

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 04.02.2021
CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRL.A.No.415 of 2019 &
Crl.M.P.No.9092 of 2019

Subramani

.. Appellant

.Vs.

State represented by
Inspector of Police,
All Women Police Station,
Tirupur South,
Tirupur City
Crime No.11 of 2018

... Respondent

Criminal Appeal filed under Section 374 of Cr.P.C. praying to set aside the conviction and sentence imposed on the appellant by the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court) Tiruppur in Special S.C.No.41 of 2018 by a Judgment dated 29.04.2019 by allowing this appeal.

For Appellant : Mr.K.Balasubramaniam
For Respondent : Mr.R.Suryaprakash
Government Advocate(Crl Side)

J U D G M E N T

The respondent police registered a case against the appellant for the offences punishable under Sections 9 (m) r/w 10 of Protection of Children from Sexual Offences Act 2012 and Section 3(1) (w) (i), 3 (2) (Va) of SC/ST (Prevention of Atrocities) Amendment Act, 2015 in Crime No.11 of 2018 and after investigation charge sheet was laid in Special S.C.No.41 of 2018 before the Magalir Neethimandram (Fast Track Mahila Court), Tiruppur for the aforesaid offences. The learned Judge after trial found the appellant guilty of the charges and thereby convicted and sentenced him as follows:

- (i) For the offence under Section 9(m) r/w 10 - Convicted and sentenced of Protection of Children from Sexual Offences Act 2012 to undergo rigorous imprisonment for 7 years and pay a fine of Rs.5,000/- in default to undergo further period of one year Rigorous Imprisonment.

(ii) For the offence under Section -Convicted and sentenced to 3(1) (w)(i) r/w 3(2) (va) of under go five years rigorous SC/ST (Prevention of Atrocities) imprisonment and pay a fine of Rs.5,000/- in default to undergo further period of one year rigorous imprisonment.

The above sentences were ordered to run concurrently. Challenging the said conviction and sentence, the accused has filed the present appeal before this Court.

2. The learned counsel for the appellant would submit that there is a delay in filing the complaint. He would further submit that the locality in which the appellant and the victim girl were residing consists of row houses in which they were residing and all the house members have to use the common toilet and if any resident wants to go to toilet they have to cross the house of the victim girl and the accused and therefore if the occurrence is said to be true, then the persons residing in those houses would have noticed the occurrence. He would further submit that since the occurrence is said to have taken place on Sunday all the members in the row houses were also available and they might have noticed the said occurrence but none of the members of other row houses were examined to establish the case of the prosecution.

3. He would further submit that as per evidence of P.W.10, there is no direct eye witness and the trial court has failed to consider the fact that there was dispute between the appellant and his landlord and the alleged complaint is only to wreck vengeance against the appellant. He would further submit that P.W.6- the Doctor who examined the victim girl has stated that there was no injury in the private part of the victim girl and there is no medical evidence to prove that the appellant has committed the offence under Section 9(m) r/w 10 of Protection of Children from Sexual Offences Act 2012. He would further submit that there is no evidence to show that the victim girl belongs to Scheduled Caste and that the appellant has committed the offence under Section 3 (1)(i) r/w 3 (2) (va) of SC/ST (Prevention of Atrocities) Amendment Act, 2015. He would further contend that the learned Judge failed to consider the materials and only on the ground of sympathy accepted the contentions of the victim girl and her mother and thereby convicted and sentenced the accused as stated supra.

4. The learned Government Advocate (Crl.side) would submit that the victim girl is only 7 years old at the time of alleged occurrence as per Ex.P1-Birth certificate. He would further submit that the appellant is a neighbor of the victim girl and on 08.07.2018, when the parents of the the victim girl had gone for work, the appellant called the victim girl

to his house, made her to sit on his lap and asked her to see the game in his cell phone and showed her the pictures and he removed her panty and placed his hand on her private part, thereby the appellant has committed the sexual assault on the minor girl. He would further submit that the victim girl was examined as P.W.1 and she has clearly deposed about the said incident. He would further submit that P.W.2- mother of the victim has clearly explained the reasons for the delay in filing the complaint and therefore the complaint is not false. He would submit that the delay in lodging the complaint is not fatal to the case of the prosecution and therefore prays for the dismissal of the Appeal.

5. The learned Government Advocate (Crl.side) would further submit that on the date of complaint i.e., on 11.07.2018, P.W.10- Meenakumari, the Inspector of Police recorded the statement of the victim girl and sent her for medical examination and after examining the witnesses she arrested the accused. He would further submit that the victim was produced before the learned Judicial Magistrate, Fast Track Court, Tiruppur and the said Magistrate recorded the statement of the victim girl under Section 164 Cr.P.C. He would further submit that P.W.8 - Vadivel also narrated about the aforesaid occurrence. He would further contend that though the P.W.6- the Doctor who examined the victim girl has stated that there is no injury on the private part of the victim, it cannot be said that the alleged occurrence is false. He would further contend that it is not the case of prosecution that the victim girl has sustained injury at the time of occurrence and therefore it cannot be stated that the evidence of Doctor is contradictory to the case of the prosecution. He would further submit that though there is no direct eye witness to the occurrence, the statement of the victim girl can be taken into consideration and the learned Judge has rightly convicted the accused and there is no merit in this Appeal and the same is liable to be dismissed.

6. Heard both sides. Perused the records.

7. The case of the prosecution is that on 08.07.2018 at about 11.30 A.M., when the victim was playing inside their compound, in front of the house of the accused, the accused called the victim to see the picture recorded in his cell phone, made her to sit on his lap and placed his hand over her private part and thereby caused the sexual assault over the minor victim child and further the victim girl belongs to Scheduled caste community and therefore a case was registered for the aforesaid offences.

8. After completing the investigation, the police laid the charge sheet against the appellant for the aforesaid offences and the trial Court framed charges against the appellant as stated supra.

9. In order to prove the case, the prosecution before the trial Court examined as many as 10 witnesses as P.W.1 to P.W.10 and 14 documents were marked as Exs.P1 to P14.

10. After completing the examination of the prosecution witnesses, all the incriminating circumstances culled out from the evidence of prosecution witnesses, were put before the appellant, but he denied the same as false. On the side of the appellant, D.W.1 was examined and no documents were marked.

11. The learned Judge, after considering the oral and documentary evidence has convicted and sentenced the appellant as stated supra.

12. It is the case of the prosecution that the victim child and the appellant are residing in the row house and even as per the observation mahazar-Ex.P3, it is clear that both the victim and the accused are residing in the row house. A reading of the evidence given by the P.W.1-victim child clearly shows that the appellant has committed the offence as alleged by the prosecution. Further, P.W.2- the mother of the victim child in her evidence has clearly deposed that when her daughter was playing in their compound, the accused called the victim girl, made her to sit on his lap and showed her the picture in his cell phone at the threshold of his house, lifted her skirt, removed her panty and placed his hand over her private part, but the victim had not informed the said incident to her mother immediately and only on the next day the victim child refused to go to school and started crying and when asked for the reason, she revealed the entire incident to her mother and out of fear asked her not to reveal the same to her father. Immediately, she was taken to the hospital and since P.W.6- the doctor who examined the victim child has deposed that there was no injuries seen on the private part of the victim and there were no signs of sexual intercourse and she issued Ex.P7- Medical certificate and the victim was produced before the Judicial Magistrate on 27.07.2018 for recording statement under Section 164 Cr.P.C. and the learned Magistrate also recorded the statement on the same day and the same has been marked as Ex.P13. A careful reading of the statement under Section 164 Cr.P.C. shows that the appellant has committed sexual assault on the victim child. Though the learned counsel for the appellant submitted that the appellant and the victim child are neighbors and they are residing in one of the row houses and since the occurrence is said to have taken place on Sunday, the other family members, who were available in the adjacent houses, would have noticed the incident, but the prosecution failed to examine them, it has to be seen that the accused has cleverly called the victim to see the picture in his mobile and made her to sit on his lap and committed the sexual assault and therefore there is no possibility of outsiders noticing the offence committed by the appellant and therefore the

contention of the learned counsel for the appellant cannot be accepted. Further, the evidence of P.W.1 and P.W.2 clearly shows that the appellant has committed the Sexual assault on the victim child and further from the evidence of P.W.1, P.W.5 and P.W.6 clubbed with evidence of P.W.7, it is evident that the accused who belongs to backward community had committed sexual assault over the victim child who belongs to the scheduled caste community and hence it is clear that the accused had committed the offences as alleged by the prosecution. D.W.1 was examined on the side of the accused and he deposed that the accused came to his house and asked him to see house for him and he deposed that the accused had informed him that there is a dispute between the appellant and his landlord and his landlord was threatening to evict him from the house, but the evidence of D.W.1 cannot be considered because it is only hearsay evidence and further the appellant has not produced any evidence to disprove the case of the prosecution and hence the learned Judge on considering the oral and documentary evidence convicted and sentenced the appellant as stated above.

13. On a careful perusal of Ex.P1- Birth certificate and Ex.P8-community certificate of the victim girl and also Ex.P13- the statement recorded under Section 164 Cr.P.C. clubbed with evidence of P.W.1 and P.W.2, it is seen that the victim child is only aged about 7 years since she is child under the definition of POCSO Act, it is found that the accused has committed the offence as alleged by the prosecution. Therefore, this Court does not find any reason to interfere with the Judgment of the trial Court. However, considering the facts and circumstances of the case, the sentence imposed on the appellant is modified from seven years to five years for the offence punishable under Section 9(m) r/w 10 of Protection of Children from Sexual offences Act 2012.

14. In the result, the Appeal is partly allowed by modifying the sentence from seven years to five years for the offence u/s 9 (m) 10 of Protection of Children from Sexual offences Act 2012. Except this modification, the rest of the Judgment of conviction and sentence imposed on the appellant stands unaltered. Consequently, connected M.P. is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

1.The Sessions Judge,
Magalir Neethimandram
(Fast Track Mahila Court),
Tiruppur.

2.The The Superintendent,Central prison, coimbatore.

3.The Inspector of Police,
All Women Police Station,
Tirupur South, Tirupur City

4.The Public Prosecutor,
High Court, Madras.

5.The Section Officer | with a direction to send back the
(Criminal Section)records, | original records, if any, to the
High Court, Madras. | trial Court

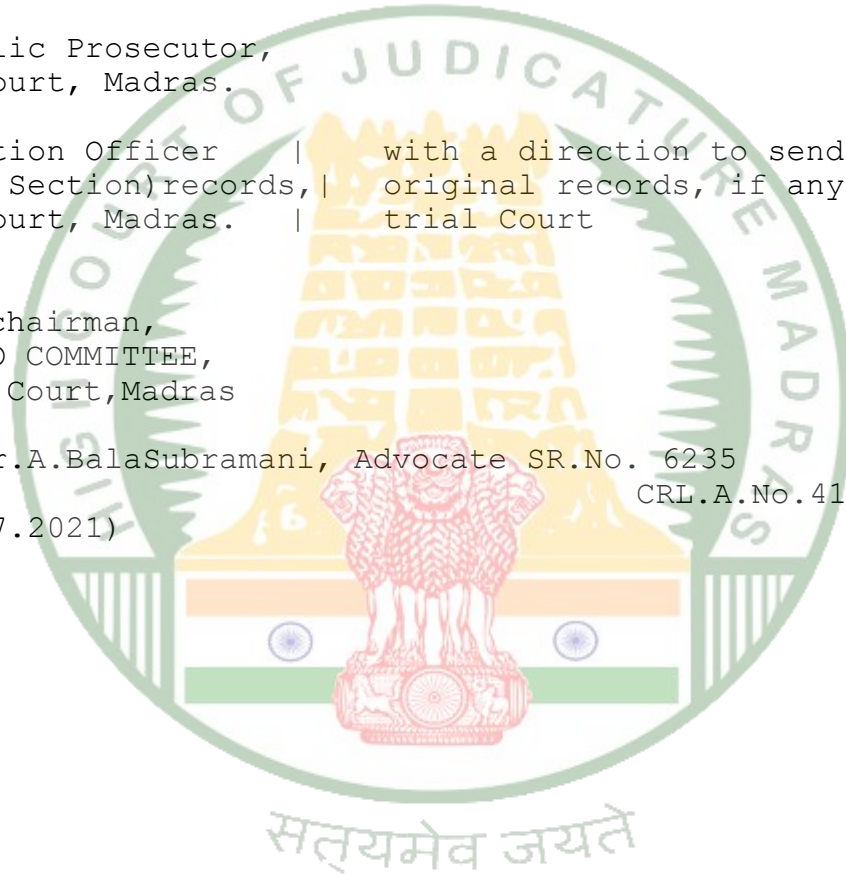
Copy to:

The chairman,
POCSO COMMITTEE,
High Court, Madras

+1cc to Mr.A.BalaSubramani, Advocate SR.No. 6235

CRL.A.No.415 of 2019

A.SK(05.07.2021)



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