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CrI.A.No.535 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.A.No.535 of 2016

Aranganathan

... Appellant

Versus

STATE Represented by
Inspector of Police,
W8-All Women Police Station,
Tirumangalam,
Crime No.334 of 2014,
Chennai.

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment of conviction by the learned Additional Sessions Judge (Magaleer Needhi Mandram), Chennai convicting the appellant for an offence under section 8 of the Protection of Children from Sexual Offences Act 2012 and sentencing him to 3 years of Rigorous Imprisonment and imposed a fine of Rs.10,000/- with a default sentence of 3 months Rigorous Imprisonment by a judgment dated 30-06-2016 in S.C.No.429 of 2014.

For Appellant : Mr.R.John Sathyan, Senior Counsel
for Mr.S.Thankira

For Respondent : Mr.R.Muniyapparaj,
Additional Public Prosecutor

JUDGMENT

The appellant/accused preferred this Criminal Appeal aggrieved by judgment of conviction and sentence passed by the learned Sessions Judge



(Mahalir Neethimandram Chennai), Special Court for Cases Under POCSO

Act, 2012/Mahila Court, Chennai (trial Court) convicting and sentencing the appellant to undergo Rigorous Imprisonment for a period of three years and to pay a fine of Rs.10,000/-, in default to undergo further period of three months for offence under Section 8 of the Protection of Children from Sexual Offence Act, 2012 (Hereinafter referred to as 'Act' for brevity).

2.The brief facts of the case is as follows:-

(i)On 25.02.2014, the father of the victim girl (PW1) lodged complaint (Ex.P1) to the respondent Police that he has two minor daughters, who were attending tuition with one Thamilselvi for the past four years. His eldest daughter/victim girl complained to him that the appellant, who is the father of said Thamilselvi made improper touch and sexually assaulted. On receipt of the complaint (Ex.P1), a case in Crime No.334 of 2014 (Ex.P4) was registered for offence under Section 12 of the Act by the Sub Inspector of Police (PW13) attached to the respondent Police.

(ii)Thereafter, the Inspector of Police/Investigation Officer (PW14) took up investigation, examined the witnesses viz., victim girl (PW3), her father (PW1), mother (PW2), Headmistress (PW4) & Class Teacher (PW5)



of the school where the victim girl studied, tuition mates of victim girl (PW6, PW7 & PW10), cousin brother of PW1 (PW9), who accompanied PW1 while lodging complaint (Ex.P1), the Metropolitan Magistrate, Egmore, Chennai (PW11), who recorded the statement under Section 164 Cr.P.C (Ex.P2) of victim girl (PW3). On completion of investigation, referred charge sheet (Ex.P6) filed on 13.10.2014 closing the FIR as Mistake of Fact. Thereafter, the closure report (Ex.P6) taken back, alteration report (Ex.P6) prepared altering Section 12 of the Act to Section 8 of the Act and again positive charge sheet filed before the trial Court.

3.To prove the guilt of the appellant, on the side of the prosecution, as many as fourteen witnesses examined as PW1 to PW14 and seven documents marked as Exs.P1 to P7. On the side of the accused, no witness examined and no document marked.

4.When the appellant was questioned under Section 313 Cr.P.C., about the incriminating circumstances appearing against him, he denied the same.

5.The trial Court, on the basis of the oral and documentary evidence, convicted and sentenced the appellant as aforesaid and challenging the



legality of the said conviction and sentence, the present appeal has been filed.

6.The learned Senior Counsel appearing for the appellant submitted that father of the victim girl (PW1) and his cousin brother (PW9) had motive against the appellant due to political rivalry. PW1 and PW9 left from TMC (Tamil Manila Congress) political party and joined AIADMK (Anaithu India Anna Dravida Munnetra Kazhagam) political party wanting recognition and position. The appellant being the local leader and Secretary of AIADMK party, opposed the same and further directed them to meet the local Councillor. On the support of local MLA, PW1 and PW9 started acting independently against the party. On 17.01.2014 being the birthday of Founder of AIADMK, the party members made arrangement for flag hoisting and celebration. The rival group viz., PW1 and PW9 placed a flag pole next to the recognized flag mast and unfurled the party flag calling the locals against the party programme which was questioned by the appellant and there was a dispute with regard to the same. PW8 and PW12 confirmed the political animosity between PW1, PW9 and the appellant. To brook vengeance, PW1 gave such false complaint against the appellant. The learned Senior Counsel further submitted that the Investigating Officer



(PW14) during investigation examined around 36 witnesses including victim girl (PW3), her parents (PW1 & PW2), appellant's daughters, son, School Teachers, neighbours, Tuition mates of the victim girl and others and finding that a false case has been foisted against the appellant, closed the same as Mistake of Fact and filed referred charge sheet before the concerned Court. Thereafter, for the reasons best known, without any reason or judicial order, the negative report was taken back and thereafter, without examining any witnesses and collecting fresh evidence, the negative report resubmitted into positive charge sheet by the same Investigating Officer (PW14). Thus, for an ulterior motive, a false case has been thrashed against the appellant.

7.The learned Senior Counsel further submitted that there have been vital contradictions in the evidences of PW1 to PW3. PW1 stated that it is the Headmistress (PW4), who informed him about the incident and he informed his wife (PW2) and further it was his Aunt who enquired victim girl (PW3) and thereafter, he lodged the complaint (Ex.P1). On the other hand, PW2 and PW3 does not say so and they gave different version. PW1 admitted that it is on the compulsion of PW9, he lodged the complaint (Ex.P1). PW1 and PW9 admitted that there was intra party rivalry between them and the appellant. The evidence of PW2 is with contradictions. The



victim girl (PW3) gives a new exaggerated version. He further submitted that the child witness/victim girl (PW3) is prone for tutoring and she was tutored to depose against the appellant. The victim girl's (PW3) admission is that she informed tuition mate Priyadharshini about the alleged sexual assault, who in turn informed the same to Class Teacher (PW5), who informed Headmistress (PW4). But in this case, the said Priyadharshini not examined as witness during trial. The learned Senior Counsel further submitted that Headmistress (PW4) and Class Teacher (PW5) not whispered anything about the alleged sexual assault made on the victim girl by the appellant. The tuition mates (PW6, PW7 & PW10) stated in their evidence that the appellant never made any improper touch or made sexual assault on them and they affirmed that the appellant used to be inside the house and watching Television and never took tuition for children. The Investigating Officer (PW14) admits the contradictions in the prosecution witnesses. The trial Court had gone on the contradictory evidence of PW1 to PW3 and convicted the appellant. He further submitted that since the victim girl (PW3) being a child and under the care of PW1, PW2 & PW9, there is every possibility of tutelage.



8.The learned Senior Counsel further submitted that the trial Court had gone on surmises and conjectures and placed conviction for the reason Section 29 of the Act comes into play. The trial Court placed conviction against the appellant since the presumption under Section 29 of the Act stands against the appellant and failed to look into the fact that it is for the prosecution to prove its case first and thereafter, dislodging of the statutory presumption would arise. Assailing these points, the learned Senior Counsel prays for setting aside the judgment of the trial Court.

9.The learned Additional Public Prosecutor appearing for the respondent Police submitted that in this case, on the complaint of the father of victim girl (PW1), FIR (Ex.P4) in Crime No.334 of 2014 came to be registered by the Sub Inspector of Police (PW13) attached to the respondent Police Station. On receipt of Ex.P4, the Investigating Officer/Inspector of Police (PW14) took up investigation, visited scene of occurrence, enquired the victim girl (PW3), her parents (PW1 & PW2), nearby residents, tuition mates (PW6, PW7 and PW10), Headmistress (PW4) and Class Teacher (PW5) of the victim girl and others. He further submitted that PW8 and PW12 are the local party men, who stated about PW1 and PW9 earlier were in TMC party and thereafter, shifted to AIADMK party and approached the



appellant to get recognition and postings. Added to it, on 17.01.2014, PW1 and PW9 hoisted the party flag in commemoration of its Founders against the official party function. Due to which there was dispute between them and the appellant. PW11, the learned Metropolitan Magistrate, Egmore, Chennai confirmed the statement of the victim girl (PW3) recorded under Section 164 Cr.P.C. During investigation, several witnesses examined viz., victim girl (PW3), her parents (PW1 & PW2), appellant's daughters and son, School Teachers, neighbours, Tuition mates of the victim girl and others.

10.He further submitted that there was some misunderstanding and dispute between the appellant and PW1 & PW9, which cannot be a reason to discard the evidence of the victim girl (PW3) and other witnesses. It is to be noted that no parents would attempt to spoil the name and future of the daughter for any political or personal reasons. Initially, the Investigating Officer (PW14) filed the closure report (Ex.P6) and thereafter, on reappraisal of statement of witnesses and document, filed positive charge sheet before the trial Court. During trial, the appellant failed to produce any positive evidence to dislodge the statutory presumption starring at him under Section 29 of the Act. Thus, the trial Court on appreciation of evidence and materials produced on the side of the prosecution, had passed judgment of



conviction, which need not be interfered with.

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11.This Court considered the rival submissions and perused the materials available on record.

12.In this case, the victim girl examined as PW3, her father and mothers examined as PW1 and PW2. The father of victim girl (PW1) lodged the complaint (Ex.P1) on 25.02.2014. The complaint (Ex.P1) is brief and cryptic. In the complaint (Ex.P1), PW1 stated that the victim girl (PW3) after coming from tuition, informed about sexual assault made by the appellant. PW1 in his evidence confirms that on 25.02.2014, at about 04.00 p.m., the Headmistress (PW4) called him through phone and enquired about tuition centre where the victim girl studying and she asked PW1 to enquire his daughter (PW3), in turn PW1 informed his wife (PW2) and his Aunt to enquire the victim girl (PW3). It is his Aunt who enquired the victim girl (PW3) and informed PW1 that the appellant, who is the father of tuition Teacher, made sexual assault on her and immediately, PW1 lodged the complaint (Ex.P1) against the appellant. But, in this case, PW2 and PW3 does not say so. Added to it, PW1's Aunt, who enquired the victim girl, is not examined as witness. In such circumstances, the information received by



PW1 through his Aunt is only an hearsay. Further, the Headmistress (PW4) of the school does not whisper any complaint with regard to sexual assault made on the victim girl (PW3). On the contrary, the Headmistress (PW4) and Class Teacher (PW5) confirmed that they enquired victim girl only with regard to her poor performance in two subjects (Mathematics and Social Science). Both Headmistress (PW4) and Class Teacher (PW5) does not whisper any complaint regarding sexual assault made by the victim girl (PW3) to Priyadharshini or to them.

13.The victim girl (PW3) admitted she informed her friend Priyadharshini about the sexual assault made by the appellant. Thereafter, Priyadharshini informed the same to Class Teacher (PW5), who in turn informed Headmistress (PW4). Thereafter, the Headmistress (PW5) informed to PW1, father of the victim girl. In this case, though the statement of Priyadharshini recorded, for the reasons best known she was not examined as witness during trial. Even in the statement under Section 161 Cr.P.C., the said Priyadharshini does not state anything about the victim girl (PW3) informing sexual assault made by the appellant. Added to it, the Headmistress (PW4) and Class Teacher (PW5) examined during investigation and in their evidence during trial, they does not state anything



with regard to victim girl's sexual assault at the hands of the appellant. On the other hand, both of them confirmed that they had spoken to the father of victim girl (PW1) only with regard to shortcomings of the victim girl in two subjects. The mother of victim girl (PW2) stated that the Class Teacher (PW5) called her husband (PW1), informed about incident and thereafter, she enquired her daughter (PW3). Thus, the evidence of father (PW1) and mother (PW2) of the victim girl are not only contradictory to each other and contradictory to prior statement which the Investigating Officer (PW14) admits.

14.PW8, the local party man in his evidence stated he is not aware about any such alleged sexual assault made by the appellant to the victim girl (PW3). PW9, the cousin brother of PW1 stated that he was informed by PW1 about the sexual assault made on the victim girl (PW3). Thus, PW9 coming to knowledge about the incident is highly doubtful. PW9 admitted that the appellant is the leader of 49th ward of AIADMK party. He further admitted that he and PW1 approached the appellant for getting recognition and political postings in AIADMK party. The learned XIII Metropolitan Magistrate, Egmore, Chennai (PW11) admitted that leading questions were put to the victim girl (PW3). Leading questions can be put to the extent of



analysing the capability of minor witnesses and not for eliciting the facts. In this case, the victim girl (PW3) stated that she informed Class Teacher (PW5) about the sexual assault made by the appellant, who in turn informed Headmistress (PW4). The victim girl (PW3) further stated that she informed her friend Priyadharshini, who informed the same to Class Teacher (PW5) and thereafter, the Class Teacher (PW5) informed Headmistress (PW4).

15. In this case, the tuition mates (child witnesses) of the victim girl (PW6, PW7 & PW10) confirmed that the appellant, father of Thamilselvi had never interacted with them in any manner, the tuition was conducted in the Varandha front portion of the house and the appellant used to be inside the house and watch television, on occasions when the children were making noise, he used to silence them, otherwise he had no interaction with any of the child. Further, the children used to answer the nature call in the open away from the house and gave positive evidence in favour of the appellant stating that appellant never spoken to them or made any improper touch or sexual assault on them or to any one. It is to be noted that these students (PW6, PW7 & PW10) are still studying in same tuition along with other children. Thus, the evidence of Headmistress (PW4), Class Teacher (PW5), tuition mates (PW6, PW7 and PW10) are positive, in favour of the appellant.



16. On perusal of the closure report (Ex.P6), it is seen that during investigation around 36 witnesses examined including victim girl (PW3), her parents (PW1 & PW2), daughters and son of the appellant, School Teachers, neighbours, Tuition mates of the victim girl and others. LW32 is Priyadharshini, to whom the victim girl (PW3) is said to have informed about the sexual assault made by the appellant. It is seen that the victim girl (PW3) failed in two subjects (Mathematics and Social Science) and she had never stated anything to Headmistress (PW4) and Teacher (PW5) about the sexual assault made by the appellant. Thus, the earlier statement of the victim girl recorded under Section 164 Cr.P.C., and the evidence of the victim girl recorded during trial are with exaggerations and contradictions and does not inspire confidence and it is without any correlation. The Investigating Officer after detailed enquiry filed closure report (Ex.P6) on 14.04.2014 and thereafter, on 30.10.2014 an alteration report (Ex.P5) filed, finally, affidavit (Ex.P7) filed by the Investigating Officer for re-submitting the charge sheet. It is strange to see that in the resubmitted charge sheet, none of the witnesses have been re-examined or any clarification sought, clarified, no fresh material collected. The Investigating Officer admitted the contradiction of PW1, PW2 and PW9, who had motive against the appellant. The dispute on the Founders Day in hoisting the flag is confirmed by PW8 and PW12.



17.As discussed above, there are contradictions between the evidence of the victim girl (PW3), her parents (PW1 & PW2) and the Headmistress (PW4), Class Teacher (PW5) of the victim girl. Added to it, the evidence of the victim girl (PW3) is with exaggerations and contradictions, which does not inspire confidence to sustain the judgment of conviction and sentence passed against the appellant.

18.Having careful look at the evidence of child witness/victim girl (PW3), this Court is of the opinion that reliance cannot be placed on her testimony since it is not corroborated by any independent and reliable evidence. It is well settled that a child witness is prone to tutoring and hence the Court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct and circumstantial. In this case, on weighing carefully the testimony of victim girl (PW3), it is with contradictions and unreliable. Hence, the appellant is entitled to benefit of doubt.

19.The trial Court reasoning that in view of Section 29 of the Act, the appellant is convicted, is on a wrong premise. Section 29 of the Act would come into play only after the prosecution proves the basic and foundational



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facts against the appellant and thereafter, the same to be dislodged either by way of producing witnesses or by way of cross examination. In this case, the prosecution failed to prove the basic and foundational facts. On the other hand, there are positive evidence in favour of the appellant.

20.Thus, looking the case from any angle, this Court comes to the conclusion that the prosecution miserably failed to prove the case against the appellant beyond reasonable doubt.

21.In the result, this Criminal Appeal is allowed setting the judgment of conviction and sentence, dated 30.06.2016 made in S.C.No.429 of 2014 by the learned Sessions Judge (Mahalir Neethimandram Chennai), Special Court for Cases Under POCSO Act, 2012/Mahila Court, Chennai.

22.The appellant is acquitted of all charges. Fine amount, if any, paid shall be refunded. The Bail Bond if any executed stands cancelled.

17.03.2023

Speaking order/Non-speaking order
Internet: Yes/No
Neutral Citation: Yes/No
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M.NIRMAL KUMAR.J.,

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To

- 1.The Sessions Judge (Mahalir Neethimandram Chennai),
Special Court for Cases Under POCSO Act, 2012/Mahila Court,
Chennai.
- 2.The Inspector of Police,
W8-All Women Police Station,
Tirumangalam,
Chennai.
- 3.The Public Prosecutor,
High Court, Madras.

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