



Criminal Appeal No.210 of 2016

IN THE HIGH Court OF JUDICATURE AT MADRAS

Delivered on : 09.01.2025

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Appeal No.210 of 2016

Baskar

.. Appellant

Versus

State by
The Inspector of Police,
All Woman Police Station,
Melmaruvathur,
Kancheepuram District.
(Crime No.9 of 2013)

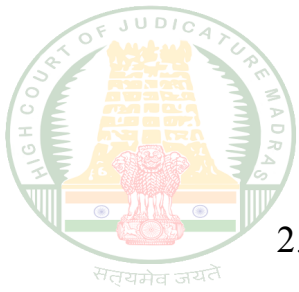
.. Respondent

Criminal Appeal is filed under Section 374 (2) of the Criminal Procedure Code, 1973, seeking to set aside the Judgment of conviction dated 12.08.2015 passed in Special Case No. 7 of 2014 by the learned Sessions Judge, Fast Track Mahila Court, Kancheepuram at Chengalpattu.

For Appellant	:	Mr. N. Sudharsan
For Respondent	:	Mrs. G. V. Kasthuri
		Additional Public Prosecutor

JUDGMENT

This Criminal Appeal is filed to set aside the Judgment of conviction dated 12.08.2015 passed in Special Case No. 7 of 2014 by the learned Sessions Judge, Fast Track Mahila Court, Kancheepuram at Chengalpattu.



2. The brief facts, which are necessary for the disposal of this

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2.1. P.W-1 is the Complainant in this case. As per the complaint under Ex.P-1, the daughter of P.W-1 the victim P.W-2 was studying in R.C School, Maduranthagam at the relevant point of time. On 18.11.2013, the Accused in this case is alleged to have come to the shop of the Complainant to purchase tooth paste. He is a neighbour also. He was having tooth brush in his hand. The Complainant P.W-1 observed that the Accused is showing some symbols and through his eyes, he is expressing something to the daughter of the Complainant. At that time, the Complainant P.W-1 was combing the hair of her daughter P.W-2. The mother of P.W-2 was in the shop which is in front of the house. Sensing something P.W-1 asked her daughter P.W-2 that what was it he was showing by gestures. For which, P.W-2 daughter of P.W-1 told her that the Accused referring him to as Anna is a bad guy he should not be allowed in the residence. P.W-1 got suspicious and on further enquiry with her daughter P.W-2, the daughter explained that he had taken her to his house on 18.11.2013, on which date she was on leave due to illness and she was alone at home. She went out of the house to attend nature's call. After attending nature's call, when she was returning to her house, the Accused who is a neighbour, three house away from the residence of P.W-1 and P.W-2 took



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P.W-2 to his house and bolted the doors from inside, made her lie on the Sofa and after lifting her dress, he removed his dress and thrust his male organ into the female organ of P.W-2. Unable to bear the pain, she cried stating that she will report the matter to her mother. To this, the Accused threatened the victim P.W-2 that if she ever inform any one he will kill her. Next day on 19.11.2013 only he had come to the shop of P.W-1 where P.W-1's mother was in the shop. P.W-1 was combing the hair of P.W-2 and Accused having come to the shop to purchase tooth paste shown some gestures to P.W-2. When P.W-2 inform about the occurrence P.W-1 took her daughter P.W-2 inside the house and on removing her clothes observed that her genital was swollen. P.W-1 informed her mother and P.W-1 took her daughter P.W-2 to Government Hospital, Maduranthagam accompanied by the mother of P.W-1 and sister in law of P.W-1. The daughter at Maduranthagam Government Hospital P.W-11 observed that her vagina was swollen indicating attempted sexual assault. Based on the Doctors information P.W-1 lodged a complaint with Maduranthagam Police Station. The Officers at Maduranthagam Police Station directed P.W-1 to lodge a complaint with All Women Police Station, Maduranthagam. Therefore, she approached the All Women Police Station, Maduranthagam and lodged a complaint under Ex.P-1. P.W-12 Mrs.Geetha Lakshmi, Inspector of Police, Maduranthagam All Women Police Station



received the complaint under Ex.P-1 and registered a case in FIR in Crime No.9 of 2013 on 20.11.2013 under Ex.P13 for the offences under Sections 376, 506(ii) of IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012. She had recorded the statement of P.W-1 Complainant and Statement of P.W-2 victim and sent the victim along with requisition letter to the learned Judicial Magistrate, Maduranthagam to subject the victim P.W-2 to medical examination. Based on the requisition letter of P.W-12, the learned Judicial Magistrate, Maduranthagam had addressed the Medical Officer, Government Hospital, Maduranthagam to examine the victim P.W-2. Based on the requisition letter of P.W-12, the learned Judicial Magistrate, Maduranthagam, had referred the victim to detailed examination by a Specialist in Chengalpet Medical College Hospital. Accordingly, the Inspector of Police, All Women Police Station, forwarded the victim P.W-2 along with her mother and a woman Constable with requisition letter from P.W-12 and the learned Judicial Magistrate, Maduranthagam to the Chengalpet Medical College Hospital where P.W-8 Dr.Sriranjani examined the victim and she issued Ex.P-5 report of the medical certificate.

2.2. The Inspector of Police P.W-12 also obtained the birth certificate of the victim P.W-2 from the mother of victim P.W-1 under Ex.P-2 where the date of birth of the victim P.W-2 is mentioned as 13.07.2001. The



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Investigation Officer P.W-12 visited the house of P.W-1 prepared observation mahazer under Ex.P-14 and rough sketch under Ex.P-15 in the presence of witnesses P.W-6 Valarmathi and one Kumar. The victim P.W-2 was also examined by P.W-9 Dr.Parasakthi Professor of Forensic Medicine at Government Medical College Hospital, Chengalpet. On the basis of the radiological report she had issued certificate under Ex.P-6 stating that the age of the victim P.W-1 is between the range of 12 and 14 years. The Inspector of Police P.W-12 also arrested the Accused and produced him before the learned Judicial Magistrate, Maduthurangam along with a letter to subject him to medical examination. Based on the requisition of P.W-12 Inspector of Police, All Women Police Station Maduranthagam, the learned Judicial Magistrate had issued letter to the duty Doctor at Government Medical College Hospital, Chengalpet, to determine the age of the Accused and also to find out the Accused is potent. P.W-7 Parasakthi, Professor of Forensic Medicine at Government Medical College Hospital, Chengalpet, subjected the Accused to medical examination and issued the age certificate of the Accused under Ex.P-7 that he is aged between 24 and 25 as per the radiological report. The Accused was subjected to medical examination by P.W-7 Dr.Arunagiri and he had issued potency certificate under Ex.P-4 against the Accused. P.W-12 Inspect of Police also addressed a letter to the learned Chief Judicial



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Magistrate, Chengalpet requesting to nominate a learned Judicial Magistrate to record the statement under Section 164 of Cr.P.C. of the Complainant P.W-1 and the victim P.W-2. The learned Chief Judicial Magistrate as per the proceedings under Ex.P-8 nominated the learned Judicial Magistrate, Maduranthagam to record the statement under Section 164 of Cr.P.C. of the complainant P.W-1 and her daughter victim/P.W-2. Accordingly, P.W-10 Mrs. Santhi, the then learned Judicial Magistrate, Maduranthagam had recorded the Section 164 of Cr.P.C. statement of Complainant P.W-1 under Ex.P-10 and the daughter of the Complainant victim P.W-2 under Ex.P-9. P.W-12 Inspector of Police, All Women Police Station had recorded the statement of the witnesses including mahazar witnesses who are the neighbour and the Doctors who had examined the Accused as well as the victim and issued medical certificate as stated above and also the learned Judicial Magistrate who had recorded the statement of the mother P.W-1 Complainant and her daughter victim P.W-2. She also on the basis of the medical report, altered the offences by including the offences under Sections 365, 366A, 354b along with offence already mentioned under Ex.P-13 by forwarding the alteration report under Ex.P-18 thereby requesting to include the Sections 365, 366A, 354b of IPC. She also forwarded the original complaint under Ex.P-1 and the original FIR under Ex.P-13 to the Fast Track Mahila Court,



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Chengalpet. On completion of the investigation, she laid final report in Crime No.9 of 2013 on the file of All Women Police Station, Maduranthagam, before the learned Sessions Judge, Fast Track Mahila Court, Chengalpet for the offence, under Sections 376, 506(ii), 365, 366A, 354B and Section 4 of the Protection of Children from Sexual Offences Act, 2012.

2.3. On filing of the final report by P.W-12 the Inspector of Police, All Women Police Station, Maduranthagam before the learned Sessions Judge, Fast Track Mahila Court, Chengalpet, the learned Judge had taken cognizance of the offence under Sections 376, 506(ii), 365, 366A, 354B and Section 4 of the Protection of Children from Sexual Offences Act, 2012 and taken the case on file as Spl. S.C.No.7 of 2014. After taking the case on file as Spl. S.C.No.7 of 2014, the learned Sessions Judge, Fast Track Mahila Court, Chengalpet issued summons to the Accused. On appearance of the Accused, copies were furnished under Section 207 of Cr.P.C.

2.4. After hearing prosecution and the learned Counsel for the defence, the learned Sessions Judge, Fast Track Mahila Court, Chengalpet, framed charges against the Accused under Sections 363, 376, 506(ii) of IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012. The Accused denied the charges and claimed to be tried. Therefore, trial was ordered. During trial, the Prosecution had examined 12 witnesses as P.W-1 to



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P.W-12 and marked documents as Ex.P-1 to Ex.P-18. After closing of the prosecution evidence, the Accused was examined under Section 313 of Cr.P.C. regarding the incriminating evidence available against him through the Prosecution witnesses P.W-1 to P.W-12 and Ex.P-1 to Ex.P-18. The Accused denied the incriminating evidence against him. The Accused had not examined any witnesses as defence witness. After hearing the arguments of the Prosecution and the defence, the learned Sessions Judge, Fast Track Mahila Court on appreciation of evidence had by judgment dated 12.08.2015 in Spl.S.C. No.7 of 2014 convicted the Accused for the offence under Sections 363 and 506(ii) of IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012. For the offence under Section 363 of Indian Penal Code, the Accused was sentenced to undergo rigorous imprisonment for a period of 3 years and to pay fine of Rs.2,000/-, in default, to undergo rigorous imprisonment for a period of six months; for the offence under Section 506 (ii) of Indian Penal Code, the Accused was sentenced to undergo rigorous imprisonment for a period of two years and for the offence under Section 4 of Protection of Children from Sexual Offences Act, 2012, the Accused was sentence to undergo rigorous imprisonment for a period of 7 years, with fine of Rs.2,000/-, in default, to undergo rigorous imprisonment for a period of six months.



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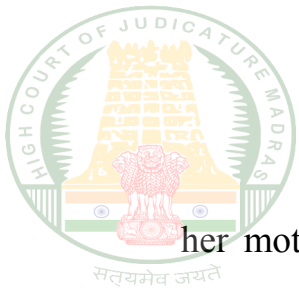
Aggrieved by the Judgment of conviction and order of sentence of imprisonment dated 12.08.2015 passed in Special Case No. 7 of 2014 on the file of the Mahila Court, Chengalpattu, the Accused had preferred this Criminal Appeal.

4. The learned Counsel for the Appellant invited the attention of this Court to the depositions of P.W.1-Mother of the victim, P.W-2 - victim, P.W-3 - grandmother of the victim, P.W-4 to P.W-6 Prosecution witnesses, P.W-8- Dr.Sriranjani, the duty Doctor at Chengalpattu Medical College Hospital, P.W-9 Dr.Parasakthi, the Medico Legal Doctor at Chengalpattu Medical College Hospital, P.W-10 the Judicial Magistrate, Maduranthakam, P.W-11 Dr.Geetha, the Assistant Surgeon at Maduranthakam Government Hospital and P.W-12 Mrs.Geethalakshmi, Inspector of Police and the report of the Doctor at page Nos. 61 and 63. It is the contention of the counsel for Appellant that there is no evidence regarding the alleged offences and the defence of the Accused was, based on previous enmity, the case had been registered against the Appellant. There are materials available in the course of the cross-examination of P.W-2 that shows that she suffered fits and fell unconscious on the road due to which she suffered injuries in her vaginal portion. This fact was admitted by



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P.W-2 in the cross-examination and also by her grandmother. The learned Counsel for the Appellant further submitted that the FIR marked as Ex.P-13 reached the Court only on 06.12.2023 whereas the alleged occurrence took place on 18.11.2013 by 12 Noon. The FIR was registered only on 20.12.2023 in Crime No. 9 of 2013 on the file of All Women Police Station, Melmaruvathur, and the reason for the delay remain unexplained. In the evidence of P.W-1, she had stated that the father of the Accused had mediated regarding a dispute between the P.W-1 to P.W-3 and her brother regarding property dispute. Therefore, there was animosity between the family of P.W-1 to P.W-3 and the family of the Accused. In order to wreck vengeance, a false complaint has been given by P.W-1. Further, the learned Counsel for the Appellant submitted that P.W-1 to P.W-3 had clearly stated that the Police Officials accompanied them during trial as witnesses. Also P.W-1 to P.W-3 were accompanied by Police Officials at the time of recording statement of P.W-1 and P.W-2 before the learned Judicial Magistrate, Maduranthakam under Section 164 of Cr.P.C. The alleged occurrence took place on 18.11.2013. The FIR was registered on 20.11.2013 and the 164 Statement of the victim was recorded by the learned Judicial Magistrate, Maduranthakam under Ex.P-9 on 16.12.2013. There was delay in recording 164 statement of the victim particularly, when the Police Officials accompanied the victim and



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her mother both during recording of 164 statement as well as recording the deposition before the trial Court, which goes to show that they were well tutored to depose in a particular manner. There was specific admission by P.W-1, P.W-2 and P.W-3 that before coming to Court they were tutored. In the light of such development, the benefit of doubt has to be given to the Accused. In this context, the learned Counsel for the Appellant relied on the decision of the Calcutta High Court reported in **2005 (1) Cal. L.J 560 [Hopna Hansda vs. The State of West Bengal]** wherein it has been observed as follows:-

“7. The main contention of the learned Counsel for the Appellant is that the finding of the Trial Court was based on uncorroborated oral testimony of a child witness. It is also pointed out after scanning the evidence of the child witness (P.W. 1) that he was tutored by P.W. 2 and Baneswar Mondal (P.W. 4). Mr. Bhattacharyya, learned Counsel appearing for the Appellant placing reliance on a decision of the Apex Court reported in **AIR 1994 SC 1068, Arbind Singh v. State of Bihar**, contended that as there are traces of tutoring the child witness, the Appellant should get benefit of doubt for which he should be acquitted.

8. Mr. Bhattacharyya also relied on another decision of the Apex Court, reported in **2003 C Cr LR (SC) 1064, Ratansinh Dalsukhbhai Nayak v. State of Gujarat**, to show that the evidence of a child witness is not only to be considered cautiously but it is also to be ascertained after careful scrutiny of the other evidence as to whether there is an impress of truth in the evidence.”

5. The learned Counsel for the Appellant also relied on the Order dated 25.04.2014 of the Hon'ble Supreme Court in **Special Leave Petitioner (Crl.) No. 5073 of 2011 [State of Karnataka by Nonavinakere Police vs. Shivanna @ Tarkari Shivanna]** wherein the Hon'ble Supreme Court had



issued the following guidelines to all the Police Stations in charge in the entire

country to be followed:

“(i) Upon receipt of information relating to the commission of offence of rape, the Investigating Officer shall make immediate steps to take the victim to any Metropolitan / preferably Judicial Magistrate for the purpose of recording her statement under [Section 164](#) Cr.P.C. A copy of the statement under [Section 164](#) Cr.P.C. should be handed over to the Investigating Officer immediately with a specific direction that the contents of such statement under [Section 164](#) Cr.P.C. should not be disclosed to any person till charge sheet / report under [Section 173](#) Cr.P.C. is filed.

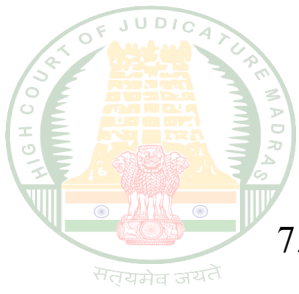
(ii) The Investigating Officer shall as far as possible take the victim to the nearest Lady Metropolitan / preferably Lady Judicial Magistrate.

(iii) The Investigating Officer shall record specifically the date and the time at which he learnt about the commission of the offence of rape and the date and time at which he took the victim to the Metropolitan / preferably Lady Judicial Magistrate as aforesaid.

(iv) If there is any delay exceeding 24 hours in taking the victim to the Magistrate, the Investigating Officer should record the reasons for the same in the case diary and hand over a copy of the same to the Magistrate.

(v) Medical Examination of the victim: [Section 164A](#) Cr.P.C. inserted by Act 25 of 2005 in [Cr.P.C.](#) imposes an obligation on the part of Investigating Officer to get the victim of the rape immediately medically examined. A copy of the report of such medical examination should be immediately handed over to the Magistrate who records the statement of the victim under [Section 164](#) Cr.P.C.”

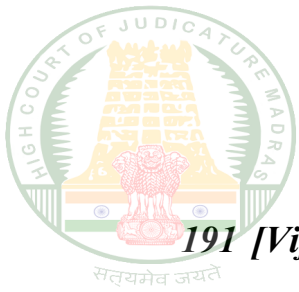
6. Therefore, in view of the unexplained delay in registering the First Information Report, the delay in receipt of the First Information Report by the jurisdictional Court and the fact that P.W-1 to P.W-3 were well tutored by the Investigation Officer, before tendering their deposition, the entire Prosecution case has to be held as vitiated and the Judgment of the trial Court has to be set aside.



7. Per contra, the learned Additional Public Prosecutor vehemently

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stating that the evidence of victim itself will be sufficient to convict the Accused in this case. There is evidence in the cross-examination of the mother of the victim (P.W-1) and the victim (P.W-2) that the father of the Accused approached P.W-1 not to proceed with Police complaint and he offered to pay amount to the tune of Rs.50,000/-. That itself can prove that it was the Accused, who committed the offences against the victim girl. Further, the submission of the learned Counsel for the Appellant that FIR reached the Court belatedly cannot be accepted. The FIR was registered on 20.11.2013. The signature of the Chief Judicial Magistrate is found on the FIR (Ex.P-13) marked before the trial Court on 20.11.2013 itself by 19.15 Hours. The seal of the Chief Judicial Magistrate was affixed on the FIR only on 21st November, 2013. The FIR was entered in the Court records after affixing seal on the next working day namely Monday. Apart from the evidence of P.W-1 to P.W-3, P.W-4 and P.W-5, who are independent witnesses and acquaintance of P.W-1 to P.W-3, had corroborated the evidence of victim. Therefore, on the basis of the clear case made out by the Prosecution, the trial Court convicted and sentenced the Appellant-Accused. The learned Additional Public Prosecutor relied on the decision of the Hon'ble Supreme Court reported in **(2010) 8 SCC**



191 [Vijay alias Chinee vs. State of Madhya Pradesh] wherein it has been

held as follows:-

“D. Penal Code, 1860 – Section 376 – Testimony of prosecutrix – Minor discrepancies on trivial matters not affecting core of prosecution case – Held, should not result in rejection of evidence in its entirety – Evidence of witnesses must be read as a whole and case to be considered in totality of circumstances – After exercising care and caution and sifting evidence to separate truth from untruth, exaggerations and improvements, Court can convict Accused on basis of residuary evidence – Discrepancies in instant case pertained to circumstances in which alleged occurrence had taken place, and dress prosecutrix was wearing then – Such contradictions having no material bearing on prosecution case, inconsequential, since admittedly prosecutrix was at place of alleged occurrence and Appellant and other Accused had intercourse with her – Criminal Trial – Appreciation of evidence – Contradictions, inconsistencies, exaggerations or embellishments.”

8. She also relied upon yet another decision of the Hon'ble Supreme Court reported in **(2020) 10 SCC 573 [Ganesan vs. State represented by Its Inspector of Police]** wherein it has been held as follows:-

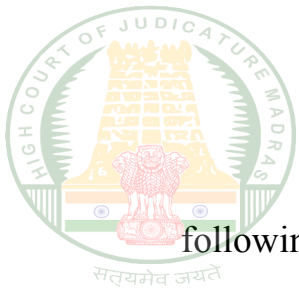
“A. Crime Against Women and Children – Protection of Children from Sexual Offences Act, 2012 – Section 7 r/w. Section 8 – Conviction on sole testimony of victim – Permissibility of – Where testimony of victim is found reliable and trustworthy, reiterated, conviction on basis of her sole testimony is permissible – In instant case, victim P.W-13 aged 15 years at time of deposition was matured and her testimony was found trustworthy, unblemished and her evidence was of sterling quality – Hence, conviction on basis of her testimony was justified – Criminal Trial – Witnesses – Sole/Solitary witness.”

9. According to the learned Additional Public Prosecutor, in this case, there is corroborating evidence let in by the mother and grandmother.



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Dr.Geetha (P.W-11) who had examined the victim on 19.11.2013 at the earliest point of time, soon after the occurrence had issued Ex. P-12 in which she had stated that the vagina of the victim was found swollen. P.W-11 was working at that time as Assistant Surgeon in Government Hospital at Maduranthakam nearer to the place of residence of the victim. She had in her evidence stated that she had forwarded the victim to Chengalpattu Medical College Hospital for further examination. P.W-8 Dr.Sriranjani at Chengalpattu Medical College Hospital examined the victim on 22.11.2023. She had examined the victim based on the requisition letter produced from the learned Judicial Magistrate, Maduranthakam in Crime No.9 of 2013 of All Women Police Station, Melmaruvathur. She had issued Ex.P-5 stating that the victim might have been subjected to sexual assault. Therefore, the learned Additional Public Prosecutor submitted that there was medical evidence to corroborate the evidence of the victim as well as the prosecution witnesses. Further, at the earliest point of time, the statement under Section 164 of Cr.P.C. was recorded from the victim under Ex.P-9 wherein the victim, aged 13 on the date of alleged occurrence, who was a student of 8th Standard, had stated that she had been subjected to sexual assault by the Accused. Even P.W-10, learned Judicial Magistrate was examined as a witness who has stated the manner in which the deposition of minor girl, P.W-2 was recorded by



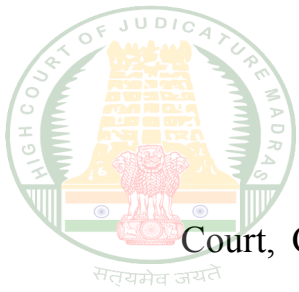
following the guidelines laid by this Honourable Court as well as the Honourable Supreme Court. P.W-10 also stated that even the mother of the victim girl, P.W-1 also gave her statement voluntarily and it was natural and free from any suspicion. In any event, the deposition of P.W-2, minor victim is natural and there is nothing to suspect that it was tendered by tutoring. Therefore, the learned Additional Public Prosecutor seeks to dismiss this Appeal as having no merit and confirm the judgment of the learned Sessions Judge, Fast Track Mahila Court, Chengalpattu, in Special Case No. 7 of 2014, dated 12.08.2015.

10. Heard the learned Counsel for the Appellant Mr. N. Sudharsan and the learned Additional Public Prosecutor Mrs. G. V. Kasthuri appearing for the Respondent.

Point for consideration:

Whether the judgment of the learned Sessions Judge, Fast Track Mahila Court, Chengalpattu, in Special Case No. 7 of 2014, dated 12.08.2015 is to be set aside as perverse?

11. Perused the deposition of the witnesses P.W-1 to P.W-12, Ex.P-1 to Ex.P-18 and the judgment of the learned Sessions Judge, Fast Track Mahila



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Court, Chengalpattu, in Special Case No. 7 of 2014, dated 12.08.2015. On perusal of the evidence of the mother of the victim (P.W-1) and the victim (P.W-2), it is found that the mother of victim in her cross-examination denied the defence of the Accused that there had been previous enmity between the family of the Accused and the mother-in-law of P.W-1. She had specifically in her chief examination as well as in her cross-examination stated that based on the narration of event by her daughter, she had taken the child victim to Dr.Geetha (P.W-11) at Maduranthakam Government Hospital where the Doctor, after examining the minor child, had stated that the victim had been subjected to sexual assault.

12. The learned Judicial Magistrate (P.W-10), Maduranthakam, who recorded the 164 statement of the victim under Ex.P-9 as well as the mother of the victim (P.W-1), stated that she received the proceedings of the learned Chief Judicial Magistrate, Chengalpattu, on 04.12.2013 based on which she issued summons to the victim and the mother of the victim through All Women Police, Melmaruvathur. On production of the witnesses – the victim and her mother, she had recorded their statement on 09.12.2023. P.W-10 learned Judicial Magistrate, Maduranthakam, was subjected to cross-examination. In the cross-examination, the learned Counsel for the Accused

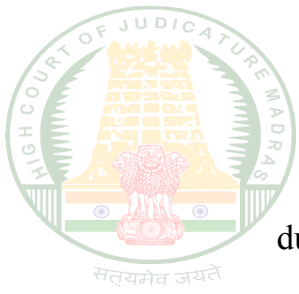


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had attempted to elucidate information that the witnesses were produced by the Women Police. The learned Judicial Magistrate had answered that mandatory procedures have been followed in this case, without being breached. To the specific query, in what way the summons are served on the witnesses, she had stated that the summons were served in the normal course as per the procedure prescribed in Criminal Procedure Code. She had denied the suggestion that the Police had produced the witnesses. She had also denied the suggestion that she had suppressed the fact that the Police had produced the witnesses. In any event, there is nothing wrong in the learned Judicial Magistrate admitting that the summons had been served on the witnesses by the Police. Summons had to be served only through the Police as the Court of the learned Judicial Magistrate, Maduranthakam has to depend on Police for issuance of summons as per the procedure prescribed in Criminal Procedure Code. There are no staff in the Criminal Courts as in the civil Court. In Civil Courts summons are served through the Nazir Section which is not available in the Criminal Court. In this regard it is apt to extract the provisions of Section 62 of Criminal Procedures Code which reads as under:-

“62. Summons how served. - (1) Every summons shall be served by a police officer, or subject to such rules as the State Government may make in this behalf, by an officer of the Court issuing it or other public servant.

(2) The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the

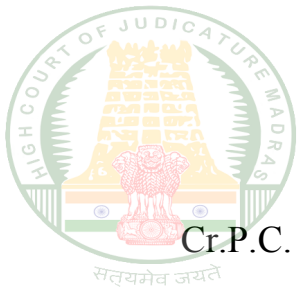


duplicates of the summons.

(3) Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.”

13. Therefore, the learned Judicial Magistrate, Maduranthakam, had recorded 164 statement of the mother of the victim and the victim on 16.12.2013 and nothing useful could be elucidated by the Appellant/Accused in support of the defence.

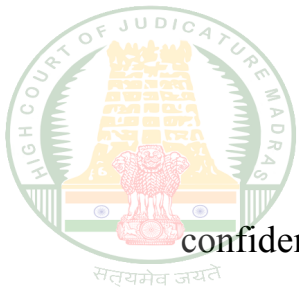
14. The directions issued by the Honourable Supreme Court in ***Special Leave Petitioner (Crl.) No. 5073 of 2011, dated 25.04.2014 [State of Karnataka by Nonavinakere Police vs. Shivanna @ Tarkari Shivanna]*** is of the year 2014. Even prior to that, as a general rule, the Police Officers, with due diligence and care, proceed with the investigation. Recording 164 statement cannot be done on request by the Investigation Officer directly to the Judicial Magistrate. The Investigation Officer has to file a petition before the learned Chief Judicial Magistrate of the District concerned. The learned Chief Judicial Magistrate has to nominate a Judicial Magistrate to record 164 statement of witnesses of Accused or conduct identification of witnesses. Only after issuing proceedings by the Chief Judicial Magistrate nominating a Magistrate, the Investigation Officer will be able to proceed with the said procedures. Also the proceedings of statement recorded under Section 164



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Cr.P.C. has to be obtained by the Investigation Officer by applying the certified copies from the Court concerned. Now as per the directions issued by the Honourable Supreme Court, directions were issued by this Court and based on that, the Police Officers are granted copies immediately after recording the 164 statement.

15. The submission of the learned Counsel for the Appellant that statement under Section 164 of the Code was not immediately recorded after registration of FIR cannot be accepted in the light of the procedures to be followed in the Criminal Courts across the State. On the allegation that while recording the statement under Section 164 of Cr.P.C. there is delay and the witnesses were accompanied by Police Officials who tutored the victim or witnesses, the witnesses are accompanied by Police Officials on the basis of the summons for production of witnesses or Accused by the Court. That does not mean the Court has to draw presumption that the victim or witnesses were tutored by Police Officials. If that argument is to be accepted by the Criminal Courts then in all cases, based on the Police investigation, the Accused in the criminal cases have to be acquitted by the Criminal Courts. Every step of the investigation has to be proceeded with the help of the Police Officials. When witnesses are produced before the Court, it is only a procedure to inspire

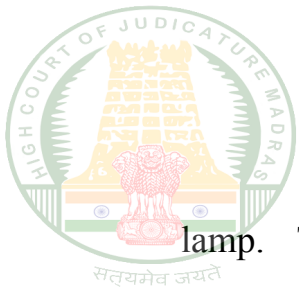


confidence in the Investigation Officer that the investigating is under right track. The statement under Section 164 of Cr.P.C. will not be revealed to an Accused before conclusion of the investigation. Only after completion of the investigation, the Accused is provided with copies under Section 207 Cr.P.C and the Accused or his Counsel can cross-examine the witnesses concerned. Till such time, it is not open to cross-examine any one, other than the Police Officials.

16. The admission in cross-examination by P.W-12 that the rough sketch under Ex.P-15 does not mention the place of residence of the victim is concerned, it only mentioned the scene of occurrence where the Accused had committed sexual assault on the child. There is no necessity for the Investigation Officer to point out the place of residence of the victim. The scene of occurrence is to be mentioned where the alleged occurrence had taken place. As per the FIR registered by the Police and the statement recorded by the Investigation Officer, the victim had stated that the victim was subjected to sexual assault by the Accused in the house of the Accused. P.W-12 also fairly conceded that the residence of the victim was not mentioned in the rough sketch (Ex.P-15). In any event, it will not affect the case of the Prosecution in any manner.



WEB COPY17. P.W-12 Investigation Officer in her evidence had clearly stated that the residence of of the Accused is located on the East street. That does not affect the Prosecution case. In the cross-examination, the victim had admitted that she fell on the street outside the residence and the neighbours splashed water on her face, only then she got up and regained consciousness. She had admitted the suggestion in the cross-examination that the Police Officials and her mother had informed her what to say and how to make deposition in the Court. She had denied the suggestion that there was no such occurrence as claimed by her and the case was foisted. In the decision relied on by the learned Counsel for the Appellant/Accused rendered by the Calcutta High Court reported in **2005 (1) Cal.LJ 560 [Hopna Hansda vs. The State of West Bengal]** it was only stated that the evidence of child witness had to be scrutinised with caution. If there is doubt of tutoring the child witness, the Court has to reject such evidence. The said decision will not be helpful to the facts of this case. In that decision, the child witness had in the cross-examination admitted that the Police Officials tutored her. Here the child witness was aged 13 years on the date of occurrence and she was aged 14 when she deposed evidence in Court. She had clearly narrated the facts that the Accused had enticed her to his house on the pretext of giving her earthen



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lamp. The alleged occurrence had taken sometime between Deepavali and Karthigai Deepam which are the two occasions the people lit earthen lamp in front of their houses. The occurrence had taken place on 18.11.2013. Therefore, it is the presumption that it is between Deepavali and Karthigai Deepam. The Appellant had enticed the victim to his house. The victim on reaching his house had closed the door and assaulted her sexually and when she was leaving his house, he threatened her not to disclose it to anyone. On the next day of occurrence when the Appellant had come to the shop he noticed the victim and gave a signal which was noticed by the mother (P.W-1) and when questioned, PW2 requested her mother (P.W-1) not to permit the Accused nearer to the shop or to their house. Suspecting something the mother of the victim questioned the victim (P.W-2) and the victim opened up to her mother and narrated the entire incident. Therefore, the mother of the victim took the child (P.W-2) to P.W-11 Dr.Geetha at Maduranthakam Government Hospital where the Doctor examined her and found that she had been sexually assaulted. The Doctor, in her certificate under Ex.P12 stated that the vagina of the victim is swollen. The Doctor (P.W-7) at Government Medical College Hospital, Chengalpattu observed that there is no visible injuries available as per Ex.P-5. The Accused had marked Ex.D-1 which is the Cytology Report that does not disclose the presence of either semen or blood.



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Regarding the same, P.W-12 Investigation Officer had clearly stated that the mother of the victim (P.W-1) had informed the Investigation Officer that she had washed the cloths of the victim. Therefore, the cloths worn by the victim could not be handed over to P.W-12-Investigation Officer and P.W-12 could not seize the dress and a clear explanation has been given in the cross-examination by P.W-12-Investigation Officer.

18. The contention of the Accused in the trial as well as in the Appeal was that there had been previous enmity between the two families viz., victim's family and the family of the Accused. It is also stated that the victim slipped and fell on the street and that was the reason for the injuries in her vagina. In cross-examination, the victim had clearly accepted that she fell on the street on the day of occurrence due to giddiness. However, P.W-11 Dr.Geetha who had examined the victim (P.W-2) at the earliest point of time, had clearly stated that the injury caused on the vagina of the victim under Ex.P-12 can be caused only by a sexual assault and. In fact, P.W-9, Doctor, in her cross examination clearly denied the suggestion that due to a fall, when a sharp object pierces the vaginal portion, there is no possibility for tear of the hymen. This deposition of P.W-9 is sufficient to reject the arguments advanced on behalf of the Accused.



WEB COPY19. The suggestion by the learned Counsel for the Accused before the trial Court is that the FIR reached the Court of learned Judicial Magistrate, Maduranthakam only on 06.12.2013. Further, the alleged occurrence took place on 18.11.2013. Whereas FIR was registered on 20.11.2013. Therefore, only after detailed discussion in the village, FIR was registered and the delay is fatal to the case of the prosecution. This submission has to be rejected because, in cases of sexual assault, the family of the victim undergoes trauma and confusion. It takes time for them to resort to legal procedures. They cannot be expected to do everything within a blink of an eye. The Honourable Supreme Court had issued guidelines in very many cases as to how the delay in registering FIR particularly in cases involving sexual assault can affect the credibility of the case of the prosecution. In this case, the occurrence took place on 18.11.2013. The incident was disclosed by PW2, to her mother, P.W-1, on 19.11.2013. On the next day, the First Information Report was registered and therefore, the delay cannot be a ground to reject the case of the prosecution. Further, the seal of the learned Judicial Magistrate, Maduranthakam on the FIR was affixed on 06.12.2013 but the FIR had reached the learned Chief Judicial Magistrate on the same day on 20.11.2013 by 19.15 hours. That shows after office hours FIR reached the Court of the



learned Chief Judicial Magistrate. Therefore, the seal of the Chief Judicial Magistrate was affixed on 21.11.2013. From the office of the learned Chief Judicial Magistrate, it has to reach the office of the learned Judicial Magistrate, Maduranthakam and it has to be sent through proper channel. On such receipt of FIR, the seal of the learned Judicial Magistrate, Maduranthakam was affixed on 06.12.2013. That does not mean the FIR was delayed. Further, there is evidence through P.W-1 that at the earliest point of time. Therefore, the delay in lodging the FIR is also properly explained in this case. Immediately after registration of the FIR, the Police Officials of the All Woman Police Station had taken the FIR to the learned Chief Judicial Magistrate due to over cautious approach not to get into trouble, as they are not sure to send the FIR either to Mahila Court or to nearest Judicial Magistrate having jurisdiction. On such confusion, they had sent the FIR to the learned Chief Judicial Magistrate. The learned Chief Judicial Magistrate had received the FIR on 20.11.2013 at 19.15 hours and also put his signature on the FIR. Therefore, the contention of the learned Counsel for the Accused that the FIR was registered with delay or reached the jurisdictional Court after lapse of time, will not hold good. In the light of the above discussion, the defence of the Accused is to be rejected, particularly, when the Accused had not entered witness box and discharged the burden of proof of his innocence.



WEB COPY20. On perusal of the entire judgment it is found that the learned Sessions Judge, Fast Track Mahila Court, Chengalpattu, in Special Case No. 7 of 2014, dated 12.08.2015, on proper appreciation of evidence, had arrived at a conclusion that the Accused had committed sexual assault attracting offence under Section 4 of the Protection of Children from Sexual Offences Act, 2012 and had rightly recorded the conviction. As per the settled proposition of law laid down by the Hon'ble Supreme Court, while appreciating the evidence before the Trial Court, the Trial Court had arrived at a conclusion based on proper appreciation of evidence and the Appellate Court shall not disturb the finding of the Trial Judge, even though there is a possibility of arriving at an opposite finding on the same set of evidence by the Appellate Court. This is because, the Trial Judge had the advantage of observing demeanor of witnesses which is not available before the Appellate Court. Therefore, the finding recorded by the Trial Court shall not be disturbed in the usual course. The Appellate Court have to be cautious on appreciating the evidence of the Trial Court.

21. In the light of the above discussion, the point for consideration is answered against the Appellant/Accused and in favour of the Prosecution. The finding arrived at by the learned Sessions Judge, Fast Track Mahila Court,



Criminal Appeal No.210 of 2016

Chengalpattu, recording the guilt of the Accused by judgment dated 12.08.2015 in Special Case No. 7 of 2014 is found proper and the same is to be confirmed.

In the result, **this Criminal Appeal is dismissed.** The finding arrived at by the learned Sessions Judge, Fast Track Mahila Court, Chengalpattu, recording the guilt of the Accused by judgment dated 12.08.2015 in Special Case No. 7 of 2014 is confirmed.

The learned Sessions Judge, Fast Track Mahila Court, Chengalpattu, is directed to issue warrant to the Accused through The Inspector of Police, All Woman Police Station, Melmaruvathur, Kancheepuram District and detain him in prison to undergo the remaining period of sentence in continuation of the judgment dated 12.08.2015 passed in Special Case No. 7 of 2014.

09.01.2025

srm

Internet : Yes/No

Index : Yes/No

Speaking/Non-speaking order



Criminal Appeal No.210 of 2016

To
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1. The Sessions Judge,
Fast Track Mahila Court,
Kancheepuram at Chengalpattu
2. The Inspector of Police,
AWPS, Melmaruvathur,
Kancheepuram District.
3. The Superintendent,
Central Prison, Puzhal,
Chennai.
4. The Public Prosecutor,
High Court, Madras.
5. The Section Officer,
Criminal Section,
High Court Madras.



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Criminal Appeal No.210 of 2016

SATHI KUMAR SUKUMARA KURUP, J

srm

Judgment made in
Criminal Appeal No.210 of 2016

09.01.2025