

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2021

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.567 of 2019 and
Crl.M.P.No.12718 of 2019

P.Karuppan

... Appellant

-Vs-

State Rep. by
Inspector of Police,
All Women Police Station,
Kangayam,
Tiruppur District.
(Cr.No.2/2018).

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, to set aside the judgment passed in Spl.S.C.No.15 of 2018, dated 26.09.2018 on the file of the Fast Track Mahila Court for POCSO Act, 2012 cases at Tiruppur.

For Appellant : Mr.P.A.Kadirvel

For Respondent : Mr.R.Suryaprakash,
Government Advocate [Crl. Side]

JUDGMENT

This Criminal Appeal has been filed against the conviction and sentence imposed by the learned Sessions Judge, Mahalir Neethimandram, (Fast Track Mahila Court), Tiruppur in Special S.C.No.15 of 2018, dated 26.09.2018.

2.The respondent Police have registered a case in Crime No.2 of 2018, for offence under Sections 9(m)(n) r/w 10 of Protection of Children from Sexual Offence Act, 2012 against the appellant on the complaint [Ex.P1] given by PW2. After completing investigation, the respondent Police laid a charge sheet before the learned Sessions Judge, Mahalir Neethimandram, (Fast Track Mahila Court), Tiruppur and same was taken on file in Special S.C.No.15 of 2018.

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 learned Sessions Judge, framed charges under Sections 9(m) r/w 10 and 9(n) r/w 10 of Protection of Children from Sexual Offence Act, 2012.

4.After completing the trial and hearing the arguments advanced on either side and also considering the oral and documentary evidence, the learned Sessions Judge found guilty of the appellant for offence punishable under Sections 9(m) r/w 10 and 9(n) r/w 10 of Protection of Children from Sexual Offence Act, 2012 and convicted and sentenced to undergo Rigorous Imprisonment for 7 years and to pay a fine of Rs.10,000/-, for each of the offences, in default of payment of fine, the appellant has to undergo one year Rigorous Imprisonment for each of the offences.

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

6.The learned counsel for the appellant would submit that the date of occurrence is 17.02.2018, whereas the complaint was lodged with a delay of two days on 19.02.2018, for which, no explanation was given on the side of the prosecution. The complainant (PW2)/father of the victim girl stated that only after discussing with the family members, he has given the complaint (Ex.P2) is not sufficient. The learned counsel would further submit that already there was a dispute between the appellant and the father of the victim girl (PW2), due to which, he made a false complaint against the appellant in order to take vengeance. The witnesses PW4 to PW6 who are stated to be neighbours, actually they are not neighbours to the place of occurrence. The learned counsel for the appellant would further submit that there are material contradictions in the statement of the victim girl (PW1) recorded under Section 164 Cr.P.C., (Ex.P7) and the evidence given by her as PW1. The trial Court failed to appreciate the contradictions between the prosecution witnesses. Further, the evidence of the victim girl (PW1) and her statement recorded under Section 164 Cr.P.C., has not corroborated by any other prosecution witnesses to prove the guilt of the appellant and except PW1, no eye witness in this case and no independent witness was examined by the prosecution to establish its case beyond all reasonable doubt. The trial Court failed to appreciate the evidence and wrongly convicted the appellant on the ground of assumption, presumption and conjunction and also on the ground of sympathy and therefore, the judgment of the trial Court is liable to be set aside and the appellant has to be acquitted.

7.Mr.R.Suryaprakash, Government Advocate [Cr1. Side] appearing on behalf of the respondent would submit that out of 8 witnesses on the side of the prosecution, the victim girl (PW1) was examined as PW1. At the time of occurrence, she was a minor and aged about 12 years. On the date of occurrence i.e., on 17.02.2018, at about 05.00 p.m., the victim girl (PW1) was taking bath in the bathroom situated near her house and there was no door for the bathroom. When she was applying soap over her face, the appellant came there, hugged her from behind and pressed her breast. Suddenly, the victim girl (PW1) raised alarm and her father (PW2) and mother (PW3) rushed to the scene of occurrence. The mother of the victim girl (PW3) secured her and subsequently, she dragged the appellant from the bathroom. On hearing the sound, the neighbours also gathered and with the help of the relatives and neighbours, the father of the victim girl (PW2) preferred a complaint to the respondent Police Station. The respondent Police registered the case and produced the victim girl (PW1) before the learned Magistrate for recording her statement under Section 164 Cr.P.C.

8.The learned Government Advocate would further submit that during trial, the victim girl was examined as PW1, her father and mother were examined as PW2 and PW3, who were seen the occurrence and pulled the appellant from bathroom. PW4 to PW6, who are neighbours to the place of occurrence after hearing the sound from the house of the victim, rushed to the place and saw the appellant was dragged from the bathroom by the parents (PW2 & PW3) of the victim girl. When the victim girl (PW1) was enquired, she narrated the incident happened to her and subsequently, a complaint was given to the respondent Police. During investigation, the victim girl was produced before the learned Magistrate for recording the statement under Section 164 Cr.P.C., and the same was marked as Ex.P7. After completing the investigation, the respondent Police laid a charge sheet before the trial Court. On completion the trial, the appellant was convicted and sentenced as stated above.

9.Therefore, the prosecution substantiated the charge framed against the appellant and the trial Court rightly appreciated the entire oral and documentary evidence adduced by the prosecution and convicted the appellant for offence under Sections 9(m) r/w 10 and 9(n) r/w 10 of POCSO Act. The judgment of the trial Court need not be interfered with.

10.Heard the learned counsel appearing for the appellant and the learned Government Advocate [Cr1. Side] appearing for the respondent and also perused the materials available on record.

11.The case of the prosecution is that at the time of

occurrence, the victim girl (PW1) was a minor and she was aged below 12 years. On 17.02.2018, at about 05.00 p.m., the victim girl (PW1) was taking bath in the bathroom situated near her house and there was no door for the bathroom. When she was applying soap over her face, the appellant came there, hugged her from behind and pressed her breast. Suddenly, the victim girl (PW1) raised alarm and her father (PW2) and mother (PW3) rushed to the scene of occurrence. The mother of the victim girl (PW3) secured her and dragged the appellant from the bathroom. On hearing the sound of the victim girl, the neighbours (PW4 to PW6) rushed to the scene of occurrence and saw the appellant was dragged from the bathroom by the parents (PW2 & PW3) of the victim girl (PW1). Thereafter, the father of the victim girl (PW2) lodged a complaint (Ex.P2) to the respondent Police.

12. Based on the complaint (Ex.P2) given by PW2, an First Information Report [Ex.P8] in Crime No.2 of 2018 was registered for offence under Section 9(m)(n) r/w 10 of POCSO Act. After completing investigation, the respondent police laid a charge sheet before the learned Special Judge, Magalir Neethimandram (Fast Track Mahila Court), Tiruppur and the same was taken on file as Special S.C.No.15 of 2018.

13. During the trial, in order to prove the case of the prosecution, on the side of the prosecution, as many as 8 witnesses were examined as PW1 to PW8 and 7 documents were marked as Exs.P1 to P7 and no material object was exhibited. After completing the examination of prosecution witnesses, when incriminating circumstances were culled out from the prosecution witnesses put before the accused, he denied the same as false. On the side of the defence, no oral and documentary evidence was produced.

14. After completing trial and hearing the arguments advanced on either side, the learned Sessions Judge, by judgment dated 26.09.2018 in Special S.C.No.15 of 2018, convicted and sentenced the appellant as stated above.

15. 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.

16. On a perusal of the evidence and materials, it is seen that the victim was examined as PW1 and her father and mother were examined as PW2 and PW3. The victim girl (PW1) in her evidence has stated that on 17.02.2018, at about 05.00 p.m., while taking bath in bathroom situated near the house and there was no door. When she was applying soap on her face, someone hugged behind her and also pressed her breast. Suddenly, she

raised alarm and her mother (PW3) came there and rescued her and her father also subsequently came there. The mother (PW3) gave a cloth and secured the victim girl (PW1) and dragged the appellant from the bathroom. On hearing the noise of the victim girl, the neighbours also came to the place of occurrence. After discussing with the neighbours, the father of the victim girl (PW2) lodged a complaint to the respondent Police.

17.The father of the victim girl was examined as PW2 and he clearly narrated that when her daughter was taking bath in the bathroom, he received sound and immediately, he and his wife rushed to the bathroom. At that time, his wife (PW3) entered the bathroom and pulled the appellant outside. The mother of the victim girl was examined as PW3 and she has also narrated and corroborated the evidence of her daughter (PW1) and her husband (PW2). The neighbours, who were examined as PW4 to PW6 categorically stated that they heard sound from the bathroom of the defacto complainant's house and rushed to there. At that time, the parents (PW2 & PW3) of the victim girl pulled the appellant from the bathroom and when they enquired, the victim girl (PW1) and the mother of the victim girl (PW3) narrated the incident and thereafter, on discussion, PW2/the father of the victim lodged a complaint (Ex.P2) to the respondent Police.

18.Subsequent to the occurrence, the victim girl was produced before the learned Magistrate for recording the statement under Section 164 Cr.P.C., and the same was recorded and marked as Ex.P7. A careful reading of Ex.P7/the statement recorded under Section 164 Cr.P.C., the victim girl clearly narrated the incident taken place in the bathroom while taking bath. Even though the statement under Section 164 Cr.P.C., is not a substantive evidence, but subsequently the same was substantiated by examining victim child as PW.1 during trial before the trial Court.

19.The evidence of the parents of the victim girl (PW2 and PW3) corroborated the statement of the victim girl under Section 164 Cr.P.C., (Ex.P7) and her evidence. The neighbours (PW4 to PW6) also corroborated the evidence of PW1 to PW3 that they heard the noise from the bathroom, at that time, the mother of the victim girl dragged the appellant from the bathroom and when they enquired, the mother of the victim girl narrated the incident.

20.Therefore, the prosecution has clearly proved its case beyond all reasonable doubt. Once it is proved by the prosecution that the appellant has committed the offence under the POCSO Act, as per Section 29 and 30 of POCSO Act, it is for the appellant, who has to rebut the presumption in the manner known to law. In this case, the appellant has not rebutted the

presumption by cogent evidence and materials in the manner known to law.

21.Hence, this Court independently comes to the conclusion that the appellant has committed the offence under Sections 9(m) r/w 10 and 9(n) r/w 10 of Protection of Children from Sexual Offence Act, 2012 and therefore, the prosecution has established its case beyond all 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.

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

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Sessions Judge,
Magalir Neethimandram (Fast Track Mahila Court),
Tiruppur.
- 2.The Inspector of Police,
All Women Police Station,
Kangeyam,
Tiruppur District.
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Chairman,
POCSO Committee, High Court, Madras.

+1cc to Mr.P.A.Kadirvel, Advocate, S.R.No.10971

Cr1.A.No.567 of 2019

RSV(CO)
CB(08/07/2021)