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Crl.A.No.927 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2022

C O R A M

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.927 of 2022

Chandran

... Appellant

Vs.

The State Rep. by
The Inspector of Police,
All Women Police Station,
Avinasi.
Crime No.09/2020

... Respondent

PRAYER: Criminal Appeal is filed under Section 374(2) of Cr.P.C. to set aside the conviction and sentence passed by the learned Special Judge, Mahila Court, Tiruppur, in Special SC.No.01 of 2021, dated 23.12.2021.

For Appellant : Mr.C.Samivel
Legal Aid Counsel

For Respondent : Mr.S.Sugendran APP



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J U D G M E N T

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This Criminal Appeal has been filed against the Judgment of Conviction and Sentence, dated 23.12.2021 made in Spl.S.C.No.01 of 2021, on the file of the learned Special Judge, Mahila Court, Tiruppur.

2. The specific case of the prosecution is that the appellant/accused, who unfortunately happens to be the father of the victim, had been committing sexual assault on her. On 24.11.2020 at about 9.00 pm, there was a dispute between the appellant/accused and his wife. The appellant/accused was in the drunken mood. He brought his daughter/the victim girl from her grandmother's house to his house and due to injuries in the appellant/accused's hand, the victim girl prepared and fed the food to her father/accused. Thereafter when he was lying, the victim girl was also lying to sleep near her father. At about 10.30 PM, the appellant/accused put his hand and leg on the victim girl. At that time, the victim girl thought that the appellant/accused put his leg in a drunken state and lifted his leg and hand and put it down. Again the appellant/accused put his leg on her and tightly



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hugged her and therefore, the victim girl questioned the appellant/accused and put down his leg and hand and alarmed by her voice. Then the appellant/accused pushed her on the side of the wall and told that “I was not your father” and grabbed her chest and squeezed and committed sexual assault. Further, the appellant/accused threatened her and attacked her by knife. At that time, the victim girl was afraid and on hearing the voice of the victim girl, one Mr.Kumaresan, neighbour of the victim girl came and rescued her and dropped her in her grandmother's house. Then the victim girl told the entire incident to her mother. Thereafter, on 26.11.2020 the mother of the victim girl lodged a complaint against the appellant/accused.

3. Based on the complaint, the respondent-Police registered a case against the appellant/accused for the offence punishable under Section 9(n) r/w Section 10 of POCSO Act. Subsequently, the Investigating Officer, investigated the matter and charge sheet was laid before the learned Special Judge, Mahila Court Salem, since the offence is against a child.



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4. The learned Special Judge, Mahila Court, took the charge sheet against the appellant/accused on file for the offence under Sections 9(i) and 9(n) r/w Section 10 of POCSO Act. After completing the formalities, in order to substantiate the charges levelled against the appellant before the Trial Court, on the side of the prosecution as many as 7 witnesses were examined as PW-1 to PW-7 and 12 documents were marked as Exs.P.1 to Exs.P.12 and one material object was exhibited as MO-1. On the side of the defence, no oral and documentary evidence was let in.

5. The Trial Court after considering the entire materials and hearing the arguments advanced on either side, by order dated 23.12.2021, convicted the appellant/accused for the offence under Section 9(n), which is punishable under Section 10 of POCSO Act and sentenced him to undergo 7 years Rigorous Imprisonment and to pay a fine of Rs.10,000/- in default, sentenced him to undergo a further period of six months' rigorous imprisonment and for the offence under Sections 9(i), which is punishable under Section 10 of POCSO Act, sentenced him to undergo 7 years' Rigorous Imprisonment and



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to pay a fine of Rs.10,000/- in default, sentenced him to undergo a further period of six months rigorous imprisonment and for the offence under Section 506 (1) IPC, sentenced him to undergo 2 years' Rigorous Imprisonment and to pay a fine of Rs.5,000/- in default, sentenced him to undergo a further period of three months' rigorous imprisonment.

6. The learned counsel for the appellant would submit that the appellant is none other than the biological father of the victim girl and no father will do this type of offence against his own daughter and the occurrence is alleged to have taken place on 24.11.2020, whereas the complaint was given only on 26.11.2020; there is a delay which has not been explained by the prosecution and the unexplained delay is fatal to the case of the prosecution. Since there is a quarrel between the husband and his wife and they were living separately and in order to wreck vengeance against the husband, the mother foisted a false case against the appellant/husband. Further the learned counsel would submit that the appellant sustained injury in his right hand, which is evident from the evidence of the victim girl and



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the mother, since it is stated that the victim girl prepared and fed the food to her father. If that be the case, how could it be said that the appellant held the neck of the victim with his right hand, squeezed the breast of the victim and committed the offence, which would clearly show that there are material contradictions.

7. Further, the learned counsel would submit that though the prosecution has stated that the appellant attacked the victim with knife, but, that knife was not recovered and as per the medical evidence also it is seen that she sustained injury only 2mm inches and there is a possibility of nail scratches only. Except that no other injuries on her. Further, the learned counsel would submit that the prosecution ought to have examined the neighbour one Mr.Kumaresan, who secured the victim girl and dropped her in her grandmother's house. But the said Kumaresan was not examined by the prosecution and the prosecution failed to give explanation as to why this witness was not examined. Therefore, the failure on the part of the prosecution to examine the said neighbour is fatal to the case of the



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prosecution. Thus, the learned counsel appearing for the appellant would submit that the prosecution failed to prove the case as projected by them and the charges framed against the appellant has not been proved by the prosecution beyond reasonable doubt and even the Trial Court also failed to appreciate the same, which warrants interference with the order passed by the Court below.

8. The learned Additional Public Prosecutor would submit that the victim girl, who is aged about 16 years at the time of occurrence and in order to prove the age of the victim Ex.P.3/Educational Certificate was marked, and as per the same, date of birth of the victim girl is 23.08.2005, who is a minor child and the offence falls under the definition of the POCSO Act. Further the learned Additional Public Prosecutor would submit that as far as the commission of offence is concerned, the victim girl was examined as PW-1, and she has narrated the entire incident which happened on 24.11.2020 and the mother of the victim was also examined as PW-5, who has corroborated the evidence of the victim. Further, the learned Additional



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Public Prosecutor would submit that the appellant is the biological father of the victim girl and he committed the offence and due to child's future, the mother of victim hesitated to file a complaint immediately. Further, the learned Additional Public Prosecutor by relying upon the Ex.P.1, Ex.P2, Ex.P5, the accident register/Ex.P.10, medical certificate/Ex.P11 and the statement recorded under Section 164 Cr.P.C., Ex.P.9 from the victim would submit that the prosecution has proved its case beyond reasonable doubt and the charges framed against the appellant under Section 9(i) & 9(n) of POCSO Act, since the victim is aged about 16 years and the offences fall under Sections 9(i) & 9(n) which are punishable under Section 10 of POCSO Act and Section 506(1) IPC and the Trial Court rightly appreciated the oral and documentary evidence and convicted the appellant and there is no merit in this appeal and the same is liable to be dismissed.

9. Heard the learned counsel on either side and perused the materials available on record.



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10. On a perusal of the statement recorded under Section 164 of Cr.P.C., and the evidence of the victim girl P.W.1, it could be seen that admittedly, the appellant/accused is none other than the biological father who has committed sexual assault on his daughter. Therefore, this Court finds that there is no reason to discard or disbelieve the evidence of the victim child and the statement recorded under Section 164 of Cr.P.C., and there is no doubt about the trustworthiness of the victim child and since the age of the victim child is only 16 years, she cannot be tutored by the mother for this kind of offence.

11. The next contention of the learned counsel for the appellant is with regard to the delay in filing the complaint and registering the case, mere sending the FIR belatedly to the Court may not be a sole ground to disbelieve or discard the evidence of the prosecution witnesses. Mere defect in the investigation also may not be a ground to disallow the case of the victim and the appellant cannot be entitled for acquittal on that ground.



12. Admittedly, the case was registered against the appellant/accused.

The statement under Section 164 Cr.P.C., was recorded from the victim by the Judicial Magistrate, which was marked as Ex.P.9 and a careful reading of the evidence of PW-1 and previous statement of the victim made before the Judicial Magistrate, it could be seen that the victim has clearly narrated about the incident and what had happened to her. The mother of the victim/PW-5 also has corroborated the evidence of PW-1. Even before the Doctor/PW-2 who conducted the medical examination also, the victim girl has clearly deposed the entire incident on the date of occurrence. Therefore, from the evidence of PW-1, PW-2 PW-3 & PW-5, statement recorded under Section 164 Cr.P.C., by the Judicial Magistrate as Ex.P9, educational certificate of the victim/Ex.P3, Accident register/Ex.P10 and Medical Certificate/Ex.P11, it would clearly show that the victim girl was subjected to sexual assault by none other than her own father caused injury and threatened her and the appellant has committed the offences under Section 9(i) & 9(n), which are punishable under Section 10 of POCSO Act and Section 506(1) of IPC.



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13. The other contention of the learned counsel appearing for the appellant is with regard to certain discrepancies and also contradictions. A careful perusal of the records would show that there is a contradiction, which is not a material contradiction. If there was a dispute between the husband and wife, the wife/mother of the victim would not use the daughter as a tool to lodge a complaint against her husband and there was no necessity to foist such a serious offence against the husband by spoiling the future of the victim child and daughter/victim girl also would not have supported the mother to give a hasty allegation against her own father and therefore the ground raised by the learned counsel for the appellant is rejected.

14. The last contention of the learned counsel for the appellant is that though the victim girl was attacked by knife, but however, that knife was not recovered by the prosecution. Normally, corroboration of oral evidence is necessary, whereas, for the offence under POCSO Act, the evidence of the victim girl is sufficient and mere defect of not recovering the knife may not



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be a ground to disallow the case of the victim and the appellant cannot be entitled for an acquittal on that ground. Further, the defence has not established that for what reason, they foisted a false case against the appellant. Though the appellant had taken the defence of motive behind the complaint, but however, it has not been established in the manner known to law.

15. Since this Court is an Appellate Court and also a final Court of fact finding, it has to re-appreciate the entire evidence and come to the conclusion independently. On a reading of the entire materials and the evidence of the victim girl/PW-1, Doctor/PW-2 and mother of the victim/PW-5 and the age of the victim girl and the fact that the victim girl knows what is bad touch and good touch, it can be seen that the victim girl/daughter could not have made such a hasty allegation against her own father. Therefore, this Court is of the view that it is very clear that the appellant has committed the offence under Section 9(i) & 9(n) punishable under Section 10 of POCSO Act, since the age of the victim is 16 years. The appellant has also committed an offence under Section 506(1) IPC.



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Therefore, this Court does not find any perversity or any good reason or good ground to interfere with the judgment of the Trial Court.

16. Therefore, under these circumstances, this Court finds that the prosecution has proved its case beyond any reasonable doubt and there is no reason to interfere with the judgement of the learned Special Judge, Mahila Court, Tiruppur and the same is confirmed. There is no merit in the Appeal and the same is liable to be dismissed. Accordingly, the Criminal Appeal is dismissed.

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Speaking Order / Non-speaking order

Index : Yes / No.

Internet : Yes/No

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P.VELMURUGAN, J.

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To

- 1.Learned Special Judge, Mahila Court, Tiruppur
- 2.The Public Prosecutor,
Madras High Court, Chennai.
- 3.The Inspector of Police,
All Women Police Station,
Avinasi.

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