



CrI.A.(MD)No.22 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.03.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

CrI.A.(MD)No.22 of 2018

Anandakannan

...Appellant

vs.

The State represented by its,
The Inspector of Police,
All Women Police Station,
Tiruchendur,
Thoothukudi District.
(Crime No.3/2016)

... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure against the judgement and order dated 25.09.2017 in S.C.No.31 of 2016 on the file of the Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thoothukudi.

For appellant

: Mr.G.Jeganathan
Amicus Curiae

For Respondent

: Mr.K.Sanjai Gandhi,
Government Advocate (Criminal Side)



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JUDGEMENT

This criminal appeal has been filed against the judgment and order dated 25.09.2017 in S.C.No.31 of 2016 passed by the Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thoothukudi, in and by which, the appellant was convicted for the offences punishable under Section 9(m) read with Section 10 of Protection of Children from Sexual Offences Act and sentenced as under:

Section of Law	Sentence of imprisonment	Fine amount
Section 9(m) r/w Section 10 of POCSO Act	Rigorous Imprisonment for five years	Rs.1,000/- in default, to undergo Rigorous imprisonment for three months.

The period of sentence already undergone by the appellant was ordered to be set off under Section 428 of Cr.P.C.

2. Challenging the said conviction and sentence, the appellant has come up with this Criminal Appeal.



3. When the matter was taken up for hearing on 04.03.2024, there was no representation for the appellant. Hence, Mr.C.Jeganathan, Advocate, Enrolment No.1751/2006 was appointed as an *amicus curiae* for assisting this Court.

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

4.1. The victim (PW1) is residing with her parents (PW2 and PW3) and her younger sister (PW4) in Udankudi Village, Thiruchendur Taluk and is studying VIth standard in a school at Udankudi. She used to attend tuition classes also run by the appellant. The appellant Anandakannan took on rent the second floor of the building at Sakthi Moorthy Bazaar from the owner of the building Thiru.Vijayalingam (PW12) on a monthly rent of Rs.2,000/- and was conducting Karate classes, Bharathanatiam classes and also Tuition classes in the said place. One Sugantha teacher used to take classes for the children. The victim (PW1) and her younger sister (PW4) were regularly attending the tuition classes.



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4.2. On 17.01.2016, at about 03.30 p.m., the victim (PW1) and her younger sister (PW4) went to the tuition centre as usual. Since their teacher Sugantha did not turn up for duty, the appellant took class for the children. He particularly requested the victim (PW1) to keep a carrom board (MO1) on the terrace of the building. Accordingly, victim (PW1) took the carrom board and when she was about to keep it in the upstairs of the building, the appellant came behind her, hugged her and kissed her. The victim (PW1) pushed him and attempted to escape from the scene of offence and in the process, her green colour glass bangles which she was wearing on her left hand broke and pierced her palm resulting in bleeding injury. According to the victim (PW1), the appellant once again attempted to hug her. She immediately came home and informed her father Velayutham (PW2) and mother Lakshmi (PW3), leaving her younger sister in the tuition centre itself. When her parents along with the victim came back to the tuition centre in search of the appellant, he was not found there. They took the younger daughter (PW4) home and at about 08.00 p.m., they all went to All Women Police Station, Thiruchendur and lodged a complaint.



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4.3. Thirumathi.Varkees Ammal, the Inspector of Police, All Women Police Station recorded the complaint statement of the victim (PW1) and registered FIR in Crime No.3/2016 (Ex.P13) against the appellant for an offence punishable under Section 12 of Protection of Children from Sexual Offences Act. She instructed Thirumathi. Murugeshwari (PW11), head constable of police to take the victim (PW1) to Thoothukudi Government College Hospital for medical examination.

4.4. Dr.Rajeshwari (PW6) examined the victim on 19.01.2016 and found bruises on her left palm. She also examined her private parts and did not find any injuries. The victim (PW1) was sent home on the same day itself. The Accident Register was marked as Ex.P6.

4.5. Thirumathi.Nagakumari (PW13), Inspector of Police took up investigation in Crime No.3/2016, went to the scene of offence and prepared an observation mahazar (Ex.P4) and a rough sketch (Ex.P14) in the presence of Thiru.Muthuselvan (PW5) and Devadas (not examined). She recovered the carrom board (MO1) and the broken pieces of green



colour bangles (MO2 series) under the cover of a Mahazar (Ex.P5) in the presence of the same witnesses. Subsequently, she produced the victim girl before Thirumathi.Irudhayarani (PW10), the then Judicial Magistrate, Thiruchendur for recording her statement under Section 164 of Cr.P.C.

4.6. In the meanwhile, the appellant surrendered before the Judicial Magistrate, Sathankulam and was remanded to judicial custody. He was sent to medical examination at Government Medical College Hospital, Thoothukudi where Dr.Ganapathy (PW8) examined him on 01.02.2016 and gave a Certificate of Examination for Sexual Offence Cases (Ex.P9) stating that there is nothing to suggest that he is impotent.

4.7. Thiru.Sathyamoorthy (PW9), a resident of Udankudi saw the victim girl (PW1) weeping on the way, scurrying back home on 17.01.2016 at about 04.30 p.m. from the tuition centre.

4.8. PW2 to PW4 corroborated the versions of PW1 in all material particulars. The investigation officer (PW13) examined the



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witnesses and recorded their statements individually. After concluding investigation, she laid a final report before the Sessions Judge, Fast Track Mahila Court, Thoothukudi.

4.9. When the appellant was questioned with regard to the circumstances appearing in evidence against him under Section 313 of Cr.P.C., he denied of having committed any offence and also filed a written submission. In his written submission, he has stated that he has a black belt in Karate and therefore had professional rivalry with one Shankar, a relative of the victim (PW1), who is running a Kung Fu Centre in Udankudi. According to him, during January 2016, when he was taking Karate class for the students, Shankar picked up quarrel with him and also threatened him with dire consequences. Since the appellant wanted to lodge a police complaint against Shankar, he had foisted a false case against him with the help of PW1 to PW4. The appellant also examined one David Gnanadurai (DW1).



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4.10. DW1 in his evidence had stated that he had put his two sons in Karate class run by the appellant and that Shankar, who is a Kung Fu master used to tell him that Kung Fu is better than Karate. Shankar had also requested him (DW1) to send his two sons to his Kung Fu class and thus, he understood that Shankar was his rival.

4.11. The learned Sessions Judge after analysing the oral and documentary evidence adduced on both sides found the appellant guilty of the offence under Section 9(m) read with Section 10 of Protection of Children from Sexual Offences Act, and sentenced him as stated in paragraph No.1. Challenging the same, present appeal is filed by the appellant.

5. Mr.C.Jegannathan, *amicus curiae* had tried his best to dilute the seriousness of the offence by suggesting that,

(i) The parents of PW1 had a grudge against the appellant since one of their relatives, Shankar, could not do well in his Kung Fu profession as the appellant was taking Karate classes successfully for



several students.

(ii) The doctor who examined the victim did not state that there was any injury on the private parts of the child.

(iii) The victim child was tutored.

(iv) The place of occurrence is not also clear as the child states that she took the carrom board to the upstairs of the building when the charge framed against the appellant state that he requested to keep the carrom board in front of LIC Office, which is one floor below the Karate Centre.

(v) The appellant is not taking tuition class for children.

(vi) No independent witness was examined to prove the offence against the appellant.

(vii) PW1 in her deposition, though, had stated that she and her parents along with Shankar went to Emaneshwaram Police Station immediately after the occurrence and informed the police officials who were present there about the incident that took place on the same day, the initial complaint given by the victim had not been filed by the prosecution.



(viii) Shankar and the tuition teacher, Sugantha, were not examined by the prosecution to substantiate their contention and to prove the guilt of the appellant.

(ix) 17.01.2016 was a holiday for all the schools.

6. Per contra, Mr.K.Sanjay Gandhi, learned Government Advocate (Criminal Side) appearing for the respondent would contend that the evidence of the victim is clear with regard to the commission of offence by the appellant and her versions are corroborated, in all material particulars, by her younger sister PW4 who also accompanied PW1 to the tuition class. PW1 had confided to her parents and they in turn had gone to the tuition centre in search of the appellant and since he was not found there, they took their younger daughter (PW4) back home and lodged a complaint with the Inspector of Police, All Women Police Station, Thiruchendur. His next contention is that even assuming that Shankar accompanied the parents of the victim PW1 to the police station, his presence would not make any difference as the appellant did not establish the alleged professional rivalry between him and the said Shankar. In



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fact, David Gnanadurai (DW1) during the course of cross examination had stated that he had never seen Shankar before. This is in contradiction to his own version in the chief examination wherein he had deposed that Shankar used to tell him that Kung Fu is better than Karate. His further contention is that the trial Court had analysed the evidence threadbare and convicted the appellant and therefore, there is no reason for this Court to interfere with the same.

7. The victim child was tutored is one prime contention put forth by the appellant as the parents of the victim had a grudge against him. It is to be understood that no parent would like their children to suffer even assuming it is to settle personal score with their enemy, the appellant. In fact, the victim child had withstood the testimony of cross-examination at that young age and such spontaneous replies could not have come out of them if tutoring had been done.

8. Another contention of the learned amicus curiae is that there was professional rivalry between the appellant and Shankar, and in fact,



Shankar had accompanied PW1 to PW3 for lodging a complaint with the police. Though PW1 had deposed that Shankar accompanied her and her parents to Emaneshwaram Police Station, the other witnesses PW2 and PW3 did not state so. However, it is not denied by PW2 and PW3 that Shankar is related to them. Normally any parent would seek the help of their relatives to lodge a complaint with the police especially with regard to this type of offence as they would be in a tense situation. It appears that the presence of Shankar in the police station was taken advantage by the appellant. As rightly pointed out by the learned Government Advocate (Criminal Side), David Gnanadurai (DW1) though initially had deposed that Shankar used to tell him that Kung Fu is better than Karate in the chief examination, had changed his version during the cross examination by stating that he had never seen Shankar before. It is pertinent to note that the cross examination was done on the same date.

9. Moreover, in the instant case, there is no delay in lodging the complaint. The parents of the victim child had lodged a complaint with the Inspector of Police, All Women Police Station, Thiruchendur



immediately after the occurrence. The evidence of PW1 is corroborated by the evidence of PW2 to PW4 in all material particulars and there are no good grounds to discard their evidence. In fact, nothing useful was suggested to PW2 and PW3 during the course of examination to discredit or disbelieve their versions. The contention of *amicus curiae* that there are no independent witness in the instant case cannot be accepted for the simple reason that in the offences of this type, the person who is committing crime would not do it in front of others and in the instant case, the specific case of the victim child is that she was asked to carry the carrom board to the upstairs of the building and when she was carrying it, the appellant came behind her, hugged her and kissed her. Thiru.Sathyamoorthy (PW9), a resident of Udankudi had seen the victim child crying and running towards her home from the tuition centre on 17.01.2016 at about 04.30 p.m.

10. Mere absence of physical injury does not rule out the sexual act of the appellant. The other effects cannot be assessed by the physical examination. An adult who engages in sexual activities with a child is



performing a criminal and immoral act, which is a criminal offence.

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11. Another contention of the *amicus curiae* is that PW1 had given a different version in her complaint statement (Ex.P1) and it was exaggerated in her statement under Section 164 of Cr.P.C. as to the place of occurrence. It is pertinent to point out that the age of the child was 11 years at the time of the commission of offence on her and it is too much to expect from a child to narrate each and every minute detail at the time of giving the complaint. However, she had cogently narrated the sequence of events before the Court. It was established that the occurrence took place in the building. The contradiction with regard to place of occurrence can only be construed as a minor contradiction. As already observed, she had not only deposed about the crime committed by the accused but also withstood the testimony of cross examination.

12. At this juncture, it is relevant to extract Sections 29 and 30 of the Protection of Children from Sexual Offences Act, 2012 as under:



"29.Presumption as to certain offences: Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved."

30. Presumption of culpable mental state:

1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

(2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability."

Thus, Section 29 provides that where a person is prosecuted for violating any of the provisions under Sections 3, 5, 7 and Section 9 of the Act, the Special Court shall presume that such person has committed the offence, unless the contrary is proved. Section 30 provides for presumption of 'culpable mental state' which includes intention, motive, knowledge of a fact and belief in, or reason to belief in, a fact. The above said



presumptions have not been rebutted by the appellant by adducing acceptable evidence or by shattering the evidence of the prosecution witness. There is no reason for PW1 to PW3 to falsely implicate the appellant and it is also pertinent to point out that PW1's testimony stand corroborated by her previous statement under Section 164 Cr.P.C., which was marked as Ex.P2.

13. Though it is contended by the learned amicus curiae that 17.01.2016 was a holiday for all schools, the appellant has not adduced any acceptable evidence to prove that he did not take tuition class for children on that particular day.

14. As regards sentence, I do not find any cause for leniency as the sentence of the trial Court seems to be adequate and reasonable.

15. In the result,

- (i) This Criminal Appeal is dismissed.
- (ii) The conviction and sentence dated 25.09.2017 in S.C.No.31



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of 2016 passed by the Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thoothukudi is confirmed.

(iii) The appellant shall surrender before the Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thoothukudi for serving the remaining period of sentence, failing which, the Sessions Judge shall take appropriate steps to secure the presence of the appellant.

16. I wish to commend the contribution by Mr.C.Jeganathan, *amicus curiae* in the matter by ably assisting this Court.

27.03.2024

NCC: Yes/No

Index : Yes/No

Speaking/Non-Speaking order

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To
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- 1.The Sessions Judge, Mahalir Neethimandram
(Fast Track Mahila Court), Thoothukudi
- 2.TheThe Inspector of Police,
All Women Police Station,
Tiruchendur,
Thoothukudi District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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R.HEMALATHA, J.

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