

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	25.01.2020
Date of judgment	21.02.2020

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THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI**

Crl.A(MD)No.197 of 2018

Alagu @ Alagarsamy : Appellant/Sole Accused

Vs.

State rep. by
The Inspector of Police,
All Women Police Station,
Madurai Town,
Madurai.
(Crime No.9 of 2016)

: Respondent/Complainant

Prayer: Criminal Appeal filed under section 374(2) of the Criminal Procedure Code against the judgment of the Additional District and Sessions Judge, Mahila Court, Madurai in Spl. SC No.6 of 2017, dated 20.02.2018.

For Appellant : Mr.S.Maya Perumal
For Respondent : Mrs.S.Bharathi
Government Advocate
(Criminal side)

J U D G M E N T

This Criminal Appeal is directed against the judgment of the Additional District and Sessions Judge, Mahila Court, Madurai, in Spl. SC No.6 of 2017, dated 20.02.2018.

2.The case of the prosecution is that on 16.06.2016, the accused had sexually assaulted six years old child. The Inspector of Police attached to All Women Police Station, Madurai Town has filed a final report against the accused examining the witnesses.

3.The trial court, after appreciation of the entire materials available on record, has convicted the appellant/accused for the offence under section 4 of POCSO Act and sentenced him to undergo 7 years rigorous imprisonment and imposed a fine of Rs.5,000/-, in default to undergo one month simple imprisonment. Aggrieved by the judgment of the trial court, the appellant/accused is before this



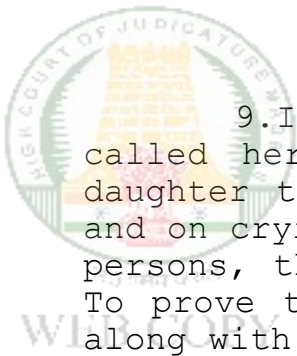
4.Heard both sides and perused the materials available on record.

5.The main contention raised on the side of the appellant/accused is that the evidence of the victim is wholly unreliable and highly unbelievable because her contact and behaviour is highly doubtful and PW3 is a tutoring witness and it was admitted by PW3 during her cross examination and 164 Cr.P.C statement which was given by the victim girl is not reliable since it is contradicted to the evidence of the prosecutrix and further the victim girl categorically admitted in her chief examination that she was not examined by any Magistrate and PW1, PW2, PW4 to PW7 are close relatives of the victim girl and they are interested witnesses and hence, their evidence cannot be relied upon and prays that the appellant/accused is entitled to acquittal.

6.In this case, PW3 is the victim. PW1 and PW5 are the parents of the victim girl. PW4 is the grand mother of PW1. PW1 gave Ex.P1 complaint. PW3 deposed that one Friday, she went to Veerakaliyamman temple to worship and at that time, the accused called by offering chocolate and he took her to Anganwadi and removed her inner garments and placed his private part over the private part of her and when she alarming, several persons in the temple came and she went to her house and she along with her mother went to the police station and the Women police enquired her and then she was brought to the hospital by her mother and at the time of enquiry by the police, she told that the accused took her to Anganwadi and removed her inner garners and placed his private part on her private part.

7.PW1 is the mother of the victim girl. She deposed that on 16.06.2016 her younger daughter Punitha Devi playing nearby the temple and she came to understand that the accused came to the place of occurrence and by showing chocolate, the accused has brought her younger daughter to Anganwadi building and made a sexual harassment and assault on her and her mother and her younger brother told about the incident and she came to the place of occurrence and then they went to the police station and gave the complaint ExP1. Hence, from the evidence of PW1, it reveals that the victim girl went to the temple nearby the house of PW1.

8.The learned counsel appearing for the appellant/accused vehemently argued that infirmities present in the sole testimony of the prosecutrix, which was contradicted by medical evidence as well as by the version given by PW1 to whom the prosecutrix narrated the incident soon-after the commission of rape held implicit reliance could not be place upon her sole testimony. For that, the learned counsel appearing for the appellant/accused submitted a ruling reported in **2002 SCC (Cr1) 592 (Dilip and another Vs. State of M.P)**.



9. In this case, PW1 categorically deposed that the accused called her daughter by offering chocolate and then he took her daughter to Anganwadi building and subjected her to sexual assault and on crying, they were rushed to the occurrence place and in that persons, they specifically identified the pandal man and radio man. To prove that after the occurrence the person who found the child along with the accused was examined as PW6. PW6 deposed that at the time of occurrence, he came to Veerakaliammal temple and one sister, who residing opposite to the temple asked him to go to Anganwadi and hence, he went to the above place he saw that one child was found crying and the accused stood near the above child and he brought out the child and the accused and one police enquired the victim, she told to the occurrence. While cross examination PW3/victim, the learned counsel appearing for the appellant/accused put a question as follows:-

“பாழ் அடைந்த கட்டிடத்திற்கு முன்பு நான் சத்தம் போட்டு கத்தினேன் என்றால் சரிதான் நான் கத்தியவுடன் பத்து முதல் பதினைந்து ஆட்கள் அங்கு வந்துவிட்டார்கள் என்றால் சரிதான் அங்கு வந்தவர்கள் அந்த ஆளை அடித்தார்கள் என்றும் அவரது முகத்தில் இரத்தம் வந்தது என்றும் சொன்னால் சரிதான்”

10. On careful perusal of the above cross examination, after the occurrence, the victim shouted and after hearing the sound of the victim, 10 to 15 persons came and assaulted the accused. Hence, it reveals that at the time of occurrence, the accused is present along with the child. From the evidence of PW6 also, it reveals that when he went to the place of occurrence, she saw that victim child was found crying and the accused stood near the above child. Hence, the evidence of PW6 is corroborated with the evidence of PW3.

11. The further contention of the learned counsel appearing for the appellant/accused is that the oral evidence of PW3 is not corroborated with the medical evidence and prays that the appellant/accused is entitled to acquittal.

12. In this case, the Doctor who gave treatment to PW3 was examined as PW12. PW12 gave Ex.P3 certificate of examination for sexual offence case. On perusal of Ex.P3, it is stated as follows:-

"1.No external injuries, bite marks, nail marks over the face, neck , breast, abdomen, external genitalia and things.

2.No external injuries over the external genitalia."

13. In this case, PW1 categorically stated that the accused placed his private part over the private part of her daughter. Hence, there is no possibility of external injuries over the face, neck, breast, abdomen, external genitalia and things. Hence, it is held that there was no contradiction between the oral evidence of PW3 and the evidence of PW12 the Doctor. Hence, the argument put



forth on the side of the appellant/accused stating that there was contradiction between the oral evidence of PW3 and the medical evidence is not at all acceptable Hence, the rulings relied upon by the learned counsel appearing for the appellant/accused are not applicable to the case on hand.

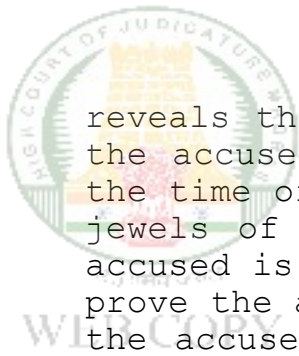
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14.Further, the learned counsel appearing for the appellant/accused argued that PW3 is a child witness and the court should evaluate carefully as a child may be swayed by what others tell him and is an easy prey to tutoring and wisdom requires that the evidence of a child witness must find adequate corroboration before it relied upon and in this case, the victim child/PW3 during her cross examination admitted that she was tutored by her mother before giving evidence and the evidence of PW3 is not natural and hence, the evidence of PW3 cannot be relied upon. For that the learned counsel appearing for the appellant/accused relied upon the judgment reported in **2000 MLJ (Crl) 572 (State of U.P Vs. Ashok Dixit and another)**.

15.In this case, PW3 deposed that on the date of occurrence, she went to the temple and the accused called her by offering chocolate and then the accused told her to Palvadi and committed sexual assault on her. It is admitted fact that the victim is six years old child. While questioning PW3, she deposed that she came to the court for stating the occurrence. While cross examining PW3, the learned counsel for the accused put a question that whether her mother or the police tortured her, for that PW3 replied that her mother told her how to give evidence before the court. PW3 has not stated that her mother told her what she has to state specially before the court. In this case, PW3 categorically deposed before this court about the occurrence. There was no infirmity in the evidence of PW3. When the evidence of solitary witness is cogent, trustworthy, the evidence of solidarity witness can be relied upon. Hence, the argument put forth on the side of the accused stating that there are infirmities in the evidence of PW3 and hence, it cannot be relied upon is not at all acceptable.

16.The learned counsel appearing for the appellant/accused submitted that on the date of occurrence, one thief came and took PW3 to Palvadi and when he attempted to remove her jewels, PW3 shouted and hence, the persons attempted to catch the above persons, but he fled away and due to previous enmity, PW1 gave false complaint as against the accused and prays that the appellant/accused is entitled to acquittal.

17.The learned counsel appearing for the appellant/accused, while cross examining put a question that on the date of occurrence, PW3 was taken by a thief and PW3 shouted, several persons came and assaulted the above person, who took PW3 for stealing her jewels, But it was denied by PW3. PW3 in her re-examination categorically stated that the accused only took her. Hence, the evidence of PW3



reveals that only the accused took her not the thief as alleged by the accused side. No complaint was given to the police stating at the time of festival, some thieves came to the temple and stolen the jewels of the children. The motive put forth on the side of the accused is denied by PW1 and PW2 during their cross examination. To prove the above motive, no contra evidence was let in on the side of the accused. Hence, due to previous motive between the family of the accused and PW1, PW1 gave false complaint as against the accused is not at all acceptable. Therefore, from the evidence of PW3, it reveals that the accused took PW3 by offering chocolate and then took her to Palvadi and thereby committed sexual assault on PW3. Further, it was supported by the evidence of PW6.

18.The learned counsel appearing for the appellant/accused further submitted that PW3 admitted during her cross examination that she narrated the above occurrence to the police and it was recorded by the police and she wrote her name in Tamil and this is the first statement by victim, which was suppressed and further PW3 during her cross examination stated that no Judge was enquired her and hence, the alleged 164(3) statement of the victim is not at all acceptable and prays that the appellant/accused is entitled to acquittal.

19.In this case, PW3 deposed that at the time of examination of Police, she narrated the occurrence and she put her name in Tamil. It is admitted that the age of the victim is 6 years. Hence, it is not possible for her to give the complaint to the police. It is possible to PW3 to narrate the occurrence to the police. PW3 when brought to the court it is not possible to identify who is the Judge since she is 6 years old. To spoke the recording of 164(3) statement from the accused, the Magistrate who recorded the statement of the victim was examined as PW15. PW15 deposed that she recorded the statement of the victim under section 164(3) of the Criminal Procedure code. Hence, it is held that there was no suppression of earlier complaint and 164(3) statement was recorded in accordance with law is not at all acceptable.

20.PW2 deposed that on 16.06.2016 at 10.45 pm, when he was standing in front of house, a Head Constable came to his house and he informed the incident took place in Paulvadi and he requested him to come with him and he went to the place of occurrence and the said Head Constable prepared a rough sketch and he and one Saranya Devi signed in the rough sketch as witnesses.

21.At this juncture, it is necessary to refer section 4 of the Protection of Children from Sexual Offences Act, 2012, which reads as follows:-

"4.Punishment for penetrative sexual assault-

Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a



term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine."

22.From the evidence of PW3 and PW6, it reveals that the accused took PW3 to Paulvadi and removed the inner garments and placed his private part over the private part of PW3. Hence, the offence under section 4 of the Protection of Children from Sexual Offences Act, 2012 is made out as against the accused.

23.For all the reasons stated above, this court is of the considered view that the prosecution has proved the case beyond reasonable doubt. Hence, there is no need to interfere with the findings of the trial court.

24.In the result, the criminal appeal fails and the same is dismissed.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar

To,

- 1.The Additional District and Sessions Judge,
Mahila Court, Madurai.
2. The Inspector of Police, All Women Police Station,
Madurai Town, Madurai City.
3. The Superintendent, Central prison, Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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The Section Officer, Crminal Section/ Records,
Madurai Bench of Madras High Court, Madurai.(2 copies)

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