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Crl. Appeal No.393 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2024

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Appeal No.393 of 2016

Premkumar @ Prem @ Kuyilu

.. Appellant

Versus

State Rep. by
Inspector of Police,
W-28, Ambattur,
All Women Police Station,
Chennai.
(Crime No.2 of 2014)

.. Respondent

Criminal Appeal is filed under Section 374 (2) of the Criminal Procedure Code, 1973, seeking to set aside the judgment of conviction and sentence imposed on the Appellant by the learned Sessions Judge, Fast Track Mahila Court, Tiruvallur, in Special S.C.No.3 of 2014, dated 11.05.2016 .

For Appellant	:	Mr. L. Ramkumar Legal Aid Counsel
For Respondent	:	Mrs. G.V. Kasthuri Additional Public Prosecutor

JUDGMENT

This Criminal Appeal is filed against the judgment of conviction and sentence imposed on the Appellant by the learned Sessions Judge, Fast Track Mahila Court, Tiruvallur, in Special S.C. No. 3 of 2014 dated 11.05.2016.



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2. When this Appeal came up for hearing on 17.03.2023, this Court had observed that there was no representation for the Appellant. The Appellant was enlarged on bail during the pendency of this Criminal Appeal by an order dated 06.06.2016. The Respondent Police was therefore, directed to secure the Appellant and produce him before this Court during the next date of hearing and if the Appellant is not secured, the bail granted to him will be cancelled and the case was adjourned to 27.03.2023. On 27.03.2023 the Inspector of Police, W-28, Ambattur All Women Police Station, produced the Appellant before this Court. The Appellant stated that he is presently residing at Sudhesi Nagar, Thirunindravur, Chennai and he is doing mason work. He further submitted that he does not have financial capacity to engage an Advocate and hence, requested this Court to appoint a Legal Aid Counsel to represent him in the Appeal. He undertook to appear before this Court during the hearings. Accordingly, this Court appointed Thiru. L. Ramkumar, Advocate [Roll No.1623/2018], No.260, New Additional Law Chamber, High Court Buildings, Chennai – 600 104 (Mobile No.93845 42712) as Legal Aid Counsel to represent the Appellant. The Registry was directed to furnish paper book to the Counsel appointed by this Court to represent the Appellant. The case was adjourned to 10.04.2023 directing the Legal Aid Counsel to proceed with the arguments. Subsequently, it was adjourned from 10.04.2023



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to 01.06.2023, from 01.06.2023 to 12.06.2023, from 12.06.2023 to 19.06.2023, from 19.06.2023 to 27.06.2023. Thereafter it was listed on 22.08.2023. On 22.08.2023, the Legal Aid Counsel sought short adjournment. Therefore, it was adjourned to 29.08.2023. On 29.08.2023 when the case came up for hearing Thiru. L. Ram Kumar, learned Legal Aid Counsel submitted his arguments on behalf of the Appellant.

3. The criminal Prosecution in this case came to be launched against the Appellant at the instance of P.W-2, mother of the victim girl P.W-1. According to P.W-2, she is residing at No.5, Bajanai Koil Second Street, Kalyanapuram along with her husband and two children, including the victim girl P.W-1. It is stated that both P.W-2 and her husband are engaged in daily wage work. It is further stated that the victim girl P.W-1 is studying in V Standard in Government High School in the locality. According to P.W-2, on 07.05.2014 at about 11.00 am, she sent the victim girl P.W-1 to the house of P.W-5, who prepares and sells breakfast in her house, to purchase idli. On reaching the house of P.W-5, P.W-5 asked the victim girl P.W-1 to bring water from the next house. When the victim girl P.W-1 fetched water from the next house, on the way, the Accused forcibly dragged the hands of the victim girl P.W-1 to his house, made her to sit on his lap, pinched her vagina with his



hands. After returning home, P.W-1 informed the incident to her mother,

P.W-2. P.W-2 immediately went to enquire it with the Accused accompanied by the neighbours. On seeing the P.W-1, the Accused fled from the place. P.W-2 therefore lodged a complaint under Ex.P-1 before W-28, All Women Police Station, Ambattur, Chennai-53. P.W-11 Tmt.Anbukkarasi, the then Inspector of Police, W-28, All Women Police Station, Ambattur, Chennai-53 registered FIR under Ex.P-9 based on the complaint of P.W-2 under Ex.P-1 in Crime No. 2 of 2014 against the Appellant for the offence under Section 8 of the Protection of Children from Sexual Offence Act, 2012. She had forwarded the original complaint under Ex.P-1 and the original FIR under Ex.P-9 to the Court of the learned Sessions Judge, Fast Track Mahila Court, Tiruvallur and the copies of the same to the higher officials of the Police Department.

4. After registration of the case under Ex.P-9, P.W-11 Inspector of Police, W-28, All Women Police Station, proceeded with the investigation. On visiting the scene of occurrence, she prepared observation mahazar under Ex.P-10 and rough sketch under Ex.P-11 in the presence of the witnesses P.W-6 Thiru.Sasikumar and P.W-4 Kanakaraj. She recorded the statement of the victim P.W-1, the mother of P.W-2, the witnesses to the observation mahazar and rough sketch namely P.W-6 Thiru.Sasikumar and P.W-4



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Kanakaraj. She forwarded the victim P.W-1 to the learned Sessions Judge, Fast Track Mahila Court, Tiruvallur with requisition letter to subject the victim P.W-1 to medical examination regarding sexual assault. P.W-11 Inspector of Police, W-28, All Women Police Station, Ambattur, Chennai – 53 arrested the Accused and produced him before the learned Sessions Judge, Fast Track Mahila Court, Tiruvallur with requisition letter to subject the Accused to medical examination regarding potency. Based on the requisition letter of P.W-11 Inspector of Police, W-28, All Women Police Station, Ambattur, Chennai-53, the learned Sessions Judge, Fast Track Mahila Court, Tiruvallur, issued letter to the duty Medical Officer at Government Headquarters Hospital, Tiruvallur to subject the victim P.W-1 to medical examination regarding sexual assault also to subject the Accused to medical examination to find out whether he is potent. Accordingly, P.W-9 Dr.Deepa subjected the victim P.W-1 to medical examination. P.W-9 Dr.Deepa also collected vaginal swab from the vagina of the victim P.W-1 in the course of her medical examination and forwarded it to the Tamil Nadu Forensic Science Laboratory, Chennai, to find out whether there is presence of semen in the vaginal swab of the victim P.W-1 and the same was received by the Scientific Officer, Tamil Nadu Forensic Science Laboratory. P.W-9 Dr.Deepa obtained report from the Scientific Officer, Tamil Nadu Forensic Science Laboratory which had stated that no



semen was detected in the vaginal swab of the victim P.W-1 and based on which, she had issued medical certificate under Ex.P-7 regarding sexual assault. P.W-10 Dr.Vidhya subjected the Accused to medical examination and issued potency certificate under Ex.P-8. P.W-11 Inspector of Police, W-28, All Women Police Station, Ambattur, Chennai – 53 had sent alteration report under Ex.P-12 to the Court of the learned Sessions Judge, Fast Track Mahila Court, Tiruvallur, to include offence under Section 4 of the Protection of Children from Sexual Offences Act, 2012. P.W-11 Inspector of Police examined the mother of P.W-2/maternal grandmother of P.W-1 and recorded her statement. Also she examined and recorded the statement of the woman P.W-5, who had been selling idli in the neighbourhood of the victim P.W-1, P.W-7 Tmt.Amudha a neighbour of P.W-5 and the Accused, P.W-8 Thiru Manisekaran, Scientific Officer attached to Tamil Nadu Forensic Science Laboratory, Chennai, who had issued report stating that no semen was detected in the vaginal swab of victim P.W-1, which was received from the duty Medical Officer at Government Headquarters Hospital, Tiruvallur. After completion of the investigation, P.W-11 Inspector of Police, W-28, All Women Police Station, Ambattur, Chennai – 53, had laid final report against the Accused for the offences under Sections 4 and 8 of the the Protection of Children from Sexual Offences Act, 2012 before the Court of the learned



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Sessions Judge, Fast Track Mahila Court, Tiruvallur.

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5. The learned Sessions Judge, Fast Track Mahila Court, Tiruvallur, had taken on file the final report filed in Crime No.2 of 2014 on the file of W-28, All Women Police Station, Ambattur, Chennai – 53 for the offences under Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012. On taking the final report filed by P.W-11 Inspector of Police, W-28, All Women Police Station, Ambattur, Chennai – 53, on file and after taking cognizance of the offences under Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012, as Special Sessions Case No.3 of 2014, the learned Sessions Judge, Fast Track Mahila Court, Tiruvallur, issued summons to the Accused. On appearance of the Accused, copies were furnished under Section 207 of Cr.P.C.

6. On appearance of the Accused, after hearing the learned Public Prosecutor and the learned Counsel for the Accused, the learned Sessions Judge, Fast Track Mahila Court, Tiruvallur framed the charges against the Accused for the offences under Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012. The Accused denied the charges and claimed to be tried. Therefore, trial was ordered. To prove the charges, the



Prosecution examined 11 witnesses as P.W-1 to P.W-11 and marked 13 documents under Ex.P-1 to Ex.P-13. No material objects were marked.

7. As per the Prosecution case, the victim P.W-1 was aged about 9 years and 8 months on the date of alleged occurrence. She was sent by her mother P.W-2 to buy idly from P.W-5. When the victim had gone to purchase idly from P.W-5, P.W-5 sought the victim to fetch water from the neighbour of P.W-5. When P.W-1 went to fetch water and brought water, on the way, the Accused is alleged to have caught hold of the victim and took her inside his house and forced her to sit on his lap. When the victim was sitting on the lap of the Accused, the Accused is alleged to have pinched on the vagina of the victim. The victim unable to bear the pain cried and went out of the house. Immediately, the victim reported it to P.W-5. P.W-5 along with neighbours went to question the Accused and on seeing them, the Accused ran away. Subsequently, P.W-1 took the idly from P.W-5 and went to her house and reported the same to her mother/P.W-2. P.W-2 along with P.W-5 went to the house of the Accused but the Accused was not found there. P.W-2 the mother of the victim waited till her husband returned home from his work. After his return, the parents of P.W-1 victim along with P.W-1 went to W-28 Ambattur All Women Police Station and lodged a complaint under Ex.P-1. The



Inspector of Police had registered a case in Crime No. 2 of 2014 initially for the offence under Section 8 of the Protection of Children from Sexual Offences Act, 2012, under Ex.P-9. However, on investigation, after recording the statement of the victim, it came to light that the Accused is alleged to have not only pinched the vagina of the victim but also attempted to have sexual intercourse with the victim. Therefore, the case was altered and Section 4 of the Protection of Children from Sexual Offences Act, 2012 was also included. as per the alteration report under Ex.P-12.

8. The Trial Judge, on analysing the oral and documentary evidence made available, concluded that the Prosecution had not proved the charge against the Appellant under Section 8 of the Protection of Children from Sexual Offences Act, 2012. However, for the offence under Section 4 of the Protection of Children from Sexual Offences Act, 2012, the Appellant-Accused was found guilty and accordingly, by the judgment dated 11.05.2016, the Appellant was sentenced to undergo three years rigorous imprisonment and to pay a fine of Rs.1,000/- in default, to undergo simple imprisonment for a period of two months. Assailing the Judgment dated 11.05.2016, the present Appeal is filed.



9. The learned Counsel for the Appellant submitted that the Appellant's younger sister was given in marriage to the maternal uncle of the victim. After the marriage, there had been misunderstanding between the younger sister of the Accused and the maternal uncle of the victim/P.W-1, the brother of P.W-2. Therefore, due to the matrimonial dispute, the sister of the Accused is living with the Accused. The maternal uncle of the victim/P.W-1 is living with P.W-2. Therefore, to secure personal vengeance owing to a family dispute, a false case had been foisted against the Accused. In the complaint under Ex.P-1, the mother of the victim/P.W-2 who is the Complainant had not stated as to where the occurrence took place. In the evidence of P.W-1, the victim had deposed that the Accused pulled her by his hand, sat on the doorstep in front of his house and made the victim to sit on his lap. P.W-1 was subjected to cross-examination. In the cross-examination, she had admitted that she had not disclosed the fact of the misbehaviour by the Accused to P.W-5 the lady who sold idlies. She had denied the suggestion that the Accused is a close friend and acquaintance of the paternal uncle of P.W-1 victim by name Jegan and the case had been foisted against the Accused on the basis of tutoring of P.W-1 by her mother P.W-2.

10. The learned counsel proceeded to submit that P.W-2 the mother



of the victim had narrated the facts as was deposed by P.W-1. P.W-2 feigned ignorance of the fact that the Accused is a close friend and acquaintance of the paternal uncle of victim/P.W-1 by name Jegan. P.W-2 the mother of the victim had admitted that there is dispute between the family of the victim and the Accused. To the pointed question by the learned Counsel for the Accused, whether P.W-5 Maheswari had asked the victim/P.W-1 to fetch water from the next door neighbouring house, when P.W-5 is selling idlies in front of her house and what is the necessity for P.W-5 to request the victim/P.W-1 to fetch water from the next door neighbour, P.W-2 would say that P.W-5 does not like to drink water from the public tap, she would like to drink water from bore well which is available in the next door neighbour house. To the pointed question as to whether P.W-2 is an acquaintance of P.W-5, P.W-2 would state that she does not know her personally. To the pointed question when she does not know P.W-5 personally, how she knows P.W-5 will not drink water from public tap and would drink water only from bore well available in the neighbour's house, she has stated to her that she will only drink borewell water. In the cross-examination P.W-2 admitted that her daughter/P.W-1 believes any story narrated to her by any one. P.W-2 mother of P.W-1 also admitted that her daughter used to tell lies regarding home work given by the Teachers in the school. When P.W-2 mother of P.W-1 asked her to do her



home work, she used to say that Teacher had not given any home work.

Further, in her cross-examination, she stated that P.W-1 victim was aware of the dispute between the Accused and the family of P.W-2 and she had seen the quarrels. In the cross-examination, P.W-2 further stated that after the Accused was granted bail, P.W-1 victim had informed P.W-2 mother that on the date of alleged occurrence, the Accused attempted to thrust his penis into the vagina of the victim and the victim wriggled out from the Accused and came home. To the pointed question as to whether P.W-2 had informed the Police about the same, she had stated that she had not informed it to the Police.

11. The learned counsel for the Appellant further submitted that defence of the Accused is that the case had been foisted against him due to family dispute between the brother of P.W-2 and the sister of the Accused, who are husband and wife. P.W-2 admitted that if any one tutored her daughter, she will repeat it as tutored by them. P.W-3 is the maternal grandmother of the victim/P.W-1. P.W-4 is the witness to the observation mahazar and witness to the arrest and confession of the Accused. P.W-5 is the person who had been selling idlies. As per the Prosecution case, P.W-1 victim had gone to the shop/house of P.W-5 to purchase idlies. She had in her evidence stated that she sells idlies in front of her house from morning 5.00



a.m. to 9.00 a.m. and thereafter, she used to attend her daily chores. In her evidence, she had stated that the house of the Accused is two houses away from her house. The house of P.W-5 and the house of the Accused are adjacent to each other in the same compound and there is only one house in between their houses. All the three houses are similarly placed having one hall and kitchen. The younger sisters of the Accused were married and they do not live with their husbands due to matrimonial dispute and they are staying with the Accused with their children. She had in her evidence in the cross-examination stated that there had been frequent quarrel between the families of the Accused and P.W-2. Since the younger brother of P.W-2 had married the younger sister of the Accused, P.W-5 remained hostile. She was cross-examined by the Prosecution. In the cross-examination, the contents of the statement under 161 Cr.P.C., were put to P.W-5, but she denied them. P.W-7 Tmt.Amudha turned hostile. P.W-6 Thiru.Sasikumar who is the witness to observation mahazar and rough sketch also turned hostile. P.W-8 is the Forensic Expert. P.W-9 Dr.Deepa who had examined the victim and issued Ex.P-7 medical opinion certificate. P.W-10 Dr.Vidhya who had examined the Accused and issued potency certificate under Ex.P-8. P.W-11 who is the Investigation Officer.



12. The learned Counsel for the Appellant invited the attention of this Court to the cross-examination of P.W-1, P.W-2, and P.W-11. In the cross-examination, P.W-11 the Investigation Officer had stated that the house of the Accused is 10 x 10 ft. and in between, there is a wooden partition. The statement of P.W-1 or P.W-2 did not mention about the place of the actual occurrence in the house of the Accused. The rough sketch was not proper was also admitted by her. The records in this case had been sent to the Court only on 17.09.2014 is also admitted by her. The learned Counsel for the Appellant invited the attention of this Court to paragraphs 8 to 19 of the judgment of the learned Sessions Judge, Fast Track Mahila Court, Tiruvallur and submitted that P.W-2, mother of P.W-1 in her evidence had stated that she sent her daughter P.W-1 to purchase idlies by 10.00 a.m and in the complaint under Ex.P-1 she had stated that she had sent her daughter to purchase idlies at 11.00 a.m. The victim/P.W-1 had not spoken about the time. It is the evidence of P.W-5, who sells idlies, that she sells idlies from 5.00 a.m. to 9.00 a.m. and thereafter she used to attend household chores. Therefore, it is the contention of the learned Counsel for the Appellant that the learned Sessions Judge, Fast Track Mahila Court, Tiruvallur, had concluded that it is a false case given against the Appellant, yet, the learned Sessions Judge convicted the Accused based on the evidence of P.W-1 alone in the concluding paragraph 19, which



is perverse. When it is a clear case of P.W-5 who sells idlies that she sells idlies only from 5.00 a.m. to 9.00 a.m. the evidence of P.W-2 that she sent her daughter to purchase idlies from P.W-5 at 10.00 a.m. and at that time P.W-5 asked P.W-1 to get water from her neighbour's house cannot be believed. When P.W-1 went to get water from the neighbour's house and was returning the Accused caught hold of her and made her to sit on his lap and pinched her vagina. Immediately she relieved herself from the clutches of the Accused and ran away. In the evidence of P.W-5 she had clearly stated that next to her house, the house of one Subramani and then the house of the Accused is situate. All the houses are same size ie., 10 x 10 ft. single portion which is partitioned by wooden partition. In the house of Accused, the Accused is residing along with his two younger sisters and their children and his mother. If that be the case, the possibility of alleged occurrence is unbelievable. P.W-2 in her evidence stated that if any one tutored her daughter she will repeat it and her daughter used to tell lies. Those facts were not analysed by the learned Sessions Judge. P.W-1 in her evidence stated that she does not know the Accused. P.W-2 mother stated that she knew the Accused and there had been dispute between the family of the Accused and the family of P.W-2 and her daughter P.W-1 had seen them quarreling. This fact was also stated by P.W-5 idly vendor. Immediately after the occurrence, the victim had not informed



P.W-5 who is also a woman. Therefore, the cross-examination of P.W-1 in which P.W-1 states that she does not know the Accused is false. P.W-2 had clearly stated that P.W-1 knows the Accused. P.W-3 maternal grandmother of P.W-1 had turned hostile. P.W-11 Investigation Officer claims ignorance regarding a similar complaint of P.W-2 against her father-in-law alleging that he attempted to misbehave with her. In that circumstances, the alleged occurrence said to have taken place at 11.00 a.m. is unbelievable considering the fact that the Accused is working as Scavenger in the Chennai Corporation in Ambattur Division and earning his daily wages. It is stated that the Accused will leave his home by 5 am in the morning and will return at 4.00 pm in the evening. The learned Sessions Judge, Fast Track Mahila Court, failed to consider those facts and erroneously convicted the Accused based on the presumption available under Section 29 of the Protection of Children from Sexual Offences Act, 2012.

13. It is further submitted by the learned counsel for the Appellant that the Investigation Officer had in her cross-examination admitted that Section 22 of the Protection of Children from Sexual Offences Act, 2012 provides punishment for foisting false case. After the release of the Accused, after one week, P.W-2 approached the Police stating that in the complaint



P.W-2 had only stated about the Accused touching the vagina of the victim with his hands, whereas on the alleged date, the Accused also attempted to thrust his penis into the vagina of the victim. Therefore, the case was altered as per the alteration report under Ex.P-12. But such a further statement was not recorded from the victim. Further, as per the evidence of P.W-9 Dr.Deepa, there is no evidence of any injury mark on the genitals of the victim. Ex.P-7 does not disclose or support the case of the Prosecution as narrated by P.W-1. However, the Court had considered only the evidence available before the Court and convicted the Accused for the offence under Section 8 of the Protection of Children from Sexual Offences Act, 2012 and sentenced him to undergo imprisonment for three years and to pay fine of Rs.1000/-, in default, to undergo two months simple imprisonment. Therefore, the learned Counsel for the Appellant seeks to set aside the judgment of conviction and sentence of imprisonment ordered by the learned Sessions Judge, Fast Track Mahila Court, Tiruvallur.

14. Mrs. G.V. Kasthuri, learned Additional Public Prosecutor appearing for the Respondent vehemently objected to the line of arguments made by the learned Counsel for the Appellant stating that the case of the Prosecution had been proved by cogent evidence of P.W-1, which inspired



confidence of the Court. She relied upon the decision of the Hon'ble Supreme

Court in the case of ***Ganesan vs. State represented by its Inspector of Police***

reported in ***(2020) 10 SCC 573*** for the proposition that in a case of this nature

the evidence of victim alone will be sufficient to convict the Accused. She has

also relied upon the discussion in paragraphs 9 to 19 of the judgment of the

learned Sessions Judge, Fast Track Mahila Court, Tiruvallur in arriving at a

conclusion and submitted that it is a well reasoned judgment on proper

appreciation of evidence. As per the settled proposition of law laid down by

the Hon'ble Supreme Court, while appreciating the evidence before the Trial

Court, when it is found that the Trial Court had arrived at a conclusion based

on proper appreciation of evidence, the Appellate Court shall not disturb such

a finding of the Trial Judge, even though there is a possibility of arriving at an

opposite finding on the same set of evidence by the Appellate Court. This is

because, the Trial Judge had the advantage of observing the demeanor of

witnesses which is not available before the Appellate Court. Therefore, the

finding recorded by the Trial Court shall not be disturbed in the usual course.

The Appellate Court have to be cautious on appreciating the evidence of the

Trial Court. Therefore, the learned Additional Public Prosecutor seeks to

dismiss this Appeal as not maintainable and prayed this Court to confirm the

judgment of the learned Sessions Judge, Fast Track Mahila Court, Tiruvallur,



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in Spl. S.C. No. 3 of 2014, dated 11.05.2016.

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Point for consideration:

Whether the judgment of the learned Sessions Judge, Fast Track Mahila Court, Tiruvallur, in Spl. S.C. No. 3 of 2014, dated 11.05.2016 is to be set aside as perverse?

15. Heard the learned Counsel for the Appellant and the learned Additional Public Prosecutor appearing for the Respondent. Perused the evidence of P.W-1 to P.W-11, Ex.P-1 to Ex.P-13 and the judgment of the learned Sessions Judge, Fast Track Mahila Court, Tiruvallur, in Spl. S.C. No. 3 of 2014, dated 11.05.2016.

16. On perusal of the provisions contained under the Protection of Children from Sexual Offences Act, 2012, it is found that the presumption made available to the Court under Section 29 of the Act is not applicable to the facts of the present case registered for the offence under Section 4 of the Protection of Children from Sexual Offences Act, 2012. The learned Sessions Judge, Fast Track Mahila Court, Tiruvallur, had in the discussion confused herself based on the deposition of the witnesses and the presumption available



to the POCSO Court under Section 29 and erroneously convicted the Accused by believing the version of P.W-1.

17. As rightly highlighted by the learned Counsel for the Appellant, there are bristling contradictions and loopholes in the Prosecution case. The occurrence is alleged to have taken place around 11.00 a.m. on the alleged date whereas it is the case of P.W-5 idly vendor that she sells idlies from 5.00 a.m. to 9.00 a.m. Therefore, the origin and genesis of the complaint itself creates doubt when it is stated that the victim had gone to purchase idlies between 10.00 a.m. and 11.00 a.m. As per the the complaint, P.W-2 had sent her daughter for purchase of idly at 11.00 a.m. but as per her evidence, she had sent her daughter at 10.00 a.m. It is the evidence of the victim that she could not recall the actual time. As per the complaint, P.W-5, P.W-1 and P.W-2 the mother of the victim went to the house of the Accused immediately after the alleged occurrence but the Accused was not found. In the evidence of P.W-1 it is stated that she did not inform about the occurrence to P.W-5. P.W-5 had remained hostile to the Prosecution case. P.W-2 states that she had not stated in her statement under 161 Cr.P.C. to the Police about P.W-1 informing P.W-5 and P.W-2 going along with P.W-5 to the house of the Accused and that the Accused ran away on seeing them. As per the evidence of P.W-1 immediately



after the occurrence she informed P.W-2 and P.W-2 immediately called the Police Helpline and the Police came immediately and arrested the Accused.

Whereas it is the clear case of P.W-2 that she waited for her husband to return home after his work and after the return of her husband, she accompanied her husband to the Police Station to lodge complaint at about 8.00 p.m. on the same date of alleged occurrence. If P.W-2 had taken it seriously, she could have lodged the complaint immediately without waiting for her husband.

18. As rightly pointed out by the learned Counsel for the Appellant it is the case of P.W-2 that she along with her husband and victim went to Police Station to lodge the complaint under Ex.P-1 and the FIR under Ex.P-9 was registered by P.W-11. While so, the husband of P.W-2, father of P.W-1 was not at all cited as a witness by the Prosecution. Above all, the maternal grandmother P.W-3 remained hostile and did not support the Prosecution case. Therefore, these are all bristling contradictions, which had weakened the foundation laid down by the prosecution to prove the charges against the Appellant-Accused. Therefore, the facts, as projected by the Prosecution, is not free from any suspicion and consequently, the case is found unbelievable.

19. The learned Sessions Judge, Fast Track Mahila Court, Tiruvallur



had in the discussion in paragraphs 11 to 19 observed that after registering the case under Section 8 of the Protection of Children from Sexual Offences Act, 2012, P.W-11 submitted a report to alter the offence thereby to invoke Section 4 of the Act also, which deals with Punishment for Penetrative Sexual Assault. During trial, the learned Special Public Prosecutor filed a memo stating that he is not pressing the Charge under Section 4 of the Protection of Children from Sexual Offences Act, 2012 and this found to support the defence of the Accused that the Accused had been framed in this case due to previous enmity between the family of P.W-2 and the Accused. The theory of the defence that the sister of Accused was married to the brother of P.W-2 and subsequent to the marriage, there was misunderstanding between the husband and wife resulting in matrimonial dispute and therefore, the Appellant had been falsely implicated in this case cannot be simply brushed aside. Admittedly, there had been frequent quarrels between the family of P.W-2 and Accused and this fact was admitted by P.W-2 in her cross-examination. P.W-2 mother of the victim clearly stated that Accused is known to the victim. The Accused is the close friend and acquaintance of the paternal uncle of P.W-1 by name Jegan. When P.W-1 claims that she does not know the family quarrel between both the families, P.W-2 mother of P.W-1 states that P.W-1 is aware of the frequent quarrels between both the families and she witnessed them. Then it is to be



presumed that the presumption under Section 29 of the Protection of Children from Sexual Offences Act, 2012 is not attracted in this case as P.W-2 mother of the victim admitted in her evidence that her daughter will lie and believes any story narrated to her by anyone. The evidence of P.W-1 that the Accused pinched her in the vagina is not proved with medical evidence.

20. It is to be noted that the maternal grandmother of the victim turned hostile. Except the evidence of P.W-1 who is the direct witness, all other witnesses are hearsay witnesses. P.W-9 Dr. Deepa had in her evidence stated that there is no evidence of any symptom of sexual assault on the victim. Therefore, based on such a weak theory projected by the Prosecution, it would not be safe to convict the Appellant-Accused. Above all, the father of the victim was not at all examined as witness and there is no explanation forthcoming from the Prosecution. In cases relating to aggravated sexual assault Section 29 cast upon a duty on the Court to believe the version of the victim.

21. The evidence of P.W-1 victim child aged about 9 years 8 months at the time of alleged occurrence and who was aged 10 years and 8 months when she was deposing evidence before the Court, is found contradictory to



the attitude of a similarly placed child. The testimony of P.W-1 does not inspire the confidence of this Court. Further, the occurrence alleged to have taken place by 11.00 a.m. But the complaint was preferred at 8.00 p.m in the evening on the ground that P.W-2 waited for her husband to return home. Even though it is stated that husband of P.W-2 also accompanied P.W-2 and P.W-1, he was not examined as a witness. In any event, the delay in giving the complaint is also one of the factors that had affected the credibility of the Prosecution case.

22. It is also to be mentioned that P.W-2 had already given a complaint against her father-in-law as though he attempted to misbehave with her. As P.W-2 could not succeed in such attempt, P.W-2 has given the instant complaint to settle score with the Accused due to the matrimonial dispute between the brother of P.W-2 and the Accused. The learned Sessions Judge, Fast Track Mahila Court, Tiruvallur, at the end of paragraph 19 in the discussion had fairly considered those points but reached a conclusion that the Accused had not let any evidence and therefore, the presumption under Section 29 of the Act is in favour of the victim. Further, the learned trial Judge, accepting the evidence of P.W-1 convicted the Appellant by judgment dated 11.05.2016 in Spl. S.C. No. 3 of 2014.



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23. From the above facts, it is found that the learned Sessions Judge, Fast Track Mahila Court, Tiruvallur, had confused herself about the presumptions contained in Section 29 of the Protection of Children from Sexual Offences Act, 2012. Here, the offence alleged is under Section 8 of the Protection of Children from Sexual Offences Act, 2012, therefore, Section 29 is not at all attracted. Apart from that, the alleged occurrence took place between 10 a.m. and 11.00 a.m. by which time the Accused is expected to be in his duty as Scavenger in the Corporation in Ambattur Division. The Prosecution had not produced any document regarding the attendance of the Accused on the alleged date of occurrence. The allegation that the Accused caught hold of the victim by hand and forcibly made her to sit on his lap in front of his house on the doorstep, when the entire house itself measures 10 x 10 ft. partitioned by wooden partition wherein the younger sisters and mother of the Accused are residing sharing the common roof, it is hard to accept the theory of the Prosecution.

24. In the light of the above discussion, the point for consideration is answered in favour of the Appellant and against the Prosecution. The judgment of the learned Sessions Judge, Fast Track Mahila Court, Tiruvallur,



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in Spl. S.C. No. 3 of 2014, dated 11.05.2016 is found perverse and the same is set aside.

25. It is brought to the notice of this Court that the Appellant-Accused had got the benefit of suspension of sentence pending disposal of the present Appeal and he is out of jail. The said statement is taken note of.

In the result, **this Criminal Appeal is allowed.** The judgment of the learned Sessions Judge, Fast Track Mahila Court, Tiruvallur, in Spl. S.C. No. 3 of 2014, dated 11.05.2016 is set aside. The Appellant is acquitted from all the charges. The bail bond executed by the Appellant, if any, is directed to be cancelled and the fine amount, if any paid, by the Appellant/Accused is directed to be refunded. Consequently, connected miscellaneous petition is dismissed.

21.12.2024

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Index : Yes/No

Speaking/Non-speaking order



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To

1. The Sessions Judge,
Fast Track Mahila Court,
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2. The Public Prosecutor,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J

srm

Judgment made in
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