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Crl.A.No.1260 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.04.2025

PRONOUNCED ON : 16.09.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.1260 of 2022

K.Chithambaram

... Appellant

Vs.

State by
The Inspector of Police,
AWPS Tiruppur South Police Station,
Tiruppur City.
(Crime No.17 of 2021)

... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., to call for the records to set aside the judgment of the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Tiruppur in Spl.S.C.No.110 of 2021 dated 14.11.2022.

For Appellant : Mr.J.Franklin

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



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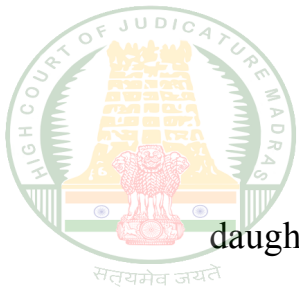
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JUDGMENT

This Criminal Appeal is filed to set aside the impugned judgment in Spl.S.C.No.110 of 2021 dated 14.11.2022 on the file of the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Tiruppur.

2.The appellant/accused in Spl.S.C.No.110 of 2021 was convicted by the Trial Court by judgment dated 14.11.2022 and sentenced him to undergo three years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default to undergo three months simple imprisonment for the offence under Section 9(m) r/w. 10 of Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

3.The case of the prosecution is that the defacto complainant/father lodged a complaint stating that on 07.10.2021, after returning from evening prayers from the mosque, his wife complained that at about 6:30 p.m. there was a power cut and the defacto complainant's brother's wife had come there with her baby aged about 1½ years. The defacto complainant's minor



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daughter aged about 9 years was carrying the baby in her arms and she was walking near the house, at that time, the appellant, who is running a grocery and rice batter shop in the name of Subulakshmi Rice Batter shop, called the victim to his shop. The appellant enquired about the baby and extended his arms to get the baby and play with the baby, but twice the baby not willing to come to him. On the third try, the appellant extended his arms in the guise of taking the baby, pressed the victim's right breast. The victim got shocked, cried, and went back home, informed her mother, who informed the defacto complainant. They immediately went to the Law and Order Police Station, who informed them that the complaint to be given to the All Women police station. Hence, they came back and on the next day, i.e. 08.10.2021 at about 8.30 a.m., they lodged a complaint to the respondent, who received the complaint, registered a case in Crime No.17 of 2021 for the offence under Section 9(m) r/w. 10 of POCSO Act. PW4 is the sub-inspector of police, who received the complaint, registered FIR/Ex.P5 and placed it to PW5/Inspector of Police. PW5 enquired the witnesses, recorded the statement of the victim, her mother, defacto complainant and others, visited the scene of occurrence and prepared an observation mahazar/Ex.P4 and



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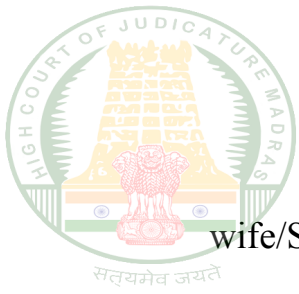
rough sketch/Ex.P6 in the presence of PW3. The victim was produced before the Magistrate. The victim gave her 164 statement/Ex.P2, the birth certificate/Ex.P1 collected. On completion of investigation, charge sheet filed. During trial, PW1 to PW5 examined, Ex.P1 to Ex.P6 marked and MO1 produced on the side of the prosecution. On the side of the defence, no witness examined and no documents marked. The trial court on conclusion of the trial, convicted the appellant as stated above.

4.The learned counsel for the appellant submitted that in this case, a complaint was lodged on a false notion as though the appellant with sexual intent forcibly touched the breast of the victim girl. PW1/victim girl clearly stated that she was holding the baby in her right hand and was walking, at that time, the appellant called the victim to his shop and wanted to have the baby and play. PW1 admits that in the shop, there was a showcase and above it there are biscuits and chocolate bottles. The shop is of 10x10 size which is fully stocked with articles and there is only little space for one person to move. The appellant called the victim girl to play with the baby, the baby couched to the victim twice and at the third attempt, the appellant



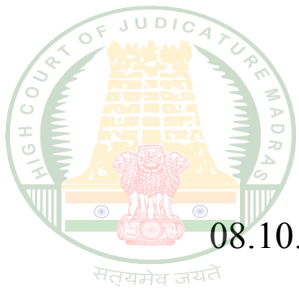
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approached the baby with force, consequently accidental touch made is projected as though the appellant touched the right breast of the victim with sexual intent and committed sexual assault. He further submitted that as per Section 7 of the POCSO Act, sexual assault means someone with sexual intent when touches the body of the victim, sexual intent is a relative factor, question of fact to be deduced from the attendant circumstances. In this case, PW5/Investigating Officer admits in her evidence that none of the witnesses and the persons present near the scene of occurrence stated that the appellant called the victim with bad intention. An accidental touch magnified and projected as though the appellant committed sexual assault. He would further submit that the trial Court primarily relied on the evidence of PW1 and PW2. PW1/victim girl, in her 164 statement/Ex.P2 and in her evidence, confirms that the appellant intended to play with the baby, at that time, touch was made, since it was with force, she complained to her mother. It is a fact that on earlier two occasions the appellant could not reach the baby, hence some force used but that would not automatically termed as an act with sexual intent qualifying to be a sexual assault. In this case, PW2 is the father of the victim. He admits that he was informed by his



wife/Shakira about the incident, as informed to her by PW1. In this case, admittedly, said Shakira not examined as witness. Hence, the statement given by PW2 with regard to the incident is hearsay and inadmissible. He further submitted that the evidence of PW2 would be relevant only to the extent of lodging the complaint. PW2 admits that the complaint was written by one Bashir, but the said Bashir not examined as witness in this case. PW3 who is the witness for observation mahazar and rough sketch, states about the topography of the area and nothing more. He further submitted that in this case, the Investigating Officer admitted that as against the Appellant there was no similar complaint received earlier. Further, PW5 admits the area of the shop is a small one with a showcase, customers stand below the showcase. Hence, there would be a slight difference of height and the possibility of accidental touch is real. In view of the above, the conviction of the Appellant is not sustainable.

5.The learned Government Advocate (Crl. Side) filed a counter and submitted that a case was registered in All Women Police Station, in Crime No.17 of 2021, U/s.9 (m) r/w 10 of POCSO Act against the accused



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08.10.2021 at about 08.30 hours by the Sub Inspector of Police and the

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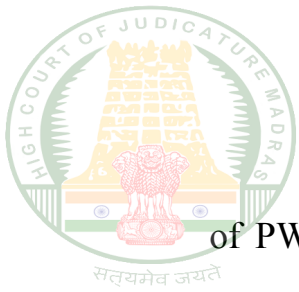
Inspector of Police took up the case for investigation. During the course of investigation, the Inspector of Police went to the scene of occurrence, drew rough sketch, prepared observation mahazar in the presence of witnesses, examined the witnesses and recorded their statements. On 08.10.2021, the Inspector of Police arrested the accused, obtained confession statement from him and produced him before the Fast Track Mahila Court, Tiruppur who remanded him into judicial custody. On 19.11.2021, the Inspector of Police produced the victim girl before the learned Judicial Magistrate-III, Tirupppur for recording 164 Cr.P.C Statement. After completion of investigation, the Inspector of Police filed a charge sheet before the Fast Track Mahila Court Thiruppur and the same taken on file, assigned Spl.S.C.No.110 of 2021 dated 16.12.2021. The Trial Court relying on the evidence, more particularly, the statement of the victim girl and her 164 statement/Ex.P2 came to the conclusion that the appellant committed the offence and had rightly convicted the appellant. Hence prayed for dismissal.

6.Considering the submissions made and on perusal of the materials,



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it is seen that the appellant is running a provisional shop and a rice batter shop and the victim is residing in the third house from the shop. The appellant was carrying her uncle's daughter in her right arm and she was walking there and there was power cut, the place was dark. The appellant, an aged person having three daughters, who are all married and now having grandchildren, to play with the baby called the victim girl to come near the shop. The baby coughed the victim girl and refused to go to the appellant twice. Hence, on the third occasion, the appellant with little force attempted to grab the baby, at that time, the appellant touched the victim's right breast. The victim confirms this. From the evidence of the victim, it is clear that the baby was in the victim's right arm and it is natural that babies do not immediately reach to third person. It is natural elderly persons like playing with babies for fun. The appellant having grand children conduct is quite natural. The evidence confirms that the touch could only be accidental and not a sexual assault and the sexual assault would get qualified if there is a sexual intent. The sexual intent, a relative factor has to be considered with the attendant circumstances. It is an admitted position at that time there was power cut and it was dark. From the attendant circumstances and evidence



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of PW1, it is clear that there can be no sexual intent deduced against the appellant, which is further qualified by PW5/Investigating Officer who confirms that there was no material or evidence to prove that the appellant had some intention while attempting to take the baby. Thus a normal and natural act has been magnified and projected as a sexual assault. The evidence of PW2 is in the nature of hearsay. He admits that the complaint was written by one Basheer, but the said Basheer not examined in this case, the complaint was not read over, found to be true and thereafter the appellant signed it.

7.The Apex Court in the case of ***Just Rights for Children Alliance and another v. S.Harish and Others*** reported in ***2024 SCC OnLine SC 2611*** for the point that Sections 29 & 30 of Protection of Children from Sexual Offences Act, 2012 would be invoked when the Court believes the existence of the fact beyond reasonable doubt and thereafter presumption would follow. In this case, the foundational fact doubtful not proved, hence convicting the appellant, is not proper.



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8.In view of the above, this Court is inclined to set aside the conviction and sentence imposed by the Trial Court.

9.In the result, this Criminal Appeal stands allowed setting aside the judgment dated 14.11.2022 in Spl.S.C.No.110 of 2021 passed by the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Tiruppur. The appellant is acquitted. Bail bond if any executed shall stand cancelled. Fine amount if any paid shall be refunded.

16.09.2025

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
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To

- 1.The Inspector of Police,
AWPS Tiruppur South Police Station,
Tiruppur City.
- 2.The Sessions Judge,
Magalir Neethimandram
(Fast Track Mahila Court),
Tiruppur.
- 3..The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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Pre-delivery judgment made in

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