

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 04.07.2022
CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.A.No.198 of 2022
and
Crl.M.P.No.2494 of 2022

Saminathan,
S/o.Kalimuthu

... Appellant

Versus

The State of Tamilnadu,
Rep. by its Inspector of Police,
All Women Police Station,
Neyveli.

... Respondent

Prayer : Criminal Appeal filed u/s.374(2) of the Code of Criminal Procedure, praying to set aside the Judgment passed against the appellant on 31.08.2015 by the District Mazhalir Session Judge, Cuddalore, in Special S.C.No.13 of 2015 and acquit the appellant from all charges in the circumstances of the case.

For Appellant : Mr.V.Murali

For Respondent : Mr.S.Vinoth Kumar,
Government Advocate (Crl.Side)

JUDGMENT

This Appeal arises out of the judgment passed by the learned District Mazhalir Session Judge, Cuddalore in Special S.C.No.13 of 2015, dated 31.08.2015.

2.The appellant, who is the accused in Spl.S.C.No.13 of 2015, aggrieved by the judgment of the learned District Mazhalir Session Judge, Cuddalore, dated 31.08.2015, in and by which, the appellant was convicted under Section 6 r/w 5(m) of POCSO Act and was sentenced to undergo rigorous imprisonment for a period of ten years and pay a fine of Rs.500/- and in default of payment of fine to undergo rigorous imprisonment for a further period of six months and under Section 323 IPC and to undergo rigorous imprisonment for a period of six months.

3.When the matter came up for hearing, the learned Counsel appearing on behalf of the appellant would submit that the appellant is in prison and as so far, undergone the sentence of imprisonment for a period more than seven year. In that view of

the matter, the learned Counsel restricted his arguments on the question of the appropriate provision under which the appellant is convicted and on the sentence alone.

4.The learned Counsel for the appellant would submit that the evidence of the victim child P.W.2 in this case reads as follows :-

“ அந்த தாத்தா எனக்கு சாக்லேட் கொடுத்து கூப்பிட்டுக்கொண்டு போனார். பிறகு எனக்கு யூரின் போகும் இடத்தில் சாமிநாதன் தாத்தா என்னை கீறிவிட்டார். அதன்பிறகு என்னை ஜி கே ஆஸ்பிடலுக்கு கூப்பிட்டு போனார்கள்.”

5. Therefore, taking this Court to Section 3 of POCSO Act (in short 'the Act'), the learned Counsel would submit that there is no any overt act even to attract Section 3(b) of the Act and therefore, the conviction under Section 6 r/w 5(m) of the Act was unsustainable.

6.Per contra, the learned Government Advocate (Crl.Side) appearing for the respondent/Police would submit that even if the offence under Section 5(m) is not made out, still the act committed by the appellant is an aggravated sexual assault as it can be seen from evidence of P.W.1, mother of the victim that the child had injury on her private part. Therefore, he would submit that still the act of the appellant would be an offence under Section 9(i) and 9(m) of the Act.

7.On a careful perusal of the evidence of the victim child and the doctor, who examined in this case, it is clear that the accused had caused bodily harm and injury to the sexual organ of the child and the child is less than 12 years of age and therefore, even though the evidence of the child is as above, still the said act of the appellant, who is an aged person, is heinous in nature and as rightly pointed by the learned Government Advocate (Crl.Side), the same would constitute an offence under Sections 9(i) and 9(m) of the Act.

8.Considering the age of the appellant, who is in advanced age and this heinous and disgusting act to the poor little child, I am of the view that the appellant is to be awarded with maximum punishment for the offence committed by him. But, however, in the absence of any allegation about insertion of finger or even attempting to insert the finger, the judgment of the Trial Court convicting the appellant under Section 6 r/w 5 (m) is unsustainable and therefore, I am inclined to modify the said conviction to the lesser offence punishable under Section 10 of the Act r/w 9(i) and 9(m) of the Act and impose the appellant with the maximum sentence of 7 years. I also confirm

the fine amount of Rs.500/- imposed by the Trial Court. The other conviction in respect of 323 IPC also stands confirmed. Accordingly, this Criminal Appeal is partly allowed with the following terms :-

(i) the judgment of the learned District Mazhalir Session Judge, Cuddalore in Special S.C.No.13 of 2015, dated 31.08.2015 is partially modified in as much as the conviction of the appellant under Section 6 r/w 5(m) of the Act into one under Section 10 r/w 9(i) and 9(m) of the Act and the appellant is sentenced to undergo rigorous imprisonment for a period of 7 years and pay a sum of Rs.500/- and in default of payment of fine, to undergo rigorous imprisonment for a further period of six months;

(ii) in other aspects, the finding and conclusion reached by the Trial Court are confirmed;

(iii) It is stated that the appellant has already undergone and completed sentence and also paid the fine of Rs.500/-;

(iv) the appellant will be entitled to set off the period already undergone and the Superintendent of Police, Cuddalore is directed to forthwith release the appellant, if he had completed the sentence and if he is not required in any other case.

9.With the above terms, this Criminal Appeal is partly allowed. Consequently, connected criminal miscellaneous petition is closed.

Sd/-

Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

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To

- 1.The District Mazhalir Session Judge, Cuddalore.
- 2.The Judicial Magistrate No.I,Cuddalore.
3. Do through the Chief Judicial Magistrate, Cuddalore.
- 4.The Inspector of Police, All Women Police Station, Neyveli.
- 5.The Superintendent,Central Prison, Cuddalore.
- 6.The Superintendent of Police, Cuddalore.
- 7.The Public Prosecutor, Madras High Court.

Copy to:

The Section Officer,
Criminal Section,High Court,Madras
+1 cc to Mr.V.Murali, Advocate Sr.NO. 42427

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skm(CO)

A.SK(19/07/2022)