



Crl.A.No.1219 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.08.2025

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.A.No.1219 of 2025

and

Crl.M.P.No.15423 of 2025

Soman

... Appellant

Versus

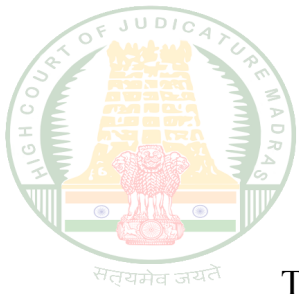
The State,
The Inspector of Police,
Sathyamangalam All Women Police Station,
(Crime No.1 of 2021)

... Respondent

PRAYER: Criminal Appeal is filed under Section 415(2) of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, to set aside the conviction and sentence passed in Judgement dated 17.03.2022 in Special S.C.No.47 of 2021 on the file of the Sessions Judge, Magalir Neethi Mandram, (Fast Track Mahila Court), Erode, and acquit the appellant from the charges.

For Appellant : Mr. K. Balaganesh

For Respondent : Mr. A. Gopinath,
Government Advocate (Crl.side)



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JUDGEMENT

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This criminal appeal has been preferred against the Judgement dated 17.03.2022 passed in Spl.S.C.No.47 of 2021, on the file of the Court of Sessions Judge, Maglir Neethi Mandram, (Fast Track Court), Erode, thereby, the appellant was convicted for the offence under Section 9(m) punishable under Section 10 of the Protection of Children from Sexual Offences (POCSO) Act, 2012.

2. The case of the prosecution was that the victim girl was aged about 6 years at the time of occurrence. On 21.01.2021 at about 05.20 P.M., while the victim was playing in front of a Temple situated near her house, the accused/appellant, who was grazing his cattle, dragged the victim into a bathroom and committed sexual assault by rubbing his penis on her navel. When the victim cried, he left her. Thereafter, the victim girl suffered from fever and informed her parents. On their complaint, the respondent registered the First Information Report in Crime No.1 of 2021 for the offence punishable under Section 5(m) r/w Section 6 of the POCSO Act. After completion of the investigation, a final report has been filed and the same was taken cognizance by the Trail Court. On the side of the prosecution, P.W.1 to P.W.10 were examined, and Exs.P1 to P15 were



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marked. On the side of the accused, no one was examined and no document

was marked. On perusal of the oral and documentary evidence, the Trial

Court found the appellant guilty of the offence under Section 9(m) r/w

Section 10 of the POCSO Act and convicted him and sentenced him to

undergo rigorous imprisonment of 7 years and also imposed a fine of

Rs.1,000/-, in default, to undergo 3 months simple imprisonment. Aggrieved

by the same, the appellant has preferred the present appeal before this Court.

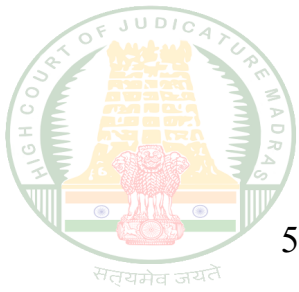
3. Learned counsel for the appellant submitted that there was a delay in lodgment of the complaint. The alleged occurrence took place on 21.01.2021, but the complaint was lodged on 23.01.2021. The prosecution failed to explain the delay in lodgement of the complaint. In fact, the complainant was not lodged on 21.01.2021 and, as such, the entire occurrence itself appears to be false, and the complaint has been filed against the appellant due to previous enmity. The appellant was aged about 70 years at the time of occurrence. Therefore, the entire allegation against the appellant is artificial in nature. After registration of the First Information Report, the victim girl was subjected to medical examination. The doctor who examined the victim also did not support the case of the prosecution, since there was no injury found on any part of the body of the victim. There



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was no evidence to show that the appellant had committed penetrative sexual assault on the victim. Only due to previous enmity, a false complaint has been foisted against the appellant. Without considering the same, the Trial Court mechanically convicted the appellant.

4. Per contra, the learned Government Advocate (Criminal side) appearing for the respondent submitted that though the deposition of the doctor did not support the case of the prosecution, the victim was examined as P.W.2, and she categorically deposed about the alleged occurrence, stating that the appellant had removed her dress and innerwear and rubbed her penis on her navel. Therefore, the victim suffered with fever and there was a delay in lodgement of complaint. Usually, delay in lodging a complaint is not material in sexual offence cases. In such circumstances, when a victim has suffered sexual assault, it is not always possible to expect immediate disclosure, and the complaint may be lodged thereafter. Therefore, after analysing the entire circumstances of the case, the Trial Court rightly convicted the appellant and the same does not warrant any interference of this Court.



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5. Heard the learned counsel for the appellant and the learned

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Government Advocate (Criminal side) appearing for the respondent and also perused the materials available on record.

6. Admittedly, the victim girl was aged about 6 years at the time of occurrence i.e., on 21.01.2021 at about 5.20 P.M., while the victim girl was playing in front of a Temple nearby her house. At that juncture, the appellant who was grazing his cattle on the way, dragged the victim into a bathroom of the nearby house and committed sexual assault on her. The prosecution failed to mention whose house it was, who owned it, and where exactly the alleged occurrence took place. That apart, the owner of the house was not examined by the prosecution. Besides the testimony of the victim girl, no other witness stated that the appellant had taken the victim into a bathroom and, after removal of her inner wear, rubbed his penis on her navel. The appellant was aged 70 years at the time of occurrence. In order to wreak vengeance, a false case has been filed against the appellant. The mother of the victim girl was examined as P.W.1, who deposed that she was confronted with suggestions about the previous enmity between both families. Though she denied the same, there was no other reason for lodging complaint that too artificial in nature. The victim girl was examined as

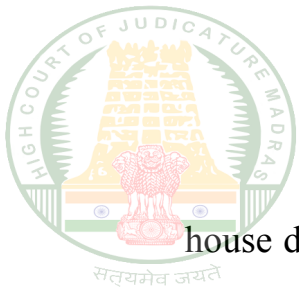


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P.W.2, who deposed that the appellant asked her to remove the dress and thereafter pressed her stomach with his penis. She further stated that she then left the scene of occurrence. The mother of the victim/P.W.1 deposed that the appellant asked the victim child to lie down, and immediately she cried and went away alone. According to the prosecution, after that incident, the victim girl suffered fever. However, there was no evidence to show that she was taken to any of the hospital for treatment. Further, no complaint was lodged on that day or the next day. The complaint was lodged only after two days from the alleged occurrence, and there was absolutely no explanation for the delay in lodgement of the complaint. Though delay in lodging the complaint is ordinarily not material in sexual offence cases, in the overall circumstances, the delay in lodgement of the complaint has played vital role.

7. That apart, after registration of the First Information Report, the victim was subjected to medical examination. The doctor, examined as P.W.8, deposed that there was no injury on the entire body of the victim girl, including her private part, and her hymen was intact. Therefore, no certificate was issued. The appellant, in his statement under Section 313(1)(b) of the Cr.P.C., stated that he had borrowed a sum of Rs.1,000/- from the mother of the victim girl/P.W.1. P.W.1 came to the appellant's



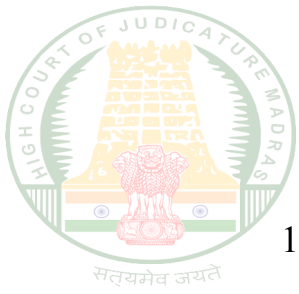
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house demanding his lamb instead of borrowed amount. When the appellant refused to give it, the mother of the victim girl threatened him that she would lodge a false case against him.

8. Further, the statement of the appellant was not even considered by the Trial Court. Therefore, the Trial Court failed to prove the charges against the appellant beyond a reasonable doubt. In view of this, the benefit of doubt is caused in favour of the appellant. Accordingly, this Court is inclined to set aside the order passed by the Trial Court.

9. In criminal jurisprudence, the burden is always on the prosecution to prove its case beyond reasonable doubt. When two views are possible and 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 in respect of all the charges against the appellant cannot be sustained and are liable to be set aside.



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10. In view of the above, the Judgement dated 17.03.2022 in Special S.C.No.47 of 2021 on the file of the Sessions Judge, Magalir Neethi Mandram, (Fast Track Mahila Court), Erode, is hereby set aside. The appellant/accused is acquitted of all charges under Section 9(m) r/w Section 10 of the Protection of Children from Sexual Offences Act, (POCSO), 2012.

11. The appellant/accused 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, shall be refunded to the appellant forthwith. The bail bond, if any executed, shall stand cancelled.

12. In the result, this Criminal Appeal stands allowed. Consequently, the connected miscellaneous petition is also closed.

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Index : Yes/No
Speaking /Non-Speaking order
Neutral Case Citation : Yes/No

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



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G.K.ILANTHIRAIYAN, J.

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