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Crl.A.No.700 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 03.12.2025

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

.Crl.A.No.700 of 2018

Premkumar

... Appellant/Accused

Versus

State rep by
The Inspector of Police,
All Women Police Station,
Ambur, Vellore District.
(Crime No.2/2016).

... Respondent/Complainant

PRAYER: This appeal has been filed seeking to set aside the conviction and judgment passed by the learned Fast Track Mahila Judge(Sessions), Vellore, Vellore District in S.S.C.No.43 of 2016 dated 06.10.2018 and consequently, acquit the appellant from charges.

Appellant	: Mr.M.Sathish Kumar
For Respondent	: Mr.S.Udayakumar, GA(Crl.side) assisted by Ms.Harshana.T

JUDGMENT

The appellant/accused in Spl.S.C.no.43 of 2016 was convicted by the trial Court by judgement dated 06.10.2018 and sentenced to undergo 10 years rigorous imprisonment and also to pay a fine of Rs.5000/-for the offence under Sections 6 r/w.5(m), r/w.6(b) of the POSCO Act,. Against which, the present appeal.



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2. The case of the prosecution is that on 05.03.2016 at about 1 p.m, the victim/PW2, who is less than 12 years, was with her friend Uma, who is a neighbour. At that time, the appellant called the victim informing that appellant's sister Priya had called her. Victim had gone to the house of the appellant and enquired about Priya. The appellant had locked the door, took her to the bed and committed penetrated sexual assault. At that time, EB assessor had come for meter reading and knocked the door. The appellant opened the door and the victim ran out crying. The assessor enquired reason for victim crying. Appellant informed victim is a neighbour. Thereafter, the victim was found crying, her mother came back home at about 3 pm and the victim informed her mother about the pain in her private part. The victim's father PW.5 returned home from his work and after informing about the incident, he enquired the appellant and abused him. Thereafter, parents lodged a complaint to the PW9, who registered an FIR in crime no.2 of 2016.

3. PW9 came to the scene of the occurrence, prepared observation mahazer and sketch. The victim referred to PW3, the casualty Doctor, Government Hospital, Ambur, who examined the victim at about 10.30 p.m and the victim informed that her neighbour/appellant took her to bed room

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locked the door, kissed and inserted his finger in victim's genitalia, on external examination, the genitalia was found with reddishness. Thereafter, she was admitted in the hospital. PW6 Doctor, examined and treated victim, gave her reports, viz., Exs.P8 & P9. The mother of the victim PW1 and the father of the victim PW5, confirmed the victim informing the sexual assault committed on her. The victim/ PW2 produced before the learned Magistrate and her 164 Cr.P.C. statement recorded, wherein, she reaffirms, being subjected to penetrative sexual assault. Ex.P3/victim's Birth Certificate was produced, confirming her age and date of birth as 29.07.2009. The accused was arrested and thereafter, statements recorded, collected materials and medical records and PW10 filed the charge sheet in this case.

4. During trial, on the side of the prosecution, PWs.1 to 10 examined and Exs.P1 to P13 marked and on the side of the appellant, the mother of the accused/appellant examined as DW1 and no documents marked. On conclusion of the trial, the trial Court, convicted the appellant as stated above.

5. Questioning the judgment of conviction, the learned counsel for the appellant would submit that there was a money dispute between the appellant's family and the victim's family and the appellant belongs to



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schedule caste, the victim's family abused the appellant's family by calling caste name and for this incident, complaint lodged which is pending. In offensive, the above false complaint lodged. He pointed out that in this case, material witnesses, viz., neither Uma, a neighbour, nor EB Assessor examined. The said two witnesses, who were said to seen the victim at the time of assault and the victim coming out of the appellant's house crying was withheld since it would expose falsifying of the prosecution case. He further submitted that the medical examination by P.Ws.3, 6 and 7 and the Police Officials, PWs.8, 9 and 10 confirmed that there was no assault and further PW6 in her report, Ex.P8 and Ex.P9 not recorded any reddishness in the private part of the victim girl. PW6 confirms that there was no injury found in the body of the victim and no nail marks found on her private part. PW.3 admits that if there is no scratching on the private part, reddishness does not occur. PW1, who is the mother of the victim admits that since the victim was complaining of pain, oil was applied and rubbed and this may be a reason for reddishness. In this case, none of the neighbours examined. The appellant is an Engineering student and due to his arrest in the above case, he was sent out from the college and now discontinued his studies. Appellant is engaged in civil works in Erode and they have also shifted the residence and living in a far away place. These factors not considered by the trial Court

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and on the other hand, convicted the appellant.

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6.The learned Government Advocate (Crl.side) appearing for the respondent would submit that totally 10 witnesses were examined in this case viz., PW2 is the victim, Pws.1 and 5 are the mother and father of the victim, PW3 is the Doctor, who treated the victim on the day of the occurrence. He would submit that on 05.03.2016 at about 1 p.m., when the victim girl was with her neighbour friend Uma, the appellant called the victim on the pretext appellant's sister Priya called her and the victim went to the house of the appellant and enquired about Priya, the appellant locked the door from inside, took her bed room, kissed her, removed her inner garments and forcibly inserted his finger into her private part and committed penetrated sexual assault. The victim girl cried out of pain, at that time, EB Assessor had come for meter reading and knocked the door. The appellant opened the door and the victim girl ran out crying from the house of the appellant. After her mother came back from her work at about 3 p.m, she complained about the appellant's act of penetrated sexual assault, father/PW5 came later, he was also informed about the appellant's act. Thereafter, PW1 and PW5 took the victim girl to the Government hospital, Ambur, where PW3 Doctor examined and treated the victim girl and recorded the incident in the Accident

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Register viz, Ex.P6. On getting information, PW8, Inspector of Police visited the hospital, recorded the statement of PW1 and registered an FIR, viz., Ex.P12, in crime No.02 of 2016. PW.9 took up investigation, prepared Observation Mahazer and rough sketch viz., Ex.P7 and Ex.P13 in the presence of PW4 and recorded the statement of witnesses including the appellant and the victim girl, thereafter, the victim was examined by PW.6 Doctor, who gave reports, viz., Ex.P8 and P9, after collecting the same, PW.9 arrested the appellant/accused. PWs.1 and 2 produced before the learned Magistrate and 164 Cr.P.C. statements recorded. The victim in her 164 Cr.P.C. narrated the incident, confirming accused committing penetrated sexual assault on 05.03.2016.

7. On the side of the respondent/prosecution, Pws.1 to 10 were examined and Exs.P1 to P13 were marked and on the side of the appellant, the mother of the accused/appellant was examined as DW1 and no documents marked. Though the appellant's mother had examined as DW1 and in her statement, she confirmed that the appellant and the victim are neighbours and PW1 mother of the victim used to receive loan from her. During January 2016, she had taken loan of Rs.10,000/- to meet Pongal festival expenses, and agreed to repay the same, but later, failed to pay the loan amount, there

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was a dispute, the victim's mother abused the appellant's family calling their caste name, in offensive now lodged a false complaint, foisting the appellant in this case knowing well no such incident as alleged took place, is the explanation by the appellant.

8. The learned Additional Public Prosecutor appearing for the respondent would submit that it is a only defence taken by the appellant and there is no material to substantiate the same. The defence taken is that Priya, sister of the appellant, conducting tuitions for three months and in the tuition, victim not performed well and hence Priya complained about the victim to her father, PW5. It was suggested that the appellant's aunt had dispute with one Prabakaran and on the advise of Prabakaran, a false complaint filed against the appellant. In this case, the appellant's sister Priya not examined on the side of the appellant. The trial Court, finding that the evidence of PW2 victim, corroborated with her parents' statements viz., Pws. 1 and 5 and on the medical evidence produced by the prosecution through the Medical Officers, viz., PWs.3, 6 and 7, the trial Court rightly convicted and sentenced the appellant, which does not require to be interfered with. Hence, he prayed for dismissal of the appeal.



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9. Considering the submissions made by the learned counsel for the appellant and the learned Government Advocate (Crl.Side) and on perusal of the materials available on record both oral and documentary, which reveal that on 05.03.2017, the victim PW.2 who is aged about 12 years, confirmed by her Birth Certificate, Ex.P3, was taken by the appellant to his house at about 1.00 p.m., locked the door, made her lie on bed, removed her dress and committed penetrated sexual assault. The victim cried out of pain and thereafter, when EB Assessor knocked the door, for recording meter reading, the appellant opened the door and the victim ran out crying. Thereafter, the victim was found crying till her mother returned home after work at 3.00 p.m., the victim informed her mother about the pain in her private part. The victim's father PW.5 also came back from his work and after knowing about the incident, he enquired the appellant and shouted at him. Thereafter, P.W.5 lodged a complaint to PW9, who registered an FIR in crime No.2 of 2016 and the case registered against the appellant. PW9 visited the scene of the occurrence, prepared Observation mahazer and rough sketch, recorded the statements of witnesses present there. The victim was examined by PW3, the casualty Doctor, Government Hospital, Ambur, at about 10.30 p.m, victim informed that her neighbour/appellant called and took her to bed room, locked the door, kissed her and inserted his finger in victim's genitalia and on

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external examination of the genitalia, it was found with reddishness.

Thereafter, she was admitted in the hospital. PW6 Doctor, further treated and examined the victim, gave medical certificate and report, viz., Exs.P8 & P9. The mother of the victim, PW1 and the father of the victim, PW5 were examined, who confirmed victim informing Penetrative sexual assault committed by the appellant. The victim/ PW2 produced before the Magistrate and her 164 statement recorded, victim reaffirms that she was being subjected to penetrative sexual assault by the appellant.

10. PW10, Investigating officer, completed the investigation filed charge sheet and in this case, all witnesses supported prosecution case. Though an attempt made by the appellant about money dispute, and caste prejudice between PW1 and his mother and examined DW1, the defence put forth by the appellant not substantiated. It has been suggested that appellant's sister Priya used to take tuitions to victim girl and PW5 taken loan, and other motive and reason during 313 Cr.P.C. examination, but no material produced either to the investigating officer or before the trial Court to substantiate the defence taken by the appellant. The Trial Court, considered all these aspects and on the evidence available on record produced by the prosecution rightly convicted and sentenced the appellant.

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This Court finds no infirmity or perversity in the findings of the trial Court,
to interfere.

11. In view of the above, this Criminal Appeal fails and dismissed,
confirming the conviction and sentence imposed by the trial Court vide its
judgment dated 06.10.2018 in Spl.S.C.No.43 of 2016.

03.12.2025

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To

- 1.The Fast Track Mahila Judge (Sessions)
Vellore.
- 2.The Inspector of Police,
All Women Police Station,
Ambur, Vellore District.
(Crime No.2/2016).



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M.NIRMAL KUMAR, J.

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