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Crl.A.No.559 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2024

CORAM

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

Crl.A.No.559 of 2018

Eswaran

... Appellant

Vs.

The Inspector of Police
Poolampatty Police Station,
Edappadi Taluk,
Salem District.

...Respondent

PRAYER: Criminal Appeal filed under Section 374(2) Criminal Procedure Code, 1973 to set aside the judgment and orders passed in S.C.No.40 of 2014 dated 14.05.2018 by the Sessions Judge, Mahila Court, Salem.

For Appellant : Mr. R. Chakkaravarthy
Legal Aid Counsel

For Respondent : Mr.S.Rajakumar
Additional Public Prosecutor



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JUDGMENT

Challenging the conviction and sentence dated 14.05.2018 passed by the learned Sessions Judge, Mahila Court Salem, in S.C. No.40 of 2014, the present Criminal Appeal is filed.

2. The appellant is the accused in S.C.No.40/2014 and is convicted under Section 376(2)(f) IPC and sentenced to undergo Rigorous imprisonment for ten years and to pay a fine of Rs.25,000/-, in default, to undergo Simple Imprisonment for a period of six months. The said fine amount was ordered to be paid as compensation to the victim girl and the period of sentence already undergone by the appellant was set off under Section 428 Cr.P.C

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

3.1. The victim child (P.W.1) was residing with her parents



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Madammal (P.W.2) and Ammasi (P.W.3) at Irupali Village, Edapadi Taluk, Salem. The victim child was aged 9 years and was studying V standard in Panchayat Union Primary school, Irupali. According to Thiru.Rathinavel (P.W.8), the Head Master of the Panchayat Union School, the date of birth of the child is 14.05.2003.

3.2. The victim child (P.W.1) was playing with her friends Thangaponnu (P.W.4) and Manju on 12.11.2012 near the house of the appellant. The appellant called the children to his house for watching television. The children went inside his house and after some time, the appellant sent the friends of the victim child from his house. He took the victim child inside his bed room and forced himself upon her, as a result of which, the victim child sustained bleeding injuries in her vagina. The appellant, as per the version of P.W.1 to P.W.3, threatened all the three children with dire consequences if they reveal the truth to anyone. P.W.1 after washing her clothes went to her house. Her mother Madammal (P.W.2) on seeing her daughter with bleeding on her dress enquired her and found that she was raped by the appellant and she immediately informed her



husband Ammasi (P.W.3) who rushed to his house. They took their daughter (the victim child) to the Government Hospital, Edapadi. The doctors in Government Hospital, Edapadi, after giving first aid referred the child to the Government Hospital, Salem. Dr.Aruna Rani (P.W.6) examined the child on 12.11.2012 and found the following injuries on her private parts.

"Hymen not intact.

Laceration involving left position lateral vaginal wall of size

3x2 cm, bleeding from perineal muscle and skin."

She performed an operation on the victim child and sutured her wounds. She sent the vaginal swab to the forensic lab, Salem. After getting the report (Ex.P6) from the Forensic Lab, Dr. Aruna Rani (P.W.6) opined that there was possibility of sexual intercourse. Her opinion was marked as Ex.P6.

3.3. On receipt of information from the hospital Thiru. Arunachalam (P.W.10), the then Sub Inspector of Police, Poolampatti Police Station, Salem, went to Government Hospital, Salem and recorded the complaint Statement (Ex.P1) of the victim. The father of the victim child signed as a



witness in the statement. P.W.10, thereafter came down to the police station and registered an FIR (Ex.P14) against the appellant in Crime No.212/2012 for an offence punishable under Section 376(2)(f) IPC. He then placed the records before Thiru.Subramaniam (P.W.11), the Inspector of Police, Edapadi police station. P.W.11 took up investigation in Crime No.212/2012 on 13.11.2012, went to the scene of occurrence, prepared an observation mahazar (Ex.P3) and a rough sketch (Ex.P15) in the presence of the witnesses Mani (P.W.5) and Palani (not examined). He recovered the dress worn by the victim child (M.O.2) under the cover of a mahazar (Ex.P13). Thereafter he arrested the appellant on the same day and recorded his confessional statement (admissible portion of which was marked as Ex.P16) in the presence of the witnesses Durai Murugan ((P.W.9), the Village Administrative Officer, Irupali Village and Prakash (not examined), based on which, he recovered the dress (M.O.1) worn by the appellant on the date of the occurrence under the cover of a mahazar (Ex.P12) in the presence of the same witnesses. He examined all the witnesses and recorded their statements under Section 161(3) Cr.P.C.



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3.4. Dr. K. Gokula Ramanan (P.W.7) examined the appellant and certified (Ex.P8) that there is nothing to suggest that he is impotent.

3.5. The Investigation Officer (P.W.11) after completing investigation laid a final report before the Judicial Magistrate No.I, Sankagiri in P.R.C. No.4/2013 against the appellant for an offence punishable under Section 376(2)(f) IPC.

3.6. The learned Judicial Magistrate No.I, Sankagiri, after furnishing copies of records to the accused under Section 207 Cr.P.C, committed the case to the Court of Session, Salem. The Sessions Judge, Mahila Court, took the case on file in S.C.No.40/2014 and framed a charge against the appellant for the offence punishable under Section 376(2)(f) IPC.

3.7. In order to bring home the guilt of the accused the prosecution examined 11 witnesses, marked 20 documents and 2 material objects.

3.8. The accused, when questioned under Section 313 Cr.P.C with



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regard to the incriminating circumstances appearing in evidence against him, he denied of having committed any offence. However, he did not examine any witness on his side.

3.9. The learned Sessions Judge, Mahila Court, after analysing the oral and documentary evidence on record, convicted and sentenced the accused as stated in paragraph No.2.

3.10. Aggrieved over the judgment and orders passed by the trial Court, the present Criminal Appeal is filed.

4. Heard Mr. R. Chakkaravarthy, learned Legal Aid Counsel appearing for the appellant and Mr.S.Rajakumar, learned Additional Public Prosecutor appearing for the respondent/State.

5. Mr. R. Chakkaravarthy, learned Legal Aid Counsel for the appellant contended that the evidence of the parents of the victim child



(P.W.2 and P.W.3) does not fit in with the case of the prosecution as the father of the victim (P.W.3) had deposed that the victim was unconscious on 12.11.2012 when she was rushed to the hospital and on the other hand, the Sub Inspector of Police (P.W.10), who registered the FIR had deposed that he recorded the compliant statement of the victim child in the hospital. It is his further contention that the appellant actually helped the parents of the victim by accompanying them to the hospital and therefore it is highly improbable that the appellant committed sexual assault on the victim child. He therefore, prayed for setting aside the conviction and sentence passed by the trial court.

6. Per contra, Mr.S.Raja Kumar, learned Additional Public Prosecutor would contend that the trial court had, after analysing the 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. It is seen from the evidence of the victim child that she was sexually



assaulted by the appellant on 12.11.2012. It was a penetrative sexual assault. The victim girl was just 9 years old on the date of occurrence and she sustained bleeding injuries in her private parts. Her parents P.W.2 and P.W.3, on noticing this, rushed her to the Government Hospital, Edapadi, from where she was referred to the Government Hospital, Salem. Dr. Aruna Rani (P.W.6) found bleeding injuries in the private parts of the victim child and had also performed an operation on her. P.W.1 though was examined two years after the incident, was able to narrate the sequence of events cogently. Her evidence fits in with her complaint statement in all material particulars. Nothing useful was suggested to P.W.1 during the course of cross examination to discredit or disbelieve her versions. Moreover, one of her friends P.W.4 also corroborated the versions of P.W.1 in all material particulars.

7.1. Dr. Aruna Rani in her certificate of examination for sexual offences (Ex.P5) had noted down that the victim child was conscious when she was admitted to the Government Hospital on 12.11.2012. In the circumstances, the evidence of P.W.3 that his daughter was unconscious at



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the time of admission in the hospital cannot be accepted. At the most the evidence of P.W.3 can only be said to be an exaggeration and nothing else.

The other evidence on record clearly shows that the victim child was sexually assaulted on 12.11.2012 by the appellant. P.W.1 though was aged 9 years at the time of occurrence had narrated the entire incident before the police and thereafter in the court. She had also withstood the testimony of cross examination.

7.2. The present case was registered prior to the enactment of Protection of Children from Sexual Offences (POCSO) Act. Therefore the appellant was charged for the offence punishable under Section 376(2)(f) IPC. The learned trial court judge had, in fact, analysed the entire evidence on record thread bare and there is no reason for this Court to interfere with the same. Accordingly the Criminal Appeal stands dismissed.

8. In the result,

i. This Criminal Appeal is dismissed.



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ii. The judgment and orders dated 14.05.2018 passed by the Sessions

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Judge, Mahila Court, Salem, in S.C.No.40 of 2014, is confirmed.

iii. This Court places on record its appreciation to Mr.R.Chakkaravarthy, learned Legal Aid counsel, for his valuable assistance in deciding this case. The High Court Legal Service Committee shall pay fees in accordance with rules.

01.07.2024

Index : yes/no
Speaking /Non speaking Order
bga

Copy to

The Secretary,
High Court Legal Services Committee,
High Court Campus, Chennai 104.

To

1. The Sessions Judge, Mahila Court, Salem

11/13



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2. The Inspector of Police
Poolampatty Police Station,
Edappadi Taluk,
Salem District.

3. The Section Officer, Criminal Section, High Court, Madras.



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R.HEMALATHA, J.

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