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Crl.A.No.1134 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.06.2023

PRONOUNCED ON: 28.06.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.A.No.1134 of 2022
and
Crl.M.P.No.6185 of 2023

Kannan

...
Vs.

Appellant

The Inspector of Police,
All Women Police Station,
Ariyalur,
Crime No.21 of 2020

...

Respondent

PRAYER: This Criminal Appeal has been filed under Section 374 (2) of Code of Criminal Procedure to set aside the judgment and sentence passed in Spl.S.C.No.2 of 2021 dated 28.07.2022 on the file of the Fast Track Mahila Court, Ariyalur.

For Appellant : Mr.V.Illanchezian

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor



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JUDGMENT

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Challenging the impugned judgment dated 28.07.2022 passed in Spl.S.C.No.2 of 2021 by the Fast Track Mahila Court, Ariyalur, the present criminal appeal has been filed.

2.The case of the prosecution is that the appellant is the father of the victim child. The appellant had misbehaved with his child whenever she was alone in the house, in this regard, there was a dispute between the appellant and his wife PW2, who is the mother of the child. Thereafter, on 27.11.2020 at 3.30 am. the appellant misbehaved with the child, on seeing the same, his wife PW2 questioned, for which, the appellant attacked the PW1 to PW3, who are the victim child, his wife PW2, and his father-in-law PW3. Hence, the complaint has been given. After receiving the complaint, the respondent police investigated the case and filed the charge sheet against the appellant under Section 10 of the POCSO Act and sections 354A(2), 323 & 498A IPC and the same was taken on file in Spl.S.C.No.2 of 2021 on the file of the Fast Track Mahila Court, Ariyalur.



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PW1 to 10 and marked nine documents as Exs.P1 to 9 and no material object has been produced and marked Ex.C1 the victim child statement under Section 164(5) Cr.P.C. On the conclusion of the prosecution evidence, the accused was examined under Section 313 Cr.P.C qua the incriminating evidence tendered against him by the prosecution witnesses and the accused had denied the same. According to the accused, he had not committed the offences levelled against him. No oral and documentary evidence has been adduced by the accused. No Material Object has been marked.

4. On an appreciation of the materials placed on record and the submissions made by the respective parties, the learned Sessions Judge, Fast Track Court, Ariyalur, found the appellant not guilty and acquitted him against the offence under Section 323 IPC and found the appellant as guilty under Sections 10 of POSCO Act, 354A(2) and 498(A) IPC and convicted and sentence the appellant to undergo 7 years rigorous



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imprisonment for the offence under Section 10 of POSCO Act and imposed a fine of Rs.25,000/- in default to undergo one year simple imprisonment and sentenced to undergo two years rigorous imprisonment for the offence under Section 498 (A) IPC and imposed a fine of Rs.5,000/- in default to undergo three months simple imprisonment and run the sentence concurrently. Aggrieved by this judgment of conviction, the appellant/accused filed this criminal appeal.

5.The learned counsel for the appellant/accused submitted that the judgment and conviction of the trial Court is against law and probabilities of the evidence on record. The prosecution failed to prove the charge against the accused person. The complainant gave two complaints but one complaint was produced before the Court and another one was suppressed. According to the PW1 victim child, the occurrence took place on 28.11.2020 but in the complaint, it is mentioned that the occurrence took place on 27.11.2020. There is enmity between the appellant/accused and his wife PW2. There is a discrepancy in the evidence of the victim girl and



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his mother PW2. The trial Court failed to consider the fact that PW2, who is the mother of victim girl and wife of the appellant/accused, led an immoral life since he questioned, the case had been falsely given by his wife PW2 with the help of daughter. The trial Court overlooked this fact and without properly appreciating found guilty and convicted. There is no evidence to support the charge, therefore, the accused has to be acquitted and thus, pleaded to set aside the impugned judgment and acquit the appellant/accused.

6.The learned Additional Public Prosecutor appearing for the respondent submitted that the respondent police prosecuted the appellant/accused for having committed offences punishable under Sections 10 of the POCSO Act and sections 354A(2), 323 & 498A IPC and the prosecution examined ten witnesses and marked 9 documents. PW1 the victim girl and her mother PW2 deposed clearly about the sexual assault made by the appellant/accused, who is the father of PW1 victim girl and there is no reason to disbelieve the evidence of victim girl and her mother and there is no ground to acquit the appellant/accused and charge is proved



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by the prosecution. The trial Court rightly found guilty and convicted and there is no reason to interfere with the findings of the trial Court and pleaded to dismiss.

7.I have considered the matter in the light of the submissions made by the learned counsel for the appellant/accused as well as the learned counsel for the respondent and perused the materials available on record.

8.On perusal of the records, it is seen that in this case, father is the accused. The allegation is that he committed a sexual offence towards his daughter PW1. PW1 victim girl is aged about 16, in her evidence before the Court stated that while she was alone in her house, her father pulled her chest and had torn her dress, at the time, her brother came to the house and prevented his father. His father pushed him and he fell down, at the time, her mother PW2 also entered the house. PW2 enquired about the incident, for that, he assaulted her mother. On the same day, while she was sleeping, the appellant/accused laid down upon her. On seeing that her mother PW2 shouted thereafter they went to her grandfather and grandmother house i.e.



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PW3 & PW4. After few days, while she was sleeping in the house at about 3.30 a.m. the father again sexually assaulted her, at that time, her brother preventing him and he assaulted his brother, after that, it was informed to the victim girl's grandfather and grandmother, they came to the house and enquired about the incident, the appellant/accused bite her grandfather PW3. On the next day, she went to the Police station and gave a complaint Ex.P1 and also gave 164 (5) Cr.P.C statement Ex.C1 before the learned Judge.

9. Further, it is noticed that PW5 Dr. Malathi examined the victim child and found no external injuries on her body and also found no injury on her private parts and also found the victim child had not lost her virginity. In this regard, Doctor PW5 Evidence runs as follows:

“நான் தற்பொழுது அரியலூர் மாவட்டம், அரியலூர் அரசு மருத்துவமனையில் மருத்துவராக பணியாற்றுகிறேன். கடந்த 30.11.2020ம் தேதி நான் மேற்படி பணியிலிருந்தபோது அரியலூர் அனைத்து மகளிர் காவல் நிலைய குற்ற எண்.21/2020ல் சம்பந்தப்பட்ட சிறுமிக்கு மருத்துவ பரிசோதனை செய்யவேண்டுமென மேற்படி காவல்



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நிலைய ஆய்வாளர் அளித்த மருத்துவ நமுனாவின் அடிப்படையில் அவரது தாயாரின் சம்மதம் பெற்று மேற்படி சிறுமியை மருத்துவ பரிசோதனை செய்தேன். அவரை விசாரிக்க அவருடைய தகப்பனார் 28.11.2020ம் தேதி மதியம் 03.30 மணிக்கு வீட்டிலிருக்கும்போது தவறாக நடந்துபொண்டதாகக் கூறினார். அவரை பரிசோதிக்க வெளிக் காயங்கள் ஏதமில்லை. உள்஁றுப்புகளிலும். அந்தரங்க உறுப்புகளிலும் காயங்கள் ஏதமில்லை. மார்பகத்தில் வலி இருப்பதாகக் கூறினார். அவரது பரிசோதனையின் முடிவில் சிறுமி கன்னித்தன்மை இழக்கவில்லை என்றும், பிறப்புறுப்பில் காயங்கள் இல்லை என்றும் கருத்துக்கூறி சான்று வழங்கினேன். சிறுமிக்கான புறநோயாளிச்சீட்டு அ.சா.ஆ.2 மருத்துவரின் கருத்துரை அ.சா.அ.3. ஆய்வாளர் என்னை விசாரித்தார்கள்”

10.Further, I have gone through the evidence of PW2 mother of the victim child. She deposed about the dispute between her and the appellant/accused and deposed that the appellant/accused sexually misbehaved with her daughter and she admitted that a divorce case is pending before the Family Court. During the cross, she deposed that she gave a complaint at the police station on 27.11.2020. On Verification of material records, it is seen that a complaint has been given on 30.11.2020



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and a case has been registered in crime No.21 of 2020. There is no explanation for giving a complaint after three days. FIR Ex.P7 reveals that the complaint was given by PW2 Mahalakshmi. But the victim girl deposed before the Court during the cross examination that she gave a complaint to the police on the date of occurrence itself and her evidence runs as follows:

”பாட்டி வீட்டில் சம்பவம் நடந்த
அன்றே மகளிர் ஸ்டேஷனுக்கு
சென்றுவிட்டோம். அன்றைய தினம்
புகாரினை நான்தான் எழுதிக்கொடுத்தேன்.
நடந்த விபரங்கள் அனைத்தினையும் அந்த
புகாரில் எழுதிக்கொடுத்தேன்.”

If it is true the complaint was not produced before the Court by the prosecution, the complaint available on record is given by the mother of the victim girl Mahalakshmi PW2. The complaint given by the victim girl was not brought on record, it seems that the police suppressed the complaint given by the victim girl, it goes to the root of the prosecution case. According to the prosecution, the appellant/accused bit PW3 Kaliyaperumal, while he enquired about the incident but there is no



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medical evidence to show that PW3 was sustained by any bite injuries. It also creates doubt about the prosecution case.

11. On perusal of the prosecution evidence, the victim child statement as to sexual assault was not supported by the medical evidence so it is unsafe to act upon the evidence of the victim child. Further, it is to be noted that the victim child deposed before the Court at the time of occurrence, all the time her brother was present but the prosecution failed to examine him before the trial Court, it also raises a doubt about the prosecution story and the prosecution has not proved the case beyond the reasonable doubt. The prosecution must give satisfactory proof that the offence has been committed by the appellant/accused but in this case, it is absent the three days delay in lodging the complaint about the incident coupled with the absence of any external and internal injuries upon the private part of the victim child and she did not lose her virginity and the medical evidence is not in support of the prosecution case. Therefore, where there is an element of genuine doubt then, there must be an acquittal. A moral conviction regarding the guilt of an individual has no



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place in criminal jurisprudence. Since the prosecution failed to prove the charges, the appellant/accused is entitled for the benefit of doubt.

Therefore, the judgment of the trial Court is unsustainable and the same has to be set aside. By granting the benefit of doubt, acquitted the appellant/accused from all the charges.

12.In the result, the criminal appeal is allowed and the conviction and sentence dated 28.07.2022 passed in Spl.S.C.No.2 of 2021 by the Sessions Judge, Fast Track Mahila Court, Ariyalur, is hereby set aside and the appellant/accused is acquitted from all the charges. Fine amount, if any, paid by the appellant/accused, is ordered to be refunded to the appellant/accused. Consequently, the connected miscellaneous petition is closed.

Index: Yes/No
Internet: Yes/No
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28.06.2023



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To
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- 1.The Fast Track Mahila Court,
Ariyalur.
- 2.The Inspector of Police,
All Women Police Station,
Ariyalur,
Crime No.21 of 2020.
- 3.The Superintendent, Central Prison, Trichy.
- 4.The Public Prosecutor
High Court, Madras.



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V.SIVAGNANAM, J.

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Pre-delivery Judgement in
Crl.A.No.1134 of 2022
and
Crl.M.P.No.6185 of 2023

28.06.2023