



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2021

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRL.A.No.520 of 2019 and

Crl.M.P.No.1081 of 2020

Rajkumar

.. Appellant/Accused

.Vs.

State by the Inspector of Police,
Veppankuppam Police Station,
Vellore District.
(Crime No.66/2015)

.. Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure to set aside the entire records in connection with Spl.S.C.No.26/2015 on the file of Learned Judge, Fast Track, Court, Magalir Neethimandram (Sessions Judge) Vellore, Vellore District and set aside the Judgment dated 11.12.2018.

For Appellant : M/s. E.Kannadasan

For Respondents : Mr.R.Suryaprakash
Government Advocate

J U D G M E N T

This Criminal Appeal has been filed against the Judgment dated 11.12.2018., made in Spl.S.C.No.26/2015, by the Learned Sessions Judge, Fast Track Magalir Neethimandram, Vellore.

2. The respondent police registered a case against the appellant in Crime No.66 of 2015 for the offences punishable under Sections 363, 366, 376, 511 I.P.C. and Section 4 r/w 3(a) (d) of the Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO' Act). After investigation, charge sheet was laid before Special Court and the same was taken on file in Spl.S.C.No.26 of 2015, by the Sessions Judge, Fast Track Mahalir Neethimandram, Vellore.

3.After completing the formalities, the learned Sessions



Judge framed charges against the accused for the offences punishable under Sections 363, 366, 376 (i) and Section 4 r/w 3 (a)(d) of the POCSO Act and after trial, found the appellant guilty of the offences punishable under Sections 363, 366, 376 (i) of I.P.C. and Section 4 r/w 3 (a)(d) of the POCSO Act and convicted and sentenced the appellant as under:

S.No	Conviction	Sentence
1	U/s. 366 of IPC	to undergo 7 years of rigorous imprisonment and to pay a fine of Rs.1.000 and in default to undergo 1 month rigorous imprisonment.
2.	Under Section 4 r/w 3 (a)(d) of the POCSO Act	to undergo 10 years of rigorous imprisonment and to pay a fine of Rs.5000/- and in default to undergo three months rigorous imprisonment.

The sentences were ordered to run concurrently. Aggrieved against the same, the accused/appellant is before this Court by filing this Appeal.

4. The learned counsel for the appellant would submit that the appellant had not committed penetrative sexual intercourse with the victim girl. He would further submit that there is no eye witness to the occurrence. He would also submit that the non examination of the material witness, namely, wife of P.W.4 who has seen the appellant and the victim- P.W.2 in the place of occurrence is fatal to the case of the prosecution. He would further submit that the victim girl was not produced before the Judicial Magistrate for recording statement under 164 Cr.P.C.. The evidence of P.W.16- Doctor clearly reveals that there are no external bite marks and internal injuries on the P.W.2-victim child and the medical evidence was also not supported the case of the prosecution, as such, the prosecution has not proved its case beyond reasonable doubt. The learned Judge, based on assumption and also on the ground of sympathy, convicted the appellant for the offences and awarded maximum punishment, which warrants interference.

5. The learned Government Advocate (Crl.side) would submit that the victim child is ten years old at the time of occurrence and she was examined as P.W.2 and she has clearly narrated the occurrence. P.W.4 who is an eye witnesses to the occurrence clearly stated that when he went to the place of occurrence, he heard the crying sound of the victim girl and found that the victim child was nude and the appellant was lying on the victim



child and thereafter he caught hold of the appellant and beat him. Further, he took both the appellant and victim child to his home and therefore, the statement under Section 164 Cr.P.C. was not recorded. Further, the evidence of the victim child corroborates with the evidence of P.W.4. Though it is stated that there are no injuries, it cannot be stated that the occurrence had not happened. He would further submit that the act of the appellant clearly falls within the ambit of POCSO Act. Since, the age of the victim child is below 12 years, the learned Sessions Judge, on proper appreciation of evidence, rightly imposed punishment and hence, there is no merit and the appeal is liable to be dismissed.

6. Heard both sides. Perused the records.

7. The case of the prosecution is that on 19.02.2015, at about 6.30 P.M., P.W.2-victim child, went to P.W.3's shop for purchase of pooja articles. At that time, the appellant went there and purchased lolly pop and gave it to the victim child and he took the victim child in his TVS 50 XL at Mango Grove of Murugesan and there the appellant removed her dress and induced her that he will give lot of lolly pop to her and committed sexual assault on her by penetrating his finger on her private part. On receipt of information from P.W.4, P.W.1 lodged a complaint against the appellant. Based on which, the respondent police registered a case against the appellant and after investigation, charge sheet was laid and the trial court framed charges against the appellant as stated above.

8. In order to prove the case, the prosecution before the trial Court, examined as many as 17 witnesses as P.W.1 to P.W.17 and 18 documents were marked as Exs.P1 to P18. Six Material Objects were marked as M.Os.1 to 6.

9. After completing the examination of the prosecution witnesses, all the incriminating circumstances culled out from the evidence of the prosecution witnesses, were put before the appellant and questioned under Section 313 Cr.P.C, but he denied the same as false and pleaded not guilty. On the side of the appellant, no oral or documentary evidence was produced.

10. After considering the evidence on record and hearing arguments advanced on either side, the learned Sessions Judge, Fast Track Magalir Neethimandram, Vellore, vide judgment dated 11.12.2018 made in Spl.S.C.No.26 of 2015 convicted and sentenced the appellant as stated above.

11. Challenging the judgment of conviction and sentence, the present appeal has been preferred by the appellant.



12. 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.

13. The mother of the victim girl was examined as P.W.1 and she has clearly narrated that on information given by P.W.4, she has lodged a complaint against the accused. The victim child was examined as P.W.2 and the victim girl clearly narrated the entire incident and there is no reason to disbelieve the evidence of the victim child. Further, the victim girl is aged 10 years at the time of occurrence. Further, it is not the case of the appellant that the family of the victim had some axe to grind against the appellant, which led to the lodging of the complaint. Such being the case, there was no need for P.W.1 to give any police complaint by implicating the appellant herein falsely. P.W.4 is an eye witness and he has clearly deposed that on hearing the crying sound of the victim child, he went to the place of occurrence and caught hold of both the victim girl and the appellant. The evidence of P.W.4, who is an eye witness to the occurrence, corroborates the evidence of P.W.s 1 and 2. Therefore, this Court does not find any reason to disbelieve or discard the evidence of P.W.1 and P.W.4. Though P.W.16-Doctor, had stated that there was no external injury, in the present case, it is not the case of the prosecution that due to forcible sexual assault committed by the appellant with the victim child, she sustained injury. Though P.W.16-Doctor deposed that there was no injury, there is no sound reason to disbelieve the case of the prosecution. During evidence, the victim child has clearly stated that the appellant sucked her private part and inserted his finger on the private part, and due to pain she cried, P.W.4 and his wife rescued her. At this juncture, it would be useful to refer the relevant provisions of the POCSO Act.

"Section 2. Definitions- (1) In this Act, unless the context otherwise requires,---

(d) "child" means any person below the age of eighteen years;

Section 3-Penetrative Sexual assault- A person is said to commit "Penetrative sexual assault" if,-

(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with



WEB COPY

him or any other person;

(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.

.....

Section 4 - Punishment for penetrative sexual assault-- Whoever commits penetrative sexual shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine."

14. A reading of the evidence of P.W.2 victim child and Section 3 (b) and (d) of the POCSO Act, it is very clear that the appellant has committed the offence punishable under Section 4 of the POCSO Act, Depth of penetration is immaterial, mere touching of private part would be sufficient so as to constitute the offence. 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, this Court is of the considered view that the prosecution has proved its case beyond reasonable doubt for the alleged offences and the Special Court has also rightly convicted the accused.

15. From the evidence of P.W.1 and P.W.4 the custody of the victim female child below the age of 18 years was removed from the lawful guardian without their consent by the appellant and therefore he has committed the offence punishable under Section 363 and 366 of I.P.C.

16. In view of all the above, this Court does not find any merit in this Appeal and therefore, the same is liable to be dismissed. Accordingly, this Appeal is dismissed, confirming the conviction passed by the trial Court dated 11.12.2018 made in Fast Track Magalir Neethimandram (Sessions Court), Vellore, Vellore District. However, considering the age of the appellant and the specific overt act attributed against him, the sentence imposed on him for the offence punishable under Section 4 of the POCSO Act is reduced from 10 years rigorous imprisonment to 7 years rigorous imprisonment. The sentence for the offence u/s 366 of IPC and the fine imposed on the appellant in respect of both the offences are confirmed.



WEB COPY

In the result, this Criminal Appeal is dismissed with the above modification. Consequently, connected M.P. is closed.

Sd/-
Assistant Registrar(Audit)

//True Copy//

Sub Assistant Registrar

arr

To

1. The Judge, Fast Track, Court,
Magalir Neethimandram (Sessions Judge) Vellore,
Vellore District.
2. The Inspector of Police,
Veppankuppam Police Station,
Vellore District.
3. The Superintendent,
Central Prison, Vellore.
4. The Public Prosecutor (Crl.side)
Madras High Court.
5. The Section Officer
Criminal Section(Records)
High Court Madras.

+1cc to Mr.E.Kannadasan, Advocate, S.R.No.13672

CRL.A.No.520 of 2019

CP(CO)
SB(15/07/2021)