



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 18.03.2021
Pronounced On : 08.06.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.A(MD).No.171 of 2016

S.Narayanamoorthy

.. Appellant/ Accused

Vs.

The State represented by
The Inspector of Police
Karur All Women Police Station
Karur. Crime No.22 of 2015

.. Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 (2) of Cr.P.C, to set aside the order of conviction and sentence dated 28.04.2016 passed in Special Sessions Case No.4 of 2016 on the file of the Fast Track Mahila Court, Karur.

For Appellant : Mr.R.Saravanan

For Respondent : Mr.K.K.Ramakrishnan,
Additional Public Prosecutor.

JUDGMENT

"Smiling face of every little girl is the signature of God's presence."

-Amit Ray.

The Criminal Appeal is directed against the judgment of conviction passed in Special Sessions Case No. 4 of 2016 dated 28.04.2016 on the file of Mahila Fast Tract Court, Karur.

2.The Inspector of Police, All Women Police Station, Karur has laid the final report against the accused alleging that the complainant's parents were running a petty shop and a puncture repair shop in their house, the victim girl was a class VIII student. The accused also belonged to the same area and on 31.08.2015 at about 9.00 p.m, when the victim was alone in the shop, the accused came to buy Hans. The victim after receiving Rs.10/-, had put the hans packet on the cot in the front of the shop. When the accused insisted to place it on his hands, the victim then gave the hans packet to him, the accused grabbed her hands and



asked her come to bed, with the intention to have sex with her and that thereby, the accused is said to have committed the offence under Section 7 r/w 8 of the Protection of Children from Sexual Offences Act, 2012.

3. The learned Judicial Magistrate No.I, Karur, on perusal of the final report and other records and after compliance under Section 25(2) of POCSO Act, has submitted the records to the Fast Track Mahila Court, Karur and the same was taken on file in Special Sessions Case No.4 of 2016 and summons were ordered to be issued to the accused.

4. After appearance of the accused, copies of records were furnished under Section 207 Cr.P.C on free of costs. The learned Sessions Judge, on hearing both the sides and on perusal of records, being satisfied that there existed a *prima facie* case against the accused, framed a charge under Section 7 r/w 8 of POCSO Act, 2012, and the same was read over and explained to him and on being questioned, the accused denied the charges and pleaded not guilty.

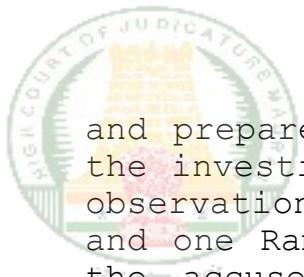
5. The prosecution, in order to prove its case, has examined 14 witnesses as PW1 to PW14 and exhibited 9 documents as Ex.P1 to Ex.P9 and one material object as M.O.1.

6. The case of the prosecution emerging from the evidence adduced by the prosecution in brief is as follows:

(i). PW1-victim as well defacto complainant is residing in xxxxxx, Karur with her parents. PW2 is her mother and PW3 is her aunt. PW1 was born in the year 2003. She and her brother Hariharan are twins and both are studying VIII Standard in xxxxxx Middle School. PW1's father is running a petty shop and puncture repair shop in the house itself. On 31.08.2015 at about 9.00 p.m, PW2 and her son Hariharan went to the house of PW3. While PW1 was alone in the petty shop, accused came and asked for Hans. She took a hans packet and put it on the cot, the accused asked her to give it in his hands. When PW1 gave the packet to the accused, he immediately grabbed both hands of the victim and said come to bed. The victim shook off his hands, went into the shop and closed the door. When she saw the accused through an opening in the door, he stood there and then he went away. Immediately, the victim girl ran to the house of PW3 and informed about the incident to her mother PW2. Thereafter, PW2 had contacted her husband through phone and informed about the incident. Since the accused has not turned up to Panchayat, PW1 along with her parents went to the police station on the next day and lodged the complaint under Ex.P1.

(ii). PW14- Rani, the then Inspector of Police, All Women Police Station, Karur, received the complaint from PW1 at about 15 hours on 02.09.2015 and registered a case in Crime No.22 of 2015

<https://hcservices.ecourts.gov.in/hcservices/>



and prepared the First Information Report under Ex.P8. She took up the investigation and visited the occurrence place and prepared the observation mahazer under Ex.P3 in the presence of P.W.4-Mahalingam and one Ramasamy and drew a rough sketch under Ex.P9. She arrested the accused at about 6.00 p.m at Chukkaliyur Bus Stop who was identified by the parents of the complainant and on enquiry, accused has given a voluntary confession statement. P.W.14 recorded the same in the presence of P.W.5 Ramesh and one Anbarasan. Thereafter, she sent the accused for judicial custody. She sent the victim girl for medical examination and also submitted a requisition to the Judicial Magistrate for sending the accused for medical examination. Thereafter, she examined the witnesses and the medical officers and recorded their statements. P.W.14, then examined the Head Mistress of the School of the victim girl and received the record sheet, later examined her and recorded her statement. After completing the investigation, she has laid the final report against the accused under Section 7 r/w 8 of POCSO Act. With the Examination of P.W.14, the prosecution has closed their side evidence.

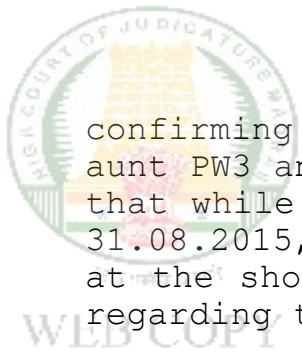
7. When the accused was examined under Section 313(1) (b) of Cr.P.C with regard to the incriminating aspects found against the accused, he denied the same as false and stated that a false case has been foisted against him. Though the accused has stated that had witnesses on his side, he had not let in any evidence subsequently.

8. The learned Sessions Judge, upon considering the evidence adduced and on hearing the arguments of both the sides, has passed the impugned judgment on 28.04.2016, convicting the accused under Section 7 r/w 8 of POCSO Act and sentenced him to undergo 3 years imprisonment and to pay a fine of Rs.1,000/- in default to undergo 3 months imprisonment and directed the accused to be detained in the Borstal School, Pudukkottai. Aggrieved by the judgment of conviction and sentence, the accused has preferred the appeal, now under consideration.

9. I have heard Mr.R.Saravanan, learned counsel for the appellant and Mr.K.R.Ramakrishnan, learned Additional Public Prosecutor.

10. Whether the impugned Judgment dated 28.04.2016 passed in Special S.C.No.4 of 2016 on the file of the Fast Track Mahila Court, Karur, is liable to be set aside ? is the point for consideration.

11. PW1 victim in her evidence before the trial Court would say that while she was alone in their Petty Shop watching TV at about 9 p.m on that day, the accused came and asked for Hans. When she placed the Hans packet on the cot, the accused insisted to give it to him. The victim obliged and gave the Hans packet, the accused grabbed her both hands and asked her to "come to bed". She immediately shook off his hands, went into the shop. After



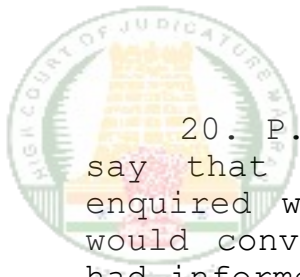
confirming that the accused had gone, she ran to the house of her aunt PW3 and informed them about the incident. PW2 and PW3 would say that while they were chatting in the house of PW3 at about 8 p.m on 31.08.2015, PW1 came there crying and informed about the occurrence at the shop. Though PW1 was cross examined at length, her evidence regarding the occurrence was at all shaken.

12.As rightly contended by the learned Additional Public Prosecutor, the accused had clutched the hands of the victim and with sexual intent uttered the words, "come to bed". Moreover, the subsequent conduct of the victim assumes significance, on hearing the words of the accused, she immediately shook off from his clutches and went inside the shop and thereafter only on confirming that the accused had left the place, she ran to P.W.3's house crying and informed them about the incident.

13.It is settled law that the evidence of the victim in a sexual assault case, if it inspires confidence, it must be relied upon without seeking corroboration of her statement in material particular. Generally, the evidence of a girl who complains of rape or sexual assault, should not be viewed with doubt, disbelief or suspicion. The Hon'ble Supreme Court has held in number of cases that the evidence of a victim of a sexual offence is entitled to great weight even without corroboration. In the case on hand, as already pointed out, the evidence of P.W.1 is consistent, cogent, reliable and trust-worthy and there is nothing to doubt her version.

14.During investigation, at the instance of the Investigating Officer, statement under Section 164 Cr.P.C. was recorded from P.W.1 by P.W.13- Judicial Officer. No doubt, the statement recorded under Section 164 Cr.P.C from the witness or the victim is not a substantive evidence and the same can be used to corroborate the substantive evidence if any available and as well by the defence for eliciting the contradictions. In the case on hand, P.W.1 in her Ex. P.2 statement under Section 164 Cr.P.C, has reiterated the same facts about the occurrence. Considering the above, the evidence of P.W.1 also stands corroborated by her statement recorded under Section 164 Cr.P.C.

15.Now, coming to the medical evidence, P.W.8-Medical Officer would say that the victim girl is not having any external injuries and no internal examination was done due to the opposition made by the mother of the victim. As rightly contended by the learned Additional Public Prosecutor, except for grabbing or clutching of the hands, there was no other allegation of physical assault and as such, the refusal on the part of P.W.2 for internal examination cannot be found fault with and more importantly, the accused has no *locus standi* to take advantage of the same.



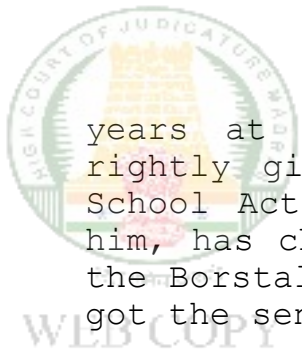
20. P.W.5- Village Administrative Officer in his evidence would say that after coming to know about the alleged incident, he enquired with the Panchayat Head, who had informed him that they would convene a Panchayat on the next day and that thereafter, he had informed that as there was no settlement, they have directed the victim's parents to lodge a complaint.

21. Moreover, the delay in lodging the FIR in a sexual assault case is not of much significance as the victim has to muster courage to come out in open and expose herself in a conservative social milieu. As rightly contended by the learned Additional Public Prosecutor, it is the usual stand taken by the defence in almost all criminal cases, as in the case on hand, that there was delay in lodging the complaint to the Police and the same having not been properly explained, the prosecution case should be viewed with suspicion. Generally in sexual offences, delay cannot be a ground to view the prosecutrix version with suspicion. It is necessary to refer the decision of the Hon'ble Supreme Court in **State of Punjab Vs. Gurmit Singh reported in 1996 (2) SCC 384** whereunder the Hon'ble Apex Court has held that the Court cannot overlook the fact that in sexual offences delay in lodging of FIR can be due to variety of reasons particularly, the reluctance of the prosecutrix or her family members to go to the Police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. It is only after giving it a cool thought that the complaint of sexual offence is generally lodged. Moreover, in the case on hand, P.W.5 and P.W.6 clearly depose regarding the panchayat held in that are immediately after the incident and only on the advice of the panchayat members, the complaint was subsequently lodged in the Police Station. This actually connects the turn of events, from the occurrence to the lodging of complaint. It is pertinent to note that the accused has not shown as to how he was prejudiced by the said delay.

22. Considering the above, this Court has no hesitation to hold that the defence has miserably failed to rebut the presumption and as such, the finding of the trial Court that the prosecution has proved the charge under Section 7 of POCSO Act and the accused is liable to be convicted for the offence under Section 7 r/w 8 of POCSO Act cannot be found fault with.

23. Now turning to the punishment imposed, as already pointed, the learned trial Judge has sentenced the accused under Section 8 of POCSO Act and to undergo 3 years imprisonment and to pay a fine of Rs.1000/- in default to undergo 3 months imprisonment. The learned trial Judge has directed to detain the accused in Borstal School, Pudukottai for a period of 3 years for his reformation.

24. It is evident from the records that the accused was aged about 18 years at the time of occurrence and since he was aged 19



years at the time of judgment, the learned Sessions Judge has rightly given the benefit under Section 8 of Tamil Nadu Borstal School Act. But the accused without availing the benefit given to him, has challenged the conviction and the sentence of detention in the Borstal School for a period of three years before this Court and got the sentence suspended.

25. It is not in dispute that the accused was in Judicial custody for 24 days, during the investigation period. Section 8 of Tamil Nadu Borstal School Act contemplates that the Court, in lieu of passing a sentence of imprisonment, can pass a sentence of detention in a Borstal School for a term which shall not be less than two years and shall not exceed five years, but, in no case, extending beyond the date on which the adolescent offender will, in the opinion of the Court, attain the age of twenty three years.

26. Considering the above provision, it is very much clear that the accused, who is above 21 years of age cannot be sent to Borstal School. Admittedly, the accused has already crossed the age of 23 years and as such, the question of giving the benefits under the Borstal School Act does not arise at all. Considering the nature and seriousness of the offence, the punishment of three years imprisonment awarded by the trial Court cannot said to be excessive. Hence, the appellant/accused is to be sent to the prison to undergo the sentence imposed on him less the period in judicial custody. Considering the above, the Criminal Appeal fails and the judgment of the trial Court is liable to be confirmed.

27. In the result, the judgment of conviction and the sentence passed in Special Sessions Case No.4 of 2016 on the file of the Fast Track Mahila Court, Karur, dated 28.04.2016, is confirmed and the Criminal Appeal is dismissed. The trial Court is directed to take necessary steps to secure the accused to undergo the remaining period of sentence and the period of detention already undergone by the accused is ordered to be set off under Section 428 of Cr.P.C.

I conclude thus,

"Save and respect girl child, as she is the future of your family and society".

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

msa/das



To

1.The Judge,
Fast Track Mahila Court ,
Karur.

2.The Section Officer, (2C)
Criminal Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.R.SARAVANAN, Advocate (SR-18990[F] dated 08/06/2021)

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08.06.2021

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