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Crl.A(MD)No.264 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 31.10.2022

DELIVERED ON : 08.11.2022

CORAM :

THE HONOURABLE MRS. JUSTICE J.NISHA BANU
and
THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.A(MD)No.264 of 2022

Subbaiah

.. Appellant/ Sole Accused

Vs.

State rep. by,
The Inspector of Police,
Seidunganallur Police Station,
Thoothukudi District.
(Crime No.219/2012)

.. Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Criminal
Procedure Code, 1973, against the judgment and order, dated 04.12.2014



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in S.C.No.112 of 2013 passed by the learned Sessions Judge, Mahalir Neethimandram, (Fast Track Mahila Court), Thoothukudi.

For Appellants : Mr.A.Saravanan

For Respondent : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

JUDGMENT

J.NISHA BANU,J.

and

N.ANAND VENKATESH, J.

This appeal has been filed against the judgment and order passed by the learned Sessions Judge, Mahalir Neethi Mandram (Fast Track Mahila Court), Thoothukudi in S.C.No.112 of 2013, dated 04.12.2014, whereby the appellant was convicted and sentenced in the following manner:



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S.No.	Provision under which conviction was made	Sentence/Punishment
1.	Section 302 IPC	Life Imprisonment and fine of Rs.1000/-, in default, to undergo six months Rigorouos Imprisonment.
2.	Section 8 of POCSO Act	5 years Rigorous Imprisonment and a fine of Rs. 1000/-, in default, six months Rigorous Imprisonment.

2. The case of the prosecution is that the victim girl, who was studying in the 7th std at John's Girls Higher Secondary School, Nazareth, was walking from her house inorder to board the train and go to her school at Nazareth. The further case of the prosecution is that the appellant followed her and in a secluded place, the victim girl was



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dragged to the south east of the Thathankulam railway station and thereafter, the appellant is said to have removed the undergarments of the victim girl and committed sexual assault on her. Since the girl was raising an alarm, the appellant is said to have strangled her on her neck and causing the instantaneous death of the victim girl.

3. P.W-1, who is the grandfather of the deceased girl, found that the friends of the victim girl viz., P.W-3 to P.W-5 had returned home after attending the school and whereas the victim girl did not reach home. This was informed by P.W-1 to P.W-2, who is the mother of the deceased and both of them started searching for the victim girl. Hence, a complaint (Ex.P1) came to be lodged before the respondent police and a 'girl missing' FIR (Ex.P11) came to be registered in Crime No.219 of 2012 at about 9.45 p.m. The next day, an information was received to the effect that the dead body of the girl was found 300 metres away from



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Thanthankulam railway station. On information, the police also came to the scene of crime and an inquest was conducted and the spot mahazar was prepared and material objects were seized.

4. An alteration report was prepared and the offence was altered to Section 302 of IPC and the same was sent to the Judicial Magistrate, Thiruvaikundam at about 12.15 noon. The investigation was taken up by P.W-20 and a final report came to be filed before the Judicial Magistrate, Thiruvaikundam. The copies were served to the appellant under Section 207 Cr.P.C. and the case was committed under Section 209 Cr.P.C. To the Principal District and Sessions Judge, Thoothukudi. Thereafter, the case was made over to the Court below. The Court below framed charges against the appellant for offence under Sections 376 and 302 of IPC and Section 8 of the POCSO Act. The prosecution examined P.W-1 to P.W-20 and marked Exhibits P1 to P17 and identified and



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marked M.O.1 to M.O.17. One document was marked on the side of the defence which is the biological report. The incriminating materials collected were put to the appellant when he was questioned under Section 313 (1) (b) Cr.P.C, and the same was denied as false.

5. The Court below on considering the facts and circumstances of the case and on appreciation of the evidence available on record came to a conclusion that the prosecution has made out a case beyond reasonable doubts and proceeded to convict and sentence the appellant in the manner stated supra. Aggrieved by the same, this Criminal Appeal has been filed before this Court.

6. Heard Mr.A.Saravanan, learned counsel for the appellant and Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor appearing for the respondents. We have carefully perused the materials



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placed before this Court.

7. This case is sought to be proved by the prosecution through circumstantial evidence. The circumstances that were relied upon by the prosecution can be summarised in the following manner:

- The death of the victim girl was caused due to homicide which has been spoken to by the postmortem doctor (P.W-13), who conducted the autopsy and through whom the postmortem report was marked as Ex.P8.
- The victim girl was seen walking towards the railway station and the appellant following her. To substantiate the same, the prosecution has relied upon the evidence of P.W-3 to P.W-6.
- The presence of the accused person in and around Thanthankulam railway station before the incident and



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after the incident was spoken by P.W- 7, P.W-8 and P.W-15.

- The arrest and recovery of M.O.1 from the accused person spoken by P.W-10 through whom Ex-P4 was marked.
- The evidence of the fingerprint expert (P.W-11) through whom Ex.P7 report was marked to prove that the fingerprints found in the water bottle marked as M.O.12 matched the fingerprints of the appellant and
- The non-explanation on the part of the accused person on the materials that were put against him under Section 313(1)(b) of Cr.P.C.

8. The accused person does not belong to Thanthankulam.

However, his presence in Thanthankulam has been spoken by P.W-8, who was working as the gangman during the relevant point of time at



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Thanthankulam railway station. This witness states that he saw the accused person on 19.12.2012 at about 7.20 p.m in an inebriated state and he was lying down in one corner of the platform. This witness further states that the brother of the accused person used to sell tea in a can in the moving train and he was under the impression that the accused had come to the railway station to meet his brother. P.W-7 also speaks about seeing the accused person on 20.12.2012 at about 8.00 a.m and the accused is said to have been moving fast with a tiffin box in his hand. This witness seems to be knowing the accused person even before since the brother of the accused used to sell tea stored in the can in the railway station. When the accused was questioned by this witness, it is stated that the accused did not give any answer and he rushed from the spot.

9. P.W-15 has been examined on the side of the prosecution and he states that he saw the accused person on 20.12.2012 at about 6.00



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a.m and he was having tea at Thanthankulam tea shop. This witness also specifically states that he knows the accused person even before.

10. It is clear from the above evidence of P.W-8, P.W-7 and P.W-15 that the accused was present in and around the Thanthankulam railway station.

11. Insofar as the victim girl leaving her house in order to go to the school, her grandfather P.W-1 and her mother P.W-2 speaks about the same and both of them have stated that the victim girl had left the house at about 07.15 a.m. It is also clear from the evidence of P.W-3 to P.W-7 that the victim girl was walking towards the railway station in order to go to the school. P.W-12, who is the Headmistress of the school has stated that the victim girl was studying in 7th std in the school and that she did not come to the school to write the examination on



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20.12.2012.

12. It is clear from the above that the victim girl left the house at about 7.15 a.m on 20.12.2012 and did not go to the school on that day.

13. The victim girl did not come back home and P.W-1 and P.W-2 went in search of her and ultimately, they were informed about the body of the victim girl found 300 metres from the Thanthankulam railway station. Since the victim girl did not come back home, P.W-1 gave Ex.P1-complaint on 20.12.2012 at about 9.45 p.m. and the FIR came to be registered in Crime No.219 of 2012 as a 'girl missing' case.

14. P.W-1 received the information about the body of the victim girl found near the railway station at about 6.30 a.m on



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21.12.2012 and he rushed to the spot and found the dead body of his grand daughter. The police also received this information and P.W-20 came to the spot and prepared an observation mahazar (Ex.P2) at about 7.45 a.m and also a rough sketch (Ex.P13) in the presence of P.W-9, who attested and which was marked as Ex.P2. Thereafter, P.W-20 held the inquest over the dead body of the deceased from 9.30 a.m to 11.45 a.m in the presence of the witnesses and prepare the inquest report Ex.P14. The fingerprint expert P.W-11 was also summoned and he recorded the fingerprint found in the plastic water bottle (M.O.12) that was found in the scene of occurrence.

15. P.W-20, thereafter altered the FIR by altering the offence under Section 302 IPC and the alteration report was sent to the Judicial Magistrate, Srivaikundam, through P.W-17. The alteration report was marked as Ex.P15. At around 7.45 a.m , P.W-20 also arranged to take



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photo in the scene of occurrence through P.W-19 and the photos taken along with the CD were marked as M.O.17 series.

16. The dead body was sent to the Tirunelveli medical college hospital for postmortem through the Head Constable. Thereafter P.W-20 seized M.O. 9 to M.O.16 under Ex.P3 and the same was attested by P.W9.

17. The postmortem conducted by P.W-13 on 21.12.2012 at about 2.40 p.m. revealed the following injuries:

“1) Abrasions: 3 x 1 cm over right upper eyelid, 1 x 1 cm over right lower eyelid, 1 x 1 cm over inner aspect of left upper eyelid. 3 patchy abrasions of sizes 1 x 0.5 cm over left cheek. 1 x 0.5 cm over left ear lobe. 2 x 1 cm over upper part of left side of neck. Multiple



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patchy abrasions of sizes 1 x 0.5 cm in the inner aspect of both lips, 2 x 2 cm over chin, 2 x 1 cm over outer aspect of right elbow, 1 x 0.5 cm over back of right wrist. 1X 0.5 cm over upper outer aspect of right thigh, 1 x 0.5 cm over middle outer aspect of right thigh. 1 x 1 cm over left elbow. 2 x 0.5 cm over back of left wrist, 1 x 0.5 cm over back of left middle finger, 4 x 2 cm over left buttock.

2) An Oblique complete ligature mark of size 29 x 3-5cm seen over front back and both sides of middle of neck with abraded contusion of size 16 x 3 cm over front of the neck. Distance of ligature mark is 8 cm below occipital protuberance, 7cm below right mastoid, 7 cm below chin, 10 cm below left mastoid, 6 cm above the supra sternal notch. The skin of the ligature mark is dark in colour and hard in consistency. On Bloodless dissection of Neck, the underlying soft tissues of neck found contused and extravasation of



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blood seen in the surrounding soft tissues.

3) Contusion of size 2 x 1 cm over chin and 3 x 2 cm over both eyelids.

4) On dissection of Head. Scalp contusion of size 5 x 3 cm over mid frontal region. Diffuse subarachnoid haemorrhage seen over left occipital lobe of brain.”

18. A final opinion was given as to the cause of death and the deceased is said to have died of asphyxia due to ligature strangulation.

19. On 22.12.2012 at about 6.00 a.m., P.W-20 arrested the accused person near Serakulam bus stop and recorded the voluntary confession and the tiffin box was also seized under Ex.P4, which was attested by P.W-10. The accused person was thereafter taken to the police station and P.W-11 was asked to come over to the police station to record



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the fingerprints of the accused. After P.W-11 recorded the fingerprints, the accused was sent to the Court for remand. P.W-20 gave a requisition to the Court to send the case properties for analysis and the properties were sent to the forensic science laboratory on 24.12.2012.

20. Ex.P7 report marked through P.W-11 shows that the finger print that was found in the water bottle (M.O-12) matched with the fingerprint of the accused person.

21. The learned counsel for the appellant, apart from raising various other grounds, mainly focused on the prosecution failing to identify the accused person and the specimen fingerprint being collected from the accused without getting the orders of the Magistrate.



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22. This Court will first deal with the issue regarding lifting of fingerprints. The chance fingerprint, which was photographed and developed at the scene of occurrence from the water bottle was sent to the concerned Court even prior to the arrest of the accused person. Only thereafter, the accused person was arrested and his specimen fingerprints were recorded by P.W-11. This specimen signature was also sent to the concerned Court. The documents that were furnished to the accused to the person under Section 207 Cr.P.C also contained the fingerprint comparison report and the statement of P.W-11. The accused person did not raise any objection during the relevant point of time. The specimen fingerprint is recorded from the accused person by virtue of Sections 4 and 5 of the Identification of Prisoners Act and Section 311A Cr.P.C. If the accused person voluntarily gives his fingerprint, it is not necessary in such a scenario to seek for the permission of the Magistrate. Such a contingency arises only where the accused person refuses to cooperate and at which point of time such a permission is taken from the Magistrate



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before recording the fingerprint of the accused person. These provisions were dealt with in detail by the Division Bench of this Court in ***Manickam Vs. State by the Inspector of Police, Chithode Police Station, Erode District*** reported in (2009) 5 CTC 316. In view of the same, it cannot be held that the lifting of the fingerprint from the accused person, who volunteered to give his fingerprints without raising any objections, cannot be considered to be illegal for the reason that the permission of the Magistrate was not obtained.

23. This Court will now considered the first issue that was raised by the learned counsel for the appellant with regard to the identity of the accused person. It is clear from the evidence of P.W-3 to P.W-6 that they saw a man going behind the victim girl and he looked similar to the accused person. Unfortunately, in this case, the Investigation Officer, who was supposed to conduct a Test Identification Parade to identify the



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accused, thought it fit not to undertake such an exercise. Similarly, neither the Public Prosecutor nor the Trial Court, at the time of recording evidence, specifically had put a question to P.W-3 to P.W-6 and asked them to identify the accused person in Court. It is therefore quite evident that there was no proper identification of the accused person in the dock. If there was no other materials available before the Court, this Court would have straight away acquitted the accused person on this ground alone. However, in the present case, the identity of the accused person being involved in the crime has been proved through scientific evidence. The scientific evidence available before this Court is the report of the fingerprint expert.

24. This Court wants to satisfy itself that the fingerprint from the water bottle (M.O.12) was lifted even before the accused person was arrested. Hence, this Court will carefully go into the sequence of



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events and render a finding.

25. The incident is said to have taken place on 20.12.2012 at 7.30 a.m. The 'girl missing' FIR came to be registered on 20.12.2012 at 9.45 p.m. P.W-20 took up investigation on 20.12.2012 at about 10.15 p.m. The Investigation Officer went to the scene of occurrence and prepared the observation mahazar (Ex.P2) on 21.12.2012 at 07.45 a.m. in the presence of P.W-9. The seizure mahazar was prepared on 21.12.2012 at 11.45 a.m. under Ex.P3. The fingerprint was lifted by P.W-11 from the scene of crime on 21.12.2012 and the same was sent to the Court. The inquest report Ex.P14 was prepared by P.W-20 on 21.12.2012 at about 9.30 a.m. and even in this report, the availability of the water bottle is mentioned. The accused person was arrested only on 22.12.2012 at about 06.00 a.m. Thereafter, P.W-11 was summoned to the police station and he recorded the fingerprint of the accused on 22.12.2012 at about 10.30 a.m.



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26. It is clear from the above sequence of events that there was no occasion for manipulating the fingerprint and matching it with the one that was found in the water bottle (M.O.12). The fingerprint from the water bottle was collected much prior to recording the fingerprint from the accused on the next day after he was arrested. This Court has already held that there is no illegality in recording the fingerprint of the accused person. In view of the same, the scientific evidence available before this Court proves the involvement of the accused person in this case and the accused person did not give any explanation as to how his fingerprint was identified in the water bottle that was collected from the scene of crime.

27. The chain of circumstances has been proved by the prosecution beyond reasonable doubts. The last link in the chain of circumstances is the explanation that should have been given by the



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accused person with regard to his fingerprint that was identified in the water bottle that was collected from the scene of crime. If no explanation is given by the accused person when he was questioned under Section 313 (1) (b) of Cr.P.C, that has to be taken as an additional link in the chain of circumstances to make it complete. Useful reference can be made to the judgments of the Apex Court in *State of Tamil Nadu v. Rajendran* reported in (1999)8 SCC 679 and *Rumi Bora Dutta v. State of Assam* reported in (2013) 7 SCC 417.

28. The upshot of the above discussion leads to the conclusion that the prosecution has proved the case beyond reasonable doubts and the Court below has properly appreciated the evidence available on record and has come to the correct conclusion and the judgment and order passed by the Court below does not warrant the interference of this Court.



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29. In the result,

(i) this Criminal Appeal stands dismissed.

(ii) The conviction and sentence passed by the learned Sessions Judge, Mahalir Neethimandram, (Fast Track Mahila Court), Thoothukudi, against the appellant in S.C.No.112 of 2013 dated 04.12.2014, is hereby confirmed.

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

08.11.2022

Index : Yes/No
Internet : Yes/No
PJJ

To

1.The Sessions Judge,
Mahalir Neethimandram,
(Fast Track Mahila Court),
Thoothukudi.



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2. The Inspector of Police,
Seidunganallur Police Station,
Thoothukudi District.

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



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**J.NISHA BANU, J
AND
N.ANAND VENKATESH, J**

PJL

Pre-delivery Judgment made in
Crl.A.(MD)No.264 of 2022

08.11.2022