

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2021

C O R A M

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CrI.A.No.559 of 2019 &
CrI.M.P.No.12376 of 2019

Ravichandiran ... Appellant/Single Accused

Vs.

State by its
The Inspector of Police,
All Women Police Station,
Chidambaram,
Cuddalore District. ... Respondent/Complainant
(Crime No.99 of 2014)

PRAYER: Criminal Appeal is filed under Section 374 (2) of Cr.P.C. to set aside the conviction and sentence imposed upon the appellants vide judgment dated 11.06.2018 made in Spl.S.C.No.17 of 2018, on the file of the Sessions Judge, Mahila Court, Cuddalore and acquit the appellant.

For Appellant : Mr.K.G.Senthilkumar

For Respondent : Mr.R.Suryaprakash
Government Advocate

J U D G M E N T
सत्यमेव जयते

Aggrieved by a Judgment dated 11.06.2018 of the learned Sessions Judge, Mahila Court, Cuddalore in Spl.S.C.No.17 of 2018 arising out of FIR No.99 of 2014 registered at All Women Police station, Chidambaram, by which the appellant was held guilty for committing offences punishable under Section 10 of the Protection of Children from Sexual Offences Act, 2012 (for brevity "the POCSO Act"), the instant appeal has been preferred by him.

2. By an order dated 11.06.2018, the appellant was sentenced to undergo Rigorous Imprisonment for seven years and to pay a fine of Rs.25,000/- under Section 10 of POCSO Act, in

default to undergo simple imprisonment for one year.

3. The case of the prosecution, in brief, is as under:-

3.1 On 02.06.2014, around 6.30 p.m., the appellant committed sexual assault on the victim girl "X" (name not divulged for the sake of anonymity), who was aged about 4 years, when she was playing in the backyard garden of her house, which was seen by "X's" grand mother Dhanam (PW2) and who in turn, informed the same to Sathya, who is the mother of the victim girl (P.W.1) and she (P.W.1) immediately contacted her husband through phone and informed the occurrence. Thereafter, she (P.W.1) lodged a complaint against the accused.

3.2 On a written complaint (Ex-P1) lodged by Sathya (PW1), the Sub-Inspector of Police, registered a case in Crime No.99 of 2014 under Section 10 of the POCSO Act and prepared the FIR (Ex-P3).

3.3 The investigation of the case was taken over by Meena (PW5), Inspector of Police, who went to the place of occurrence and prepared the Observation Mahazar (Ex-P2) and Rough Sketch (Ex-P4). The appellant was not arrested, as he had obtained anticipatory bail on 12.06.2014.

3.4 After completing the investigation, the police filed a final report in S.C.No.17 of 2018 before the Sessions Mahila Court, Cuddalore.

3.5 On appearance of the appellant, the provisions of Section 207 Cr.P.C. were complied with and the trial Court framed charge for the offence under Section 10 of the POCSO Act, against the appellant. When questioned, the appellant pleaded "not guilty".

3.6 To prove the case, the prosecution examined ten witnesses and marked four exhibits.

3.7 When the appellant was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. On behalf of the appellant, no witness was examined nor any document marked.

3.8 After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 11.06.2018, convicted the appellant of the offence under Section 10 of the POCSO Act and sentenced him to undergo seven years Rigorous Imprisonment and to pay a fine of Rs.25,000/-, in default to undergo one year Simple Imprisonment.

3.9 Challenging the above conviction and sentence, the appellant is before this Court.

4. The learned counsel for the appellant would submit that the victim girl was not referred to Medical Officer for clinical examination and no documents were produced by the prosecution. It is also contended that the learned Judge failed to take note that neither statement nor the victim child was produced before the learned Judicial Magistrate as per the POCSO Act, 2012. Therefore, the learned Sessions Judge failed to consider the materials available on record and only on the sympathy ground, considering the age of the victim girl, imposed a maximum punishment of 7 years and therefore, the order of conviction and sentence passed by the learned Sessions Judge, has to be set aside.

5. The learned Government Advocate (Criminal Side) would submit that the victim girl is 4 years old and since there is no allegation against the appellant that he had committed penetrated sexual assault with the victim girl and sustained injury, she was not subjected to medical examination, however, non producing the victim girl before the Medical Officer is not a fatal to the case of the prosecution. The Grandmother of the victim girl was examined as and P.W.2 and she categorically deposed that that the appellant had lifted the victim girl and tried to sexual assault, after the victim girl raised alarm and after seeing the P.W.2, he escaped from the scene of occurrence, Therefore, the prosecution has proved its case beyond reasonable doubt.

6. Heard the learned counsel on either side and perused the materials placed on record.

7. Sathya (PW1) was examined-in-chief on 24.05.2018. In her evidence, she has stated that she is residing with her husband and two sons and a daughter in Thillaividangam Village at Chidambaram Taluk. On 02.06.2014, around 6.00 p.m., when she was in residing her house, her daughter was playing in the

backyard garden and at that time P.W.2 (grandmother of the victim) told her that the accused had tried to commit rape her daughter and when P.W.2 had beaten the accused, he fled from the scene of occurrence. She (PW1) immediately informed to her husband and told the occurrence through phone and when her husband returned home and together, they went to the police station and lodged the complaint (Ex-P1).

8. She (P.W.10) was cross-examined on the same day i.e., 24.05.2018. The defence was not able to make any serious dent in the testimony of Sathya (PW1), but, it was ultimately suggested to her that she has foisted a false case against the appellant to wreak vengeance due to land dispute, which suggestion, she has denied. Apart from this bare suggestion, no other motive has been suggested to Sathya (PW1), for falsely implicating the appellant.

9. Dhanam (PW2), in her evidence, has stated that she is living in Thillaividangam Village at Chidambaram Taluk, P.W.1 is her daughter-in-law and at the time of occurrence, when she had returned to home after the work, she had gone to backside of the home to take the dried clothes, and at that time she heard the sound of her granddaughter cries, and she had also noticed that the accused had removed his trouser and the dress of her granddaughter and lifted her to his hip and rubbed his private part with the private part of her granddaughter and when she went to near and beaten the accused, he escaped from the scene of occurrence. Immediately, she informed to her daughter-in-law (P.W.1), who in turn, informed to her husband (P.W.2), and has given a police complaint. During cross-examination, she was also denied, due to land dispute, they foisted a false complaint against the appellant.

10. The evidence of P.W.1 and P.W.2 are categorical to the effect that the accused / appellant had attempted to penetrate the victim girl, who is aged about 4 years at the time of occurrence. The learned counsel for the appellant took a stand that the victim girl was not examined and she was not sent to doctor for clinical examination. Since the girl is aged 4 years at the time of occurrence and there was no penetrated sexual assault and there cannot be no injury, and therefore, the victim girl need not be produced before the Medical Officer for clinical examination and therefore, mere non-sending of the victim girl to the Medical Officer is not a fatal to prosecution. Admittedly, in the case on hand, from the evidence of P.W.2, it could be seen that no penetration had taken place, however, in her evidence, the intention of the

accused for attempting to penetrate the vagina of the minor victim is proved. No doubt, as per Section 7 of POCSO Act, 2012, touching the vagina or any other act with sexual intent which involves physical contraction without penetration is a sexual assault. Therefore, the learned Judge rightly held that since the victim girl is aged about 4 years old and the sexual assault which involved physical contract of the accused with the naked body of the child with sexual intent is aggravated sexual assault which is punishable under Section 10 of POCSO Act and convicted and sentenced him to undergo Rigorous Imprisonment for a period of 7 years Rigorous Imprisonment and fine of Rs.25,000/- in default on year simple imprisonment.

11. In view of the above, the learned Sessions Judge, rightly recorded the order of the conviction of the accused/appellant. However, the learned Sessions Judge imposed maximum punishment prescribed by Section 10 of the POCSO Act. In the considered view of this Court, the facts and circumstances of the case, if the substantive sentence is reduced to 5 years Rigorous Imprisonment from 7 Years Rigorous Imprisonment, will suffice to meet the ends of justice. In respect of punishment in the form of fine, and the default clause, this Court finds no reason to interfere with. The substantive sentence of Rigorous Imprisonment is reduced to 5 years Rigorous Imprisonment.

12. In the result, the Criminal Appeal is partly allowed with the above modification. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Inspector of Police,
All Women Police Station,
Chidambaram,
Cuddalore District.

2. The Sessions Judge,
Mahila Court,
Cuddalore

3.The Public Prosecutor
High Court, Madras

4.The Hon'ble Committee
High Court, Madras-104

Copy to
The Section Officer
Crl Section High Court,
Madras-104

+1 cc to Mr.K.G.Senthilkumar Advocate sr3501

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Crl.M.P.No.12376 of 2019

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