



Crl.A.No.173 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.04.2025

PRONOUNCED ON : 08.09.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.173 of 2022 and
Crl.M.P.No.18567 of 2023

Dhanasekar

... Appellant

Vs.

State Rep by
The Inspector of Police,
All Women Police Station,
Panruti, Cuddalore.

... Respondent

PRAYER: Criminal Appeal is filed under Section 374(2) of Code of Criminal Procedure, to set aside the conviction judgment dated 30.11.2021 in Spl.S.C.No.80 of 2019 on the file of the Special Court for POCSO Act at Cuddalore.

For Appellant : Mr.K.Prabakar

For Respondent : Mr.L.Baskaran,
Government Advocate (Crl. Side)



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JUDGMENT

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The appellant was convicted by judgment dated 30.11.2021 in Special S.C.No.80 of 2019 by the learned Sessions Judge, Special Court (POCSO Court Cases), Cuddalore and sentenced to undergo twenty years Rigorous Imprisonment and to pay a fine of Rs.5,000/- in default to undergo three months Simple Imprisonment for offence under Section 5(m), 6 of Protection of Children from Sexual Offences Act, 2012 r/w Section 376AB IPC. Challenging the same, the present criminal appeal is filed.

2.Case of the prosecution is that PW1 is the defacto complainant and PW2/victim girl is her elder daughter aged about six years as on the date of occurrence. PW1's younger daughter is a deaf and dumb child, for treatment, PW1 takes her younger daughter to Chennai on every Tuesday and Friday. PW1 employed as Insurance Agent in State Bank of India, the appellant a neighbour residing two houses away from the house of PW1. On 20.01.2019, the victim girl went to the appellant's house for play, at that time, the appellant made the victim girl to sit on him, undressed himself, removed her dress and undergarments, laid over her, placed his penis on her genitalia with force and also squeezed her breast and buttocks, the victim girl was threatened not to



disclose the same to anyone. On 21.01.2019, PW1 was giving bath to the victim girl, at that time, she noticed marks and contusions on the breast and buttocks of victim girl. When questioned, victim girl disclosed the appellant's act. PW1's husband was working in Dubai, hence, fearing for life, she kept quiet and not immediately informed anyone. Later, PW1 gained strength, on 06.03.2019 called her husband, informed the incident. PW1 went to the appellant's house and questioned the incident but he denied. Thereafter, PW1 lodged a complaint (Ex.P1) to the respondent Police. PW6, Sub Inspector of Police received the complaint (Ex.P1), registered FIR (Ex.P6) in Crime No.3 of 2019 for offence under Sections 342 IPC and Sections 5(l) & 5(m) r/w 6 of Protection of Children from Sexual Offences Act, 2012, PW6 visited the scene of occurrence, prepared Observation Mahazar (Ex.P3), Rough Sketch (Ex.P7), arrested the appellant, produced the victim girl for recording 164 statement, thereafter, handed over the investigation to PW9, Inspector of Police.

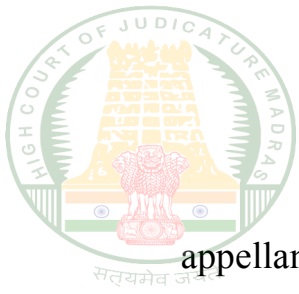
3.PW9 conducted further investigation, visited the scene of occurrence, examined the witnesses PW1/defacto complainant, PW2/her elder daughter/victim girl, her brother/PW3, her sister-in-law/PW8, her mother/PW7 and other witnesses and recorded their statements. Thereafter,



PW9 sent the victim girl and the appellant for medical examination. The Doctor/PW4 examined the victim girl and issued medical report (Ex.P4) and Doctor/PW5 conducted potency test for appellant and issued medical report (Ex.P5). On collection of medical reports, 164 Statement of victim girl (Ex.P8), school certificate and other documents, charge sheet filed before the trial Court.

4.During trial, on the side of the prosecution, PW1 to PW10 examined and Exs.P1 to P10 marked. On the side of the defence, no witness examined and no document marked. On conclusion of trial, the trial Court convicted the appellant as stated above.

5.The learned counsel for the appellant submitted that it is projected as though the appellant and PW1 are relatives and the appellant is a neighbour residing two houses away from PW1's house. The appellant and PW1 are not relatives and they belong to different community. Further, it is alleged the victim girl used to visit the appellant's house to watch television, during that time, the appellant is said to have committed aggravated penetrative sexual assault. PW1 was working as Insurance Agent in State Bank of India and the



appellant for his mother's insurance, paid a sum of Rs.20,000/- to PW1. But

PW1 neither got any insurance policy nor returned back the money, due to which, there was some dispute. The appellant constantly questioned PW1 to return the said amount and also abused her, hence, PW1 projected a false case against the appellant using her minor girl as a weapon. It is admitted by PW1 that she used to visit Chennai every Tuesday and Friday for the treatment of her younger daughter. In her absence, her mother/PW7 residing with her, used to take care of the victim girl. PW1 falsely stated that she does not have television but her mother/PW7 admits that in their house, there is a television and there is no reason for the victim girl to visit the appellant's house for watching television. The appellant was residing with his sick mother and she was always present in the house and the appellant was not alone at any point of time.

6.The learned counsel further submitted that in this case, there is a delay of more than 45 days in lodging the complaint (Ex.P1). The case is that on 21.01.2019, when the victim girl was giving bath, her mother/PW1 noticed marks and contusions on the victim girl's body, on enquiry, the victim girl disclosed the appellant's act. But PW1 lodged a complaint (Ex.P1) only on



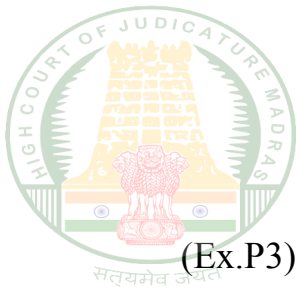
06.03.2019. Though PW1 gives explanation that immediately she informed the occurrence to her brother/PW3 and her mother/PW7, but she lodged a complaint only after getting confidence from her husband. PW3 and PW7 confirmed that only on 06.03.2019 PW1 informed about the incident and lodging of complaint (Ex.P1) and PW8 confirms the same. Thus, the complaint (Ex.P1) of PW1 is a motivated one. Added to it, PW1 admits that two days after she noticing the marks and contusions on the body of the victim girl, she took the victim girl to a Private Nursing Home at Villupuram for treatment. Who is the Doctor treated the victim girl and what was the treatment given on 21.01.2019, no details produced. In this case, after registration of FIR (Ex.P6), the victim girl was taken to Government Headquarters Hospital, Cuddalore, PW4, Doctor examined her on 07.03.2019 and gave medical report (Ex.P4). In Ex.P4, it is recorded no mark of violence, hymen intact, and finally opined that the victim girl was not subjected to penetrative sexual assault, no injuries found in the private parts and also opined possibility of sexual offence is there. How such conclusion arrived no details given. The evidence of the Doctor/PW4 confirms no aggravated penetrative sexual assault and further confirms PW1 not informed about any visit to Doctor prior to PW4's examination. That being so, taking advantage



recording in Ex.P4 that there is possibility of sexual offence, the appellant prosecuted and convicted. Further, the trial Court failed to consider that it is only a possibility of sexual offence and PW1 gave contradictory evidence at each time.

7.The learned counsel further submitted that in the medical report (Ex.P4), it is recorded PW1/mother of the victim girl narrated the incident to the Doctor/PW4. In 164 statement (Ex.P8), the victim girl stated that the appellant removed her undergarments, laid on her, placed his hands on the breast and buttocks, bitten her lips and touched her private parts. No way this act can be construed and projected as aggravated penetrative sexual assault. The victim girl in her evidence before the trial Court stated that the appellant gave a toy TV to play. In this case, the foundational fact gets demolished and contrary to the complaint (Ex.P1). In the complaint (Ex.P1), it is alleged the victim girl subjected to aggravated penetrative sexual assault when she visited the home of the appellant to watch television.

8.He further submitted that PW3, brother of PW1 confirms that on 07.03.2019 at about 05.00 p.m, in his presence the Observation Mahazar



(Ex.P3) prepared. Prior to it, PW1, his sister not informed about the incident of sexual assault to PW2. PW8, wife of PW3 confirms that on 06.03.2019, PW1 informed that during the month of January, the appellant stuffed the victim girl's mouth using cloth and committed penetrative sexual assault on the victim girl. PW7, mother of PW1 confirms she was informed by PW1 about sexual assault committed on her granddaughter/victim girl only on 06.03.2019. Thus, the evidence of PW3, PW7 & PW8 are contradictory to each other about the incident happened on 20.01.2019.

9.He further submitted that PW6 admits that PW1 not informed of taking the victim girl to a Private Nursing Home at Villupuram before 06.03.2019 and also she visiting Chennai on Tuesday and Friday for her second daughter's treatment. PW6 further admits that the appellant's mother is bedridden and living with the appellant in the same house. PW9 confirmed that none of the neighbours and no private individuals examined as witnesses in this case even the School Headmaster not shown as witness. PW9 further confirms that PW1 not produced any medical record for the victim girl's treatment prior to 06.03.2019 for sexual assault. PW9 confirms that in 164 statement (Ex.P8) the victim girl states improper touch and there is nothing as

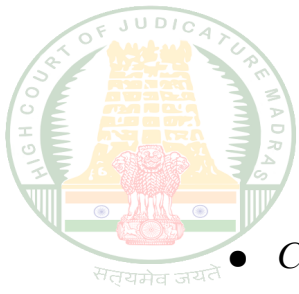


regards aggravated penetrative sexual assault. In such circumstances, the trial Court brushing aside all these evidence and convicted the appellant for the above offence, is improper and not sustainable.

10.The learned counsel further submitted that tutelage of child witness is probable in this case and the victim tutored to give false version as per her mother's wish. In this case, oral evidence *i.e.*, the evidence of PW1, PW2/victim girl and 164 Statement (Ex.P8) are contradictory to the medical evidence (Ex.P4). Added to it, the mother/PW7, brother/PW3 and sister-in-law/PW8 of PW1 all deposed contradictorily.

11.In support of his submissions, the learned counsel for the appellant relied on the following decisions:

- *Arbind Singh v. State of Bihar reported in CDJ 1992 SC 568.*
- *Digamber Vaishnav & Another v. State of Chhattisgarh reported in CDJ 2019 SC 375.*
- *Pradeep v. The State of Haryana reported in CDJ 2023 SC 640.*
- *Senthilkumar v. State, Rep. by The Inspector of Police, A.Pallipatty Police Station, Dharmapuri reported in CDJ 2022 MHC 1469.*
- *Begari Ravi Kumar v. The State of Telangana reported in CDJ 2025 TSHC 001.*



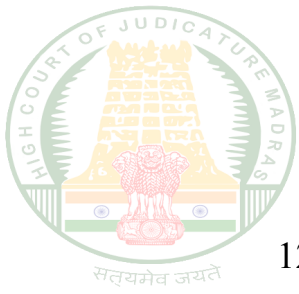
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- *Chellappan v. State represented by the Inspector of Police, Gandarvakottai Police Station, Pudukkottai reported in CDJ 2016 MHC 7154.*
- *Harishankar v. State through the Inspector of Police, Anamalai Police Station, Coimbatore reported in CDJ 2021 MHC 1978.*
- *Sri Joubansen Tripura v. The State of Tripura reported in CDJ 2021 THC 050.*
- *Veerpal @ Titu v. State reported in CDJ 2024 DHC 126.*
- *Rajamohan v. State represented by The Inspector of Police, Thallakulam, Madurai reported in CDJ 2024 MHC 6922.*
- *Kisan v. State of Maharashtra in Criminal Appeal No.303 of 2022.*

To buttress the fact that the child witnesses are proven for tutelage and their evidence to be analyzed with care and caution, more so, when there are contradictions between the witnesses and medical records.

- *Just Rights for Children Alliance and another v. S.Harish and Others reported in 2024 SCC OnLine SC 2611* for the point that Sections 29 & 30 of Protection of Children from Sexual Offences Act, 2012 would be invoked when the Court believes the existence of the fact beyond reasonable doubt and thereafter presumption would follow. In this case, the foundational fact not proved, hence, invoking Sections 29 & 30 of the Act and convicting the appellant, is not proper.



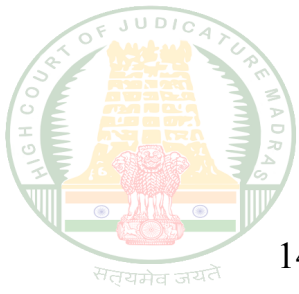
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12.The learned Government Advocate (Crl. Side) appearing for the respondent Police filed counter and submitted that in this case, at the time of occurrence, the victim girl was aged about 6 years and her date of birth was 13.09.2013. PW1, mother of the victim girl used to visit Chennai on Tuesday and Friday for the treatment for her second daughter leaving the victim girl alone. The victim girl visits the appellant's house to watch television. Taking advantage of the victim girl's loneliness, the appellant removed the clothes of victim girl, undressed himself, laid on her and forcibly committed aggravated penetrative sexual assault on two or three occasions prior to 20.01.2019. On 21.01.2019, when the victim girl was giving bath by PW1, she noticed some marks and contusions on the breast and buttocks. When PW1 questioned, the victim girl informed the appellant's act. Since PW1 being a woman and her husband working in Dubai, fearing for life she not disclosed the incident to anyone immediately. Thereafter, PW1 took the victim girl to a Private Nursing Home at Villupuram. The appellant constantly threatened the victim girl. Gaining confidence and courage, she informed her husband on 06.03.2019 and thereafter, lodged the complaint (Ex.P1). The delay in lodging the complaint (Ex.P1) rightly explained by PW1. In all cases of similar nature, the reaction of the parents to lodge a complaint depends upon



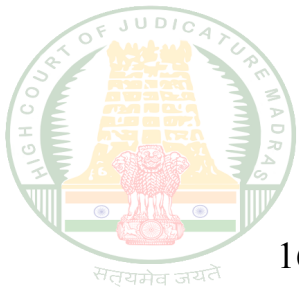
various factors. After registration of FIR (Ex.P6), the victim girl sent to the Government Head Quarters Hospital, Cuddalore and PW4/Doctor examined and gave medical report (Ex.P4). Further, PW5/Doctor examined the appellant and gave potency certificate (Ex.P5). The Investigating Officer/PW9 visited the scene of occurrence, recorded the statements of defacto complainant/PW1, her daughter/victim girl/PW2, PW1's mother/PW7, PW1's brother/PW3 and PW1's sister-in-law/PW8 who are the right persons to speak what happened to the victim girl inside the appellant's house. After collection of medical records (Exs.P4 & P5), 164 statements of PW1 & PW2 and other documents, charge sheet filed in this case.

13.It is further submitted that since the incident happened inside the appellant's house, examination of neighbours and others might not be of any use. PW1 on noticing the marks and contusions on the body of the victim girl, she informed her mother/PW7, her brother/PW3 and sister-in-law/PW8 which is a normal conduct. Added to it, the victim girl confirms the appellant's sexual assault in her 164 Cr.P.C statement (Ex.P8) and also reiterates in her evidence before the trial Court. The Doctor/PW4 gives opinion there is possibility of sexual offence.



14.He further submitted that though the learned counsel for the appellant relied on several decisions, in those cases the children are witnesses for a murder or any other offences. In this case, the child is a victim and witness who suffered and deposed how she was sexually assaulted by the appellant, hence, the decisions cited by the appellant are not applicable to the facts and circumstances of the present case.

15.He further submitted that for the insurance dispute projected by the appellant, the appellant not produced even a single piece of evidence or material to substantiate the same. He fairly submitted that the appellant and PW1 belonged to different community, but they were having a good relationship as relatives. Thus, non examination of the husband of PW1, non collection of medical records from the Private Nursing Home at Villupuram and the contradictions in the evidence of PW3, PW7 and PW8, would not make the prosecution case doubtful. The trial Court considered all these aspects and by a well reasoned judgment convicted the appellant. Hence, the appeal to be dismissed confirming the conviction and sentence of the trial Court.



16.This Court considered the rival submissions and perused the materials available on record.

17.The case projected is that PW1 is residing two houses away from the appellant's house and the victim girl used to visit the appellant's house to watch television. Taking advantage of the same, the appellant committed aggravated penetrative sexual assault. In this case, the occurrence took place on 20.01.2019 and on two or three occasions prior to it. On 21.01.2019, when PW1 was giving bath to the victim girl, she noticed some marks and contusions on the breast and buttocks of the victim girl. When PW1 questioned, the victim girl disclosed that the appellant is the reason who committed sexual assault on two or three occasions. PW1 was shocked, further fearing for life, not disclosed the same to anyone and two later PW1 took the victim girl to a Private Nursing Home at Villupuram. PW1 in her evidence stated that she submitted the medical records of the Private Nursing Home to the Investigating Officer. PW1 further states that she noticed marks and contusions on the breast and buttocks and lips bitten. But PW9/Investigating Officer denies and contradicts the same. The reason for the victim girl visiting the appellant's house is to watch television since there



was no television in the house of PW1. Even in the complaint (Ex.P1), PW1 records the same but PW7, mother of PW1 contradicts this fact and confirms that there is television in the house of PW1. The appellant is an unmarried person and there are no children in his house to give company or to play with the victim girl.

18.In this case, admittedly till 06.03.2019, PW1 not disclosed the incident to anyone even to her mother/PW7 who is residing with her and also to her brother/PW3 and PW8/sister-in-law who are living nearby. PW3, PW7 & PW8 the family members of PW1 all confirmed they were informed about the incident only on 06.03.2019. PW7, mother of PW1 and grandmother of PW2 confirms the victim girl was attending the school regularly after 20.12.2019 and she was also giving bath to PW2/victim girl on some of the days till 06.03.2019. But neither she found any marks or contusions nor PW2 informed about any incident. PW3, brother of PW1 states only about he being a witness to the Observation Mahazar (Ex.P3). The aunt of the victim girl/PW8 gives a dramatized version as though the victim girl was tied, mouth stuffed with clothes and penetrative sexual assault committed as informed by PW1. In this case, PW1's husband not examined and no call detail records or



any other materials produced to show that on 06.03.2019 PW1 spoke to her husband who directed PW1 to lodge a complaint. The evidence of PW7, mother of PW1 is that the husband of PW1 used to call PW1 twice a day in the morning and night hours. Hence, the delay of more than 45 days is quite abnormal. In the absence of any material to show that the victim girl had suffered injuries on the body and private parts, it is highly doubtful to believe such incident took place. Added to it, the victim girl in her 164 statement (Ex.P8) stated about the appellant undressing her and making improper touch but there is nothing about aggravated penetrative sexual assault. The evidence of Doctor/PW4 and medical report (Ex.P4) confirms that there is no mark of violence, no external injuries and opinion given is that the victim girl was not subjected to aggravated penetrative sexual assault. Further, PW1 is the person who had narrated the entire incident to the Doctor/PW4 and not the victim girl. Thus, the evidence of PW1 and victim girl and 164 Cr.P.C statement (Ex.P8) are not in conformity to the medical report (Ex.P4).

19.PW9 further confirms that PW1 not produced any medical records for the victim girl's treatment prior to 06.03.2019. PW1's evidence is with contradictions with regard to taking the victim girl to a Private Nursing Home



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at Villupuram, handing over the medical reports and informing the Investigating Officer and also contradicts disclosing the incident to her brother/PW3, mother/PW7 and sister-in-law/PW8 immediately on 21.12.2019. PW1 seems to be a person who improves and contradicts her statement depending upon the situation and not coming out with true version. Hence, PW1's evidence becomes doubtful and does not inspire confidence. Further, the conduct of PW1 keeping quite from 21.01.2019 to 06.03.2019, that to when her daughter/victim girl being subjected to penetrative sexual assault defies normal human conduct.

20.It is to be noted that PW1 and appellant are not relatives and they belong to different community. Added to it, the victim girl tutored by PW1 cannot be ruled out. In this case, none of the neighbours, private individual neither cited nor examined as witness in this case. Even the School Headmaster examined as additional witness, thereafter, Ex.P9 admission register extract marked.

21.There is clear contradictions in the evidence of PW1, PW3, PW7 & PW8 and the medical record (Ex.P4) and not in conformity to the evidence of



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victim girl and her 164 Cr.P.C statement (Ex.P8). From the statement of victim girl (Ex.P8) and medical record (Ex.P4), there is no penetrative sexual assault as projected. The foundational facts becomes shaky, hence, inference cannot be drawn invoking statutory presumption. Hence, this Court finds that the prosecution failed to prove the case beyond reasonable doubt.

22.In the result, this Criminal Appeal stands allowed setting aside the judgment dated 30.11.2021 in Special S.C.No.80 of 2019 passed by the learned Sessions Judge, Special Court (POCSO Court Cases), Cuddalore. The appellant is acquitted. Bail bond if any executed shall stand cancelled. Fine amount if any paid shall be refunded. Consequently, connected Criminal Miscellaneous Petition is closed.

08.09.2025

Speaking order/Non-speaking order

Index: Yes/No

Internet: Yes/No

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Note: Issue Order Copy on 08.09.2025.



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To

- 1.The Special Court for POCSO Act,
Cuddalore.
- 2.The Inspector of Police,
All Women Police Station,
Panruti, Cuddalore.
- 3.The Central Prison,
Cuddalore.
- 4.The Public Prosecutor,
Madras High Court.



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CrI.A.No.173 of 2022

M.NIRMAL KUMAR, J.

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PRE-DELIVERY JUDGMENT IN
CrI.A.No.173 of 2022

08.09.2025