



Crl.A.No.397 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated: 02.06.2025

Coram :

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Appeal No. 397 of 2017

Sarath Kumar : Appellant

Versus

State
Rep by the Inspector of Police,
All Women Police Station,
Rasipuram,
Namakkal District.
(Crime No. 5 of 2015) : Respondent

Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, praying to call for the entire records and set aside the judgment dated 31.05.2017 passed in Special C. C. No.50 of 2015, on the file of the learned Sessions Judge, Fast Track Mahila Court, Namakkal.

For Appellant : M/s. K. Raja
For Respondent : Mrs.G.V.Kasthuri
Additional Public Prosecutor

J U D G M E N T

This Criminal Appeal had filed under Section 374(2) of the Code of Criminal Procedure against the judgment dated 31.05.2017 passed in Special C. C. No.50 of 2015, on the file of the learned Sessions Judge, Fast Track Mahila Court, Namakkal.



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

Criminal Appeal, are as follows:-

2.1. As per the prosecution case, the elder brother of the victim with his wife and children, the victim and her younger sister are residing in a hut in the premises of the bricklin where the elder brother of the victim and the sister-in-law of the victim are engaged as daily wage labourers in the bricklin. The Accused is also residing in a hut within the same premises. The victim was a student of 8th Standard studying in the School nearer to the bricklin within the local limits of Vennanthur Police Station within the territorial jurisdiction of learned Judicial Magistrate, Rasipuram.

2.2. As per the complaint lodged by the elder brother of the victim, the Accused is residing in a hut along with his family. The Accused is the son of Varadharaj, a labourer, like the elder brother of the victim working in the bricklin. On the intervening night of 28.08.2015, when the infant child of the elder brother of the victim was crying, he took the baby out of the hut to get fresh air to calm down the child. He observed his sister was missing when enquired the victim stated that she went out to attend nature's call. After attending nature's call when she returned to the hut, the Accused caught hold of her hand and gagged her mouth, pulled her inside the hut, forced her on the bed and the Accused undressed himself and thrust his male organ by lifting the



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dress worn by the victim. Hearing her pleas, to let her go, the elder brother of

the victim kicked the door of the hut where the occurrence took place and entered the hut. On seeing the elder brother of the victim, the Accused pushed him down and ran away. He was shocked to see his sister/victim in a compromising position. She was pleading with him not to raise the issue as it will affect her life. He consoled her and brought her back to his hut. He did not prefer any complaint immediately to the Police. After about 10 days, on 12.09.2015, he lodged a complaint with the All Women Police Station, Rasipuram. Based on the complaint of the elder brother of the victim, the Inspector of Police, All Women Police Station, Rasipuram, registered a case in FIR in Crime No. 5 of 2015 and sent the original complaint and the original FIR to the Court of the learned Judicial Magistrate, Rasipuram. The case was registered under Sections 7 and 8 of the Protection of Children from Sexual Offences Act, 2012. She proceeded with the investigation. She prepared a rough sketch under Ex.P-12 and observation mahazar under Ex.P-13 in the presence of the witnesses Panneer Selvam and Siva Kumar. Panneer Selvam died before the case reached the trial. She arrested the Accused and produced him before the Court of the learned Judicial Magistrate with a requisition to subject him to medical examination regarding potency. She also took the victim to subject her to medical examination with a requisition to the learned Judicial Magistrate to subject the victim to medical examination. P.W-8



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Dr.Sasireka, Gynaecologist, on duty at the Government Headquarters Hospital,

Namakkal, examined the victim and issued certificate under Ex.P-9 stating that there are symptoms available that the victim was subjected to sexual intercourse. The Accused was produced before the Government Headquarters Hospital, Namakkal, where P.W-5 Dr.Murali examined him and issued medical certificate under Ex.P-4. Also, the Inspector of Police, All Women Police Station, Rasipuram, had given a requisition to the learned Chief Judicial Magistrate to nominate a Magistrate for recording the statement of the victim under Section 164 Cr.P.C. Accordingly, the learned Chief Judicial Magistrate had nominated the learned Judicial Magistrate, Rasipuram to record the statement of the victim under Section 164 of Cr.P.C. The victim was produced before the learned Judicial Magistrate, Rasipuram. The learned Judicial Magistrate, Rasipuram had recorded the statement of the victim under Section 164 of Cr.P.C. under Ex.P-10 wherein she had narrated the incident. The Inspector of Police, All Women Police Station, Rasipuram, had approached the Headmaster of the School where the victim studied to obtain her age certificate. Accordingly, the Headmaster of the School P.W-7 had issued Ex.P-7. As per the School record under Ex.P-7, the date of birth of the victim was 25.12.2002. To determine whether the victim was child to attract the provisions of the Protection of Children from Sexual Offences Act, 2012, the Inspector of Police, All Women Police Station, Rasipuram, as the Investigation



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Officer examined the elder brother of the victim/Complainant/P.W-1, his wife/P.W-4, the victim/P.W-2, the Village Administrative Officer/P.W-3 in whose presence the Accused was arrested, P.W-8 the Doctor who had examined the victim, P.W-5 the Doctor who had examined the Accused, the witnesses who stood as witness to the observation mahazar Sivakumar, Panneer Selvam, Headmaster who had issued the details of the School admission register to ascertain the date of birth of the child victim under Ex.P-7 was examined as witness P.W-7. The woman Police Constable, who accompanied the victim for medical examination and the male Constable who accompanied the Accused to the medical examination. The matter was enquired by the Child Welfare Committee. Therefore, the Official of the Child Welfare Committee was also examined as witness. The learned Judicial Magistrate, Rasipuram who had recorded the 164 Cr.P.C. statement of the victim under Ex.P-10 was also recorded by the Investigation Officer. After completion of the investigation, she had sent alteration charge to the learned Judicial Magistrate and filed final report, altering the offence under Section 3 r/w. Section 4 the Protection of Children from Sexual Offences Act, 2012. The learned Judicial Magistrate, Rasipuram, had taken cognizance of the offence, issued summons to the Accused. The case was committed to the Court of the learned Sessions Judge. The Accused was furnished with copies under Section 207 of Cr.P.C. and the Accused was bound over to the learned Principal



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Sessions Judge. On appearance of the Accused before the learned Principal Sessions Judge, the learned Principal Sessions Judge made over the case to the Court of the learned Sessions Judge, Fast Track Mahila Court, Namakkal. On appearance of the Accused before the learned Sessions Judge, Fast Track Mahila Court, Namakkal, after hearing the prosecution and the learned Counsel for the defense, the learned Sessions Judge, Fast Track Mahila Court, Namakkal, had framed charges under Section 3 r/w. Section 4 and under Section 7 r/w. Section 8 of the Protection of Children from Sexual Offences Act, 2012. The Accused pleaded not guilty and claimed to be tried. Therefore, trial was ordered. During trial, the prosecution had examined 13 witnesses as P.W-1 to P.W-13 and marked 15 documents as Ex.P-1 to Ex.P-15.

2.3. After prosecution evidence was closed, the incriminating evidence was put to the Accused and the Accused was examined under 313 Cr.P.C. The Accused denied the incriminating evidence against him. The Accused did not adduce any evidence to disprove the claim of the prosecution. After hearing the prosecution and the defence, the learned Sessions Judge, Fast Track Mahila Court, Namakkal, had convicted the Accused for the offence under Section 3 r/w. Section 4 the Protection of Children from Sexual Offences Act, 2012. The Accused was convicted and sentenced to undergo 10 years of rigorous imprisonment with fine of Rs.2,000/-, in default, to undergo six months simple imprisonment. Under Section 235 of Cr.P.C., the period already undergone in



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detention was set off. The learned Sessions Judge, Fast Track Mahila Court, Namakkal, also ordered compensation to the victim under the Tamil Nadu Victim Compensation Act, 2013, through the Legal Services Authority attached to the District Court, Namakkal.

2.4. Aggrieved by the judgment of conviction and sentence of imprisonment, and the fine imposed on the Accused, the Accused had preferred this Criminal Appeal.

3. It is the contention of the learned Counsel for the Appellant that the learned Sessions Judge, Fast Track Mahila Court, Namakkal, failed to consider the fact that the FIR was belated. If the alleged occurrence had taken place, the victim and her relatives would have approached the Police immediately on such occurrence. Here the FIR was belated. Therefore, it raises a suspicion. It is the defence of the Accused that there were monetary transactions between the Accused and the family of the victim. The parents of the Accused is alleged to have sought repayment of the loan availed by the elder brother of the victim, therefore, to wreak vengeance on the Accused, a case was foisted. Also, it is the contention of the learned Counsel for the Appellant that the person who had registered the FIR shall not proceed with the investigation as always the person who registered the FIR has an intention to



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lay final report against the Accused. Therefore, they collect evidence accordingly. Here the FIR under Ex.P-11 was registered by P.W-13 Inspector of Police, All Women Police Station, Rasipuram. Also, the Complainant P.W-1 had in the course of cross- examination, admitted that he had given a complaint before the Vennanthur Police Station. Therefore, the earlier complaint was suppressed and the latter complaint was produced before the Court. P.W-8 the Doctor, who had examined the Victim, had stated that the hymen happens to tear due to sports activities to the child of similar age. Therefore, merely the hymen was not intact, it cannot be treated as the victim was subjected to sexual intercourse. Also, the Investigation Officer had not examined the father of the victim who is also staying in a hut adjoining the hut where the elder brother of the victim was staying. He was not at all examined. Nearby hut dwellers who are all daily wage labourers working in the bricklin, were not examined. The victim/P.W-2 had given statement to the learned Judicial Magistrate, based on the tutoring of her elder brother/P.W-1. The learned Sessions Judge, Fast Track Mahila Court, failed to consider those aspects. The investigation itself was shoddy as is available in the cross-examination of P.W-13 Investigation Officer, All Women Police Station, Rasipuram.. Based on a shoddy investigation, a final report was laid before the Court. Based on the final report, the evidence adduced by the prosecution witness. Based on the deposition of the victim and her elder brother, and sister in law, the learned



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Sessions Judge, Fast Track Mahila Court, Namakkal, had convicted the Accused imposing sentence of 10 years of rigorous imprisonment. The victim was a student in a college on the date of alleged occurrence. There is no other witness to the alleged occurrence, except the elder brother and sister in law of the victim. The victim herself had stated in her deposition that she had requested her brother not to give a Police complaint. That gives an impression that it was a false case. Still, the learned Sessions Judge, Fast Track Mahila Court, Namakkal, convicted the Accused based on the presumption available under Section 29 of the Protection of Children from Sexual Offences Act, 2012, which had resulted in a grave injustice to the Accused, who is a college student aged about 23 years, was convicted and sentenced to undergo rigorous imprisonment for 10 years affecting his future prospects of getting job at the prime of his age. The learned Sessions Judge, Fast Track Mahila Court, Namakkal, failed to consider the circumstances available in the case of the prosecution and the loopholes in the case and convicted him only based on the surmises and conjunctures which had resulted in grave injustice to the young man aged 23 years. Therefore, the judgment of conviction imposed on the Accused/Appellant is to be set aside.

4. Also the learned Counsel for the Appellant submitted that no material object had been seized by the Investigation Officer. If the prosecution



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is to be accepted as per the report of the Doctor who had examined the victim and issued Ex.P-4, there was no injury on the body of the Accused. Therefore, the judgement of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court is to be set aside.

5. In support of his submission, the learned Counsel appearing for the Appellant relied on the decision reported in **CDJ 2021 MHC 1978** in the case of **Harishankar vs. State through the Inspector of Police, Anamalai Police Station, Coimbatore**, where the facts are similar. On appeal, the Hon'ble High Court had acquitted the Accused from the charge of the Protection of Children from Sexual Offences Act, 2012 stating that the evidence of the Prosecutrix does not inspire confidence. In the light of this ruling, the learned Counsel for the Appellant/Accused sought to set aside the judgment of conviction and sentence.

6. He also relied on the ruling of the Hon'ble Supreme Court of India reported in **(2006) 1 SCC 283** in the case of **Vishnu alias Undrya vs. State of Maharashtra** wherein it is held that expert medical evidence not binding on the ocular evidence. Opinion of the Medical Officer is to assist the Court as he is not a witness of fact and the evidence given by the Medical Officer is really of an advisory character and not binding on the witness of fact. If that is



considered, the evidence of victim as well as her elder brother are interested witnesses as she had been tutored by her elder brother and along with that the delay in filing FIR. It is an afterthought to wreak vengeance of the Accused to misuse the provisions of the Protection of Children from Sexual Offences Act, 2012 and the Appeal is to be allowed and the Accused is to be discharged from all the charges.

7. He further relied on the ruling of the Hon'ble Supreme Court of India reported in **(2013) 14 SCC 643** in the case of ***Lillu alias Rajesh and another vs. State of Haryana*** wherein it is held as follows:

“B. Criminal Trial - Medical Jurisprudence/Evidence – Rape – Genital examination – Two-finger Test – Standard of conducting and interpreting forensic examination of rape survivors – Held, in view of various judgments of Supreme Court taking into account aspects like propriety of such examination of prosecutrix, irrelevance of previous sexual experience and character of prosecutrix, and rape as a crime against dignity, honour, reputation, chastity of women and their right to life, held, the two-finger test and its interpretation violates right of rape survivors to privacy, physical and mental integrity and dignity – Thus, the test, even if report is affirmative, cannot ipso facto, give rise to a presumption of consent – Constitution of India – Art. 21 – Rape survivors – Dignity to be accorded to – International Law – International Treaties and Conventions – International Covenant on Economic, Social, and Cultural Rights, 1966 – United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985.”

8. In the light of these two rulings the report of the Doctor on the victim under Ex.P-4 by P.W-8 is to be rejected. If that is rejected, the evidence available with the victim as well as the elder brother and sister in law of P.W-1



and P.W-4 happens to be influenced by the elder brother P.W-1 in which case the evidence of the prosecutrix is unbelievable. Therefore the conviction against the Accused is to be set aside. There is evidence in cross examination of P.W-1 that there was a complaint given against the Accused by P.W-1 before the Vennanthur Police Station. It was with regard to money transaction which was denied in cross-examination. Therefore, the judgment of the learned Sessions Judge, Fast Track Mahila Court convicting the Accused is to be set aside.

9. The learned Counsel for the Appellant also relied on the ruling of the Hon'ble Supreme Court of India reported in **2022 LiveLaw (SC) 890** in the case of ***The State of Jharkhand vs. Shailendra Kumar Rai @ Pandav Rai*** wherein it has held as under:

“64. The status of hymen is irrelevant because the hymen can be torn due to several reasons such as cycling, riding or masturbation among other things. An intact hymen does not rule out sexual violence, and a torn hymen does not prove previous sexual intercourse. Hymen should therefore, be treated like any other part of the genitals while documenting examination findings in cases of sexual violence. Only those that are relevant to the episode of assault (findings such as fresh tears, bleeding, edema etc.) are to be documented.”

10. In the light of the above ruling, the report of the Doctor/P.W-8 under Ex.P-9 has to be ignored. The evidence of P.W-2 victim is based on the instigation of P.W-1 elder brother. If what had been taken place is true the



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father of the victim as well as the elder brother of the victim is available in the next hut. He was not at all examined. The non-examination of the prime witness creates doubt regarding the investigation. It is a shoddy investigation. Based on the shoddy investigation, if the Accused is convicted he will suffer injustice. Therefore, the learned Counsel for the Appellant seeks to allow this Appeal and set aside the conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Namakkal and set free the Accused.

11. The learned Additional Public Prosecutor vehemently objected to the submission of the learned Counsel for the Appellant. As per the submission of the learned Additional Public Prosecutor, the victim was studying 8th Standard and was aged 14 years as per evidence of the Headmaster of the School P.W-7 under Ex.P-7. After this incident, because of the shame and the stigma suffered by the victim, she dropped out of School which is available in the evidence of P.W-12 Mrs.Uma Maheshwari, Child Welfare Committee official and P.W-7 Mr.Jayaseelan, Headmaster of the School where the child is studying. Because of the criminal assault committed by the Accused, a child aged about approximately 13 years suffered deprivation. A child hailing from socio-economically poor background had to drop out of the School because of this dark incident which affected her future also. In modern days, the children are interested in coming up in life by studying and



competing in future in excellence in education whereas the victim had lost her inclination to study and come up in life because of this dark incident in her life.

The claim of the learned Counsel for the Appellant as well as the learned Counsel for the Accused before the trial Court that the neighbours had not been examined will not hold good. It is to be considered that the occurrence is on the middle of the night, early in the morning, where everyone sleep. The silent night was exploited by the Accused. Except for the cries of the infant child, the elder brother would not have come out of the hut and noticed the murmur of the helpless pleadings with the Accused by his sister/the victim. It is an irony that the Accused had challenged the Investigation Officer claiming that the neighbouring hut dwellers were not examined as witnesses. Therefore, the investigation is shoddy. It is to be noted that in the offences of this nature, the victims are very careful. That is why the victim herself prevented her brother from lodging a complaint with the Police as it will affect her future life. Still there is evidence in the brother P.W-1 that he had apprehension that if not reported, the Accused will indulge in same offences with his sister in future. Therefore, after clear thinking, he had approached the Police after 10 days of the occurrence. The delay in lodging the FIR had been explained by the victim and her brother P.W-1 complainant. The fact that the father of the victim who was also staying in the adjoining hut was not examined will not damage the case of the prosecution. The elder brother being aware of the sensibilities of

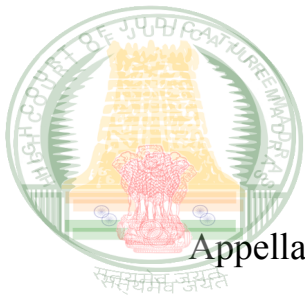


his younger sister's future, had not created ruckus in the middle of the night.

He had calm down his sister and brought her back to the hut. Therefore, the claim that the nearby hut dwellers were not examined as witness will not help the Accused. To pierce force in the prosecution case considering the sensibilities of the nature of the offence and the sensibilities of the victim a special enactment had come into existence by way of the Protection of Children from Sexual Offences Act, 2012 to protect helpless victims of child sexual offence. The learned Sessions Judge, Fast Track Mahila Court, had clearly discussed the evidence as well as the defence of the Accused. Apart from this, it is to be noted that the Accused had not entered the witness box or examined any witness to rebut the presumption available to the prosecution under Section 29 of the Protection of Children from Sexual Offences Act, 2012. Till the date of this occurrence, there is no enmity between the Accused and P.W-1. The evidence of P.W-1 is corroborated by the victim. The mandatory 164 Cr.P.C. statement recorded by the learned Judicial Magistrate also corroborates the claim of the elder brother of the victim P.W-1 complainant. The claim of the learned Counsel for the Appellant that the college student had been punished for 10 years is nothing but plea for misplaced sympathy which cannot be entertained by the Court of law when dealing with the grave crimes affecting minor child. Here the victim was aged 13 years studying in 8th standard. She had dropped out of the School because



of the dark experience suffered by her causing stigma and shame. Even after visit by Headmaster and the Child Welfare Committee, she did not attend School. That much of evidence is available through P.W-2 the victim, P.W-7 the Headmaster and P.W-12 the Child Welfare Committee official affecting the dignity of the child, the psychology of the child, the mental status of the child and the personality of the child. Apart from that, the Investigation Officer when subjected the exhaustive cross-examination regarding the non-examination of the neighbouring hut dwellers had clearly stated that neighbouring hut dwellers did not come forward to remain as witness. That much of evidence is available. The Teachers of the School came to know about the incident only due to the long absence of the child. They came to the residence of the victim and on enquiry the victim informed them that she had suffered the cruel incident. The Teachers informed the same to the Child Welfare Committee. Therefore, P.W-12 visited the victim and made enquiries. The P.W-1 brother of the victim, P.W-2 the victim, P.W-4 sister-in-law of the victim withstood cross examination. The claim that there was earlier complaint is on a different case and not the for the same offence. Even if it is to be considered that the victim and her family are semi-literates or illiterates they does not know whom to approach and the niceties and technicalities of law as common citizens they had approached the nearby Police Station who had directed them to the All Women Police Station. Therefore, the claim of the



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Appellant/Accused that there were two complaints will not hold good. Even if

there are lapses on the part of the investigation agencies the same shall not be taken advantage in favour of the Accused particularly when the offence happens to be sexual assault on a child. The definition of the child as per the Protection of Children from Sexual Offences Act, 2012 is squarely applicable to the facts of this case. Therefore, Section 29 of the Protection of Children from Sexual Offences Act, 2012 is relevant to the facts and circumstances of this case. It is to be noted that the First Information Report was registered under Sections 7 and 8 of the Protection of Children from Sexual Offences Act, 2012 and after completion of the investigation, based on the medical report available, the Investigation Officer had arrived at a conclusion that it was not sexual assault and it was penetrative sexual assault. Therefore, altered the offence as per the alteration report under Ex.P-14 and laid the final report for the offence under Sections 3 and 4 of the Protection of Children from Sexual Offences Act, 2012. When the Court had framed the charges, the Court had framed charges under Section 3 r/w. Section 4 and under Section 7 r/w. Section 8 of the Protection of Children from Sexual Offences Act, 2012 against the Accused. In conclusion of the trial, the learned Sessions Judge, Fast Track Mahila Court, had convicted the Accused for the offence under Section 3 r/w. Section 4 of the Protection of Children from Sexual Offences Act, 2012. After the incident, the family of the victim had shifted from the place where they



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were staying, as per the evidence available through P.W-7 Headmaster, through the Child Welfare Committee official P.W-12.

12. In support of her contention, the learned Additional Public Prosecutor also relied on the ruling reported in **(2020) 10 SCC 573** in the case of **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.”

13. By relying on the above rulings, if the evidence of the victim inspires confidence of the Court, the Court has to convict the Accused. Also it is pointed out by the learned Additional Public Prosecutor that due to long absence of the child from the School and the School Teachers and the Headmaster came to the residence of the child. Only then, the child informed the Teachers and they have informed the Child Welfare Committee. Only when the Child Welfare Committee came to the residence of the victim based



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on their moral support the elder brother of the victim had pursued the case.

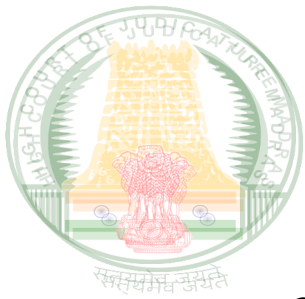
That much is available from the evidence of P.W-2 the victim. The alleged offence is an offence under Sections 3 and 4 of the Protection of Children from Sexual Offences Act, 2012. Whereas the complaint was lodged by the elder brother of the victim and based on which, the First Information Report was registered under Sections 7 and 8 of the Protection of Children from Sexual Offences Act, 2012 by the Inspector of Police, All Women Police Station, Rasipuram. After subjecting the victim to medical examination, based on the report, the offence was altered under Section 3 r/w. Section 4 of the Protection of Children from Sexual Offences Act, 2012. The learned Additional Public Prosecutor invited the attention of this Court to the portion in the deposition of the victim that “நான் வலி தாங்க முடியாமல் வாயில் இருந்து துணியை எடுத்துவிட்டு கத்தினேன்,” When the victim informed her brother, out of shame, she cannot express what are all had taken place. She had only narrated the first part of the occurrence, based on which, her brother had given the complaint. The learned Additional Public Prosecutor also invited the attention of this Court to the educational status of the victim as well as the elder brother who is a labourer in a bricklin, thinking about the future of the victim, he had avoided to report the matter to the Police. Since the victim had not attended the School for a long time, the Headmaster of the School came to the residence of the victim. Only then, they came to know about the occurrence. Therefore they had informed the Child



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Welfare Committee. Accordingly, the Child Welfare Committee also conducted enquiry with the victim and her family. Only on the moral support and guidance, the elder brother of the victim decided to give a complaint. The complaint was written by somebody. He did not know about the person who had recorded his oral statement as complaint under Ex.P-1. That cannot be used against the victim and in favour of the Accused. Also money transaction between the parents of the Accused and the elder brother of the victim cannot be used against the victim. If what had been stated by the Accused is true, he should have entered the witness box and disputed the case of the prosecution. He had avoided the witness box. That has to be taken note of by this Court to draw adverse inference against the Accused for not attempting to disprove the case of the prosecution, to rebut the prosecution evidence by adducing evidence. The conduct of the Accused in not entering the witness box had to be considered and heavily relied for convicting the Accused. The learned Sessions Judge, Fast Track Mahila Court, has given a well reasoned judgement and he had also offered his clarification to the defence of the Accused by citing rulings of the Honourable Supreme Court. Therefore it is a well reasoned judgement it does not warrant any interference by this Court. The appeal lacks merit and it has to be dismissed.

Point for consideration:



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Whether the judgment dated 31.05.2017 passed in Special C. C. No.50 of 2015, on the file of the learned Sessions Judge, Fast Track Mahila Court, Namakkal, is to be set aside as perverse warranting interference by this Court?

14. Heard the learned Counsel for the Appellant and the learned Additional Public Prosecutor for the State. Perused the evidence of the Prosecution through P.W-1 to P.W-13, the documents under Ex.P-1 to Ex.P-15 and the judgement of the learned Sessions Judge, Fast Track Mahila Court, Namakkal, in S.C.No. 50 of 2015, dated 31.05.2017.

15. The submission of the learned Counsel for the Appellant cannot at all be accepted in the light of the evidence of P.W-2. P.W-2 is the victim aged 13 years, a student of 8th standard in the Government Higher Secondary School, Mallur, Salem. P.W-2 was cross-examined exhaustively in which it is stated that the Accused suffered from Chikungunya and unable to stand and walk. If that be the case, as per the provision of the Protection of Children from Sexual Offences Act, 2012, the Accused shall adduce evidence by way of rebuttal evidence. The Accused had engaged a Counsel before the trial Court but had not adduced evidence by examining the witnesses who had treated him by marking documents regarding treatment for Chickungunya or examined the Doctor who had treated him for Chickungunya. The Accused avoided the



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witness box. Therefore, the presumption under Section 29 of the Protection of

Children from Sexual Offences Act, 2012 has to be considered by the Court that the victim is speaking the truth. On perusal of Ex.P-1 complaint, the elder brother of the victim P.W-1 had narrated the facts that taken place on the intervening night of 28.08.2015. The victim had clearly stated that the Accused gagged the mouth of the victim and dragged her inside the hut. The Accused undressed himself and thrust his male organ in the female organ of the victim. That much of the evidence is available. Therefore, it is a penetrative sexual assault as per Sections 3 and 4 of the Protection of Children from Sexual Offences Act, 2012. But on investigation on subjecting the victim to medical examination, the Doctor had opined that she had symptoms of subjecting herself to sexual intercourse. Therefore, the offence was altered to offence under Sections 3 and 4 of the Protection of Children from Sexual Offences Act, 2012 by filing alteration report under Ex.P-15. The victim had narrated the incident under section 164 Cr.P.C. statement recorded under Ex.P-10. Before the trial Court, she had deposed clearly the occurrence indicating that the Accused had forced his male organ on her female organ, because of the pain she suffered, she pleaded with him to let her go which was heard by her brother forcing him to kick open the door and enter the hut of the Accused. The defence of the Accused that the hymen of a child aged similar of the victim suffers injury due to sporting activities was put to the victim suggesting that



she is involved in sports activities. She had denied the same in cross examination. She had not indulged in any cycling activities to suffer damage to her hymen. The evidence of the victim P.W-2 is found inspiring.

16. On perusal of the evidence of P.W-1 it corroborates the incident. Ex.P-1 is the complaint which does not mention about the penetrative sexual assault. It is for the victim to speak about the same. On perusal of the evidence of victim P.W-2, she had clearly stated that the Accused thrust his male organ in her female organ, because of the pain, she pleaded him to let her go. At that time, hearing her murder, pleas, the elder brother of the victim kicked open the door of the hut and entered in the hut of the Accused and by seeing him, the Accused pushed him down and ran away. Considering the ruling cited by the Appellant in **(2013) 14 SCC 643** in the case of **Lillu alias Rajesh and another vs. State of Haryana**, the standard of conducting and interpreting forensic examination of rape survivors, the Hon'ble Supreme Court deprecated the practice of two finger test. That ruling had clearly stated that two finger tests even if the report is affirmative, cannot *ipso facto*, give rise to the presumption of consent. Here the victim is a child and consent is not applicable. The submission of the learned Counsel for the Appellant that the evidence of P.W-8 Doctor and the report of the Doctor under Ex.P-9 had to be ignored in the light of the above ruling will not help the Appellant/Accused to



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she wriggle out of this case. The victim had not narrated the entire incident when she was examined by the learned Judicial Magistrate, Rasipuram under Section 164 Cr.P.C. which is marked as Ex.P-10. The evidence of P.W-1 elder brother, the complainant and P.W-4 sister-in-law of the victim found that they had withstood exhaustive cross examination.

17. As pointed out by the learned Additional Public Prosecutor, if the defence of the Accused that he had suffered from the aftermath of Chickungunya by losing normal strength, unable to stand had been true, it is for the Accused to have entered the witness box and adduced evidence to that effect and also examined the Doctor who treated him and to produce the medical records to that effect, so that the rebuttal evidence could have been considered in favour of the Accused, if it had been the case. The attempt of the Accused that only due to previous enmity, the case has been foisted against the Accused as there was an earlier complaint preferred by the elder brother against the Accused before Venanthur Police Station also will not help the Accused to wriggle out of this case. There is evidence through P.W-2 victim that due to long absence, the Teachers of the School and P.W-7 Headmaster of the School visited the victim. There is evidence that the Child Welfare Committee visited the victim and the family of the victim. This is available through P.W-12 official of the Child Welfare committee and P.W-7



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Headmaster of the School. The transfer certificate of the victim was also marked before the trial Court to show the date of birth of the child and the fact that she had obtained transfer certificate from the School. When the victim was examined before the Court she was aged 16 years and she had clearly stated that she had dropped out of School at 8th Standard after this embarrassing incident. The act of the Accused had caused such mental trauma in a child aged about 13 years to drop out of the School whereby the Teachers and Headmaster had visited the victim and made enquiries. They had reported the matter to the Child Welfare Committee and the Child Welfare Committee also visited the victim and her family and conducted enquiry. Based on the strength, moral courage, support given by them, may be the reason for the elder brother of the victim to lodge the complaint under Ex.P-1 after 10 days of the incident.

18. The submission of the learned Counsel for the Appellant that the FIR is delayed, therefore, it is an embellished FIR and the Court has to draw presumption that it is an embellished complaint and embellished FIR. Therefore, the advantage is to be given to the Accused cannot at all be accepted in the facts and circumstances of this case. The victim aged 13 years had undergone mental trauma because of this incident resulting in her dropping from School warranting visit to her house by the Teachers and Headmaster of



the School advising the child to return to School and continue with her studies.

In spite of their moral support and advise, she opted out due to social stigma, mental trauma suffered by her. The family of the victim who are poor labourers, illiterates or semi-literates they had not taken her for any medical treatment to overcome the mental trauma. Therefore, the defence of the Accused that it is a foisted case cannot at all be accepted. The ruling cited by the learned Counsel for the Appellant in (i) **CDJ 2021 MHC 1978** in the case of *Harishankar vs. State through the Inspector of Police, Anamalai Police Station, Coimbatore*; (ii) **(2006) 1 SCC 283** in the case of *Vishnu alias Undrya vs. State of Maharashtra*; (iii) **(2013) 14 SCC 643** in the case of *Lillu alias Rajesh and another vs. State of Haryana* and (iv) **2022 LiveLaw (SC) 890** in the case of *The State of Jharkhand vs. Shailendra Kumar Rai @ Pandav Rai* are not helpful to the Appellant/Accused. In all the above rulings, it is specifically stated that if the evidence of the victim inspires confidence of the Court, the Court shall convict the Accused.

19. The learned Sessions Judge, Fast Track Mahila Court, Namakkal, in the discussion of evidence had elaborately dealt with the evidence of the Prosecution and the defence of the Accused and he had relied on the ruling of the Honorable Supreme Court and various High Courts to reject the defence of the Accused. The learned Sessions Judge, Fast Track Court had on logical



deduction arrived at a conclusion that even though charge was framed under

Section 7 r/w. 8 of the Protection of Children from Sexual Offences Act, 2012, evidence available before the Court indicates proved that offence under Section 3 r/w. Section 4 of the Protection of Children from Sexual Offences Act, 2012 had been committed by the Accused warranting punishment not less than 10 years. Therefore, he had convicted the Accused for the offence under Section 3 r/w. Section 4 the Protection of Children from Sexual Offences Act, 2012. The same is not found perverse. It is a well reasoned judgment as pointed out by the learned Additional Public Prosecutor. The the ruling cited by the learned Additional Public Prosecutor reported in **(2020) 10 SCC 573** in the case of **Ganesan vs. State represented by its Inspector of Police** wherein it is reiterated by the Honorable Supreme Court that the conviction on the sole testimony of the victim if found reliable trustworthy the conviction has to be confirmed upheld is applicable to the facts of this case.

20. The ruling of the Hon'ble Supreme Court of India reported in **(2006) 1 SCC 283** in the case of **Vishnu alias Undrya vs. State of Maharashtra** is a case where there was shoddy investigation against which the father of the victim had given a complaint to the office of the Prime Minister and office of the Chief Minister warranting a transfer of the investigation. Accordingly, after the subsequent investigation the Accused was arrested and proceeded with. In



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the trial, based on evidence the Accused was convicted. In appeal, the appeal was dismissed. There the defence of the Accused was that it was a consensual sex whereas the evidence was otherwise. The offence attracted under Section 57 of the Bombay Children Act, 1940. The trial Court as well as the High Court had arrived at a conclusion that the age of the victim was not 16, she was less than 16. Her date of birth was 1963 and not 1964 as per the evidence of the father of the victim who was undergoing treatment for eye in K.M. Hospital not when the victim was picked up by the Accused on the pretext of dropping her in her house and instead, taken to different place and by use of threat raping her. The date of birth recorded in the School register as well as municipal corporation was relied and the date of birth of 29.11.1964 was considered and not as made out by the Accused. The defence of the Accused was rejected on the pretext of consensual sex. More or less the facts of the case in the above decision and the case before us are similar. Here it is a neighbour who had gagged the mouth of the victim and dragged her inside the hut. It is total denial as though no such occurrence had taken place. Whereas there is evidence through the evidence of the victim. As pointed out by the learned Counsel for the Appellant, if the evidence of P.W-8 Doctor is rejected then the evidence left out is the evidence of victim P.W-2 and her elder brother and her sister-in-law P.W-1 and P.W-4 all happened to be from the same family. Therefore the defence of the Accused that it is a cooked up case to wreck vengeance on a



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monetary transaction will not hold good in this case. The evidence of the Doctor is with regard to consensual sex as pointed out in **(2013) 14 SCC 643** in the case of ***Lillu alias Rajesh and another vs. State of Haryana***. This will not help the case of the Accused in this case. As per the reported ruling of the Hon'ble Supreme Court in **(2013) 14 SCC 643** in the case of ***Lillu alias Rajesh and another vs. State of Haryana*** even if the Doctor's evidence is affirmative it has to be ignored regarding the dignity of the victim regarding a rape survivors. Here it is not the case. The report is affirmative. It need not be ignored as consensual sex. In the same ruling it is stated where the prosecutrix as per the School records is shown to be less than 14 years, it is immaterial whether it is a consenting party or not.

21. Therefore, under all the above circumstances, the case of the Prosecution had been proved as per the ruling reported in **(2020) 10 SCC 573** in the case of ***Ganesan vs. State represented by its Inspector of Police***. Therefore, the conviction of the Accused by the learned Sessions Judge, Fast Track Mahila Court, Namakkal awarded against the Accused under Section 3 r/w. Section 4 of the Protection of Children from Sexual Offences Act, 2012 is found justified and it is a well reasoned judgment it does not warrant any interference by this Court.



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22. In the light of the above discussion, the point for consideration is answered in favour of the Prosecution and the against the Accused. The judgment dated 31.05.2017 passed in Special C. C. No.50 of 2015, on the file of the learned Sessions Judge, Fast Track Mahila Court, Namakkal, is found proper which does not warrant any interference.

In the result, **this Criminal Appeal is dismissed.** The judgment dated 31.05.2017 passed in Special C. C. No.50 of 2015, on the file of the learned Sessions Judge, Fast Track Mahila Court, Namakkal, is confirmed.

The learned Sessions Judge, Fast Track Mahila Court, Namakkal, is directed to issue warrant to the Accused. The Inspector of Police, All Women Police Station, Rasipuram, Namakkal District, is directed to secure the Accused and produce him before the learned Sessions Judge, Fast Track Mahila Court, Namakkal, to undergo the remaining period of sentence as per the judgment of conviction and sentence passed in Special C. C. No.50 of 2015, dated 31.05.2017 by the learned Sessions Judge, Fast Track Mahila Court, Namakkal.

02.06.2025

Shl/srm
Index: Yes/No



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Internet: Yes/No

Speaking Order/Non-speaking Order

WEB COPY

To:

1. The Sessions Judge,
Fast Track Mahila Court,
Namakkal.
2. The Inspector of Police,
All Women Police Station,
Rasipuram,

31/33



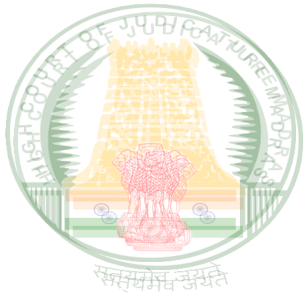
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Namakkal District.

3. The Public Prosecutor,
High Court Madras.
4. The Superintendent,
Central Prison,
Coimbatore.
5. The Section Officer,
Criminal Section,
High Court of Madras.

SATHI KUMAR SUKUMARA KURUP, J.

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Judgment made in
Crl.A.No.397 of 2017

02.06.2025