



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 26.06.2023

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CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.A.(MD)No.175 of 2017

M.Rubi ... Appellant/Defacto Complainant

vs.

1.The Inspector of Police,
All Women Police Station,
Palayamkottai,
Tirunelveli District.
(Crime No.17 of 2013). ... 1st Respondent/Complainant

2.K.Alagesan ... 2nd Respondent/Accused

PRAYER : Criminal Appeal has been filed under Section 372 of Cr.P.C., to set aside the Judgment of acquittal passed in S.C.No.5 of 2014 on the file of the learned Mahila Court, Tirunelveli, dated 29.10.2015 and convict the accused.

For Appellant	: Mr.G.Karuppasamy Pandian
For R - 1	: Mr.T.Senthil Kumar Additional Public Prosecutor
For R - 2	: Mr.G.Kannan



JUDGMENT

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This Criminal Appeal has been preferred as against the order of acquittal passed in S.C.No.5 of 2014, dated 29.10.2015, on the file of the learned Mahila Judge, Tirunelveli, thereby acquitted the second respondent for the offence under Section 452 of I.P.C and Section 4 of the POCSO Act.

2.The case of the prosecution is that on 01.09.2013, at about 04.30 p.m., when the victim girl was alone in her house, when her mother had gone to Church for prayer, the accused had taken advantage of the circumstances and trespassed into the house of the victim girl. Thereafter, he removed her dress and committed penetrative sexual assault on the minor victim girl aged about 8 years. When the cable TV operator entered into the house, the accused ran away from the scene of crime. It was informed to her mother and immediately lodged the complaint.

3.On receipt of the said complaint, the respondent registered the F.I.R in Crime No.17 of 2013 for the offences under Sections 4 and 6 of the Protection of Children from Sexual Offences Act. After completion of the investigation, the respondent filed a final report and the same has been cognizance by the trial Court for



the offence under Section 452 of I.P.C and under Section 4 of the Protection of Children from Sexual Offences Act in S.C.No.5 of 2014 on the file of the learned Mahila Judge, Tirunelveli.

4.On the side of the prosecution, they had examined P.W.1 to P.W.15 and marked Exs.P.1 to P.13 and on the side of the accused, no one was examined and no documents were marked in order to disprove the case of the prosecution.

5.On perusal of both oral and documentary evidence, the trial Court found the second respondent/accused not guilty for the offence under Section 452 of I.P.C and under Section 4 of the Protection of Children from Sexual Offences Act. Aggrieved by the same, the defacto complainant preferred the present revision.

6.The learned counsel appearing for the appellant would submit that the minor victim girl, aged about 8 years, was examined as P.W.2. She categorically deposed that the accused trespassed into her house and removed her shirt. Thereafter, he committed penetrative sexual assault by his penis and by his finger on the victim girl. In fact, during her cross-examination, nothing was elucidated by the accused. The victim's evidence was duly corroborated by P.W.1, P.W.3 and P.W.4. Though P.W.5, the cable T.V



operator turned hostile, it is not fatal to the case of the prosecution, since the victim girl categorically deposed to prove all the charges as against the accused. There was absolutely no contradiction in the victim's evidence, even then the trial Court mechanically acquitted the accused on the ground that the victim herself contradicted her version by two views. The Doctor, who examined the victim girl, was examined as P.W.13. According to the trial Court, P.W.13 also failed to support the case of the prosecution, since the minor victim girl was not found with any external injury on her private part and her hymen was also intact. In the case of penetrative sexual assault, the hymen need not be ruptured and external injuries are not required in order to prove the offence under Section 4 of the Protection of Children from Sexual Offences Act. Section 3(b) of the POCSO Act is very clear that if the accused inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, it constituted the offence under Section 3 of the POCSO Act. Further, the victim's evidence is the best evidence and it need not be corroborated by any other evidence. The contradiction pointed out by the trial Court is not a contradiction since the victim girl categorically deposed that first, he committed penetrative sexual assault by penis and thereafter, by his finger. Therefore, the trial Court ought to have convicted the accused.



7.The second respondent filed a counter-affidavit before this Court through the present counsel on record. However, on 21.06.2023, the learned counsel, who entered appearance on behalf of the second respondent filed a memo stating that he has been appointed as Additional Government Pleader and as such, he could not able to appear on behalf of the second respondent and he has withdrawn his appearance on behalf of the second respondent.

8.The Junior counsel appearing for the second respondent/accused would submit that the prosecution failed to prove any of the charges beyond any doubt. The case of the victim girl was also not supported by Doctor, who examined the victim girl. The Doctor was examined as P.W.13 and she found that there was no external injury and the victim's hymen was intact. Further, he submitted that the Cable TV operator entered into the house of the victim when the alleged occurrence happened immediately and the accused flew away. The cable TV operator was examined by the prosecution as P.W.5 and he turned hostile and failed to support the case of the prosecution Therefore, the trial Court rightly acquitted the second respondent and the same does not warrant any interference by this Court.



9.Per contra, the learned Additional Public Prosecutor would submit that the victim girl categorically deposed about the occurrence and it is also supported by P.W.1, P.W.3 and P.W.4. Therefore, the trial Court ought to have convicted the second respondent.

10.Heard the learned counsel appearing on either side and perused the materials available on record.

11.The second respondent is the sole accused and he was charged for the offence under Section 452 of I.P.C and Section 4 of the POCSO Act. The victim girl was aged about 8 years at the time of occurrence. On perusal of the deposition of P.W.1 revealed that on 01.09.2013 when the victim was alone in the house, the accused trespassed into her house and removed her dress. Thereafter, he committed penetrative sexual assault by his penis and thereafter, by his finger into the vagina of the victim girl. Immediately, the victim girl raised a hue and cry due to intolerable and unbearable pain. In turn, the accused gagged her mouth with his hand. Thereafter, the cable TV operator entered into the house and scolded the accused. He had flown away from the scene of the crime. Immediately, the mother of the victim girl came from the Church and the occurrence was duly explained by the victim.



Immediately, she informed her mother and sister. Even during the cross-examination of the victim, nothing was elucidated by the accused. The victim girl categorically and cogently deposed about the occurrence.

12.The victim girl's mother was examined as P.W.1. On perusal of the deposition of P.W.1 also revealed that whatever was deposed by the victim girl, the same was informed to her mother and sister. Immediately, she lodged the complaint. On the complaint, the respondent registered the F.I.R in Crime No.17 of 2013. Immediately, the victim girl was subjected for a medical examination. On 01.09.2013 at about 10.30 p.m., the victim girl's statement was recorded in the accident register, which was marked as Ex.P.9. It is also duly corroborated the version of the victim girl.

13.The Doctor, who examined the victim girl, was examined as P.W.13. On perusal of the deposition of P.W.13 revealed that there was no injury on the victim's body and also her private parts. Since she did not attain puberty, she was not subjected for other tests related to her fitness for physical relationship. She also opined that her hymen was not ruptured. However, she also deposed that when the victim was subjected for penetrative sexual



assault it is not compulsory to rupture her hymen. She issued a wound certificate, which was marked as Ex.P.10.

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14.In order to prove the age of the victim girl Ex.P.2 was marked through the Headmistress, P.W.7. She categorically deposed that the victim girl was studying 3rd standard during the academic year 2013-2014 and as per the School records her date of birth was 31.10.2005. Her certificate was marked as Ex.P.2 and the extract of the admission ledger was marked as Ex.P.3. Further the grandmother of the victim girl and parental aunt of the victim girl were examined as P.W.3 and P.W.4. They also categorically and cogently deposed that they received a phone call from P.W.1 about the occurrence. Therefore, the prosecution categorically proved its case beyond any doubt. The trial Court acquitted the accused only on the ground that Doctor P.W.13 is not supported the case of the prosecution and self-contradiction in the victim's deposition.

15.On perusal of the deposition of the victim girl revealed that first the accused committed penetrative sexual assault by his penis and thereafter, by his finger and it would not amount to any self-contradiction. She categorically and cogently deposed that the accused committed penetrative sexual assault on the victim girl. Therefore, the order of acquittal passed in S.C.No.5 of 2014, dated



29.10.2015, on the file of the learned Mahila Court, Tirunelveli, is liable to be set aside. The second respondent is liable to be convicted for the offence under Section 452 of I.P.C and under Section 4 of the POCSO Act.

16. Accordingly, the Judgment passed in S.C.No.5 of 2014, dated 29.10.2015, on the file of the learned Mahila Court, Tirunelveli, is set aside. The second respondent is convicted for the offence under Section 452 of I.P.C and Section 4 of the POCSO Act. In respect of the sentence is concerned, as required under Section 235(2) of Cr.P.C., questioning about the sentence an effective and substantive opportunity to be given for being heard on the question of sentence, but when minimum sentence prescribed, then no need to give any opportunity to the accused while imposing sentence, therefore, the second respondent does not require any opportunity with regard to questioning of sentence. Hence, the second respondent is sentenced to undergo 3 years Rigorous Imprisonment for the offence punishable under Section 452 of I.P.C and sentenced him to undergo 7 years Rigorous Imprisonment for the offence punishable under Section 4 of the POCSO Act and to pay a fine of Rs.50,000/- and in default to undergo 3 months Rigorous Imprisonment. The fine amount paid by the second respondent/accused shall be permitted to withdraw by the victim.



The sentences shall run concurrently. The second respondent/accused is entitled to set off the period, if any, already undergone by him. The trial Court is directed to secure the accused to serve the period of sentence.

26.06.2023

NCC : Yes/No
Index: Yes/No
Internet: Yes
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To

- 1.The Mahila Court,
Tirunelveli.
- 2.The Inspector of Police,
All Women Police Station,
Palayamkottai,
Tirunelveli District.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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