

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 23.04.2019
CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN
Crl.A.No.325 of 2016 and
Crl.M.P.No.4996 of 2016

Sengottaian
S/o.Chinnapaiyan

...Appellant/single accused

-Vs-

The State by Inspector of Police,
All Women Police Station,
Sankari,
Crime No. 20 of 2013,
Salem District.Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of
Crl.P.C. to call for the records relating to the Judgment dated
20.04.2016 made in S.C.No.227 of 2014 on the file of the learned
Sessions Judge Mahila Court, Salem and set aside the same.

For Appellant : Mr.N. Manokaran
For Respondent : Mr.R. Ravichandran
Government Advocate(crl side)

J U D G M E N T

This criminal appeal has been filed by the appellant against
the Judgment dated 20.04.2016 made in S.C.No.227 of 2014 on the
file of the learned Sessions Judge Mahila Court, Salem, for the
offence under POCSO Act and also IPC.

2. The case of the prosecution is that on 2.2.2013 at about
4.30 p.m when the victim girl aged about 5 years was playing
with her friends near to the accused house, the accused sexually
assaulted her. Therefore, the respondent police registered a
case in Crime No.20 of 2013 Under Sections 3 and 4 of POSCO Act,
2012 and under section 366 of IPC. After investigation,
prosecution had filed the charge sheet before the learned
Sessions Judge, Mahalia Court (Fast Track Mahila Court), Salem,
which was taken on file in S.C.No.227 of 2014.

3. In order to prove the case of the prosecution before the
Trial Court P.W.1 to P.W.12 were examined and Ex.1 to Ex.18 were
marked and no material objects were marked. One P.Angamuthi was
examined on the side of the defence and no documents were
marked.

4. The learned Sessions Judge, after advertng to the materials placed on record and after hearing both the parties, by judgment dated 20.04.2016 the accused is found guilty of the offence U/s 3 and 4 of POCSO ACT and convicted Under Section 235 (2) of Cr.P.C and sentenced him to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.10,000/- in default and to under go simple imprisonment for 3 months. Out of fine amount a sum of Rs.9,000/- is ordered to be given to the victim girl as compensation under section 357(1) of Cr.P.c.

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

6. The learned counsel for the appellant would submit that the victim girl was aged about 5 years and except the mother of the victim girl, no body has given any complaint and there is no eyewitness in the case and the children who were playing with the victim girl have not been examined by the investigating officer or before the Trial Court. Therefore, there is a motive between the defacto complainant/ parents of the victim girl and the appellant. Hence, they foisted the false case.

7. The learned Government Advocate(Crl side) states that there is no motive between the appellant and the parents of the victim girl and further states that the victim girl has clearly stated about the

occurrence. PW1 is the mother of the victim girl, who in her evidence has stated that when her daughter reported that her private part is paining, she applied coconut oil and advised the victim girl not to play in the sunlight and handed over her daughter to her grand mother and went to job. The doctor also in his evidence stated that the victim girl complained about the pain in the private part. He would further submit that the prosecution has proved the case beyond reasonable doubt and prays to dismiss this appeal.

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

9. The prosecution in order to prove the case, examined P.W.4/Kannan who clearly deposed that even though the appellant put a thatched house in the lane between the appellant and the house of the victim girl, alleged previous enmity between them was proved by the defence and no parents will foist a false case against the appellant by sacrificing the future of female child. The Victim girl was aged about 4-5 years and at the time of occurrence, she did not know the intricacies and trickeries of the world.

10. P.W.1 Kala, mother of the victim girl in her evidence deposed that her daughter Naveena was sitting near by house and weeping and when she enquired about the reason for her weeping she reported her private part is paining. Hence, she thought that it would be due to heat, and she advised the victim girl as don't play in the sunlight and applied some coconut oil on her head and abdomen and rubbed and advised her not to play in the sunlight and handed over her daughter to her grand mother Seerangayee and went to job. After finishing her work she came at 6.00 p.m and grand mother of the victim girl reported that child was still weeping and when she enquired her child, she told that when she was playing in the street with her friends the appellant called her to his home and pinched her private part and it was still paining.

11. P.W.7 Dr.Dineshkumar in his evidence stated that on examination of the victim girl it shows ulcer in the vicinity of vaginal infile and referred to Salem Hospital for expert opinion.

12. Though the learned counsel for the appellant submitted that there was a motive between the defacto complainant and the appellant, P.W.3 has clearly stated that the victim girl was crying and said that her private part is paining due to the illegal act of the accused.

13. On reading of the evidences adduced by P.W.6,7 and 8 and also the A.R. Copy of Edapaddy Government Hospital of the victim girl, it reveals that the appellant has used his finger and due to which the private part of the victim girl is paining. Therefore, the defence taken by the learned counsel for the appellant is not acceptable

14. D.W.1 in her witness stated that there was a dispute between the parents of the victim girl and the appellant and the same is not proved with manner known to law, hence the same is not acceptable. Therefore, it is clear that the prosecution has proved the case beyond reasonable doubt.

15. This Court does not find any sound ground 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.

16. There is no merit in the present criminal appeal and hence the appeal is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

smn

To

The Sessions Judge Mahila Court, Salem

2.The Superintendentm,Central Prison, Coimbatore

3.The Inspector of Police,
All Women Police Station,
Sankari,
Crime No. 20 of 2013,
Salem District.

Copy to:

1. The Public Prosecutor, High Court, Madras - 104.
2. The Section Officer,
Criminal Section,
High Court, Madras

+1cc to Mr.N.Manokaran , Advocate SR.No. 39022

Cr1.A.No.325 of 2016 and
Cr1.M.P.No.4996 of 2016

A.SK(19/12/2019)

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