

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	PRONOUNCED ON
23.11.2019	20.12.2019

CORAM

THE HONOURABLE MR. JUSTICE C.SARAVANAN

Crl.A.No.598 of 2018

Vignesh Appellant/Accused

vs

State by
The Inspector of Police,
Kovai All Women Police Station (Central),
Coimbatore District. Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 (2) of Cr.P.C., to call for the records in Special C.C. No. 13 of 2015 on the file of the Magalir Neethimandram (Mahila Court), Coimbatore, dated 08.12.2017 and set aside the Judgment, Conviction and Sentence passed against the Appellant and acquit the Appellant.

For Appellant : Mr. Anbazhagan
for M/s. Arunselvam Associates

For Respondent : Mr.T.Shanmuga Rajeswaran
Government Advocate
(Crl.side)

J U D G M E N T

The Criminal Appeal arises out of the impugned judgment dated 08.12.2017 in C.C.No.13 of 2015 convicting and sentencing the appellant for an offence under Section 9 (m) r/w 10 of the Protection of Children from Sexual Offences Act on the file of the Mahila Court, Coimbatore. The appellant has been sentenced to undergo rigorous imprisonment for 5 years. He has also been directed to pay a fine of Rs.2,500/- and in default in payment to undergo rigorous imprisonment for a further period of 3 months.

2. Following charges were framed against the appellant on 13.2.2015:-

i) Section 9 (m) r/w 10 of Protection of Children from Sexual Offences (POCSO) Act, 2012

ii) Section 294 (b) of I.P.C.

iii) Section 506 (i) of I.P.C.

3. Before the Trial Court, 14 witnesses were examined and 16 exhibits were marked by the respondent state. The mother of the minor victim defacto complainant PW1 in Exhibit P1 complaint dated 20.12.2014 had stated that on the said date she had left the minor victim in the courtyard of her house to play and when she went to attend to the other infant child inside the house, the appellant had taken the minor to his house and had committed sexual assault. She stated that she heard the minor victim crying and therefore went looking for her and found that her minor child was inside the appellant's house locked and tried opening the door. Hearing the commotion the neighbours gathered and they decided to enter the appellant's house from the rear side but by that time the appellant himself opened the locked door.

4. She found the minor victims child lips was slightly bleeding and she was holding her abdomen/pubic area as if she was in pain. Therefore, the appellant questioned as to whether he had done to her minor child to which the appellant stated that if PW1-defacto complainant revealed to the outsiders, he would not only kill the PW1-defacto complainant but also the minor victim.

5. The minor victim was aged less than 3 years at the time of commission of the offence. Fearing for the safety of the child she quickly grabbed the minor victim and took her to her house. There she gathered that the appellant had inappropriately touched the private parts of the minor victim and had caused injury to her lips, chest and private parts. Under these circumstances, she along with her husband went to the police station and lodged Ex.P.1- complaint.

6. The injury to the minor child aged about 3 years is not in dispute. The incident is supposed to have taken place on 20.12.2014, pursuant to which Ex.P.1-complaint was also lodged by P.W.1-mother of the victim defacto complainant. P.W.1 along with other witnesses (the neighbours) were also examined who confirmed that the victim was found crying with the appellant.

Based on the above, a case was registered under Section 7 of the POCSO Act, 2012. The Accident Register-Ex.P.10 (Certificate of Examination of Sexual Offences) confirms that there were abrasion over the right side of chest and right arm and a small contusion over the inner side of cheek.

7. In this case, there is no doubt that the minor child was with the appellant and that the minor child had also suffered injuries. There is no explanation forthcoming from the appellant as to why the minor victim was with him. A fact is also said to be proved when the court believes as its existence beyond reasonable doubt and not merely when its existence is established by a preponderance of probability. Therefore, the court was entitled to draw a presumption of culpable state of mind to commit an offence by the appellant.

8. Before the Trial Court, the appellant has neither cross examined any of the witnesses nor contradicted their statements by letting independent evidence. He has also not questioned the correctness of the Exhibits which were marked before the trial Court.

9. Under Section 29 of the Protection of Children from Sexual Offences Act, 2012, there is a presumption regarding commission or abutment to commit or attempt to commit the offence unless contrary is proved. Under section 30 of the said Act there is presumption regarding existence of such mental state and it is for the accused to prove that he or she had no culpable mental state to commit the offence.

10. In Ex.P.10-Copy of Accident Register and Ex.P.11-Report of Medical Examination of Sexual Offences clearly indicates that the minor victim had been subjected to aggravated sexual offence within the meaning of Section 9 (m) of the said Act.

11. The expression "sexual assault" includes any touch to the vagina with sexual intent or any act with sexual intent which involves physical contact without penetration. In this case, the injury to the child/minor victim stands established. Though there are minor contradiction in the evidence of PW1 in her deposition and in Ex.P.1 complaint, nevertheless the fact remains that the victim was with the appellant when PW1 along with PW3 and few other neighbours knocked the appellant's door. Barring a bald denial, the appellant has not made any attempt to extricate himself from the grave charges framed against him by

letting in independent evidence to discredit the case of the prosecution. The evidence of the witnesses inspires the confidence of the Court. Since the appellant has not discharged his burden by any independent evidence and the finding of the Trial Court cannot be found fault with.

12. The Trial Court has weighed the evidence and has come to a fair conclusion on facts and evidence on record. Minor contradiction pointed out between the statement in the complaint In Exhibit P1 and at the time oral statement by PW 1 are insignificant. They do not any manner negate the clear evidence of the appellant having committed aggravated sexual assault on the minor victim child. The minor victim was below the age of 12 years. In my view, the Trial court has correctly awarded the punishment under Section 9 (m) read with Section 10 of the Act.

13. The punishment that has been awarded to the appellant commensurates with the gravity of the offence committed on the minor victim. Therefore, the judgment of conviction and sentence passed by the trial Court is sustainable and it does not warrant any interference and hence, it is hereby confirmed.

14. In the light of the above discussion, I do not find any merits in the present appeal. Hence, the Criminal Appeal is dismissed, confirming the judgment of conviction and sentence dated 08.12.2017 in C.C.No.13 of 2015 on the file of the Mahila Court, Coimbatore.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

To

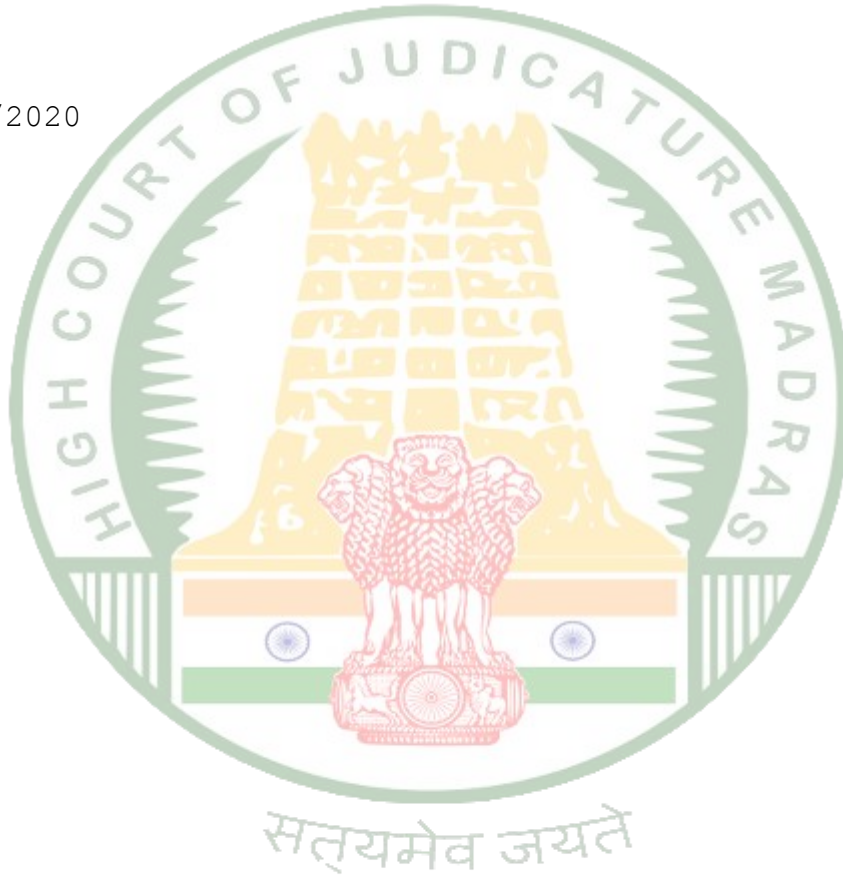
1.The Magalir Neethimandram
(Mahila Court), Coimbatore.

2.The Inspector of Police,
Kovai All Women Police Station (Central),
Coimbatore District.

3.The Public Prosecutor,
High Court, Madras.

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srg 11/02/2020



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