



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2021

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRL.A.No.432 of 2019

Thangamani

.. Appellant

.Vs.

State Rep.by
Inspector of Police,
W.22 All Women Police Station,
Mylapore, Chennai,
Crime No.21 of 2015.

.. Respondent

Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure to set aside the judgment and sentence passed by the learned Mahila Court, Chennai in S.C.No.252 of 2016 dated 04.05.2018 against the appellant/accused.

For Appellant : Mr.Rajavelu M.

For Respondent : Mr.R.Surya Prakash
Government Advocate (Crl.Side)

J U D G M E N T

This Criminal Appeal has been filed against the Judgment dated 04.05.2018 passed in S.C.No.252 of 2016 on the file of the learned Mahila Court, Chennai.

2.The case of the prosecution is that on 08.10.2015 at about 3.00 p.m the victim boy went to play out side of his house. After some time, the (P.W.1) mother found that the victim boy (P.W.2) was missing and that she searched the boy. At that time, she found the victim boy little far away and on enquiry he told that the accused took him to the terrace of Balu's house asked him to suck his private part and also assaulted him on his private part. When the victim boy started to shout, the accused threatened him and on hearing the sound of the victim boy, (P.W.3) neighbour of the victim boy came and enquired him and then took the boy to his mother, thereafter, the victim boy informed about the said incident. Thereafter, the mother of the victim boy preferred a complaint (Ex.P1) to the respondent



police.

3.The respondent police registered a case in Crime No.21 of 2015 for the offence punishable under Section 5(m) r/w 6 of The Protection of Children from Sexual Offences Act, 2012 [hereafter 'POCSO Act' for the sake of convenience]. After investigation, the respondent police filed a charge sheet before the learned Sessions Judge, Special Court for Cases under POCSO Act 2012/Mahila Court, Chennai and the same was taken on file in S.C.No.252 of 2016 and charges were framed against the appellant for the offence under Section 6 of POCSO Act and Section 506(i) IPC.

4.In order to prove the case of the prosecution before the trial Court, on the side of the prosecution as many as 9 witnesses were examined as P.W.1 to P.W.9 and also marked Exs.P1 to P12 and no material objects were marked. After completion of the prosecution side evidences, the incriminating circumstances were put to the appellant/ accused by examining the appellant/accused under Section 313 of Cr.P.C and he has denied all the incriminating circumstances as false. 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 accused/appellant is guilty for the offence under Section 6 of POCSO Act and sentenced to undergo simple imprisonment for a period of ten years and to pay a fine of Rs.5,000/- and in default, to undergo simple imprisonment for a period of six months. Challenging the said conviction and sentence, the appellant is before this Court.

6.The learned counsel for the appellant would submit that there is a material contradiction between the complaint (Ex.P.1) and the evidence of the victim boy (P.W.2). Further, the Doctor (P.W.5), who examined the victim boy has deposed that there was no external injury in the body of the victim boy. There is no material or medical evidence to prove that the victim boy was sexually assaulted by the appellant and therefore, the conviction and sentence imposed against the appellant are not in accordance with law. During the cross examination of (P.W.1) the mother of the victim boy, has deposed that she knows the accused for the past nine years, both the appellant and the victim boy used to play and the appellant always used to pinch the victim boy. Further, she has stated that she had not seen the occurrence, rather that was only hearsay. Therefore, the mother of the victim boy was not an eye witness to the said occurrence, she was only a hearsay witness and hence, the prosecution has failed to prove the case beyond reasonable doubt.



6.1 The learned counsel for the appellant would further submit that no sufficient opportunity was provided to the appellant to cross examine the victim boy (P.W.2) and denial of the opportunity is against the fundamental principles of criminal jurisprudence. The prosecution witnesses are only interested witnesses. Further, without proper enquiry, the Investigating Officer filed the final report only based on the complaint given by P.W.1. He would further submit that soon after the occurrence i.e. on 08.10.2015, the mother of the victim boy lodged the complaint, however, the statement of the victim boy under Section 164 Cr.P.C was recorded only on 05.11.2015, hence, there is an inordinate delay of 27 days and the delay was not properly explained by the prosecution. The trial Court failed to consider the material contradictions and convicted the appellant only on assumption, conjectures and sympathy, and therefore, the judgment of conviction and sentence passed by the trial Court against the appellant, is liable to be set aside.

7. The learned Government Advocate (Crl.Side) would submit that on the date of occurrence, the victim boy was aged about 7 years, in order to prove the same the birth certificate of the victim boy was marked as Ex.P.11. He would further submit that the appellant is the neighbour of the victim boy and he took the victim boy to the open terrace and sexually assaulted him, which falls under the POCSO Act. He would further submit that the victim boy (P.W.2), during the deposition before the trial Court, has clearly narrated the said incident. The Doctor (P.W.5) who examined the victim boy, has clearly stated that the victim boy told her that the appellant sexually assaulted him. Subsequently, the victim boy (P.W.2) and his mother (P.W.1) were produced before the learned Magistrate for recording their statements under Section 164 Cr.P.C, which were marked as Ex.P.2 and Ex.P3 in that they have clearly narrated the said incident. P.W.3, the neighbour of the victim boy has clearly deposed that the appellant and the victim boy were known to her, at the time of occurrence, the victim boy was crying and coming down from the terrace, on hearing the noise of the victim boy she came out and asked what happened. He told something, but, she could not understand, thereafter, she took him to his mother. From the evidence of the mother of the victim boy (P.W.1), the victim boy (P.W.2), the neighbour (P.W.3), the Doctor (P.W.5), the Birth Certificate of the victim boy (Ex.P11) and the statements recorded under Sections 164 Cr.P.C (Ex.P2 and Ex.P3), the prosecution has proved its case beyond reasonable doubt. The learned Government Advocate (Crl.Side) would further submit that though sufficient opportunity was given to the appellant to cross examine all the witnesses, purposefully he has not examined the victim boy. Therefore, no violation of fundamental principles of criminal jurisprudence caused to the appellant.

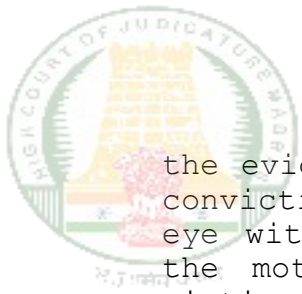


The prosecution has rightly established their case beyond reasonable doubt and at the time of occurrence, the victim boy was only 7 years old, and the appellant was 19 years, who had sexually assaulted the victim boy and therefore, the trial Court has rightly convicted the appellant, and the appeal is liable to be dismissed.

8. Head 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. The complaint (Ex.P1) has been lodged by P.W.1, who is none other than the mother of the victim boy. Even though she is not an eye-witness to the occurrence, since the victim boy is a minor, the mother of the victim boy has filed the complaint (Ex.P1) before the respondent Police. In order to substantiate the charges framed against the appellant, on the side of the prosecution, the victim boy was examined as P.W.2 and he has clearly deposed the incident. The mother of the victim boy was examined as P.W.1 and her evidence was corroborated with the evidence of the victim boy (P.W.2). The neighbour, who immediately met the victim boy soon after the occurrence, was examined as P.W.3 and her evidence also corroborated the evidence of P.W.1. At the time of occurrence, the victim boy was aged about 8 years, in order to prove the same, the Birth Certificate of the victim boy was marked as Ex.P11. The Doctor, who examined the victim boy was examined as P.W.5, she has also stated in her evidence that, when the victim boy was produced for clinical examination, the victim boy and his mother told her that the victim boy was sexually assaulted by the appellant. Subsequently, the victim boy and his mother was produced before the learned Magistrate for recording statements under Section 164 Cr.P.C, which were marked as Ex.P2 and Ex.P3. The Accident Register and other medical records are marked as Ex.P5.

10. On a reading of the evidence of P.W.3, it reveals that at the time of occurrence i.e. on 08.10.2015, the victim boy came from the open terrace of the building by raising hue and cry, on hearing the noise P.W.3 came out and enquired the victim boy, but she was not able to understand what he was telling and she took him to his mother. Thereafter, the victim boy informed about the said incident to his mother. Subsequently, (P.W.1) mother of the victim boy gave the complaint to the respondent police. The mother of the victim boy (P.W.1) and his neighbour (P.W.3) were not eye witnesses to the said occurrence, but, they were only hearsay witnesses, however, that may not be a sole ground to conclude that their evidences are not trustworthy and the same can be discarded. The evidence of interested witnesses, if found to have credit worthy, conviction could be based on an uncorroborated testimony. If



the evidence of sole witness is cogent credible and trustworthy, conviction is permissible. In cases of this nature presence of eye witnesses are mostly improbable. Further, the evidence of the mother of the victim boy (P.W.1), the neighbour of the victim boy (P.W.3), the Doctor (P.W.5), the statement recorded under Section 164 Cr.P.C (Exs.P2 and P3) corroborated the evidence of the victim boy (P.W.2). At the time of occurrence, the victim boy was aged about 7 years, in order to prove the same, Birth Certificate of the victim boy was marked as Ex.P.11. Hence, the victim boy falls within the definition of child as defined under Section 2(1)(d) of POCSO Act and he is below 12 years, who was sexually assaulted by the appellant. Therefore, under these circumstances, the offence punishable under Section 6 POCSO Act is very well established by the prosecution.

11.Considering the age of the victim boy and the nature of the offence, this Court can safely come to the conclusion that the appellant has committed sexual assault on the victim boy and therefore, the prosecution has established its case beyond reasonable doubt. 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.

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

Sd/-
Assistant Registrar (CS-VII)

// True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge,
Special Court for Cases under
POCSO Act 2012/Mahila Court,
Chennai.
2. The Inspector of Police,
W.22 All Women Police Station,
Mylapore, Chennai.



3. The Public Prosecutor,
High Court, Madras.

4. The Deputy Registrar |
(Criminal Section), |
High Court, Madras. |

with a direction to send back the
original records, if any, to the
trial Court

Copy to:

The Chairman,
POCSO Committee,
High Court, Madras-104.

+1cc to Mr.M.Rajavelu, Advocate, S.R.No.10279

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RK(CO)
SU(13/08/2021)