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Crl.A.No.823 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.07.2023

DELIVERED ON : .07.2023

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.A.No.823 of 2022

Rajeswaran

... Appellant

Vs.

The Inspector of Police,
All Women Police Station, Nannilam,
Thiruvarur District.
(Crime No.07 of 2019)

... Respondent

PRAYER: Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code, 1973 to call for the records in Spl.S.C.No.22/2019 on the file of learned Court of Sessions Judge (Fast Track Mahila Court) Thiruvarur dated 08.12.2020 and set aside the judgment dated 08.12.2020 made in Spl.S.C.No.22/2019.

For Appellant : Mr.P.Muthamizhselvakumar

For Respondent : Mr.R.Vinothraja, GA (Crl. Side)



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JUDGMENT

This criminal appeal is against the Judgment and order of the Sessions Judge (Fast Track Mahila Court), Thiruvavarur, made in Spl. S.C. No.22/2019, dated 8.12.2020.

2. The appellant is the accused in Spl.S.C.No.22/2019 and he is convicted and sentenced as detailed hereunder:

<i>Conviction</i>	<i>Sentence</i>
U/s.10 r/w 9(m) of POCSO Act	Simple Imprisonment for 5 years and a fine of Rs.5,000/-, in default, to undergo 5 months simple imprisonment as per Section 235(2) Cr.P.C.

3. The case of the prosecution in brief is as follows:

- i. The appellant and the victim were residing on the same street namely Upayavedhathapuram, Rice Mill Street in Nannilam Taluk of Thiruvavarur District.
- ii. According to the defacto complainant, who is the mother of the



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victim girl aged 11 years, the appellant had sexually harassed her daughter, the victim girl on 09.06.2019 at about 02.00 pm who was playing near the house of one Buvaneswari, a neighbour. The girl was alone as her mother had left for a function in Neikuppai Village, when the incident happened.

- iii. The girl victim was molested by the 19 year old Rajeswaran @ Baba (the appellant) when he touched her chest in an inappropriate manner. The appellant had also threatened the minor girl and gave Rs.6/- to her to keep mum.
- iv. The mother of the child preferred a complaint (Ex.P1) on 12.06.2019 before the Inspector of Police, Nannilam Police Station, who registered an FIR (Ex.P5) under Sections 7, 8 of POCSO Act and also under Section 506(i) IPC.
- v. The Inspector of Police (PW-10) immediately plunged into action, went to the scene of crime, prepared an observation mahazar (Ex-P3) witnessed by one Kannan (PW-8) and Raman.
- vi. A rough sketch was prepared by her (Inspector of Police) (Ex.P6)



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- indicating the topography of the street and location of the houses on the street. A transfer certificate from the school - APS onbathuveli was obtained to ascertain the age of the victim. It is marked as Ex-P4.
- vii. The Inspector of Police (PW-10) arrested the accused Rajeswaran @ Baba at 19.30 hrs the same day near Peralam bus stand in the presence of Bharathi (PW-6) and Kamaraj (PW-7) and remanded him to judicial custody.
- viii. She sent the victim girl for recording her statement before the Judicial Magistrate, Nannilam, who recorded her statement under Section 164 Cr.P.C as required in POCSO cases.
- ix. Subsequently, after confirming the age of the victim an alteration report was filed by the Investigating Officer, before the Judicial Magistrate, Nannilam, which is marked as Ex-P7 altering the Section from 7, 8 of POCSO Act to Sections 10, r/w. 9(m) of POCSO Act as the victim girl was less than 12 years old.
- x. A charge sheet was filed in the Fast Track Mahila Court, Thiruvarur.
- xi. In the trial court, the prosecution examined 10 witnesses and marked 7 exhibits.



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xii. When the accused was questioned under Section 313 Cr.P.C. with regard to the circumstances appearing in evidence against him, he denied of having committed any offence. He had no witness or evidence on his behalf.

xiii. The mother of the child PW-1 in her oral examination deposed the sequence of events as narrated by her victim daughter. PW-2 was the victim child who herself categorically described the events leading to the crime committed by the appellant.

xiv. PW-3 to PW-7 turned hostile. PW-8 deposed that he was one of the two witnesses to the observation mahazar (Ex.P-3).

xv. PW-9, the Headmaster in charge of the Onbathuveli School deposed regarding the issuance of Transfer Certificate (Ex.P-4). The Investigating Officer (PW-10) had deposed about the receipt of the complaint from PW-1 registration of FIR, visit to the scene of crime, preparation of observation mahazar and enquiries of the victim child, her mother, Balu (PW-3), Anbazhagan (PW-4), Buvaneswari (PW-5), Kannan (PW-8) and Raman (not examined) as a witness.

4. The trial Court concluded with the available evidence that the



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appellant was guilty of the offence u/s.10 r/w.9(m) of POCSO Act and though the learned counsel for the accused pleaded for leniency, the trial Court awarded the sentence of 5 years simple imprisonment and a fine of Rs.5,000/- and in default to pay the fine amount, to undergo simple imprisonment for further 5 months, which is the minimum sentence prescribed for Section 10 r/w.9 (m) under POCSO Act. However, he was acquitted with regard to Section 506(i) of IPC. The period of detention already undergone (from 12.06.2019 to 25.06.2019) by the accused was ordered to be set off under Section 428 Cr.P.C.

5. Heard, Mr.P.Muthamizhselvakumar, learned counsel for the appellant and Mr.R.Vinothraja, learned Government Advocate (Crl. Side) for the respondent.

6. The arguments of Mr.P.Muthamizhselvakumar, learned counsel for the appellant are as follows:

(a) Delay by the defacto complainant in lodging police complaint was not properly explained.



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(b) Many witnesses turned hostile while the case as such had only circumstantial evidence and no direct witness.

(c) The neighbours were not examined to know the truth.

(d) The victim was not referred to any Doctor and also there was enmity between the appellant and the victim's family on water connection which was not considered by the trial Court.

(e) The 'third person' who the child claims had lifted her when she tried to escape on seeing the accused, was not examined and he remained anonymous.

7. Per contra, the learned Government Advocate (Crl. Side) contended that POCSO cases are to be dealt with iron hand and the punishment has to act as a deterrent to such crimes. His further contention was that the presumption of guilt has to be demolished by the accused and in the instant case, the accused had no defence or evidence to establish his innocence. Moreover, it was also contended that once the victim girl had deposed clearly and her mother's deposition corroborated with the victim's, the deposition of the hostile witnesses became immaterial.



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8. The 11 year old girl studying in 6th standard is molested by the accused. The accused himself is 19 years of age. Though it is his first offence as per record, the narration of the girl that on hearing his voice she tried to run away itself shows the past character of the accused. The learned counsel for the accused/appellant instead harps on the 'unknown third person'. The 'third person' is definitely a 'facilitator', it appears. But it does not dilute the gravity of the offence committed by the accused. He has touched the victim girl inappropriately. Mr.P.Muthamizhselvakumar, learned counsel for the appellant /accused contended that the present case does not fall under "aggravated sexual assault" as the accused had, even according to the prosecution, only touched the breast of the victim girl. At this juncture it is relevant to extract Section 7 of the POCSO Act, which reads as under:

"Section 7 of Protection of Children from Sexual Offences

Act, 2012 : Sexual assault

Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any



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other act with sexual intent which involves physical contact without penetration is said to commit sexual assault."

It is also appropriate to extract Section 9 (m) of the POCSO act, which reads as under:

Section 9 of Protection of Children from Sexual Offences Act, 2012 : Aggravated sexual assault

...

(m) whoever commits sexual assault on a child below twelve years

Section 10 of Protection of Children from Sexual Offences

Act, 2012 : Punishment for aggravated sexual assault

Whoever, commits aggravated sexual assault shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

Therefore, the present case comes within the ambit of Section 9 (m) of the POCSO Act.

9. The learned counsel for the appellant/accused contended that there is a delay in lodging the complaint by the defacto complainant and this has not been explained by the defacto complainant. The defacto complainant is



the mother of the victim child and she has to take a decision before lodging a police complaint since it involves the future of the girl child. In the instant case the evidence on record shows that she has consulted the elders in the village and convened a panchayat. Subsequently, the defacto complainant had lodged the complaint and therefore in the facts and circumstances, the delay in lodging the complaint cannot be a reason to acquit the accused.

10. Yet another contention of the learned counsel for the appellant/accused is that the victim was not at all referred to a doctor especially when it is contended by the prosecution that there is an aggravated sexual assault. As already observed, the appellant had touched the victim girl in an inappropriate manner and no injuries were found on her body. In such circumstances, there was no necessity for the police to refer the victim girl to a doctor. Fortunately, the victim girl escaped from the scene of offence and did not face the situation in a lonely place. The evidence of both the victim as well as the defacto complainant are cogent and there are no good grounds to discard their evidence. The victim child



had infact withstood the testimony of cross examination and there is nothing on record to show that she has been tutored. The contention of the learned counsel for the appellant that there was some dispute with regard to water pipeline between the two families had not been substantiated and victim child herself, had deposed that they had a separate water pipeline in their house. Therefore, the conviction of the accused for the offences punishable under Section 10 r/w 9 (m) of POCSO Act, 2012 cannot said to be erroneous. In fact, the learned trial Court Judge had taken a lenient view on the punishment by awarding only five years of simple imprisonment. Therefore, I do not see any ground for interfering with the orders of the learned trial Court Judge.

11. In the result,

(i) The Criminal Appeal is dismissed.

(ii) The conviction and sentence dated 08.12.2020 passed by the learned Court of Sessions Judge (Fast Track Mahila Court), Thiruvavur in Spl.S.C.No.22/2019, is confirmed.



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Index : yes/no
Speaking /Non speaking Order

To

- 1.The Inspector of Police,
All Women Police Station, Nannilam,
Thiruvarur District.
- 2.The Sessions Court, (Fast Track Mahila Court) Thiruvarur.
- 3.The Section Officer, Criminal Section, High Court, Madras.



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R.HEMALATHA, J.

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Pre-Delivery Judgment in
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