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CRL A No.669 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2022

Coram:

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

Criminal Appeal No.669 of 2021

Rajadurai

... Appellant

Vs.

1. The Superintended of Police
Ariyalur District
Ariyalur

2. State Rep. by Inspector of Police
Irumpulikulurichi Police Station
Ariyalur District
(Crime No.43 of 2019)

3.S.Suganthi

... Respondents

Prayer : Criminal Appeal filed under Sections 374 (2) of Criminal Procedure Code, praying to set aside the Judgment and sentence passed in Spl.S.C.No.49 of 2019 dated 09.11.2021 on the file of the Fast Track Mahila Court, Ariyalur.

For Appellant : Mr.V.Illanchezian

For Respondents : Mr.S.Sugendran

Additional Public Prosecutor for R1 and R2
Mr.Arunkasi for R3.



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JUDGMENT

This Criminal Appeal has been filed seeking to set aside the Judgment of conviction and sentence imposed on the appellant in Spl.S.C.No.49 of 2019 dated 09.11.2021 on the file of the Fast Track Mahila Court, Ariyalur.

2.The respondent police registered the case in Crime No.43 of 2019 against the appellant for the offences punishable under Section 10 of POCSO Act, 2012 and Section 506(i) of IPC @ into Section 10 of POCSO Act, 2012 and Section 506(i) of IPC read with 3(1)(w)(i), 3(2)(va) of SC/ST PoA Act 1989, and after completing the investigation, laid charge sheet before the Fast Track Mahila Court, Ariyalur. in Spl.SC.No.49 of 2019 for the offences under Section 10 of POCSO Act, 2012 and Section 506(i) of IPC read with 3(1)(w)(i), 3(2)(va) of SC/ST (PoA) Act 1989. The learned Sessions Judge after completing the formalities, framed the charges against the appellant for offence under Section 9m of POCSO Act punishable under Section 10 of POCSO Act, 2012 and Section 506(ii) of IPC and Sections 4(1)(w)(i), 4(2)(va) of SC/ST (PoA) Amendment Ordinance, 2015.



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3. After framing the charges, in order to prove the case of the prosecution, during trial before the trial Court, totally 14 witnesses were examined as P.W.1 to P.W.14 and 12 documents were marked as Exs.P.1 to P12 and no material object was exhibited.

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

5. On conclusion of trial, hearing the arguments advanced on either side and also considering the materials, the learned Sessions Judge, convicted the appellant for the offences under Sections 10 of POCSO Act, 2012 and Section 506(ii) of IPC and Section 4(1)(w)(i), 4(2)(va) of SC/ST (PoA) Amendment Ordinance, 2015 and sentenced to undergo 7 years rigorous imprisonment and to pay fine of Rs.10,000/- in default to



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undergo simple imprisonment for further period of one year for the offence under Section 10 of POCSO Act, 2012; to undergo 2 years rigorous imprisonment and to pay fine of Rs.1,000/- in default to undergo simple imprisonment for further period of 3 months for the offence under Section 506(ii) IPC; to undergo 5 years rigorous imprisonment and to pay fine of Rs.5,000/- in default to undergo simple imprisonment for further period of one year for the offence under 4(1)(w)(i) of SC/ST (PoA) Amendment Ordinance, 2015; to undergo 2 years rigorous imprisonment and to pay fine of Rs.1,000/- in default to undergo simple imprisonment for further period of 3 months for the offence under Section 4(2)(va) of SC/ST (PoA) Amendment Ordinance, 2015. Challenging the Judgment of conviction and sentence, the accused has filed this present appeal before this Court.

6. The case of the prosecution is that on 22.04.2019 at about 4 p.m., the victim girl along with her elder sister had gone outside of her house to attend nature's call. At that the appellant who came there for grazing goats, approached the victim girl and sexually assaulted her by



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touching her private parts. Immediately, she escaped from the place and informed to her mother. Thereafter, when the mother of the victim girl questioned the same, the appellant threatened her to take away the life of her child if she reveals the same to anybody.

7. The learned counsel for the appellant would submit that there are contradictions even between the evidence of victim girl and the statement given before the learned Judicial Magistrate under Section 164 Cr.P.C. In the statement recorded by the Magistrate under Section 164 Cr.P.C., the victim girl has stated that at the time of alleged commission of offence by the appellant, she bit the hands of the appellant and escaped from the place and thereafter, her mother questioned the appellant, whereas before the Court, when she was examined as witness as P.W.3, she did not mention that she bit the hands of the appellant. Further, the victim girl in her previous statement recorded by the Magistrate has not stated anything about the threat alleged to have been made by the appellant. Though P.W.8 and P.W.9 have spoken about the threat made by the appellant, they are interested witnesses. He would



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further submit that the father of the victim in his evidence, has stated that the mother of the victim had written the complaint, whereas the mother of the victim girl has stated that she did not know who had written the complaint. Therefore, there are material contradictions and there is no medical evidence to substantiate the case of the prosecution. Further, the complaint has been lodged belatedly against the appellant after deliberation. He would further submit that the mother of the victim stated that the distance between the occurrence place and her house is about 100 ft., whereas the Investigating Officer/P.W13 has stated as 1 km distance. Even the Investigating Officer has not specifically mentioned the place of the occurrence and house of the victim girl and the exact distance between both the places. Therefore, the prosecution has not proved the place of occurrence and who had written the complaint and they have also not given proper explanation for the delay in lodging the complaint. He would further submit that the prosecution has failed to prove as to whether the victim had bit the hands of the appellant and whether there was any bite mark in the hands of the appellant through medical examination. In the absence of the same, it creates doubt over



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the very genesis of the complaint/allegation. The prosecution has not properly conducted the investigation in a fair manner and has failed to substantiate the charges beyond all reasonable doubt. Therefore, the judgement of conviction and sentence passed by the trial Court is liable to be set aside.

8. The learned Additional Public Prosecutor appearing for the respondents police would submit that as per the School Certificate/Ex.P.6 issued by P.W.10/Head Master of the school in which the victim girl was studying, the date of the birth of the victim girl is 10.09.2013 and the date of occurrence is on 22.04.2019 and therefore the age of the victim girl was only about 6 years at the time of occurrence and she was a child under the definition of POCSO Act. Further from the evidence of P.W.7/Tahsildar and Ex.P.5/certificate issued by him would clearly show that the victim girl belongs to the member of the Scheduled Caste Community and the appellant is the non member of Scheduled Caste Community. Therefore, the offence committed by the appellant false under the POCSO Act as well as SC/ST (PoA) Act. In order to prove the



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the commission of offence, on the side of the prosecution totally 14 witnesses were examined out of which, the victim girl was examined as P.W.3 and her elder sister was examined as P.W.4. Though there was no allegation of penetrative sexual assault, both the victim girl and the appellant were produced before the doctor for medical examination. The doctor who conducted medical examination on the appellant was examined as P.W.11 and the medical report and opinion of the doctor were marked as Exs.P.7 and P.8. The doctor who conducted medical examination on the victim girl was examined as P.W.6 who has stated that there was no external injury on the body of the victim girl and her hymen was intact. The outpatient slip and the opinion of the doctor were marked as Exs.P.3 and P.4. The victim girl/P.W.3 and her sister/P.W.4 in their evidence have clearly narrated the entire incident that on the date of occurrence, when the victim girl and her sister went to attend nature's call, the appellant approached the victim girl and sexually assaulted the victim girl/P.W.3 by touching her private parts. Immediately the victim girl bit the hands of the appellant and escaped from there. The sister of the victim also noticed the same and immediately they both went to their



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house and informed to their mother. Thereafter, the mother of the victim girl along with the victim girl went to the house of the appellant and questioned the same for which, the appellant threatened the mother of victim to take away the life of her daughter. P.W.1/victim girl, P.W.8 and P.W.9 who are the independent witnesses have stated that when they went along with the mother of the victim girl and questioned the appellant, he threatened the mother of the victim with dire consequences. P.W.1 and P.W.2 are the parents of the victim girl and they have clearly stated what they heard from their daughters/P.W.3 and P.W.4. Therefore, from the evidence of the prosecution witnesses, the prosecution substantiated the charges leveled against the appellant. The trial Court rightly appreciated the evidence and convicted the appellant and there is no merit in the appeal and the appeal is liable to be dismissed.

9. Heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the respondents police and the learned counsel appearing for the 3rd respondent/defacto complainant and also perused the materials on record.



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10. In order to substantiate the charges framed by the trial Court, on the side of the prosecution as many as 14 witnesses were examined and 12 documents were marked and no material object was exhibited. Since the statement recorded by the learned Judicial Magistrate from the victim girl under Section 164 Cr.P.C. was not marked with any of the witnesses, the trial Court marked the said document as Ex.C.1.

11. This Court as appellate Court and final Court of fact finding, has to necessarily re-appreciate the entire evidence and to give independent findings. This Court carefully gone through the entire materials and re-appreciated the entire oral and documentary evidence and gives independent findings.

12. The victim girl was examined as P.W.3 and in her evidence, she has clearly narrated the entire incident. Even in the previous statement recorded by the learned Judicial Magistrate under Section 164 Cr.P.C./Ex.C.1, she has clearly narrated the entire incident.



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13. A reading of the evidence of P.W.4 shows that she is none other than the elder sister of the victim girl and she has clearly deposed that she also accompanied the victim girl at the time of occurrence to attend nature's call during which, the appellant approached the victim girl and committed the alleged sexual assault on the victim girl and subsequently, they both ran to their mother and informed the same. In turn, the mother of the victim girl along with the victim girl went to the place of the appellant and questioned the same for which, the appellant threatened the mother of the victim girl with dire consequences.

14. A entire reading of the evidence of P.W.3 is corroborated with the evidence of P.W.4. Even the previous statement of the victim girl/Ex.C1 is also corroborated by the evidence of the P.W.4.

15. Since the victim girl is a member of the scheduled caste community and the appellant is non member of the Scheduled Caste Community, the appellant was also charged for the offence under the SC/ST (PoA) Act. In order to substantiate the same, the Tahsildar was



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examined as P.W.7 and the certificate issued by him was marked as Ex.P.5.

16. Further in order to substantiate the age of the victim girl/P.W.3, the school certificate of the victim girl was marked as Ex.P.6 through the P.W.10/Head Master of the school in which, the victim girl was studying and as per Ex.P.6, the date of birth of the victim girl is 10.09.2013 and the date of occurrence is on 22.04.2019. Therefore, the prosecution proved that at the time of occurrence, the victim girl was aged only about 6 years. Since the victim was aged below 12 years at the time of occurrence, the offence committed by the appellant is termed as aggravated sexual assault which false under Section 9m of POCSO Act punishable under Section 10 of POCSO Act. Therefore, the trial Court has rightly appreciated the oral and documentary evidence produced by the prosecution and convicted and sentenced the appellant as stated above.



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17. As far as the charges under SC/ST (PoA) Act are concerned, the prosecution proved from the evidence of Tahsildar/P.W.7 and the certificate issued by him/Ex.P.5 that the victim girl belongs to the member of Scheduled Caste Community and the appellant is non member of Scheduled Caste Community. Therefore, the trial Court also rightly convicted the appellant for the offence under Section 4(1)(w)(i), 4(2)(va) of SC/ST (PoA) Amendment Ordinance, 2015 and sentenced as stated above and this Court does not find any reason to interfere with the Judgment of conviction and sentence imposed by the trial Court.

18. Further, the trial Court has also convicted the appellant for the offence under Section 506 (2) IPC for allegedly threatening the mother victim girl with dire consequences. A reading of the previous statement of the victim girl recorded under Section 164 Cr.P.C., shows that the victim girl had not stated anything about the threat made by the appellant. Therefore, this Court is of the view that the prosecution has not proved the charge against the appellant for the offence under Section 506(2) IPC beyond reasonable doubt. Therefore, the conviction and



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sentence passed by the trial Court for the offence under Section 506 (2) IPC alone is set aside.

19. As observed above, the conviction and sentence passed by the trial Court for the offence under Section 9m of POCSO Act punishable under Section 10 of POCSO Act and for the offence under Sections 4(1)(w)(i), 4(2)(va) of SC/ST (PoA) Amendment Ordinance, 2015 are hereby, confirmed.

20. With the above modifications, this Criminal Appeal is dismissed. The respondent police is directed to secure the appellant to undergo the remaining period of sentence if any.

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Index:Yes/No



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To

1. The Sessions Judge,
Special Court (POCSO Act Cases), Cuddalore
2. The Inspector of Police
Virudhachalam Police Station
Cuddalore 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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