

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.100 of 2019 and

Crl.M.P.No.2460 of 2019

D.Paulraj

... Appellant/Accused

-Vs-

State Rep. by

The Inspector of Police,
All Women Police Station,
Denkanikottai,
Krishnagiri District.

... Respondent/Complainant

Prayer: This Criminal Appeal is filed under Section 374(2) of Cr.P.C. praying to set aside the conviction and sentence passed by the Sessions Judge, Fast Track Mahila Court, Krishnagiri in Spl.S.C.No.66 of 2015 by judgment dated 24.10.2018.

For Appellant : Mr.M.P.Saravanan

For Respondent : Mr.R.Ravichandran
Government Advocate (Crl.Side)

JUDGMENT

This criminal appeal has been filed against the judgment of conviction dated 24.10.2018 made in Spl.S.C.No.66 of 2015 by the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri.

2 Case of the prosecution is that on 22.07.2015 at about 1.00 p.m., the appellant/accused took the victim girl P.W.1 from the School Campus with an intend to commit sexual offence on her. The appellant/accused tied eyes of the victim with cloth and removed her dresses and touched all over the body and thereby sexually assaulted the minor girl. Hence the respondent police has registered a case against the appellant/accused, for the offence punishable under Sections 376 IPC and 5(m) r/w 6 of Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO Act'). After investigation, prosecution had filed a charge sheet which was taken on file in Spl.S.C.No.66 of 2015. In order to prove the case of the prosecution, before the trial Court P.W.1 to P.W.16 were examined and Ex.P1 to Ex.P13 were marked. On the side of the defense, no one was examined and no document was marked. The learned Sessions Judge, after adverting to the materials placed on record and after hearing both the parties, altered the section from 5(m) r/w 6 to 9(i) r/w 10 of

POCSO Act, since there is no penetrative sexual assault, and by judgment dated 24.10.2018 convicted the accused and sentenced him to undergo rigorous imprisonment for 5 years with fine of Rs.1,000/- for the offence under Section 9(m) r/w 10 of POCSO Act, in default, to undergo rigorous imprisonment for a further period of ten months.

3 Aggrieved against the said judgment of conviction, the accused has preferred the present criminal appeal.

4 According to the learned counsel for the appellant/accused, the accused has not committed any offence and there is no eye witness and most of the witnesses are interested witnesses, who would naturally support the case of the prosecution. The alleged occurrence was took place on 22.07.2015 at about 1.00 p.m., whereas the complaint was lodged only on 31.07.2015. Prosecution had failed to explain the above delay. The victim has not sustained any external injuries and the Doctor's Report says that 'Hymen intact' which means there is no aggravative sexual assault and hence there is no ingredients for the alleged offence. Further, mother of the victim girl was not examined, which creates doubt in case of the prosecution. Hence, the appellant is entitled for acquittal.

5 According to the learned Government Advocate (Crl.Side) appearing for the respondent, the victim girl, who is ten years old at the time of occurrence, has clearly identified the accused and has spoken about the offence committed by the appellant/accused which would attract offence under the POCSO Act. Prosecution has proved the case by examining 16 witnesses and marking 13 exhibits. Further, cases like this, the Court cannot expect any direct eye witness and the trust worthy of evidence of the victim girl has to be taken into consideration. In the present case, the victim girl, has clearly stated the offence committed by the appellant/accused, which is corroborated by the evidence of the prosecution witnesses. The appellant/accused used to visit the place of occurrence, which was the house of P.W.6. P.W.6 has clearly stated that the appellant/accused is friend of her son P.W.7 Iyesumani and he knows, where they kept the key of the house. The trial Court, after examining all the witnesses and after hearing both the parties, since there is no penetrative sexual assault, had altered the charge in to Section 9(i) r/w 10 of the POCSO Act and convicted accordingly. There is no reason to interfere with the judgment of conviction, since it is well founded.

6 Heard the learned counsel appearing on either side and perused the materials available on record.

7 Cases of this nature under the POCSO Act, the Court cannot expect any direct eye witness and the evidence of the victim itself would suffice to convict the accused and the Court cannot expect the victim girl to rush the Police Station, soon after the occurrence. Parent of the victim girl also will think about the future of the minor child and they also should not rush to the police station to lodge a complaint. Hence delay in lodging the complaint, is not a fatal to the case of the prosecution. Even though, in the Doctor's report it has been stated that 'hymen intact', however, the Doctor has stated that the possibilities of sexual assault cannot be ruled out. The victim girl, who is aged about ten years at the time of occurrence, has clearly narrated the incident and the involvement of the accused in the offence, which would clearly attract offence under Section 9(i) r/w 10 of the POCSO Act. In the case on hand, there is no reason to discard the evidence of the victim girl. Further the appellant/accused did not establish his defence by examining any witness. This Court does not find any special circumstances to take a different view in the present case on hand. For the offence under the POCSO Act, the accused should be punished with heavy terms of imprisonment, in order to give effective implementation to the Act. There is no iota of merit and substance in the present criminal appeal and the same is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Sessions Judge, Fast Track Mahila Court, Krishnagiri.
- 2.The Public Prosecutor, High Court of Madras.
- 3.The Inspector of Police,
All Women Police Station,Denkanikottai,
Krishnagiri District.

+1 cc to Mr.M.P.Saravanan, Advocate, Sr.No. 13242

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CSL/27.06.2019