



CRL.A(MD).No. 82 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATE : 11.08.2023

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THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CRL.A(MD).No.82 of 2023

Muthuramalingam : Appellant/Sole Accused

Vs.

State Rep by its,
The Inspector of Police,
Thirupparankundram All Women Police Station,
Madurai City.
(Crime No.15 of 2021) : Respondent/ Complainant

Prayer : This Criminal Appeal is filed under Section 1374(2) of CrI.P.C, to call for the records and set aside the judgment of the trial Court in Spl.S.C.No.17 of 2020 dated 30.08.2022 on the file of the Special Court for the Exclusive Trial of Protection of Children from Sexual Offences Act Cases cum Sessions Judge, Madurai, and allow this Criminal Appeal.

For Appellant : Mr.M.S.Suresh Kumar
For Respondent : Mr.R.Sivakumar
Government Advocate (Criminal Side)



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JUDGMENT

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This Criminal Appeal has been filed to set aside the judgment passed by the Exclusive Trial of Protection of Children from Sexual Offences Act Cases cum Sessions Judge, Madurai, in Spl.S.C.No.17 of 2020 dated 30.08.2022.

2.The appellant is the sole accused in Spl.S.C.No.17 of 2020 on the file of the Special Court for the Exclusive Trial of Protection of Children from Sexual Offences Act Cases cum Sessions Judge, Madurai, filed this appeal challenging the conviction under Sections 11(i) and 12 of the POCSO Act, and sentence imposed upon him to undergo three years Imprisonment and to pay a fine of Rs.1,000/- in default, to undergo 6 months Imprisonment and compensation of Rs.50,000/- to the victim girl.

3. Case of the prosecution:

The appellant is a mason and he is living in Pandiselvi Compound, Kanatchi Amman Cross Street, Mela Anuppanadi, Madurai. In the said compound, number of persons are residing. According to the prosecution, on 25.01.2020 at 4.00 pm., when the victim girl and the other girls were playing in the compound, the appellant caused sexual harassment to the



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victim girl by lifting his Dhoti and showing his private part to her. So, the respondent police, on receipt of the complaint from PW.1, registered a case in Crime No.3 of 2020 against the appellant for the offence under Sections 11(i) and 12 of the POCSO Act, 2012.

4. The investigation officer-PW.13, after arresting the appellant on 26.01.2020 itself, conducted investigation, collected material documents and filed final report before the Special Court for the offence under Sections 11(i) and 12 of POCSO Act. The learned trial Judge, after framing necessary charge, questioned the accused and the accused pleaded not guilty and stood for trial.

5. On the side of the prosecution to prove the charges, PW.1 to PW.13 were examined and Ex.1 to 14 were marked and also Court document, Ex.C1 also marked. Thereafter, put the incriminative materials available against the accused in the evidence under Section 313 Cr.P.C. The accused denied the same as false and posted for the defence evidence and the appellant never adduced any defence evidence and documentary evidence.



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6.The learned trial Judge, considering the above documents and submission of the accused and the Public Prosecutor, convicted the appellant for the offence under Sections 11(i) and 12 of POCSO Act, stating that the prosecution proved the case that the appellant lifted his Dhoti and shown his private parts to the victim girl and thereby, he committed the offence of sexual harassment and imposed the sentence as stated above by passing the impugned judgment, dated 30.08.2022 in Spl.S.C.No.17 of 2020.

7. Challenging the same, the appellant preferred this appeal on the grounds stated in the memorandum of appeal.

8. The learned counsel for the appellant submitted that according to the prosecution, when the victim girl was playing with her friends namely, Siva, Sakthi, Viswa and Dhanam, the appellant said to have lifted his dhoti and shown his private parts to all and asked them to come inside the house. So, the non-examination of the said friends clearly shows that the prosecution version is doubtful and the victim statement is not trustworthy and without any corroboration. So, he seeks for acquittal.



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9.The learned Public Prosecutor would submit that the prosecution clearly proved the charge against the appellant. The evidence of P.W.2, the victim girl is cogent and trustworthy. She also immediately informed the occurrence to her mother P.W.1 and the other witnesses. So, the prosecution clearly proved the sexual harassment of the accused that lifting his dhoti and shown his private part to the victim girl. The non-examination of the other witnesses is not material when the evidence of P.W.2 is cogent and trustworthy. So, the Public Prosecutor prayed for dismissal of the appeal.

10.This Court considered the rival submission and perused the records.

11. Now, the only question arises for consideration in this case is *whether the conviction passed by the learned trial Judge is sustained on the basis of the evidence adduced by the prosecution?*

12.From the evidence of the victim girl, it is clear that the appellant lifted his dhoti and shown his private part to the victim girl. There was no motive is alleged against the victim girl to implicate the appellant in the



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above occurrence at the cost of her reputation. P.W.2 clearly stated the occurrence and the same was immediately informed to P.W.1. Even though, complaint has been immediately made before the Avaniyapuram Police Station, Madurai District, they refused to take the same. So, P.W.1 went to the respondent jurisdictional All Women Police Station on the next day Morning itself i.e., on 26.01.2020 at 07.00 a.m. So, the complaint was properly made and investigation was conducted in fair manner and final report was also filed.

13. In view of the above circumstances, this Court find no reason to disbelieve the evidence of the victim and her mother P.W.1. The victim girl clearly deposed the fact to constitute the offence under Section 11(i) of POCSO Act and hence, the learned trial Judge is rightly convicted the appellant under Sections 11(i) and 12 of POCSO Act. Accordingly, the question arises for consideration in this case answered against the appellant.

14. The learned counsel for the appellant would submit that the appellant is 53 years old and he is a mason and there was no previous antecedents. Now, he shifted his residence from the said compound and he



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is continuously in jail for the past one year. So, he prays for reduction of sentence of imprisonment. He also submit that he is ready to file undertaking affidavit that he would not entered into the said compound and he would not further commit the similar offence.

15.Considered the above circumstances, the conviction passed by the trial Court for the offence under Sections 11(i) and 12 of POCSO Act is hereby confirmed. Insofar as the sentence for the offence under Sections 11(i) and 12 of POCSO Act, is concerned, this Court is inclined to reduce the sentence from 3 years Imprisonment to 1 ½ years Imprisonment.

16.Accordingly, this Criminal Appeal is partly allowed.

11.08.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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K.K.RAMAKRISHNAN,J.

dss

To

- 1.The Special Court for the Exclusive Trial of Protection of Children
from Sexual Offences Act Cases cum Sessions Judge, Madurai,
- 2.The Inspector of Police,
Thirupparankundram All Women Police Station,
Madurai City.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court, Madurai.

Order made in
CRL.A(MD).No.82 of 2023

11.08.2023