

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.141 of 2019 and
Crl.M.P.No.3786 of 2019

Kennady @ Kennady Murugan

...Appellant/Accused

-Vs-

The State represented by
The Inspector of Police,
W8 All Women Police Station,
Tirumangalam,
Chennai - 101.

...Respondent/Complainant

This Criminal Appeal is filed under Section 374(2) of Cr.P.C. praying to set aside the judgment passed against the appellant by Mahila Court, Chennai, in S.C.No.265 of 2014 dated 03.01.2019 and acquit him from all the charges.

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

JUDGMENT

This criminal appeal has been filed against the judgment of conviction by Mahila Court, Chennai, in S.C.No.265 of 2014 dated 03.01.2019.

2 The respondent police registered a case against the appellant in Cr.No.485 of 2014 for the offence under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (in short "POCSO Act"), stating that the appellant, on 03.04.2014 at about 1.00 p.m. asked the victim child to come inside the house, who came to buy chicks selling by the appellant/accused and removed her dress and committed offence punishable under Section 6 of the POCSO Act. After investigation, laid charge sheet before the jurisdictional Magistrate and the same was taken on file in S.C.No.265 of 2014 by the learned Sessions Judge, Mahila Court, Chennai.

3 Before the trial Court, on the side of the prosecution P.W.1 to P.W.9 were examined and Ex.P1 to Ex.P7 were marked and no material object was produced. On the side of the defence, no one was examined and no document was marked.

4 The learned Sessions Judge, after trial found the accused guilty of offence punishable under Section 6 of POCSO Act and by judgment dated 03.01.2019 sentenced him to undergo rigorous implementation for 10 years with fine of Rs.5,000/- , in default, to undergo rigorous imprisonment for six months. Further 1,50,000/- was ordered as compensation to the victim child. Aggrieved against the said judgment of conviction, the appellant is before this Court with the present criminal appeal.

5 According to learned counsel appearing for the appellant, there are many material contradictions between the prosecution evidences. At the time of alleged occurrence, the appellant was not available in the house and was arrested in some other case. Prosecution has failed to prove that the appellant was present in the house at the time of alleged occurrence and has failed to examine the owner of the house of the appellant/accused. The accused was having two dogs and it created nuisance to the neighbours and in order to vacate the appellant in that place, false case has been foisted against the appellant. There are many contradictions from the evidence of P.W.1 and P.W.3, which was not considered by the Court below. Further, the accused was pouring colors on the chicks, which were selling by him, if the alleged occurrence has taken place as stated by the prosecution, there may be some colors on the victim dress and body of the victim. But, no such dress was recovered by the prosecution. Generally, the child will come to home from the School only at 4.30 p.m., but the alleged occurrence was said to have taken place at 1.00 p.m., which is not possible. In fact, the occurrence was said to have taken place on 03.04.2014 by, whereas, in the documents produced by the prosecution it was mentioned as 04.04.2014, which itself creates doubts in the case of the prosecution. The learned Sessions Judge has failed to consider the above facts and erroneously convicted the appellant, which warrants interference.

6 The learned Government Advocate (Crl.Side) appearing for the respondent police would submit that after the registration of present case, another case was registered against the appellant for the offence punishable under the POCSO Act, which shows that the appellant is in the habit of committing the offence. P.W.1, who is 9 years old at the time of occurrence, has clearly narrated the occurrence in the 164 statement and deposed the same before the Court also, which

could not be discarded. P.W.2 and P.W.3 corroborates the version of victim child P.W.1. The Doctor, who was examined as P.W.7, has opined that there was reddishness on the private part of the victim child, which could be happened when some one sexually assaulted her with hand. Therefore, prosecution has clearly proved its case beyond reasonable doubt and the learned Sessions Judge has rightly appreciated the evidence and convicted the appellant/accused, which does not call for any interference.

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

8 The victim child, who is aged about nine years at the time of occurrence, has clearly narrated the incident and the involvement of the accused in the offence in the 164 statement recorded by the Magistrate and has clearly deposed the same before the trial Court, during the trial, the Doctor's evidence also corroborated the same, which would clearly attract offence under Section 6 of the POCSO Act. The main contention of the appellant/accused that he was not available in the house at the time of occurrence was not established by him with clear evidence, when presumption under the Act stands against him. On reading of the evidence of P.W.1 to P.W.5, it is clear that the accused committed offence and when they went and search him, he escaped from the scene of occurrence. The respondent police has arrested him, after two days of occurrence and produced before the Court. In the cases of this nature, the evidence of victim has to be given more weightage and in the case on hand, the victim child, who is nine years old at the time of occurrence, has clearly narrated the incident. The contradiction in the date of occurrence as stated by the defence could not be considered, since the victim P.W.1 and P.Ws.2 & 3 had clearly stated that the date of occurrence is 03.04.2014. The other defence taken by the appellant/accused would not suffice to rebut the presumption under the POCSO Act. 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.

9 In the result, this Court does no find iota of merit and substance in the present criminal appeal and hence the appeal is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

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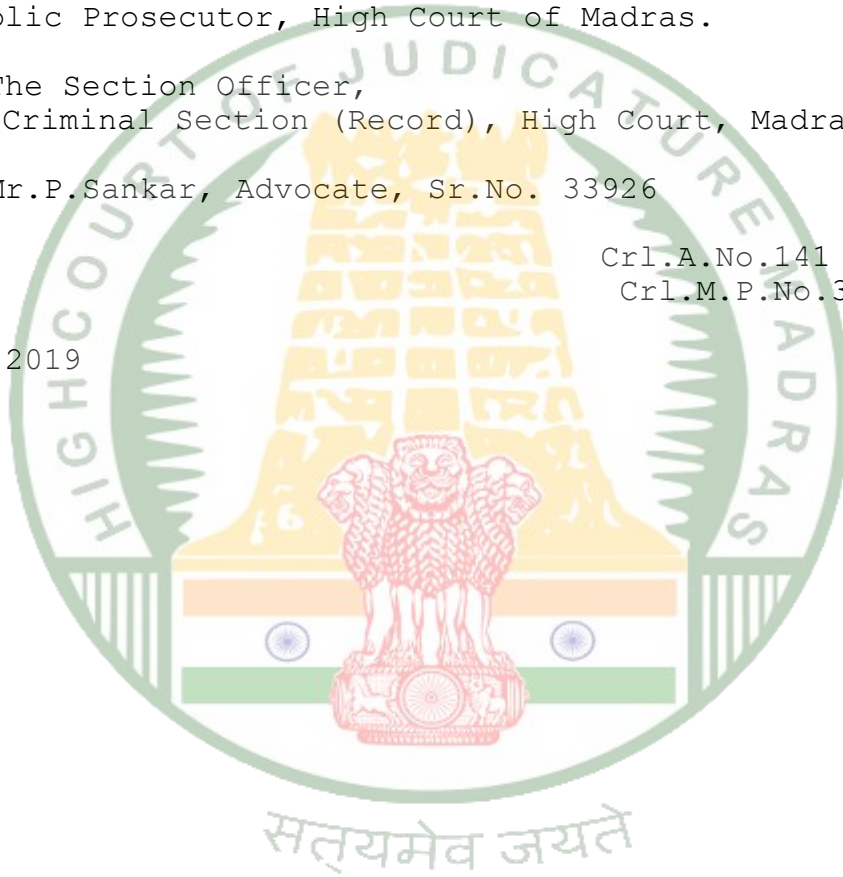
1. The Sessions Judge, Special Court for Cases under
POCSO Act 2012 (Mahila Court), Chennai.
2. The Inspector of Police,
W8 All Women Police Station, Tirumangalam, Chennai - 101.
3. The Public Prosecutor, High Court of Madras.

Copy To: The Section Officer,
Criminal Section (Record), High Court, Madras.

+1 cc to Mr.P.Sankar, Advocate, Sr.No. 33926

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GJ-II(CO)
CSL/27.06.2019



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