



Criminal Appeal No.344 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Criminal Appeal No.344 of 2015

Kaliappan
S/o.Lakshmanan

... Appellant/Sole Accused

Vs.

The Inspector of Police,
Namakkal Police Station.
Crime No.695 of 2013

...Respondent/Complainant

Prayer : Criminal Appeal filed u/s.374(2) of the Code of Criminal Procedure against the judgment dated 20.05.2015 passed in Special C.C.No.1/2014 on the file of Fast Track Mahila Court, Sessions Judge, Namakkal.

For Appellant : Mr.K.Sivakumar

For Respondent : Mr.L.Baskaran
Government Advocate [Crl.side]



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JUDGMENT

WEB COPY This Criminal Appeal has been filed questioning the judgment and order passed by the Fast Track Mahila Court, Sessions Judge, Namakkal, in Spl.C.C.No.1 of 2014, dated 20.05.2015, convicting and sentencing the appellant in the following manner:

Sl.No.	Offence	Sentence
1.	Section 363 IPC	3 years rigorous imprisonment and fine of Rs.1,000/-, in default, to undergo 6 months simple imprisonment.
2.	Section 10 r/w 9(i) and (m) of POCSO Act, 2012	3 years rigorous imprisonment and fine of Rs.1,000/-, in default, 6 months simple imprisonment

Both the sentences were directed to run concurrently.

2. The case of the prosecution is that the victim child, aged about 1½ years was living along with her parents at Khadi Board Colony, Namakkal. The appellant was a neighbour, who was living four houses away from the house belonging to the victim child. The appellant used to visit the house of the victim child and used to play with the children there. The appellant is well known to the victim child. On 06.07.2013, at about 05.15 p.m., the victim child was playing in her house and at that point of time, the appellant



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took away the child to his house and went into the bathroom and pressed his hands on the private part of the victim child. The victim child started crying and hearing the sound, PW-1 went to the house of the appellant and found that the appellant was misbehaving with the victim child. PW-1 immediately brought back the child to her house and she found that the victim child had sustained injuries in her private part as well as in her thighs.

3. Thereafter, PW-1 informed about this incident to her neighbours and she was not able to get in touch with her husband immediately. The husband of PW-1 (PW-2) came only on the next day and he was informed about the incident at about 10.00 a.m.

4. PW-1 and PW-2 went to Namakkal Police Station and gave a complaint (Ex.P1). A First Information Report came to be registered in Crime No.695/2013 at about 11.30 a.m. on 07.07.2013, which was marked as Ex.P13.

5. PW-14 took up investigation and had sent the victim child to the



Namakkal Government Hospital for clinical examination. The victim child was taken by PW-10 to the Doctor. PW-13, Doctor, examined the child on 07.07.2013 at about 07.25 p.m. The Accident Register was marked through her as Ex.P9 and the following injuries were recorded in the Accident Register :

- 1) An abrasion of 0.5 cm. right side labia minora. Hymen intact.
- 2) A linear abrasion 5 cm in right side thigh medial aspect.

6. The Investigation Officer [PW-14] recorded the statements of the witnesses u/s.161(3) Cr.P.C. Initially, the First Information Report was registered for offence u/s.6 r/w 5(m) of the POCSO Act. The same was altered through the alteration report marked as Ex.P14 and the offence was altered to one u/s.10 r/w 9(m) of POCSO Act, 2012. In the mean time, the Investigation Officer [PW-14] arrested the appellant on 07.07.2013 at about 16 hours and he was remanded to judicial custody. The Investigation Officer [PW-14], thereafter, collected all the scientific reports and ultimately, laid the final report before the Court below.

7. The Court below framed charges against the appellant for offences



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u/s.363 IPC and u/s.10 r/w 9(m) of POCSO Act, 2012. The prosecution examined PWs.1 to 15 and marked Exs.P1 to P14. The incriminating evidence that was gathered in the course of trial was put to the appellant while he was questioned u/s.313(1)(b) of Cr.P.C. The appellant denied the same as false.

8. The Court below, considering the facts and circumstances and on appreciation of oral and documentary evidence, came to the conclusion that the prosecution has proved the case beyond reasonable doubt and hence, proceeded to convict and sentence the appellant in the manner stated supra. Aggrieved by the same, the present appeal has been filed.

9. Heard Mr.K.Sivakumar, learned counsel for appellant and Mr.L.Baskaran, learned Government Advocate [Crl.side], appearing for the State.

10. The main ground that was urged by learned counsel for appellant



is that there was an unexplained delay in lodging the complaint in this case.

Learned counsel submitted that the complaint was given after nearly 19 hours after the incident and the same was not explained by the prosecution.

Learned counsel further submitted that there was a prior enmity between the parties and a false case was foisted against the appellant, who is now aged about 70 years. Learned counsel further submitted that the nature of injuries sustained by the victim child could have been caused while playing and the same has been intentionally put against the appellant. Learned counsel concluded his arguments by submitting that the appellant is aged about 70 years and if, in the event of this Court confirming the conviction, some leniency can be shown insofar as the sentence is concerned.

11. *Per contra*, learned Government Advocate appearing on behalf of the respondent, submitted that the evidence of PW-1 has been sufficiently corroborated by the evidence of PW-13, Doctor and hence, the prosecution has established the foundational facts. Having done so, the reverse burden was on the appellant and the appellant did not discharge his burden as



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mandated u/s.29 and 30 of POCSO Act. In view of the same, it was contended by learned Government Advocate that there is absolutely no ground to interfere with the conviction and sentence imposed by the Court below.

12. This Court has carefully considered the submissions made on either side and perused the materials available on record.

13. It is clear from the evidence available on record that the appellant is living four houses away from the residence of the victim child. The victim child was hardly aged about 1½ years. It is also not in dispute that the appellant is known to the family of the victim child and they have seen the appellant playing with the victim child even on earlier occasions.

14. On the fateful day i.e. 06.07.2013, PW-1 heard the cries of her daughter and when she rushed to the spot, she found the appellant pressing



his hands on the private part of the victim child. At that point of time, the victim child was not wearing any underwear and she was only wearing tops. PW-1, on seeing this shocking incident, immediately grabbed the child and ran away to her house. She was not able to immediately get in touch with her husband and her husband came home the next day only at about 10.00 a.m. He was informed about the incident and thereafter, a complaint came to be given against the appellant by PWs.1 and 2.

15. The fact that the appellant had committed sexual offence against the victim child is evident from the evidence of PW-13. She was a Doctor, who examined the child and found that the child had an injury in her private part as well as in her right thigh. This evidence of PW-13 corroborates the version of PW-1, who had seen the appellant committing sexual assault on her child.

16. An attempt has been made on the side of the appellant to project the case as if there is a prior enmity and that is the reason why there was



deliberation and a detailed complaint was given by roping in the appellant.

17. In the considered view of this Court, in cases of this nature, the delay in lodging the complaint cannot be dealt with like any other regular criminal case. The victim's family are very hesitant to lodge complaint in cases of this nature since it involves a small kid and her future. Hence, the mere delay will not vitiate the case of the prosecution when there are other materials, which support the case of the prosecution.

18. Insofar as the evidence under the POCSO Act is concerned, the same brings forth the concept of reverse burden u/s.29 and 30 of the POCSO Act. Where a person is prosecuted for committing any offence u/s.3, 5, 7 and 9 of the POCSO Act, the Court shall presume that the person has committed the offence unless the contrary is proved. Likewise, there is also a legal presumption on the culpable mental state as provided u/s.30 of the POCSO Act. It is now too well settled that it is enough if the prosecution establishes the foundational facts and thereafter, the burden of proof will rest on the



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accused person. If the accused person does not discharge his burden, the Court can proceed further to convict the accused person based on the foundational facts established by the prosecution.

19. In the instant case, the evidence of PW-1 and the evidence of the Doctor examined as PW-13 through whom Ex.P9 was marked, clearly establish the foundational facts. The appellant has not dislodged the reverse burden except by pointing out that there was a delay in launching the prosecution and that the complaint itself has been given due to prior enmity. This defence taken by the appellant does not in anyway dislodge the foundational facts that have been established by the prosecution.

20. In cases of this nature, such offences are committed only by persons, who are well known to the family. Even in the present case, the child used to play in the house of the appellant and nobody would have doubted that the appellant will turn around and his perverse mind will make him commit an offence against the child aged about 1½ years. The Court



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below has considered the evidence from all aspects and found that the prosecution has established the case against the appellant.

21. Learned counsel for the appellant submitted that the appellant is now aged about 70 years and hence, some leniency can be shown on the sentence imposed against the appellant. POCSO Act was an Act which was brought into force only by keeping the hapless victim in mind. This is an Act where the interest of the victim is predominant in the mind of the legislature and that is the reason why stringent punishment has been prescribed under the Act. The Court below has properly weighed the evidence and taking into consideration the age of the appellant, has imposed proper sentence, which does not require the interference of this Court.

22. Insofar as the offence u/s.363 IPC is concerned, the said offence will get established where a person is kidnapped from lawful guardianship. The victim child was under the guardianship of her mother and the appellant had taken the victim child from her house and brought to his house and



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committed the sexual assault in the bathroom. This act of the appellant clearly makes out an offence u/s.363 IPC.

23. In the light of the above discussion, this Court does not find any ground to interfere with the judgment and order passed by the Court below and the same is hereby confirmed. The sentence imposed against the appellant was suspended by this Court by order dated 15.06.2015 and as a result, the appellant was granted bail pending the criminal appeal. During the pendency of this criminal appeal, the appellant was also directed to report before the Namakkal Police Station daily at 11.00 a.m. Learned Government Advocate informs this Court that the appellant has been complying with this condition. Hence, the appellant is directed to surrender before the trial Court within a period of two (2) weeks from today in order to undergo the rest of the sentence. If the appellant does not surrender, the trial Court shall immediately take steps to secure the appellant and send him to jail to undergo the remaining sentence.

In the result, this Criminal Appeal stands dismissed.



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Index : Yes/No
Speaking Order / Non Speaking Order
Neutral Citation: Yes/No
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To

- 1.The Sessions Judge
Fast Track Mahila Court,
Namakkal.
- 2.The Inspector of Police,
Namakkal Police Station.
Crime No.695 of 2013
- 3.The Public Prosecutor,
High Court, Madras.



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N. ANAND VENKATESH, J

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