



Crl.A.No.102 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2025

CORAM :

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

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Sarathi

... Appellant

Vs

State rep. by Inspector of Police,
All Women Police Station,
Tirupur South,
Tiruppur District.
Crime No.9 of 2021

... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, to set aside the Judgment passed by the learned Session Judge Mahila Court, (Fast Track Mahila Court), Tiruppur in S.C.No.81 of 2021 dated 08.06.2022 and allow this Appeal.

For Appellant : Mr.M.Vignesh

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

JUDGMENT

This Criminal Appeal has been preferred as against the judgment dated 08.06.2022 passed in S.C.No.81 of 2021 on the file of the learned Sessions Judge, Mahila Court, (Fast Track Mahila Court), Tiruppur,



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thereby convicted the appellant for the offence punishable under Section 9(m) r/w 10 of POCSO Act.

2. The case of the prosecution is that the victim girl was aged about 11 years. While being so, on 17.07.2021, when the parents of the victim had gone to work, the appellant came to her house at about 11.00a.m. and informed the victim that he is leaving out station and when the victim questioned him as to the necessity of informing her, the accused pushed her on the cot, lifted her nighty and thereafter, he committed aggravated sexual assault on the victim. At that juncture, the father of the victim knocked the door of the house and immediately, the appellant went under the cot. Thereafter, the victim opened the door and her father found the appellant under the cot. Immediately, he left the house and the victim informed the incident to her mother and she, in turn informed the incident to the Child Line for help. Thereafter, the Child Line officer lodged a complaint. On receipt of the said complaint, the respondent registered an FIR in Crime No.9 of 2021 for the offence punishable u/s 5(m) read with 6 of POCSO Act. After completion of investigation, a final report was filed before the Sessions Judge, Mahila



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Court (Fast Track Mahila Court), Tiruppur and same has been taken cognizance in S.C.No.81 of 2020 for the offence punishable under Section 9(m) read with 10 of POCSO Act.

3. Before the Trial Court, the prosecution examined eight (8) witnesses as P.W.1 to P.W.8, marked eleven (11) documents as Ex.P1 to Ex.P11. On the side of the accused, no witness was examined and no document was marked.

4. On perusal of the oral and documentary evidence, the Trial Court found the appellant guilty, convicted for the offence under Section 9(m) r/w 10 of POCSO Act and sentenced him to undergo 5 years Rigorous Imprisonment and to pay fine of Rs.5,000/-, in default of payment of fine, to undergo a further period of 6 months of Simple Imprisonment. Aggrieved by the same, the present Criminal Appeal has been filed.

5. The learned counsel for the appellant would submit that the person, who had seen the alleged occurrence was not examined by the



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prosecution, who is none other the father of the victim. Though the father of the victim has seen the appellant under the cot, he did not take any steps to caught hold him and lodge any complaint. He informed the said incident to his wife and in turn informed to the Child Line for help. Thereafter, the complaint was lodged before the respondent. Further, the victim was subjected for medical examination and the doctor, who had examined the victim girl was examined as P.W.4, who deposed that there was no external injury found on the victim's private part and also there was no evidence that the victim had sexual intercourse and her hymen was intact. Therefore, the prosecution has miserably failed to prove the charge as alleged against the appellant. That apart on the very same day, one Madhi quaralled with the appellant for the reason that he was informed about the love affair between the appellant and the victim girl. Therefore, he also attacked the appellant and as such, he sustained grievous injuries and immediately, was taken to hospital. On the said complaint, the Inspector of Police, Nallur Police Station, Tiruppur District registered an FIR in Crime No.1176 of 2021 for the offence punishable u/s 307 of IPC and it is pending for investigation. Therefore, there was no such occurrence happened as alleged by the prosecution and



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in order to split the appellant from the victim, a false complaint has been foisted as against the appellant. Therefore, the conviction and sentence imposed by the Trial Court cannot be sustained and liable to be set aside.

6. Per contra, learned Additional Public Prosecutor submitted that the victim girl was examined as P.W.1 and she categorically deposed that on 17.07.2021 at about 11.00 a.m., the appellant came to her house and had committed aggravated sexual assault on her. At that juncture, her father knocked the door and immediately, he went under the cot. Therefore, the victim herself had opened the door and his father also found him and immediately, he went out of the house. Further, though her hymen was intact as per the medical report, the appellant had committed sexual harassment on the victim. Hence, the order of conviction and sentence does not warrant any interference by this Court.

7. Heard the learned counsel appearing for the appellant, the learned Additional Public Prosecutor appearing for the respondent police and perused the materials available on record.



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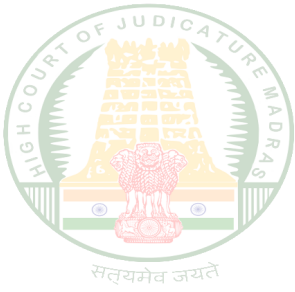
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8. The specific case of the prosecution was that on 17.07.2021, the appellant went to the house of the victim and committed aggravated sexual assault on the victim girl. However, no charge for the offence for house trespass. Even according to the prosecution, the appellant and the victim fell in love. At the time of alleged occurrence, the father of the victim knocked the door of the house and immediately, the victim herself opened the door. When she was subjected for aggravated sexual assault, she would not have opened the door. That apart, the father of the victim girl went into the house and had seen the appellant who was hiding under the cot. Even then, the father of the victim did not take any steps to catch him. The prosecution also failed to examine the father of the victim girl, who had seen the appellant inside the house that too, while he had committed sexual assault on the victim girl. Further, the father of the victim girl informed the said occurrence to his wife, namely the mother of the victim. Even then, they did not take any steps to lodge any complaint. However, the mother of the victim informed the said occurrence to the Child Line for help and in turn, the Child Line officer lodged a complaint before the respondent. After registration of FIR, the



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victim girl was subjected for medical examination and she had also appeared before the doctor, P.W.4. On examination, the P.W.4 found that there was no injury on her entire body and there was injury on her genitalia also. Further, she opined that the victim's hymen was intact and she was not subjected for any sexual intercourse. P.W.4 issued medical report and the same was marked as Ex.P.4. It is clear that there was no evidence of sexual intercourse and vaginal smear or vaginal swab and result awaited. Therefore, the prosecution miserably failed to prove the charge u/s 9(m) r/w 10 of POCSO Act. At the worst, the charge u/s 7 r/w 8 of POCSO Act can be attracted as against the appellant, since admittedly, the appellant fell in love with the victim and he was available in the house of the victim on the date of occurrence. That apart, for the said occurrence, one Madhi quaralled with the appellant and thereby, the appellant sustained injuries and he was taken to hospital. For that, the appellant lodged a complaint and the same got registered in Crime No.1176 of 2021 of the offence u/s 307 IPC and it pending for investigation. Therefore, the conviction and sentence u/s 9(m) r/w 10 of POCSO cannot be sustained and the same is liable to be set aside.



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9. Accordingly, the conviction and sentence of the Trial Court is hereby set aside. However, the appellant is convicted for the offence u/s 7 r/w 8 of POCSO Act. Insofar as the sentence is concerned, though the suspension of sentence was ordered, the appellant did not even execute surety till today. Therefore, the appellant is incarcerating imprisonment from the date of judgment till today. While he was on remand, he had incarcerated imprisonment for about six months. In view of the same, the appellant is sentenced to the period already undergone. The appellant is set at liberty forthwith, if he is not required in connection with any other case. Fine amount, if any paid by the accused shall be refunded to him. Bail bond, if any, executed by the accused shall stand discharged.

10. In the result, the Criminal Appeal is partly allowed.

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Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
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To
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- 1.The Sessions Judge, Mahila Court, (Fast Track Mahila Court),
Tiruppur.
- 2.The Inspector of Police,
All Women Police Station,
Tirupur South,
Tiruppur District.
- 3.The Superintendent,
Central Prison, Coimbatore.
- 4.The Public Prosecutor,
High Court of Madras,
Chennai.



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G.K.ILANTHIRAIYAN, J.

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