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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2021

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THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRL.A.No.328 of 2021

A.Arunachalam

..Appellant/Accused

.Vs.

State of Tamil Nadu Rep.by
Inspector of Police,
All Women Police Station,
Omalur,
Salem District.

..Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure to set aside the judgment dated 26.02.2021 in New Special Sessions Case No.109/2019 (Old Special Sessions Case No.65 of 2018) on the file of the learned Special Sessions Judge (Special Court under PCOSO Act) Salem and acquit the petitioner/accused from all the charges.

For Appellant : Mr.S.Sundar

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 26.02.2021 in New Special Sessions Case No.109/2019 (Old Special Sessions Case No.65 of 2018) by the learned Sessions Judge (Special Court under POCSO Act) Salem.

2.The case of the prosecution is that on 28.04.2018 at 12.00 p.m when the victim girl, who is aged about seven years was sleeping in her house alone, the appellant, who is the neighbour of the victim girl trespassed into the house and had committed penetrative sexual assault on the victim girl. Hence, P.W.1/mother of the victim girl has filed a complaint/Ex.P1 against the appellant.

3.The respondent-Police registered a case in Crime No.17 of



2018 against the appellant for the offence under Section 451 IPC and Section 5(m) which is punishable under Section 6 of The Protection of Children from Sexual Offences Act, 2012 [hereafter referred to as 'POCSO Act' for the sake of convenience]. On completion of the investigation, the respondent police filed a charge sheet before the learned Sessions Judge, (Special Court under POCSO Act) Salem and the same was taken on file in Spl.S.C.No.65 of 2018, subsequently renumbered as Spl.S.C.No.109 of 2019. After completing the formalities, the learned Sessions Judge, framed charges against the appellant for the offence punishable under Section 450 IPC and Section 6 of POCSO Act.

4. In order to prove the case of the prosecution before the trial Court, on the side of the prosecution as many as 13 witnesses were examined as P.W.1 to P.W.13 and marked 16 documents as Exs.P1 to P16 and no material object was marked. 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 :

(i) for the offence under Section 5(m) which is punishable under Section 6 of POCSO Act, the appellant was convicted and sentenced to undergo rigorous imprisonment for a period of twenty years and to pay a fine of Rs.50,000/-, in default, to undergo simple imprisonment for a period of six months.

(ii) for the offence under Section 450 IPC, the appellant was convicted and sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for a period of three months. Challenging the said conviction and sentence, the appellant is before this Court.

6.1 The learned counsel for the appellant would submit that no occurrence had taken place as alleged by the prosecution. At the time of occurrence, the victim girl is seven years and the appellant is 62 years. The appellant is the neighbour and relative of the victim girl's grandmother and he frequently visit their house and no prudent man would commit such type of offence. He would further submit that as per the evidence of P.W.4/grand mother of the victim girl, soon after the



occurrence, the neighbours and public gathered, but, none of them informed the said incident to the police officials, which clearly shows that no such occurrence had taken place as projected by the prosecution.

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6.2 The learned counsel for the appellant would further submit that P.W.12/Doctor, one who examined the victim girl has clearly deposed that no external injuries were found on the body of the victim girl. Even assuming that a person, who is aged about 62 years had forcibly committed sexual assault on a child, on such force, certainly some injuries would have been appeared on the body of the victim girl. However, in the present case, the Doctor has clearly deposed that no injuries were found on the body of the victim girl, which clearly shows that the appellant has not committed any of the charged offence as alleged by the prosecution.

6.3 The learned counsel for the appellant would further submit that there was a delay in filing the complaint and the inordinate delay has not been properly explained. Therefore, the prosecution has not proved its case beyond all reasonable doubts. However, the trial Court failed to appreciate the entire evidence, convicted the appellant only on assumption and sympathy, and therefore, the judgment of conviction and sentences passed by the trial Court against the appellant, are liable to be set aside.

7.1 The learned Government Advocate (Crl.Side) for the respondent would submit that at the time of occurrence, the age of the victim girl is seven years and the appellant is 62 years. On 28.04.2018, when the victim girl was sleeping in her house, alone, at that time, the appellant, who is the neighbour of the victim girl trespassed into the house and removed his dress and dress of the victim girl and laid on her and had committed penetrative sexual assault. At that time, P.W.4/grand mother of the victim girl entered into the house, after seeing the said incident, immediately, she shouted and beaten the appellant and he escaped from that place. Thereafter, P.W.4 informed the said incident to her son and daughter-in-law, after arrival from their work and thereafter, they registered the complaint/Ex.P1 against the appellant before the respondent police.

7.2 The learned Government Advocate (Crl.Side) would further submit that after registration of the complaint, the victim girl was produced before P.W.12/Doctor for medical examination and the Doctor has clearly deposed that on enquiry, the victim girl has stated that a known person had committed sexual assault on her and on clinical examination she found that hymen of the victim girl was not intact and she has not attained menarche and



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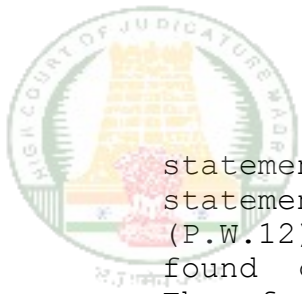
the Doctor made entries in the Accident Register, which was marked as Ex.P.10. Thereafter, the victim girl was produced before the Judicial Magistrate for recording her statement under Section 164 Cr.P.C/Ex.P2, in which, the victim girl has clearly narrated the said incident. Therefore, the evidence of the victim girl is corroborated with the evidence of P.W.4/grand mother of the victim girl, the Doctor/P.W.12 and her statement recorded under Section 164 Cr.P.C. He would further submit that the Doctor has opined that there was no injury found on the body of the victim girl, in cases of this nature, it depends upon the force and method adopted by the accused. Further, there is no dispute regarding identification of the accused, during trial and statement of the victim girl recorded under Section 164 Cr.P.C, in which, the victim girl has clearly deposed that when she was sleeping at her home, at that time the appellant, who is a well known person had committed the said offence and there is no reason to disbelieve the evidence of the victim girl. Therefore, considering the age of the victim girl and the gravity of the offence committed by the appellant, the trial Court rightly appreciated the entire evidence and convicted and sentenced the appellant and hence, there is no merit in this appeal and the same 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 careful reading of the complaint (Ex.P1) clearly indicates that the appellant had sexually assaulted the victim girl on 28.04.2018 and that the mother of the victim girl preferred the complaint and the respondent police registered the case in Crime No.17 of 2018. After completing formalities, the trial Court framed charges against the appellant for the offence under Section 450 IPC and Section 6 of POCSO Act.

11.In order to prove the case of the prosecution, the mother of the victim girl was examined as P.W.1. Though she was not an eye witness to the said occurrence, she has heard about the occurrence from P.W.4 and gave evidence clearly about the information received from P.W.4 and registration of the complaint. P.W.3 is the father of the victim girl and his evidence is corroborated with the evidence of P.W.1. P.W.4/grand mother of the victim girl, who is an eye witness to the said occurrence and she has clearly spoken about the said incident. Further, the victim girl was examined as P.W.2 and she clearly deposed the said incident, which was corroborated with her



statement recorded under Section 164 Cr.P.C. After recording the statement, the victim girl was produced before the Doctor (P.W.12) and she has opined that there was no external injury found on the victim girl and her hymen was not intact. Therefore, the evidence of the victim girl is cogent and trustworthy and her evidence is corroborated with the evidence of P.W.4/grand mother of the victim girl and P.W.12/Doctor. In cases of this nature, no independent eye witness is expected. However, in the present case, P.W.4/grand mother of the victim girl is an eye witness, though she is a relative of P.W.2, there is no need to discard the evidence of interested witnesses, if the evidence of the interested witness is cogent, consistent and her evidence can be taken into consideration.

12. On a combined reading of the evidence of P.W.2 and P.W.4 coupled with the statement of the victim girl recorded under Section 164 Cr.P.C and the evidence of P.W.12/Doctor and also medical records, which clearly show that the appellant had committed penetrative sexual assault on the victim girl. As far as the age of the victim girl is concerned, there is no dispute. At the time of occurrence, the victim girl is seven years. In order to substantiate the same, the prosecution produced Ex.P6/Transfer Certificate, which clearly shows that the date of birth of the victim girl is 24.04.2011, whereas the date of occurrence is 28.04.2018. Since the victim girl is a child, Section 2(1) (d) of POCSO Act would be attracted. From the evidence of P.W.2/victim girl and P.W.4/grand mother of the victim girl, the prosecution has proved that when the victim girl, who is below 12 years was sleeping in her house alone, the appellant trespassed into the house and had committed the aggravated penetrative sexual assault on her, thereby, the appellant committed the offence under Section 451 IPC and Section 5(m) which is punishable under Section 6 of POCSO Act.

13. This Court independently, re-appreciated the entire evidence especially P.W.1 to P.W.4, P.W.12/Doctor, Ex.P1/complaint, Ex.P2/statement recorded under Section 164 Cr.P.C, Ex.P6/Age proof certificate of the victim girl and Ex.P8/Accident register, Ex.P9/enquiry report found that the appellant, who is none other than neighbour and relative of P.W.4 had committed the offence under Section 450 IPC and Section 5(m) which is punishable under Section 6 of POCSO Act. The trial Court has rightly appreciated the entire evidence and awarded maximum punishment. However, considering the age of the victim girl and nature of the offence committed by the appellant, there is no mitigating circumstances to reduce the sentence.

14. In fine, this Criminal Appeal deserves to be dismissed and accordingly, the same is dismissed. The conviction and



sentences passed in New Special Sessions Case No.109/2019 (Old Special Sessions Case No.65 of 2018) by the learned Special Sessions Judge (Special Court under PCOSO Act) Salem is confirmed.

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Sd/-
Assistant Registrar(CS-VI)

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Sub Assistant Registrar

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To

1. The Sessions Judge,
Special Court under PCOSO Act,
Salem.
2. The Superintendent,
Central Prison, Salem.
3. The Inspector of Police,
All Women Police Station,
Omalur, Salem District.
4. The Public Prosecutor,
High Court, Madras.
5. The Deputy Registrar | with a direction to send back the
(Criminal Section), | original records, if any, to the
High Court, Madras. | trial Court

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CA(CO)
RGA(02/03/2022)