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CRL.A.No.44 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.12.2022

PRONOUNCED ON : 21.12.2022

CORAM

THE HONOURABLE Mr. JUSTICE P.N. PRAKASH
AND
THE HONOURABLE Mr. JUSTICE N. ANAND VENKATESH

CRL.A.No.44 of 2021

Manikandan

.. Appellant/A-1

Vs.

State rep. by
The Inspector of Police
All Women Police Station
Virudhachalam Police Station
Cuddalore
Cr.No.2/2019

.. Respondent

Criminal Appeal filed under Section 374(2) Cr.P.C. against the judgment and order of conviction and sentence dated 23.12.2020 passed by the Special Court for POCSO Act Cases, Cuddalore, in Spl.S.C.No.64 of 2019.

For Appellant Mr.P.Muthamizh Selvakumar

For Respondent Mr.Babu Muthumeeran
Additional Public Prosecutor



JUDGMENT

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N. ANAND VENKATESH, J.

This Criminal Appeal has been filed against the judgment and order passed by the Sessions Judge, Special Court for POCSO Act Cases, Cuddalore, in Spl.S.C.No.64 of 2019 dated 23.12.2020, convicting and sentencing the accused/appellant in the following manner:

<i>Offence</i>	<i>Sentence</i>
Section 5(m) read with Section 6 of the POCSO Act read with Section 376-AB IPC	Life imprisonment and to pay a fine of Rs.5,000/-, in default to undergo three months simple imprisonment
Section 506(I) IPC	Two years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo one month simple imprisonment
The aforesaid sentences were ordered to run concurrently.	

2. The case of the prosecution is as under :

2.1. The victim child aged about 6 years was playing near Mariamman temple and the appellant (A-1) is said to have lewd the child as if he is going to get her chocolate and took the child to a building belonging



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to the local body and laid her on the floor, removed her inner garments and committed penetrative sexual assault on her. While doing this act, he had closed her mouth with his hand to ensure that the child did not make any noise. The appellant also threatened the child not to inform about this incident to anyone.

2.2. After this incident, the child came back home and slept. She was woken up by her mother at 09.30 p.m. and the child was running temperature. After a lot of persuasion, the victim child informed her mother about the incident. The mother of the victim child went and questioned the sister of the appellant *viz.*, Manjula (A-2) about this incident and the said Manjula (A-2) is said to have abused the parents of the victim child in filthy language and threatened them.

2.3. The mother of the victim child gave a complaint (Ex.P1) before the AWPS, Vridhachalam at 09.00 a.m. on 15.02.2019 and an FIR (Ex.P6) came to be registered in Crime No.2 of 2019 for the offences under



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Sections 5(m) and 6 of the POCSO Act and Section 376-AB, 294(b) and 506(I) IPC as against the appellant and his sister Manjula.

2.4. The investigation was taken up by P.W.6 and she went to the scene of crime and prepared the observation mahazar (Ex.P7) and a rough sketch (Ex.P8), in the presence of P.W.3. The victim child was sent for medical examination to the Dr. (P.W.5) and (P.W.5), on examination of the victim child, gave an opinion that there is a possibility of sexual offence/ assault and the report of (P.W.5) was marked as ExP5.

2.5. The Investigating Officer (P.W.6) recorded the statement of witnesses under Section 161(3) Cr.P.C. and gave a requisition to the learned District Munsif-cum-Judicial Magistrate, Tittagudi, to record the statement of the victim child under Section 164 Cr.P.C. Accordingly, statement of the victim child was recorded on 28.02.2019 under Section 164 Cr.P.C. and the same was also marked as Ex.P10. In the course of the investigation, the appellant was arrested on 15.02.2019 at 13.30 hrs. and remanded to judicial



custody. The appellant was also subjected to medical examination by P.W.4 and the report submitted by P.W.4 was marked as Ex.P4.

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2.6. The I.O. (P.W.6), after completing the investigation, laid the final report before the Court below and the same was taken on file in Spl.S.C.No.29 of 2019. Summons were issued to the accused and on their appearance, copies were served on them under Section 207 Cr.P.C. The Court below framed the following charges against the accused persons:

<i>Rank</i>	<i>Charges</i>
A1	Section 5(m) and 6 of the POCSO Act read with Section 376-AB IPC and 506(I) IPC
A2	Section 294(b) IPC and 506(I) IPC

2.7. The prosecution examined P.W.1 to P.W.6 and marked Ex.P1 to Ex.P11. On completion of the trial, the incriminating materials were put to the accused persons and they were questioned under Section 313(1)(b) Cr.P.C. and they denied the same as false.



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2.8. The Court below, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the prosecution has proved charges beyond reasonable doubts as against the appellant and proceeded to convict and sentence the appellant in the manner stated *supra*. A-2 was acquitted from all the charges.

3. Heard Mr.P.Muthamizh Selvakumar, learned counsel for the appellant and Mr.M.Babu Muthumeeran, learned Additional Public Prosecutor appearing for the respondent State.

4. The main ground that was raised by the learned counsel for the appellant is that a false case has been foisted against the appellant, since P.W.1. *viz.*, the mother of the victim child had an illicit relationship with a person and they were seen together in a compromising position by the appellant and hence, P.W.1 had orchestrated a false complaint against the appellant. It was further urged that the victim child was made to improve



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the case, while giving evidence before the Court and the evidence of the victim child in the Court was invariance from the statement that was recorded from the victim child under Section 164 Cr.P.C.

5. The learned counsel for the appellant further contended that even if the statement recorded from the victim child under Section 164 Cr.P.C. is taken as it is and it is read along with the report given by P.W.5, at the best, it will only constitute an offence of sexual assault under Section 7 of the POCSO Act. This submission was made on the ground that there is absolutely no proof to establish that there was a penetrative sexual assault against the victim child.

6. The learned counsel for the appellant further contended that the incident could not have happened in a public place as was sought to be projected by the prosecution and hence, the entire case of the prosecution is unbelievable. To substantiate this submission, the learned counsel relied upon the evidence of P.W.1 and P.W.6. The learned counsel also questioned



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the maximum sentence that was imposed by the Court below even without considering the age of the appellant.

7. *Per contra*, the learned Additional Public Prosecutor submitted that the evidence of the victim girl was natural and there is no ground to doubt the veracity of the submission made by the victim child. The learned Additional Public Prosecutor further submitted that the evidence of the victim child was corroborated by the evidence of the mother of the victim child (P.W.1) and the Doctor (P.W.5), through whom Ex.P5 was marked. The learned Additional Public Prosecutor also placed reliance upon Section 29 of the POCSO Act, which provides for reverse burden and it is contended that the appellant failed to discharge his burden and hence, the Court has to necessarily presume that the offence has been made out. To substantiate this submission, the learned Additional Public Prosecutor placed reliance upon the judgment of this Court in *Udhyanithi vs. State* [2020 -1-LW(Crl) 95].



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8. We carefully considered the submissions made on either side and the materials available on record. We have also carefully gone through the judgment and order passed by the Court below.

9. The victim child in this case was aged about six years, at the time of the incident and the same is evident from the birth certificate that was marked as Ex.P2 through P.W.1. The date of birth as found in the birth certificate is 01.09.2013 and the incident had taken place on 14.02.2019. the incident took place on 14.02.2019, after the victim child returned from the school at about 04.30 p.m. The victim child examined as P.W.2 as stated in her evidence that she was playing and the appellant took her to a place and made her lie down and kept his hand on her mouth and thereafter, kept his penis in her vagina. The victim child further stated that she was threatened by the appellant, not to reveal about this incident to her mother. The victim child came back home and she slept. During night hours, she felt discomfort and informed her mother about the incident. The complaint



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was given by P.W.1 on 15.02.2019 at about 09.00 a.m. and the express FIR had reached the Court on the same day at 05.45 p.m. Therefore, there is no delay in the lodging of the complaint and the complaint reaching the Court and hence, there is no question of any deliberation for fixing the accused persons.

10. When the victim child's statement was recorded under Section 164 Cr.P.C., she has stated about the incident almost in the same manner, in which, she deposed before the Court. The victim child did not give any description as to how the sexual assault took place when her statement was recorded under Section 164 Cr.P.C. and that by itself, cannot lead to a conclusion that the victim child had improved her version, while deposing before the Court. The victim child was hardly aged about 6 years and she did not possess the maturity to improve upon her statement and particularly when it involved a sexual assault. The victim child had perfectly identified the appellant and had also stated about the incident in a very natural way, while recording the statement under Section 164 Cr.P.C. as well as when she



was examined before the Court. The evidence of the victim child was not discredited, during the cross-examination.

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11. It will be apposite to take note of the judgment of the Apex Court in *State of Punjab v. Gurmit Singh (1996 SCC Crl. 316)* in this regard. The Apex Court has cautioned that in cases involving sexual molestation, it is the duty of the Court to deal it with utmost sensitivity, hence minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Insofar as the appreciation of evidence of the prosecutrix is concerned, it was held as follows:

"8. ... The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no



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requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self-inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable."

12. The testimony of the victim child inspires the confidence of this Court and is found to be reliable and it is not necessary for this Court to even look for corroboration.

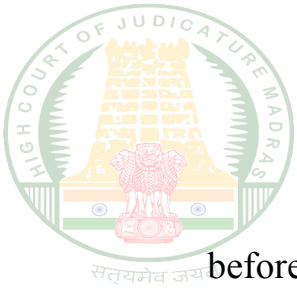
13. The evidence of the victim child has been corroborated by her mother, who was examined as P.W.1. She has stated that the victim child told her about the incident on 14.02.2019 during the night hours. P.W.1 has



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given the complaint (Ex.P1), within a reasonable time and the express FIR has also reached the Court on the very same day *i.e.*, on 15.02.2019. The evidence of the victim child is further corroborated by the evidence of P.W.5, the Doctor, who examined the victim child on 15.02.2019 at 05.20 p.m. Ex.P5 is the report of that was prepared by the Doctor and the complaint of the victim child that has been recorded by the victim child and her mother. On examination, P.W.5 found the hymen in tact and there were no apparent signs of bloodstain or injuries in and around the vagina. An opinion has been given to the effect that there was reddishness over the *genitalia* and that there is a possibility of consensual offence committed against the victim child.

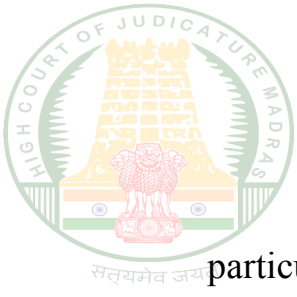
14. The learned counsel for the appellant submitted that there are absolutely no signs of penetrative sexual assault and at the best, the report only shows that there could have been a sexual assault. We are not in agreement with this submission made by the learned counsel for the appellant. The victim child has described the incident, when she deposed



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before the Court and she has specifically stated that the appellant had placed his penis over the vagina of the victim child. Section 3 of the POCSO Act explains penetrative sexual assault and Section 3(a) of the POCSO Act makes it clear that there is no requirement that the penis should have completely penetrated the vagina. Hence, sexual assault as described by the victim child clearly satisfies the requirement under Section 3(a) of the POCSO Act.

15. Section 7 of the POCSO Act speaks about touching the various parts of the body of a child. The purport of this provision can only be understood as touching with the hands. The learned counsel for the appellant attempted to argue that since there is no evidence of penetration, the penis of the appellant had only touched the vagina of the victim child and hence, it only constitutes an offence of sexual assault under Section 7 of the POCSO Act. The interpretation that is attempted to be given by the learned counsel for the appellant goes beyond the scope of Section 7 of the POCSO Act. Insofar as the penetrative sexual assault is concerned,



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particularly when it involves a child, the Court has to necessarily examine the manner in which, the incident is explained by the child and also consider the report of the Doctor, who examined the child. The victim child will have no idea about a sexual assault and it will be a very terrifying experience for a child, who will only get an impression that someone is trying to physically assault her. Hence, from the perspective of a child, a sexual assault will be understood at that age, only as a physical assault like hitting or pinching. Therefore, the description about the incident assumes a lot of significance for the Court to come to a conclusion as to whether there was penetrative sexual assault in a given case. In the instant case, going by the description given by the victim child about the incident and carefully considering the evidence of P.W.5 and the medical report marked as Ex.P5, we are convinced that the victim child was subjected to penetrative sexual assault.

16. The victim child was six years old at the time of incident and hence, the offence of aggressive penetrative sexual assault is clearly



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established under Section 5(m) of the POCSO Act, which is punishable under Section 6 of the POCSO Act.

17. The learned counsel for the appellant questioned the motive of P.W.1 as if she had lodged a false complaint against the appellant. To substantiate the same, the learned counsel drew our attention to the reply given by the appellant when he was questioned under Section 313(1)(b) Cr.P.C. We went through the reply given by the appellant and he has stated that he saw P.W.1 and one Selvam indulging in sexual intercourse and he had locked the door of the room from outside. According to the appellant, this was the motive for giving the false complaint against the appellant.

18. The answer given by the appellant, when he was questioned under Section 313(1)(b) Cr.P.C., is only the *ipse dixit* of the appellant. During cross-examination, P.W.1 was not confronted with the specific allegations as was projected while replying at the time of questioning under Section 313(1)(b) Cr.P.C. Hence, there was no occasion for P.W.1 to answer



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the allegations that was made by the appellant. In view of the same, the defence that was attempted to be taken by the appellant, was not proved.

19. The appellant was facing charges for the offences under the POCSO Act. The presumption under Section 29 of the POCSO Act starts from the date when the prosecution for the offence under Section 5(m) of the POCSO Act commenced. It is the duty of the appellant to discharge the reverse burden, failing which, the Court has to necessarily presume that the offence has been committed. In the present case, the appellant has not discharged the burden that was cast up on him under Section 29 of the POCSO Act and hence, the legal presumption is that the prosecution has proved the offence under Section 5(m) of the POCSO Act. Where an enactment provides that an offence shall be presumed, the Court shall regard such offence to have been proved, once the fundamental facts constituting the offence is established, unless and until it is disproved. Hence, apart from the prosecution proving the case against the appellant beyond reasonable doubt, there is also a legal presumption against the appellant that he has committed the offence.



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20. The learned counsel for the appellant also questioned the sentence imposed by the Court below. While imposing the sentence, the Court has to necessarily keep in mind the age of the victim who was hardly 6 years old and the act of that was perpetrated by the appellant, will haunt the victim child through out her life. The appellant should have known the consequences, before he even thought about the treacherous act committed by him and having failed to do so, the appellant has to face the consequences. The Court below has properly applied its mind and imposed life sentence against the appellant and we do not find any ground to interfere with the same. In cases of this nature, punishment should act as a deterrent and such punishment should be imposed within a reasonable time. The special enactment has been brought into force for this specific purpose to effectively handle offences against a child.

21. The upshot of the above discussion leads to the conclusion that the prosecution has established the charges against the appellant and we do



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not find any ground to interfere with the judgment and order passed by the Court below.

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In the result, this Criminal Appeal stands dismissed.

[P.N.P., J.] [N.A.V., J.]

21.12.2022

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To
1. The Sessions Judge
Special Court for POCSO Act Cases
Cuddalore
(Spl.S.C.No.64/2019)

2. The Inspector of Police
All Women Police Station
Virudhachalam Police Station
Cuddalore
(Cr.No.2/2019)

3. The Public Prosecutor
Madras High Court
Chennai

19/20



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P.N.PRAKASH, J.
AND
N.ANAND VENKATESH, J.

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