

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2022

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRL.A.NO.417 OF 2018

S.Kaliyamoorthy,
S/o.Sundaram,
Koundapalayam,
Kumaramangalam,
Tiruchengodu.

Convict No.19100,
Tower 5th Block,
Central Prison,
Coimbatore - 18.

...Appellant / Accused

Versus

The State Rep. by its,
The Inspector of Police,
Rural Police Station,
Thiruchengodu.

...Respondent / Complainant

Prayer : Criminal Appeal is filed under Section 374 (2) of Criminal Procedure Code, to set aside the judgment and order made in Special Calendar Case No.24 of 2015 dated 29.01.2016 on the file of Mahalir Fast Tract Court, Namakkal.

For Appellant : Mr.R.Vinayagamoorthy

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

J U D G M E N T

Heard the Learned Counsel for the appellant and the Learned Government Advocate (Crl.Side) for the respondent.

2. The appellant herein was convicted for offence under Section 10 r/w 9(m) and 6 read with 5(k) & (m) of Protection of Children from Sexual Offence Act, 2012. The petitioner was convicted and sentenced to undergo 7 years R.I and to pay fine

of Rs.1000/- in default 6 months R.I for offence under Section 10 r/w 9(m) and Section 6 r/w 5(k) of the POCSO Act. The period of sentence ordered to run concurrently.

3. According to the prosecution, on 09.02.2014 at about 06.00 p.m., the accused has taken away the minor girl who was playing with her friend to an isolated place near Angalamman temple and had committed penetrated sexual assault and aggravated sexual assault. The minor girl was rescued from the house of the accused and when the girl was enquired, she has narrated the incident to her mother about the act of sexual violence committed on her by the accused. The victim girl was admitted in the hospital and thereafter, complaint to the police was lodged.

4. The victim girl was examined as P.W.2. She has deposed about the act of sexual violence committed by the accused and the trial Court inspired by her evidence and the other corroborated evidence such as evidence of P.W.1 the mother of the victim girl who rescued the girl from the house of the accused and got her admitted in the hospital. P.W.4, another minor girl aged 10 years, who was playing with the victim girl on the date of occurrence coupled with the medical evidence had found the accused guilty of the charges and convicted the accused.

5. In appeal, it is contended that the version of the victim girl or her mother not been supported by any medical evidence and in fact P.W.14 Doctor who has examined the victim girl at Tiruchengode Government Hospital had deposed that the victim girl brought to the hospital alleging that she was sexually assaulted by known person. However, there is no external injury. Relying on Ex.P.14, the medical certificate given by P.W.14, the Learned Counsel for the appellant submits that the conviction is erroneous and contrary to evidence.

6. The Learned Government Advocate (Crl.Side) for the respondent rely upon the judgment of the Hon'ble Supreme Court in Parminder @ Alias Ladka Pola -vs- State of Delhi reported in (2014) 2 SCC 592, has stated that, sign of injury near the private parts of the victim girl is not sine qua non to convict the offender for sexual offence. The evidence of the victim girl who is hardly aged 9 years corroborated by evidence of P.W.4 who is hardly 10 years and the conduct of the accused, who was holding the victim girl in his house locked inside and when the mother of P.W.1 knocked the door, he opened the door and ran away from his house and the minor girl was found weeping is res gestae evidence which is admissible in evidence and the trial Court has rightly convicted the accused.

7. This Court, on re-appreciating the evidence and the reasons stated by the trial Court finds no error to interfere in the appeal. Hence, this Criminal Appeal is dismissed.

Sd/-
Assistant Registrar(CS-VI)

// True Copy //

Sub Assistant Registrar

bsm

To

1.The Mahalir Fast Tract Court,
Namakkal.

2.The Inspector of Police,
Rural Police Station,
Thiruchengodu.

3.The Public Prosecutor,
High Court, Madras.

+2ccs to Mr.R.Vinayagamoorthy, Advocate Sr.No.38420

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SKM(CO)
RVM(13/07/2022)