



Bail Slip

The Petitioner/Accused Viz., M.Rajendran, S/o Krishnan was released on bail as per order of this Court dated 06/03/2020 in Crl.M.P.No.30/09/2020 in Crl.A.No.161/2020 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Criminal Appeal No.161 of 2020

M. Rajendren

... Appellant/Accused

Versus

The State represented by
The Inspector of Police,
All Women Police Station (East)
Ramanathapuram
Coimbatore.
(Crime No.818 of 2017)

... Respondent/Complainant

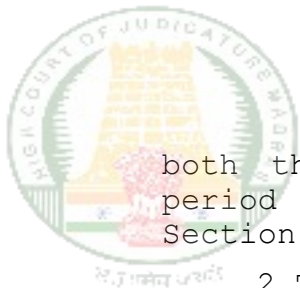
Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to call for the records and set aside the conviction Judgment passed by the learned Sessions Judge/Special Court for Exclusive Trial of cases under POCSO Act, Coimbatore in Spl. C.C. No.40 of 2019, dated 30.01.2020 and set the appellant at liberty.

For Appellant : Mr.P.Nagaraju

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

JUDGMENT

The convicted sole accused is the appellant herein. The appellant herein filed this appeal challenging the Judgment dated 30.01.2020 passed in Spl.C.C.No.40 of 2019, on the file of the Sessions Judge/Special Court for Exclusive Trial of cases under POCSO Act, Coimbatore, convicting him for the offence under Section 7 of the Protection of Children from Sexual Offences (POSCO) Act, 2012 and sentenced him to undergo Imprisonment for three years and to pay fine of Rs.2000/-, in default to undergo three months Simple Imprisonment. However,



both the sentences were ordered to run concurrently and the period already undergone was ordered to be given set off under Section 428 of Cr.P.C.

2.The respondent/police registered a case against the appellant, in Crime No.818 of 2017 on 21.07.2017, for the offence under Section 7 of the POSCO Act. After investigation, the charge sheet was laid before the learned Special Sessions Judge, Mahila Court, Coimbatore, since the offence is against the child. The Mahila Court had taken the charge sheet in Special Sessions Case in Spl.S.C.No.60 of 2018. After completing the formalities, the trial court framed the charges against the appellant for the offence under Section 9(1), 9(m), which are punishable under Section 10 of the POCSO, Act, 2012.

3.After framing charges, in order to prove the case of the prosecution, on the side of the prosecution, during the trial, as many as 9 witnesses were examined as P.W.1 to P.W.9 and eight documents were marked as Ex.P1 to Ex.P8. No material object was exhibited.

4.After completing examination of the prosecution side witnesses incriminating circumstances culled out from the evidences of the prosecution witnesses were put to the accused/appellant by questioning him under Section 313 of Cr.P.C., with reference to the incriminating circumstances on the prosecution witnesses, but, he denied the same as false. On the side of the defence, no oral or documentary evidences was produced.

5.On completion of trial and hearing the arguments advanced on either side and considering the materials put forth before the Trial Court, the trial court found the appellant/accused guilty of the offence under Section 7 which is punishable under Section 8 of the POCSO Act and sentenced him to undergo 3 years Imprisonment and to pay fine of Rs.2,000/- in default to undergo 3 months simple imprisonment. Challenging the said judgment of conviction and sentence, the accused/appellant has filed the present appeal before this Court.

6.The learned counsel for the appellant would submit that none of the witnesses spoken about the involvement of the appellant. Though PW1, father of the victim child has stated that he has given the complaint the next day on 21.07.2017, he has stated that he had written the complaint as stated by the Police. Thus, the averments in the complaint has been exaggerated by the PW1. Even PW.1 is not an eyewitness to the incident. Further, PW.1 & PW.2, parents of the victim child have not stated anything about the involvement of the appellant. PW.1 also stated that when the police officials wanted the



victim child to be sent for medical examination, he has stated that medical examination may not be required in this case since the victim child has not suffered any injuries. Thus, none of the ingredients of Section 7 of the POCSO Act is attracted. Though the charges were framed under Section 9 (l), 9 (m) which are punishable under Section 10 of the POCSO Act, the Trial Court convicted the accused/appellant only for the offence under Section 7 of the POCSO Act, which is unwarranted. In any event, there are no independent witnesses examined by the prosecution to prove its case. Even the shopkeeper Muthu Pandian, who was said to be available at the time of occurrence and was present at the scene of occurrence was not examined and therefore his non-examination is fatal to the case of the prosecution. The victim was not immediately produced for medical examination before the medical officer or before the Judicial Magistrate, to record her statement under Section 164 of Cr.P.C., therefore, non-production of the victim before the medical officer for medical examination and before the Judicial Magistrate is also fatal to the case of the prosecution. It is also stated that there is enmity between the appellant and PW1/father with reference to the construction work. In order to take vengeance, the father of the victim had foisted a false against the appellant. In this case, there is no eye witness, except the victim and she alone only stated about the offence alleged to have been committed by the appellant. The appellant is a neighbour known to the victim child and he is an aged person. The appellant, without any intention, touched the child and it will not attract the ingredients of Section 7 of the POSCO Act. The prosecution failed to establish the sexual intention on the part of the appellant. From any angle, the appellant has not committed any offence either under Section 9 or under Section 7 of the POCSO Act. The Trial Court wrongly convicted the appellant, without an appreciation of any evidence and therefore, the conviction and sentence passed by the Trial Court is liable to be set aside.

7.The learned Government Advocate (Crl.side) submitted that the sole testimony of the victim child is sufficient to convict the appellant and her testimony needs no corroboration by any other independent witness. The victim child has clearly identified the appellant, soon after the completion of the offence. The appellant also admitted his guilt to PW1 when he has stated that he is going to give a complaint to the police. The deposition of PW1, 2 and 4 also clearly reveal the presence of the appellant at the time of occurrence in the place of commission of offence. The trial court, on appreciation of the aforesaid evidence, both oral and documentary, has rightly convicted the appellant and it does not call for any interference by this Honourable Court. The learned Government



Advocate (Crl.side) therefore prayed for dismissal of this appeal.

8. Since this Court as an Appellate Court is a final Court of fact finding Court, this Court has to independently arrive at a finding on re-appreciation of the entire materials. Accordingly, this Court is re-appreciating the entire evidence and made the following findings.

9. The case of the prosecution is that on 20.07.2017 at about 20.00 hours, when the victim child went to "MJ Grocery Shop", which was near Ammankulam, Rajeev Nagar, to buy milk, the grocery shop keeper went inside the grocery shop to take the milk. At that time, the accused came near to the victim child with the intention of committing sexual assault. He rubbed the victim child's private organ and sexually assaulted her. Immediately, the victim child rushed into her house and told the incident happened to her father. The father of the victim child went to the scene of occurrence where the victim child identified him. Thereafter, PW1 questioned the appellant but the appellant told that nothing had happened and he denied the complaint of the victim child. When PW1 told the appellant that he is going to give a complaint to the Police Station, the appellant confessed that he has done it unknowingly. The next day, the complaint was registered by the respondent/police in Crime No.818 of 2017 for the offence under Section 7 of POSCO Act against the appellant herein.

10. The learned Special Judge, framed charges against the appellant for the offences under Section 9(l) and 9(m) which are punishable under Section 10 of the POCSO Act. In order to substantiate the case of the prosecution, totally nine witnesses were examined and eight documents were marked. The victim child was examined as PW.3. She has clearly spoken in the Chief examination that she went to the grocery shop for buying milk, at that time, the shopkeeper went inside for taking milk. Further, the appellant, who was standing behind her had rubbed her buttocks. Immediately she left that place and informed her parents. Thereafter, the victim child, accompanied by her parents, again come to the shop and identified the appellant. The parents of the victim child questioned the appellant and thereafter, given the complaint to the Police Station on 21.07.2017. PW.1 & PW.2 are not eyewitnesses in this case. However, soon after the occurrence, they came to the occurrence place and questioned the appellant. Though they did not witness the occurrence and their testimony is hearsay, their evidence corroborated the evidence of the victim. The victim has not stated that somebody at the scene of occurrence had sexually assaulted her. The victim clearly identified the appellant.



The evidence of the victim child clearly proves that the appellant committed the offence. While committing this type of offence, there may not be any person who could witness the offence. Therefore, in case of this nature, the sole testimony of the victim is sufficient to convict the appellant accused. If the witness of the victim child is cogent and consistent it can be taken into account for awarding a conviction against the appellant. Consequently, non-examination of any independent witness is not fatal to the case of the prosecution in this case.

11.The allegation against the appellant is that he had touched the buttocks of the victim child. After the occurrence, PW.5/ the shop owner's wife had seen the father of the victim child shouting the appellant. The evidence of PW5 also corroborates the version of PW1 and PW2, as also PW3/victim child. In those circumstances, no medical evidence is necessary to prove the offence committed by the appellant. The appellant touched the buttocks of the victim child and sexually assaulted her. Due to such assault, the victim child has not sustained any injuries and therefore, medical evidence is not necessary. The specific allegation against the appellant is that when the victim child was standing in the grocery shop, to buy milk, the shopkeeper went inside the shop and at that time, the appellant touched her on the backside. This was proved by the prosecution by examination of the witnesses, including the victim child.

12.The learned counsel for the appellant would submit that the victim has not identified the appellant and she has not seen the appellant before the incident. It is also stated that the appellant is aged about 78 years, he went to approach the grocery shop to get some grocery items, at that time, the victim child went to the shop to buy milk, at the time, the appellant, who was standing aside from the shop, without any intention, touched the victim child and it will not attract the ingredient of Sections 7, 8 or 10 of the POSCO Act. Further, three months after registration of the case on 21.07.2017, the appellant was called by the police for enquiry.

13.This submission of the counsel for the appellant is not correct. In Ex.P1/complaint, it was stated that when the victim child went to the local shop the appellant came to the shop and rubbed her buttocks. The victim child also identified the appellant to her father PW.1 and PW1 questioned the appellant as to why he had committed the offence. The victim child identified the appellant as she already knows him. In the cross-examination of PW1, he has clearly stated about the presence of



the appellant in the scene of occurrence, as identified by the victim child. Further, even though the counsel for the appellant stated about previous enmity between PW1 and the appellant, there is no proof to substantiate the same by way of defence evidence. Therefore, in the absence of any effective defence the previous enmity theory projected by the counsel for the appellant cannot be accepted. This Court finds that the evidence of victim child is cogent and consistent and there is no reason to discard the evidence of the victim child. The victim child need not foist a false case against the appellant. Therefore, the commission of the offence under Section 7 of POCSO Act is made out. The Trial Court framed the charges under Section 9 (l), 9 (m) which are punishable under Section 10 of the POSCO Act, however, based on the available materials and evidence of the victim the trial court convicted the appellant for the offences under Sections 7 which is punishable under Section 8 of the POSCO Act. The Trial Court has given a minimum punishment for the offence under Section 7 which is punishable under Section 8 of the POCSO Act for three years Imprisonment, though the sentence ought to have been granted for five years. Therefore, this Court does not find any merits in this appeal and it is liable to be dismissed.

14. Accordingly, the Criminal Appeal is dismissed. The conviction and sentence imposed on the appellant/accused by the Court below is confirmed. The Trial Court is directed to secure the appellant for sufferance of the remaining period of sentence if he is in outside. The Suspension of Sentence granted on 06.03.2020, by this Court in CrI.M.P.No.3019 of 2020 in CrI.A.No.161 of 2020 is cancelled.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

- 1.The learned Sessions Judge/Special Court for
Exclusive Trial of cases under POCSO Act, Coimbatore.
- 2.The Additional Sessions Judge,
Special Court for Exclusive Trial of
Cases under POCSO Act, Coimbatore.



3.The Superintendent,
Central Prison, Coimbatore.

4.The Inspector of Police,
All Women Police Station (East)
Ramanathapuram, Coimbatore.

5.The Public Prosecutor,
High Court of Madras.

Copy to

The Hon'ble Chairman,
POCSO Committee,
High Court, Madras-104.

Crl.A.No.161 of 2020

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srg 13/08/2021