



Crl.A(MD)No.550 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.07.2023

Pronounced on : 19.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

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A.Muthukrishnan

.. Appellant/Sole Accused

Vs.

State represented by
The Inspector of Police,
All Women Police Station,
Tallakulam,
Madurai City.
(In Crime No.33 of 2016)

.. Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 of Criminal Procedure Code, to call for the records pertaining to the judgment dated 09.04.2021 in Spl.S.C.No.25 of 2017 passed by the learned Sessions Judge, Special Court for Exclusive Trial of cases under POCSO Act, Madurai, and to set aside the judgment of the conviction on the appellant/accused.



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For Appellant : Mr.C.Ezhilarasu

For Respondents : Mr.M.Muthumanikkam
Government Advocate (Criminal side)
For R1

JUDGMENT

This Criminal Appeal has been filed by the appellant/sole accused in Spl.S.C.No.25 of 2017 before the learned Sessions Judge, Special Court for Exclusive Trial of cases under POCSO Act, Madurai. The trial Court convicted the appellant for the offence under Sections 9(n) r/w 10 and 9(1) r/w 10 of the POCSO Act and Section 506(i) IPC and imposed sentence as follows:

Rank of the Accused	Offence under Section	Punishment
Sole Accused	9(n) r/w 10 of the POCSO Act	5 years Rigorous Imprisonment and fine of Rs.5,000/-, in default, to undergo three months Rigorous Imprisonment.
	9(1) r/w 10 of the POCSO Act	5 years Rigorous Imprisonment and fine of Rs.5,000/-, in default, to undergo three months Rigorous Imprisonment.



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507(i) IPC

2 years Rigorous
Imprisonment.

Challenging the same, the appellant filed this appeal.

2. Case of the prosecution:

The appellant is the sole accused in the Special S.C.No.25 of 2017 on the file of the Sessions Judge, Special Court for Exclusive Trial of cases under POCSO Act, Madurai. The respondent police registered the case against the appellant for offences under Sections 9(n) r/w 10 of POCSO Act, 9(1) r/w 10 of the POCSO Act and Section 506(i) IPC. According to the prosecution, the appellant is said to have committed sexual assault on his own daughter namely, the victim girl-PW.2 continuously. Even prior to this incident, he also committed such sexual assault with another girl, who was the resident of the same street and hence, there is already an FIR registered against the appellant. Even after the said occurrence, he has not reformed himself and continuously committed sexual assault upon the victim girl. Therefore, unable to tolerate, the girl took a decision to give complaint before the respondent police. The respondent police after registration of the FIR conducted the



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investigation and filed the final report before the learned Special Judge, Special Court for POCSO Act cases. The learned Special Judge had taken the final report on file in Spl.S.C.No.25 of 2017 and served the copies to the appellant under Section 207 Cr.P.C. Thereafter, necessary charges were framed and questioning under Section 235 Cr.P.C was done. The accused is denied the accusation and pleaded not guilty and stood for trial.

3. The prosecution, in order to establish the offences under Section 11(iii) r/w 12 as well as Section 9(l) r/w 10, 9(n) r/w 10 of the POCSO Act and 506(i) IPC, examined PW.1 to PW.11 and marked Ex.P1 to Ex.P7.

4. After examination of the witnesses, the appellant was questioned under Section 313 Cr.P.C by putting the incriminating circumstances available against him and the appellant simply denied his involvement and hence, the case was posted for defence witnesses. No witnesses were examined and no documents were marked on the side of the defence. The Court also examined CW.1 and filed Ex.C1- birth certificate of the victim



girl to show the age of the victim girl.

5. The trial Court, after considering the above aspect, acquitted the accused under Section 11(iii) r/w 12 of the POCSO Act on the ground that the investigating officer failed to seize the mobile phone and rendered conviction under Section 9 (n) and 9(l) of the POCSO Act and Section 506(i) IPC and imposed sentence as stated supra.

6. Aggrieved over the same, the appellant preferred the appeal and the learned counsel for the appellant reiterating the grounds raised in the memorandum of appeal, specifically made the following submissions.

6.1. On the date of the occurrence, the victim girl was major and hence in order to bring the offence under the POCSO Act, the prosecution falsely stated that as if the appellant committed sexual assault on the victim girl during her minority and hence the prosecution does not come up with true version regarding the period of occurrence.

6.2. As per the prosecution evidence, after the alleged sexual assault made by the appellant to the another girl in the same street, he



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was arrested and confined in jail. Thereafter, he came out from jail. Due to his activity, PW.1-wife of the appellant was trying to commit suicide and she was admitted in the Government Hospital and took treatment for three days as inpatient. Thereafter, the appellant had given an undertaking to his brother-in-law that he would not do such an offence in future.

6.3. Within 15 days from the date of the said occurrence, the appellant committed sexual assault upon the victim girl. Therefore, she left the company of the appellant. The prosecution did not produce any evidence to prove the said admission as inpatient in the hospital and subsequent undertaking given by the appellant. Hence, the prosecution has failed to prove the above fact.

6.4. The learned counsel for the appellant further submitted that the undertaking letter allegedly written by the appellant to his brother-in-law has not been marked and hence, no such occurrence took place.

6.5. The learned counsel further submitted that it is the evidence of PW.2-victim girl that the accused inserted his hands into her shirt, but the



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victim girl stated that she never wore shirt and used to wear only churidhars and nighties. Therefore, this material contradiction affects the evidence of the victim girl.

7. On the other hand, the learned Additional Public Prosecutor submitted that the said contradiction regarding the shirt or churidar is not material, when the victim girl stated that there is a sexual assault upon her. Considering the relationship between the victim girl and the appellant, the evidence of the daughter of the appellant/victim girl is without any motive to implicate the appellant in the above crime, hence, her evidence is to be accepted. Admittedly, no motive has been attributed on the side of the appellant that PW.1 and PW.2 had falsely roped the appellant in this case. It is the further submission of the learned Additional Public Prosecutor that the daughter, that too, at the age of her marriage, has no motive to make such grave allegation against her own father. Therefore, he seeks the indulgence of this Court to confirm the judgement passed by the trial Court. The learned Additional Public Prosecutor further submitted that it is the case of the victim girl that there is a continuous sexual assault upon her by the father, even after the arrest



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made in the earlier case on account of his involvement in the sexual assault upon the girl residing near his street. Hence, from the sequence of events, this Court is able to see that the appellant committed the offence as spoken by the victim girl.

7.1. The learned Additional Public Prosecutor further submitted that the non-production of the letter alleged to have been written by the appellant with the undertaking that he would not commit such offence in future, is not relevant with the evidence of PW.1. But, PW.2 has clearly deposed in the same line. Therefore, in all aspects, the trial Court judgement is in accordance with law. Hence, there is no need to interfere with the order of the trial Court.

8. The victim girl is none other than the daughter of the accused. The accused on an earlier occasion committed such misbehaviour as done in this case with the another girl for which the law enforcing agency has already registered a case. The victim girl specifically stated that the accused had compelled the victim girl to take obscene photos and videos in the mobile phone and forced her to see the obscene photos and videos



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along with him and he inserted his hand into her shirts, squeezed her breasts and hugged her and thus, he had been committing sexual assault for the past one year. Even though the investigating agency has not seized the cellphone, the deposition of the victim girl that the accused misbehaved with his own daughter by doing the act of inserting his hands into the shirts of the victim girl and caused the sexual assault is clearly proved the charge under Section 9(n) and 9 (l) of the POCSO Act.

9. The said act was continued by the appellant even after his confinement in jail for the complaint registered at Thallakulam police station in some other case. Due to such activity of the appellant, PW.1- wife of the appellant took sleeping pills to commit suicide and after consuming the tablets, she was admitted in the Government Hospital and took treatment. Thereafter, the appellant had given an undertaking in the presence of his brother-in-law that he would not do such things in future.

10. From the evidence of PW.1, it is clear that not only the victim girl but also after immediate disclosure of the sexual assault committed by the appellant to PW.1, the evidence of PW.2 also gets support and



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there was no reason to disbelieve the evidence of the said witnesses.

Hence, the trial Court, after considering the circumstances and evidence, correctly came to a conclusion that the appellant committed offence under Section 9(m) and 9(l) of the POCSO Act.

11. The learned counsel for the appellant submitted that on the date of registration of the FIR, the victim girl was major and in order to bring the offence under the POCSO Act, they fabricated the incident as if the appellant committed the continuous sexual assault upon the victim girl. The same cannot be accepted for the reason that the victim girl stated that the appellant continuously committed the sexual assault upon her. PW.1 is doing her graduation, more particularly, she stated that her father was continuously doing the sexual assault during the previous years. Hence, the argument of the learned counsel for the appellant that the prosecution, in order to bring the offence under the POCSO Act, stated that the incident as such happened before the majority of the victim girl, cannot be accepted.

12. The victim girl is the daughter of the appellant. When the



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victim girl, in her filial capacity of daughter, deposed before the Court without any embellishment, this Court also has no hesitation to accept this evidence. The victim girl specifically stated in the cross-examination that the complaint was given only at the time of the second sexual assault. Therefore, from the statement of the victim girl, it is clear that the appellant committed the continuous sexual assault upon the victim girl.

13. The submission of the learned counsel for the appellant that the sentence may be reduced considering his incarceration for more than one and half years is concerned, this is the Special Act, where Section 10 of the POCSO Act reads as follows.

“Section 10-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.”

14. From the reading of the above provision, it is clear that without



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any specific provision to award lesser sentence other than the minimum sentence as prescribed under the Act, this Court has no power to impose the sentence lesser than the minimum sentence prescribed by the legislature. At the same time, considering the conduct of the appellant that he committed sexual assault upon his own daughter, repeatedly and the appellant also is involved in another sexual assault case in similar nature, this Court is not inclined to reduce the sentence imposed by the trial Court.

15. In the result, this Criminal Appeal stands dismissed. The judgment dated 09.04.2021 in Spl.S.C.No.25 of 2017 passed by the learned Sessions Judge, Special Court for Exclusive Trial of cases under POCSO Act, Madurai, is hereby confirmed.

19.10.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
PJJ

To
1. The Sessions Judge,
Special Court for Exclusive
Trial of cases under POCSO Act,
Madurai.



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2.The Inspector of Police,
All Women Police Station,
Tallakulam,
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.



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K.K.RAMAKRISHNAN, J.

PJL

**Judgment made in
Crl.A(MD)No.550 of 2022**

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