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Crl.A.No.173 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.06.2025

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.A.No.173 of 2024 and
Crl.MP.No.2398 of 2024

Bakrudheen

...Appellant

State Rep. by its
Inspector of Police,
All Women Police Station,
Poonamallee,
Tiruvallur District
(crime No.5 of 2019)

... Respondent

Prayer:

Criminal Appeal filed under Section 374(2) of Cr.P.C., praying to set aside the conviction order passed by the learned Magalir Neethi Mandram, (Fast Track Mahila Court), Tiruvallur in Spl.SC.No.31 of 2019 dated 12.09.2022 and allow the appeal.

For Appellant : Mr.S.Chrispinraj



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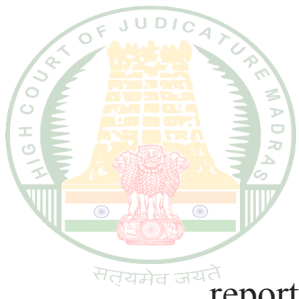
For Respondent : Mr.S.Raja Kumar,
Additional Public Prosecutor

JUDGMENT

This criminal appeal has been preferred against the judgment passed by the learned Magalir Neethi Mandram, (Fast Track Mahila Court), Tiruvallur in Spl.SC.No.31 of 2019 dated 12.09.2022, thereby convicting the appellant for the offences punishable under Section 7 r/w 8 of POCSO Act.

2. The case of the prosecution is that accused was residing in the same street where the house of the minor victim was situated. While being so, on 24.03.2019 at about 12.30 p.m. to 1.00 p.m., when the minor victim girl was playing with her younger brother, the accused with malafide intention to commit sexual offence, called her. When the victim refused, he dragged her by pulling her hands to the vacant house site next to her house and made her to sit on his lap and inserted his finger into her vagina. On a complaint, the respondent registered FIR in crime No.5 of 2019 for the offence punishable under Section 366 of IPC and Section 5 (m) r/w 6 of POCSO Act, 2012. After completion of investigation, final

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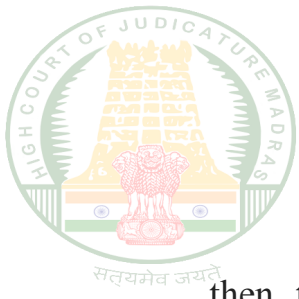
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report was filed and the same was taken cognizance by the trial court.

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3. On the side of the prosecution, they had examined PW1 to PW11 and marked Ex.P1 to Ex.P13. The accused had examined himself as DW1. The accused did not mark any document. On perusal of the oral and documentary evidences, the trial court found the appellant guilty for the offence punishable under Section 7 of POCSO Act punishable under Section 8 of POCSO Act and he was sentenced to undergo five years of rigorous imprisonment with fine of Rs.1,000/-, in default to undergo three months simple imprisonment. Aggrieved by the said orders, the present criminal appeal has been filed by the accused.

4. The learned counsel for the appellant would submit that the entire case is false one and only in order to wreak vengeance due to previous enmity, for the occurrence alleged to have taken place on 24.03.2019, the mother of the victim lodged complaint only on 26.03.2019. The prosecution failed to explain the delay in lodgment of complaint. Even according to the case of the prosecution, along with the victim, her brother was also playing at the time of the occurrence. Even



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then, the prosecution failed to examine him to prove the charges against the appellant. Further, there are full of contradictions between the statement recorded under Section 164 of Cr.P.C. and the deposition. The doctor who examined the victim deposed as PW9. She also failed to support the case of the prosecution. Therefore, the entire conviction and sentence imposed by the trial court cannot be sustained and the same are liable to be set aside.

5. Per contra, the learned Additional Public Prosecutor submitted that the appellant committed serious offence against the minor victim girl, who was aged about only 7 years at the time of the occurrence. There was no delay in lodgment of complaint. In fact, the other relations lodged complaint immediately after the occurrence. However, the complaint lodged by the mother of the victim was only registered on 26.03.2019. Further, the delay in lodgment of complaint for the offences under POCSO Act is not at all a matter since there were circumstances for delay in lodgment of complaint. Immediately after the occurrence, the mental state of the victim was not in a position to disclose the matter. The victim was examined as PW2. PW1, who is the mother of



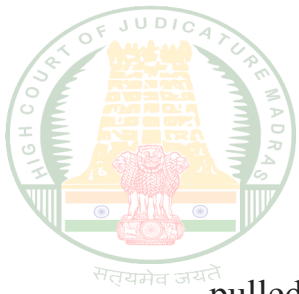
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the victim, lodged complaint and the same was marked as Ex.P1. PW2 categorically deposed about the occurrence and it is also corroborated by PW1. The doctor who examined the victim girl deposed as PW9. She deposed that her hymen was not intact. Therefore, the prosecution proved the charge and the trial court rightly convicted the appellant.

6. Heard, the learned counsel appearing on either side and perused, all the materials placed before this Court.

7. The appellant was initially charged for the offences punishable under Section 366 of IPC and Section 5(m) r/w 6 of POCSO Act, 2012. The trial court found him guilty for the offence under Section 7 punishable under Section 8 of POCSO Act. The alleged occurrence took place on 24.03.2019 at about 12.30 p.m. to 1.30 p.m. At the time of the occurrence, the victim was aged about only 7 years. In order to prove the age of the victim girl, the bonafide certificate obtained from the school was marked as Ex.P9. The victim was examined was PW2. She deposed that while she was playing with her younger brother, the appellant called her. When the victim refused to come, the appellant



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pulled her hands and dragged her to a vacant place near her house. He made her to sit on his lap and he touched her private part by his pointing finger. When the victim shouted, her mother came there. However, the victim did not disclose anything to her mother. Next day, she disclosed the occurrence to her parents. Thereafter, PW1 lodged complaint. On perusal of the deposition of PW1, it is revealed that she lodged complaint on 26.03.2019. The father of the victim girl was examined as PW3. The doctor who had examined the victim deposed as PW9. She deposed that her hymen was not intact and there was no other external injury on her private part. However, the victim deposed to her that the appellant had only touched her private part. Therefore, the prosecution categorically proved the charge for the offence punishable under Section 7 r/w 8 of POCSO Act. Therefore, this Court does not find any infirmity or illegality to interfere with the order of conviction by the trial court for the offence under Section 7 r/w 8 of POCSO Act.

8. However, this Court is inclined to reduce the sentence awarded by the trial court considering that the appellant is still in prison from the date of the criminal appeal and he has been incarcerating for



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more than three years. Accordingly, the impugned judgment passed by the learned Magalir Neethi Mandram, (Fast Track Mahila Court), Tiruvallur in Spl.SC.No.31 of 2019 dated 12.09.2022, is modified as follows: The order of conviction for the offences under Section 7 of POCSO Act punishable under Section 8 of POCSO Act is confirmed. Insofar as the sentence of imprisonment, the period is now reduced to three years. The appellant has already incarcerated for more than three years. Therefore, the appellant/accused is directed to be set at liberty forthwith unless his custody is otherwise required in connection with any other case.

9. In the result, this criminal appeal stands partly allowed. Consequently, the connected miscellaneous petition is closed.

20.06.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order

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To

1. Magalir Neethi Mandram, (Fast Track Mahila Court), Tiruvallur
2. Inspector of Police,
All Women Police Station,
Poonamallee,
Tiruvallur District
3. The Public Prosecutor,
High Court of Madras



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G.K.ILANTHIRAIYAN, J.
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