



Crl.R.C(MD)No.349 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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24.04.2024

CORAM :

THE HONOURABLE MR. JUSTICE K.K.RAMAKRISHNAN

Crl.A.(MD).No.349 of 2022

Ganesan

..Appellant

Vs.

State
rep.by the Inspector of Police,
All Women Police Station,
Sattur,
Virudhunagar District.
(Crime No.1 of 2017)

..Respondent

PRAYER: Criminal Appeal filed under Section 374(4) of Criminal Procedure Code, to call for the records and set aside the judgment and conviction dated 21.04.2022 by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, 2012, Virudhunagar District at Srivilliputhur made in Special Sessions Case No.18 of 2017 and acquit the appellant.

For Appellant :Mr.T.J.Ebenezer Charles

Fro Respondent :Mr.B.Nambiselvan
Additional Public Prosecutor



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JUDGMENT

This Criminal Appeal has been filed to set aside the impugned order passed in Spl.S.C.No.18 of 2017, dated 21.04.2022, on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, 2012, Srivilliputhur, Virudhunagar District and acquit the appellant in connection with Crime No.1 of 2017, on the file of the respondent police.

2. The appellant, who is the sole accused in Spl.S.C.No.18 of 2017 on the file of the Special Court for POCSO Act cases, Srivilliputhur, filed this criminal appeal challenging the conviction and sentence imposed against him by the Special Court for POCSO Act Cases, Srivilliputhur. The learned trial Judge convicted the appellant for the offence under Section 450 of IPC and Section 4 of the POCSO Act 2012 and sentenced him to undergo 7 years imprisonment and a fine of Rs.1000/- and in default of fine, to undergo 6 months of imprisonment.

3. According to the prosecution, the appellant is aged about 24 years, residing at Karuppasamy Temple Street, Ameerpalayam Village, Sattur Taluk, Virudhunagar District. On 23.01.2017, at about 01.00 a.m, when the victim



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girl was going to attend nature's call, the appellant gagged her mouth and committed aggravated penetrative sexual assault. At that time, the mother of the victim girl intervened and made valiant attempt to save her daughter from the clutches of the accused. However, the accused escaped from the scene of the occurrence. Thereafter, the victim girl gave the complaint to the jurisdictional police and the complaint was received by P.W.17. Thereafter FIR was registered by him. The FIR was transmitted to P.W.18/investigating officer. The investigating officer, after receiving the FIR, conducted an investigation by arresting the accused and producing the victim girl for recording the statement under Section 164 Cr.P.C. He also sent her for the medical examination and collected all the medical reports and filed the final report before the court below for the alleged offence under section 5(l) r/w 6 of the POCSO Act. The same was taken on file in Spl.S.C.No.18 of 2017. Thereafter, the offence was altered into 450 IPC and 6 r/w 5(i) of the POCSO Act. Thereafter, the respondent police arrested the appellant and completed the investigation and filed the final report before the learned trial Judge. The learned trial Judge took the final report on file in Spl.S.C.No.18 of 2017. The learned trial Judge issued summons to the accused. After his appearance, the trial Judge served the copies under Section 207 Cr.P.C. Thereafter, he framed necessary charges and questioned the accused. The accused pleaded not



guilty and hence the trial was commenced against the accused.

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4. To prove the case, the prosecution examined PW.1 to PW.18 and Ex.P1 to Ex.P14. The learned trial Judge, thereafter, questioned the accused under Section 313 Cr.P.C, by putting the relevant question and the accused denied the same as false and thereafter, the case was posted for examination of the witnesses on the side of the accused. The accused neither produced any documents nor examined any witnesses on his side.

5. The learned trial Judge, on considering the evidence of witnesses and documents convicted and sentenced the appellant for the offence as stated supra and acquitted the appellant for the offence under Section 5(1) of POCSO Act, 2012. Aggrieved over the same, the appellant preferred this appeal.

6. The learned counsel for the appellant made the following submissions:

Age of the victim girl was not proved in accordance with the law and by placing the reliance of the judgment of the Hon'ble Supreme Court in *Yuvraj Vs.state of Tamil Nadu*, he submitted that the date of birth was not



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proved by examining the school authorities in accordance with law. Without proof of the age of the victim girl, the prosecution case was liable to be rejected.

6.1. Apart from that, he stated when there was no evidence for the aggravated penetrative sexual assault, the conviction under section 4 of the POCSO Act was not maintainable. More particularly, the medical evidence is that there was no trace of the penetrative sexual assault and also there was no injury in the private part of the victim. Under the said circumstances, conviction under section 4 of the POCSO Act is not maintainable. Further the punishment imposed for the offence under section 450 of IPC is not made out.

6.2. Further, both the appellant and the victim girl were neighbours and hence, there was no question of the offence under section 450 of IPC. Hence, he seeks for setting aside the judgment and the sentence imposed by the court below.

7. The learned Additional Public Prosecutor submitted that the submission of the learned Counsel for the appellant that no birth certificate



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was produced and no school authority was examined and hence, the prosecution miserably failed to prove the age of the victim cannot be accepted. In this case the school certificate has been marked. It is well settled the principle that once the SSLC certificate is marked, there is no need for further proof by examining the school headmaster. In view of the specific provision under the Juvenile Justice Act to prove the age of the victim, SSLC certificate is the *prima facie* evidence and the same was marked and hence, the contention of the appellant was not legally sustainable. He further submitted that on the basis of the medical evidence as there was no injury in the private part of the victim girl and also there was no trace of the sexual relationship between the victim girl and the accused, the learned trial judge has acquitted the accused under section 5(l) of POCSO Act, and abundant material is available to sustain the conviction under section 4 of the POCSO Act. It is the specific case that the victim girl was sexually abused by the accused. Hence the learned trial judge correctly convicted the accused for the offence under section 4 of the POCSO Act. Further, even though the appellant was neighbour, he criminally trespassed into the house of the victim girl in order to commit an offence and hence the offence under Section 450 of IPC was made out. Therefore, he seeks for the dismissal of this appeal.



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8. This court considered the rival submissions made by the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the respondent and also perused the materials available on record and the impugned judgment and the precedence relied upon them.

9. In this case, the prosecution is duty-bound to prove the following foundational facts:

9.1. Whether the conviction and sentence imposed on the appellant under section 4 of the POCSO Act is maintainable after acquittal under section 6 r/w 5(l) of the Postcode Act?

9.2. Considering the specific evidence that there was no trace of the penetrative sexual assault, whether the conviction and sentence imposed against the petitioner under 450 IPC is maintainable or not?

10. According to the prosecution, the appellant is the neighbour of the victim girl. On 23.01.2017, at about 01.00 am, while the victim girl was going to the rest room, she was gagged by the appellant and he is said to have committed aggravated penetrative sexual assault in the upstairs of the house of the victim girl. At that time, the mother of the victim girl rushed in and



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rescued her from the accused. The appellant escaped from the scene of the occurrence. Immediately after the incident, the victim girl gave the complaint before the respondent police and the respondent police/ PW 17 registered the case and PW 18 conducted the investigation by arresting the accused and filed the final report against the appellant under Sections 450 of IPC and 4, 6 r/w 5(1) of POCSO Act, 2012.

11.The learned trial judge, after considering the medical evidence, acquitted the appellant under section 5(1) of the POCSO Act. But the learned trial judge, only on the basis of the evidence of the victim girl, imposed the punishment under section 4 of the POCSO Act. To constitute the offence under 4 of the POCSO Act, there must be penetrative sexual assault, committed by the appellant. In this case, even as per the evidence of the defacto complainant and victim, there was no penetrative sexual assault. From the above deposition of the victim girl, the allegation of the penetrative sexual assault was not made out. Apart from that, the above deposition only constitutes the offence under section 6 of the POCSO Act and the appellant committed only the sexual assault upon the victim girl. In the said circumstances, this court finds that the offence under section 4 of the POCSO Act is modified into the conviction under section 6 of the POCSO Act.



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12. The contention of the learned counsel for the appellant is that the school certificate is inadmissible. The age of the victim is not proved and same is not correct. To prove the age of the victim, the prosecution produced the SSLC mark statement. As per Section 12 of the Juvenile Justice Act, the SSLC mark Statement is the evidence to be considered as the material document to prove the age of the victim girl. In this aspect, the learned counsel appearing for the appellant relied upon the judgments mentioned supra, but they are not applicable to the present case. In all the above cases, the entry in the school records were produced before the Court and the corresponding officer from the school was examined. In the above cases, the SSLC certificate were not produced. In the said circumstances, in the above cases, the Honourable Supreme Court on factual aspects held that the entry in the school record without source of the registration of the date of birth in the entry is not admissible and insufficient to prove the age of the victim girl. But in the present case, the primary document, namely, SSLC certificate has been produced, as contemplated under the Juvenile Justice Act.



12.1. To fortify the same, it is relevant to extract the Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007, as follows:

- “12.Procedure to be followed in determination of age:*
- (1) in every case concerning a child or a juvenile in conflict with law, the Court or the Board or as the case may be the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.*
- (2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.*
- (3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining*
- (a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;*
- (ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;*
- (iii) the birth certificate given by a corporation or a municipal authority or a panchayat;*
- (b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child.....”*

12.2. From the above reading of the rule, the primary evidence to prove the age of the victim is SSLC Certificate. In the absence of the said certificate, other documents are to be looked into. Only, in the category of the



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“other documents”, the contents of the document relating to the date of birth has to be proved. In this case, it is not necessary to prove the same. Further, the Ex.P.14 is the SSLC Mark Statement and the same is admissible and the same has statutory force to prove the age of the victim. Even the accused has not pleaded anywhere that the victim girl is more than 17 years. In the said circumstances, the age of the victim was below 18 at the time of the occurrence and hence, the learned Counsel's submission that the POCSO Act is not applicable, cannot be accepted.

12.3.Once the Government authority issues the certificate for proof at the time of issuing the SSLC certificate, it is the *prima facie* evidence to show the age of the victim. In the said circumstances, without any contra evidence adduced by the accused to prove the age of the victim other than the mentioned in Ex.P14, this Court is not accepting the argument submitted by learned counsel for the appellant. Further, the judgment relied by the learned counsel for the appellant is not applicable to the present case. In the said case, the Hon'ble Supreme Court, on appreciation of the facts of the case, ie, the victim had not completed 10th standard and the teachers of the said school were not examined to prove the age on the basis of the entry made in the records, it was held that the age was not proved. The said judgment is not



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applicable. In view of the statutory presumption attached with Ex.P14, as per the Section 12 of the Juvenile Justice Act, to prove the age of the victim girl.

In all aspects, the contention of the appellant that the age of the victim was not proved in accordance with law is not correct and the same cannot be accepted.

13.As per Section 6 of POCSO Act, minimum sentence of 3 years imprisonment can be imposed. Hence, this Court is inclined to impose a sentence of 3 years under Section 6 of POCSO Act, considering the subsequent event that the victim girl got married and living separately with another person and the appellant also married and has a small child. So far as Section 450 of IPC is concerned, the learned trial judge imposed a sentence of 7 years of imprisonment. Considering the above facts and circumstances, this Court is inclined to reduce the sentence of imprisonment from 7 years to 3 years.

14.Finally, this Court allows this appeal in part with the following terms:

14.1.The conviction and sentence imposed by the learned trial Judge under section 4 of the POCSO Act is modified into section 6 of the POCSO



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Act and a sentence of three years is imposed.

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14.2.The sentence imposed by the learned trial judge for the offence under section 450 IPC is hereby reduced to 3 years. The remaining condition imposed by the learned trial Judge is hereby confirmed.

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NCC :Yes/No
Index :Yes/No
Internet :Yes/No
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To

- 1.The Inspector of Police,
All Women Police Station,
Sattur, Virudhunagar District.
- 2.The Sessions Court,
Special Court for Exclusive Trial of Cases under POCSO Act, 2012,
Srivilliputhur, Virudhunagar District.
- 3.The Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
4. The Section Officer, Criminal Section,
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

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