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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :14.09.2021

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CRL.A.NO.275 OF 2020

P.Chinnasamy,
S/o, Palaniappan

... Appellant/Accused

Versus

The State by
The Inspector of Police,
All Women Police Station East,
Coimbatore District.

... Respondent/Complainant

PRAYER:

Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, to call for the records relating to the judgment dated 22.06.2016 made in Spl.C.C.No.7 of 2015 on the file of the learned Sessions Judge, Magalir Neethi Mandram (Mahila Court), Coimbatore and setaside the same.

For Appellant : Mr.M.Saravana Kumar

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

JUDGMENT

This Criminal Appeal has been filed to call for the records relating to the judgment dated 22.06.2016 passed in Spl.C.C.No.7 of 2015 on the file of the learned Sessions Judge, Magalir Neethi Mandram (Mahila Court), Coimbatore and setaside the same.

2. The respondent police registered a case against the appellant in Crime No.30 of 2014 for the offence under section 7 and 8 of POCSO Act. After investigation, laid a charge sheet before the Special Court, since the offence is against woman especially, the child under the definition of POCSO Act. The



learned Special Judge taken the charge sheet on file in Spl.C.C.No.7 of 2015. After completing the formalities, framed the charge against the appellant for the offence under section 5 (m) of POCSO Act, which is punishable under Section 6 of POCSO Act. During trial, in order to substantiate the charge, on the side of the prosecution, totally 12 witnesses were examined as P.Ws.1 to 12. 15 documents were marked as Exs.P1 to P15. Besides, four material objects were also exhibited as M.O.Nos.1 to 4. On completion of the examination of the prosecution witnesses, incriminating circumstances culled out from the evidence of the prosecution witnesses put before the accused by questioning under section 313 Cr.P.C. He denied the same as untrue and pleaded not guilty. On the side of the defence, no oral and documentary evidence was produced.

3. On completion of trial and hearing the arguments advanced on either side and considering the materials placed before the trial court, found the appellant guilty for the offence under section 5(m) of POCSO Act, which is punishable under section 6 of POCSO Act and convicted the appellant and sentenced him to undergo 10 years rigorous imprisonment and to pay a fine of Rs.1,000/- in default, to undergo three months simple imprisonment. Challenging the said judgment of conviction and sentence, the accused has filed the present appeal before this Court.

4. The learned counsel for the appellant would submit that P.W.1 is the mother of the victim girl. The victim girl was examined as P.W.2. She is aged about only six years and she does not know anything. Due to previous enmity, the mother of the victim girl tutored the victim girl and based on the same, lodged a false complaint against the appellant. The respondent police failed to conduct fair investigation and believed the false case of the complainant, filed a charge sheet against the appellant. Even P.Ws.1 to 4 are the neighbors of the appellant. The appellant has vacant land and they used the same as toilet and also used to take fire wood, the appellant warned and prevented them from doing so. Therefore, they foisted a false case against the appellant by setting up the victim girl. Unfortunately, the prosecution also failed to conduct proper investigation and laid a charge sheet against the appellant and even the medical evidence did not support the case of the prosecution, since there was no symptom of penetrative sexual assault. Even injury sustained by the victim girl, according to the doctor, there is a possibility of sustaining such injury, due to hit against any hard object. The trial court failed to appreciate the evidence that the victim girl is aged about only 6 years and she is not in a position to say anything and the family members of the victim tutored her. She gave statement before the Judicial Magistrate. Subsequently, as



tutored by P.W.1, mother of the victim girl, gave evidence before the court and there is no eye witness and corroborating evidence in this case. Medical evidence is also not corroborating with the evidence of prosecution witnesses and the other eye witnesses. Therefore, the trial court failed to appreciate the entire evidence in toto and simply based on the evidence of the victim girl and without any corroborating evidence, convicted the appellant, which warrant interference of this Court.

5. The learned Government Advocate (Criminal Side) appearing for the respondent would submit that the age of the victim girl is only 6 years at the time of occurrence. Since the date of occurrence is a holiday, she was playing with neighbors near by the appellant's house. At that time, the appellant called the victim and promised her to provide tender coconut and took her into his house, removed her dress and also his dress and sexually assaulted her by penetrating his penis in to her vagina. She informed the said act of the appellant to neighbors, in turn, informed the same to her mother. She made a complaint on the same day. There is no delay in lodging the complaint. Subsequently, the victim girl was produced before the doctor for medical examination. The doctor also though he has stated that the victim girl did not say anything, the mother only informed the history of the case and they found that there is a scratch injury on the private part of the victim girl. Therefore, subsequently, the victim also produced before the Judicial Magistrate to record the statement under section 164 Cr.P.C. Accordingly, the Magistrate also recorded the statement in which also the victim girl clearly stated the incident. Therefore, the prosecution proved its case beyond reasonable doubt, though all other witnesses are hearsay witnesses. However, there is no reason to discard the evidence of the victim girl, which is corroborated by the medical evidence. The trial court rightly appreciated the evidence and convicted the appellant.

6. Heard the learned counsel for the appellant and the learned Government Advocate (Criminal Side) appearing for the respondent and perused the records.

7. The case of the prosecution is that on the date of occurrence, while the victim girl was playing with her neighborhood, the appellant called the victim and promised her to provide tender coconut and took her into his house, sexually assaulted her by penetrating his penis in to her vagina. Hence the complaint.

8. In this case, this court is the appellate court, which is final court of fact finding, it has to re-appreciate and revisit the entire evidence and give the independent finding. This



Court also carefully gone into the entire materials. The trial judge framed the charge against the appellant for the offence under section 5(m) of POCSO Act, which is punishable under section 6 of POCSO Act.

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9. In order to substantiate the charge framed against the appellant by the trial court, totally 12 witnesses were examined and 15 documents were marked. Besides, four material objects were also marked. Out of 12 witnesses, victim girl was examined as P.W.2. P.W.1 is the mother of the victim girl. She has spoken about the complaint given by her, based on the information given by the neighbors and also informed by the victim girl. The victim girl was produced before the Magistrate, for recording the statement under Section 164 Cr.P.C., which has been marked as Ex.P12. On a combined reading of Ex.P12, the previous statement made by the victim girl before the Magistrate and also the deposition before the Special Judge while examined as witness as P.W.2, it is found that the appellant called the victim girl to his house and made promise to provide tender coconut and took her into his house, removed her dress and also his dress and sexually assaulted her by penetrating his penis into her vagina. The victim girl stated the incident in her own language. Therefore, the evidence of the victim girl is natural, cogent and consistent. The evidence of P.W.1 inspires the confidence of this Court and there is no reason to discard the evidence of P.W.1, the victim girl, though the learned counsel for the appellant vehemently contended that the age of the victim is only 6 years, she may not know these things, which was tutored by the mother of the victim girl P.W.1 and neighbors P.Ws.4 and 5. Therefore, on a reading of evidence of P.W.1 and also statement recorded under Section 164 Cr.P.C, she has clearly narrated the incident and the evidence of P.W.2 is natural. Therefore, cases of this nature, one cannot expect eye witness, the culprits always will take advantage of the loneliness of the children and they used/exploited the children for their sexual need. In this case also, the appellant is aged about 65 years is also none other than the neighbor of the victim girl and she called the appellant as "Thatha", taking advantage of familiarity and the acquaintance in the relationship, he took the victim girl as if he would provide tender coconut, he committed the sexual assault.

10. A reading of the evidence of P.W.2, the victim girl and the statement recorded under section 164 Cr.P.C, Ex.P12 and the reading of section 3 of POCSO Act, the act committed by the appellant falls under section 3(a) of POCSO Act. Since the victim girl is below 12 years and the offence falls under section 5(m) of POCSO Act, which is punishable under Section 6 of POCSO Act.



Section 5(m) of POCSO Act reads as follows:

"whoever commits penetrative sexual assault on a child below twelve years"

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11. On a reading of evidence of the doctor, she has stated in her medical examination that a small bruise was noticed on the private part of the victim girl and no other injuries were found and the hymen remained intact. Therefore, considering the evidence of P.Ws.2 and 7 and previous statement of P.W.2, Ex.P.12, this Court also finds that the appellant has committed the offence under section 5 of POCSO Act, which is punishable under Section 6 of POCSO Act. Therefore, there is no reason to discard the evidence of the victim girl and this Court does not find any merit in the appeal and the same is liable to be dismissed. Accordingly, the Criminal Appeal is dismissed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge,
Magalir Neethi Mandram (Mahila Court),
Coimbatore.
2. Do-Thro' The Principal Sessions Judge,
Magalir Neethi Mandram, Mahila Court,
Coimbatore.
3. The Special Court for POSCO Act,
Coimbatore.
4. The Inspector of Police,
All Women Police Station East,
Coimbatore District.
5. The Superintendent,
Central Prison,
Coimbatore.



6. The Public Prosecutor,
High Court,
Madras.

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RSI (CO)
PM/24/01/2022