



Crl.A.No.284 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2025

CORAM

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

Crl.A.No.284 of 2024
and Crl.M.P.No.4262 of 2024

Santhakumar

... Appellant

Vs

The State Rep. By,
The Inspector of Police,
Erode All Women Police Station,
(Crime No.51 of 2018)

...Respondent

PRAYER : Criminal Appeal has been filed under Section 374(2) of Code of Criminal Procedure, to call for records and set aside the conviction and sentence awarded by a Judgement dated 11.01.2024 passed by the Learned Sessions Judge, Magalir Neethi Mandram, (Fast Track Mahila Court), Erode in Special Sessions Case No.50 of 2020 and acquit the Appellant herein.

For Appellant : Mr.S.Sivalinga Kesavan

For R1 : Mr.S.Raja Kumar

Additional Public Prosecutor

JUDGMENT

This Criminal Appeal has been filed as against the order passed in Special Sessions Case No.50 of 2020 dated 11.01.2024 by the Sessions Judge, Magalir Neethi Mandram, (Fast Track Mahila Court), Erode, thereby convicting the appellant for the offence punishable under Sections 5(l), 5(m)



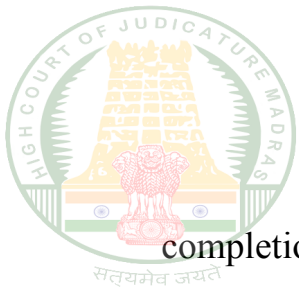
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read with Section 6 of POCSO Act.

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2. The case of the prosecution is that the minor victim girl and her brother were under the custody and care of their grand mother, since their parents go for business and return to their home at 9 p.m. While being so, when the victim was studying fourth standard, who was aged about nine years, used to go and play with her friend, one Dharani, who lives in the first floor of their house. When her friend Dharani was not there at her house, her father viz., the accused dragged the victim upstairs and had exhibited obscene movie and asked her to do the same. He had also pressed her breast and had inserted his penis into her vagina. It had happened continuously till the year 2017. During the month of August, 2017, the victim and her family shifted their residence. In the new house, the victim had seen the accused and he had called her. Therefore, the victim, fearing the sexual assault at the hands of the accused, informed her mother. Hence, the complaint.

3. On receipt of the complaint, the respondent Police registered FIR in Crime No.51 of 2018, for the offences punishable under Sections 11(5), 12, 5(l), 5(m) and 6 of POCSO Act and Sections 376AB and 506(1) of IPC. After

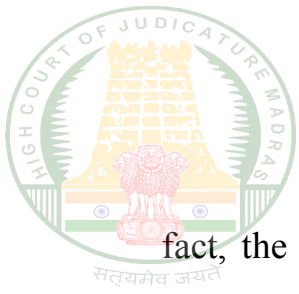


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completion of investigation, final report was filed and the same was taken cognizance by the Trial Court in Special Sessions Case No.50 of 2020.

4. In order to bring home the charges, the prosecution had examined PWs.1 to 12 and marked Exs.P1 to 23. On the side of the accused, he had examined D.W.1 and no document was marked. The Court marked Ex.C1. The prosecution had also produced material objects and marked P.M.Os.1 to 3. On perusal of oral and documentary evidence, the Trial Court found the accused guilty for the offence punishable under Sections 5(l), 5(m) read with Section 6 of POCSO Act and sentenced him to undergo 20 years rigorous imprisonment and also imposed fine of Rs.5,000/-, in default, to undergo three months rigorous imprisonment. Aggrieved by the same, the present appeal.

5. The learned counsel for the appellant would submit that though there is a statutory presumption in respect of the guilt of the accused under the POCSO act, the presumption will not operate when the prosecution has failed to prove foundational facts on examination of the prosecution witnesses and also by contesting materials on record. Therefore, the Trial Court ought not to have presumed the guilt of the accused under Section 29 of the POCSO Act. In



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fact, the prosecution did not frame any charge under Section 376AB of IPC,

since no *prima facie* material was available to prosecute the appellant. The prosecution failed to explain the delay in lodgment of the complaint for a period of five years from the date of the alleged occurrence. Therefore, the delay throws a cloud over the entire version of the prosecution and it is fatal to the case of the prosecution. A false complaint has been foisted as against the petitioner due to previous enmity. The Doctor, who had examined the victim also did not support the case of the prosecution, since there was no injury in any part of the victim's body. The prosecution also failed to produce any medical records in order to prove the allegation of aggravated penetrative sexual assault of the victim girl. The grand mother of the victim girl was examined as PW.4 and she did not support the case of the prosecution. Even after knowing the alleged sexual assault at the hands of the appellant, PW.4 did not even whisper about the alleged occurrence even to the mother of the victim. In fact, according to PW.4, the victim sustained injury on her private part and she had applied some medicine. Even then, PW.4 did not take the victim to any hospital and did not inform the parents of the victim. Therefore, the prosecution had miserably failed to prove any of the charge and even then, the Trial Court mechanically convicted the appellant.



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6. Per contra, the learned Additional Public Prosecutor appearing for the respondent Police would submit that the victim was examined as PW.1 and her parents were examined as PWs.2 and 3. The statement of the minor victim girl was recorded under Section 164 of Cr.P.C was marked as Ex.P2. The evidence of PW.1 clearly corroborates the statement recorded under Section 164 of Cr.P.C. The grand mother of the victim was examined as PW.4. She categorically deposed that she had applied some medicine on the injury sustained by the victim due to aggravated penetrative sexual assault by the appellant. Since, the victim girl was subjected for medical examination after several months from the occurrence, PW.6 did not find any injury on the victim. The deposition of PW.1 clearly corroborates with the statement recorded under Section 164 of Cr.P.C. It was also corroborated by the evidence of PW.4. Therefore, the prosecution proved the charges beyond any reasonable doubt and the Trial Court had rightly convicted the appellant and it does not warrant any interference by this Court.

7. Heard the learned counsel on either side and perused the materials



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available on record.

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8. The victim was aged about nine years on the date of the alleged occurrence. The date of the alleged occurrence was not stated anywhere by the victim or any other witness. Even according to the victim, when she was studying fourth standard at the age of nine years in the year 2014, the alleged occurrence had happened when the victim went to the house of the appellant to play with his daughter Dharani. According to her, it was happened till the year 2017. Thereafter, she along with her family members shifted their family to other place. In the new house, when the victim had seen the appellant, the appellant had called her. At that juncture, the victim feared of the sexual assault committed by the appellant and informed her mother. Though the victim deposed that the appellant had committed penetrative sexual assault continuously from the year 2014-2017, she did not whisper about the said occurrence to anybody. In fact, according to PW.1, she sustained some bleeding injury, for which her grand mother who deposed as PW.4 had applied some ointment. Even then, she did not whisper about the alleged sexual assault committed by the appellant to her grand mother. There was delay of nearly four years to lodge the complaint. The complaint was lodged only on 11.12.2018 by



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the mother of the victim, who was examined as PW.2. Even according to PW.1,

the alleged occurrence was informed to PW.2 in the month of August, 2018 itself. Even then, PW.2 did not lodge any complaint after knowing the alleged penetrative sexual assault committed by the appellant. There was absolutely no explanation for the delay. Though the delay is immaterial in the case sexual offences, in view of the facts and circumstances of the entire case of the prosecution, the delay is very much significant in this case. No prudent person even after treating the victim by applying some ointment for bleeding injury would keep quiet without even informing about the injury to the victim's parents.

9. PW.4 deposed that she had treated the victim girl for the bleeding injury. That apart, the victim had duly informed about the alleged occurrence to PW.4. Even then, PW.4 did not inform to the victim's parents. After registration of FIR, the victim girl was subjected for medical examination. PW.6 examined the victim and issued medical report which was marked as Ex.P8, on the basis of the forensic laboratory report which was marked as Ex.P7. As per Exs.P7 and 8, hymen of the victim was intact. There was no injury on the victim's genitalia part. There was no evidence for penetrative sexual assault on the



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victim. Therefore, Exs.P7 and 8 are completely against the evidence of PW.1.

Therefore, the evidence of PW.1 is not legitimate, since the complaint was lodged only after four years from the date of occurrence. The victim also did not even whisper about the date and place of the alleged occurrence. The only person who played along with the victim at the time of the alleged occurrence is the daughter of the appellant. The prosecution failed to examine her to corroborate the evidence of PW.1. Except PW.1, other witnesses are hear say witness. Though PW.1 informed about the alleged occurrence to PW.4, PW.4 did not whisper to anybody and no complaint was lodged for the alleged occurrence.

10. Therefore, the prosecution failed to prove the charge under Sections 5(l), 5(m) read with Section 6 of POCSO Act. Hence, the presumption under Section 29 of the POCSO Act is not applicable and the contrary is proved through the evidence of PW.4 as required under the POCSO Act to break the presumption.

11. In criminal jurisprudence, the burden is always on the prosecution to prove its case beyond reasonable doubt. When two views are possible and



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the one favourable to the accused is equally plausible, the benefit of doubt must necessarily go to the accused. In the present case, the prosecution has failed to discharge its burden convincingly, and the trial Court failed to properly appreciate the infirmities in the prosecution case. Therefore, the conviction and sentence awarded by the trial Court cannot be sustained and is liable to be set aside.

12. Accordingly, the Judgment passed in Special Sessions Case No.50 of 2020 dated 11.01.2024 by the Sessions Judge, Magalir Neethi Mandram, (Fast Track Mahila Court), Erode, is hereby set aside. The appellant is acquitted from all charges in Special Sessions Case No.50 of 2020 for the offences under Sections 5(l), 5(m) read with Section 6 of POCSO Act. The appellant is directed to be set at liberty forthwith unless his custody is otherwise required in connection with any other case. The fine amount, if any, paid by the appellant shall be refunded. Bail bond, if any, executed by the appellant shall stand cancelled.



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connected Miscellaneous petition is closed.

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Speaking order/Non-speaking order
Index :Yes/No
Internet :Yes/No
mn



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To

1. The Sessions Judge, Magalir Neethi Mandram,
(Fast Track Mahila Court), Erode.
2. The Inspector of Police,
Erode All Women Police Station,
3. The Central Prison,
Coimbatore.
4. The Public Prosecutor,
High Court, Madras.



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G.K.ILANTHIRAIYAN, J.

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