

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2021

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRL.A.No.713 of 2019

Aravinthan

.. Appellant/Sole Accused

.Vs.

The State Rep.by
Inspector of Police,
Arumbavur Police Station,
Perambalur District,
Crime No.169 of 2019.

.. Respondents/Complainant

Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure to set aside the judgment passed in Spl.S.C.No.2 of 2019 dated 20.09.2019 on the file of the Mahila Court, Perambalur.

For Appellant : Mr.T.Balachandran

For Respondent : Mr.R.Surya Prakash
Government Advocate (Crl.Side)

J U D G M E N T

This Criminal Appeal has been filed against the Judgment dated 20.09.2019 in Spl.S.C.No.2 of 2019 on the file of the learned Mahila Court, Perambalur.

2.According to the appellant, the respondent police registered a case in Crime No.169 of 2019 against him for the offence punishable under Sections 294(b), 451, 506(i) of IPC and Sections 7 r/w 8 of The Protection of Children from Sexual Offences Act, 2012 [hereafter 'POCSO Act' for the sake of convenience]. On completion of the investigation, the respondent police filed a final report before the Sessions Judge, Mahila Court, Perambalur and the same was taken on file in Spl.S.C.No.2 of 2019. After framing of charges and on completion of trial, the accused/appellant found guilty under Section 451 of IPC and sentenced him to undergo rigorous imprisonment for two years and to pay a fine of Rs.1000/-; and also for the offence under Sections 7 r/w 8 of POCSO Act and sentenced him to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.3,000/-. The accused/appellant was acquitted from the charges under Sections 294(b) and 506(i)IPC. Challenging the said conviction and sentence, the appellant/accused is before this Court.

3. 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 also marked 14 documents as Exs.P1 to P14. On completion of the evidence of the prosecution, the accused was questioned under Section 313 Cr.P.C about the incriminating circumstances found in the evidence of prosecution witnesses, but, the accused has come with the version of total denial and stated that he has been falsely implicated in this case and pleaded not guilty. On the side of the defence, no witness was examined and no document was marked.

4. The Court below, after hearing the arguments advanced on either side and also considering the materials available on record, had convicted the accused/appellant for the offence as referred to above and sentenced him as stated earlier, which is challenged in this Criminal Appeal.

5. The learned counsel for the appellant would submit that the occurrence alleged to have taken place on 01.09.2018. After deliberation, P.W.1/ the de facto complainant, who is the mother of P.W.2 victim girl preferred a complaint before the respondent/police on the next day i.e. 02.09.2018, therefore, there was a delay of one day in preferring the complaint. He would further submit that the victim girl is very well known to the appellant and he is the local man and he has also helped for her studies. Even though the appellant is well known person to the victim girl, she has stated during trial before the learned Sessions Judge that she is not aware of the appellant. Therefore, the prosecution has failed to establish the case that the appellant has committed the offence. The evidence of the victim girl was not corroborated by any other witnesses. He would further submit that the respondent/police have not examined any of the neighbours of the victim girl and also not given sufficient explanation for the delay in filing the complaint. Further, the doctor who was examined as P.W.5 has stated that the victim girl not sustained any injury. Therefore, the evidence of the doctor has not supported the case of the prosecution. Therefore, the prosecution has not proved its case beyond all reasonable doubts. The learned Sessions Judge, only on presumption come to the conclusion that the appellant found guilty for the offence under Sections 451 IPC and 7 r/w 8 of POCSO Act 2012 and convicted and sentenced as referred to above, which warrants interference of this Court.

6. The learned Government Advocate (Crl.Side) would submit that the victim girl was examined as P.W.2 and she has clearly narrated the facts that on 01.09.2018 at 5.30 p.m., while sleeping in her house, the accused has suddenly entered into the house and touched her chest and hugged her and immediately she woke up, the appellant moved from that place. All of a sudden P.W.10, who is the sister of the victim girl entered

into the house. The appellant pushed down the victim girl and her sister and ran away from that place. At that time, the parents of the victim girl were not at house. After their arrival, the victim girl and her sister informed the said occurrence, thereafter, they discussed about the same with their family members and preferred the complaint before the respondent police on 02.09.2018. Hence, the delay has been properly explained by the complainant and the investigating officer. Further, the evidence of the prosecution witnesses P.Ws.2 and 10 clearly established the case. The statement of the victim girl was recorded under Section 164 Cr.P.C by the learned Judicial Magistrate. Therefore, the prosecution has rightly established the case.

7. Heard the learned counsel for the appellant and the learned Government Advocate (Cr1.Side) for the respondent and also perused the materials available on record.

8. The case of the prosecution is that on 01.09.2018 at about 5.30 p.m., the mother of the victim girl was doing her usual chores. While, the victim girl was sleeping at her house, the appellant on sexual intention, touched her chest and hugged her, immediately she woke up, the appellant moved from that place. All of a sudden P.W.10 sister of the victim girl entered into the house, the appellant pushed her down and escaped from that place. Subsequently, the victim girl and her sister informed the said occurrence to their parents. Thereafter, they questioned the appellant regarding the occurrence. The appellant threatened them by using unparliamentary words and also with dire consequences and hence, P.W.1 the de facto complainant preferred the complaint before the respondent police on 02.09.2018. After receiving complaint, the respondent police registered the case against the appellant for the offence punishable under Sections 294 (b), 451, 506(i) of IPC and Sections 7 r/w 8 of POCSO Act 2012. After trial, the learned Sessions Judge convicted and sentenced the appellant for the offence under Sections 451 of IPC and Sections 7 r/w 8 of POCSO Act.

9. It is the specific case of the prosecution that at the time of occurrence, the victim girl is aged about 13 years and was studying 8th standard. Further, the prosecution examined the victim girl as P.W.2 and she has clearly narrated the said incidents. In order to prove the same, the sister of the victim girl was examined as P.W.10 and she has also corroborated the same. Further, the delay has been properly explained by the de-facto complainant and the Investigating Officer. Hence, the prosecution has rightly established the case beyond all reasonable doubts.

10. The minor girls, who were affected in the said occurrence would not rush to the police station immediately and prefer the complaint against the accused person. Naturally, they informed the same to their parents, then only

they preferred the complaint before the police station. Further, the parents also think about the future of the minor girls and the reputation of the family. Normally, they would take advise of the elders in the village, however, if the culprit did not obey the advise of the elders, then only they approach the police station. In this case, though the family members of the victim girl questioned the appellant regarding the occurrence, he threatened them with dire consequences, then only they preferred the complaint on 02.09.2018. Therefore, delay in filing of the complaint is not fatal to the case of the prosecution. Hence, the delay in preferring the complaint was properly explained by P.W.1 de facto complainant. Further, victim's statement was recorded under Section 164 Cr.P.C, by the learned Judicial Magistrate, in which, she has clearly narrated the said facts.

11. Though the learned counsel for the appellant pointed out that the victim girl has not named the appellant, even though she is well known to the appellant, who helped for her studies. On a careful reading of the statement under Section 164 Cr.P.C, it reveals that while the victim girl was sleeping in her house, the accused misbehaved with her, therefore, non-mentioning of the name of the appellant is not fatal to the case of the prosecution. P.W.10 has clearly corroborated the incident and also identified the appellant. In this case, there is no injury or allegation of penetrative sexual assault, therefore, medical examination of the victim girl is not necessary. It is the case of the prosecution that the victim girl has not sustained any injury, therefore, Doctor evidence is not helpful to corroborate the evidence of the victim. Therefore, the evidence of P.Ws.2 and 10 are enough to convict the accused. In a case of this nature, the culprits taking advantage of the loneliness of the minor girls, committing this type of crimes. Therefore, the contention of the learned counsel for the appellant that the neighbours would have seen the said occurrence but they were not examined and the same cannot be accepted. Therefore, mere non-examination of the independent witnesses is not fatal to the case of the prosecution. In cases of this nature, presence of independent eye witnesses are mostly improbable. If the evidence of sole witness is cogent, credible and trustworthy, conviction is permissible.

12. Therefore, the evidence of the victim girl is enough to convict the accused and the Court has to see whether there is any reason to discard the evidence of the victim girl. In this case, no doubt arise for the trustworthiness of the evidence of the victim girl and her sister. Even before the complaint, the village elders and the victim girl family went to the house of the appellant and questioned him about the incident. However, the accused threatened them by using unparliamentary words, then only, they preferred the complaint against the accused/appellant. Further, the victim girl's statement was recorded under Section 164 Cr.P.C. by the

learned Judicial Magistrate. Hence, the prosecution has proved its case beyond all reasonable doubts and established the case in a cogent manner.

13. Under these circumstances, this Court reappreciated the evidence of P.Ws.1, 2 and 10 finds that no further corroboration is necessary in cases of this nature. Therefore, the trial Court, as a fact finding Court has rightly appreciated the entire evidence and arrived at just conclusion, convicted and sentenced the appellant for the offence under Section 451 IPC and Section 7 r/w 8 of POCSO Act.

14. In fine, this Criminal Appeal deserves to be dismissed and accordingly, the same is dismissed. The conviction and sentences passed in Spl.S.C.No.2 of 2019 by the Sessions Judge, Mahila Court, Perambalur is confirmed.

15. It is seen from the records that the appellant/accused is at large and therefore, the trial Court is directed to take appropriate steps so as to immure him in prison to serve out the remaining period of sentence.

Sd/-
Assistant Registrar (CS-IX)

//True Copy //

Sub Assistant Registrar

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To

1. The Sessions Judge,
Mahila Court,
Perambalur.
2. The Inspector of Police,
Arumbavur Police Station,
Perambalur District,
3. The Honourable Posco Committee,
High Court, Madras.
4. The Public Prosecutor,
High Court, Madras.
5. The Deputy Registrar | with a direction to send back the
(Criminal Section), | original records, if any, to the
High Court, Madras. | trial Court

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