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Crl.A.No.993 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2025

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.993 of 2024

M.Boopathi

... Appellant

Vs.

The State Represented by
Inspector of Police
All Women Police Station,
Dharapuram, Tiruppur District
Crime No.5 of 2020

... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C. to set aside the judgment, conviction and sentence dated 16.06.2022 passed in Special Sessions Case No.51 of 2020 by the Sessions judge of Magalir Neethimandram, (FTMC) Thiruppur.

For Appellant : Mr.K.Ethirajalu
Legal Aid Counsel

For Respondent : Mr.G.V.Kasthuri
Additional Public prosecutor



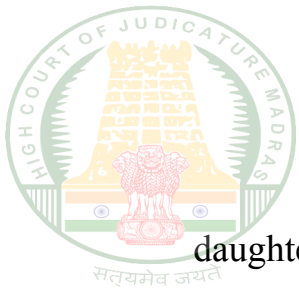
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JUDGMENT

This Criminal Appeal has been filed by the appellant/accused to set aside the judgment of conviction and sentence dated 16.06.2022 passed in Special Sessions Case No.51 of 2020 by the Sessions Judge of Magalir Neethimandram, (Fast Track Mahila Court) Thiruppur.

2. The brief case of the prosecution is that, the de-facto complainant is the mother of the victim. On 26.05.2020, the de-facto complainant lodged a complaint against the appellant alleging that she and her husband are working as Coolies and they used to leave for work in mornings at 6 a.m. and return home at 6 p.m. They have got a son, aged 13 years and a daughter/victim aged 11 years. Her daughter/victim was studying 5th Standard and she is a mild mentally retarded person. The appellant is her neighbour. On 26.05.2020, the de-facto complainant left for work, along with her husband at 6 a.m. and since she was not feeling well, she returned home at about 10 a.m., but her



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daughter/victim was not at home. Hence, she, along with her relatives, were

searching for the victim girl. At that time, near the appellant's house, she heard her daughter's screaming sound. Hence, she went inside the appellant's house wherein, the appellant was found lying on the victim girl and on seeing the mother of the victim, the appellant escaped from his house. On enquiry, the victim girl stated that, at about 9.30 a.m., the accused took her to his house and insisted her to act according to his instructions so that he would give chocolates to her and thereafter, he removed her inner wear and pressed her private part with his private part. Hence, she screamed out of pain and at that time, her mother came and rescued her. She also stated that the appellant did the same last Sunday also at about 1 p.m. and provided chocolates stating that she should not disclose the same to anyone. Based on the said complaint, the respondent/Police registered a case in FIR No.5 of 2020 on 26.05.2020 against the appellant herein for the offences under Sections 5(l), 5(m), 5(k) and 6 of the POCSO Act and after completion of investigation, laid charge sheet and the



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same was taken on file in Special Sessions Case No.51 of 2020 by the Sessions

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Judge of Magalir Neethimandram, (Fast Track Mahila Court) Thiruppur.

3. In order to substantiate the charges before the trial Court, on the side of the prosecution, 9 witnesses were examined as P.W.1 to P.W.9, in which, the victim girl was examined as P.W.1. P.W.2 is the mother of the victim. The mahazar witness was examined as P.W.3 and the confession statement witness was examined as P.W.4. The Doctor who conducted medical examination on the appellant/accused, was examined as P.W.5. The Doctor who registered the accidental register of the victim, had conducted medical examination on the victim, and she was examined as P.W.6. The Doctor (Psychologist) who conducted IQ test on the victim girl, was examined as P.W.7. The Investigating Officer/Inspector of Police was examined as P.W.8. The Sub-Inspector of Police of the respondent-Police Station was examined as P.W.9. Further, on the side of the prosecution, 14 documents were marked as Ex.P.1 to Ex.P.14. However, on the side of the defence, no oral and documentary



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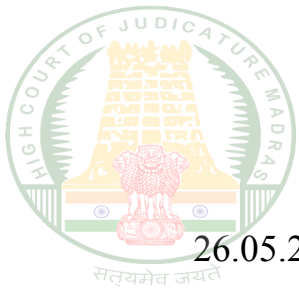
evidence was produced.

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4. Based on the oral and documentary evidence, the trial Court found the appellant/accused guilty for the offence under Sections 5(l), 5(m), 5(k) read with 6 of POCSO Act and convicted and sentenced him to undergo 20 years rigorous imprisonment for each count and totally, sentenced to 60 years rigorous imprisonment and also imposed fine of Rs.2,000/- for each count, in default, to undergo six months simple imprisonment for the offence under Sections 5(l), 5(m), 5(k) read with Section 6 of POCSO Act. The period of judicial custody already undergone was ordered to be set off under Section 428 Cr.P.C. and the sentences were ordered to run concurrently.

5. Aggrieved by the judgment of conviction and sentence passed by the trial Court, the accused has filed the present appeal.

6. Learned counsel who has been appointed as a Legal Aid Counsel for the appellant herein, submitted that there is a contradiction even in the time and date of occurrence. As per the prosecution, the occurrence took place on



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26.05.2020 at about 9.30 a.m., whereas, the Doctor/P.W.6 who conducted

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medical examination on the victim, has stated that the victim had informed her that a known person had sexual intercourse with her forcibly for 6 to 7 times and that on 25.05.2020 at about 4 p.m., the accused lastly had forcible sexual intercourse with her, which is a material contradiction. He further submitted that there is a delay of 10 hours in sending the FIR to the Court and the delay has not been properly explained. He also submitted that the mother of the victim had borrowed money from the appellant and when the appellant demanded re-payment of the loan amount, she had beat the appellant and therefore, the appellant had gone to the Police Station for lodging a complaint against the mother of the victim. Therefore, in order to escape from the criminal case, the mother of the victim foisted a false case against the appellant. Even the mother of the victim in her deposition as P.W.2, has stated that when she had gone to the Police Station to lodge a complaint against the appellant, the appellant was also present in the Police Station, whereas, the



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arrest was shown only at 6 p.m., which is evident that there was a previous

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enmity between the parties and after due deliberations, the appellant has been fixed as an accused in this case. Even the evidence of Doctor/P.W.6 is not corroborated with the evidence of the victim/P.W.1. The Doctor/P.W.6 has stated that there was no external injuries or bite injuries or nail scratch injuries on the body of the victim and no sperm was detected in the vaginal swab. Therefore, it can be easily concluded that there was no forcible penetrative sexual intercourse. He further submitted that statement recorded from the victim under Section 164 Cr.P.C. had not been produced before the trial Court and the same was also not marked as an exhibit, instead, the statement recorded from the mother of the victim was marked as Ex.P.1 through the victim/P.W.1. The learned Judge failed to consider the said facts. Further, there are two more witnesses shown as eye-witnesses to this case. However, they were not examined deliberately. He further reiterated that there are material contradictions between the evidence of P.W.1/victim girl and P.W.2/mother of



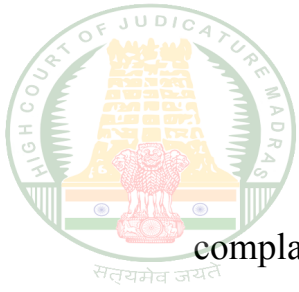
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the victim and there is no cogent evidence to convict the appellant/accused.

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Therefore, the judgment of the trial Court is liable to be set aside.

7. The learned Additional Public Prosecutor appearing for the respondent-Police submitted that at the time of occurrence, the victim girl was aged 11 years and she is a mild mentally retarded person. The parents of the victim used to go for Coolie work and taking advantage of the same, the appellant, who is the neighbour of the victim, took the victim girl to his house under the guise of offering snacks and chocolates to the victim and committed penetrative sexual assault on her on several occasions. On 26.05.2020, due to illness, the mother of the victim returned home at about 10 a.m. and since the victim was not at home, she went in search of her along with her relatives. At that time, she heard the screaming sound of the victim from the house of the appellant. Immediately, she rushed and opened the house door of the appellant wherein, the appellant was found lying on the victim. On seeing the mother of the victim, the appellant escaped from the place. Subsequently, based on the

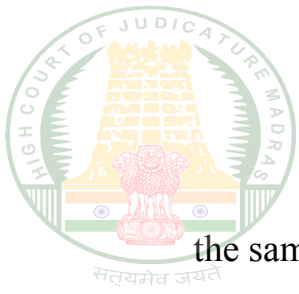


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complaint given by the mother of the victim, the FIR was registered.

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Thereafter, the victim was taken to the hospital. Even the A.R. Entry shows that known person had committed sexual assault on the victim girl several times. Even the medical examination report shows that the hymen of the victim is not in-tact. Further, the Psychologist/P.W.7 who examined the victim has given report/Ex.P.11 stating that the I.Q. Level of the victim is 65% and she has the mental ability of 7 years old child and that she is a mild mentally retarded person. He further submitted that when the victim was examined as P.W.1, she clearly deposed before the trial Court that she was subjected to penetrative sexual assault and also identified the appellant. Therefore, the evidence of the victim corroborated with the medical evidence and that the prosecution had proved its case beyond all reasonable doubts. The trial Court rightly appreciated the oral and documentary evidence and convicted the appellant and imposed the minimum sentence of 20 years for each count under Section 6 of the POCSO Act. Therefore, there are no merits in this appeal and



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the same is liable to be dismissed.

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8. Heard both sides and perused the materials available on record.

9. The specific case of the prosecution is that the victim is a mild mentally retarded person and her parents who are Coolie workers, used to go to work in the mornings and return in the evenings. Taking advantage of the same, the appellant who is their neighbour, under the guise offering snacks and chocolates to the victim, committed aggravated penetrative sexual assault on several occasions on the victim, who was aged 11 years. On 26.05.2020, due to illness, the mother of the victim returned home early. Since the victim was not at home, she was in search of the victim. At that time, she heard the screaming sound of the victim from the house of the appellant. When she pushed the door of the appellant, she found the appellant lying on the victim in semi-nude. On seeing the mother of the victim, the appellant escaped from the place. Hence, the mother of the victim lodged a complaint before the respondent-Police. Subsequent to registration of FIR, the victim was taken to



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the hospital for clinical examination and also produced before the Magistrate for recording evidence under Section 164 Cr.P.C.

10. It is seen that, on the side of the prosecution, 9 witnesses were examined as P.W.1 to P.W.9, in which, the victim was examined as P.W.1 and she has clearly deposed about the sexual intercourse made by the appellant and also identified the appellant who is a neighbour and therefore, there is no doubt in the identification. The Doctor who made entry in the Accidental Register and conducted medical examination on the victim at the first instance, was examined as P.W.6 and she has deposed that she was informed by the victim that a known person forcibly had sexual intercourse with her for 6 to 7 times and on 25.05.2020 at about 4 p.m., the accused lastly had forcible sexual intercourse with her. Since it was alleged that the victim was a mild mentally challenged person, she was produced before the Psychologist/P.W.7 who has given the certificate/Ex.P.11 that the I.Q. Level of the victim is 65% and she is a mild mentally retarded person and that she has the mental ability of a 7 year-

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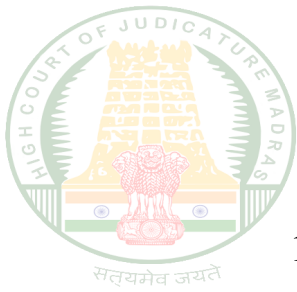


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old child. Even the A.R. entry shows that a known person had committed

sexual assault on the victim girl several times and the medical examination report shows that the hymen of the victim is not in-tact. Further, the learned trial Judge has made an observation that when preliminary questions were posed to the victim (PW1) during chief examination, the victim understood the questions and answered for the same.

11. In a case of this nature, the Court cannot expect an independent eye-witness to corroborate the evidence of the victim and as these kinds of offences are not committed in the public place or in the public view. However, in this case, the mother of the victim is an eye-witness to the occurrence and she was examined as P.W.2. A reading of the evidence of P.W.1/victim and the medical evidence and also the deposition of Doctors, are all corroborated by the evidence P.W.2/mother of the victim. Though there are some contradictions between the evidence of the P.W.1/victim and P.W.2/mother of the victim, the contradictions are not material contradictions.

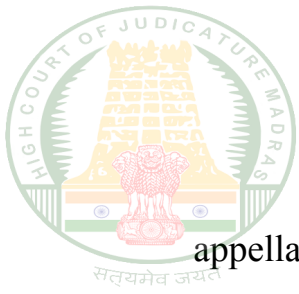


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12. Though an accused is presumed to be an innocent and he need not come to the witness box, the cases of this nature are not like any other offences under the IPC. When once the prosecution proved that the accused committed the charged offence, presumption would come into play and it is for the accused to rebut the presumption in the manner known to law. However, the appellant had not rebutted the presumption.

13. In this case, though the learned counsel for the appellant/accused contended that, in order to escape from the criminal case, the mother of the victim girl foisted a false case against the appellant, but admittedly, there was no complaint lodged by the appellant against the parents/mother of the victim. Even the appellant has not examined any witnesses like neighbours or any other person to show that there was a money transaction between the appellant and the parents of the victim-girl and when he had gone to the house of the victim to collect money, there was a quarrel between the appellant and the parents of the victim, during which time, the mother of the victim assaulted the

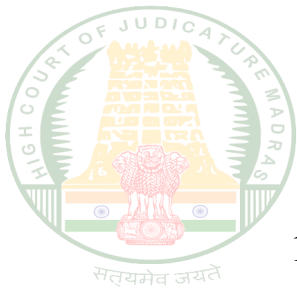


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appellant and therefore, he went to Police Station to lodge a complaint against

the mother of the victim and at that time, the mother of the victim came to the Police Station and lodged a false complaint against him. Therefore, the appellant failed to substantiate his defence in the manner known to law.

14. As far as the delay in sending the FIR to Court is concerned, a perusal of records shows that the FIR was registered at about 12 noon on 26.05.2020 and the same reached the Court only at 10 p.m. In a case of this nature, after receiving the complaint, the Police have to comply with certain preliminary procedures and only after completion of the formalities, they can send the FIR to the Court concerned. However, there is no material to show that the FIR was registered and sent to Court after deliberations. Mere delay in sending the FIR to Court is not a sole ground to disbelieve the evidence of the prosecution, unless it is established that there was actually a deliberation. Therefore, the contention of the learned counsel for the appellant is not acceptable.



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15. The further contention of the appellant that the statement recorded from the victim under Section 164 Cr.P.C. had not been produced and marked before the trial Court and instead, the statement recorded from the mother of the victim was marked as Ex.P-1 through the victim/P.W.1 and that the non-marking of the actual statement of the victim is fatal to the case of the prosecution. Admittedly, a perusal of Ex.P.1 shows that it is actually the statement recorded from the mother of the victim under Section 164 Cr.P.C. and the same has been marked through the victim girl, as if is the statement of the victim girl. The prosecution had not marked the statement of victim actually recorded under Section 164 Cr.P.C. and the trial Court also has not insisted for the same.

16. Though there are some discrepancies and contradictions and defect in investigation and flaw in conducting trial, this Court, as an appellate Court and final Court of fact finding, while re-appreciating the entire materials, especially the evidence of victim/P.W.1, P.W.2/mother of the victim and



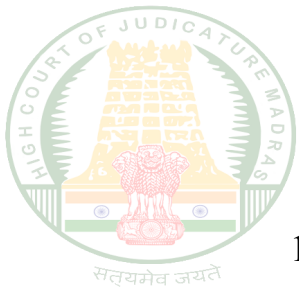
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Doctors' evidence, viz. P.W.6 and P.W.7 and Accidental Register and medical

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records of both the victim and the appellant finds that the prosecution proved its case that the age of the victim at the time of occurrence was below 12 years and no contra evidence was adduced by the appellant regarding the age of the victim girl and that the appellant who is the neighbour, used to take the victim to his house under the guise of offering snacks and chocolates and committed penetrative sexual assault on the victim. The Doctor/P.W.5 who conducted clinical examination on the victim-girl, has stated that the hymen of the victim is not in-tact.

17. The contradictions and discrepancies pointed out by the learned counsel for the appellant/accused may not be fatal to the case of the prosecution. Especially in the offence of this nature, that too, when the victim-girl was aged below 12 years and also a mild mentally retarded person, she cannot be expected to explain each and everything that happened to her.



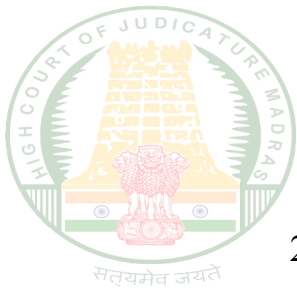
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18. This Court, as an appellate Court and final Court of fact finding,

while re-appreciating the entire evidence, finds that there is no reason to discard or disbelieve the evidence of P.W.1/victim girl and the evidence of P.W.1/victim girl is cogent and consistent and the same is corroborated with the medical evidence as stated supra.

19. This Court finds no perversity in the appreciation of evidence by the trial Court and that there are no merits in this appeal.

20. Since the victim girl who was below 12 years at the time of occurrence and also a mild mentally retarded person, was subjected to repeated penetrative sexual assault, the case was registered for the offences under Sections 5(l), 5(m), 5(k) punishable under Section 6 of the POCSO Act. Section 6 of the POCSO Act prescribes minimum sentence of 20 years. Therefore, in the interest of justice, the sentence awarded by the trial Court cannot be reduced.



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21. Accordingly, this Criminal Appeal is dismissed. Consequently, the

connected Miscellaneous Petition is closed. The judgment of the trial Court is confirmed.

23.04.2025

Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No

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To

1. The Sessions Judge of Magalir Neethimandram
(Fast Track Mahila Court) Thiruppur.
2. The Inspector of Police
All Women Police Station,
Dharapuram, Tiruppur District
3. The Public prosecutor
High Court of Madras
4. The Member Secretary, Tamil Nadu State Legal Services Authority,
High Court Campus, Chennai-600 104.
5. The Section Officer
V.R. Section, High Court of Madras



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P.VELMURUGAN. J.

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