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CrI.A.No.311 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.06.2023

PRONOUNCED ON : 28.08.2023

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CrI.A.No.311 of 2018

Karthick

.....Appellant

.. Vs ..

The State rep. by
the Inspector of Police,
W-22, All Women Police Station,
Chennai.
(Crime No.3 of 2016)

...Respondent

PRAYER: Criminal Appeal filed under Section 374 (2) of Cr.P.C, to set aside the conviction of the appellant in S.C.No.249 of 2016 dated 08.05.2018 by the Special Court for Cases under Protection of Children from Sexual Offences Act, 2012, Mahila Court, Chennai.

For Appellant	: Mr.R.C.Paul Kanagaraj
For Respondent	: Mr.L.Baskaran Government Advocate (CrI.Side)

J U D G M E N T

The convicted sole accused is the appellant herein.



CrI.A.No.311 of 2018

WEB COPY

2. This Criminal Appeal has been filed against the conviction and sentence awarded by the learned Sessions Judge, Special Court for Cases under Protection of Children from Sexual Offences Act, 2012, in S.C.No.249 of 2016 by judgment dated 08.05.2018 wherein the learned Sessions Judge convicted the appellant for the offence punishable under Section 12 of the POCSO Act, 2012 and sentenced him to undergo one year Simple Imprisonment and to pay a fine of Rs.5,000/- in default to undergo Simple Imprisonment for 3 months.

3.(a) The respondent Police filed a final report before the learned Sessions Judge in Crime No.3/2016 alleging that the daughter of the complainant is the victim child. She was aged 12 years and studying VII Std. in a School at Adyar. On 27.01.2016 at about 3.47 p.m and alighted down from the Van and walked towards her house, one person who was walking in front of her, when she was climbing the steps.

3 (b). He told her that he was going to be come as her neighbour and made friendly conversation about her School and studies. While talking so, he touched her chest over her school badge and lifted her skirt



Crl.A.No.311 of 2018

by asking whether she was wearing shorts. The victim child shouted at him that he should not do like that and climbed up fast and went inside her home. She told about the occurrence to her parents. The father of the victim child went down to fix the person who misbehaved with his daughter. But, he slipped away.

3 (c). The father of the victim child could trace the identity of the person through CCTV footage and from then onwards, the parents of the victim child were having vigilance when the victim child returns from school. On 09.02.2018, at 3.25 pm, the person who misbehaved with the victim child on 27.1.2018 appeared again in the apartment. After watching him, the victim child's father went and enquired why he was there and what was his name. The said person did not give any proper answer and took away the TVS Scooty Vehicle bearing No.TN07AA9718.

3 (d). Thereafter, with the assistance of Police, the complainant could get the name of the person as Karthick Slo Devendran. Since investigation revealed that the said person, who is the accused herein has committed sexual assault on the victim child.



Crl.A.No.311 of 2018

WEB COPY

3 (e). The Inspector of Police, W22 All Woman Police Station, Mylapore, Chennai, has filed the charge sheet against the accused under Sections 7 and 8 of POCSO Act.

4 (a). After observing the formalities the case was taken on file as S.C.No.249 of 2016 and made over to the Special Court for cases under POCSO Act, 2012, Chennai.

4 (b). In order to bring home the guilt of the accused, out of 9 witnesses cited in the list of witnesses, the prosecution examined 5 witnesses (P.W.1 to P.W.5) and marked Ex P1 to P5. P.W.2 is the victim child, P.W.1 and P.W.3 are mother and father of the victim girl respectively. P.W.4 is the neighbour of P.W.1's family who had CCTV camera at his apartment and P.W.5 is the Investigation officer who has registered FIR, conducted enquiry and filed final report. On behalf of the accused, his brother was examined as D.W.1. Based on the oral and documentary evidence, the trial Court has come to the conclusion that though the charges are framed under Sections 7 and 8 of the POCSO Act, the learned Sessions Judge found the accused guilty and convicted him



CrI.A.No.311 of 2018

WEB COPY

for the offence punishable under Section 12 of the POCSO Act (lesser award) and accordingly awarded the sentence as stated supra.

5. Mr.R.C.Paul Kanagaraj, learned counsel for the appellant would contend that there is no proper identification in fixing the accused. In the mistaken identity, the present appellant / accused has been falsely implicated by the Police for their lapse to secure the actual person who committed the offence and also stated that there is a delay in registering FIR.

6. Mr.L.Baskaran, learned Government Advocate (CrI.Side) made submissions in support of the judgment of the trial Court.

7. Heard both side and perused records.

8 (a). As per Ex.P3, Birth certificate of the victim child, the date of birth of the victim child is 26.12.2003 and the alleged occurrence taken place on 27.01.2016 and hence the victim is a minor as stated under Section 2 (1) (3) of the POCSO Act.



CrI.A.No.311 of 2018

8 (b). With the help of P.W.4, Radhakrishnan who is residing in the apartment having CCTV Camera, they have identified the person and given the complaint. P.W.5 is the Police witness who had taken the accused for medical examination and obtained medical certificate and also obtained certificate under 65 B of the Indian Electronic Evidence Act which is marked as Ex.P4. The statement of the victim girl is recorded under Section 164 of Cr.P.C, which is marked as Ex.P2. The CCTV footage was marked as M.O.1.

9. Whether the order of conviction awarded by the learned Sessions Judge, Special Court for cases under POCSO Act, 2012, Chennai is sustainable in law?

10. The prosecution case is that on 27.01.2016, the accused has committed sexual assault on the victim child, who is aged 12 years by pressing her breast and lifted her skirt by asking whether she was wearing shorts. The mother of the victim child viz., Deepa Chandrasekaran, gave the complaint dated 15.02.2016 and she was examined as P.W.1 and the complaint was marked through her as Ex.P1. The accused has been charged for an offence u/s 8 of POCSO Act on the



CrI.A.No.311 of 2018

allegation that on 27.1.2016 at about 3.47 p.m. when the victim girl after alighting from her school van and walked towards her home by climbing steps, the accused intercepted her on the first floor landing and shook her hands by telling that he was going to be her neighbour soon. On the pretext of asking her school details, he touched her school badge and pressed her breast incidentally. Then, he lifted her skirt by asking whether she was wearing shots.

11. After perusing the evidence of P.W.2 victim girl and her parents P.W.1 and P.W.3 I find when PW-2 (Victim child) came from the School at about 3.47 p.m. and alighted down from the van and walked towards her house, one person walking in front of her stopped when P.W.2 was climbing the steps and the said person told P.W.2 that he was about to be their neighbour and had a conversation with the child and during that time the said person alleged to have touched the chest and also alleged to have lifted the skirt of the victim child, immediately the victim child shouted and came home and informed the incident to her parents. The father of the child (P.W.3) immediately came to trace the person and since the said person slipped away, his identity was fixed in



CrI.A.No.311 of 2018

CCTV footage on 09.02.2016 at 03.25 p.m. The alleged person was found again in the apartment and when the alleged person was enquired by P.W.3 he immediately left the spot without answering by the vehicle and the said vehicle No. TN 07 AA 9718 was noted and its owner was found to be one Karthick (appellant) and thereafter a compliant was lodged before the respondent.

12. On a combined reading of the chief and cross examination of the victim girl who is examined as P.W.2 she had narrated that on 27.01.2016 at about 3.45 p.m. after getting down from her School Van she was walking towards her home. At that time, one uncle was climbing steps before her and he met her on the first floor landing. He shook his hands with the child and fetched friendly conversation by telling that he is going to come as her neighbour and then he pressed her chest over her badge and lifted her skirt by telling whether she was wearing shots. The victim child pushed him and went fast to her home. Immediately, she went and reported to her father about the occurrence. Her father came down in order to fix the person. But, he was not found. Thereafter, the mother of the victim child also came to know about the occurrence and then, her mother got the CCTV footage from a neighbour P.W.4 and



CrI.A.No.311 of 2018

asked P.W.2 to identify from the CCTV footage, who misbehaved with her. After a few days, her father P.W.3 caught hold of the person in the apartment itself and enquired him. Since he went away immediately, P.W.3 noted down his Scooty number and collected his details.

13. On a careful reading of the evidence of P.W2, I find that the procedure contemplated for recording the child witness by the Special Court has been duly complied with and preliminary questions have been put by the learned Sessions Judge before commencing the actual recording of evidence. P.W.2 also identified the accused in the Court. The evidence of sexual victim deserves to be given due weightage.

14 (a). In Ex.P1 complaint given by the mother of P.W.1, it has been stated that the accused touched and fondled the chest of the child and attempted to lift her skirt by asking whether she was wearing shorts. In the 164 Statement, there is no allegation that the accused pressed her breast. The said fact was told by the child (victim) in her evidence only. Based on the above evidence, the learned Sessions Judge has rightly come to the conclusion that the evidence of P.W.2 inspires the evidence



CrI.A.No.311 of 2018

WEB COPY

of the Court and accordingly held that the prosecution is entitled for presumption under Section 29 of the POCSO Act.

14 (b). To rebut the presumption, it appears that the accused has examined his brother D.W.1 to mark Ex.D1 signature of D.W.1 in the arrest memo.

14 (c). The suggested case of the defence is that it is a mistaken identity. In other words, the accused has not committed any offence. The Police instead of arresting the actual culprit has falsely foisted a case against the accused and impleaded him.

15. At this juncture, it is relevant to note that during the cross examination of P.W.3 (father of the victim girl), a suggestion was made that the accused came to the apartment of P.W.3 for hunting a house for rent and it is further suggested that there was a quarrel between him and P.W.1 because of that P.W.1 gave complaint. It remains to be stated that such a suggestion was not put to P.W.1 while she was in the witness box and hence I find that the previous enmity alleged to have been existed between P.W.1 and the accused is not elucidated.

16 (a). No independent witness has been examined by the



CrI.A.No.311 of 2018

defence to rebut the presumption. Further more, the identity of the accused has been clearly established by the CCTV footage recorded in CD that was marked as M.O.1 along with 65 B certificate (Ex.P4) given by P.W.4. In this regard, the evidence of P.W.2 is that the person who has appeared in CCTV footage is the accused. Though the alleged act was not covered under the CCTV footage in view of the position of the camera, the act of the accused has spoken to by P.W.2 (victim girl) which was taken into consideration by the trial Court while convicting the accused for the offence punishable under Section 12 of the POCSO Act.

16 (b). Hence I find that in the absence of any positive evidence to probablise the accused, this Court is of the considered view that the defence has failed to probablise his case and failed to rebut the presumption in favour of the prosecution under Section 29 of the POCSO Act. Consequently, the learned Sessions Judge has rightly come to the conclusion that the charges framed under Section 12 of the POCSO Act has been proved and accordingly the convicted the accused and awarded sentence of one year Simple Imprisonment with fine amount.

17. Taking into consideration of the Act committed by the



CrI.A.No.311 of 2018

WEB COPY

accused on the minor girl (P.W.2) the learned trial Judge has rightly awarded sentence of one year of Simple Imprisonment and the same cannot be said to be exaggerated and hence both the conviction and sentence passed by the learned Sessions Judge is not suffered from any irregularity or illegality warranting interference by this Court. In this view of the matter, I do not find any merit in this case as the conviction and sentence is based on the evidence of prosecution witness supported by the prosecution exhibits.

18. For the reasons stated supra, the Criminal Appeal is dismissed as devoid of merits. The learned Sessions Judge, Special Court for Cases under Protection of Children from Sexual Offences Act, 2012 is directed to issue Non Bailable Warrant to secure the accused to undergo remaining period of sentence.

28.08.2023

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Internet : Yes / No

Speaking Order : Yes/No

Neutral citation : Yes/No

To



CrI.A.No.311 of 2018

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1. The Special Court for Cases
under Protection of Children from
Sexual Offences Act, 2012,
Mahila Court, Chennai
2. The Inspector of Police,
W-22, All Women Police Station,
Chennai.
3. The Public Prosecutor,
High Court, Madras.

RMT.TEEKAA RAMAN, J.

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CrI.A.No.311 of 2018

Pre-Delivery Judgment made in

CrI.A.No.311 of 2018

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