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CrI.A.No.694 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2024

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CrI.A.No.694 of 2016

Elango Karthik

...Appellant

vs.

The Inspector of Police
All Women Police Station,
Pollachi, Coimbatore District.
Crime No. 14 of 2014

...Respondent

PRAYER: Criminal Appeal filed under Section 374(2) Criminal Procedure Code, 1973, against the judgment and orders dated 15.07.2016 passed by the Sessions Judge, Magalir Neethimandram (Mahila Court), Coimbatore, in Spl.C.C.No.50 of 2014.

For Appellant : Ms. D. Jeevitha
for M/s. R. Nalliyappan
For Respondent : Mr.S. Rajakumar
Additional Public Prosecutor.

JUDGMENT

This criminal appeal is filed by the 1st accused against the judgment and orders dated 15.07.2016 passed by the Sessions Judge, Magalir Neethimandram (Mahila Court), Coimbatore, in Spl.C.C.No.50 of 2014.



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2. The trial court framed the following charges against accused 1 to

4 in Spl.C.C.No.50 of 2014.

<i>Serial Number of charge</i>	<i>Charge(s) framed against</i>	<i>Charge(s) framed under Section</i>
1	A1	376 IPC r/w 3(a) r/w 4 of the Protection of Children from Sexual Offences Act (POCSO), 2012
2.	A1	306 IPC
3.	A2 to A4	306 IPC

3. The trial court acquitted A2 to A4 for the offences of which they were charged. However the trial court convicted and sentenced the appellant/A1, vide its judgment dated 15.07.2016, as detailed hereunder.

<i>Conviction</i>	<i>Sentence</i>
Section 3(a) r/w 5(1) r/w 6 of the Protection of Children from Sexual Offences Act (POCSO), 2012	Rigorous Imprisonment for ten years and a fine of Rs.2,000/-, in default, to undergo Simple Imprisonment for three months.
306 IPC	Rigorous Imprisonment for ten years and a fine of Rs.2,000/-, in default, to undergo Simple Imprisonment for three months.
The period of sentence already undergone shall be set off under Section 428 Cr.P.C. The sentences shall run concurrently.	



4. The case of the prosecution as could be discerned from the oral

and documentary evidence is as follows:

4.1. The victim girl was aged 14 years and had completed her 9th standard. P.W.1 and P.W.2 are her parents. They were residing in Vaigai Nagar, Makkinampatti, Pollachi. According to Indirani (P.W.9), Headmistress of Government Girls High School, Pollachi, the date of birth of the victim was 23.05.2000.

4.2. On 31.05.2014, at about 3 p.m., when the victim girl (P.W.1) went to the house of her aunt Nanjammal (P.W.5) at Amaithi Nagar, Makkinampatti Road, Pollachi, the appellant, who is the neighbour of Nanjammal, forcibly took her inside his house and sexually assaulted her. It was a penetrative sexual assault. She was also illegally confined in his house.

4.3. Since the victim went missing, the victim's mother Sumathi (P.W.1) along with her other relatives came down to Nanjammal's (P.W.5) house in search of the deceased victim girl. But their efforts went in vain. Then all of a sudden, the victim appeared in front of the house of Kuppammal (P.W.3), who is a close relative of P.W.1 and



P.W.2. She was fully drenched in rain.

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4.4. Kuppammal (P.W.3), questioned the victim girl. The victim girl narrated that she was forcibly taken by the appellant into his house and was raped by him. She had also informed P.W.3 that she was confined in a bathroom inside the house of the appellant and was let out only in the night. P.W.3 along with the victim went to the house of Lakshmi (P.W.6), the elder sister of P.W.2. Then the victim's parents were called and they all went and confronted the appellant. The appellant refuted the allegations and asked them whether they have any witness to the occurrence. He also questioned the character of the victim girl. The parents of the victim along with their other relatives went to the house of the appellant, where they were also verbally abused by the other appellant (parents and relatives of the appellant). They had also assassinated the character of the victim. The victim girl, unable to bear the mental torture meted out to her, immolated herself by pouring kerosene on her on the night of 01.06.2014. She was immediately rushed to Coimbatore Medical College Hospital through an ambulance where she was admitted as an inpatient.



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4.5. Dr. R. Jayakumar (P.W.10) examined the victim girl who was brought to the hospital at about 11 p.m. on 01.06.2014 with 98% burn injuries and admitted her as an inpatient and sent a communication to the All Women Police station, Pollachi. He also sent intimation to the Judicial Magistrate for recording the dying declaration of the victim.

4.6. Tmt. Veerammal (P.W.13), the then Sub Inspector of Police, All Women Police Station, Pollachi, on receipt of intimation from Coimbatore Medical College Hospital went there and recorded the complaint statement (Ex.P1) of the victim and registered an FIR (Ex.P16) in Crime No.14/14 of All Women Police Station, Pollachi, against the present appellant and three others for the offences punishable under Sections 3 r/w 4 of the Protection of Children from Sexual Offences Act (in short POCSO Act), 2012, 4 of Tamil Nadu Prohibition of Women Harassment Act and 376 and 307 IPC. P.W.13 placed the entire records before the Inspector of Police for investigation.

4.7. Thiru. Selvakumar (P.W.12), Judicial Magistrate, Udagamandalam, on getting intimation from Coimbatore Medical College Hospital on 02.06.2014 at about 1.56 a.m., went to the hospital and



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recorded the dying declaration of the victim (Ex.P9 & Ex.P10) after getting a certificate from Dr. Jayakumar (P.W.10) that the victim is fit to give a dying declaration. The sum and substance of the dying declaration of the victim girl was that she immolated herself since the appellant had sexual intercourse with her forcibly and subsequently he and his family members questioned her character. The learned Judicial Magistrate obtained the left thumb impression of the victim on the dying declaration and sent the entire records to the concerned Jurisdictional Magistrate.

4.8. Tmt. Tamil Selvi (P.W.14), the then Inspector of Police, All Women Police Station, Pollachi, took up investigation in Crime No.14/14 of All Women Police station, Pollachi, went to the scene of occurrence, prepared an observation mahazar (Ex.P6) in the presence of the witnesses Vadivel (P.W.8) and Karthik Kumar (not examined) and a rough sketch (Ex.P17). On 02.06.2014, she arrested the appellant and the other accused near Badrakaliamman temple and recorded the confessional statement of the appellant. The dress (M.O.4 and M.O.5) worn by the appellant at the time of occurrence were recovered under the cover of a mahazar (Ex.P5) in the presence of the witnesses Marimuthu (P.W.7) and Karuppusami (not examined). She then produced all the accused



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before the Judicial Magistrate, Udagamandalam, who in turn remanded them to judicial custody. P.W.14 examined all the witnesses and recorded their statements individually under Section 161(3) Cr.P.C.

4.9. In the meanwhile, the victim girl died on 10.06.2014. Tmt.Tamil Selvi (P.W.14), the Investigation Officer, on receipt of the death information of the deceased altered the Sections to 3 r/w 4 of the Protection of Children from Sexual Offences Act (POCSO), 2012, 4 of Tamil Nadu Prohibition of Women Harassment Act and 376 and 306 IPC and sent an alteration report (Ex.P18) to the Court. She also sent the body of the deceased for postmortem through Tmt. Jayasudha , Grade I constable.

4.10. On 11.06.2014, Dr. Jayasingh (P.W.11) conducted autopsy on the body of the deceased and found the following injuries.

- Infected dermo dpidermal burns involving entire body,sparing genital area.*
- Partial singeing noted over marginal scalp hairs.*
- Total singeing noted over facial and both axillary hairs.*
- Degloving of skin noted over both palms and soles.*
- The base of burnt area of reddish in colour. Infacted area*



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covered with yellow colour slough materials.

On examination of Genital area : Hymen tear noted over 3'O clock, 7'O clock position. Contusion in variegated colour noted over both side anterior part of vaginal wall.

OTHER FINDINGS:

- Peritoneal & Pleural cavities - empty.*
- Hyoid bone - in tact.*
- Larynx and Trachea ; cut section congested.*
- Heart - right side chambers contain about few cc of fluid blood and left side chambers empty.*
- Coronaries - patent*
- Stomach contains about 150 ml of dark brown colour fluid, no specific smell, mucosa congested.*
- Small intestine contains about 10 ml dark brown colour fluid, no specific smell, mucosa congested.*
- Liver, spleen, kidneys, lungs and brain - cut section congested.*
- Urinary bladder - empty.*
- Uterus : Normal in size, cut section empty.*
 - Viscera preserved for chemical analysis.*
 - Vaginal and uterus swab preserved for analysis.*

In the opinion of P.W.11 "the deceased would appear to have died of burns". It was also opined by him that the victim was subjected to forcible sexual assault before her death. The postmortem certificate was



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marked as Ex.P11 and his final opinion was marked as Ex.P13.

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4.11. The Investigation Officer sent the appellant for medical examination on 13.06.2014. Dr. Jayasingh (P.W.11) examined the appellant and certified (Ex.P14) that there was nothing to suggest that he is impotent.

4.12. On 19.06.2014, P.W.14 recovered the dress (M.O.1 and M.O.2) worn by the deceased victim at the time of occurrence under the cover of a mahazar Ex.P3 in the presence of the witnesses Nanjammal (P.W.5) and Lakshmi (P.W.6). She also recovered a kerosene can (M.O.3) from the place of occurrence. She recorded the statements of all the witnesses. After completing the investigation she laid a final report against the appellant and the other accused for the offences punishable under Sections 3 r/w 4 of POCSO Act, 2012, 4 of Tamil Nadu Prohibition of Women Harassment Act and 376 and 306 IPC before the Sessions Judge, Magalir Neethimandram (Mahila Court), Coimbatore, in Spl.C.C. No.50/2014.

4.13. The learned Sessions Judge, Magalir Neethimandram



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(Mahila Court), Coimbatore, after furnishing copies of records to the accused under Section 207 Cr.P.C, framed charges against the accused as stated in paragraph No.2.

4.14. In order to bring home the guilt of the accused the prosecution examined 14 witnesses, marked 20 documents and five Material Objects.

4.15. The accused, including the appellant, when questioned under Section 313 Cr.P.C with regard to the incriminating circumstances appearing in evidence against them, denied of having committed any offence. However, they did not adduce any oral / documentary evidence.

4.16. The learned Sessions Judge, after analysing the oral and documentary evidence on record, acquitted the accused 2 to 4 of the offences of which they were charged and convicted the appellant/1st accused for the offences punishable under Sections 3(a) r/w 5(1) r/w 6 of POCSO Act, 2012 and 306 IPC and sentenced him as stated in Paragraph No.3 vide his judgment dated 15.07.2016.



WEB COPY 4.17. Aggrieved over the same, the appellant has preferred the present appeal.

5. Heard Ms. D. Jeevitha, learned counsel appearing for the appellant and Mr.S. Rajakumar, learned Additional Public Prosecutor for the respondent State.

6. This is a tragic tale of a POCSO victim, who committed suicide. The deceased girl was residing with her parents Sumathi (P.W.1) and Baggiaraj (P.W.2) in Vaigai Nagar, Makkinampatti, Pollachi. The appellant Elango Karthik was a neighbour of Nanjammal (P.W.5), the paternal aunt of the victim, with whom the deceased victim was staying during her school vacation as both of her parents were daily wagers and the victim girl, who had just completed her 9th standard was in her paternal aunt's house where she had a cousin as a playmate. She went missing from there on 31.05.2014. The parents of the victim were informed and the entire group of relatives including P.W.2's sister and brother searched the entire locality. But their efforts went in vain. Then all of a sudden, the victim appeared in front of the house of Kuppammal



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(P.W.3). She was fully drenched in rain. P.W.3 was a distant relative of

P.W.1. The victim girl was grilled by P.W.3 and therefore she narrated that she was forcibly taken by the appellant into his house and was raped by him. She was also confined in a bathroom by the appellant in his house and was released during night hours.

6.1. P.W.3 along with the victim went to the house of Lakshmi (P.W.6), P.W.2's elder sister. Then the victim's parents were also called who went and confronted the appellant. The appellant defiantly refuted the allegation and asked for evidence. Since the parents of the appellant were not in town, the parents of the victim returned. The next day they went back accompanied by Nanjammal (P.W.5), the sister of P.W.2 and the brother of P.W.2 to the house of the appellant. The parents of the appellant supported their son and denied the charge. To make the matters worse, they spoke ill of the victim girl using filthy language and assassinated her character, which led to the victim setting herself ablaze in the house of Nanjammal (P.W.5). She was rushed to Government Hospital, Pollachi and later to Coimbatore Medical College Hospital with 98% burn injuries and after 10 days struggle for life, she succumbed to injuries.



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7. Ms.D. Jeevitha, learned counsel for the appellant contended that
- i. there has been a delay in filing a police complaint, which is fatal to the case of the prosecution;
 - ii. the age of the victim has not been satisfactorily proved by the prosecution;
 - iii. even as per the admission of the victim in her dying declaration, she was in love with the accused and therefore it was a consensual sex;
 - iv. the victim girl had an earlier relationship with some other person, which was hushed up and the accused was forced to marry her. When he refused, a false case was foisted against him;
 - v. the victim did not raise any alarm when she was confined in the bathroom of the appellant though there were shops and houses nearby;
 - vi. lastly, all the prosecution witnesses were closely related to the victim girl and with no independent witness, the prosecution case stands on a weak premise.

8. Per contra, Mr. S. Raja Kumar, learned Additional Public



Prosecutor appearing for the respondent / State contended that

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- i. the dying declaration (Ex.P9 and Ex.P10) of the victim specifically implicates the appellant for her rape and death by suicide;
- ii. the evidence of P.W.1 to P.W.7 supports the case of the prosecution in all material particulars; in fact, they did not contradict each other and all of them withstood the testimony of cross examination;
- iii. Dr. Jayasingh (P.W.11) who conducted autopsy on the body of the victim girl had opined that "the deceased has evidence of recent forcible sexual act", which proves the charge of rape;
- iv. since it is a sexual act with a girl just aged 14 years, it comes under POCSO Act;
- v. the school records (Ex.P7) mentioning the Date of Birth of the victim as 23.05.2000 is an adequate proof of her age.

9. In the instant case, the victim girl had not only given a complaint statement before the Sub Inspector of Police, All Women Police Station, Pollachi, stating that she was sexually assaulted on 31.05.2014 by the appellant forcibly but had also narrated the subsequent events cogently to the Sub Inspector of Police and an FIR was registered against the



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appellant on the same date. Thiru.Selva Kumar (P.W.12), the Judicial Magistrate, Udagamandalam, recorded the dying declaration of the victim after getting a certificate from Dr. Jayakumar (P.W.10) that she is fit to give dying declaration. The victim girl once again had narrated the entire sequence of events to the Judicial Magistrate.

9.1. The main object behind the dying declaration is that "a person who is about to die would not lie". It is also stated that "truth sits on the lips of a person who is about to die". Section 32(1) of the Indian Evidence Act reads thus:

Section 32(1) in The Indian Evidence Act, 1872

(1)When it relates to cause of death. - When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

9.2. In the decision in ***Ramnath Madhoprasad vs. State of Madya***



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Pradesh reported in *AIR 1953 SC 420*, the Hon'ble Supreme Court held

that it is not safe to convict an accused person merely on the evidence furnished by a dying declaration without further corroboration because such a statement is not made on oath and is not subject to cross-examination. Subsequently the Hon'ble Supreme Court in *Khushal Rao vs. State of Bombay* reported in *1958 SCR 552* held that this observation is in the nature of obiter dicta and further observed that that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated. The Apex Court also summarised the proposition as under :

- (1) that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated;
- (2) that each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made;
- (3) that it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other piece of evidence;



WEB COPY (4) that a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence;

(5) that a dying declaration which has been recorded by a competent Magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character, and

(6) that in order to test the reliability of a dying declaration, the court has to keep in view, the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the facts stated, had not been impaired at the time he was making the statement, by



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circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties.

9.3. Further in the decision in *State of Uttar pradesh vs. Ram Sagar Yadav* reported in *1985 AIR 416*, the Hon'ble Supreme Court observed that the primary effort of the Court has to be, to find out whether the dying declaration is true. If it is true, no question of corroboration arises. If only, the circumstances surrounding the dying declaration are not clear or convincing, the Court may, for its assurance, look for corroboration to the dying declaration.

9.4. Keeping the above principles in mind, we have to scan the evidence of the witnesses on the side of the prosecution and the dying declaration (Ex.P9 and Ex.P10) recorded by the Judicial Magistrate. It is pertinent to point out that the victim was aged just 14 years. According to her complaint, she was forcibly taken inside the house of the appellant on 31.05.2014. It is also her contention that the accused had sexually



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assaulted her and it was a penetrative sexual assault. The relatives and the parents of the victim went in search of the victim girl, but she was kept inside the bathroom of the house of the appellant . The contention of the learned counsel for the appellant is that the victim girl had consented to have sexual intercourse with the appellant. This contention of the learned counsel for the appellant smacks of a mere formality. The victim girl was just aged 14 years on the date of occurrence and therefore, she was a child within the meaning of POCSO Act. Moreover, the appellant after raping the victim had questioned her and her parents for proof and also abused the victim and her family in a derogatory manner. The decision to end her life was a momentary decision by the victim girl and there was no other reason for her to end her life. The appellant had not disputed his presence in the scene of occurrence (of rape). Assassinating the character of the girl fuelled her dejection further. The victim girl had committed suicide on the night of 01.06.2014 itself as she was unable to bear the mental torture meted out to her and she was admitted in the hospital with 98% burn injuries. She had narrated the entire sequence of events not only to the Sub Inspector of Police who registered FIR in the instant case but also to the Judicial Magistrate immediately after the occurrence. There is absolutely nothing to show



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that the victim was tutored or was speaking lies. All the prosecution witnesses P.W.1 to P.W.7, had supported the case of the prosecution in all material particulars. Dr. Jayasingh (P.W.11) had also stated in his final opinion (Ex.P13) that there was evidence of forcible sexual act. In the instant case it is not necessary to look for corroboration of the dying declaration. However, the dying declaration is not only corroborated with the other witnesses but also with the medical evidence. Therefore, the conviction of the accused by the trial court for the offences punishable under Sections 3(a) r/w 5(l) r/w 6 of the POCSO Act and 306 IPC cannot be assailed. The trial court has been quite lenient in the quantum of sentence awarded to the accused. In the circumstances, this court does not find any reason to interfere with the sentence passed by the trial court.

10. In the result,

i. The Criminal Appeal is dismissed.



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ii. The judgment and orders dated 15.07.2016 passed by the Sessions Judge, Magalir Neethimandram (Mahila Court), Coimbatore, in Spl.C.C.No.50 of 2014, is confirmed.

iii. The accused is directed to surrender before the trial Court viz., the Sessions Court, Magalir Neethimandram (Mahila Court), Coimbatore, within fifteen days from the date of receipt of a copy of this order / uploading of the order, failing which, the trial Court shall take necessary steps to secure the presence of the accused to serve the remaining period of sentence.

20.06.2024

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Index : yes/no

Speaking /Non speaking Order

To

1. The Inspector of Police, All Women Police Station, Pollachi.
2. The Sessions Court, Magalir Neethimandram (Mahila Court), Coimbatore.
3. The Public Prosecutor, High Court, Madras.
4. The Section Officer, Criminal Section, High Court, Madras.

R.HEMALATHA, J.

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