



Crl. Appeal No.159 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.07.2023

Delivered on : 08.03.2024

Coram

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl. Appeal No.159 of 2017

and

Crl.M.P.No.15043 of 2017

Prakash

.. Appellant

Vs.

State rep. by its
Inspector of Police,
W-25, All Women Police Station,
Thiagaraya Nagar,
Chennai.

.. Respondent

Criminal Appeal filed under Section 374 Cr.P.C to set aside the sentence imposed by the learned Sessions Judge, Special Court for Cases under POCSO Act, 2012/Mahila Court, Chennai in S.C.No.160 of 2014, dated 10.02.2017 in Crime No.15 of 2013 for the offence under Section 4 of Protection of Children from Sexual Offences Act, 2012 and Section 506(2) of IPC, Section 6 of Protection of Children from Sexual Offences Act, 2012 and 506(ii) of IPC and acquit the Accused.

For Appellant
For Respondent

.. Mr.R.C.Paul Kanagaraj
.. Mrs.G.V.Kasthuri
Additional Public Prosecutor

JUDGMENT



Crl. Appeal No.159 of 2017

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The Appellant/Accused has preferred this Criminal Appeal as against the judgment of conviction and sentence imposed on him in S.C.No.160 of 2014, on the file of the learned learned Sessions Judge, Special Court for Cases under POCSO Act, 2012/Mahila Court, Chennai, dated 10.02.2017.

2.The brief facts which are necessary for the disposal of this Criminal Appeal are as follows:-

2.1. On 10.11.2013 at about 5.30 p.m. the daughter of the De-facto Complainant (hereafterwards referred to as victim) who was aged about 8 years went out of her house for playing. The Accused who is residing in the same area called the victim “baby” and told her that they will play Balti game and took her to his residence. The Accused took the victim to the first floor of his residence and made her to do balti in the rear portion of his residence which was kept under lock. He removed her panties and kept his finger on the private part of the victim and thus sexually assaulted her. Unable to bear the pain, when the victim cried, the Accused threatened her stating that if she discloses the same to her mother, he would kill her mother by using bike. The victim cried and went to her house. She informed her



Crl. Appeal No.159 of 2017

mother about the occurrence. The mother was shocked. Therefore, she lodged a complaint with All Women Police Station, T.Nagar, Chennai. The Inspector of Police, All Women Police Station, T.Nagar registered a case in Crime No.W25/2013 proceeded with investigation. She had forwarded the victim to the Maternity Hospital, Egmore, Chennai where Dr.Kalpana, Assistant Professor, Gynaecology, examined the victim and issued Ex.P-10 and Ex.P-11. The Inspector of Police, All Women Police Station also arrested the Accused and forwarded him to the Madras Medical College to obtain medical certificate regarding potency of the Accused. Dr.Ramalingam P.W-10 had examined the Accused on 18.11.2013 and issued Ex.P-9 potency certificate. The Inspector of Police, All Women Police Station, examined the complainant/mother of the victim and the victim and recorded their statements. The Inspector of Police, All Women Police Station, also examined the Doctor who examined the victim and issued Ex.P-10 and Ex.P-11 and Dr.Ramalingam who had issued Ex.P-9. P.W-13 Inspector of Police also examined P.W-12 Thiru.Manisekaran, Deputy Director of Forensic Science and recorded their statements. The Inspector of Police also addressed the learned Chief Metropolitan Magistrate to nominate a learned



Crl. Appeal No.159 of 2017

Magistrate to record the statement of the victim under Section 164 Cr.P.C.

The learned Chief Metropolitan Magistrate had nominated learned V Metropolitan Magistrate to record the statement of the complainant/mother of the victim. Accordingly, the learned V Metropolitan Magistrate had recorded the statement of the complainant/mother of the victim under Section 164 of Cr.P.C. through Ex.P-4. After completion of the investigation, the Inspector of Police, All Women Police Station, T.Nagar filed final report before the Court of the learned Sessions Judge, Fast Track Mahila Court, Chennai. On appearance of Accused, copies were furnished to the Accused under Section 207 of Cr.P.C. After hearing the Prosecution and the learned Defence Counsel, the learned Sessions Judge, Fast Track Mahila Court had framed the charges under Section 6 of the Protection of Children from Sexual Offences Act, 2012 and under Section 506(i) of IPC. The learned Sessions Judge, Fast Track Mahila Court, Chennai, framed charges under Section 6 of the Protection of Children from Sexual Offences Act, 2012 and Section 506(ii) of IPC. Since the Accused denied the charges and claimed to be tried, the learned Sessions Judge, Fast Track Mahila Court, had ordered trial. In the trial, the Prosecution had examined 15 witness as P.W-1 to P.W-15



Crl. Appeal No.159 of 2017

and marked 16 documents as Ex.P-1 to Ex.P-16. On closing of the Prosecution evidence, the Accused was examined under 313 Cr.P.C. where he denied the incriminating evidence against him. After hearing the arguments of the Prosecution and the learned defence Counsel and on perusal of the record and on proper appreciation of evidence, the learned Session Judge, Fast Track Mahila Court, Chennai, by judgment dated 10.02.2017 had convicted the Accused for the offence under Section 6 of the Protection of Children from Sexual Offences Act, 2012 thereby awarded him 10 years of Rigorous Imprisonment and fine of Rs.5,000/-, in default, to undergo Simple Imprisonment for three months. The period of remand was already set off.

3. Aggrieved by the judgment of conviction and sentence of imprisonment imposed on the Appellant/Accused, the Appellant had preferred this Criminal Appeal.

4. Learned Counsel for the Appellant submitted that the Appellant had preferred this Appeal against the conviction and sentence imposed by the learned Sessions Judge, Special Court for Cases under the POCSO Act,



Crl. Appeal No.159 of 2017

2012/Mahila Court, Chennai, convicting the Accused for offence under Section 6 of the Protection of Children from Sexual Offences Act, 2012.

5.Learned Counsel for the Appellant invited the attention of this Court to the provisions of the Protection of Children from Sexual Offences Act, 2012, particularly, Section 3, which describes the offences.

“3. Penetrative sexual assault.—

A person is said to commit "penetrative sexual assault" if—

- (a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or
- (b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or
- (c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or
- (d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.”



Crl. Appeal No.159 of 2017

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6.Further, he invited the attention of this Court to the certificate issued by the Medical Officer, wherein, the injuries suffered by the Victim are not stated. Also, Thiru.Manisekaran, P.W-12, who is the Forensic Expert, had conducted test on the dress worn by the victim. It is stated by the Forensic Expert that there are no blood stains or semen found on the dress material sent from the Court to the Forensic Department.

7.Therefore, it is the contention of the learned Counsel for the Appellant that the conviction for "Aggravated sex" is not at all attracted. Further, he submits that as per the charge sheet, the child victim is stated to have been subjected to "Aggravated sex", and the child victim, who was aged eight years, had informed the same to her close friends Nithya and Babblu. These two friends were not examined by the Investigation Officer. The Prosecution has to explain the same. In the absence of proof regarding injury on the private part of the victim, the conviction by the learned Sessions Judge, Special Court for Cases under POCSO Act, 2012/Mahila Court, Chennai, convicting the Accused, is not sustainable in law and has to be set aside.



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8.Learned Additional Public Prosecutor appearing for the Respondent vehemently objected to the submission of the learned Counsel for the Appellant, stating that the deposition of the child victim is available before this Court.

9.Also, the learned Additional Public Prosecutor invited the attention of this Court to the deposition of P.W-11, who had examined the child witness. Also, the learned Additional Public Prosecutor invited the attention of this Court to the deposition of P.W-13, which is clearly stated in page 77 of the typed set filed by the Appellant.

10.The learned Additional Public Prosecutor invited the attention of this Court to the statement of the victim recorded by the learned XVII Metropolitan Magistrate under Section 164 of Cr.P.C, which is available in the typed set as Ex.P-4. Further, the learned Additional Public Prosecutor submitted that through P.W-1 to P.W-7, the charges against the Accused had been proved. Therefore, the conviction of the Accused under Section 6 of the



Crl. Appeal No.159 of 2017

Protection of Children from Sexual Offences Act, 2012, is to be confirmed.

The Appeal lacks merit and is to be dismissed.

Point for consideration:

Whether the judgment of conviction and sentence imposed on the Appellant in S.C.No.160 of 2014, on the file of the learned Sessions Judge, Special Court for Cases under POCSO Act, 2012/Mahila Court, Chennai, dated 10.02.2017 is to be set aside as perverse?

11.On consideration of the rival submission and on perusal of the materials available before this Court, the submission of the learned Counsel for the Appellant cannot at all be accepted in the light of the deposition by the Doctor-P.W-11 who had examined the child victim. It is clearly stated that the genital organs of the child victim had developed reddish colour. Also, as a mandatory procedure for offences attracting Protection of Children from Sexual Offences Act, the victim of sexual assault is subjected to medical test and also subjected to recording of statement before the Judicial Magistrate/Metropolitan Magistrate. Accordingly, the statement under Section 164 of Cr.P.C. of the victim was recorded by the Magistrate. The victim had narrated the occurrence. It has some weightage before the trial



Court. It is presumed true. Also in cases under Protection of Children from Sexual Offences Act, there is a presumption in favour of the child victim. The criminal jurisprudence that is followed in all other criminal trials are not applicable to the offences attracting Protection of Children from Sexual Offences Act, 2012. Therefore, once the Prosecution had established the case of the Prosecution, the Accused who denied the charge is expected to discharge his burden by adducing rebuttal evidence. Therefore, the submission of the learned Counsel for the Appellant/Accused that at the initial stage the victim/Prosecutrix had stated that she had narrated the incident to her friends Nithya and Babblu, who in turn, had informed the mother of the victim. The said Nithya and Babblu were not examined by the Prosecution. Therefore, the Prosecution had suppressed the real facts. In the cross-examination, the Prosecutrix as P.W-1 had stated that there is enmity between the family of Nithya and the Prosecutrix. Apart from all those things, it is the contention of the learned Counsel for the Appellant that the child victim had been instigated by her mother to settle score with the family of the Accused/Appellant. Therefore, the Prosecution had not proved the case beyond reasonable doubt and hence, the charge against the



Crl. Appeal No.159 of 2017

Accused/Appellant under Section 6 of the Protection of Children from Sexual Offences Act, 2012 is not attracted. The finding of guilt recorded by the learned Sessions Judge, Special Court for Cases under POCSO Act, 2012/Mahila Court, Chennai, on 10.02.2017 is perverse and is to be set aside. This argument is not acceptable in the facts of the case contrary to the explanation offered by the learned Counsel for the Appellant that aggravated sex is not attracted. Therefore, based on proper appreciation of evidence only learned Sessions Judge, Special Court for Cases under POCSO Act, 2012/Mahila Court, Chennai, had convicted the Accused for the offences under Section 6 of the Protection of Children from Sexual Offences Act, 2012 and under Section 4 of the Protection of Children from Sexual Offences Act, 2012 even though the charge was not framed under Section 4, the evidence of the Prosecutrix clearly established the offences under the Protection of Children from Sexual Offences Act, 2012, Penetrative Sexual assault even though the charge was framed under Section 4 of the Protection of Children from Sexual Offences Act, 2012, the learned Judge had convicted the Accused under Section 6 of the Protection of Children from Sexual Offences Act, 2012.



Crl. Appeal No.159 of 2017

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12.The submission of the learned Additional Public Prosecutor is found acceptable regarding the submission that the learned Judge had appreciated the evidence available before the Court and on assessment of evidence, had rightly arrived at a just conclusion that the Accused had committed offence attracting punishment under Section 6 of the Protection of Children from Sexual Offences Act, 2012. The learned Additional Public Prosecutor invited the attention of this Court to the deposition of P.W-7, the deposition of P.W-11 Doctor who had examined the victim and issued Ex.P-10 and Ex.P-11, statement under Section 164 Cr.P.C. made to the learned Metropolitan Magistrate under Ex.P-4, deposition of P.W-4, deposition of P.W-4, P.W-6 and P.W-7. The evidence of the Prosecution witnesses clearly proves the case of the Prosecution. The submission of the learned Counsel for the Appellant is rejected in the light of the submission of the learned Additional Public Prosecutor relying on the medical certificate issued by P.W-11 Doctor under Ex.P-10 and P-11 and the 164 statement made by the victim at the earliest point of time. Apart from that, the evidence of Prosecutrix will be sufficient for the Court to convict the Accused. The



Court need not search for corroborative evidences.

13.It is to be noted that the Protection of Children from Sexual Offences Act, 2012 is a peculiar Act wherein the innocent children are exploited by sex perverts exploiting their innocence, their helplessness for the sexual pleasure and urge. Only to curtail those activities and to protect the children from the perverted acts of elders in the society, who indulges in similar activities causing mental and physical pain to the minor victims, the Protection of Children from Sexual Offences Act, 2012 was enacted by Parliament. The victims of sexual offences under Protection of Children from Sexual Offences Act, 2012 will not be able to regain normal health both mentally and physically after such assault. Therefore, what had been argued by the learned Counsel for the Appellant is rejected.

14.In the light of the above discussion, the point for consideration is answered against the Appellant and in favour of the Respondent. The judgment of conviction and sentence imposed on the Appellant in S.C.No.160 of 2014, on the file of the learned Sessions Judge, Special Court



Crl. Appeal No.159 of 2017

for Cases under POCSO Act, 2012/Mahila Court, Chennai, dated 10.02.2017

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does not warrant any interference by this Court and the same is to be confirmed.

In the result, **this Criminal Appeal is dismissed as having no merit.**

The conviction and sentence imposed on the Appellant/Accused by the Trial Court in S.C.No.160 of 2014 vide impugned judgment dated 10.02.2017 for the offence under Section 6 of the Protection of Children from Sexual Offences Act, 2012 [POSCO Act] is hereby confirmed. The period of sentence already undergone by the Appellant/Accused is ordered to be given set-off under section 428 Cr.P.C. Consequently, connected miscellaneous petition is closed.

08.03.2024

cda/srm

Index : Yes/No

Speaking/Non-speaking order

To

1.The Sessions Court,
Special Court for Cases under POCSO Act, 2012/
Mahila Court, Chennai.



Crl. Appeal No.159 of 2017

2.The Additional Public Prosecutor,
Madras High Court, Madras.



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Crl. Appeal No.159 of 2017

SATHI KUMAR SUKUMARA KURUP, J.,

cda/srm

Pre-Delivery Judgment made in
Crl.A.No.159 of 2017

08.03.2024