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Crl.A.No.849 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2026

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.849 of 2022

Shabi

... Appellant

Vs.

The State rep. by
The Inspector of Police,
W13 All Women Police Station,
Washermenpet, Chennai – 600 021.
(Crime No.2 of 2019)

... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the order of conviction and sentence imposed in Spl.S.C.No.78 of 2020 dated 22.06.2022 passed by the Courts of Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai to secure the ends of justice.

For Appellant : Mr.R.Sankarasubbu

For Respondent : Mr.S.Udayakumar
Government Advocate (Crl. Side)
Assisted by Ms.Harshana.T



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JUDGMENT

The appellant/accused in Spl.S.C.No.78 of 2020 convicted by the Trial Court by judgment dated 22.06.2022 for the offence under Section 10 of Protection of Children from Sexual Offences Act, 2012 (POCSO Act) and sentenced to undergo seven years imprisonment and to pay a fine of Rs.25,000/-, in default, to undergo three months simple imprisonment. Aggrieved against the same, the appellant preferred the present appeal.

2.The case of the prosecution is that the victim/PW2 is the grand daughter of the defacto complainant/PW1. The victim's mother Reshma was married to one Askar Ali and out of this marriage, the victim was born to them. Some years after the marriage, the said Askar Ali had a fall, sustained head injury and he was mentally affected. Thereafter, the victim and her mother were living with the defacto complainant. When the victim was 1½ years old, the victim's mother Reshma married the appellant and they were living separately. When the victim was studying 4th standard, the victim's mother took the victim to her house and victim staying with her mother and



step father. Thereafter they were living happily and the defacto complainant used to visit her daughter and grand daughter. One year prior to the complaint, the defacto complainant's second daughter/PW5 informed that the appellant was misbehaving with the victim. The defacto complainant questioned the same, thereafter the defacto complainant was not allowed visit her daughter and grand daughter and started visiting her granddaughter in the School. Three days prior to the complaint when the defacto complainant visited her grand daughter in the School, the victim complained that her step father/appellant was sexually assaulting her and threatened not to disclose to her mother, further the victim was beaten using the back of the broomstick and the victim had contusions. Hence, on 02.08.2019 the defacto complainant lodged a complaint to the respondent, who assigned C.S.R.No.61 of 2019. After enquiry, case in Crime No.2 of 2019 for offence under Section 8 of POCSO Act registered by PW6. Thereafter, investigation conducted, the victim, defacto complainant and other witnesses enquired, statements recorded, the victim was produced for medical examination and thereafter produced before the Magistrate, 164 statement recorded, the accused was arrested on 16.09.2019 and produced for medical examination on 25.10.2019. On the point of jurisdiction, the case was transferred to All



Women Police Station, Washermenpet. PW7 on conclusion of investigation filed charge sheet in this case on 20.08.2020. During trial PW1 to PW7 examined and Ex.P1 to Ex.P12 marked on the side of the prosecution and on the side of the defence, no witness examined and no documents marked. On conclusion of trial, the Trial Court convicted the appellant as stated above.

3.The contention of the learned counsel for the appellant is that the appellant is the step father, who married mother of the victim when the victim was 1½ years infant and the victim was brought up by her maternal grandmother/PW1. The victim's mother/wife of the appellant was insistent to taken back her daughter and the defacto complainant objected, finally when the victim was about 9 years old, the victim was taken by her mother and from then, victim was with her mother and the appellant all staying together. The appellant was taking care of her, providing all her needs and sending her to School. The victim was not showing much interest in her studies which was questioned by the appellant and sometimes he used to beat her. Further, the victim was not showing any interest in helping her mother and this was also questioned by the appellant. To change her for good, some restrictions placed, which hurt the victim very badly. Added to



it, the defacto complainant was constantly demanding victim to stay with her which was opposed. Earlier there was a police complaint as though victim was ill-treated which was enquired and closed. Thus the defacto complainant was doctoring the victim by giving false information. Thus the victim was not happy with her mother as well as with the appellant/step father. Hence, when the victim was beaten for not changing herself, a case is projected as though the appellant was asking the victim to massage his legs during night hours and also placing his hands on the victim's chest and body. The defacto complainant having animosity against the appellant lodged a false complaint. The respondent police finding that the complaint is doubtful initially taken the complaint and assigned C.S.R. number. Thereafter, the defacto complainant engaged Advocates who pressurized the Police and thereafter FIR registered. The Advocates behind the complaint is admitted by the victim in her evidence. In this case, PW1/defacto complainant later realizing the mistake committed by suppressing the true facts not supported the case of the prosecution. PW5/second daughter of the defacto complainant and aunt of the victim girl also not supported the case of the prosecution. Now, the only evidence is that of the victim. PW2/victim girl in her 164 statement/Ex.P3 states that she was forced to study and also



help her mother in household work. Further she states she complained to her uncle Saddam Hussain for being beaten. In this case, her uncle Saddam Hussain not examined as witness. Further, the victim girl gave an exaggerated version as though she was taken to a 24 Hours Hospital where she was administered injection at the instance of the appellant, but no such medical evidence collected. In her 164 statement, the victim girl states that her father attempted to misbehave with her and thereafter, she went to her grandmother's house on 03.08.2019. On a demurrer, taking the statement of the victim to be true, then also there is nothing to infer that appellant had any sexual intent and no presumption can be drawn under Section 29 of the POCSO Act. PW3/Doctor who examined the victim issued Accident Register/Ex.P5, medical report/Ex.P7 and opinion/Ex.P8. From these documents, it is seen that the victim's primary complaint seems to be beaten with broomstick and forced her to sleep besides the appellant. The contention of the victim is that the appellant attempting to misbehave and touched her chest and she was beaten. The complaint registered only on the pressure of three Advocates engaged by the defacto complainant. The victim further confirms that she had deposed only as per the advice of the Advocates. Thus, a misunderstanding between the stepfather and



stepdaughter fueled by the victim's grandmother who demanded victim to be left in her custody, all resulted in a false complaint being webbed around against the appellant. The Trial Court failed to consider all these aspects and convicted the appellant.

4.The learned Government Advocate (Crl. Side) submitted that in this case, the victim is the daughter of Reshma and Askar Ali born on 12.04.2006. The victim was 13 years old when she was sexually assaulted by the appellant, who is her stepfather. The maternal grandmother of the victim/PW1 lodged a complaint. Prior to lodging the complaint, she warned the appellant to change his behavior and not to misbehave with her granddaughter, but the appellant continued to misbehave with the victim. Further, the appellant beaten the victim using the back of a broomstick causing injuries and threatened her not to disclose anything to anyone. The victim informed her grandmother and later grandmother lodged a complaint of sexual assault on the victim by the appellant to PW6, who registered the FIR, examined the victim, recorded the statement of the victim, defacto complainant. The victim produced for medical examination. Thereafter appeared before the Magistrate, her 164 statement recorded. The birth



certificate of the victim collected. PW3/Doctor examined the victim, issued Accident Register/Ex.P5 and gave a medical report/Ex.P7 and opinion/Ex.P8. The accused arrested and produced for medical examination. On completion of investigation, PW7 filed charge sheet. During trial, PW1 to PW7 examined and Ex.P1 to P12 marked. In this case, PW1/maternal grandmother of the victim and PW5/aunt of the victim not supported the case of the prosecution since they are closely related. The victim/PW2 in this case was consistent in her statement confirming the sexual assault committed by the appellant in her 161 statement, 164 statement and in her evidence before the Trial Court. Considering all these aspects, the Trial Court rightly convicted the appellant. Hence prayed for dismissal.

5.At this juncture, the learned counsel for the appellant submitted that in this case a complaint was made against the appellant due to the defacto complainant was denied the custody of her granddaughter/victim girl/PW2 and later realizing the mistake, she had not deposed anything against the appellant. PW5/aunt of the victim also not supported the case of the prosecution. The victim, in her previous statement and in her evidence, stated the appellant attempted to misbehave, but that to at the instance of her



maternal grandmother and the Advocates engaged by her grandmother. After the incident, the victim continued to stay with her mother and her stepfather/appellant, she had no fear or apprehension of safety made by her. In fact, the appellant took steps in finding a bridegroom for the victim, marriage performed between the victim and one Md.Rahamathulla on 02.02.2025. The marriage invitation card, marriage certificate issued by the Imam and the marriage registration certificate issued by SRO, Royapuram, marriage photographs produced. The appellant is a witness for the marriage and signed the same. From the marriage photograph, it is seen that the appellant and his wife were seen with his stepdaughter/victim all happily participated in the marriage. Further, the victim appeared before this Court and filed an affidavit confirming appellant/her stepfather arranged her marriage. Further she is happy and having good bondage with her half brother and sister.

6.Considering the submissions made and on perusal of the materials, it is seen that in this case, except for the statement of the victim, the other witnesses, namely PW1/maternal grandmother and PW5/aunt of the victim not supported the case of the prosecution. The evidence of victim/PW2 all



through is that the appellant was insisting her to concentrate on studies and to help her mother in the household chores and he used some force, beating her using the back of the broom stick. The defacto complainant/maternal grandmother of the victim was already fighting for the custody of the victim, hence there was a dispute between them and there have been police complaints in this regard. As stepfather and guardian forcing his daughter to study properly and do some household work and at times beating her coupled with custody fight, all magnified and projected as though the appellant attempted to misbehave with sexual intent. The facts of the case would prove that there can be no sexual intention while beating his daughter to change herself for good and to concentrate in her studies. The act of the appellant in beating the victim and at that time, touching the victim cannot be act driven by sexual intent. Apart from it, the evidence of the victim is with improvements and contradictions. Hence this Court finds on the facts of the case finds no sexual intent. In view of the above, this Court finds that no offence under Section 10 of POCSO Act committed by the appellant. Hence this Court is inclined to set aside the conviction and sentence imposed by the Trial Court.



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7.In the result, this Criminal Appeal stands allowed setting aside the judgment dated 22.06.2022 in Spl.S.C.No.78 of 2020 passed by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai. The appellant is acquitted from all charges. Bail bond if any executed shall stand cancelled. Fine amount if any paid shall be refunded.

06.02.2026

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
cse

To

- 1.The Sessions Judge,
Special Court for Exclusive Trial of Cases
under POCSO Act,
Chennai.
- 2.The Inspector of Police,
W13 All Women Police Station,
Washermenpet, Chennai – 600 021.
- 3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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