

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2021

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRL.A.No.935 of 2019

Jayakumar

..Appellant/Accused

.Vs.

State by Inspector of Police
W23, All Women Police Station,
Royapettah, Chennai-600 014
(Crime No.6/2016)

...Respondent/Complaint

Criminal Appeal filed under Section 374 of the Code of Criminal Procedure to set aside the Judgment of the learned Sessions Judge, Mahila Court, Chennai, made in S.C.No.113 of 2017 dated 01.03.2018, convicting the appellant/accused herein for the offence (i) under Section 10 of Protection of Children from Sexual Offences Act (2 counts) and sentencing him to undergo 5 years simple imprisonment for each count and imposed with fine of Rs.2,000/- for each count in default to undergo further 3 months S.I. for each count and directed the sentences imposed for the offences as above should run consecutively and acquit the appellant/accused from the charges.

For Appellant : Mr.T.R.Ravi
For Respondent : Mr.R.Suryaprakash
Government Advocate

J U D G M E N T

This Criminal Appeal has been filed, challenging the Judgment of the learned Sessions Judge, Mahila Court, Chennai, made in S.C.No.113/ 2017 dated 01.03.2018.

2. The respondent police registered a case against the appellant in Crime No.6 of 2016 for the offences punishable under Sections 7 and 8 of Protection of Children From Sexual Offences Act, 2012 (in short 'POCSO Act'). After investigation, since the offence under POCSO Act is attracted, charge sheet was laid and taken on file by the learned Special Judge, Special Court for cases under POCSO Act 2012/Mahila Court, Chennai in S.C.No.113 of 2017 for the offence under Section 10 of POCSO Act.

3. After completing the formalities, the learned Trial Judge framed charges against the accused for the offence under Section 10 of POCSO Act, 2012 (2 counts).

4. After completing the trial and hearing the arguments advanced on either side and also considering the oral and documentary evidence, the Trial Court found guilty of the appellant for offence punishable under Section 10 of the Protection of Children from Sexual Offences Act 2012 (2 counts) and convicted and sentenced him to undergo 5 years Simple Imprisonment for each count and imposed a fine of Rs.2,000/- for each count, in default, to undergo further period of 3 months Simple imprisonment for each count and the sentences imposed are ordered to run consecutively. Aggrieved over the same, the accused is before this Court by filing this Appeal.

5. The learned counsel for the appellant would submit that grandmother of the victim girls, who had given the complaint against the appellant was not examined in this case and no reason was given for non-examination of the grandmother, who is the main witness and therefore, the non-examination of the main witness is fatal to the case of the prosecution. He would further submit that the victim girls were not sent for medical examination. He would also submit that there is no independent witness examined and there is no eye-witness to the alleged occurrence. He would further submit that the victim children were touted in order to foist a false case against the appellant. He would also submit that there are contradictions between the statement recorded under Section 164 Cr.P.C. and the depositions recorded before the Court, but the trial Court failed to consider the same and convicted the appellant on the ground of presumption and sympathy upon the victim girls and therefore, the Judgment of the trial court is liable to be set aside.

6. The learned Government Advocate (Crl.side) would submit that the victim girls are aged about 7 years and 5 years respectively and on 07.07.2016 at about 2.00 P.M. when the grandmother of the victim girls was standing in front of her house, Briyani parcel was distributed by their neighbour for the occasion of Ramzan; when the second victim child got the Briyani parcel and came home, the accused who came to get Briyani, touched her private parts; due to the same, she got scared and ran to her house and informed the matter to her grandmother and when the grandmother of the victim children and the mother of the victim children went to the place of the occurrence, the first victim child by identifying the accused told that the said old man touched her private parts also and thus the accused has committed the aforesaid offence and subsequently, a case was registered against the appellant and the victim girls were

produced before the Judicial Magistrate for recording statement under Section 164 Cr.P.C. and the learned Magistrate also recorded their statements.

7. He would further submit that since it is not the offence of penetrated sexual assault, the girls were not sent for medical examination and even if they were sent for medical examination, the same will not be helpful to the prosecution and therefore, under such circumstances, non-examination of the victim girls is not fatal to the case of the prosecution. He would further submit that the victim girls have clearly given statements before the learned Magistrate as well as deposed before the Court during trial about the alleged occurrence and the culprit taking advantage of the loneliness of the children had committed the alleged offence and therefore, for such cases eye-witness should not be expected. He would further submit that there is no reason to disbelieve the evidences of the victim girls and therefore, the trial Court has rightly appreciated both oral and documentary evidence and convicted the accused and therefore, there is no merit in the Appeal and the same is liable to be dismissed.

8. Heard both sides. Perused the records.

9. The case of the prosecution is that on 07.07.2016 at about 2.00 p.m. when the grandmother of the victim girls was standing in front of her house, Briyani parcel was distributed by their neighbour for the occasion of Ramzan; when the second victim child got the Briyani parcel and came home, the accused who came to get Briyani touched her private parts; due to the same, she got scared and ran to her house and informed the matter to her grandmother and when the grandmother of the victim children and the mother of the victim children went to the place of the occurrence, the first victim child by identifying the accused told that the said old man touched her private parts also and thus, the accused has committed the aforesaid offence. Subsequently the grandmother of the victim girls lodged the complaint against the appellant.

10. In order to prove the case of the prosecution before the trial Court, on the side of the prosecution as many as 7 witnesses were examined as P.W.1 to P.W.7 and 11 documents were marked as Exs.P1 to P11 and no material object was recovered .

11. 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, but he denied it as false, however on the side of the appellant, no witnesses was examined and no documentary evidence was marked.

12.After hearing the arguments on either side and considering the evidence on record, the learned Special Court for cases under POCSO Act 2012/Mahila Court, Chennai vide judgment dated 01.03.2018 in S.C.No.113 of 2017, convicted and sentenced the appellant as stated above.

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

14.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.

15. One of the victim girls, who was 10 years old at the time of giving evidence, was examined as P.W.1 and she deposed that she went to the shop to buy egg and at that time, an uncle who stood there put his hands on her private part and thereafter she reported the matter to her mother and grandmother. She also deposed that the said person put his hands on the private parts of her sister also. When her mother and grandmother came to know about the same, they caught the appellant and handed over him to the police.

16. Another victim girl, who was 8 years old at the time of giving evidence, was examined as P.W.2. She deposed that Briyani Parcel was distributed due to Ramzan and her grandmother went and got the briyani parcel; subsequently she went to get Briyani parcel by sliding over the stair case and at that time the appellant kept his hands in her private parts and thereafter she informed the said incident to her grandmother and she slapped the appellant and she has lodged the complaint before the police.

17. Subsequently, the victim girls were produced before the learned Judicial Magistrate for recording statement under Section 164 Cr.P.C. and the learned Magistrate recorded their statements and the same were marked as Exs.P1 and P2 respectively.

18. The mother of the victim girls was examined as P.W.3 who deposed that the accused is known to her and she used to call him as Appa and on the alleged date of occurrence, i.e., in the event of Ramzan, when she went to home, her daughter P.W.1 came and told that the 'thatha' whom she used to talk had pat on her buttocks; at that time the accused was drunk and on the same day, one Muslim man was distributing briyani to all the persons near her house; her mother-in-law took her second daughter to get briyani and while her second daughter was claiming steps, the accused had sexually assaulted her by touching her private

parts with his hands. She further deposed that P.W.2 informed the said occurrence to her grandmother, who in turn, slapped the accused and on the same day when P.W.1 went to the shop to buy egg at that time the accused followed her and put his hands on her private parts, thereafter, she reported the same to P.W.3. Thereafter, she went along with her mother-in-law caught hold of the accused and handed over him to the police station and lodged a complaint against him. The granddaughter of the complainant, namely, Krishnakumari was examined as P.W.4 and she has narrated that on the alleged date of occurrence during Ramzan festival, Briyani parcel was distributed to all of the neighbors nearby house; the children of P.W.3 went there along with her grandmother to that house and thereafter both the children came back and reported to their grandmother that the accused misbehaved with them by removing their panties and touched their private parts with hands.

19. In order to prove the age of the victim girls, their birth certificates were marked as Ex.P3 and Ex.P4 which clearly show that the victim girls were 8 years and 6 years respectively and they are the children under the POCSO Act. The children were also produced before the learned Magistrate for recording statement under Section 164 Cr.P.C and statement recorded from the victim girls were marked as Ex.P1 and Ex.P2.

20. From the combined reading of the evidence of P.W.1 to 4 and on a perusal of Exs.P1 to P4, this Court comes to the conclusion that the prosecution has proved its case beyond reasonable doubt and the appellant has committed the offence punishable under Section 10 of POCSO Act. Though the learned counsel for the appellant would contend that the trial Court convicted the appellant on the ground of presumption and sympathy, the appellant has not rebutted the presumption under Section 29 of the POCSO Act. As far as the contention of the learned counsel for the appellant that there are material contradictions in this case is concerned, it has to be seen that the children are 8 and 6 years at the time of occurrence and they could understood good touch and bad touch and thereby they have clearly deposed about the alleged occurrence. Further the appellant who is 66 years, with bad intention, had sexually assaulted the victim girls and thereby committed the offence under Section 9 of POCSO Act and it is found that the contradictions are not material which will not affect the case of the prosecution.

21. As far as the contention of the learned counsel for the appellant that the victim girls were not put to medical examination which would go to the root of the prosecution case, considering the nature of allegations, this Court is of the view that there is no necessity to send the victim girls for medical

examination and hence, it is not the fatal to the case of the prosecution.

22. From the above discussion, it is clear that the trial Court has rightly appreciated the evidence and accordingly convicted the accused as stated above. Therefore, this Court finds no merit in the appeal and hence, the same is liable to be dismissed. Accordingly, this Appeal is dismissed. However, as far as sentence imposed on the appellant is concerned, the trial Court ordered to run the sentences consecutively, but considering the age of the appellant, this Court is of the considered view that directing the appellant to undergo the sentences concurrently would meet the ends of justice. Accordingly, substantive sentence of imprisonment imposed on the appellant is modified and the same are ordered to be run concurrently.

In the result, this Criminal Appeal is dismissed with the above modification.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Sessions Judge, Mahila Court, Chennai.

2.The Inspector of Police
All Women Police Station,
Royapettah, Chennai-600 014.

3. The Deputy Registrar, (Crl.side)
High Court, Madras.

4. The Public Prosecutor,
Madras High Court, Chennai-600 104.

5.The Superintendent of Prison
Central Prison I, Puzhal, Chennai

6.The Hon'ble POCSO Committee
High Court, Madras 104.

+1 CC to Mr.T.R. Ravi, Advocate sr 11216.

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NR(CO)
SP(30/06/2021)