

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 05.03.2021

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRL.A.No.531 of 2020 and
Crl.M.P.No.8671 of 2020

Nagesh

.. Appellant

.Vs.

State Represented by
Inspector of Police,
All Women Police Station,
Hosur, Krishnagiri District.

.. Respondent

Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure to set aside the conviction and sentence imposed on the Appellant by the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri, Krishnagiri District in Spl.S.C.No.28 of 2018 dated 17.12.2019.

For Appellant : Mr.S.Suresh
For Respondent : Mr.R.Suryaprakash
Government Advocate

J U D G M E N T

This Criminal Appeal has been filed, challenging the conviction and sentence imposed on the appellant by Judgment dated 17.12.2019 passed in Spl.S.C.No.28/2018 by the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri.

2.The respondent police has initially registered a case in Crime No.5 of 2017 against the accused for the offences punishable under Sections 3 r/w 4 & 5 (1)(m)(n) r/w 6 of Protection of Children from Sexual Offences Act, 2012 (in short POCSO Act) and later on, altered the same into Sections 5 (1) r/w 6 and 5 (1)(m)(n)(u) r/w 6 and 9 (m)(n) r/w 10, Section 11 (v) of POCSO Act & 506 (i) I.P.C. The appellant is shown as second accused in the said crime number. After investigation, a charge sheet was laid and the same was taken on file by the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri, Krishnagiri District in Spl.S.C.No.28 of 2018 for the offences under Sections 5 (1)(m)(n)(u) r/w 6 of POCSO Act 2012, 506(i) IPC and Sections 9 (m)(n) r/w 10 of POCSO Act 2012 as against the first accused and for the offences punishable under Sections 5 (1) r/w 6 of POCSO Act 2012 against the second accused.

3. After completing the formalities, the learned Sessions Judge framed charges against the accused as stated above, and after trial, the 1st accused was found guilty for the offences under Sections 5(1) r/w 6, 5(n) r/w.6, 9(1) r/w.10, 9(n) r/w.10 of POCSO Act 2012 and Section 506(i) IPC and the trial Court convicted him for the above said offences and sentenced him to undergo various terms of imprisonment, the maximum being 12 years Rigorous Imprisonment and total fine of Rs.31,000/- and also imposed default sentence, the 2nd accused/appellant was found guilty of the offence under Section 5(1) r/w 6 of POCSO Act 2012 and he was convicted and sentenced to undergo 12 years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo one year rigorous imprisonment.

4. Aggrieved over the same, the second accused, namely the appellant herein, is before this Court by filing this Appeal.

5. Learned counsel for the appellant would submit that victim girl has not spoken anything adverse against the appellant herein and the prosecution has not produced incriminating circumstances against this appellant and the teacher who is said to have informed the Child Welfare Officer about the alleged occurrence, had not named the appellant herein. She has stated that the victim girl had told the names of the persons who assaulted her and therefore, the evidence of P.W.3- Gomathi, teacher has not supported the case of the prosecution. He would further submit that the Headmaster of the school has not spoken anything about the occurrence and therefore, the evidence of P.W.2-victim girl is highly flimsy and artificial in nature. He would also submit that P.W.2-victim girl in her examination has admitted that till the age of 12, there was no sexual assault by the first accused and further she has also admitted that she was advised by the first accused that she should not go along with boys, while attending school and she also admits that she was angry with the first accused regarding this issue. He would further contend that the victim girl also admitted that Panchayat Chairman caught her while roaming with some boys and handed over to her parents.

5. It is further contended by the learned counsel for the appellant that the deposition of the victim girl is very vague and ambiguous in nature and it does not contain proper allegations and does not inspire confidence, as the same is artificial and exaggerated in nature. He would further submit that the evidence of P.W.9 and P.W.10 - the Doctors who examined the victim girl and gave treatment to her shows that there was no traces of sexual assault on the victim girl and there was no injury or signs of sexual violence and further the Doctor opined that the victim is sexually active and opined that it may be caused due to riding bicycle and active participation in sports. He would further submit that though the victim has stated that she informed one Anusuya, the said

Anusuya was not examined by the prosecution. He would further submit that the neighbours, who are independent witnesses were not examined in this case. It is also submitted that the alleged recovery and arrest seem to be artificial in nature, which was not supported by prosecution witnesses. The learned Counsel would vehemently contend that the victim girl has not spoken anything about the appellant herein and the allegation is only against the first accused and therefore, there is no material to connect the present appellant with the alleged crime. He would further submit that there are material contradictions in the prosecution witnesses and the learned trial Judge has failed to appreciate the evidence and erroneously convicted the appellant/second accused which warrants interference.

6. Per contra, the learned Government Advocate (Crl.side) would submit that the victim child is not the biological daughter of the first accused and she is his foster daughter. He would further submit that the first accused had sexually assaulted the victim child from third standard. He would also submit when A1 was working in Brick Kiln, he used to take her and have sexual intercourse with her and subsequently, he had also committed penetrative sexual assault on the victim girl in his house during night hours. He would further submit that when there was repeated penetrative sexual assault on the victim girl, she informed to her sister Anusuya. When this appellant who is the relative of the first accused came to know about the same, he took the victim girl to the mango grove and committed penetrative sexual assault on her. He would further submit that the victim girl was studying seventh standard and she could not concentrate on her studies and was so dull in the class, for which the class teacher enquired her, then the victim girl revealed about the said facts and thereafter, the teacher informed to the District Child Welfare Committee, who intervened in the matter and secured the victim girl, recorded her statement and lodged a complaint against the accused. Subsequently the victim girl was also produced before the Doctor- P.W.9 who made entry in the Accident Register and subsequently referred to P.W.10-Doctor for medical examination, she also examined the victim girl and opined that hymen was not intact though there was no injury and she was subjected to penetrative sexual assault. He would further submit that the victim was also produced before the learned Magistrate for recording the statement under Section 164 Cr.P.C. and the learned Magistrate also recorded the statement and subsequently, the victim girl was examined as P.W.2 during trial and she has narrated that the first accused and the present appellant had committed penetrative sexual assaults on her and therefore, there is specific allegation against this appellant.

7. The learned Government Advocate (Crl.side) would further also submit that P.W.1 - the President of District Welfare Committee, Hosur, had spoken about the assault

committed by the first appellant. P.W.3 - the teacher who was working in the School of the victim girl stated that the victim girl had told her and subsequently she informed the same to the Child Welfare Committee. He would further submit that the statement recorded under Section 164 Cr.P.C. clearly proved the case of the prosecution beyond all reasonable doubt and therefore, the trial Court has rightly convicted the appellant as stated above. He would also submit that there is no merit in this appeal and therefore, the same is liable to be dismissed.

8. Heard both sides. Perused the records.

9. The case of the prosecution is that P.W.2 -victim girl is the foster daughter of the first accused and the first accused alleged to have sexually assaulted the victim girl when she was studying from third standard. Further, when A1 was working in Brick Kiln, he used to take her with him and have sexual intercourse with her and subsequently, he had also committed penetrative sexual assault on the victim girl in his house during night hours. When there was repeated penetrative sexual assault, the victim girl informed the same to her sister Anusuya and when the appellant, who is the relative of A1 came to know about the same, he also took the victim girl to the mango grove and committed penetrative sexual assault on her. Further, when the victim girl had not concentrated on her studies, P.W.3-the teacher enquired the victim girl about the same and at that time, she revealed the entire facts to her. Thereafter, P.W.3 informed to the Child Welfare Committee, who on enquiry lodged a complaint against the accused. After investigation, the respondent police laid a charge sheet against the accused and the trial Court framed charges against the accused as stated above. When questioned, the accused pleaded "not guilty".

10. In order to prove the case of the prosecution before the trial Court, on the side of the prosecution as many as 17 witnesses were examined as P.W.1 to P.W.17 and 32 documents were marked as Exs.P1 to P32 and no material object was exhibited.

11. 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 and pleaded not guilty. On the side of the appellant, no witness was examined and no documentary evidence was produced.

12. After considering the evidence on record and after hearing arguments advanced on either side, the learned Special Judge, by judgment dated 17.12.2019 in Spl.S.C.No.28 of 2018, convicted and sentenced the 1st accused and the appellant/2nd accused as stated supra.

13. Challenging the judgment of conviction and sentence, the 2nd accused has preferred the present appeal before this Court.

14. This Court, being an Appellate Court, is final court of fact finding, which has to necessarily re-appreciate the entire evidence and give an independent finding.

15. The specific case of the prosecution is that the victim girl is the foster daughter of A1 and she was subjected to penetrative sexual assault by the first accused right when she was studying from the third standard. Further, the first accused committed repeated sexual assault and also harassed her several times. The appellant being the son-in-law of the first accused, after coming to know of the said fact he also committed penetrative sexual assault on her by taking her to mango grove. At one point of time, the victim girl informed to P.W.3 school teacher, who in turn informed to the District Child Welfare Committee. The said District Child Welfare Committee initiated enquiry and after confirming the said incident, lodged the complaint. After investigation, Charge Sheet was laid against the accused and during trial the victim girl was examined as P.W.2 and on a careful perusal of the deposition, it is found that the victim girl has also spoken about the involvement of the appellant in this case.

16. When she was produced before Judicial Magistrate for recording statement under Section 164 Cr.P.C., she has stated that the appellant also had committed aggravated penetrative sexual assault on her and the same was marked as Ex.P8. A reading of Ex.P8 clearly shows that the appellant also had committed the aggravated penetrative sexual assault on the victim girl and that even at the time of giving complaint the age of the victim girl was 13 years. From the medical certificate and the school certificate, the prosecution has proved that the victim child not completed age of 18 years and therefore, she is a child under the definition of Section 2(i)(d) of POCSO Act. Doctor Kalaiselvi was examined as P.W.9. She deposed that she conducted medical examination on the victim girl and also made entry in the accident register and thereafter, she referred her to the Doctor- P.W.10, who conducted medical examination on the victim girl and clearly stated that the hymen was not intact and the victim girl was subjected to sexual assault and further stated that she found the victim girl sexually active. P.W.3- the teacher has clearly stated in the academic year 2016-2017, one day she noted that victim was not concentrating on her studies and appears to be dull. Therefore, she enquired the victim girl and found that she was subjected to sexual assault, but however she has not spoken about the involvement of this appellant and therefore, the evidence of P.W.3 was treated as hostile. However, she has stated that she enquired the victim girl and immediately informed to the District Child welfare committee. P.W.5- the member of the District Child Welfare

Committee has stated that P.W.3 informed about the harassment caused to the victim on 07.02.2017 and after completing the formalities P.W.1- Chairman of the District Welfare Committee made a complaint against the accused persons.

17. Though the learned counsel for the appellant contended that since the P.W.1-Chairman of the District Child Welfare Committee told that since her foster father warned the victim girl and further the appellant is also a relative, he foisted a false complaint against the accused with inordinate delay, the same cannot be a ground to disbelieve the evidence of P.W.2-victim girl. Further, the learned counsel for the appellant contended that in the complaint, it was stated that from third standard, the victim was subjected to sexual assault, but during the cross examination she has stated only from the age of 12, she was subjected to sexual assault.

18. From the evidence of P.W.10-Doctor, it is clearly seen that she was subjected to repeated sexual assault and the evidence of P.W.13-Doctor who conducted the potency test and issued Ex.P20 clearly shows that the appellant was capable of having the sexual intercourse. Therefore, from the evidence of P.W.1, P.W.2, P.W.4, P.W.5, P.W.9 and P.W.10 and from Ex.P8 statement of the victim girl recorded under Section 164 Cr.P.C, Ex.P12-Accident Register and Ex.P15-Medical certificate of the victim girl, this Court finds that the appellant has committed the offence of aggravated penetrative sexual assault on the victim. The trial Court has rightly appreciated the entire evidence and convicted the accused.

19. Though the learned counsel for the appellant vehemently contended that the sister of the victim girl to whom the victim has informed about the action of the first appellant, was not examined as witness and even the evidence of school teachers P.W.3, P.W.6, P.W.7 and P.W.12 had not supported the case of the prosecution, P.W.3 on coming to know of the sexual assault undergone by the victim girl, she immediately informed to the District Child Welfare Committee, however from the evidence of Doctors P.W.9 and P.W.10, it is obvious that she was subjected to sexual assault which was seen from the medical certificate and further, as per school certificate, she has not completed the age of 18 years and therefore she is a child under the definition of 'POCSO' Act. Further, when she was produced before the learned Judicial Magistrate, a statement was recorded from her under Section 164 of Cr.P.C. The evidence of the victim girl would corroborate with the evidence of P.W.1. P.W.1 who was the Chairman of the District Child Welfare Officer has elaborately spoken about how he traced about the incident and they need not create any document adversely against the accused persons. Evidence of hostile witness need not be discarded in totality but the portion of evidence, in chief which supports the prosecution can be taken into consideration. Further, if the evidence of sole witness is cogent, credible and trustworthy, conviction is permissible.

20. On a reading of the evidence of the victim girl, this Court does not find any reason to discard the evidence of the victim girl as she has clearly narrated the events. There is no reason to disbelieve the evidence of the victim girl. Therefore, this Court finds that the prosecution has proved its case beyond all reasonable doubt with cogent evidence and though there are discrepancies in the evidence of prosecution witnesses which are pointed out by the learned counsel for the appellant, are not material contradictions and only minor contradictions which will not go to the root of the prosecution case. However the defect in investigation is not the ground to disbelieve the evidence of victim girl. In cases of this nature presence of eye witnesses are mostly improbable. If the evidence of sole witness is cogent, credible and trustworthy, conviction is permissible.

21. Further, on a reading of the entire oral and documentary evidence, this Court finds that the appellant also has committed aggravated penetrative sexual assault on the victim girl. Therefore, the conviction and sentence recorded by the trial court does not warrant interference.

22. In view of the same, there is no merit in the Appeal and the same is, therefore, liable to be dismissed and accordingly dismissed. The judgment of conviction and sentence passed by the trial Court is confirmed. Consequently, connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

WEB COPY

arr
To

1. The Sessions Judge, Fast Track Mahila Court, Krishnagiri,
Krishnagiri District.

2. Inspector of Police,
All Women Police Station,
Hosur, Krishnagiri District.

3. The Deputy Registrar | with a direction to send back the
(Criminal Section), | original records, if any, immediately
High Court, Madras. | to the trial Court

4.The District Collector,
Chennai District, Chennai.

5.The Director General of police,
Chennai.

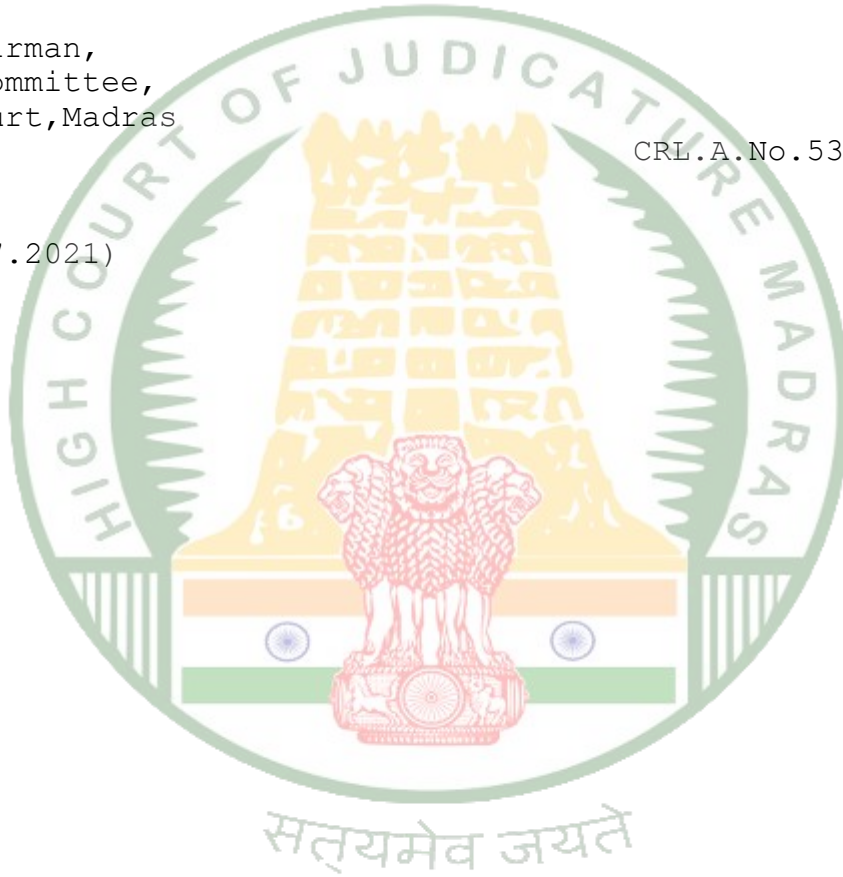
6.The Public Prosecutor,
Madras High Court.

7.The Superintendent,Central prison, Vellore.

Copy to
The Chairman,
POCSO committee,
High Court,Madras

CRL.A.No.531 of 2020

KV(CO)
B.VC(14.07.2021)



WEB COPY