

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2021

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Criminal Appeal No.414 of 2019

Haneefa

... Appellant/Sole Accused

Vs.

State through
The Inspector of Police,
All Women Police Station,
Tiruppur South
Tiruppur District.
(In Cr.No.15/2018)

... Respondent/Complainant

Criminal Appeal is filed under Section 374 Cr.P.C. to call for the records and set aside the judgment and conviction imposed by the Hon'ble Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Tiruppur, in Spl.S.C.No.04 of 2019 dated 18.06.2019 against the appellant/accused.

For Appellant : M/s.S.Mohamed Ansar

For Respondent : Mr.R.Suryaprakash
Government Advocate

JUDGEMENT

This Criminal Appeal has been filed against the judgment and conviction imposed by the Hon'ble Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Tiruppur, in Spl.S.C.No.04 of 2019 dated 18.06.2019.

2. The respondent Police registered a case against the appellant in Crime No.15 of 2018 and after completing investigation filed a charge sheet for the offence under Section 9(m) r/w 10 of the Protection of Children from Sexual Offences Act 2012 before the Magalir Neethimandram (Fast Track Mahila Court) Tiruppur. The learned Sessions Judge had taken the case on file in Special S.C.No.4 of 2019 and the charges were framed against the appellant for the offence under Section 9(m) r/w 10 of the POCSO Act, 2012, but the appellant was not pleaded guilty

and hence the trial was conducted. During the trial, on the side of the prosecution, 9 witnesses were examined as PW1 to PW9 and 11 documents were marked as Exs.P1 to P11 and no material objects were displayed. When the accused was questioned under Section 313(1) (b) Cr.P.C. about the incriminating evidences adduced by the prosecution witnesses, he denied the entire case as false and no oral or documentary evidences were produced on the defense side. The learned Sessions Judge after hearing the arguments, found the appellant guilty under Section 9(m) r/w 10 of POCSO Act 2012, convicted and sentenced him to undergo rigorous imprisonment for 7 years along with fine of Rs.10,000/-, in default of payment of fine the appellant has to undergo additional rigorous imprisonment for 1 year. Challenging the said judgment, the appellant has come up before this Court by way of this appeal.

3. The case of the prosecution is that on 11.12.2018 around 17.00 pm, when the victim girl returned from the school, the appellant called her to see the tiles on the terrace of the newly built north facing house near the west window of the house in the margin of the Meenakshi compound of the victim girl and left his hand into the panty of the victim girl, touched her vagina and sexually assaulted her. The girl was aged about 8 years at the time of occurrence. Subsequently, the complaint was made by the mother of the victim girl and the respondent Police registered a case.

4. The learned counsel appearing for the appellant would submit that though the victim girl has stated that one Seetha aunty has seen her when she came down from the occurrence place but the said Seetha aunty has not been examined herself as witness and the doctor has also not been examined in this case. It is fatal to the case of the prosecution. Further, there is no injury found in the private part of the victim girl. He would further submit that the intention of the appellant has not been established by the prosecution and the prosecution not corroborated the evidence of PW1 - the victim girl and therefore, there is no eye witness in this case. He would further submit that due to previous enmity between the appellant and the victim girl's family, a false case has been filed against him.

5. The learned Government Advocate would submit that the victim girl was aged about 8 years and the appellant/accused was 61 years at the time of the incident. On 11.12.2018, the appellant/accused took the victim girl to the newly constructed building of the house owner of the victim girl and when the victim girl was looking the tiles by standing near the window, the appellant left his hand into the panty of the victim child and touched the place from where she use to pass urine. Though

she protested but the appellant did not listen and she ran away from the scene of occurrence. Later, she stated everything to her mother as she went out for work at the time of incident. Thereafter, the mother made a complaint to the Police and the Police filed a charge sheet after the investigation. The victim child has given her statement before the learned Judicial Magistrate and statement has also been recorded from the victim child under Section 164 Cr.P.C. The Trial Court found the appellant guilty and imposed the punishment on him, therefore, there is no merit in this appeal and the same is liable to be dismissed.

6. Heard both sides and perused the records.

7. The specific case of the prosecution is that the victim child was aged about 8 years. During the relevant period on 11.12.2018 at about 17 hrs, the appellant took the victim child to the newly constructed building situated in the upper floor of the Meenakshi compound where the victim child was residing with her parents. The victim child and the appellant were neighbors. When the victim child was seeing the tiles standing near the window, the appellant left his hand into the panty of the victim child and touched her vagina and sexually assaulted her. Thereafter, a complaint was lodged by the mother of the victim girl. In order to prove the case of the prosecution, the victim child was examined as PW1 and even soon after the occurrence, the victim girl was examined by the learned Magistrate under Section 164 Cr.P.C. and statement was also recorded and the same was marked as P11. P11 itself shows that the victim girl had narrated the event and had also identified the appellant and that she was examined before the Trial Court as PW1. Though, the learned counsel for the appellant would submit that one Seetha who is the neighbor, was standing near the occurrence place at the time when the victim child came running from the occurrence place as per the statement of the victim girl, the said Seetha was not examined and there is no eye witness in the case except the victim child. He has also stated that the age of the appellant was 61 years and he was not subjected to medical examination to prove the potency. A reading of the evidence of the victim child itself is enough to convict the appellant and there is no reason to discard the evidence of PW1- victim girl or the mother of the victim girl.

8. As per Ex.P1- Birth certificate, the date of birth of the victim girl is 12.09.2011. The date of the offence is 11.12.2018. Therefore, the age of the victim girl is only 7 years and she is child under the definition of Section 2(1)(d) of POCSO Act.

9. Under the above said facts and circumstances of the case and after a careful perusal of the records available, the evidence of PW1- the victim child and Ex.P11- the statement recorded under Section 164 Cr.P.C., clearly proves that the appellant has committed the offence under Section 9(m) r/w 10 of the Protection of Children from Sexual Offences Act 2012. 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. Therefore, under these circumstances, the Appellate Court is a fact finding Court and this Court also has come to the conclusion that the appellant has committed the offence under Section Section 9(m) r/w 10 of the POCSO Act, 2012. Therefore, this Court finds that the judgment and the conviction passed by the Trial Court is correct and there is no merit in the appeal and there is no reason to interfere with the judgment of the conviction passed by the Trial Court. However, considering the nature of offence and also the facts and circumstances of the case and the age of the appellant, the sentence is modified from 7 years rigorous imprisonment to 5 years rigorous imprisonment, which will meet the ends of justice.

10. With the above modification in the sentence, this Criminal Appeal is partly allowed.

Sd/-

Assistant Registrar(CS-VII)

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Sub Assistant Registrar

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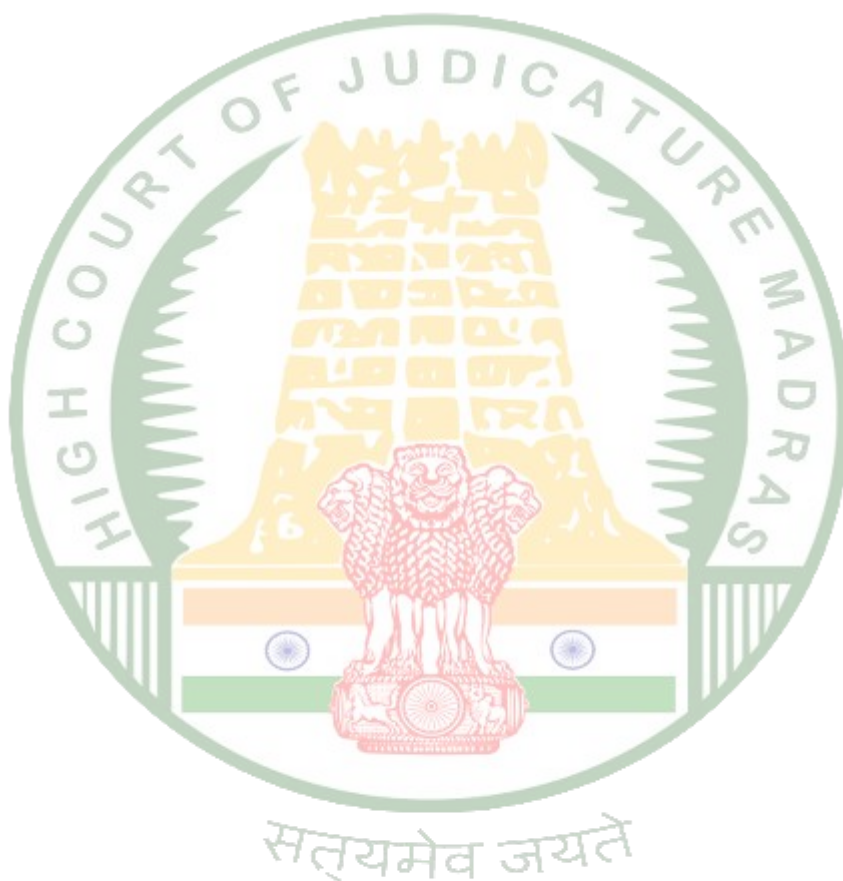
To

- 1.The Inspector of Police,
All Women Police Station,
Tiruppur South
Tiruppur District.
- 2.The Sessions Judge,
Magalir Neethimandram (Fast Track Mahila Court), Tiruppur.
- 3.The Public Prosecutor,
Madras High Court,
Chennai - 600 104.
- 4.The Superintendent of Police
Central Prison, Coimbatore.

Copy to:
The Chairman,
Pocso Committee,
High Court, Madras-104.

Crl.A.No.414 of 2019

KV (CO)
CB (05/07/2021)



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