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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON:09.02.2022

PRONOUNCED ON :01.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

Crl.A.No.731 of 2018
(Through Physical Hearing/Video Conferencing)

Baskar ...Petitioner/Sole Accused

Vs

State by the Inspector of Police
Rasipuram Police Station,
Namakkal

...Respondent/Complainant

Prayer:- This Criminal Appeal has been filed, under Section 374 (2) of Cr.PC, against the judgement of conviction and sentence, dated 19.09.2018, made in Spl.CC.No.9 of 2016, by the Sessions Court (Fast Track Mahila), Namakkal.

For Petitioner : Mr.T.Muruganantham

For Respondent : Mr.M.Babu Muthu Meeran, APP

JUDGEMENT

(Judgement of the Court was made by A.A.NAKKIRAN, J.)

- 1.This Criminal Appeal has been filed, against the judgement of conviction and sentence, dated 19.09.2018, made in Spl.CC.No.9 of 2016, by the Sessions Court (Fast Track Mahila), Namakkal, thereby convicting and sentencing the Appellant/Accused, for the offences under Section 5(m) read with Section 6 of the Protection of Children from Sexual Offences Act, 2012 (herein after referred to as the Act), to undergo life imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo one year Rigorous Imprisonment.
- 2.The case of the Prosecution has arisen on the basis of Ex.P1, complaint made by PW.2, mother of the victim girl, Kasthuri, PW.2, aged about 11 years, at the time of the occurrence, alleging that both PW.1 and PW.2 were living at Marikadu in Kattanachampatty Village and that in 2016, the victim girl was studying VI Standard in the Government School and that on



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13.03.2016 Noon, when the victim girl went to her uncle's house at Manakadu in the same Village and was playing with her uncle's daughter Sandiya, PW.4, near Karuppanar Kovil Thittu, the Appellant/Accused came there and under the pretext of showing a Tamil Movie 'Rajini Murugan' in his Cell Phone, took the victim girl to Karuppanar Kovil Thittu Lane at EB.Colony, Manakadu and applied his finger and mouth into the genital part of the victim girl and laid down her and by laying over her, penetrated his male genital organ into her mouth. Hence, the Appellant/Accused was charge sheeted for the offences punishable under Section 5(m) read with Section 6 of the Protection of Children from Sexual Offences Act, 2012 or under Section 376(2) (i) of IPC.

- 3.The case was taken on file in Spl.CC.No.9 of 2016, by the Sessions Court (Fast Track Mahila), Namakkal and necessary charges were framed. The accused had denied the charges and sought for trial. In order to bring home the charges against the accused, the Prosecution had examined PW.1 to PW.16 and also marked Exs.P1 to P13 and Mo.1 (Series). On the side of the Defence, neither any witness was examined nor any document was marked. On completion of the evidence on the side of the prosecution, the accused was questioned under Section 313 Cr.PC as to the incriminating circumstances found in the evidence of prosecution witnesses and the accused had come with the version of total denial. The court below, after hearing the arguments advanced on either side and also looking into the materials available on record, had found the Appellant/Accused guilty and awarded punishments, as referred to above, which is challenged in this Criminal Appeal by the Appellant/Accused.
- 4.This court heard the submissions of the learned counsel on either side.
- 5.The learned counsel for the Appellant would submit that there are discrepancies and infirmities in the case of the Prosecution and that the subsequent insertions made in the complaint create a grave doubt in the case of the Prosecution and that the non examination of the person, who wrote the complaint dictated by PW.1, is fatal to the case of the Prosecution and that the 164 statement given by the victim girl is not her true version and it is not a substantial evidence and that the victim girl is a tutored witness and the judgement of the lower court is excessive and not in accordance with law.
- 6.On the other hand, the learned Additional Public Prosecutor for the Respondent would submit that immediately after the occurrence, the victim girl herself had narrated the entire incident to the witnesses of the Prosecution and that there were sufficient eye witnesses to the occurrence and that the



Prosecution had proved its case, beyond all reasonable doubts, by examining all the witnesses and by valid and cogent evidence and hence, the impugned judgement of conviction and sentence does not warrant any interference by this Court.

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7. This Court carefully considered the rival contentions of the learned counsel on either side and also thoroughly scanned through the entire evidence available on record, including the impugned judgement of conviction and sentence.
8. Now, it is to be seen as to whether the Prosecution has proved its case, beyond all reasonable doubts to base conviction on the Appellant/ accused, by valid and cogent evidence or whether the Appellant/ accused is entitled for acquittal, for which, a thorough scrutiny of the evidence, both oral and documentary is necessary and it is done as under.
9. At the outset, it is pertinent to state that the Honourable Supreme Court, in a catena of decisions, had held that nobody be convicted on surmises and conjectures. Similarly, nobody be convicted on mere suspicion, however strong it may be. Similarly, it had been held that the evidence can be rejected, if it suffers from any serious infirmities or if there is any inherent inconsistency in the testimony. At the same time, if there is intrinsic merit in the evidence of the witnesses, the same cannot be rejected. Discrepancies and contradictions, if found material and substantial, are in respect of vital aspects of facts, then the entire testimony cannot be discarded. Bearing in mind, the aforesaid principles, the rival submissions made by the parties are to be analysed and a detailed and proper analysis of the entire evidence is essentially required.
10. In this case, now coming to the evaluation of the evidence adduced by the Prosecution witnesses, PW.1, who lodged the complaint Ex.P1, is the mother of the victim girl PW.2. PW.1 had deposed that in 2016, the victim girl was studying VI Standard and the victim girl along with the daughter of his brother, Sandya, PW.4, went for playing and that at 2.00 p.m. when she was in her house, PW.4 came to her house and told that when they were playing, one person called her and that the accused under the guise of showing a Tamil Film in his Cell Phone, took her to Karuppanar Koil Thittu and misbehaved with the victim girl and that immediately, she along with her sister, went to that place and that PW.1 saw the accused, penetrating his male genital organ in her mouth and immediately, she took the victim girl and they caught hold of the accused and handed over him to the Police Station and then, gave the complaint Ex.P1. PW.1 had further deposed that before giving the complaint, the victim girl told her that the accused



penetrated his male genital organ in her mouth and thereafter, the Police Personnel enquired the victim and took her to the Hospital for clinical examination.

11.PW.2 is the victim girl, who had deposed in her examination in chief that she was studying VI Standard and in the afternoon, she was playing along with her uncle's daughter, Sandya near the Karuppanar Kovil and at that time, the accused called her to come along with him to see a Tamil Film, 'Rajini Murugan' in his Cell Phone and then, she went along with him and at Karuppanar Kovil Thittu, the accused laid down the victim girl and inserted his male genital organ in her mouth and on seeing the same, Sandya ran away from that place and told the incident to her mother and others and brought them to the place of occurrence and they caught hold of the accused and brought the victim girl and the accused to the Police Station. Immediately after the incident, PW.2 had also narrated the entire incident in the 164 Statement and then to PW.10 Doctor, who examined her clinically.

12.PW.3, who is the brother of PW.1, is one of the witnesses, who reached the place of occurrence and saw the incident directly and deposed in the same line as that of PW.1. His evidence is in corroborative in nature.

13.PW.4, Sandya, who was playing along with the victim girl, had deposed that on 13.3.2016 Noon, when she and the victim girl were playing near the Karuppanar Kovil, the accused came there and called her, saying that he will a show Tamil Movie, 'Rajini Murugan' in his Cell Phone and took her to the nearby lane and laid down her and he laid on her and that at that time, the accused removed her pant and the dresses of the victim and on seeing the same, she ran away and told to the mother of the victim and immediately, they came to the place of occurrence and caught hold of the accused. She had denied the suggestion that whether the Police tutored her.

14.PW.5, a resident of the street adjacent to the Street, where the victim is residing, had deposed that on 13.03. 2016 at 2.00 p.m. he went to the place occurrence on hearing the noise and on seeing the accused removing her inner ware and thereafter, laying on the victim girl, all of them shouted against him and also saw the accused inserting his genital organ in her mouth and then, they caught hold of the accused.

15.PW.7 was also the one of the persons, who saw the occurrence directly and he had deposed in the same lines in respect of the occurrence, as that of the other witnesses, as stated above.

16.PW.8, Village Administrative Officer, is the mahazar witness



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and he had deposed that under Ex.P3, seizure mahazar, MO.1 (Series), namely, Cell Phone, Simcard and Memory Card), were seized and deposed regarding the confession of the accused. The evidence of PW.9, who rushed to the scene of occurrence and saw the incident, also corroborates the case of the Prosecution.

17.PW.10 Doctor, who examined the victim girl clinically, had deposed that while examining the victim, she told that there was pain in her genital organ and found that there was an attempt to sexually assault on the victim and issued his report under Ex.P5, stating that "11 years old victim girl told that 42 years old unknown person tried to introduce his finger into the introitus and oral stimulation was done over the introitus and that person lied over this girl and tried for intercourse and the girl shouted". As per Ex.P6, opinion of PW.11 Doctor, the accused was having potential capacity to perform sexual activity.

18.In so far as the contention of the Appellant/Accused that the complaint itself is a suspicious one, since there was a subsequent insertion in the complaint, is concerned, as rightly pointed out by the Trial Court, since there was no suggestion or cross examination in categorical terms with regard to the above said allegation, it cannot be said that it was a subsequent insertion, as it did not find a place in Ex.P9, First Information Report and hence, Ex.P1 cannot be doubted.

19.As per Ex.P8, age certificate issued by PW.12, Head Master of the School, where the victim girls was studying, PW.2 was aged below 12 years at the time of occurrence. According to the defence, PW.2 and PW.4 are the child witnesses and they were tutored or influenced by the Prosecution to foist a false case against the Appellant/Accused. It is not the law that if a witness is a child, his/her evidence shall be rejected, even if it is found reliable. The decision, on the question as to whether a child witness has sufficient intelligence, primarily rests with the Trial Judge, who notices his/her manners, apparent possession or lack of intelligence and the said Judge may resort to any examination. Though a child witness is a dangerous witness, as he/she is pliable and liable to be influenced easily, shaped and moulded, but it is also an accepted norm that if after careful scrutiny of his/her evidence, the court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of such a child witness.

20.In this case, there is nothing on record to indicate that the minor victim girl examined as PW.2 and PW.4, had, in any manner, been tutored or influenced by the Prosecution. Further, in a case relating to sexual assault and rape, the



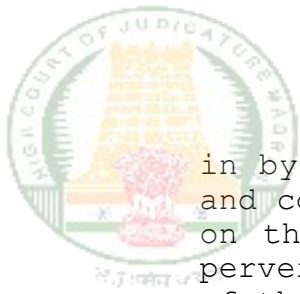
evidence of the victim girl is very much vital and if found reliable can form the basis of conviction of the accused, without seeking for further corroboration. In this case, both the victim girl, examined as PW.2 and PW.4, who are the child witnesses, had spoken about the occurrence and clearly identified the Appellant/Accused himself and not on the basis of what the Prosecution told them to state. The evidence of PW.2 and PW.4 is corroborated by the testimonies of the other eye witnesses.

21. The victim girl herself had narrated the entire incident to the witnesses of the Prosecution. The above said witnesses, PW.1, PW.3 to PW.7 and PW.9 are the direct eye witnesses to the occurrence. All in one voice, in their oral evidence, in categorical terms, had spoken about the incident and the involvement of the Appellant/Accused in the commission of the offences and their evidence are corroborative in nature with each other. The evidence of the said witnesses inspires the confidence of this Court.

22. In so far as the ground raised by the learned counsel for the Appellant/Accused that the non examination of the person, who wrote the complaint, is fatal to the case of Prosecution, is concerned, we do not think so. The credibility of the evidence is assessed not quantitatively, but qualitatively. It is to be seen as to whether the case of the Prosecution is proved by the evidence of a single witness, whose evidence is unshakable. Therefore, we do not agree that the non-examination of the scribe of the complaint in any way falsify the case of the Prosecution, since the other unshakable evidence of the Prosecution witnesses on record, as discussed above, inspires the confidence of this Court to base conviction on the Appellant/Accused.

23. It is seen from the entire evidence let in by the Prosecution that the victim girl was aged below 12 years at the time of occurrence and that she was subjected to aggravated penetrative sexual assault by the Appellant/ Accused. Thus, the offences under Section 5(m) read with Section 6 of the Protection of Children from Sexual Offences Act, 2012 levelled against the Appellant/Accused were proved by the Prosecution, beyond all reasonable doubts, by valid and cogent evidence, which was rightly accepted by the court below and accordingly, punishment was awarded as stated above, by the impugned judgement of conviction and sentence, which in the opinion of this Court, is proper.

24. Further, this Court is unable to find any rebuttal evidence let in by the Appellant/ accused to discard the conviction and sentence imposed on them. On the other hand, the evidence let



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in by the Prosecution as discussed above is sufficient, cogent and convincing, to sustain the conviction and sentence imposed on the Appellant/ accused by the court below and there is no perversity or infirmity or illegality in the impugned judgement of the court below.

25.Children are precious human resources of our country and they are the Country's future. The hope of tomorrow rests on them. There are different modes of her exploitation, including sexual assault and/or sexual abuse. In our view, exploitation of children in such a manner is a crime against humanity and the society. Therefore, the children and more particularly the girl child deserve full protection and need greater care and protection whether in the urban or rural areas. By awarding a suitable punishment commensurate with the offence committed by the Appellant/Accused, a message must be conveyed to the Society at large that if anybody commits any offence under the POCSO Act of sexual assault, sexual harassment or use of children for pornographic purposes, they shall be punished suitably and no leniency shall be shown to them.

Since no compensation has been awarded by the Trial Court, this Court awards a compensation of Rs.5,00,000/- (Rupees Five Lakhs Only), under GO.Ms.No.33, Social Welfare and Nutritious Meal Department Programme (SW.5(2)) Department, dated 03.10.2020, to be deposited in the name of PW.2 Victim Girl, by the State Government, in any one of the Nationalised Banks, with her Mother, PW.1, as her Guardian, till she attains the age of majority. The District Child Protection Officer, Namakkal, the Secretary, Legal Services Authority, Namakkal, the Trial Court and the Respondent Police shall ensure that the above said compensation is disbursed to PW.2 Victim Girl, as directed above, within a period of three months from the date of receipt of a copy of this judgement. The Director, Social Welfare Department, Chennai, shall file a compliance report in the Registry of this Court, within a period of three months from the date of receipt of a copy of this judgement and the Registry shall place the compliance report as part of the appeal records.

26.In fine, this Criminal Appeal is dismissed, on the aforesaid terms.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1.The Inspector of Police,
Rasipuram Police Station, Namakkal

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2.The Sessions Court (Fast Track Mahila), Namakkal

3.Do Thro Principal Sessions Judge,
Mahila Court, Namakkal.

4.The Superintendent
Central Prison, Coimbatore.

5.The Public Prosecutor,
High Court, Madras

6.The District Child Protection Officer,
Namakkal.

7.The Secretary,
Legal Service Authority, Namakkal.

8.The Director,
Social Welfare Department,
Chennai.

9.The Section Officer,
Criminal Section,
High Court, Madras.

10.The POCSO Committee,
High Court, Madras.

+1cc to M/s.t.Muruganantham, Advocate, S.R.No.13905

Cr1.A.No.731 of 2018

RSI (CO)
RGA(16/03/2022)