

Crl.A(MD)No.200 & 223 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 20.06.2025

CORAM:

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

Crl.A(MD)No.200 & 223 of 2017

A.Antony Cruz

... Appellant in Crl.A(MD) No.200 of 2017

Arockiasamy

... Appellant in Crl.A(MD) No.223 of 2017

Vs

The Inspector of Police,
Periyakulam Police Station,
Periyakulam, Theni District.

... Respondent in both appeals

Common Prayer: These Criminal Appeal Cases filed under Section 374 of Cr.P.C to call for records relating to the Judgment in Spl.S.C.No.07 of 2014 on the file of the learned Sessions Judge (Fast Track Mahila Court), Theni, in Cr.No.210 of 2013 on the file of the respondent police station and set aside the same and acquit the appellants.

For Appellants : Mr. T.Lajapathi Roy
Senior Counsel
for M/s.Seeni Syed Amma
(In Crl.A(MD) No.200 of 2017)

Mr. C.V.Varkeeswaran
(In Crl.A(MD) No.223 of 2017)

For Respondent : Mr.A.Albert James
Government Advocate (Crl.Side)



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COMMON JUDGMENT

The Criminal Appeals have been filed challenging the Judgment of the learned Special Judge, Fast Track Mahila Court, Theni, dated 08.05.2017 made in Spl.S.C.No.07 of 2014.

2.The appellants are the accused 1 and 2, who have been convicted and sentenced in the following manner:

S. No	Rank of the accused	Provisions under which convicted	Sentence of imprisonment	Fine amount
1	A-1	294(b) IPC	3 months simple imprisonment	-
		354 IPC	Two Years simple imprisonment	-
		506(i) IPC	Two Years simple imprisonment	
		8 of POCSO Act	5 years rigorous imprisonment	Rs.5,000/-, in default to undergo 1 year rigorous imprisonment-
2	A-2	294(b) IPC	3 months simple imprisonment	-
		354 IPC	Two Years simple imprisonment	-
		506(i) IPC	Two Years simple imprisonment	
		8 of POCSO Act	5 years rigorous imprisonment	Rs.5,000/-, in default to undergo 1 year rigorous imprisonment-

The sentences were ordered to be run concurrently.

3.As per the case of the prosecution, on 13.08.2013 when PW2, who is the brother's daughter of PW1 was playing outside her house; the



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accused 1 and 2 came to the house of PW1 and asked her for some medicine.

But she turned them away by stating that she did not have any medicine. After some time, she had seen that the accused were sexually assaulting PW1 and when she objected, the accused abused her in filthy language and started to outrage her modesty by pulling her hands. PW1 rescued herself with difficulty and shouted. On seeing this, the accused threatened her that they would do away with her.

4. On the complaint given by PW1, on 13.08.2013 at about 05.00p.m., a case in Cr.No.210 of 2015 has been registered and taken up for investigation. After completing the investigation, charge sheet has been filed against the accused under Sections 294(b), 354, 506(i) IPC and Section 8 of POCSO Act.

5. After taking cognizance of the charge sheet, copies were furnished to the accused and charges were framed against the accused under Sections 294(b), 354, 506(i) IPC and Section 8 of POCSO Act and questioned them. As the accused denied the offence and claimed to be tried, trial was conducted.



6. On the side of prosecution, 12 witnesses were examined as PW1 to PW12 and 7 documents were marked as Ex.P.1 to Ex.P.7. After observing the legal mandates and concluding the trial and on appreciation of evidence, the learned trial Judge has convicted the accused as tabulated above. Aggrieved over that, the accused have filed these appeals.

7. The learned Senior Counsel for the appellants submitted that the age of the child has not been determined as per guidelines. The manner in which the evidence was given by PW1 and PW2, it is impossible for PW1 to have witnessed the occurrence. PW5 and PW6, who are independent witnesses along with PW7 and PW8 mahazar witnesses, have turned hostile, but this was not appreciated by the trial Court.

8. The learned Senior Counsel further submitted that PW1 is the complainant, who did not even know the contents of the complaint. The complaint has been written by one Karunanithi. The accused were totally strangers to PW2. It is impossible for the strangers to come and ask medicine for their ailments, to abuse the victim child sexually. As the accused came in a Car and PW1 demanded more money for the medicine and that has resulted in quarrel and with that motive, a false complaint was given and that was not



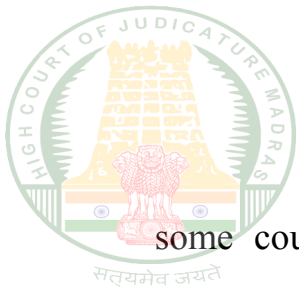
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properly appreciated by the trial Court. Even about the material part of evidence, there is contradictions in the evidence of PW1 and PW2 and the trial Court failed to appreciate the same in a proper perspective.

9.Per contra, the learned Government Advocate (Crl.Side) appearing for the respondent Police submitted that the prosecution witnesses have stated in their evidence about the incriminating acts of the accused and that would make out the offences punishable under the POCSO Act. The trial Court has rightly given the initial presumption in favour of the prosecution and with the evidence of PW1 and PW2, the presumption had become conclusive and hence, it is right for the trial Court to convict the accused for the offences under Sections 294(b), 354, 506(i) IPC and Section 8 of POCSO Act.

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

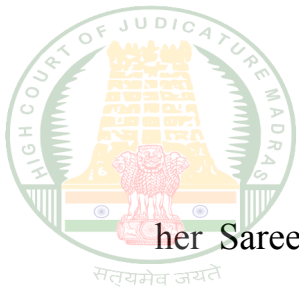
11.It appears from the compliant Ex.P1 and the evidence of PW1 that the accused had came to the house of PW1 for requesting some medicines, as they had pain over their legs. During cross examination of PW1, she has stated that her family belongs to Scheduled Tribe Community and they prepare



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some country medicine for certain ailments. She has further stated in her evidence that when the accused came to her house seeking medicines, the second accused was limping, as he had some injuries on his leg. In the complaint, it is alleged that after saying to the accused that the medicines are not available, PW1 went inside the house. After some time, when she came out, she had seen the occurrence. But in her evidence, she has stated that after driving away the accused by stating that no medicine was available, she went outside to fetch water. Only when she returned, she noticed that the accused were removing the dress of the victim child and the accused was touching her private parts.

12.PW2, who is the victim child has stated in her evidence that PW1 is her paternal aunt and while she was playing in front of her house, the accused came there and requested some medicine from her aunt and her aunt had driven them away by stating that they do not run a medical shop and thereafter, the accused came to her and asked her to remove her shirt and skirt and touched her inappropriately. That was seen by her aunt and she shouted at them, for which, the accused responded by abusing her in filthy language. PW1 has stated in her evidence that when she shouted at the accused, they quarreled with them by saying that they would do the same thing for her also and pulled



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her Saree. But in the complaint of PW1, it is stated that the accused have removed the panties of the child and assaulted her sexually by touching her private parts.

13. PW10, Investigation officer has also stated in his evidence that the witnesses have stated during his examination that the accused had removed the panties of the child and touched the private parts. They also pulled the Saree of PW1 and outraged her. The evidence of PW1 and PW2 are seen to be contradictory in respect of the manner in which the occurrence had taken place.

14. Though in sexual offenses against children one cannot expect the same words from the child and her guardians, their evidence have to be appreciated in a holistic manner in order to understand whether they seriously mean what they had stated in the complaint. Sometimes the contradictions in describing the offence, plays a crucial role. This is especially when there are doubtful circumstances and contradictions in the other aspects of the occurrence.

15. In the instant case, the accused, who came there to seek medicines were strangers to PW1 and even according to PW1, her families involved in preparing country medicine for certain ailments and the second



accused had ailment on his leg and he was seen walking by limping. She had further stated that the accused had come in a Car. In such case, after PW1 answered them that there was no medicine available, the accused would naturally move away from that place. But PW1 has stated that she had seen them sexually abusing the child. At one point, her evidence, she has stated that she went out of the house to fetch water. In the complaint she has stated that she went inside the house and she came after some time and noticed the occurrence.

16.The victim child has stated in her evidence that her aunt has gone inside the house, which is also contradictory to the evidence of PW1. No doubt, the victim's evidence is the most significant evidence in the offence of sexual offenses against children. She has stated in her evidence that the accused asked her to remove her dress and they touched her body parts. PW2 has not stated the occurrence by supplying any detail as to how it was stated by PW1. PW2's evidence does not have anything as to the accused touching her private parts.

17.As regards the motive, it was suggested to PW1 that there was some quarrel with regard to demand for more money for the medicine and at the instigation of some community persons, complaint has been given against the accused with false allegations.



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18. PW1 has stated in her examination that her husband's brother Karuppasamy had written the complaint, but the person, who said to have written the complaint was not examined as a witness.

19. In this aspect, the trial Court has observed in its judgment that even if the scribe of the complaint was not examined, PW2 has deposed evidence clearly and that will strengthen the case of the prosecution.

20. But, perusal of the records show that PW2 has not stated the matter found in her complaint, while she was examined in the Court. As stated already, there are contradictions in the evidence of PW1 and PW2. One more aspect, which assumes relevance is about the allegation that the accused shouted at PW1, when she questioned them about the act of causing sexual assault to the child. PW1 has stated that when she questioned the accused, they abused her and declared that they would do the same thing to her also and pulled her Saree. If any strangers are caught red-handed when they were doing such atrocious and ugly act of sexual assault on a child, his impulsive response would be rectified and trying to leave the place early. Quite strangely PW1 has stated that the accused had retaliated by abusing her and pulling her saree. This is highly improbable and abnormal and hence unbelievable. The accused are total



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strangers to PW1 and PW2 and hence, they would have got a feeling of insecurity. This impracticality and improbability would weaken the reliability standards of the evidence of PW1 and PW2.

21.According to the prosecution, the victim was below 12 years. But for the reasons best known, the School Certificate of the victim child was not produced by the investigation officer. Even the trial Judge has not raised any doubt about her age. PW2 by her looks could be a child below 18 years of age. But the impact of age between 10 years and 12 years old child is significant in POCSO case, in view of the categorisation of aggravated act if the child is below 12 years and the graver of punishment. In the instant case, the trial Court has framed the charges under Section 8 of POCSO Act, though it has determined the age of the child is below 12 years.

22.The victim child in her evidence has stated that she was studying in 6th Standard at the time when she deposed evidence. Considering the difference in punishment, the age of the child ought to have been determined properly.



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23.The above lapses on the part of the trial Court would also show that the trial Court has not appreciated the material exaggerations and contradictions in the circumstances of the case in a proper perspective.

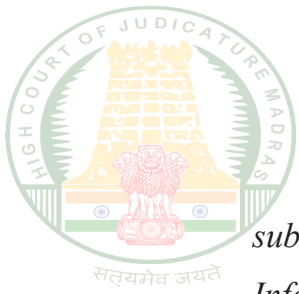
24.It has been, held repeatedly by various judgments of the Hon'ble Supreme Court that wherever the accused has got the reverse burden to prove his innocence, in view of the initial presumption in favor of the prosecution, the rebuttal proof can be either through direct evidence or by availing the presumption drawn from the infirmities and weaknesses on the side of the prosecution.

25.In this regard, it is relevant to refer the decision of the Hon'ble Supreme Court in ***Basalingappa v. Mudibasappa***, reported in ***(2019) 5 SCC 418***, wherein, it is held as follows:

“25. We having noticed the ratio laid down by this Court in the above cases on Sections 118(a) and 139, we now summarise the principles enumerated by this Court in following manner:

25.1....

25.3. To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials



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submitted by the complainant in order to raise a probable defence.

Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.”

26.The position of law with regard to reverse burden as held by the Hon'ble Supreme Court in the above said case is applicable to the case on hand also. As observed already the material contradictions and exaggerations in the evidence on the side of the prosecution should be considered as rebuttal circumstances or proof in favour of the accused. If the initial presumption is rebutted in view of the above weakness in the case of the prosecution, then the burden once again shifts on the prosecution for proving the guilt of the accused. As the prosecution failed to discharge the burden so shifted, by proving the guilt of the accused, the learned trial Judge ought to have held that the charges against the accused are not proved. As the trial Court has not properly appreciated the evidence before arriving at the conclusion that the accused is guilty, I feel the Judgment of the trial Court calls for interference.



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27. In fine,

- *these Criminal Appeals stand Allowed;*
- *The appellants are acquitted from the charges under Sections 294(b), 354, 506(i) IPC and Section 8 of POCSO Act;*
- *The bail bond executed by the appellants if any, shall stand terminated and the fine amount, if any paid by the appellants shall be refunded to them.*

20.06.2025

NCC :Yes/No

Index :Yes/No

PNM

To

1.The Sessions Judge,
Fast Track Mahila Court, Theni

2. The Inspector of Police,
Periyakulam Police Station,
Periyakulam, Theni District.

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

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



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R.N.MANJULA, J.

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COMMON JUDGMENT IN

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