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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.08.2021

PRONOUNCED ON : 25.10.2021

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.267 of 2021 and

Crl.M.P.No.5932 of 2021

Premkumar

...Appellant/Accused

Vs.

State Represented by
The Inspector of Police,
All Women Police Station,
Mayiladuthurai.
(Crime No.10 of 2019)

...Respondent/Complainant

The Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure seeking to set aside the judgment passed against the appellant on 29.03.2021 in Spl.S.C.No.07 of 2020 on the file of the Special Court under POCSO Act, Nagapattinam and acquit him for all the charges.

For Appellant : Dr.R.Sampathkumar

For Respondent : Mr.S.Sugendran
Govt. Advocate (Crl.Side)

JUDGMENT

This criminal appeal has been filed against the judgment of conviction dated 29.03.2021 passed in Spl.S.C.No.07 of 2020 by the learned Sessions Judge, the Special Court under POCSO Act, Nagapattinam.

2 The respondent police registered a case in Cr.No.10 of 2019 against the appellant for the offence under Sections 9(f), (m), (l), (p) of Protection of Children from Sexual Offences Act, 2012 (in short "the POCSO Act) and 506(i) of IPC. After completing investigation, the respondent police laid a charge sheet before the learned Sessions Judge, Special Court under POCSO Act, Nagapattinam, which was taken on file in Spl.S.C.No.07 of 2020. The learned Sessions Judge after hearing both the accused and the prosecution and after perusing the



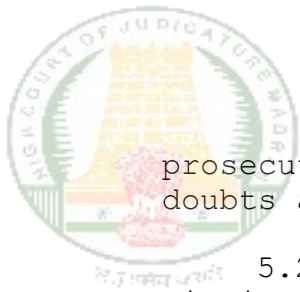
records, since there is prima facie case, framed charges against the appellant/accused for the offence under Section 9(f), (m), (l), (p) of the POCSO Act and Section 506(i) of IPC.

3 Before the trial Court, in order to substantiate the charges, prosecution has examined as many as 11 witnesses as P.Ws.1 to 11 and Exs.P1 to P17, besides one material object was marked by the Court as C.M.O.1. After completing examination of prosecution witnesses, when incriminating circumstances culled out from the evidence of prosecution witnesses were put before the accused by questioning under Section 313 Cr.P.C., he denied the same as false and pleaded not guilty. On the side of the defence, no one was examined and no document was marked.

4 The learned Sessions Judge, on completion of trial and hearing arguments advanced on either side, by judgment dated 29.03.2021 convicted the appellant/accused and sentenced him to undergo rigorous imprisonment for a period of seven years with fine of Rs.10,000/-, in default, to undergo simple imprisonment for a period of one year for the offence under Section 9(f), (m), (l), (p) punishable under Section 10 of the POCSO Act and sentenced to undergo rigorous imprisonment for a period of two years for the offence under Section 506(i) of IPC and ordered the sentence to run consequently. Aggrieved against the said judgment of conviction and sentence, the accused has preferred this criminal appeal.

5 The learned counsel appearing for the appellant/accused would submit that even though the alleged occurrence is said to have taken place on 04.11.2019, the complaint was lodged only on 08.11.2019. Prosecution has not explained the inordinate delay in filing the complaint and the same is fatal to the case of the prosecution. Both the victim girl P.W.2 and her mother P.W.1 have not stated any specific dates while recording statement under Section 164 of Cr.P.C. There is no independent witness to corroborate the alleged occurrence as projected by the prosecution. Further medical evidence also does not support the case of the prosecution.

5.1 The learned counsel further vehemently contended that all the witnesses examined on the side of the prosecution have turned hostile and not supported the case of the prosecution. The trial Court erred in not appreciating the fact that the prosecution has miserably failed to prove the allegation of the sexual assault on the victim child. It is settled proposition of law that prosecution should prove its case beyond all reasonable doubts and there is presumption under Section 29 of POCSO Act, which is rebuttable. If prosecution proved its case beyond all reasonable doubt then only the accused has to rebut the presumption by preponderance of probabilities. In this case,



prosecution has failed to prove its case beyond all reasonable doubts and therefore there is no presumption would arise.

5.2 The learned counsel vehemently contended that the victim and her mother have categorically stated that since the victim did not study well, the appellant/accused beaten her and hence they have lodged a false complaint against the appellant. No witnesses have spoken about the alleged sexual offence said to have committed by the appellant. The appellant is an innocent person and he never committed such offence.

5.3 The trial Court erroneously convicted the appellant based on the presumption under Section 29 of the POCSO Act and sympathy. Hence the judgment of conviction and sentence passed by the trial Court is not sustainable under the eye of law and hence the same warrants interference of this Court.

6 The learned Government Advocate (Crl.Side) appearing for the respondent police would submit that during the relevant point of time in the year 2019, the victim girl was studying 4th standard in the Adi Dravidar School, the appellant, who was working as Teacher in the same School, took the victim child to the lane near the School and committed the sexual offence repeatedly as stated in the charge sheet and also threatened the victim child not to reveal the same to anyone. Thereafter, when P.W.2 the victim child refused to go to School, her mother P.W.1 enquired and on enquiry the victim child narrated the entire incidents.

6.1 Even though, the learned counsel for the appellant contended that most of the witnesses have turned hostile and not supported the case of the prosecution, the victim girl/P.W.2 and mother of the victim child P.W.1 while recording statement under Section 164 of Cr.P.C. have clearly stated that the appellant has committed the sexual offence on the victim child, which corroborated with each other. Subsequently, they have not supported the case of the prosecution for the reasons best known to them. However, the offence committed by the appellant has been proved beyond the reasonable doubt.

6.2 Further, it is not the case of prosecution that the appellant had committed aggravated penetrative sexual assault and the victim had sustained injuries and hence it is not necessary for the prosecution to prove its case with the support of the medical evidence. The learned counsel contended that there was delay in filing the complaint. Cases of this nature, we cannot expect the parents of the victim child to rush Police Station immediately soon after knowing the occurrence, that too by the Teacher in the School itself. Therefore delay in filing the complaint is not a fatal to the case of the prosecution.



6.3 As per Ex.P8 Transfer Certificate and Ex.P10 Bonafide Certificate, the victim was aged about 16.01.2009 and was only 10 years old at the time of occurrence. Therefore the offence committed by the appellant would fall under Section 9(f), (m), (l), (p) of the POCSO Act and since the appellant threatened the victim not to reveal anything, he was charged for the offence under Section 506(i) also. The trial Court has rightly appreciated the evidence of the prosecution witnesses in a right perspective and come to the conclusion that the appellant/accused committed the offence and convicted him accordingly. Therefore, since the judgment of conviction and sentence passed by the learned trial Judge is being well founded, the same does not call for any interference.

7 Heard the learned counsel for the appellant and the learned Government Advocate (Crl.Side) appearing for respondent police and perused the materials available on record.

8 Case of the prosecution is that on 25.10.2019 during lunch break at about 2.30 p.m. the appellant/accused, who was working as Teacher in the Adi Dravida Welfare School, with sexual intention took the victim child, who was studying 4th Standard in the same School, to the lane situated in between the School building, pinched and sucked her breasts and hugged her. Like wise on 04.11.2019 at about 3.00 p.m. the accused lured the victim child to the same place and repeated the sexual offence. He further criminally intimidated the victim child not to reveal to anyone, if she disclose, he would kill her. Since the victim child refused to go to school, P.W.1 her mother enquired and on enquiry, the victim child narrated the offence committed by the appellant. Therefore the present case was registered against the appellant for the offence under the POCSO Act and also IPC.

9 This Court, being an Appellate Court, is a final Court of fact finding, which has to necessarily re-appreciate the entire evidence and give an independent finding. Accordingly, this Court has re-appreciated the entire oral and documentary evidence produced before this Court.

10 The victim girl, who was examined as P.W.2 has clearly spoken about the offence committed by the appellant, while recording statement under Section 164 of Cr.P.C. which corroborated with the statement of P.W.1 mother of the victim child. Even though, all the witnesses examined on the side of the prosecution have turned hostile and not supported the case of the prosecution, the victim girl, while producing before the Magistrate for recording statement under Section 164 of Cr.P.C. has clearly narrated the entire incident as stated in the complaint and the said statement was marked as Ex.P.3, which



corroborates with the statement of P.W.1 mother of the victim child recorded under Section 164 of Cr.P.C.

11 It is further contended that medical evidence does not support the case of the prosecution and there is delay in lodging the complaint, which was not properly explained by the prosecution. It is not necessary that in all the cases, medical evidence should be corroborated with the evidence of the victim. In this case, the victim has stated that the appellant took her to the lane situated between the School building and committed the sexual assault, which is not penetrative sexual assault and hence it is not necessary that there should be any injuries on the parts of the body of the victim child and the complaint also does not say so. Cases like this, mere delay in filing the FIR, is not fatal to the case of the prosecution and also the reason for delay though specifically not given, one cannot expect the family members of the victim child would rush to the Police immediately soon after the occurrence.

12 It is seen that age of the victim is not in dispute and the same was proved through Exs.P8/Transfer Certificate & P10/Bonafide Certificate and the fact that at the relevant point of time, the appellant was a Teacher in the Adi Dravida Welfare School, in which the victim child studied. Even though, the P.Ws.1 & 2 subsequently not stated anything about the offence committed by the appellant, the victim child and her mother, while recording the statement under Section 164 of Cr.P.C. have stated the chain of occurrence clearly that one day the appellant took the victim child to the lane situated near the School building and committed the sexual offence and on the other day also took her to the same place and repeated the offence. Even though, while examining in chief before the Court, the victim child has not stated anything about the offence committed by the appellant, when prosecution cross examined the victim child, she has reiterated the contents narrated in the complaint and the statement under Section 164 of Cr.P.C.

13 In the present case on hand, there is no eye witness except the victim child, who was 10 years at the time of occurrence and while recording the statement under Section 164 of Cr.P.C. and when the prosecution cross examine the victim child, she has clearly spoken about the incidents and the manner in which the offence committed by the appellant, which is cogent, consistent and natural and hence this Court does not finds any reason to disbelieve or discord the evidence of the victim child. Even though, the victim and the other witnesses turned hostile, the victim, during cross examination by the prosecution has clearly stated that the accused has committed



the sexual assault. It is settled proposition of law that the evidence of the hostile witness would not be totally rejected. If spoken in favour 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 upon. In the absence of any valid reason to disbelieve the evidence of the victim, this Court finds that the evidence of the victim child inspires the confidence of the Court. On a careful reading of the evidence of the victim child, this Court finds no reason to disbelieve the same. On reading of the entire materials, this Court is of the view that the prosecution has proved its case beyond all reasonable doubt. The learned trial Judge has rightly appreciated the evidence of the prosecution witnesses in a right perspective and convicted the appellant accordingly, in which this Court does not find any perversity.

14 In fine, this Court come to the conclusion that there is no merit in the appeal and there is no sound reason to interfere with the judgment of conviction and sentence. Accordingly, this criminal appeal is dismissed. The trial Court is directed to secure the appellant/accused to serve remaining period of imprisonment, if any. Consequently connected miscellaneous petition is closed.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

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To

1. The Sessions Judge, Special Court under POCSO Act, Nagapattinam.
2. The Inspector of Police, All Women Police Station, Mayiladuthurai.
3. The Public Prosecutor, High Court of Madras.

Copy to
POCSO Committee
High Court, Madras 104

Crl.A.No.267 of 2021

SSD(CO)
SP(11/11/2021)