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Crl.A.No.564 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2023

CORAM :
THE HON'BLE MR.JUSTICE SUNDER MOHAN

Crl.A.No.564 of 2016

State Rep. by
The Public Prosecutor,
High Court, Madras – 600 104,
[AWPS, Perambalur
Crime No.02/2013]

.. Appellant / Complainant

v.

1. Kumar
2. Raja

.. Respondent/A1
.. Respondent/A3

Criminal Appeal filed under Section 378 of Code of Criminal Procedure, 1973, to set aside the judgment of acquittal passed in Spl.S.C.No.1 of 2015 dated 06.11.2015 by the learned Sessions Judge, Mahila Court, Perambalur and convict the respondents/accused 1 and 3 as charged.

For Appellant : Mr.A.Gokulakrishnan
Additional Public Prosecutor

For Respondents : Mr.M.Jegan
(Legal Aid Counsel)



Crl.A.No.564 of 2016

JUDGMENT

This appeal has been preferred by the State, challenging the acquittal of the respondents/A1 and A3, for the offence under Section 7 r/w 8 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO Act'), passed vide judgment dated 16.11.2015 in Spl.S.C.No.01/2015, on the file of the learned Sessions Judge, Mahila Court, Perambalur.

2. (i) It is the case of the prosecution that the 1st respondent/A1 is the father of the victim and respondents 2 and 3 (A2 and A3) are known to her father; that on 15.01.2013, when the victim child who was aged 13 years at the time of occurrence came from her hostel, the respondents/accused made her sleep in a verandah of a hotel and committed the offence of sexual assault by lying over her and by pressing her breasts.

(ii) It is the further case of the prosecution that the victim child informed about the occurrence to her friend's mother [PW3]; that PW3



Crl.A.No.564 of 2016

confronted the 1st respondent/A1 about the incident and the 1st respondent gave evasive reply and ran away from the place; that PW4, came to know of the alleged occurrence and she in turn informed PW1, the Social Welfare Officer; that PW1 after obtaining permission from the Collector enquired the girl child and thereafter, lodged a complaint [Ex.P1] on 22.01.2013.

(iii) On receipt of the complaint, PW13, the investigation officer registered the FIR in Cr.No.2 of 2013 for the alleged offence under Sections 376 of IPC r/w 7, 9(g) (n) and 10 of the POCSO Act, against the respondents.

(iv) PW14-Inspector of Police, took up the investigation and went to the scene of occurrence and examined the witnesses. She sent the victim for medical examination, which was conducted by PW12. She thereafter, sent the respondents for medical examination to PW16.

(v) After examination of all the witnesses, PW14, filed a final report before the learned Judicial Magistrate, Perambalur for the offence under



Crl.A.No.564 of 2016

Section 7 r/w 8 of the POCSO Act, against the respondents. It is to be noted that though the FIR was registered for the offence under Section 376 of IPC also, the final report was only for the above said offences of sexual assault.

(vi) On appearance of the respondents/accused, the provisions of Section 207 Cr.P.C., were complied with and the case was committed to the Court of Session in Spl.S.C.No.01 of 2015 and was made over to the Sessions Court [Mahila Court], Perambalur, for trial. The trial Court framed charges u/s.7 r/w 8 of the POCSO Act, as against the accused and since A2 absconded, the case against him was split up. When questioned, the respondents pleaded 'not guilty'.

(viii) To prove the case, the prosecution examined 16 witnesses and marked 13 exhibits. When the respondents/accused were questioned u/s.313 Cr.P.C. on the incriminating circumstances appearing against them, they denied the same. On the side of the respondents/A1 and A3, one Ramesh, was examined as DW1 and the statement of Mr.Ilavarasan, Head



Crl.A.No.564 of 2016

Constable, Mangalamedu Police Station, under Section 161(3) Cr.P.C., was marked as Ex.D1 (It is not known how the learned trial Judge has permitted the marking of a statement under Section 161 Cr.P.C.).

(ix) On appreciation of oral and documentary evidence, the trial Court found that the evidence of victim did not inspire confidence as she had given contrary versions and therefore, it is unsafe to render a finding of guilt and acquitted the respondents/accused. Hence, the State has preferred the appeal challenging the said acquittal.

3. The learned Additional Public Prosecutor submitted that PW2, the victim was a school going child and though there are minor contradictions in her evidence, there is no necessity for her to give a false evidence as against her own father. Her version that sexual assault was committed on her, is corroborated by the evidence of PW3 and PW4 and PW1, who took action on the basis of the victim's complaint to them. The learned Additional Public Prosecutor further submitted that the finding of the trial Court is perverse and has not taken into consideration Sections 29 and 30



Crl.A.No.564 of 2016

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of the POCSO Act, which provides that the Special Court shall presume the commission of offence and the culpable mental state.

4. On perusal of the records, this Court finds that PW3, who is the mother of the victim's friend, had not taken any action for giving a complaint after the victim had allegedly informed about the occurrence. PW4, who informed PW1 about the occurrence states that she received a call on 21.01.2013 that some persons were troubling the victim and thereafter, on enquiry, she learnt about the background of the victim and when she enquired the victim, she found that the victim was subjected to sexual assault by the respondents and the absconding accused. PW1 thereafter on the information given by PW4 had given a complaint. PW5 and PW6 spoke about the fact that the victim and her father viz., the 1st respondent had no house and would normally sleep outside a tea stall. The other witnesses assisted the investigation officer.

5. From the above narrative, it is clear that the prosecution rests on the evidence of PW2, the victim. The others are hearsay witnesses. It is no



Crl.A.No.564 of 2016

doubt true that PW4 and PW1 according to the prosecution have acted on the complaint given by PW2. However, this Court finds that the charge states that the alleged occurrence took place in a verandah of a hotel, whereas, in Ex.P1, it is stated that the occurrence took place in a bungalow. Further, in the complaint it is stated that the 1st respondent, father of the victim brought the victim from the hostel on the day of occurrence. However, the victim in her deposition would state that she came on her own.

6. Be that as it may, on reading of the evidence of PW1, this Court finds that the victim during the *voir dire* questioning by the learned Judge, has stated as follows:

“கேள்வி:- நீ எங்கு வந்திருக்கிறாய் தெரியுமா?

பதில்:- நான் நீதிமன்றத்திற்கு வந்துள்ளேன்.

கேள்வி:- உண்மை என்றால் என்ன தெரியுமா?

பதில்:- உண்மை என்றால் பொய்.

கேள்வி:- பொய் என்றால் என்ன தெரியுமா?

பதில்:- அது தான் உண்மை.”

From the above questions and answers, it is seen that the victim was asked as to what is meant by 'truth'. She had stated that it is a 'lie' and when she



Crl.A.No.564 of 2016

was asked as to what is a 'lie', she had stated that it is 'truth'. It is well settled that the purpose of questioning of child witnesses is to ensure that the child witness is able to comprehend the question and answer correctly. The above questions and answers do not suggest that the witness understood the question. It is also seen that DW1 had stated that the victim suffered from mental illness.

7. When this Court analysed the evidence of the victim, it is found that the victim had admitted atleast in two places that she was deposing on the instructions of the Social Welfare Officer and the authorities running the Home, where she stayed. She had not clearly spelt out as to the exact nature of the sexual assault committed on her. The trial Court therefore, found that it is highly unsafe to rely upon her evidence to hold that the respondents are guilty of the offences.

8. The above view taken by the trial Court is plausible and there is no perversity, to interfere with the said finding in an appeal against acquittal. Hence, this Court finds no merits in the appeal and accordingly,



Crl.A.No.564 of 2016

this Criminal Appeal stands dismissed.

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07.12.2023

Index : yes/no

Neutral citation : yes/no
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Crl.A.No.564 of 2016

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