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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2023

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.A.No.499 of 2016

State represented by:
The Public Prosecutor,
High Court, Madras - 600 104.
[AWPS., Perambalur,
Crime No.18 of 2014] ... Appellant

Versus

M.Rajagopal ... Respondent

Prayer: Criminal Appeal filed under Section 378 of The Criminal Procedure Code, 1973 to set aside the judgment of acquittal passed in S.C.No.35 of 2014, dated 02.06.2015 by the learned Principal District Sessions Judge, Mahila Court, Perambalur and convict the respondent / accused as charged.

For Appellant : Mr.S.Vinoth Kumar
Government Advocate (Crl. Side)

For Respondent : M/s.D.Chandraleka
Legal Aid Counsel

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JUDGMENT

The State is on an appeal aggrieved by the judgment of the Mahila Court, *Perambalur* in S.C.No.35 of 2014, thereby, acquitting the respondent / accused of the charges under Section 5(n) r/w 6 of *Protection of Children from Sexual Offences Act, 2012* (hereinafter referred to as '*POCSO Act*') and Section 4 of *Tamil Nadu Prohibition of Harassment of Woman Act, 1998* (hereinafter referred to as '*TNPHW Act*').

2. The case of the prosecution is that upon information, ***P.W.1***, the Child Protection Officer along with the other officials visited the house of the victim child on 23.06.2014, whereupon, the child narrated an incident that took place about a month back on 23.05.2014, on which date, the respondent / accused, being her father, had come home in an inebriated condition, torn her dress, forced himself on her and sexually assaulted her. Since the information disclosed an offence punishable under Section 6 of *POCSO Act*, the matter was brought to the notice of the All Women Police Station, *Perambalur* and a case was registered in Crime No.18 of 2014 and the child was also taken up for medical examination. On examination, a bite mark on the left thigh of the child and also open wound on the head of the child was found. Thereafter, when the victim child was taken to the learned Judicial Magistrate, *Perambalur* on

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05.07.2014, she deposed that her father has an extra-marital affair and since he had two wives, he has always been torturing her mother. On the fateful day, in an inebriated condition, he attacked her on the head and caused an injury and also dragged her by pulling the dress and her dress was torn. However, when the victim child as well as her mother were examined before the Trial Court as ***P.Ws.1*** and ***5***, they deposed that the victim child sustained injuries while playing Kabaddi in the school. The Trial Court, considering the said evidence on record, came to a conclusion that except the official witness of the Child Welfare Committee, when each and every witness has turned hostile, there is no enough material to bring home the guilt of the accused and acquitted the accused, against which, this Criminal Appeal is laid before this Court.

3. Heard *Mr.S.Vinoth Kumar*, learned Government Advocate (Crl. Side) for the appellant and *M/s.D.Chandraleka*, learned Legal Aid Counsel for the respondent.

4. *Mr.S.Vinoth Kumar*, learned Government Advocate (Crl. Side) for the appellant would contend that even though currently, the victim child as well as the accused were living happily as a family, still, only upon information from the family, the Child Welfare Committee officials visited the house of the

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victim, wherein, the victim had narrated about the incident. The version is also corroborated by the medical evidence in the form of a bite mark which was found on the left thigh of the child. Otherwise, medical evidence does not corroborate the version of ***P.W.1*** that the child sustained injuries during play in the school. He would submit that even though the victim child did not support the case of the prosecution, the evidence of ***P.W.1***, corroborated with ***Ex.P-5***, medical examination report, itself would prove if not penetrative sexual assault atleast sexual assault punishable under Sections 10, 11 of *POCSO Act* and therefore, the Trial Court erred in acquitting the respondent / accused.

5. Per *contra*, *M/s.D.Chandraleka*, learned Legal Aid Counsel for the respondent / accused would submit that there cannot be any conclusion on the sole basis of the bite mark which is found in the medical report. A bite mark can also happen during the children playing Kabaddi. Therefore, when the offence under the *POCSO Act* being serious in nature, there must be very categorical and clear evidence so as to convict the accused and when the Trial Court, after appreciating the entire evidence on record, by exercising its jurisdiction, had granted the benefit of doubt to the respondent / accused, the same cannot be upturned in this appeal against acquittal.

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6. I have considered the rival submissions made on either side and perused the material records of the case. As rightly contended by learned Legal Aid Counsel for the respondent / accused, it can be seen that the accusation is made against the father of the victim child. But, however, both the victim child and her mother turned hostile and not only they turned hostile, they had not supported the case of the prosecution even while recording the statement under Section 164 of *The Code of Criminal Procedure* which was recorded 15 days, after which, the child was rescued by the Child Welfare Committee. This apart, unfortunately, even in ***Ex.P-5***, no statement or the purpose, as to how the injuries namely, the bite mark, was caused, was also not recorded. Therefore, on the sole basis of the official witness's evidence who deposed that the child narrated about the sufferings and on the basis of the bite mark alone, I am unable to upturn the finding of acquittal given by the Trial Court as to one of guilt as the view taken by the Trial Court cannot be termed as a perverse view or an impossible view .

7. Therefore, finding no merits, this Criminal Appeal stands dismissed.

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Index : no
Speaking order
Neutral Citation : no
grs

D.BHARATHA CHAKRAVARTHY. J.,
grs

To

1. The Principal District Sessions Judge,
   Mahila Court,
   Perambalur.

2. The Public Prosecutor,
   High Court of Madras.

3. The Inspector of Police,
   All Women Police Station,
   Perambalur.

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