



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2021

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRL.A.No.271 of 2021

Balasubramani

... Appellant

.Vs.

State by

The Inspector of Police,
All Women Police Station,
Central Coimbatore City,
Coimbatore,
Crime No.5 of 2019.

... Respondent

Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure to set aside the judgment, conviction passed against the appellant by the learned Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore in Spl.S.C.No.111 of 2019 dated 02.03.2021.

For Appellant : Mr.M.Jaikumar

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

J U D G M E N T

This Criminal Appeal has been filed against the Judgment dated 02.03.2021 passed in Spl.S.C.No.111 of 2019 by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore.

2.The case of the prosecution is that the accused/appellant is the foster father of the victim girl. On 14.09.2019 at about 10 a.m., when the victim girl was in her house alone, the accused sexually harassed her by way of touching her breast, she resisted the same, the appellant expressed his desire to have sex with her. Thereafter, he repeated the same on several times. The victim girl hesitated to intimate the same to her mother and that she has stated that she did not want to live in their house. Thereafter, she informed the said incident to her lecturers, who in turn, informed the said incident to her mother, thereafter, she went to her aunt's house. On 25.09.2019, the victim girl due to stomach pain went to the Doctor/P.W.7



and on medical examination she informed the said incident to the Doctor. Subsequently, based on the instructions given by the Doctor, the victim girl contacted Child Help Line and thereafter, preferred a complaint/Ex.P1 against the appellant.

3.The respondent police registered a case in Crime No.5 of 2019 against the appellant for the offence under Sections 7 and 8 of The Protection of Children from Sexual Offences Act, 2012 [hereinafter referred to as 'POCSO Act' for the sake of convenience]. Subsequently, altered into Sections 7 r/w 8, 9(1), 9(n) r/w 10 of POCSO Act. After completing the investigation, the respondent police filed a charge sheet before the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore. The offence is against a child, which falls under the definition of Section 2(1) (d) of POCSO Act and the learned Sessions Judge, taken cognizance of the case on file in Spl.S.C.No.111 of 2019. On completion of the formalities, the learned Sessions Judge framed charges against the appellant for the aforesaid offences.

4.In order to prove the case of the prosecution before the trial Court, on the side of the prosecution as many as 14 witnesses were examined as P.W.1 to P.W.14 and marked 15 documents as Exs.P1 to P15. After examining the prosecution witnesses, the incriminating circumstances culled out from the evidence of the prosecution witnesses were put before the appellant/accused and questioned under Section 313 of Cr.P.C., wherein he denied all the incriminating circumstances as false and pleaded not guilty. On the side of the defence, no oral and documentary evidence was produced.

5.The Court below, after hearing the arguments advanced on either side and also considering the materials available on record, found that the appellant is guilty for the following offences and imposed sentences as follows :

(i) For the offence under Section 7 which is punishable under Section 8 of POCSO Act, the appellant was convicted and sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.5,000/-, in default, to undergo rigorous imprisonment for a period of six months.

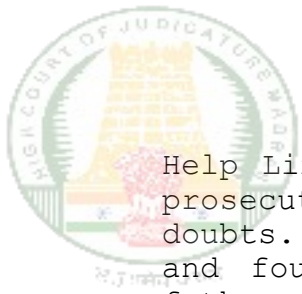
(ii) For the offence under Sections 9(1), 9(n) which is punishable under Section 10 of POCSO Act, the appellant was convicted and sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.5,000/-, in default, to undergo rigorous imprisonment for a period of six months and ordered that the sentences to be run concurrently.



Challenging the said conviction and sentences, the appellant is before this Court.

6.The learned counsel for the appellant would submit that the specific allegation against the appellant is that on 14.09.2019 at about 10 a.m., the appellant sexually harassed the victim girl, who is aged about 16 years, whereas, P.Ws.5 and 6/Lecturers of the victim girl have stated that the victim girl was present at college on 14.09.2019 at 9.30 a.m and hence, the occurrence itself is very doubtful. He would further submit that the victim girl was produced before the learned Judicial Magistrate for recording her statement under Section 164 Cr.P.C on 10.10.2019 and she has clearly stated that her grandmother and her aunt tutored her to preferred the complaint against the appellant and hence, the prosecution has not established its case beyond all reasonable doubts. He would further submit that the appellant is the foster father of the victim girl, the victim girl asked phone to the appellant, he resisted the same and beaten her in angry and hence, a false case has been foisted against the appellant. However, at the time of recording statement under Section 164 Cr.P.C and during trial, the victim girl/P.W.1 turned hostile and P.W.2/mother of the victim girl and P.Ws.3 and 4/aunts of the victim girl also turned hostile and they have not supported the case of the prosecution. There is no eye witness to the said occurrence. The trial Court failed to appreciate the entire evidence in a right manner and simply convicted the appellant on the ground of assumption and sympathy, which warrants interference of this Court.

7.The learned Government Advocate (Crl.Side) for the respondent would submit that Doctor/P.W.7, who examined the victim girl has stated that on 25.09.2019, the victim girl along with her aunt came to her hospital due to stomach pain and on medical examination the victim girl has stated that her foster father misbehaved with her by touching her private parts, when she resisted the same the appellant insisted her to co-operate with him. The Doctor questioned the victim girl, why she did not inform the said incident to her mother, the victim girl has stated that already she informed the said incident to her mother and she advised her to adjust with him and that the victim girl went to her aunt's house. Hence, P.W.7/Doctor advised the victim girl to approach the Child Help Line and informed the said incident to P.W.9/Counselor of Child Help Line. Thereafter, as per the instructions of P.W.9, the victim girl preferred the complaint/Ex.P1 on 26.09.2019. He would further submit that even prior to filing of the complaint, on 25.09.2019 itself, the victim girl has clearly narrated the said incident before the Doctor/P.W.7 and P.W.9/Counselor of Child



Help Line. Therefore, from the evidence of P.W.7 and P.W.9, the prosecution has established its case beyond all reasonable doubts. The trial Court rightly appreciated the entire evidence and found that the appellant, who is none other than foster father of victim girl has sexually harassed her for more than once and that convicted and sentenced the appellant for the offence under Section 7 which is punishable under Section 8 of POCSO Act and Section 9(l), 9(n) which is punishable under Section 10 of POCSO Act. He would further submit that the victim girl is the foster daughter of the appellant and till the date of occurrence, both the victim girl and her mother were living along with the appellant and that only at the instigation of her mother, the victim girl might have turned hostile and not supported the case of the prosecution, after registration of the complaint. However, the evidence of P.W.7 and P.W.9 clearly shows that when the victim girl informed the said incident to her mother, she advised the victim girl to adjust with him and hence, one cannot expect that the mother will support the case of the prosecution. The facts remains that even prior to the complaint, the victim girl informed the said incident before P.W.7 and P.W.9 regarding sexual assault made by the appellant. Therefore, the trial Court has rightly convicted the appellant for the charged offence and hence, the appeal is liable to be dismissed.

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

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.

10.On a reading of the complaint, it would reveal that even prior to the complaint i.e. on 26.09.2019, the victim girl went to hospital along with her aunt, due to stomach pain. At that time, the victim girl stated before the Doctor/P.W7 that her foster father misbehaved with her, when she resisted the same, the appellant insisted her to co-operate with him. When she informed the said incident to her mother, but, her mother also advised to adjust with him, which clearly shows that the mother of the victim girl did not want to disclose the said incident to any one and she want to live with the appellant, since she has two more children through the appellant. The victim girl is a grown up child, she did not like the behaviour of the appellant and hence, she went to her aunt's house. Thereafter, as per the advise of Doctor, the victim girl contacted Child Help Line and clearly narrated the said incident to P.W.9 and the same was



recorded in Ex.P9/True Copy of Call Register. Thus, prior to the registration of the complaint, the victim girl narrated the said incident before P.W.7 and P.W.9, subsequently, she turned hostile and not supported the case of the prosecution.

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11. Though the appellant is the second husband of the victim girl's mother, the victim girl could have been tutored by her mother and her relatives and that she might have turned hostile before the Judicial Magistrate for recording her statement under Section 164 Cr.P.C and during trial. Further, after fifteen days from the date of the complaint i.e. on 10.10.2019, the victim girl was produced before the learned Magistrate. However, the facts remains that prior to the complaint, the victim girl approached P.W.7 and P.W.9 and informed the said incident and thereafter, only she preferred the complaint/Ex.P1. However, before the learned Judicial Magistrate, she has stated that her aunt misguided to give a false complaint against the appellant. Therefore, this Court finds that in order to safeguard the appellant from the clutches of law, subsequent to the complaint the victim girl has not supported the case of the prosecution.

12. Under these circumstances, considering the nature of the allegations and that the appellant is the foster father of the victim girl, due to that, she might have turned hostile. However, the evidence of P.W.7 and P.W.9 clearly shows that the victim girl informed that the appellant misbehaved with her and her mother advised her to adjust with him. Hence, there is no reason to discard the evidence of P.W.7 and P.W.9, since they are public servants and independent witnesses, there is no reason for them to make false allegations against the appellant.

13. In the light of the above facts and circumstances, this Court being an Appellate Court, gone through the entire materials and found that the appellant being a custodian of the victim girl had made a sexual assault on the victim girl and he has committed the offence under Section 7 which is punishable under Section 8 of POCSO Act and Section 9(1), 9(n) which is punishable under Section 10 of POCSO Act. Hence, this Court does not find any perversity in the judgment of the trial Court and the appeal is liable to be dismissed. Considering the relationship between the victim and the appellant and serious in nature of the offence, this Court does not find any mitigating circumstances to modify or reduce the sentence of the appellant.

14. In fine, this Criminal Appeal deserves to be dismissed and accordingly, the same is dismissed. The conviction and sentence passed in Spl.S,C.No.111 of 2019 by the learned



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Sessions Judge, Special Court for Exclusive Trial of Cases Under POCSO Act, Coimbatore is confirmed.

Sd/-
Assistant Registrar(CS-CCC)

//True copy//

Sub Assistant Registrar

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To

- 1.The Sessions Judge,
Special Court for Exclusive Trial of Cases
under POCSO Act,
Coimbatore.
- 2.The Superintendent,
Central Prison,
Coimbatore.
3. The District Collector,
Coimbatore.
4. The Director General of Police,
Mylapore, Chennai-4.
5. The Hon'ble POCSO Committee,
High Court, Madras.
- 6.The Inspector of Police,
All Women Police Station,
Central Coimbatore City,
Coimbatore.
- 7.The Public Prosecutor,
High Court, Madras.
- 8.The Deputy Registrar | with a direction to send back the
(Criminal Section), | original records, if any, to the
High Court, Madras. | trial Court

+1cc to Mr.M.Jaikumar, Advocate SR.No.45382

CRL.A.No.271 of 2021

SMI (CO)
GMY(11/03/2022)