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Crl.A.No.545 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.10.2022

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Crl.A.No.545 of 2017

Madhaeswaran

.. Appellant

/versus/

State rep.by
Inspector of Police,
All Women Police Station,
Perur, Coimbatore District.
Crime No.41 of 2014.

.. Respondent

Prayer: Criminal Appeal has been filed under Section 374 (2) of Cr.P.C., to set aside the judgment passed in C.C.no.5 of 2015 on the file of the Sessions Judge, Magaleer Needimandram (Mahila Court), Coimbatore, dated 03.03.2017.

For Appellant :Mr.Philip Ravindran Jesudoss

For Respondent :Mr.R.Kishore Kumar
Government Advocate (Crl.Side)



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JUDGMENT

Criminal Appeal by the accused challenging the judgment of the trial Court holding him guilty of offence under Section 5(l)(m) r/w 6 of Protection of Children From Sexual Offences Act, 2012. Sentence of 12 years RI and fine of Rs.5,000/- in default to undergo six months SI imposed on the appellant.

2. The case of the prosecution is that the victim girl was about 10 years old and she was pursuing 4th standard. She had been sexually abused by her maternal uncle, the appellant herein, taking advantage of the fact that her father passed away 3 years ago and mother has eloped with somebody else and she has taken shelter under her grandmother (i.e.) maternal mother, who is also the mother of the appellant. The crime has come to light, when some college students had visited the victim girl school and conducted awareness camp about child abuse. The victim girl has informed the volunteers and on their advise, the victim girl informed the matter to the Child Help Line Office-bearers. Teachers of the school had counselled with the victim girl and



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complaint has been lodged on 18.10.2014. After investigation, the child has been rescued and handed over to the Child Welfare Home. On completion of investigation, Final Report was filed against the appellant for the offence under Section 5 (l) (m) r/w 6 of Protection of Children from Sexual Offences Act, 2012.

3. To prove the charges, the prosecution has examined 11 Witnesses and marked 12 Exhibits. On the side of the defence, photocopy of the letter written by the victim girl was marked as Ex.D1. The Court below found the accused guilty and sentenced him as stated above, which is now challenged in this Criminal Appeal.

4. The learned counsel appearing for the appellant submits that the complaint itself is a concocted designed one at the behest of PW-1. The very reading of the complaint would indicate that for the alleged imaginary incident took place 2 years ago the present complaint is lodged and the same has been taken for investigation. The unmindful of the act is that the victim



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girl was living with the appellant under the same roof till the complaint was lodged. If something has happened two years ago, there is no reason for the victim girl to continue to stay with the offender under the same roof. The visit of the college students conducting awareness camp itself is a make believe story and there is no evidence to show that the students of AnivashiLingam College visited the school of the victim girl to conduct awareness camp. It is also contended by the learned counsel appearing for the appellant that the fact whether the victim girl, PW-2 was pursuing her studies itself is a disputed fact and it has not been proved by the prosecution beyond doubt. The statement of the victim girl was not recorded in a fair and proper manner either before the Judicial Magistrate or before the Court during trial.

5. It is also contended by the learned counsel appearing for the appellant that though the prosecution claims that when the victim girl gave her statement before the Magistrate, the same was video- graphed and the said video-graph was not produced before the Court, which causes doubt about the statement under Section 164 of Cr.P.C., recorded by the



Magistrate, which has been marked as Ex.P6.

6. The learned Government Advocate (Crl.Side) appearing for the State that it is a clear case of sexual abuse by the protector of the child. Having lost her father, the victim girl had taken shelter under her maternal grandmother, since her mother had eloped with somebody else deserted her. The awareness camp has brought the crime to light and PW-1- A Social Worker has initiated the prosecution by informing the same to the police. Even if the other evidence are not available, the evidence of PW-2 victim girl is solely sufficient to convict the person, since it could inspire the confidence of the Court. Therefore, the trial Court has rightly convicted the appellant.

7. Heard the learned counsel appearing for the appellant and the learned Government Advocate (Crl.Side) appearing for the State. Perused the records.

8. The contention of the appellant is that the age of the victim girl has not been proved and her averment that she was sexually abused by the



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appellant and he committed aggravated penetrated sexual assault two years ago has not been proved by any other corroborative evidence. Further more, the fact that she was studied in 6th standard and the awareness camp was conducted by AvinashiLingam College Students, itself is doubtful. But, on perusing the evidence of PW-11 [Tmt.Janaki, Head Mistress of the School], this Court finds that the victim girl was pursuing 6th standard, 'C' Section in the year 2014 and her date of birth is 02.06.2004. The Transfer Certificate and Bonafide certificate given by PW-11-the Head Mistress of the School are marked as Ex.P11 and Ex.P12 respectively. Therefore, the age of the child or pursuing 6th standard at the time of registering the complaint cannot be disbelieved.

9. As pointed out by the learned Government Advocate (Crl.Side), the act of aggravated penetrative sexual assault upon the minor girl by her maternal uncle has been committed within four walls and she has been an innocent and the helpless minor girl had no opportunity to reveal the same to the third party. When she has reported her grandmother, she has ignored the



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complaint. As she has grown up and realising that he had been grossly abused, she has come forward to give the complaint. The statement of the victim girl recorded under Section 164 of Cr.P.C. has been tested when she was in the witness box and in the cross examination, he has been put all sort of suggestions and reiterated that she had given the complaint on her own and not on any compulsion and she had been subjected to penetrative sexual assault by the appellant. To rebut the presumption under the Statute, the appellant has marked Ex.D1, which is photocopy of the statement written by the victim girl. This document has been confronted during the cross examination of PW-1, the defacto complainant and PW-2 the victim girl. PW-2 admits that it was written by her and she has written this letter on 17th night, when she was enquired about the misdeed of the appellant. This Court on perusing the evidence of PW-2 and Ex.D1 finds that there is no doubt about the case of the prosecution and the victim girl has come forward to tell the truth and her evidence is sufficient to hold the accused guilty of offence under Section 5 (l)(m) r/w 6 of the Protection of Children from Sexual Offences Act, 2012. Considering the gravity of the offence, this Court finds no error in the



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finding of the Court below on conviction.

10. As far as the sentence is concerned, at the time of occurrence the Act had prescribed minimum sentence of 10 years. The trial Court sentenced the accused to undergo 12 years RI. Since at the age of 24 years, the appellant has committed this crime and now he is in prison and substantial portion of his youth has been spent in jail, the sentence is modified from 12 years RI to 10 years RI and to pay a fine of Rs.5,000/- in default, to undergo 6 months SI. ***Accordingly, this Criminal Appeal is partly allowed.***

13.10.2022

Index:yes/no
speaking order/non speaking order
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To :

1.The Sessions Judge, Magaleer Needimandram
(Mahila Court), Coimbatore.

2.The Inspector of Police, All Women Police Station,
Perur, Coimbatore District.

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3.The Public Prosecutor, High Court, Madras.

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DR.G.JAYACHANDRAN,J.

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