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CRL A No.946 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2022

Coram:

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

Criminal Appeal No.946 of 2022

K.Pandiyan

... Appellant

Vs.

The State, rep. by the Inspector of Police,
AWPS, Jeyankondam Police Station,
Ariyalur District.
Crime No.19/2019.

... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to call for the records pertaining to Special S.C.No.08/2020 on the file of Sessions Judge, Fast Track Mahila Court, Ariyalur and set aside the judgment of conviction dated 15.06.2022.

For Appellant : Mr.P.Tamilavel

For Respondent : Mr.S.Sugendran
Additional Public Prosecutor



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JUDGMENT

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This Criminal Appeal has been filed to set aside the judgment of conviction and sentence passed by the learned Sessions Judge, Fast Track Mahila Court, Ariyalur in Special S.C.No.8/2020 dated 15.06.2022.

2. The respondent police registered a case against the appellant in Crime No.19 of 2019 for the offences punishable under Section 354(A)(1)(i), 506(ii) IPC and also Section 7 and 8 of POCSO Act. After investigation, they laid a charge sheet before the Special Court and the learned Sessions Judge, taking cognizance of the charges, has taken it on file as Special S.C.No.8 of 2020. On completion of formalities, the Trial Court framed charges against the appellant for the offence under Section 7 r/w Section 8 of POCSO Act and also under Section 354(A)(2) and 506(ii) IPC.

3. After framing charges and completing the formalities, during Trial, in order to substantiate the charges framed against the appellant, on the side of the prosecution, as many as 12 witnesses were examined as PW1 to PW12 and 6 documents were marked as Ex.P1 to Ex.P6 and one



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court document was marked as Ex.C1. No material objects was exhibited.

4. After completing examination of entire prosecution witnesses, incriminating circumstances culled out from the evidence of the prosecution witnesses were put before the appellant / accused by questioning under Section 313 Cr.P.C. However, the same were denied by the accused as false and pleaded not guilty. On the side of the defence, one witness was examined as Dw2, however, no documentary evidence was produced.

5. On completion of trial and hearing the arguments advanced on either side and considering the materials, the trial Court found guilty of the appellant for the offence under Section 7, punishable under Section 8 of POCSO Act and also found guilty for the offence under Section 354A(2) and 506(ii) IPC. Accordingly, the Trial Court convicted the appellant for the offence under Section 7, punishable under Section 8 of POCSO Act and sentenced him to undergo five years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo a



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further period of one year simple imprisonment. Since the Trial Court imposed sentence for the offence under Section 8 of POCSO Act, which is a Special Act, separate sentence for the offence under Section 354A(2) did not impose. However, the Trial Court found not guilty of the appellant for the offence under Section 506(ii) IPC and hence, he was acquitted for the said offence.

6. Aggrieved over the above said judgment of conviction and sentence, the accused has filed the present appeal before this Court.

7. The specific case of the prosecution is that, the daughter of the de-facto complainant, aged about 13 years was studying VIII Standard on the date of occurrence and her date of birth is 17.11.2006 and she was living with her mother. During holidays, after half yearly examination, the victim was being at her home and on 24.12.2019, goats belonging to them did not return to home, after grassing. Hence, at 4.40 p.m., she went for searching the missing goats. While she was searching the missing goats near dilapidated building at the premises of E.B. office, the appellant followed the victim, pulled her inside the dilapidated building



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and kissed on her cheek and told the victim that he will provide bangles and dresses during Pongal festival. Further he caught hold her hand, pressed her breast and hugged her. The victim girl tried to escape from the clutches of the appellant and while she calling her grandmother for help, the appellant threatened by saying that, if she reveals to anybody, he will take away her life. Without bothering the same, the victim ran away and escaped from the appellant and informed the same to her grandmother. Subsequently, the father of the victim gave a complaint and it was registered and the respondent police investigated the matter and filed a charge sheet. After Trial, the Trial Court convicted and sentenced the appellant as stated above.

8. The learned counsel for the appellant would submit that, there was a contradictions in the evidence given by the victim before the Judicial Magistrate under 164 Cr.P.C (Ex.C1) and before the Trial Court as PW1. The Victim says at one place that they got goats and another place, they got single goat. The witness admitted that the occurrence is alleged to have taken place at the E.B.office and nearby there are quarters and none will allow to go into the E.B. office. Therefore, the version of



the prosecution is imaginary and they have not proved the place of occurrence and also the occurrence. Since the occurrence is alleged to have taken place in the E.B. office, in which, none would be allowed, it is improbable that the victim went to the E.B. premises to search the missing goat, while grassing.

8.1. Further, he would submit that the victim girl stated to the grandmother and the other witnesses that she was subjected to sexual assault. However, the victim was not subjected for medical examination, and if she was subjected to medical examination, the medical reports would reveal, whether the victim was sexually assaulted or not. Since it is a false case and in order to suppress the case, the victim was not subjected to medical examination, which clearly proved that the case of the prosecution is false.

8.2. He would further submit that if really the victim girl was subjected to sexual assault, she would have raised alarm and on hearing her voice, the persons, who are residing nearby quarters, would come for rescue. Since there was no occurrence said to have taken place, as projected by the prosecution, no independent witnesses were examined in



this case.

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8.3 The another contention of the learned counsel for the appellant is that there was a delay in filing the complaint and registering the case and also sending the FIR to Court, which are all fatal to the case of the prosecution. However, after much deliberation, the respondent police foisted a false case against the appellant and hence, the prosecution has failed to prove its case, beyond reasonable doubts.

8.4. It is the contentions of the learned counsel for the appellant that, birth certificate of the victim was not produced; in the observation mahazar, the prosecution has not specifically stated about the actual place of occurrence; and the rough sketch reveals that there was crowd and people were there in and around the occurrence place, however, no independent witness was examined to speak about the occurrence. Therefore, the learned counsel argued that in the absence of any medical evidence and also independent witness, it is safe to record that the Trial Court has failed to appreciate the evidence and erroneously convicted the appellant and hence the judgment of conviction and sentence passed by



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the Trial Court is liable to be set aside and the appellant has to be acquitted.

9. The learned Additional Public Prosecutor would submit that, in this case, the date of birth of victim is 17.11.2006 and the date of occurrence was 24.12.2019 and hence, the age of the victim was only 13 years, at the time of occurrence and hence, she was a child under the definition of POCSO Act. Further, on the date of occurrence, the victim was residing with her grandmother and she was being at her home, since, school was closed, after half yearly examination. On that day, one of the goats have not returned from the grassing place and hence, she went for searching the missing goat nearby E.B. premises, where, the appellant followed her, pulled her into the dilapidated building situated at the E.B. premises and hugged her, kissed her and pressed her breast. He also caught hold her hand and said that he will provide bangles and other articles during Pongal festival and also threatened her with dire consequence, if she revealed to anybody. Immediately, the victim escaped from the clutches of the appellant and ran away from that place and informed the same to her grandmother and subsequently, informed to her



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mother and father. Thereafter, her mother gave a complaint and the respondent police registered the case. The victim has given a statement under Section 164 of Cr.P.C. before the Judicial Magistrate narrating the occurrence, and it was marked as Ex.C1 and during the Trial, she was also examined as PW1.

9.1 The learned Additional Public Prosecutor submitted that a combined reading of evidence of PW1 and Ex.C1 makes it clear that the prosecution has proved that the appellant had committed sexual assault on the victim, which is punishable under Section 8 of POCSO Act. Further, though in this case, there is no independent witnesses, the victim has not stated that the apart from the victim and the appellant, somebody also there in the nearby place of occurrence and they also noticed the occurrence. Further, the victim has not stated that she sustained injury. The PW2, father of the victim has clearly stated that since the victim got afraid about the medical examination, she was not subjected to do so. Even otherwise, the evidence of victim is cogent, consistent and it is natural, therefore, though there is no independent witness, the Court cannot reject the evidence of prosecutrix, namely the victim.



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9.2. He further argued that, in a case of this nature, no independent witness can be expected, soon after the occurrence, however, the victim informed about the occurrence to the PW2, PW3, PW4 and PW5 and their evidence also corroborated with the evidence of PW1, victim. Mere non medical examination of the victim, may not be a sole ground to disbelieve the evidence of victim. Since the victim is a child and she was subjected to sexual assault by the appellant, charge was framed against the appellant punishable under Section 8 of POCSO Act and the Trial Court has rightly appreciated the evidence of prosecution and has rightly convicted the appellant as stated above. Since the appellant was convicted under Section 8 of POCSO Act, which is a Special Act and the offence under Section 354 A(2) IPC is similar in nature, the appellant was not sentenced separately for the said offence. Therefore, there is no merit in the appeal and the same is liable to be dismissed.

10. Heard the counsel appearing on either side and I have perused the materials on record.



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11. The case of the prosecution is that the victim is a minor and she was subjected to sexual assault by the appellant in a secular place and hence the case was registered. As already stated, in order to substantiate the case of the prosecution, totally 12 witnesses were examined and 6 documents were marked and also one Court Document was marked as Ex.C1.

12. A perusal of the materials and the evidence of PW1/victim shows that, at the time of occurrence on 28.04.2018, the victim was studying in VIII standard, aged 13 years, and her date of birth is 17.11.2006. In order to substantiate the evidence for age, on the side of the prosecution, Ex.P3 was marked through PW9, Head Master of the School, in which the victim was studying. As per the evidence of PW1, PW9 and as per Ex.P3, date of birth of victim is 17.11.2006 and the defence side also not challenged the above fact. Therefore, the prosecution proved that at the time of occurrence, the victim was aged 13 years and had not completed 18 years, as such she was child under the definition of Section 2(1)(d) of the POCSO Act.



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13. As far as the commission of offence is concerned, the victim was examined as PW1 and during her evidence, she deposed that the appellant had committed sexual assault on her, by hugging, kissing, and pressing her breast. The prosecution has also filed the previous statement of the victim, made before the Judicial Magistrate, soon after the occurrence, under 164 of Cr.P.C. as Ex.C1, in which the victim has narrated the incident. Though the learned counsel for the appellant has pointed out some discrepancies in the statement of the victim recorded under Section 164 Cr.P.C. and the deposition of PW1, this Court finds that they are only minor in nature and not material contradictions, which will go to the route of the case of the prosecution.

14. Further, a reading of deposition of PW2 - Father of the victim; PW3 - Grandmother; PW4 - Grand father; and PW5- Aunt of the victim shows that their evidence corroborated with the evidence of victim. Even though the PW2 to PW5 had not seen the occurrence and they have not stated that they saw the victim along with the appellant, their evidence would clearly go to show that, soon after the occurrence, the victim escaped from the clutches of the appellant and left the place of occurrence



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and immediately, she informed her grandmother-PW3 and subsequently informed to PW2, PW4 and PW5 and their evidence is corroborated with the evidence of victim/PW1.

15. The main contention of the appellant is that the victim was not subjected to medical examination and while examining as PW1, the victim has not stated that, she sustained scratch injury on her breast. However, soon after the occurrence, she informed to the other witnesses, and they have also noticed the same.

16. It is argued by the learned counsel for the appellant that the prosecution has not produced the victim for medical examination. For which, the father of the victim stated that since the victim afraid about the medical examination and was not in normal states, she was not sent for. Therefore, non sending the victim for medical examination, is not a sole ground to discard the evidence of the victim and there is no personal motive between the victim and the appellant and there is no need for the victim to give a false version as against the appellant.

17. The learned counsel for the appellant submitted that there was a



personal motive between the family of the Aunt of the victim and the appellant and in view of the same, false case has been foisted against the appellant. If really there was a personal motive as stated by the appellant, no victim sacrifices their future, by filing false case against the appellant. Therefore, the defence taken by the appellant is not acceptable and there is no probable defence raised by the appellant.

18. In a case of this nature, normally, independent witnesses would not be available and the culprits always will take advantage of the innocence of the child and loneliness and they will take the child to a secular places and exploit the children with sexual intent. Therefore, the non availability of the independent witness will not be a sole ground to discard the evidence of the victim. Therefore, from the evidence of PW1/ victim; the evidence of PW2 to PW5; the previous statement of the victim Ex.C1; and the evidence of PW9/School Headmaster; and the School Certificate Ex.P3, this Court finds that the victim is a child under the definition of Section 2(1)(d) of POCSO Act and the victim was subjected to sexual assault by the appellant, which is punishable under Section 8 of POCSO Act.



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19. This Court, being an appellate Court, is a final Court of fact finding, while re-appreciating the entire evidence, finds that the evidence of Victim/ PW1 is cogent, consistence and also natural. Therefore, her evidence inspires the confident of this Court and this Court do not find any reason to disbelieve the evidence of victim. Further, since the evidence of victim inspires the confident of this Court, this Court need not expect corroboration, especially, the case of this nature, would not occur either in the public place or in the presence of any witnesses. Therefore, the prosecution case cannot be affected for non examination of independent witness. Therefore, this Court finds that the appellant has committed the offence as stated above and the Trial Court has rightly appreciated the oral and documentary evidence of the prosecution and has rightly convicted and sentenced the appellant. Further, considering the nature of the offence and the age of the victim, this Court do not find any mitigating circumstances to reduce the sentence imposed on the appellant by the Trial Court.

20. Accordingly, the Criminal Appeal is dismissed. The trial Court is directed to secure the appellant/accused to serve remaining period of



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imprisonment, if any.

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Internet: Yes/No

Speaking Order/Non Speaking Order

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To

1. The Sessions Judge, Fast Track Mahila Court, Ariyalur
2. The the Inspector of Police, AWPS, Jeyankondam Police Station, Ariyalur District.
3. The Public Prosecutor Officer, High Court, Madras.
4. The Section Officer, Criminal Section, High Court, Madras.



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P.VELMURUGAN, J

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