



CRL.A.No.268 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :28.03.2024

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

CRL.A.No.268 of 2017

Pragash

... Appellant / Accused

vs.

The Station House Officer,
T.R.Pattinam Police Station,
T.R.Pattinam,
Puducherry State.

... Respondent / Complainant

PRAYER: This Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code, against the Conviction and Sentence passed in Spl.S.C.No.13 of 2016 dated 12.04.2017 by the Sessions Judge, Karaikkal, Karaikkal District for the offence under Section 8 of POCSO Act, against the accused to undergo Rigorous Imprisonment for 3 years and also to pay a fine of Rs.1,000/- in default to undergo Simple Imprisonment for 2 months.

For Appellant : Mr.R.Murugabharathi
For Respondent : Mr.K.S.Mohandass
Public Prosecutor (Pondicherry)

JUDGMENT

Being aggrieved by the conviction and sentence imposed by the



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learned Sessions Judge, Karaikkal, in Spl.S.C.No.13 of 2016 dated 12.04.2017, the appellant has preferred this Criminal Appeal.

2. The details of charge and sentence are given hereunder:

1	Name of the Accused	Pragash
2	Charges against the accused	U/s.8 of POCSO Act.
3	Plea of accused	Pleaded not guilty
4	Finding of the Judge	Guilty
5	Sentence	The accused is found guilty of the offence u/s.8 of POCSO Act and he is sentenced to undergo RI for 3 years with a fine of Rs.1,000/- In default to undergo SI for 2 months.

2.1. The case of the prosecution is that on 06.08.2015, at about 2.30 hours, at No.45, Muthampallampet, T.R.Pattinam, the accused went to the house of the complainant and gagged the mouth of her daughter Minor "X" and sexually assaulted her by pressing her breast while she went to nearby place for attending nature's call, thereby the accused was charged with an offence punishable under Section 8 of POCSO Act.

2.2. Upon appearance of accused, the documents relied upon and the statement of witness were furnished to the accused.



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2.3. After hearing both sides and upon consideration, the trial Court framed the charge under Section 8 of POCSO Act and when the charge was explained to the accused, he denied the same.

3. In order to substantiate the said charge, prosecution examined 11 witnesses out of the listed 12 witnesses and marked 10 exhibits and marked one material object. No witness was examined by the defence side.

4. The learned counsel Mr.R.Murugabharathi, vehemently argued that the prime witnesses have not identified the accused. The victim was not sent for medical examination. The charge as against the accused was not proved beyond reasonable doubt by the prosecution and the trial Court failed to appreciate the evidence in a proper perspective and gave a wrong finding which needs to be set aside.

5. Refuting the said details, the learned Public Prosecutor, Puducherry, Mr.K.S.Mohandass strenuously contended that the father of the victim Jayaraman-PW1 on hearing the alarming sound of his daughter, came out from his house and witnessed the occurrence. The accused was



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following the victim from the back. He also drew the attention of this Court with regard to the cross-examination details of PW1 that the accused had come to his house 5 months before, for giving cable connection, which was told by his daughter. He would further argue that the accused did not give any explanation as to why, he was present at the scene of occurrence during mid-night and he does not belong to that place. Accused hails from Thiruvettakkudi. It is his further argument that PW3-Vigneshwaran, an independent witness has given the exact version about the occurrence. The accused has not given any satisfactory explanation while he was questioned under Section 313 Cr.P.C., The charge under Section 8 of POCSO Act was proved through the examination of PW1 to PW3 and the trial Court has passed a well considered judgment.

6. At trial, to substantiate the charge, prosecution has examined 11 witnesses and 10 documents were marked. The motor cycle seized from the accused (Reg.No.PY-01-BU-0146) is M.O.I.

7. PW1-Jayaraman is the father of the victim. PW2 is the victim minor "X". PW3-Vigneshwaran is an independent witness. PW4-Marimuthu, PW5-Thangammal, PW6-Ravichandran, PW7-Venkatesh are



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Observation Magazar and Seizure Magazar witnesses. PW8-Jayaseelan is the brother of the accused. PW9-Thiru.Radhakrishnan, learned Judicial Magistrate who recorded the statement of the victim under Section 164 of Cr.P.C. PW10-Ms.Geetha is the Child Line Team Member. PW11-Thiru.Jerome Jesmond, is the Sub-Inspector of Police of Thirumalairayan Pattinam police station, who investigated the offence. Copy of the birth certificate of victim girl is Ex.P2.

8. It is the evidence of PW1-Jayaraman (father of the victim) that on 06.08.2015 at about 2.30 a.m., when his daughter minor "X" went to the lane in order to attend nature's call, he heard the screaming sound of his daughter "Iyyo Appa". When he rushed there, he saw the accused was hugging and gagging mouth of his daughter. He raised alarm by shouting iyyayo, the villagers came and caught hold of the accused. By an early morning they went to the T.R.Pattinam Police Station and lodged a complaint Ex.P1. Police came and took the accused. When the accused was enquired, he told that he hails from Thiruvettakkudi. Five months before, the accused had come to their village for giving cable connection. During the cross-examination of PW1, when a suggestion was posed to him to the effect that the persons who had involved in the lake work had



wordy altercations with the accused, for that he was handed over to the police by foisting a false case against him, was totally denied by him.

9. The victim minor "X" – PW2 would state that she has completed her 9th standard and she is at home and her age is 15 years. On 06.08.2015 at about 2.30 a.m., she went to the lane to attend to her nature's call, a person came behind her and he lifted her by gagging her mouth. When she shouted as "Appa", her father came out and he too raised alarm on hearing his screaming, villagers came there. Villagers caught hold of the accused, who tried to run away from the place. She does not know the accused and she did not see the face of the accused. Her date of birth is 09.12.1999. Copy of her birth extract is Ex.P2.

10. It has come on record through independent witness-PW3-Vigneshwaran that on 06.08.2015 while he was driving his lorry along with Manager Marimuthu and Venkatesh and returning to his village Muthampallampet, at about 2.30 a.m., when he was changing the lorry tyre, he heard the noise from the street where PW1 is residing. When he rushed to the scene of occurrence along with Marimuthu, he saw PW2 was crying. The accused came out from the lane, they chased, caught the accused and handed over him to the villagers. When PW2(victim) was enquired, she told



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that he gagged her mouth and lifted her. The accused had come in a blue colour Hero Honda Splendor vehicle. From the R.C.Book, which was kept in the above said vehicle, villagers found out his residential address and intimated to the police. The accused was taken to the police station by the police.

11. PW4-Marimuthu, PW5-Thangavel, PW6-Ravichandran and PW7-Venkatesh are witnesses connected to Observation Magazar and Seizure Magazar. As they did not support the prosecution case, they were treated as hostile witnesses.

12. The case was investigated by PW11-Mr.Jerome Jesmond, Sub-Inspector of Police of T.R.Pattinam police station. On receipt of complaint from PW1, on 06.08.2015, he registered the case in Crime No.54 of 2015 under Section 8 of POCSO Act, 2012 (Ex.P9/F.I.R.), it appears that the accused was also handed over to the police by the villagers at the same time along with the vehicle which was used by the accused. After effecting arrest of the accused, his voluntary confession statement was recorded in the presence of witnesses Thangavel and Ravichandran. He proceeded to the scene of occurrence along with child line team Member and women



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Sub-Inspector of Police Ms.Sathya and inspected the place of occurrence and prepared Observation Magazar and rough sketch. The statement of the victim was recorded by the women Sub-Inspector. The accused was sent for remand. The witnesses Jayaraman, Vigneshwaran, Marimuthu, Thangavel, Ravichandran, Selvam, Jayaseelan and Geetha were examined by her and their statements were recorded. As per the order of the Court, the statement of the victim was recorded by the learned Judicial Magistrate. He laid a final report against the accused under Section 8 of POCSO Act, 2012.

13. The learned counsel appearing for the appellant contended that the accused was not identified by PW1 and PW2 has stated that she did not see the face of the accused. It is the clear evidence of PW1- Jayaraman that upon hearing the noise of his daughter as Iyyo Appa, he rushed to the scene of occurrence and saw the accused who was hugging his daughter besides gagging her mouth.

14. As rightly pointed out by the learned counsel for the appellant, PW2, the victim minor "X" has stated that she did not see the face of the accused.



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15. A careful perusal of the evidence of PW1 and PW3, it is pellucid that the accused hugged the victim minor "X" and gagged her mouth. It was clearly spoken out by PW1. Within no minute, the accused was chased and caught by PW3. There is no enmity between the accused, PW1 and PW3. It is pertinent to note that the accused had already come to the village of PW1 for giving cable connection. The evidence of PW1 and PW3 are casual, cogent and trust worthy.

16. As regards the age determination, the law laid down in Ashwani Kumar's case was reiterated in Sri Ganesh v. State of Tamil Nadu and another reported in (2017) 3 SCC 280. Useful reference may be made in Ashwani Kumar's case and relevant portion is extracted hereunder:

"32. "Age determination inquiry" contemplated under Section 7-A of the Act read with Rule 12 of the 2007 Rules enables the court to seek evidence and in that process, the court can obtain the matriculation or equivalent certificates, if available. Only in the absence of any matriculation or equivalent certificates, the court needs to obtain the date of birth certificate from the school first attended other than a play school. Only in the absence of matriculation or equivalent certificate or the



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date of birth certificate from the school first attended, the court needs to obtain the birth certificate given by a corporation or a municipal authority or a panchayat (not an affidavit but certificates or documents). The question of obtaining medical opinion from a duly constituted Medical Board arises only if the above mentioned documents are unavailable. In case exact assessment of the age cannot be done, then the court, for reasons to be recorded, may, if considered necessary, give the benefit to the child or juvenile by considering his or her age on lower side within the margin of one year."

17. As regards the age of the victim, as per her birth extract [Ex.P2], her date of birth is 09.12.1999.

18. As the birth certificate is produced and marked in the normal course of **evidence**, I am of the considered view that roving enquiry need not be done as the same was obtained from the office of the Karaikkal Municipality. Relying upon Ex.P2, on the date of occurrence, age of the victim was 15 years.

19. In the matters of sexual offences, as regards appreciation of evidence, it is relevant to refer to the following decision of Apex Court:



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State of Punjab v. Gurmit Singh and others reported in (1996) 2 SCC

384.

20. The Hon'ble Supreme Court time and again has observed that on the sole testimony of the prosecutrix inspires confidence, such evidence may be relied upon.

21. Relevant portion of the evidence of PW2/victim, is culled out as given here under:

"நான் 9வது படித்துவிட்டு வீட்டில் இருக்கிறேன். சம்பவத்தின்போது எனக்கு 15 வயதானது. அதாசா1 என் அப்பா. 6.8.2015 அன்று விடியற்காலை 2,30 மணிக்கு பாத்ரூம் போவதற்காக சந்திற்கு போனேன். அப்போது ஒருவர் என் பின்னால் வந்து என் வாயைப் பொத்தி துக்கிச் சென்றார். நான் கையை தட்டிவிட்டு அப்பா என்று கத்தினேன். அப்போது அப்பா வெளியில் வந்தார். அப்பாவும் கத்தினார். ஊர் ஜனங்கள் வந்தார்கள். நான் கையை தட்டியதும் அவர் ஓடினார். ஊர் ஜனங்களும் அவர்களை



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பிடித்தார்கள். அவரை முன்பு எனக்கு தெரியாது. அவர்

மூஞ்சை நான் பார்க்கவில்லை."

22. It is relevant to refer to the observations made by the Apex Court in **State of Maharashtra v. Chandraprakash Kewalchand Jain and Another** reported in 1990 (1) SCC 550, wherein, it has been held that:

"A prosecutrix of a sex offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to illustration (b) to Section 114 which requires it to look for



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corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice.

23. It is relevant to refer to the observations made by the Apex Court in ***State of Punjab v. Gurmit Singh and others*** reported in (1996) 2 SCC 384, wherein, it has been held that:

"The testimony of the victim of sexual assault is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty in acting 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."

24. PW2 is aged about 15 years at the relevant point of time. From her evidence, it reveals the fact that she completed her 9th standard and



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she was at home. She has stated that the accused gagged her mouth and lifted her. But, PW1-in clear terms has stated that when he heard the alarming sound of his daughter, he went out and saw the accused was hugging his daughter besides gagging her mouth.

25. In the complaint, it has been stated that the accused firmly hugged her and gagged her mouth and also pressed her breast. PW10 Ms.Geetha is a child line team member. It has come on record that she went to the house of the victim and enquired about the case along with Sub-Inspector of Police of Thirumalainayakan Pattinam Police Station. It is the evidence of PW10 that at about 2.30 a.m., when she [victim] went out, for attending her nature's call, one Pragash hugged her and pressed her breast. When she raised alarm, the villagers came there.

26. It is the evidence of victim minor "X", that on 06.08.2015, at about 2.30 a.m., for attending natures call, she went to the lane side and at that point of time, a person came behind her and gagged her mouth and lifted her. She pushed away his hands and raised alarm as "Appa". It is her further evidence that her father came out and he too shouted and the villagers came there, he ran away and he was caught hold by the villagers.



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He is not a known person to her and she did not see his face.

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27. A holistic perusal of evidence of PW2 indicates the fact that she has very innocently narrated what had happened at the time of occurrence. A girl who met with sexual offence will be under shock for a long time. Her evidence is of sterling quality. At times, they will be reluctant to speak about the happening. Even explaining those details would cause embarrassment to the victim. From her evidence, it is clearly discernible that she was subjected to sexual assault. Section 7 of POCSO Act defines sexual assault, which is extracted hereunder:

"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."

28. In this regard, a suggestion was posed to PW1 that while the accused was crossing the village of PW1, he had wordy altercation with the persons who were involved in lake work and they assaulted him and foisted a false case. Except posing suggestion to the prime witnesses, no positive



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step was taken by the accused to rebut the presumption arose against him.

It has clearly come out from the evidence of prime witnesses (PW1 and PW3) when the accused was trying to flee away from the scene of occurrence by hearing alarm sound of PW1, villagers rushed to the front of the house of PW1 and PW3 were one among the persons who caught the accused by chasing him. The accused has not given any plausible explanations why did he stopped his two wheeler near the house of PW1 and went to the lane at odd hours. The evidence of PW3-Vigneswaran and Ms.Geetha-PW1, child line member in her evidence have lent corroboration to the testimony of the prosecutrix. As per Section 30 of POCSO Act, as to the presumption of culpable mental state, the accused has failed to explain that he had not in a mental state with respect to the act charged as an offence. His commission/act of hugging the victim and besides pressing her breast by gagging her mouth would speak about volumes about the *mens rea* of the accused. It is relevant to note that PW1, it is the testimony of PW1 that his daughter told him that the accused had come to his house for giving cable connection.

29. Therefore the said narration would not improbabilise the very genesis of the prosecution case of physical touching of the victim by the



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appellant with sexual intent which is supported by the testimony of PW10-Geetha. The evidence of PW11 clearly proves the ingredients of the alleged offence.

30. Intention can be inferred from the act of the accused. The accused had followed the victim at 2.30 a.m., and hugged her from behind, gagged her mouth and pressed her breast, it shows that he was in lust. Where a person is prosecuted for committing any offence under Sections 3, 5, 7 and 9 of PCSO Act, the trial Court shall presume that such person has committed the offence as the case may be, unless the contrary is proved. Section 29 of the POCSO Act deals with the presumption; the presumption arose against the accused is a rebuttable one.

31. Testimony of PW2/victim is probable. On a careful analysis of the testimony of the victim, coupled with the evidence of PW1, PW3 and PW10, it was made clear that the accused sexually assaulted the victim and it was brought about through the above said witnesses by prosecution.

32. The trial Court in a right perspective appreciated the testimony of the above said witnesses and came to the conclusion that the accused is



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guilty of offence under Section 8 of POCSO Act. I find no valid reason to interfere with the finding of the learned trial Court.

33. In the result, this Criminal Appeal stands dismissed and the sentence and conviction passed by the learned Sessions Judge, Karaikkal, Karaikkal District in Spl.S.C.No.13 of 2016 dated 12.04.2017 stands confirmed. On receipt of a copy of this judgment, within four weeks, the trial Court shall issue warrant and secure the accused and send him to the prison to serve the remaining period of sentence.

28.03.2024

Index : Yes/No
Internet: Yes/No
Speaking Order : Yes/No
ssn

To:

1. The Sessions Judge,
Karaikkal, Karaikkal District.
2. The Station House Officer,
T.R.Pattinam Police Station,
T.R.Pattinam,
Puducherry.
3. The Public Prosecutor,
High Court, Madras.



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R.KALAIMATHI, J.,

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