



Crl.A.No.34 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.07.2023

DELIVERED ON : .07.2023

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.A.No.34 of 2022

K.Madhu

... Appellant

Vs.

State Represented by
The Inspector of Police,
All Women Police Station,
Harur.
(Crime No.07 of 2016)

... Respondent

PRAYER: Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code, 1973 to allow the criminal appeal, set aside the conviction and sentence passed by the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Dharmapuri in judgment dated 06.06.2019 passed in Spl.S.C.No.24/2016.

For Appellant : Mr.B.Krishnamani Appukutti

For Respondent : Mr.R.Vinothraja, GA (Crl. Side)



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J U D G M E N T

This criminal appeal is against the Judgment and order of the Sessions Judge (Fast Track Mahila Court), Dharmapuri, made in Spl.S.C.No.24/2016, dated 06.06.2019.

2. The appellant is the accused in Spl.S.C.No.24/2016 and he is convicted and sentenced as detailed hereunder:

<i>Conviction</i>	<i>Sentence</i>
Section 4 of POCSO Act	i. Rigorous Imprisonment for 7 years and a fine of Rs.5,000/-, in default, to undergo 3 months Rigorous imprisonment. ii. To pay a sum of Rs.10,000/- to the victim as compensation in default, to undergo simple imprisonment for 3 months. iii. The period already undergone has been directed to be set off under Section 428 Cr.P.C.

3. The Incident as naratted by the prosecution



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The scene of occurrence of the crime is Dasarahalli Colony in Harur, Dharmapuri District. PW-1 is the complainant and the mother of three children, one of whom is the victim. The victim(P.W.2) who was 5 years old was playing on 11.03.2016 with her twin sister and another child (Anbuselvi) in front of the house of the accused Madhu who was also a resident of the same colony. They were studying in the Balwadi next door. It is alleged that the said accused had taken the victim child to the bathroom, removed her inner brief and pressed his penis on the private part of the victim child. She screamed in pain. Her twin sister who peeped into the bathroom to know what was happening saw this act of the accused after which the victim was let off. The victim child had narrated the incident to her twin sister and to another friend Anbuselvi, who was also playing with her.

The mother of the victim child observed the strange behaviour of the child who refused to squat on the floor and also did not eat properly. She also complained of abdominal pain when the mother persistently questioned her child and on knowing the matter on 14.03.2016, took the victim child to



Morappur Government Hospital where she was referred to Dharmapuri Government Hospital. Since her husband was not in station, she waited for him and took the child on 15.03.2016 morning to Dharmapuri Government Hospital where the child was admitted. She was medically examined by Dr.Girija (PW-8). The Accident Register is marked as Ex.P8 and Medical Report is marked as Ex.P9. Harur All Women Police Station Inspector and Child Line volunteer also visited the hospital and enquired the mother.

4. The Investigation by the prosecution

Tmt.Amudhavalli (PW-13), the then Inspector of Police of All Women Police Station, Harur is the Investigating Officer in this case. Tmt.Manjula (P.W.11) was the Sub Inspector of Police in the same station who received the information from Dharmapuri Government Hospital on 15.03.2016 in the afternoon and who was deputed by PW-13 to visit the hospital for further enquiries. PW.11 along with a counsellor of the child line Ananthi (P.W.4), visited the hospital (Government Hospital, Dharmapuri) enquired the victim's mother (PW-1), recorded her statement (Ex.P1) which was witnessed by PW-4. Based on this statement by the mother of the child, PW-



13 registered an FIR (Ex.P11) in Crime No.07/2016 at 18.00 hours under

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Sections 3 & 4 of POCSO Act against the accused, Madhu. The same day in

the evening the accused was arrested near Morappur Bus Stand after PW-1

identified him, in the presence of witnesses Arasu (PW-5) and Singaram

(PW-6) and the confession statement of the accused was also obtained and

he was remanded to judicial custody the same evening. The next day i.e. on

16.03.2016 at 08.00 am the Investigating Officer visited the place of

occurrence, prepared an observation mahazar (Ex.P10) and rough sketch

(Ex.P12) in the presence of the Sampathraj (PW.9) and Ammasi (PW-10).

Statement was obtained from the complainant (PW-1), her husband and

father of the victim (PW-3) Thirumal, Ananthi, the Child Line Counsellor

(PW-4) and Suguna (PW-12), who was running the Balwadi by the

Investigating Officer under Section 161(3) Cr.P.C. On 17.03.2016, the

Investigating Officer had written a letter to the Chief Judicial Magistrate,

Dharmapuri seeking permission for producing the victim girl before the

concerned Judicial Magistrate, Pappireddipatti and her statement under

Section 164 Cr.P.C. was recorded on 29.03.2016 by the Judicial Magistrate.

The same is marked as Ex.P3. The accused was examined medically on



29.03.2016 by Dr.Muralirajan (PW-7) of Dharmapuri Government Hospital

and his certificate regarding the potency of the accused was marked as Ex.P7. Similarly, on the same date both the doctors were examined and their statements were obtained. Subsequently, the Investigating Officer filed the charge sheet against the accused.

5. The Trial in the court.

There were as many as 13 prosecution witnesses and 13 exhibits. The accused was questioned with regard to the circumstances appearing in evidence against him under Section 313 Cr.P.C. The accused denied of having committed any offence. On the defence side, two witnesses DW-1 and DW-2 were examined and one exhibit (Ex.D1) was marked. PW-1 and PW-3 were the parents of the child. PW-1, the mother was the complainant. PW-2, the victim child was examined and also subjected to cross examination. She withstood the testimony of cross examination. PW-4 the Child Line Counsellor narrated the sequence of events as told to her by the mother of the victim child. PW-5 and PW-6 are witnesses of the arrest and confession of the accused. While PW-7 was the doctor who certified the



potency of the accused, PW-8 is the doctor who examined the victim child, PW-9 and PW-10 are the mahazar witnesses, PW-11 and PW-13 are the Sub Inspector and Inspector of the Harur, All Women Police Station and PW-12 is the person running Balwadi. The deposition of PW-1 and PW-2 are corroborative. PW-4 the Child Line Counsellor was also convinced on the statement of PW-1, the mother of the child. PW-2's 164 statement and her deposition in the trial Court had no contradictions. PW-13, Investigating Officer, narrated the entire sequence of events leading to the arrest of the accused and filing of charge sheet.

6. Heard Mr. B. Krishnamani Appukutti, learned counsel for the appellant and Mr.R.Vinothraja, learned Government Advocate (Crl. Side) for the respondent.

7. Arguments on the Prosecution Side :

- a) PW-2, the victim child has clarity in her statement.
- b) There is no evidence of any other enmity between the two families.
- c) Already only minimum punishment is given. Therefore, no leniency



need to be shown to the accused.

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8. Arguments on the Defence Side :

- a) No physical injuries on the private part of the victim were reported by Dr.Girija (PW-8).
- b) The complainant was not a direct eyewitness.
- c) The complainant had a personal grudge against the accused's wife and therefore, the charge is a trumped up one. This was not considered.
- d) As per the evidence of Ananthi (P.W.4) the victim child was left in the school on the date of occurrence by her mother and was also brought back home by her. Therefore, there is no scope for the accused to commit the offence at about 11 a.m.
- e) There was delay in going to the police for the complaint. No plausible explanation is given.
- f) Non examination of the sister and friend of the victim's child as witnesses is fatal to the case of the prosecution.
- g) The conviction is based on doubt and not on clear proof.



WEB CO **9.The Conclusion by this court**

The victim was just five years old. Her testimony does not need any outside support or corroboration. It inspires the confidence of this Court. This Court opines that in such cases strongly backed by deposition of the victim herself, no defence can serve the purpose. Let us go one by one into the defence points raised by the learned counsel for the appellant/accused.

- a) Physical injuries alone do not decide whether there has been a sexual assault. In the instant case, the accused's act of stripping the child and pressing his private part on her private part in itself is a conclusive proof of the offence. In fact, as per the sequence of events the victim's sister saved the victim from a bigger damage and the victim's scream made the assailant flee the scene.
- b) In the presence of a 'solid' deposition by the victim child herself, absence of an eye witness does not matter.
- c) No evidence is given by the defence for any enmity or hostility between the victim's and complainant's families.
- d) Balwadi's timings have no relevance to this case and the accused did



"Section 29 of Protection of Children from Sexual Offences

Act, 2012 : 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."

Subjecting a young child who is an avatar of God to a cruel crime of sexual assault and later for a trial with cross examination etc. is a grueling process. The stigma remains for her entire life. The accused is 52 years old, old enough to be the grandfather of the victim. It is a shameful act. It is not an impulsive act that happened at the spur of the moment. It is the highest form of perversity. In a male centric society like ours, we celebrate International Women's Day and make tall claims of respecting women on one side while on the other such disturbing instances remind us as to how primitive and uncouth the society remains. Morals are thrown to wind. Such disgusting acts deserve the strongest penalty. Today's education resolves only around



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getting a degree and not in personality development which includes good behaviour. We boast of high literacy status but such alarming incidents are on the rise. What is ailing our society? It is perplexing. Therefore, I do not find any reason to interfere with the conviction and sentence passed by the trial Court.

10. In the result,

(i) The Criminal Appeal is dismissed.

(ii) The conviction and sentence dated 06.06.2019 passed by the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Dharmapuri in Spl.S.C.No.24/2016, is confirmed.

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Index : yes/no

Speaking /Non speaking Order



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- 1.State Represented by
The Inspector of Police,
All Women Police Station, Harur.
- 2.The Sessions Court, Magalir Neethi Mandram
(Fast Track Mahila Court), Dharmapuri
- 3.The Section Officer, Criminal Section, High Court, Madras.



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R.HEMALATHA, J.

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Pre-Delivery Judgment in
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