



Crl.A.No.8 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.07.2023

DELIVERED ON : 03.08.2023

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.A.No.8 of 2022

Chandran

... Appellant

Vs.

State Rep. by
The Inspector of Police
W-15, All Women Police Station,
Royapuram,
Chennai 600 013.

... Respondent

PRAYER: Criminal Appeal filed under Section 374 of Criminal Procedure Code, 1973 to set aside the conviction and sentence imposed by the learned Sessions Judge, Special Court for Cases under POCSO Act, 2012 / Mahila Court, Chennai in Sessions Case No.307/2017 dated 05.10.2018 and acquit the appellant.

For Appellant : No appearance

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



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J U D G M E N T

This appeal is against the conviction and sentence dated 05.10.2018 on the file of the Sessions Judge, Special Court for Cases under POCSO Act, 2012/ Mahila Court, Chennai in Sessions Case No.307/2017 in Crime No.7/2016 - W15, Royapuram All Women Police Station.

2. The Crime :

- i. The appellant/accused is a 54 years old person living in the 2nd Floor of the building bearing Door No.537, 'G' Block, G.M.Pet, Kasimedu, Royapuram, Chennai.
- ii. The victim girl (PW-1) a VII standard student aged just 13 years and is the step daughter of Kalaiarasi (PW-2), the complainant. The victim was born to the first wife of one Saravanan, father of the child while PW-2 is the second wife, after the demise of his first wife. They were living in the 1st Floor of the same building.
- iii. The child was sexually exploited by the accused for about a month at his house. He allegedly used to call her home and not only talk dirty but also molest her by pressing her breast, kissing her and pressing



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his private part on her private parts. He also tried oral sex with her, it is alleged.

- iv. It came to light on 29.09.2016, when the child had a Rs.20/- note with her. Her sister-in-law and subsequently her mother had questioned her as to how she had that money to whom she had confessed only partly. When her mother Kalaiarasi took her to a child help centre by name Karunalaya, where the child confessed to the volunteers Mahalakshmi (PW-8), Kavitha (PW-4) and one Bharathi. The child also revealed that she was threatened by the accused of getting thrown out from the third floor if she exposes him. He also paid her for keeping quiet.
- v. The mother (PW-2) confronted the accused and went to the police station to give a complaint (Ex.P3) on 01.10.2016. The police referred the child for a medical examination. The complaint by PW-2 was taken on record and an FIR (Ex.P11) was registered on 01.10.2016 by Sabitha (PW-9), the Inspector of Police, W-15, Royapuram All Women Police Station. Dr.Vijayalakshmi (PW-6) of RSRM Government Maternity Hospital, Royapuram examined the victim on 01.10.2016 and prepared Accident Register (Ex.P5), Investigation



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Report of Sexual Offence (Ex.P6), Certificate of examination for Sexual Offence (Ex.P7) and her final opinion based on the forensic report dated 09.11.2016. Dr.Gokulakrishnan (PW-7) examined the accused to determine his age and also the potency. The report is Ex.P10.

3. The Investigation :

- i. The Investigating Officer Sabeetha, Inspector of Police W-15, Royapuram All Women Police Station took up investigation on 01.10.2016 itself, examined Kalaiarasi (PW-2), her husband Saravanan, and other relatives Jothi (PW-3) Malliga and Bharathi and recorded their statements.
- ii. The victim girl also was examined by her and sent for medical examination to RSRM Hospital. She went to the building where the incident had occurred, prepared an observation mahazar (Ex.P13) and a rough sketch (Ex.P12) in the presence of Anjali, Devi (PW-5) and Sathyadevi. The same night the accused was arrested near Kasimedu Beach and also recorded the accused's confession statement in the presence of Kuppuraj and Balachandran.



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iii. The accused was remanded to judicial custody on 02.10.2016. The same day a request for recording victim's statement under Section 164 Cr.P.C. was given to the VI Metropolitan Magistrate, George Town, Chennai and on 17.10.2016 her statement under Section 164 Cr.P.C. was recorded.

iv. On 19.10.2016, the accused was brought from Puzhal Prison for medical examination in Stanley Medical College Hospital and the Investigating Officer also examined Dr.Vijayalakshmi (PW-6) and Dr.Gokulakrishnan (PW-7) and recorded their statements under Section 161(3) Cr.P.C. On 28.12.2016, Mahalakshmi (PW-8) working Karunalaya Illam, Head Constable Vijayarani (not examined) who had accompanied the victim to the hospital for examination and police constable Ramu were also examined. On conclusion of the investigation the charge sheet was filed against the accused under Sections 4 & 8 of POCSO Act.

4. The Trial on the side of the prosecution :

i. On the side of prosecution, nine witnesses were examined and 13 documents were marked.



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- ii. PW-1 is the victim child who deposed that when she was playing in the third floor of her building the accused who is also related to her stepmother PW-2 called her upstairs to his house stripped himself and pressed his penis on the private part of the child. He also tried to press his penis on her buttocks. He also molested her by touching her breast and also kissing her on her mouth. Later he gave Rs.20/- to her and she went home.
- iii. On seeing the 20 Rupee note, Kalaiarasi (PW-2), stepmother of PW-1 asked her as to how she got the money when she had to narrate the incident. Subsequently, she was taken to the hospital and also to a judge. Her birth certificate was marked as Ex.P1 and her 164 Cr.P.C. confession statement was marked as Ex.P2. Kalaiarasi (PW-2), stepmother of the child deposed that she was the second wife of her husband Saravanan and that the victim was born to his first wife who is no more.
- iv. She further deposed that on 29.09.2016, the victim child had a 20 Rupee note and when she was questioned on that she told that it was given to her by the accused who called her and touched her breast.



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- v. Later the victim girl was taken to Karunalaya Illam where the girl gave a detailed account of the sequence of events. The child had described as to how she was molested by the accused who had also performed oral sex on her. The child had also told her that she was threatened that she would be thrown out from the terrace if she revealed the truth to anyone. PW-2 could not immediately go to the police station as her husband had come home fully drunk late in the night and on the next day she confronted the accused and subsequently, went to All Women Police Station, Royapuram to lodge a complaint (Ex.P3).
- vi. Jothi (PW-3) is the sister-in-law of the victim child who more or less corroborated the deposition of PW-2 and also added that the accused used to talk dirty to the victim child.
- vii. Kavitha (PW-4) and Mahalakshmi (PW-8) are volunteers of Karunalaya Illam who also were present in the police station and witness to the narration made by the victim child to the police.
- viii. Devi @ Sathya (PW-5) who was a witness to the observation mahazar. (Ex.P4) turned hostile to the prosecution.



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ix. Dr.Vijayalakshmi (PW-6) is the Doctor who examined the victim child on 01.10.2016 in RSRM Hospital, Royapuram. She had also prepared the Accident Register (Ex.P5), Investigation Report on Sexual Offence (Ex.P6), Certificate of examination of Sexual Offence (Ex.P7) and her final opinion based on forensic report (Ex.P8). According to her, the child was being sexually exploited for a month by a known person (Accused) who was a neighbour. He used to call the girl to his house, strip her and kiss her on her breasts and private parts. She also found the hymn to be intact and no external injuries on her body and on private parts except for the nail marking were found on both her breasts. She sent nail clippings, vaginal hair, smear and swab to forensic lab for analysis. The forensic report (Ex.P8) had mentioned there was no spermatozoa, blood or tissue or semen in any of the items.

x. Dr.Gokulakrishnan (PW-7) of Stanley Medical College Hospital examined the accused to certify on the potency as well as age. As per his certificate (Ex.P10) the age of the accused was 54 years and there was nothing to suggest that the accused was impotent.



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xi. The Investigating Officer in her deposition had narrated how she investigated the case, referred the victim and the accused to the respective Doctors, recorded the statements of the witnesses as discussed in the preceding paragraphs.

xii. The accused was questioned under Section 313 Cr.P.C. with regard to the incriminating circumstances appearing in evidence against him. The accused denied having committed the offence. However, no oral / documentary was adduced on his side.

5. The Judgment of the Trial Court :

The trial Court relied on the deposition of the victim girl (PW-1) and her close relatives including her stepmother (PW-2) and found the accused guilty of sexually assaulting the minor girl and convicted and sentenced the accused as detailed hereunder :

<i>Conviction</i>	<i>Sentence</i>
Section 8 of the Protection of Children from Sexual Offences Act 2012	Rigorous Imprisonment for 5 years and a fine of Rs.5,000/-, in default, to undergo 6 months Rigorous imprisonment.



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<i>Conviction</i>	<i>Sentence</i>
Section 6 of the Protection of Children from Sexual Offences Act 2012	Rigorous Imprisonment for 10 years and a fine of Rs.10,000/-, in default, to undergo 6 months Rigorous imprisonment.

6. When the matter is taken up for hearing today, there is no representation for the appellant. Section 386 Cr.P.C. , which reads thus:

*After perusing such record and hearing the appellant or his pleader, **if he appears**, and the Public Prosecutor, **if he appears**, and in case of an appeal under section [377](#) or section [378](#), the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal.*

Heard, Mr.S.Sugendran, learned Additional Public Prosecutor for the respondent.

7. In the trial Court, the appellant had taken the following defence.

- i. There was previous enmity between PW-2, the stepmother of the child and the appellant.
- ii. PW-2 was running a chit in which the accused was also a member



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and that some misunderstanding cropped up due to which PW-2 wanted to settle her personal score with the appellant/accused.

- iii. There is a serious contradictions in the deposition of PW-2 & PW-3 and even in the deposition of PW-1 the factual position was not stated.
- iv. PW-1 in her deposition had stated that she was residing with her stepmother (PW-2) in the third floor of the building whereas the accused was in the fourth floor. The PW-3 in her deposition stated that they were residing in the first floor of the building and the accused in the second floor.
- v. The victim girl had a twenty rupee note in her hand and was questioned by PW-3 at 10.00 am on 29.09.2016 while PW-2 in her statement deposed that she had questioned the victim girl at 08.00 - 09.00 pm on 29.09.2016.
- vi. There was unexplained delay in lodging the complaint. According to the accused, the child was tutored since her deposition was a couple of years after the date of occurrence.

8. Per contra, Mr.S.Sugendran, learned Additional Public Prosecutor



contended that the trial court after analysing the documentary evidence and also the defence taken by the revision petitioner/accused, had held that the accused is guilty of the offences under Sections 6 & 8 of the Protection of Children from Sexual Offences Act 2012.

9. Conclusion :

9.1. Section 29 & 30 of POCSO Act read thus :

Section 29 :- Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.

Section 30 :- Presumption of culpable mental state:- (1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

(2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

Explanation.-In this section, "culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact."



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Thus there is a presumption against the accused unless the contrary is proved. When the onus of proof lies with the accused mere denial of commission of offence cannot absolve him of the crime. Though it was argued that there was a previous enmity between PW-2 and the appellant/accused there was no evidence adduced by the accused in this regard. In the light of the overwhelming evidence of the victim girl (PW-1), the defence that there were contradictions in the deposition of PW-2 & PW-3 recedes to the background making it inconsequential. In the trial Court, it was suggested to PW-2 & PW-3 that the non recovery of 20 Rupee note from the victim girl itself showed that the entire version of prosecution is concocted. This was vehemently denied by them. It is incomprehensive as to how the non-recovery of 20 rupee note had anything to do with the incident of sexual harassment. PW-2 had also clarified that though she knew about the incident on 29.09.2016 her husband had arrived home fully drunk late in the night and therefore, she went to the police station the next day. In the opinion of this Court there is no inordinate delay as alleged by the accused. Moreover, the girl was 13 years old and PW-2 would have thought to take



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guidance of her husband before approaching the police and also due to stigma attached to a girl child.

9.2. POCSO cases have been on the rise to a large extent and though the punishment is stringent, there seems to be no let up due to ignorance and the taboo attached to it. The insensitivity involved in such cases especially when such flimsy grounds are taken up for saving the accused reminds this Court of the infamous Roman Emperor Nero who was playing his fiddle when rome was in flames. There has to be more seriousness to curb such crimes to ensure a safe and secure future for the future generations.

10. In the result,

- i. The Criminal Appeal is dismissed.
- i. The conviction and sentence dated 05.10.2018 passed by the learned Sessions Judge, Special Court for Cases under POCSO Act, 2012/ Mahila Court, Chennai, in Session Case No.307/2017, is confirmed.
- ii. The appellant in Crl.A. No.8 of 2022 (accused in Session Case



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No.307/2017), shall surrender before the Sessions Judge, Special Court for Cases under POCSO Act, 2012/ Mahila Court, Chennai, within 15 days from today, failing which, the Trial Court shall take steps to secure him for undergoing the sentence.

03.08.2023

bga
Index : yes/no
Speaking /Non speaking Order

To

1. The Inspector of Police
W-15, All Women Police Station,
Royapuram,
Chennai 600 013.
- 2.The Sessions Judge, Special Court for Cases under POCSO Act,
Mahila Court, Mahalir Neethimandram, Chennai.
- 3.The Additional Public Prosecutor, High Court, Madras.

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R.HEMALATHA, J.

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Pre-Delivery Judgment in
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