



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2024

CORAM

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

Crl.A.No.190 of 2017

Anthony Prabhu @ Prabhu, M/A 32 years ... Appellant/Accused

vs

State by the Inspector of Police,
All Women Police Station, Ambur,
Uthagai,
The Nilgiris (Crime No.05 of 2015) ...
Respondent/Complainant

Prayer: Criminal Appeal is filed under Section 374 of Criminal Procedure Code, to set aside the judgment of the learned Sessions Judge, Mahalir Neethimandaram (FTC), Udhagamandalam, The Nilgiris in Special C.C.No.07 of 2016 dated 11.11.2016 and acquit the appellant herein from the charges.

For Appellan : Mr.T.Shanmugam

For Respondent : Ms.G.V.Kasthuri

Additional Public Prosecutor

JUDGMENT

This criminal appeal is preferred against the conviction and

<https://www.mhc.tn.gov.in> sentence passed by the Mahila Court (FTC), Ooty under Section 5(I) read



with 6 of the Protection of Children from Sexual Offences Act (POCSO Act), 2012.

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Title	Description
Name of the Complaint	Susila (Mother of the Victim 'X')
Name of the Accused	Anthony Prabhu @ Prabhu
Name of the Court and Case Number	The Mahila Court (FTC), Ooty in Spl.C.C.No.07 of 2016 dated 11.11.2016
Case of the Prosecution	The accused committed the offence under Section 5(I) read with Section 6 of the POCSO Act, 2012
Plea of the accused	Not guilty
Finding of the Judge	Accused is convicted under Section 5(I) read with Section 6 of the POCSO Act, 2012 and sentenced to undergo 10 years rigorous imprisonment and to pay fine of Rs.10,000/- in default to undergo one year simple imprisonment and directed the Government to remit Rs.2,00,000/- as compensation from the Victims Assistance Fund as per the Government Gazette dated 14.11.2012 by the District Collector, The Nilgiris to the District Legal Aid Services Committee, The Nilgiris within a period of 30 days from the date of judgment of the lower Court which is payable to the victim girl.



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2. The case of the prosecution is given hereunder:-

i) The 14 years old victim Minor 'X' has been residing at Thoni Bungalow, Rajiv Gandhi Nagar, Forest Gate, Ooty along with her parents.

ii) The accused herein is a resident of Door No.58, Thoni Bungalow, Rajiv Gandhi Nagar, Forest Gate, Ooty, which is straight opposite to the house of the victim.

iii) On 13.11.2015 at about 6.45 a.m, when the minor went to 'Solai' for attending natural call, the accused with the knowledge that the victim minor 'X' who is aged about 14 years, sexually assaulted her and thereby, accused was charged under Section 376 IPC and Section 5 (I) read with Section 6 of the POCSO Act, 2012 by the Ooty Town Police Station (Crime No.5 of 2015 of Ooty Town Police Station).

3. The Mahila Court, Ooty took cognizance of the final report as Special C.C.No.7 of 2016. The documents which were relied upon by the prosecution and the statements of the witnesses were furnished to the accused under Section 208 Cr.P.C.



4. After hearing both sides, on consideration, charge under was Sections 5(l) read with 6 of the POCSO Act, 2012 was framed against the accused. When the accused was questioned, he denied the said charge.

5. To substantiate the charge, on the prosecution side, 16 witnesses were examined. 25 documents and three material objects were marked. On the defence side, two witnesses Pieula (D.W.1) and Irudhaya Raj (D.W.2) were examined.

6. The learned counsel Mr.T.Shanmugam appearing for the appellant/accused vehemently contended that non-examination of father of the victim is fatal to the prosecution case. Though he was said to have been enquired by the police, but his name is not shown in the witnesses list. It is his further contention that as the husband of P.W.1 (Susila) misbehaved with the wife of accused, on the same day in order to thwart the case, husband of P.W.1 has falsely given complaint through his wife against the accused. He would strongly contend that age of the victim was not clearly proved by the prosecution side. He also drew the attention of this Court that Dr.Divya (P.W.8) in her medical examination report (Ex.P10), relating to victim has opined that there is no evidence of recent intercourse, would go to show that the complaint is a false one. It is his further argument that in Ex.P.3 study certificate of the victim, name of the father of victim is mentioned as R.Ganeshan. Belated lodging of complaint



is also fatal to the prosecution case which is not explained properly.

Based on the above said details, the charge under Section 5(I) read with 6 of the Act, framed against the accused has not been proved beyond reasonable doubt by the prosecution side and the trial Court has proceeded on the wrong footing and hence, conviction of the accused may be set aside.

7. Per contra Ms. G.V.Kasthuri, learned Additional Public Prosecutor would strenuously argue that to substantiate the charge against the accused, the evidence of P.W.2 (Victim) has been well corroborated by the evidence of P.W.1 (Susila - Mother of the Victim) coupled with the medical evidence and the relevant certificates/reports are suffice to bring home the guilt of the accused. It has been alleged that as the husband of P.W.1 misbehaved with the wife of accused on the date of occurrence; no crime number is given for the complaint of the accused's wife would go to show that just for the name sake, the allegation is raised in order to weaken the prosecution case.

8. The learned Additional Public Prosecutor drew the attention of this Court that the accused's wife Priya did not lodge complaint against the father of the victim at all.



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9. To buttress her arguments, the following judgment of Hon'ble Supreme Court rendered in *Yuvaprakash Vs. State represented by Inspector of Police reported in 2023 SCC Online 846* was referred to.

10. The evidence of D.W.1 and D.W.2 cannot be believed for the simple reason that no complaint was lodged by the wife of the accused-Priya. It is her final argument that the trial Court has discussed in a proper perspective and gave a finding that the accused is guilty of offence under Section 5(I) read with 6 of the POCSO Act.

11. Meaning for sexual assault under Section 2(i) of the POCSO Act, 2012 is extracted hereunder:-

“Section 2(i) - “Sexual Assault” has the same meaning as assigned to it in Section 7.

Section 7 – Sexual assault – Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other Act with sexual intent which involves physical contact without penetration is said to commit sexual assault.”

12. Sections 5(I) and 6 of the POCSO Act, 2012 is extracted hereunder:-

“Section 5 Aggravated penetrative sexual assault:-



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(I) whoever commits penetrative sexual assault on the child more than once or repeatedly;

Section 6 - Punishment for aggravated penetrative sexual assault:- Whoever, commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine."

13. Child is defined in Section 2(d) of the POCSO Act, 2012

"Section 2(d): Child "means any person below the age of eighteen years"

14. Mr.T.Shanmugam, learned counsel appearing for the appellant/accused would contend that the complaint was lodged belatedly. It is not in dispute that the date of occurrence is 13.11.2015. Ex.P.1 is the complaint. From the endorsement details made by the P.W.12 Sharmila (Police Constable), it appears that the case was registered on 13.11.2015 at about 22.00 hours.

15. It is the evidence of P.W.1 (Mother of Victim) that she immediately sent intimation to her husband, thereafter her husband reached home, she went to the police station along with her husband and



daughter and lodged the complaint. P.W.1 exactly at what time she went to the police station is not elicited during her examination.

16. However, it is evident that when the victim went to her house on 13.11.2015 at about 9.00 a.m she was unwell. It has come on record through the evidence of victim (P.W.2) herself that on the date of occurrence, after attending to her natural call, she went home by 9.00 a.m, she was feeling so tired and after changing her dress, she laid down. When her mother told her to go to school, she was not in a position to get ready in order to go to school. Therefore, in such a situation, after hearing about the incident, any parent would never be in a normal condition. It would take sometime to take a decision whether to approach the police station or not as it involves future of girl/daughter. So in these circumstances, one cannot expect that soon after the not occurrence, the complaint was not lodged would not affect the merits of the case.

17. The next point put forth by the learned counsel for the appellant/accused is that the non-examination of husband of P.W.1 is fatal to the prosecution case. P.W.2 victim is the only ocular witness who speaks about the occurrence. It is the evidence of mother of the victim (P.W.1) that as her daughter was lying on the bed, she told her to go to school, the victim explained to her about the occurrence. In these



circumstances, non-examination of husband of P.W.1 will no way affect the merits of the case and I do not find any force in his arguments.

18. As regards the age of the victim, the study certificate along with birth certificate of the victim is marked as Ex.P.3 issued by the Headmaster, Bethlehem Girls Higher Secondary School, Ooty on 17.11.2015. The date of birth of the victim as per the school records is mentioned as 18.05.2002. The year details is over written. However, the date of birth is written in words. She was studying in IX-D Section during the academic year 2015-2016. P.W.2 (Victim) has also in her statement under 164 Cr.P.C., has stated that she was studying in IX Standard. As per the Ossification test report (Ex.P.12) age of the victim is mentioned as above 15 years and below 17 years of age on the date of examination 19.11.2015 by Dr. A.M.Seeman (P.W.9), Radiologist.

19. When Ex.P.3 Study certificate was marked through the mother of the victim, no question was posed about the veracity of the said document. Among all the witnesses, mother of the child (P.W.1) is the best person to speak about the date of birth of her child. The Hon'ble Supreme Court in *Yuva prakash vs. State* represented by Inspector of Police reported in 2023 SCC Online SC 846 has observed that:



"12. In view of Section 34(1) of the POCSO Act, Section 94 of the JJ Act, 2015 becomes relevant, and applicable. That provision is extracted below:

94. Presumption and determination of age. (1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining -

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any



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other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person."

20. The Hon'ble Supreme Court in *Sanjeev Kumar Gupta Vs. The State of Uttar Pradesh* reported in (2019) 9 SCR 735 has held that:

"Clause (i) of Section 94(2) places the date of birth certificate from the school and the matriculation or equivalent certificate from the concerned examination board in the same category (namely (i) above). In the absence thereof category (ii) provides for obtaining the birth certificate of the corporation, municipal authority or panchayat. It is only in the absence of (i) and (ii) that age determination by means of medical analysis is provided. Section 94 (2)(a)(i) indicates a significant change over the provisions which were contained in Rule 12(3)(a) of the Rules of 2007 made under the Act of 2000. Under Rule 12(3)(a)(i) the matriculation or equivalent certificate was given precedence and it was only in the event of the certificate not being available that the date of birth certificate from the school first attended, could be obtained. In



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Section 94(2)(i) both the date of birth certificate from the school as well as the matriculation or equivalent certificate are placed in the same category.”

21. The Hon'ble Full Bench of the Supreme Court in *Abuzar Hossain @ Gulam Hossain Vs. State of West Bengal* reported in (2012) 9 SCR 224 has held that the burden of proving that someone is juvenile (or below the prescribed age) is upon the person claiming it.

22. Therefore, it is clear that as per Section 94(2) and (3) of the Juvenile Justice (Care and Protection of Children) Act, 2015, the date of birth certificate from the school or matriculation or equivalent certificate issued by the examination board has to be given first preference in the absence of birth certificate issued by the corporation or municipal authority or panchayat. In the absence of these documents, the age of the child has to be determined through the ossification test or any other latest medical age determination test.

23. In this case, in the Study Certificate (Ex.P3), the date of birth is mentioned as 18.05.2002 and her age is mentioned as 13. Victim has stated that at the relevant point of time she was studying at IX standard. No question was posed to P.W.1 (Mother of the victim) as to whether the child failed or in which year or in which age, the child was admitted in the



1st class. Therefore, relying upon Ex.P.3 study certificate, age of the victim is fixed at 13 years and 6 months. Mother of the victim P.W.1 stated that dated of birth of her daughter is 18.05.2002. No question was posed either to P.W.1 or to the victim P.W.2.

24. P.W.1 Susila who is the mother of the victim and P.W.2 is victim Minor 'X'. P.W.3 Sathish Kumar who is the Pastor of the Church is observation mahazar witness (Ex.P 5). P.W.4 Ranjith Kumar who is also Pastor of the Church has to some extent spoken about the occurrence. P.W.5 Babu, Neighbour of the P.W 1 has not supported the prosecution case. P.W.6 Dr.Harihara Subramanian, Medical Officer of Government Hospital, Ooty had seen the victim and issued accident register Ex.P.7. P.W.7 Dr.Karthick Balaji, Medical Officer of Ooty Government Hospital has issued potency certificate for the accused (Ex.P.9). P.W.8 Dr.Divya, Medical Officer of Government Hospital, Ooty has examined the victim and Ex.P.10 Case sheet pertains to the victim. P.W.9 Dr.Seeman, Radiologist who conducted ossification test upon the victim and issued certificate Ex.P.12 wherein the age of the victim is found as above 15 years and below 17 years. P.W.10 Mr.P.Vijaykumar, Scientific Officer has issued Chemical Analysis report Ex.P.14 and Ex.P.15. P.W.11 Ramya is the child counsellor. P.W.12 Sharmila is the Police Constable who registered the



case against the accused on 13.11.2015 in Crime No.5 of 2015 of Ooty All Womens Police Station. P.W.14 to 16 are Investigating Officers.

25. It is the evidence of P.W.1 (Susila/mother of the victim) that on 13.11.2015 as they do not have toilet facility at her residence, her daughter went out to attend natural call by 6.45 a.m. after sometime her daughter did not return home. She had to go for work after leaving her daughter in the school. As search was made around her house and at 'Solai', she could not found out her daughter. At about 9.00 a.m, her daughter came home, after changing her dress she was lying down. When she enquired her daughter, her daughter told her that the accused sexually assaulted her by removing her clothes at Solai. She immediately sent intimation to her husband to come home and proceeded to the police station after arrival of her husband.

26. The victim P.W.2 Ms.'X' in her evidence would state that when she was left alone at her home, accused used to come to her home during the lunch break and he would play game in the cell phone. When she was playing game in the cell phone of her father, the accused used to ring up to her and she used to go to his residence. When she went to the residence of accused as nobody was there at his residence, the accused



told her to remove her clothes and he also removed all his dresses. In her own words,

“எதிரி தன்னுடைய யூரின் போவதை எடுத்து நான் யூரின் போகும் இடத்தில் வைத்து அழுக்குவார், அப்போது எனக்கு வலியாகி நான் கத்துவது போல் இருக்கும் ஆனால் கத்த முடியவில்லை. எதிரி என்னுடைய மார்பகங்களை அழுக்கிவிடுவார். எனக்கு வலியாகிவிடும். துணியை மாற்றிக்கொண்டு வீட்டிற்கு போகும்படி சொல்வார். 14.02.2015 அன்று வேலடைன்ஸ் டே என்று சொல்லி எதிரி என்னை லவ் செய்தாக சொன்னார். அதற்கு அர்த்தம் எனக்கு தெரியவில்லை. இந்த சங்கதிகளை என் அம்மா அப்பாவிடம் சொன்னால் கொன்று விடுவேன் என்று எதிரி அண்ணன் சொன்னார். 13.11.2015 அன்று காலை காலைகடன் கழிப்பதற்கு நான் சோலைக்கு போனேன். நான் போவதை பார்த்து எதிரியும் பின்னாடியே வந்துவிட்டார். அங்கு எதிரி தன்னுடைய யூரின் போவதை எடுத்து நான் யூரின் போகும் இடத்தில் வைத்து அழுக்கினார். இதுபோல் 2 முறை செய்தார். எனக்கு மிகவும் சோர்வாகிவிட்டது. கத்துவது போல் ஆகிவிட்டது ஆனால் கத்த முடியவில்லை. டிரஸ்ஸை போட்டுக்கொண்டு போ என்று அந்த அண்ணன் சொன்னார். எதிரியும் டிரஸ்ஸை போட்டுக்கொண்டு போய்விட்டார். நான் வீட்டிற்கு வந்தவுடன் எனக்கு டயர்டாக இருந்ததால் டிரஸ்ஸை மாற்றிக்கொண்டு படுத்துவிட்டேன். பள்ளிக்கு போவதற்காக என் அம்மா என்னை எழுச்சொன்னார். என்னால் எந்திரிக்க முடியவில்லை. என் அம்மா மிரட்டி கேட்டார், நான் நடந்த எல்லா சங்கதிகளையும் சொன்னேன்.”



27. Statement of the victim under Section 164 Cr.P.C was recorded by the learned Judicial Magistrate, Kotagiri is Ex.P.4. Her 164 statement is extracted hereunder:

“நாங்க வந்துவிட்டு புதுமந்துல இருந்தோம், 20ம் தேதி வெள்ளிக்கிழமை பிரபு என்றவரு வந்து கூப்பிட்டாரு. அங்க பாத்ரும் வசதியில்லை. சோலைக்குதான் போனும். நான் சோலைக்கு போனேன். அப்ப அந்த அண்ணா பைக்கை நிப்பாட்டிட்டு நின்னாங்க. அப்ப இந்த அண்ணா ஏன் இங்கே நின்கிறாங்கன்னு மனசிலே நெனச்சிட்டு நான் கீழே பாத்துட்டே போனேன். அப்ப அந்த அண்ணா வானு கூப்பிட்டாங்க. நான் வரமாட்டேன்னு சொன்னேன் அவங்க கைய பிடிச்சி என்ன சோலைக்குள்ளே இழுத்துட்டு போனாங்க. நா கத்தலாமனு நெனச்சப்ப என்னாலே கத்த முடியலே. அப்ப வந்துட்டு பேசாம வானு அந்த அண்ணா வாயில அடிச்சிட்டாங்க. அப்பற சோலைக்குள்ளே கூட்டிட்டுப் போயிட்டு என்ன கட்டிப்பிடிச்சாரு. என்னை உதட்டிலே கிஸ் பன்னாங்க. டிரஸ்சு கழட்டினாங்க. அங்கே இங்கெல்லாம் கையை வச்சாங்க. அவங்களும் டிரஸ் கழற்றினாங்க. ஏங்கிட்டே தப்பா நடந்துகிட்டாங்க. அப்பறம் வீட்டுக்குபோனு சொன்னாங்க. இத யாருகிட்டேயாவது சொன்னீனா உன்னை கொன்னுடுவேன்னு சொன்னாங்க. அந்த அண்ணா என்னை சோலைக்குள்ளே கூட்டிட்டு போனப்ப நான் எங்க அம்மா அப்பாகிட்டே சொல்லுவேன்னு சொன்னேன். உங்க அம்மா அப்பாகிட்டே சொன்னா உங்க அம்மா அப்பாவையும் கொன்னுடுவேன்னு சொன்னாரு. அப்பறம் நா பேசாம போய் வீட்டுல படுத்துட்டேன். அப்ப மம்மி வந்து ஒன்னும் கேக்கல. எனக்கு நிதானமே இல்லாம இருந்துச்சு. முன்றை



மணிக்குதான் எனக்கு நிதானம் தெளிச்சுச்சு. நான் பார்க்க டயர்ட்டு இருந்ததாலே மம்மி என்ன என்று கேட்டாங்க. அப்பே மம்மிக்கிட்ட சொன்னேன்.”

28. It is the evidence of P.W.3 Sathish Kumar that on 13.11.2015 at about 11.00 p.m., police came to the house of P.W.1 and inspected the house of P.W.1, accused house and 'Solai', and prepared observation mahazar and rough sketch. Wherein, he along with Mariyaxavier attested the same (Ex.P.5).

29. P.W.4 Ranjith Kumar, Pastor of Church would depose that on 13.11.2015, P.W.1 Susila at about 7.00 to 7.30 a.m., was came to his house and told that her daughter was found missing. Despite being searched, victim could not be found. When he was doing prayer at the residence of P.W.1, victim knocked the door and P.W.4 opened the door. He found the victim was looking so tiresome and about to fall on the ground. She was made to lay down on woollen blanket and he went to the wedding function which was going on, opposite to the house of P.W.1.

30. P.W.5 Babu, who was an independent witness did not support the prosecution case and he was treated as hostile witness by the prosecution side.



31. It is the evidence of P.W.6 Dr.Harihara Subramaniam that the victim 'X' was brought to the Ooty Government Hospital on 14.11.2015 in connection with Crime No.5 of 2015 of Ooty All Women Police Station. On enquiry, the victim told her that few days before she was sexually assaulted for several times. Accident Register is Ex.P.7.

32. It is the evidence of P.W.8 Dr.Divya that the victim was brought to her on 14.11.2015, for medical examination as per the reference of Dr.Harihara Subramaniam (P.W.6). No external injury was found on the victim. Swab was received was taken and the result was received as negative. It is her opinion that there is no evidence of recent intercourse. Neonatal Case Sheet of victim (Ex.P.10) has been here was issued by Dr.Divya (P.W.8) wherein it has been recorded that her hyme was not intact.

33. Ossification test was conducted upon the victim by Dr.Seeman as (P.W.9) on 19.11.2015. Dr. Seeman fixed the age of the victim as above 15 and below 17 years (Ex.P.12). It is the evidence of P.W.10 Vijay Kumar, Scientific Officer that the dress of the victim were received and no spermatozoa was deducted in the pubic hair and vaginal smear. It has come was on record through P.W.11 Ramya who was the child counsellor



that she enquired the victim who was produced before her for counselling.

Her report Ex.P.17 is extracted hereunder:-

“அன்று சிறுமி காலை சுமார் 6.45 மணிக்கு காலை கடன் கழிப்பதற்காக “X” கம்பிசோலைக்கு சென்றுள்ளார். சிறுமி சென்று வெகு நேரமாகியும் காணாததால் சிறுமியை தாயும், அண்ணனும் அக்கம்பக்கம் தேடிப்பார்த்த போது சிறுமி சோர்ந்து போன நிலையில் 9.00 மணிக்கு வீடு திரும்பி சோர்வாக படுத்துள்ளாள். சிறுமியின் தாய் பள்ளிக்கு செல்ல தயார் ஆகம்படி எழுப்பியும் எழ முடியாமல் படுத்திருந்த சிறுமியிடம் அதட்டிக் கேட்டபோது பக்கத்து வீட்டில் வசிக்கும் அந்தோணி பிரபு என்பவருடன் பிப்ரவரி 2015 முதல் பழகி வந்ததாகவும், அவரைக் காதலிப்பதாகவும் கூறியுள்ளாள். நேரிலும், தொலைபேசியிலும் அடிக்கடி பேசி வந்ததாகவும், பிப்ரவரி 14ஆம் தேதி அவனது வீட்டில் யாரும் இல்லாத போது தன்னை கட்டாயப்படுத்தி உடலுறவு கொண்டதாகவும் கூறினாள். சுமார் பத்து முறைக்கு மேல் பாலியல் வன்கொடுமைக்கு உட்பட்டதாக கூறினாள்.”

34. P.W.14 to P.W.16 are the investigating officers. P.W.14 Vinyagam, Investigating Officer took up case for investigation and proceeded to the scene of occurrence. In the presence of one Mariyaxavier and Sathish Kumar (P.W.3) inspected the scene of occurrence and prepared observation mahazar and rough sketch. He examined Susila

(P.W.1), Victim (P.W.2), David, Mariyaxavier, Sathish, Ranjith Kumar



(P.W.4), Babu (P.W.5) and recorded their statements. The victim was sent to the Saras Trust with the women police. Accused was arrested on 14.11.2015 at about 6.00 a.m., near the poultry farm and his voluntary confession was recorded in the presence of the above said two witnesses and he was sent to the Judicial Magistrate. The victim was sent for medical examination as well as for giving statement under Section 164 Cr.P.C.

35. Thereafter, P.W.15 Ms.Thangam took up the case for investigation and as per the Order of the Court, the victim was taken to the hospital on 19.11.2015 and produced before the Radiologist (Dr.Seeman). Accused was subjected to medical examination. The statement under Section 164 Cr.P.C of the victim was recorded by the learned Judicial Magistrate, Kothagiri. Medical test was conducted upon the accused as well as the victim on 26.11.2015.

36. It is the evidence of P.W.16 Ms. P. Parvathi, Investigating Officer that as part of investigation, she examined the witnesses Susila (P.W.1), Victim 'X' (P.W.2), David, Mariyaxavier, Sathish Kumar (P.W.3), Ranjith Kumar (P.W.4) and Babu (P.W.5). She has examined Dr.Harihara Subramanian (P.W.6), Dr.Karthick Balaji (P.W.7), Dr.Divya (P.W.8), Dr.Seeman (P.W.9), Mr.Vijay Kumar (Scientific Officer) (P.W.10) and



Ms.Ramya, District Children Welfare Committee Member (P.W.11) and recorded their statements. She altered the provisions from Sections 3, 4 and 8 of the POCSO act, 2012 to Section 5(I) read with Section 6 of the POCSO Act and filed final report under Section 376 IPC and under Section 5(I) Section read with Section 6 of the POCSO Act, 2012.

37. A suggestion is posed to the material witnesses during cross examination that the husband of P.W.1 (Susila - Mother of the victim) misbehaved with the wife of the accused Priya. In order to escape from the same, P.W.1 husband through his wife has lodged a false complaint. P.W.1 who is the mother of teenage girl has given complaint that her daughter was ravished by the accused. No mother would dare to lodge such a complaint at the request of her husband that her minor daughter is sexually assaulted. The suggestion put forth by the accused is not acceptable for a moment.

38. At relevant point of time, the accused was aged about 31 years. Age of the victim is fixed at 13 years as per study certificate / Ex P3.

39. From the evidence of P.W.2 victim that the accused with the intention to gain the confidence of the victim and thereafter started to sexually assaulted her by calling her to his residence when he was alone.



The evidence of victim shows that on his call she used to go to his residence and he sexually assaulted her. Her innocence was being misused by the accused. When the accused was questioned under Section 313 Cr.P.C. he has answered that false case is foisted against him as there is a family dispute between the defacto complainant and himself.

40. In this circumstances, presumption under Section 29 of the POCSO Act, 2012 comes into play. By way of rebuttal, accused has examined two witnesses D.W.1 and D.W.2. It is the evidence D.W.1 Pieula that on 13.11.2015 at about 7.00 a.m. wife of accused was crying and came out from her house followed by David (Husband of P.W.1) from the kitchen of the accused house. When she enquired the wife of accused, she told that David came to her house in order to get spade and he misbehaved with her. When accused rang up to the Police Station, meanwhile, David went to the Pudhumunthu Police Station and lodged a complaint against the accused to the effect that the accused misbehaved with his daughter in order to hide his mistake. During her cross examination when she was posed a question that in what way David misbehaved with Priya, for that she has answered that accused wife Priya did not tell her anything about that.

41. In the same line another witness one Irudhaya Raj was examined (D.W.2). It is the evidence of D.W.2 that he along with D.W.1



went to the police station at about 8.00 a.m., and lodged a complaint.

Without explaining about the occurrence by wife of accused, how it was known to D.W.1, is not known and her evidence is totally illogical and unbelievable. It is the version of Irudhaya Raj/D.W.2 that husband of P.W.1 misbehaved with Priya (Wife of accused) for which he along with Pieula (D.W.1) went to police station and lodged a complaint. In his chief examination, he has stated that accused wife Priya wrote a complaint whereas during his cross examination he has stated that she did not lodge a complaint. What is the crime number is nowhere stated. More so, this was not elicited from any of the investigating officer. Had it been true, she should have lodged a complaint. Therefore, for the above said reasons, the evidence of both witnesses D.W.1 and D.W.2 are totally not believable.

42. The Hon'ble Supreme Court in *State of Punjab Vs. Gurumit Singh* reported in 1996 (2) SCC 384 has held that if the evidence of sole prosecutrix is cogent, convincing and truth worthy, based on her evidence alone accused can be convicted without any corroboration.

43. A holistic perusal of the evidence of P.W.1 (Susila) and P.W.2 (Victim) depict the fact that their evidences are natural, consistent and trust worthy.



44. The victim was aged about 13 years at the relevant time. The age of the accused was 31 years in the year 2015. When the accused was questioned under 235 (2) of Cr.P.C on 11.11.2016, he has answered that he has got three children and he may be pardoned.

45. From the evidence of P.W.2 (Victim), it appears that the accused posted himself as a normal person and slowly gained confidence of the poor victim. The accused in order to satisfy his lust and desire, by fooling a 13 year girl made sexual assault, for the simple reason that he was interested in it. It is inferable that whenever the accused left alone, he would play tricks and made the victim to come to his residence and thereby he has committed penetrative sexual assault so many times.

46. It is the evidence from the D.W.2 Irudhaya Raj that soon after the occurrence, parents of the victim vacated their house and shifted their residence elsewhere.

47. From the Cogent evidence of P.W.2 (Victim) corroborated by her mother P.W.1 (Susila), evidence of medical witnesses P.W.6 (Dr.Harihara Subramanian), P.W.8 (Dr.Divya) coupled with Ex.P.7 accident register and Ex.P.10 case sheet of the victim, it is pellucid that accused has committed penetrative sexual assault on the victim many times.



48. I find no valid reason to interfere with the well considered judgment of the trial Court. This Criminal Appeal stands dismissed and the sentence and conviction passed in Special C.C.No.7 of 2016 dated 11.11.2016 by the learned Sessions Judge, Mahila Court (FTC). Udhagamandalam, The Nilgiris stands confirmed. The Trial Court shall issue warrant against the accused to serve the remaining period of sentence with one month from the date of receipt of a copy of this judgment.

28.03.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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To

1. The Sessions Judge,
Mahalir Neethimandram (FTC),
Udhagamandalam, The Nilgiris
- 2.The Public Prosecutor,
Madras High Court, Chennai.
3. The Inspector of Police,
All Women Police Station, Ambur,
Uthagai,



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Crl.A.No.190 of 2017

R.KALAIMATHI,J.

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Crl.A.No.190 of 2017

28.03.2024