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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2021

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRL.A.NO.714 OF 2019

Pappaiah

... Appellant

-Vs-

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

... Respondent

PRAYER: Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure, to set aside the conviction and sentence imposed in Spl.S.C.No.60 of 2018, dated 05.09.2019 passed by the Sessions Court, Fast Track Magalir Neethimandram Krishnagiri and setaside the same as illegal.

For Appellant : Mr.C.D.Vivekanandan,
Legal Aid Counsel

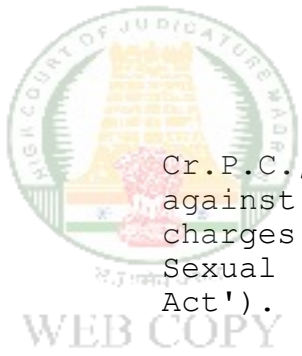
For Respondent : Mr.R.Suryaprakash,
Government Advocate [Crl. Side]

JUDGMENT

This Criminal Appeal has been filed against the conviction and sentence imposed by the learned Sessions Judge, Fast Track Mahila, Krishnagiri in Special S.C.No.60 of 2018, dated 05.09.2019.

2.The respondent Police have registered a case in Crime No.15 of 2018, for offence under Sections 3, 4 and 18 of Protection of Children from Sexual Offence Act, 2012 against the appellant on the complaint (Ex.P1) given by PW1. After completing investigation, the respondent police laid a charge sheet before the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri and the same was taken on file in Special S.C.No.60 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 Section 5(m) r/w 6 of Protection of Children from Sexual Offence Act, 2012 (hereinafter referred to as 'POCSO Act').

4. After completing the trial and hearing the arguments advanced on either side and also considering the oral and documentary evidence, the trial Judge found the appellant guilty for offence punishable under Section 9(m) r/w 10 of POCSO Act and convicted and sentenced to undergo 5 years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default to undergo 6 months Rigorous Imprisonment for offence under Section 10 of POCSO Act.

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

6. The learned counsel for the appellant would submit that in this case, there is no eye witness and no independent witness was examined by the prosecution to prove its case. PW1 and PW3 are the mother and father of the victim girl (PW2). The mother of the victim girl (PW1) is not an eye witness to the occurrence and she was projected by the prosecution as if she is an eye witness to the occurrence. The Doctor (PW15), who examined the victim girl has stated that there was no external injury and no symptoms for sexual assault, hence it is not conclusively proved that the appellant had committed the sexual assault on the victim girl and the medical evidence does not support the case of the prosecution. The learned counsel would further submit that the trial Court failed to consider the fact that in the dwelling house, it is not possible for such kind of incident to be happen. Though the mother of the victim girl (PW1) stated that her daughter and the grand daughter of the appellant used to play together, the victim girl (PW2) has stated that on the date of occurrence, only the grand daughter of the appellant taken her to her house. Hence, in the presence of the family members, no one would commit such kind of offence. Therefore, the prosecution has put up a false case against the appellant.

7. The learned counsel for the appellant would further submit that the time of occurrence has not been clearly established by the prosecution. The mother of the victim (PW1) has deposed that the occurrence had taken place at about 03.00 p.m., whereas the father of the victim girl (PW3) has deposed that when he was working in the company her wife informed him about the incident at about 01.30 p.m., and he came to the hosue at about 05.00 p.m and took the victim girl to the hospital. Hence, with regard to the time of occurrence, there is material



contradiction between the evidence of PW1 and PW3. The trial Court failed to consider the material contradictions regarding the time and place of occurrence and simply on the ground of presumption and assumption and also on the ground of sympathy, convicted the appellant.

8.The learned counsel for the appellant would further submit that the trial Court without even framing the charge under Section 9(m) r/w 10 of POCSO Act, convicted the appellant for offence under Section 9(m) r/w 10 of POCSO Act and found the prosecution has not proved the offence under Section 5(m) r/w 6 of POCSO Act.

9.The learned counsel for the appellant would further submit that the entire episode said to have taken place inside the house at about 01.40 p.m., on 31.08.2018 is highly improbable as inmates of the house would not allow such thing to happen. Further, the inmates of the house friend of the victim girl Himavarsini, her father, mother and wife of the accused were not examined by the prosecution. The said lapse vitiates the conviction. Therefore, the trial Court failed to appreciate the non examination of the independent witnesses and the contradictions between the prosecution evidence and erroneously convicted the appellant for offence under Section 9(m) r/w 10 of POCSO Act. The Judgment of the trial Court is liable to be set aside and the appellant is to be acquitted.

10.Mr.R.Suryaprakash, learned Government Advocate (Crl. Side) appearing on behalf of the respondent Police would submit that at that time of occurrence, the age of the victim girl is only 4 years and she was studying Government Nursery School. The appellant is the neighbour of the victim's family. On the date of occurrence, the father (PW3) of the victim girl had gone to his regular work. The victim girl and the grand daughter of the appellant Himavarsini, who are friends went to the Government Nursery School and returned back to home at about 01.30 p.m., for taking lunch. After giving lunch to the victim girl, the mother of the victim girl had gone to wash her hands and vessels. At that time, she heard the crying sound of her daughter from the house of the appellant and she rushed there and knocked the door and nobody was opened the door and when she saw inside the house through gap between the door, the appellant laid on her daughter. At that time, the mother of the victim girl (PW1) forcibly opened the door and the appellant came out from the house and ran away from the scene of occurrence. Then, the mother of the victim girl (PW1) informed the incident to her husband (PW3). Thereafter, they took the victim girl to the hospital for medical examination, from there information was sent to the Police station. The respondent Police on receipt of the complaint, registered a case in Crime No.15 of 2018, for



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offence under Sections 3 r/w 4 and 18 of POCSO Act, against the appellant. After completing investigation, the respondent Police have laid the charge sheet before the trial Court, and the trial Court also framed the charge against the appellant for offence under Section 5(m) r/w 6 of POCSO Act and after completing the trial, convicted the appellant under Section 9(m) r/w 10 of POCSO Act. During trial, the victim girl was examined as PW2 and father and mother were examined as PW3 and PW.1 respectively. During medical examination of the victim girl, her mother informed the incident to the Doctor. The Doctor (PW15) examined the victim girl and opined that the victim girl was subjected to penetrative sexual assault. After the treatment, the victim girl was produced before the learned Judicial Magistrate for recording the statement under Section 164 Cr.P.C. Accordingly, the same was recorded from the victim girl and her mother and marked as Exs.P2 & P3.

11.The learned Government Advocate (Crl. Side) would further submit that in this case, at the time of occurrence, the age of the victim girl is only 4 years and she knew the appellant, who is the grand father of her friend Himavarsini. The victim girl soon after the occurrence immediately informed her mother about the sexual assault of the appellant, in turn the mother of the victim girl informed to her husband (PW3). Immediately, the father of the victim girl rushed to home and lodged the complaint (Ex.P1) to the respondent Police and on receipt of the same, before 5'o clock itself, the FIR (Ex.P15) in Crime No.15 of 2018 was registered. Hence, the complaint has been given immediately soon after the occurrence and the question of delay in lodging the complaint does not arise. Even though the learned counsel for the appellant submits that the time and place of occurrence are highly doubtful, the mother of the victim girl (PW1) stated that on the date of occurrence, she took the victim girl at 01.30 p.m., from the school and gave lunch at about 01.45 p.m., thereafter she went to wash her hands and vessels, at that time, the appellant took the victim girl to his house and committed the offence and further she stated that the occurrence had happened approximately 01.40 p.m., and subsequently, she informed the occurrence to her husband, at that time they could not see the exact time and what time the complaint was lodged. The fact remains that after the lunch hours, the appellant was available in his house and no one was there. The evidence of PW1, PW4 and PW5 are very clear and cogent that at the time of occurrence, except the appellant no one was available in his house and therefore, the points raised by the learned counsel for the appellant regarding discrepancy in time and place of occurrence are not acceptable.

12.The learned Government Advocate (Crl. Side) would further submit that PW8 and PW9, who are the neighbours of the



victim girl clearly stated that they were informed about the occurrence by the mother of the victim girl (PW1). Therefore, soon after the occurrence, the sexual assault committed by the appellant was informed to PW4, PW5 (brother of the father of the victim girl), PW8 and PW9 by the mother of the victim girl (PW1) before 05.00 p.m. The Doctor (PW15) has stated that the mother of the victim girl informed him that a neighbour sexually assaulted her daughter. Therefore, the prosecution has proved its case beyond all reasonable doubt and there is no reason to interfere with the judgment of the trial Court and no merit in the appeal and is liable to be dismissed.

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

14. The case of the prosecution is that on the date of occurrence, the age of the victim girl is 4 years and she was staying along with her parents and she was studying in the Government Nursery School. On 31.08.2018, the victim girl went to the school and the mother of the victim girl (PW1) took the victim girl for providing lunch at about 01.30 p.m. After giving lunch, the victim girl had gone to play with her friend Himavarsini, who is the grand daughter of the appellant and the mother of the victim had gone to wash her hand and vessels, at that time, she heard the crying sound of her daughter from the house of the appellant. The mother of the victim girl rushed to the appellant's house and knocked the door forcibly, but no one was opened the door and thereafter, the appellant opened the door and ran away from the scene. When the mother of the victim girl asked the victim girl what had happened, the victim girl cried and informed that the appellant laid on her and sexually assaulted. Immediately, the mother of the victim girl informed the same to her husband (PW3). After PW3 coming, the mother of the victim girl (PW.1) lodged a complaint (Ex.P1) to the respondent Police.

15. Based on the complaint (Ex.P1) given by the father of the victim, an FIR in Crime No.15 of 2018 was registered for offence under Sections 3 r/w 4 and 18 of POCSO Act. After completing investigation, the respondent police laid a charge sheet before the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri and the same was taken on file in Special S.C.No.60 of 2018.

16. During the trial, on the side of the prosecution, as many as 17 witnesses were examined as PW1 to PW17 and 20 documents were marked as Exs.P1 to P20 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 had denied as false. On the side of the defence, no oral and documentary evidence was produced.

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17. After completing trial and hearing arguments advanced on either side, the learned Sessions Judge, by judgment dated 05.09.2019 in Special S.C.No.60 of 2018, convicted and sentenced the appellant as stated above.

18. 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 and accordingly, this Court appreciated the entire evidence and materials available on record.

19. Initially, the FIR (Ex.P15) was registered for offence under Sections 3 r/w 4 and 18 of POCSO Act and after completion of investigation, charge sheet came to be filed before the trial Court. During trial, the trial Court has framed charges against the appellant under Section 5(m) r/w 6 of POCSO Act and on completion of the trial, the trial Court convicted the appellant for offence punishable under Section 9(m) r/w 10 of POCSO Act based on the evidence of the victim girl (PW.2) and her mother (PW.1), her father (PW.3) and the Doctor (PW.15), who gave treatment to her.

20. A reading of the evidence of PW2, who is the victim girl, aged about 4 years, she identified the appellant and clearly deposed that the appellant is the grand father of her friend Himavarsini. On the date of occurrence, she went to school and after came back to home and taking lunch, the appellant entered the house and took her to his house and laid on her and sexually assaulted her. The mother of the victim girl was examined as PW1. She has deposed that on the date of occurrence at about 01.30 p.m., she took her daughter from the school and after providing lunch, she went for washing vessels, at that time, the appellant, who is the neighbour just residing opposite to her house, took the victim girl to his house and closed the door. On hearing the crying sound of her daughter, she went to the appellant's house and knocked the door. Thereafter, the appellant opened the door and pushed the mother of the victim girl forcibly and ran away from the scene of occurrence. When she questioned the victim girl, the victim girl informed the incident. Immediately, she informed her husband (PW3) and PW3 informed the incident to the owner of the company and came to the house and took the victim girl to the hospital and lodged the complaint (Ex.P1).

21. Though the learned counsel for the appellant pointed out



the contradictions regarding the time of occurrence, it is stated by the learned Government Advocate (Crl. Side) that the victim girl is aged about 4 years and her mother is illiterate and rustic villager. The mother of the victim stated that on 31.08.2018, she took her daughter from the school at about 01.30 p.m., and provided a lunch at about 01.45 p.m. After the occurrence, immediately she informed the incident to her husband (PW3). PW3 stated that he received phone call from her wife nearly 01.30 p.m., and he came to the house at about 05.00 p.m. If at all PW3 received the information at about 03.00 p.m., he could only come at about 05.00 p.m. PW15 stated that the victim girl was produced for medical examination at about 05.00 p.m. Therefore, the occurrence had taken place between 01.45 p.m., and 03.00 p.m. Though there are contradictions regarding the time of occurrence, but it is not the material contradiction and it would not be fatal to the case of the prosecution.

22.The evidence of the victim girl and her mother (PW1 & PW2) are clearly corroborated by the evidence of the Doctor (PW15) and the statements recorded by the learned Judicial Magistrate under Section 164 Cr.P.C., (Exs.P2 & P3). On combined reading of the evidence of PW1, PW2, PW3, PW4, PW5, PW8, PW9 and PW15 and also the documents Exs.P1, P2, P3, P5, P6, P8, P13 & P14, the prosecution has established that the appellant has committed the offence under Section 9(m) r/w 10 of POCSO Act and the trial Court has rightly appreciated the evidence and materials and convicted the appellant for offence under Section 9(m) r/w 10 of POCSO Act.

23.Hence, this Court can safely come to the conclusion that the appellant has committed aggravated sexual assault on the victim girl. 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.

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

25.The counsel who argued the appeal for the appellant was appointed by the Legal Services Authority from the legal aid panel, hence he is entitled for fees as per rule.

Sd/-

Assistant Registrar (CS-IV)

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Sub Assistant Registrar

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To

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

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

3. The Public Prosecutor,
High Court, Madras.

4. The Superintendent,
Central Prison,
Vellore.

5. The Secretary,
Legal Service Authority,
High Court, Madras.

Crl.A.No.714 of 2019

RSV(CO)
RLP(02/08/2021)