



Crl.A.No.499 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2022

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

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Sarangapani

... Appellant

Vs.

The State rep. By
The Inspector of Police,
W-18, All Women Police Station,
MKB Nagar,
Chennai – 600 039.

... Respondent

Prayer:

Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the conviction and sentence imposed by the Mahila Court/Special Court for Cases under POCSO Act/Children's Court, Chennai-600 104 in S.C.No.287 of 2018 dated 18.07.2019.

For Appellant : Mr.B.Ganesha Moorthy

For Respondent : Mr.S.Sugendran
Additional Public Prosecutor



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JUDGEMENT

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This Criminal Appeal has been filed against the judgment dated 18.07.2019 passed in S.C.No.287 of 2018 on the file of the Mahila Court/Special Court for cases under POCSO Act/Children's Court, Chennai.

2. The respondent police registered a case against the appellant in Crime No.10 of 2017 for the offence under Sections 377 and 506(ii) IPC and under Section 6 of POCSO Act. After investigation, laid a charge sheet before the Special Court for cases under POCSO Act, Chennai, since the offence is against child. The learned Special Judge taken the charge sheet on file in S.C.No.287 of 2018 and after completing the formalities, framed the charges against the appellant for the offence under Section 6 of POCSO Act and under Section 506(ii) IPC.

3. After framing of charges and completing the formalities during trial, in order to prove the case of the prosecution, as many as seven witnesses were examined as P.Ws.1 to 7 and six documents were marked as Exs.P1 to P6. No material object was exhibited.



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4. After completing the examination of the prosecution witnesses, incriminating circumstances were culled out from the evidence of the prosecution witnesses, put before the accused by questioning under section 313 Crpc., and the same was denied by the accused as false and pleaded not guilty. On the side of the defence, no oral and documentary evidence was produced. On completion of trial and hearing the arguments advanced on either side, the trial judge found the appellant guilty for the offence under Section 6 of POCSO Act and convicted and sentenced him to undergo 10 years Rigorous Imprisonment and to pay fine of Rs.10,000/- in default to undergo further period of 6 months Rigorous Imprisonment for the offence under Section 6 of POCSO Act. Further, found the appellant guilty for the offence under Section 506 (ii) of IPC and convicted and sentenced him to undergo three years Rigorous Imprisonment with a fine of Rs.5,000/- in default to undergo further period of three months Rigorous Imprisonment for the offence under Section 506(ii) IPC. Challenging the said judgment of conviction and sentence, the accused has filed the present appeal before this Court.



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5. The case of the prosecution is that the appellant and the victim are neighbours and in the absence of family members of the appellant, the appellant used to take the victim child to his house, had committed sexual assault for two months. On 10.11.2017, the victim boy informed the sexual act of the appellant to his mother. Then, the victim's mother preferred a complaint against the appellant on 11.11.2017 before the respondent police. The respondent police registered the case and investigated the matter and filed the charge sheet.

6. Learned counsel appearing for the appellant would submit that there was an enmity between the appellant and the victim's family. The appellant is a tenant in the house of the victim's paternal uncle. Due to landlord-tenant dispute, they filed a false case against him. Further, he would submit that medical records have not corroborated with the allegations levelled against him. P.W.2-mother of the victim boy has stated that on 03.11.2017 she took the victim boy to the hospital for treatment, but there is no medical record to show that the victim boy has taken treatment in the hospital on that day. In Ex.P4-copy of the AIR, no injury or symptoms



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have been mentioned with regard to sexual assault on the victim boy. When the victim boy was produced before the hospital on 11.11.2017, there was no symptom about sexual assault has been stated whereas, after 40 days, when the victim boy was examined by the Doctor, there was a symptom of sexual assault, which creates doubt. There is no eye witness in this case except P.W.1-the victim boy. P.Ws.2,3 and 4 are only hearsay witnesses and their evidence cannot be given any effect to convict the appellant. P.W.5-the doctor who examined the victim boy has also not supported the case of the prosecution. Hence the genesis of the complaint itself highly doubtful. In order to take vengeance regarding landlord-tenant dispute, they used the victim boy as tool, foisted a false case against him. There are material contradictions between the prosecution witnesses and the medical evidence. The trial court miserably failed to appreciate the evidence. Hence, the order of conviction and sentence passed by the trial court is liable to be set aside.

7. Learned Additional Public Prosecutor appearing for the respondent would submit that age of the victim boy is only seven years. Date of birth of the victim boy is 19.11.2010 and the date of occurrence is 10.09.2017. In



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order to prove the age of the victim, the birth certificate of the victim boy has been marked as Ex.P2. The age of the victim boy on the date of occurrence is 7 years and he is a child under the definition of section 2(1)(d) of POCSO Act. Therefore, the offence committed by the appellant falls under the POCSO Act. Since age of the victim boy is below 12 years, the offence committed by the appellant is termed into an aggravated penetrative sexual assault. In order to substantiate the said charge, the victim boy himself examined as P.W.1 and the victim boy was produced before the Judicial Magistrate to record statement under Section 164 Cr.P.C., and the same was marked as Ex.P1. Statement recorded by the Judicial Magistrate was substantiated with the evidence of P.W.1-victim boy. Though there is no eye witness, the victim boy informed the sexual act committed by the appellant to his mother. When the victim boy informed about the pain on his private part, his mother took him to hospital. Ex.P4-medical records show that there was a symptom of sexual assault on the victim boy. P.W.5 doctor also corroborated the evidence of victim. Prosecution has proved its case based on both oral and documentary evidence and the trial court also rightly appreciated the evidence and



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convicted the appellant for the charged offence. There is no merit in the appeal and the same is liable to be dismissed.

8. Heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record.

9. Admittedly, respondent police registered a case against the appellant originally for the offence under Section 377 and 506(ii) IPC and also under Section 6 of POCSO Act and charges have been framed against the appellant for the offence under Section 6 of POCSO Act and also under Section 506(ii) IPC, however, no charge was framed against the appellant for the offence under Section 377 IPC. In order to substantiate both the charges, on the side of the prosecution, totally seven witnesses were examined and six documents were marked. Out of seven witnesses, the victim boy was examined as P.W.1. On a reading of evidence of the victim boy, it is found that the victim boy informed his mother about the penetrative sexual assault made by the appellant for the past two months and



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also threat made by appellant that if he told the sexual act to any one, he would kill him. Due to fear, he did not inform the sexual act committed by the appellant to his mother immediately. Subsequently, when he was not able to bare the atrocities made by the appellant, he revealed the same to his mother, which leads to give complaint against the appellant. The victim boy was produced before the Magistrate, for recording statement under Section 164 Cr.P.C., which has been marked as Ex.P1 and before the Magistrate also he narrated the entire incident, thus Ex.P1 was substantiated by the evidence of P.W.1. On a reading of the statement recorded under Section 164 Cr.P.C., by the Judicial Magistrate/Ex.P1, it is found that the victim was subjected to penetrative sexual assault and the sexual act committed by the appellant falls under Section 3(a) of POCSO Act. The victim boy was also produced before the doctor on 30.12.2017, to get opinion as to whether the victim boy was subjected to penetrative sexual assault. During clinical examination, the doctor issued certificate Ex.P.4, in which findings of the doctor reads as follows:

“ moderately built and nourished, male child measuring 120 cm in length and weights 18 Kg and his secondary sexual characters developed



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for age, axillary and public hair absent, penis developed for age and skin over penis edematous and painful over examination, upon retraction underlying smegma absent, scrotum and testis were intact there is no enlarged lymph nodes over inguinal region, there is no evidence of sexual transmitted disease, the reflexes are normal, mental condition normal and anus were intact.

On perusal of clinical examination and hospital case records, I am of the opinion that

- i. Yes, Belanoprosthitis (edema over prepuce)*
- ii. Yes, Due to repeated suction pressure over penish the above mentioned injury can happen.*

Iii. Yes.”

P.W.5, the doctor one who conducted medical examination, has clearly stated that the victim was subjected to penetrative sexual assault. Even on the date of receiving the complaint also, the victim boy was admitted in hospital. Copy of A.I.R entry also annexed with Ex.P4. Combined reading of the evidence of the victim and the previous statement recorded by the Judicial Magistrate, it is proved that the victim boy was subjected to



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penetrative sexual assault. Though the learned counsel for the appellant vehemently contended that in the accident register dated 11.11.2017, there is no symptom of injury has been mentioned as stated in the medical certificate dated 30.12.2017, careful reading of the evidence of the victim and also evidence of the doctor, which clearly proved that the victim boy was subjected to penetrative sexual assault. Even though in the Accident Register, it is not specifically mentioned, but unfortunately the prosecution has not examined the doctor who made entry in the Accident Register. Therefore, it is not known whether the doctor who made entry in the Accident Register, has clinically examined the victim boy and whether the Investigating Officer made request to the doctor concerned who examined the victim boy. Even in A.I.R copy, in the history, it is mentioned that the victim boy was subjected to penetrative sexual assault. In previous statement Ex.P1 made by the victim also clearly stated that he was subjected to penetrative sexual assault. Though the learned counsel for the appellant contended that due to personal motive, they foisted a false case, but, he has not examined any other witness to substantiate his defence of personal motive regarding landlord-tenancy dispute. Further, parents of the victim



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are not owners of the building, whereas paternal uncle only owner of the building in which the appellant was residing. Therefore, no parent would sacrifice the future of their child in order to take the vengency of the dispute between the relative of the victim and the appellant. Further, from the evidence of the victim and the medical evidence, it is proved that the victim was subjected to penetrative sexual assault.

10. In cases of this nature, no eye witness can be expected to be available. Considering the facts that the allegations levelled against the appellant was that he committed penetrative sexual assault on the child who is aged about 7 years and also reading of the evidence of the victim boy P.W.1 and also the previous statement recorded by the Magistrate from the victim boy under Section 164 Cr.P.C., there is no possibility of tutoring P.W.1. This Court do not find any reason to discard or disbelieve the evidence of the victim boy, when the evidence of the victim boy is natural, cogent and consistent and there is no reason to disbelieve the evidence on the fault of the prosecution that the Investigating Officer, ought to have immediately produce the victim before the Judicial Magistrate to record



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statement under Section 164 Cr.P.C., within the stipulated time as mentioned in Section 25 of POCSO Act. The Investigating Officer has violated the procedures contemplated under Section 25 of the POCSO Act. The victim was not produced before the medical officer for getting opinion within the stipulated time as mentioned in Section 27 of POCSO Act. Mere defect in investigation may not be the sole ground to discard the evidence of the victim.

11. A careful reading of the entire records, it is found that the victim is a child who was born on 19.11.2010 was subjected to penetrative sexual assault during the month of September 2017 by the appellant. The appellate court is the final court of fact finding, it has to re-appreciate and revisit the entire evidence and give independent finding. This Court also independently finds that the appellant has committed offence under Section 3(a) of POCSO Act since the victim's age is below 12 years, offence committed by the appellant termed into aggravated penetrative sexual assault, which falls under Section 5(m) of POCSO Act, and the victim was subjected to penetrative sexual assault more than once which falls under Section 5(l)

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which is punishable under Section 6 of POCSO Act. Therefore, this Court finds that the trial court rightly appreciated the entire evidence and convicted the appellant for the offence under Section 6 of POCSO Act. As far as the offence under Section 506(ii) IPC is concerned, it is admitted from the evidence of P.W.1 that the appellant had penetrative sexual assault on the victim boy more than once nearly for two months and he has also threatened the victim boy not to reveal the sexual act of the appellant and if he told to anyone, he would kill him. The victim also stated that due to threat, he has not informed about the sexual assault to his mother immediately. Therefore, in the cases of this nature, especially the victims are children, one reason or the other, they will not intimate the sexual act of the accused either to their parents or to their relatives, because of the threat made by the accused. The accused are taking advantage of the innocence of the children, exploiting them sexually. There is no mitigating circumstances to reduce the sentence and moreso, minimum sentence for the offence under Section 6 of POCSO Act is 10 years Rigorous Imprisonment. Therefore, the trial court also imposed minimum sentence of 10 years Rigorous Imprisonment for the offence under Section 6 of POCSO Act.



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12. This Court do not find any reason to interfere with the impugned judgment of the trial court. However, it is found that the Investigating Officer is not following the procedures contemplated under POCSO Act, especially, he had violated the procedures contemplated under Section 27 of the POCSO Act and also Section 164 (A) Cr.P.C., The victim has to be subjected to medical examination within 24 hours from the time of receiving the information relating to the commission of the offence and the investigating officer should produce the victim before the Doctor for medical examination within 24 hours. But, in this case, the victim was subjected to medical examination only after 44 days. This Court again and again has given directions to all the stakeholders to strictly adhere to the provisions contemplated under the POCSO Act, keeping in mind the serious nature of the offence and the circumstances in which the POCSO Act came into force. This Court highly condemns the action of the investigating officer that he has not followed the legal provisions. The Investigating Officer is directed to pay sum of Rs.5,00,000/-(Rs.Five Lakhs only) as compensation to the victim for making the victim from pillar to post for more than 60 days. The said amount has to be paid by the



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respondent/Department within two months and the said amount has to be recovered from the salary of the Investigating Officer concerned and a report is directed to be filed before this Court with regard to the action taken against the concerned Investigating Officer within two months from the date of receipt of a copy of this order.

13. The appellate court is the fact finding court, it has to re-appreciate and revisit the entire evidence and give independent finding. Considering the facts and circumstances of the case, the prosecution has proved its case beyond reasonable doubt. This Court do not find any perversity or any reason to interfere with the judgment of the trial court and there is no merit in the appeal and the appeal is liable to be dismissed. Accordingly the Criminal appeal is dismissed. Judgement of conviction and sentence passed by the Trial Court is confirmed. Consequently, connected miscellaneous petition, if any, is closed.

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Index:yes/No
Internet:yes/No

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To

1. The Sessions Judge,
Mahila Court/Special Court for Cases under POCSO Act/Children's
Court,
Chennai-600 104.
2. The Inspector of Police,
W-18, All Women Police Station,
MKB Nagar,
Chennai – 600 039.
3. The Public Prosecutor
High Court,
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P.VELMURUGAN, J.

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