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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2021

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THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRL.A.No.321 of 2021

Antony

...Appellant

.Vs.

State by
Inspector of Police,
Avadi All Women Police Station,
Thiruvallur District,
Crime No.1 of 2017.

...Respondent

Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure to call for the records of the case in S.C.No.29 of 2017 on the file of the learned Magalir Neethimandram (Fast Track Mahila Court), Tiruvallur and set aside the judgment of conviction dated 29th April 2019 in S.C.No.29 of 2017 on the file of the Learned Magalir Neethimandram (Fast Track Mahila Court), Tiruvallur.

For Appellant : Ms.S.Thamizharasi
Legal Aid counsel

For Respondent : Mr.S.Sugendran
Government Advocate (Crl.Side)

J U D G M E N T

This Criminal Appeal has been filed against the Judgment dated 29.04.2019 passed in S.C.No.29 of 2017 by the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Tiruvallur.

2.The case of the prosecution is that at the time of occurrence, the victim girl was aged about 8 years and is residing with her parents at Indian Air Force Servant quarters at Muthapudupet. On 23.01.2017, when the victim girl went to the park nearby her house for playing, the accused Antony took her to the nearby vacant house and made her to lie down on the floor and removed her panty and pressed his private part in the private part of the victim girl and has committed aggravated penetrative sexual assault on the victim child. Hence, the



3.The respondent police registered a case in Crime No.1 of 2017 against the appellant for the offence under Section 8 of The Protection of Children from Sexual Offences Act, 2012 [hereafter referred to as 'POCSO Act' for the sake of convenience]. After completing the investigation, the respondent police filed a charge sheet before the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Tiruvallur. The offence is against a child, which falls under the definition of Section 2(1)(d) of POCSO Act and the learned Sessions Judge, taken cognizance of the case on file in S.C.No.29 of 2017. After completing the formalities, the Sessions Judge framed charges against the appellant for the offence under Section 5(m) r/w 6 of POCSO Act.

5. The Court below, after hearing the arguments advanced on either side and also considering the materials available on record, found that the appellant is guilty for the offence under Section 5(m) which is punishable under Section 6 of POCSO Act and he was convicted and sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for a period of six months. Besides this, the Court below awarded a sum of Rs.4,00,000/- to the victim girl as per the victim compensation. Challenging the said conviction and sentence, the appellant is before this Court.

7. The learned counsel for the appellant would submit that there is a dispute between the families of the appellant and the victim girl. Due to such personal enmity and to take vengeance, the family of the victim girl have foisted a false case against the appellant. He would further submit that the alleged



occurrence is said to have taken place on 23.01.2017, whereas, the complaint was preferred on 24.01.2017 and the delay in preferring the complaint has not been properly explained, which itself clearly shows that the allegations made in the complaint are not genuine. After deliberation, the de facto complainant filed the complaint and documents were sent to the Court very belatedly, which are fatal to the case of the prosecution. Further, P.W.11/Doctor, who examined the victim girl, has deposed that there was no external injuries found on the body of the victim girl and also deposed that there was no traces of subjecting the child to sexual intercourse recently. Hence, medical evidence is also not supported the case of the prosecution. He would further submit that there is no independent eye witness to the said occurrence and the evidence of the victim girl is not corroborated with the evidence of independent eye witnesses or medical evidences. Further, the prosecution examined the relatives of the victim girl as witnesses in a pick and choose method and they are all interested witnesses. However, the learned Sessions Judge failed to consider the entire oral and documentary evidence, convicted and sentenced the appellant only on assumption, conjectures and sympathy. Therefore, the judgment of conviction and sentence passed by the trial Court against the appellant is liable to be set aside.

8.The learned Government Advocate (Crl.Side) for the respondent would submit that the victim girl was eight years at the time of occurrence. The appellant is the neighbour of the victim girl. On the date of occurrence i.e. on 23.01.2017, the victim girl and her brother went to play in the park after returning from the school. At that time, the appellant took the victim girl to the nearby vacant house and had committed penetrative sexual assault. Since the victim girl cried out of pain, the brother of the victim girl came in search, found her and on seeing him, the appellant ran away from that place. Thereafter, they informed the said incident to their mother/P.W.1 and preferred the complaint/Ex.P1. Soon after the complaint, the victim girl was produced before Doctor/P.W.11 for medical examination and she has opined that there was no external injuries found on the body of the victim girl and also deposed that there was no traces of subjecting the child to sexual intercourse recently, but, hymen was not intact. Subsequently, the victim girl was produced before the learned Judicial Magistrate for recording her statement under Section 164 Cr.P.C and she has clearly narrated the said incident. During the trial, the victim girl was examined as P.W.2 and she has clearly narrated the said incident. From the evidence of victim girl, it is seen that the prosecution proved its case beyond all reasonable doubts. He would further submit that on the date of occurrence i.e. 23.01.2017, the mother of the victim



girl went for her regular work, after returning from her work, the victim girl informed the said incident and thereafter, she preferred the complaint on the next day i.e. on 24.01.2017 and hence, delay in preferring the complaint is not fatal to the case of the prosecution. The trial Court has rightly convicted and sentenced the appellant as stated above and there is no merits in this appeal and the same is liable to be dismissed.

9. Heard Ms.S.Thamizharasi, learned Legal Aid Counsel for the appellant and Mr.S.Sugendran, learned Government Advocate (Crl.Side) appearing for the respondent and also perused the materials available on record.

10. This Court, being an Appellate Court, is a final Court of fact finding which has to necessarily re-appreciate the entire evidence and give an independent finding.

11. In order to prove the case of the prosecution before the trial Court, on the side of the prosecution as many as 13 witnesses were examined as P.W.1 to P.W.13, out of which, the victim girl was examined as P.W.2 and she has clearly deposed that when she went to play in the park, the accused took her to the nearby vacant house and had committed penetrative sexual assault on her. After the occurrence, she informed the said incident to her mother/P.W.1 and she preferred the complaint. The evidence of the victim girl is corroborated with the evidence of P.W.1/mother of the victim girl.

12. P.W.11/Doctor who examined the victim girl has clearly deposed that the victim girl was brought before her on 24.01.2017 at about 5.45 p.m and on examination, she was found conscious and fit state of mind and there was no external injuries on the private parts of the victim girl. Further, she deposed that there was no recent sexual intercourse, but, there was a possibility of sexual intercourse and her hymen was not intact and the history of the case was entered in the Accident Register/Ex.P9 and also given Sexual Offence Certificate for victim girl/Ex.P7.

13. P.W.2/victim girl and her mother/P.W.1 were produced before the learned Judicial Magistrate for recording their statements under Section 164 Cr.P.C., in which, they clearly spoken about the said incident, which were marked as Exs.P2 and P3.

14. On a combined reading of the evidence of P.W.1/mother of the victim girl, P.W.2/victim girl, P.W.11/Doctor, Exs.P2 and Ex.P3/Statements of P.W.1 and P.W.2 recorded under Section 164 Cr.P.C, Ex.P7/Sexual Offence Certificate of victim girl and Ex.P9/Copy of the Accident Register, it reveal that the prosecution proved its case beyond all reasonable doubts.



15. Though the learned counsel for the appellant contended that the delay in preferring the complaint and registering the case has not been properly explained. After deliberation, in order to take advantage of the weak vengeance, they have filed a false case against the appellant. The victim girl is a minor and the mother of the victim girl (P.W.1) came to know the said incident only after returning from her work, in night hours a lady cannot go to the police station and give complaint and hence, she preferred the complaint on the next day i.e on 24.01.2017. Therefore, this Court finds that the delay is properly explained by the prosecution. Further, the delay is not a matter, unless the defence proved that the delay was occurred only for the purpose of deliberation. In the present case, no such deliberation was established by the prosecution. Therefore, the contention raised by the learned counsel for the appellant is rejected.

16. The defence taken by the learned counsel for the appellant is that there was no independent eye witness to the said occurrence. In cases of this nature, one cannot expect eye witness, since the culprit will take a chance only on the loneliness of the minor children and make use of their innocence and exploited them sexually and also threatened them to take away their life of their kith and kin. Hence, the victim girl would have hesitated to reveal the truth to her parents. However, in this case, the victim girl informed the said incident to her mother (P.W.1) and preferred the complaint. Moreover, the evidence of the Doctor (P.W.11) clearly indicates that there was a possibility of sexual intercourse, since hymen was not intact. Therefore, the defence taken by the learned counsel for the appellant is not acceptable.

17. As far as the charges framed against the appellant is concerned, at the time of occurrence the victim girl was only 8 years and there is no dispute regarding the age of the victim girl. Since the victim girl is below 12 years, the offence committed by the accused falls under Section 5(m) which is punishable under Section 6 of POCSO Act.

18. Considering the object of the POCSO Act, this Court is of the view that the contradictions pointed out by the learned counsel for the appellant are not material contradictions to disbelieve the case of the prosecution, but the same are only minor contradictions and that will not vitiate the case of the prosecution. Further, in cases of this nature presence of independent eye witnesses are mostly improbable. If the evidence of sole injured witness is cogent, credible and trustworthy, conviction is permissible. Admittedly, in this case, the victim girl has clearly narrated the incident before the trial Court as well as before the Doctor, who examined her, that she was



subjected to penetrative sexual assault and the appellant is the one who has committed the penetrative sexual assault on her. Therefore, the offence under POCSO Act is very well established.

19. Under these circumstances, this Court, being an Appellate Court, is a fact finding Court re-appreciated the entire evidence independently and arrived at just conclusion that the appellant has committed the offence under Section 5(m) which is punishable under Section 6 of POCSO Act and this Court does not find any mitigating circumstances to reduce the sentence imposed by the trial Court.

20. In the light of the above discussion, this Court does not find any merit in this appeal and the appeal is liable to be dismissed. Accordingly, this Criminal Appeal is dismissed and the judgment of conviction and sentence passed in S.C.No.29 of 2017 by the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court) Tiruvallur is hereby, confirmed.

21. The Legal Aid counsel appointed by this Court is entitled to legal fees as per Rules.

Sd/-
Assistant Registrar (CS-VII)

// True Copy //

Sub Assistant Registrar

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To

1. The Sessions Judge,
Magalir Neethimandram
(Fast Track Mahila Court),
Tiruvallur.

2. The Superintendent,
Central Prison, Puzhal,
Chennai.

3. The Inspector of Police,
Avadi All Women Police Station,
Thiruvallur District.

4. The Public Prosecutor,
High Court, Madras.

5. The Deputy Registrar (Criminal Section), High Court, Madras.		with a direction to send back the original records, if any, to the trial Court
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6.The Member Secretary,
High Court Legal Aid Services Committee
High Court, Chennai.

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+1cc to M/s.S.Thamizharasi, Advocate SR.No.44337

CRL.A.No.321 of 2021

SPD (CO)
RVM(06/01/2022)