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Crl.A.(MD)No.369 of 2017



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 24.06.2025

CORAM:

THE HONOURABLE Dr.JUSTICE R.N.MANJULA

Crl.A.(MD)No.369 of 2017

Ilayaraja

... Appellant

vs.

State rep. by Inspector of Police,
All Women Police Station,
Keeranur, Pudukkottai District.
(Viralimalai Police Station
Crime No.175 of 2015)

...Respondent

PRAYER : This Criminal Appeal has been filed under Section 374(2) of Criminal Procedure Code against the Judgement of the learned Sessions Judge, Mahila Neethimandram, Pudukkottai, dated 14.09.2017 in Special S.C.No.1 of 2016.

For Appellant : Mr.D.Rameshkumar

For Respondent : Mr.A.Albert James,
Government Advocate (Crl. Side)

J U D G E M E N T

This appeal has been filed challenging the Judgement of the learned Sessions Judge, Mahila Neethimandram, Pudukkottai, dated 14.09.2017 in Special S.C.No.1 of 2016.



2. The appellant is the sole accused, who has been charged for the offence under Section 6 of POCSO Act, 2012 and convicted and sentenced to undergo the following punishment.

Accused	Offences under Sections	Punishment	Fine	In default Sentence
Sole Accused	8 of POCSO Act	Rigorous Imprisonment for 4 years	Rs.2,000/-	Rigorous Imprisonment for 6 months

3. As per the case of the prosecution, the victim girl who was studying in 3rd standard was alone at her house on 15.06.2015 as her parents had gone for work. At about 06.00 p.m., she went to the petty shop of the accused to buy biscuits. During that time, the accused lifted the victim child inside the shop and committed penetrative sexual assault on her. As the victim child shouted, the persons outside gathered and the accused left her.

3.1. The mother of the victim after knowing about the occurrence, had given a complaint at about 11.15 p.m. on the same day. Based on the complaint, a case has been registered in Crime No.175 of 2015 on the file of the All Women Police Station, Keeranur, Viralimalai. After the



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conclusion of the investigation, charge sheet has been filed against the accused for the offences punishable under Section 376(2)(h) IPC and Sections 5(m) and 6 of POCSO Act, 2012.

3.2. After completing the legal mandate of furnishing copies and all other legal formalities, charges have been framed against the accused for the offence under Section 6 of POCSO Act, 2012. When the accused was questioned, he denied his involvements and claimed to be tried.

3.3. Before the Trial Court, on the side of the prosecution PW1 to PW17 have been examined and Exs.P1 to P19 have been marked. Material Objects M.O.1 to M.O.5 have been marked. On the side of the accused, no oral or documentary evidence has been marked.

3.4. After the conclusion of trial, the learned Sessions Judge found the accused guilty for the offence under Section 8 of POCSO Act and convicted and sentenced him as mentioned supra. Aggrieved over that, the appellant / accused has preferred this appeal.

4. Mr.D.Rameshkumar, learned counsel appearing for the appellant submitted that the victim was initially taken to a Private Hospital and



thereafter, to the Government Hospital; Investigation Officer had gone to the Private Hospital and obtained the statement from the mother of the victim, but that was suppressed and FIR was registered only after the victim child was taken to the Government Hospital; the Doctor's evidence did not support the case of the prosecution; even though the appellant has been charged for the offence under Section 6 of the POCSO Act, without alteration of the charge and giving an opportunity to the appellant, he was found guilty for the offence under Section 8 of the POCSO Act; and the contradictions between the evidence of witnesses were not appreciated properly.

5. Mr.A.Albert James, learned Government Advocate (Crl. Side) appearing for the respondent submitted that the victim child has given categorical evidence and her evidence before the Court is cogent and convincing; PW1, who is the defacto complainant / mother of the victim has also stated about the events consequent to the occurrence in a very natural way; and there is nothing to suspect the genuineness of the evidence of the prosecution witnesses.

6. The contention of the learned counsel for the appellant is that PW16 Investigation Officer had obtained a statement in the Private



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Hospital where the victim was initially taken by her parents, but, did not proceed to register a case basing on that statement. Ex.P1 complaint given by PW1 shows that the complaint was given when the victim was taking treatment at the Government Hospital at about 10.40 p.m. In fact, PW1 has stated in her cross examination that the Inspector of Police had enquired the Doctor of Private Clinic only on the next day. Though it is contended that PW16 Investigation Officer has obtained statement of PW1 in the Private Hospital, during the cross examination of PW16 that was not suggested to her. Without establishing the previous statement, it cannot be simply stated that the first information has been suppressed.

7. The victim was below 12 years of age and she was alone at the house when her parents went for work on the alleged day of occurrence. PW2 is the sister of PW1 and she is residing near the house of PW1. After the occurrence, the victim child was crying and that was noticed by PW2. When PW2 enquired the victim child, she has stated about the criminal act committed by the accused. PW2 informed her sister after she returned from work and thereafter, PW1 had informed the matter to her husband. After the father of the victim arrived, they took the victim child to a Private Hospital at Manapparai, where she was given first aid. As the Doctor of the Private Hospital had referred the victim child to



Government Hospital, they took her to the Government Hospital and thereafter, went to the Police Station to give a complaint.

8. It is not the contention of the appellant that the victim child was above 12 years. When the victim was examined on 31.08.2016, she was studying in 3rd standard and was just 9 years old. The School Certificate of the victim girl has been marked as Ex.P4, where her Date of Birth is shown as 20.10.2007. As the occurrence had taken place on 15.06.2015, the victim was very much a child below 12 years old. The Headmaster of the School where the victim child was studying was examined as PW9 and he has stated about the issuance of School Certificate Ex.P4 in proof of her age.

9. Even before deposing evidence before the Court, the victim child has given statement under Section 164 Cr.P.C. before the Magistrate, where she has stated that on the day of occurrence, the appellant lifted her inside the shop, removed her panties and skirt and pressed his private part on her. She has further stated that she has informed the incident to her mother who had taken her to the Hospital. While examined as PW3 before the Court also, the victim child has stated the same evidence and hence evidence is consistent.



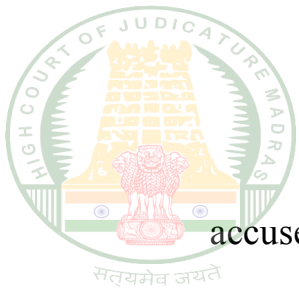
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10. In fact, PW1 had stated in her complaint and evidence that PW2 who is the maternal aunt of the victim child knew about the incident immediately and she was consoling the victim and after the mother of the victim arrived, she informed the occurrence to her.

11. PW2's evidence is also very much similar to what was stated by the mother of the victim child in her evidence. There are no material contradictions in their evidence. The evidence of the victim is corroborated with the evidence of PW1 and PW2 in all material aspects.

12. But the learned Sessions Judge appeared to have given much significance to the medical evidence where PW9 Doctor has stated that there is nothing to suggest that the victim was raped and that there are no injuries found on her private parts or other parts of her body. But, the Doctor has also observed that the victim child was seen to be traumatic and shocked and she did not wish to speak. The Psychological state of the victim immediately after the occurrence also corroborates with her substantive evidence and the evidence of her mother and maternal aunt.

13. Even though the victim has constantly stated in her statement under Section 164 Cr.P.C. and her evidence before the Court that the

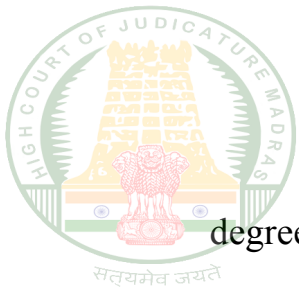


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accused has pressed his private part into her private part after removing her panties and skirt, the learned Sessions Judge did not convict the appellant for the offence of 'penetrative sexual assault', but, for 'sexual assault'. In the understanding of the learned Sessions Judge, contacting the vagina of the child with the private part of the appellant would not amount to 'penetrative sexual assault'.

14. In fact, the victim was initially taken to the private hospital and was given first aid before she was taken to the Government Hospital. The occurrence is said to have taken place at about 06.00 p.m. and the Doctor in the Government Hospital has examined her at about 11.00 p.m. As there was a gap of five hours and the victim child was also given with first aid, there is a possibility that PW14 Doctor could not have seen any contusion or injuries. But the learned Sessions Judge had failed to notice other features of Doctor's of evidence where she has stated that the victim was found to be traumatic and shocked.

15. According to the definition of 'sexual assault' under Section 3(a) of POCSO Act, a person is said to have committed sexual assault if he penetrates his penis to any extent of the vagina of a child. As the child was 9 years old, there could not have been a penetration to a larger



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degree and the extent of touching on the vagina by the penis of the appellant should have been considered by the learned Sessions Judge as minimum level of penetration in order to find the appellant / accused guilty for the offence under Section 6 of POCSO Act. Unfortunately, that was not done and the State also did not choose to prefer any cross appeal on the above basis.

16. A holistic reading of the Judgement of the learned Sessions Judge would show that he did not believe the evidence of the prosecution witnesses including the evidence of the victim child, but tried to distinguish between 'penetrative sexual assault' and 'sexual assault' on the basis of the evidence of the Doctor who has stated she did not find any injuries on the body of the victim.

17. Even accepting for the sake of argument, if the act of the appellant / accused is considered as an offence of 'sexual assault', it would fall under the category of 'aggravated sexual assault' as the victim is a child below 12 years. This essential aspect was also ignored by the learned Sessions Judge and the appellant was found guilty for the offence under Section 8 of the POCSO Act.



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18. In the absence of any appeal preferred by the prosecution, by taking advantage of the appeal preferred by the appellant / accused, it is not fair on the part of this Court to suggest or impose higher punishment on the appellant / accused without giving him an opportunity to stand for the right charges that might be available to him before the Session Court.

19. The evidence of the victim child, her mother / defacto complainant PW1 and her maternal aunt PW2 are seen to be consistent, cogent and acceptable and there is no material contradiction found in their evidence. The victim's family did not have any previous motive with the appellant / accused in order to lodge a false complaint at the cost of modesty of their child. In fact, at the time of occurrence, there are other children who went to the shop of the accused and had seen the victim coming out of the shop crying. A neighbour child, who has been examined as PW5 has stated these facts in his evidence.

20. A holistic reading of the evidence of the prosecution witnesses and the events that followed the occurrence would only show that the case of the prosecution is true and there is no merit in the grounds of appeal raised by the appellant / accused.



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21. In view of the above stated reasons, the Criminal Appeal is **dismissed.** The Judgement of the learned Sessions Judge, Mahila Neethimandram, Pudukkottai, dated 14.09.2017 in Special S.C.No.1 of 2016 is confirmed. The Sessions Court shall take steps to secure the appellant / accused for undergoing the remaining period of sentence, if any.

24.06.2025

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To

1.The Sessions Judge,
Mahila Neethimandram,
Pudukkottai.

2.The Inspector of Police,
All Women Police Station,
Keeranur, Pudukkottai District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Dr.R.N.MANJULA, J.

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