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Crl.A.No.322 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	29.10.2024
Pronounced On	31.01.2025

CORAM

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.322 of 2024
and
Crl.M.P.No.4908 of 2024

Muthu Kumar

... Appellant / A1

Vs.

The State, Rep. by,
Inspector of Police,
W-16, All Women Police Station,
Pulianthope, Chennai.

... Respondent /
Complainant

Prayer:- Criminal Appeal filed under Section 374(4) of the Criminal Procedure Code, 1973, against the judgment of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai, made in Spl.S.C.No.195 of 2022, dated 31.10.2023.

For Appellant : Mr.D.Prasanna Kumar

For Respondent : Mr.R.Vinothraja
Government Advocate
(Criminal side)



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JUDGMENT

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This Criminal Appeal arises out of the judgment of conviction and sentence rendered by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under the POCSO Act, Chennai, in Spl.S.C.No.195 of 2022, dated 31.10.2023.

2. On conclusion of trial in Spl.S.C.No.195 of 2022, the learned trial Judge found the appellant guilty and convicted him for the offence under Section 6 of the Protection of Children from Sexual Offences Act, 2012 [hereinafter referred to as "the POCSO Act"] and sentenced him to undergo rigorous imprisonment for 20 years and to pay a fine of Rs.5,000/-, in default, to undergo three months simple imprisonment.

3. The facts of the case is that, the appellant was tried along with one Bhuvaneswari (A2), the mother of the victim girl. The learned trial Judge found A2 guilty for the offence under Section 6 read with Section 17 @ 21(1) of the POCSO Act and convicted and sentenced her to undergo imprisonment for four months and the period of detention already undergone has been set off under Section 428 Cr.P.C.



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3.1. The victim, P.W.2, who was born on 15.09.2004, was a minor at the time of the incident. She had been living with her mother (A2) since her father separated from the family, taking the victim's brother with him. The appellant, an auto driver, came into contact with the victim's family when he began providing transportation. Later, he informed the victim's mother that he had divorced his wife, and the appellant and A2 began living together with the victim girl.

3.2. Taking advantage of the mother's absence, the appellant forcibly committed penetrative sexual assault on the victim girl. This abuse continued, and the victim later became pregnant. She gave birth to a male child at home, and when complications arose with the umbilical cord, the victim sought medical treatment. This led to the involvement of the Child Welfare Committee (CWC) and the Police, bringing the crime to light.

3.3. Following medical treatment, the Primary Health Centre staff, Nammalwarpet reported the case to the CWC after discovering the victim's pregnancy and minor status. The CWC informed the Police, and



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thereafter, the case was registered in Crime No.11 of 2022 against the accused for the offences under Sections 5(j)(ii), 6 and 17 of the POCSO Act.

3.4. During the investigation, the victim's statement was recorded. Subsequently, the victim was produced before a doctor and a Magistrate, where her statement under Section 164 of the Cr.P.C. was recorded. After recording statements from the witnesses and collecting the materials, the accused were arrested. A charge sheet was filed before the trial Court, listing 14 witnesses. During the trial, P.W.1 to P.W.9 were examined, and Exhibits P.1 to P.11 were marked.

3.5. Upon completion of the trial, the trial Court convicted the appellant (A1) under Section 6 of the POCSO Act. The second accused (A2) was convicted under Section 6 read with Section 17 @ 21 (1) of the POCSO Act. Since A2 had already served the sentence, no appeal was filed by her. However, the appellant / A1 has preferred the present appeal, challenging the conviction and sentence imposed on him.

4. The learned counsel for the appellant contends that the trial



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Court's finding is contrary to both the law and the weight of the evidence.

The learned counsel submits that the trial Court failed to properly consider the statement made by the victim, P.W.2, who categorically stated that she and the appellant had got married, and that a male child was born out of their relationship. According to P.W.2, she and the appellant were living together as husband and wife. P.W.2 further stated that their baby developed an infection in the umbilical cord, and the baby was taken to the Public Health Centre for treatment. From there, information was sent to the Child Welfare Committee (CWC), which, according to the learned counsel, did not conduct a proper enquiry and rushed into action by lodging a complaint. The CWC took the victim to an orphanage home, where the baby received treatment, and later, it was decided that the baby would be put up for adoption. In her testimony, P.W.2 confirmed that she was not interested in maintaining the baby and had no intention of lodging any complaint against the appellant. She further stated that the appellant is her husband, and they had been living together as a married couple after getting acquainted when the appellant used to pick her up in his auto. P.W.2 admitted that she gave birth to the child shortly before reaching the age of majority, but she did not intend to lodge any complaint against the



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appellant or her mother, A2.

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4.1. The learned counsel for the appellant contends that the trial Court failed to adequately assess the victim's statements and her lack of intention to file a complaint, which, according to the defence, should be a crucial factor in determining the credibility of the charges against the appellant and A2. The learned counsel for the appellant emphasizes that P.W.2's testimony clearly indicates a consensual relationship between P.W.2 and the appellant. According to the learned counsel, P.W.2 herself stated that she and the appellant were living together as husband and wife, and they had a child together. The learned counsel submits that this relationship was consensual, and as such, the charges leading to the appellant's conviction are disputed and the trial Court did not adequately consider P.W.2's own statements, particularly her lack of any intention to file a complaint against the appellant.

4.2. The learned counsel for the appellant further submits that the respondent Police found the victim wearing a Thali (a traditional symbol



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of marriage), which was subsequently removed by the Police. The learned counsel further contends that while in Police custody, the victim was allegedly subjected to coercion and forced to sign various documents, which were later used against the appellant and the victim's mother. The learned counsel submits that these actions by the Police were improper and raise doubts about the authenticity of the evidence obtained under duress.

4.3. The learned counsel submits that the trial Court failed to consider the case in a holistic manner, particularly, the circumstances surrounding the victim's statements and the Police's actions. While the trial Court relied heavily on the DNA test results, which confirmed that the appellant is the father of the baby, the learned counsel submits that this evidence should not have been the sole basis for conviction. The victim had not denied her relationship with the appellant; in fact, she confirmed that she was married to him and that the baby was the result of their relationship.

4.4. The learned counsel further submits that the trial Court's



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decision was influenced by a narrow focus on the DNA test, without adequately taking into account the broader context, including the victim's statement, her lack of intention to lodge a complaint, and the potential coercive circumstances under which her signatures were obtained. The learned counsel for the appellant contends that the trial Court's conviction was flawed for not properly assessing the totality of the evidence, including the victim's own testimony, and the irregularities in the way evidence was gathered during the investigation.

4.5. The learned counsel for the appellant submits that the trial Court relied primarily on the evidence of P.W.1, the Child Welfare Committee (CWC), which, according to the learned counsel, acted hastily from the very beginning of the case. The learned counsel submits that the CWC's actions, including the filing of a complaint and subsequent steps, were rushed and not based on a thorough investigation. The learned counsel also points out that P.W.3, the house owner at Narayana Maistri Street, where the appellant and P.W.2 had initially lived together, merely stated that the appellant and A2 had informed her that they were husband and wife. However, these statements by P.W.3 were uncorroborated, and



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therefore, the learned counsel contends that there is no additional supporting evidence to substantiate her testimony.

4.6. Furthermore, the learned counsel points out that the testimony of P.W.4, local resident at Nammalwarpet, where the appellant and the victim were residing at the time of the investigation. P.W.4, along with L.W.10 and L.W.11, were examined as witnesses. P.W.4, being a local resident, was present when the Observation Mahazar was prepared. However, P.W.4's signature was obtained in the Police Station, casting doubt on the integrity of the investigation. According to the learned counsel, this indicates that the investigation was carried out in a hasty and perfunctory manner.

4.7. The leaned counsel for the appellant also submits that the prosecution selectively produced witnesses, and the trial Court failed to take all relevant facts into consideration. The trial Court's reliance on the DNA test results and the finding that the victim was a minor led to the appellant's conviction. The learned counsel submits that this approach was inadequate, as it did not fully account for the broader context of the case.



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Furthermore, the appellant produced a Kula Certificate, dated 21.04.2015, which demonstrated that the appellant had divorced his previous wife, Saira Banu, as per the Islamic divorce certificate. The learned counsel submits that this fact was overlooked by the trial Court and should have been considered when evaluating the appellant's relationship with the victim girl. Therefore, the learned counsel for the appellant contends that the trial Court's conviction was based on an incomplete assessment of the evidence, and that the case should have been considered in a more comprehensive manner, especially in light of the discrepancies in the investigation and the additional evidence presented by the appellant.

5. The learned Government Advocate (Criminal side) submits that the de-facto complainant in this case is a member of the Child Welfare Committee (CWC), who received information from the Public Health Centre in Nammalwarpet regarding the victim's condition. Thereafter, P.W.1, the CWC member, visited the victim's house, examined her, recorded her statement, and subsequently, lodged a complaint with P.W.7, which led to the registration of a case in Crime No.11 of 2022 (Ex.P.9).



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5.1. The learned Government Advocate (Criminal side) submits that P.W.7, the Investigating Officer examined both P.W.1 and P.W.2 in the presence of witnesses and prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.4. Statements from witnesses residing near the appellant's house were recorded. On 14.05.2022, the appellant and A2 both arrested in the presence of witnesses and their statements were recorded. On 24.05.2022, the victim was sent to the children's hospital in Egmore for examination, and the doctor's statement was recorded. On 06.06.2022, the victim was produced before the Magistrate, where her statement under Section 164 Cr.P.C. (Ex.P.4) was recorded. In her statement, she explicitly accused the appellant, whom she identified as being in a fatherly relationship with her, of committing sexual assault on her while she was a minor.

5.2. The learned Government Advocate (Criminal side) further submits that the prosecution presented additional evidence to support the victim's claims. The appellant's Potency Certificate was obtained and marked as Ex.P.6, while medical records (Exs.P.7 and P.8) confirmed the victim's allegations. Dr.Sujatha, a forensic expert, was examined as



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P.W.9, and Ex.P.11, the DNA report dated 23.11.2022, further confirmed the appellant's paternity of the victim's child. Further, the victim was confirmed to be a minor and her date of birth is 15.09.2004. This fact was significant in determining the severity of the charges levelled against the appellant.

5.3. The learned Government Advocate (Criminal side) submits that the trial Court correctly considered all the relevant materials and evidence in this case, including the victim's minor status, the DNA test report, and the statements recorded during the investigation. Based on this thorough and comprehensive analysis, the trial Court concluded that the appellant was guilty of the charges levelled against him. The trial Court's decision was well-supported by the evidence presented, and therefore, the learned Government Advocate prays for the dismissal of the criminal appeal, urging that the conviction be upheld.

5.4. The learned Government Advocate (Criminal side) also produced a report from the Child Welfare Committee indicating that the newborn child born to the victim girl was placed for adoption on



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15.03.2023, which highlights the steps taken to secure the welfare of the child after the incident.

6. The victim girl, P.W.2, appeared before this Court along with her mother (A2) and the appellant's mother. She confirmed that the appellant is her husband and that she resides with the appellant's mother. The victim reiterated her relationship with the appellant as husband and wife.

7. Considering the above submissions and on perusal of the materials, it is clear that the appellant is portrayed as the live-in partner of the victim's mother, A2. However, the only support for this claim comes from the uncorroborated statement of P.W.2, who confirms that the appellant and A2 represented as a married couple when renting a house, with the victim being their daughter. Further, there were many other co-tenants residing at Narayana Maistri Street, but none of them were examined to substantiate the claim that the appellant and A2 were living as husband and wife. On the other hand, the victim, P.W.2, stated, initially she had no relationship with the appellant, despite the fact that he



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would pick her up in his auto to go to school and other places. She later stated that they developed a mutual liking, and the appellant informed her mother that he had divorced his previous wife and was living separately. Hence, they started living together, and she and the appellant were living as husband and wife and had a physical relationship. However, the victim further explained that her statement before the learned Magistrate (Ex.P.4) was given under Police compulsion, and she later, resiled from it. Since the deponent resiled from the earlier statement, it is imperative that the learned Magistrate who recorded it to be called as a witness to clarify and confirm contradictions. In this case, the said procedure was not followed, thereby discarding Ex.P.4 as a reliable foundation for the prosecution's case against the appellant.

8. In this case, it is noteworthy that none of the personnel from the Public Health Centre, Nammalwarpet, who informed the Child Welfare Committee and treated the umbilical cord infection of the baby, were examined, and no documents collected to support these claims. Exs.P.2 and P.3 the Transfer Certificate and 10th Mark Statement of the victim girl were presented to establish her minor status, but none of the school



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authorities examined to prove these documents. These documents marked through P.W.2, which raises concerns about the admissibility and proof.

Further, P.W.1 stated that she had lodged a complaint with the Police at the Public Health Centre, Nammalwarpet. On the other hand, P.W.7, the Investigating Officer, gives a contradictory statement, stating that the complaint was lodged in the Police Station. This inconsistency creates further confusion about the sequence of events. Further, the victim, P.W.2, in her testimony, stated, albeit with some uncertainty, that she and the appellant were living together as husband and wife, and that a baby boy was born to them. This child was surrendered by his biological mother on 19.05.2022 and was registered in the Child Adoption Resource Information & Guidance System [CARINGS] Portal for adoption on 20.05.2022. A DNA test for the child was conducted on 11.08.2022, and on 15.03.2023, the Child Welfare Committee, North Zone, Chennai, issued a certificate declaring the baby as fit and legally free for adoption. The child study report by the Social Worker and the Legally Free for Adoption Certificate were uploaded in the CARINGS portal on 17.03.2023. The child was then referred to prospective adoptive parents by Central Adoption Resource Authority [CARA] on 30.03.2023.



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WEB COPY 9. The absence of corroborative evidence, including medical and school records, and the inconsistencies in witness testimonies significantly undermine the credibility of the case. The victim's testimony also appears uncertain, raising doubts about the reliability of her statements. Consequently, the prosecution's case against the appellant is weakened by these contradictions and lack of substantiated evidence.

10. Further, the victim appeared in Court and confirmed her relationship with the appellant, stating that they are living together as husband and wife. While there is an age difference between the appellant and the victim, this alone does not necessarily disqualify their relationship as husband and wife, especially considering that the victim is now being cared by the appellant's mother and is living with the appellant's family. She has expressed her desire to continue this relationship. While so, A2, the victim's mother, is living separately and leading her own life, which further complicates the case. The trial Court, in its conviction, relied on the shaky foundational facts as proved and that the circumstances sufficiently established the appellant's involvement in the offence. This



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conclusion is flawed as the evidence presented was inconsistent and lacking in corroboration. The victim's retracted statement, the absence of key witnesses, and conflicting testimonies significantly weaken the case. Hence, the conviction based on these assumptions is not sustainable, and the appellant's involvement in the alleged offence has not been conclusively proven beyond a reasonable doubt. The victim hails from a marginalized background and lives in poverty. It is the appellant's family that takes care of the victim, supports her, and provides aid in all aspects. It would be an injustice to the victim if she is made to suffer further.

11. In the result, the criminal appeal is allowed; the conviction and sentences imposed on the appellant/A1 by judgment dated 31.10.2023, in Spl.S.C.No.195 of 2022, by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under the POCSO Act, Chennai, is set aside and he is acquitted from all the charges. Fine amount already paid, if any, shall be refunded to him. The appellant/A1-Muthu Kumar is directed to be set at liberty forthwith unless and otherwise his presence is required in connection with any other case. Consequently, connected Miscellaneous Petition is closed.



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31.01.2025

Index : Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order
smn2

To

- 1.The Sessions Judge,
Special Court for Exclusive Trial of Cases
under the POCSO Act,
Chennai.
- 2.The Inspector of Police,
W-16, All Women Police Station,
Pulianthope, Chennai.
- 3.The Public Prosecutor,
High Court,
Madras.

Copy to:-

The Superintendent,
Central Prison-I,
Puzhal,
Chennai - 600 066.

Note: Issue Order Copy on 03.02.2025.



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M.NIRMAL KUMAR, J.

smn2 / vv2

Pre-delivery Judgment in
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31.01.2025