



WEB COPY

Crl.A(MD)No.308 of 2016



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 22.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.A.(MD)No.308 of 2016

S.Vincent

... Appellant/Sole Accused

VS.

The State of Tamil Nadu,
Represented by,
The Inspector of Police,
All Women Police Station,
Kanyakumari,
Kanyakumari District.
(Crime No.18 of 2003).

... Respondent/Complainant

PRAYER : Criminal Appeal has been filed under Section 374 of Cr.P.C., to call for the records of the Judgment in S.C.No.126 of 2013 on the file of the learned Sessions Judge (Fast Track Mahila Court), Kanyakumari at Nagercoil, dated 28.06.2016 in Crime No.18 of 2013 on the file of the respondent police and set aside the same and acquit the appellant.

For Appellant : Mr.T.Seeni Syed Amma

For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor



WEB COPY

Crl.A(MD)No.308 of 2016



JUDGMENT

This Criminal Appeal has been preferred as against the Judgment and conviction made in S.C.No.126 of 2013, dated 28.06.2016 on the file of the learned Sessions Judge (Fast Track Mahila Court), Kanyakumari at Nagercoil, thereby convicted the appellant for the offence under Section 4 of the Protection of Children from Sexual Offences Act.

2.The case of the prosecution is that on 08.06.2013 at about 07.30 p.m., the victim went to P.W.3's house and while she was returning from there, the appellant forcibly took the victim to Udaimaram situated near Apollo Teacher's house and removed her undergarment and inserted his finger into her vagina and thereby caused pain to her. Hence, the complaint.

3.Based on the complaint, the respondent registered the F.I.R in Crime No.18 of 2013 for the offences punishable under Section 377 of I.P.C and also under Section 4 of the Protection of Children from Sexual Offences Act. After completion of the investigation, the respondent filed a final



report and the same has been taken cognizance by the trial Court for the offence under Section 4 of the Protection of Children from Sexual Offences Act in S.C.No.126 of 2013 on the file of the learned Sessions Judge (Fast Track Mahila Court), Kanyakumari at Nagercoil.

4.On the side of the prosecution, they had examined P.W.1 to P.W.8 and marked Exs.P.1 to P.7 and on the side of the accused, no one was examined and no documents were marked.

5.On perusal of both oral and documentary evidence, the trial Court found the accused guilty for the offence punishable under Section 4 of the Protection of Children from Sexual Offences Act and sentenced him to undergo 10 years Rigorous Imprisonment and also imposed a fine of Rs.10,000/-, in default, to undergo one year Rigorous Imprisonment. Aggrieved by the same, the present Appeal.



WEB COPY

6.The learned counsel appearing for the appellant would submit that the prosecution failed to prove the charge as against the appellant in the manner known to law. The statement of the victim girl was recorded under Section 164 of Cr.P.C. Unfortunately, the victim child died after two years. Even then, the prosecution failed to mark the statement recorded under Section 164 of Cr.P.C through the concerned Magistrate, who recorded her statement. The Investigating Officer was examined as P.W.8. According to her, the victim was brought to the Hospital for medical examination after one week from the date of occurrence and the medical records were not marked as material object. P.W.1 and P.W.2 are hearsay witnesses. P.W.3 and P.W.4 turned hostile. Therefore, no witness supported the case of the prosecution in order to bring the charge under Section 4 of the Protection of Children from Sexual Offences Act. The Doctor, who examined the victim girl, was examined as P.W.6. She categorically deposed that the victim girl did not sustain any injury on her vagina. She also issued a wound certificate, which was marked as Ex.P.

3. It was also not supported the case of the prosecution, even



then, the Court below mechanically convicted the appellant. It revealed that there is no blood injury either in the vagina or anus of the victim. She was subjected to medical examination on the very next day of the date of occurrence. If at all anything happened on 08.06.2013, it would have been feasible on 09.06.2013. Therefore, she prayed for acquittal of the appellant from the charge under Section 4 of the Protection of Children from Sexual Offences Act.

7.Per contra, the learned Additional Public Prosecutor appearing for the respondent would submit that the victim was aged only 6 years at the time of occurrence. Though the statement recorded under Section 164 of Cr.P.C was not marked before the trial Court, her statement was recorded by the learned Magistrate and it is very clear that the victim child was subjected to penetrative sexual assault by the appellant. It is also duly corroborated by the evidence of P.W.1 and P.W.2. Thereafter, the victim child was affected with jaundice and died. Therefore, the prosecution was not able to examine the victim child. Hence, it is not fatal to the case of the prosecution and the trial Court rightly convicted the



appellant and the same does not warrant any interference by this Court.

WEB COPY

8.Heard the learned counsel appearing on either side and perused the materials available on record.

9.The case of the prosecution is that the victim child was aged about 6 years old at the time of the alleged occurrence. On 08.06.2013 around 07.30 p.m., when the victim and her cousin went to the house of P.W.3 in order to hand over the fish, the appellant forcibly had taken the victim to a remote place and after removing her undergarment inserted his finger into her vagina and thereby caused pain to her. Hence, the appellant was charged for the offence punishable under Section 4 of the Protection of Children from Sexual Offences Act. It was informed to her mother. Her mother was examined as P.W.1. On the next day, namely on 09.06.2013, she was subjected to the medical examination. P.W.6 had examined the victim.



WEB COPY

10.The deposition of the victim is extracted hereunder:-

□நான் விசாரித்த போது குழந்தையின் தாயார் தன்னுடைய குழந்தை பாலியல் பலாத்காரத்திற்கு உட்பட்டிருந்ததாக சொன்னார். அந்த குழந்தையை நான் பரிசோதனை செய்து பார்த்த போது 6 வயதிற்கான வளர்ச்சி அடைந்திருந்தது. குழந்தைக்கு குறிப்பாக பெண்ணுறுப்பில் காயங்கள் காணப்படவில்லை. அந்த குழந்தைக்கு உடலுறவு நடந்ததற்கான சாத்தியம் இல்லை. ஆனால் பாலியல் பலாத்காரம் நடந்திருக்காது என்று கருத்து கூறியுள்ளேன். நான் வழங்கிய காயச்சான்று அ.சா.ஆ.3.□

11.On perusal of the wound certificate issued by P.W.6, which was marked as Ex.P.3 revealed that "vagina appears normal. No scratch marks or abrasion or any external injury. Hymen appears normal. No other external injuries in any part of the body. Since no evidence of trauma to external genitalia found since vagina is found intact. No further chemical examination proceeded". P.W.6 opined finally that the "possibility of sexual intercourse clearly ruled out. The



possibility of sexual abuse could not be ruled out”.

Therefore, the medical evidence did not support the case of the prosecution.

12.Further, the statement of the victim girl was examined under Section 164 of Cr.P.C by the learned Judicial Magistrate No.2, Nagercoil. However, it was not marked by the prosecution through the learned Magistrate or through the Investigating Officer. Though the victim died subsequently, during trial, her statement recorded under Section 164 of Cr.P.C ought to have been marked in order to bring the charge to home. The prosecution failed to mark the same and it is fatal to the case of the prosecution. Further, P.W.1 and P.W.2 are only hearsay witnesses. P.W.3 and P.W.4 also turned hostile. Therefore, the prosecution failed to prove the charge under Section 4 of the Protection of Children from Sexual Offences Act to home and the conviction cannot be sustained as against the appellant.



WEB COPY

13. Accordingly, the order passed in S.C.No.126 of 2013, dated 28.06.2016 on the file of the learned Sessions Judge (Fast Track Mahila Court), Kanyakumari at Nagercoil, is set aside and the Criminal Appeal is allowed. The appellant/Accused is acquitted. Bail bond if any executed by the appellant/Accused shall stand cancelled and a fine amount if paid is ordered to be refunded to the appellant/Accused forthwith.

22.06.2023

NCC : Yes/No
Index: Yes/No
Internet: Yes
ps

To

- 1.The Sessions Judge (Fast Track Mahila Court),
Kanyakumari at Nagercoil.
- 2.The Inspector of Police,
All Women Police Station,
Kanyakumari,
Kanyakumari District.
- 3.The Section Officer,
VR Section,



Madurai Bench of Madras High Court,
Madurai.

WEB COPY

Crl.A(MD)No.308 of 2016





WEB COPY



Crl.A(MD)No.308 of 2016

G.K.ILANTHIRAIYAN , J.

ps

Crl.A.(MD)No.308 of 2016

22.06.2023