

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2019

C O R A M

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Criminal Appeal No.806 of 2018

and

CRL.M.P.No.16718 of 2018

Sankara Narayanan

... Appellant/Accused

-Vs-

State rep. by
Inspector of Police,
All Women Police Station,
Vridhachalam.
(Crime No.4 of 2017)

... Respondent/Complainant

Prayer:Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, against the judgment dated 22.11.2018 made in Spl.S.C.No.13 of 2018 passed by the learned Sessions Judge, Mahila Court, Cuddalore by convicting and sentencing the appellant to undergo 10 years R.I and to pay a fine of Rs.15,000/- i/d 2 years S.I under Section 6 of POCSO Act 2012 and sentenced to undergo 2 years S.I and to pay a fine of Rs.5,000/- i/d 6 months S.I u/s 506(ii) of IPC.

For Appellant : Mr.S.Ashok Kumar
Senior Counsel
for Mr.P.Palaninathan

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

J U D G M E N T

This appeal arises against the judgment dated 22.11.2018 made in Spl.S.C.No.13 of 2018 passed by the learned Sessions Judge, Mahila Court, Cuddalore, convicting the appellant/accused for the offence under Section 6 of POCSO Act, 2012 and Section 506(ii) IPC and sentenced him to undergo 10 years Rigorous Imprisonment and fine of Rs.15,000/-, in default, 2 years Simple Imprisonment for the offence under Section 6 of POCSO Act, 2012 and 2 years Simple Imprisonment and fine of Rs.5,000/-, in default, six months Simple Imprisonment for offence under Section 506 (ii) IPC. Trial Court directed the sentences to run concurrently.

2. The case of the prosecution is that the victim girl was aged 12 years and the accused was aged 63 years. On 23.01.2017 the accused took the victim girl inside the house, inserted his hands inside the skirt and top of the child, touched the private parts of the child and sexually assaulted her. The accused had also threatened her not to reveal the incident to anybody. Again on 17.03.2017, when the victim girl came back from school in a cycle, fell down due to an electric wire hanging on the way. The accused, who came there, took the victim girl under the guise of helping her, had again rubbed and pinched her in private parts of the child. Hence, the mother of the victim girl lodged complaint against the accused. The respondent police registered a case against the appellant/accused in Crime No.4 of 2017 for the offence under Sections 7, 8 of POCSO Act, 2012 and 506(i) IPC. After investigation, the respondent police laid charge sheet against the accused before the learned Sessions Judge, Mahila Court, Cuddalore informing the commission of offence under Section 6 of POCSO Act, 2012 and 506(ii) IPC and the same was taken on file in Spl.SC.No.13 of 2018.

3. Before the trial Court, prosecution examined PWs.1 to 10 and marked Exs.P1 to P8. None were examined on behalf of the defence nor any exhibits were marked. On questioning u/s.313 Cr.P.C., accused denied the charges. Trial Judge, on appreciation of the oral and documentary evidence, under judgement dated 23.11.2018, convicted the appellant/accused for the offence under Section 6 of POCSO Act, 2012 and 506(ii) IPC and sentenced him as stated above. There against, the present appeal has been filed before this Court.

4. The learned counsel appearing for the appellant would submit that PW-2 is the mother of the victim girl and she is having enmity with the accused and hence, she foisted the false case. Initially, the case was not taken by the police, subsequently, PW-2/Mother of the victim threatened that she will go to the Media and thereafter, the police registered the case. Except PW-2, none of the prosecution witnesses supported the prosecution case. The learned Sessions Judge failed to consider the defence taken by the accused regarding the relationship of the accused and also the age of the accused. The benefit should have been extended to the accused, which warrants interference.

5. The learned Government Advocate (CrI.Side) appearing for the respondent would submit that though PW-1 has clearly stated that the occurrence was happening for two months, one cannot except eye-witness to establish the occurrence, since the grand father is involved in this case. In the circumstances, the prosecution has established the case with the evidence of PW-1. Considering the evidence of PW-1 and the intention of the

accused, though the learned Sessions Judge found the accused guilty under Section 3(c) of POCSO Act, 2012, convicted the accused under Section 6 of POCSO Act, 2012, since the child was aged below 12 years. Admittedly, the appellant/accused is none other than the grand father of PW-2 and the relationship of the parties and nexus of the of the parties are not in dispute. There is no reason to discard the witness of PW-1/victim. Assuming that PW-2/mother of the victim girl has enmity with the appellant/accused, due to the reason that the appellant had misbehaved with her mother also, she would not take revenge by sacrificing the future of her minor daughter. The said incident alleged to have taken place long back when PW-2, the mother of the victim was 6 years and studying 2nd standard. It is not believable, at the time of the present occurrence the age of the victim girl itself is 12 years and after such a long time one will not use her minor daughter and tutor to ventilate her anguish.

6. On reading of the evidence of PW-1, it is seen that the offence falls under Section 7 of POCSO Act and the prosecution has proved its case beyond reasonable doubts. However, it has failed to prove the case under Section 6 of POCSO Act. This Court finds that the offence committed by the accused falls under Section 7 of POCSO Act and the sentence shall be 5 years.

7. Considering the nature of the offence established by the prosecution, this Court is inclined to modify the offence from one under Section 6 of POCSO Act to under Section 7 of POCSO Act and awards the sentence on the appellant/accused to 5 years Rigorous Imprisonment.

8. Accordingly, this Criminal Appeal is partly allowed. The appellant/accused is convicted for the offence under Section 7 of POCSO Act and sentenced to undergo 5 years Rigorous Imprisonment. Rest of the conditions shall remain the same. Consequently, connected miscellaneous petitions is also closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

kmi

To

1.The Sessions Judge,
Mahila Court, Cuddalore.

2.The Inspector of Police,
All Women Police Station,
Vridhachalam.

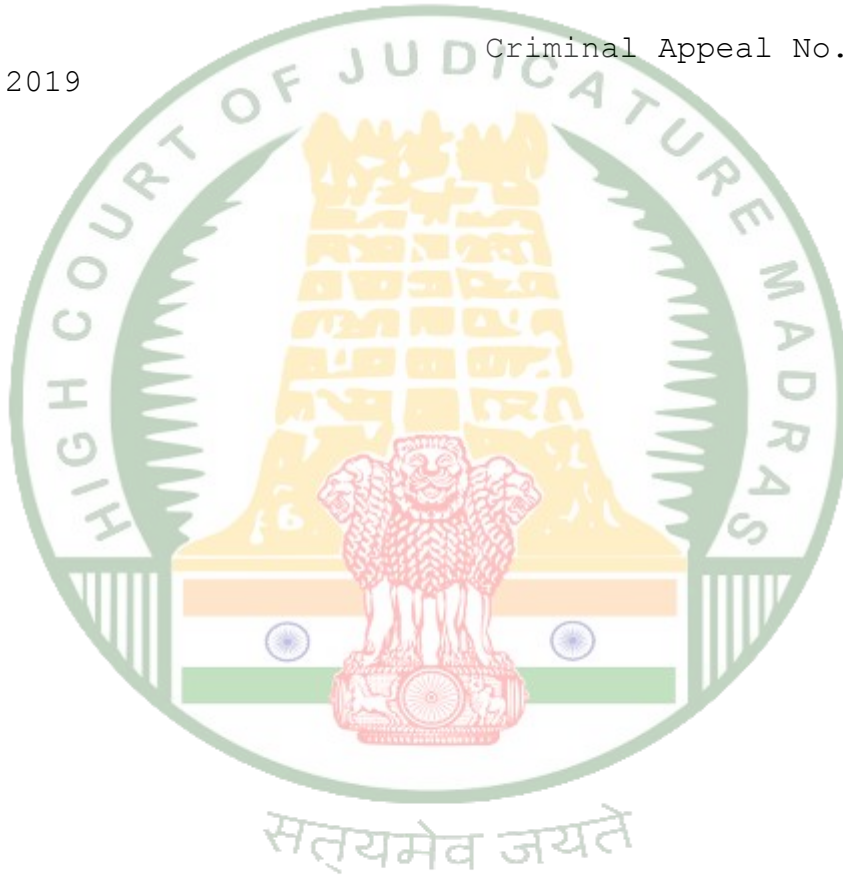
3.The Public Prosecutor,
High Court, Madras -104.

Copy To: The Section Officer,
Criminal Section, High Court, Madras.

+1 cc to Mr.P.Pualaninathan, Advocate, Sr.No. 36225

CSL/27.06.2019

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