

Thangarasu, S/o.Sevalingam, Male, aged about 72 years/2015 (Accused No.1) was released on bail vide Court order dated 3.12.2015 in MP (MD)1/2015 in Crl A(MD)No.356/2015.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**Crl.A.(MD)No.356 of 2015

Thangarasu

... Appellant/Accused No.1

versus

The State
The Inspector of Police,
Uppiliapuram Police Station,
Tiruchirappalli

... Respondent/Respondent

Criminal Appeal filed under Section 374(2) of Cr.P.C. against the Judgment dated 14.10.2015 made in Spl. S.C.No.2 of 2015 on the file of the learned Sessions Judge, Mahila Court, Trichy.

For Appellant : Mr.K.Sivabalan

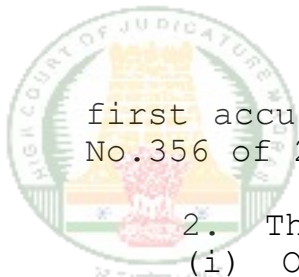
For Respondent : Mr.A.Robinson,
Government Advocate (Crl. Side)

JUDGMENT

The appellant, who was arrayed as A1, was tried along with other accused/A2, before the learned Sessions Judge, Mahila Court, Tiruchirappalli, in Special S.C.No.2 of 2015 and the trial Court framed charges as against the accused and gave its verdict as follows:

<i>Rank of the accused</i>	<i>Charges framed</i>	<i>Findings of the trial Court</i>	<i>Sentence imposed</i>
A1-Thangarasu	Under Section 9(m) r/w. 10 of POCSO Act	Found guilty	Sentenced to undergo seven years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for three months.
A2-Manickam	Under Sections 294 (b) and 506 (i) IPC	Found not guilty	

As against the Judgment of the trial Court dated 14.10.2015, the



first accused has preferred the above Criminal Appeal in Crl.A.(MD) No.356 of 2015.

2. The prosecution case, in a nut-shell, is as follows:

(i) On 02.12.2014, at about 5.00 p.m., the victim child, Mirtuhula, who was aged about 5 years and studying UKG at Sowdambiga School, after attending the school, came to her home and went to attend the natural call to the bush nearby her house. Since the victim child did not return, the mother of the victim child (P.W.1) went in search for the victim child, at that time, the victim child came from the backside of the bush holding her panties in one hand and slipper in another hand. When P.W.1 shouted the victim child, why she went interior to the bush?, she informed P.W.1 that the first accused came there and took her inside and put his penis on her face and rubbed. At that time, P.W.1 saw the first accused going. Thereafter, P.W.1 went to the first accused's house and informed the incident to the wife and daughter in law of the first accused. At that time, the first accused was not at home. Thereafter, on the same day, at about 9.00 p.m., the second accused, son of the first accused, came to P.W.1's house and abused her in filthy language. Since the husband of P.W.1 went to work, on the next day, P.W.1 went along with his husband to Uppiliapuram Police Station and gave a complaint (Ex.P1).

(ii) On receipt of the complaint (Ex.P1) given by P.W.1, P.W.13-Jayachitra, Sub Inspector at Uppliapuram Police Station, registered a case in Cr.No.346/14 under Section 9(m) r/w. 10 of POCSO Act and 294(B) and 506(i) IPC and sent the FIR (Ex.P9) to the Court as well as to the Inspector (P.W.14).

(iii) P.W.14-M.Chezhiyan, Inspector, after receiving the FIR (Ex.P9), on 04.12.2014, at about 8.30 a.m., went to the place of occurrence and in the presence of witnesses, namely, Arulselvam (P.W.12) and Saravanakumar (P.W.6), he prepared observation mahazar (Ex.P3) and rough sketch (Ex.P10). Thereafter, he examined the witnesses, namely, P.W.1-Vijayalakshmi, P.W.3-Udhayakumar, P.W.4-Damayanthi, P.W.5-Ananthakumar, P.W.12-Arulselvan and P.W.6-Saravanakumar and recorded their statements. Thereafter, he arrested the first accused and produced him before the Court for judicial custody. He sent a requisition letter for medical examination of the victim girl (Ex.P13) as well as for the accused (Ex.P12). On 15.12.2014, he examined the doctors, who examined the victim child as well as the accused and recorded their statements. Thereafter, he sent the requisition (Ex.P11) for recording the statement of the victim child under Section 164 Cr.P.C. Pursuant to the proceedings of learned Chief Judicial Magistrate, Tiruchirappalli (Ex.P6), the learned Judicial Magistrate, Musiri (P.W.10) recorded the statement of the victim child, which was marked as Ex.P2. During investigation, he also arrested and remanded the second accused in judicial custody. On completion of the investigation, he filed a final report on 10.02.2015 as



against the accused Nos.1 and 2 for the offence as stated above. The same was taken on file by the learned Sessions Judge, Mahila Court, Tiruchirappalli, in Spl.S.C.No.2 of 2014.

(iv) The available evidence from the prosecution case is, P.W.1 Mariammal, who is the mother of the victim child, set the law in motion. P.W.2-Miruthula is the victim child and she speaks about the occurrence. P.W.3-Udhayakumar, is the father of the victim child and he was not present at the time of occurrence. P.W.4-Damyanthi, who is the sister of P.W.3, speaks that P.W.1 informed the incident what had taken place on the date of occurrence. P.W.5-Ananthakumar, who is the brother in law of P.W.1, witnessed the victim child, who came along with her mother holding her panties in one hand and slippers in another hand. P.W.6-Saravanakumar and P.W.12-Arulselvan are the witnesses of the observation Mahazar and rough sketch. P.W.7 is the Doctor, who recommended and sent the victim child to Tiruchirappalli Medical College Hospital to get the opinion of the Psychiatrist through woman constable, Thuraiyur Police Station. P.W.8-Dr.S.Malai examined the victim child and gave a certificate. P.W.9-Dr.Savaranan examined the first accused and gave the potentiality certificate. P.W.10-N.Kamaraj, then Judicial Magistrate, Musiri, recorded the statement of minor victim child. P.W.11-Dr.Tamilarasi examined the victim child and gave the report. P.W.13-Jayachitra is the Sub Inspector of Uppliapuram Police Station, who received the complaint from P.W.1. P.W.14-M.Chezhiyan, is the Investigating Officer, who conducted the investigation and filed the final report in this case.

(v) Before the trial Court, 14 witnesses were examined and 15 documents were marked during the trial. In conclusion of the trial, the trial Court found this appellant/A1, convicted and sentenced them as mentioned above. However, the trial Court acquitted the second accused.

(vi) As against the Judgment of the trial Court dated 14.10.2015, the accused No.1/appellant has preferred the present Criminal Appeal.

3. Mr.K.Sivabalan, learned counsel appearing for the appellant submitted that the occurrence had taken place on 02.12.2014 at about 5.00 p.m, but, the complaint was registered only on 03.12.2014 at about 8.30 p.m. Therefore, there was a delay in lodging the complaint (Ex.P1), for which, there was no explanation on the side of the prosecution.

4. The learned counsel for the appellant further submitted that P.W.3 in his cross examination stated that the complaint was written by P.W.1, but, he denied to put the signature in Ex.P1, which creates suspicion on the complaint given by P.W.1.

<https://hcservices.courts.gov.in/services/> 5. The learned counsel for the appellant further submitted



that the accused was not identified by P.W.1 and P.W.2 before the trial Court. Further, in the evidence of P.W.1, she stated that she saw a person through the bushes at a distance of 500 feet. Moreover, in the examination of P.W.2, victim child, stated that its only "kj d; jh j; jh". Therefore, the appellant was falsely implicated in this case.

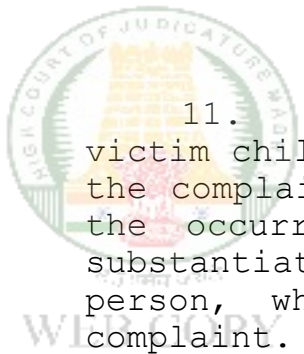
6. The learned counsel for the appellant further submitted that P.W.13-Sub Inspector, in her evidence, stated that she examined the victim child and recorded her statement at her house on 04.12.2014. But, P.W.2 in her evidence stated that she was examined only at the police station and not at her house. Moreover, P.W.1 and P.W.3 also stated that the statement of the victim child was recorded in the Police Station. Therefore, there is a contradiction between the evidence of P.W.2 and P.W.13, which shows that the prosecution has not proved its case beyond all reasonable doubt.

7. The learned counsel for the appellant further submitted that the statement of witnesses, namely, P.Ws.4 to 6 are said to have been recorded on 04.12.2014, but, their statements reached the Court only on 12.01.2015, which creates a doubt on the case of the prosecution.

8. Apart from that, though P.W.1 in her evidence stated that there were number of people in the vicinity of the place of occurrence when she went in search of P.W.2 in the lake area and there were number of houses near the place occurrence, no independent witness was examined by the Investigating Officer to corroborate with the evidence of P.W.1 and P.W.2. Therefore, the case of the prosecution is doubtful.

9. Moreover, P.W.2 in her statements stated that after returning from school, she went directly to the lake area to ease herself, which is very improbable. But, in her evidence, she deposed that after coming from school, she went to her house and after telling her mother, she went to the lake area to ease herself. Therefore, improvement is made in order to correlate with the evidence of P.W.1. Since the prosecution has not proved its case beyond all reasonable doubt, the accused is entitled to benefit of doubt.

10. The learned Government Advocate (Crl. Side) submitted that P.W.3, father of the victim child, who was working as a driver in private bus, went to the work and he was not present on the date of occurrence. Therefore, P.W.1-mother of the victim child, after the incident, told the same to her brother-in-law and since her husband went to the work, she waited for him till next day and gave the complaint on 03.12.2014 at 4.00 p.m. Therefore, the mere delay in lodging the complaint cannot be a ground to reject the prosecution case.



11. It is an admitted fact that P.W.3, the father of the victim child, in his cross examination, stated that he did not sign the complaint (Ex.P1). It is in general that a person, who witness the occurrence, can give a complaint and that is enough to substantiate the occurrence. Further, it is not necessary that the person, who went along with the complainant, should sign the complaint. Therefore, the ground taken by the learned counsel for the appellant that P.W.3 has not signed the complaint (Ex.P1) would not falsify the case of the prosecution and create any doubt on the prosecution case.

12. The learned Government Advocate (Crl. Side) further submitted that with regard to the identification of the accused, a defence has been taken before the trial Court that it is more improbable to see a person away from 300 meters. The trial Court has rightly held that 300 meters distance can be a place which can be seen by eyes and it is not too far away and the reason said by P.W.2 is acceptable. Now, a similar defence has been taken by the learned counsel for the appellant that P.W.1 in her cross examination stated that she saw a figure through the bushes at the distance of 500 feet. Within the distance of 500 feet, a person can easily see the person and identify the person correctly. Therefore, this ground cannot be acceptable.

13. The learned Government Advocate (Crl. Side) submitted that there was a delay in recording the statement of witnesses and in forwarding their statements. The Hon'ble Supreme Court in the case of **Latel Ram and another vs. State of Chattisgarh**, held that mere delay in recording the statement of the eye witness by the investigating officer cannot *ipso facto* raise suspicion in the mind of the Court about the veracity of the prosecution case, more particularly, about the veracity of the eye witnesses. Therefore, in this case, the delay in recording the statement of witnesses and forwarding their statements would not vitiate the case of the prosecution.

14. The learned Government Advocate (Crl. Side) further submitted that when P.W.1 and P.W.2 clearly narrated the incident, there is no need to examine the independent witnesses. Further, in the case of sexual abuse, the evidence of victim child is sufficient to convict the accused for the offence.

15. Further, the learned Government Advocate (Crl. Side) relied upon a Judgment of the Apex Court in the case of **C.Muniaappan and others vs. State of Tamil Nadu**, reported in **(2010) 9 SCC 567**, wherein, the Apex Court has held as follows:

"43. Serious issues have been raised by learned senior counsel appearing for the appellants, submitting that inquest report was defective as there has been much irregularity in the inquest itself. Undoubtedly, three



Investigating Officers, namely, T. Shanmugaiah, Police Inspector (PW.116); S.Palanimuthu (PW.121); and John Basha (PW.122) had conducted the investigation at the initial stage. The occurrence was so ugly and awful that the I.Os. had conducted the investigation under great anxiety and tension. The seizure memos were also prepared in the same state of affairs. Therefore, when the investigation had been conducted in such a charged atmosphere, some irregularities were bound to occur. There is ample evidence on record to show that after burning of the University bus, when the students came to know that three girls had been charred and large number of girl students had suffered burn injuries, they became so violent that they damaged the ambulance which had been brought to take bodies of the deceased girls for conducting autopsy. The State Authorities, after keeping all these factors in mind and realizing that the investigation had not been conducted in proper manner, had taken a decision to transfer the investigation to the CBCID. Therefore, the irregularities committed in the investigation by the earlier I.Os. has too little relevance on the merits of the case. The evidence collected by the said three I.Os. was not worth placing reliance on and has rightly been not relied upon by the subsequent Investigating Officer.

44. There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the I.O. and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence de hors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation. (Vide Chandra Kanth Lakshmi v. State of Maharashtra, AIR 1974 SC 220; Karnel Singh v. State of Madhya Pradesh, (1995) 5 SCC 518; Ram Bihari Yadav v. State of Bihar, AIR 1998 SC 1850; Paras Yadav v. State of Bihar, AIR 1999 SC 644; State of



Karnataka v. K. Yarappa Reddy, AIR 2000 SC 185; Amar Singh v. Balwinder Singh, AIR 2003 SC 1164; Allarakha K. Mansuri v. State of Gujarat, AIR 2002 SC 1051; and Ram Bali v. State of U.P., AIR 2004 SC 2329)."

16. This Court paid its anxious consideration to the rival submissions and also perused the available records.

17. The evidence of P.Ws.1 and 2 establish the case of the prosecution that the victim child was sexually abused by the accused on 02.12.2014. On the date of occurrence, the victim child, after returning from school, went to attend natural call to the bush nearby her house, where, the first accused came there and took her inside the bush and put her penis on her face and rubbed. When P.W.1, mother of the victim child went in search of P.W.2, at that time, P.W.2 came from inside the bush by holding her panties in one hand and slippers in another hand and she was weeping and crying. When P.W.1 shouted P.W.2 why she went interior to the bush, P.W.2 told that the first accused (Madan thatha) pulled her hand and took her inside and removed his dhothi and put his penis on her face and rubbed. P.W.2, in her 164 statement, also narrated the incident. Further, at the time of trial, she also gave her evidence about the occurrence. Even though the victim child was cross examined elaborately, the defence could not shatter her evidence. Further, P.W.8-Malini, Department of Psychiatry, after examining the victim child, gave a report (Ex.P4), stating that child is able to explain the incident clearly. Therefore, the evidence of P.W.2 is trustworthy and acceptable and it clearly establishes the sexual abuse made by the first accused. The trial Court has also rightly held that when the evidence of victim was very clear and brief, it cannot be thrown off as tutioned because 5 years old girl cannot be taught about the occurrence and it cannot be taken as causal because no penetrating offence was committed to the victim.

18. Further, according to the learned counsel for the appellant, there was a delay in lodging the complaint. P.W.1 mother of the victim child, after the incident, informed her husband, who went to the work, over phone and she waited for him and on the next day, she along with her husband and P.W.2 came to the Police Station and lodged the complaint. P.W.3 father of the victim child in his evidence stated that he was working as a driver in a private bus and on the date of occurrence he was on duty and his wife called him at about 5.30 p.m. Since he was driving the bus, he was not able to speak. Thereafter, at about 7.00 p.m. he called his wife, at that time, P.W.1 narrated the incident to him. He came to the house only on the next day, he inquired her daughter and thereafter, took his wife and daughter to the Police Station. When P.W.1 stated that she waited for her husband to give complaint, the delay would not vitiate the case of the prosecution. Further, the delay for this nature of offence cannot be a material defect to disbelieve the case of the prosecution.



19. It is the contention of the learned counsel for the appellant that the accused was not identified by P.W.1 and P.W.2 before the trial Court. The accused person is known to P.W.1 and P.W.2. Further, P.W.2 in her evidence told the name of the accused as "kjd; jhj;jh". When the victim child specifically told the name of the accused, there is no need for identification of the accused before the trial Court.

20. As rightly contended by the learned Government Advocate (Crl. Side), a person, within the distance of 500 feet, can easily see the person and identify the person correctly. Therefore, the ground taken by the appellant cannot be acceptable.

21. So far as the delay in recording the statement of witnesses and forwarding the same to the Court, when the Hon'ble Supreme Court in the case of **Latel Ram and another vs. State of Chattisgarh**, held that mere delay in recording the statement of eye witness by the Investigating Officer cannot *ipso facto* raise suspicion in the mind of the Court about the veracity of the prosecution case, more particularly, about the veracity of the eye witnesses, the delay in recording the statement of witnesses and forwarding their statements would not vitiate the case of the prosecution.

22. With regard to the non-examination of independent witness is concerned, P.W.2-victim child in her 164 statement has clearly narrated the incident and P.W.8-Malini, Department of Psychiatry, after examining the victim child, gave a report (Ex.P4), stating that child is able to explain the incident clearly. Apart from that, P.W.1, mother of the victim child, also saw the first accused in the place of occurrence and she also speaks about the occurrence. Therefore, the non-examination of independent witnesses does not affect the prosecution case.

23. Considering the facts and circumstances of the case, the prosecution has proved its case beyond reasonable doubt. Further, the trial Court, on proper appreciation and consideration of oral and documentary evidences, has rightly found the appellant/A1 guilty for the commission of the offence and imposed the sentence as stated above, which requires no interference by this Court. This Court is of the view that there is no infirmity or error apparent on the face of the record in the impugned judgment passed by the trial court. Accordingly, the appeal deserves to be dismissed.

24. At this stage, the learned counsel for the accused pleaded that the appellant is now aged about 75 years old and he is not having eyesight in one eye and also bedridden and therefore, he sought for modification of sentence to the minimum period of five years instead of seven years.



objected that the evidence of P.W.2 is very cogent and she also clearly narrated the manner in which the offence committed. Therefore, the plea of modification of sentence cannot be entertained.

26. Considering the fact that the first accused, who is aged about 75 years old, is bedridden and he lost his eyesight in one eye, this Court is inclined to modify the sentence from 7 years to the minimum period of 5 years.

27. Accordingly, the Criminal Appeal is dismissed. The conviction imposed on him by the trial court vide judgment dated 14.10.2015 in Special S.C. No.2 of 2015 is confirmed. However, the sentence is modified from 7 years to the minimum period of 5 years. Bail bonds executed by the appellant/A-1 at the time of suspension of sentence shall stand cancelled and the trial court is directed to take necessary steps to secure the custody of A-1 and commit him to prison to undergo the remaining portion of the sentence imposed on him. The period of incarceration, if any, already undergone by A-1 during the course of investigation shall be set off in terms of Section 428 Cr.P.C.

Sd/-

Assistant Registrar (CS-II)

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/ /2021

Sub Assistant Registrar(CS)

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To

1. The learned Sessions Judge,
Mahila Court, Trichy.
2. The Superintendent central prison,
Trichy.
3. The Inspector of Police,
Uppaliapuram Police Station,
Trichy.

Crl.A.(MD)No.356 of 2015

04.09.2020

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