



CRL A No.697 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	:	27.10.2022
Pronounced on	:	11.11.2022

Coram:

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

Criminal Appeal No.697 of 2021

1.Nirmal Premkumar

2.Lawrance

... Appellants

Vs.

The State, represented by
The Inspector of Police,
All Women Police Station,
Kallakurichi,
Villupuram District.
Crime No.01 of 2018

... Respondent

Prayer : Criminal Appeal filed under Sections 374(2) of Criminal Procedure Code, praying to set aside the Judgment dated 22.11.2021 in Spl.S.C.No.13 of 2020, on the file of the Special Court for Exclusive Trial of cases under POCSO Act, Villupuram.

For Appellant : Mr.J.Antony Jesus

For Respondent : Mr.S.Sugendran
Additional Public Prosecutor



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J U D G M E N T

This Criminal Appeal has been filed to set aside the Judgment passed by the Special Court for Exclusive Trial of cases under POCSO Act, Villupuram. in Spl.S.C.No.13 of 2020, dated 22.11.2021.

2. The respondent registered the case against the appellants in Crime No.01 of 2018 for the offences registered originally under Sections 11(1), 12 of POCSO Act later altered to 11(1), 12, 17 of POCSO Act. After completing the investigation, police have filed the charge sheet before learned Sessions Judge, Special Court for exclusive trial of cases under POCSO Act, Villupuram, since the offences are against woman. The Special Court taken cognizance of the charge sheet on file in Spl.S.C No.13 of 2020.

3. The learned Special Judge after completing the formalities framed the charges against the first appellant for the offences under Section 12 of POCSO Act and 506 (i) of IPC and Section 12 r/w 17 of POCSO Act and 506(i) of IPC.



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4. After framing the charges, in order to substantiate the charges framed against the appellant during the trial, on the side of the prosecution as many as 12 witnesses were examined as PW 1 to PW 12 and 9 documents were marked as Ex. P1 to P9. No material object was marked on the side of the prosecution.

5. After completing the examination of prosecution witnesses, when the incriminating circumstances culled out from the evidence of prosecution witnesses were put to the appellants by questioning under Section 313 of CrPc, wherein they denied the same as false and pleaded not guilty. On the side of the defense, one witness was examined as DW1 and 2 documents were marked as Ex. D1 to D2.

6. Hearing the arguments advanced on either side and considering the materials, the trial court found not guilty of the first appellant for the offence under Section 506(i) of IPC and acquitted from the said charge and the trial court found not guilty of the second appellant for the offence under Section 12 r/w 17 of POCSO Act. However the trial court found



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guilt of the first appellant for the offence under Section 12 of POCSO Act and the first appellant was convicted and sentenced to undergo 3 years of rigorous imprisonment and pay fine of Rs.30,000/- in default to undergo further period of six months simple imprisonment for the offence and the trial court found guilt of the second appellant for the offence under Section 506(i) of IPC and the accused was convicted and sentenced to undergo 2 years of rigorous imprisonment and pay fine of Rs.20,000/- in default to undergo further period of four months simple imprisonment for the offence.

7. Challenging the said judgment of conviction and sentence passed by the trial court, the accused have filed the present appeal.

8. The specific case of the prosecution is that the victim was studying 8th std in St.Anthoniyar Higher Secondary School, Melnariyappanur for the academic year 2017-18. The first appellant was working as Tamil teacher and second appellant was working as Social Science teacher in the said school. On 14.02.2018 and 15.02.2018, the first appellant gave flowers and chocolate to the victim. When the victim



girl refused to receive the same, he pinched her hand and forcefully kept flowers in her hand. Subsequently, the victim informed her father about the same and her father made a complaint to the police. The respondent police registered the case and after investigation, charge sheet was laid out.

9. The learned counsel for the appellants would submit that a false case has been foisted on them and no teacher would give flowers specifically to one girl in the presence of the entire class. He would further submit that in order to take vengeance, due to a previous enmity between the appellants and another teacher who was a relative of the victim, the teacher used the victim as a tool to foist a false case against the appellants. Further, none of the students, who were present in the class at the time of the alleged occurrence was examined. Therefore, the prosecution has failed to prove its case beyond reasonable doubt. It was further stated that the second appellant did not attend school on the said day. No sexual intent has been proved by the prosecution, in order to attract offence under Section 12 of POCSO Act and there is no presumption for the offence under Section 12 of POCSO Act which falls



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under Section 29 of POCSO Act. Even the father of the victim stated that the victim requested him to get admission for her to some other school for 9th std. Whereas, the prosecution has not given any reason why her father did not shift her to different school. It was further submitted that there is a material contradiction between the prosecution witnesses and it was not corroborated with the victim's evidence. The students who were present in the class during the alleged occurrence which was projected by the prosecution that the first appellant gave flowers and chocolate to the victim and misbehaved with her, were not examined and the same is highly fatal to the case. The FIR was registered originally under Sections 11(1), 12 of POCSO Act. However, later it was altered to 11(1), 12, 17 of POCSO Act. There are no materials available to connect the appellants for the said offences. The prosecution has not explained the inordinate delay in filing the complaint and there are discrepancies in the documents produced by the prosecution, which clearly shows that the victim was made as a tool for foisting false against the appellants. Therefore, the prosecution has failed to prove the charges as projected by them and therefore, the Judgment of conviction and sentence passed by the trial court are perverse which wants interference of this Court.



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10. The learned Additional Public Prosecutor would submit that the date of birth of the victim was on 01.10.2004. The date of occurrence was on 14.02.2018. Therefore, the age of the victim, at the time of the occurrence was only 13 years. In order to prove the age of the victim, exhibits P3 which is the school record is produced. Therefore, the victim was a minor child under the definition of POCSO Act. The victim was examined as PW2. She has clearly narrated that on 14.02.2018 at 11 a.m, the appellant who is the tamil teacher approached her and gave flowers and chocolate. When the victim refused to receive the same, he pinched her and kept the flowers forcefully in her hand. The second appellant who was the Social Science teacher supported the offence committed by the first appellant. The victim stated that the second appellant called her and asked why she was not talking with the first appellant. When the victim refused to talk, he threatened that the first appellant would die, if she is not talking and she would be responsible, if anything happens to the first appellant. PW9 who is also a co-teacher has clearly stated that while he was taking class for the victim's class, the appellants telephoned him and asked him to send the victim to PT room. Therefore the evidence of PW9



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corroborated with the evidence of PW2. The father of the victim who was examined as PW1 clearly stated that her daughter was studying in 8th std in the school where appellants were working. One day, her daughter requested him to get admission in some other school, for which he assured the same. Subsequently, when her daughter told him about the misbehavior committed by the appellants, he gave a police complaint against them. When the victim was produced before the learned Jurisdictional Magistrate to record statement under Section 164 of CrPc, she clearly narrated the incident and therefore, the evidence of PW1 corroborated with the evidence of PW2. Since, victim is a minor child under the definition of POCSO Act and she was subjected to sexual assault committed by the appellants, the prosecution has proved its case beyond reasonable doubt. He further submitted that there is no merit in this case and this case is liable to be set aside.

11. Heard the learned counsel for both sides and perused the materials available on record.

12. Admittedly, the victim was studying 8th std, at the time of the



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occurrence in St.Anthoniyar Higher Secondary School, Melnariyappanur for the academic year 2017-18. The first appellant was working as Tamil teacher and second appellant was working as Social Science teacher in the said school. On 14.02.2018 and 15.02.2018, the first appellant gave flowers and chocolate to the victim. When the victim girl refused to receive the same, he pinched her hand and forcefully kept flowers in her hand. Subsequently, the victim informed her father about the same and her father made a complaint to the police. The respondent police registered the case and after investigation, charge sheet was laid out. On the side of the prosecution as many as 12 witnesses were examined as PW 1 to PW 12 and 9 documents were marked as Ex. P1 to P9. No material object was exhibited on the side of the prosecution. Out of the 12 witnesses, victim was examined as PW2. The statement under Section 164 of CrPc was recorded from the victim by the learned Jurisdictional Magistrate and the same was marked as exhibit P5.

13. A combined reading of the evidence of PW2 and the previous statement of victim, exhibit P5 which was recorded before the learned Jurisdictional Magistrate clearly shows that the first appellant was



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working as Tamil teacher in the school in which the victim girl was studying 8th std. On 14.02.2018, the first appellant offered flowers and chocolates to her. When the victim girl refused to receive the same, he pinched her and forcefully kept it in her hand. Therefore, there was a physical attack. PW1, the father of the victim has also clearly stated that her daughter requested him to get admission in some other school. Subsequently, he came to know the reason for that. PW9 who was also a teacher in the school at the time of occurrence but later left the school subsequently, deposed that on the particular day when he was taking class to the victim's class, the appellants called and asked him to send the victim to PT room. Therefore, it is clear that the appellants committed some sexual assault on the victim. The evidence of PW2 shows that the second appellant who was also a co-teacher threatened the victim by saying that if the victim refuse to talk to the first appellant, he would die and the victim is reasonable for that. Therefore, from the evidence of the victim, it is clear that both the appellants had committed punishable offences. The date of birth of victim as per exhibit P3 is 01.10.2004 and the said occurrence took place on 14.02.2018. Therefore, the age of the victim is 13 years and she is a child under the definition of Section



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2(1)(d) of POCSO Act and therefore, the offence committed by the appellants falls under POCSO Act. It was stated by the defence side that none of the students, who were present at the time of alleged occurrence, were examined by the prosecution and the same is a defect on the part of the prosecution. Moreover, the defect on the part of the prosecution may not be a sole ground to discard or disbelieve the evidence of the victim. Since, the allegation is against the teachers, no student would come forward and speak against their own teachers. The students and their parents would have thought about their future and hence, no student had come forward to give evidence in support of the victim. Further, it is not necessary for the victim to say such an allegation against her own teacher. The appellants tried to drag the case by saying that this complaint was foisted against them due to a previous enmity between the appellants and another teacher who was a relative of the father of the victim. The father of the victim made her daughter as a tool to take vengeance against the appellants and the teacher foisted a false case against the appellants. However, it is not believable and the appellants have not substantiated the ground. Though the defence have filed the FIR, there was a FIR against other teachers for whom the father of the victim registered a case against



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the appellants. The same is not believable and not substantiated. In cases of this nature, one cannot expect a girl student to be bold enough to come forward and give a complaint against her own teacher. At the same time, the parents of the students would also think that giving a complaint against the teacher, in order to help their friends and relatives will be a hasty decision. The defence taken by the appellants are not believable. In cases of this nature, no independent witness could be expected by the Court. Either no independent witness would be available or even if it is available, no student or parent would come forward to give evidence against their own teacher. If the evidence of the victim inspires the confidence of the Court, it is alone sufficient and this Court need not look forward for independent witness and it can record the conviction against the accused.

14. Therefore, considering the facts and circumstances of the case, it is evident that the evidence of the victim is natural, cogent and consistent and no reason is found to disbelieve or discard the evidence of the victim and this Court finds that as a appellate Court and final Court of fact finding, re-appreciated the entire facts and evidence and finds that



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the prosecution has proved its case beyond reasonable doubt. Therefore, this Court finds that the first appellant has committed offences punishable under Section 12 of POCSO Act. The second appellant who is a friend and co-teacher of the first appellant instigated him instead of advising the first appellant not to misbehave with the victim. The second appellant further threatened the victim to co-operate with the first appellant otherwise she would be responsible, if anything happens to first appellant. Such a threat committed by the second appellant is punishable under Section 506(i) of IPC.

15. Therefore, the trial Court has rightly appreciated the evidences. Though the Section 29 of POCSO Act is not applicable to Section 11 of POCSO Act. However, the victim in her 164 statement recorded before the learned Jurisdictional Magistrate clearly stated that the first appellant misbehaved with her. Then, it is for the appellant to rebut the presumption that he had no sexual intent. This court finds that the prosecution has proved its case beyond reasonable doubt and the appellants have misbehaved with the victim, who is a child under the definition of POCSO Act. The physical contact with sexual intent is an



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offence under Section 11 of the POCSO Act. Therefore, once the prosecution proved that the first appellant offered flowers and when she refused he pinched her, kept the flower in her hand, then, it is an offence under Section 7 of POCSO Act punishable under Section 8 of POCSO Act, and it is for the appellants to explain for what purpose he offered flower specifically to the victim. However, the trial Court framed charges under Section 11 punishable under Section 12 of the POCSO Act and convicted under the said section for A1. Neither the state nor the victim filed an appeal. Therefore, this Court confirmed the offence under Section 11 punishable under Section 12 of POCSO Act.

16. Therefore, this Court finds that the appellants have committed the charged offences and there is no perversity in the order passed by the trial Court. Hence, there is no merit in the appeal and the appeal is liable to be dismissed.

17. Accordingly, the Criminal Appeal is dismissed.

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Index: Yes/No

To

1. The Special Court for Exclusive Trial of cases under POCSO Act,
Villupuram
2. The Inspector of Police,
All Women Police Station,
Kallakurichi,
Villupuram 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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**Pre-Deliver Order in
Criminal Appeal No.697 of 2021**

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