



Crl.A.No.72 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.07.2023

DELIVERED ON : 04.08.2023

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.A.No.72 of 2022

Ramki

... Appellant

Vs.

State Represented by
The Inspector of Police,
W-20, All Women Police Station
Saidapet, Chennai
(Crime No.03/2018)

... Respondent

PRAYER: Criminal Appeal filed under Section 374 of Criminal Procedure Code, 1973 against the conviction and sentence passed by the learned Sessions Judge, Special Court for Exclusive trial of cases under POCSO Act, Chennai, in judgment dated 23.12.2021 passed in S.C.No.257/2018.

For Appellant : Mr.T. Shanmugaboopathi

For Respondent : Mr.S. Sugendran
Additional Public Prosecutor.



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JUDGMENT

This criminal appeal is filed against the Judgment and order of the Sessions Judge, Special Court for Exclusive trial of cases under POCSO Act, Chennai, made in S.C.No.257/2018, dated 23.12.2021.

2. The appellant is the accused in S.C.No.257/2018 and he is convicted and sentenced as detailed hereunder:

<i>Conviction</i>	<i>Sentence</i>
Section 6 @ 10 of POCSO Act, 2012	Imprisonment for 7 years and a fine of Rs.5,000/-, in default, to undergo 3 months Simple imprisonment. The period already undergone has been directed to be set off under Section 428 Cr.P.C.

3. The Prosecution case:

- i. The victim girl in the present appeal against the conviction and sentence by the Mahila Court, Chennai in S.C. No.257/2018, is just 4½ years old.
- ii. The case of the prosecution is that the victim girl (P.W.1) along with



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her mother (P.W.2) Durga were residing in the 2nd floor of the house building bearing No.68/24, Gangaianman koil street, Jafferkhanpet, Chennai. P.W.1 had a younger brother and father (both not examined), all living together along with her grandmother.

- iii. On 19.04.2018, it was a school holiday for the victim girl who was in the UKG class. Her mother Durga (P.W.2) had left her and her little brother with her mother (grand mother) and went to the ESI hospital, K.K. Nagar, to attend to her (P.W.2's) mother-in-law, who was an inpatient and undergoing treatment.
- iv. The children, P.W.1, her little brother and her friend one Tarika and her little brother were playing in the 1st floor portion which was getting painted by the accused for a new tenant.
- v. The accused Ramakrishna alias Ramki was a painter by profession and used to be called for painting work by the owner of the building one Jaya (P.W.4) She had many houses in the street and also many portions in the building rented out. One such tenant was P.W.2.
- vi. At about 1.30 p.m., the accused sexually assaulted the 4½ year old child by kissing her on the lips and putting one finger in her genital



and pinching it hard causing pain and bleeding.

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vii.Nadiya (P.W.6) another tenant in the same building (ground floor) heard some noise on the first floor, went there and found the owner of the building Jaya (P.W.4) along with other neighbours questioning the accused as the victim child (P.W.1) was crying.

viii.P.W.6 took the crying child to the bathroom and found the child bleeding from the genital area. She washed the child's genital with water and later on handed over the child to her grandmother who applied coconut oil on the injured area.

ix. When the mother of the child received a telephone call regarding the incident, she rushed to her home and also called her husband. The child narrated the incident to her mother (P.W.2) who later went to the Saidapet All Women Police Station to give a complaint (Ex.P1)

x. The child's birth certificate is marked as Ex.P2. The child was referred to Egmore Children's Hospital, where she was first examined by Dr.

xi. (P.W.9) a paediatrician at 5.45 p.m the same day. She prepared the Accident Register (Ex.P13) wherein she mentioned that there were



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nail markings on the lips of the child and also nail impression on the left side vaginal area of the child. She was again examined at 8.45 p.m. on the same day by Dr. Suganthi (P.W.7) (a gynecologist) who prepared a report Ex.P9.

xii.The forensic report is Ex.P10 and the report on sexual offences is marked as Ex.P11. The accused was examined by Dr. Vishnu Rajkumar (P.W.8) for potency test and the certificate is Ex.P12.

xiii.Yuvarani, the Inspector of Police, All Women Police Station received the complaint (Ex.P1) from P.W.2 the mother of the victim child on 19.04.2018 at 5 p.m. and registered FIR (Ex.P14) in Cr. No.03/2018 of W-20 All Women Police Station, Saidapet, Chennai, under Section 5(m) r/w 6 of POCSO Act. and sent the same to the Magistrate Court, Saidapet. She referred the child to Egmore Children's Hospital for medical examination and visited the hospital, examined the victim child's parents Durga (P.W.2) and Rajendran (not examined) and recorded their statements.

xiv.On the next day (20.04.2018), she went to the residence of the accused in Nesapakkam and apprehended him near his house at 9.



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a.m. He was taken into custody and his confession was recorded in the presence of Bavani Shankar (not examined) and Loorthu Xavier (P.W.3). She also went to the hospital again and recovered the three fourth pant worn by the victim girl in the presence of the same witnesses under the cover of a mahazar Ex.P5. The pant was marked as M.O.1.

xv. On the same day evening at 5 p.m, P.W.10 went to the place of occurrence of the crime, enquired Jaya (P.W.4) and Divakar (P.W.5) and prepared the Observation Mahazar (Ex.P7) and also a rough sketch of the building (Ex.P15) in their presence. Their statements were recorded along with that of Jaya, Taj, Nadiya and Panjamirtham.

xvi. The victim girl made her statement under Section 164 Cr.P.C. before the XVII Metropolitan Magistrate Court. The doctors who examined the victim child were examined and their statements were recorded by the Investigating Office. The forensic reports were obtained and marked as Ex.P10 and Ex.P16.

xvii. The Investigating Officer (P.W.10) filed the final report on 21.06.2018 under Section 6 of POCSO Act against the accused.



4. The trial of the prosecution

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- i. There were as many as 10 prosecution witnesses, 16 exhibits and one Material Object.
- ii. P.W.1 to P.W.10 were the witnesses who deposed on the side of the prosecution. P.W.1 is the victim girl. She has narrated the sequence of events. P.W.1 had deposed that when she was playing with her brother and her friend the accused had pinched her genital. Her evidence corroborated with the evidence of P.W.3, P.W.4, P.W.5 and P.W.6.
- iii. P.W.9 Dr.Thannoli Gowthami was the first doctor to have examined the child on the same day and was the author of the Accident Register. The victim child in fact stated about the sexual abuse which was recorded by the doctor and the doctor also found nail markings on the lips of the child as well as nail impression on the left side of vaginal area as per Ex.P.13, the Accident Register. It was only to her P.W.1 had spoken about the fact that the accused kissed her on her lips. Dr.Vishnu (P.W.8) also examined the accused and found nothing to suggest that he was impotent.



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xviii. The accused was questioned with regard to the circumstances appearing in evidence against him under Section 313 Cr.P.C. and he denied all the charges.

iv. However, the accused did not adduce any documentary evidence and also had no witnesses to examine. Nevertheless, the counsel for the accused had asked the victim child as to 'which hand was used for molesting' etc. Similarly, much also was about the colour of the dress worn by the victim child. This was the content of the cross examination of other witnesses especially P.W.4 and P.W.6.

v. The stand of the counsel for the accused was that there was enmity between the accused and P.W.6. The trial court found all these irrelevant in the light of the overwhelming oral evidence of the victim girl which was well corroborated with the other witnesses. Similarly the Medical Report (AR) of Dr. Thannoli Gowthami (P.W.9) who was the first to examine the girl child also was assertive and clinching.

vi. Thereafter, the trial court concluded that the accused was guilty of the offence under Section 6 @ 10 of POCSO Act, 2012 and hence awarded the punishment as stated supra.



5. The Appeal

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5.1. This appeal has been preferred against the above conviction and sentence.

5.2. Heard Mr.T. Shanmugaboopathi, learned counsel for the appellant and Mr.S. Sugendran, learned Additional Public Prosecutor appearing for the respondent.

5.3. The learned counsel for the appellant/accused contended that vital witnesses were not examined by the prosecution and this itself causes serious doubt as to the occurrence of the crime. One eyewitness was Tharika who was another child (a relative to the house owner Jaya (P.W.4)) playing with P.W.1 and another one was Bhavani Shankar brother of P.W.2 who was the first to be on the spot after the incident took place. It was also contended that the gynecologist Dr. Suganthi (P.W.7) neither found injuries on the private parts of the child nor found any evidence of penetrative sexual assault on the child. This is also corroborated with the forensic report and therefore according to the learned counsel for the accused, the incident was concocted to implicate the accused. He also contended that the depositions



of P.W.1, the victim child were different in 164 Cr.P.C. Statement and that made before the doctor who examined her first. Such contradictions along with the statements of the other prime witnesses like P.W.2 to P.W.6 were all not convincing which the trial court failed to notice. Thus he pleaded for acquittal.

5.4. Per contra the learned Public Prosecutor argued that it was an open and shut case. The child who was just 4½ years old had spoken the truth and this could be asserted as the child had withstood the testimony of cross examination very well. His further contention was that minor contradictions in the depositions of P.W.2 to P.W.6 fade into insignificance when the child itself has managed the barrage of questions from the learned defence counsel in the trial court. He pleaded for dismissal of the appeal.

6. Conclusion

6.1. This court opines that sexual assault on minor children is one of the most heinous crimes which need very stringent punishment to curb the menace. In the instant case, P.W.1's evidence is very convincing. A painter



who is a rank outsider has been accused of the act of sexual assault. He was the only one present there in the room in the first floor where the children were playing. The child has been touched inappropriately by him. She was not only touched but also pinched roughly on her genitals resulting in some bleeding. In such a scenario it is not acceptable that he was innocent. There is no room to believe that the 4½ year old child lied. It is true that she has not deposed about the kissing in her 164 Cr.P.C. statement as well in the deposition. But her first statement was made to the paediatrician Dr.Thannoli Gowthami which was recorded in the Accident Register. Dr.Thannoli Gowthami also withstood the testimony of cross examination as a witness (P.W.9). Subsequently after four hours, the gynecologist Dr. Suganthi (P.W.7) examined the child and certified in Ex.P9 as 'no evidence of sexual assault'. This has been relied upon by the learned counsel for the accused. However he has not alleged any motive for the charge being a 'trumped up' one. Merely stating that there was enmity between Nadiya (who is a tenant) P.W.6 and the accused painter is not convincing. The painter was engaged by P.W.4 Jaya, the owner of the building and not by P.W.6, a tenant.



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6.2. It is true that every accused is entitled to be defended and defence counsel has to fight for the case. But posing questions like 'which hand was used by the accused to pinch you in the genitals' to the victim child who is just 4½ years old is appalling to say the least. In the opinion of this court, not examining the child Tarika who was playing with the victim child and also the maternal uncle of the victim child about whom the child has not mentioned are not fatal to the case in the light of the clarity in the statements made by the victim child.

6.3. The victim child was just 4½ years old. In a developing country riddled with taboos and biases, we have seen women emerging out of the shell of ignorance and illiteracy. But, such incidents only make us feel that the future of young girls is unsafe. Every girl child is considered as a reincarnation of Goddess and unless this evil of sexual assault is eradicated with strict laws and effective implementation, our society could never grow into a safe and secure society.

6.4. I do not hesitate to believe the victim girl. The trial court has



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been considerate in awarding punishment. The accused has been sentenced with the minimum punishment only. Sexual abuse, drugs and alcohol are the three deep malaises that ruin a society and never allow development of the country. In an era when our President is a woman, we need to hang our heads in shame for such crimes being perpetrated on a daily basis. The conviction and sentence need no interaction.

7. In the result,

(i) The Criminal Appeal is dismissed.

(ii) The conviction and sentence passed by the learned Sessions Judge, Special Court for Exclusive trial of cases under POCSO Act, Chennai, in judgment dated 23.12.2021 passed in S.C.No.257/2018, is confirmed.

04.08.2023

bga

Index : yes/no

Speaking /Non speaking Order

To

1. The Inspector of Police,
W-20, All Women Police Station

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2. The Sessions Judge, Special Court for Exclusive trial of cases under POCSO Act, Chennai
3. The Public Prosecutor, High Court, Madras.



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R.HEMALATHA, J.

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Pre-Delivery Judgment in
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