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Crl.A.No.105 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02-01-2026

CORAM

THE HONOURABLE MR JUSTICE M. NIRMAL KUMAR

CRL A No. 105 of 2022

AND

CRL MP NO. 1388 OF 2022

Manikandan @ Shanmugam
S/o. Gurusamy, Valliyammal -1 Street,
Anna Theatre Back Side,
Periyavalasu Nall Road, Erode.

Appellant/Accused

Vs

State Rep by
The Inspector of Police,
Erode All Women Police Station,
Erode.
(Crime No.11/2019).

Respondent(s)

CRL MP No. 1388 of 2022

1. Manikandan @ Shanmugam
S/o. Gurusamy, Valliyammal -1 Street,
Anna Theatre Back Side, Periyavalasu
Nall Road, Erode.

Petitioner(s)

Vs

1. State Rep By
Inspector Of Police, Erode All
Women Police Station, Erode. Cr.No.
11/2019.



Crl.A.No.105 of 2022

Respondent(s)

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PRAYER : Criminal Appeal filed under Section 374 of Cr.P.C. praying to set aside the judgment of conviction passed by the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Erode in Spl.S.C.No.42 of 2019 on 02.08.2021, acquit the appellant.

For Appellant : Mr.M.Vignesh

For Respondent : Mr.S.Udayakumar
Government Advocate (Crl. Side)
Assisted by
Ms.Harshana, T.

J U D G M E N T

The appellant/accused in Spl.S.C.No.42 of 2019 was convicted by the trial Court by the judgment dated 02.08.2021 for the offences under Sections 9(n) r/w 10 of Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO Act') and sentenced to undergo five years rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo three months simple imprisonment. Aggrieved against the said conviction, the appellant/accused filed this appeal.

2. The gist of the case is that PW1/mother of the victim lodged a complaint stating that her daughter is 11½ years old and her date of birth is 29.11.2008. She married one Shanmugam, who died due to blood cancer



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when her daughter/victim was 1½ years old and thereafter the appellant and PW1 were living as husband and wife. The victim was studying 5th standard, the de facto complainant used to go for work at 8.00 a.m. and return at 8.00 p.m. The victim used to attend school daily at 8.45 a.m., return by 4.10 p.m., and thereafter attend tuition at 6.00 p.m. The appellant used to go for work in the morning and come back by 3.00 p.m. This being so, one week prior to 29.03.2019, the victim was sexually assaulted by the appellant. Initially, the assaults occurred on Sunday and thereafter on Monday and Wednesday. Though the victim not informed her mother immediately, unable to bear the pain and suffering, she later disclosed the same to her mother. When the appellant was questioned about the same, he denied. Thereafter the victim was taken to the police station by the de facto complainant and a complaint was lodged. PW8/Investigating Officer, received the complaint, register an F.I.R. Thereafter the victim was sent for medical examination. PW6/Doctor examined the victim at about 10.00 a.m. and issued Accident Register/Ex.P8. Thereafter referred for further examination of the victim. PW5/Doctor examined the victim and the victim informed about she being sexually assaulted by the appellant on several days. PW5 issued Medical Report/Ex.P6 and Final Opinion/Ex.P7. PW8 visited the scene of occurrence, prepared observation mahazar, rough sketch in presence of witnesses, examined



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victims, victim's mother and others. The accused was arrested on the same day at 9.30 a.m. On his confession, chappatti roller/MO1 recovered. The accused was produced for medical examination. PW7 examined the accused, issued Potency Certificate/Ex.P11. The victim was produced before the Magistrate on 03.04.2019 and a statement under Section 164 of Cr.P.C./Ex.P2 recorded. On collection of materials and medical records charge sheet filed in this case.

3.During trial, on the side of the prosecution, PW1 to PW8 examined, Exs.P1 to P20 marked and M.O.1 produced. On the side of the defence, no witnesses examined and no documents marked. On conclusion of trial, the trial Court convicted the appellant as stated above.

4.The contention of the learned counsel for appellant is that in this case PW1/de facto complainant was living with the appellant for almost 10 years and the appellant was taking care of victim and her mother and spent all his earnings to them. In fact, he took the victim to the school in his bike, drop her and he has been taking care of the victim from 1½ years and treated her as his own daughter. The de facto complainant/victim's mother developed a relationship with one Ilayaraja, which was questioned by the appellant, for



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this reason there was constant fight between them. The victim being a minor girl dependent on her mother, has been tutored and the case was projected as though the appellant made improper touch and sexually assaulted. In this case alleged occurrence is said to have been taken place on 23.04.2019 but complaint lodged 5 days later, i.e., on 29.03.2019, but no explanation given. The Doctors/PW5 and PW6 who examined the victim, not found any external injuries or redishness in the private parts and in the body of the victim. The medical records confirm that the victim was not subjected to any penetrative sexual assault. PW3 is the sister and PW4 is the brother of PW1. PW3 admits that she is not aware about what is written in the observation mahazar, rough sketch and she only signed the same. PW4 confirms that the de facto complainant married one Ilayaraja, probalising the defence of the appellant that the appellant objected for the relationship of the de facto complainant. Hence, he is falsely implicated in this case using the victim/PW2. In this case, PW8/Investigating Officer marked school certificate/Ex.P18 and Birth Certificate/Ex.P20. Hence, the age of the victim not proved. On the other hand, in the Age Certificate/Ex.P17, the Doctor found the victim's age should be between 12 and 14 years. Thus in this case the age of the victim not proved and using the victim/PW2, PW1 fabricated a false complaint. In this case, PW8/Investigating Officer, who received the complaint, registered the



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F.I.R., had also conducted investigation, which is not proper. He further submitted that the Hon'ble Apex Court in *Mohanlal* case had clearly deprecated such practice. The trial Court not considered these factors but merely gone on the statement of the victim, which is tutored one, highly doubtful without any corroboration. Hence, prayed for acquittal of the appellant.

5.The learned Government Advocate (Crl. Side) appearing for the respondent opposed the appellant's contention and submitted that in this case de facto complainant is the mother of the victim. victim's date of birth is 29.11.2008. When she was around 11½ years, she was subjected to sexual assault by the appellant. The appellant not denied that the de facto complainant and appellant living as husband and wife under the same roof and the victim was born to the de facto complainant's first husband Shanmugam. The victim was brought up along with the appellant from the age of 1½ years and the appellant acted as her guardian. The appellant misbehaved with the victim, committed sexual assault on her on more than three occasions. Victim not immediately informed to her mother considering the relationship. When the assault became unbearable and she suffered pain she informed her mother about sexual assault. PW1 questioned the appellant



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and later lodged a complaint/Ex.P1. PW8 received the complaint, registered F.I.R./Ex.P12. Thereafter she visited the scene of occurrence, prepared observation mahazar, rough sketch in the presence of PW3 and examined the victim and others. Victim was referred to Doctor/PW6, who initially examined the victim thereafter referred the victim for further examination. PW5/Doctor further examined the victim and issued Ex.P6 to Ex.P8. The victim was produced before the Magistrate and gave statement under Section 164 of Cr.P.C. narrating the sexual assault committed by the appellant. Ex.P2 is the 164 statement. The accused was arrested on 29.03.2019. On his confession, MO1 recovered. The accused was produced for medical examination. PW7 is the Doctor, who examined the accused and gave his report/Exs.P10 and P11. The school certificate and age certificate/Exs.P17 and P18 and birth certificate/Ex.P20 collected, all confirmed that victim's date of birth is 29.11.2008 and she was 11½ years old at the time of occurrence.

6.He further submitted though the appellant made a feeble attempt to project that the appellant had been falsely implicated due to de facto complainant's relationship with Ilayaraja, this suggestion neither put to PW1 nor to PW2. PW3 denied the suggestion and PW4 answers that the de fact



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complainant had relationship with one Ilayaraja. But in this case PW4 is not residing in the same area of PW1 to PW3 and he is residing far away and it is only a passing answer. The trial Court hence rejected such claim. Further it is not in dispute that the appellant and the de facto complainant were living as husband and wife and the victim was brought up as their daughter. The appellant as guardian is expected to have care and concern for the victim, but had committed aggravated sexual assault and the trial Court had rightly convicted the appellant. Hence, prayed for dismissal of the appeal.

7.Considering the submissions made on either side and on perusal of the material it is seen that in this case PW1/de facto complainant is the mother of the victim. The victim is aged about 11½ years at the time of occurrence, which is proved by Exs.P17, P18 and P20. Further from the evidence of victim it is clear that the victim was subjected to sexual assault not once, on several occasions. When the victim was alone at home, the appellant used force and also beaten her using MO1. The appellant is a guardian of the victim. Though the de facto complainant/mother of the victim came to know about the sexual assault on 24.03.2019, considering the relationship and due to the shock, it took some time for her to come out of the shock thereafter react. Hence, there is some delay in lodging the complaint.



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But the victim confirmed the assault in her earlier statements and also in her evidence before the trial Court. The same corroborated by the evidence of PW1/mother and PW3/aunt. Since it is a sexual assault and the victim was examined five days after the occurrence, there were no marks or redishness or injuries on the victim, but the victim clearly deposed the sexual assault committed by the appellant. The victim was below 12 years of age at the time of occurrence and the appellant being her guardian, committed sexual assault on her on more than one occasion. The trial Court considering all these aspects had rightly convicted the appellant for offence under Section 9(n) r/w 10 of POCSO Act for aggravated sexual assault. This Court finds no reason to interfere with the finding of the trial Court.

8. Accordingly, the Criminal Appeal stands dismissed and the conviction order passed by the trial Court is hereby confirmed. The Trial Court is directed to secure the accused to undergo remaining period of sentence, if any. Consequently, the connected criminal miscellaneous petition is closed.

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Index : Yes / No
Neutral citation : Yes / No
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Speaking / Non-speaking order
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M.NIRMAL KUMAR, J.

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To

- 1.The Sessions Judge,
Magalir Neethimandram (Fast Track Mahila Court),
Erode.
- 2.The Inspector of Police,
Erode All Women Police Station,
Erode.
- 3.The Public Prosecutor,
High Court, Madras.

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