



Crl.A(MD)No.228 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 12.06.2025

CORAM :

THE HONOURABLE MS. JUSTICE R.N.MANJULA

Crl.A(MD)No.228 2017

Ponnuthai Regina

... Appellant/P.W.1

Vs.

1.State Rep. by
The Inspector of Police,
Tirunelveli Town Woman Police Station,
Tirunelveli
(In Crime No.8 of 2014)

... 1st Respondent/Complainant

2.Sritharan

... 2nd Respondent/Accused

PRAYER: Criminal Appeal filed under Section 372 of Criminal Procedure Code, to set aside the order passed in Spl.S.C.No.32 of 2015 dated 29.09.2016 on the file of the Sessions Court (Mahila Court), Tirunelveli Sessions Division, Tirunelveli.

For Appellant : Mr.E.Somasundaram

For R1 : Mr.A.Albert James

Government Advocate (Crl.side)

For R2 : Mr.J.Jeyakumaran



Crl.A(MD)No.228 of 2017

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JUDGMENT

This Criminal Appeal is filed by the defacto complainant against the judgment dated 29.09.2016 passed by the learned Sessions Judge (Mahila Court), Tirunelveli, in Spl.S.C.No.32 of 2015.

2. The brief facts of the case are as follows:

i) The appellant/defacto complainant had given the complaint of sexual assault caused against the victim child. The accused is the husband of the defacto complainant and the father of the victim girl. It is alleged in the complaint that after marriage between the defacto complainant and the accused, there arose some misunderstanding between themselves in view of extra marital relationship alleged to have been developed by the accused. Due to that, the appellant and the accused were living separately. The victim child and her brother were under the custody of the accused and the accused was living together with another woman. During the year 2012, when the victim child was studying 2nd Standard, she was alone at home and lying with the accused. During that time, the accused applied his hand on the private parts of the



Crl.A(MD)No.228 of 2017

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victim child on several occasions and sexually assaulted her. Whenever the victim child raised her voice, the accused was beating her with comb on her mouth. The accused threatened the victim child by saying that if she revealed these acts to anyone he would kill her.

ii) After completion of investigation, charge sheet has been laid against the accused under Section 506(i) IPC and Section 6 of the POCSO Act, 2012, by the first respondent/prosecution.

iii) After furnishing copies of records to the accused under Section 207 of the Code of Criminal Procedure, the substance of the charges was explained to the accused. The accused denied the offences and claimed to be tried.

v) In order to establish the guilt of the accused, 20 witnesses were examined as P.W.1 to P.W.20 and 14 documents were marked as Ex.P.1 and Ex.P.14. No witness was examined and one document was marked as Ex.D.1 on the side of the accused.



Crl.A(MD)No.228 of 2017

WEB COPY

vi) After concluding the trial and after appreciating the oral and documentary evidence on record, the Sessions Court (Mahila Court), Tirunelveli, found the accused not guilty for the aforesaid offences and acquitted him.

vii) Aggrieved over the judgment of acquittal, the defacto complainant has filed the present appeal.

3. The learned counsel for the appellant/defacto complainant has made the following submissions:

i) The trial Judge ought to have given weightage to the evidence of the victim girl/P.W.2, who had clearly stated about the occurrence and pain she experienced on her private parts;

ii) The prosecution is entitled for presumption under Section 29 of the POCSO Act;

iii) The trial court not only acquitted the accused but did not even order any compensation to the victim girl.



Crl.A(MD)No.228 of 2017

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4. The learned Government Advocate (Crl.side) for the first respondent submitted that the learned Sessions Judge ought not to have given the benefit of doubt to the accused and there are only minor contradictions and discrepancies in the deposition of prosecution witnesses. He would further submit that medical evidence corroborated the evidence of the other witnesses. Hence, the Sessions Judge ought to have convicted the accused for the offences charged against him.

5. The learned counsel appearing for the second respondent/accused submitted that the learned Sessions Judge has correctly weighed the oral and documentary evidence and rightly acquitted the accused and the judgment of the learned Sessions Judge does not warrant any interference by this Court.

6. I have given anxious consideration to the submissions made by the parties and carefully perused the materials available on record.



Crl.A(MD)No.228 of 2017

WEB COPY

7. The evidence of P.W.1 would show that the defacto complainant had brought the victim child from her husband's house and kept her under her custody. During that time, the victim child used to complain pain on her private parts. P.W.1 did not take it very seriously. On 01.07.2014, the victim girl complained severe pain and so P.W.1 had taken her to the hospital. After examining her, the Doctor told that the child was subjected to sexual assault. Thereafter, P.W.1, the mother of the victim child enquired and the victim child told when she was staying with her father, on several occasions, he had committed sexual assault and threatened her not to tell to anyone.

8. P.W.1 has further stated in her evidence that after P.W.1 got separated from the accused, the accused took care of the children by admitting them in schools. On one occasion, she has taken her daughter from the school without informing to the management or to the accused. This has resulted in a police complaint and after an enquiry by the police, the children were given to the custody of P.W.1. Thereafter the accused did not leave the children with P.W.1 and again a complaint was given



Crl.A(MD)No.228 of 2017

WEB COPY

by P.W.1 and the police had advised the parties to resolve the issue by taking proper proceedings in the court.

9. The defacto complainant was given with visitation rights. She would visit and take the children and keep them with her for some days. So it was suggested by the accused that the complaint was given by P.W. 1 with the motive to get back the children, who were under the custody of the accused. In chief examination, it is stated by P.W.1 that on 26.06.2013 when she was giving bath to the victim child, she reported pain over her private parts. Thereafter, on enquiry she had stated about the sexual assault. P.W.1 had stated that the child told her that the accused used to scratch her private parts with his fingers and compelled her to touch his private parts also. But, in the complaint of P.W.1, she has only stated that the accused used to apply his hands and she has not stated that the accused compelled the victim child to touch his penis.

10. It was suggested that the child was made as a pawn in view of the dispute between P.W.1 and the accused for having got the custody



CrI.A(MD)No.228 of 2017

WEB COPY

for the children. The evidence of P.W.1 would confirm that she had lot of misunderstanding and the complaints were given by herself and the accused in connection with custody of children. As P.W.1 and the accused got separated, the trial court appears to have been very careful in evaluating the evidence of P.W.1 and P.W.2.

11. P.W.2, the victim child had given statement under Section 164 Cr.P.C before the Court during investigation. At the time of recording that statement she was studying in 4th Standard. She had made lot of allegations about the person with whom her father was staying in the house with the children. Her testimony would show that she did not like her father's relationship with another woman by deserting her mother.

12. Without any details as to the time and the place of the occurrence, the victim girl has given statement under Section 164 Cr.P.C. She further stated that her father had sharp nails and with that nails, he scratched her private parties. Her statement recorded under Section 164 Cr.P.C is very vague and without coherence. When the victim girl was



Crl.A(MD)No.228 of 2017

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examined before the court as P.W.2, more details than what she stated in her statement under Section 164 Cr.P.C were spoken elaborately by her and there were lot of improvements in her evidence.

13. No doubt, the evidence of the victim child needs to be considered very seriously. A holistic reading of her evidence would show that she had some dissatisfaction with her father's choice of leaving her mother. Therefore, her evidence on the aspect of sexual assault has to be seen very carefully. There are lot of material contradictions between the statement recorded under Section 164 Cr.P.C from the victim child and her evidence before the Court as P.W.2.

14. P.W.3 is the grand-mother of the victim child and the mother of P.W.1. She is a hearsay witness. During her cross-examination, P.W.3 stated that in the year 2001, P.W.1 came to her house after being sepaated from the accused by leaving the children with him.



Crl.A(MD)No.228 of 2017

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15. The statement of P.W.1/mother of the victim child which was alleged to have been given during the police enquiry has been marked as Ex.D.1. In the said statement, P.W.1 has affixed her signature and P.W.3 attested the same. During the cross examination of P.W.1, she has admitted that the statement has been made by her and it is marked as Ex.D.1. The contents of Ex.D.1 would show that she would not keep any contact with any third person and one driver Raja and that she would lead a happy family life with the accused and she would not threaten that she would commit suicide. Thus, the complaint given to the police has been closed. That statement is dated 20.06.2009.

16. P.W.3 has stated that even thereafter P.W.1 left the accused and had filed a petition seeking divorce before the learned I Additional District Court. When the said fact was confronted to P.W.1, she denied the same. The other witnesses, who were examined on the side of the prosecution as P.W.4 and P.W.5 are closely connected to P.W.1 and hence they are also interested witnesses.



Crl.A(MD)No.228 of 2017

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17. There was a family dispute between the defacto complainant and the accused. With regard to the custody of the children also, there were litigations. Hence, it is difficult to probalize the occurrence as alleged by the prosecution. This is especially so when there is total contradiction from the statement recorded under Section 164 Cr.P.C and the evidence of the victim child P.W.2.

18. P.W.14, the Doctor, who had examined the child on 03.07.2014, stated that he did not notice any injury on the private parts or body of the child. He had observed that her hymen was ruptured. During cross examination of P.W.14, he had stated that the child did not have any external injuries or any injuries over her private parts and it is possible for the hymen to rupture even while playing or falling down.

19. As per Section 29 of the POCSO Act, when a person is prosecuted for committing, abetting, or attempting to commit offenses under Sections 3, 5, 7, or 9 of the Act, the Special Court shall presume that such person has committed the offense, unless the contrary is



Crl.A(MD)No.228 of 2017

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20. In the instant case, the accused has been prosecuted for the offence under Section 8 of the POCSO Act. Even though initial presumption can be taken against him as per Section 29 of the POCSO Act, the reverse burden for rebutting the initial presumption can be discharged by the accused either through direct evidence or through the doubtfulness in the evidence of the prosecution.

21. Perusal of the entire evidence on the side of the prosecution would show that there are not only material contradictions but the background in which the complaint was given itself is not normal. The said weaknesses on the side of the prosecution can serve as rebuttal circumstances in favour of the accused for discharging his reverse burden against the initial presumption and that has not been properly appreciated by the trial court also.

22. Normally, the judgment of acquittal need not be interfered



Crl.A(MD)No.228 of 2017

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unless for the reasons of prevention of miscarriage of justice. In that regard, it is useful to refer the judgment of the Hon'ble Supreme Court in **Chandrappa & Others vs State Of Karnataka** dated 15.02.2007 reported in **2007(4) SCC 415**, wherein the principles regarding the powers of the appellate court while dealing with an appeal against judgment of acquittal has been laid down as under:

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

(1) An appellate court has full power to review, reappreciate 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



Crl.A(MD)No.228 of 2017

WEB COPY

nature of "flourishes of language" to emphasise 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 e acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is 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 law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the

(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".

23. As the instant case falls under the POCSO Act, there cannot be any initial presumption of innocence in favour of the accused. As stated already, initial presumption will be in favour of the prosecution and the accused has got reverse burden to prove his innocence by rebutting the initial presumption. As there is a glaring possibility for a complaint was given with a tainted motive and there are material contradictions in the evidence of the victim child along with other incidental and unusual



Crl.A(MD)No.228 of 2017

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circumstances, that can serve as rebuttal circumstances in favour of the accused to rebut the initial presumption. Thereafter, the prosecution has got burden to prove the guilt of the accused beyond reasonable doubt. As initial presumption got rebutted, the prosecution has lost the benefit of getting it culminated into conclusive proof.

24. In view of the above discussion, I do not find any necessity to interfere with the judgment of acquittal as held by the trial court.

25. In fine,

(i) This Criminal Appeal is dismissed;

(ii) The judgment dated 29.09.2016 passed in Spl.S.C.No.32 of 2015 on the file of the Sessions Court (Mahila Court), Tirunelveli Sessions Division, Tirunelveli, is confirmed.

12.06.2025

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Crl.A(MD)No.228 of 2017

To,

1.The Sessions Court,(Mahila Court),
Tirunelveli Sessions Division,
Tirunelveli.

2.The Inspector of Police,
Tirunelveli Town Woman Police Station,
Tirunelveli
(In Crime No.8 of 2014)

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



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Crl.A(MD)No.228 of 2017

R.N.MANJULA, J

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Judgment made in
Crl.A.(MD)No.228 of 2017

12.06.2025