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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2021

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRL.A.No.515 of 2020

and

Crl.M.P.No.8240 of 2020

Ilavarasan @ Kumar

.. Appellant

.Vs.

1.The Sub Inspector of Police,
Ambagarathur Out Post Police Station,
Karaikal, Karaikal District,
Puducherry State.

2.Muruganandan @ Anandu

.. Respondents

(R2 suo motu impleaded as per order
of this Court dated 16.12.2020 in
Crl.MP.8240 of 2020 in
Crl.A.No.515 of 2020)

Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure to set aside the conviction and sentence passed in Spl.S.C.No.9 of 2018 by the Sessions Judge (Under POCSO Act, 2012) Karaikkal, Karaikkal District dated 22.01.2020.

For Appellant : Mr.C.Venkatesan
for M/s.R.Muruga Bharathi

For Respondent : Mr.D.Bharatha Chakravarthy
Public Prosecutor (Pondicherry)

J U D G M E N T

This Criminal Appeal has been filed against the Judgment dated 22.01.2020 in Spl.S.C.No.9 of 2018 passed by the learned Sessions Judge (Under POCSO Act, 2012) Karaikkal, Karaikkal District.

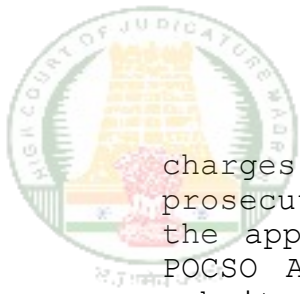
2.The respondent police registered a case against the appellant for the offence punishable under Section 8 of POCSO Act and also under Section 506(ii) IPC. After investigation, a charge sheet was laid before the learned Sessions Judge (Under POCSO Act, 2012) Karaikkal, Karaikkal District, since the offence is against minor girls. The learned Judge taken the case on file in Spl.S.C.No.9 of 2018. After framing of charges and on completion of trial, the appellant found guilty for the offence under Section 12 of POCSO Act and sentenced him to undergo rigorous imprisonment for three years and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for six months; and for the offence under Section



506(ii) IPC sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for six months. Challenging the said judgment of conviction and sentence, the appellant/accused is before this Court.

3. The learned counsel for the appellant would submit that there was a delay in preferring the complaint before the respondent police. After deliberation, the de facto complainant filed the complaint and the respondent police without any preliminary enquiry registered the First Information Report. He would further submit that there is no eye witness to the said occurrence. Further, P.W.8, who is the neighbour of the victim girls is totally a stranger to this case. The evidence of P.Ws.10 and 12, the Doctors who examined the victim girls are not helpful to the case of the prosecution. Further, P.Ws.1, 6 and 7 are not eye witnesses and two of the victim girls turned hostile and they have not supported the case of the prosecution. He would further submit that no weapons were recovered from the accused, therefore, Section 506(ii) IPC would not attract and that there are many contradictions between P.W.3 to P.W.5. Further, in this case, all the witnesses are interested witnesses. The learned counsel would further submit that due to previous enmity between the appellant and the de facto complainant, a false case has been foisted against him. However, the learned Special Judge failed to consider the above facts and convicted the appellant. Therefore, the judgment of the trial Court is liable to be set aside.

4. The learned Public Prosecutor (Pondicherry) would submit that when the four girls, who are minors below the age of 12 years, are playing in the upstairs of the house of the victim girl P.W.3, the appellant misbehaved with the victim girls. The appellant, who is aged about 51 years, lifted his lungi and shown his private part to the children with sexual intention and also asked the children to touch his private part. At the time of occurrence, no other members of the family were present in that place. One of the victim girls P.W.2 gone to her house and reported the same to her father P.W.1. Since the sexual harassment made against all the minor girls, they have informed the same to their parents. After discussion, they preferred a complaint before the Ambagarathur Police Outpost. Therefore, the delay has been properly and sufficiently explained by the complainant and also by the investigating officer. He would further submit that at the time of chief examination, two of the victim girls have not supported the case of the prosecution. During the cross examination, they have elicited the incident, except one girl, other girls clearly narrated the occurrence. Though one of the girls has stated that she was not able to recollect the incident, the same itself is not a ground to discard the evidence of other victim girls. He would further submit that the learned Special Judge has rightly appreciated that the



charges levelled against the appellant were proved by the prosecution and hence, the learned Special Judge, convicted the appellant for the offence punishable under Section 12 of POCSO Act and under Section 506(ii) IPC. He would further submit that none of the weapons have been recovered, however, the witnesses have clearly stated that the appellant by using a weapon threatened the victim girls. Therefore, non-recovery of the weapons is not fatal to the facts of the case. Therefore, there is no perversity in the judgment of the Court below.

5. Heard the learned counsel for the appellant and the learned Public Prosecutor (Pondicherry) for the first respondent and also perused the materials available on record.

6. The case of the prosecution is that on 05.08.2017 at about 17.00 hours at the upstairs of the house of one of the victim girls P.W.3, the accused/appellant had sexually assaulted the victim girls P.Ws.2 to 5, who are aged about below 12 years, by compelling them to touch his private part and also the accused touched the whole body of the victim P.W.2 with sexual intention, thereby, a case has been registered against the appellant for the offence under Section 8 of POCSO Act.

7. In order to prove the case of the prosecution before the trial Court, on the side of the prosecution as many as 15 witnesses were examined as P.W.1 to P.W.15 and also marked 21 documents as Exs.P1 to P21 and no material object was produced. On completion of the evidence on the side of the prosecution, the accused was questioned under Section 313 Cr.PC and incriminating circumstances found out in the evidence of prosecution witnesses, but, the accused has come with the version of total denial and stated that he has been falsely implicated in this case. On the side of the defence, no witnesses were examined and no documents were marked.

8. The Court below, after hearing the arguments advanced on either side and also looking into the materials available on record, found that the accused/appellant is guilty and convicted him and imposed sentence as referred to above, which is challenged in this Criminal Appeal.

9.1 On a careful perusal of the records, it would reveal that on 05.08.2017, P.W.1 and his wife had gone to attend obsequies and thereby, they had left their daughter P.W.2, in the house of P.W.1's mother. One of the victims P.W.2 is aged about 12 years at the time of occurrence and her date of birth is 01.04.2006 as per Ex.P3 Birth Certificate. At around 5.00 p.m. the victim girls P.Ws.2 to 5 were playing near the house of one of the victims P.W.3. P.Ws.2 and 5 were playing near the house and P.Ws.3 and 4 were playing in the upstairs of the house. When P.W.3 shouted P.Ws.2 and 5 had gone upstairs and P.W.2 reported that the accused lifted his lungi and shown



his private part to her. At that time, the accused was cutting the tree at the upstairs of P.W.3's house. When all the victim girls were in the upstairs, again the accused do the same thing. P.Ws.2 and 3 were in the downstairs, at that time, the accused threatened the victims by showing weapons and has stated that he would murder them, if they revealed the same to anybody and again lifted his lungi and had shown his private part. Thereafter, P.W.2 gone to her house and reported the same to her parents. Thereafter, they gone to the house of P.W.3 and informed the same to her parents. Subsequently, they went to the house of the accused, but, he escaped from his house and he came to the house only after two days. Thereafter, P.W.1 had consulted with the parents of the other victim girls and reported the said incident in Ambagarathur Police Outpost.

9.2 Subsequently, the victim girls were produced before the learned Judicial Magistrate and their statements were recorded under Section 164 Cr.P.C. on 28.08.2017 i.e after 20 days from the date of occurrence. Even at that time also the victim girls clearly narrated the incident before the learned Judicial Magistrate. On reading of the entire evidence, out of four victim girls, three of them have clearly spoken about the occurrence. At the time of chief examination, two victim girls have not stated about the occurrence, subsequently, they have narrated the incident during the cross examination. Therefore, the prosecution proved the case against the appellant from the evidence of P.Ws.2 to 5, especially from P.Ws.2 and 3. In this case there is no injury or allegation of penetrative sexual assault, therefore, medical examinations of the victim girls are not necessary. In this type of cases, no corroboration is necessary, because the prudent man would not commit these type of offence in the presence of adult members. In cases of this nature presence of independent eye witnesses are mostly improbable. The evidence of hostile witness would not be totally rejected. If spoken infavour of the prosecution or the accused are required to be subjected to close scrutiny and the portion of the evidence which is consistent with the case of the prosecution or defence can be relied on.

10. At this juncture, the learned counsel for the appellant vehemently 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.

11. In this case delay was properly explained by the prosecution. In POCSO Act cases, no parent would take a hasty decision and immediately rush to the police station and file a complaint. It will affect the future of the female girl. Therefore, the parents would naturally think about the future of the child and also about the reputation of the family. Normally, they used to take advise of the elders in the



village and when, the culprit did not obey the advise of the elders, then only they approach the police station. In this case on hand, after receiving information, the parents of the victims went to the house of the appellant, but, he escaped from his house then he came only two days later to his house. The main contention of the learned counsel for the appellant that the delay in filing the complaint is fatal to the case of the prosecution and the same is not acceptable.

12. Considering the nature of the offence, age and gender of the victims, the contentions raised by the learned counsel for the appellant is rejected. On entire reading of the evidence of the victim girls, especially P.Ws.2 and 3, this Court does not find any reason to discard the evidence of the victims and also there is no doubt of testimony of the victims. Further, these type of offences cannot be encouraged by this Court.

13. Under these circumstances, based on the deposition of the victim girls and also the statements recorded under Section 164 Cr.P.C and also the supporting materials, this Court finds that the appellant has committed offence punishable under Section 8 of POCSO Act. However, the trial Court found that the appellant committed offence punishable under Section 12 of POCSO Act and under Section 506(ii) IPC. Further, one of the the victim girls has categorically stated that the appellant threatened the victim girls by showing weapons. Further, non-recovery of weapons is not fatal to the prosecution. Since it is not a case under Section 326, 307 and 302 IPC, the identification of the weapons for getting opinion from the experts is not necessary. Therefore, considering the nature of the allegations levelled against the appellant and the evidence of the victims, mere non-recovery of the weapons is not fatal to the case of the prosecution. Further the victims are minor girls and already this Court held that no reasonable doubt arise in the testimony to discard the evidence of the victims and defence has not substantiated the motive attributed by the appellant in the manner known to law. However, neither the state nor parents of the victims filed any appeal. This appeal is filed by the accused against the conviction for the offence under Section 12 of POCSO Act and Section 506(ii) IPC.

14. In light of the above facts, this Court as an Appellate Court, in order to give factual finding and independently re-appreciated the entire evidence and materials finds that the prosecution has proved their case beyond all reasonable doubts. Hence, this Court finds no reason to interfere with the judgment of the trial Judge for the offence punishable under Section 12 of POCSO Act, 2012 and under Section 506(ii) IPC.

15. In fine, this Criminal Appeal deserves to be dismissed and accordingly, the same is dismissed. Consequently,



connected miscellaneous petition is closed. The convictions and sentences passed in Spl.S.C.No.9 of 2018 by the learned Sessions Judge (Under POCSO Act, 2012) Karaikkal, Karaikkal District are confirmed.

16.It is seen from the records that the appellant/accused is at large and therefore, the trial court is directed to take appropriate steps so as to immure him in prison to serve out the remaining period of sentence.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1.The Sessions Judge (Under POCSO Act, 2012)
Karaikkal, Karaikkal District.

2.The Sub Inspector of Police,
Ambagarathur Out Post Police Station,
Karaikal, Karaikal District,
Puducherry State.

3.The Public Prosecutor,
High Court, Madras.

4.The Section Officer (Criminal Section),
Records,
High Court, Madras. |with a direction to send back the
|original records, if any, to the
|trial Court

CRL.A.No.515 of 2020
and CrI.M.P.No.8240 of 2020

LN(CO)
GN(19/07/2021)