



Crl.M.P.No.16712 of 2023 in Crl.A.No.1142 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.12.2023
PRONOUNCED ON : 20.02.2024

CORAM:

THE HON'BLE MR.JUSTICE M. NIRMAL KUMAR

Crl.M.P.No.16712 of 2023
in Crl.A.No.1142 of 2023

Santhosh Premkumar,
S/o.Late Paulraj Kumar.

... Petitioner

Vs.

State rep. by,
Inspector of Police,
W-16, All Women Police Station,
Pulianthope, Chennai.
(Crime No.06 of 2020)

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 489(1) of Cr.P.C., to suspend the sentence of conviction and imprisonment dated 03.10.2023 imposed by Special Court for Exclusive Trial of Cases under POCSO Act, Chennai in Spl.S.C.No.23 of 2021 and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

For Petitioner : Mr.B.Kumar, Senior Counsel for
Mr.S.Conscious Ilango

For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor

ORDER



The petitioner/accused in Special S.C.No.23 of 2021 was convicted by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai on 03.10.2023 and sentenced to undergo twenty years Rigorous Imprisonment and to pay a fine of Rs.25,000/-, in default to undergo three months for Simple Imprisonment for offence under Section 6 of The Protection of Children from Sexual Offence Act, 2012 (In short 'Act, 2012'). Similarly, the petitioner was also convicted for offence under Section 75 of the Juvenile Justice Act, 2015 and sentenced to undergo three years imprisonment. Challenging the same, the present criminal appeal and suspension of sentence filed by the petitioner.

2.The case of the prosecution is that PW1 is the grandmother of the victim girl (PW2) and the petitioner is the father of the victim girl (PW2). On 05.03.2020, the defacto complainant's (PW1) daughter died in Hyderabad, after the death ceremony, the defacto complainant's grandchildren (PW2 and PW4) were staying with them in Chennai along with the petitioner, her son-in-law. The petitioner with PW2 and PW4 were sleeping in the bedroom at first floor. The petitioner used to send his son (PW4) downstairs to get coffee at late hours. In the meanwhile, the



petitioner used to put his fingers on the vagina of the victim girl (PW2) and also insert his little finger into the vagina and rub inside the vagina and caused injuries. The victim girl (PW2) though resisted, she was beaten by the petitioner and forced her not to disclose the fact to anyone. During this period, on some days, PW4 was given mobile phone activating some plays and stories and he was engrossed in the stories turning to the other side. During such time also, the petitioner indulged in such acts. On 04.06.2020, the victim girl (PW2) complained to her grandmother (PW1) that she was feeling irritation and pain in her private part and also facing difficulty to urinate. The victim girl (PW2) was taken to Doctor (PW3). PW3 examined the victim girl (PW2), found reddishness on her private part. When she enquired the victim girl, she narrated the sexual assault committed by the petitioner. Thereafter, the Doctor (PW3) sent email (Ex.P12) to the Deputy Commissioner of Police which was forwarded to the respondent Police. PW8, the Investigating Officer registered an FIR (Ex.P13) in Crime No.6 of 2020, examined the victim girl, her grandmother (PW1), Doctor PW3 and the other child (PW4), in presence of witnesses prepared Observation Mahazar (Ex.P14), Rough Sketch (Ex.P15), arrested the accused on 05.06.2020 and produced the petitioner for medical examination. Thereafter,



the victim girl produced before the Government Doctor (PW7) who examined the victim girl and gave medical reports (Exs.P8 to P11). On completion of investigation, PW8 filed charge sheet before the trial Court.

3.During trial, on the side of the prosecution, eight witnesses examined as PW1 to PW8 and fifteen documents marked as Exs.P1 to P15 and one material object marked as MO1. On the side of the defence, eight witnesses examined as DW1 to DW8 and ten documents marked as Exs.D1 to D10. During cross examination of witnesses, the trial Court marked four documents as Exs.X1 to X4. On conclusion of trial, the trial Court convicted the petitioner as stated above.

4.The submissions of the learned Senior Counsel appearing for the petitioner is as follows:

(i)The learned Senior Counsel submitted that the marriage between the petitioner and the defacto complainant's daughter Sharmila Santhosh held in the year 2009. The victim girl (PW2) born on 26.11.2013. From the year 2010, the petitioner was staying along with his wife and children in



Hyderabad and was looking after his father's business. The petitioner is a well placed business man. They had two children, viz., PW2 and PW4.

When his wife got pregnant for third occasion, they decided to abort the same, hence, she was taken to the Doctor at Hyderabad for treatment on 03.03.2020. During the treatment, the petitioner's wife was not feeling well and the same was informed to her mother (PW1). PW1, her husband/petitioner's father-in-law had gone to Hyderabad in the next flight. On 05.03.2020, the petitioner's wife died. Thereafter, PW1 and his husband insisted that the petitioner's wife to be taken to Chennai for burial. The petitioner insisted that his wife's body to be kept in his house at Hyderabad for a day. After a day in Hyderabad, the body of the petitioner's wife was taken to Chennai by hearse van. PW1, PW2 and PW4 came back to Chennai by flight and the petitioner came in his car to Chennai on 05.03.2020. On 07.03.2020, burial done. Thereafter, the petitioner, his children (PW2 & PW4) were staying in PW1's house in Chennai. At that time, it is projected petitioner indulged in penetrative sexual assault by inserting his finger on the private parts of the victim girl (PW2). After some period of stay, before the lockdown, the petitioner for his business left to Hyderabad leaving behind his children (PW2 and PW4) with PW1. Months thereafter, on



04.06.2020, complaint (Ex.P4) lodged as though PW2 complained pain in her private part and during urination and the petitioner is the reason for the same. On 04.06.2023, the Doctor (PW3) sent report (Ex.P12) to the Deputy Commissioner of Police through her private email that the victim girl (PW2) was abused sexually. PW3 in her evidence confirms that the entire story was narrated to her by PW1. Further, PW3 recorded in her report (Ex.P12) that the victim girl (PW2) was sexually abused. Except for stating about the pain during urination, there is nothing in the report, but PW3 in her evidence gives an exaggeration version about the victim girl's sexual assault. During cross examination, she admits mentioning of reddishness in the private part of the victim girl, not in the report (Ex.P12). Further, she confirms that such reddishness may occur due to infection. Added to it, she admits there is no injury or no age of any injury recorded in the report (Ex.P12). She further confirms that the reddishness can last only for three days. The admitted case of the prosecution is that it is almost 1 ½ months prior to the complaint i.e., on 04.06.2023, the petitioner had gone to Hyderabad and he was staying there.

(ii) The learned Senior Counsel further submitted that PW7 is the



Doctor attached to the Government Maternity Hospital, Egmore, before whom, the victim girl was produced on 05.06.2020. She also confirms that it was PW1 who narrated the events. PW7 gave report that no mark or injury or any reddishness found on the private part as well on any part of the body of the victim girl. From PW7's reports (Exs.P8 to P11) nothing found against the petitioner except hymen found not intact. PW7 admits that in the event of cycling, exercise and attending Karate classes, hymen may not be intact. PW2 and PW4 admit that the victim girl (PW2) was regularly attending Karate class and was cycling bicycle. Thus, the medical evidence does not support the case of the prosecution.

(iii) In this case, PW1 gave an exaggerated version that a month after the petitioner left to Hyderabad, the victim girl (PW2) complained about the pain in her private part and during urination. This is proved false on the evidence of the Doctors (PW3 and PW7) and their medical records (Exs.P3, P8 to P12). PW1 admits that she and her family members caused some doubt on the death of her daughter i.e., wife of the petitioner and for which, she gave complaint to Hyderabad Police as well as to the Commissioner of



Police, Chennai and to the local Police in Chennai. The body of PW1's daughter was exhumated and postmortem conducted which confirms that the petitioner's wife Sharmila Santhosh died due to the effect of septicemic shock due to incomplete abortion. DW6, the Doctor attached to the Metro Cure Hospital, Hyderabad confirms the reason and cause for the petitioner's wife death. The family members of petitioner's wife were apprehensive doubting the petitioner is the reason for the death of PW1's daughter and developed some animosity against him.

(iv) The learned Senior Counsel further submitted that PW1 wanted to retain her grandchildren (PW2 & PW4) with her, for which, she poisoned the mind of her grandchildren (PW2 and PW4) during their stay with her stating that it is the petitioner, who is the reason for death of their mother. PW2 and PW4 were tutored and they have been exploited to make allegation against the petitioner. PW1 gave exaggerated version with contradictions which is admitted by the Investigating Officer (PW8). Further, PW1 admits that in her house, CCTV cameras installed in ground floor and first floor, but no CCTV recordings handed over to the Investigating Officer (PW8) which could have proved that the stories propounded by the prosecution as false.



PW8 admits that she had not looked into the CCTV recordings, but merely gone by the statements of PW1 that CCTV recordings have been erased.

PW8 admits that by forensic analysis, erased recordings of CCTV footage can be retrieved. Thus, the evidence of PW1 is unbelievable.

(v) In this background, the learned Senior Counsel submitted that PW2 and PW4 were under tutelage at the hands of their grandmother (PW1). From the evidence of PW2 and PW4, it is seen that the witnesses were focused with regard to the doubt about her mother's death. PW2's evidence does not corroborate with the medical evidence and that of PW4. PW4 gives an exaggerated version contrary to the evidence of PW2. Both PW2 and PW4 were under tutelage of PW1 and thereby, falsely implicated the petitioner. The trial Court disbelieved the evidence of PW4, the same analogy applies to the evidence of PW2.

(vi) The learned counsel further submitted that by way of cross examination, the contradictions elicited and confirmed by the Investigating Officer (PW8), but the trial Court had merely gone on the evidence of the victim girl (PW2) failing to look into the attendant circumstances, possibility



of false implication of the petitioner for the purpose of custody of grandchildren for PW1 and the demand of settlement of property to them. In this case, the petitioner examined himself as DW7 and marked exhibits to probablize his defence and to prove his innocence stating that how normal fight in the family and trivial issues had been blown out of preposition and a false complain lodged against him.

(vii)He further submitted that after petitioner had gone to Hyderabad, he was continuously talking terms with PW2 and PW4 and the telephonic conversation (Exs.D10 series) shows that they had normal and cordial relationship. Had there been any sexual assault or penetrative sexual assault by the petitioner, the conversation could have been otherwise not as per Ex.D10 series. The trial Court completely ignored and not considered the defence evidence and materials. Assailing the above points, the learned Senior Counsel prays for suspension of sentence and bail.

5.The learned Additional Public Prosecutor appearing for the respondent Police submitted that in this case, PW1 is the grandmother of the



victim girl (PW2) and PW4. PW1's daughter and the petitioner got married in the year 2009 and settled in Hyderabad. PW1's daughter i.e., the petitioner's wife Sharmila Santhosh died on 05.03.2020 under suspicious circumstance. After the death, the petitioner along with PW2 and PW4 were staying with PW1 in Chennai with PW1. At that time, the petitioner forced, insisted that PW2 and PW4 to sleep with him and committed penetrative sexual assault on the victim girl (PW2). After petitioner had gone to Hyderabad, the victim girl was suffering from pain in her private part and during urination. The victim girl (PW2) complained to her grandmother (PW1), who took her to the Doctor (PW3). PW3 examined and found that the victim girl was sexually assaulted by her father. PW3 informed through email to the Deputy Commissioner of Police who alerted the respondent Police. On receipt of the complaint, the respondent Police immediately registered FIR (Ex.P13), visited the scene of occurrence, recorded the statement of witnesses, prepared Observation Mahazar (Ex.P14), Rough Sketch (Ex.P15), arrested the petitioner and produced the victim girl and the petitioner for medical examination. The Doctor (PW6) examined the petitioner and the Doctors (PW3 & PW7) examined the victim girl and they gave medical reports (Exs.P3, P8 to P11). From the medical report, it is



seen that the hymen of the victim girl found not intact which confirms that she was abused sexually. PW2 gave statement under Section 164 Cr.P.C., (Ex.P5) confirming penetrative sexual assault committing by the petitioner. During examination in the trial Court, the evidence, PW1, PW2 and PW4 clearly deposed about the sexual assault committed by the petitioner and their evidence corroborated with each other. Though the petitioner examined eight defence witnesses including himself as DW7, the evidence of PW2 is cogent, believable and trustworthy. Hence, the trial Court convicted the petitioner as stated above.

6.This Court has carefully considered the rival submissions and perused the materials available on record.

7.It is seen that PW1 is the grandmother of the victim girl who lodged a complaint (Ex.P4) on 04.06.2020 stating that her daughter Sharmila Santhosh passed away on 05.03.2020 and her body was brought from Hyderabad for burial in Chennai on 07.06.2020 and last rites performed in Chennai. After the burial, the petitioner, who is her estranged son-in-law, PW2 and PW4 her grandchildren all staying in Chennai. During their stay,



the petitioner forced the victim girl to sleep with him and he somehow sent away PW4 to get coffee from PW1 who was in ground floor. In the meanwhile, the petitioner indulged in sexual assault and penetrative sexual assault by inserting his fingers into the vagina of the victim girl (PW2). The petitioner had gone to Hyderabad to continue with his business one and half months before the date of the complaint. On 04.06.2020, the victim girl is said to have complained to PW1 about pain in her private part and during urination. PW1 took the victim girl to the Doctor (PW3). From Ex.P3, it is seen that the pain has been felt in vulva area and the victim girl's mother died three months before due to heart attack and the victim girl was accompanied by PW1 her grandmother who gave these information, PW3 not conducted detailed examination. PW3 admits that she sent email to the Deputy Commissioner of Police (Ex.P12) from her personal email. She also admits that the victim girl was examined in Dr.Mehta's Hospital and the hospital has got a specific mail ID, but no complaint from the hospital made, no accident register recorded despite it is a medical legal case. Added to it, PW3's evidence is contrary to Ex.P12. In her cross examination, PW3 admits that the reddishness might be due to infection and during clinical examination, no injury found, no mark or any injury would be found two



weeks after sustaining such injury. As regards, the reddishness it will be available for three days only, which is further fortified from the evidence of the Doctor (PW7) who examined the victim on 05.06.2020 and issued medical reports (Exs.P8 to P11).

8.PW7 admits that the reddishness of the injury would be there only for a day. She states that there is no other injury in any parts of the body of the victim girl causes serious doubt the case propounded by the prosecution. The victim girl subjected to sexual and physical abuse in Hyderabad and Chennai is not in conformity to the medical evidence and reports. Except hymen found not intact, there is no nothing medically against the petitioner. The hymen not intact might be for various reasons that too it is not in dispute. The victim girl attending Karate class and cycling bicycle admitted by PW2 and PW4 and effect of its, is clearly spoken to by the Doctor (PW7). It is seen CCTV recordings was very much available in the house of PW1, but the same not produced and the reason given by PW1 and PW8 not acceptable.

9.Now, with regard to the motive of the petitioner being falsely implicated, the petitioner cross examined PW1 in detail. PW1 admits that



the petitioner's wife Sharmila Santhosh death was doubtful, PW1 and her husband lodged complaints with Hyderabad Police and with the Commissioner of Police, Chennai. Thereafter, a case in Crime No.589 of 2020 under Section 174 Cr.P.C., registered for the suspicious death of her daughter. Added to it, PW1 approached this Court and obtained an order for exhumation and thereafter, the buried body of her daughter was exhumated and postmortem conducted. The petitioner was looked with suspicion and was doubted to be reason and cause for her daughter's death. PW8, the Investigating Officer admits that she was part of the earlier investigation. The Doctor (DW6) from Metro Cure Hospital clearly stated that the death was due to septicemia and not as suspected by PW1 and her family. Thus, the petitioner is not the cause of his wife's death, but for some reason the family members of PW1 were making allegation against him for the untimely death of the petitioner's wife and daughter of PW1.

10.In this case, PW2 and PW4, the victim girl and her brother had cultivated doubt about their mother's death that the petitioner might be the reason as informed to them by their grandparents, which could be seen from their statements. PW2 and PW4 are minors who are under the care of



maternal grandparents, hence, the chances of tutelage are very possible. The trial Court finding is that the evidence of PW4 is not reliable on the attendant circumstances, the same analogy not applied in considering the evidence of PW2.

11. In view of the above, the evidence of PW1, PW2 and PW4 are with contradictions on the vital aspects of the case, which is confirmed by PW8/Investigating Officer. Hence, the evidence of PW1 and PW2 becomes doubtful. Added to it, the medical evidence is staring against the evidence of PW1 and PW2. The petitioner examined defence witnesses including examined himself as DW7 and marked exhibits to probablize his case and to prove his innocence which not considered by the trial Court. Hence, the entire evidence of the case to be reconsidered and reappreciated.

12. Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the appeal and the petitioner is ordered to be enlarged on bail, on condition that he shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties each for a likesum to the satisfaction of the trial Court.



CrI.M.P.No.16712 of 2023 in CrI.A.No.1142 of 2023

WEB COPY

13.Further, the petitioner shall appear before the trial Court on the first working day of English calendar once in three month at 10.30 a.m., till the disposal of the main appeal and if he is not able to appear before the trial Court on that day, he shall make arrangements to file an application under Section 317 Cr.P.C., and shall appear before the trial Court on any other day in lieu of the date of his absence as directed by the trial Court.

14.Accordingly, this Criminal Miscellaneous Petition is ordered.

20.02.2024

vv2

To

- 1.The Special Court for Exclusive Trial of Cases under POCSO Act,
Chennai.
- 2.The Inspector of Police,
W-16, All Women Police Station,
Pulianthope, Chennai.
- 3.The Superintendent,
Central Prison, Puzhal.
- 4.The Public Prosecutor,
High Court, Madras.



WEB COPY



Crl.M.P.No.16712 of 2023 in Crl.A.No.1142 of 2023

M. NIRMAL KUMAR., J.

vv2

Crl.M.P.No.16712 of 2023
in Crl.A.No.1142 of 2023

20.02.2024