



Crl.A(MD)No.192 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.06.2022

DELIVERED ON : 12.07.2022

CORAM :

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MRS. JUSTICE R.HEMALATHA

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John Kennady

.. Appellant/Sole Accused

Vs.

State represented by
The Inspector of Police,
Fort All Women Police Station,
Trichy City.
(Crime No.6/2017)

.. Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 of Criminal Procedure Code, 1973, praying to set aside the conviction and sentence passed by the learned Sessions Judge, Mahila Court, Trichy, in Spl.S.C.No.28 of 2017 dated 27.04.2018.

For Appellant : Mr.T.J.Ebenezer Charles
For Respondent : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor



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JUDGMENT

[Judgment of the Court was delivered by **R.HEMALATHA, J.**]

The present appeal is filed against the judgment and order, dated 27.04.2018, passed by the learned Sessions Judge, Mahila Court, Trichy, in Spl.S.C.No.28 of 2017 in and by which the Appellant was convicted for the offence punishable under Sections 5(l)(m)(n) r/w Section 6 of the Protection of Children from Sexual Offences Act, and sentenced as under:

Sl. No.	Conviction	Sentence
1.	U/s.5(l) r/w Sec.6 of POCSO Act	Life Imprisonment and a fine of Rs. 1,000/-, in default, to undergo Simple Imprisonment for one year.
2	U/s.5(m) r/w Sec.6 of POCSO Act	Life Imprisonment and a fine of Rs. 1,000/-, in default, to undergo Simple Imprisonment for one year.
3.	U/s.5(n) r/w Sec.6 of POCSO Act	Life Imprisonment and a fine of Rs. 1,000/-, in default, to undergo Simple Imprisonment for one year.

The trial court further directed that the sentences shall run concurrently.



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2. The case of the prosecution is that the appellant, John Kennady, is a resident of Ambedkar Nagar, Palakarai, Tiruchirappalli and father of four children. His wife had left him and children to fend for themselves. The eldest of the children, a eleven year old child [P.W-2] is the victim. According to the prosecution, the victim was subjected to sexual assault by none other than her own father and it was only her neighbours, Palaniammal [P.W-6], Janaki [P.W-3] and Kowsalya [P.W-10] joined together and decided to inform the Child Line and Kowsalya [P.W-10] informed the Child Line over phone on 05.04.2017. On receiving the information over phone, Terasammal [P.W-1] and Tamilselvi [P.W-5] both working in Child Line, Trichy, visited the address and enquired about the alleged complaint. When Palaniammal [P.W-6] and Janaki [P.W-3] confirmed the same, Terasammal[P.W-1] lodged a complaint [Ex.P-2] along with a Proforma[Ex.P-1] for providing information as per Section 19(1) of the Protection of Children from Sexual Offences Act.



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3. Tmt.S.Jeyarani [P.W-15] the then Inspector of Police, All Women Police Station, Trichy Fort, received the complaint [Ex.P-2] from P.W-1 and registered an FIR [Ex.P-3], in Crime No.6 of 2017, of All Women Police Station, Trichy Fort, against the appellant for the offence punishable under Sections 5(m) 5(n) r/w Section 6 of Protection of Children from Sexual Offences Act. She took up investigation, went to the scene of offence and prepared an observation mahazar [Ex.P-15] in the presence of the witnesses Anthony Sahayaraj [P.W-8] and Ruban [P.W-9]. She also prepared a Rough Sketch [Ex.P-14]. She examined the victim child and P.W-1 and recorded their statements.

4. On 06.04.2017, P.W-15 sent the victim child to Government Mahatma Gandhi Memorial Hospital, Tiruchirappalli, for medical examination along with Tmt.Hemalatha [P.W-12], Head Constable of Police, All Women Police Station, Trichy Fort and Selvi [not examined] Constable attached to All Women Police Station, Trichy Fort.



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5. Dr.Seeniammal [P.W-7] physically examined the child and took the smear of vagina and sent it for analysis. However, the examination of the vaginal smear and swab did not reveal the presence of any semen or sperm. Dr.Seeniammal [P.W-7] had opined that the victim girl was subjected to sexual intercourse and that her hymen was found torn. It was also mentioned that the child had not attained puberty. The Accident Register and Discharge Summary were marked as Ex.P-7 and Ex.P-18 respectively. The age of the victim child was also determined between 11 and 12 by the radiologist. Thiru.Sirajudeen [P.W-4] Headmaster of the Corporation Middle School, Sengulam, Palakarai, where the victim child was studying in 6th standard submitted the school certificate along with the extract of Attendance Register [Ex.P-6]. As per the school records, the date of birth of the victim child was 28.05.2006.

6. Tmt.Jeyarani [P.W-15] Inspector of Police, All Women Police Station, Trichy Fort, arrested the appellant on 06.04.2017 and sent him to Court for judicial custody. Thereafter, the appellant was sent to K.A.P.



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Viswanatham Medical College Hospital through Thiru.Periyakaruppu [P.W-13], Head Constable of Police, Palakarai Police Station, for medical examination. Dr.Saravanan [P.W-14] examined the appellant on 17.04.2017 and opined that there was nothing to suggest that the appellant was impotent or was incapable of performing sexual intercourse. The opinion of P.W-14 was marked as Ex.P-12.

7. Tmt.Suganthi [P.W-11] Additional Mahila Judge, Trichy, recorded the statements of the victim child and Teresammal [P.W-1] under Section 164 of the Code of Criminal Procedure as per the proceedings[Ex.P-11] of the learned Chief Judicial Magistrate, Tiruchirappali, on 24.07.2017.

8. Tmt.Jeyarani [P.W-15], Inspector of Police, All Women Police Station, Trichy Fort, examined the witnesses and recorded their statements. Thereafter, she altered the sections of law from Sections 5(m) and 5 (n) r/w Section 6 of Protection of Children from Sexual Offences



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Act to Sections 5(l), 5(m) and 5(n) r/w Section 6 of the Protection of Children from Sexual Offences Act and sent the alteration report [Ex.P-19] to Court.

9. After completing the investigation, Tmt.Jeyarani [P.W-15] Inspector of Police, All Women Police Station, Trichy Fort, filed a final report against the appellant for the offences punishable under Sections 5(l), 5(m) and 5(n) r/w Section 6 of the Protection of Children from Sexual Offences Act, before the learned Sessions Judge, Mahila Court, Tiruchirappalli.

10. The learned Sessions Judge, Mahila Court, Tiruchirappalli, took up the case on file in Spl.S.C.No.28/2017 and framed the charges against the appellant for the offence punishable under Sections 5(l), 5(m) and 5(n) r/w Section 6 of Protection of Children from Sexual Offences Act. Since the appellant pleaded not guilty, the case was posted for trial.



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11. In order to establish the guilt of the appellant, the prosecution examined fifteen witnesses and marked nineteen documents.

12. When the appellant was questioned with regard to the circumstances appearing in evidence against him under Section 313 of the Code of Criminal Procedure, he simply denied of having committed any offence. However, no witness was examined on his side.

13. This is yet another case of the fence itself eating the crops. The father is supposed to protect his child, especially, when he is entrusted with the job of mother also, but he has breached the moral ethics and acted like a beast.

14. Mr.T.J.Ebenezer Charles, learned counsel for the appellant has attempted to fish out discrepancies in the case of the prosecution by pointing out some deficiencies in the investigation and the statutory documentation like Observation Mahazar [Ex.P-15] and Rough Sketch



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[Ex.P-14] submitted by the Investigation Officer. One such aspect pointed out by him was regarding the absence of the date 'from and to' during which the victim was subjected to sexual assault. Similarly, the type of the house in which the victim was residing, was not mentioned by the Investigation Officer, thereby, negating the claim by Kowsalya [P.W-10] that she and Janaki[P.W-3] had seen, through the thatched roof, the father forcing himself upon his own daughter. It was also pointed out regarding the absence of any physical injury either in the private parts or on the body of the victim.

15. Dr.Seeniammal[P.W-7], who examined the child had made it clear in her deposition that the child complained of pain when her private part was pressed. Similarly, her hymen also was not found intact and vagina admitted one finger. The perpetrator of the crime was not an unknown person and the victim being a child of just eleven years was naturally oblivious of the act by her father till she complained about the pain to her neighbours and friends.



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16. The victim child was examined as P.W-2 and she clearly deposed as follows:

“என்னுடைய தகப்பனார் தினமும் குடித்துவிட்டு வந்து அவருடைய ஆடைகளை கழற்றிவிட்டு என்னுடைய ஆடைகளையும் கழற்றுவார். என்னை கீழே படுக்க வைத்து அவருடைய குஞ்சை எடுத்து என்னுடைய சிறுநீர் கழிக்கும் இடத்தில் வைத்து நுழைத்து அழுக்குவார். நான் வலிக்குது, வலிக்குது என்று கத்துவேன்”.

17. The learned counsel for the appellant did not cross-examine her on the day when she was examined-in-chief. Subsequently, a petition under Section 311 of the Code of Criminal Procedure for recalling the victim child was filed and thereafter on 09.04.2018, the victim child was cross-examined by the defence. During the course of cross-examination, it was suggested to the victim child that she and one Marimuthu, the care taker of the house were having an affair and since her father came to



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know of it she had given a false complaint against him. This suggestion was stoutly denied by the victim child [P.W-2].

18. It is pertinent to point out that the victim child [P.W-2] was just aged 11 years during the crime period and she had not even attained puberty as is seen from the medical reports. Therefore, it is unbelievable that she was having an affair with Marimuthu. It was also suggested to P.W-2 that in order to get compensation amount from the Government, a false case was foisted against her father. This again was also denied by the victim child [P.W-2]. The very same suggestion was put to Tmt.Janaki [P.W-3], who is one of the eyewitnesses to the occurrence. She was clear in her deposition that she witnessed the father of the victim child sexually abusing his own daughter, the victim child and this was happening for a long time and she witnessed it once. The P.W-3 is a stranger and it is incomprehensible as to how she would get compensation/consession from the Government for the offence committed by the appellant on his own daughter. It is not the case of the



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defence that P.W-3 and P.W-2 conspired with each other in this regard.

19. At this juncture, it is relevant to extract Sections 29 and 30 of the Protection of Children from Sexual Offences Act, 2012 as under:

"29.Presumption as to certain offences: *Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved."*

30. Presumption of culpable mental state:

1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

(2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability."



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Thus, Section 29 provides that where a person is prosecuted for violating any of the provisions under Sections 3, 5, 7 and Section 9 of the Act, the Special Court shall presume that such person has committed the offence, unless the contrary is proved. Section 30 provides for presumption of 'culpable mental state' which includes intention, motive, knowledge of a fact and belief in, or reason to belief in, a fact. The above said presumptions had not been rebutted by the appellant by adducing acceptable evidence or by shattering the evidence of the prosecution witness. In the instant case, absolutely there is no rebutted evidence. Infact, when the appellant was questioned under Section 313 Cr.P.C., he simply denied the evidence adduced on the side of the prosecution. There is no reason for P.W-1 to P.W-3 to falsely implicate the appellant and it is also pertinent to point out that P.W-2's testimony stand corroborated by her previous statement under Section 164 Cr.P.C., which was marked as Ex.P-4.



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21. The deposition of the victim child [P.W-2] has clarity in it. The child has also withstood the testimony of cross examination. There was not even a whisper of allegation from the side of the appellant that the child was tutored or part of any conspiracy against her own father. In fact, the child's mother did not live with her, and she was deprived of the comfort of her mother during such a crucial and critical situation. Ironically, she was the eldest of the four children and could not share anything with her siblings, who were much younger than her. It also appears that the seriousness of the situation was realised by her only after the Child Protection officials came to investigate and found the truth.

22. The prosecution case, in fact, fully rests on the impeccable evidence of the victim child, who had clearly deposed about the sexual act of her father, but without even knowing the seriousness or the consequences of such an act. Probably, the absence of any injury on her body or in her private parts may be due to the fact that except for the pain that she suffered, there was no physical resistance from her which



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normally causes injuries.

23. Another defense put up by the learned counsel for the appellant is that there was one Marimuthu, the care taker of the house appointed by the appellant, with whom, the victim child was having an affair and that since this was reprimanded by the appellant, the victim child had falsely alleged that the appellant misbehaved with her. This contention cannot be accepted because the child was just eleven years old and it is ridiculous to spin a version that she was having an affair with one Marimuthu. It was also contended by the learned counsel for the appellant that since the prime witness Palaniammal turned hostile, the case of the prosecution is weakened. In the instant case, the victim girl had clearly deposed about the incident and her deposition was crystal clear and convincing. As already observed, she had withstood the testimony of cross examination.



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24. In the circumstances, there is no merit in the present appeal and we do not see any reason to interfere with the conviction and sentence passed by the learned Sessions Judge, Mahila Court, Tiruchirappalli, and therefore, this appeal deserves to be dismissed.

25. In the result,

(i) This Criminal Appeal is dismissed.

(ii) The conviction and sentence passed by the learned Sessions Judge, Mahila Court, Tiruchirappalli, against the appellant in Spl.S.C.No. 28 of 2017, dated 27.04.2018, is hereby confirmed.

[P.N.P., J.] & [R.H., J.]
12.07.2022

Index : Yes/No
Internet : Yes/No
PJJ

To
1. The Sessions Judge,
Mahila Court,
Tiruchirappalli.



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2. The Inspector of Police,
Fort All Women Police Station,
Trichy City.
3. The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.



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**P.N.PRAKASH, J
AND
R.HEMALATHA, J**

PJL

Judgment made in
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12.07.2022