

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2021

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRL.A.NO.332 OF 2019

Tamilarasan

.. Appellant

.Vs.

State represented by
Inspector of Police,
All Women Police Station,
Avinashi, Tiruppur District.
(Cr.No.6 of 2016)

.. Respondent

Prayer:-

Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure to set aside the Judgment and conviction made in Spl.S.C.No.1 of 2017 dated 24.09.2018, on the file of the Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court) at Tiruppur and acquit the appellant.

For Appellant : Mr.S.Anburaja

For Respondent : Mr.R.Suryaprakash
Government Advocate

J U D G M E N T

This Criminal Appeal has been filed, challenging the Judgment of conviction and sentence made in Spl.S.C.No.1 of 2017 dated 24.09.2018, on the file of the Magalir Neethimandram (Fast Track Mahila Court) at Tiruppur and acquit the appellant.

2. The respondent police registered a case against the appellant in Crime No.6 of 2016 for the offence under Section 5 (m) r/w 6 of Protection of Children from Sexual Offences Act (in short 'POCSO') Act, 2012 . After investigation, charge sheet was laid and taken on file in Spl.S.C.No.1 of 2018, by the learned Magalir Neethimandram (Fast Track Mahila Court), Tiruppur.

3.After completing the formalities, the learned Judge framed charges against the appellant and after trial found guilty of the appellant for the offences under Section 9 (m) r/w 10 of

POCSO Act, 2012 and convicted and sentenced the appellant to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.10,000/-, in default, to undergo one year rigorous imprisonment. Aggrieved against the same, the accused is before this Court by filing this Appeal.

4. The learned counsel for the appellant would submit that there are material contradictions and inconsistencies in the evidence of prosecution witnesses and the trial Court convicted the appellant based on the surmises and conjunctures which are not relevant to the circumstances of the case. He would further submit that identification parade was not conducted by the prosecution to identify the appellant. He further submitted that the complaint was not lodged immediately after the occurrence, but only 16 days after the alleged occurrence, the complaint was given and the reason for delay has not been explained in the complaint.

5. He would further submit that in the complaint, the defacto complainant has stated that the occurrence has taken place 15 days prior to the date of lodging the complaint, but nowhere in the complaint, the date and time of occurrence have been mentioned, but in the FIR and 164 Cr.P.C. statement, the date and time of occurrence have been given. He would further submit that in the first page of the complaint, there is a gap between the lines of the written contents, but in the second page of the complaint, there is no gap in the written contents, which clearly shows that the complaint has been later filled up by the police by getting the signature of the defacto complainant alone in the blank sheet/paper. He would further submit that the mother of the victim girl was deserted by her husband and she was struggling to maintain her three female children and approached the accused several times to marry her, but as the appellant refused to marry her, in order to wreck vengeance, she has lodged a false complaint against the accused. He would further submit that the victim was first sent for medical examination, but the serial number of Accident register issued to the victim was 2680, and that the appellant was later sent for medical examination, but the serial number of Accident register issued to the appellant was 2296, the serial number of the accident register should be in ascending order and that only because a false case has been foisted against the appellant, the said discrepancy has occurred. He would further submit that the age of the appellant was 18 years at the time of occurrence and he was studying in the second year degree of the graduation and he had not committed the alleged offence and therefore, the Judgment of conviction and sentence imposed on the appellant is liable to be set aside.

6. The learned Government Advocate (CrI.side) would submit that at the time of occurrence, the age of the victim child was originally 8 years and she is the first daughter of P.W.2 and she was living with her family in one of the houses in the same compound where the accused was residing and on 14.08.2016 at about 4.30 P.M., when the victim girl was playing in front of her house, the ball with which she was playing went inside the appellant's house and when the victim girl went into the house of the appellant to take the ball, the appellant with an intention of sexually harassing the victim child, hugged her, made her to lie in the cot, placed his hand over the vagina, tried to penetrate his male organ into her vagina and as he could not succeed in his attempt, rubbed his male organ over her vagina and thereby committed aggravated penetrative sexual assault over the victim child who was aged below 12 years at the time of occurrence. Further, when the victim child asked the appellant to leave her and that she would inform her mother, the appellant threatened her by saying that if she informs her mother about the occurrence, he would assault her, due to which the victim girl has not disclosed the occurrence to her mother. He would further submit that after the occurrence, the victim child suffered from fever, for which she was admitted in the hospital and when she was in hospital, on one night, the victim child murmured by saying 'please leave me anna, my legs are paining' and immediately the mother of the victim child woke up and enquired her, during that time, the victim child had informed about the incident to her mother and thereafter the mother of the victim child contacted child help line office over phone and two ladies from the said child help line came to the hospital and enquired the victim child and her mother and thereafter, on their advice, P.W.2 lodged a complaint before the respondent police and the case came to be registered and after investigation, the respondent police laid charge sheet. He would further submit that the victim child was examined as P.W.1 and she has clearly narrated the occurrence and the mother of the victim child who was examined as P.W.2, also narrated the incident. He would further submit that the Doctor, who admitted the victim in the hospital was examined as P.W.7 and she deposed that the victim girl was admitted in the hospital for fever and after enquiry, she informed that she was sexually assaulted. The Doctor, who examined the victim child at the Government Hospital, Tiruppur was examined as P.W.8 and she also deposed the same and the Psychiatrist who examined the victim girl and issued Medical certificate (Ex.P7) was examined as P.W.9.. He would further submit that subsequently the child also produced before the Judicial Magistrate for recording her statement under Section 164 Cr.P.C., which was marked as Ex.P11. Therefore, from the evidence of P.Ws.1, 2, 7, 8 and 9 and the medical certificate issued at the Government Hospital, Tiruppur-Ex.P5 and also statement recorded under Section 164 Cr.P.C.-

Ex.P11, the prosecution has clearly established that the appellant has committed the offence and the trial Court has rightly convicted and sentenced the appellant and there is no merit in the appeal.

7. Heard both sides. Perused the records.

8. The case of the prosecution is that the victim girl child the first daughter of P.W.2 and she was living with her family in one of the houses in the same compound where the appellant was residing and on 14.08.2016 at about 4.30 P.M., when the victim child was playing in front of her house, the ball with which she was playing went inside the appellant's house and when the victim child went into the house of the appellant to take the ball, the appellant with an intention of sexually harassing the victim child hugged her, made her to lie in the cot, placed his hand over the vagina, tried to penetrate his male organ into her vagina and as he could not succeed in his attempt, rubbed his male organ over her vagina and thereby committed aggravated penetrative sexual assault over the victim child, who was aged below 12 years at the time of occurrence. Further, when the victim girl asked the appellant to leave her and stated that she would inform her mother for which the appellant threatened her by saying that if she informs her mother about the occurrence he would assault her, due to which the victim child did not disclose the occurrence to her mother. Subsequently, when the victim child was suffered from fever and when she was admitted in the hospital, on one night, the victim child murmured by saying 'please leave me anna, my legs are paining and immediately the mother of the victim child woke up and enquired her, during that time, the victim child informed about the incident to her mother and thereafter, the mother of the victim girl contacted child help line office over phone and two ladies from the said child help line came to the hospital and enquired the victim child and her mother and thereafter on their advice, P.W.2 lodged the complaint before the respondent police and the case came to be registered and after investigation the respondent police laid charge sheet.

9. In order to prove the case of the prosecution before the trial Court, on the side of the prosecution as many as 10 witnesses were examined as P.W.1 to P.W.10 and 13 documents were marked as Exs.P1 to P13 and one material object is marked.

10. After completing the examination of the prosecution witnesses, all the incriminating circumstances culled out from the evidence of prosecution witnesses, were put before the appellant, but he denied the same as false, however on the side of the appellant, no witness was examined and documentary evidence was produced.

11. After considering the evidence on record and hearing either side, the learned Sessions Judge, vide judgment dated 24/09/2018 in Spl.S.C.No.1 of 2017, convicted and sentenced the appellant as stated above.

12. Challenging the judgment of conviction and sentence, the present appeal has been preferred by the appellant.

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

14. The allegation against the appellant is that at the time of occurrence the victim child is 8 years old and while she was playing near her house with a ball, the ball entered into the house of the appellant, who is residing in the neighboring house and at that time when the victim girl had gone to take the ball, the appellant closed the door, hugged her, made her to lie in the cot, placed his hand over the vagina, tried to penetrate his male organ into her vagina and as he could not succeed in his attempt, rubbed his male organ over her vagina and thereby committed aggravated penetrative sexual assault over the victim child who was aged below 12 years at the time of occurrence and the appellant also threatened the victim not to reveal the incident to her mother. Thereafter, the victim child suffered from fever and later she was admitted in the hospital. While taking treatment in the hospital, on one day during night when the victim was sleeping in the hospital she blabbered "Anna please leave me Anna my legs are painin'".

15. To establish the case of the prosecution, the victim child was examined as P.W.1 and a reading of the deposition of the victim child shows that she has clearly narrated the occurrence and also stated that she was admitted in the hospital for fever, but due to threat, she did not inform her mother. While sleeping when she murmured, her mother enquired about the incident, thereafter only she revealed the same. Therefore, from the reading of evidence of P.W.1, it is seen that the victim child was subjected to sexual harassment and in order to corroborate the same, the mother of the victim was examined as P.W.2. She has deposed what her daughter stated in her evidence. Even the Doctors P.W.7, 8, 9 have stated that during the examination, the victim child stated the history of the case that the known person sexually assaulted her and they had stated that there were no injuries. Though the learned counsel for the appellant stated that there are certain discrepancies and contradictions in the case of the prosecution, that is not material contradiction and the same is not fatal to the case of the prosecution. The victim child is aged about 8 years at the time of occurrence and she has no reason to lie and implicate

the appellant and therefore, there is no reason to disbelieve the version of P.W.1. Though the learned counsel for the appellant stated that there are certain discrepancies and the prosecution case was not substantiated by conducting the identification parade, there was no occasion raised for conducting the identification parade and identifying the appellant for the reason that the appellant is the known person and the neighbor of the victim. Therefore, the victim child was also produced before the Judicial Magistrate and the statement was recorded under Section 164 Cr.P.C. The said statement was marked as Ex.P11.

16. Further, the victim child was eight years at the time of occurrence, Ex.P2 -Birth certificate, which clearly shows that the Date of Birth of the victim child is 12.06.2008 and the Date of occurrence is only 14.08.2016 and therefore, at the time of occurrence, the victim has just completed 8 years and the victim is a child below 12 years that she was subjected to sexual assault. Though the appellant denied the same, there is no reason to discard the evidence of the victim child and there is no reason to doubt about the trustworthiness of the victim child. The evidence of P.W.1 clearly shows that she was not tutored by anyone and she has clearly narrated the events. The contention of the learned counsel for the appellant that there is no eye witness for the alleged occurrence cannot be accepted for the reason that the eye witness cannot be expected in the closed house. From the combined reading of evidence of P.W.1, P.W.2, P.W.7, P.W.8 and P.W.9 and on a perusal of Ex.P2- Birth certificate of the victim, medical certificate- Ex.P5, Chemical Examination report- Ex.P6, Medical certificate issued to victim by Psychiatrist -Ex.P7 and Statement recorded under Section 164 Cr.P.C. - Ex.P11, this Court finds that the prosecution has proved its case beyond reasonable doubt and on considering both the oral and documentary evidence, the trial Court has rightly come to the conclusion that the appellant has committed the alleged offence and rightly convicted and sentenced him as stated supra.

17. There is no reason to interfere with the Judgment of the trial Court. There is no merit in the Appeal and the same is liable to be dismissed and accordingly the appeal is dismissed, confirming the judgment of the trial court.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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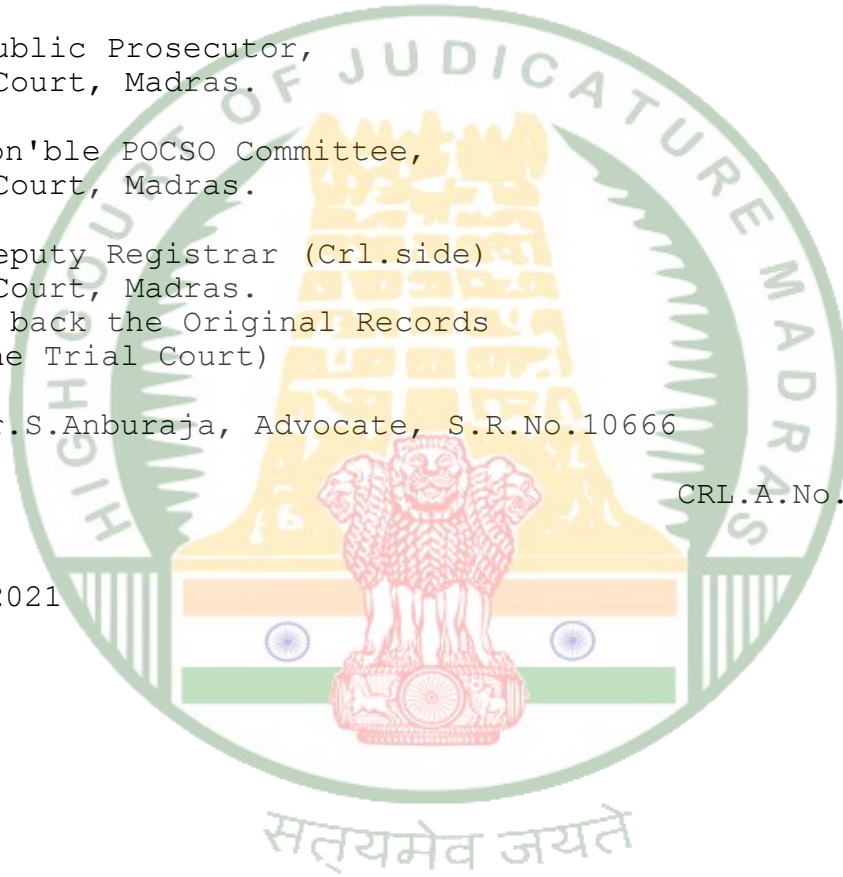
To

1. The Inspector of Police,
All Women Police Station,
Avinashi, Tiruppur District.
2. The Sessions Judge,
Magalir Neethimandram
(Fast Track Mahila Court) at Tiruppur.
3. The Superintendent,
Central Prison, Coimbatore.
4. The Public Prosecutor,
High Court, Madras.
5. The Hon'ble POCSO Committee,
High Court, Madras.
6. The Deputy Registrar (Crl.side)
High Court, Madras.
(Send back the Original Records
to the Trial Court)

+1cc to Mr.S.Anburaja, Advocate, S.R.No.10666

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JP(CO)
CS/01/07/2021



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