



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	14.03.2019
Date of Judgment	13.06.2019

CORAM

THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI****Crl.A.(MD)No.527 of 2017**

Dheenani @ Vijayanarayanan

: Appellant/Sole Accused

Vs.

State represented by
The Inspector of Police,
Ammapettai Police Station,
Thanjavur District.
(Crime No.261 of 2014)

: Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code against the judgment and sentence passed by the Sessions Judge, Mahalir Neethimandaram (Fast Track Mahila Court), Thanjavur made in Spl S.C.No.28 of 2014, dated 21.12.2016 .

For Appellant

: Mr.M.Karunanidhi

For Respondent

: Mr.A.Robinson

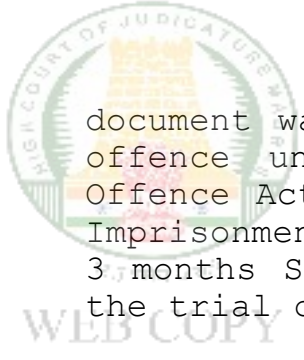
Government Advocate (Crl. Side)

J U D G M E N T

This Criminal Appeal is directed against the judgement passed by the Sessions Judge, Mahalir Neethimandaram, Thanjavur, made in Spl S.C.No.28 of 2014, dated 21.12.2016.

2.The case of the prosecution is that on 11.06.2014 one Arthi aged about 10 years went to the south side of the Primary Health Centre for attending nature's call, at that time, the accused gave money to the child and took her to some interior place and made sexual harassment and the same was explained by the child to the de-facto complainant and immediately, the mother of the victim called 108 Ambulance and took her child to Raja Mirasudar Government Hospital, Thanjavur. The Inspector of Police, attached to Ammapettai Police Station, Thanjavur District, has filed a final report against the accused examining the witnesses.

3.In the trial court, 21 witnesses were examined and 22 Exhibits and 4 material objects were marked. When the accused was questioned about the incriminating circumstances, he denied the same. On the side of the accused, two witnesses were examined and no



document was marked. The trial court convicted the accused for the offence under Section 4 of Protection of Children from Sexual Offence Act, 2012 and sentenced him to undergo 7 years of Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default to undergo 3 months Simple Imprisonment. Aggrieved by the judgement passed by the trial court, the appellant is before this court.

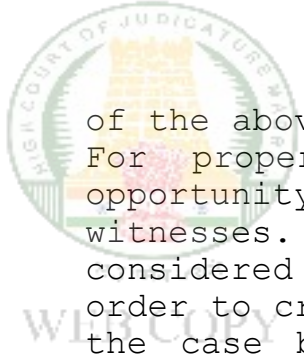
4.The learned counsel appearing for the appellant submitted that the judgment of the trial court is based only on presumption, surmises and conjectures, which are not relevant to the facts and circumstances of the case and there was no opportunity given to the appellant/accused to challenge the evidence of PW2 by way of cross examination and the trial court failed to give an opportunity to cross examine the witnesses and there are material contradictions, omissions found in the evidence of the prosecution witnesses and the same has not been considered by the trial court and the prosecution has suppressed the genesis of occurrence and the earlier complaint has also been suppressed and in this case, all the material documents have been sent to the court belated and no explanation was offered and the evidence of PW2 does not make out an offence under Section POCSO Act and the medical evidence does not corroborate the evidence of PW1 and PW2. In view of the above circumstances, the judgment of the trial court has to be set aside and the criminal appeal has to be allowed.

5.The learned Government Advocate (Criminal side) appearing for the respondent/State submitted that the trial court, after properly considering the evidence both oral and documentary, has passed correct order, which does not require any interference by this court and prays for dismissal of the criminal appeal.

6.Heard both sides and perused the materials available on record.

7.The main contention raised on the side of the appellant is that no opportunity was given to the appellant/accused to cross examine the witnesses and hence, there was no fair trial as contemplated under the Constitution of India and the trial itself is violation of the Constitution of India, since no fair opportunity to cross examine the witnesses by the defence counsel. Further, the learned counsel for the appellant/accused submitted that there are material contradictions, omissions found in the evidence of the prosecution witnesses and the prosecution suppressed genesis of the occurrence and further the earlier complaint was suppressed and all the material documents have been sent to the Court highly belated and no explanation was offered and the medical evidence does not corroborate with the evidence of PW1 and PW2 and prays that the appellant/accused is entitled to acquittal.

8.On careful perusal of the records, it reveals that PW1 to PW14, PW16, PW18 to PW20, PW22 and PW23 were not cross examined by the defence counsel. No reason was stated for non-cross examination



of the above witnesses. The above witnesses are material witnesses. For proper adjudication, it is necessary to give reasonable opportunity to the appellant/accused to cross examine the above witnesses. Under these circumstances, this Court is of the considered view that to give opportunity to the appellant/accused in order to cross examine the above witnesses, it is necessary to remit the case back to the trial court for giving opportunity to the appellant/accused to cross examine the above witnesses, after setting aside the judgment passed by the trial court.

9. In the result, the Criminal Appeal is **allowed**. The judgment of the trial court is set aside and the matter is remitted back to the trial court with a direction to give an opportunity to the accused to cross examine the witnesses and thereafter, dispose of the case on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order. Since, the judgment of the trial court has been set aside by this court and the matter is remitted back the case to the trial court for fresh disposal as indicated above, the appellant shall be released forthwith, unless his detention is required in connection with any other case. The appellant/accused shall observe the bail conditions on which he was released on bail during trial, till the court below disposes the case as indicated above.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Sessions Judge,
Mahalir Neethimandaram, Thanjavur.

2. The Superintendent,
Central Prison, Trichy.

3. The Inspector of Police,
Ammapettai Police Station, Thanjavur District.

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to: The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

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