

HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY

CRIMINAL APPEAL No.135 of 2020

JUDGMENT :

This appeal is preferred by the State against the order of acquittal of the accused in Sessions Case PCS No.65 of 2017, dated 26.06.2019 on the file of I Additional Metropolitan Sessions Judge-cum-Special Judge for Trial of Cases under Protection of Children from Sexual Offences Act (hereinafter referred to as 'the POCSO Act'), Hyderabad.

2. The brief facts of the case are that on 08.01.2017 at 8.00 p.m., the accused outraged the modesty of victim girl/PW-2 in front of her house by catching hold of her hand from behind. When her family members tried to apprehend him, the accused fled away from the spot by pushing the mother of the victim girl and as a result, the mother of the victim girl received injuries.

3. Basing on the complaint preferred by the mother of the victim girl, a case was registered against the accused vide Crime No.7 of 2017 for the offences punishable under Sections 354, 354-

A, 509 and 323 of IPC and under Section 7 r/w. 8 of the POCSO Act.

4. During the course of investigation, the investigating officer recorded the statements of witnesses and a woman Police Constable also recorded the statement of the victim girl, alleged to be aged 17 years, as on the date of the offence (DOB: 10.07.2001), prepared the scene observation panchanama and further effected the arrest of accused on 11.01.2017 at 9.00 a.m. On enquiry, the accused confessed his guilt of committing the offence and later the accused was remanded to judicial custody. Further, the statement of the victim girl was recorded by the learned Magistrate under Section 164 Cr.P.C. PW-6 i.e. the Doctor, who medically examined the mother of the victim girl i.e. PW-1, has opined that the injuries sustained by the mother of the victim, are simple in nature. On completion of investigation and receiving the medical reports, the investigating officer laid charge sheet against the accused for the offences punishable under Sections 354, 354-A, 509 and 323 of IPC and under Section 7 r/w. 8 of the POCSO Act.

5. During the course of trial, charges were framed against the accused for the offence punishable under Section 8 of POCSO Act and under Sections 354 and 323 of IPC. Prosecution has examined PWs.1 to 9 and marked Exs.P-1 to P-6. The accused was examined under Section 313 Cr.P.C. with reference to the incriminating evidence of the prosecution witnesses and he denied the evidence, reported no defence witnesses, but marked Ex.D-1. On considering the entire material on record, the trial Court has acquitted the accused for the aforesaid charged offences.

6. Heard learned Assistant Public Prosecutor for the State and the learned counsel for the respondent/accused.

7. As stated supra, the State has preferred this appeal against the acquittal of the accused. It is the contention of the learned Public Prosecutor that the trial Court ought to have convicted the accused for the offences punishable under Section 8 of POCSO Act and Section 354 of IPC, as the prosecution has successfully proved the guilt of the accused beyond reasonable doubt. In view of the oral evidence of PWs.1 to 9 corroborating with each other. It is

further contended by the learned Assistant Public Prosecutor that the 164 Cr.P.C. statement of the victim girl, the evidence of PW-1, PW-2 and PW-6 corroborates with Ex.P-5, and therefore, prayed to set aside the judgment of the trial Court and convict the appellant/accused.

8. On the other hand, the learned counsel for respondent/accused contended that there is no need to interfere with the orders of the trial Court, which rightly acquitted the accused, as no specific evidence attracting the offence under Section 8 of POCSO Act or under Section 354 of IPC and there are no grievous injuries noticed/found on PW-1, so as to believe the testimony in order to convict the accused for the offence under Section 323 of IPC.

The point for determination in this appeal is;

Whether there is any necessity to interfere with the judgment of the trial Court and whether the prosecution is able to bring home the guilt of the accused for the offence punishable under Section 8 of POCSO Act and under Sections 354 and 323 of IPC beyond reasonable doubt ?

9. For better appreciation of the evidence of the prosecution, it is relevant to note the relationship of prosecution witnesses. PW-1 is the mother of the victim girl i.e. PW-2. PW-3 is the elder sister of the victim girl. PW-6 is the Doctor who has examined PW-1 and issued wound certificate i.e. Ex.P-5, which discloses that PW-1 sustained simple injury. The other witnesses in this case are; PW-4/circumstantial witness, PW-5/panch witness for scene observation-cum-rough sketch, PW-7/woman Constable who recorded the statement of victim girl and PWs.8 and 9 are the Police officials who registered the case and issued FIR and further investigated the case. The evidence of PWs.4, 5, 7, 8 and 9 need not be discussed in detail, as they are circumstantial and official witnesses.

10. On perusal of the entire evidence on record, it is evident that PW-1, who is the mother of the victim girl, has preferred report/Ex.P-2, which discloses that since two years, prior to the incident, the accused followed the victim forcing her to love him, due to which, PW-2 had stopped going to college and on 08.01.2017 at around 8.00 p.m., the accused came to their house

and caught hold the hand of the victim, upon which, PWs.1 and 3 stopped him and then the accused abused them in vulgar language, beat them and fled from the scene of offence.

11. On perusal of Ex.P-2, the aspect of sexual assault is found missing. Section 8 of POCSO Act prescribes the punishment for the offence under Section 7 of the said Act. Section 7 of the POCSO Act defines sexual assault as under:

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

Section 8 of the said Act reads as under:

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

12. There was no averment in the complaint/Ex.P-2, about the sexual assault alleged to have been committed by the accused against the victim girl i.e. PW-2. The 161 Cr.P.C. statements of PWs.1 and 2 are also silent about the sexual assault alleged to have been committed by the accused.

13. On perusal of the evidence of PW-2, it is evident that the accused went to her house, caught hold of her hand and insisted her to make phone calls to him, or else, he would beat her parents. When she raised cries, PW-1 came out of the house, upon which, the accused pushed her. Except that, the victim girl has not stated anything about sexual assault against the accused. Furthermore, the evidence of PW-1 also discloses that she found the accused holding her daughter's hand from behind. Except that, there is no whisper of sexual assault either by the victim or the eye witness i.e. PW-1. Therefore, the ingredients of 'sexual assault' as envisaged under Section 7 of POCSO Act are not attracted in this case and the prosecution has miserably failed to prove the guilt of the accused for the said offence.

14. The evidence of PWs.1 and 2 also do not attract the ingredients of Section 354 of IPC. Section 354 of IPC defines assault or criminal force on a woman with an intent to outrage her modesty. The evidence of the victim and the eye witness do not disclose about outraging the modesty of the victim girl.

15. Section 323 of IPC prescribes punishment for voluntarily causing hurt as under:

“Whoever, except in the case provided for by Section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.”

‘Voluntarily causing hurt’ is defined under Section 321 of IPC, as under:

“Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said “voluntarily to cause hurt”.

16. In the present case, the prosecution has miserably failed to bring home the guilt of the accused, as none of the witnesses have stated that the accused had an intention to cause hurt to the mother of the victim i.e. PW-1 and the knowledge of causing hurt is also not attributed to the accused. The evidence of PW-2 clearly discloses that when she raised cries, her mother/PW-1 came out of the house and tried to interfere, for which, the accused pushed her, does not attract the ingredients of offence punishable under Section 321 of IPC. Therefore, it can be safely construed that the trial

Court has rightly acquitted the accused for the charged offences and the prosecution has miserably failed to bring home the guilt of accused for the offences charged. There is no error or irregularity in the judgment of the trial Court so as to interfere with the same.

17. For the aforesaid reasons, this appeal is dismissed, confirming the judgment in Sessions Case PCS No.65 of 2017, dated 26.06.2019 on the file of I Additional Metropolitan Sessions Judge-cum-Special Judge for Trial of Cases under the POCSO Act, Hyderabad.

Pending miscellaneous applications, if any, shall stand closed.

G.ANUPAMA CHAKRAVARTHY, J

Date: 06.02.2023

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