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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.339 of 2021

Santhanakrishnan

... Appellant/Accused

Vs.

The Inspector of Police,
All Women Police Station
Mannargudi.

Crime No.1 of 2019

... Respondent/Complainant

PRAYER: This Criminal Appeal is filed under Section 374(2) of the Criminal Procedure Code, to set aside the Order of Conviction dated 07.01.2021 made in Spl.S.C.No.10 of 2019 on the file of Sessions Court [Womens Fast Track] Court, Tiruvarur and sentenced the Accused to undergo imprisonment for a term of 5 years simple imprisonment under Section 10 R/w Section 9(n) of the Protection of Children from Sexual Offences Act, 2012 and one year imprisonment under Section 506(1) IPC and directed to pay compensation for a sum of Rs.1000/- and Rs.500/- for the above two count and in default shall under go imprisonment for another term of 3 months and 1 months respectively in accordance with law.

For Appellant : Mr.J.Nandagopal

For Respondent : Mr.S.Sugendran

Govt. Advocate (Crl.Side)

J U D G M E N T

This criminal appeal has been filed to set aside the order of conviction dated 07.01.2021 made in Spl.S.C.No.10 of 2019 on the file of Sessions Court [Womens Fast Track] Court, Tiruvarur and sentence imposed on the accused to undergo 5 years simple imprisonment with fine of Rs.1,000/- in default to undergo imprisonment for another 3 months for the offence under Section 9(n) punishable under Section 10 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO Act' for short) and 1 year simple imprisonment with fine of Rs.500/- in default to undergo simple imprisonment for 1 month for the offence under Section 506(i) IPC.



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2. The respondent/police registered a case in Crime No.1 of 2019 against the appellant for the offence under Section 9(n) punishable under Section 10 and also Section 12 of POCSO Act and Section 506(i) IPC.

3. After investigation, laid a charge sheet before the learned Sessions Judge, [Women's Fast Track] Court, Tiruvarur. The learned Sessions Judge taken the charge sheet on file in Spl.S.C.No.10 of 2019. After completing the formalities, the learned Sessions Judge framed charges against the appellant for the offence punishable under Sections 10 and 12 of POCSO Act and also Section 506(i) IPC.

4. After framing the charges, in order to prove the case of the prosecution on the side of the prosecution, during trial, as many as 12 witnesses were examined as PW.1 to PW.12 and 9 documents were marked as Ex.P1 to Ex.P9. No material object was exhibited.

5. After completing the examination of prosecution witnesses, incriminating circumstances culled out from the evidence of the prosecution witnesses were put before the appellant/accused by questioning under Section 313(1)(b) of Cr.P.C., with reference to incriminating circumstances. He denied the same as false and pleaded not guilty. The accused himself was examined as DW.1 and on his side 5 documents were marked as Ex.R1 to Ex.R5.

6. After completion of trial, hearing of arguments advanced on either side and considering the materials available on record, the learned Sessions Judge found guilt of the accused for the offence under Section 9(n) punishable under Section 10 of POCSO Act and Section 506(i) and he was convicted and sentenced to undergo 5 years simple imprisonment and pay a fine of Rs.1,000/- in default to undergo further period of 3 months simple imprisonment for the offence punishable under Section 10 of POCSO Act and also he was convicted and sentenced to undergo 1 year simple imprisonment and pay a fine of Rs.500/- in default to undergo 1 month simple imprisonment for the offence under Section 506(i) IPC and also found not guilty, for the offence under Section 12 of POCSO Act and he was acquitted from the said charge. Challenging the said judgment of conviction and sentence, the appellant/accused has filed the present appeal before this Court.



7. Learned counsel for the appellant would submit that the appellant has not committed any offence. The victim is none other than the daughter of the appellant. No father would behave like this with his own daughter. Since, the appellant was working in Singapore, he used to send all the money to his wife/PW.2 and she also received the money. Thereafter, the appellant came to India and he asked about the money sent by him from Singapore and she has not properly responded and in order to avoid the same, she tutored the victim and made a false complaint.

8. While working in Singapore, the daughters were residing with the mother and therefore, the victim said whatever mother says. PW.2/wife of the appellant left the matrimonial home without any valid reason and she filed a petition for maintenance and also she filed a petition for divorce. The appellant filed a petition against his wife/PW.2 under Section 9 of the Hindu Marriage Act, 1955, for restitution of conjugal rights. Despite the Court passed the order, she did not come and join with him.

9. Further, he would submit that after returning from Singapore, the appellant asked about the money sent by him to his wife and she has not properly responded and she also attacked the appellant with the vegetable cutter (mUths;kid) and he also given a complaint dated 03.11.2018 against his wife before the Police Station. On the side of the defence in order to prove his defence, the receipt given by the Police was marked as Ex.D1. Ex.D2 is the advocate notice for calling the wife of the appellant to come and join with him. Ex.D3 is the copy of the petition filed by the wife/PW.2 for maintenance. Ex.D4 is the petition for divorce filed by the wife of the appellant. Ex.D5 is the copy of the petition filed by the appellant for restitution of conjugal rights. The appellant was examined as RW.1. He has clearly spoken about the enmity and attitude of his wife. The wife took her daughters to her parental home, without any valid reason and all the documents and evidence shows that the appellant has established the motive of enmity between the appellant and his wife. Therefore, the wife of the appellant set up the victim girl and tutored the victim and she gave a false complaint against the appellant.

10. The Trial Court failed to appreciate the evidence of the appellant and documents and wrongly convicted the appellant even without ascertaining the fact that the appellant is the father and the victim is the daughter and no father would do



such a thing with his own daughter. Since the appellant asked his wife regarding the money sent by him, when he was working in Singapore, for which she has attacked the appellant and created a very big drama and also in order to avoid and escape from the criminal case filed by the appellant against his wife/PW.2, she filed a complaint with the help of her daughter. Therefore, the judgment of the Trial Court is liable to be dismissed.

11. Learned Government Advocate (Crl.side) would submit that at the time of occurrence, the age of the victim girl was only 14 years. The appellant is none other than the father of the victim and 4 months prior to the complaint, while the victim was sleeping in sofa during night hours, the appellant was in drunken mood and came to the house and he went nearby the victim and pressed her legs and also pressed the victim with sexual intention. All of sudden, the victim wake up and shouted and later, the mother of the victim wake up and shouted the appellant. Thereafter, the victim was with fear and even before 8.00'o clock she completed her study and went to separate room and locked the door and she was in the room itself. When the appellant came to the house earlier, even she has not in a position to go to rest room in her house. Even some time at 12.00'0 clock, the appellant came and tortured the victim and the mother of the victim as no other option except leave from the house, she left the appellant and took her daughters to her parental home and living there.

12. On the side of the prosecution totally 12 witnesses were examined out of them, the victim was examined as PW.1 and she has clearly narrated the above incidents. Thereafter the mother of the victim was examined as PW.2 and one Mr.Varadharajan was also examined as PW.3, but they have not supported the case of the prosecution. However, in cases of this nature, no independent witness could be expected when the parents where residing with minor children, no one would expect that the father himself would give a sexual torture to his own daughter during night hours in locked house. Therefore, no independent witness can be expected. PW.2/the mother of the victim and the wife of the appellant also clearly spoken about this.

13. The victim was also produced before the learned Judicial Magistrate for recording the statement under Section 164 of Cr.P.C. Before the learned Judicial Magistrate, the victim girl has clearly spoken about the incident and the mother of the victim girl was also produced before the learned Judicial Magistrate for recording statement. The statement recorded by



the learned Judicial Magistrate clearly shows that the appellant has committed the offence punishable under Section 10 of POCSO Act. Though the appellant has raised certain defence which is not acceptable one, the appellant stated that his wife attacked with vegetable cutter, but there was no medical evidence produced and he has not stated anything about the complaint filed by him against his wife. The wife of the appellant left from the matrimonial home with a valid reason and she filed a maintenance case and also filed the divorce petition. Therefore, the prosecution has proved its case that the appellant had given a sexual torture to his own daughter. Therefore, from the evidence of PW.1 and PW.2 and Ex.P1 to Ex.P3, prosecution has proved its case beyond reasonable doubts.

14. Even the birth certificate of the victim girl was marked as Ex.P7, which shows that the date of birth of the victim girl is 07.12.2004. The occurrence is in the year of 2019 and therefore, the age of the victim girl at the time of occurrence is only 14 years. Therefore, she is a child under the definition of Section 2(1)(d) of POCSO Act and the appellant is none other than the father of the victim. The charge was framed against the appellant for the offences under Section 9(m) which is punishable under Section 10 of POCSO Act and also according to the victim, the appellant threatened her that not to reveal any one and he has also committed an offence under Section 11 of the POCSO Act and there is no merit in the present criminal appeal and the same is liable to be dismissed.

15. Heard both sides and perused the materials available on records.

16. The case of the prosecution is that the victim girl aged about 14 years at the time of occurrence. The father of the victim girl was working in Singapore. After returning to his home, he asked his wife/P.W.2 about the money sent by him, while he was working in Singapore and she has not properly responded for the same. When the victim girl was sleeping in sofa during night hours, the appellant with drunken mood pressed her legs with a sexual intention on her. In this regard, the mother of the victim girl made a complaint before the respondent/police. After completion of investigation, the respondent/police laid a charge sheet before the learned Sessions Judge, [Womens Fast Track] Court, Tiruvarur. The learned Sessions Judge taken the charge sheet on file in Special S.C.No.10 of 2019. After completing the formalities, the learned Sessions Judge framed charges against the appellant for the offence punishable under Section 10 and 12 of POCSO Act and also Section 506(i) IPC.



After completing formalities, the appellant was convicted and sentenced. Hence, this criminal appeal.

17. The Appellate Court, is a final Court of fact finding, which has to necessarily re-appreciate the entire evidence and give an independent finding.

18. In this case, the Trial Court framed charges against the appellant for the offence under Section 9(m) which is punishable under Section 10 and also Section 12 of POCSO Act and further for the offence under Section 506(i) IPC.

19. In order to substantiate the charges framed against the appellant, on the side of the prosecution totally 12 witnesses were examined and 9 documents were marked. On the side of the defence, the appellant himself was examined as RW.1 and 5 documents were marked. The victim was examined as PW.1 out of 12 witnesses examined on the side of prosecution.

20. A careful reading of the evidence of PW.1, she has clearly narrated the incident that when the victim girl was sleeping in sofa in her house, the appellant was in drunken mood and came to his house during night hours and switched off the lights and he touched the body of the victim girl and pressed her legs with sexual intention. All of sudden, when the victim wake up and shouted, the mother of the victim wake up and shouted the appellant and took the victim girl to her parental home. The appellant used to torture the victim girl and hence, the mother of the victim girl, to safeguard her daughter and left the appellant. The mother of the victim was examined as PW.2, she also corroborated the evidence of PW.1. The appellant has taken the specific defence that since the appellant asked about the money which was sent by him while he was working in Singapore, for which, she has not given any proper response and in order to escape from that, she looted the money and also she gave a complaint against him. Since P.W.2 left the house, the appellant filed a petition for restitution of conjugal rights.

21. A careful reading of the evidence of PW.1 and PW.2, the victim has clearly stated that the appellant was in drunken mood, came during night hours and pressed the parts of the body of the victim girl with sexual intention. The victim girl aged about 14 years, she can easily realise the feeling of good touch and bad touch and also she has narrated the attitude of the appellant. When the victim girl was produced before the learned Judicial Magistrate to record statement under Section 164 of Cr.P.C. She has narrated the alleged incident.



22. In cases of this nature, no independent witness can be expected and also no eye-witness can be expected or if the witnesses either the kith and kin of the inmates of the house. In this case, the appellant is none other than the father of the victim girl. During night hours, the father came to his house and touched the parts of the body of the victim girl with the sexual intention. The mother of the victim girl has also witnessed the same, after hearing the voice of the victim and she shouted the appellant, while he was sitting nearby the victim girl and when the appellant pressed the parts of the body of the victim girl and the victim was shouted. Since there is no penetrative sexual assault, the medial evidence would not help. Though the appellant has stated that since the appellant asked about money sent by him while he was working in Singapore the mother of the victim shouted and assaulted the appellant. To substantiate the same no medical evidence was produced. Even though he has filed the receipt of complaint, he has not produced any documents to show that as to whether the First Information Report registered in this case and completed investigation.

23. A combined reading of the evidence of PW.1/victim girl and PW.2/mother of the victim girl and the statement recorded under Section 164 of Cr.P.C. and the birth certificate of the victim girl, this Court finds that the victim girl is only aged about 14 years and not completed the age of 18 years and she is a child under the definition of Section 2(1)(d) of POCSO Act. Further, all the above said evidence clearly shows that since the appellant has committed the serious offence and he is none other than the father of the victim girl and the commission of offence falls under Section 9(m) which is punishable under Section 10 of POCSO Act. The evidence of the victim girl is very clear when she was sleeping, the appellant came to his house with drunken mood, even though no lights, the appellant came nearby the victim girl and pressed her legs with sexual intention. Immediately, she shouted and PW.2/mother of the victim girl also wake up and shouted the appellant while she was sleeping.

24. Even though the appellant has taken several defence which are only in order to escape from this case, the appellant has taken all the defences and this Court does not find any reason to discard the evidence of the victim girl. The evidence of the victim is cogent and consistent. The victim girl wake up and shouted at that time, the appellant threatened the victim girl and therefore, he has committed offence under Section 506 (i) IPC.



25. Though the above said evidence of prosecution witnesses and documents would clearly shows that the appellant has committed the above offences and defence taken by the appellant cannot be accepted. The appellant has not rebutted the presumption and therefore, under these circumstances, this Court finds that the appellant has committed the above said offence and the Trial Court rightly appreciated the evidence and convicted and sentenced the appellant. In the admission stage, there is no prima facie reasons and grounds made out to entertain this appeal.

26. In the result, the criminal appeal is dismissed at the admission stage itself.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

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To

1. The Sessions Court
[Womens Fast Track] Court,
Tiruvarur.
2. The Inspector of Police,
All Women Police Station
Mannargudi.
3. The Superintendent
Central Prison, Trichy
4. The Principal Sessions Court
Tiruvarur
5. The POCSO Committee
High Court, Madras
6. The Public Prosecutor,
High Court, Madras.



Copy to

The Section Officer
Criminal Section
High Court, Madras 104.

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+1 CC to Mr.J.Nandagopal, Advocate sr 32402.

Crl.A.No.339 of 2021

GJ(CO)
SP(11/03/2022)