



Crl.A.No.1118 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2024

CORAM :

THE HON'BLE MR. JUSTICE M.S.RAMESH

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.1118 of 2022
and Crl.M.P.No.3083 of 2023

Saravanan

... Appellant/sole Accused

v.

State represented by
Inspector of Police
Maruvathur Police Station,
Perambalur District.
(Crime No.1123 of 2020)

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, 1973, against the conviction of the appellant and sentence in Spl.S.C.No.7 of 2021 dated 03.09.2022, on the file of the learned Sessions Judge, Mahila Court, Perambalur, and set aside the conviction and sentence imposed in



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judgment dated 03.09.2022 and acquit the appellant.

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For Appellant : Mr.R.Sankarasubbu
For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

JUDGMENT

(Order of the Court was made by SUNDER MOHAN,J.)

This Criminal Appeal has been filed by the sole accused challenging the conviction and sentence imposed upon him vide judgment dated 03.09.2022 in Spl.S.C.No.7 of 2021 on the file of the learned Sessions Judge, Mahila Court, Perambalur.

2.(i) It is the case of the prosecution that the appellant owned a tractor and used it to plough land on rental basis; that on 30.11.2022 at about 10.00 a.m., when he brought the tractor to plough, the agricultural land belonging to the defacto complainant, he lured the victim girl, who was then aged six years, by offering chocolate and took her to the maize field nearby and removed her inner wear, kissed her cheek, squeezed her breast, inserted his finger in her private part and thereafter, forcibly committed penetrative sexual intercourse.



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(ii) It is the further case of the prosecution that when the defacto complainant-PW1 found her daughter-victim missing, she searched for her and at about 11.30 a.m., her daughter came crying and screaming from a nearby corn field belonging to one Mathi; that when she enquired the victim girl, she informed that the appellant had committed the aforesaid acts; that thereafter, PW1 lodged a complaint with the respondent police and the complaint was marked as Ex.P1. PW15, the Sub Inspector of Police attached to the respondent police station, registered the FIR in Crime No.1123 of 2020 for the offence under Section 366 (A) of the IPC and Section 5(m) read with Section 6 of the Protection of Children from Sexual Offences Act (hereinafter referred to as 'POCSO Act') at about 2.30pm and the FIR was marked as Ex.P10.

(iii) Thereafter, PW16, the Inspector of Police, took up the investigation, went to the scene of the occurrence and prepared the Observation Mahazar (Ex.P11) and Rough Sketch (Ex.P12). She seized the tractor bearing Regn.No.TN-46-F-3407 [photoes of which are marked as



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M.O.1] belonging to the appellant under Seizure Mahazar [Ex.P13], in the presence of witnesses. She thereafter, examined the witnesses and on the same day, at about 6.00 p.m., arrested the accused near the Neduvasal Bus Stop and submitted him to medical examination. On 22.12.2020, on the request made by PW16, the learned Judicial Magistrate No.I, Perambalur, recorded the Section 164 Cr.P.C. statement of the victim. Thereafter, on 03.02.2021, PW16 altered the offence to Section 376(2) of the IPC and Section 5(m) r/w 6 of the POCSO Act. The alteration report was marked as Ex.P15. After examination of other witnesses, PW16 filed a final report for the offence under Section 376 (2) (f) of the IPC, 5 (m) r/w 6 of the POCSO Act, before the learned Sessions Judge, Mahila Court, Perambalur, which was taken on file as Special S.C.No.7 of 2021.

(iv) On the appearance of the appellant, the provisions of Section 207 Cr.P.C., were complied with and the trial Court framed charges against the appellant, and when questioned, the appellant pleaded 'not guilty'.

(v) To prove the case, the prosecution examined 16 witnesses as



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P.W.1 to P.W.16, marked 15 exhibits as Exs.P1 to P15 and marked one Material Object as M.O.1. When the appellant was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. The accused did not examine any witnesses or mark any documents.

(vi) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established its case beyond reasonable doubt and held the appellant guilty of offence under Section 5(m) r/w Section 6 of the POCSO Act. The appellant was convicted for the said offence and sentenced to undergo life imprisonment and to pay a fine of Rs.1,00,000/- in default to undergo SI for 1 year. Hence, the appellant has preferred the appeal challenging the said conviction and sentence.

3. Heard, Mr.R.Sankarasubbu, learned counsel appearing for the appellant, and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor appearing for the respondent/State.



4. (i) The learned counsel for the appellant submitted that the witnesses viz., the defacto complainant-PW1, her mother (Grandmother of the victim)-PW2, the victim-PW3, the father of the victim-PW4 and other material witnesses, turned hostile during the cross examination.

(ii) The learned counsel further submitted that the doctor's evidence by itself would not lead to the inference that the victim was subjected to penetrative sexual assault. That apart, the victim herself had not stated about the penetrative sexual assault in her statement under Section 164 Cr.P.C. and that the above infirmity in the prosecution case, would make it highly unsafe to convict the appellant for the offence alleged against him; and hence, he prayed for acquittal.

5.(i) The learned Additional Public Prosecutor *per contra* submitted that the witnesses and the victim had all supported the prosecution case during the chief examination and in the cross examination, which was conducted eight months after the examination-in-chief, they turned hostile; and that the tenor of the cross examination would suggest that all the



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witnesses were won over by the appellant and therefore their evidence in the cross examination has to be ignored.

(ii) The learned Additional Public Prosecutor therefore submitted that the evidence of the above witnesses, coupled with the medical evidence, conclusively establish the guilt of the appellant and there is no reason to set aside the finding of guilt rendered by the trial Court. Hence, he prayed for dismissal of the appeal.

6. We have carefully considered the rival submissions and have perused all the relevant records.

7. As stated earlier, the prosecution has examined 16 witnesses to prove its case. PW1 is the mother and the defacto complainant; PW2 is grandmother of the victim; PW3 is the victim; PW4 is the father of the victim; PW5 is the Head Constable who took the victim along with her grandmother-PW2, to the hospital for medical examination; PW6 is a relative of the victim, who accompanied the victim to the hospital; PW7 and



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PW8 are Mahazar witnesses; PW9, is a passer-by, who came to know that the appellant had misbehaved with the victim and his evidence is of no avail to the prosecution, as he admits in the cross examination that he does not remember as to who told him about the occurrence; PW10 is the Headmistress of Neduvasal Panchayat Union Primary School, in which the victim was studying and deposed about the date of birth of the victim as 09.07.2015 and has marked the Admission Register (Ex.P6) and the School Certificate (Ex.P7) to prove the date of birth; PW11 is the doctor, who examined the appellant and issued Ex.P8-certificate to prove the potency of the appellant; PW12 is the doctor, who had examined the victim and deposed about the Accident Register issued by her [Ex.P9] in which she had noted injuries on the victim; PW13 is the Head Constable, who took the accused for medical examination; PW14 is a hearsay witness who had stated that he came to know of the occurrence, from PW1; PW15 is the Sub Inspector of Police, who registered the FIR; PW16 is the investigating officer.

8. As stated earlier, PW1 lodged the complaint after the victim



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complained to her about the occurrence. PW1 however, in her deposition, would state that the victim told her that the appellant misbehaved with her.

In her deposition, the details of the penetrative sexual assaults are not found, though they are found in her complaint. PW2, corroborates the version of PW1. Even in her version, she would not give the exact details of the alleged sexual assaults. Be that as it may. Both these witnesses in the cross examination have stated that their version in the chief examination is false. The evidence of PW1 in the cross examination reads as follows:

“ஆஜர் எதிரியை சுமார் 10-15 வருடங்களாக எனக்கு தெரியும். அதசாஆ.1 ஆவணத்தில் உள்ள கையெழுத்து மட்டும் என்னுடையது அதில் எழுதப்பட்ட விவரங்கள் யார் எழுதினது என்று எனக்கு தெரியாது. அந்த கையெழுத்து போட்ட பேப்பரில் என்ன எழுதப்பட்டது என்று விவரமும் எனக்கு தெரியாது என்றால் சரிதான். அதசாஆ.1ல் உள்ள கையெழுத்தை நான் காவல்நிலையத்தில் காலை 8-8.30 மணிக்கு போட்டேன் என்றால் சரிதான். நான் பார்க்கும் காட்டின் உரிமையாளருக்கு ஆஜர் எதிரி சரவணனுக்கும் இடையே இடம் பிரச்சனை சம்பந்தமாக முன்விரோதம் உள்ளது என்றால் சரிதான். நான் பார்க்கும் காட்டின் உரிமையாளர் பூவண்ணன் சொல்லி தான் நான் காவல்நிலையத்தில் புகார் செய்தேன். ஆஜர் எதிரி சரவணன் பதிக்கப்பட்ட சிறுமியிடம் தவறாக நடந்த விவரம் எனக்கு நேரடியாக தெரியாது என்றால் சரிதான். நான் நீதிமன்ற முதல் விசாரணையில் ஆஜர் எதிரி பதிக்கப்பட்ட சிறுமியிடம் தவறாக நடந்துக்கொண்டார் என்று சொல்லியுள்ளேன் ஆனால் அவ்வாறு எதுவும் ஆஜர் எதிரி தவறாக



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நடக்கவில்லை.”

The above evidence would suggest that PW1 had lodged a false complaint at the instance of her land owner one Poovannan, who had prior enmity with the appellant.

9. PW2 in her cross examination would state as follows:

“ஆஜர் எதிரி சரவணன் என் பேத்தி பாதிக்கப்பட்ட சிறுமிடம் தவறாகவோ எந்த விதமான குற்ற உணர்வோடோ நெருங்கவில்லை என்றால் சரிதான். பாதிக்கப்பட்ட சிறுமிக்கு உடம்பில் ஏற்பட்ட கீரல் காயங்கள் சோளக்காட்டில் விளையாடிய போது ஏற்பட்ட காயங்கள் என்றால் சரிதான். நான் நீதிமன்ற முதல் விசாரணையில் சொல்லியுள்ளப்படி ஆஜர் எதிரி எந்த வித செயலும் செய்யவில்லை என்றால் சரிதான். பாதிக்கப்பட்ட சிறுமியை ஆஜர் எதிரி தூக்கிச்சென்று சாக்லெட் கொடுத்து பம்பு செட்டில் எந்தவிதமான தவறும் செய்யவில்லை என்று சொன்னால் சரிதான். நான் நீதிமன்ற முதல் விசாரணையில் சொல்லியுள்ளதை போல் எந்தவிதமான நிகழ்வும் நடைபெறவில்லை என்று சொன்னால் சரிதான்.”

10. Similarly, PW4 the father of the victim also stated that it is true that no such incident reported by them, had ever happened. The relevant portion reads as follows:

“ஆஜர் எதிரி சரவணன் என் மகள் பாதிக்கப்பட்ட சிறுமியிடம்



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எந்த விதத்திலும் தப்பாக நடக்கவில்லை என்றால் சரிதான். அதேபோல் ஆஜர் எதிரி சரவணன் என் மகள் பாதிக்கப்பட்ட சிறுமியின் வாயில் துணியை வைத்து அடைத்தார் என்று சொல்வது போல் எதுவும் நடக்கவில்லை என்றால் சரிதான். நான் நீதிமன்ற முதல் விசாரணையில் சொன்னதை போல் எந்தவிதமான குற்ற செயலும் என் மகள் பாதிக்கப்பட்ட சிறுமிக்கு நடக்கவில்லை என்றால் சரிதான்.”

11. Likewise, PW6 another relative of the victim, who took the victim to the hospital, also turned hostile.

12. It is the submission of the learned Additional Public Prosecutor that the above witnesses came up with the above versions only in the cross examination after supporting the prosecution case in the chief examination, which suggests that the witnesses were won over by the appellant.

13. We are afraid that such an inference cannot be drawn in the absence of any challenge made by the prosecution to the above statements made by the witnesses in their cross examination. The Public Prosecutor ought to have cross examined these witnesses after seeking permission from the trial Court and established that the witnesses were won over.



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Unfortunately, the prosecution has not treated any of these witnesses hostile and challenged their deposition in the cross examination. Therefore, one cannot presume that the witnesses were won over. That apart, if the victims have given two different versions at two different stages and there is a doubt as to which of the version is true, the one in favour of the accused has to be preferred.

14. Coming to the evidence of PW3-victim, we find that the victim in her Section 164 Cr.P.C statement had not specifically stated about the penetrative sexual assault, though it suggests sexual assault by the appellant. However, the victim herself, in the cross examination would state that the accused had not misbehaved with her. The relevant portion reads as follows:

“ஆஜர் எதிரி சரவணன் தப்பாக என்னிடத்தில்
நடக்கவில்லை.”

15. Considering the fact that the victim, who had originally not stated about the penetrative sexual assaults in her Section 164 Cr.P.C., statement, had made an improvement in the deposition and the fact that in the cross



examination she had stated that the appellant had not misbehaved with her and also considering her age, we are of the view that it would be highly unsafe to convict the appellant for the serious offence of penetrative sexual assault, on such evidence.

16. As pointed out above, since the mother/defacto complainant, the grandmother and the father have all stated that what was stated in the chief examination was false, we are of the view that the conviction rendered by the trial court on the basis of such evidence, cannot be sustained. It is no doubt true that the Doctor had found some injuries on the victim which are recorded in the Medical Examination Report of the victim which was marked as Ex.P9. The medical report suggests that the hymen was not intact and there were injuries on the private part of the victim. The evidence of the medical witness is only an opinion that can be used to corroborate the other evidence on record and it cannot be the sole basis to hold the appellant guilty of the offence. In this case, it is seen that the Doctor has also been cross examined and the cross examination would suggest that the injuries could have been caused by other means as well.



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17. Therefore, we are of the considered view that, in the absence of challenge to the version of the witnesses who disowned the complaint and the averments made therein, their versions in the cross examination, cannot be brushed aside. The prosecution, therefore, in our view failed to establish its case. Hence, the judgment of the trial Court, convicting the appellant is liable to be set aside.

18. Accordingly, the Criminal Appeal is allowed and the appellant is acquitted of the charge. The conviction and sentence imposed upon the appellant in Spl.S.C.No.7 of 2021 dated 03.09.2022, on the file of the learned learned Sessions Judge, Mahila Court, Perambalur, are set aside. The fine amount, if any, paid by the appellant shall be refunded. Bail bond, if any, executed shall stand discharged. Consequently, the connected Criminal Miscellaneous Petition is closed.

(M.S.R.,J.) (S.M.,J.)
05.06.2024

Index : yes/no



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Speaking /Non-speaking order
Neutral citation : yes/no
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To

1. The Sessions Judge, Mahila Court,
Perambalur.

2. The Inspector of Police,
Maruvathur Police Station,
Perambalur District.

3. The Superintendent,
Central Prison, Trichy.

4. The Public Prosecutor,
High Court, Madras.



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