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Crl.A.No.30 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.04.2025
PRONOUNCED ON : 23.04.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.30 of 2022

Pradeep @ Pradeepan @
Pradevan

... Appellant

Vs.

State rep. by
The Inspector of Police,
H5 New Washermanpet Police Station,
Chennai.
Cr.No.654 of 2015.

... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C. to set aside the conviction and sentence imposed upon the appellant by the learned Sessions Judge, Magalir Needhimandaram, Chennai-104 in S.C.No.21 of 2016 dated 19.12.2018.

For Appellant : Mr.V.Rajamohan

For Respondent : Mr.L.Baskaran
Government Advocate (Crl. Side)



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JUDGMENT

This Criminal Appeal has been filed to set aside the impugned order in S.C.No.21 of 2016 dated 19.12.2018 on the file of the learned Sessions Judge, Magalir Needhimandaram, Chennai-104.

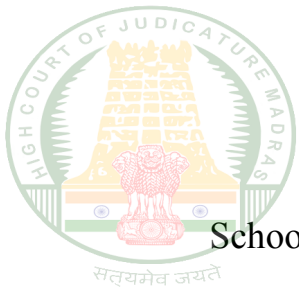
2.The appellant/accused in S.C.No.21 of 2016 was convicted by the Trial Court by judgment dated 19.12.2018 and sentenced him to undergo ten years rigorous imprisonment and to pay a fine of Rs.50,000/-, in default to undergo three years rigorous imprisonment for the offence under Section 376(2)(j)(I) of IPC. Against which, the present appeal filed.

3.The case of the prosecution is that the victim is a mentally retarded person with less IQ, her father passed away when she was young and her mother left the victim to her aunt at the age of 5 years. The victim was put in Manasa School for the Special Children and during the holidays, the victim used to come to her aunt's house. Likewise, she was in her aunt's place on 26.05.2015. The appellant/accused was employed in the Hotel



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opposite to the house of the victim. On 26.05.2015, the Hotel was closed due to maintenance works. At about 6.00 p.m., the victim who is a mentally retarded person was alone in her house. Taking advantage of the same, the appellant went to her house and took her to the terrace of the house, removed her clothes and committed penetrative sexual assault. The victim's aunt came home, searched for the victim, she went to the terrace and in the corner of the terrace she found the appellant committing sexual assault. On seeing the victim's aunt, the appellant collected his dress, ran down and fled from the scene. Thereafter, the victim's aunt informed the owner of the Hotel, P.W.2 about the appellant's act, she also called her Churchmate P.W.4, informed about the incident and thereafter, she lodged the complaint. P.W.8 received the complaint, registered FIR/Ex.P11, visited the scene of occurrence, prepared observation mahazar/Ex.P3 and rough sketch/Ex.P12 in the presence of P.W.3, recorded the statement of witnesses P.W.1 and P.W.2. The appellant/accused was arrested on 29.05.2015 and in the presence of P.W.3, the accused gave a confession statement. Thereafter, the Special School Teacher/P.W.5 examined who confirmed the victim a mentally retarded person with less IQ and she is studying in the Special



School. P.W.6/Doctor confirms the accused a potent person. The victim was examined by P.W.7 who confirms the medical condition of the victim and gave a report stating that she was subjected to penetrative sexual assault. On recording statements and collection of materials, charge sheet filed. During trial, P.W.1 to P.W.8 examined, Ex.P1 to Ex.P13 marked and M.O.1 to M.O.3 produced on the side of the prosecution, C.W.1 and C.W.2 examined as Court witness, Ex.C1 and Ex.C2 marked. On the side of defence, no witness examined and no documents marked. On conclusion of trial, the Trial Court convicted the appellant as stated above.

4.The contention of the learned counsel for the appellant is that the appellant had been falsely implicated in this case. The victim's aunt had come and asked for food articles on credit basis which was refused, due to which, there was some misunderstanding. Further, running of hotel opposite to her residence was not liked by the victim's aunt and she wanted to create some problem and to shut down the hotel. The appellant used to work in the Hotel and stayed in the second floor of the Hotel on the terrace. The victim being a mentally retarded person was not sure what happened to



her, taking advantage of her health condition, P.W.1 projected a false case.

The Doctor's evidence confirms that there is nothing found on the victim to confirm the victim recently subjected to penetrative sexual assault. The victim is studying in the Manasa School for the Special Children, staying in the hostel and what had happened there is not known. Now the appellant has been falsely implicated in this case. The Trial Court took extra interest in this case, examined the Court witnesses and marked Court documents, with a pre-determined to convict the appellant.

5.The learned counsel further submitted that the Trial Court after finding the appellant guilty and with regard to the quantum of sentence, it recorded that the appellant at the time of occurrence was of young age and mandatory minimum sentence of ten years and fine of Rs.50,000/- imposed. He would submit that the Trial Court had come to the conclusion that the appellant to be sentenced to minimum sentence of ten years but the minimum sentence as on the date of occurrence i.e., 26.05.2015 is seven years. He further submitted that as per Act 22/2018, amendment to the minimum sentence is increased to ten years with effect from 21.04.2018.



hence, the minimum sentence should be only seven years. Further, the learned counsel for the appellant without prejudice to his submissions further submitted that the appellant donated a sum of Rs.1,00,000/- to the Manasa School for the Special Children vide DD.No.505305 dated 25.03.2025.

6.The learned Government Advocate (Crl. Side) opposed the appellant's contention and submitted that the victim is a mentally retarded person with less IQ which is confirmed by the evidence of P.W.5/Teacher in Manasa School for the Special Childen and the victim was staying there as boarding student. P.W.1/aunt of the victim confirms the same and states that 15 years before, the victim's father who is the brother of P.W.1 passed away and thereafter, the mother of the victim left the victim with P.W.1 and left. P.W.1 admitted the victim in the Manasa School for the Special Children, she is staying there and during the annual vacation and on special occasions, the victim used to come and stay with P.W.1. On 26.05.2015, the victim was alone at home and P.W.1 had gone out. P.W.2 was running a hotel opposite to P.W.1 house in which the appellant employed and stayed



in the second floor terrace of the hotel. On 26.05.2015, the hotel was closed due to maintenance work carried out in the hotel and the appellant was free.

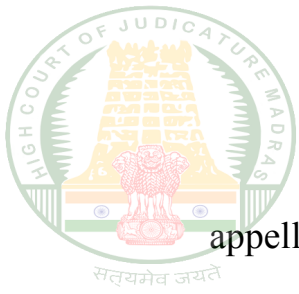
Finding that the victim was alone, the appellant entered P.W.1's house and took the victim to the open terrace, made her lie down in a corner of the terrace, removed her dress and thereafter committed penetrative sexual assault. P.W.1 returned home, found victim missing, went in search of the victim to the terrace where she saw the appellant committing penetrative sexual assault. On seeing P.W.1, the appellant fled from the scene of occurrence. P.W.1 informed the incident to P.W.2/hotel owner and she lodged a complaint. P.W.8 received the complaint, visited the scene of occurrence, prepared observation mahazar and rough sketch in the presence of P.W.4 and recovered the dress of the victim. The victim was produced before the Doctor/P.W.7 for medical examination who confirms that the victim was subjected to penetrative sexual assault and gave medical examination report/Ex.P8 and age certificate/Ex.P9. Ex.P10 is the Forensic report. In this case, P.W.2/hotel owner confirms that he saw the appellant rushing out of P.W.1's house after committing penetrative sexual assault on the victim and the appellant asked for money which was refused by P.W.2



and appellant fleeing from the place. On 29.05.2015, the appellant was arrested in the presence of P.W.3 and gave a statement admitting his guilt.

On completion of investigation, charge sheet filed. He further submitted that the appellant committed an inhuman act and that to, on a mentally retarded person and no leniency to be shown. The Trial Court on the evidence and materials, had rightly convicted the appellant. Hence, prayed for dismissal.

7.Considering the submissions made and on perusal of the materials, it is seen that in this case the victim is a mentally retarded person with less IQ as per P.W.1, which is confirmed by the evidence of P.W.5/Special School Teacher. The Doctor/P.W.7, who examined the victim, confirms victim is a mentally retarded person and her IQ level low not to her age. In this case, P.W.4/Churchmate of P.W.1 corroborates the evidence of P.W.1. C.W.1 is the Assistant Professor in the Institute of Mental Health, Kilpauk, who examined the victim and confirm that the victim is a mentally retarded person and given a report/Ex.C1. C.W.2, another Doctor confirms that the victim was with mental incapability of 4 years old child. In this case, the



appellant not disputed the evidence of C.W.1 and C.W.2 and documents

Ex.C1 and Ex.C2. P.W.1 had seen the appellant committing the offence, the appellant rushing down from the house of P.W.1 immediately after the occurrence was seen and questioned by P.W.2 and the appellant admitted the commission of offence. P.W.1 informed to P.W.4 about the incident. Thus, the evidence of P.W.1, P.W.2 and P.W.4 confirms the occurrence and the material evidence of P.W.7, C.W.1 and C.W.2 confirm the victim's mental incapability and the victim subjected to penetrative sexual assault.

8.It is seen that the Trial Court imposed the minimum sentence of ten years and this minimum sentence of ten years considering the young age of the appellant. The minimum sentence of ten years came into effect from 21.04.2018. Hence, this Court modifies the minimum sentence of ten years to seven years which is the minimum sentence prior to 21.04.2018.

9.In view of the above, the conviction and sentence imposed by the Trial Court in S.C.No.21 of 2016 dated 19.12.2018 is modified to seven years and the fine sentence is reduced from of Rs.50,000/- to Rs.5,000/-.



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WEB COPY 10.In the result, the Criminal Appeal stands partly allowed.

23.04.2025

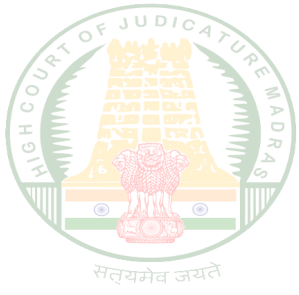
Index : Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

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Note: Issue order copy on 23.04.2025



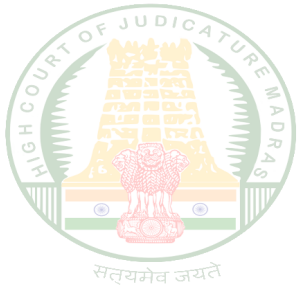
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To

- 1.The Inspector of Police,
H5 New Washermanpet Police Station,
Chennai.
- 2.The Sessions Judge,
Magalir Needhimandaram,
Chennai-104.
- 3.The Superintendent,
Central Prison, Puzhal.
- 4.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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Pre-delivery judgment in

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