

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2021

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRL.A.No.277 of 2019

Venkatesan

.. Appellant/Accused

.Vs.

State Rep.by

The Inspector of Police,

W.25, All Women Police Station,

T.Nagar, Chennai - 17,

Crime No.9 of 2015.

.. Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure to call for the records in S.C.No.212 of 2016 dated 05.03.2019 on the file of the Mahila Court/Special Court for Cases Under POCSO Act/Children Court, Chennai - 600 104 and set aside the said conviction of the lower Court.

For Appellant : Mr.A.Thiyagarajan

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

J U D G M E N T

This Criminal Appeal has been filed against the Judgment dated 05.03.2019 in S.C.No.212 of 2016 on the file of the learned Mahila Court/Special Court for Cases Under POCSO Act/Children Court, Chennai - 600 104.

2.The respondent police registered a case in Crime No.9 of 2015 for the offence punishable under Section 10 of The Protection of Children from Sexual Offences Act, 2012 [hereafter 'POCSO Act' for the sake of convenience]. After investigation, the respondent police filed a charge sheet before the learned Sessions Judge, Mahila Court/Special Court for Cases Under POCSO Act/Children Court, Chennai - 600 104 and the same was taken on file in S.C.No.212 of 2016, since the offence is against a minor girl.

3.After trial, the appellant found guilty for the offence punishable under Section 10 of POCSO Act and sentenced him to undergo simple imprisonment for a period of five years and to pay a fine of Rs.5,000/- and in default, to undergo simple imprisonment for a period of six months. Challenging the said

conviction and sentence, the appellant is before this Court.

4.1 The learned counsel for the appellant would submit that the victim girl was examined as P.W.2 and her evidence is contradictory to the other evidences of the prosecution. However, the learned Judge failed to appreciate the entire evidence and erroneously convicted the appellant. According to the prosecution, the defacto complainant (P.W.1) is the father of the victim girl. The alleged occurrence is said to have taken place on 11.11.2015. Though the appellant is very much available in the opposite house, after deliberation, P.W.1 gave a complaint (Ex.P.1) on 12.11.2015 with an inordinate delay. The delay in preferring the complaint has not been properly explained, however, the learned judge failed to consider the unexplained delay and convicted the appellant, which is fatal to the case of the prosecution. It creates a doubt about the case of the prosecution. The learned counsel for the appellant would further submit that the appellant is none other than the neighbour of the victim girl's family, apart from that, he is residing nearby their house. There was a previous enmity between the appellant and their Association. Due to such enmity and to take vengeance, a false case has been foisted against the appellant. There is no eye witness to the said occurrence.

4.2 The learned counsel for the appellant would further submit that according to the prosecution, P.W.1, father of the victim girl (P.W.2) had stated that at the time of occurrence, the victim girl was alone in the house, since he himself, his wife and younger daughter went to Big Bazaar. At that time, the victim girl (P.W.2) telephoned her mother (P.W.3) and asked her to come home immediately, but, she has not stated anything about the occurrence. After their arrival, his wife enquired the victim girl and came to know about the said occurrence. After deliberation, they improvised the version and preferred a false case against the appellant. He would further submit that if at all anything happened, the victim girl would have told her mother through phone, but, she has not made any allegation against the appellant. There is a contradiction in the evidence of the victim girl and other prosecution witnesses and it will go to the root of the case of the prosecution. The evidence of the Doctor (P.W.7) and the medical report did not support the case of the prosecution. There is no corroborative evidence and independent witness to support the case of the prosecution. However, the learned Special Judge failed to appreciate the prosecution evidence in a right manner and simply convicted the appellant on the ground of sympathy, which warrants interference of this Court.

5.1 The learned Government Advocate (Crl.Side) would submit that at the time of occurrence, the victim girl, who was

examined as P.W.2 was aged about 11 years and studying 7th standard. During the trial, the victim girl has clearly deposed that on 11.11.2015, she was alone in her house, since her parents and sister went to Big Bazaar. At 11.00 a.m., she heard the calling bell and peeped through the door slit. She saw that the accused was standing nearer to the door. Then, she opened the lock without removing the chain and saw him through the chain gap. The accused saw her and asked her whether he could come inside the home and play with the toy house. Thereafter, she opened the door. The accused came inside the house and sexually assaulted her. When she resisted the same, the appellant left from the house, thereafter, the victim girl telephoned her mother (P.W.3) and asked her to come home soon. Immediately, the parents of the victim girl rushed to their home and learnt about the occurrence. Thereafter, they preferred a complaint on 12.11.2015 and First Information Report (Ex.P.10) was registered on the same day. The learned Government Advocate (Crl.Side) would further submit that a mere delay in preferring the complaint is not fatal to the case of the prosecution.

5.2 The learned Government Advocate (Crl.Side) would further submit that during the course of investigation, the victim girl (P.W.2) was produced before the Doctor (P.W.7) for medical examination, thereafter, was produced before the learned Magistrate (P.W.6) for recording her statement under Section 164 Cr.P.C. During that time the victim girl has clearly deposed that the appellant, who entered into her house knowing fully that her parents and younger sister left the house, taking advantage of the situation, had committed the offence. From the evidence of the victim girl (P.W.2), the Doctor (P.W.7) and the evidence of the learned Magistrate (P.W.6), the prosecution has clearly established their case beyond reasonable doubt. He would further submit that after the occurrence, immediately the victim girl informed the same to her mother, thereafter, they discussed the same with their family members and other relatives later they preferred the complaint. Therefore, the delay in filing the complaint is properly explained and the delay in filing the complaint cannot be a sole ground to disbelieve the case of the prosecution.

6. Heard both sides and perused the records.

7. The case of the prosecution is that the victim girl (P.W.2) was aged about 11 years at the time of occurrence i.e on 11.11.2015. When the victim girl was alone in her house, the appellant entered into her house and sexually assaulted her by twisting her breast. However, when the victim girl resisted the same, the appellant left the house. Thereafter, she informed about the same to her mother (P.W.3). The mother, in turn, informed the same to her husband (P.W.1), who gave a complaint

(Ex.P.1) to the respondent police and a case in Crime No.9 of 2015 was registered against the appellant/accused. After completion of the investigation, the respondent/police laid a charge sheet before the Sessions Judge, Mahila Court/Special Court for Cases Under POCSO Act/Children Court, Chennai - 600 104 and the same was taken on file in S.C.No.212 of 2016. The date of birth of the victim is 18.11.2004 and date of the occurrence 11.11.2015. As such the age of the victim is 11 years. Since she is under the age of 18 years, she is child under Section 2(i) (d) of the POCSO Act. Therefore, the appellant has been charged for the offence punishable under Section 10 of POCSO Act.

8.In order to prove the case, before the trial Court, on the side of the prosecution as many as 9 witnesses were examined as P.W.1 to P.W.9 and also marked Exs.P1 to P11. On completion of the evidence on the side of the prosecution, the accused was questioned under Section 313 Cr.P.C as to the incriminating circumstances found 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.

9.On the side of the defence, one witness was examined as D.W.1 and also marked Exs.D.W.1 to D.W.2,, besides D.M.O.1 to D.M.O.3, material objects.

10.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 guilty and awarded punishments, as referred to above, which is challenged in this Criminal Appeal.

11.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.

12. It is the specific case of the prosecution that the appellant and the victim girl are neighbours and they are residing in the same floor. On 11.11.2015, the parents of the victim girl along with her younger sister went to Big Bazaar, at that time, the victim girl was alone in the house. The appellant, taking advantage of the said situation, entered into her house and sexually assaulted her and when she resisted the same, the appellant left the house. Thereafter, she informed the same to her mother.

13. Though the learned counsel for the appellant would submit that when the victim girl first informed her mother over phone, she had simply stated that the appellant entered into the house, but, she has not stated anything that the appellant

sexually assaulted her. The mother (P.W.3) of the victim girl has categorically stated that when they were in Big Bazaar, at 11.00 a.m. she received a call from her daughter and she told her that the opposite house uncle came into her house and that they should come home early. After their arrival, the victim girl informed the occurrence to her mother. He would further submit that if at all anything happened, she would have informed the same to her mother over phone, but, she has not stated anything about the occurrence. After deliberation, a false case has been foisted against the appellant. However, the facts remains that the appellant is none other than the neighbour of the victim girl. At the time of occurrence, the victim girl telephoned her mother and asked her to come home early. We cannot expect the victim girl, aged 11 years, to reveal all these information over phone, when she was in panic situation. After coming home, when her mother asked her, the victim girl revealed about the occurrence. Thereafter, they preferred the complaint.

14. Further, the Doctor, who conducted medical examination of the the victim girl was examined as P.W.7 and he has deposed that there is no internal injury found on her private part. The evidence of the victim girl (P.W.2) has clearly stated that the appellant entered into her house and sexually assaulted her. She informed the said occurrence to her mother. In a case like this, this Court cannot expect any eye witness or independent witness. These type of accused will always wait for a chance to take advantage of the loneliness of minor girls to commit this type of offence. The evidence of the victim regarding sexual assault is enough for conviction and it does not require any corroborative evidence unless there are compelling reasons seeking for corroboration. The Court may testify the evidence of the witness, as to whether she was tutored by her parents or adult members for any reason. The Doctor (P.W.7), who examined the victim girl had clearly stated that when she enquired the victim girl, she has stated that on 11.11.2015, when she was alone at her home, the appellant entered into their house and molested her and sexually assaulted her. Further, she was produced before the learned Magistrate for recording her statement under Section 164 Cr.P.C, she narrated the entire evidence before him.

15. Therefore, from the combined reading of the evidence of the victim girl (P.W.2), the evidence of the Doctor (P.W.7) and the statement recorded under Section 164 Cr.P.C, which was marked as Ex.P.3, this Court finds that the appellant has committed offence punishable under Section 10 of POCSO Act and the prosecution has proved its case beyond reasonable doubt and the trial Court has rightly appreciated the entire evidence and convicted the appellant and the accused has not rebutted the

presumption under Section 29 of POCSO Act.

16. In fine, this Criminal Appeal deserves to be dismissed and accordingly, the same is dismissed. The conviction and sentences passed in S.C.No.212 of 2016 by the Mahila Court/Special Court for Cases Under POCSO Act/Children Court, Chennai - 600 104 is confirmed.

17. The trial Court is directed to take appropriate steps to secure the appellant to undergo the remaining period of sentence.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Sessions Judge,
Mahila Court/Special Court for Cases
Under POCSO Act/Children Court,
Chennai - 600 104.
- 2.The Inspector of Police,
W.25, All Women Police Station,
T.Nagar, Chennai - 17.
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Deputy Registrar | with a direction to send back the
(Criminal Section), | original records, if any, to the
High Court, Madras. | trial Court

Copy To

The Chariman,
POSCO Committee,
High Court, Madras 104.

+1cc to Mr.A.Thiyagarajan, Advocate, S.R.No.25870

CRL.A.No.277 of 2019

VBM(CO)
GN(08/07/2021)