



CrI.A.No.346 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Reserved on 10.10.2023

Delivered on 08.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA

KURUP

CrI.A.No.346 of 2017

Matheeswaran

...Appellant/Accused

-Vs-

State by
Inspector of Police,
All Women Police Station,
Kangayam in Cr.No.3/2015,
Tiruppur District.

...Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 372 of Criminal Procedure Code, 1973, to set aside the judgment of the learned Sessions Judge, Fast Track Mahila Court, Tiruppur, dated 23.02.2017 in Spl.S.C.No.23 of 2015 in erroneously convicted the Appellant under Section 5(k)(l)(n) r/w Section 6 of the Protection of Children from Sexual Offences Act, 2012, and sentencing him to undergo 10 years rigorous imprisonment and ordered him to pay a fine of Rs.5,000/- in default to undergo 6 months rigorous imprisonment.

For Appellant : Mr.P.Murali
for Mr.S.Venkatesh

For Respondent : Ms.G.V.Kasthuri
Additional Public Prosecutor

J U D G M E N T

The Appellant is the sole Accused in Spl.S.C.No.23 of 2015 dated



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23.02.2017 on the file of the learned Sessions Judge, Fast Track Mahila Court, Tiruppur.

2. The brief facts, which are essential to decide this Appeal, are as follows:-

2.1.The victim in this case is the daughter of the defacto Complainant. She is a mentally disabled child. The defacto Complainant/mother of the victim was employed in a Mill in Tiruppur. The Accused in this case is residing adjacent to the house of the victim, the victim was staying along with her mother, sisters and brothers. Except the victim, others in the family go out for their livelihood. Since the victim was a mentally disabled child, aged 15, the mother used to lock her inside the house. The Accused and the family of the Accused had been interacting with the family of the victim as neighbours. Taking advantage of the relationship as neighbours and as acquaintances, the Accused had picked up conversation with the victim and entered the house of the victim when her mother, sisters and brothers had gone out for their livelihood. On a particular day, the Accused is alleged to have entered the house of the victim when the family members were not inside the house and had removed her clothes. Also, the Accused is alleged to have removed his



clothes and thrust his penis in the genitals of the victim, since the victim

felt the pain, she cried. At the time, the Accused is alleged to have thrust

his lungi into her mouth, thereby preventing her from shouting and crying.

Also, after committing a crime, he threatened her not to disclose it to

anyone. Failing which, he will kill her. Apprehending threat to her life, she

did not disclose to anyone. The Accused is alleged to have repeatedly

committed the offence over a period from 15.05.2015 to 28.05.2015. On

28.05.2015, the mother of the victim came home in the afternoon as she

had to attend a reception in the evening. At that time, when she was

getting ready, the daughter/victim requested her not to leave her alone. She

felt scared and she wanted her mother be with her. On enquiry by the

mother of the victim, narrated the incidents to her mother stating that the

father of Parimalam, the victim refers to the Accused as the father of

Parimalam (Parimalam is the daughter of the Accused) had indulged in

such activities. Shocked by the narration of the victim, the mother of the

victim took her to the All Women Police Station, Kangeyam, Coimbatore

District and lodged a Complaint. The Sub Inspector of Police, All Women

Police Station had registered the case in Cr.No.3 of 2015 under Section 6 of

Protection of Children from Sexual Offences Act, 2012 r/w. 506 (i) of IPC

and sent the original Complaint and the original FIR to the Court of the



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learned Judicial Magistrate. Copies of the Complaint and the FIR were

forwarded to the higher Officials of the Police Department including the

Inspector of Police. On receipt of copy of the FIR, the Inspector of Police,

All Women Police Station proceeded to the house of the victim and

prepared the Rough Sketch and Observation Mahazar in the presence of

Witnesses. She forwarded the victim to the Government Hospital along

with Police Constable with a requisition letter to subject the victim to

medical examination regarding sexual assaults. Also, she had obtained the

School records from the School where the victim studied regarding her date

of birth and other particulars. The Inspector of Police had also forwarded a

letter to the learned Chief Judicial Magistrate to nominate a learned Judicial

Magistrate to record the statement of the victim and her mother under

Section 164 Cr.P.C. Also the Inspector of Police arrested the Accused and

forwarded him to medical examination regarding potency. He was

forwarded to medical examination with a requisition letter to the Medical

Officer along with Police Constable. Also, the victim was subjected to

medical examination regarding her mental age. The Doctor had issued

Ex.P-5 regarding mental age of the victim. Ex.P-5 was issued by P.W-8-

Dr.Saravanaprakash regarding mental disability. P.W-7-Dr.Saroja

examined the victim and issued Ex.P-4 regarding physical age of the victim



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as 17 to 19 based on Radiological Report. P.W-12-Dr.Vanikrithika had

examined the victim and issued Accident Register under Ex.P-10 to Ex.P-

12 claiming that the victim was subjected to sexual intercourse. The

Inspector of Police examined the Doctors who had issued a medical

certificate to the Accused and the victim and P.W-10-the learned Judicial

Magistrate who had recorded the statement of the victim and her mother

under Section 164 Cr.P.C., and the statements of the mother of the victim,

sister of the victim and the statement of the Mahazar Witness who stood as

witness for the Observation Mahazar under Ex.P-2 and Rough Sketch

under Ex.P-14. Also, the Inspector of Police examined the Head Master of

the School where the victim studied up to 8th Standard and subsequently

dropped out of the School regarding the age of the victim. P.W-6-

Dr.Periyasamy who had examined the Accused and issued potency

certificate under Ex.P-3. The relatives of the victim were also examined

and their statements were recorded. After completion of investigation, the

Inspector of Police laid the final report before the Fast Track Mahila Court.

The learned Sessions Judge, Fast Track Mahila Court had taken cognizance

of the offence and taken the final report on file as Spl.S.C.No.23 of 2015

and issued summons to the Accused. On appearance of the Accused,

copies were furnished under Section 207 Cr.P.C. After hearing the learned



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Public Prosecutor and the learned Counsel for the defence, the learned Sessions Judge, Fast Track Mahila Court had framed the charges under Section 5 (k) (l) (n) r/w. Section 6 of Protection of Children from Sexual Offences Act, 2012 and Section 506 (i) of IPC. The Accused denied the charges and claimed to be tried. Therefore, the learned Sessions Judge, Tiruppur ordered trial.

2.2. During trial, the Prosecution had examined 14 Witnesses viz., P.W-1 to P.W-14 and marked 14 documents under Ex.P-1 to Ex.P-14. After completion of Prosecution witnesses, the incriminating evidence appearing through the witnesses were put to the Accused when the Accused was examined under Section 313 Cr.P.C., the Accused denied the incriminating evidence appearing against him. The Accused had not examined any witness to rebut the evidence of the Prosecution. After hearing the learned Public Prosecutor and the learned Counsel for the defence, the learned Sessions Judge, Tiruppur had on assessment of evidence, convicted the Accused by the Judgment dated 23.02.2017. The Accused was convicted for the offence under Section 5 (k) (l) (n) r/w. Section 6 of Protection of Children from Sexual Offences Act, 2012 and the Accused was acquitted for the offence under Section 506 (i) of IPC. The



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Accused was sentenced to undergo 10 years of Rigorous Imprisonment with a fine of Rs.5,000/-, in default, to undergo 6 months of Rigorous Imprisonment.

2.3. The Trial Court, vide impugned judgment in Spl.S.C.No.23 of 2015 dated 23.02.2017, has convicted the Sole Appellant/Accused as follows:-

Conviction under section	Sentence Awarded
Section 5(k)(l)(n) r/w Section 6 of the Protection of Children from Sexual Offences Act, 2012	To undergo ten years of rigorous imprisonment and to pay a fine of Rs.5,000/- and in default, to undergo six months of rigorous imprisonment.

The Trial Court ordered the sentences to run concurrently and has also granted set-off under Section 428 Cr.P.C. for the period of incarceration undergone by the Accused during investigation/trial. The Accused is not found guilty for the offence under Section 506(i) of IPC and was acquitted under Section 235(1) of Cr.P.C.

3. The challenge in this Appeal is to the above said judgment of the learned Sessions Judge, Fast Track Mahila Court, Tiruppur.



4. Learned Counsel for the Appellant submits that the case of the prosecution was not regarding the age of the victim. The second point of attack by the learned Counsel for the Appellant is that the complaint is the belated complaint.

5. Learned Counsel for the Appellant invited the attention of this Court to the FIR registered in this case. It is stated in Col.No.3(a) that the occurrence was continuously from 15.05.2015 to 28.05.2015. In Col.No.3(b) stated that the complaint was received on 31.05.2015.

6. It is the submission of the learned Counsel for the Appellant that the prosecution had not explained the delay for lodging the complaint. Further, it is the case of the Appellant that the mother of the victim had borrowed money from the wife of the Accused. When the Accused and his wife demanded the money back, instead of settling the dues, they were threatened with the POCSO case. It is the further defence of the Accused that the mother of the victim has lodged similar complaints against many individuals in the village misusing the provisions of the Protection of Children from Sexual Offences Act, 2012.



WEB COPY 7. It is the further case of the Appellant that, as per the radiologist report under Ex.P3, the physical age of the victim was between 17 and 19. Whereas the psychologist who had issued report under Ex.P5 had stated that the mental age of the victim was 12 years and four months. It is not considered by the learned Sessions Judge while appreciating the evidence how they arrived at the age of 12 has to be stated in the evidence. The Doctor who had issued Ex.P6 had not stated clearly in his evidence that how he had arrived, the age of the victim as 12 years and four months.

8. Further, the learned Counsel for the Appellant invited the attention of this Court to the evidence of P.W.11 as Headmaster of the School, where the victim studied up to 7th Std. He had admitted in his cross-examination that many of the forms in the register had been left blank. In his cross-examination, he had stated that blanks will be filled up on the basis of the facts stated by the parents of the child concerned. Therefore, the evidence of P.W.11 regarding the age of the victim under Ex.P9 is also inadmissible and unacceptable. It creates doubt in the mind of an ordinary prudent man.



9. It is the submission of the learned Counsel for the Appellant that the prosecution had failed to prove that the victim was a minor or a child as per the provisions of the Protection of Children from Sexual Offences Act, 2012, to attract the provision of Section 29 of the Protection of Children from Sexual Offences Act, 2012. The learned Trial Judge had ignored the materials available through the evidence of the prosecution witnesses in the cross-examination and had mechanically convicted the Accused.

10. The learned Counsel for the Appellant invited the attention of this Court to the evidence of Doctor, who had examined the Accused regarding the health of the Accused as he is a heart patient. These facts were not considered by the learned Trial Judge while considering the judgment. The learned Trial Judge failed to appreciate the entire material available through the evidence of the prosecution witnesses as well as the documents relied on by the prosecution. Therefore, the learned Counsel for the Appellant seeks to set aside the judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Tiruppur, in Spl.S.C.No.23 of 2015 dated 23.02.2017.

11. Learned Additional Public Prosecutor vehemently objected to the



line of argument of the learned Counsel for the Appellant. The learned

Additional Public Prosecutor submitted that P.W.1 is the prosecutrix/victim. P.W.2 is her mother. P.W.3 and P.W.4 are sisters of victim, P.W.1. P.W.5 is the maternal uncle of P.W.1. P.W.6 is the Doctor, who issued Ex.P3-radiologist report of the victim, P.W.1. P.W.7 is the Doctor, who had examined the victim regarding the alleged offence. P.W.8 is the Doctor, who had examined the Accused and issued the potency certificate. P.W.9 is the Doctor, who had examined the victim and issued the mental age certificate. P.W.10 is the learned Judicial Magistrate, who had recorded the statement of the victim, P.W.1, under Section 164 of Cr.P.C. P.W.11 is the Headmaster of the School where the victim studied up to 7th Std, who had issued Transfer Certificate under Ex.P9.

12. Learned Additional Public Prosecutor further submitted as per the reported ruling of the Hon'ble Supreme Court in the case of ***Jaya Mala Vs. Home Secretary, Government of Jammu & Kashmir and Others*** reported in ***(1982) 2 SCC 538***, wherein the radiologist report has to be considered plus or minus two in the radiologist report regarding the age of the victim. Here, the victim was assessed by the Doctor and he finds that the victim was aged 12 years on the date of the alleged occurrence.



WEB COPY 13. Learned Additional Public Prosecutor invited the attention of this Court to the examination-in-chief of P.W.1, where she had clearly narrated the occurrence as stated by her in 164 statement before the learned Judicial Magistrate, which was recorded as Ex.P8. As per Section 29 of the Protection of Children from Sexual Offences Act, 2012, the Court is duty-bound to believe the version of the victim and presume that the occurrence had taken place.

14. Therefore, it is the submission of the learned Additional Public Prosecutor that the learned Sessions Judge, Fast Track Mahila Court, Tiruppur, had on proper appreciation of evidence convicted the Accused for the offence under Section 5(k)(l)(n) r/w Section 6 of the Protection of Children from Sexual Offences Act, 2012. This Appeal lacks merit and is to be dismissed.

Point for consideration:

Whether the judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Tiruppur, in Spl.S.C.No.23 of 2015 dated 23.02.2017 is to be set aside as perverse?

15. Heard the learned Counsel for the Appellant and the learned



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Additional Public Prosecutor for the State.

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16. Perused the judgment of the learned Sessions Judge, Fast Track Mahila Court, Tiruppur, in Spl.S.C.No.23 of 2015 dated 23.02.2017. Perused the depositions of prosecution witnesses, P.W.1 to P.W.14 and Exs.P1 to P14.

17. On perusal of the evidence of P.W.1, it is found that P.W.1, the victim, stated in her evidence that she is aged about 15 years and her date of birth is 08.03.2000. It is stated that on 15th June, she was not aware of the year when her parents had gone for work. When her sisters and brother had gone to School, she was alone at home, and at that time, the Accused, who is the neighbour and who is acquainted with the family of the victim, came to the house and forcibly removed the dress worn by the victim. He also removed his dress and indulged in sexual intercourse. Again, he came on the same day three times and indulged in the same occurrence. By 9.30 P.M., her mother had come to home, and she had informed her mother. She was cross-examined on behalf of the Accused. In the cross-examination, she was confronted by the learned Counsel for the Defence regarding the dates and the number of months in a year. She was unable to



answer those facts. The suggestion of the defence that, when her mother left for work, she used to close the house and lock the door from outside was denied by her. When her mother leaves for work, her elder brother was not allowed to enter the home was also denied by her. Whether the dress worn by her on the alleged date of occurrence was handed it over to the police she had stated that she had not handed over to the police. To the suggestion of the defence that, for the alleged conduct of the Accused, whether the victim had protested by injuring the Accused with her nails or biting him to drive him out she had answered that she had not done so. Whether she had raised alarm she had answered that she had not raised alarm.

18. From the deposition, it was found that the victim was accompanied by her mother. When the victim was cross-examined, the mother had intervened. Therefore, the learned Counsel for the Accused objected. The suggestion of the Defence that, on earlier occasion, the mother of the victim had given similar complaints against some other individuals for the same offence. She claimed ignorance. The specific defence of the Accused was to foist a case against the Accused. The



physical age of this prosecutrix was suppressed by showing her as mentally

retarded, and her mental age is 12 years, as though she is mentally retarded

and she has not at all attended School. Whereas the prosecution had

examined P.W.11, Headmaster of the School, through whom Ex.P9 was

marked to show that P.W.1 is a mentally challenged person covered under

Sarva Shiksha Abhiyan under the Central Government Scheme. Therefore,

the evidence of the Headmaster is to be considered. P.W.11, Headmaster of

the School, stated that the victim, P.W.1, had attended the school up to

VIII Std. and dropped out of the School at VIII Std. The date of birth

recorded in the school register was 08.03.2000. The Transfer Certificate

issued by P.W.11 for P.W.1 is under Ex.P9. She had left the School at the

stage of studying VIII Std. As per the Transfer Certificate under Ex.P9, she

was promoted. She had studied in the School under Ex.P9 for two years,

from 2011 to 2012 – VII Std. and 2012 to 2013 – VIII Std. As per the

evidence of P.W.1, she dropped out of the School when she studied in VIII

Std. As per the Transfer Certificate, she had been promoted, which shows

she is not mentally challenged or disabled. If the prosecution case is to be

accepted that the victim, P.W.1, was a mentally challenged person, the

certificate issued under the Rights of Persons with Disabilities Act, 2016,

to be obtained from the Competent Authority. In cases where mentally



challenged children are involved, the parents of such children have to

produce the child for medical examination under the duly constituted medical board regarding the disability. If it is a mental disability, the child is to be assessed by Professor of Psychiatry and along with two specialists regarding mental illness and the mental capabilities of the child by a duly constituted medical board, and a certificate to that effect under the Rights of Persons with Disabilities Act is to be issued. This is for the protection of the child to get medical treatment and other social benefits under the Government Social Beneficial Legislations, including maintenance from the Government. Such mentally challenged children are provided maintenance allowance by the Government, and card is issued to such child. On verification of documents, Exs.P1 to P14, such a card issued by the Competent Authority under the Rights of Persons with Disabilities Act is not marked as a valuable document among the documents relied on by the prosecution. The best document is one obtained from the appropriate Competent Authority.

19. The fact that P.W.1 had not attended School. But P.W.11 has been examined and states that she dropped out of class VIII. Further, it is seen that in the cross-examination of P.W.11, the Headmaster of the



School, he was also prosecuted for similar offences and was suspended from the School on the basis of a complaint lodged by the parents of the people with the All Women Police Station. Therefore, using that same, the Headmaster was summoned to depose evidence against the Accused herein by furnishing documents as though P.W.1 is a student under the beneficial of the Sarva Shiksha Abhiyan Scheme, where facts are not so. Further, in support of such a case, P.W.9, who had examined P.W.1, and issued document under Ex.P6. As per the Doctor's evidence, P.W.9 was produced before him on 13.07.2015, to assess her mental capability. As per his assessment, she has IQ 68 to 70. Therefore, he had given certificate under Ex.P6, wherein he had stated that she is mentally aged 12 years and 4 months. In the cross-examination, he had stated that P.W.1 had cooperated in the examination. Also, he had admitted that ordinary prudent man is assessed to have IQ range from 80 to 90.

20. P.W.2 is the mother of the victim. As per her evidence, her eldest son is aged 23 years, the second is a daughter aged 20 years, the third is also a daughter aged 18 years, and the fourth is the daughter victim, who is aged 15 years. The fifth child is the son, aged 12 years. She claims that the date of birth of the victim/prosecutrix, P.W.1, is 08.03.2000. As per her



evidence, the prosecutrix is a mentally challenged person. She used to go for work and her children also attended School. The eldest daughter was married and living separately. As per the evidence of P.W.2, on the alleged date of occurrence, she had returned home early by 2.30 noon instead of 9.30 p.m. in the evening. She returned early to attend the ear-piercing ceremony for the child of a relative. At that time, the victim, P.W.1, identified the Accused as the father of Parimala. The father of Parimala, the Accused herein, is alleged to have misbehaved with her. Unable to find out what she was referring. She further probed. On such probing question, P.W.1 is alleged to have narrated the entire incident. Also, she is alleged to have informed P.W.2, her mother, that on the same day, he had sexual intercourse with P.W.1, two or three times, and she is also alleged to have threatened that if she disclosed anything outside, her mother will be killed. Therefore, she had lodged the complaint under Ex.P1.

21. In the cross-examination of P.W.2, she had sent her child to the special School for the mentally challenged. She had attended the School from II Std. to VIII Std. In the cross-examination, she admitted that the wife of the Accused and P.W.2, mother of the victim, had been colleagues working in the same baniyan factory. Therefore, she denied the suggestion



of the defence that she preferred similar complaint against one Ramesh and

another neighbour. The suggestion of the learned Counsel for the Defence

that the wife of the Accused had lent money of Rs.4,000/- to P.W.2, which

was later demanded by them, and she refused, for which this complaint has

been foisted against the husband of her colleague, the Accused herein, was

also denied by her. She admits that when she left for work, she used to

close the door and lock it. She had admitted in her cross-examination that

P.W.1, the victim, had not skipped her periods. She had denied the

suggestion that no such occurrence as was complained to by P.W.1 and

P.W.2 had occurred. On the alleged date of occurrence, the daughter of

Accused, Parimala, was in the house of the Accused, which was also

admitted by her. In the earlier part of the cross-examination, she stated that

the house is locked from the outside. In the later part of the cross-

examination, the mother of the victim, P.W.2, states that she herself had

asked the Doctor not to lock it as she was suffering from illness. The said

deposition is found to be contradictory. If P.W.1 is to be accepted as

mentally challenged, somebody has to take care of such a child. If the

evidence of P.W.2 that she locked her daughter in her house is to be

believed, then there is no chance for the neighbour to trespass into the

house of P.W.2 or P.W.1. P.W.2 stated in her evidence that the age of the



victim on the alleged date of occurrence is 15 and gives the date of birth,

but she is unable to give the document regarding the date of birth. If her

child was admitted in the School, that should have been produced before

the Court, but the entries to the same had been left blank as per the

evidence of P.W.11, Headmaster of the School, regarding the register, in

which many of the particulars are left blank. As per his evidence, the

blanks will be filled up at the appropriate time after getting relevant facts

from the parents of the child concerned. The evidence of P.W.11 itself was

found unacceptable since he himself is facing a similar POCSO case as per

his submission in the cross-examination. Therefore, his service had been

exploited on the coercion to meet out the foisted case. If the evidence of

P.W.2, the mother of the victim, is to be believed, she should have relevant

disability card issued under the Rights of Persons with Disabilities Act,

which will be issued only after assessment by a duly constituted expert

committee medical board consisting of experts in the fields. If it is

disability of the hands or limbs, Orthopedic surgery; if it is disability

regarding sight by a team of Doctors, who are Ophthalmology; if it is

disability regarding speech and hearing by the ENT Specialists and

Psychologist and Psychiatrist; if it is mental disability, it should be by a

duly constituted medical team of Psychiatrists and Neurosurgeon such a



card had not been marked during the trial. Therefore, the evidence of

P.W.9, the Psychologist of the Government Head Quarters Hospital, is found unacceptable considering the fact that the victim was aged 17 to 19, as per the Radiologist report under Ex.P3 by Doctor P.W.7.

22. As per FIR under Ex.P13, the alleged occurrence is stated to have been taken place between 15.05.2015 and 28.05.2015. The complaint was registered on 31.05.2015. Reasons for the delay in col no.8, it is stated that the Complainant had discussed it with her relatives. Therefore, the delay. Therefore, the defence of the Accused, that the case was foisted with ulterior motive to settle scores with him belatedly, is found more probable. P.W.6, Doctor, had examined the Accused and issued Ex.P3, wherein he had stated that the Accused is potent. In the cross-examination of P.W.6, he admitted that the Accused had informed him that he was consuming medicine related to heart disease. The suggestion of the defence that person suffering from heart ailment cannot indulges in sexual offence. P.W.6 had given evasive answer, stating that person suffering from high blood pressure need not be a heart patient, and all heart patients need not suffer from high blood pressure. If the evidence of P.W.6 is to be accepted, the Accused had informed him of taking medicine for heart ailment. If the



person suffering from heart ailment indulges in sexual intercourse, the

heart has to pump blood while exerting pressure, and their pulse will be

high. Under such circumstances, there is likelihood of person suffering

heart attack. The same was not considered by the learned Trial Judge in

convicting the Accused. From the available materials, under the evidence of

P.W.1 to P.W.14 and Exs.P1 to P14, there are about four Doctors

examined in this case. P.W.6 is the Doctor, who had issued potency

certificate under Ex.P3. P.W.7 is the Doctor, who had issued Ex.P4,

wherein the physical age of the victim is stated to be 17 to 19. Whereas,

P.W.11 is the Headmaster of the School, where the victim studied and

dropped out of the School at the VIII Std. had furnished Transfer

Certificate, wherein the date of birth of the child is recorded as 08.03.2000.

When the Headmaster of the School was cross-examined, he had stated

that many of the columns in the register maintained by the School had been

left blank. It was filled up on the request of P.W.2 for this case and it was

signed by P.W.1 and P.W.2. Therefore, the evidence of P.W.11 and Ex.P9

is found suspicious in the light of the specific evidence that the victim was

promoted from VII to VIII Std, it indicating she is normal student in the

absence of Competent certificate from the Competent medical board as per

the Rights of Persons with Disabilities Act. The evidence of P.W.9, who



had issued Ex.P5, is found suspicious only to fix the Accused. The said

documents had been created to attract the POCSO offence. The learned

Trial Judge failed to appreciate the materials available through the cross-examination of the said witnesses in the light of evidence of P.W.1 and the

recording of 164 statements under Ex.P8 by P.W.10 cannot be accepted as

bona fide truth. P.W.11, Headmaster of the School, had stated that he had

issued Ex.P9 on instruction from his higher authority without verifying the

relevant records where the student/victim studied from I to VI Std.

Therefore, the evidence of P.W.11 and the document under Ex.P9 were

also found to have been created for the purpose to invoke the POCSO Act

in the light of those facts. The statement recorded by the learned Judicial

Magistrate, P.W.10, under 164 Cr.P.C. under Ex.P8 is also found to have

been recorded based on tutoring P.W.1 by P.W.2. The evidence of P.W.2 is

found contradictory. At one stage, she says that her daughter is mentally

challenged. Later on, on the same evidence, she states that her daughter

was left alone at home daily, and she herself was asked to close the door

from inside. The daughter had not attended School was the first version.

Subsequently, she stated that the daughter was admitted to School and she

attended School up to VII Std. Whereas in Ex.P9, the certificate issued by

P.W.11 claims that she was promoted from VII to VIII Std. The same



Headmaster, P.W.11, states that she had not verified the relevant records

regarding the date of birth of the victim, where she was studied earlier from

I to VI Std. He had clearly stated that in the register maintained by the

School regarding this child, many of the columns were left blank. To the

pointed question, he says that at the relevant point of time, facts are filled

up based on the facts stated by the parents of the child. Therefore, the

evidence itself is found unacceptable considering the fact that P.W.11 was

exploited by the prosecution, as he is facing similar POCSO case on the

basis of a complaint registered by All Women Police Station and he is

under suspension. P.W.8, Doctor had in his evidence stated that P.W.1 had

with her the relevant card under the Rights of Persons with Disabilities Act.

He had forwarded her to be examined by a Psychologist. He had issued

Ex.P5, in which it is stated history of seizure but it does not mention about

mental disability or IQ in the light of the specific evidence by P.W.8 that, at

the time of examination, she had produced the disability card issued under

the Rights of Persons with Disabilities Act. This card was not at all marked

before the Trial Court by the prosecution. Therefore, the Court has to

drawn adverse inference regarding the suppression of the disability card

issued to P.W.1 by the Competent Authority, the duly constituted medical

board and instead marking a document issued by P.W.9, giving out the age



of the victim as 12 years. As per his own evidence in cross-examination, the evidence of P.W.9 a normal average individual has IQ between 80 to 90, whereas P.W.1 had between 68 to 70, is found unacceptable in the light of the suppression of the original card issued by Competent Authority duly constituted medical board as per the evidence of P.W.8.

23. P.W.12 is the doctor, who had examined the victim and issued report under Exs.P10 and P11. As per her evidence before the Court, she had stated that on examination of the victim, she had found no injuries on the genitals of the victim and she had her periods normally. The admission register was marked as Ex.P10, it was marked with objection by the defence. The examination report was marked as Ex.P11. In the light of contradictions available through the materials before the Trial Court, the case of the prosecution that the Accused caused sexual abuse on the victim is found not attracting the charges framed by the Trial Court. The victim is not a child, as per the POCSO Act. The victim is aged between 17 and 19. The prosecution had created documents to foist the case against the Accused. P.W.11 is a person who had been suspended on a similar charge of POCSO offence and he had issued Ex.P9. In his cross-examination, he had stated that he had not verified the documents of the earlier School



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where the child studied from I to VI Std. Under those circumstances, the filling up of the column regarding the date of birth as given by the mother of the victim is found to have been created for the purpose of the case. Therefore, the benefit of reasonable doubt created in the prosecution case is extended to the Accused. Also, in the light of the admission in the cross-examination by the Doctor, who had examined the Accused and issued Ex.P3, potency certificate that the Accused is a heart patient. He had informed the Doctor, who had examined him, that he was taking medicine for heart problem. Under those circumstances, the prosecution case is to be found unbelievable. Therefore, the benefit of doubt is extended to the Accused in the light of the materials available before the Trial Court. The Accused is acquitted of the charges framed by the Trial Court.

24. The point for consideration is answered in favour of the Appellant/Accused and against the prosecution. The judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Tiruppur, in Spl.S.C.No.23 of 2015 dated 23.02.2017 is to be set aside as perverse.

Accordingly, this Criminal Appeal stands allowed. The judgment



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of the learned Sessions Judge, Fast Track Mahila Court, Tiruppur, in
Spl.S.C.No.23 of 2015 dated 23.02.2017 is hereby set aside. The Accused
is acquitted of the charges under Section 5(k)(l)(n) r/w Section 6 of the
Protection of Children from Sexual Offences Act, 2012.

The bail bond executed by the Appellant/Accused is ordered to be
cancelled. The fine amount already deposited before the learned Sessions
Judge, Fast Track Mahila Court, Tiruppur, if any, is also ordered to be
refunded to the Appellant.

08.03.2024

cda
Speaking/Non-speaking order
Neutral Citation : Yes/No

SATHI KUMAR SUKUMARA KURUP, J.,

cda



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To
WEB COPY

- 1.The Sessions Judge,
Fast Track Mahila Court, Tiruppur.
- 2.The Inspector of Police,
All Women Police Station,
Kangayam in Cr.No.3/2015,
Tiruppur District.
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Section Officer,
VR Records, High Court, Madras.

**Judgment made in
Crl.A.No.346 of 2017**

08.03.2024