



Crl.A.No.464 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.11.2022

CORAM:

THE HONOURABLE MR. JUSTICE **P.VELMURUGAN**

Crl.A.No.464 of 2022

Perumalsamy

...Appellant

Vs.

The State represented by
The Inspector of Police,
All Women Police Station,
Perur, Coimbatore.
(Cr.No.20/2019)

...Respondent

This Criminal Appeal is filed under Section 374(2) of Cr.P.C. to set aside the conviction and sentence made in Spl.C.C.No.16 of 2020 dated 04.04.2022 by the learned Sessions Judge, Special Court for Exclusive trial of Cases under the POCSO Act, Coimbatore.

For Appellant : Mr.C.Veeraraghavan

For Respondent : Mr.S.Sugendran
Additional Public Prosecutor



Crl.A.No.464 of 2022

JUDGMENT

The criminal appeal has been filed against the judgment of conviction and sentence dated 04.04.2022 made in Spl.C.C.No.16 of 2020 by the learned Sessions Judge, Special Court for Exclusive trial of Cases under the POCSO Act, Coimbatore.

2 The respondent police registered a case in Cr.No.20 of 2019 against the appellant for the offence under Section 9(m) punishable under Section 10 of the Protection of Children from Sexual Offences Act, 2012 (in short “POCSO Act”) (3 counts) and Section 506(i) (3 counts) IPC. After completing investigation, the respondent police laid a charge sheet before the learned Sessions Judge, Special Court for Exclusive trial of Cases under the POCSO Act, Coimbatore, which was taken on file in Spl.C.C.No.16 of 2020. The learned Sessions Judge, after hearing both the accused and the prosecution and after perusing the records, since there is *prima facie* case, framed charges against the appellant/accused for the offence under Section 9(m) punishable under Section 10 of the POCSO Act (3 counts) and Section 506(i) (3 counts) IPC.



Crl.A.No.464 of 2022

3 Before the trial Court, in order to prove the case of the prosecution, as many as 14 witnesses were examined as P.Ws.1 to 14 and Exs.P1 to P12 were marked. After completing examination of prosecution witnesses, when incriminating circumstances culled out from the evidence of prosecution witnesses were put before the accused by questioning under Section 313 Cr.P.C., he denied the same as false and pleaded not guilty. On the side of the defence, D.W.1 wife of the appellant was examined and no document was marked. Two Court documents were marked as Ex.C1 and Ex.C2.

4 The learned Sessions Judge, Special Court for Exclusive trial of Cases under the POCSO Act, Coimbatore, on completion of trial and hearing arguments advanced on either side, by judgment dated 04.04.2022 convicted the appellant/accused for the offence under Section 9(m) (3 counts) punishable under Section 10 of the POCSO Act and Section 506(i) (3 counts) of IPC and sentenced the appellant to undergo rigorous imprisonment for a period of five years for each count and to pay a fine of Rs.10,000/- for each count, in default, to undergo rigorous imprisonment for



Crl.A.No.464 of 2022

a further period of one year for each default for the offence under Section 9(m) punishable under Section 10 of the POCSO Act and to undergo rigorous imprisonment for a period of one year for each count and to pay a fine of Rs.1000/- for each count, in default, to undergo rigorous imprisonment for a further period of one month for each default for the offence under Section 506(i) IPC and ordered both the sentences to run concurrently. Aggrieved against the said judgment of conviction and sentence, the accused has preferred the present criminal appeal before this Court.

5 The learned counsel appearing for the appellant/accused would submit that there is a contradiction in the evidence of P.W.4 regarding the date of filing the complaint. P.Ws.1 to 3 have stated that near the house of the appellant there were around 15-20 persons doing agricultural work, but, no independent witness was examined by the prosecution to corroborate the evidence of the P.Ws.1 to 3 and prosecution has failed to examine those witnesses. P.Ws.5 to 9 are only relatives of P.Ws.1 to 3. As per the evidence of the Investigating Officer, two independent witnesses were examined and



Crl.A.No.464 of 2022

their statement under Section 161 Cr.P.C. were also recorded, but they have not examined before the trial Court as witness, which are all create suspicious on the case of the prosecution.

5.1 The learned counsel appearing for the appellant/accused would further submit that the victims have categorically stated that two sisters came to their School and taught about good touch and bad touch, but, prosecution has projected that P.W.4 is the only one person went to the School to conduct awareness programme, which creates doubts in the case of the prosecution.

5.2 P.W.4, who set the law into motion and who claimed to be working in the social welfare organisation went to the School, in which the victim children were studying as alleged by the prosecution, has not even produced any scrap of papers to prove that she was working in a particular organisation and there is no document to show who granted permission to P.W.4 to conduct such awareness programme in the school.



Crl.A.No.464 of 2022

5.3 There was previous enmity between P.W.5 Grandmother of P.W.2 and the appellant regarding broking the Drumstick for the Goats owned by P.W.5. Therefore, P.W.5 making use of P.W.4 tutored the witnesses and foisted false case against the appellant. There was no such occurrence taken place as alleged by the prosecution.

5.4 P.W.3 alone was sent for medical examination and other two victims were not sent for medical examination. Further Ex.P6 medical report of P.W.3 shows that there is no external injury present on the body of the victim. Therefore medical evidence also does not support the case of the prosecution.

5.5 Further, P.W.4 Sherin Reshma is a fictitious person and her evidence could not be relied on to record conviction against the appellant, since in Ex.P2 the complaint, she signed in Tamil, but in all other documents she signed in English in different style. Therefore it is not safe to rely on the evidence of the fictitious witness.



Crl.A.No.464 of 2022

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5.6 The trial Court has miserably failed to consider the above facts and erroneously convicted the appellant/accused, which warrants serious interference of this Court and the learned counsel prays to allow the appeal by setting aside the conviction recorded against the appellant.

6 The learned Additional Public Prosecutor appearing for the respondent police would submit that on 15.08.2019 when the victims went to the place near the house of the appellant/accused, the appellant called them to his field house and provided biscuit, chocolates and fruits and at about 3.00 p.m. removed their dresses and touched the chest of all the three victim children and also threatened them that if they reveal the same to anyone, he will kill them. Thereafter on 28.08.2019 P.W.4, who was the social worker, went to the School, in which the victims studied, to conduct awareness programme and taught the students about good touch and bad touch. At that time, P.Ws.1 to 3 have informed P.W.4 about the sexual assault made by the appellant/accused on the victims. Subsequently, P.W.4 made complaint against the appellant/accused and the case was registered.



Crl.A.No.464 of 2022

WEB COPY

6.1 The contradictions pointed out by the learned counsel for the appellant/accused are not material contradictions and the same would not affect the case of the prosecution. As far as the contention raised by the learned counsel for the appellant that P.W.4 is fictitious person and the victims stated that Sherin Reshma two sisters came, but the prosecution claimed that P.W.4 Sherin Reshma as one person, is concerned, from the evidence of P.W.11, the Head Master of the School, it is clear that Sherin Reshma is only one person and they have obtained permission from District Educational officer through mobile phone. Therefore the defence taken by the appellant could not be acceptable.

6.2 The statement of all the victims under Section 164 were recorded, in which, all the victims have categorically stated about the sexual assault made by the appellant/accused. Subsequently, while examining before the Court also they have clearly stated about the act of the appellant, which falls offence under the POCSO Act and he also threatened the victims and the offence under Section 506(i) also attracted. Prosecution has proved



Crl.A.No.464 of 2022

its case beyond all reasonable doubt and the trial Court has rightly recorded conviction against the appellant, which does not call for any interference of this Court.

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

8 Case of the prosecution is that on 25.08.2019 when P.W.5 took all the victims to the grazing land situated near the place, where the accused resided, appellant/accused took the victims to his garden and gave them biscuits, chocolates and fruits and about 3.00 p.m. he removed their dresses and touched the chest of all the victims and when they raised noise, the appellant threatened them that if they reveal the same to anyone, he will kill them. Hence the present case was registered against the appellant for the offence under Section 9(m) (3 counts) punishable under Section 10 of POCSO Act and Section 506(i) (3 counts) of IPC.



Crl.A.No.464 of 2022

9 This Court, being an Appellate Court, is a final Court of fact finding, which has to necessarily re-appreciate the entire evidence and give an independent finding. Accordingly, this Court has re-appreciated the entire oral and documentary evidence produced before this Court.

10 P.Ws.1 to 3 are the victims, P.W.4 is the one Sherin Reshma, who was working in a social welfare organisation and who set the law into motion by filing the present complaint against the appellant. P.W.5 is the Grandmother of P.W.3, who took the victim to the land situated near the house of the appellant. P.W.6 is mother of P.W.1, P.W.7 is mother of P.W.3, P.W.8 is father of P.W.3, P.W.9 is Grandmother of P.W.2. P.W.10 is the Doctor, who conducted medical examination on P.W.3, P.W.11 is the Head Master of the School, in which the victims were studying. P.W.12 is a Mahazar witness, P.W.13 and 14 are the Investigating Officers.

11 To prove the age of the victims, prosecution has marked Ex.P3, P4, P5 copy of Birth Certificates of the P.Ws.1 to 3 and as per the above documents, prosecution has proved that age of the victims at the time



Crl.A.No.464 of 2022

occurrence was only 10 and 11 years and hence they are children under the definition of Section 2(1)(d) of POCSO Act.

12 As far as commission of offence is concerned, the statement under Section 164 Cr.P.C. were recorded from the victims, in which, they have clearly deposed that the appellant called them and gave chocolates and removed their dresses and touched their chest and also threatened them with dire consequences. Subsequently they have also examined before the Court as P.Ws.1 to 3, which also clearly proved that the appellant committed sexual assault on the victims and the same are corroborated with the previous statements of the victims.

13 It is contended by the learned counsel for the appellant that out of three victims P.Ws.1 to 3, P.W.3 alone sent for medical examination and the medical report also does not support the case of the prosecution. It is not the case of the prosecution that the appellant committed penetrative sexual assault and the victims sustained injuries and it is the specific case of the prosecution that the appellant touched the breast of all the victims and hence



Crl.A.No.464 of 2022

the offence committed by the appellant falls under Section 7 and since all the victims are below the age of 12 years at the time of occurrence, the offence falls under Section 9(m) aggravated sexual assault, punishable under Section 10 of the POCSO Act. Hence the contention of the learned counsel for the appellant is not acceptable and in all the cases, corroboration of medical report is not necessary and it is depends upon the nature of allegation made against the accused.

14 The other defence taken by the appellant is that P.W.4 is fictitious person and the victims have stated that two sisters came and taught about the good touch and bad touch, whereas prosecution has projected that P.W.4 Sherin Reshma is the one person, who went to the School and conducted awareness programme, therefore it is proved that there is no truth in the prosecution story. But, a perusal of the evidence of P.W.11 Head Master of the School, it is clear that P.W.4 being a social worker, asked permission to conduct good touch bad touch awareness programme and he also after obtaining permission from District Educational Officer through mobile, permitted P.W.4 to conduct the awareness programme in the School



Crl.A.No.464 of 2022

and P.W.4 also on 28.08.2019 conducted the programme. Thereafter, P.W.4 informed him that three children complained about the sexual assault committed by the appellant and she subsequently registered the complaint. Therefore, from the evidence of P.W.11, it is proved that P.W.4 has conducted the awareness programme and at that time the victims have reported her about the sexual assault committed by the appellant. Further P.Ws.1 to 3 have also categorically stated that after having the good touch bad touch programme, they informed P.W.4 that the appellant committed sexual assault on them and thereafter P.W.4 filed the complaint against the appellant.

15 The evidence of prosecution witnesses 1 to 3 corroborate with the evidence of P.W.4 with regard to the conduct of awareness programme and the sexual assault committed by the appellant. This Court does not find any reason to discord and disbelieve the evidence of all the victim children.

16 Even though, the appellant took a defence of previous enmity between P.W.5 and the appellant, the appellant has not substantiated the



Crl.A.No.464 of 2022

same by examining any other witness or by cross examining the prosecution witnesses. It is also the contention of the learned counsel for the appellant that there is no independent witness examined by the prosecution. Cases of this nature, we cannot expect independent witness to corroborate the evidence of the victim girl. In this case, the victims have not stated that the any independent witness has noticed the occurrence. The culprits will always take advantage of the loneliness of the children and exploit their innocence for satisfying the sexual intend of the culprits. Hence non examination of independent witness is not fatal to the case of the prosecution. If the Court finds that evidence of the victim is cogent, consistent and natural and also inspires the confidence of the Court, the Court can record the conviction against the accused. Once prosecution proved the foundational facts of sexual assault committed by the accused falls under Section 9(m) of the POCSO Act, presumption under Section 29 and 30 would come into play and it is for the accused to rebut the presumption in the manner known to law. In the present case on hand, the appellant/accused has not rebutted the presumption and this Court does not find any perversity and there is no valid ground to interfere with the



Crl.A.No.464 of 2022

judgment of conviction made by the trial Court.

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17 In fine, this Court come to the conclusion that there is no merit in the appeal and there is no sound reason to interfere with the judgment of conviction and sentence. Accordingly, this criminal appeal is dismissed. The trial Court is directed to secure the appellant/accused to serve remaining period of imprisonment, if any.

08.11.2022

Index : Yes/No
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To

1. The Sessions Judge, Special Court for Exclusive trial of Cases under the POCSO Act, Coimbatore.
2. The Inspector of Police, All Women Police Station, Perur, Coimbatore.
3. The Public Prosecutor, High Court of Madras.



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Crl.A.No.464 of 2022

P.VELMURUGAN, J.,

cgi

Crl.A.No.464 of 2022

08.11.2022