



Crl.A.No. 599 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2022

Coram

THE HON'BLE MR. JUSTICE P.VELMURUGAN

Crl.A.No. 599 of 2021

Kodeeswaran

...Appellant

-Vs-

State rep. By
The Inspector of Police,
All Women Police Station,
Erode.

..Respondent

PRAYER : Criminal Appeal filed under Section 374(2) Cr.P.C., praying to set aside the conviction imposed in judgment dated 10.05.2021 made in Spl.Sessions Case No. 15/2020 on the file of Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Erode.

For Appellant : Mr. M.Guruprasad

For Respondent : Mr.S.Sugendran, APP

ORDER

This Criminal Appeal is filed challenging the judgment dated 10.05.2021 made in Spl.Sessions Case No. 15/2020 on the file of Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Erode.



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2. The respondent police registered a case against the appellant in

Crime No.24 of 2019 under Section 9(m) r/w 10 of Protection of Children from sexual offences Act, 2012. The respondent police, after investigation, laid the charge sheet before the Sessions Court, Mahalir Neethimandram (Fast Track Mahila Court), Erode. The Sessions Court taken the case on file in Special S.C.No. 15 of 2020 and after completing all formalities framed charges against the appellant for the offences punishable under Section 9 (m) r/w 10 of POCSO Act.

3. In order to substantiate the case of the prosecution, on the side of the prosecution as many as ten (10) witnesses were examined as PW1 to PW10 and 17 documents were marked as Exhibits P1 to P17 and material objects were exhibited.

4. When the accused has been questioned under Section 313 of the Code of Criminal Procedure, 1973 in respect of the incriminating materials available in evidence against him, he denied his complicity in the crime. On the side of defence, no oral or documentary evidence were produced.



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5. On completion of trial and arguments advanced by the learned counsels, the trial Court based on the available materials, found appellant not guilty for the offences under Section 9(m) r/w 10 of POCSO Act, but found guilty for the offences under Section 11 punishable under Section 12 of POCSO Act, 2012 and sentenced to under go rigorous imprisonment for 2 years and fine Rs.2000/- and in default to undergo three months simple imprisonment.

6. Challenging the said judgment, the appellants/accused filed the present criminal appeal before this court.

7. It is the specific case of the prosecution that the appellant and the victim family are neighbours. On the date of occurrence, the appellant called the victim girl that he will give chocolate and took her into the room and showed his penis, kept sugar and asked her to lick inducing her that it will be like chocolate. Since the victim refused, the appellant asked to touch the penis and pulled her hand and made her to touch the penis. The victim girl



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immediately informed her mother and based on the complaint, an FIR was registered against the appellant/accused and after investigation, charge sheet has been filed against the appellant for offences punishable under Section 9(m) r/w 10 of POCSO Act.

8. The learned counsel for the appellant would submit that there was frequent quarrel between the father of the victim and the appellant, hence the appellant made complaint to the owner of the building and the owner of the building has also directed the victim's family to vacate the house. Due to the said dispute, the victim's family had foisted a false case against the appellant in order to wreck vengeance against the appellant. The learned counsel for the appellant would further submit that the appellant has got defects in his sexual organs by birth, therefore he may not have sexual feelings, therefore he would not have committed such offences as projected by the prosecution. Even Exhibit P4 and the evidence of doctor (PW7) would clearly shows that the appellant was having disability in his sexual organs and he would not have committed such offence. In the statement recorded under Section 313 of Crpc, the appellant had expressed his



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disability of sexual organs, but the trial Court failed to appreciate the said evidence and the prosecution has also not proved the foundational fact that the appellant had committed the alleged offence. Though the trial Court has rightly appreciated the evidence and not found guilt of the charges framed under Section 9(m) r/w 10 of POCSO Act, the trial Court ought to have acquitted the appellant from the said charges. But based on the very same materials, the trial Court has convicted the appellant under Section 11 r/w 12 of POCSO Act, which is against the law. The Investigating Officer has not clarified the position whether the complainant is able to commit the sexual offence as alleged by the victim. Therefore the judgment of the trial Court is liable to be set aside and the appellant is liable to be acquitted from the offences charges levelled against him.

9. On the other hand, the learned Additional Public Prosecutor appearing for the respondent police would submit that the victim girl was aged about six years, she is none other than the neighbour of the appellant. On the date of occurrence, the appellant called the victim girl that will give chocolate and took her into the room and showed his penis, kept sugar and



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asked her to lick inducing her that it will be like chocolate. Since the victim refused, the appellant asked to touch the penis and pulled her hand and made her touch the penis. The victim girl immediately informed to her parents. Initially the parents of the victim girl hesitate to give a complaint, subsequently after discussing with their family members, they made complaint before the respondent-police station on the next day of the occurrence. The respondent police had registered a case in Crime No. 24/2019 under Section 9(m) r/2 10 of POCSO Act and investigated the case and laid charge sheet. The victim girl was examined as PW1, she clearly narrated the incident. The mother and father of the victim girl were examined as PW2 & PW3 respectively, they have also spoken about the words as stated by the victim. The victim girl was produced before the Judicial Magistrate and recorded statement under Section 164 CrPc. The said statement was subsequently substantiated by the evidence of the victim girl, therefore the prosecution proved the case beyond reasonable doubt. However, the trial Court found some discrepancies in the statement of the victim before the Judicial Magistrate and the evidence recorded before the trial Court under Section 313 (1)(b), therefore the trial Court has come to



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the conclusion that the accused/appellant found not guilty of the charges under Section 9(m) r/w 10 of POCSO Act and found guilty under Section 11 r/w 12 of POCSO Act, 2012 and given minimum sentence to the accused/appellant, therefore there is no reason to interfere with the judgment of the trial Court.

10. Heard Mr.M.Guruprasad, learned counsel for the appellant and Mr.S.Sugendran, learned Additional Public Prosecutor for the respondent police and perused the materials available on record.

11. Admittedly, the respondent-police registered a case against the appellant for the offences punishable under Section 9(m) r/w 10 of POCSO Act, however the trial Court convicted the appellant for the offences under Section 11 punishable under Section 12 of POCSO Act. In this case, in order to substantiate the charges levelled against the appellant, on the side of the prosecution totally 10 witnesses were examined. Out of which, the victim was examined as PW1 and to prove the age of the victim, school certificate was marked as Ex.P10, birth certificate was marked as Ex.P16.



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As per Exhibit P16, the date of birth of the victim is 05.05.2014, the date of occurrence was on 19.08.2019, therefore it is clear that the age of the victim girl on the date of occurrence was six years, therefore she is a child under the definition of Section 2 of POCSO Act and it is clear case to be registered under POCSO Act.

12. As far as commission of offence is concerned, the victim was examined as PW1 and the statement of the victim recorded by the Judicial Magistrate under Section 164 Crpc was marked as Ex.P8. A combined reading of the statement recorded by the Judicial Magistrate and the evidence before this Court, there is minor discrepancy in the statement made by the victim girl before the Judicial Magistrate and the evidence before trial Court, further there is no eye witness in this case. Only the victim, soon after the occurrence had informed to the parents, thereafter, the parents of the victim after having discussions with their family members, have preferred the complaint against the appellant before the respondent police.



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13. The main submission of the learned counsel for the appellant that the appellant and the victim family are neighbours and residing in a row houses building. There was frequent wordy quarrel between them, which ultimately made the appellant to complain to the owner of the house and the owner of the house also directed the victim family to vacate the house. Therefore, in order to wreck vengeance, the victim family had foisted a false case against the appellant by making use the innocent child.

14. A careful perusal of the statement of the victim before the trial Court recorded before the Judicial Magistrate recorded under Section 164 Crpc, would clearly reveal that the victim was in a sound state of mind and conscious in answering the questions, therefore the contention of the learned counsel for the appellant that the victim was tutored by her parents to make false allegations is unacceptable. Further evidence of victim who was examined as PW1 before the trial Court and the statement recorded by the Judicial Magistrate also very clear and this Court inspires the confidence of the evidence of the victim.



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for the appellant that the appellant has disability in his sexual organs and has no intention to have sexual offence, the Investigation Officer has also admitted the said fact. A reading of the evidence of the victim and also the evidence of the doctor who conducted medial examination to the appellant, though there is certain disability in his sexual organs, there are no other materials to show that the appellant is not having sexual feelings at all. Though the said statement was also stated by the appellant during 313 proceedings, but he has not substantiated his defence by positive medical evidence. Further, the allegations levelled against the appellant are not much serious like penetrative sexual intercourse or sexual assault, it is only allegations of showing his sexual organs to the victim. Intention has to be gathered from the evidence, in the instance case, the evidence of the victim clearly reveals that the appellant showed his private part to the victim. Therefore, the commission of offence under Section 11 which is punishable under Section 12 of POCSO Act is made out.



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16. Therefore, considering the fact that there is no positive evidence put forth by the defence to substantiate the fact that the appellant does not have sexual feeling and he could not have committed such offence as alleged against the appellant, this Court is not in a position to accept the defence taken by the appellant and the arguments put forth by the learned counsel for the appellant.

17. Thus, this Court re-appreciate the entire evidence and the entire materials viz., the complaint, the statement recorded by the Judicial Magistrate from the victim and the evidence of the victim before the trial Court and also taking note of the fact that there is no eyewitness, this Court has come to the independent conclusion. Further this Court cannot expect any independent witnesses for the offences of this nature. Normally the culprit who committed the offence of this nature will take advantage of loneliness of the children and take the children to the lonely place and exploit their innocence by causing sexual assault. But in the present case, the prime witness is the victim who is aged 6 years and this Court does not find any reason to discard and disbelieve the evidence of the victim.



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Therefore, in view of the discussions made in the foregoing paragraphs and the materials placed before this Court, this Court is of the considered view that the prosecution has not proved the charges for the offences under Section 9 (m) r/w 10 of POCSO Act, but however, on overall consideration of materials, this Court finds that the prosecution has proved the charges for the offence under Section 11 punishable under Section 12 of POCSO Act.

18. The cases of this nature, this Court cannot look forward the independent witness or any corroborative evidences, if the evidence of the sole witness inspires the confidence of the court. As regards the conviction, this Court finds no perversity in the complaint made by the parent of the victim and the conviction imposed by the learned Sessions Judge, Mahalir Neethimadram (Fast Track Mahila Court), Erode.

19. In the light of the above reasonings, there is no merit in the appeal and the appeal is liable to be dismissed. However, considering the nature of the offence, the quantum of sentence alone is modified from two years to one year. Thus, the conviction imposed by the trial court



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against the appellants under Section 11 punishable under Section 12 of POCSO Act is confirmed. However, quantum of sentence imposed under the said section is alone modified as stated supra, which will meet the ends of justice. Since the appellant already undergone the modified period of sentence, the trial Court is directed to release appellant, if he is not involved in any other case or undergoing sentence in any other case.

20. In the result, the criminal appeal is partly allowed with the above modification.

27.10.2022

Index:Yes/No

Speaking order/Non-speaking order
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To

1. The Inspector of Police,
All Women Police Station,
Erode.

2. The Sessions Judge,
Mahalir Neethimandram (Fast Track Mahila Court),
Erode.



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P.VELMURUGAN, J

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