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Crl.A.No.1618 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2025

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

Crl.A.No.1618 of 2023 &
Crl.MP.No.19792 of 2023

Sanjay Behara

... Appellant

Vs.

Inspector of Police,
W-15, AWPS Royapuram,
Chennai
(crime No.12 of 2022)

... Respondent

PRAYER:

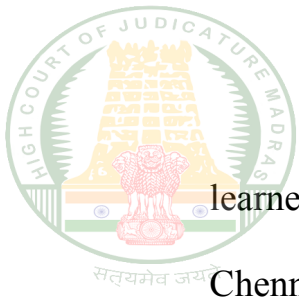
Criminal Appeal filed under Section 374 of Cr.P.C., praying to set aside the convicted by the learned Special Court for Exclusive Trial of Cases under POCSO Act, Chennai in Spl.SC.No.284 of 2022 dated 08.08.2023 and allow the appeal.

For Appellant : Mr.S.Manoharan

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

JUDGMENT

This Criminal Appeal has been filed against the judgment of the

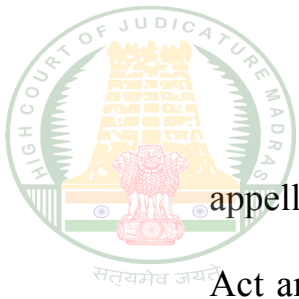


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learned Special Court for Exclusive Trial of Cases under POCSO Act, Chennai passed in Spl.SC.No.284 of 2022 dated 08.08.2023, thereby convicting the appellant for the offence punishable under Section 10 of POCSO Act.

2. The case of the prosecution was that on 18.09.2022 at about 07.30 PM, when the victim children, who are the daughters of the complainant, were in a dressing room at Royapuram playground, the accused trespassed that room and sexually assaulted both the children. Immediately, it was informed to their father. Thereafter, complaint was lodged. On receipt of the said complaint, the respondent registered FIR in crime No.12 of 2022 for the offence punishable under Section 448 of IPC and under Section 10 of POCSO Act(2 counts). After completion of investigation, final report was filed and the same was taken cognizance by the trial court.

3. In order to bring the charges to home, the prosecution had examined PW1 to PW6 and marked Ex.P1 to Ex.P11. On the side of the accused, no one was examined and no documents were produced. On perusal of oral and documentary evidences, the trial court found the

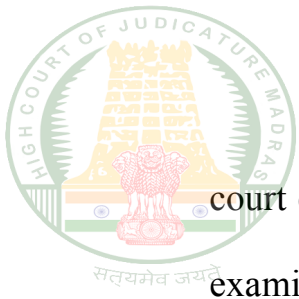


appellant guilty for the offence punishable under Section 10 of POCSO

Act and sentenced him to undergo five years imprisonment with fine of Rs.5,000/-, in default, to undergo one month simple imprisonment.

Aggrieved by the same, the present criminal appeal has been filed.

4. The learned counsel for the appellant would submit that the appellant was arrested only on the ground of suspicion. Since no other person was available at the place of the occurrence, the appellant was roped into this crime. The appellant was a load man and at the time of the alleged occurrence, he was loading goods from a lorry near the playground. Therefore, he has been falsely roped into this crime since no person was available. Further, according to the case of the prosecution, while two children were playing in a room without light, they had bad touch. Further, they did not also identify the accused. When the appellant was beaten by others, they had seen him. Therefore, accused was not even identified by the victim children. Further, though both the victim stated that both had bad touch at the hands of the accused in the statement recorded under Section 164 of Cr.P.C., during their evidence, one victim did not even whisper about the bad touch. She deposed that her elder sister only had bad touch at the hands of the accused. Therefore, the trial



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court convicted the appellant for one count. The father of the victim was examined as PW1. He also deposed that he did not see the accused and when he was standing 150 meters away from the room, he was identified as accused. Therefore, the prosecution miserably failed to prove the charge beyond any doubt.

5. Per contra, the learned Additional Public Prosecutor appearing for the respondent submitted that there were two victims and both are sisters. While they were playing in a dressing room and their father was playing game in the ground, they were touched inappropriately by the accused. The accused was duly identified by the victim and he was beaten by the general public for the act committed by him. Therefore, the trial court rightly convicted the appellant and it does not warrant any interference by this Court.

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

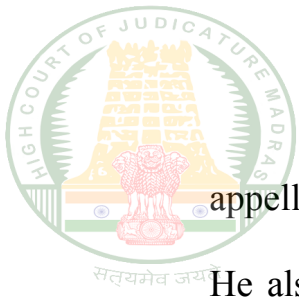
7. There are two victims. Both are sisters and while they were playing in a dressing room, they were touched inappropriately by the



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accused. The only point for consideration in this criminal appeal is that, whether the victims identified the accused since the alleged occurrence took place in a dark room. Both the victims were examined as PW2 and PW3. Even according to them, they were playing in a dark room. It is difficult to believe that they were playing in a dark room without any light. At that juncture, according to them, the accused touched them inappropriately. Though they had told in their statement recorded under Section 164 of Cr.P.C., that both were touched inappropriately by the accused, the elder sister alone deposed before the court about the occurrence but the younger sister deposed that she was not touched by the accused and only her sister was subjected to bad touch at the hands of the accused. The contradiction cannot be brushed aside. Further, when the victims were playing in a dark room, it was very difficult to identify the accused.

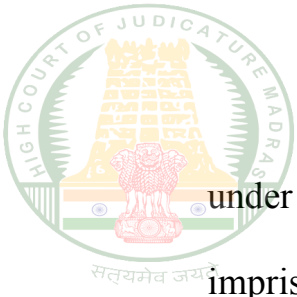
8. That apart, when the appellant was standing 150 meters away from the said room, he was caught hold and beaten by the others. Therefore, no one identified the appellant as the person who committed the alleged offence on the victim children. Since one of the victim girl did not say anything about the bad touch on her, the trial court convicted the



appellant for one count. The father of the victims was examined as PW1.

He also deposed that the appellant was standing 150 meters away from the room and except the appellant, no one was there. Therefore, they themselves assumed that the appellant was the accused and caught hold of him. They had also badly attacked him. As such, this Court infers that the prosecution failed to prove the charge beyond any doubt and the benefit of doubt goes in favour of the appellant. The petitioner is incarcerating imprisonment for more than three years. Even assuming that the case of the prosecution is true and the appellant committed the offence, no charge is made out under Section 10 of POCSO Act since there was no aggravated sexual assault. At the maximum, he can be convicted for the offence under Section 7 r/w 8 of POCO Act.

9. In view of the above discussion, this criminal appeal is partly allowed and the judgment passed by the learned Special Court for Exclusive Trial of Cases under POCSO Act, Chennai in Spl.SC.No.284 of 2022 dated 08.08.2023, is modified as follows: The order of conviction and sentence of imprisonment imposed on the appellant by the trial court for the offence under Section 10 of POCSO Act, 2012 is set aside. The appellant is now convicted for the offences under Section 7 punishable



under Section 8 of POCSO Act, 2012. The period of sentences of imprisonment in respect of the conviction for the aforesaid offences shall be the period of sentence of imprisonment which has been undergone by the appellant till now. Consequently, connected miscellaneous petition is closed.

06.08.2025

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To

- 1.The learned Special Court for Exclusive Trial of Cases under POCSO Act, Chennai
- 2.Inspector of Police,
W-15, AWPS Royapuram,
Chennai
- 3.The Public Prosecutor,
High Court, Madras.



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G.K.ILANTHIRAIYAN, J.

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