



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date : 21.07.2025

CORAM:

THE HONOURABLE Dr.JUSTICE R.N.MANJULA

Crl.A.(MD)No.480 of 2017

Duraimanickam

... Appellant

vs.

The Inspector of Police,
All Women Police Station,
Thanjavur District.
Crime No.3 of 2016

...Respondent

PRAYER : This Criminal Appeal has been filed under Section 374 of Criminal Procedure Code against the Judgement of the learned Sessions Judge, Fast Track Mahila Court, Thanjavur, dated 27.06.2017 in Special S.C.No.14 of 2016.

For Appellant : Mr.R.Maheswaran

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

J U D G E M E N T

This appeal has been filed challenging the Judgement of the learned Sessions Judge, Fast Track Mahila Court, Thanjavur, dated 27.06.2017 in Special S.C.No.14 of 2016.



2. The appellant is the sole accused, who has been convicted and sentenced by the learned Sessions Judge as under.

Accused	Offences under Sections	Punishment	Fine	In default Sentence
Sole Accused	Section 18 of POCSO Act	3 years RI	Rs.500/-	3 months SI

3. The case of the prosecution as per the records is that on 25.05.2016, at about 01.30 p.m., when the victim child was playing near the house of the accused, the accused asked her to bring some water from his house. The victim went inside his house to take water. The accused followed her, hugged her and pushed her down and lifted her nighty and committed penetrative sexual assault and threatened the child that he will kill his parents if she dared to tell this to anyone.

4. On the complaint given by mother of the victim girl, a case has been registered in Crime No.3 of 2016 on the file of the All Women Police Station, Thanjavur. After conclusion of the investigation, charge sheet has been filed against the accused for the offence punishable under Section 4 of POCSO Act, 2012 and Section 506(1) IPC.



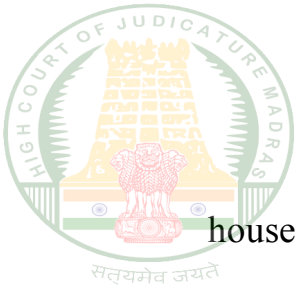
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5. After completing the legal mandates of furnishing copies and all other legal formalities, charges have been framed against the accused for the offence under Section 4 of POCSO Act, 2012 and Section 506(2) IPC. When the accused was questioned, he denied his involvement and claimed to be tried.

6. Before the Trial Court, on the side of the prosecution PW1 to PW15 have been examined and Exs.P1 to P12 have been marked. On the side of the accused, DW1 and DW2 have been examined and documentary evidence has been marked.

7. After the conclusion of trial, the learned Sessions Judge found the accused guilty for the offence under Section 18 of POCSO Act, 2012 and convicted and sentenced him as mentioned supra. Aggrieved over that, the appellant / accused has preferred this appeal.

8. Mr.R.Maheswaran, learned counsel appearing for the appellant submitted that the complaint has been given due to motive between the defacto complainant's family and the appellant; there are material contradictions in the evidence of the prosecution and it was not properly appreciated by the learned Sessions Judge; there was no door in the



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house of the appellant where the occurrence is alleged to have taken place, but, in the complaint it is stated that the appellant had closed the door and committed the offence; PW8 Doctor has also recorded that the victim has stated that the appellant has committed the offence after closing the door when there was actually no door; two witnesses, who are neighbours and who knew the appellant and defacto complainant's family, have been examined on the side of the defence and they had stated in the evidence that the father of the victim child was working as Plumber and the appellant had fought with him for not opening the water to his house properly; hence, it is claimed that only to take revenge, the victim's family has given complaint and the appellant has not involved in the occurrence.

9. Mr.A.Albert James, learned Government Advocate (Criminal Side) submitted that the defacto complainant and the victim girl have given clear evidence as to how the occurrence had taken place; the motive alleged by the defence has not been substantiated; the witnesses including the victim child have stated in their evidence that the appellant had closed the screen and then committed the offence; even if presence of door is stated in the complaint, it can only be a minor contradiction and that will not affect the case of the prosecution and the learned

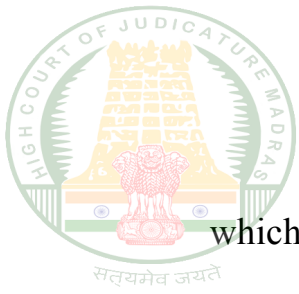


Sessions Judge has rightly convicted the appellant.

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10. Before proceeding to appreciate the merits of the evidence of the prosecution, understanding has to be made in respect of presumption that is available in favour of the prosecution and the reverse burden that lies on the side of the defence. As per Sections 29 and 30 of the POCSO Act, when a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 and 9 of the POCSO Act, a presumption can be drawn in favour of the prosecution that the person has committed the offence until contrary is proved. The presumption is not only with regard to the act, but also culpable mental state with which the act has been committed. So far as the mental state is concerned, the reverse burden is very severe. The standard of reverse proof for the accused is not just preponderance of probabilities but it should be beyond reasonable doubt. In other words, the presumption about the mental state to commit the offence goes with the act of the accused and hence, he has draconian task of proving that he did not have sexual intention.

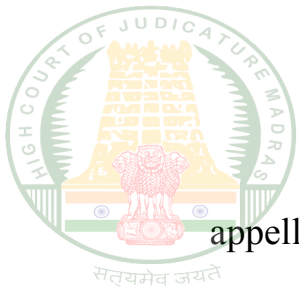
11. In the instant case, the victim child who has come to the witness box as PW1 has stated about the occurrence. The manner in



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which the complaint has been given and the evidence of PW1 would show that the ingredients for offence under Section 4 of POCSO Act is very much present and the mother of the victim child (PW2) has stated as how she learnt about the occurrence from the victim child and proceeded to give the complaint Ex.P2. When the foundational facts are proved, the prosecution would have the advantage of getting the initial presumption in their favour as per Section 29 of POCSO Act.

12. Rebuttal burden is on the side of the appellant / accused and he tried to rebut the initial presumption by stating that there was motive between himself and the father of the victim child who has been working as a Plumber in the Municipality and has duty to open water supply to the houses of their area. DW1 and DW2 who are neighbours of the appellant had stated in their evidence that the appellant had misunderstanding with PW1's father with regard to opening of the water. When PW1 was suggested about the motive during the cross examination she has stated that the appellant and other neighbours used to tell her father to open water properly and no one has quarreled with her father. That was asserted by the mother of the victim (PW2) and the father of the victim (PW3), who have stated in their evidence that there was no previous motive between the appellant and PW3. So rebuttal proof offered by the



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appellant / accused did not have the strength to shatter the initial presumption that has been given to the benefit of the prosecution. Along with the initial presumption it has to be seen whether the evidence of the prosecution proves the case of the prosecution.

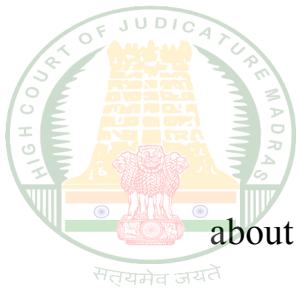
13. PW1 has stated in her evidence that there was house under repair and she used to sit in the house to have fun. On 25.05.2016, at about 01.30 p.m., when PW1 was sitting there, the appellant called her to take some water from his house. When PW1 went inside his house to fetch water, he followed, pushed her and committed penetrative sexual assault. The evidence of PW1 with regard to commission of penetrative sexual assault is that she has stated that the appellant had lifted her dress along with undergarments and pressed his genital over her genitals. She has also stated when the appellant committed the offence, she cried saying it was painful. She has further stated that the appellant threatened to kill her parents if she dared to tell anyone. After the occurrence, when PW1 came to her house, she did not have the mind to share the occurrence to anyone, but was suffering with pain. Next day, PW2 asked her about the reason for pain and compelled her to say what had happened and PW1 has disclosed the previous day occurrence. Thereafter, PW2 had gone to the house of the appellant and quarrelled



with him. However, no complaint was given until the father of the victim (PW3) arrived at 10.00 p.m. As it was too late, they decided to give complaint the next day morning and as such they gave complaint on 27.05.2016 at about 06.00 p.m.

14. Though the delay in giving the complaint and registering the FIR can sometimes create a doubt against the case of the prosecution, in cases like sexual offence there used to be a reluctance on the part of the family of the victim to report to the Police. Even in the instant case, the mother of the victim (PW2) could not take the decision on her own and waited for her husband to come home. After deliberations inside their family, they thought it fit to lodge a complaint. Delay in these type of cases cannot be fatal to the prosecution.

15. In the statement under Section 164 of Cr.P.C., the victim girl has stated that the appellant came to the place of occurrence and asked her to get some water from his house. When the victim girl went inside the house, he hugged her, pushed her down, gagged her mouth with a cloth and then lifted her dress and committed penetrative sexual assault. The act of penetrative sexual assault has been described by the victim girl during her statement under Section 164 Cr.P.C. and she has spoken



about the same in her evidence as well. The evidence of PW1 also contains the essential features of the Statement under Section 164 Cr.P.C.

The events following the occurrence were also quiet natural and spontaneous that the mother of the victim child had confronted the appellant directly and quarrelled with him how he dared to do that to her daughter.

16. The mother of the victim has deposed in her evidence about how she learnt about the occurrence and thereafter, how she lodged the complaint. When it was suggested that there was a misunderstanding between her husband and the appellant, she stoutly denied the same. Both PW1 and PW2 have stated in their evidence that there was no door in the house of the appellant and at the time of committing the offence, the appellant had only closed the screen. Because of some inadvertency that has crept in the complaint and the statement given to the Doctor to the effect that there was a door, it cannot be presumed that the whole of the prosecution case will fail.

17. PW3 who is the father of the victim girl has also stated as to how he learnt about the occurrence and made up his mind to lodge the complaint. He has also stated that her daughter was taken to the hospital



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for medical examination and thereafter to the Court for giving Statement under Section 164 of Cr.P.C. in a manner how he can understand these events. The evidence of PW2 and PW3 also corroborate to the evidence of PW1 in all material aspects and it did not bring any doubt in favour of the appellant or any fatal infirmities in the case of the prosecution.

18. PW4 who stood as a witness for arrest and confession has been examined as an independent witness and when it was suggested to him that PW3 had motive against the appellant, that was denied by him. So, without substantiating anything about the motive of the prosecution witnesses, the appellant cannot claim that motive had played a major role in reporting the offence.

19. PW5 is the Head Constable who had taken the victim girl for medical examination. PW8 Doctor who examined the victim girl has stated in her evidence as to how the victim girl was brought on 27.05.2016 for examination. The Doctor did not notice any injury on the body of the victim at the time of her examination. As the victim child has washed her clothes, no scientific evidence could be collected. PW10 is a local person who came to know about the tension in the area and he had spoken about the same.



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20. Even though the learned counsel for the appellant tried to make out a benefit by mentioning the contradictions about the presence of door, consistent, cogent and reliable evidence of PW1 and PW2 would prove to be satisfactory and acceptable. The contradictions as pointed out by the learned counsel for the appellant are too minor in nature and it does not dispel the initial presumption coupled with the facts proved before the Court by the prosecution.

21. Curiously, the learned Sessions Judge had convicted the appellant for the offence under Section 18 of the POCSO Act, though he had framed the charge under Section 4 of the POCSO Act. It only shows the understanding of the learned Sessions Judge about the definition of penetrative sexual assault in his own presumptive and unclear fashion. As there is no material contradiction shown to affect the case of the prosecution and the defence of motive taken by the appellant was also not proved, there is no reason to suspect the case of the prosecution. Except the unclear understanding of the learned Sessions Judge, nothing is seen to have flawed in the appreciation of the evidence. The learned Sessions Judge has not properly understood the definition of penetrative sexual assault and has chosen to convict the accused under Section 18 of the POCSO Act instead of Section 4 of the POCSO Act. Ultimately, the



prosecution has also omitted to file an appeal to rectify the above flaw.

As the appeal has been preferred by the accused, nothing much can be done except to confirm the Judgement of the learned Sessions Judge.

22. In view of the above discussions, this Criminal Appeal is **dismissed**. The Judgement of the learned Sessions Judge, Fast Track Mahila Court, Thanjavur, dated 27.06.2017 in Special S.C.No.14 of 2016 is confirmed. The Sessions Court shall take steps to secure the appellant / accused for undergoing the remaining period of sentence, if any.

21.07.2025

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To

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

2.The Inspector of Police,
All Women Police Station,
Thanjavur District.

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



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Dr.R.N.MANJULA, J.

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