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Crl.A.No.557 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 17.10.2023**

CORAM:

**The Honourable MR.JUSTICE SATHI KUMAR SUKUMARA KURUP**

**Crl.A.No.557 of 2016**

Babu @ Dinakaran

...Appellant / Accused

-Vs-

State rep. by  
The Inspector of Police  
Adhiyamankottai Police Station,  
Dharmapuri District.  
(Crime No.84 of 2014)

...Respondent / Complainant

**Prayer:-** Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, 1973, to set aside the judgment dated 06.05.2016 in Spl.S.C.No.62 of 2015 conviction and sentence of one year simple imprisonment and imposing a fine of Rs.1000 i/d to undergo 1 month imprisonment for the offence under Section 11(1) r/w Section 12 of the Protection of Children from Sexual Offences Act, 2012, imposed as against the Appellant/Accused by the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri.

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

**J U D G M E N T**



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The Appellant is the sole Accused in Spl.S.C.No.62 of 2015 dated 06.05.2016 on the file of the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri.

2. The Trial Court, vide impugned judgment in Spl.S.C.No.62 of 2015 dated 06.05.2016, has convicted the Sole Appellant/Accused as follows:-

| Conviction under section                                                                     | Sentence Awarded                                                                                                                     |
|----------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|
| Section 11(1)(e) r/w Section 12 of the Protection of Children from Sexual Offences Act, 2012 | To undergo one year of simple imprisonment and to pay a fine of Rs.1,000/- and in default, to undergo one month simple imprisonment. |

The Trial Court ordered the sentences to run concurrently and has also granted set-off under Section 428 Cr.P.C. for the period of incarceration undergone by the Accused during investigation/trial.

3. The challenge in this Appeal is to the above said judgment of the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri.

4. Mr.M.Karthick, learned Counsel representing the Counsel on record on behalf of the Appellant, submitted his arguments.

5. The learned Counsel for the Appellant invited the attention of this Court to the charges framed by the learned Sessions Judge, Fast Track



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Mahila Court, Dharmapuri, as follows:

| No. of charges | Charges framed                                                                               |
|----------------|----------------------------------------------------------------------------------------------|
| Charge 1       | Section 7 r/w Section 8 of Protection of Children from Sexual Offences Act, 2012             |
| Charge 2       | Section 11(1)(e) r/w Section 12 of the Protection of Children from Sexual Offences Act, 2012 |
| Charge 3       | 506(ii) of IPC                                                                               |

Since the charges were denied by the Accused, the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, ordered trial.

6. During trial, the prosecution examined witnesses P.W-1 to P.W-12 and marked Ex.P1 to Ex.P11.

6.1 P.W-1-victim; P.W-2- mother of the victim; P.W-3-headmaster; P.W-4 is the maternal uncle of P.W-1; P.W-5 is the maternal aunt of P.W-1, P.W-6, P.W-7, P.W-8 were neighbours of the family of the victim and they turned hostile; P.W-9-Mahazar witness; P.W-10-Doctor, who examined the victim; P.W-11-Sub Inspector of Police, who received the complaint registered FIR under Ex.P5 and P.W-12-Inspector of Police.

7. Learned Counsel for the Appellant invited the attention of this Court to the depositions of P.W-1, P.W-2, P.W-3, P.W-4, P.W-5. The



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defence of the Accused is that this is a foisted case. The Accused is also a cousin of the mother of the victim.

8. Learned Counsel for the Appellant invited the attention of this Court to the cross-examination of P.W-1, the victim, wherein the child witness admits that before deposing evidence, she was tutored “யார் மாமா சொல்லி கொடுத்தார் சரிதானா yes சரிதான்”. This is relied on by the learned Counsel for the Appellant, stating that the complaint itself was foisted based on previous enmity between P.W-4, the maternal uncle of P.W-1 and the Accused, who is the cousin of the mother of the victim. P.W-2, the mother of the victim, admitted in her cross-examination that the brother of P.W-2 had prevailed upon her to give a complaint to the police. Based on which, the complaint under Ex.P1 was lodged with the Respondent Police.

9. It is the contention of the learned Counsel for the Appellant that there had been quarrel between P.W-4 and the Accused, that had been admitted in the cross-examination of P.W-1, the victim, and P.W-2, the mother of the victim. Only after that clash, this complaint was filed. Therefore, it is the contention of the learned Counsel for the Appellant that



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this is a foisted case. The learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, had acquitted the Accused from the charges under Section 7 r/w Section 8 of Protection of Children from Sexual Offences Act, 2012 and Section 506(ii) of IPC based on evidence but had convicted the Accused for the offence under Section 11(1)(e) r/w Section 12 of the Protection of Children from Sexual Offences Act, 2012.

10. It is the contention of the learned Counsel for the Appellant that there had been previous enmity between P.W-4 and the Accused, which had been elicited from the cross-examination of P.W-1, P.W-2, P.W-4, and P.W-5. Still, the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, had convicted the Accused for the offence under Section 12 of the Protection of Children from Sexual Offences Act, 2012. Therefore, the same has to be set aside.

11. Also, the learned Counsel for the Appellant invited the attention of this Court to the evidence of P.W-10, Doctor, and the report of P.W-10 under Ex.P4. It is the further contention of the learned Counsel for the Appellant that, as per the evidence of P.W-1, the victim, she was playing along with her friend in the school during interval time. The Accused is



alleged to have took the victim along with him under the pretext of buying chocolate. She did not consume the chocolate bought by the Accused, and she was taken to the lonely place where the Accused is alleged to have removed her dress and exposed his genital area to the child. Scared of that, the child cried. The grandma came there, and she was unable to mention the name of the place. In the cross-examination of P.W-2, mother of the victim, P.W-4, maternal uncle of the victim and P.W-5, maternal aunt of the victim, had submitted that, on the alleged date of occurrence, the child was at home. Therefore, it is the contention of the learned Counsel for the Appellant that there are contradictions regarding the place of occurrence as per the evidence of P.W-4, maternal uncle of the victim, and P.W-5, maternal aunt of the victim, that the child was at home and she was playing with her friends. At that time, the Accused had taken her alone and indulged in the alleged act. Whereas, as per the evidence of P.W-1, the victim, she was playing outside the school during interval time the Accused is alleged to have taken her under the pretext of buying her chocolate and indulged in the alleged act.

12. Further, the learned Counsel for the Appellant invited the attention of this Court to the admission made in the cross-examination by P.W-1, the victim, that before entering the witness box in the trial, P.W-4,



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maternal uncle of the victim, had tutored her, “நீதிமன்றத்துக்கு

வருவதற்கு முன்பாக உனது மாமா சொல்லிக் கொடுத்தார்

சரிதானா ஆமாம்”. Therefore, it is the contention of the learned Counsel

for the Appellant that the entire occurrence alleged by the prosecution is

not true occurrence. It was a foisted case. Also, the physical feature of the

area near the school was elicited in the cross-examination where there is no

alleged occurrence took place. Therefore, the child is unable to explain

where and how the occurrence took place. P.W-2, the mother of the victim

is also unable to state from where the information was received by her.

Without mentioning Chandran, the said Chandran was not at all examined

before this Court as a witness. When analysing the deposition of witnesses

P.W-1 to P.W-5, it is clear that such occurrence had not taken place at all.

The learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, had

convicted the Accused only based on the oral evidence of P.W-1, the

victim, and marked the materials available in the cross-examination of the

Accused and the motive for foisting such a complaint. Therefore, the

learned Counsel for the Appellant seeks to set aside the judgment of

conviction, sentence of imprisonment, and fine imposed on the

Appellant/Accused in Spl.S.C.No.62 of 2015 dated 06.05.2016.



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13. Mr.S.Vinoth Kumar, learned Government Advocate (Crl.Side)

for the State, vehemently objected to the line of argument of the learned Counsel for the Appellant, stating that, at the earliest, Section 164 Cr.P.C. statement was recorded from P.W-1, the victim. The learned Government Advocate (Crl.Side) further submits that, as per the Doctor's evidence, there is injury on the body of the victim. Based on the evidence of the victim alone, the Court can convict the Accused. It need not place reliance on such factors. The learned Government Advocate (Crl.Side) also invited the attention of this Court to P.W-1 to P.W-3, P.W-4, and P.W-5, which stood cross-examination. Therefore, their evidence had been cogent.

14. On appreciation of evidence, the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, had acquitted the Accused from the charges under Section 7 r/w Section 8 of Protection of Children from Sexual Offences Act, 2012, and 506(ii) of IPC. Therefore, the learned Government Advocate (Crl.Side) vehemently objects to setting aside the judgment of the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, which is perverse. Further, the submission of the learned Government Advocate (Crl.Side) that the Appeal lacks merit and is to be dismissed by confirming the judgment of the learned Sessions Judge, Fast



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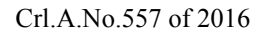
Track Mahila Court, Dharmapuri, in Spl.S.C.No.62 of 2015 dated 06.05.2016.

**Point for consideration:**

***Whether the judgment of the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, in Spl.S.C.No.62 of 2015 dated 06.05.2016 is to be set aside as perverse?***

15. Heard the learned Counsel for the Appellant and the learned Government Advocate (Crl.Side) for the State. Perused the evidence of prosecution witnesses, P.W-1 to P.W-12 and Ex.P1 to Ex.P11.

16. On consideration of the rival submission and on perusal of the deposition of the child witness, the child witness was aged about 7 years at the time of the occurrence and she was 9 years at the time when she was examined as a witness before the Court. The defence of the Accused is that the maternal uncle of the victim/P.W-1 had preferred a complaint as though, the Accused had indulged in offences attracting POCSO Act. The Accused and the maternal uncle of the victim/P.W-1, P.W-1 were close friends. Subsequently this case had been foisted based on enmity between the Accused and P.W-4 maternal uncle of the victim.



18. The learned Sessions Judge, Fast Track Mahila Court failed to appreciate the materials available in the cross examination of P.W-1, P.W-2 and P.W-4. The victim was examined as P.W-1. The mother of the victim was examined as P.W-2. She had preferred a complaint under Ex.P-1 to the Superintendent of Police, Dharmapuri District, based on which it was forwarded to the Inspector of Police, Athiamaankottai Police Station. The Inspector of Police, Athiamaankottai Police Station had registered the case in Crime No.84 of 2014 for the offences under Section 366(A) and 506(i) of I.P.C. It is the defence of the Accused that P.W-2 and P.W-4 were behind foisting the case against the Accused.

19. As per Section 29 of the POCSO Act, the testimony of the child witness should be presumed true, if the defence of the Accused that the mother and maternal uncle of the child had instituted this case to wreck



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vengeance on his former friend, the Accused. The child witness did not concede or deny. The mother of the victim, P.W-2 had also rejected such suggestions. On perusal of the statement recorded under Section 164 of Cr.P.C from the victim by the learned Judicial Magistrate is found reflecting the same depositions as stated by the same child witness. The evidence of the mother of the victim, P.W-2 is found cogent and trustworthy. She claims that she was informed about the alleged occurrence by her acquittance in the village. The child victim had spoken about the conduct of the Accused regarding the sexual offences to her maternal uncle and the sister of P.W-2. After knowing about the incident, P.W-2 had gone to the house of Accused. Only the sister of the Accused was available at that time. When P.W-2 narrated the incident, she denied it stating, that she will enquire with the Accused and even bring him to her house. But nothing of that sort took place. Similarly, P.W-2, mother of the victim had spoken about the occurrence to the mother of the Accused also, she too denied such conduct of the Accused. But the mother of the Accused expressed to P.W-2 that she will bring her son to the house of P.W-2. Nothing of that sort took place. Therefore the mother of the victim preferred a complaint in Crime No.84 of 2014 to the Inspector of Police, Athiamaankottai Police Station.



20. The submission of the learned Counsel for the Appellant that no such occurrence took place. Only to wreck vengeance, the case has been foisted is rejected. what was the reason for the vengeance, what was the reason for the close friends turning into enemies had not been stated by the Accused entering the witness box by way of rebuttal evidence. Therefore, it is found that the evidence had been cogently recorded in this case. The Accused himself had not let in evidence by rebuttal evidence. Under those circumstances, the judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court is found justified. The learned Sessions Judge, Fast Track Mahila Court have the advantage of observing the Accused and the victim. Therefore, the judgment is not found perverse. It is a proper judgment it does not warrant any interference by this Court. In the light of the above discussion, point for consideration is answered partly in favour of the Appellant/Accused and against the prosecution.

In the result, **this Criminal Appeal is partly allowed**. The sentence of imprisonment is reduced as the period already undergone by the Accused since no minimum sentence is prescribed under Section 11 of the Protection of Children from Sexual Offences Act, 2012.



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cda/shl

Index : Yes/No

Speaking/Non-speaking order

To

- 1.The Sessions Judge,  
Fast Track Mahila Court,  
Dharmapuri.
- 2.The Inspector of Police  
Adhiyamankottai Police Station,  
Dharmapuri District.
- 3.The Public Prosecutor,  
High Court, Madras.
- 4.The Section Officer, VR Records,  
High Court, Chennai.

**SATHI KUMAR SUKUMARA KURUP, J.,**



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