



Crl.A.No.1095 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.10.2022

CORAM:

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

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V.Saravanan

...Appellant

Vs.

The State represented by
The Inspector of Police,
All Women Police Station,
Thudiyalur,
Coimbatore District.

...Respondent

This Criminal Appeal is filed under Section 374 of Cr.P.C. to call for the records in connection with the judgment dated 29.08.2022 made in Spl.C.C.No.79 of 2020 by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore, and set aside the same.

For Appellant : Mr.Vinoth Kumar

For Respondent : Mr.S.Sugendran
Government Advocate (Crl.Side)



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JUDGMENT

The criminal appeal has been filed against the judgment of conviction and sentence dated 29.08.2022 made in Spl.C.C.No.79 of 2020 by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore.

2 The respondent police registered a case in Cr.No.12 of 2020 against the appellant for the offence under Section 7 punishable under Section 8 r/w Section 18 of the Protection of Children from Sexual Offences Act, 2012 (for brevity “the POCSO Act”). After completing investigation, the respondent police laid a charge sheet before the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore, which was taken on file in Spl.C.C.No.79 of 2020. The learned Sessions Judge, after hearing 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 7 punishable under Section 8 r/w Section 18 of the POCSO Act.



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Before the trial Court, in order to bring home the guilt of the accused, as many as 10 witnesses were examined as P.Ws.1 to 10 and Exs.P1 to P8 were marked besides one Court document as Ex.C1. 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, no one was examined and no document was marked.

4 The learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore, on completion of trial and hearing arguments advanced on either side, by judgment dated 29.08.2022 convicted the appellant/accused and sentenced him to undergo rigorous imprisonment for a period of two and a half years (2½ years) and to pay a fine of Rs.5,000/- in default, to undergo simple imprisonment for a further period of three months for the offence under Section 7 punishable under Section 8 r/w 18 of the POCSO Act and also ordered the Government to pay compensation



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for a sum of Rs.50,000/- to the victim girl from the Victim Compensation Scheme. 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 no commission of offence as alleged by the prosecution and even and as per the statement of the victim, the act of the appellant comes only under Section 11 of the POCSO Act, which is only Sexual harassment and not the sexual assault, since even as per the prosecution story the appellant only uttered the words that “shall I kiss you”. There was about 28 hours delay in registering the FIR and the first complaint has been screened and the second complaint only reached the police station, which are all fatal to the case of the prosecution. Further P.W.1 admits that at the time of giving complaint before the respondent police, there were political parties went along with the victim.

5.1 As per the evidence of P.W.1/victim, she informed about the incident immediately to one Sumathi, but the crucial witness was not



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examined before the Court. Brother of P.W.1 was also available in the house at the time of occurrence, but, the brother was also not examined by the prosecution. Further, prosecution has failed to examine any independent witness to prove the offence as alleged by the prosecution.

5.2 The appellant is a Cable TV Operator and there was enmity between P.W.3 and the appellant in connection with the subscription charges of the cable TV. P.W.7 and P.W.8 have categorically deposed that there was quarrel between P.W.3 and the appellant when the appellant's brother went to the house of the victim to collect the subscription charges. P.W.8, specifically stated that he came to know that P.W.3 and his people went to the house of the appellant and ransacked his house. The Court below failed to consider the evidence of the above witnesses. Even though, there was no concrete proof for the commission of offence, the Court below solely based on the evidence of P.W.1/victim recorded the conviction against the appellant/accused, which warrants interference.



WEB COPY 5.3 The learned counsel would further submit that statement of the victim girl under Section 164 Cr.P.C. was recorded only after 20 days, which shows that the victim was tutored to give statement against the accused attracting the offence under the POCSO Act. Even as per the statement of the victim and the charges, the accused uttered only “shall I kiss”, which would not at all attract Section 7 of the POCSO Act and it comes only under the definition of Section 11 of the POCSO Act, in which question of presumption under Section 29 and 30 of the POCSO Act would not arise. The prosecution has miserably failed to prove its case beyond all reasonable doubt.

5.4 P.W.1 deposed that initially they went to Annur Police Station to lodge the complaint and since they refused to receive the complaint and directed to file the same before the Thudiyalur Police Station, they have filed the complaint before the respondent police. Therefore, if it is so, the officials at Annur Police Station should be prosecuted for the offence under Section 21 of the POCSO Act, but, nothing was done.



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WEB COPY 5.5 The trial Court has failed to consider the above aspects and simply relied on the evidence of P.W.1/victim and recorded conviction against the appellant/accused, which warrants serious interference of this Court.

6 Mr.S.Sugendran, the learned Additional Public Prosecutor appearing for the respondent police would submit that P.W.1 is the victim, who was aged about 16 years at the time of occurrence, has clearly narrated the incident in the statement recorded under Section 164 Cr.P.C. and when she was produced before the Court also, she has clearly deposed about the act of the appellant, which would attract offence under Section 7 of the POCSO Act.

6.1 P.Ws.2 and 3 are the parents of the victim. Immediately after the occurrence, P.W.1 informed her mother P.W.2 and she informed P.W.3 father of the victim and thereafter complaint was lodged. Since the earlier complaint presented before the Annur Police Station was having some



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mistakes, fresh complaint was filed before the Thudiyalur Police Station.

Therefore the contention raised by the learned counsel for the appellant regarding the earlier complaint is not acceptable.

6.2 The appellant is the Cable TV Operator and P.W.3 was one of the subscribers of the appellant. Since on the previous day of the occurrence, the cable connection was not working properly, P.W.3 complained the same to the appellant and the appellant also went to the house of the victim on the next day. At that time no one was available in the house and the victim was brooming the outside steps, the appellant called her inside and asked her to turn the switch on and the victim after turning the switch on, proceeded to outside and the appellant caught hold the hands of the victim and tried to hug and kiss her. The victim escaped from the appellant and came outside and informed the same to her mother. Therefore the appellant committed offence under Section 7 punishable under Section 8 r/w 18 of the POCSO Act.



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WEB COPY 6.3 Evidence of P.Ws.2 and 3 are corroborated with the evidence of the victim girl P.W.1. Cases of this nature, independent witnesses could not be expected and the evidence of the victim girl would suffice to record conviction, if it is trustworthy. In this case, there is no reason to disbelieve the evidence of the victim girl and the Court below has also rightly appreciated the evidence on record and convicted the appellant, which does not call for any interference of this Court and the appeal is liable to be dismissed.

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

8 Case of the prosecution is that on 09.06.2020 at about 5.15 p.m., when the victim girl, who was aged about 16 years at the time of occurrence, was brooming front steps of her house, the appellant, who is the



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Cable TV Operator, came there to repair the cable wire as requested by P.W.3 father of the victim, and asked the victim to come inside and turn the switch on. The victim also went inside and turned the switch on and while she proceeded to leave the place, the appellant caught hold the hands of the victim and tried to hug and kiss her by saying “shall I kiss”. Hence the complaint.

9 In order to substantiate the charges levelled against the appellant, on the side of the prosecution, 10 witnesses were examined as P.Ws.1 to 10, out of which, P.W.1 is the victim. A reading of the evidence of P.W.1/victim girl, clearly show that she has categorically narrated the incident. P.Ws.2 and 3, who are the parents of the victim have also categorically stated what the victim told to them. P.W.6, Headmistress of the School, in which, the victim studied and Ex.P4 is the Bonofide Certificate issued by P.W.6 and Ex.P2 is the copy of the Birth Certificate of the victim girl, from which it is clear that the date of birth of the victim girl is 05.05.2004 and the date of occurrence is on 09.06.2020 and hence on the date of occurrence, the victim girl was aged about 16 years and not



completed 18 years and hence she was a child under the definition of Section 2(1)(d) of the POCSO Act.

10 It is the contention of the learned counsel for the appellant that the offence committed by the appellant would not falls under Section 7 and it is only under Section 11 of the POCSO Act. For a better understanding, it is useful to extract Section 7 of the POCSO Act.

“7. Sexual assault

Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.”

11 A careful reading of Section 7 shows that “any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault”. In this case, as per the statement of the victim under



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Section 164 of Cr.P.C. and the evidence of the victim would clearly show that the appellant caught hold the hands of the victim and uttered the words “shall I kiss”, which would clearly attract the offence under Section 7 of the POCSO Act.

12 The other contention of the learned counsel for the appellant is that there is delay in lodging the complaint and no independent witness was examined. In the cases of this nature, we cannot expect the parents of the victim child to rush Police Station immediately soon after knowing the occurrence, naturally they would think about the future of the female child and reputation of the family, like wise, we cannot expect any eye witness or independent witness, when the accused is a neighbour or the person who has got easy access to the house and committed the offence under the POCSO Act. Therefore, the contentions of the learned counsel regarding the independent witness and the delay in lodging the complaint are not fatal to the case of the prosecution.



13 The contention of the learned counsel that the earlier complaint presented before the Annur Police Station has been suppressed by the prosecution, since it would not have attracted the offence under the POCSO Act, is not acceptable, since it was explained that as there was some mistake in the earlier complaint, they have prepared fresh complaint and filed the same before the respondent police.

14 Once the statement under Section 164 Cr.P.C. of the victim child and her evidence before Court would clearly attract the offence under Section 7 punishable under Section 8 of the POCSO Act, presumption under Section 29 and 30 would come into play and it is for the appellant/accused to rebut the presumption in the manner known to law. In this case, the appellant/accused has not rebutted the presumption in the manner known law.

15 It is to be noted that conviction can be recorded solely based on the evidence of the victim, if it is consistent, cogent and trustworthy and also inspires the confidence of the Court. From a careful reading of the evidence



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of P.W.1 and her statement recorded under Section 164 Cr.P.C. this Court does not find any reason to discord or disbelieve the same.

16 Further, on a reading of the judgment of the trial Court, it is seen that the minimum sentence for the offence under Section 7 punishable under Section 8 of the POCSO Act is three years and the learned Sessions Judge misconceived the evidence of the victim as if it is attempt for the offence under Section 7 of the POCSO Act, which is punishable under Section 8 r/w 18 of the POCSO Act and awarded only 2 ½ years imprisonment. However, neither the state nor the victim filed any appeal against the conviction and sentence and this is the appeal filed by the accused against the judgment of conviction and hence this Court cannot go beyond the scope of the appeal.

17 This Court, being an appellate Court, has to necessarily re-appreciate the entire evidence and give its independent finding. Accordingly, while re-appreciating the entire evidence, this Court finds that the appellant committed the offence under Section 7 punishable under Section 8 of the



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18 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 recorded against the appellant. Accordingly, this criminal appeal is dismissed. The trial Court is directed to secure the appellant/accused to serve remaining period of imprisonment, if any.

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Index : Yes/No
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To

1. The Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore.
2. The Inspector of Police, All Women Police Station, Thudiyalur, Coimbatore District.

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3. The Public Prosecutor, High Court of Madras.

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P.VELMURUGAN, J.,

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