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Crl.A.No.360 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2024

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.A.No.360 of 2018

Ramesh

...Appellant

vs.

State represented by its
The Inspector of Police,
Thiruchengode Rural Police Station,
Namakkal District.
(Crime No.322/2014)

...Respondent

PRAYER: Criminal Appeal filed under Section 374 (2) Criminal Procedure Code, 1973, to set aside the judgment dated 19.05.2016 passed in Spl.S.C.No.25/2015 by the Fast Track Mahila Court, Namakkal.

For Appellant : Mr. M.Rajkumar

For Respondent : Mr.S. Rajakumar
Additional Public Prosecutor

J U D G M E N T

The appellant stood charged for the offences punishable under Sections 6 r/w. 5 (k), (m) of the Protection of Children from Sexual Offences Act, 2012 (in short POCSO Act) by the trial court in



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Spl.S.C.No.25/2015.

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2. The learned trial court Judge, after full trial, convicted and sentenced the appellant, vide his judgment dated 19.05.2016, as detailed hereunder.

<i>Conviction</i>	<i>Sentence</i>
Section 6 r/w.5 (k) of POCSO Act, 2012	Rigorous Imprisonment for ten years and a fine of Rs.1,000/-, in default, to undergo Rigorous Imprisonment for six months.
Section 6 r/w.5 (m) of POCSO Act, 2012	Rigorous Imprisonment for ten years and a fine of Rs.1,000/-, in default, to undergo Rigorous Imprisonment for six months.
The period of sentence already undergone shall be set off under Section 428 Cr.P.C. The sentences shall run concurrently.	

3. The case of the prosecution as could be discerned from the oral and documentary evidence is as follows:

- i. Parameshwari (P.W.1) is a resident of Kosavampalayam Colony, Komaramangalam. She had two female children aged 8 and 4, respectively. Her older daughter (victim child) aged about 8 years was mentally challenged and therefore, was not sent to school. On 08.06.2014 at about 03.00 P.M she came down to her house after



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completing her work and since she could not find her daughter in her house, she went in search of her and called her. After some time, she saw her daughter (victim) coming out of the house of the appellant. The victim girl looked frightened and her skirt (M.O.1) found wet. On further examination, her mother found white colour substance in her private parts. Suspecting a foul play, she went to the house of the appellant and confronted him and thereafter, took her child to the Thiruchengode Police Station and lodged a complaint (Ex.P1) with Thiru.Selvaraj (P.W.7), the then Special Sub Inspector of Police, Thiruchengode Police Station on the same day.

ii. P.W.7 registered FIR (Ex.P5) in Crime Number 322/2014 against the appellant for the offences punishable under Sections 5(k),(m) r/w.6 of POCSO Act, 2012. He then placed the entire records before Thiru.Lakshmanakumar (P.W.14), the then Inspector of Police, for investigation.

iii. P.W.14 took up investigation in Crime Number 322/2014 and examined all the witnesses and recorded their statements



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individually under Section 161(3) Cr.P.C. He went to the scene of occurrence, prepared an Observation Mahazar (Ex.P12) and a rough sketch (Ex.P17) in the presence of the witnesses Thamizharasu (P.W.11) and Veeramani (P.W.5).

iv. P.W.14 sent the victim girl to the Government Hospital, Tiruchengode for medical examination.

v. Dr.Prathap (P.W.6), Government Hospital, Tiruchengode, examined the victim girl on 08.06.2014 at about 03.00 P.M. and referred her to Dr.Shobana, Gynaecologist.

vi. Dr.Shobana examined the victim girl on 08.06.2014 at about 07.50 P.M. and issued the certificate of examination of sexual offence (Ex.P13) stating that

"sexual abuse by a known person at his home on 08.06.2014 at about 03.00 P.M. child is mentally retarded no external bodily injury - hymen admits tip of finger."

vii. On 09.06.2014 at about 09.00 a.m., P.W.14 arrested the appellant near Perumal Temple, Paatharai Village and recorded



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his confessional statement in the presence of the witnesses and produced him before the Fast Track Mahila Court, Namakkal for remanding him to judicial custody. Subsequently, he sent the appellant for medical examination to Salem Mohan Kumaramangalam College and Hospital.

viii.Dr.Gokularamanan (P.W.10), examined the appellant on 21.07.2014 and opined (Ex.P10) that there is nothing to suggest that he is impotent.

ix. Dr.Sangeetha (P.W.9), Assistant Professor of Salem Mohan Kumaramangalam College and Hospital examined the victim child and certified (Ex.P8) that the age of the victim is above 7 years and below 9 years.

x. Dr.Inbasekaran (P.W.8), Salem Mohan Kumaramangalam College and Hospital assessed the mental capacity of the victim child and categorized her mental retardation at 60%. His certificate was marked as Ex.P7.



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xi. Varadharaj (P.W.2), Kuppusamy (P.W.3) and Madhaiyan (P.W.4) are all neighbours of P.W.1 and they have seen the child coming out of the house of the appellant on 08.06.2014. They also corroborated the versions of P.W.1 in all material particulars.

xii. The dress (M.O.1 and M.O.2) worn by the victim child at the time of occurrence was recovered by the Investigation Officer under Form 95. He sent the same to Forensic Lab, Chennai, through court. The Assistant Director of Forensic Lab had issued the forensic analysis report (Ex.P16) stating that 'semen' was detected on the skirt (M.O.1).

xiii. Thiru.Lakshmanakumar (P.W.14), after completing investigation laid a final report before the Fast Track Mahila Court, Namakkal, in Spl.S.C.No.25/2015 against the appellant for the offences punishable under Sections 5(k) (m) r/w.6 of POCSO Act, 2012.

xiv. In order to bring home the guilt of the accused the prosecution examined 14 witnesses, marked 19 documents and 2 Material



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Objects.

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xv.The appellant, when questioned under Section 313 Cr.P.C with regard to the incriminating circumstances appearing in evidence against him, denied of having committed any offence. However, he did not examine any witness on his side.

xvi.The trial court judge, after analysing the oral and documentary evidence on record, convicted and sentenced the appellant for the offences punishable under Sections 6 r/w. 5(k), (m) of the Protection of Children from Sexual Offences Act (POCSO), 2012 as stated in paragraph No. 2.

xvii.Aggrieved over the judgment and orders passed by the trial Court judge, the appellant has preferred the present appeal.

4. Heard Mr.M.Raj Kumar, learned counsel for the appellant, Mr.S.Rajakumar, learned Additional Public Prosecutor for the respondent.



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5. Mr.M.Raj Kumar, learned counsel for the appellant would contend that the case of the prosecution is not free from infirmity. P.W.1, the mother of the victim child had mentioned the colour of the skirt (M.O.1) worn by her daughter as black and green whereas the skirt (M.O.1) sent to Forensic Lab was black, green and yellow. Moreover, when P.W.1 had stated that she handed over the dress (M.O.1 and M.O.2) in the hospital. P.W.14, the Investigation Officer had deposed that M.O.1 and M.O.2 were handed over by P.W.1 in the police station. It is also his submission that M.O.1 and M.O.2 were sent to Forensic Lab after four months of the occurrence and no DNA test was conducted to show that the appellant is the person who sexually assaulted the victim. According to him, P.W.11 one of the witnesses to prosecution was inimical towards the appellant as he (P.W.11) and the appellant are members of a political party and he used to dominate the appellant. According to the counsel, P.W.11 instigated P.W.1 to lodge a false complaint against the appellant.

6. Per contra, Mr.S.Raja Kumar, learned Additional Public Prosecutor would contend that the trial court had after analysing the



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oral/documentary evidence, rightly convicted and sentenced the accused and therefore, no interference is called for by this court and prayed for dismissal of the Criminal Appeal.

7. In the instant case, the victim child was aged between 7 and 9 years. She is mentally challenged and also has speech impairment. On 08.06.2014, P.W.1 came down to her house after completing her work and since she could not find her daughter inside the house, she went in search of her and after some time, she saw her child coming out of the house of the appellant. Varadharaj (P.W.2), Kuppusamy (P.W.3) and Maadhaiyan (P.W.4) have also seen the victim child coming out of the house of the appellant. P.W.1 had found her daughter's dress wet and when she enquired her, the victim child had informed her mother as to what had happened in the house of the appellant by sign language. P.W.1 understood the seriousness of the situation and went to the house of the appellant and confronted him. The appellant denied all the allegations of P.W.1. Thereafter, P.W.1 went to Thiruchengode Police Station and lodged a complaint with the Special Sub Inspector of Police (P.W.7) which was recorded by the latter (Ex.P1). The dress worn by the victim girl was recovered on 08.06.2014 itself and it is immaterial as to whether



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it was handed over in the hospital or in the police station. The fact remains that the dress worn by the victim child were sent to forensic lab and the Director of Forensic Lab, Chennai in his report (Ex.P16) stated that semen was detected in the skirt (M.O.1). A perusal of the evidence of P.W.1 also shows that she had identified the dress worn by the victim child on the date of occurrence.

8. Another contention of the learned counsel for the appellant was that Thamizharasu (P.W.11) who is closely related to Parameshwari (P.W.1) was holding a higher post in the political party where the appellant was also a member. According to the counsel, the appellant was dominated by P.W.11. But it is seen that in the trial court, it was suggested to P.W.1 during the course of cross examination that there was a property dispute between the appellant and his paternal uncle and in the panchayat the advice given by P.W.11 was ignored by the appellant. This was stoutly denied by P.W.11. Except this bald allegation, no other evidence was adduced on the side of the appellant to substantiate that P.W.11 was inimical towards the appellant and instigated P.W.1 to foist a false case against him.



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9. It is appropriate to extract Section 29 of POCSO Act which reads thus :

"29. Presumption as to certain offences.—

Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved."

10. In the instant case, the evidence of P.W.1 to P.W.4 are cogent and as already observed they have narrated the sequence of events. Semen was also detected in the skirt (M.O.1) of the victim girl as per the forensic analysis report. When absolutely no explanation is forthcoming from the appellant with regard to the evidence adduced on the side of the prosecution he cannot blame the prosecution for not conducting DNA test of semen. Therefore, the conviction of the appellant by the trial court for the offences punishable under Sections 6 r/w.5(k), (m) of the POCSO Act cannot be assailed. The trial court has been quite lenient in imposing the sentence on the accused. In the circumstances, this court does not



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also find any reason to interfere with the sentence passed by the trial court.

11. In the result,

(i) This Criminal Appeal is dismissed.

(ii) The judgment and orders dated 19.05.2016 passed in Spl.S.C.No.25/2015 by the Mahalir Fast Track Court, Namakkal, is confirmed.

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Index : yes/no
Speaking /Non speaking Order
mtl

To

1. State represented by its
The Inspector of Police,
Thiruchengode Rural Police Station,
Namakkal District. (Crime No.322/2014)
2. The Fast Track Mahila Court, Namakkal.
3. The Public Prosecutor, High Court, Madras.
4. The Section Officer, Criminal Section, High Court, Madras



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R.HEMALATHA, J.

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