

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.A.No.556 of 2015
and M.P.No.1 of 2015

T.Easwaramoorthy ... Appellant/ Sole Accused

Vs.

State represented by
The Inspector of Police,
Mangalam Police Station,
Thiruppur.

(Crime No.276 f 2013) ... Respondent/Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C.
against the judgment and order dated 15.05.2015 passed in
Special S.C.No.2 of 2014 on the file of the Mahila Court (Fast
Track Mahila Court), Thiruppur.

For Appellant : Mr.Rajan
Senior Counsel for
Mr.N.Nedunchezhiyan

For Respondent : Mr.G.Ramar
Government Advocate
(Crl. Side)

JUDGMENT

This criminal appeal has been preferred seeking to set
aside the judgment and order dated 15.05.2015 passed in
Special S.C.No.2 of 2014 on the file of the Mahila Court (Fast
Track Mahila Court), Thiruppur.

2. Minus the minute details, the germane facts which are
just necessary for deciding this appeal are stated as under:

2.1 It is the case of the prosecution that on
15.06.2013, between 2.30 p.m. and 4.00 p.m., when three
children viz., "X" (PW4), "Y" (PW5) and "Z" (PW6) (names not
divulged for the sake of anonymity), were playing in the
street, the appellant, who lives in the neighbourhood and who
is known to the said children, called them to come into his
house by offering chocolates and when they went inside his
house, he is said to have sexually assaulted them. The
children informed their respective parents.

2.2 On a complaint (Ex-P1) given by Rani (PW1), mother of "X" (PW4), Tagore (PW8), Sub-Inspector of Police, registered a case in Crime No.276 of 2013, on 15.06.2013, for the offences under Sections 376(1), 376(2)(f) and 506 (I) IPC and Section 3 r/w 4 of the Protection of Children from Sexual Offences Act, 2012 (for brevity "the POCSO Act").

2.3 The investigation of the case was taken over by Kaleeswari (PW17), Inspector of Police, who went to the place of occurrence and prepared the Observation Mahazar (Ex-P8) and Rough Sketch (Ex-P24).

2.4 Dr.Srividhya (PW14) medically examined the children and issued the medical reports viz., Exs-P15 to 17. The appellant was arrested and he was subjected to medical examination by Dr.Muthuvel (PW16), who issued the potency certificate (Ex-P22).

2.5 After completing the investigation, the police filed a final report in Special S.C.No.2 of 2014 before the Mahila Court (Special Court for POCSO Act cases), Thiruppur, against the appellant for the aforesaid offences.

2.6 Charges were framed under Section 376(2)(i)(m) (3 counts) and 506 (I) (3 counts) IPC and Section 3 r/w 4 of the POCSO Act (3 counts) against the appellant. When questioned, the appellant pleaded "not guilty".

2.7 To prove the case, the prosecution examined seventeen witnesses, marked twenty four exhibits and nine material objects.

2.8 When the appellant was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. On behalf of the appellant, two witnesses viz., Marathal (DW1), his mother and Nisha (DW2), his daughter, were examined.

2.9 After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 15.05.2015 in Special S.C.No.2 of 2014, convicted and sentenced the appellant as follows:

Provision under which convicted	Sentence
Section 376(2)(i)(m) IPC (3 counts)	Ten years rigorous imprisonment and fine of Rs.10,000/- (3 counts) totally Rs.30,000/-, in default to undergo one year rigorous imprisonment (three counts) each.

Provision under which convicted	Sentence
Section 3 r/w 4 of the POCSO Act (3 counts)	Seven years rigorous imprisonment and fine of Rs.10,000/- (3 counts) totally Rs.30,000/-, in default to undergo one year rigorous imprisonment (3 counts) each.

The aforesaid sentences were ordered to run concurrently.

2.10 Challenging the aforesaid conviction and sentences, the appellant is before this Court.

3. Heard Mr.Rajan, learned Senior Counsel representing Mr.N.Nedunchezhiyan, learned counsel on record for the appellant and Mr.G.Ramar, learned Government Advocate (Crl.Side) for the respondent/State.

4. At the outset, the learned counsel for the appellant fairly submitted that the evidence of the three children corroborate one another and therefore, he has a bad case to plead for acquittal and hence, he pleaded for leniency in sentence.

5. It is admitted that the appellant has been undergoing the sentence from the date of the judgment of the trial Court.

6. Be that as it may, when the appeal has been admitted, it is imperative for this Court to go through the evidence and satisfy its judicial conscience with regard to the correctness of the findings of the trial Court. The prosecution case hinges on the evidence of the three girls viz., "X" (PW4), "Y" (PW5) and "Z" (PW6).

7. This Court carefully perused the evidence of "X" (PW4), "Y" (PW5) and "Z" (PW6).

8. In their evidence, they have stated that one evening, they were playing in the street; the appellant, who is known to them, told them that he would give them chocolates and asked them to come inside his house; when they went inside his house, he pressed their body parts and abused them; when one of them started weeping, he threatened them and therefore, they became silent; he (appellant) left them after some time and on coming out of his house, they went to their house and told their mothers.

9. In the cross-examination of these children, they have admitted that the appellant's daughter Nisha is their friend and thus, they knew the appellant.

10. Rani (PW1), mother of "X" (PW4), Mohanambal (PW2), mother of "Z" (PW6) and Karpagam (PW3), relative of "Y" (PW5), have stated that the children came home and complained to them

and they all met together, confronted the appellant and thereafter, went to the police station and lodged a complaint. The defence was not able to make any serious dent in the testimonies of the three children and their mothers.

11 At this juncture, it may be relevant to refer to the defence taken by the appellant in the cross-examination of the children. It was suggested to them that they would have raised a hue and cry had the incident really occurred and since they did not make any noise, the incident had not occurred at all, which suggestion, they denied. It was further suggested that Rani (PW1), mother of "X" (PW4) had a motive to falsely implicate the appellant, as there was a dispute between the appellant and the relative of Rani (PW1), which, they denied. Though these suggestions were put to Rani (PW1), she denied them.

12. Even assuming for a moment that Rani (PW1) had ill will towards the appellant, there is no reason as to why the other two children, viz., "Y" (PW5) and "Z" (PW6) and their mothers testified against the appellant.

13. Coming to the defence evidence, Marathal (DW1), who is the mother of the appellant, has stated that on the date of the incident, she was very much available in the house and no such incident had taken place. Similarly, Nisha (DW2), daughter of the appellant, has stated that she was at home on 15.06.2013 and no such incident had taken place.

14. This Court is unable to act on their testimonies, because, even in the cross-examination of the prosecution witnesses, the defence had not taken the stand that the appellant's mother and daughter were in the house on 15.06.2013. Even when the appellant was questioned under Section 313 Cr.P.C., this theory was not proffered. For the first time, like a sinking man holding on to a straw, a vain attempt was made by the appellant to disprove the prosecution case by examining his mother and daughter, as defence witnesses.

15. In such perspective of the matter, this Court does not find any infirmity in the finding of guilt against the appellant, arrived at by the trial Court. Hence, the conviction of the accused stands maintained. However, interests of justice will be served if the substantive sentence of ten years rigorous imprisonment for the offence under Section 376 (2)(i)(m) IPC is reduced to eight years rigorous imprisonment and it is ordered accordingly.

In the result, this criminal appeal is partly allowed.
Connected M.P. is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1. The Mahila Sessions Judge,
(Fast Track Mahila Court),
Thiruppur.
- 2.The District and Sessions Judge,
Tiruppur.
3. The Inspector of Police,
Mangalam Police Station,
Thiruppur.
4. The Superintendent of Prison,
Central Prison,
Coimbatore.
5. The Public Prosecutor,
Madras High Court,
Chennai - 104.
- 6.The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.B.Nedunchezhiyan, Advocate Sr.82896

Cr1.A.No.556 of 2015

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srg 11/11/2019