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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:19.03.2024

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN**

CRL.A(MD) No.310 of 2021

Karthick

... Appellant/sole accused

-VS-

The State, represented by
The Inspector of Police,
All Women Police Station,
Thirumayam,
Pudukkottai District.
(Crime No.2 of 2018)

... Respondent/Complainant

PRAYER : Criminal Appeal filed under Section 374(2) of Criminal Procedure Code praying this Court to call for the records and set aside the judgment and conviction, dated 14.07.2021 by the learned Sessions Judge, Mahila Court, Pudukkotai in Spl.S.C.No.18 of 2018e and acquit the appellant.

For Appellant : Mr.D.Rameshkumar

For Respondent : Mr.R.Meenakshisundaram,
Addl.Public Prosecutor



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JUDGMENT

DR.G.JAYACHANDRAN,J.
AND
C.KUMARAPPAN,J.

This Criminal Appeal against conviction is preferred by the accused, who is found guilty for the charges under Sections 5(m) and 5(n) r/w Section 6 of POCSO Act.

2.The trial Court, having found the appellant/accused guilty of the above said charges, had imposed Life Imprisonment for each of the charges and a fine of Rs.50,000/- for each of the charges, in default, to undergo one year simple imprisonment for each of the charges. The period of conviction is ordered to be run concurrently.

3.The case of the prosecution is that on 22.07.2018 at about 10.30 a.m., the victim, aged 7 years, has been subjected to penetrative sexual assault causing bleeding injury in her private part. The mother of the victim child, who went on search of the child saw her lying in the bed of the accused house in semi conscious stage and found bleeding in her private part. Assuming that her daughter had



attained puberty, the elders in the family has arranged for puberty ceremony. However, when the child was taken to the Doctor by her mother, it was found that the victim child was subjected to penetrative sexual assault by the accused, who is none other than the cousin of her father, living in the next house of the victim girl. Therefore, since the victim child was aged below 12 years and the accused is a close blood relative, charge under Sections 5(m) and 5(n) of the POCSO Act, both punishable under Section 6 of the POCSO Act, was framed.

4.To prove the charges, prosecution has examined 8 witnesses. Ex.P1 to Ex.P11 were marked. MO1 was recovered. No witness was examined on the side of the accused and no material objects recovered.

5.P.W.1 is the mother of the victim child and the complaint given by her is marked as Ex.P1. Though the incident has taken place on 22.07.2018, there was a delay in lodging the complaint initially because they thought that the bleeding injury in the private part is due to the child attained puberty. Further, there was temple festival in the complainant's village and also she had hesitancy to lodge the



complaint against their own relatives.

6. On registration of FIR marked as Ex.P8, dated 26.07.2018, the Investigation Officer has arranged for recording the statement of the victim child and her mother, who is the de-facto complainant under Section 164 of Cr.P.C. Their statement is marked as Ex.P3 and Ex.P2 respectively. The victim child was examined as P.W.2, who has narrated as to what had happened to her on the fateful day. P.W.3- Nagarajan, who is the maternal uncle of the victim child is a witness to the observation Mahazar, marked as Ex.P4. P.W.4 is one of the resident in the village, who initially had the impression that the victim child has attained puberty and arranged for puberty ceremony. P.W.5 is the Headmaster of the school, in which, the victim child was pursuing her studies. She has been examined to prove the age of the victim child. Her school certificate is marked as Ex.P5, in which, the date of birth of the victim child is shown as 30.12.2010.

7. The victim child was taken to medical examination. P.W.6- Doctor at Pudukkottai Government Hospital, who has examined her physically, had certified that there is no evidence to show that the



child was subjected to penetrative sexual assault. The Accident Register is marked as Ex.P6. Further, she states that there was no sign of external injuries found in the vagina or breast or any other part of her body. She has also certified that the hymen is intact. P.W.7-Doctor who had examined the accused for potency and certified that there is no indication to show that he is incapable of sexual intercourse.

8.P.W.8 is the Inspector of Police attached to All Women Police station, Thirumayam, who had registered the complaint and taken up the investigation, had deposed about the process she undertake in the course of investigation and filing of the final report. Though the accused has substantially cross-examined the victim and her mother, he heavily relied upon the evidence of P.W.6-Dr.Nabisha Begum, who had given the certificate marked as Ex.P6 indicating that there is no sexual violence on the victim child and contended that the trial Court has miserably failed to appreciate the medical evidence and had relied upon the evidence of interested witnesses qua the victim child and her mother.

9.When the POCSO Act provides for presumption of guilt, the



duty of the prosecution is to place unassailable evidence to show that the accused has committed the offence attracting the provisions of POCSO Act. When the medical evidence does not corroborate with the ocular evidence, the trial Court ought to have extended the benefit of doubt to the appellant/ accused. The learned counsel further submitted that at the time of occurrence, the accused was 23 years old and there was a property dispute between the complainant's family and the accused family. Further, there was also an exchange of notices through lawyer. The same was projected as a motive for filing the criminal complaint belatedly.

10.Per contra, the learned Additional Public Prosecutor appearing for the respondent/State submitted that the testimony of the victim child and the mother are quite natural and the narration of the incident by the victim child stands unassailable. The overt-act of the accused as spoken by the victim child has no reason to be disbelieved. Since the occurrence has taken place in secret, the perpetrator of the crime and the victim child alone will have the personal knowledge about the incident. The evidence of P.W.2, the victim child is highly reliable and being the victim of the crime, in the



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absence of any inference that they had the previous enmity or property dispute, there is no reason for the victim to falsely implicate the accused in the crime.

11.This Court after giving its anxious consideration to the rival submissions made on either side, found that the testimony of P.W.2 stand at a high pedestal without any falsehood or embellishment. The victim child has been cross-examined by the accused. She had clearly answered all these questions in mincing words. She has spoken about the bleeding in her private part both in the chief examination as well as in the cross-examination. For the specific question in the cross-examination, whether the bleeding continued for two or three days, she emphatically denied and stated that after taking bath, there was no bleeding, but it was painful. Having identified the accused, the overt-act of the accused which falls within the definition of penetrative sexual assault as defined under the statute, this Court finds that further corroboration is not required in the evidence of an innocent 7 years old child, who had been subjected to very serious sexual assault.



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12.No doubt, the Doctor, who has examined the victim child after four days of occurrence, has recorded that there was no external injuries found in her private part to prove the sexual assault. This may be due to several reasons. The trial Court has discussed those reasons with the opinion of the medical experts. To put it in simple terms, the P.W.6-Doctor had examined the victim child only after four days of the occurrence, however, soon after the occurrence, P.W.1 had taken her daughter to the private Doctor and had taken medicines. So the four days treatment might have healed the injury on the body of the victim. When the victim has identified the assailant/accused and also spoken about the nature of assault committed on her which squarely attracts the offence under Section 5(m) and 5(n) of the POCSO Act, this Court finds no reason to interfere with the judgment of conviction rendered by the trial Court in its order, dated 14.7.2021.

13.In respect of the submission made by the learned counsel for the appellant about the sentence, this Court took note of the fact that the incident has occurred on 22.07.2018. At that time, the age of the appellant /accused was 24 years and the age of the victim was 7 years. Prior to the amendment to Section 5 of the POCSO Act which



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came into effect from 16.08.2019, the punishment prescribed for aggravated penetrative sexual assault is a term not less than ten years, but which may extend to imprisonment of life and also liable to fine. In this case, the learned trial Court has imposed life imprisonment and when the accused was questioned about the sentence, he apart from denying the charges, had pleaded for lesser sentence stating his povertyness and the age of his parents. The learned counsel for the appellant submitted that due to his poverty, till date, he is not able to pay the fine amount of Rs.1 lakh.

14. On taking into consideration of his plea of his financial status, societal status and his age, this Court is of the view that the life sentence imposed on the appellant need to be interfered with. The learned counsel for the appellant stated that the appellant/accused has been in prison from the date of his conviction.

15. Accordingly, the Criminal Appeal is partly allowed and the life sentence imposed on the appellant for each of the charges, is modified as ten years rigorous imprisonment for each of the charges under Sections 5(m) r/w Section 6 of the POCSO Act, and Section 5(n)



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r/w Section 6 of the POCSO Act, with a fine of Rs.50,000/- for each of the above said charges and in default, to undergo six months simple imprisonment for each of the charges. The period of sentence is ordered to be run concurrently by the appellant/accused. The period of sentence already undergone by the appellant/accused shall stand set off under Section 428 of Cr.P.C.

[G.J.,J.] [C.K.,J.]
19.03.2024

NCS : Yes/No
Index : Yes / No
Internet : Yes / No

vsn

To:

- 1.The Sessions Judge,
(Mahila Court),
Pudukkottai.
- 2.The Inspector of Police,
All Women Police Station,
Thirumayam,
Pudukkottai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Section Officer,

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Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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