

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2021

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.243 of 2020

Anbalagan

... Appellant

-Vs-

The State. Rep. By. Its
The Inspector of Police,
Panruti All Women Police Station,
Panruti,
Cuddalore District.
Crime No.10 of 2018.

... Respondent

PRAYER: 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.19 of 2019 by the Special Court (POCSO Act Cases), Cuddalore dated 10.03.2020.

For Appellant : Mr.C.Venkatesan,
Legal Aid Counsel

For Respondent : Mr.R.Suryaprakash
Government Advocate (Crl. Side)

JUDGMENT

This Criminal Appeal has been filed against the Judgment of conviction and sentence imposed by the learned Sessions Judge, Special Court (POCSO Act Cases), Cuddalore in Special S.C.No.19 of 2019, dated 10.03.2020.

2.The respondent Police have registered a case in Crime No.10 of 2018, for offence under Section 450 IPC and Section 9 (k), 10 of Protection of Children from Sexual Offence Act, 2012 and Section 3(2)(va) and 3(1)(w)(i) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Amendment Act, 2015 against the appellant on the complaint (Ex.P3) given by PW1. After completing investigation, the respondent Police laid a charge sheet before the learned Sessions Judge, Special Court (POCSO Act Cases), and same was taken on file in Special S.C.No.19 of 2019.

3.After completing the formalities under Section 207 Cr.P.C., since there was a prima facie material to frame charges against the appellant, the Sessions Judge framed charges under Section 450 IPC and Section 9(k), 10 of Protection of Children from Sexual Offence Act, 2012 (hereinafter referred to as 'POCSO Act') and Section 3(2)(va)

and 3(1)(w)(i) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Amendment Act, 2015.

4. After completing the trial and hearing the arguments advanced on either side and also considering the oral and documentary evidence, the Sessions Judge found guilty of the appellant for offence punishable under Section 10 of POCSO Act and convicted and sentenced to undergo Rigorous Imprisonment for six years and to pay a fine of Rs.2,000/-, in default to undergo one month Rigorous Imprisonment and acquitted him for offence under Section 450 of IPC and Section 3(2)(va) and 3(1)(w)(i) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Amendment Act, 2015.

5. Challenging the above said Judgment of conviction and sentence, the appellant has filed the present appeal before this Court.

6. The learned counsel for the appellant would vehemently contend that the victim girl (PW.9) is not a normal person, she is a special child and she is unable to speak and write. During recording her statement under Section 164 Cr.P.C., before the learned Judicial Magistrate, the victim girl was only put her thumb impression and she did not make signature in it, which shows that she did not understand what was recorded in the statement. The learned counsel would further submit that the brother of the victim girl (PW.7) is not an eye witnesses to the occurrence. According to the prosecution, he was only outside at the time of occurrence. The Doctor (PW.11) has clearly stated that the victim girl (PW.9) has not understood the questions asked while examining her clinically. The Special Teacher, who was examined as PW.10 has stated that he aided the trial Court to record the evidence of the victim girl (PW.9), but he has not produced any document to show that he is a qualified Psychiatric Doctor and fully qualified to understand the language of the special child. Therefore, in the absence of certificate for qualification, the evidence of the Special Teacher (PW.10) cannot be taken into consideration.

7. The learned counsel for the appellant would further submit that the the evidence of the Doctor (PW.11) has not corroborated the case of the prosecution. The Doctor (PW.11) has clearly stated that there was no external injury on the private parts of the victim girl and no forcible sexual intercourse. PW.8, who is the brother of the victim girl is a small child and he cannot understand what had happened at the time of occurrence. In the statement recorded under Section 164 Cr.P.C., the children (PW.7, PW.8 & PW.9) have not stated all the things which they have deposed before the trial Court and hence, there are material contradictions and discrepancies in the oral and documentary evidence. The learned counsel would further submit that the age of the victim was not proved by the prosecution. Though the prosecution has stated that

the victim girl studied 9th standard, no signature was obtained from her either in the statement recorded under Section 164 Cr.P.C., or in the deposition made before trial Court. Therefore, the evidence of the victim girl (PW.9) cannot be considered for convicting the appellant. When the trial Court disbelieved the case of the prosecution for offence under Section 450 IPC and Section 3(2)(va) and 3(1)(w)(i) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Amendment Act, 2015, the conviction recorded under Section 10 of POCSO Act is impermissible which warrants interference of this Court. Therefore, in the absence of any translation of the qualified person, the evidence of the victim girl (PW.9) cannot be accepted. PW.7 and PW.8 are the brothers of the victim girl and they were tutored by the family members to depose against the appellant.

8. Since there are material contradictions and discrepancies in the evidence of the prosecution, it is unsafe to convict the appellant under Section 10 of POCSO Act. From the evidence of the Doctor (PW.11), it could not be conclusively proved that there was penetrative sexual assault and hence, the evidence of the Doctor (PW.11) is false. The trial Court failed to appreciate the evidence and materials and convicted the appellant erroneously. Therefore, the judgment of the trial Court is liable to be set aside and the appellant is to be acquitted.

9. Mr. K. Madhan, learned Government Advocate (Crl. Side) appearing on behalf of the respondent Police would submit that the prosecution has clearly established its case beyond all reasonable doubt. The victim girl at the time of clinical examination and the statement recorded under Section 164 Cr.P.C., and at the time of deposing before the trial Court, the Special Teacher/PW.10 was present to translate her version. In the presence of the Special Teacher (PW.10), the victim girl was examined. The Special Teacher (PW.10) translated the statement recorded under Section 164 Cr.P.C., and her deposition and certified the translated version and attested the same. PW.7 and PW.8, who are the younger brothers of the victim girl have clearly stated that the appellant entered into the house and put PW.7 outside and locked the door and misbehaved with her sister (PW.9), but unfortunately PW.8 was inside the house. The Doctor (PW.11) has opined that the hymen was not intact and the victim girl was subjected to sexual intercourse. On combined reading of the evidence of the victim girl (PW.9), her brothers (PW.7 & PW.8), Special Teacher (PW.10) and Doctor (PW.11), the prosecution has proved its case beyond all reasonable doubt. Even though the trial Court found that the appellant not guilty for offence under Section 450 IPC and Section 3(2)(va) and 3(1)(w)(i) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Amendment Act, 2015, the charge framed under Section 10 of POCSO Act is proved beyond all reasonable doubt and the trial Court rightly convicted the appellant.

10.The trial Court considering the special status of the victim girl and also considering that the appellant had committed a penetrative sexual assault with the special child, rightly convicted the appellant and imposed maximum sentence. Hence, the judgment of the trial Court is sustainable which need not be interfered with.

11.Heard the learned counsel appearing for the appellant and the learned Government Advocate [Crl. Side] appearing for the respondent Police and also perused the materials available on record.

12.The case of the prosecution is that the victim girl (PW.9) is a special child and aged about 16 years at the time of occurrence. On 03.07.2018, at about 07.00 a.m., the parents of the victim girl had gone to their regular work and their children (PW.7, PW.8 & PW.9) were in the house. At about 10.00 a.m., the appellant trespassed into the house and put PW.7 outside and locked the door, but unfortunately PW.8 was inside the home. At that time, the appellant threatened the victim girl (PW.9) by showing knife and pressed her breast and also pressed the other parts of the victim girl. Seeing the act of the appellant, PW.8, who was inside the house raised alarm and PW.8 who was outside also raised alarm and crying. On hearing the noise of the children, the neighbours (PW.3, PW.4 and PW.5) rushed to the house of the victim girl. Thereafter, the appellant had left the house and it was witnessed by the neighbours (PW.3, PW.4 & PW.5). Then, the information was sent to the parents of the victim girl and the father of the victim girl (PW.1) lodged a complaint to the respondent Police.

13.Based on the complaint (Ex.P3) given by the father of the victim girl (PW.1), an First Information Report [Ex.P8] in Crime No.10 of 2018 was registered for offence under Section 450 IPC and Section 9(k), 10 of Protection of Children from Sexual Offence Act, 2012 and Section 3(2)(va) and 3(1)(w)(i) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Amendment Act, 2015. After completing investigation, the respondent police laid a charge sheet before the learned Sessions Judge, Special Court (POCSO Act), Cuddalore and the same was taken on file in Special S.C.No.19 of 2019.

14.During the trial, in order to prove the case of the prosecution, on the side of the prosecution, as many as 14 witnesses were examined as PW1 to PW14 and 15 documents were marked as Exs.P1 to P15 and one material object was exhibited. After completing the examination of prosecution witnesses, when incriminating circumstances were culled out from the evidence of prosecution witnesses put before the appellant, he denied the same as false. On the side of the defence, no oral and documentary evidence was produced.

15. After completing trial and hearing arguments advanced on either side, the learned Sessions Judge, by judgment dated 10.03.2020 in Special S.C.No.19 of 2017, convicted and sentenced the appellant as stated above.

16. 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.

17. Admittedly, the victim girl (PW.9) is a child, which comes under the definition of Section 2(1)(d) of POCSO Act. At the time of occurrence, she was a minor and aged below 18 years. Further, she is a special child as per the evidence of the Special Teacher (PW.10), Doctor (PW.11) and the Disability Certificate (Ex.P2). The age of the appellant is 50 years. The appellant on the pretext that he is a trainee to the victim girl for her disability, entered the house and committed the penetrative sexual assault. Though she is a special child and her language could not be understood by others, at the time of occurrence the appellant was in the house of the victim girl and it was witnessed by the neighbours (PW.3, PW.4 and PW.5). The appellant put PW.7 outside and entered the house and locked the door. But unfortunately PW.8 was also inside the house along with the victim girl. The appellant removed the dress of the victim girl and pressed her breast and also pressed the other parts of the victim girl and committed the penetrative sexual intercourse. The appellant threatened the victim girl (PW.9) by showing the knife and on seeing the same, PW.7 and PW.8 were shouting and raised alarm and the appellant left the house of the victim girl and it was witnessed by the neighbours (PW.3, PW.4 & PW.5). Subsequently, the incident was informed to the parents and the father of the victim girl made a complaint (Ex.P3) to the respondent Police. Thereafter, the victim girl (PW.9) was produced before the Doctor (PW.11) for clinical examination. The Doctor (PW.9) has examined the victim girl and spoken about her mental and physical status. Subsequently, the victim girl (PW.9) was produced before the learned Judicial Magistrate for recording the statement under Section 164 Cr.P.C. Since the victim girl is a special child, she was examined in the presence of the Special Teacher (PW.10), who is having a special knowledge about mentally disorder person. Therefore, in the presence of Special Teacher (PW.10), the learned Judicial Magistrate recorded the statement under Section 164 Cr.P.C., of the victim girl and the Special Teacher (PW.10) also attested that what are all the victim girl (PW.9) stated, she translated the same to the learned Judicial Magistrate.

18. A reading of the evidence and materials, the victim girl was examined as PW.9 in the presence of the Special Teacher (PW.10). The evidence of the victim girl (PW.9) was corroborated by the evidence of PW.7 and PW.8 and also corroborated by the evidence of the Doctor (PW.11). The

evidence of the Doctor (PW.11) clearly shows that the victim girl is a special child and she was subjected to penetrative sexual assault.

19.This Court does not find any reason to disbelieve the evidence of PW.7, PW.8, PW.9, PW.10 and PW.11. As against the acquittal of the appellant for offence under Section 450 of IPC and 3(2)(va) and 3(1)(w)(i) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Amendment Act, 2015, neither the prosecution nor the victim girl have filed any appeal before the concerned Court and hence, this Court is not inclined to interfere with the same.

20.The trial Court has rightly appreciated the entire evidence and materials and convicted the appellant for offence punishable under Section 10 of POCSO Act and the prosecution has established the case beyond all reasonable doubt for offence punishable under Section 10 of POCSO Act and proved the charge with cogent evidence and materials.

21.This Court independently comes to the conclusion that the appellant has committed the offence under Section 10 of POCSO Act and therefore, the prosecution has established its case beyond all reasonable doubt. 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.

22.Accordingly, this Criminal Appeal is dismissed and the judgment of conviction and sentence passed by the trial Court is confirmed. The trial Court is directed to secure the appellant to undergo the sentence, if he is outside.

23.The counsel who appointed by the Legal Services Authority from the legal aid panel for the appellant is entitled for fees as per rule.

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Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

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To

1.The Sessions Judge,
Special Court (POCSO Act Cases),
Cuddalore.

2.The Inspector of Police,
Panruti All Women Police Station,
Panruti,
Cuddalore District.

3. The Chairman,
POCSO committee,
High Court, Madras.

4. The Secretary,
Legal Services Authority,
High Court, Madras.

5. The Public Prosecutor,
High Court, Madras.

+1cc to Mr. C.Venkatesan, Advocate SR.No. 13871

Crl.A.No.243 of 2020

VSNI (CO)

A.SK(09.07.2021)



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