



CrI.A.No.619 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.07.2022

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Criminal Appeal No.619 of 2017

Dhasthagir

.. Appellant

/versus/

State Represented by,
The Deputy Superintendent of Police,
Sathyamangalam Sub Division,
Erode District.
(Crime No.2 of 2013)

.. Respondent

Criminal Appeal has been filed under Section 374(2) of Cr.P.C.,
praying to set aside the judgment passed in S.C.No.150 of 2014 dated
17.06.2015.

For Appellant :Mr.K.Balaji

For Respondent :Mr.S.Udaya Kumar
Government Advocate (CrI.Side)



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JUDGMENT

The appellant herein/accused tried for charges under Section 10 of Protection of Children from Sexual Offences Act, 2012 and Section 506 (ii) of IPC and the trial Court found the accused guilty. Sentence of 10 years Rigorous Imprisonment and fine of Rs.10,000/- in default, 2 years Simple Imprisonment for the offence under Section 10 of the Protection of Children from Sexual Offences Act, 2012 and 7 years Rigorous Imprisonment and fine of Rs.10,000/- in default, 2 years Simple Imprisonment for the offence under Section 506(ii) of IPC was awarded by the trial Court. The period of sentence was ordered to run consecutively.

2. The sum and substances of the prosecution case as spoken by the prosecution witnesses is that in the course of crime, when the minor child aged 8 years cried out of pain, the accused allowed to go out but threatened her if she discloses to any one, he will kill her. Therefore, charge under Section 506(ii) IPC was framed. Further, on 25.09.2013, at about 05.00 p.m., the minor child was called by the accused to his house and in his



house, she was subjected to aggravated sexual assault for disobeying him and placing his private parts on the child private parts. Since the child was 8 years old, charge under Section 9(m) of the Protection of Children from Sexual Offences Act, 2012 was framed. The victim girl child has been examined as PW-3 and she has deposed about the occurrence incriminating the accused and the said occurrence has come to light only on the next day. When the victim played along with her friends viz, Sammima and Reshma, the victim girl child warned her friends not to go to the house of the accused, but it was over heard by the mother of Reshma, Nila Parveen @ Nilopher (PW-4) and she enquired the victim girl child why she warns Reshma not to go to the accused house and then, the victim girl child disclosed the event which she faced the day before. Thereafter, the matter has been informed to the police and case was registered in Crime No.2 of 2013 on 27.09.2013. The trial Court considering the evidence of the victim girl child and the other witnesses has found the accused guilty of both the charges.

3. The learned counsel appearing for the appellant submitted that the



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trial Court erred in holding the accused guilty without considering the inordinate delay in filing the First Information Report and the existing dispute between the appellant and the family of the victim girl child. The accused mounted the witness box and deposed about the existing previous enmity between him and PW-1 the father of the minor girl child regarding transaction of Automobile oil. Further, the Court has also not taken note of the fact that the minor girl child had not sustained any external injury on her private parts or other parts of her body and believing that he has subjected the aggravated sexual assault.

4. Per contra, the learned Government Advocate (Crl.Side) submitted that the evidence of the victim girl is a cogent and reliable. There is no necessity for 8 years old girl child to say anything adverse against the accused.

5. Heard both sides.

6. This Court, on considering the deposition of the victim girl child,



her father and the neighbour (PW-4) finds that their evidence is untainted and unblemished. Absence of injury on the private parts is not an indication that the minor girl child was not subjected to any sexual assault. The evidence of PW-3 victim girl child would clearly said that when she raised alarm the accused allowed to go free but under threat that he will kill her if she discloses the incident to any one. Further more, the medical report of the minor victim girl child which is marked as Ex.P3 indicates that hymen ruptured posteriorly mild congestion present. Therefore, there was no external injury over her body. It is medically found that there was injury in her private parts. Therefore, this Court finds no error in the finding of the trial Court convicting the accused for the offence under Section 10 of Protection of Children from Sexual Offences Act, 2012 and Section 506 (ii) of IPC. However, as pointed out by the learned counsel appearing for the appellant that the sentence imposed for the offence under Section 10 of the Protection of Children from Sexual Offences Act, 2012 is over and above the term of imprisonment prescribed under the Act.

7. For convenience Section 10 of the Protection of Children from



Sexual Offences Act, 2012 is extracted below:-

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“10. Punishment for aggravated sexual assault—Whoever, commits aggravated sexual assault shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.”

8. Whereas in this case, the imprisonment imposed is 10 years Rigorous Imprisonment which is over and above the term prescribed in the statute. Therefore, there is necessity to interfere with the trial Court judgment in respect of the sentence. Accordingly, the period of sentence imposed for the offence under Section 10 of the Protection of Children from Sexual Offences Act, 2012 is modified and fixed as seven years Rigorous Imprisonment and to pay a fine of Rs.10,000/- in default to undergo one year Simple Imprisonment and the period of sentence for the offence under Section 506(ii) of IPC 7 years Rigorous Imprisonment and pay a fine of Rs10,000/- in default to undergo 2 years Simple Imprisonment is unaltered. The period of sentence shall run concurrently.



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9. In the result, *this Criminal Appeal is partly allowed.* The period

of sentence already undergone by the appellant is set off under Section 428 of Cr.P.C.

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Index:yes/no

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To:

- 1.The Sessions Court, Magaleer Needimandram (Mahila Fast Track Court), Erode.
- 2.The Deputy Superintendent of Police, Sathyamangalam Sub Division, Erode District.
- 3.The Public Prosecutor, High Court, Madras.



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DR.G.JAYACHANDRAN,J.

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