

CrI.A(MD)No.355 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 29.07.2025

CORAM:

THE HON'BLE DR.JUSTICE R.N.MANJULA

CrI.A(MD)No.355 of 2018

The Public Prosecutor,
High Court, Madras – 104.

Crime No.141 of 2014 of Gangaikondan Police Station.

... Appellant/Complainant

Vs

Sivakumar

... Respondent/Accused

Prayer: This Criminal Appeal Case filed under Section 374 of Cr.P.C to allow the appeal and set aside the Judgment of acquittal of the respondent passed by the file of the learned Sessions Judge, Mahila Court, Tirunelveli in Special Case No.117 of 2016, dated 02.05.2017.

For Appellant : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

For Respondent :Ms.A.S.Rajeswari



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JUDGMENT

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The present appeal has been filed challenging the Judgment of the learned Sessions Judge, Mahila Court, Tirunelveli, dated 02.05.2017 made in Special Case No.117 of 2016.

2.The case of the prosecution is that on 25.06.2014 at about 5.00 p.m., when the defacto complainant's 8 years old daughter was at house, the accused came there and trespassed into the house with an intention to commit sexual assault on the child and he made the child to lie on the bed and removed her dress and fondled on her private parts and whole of her body.

3.Based on the complaint given by the mother of the victim girl, a case has been registered against the accused and after completion of investigation, charge sheet has been filed against the accused under Section 451 IPC and Section 10 of POCSO Act. At the conclusion of trial, the trial Court acquitted the accused.

4.Aggrieved over that, the State has preferred this appeal.



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5.The learned Additional Public Prosecutor appearing for the State/Complainant submitted that the mother of the victim child is the defacto complainant and she was examined as PW1; in this case, PW1/mother of victim, victim child, and father of victim child and also other witnesses, who came to the spot on the information given by PW1 have given cogent and consistent evidence before the Court, but the trial Court has rejected the same; during the cross-examination of the Investigation Officer, PW12, contradictions have been made in a generalized manner and the Investigation Officer had answered the questions without getting the advantage of tackling distinct and split questions from the defence side; though the offence is serious and the occurrence is genuine, the trial Court has acquitted the accused without properly appreciating the whole of evidence on record and by giving advantage of initial presumption in favour of the prosecution as per Section 29 and 30 of POCSO Act.

6.The learned counsel appearing for the respondent submitted that the evidence of PW1 and her complaint itself are eventually contradictory and the witness, who had brought the accused to the house of PW1 subsequent to the occurrence was not examined before the Court;



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PW1 stated in her evidence that they went in search of the accused after the occurrence and the accused came to PW1's house by wearing a different dress and the victim child, PW2 had identified him; thereafter, he was taken to the Police Station and handed over to the Police; but in the complaint, PW1 has stated that the accused was about to flee away, but the witnesses by name Sukumar, Ramakrishnan and Eswaran chased him and caught hold of him and they went together to the Police Station to lodge a complaint; one of the witnesses, who have been examined in support of the prosecution by name Sukumar has already got previous motive with the family of the accused and that has been admitted in his evidence; No independent witness has been examined, though there are other residents residing in the same street; the trial Court has acquitted the accused only because the prosecution had failed to prove the case to the satisfaction of the Court and hence the judgment of the trial Court should be confirmed.

7. I have given my anxious consideration to the submissions made on either side and carefully perused the records.



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8.PW1 is the mother of the victim girl, who has given the complaint Ex.P.1. In the complaint, she has stated that on 25.06.2014, when her children returned from School, she gave them Coffee; after that she went to her mother-in-law's house, which is three houses away; when she came back to her house, she saw the accused removed the dress of her daughter and fondling on her body; at that time, the victim child screamed and the accused ran away from the spot; on hearing the noise of PW1, the neighbours came to her house, chased the accused and caught hold of him and handed over him to the Police Station, after her husband arrived.

9. However, PW1 in her evidence has stated that on seeing the accused, her other daughter screamed and on seeing that the accused escaped by jumping over the compound wall. As the victim child was crying, PW1 went to the house of the accused and later, the accused came to PW1's house by changing his dress. On seeing him, the victim identified that he was the person, who assaulted her sexually; and he was beaten up by the persons gathered there and then he was handed over to the Police Station.



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10. In the cross-examination of PW1, she has stated that the compound wall surrounding her house would be 10 feet height. So, it is difficult to believe that the accused had jumped over 10 feet compound wall on seeing PW1.

11. During the cross-examination of PW2 also, she has stated that she had identified the accused to her mother. Unfortunately, the child was not examined in one and the same day. Her chief examination was initiated on 03.10.2016 and further chief-examination and the cross-examination was done only on 25.10.2016. Despite the occurrence had occurred before 2 years, the child has not been examined immediately or at least within the prescribed period. It would have been possible for the child to forget what had happened before 1 ½ years. So, the chief examination of PW2 does not contain the complete details of the occurrence and her evidence as to the material part is vague. She has stated in her evidence that the person has kept her on bed and lied on her and immediately she shouted. However, the mother of PW2 has stated in her evidence that the accused was sitting on the victim and was fondling on her body.



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12. During the chief examination of PW2, she has stated that the accused escaped through the compound wall and her mother immediately shouted. At that time, PW1 asked her that whether he was that person. But in the evidence of PW1, she stated that the accused came little later by changing the dress.

13. One of the witness, who was examined as PW6 has stated in his evidence that one Chelladurai has brought the accused from cricket ground. However, the said Chelladurai has not been examined as a witness. It is seen that PW6 said to have got some previous motive with the family of the accused and it was elucidated during his cross-examination.

14. The evidence of PW12 is the death knell for the case. The cross-examination of PW12 has been done in a generalized pattern and the Investigation Officer has accepted the suggestions made to him with regard to the contradictions.

15. The Investigation Officer had not insisted that the contradictions should be put to him distinctly and only then he can answer



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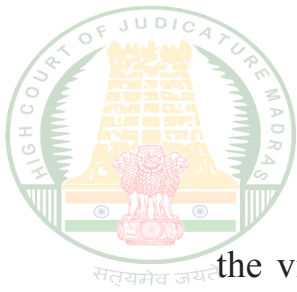
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rightly. The Prosecutor has also not raised any objection to the generalized suggestions put to the Investigation Officer. The Court could have avoided such suggestion by not being a mute spectator. The Court could have insisted the defence counsel to put the suggestion only with regard to the contradictions and not paragraph patterned suggestions.

16. Even in some cases, when the prosecution case is true, the manner in which trial is conducted would damage the case. This is one such example where the Investigation Officer had given straight acceptance to all the suggestions and that had gone adverse to the interest of the prosecution.

17. There are contradictions in the evidence of eyewitnesses and other witnesses, who came to the rescue of PW1 immediately after the occurrence. It is unfortunate that the victim girl was examined after two years and her memory about the occurrence is somewhat faded and hence, her evidence is also vague.

18. Though it cannot be classified as a false case foisted against the accused, it is a classic example of how the delay in examining



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the victim child and the improper manner in conducting the trial would affect the case of the prosecution.

19.No doubt, the initial presumption under Sections 29 and 30 of the POCSO Act ought to be given in favour of the prosecution, once a person is prosecuted for the offence under 10 of POCSO Act. But such initial presumption would be drawn only when the foundational facts are proved to the satisfaction of the Court. Even when the foundational facts are proved, the accused has got the liberty to rebut the presumption. The process of rebuttal can be done either through direct evidence or through establishing the weaknesses, infirmities and inadequacies in the case of prosecution.

20.The High Court of Tripura at Agartala has elaborately dealt with the presumption under Sections 29 and 30 of POCSO Act in ***Lalmalsom Kaipeng Vs. The State of Tripura*** reported in ***MANU/TR/0211/2021***. The relevant portion is extracted hereunder:

“28. To say more comprehensively, the presumption to be drawn under Sections 29 and 30 of the POCSO Act do not absolve the prosecution of its duty to establish the



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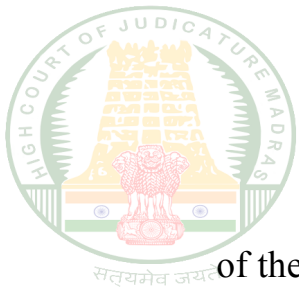
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foundational facts. Prosecution has to establish a prima facie case beyond reasonable doubt. Only when the fundamental facts are established by the prosecution, the accused will be under obligation to rebut the presumption that arise, by adducing evidence with standard of proof of preponderance of probability. The insistence on establishment of fundamental facts by prosecution acts as a safety guard against misapplication of statutory presumption.

Foundational facts in POCSO Act include:-

- (i) the prove that the victim is a child;*
- (ii) that alleged incident has taken place;*
- (iii) that the accused has committed the offence; and*
- (iv) whenever physical injury is caused, to establish it with supporting medical evidence.”*

21.The Hon'ble Supreme Court as held in ***Chandrappa Vs State of Karnataka***, reported in ***2007 AIR SCW 1850*** that the appellant Court can interfere in the appeal filed against acquittal only on the following circumstances. For the sake of convenience, the relevant part



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of the Judgment is extracted hereunder:

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“From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded;

(2) The [Code of Criminal Procedure](#), 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of



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law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

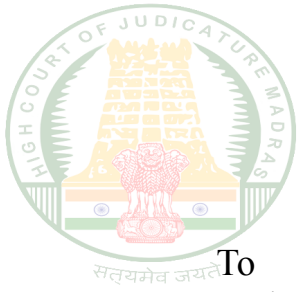
(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

22.As already detailed, the prosecution had failed to make the initial presumption to be culminated into conclusive proof and that led to the acquittal of the accused. Hence, in all probabilities and possibilities, this is not a case, where interference is needed on the Judgment of the acquittal.

23. In the result, ***this Criminal Appeal stands dismissed and the acquittal Judgment of the learned Sessions Judge, Mahila Court, Tirunelveli in Special Case No.117 of 2016, dated 02.05.2017, is confirmed.***

29.07.2025

NCC :Yes/No
Index :Yes/No
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To

1. The Sessions Judge,
Mahila Court, Tirunelveli

2. The Inspector of Police,
Gangaikondan Police Station,
Crime No.141 of 2014.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

4. The Section Officer,
Criminal Record Section,
Madurai Bench of Madras High Court, Madurai.



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DR.R.N.MANJULA, J.

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