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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2021

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRL.A.No.345 of 2021

Prakash

.. Appellant/Accused

.Vs.

State rep.by its
Inspector of Police,
All Women Police Station,
Sethiathope, Cuddalore District.
Crime No.11 of 2018

.. Respondent/Complainant

Criminal Appeal filed under Section 374 of Code of Criminal Procedure to set aside the conviction of the appellant in Spl.S.C.No.62 of 2019 dated 08.02.2021 on the file of the learned Session Judge, Special Court for POCSO Act Cases Cuddalore by allowing this appeal.

For Appellant : Mr.R.Ganesh
Legal Aid Counsel

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 08.02.2021 passed in S.C.No.62 of 2019 by the learned Sessions Judge, Special Court for POCSO Act cases Cuddalore.

2.The case of the prosecution is that on 09.12.2018 at about 18.00 hrs, the victim girl went to fetch some water in the nearby lake for cleaning utensils; at that time the appellant/accused committed penetrative sexual assault on the victim girl and on hearing her cry, P.W.2 reached the spot and shouted at the appellant and the appellant ran away from the place of occurrence. Thereafter, a complaint/Ex.P2 has been registered against the accused/appellant.



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3.The respondent police registered a case in Crime No.11 of 2018 against the appellant for the offence under Section 5(i), which is punishable under Section 6 of The Protection of Children from Sexual Offences Act, 2012 [hereinafter referred to as 'POCSO Act' for the sake of convenience], subsequently, altered into Section 3(a) which is punishable under Section 4 of POCSO Act. After completing the investigation, the respondent police filed a charge sheet before the learned Sessions Judge, Special Court for POCSO Act Cases, Cuddalore. Since, the offence is against a child, it 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.62 of 2019. After completing the formalities, the Sessions Judge framed charges against the appellant for the offence under Section 341 IPC and Section 5(i) which is punishable under Section 6 of POCSO Act.

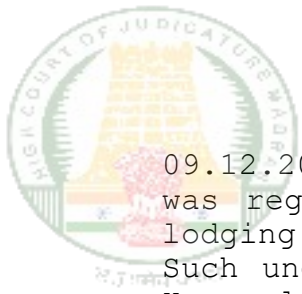
4.In order to prove the case of the prosecution before the trial Court, on the side of the prosecution as many as 13 witnesses were examined as P.W.1 to P.W.13 and marked 15 documents as Exs.P1 to P15, besides that one material object was marked as M.O.1 After examining the prosecution witnesses, the 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 no 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) Under Section 341 IPC, the appellant was convicted and sentenced to undergo simple imprisonment for a period of one month and to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for a period of one month;

(ii) Under Section 5(i) which is punishable under Section 6 of POCSO Act, the appellant was convicted and sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for a period of three months and ordering the sentences to run concurrently. Challenging the said judgment of conviction and sentence, the appellant is before this Court.

6.The learned counsel for the appellant would submit that the alleged occurrence was said to have taken place on



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09.12.2018 at 6.00 a.m, whereas, the First Information Report was registered on 10.12.2018 at 8.15 p.m. There is a delay in lodging the complaint and the same was not properly explained. Such unexplained delay is fatal to the case of the prosecution. He would further submit that the alleged occurrence said to have taken place nearby her house, but, expect the family members of the victim girl, none of the independent witnesses were examined by the prosecution, even though, nearby the occurrence place residences and third party fields were there. Therefore, non-examination of the independent witnesses is fatal to the case of the prosecution. Further, medical records show that there was no external injury found on the body of the victim girl and hence, the medical evidence also not support the case of the prosecution. The said occurrence was happened only due to love affair and in order to suppress the same, the family members of the victim girl concocted a false case against the appellant. The appellant has not committed any charged offence and the prosecution failed to prove its case beyond all reasonable doubts. There are material contradictions between the evidence of the prosecution witnesses. Further, the witnesses, who were examined by the prosecution are relatives and family members of the victim girl and no independent eye witness was examined by the prosecution. The prosecution failed to conduct fair investigation and they laid a charge sheet only based on the concocted story made by the victim girl and her family members. Therefore, the benefit of doubt would extend to the appellant. However, the learned Sessions Judge failing to consider the entire oral and documentary evidence, convicted and sentenced the appellant only on assumption, conjectures and sympathy. Therefore, the judgment of conviction and sentence passed by the trial Court against the appellant is liable to be set aside.

7.1 The learned Government Advocate (Crl.Side) for the respondent would submit that at the time of occurrence i.e. on 09.12.2018, the age of the victim was only 17 years. When she went to fetch water in the lake, at the time, the appellant sexually assaulted the victim girl. After the occurrence, within an hour, the victim girl was admitted in a Hospital and the Doctor/P.W.7, who gave first aid to the victim, had deposed that at the time of medical examination, he found there was bleeding in the vaginal part of the victim girl. Thereafter, he referred the victim girl for further medical treatment and he entered the history of the case in the Accident Register/Ex.P5. Subsequently, the Doctor/P.W.11 who examined the victim girl, had stated that on medical examination, the victim girl stated that a known person had inserted his finger in her private part and committed sexual assault on her and he found that there was bleeding in the vaginal part of the victim girl and he made stitches in the private part. The evidence of victim/P.W.1 is



corroborated with the medical evidence. After registration of the complaint, the victim girl was produced before the learned Judicial Magistrate for recording her statement under Section 164 Cr.P.C, in which, the victim girl clearly narrated the said incident, how she sustained injuries in her private part and her statement was marked as Ex.P.15.

7.2 The learned Government Advocate (Crl.Side) would further submit that during trial P.W.2/sister of the victim girl had deposed that after hearing the crying sound of the victim girl/P.W.1, she rushed to the place and saw the appellant sexually assaulted the victim girl; when she shouted at the appellant, he ran away from that place. Subsequently, after hearing of the voice of P.W.2, P.Ws.3 to 5 rushed to the place, after saw the condition of the victim girl, they called ambulance and immediately took the victim girl to the hospital. Since she was in dangerous condition, she was immediately taken to the hospital and thereafter, the parents of the victim girl preferred the complaint. Therefore, the delay in preferring the complaint has been properly explained by the prosecution. He would further submit that on a combined reading of the evidence of P.W.1 to P.W.4, P.W.7, P.W.10, P.W.10, Ex.P5, Ex.P8, Ex.P9 and Ex.P15, the prosecution has proved its case beyond all reasonable doubts. Further, at the time of occurrence, the age of the victim girl was 16 years and in order to prove the same the prosecution marked Ex.P1/10th Mark Sheet of the victim girl, in which, the date of birth of the victim girl is shown as 03.06.2002, whereas, the date of occurrence is 09.12.2018. Therefore, the victim girl was minor at the time of occurrence and hence, the offence committed by the appellant falls under Section 5(i), which is punishable under Section 6 of POCSO Act and Section 341 IPC. Therefore, the trial Court has rightly convicted and sentenced the appellant and there is no merits in this appeal and the same is liable to be dismissed.

8.Heard the learned Legal Aid 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 fact finding, which has to necessarily re-appreciate the entire evidence and give an independent finding.

10. A reading of the complaint (Ex.P2) clearly indicates that the appellant committed penetrative sexual assault on the victim girl on 09.12.2018. After the occurrence, the parents of



the victim girl took her to hospital, due to the injuries sustained on her private part. Thereafter, they preferred the complaint against the appellant. Further, the Doctors who examined the victim girl stated that the victim girl was subjected to sexual assault by a known person. The evidence of the victim girl is corroborated with the medical evidence. Therefore, the only question that has to be decided is, whether the appellant has committed the penetrative sexual assault on the victim girl.

11.The Special Court framed charges against the appellant. In order to substantiate the charges framed against the appellant, the prosecution examined totally 13 witnesses, out of which, the victim girl was examined as P.W.1 and she had clearly narrated the said incident. Further, at the time of occurrence, the victim girl was 16 years and in order to prove the same, the prosecution exhibited Ex.P1/10th mark sheet of the victim girl, in which, her date of birth is shown as 03.06.2002. As per the evidence of P.W.1 to P.W.5 and Accident Register/Ex.P5, the said incident happened on 09.12.2018. However, the defence counsel has stated that the prosecution has not proved that at the time of occurrence, the victim girl was below 18 years. As per Section 94(2) of THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015, the Court perused the public record, viz., Ex.P1 and found that the date of birth of the victim girl is 03.06.2002 and at time of the occurrence, the victim was a child and it comes under the definition of 2(1)(d) of POCSO Act. Therefore, this Court finds that the prosecution has proved the age of the victim girl is below 18 years.

12.P.W.1/victim girl has clearly stated that on 09.12.2018 at 6.00 p.m., when she went to the canal for taking water, which is behind her house, the appellant followed her. While she was taking water, the appellant came behind and pushed her and closed her mouth and inserted his finger into her vaginal part and thus she sustained injury. When she got uncontrollable pain, she shouted loudly and her sister P.W.2 rushed to that place. On seeing the sister of the victim girl, the appellant run away from that place. Thereafter, the victim girl was immediately taken to the Hospital on the same day and gave treatment and subsequently, preferred the complaint. Further to strengthen the case of the prosecution, the sister of the victim girl was examined as P.W.2 and she clearly narrated the said incident. The evidence of the victim girl during trial is corroborated with her statement recorded under Section 164 Cr.P.C before the learned Judicial Magistrate and also the evidence of P.W.2 to P.W.5.



13. On a combined reading of evidence of P.Ws.1 to 5, P.W.7, P.W.10, P.W.11, Ex.P5, Ex.P8, Ex.P9 and Ex.P15, this Court finds that the prosecution has proved that the victim girl was subjected to sexual assault by the appellant. Since the victim girl sustained injury on her vaginal part, the offence committed by the appellant falls under Section 5(i) which is punishable under Section 6 of POCSO Act.

14. The defence taken by the learned counsel for the appellant is that there was a delay in filing the complaint. A reading of the entire materials, this Court finds that at the time of occurrence, the victim girl sustained injuries and that the parents of the victim girl took her to Hospital and thereafter, preferred the complaint. Therefore, on such situation, one cannot expect either the victim girl or her relatives will rush to the police station and give complaint. Therefore, the delay has been properly explained by the prosecution. Further, in a case of this nature, the delay is not fatal to the case of the prosecution. Therefore, the contention raised by the learned counsel for the appellant is not acceptable.

15. Further defence taken by the learned counsel for the appellant is that there was no external injury found on the body of the victim girl. The injuries sustained by the victim depends upon place and surface. In the present case the victim girl sustained injury on her vaginal part. Further, the evidence of P.W.7, P.W.10 and P.W.11 clearly show that the victim girl sustained injury on her vaginal part. Therefore, the contention raised by the learned counsel for the appellant is not acceptable.

16. In a case of this nature, one cannot expect independent eye witness, since the culprits will take a chance only on the loneliness of the minor children and make use of their innocence and exploit them sexually. If the evidence of interested witnesses are cogent, credible and trustworthy, conviction is permissible. In the present case, the victim girl clearly narrated the said incident and also identified the appellant.

17. Under these circumstances, this Court, being an Appellant Court as a fact finding Court reappraised the entire evidence independently and arrived at just conclusion that the appellant has committed sexual assault on the victim girl and the trial Court has rightly convicted and awarded minimum sentence of ten years and this Court does not find any mitigating circumstances to reduce the sentence imposed by the trial Court.



18. In the light of the above discussion, this Court does not find any merit in this appeal and the appeal is liable to be dismissed. Accordingly, this Criminal Appeal is dismissed and the judgment of conviction and sentence passed in Spl.S.C.No.62 of 2019 by the learned Session Judge, Special Court for POCSO Act Cases Cuddalore is hereby, confirmed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge,
Special Court for POCSO Act Cases,
Cuddalore.
2. The Superintendent,
Central Prison, Cuddalore.
3. The Public Prosecutor,
High Court, Madras.
4. The Inspector of Police,
All Women Police Station,
Sethiathope, Cuddalore District.
5. The Deputy Registrar | with a direction to send back the
(Criminal Section), | original records, if any, to the
High Court, Madras. | trial Court
6. The Secretary,
High Court Legal Services Committee,
High Court, Madras-104.

+1cc to Mr.J.Karthik, Advocate, S.R.No.47684

+1cc to Mr.R.Ganesh, Advocate, S.R.No.47913

CRL.A.No.345 of 2021

RR(CO)
SU(25/02/2022)