

Crl.O.P.No.15997 of 2020 in
Crl.A.SR.No.9933 of 2020

M.NIRMAL KUMAR., J.

The petitioner/the Station House Officer, Nedungadu Police Station, Karaikal has filed the grant leave petition to file an appeal against the judgment of acquittal, passed by the learned Sessions Judge, Karaikal in Special Sessions Case No.1 of 2017, dated 10.04.2018.

2.The accusation in the case in essence is that the respondent/Ramesh and the defacto complainant/PW1 are neighbours. The victim/PW3/daughter of PW1 is a minor girl, aged about 17 years, who is studying 12th Standard in Jawaharlal Nehru Government Higher Secondary School at Nedungadu. On 21.08.2018 at Pon Nagar Colony, Nedungadu, the respondent had given sexual harassment by uttering words against PW3/victim while she was proceeding to the school. The harassment was regularly given by the respondent with an intention to insult her modesty and call her to come with him on his motor cycle by showing his hand as gesture with sexual intention. This was complained

by PW3/victim to her mother/defacto complainant/PW1. On 21.08.2013 at about 07.30 a.m., when the defacto complainant/PW1 went to the house of the respondent and questioned him about his act and behaviour towards her daughter/PW3, the respondent slapped the defacto complainant/PW1 on her cheek. The defacto complainant/PW1 went to the Government Hospital, Karaikal, where she was given treatment and issued wound certificate [Ex.P5].

3.PW1 had gone to Nedungadu Police Station, Karaikal and lodged a complaint [Ex.P1] to PW7, who on receipt of the same, registered an FIR [Ex.P6] in Crime No.68 of 2013, for offence under Sections 323, 506 @ 323 IPC and Section 12 of the Protection of Children from the Sexual Offence Act, 2012. On 22.08.2014, at about 10.10 p.m., PW7 visited the scene of occurrence, examined the witnesses, prepared Observation Mahazar and Rough Sketch [Ex.P7] in the presence of witnesses/PW2 and PW3 and recorded the statement of witnesses PW1 to PW3 and PW5. PW7 obtained the birth certificate [Ex.P8] of PW3/victim. On finding that the age of PW3/victim was 17 years, Section was altered to offence under Section 323 IPC and Section

12 of the Protection of Children from Sexual Offence Act, 2012 and alteration report [Ex.P9] was sent to the concerned Court. On completion of investigation, charge sheet came to be filed before the Court.

4.During trial, the prosecution examined PW1 to PW8 and marked Exs.P1 to P9. None were examined and no documents were marked on the side of the defence.

5.On conclusion of trial, the learned Sessions Judge, Karaikal, acquitted the respondent by judgment, dated 10.04.2018 in Special S.C.No.1 of 2017, against which, the petitioner to file an appeal, has filed the above grant leave petition.

6.The learned Public Prosecutor, Pondicherry appearing for the petitioner submitted that the trial Court had erroneously given a reason that there are no independent witnesses and there was previous enmity between the respondent's family and PW1/defacto complainant's family. Further, the trial Court had given benefit of doubt to the respondent

based on the minor contradictions in the evidence of PW1/defacto complainant and PW3/victim. The learned Public Prosecutor further submitted that the trial Court failed to consider that the previous enmity cannot be a reason for giving benefit of doubt for the respondent, on the other hand it only strengthens the case of the prosecution that there is every reason for the respondent to behave and make advances towards PW3/victim and in assaulting PW1/defacto complainant/mother of PW3. The evidence of PW1 and PW3 corroborates each other on the material aspect. Thus, the minor contradictions ought to be ignored. The finding of the trial Court that there was delay in lodging the complaint cannot be a reason in cases of this nature. In this case, PW3/victim is a minor school going girl and she was constantly harassed by the petitioner by showing sexual gesture on a daily basis. Unable to tolerate, PW3/victim complained the same to PW1/defacto complainant. When PW1 questioned the respondent, she was assaulted. Thereafter, PW1 had gone to the Government Hospital, Karaikal for treatment. PW5 clearly stated about PW1 getting treatment on the same day.

7.The learned Public Prosecutor further submitted that it is a normal conduct that the person would think twice before lodging a complaint to the Police in issues involving a school going child, considering future, which cannot be faulted with. The trial Court failed to look into the fact that as per Section 30 of the POCSO Act, there is a statutory presumption of culpable mental state. On the facts of the above case, the prosecution clearly proved the case against the respondent.

8.PW1/defacto complainant is the mother of PW3; PW3 is the victim; PW4 and PW5 are the witnesses to the Observation Mahazar; PW6 is the Doctor from the Government Hospital, Karaikal; PW7 is the Sub Inspector, who registered FIR and PW8 is the Investigating Officer. Ex.P1 is the complaint; Ex.P5 is the wound certificate of PW1; Ex.P8 is the birth certificate of PW3. Ex.P8 discloses PW3 is a minor girl. Thus, the trial Court failed to consider these documents and wrongly acquitted the respondent, which needs interference of this Court and prayed for grant of leave to present an appeal.

9.The learned counsel for the respondent/accused submitted that the respondent has been falsely implicated in this case. It is admitted by PW1 and PW3 that there was previous enmity between the respondent family and PW1/defacto complainant family and they are not in talking terms with each other. In view of the same, the case of the prosecution becomes highly doubtful. Further, there is a delay of 22 hours in lodging the complaint, no reason has been given explaining the delay. It is admitted by PW1 that Nedungadu Police Station, Karaika is only ½ km from the residence of PW1. This unexplained delay is fatal to the case of the prosecution.

10.PW1 in her complaint and evidence stated that she was slapped by the respondent. PW6, the Doctor, through whom, Ex.P5/wound certificate marked, deposed that PW1 complained pain in her stomach and left shoulder. Hence, the medical evidence is contrary to the oral evidence of PW1. PW3 stated that she found PW1 with blood injuries. In Ex.P5, there is no mention about external injuries and stains of blood. Thus, the evidence of PW1 and PW3 are contrary to each other and highly artificial and the trial Court had rightly disbelieved the evidence

of PW1 and PW3.

11.The learned counsel for the respondent further submitted that PW2 and PW5 were treated hostile and not supported the case of the prosecution. PW4 is from the Child Helpline and she is not a witness to the occurrence and her evidence in the nature of hearsay. The trial Court on proper analysis of the evidence both oral and documentary, found the prosecution had failed to prove the case and acquitted the respondent. The alleged occurrence is said to have been taken place in the year 2013 and seven years later, now the prosecution is attempting to overturn the judgment of acquittal. On the facts and materials submitted, this cannot be done. Hence, he opposed to grant leave to present an appeal.

12.This Court considered the rival submissions and perused the materials available on record.

13.The admitted case of PW1 is that she was slapped by the respondent when she questioned him about his behaviour with her daughter/PW3. In the complaint [Ex.P1], the same is narrated. Ex.P5 is

the wound certificate. PW6, the Doctor in his evidence stated that PW1, while examination, complained about pain on her stomach and left shoulder and she has not stated anything about the respondent slapping her. Further, there is no external injuries or blood stains, on the contrary PW1 daughter/PW3 stated that her mother was with blood injuries. It is admitted by PW1 and PW3 that the respondent's family and PW1's family were not in talking terms, they are neighbours and they were enimically disposed against each other. In such circumstances, the implication of the respondent is possible.

14. It is seen that in this case, the other independent witnesses have not supported the case of the prosecution. The evidence of PW4 is of no consequence. PW7 and PW8 are the police personnels, who registered the case and investigated the same. There is no reason given for the delay in lodging the complaint. Thus, the trial Court rightly found the contradictions in the evidence of PW1 and PW3 and their evidence being highly doubtful. It is also seen that no individual witnesses to corroborate the evidence of PW1 and PW3 and the medical evidence is contra to the oral evidence of PW1. Hence, the trial Court considering

all these aspects, had rightly rendered the judgment of acquittal.

15.This Court finds that there is no perversity or reason to interfere with the judgment of the trial Court. In view of the same, the grant of leave to present appeal against the judgment passed by the learned Sessions Judge, Karaikal in Special S.C.No.1 of 2017, dated 10.04.208, has no merits. Hence, the grant leave petition stands dismissed.

14.10.2020

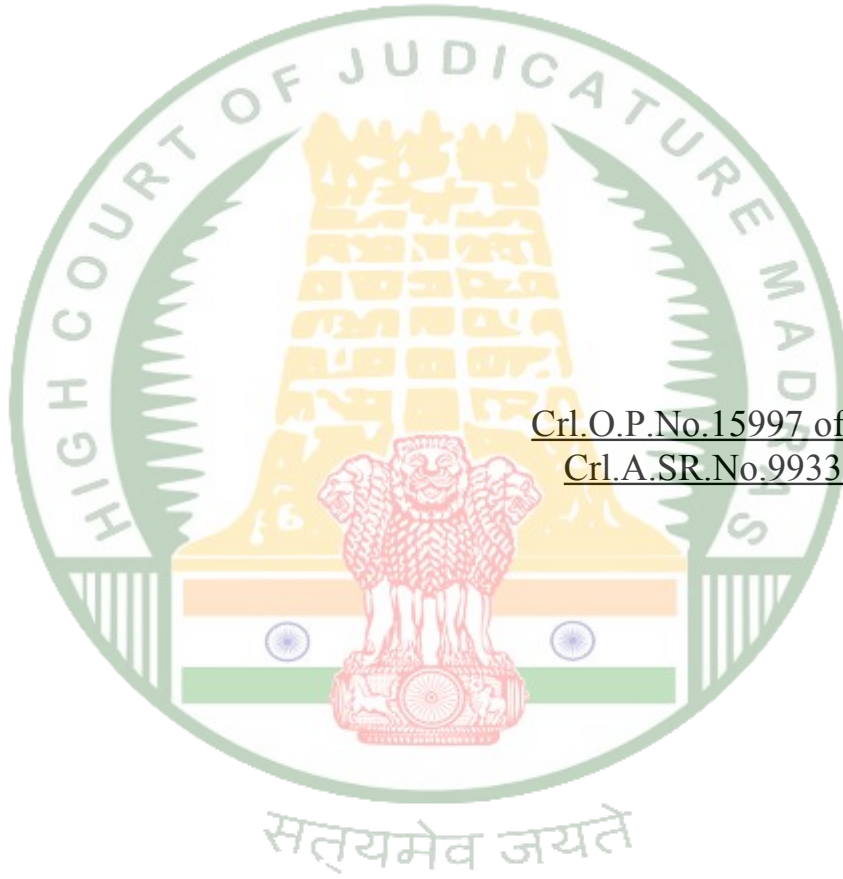
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