



CRL.A(MD).No.564 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 20.12.2023

Delivered on : 19.01.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CRL.A(MD).No.564 of 2022
and
CRL.M.P(MD).No.11082 of 2022

Rajamanickam

... Petitioner/Sole Accused

Vs.

State
rep. by Inspector of Police,
All Women Police Station,
Alangudi,
Pudukkottai District.
(Crime No.3/2020)

... Respondent/Complainant

Prayer : This Criminal Appeal is filed under Section 374(2) of Cr.P.C. to call for the records and set aside the Judgment and Conviction dated 04.04.2022 in Special S.C.No.10 of 2020 on the file of the learned Sessions Judge (FAC), Mahila Court, Pudukkottai, and acquit the Appellant.

For Appellant : Mr.D.Rameshkumar

For Respondent : Mr.T.Senthil Kumar,
Additional Public Prosecutor



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JUDGMENT

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This appeal has been filed to set aside the Judgment and Conviction dated 04.04.2022, in Special S.C.No.10 of 2020 on the file of the learned Sessions Judge (FAC), Mahila Court, Pudukkottai.

2. The sole accused in S.C.No.10 of 2020 on the file of the learned Sessions Judge (FAC), Mahila Court, Pudukkottai, filed this appeal challenging the conviction under Section 12 of the POCSO Act, and sentence imposed upon him to undergo three years Rigorous Imprisonment and to pay a fine of Rs.35,000/- in default, to undergo 6 months Simple Imprisonment.

3.1. According to the prosecution, on 03.03.2020 at about 04.00 p.m., P.W.3, the victim child aged about 3 years old alleged to have been taken by the appellant to the bath room situated next to a tea shop and removed her cloths including his trouser and stood nakedly in front of the victim child and the same was witnessed by P.W.1, the father of the victim child. The father of the victim child took the child from that place and reported to P.W.2, the mother of the child. The mother of the child advised him to give a complaint. But, P.W.1 considering the welfare of the child,



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did not give any complaint. Thereafter, P.W.1 disclosed the same to the panchayathar. Subsequently, the appellant criminally intimidated P.W.1 and P.W.2 that he would kill them and therefore, they decided to give a police complaint. Hence, police complaint was given belatedly on 05.03.2020.

3.2. The respondent police registered a case in Crime No.3 of 2020 for the offence under Sections 9 and 10 of the POCSO Act. The Investigating Officer conducted investigation, examined the witnesses and collected the documents and filed final report before the learned Sessions Judge (FAC), Mahila Court, Pudukkottai for the offence under Section 9(m) r/w 10 of POCSO Amendment Act, 2019.

3.3. The learned Sessions Judge took cognizance and issued summon to the accused. On appearance of the accused, the learned Sessions Judge, furnished the copies under Section 207 Cr.P.C., and framed necessary charges and questioned the accused. The accused denied the charges and pleaded not guilty and stood for trial.



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4.To prove the charges, the prosecution examined P.W.1 to P.W.9, exhibited Ex.P1 to Ex.P11 and marked the M.O.1 to M.O.5. The learned trial Judge, questioned the accused under Section 313 of Cr.P.C., by putting the incriminating materials available against him, he denied the same as false. No witness was examined on the side of the appellant.

5. The learned Sessions Judge after considering the evidence came into conclusion that the appellant committed the offence under Section 12 of the POCSO Act, 2019, and sentenced him to undergo 3 years Rigorous Imprisonment and directed him to pay a fine of Rs.35,000/- in default, to undergo, 6 months Simple Imprisonment vide impugned judgement dated 04.04.2022.

6. Aggrieved over the above conviction and sentence passed by the learned Sessions Judge, the present appeal has been filed by the appellant.

7.1. The learned counsel for the appellant submitted that occurrence took place on 03.03.2020 at 04.00.p.m. Even though, the distance between the occurrence place and the police station is 1 ½ km and one could reach within 20 minutes, the complaint was lodged only on 05.03.2020 at



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about 03.00 p.m. There was no explanation. Therefore, the non explanation of delay in this case, is an important factor to disbelieve the version of P.W. 1 to P.W.3. Hence, benefit of doubt is to be given to the accused.

7.2. The learned counsel for the appellant further submitted that the contradiction between the evidence of P.W.1, P.W.2 and P.W.3 in respect of the overtact attributed against the appellant, clearly demonstrated that they have come forward with a false version due to the money dispute already existed between the appellant and P.W.1's family.

7.3. The learned counsel for the appellant further submitted that the learned Sessions Judge travelled beyond the charge and imposed the rigorous punishment under Section 12 of the POCSO Act. According to the charge, the only allegation is that the appellant was in the buff in the bath room in front of the child. But, the learned Sessions Judge has observed that the child's dress was also removed and the child also was without dress and the witness P.W.3 victim also toed the same line going beyond the charge. In the said circumstances, the evidence of the victim girl is tutortued one and the finding of the learned Sessions Judge is perverse.



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7.4. The learned counsel for the appellant further submitted that according to the prosecution case, when P.W.1 and one Selvam were conversing, the accused is said to have taken the child from the custody of P.W.1. He is the neighbour to P.W.1. But, he has no relationship with P.W.1's family. In the said circumstances, the non-examination of Selvam creates doubt over the version of P.W.1. Therefore, the case of the prosecution that taking the custody of the child from P.W.1 itself is doubtful one.

7.5. The learned counsel for the appellant further submitted that the appellant has taken the child to the bath room situated behind the tea shop. The non-examination of tea shop owner creates another doubt regarding the alleged occurrence that the accused was standing inside the bath room nakedly in front of the child. Hence, the prosecution has not proved the case beyond reasonable doubt. Hence, he seeks for acquittal.

8.1. The learned Additional Public Prosecutor appearing for the State submitted that P.W.1 and P.W.2 gave a detailed explanation for the delayed complaint. Their explanation is in order to safeguard the interest of the child, they did not want to give the complaint. But, subsequently, the



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appellant threatened P.W.1 and P.W.2 and criminally intimidated them not to give the complaint immediately. Thereafter only, they gave complaint with a delay of 2 days. The said reason was acceptable to the Sessions Court and there was no reason to differ with the findings of the Sessions Court in this aspect.

8.2. The learned Additional Public Prosecutor appearing for the State further submitted that the contradiction between P.W.1 to P.W.3 regarding the naked position of the child is concerned, the prosecution charged only in respect of the harassment made by the appellant i.e., he was standing in front of the child nakedly which attracts the offence under Section 12 of the POCSO Act. Even though, the learned trial Judge recording a finding that the child's dress was also removed and she also was in naked position, the learned Sessions Judge correctly has come to the conclusion that the appellant has committed the offence under Section 12 of the POCSO Act and only sentenced for the offence under Section 12 of the POCSO Act.

8.3. The learned Additional Public Prosecutor appearing for the State further submitted that from the evidence of P.W.1 to P.W.3, it is clear that inside the bath room, he removed her dress including trouser and he was



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standing nakedly in front of the child. Hence, the conviction and sentence imposed by the Sessions Court is not liable to be interfered with when the evidence of P.W.1 to P.W.3 is cogent and trustworthy.

8.4. The learned Additional Public Prosecutor appearing for the State further submitted that even though, the defence version is that there was money dispute, the same has not been proved in accordance with law. Further, the learned Sessions Judge, considering all aspects, convicted the appellant. Hence, there is no reason to interfere with the conviction and sentence passed by the learned Sessions Judge. Hence, he seeks for dismissal of the appeal.

9. This Court considering the rival submission of both the parties and perused the records.

10. P.W.3 is a three year old victim girl. The appellant is the neighbour of the victim girl. P.W.3 deposed that the appellant took her to the bathroom behind the tea shop. In the bathroom, he has removed her dress including her trousers. The appellant also removed his dresses and exposed his private parts to the child and also locked the door. At that time,



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the father of the victim child came and opened the door and slapped her and took her. P.W.1/father of the victim child deposed that the appellant is his neighbour. On the date of occurrence, he and one Selvam were engaged in a conversation. At that time, the appellant came and asked his child to take tea in the tea shop and took her. She did not return. Therefore, he went to the tea shop and found that his child was missing. Hence, he made a search in the said bath room. At that time, he saw that accused standing in front of the child nakedly and he got nervous. The appellant ran away from the place. Thereafter, he took her child and told the incident to his wife. Even though, his wife/P.W.2 insisted to give a complaint, he hesitated to give complaint to protect the interest of the child. But, they decided to inform the elders of the village. At that time, the appellant criminally intimidated P.W.1 and P.W.2 that he would kill them and asked not to give complaint. Thereafter, he gave the complaint to the respondent police.

11.The evidence of victim girl and P.W.1 is cogent and trustworthy. Even though they were subjected to intensive cross examination, no answer could be elicited in favour of them. This Court also finds no reason to disbelieve the said version of the victim girl and her father. The learned trial Judge also properly appreciated the above evidence and correctly has



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come to the conclusion that the appellant committed the offence under Section 12 of the POCSO Act.

12.The father of the victim girl as stated above clearly gave the explanation for the delay in lodging the FIR. In order to protect the interest of the child, he hesitated to give complaint. Only after the criminal intimidation by the appellant they gave the complaint. Hence, the delay was properly explained. The said explanation was considered with other attending circumstances and accepted by the learned trial Judge. This Court finds no reason to differ with the reasoning of the learned trial Judge in accepting the reason. In the case of sexual offence, the acceptance of the reason is rule and only in the exceptional circumstances, delay is taken into account to test the trustworthiness of the evidence. It is relevant to note that the Judgment of the Hon'ble Supreme Court, in the case of ***State of H.P. v. Prem Singh***, reported in (2009) 1 SCC 420 :

6. So far as the delay in lodging the FIR is concerned, the delay in a case of sexual assault, cannot be equated with the case involving other offences. There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the police station to lodge a



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complaint. In a tradition-bound society prevalent in India, more particularly rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is some delay in lodging the FIR. In that score, learned counsel for the appellant is right that the High Court has lost sight of this vital distinction.

13. The defence of the accused that there was a money dispute between the appellant's family and the victim family is a mere suggestion. Mere suggestion is not evidence. The defence must be pleaded and proved in compliance with the requirement of POCSO Act. In this case, no evidence was adduced by the appellant to prove his case of false implication. Hence, the contention of the appellant that he was falsely implicated in the case cannot be accepted.

14. The appellant contended that there was contradiction between P.W.1 and P.W.3 ie., P.W.3 deposed that the victim girl's dress was not removed whereas P.W.1 deposed that the appellant removed her dress also. In this case, the charge is that the appellant stood in front of the victim girl nakedly by removing his dress and thereby committed the offence of



sexual harassment. The said portion of the evidence of P.W1 and P.W.3 that the appellant stood in front of the victim girl nakedly in the bathroom is without any contraction. Therefore, the same is not a ground to disbelieve the evidence of both witnesses. The evidence of P.W.1 and P.W.2 can not be eschewed on the ground of the said minor contradiction, which has not materially affected the prosecution case. In this aspect, it is relevant to extract the following judgments of Hon'ble Supreme Court:

In ***State of U.P. v. M.K. Anthony [(1985) 1 SCC 505]*** the Hon'ble Supreme Court has observed as follows: (SCC pp. 514-15)

“10... Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole....

.... Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals.”

(Brahm Swaroop case [Brahm Swaroop v. State of U.P., (2011) 6 SCC 288 SCC p. 303])



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“32. It is a settled legal proposition that while appreciating the evidence of a witness, minor discrepancies on trivial matters, which do not affect the core of the prosecution's case, may not prompt the court to reject the evidence in its entirety. ‘Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions.’ Difference in some minor details, which does not otherwise affect the core of the prosecution case, even if present, would not itself prompt the court to reject the evidence on minor variations and discrepancies. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution witness. As the mental capabilities of a human being cannot be expected to be attuned to absorb all the details, minor discrepancies are bound to occur in the statements of witnesses.”



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By applying the above principles, the discrepancy between the deposition of P.W.1 and P.W.3 about the allegation that the child was standing with dress or without dress is immaterial, when P.W.1 and P.W.2 clearly deposed about the sexual harassment committed by the appellant by standing in front of the victim girl nakedly.

15. Therefore, the prosecution proved the case beyond reasonable doubt that the accused took the child to the bathroom and he was standing nakedly in front of the child. At that time, P.W.1 witnessed the same. Hence, the learned trial Judge correctly convicted the appellant under Section 12 of the POCSO Act.

16. Since the victim girl called the appellant as “Chitappa”(Uncle) and the appellant took her to buy tea for her and without offering tea, he took her to the bathroom and committed the sexual harassment. Therefore, this Court finds no reason to interfere with the punishment granted by the Court below.



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17. Accordingly, this Criminal Appeal is dismissed by confirming the Judgment and Conviction dated 04.04.2022, in Special S.C.No.10 of 2020, by the learned Sessions Judge (FAC), Mahila Court, Pudukkottai. Consequently, connected miscellaneous petition is closed.

19.01.2024

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

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



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K.K.RAMAKRISHNAN,J.

dss

Order made in
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