



Crl. Appeal No. 178 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 07.11.2023

Delivered On : 17.04.2024

Coram

**THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP**

Crl. Appeal No. 178 of 2017

Thangarasu

.. Appellant/Accused

Vs.

State represented by  
Inspector of Police,  
All Women Police Station,  
Velur,  
Namakkal District.  
(Crime No.6/2015)

.. Respondent/Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C to set aside the Judgment dated 07.03.2017 passed in Spl.C.C.No.35 of 2015 on the file of the learned Sessions Judge, Fast Track Mahila Court, Namakkal.

|                |    |                                 |
|----------------|----|---------------------------------|
| For Appellant  | .. | Mr.V.Regunathan                 |
| For Respondent | .. | Mr.S.Vinoth Kumar               |
|                |    | Government Advocate (Crl. Side) |



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### **JUDGMENT**

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The Appellant/Accused had preferred this Criminal Appeal as against the Judgment of conviction and sentence imposed on him by Judgment dated 07.03.2017 made in Spl.C.C.No.35 of 2015 on the file of the learned Sessions Judge, Fast Track Mahila Court, Namakkal.

2. The learned Counsel for the Appellant submitted that the Accused in this case is a relative of the victim through her father. The victim's father is employed as a lorry driver. The victim is examined as P.W-2. P.W-1 is the mother of the victim. The Accused is the neighbour also. The son of the Accused is studying along with the victim. Both are of the same age. As per the case of the prosecution, the Accused is alleged to have harassed the victim attracting the provision of Section 12 of the Protection of Children from Sexual Offences Act, 2012. The Accused in this case is a Deaf and Dumb. As per the Prosecution case, he is alleged to have offered the victim/P.W-2 Rs.10 in one instance, then Rs.40 and Rs.100 and invited her for sexual pleasure. This is the gist of the case of the Prosecution. The



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Prosecution had examined 15 witnesses. P.W-1 is the mother of the victim.

P.W-2 is the Victim, P.W-3 is the uncle of the victim, P.W-4 is the grandfather of the victim, P.W-5 is also a grandfather of the victim, P.W-6 is the adjacent land owner and neighbour of the victim, P.W-7 is the cousin of the victim, P.W-8 is the maternal aunt, P.W-9 is the grandmother of P.W-2, P.W-10 is the neighbour of P.W-2, P.W-11 is the Judicial Magistrate at Tiruchencode, P.W-12 is the neighbour of victim/P.W-2, P.W-13 is the Headmistress of the School where the victim/P.W-2 studied, P.W-14 is the Sub Inspector of Police who had registered the case. P.W-15 is the Investigation Officer. It is the submission of the learned Counsel for the Appellant that the complaint under Ex.P-1 was written by the maternal aunt of the victim she was not examined as a witness by the Investigation Officer or any statement was recorded from her. P.W-1 had only affixed her signature on the complaint. P.W-1 mother of the victim is a hearsay witness.

Invariably all the witnesses are the hearsay witnesses. All the witnesses are related to each other and interested witnesses. If what had been deposed by the victim P.W-2 had been proved, the place where the alleged offence had



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taken place is the village where the house of the victim is situate where there are more than 1000 families. Hearing the cries of the victim, the neighbours and relatives would have come to the rescue of the victim and attacked the Accused. No individual witness was available in the village and no such occurrence had taken place. It is a cooked up story to settle scores with the Accused. P.W-13 Headmistress of the School where the victim studied. The Certificate under Ex.P-6 issued by P.W-13 is only a study certificate and it is not a valid document. The Registers maintained by the School had not been produced before the trial Court. P.W-1 mentioned about one Ramayee to whom she had reported the alleged conduct of the Accused. The said Ramayee was examined as P.W-14 she had turned hostile. Therefore, the learned Counsel for the Appellant seeks to set aside the Judgment of conviction recorded by the learned Session Judge, Fast Track Mahila Court, Namakkal in Spl. S.C.No.35 of 2015.

3.Thiru.S.Vinoth Kumar, learned Government Advocate (Crl. Side) appearing for the Respondent vehemently objected to the submission of the

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learned Counsel appearing for the Appellant stating that the evidence of the child victim itself would be sufficient to convict the Accused as per the ruling of the Supreme Court in ***Ganesan vs. State represented by its Inspector of Police reported in (2020) 10 SC 573***. Further, the learned Government Advocate (Crl. Side) submitted that the victim was undergoing studies as a student of 8<sup>th</sup> standard when she was deposing evidence before the Court. The learned Government Advocate (Crl. Side) invited the attention of this Court to Section 164 of Cr.P.C. statement recorded by the learned Judicial Magistrate, Tiruchencode and the deposition of the child witness P.W-2 before the Court. From the evidence of P.W-2 nothing can be elicited or treated as false. Therefore, the learned Session Judge, Fast Track Mahila Court, Namakkal had properly appreciated the evidence and convicted the Accused for the offence under Section 12 of Protection of Children from Sexual Offences Act, 2012 for causing harassment to the child victim. Further, he had stated that as per the evidence of P.W-2 a neighbour whom the child witness identifies as Nagarajan is alleged to have seen the Accused stalking her wherever she goes and he had objected to his conduct by

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slapping him. This fact was stated by P.W-6 who is the crucial witness. He had in his deposition stated that he had slapped the Accused for his conduct and also complained to the wife of the Accused regarding the conduct of the Accused. Also, P.W-6 had reported the matter to the mother of the Victim – P.W-1. Therefore, the evidence of P.W-6 cannot be discarded. He is a reliable witness. Further, the learned Government Advocate (Crl. Side) submitted that at the stage of the appeal, the learned Counsel for the Appellant cannot claim that the Accused was prejudiced as he is deaf and dumb. The Accused had engaged a Counsel, put up defence, given instructions to the Counsel. The Accused had understood the Court proceedings and had offered his explanation to the proceedings under Section 313 Cr.P.C. The submission of the learned Counsel for the Appellant that the Appellant is a deaf and dumb he is prejudiced by the Judgment of the learned Session Judge, Fast Track Mahila Court, Namakkal, will not hold good.

***Point for consideration:***

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***Whether the Judgment dated 07.03.2017 passed in Spl.C.C.No.35 of 2015 by the learned Session Judge, Fast Track Mahila Court, Namakkal, convicting the Accused is to be set aside as perverse?***

4. Heard the learned Counsel for the Appellant, the learned Government Advocate (Crl. Side) for the Respondent/State.

5. On perusal of the deposition of the witness P.W-1 to P.W-15, Ex.P-1 to Ex.P.9 and the Judgment of the learned Sessions Judge, Fast Track Mahila Court, Namakkal, the evidence of P.W-2 is found cogent. P.W-1 is the mother of the victim. She had deposed clearly that P.W-2/her daughter used to report regularly regarding the conduct of the people around her towards her. Under those circumstances, the evidence of P.W-1 even though hearsay has to be given due weightage. Naturally, a child will confide to his/her mother. Naturally daughters will confide to their mothers. Here P.W-2 is the victim daughter/a minor girl. She complained about the conduct of the Accused to her mother/P.W-1. The evidence of P.W-2 as victim had clearly, cogently stated the facts attracting the provisions of Protection of Children from Sexual Offences Act, 2012 particularly Section 12. In the



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cross-examination, the victim as P.W-2 denied the suggestion of the defence stating that victim used to be with the house of the Accused in her childhood because of the affection, the Accused had offered her money and there was no evil intention on his part. The evidence of P.W-2 victim is corroborated by P.W-6 Nagarajan who claims to be a neighbour and adjacent land owner. Prior to the date of occurrence, he had seen the conduct of the Accused and had questioned him regarding the same. In one incident, he had slapped the Accused for moving on the land of P.W-6 stalking behind P.W-2 wherein suspicion arose in the mind of P.W-6 and so he objected the Accused that he is stalking her. Since the reply given by the Accused was not satisfied, he had slapped him. Also P.W-6 stated that he had complained to the wife of Accused and the mother of the victim/P.W-2 respectively. This fact had been stated by P.W-2 also. The fact that the corroborating witnesses are all the relatives of the victim is found justified particularly in the case of attracting sexual offences involving child. People will not volunteer to remain as witness, whoever was found in the village, whoever came forward to give statement and particularly the Investigation Officer had recorded the



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statement of the witness, all the witnesses claimed that they are hearsay witnesses.

6. Further, the statement under Section 164 of Cr.P.C., which is a mandatory Provision followed by the Investigation Officer in a case under Protection of Children from Sexual Offences Act, 2012 wherein the statement of the victim was recorded before the learned Judicial Magistrate in the course of investigation. The said statement under Section 164 of Cr.P.C., of the victim was marked as Ex.A-5 in this case which clearly states the plight of the victim that the Accused in this case has caused harassment on her. This fact was also clearly narrated by her in examination-in-chief before the trial Court. The offences attracted against the Accused is Section 12 of Protection of Children from Sexual Offences Act, 2012, i.e., harassment. Therefore, while registering the case in FIR in Cr.No.6 of 2015 on the file of the All Women Police Station, Paramathi Vellore, Namakkal District, the offences under Section 354 of IPC and Section 4 of Tamil Nadu Prohibition of Woman Harassment Act and Section 11 (vi) r/w. 12 of

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Protection of Children from Sexual Offences Act, 2012 were invoked. In the course of the evidence, it was found that the son of the Accused was a classmate of the victim, during her Primary School days. At the time of the incident, the victim was studying 7<sup>th</sup> Standard and at the time of deposing evidence, she was studying 8<sup>th</sup> Standard. She had naturally and cogently deposed regarding the conduct of the accused which scared her to run away from the Accused and complained immediately to her grandfather viz., Periyasamy. The grandfather was examined as P.W-5. On return of daily wage work, the victim had informed her mother. Her mother was also examined as P.W-1. A neighbour/P.W-6 viz., Nagaraj was also examined, he had clearly deposed that on an earlier occasion, he happened to observe that the Accused stalked the victim when the victim was taking her goats to agricultural land belonging to P.W-6. On suspicious conduct of the Accused stalking the victim, he had objected to which the Accused had replied. Not satisfied with the reply of the Accused, P.W-6 slapped him and also he reported the incident as a responsible citizen to the wife of the Accused and also to the mother of the victim. This fact was spoken to by P.W-2 in her

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examination-in-chief and also spoken to by P.W-1-mother of the victim.

7. From the evidence of the victim having inspired confidence of the trial Judge nothing is found to consider the evidence of P.W-2 as artificial or imaginary. The other witnesses in this case are hearsay witnesses. Also, as pointed out by the learned Counsel for the Appellant, all are related. P.W-5 was cross-examined by the learned Counsel for the defence that P.W-5 is related to the victim and questioned P.W-5 regarding the relationship of the Accused and he replied that the Accused is also related to him. The Accused and the victim's family are related to each other as stated by P.W-5. P.W-6 had also stated that all are related.

8. It is to be noted that the offence attracting sexual conduct or sexual misconduct, the Accused are very conscious of the people are not observing them. Therefore, there is no possibility of examining the independent witness as in a case of IPC offences regarding assault and murder. That is why, the Protection of Children from Sexual Offences Act, 2012 under



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Section 29 had imposed a duty on the trial Court to presume the evidence of the victim as true. The offences under Protection of Children from Sexual Offences Act, 2012 stand on a different footing from the offences under IPC. Here, the victims are innocent children and they are exploited for the pervert sexual conduct of the adults which creates in the minds of the children mental agony and fear affecting their personality as future citizens of this Country. Therefore, the Act was enacted by the Parliament based on the international treaty regarding the sexual abuse of minors and adults across the world. Therefore, the Parliament in its wisdom had imposed conditions on the trial Court considering the safety of the minors. Therefore, the submission of the learned Counsel for the Appellant that there was no independent witness in this case has to be rejected. The child had immediately reported to the elder person/P.W-5 who is related to the victim as a grandfather. From the evidence, he is either an uncle of her mother or uncle of her father and he is not a direct grandfather. He had consoled the victim stating that after her mother returns, they can do the needful. The mother/P.W-1 was agitated by the conduct of the Accused towards her

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daughter. Therefore, she went to the house of the Accused questioned him and alleged to have slapped him. As per the evidence of P.W-1, the relatives of the Accused had sought clarification from her as why she had not informed the conduct or misconduct of the Accused towards her daughter/victim, earlier.

9.The evidence of P.W-1/mother of the victim, P.W-2 –victim, P.W-3-uncle of the victim, P.W-4- maternal grandfather viz., Muthusamy. P.W-5 paternal uncle to the father of the victim whom she calls a grandfather, with whom she had immediately informed.

10. As pointed out by the learned Counsel for the Appellant, all the witnesses are related to each other. All the witnesses had deposed in their cross-examination that the Accused was also related to them. Except the victim, all others are hearsay witnesses. The fact that the victim informed the misconduct of the accused the elders with whom she has confidence is made out through the evidence of P.W-1 to P.W-6. Therefore, the

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ingredients of the offence were corroborated through the evidence of P.W-1 to P.W-6. The defence of the Accused that the Accused and the family of the victim are on inimical terms, will not hold good. As P.W-1, in her cross-examination stated that after slapping the Accused for his misconduct, they had been inimical. Still such time, they were on good terms. Therefore, the defence of the Appellant that only to settle scores with the Accused, the Accused had been foisted will not hold good.

11. The defence of the Appellant that the Accused is deaf and dumb was rejected by the witnesses claiming the Accused can speak not as a normal human being but not deaf and dumb. It is true that his speech is impaired. At the same time, he understood the Court proceedings, he had engaged a Counsel and he had instructed the Counsel, based on which the Counsel had cross-examined the witnesses. If the Accused was deaf and dumb as claimed by the Appellant, the defence ought to have objected to the trial at the earliest point of time. The fact that P.W-6, who is a neighbour of the Accused as well as the victim, had seen the Accused stalking the victim



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over the agricultural land belonging to P.W-6 and objected to the conduct of the Accused for which the Accused replied is found cogent as they are in regular interactions. Therefore, the Accused is not a stranger. The Accused is in the normal conduct with the neighbours and interacts. From the evidence of P.W-1 to P.W-15, it is found that P.W-11-learned Judicial Magistrate, Tiruchengode, who had recorded the statement of the victim under Section 164 of Cr.P.C., P.W-12-Thangamani is also a neighbour, P.W-13-Vasuki is the Head Master of the School through whom the School Certificate of the victim was marked which claims that the date of birth of the victim as 07.12.2002. P.W-14 is also a neighbour. She had turned hostile. P.W-15-Lalitha, Investigation officer in this case.

12. From the evidence of the witnesses, P.W-1, P.W-3 to P.W-6 had cogently supported the Prosecution case even though it is hearsay. Immediately, after the occurrence, P.W-1- the mother of the victim informed other witnesses as per their evidence. If the evidence of the hearsay witnesses is rejected still the evidence of P.W-2 has to be given due

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weightage as per Section 29 of the Protection of Children from Sexual Offences Act, 2012.

13. *Ganesan Vs. State represented by its Inspector of Police reported in (2020) 10 SC 573 and Phool Singh Vs. State of Madhya Pradesh reported in (2022) 2 SCC 74* also holds good in this case. Here, it was an attempt at sexual assault, he had invited her for sexual pleasure by attempting to influence her by offering money. Therefore, the defence of the Accused has to be rejected. Here, the victim was not sexually assaulted and the conduct or misconduct of the Accused attracts sexual harassment as per Section 12 of Protection of Children from Sexual Offences Act, 2012. Therefore, the minimum sentence is not stated, the maximum sentence has been stated as up to three years. The learned Sessions Judge on his wisdom had imposed a sentence of one year.

14. The learned Judge had acquitted the Accused for the offence under Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 1998



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and had found the Accused convicted for the offence under Section 354 of IPC and Section 12 of Protection of Children from Sexual Offences Act, 2012.

15. Section 354 of IPC is extracted hereunder:

*“354. Assault or criminal force to woman with intent to outrage her modesty*

*Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, (shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine).”*

16. As per Section 354 of IPC, the imprisonment shall not be less than one year but which may extend to five years. Here, the learned Sessions Judge, Fast Track Mahila Court had in his wisdom on appreciation of fact and circumstances of this case, had imposed minimum sentence of one year. For the same, offence under Section 354 of IPC, one year minimum sentence is imposed and under Section 12 of the Protection of Children from Sexual Offences Act, 2012 one year minimum sentence is imposed. It was not found to be unreasonable or warranting interference of this Court. The



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submission of the learned Government Advocate (Crl. Side) that the Accused understood the proceedings and answered the question of 313 of Cr.P.C., and he had responded to the question put to him at the framing of charges. The Court had observed the conduct. Therefore, nothing found perverse in the Judgment warranting interference of this Court as the Accused was prejudiced by not providing the assistance of his speech and speech Therapist or special Teacher from the School for deaf and dumb to interpret the proceedings to him is also rejected.

17. In the light of the above, the point for consideration is answered in favour of the Prosecution and against the Accused. The Judgment of conviction and sentence imposed on him by Judgment dated 07.03.2017 made in Spl.C.C.No.35 of 2015 on the file of the learned Sessions Judge, Fast Track Mahila Court, Namakkal is not perverse.

In the result, this ***Criminal Appeal is dismissed.*** The Judgment of conviction and sentence imposed on him by Judgment dated 07.03.2017



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made in Spl.C.C.No.35 of 2015 on the file of the learned Sessions Judge, Fast Track Mahila Court, Namakkal is confirmed. During the pendency of the appeal, since the learned Counsel for the Appellant did not co-operate with the Court, the Appellant/Accused was secured on orders of this Court dated 10.10.2023 to the learned Sessions Judge, Fast Track Mahila Court, Namakkal and he was detained in prison in continuation of the judgment of conviction and sentence of imprisonment imposed by the trial Court. Therefore, the period already undergone by the Accused in detention is to be given set off under Section 428 of Cr.P.C.

**17.04.2024**

srm/dh

Internet:Yes/No

Index:Yes/No

Speaking/Non-speaking order

**Note: Issue order copy on 24.10.2024**

**SATHI KUMAR SUKUMARA KURUP, J.,**

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srm/dh

**To**

- 1.The Sessions Judge,  
Fast Track Mahila Court,  
Namakkal.
- 2.The Additional Public Prosecutor,  
Madras High Court, Chennai.

**Judgment made in**  
**Crl.A.No.178 of 2017**

**17.04.2024**