

Ashokan vs State of Kerala

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Court : Kerala

Decided On : May-31-2023

Judge : Honourable Mrs. Justice Mary Joseph

Appeal No. : CRL.A/318/2020

Appellant : Ashokan

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE MARY JOSEPH
WEDNESDAY, THE 31ST DAY OF MAY 2023 / 10TH JYAISHTA, 1945
CRL.A NO. 318 OF 2020 AGAINST THE JUDGMENT DATED
24.05.2018 IN SC NO.389/2017 OF SPECIAL COURT FOR THE TRIAL
OF OFFENCES UNDER POCSO ACT, THALASSERY

APPELLANT/ACCUSED: ASOKAN, S/O RAMASWAMY, AGED 57
YEARS, C-395/18, CENTRAL PRISON, KANNUR BY ADV.SMT.
M.L.REMYA RESPONDENT/COMPLAINANT: STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR SMT.SEENA C. ADV
SMT.AMBIKA DEVI S, SPL.GOVERNMENT PLEADER, ATROCITIES
AGAINST WOMEN AND CHILDREN AND WELFARE OF WOMEN AND

CHILDREN THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 31.05.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -:2:-

JUDGMENT

Dated this the 31st day of May, 2023 The appeal on hand is preferred against a judgment passed by Special Court for the Trial of Offences Under POCSO Act, Thalassery (for short the court below) in SC No.389/2017. The

judgment assailed was passed on 24.05.2018. SC No.389/2017

was originated from crime No.25/2017 of Mayyil Police station registered against the appellant herein for offences punishable under Sections 3(a) read with Section 4 and Section 5(m) read with Section 6 and Section 11 (iii) read with section 12 of the Protection of Children from Sexual Offences Act, 2012 (for short the POCSO Act).

2. Accused was found guilty by the court below for offences punishable under Section 3(a) read with Section 4 and Section 5(m) read with Section 6 of the POCSO Act. He was sentenced to undergo rigorous imprisonment for ten years and to -:3:- pay a fine of `25,000/- under Section 3(a) read with Section 4 of POCSO Act and in default of payment of fine, to undergo rigorous

imprisonment for a further period of six months. He was also convicted and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of `25,000/- under Section 5(m) read with Section 6 of the POCSO Act and in default of payment of fine, to undergo rigorous imprisonment for a further period of six months. The substantive sentences were ordered to run concurrently. The appellant was also granted the benefit of set off. Fine amount on realisation was directed to be deposited in a Nationalised Bank in the name of PW2, who is the minor victim till the attainment of his age of majority.

3. The accused was not found guilty for the offence

under Section 11(iii) read with Section 12 of the POCSO Act and was acquitted under Section 235(1) of the Code of Criminal Procedure, 1973 (for short the Cr.P.C.).

4. Aggrieved by the finding of guilt and the order of conviction and sentence imposed, the sole accused in the case has approached this Court in the Appeal on hand. -:4:-

5. For the sake of convenience, the parties to this appeal will hereinafter be referred to as the accused and the prosecution respectively.

6. The factual milieu of the case on hand are to the following effect: The victim is a minor boy aged 6 years. He alongwith his

mother were residing at a building named Aboobacker quarters at a place called Kannadiparamba. On 30.01.2017, at 4.45 p.m. the accused allegedly showed obscene pictures to the victim in his mobile phone and thereafter penetrated his penis into the mouth of the victim and thus committed the aforementioned offences. FIS was lodged by the mother of the victim before Mayyil Police Station and that led to the registration of crime

No.25/2017. Investigation was conducted in the crime so registered and concluding the same, a final report was filed before the court below. Accused who was then under judicial custody was produced before the court below. Legal aid was provided to him by the court on a request being made by him. A counsel was appointed for him at the expense of the State.

-:5:- Copies of all relevant records proposed to be relied on by the prosecution were also furnished to the accused.

7. After a preliminary hearing of the learned Special

Public Prosecutor and the learned counsel for the defence, charge was framed against the accused under Section 3(a) read with Section 4, Section 5 (m) read with Section 6 and Section 11(iii) read with Section 12 of the POCSO Act. Charge was read over and explained to the accused. He pleaded not guilty and faced trial.

8. On the side of the prosecution, PWs 1 to 13 were

examined and Exts.P1 to P13 and MO1 were marked. On closure of the prosecution evidence, the accused was questioned under Section 313 (1)(b) Cr.P.C. with reference to the incriminating circumstances brought out by the prosecution during trial. The accused denied all those put to him and maintained a stand of innocence. Both the learned special public prosecutor and the learned counsel for the defence were heard under Section 232 Cr.P.C. Having failed to find any ground to record an order of acquittal, the accused was asked to enter on his defence. The -:6:- accused did not adduce any evidence. The learned special public prosecutor as well as the learned defence counsel were heard then and the court below arrived at a finding of guilt against the accused for offences under Section 3(a) read with Section 4 and Section 5 (m) read with Section 6 of the POCSO Act.

9. In the appeal on hand also a counsel was appointed on

State Brief to argue on his behalf. First and foremost argument of the learned counsel was that the case of the prosecution is a totally false one foisted against the accused by PW3 and PW4. According to her, PW3 is a neighbour of the victim and the information about the incident was given by her to the mother of the victim. After getting information, the mother lodged the FIR and that led to the investigation and culminated in laying the

final report against the accused. According to her, PW3 was in inimical terms with the accused and she does not like the stay of the accused in the quarters as her neighbour and therefore raised false allegations and caused the mother of the victim to lodge the FIR against him. PW4 was a student aged 18 years and the version tendered also discloses some dislike for her -:7:- against the accused and his stay at the nearby quarters. According to the learned counsel, the court below failed to appreciate the above aspects in the evidence of PW3 and PW4.

10. The mother of the victim was examined as PW1. She

lodged the FIS based on the information obtained by her from PW3 and PW4. Therefore, what have been spoken by her while lodging FIS was purely based on her hearsay information.

11. The minor boy was examined by the court below on being convinced of his competency to depose in a voir dire test. He deposed as PW2. The evidence tendered by him was scrutinised deeply. He deposed about the acts committed by the accused on him. FIS was also laid by the mother of the victim without any delay.

12. PW2 has deposed in tune with the prosecution case.

The lengthy cross examination by the defence did not bring any circumstances to disbelieve his version. PW3 and PW4 deposed to the extent the incident was seen by them. The defence has not projected a case that PW1 has some ill feeling or dislike against the accused. True that, the dislike of PW3 and PW4 -:8:- against the stay of the accused as their neighbour in the quarters was brought to light in evidence during cross examination. But it is difficult to believe that PW1 the mother of the victim would join them to victimise her son in the alleged incident, having serious repercussions in his life.

13. When the victim, who has been established as a

competent witness, deposed precisely about all acts to which the accused had subjected him, the court need not have to look for corroboration. Court is justified in relying on his solitary version.

14. In Shaju @ Shaju V. State of Kerala and Another [2022 (5) KHC 663] relied on by the learned Public Prosecutor, a Division Bench of this Court has held that the version of the victim, if found truthful, reliable and fully acceptable, even without any corroboration, the court can arrive at a finding of

guilt of the accused. In the case on hand as already stated, the testimony of the victim who was a minor boy studying in 8 th standard at the time of commission of the alleged acts was found truthful, reliable and fully acceptable. -:9:-

15. The version of PW2 corroborates with that spoken by

PW3 and PW4. In the nature of the acts spoken as committed by the accused, there is no scope for any medical evidence to occur. The version of the victim is sufficient to attract penetrative sexual

assault as provided under Section 3 of the POCSO Act. The victim being a boy aged 6 years, the acts established by the prosecution as committed on him, would amount to aggravated penetrative sexual assault under Section 5 of the POCSO Act. Evidence led in the case unequivocally establish the crime having been committed by the accused on the victim. This Court finds no reason to interfere with the judgment assailed.

In the result, Criminal Appeal is dismissed. Sd/- MARY JOSEPH, JUDGE. MJL

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