

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**RESERVED ON : 01.04.2021**

**PRONOUNCED ON : 07.07.2021**

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRL.A.No.113 of 2021  
and Crl.M.P.No.2925 of 2021

Venkatachalam

.. Appellant

.Vs.

The Inspector of Police,  
Puduchathiram Police Station,  
Namakkal District,  
Crime No.49 of 2014.

.. Respondent

Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure to call for the records and set aside the judgment and conviction passed by the Sessions Judge, Fast Track Mahila Court, Namakkal in Spl.C.C.No.29 of 2018 dated 20.01.2021 and acquit the appellant.

For Appellant

: Mr.G.Karuppasamy Pandian

For Respondent

: Ms.T.P.Savitha

Government Advocate (Crl.Side)

**JUDGMENT**

This Criminal Appeal has been filed against the Judgment dated 20.01.2021 in Spl.C.C.No.29 of 2018 by the learned Sessions Judge, Fast Track Mahila Court, Namakkal.

2.The case of the prosecution is that the victim girl, who is aged about 10 years at the time of occurrence was studying 5<sup>th</sup> standard. On 26.01.2014 at about 11 a.m., when the victim was playing in front of her house, the accused, who is the neighbour of the victim girl took her to his house and made the victim girl to lay on a cot, hugged her, opened her tops, lifted her skirt and sexually harassed her. The next day i.e. on 27.01.2014 at 4.00 p.m the accused with an intention to sexually harass the victim girl called her to his house, the victim girl refused to go with the accused and he threatened her. On 28.01.2014, again the accused followed the victim girl and on seeing the said incident, P.W.2/mother of the victim girl questioned her and that the victim girl narrated the said incident to her mother. Thereafter, P.W.2/mother of the victim girl filed a complaint against the appellant before the respondent police.

3.The respondent-Police registered a case in Crime No.49 of 2014 against the appellant for the offence under Section 354 and 506(i) IPC subsequently it was altered into Sections 3 and 4 of The Protection of Children from Sexual Offences Act, 2012 [hereafter referred to as 'POCSO Act' for the sake of convenience] later altered into Section 7 r/w Section 8 of the POCSO Act and Section 506(i) IPC. On completion of

investigation, the respondent police filed a charge sheet before the learned Sessions Judge, Fast Track Mahila Court, Namakkal and the same was taken on file in Spl.C.C.No.29 of 2018. After completing the formalities, the trial Court framed charges against the appellant for the offences under Section 7 r/w 8 of POCSO Act and Section 506(i) IPC.

4. In order to prove the case of the prosecution before the trial Court, on the side of the prosecution as many as 9 witnesses were examined as P.W.1 to P.W.9 and also marked 10 documents as Exs.P1 to P10 and no material object was marked. After examining the prosecution witnesses, incriminating circumstances culled out from the evidence of the prosecution witnesses were put before the appellant/accused and he was questioned under Section 313 of Cr.P.C., wherein he denied all the incriminating circumstances as false and pleaded not guilty. On the side of the defence one witness was examined as D.W.1 and also marked one document as Ex.D1 and no material object was marked.

5. The Court below, after hearing the arguments advanced on either side and also considering the materials available on record, found that the

appellant is guilty for the following offences and imposed sentences as follows :

(i) For the offence under Section 7 r/w 8 of POCSO Act the appellant was convicted and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for a period of six months.

(ii) For the offence under Section 506(i) IPC, the appellant was convicted and sentenced to undergo rigorous imprisonment for a period of one year;

6.Challenging the said conviction and sentence, the appellant is before this Court with this Criminal Appeal.

7.1 The learned counsel for the appellant would submit that there was a delay in filing the complaint and the same has not been properly explained by the prosecution and the unexplained inordinate delay is fatal to the case of the prosecution. The case of the prosecution as per the *de facto complainant*/P.W.2 is that on 26.01.2014, while the victim girl aged about 10 years was playing in front of her house, the appellant took the victim to his house and sexually harassed her. In the sequence on 27.01.2014, the appellant threatened the victim girl not to disclose the

previous day incident to anybody. On 28.01.2014, when the appellant called the victim girl to his house, she refused to go with him, the appellant followed her and on seeing the victim girl crying, P.W.2/mother of the victim girl questioned her and that the victim girl told about the said occurrence to her mother. However, the complaint was given only on 29.01.2014 at about 1.20 p.m. Therefore, the delay of three days in filing the complaint remains unexplained. Even though the distance between the police station and the scene of occurrence is only 6 kms, the delay in filing F.I.R is not properly explained. Further, there was an improvement in the F.I.R and that there was a discrepancy in the statement made before the Investigating Officer and also in the chief examination. The contradictions are material contradictions and there was an improvement in every stage and the same is fatal to the case of the prosecution.

7.2 The learned counsel for the appellant would further submit that the age of the victim girl has not been proved by the prosecution. In sexual offence cases, it is the duty of the prosecution to prove the age of the victim girl. However, in the present case, no birth certificate has been marked and no competent witness was examined to prove the date of birth of the victim girl. Further, the victim girl was neither subjected to

medical examination nor produced before the learned Judicial Magistrate for recording statement under Section 164 Cr.P.C. Therefore, the provisions of POCSO Act has not been properly followed in this case. Further, the statement of witnesses have been reached the Court very belatedly i.e. on 16.07.2018. Admittedly, their statements were recorded in the year 2014 and the same reached after lapse of four years and the said inordinate delay also remains unexplained. He would further submit that except the statement of the victim girl, no other corroborative evidence was adduced by the prosecution. Though the corroboration is not a rule of law, but, it is a rule of prudence. When the evidence of the victim suffers from doubt, undoubtedly that evidence should have been corroborated by other independent witnesses in material particulars. In the present case, since there was a previous enmity between the father of the victim girl and the appellant, the appellant lodged a complaint, where the father of the victim girl being an accused and only to settle that issue, the present complaint has been falsely filed against the appellant. However, the trial Judge has failed to appreciate both oral and documentary evidence as well as the defence and erroneously convicted the appellant only on assumption and on sympathy. Therefore, the

judgment of conviction and sentence passed by the trial Court against the appellant, is liable to be set aside.

8.1 The learned Government Advocate (Crl.Side) would submit that at the time of occurrence, the victim girl, who examined as P.W.1 was aged about 10 years and was studying 5<sup>th</sup> standard. The case of the prosecution as per P.W.2/*de facto complainant* is that on 26.01.2014 at about 11 a.m. when P.W.1/victim girl was playing in front of her house, the appellant took her to his house and sexually harassed her and that he committed the offence under Section 7 which is punishable under Section 8 of POCSO Act. Thereafter, on 27.01.2014 at about 4.00 p.m the accused with an intention of sexually harassing the victim girl, called her to his house and when the victim girl refused to go with the appellant, he criminally intimidated the victim and that the appellant committed the offence punishable under Section 506(i) IPC.

8.2 The learned Government Advocate (Crl.Side) would further submit that the appellant is none other than the neighbour of the victim girl's family, apart from that, he is residing nearby their house. Though, the offence is said to have taken place on 26.01.2014, at the time of commission of offence, the victim girl escaped from the clutches of the

appellant. The next day i.e on 27.01.2014, the appellant called her, but, she refused to go to his house and the appellant criminally intimidated the victim not to reveal the previous day occurrence to anybody. On 28.01.2014, again the appellant called the victim girl, but, she refused to go, the appellant followed her and that the parents of the victim girl came to know about the said incident and lodged the complaint against the appellant. After investigation, the respondent police laid a charge sheet against the appellant.

8.3 The learned Government Advocate (Crl.Side) would further submit that in order to prove the case of the prosecution before the trial Court, on the side of the prosecution totally 9 witnesses were examined. out of which the victim girl was examined as P.W.1, the mother of the victim girl was examined as P.W.2, the father of the victim girl was examined as P.W.3 and also to prove the age of the victim girl, the prosecution examined the Head Mistress of the school, in which the victim girl studied, as P.W.5.

8.4 The learned Government Advocate (Crl.Side) would further submit that since there was no penetrative sexual assault, it not necessary to produce the victim girl before the Doctor for medical examination.



Therefore non-production of the victim girl before the Doctor for medical examination is not fatal to the case of the prosecution.

8.5 The learned Government Advocate (Crl.Side) would further submit that during the trial, the victim girl was examined as P.W.1 and she has clearly deposed that on 26.1.2014 she went to the school for attending the Republic Day function and after returning home, she was playing in front of her house, at that time the appellant, who is the neighbour of the victim girl called her by saying that he would provide chocolates and when the victim girl entered into his house, the appellant misbehaved with her and she escaped from the appellant and due to fear she did not reveal the said incident to her parents. Subsequently, on 27.01.2014 the appellant called her, but, she refused to go with him, the appellant followed her and also threatened her. On 28.01.2014, again the appellant called the victim girl to his house, but, she refused, the appellant followed her and that the victim girl rushed to her house and on seeing the said incident, P.W.2 questioned the victim girl and that she revealed the said incident to her mother. Thereafter, on the next day i.e on 29.01.2014, P.W.2/mother of the victim girl filed the complaint Ex.P1 against the appellant. Therefore, there was no deliberation or inordinate

delay in preferring the complaint. Mere delay in filing the complaint is not fatal to the case of the prosecution and hence, the contention of the learned counsel for the appellant is not acceptable. In cases like this nature, no corroborative eye witness can be expected. The trial Court has rightly appreciated the evidence of the victim girl and believed that the evidence of the victim girl is clear, cogent and trust worthy and convicted and sentenced the appellant. Hence, there is no merit in this Criminal Appeal and the same is liable to be dismissed.

9. Heard the learned counsel for the appellant and the learned Government Advocate (Crl.Side) for the respondent and also perused the material available on record.

10. This Court, being an Appellate Court, is a fact finding Court, which has to necessarily re-appreciate the entire evidence and give an independent finding.

11. It is a specific case of the prosecution that on 26.01.2014 at about 11.00 a.m when the victim girl was playing in front of her house, the appellant, who is the neighbour of the victim girl took the victim girl to his house and sexually harassed her. The victim girl shouted, but her

voice was not heard because of the sound of looms running outside and that P.W.1 pushed the accused and came out of the accused house, at that time, no one else in the accused house. Thereafter, P.W.1 went to her house, but, due to fear she did not reveal the said incident to her parents. The next day i.e. on 27.01.2014, the victim girl came back from school and went to play, on that day also the appellant called her, but, she refused to go, the appellant told her that if she tells about the said incident, which took place on 26.01.2014, he would kill her, so that the victim girl did not reveal the incident to anybody. The next day i.e. on 28.01.2014, the appellant called the victim girl, but, she refused to go with him; the appellant followed her, when her mother/P.W.2 saw the same and questioned her; the victim girl revealed the truth. On the next day itself i.e. on 29.01.2014, the mother of the victim girl lodged the complaint against the appellant. While cross examining the victim girl as P.W.1 before the Court, she has clearly narrated the said incident. During the investigation, the victim girl was neither produced before any Doctor for medical examination nor produced before any Judicial Magistrate for recording statement under Section 164 Cr.P.C. However, from the evidence of the victim girl, the prosecution has proved its case beyond

reasonable doubts.

12.The defence taken by the learned counsel for the appellant is that there was a delay in filing the complaint, but, there was no inordinate delay in filing the complaint and the same has been properly explained by the prosecution. The evidence of P.W.1 clearly shows that with an intention, the appellant sexually harassed her. Further, there was no injury or allegation of penetrative sexual assault, therefore, medical examination of the victim girl is not necessary. The Investigating Officer should have produced the victim girl before Judicial Magistrate for recording statement under Section 164 Cr.P.C., however, they have not produced the victim girl before Judicial Magistrate. Therefore, the lapses committed on the part of the prosecution will not be a ground to disbelieve the evidence of the victim girl. The victim girl was examined before the Court as a witness and she has clearly narrated the said incident.

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13.Another defence taken by the learned counsel for the appellant is that due to previous enmity, the *de facto complainant* filed a false case against the appellant. But, the same has not been established in the

manner known to law and they have taken the said plea only to escape from the clutches of law. Further, non-production of the victim girl neither before the Doctor for medical examination nor before Judicial Magistrate for recording her statement under Section 164 Cr.P.C will not be fatal to the case of the prosecution. In cases of this nature, no corroboration is necessary, because prudent man would not commit these type of offence in the presence of adult members and the presence of independent eye witnesses are mostly improbable.

14. Though the learned counsel for the appellant submitted that the victim girl is the only eye witness to the said incident and the prosecution has proved its case only based on the evidence of P.W.1/victim girl and that the evidence of P.W.1/mother of the victim girl is only hearsay evidence, on a careful reading of the entire evidence, this Court finds that the evidence of the victim girl is cogent and convincing. In cases of this nature, no corroborative evidence is necessary, if the evidence of the victim girl is trust worthy. Further, the defence taken by the learned counsel for the appellant is not substantiated with any materials in the manner known to law and hence, the trial Court has rightly rejected the defence taken by the learned counsel for the appellant. Therefore, this

Court finds that there is no reason to discard and disbelieve the evidence of the victim girl/P.W.1.

15.On a careful reading of the evidence of the victim girl, it would reveal that the appellant sexually harassed the victim girl, who is below the age of 12 years and also threatened her not to disclose the said incident to anybody. If the age of the victim girl is above 12 years, the commission of sexual assault falls under Section 7 which is punishable under Section 8 of POCSO Act and if the age of the victim girl is below 12 years, it is termed as an 'Aggravated sexual assault', which falls under Section 9(m) punishable under Section 10 of POCSO Act. Further, the minimum punishment for the offence under Section 7 of POCSO Act is three years, which is punishable under Section 8 of POCSO Act, whereas for the offence under Section 9(m) of POCSO Act is five years, which is punishable under Section 10 of POCSO Act.

16.Under these circumstances, this Court finds that the appellant has committed the offence under Section 9(m) of POCSO Act which is punishable under Section 10 of POCSO Act. However, the trial Court has failed to look into the age of the victim girl at the time of occurrence i.e. 8 years and wrongly convicted and sentenced the appellant only for the

offence under Section 7 of POCSO Act, which is punishable under Section 8 of POCSO Act.

17. In fine, this Court does not interfere with the charges framed by the trial Court against the appellant, however, the benefit of set off given by the trial Court is set aside. The trial Court has directed the appellant to undergo three years of rigorous imprisonment for the offence under Section 7 punishable under Section 8 of POCSO Act and also convicted and sentenced to undergo one year rigorous imprisonment for the offence under Section 506(i) IPC. Though the sentences are ordered to be run concurrently by the trial Court, the same is set aside and modified as both the sentences of imprisonment are to run consecutively, which will meet the ends of justice.

18. With the above modification, this Criminal Appeal is dismissed. Consequently, connected miscellaneous petition is closed.

19. It is seen from the records that the appellant/accused is on bail and therefore, the trial Court is directed to take appropriate steps so as to immure him in prison to serve out the remaining period of sentence.

20.It is pertinent to mention here that the trial Judge has failed to appreciate the age of the victim girl and not understood the relevant provisions of POCSO Act. In many cases, this Court observed that the Special Judges who deal with cases under POCSO Act, not properly understood the scope and object of the POCSO Act. Before posting any Sessions Judge to the Special Court which deals with the cases under POCSO Act, have to necessarily sensitise and impart training to them through Tamil Nadu State Judicial Academy. The Registrar General and Director of State Judicial Academy have to necessarily take steps for the same after getting necessary approval from My Lord The Honourable Chief Justice as Patron-in-Chief and Board of Governors of the State Judicial Academy.

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07.07.2021

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Index: Yes/No

Internet: Yes/No

Speaking Order/Non Speaking Order

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To

1. The Sessions Judge,  
Fast Track Mahila Court,  
Namakkal.

2. The Inspector of Police,  
Puduchathiram Police Station,  
Namakkal District.

3. The Public Prosecutor,  
High Court, Madras.

4. The Deputy Registrar | with a direction to send back the  
(Criminal Section), | original records, if any, to the  
High Court, Madras. | trial Court

Copy to:

1. The Registrar General,  
High Court, Madras.
2. The Director,  
Tamil Nadu State Judicial Academy,  
Greenways Road,  
Chennai.

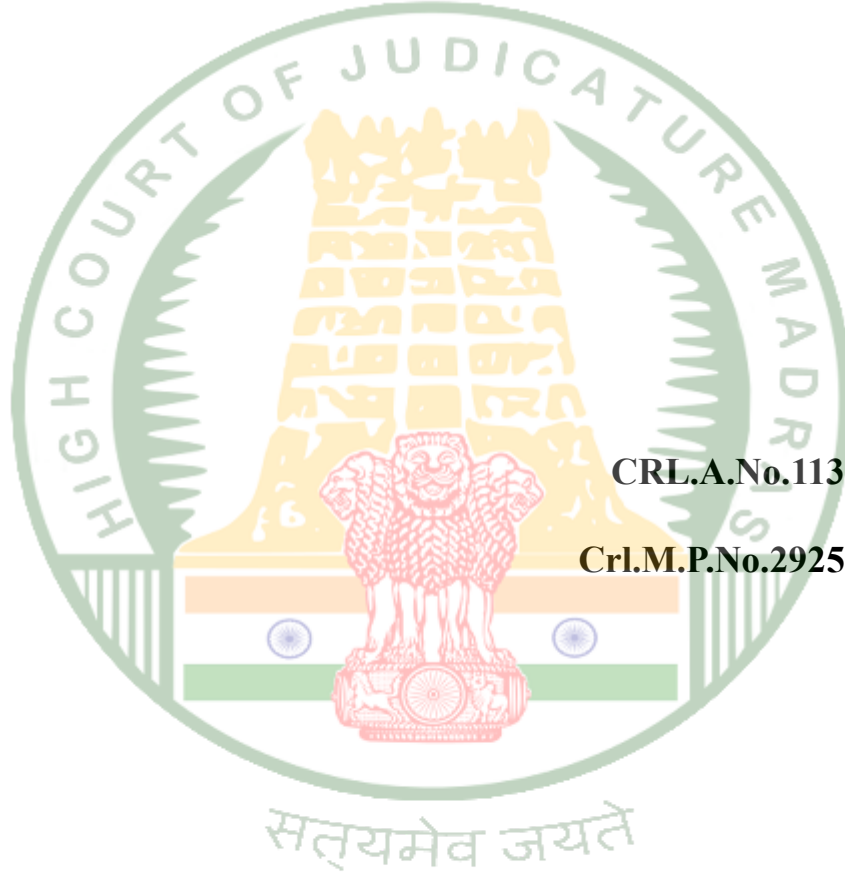
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**P.VELMURUGAN, J.**

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and  
Crl.M.P.No.2925 fo 2021**

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