



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.08.2021

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CRL.A.NO.242 OF 2021

Raja @ Periyasamy
S/o, Kunjappan @ Ramachandran

... Appellant/Petitioner

Versus

State by
The Inspector of Police,
Sooramangalam AWPS,
Salem.

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the judgment passed by the learned Sessions Judge, Special Court for Cases under POCSO Act, Salem dated 21.12.2020 convicted the appellant U/s.5(m), 5(n) r/w 6 of the POCSO Act 2012 and sentenced to undergo ten years Rigorous Imprisonment and also imposed a fine of Rs.25,000/- in default to undergo further period of six months Simple Imprisonment and to set aside the conviction against him.

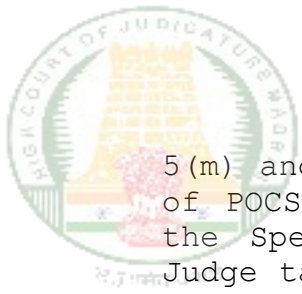
For Appellant : Mr.N.Sudharsan

For Respondent : Mr.S.Sugendran
Government Advocate, (Criminal Side)

JUDGMENT

This Criminal Appeal has been filed against the judgment dated 21.12.2020 passed in old S.C.No. 6 of 2018 , new S.C.No.67 of 2019 on the file of the Sessions Judge, Special Court for cases under POCSO Act, Salem.

2. The respondent police registered a case against the appellant in Crime No.11 of 2017 for the offence under sections



5(m) and 5(n) of POCSO Act, which are punishable under section 6 of POCSO Act. After investigation, laid a charge sheet before the Special Judge, Mahila Court, Salem. The learned Special Judge taken the charge sheet on file in Spl.S.C.No.6 of 2018 and after completing the formalities, framed the charges against the appellant for the offence punishable under section 6 of POCSO Act.

3. After framing of charges and completing the formalities during trial, in order to prove the case of the prosecution, as many as 12 witnesses were examined as P.Ws.1 to 12 and 17 documents were marked as Exs.P1 to P17. Besides that, one material object was also marked.

4. After completing the examination of the prosecution witnesses, incriminating circumstances were culled out from the evidence of the prosecution witnesses, put before the accused by questioning under section 313 Crpc., and the same was denied by the accused as false and pleaded not guilty. On the side of the defence, two witnesses were examined and one document was marked.

5. On completion of trial and hearing the arguments advanced on either side, the trial judge found the appellant guilty for the offence under sections 5(m) and 5(n) of POCSO Act which were punishable under section 6 of POCSO Act, convicted and sentenced him to undergo ten years rigorous imprisonment and to pay a fine of Rs.25,000/- in default to undergo 6 months simple imprisonment. Challenging the said judgment of conviction and sentence, the accused has filed the present appeal before this Court.

6. The learned counsel for the appellant would submit that the prosecution has not proved its case beyond reasonable doubt. There are contradictions among the prosecution witnesses and the contradictions are material contradictions which will go into the root of the case of the prosecution. The trial court failed to appreciate the evidence of the prosecution witnesses and give effect to the materials contradictions and convicted the appellant based on sympathy and also on assumption and therefore, which warrants interference of this Court. Further, he would submit that P.Ws.1 to 9 are the interested witnesses. Since the appellant refused to give his daughter in marriage to P.W.7, they foisted a false case against the appellant and gave false evidence against him in order to take vengeance for the abovesaid refusal of the marriage proposal of his daughter to P.W.7. Further, the evidence of P.W.11, doctor who has conducted the medical examination of the victim girl has stated that the victim girl was not subjected to penetrative sexual assault and the final opinion Ex.P12 also proved the same.



Even, P.W.2, victim girl in her cross examination has clearly stated that she slept along with one Shalini in the appellant's house and they woke about 8.30 pm and when they came outside the house, P.W.1, P.W.7 and the appellant stood outside the house. The trial court failed to appreciate the evidence of P.W.4, the father of the victim girl stated that at about 8.30 pm, the victim girl crying and coming out of the house of the appellant and at the time, both the appellant and his daughter sitting outside their house. The evidence of P.W.5, the mother of the victim girl shows that she did not go inside the house of the appellant and P.W.1, who went inside the house and brought P.W.2 from the house of the appellant. Further, the trial court failed to appreciate the cross-examination of P.W.7 that he has not seen the appellant on the date of occurrence. The trial court failed to note that the complaint Ex.P3 was signed inside the police station by P.W.8. P.W.12 in her cross examination has stated that she has not received any evidence and nothing available in the place of occurrence. The victim girl P.W.2 was sent for medical examination only after two days of the alleged occurrence and the same is vitiated the case of the prosecution. The trial judge failed to appreciate the evidence of the prosecution witnesses and also the defence witnesses and also the material contradictions and especially the medical evidence not supported the case of the prosecution and the judgment of conviction passed, based on assumption and sympathy ground. Therefore, the judgment of the trial court warrants interference.

7. The learned Government Advocate appearing for the respondent police would submit that age of the victim girl is only 3 ½ years and when she went to her relatives P.W.1 and P.W.3's house, for celebrating festival and when she was in the appellant's house, the appellant committed penetrative sexual assault on her. The victim girl informed the abovesaid act of the appellant to P.W.1 and she along with neighbours and relatives questioned the said act of the appellant, he denied the same and behaved rudely. Therefore, they filed the complaint before the respondent police, and the respondent police registered the case against the appellant and after investigation, laid a charge sheet before the Sessions Judge, Special Court for cases under POCSO Act, Salem. The Special Judge, framed the charge against the appellant for the offence punishable under section 6 of POCSO Act. In order to substantiate the charge, on the side of the prosecution, totally 12 witnesses were examined. Out of 12 witnesses, the victim girl was examined as P.W.2 and in her evidence, she has clearly stated that the appellant has committed the penetrative sexual assault on her. P.W.1 is the aunt of the victim girl was spoken about the complaint given to the police. P.W.3 is the husband of P.W.1, corroborated the evidence of P.W.1. P.W.4 and P.W.5



are the mother and father the victim girl respectively. They have also corroborated the evidence of P.Ws.1 and 3 that they went to the appellant's house, at that time, the victim girl crying and coming out of the house of the appellant and they enquired about the same, the victim girl stated that the appellant caused injury on her private part of the body. Subsequently, P.Ws.1 and 3 questioned the abovesaid act of the appellant, he has not properly responded, therefore they laid a complaint before the respondent police. During the evidence, the victim girl and other witnesses have stated that the victim girl crying and coming out of the house of the appellant and they enquired about the same, the victim girl stated that the appellant caused injury on her private part of the body and also she stated that she had pain on her private part of the body. Subsequently, the victim girl was produced before the doctor. The doctor examined the victim girl and found the injury on her private part of the body. Thereafter, the victim was produced before the Magistrate for recording statement under Section 164 Cr.P.C. The statement was marked as Ex.P17. Therefore, from the combined reading of the evidence of P.W.1 and P.W.11, doctor who conducted medical examination on the victim girl and also the document Ex.P.8, the copy of the accident register of the victim girl and Ex.P9, wound certificate, the medical test report and also Ex.P17 statement recorded under 164 Cr.P.C, the prosecution proved its case beyond all reasonable doubt. The trial judge also rightly appreciated the evidence and convicted the appellant and sentenced him to undergo ten years rigorous imprisonment and to pay a fine of Rs.25,000/- in default to undergo 6 months simple imprisonment. There is no merit in the appeal and the same is liable to be dismissed.

8. Heard the learned counsel for the appellant and the learned Government Advocate (Criminal Side) appearing for the respondent.

9. Admittedly in this case, age of the victim girl is only 3 ½ years. Though the age of the victim is not in dispute and the defence has also not disputed the age of the victim, the prosecution has not taken any steps to mark the birth certificate of the victim girl and also proved the same. Therefore, the victim is a child under the definition of section 2(1)(d) of POCSO Act. From the evidence of the victim girl P.W.2, she has clearly stated that the appellant caused injury on her private part and she informed the same to her mother. The evidence of P.W.1, the aunt of the victim girl clearly said that there was a festival in her native place. She invited the appellant's family and the victim girl's family for that function. Therefore, the victim girl and their parents came to their native place. On the date of occurrence, the victim girl



played with her neighbourhood daughter one Shalini and she went to the house of the appellant and played with the daughter of the appellant also. When the victim girl was sleeping at about 8.30 pm, P.W.1 heard the crying sound of the victim girl, immediately they rushed to the place, they found that the appellant and the victim girl were in nude condition and the appellant lie on the victim girl and also had penetrative sexual assault. The victim was crying due to unbearable pain. When they questioned the said act of the appellant, he did not respond properly and denied the same and after that he left the place. Therefore, they gave a complaint. P.W.3 is the husband of P.W.1, who also corroborated the evidence of P.W.1. P.W.4 is the neighbour also corroborated the evidence of P.W.1. P.Ws.4 and 5 are the father and mother of the victim girl respectively, they have not seen the occurrence, but they have stated about what the victim girl informed to them about the appellant's act on her.

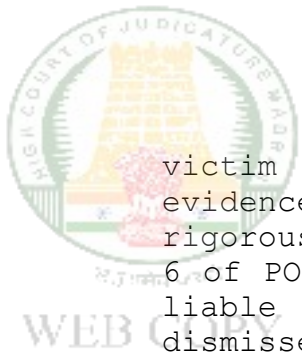
10. Though the learned counsel for the appellant would vehemently contended that there are material contradictions between the evidence of P.W.1, P.W.3 and others and the victim girl has not clearly stated anything about the sexual assault and only said that she had pain on her private part. The trial court failed to appreciate the evidences. The victim girl was also produced before the doctor for medical examination. The doctor one who conducted the medical examination is P.W.11 and also Exs.P8, P9 and P10, clearly shows that the appellant has committed the penetrative sexual assault on the victim girl and the victim girl also produced before the Judicial Magistrate to record the statement under section 164 Cr.P.C and the same was also marked as Ex.P17, in which also, the victim girl has clearly stated that the appellant caused injury on her private part of the body and she had pain on it. Though, on a reading of evidence of P.W.2 and also Ex.P17, and the victim girl not stated anything about the penetrative sexual assault, since the victim girl was only 3 ½ years old, she has stated that the appellant caused injury on her private part of the body and she had pain on it. The doctor one who conducted the medical examination has clearly stated that there was an injury on the private part. Therefore, from the evidence of P.Ws.1,2,3 and P.W.11 doctor and also the statement recorded under section 164 Cr.P.C, and the medical report clearly shows that the appellant had penetrative sexual assault on the 3 ½ years old victim girl. The age of the victim girl is only 3 ½ years and the appellant is also the relative of the victim, has committed the offence punishable under section 5(m) and 5(n) of POCSO Act, which is an aggravated penetrative sexual assault falls under section 5 of POCSO Act which is punishable under section 6 of POCSO Act. Since the victim girl is only 3 ½ years and she has not in a



Section (3) of POCSO Act, 2012 which reads as follows:

(d) he applies his mouth to the penis, vagina, anus, urethra of the child to makes the child to do so to such person or any other person.

11. In cases of this nature, no eye witness can be expected to be available and taking advantage of the loneliness of children, persons try to exploit them sexually and in this case, the appellant, who is the relative and neighbourhood of P.W.1 and when the victim girl went to the appellant's house, the appellant, taking advantage of loneliness, tried to misbehave with the victim girl. The victim girl cried and at that time, P.W.1 entered into the house of the appellant and saw the occurrence. The contradictions are not material contradictions. The victim girl has clearly stated that the appellant has committed the penetrative sexual assault on her. Even P.Ws.1 to 4 seen the appellant together with the victim girl at the relevant point of time, therefore the court drawn the presumption under Section 29 of POCSO Act that the appellant is the one who has committed the penetrative sexual assault on the



victim girl and the trial court rightly appreciated the entire evidence and convicted him and sentenced to undergo ten years rigorous imprisonment, which is a minimum sentence under Section 6 of POCSO Act. There is no merit in the appeal and the same is liable to be dismissed. Accordingly, the Criminal Appeal is dismissed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge,
Special Court for Cases under POCSO Act,
Salem.
2. The Inspector of Police,
Sooramangalam AWPS,
Salem.
3. The POCSO Committee,
High Court, Madras.
4. The Public Prosecutor,
High Court,
Madras.
5. The Superintendent,
Central Prison, Salem.
6. The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to M/s.N.Sudharsan, Advocate, S.R.No.43608

CRL.A.No.242 of 2021

SR(CO)
RLP(12/01/2022)