



WEB COPY



CRL A No.787 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2023

CORAM :

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.A.No.787 of 2016

Sathyamoorthy

... Appellant

Versus

State by,

The Inspector of Police,

All Women Police Station,

Harur, Dharmapuri District.

(Crime No.20 of 2015)

...Respondent

Prayer: Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, against the Judgment of Sessions Judge, Fast Track Mahila Court, Dharmapuri District in Spl.S.C.No.69 of 2015, dated 05.11.2016.

For Appellant : Mr. V. Sakkarapani

For Respondent : Mrs. G.V. Kasthuri,

Additional Government Pleader

JUDGMENT

The sole Accused in Crime No.20 of 2015 on the file of the All Women Police Station, Harur, has preferred this appeal. Aggrieved by the Judgment dated 05.11.2016 in and by which, he was convicted for the offence punishable under Section 7 read with Section 8 of the Protection of Children from Sexual Offences, Act, 2012 (in short "POCSO Act") and was imposed with the sentence to undergo Rigorous Imprisonment for a period of three years and to pay a fine of Rs.5,000/-, and in default, to undergo



CRL A No.787 of 2016

Simple Imprisonment for two months.

WEB COPY

2. The brief facts, which are essential for disposal of this Appeal, are as follows:

On 17.08.2015, when P.W.10/Lakshmi, the Inspector of Police was on duty at All Women Police Station, Harur, the de-facto complainant, P.W.2 appeared before her and lodged a complaint to the effect that her elder daughter being a mentally affected girl by birth, aged 14 years, was alone at home and by taking advantage of the victim's disabled condition, the Accused provided some chocolates and took her into a nearby bathroom and touched her private part, breast with sexual intention and committed sexual assault on her. After noticing her daughter's abnormal behaviour, she enquired her daughter and revealed the incident through signs. Thereafter, when P.W.2 and their family members went to the house of the Accused. No one was available there. Therefore, the complaint was lodged.

3. On the strength of the said complaint, P.W.10 registered a case in Crime No.20 of 2015 for the offence punishable under Section 7 read with Section 8 of the POCSO Act, and took up the matter for investigation and laid the final report before the Judicial Magistrate, Fast Track Mahila Court,



CRL A No.787 of 2016

Mahalir Neethimandram, Dharmapuri, in Spl.S.C.No.69 of 2015, stating that the Accused had committed the offence under Section 7 read with Section 8 of the POCSO Act. After serving of summons on the Accused, the Accused entered appearance, the learned Judicial Magistrate (Additional Mahila Court) Magisterial level furnished copies on the Accused under Section 207 of Cr.P.C., and committed the case to the Court of learned Sessions Judge Fast Track Mahila Court. On appearance of the Accused and after the arguments of learned Public Prosecutor and the learned Counsel for Accused, the trial Court framed the charges as above mentioned. The Accused denied the charge and stood trial.

4.The prosecution, in order to substantiate the charges, examined the de-facto complainant, the mother of the victim as P.W.2; the victim girl as P.W.1, the maternal uncle of the victim and one *Rukku*, Petty Shop owner as P.W.3 and P.W.4. One *Poongodi*, the caretaker of the victim girl referred as "Ayah-amma", was examined as P.W.5. The School Headmaster of the Accused was examined as P.W.6. The Doctor, who examined the victim was examined as P.W.7 and the Doctor, who examined the Accused and who issued the potency certificate, was examined as P.W.8. One *Saravanan*, Chairperson of the Child Welfare Committee in Dharmapuri, who confirmed



CRL A No.787 of 2016

the disability and gave the report of the victim, was examined as P.W.9 and the Investigating Officer was examined as P.W.10.

5.On behalf of the prosecution, a copy of proof of the victim's disability assistance was marked as Ex.P-1; the complaint given by the mother/P.W.2 was marked as Ex.P-2; the statement of P.W.2 under Section 164 of Cr.P.C., was marked as Ex.P-3; Observation Mahazar was marked as Ex.P-4; the School certificate of the Accused was marked as Ex.P-5; Medical reports of the victim and the Accused were marked as Ex.P-6 and Ex.P-7 respectively; The First Information Report was marked as Ex.P-8; the Rough sketch was marked as Ex.P-9; The statement of the victim under Section 164 of Cr.P.C., was marked as Ex.P-10; and shows the alteration of the offence, as Ex.P-11.

6.When the Accused was questioned on the material evidence and incriminating circumstances on records, as per Section 313 of Cr.P.C., the Accused denied the same as false. Thereafter, no evidence was let in on behalf of the Accused.



CRL A No.787 of 2016

7. Thereafter, the Trial Court has come to the conclusion based on the material records and arguments on both sides and by Judgment dated 05.11.2016 found the Accused guilty of the offence and he was convicted for the offence punishable under Section 7 read with Section 8 of the POCSO Act, 2012, and he was punished as above. Aggrieved by the same, the present Criminal Appeal has been filed before this Court.

8. The learned counsel for the Appellant invited attention of this Court to the charge(s) framed by the Learned Sessions Court in Page No.1 in the appeal book would submit that the victim is mentally affected child and the complainant is the mother of the child, and the victim was taken care by one woman referring as 'Ayah-amma'.

9. Learned Counsel for the Appellant invited the attention of this Court to the contents of the Complaint which is extracted hereunder:

"I reside at XXXX Village. My husband works as a driver. I have 3 daughters and a son. My elder daughter aged 14 years has mental retardation. On 30.07.2015, I had been to MGNREGA work. Other children had gone to school. Elder daughter was alone at home. I returned home around 4 p.m. after completing my day's work. At that time, my daughter told me that one Sathyamoorthy, a person from our village gave her a chocolate that afternoon and took her to bathroom which is behind my grandfather's house



WEB COPY



CRL A No.787 of 2016

and pinched on her breast and genital with his hand. While I was hearing this, my village caretaker also was there. After hearing this, I told about this to my maternal uncle. We went to his (Sathyamoorthy's) house, nobody was there. So far, we do not know where they have gone. Hence, I request that action may be taken based on this."

10. Based on the Complaint, the First Information Report was registered. The learned Counsel for the Appellant invited the attention of this Court to the contents of the First Information Report which is extracted hereunder:

"At 13.00 hours on 17.08.2015, when I was on duty as Inspector of the police station, (Complainant), XXXXX Village appeared before me and gave me a complaint, the details of which are as follows:

On receipt of the above complaint, I registered a case in Arur A.W.P.S. Cr.No.20/2015 U/s 7 and 8 of the POCSO Act and sent a true copy of the First Information Report to the Mahila Court, Dharmapuri and sent the other copies to the higher authorities for investigation of this case and took up the case for investigation."

11.The First Information Report was lodged belatedly after the occurrence happened i.e., after 18 days and the delay had not been explained to the satisfaction of the Court.



WEB COPY

12. Learned Counsel for the Appellant also invited the attention of this Court to (i) the evidence of P.W.2, the mother of the victim and P.W.3, maternal uncle of the victim, who were also mahazar witnesses; (ii) Ex.P-4 and Ex.P-9, rough sketch and observation mahazar respectively; (iii) The cross-examination of the witnesses, particularly P.W.2 & P.W.3, the mother and the maternal uncle of the victim, who did not say anything incriminating against the Accused; (iv) The mahazar witnesses did not support the case of prosecution in the cross examination; v) P.W.4, the petty shop owner from whom the Accused is said to have purchased the chocolates for the victim on the said alleged date of occurrence; (vi) P.W.5 "Ayah-amma", the victim's caretaker. (vii) Some portions of the cross-examination of the prosecution witnesses particularly, P.W.2, P.W.4 and P.W.5 and also cross-examination of the Investigation Officer/P.W.10.

13. Further, the learned counsel for the Appellant pointed out the evidence of the Doctor, who had conducted examination on the victim. The Doctor has stated that the victim could not be examined as she was not co-operating for the examination.



14. Further, The learned counsel for the Appellant brought to the notice of this Court to some portions in the Judgment of the learned Trial Judge, particularly, in paragraphs Nos.32, 34, 35, 36, 37, 38, wherein, reason was assigned by the learned Sessions Judge for rejecting the defence of the Accused, and the learned Trial Judge also referred with regard to the previous enmity, and also referred to the First Information Report which had not been lodged in time, for which, the prosecution had not given any substantial explanation for rejection and all of these were clearly mentioned in Page No.38 of the Judgment.

15.It is the contention of the learned counsel for the Appellant that in the place where the alleged occurrence took place, there were two shops in the place, but, in which shops, the Accused purchased the chocolates for the victim which was not clearly stated by the victim. Learned counsel has also highlighted the cross-examination of P.W.4, who is alleged to have sold the chocolates to the Accused, and she has only stated that the Accused used to come very often and that it cannot be taken as proof on the said date of the occurrence. The Accused purchased the chocolates for the victim to entice her to commit the alleged sexual assault on her. Therefore, he sought to set aside the impugned Judgment of the conviction passed by the learned



CRL A No.787 of 2016

Sessions Judge, and to acquit the Accused from the charge(s) framed before the Trial Court.

16.The learned Additional Public Prosecutor appearing for the Respondent has vehemently objected to the submissions of the learned counsel for the Appellant stating that the Judgment of the learned Sessions Judge is well-reasoned and based on the proper appreciation of evidence. The learned Counsel has also adverted to the evidence particularly, regarding the victim/P.W.1. It is the further contention of the learned Additional Public Prosecutor that the victim was not a normal child, though her biological age is 14, but, she was mentally only 12 years old, according to the disability certificate/Ex.P-1, which was issued to the victim by the Competent Medical Board/Authority. Learned counsel has also pointed out the evidence of the victim to show that the victim was examined before the Court with the help of a psychiatrist [Doctor]. The victim understood the questions put to her and was able to answer. Therefore, the evidence of the victim alone is sufficient to convict the Accused.

17. Further, the learned Additional Public Prosecutor submitted that the evidence of P.W.8/Doctor, who examined the Accused and issued



CRL A No.787 of 2016

certificate, which was marked as Ex.P-6, and the Doctor's evidence corroborated with the evidence of the victim . Therefore, the prosecution has supported its case through the evidence of P.W.4/the Petty shop owner and P.W.5/the caretaker of the victim. Hence, the impugned Judgment passed by the learned Sessions Judge, does not warrant any interference of this Court and she prays to dismiss the appeal, as the same is devoid of merits.

18.Upon hearing the submissions made on either side, the point that arises for consideration is as to:

“Whether the impugned Judgment of the learned Sessions Judge, Fast Track Court No.I, Dharmapuri in Spl.S.C.No.69 of 2015, dated 05.11.2016 is perverse, and warrants interference by this Court?”

19.On considering the rival submissions and on a perusal of Ex.P-1 to Ex.P-11, the evidence of the witnesses, it is clear that P.W.1/the victim is a mentally affected child, P.W.2 is the mother of the victim, P.W.4 is the petty shop owner, P.W.5 is a woman referred as "Ayah-amma" of the victim, P.W.7 is the Doctor, who had conducted the examination of the victim and issued certificate Ex.P-6, to the effect that the victim is a mentally affected child.



20. With regard to contention of the learned counsel for the Appellant that the First Information Report was lodged belatedly, the delay of lodging the complaint was not explained to the satisfaction of the Court and the Accused was wantonly implicated in this case due to previous enmity between the family of P.W.2 and the Appellant. In the light of the reasons given by the learned Sessions Judge in paragraph No.3 of his Judgment regarding the delay in filing the First Information Report, the learned Judge had also stated that the reason, immediately after hearing about the occurrence from the victim, the mother, P.W.2 had rushed to the place where the Accused was residing, but, at that time, nobody was available in the house. After waiting for a long time in front of the residence of the Accused for their response, and since they could not respond, the mother of the victim had approached the Police, and the said reason was accepted by the learned Sessions Judge.

21. Further, the learned Judge had also observed that the mother of the victim stated that the victim could not be put to harassment again and again and was it also one of the reasons for the delay. Since the victim was a mentally affected child, the learned Judge had accepted the reason for lodging the First Information Report belatedly. Therefore, the learned Judge



had arrived at a conclusion based on the evidence of the victim's statement recorded with the help of Psychiatrist [Doctor], particular by based on the evidence of P.W.7/Doctor.

22.Apart from that, on a perusal of the deposition of the witnesses, which was highlighted by the learned counsel for the Appellant, viz., P.W.2, P.W.4, P.W.5, P.W.7 and P.W.10 ,and also the documents marked through these 5 witnesses. The argument of the learned Additional Public Prosecutor is that even without corroboration of the evidence of witnesses, the evidence of the victim alone is sufficient to convict the Accused, and therefore, there is acceptable evidence on a perusal of the deposition of the victim.

23.As per the guidelines issued by the Hon'ble Supreme Court in various decisions as relied on by the Trial Court regarding conviction and acquittal by the Appellate Court, it is sufficient that the findings recorded by the learned Sessions Judge had to be given due weightage. The Appellate Court had the discretion to peruse the entire materials available before the Trial Judge. On the same set of evidence, the Appellate Judge may arrive at an opposite conclusion which would differ from the conclusion of the learned Trial Judge. Still, the learned Appellate Judge shall not disturb the view of the Trial Judge and discard the findings of the Trial Judge. If it is



found that the Trial Judge had appreciated the evidence adduced before the Court and as per the provisions of the Indian Evidence Act, the Trial Court shall arrive at a conclusion based on the facts, in the light of the evidence recorded before the Trial Court cogently and logically.

24. In these circumstances, even though findings recorded by the Trial Judge are not found to be perverse, the Appellate Court shall not disturb the findings recorded by the Trial Judge. The Trial Court has the advantage of observing the demeanour of the witnesses and the Accused, which advantage is not available to the Appellate Judge. Therefore, under those guidelines issued by the Hon'ble Supreme Court of India, the finding of the guilt recorded by the learned Sessions Judge, is found to be well-reasoned and does not warrant any interference by this Court. With regard to the submission of the learned counsel for the Appellant to the observation made in the Judgment of the Trial Court in paragraph No.38, the explanation of the prosecution was accepted by the learned Sessions Judge. The prosecution has explained the delay in filing the First Information Report which is also found to be acceptable and the objection raised by the learned Counsel for the Appellant with regard to the delay was rejected.



CRL A No.787 of 2016

25. In the light of the above discussion, point for consideration is answered in favour of Prosecution and against the Appellant. The impugned judgment of the learned Sessions Judge (Fast Track Court -I) Dharmapuri in Spl.S.C.No.69 of 2015, dated 05.11.2019 is not perverse. The Appeal fails, and the impugned Judgment of conviction recorded by the learned Sessions Judge is confirmed. The learned Sessions Judge is directed to issue warrant and confine the Accused to the prison to undergo the remaining period of sentence, if any, and the fine amount shall remain the same.

26. With the above observation and direction, the Criminal Appeal is dismissed.

14.07.2023

Index: Yes/No

Speaking order/Non-speaking order

Neutral Citation : Yes/No

klt

To

1. The Sessions Judge, Fast Track Mahila Court,
Dharmapuri District.

2. The Inspector of Police, All Women Police Station,
Harur, Dharmapuri District.

3. The Public Prosecutor, Madras High Court.



WEB COPY



CRL A No.787 of 2016

SATHI KUMAR SUKUMARA KURUP, J.,

klt/dh

Crl.A.No.787 of 2016

14.07.2023