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Crl.A.No.425 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2022

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.A.No.425 of 2018

Velmurugan

... Appellant

Vs

The State represented by its,
The Inspector of Police,
All Women Police Station,
Rasipuram.
(Crime No.7 of 2015)

...Respondent

PRAYER: This Criminal Appeal has been filed under Section 374(2) of Criminal Procedure Code, to set aside the Judgment dated 04.07.2018 passed in Special C.C.No.51 of 2015 by the learned Sessions Judge Fast Track Mahila, Namakkal.

For Appellant : Mr.S.N.Arunkumar

For Respondent : Mr.A.Gopinath

Government Advocate (Crl. Side)

JUDGMENT

This appeal is directed as against the Judgment passed in Special C.C.No.51 of 2015 dated 04.07.2018, on the file of the learned Sessions Judge Fast Track Mahila, Namakkal, thereby convicted the appellant for the offence punishable under Sections 7 r/w 8 of POCSO Act, 2012.



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2. The case of the prosecution is that the victim was aged about seven years at the time of occurrence and she was studying IInd standard. While being so, on 26.09.2015, she was playing in the house of one Chandran and she did not return to her house on time. When her mother searched for her, it was informed that she was playing in the house of her uncle. On verification, she found that she was not there. When her mother returned to her house, the victim came to the house, without wearing any dress and only with panties. She informed her mother that the accused removed her dress and he rubbed with his male organ into the female organ of the child by laying over the victim. At the time of occurrence, no one was there. Hence, the complaint.

3. On receipt of the complaint, the respondent registered an FIR in Crime No.07 of 2015 for the offence punishable under Sections 7 r/w 8 of POCSO Act, 2012. After completion of investigation, the respondent filed a final report and the same has been taken cognizance by the Trial Court in Special C.C.No.51 of 2015.

4. On the side of the prosecution, they had examined P.W.1 to P.W.12 and marked Exs.P1 to P12. On the side of the appellant, D.W.1 was



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examined and no document was marked. On a perusal of oral and documentary evidence, the Trial Court found the appellant guilty for the offence under Sections 7 r/w 8 of POCSO Act, 2012 and sentenced him to undergo three years rigorous imprisonment and also awarded fine of Rs.1000/-, in default to undergo three months rigorous imprisonment. Aggrieved by the same, this present appeal.

5. The learned counsel for the appellant would submit that only on the basis of conjectures and surmises, the Trial Court convicted the appellant and no evidence was available to convict the appellant. The Doctor, who examined the victim deposed and opined that there is no evidence for sexual intercourse and no injury was found on the victim's vagina. Therefore, the appellant did not commit any offence as alleged by the prosecution. The appellant, in order to disprove the case of the prosecution, examined D.W.1. He categorically deposed that the appellant suffered with defective eye sight and at the date of occurrence, he was working under D.W.1. Therefore, no such occurrence had happened as alleged by the prosecution. The Trial Court without considering these aspects, mechanically convicted the appellant.



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6. Per contra, the learned Government Advocate (Crl.Side) submitted that the victim girl was examined as P.W.2. Her mother was examined as P.W.1. The Doctor, who examined P.W.2 was examined as P.W.8. The opinion issued by the Doctor was marked as Ex.P7. The statement recorded under Section 164 Cr.P.C of the victim, was marked as Ex.P8. The evidence of P.W.1, P.W.2 and the statement recorded under Section 164 Cr.P.C, not only corroborates each other but it is also cogent and trust worthy. The victim girl categorically deposed that she was subjected to penetrative sexual assault by the appellant. Therefore, the Trial Court rightly convicted the appellant and it does not warrant any interference by this Court.

7. Heard Mr.S.N.Arunkumar, learned counsel appearing for the appellant and Mr.A.Gopinath, learned Government Advocate (Crl.Side) appearing for the respondent.

8. The victim, while staying in her uncle's house, was taken by the accused to his house by inducing the victim to show her cartoon film. The accused raised the volume of the TV and subjected her to penetrative sexual



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assault. When the victim was suffering the pain, she shouted and thereafter he left from there. Immediately, she ran away to her house. Next day, she was taken to the hospital. Admittedly, the victim was aged about seven years at the time of occurrence. Her statement was recorded under Section 164 Cr.P.C and the same was marked as Ex.P8. It revealed that she was taken by the accused to show cartoon film in his house. While being so, he removed her dress and committed penetrative sexual assault on her. Therefore, her evidence and the statement recorded under Section 164 Cr.P.C of the victim, corroborated with each other and the victim evidence is the best evidence. She informed the occurrence to her mother who was examined as P.W.1. She also categorically deposed the occurrence and corroborated the evidence of P.W.2. On the next day, i.e., 27.09.2015, she was taken to Government Hospital, Namakkal. The victim felt the pain on her private part and as such the Doctor could not do any test to find out whether she was subjected to sexual intercourse. She issued a report and the same was marked as Ex.P7. She opined that P.W.2 had no external injuries and no bleedings around the external genitalia. There is no evidence to state that she had sexual intercourse. She cannot do the test on the victim's vagina, since she suffered with pain on her vagina.



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9. Therefore, the prosecution proved its case beyond any doubt.

Hence, the Court below rightly convicted the appellant and this Court finds no infirmity or illegality in the order passed by the Court below and this appeal is liable to be dismissed.

10. Accordingly, this Criminal Appeal stands dismissed.

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Speaking order/Non-speaking order

Index :Yes/No

Internet :Yes/No

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G.K.ILANTHIRAIYAN, J.

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To

1. The Sessions Judge Fast Track Mahila, Namakkal.
2. The Inspector of Police,
All Women Police Station,
Rasipuram.
3. The Public Prosecutor,
High Court, Madras.

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