



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	:	31.08.2021
PRONOUNCED ON	:	21.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRIMINAL APPEAL NO.385 OF 2020

Perumal

... Appellant/Accused

.Vs.

State Rep. by
The Inspector of Police,
All Women Police station,
Suramangalam,
Salem District.

... Respondent/Complainant

PRAYER:-

Criminal Appeal is filed under Section 374 of Code of Criminal procedure praying to call for the records and set aside the Judgment passed by the Special Court constituted for the Protection of Children from Sexual Offences Act, Salem made in Spl.S.C.No.66 of 2015, New.Spl.S.C.No.14 of 2019 dated 20.02.2020.

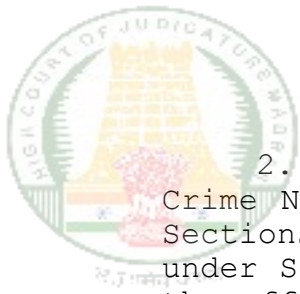
For Appellant : Mr.N.Umapathi

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

J U D G M E N T

(The case has been heard through video conference)

The Criminal Appeal has been filed against the Judgment dated 20.02.2020 passed by the Special Court constituted for the Protection of Children from Sexual Offences Act, Salem, made in Spl.S.C.No.66 of 2015, New.Spl.S.C.No.14 of 2019.



2. The respondent police initially registered a case in Crime No.12 of 2015 against the appellant for the offence under Sections 5(n) punishable under Section 6 and 9(n) punishable under Section 10 of POCSO Act. After investigation, they altered the offences in to Section 5(m) & (n) punishable under Section 6 of the POCSO Act and 9(1), (m) & (n-2 counts) punishable under Section 10 of the POCSO of 2012 and laid the charge sheet before the Mahila Court, Salem, and was taken on file in Spl.SC.No.66/2015, subsequently transferred to the Special Court constituted for the Protection of Children from Sexual Offences Act, Salem. The learned Special Judge, on taking up the case on file as New Spl.SC.No.14/2019, framed the charges against the appellant for the offence under Sections 9(1) and 9(n) punishable under Section 10 of POCSO Act and for the offence under Section 5(m) and (n) which are punishable under Section 6 of POCSO Act.

3. After completing the formalities, in order to substantiate the charges, on the side of the prosecution during the trial, as many as 14 witnesses were examined as P.W.1 to 14 and 19 documents were marked as Exs.P1 to P.19, besides one material object, viz., M.O.1-CD, was exhibited.

4. After completing the examination of the prosecution witnesses, incriminating circumstances culled out from the evidence of the prosecution witnesses were put before the appellant by questioning under Section 313 Cr.P.C. However, he denied the same as false and he pleaded not guilty. On the side of the defence, 4 witnesses were examined as D.W.1 to D.W.4. and no material object or documentary evidence was produced.

5. On completion of trial and hearing the arguments advanced on either side, the trial Court found the appellant guilty for the offence under Sections 9(1) & (n) which are punishable under Section 10 and 5(m) and (n) which are punishable under Section 6 of POCSO Act and convicted and sentenced him to undergo rigorous imprisonment for 10 years and to pay fine of Rs.10,000/- in default to undergo simple imprisonment for a period of 6 months for the offence under Section 5(m) and (n) punishable under Section 6 of POCSO and sentenced to undergo rigorous imprisonment for 5 years and to pay fine of Rs.10,000/- in default to undergo simple imprisonment for a period of 6 months and also awarded a sum of Rs.2,00,000/- as compensation to the 1st victim/P.W.2 and Rs.3,00,000/- to the 2nd victim/P.W.3. Challenging the said Judgment of conviction and sentence, the present appeal has been filed before this Court.

6. The learned counsel for the appellant would submit that there is an inordinate delay in filing the complaint and the un-



explained delay is fatal to the case of the prosecution. Further, the 1st victim/P.W.2 has not even stated anything about on which date, the offence was committed on her. Further, as per the evidence of the doctor/P.W.13, there is no external injury and the hymens of the victims were intact and therefore the prosecution has failed to prove its case that the victims were subjected to penetrative sexual assault and thereby, the ingredients of offence under the aggravated penetrative sexual assault would not attract. In this case, there are two victims. The appellant is none other than the father of the victims and mother of the victims is no more. The appellant is the one who brought up the two daughters/the victims herein and one son and they all three were staying with the appellant in a same house. He would further submit that no father would commit such an offence against his own daughters which is unimaginable. Further, the complainant is the Child Line Officer and the prosecution has failed to prove that how they came to know about the occurrence and the charge is also vague and that the prosecution has failed to conduct a fair investigation and falsely filed the charge sheet against the appellant. Further, the trial Court has failed to appreciate the evidence of the doctor/P.W.13 and the delay in filing the complaint. Though, the victims have stated that they had informed to their grandmother/the mother of the appellant about the act of the appellant, she has not deposed anything about the same. Further, the brother of the victims who was also staying with the victim in the same residence, has not stated anything about the occurrence which creates doubt. He would submit that whenever, the victims commit mistakes, as a dutiful father, the appellant used to warn the victims which was not liked by the victims and thereby, a false complaint has been given against the appellant and the Child Line Officials without verifying the same, detained the children/victims in the Home for about one month during which time, the victims might have been tutored to say so against the appellant. In order to prove the case of the defence by preponderance of probabilities, the defence side 4 witnesses were examined. However, the trial Court failed to consider the evidence of the defence witnesses and erroneously convicted the appellant without seeing the fact that the appellant is none other than the father of the victims. The medical evidence clearly shows that the prosecution miserably failed to prove the fact that there was a penetrative sexual assault and also aggravated penetrative sexual assault on the victims. Therefore, the Judgment of the trial Court warrants interference and the conviction and sentence imposed by the trial Court is liable to be set aside.

7. Learned Government Advocate (Crl. Side) would submit that age of the 1st victim is 14 years and the second victim is only 10 years old and they both are sisters. The appellant is none



other than the father of the victims. Since, the mother of the victims is no more, the two victims along with his brother were staying with the appellant. While so, prior to 2015, during night hours, the appellant used to misbehave with the 1st daughter and when she resisted him, he used to beat and scold her and also forced her. After sometime, the 1st daughter stopped talking with him and therefore, the appellant turned to misbehave with the 2nd daughter/P.W.3 who is aged about 10 years. Since, the appellant started to misbehave with the 2nd daughter/P.W.3, the 1st victim could not tolerate the same and contacted the Child Line number given at her school and informed the incident. Subsequently, the Child Line Officials secured the victims and placed them in a Home following which, they were produced before the doctor for medical examination and also before the Judicial Magistrate and their statements were recorded under Section 164 Cr.P.C. in which, the victims have clearly narrated the entire incident. Thereafter, the prosecution examined the 1st daughter as P.W.2 and the 2nd daughter as P.W.3 and they narrated the entire incident happened in their house and the offence committed by their own father. Though the doctor/P.W.13 has stated that there is no external injury and the hymens of the victims were intact, the 1st victim has clearly stated that her father used to hug her while sleeping and also lie on her during night hours and the 2nd victim has also clearly stated about the sexual assault committed by her father/the appellant. Therefore, since because the hymens are intact and no injury is found, it does not mean that the appellant does not commit any penetrative sexual assault on the victims. A reading of Section 3 especially sub clause (c) of Section 3 would go to show that even touching of the any parts of the body of a child with an intent to commit sexual assault is sufficient to convict the accused for penetrative sexual assault and the extent of the penetration is immaterial. The provision clearly says that "at any extent". The victims/daughters of the appellant in the absence of their mother were fully depending their father/the appellant. In such circumstances, there is no need for the victims to tell lie against their own father. Further, the evidence of the victims are cogent, consistent and natural. Therefore, the trial Court rightly appreciated the entire evidence and recorded the conviction and there is no merit in the appeal and the appeal is liable to be dismissed.

8. Heard the learned Counsel for the appellant and the learned Government Advocate (Crl. Side) and perused the materials on records.

9. The case of the prosecution is that P.W.1 is the Chairman of Salem Child Welfare Committee. On receipt of information through Child Line 1098, P.W.4/Child Line Officer along with



other Officer, secured the victims from their house and produced before P.W.1. following which, they were sent to Home. Thereafter, on 24.04.2015, the victims were enquired during the child Welfare Committee Sitting during which, the 1st victim stated that she is studying in 10 standard and her mother died 9 years back and her father is doing Mason work and she has got one younger sister and brother. She further stated that while she was studying class IX, her father/the appellant during night hours, used to sexually abuse her and when she resisted him, he used to beat and scold her. Hence, she informed the same to her grandmother who in turn, questioned the appellant. However, he did not stop his ill activities. While so, on 13.04.2015 at about 10 p.m., the 1st victim heard the noise of 2nd victim crying. While she switched on the light, she saw his father lying on the 2nd victim and on seeing the 1st victim, the father of the victims left the place. Again on 15.04.2015, the father of the victim sexually assaulted the 2nd victim and thereby, they informed the same to the Child Line. Subsequently, the Child Line Officials secured the victims and lodged the complaint before the respondent police.

10. In this case, since this Court is the Appellate Court as final Court of fact finding, it has to re-appreciate the evidence independently and to give its findings. Accordingly, this Court gone through the entire materials and the Judgment of the trial Court and re-appreciated the entire evidence independently and gives its finding.

11. In this case, there are two victims and they are the daughters of the appellant. The 1st victim was examined as P.W.2 and the 2nd victim was examined as P.W.3. The date of birth of the 1st victim is 19.07.2000. In order to substantiate the age of the 1st victim/P.W.2, her school certificate which was issued by Head Master of the school/P.W.9 in which the 1st victim studied was marked as Ex.P4 in which, her date of birth is mentioned as 19.07.2000 and the date of offence is prior 2015. Therefore, the age of the 1st victim is only 14 years at the time of the occurrence. As far as the 2nd victim is concerned, her date of birth is 27.07.2005. In order to substantiate the same, her school certificate issued by the Head Mistress of the school/ P.W.8 in which the 2nd victim studied, was marked as Ex.P.3 in which, the date of birth of the 2nd victim is mentioned as 27.07.2005. The date of occurrence as against the 2nd victim is on 13.04.2015 and 15.04.2015. Therefore, the age of the 2nd victim is only 9 years at the time of occurrence. There is no contra evidence laid by the defence that the date of birth mentioned in Ex.P.3 and Ex.P.4 are not true and genuine. Since, it is not proved that the age mentioned in the said certificates are not genuine, this Court finds that the victims were child under the definition of POCSO Act at the time of occurrence.



12. As far as the commission of offence is concerned, the prosecution totally examined 14 witnesses and out of them, the victims were examined as P.W.2 and P.W.3 respectively. The 1st victim/P.W.2 was aged only 14 years and the 2nd victim/P.W.3 was aged only 9 years.

13. A reading of the evidence of the victims/P.W.2 and P.W.3 would go to show that the appellant is the father of the victims and during night hours, while the P.W.2 was sleeping, the appellant used to misbehave with her. When she resisted and refused to co-operate, he used to beat her and also scold her. Thereafter, when, the 1st victim stopped talking with the appellant, the appellant turned to the 2nd victim and started to misbehave with the 2nd victim. Thereafter, they informed the same to their grandmother/the mother of the appellant and when she questioned the same, the appellant used to scold her. Therefore, the 1st victim who could not tolerate the same any more, informed the same to P.W.1/Child Line Officials. Subsequently, the P.W.1 lodged a complaint before the respondent Police.

14. P.W.1 has clearly stated that he received an information from P.W.2 and since, the accused is none other than the own father of the victims, they immediately secured the victims and sent them to a Home and thereafter, they proceeded with the case. Thereafter, the victims were examined by the Judicial Magistrate under Section 164 Cr.P.C. and recorded their previous statement and same were marked as Exs.P.2 and P.17. A reading of the Exs.P.12 and P.17 clearly shows the misbehavior of the appellant and the commission of sexual assault made by him on his own daughters/victims. Further, when the victims were produced before the doctor/P.W.13 for medical examination, the victims have stated that their father had committed sexual assault on them. Though, the doctor has given opinion that the hymens of the victims are intact and no external injury is found, it does not mean that there is no penetrative sexual assault on the victim and the evidence of the victims have to be thrown away without any reasons. This Court does not find any reason to discard the evidence of the victims since, there is no necessity for the victims to give such an heinous allegations against their own father especially, when they were brought up by the appellant after the death of their mother.

15. A combined reading of the evidence of P.W.2/1st victim, P.W.3/2nd victim, P.W.13/doctor and the documents Exs.P.2/statement recorded from the 1st victim under Sections 164 Cr.P.C., Ex.P.17/statement recorded from the 2nd victim under Section 164 Cr.P.C., Ex.P.9/medical report of the 2nd victim in which the doctor has mentioned the history of the case of alleged offence of sexual abuse by the own father of the 1st victim, Ex.P.10/opinion of the doctor issued for the 2nd victim



along with Chemical report, Ex.P.11/medical report of the 1st victim in which the doctor has mentioned the history of the case of alleged offence of attempt to sexual intercourse by own father on 13.04.2015 and 15.04.2015 and Ex.P.12/opinion of the doctor issued for the 2nd victim along with Chemical report, this Court finds that the appellant has committed both the offence under Section 5 (m) and (n) punishable under Section 6 of POCSO and 9(1) and (n) which are punishable under Section 10 of POCSO Act and this Court does not find any perversity in the appreciation of the evidence by the Court below.

16. This Court as an appellate Court and final Court of fact finding, re-appreciated the entire evidence and the evidence of the victims are cogent, consistent and natural one. The accused is none other than the father of the victims. It is seen that after the demise of the mother of the victims, the victims were brought up by the appellant. Under these circumstances there is no need for other persons to tutor the victims against their own father and there is no necessity for the victims to give such an heinous allegations against their own father. Therefore this Court does not find any reasons to disbelieve or discard the evidence of the victims and the evidence of the victims inspires the confidence of this Court.

17. In this case there is no eye witness against the appellant since, because the appellant is the father of the victims and they all were residing under one roof and the occurrence are said to have taken place at their residence during night hours while sleeping. Therefore, no independent witness can be expected. Though the learned Counsel for the appellant contended that the grandmother of the victims/the mother of the appellant has not stated anything, a mother cannot be expected to give any adverse allegation against her own son that too, when the victims are the own daughters of the appellant. Though the defence tried to disprove the case of the prosecution and examined 4 witnesses, this Court does not find any materials to disbelieve the evidence of the victims and accept the evidence of the defence witnesses. Therefore, considering the facts and circumstances of the case, this court does not find any merit in the appeal and the appeal is liable to be dismissed.

18. A reading of the evidence of P.W.3/2nd victim and Section 3 of POCSO Act would go to show that the offence committed by the appellant falls under Section 3 of POCSO and since the 2nd victim is below 12 years, the offence falls under Section 5(m) which is termed as aggravated penetrative sexual assault. The 1st victim has not stated about any penetrative sexual assault however the offence committed by the appellant is punishable under Section 10 of POCSO and therefore as a final



Court of fact finding, this court independently come to the conclusion that the appellant has committed the charged offence and the prosecution proved its case beyond all reasonable doubt. Therefore, there is no merit in the appeal and appeal is liable to be dismissed

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19. Accordingly, this Criminal Appeal is dismissed. The Judgment dated 20.02.2020 made in Spl.S.C.No.66 of 2015, New.S.C.No.14 of 2019 passed by the Special Court constituted for the Protection of Children from Sexual Offences Act, Salem, is hereby, confirmed. Trial Court is directed to secure the appellant/accused to serve remaining period of imprisonment, if any. The period of incarceration already undergone, shall be given set off.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ksa-2/dsn

To

1. The Sessions Judge,
Special Court constituted for the Protection of
Children from Sexual Offences Act,
Salem.
2. The Inspector of Police,
All Women Police station,
Suramangalam,
Salem District.
3. The Public Prosecutor Officer,
High Court, Madras.
4. The Registrar,
The Honourable POSCO Committee,
High Court, Madras.
5. The Superintendent,
Central Prison,
Salem.



6. The Section Officer,
Criminal Section,
High Court, Madras.

7. The District Sessions Cum Mahila Court,
Salem.

+1cc to Mr.N.Umapathi, Advocate, S.R.No.54355

CRIMINAL APPEAL NO.385 OF 2020

AK-II(CO)
PBS/29/10/2021