

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.347 of 2017 and
Crl.M.P.No.7797 of 2017

Radhakrishnan

...Appellant/Accused

-Vs-

The State Rep. by
The Inspector of Police,
All Women Police Station,
Bhavani, Erode District.
(Crime No.4/2016)

...Respondent/Complainant

This Criminal Appeal is filed under Section 374(2) of Cr.P.C. praying to set aside the judgment of the learned Magalir Fast Track Court cum Sessions Court Judge, Erode, Erode District made in Spl.S.C.No.10 of 2016 dated 29.09.2016 and acquit the appellant/accused from the charges.

For Appellant : Mr.T.R.Ravi

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

JUDGMENT

This criminal appeal has been filed against the judgment of conviction dated 29.09.2016 made in Spl.S.C.No.10 of 2016 by the learned District Judge, Sessions Court, Magalir Sessions (Fast Track) Court, Erode, for the offence under Protection of Children from Sexual Offences Act (in short "POCSO Act").

2 The respondent police has registered a case against the appellant/accused in Cr.No.4/2016, based on the complaint given by P.W.1 mother of the victim child/P.W.2, for the offence under Section 10 of POCSO Act. After investigation, prosecution had filed a charge sheet before the learned Magalir Fast Track Court cum Sessions Court Judge, Erode, Erode District, which was taken on file in Spl.S.C.No.10 of 2016. In order to prove the case of the prosecution, before the trial Court P.W.1 to P.W.13 were examined and Ex.P1 to Ex.P20 were marked and no material object was exhibited. On the side of the defense, no one was examined and no document was marked. The learned Judge, after advertng to the materials placed on record and after hearing both the parties, by judgment dated 29.09.2016 convicted the accused and sentenced him to undergo rigorous imprisonment for a

period of 7 years with fine of Rs.100/- for the offence under Section 10 of POCSO Act, in default, to undergo simple imprisonment for a further period of two weeks.

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

4 According to learned counsel for the appellant/accused, the accused has not committed any offence and in order to attract the charges levelled against the appellant, there should be physical relationship and the same should be proved by producing medical records. In the present case on hand, there is no eye witness and most of the witnesses are interested witnesses, who would naturally support the case of the prosecution. The appellant is a known person to P.W.1 and P.W.3 and was playing with the victim child. Ex.P18, copy of Accident Register and Ex.P19 Doctor's opinion does not reveal anything that the victim sustained external injuries. Under these circumstances, the Court below ought to have acquitted the appellant. Further, if at all the alleged occurrence happened as stated by the prosecution, the accused must be prosecuted only under Section 8 of POCSO Act, but not under Section 10 as alleged by the prosecution and hence atleast sentence may be reduced.

5 According to the learned Government Advocate (Crl.Side) appearing for the respondent police, the victim child, who is aged about 4 ½ years 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. P.W.1 and P.W.3 had stated that after completing their catering work, they searched for the child and at that time, they heard crying sound of the victim child at 1st floor of the Marriage Hall and when they rushed to the place, the appellant/accused on seeing them, ran away from the place, which evidence was corroborated with the evidence of the victim child. The section says that touching of the body of the child with bad intention is also an offence under POCSO Act, since which would cause harm to the child. Further, The trial Court after examining all the witnesses and after hearing both the parties, had come to the conclusion that the accused found guilty for the offence punishable under Section 10 of the POCSO Act. There is no reason to interfere with the judgment of conviction, when it is well founded.

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

7 On reading of the entire allegations made against the appellant, it would reveal that cases of this nature under the

POCSO Act, the Court cannot expect any eye witness and the evidence of the victim itself would suffice to convict the accused. The victim, who is a female child and aged about 4½ years at the time of occurrence, has clearly narrated the incident and the offence committed by the appellant/accused, which would clearly attract offence under Section 10 of the POCSO Act. In the case on hand, there is no reason to discard the evidence of the victim child. Further the appellant/accused did not establish his defence by examining any witness. P.W.1 to P.W.3 had stated about the incident, which corroborates with each other. As rightly stated by the learned Government Advocate (Crl.Side), touching of the body of the child with bad intention is also an offence under the POCSO Act. In this case, the victim is a female child and only aged about 4 ½ years, was subjected to sexual abuse.

8 This Court does not find any special circumstances to take a different view in the present case on hand. Accordingly the appeal is dismissed as far as conviction is concerned. However, in order to meet ends of justice, the sentence alone modified from 7 years to 5 years.

9 With the above modification, the criminal appeal is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

cgi

To

1. The Magalir Fast Track Court cum Sessions Court Judge, Erode, Erode District.
2. The Public Prosecutor, High Court of Madras.
3. The Inspector of Police, All Women Police Station, Bhavani, Erode District.

+1cc to Mr.T.R.Ravi, Advocate SR.No.28794

Crl.A.No.347 of 2017 and
Crl.M.P.No.7797 of 2017

SVI (CO)
GMY (18/06/2019)