



Crl.A.No.5 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2024

CORAM :

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.5 of 2023

Murugan @ Murugesan @ Selvam

...Appellant/Accused

vs.

The State represented by
Inspector of Police,
W 20, All Women Police Station,
Saidapet, Chennai.
(Crime No.93 of 2021)

...Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, 1973, to call for the records pertaining to the Judgement dated 12.04.2022 made in Spl.S.C.No.93 of 2021 by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under the POCSO Act, Chennai, and set aside the same.

For Appellant : Mr.K.Selvakumaraswami

For Respondent : Dr.C.E.Pratap
Government Advocate (Crl.Side)



CrL.A.No.5 of 2023

JUDGMENT

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This Criminal Appeal has been filed by the accused, challenging the conviction and sentence imposed upon him, vide judgment dated 12.04.2022 in Spl.C.C.No.93 of 2021, on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as POCSO Act), Chennai.

2(a). The case of the prosecution is that the appellant is the victim's neighbour and they were living in the same building; and that on 19.05.2014, at about 2.30 p.m., the appellant touched the genital part of the victim inappropriately, which was witnessed by the mother of the victim and a complaint was lodged on the next day of the occurrence.

(b). On the appearance of the appellant, the provisions of Section 207 Cr.P.C., were complied with and the trial Court framed charges against the appellant, and when questioned, the appellant pleaded 'not guilty.'

(c). To prove the case, the prosecution examined nine witnesses as



Crl.A.No.5 of 2023

P.W.1 to P.W.9 and marked eight exhibits as Exs.P1 to P8. When the appellant was questioned under Section 313 of the Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. The appellant did not examine any witnesses or mark any documents.

(d). On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established its case beyond reasonable doubt and held the appellant guilty of the offence under Sections 10 of the POCSO Act, 2012 and 352 of the IPC and acquitted the appellant for the offences 294(b) and 506(ii) of the IPC. The appellant was sentenced as follows:

<i>Offence under</i>	<i>Sentence imposed</i>
10 of the POCSO Act, 2012	To undergo imprisonment for five years and to pay a fine of Rs.5,000/-, in default to undergo SI for one month.
352 of the IPC	To undergo imprisonment for three months.
Both the sentences were ordered to run concurrently.	

Hence, the accused has preferred the appeal challenging the said conviction and sentence.

3. Heard, Mr.K.Selvakumaraswami, learned counsel appearing for the



Crl.A.No.5 of 2023

appellant and Dr.C.E.Pratap, learned Government Advocate (Crl.Side) appearing for the respondent/State.

4. The learned counsel for the appellant would submit that the evidence of the victim is highly doubtful; that her version is tutored and it would be revealed from the fact that in her 164 Statement of Cr.P.C., she would say that nothing had happened; that the evidence of the father of the victim also does not inspire confidence and in fact in his statement under Section 164 of Cr.P.C., he had stated that he was not interested in pursuing the complaint; and that the dispute between the neighbours has been projected as a case of sexual assault; that the FIR was lodged nearly twenty four hours after the occurrence; and that therefore, the Judgment of conviction is liable to be set aside.

5. The learned Government Advocate (Crl.Side), *per contra*, submitted that notwithstanding the statements made before the learned Magistrate under 164 of Cr.P.C., the witnesses have deposed in a cogent manner and therefore, the trial Court was right in convicting the appellant for the offences under Sections 10 of the POCSO Act and 352 of the IPC.



Crl.A.No.5 of 2023

Hence, he prayed for dismissal of the appeal.

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6. This Court carefully considered the submissions made on either side and perused the records.

7. The prosecution had examined nine witnesses. P.W.1 is the father of the victim and is the *defacto* complainant. P.W.2 is the mother of the victim and said to be an eye witness to the occurrence. P.W.3 is the victim. P.W.4 is the neighbour and is a hearsay witness. P.W.5 is the witness to the Observation Mahazar, Ex.P6. P.W.6 is the Sub-inspector of Police, who assisted the Investigating Officer in the investigation. P.W.7 was the Inspector of Police, at the relevant point of time and had registered the FIR, (Ex.P7) on the complaint given by P.W.1/father of the victim/*defacto* complainant. Pursuant to the registration of the FIR, she had conducted an investigation and thereafter, handed over the case to P.W.8, ten days after the occurrence. P.W.8 is the Investigating Officer, who had recorded the statements of witnesses and had handed over the investigation to P.W.9, who in turn filed the final report.



Crl.A.No.5 of 2023

8. The narration would show that the complaint was filed by P.W.1 on the information given by P.W.2, the next day, i.e., on 20.05.2014 at 12.30 p.m. The occurrence is said to have taken place on 19.05.2014 at about 2.30 p.m. During the investigation, the 164 statements of P.W.1, the father and P.W.3, the victim, were recorded. The trial Court had convicted the appellant for the offence under Section 10 of the POCSO Act (Charge 1) and 352 of the IPC (Charge 2). The Trial Court had acquitted the appellant for the offences under Sections 294(b) and 506(ii) of the IPC.

Charge No.1 reads as follows:

“கடந்த 19.05.2024 அன்று பிற்பகல் 14.30 மணியளவில் 12 வயதுக்கும் குறைவான பட்டியல் சாட்சி 3, 6 வயதான பாதிக்கப்பட்ட சிறுமி வீட்டின் முன்பு நின்றன்கொண்டிருந்தபோது அதே வீட்டில் மாடியில் குடியிருந்து வரும் எதிரியாகிய நீர் பாலியல் நோக்கத்துடன் சிறுமியை கடுமையான பாலியல் வன்தாக்குதல் செய்ததின் மூலம் பிரிவு 10 பாலியல் குற்றத்திலிருந்து



Crl.A.No.5 of 2023

குழந்தைகளைப் பாதுகாக்கும் சட்டம் 2012 இன்கீழ்
தண்டிக்கத்தக்கதும், இந்நீதிமன்றத்தால்
விசாரிக்கத்தக்கதுமான குற்றத்தை புரிந்துள்ளீர்
என்றும் குற்றச்சாட்டு.”

Strangely, there is no reference in Charge No.1 as to the nature of the sexual assault that is said to have been committed. It is needless to point out that the accused must be put on notice as to the nature of the allegations against him in order to defend himself effectively. Be that as it may. The prosecution case is that the appellant had inappropriately touched the undergarment of the victim/P.W.3 and had slapped the P.W.1/father of the victim when he questioned him about the same.

9. From the narration of the above evidence, it would be seen that P.W.2/the mother of the victim, is said to have witnessed the occurrence. However, P.W.2, in her cross-examination, would state that she had not witnessed the occurrence and she came to know of the occurrence only from her daughter/P.W.3/victim. Therefore, P.W.3 (victim) is the only witness to



Crl.A.No.5 of 2023

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speak about the occurrence. The occurrence is said to have taken place in the year 2014. P.W.3/victim, who was examined by the learned Magistrate on 03.01.2022 under Section 164 of Cr.P.C., had not stated anything about the occurrence and when a specific question was put to her, she would say that she did not remember what had happened. However, for the first time in the Court, she would state that the appellant had inappropriately touched the undergarment. When specifically asked in the cross-examination about the statement given earlier, she would say that she did not remember.

10. Be that as it may. P.W.1/the father of the victim, would also state that he had told the learned Magistrate in his statement under 164 of Cr.P.C. that he did not wish to pursue the complaint, and as to why he said so, there is no explanation. The complaint was also lodged one day after the alleged occurrence. Further P.W.1, in the cross-examination, would state that the occurrence took place at 10.00 a.m., and he clarified on the questions put by the Court that he could not remember the exact time because of the lapse of time. The earliest version of P.W.1 is that his wife/P.W.2 witnessed the occurrence, which is contradicted by P.W.2 herself in her deposition.



Crl.A.No.5 of 2023

WEB COPY

11. It is also seen that P.W.7/the first investigating officer had admitted that none of the statements recorded by her had any specific date and were sent to the Court only on 22.02.2021 along with the Final Report.

12. Considering the fact that the victim had not stated anything about the occurrence in her earliest statement before the learned Magistrate and considering the above-said infirmities in the prosecution case, it would be highly unsafe to convict the appellant on the basis of such evidence. Therefore, this Court is inclined to extend the benefit of the doubt to the appellant and hence the Judgment of conviction and sentence passed in Spl.C.C.No.93 of 2021, dated 12.04.2022, on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under the POCSO Act, Chennai, is liable to be set aside.

13. As a result, this Criminal Appeal is allowed, and the appellant is acquitted of all the charges. The conviction and sentence passed in Spl.C.C.No.93 of 2021, dated 12.04.2022, on the file of the learned Sessions



CrL.A.No.5 of 2023

Judge, Special Court for Exclusive Trial of Cases under the POCSO Act, Chennai, are set aside. The fine amount, if any, paid by the appellant shall be refunded. Bail bond, if any, executed shall stand discharged.

13.11.2024

Speaking /Non-speaking order
Neutral citation : yes/no
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CrL.A.No.5 of 2023

To

1. The Sessions Judge,
(Under POCSO Act, 2012)
Chennai.
2. The Inspector of Police,
W20, All Women Police Station,
Saidapet, Chennai.
3. The Superintendent of Prisons,
Central Prison, Puzhal.
4. The Public Prosecutor,
High Court, Madras.



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Crl.A.No.5 of 2023

SUNDER MOHAN,J.

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Crl.A.No.5 of 2023

13.11.2024