



Crl. A(MD)No.66 of 2020

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated 10.10.2022

CORAM:

THE HONOURABLE Mrs.JUSTICE J.NISHA BANU

AND

THE HONOURABLE Mr. JUSTICE N.ANAND VENKATESH

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Dharmaraj

.. Appellant

Vs.

State rep by
The Inspector of Police,
All Women Police Station,
Kulithalai
Karur District.
(Crime No. 02 of 2014)

.. Respondent/Complainant

Appeals filed under Section 374 of Criminal Procedure Code, against the judgment and order dated 31.03.2015 in S.C.No.7 of 2014 on the file of the Mahila Court, Sessions Judge, Karur.

For Appellant

: Mr.E.Somasundaram

For Respondent

: Mr.A.Thiruvadikumar
Additional Public Prosecutor



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JUDGMENT

J.NISHA BANU
AND
N.ANAND VENKATESH

This criminal appeal has been preferred against the judgment and order dated 31.03.2015 in S.C.No.7 of 2014 on the file of the Mahila Court, Sessions Judge, Karur, whereby, the appellant was convicted and sentenced as follows:

Provisions under which convicted	Sentence	Fine amount
366 IPC	To undergo rigorous imprisonment for ten years	Rs.1,000/-, in default, to undergo simple imprisonment for three months
506(i) IPC	To undergo simple imprisonment for one year	-
Section 5(m) read with 6 of the POCSO Act	To undergo imprisonment for life.	Rs.1,000/-, in default, to undergo simple imprisonment for three months.

The sentences were ordered to run concurrently.



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2. The case of the prosecution is that on 12.04.2014 at about 11.00 a.m., when the victim girl [P.W.-2] aged about 10 years was staying alone in her house, the appellant called her in the guise of handing over the photographs and visiting card to the father of the victim and believing his words, the victim girl went along with the appellant in his two wheeler (M.O.6) and the appellant is said to have taken the minor girl to a shop and purchased soft drinks packets and thereafter taken the victim girl to a secluded place and removed the dress of the victim girl. In the course of the said act, the appellant had committed aggravated sexual assault on the victim girl.

3. A complaint (Ex.P1) was given by the mother (P.W.1) of the victim girl and based on the same, an FIR (Ex.P22) came to be registered by P.W.21. The statement of the victim girl and her mother was recorded under Section 164 Cr.P.C. by the Judicial Magistrate, Kulithalai (P.W.16). On completion of investigation, the final report came to be laid before the Judicial Magistrate, No.I, Kulithalai and the case was forwarded to the Special Court.



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4. The Court below framed charges against the appellant for offences under Sections 366 and 506(i) IPC and under Section 5(m) read with Section 6 of the Act. The prosecution examined P.W.1 to P.W.22 and marked Ex.P1 to Ex.P25 and identified and marked M.O.1 to M.O.6 to establish their case. The Court below questioned the appellant by putting the incriminating materials that were gathered in the course of trial and the appellant denied the same as false. Taking into consideration the facts and circumstances of the case and on appreciation of evidence, the Court below convicted and sentenced the appellant in the manner indicated above and aggrieved by the same, the present appeal has been filed before this Court.

5. Heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the State.

6. The learned counsel for the appellant made the following submissions:

- There was a prior enmity between the parties and hence, a false case



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WEB COPY has been foisted against the appellant ;

- The prosecution on the one hand talks about the purchase of soft drink (rasna) packets, whereas, the victim girl has stated that they purchased ice cream ;
- There is a contradiction as to how the complaint was given as between the evidence of P.W.1 and P.W.21 ;
- The incident had taken place on 12.04.2014, whereas there is a substantial delay in recording Section 164 Cr.P.C. statement of the victim girl and her mother on 09.06.2014 ; and
- The Court below had imposed the maximum sentence of life imprisonment even without considering the explanation given by the appellant and even if the conviction is upheld, the sentence has to be reduced/modified.

7. Per contra, the learned Additional Public Prosecutor appearing on behalf of the State, by placing reliance upon the judgment of the Apex Court in *State of Punjab v. Gurmit Singh* reported in *1996 SCC Crl. 316*, submitted that the evidence of the victim girl inspires the confidence and



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hence, the appellant is liable to be convicted and sentenced on that ground alone. The learned Additional Public Prosecutor further submitted that the evidence of the Doctor, who was examined as P.W.13 corroborated the evidence of the victim girl P.W.2. M.O.3 to M.O.5 are the clothes belonging to the accused, which contain the bloodstains of the victim girl and it is clear from Ex.P15 and Ex.P17 that the blood group of the victim girl matched the bloodstains found in the clothes. The victim girl was aged about 10 years and hence, this case clearly falls within the requirements of Section 9 (m) of the Act and even if there was no penetration as contended by the learned counsel for the appellant, the appellant had used his finger on the vagina of the victim girl, which caused bleeding and the same will also amount to penetrative sexual assault as per Section 3(b) of the Act. The learned Additional Public Prosecutor concluded his arguments by submitting that the appellant has not discharged the burden cast on him under Sections 29 and 30 of the Act and hence, the Court below was perfectly right in convicting and sentencing the appellant to undergo life imprisonment.

8. This Court carefully considered the submissions made on either



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side and perused the materials available on record.

9. In the present case, the most important evidence that has to be taken into consideration by this Court is the evidence of the victim girl, who was examined as P.W.2. The victim girl has cogently explained the entire incident and also in the statement given by her before the learned Magistrate under Section 164 Cr.P.C. The evidence of P.W.2 has not been assailed during cross-examination and the minor contradictions on her conscious state after the incident and the complaint given by her mother does not in any way discredit the evidence of PW.2. Section 164 Cr.P.C. statement recorded from the victim girl by P.W.16, which was marked as Ex.P4, further corroborates the evidence of the victim girl.

10. It will be apposite to take note of the judgment of the Apex Court in ***State of Punjab v. Gurmit Singh*** reported in ***1996 SCC Crl. 316*** in this regard. The Apex Court has cautioned that in cases involving sexual molestation, it is the duty of the Court to deal it with utmost sensitivity, hence minor contradictions or insignificant discrepancies in the statement of



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the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution cases. Insofar as the appreciation of evidence of the prosecutrix is concerned, it was held as follows:

“8. ... The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in



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the occurrence, which is not found to be self-inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable.”

11. In the present case, apart from the evidence of the victim girl



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(P.W.2), which certainly inspires the confidence of this Court, the evidence of the Doctor, who was examined as P.W.13, clearly corroborates the version given by the victim girl. On examination of the victim girl, the Doctor has recorded the following injuries in the Accident Register (Ex.P12):

“1.On 12.04.2014, EVA – Duration 1 hr

Findings: (1) Both side posterior fornix 2 x 1 cm tear present and the same sutured with 2.0 chromic catgut. (2) lacerated wound of above 4 x 4 cm extending from the fourchette up to the perineum and the same sutured with 2.0 chromic catgut. Rectum intact. Bladder catheterised, clear urine drained at end of surgery.

1.பாதிக்கப்பட்ட சிறுமிக்கு உடலில் காயங்கள் உள்ளன. Bruise over both breast, both side posterior fornic tear 2 x 1 cm.

2.பாதிக்கப்பட்ட சிறுமி கற்பழிக்கப்பட்டுள்ளார். கன்னித்திரை கிழிந்துள்ளது.

3.Semen analysis பண்ண முடியவில்லை. ஏனென்றால் பிறப்பு உறுப்பில் உதிரப்போக்கு இருந்தது.”



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12. Apart from the above, the evidence of P.W.3 to P.W.6 also supports the case of the prosecution and it is in line with the version given by the victim girl. The clothes that were recovered from the appellant at the time of his arrest and marked as M.O.4 to M.O.6 under Ex.P8 Mahazar also contained bloodstains and it is clear from Ex.P15 and Ex.P.17 that the same matched with the blood group of the victim girl.

13. Insofar as the offence under Section 5 of the Act is concerned, there is a legal presumption under Section 29 of the Act and the Court shall presume that the person, who is prosecuted for committing the offence, has committed the offence, unless the contrary is proved. That apart, there is also a presumption of culpable mental state under Section 30 of the Act. The appellant has not dislodged the statutory presumption and that apart the prosecution has proved the case beyond reasonable doubts against the appellant. In view of the same, this Court does not find any ground to interfere with the conviction made by the Court below against the appellant and the Court below has given cogent reasons after analyzing the evidence on record.

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14. The learned counsel for the appellant urged this Court to consider reducing the sentence on the ground that Section 6 of the Act, as it stood prior to the amendment, which came into effect from 16.08.2019, the punishment extended from 10 years, which can go up to life imprisonment. The Court below, without considering the facts and circumstances of the case and the plea made by the appellant, while being questioned on the sentence, proceeded to impose the maximum sentence of life imprisonment against the appellant.

15. In the present case, the victim girl was aged 10 years and the same is clear from the evidence of P.W.20 through whom Ex.P19 to Ex.P21 were marked. The penetrative sexual assault has been committed against the child below 12 years and hence it attracts Section 5(m) of the Act. The Court below on considering the age of the victim girl and the gravity of the offence, which involved the depraved mind of the appellant, thought it fit to impose the maximum sentence of life imprisonment. The appellant is said to be married and he has two small kids. That apart the appellant had

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undergone sentence for nearly 8½ years. In view of the same, this Court is inclined to modify the sentence insofar as the offence under Section 5(m) read with Section 6 of the Act. There is no ground to interfere with the sentence imposed for offence under Section 366 IPC.

16. In view of the above discussion, the conviction against the appellant is sustained and the sentence is modified in the following manner:

- a) The conviction and sentence imposed under Section 366 IPC is hereby confirmed;
- b) The conviction under Section 5(m) and Section 6 of the Act is hereby sustained and the appellant is sentenced to undergo 12 years rigorous imprisonment without remission;
- c) The sentence of fine imposed by the trial Court stands confirmed.
- d) The sentences are ordered to run concurrently; and
- e) The period of sentence already undergone by the accused/appellant is ordered to be set off under Section 428 Cr.P.C.



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WEB COPY 17. In the result, the criminal appeal is allowed in part to the extent indicated above.

[J.N.B., J.] & [N.A.V., J.]
10.10.2022

Index : Yes
Internet : Yes
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To

1.The Mahila Court, Sessions Judge, Karur.

2.The Inspector of Police,
All Women Police Station,
Kulithalai
Karur District.

3.The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.

4.The Record Keeper,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.



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**J.NISHA BANU, J
AND
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**Judgment made in
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