

IN THE HIGH COURT OF JUDICIATURE AT MADRAS

DATED : 10.11.2020

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.A.No.368 of 2014

Karthikeyan,
S/o.Thangavel

...Appellant/
Sole Accused

versus

State rep. by Inspector of Police,
All Women Police Station,
Virudhachalam District.
(Crime No.18 of 2013)

...Respondent/
Complainant

Prayer: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, to set aside the judgment of conviction and sentence passed by the learned Sessions Judge, Mahila Court, Cuddalore dated 23.06.2014 in Special Sessions Case No.1 of 2013.

For Appellant : Mr.S.Ganeshkumar
For Respondent : Mr.S.Karthikeyan
Additional Public Prosecutor

J U D G M E N T

The present Criminal Appeal has been filed by the appellant to set aside the judgment of conviction and sentence passed by the learned Sessions Judge, Mahila Court, Cuddalore dated 23.06.2014 in Special Sessions Case No.1 of 2013.

2. The appellant herein is the sole accused in the above referred case. He stood charged for the offences under Sections 8 and 12 of The Protection of Children from Sexual Offences Act, 2012 [hereinafter referred to as 'the POCSO Act']. By a judgment dated 23.06.2014, the learned Sessions Judge, Mahila Court, Cuddalore, convicted the appellant under Section 8 of the POCSO Act and sentenced to undergo Rigorous Imprisonment for three(3) years and to pay a fine of Rs.5,000/-, in default to undergo Rigorous Imprisonment for six(6) months. In respect to Section 12 of the POCSO Act, the learned Sessions Judge, acquitted the accused from the charges.

3. Challenging the said conviction and sentence, the accused is before this Court, by way of filing the present Criminal Appeal.

4. The case of the prosecution, in brief, is as follows;

4.1. P.W.1-Sarada, is the daughter of P.W.2-Sundararajan and they are residing at Nallur Nagar, Virudhachalam Taluk, Cuddalore District. The accused herein also residing in the same village. At the time of occurrence, the victim / P.W.1 was aged about 17 years. On the date of occurrence, the present appellant/accused intercepted P.W.1 and made a request to marry her by saying that he was having a love affair with her. Immediately, after saying as above, he pulled P.W.1 voluntarily and gave kiss to her. Thereafter, the same was informed to P.W.3-Ambika, who is the mother of P.W.1 and after hearing the same, P.W.3 informed P.W.1 as not to disclose the said occurrence to anybody.

4.2. However, two days after the said occurrence, while at the time P.W.1 and P.W.3 going to the grocery shop, the appellant / accused came and sang an obscene song as "கல்யாணம் தான் கட்டிகிட்டு ஓடி போகலாமா". After hearing the same, P.W.3 attempted to catch the accused, but he ran away from the scene of occurrence. However, P.W.1 informed the same to his uncle and thereafter, she lodged a complaint before the All Women Police Station, Virudhachalam under Ex.P.1.

4.3. P.W.8-Vasumathi, the then Sub Inspector of Police, Virudhachalam, on the date of occurrence, at about 16.30 hours, received the complaint from P.W.1 and registered a case in Crime No.18 of 2013 against the appellant for the offences punishable under Section 354(A), Section 4 of the Tamil Nadu Women Harassment Act and Section 7 of the POCSO Act. The printed F.I.R. has been marked as Ex.P.5.

4.4. Immediately, after registration of the case, P.W.8 visited the scene of occurrence and in the presence of one Subramaniam and another one Subramaniam, she prepared an observation mahazar under Ex.P.6. She drawn a rough sketch under Ex.P.7. She examined the witnesses and recorded their statements. On 03.09.2013, she arrested the accused and sent him to the judicial custody. She submitted an application before the Chief Judicial Magistrate for recording 164(1) Cr.P.C. statement from P.W.1. Upon receipt of the same and after issuing the proceedings, P.W.5, the District Munsif-cum-Judicial Magistrate, Thittagudi, after adopting all formalities recorded 164(1) Cr.P.C. statement from P.W.1 and the same has been marked as Ex.P.3

4.5. By way of continuing the investigation, P.W.8 examined P.W.7, who is the Head Master of Nallur Government Higher Secondary School and received the Transfer Certificate

pertains to P.W.1 on 07.08.2013. The said Certificate has been marked before the trial Court as Ex.P.4.

4.6. Subsequently, P.W.8 examined the witnesses and recorded their statements. After completion of investigation, she came to the positive conclusion that the appellant / accused has committed the offences under Section 7 r/w 8 and 11 r/w 12 of the POCSO Act and accordingly, he filed a Final report before the learned Sessions Judge, Mahila Court, Cuddalore.

5. Based on the above materials, the trial Court framed charges under Sections 8 and 12 of the POCSO Act and the accused denied the same. In order to prove their case, on the side of the prosecution, as many as 8 witnesses were examined as P.W.1 to P.W.8 and 7 documents were marked as Exs.P.1 to P.7.

6. Out of the said witnesses, P.W.1-Sarada, who is the victim girl speaks about the occurrence as while at the time she was going to the grocery shop, the accused came there and requested to marry her and also, suddenly he pulled her and gave a kiss on her cheek. Further, she has deposed that after two days from the above mentioned occurrence, when at the time she along with her mother while going to the grocery shop, the appellant/accused came there and sang a obscene song, for which, P.W.1 lodged a complaint before the Police.

7. P.W.2-Sundararajan, who is the father of the victim girl, has deposed before the trial Court as after hearing the occurrence through her daughter, he lodged the complaint before the Veppur Police Station but the same was not entertained by the said police.

8. P.W.3-Ambika, has also supported the evidence given by P.W.1 in respect to the alleged second occurrence. Further, she has stated when at the time she informed the occurrence to the father of the accused, he refused to hear the same as "உன்னால் முடிந்ததை பார்த்துக்கொள்". Further, she has stated that due to the said occurrence, the proposed marriage of P.W.1 was not solemnized.

9. P.W.4-Dineshkumar is the younger brother of the victim, though he was cited as an eye witness to the occurrence, he has not supported the case of prosecution and hence, he treated as a hostile witness. The cross examination of the said witness is also not support the case of prosecution.

10. P.W.5-Uthamaraj, is working as District Munsif-cum-Judicial Magistrate, Thittagudi, speaks about the recording of 164(1) Cr.P.C. statement from P.W.1.

11. P.W.6-Venkatesan, is the resident of Nallur, has

not stated anything before the trial Court in support of the prosecution and hence, he also treated as a hostile witness.

12. P.W.7-Elangovan, is working as Head Master of Nallur Higher Secondary School, has deposed as at the request made by the Inspector of Police, All Women Police Station, Virudhachalam, he issued the Transfer Certificate stating that the victim girl was born on 10.05.1997.

13. P.W.8-Vasumathi, the then Sub Inspector of Police, All Women Police Station, Virudhachalam, speaks about the receipt of complaint from P.W.1, registration of the case, examination of the witnesses, about the details of investigation made and in respect of filing of the final report against the accused.

14. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness nor did he mark any documents on his side.

15. The learned Sessions Judge, Mahila Court, Cuddalore, after perusing all the above materials and on considering the arguments advanced by either side, convicted and sentenced the appellant as stated supra. Aggrieved over the said conviction and sentence, the appellant is before this Court with this appeal.

16. I have heard Mr.S.Ganeshkumar, learned counsel appearing for the appellant and Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the State. I have also perused the records carefully.

17. The learned counsel appearing for the appellant would submit that in respect to the lodging of complaint, the evidence recorded from P.W.1 to P.W.3 create a doubt whether the case has been registered as per the version given by P.W.8. Accordingly, the genesis of occurrence in this case was suppressed. Further, due to previous enmity, a false case has been foisted against the appellant / accused.

18. Per contra, the learned Additional Public Prosecutor appearing for the respondent Police would submit that during the time of investigation on the request made by P.W.8, the learned District Munsif-cum-Judicial Magistrate recorded 164 (1) Cr.P.C. statement from P.W.1. Further, the same has not been rebutted on the side of the accused and thereby, the presumption has to be taken into account for deciding this case.

19. I have considered the rival submissions made on either side and perused the records carefully.

20. Initially, the complaint given by P.W.1 before P.W.8 was marked as Ex.P.1. In the said complaint given by P.W.1, she has narrated the two occurrences as both were committed by the appellant. On a close reading of the same, it appears that the first occurrence had happened on 10.08.2013. Subsequently, when at the time of giving complaint on 02.09.2013, P.W.1 has stated that as yesterday when at the time she was going to the grocery shop with her mother, the accused came there and sang obscene song. Therefore, as per the complaint, the second occurrence had happened on 01.09.2013 that means after 20 days from the first occurrence.

21. In respect to the same, while at the time of giving evidence before the trial Court, P.W.1 has stated as the second occurrence had happened immediately after 2 days from the date of first occurrence. Further, in respect to the occurrence, both the Police attached with Veppur Police Station and All Women Police Station, Virudhachalam, are examined her. She has specifically stated that the signature found in Ex.P.1 was obtained from her in the complaint given before the Veppur Police Station.

22. On the other hand, this case was registered based upon the complaint given by P.W.1 before the All Women Police Station, Virudhachalam. Accordingly, the evidence of P.W.1 is not clear and cogent in respect to the registration of the case. As per the alleged version of P.W.1, two complaints have been lodged for the same occurrence before different Police Stations.

23. More than that, in respect to the investigation conducted by the Veppur Police Station, P.W.2, who is the father of the victim girl has stated in his cross examination as for the alleged occurrence, the father of the accused lodged a complaint before the Veppur Police Station, further he has admitted in his cross examination as the father of the accused lodged one another complaint before the Deputy Superintendent of Police, Thittagudi. More than that, P.W.3, the mother of the victim girl has stated as she lodged the complaint before the All Women Police Station, Virudhachalam. Therefore, on culling out the entire evidence given by P.W.1 to P.W.3 create a doubt whether the case pertains to the appeal has been registered as narrated by P.W.8. Accordingly, the contradictions illicitated from the evidence of P.W.1 to P.W.3 approves that the genesis of occurrence was suppressed by the prosecution. At this juncture, it is relevant and useful to see the judgment of our Hon'ble Apex Court in the case of BHAGWAN SAHAI vs. STATE OF RAJASTHAN reported in (2016) 13 SCC 171 wherein it was held as follows;

"Once Court came to a finding that prosecution suppressed genesis and origin of occurrence and also failed to explain injuries on person of accused including death of father of appellants, the only possible and probable course left open was to grant benefit of doubt to appellants."

24. Applying the ratio laid down by our Hon'ble Apex Court to the case in our hand, in this case also the genesis of occurrence was suppressed on the side of the prosecution and the same is fatal to the prosecution.

25. In respect to the submissions made by the learned Additional Public Prosecutor, though the victim girl has narrated the occurrence to the learned District Munsif-cum-Judicial Magistrate correctly while at the time of recording 164 (1) Cr.P.C. statement, as already stated since the genesis of occurrence was suppressed, the subsequent events which has been taken place after registration of the case is not at all having any value for considering the case of prosecution in their favour. Since the date of occurrence narrated by the prosecution witnesses is doubtful one, the same would create a doubt as whether the alleged occurrence had happened as stated by the prosecution version. In this regard, no answer is available from the side of the prosecution.

26. Therefore, on culling out the entire circumstances, I am of the considered opinion that the prosecution has not proved its case beyond reasonable doubt and therefore, the conviction and sentence imposed upon the appellant / accused by the learned Sessions Judge, Mahila Court, Cuddalore dated 23.06.2014 in S.C.No.1 of 2013 is liable to be set aside and accordingly, it is set aside.

27. In the result, this Criminal Appeal is allowed.

सत्यमेव जयते

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Sessions Judge,
Mahila Court, Cuddalore.
2. State rep. by Inspector of Police,
All Women Police Station,
Virudhachalam District.

3. The Public Prosecutor,
High Court, Madras.

+1cc to M/s.A.Gokulakrishnan, Advocate, S.R.No.36666

Crl.A.No.368 of 2014

AD(CO)
RV(10/12/2020)



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