



WEB COPY



Crl.A.No.323 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.A.No.323 of 2018

S.Sivanesan

...

Appellant

Vs

State rep. by
Inspector of Police,
Thirunallar Police Station,
Karaikal.

Crime No.102 of 2016

...

Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, against the judgment dated 25.04.2018 made in Spl.S.C.No.4 of 2017 passed by the learned Sessions Judge at Karaikal by convicting and sentencing the appellant to undergo 10 years rigorous imprisonment and also to pay a fine of Rs.5,000/- in default to undergo 3 month simple imprisonment for the offence under Section 6 of Protection of Children from Sexual Offences Act, 2012.

For Appellant : Mr.S.Ashok Kumar
Senior Counsel
for Mr.P.Palani Nathan

For Respondent : Mr.A.Gopinath
Government Advocate(Crl.side)



Crl.A.No.323 of 2018

JUDGMENT

This Criminal Appeal is directed as against the Judgment dated 25.04.2018 passed in Spl.S.C.No.4 of 2017 on the file of the learned Sessions Judge, Karaikal, thereby convicted the appellant for the offence punishable under Section 6 of Protection of Children from Sexual Offences Act, 2012.

2. The case of the prosecution is that on 04.08.2016 at about 3.45 hours, at the class room for the Standard VI of the Government Middle School, Surakudy, the accused, being the Science teacher for the VI Standard students at Government Middle School, Surakudy, Thirunallar, had penetrated his fingers into the private part of the victim with sexual intention, thereby caused tear injuries and committed penetrative sexual assault on the victim. On the complaint, the respondent registered an FIR in Crime No.102 of 2016 for the offence under Section 6 of Protection of Children from Sexual Offences Act, 2012.

3. After completion of the investigation, the respondent filed final report and the same has been taken cognizance by the Trial Court in Spl.S.C.No.4 of 2017 for the offence punishable under Section 6 of Protection of Children from Sexual Offences Act, 2012. In order to bring home the charge, the prosecution

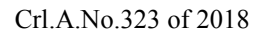


Crl.A.No.323 of 2018

had examined P.Ws.1 to 17 and marked Exs.P1 to P15. The prosecution also produced M.Os.1 and 2. On the side of the accused, no one was examined and marked Exs.D1 and D2.

4. On perusal of the oral and documentary evidence, the Trial Court found the appellant guilty for the offence punishable under Section 6 of Protection of Children from Sexual Offences Act, 2012 and sentenced him to undergo ten years rigorous imprisonment and also to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for three months. Aggrieved by the same, the present appeal.

5. Mr.S.Ashok Kumar, learned Senior Counsel appearing for the appellant submitted that the victim was studying VI Standard at Government Middle School, Surakudy, at the time of the alleged occurrence. The appellant was a Science teacher in the said school. The alleged occurrence had taken place on 04.08.2016, when the victim girl went to her school and when, along with other students, were taken to PANJANCOA Research College for an educational trip and returned to the school by lunch hours. The victim attended the school after lunch hours and it was alleged that the last period was Science



6. Only on 11.08.2016, when P.W.9 examined her, it was found that she had injury on her private part. Thereafter, the complaint was lodged and the appellant was voluntarily implicated as if he committed penetrative sexual assault on his finger on 04.08.2016. P.W.9 also categorically deposed that the said injury happened within 4 to 6 hours on her examination, since the injury was fresh. Admittedly, the victim suffered with urinary track infection and got



irritation over her private part. Normally, the human behaviour will be putting their hand in the private part as there would be a sense of itching. Therefore, possibility for the injury would be, due to her urinary infection and irritation, she may used her hands in the irritation parts and as such, there was a nail injury. He further submitted that two others were also present at the time of occurrence in the class room. However, the prosecution did not examine them to prove its case. The victim never disclosed that the appellant had only penetrated sexual assault on her on 04.08.2016. P.W.9 examined her and found some small injury on her private part, the entire case has been hooked up. Unfortunately, the Trial Court, without considering those aspects, mechanically convicted the appellant for the offence punishable under Section 6 of Protection of Children from Sexual Offences Act, 2012.

7. Per contra, the learned Government Advocate (Criminal Side) submitted that the prosecution in order to prove its case, examined P.Ws.1 to 17 and marked Exs.P1 to P15. The deposition of P.W.9 is very clear that only because of penetrative sexual assault, the victim had injury in her private part. Though, the victim suffered with urinary track infection, it was co-incident and the Trial Court rightly convicted the appellant for the offence under Section 6



Crl.A.No.323 of 2018

of Protection of Children from Sexual Offences Act, 2012.

WEB COPY

8. Heard, Mr.S.Ashok Kumar, learned Senior Counsel appearing for the appellant and Mr.A.Gopinath, learned Government Advocate (Criminal Side) appearing for the respondent and perused the materials available on record.

9. Admittedly, the victim was aged about 11 years at the time of occurrence and she was studying VI Standard at Government Middle School, Surakudy. The appellant was working as Science teacher in the school and he was taking his science class on 04.08.2016 during the last period. Admittedly, the victim and other students were taken to PANJANCOA Research College for plants visit at morning session and returned school by lunch hours. At that time the alleged occurrence had taken place. Except two other friends, no one was there, along with the victim.

10. According to the prosecution, when the victim was called for some questions and answers, the appellant inserted his hand into her underwear and pinched over her private part. However, it was not informed to her parents by the victim. On next day, she felt some pain on her private part and informed to



P.W.2, who is the mother of the victim. Immediately she was taken to Government Hospital, Thenoor. She was treated as out patient on 05.08.2016 and no one was informed about the alleged occurrence on 04.08.2016. She was treated for urinary track infection and went to her house. Again on 06.08.2016, she felt pain on her private part and also she found bleeding on her private part. Again she was taken to the Government Hospital, Karaikal, on 06.08.2016, she was admitted as in patient till 09.08.2016. On 09.08.2016, she was voluntarily discharged from the hospital against her medical advice, to attend a funeral ceremony. Once again, on 11.08.2016, she felt some pain and bleeding in her private part and on 11.08.2016 she was taken to Government Hospital, Karaikal. She got admitted and P.W.9 examined her. During her examination, she found external injury on her private part. It was informed to her parents and thereafter, the victim and P.W.2 came out with the case that on 04.08.2016, the appellant committed penetrative sexual assault on her ,during the last period, when the appellant was taking Science class. It is relevant to extract the evidence of P.W.9, which is as follows :

“I have examined the patient. The patient's mother stated that on 04.08.2016 the class children were taken for school trip to Pajango. After the trip was over they were dropped in school. She and her friend sitting the class room,



WEB COPY

the Science teacher name by Sivanesan called her to his table then he inserted his hands into her garments, then he inserted one finger into the private part of that girl and pincher her, then she shouted and ran away from the class room. Thereafter she went to home and did not reveal it to anybody, then at home she have complaint of passing of blood stain with urine. So, she was brought to her. I examined the girl. On examination she was well oriented, she has already changed the cloths and she took bath. On examination no free hair retained in her external genital, Labia Majora normal, Labia Minora normal, fourchette a small 1.5 x 2 c.m. bruise seen in the posterior fourchette, vulva slightly edematous, perineum normal, hymen intact, admits tip of finger anus normal.'"

11. In her cross examination, she deposed that the victim was admitted as inpatient from 06.08.2016 and the relevant portion is extracted hereunder :

"From the records I can see that she was admitted on 06.08.2016 and provisional diagnosed for UTI. She was treated as inpatient from 06.08.2016 to 09.08.2016. From the case records I do not see any injury in the private part of the girl Kalainaya. Again she was admitted at General Hospital, Karaikal on 11.08.2016 at 9.45 a.m. as seen from the medical records of Pediatric ward shown to me now. I examined the girl Kalainaya on 11.08.2016 at 10.30 p.m. It is noted in the case records shown to me that there was bleeding from he



WEB COPY



CrI.A.No.323 of 2018

vagina. This is noted for the first time only on 11.08.2016 as seen from the case records which is issued by GH, Karaikal. The medical records marked as Ex.D1 (entire case sheet). Another case records shown to me is issued by Thennur community medical centre marked as Ex.D2. Ex.D2 records are sent by Dr.K.Mohanraj, Medical officer incharge community health centre, Thirunallar. I am aware that the girl Kalainaya was discharged from the hospital against medical advice on 09.08.2016. I cannot rule out the possibility that this girl Kalainaya could have sustained this injury as noted in my certificate Ex.P6, on 09.08.2016 or on 10.08.2016. This girl Kalainaya complaint of pinching in her Urethra is not correct, but in her private part. Passing of urine is through Urethra. The distance between Urethra and posterior fourchette is about 1.5 to 2 inches. There is no injury in Urethra but I found injury in fourchette. Fourchitte is not part for passing Urine.”

12. It is clear that the victim was admitted into the Government Hospital, Karaikal on 06.08.2016. On 09.08.2016, against medical advice she was taken from hospital. Again she was admitted at General Hospital on 11.08.2016. She was treated for urinary track infection. She also deposed that no Medical Officer was informed that she was sexually assaulted by anybody. She was suffered from Haematuria. It is nothing but passing of blood in the urine. It



would be caused due to kidney stones and stone in the urinary bladder track.

Therefore, the victim suffered Haematuria and she was treated for urinary track infection. No injury was found from 05.08.2016 to 011.08.2016 on her private part. Only on 11.08.2016 at about 9.45 a.m., when P.W.9 examined her and found the injury on her private part that too, it is an external injury. Only thereafter, the complaint was lodged and P.W.14 registered an FIR. After a period of 20 days from the registration of the FIR, her statement was recorded under Section 164 of Cr.P.C.

13. On receipt of the information, P.W.11 went to the hospital and recorded the statement of the victim, which was marked as Ex.P1. On receipt of the statement, P.W.14 registered an FIR in Crime No.102 of 2016 for the offence punishable under Section 6 of Protection of Children from Sexual Offences Act, 2012, which was marked as Ex.P10. Therefore, only on 11.08.2016, that too, after finding the external injury on her private part, the victim made statement alleging that the appellant had penetrative sexual assault by his finger on her. In fact, the external injury was found only on 11.08.2016.

14. That apart, even according to the victim, she along with two other



Crl.A.No.323 of 2018

students were in the class room, at the time of the alleged occurrence.

According to her, when the appellant committed the offence immediately, the bell rang and as such, without even shouting she came out of the school. She directly went to her house and even then the victim failed to disclose the same. It is not the case of the prosecution that previous to the occurrence on 04.08.2016, there were any incident related to sexual assault on the victim or any other students by the appellant. Even according to the victim, it was the first occurrence viz., on 04.08.2016 and before that no such occurrence had taken place for any other students. There was no complaint as against the appellant so far, except the present complaint. In order to prove the misconduct of the appellant, the prosecution failed to examine any other teacher or head master. They were not examined and their statement was not recorded under Section 161 of Cr.P.C.

15. P.W.9 opined that the external injury found on the private part of the victim might have been caused due to nail mark. Admittedly, the victim was infected with urinary track infection and as such, she would have suffered itching over her private part. In a normal human behaviour, the victim might down pinched her private part, thus there might be a nail mark caused in her



Crl.A.No.323 of 2018

private part. As per the medical records, she suffered with urinary track infection and as such, bleeding was passing out along with urine. If she urinated with blood, it was only due to her urinary infection. Even assuming that the appellant had penetrative sexual assault by his finger, there must be injury on her vagina. There was no medical examination on her vagina. It is not a case of the victim that there was bleeding through her vagina. There was also no medical examination to that effect.

16. Therefore, the circumstances are very clear that the prosecution failed to prove its case beyond any reasonable doubt. Unfortunately, the Trial Court convicted the appellant. Hence, the conviction imposed on the appellant cannot be sustained and it is liable to be set aside.

17. In view of the above, this Criminal Appeal is allowed and the judgment of conviction and sentence dated 25.04.2018 made in Spl.S.C.No.4 of 2017 on the file of the learned Sessions Judge, Karaikal, by convicting and sentencing the appellant for the offence under Section 6 of the Protection of Children from Sexual Offences Act, 2012 is hereby set aside. The appellant/accused is acquitted of all charges in Spl.S.C.No.4 of 2017 on the file of the



CrI.A.No.323 of 2018

learned Sessions Judge, Karaikal. The appellant/accused is directed to be set at liberty forthwith unless his custody is otherwise required in connection with any other case. Fine amount, if any paid, shall be refunded to the appellant forthwith. Bail bonds, if any executed, shall stand cancelled.

04.11.2022

Index : Yes/No
Internet : Yes/No
Speaking/Non Speaking order
Lpp

To

1. The Sessions Judge,
Karaikal.

2. The Inspector of Police,
Thirunallar Police Station,
Karaikal.

3. The Public Prosecutor,
High Court, Madrs.

G.K.ILANTHIRAIYAN. J.



WEB COPY



Crl.A.No.323 of 2018

Lpp

Crl.A.No.323 of 2018

04.11.2022