



Crl.A.No.204 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2025

CORAM :

THE HON'BLE MR. JUSTICE **SUNDER MOHAN**

Crl.A.No.204 of 2023

Elangovan

...Appellant/Sole Accused

VS.

The State represented by
The Inspector of Police,
All Women Police Station,
Jeyamkodam, Ariyalur District
(Crime No.3 of 2022)

...Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, 1973, to call for the records pertaining to the Judgment passed in Special S.C.No.42 of 2022 dated 11.01.2023 by the Fast Track Mahila Neethimandram, Ariyalur, set aside the same.

For Appellant : Mr.A.Balamurugan

For Respondent : Mr.C.E.Pratap
Government Advocate (Crl.Side)



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JUDGMENT

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This Criminal Appeal has been filed by the sole accused, challenging the conviction and sentence imposed upon him, vide judgment dated 11.01.2023 in Spl.S.C.No.42 of 2022, on the file of the learned Sessions Judge, Fast Track Mahila Neethimandram, Ariyalur.

2(a). It is the case of the prosecution that the appellant/sole accused was a neighbour of the victim aged eight years at the time of occurrence; that there were jujube fruit trees in the house of the appellant; that on 11.01.2022, at about 8:00 a.m., the appellant lured the victim go to his house to pick up the jujube fruits and thereafter took her to the bedroom, hugged her and made her lie on the bed and thereby committed sexual assault on the victim.

(b) Since the appellant called the victim/P.W.1 once again to his house and the victim refused, P.W.2, the mother of the victim, questioned the victim and the victim is said to have stated about the alleged sexual assault committed by the appellant and thereafter, a complaint/Ex.P1 was



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lodged on the same day at about 6.00 p.m. An FIR was registered for the offences under Sections 366 and 354A(1)(i) of the Indian Penal Code, 1860, and Section 9(m) r/w 10 of the Protection of Children from the Sexual Offences Act, 2012, by P.W.13/Sub Inspector of Police in Crime No.3 of 2022 marked as Ex.P8. P.W.14/Inspector of Police took up the investigation. After examination of the witnesses and after obtaining the 164(5) Cr.P.C. statement made by the victim/P.W.1, before the learned Sessions Judge, Fast Track Mahila Court, Ariyalur, had filed the Final Report for the offences under Sections 366 and 354A(1)(i) of the Indian Penal Code, 1860, and Section 9(m) r/w 10 of the Protection of Children from the Sexual Offences Act, 2012.

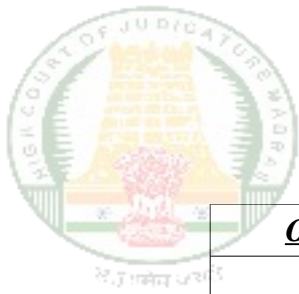
(c). On the appearance of the appellant, the provisions of Section 207 Cr.P.C. were complied with and the trial Court framed charges against the appellant under Section 10 of the POCSO Act, 2012 and 354A(2), 366 of the IPC and when questioned, the appellant pleaded 'not guilty.'



(d) During the trial, the prosecution examined fourteen witnesses as P.W.1 to P.W.14 and marked ten documents as Exs.P1 to P10; the 164(5) Cr.P.C. statement of the victim was marked as a Court document, i.e., Ex.C1. When the appellant was questioned under Section 313 of the Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. The mother of the appellant was examined as D.W.1. The appellant did not mark any documents.

(e) The trial Court, after considering the oral and documentary evidence, found the appellant guilty of the offences under Sections 354A(2) and 366 of the IPC and Section 10 of the POCSO Act, 2012. The appellant was sentenced as follows:

<u>Offence under</u>	<u>Sentence imposed</u>
Section 10 of the POCSO Act, 2012	To undergo rigorous imprisonment for seven years and to pay a fine of Rs.50,000/-, in default to undergo simple imprisonment for six months.
Section 366 of the IPC	To undergo rigorous imprisonment for ten years and to pay a fine of Rs.10,000/-, in default to undergo simple imprisonment for one year.



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<u>Offence under</u>	<u>Sentence imposed</u>
Section 354A(2) of the IPC	To undergo rigorous imprisonment for seven years and to pay a fine of Rs.50,000/-, in default to undergo simple imprisonment for six months.
Sentences were ordered to run concurrently.	

Hence, the accused has preferred the appeal challenging the said conviction and sentence.

3. Heard, Mr. A. Balamurugan, learned counsel appearing for the appellant and Mr.C.E.Pratap, learned Government Advocate (Crl.Side), appearing for the respondent/State.

4. Mr.A.Balamurugan, the learned counsel for the appellant/sole accused would submit that one Revathy, the landlord of the house, in which P.W.2 (mother of the victim) was a tenant had authorised the appellant to collect rent; that there was a dispute and due to that the appellant was beaten up by P.W.3/uncle of the victim and in order to avoid prosecution, P.W.2 had lodged this false complaint against the appellant; that in any case, the conviction cannot be sustained on the sole testimony of the victim since her earliest version before the Doctor is contrary to her evidence on record; and



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that in the absence of corroboration, it would be highly unsafe to convict the appellant and prayed for acquittal.

5. Mr.C.E.Pratap, the learned Government Advocate (Crl.Side) for the respondent, *per contra*, submitted that the victim had consistently stated about the occurrence both in her 164(5) Cr.P.C. statement and in her deposition; that nothing has been elicited in her cross-examination to discredit her testimony; that minor contradictions would not render her evidence unreliable; and therefore, submitted that the instance appeal is devoid of merits and prayed for dismissal.

6. This Court carefully considered the submissions made on either side and perused the materials available on record.

7. As stated earlier, the prosecution examined fourteen witnesses and marked ten documents. P.W.1 is the victim. P.W.2 is the mother of the victim. P.W.3 is the maternal uncle of the victim. P.W.4 is the sister of the



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victim and P.W.5 is the child helpline member and would speak about the information received by him as regards the alleged sexual assault. P.W.6, P.W.7, P.W.9, and P.W.10 are residents of the same village who turned hostile. P.W.8 and P.W.10 are the Observation Mahazar witnesses, who turned hostile. P.W.11 is the doctor who examined the victim and who had made entries in the accident register/Ex.P4 and entries in the Out Patient Register/Ex.P5. P.W.12 is the Headmistress of the school in which the victim studied and had marked the school certificate/Ex.P6 and the admission register/Ex.P7 to prove the date of birth of the victim as 02.11.2013. P.W.13 is the sub-inspector of police who registered the FIR. P.W.14 is the investigating officer.

8. The evidence of P.W.2, P.W.3 and P.W.4, namely the mother, uncle, and the younger sister of the victim is to the effect that they came to know of the occurrence from the victim. According to P.W.2, the victim refused to go to the house of the appellant, and when she questioned the victim, the victim had narrated the incident. Similarly, P.W.3, who is the uncle of the victim, had stated that he heard from his sister/P.W.2 as to what



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happened on the date of occurrence, and thereafter, he questioned the appellant and had beaten him up. P.W.4 is the younger sister of the victim, who states that she, along with P.W.1/victim, went to the house of the appellant to pick up jujube fruits and also about the fact that the victim cried after the occurrence.

9. As stated earlier, the remaining witnesses turned hostile. From the above narration, it would be clear that the prosecution case entirely rests on the evidence of the victim. The evidence of P.W.2, P.W.3 and P.W.4 would be of no avail to establish the exact overt act committed by the appellant. It is the victim's version that the appellant called both the victim/P.W.1 and her sister/P.W.4 to his house to pick up the fruits and thereafter, sent P.W.4 away and called P.W.1/victim to his bedroom, hugged her and made her lie on the bed. Though it is the prosecution case that the appellant did not do anything else since P.W.4 returned to the house of the appellant, neither P.W.1 nor P.W.4 would state about P.W.4 returning to the house which stopped the appellant from committing any other sexual assault.



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10. Be that as it may. The victim had narrated the incident to the doctor/P.W.11 in Ex.P4/Accident Register. The Doctor had observed as follows:

“XXX (victim) is in sound knowledge & mind. She has come with mother XXX. According to her own statement, she was called by known person to his house, he made XXX(victim) to lie in bed, she ran away from him.”

The above portion would show that the victim/P.W.1 had not stated before the doctor about the alleged hugging by the appellant. P.W.11, the doctor, in fact, had confirmed this fact in her cross-examination. The relevant portion of which reads as follows:

“சிறுமி என்னிடம் எதிரி கட்டிப்பிடித்ததாக சொல்லவில்லை.”

The final opinion recorded in the Accident Register/Ex.P4 reads as follows:

- “1.சிறுமி பாலியல் பலாத்காரம் செய்யப்பட்டதற்கான வாய்ப்புகள் இல்லை.*
- 2. சிறுமிக்கு பிறப்புருப்புலோ, உடலிலோ காயங்கள் ஏதும் இல்லை.”*



The above would also show that the victim/P.W.1 was not subjected to any assault and there were no injuries on her genital part or any other part of her body. At this juncture, it is relevant to point out that it is the case of the defence that one Revathy had authorised the appellant/accused on her behalf to collect rent from P.W.2/mother of the victim, who was a tenant, and there was a quarrel between the appellant and P.W.2 in this regard. Though this suggestion was denied, the appellant had examined D.W.1, his mother, who was aged 95 years at the time of her deposition. She had stated that the appellant was beaten up by P.W.2 and her relatives, since there was a dispute with regard to rent collection. Except for suggesting that she had deposed to support her son, nothing has been elicited to disbelieve her testimony.

11. Even if the testimony of D.W.1 is discarded, the question is whether the conviction can be sustained on the sole testimony of the victim, in the light of the above infirmities. The doctor/P.W.11 had categorically stated that the victim had not stated anything about the alleged hugging by the appellant. The doctor also opined that there was nothing to suggest that



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the victim was subjected to any sexual assault. Therefore, this Court is of the view that it is highly unsafe to render a finding of guilt on the basis of such evidence. The appellant would therefore be entitled to the benefit of the doubt, and hence the Judgment of conviction and sentence imposed on the appellant by the trial court is liable to be set aside.

12. Accordingly the Criminal Appeal is allowed and the appellant is acquitted of all the charges levelled against him. The conviction and sentence passed in Spl.S.C.No.42 of 2022 dated 11.01.2023 on the file of the learned Sessions Judge, Fast Track Mahila Neethimandram, Ariyalur, are set aside. The fine amount, if any, paid by the appellant shall be refunded. Bail bond, if any, executed shall stand discharged.

06.01.2025

Index: yes/no
Speaking order/Non Speaking order
Neutral citation : yes/no
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To

1. The Sessions Judge,
Fast Track Mahila Neethimandram,
Ariyalur.

2. The Inspector of Police,
All Women Police Station,
Jeyamkodam,
Ariyalur District.

3. The Public Prosecutor,
High Court, Madras.



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SUNDER MOHAN,J.

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