

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Criminal Appeal No.246 of 2018

1.Balan @ Balakrishnan
S/o.Rathinasamy

2.Ravikumar @ Stanly
S/o.Shanmugam ... Appellants/Accused 3 & 4

Vs

State represented by
The Inspector of Police,
Kovai East All Women Police Station,
Coimbatore.

Crime No.1 of 2015 ... Respondent/Complainant

Criminal Appeal filed u/s.374(2) Cr.P.C. against the
judgment of learned Sessions Judge (Mahalir Neethimandram),
Coimbatore, passed in Spl.C.C.No.1 of 2017 on 09.02.2018.

For Appellants : Mr.R.Vivekanandan
for Mr.M.Guruprasad

For Respondent : Mr.R.Prathap Kumar,
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was made by C.T.SELVAM, J]

This appeal arises against the judgment of learned Sessions
Judge (Mahalir Neethimandram), Coimbatore, passed in
Spl.C.C.No.1 of 2017 on 09.02.2018.

2. Totally, there are four accused in this case. Appellants
are A3 and A4. Case of prosecution is that A1, father of PW-
2/victim girl raped his daughter while she was in the 4th
standard, A2, his friend, raped her while she was in the 5th, A3,
a relative, raped her while she was in the 6th and A4 did so

while she was in the 7th standard. Upon being informed by PW-7, class teacher of PW-2, PW-1 - an employee of Child Help Line sent one Sulekha to rescue PW-2. PW-1 preferred Ex.P1, complaint and a case was registered in Crime No.1 of 2015 on the file of respondent for offences u/s.3 r/w 4 of Protection of Children from Sexual Offences Act, 2012. Upon completion of investigation and filing of charge sheet informing commission of offences u/s.5(1)(m)(n) r/w 6 POCSO Act, 2012, against A1 and 5(m) r/w 6 POCSO Act, 2012 against A2 to A4, the case was tried in Spl.C.C.No.1 of 2017 on the file of learned Sessions Judge (Mahalir Neethimandram), Coimbatore.

3. Before trial Court, prosecution examined 13 witnesses and marked 20 exhibits. None were examined on the side of defence nor were any exhibits marked.

3.1. PW-1, an employee of Child Help Line, spoke to having been informed by one Priya, a Teacher, through telephone No.1098 that PW-2, aged 12, needed security, of sending one Sulekha to rescue PW-2, sending PW-2 to Child Welfare Committee, PW-2 explaining what had happened to her in the enquiry, PW-2 informing that her mother disbelieved her, Child Welfare Officer requiring PW-2's stay in the reception section for two months as she was very feeble, Child Welfare Officer affording counselling to PW-2 on the instructions of Counselor and submitting report, preferring Ex.P1, complaint, on the instructions of Child Welfare Officer, subjecting PW-2 for medical examination and accompanying PW-2 to hospital. PW-1 also spoke to accompanying PW-2 while she tendered statement before Magistrate.

3.2. PW-2/victim was examined by adopting the 'Question and Answer' format. PW-2 spoke about the occurrences, of informing her teacher thereabout who informed PW-1, her having been taken by PW-1 to Child Welfare Committee, her having been enquired by police, of her being examined by Doctors and of tendering Section 164 Cr.P.C. statement.

3.3. PW-3, neighbour, spoke to knowing A1 and PW-2. PW-3 has totally denied knowledge and has been treated hostile.

3.4. PW-4, neighbour, spoke to knowing A1 and PW-2 and of attesting Ex.P2 - observation mahazar. PW-4 has been treated hostile.

3.5. PW-5, Doctor/Radiologist, spoke to issuing Ex.P4, age certificate, informing the age of PW-2 to be between 15 and 17.

3.6. PW-6, Head Master of Irugoor Government Higher Secondary School, spoke to issuing Ex.P5, 'Bonafide Certificate', to police, informing the date of birth of PW-2 as 24.12.2002. PW-6 also spoke to issuance of Transfer Certificate

to PW-2 on 27.10.2014.

3.7. PW-7, Teacher, spoke to PW-2 having studied in the school between 2010 and 2013, of her parents enquiring about hostel facilities in the year 2014, informing no knowledge there regards, one Arul, Teacher, informing the parents of PW-2 about availability of hostel at 'Poomarket', PW-2's parents visiting the Head Master the next morning with a visiting card and requiring him to call 1098, PW-2's parents again visiting her a day after, PW-7 calling 1098 telephone and informing them to take PW-2 to their hostel and of one Sulekha taking PW-2. PW-7 has been treated hostile.

3.8. PW-8, Doctor, who examined the victim girl on 03.01.2015 deposed to finding the hymen torn and that there was possibility of her having been subjected to sexual intercourse. PW-8 deposed that the victim girl has not attained puberty. PW-8 also spoke to issuing Ex.P6, Accident Register.

3.9. PW-9, Civil Judge, spoke to recording Section 164 Cr.P.C. statement of PW-2/victim girl on 08.01.2015 under Ex.P7 and forwarding the same to Court on 19.01.2015 along with Ex.P8 - 5 CDs. PW-9 deposed that the entire proceedings were videographed.

3.10. PW-10 spoke to not knowing anything about the occurrence and of attesting observation mahazar. PW-10 has been treated hostile.

3.11. PW-11, Doctor, who examined A2 and A3, spoke to conducting examination and issuing Exs.P11 and P12, final opinions on their potency. PW-11 also spoke to A1 and A4 having been examined by Dr.Pandeewaran and issuance of Exs.P13 and P14, final opinions on their potency by such Doctor.

3.12. PW-12, Sub-Inspector of Police, spoke to registering a case, on the complaint of PW-1, in Crime No.1 of 2015 on the file of respondent for offences u/s.3 r/w 4 of POCSO Act, 2012 and forwarding the same to Court and higher officials.

3.13. PW-13, Investigation Officer, spoke to examining PW-2, recording her statement, visiting the house of A1, preparation of mahazars, examining witnesses and recording their statements, subjecting PW-2 for medical examination, obtaining age and bonafide certificate of PW-2, arresting accused and recording their confessions in the presence of witnesses, sending accused to judicial custody, subjecting accused for medical examination towards ascertaining their potency, obtaining various reports and on completion of investigation, filing of charge sheet informing commission of offences u/s.5(1)

(m)(n) r/w 6 POCSO Act, 2012, against A1 and 5(m) r/w 6 POCSO Act, 2012 against A2 to A4.

4. On questioning u/s.313 Cr.P.C., appellant/accused denied charges. On appreciation of materials before it, trial Court convicted A1 for offence u/s.5(1)(m)(n) r/w 6 POCSO Act, 2012 and A2 to A4 for offence u/s.5(m) r/w 6 POCSO Act, 2012 and sentenced each of them to life imprisonment and fine of Rs.5,000/- i/d 6 months R.I. Hence, this appeal.

5. Heard learned counsel for appellants and learned Additional Public Prosecutor for State. Perused the materials on record.

6. PW-7 allegedly has informed PW-1 of sexual assault suffered by PW-2 on 31.10.2014. The Child Welfare Officer had conducted an enquiry only on 10.12.2014 i.e. after a period of 40 days. The complaint has been preferred and case in Crime No.1 of 2015 has been registered only on 03.01.2015. There is enormous delay in preference of complaint. The observations of the Honourable Supreme Court in Marudanal Augusti v State of Kerala [1980 (4) SCC 425] are trite.

'The High Court seems to have overlooked the fact that the entire fabric of the prosecution case would collapse if the FIR is held to be fabricated or brought into existence long after the occurrence and any number of witnesses could be added without there being anything to check the authenticity of their evidence.'

7. Learned counsel for appellants quite rightly submits that the mother and grand mother of victim, one Uma and Sulekha, Field Officers, the Child Welfare Committee Officer as also the Head Master of the School, who have been cited as witnesses in the list of witnesses annexed to the charge sheet have not been examined. Such other persons are acquainted with the facts of the case from the inception of the occurrence and their non-examination, being material witnesses as they are, fatally affects the prosecution case. PW-2, victim, readily has admitted to deposing in keeping with a written note handed over to her and also in keeping with instructions received from police. Though one would have to provide some leeway for discrepancies in deposition of one of very young age, this Court is unable to accept the evidence of PW-2, there being several discrepancies between Ex.P1, complaint, her 164 Cr.P.C. statement and deposition in Court, starting from the very sequence of events. To add to the prosecution woes is the fact that Ex.P6, Accident Register, of the victim has conspicuously been manipulated by including the word 'not' in three places between hymen and intact. Not all, rather nothing is well with the prosecution case.

The Criminal Appeal is allowed and the conviction and sentence imposed on appellants by learned Sessions Judge, Magalir Neethimandram, Coimbatore, in Spl.S.C.No.1 of 2017 dated 09.02.2018 are hereby set aside. Appellants are acquitted of all charges leveled against them. The benefit of this judgment shall also flow to the other accused viz., A1 and A2, who are informed to have not preferred any appeal. Accused tried in Spl.S.C.No.1 of 2017 on the file of learned Sessions Judge, Magalir Neethimandram, Coimbatore, are directed to be released forthwith unless their presence/custody is required in connection with any other case/proceedings. Fine, if any, paid shall be refunded. Bail bonds, if any, executed shall stand cancelled.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gm

To

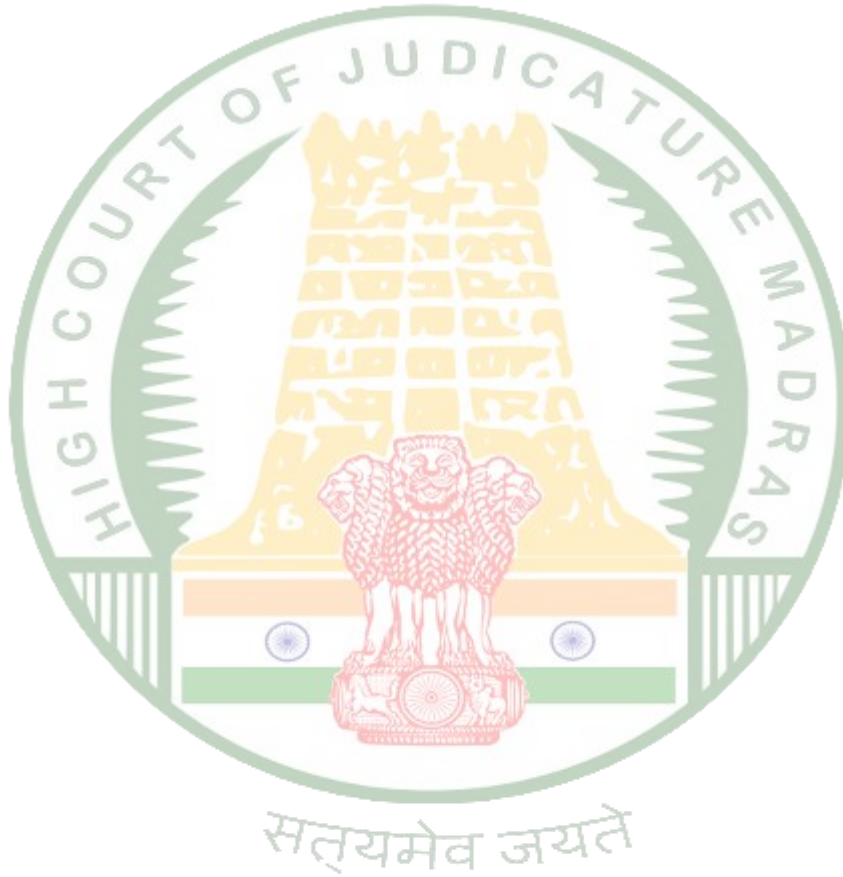
- 1.The Judicial Magistrate,
Coimbatore.
- 2.The Chief Judicial Magistrate,
Coimbatore.
- 3.The Sessions Judge,
Mahalir Neethimandram,
Coimbatore.
- 4.Do Thro The Principal Sessions Judge of
Coimbatore.
- 5.The Superintendent of Police,
Central Prison,
Coimbatore.
- 6.The District Collector, Coimbatore.
- 7.The Director General of Police,
Chennai.
- 8.The Inspector of Police,
Kovai East All Women Police Station,
Coimbatore.

9.The Public Prosecutor,
High Court, Madras.

10.The Section Officer,
Criminal Section,
High Court, Madras.

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