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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2021

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Cr1.A.No.455 of 2020

V.Vinoth

... Appellant/Accused

-Vs-

State represented by,
The Inspector of Police,
Bahour Police Station,
Puducherry.
(Crime No.65/2019).

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, to call for the records and to set aside the order of conviction passed in judgment in S.C.No.30/2019, dated 13.10.2019, by the Special Judge at Puducherry.

For Appellant : Mr.M.Muthu Kannan,
Legal Aid Counsel

For Respondent : Mr.D.Bharatha Chakravarthy,
Public Prosecutor (Pondicherry)

JUDGMENT

This Criminal Appeal has been filed against the Judgment of conviction and sentence imposed by the learned Special Judge (Under the POCSO Act, 2012), Principal Sessions Judge, Puducherry in Special S.C.No.30 of 2019, dated 13.10.2020.

2.The respondent Police have registered a case in Crime No.65 of 2019, for offence under Section 6 of Protection of Children from Sexual Offence Act, 2012 (hereinafter referred to as 'POCSO Act') against the appellant on the complaint (Ex.P13) given by PW6. After completing investigation, the respondent Police laid a charge sheet before the learned Special Judge (Under the POCSO Act, 2012), Principal Sessions Judge, Puducherry and same was taken on file in Special S.C.No.30 of 2019.

3.After completing the formalities under Section 207 Cr.P.C., since there was a prima facie material to frame charges against the appellant, the Special Judge framed charges for offence punishable under Section 6 of POCSO Act and Sections 450, 342 and 506(ii) IPC.



4. After completing the trial and hearing the arguments advanced on either side and also considering the oral and documentary evidence, the Special Judge found guilty of the appellant and convicted and sentenced him as follows:-

- For offence punishable under Section 6 of POCSO Act, the appellant to undergo Rigorous Imprisonment for ten years and to pay a fine of Rs.1,000/-, in default to undergo three months Rigorous Imprisonment.
- For offence punishable under Section 450 of IPC, the appellant to undergo Rigorous Imprisonment for seven years and to pay a fine of Rs.1,000/-, in default to undergo three months Rigorous Imprisonment.
- For offence punishable under Section 342 IPC, the appellant to undergo Rigorous Imprisonment for six months. The appellant not found guilty for offence under Section 506(ii) IPC and he is acquitted.

5. Challenging the above said Judgment of conviction and sentence, the appellant has filed the present appeal before this Court.

6. The learned counsel for the appellant would vehemently contend that in this case, the identification of the appellant/accused itself is doubtful, since the person who alleged to have committed the offence was wearing uniform. The appellant has not wore uniform and he entered the house of the victim girl only for taking meter reading. Someone under the pretext of taking meter reading, might have entered the house of the victim girl and committed the offence and it is not the appellant. The learned counsel would further submit that when the victim girl (PW1) was examined before the trial Court, she was not in a position to identify the appellant. A bare reading of the evidence of the prosecution, shows that the victim girl was tutored by the adult members to depose against the appellant. If at all the appellant committed the offence, the victim girl had seen the appellant and definitely she could have identified him before the trial Court. Even in the statement given by the victim girl (PW1) under Section 164 Cr.P.C., before the learned Judicial Magistrate No.I, Puducherry also, there are discrepancies and contradictions. Therefore, the prosecution has failed to establish its case beyond all reasonable doubt.

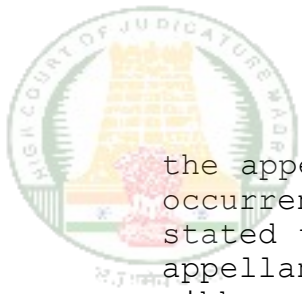
7. The learned counsel for the appellant would further submit that the brother (PW2) of the victim girl would not have been eye witness in this case. According to the case of the prosecution, the appellant sent out the brother of the victim girl (PW2) outside and locked the house inside and thereafter, he committed the offence. Therefore, at the time of occurrence, no one was present in the house. Even in evidence of other witnesses, there is no corroboration that the appellant is the person, who had come to the place of



occurrence on the pretext of note down the meter reading and committed the offence. Even though the Attendance Register (Ex.P6) shows that on the date of occurrence the appellant was present, no witnesses have spoken that the appellant had gone to the house of the victim girl for taking meter reading. The neighbour (PW21) has stated that on the date of occurrence, one person came to his house and took meter reading and after that, he went to the house of the victim girl for taking meter reading, but PW21 has not stated that the appellant is the person, who has taken the meter reading in his house and the same person went to the house of the victim girl and committed the offence and left by bike very fast. Merely because the appellant had gone in his bike in high speed, it could not be said that the appellant had committed the sexual assault as alleged by the prosecution.

8.The learned counsel for the appellant would further submit that the evidence of the Doctor (PW20) does not corroborate the evidence of the victim girl (PW1) and there are material contradictions, which are go to affect the root of the case of the prosecution. In this case, the identification of the appellant/accused itself is very doubtful and therefore, the prosecution has not proved the charges as framed against the appellant. The trial Court miserably failed to appreciate the evidence of the witnesses, especially the evidence of the victim girl (PW1). Since the victim girl (PW1) could not identify the appellant while deposing before the trial Court, it is very doubtful whether such occurrence had taken place. The presumption under Section 29 of POCSO Act would not attract in this case, since the evidence of the victim girl (PW1) and his brother (PW2) itself shows that they have clearly understood what are the parts of the body. The learned counsel would submit that the learned Special Judge failed to consider the material contradictions and mechanically convicted the appellant only on assumptions and on sympathy, and therefore, the judgment of conviction and sentence passed by the trial Court against the appellant, is liable to be set aside.

9.The learned Government Advocate (Crl. Side) appearing on behalf of the respondent Police would submit that the neighbour (PW21) has clearly spoken about the presence of the appellant that on the date of occurrence, the appellant came to the area and took meter reading in all the houses including the house of the victim girl. Immediately soon after the occurrence, the appellant left by two wheeler in high speed and subsequently, he came to know that the appellant has committed the oral penetrative sexual assault. The evidence of the brother of the victim girl (PW2) clearly shows that at the time of occurrence, the appellant was in the area for taking meter reading and he identified the appellant even before the trial Court. Hence, the prosecution has proved the identification of the accused beyond reasonable doubt. Though the victim girl (PW1) due to some reason could not identify



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the appellant, she deposed that her brother (PW2) had seen the occurrence through window. PW2 in his evidence has also stated that he saw the occurrence through window and after the appellant left the place, he opened the door and removed the ribbon and released the victim girl. Therefore, the evidence of the victim girl (PW1) was corroborated by the evidence of the brother of the victim girl (PW2).

10. The learned Government Advocate would further submit that the evidence of the neighbour (PW21) is that during the relevant time the appellant moving away by two wheeler in high speed, which itself shows that the prosecution has proved the case not only through eye witness, but also through the circumstantial evidence. Further, the witness, who allotted the duty to the appellant for taking reading was also examined as PW10 in this case. PW10 stated that on the date of occurrence, he allotted work to the appellant to that area, where the place of occurrence is located. The Attendance Register (Ex.P6) also shows that the appellant had attended the duty for taking reading in that locality where the occurrence place is located. Since the appellant has committed the oral penetrative sexual intercourse, the medical witness could not be possible to support the case of the prosecution. From the evidence of the victim girl (PW1), her brother (PW2) and the neighbour (PW21) and the other official witnesses, the prosecution has proved its case beyond reasonable doubt and the trial Court has also rightly appreciated the same and convicted the appellant, which need not be interfered with.

11. Heard the learned counsel appearing for the appellant and the learned Government Advocate [Crl. Side] appearing for the respondent Police and also perused the materials available on record.

12. The case of the prosecution is that at the time of occurrence, the victim girl (PW1) is a minor below the age of 18 years. On 15.05.2019, at about 12.00 p.m., the victim girl (PW1) and her brother (PW.2) were alone in the house. The father of the victim girl (PW.6) had gone for his regular work and her mother had gone to hospital. At that time, the appellant who was working as Construction Helper in the Electricity Department, Puducherry had gone for recording electricity meter reading in the house of the victim girl. Noticing that the victim girl was alone in the home and knowing that she is a minor below the age of 18 years, the appellant sent out the brother of the victim girl outside and locked the door inside and pushed the victim girl into the chair, tied her hand with ribbon and inserted her penis into her mouth and committed oral penetrative sexual assault. At that time, her brother saw the occurrence through the window and shouted the appellant to open the door. Thereafter, the appellant went out by locking the door outside. Then, the brother of the victim girl opened the door and untied the



ribbon and took her to aunt's house and waited till her parents would come. Thereafter, the father of the victim girl (PW.6) lodged a complaint to the respondent Police.

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13. Based on the complaint (Ex.P13) given by the father of the victim girl (PW.6), an First Information Report (Ex.P14) in Crime No.65 of 2019 was registered for offence punishable under Section 6 of POCSO Act. After completing investigation, the respondent police laid a charge sheet before the learned Special Judge, (Under the POCSO Act), Principal Sessions Judge, Puducherry and the same was taken on file as Special S.C.No.30 of 2019.

14. During the trial, in order to prove the case of the prosecution, on the side of the prosecution, as many as 26 witnesses were examined as PW1 to PW26 and 18 documents were marked as Exs.P1 to P18 and three material objects were exhibited. After completing the examination of prosecution witnesses, when incriminating circumstances were culled out from the evidence of prosecution witnesses put before the appellant, he denied the same as false. On the side of the defence, no oral and documentary evidence was produced.

15. After completing trial and hearing arguments advanced on either side, the learned Special Judge, vide judgment dated 13.10.2020 in Special S.C.No.30 of 2019, convicted and sentenced the appellant as stated above.

16. This Court, being an Appellate Court, is a fact finding Court, which has to necessarily re-appreciate the entire evidence and give an independent finding.

17. A reading of the evidence and materials, it is seen that the victim girl is a minor child below the age of 18 years at the time occurrence. The charges framed against the appellant is for offence punishable under Section 6 of POCSO Act and Section 450, 342 and 506(ii) IPC. In order to prove the above charges framed against the appellant, the prosecution has totally examined 26 witnesses and marked 18 documents. Out of the 26 witnesses, the victim girl was examined as PW1 and her brother was examined as PW2. In this case, PW2 is the eye witness, who had seen the occurrence through window. PW21 also saw the appellant was on duty on the date of occurrence in that area. PW10, the official witness has stated that he allotted the work to the appellant in the said area. Hence, the appellant is the person, who has gone to that area for taking meter reading.

18. A perusal of the evidence, it is not dispute that the appellant was working in the Electricity Department and he was allotted to take meter reading in the area, where the house of the victim girl is located. The Attendance Register (Ex.P6) clearly shows that the appellant was on duty on that



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particular date of occurrence and he was also allotted to work to take meter reading. The victim girl has not identified the appellant while deposing before the trial Court. The reason for not identifying the appellant is that on the date of occurrence, she was aged about 9 years and she already stated that at the time of occurrence, the appellant threatened her. Therefore, most probably at the time of occurrence, the victim girl did not see the face of the appellant due to fear and shock which might be reason for not identifying the appellant before the trial Court. However, the brother of the victim girl (PW2) who is an eye witness, has clearly stated that he saw the occurrence through window and shouted the appellant to open the door. Hence, PW2 has clearly identified the appellant before the trial Court and one of the neighbours (PW21) also clearly identified the appellant, who had come to his house and taken meter reading and gone to the house of the victim girl for taking meter reading. Therefore, this Court does not find any reason to disbelieve the evidence of PW1, PW2 and PW21 and there is no dispute regarding the identification of the appellant and the appellant is the one who had committed the offence.

19.As far as the occurrence is concerned, PW1 and PW2 have clearly stated that the appellant came to the house for taking reading and asked the victim girl (PW1) to bring water and at that time, he sent out the brother of the victim and locked the door and pushed the victim girl in a plastic chair and tied her hands by ribbon and subsequently, he put his penis into the mouth of the victim girl (PW1). PW2 has also seen the same and shouted the appellant to open the door. Thus, PW1 and PW2 have clearly stated the act of the appellant before the trial Court and PW1 also stated the same before the learned Judicial Magistrate No.I, Puducherry while recording the statement under Section 164 Cr.P.C. Even though PW1 and PW2 were not stated about the name of each and every part, they clearly stated that the appellant has committed the oral penetrative sexual assault on the victim girl.

20.Therefore, on a perusal and consideration of the evidence of the victim girl (PW1), his brother (PW.2) and the neighbour (PW21) and the statement of the victim girl recorded under Section 164 Cr.P.C., and the Attendance Register (Ex.P6) and all other oral and documentary evidence on record, this Court finds that the appellant forcibly entered into the house of the victim girl in the absence of the adult members and wrongly confined her and committed the oral penetrative sexual assault. The charges framed against the appellant have been proved by the prosecution beyond all reasonable doubt and the trial Court has also rightly appreciated the entire oral and documentary evidence and convicted the appellant for the offence punishable under Section 6 of POCSO Act and Sections 450 and 342 IPC.



21. 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.

22. Accordingly, this Criminal Appeal is dismissed and the judgment of conviction and sentence passed by the trial Court is confirmed.

23. The counsel who appointed by the Legal Services Authority from the legal aid panel for the appellant is entitled for fees as per rule.

Sd/-
Assistant Registrar (CS-II)

//True copy//

Sub Assistant Registrar

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To

1. The Principal Sessions Judge,
Special Court (POCSO Act Cases),
Puducherry.
2. The Inspector of Police,
Bahour Police Station,
Puducherry.
3. The Public Prosecutor (Pondicherry),
High Court, Madras.
4. The Superintendent,
Central Prison, Kalapet,
Puducherry.
5. The Secretary,
Legal Services Authority,
High Court, Madras.
6. The Hon'ble POCSO Committee
High Court, Madras.

Copy To

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

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<https://hcservices.courts.gov.in/hcservices/>
GM (23/07/2021)