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Crl.A.Nos.581 & 686 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2022

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Crl.A.No.581 of 2021

and

Crl.A.No.686 of 2021

Crl.A.No.581 of 2021

1. Ayupkhan

2. Noorjahan

... Appellants

Vs.

State Represented by
The Inspector of Police,
Kuthanallur Police Station,
Thiruvarur 614 014.

... Respondent

Prayer:Criminal Appeal filed under Section 374(2) of Cr.P.C., to call for the records relating to sentence and conviction passed in Spl.S.C.No.19 of 2017 dated 18.02.2021 on the file of the Learned Sessions Judge (Magalir Fast Track Court) for Exclusive Trial of Cases under POCSO Act, Thiruvarur-614 014 and set aside the same.



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Crl.A.No.686 of 2021

Noorjahan

... Appellant

Vs.

State Represented by
The Inspector of Police,
Kuthanallur Police Station,
Thiruvarur 614 014.

... Respondent

Prayer:Criminal Appeal filed under Section 374(3) of Cr.P.C., against the order of conviction and sentence dated 18.02.2021 passed in Spl.S.C.No.19 of 2017 on the file of the Learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court) Thiruvarur.

For Appellant : Mr.R.Ganesh,
Legal Aid Counsel

For Respondent : Mr.S.Sugendran
Additional Public Prosecutor

COMMON JUDGEMENT

Criminal Appeal No.581 of 2021⁼ has been filed by the appellants/A1 & A2 against the order of conviction and sentence dated 18.02.2021 passed in Spl.S.C.No.19 of 2017 on the file of the Learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court) Thiruvarur.



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2. Criminal Appeal No.686 of 2021 has been filed by the second appellant/A2 in Crl.A.No.581 of 2021 against the order of conviction and sentence dated 18.02.2021 passed in Spl.S.C.No.19 of 2017 on the file of the Learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court) Thiruvarur.

3. Both the Criminal Appeals are arising out of the common judgment dated 18.02.2021 passed in Spl.S.C.No.19 of 2017 on the file of the Learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Thiurvarur.

4. For the sake of convenience, the parties are referred to as per their rankings in Criminal No.581 of 2021.

5. The respondent police registered a case against the first appellant for the offence under Section 9(n) punishable under Section 10 of POCSO Act and for the offence under Section 5(n) punishable under Section 6 of POCSO Act and as against the second appellant for the offence under Section



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17 of POCSO Act in Crime No.38 of 2016. After investigation, laid a charge sheet before the Learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Thiurvarur, since the offence is against the child. The learned Special Judge, taken the case on file in Spl.S.C.No.19 of 2017. The learned Special Judge, after completing the formalities, framed the charges as against the first appellant for the offence under Section 9(n) which is punishable under Section 10 of POCSO Act and as against the second appellant, for the offence under Section 17 of POCSO Act. The Special Judge not found the first appellant guilty for the offence under section 5(n) punishable under Section 6 of POCSO Act and found the first appellant guilty for the offence under Section 9(n) which is punishable under Section 10 of POCSO Act and sentenced him to undergo five years simple imprisonment and to pay fine of Rs.1000/- in default to undergo three months simple imprisonment and also found the second appellant guilty for the offence under Section 17 read with 9(n) of POCSO Act and sentenced her to undergo five years simple imprisonment and to pay fine of Rs.1000/-, in default to undergo three months simple imprisonment.



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6. In order to substantiate the charges against the accused on the side of the prosecution, after framing the charges, during trial, as many as 13 witnesses were examined as P.Ws.1 to 13 and 16 documents were marked as Exs.P1 to P16.

7. After completing the examination of the prosecution witnesses, incriminating circumstances were culled out from the evidence of the prosecution witnesses and put before the accused by questioning under section 313 Crpc., with reference to the incriminating circumstances appears on the side of the prosecution witnesses and the same was denied by the accused as false and pleaded not guilty. On the side of the defence, two witnesses were examined as D.W.1 and D.W.2 and no documents were marked.

8. On completion of trial, hearing the arguments advanced on either side, considering the materials, the Special Court though acquitted the first appellant for the offence under Section 5(n) punishable under Section 6 of POCSO Act, convicted the first appellant/A1 for the offence under Section



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9(n) which is punishable under Section 10 of POCSO Act and sentenced him to undergo five years simple imprisonment and to pay fine of Rs.1000/- in default to undergo three months simple imprisonment and convicted the second appellant /A2 for the offence under Section 17 read with 9(n) of POCSO Act and sentenced her to undergo five years simple imprisonment and to pay fine of Rs.1000/-, in default to undergo three months simple imprisonment. Challenging the said judgment of conviction and sentence, both A1 and A2 have filed the Criminal Appeal No.581 of 2021 and A2 has filed the Criminal Appeal No.686 of 2021 before this Court.

9. Learned counsel for the appellants would submit that the appellants have not committed any offence as alleged by the prosecution. The victim girl is none other than the daughter of the second appellant and first appellant is the second husband of the second appellant. Since the first appellant was shouted at the victim girl, she made a false allegation against him. From the evidence of the doctor who examined the victim girl and in the medical report, it is mentioned that there is no symptom of forcible penetrative sexual assault and her hymen was intact and there is no external injuries. P.W.1



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clearly stated that the signature found in the statement is not that of her and also she has not supported the case of the prosecution. The Trial Court failed to consider the evidence of P.W.1 and P.W.8. The prosecution failed to prove its case beyond reasonable doubt and the trial court miserably failed to appreciate the evidence of P.W.1, the defacto complainant and the evidence of doctor P.W.8 and wrongly held that the first appellant has committed the offence under Section 9(n) which is punishable under Section 10 of POCSO Act. Second appellant is none other than the mother of the victim girl and she has not abetted to commit the offence by the first appellant on the victim girl. Therefore, none of the ingredients attract under section 17 of POCSO Act. There was a delay in filing the complaint, registering the case and sending the records to the Court. The delay was not properly explained by the prosecution. Therefore, the unexplained delay in filing the complaint is fatal to the case of the prosecution. Hence the judgment of the trial court is liable to be set aside.

10. Learned Additional Public Prosecutor appearing for the respondent



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would submit that the victim girl is aged about 12 years. From Ex.P10 and Ex.P11, it is found that age of the victim girl is 12 years. First appellant is the second husband of the mother of the victim girl. The victim girl born to the second appellant through his first husband. The victim girl has brother and the first appellant used to send her brother to Mothersha. Second appellant is working as servant maid. When the victim girl was alone in her house, the first appellant used to come to her house and taking advantage of the loneliness of the victim girl, had sexual intercourse with her and also he caused sexual torture on her. The victim girl informed the abovesaid act of the first appellant to her brother. His brother in turn informed to his neighbour. They in turn informed to the police and made a complaint. Subsequently, the victim girl was produced before the doctor for medical examination. The victim was also produced before the Judicial Magistrate to record statement under section 164 Cr.P.C. Accordingly, the Magistrate also recorded the statement in which also the victim girl clearly stated the incident. When the victim girl was examined as P.W.1, she has clearly narrated the entire incident. Evidence of P.W.1 clearly shows that the victim informed the sexual torture given by the first appellant to her mother and her mother



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replied that they do not have father, therefore, they have to depend on the first appellant and directed the victim girl to do whatever he asked and to adjust with him. Hence, the case was registered against the second appellant for the offence under Section 17 of POCSO Act for abetment. From the evidence of P.W.1-victim girl, P.W.8-the doctor who conducted medical examination on the victim girl, P.W.9-doctor who conducted medical examination on the first appellant, Exs.P8,9 and 10, it is found that the victim is a minor aged about 12 years and the first appellant is the step-father of the victim girl and second appellant is the mother of the victim girl. Therefore, prosecution proved its case beyond all reasonable doubt. The trial court rightly appreciated the evidence and convicted the appellants.

11. Heard the learned legal aid counsel appearing for the appellants and the learned Additional Public Prosecutor appearing for the respondent and perused the records.

12. The specific case of the prosecution is that first appellant is the second husband of the second appellant. Second appellant is the mother of



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the victim girl. The first appellant used to send her brother to Mothersha.

Second appellant used to go for her work. When the victim girl was alone in her house, the first appellant used to come to her house and taking advantage of the loneliness of the victim girl, had sexual intercourse with her and also caused sexual torture on her. Hence the complaint.

13. In order to substantiate the charges framed against the appellants by the trial court, totally 13 witnesses were examined and 16 documents were marked. Out of 13 witnesses, victim girl was examined as P.W.1. P.W.2 is the neighbour, who gave complaint based on the information given by P.W.1-victim girl, since the mother and step father are accused in this case. P.W.8 is the doctor who conducted medical examination on the victim girl. P.W.9 is the doctor who conducted the medical examination on both the first appellant and the victim girl. P.W.11 is the Headmistress of the school in which the victim girl studied. In her evidence, P.W.1-victim girl clerly narrated that the second appellant and victim are staying with the first appellant. First appellant is the second husband of the second appellant. She used to go for her work, since she is working as servant maid in various houses. The first



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appellant used to come to her house and when the victim girl was alone in her house, the first appellant caused sexual torture on her. Though the victim girl informed the said sexual torture of the first appellant to her mother, in turn, she advised her daughter to adjust with the first appellant. Hence, she has no other option except to reveal the sexual torture made by the first appellant to her neighbour, who is so affectionate with her. Subsequently, her neighbour informed to the police. P.W.2 is the complainant, who sets the law into motion. Based on her complaint, the respondent police registered the case and investigated the matter and laid a charge sheet. In order to substantiate the complaint given by the complainant, she was examined as P.W.2. She has categorically deposed about the incident. The victim was produced before the Judicial Magistrate for recording statement under Section 164 Cr.P.C and the same was marked as Ex.P1. Ex.P6 is the Accident Register, Ex.P7 is the opinion of the doctor, Ex.P.10 is the medical report and Ex.P.11 is the Age assessment certificate given by the doctor and Ex.P12 is the record sheet. The learned counsel for the appellants vehemently contended that through medical evidence it is found that there is no penetrative sexual assault made on the victim girl and due to enmity, using the victim girl as a tool, false case



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has been foisted as against the appellant. But the evidence of the victim girl clearly shows that the first appellant used to touch her breast and also he used to press his private part into the private part of the victim girl on several occasions. Further she stated in her evidence that she informed the abovesaid act of the first appellant to her mother, but she asked the victim girl to adjust with the first appellant. A reading of the evidence of P.W.1-victim girl and the statement recorded under section 164 Cr.P.C, Ex.P1, the act committed by the first appellant falls under section 3 of POCSO Act. Since the appellants are close relatives, the offence falls under Section 5(n) which is punishable under Section 6 of POCSO Act and also the act committed by the first appellant falls under Section 9(n) which is punishable under Section 10 of POCSO Act. Though the victim girl informed the sexual torture of the first appellant to her mother, she has not taken any steps instead she asked the victim girl to adjust with the first appellant. Hence she committed offence falls under Section 17 of POCSO Act. Cases of this nature, no corroborative evidence and independent evidence can be expected. Delay in filing the complaint is not fatal to the case of the prosecution.



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14. This Court finds that the prosecution has substantiated the charges based on the cogent evidence and there is no reason to discard the evidence of victim girl P.W.1 and other witnesses.

15. 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 does not find any perversity or any reason to interfere with the judgment of the trial court and there is no merit in the appeals and the appeals are liable to be dismissed. Accordingly the Criminal appeals are 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

To

13/15



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1. The Sessions Judge,
(Magalir Fast Track Court)for Exclusive Trial of Cases under POCSOAct,
Thiruvavarur- 614 014

2. The Inspector of Police,
Kuthanallur Police Station,
Thiruvavarur 614 014.

3. The Public Prosecutor,
High Court of Madras,
Chennai.



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P.VELMURUGAN, J.

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