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Crl.A.No.627 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2024

CORAM :

THE HON'BLE MRS. JUSTICE R.HEMALATHA

Crl.A.No.627 of 2018

Balamurugan

...Appellant

vs.

The State Rep. by
Inspector of Police,
All Women Police Station,
Attur, Salem District.
(Crime No.5 of 2014)

...Respondent

PRAYER: Criminal Appeal filed under Section 374(2) Criminal Procedure Code, 1973, against the judgment and orders dated 28.09.2018 passed in S.C.No.03 of 2015 by the Sessions Judge, Mahila Court, Salem.

For Appellant : Mr.K.Mohanamurali

For Respondent : Mr.S.Raja Kumar
Additional Public Prosecutor

JUDGMENT

Challenging the conviction and sentence dated 28.09.2018 passed by the Sessions Judge, Mahila Court, Salem, in S.C No.03/2015, the



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present Criminal Appeal is filed.

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2. The appellant stood charged for the offences punishable under Section 8 r/w. 7 of the Protection of Children from Sexual Offences Act, 2012 (in short POCSO Act) and Sections 294(b) and 323 of IPC by the trial court in S.C.No.03/ 2015.

3. The trial court Judge, after full trial, convicted and sentenced the appellant vide his judgment dated 28.09.2018 as detailed hereunder.

<i>Conviction</i>	<i>Sentence</i>
Section 8 r/w. 7 of POCSO Act, 2012	Rigorous Imprisonment for five years and a fine of Rs.10,000/-, in default, to undergo Simple Imprisonment for six months.
Section 294(b) IPC	Rigorous Imprisonment for three months and a fine of Rs.500/-, in default, to undergo simple Imprisonment for two weeks.
Section 323 IPC	Simple Imprisonment for one year and a fine of Rs.1,000/-, in default, to undergo simple Imprisonment for two months.
The aforesaid sentences shall run concurrently.	
The period of sentence already undergone is set off under Section 428 Cr.P.C.	



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

4.1.The victim girl (P.W.2) aged 10 years is the daughter of Suganthi (P.W.1) and Murugesan (P.W.3). P.W.1 to P.W.3 are residing at South Mariamman Koil Street, Mandaveli, Attur Taluk, Salem. The victim was studying V standard during 2014 in Government Adidraavidar Welfare Primary School. On 03.03.2014, when the victim was playing in front of her house, Balamurugan, the appellant with an intention to sexually assault the victim child hugged her and also attempted to kiss her. The victim child immediately informed her mother (P.W.1) who in turn confronted the appellant. The appellant abused PW.1 in filthy language and also slapped her.

4.2.Thereafter, P.W.1 lodged a complaint (Ex.P1) on 04.03.2014 with Tmt.Bhuvaneshwari (P.W.8), the then Inspector of Police, All Women Police Station, Attur, Salem District. P.W.8 received the complaint (Ex.P1) from P.W.1 and registered FIR (Ex.P9) in Crime No.05/2014 against the appellant for the offences punishable under Section 8 r/w. 9 of POCSO Act and Sections 294(b) and 323 of IPC.



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4.3. P.W.8 took up investigation, went to the scene of occurrence, prepared an observation mahazar (Ex.P4) and a rough sketch (Ex.P10) in the presence of witnesses Gunasekaran (P.W.5) and Aasaithambi (not examined). On 18.03.2019, she produced the victim girl before the Judicial Magistrate No.II, Salem, as per the proceedings (Ex.P12) of Chief Judicial Magistrate, for recording her statement under Section 164 Cr.P.C. The statement of the victim under Section 164 Cr.PC was marked as Ex.P2 and since P.W.8 was transferred, she handed over the records to her successor Tmt.Ezhilarasi (P.W.9), the then Inspector of Police, All Women Police Station, Attur, Salem.

4.4. In the meanwhile, the appellant was sent to Salem Government Mohan Kumaramangalam Medical College and Hospital, where Dr.Gokularamanan (P.W.7) examined the appellant and opined that there was nothing to suggest that the appellant is impotent and that he is aged 24 years. The Potency Certificate and the Age Certificate issued by P.W.7 were marked as Ex.P7 and Ex.P8 respectively.



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4.5. Tmt. Prema (P.W.6) is the Headmistress of the Government Adi Dravidar Welfare Primary School, Attur. Her evidence is that as per the school records (Ex.P5) the Date of Birth of the victim child (P.W.2) is 13.01.2004.

4.6. Tmt.Ezhilarasi (P.W.9) after completing investigation laid a final report against the appellant for the offences punishable under Section 8 of POCSO Act, 2012 and Sections 294(b), 323 IPC before the Sessions Judge, Mahila Court, Salem in Spl.S.C.No.03/2015.

4.7.The learned Sessions Judge, Mahila Court, Salem, 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.

4.8. In order to bring home the guilt of the accused, the prosecution examined 9 witnesses and marked 15 documents.

4.9. The appellant, when questioned under Section 313 Cr.P.C with regard to the incriminating circumstances appearing in evidence



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against him, denied of having committed any offence. However, he did not examine any witness on his side.

4.10. The learned Sessions Judge, after analysing the oral and documentary evidence on record, convicted and sentenced the appellant as stated in Paragraph No.3, vide his judgment and orders dated 28.09.2018, aggrieved over which, the appellant has preferred the present appeal.

5. Heard Mr.K.Mohanamurali, learned counsel for the appellant and Mr.S.Raja Kumar, learned Additional Public Prosecutor for the respondent.

6. Mr.K.Mohanamurali, learned counsel for the appellant contended that there is a delay in lodging the complaint and sending the FIR to Court and that the prosecution has not explained the same. His further contention is that the Magistrate did not follow the procedure as contemplated under POCSO Act, while recording the victim's statement under Section 164 Cr.P.C. P.W.2 had stated that she was playing in front of one Veeramuthu's house but P.W.1 had stated that she was playing in



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front of her house and the rough sketch (Ex.P10) shows that the house of Veeramuthu is altogether in a different street. He, therefore, prayed for setting aside the conviction and sentence passed by the trial court judge.

7. 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 that therefore, no interference is called for by this court and prayed for dismissal of the Criminal Appeal.

8. It is seen from the records that the occurrence took place at about 07.00 p.m. on 03.03.2014 and that on the next day morning at about 11.00 a.m. P.W.1 had lodged the complaint (Ex.P1) with Tmt.Bhuvaneshwari (P.W.8), the then Inspector of Police, All Women Police Station, Attur, Salem. Normally, a mother would hesitate going to a police station immediately when the offence involves her child and therefore, the delay in lodging the complaint cannot be a ground for rejecting the prosecution case. However, the Inspector of Police had sent the FIR (Ex.P9) to Court only on 06.03.2014. Thus, there is a delay of two days in sending FIR to Court.



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9. It is settled law that delay in sending the FIR to Court may not to be fatal to the case of the prosecution in all cases. Therefore, this Court has to scan the evidence of the victim child (P.W.2) as well as her mother (P.W.1). The victim child (P.W.2) had clearly stated in her evidence that when she was playing near her house, the appellant in an inebriated condition hugged her and also attempted to kiss her. She immediately informed this to her mother (P.W.1) who was inside her house. P.W.2's further deposition was that when her mother confronted the appellant, he abused her mother in filthy language and also slapped her. The evidence of PW.2 corroborated the evidence of P.W.1 in all material particulars. Nothing useful was suggested to P.W.1 and P.W.2, during the course of cross examination, to discredit or disbelieve their versions. The victim P.W.2 was aged about 10 years on the date of occurrence and she was able to narrate the incident both before the police and Magistrate cogently. The Magistrate had recorded the statement of the victim child (P.W.2) under Section 164 Cr.P.C. after observing necessary legal formalities. The presence / absence of P.W.1 before the Magistrate does not matter much since the child was able to narrate the sequence of events cogently to the Judicial Magistrate. The



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evidence of P.W.2 fits in with her statement under Section 164 Cr.P.C.

statement in all material particulars. Moreover, the victim child (P.W.2) was examined after three years of the occurrence and despite this she had withstood the testimony of cross examination.

10. P.W.1 in her evidence had specifically stated that the victim child (P.W.2) was playing near her house and not in front of her house. The house of Veeramuthu is nearer to the house of P.W.1. It is the case of the prosecution that P.W.2 was playing with her friends near the area where her house is situated. The rough sketch (Ex.P10) shows that the distance between the scene of occurrence and her house is just 50 feet and 75 feet away from the house of Veeramuthu. Therefore, it cannot be stated that the house of Veeramuthu is situated elsewhere. In view of the overwhelming evidence adduced on the side of the prosecution, the delay in sending the FIR to court is not fatal to the case of the prosecution.

11. In these circumstances, the conviction and sentence passed by the trial court judge is perfectly in order and I do not see any reason to interfere with the same.



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12. In the result,

- i. The Criminal Appeal is dismissed.
- ii. The judgment and orders dated 28.09.2018 passed in S.C.No.03 of 2015 by the Sessions Judge, Mahila Court, Salem, is confirmed.
- iii. The accused is directed to surrender before the trial Court viz., the Sessions Judge, Mahila Court, Salem, 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.

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Index : yes/no
Speaking /Non speaking Order
mtl



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To

1. The Inspector of Police, All Women Police Station, Attur, Salem District.
2. The Sessions Judge, Mahila Court, Salem.
3. The Public Prosecutor, High Court, Madras.
4. The Section Officer, Criminal Section, High Court, Madras.



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R.HEMALATHA, J.

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