

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.656 of 2018

Babu

...Appellant/Accused

-Vs-

State represented by
The Inspector of Police,
W 16, All Women Police Station,
Pulianthoppu, Chennai - 600 012.
(Cr.No.3 of 2017)

...Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C. praying to set aside the judgment of conviction and sentence imposed in S.C.No.293 of 2017 dated 25.09.2018 on the file of the Special Court for cases under POCSO Act 2012/Mahila Court, Chennai.

For Appellant : Mr.T.Muruganandam,
Legal Aid Counsel

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

JUDGMENT

This criminal appeal has been filed against the judgment of conviction and sentence dated 25.09.2018 made in S.C.No.293 of 2017 by the learned Sessions Judge, Special Court for cases under POCSO Act 2012/Mahila Court, Chennai.

2 The respondent police registered a case against the appellant in Cr.No.3 of 2017 for the offence punishable under Section 10 of the Protection of Children from Sexual Offences Act, 2012 (in short "POCSO Act"), stating that on 13.04.2017 at about 4.30 p.m., when the victim girl was playing outside the home, the appellant/accused who was living in the first floor of opposite house, called the victim child to get match box and when the victim child went and asked money to buy match box, he pulled her inside and removed her dress and committed offence punishable under Section 10 of POCSO Act. The respondent police, after investigation laid charge sheet before the Special Court and the same was taken on file in S.C.No.293 of 2017 by the learned Sessions Judge, Mahalir Neethimandram,

Chennai. After completing the procedural formalities, charges were framed against the appellant.

3 Before the trial Court, on the side of the prosecution P.W.1 to P.W.6 were examined and Ex.P1 to Ex.P14 were marked and no material object was produced. On the side of the defence, wife of the appellant was examined as D.W.1 and no document was marked.

4 The learned Sessions Judge, after trial found the appellant/accused guilty of offence punishable under Section 10 of POCSO Act and by judgment dated 25.09.2018 has convicted the appellant and sentenced him to undergo simple imprisonment for five years with fine of Rs.10,000/-, in default, to undergo simple imprisonment for six months for the offence punishable under Section 10 of POCSO Act and also awarded Rs.50,000/- as compensation to be paid by the Government of Tamilnadu. Aggrieved against the said judgment of conviction, the accused has preferred this appeal before this Court.

5 According to learned counsel appearing for the appellant, there was money transaction between P.W.1/the mother of the victim and the appellant and she used to borrow money from the appellant. P.W.1 demanded money from the appellant and when he refused to give, she filed a complaint against him with false allegations. P.W.2, the victim child in her evidence had stated the appellant as "எதிரி", it is not possible for the victim child, who is 8 years old at the time of occurrence to state the appellant as formal word "எதிரி" which clearly shows that the victim child had been tutored by prosecution to give evidence against the appellant. In copy of the Accident Register Ex.P6, there was no seal of the Hospital and the Doctor did not speak about the age of the injury. Further there is only one impression of the teeth found on the body of the victim child, which is not practically possible. There was nearly 3 days delay in lodging complaint, which was not properly explained by the prosecution and no independent witness has been examined by the prosecution to prove its case. The son of the appellant was also present in the house, when the alleged occurrence stated to have been taken place. The trial Court 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 on 13.04.2017, when the victim was playing outside the house, the appellant asked her to get a matchbox. The victim child went to house of the appellant/accused and asked money to buy a matchbox, at that time the appellant/accused pulled her inside and committed offence under POCSO Act and threatened the victim child not to disclose anyone. On 16.04.2017, when P.W.1 mother of the victim,

removed victim's dress for bathing, she found a red mark over her chest and asked about the same and then the victim child narrated entire incident and thereafter P.W.1 lodged complaint against the appellant. Soon after knowing the incident, P.W.1 lodged a complain and therefore, there was no delay in lodging complaint. The victim child/P.W.2 has clearly narrated the occurrence before the Court below, which could not be discarded. 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 On 13.04.2017, when the victim was playing outside the house, the appellant asked her to get a matchbox and when the victim child went to house of the appellant/accused and asked money to buy a matchbox, the appellant/accused pulled her inside and committed offence under POCSO Act and threatened the victim child not to disclose anyone. Thereafter on 16.04.2017, when P.W.1/mother of the victim removed victim's dress for bathing, she found a red mark over her chest and asked about the same and then the victim child narrated occurrence and immediately P.W.1 lodged complaint against the appellant and therefore, there was no delay in lodging complaint. It is contended by the learned counsel for the appellant that the appellant refused to give money to P.W.1 and therefore she filed a false complaint. No mother will go to that extent, which would spoil future of the child and therefore the above contention could not be acceptable. The Doctor, who examined as P.W.4 has stated that there was reddish bite mark on both side of breast of victim child. The medical evidence has strengthen the case of the prosecution. 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. Further, it was contended that son of the appellant was present in the house at the time of occurrence. The son will not always available in the house, if he was available in the house, the appellant should have examined him as witness to strengthen his case, but he only examined his wife as D.W.1, who has not supported the case of the appellant/accused in any way. The chain has been clearly proved and there is no contradiction. It is seen that the victim child has stated the appellant as "jhj;jh" in some places, and mentioned as "vjphp" in some places. Therefore, the contention that the victim child has been tutored is not acceptable. On reading of evidences of P.W.1 to P.W.4, prosecution has proved its case cogently and medical records strengthen the same.

9 In the result, this Court does not find iota of merit and substance in the present criminal appeal and hence the appeal is dismissed. Judgment of conviction and sentence dated 25.09.2018 passed by the trial Court in S.C.No.293 of 2017 is hereby confirmed.

10 While parting with the case, I appreciate the services rendered by Mr.T.Muruganandam, learned counsel who appeared on behalf of the appellant/accused, as Legal Aid Counsel. The Legal Services Authority is directed to pay his remuneration.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

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To

1. The Sessions Judge, Special Court for cases under POCSO Act 2012/Mahila Court, Chennai.
2. The Inspector of Police, W 16, All Women Police Station, Pulianthoppu, Chennai - 600 012.
3. The Public Prosecutor, High Court of Madras.
4. The Superintendent, Central Prison, Puzhal, Chennai

+1 CC to Mr.T.Muruganandam, Advocate sr 43301

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SVI(CO)
SP(04/12/2019)