

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2019

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.602 of 2017

and

Crl.M.P.No.11847 of 2017

1.Kathiravan

2.Vaiyapuri

.. Appellants/Petitioner

Vs.

The Inspector of Police
All Women Police Station
Udumalai

.. Respondent/Respondent

PRAYER:Criminal Appeal has been filed under Section 374 of Criminal Procedure Code to set aside the judgment passed by the learned Sessions Judge, Mahila Court (Fast Track Court), Tiruppur, in S.C.No.7 of 2015 dated 31.03.2016 and allow the above appeal.

For Appellants : Mr.T.Saravanan

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

JUDGMENT

The Appellant has filed this Criminal Appeal under Section 374 of Criminal Procedure Code to set aside the judgment passed by the learned Sessions Judge, Mahila Court (Fast Track Court), Tiruppur, in S.C.No.7 of 2015 dated 31.03.2016 and allow the above appeal.

2.The case of the prosecution is that A1 is the father and A2 is the grand father of PW1 and PW8. The victim girl's mother died due to her illness. PW1 and PW8 are living along with A1 and A2 in their house. PW1 aged about 16 years who is a minor and drop out of 10th standard in Government High School, Malayandipatinam. PW8 is the sister of PW1, studying in 8th standard. PW1 and the appellants were living in the same house at Kannamanaickanur. While being so, the appellants used to

sleep near by PW1, kissing her on her lips and standing nude in front of PW1 in a drunken state and pressing the breast and abusing in filthy language and mixing a powder like substance in the food and thereby the PW1 was put into a sexual harassment. Therefore, she informed the same to her neighbor and subsequently got the cell phone number of Mariyalaya Child Care Line Nodal Office and informed them over phone about the misbehavior of A1 and A2. Subsequent to the phone call, the Mariyalaya Child Welfare Officer secured the victim girls PW1 and PW8. Thereafter, a complaint was lodged before the respondent police and a case was registered under Section 9(n) r/w Section 10 of Protection of Child from Sexual Offence (POCSO) Act, 2012.

3. After investigation, a charge sheet was filed against the appellants/accused before the Trial Court. Since the appellants/accused denied the charges and claimed to be tried, the prosecution examined 12 witnesses and marked 11 documents. No material objects were produced. On the side of the appellants DW1 and DW2 were examined.

4. The Trial Court after hearing the arguments and considering the materials, found the accused / appellants guilty under Section 9(n) r/w Section 10 of Protection of Child from Sexual Offence (POCSO) Act, 2012 and convicted and sentenced the appellants to undergo 5 years Rigorous Imprisonment each together with fine of Rs.5,000/- in default to undergo 6 months Simple Imprisonment. Aggrieved by the said conviction, the appellants have preferred the present Appeal.

5. The learned counsel for the appellants would submit that there is no such alleged occurrence took place. PW1 & PW8 are the sisters and they are the daughters of the 1st Accused and grand daughters of the 2nd Accused. Though PW1 stated that the sexual harassment of the accused/ appellants was informed to the neighbours, the neighbours were not examined as prosecution witness, which creates a serious doubt as to whether the occurrence had taken place or not as alleged in the charge sheet.

6. It is further submitted by the learned counsel for the appellant that after receiving the complaint, the Revenue Divisional Officer (RDO) enquired PW1. The victim girl stated that her father used to beat her due to wastage of food materials. Therefore, RDO advised the accused / appellants, the father of PW1 accordingly. This fact has not been considered by the Trial Court. Thereafter, immediately the police came to the

spot and the statement of the victim girl was recorded. It is clear from the records that the neighbours are not examined as prosecution witnesses and the statement recorded by the police was not marked as exhibit and the RDO's advice was not considered showing the case otherwise. Since because the victim girl is a minor and drop out of 10th standard and subsequently on the inducement of the PW2, the Child Welfare Officer, the victim girl gave a false statement. PW1 never stated any allegation against her father and grand father / accused till she was taken to the Home. All the allegations were levelled only subsequent to the date of the victim girls went to the home and at the ill advice of the home and the child welfare officer. The said fact was not considered by the Trial Court and the case was decided with the lack of particulars. Hence, the prosecution has not proved the case beyond reasonable doubt and the same warrants interference of this Court.

7.The learned Government Advocate (Crl. Side) would submit that the PW1/ victim girl is a minor and a drop out of 10th standard in Government High School, Malayandipatinam. PW1 and PW8 are sisters and they were living with their father and grand father as their mother had died due to her ill health. The accused/appellants taking advantage of the situation, misbehaved with PW1 and gave her sexual torture. PW1 and PW8 have stated in their evidence clearly about the harassment given by the accused. Which clearly proves that the accused have committed an offence under Section 9(n) r/w Section 10 of Protection of Child from Sexual Offence (POCSO) Act, 2012.

8.The learned Government Advocate would further submit that PW2 is the Co-ordinator of the Mariyalaya Child Care Line Nodal Office. He has stated in his deposition that after receiving the information over phone, they could not identify the location and address of the victim girl. The house of the victim girls could be identified only after three days i.e. on 19.09.2014. Thereafter the victim girls were secured and taken to the Mariyalaya Child Care Home. Subsequently, after the enquiry, a complaint was lodged against the appellants / accused. Therefore, on reading of the evidences of PW1, PW2, PW7, PW8 and PW11, the prosecution has proved the case beyond reasonable doubt. Accordingly, prays for dismissal of the appeal.

9.Though the learned counsel for the appellants would submit that at the first instance the victim girls have not levelled any derogatory allegation against their father and grand father before RDO. The actual case is that the father and the grand father committed an offence under Section 9(n) r/w Section 10 of

Protection of Child from Sexual Offence (POCSO) Act, 2012 and also misbehaved chauvinistically. One cannot accept the fact that the victim girls without any support and they are only living with the support of the appellants / accused, they can reveal the truth to RDO who is the unknown person and stranger to the victim girls.

10. On reading of the evidence of PW2, the Co-ordinator of the Mariyalaya Child Welfare Home, it is clear that on receiving the information over phone from the victim girl, they could trace the location of the victim girls and after convincing them they took them to the home wherein the victim girls revealed the truth before the Child Welfare Officer. Therefore, on reading of the entire evidence of PW1, PW2 and PW8, this court as fact finding Court has reassessed the entire evidence and come to independent conclusion that from the evidence of the victim girls i.e. PW1 & PW8 who are the sisters and they are residing in the same house and also the evidence of PW2 and further the statement of the victim girls recorded under Section 164 Cr.P.C. the prosecution has clearly proved the case that the appellants / accused have committed offence under Section 9(n) r/w Section 10 of Protection of Child from Sexual Offence (POCSO) Act, 2012.

11. In the light of the above, this Court does not find any valid grounds or reasons or merit in this appeal to interfere with the judgment of the learned Session Judge, Mahila Court (Fast Track Court), Tiruppur, in S.C.No.7 of 2015 dated 31.03.2016. Hence, the appeal is liable to be dismissed.

12. Accordingly, the Criminal Appeal stands 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
Mahila Court (Fast Track Court)
Tiruppur

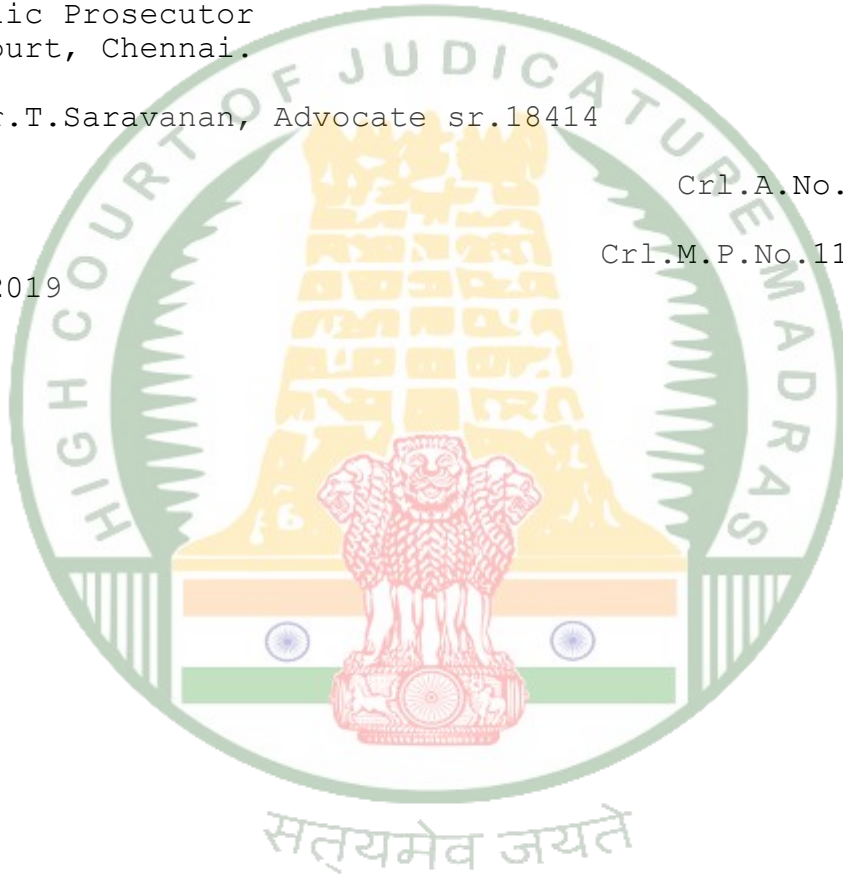
2.The Inspector of Police
All Women Police Station
Udumalai

3.The Public Prosecutor
High Court, Chennai.

+lcc to Mr.T.Saravanan, Advocate sr.18414

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