



Crl.A.(MD).No.745 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 21.02.2023

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.A.(MD).No.745 of 2022

Yousuf Nana @ Yousuf

... Appellant/Sole Accused

Vs.

State through,
The Inspector of Police,
All Woman Police Station,
Aranthangi,
Pudukkottai District.
(Crime No.11/2020)

... Respondent/Complainant

Prayer: Criminal Appeal has been preferred under Section 374 (2) Cr.P.C., to call for the records relating to the Judgment in Spl.S.C.No.45 of 2020, dated 28.10.2021, on the file of the learned Sessions Judge (FAC), Mahila Court, Pudukkottai and set aside the same.

For Appellant : Mr.P.Mani Anandh

For Respondent : Mr.B.Nambiselvan
Additional Public Prosecutor

J U D G M E N T

This Criminal Appeal is preferred against the judgment of conviction and sentence passed by the learned Sessions Judge (FAC), Mahila Court, Pudukkottai, in Spl.S.C.No.45 of 2020, dated 28.10.2021, by



which, the appellant was convicted and sentenced to undergo 5 years of Rigorous Imprisonment for the offence punishable under Section 8 of POCSO Act, 2012 and imposed fine of Rs.30,000/- in default to undergo simple imprisonment for one year. The period already undergone by the accused is ordered to be set off under Section 428 Cr.P.C.

2.The case of the prosecution:-

The victim girl was studying 3rd standard during the occurrence period. The defacto complainant is the mother of the victim child, was attending the work in a neighbouring area. So at that time, she used to left the child in the house of one Selvi. On the particular day of occurrence also, similarly she left the victim child under the care of the above said Selvi and went for job. She returned from the work to the house. At that time, she was told by the victim child that one person removed her dress and touched her private parts. He gave 100 rupees asking her not to disclose the same to others. The above said person had also shown the knife and threatened her. So on the basis of the occurrence, the case was registered and after completing the formalities of investigation, final report was filed in Special S.C.No.45 of 2022, for the offence under Section 8 of the POCSO Act, 2012.



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3.Charge against the accused person:-

On 26.08.2020, when the PW1 went for work, leaving the victim child with PW6. At that when the victim child was playing with one Shanthosh and Ammu, at about 03.00 p.m., the accused person picked up the victim child to one Panjali's house and sexually assaulted her, by touching her private parts, by removing the garments, kissing and gave her Rs.100/- for not disclosing the same to any one, thereby, he committed the offence punishable under Section 8 of POCSO Act, 2012.

4.To prove the charges on the side of the prosecution 10 witnesses have been examined and 11 documents were marked. On the side of the accused side no witness was examined and no documents were marked.

5.After completion of the trial, the trial Court found the accused person guilty, convicted and sentenced as stated above. Against which, this appeal have been preferred by the accused.

6.The case of the prosecution in brief as narrated through the evidence.

PW2 is the victim. She was aged about 7 at the time of the



examination. On the particular day of occurrence, she was playing near Panjali's house, the mother PW1 was on a work. She was taken by the accused to the house of the above said Panjali. He touched her private part by removing her garments. He also kissed in that portion. She was assaulted not to disclose the same to any one. She was given hundred rupee note. After that he went away. The above said fact was informed to PW3 by her. PW3 in turn intimated PW1. PW1 is the mother of the victim. She corroborated the victim. On the particular day of the occurrence, she went for work, leaving the child in the house of Selvi. She returned to the house at about 2.30 p.m., and went searching the child. At that time PW3 informed her that one person sexually misbehaved with PW2. She made enquiry with the Panjali's house. But no proper information was given. She went to the Manamelkudi police station at the first instance. They advised her to approach Aranthangi All Women Police Station. She lodged a complaint under Ex.P1. Later the victim girl was taken to Aranthangi Government Hospital for examination.

7.PW7 was working as Sub Inspector of Police, Aranthangi All Women Police Station, during the relevant time. On 27.08.2020 at about 3.30 p.m., PW1 lodged a complainant and the same was registered as in Crime No.11 of 2020 for the offence under Section 8 of the POCSO Act.



She submitted the original document to the Court and copies to the higher officials as per the procedure. She recorded the statement of the witnesses and further investigation was undertaken by the Inspector of Police.

8.The child was examined by PW5 Doctor, on 27.08.2020 at about 5.30 p.m. On her examination, she found no external injuries on the private parts of the victim. Similarly, after arrest, the accused was also produced before PW6. He also examined the accused and found that there was no disability and he recorded opinion that he was not of the view that the accused could not perform sexual activity.

9.The above said accused was arrested by PW9, who was working as Inspector in the All Women Police Station, Aranthangi. She took up further investigation on 13.11.2020 and recorded the statement of witnesses. She recorded the statement of the Doctors, who examined the accused as well as the victim. After completing the investigation, she filed the final report. The preliminary investigation was undertaken by PW10. She took steps to record the statement of the witnesses and as well as the victim girl under Section 164 of Cr.P.C. by the learned Judicial Magistrate, Aranthangi.



10.PW3 was also corroborating PW2 with regard to the occurrence. He was also playing along with PW2 at that time. He also witnessed the occurrence of taking the victim girl by the accused. Along with one Ammu, they followed the accused. They peeped through windows, but could not witness the occurrence. He only informed PW1 with regard to the above said occurrence, which was informed by PW2.

11.Other witnesses are not material witnesses. At the conclusion of the prosecution evidence the accused was put on questioning as per Section 313 Cr.P.C.. He denied the facts narrated by the witnesses. On his side none was examined.

12.Heard both sides. The learned counsel for the petitioner would rely upon various circumstances, for the purpose of arguments that the prosecution has not put up a genuine case and there are various infirmities and contradictions in the evidence. He would submit that PW1 was contradicting herself with regard to the contents of the complaint under Ex.P1, during the course of evidence. For that purpose, he would draw the attention of this Court. In the complaint, she has stated that she returned to the house on the particular date at about 6.00 p.m., but, whereas, in the evidence, she has stated that she returned to the house at about 2.30 p.m. No



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doubt, there is contradiction with regard to the time of returning to the house. The occurrence is stated to have been taken place on the previous day of registration of FIR namely 26.08.2020. The complaint has been given on the next day namely on 27.08.2020 at about 3.30 p.m. During the course of evidence PW1 has stated that after coming to know about the occurrence, she immediately went to Manamelkudi police station. At that time, she was directed to approach the All Women Police Station, Aranthangi. But, with regard to the above said fact, during the course of cross examination, she has stated that at about 07.00 p.m., she went to Manamelkudi Police Station on the date of occurrence itself. She made enquiry with regard to the person, who misbehaved with the child. Except this minor contradictions, I find absolutely, no other material contradictions even with regard to the date of complaint.

13.Now let us go to the evidence of the independent witnesses PW3, as I mentioned earlier, he was also playing at the time of occurrence with the PW2 and others. He would say that on the date of occurrence near the house of one Panjali, he, his sister and the victim were playing and at that time, the accused person came there and took the victim to Panjali's house. They followed him, but, they could not see through the window. After some time, the victim girl came out of the house and informed him



that the accused misbehaved with her and also gave 100 rupee note. He informed PW1 about the occurrence. PW1 has also corroborated the evidence of PW4 with regard to the information. I find absolutely, no reason to discard the evidence of PW3.

14. With regard to the identity of the accused also not only PW2, but also PW3 identified the accused in the Court itself. It is also seen that this appellant was also known to the witnesses even before the occurrence. They stated that this accused used to visit Panjali's house frequently. So the question of identification also does not arise here.

15. Now, coming to the time of occurrence much argument has been advanced by the accused PW1, as mentioned above, stated that at about 2.30 p.m., she returned to the house. At that time, she was informed. PW2 could not able to say the correct time. PW3 also could not able to give the correct time of the occurrence. But, from this alone, the case of the prosecution cannot be doubted. Absolutely, there was no motive between the accused person and PW1 to falsely implicate this petitioner in the occurrence. A small child was taken by this appellant and caused sexual assault. The offence of such nature cannot be excused on any ground. On going through the judgment of the trial Court, I find absolutely, no error



either in appreciation of evidence or in making conclusion on the basis of the circumstances. Simply, because no other independent witnesses has been examined. As I mentioned above, PW2 has been corroborated by PW3 and absolutely, nothing has been brought on record to disbelieve their version.

16.Now come to the age of the victim. Ex.P4 is the Birth Certificate of the victim. In fact, it is not disputed by the accused also. The date of Birth is mentioned as 13.08.2013. The date of occurrence stated to be 26.08.2020, which means that she crossed the age of 7 years on the date of occurrence. She was below 12 years. The trial Court started its discussion in view of the foundational facts for drawing presumption under Section 29 of the POCSO Act. As I mentioned earlier, there was no motive suggested by the accused to falsely implicate him into the above said occurrence and not even a single circumstances has been brought on record even to remotely doubt the veracity of the prosecution case. Absolutely, I find no merit in the appeal. 5 years of imprisonment imposed. Therefore, with regard to the sentence also, I find no reason to interfere. This appeal Deserves to be dismissed.

17.Accordingly, this criminal appeal is dismissed. The Conviction



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and sentence passed by the Judgment in Spl.S.C.No.45 of 2020, dated

28.10.2021, by the learned Sessions Judge (FAC), Mahila Court,

Pudukkottai, is hereby confirmed.

21.02.2023

Index: Yes/No

Internet: Yes/No

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To

1.The Sessions Judge (FAC), Mahila Court, Pudukkottai.

2.The Inspector of Police, All Woman Police Station,
Aranthangi, Pudukkottai District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGOVA, J

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