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Crl.A.No.460 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2023

CORAM:

The Hon'ble MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.A.No.460 of 2017

Standly

...Appellant/Accused

-Vs-

The Inspector of Police,
All Women Police Station,
Uthagamandalam Town,
The Nilgiris District,
In Crime No.2/2016

...Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, 1973, against the judgment and sentence passed in Special C.C.No.26 of 2016 dated 21.06.2017 on the file of the learned Sessions Judge of Mahalir Neethimandram (FTMC), Uthagamandalam at Nilgiris, convicting the Appellant under Section 7 r/w 8 of rigorous imprisonment and to pay a fine of Rs.3,000/- in default of payment further sentenced to undergo simple imprisonment for the period of three months and the 45 days of imprisonment already undergone by the Accused from 03.11.2016 to 17.12.2016 is ordered to be set off under Section 428 of Cr.P.C.



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Crl.A.No.460 of 2017

For Appellant : Mr.V.Lakshminarayanan
For Respondent : Mr.V.Meganathan,
Government Advocate (Crl.Side)

J U D G M E N T

The Appellant is the sole accused in Special C.C.No.26 of 2016 on the file of the learned Sessions Judge of Mahalir Neethimandram (FTMC), Uthagamandalam, Nilgiris. The Appellant/Accused stood charged and convicted for the offences under Section 7 r/w 8 of the Protection of Children from Sexual Offences Act, 2012 [POSCO Act].

2. The Trial Court, vide impugned judgment dated 21.06.2017, has convicted the Appellant/Accused as follows : -

Conviction under section	Sentence Awarded
7 r/w 8 of the Protection of Children from Sexual Offences Act, 2012 [POSCO Act]	To undergo three years of rigorous imprisonment and to pay a fine of Rs.3,000/- and in default, to undergo three months simple imprisonment.

The Trial Court further ordered the sentences of 45 days of imprisonment already undergone by the Accused from 3.11.2016 to 17.12.2016 to be set off under Section 428 of Cr.P.C.



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3. When the Appeal came up for hearing on earlier occasions, the learned Counsel for the Appellant sought an adjournment. Therefore, the case was adjourned from 07.07.2023 to 18.07.2023. Again, on 18.07.2023, the learned Counsel for the Appellant sought further adjournment. Therefore, this Court had passed order to detain the Accused in prison and adjourned the case to 25.07.2023, on the top of the list.

4. Today, 25.07.2023, the case was posted as item no.2 in the list. The learned Government Advocate (Crl.side) appearing for the Respondent submitted that the Accused had been secured as per the direction of this Court by order dated 18.07.2023. As per the judgment of the learned Sessions Judge, Fast Track Mahila Court, Uthagamandalam, Nilgiris, in Spl.C.C.No.26 of 2016 dated 27.06.2017, the Accused was secured.

5. Brief facts which are necessary for the disposal of this Criminal Appeal, are as follows:-

(a) The child victim [P.W.2] is the student of P.W.7—Father J.Amulraj, the Headmaster of St.Therasa High School, Udhagamandalam,



Nilgiris.

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(b) The Accused in this case is her stepfather. On 01.11.2016, there was a sensitization program at St. Therasa High School, Udthagamandalam, Nilgiris, by the Child Welfare Committee, Ooty, to sensitize the children regarding the conduct of the adults towards children, commonly calculated as misbehaviour or legal conduct, or objectionable behaviour of the adults towards children. This program is conducted based on the ruling of the Hon'ble Supreme Court to conduct such sensitization programs throughout the country to warn the children to take safety measures to protect themselves from evil eyes.

(c) After the program on 01.11.2016, the child victim [P.W.2] in this case gave a complaint stating that her stepfather was behaving in a peculiar manner. She was unable to concentrate on her studies. Whenever she is at home and her mother is away from her, she is forced to sit on his lap and he touches her inappropriately, causing her severe mental stress and pain and he will tell her that he will give her Rs.50/- for obeying his dicta to do things, which she considers inappropriate as a child aged 15 years. She was suffering



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intolerable pain for not obeying. Only when this program was conducted in the School by the Child Welfare Committee of the District, on her complaint, the Child Welfare Committee towards those who were participating in the program as resource persons was shocked. To satisfy themselves, they enquired with the child, and the child opened up. She told them that she had not shared this insecure feeling with anyone including her mother. Therefore, the Child Welfare Committee of P.W.1–N.Hemalatha, Child Helpline Counsellor, P.W.10–A.Mohammed Yasar Arafath, District Child Protection Officer and P.W.11– S.Meena, Child Protection Officer, went to the residence of the child victim [P.W.2] and conducted enquiry.

(d) After discussion among the members of the Child Welfare Committee, they had preferred complaint under Ex.P2. The complaint by the child victim [P.W.2] to the Child Line under Ex.P1, based on which the Child Welfare Committee moved the complaint under Ex.P2 to P.W.12–P.Selvi, Sub Inspector of Police of All Women Police Station, Ooty, and had registered a case under Ex.P14 [First Information Report] in Crime No.2 of 2016 under Section



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11(1) r/w Section 12 of the POCSO Act, 2012. The original FIR was sent to the learned Judicial Magistrate Fast Track Court (Magisterial Level), Coonoor, and copies to the higher officials.

(e) On receipt of the copy of the FIR under Ex.P14, P.W.13– S.Tamilselvi, Inspector of Police, All Women Police Station, Ooty, proceeded to the place of occurrence, the residence of the child victim [P.W.2] she prepared the Observation Mahazar under Ex.P8 and the Rough Sketch under Ex.P15 in the presence of witnesses of P.W.6–S.Panjavarnam, mother of P.W.2. P.W.13 examined the child victim [P.W.2] and forwarded the child victim to the Sait Government Hospital, Ooty, for subjecting her to an examination. P.W.3–Dr.C.Sanjeev, examined the child victim [P.W.2] and issued Ex.P5: Accident Register Copy of the Victim and forwarded the P.W.2 to be examined by a Gynaecologist at Government Sait Hospital, Ooty. P.W.4–Dr.C.Jothikala, Assistant Surgeon at Ooty Government Sait Hospital, had examined P.W.2 and had issued Ex.P7, the medical report of P.W.2. On examining the P.W.2, no injuries were found on her body, either on her breast or on her vagina. P.W.13 had visited St.Therasa High School,



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Udhagamandalam, Nilgiris, examined P.W.7 and obtained the birth certificate of the victim, where the date of birth of the child victim [P.W.2] was mentioned as 01.08.2001. The birth certificate of P.W.2 given by the School Headmaster regarding the date of birth of the child as recorded in the admission register of the School is Ex.P10. The Accused was arrested and forwarded to the Government Hospital for medical examination. P.W.8—Dr.S.Gowtham, Assistant Surgeon, Government Hospital, Ooty, examined the Accused and issued Ex.P12: Accident Register Copy of the Accused regarding the potency of the Accused.

(f) P.W.13—S.Tamilselvi, Inspector of Police of All Women Police Station, Ooty, recorded the statements of P.W.1—N.Hemalatha, Child Helpline Counsellor, P.W.2—Child Victim, P.W.3—Dr.C.Sanjeev, Assistant Surgeon of Ooty Government Hospital, who examined the child victim [P.W.2] and issued Ex.P5:Accident Register Copy of the Victim and forwarded the P.W.2 to be examined by a Gynaecologist at Sait Government Hospital, Ooty, P.W.4—Dr.C.Jothikala, Assistant Surgeon at Ooty Government Sait Hospital, had examined P.W.2 and had issued Ex.P7, the medical



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report of P.W.2, P.W.5–M.Wilson Rinesh, Childline Member, P.W.6–S.Panjavarnam, mother of the victim, who stood as witness to the Observation Mahazar under Ex.P8 and Rough Sketch under Ex.P15, P.W.7–Father J.Amulraj, the Headmaster of St.Therasa High School, Udhagamandalam, Nilgiris, P.W.8–Dr.S.Gowtham, Assistant Surgeon, Government Hospital, Ooty, examined the Accused and issued Ex.P12: Accident Register Copy of the Accused regarding the potency of the Accused, P.W.9–R.Geetha, Head Constable of All Women Police Station, Ooty, who accompanied the child victim to the Sait Government Hospital, Ooty, regarding medical examination by P.W.3 and P.W.4. P.W.13 examined P.W.10–A.Mohammed Yasar Arafath, District Child Protection Officer and P.W.11– S.Meena, Child Protection Officer, who had registered the case. P.W.12–P.Selvi, Sub Inspector of Police of All Women Police Station, Ooty, who had registered a case under Ex.P14 [First Information Report] in Crime No.2 of 2016 under Section 11(1) r/w Section 12 of the POCSO Act, 2012.

(g) On proceeding with the investigation, the P.W.13 had issued request to the learned Sessions Judge of Mahalir Neethimandram (FTMC),



CrI.A.No.460 of 2017

WEB COPY

Uthagamandalam, Nilgiris, to record the 164 statement of the victim under Section 164 of the Cr.P.C. Based on the request of P.W.13, the learned Sessions Judge had nominated the learned Judicial Magistrate (FTC) Magisterial Level, Coonoor, for recording statements under Section 164 of the Cr.P.C for vulnerable witnesses. The learned Judicial Magistrate Fast Track Court (Magisterial Level), Coonoor, had recorded the statement under Section 164 of the Cr.P.C from the child victim [P.W.2] under Ex.P4. After completion of the investigation, the P.W.13 had laid the final report before the learned Sessions Judge, Mahalir Neethimandram (Fast Track Court Magisterial Level), Uthagamandalam, Nilgiris, and summon was issued to the Accused. On the appearance of the Accused, copies were furnished under Section 207 of the Cr.P.C.

(h) After hearing the arguments of the prosecution and the defence, the learned Sessions Judge, Mahalir Neethimandram (Fast Track Court Magisterial Level), Uthagamandalam, Nilgiris, had framed charges under Section 7 read with Section 8 of the POCSO Act, 2012. Therefore, charges were framed.

(i) The Accused denied the charges and claimed to be on trial.



Therefore, the trial was ordered.

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(j) In the trial, the prosecution witnesses were examined as P.W.1 to P.W.13 and are as follows:

- i. **P.W.1–N.Hemalatha**, Child Helpline Counsellor.
- ii. **P.W.2–Child Victim**.
- iii. **P.W.3–Dr.C.Sanjeev**, Assistant Surgeon at Ooty Government Sait Hospital, who examined the child victim [P.W.2] and issued Ex.P5:Accident Register Copy of the Victim and forwarded the P.W.2 to be examined by a Gynaecologist at Sait Government Hospital, Ooty.
- iv. **P.W.4–Dr.C.Jothikala**, Assistant Surgeon at Ooty Government Sait Hospital, had examined P.W.2 and had issued Ex.P7, the medical report of P.W.2.
- v. **P.W.5–M.Wilson Rinesh**, Childline Member.
- vi. **P.W.6–S.Panjavarnam**, mother of the victim, who stood as witness to the **Observation Mahazar under Ex.P8 and Rough Sketch under Ex.P15**.
- vii.**P.W.7–Father J.Amulraj**, the Headmaster of St.Therasa High School, Udhagamandalam, Nilgiris.



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viii. **P.W.8–Dr.S.Gowtham**, Assistant Surgeon, Government Hospital, Ooty, examined the Accused and issued Ex.P12: Accident Register Copy of the Accused regarding the potency of the Accused.

ix. **P.W.9–R.Geetha**, Head Constable of All Women Police Station, Ooty, who accompanied the child victim to the Sait Government Hospital, Ooty, regarding medical examination by P.W.3 and P.W.4.

x. **P.W.10–A.Mohammed Yasar Arafath**, District Children Protection Officer.

xi. **P.W.11– S.Meena**, Child Protection Officer.

xii. **P.W.12–P.Selvi**, Sub Inspector of Police of All Women Police Station, Ooty, who had registered a case under Ex.P14 [First Information Report] in Crime No.2 of 2016 under Section 11(1) r/w Section 12 of the POCSO Act, 2012.

xiii. **P.W.13–S.Tamilselvi**, Inspector of Police of All Women Police Station, Ooty, recorded the statements of all the witnesses.

(k) On perusal of the evidence, the learned Trial Judge had recorded the judgment of conviction and found the Accused guilty of the charges



CrI.A.No.460 of 2017

WEB COPY

under Section 7 read with Section 8 of the POCSO Act, 2012, and sentenced the Accused to undergo rigorous imprisonment of three years with fine of Rs.3,000/- in default to undergo simple imprisonment for three months. The period already undergone in remand from 03.11.2016 to 17.11.2016 was set off under Section 428 of the Cr.P.C.

6. Aggrieved by the judgment of conviction in Spl.C.C.No.26 of 2016 by judgment dated 21.06.2017, the Accused had preferred this Appeal.

7. Learned Counsel for the Appellant submitted his arguments. As per his submission, the victim in this case was examined as P.W.2. The mother of the victim was examined as P.W.6. The Accused/Appellant, who is none other than the stepfather of the victim.

8. Learned Counsel for the Appellant further submitted that the case of the prosecution is on 01.11.2016. The Child Helpline had conducted a program in the School, where the child victim was studying 10th std at



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St. Therasa High School, Udthagamandalam, Nilgiris. There was a program regarding sensitization of the children regarding the POCSO Act, 2012, to bring about awareness among the children about the evils of the POCSO Act, and it is helpful to the children when they become victims to know what action to take. After conducting this sensitization program, the child victim gave a complaint to the resource person at the Child Helpline. They had taken complaint and made enquiries. Subsequently, P.W.1 preferred a complaint to the Inspector of Police, All Women Station, Ooty. The complaint under Ex.P2 was preferred by the Counsellor of the Child Helpline. Based on which, FIR was registered under Ex.P14 by the P.W.12, Sub Inspector of Police and a copy of the same was placed before the P.W.13, Inspector of Police, All Women Police Station, Ooty.

9. It is the case of the Appellant that the mother of the victim was examined as P.W.6. She stated in her deposition that she was not examined by P.W.13, Inspector of Police, All Women Police Station, Ooty. No statement was recorded from her. Also, in the evidence of P.W.6, the mother of the victim, she states that the child victim has not stated anything. The P.W.6 signature was obtained only with regard to the



Crl.A.No.460 of 2017

preparation of the Observation Mahazar under Ex.P8 and the Rough Sketch under Ex.P15.

10. Learned Counsel for the Appellant invited the attention of this Court to the deposition of P.W.1, who was instrumental in lodging the complaint. P.W.2 is the child victim. P.W.3 is Dr.C.Sanjeev, Assistant Surgeon at Ooty Government Hospital. P.W.4 is Dr.C.Jothikala, who was working as the Medical Officer at Ooty Government Sait Hospital. She had examined the victim and issued Ex.P7. No injuries were found on the body of the child victim. P.W.5 is M.Wilson Rinesh, who had accompanied P.W.1 to the School as well as the place of residence of the victim. P.W.6 is the mother of the victim. P.W.7 is the Headmaster of the School. He had deposed regarding the conduct of the Child Helpline sensitization program for the children in the School on 01.11.2016. P.W.8 is Dr.S.Gowtham, who had examined the Accused and issued Ex.P12, medical certificate. P.W.9 is R.Geetha, a women Head Constable of the All Women Police Station, Ooty. P.W.10 is Mr.A.Mohammed Yasar Arafath, who is the member of the Child Welfare Committee, Ooty, who had also deposed regarding conducting of the sensitization program for the children in the School



Crl.A.No.460 of 2017

regarding POCSO case. P.W.11, S.Meena, who is also a member of the Child Welfare Committee, Ooty, and Child Protection Officer, Ooty. P.W.12 is P.Selvi, Sub Inspector of Police, who had registered the case. P.W.13–S.Tamilselvi, Inspector of Police of All Women Police Station, Ooty, issued request to the learned Sessions Judge of Mahalir Neethimandram (Fast Track Court Magisterial Level), Uthagamandalam, Nilgiris, to record the 164 statement of the victim.

11. Learned Counsel for the Appellant invited the attention of this Court to the complaint of the child victim under Ex.P1. The full complaint is not available before the Court. He suspects that the Investigation Officer had suppressed the original or full complaint. Only a part of it was present before this Court. Further, he invited the 164 statement of the child victim, wherein nothing is stated specifically to attract offence under the POCSO Act, 2012.

12. Learned Counsel for the Appellant invited the attention of this Court to the complaint made by P.W.1, the Counsellor of the Child Helpline, N.Hemalatha, which is under Ex.P1. It is his contention that the



victim had improved further when deposing the evidence before the Court.

Also, learned Counsel for the Appellant invited the attention of this Court to the deposition of P.W.3, Dr.C.Sanjeev, who stated that the victim had stated behind her back that the stepfather of the victim used to show his mobile phone and asked the victim to do so as seen in the mobile. Further, learned Counsel for the Appellant submitted that, as per the evidence of the child victim [P.W.2], she had not disclosed anything to her mother.

13. Learned Counsel for the Appellant invited the attention of this Court to the cross-examination of P.W.1, P.W.2, P.W.3, P.W.4, P.W.5, P.W.6, P.W.7, P.W.8, P.W.9, P.W.10, P.W.11, P.W.12 and P.W.13. In their cross-examination, they admitted that they had recorded the statement of the mother of the victim. They had conducted enquiry. They had seen the place of residence of the victim. They had not examined the mother of the victim. They had not examined the neighbours. They had not cross-examined the class teacher of the child victim. Therefore, it is the contention of the learned Counsel for the Appellant that it is a case built by the Child Welfare Committee, Child Helpline, only for the statistics concerned.



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14. It is the further submission of the learned Counsel for the Appellant that, as per the evidence of P.W.2, her biological father abandoned her, when the victim was one year old. The child victim and her mother, P.W.6, had been taken care of by the Accused. Only when the sensitization program is conducted regarding the POCSO in the School. She had given the complaint. The only child who should have given the complaint is P.W.2. Based on which they had developed the case during the period of investigation. The learned Judge had believed the evidence of P.W.1, P.W.2, P.W.3, P.W.4, P.W.10 and P.W.11 and convicted the Accused for the offence under Section 7 r/w Section 8 of the POCSO Act, 2012 and sentenced the Accused to undergo three years of rigorous imprisonment with fine of Rs.3,000/- and in default, to undergo three months of simple imprisonment.

15. It is the contention of the learned Counsel for the Appellant that there are many flaws in the case of the prosecution. The FIR was registered with delay. The mother of the child victim was not at all investigated by the Investigation Officer. The Child Welfare Committee, consisting of



Crl.A.No.460 of 2017

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P.W.1, P.W.9 and P.W.10, cooked up the case as though the Accused had committed an offences and there are sufficient materials available in the cross-examination of P.W.9 and P.W.10. The learned Judge failed to appreciate the materials available in the cross-examination of P.W.1, P.W.9 and P.W.10 and had convicted the Accused. Therefore, the judgment of conviction passed by the learned Sessions Judge, Fast Track Mahila Court, Uthagamandalam, Nilgiris, in Spl.C.C.No.26 of 2016 dated 27.06.2017 is to be set aside.

16. Mr.V.Meganathan, learned Government Advocate (Crl.Side) appearing for the Respondent vehemently objected to the submission of the learned Counsel for the Appellant stating that the child is aged 15 on the date of the complaint. The 164 statement of the victim itself shows that there are sufficient materials, that she was shy of exposing the conduct of the Accused. During her evidence as P.W.2, the child victim had clearly stated that she was scared of quarrel between the stepfather and her mother, if she discloses the conduct of the Accused/stepfather to her mother. Therefore, it is not improvement the child had naturally opened up during the evidence before the Court. The Court has to give due weightage



to the victim's deposition.

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17. Further, learned Government Advocate (Crl.Side) submitted the evidence of P.W.1, P.W.10 and P.W.11, who had conducted enquiry regarding the complaint of the victim, the child aged about 15 and was ignorant of to whom to speak. Therefore, she had not disclosed the fact to anyone. The opportunity came to the child when the Child Welfare Committee of the District visited the School to conduct a program regarding sensitization among the children to make them aware of the POCSO Act, so they could move around with caution to protect themselves from the sexual conduct of adults. Therefore, the child on being aware of this Act had given a complaint to the Committee members narrating the incidents. The Child Welfare Committee members P.W.1, P.W.10 and P.W.11 had conducted enquiry. They were satisfied that there was sufficient material to implicate the Accused from the complaint of the victim under Ex.P1.

18. After conducting enquiry and being satisfied about the occurrence as complained by the victim, they had preferred the complaint



Crl.A.No.460 of 2017

under Ex.P2 to the P.W.12, Sub Inspector of Police of the All Women Police Station, Ooty. From the deposition of the witnesses before the Court, the learned Trial Judge has assessed the evidence and arrived at the conclusion that the alleged conduct of the Accused has been proved by the child victim alone. Therefore, the Court has to naturally convict the Accused. The charges framed by the Court were proved by the evidence of the child victim. The Court can convict only based on the evidence of the child victim, which will be sufficient. Learned Government Advocate (Crl.Side) submitted that the Appellant does not have the case and that the judgment of the Trial Judge is a well-reasoned judgment that does not warrant any interference by this Court.

19. Point for consideration:

Whether the judgment of conviction recorded by the learned Sessions Judge of Mahalir Neethimandram (FTMC), Uthagamandalam, Nilgiris, in Spl.C.C.No.26 of 2016 dated 21.06.2017, is perverse, warrant interference by this Court and is to be set aside?

20. On perusal of the charges framed by the learned Trial Judge, the deposition of the witnesses of P.Ws.1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and



13, Exs.P1 to P15 and to record the 164 statement of the victim under Section 164 of the Cr.P.C. before the learned Judicial Magistrate (Fast Track Court Magisterial Level), Coonoor.

21. On perusal of the judgment of the learned Trial Judge and on perusal of the deposition of the witnesses, particularly P.W.1 up to P.W.11, it is found that P.W.1, P.W.10 and P.W.11, members of the Child Welfare Committee, had conducted the enquiry before registering the complaint to the All Women Police Station, Ooty.

22. If accepting the submission of the learned Counsel for the Appellant, if it is not a case under POCSO, this is a fit case for acquittal. There are loopholes in the investigation. That cannot be exploited by the Accused. There may be flaws in the investigation. That cannot be considered by the Court when dealing with the case under POCSO Act. Here is the case where the child, aged about 15, was suffering at the hands of the stepfather. She was unable to express herself freely about her sufferings. She was ignorant as to whom she had to speak? It is a God given opportunity for the child victim through the Child Welfare



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Committee of the District who had visited the School, where the child victim [P.W.2] was studying 10th std. in St.Therasa High School, Udhagamandalam, Nilgiris. P.W.7 is Headmaster of the School had conducted the sensitization program for the children even in the media, both print media as well as audiovisual children, strangers, or close relatives of the children regarding soft touch or other touch. Therefore, naturally, when there is a sensitization program, the child who was suffering opens up. Therefore, she had complained to the resource person, who attended the School, particularly P.W.1–N.Hemalatha, Child Helpline Counsellor. The Child Welfare Committee requested that the child victim to come forward. Therefore, they conducted enquiry at the place of residence of the child victim. The child victim was seeking protection from the stepfather for the safety of her child, as made was not out clear in the complaint under Ex.P1.

23. After conducting enquiry, the P.W.1, P.W.10 and P.W.11 members of the Committee were satisfied with the case, which attracted provisions of the POCSO Act, 2012, and had preferred a complaint under Ex.P2. Based on which, P.W.12 registered the FIR under Ex.P14. There is



delay, but cases of this nature invariably take place after discussion about whether to proceed with the case or not. Therefore, naturally, there will be delay that cannot be exploited by the Accused. It is a fit case for the child victim, but there are contradictions and loopholes in the investigation, as found from the depositions of the witnesses. It is true that the Child Welfare Committee officials, P.W.1, P.W.10 and P.W.11, had not conducted enquiry with the class teacher of the victim or the Headmaster. Those things cannot be utilized or exploited by the learned Counsel for the Appellant seeking to wriggle out of the case.

24. What has been focused on in the Appeal by the learned Counsel for the Appellant is true. What prevented the Appellant/Accused from entering the witness box. He could have examined himself as P.W.1. He had not done so. The conduct of the Accused before the Trial Court has to be considered by the Court when the prosecution witness is closed. There is a probability of the case that the Accused is charged. Against the charges is made out under those circumstances. Also, there is a prosecution in the POCSO Act that the victim's statement or deposition is to be taken as true. Therefore, the burden shifts on the Accused to disprove the prosecution,



Crl.A.No.460 of 2017

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and the Accused shied away from the witness box. The Court has to draw an adverse inference under Section 114 of the Indian Evidence Act from the conduct of the Accused.

25. After suffering conviction after filing the Appeal, this Court had released the Accused on bail. The Accused was aware of the outcome of the Appeal. Therefore, even though the Appeal was filed in the year 2017, even after 6 years, the Accused is not willing to prosecute the case. Only after he was secured by the orders of this Court in continuation of the judgment of conviction passed by the learned Sessions Judge, Mahalir Neethimandram (FTMC), Uthagamandalam at Nilgiris, the Appellant's Counsel was eager to prosecute the Appeal, which shows the Appellant was not sure of success in this case. The fact that P.W.6 was not examined and no statement was recorded either by the Child Welfare Committee of the District or by the Investigation Officer in this case is found true. It is because the child had expressed it in her statement and in her deposition before the Court that there had been a quarrel between them that she discloses her fact that there is a likelihood of breaking of the relationship. Therefore, she had not stated.



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26. Under those circumstances, it is left to the discretion of the Investigation Officer and the Child Welfare Committee whether the statement recorded from the mother of the witness will help the case or whether it is for her. That it why the mother of the victim was rightly not examined. As far as the provisions of the POCSO Act are concerned, when the victim has narrated the facts before the Trial Court and the Trial Court is convinced that the case as stated by the prosecution has been made out, the Court has to necessarily convict the Accused. As per the evidence of doctors P.W.3 and P.W.4, there are no injuries on the body of the child. That is why the learned Trial Judge had considered only the minimum punishment. The charge framed against the Accused and based on the material available before the Trial Court had been proved by the evidence of P.W.2 alone by way of corroboration and the evidence of P.W.1, P.W.10 and P.W.11, who were members of the District Child Welfare Committee, is sufficient to hold the Accused guilty of charges. On perusal of the judgment, nothing is found perverse.

27. In the result, the **Criminal Appeal stands dismissed and the**



Crl.A.No.460 of 2017

conviction and sentence imposed on the Appellant/Accused by the Trial Court in Spl.S.C.No.26 of 2016 vide impugned judgment dated 21.06.2017 for the offence under Section 7 r/w 8 of the Protection of Children from Sexual Offences Act, 2012 [POSCO Act] is hereby confirmed. The period of sentence already undergone by the Appellant/Accused is ordered to be set-off under section 428 Cr.P.C.

25.07.2023

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Index : Yes/No

Speaking/Non-speaking order



WEB COPY



Crl.A.No.460 of 2017

To

- 1.The Sessions Judge (FTMC),
Uthagamandalam, Nilgiris.
- 2.The Inspector of Police,
All Women Police Station,
Uthagamandalam Town,
Niligiris District.
- 3.The Public Prosecutor,
High Court, Madras.



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Crl.A.No.460 of 2017

SATHI KUMAR SUKUMARA KURUP, J.,

cda

Crl.A.No.460 of 2017

25.07.2023