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Crl.A.(MD)No.481 of 2016



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 19.06.2025

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Crl.A.(MD)No.481 of 2016

Tamil @ Tamilarasan

... Appellant

vs.

State Rep. by
The Inspector of Police,
Thirupathur All Woman Police Station,
Thirupathur, Sivagangai District.
(Crime No.5 of 2015)

...Respondent

PRAYER : This Criminal Appeal has been filed under Section 374(2) of Criminal Procedure Code against the Judgement of the learned Sessions Judge, Fast Track Magalir Neethimandram, Sivagangai dated 17.11.2016 in Spl.S.C.No.3 of 2015.

For Appellant : Mr.R.Ilayaraja
for Mr.D.Veerasekaran

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

J U D G E M E N T

This appeal has been filed challenging the Judgement of the learned Sessions Judge, Fast Track Magalir Neethimandram, Sivagangai dated 17.11.2016 in Spl.S.C.No.3 of 2015.



2.1. The appellant is the sole accused, who has been charged under Sections 450 and 506(1) IPC and Section 4 of POCSO Act, 2012 and convicted and sentenced by the learned Sessions Judge as under.

Accused	Offences under Sections	Punishment	Fine	In default Sentence
Sole Accused	450 IPC	Rigorous Imprisonment for 5 years	Rs.2,000/-	Rigorous Imprisonment for 6 months
	4 of POCSO Act	Rigorous Imprisonment for 8 years	Rs.5,000/-	Rigorous Imprisonment for 1 year

2.2. The sentences were ordered to run concurrently. Set off under Section 428 Cr.P.C. is also ordered.

3.1. The case of the prosecution as per the records is that on 23.03.2015, at about 17.00 hours, when the victim girl's mother (PW1) went to fetch water and PW1's husband was not at home, the accused taking advantage of the fact that the victim girl was alone, entered her home in order to commit the offence of penetrative sexual assault on her. He compelled the victim girl and forcibly committed sexual assault on her and threatened to kill her if she dared to tell that to anyone.



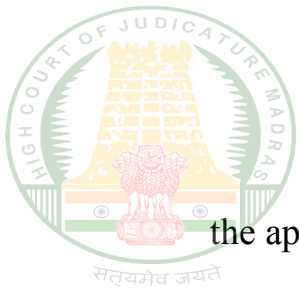
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3.2. On the complaint filed by PW1, a case has been registered in Crime No.5 of 2015 on the file of the All Women Police Station, Thiruppathur. At the conclusion of the investigation, charge sheet was laid against the accused for the offences under Sections 448 and 506(1) of IPC and Section 4 of POCSO Act.

3.3. After completing the legal mandate of furnishing copies and all other legal formalities, charges have been framed against the accused for the offences under Sections 450 and 506(1) of IPC and Section 4 of POCSO Act. When the accused was questioned, he denied his involvements and claimed to be tried.

3.4. Before the Trial Court, on the side of the prosecution PW1 to PW16 were examined and Exs.P1 to P18 were marked. On the side of the accused, the accused has been examined as DW1 and no document was marked. Material Objects MO1 and MO2 were marked.

3.5. After the conclusion of trial, the learned trial Judge acquitted him from the charge under Section 506(1) of IPC and found the accused guilty under Section 450 of IPC and Section 4 of POCSO Act and convicted and sentenced him as mentioned supra. Aggrieved over that,



the appellant has preferred this appeal.

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4. Mr.R.Ilayaraja, learned counsel appearing for the appellant submitted that there is no certainty about the date of occurrence; in the First Information Report, the date of occurrence has been mentioned as 22.03.2015; in the Charge Sheet, the date of occurrence has been mentioned as 23.03.2015; and even though First Information Report has been registered only on 25.03.2015, the observation mahazar and rough sketch are dated 22.03.2015, which is impossible.

5. Mr.R.Meenakshi Sundaram, learned Additional Public Prosecutor attracted the attention of the Court to Accident Register Ex.P18, wherein the date of occurrence has been rightly mentioned as 22.03.2015 and submitted that the typographical mistakes cannot be held against the prosecution.

6. The victim girl was examined as PW2 and her age is not in dispute. The School Transfer Certificate Ex.P13 show that PW2's date of birth is 12.07.2000. The occurrence had taken place in the year 2015; the victim girl is aged 15 years; and hence she comes within the definition of child under POCSO Act.



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7. The complaint, Ex.P1 has been given by the mother of the victim girl on 25.03.2015. As per the complaint, on 22.03.2015 (Sunday), at 05.00 p.m., PW1 went out to fetch water, her husband not returned from work and their daughter (victim girl) was alone at home; after she returned home at about 06.00 p.m., she saw her daughter crying complaining pain in her stomach; and the victim girl's conduct was abnormal and she refused to take food or sleep properly. On 25.03.2015, the victim girl returned from School and started crying. When PW1 enquired what bothered her, the victim girl has stated that on 22.03.2015, the accused came to the house and compelled her to have sexual intercourse with him and thereafter, threatened her not to reveal the same to anyone.

8. When the victim girl was examined as PW2, during the course of the trial, she has stated that on 22.03.2015 when she was alone at home, the accused came there, closed her mouth, removed her dress and misbehaved with her and thereafter, she informed it to her mother. In the latter part of her evidence, it is stated that she had pain in her stomach for 3 days and after her mother informed her father, and consequent to his arrival, they went to the Police Station and reported about the occurrence.



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9. During the cross examination of the victim girl, she has stated that she revealed about the occurrence to her mother on the same day itself. But, in the complaint Ex.P1, it is stated that the victim girl revealed the occurrence to PW1 only after three days. During the cross examination of PW1, she has stated that her daughter told the occurrence to her on the next day i.e., Monday. But, she has proceeded to give complaint only on Friday. Obviously, there are contradictions with regard to the date of knowledge of occurrence in the complaint, evidence of PW1 and evidence of PW2.

10. Even during the cross examination of PW2, she had not stated specifically that the accused had compelled her to have sexual intercourse with her. She has given a generalized statement that the accused had misbehaved with her.

11. The Medical Certificate Ex.P7 issued by the Doctor (PW9) shows that some known person sexually assaulted the victim girl on 25.03.2015 at about 05.00 p.m. The evidence of the Doctor (PW9) does not state anything about the history of the case and it simply stated that she had examined the victim girl on the request letter sent from the Court through Police. But, in the cross examination, PW9 has deposed that the



victim girl has stated that the occurrence had taken place at her home on 25.03.2015 at about 05.00 p.m. This is yet another contradiction with regard to the date of occurrence.

12. Despite the complaint itself has been given on 25.03.2015, the observation mahazar and rough sketch are dated 22.03.2015, which is yet another contradiction.

13. No doubt, in a case of this nature, as per Sections 29 and 30 of POCSO Act, the initial presumption about the occurrence and the involvement of the accused have to be presumed in favour of the prosecution and it is the accused who has got the burden to rebut the said presumption. The rebuttal proof can either be direct or it can be even arise from the lack of reliability standards in the evidence of the prosecution witnesses, weaknesses in the evidence of the prosecution or other materials infirmities.

14. In the instance case, neither the appellant / accused had examined himself or other persons as witness nor he had marked any document.



15. However, it is the argument of the learned counsel for the appellant that there are material contradictions in the date of occurrence and the manner in which the occurrence had taken place and that there is no consistency in the statement of the victim girl.

16. On perusal of the Judgement of the trial Court, there are observations about the lack of resistance by the victim girl during the course of occurrence. The trial Court had appreciated the evidence of the victim girl PW2 and interpreted her statement about the 'misbehaviour' as the statement denoting 'penetrative sexual assault' in view of the understanding of the witness for the local words used by them.

17. The learned Trial Judge has noticed the manner of the victim girl PW2 while deposing evidence and during that course, she was found to be shy and guilty. The above conduct exhibited by the victim in the witness box would show that something had happened. But the Court cannot presume or have precision to her demeanor and conclude that the victim has meant only the occurrence of 'penetrative sexual assault' with her demeanor exhibited before the Court.



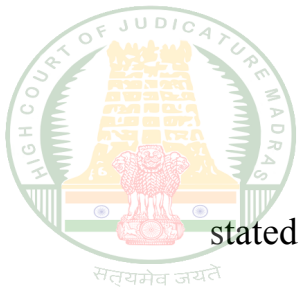
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18. It may be correct to observe that the victim of sexual violence may not be fully free to state the words to describe sexual assault in plain words and the Court should try to understand what the witness is about to say through her words.

19. In the instant case, there is a contradiction with regard to the date of occurrence. While the victim has stated that the occurrence had taken place on 22.03.2015, the Accident Register entered by the Doctor revealed that the occurrence had taken place on 25.03.2015. Even though the complaint was lodged only on 25.03.2015, the observation mahazar and rough sketch have the date 22.03.2015. Charge Sheet states that the occurrence had taken place on 23.03.2015.

20. No doubt, the victim girl or her family cannot have any motive against the appellant to lodge any false complaint against him. But the commission of offence of penetrative sexual assault being a serious offence and punishment is very grave, it is essential for the prosecution to prove the foundational facts without any conflict in order to give the initial presumption in favour of the prosecution.

21. No doubt, the witness had deposed about the occurrence and



stated the involvement of the accused. PW9 Doctor has stated about the 'sexual assault'. But to her mother (PW1) the victim girl has stated that the accused had committed 'penetrative sexual assault' on her. Such serious contradictions cannot be allowed to the imagination of the Court when the appellant has got severest reverse burden.

22. Even in cases not tainted with motive, the prosecution may not be able to prove the guilt of the accused due to material ambiguity in the substantive evidence along with other inconsistencies. As stated already, that would favour the accused.

23. During the cross examination of the father of the victim girl (PW3), he admitted that the accused stand in 'mama' relationship to the victim. However, when it was suggested to him that they wanted the appellant / accused to marry the victim girl and he refused and with that motive, the complaint has been lodged to threaten him, it was denied by PW3. During the further cross examination, he has stated that after the appellant / accused was arrested, he had taken steps to get bail for him, as the appellant / accused is the relative of the complainant family. There could have been several reasons for PW3 to involve and get bail for the appellant / accused and that alone cannot be presumed to be the intention



on the part of PW3 to marry the victim girl to the appellant / accused.

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24. Now, it is learnt that both the appellant / accused and the victim girl have got married, but to different persons and lead their family life peacefully.

25. Though Courts are expected to be sensitive when dealing with sexual offences against children, the Courts cannot conclude that the initial presumption has proved the guilty against the accused, unless, the presumption is strengthened by proving the essential aspects without inconsistencies or the initial presumption is not demolished through rebuttal evidence.

26. In the instant case, there is ambiguity in the evidence of the victim girl herself and there are inconsistencies in the statement to her parents and to the Doctor and there are contradictions in the date of occurrence. The documents like observation mahazar and rough sketch also contain the date which is prior to the date of complaint itself. In the charge sheet also, the date has been mentioned as 23.03.2015, which is an yet another contradiction.



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27. As PW2 was not plain enough to narrate the evidence and her demeanor alone was interpreted by the Court in presuming the occurrence, I feel such lapses on the side of the prosecution, can be considered as rebuttal circumstances in favour of the appellant / accused.

28. The learned Trial Judge has tried to justify the contradictions in the dates and days in the prosecution evidence by stating that PW1 and PW3 who are parents of PW2 are not educated witnesses and hence they could have confusions about the details. So far as the victim girl is concerned, she is studying in 10th standard and she is quite clear about the dates and days and it is the victim girl who has given statement to the Doctor and not her parents.

29. Sofaras the rebuttal proof available to the appellant / accused is concerned, it can also be the contradictions and infirmities in the case of the prosecution. So the benefit of initial presumption cannot in anyway compromise the date, time and other essential details of the prosecution documents. Inconsistencies affecting the foundational facts and material aspects can serve as rebuttal proof in favour of the accused. Once the mandatory presumption gets diluted due to the infirmities and contradictions, that would result in the failure of the prosecution case.



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30. In view of the above observations, the Criminal Appeal is allowed and the Judgement of the learned Sessions Judge, Fast Track Magalir Neethimandram, Sivagangai dated 17.11.2016 in Spl.S.C.No.3 of 2015 is set aside. The appellant / accused is hereby acquitted of all charges frames against him. The bail bond, if any, shall stand cancelled and sureties, if any, shall be discharged. The fine amount, if already paid, shall be refunded to the appellant / accused. If any compensation awarded by the Trial Court under Section 357 Cr.P.C. or other provision has been paid, the same shall also be refunded.

19.06.2025

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To

1.The Sessions Judge,
Fast Track Magalir Neethimandram,
Sivagangai.

2.The Inspector of Police,
Thirupathur All Woman Police Station,
Thirupathur, Sivagangai District.

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



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R.N.MANJULA, J.

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