



*Crl.A.No.484 of 2017*

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 27.03.2024

CORAM

THE HONOURABLE MRS. JUSTICE R.KALAIMATHI

**Crl.A.No.484 of 2017**

Manikandan

... Appellant/Sole Accused

Vs.

State by Inspector of Police,  
All Women Police Station,  
Dharmapuri,  
Dharmapuri District.  
(Crime No.11 of 2015)

...Respondent/Complainant

**Prayer:** Criminal Appeal filed under Section 374 (2) Criminal Procedure Code to set aside the conviction and sentence imposed on the appellant herein in Special S.C.No.66 of 2015 by judgment dated 20.02.2017 passed by the learned Sessions Judge, Fast Track Mahila Court Dharmapuri, Dharmapuri District and acquit the appellant herein from all charges.

For Appellant : Mr.K.Ethirajulu

Legal Aid Counsel

For Respondent : Mr.S.Udaya Kumar

Government Advocate (Crl. Side)



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## **J U D G M E N T**

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This Criminal Appeal is preferred against the judgment and conviction passed under Section 448 IPC and under Sections 5(m) and 6 of the Protection of Children from Sexual Offences Act (POCSO Act), 2012 in Special S.C.No.66 of 2015 dated 20.02.2017 on the file of the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri.

| <b>Title</b>                         | <b>Description</b>                                                                                                                                                                                                                                                                                                                                                   |
|--------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Name of the Defacto Complaint</b> | Kalpana (Mother of the minor girl child 'X')                                                                                                                                                                                                                                                                                                                         |
| <b>Name of the Accused</b>           | Manikandan S/o Raji (23 years/2015)                                                                                                                                                                                                                                                                                                                                  |
| <b>Case of the Prosecution</b>       | The accused is charged under Section 448 IPC and under Section 5(m) read with Section 6 of the POCSO Act, 2012                                                                                                                                                                                                                                                       |
| <b>Plea of the accused</b>           | Pleaded not guilty.                                                                                                                                                                                                                                                                                                                                                  |
| <b>Finding of the Court</b>          | The accused is convicted for the offence under Section 448 IPC and sentenced to undergo one year rigorous imprisonment and for the offence under Section 5(m) read with Section 6 of the POCSO Act, 2012, sentenced him to undergo ten years rigorous imprisonment and to pay fine of Rs.500/- in default to undergo rigorous imprisonment for the period one month. |



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**2. The case of the prosecution in brief is stated as follows:**

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On 13.08.2015 at about 9.30 p.m. the minor girl child 'X' was made to sleep by the mother of the child Kalpana and the defacto complainant Kalpana along with her neighbour Govindhammal were stringing flowers. At that time, the accused trespassed into the house of Kalpana/defacto complainant and he committed sexual assault on the child 'X'. The accused was charged under Section 448, 376 of I.P.C and under Sections 3, 4 , 5(m) read with Section 6 of the POCSO Act, 2012.

3. Mr.K.Ethirajulu, the learned Legal Aid Counsel appearing for the appellant vehemently argued that P.W.1 Kalpana (Mother of the minor girl 'X') and P.W.2 (Govindhammal) did not witness the occurrence. But on the false premises, it was construed that they witnessed the occurrence and the trial court has convicted the accused on wrong basis. He would further contend that P.W.1 has stated that on the date of occurrence itself, the accused was got caught by the villagers. Whereas, P.W.15 Investigating Officer has given different version which is fatal to the prosecution case. It is his further argument that since some theft case was pending against the accused, this case is falsely foisted against him.



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4. Per contra, Mr.S.Udaya Kumar, learned Government Advocate (Crl. Side) strenuously argued that the ocular witnesses P.W.1 and P.W.2 have clearly spoken about the occurrence and they supported the case of the prosecution. It is his further argument that as per the evidence of P.W.11/Dr. Ashok Ramkumar, he would further strengthen the case of prosecution. He would further contend that P.W.9 Dr.N.Shanmuga Priya who treated the child has deposed about the injury sustained by the minor child 'X'. The learned Government Advocate drew the attention of this Court to the statement of 164 Cr.P.C of P.W.1 and P.W.2.

5. On appearance of the accused, the trial Court has furnished the copies of statement of the witnesses and documents relied upon by the prosecution under Section 207 of Cr.P.C.

6. After hearing both sides, the charges under Section 448 IPC and under Section 5 (m) read with Section 6 of the POCSO Act were framed against the accused. When the accused was questioned about the charges, he abjured guilty.

7. To substantiate the charges, on the prosecution side 15 witnesses were examined and eighteen documents were marked.



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M.O.1 to M.O.3 are the inner wear, lungi and banian/dress seized from the accused.

8. Mother of minor child is P.W.1. Her neighbours Govindhammal and Prakash are P.W.2 and P.W.3. P.W.6 Palani is the husband of P.W.1/Father of the victim child. P.W.4 Sakthi and P.W.5 Lingadharan are confession statement and seizure mahazar witnesses. P.W.7 Palaniammal and P.W.8 Saroja they belong to the same village but did not support the prosecution case. P.W.9 Dr.N.Shanmuga Priya has examined the victim child and issued report of medical examination of the victim of sexual offence (Ex.P.8). P.W.10 Dr.Arivazhagan who examined the accused and issued potency certificate (Ex.P.12). P.W.11 Dr.Ashok Ramkumar is the medical officer of Karimangalam Government Hospital who treated the victim minor girl at the first instance. P.W.12 to P.W.14 are all the police constables who assisted the Investigating Officer during investigation. P.W.15 Tmt.Saroja is the Investigating Officer.

9. It is the evidence of Kalpana (P.W.1) that her daughter aged about 2 1/2 years minor girl is not able to talk and it was verified by the Trial Court. It is her evidence that on 13.08.2015 at about 9.00 p.m., P.W.1 Kalpana after giving food to her minor child made her to sleep



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and she went to string flowers at the residence of Govindhammal (P.W.2/neighbour). Suddenly, she heard the crying sound of her minor child 'X', she went to her residence and saw the dress and inner wear of the child had been removed and her minor child 'X' was bleeding profusely from her private parts. When she entered into the house after hearing crying sound of the child, she saw the accused came out from her house. She immediately took her child to the Karimangalam Government Hospital where the child was treated and for further treatment the child was referred to Dharmapuri Government Hospital. The minor child was admitted at Dharmapuri Government Hospital for two or three days. She told the fact to P.W.2 Govindhammal that the she saw the accused came out from her house. Her complaint is Ex.P.1.

10. It has come on record through the evidence of her neighbour Govindhammal (P.W.2) that Kalpana (P.W.1) residing nearby to her residence and she used to string flowers till 11.00 clock. At about 9.00 p.m., she along with kalpana while stringing flowers, the minor girl 'X' was sleeping at her residence. Suddenly, the crying sound of minor girl 'X' was heard and kalpana rushed to her residence, she followed Kalpana. Accused Manikandan came out from the house of Kalpana, she could not catch Manikandan and he fled away. The house of the accused is situate 5 or 10 feet away from her house. When they



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brought the child out and saw the child was bleeding heavily. Then, the child was taken to Karimangalam Government Hospital.

11. P.W.3 Prakash who is also neighbour of P.W.1 and P.W.2.

It is his evidence that when he heard the noise, he went to the house of Kalpana. They were crying and he saw the minor girl child 'X' bleeding in her private parts. Then, P.W.3 Prakash took the minor child to the hospital.

12. P.W.4 Sakthi and P.W.5 Lingadharan have spoken about the confession statement of the accused and signature of the accused found is the same. In their presence, the dresses of the accused were seized by the police (Ex.P.6, M.O.1 to M.O.3)

13. The husband of P.W.1/Father of the victim P.W.6 Palani would state that on information about the occurrence at about 10.00 p.m. he came to the village on the next day at about 1.00 p.m. He saw his daughter who was in the Dharmapuri Government Hospital and he was told that his minor daughter was bleeding heavily and reason for the same is said to be Manikandan (accused).

14. P.W.7 Palaniammal and P.W.8 Saroja are the hearsay



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witnesses. They have not supported the prosecution case.

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15. P.W.11 Dr.Ashok Ramkumar who is the Medical Officer of Karimangalam Government Hospital would state that on 13.08.2015 at about 10.30 p.m., two years old minor child 'X' was brought by her mother and relatives. The child was crying and on examination, he found that the child was bleeding in her private parts. On enquiry, the mother of the child told that the child was sexually assaulted by a known person. He would further state that he was not in a position to convince the child and the child was scary. As the child was bleeding from her private parts, he referred the child for further treatment to the Dharmapuri Government Medical College Hospital.

16. It is the evidence of P.W.9 Dr.N.Shanmuga Priya, Medical Officer of Dharmapuri Medical College Hospital that on 14.08.2015 at about 12.05 hours (in the wee hours), she examined the girl child aged about 2 ½ years. The child was brought by her mother accompanied by the women constables of the All Women Police Station, Dharmapuri. When she enquired the mother (P.W.1), she told her that 13.08.2015 at about 9.00 p.m., when her minor child was sleeping at her residence, the child was sexually assaulted by a known person. When she talked to the child, child did not talk to her and she noticed the sign of bleeding



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in the private parts. As the child did not cooperate for the examination, she gave oral anesthesia to made her to sleep. Then she examined the child and conducted medical examination and found following injuries on the private parts of the child “reddish bruise over posterior fourchette roughly of size 2X1 cm. No other external injuries found anywhere on the body (Ex.P.8).” She also found “dried up secretion over the vagina and minimal altered blood” in the private parts of the child. Smear from introitus perineum was taken from the private parts of the minor child and sent for chemical analysis to the forensic lab. She has given opinion that the minor child was sexually assaulted and there is a evidence of penetrating sexual assault. As per the smear report, there is no presence of spermatozoa in the private parts of the minor child.

17. P.W.10 Arivazhagan, the medical officer of Dharmapuri Medical College hospital has stated that on 19.08.2015, one Manikandan son of Raji was brought by the Dharmapuri Women Police connected in Crime No.11 of 2015 of Dharmapuri Women Police Station, for medical examination. He was subjected to medical examination and issued age certificate, blood report and potency certificate (Ex.P.10 to Ex.P.12).



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18. It is the evidence of the investigating officer Tmt.Saroja (Ex.P.15) that on intimation from the Dharmapuri Government Hospital, she went to the said hospital and saw the minor girl child 'X' who was in admission in the hospital. She examined the mother of the victim child (P.W.1) and recorded her complaint statement. Based on the same, a case was registered in Crime No.11 of 2015 at Dharmapuri All Women Police Station under Section 3(a), 4, 5 (m)(i) read with Section 6 of POCSO Act, 2012 read with 376 I.P.C. (Ex.P.13 FIR). She took the case for investigation and proceeded to the scene of occurrence on 14.08.2015 at about 3.00 a.m. In the presence of witnesses Prakash (Ex.P.3) and Anbazhagan, she visited the place of occurrence and prepared observation mahazar and rough sketch. She examined the defacto complainant (P.W.1), Govindhammal (P.W.2), Prakash (P.W.3) and Anbazhagan and recorded their statements. As the occurrence found to be true, at about 7.15 a.m, the accused (Manikandan) was arrested at Chennampatti bus stop. During investigation, the voluntary statement given by the accused was recorded in the presence of witness Sakthi (P.W.4) and Linganathan (P.W.5). Thereafter, he was brought to the police station and sent for judicial custody. Further statements of P.W.1 and P.W.2 were recorded by her. As per order of the Court, statements of witnesses Kalpana (P.W.1) and Govindhammal (P.W.2) were recorded by the learned Sessions Judge, Fast Track



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Mahila Court, Dharmapuri under Section 164 Cr.P.C. She examined witnesses Palani (P.W.6), Palaniammal (P.W.7), Saroja (P.W.8) and she examined the constables, who took the accused for medical examination and recorded their statements. Medical Officers were examined by her and recorded their statements. Birth Certificate of the accused was procured from the Government Higher Secondary School, Karimangalam and his study certificate was marked as Ex.P.17. On 22.09.2015, she filed alteration report and laid a final report under Sections 448 and 376 IPC read with Sections 3, 4, 5(m) and 6 of the POCSO Act, 2012.

19. From the evidence of P.W.1 to P.W.3 coupled with medical evidence of P.W.11 Dr.Ashok Ramkumar and P.W.9 Dr.N.Shanmuga Priya, it is vividly clear that the 2 ½ year old minor girl child was bleeding in her private parts. P.W.1 with regard to the injury sustained by the minor child 'X' would state that "வயதிற்கு வந்த பெண்கள் மாதவிடாய் சமயத்தில் எவ்வாறு ரத்தப்போக்கு இருக்குமோ அதே மாதிரி என் மகளுக்கு ரத்தப்போக்கு இருந்தது". It is the evidence of P.W.2 Govindhammal that the minor girl "X" was bleeding heavily – in her own words - "...குழந்தைக்கு பிளட் ஏகமாக வந்தது". It is the observation of P.W.3 Prakash, though he did not witness the occurrence, he would



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state that "... அங்கிருந்தவர்கள் அனைவரும் அழுதார்கள். "X"ன் பிறப்பிறுப்பில் இருந்து ரத்தம் கொட்டிக் கொண்டிருந்தது.... மருத்துவமனைக்கு நான் முன்னின்று "X" ஐ அழைத்துச் சென்றேன். போகும்வழியிலேயே ரத்தம் அதிகமானது."

20. It is pertinent to note that P.W.11 Dr.Ashok Ramkumar who saw the victim minor child 'X' at the first instance, in his own words "குழந்தையை என்னால் கன்வின்ஸ் செய்யமுடியவில்லை, which means the child was continuously weeping. ஒரு பயத்துடனேயே குழந்தை இருந்தார். குழந்தை உள்ளே வரும்போத அழுது கொண்டிருந்தார், நான் குழந்தையை பரிசோதனை செய்ததில் பிறப்பிறுப்பில் ரத்தம் வந்து கொண்டிருந்தது...

21. P.W.9 Dr.N. Shanmuga Priya, Medical Officer who treated the minor child in Dharmapuri Government Hospital. On 14.08.2015 at about 12.05 (Mid Night), she enquired the mother of the victim and she also confirmed the fact that the child was bleeding in her private parts. She has observed that the child did not cooperate with her for medical examination and the child did not co-operate to touch her private parts. She gave oral anesthesia to the child and thereafter, she made the child to sleep and conducted medical examination and noted down the injury



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found on the private part of the child (Ex.P.8). She received the smear report, as per the report there was no presence spermatozoa in the private parts of the minor child.

22. P.W.10 Dr.Arivazhagan that who issued the potency certificate (Ex.P.12) in respect of the accused.

23. The evidence of P.W.11 Dr. Ashok Ramkumar and the evidence of P.W.9 N.Shanmuga Priya indicate in categorical terms that the child was subjected to sexual assault and it was bleeding from the private parts.

24. It is the clear evidence of P.W.1 that when she heard the crying sound of her minor child, she went to her house and saw the accused was coming out from her house. It is her further evidence that having seen her, he went out of her house. But it is her statement in 164 Cr.P.C that when she heard the crying sound of her baby, she went to her house, by that time the accused came out. When she tried to catch the accused she could not catch him. 164 Cr.P.C statement of P.W.1 is extracted herein:

"வியாழக்கிழமை இரவு 9.00 மணி வாக்கில் குழந்தையை துங்க வைத்து விட்டு பக்கத்து வீட்டிற்கு சென்றிருந்தேன். பக்கத்துவீட்டு



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கோவிந்தம்மாள் வீட்டில் பூ கட்டிக் கொண்டிருந்தேன். அப்போது வீட்டில் குழந்தை அழும் சத்தம் கேட்டது. குழந்தை அழும் சத்தம் கேட்டு நான் வீட்டிற்கு போய் பார்த்தபோது அவன் வெளியே வந்து விட்டான். குழந்தையை பார்த்தபோது நிறைய இரத்தம் வந்திருந்தது. அவனை நான் விரட்டினேன். பிடிக்க முடியவில்லை. நான் வீட்டிற்கு வந்தபோது குழந்தை வெளியே வந்து உட்கார்ந்திருந்தது. குழந்தை உட்கார்ந்திருந்த இடத்தில் எல்லாம் நிறைய இரத்தம் போயிருந்தது. உடனடியாக போலீசுக்கு போன் செய்து வரவழைத்து எனது மகளை ஆம்புலன்ஸ் மூலமாக மருத்துவமனைக்கு அழைத்துப் போனேன். மருத்துவர் எனது குழந்தையை பார்த்து விட்டு எனது குழந்தைக்கு பாதிப்பு ஏற்பட்டுள்ளது என்று(ம்) லேசான பாதிப்புதான் என்று சொன்னார். நான் சொல்ல வேண்டிய விவரம் எல்லாம் சொல்லிவிட்டேன். எனது குழந்தைக்கு 2 1/2 வயதாகிறது. அவளுக்கு எதுவும் சொல்ல வராது. சாப்பாடு மட்டும் கேட்பார்.

25. The 164 Cr.P.C statement of P.W.2 is extracted hereunder:

"நான் கூலி வேலை செய்து வருகிறேன். சாட்சி சொல்லச் சொல்லி என்னை யாரும் கட்டாயப்படுத்தவில்லை. நான் என்ன சொல்ல வேண்டும் என்ற விவரம் எனக்கு யாரும் சொல்லிக் கொடுக்கவில்லை. நான் எப்போதும் இரத்திரி 11.00 மணி பூ கட்டுவோம். கல்பனா குழந்தையை துங்கவைத்து விட்டு எங்கள் வீட்டிற்கு வந்து பூ கட்டிக்கொண்டிருந்தார். 9, 9.30 மணிவாக்கில் குழந்தை வீர் வீர் என்று கத்தியது. கல்பனா குழந்தையை பார்ப்பதற்காக ஓடினார். நாங்கள் வீட்டிற்குள் போன போது மணிகண்டன் என்பவன் வீட்டை விட்டு வெளியே ஓடினான். குழந்தையை துக்கி பார்த்தபோது குழந்தையிடம் இருந்து இரத்தம் ஒழுகியது. பின்னர் காவல்



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நிலையத்திற்கு போன் செய்து போலீசாரை வரவழைத்து ஆம்புலன்ஸ் மூலமாக குழந்தையை மருத்துவமனைக்கு கொண்டு போனோம். குழந்தையை பார்த்தவுடன் எனக்கு மயக்கம் ஏற்பட்டு படுத்துக் கொண்டேன். நான் சொல்ல வேண்டிய விவரங்களை எல்லாம் சொல்லிவிட்டேன்.

26. When law visits the accused with severe punishment, the evidence relied upon should be cogent and strong evidence. P.W.1 mother of the victim child and her neighbour P.W.2 Govindhammal have clearly indicated that the accused was seen while coming from the house of P.W.1. P.W.1 Kalpana has deposed that even Govindhammal (P.W.2) saw the accused coming out from P.W1's residence.

27. Complaint statement of the defacto complainant (P.W.1 Kalpana) was recorded by the Investigating officer (P.W.15), All Women Police Station, Dharmapuri on 14.08.2015 at about 00.45 hours at Dharmapuri Medical College Hospital and a case was registered at about 1.30 hours in Crime No.11 of 2015 under Section 3(a) 4, 5(m)(i) 6 of the POCSO Act, 2012 and under Section 376 I.P.C.

28. In Ex.P.8 report is medical examination of victim baby. The finding of P.W.9 Dr.N.Shanmuga Priya has recorded, while examining the child, she found marks of violence, "reddish bruise over



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posterior fourchette roughly of size 2X1 cm. She also in her specific examination has recorded that “in and around private parts minimal altered blood” was seen and “dried up secretion present over the perineal region”, whitish in colour of private parts of the child.

29. The accused who was in perverse lust for sex did not leave a innocent girl child who was hardly 2 ½ years old. Children are the future of the Nation.

30. As per section 29 of the Protection of Children from Sexual Offences Act (POCSO Act), 2012, presumption arise against the accused when he personated for committing offence under Section 5(m) read with section 6 to the effect that a special Court shall presume, that such person has committed the offence, unless, the contrary is proved. The presumption is rebuttable one and the accused is not rebutted by any means.

31. Therefore, it is made clear that from the evidence of P.W.1 (Kalpana), with the *mens rea* to commit sexual offence on the minor child 'X', the accused committed penetrative sexual assault on the child which is below 12 years. Therefore, based on the evidence of P.W.1 corroborated by P.W.2, coupled with the medical evidence of P.W.11



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and P.W.9 along with medical records, the prosecution has clearly proved the charges and offences 448 IPC read with section 5(m) read with Section 6 of the POCSO Act beyond reasonable doubt.

32. I find no valid reason to interfere with the conviction and sentence of the trial Court.

33. Based on the aforesaid discussion, this Criminal Appeal stands dismissed and in the result, conviction and sentence passed by the Trial Court by the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri in Special S.C.No.66 of 2015 on 20.02.2017 stands confirmed. The trial Court shall issue warrant to secure the accused and send him to the prison in order to serve period of sentence within four weeks from the date of receipt of a copy of this judgment.

**27.03.2024**

Index : Yes/ No  
Internet : Yes/ No  
Neutral Citation : Yes/ No  
Speaking order/ Non-speaking order



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