

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2019

C O R A M

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Criminal Appeal No.479 of 2018

S.Venkatesh

... Appellant/Accused

-Vs-

State rep. by
The Inspector of Police,
W-6 AWPS Police Station,
Tirumangalam, Chennai.

... Respondent/Complainant

Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, praying to set aside the judgment dated 17.07.2018 made in S.C.No.379 of 2015 on the file of the Mahila Court, Chennai.

For Appellant : Mr.B.Sundar

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

J U D G M E N T

This appeal arises against the judgment dated 17.07.2018 made in S.C.No.379 of 2015 on the file of the Mahila Court, Chennai, convicted the appellant/accused for offence under Section 6 of POCSO Act, 2012 and sentenced him to undergo 10 years Rigorous Imprisonment and fine of Rs.10,000/-, in default, 6 months Rigorous Imprisonment.

2. The case of the prosecution is that on 27.05.2015 at about 3.00.p.m, when the victim child was alone at home, the accused came to her house in a drunken mood and he locked the door and removed the panties of the victim child, touched inside the genitals of the child with his hands and shook. PW-1/mother of the victim, lodged a complaint before the Inspector of Police, W8 All Women Police Station, Chennai and a case was registered in Crime No.16 of 2015. After completing the investigation, the respondent police laid a charge sheet against

the accused before the learned Sessions Judge, Mahila Court, Chennai, informing the commission of offences under Section 6 of POCSO Act 2012 and the case was tried in S.C.No.379 of 2015.

3. During trial, on the side of the prosecution, prosecution examined PWs.1 to 9 and marked Exs.P1 to P10. After completing the evidence, incriminating circumstances culled out from the prosecution witnesses and the same were put before the accused but, he denied as false. On the side of the defence, 3 witnesses were examined and no exhibits were marked. After hearing the arguments, the learned Sessions Judge, under judgement dated 17.07.2018, convicted the appellant/ accused for the offences under Section 6 of POCSO Act, 2012 and sentenced him as stated above. There against, the present appeal has been preferred before this Court.

4. The learned counsel for the appellant would submit that the victim girl was produced for medical examination after four days from the date of occurrence. PW-6-Doctor, who examined the victim girl, has stated that after four days, it is not possible to give exact result and Ex.P7 also corroborated the same. The House owner, where the accused was staying, was examined as PW-4 and the independent witness PW-5 had not appeared for the cross-examination. Therefore, the learned Sessions Judge relied on the evidence of PWs-4 and 5 cannot be sustained and their evidence cannot be treated to substantiate the case of the prosecution. There is previous enmity between the PW-1/defacto complainant and the accused and to establish the enmity, the mother of the accused and the wife of the accused were examined as DWs-2 and 3. Initially the case was registered for the offence under Section 4 of the POCSO Act, the learned Sessions Judge, after trial, found that the accused committed the offence under Section 6 of the POCSO Act, which warrants interference.

5. The learned Government Advocate (Crl. Side) appearing for the respondent would submit that the victim girl was examined as PW-2 and her statement was recorded by the learned Sessions Judge under Section 164 Cr.P.C, in which, she has clearly narrated the incident and her mother was examined as PW-1 before the Court. PW-2/victim girl deposed that on the day of occurrence, herself and her sister were alone at home. It was during summer holidays. Her sister went to bathroom for bathing. PW-2 took a towel and gave it to her sister. Victim girl also started to go for taking bath by taking her dress. At that time, the accused caught hold of her and pulled her inside. He removed her panties and also removed his panties. He laid on her by putting his hands. He also pressed her face with pillow. At that time her sister came and called her with her nick name. The accused told that the victim girl was not there. But her sister did not believe the same and she came inside the house.

PW-2 was very suffocating at that time. The house owner shouted at the accused and asked him to vacate the house. On seeing the accused after three days, the neighbours attacked him and informed the police. Though PW-6-Doctor has stated that hymen is intact, she found reddishness from the private part of the victim. The appellant penetrated his fingers into the private part of the victim girl and the medical evidences of PW-6-Doctor corroborated the same. The occurrence took place on 27.05.2015, whereas, PW-2 was examined by the Doctor only after four days i.e., on 31.05.2015. In the case of POCSO Act, the evidence of the victim girl itself is sufficient to prove the case unless the defence establishes that the evidence of the victim girl is not believable. In this case, there is no reason to disbelieve the evidence of the victim girl. The counsel for the appellant would submit that there was previous enmity between the defacto complainant/PW-1 and the appellant for the past 10 years, due to which, the defacto complainant/PW-1 lodged a false complaint to take vengeance. However, no mother will spoil the future and the reputation of the minor daughter. Though the evidence of DW-3/Mother of the accused has stated that there is enmity between her family and the defacto complainant, there is no evidence to prove the same. In the circumstance, the defence taken by the appellant/accused is not acceptable. The prosecution has proved its case beyond reasonable doubts through the victim girl and also by documentary evidence.

6. Though the learned counsel for the appellant would submit that hymen of the victim is intact, PW-6-Doctor spoken about the reddishness in the private part of the victim girl. From the evidence of PW-2/victim girl, it is seen that the accused penetrated his finger in the private part of the victim. The medical evidences corroborated the same. The victim girl was aged 10 years at the time of occurrence and there is no need to give false allegations against the accused. The trial Court rightly appreciated the entire evidence and came to the conclusion that the appellant/accused committed the offence and convicted him.

7. In the circumstances, this Court does not find any merit in this appeal and the same is liable to be dismissed. Accordingly, the Criminal Appeal is dismissed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

KMI

To

- 1.The Sessions Judge,
Mahila Court, Chennai.
- 2.The Inspector of Police,
W-6 AWPS Police Station,
Tirumangalam, Chennai.
- 3.The Public Prosecutor,
High Court, Madras -104.

AD(CO)
CB(19/09/2019)

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