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Crl.A.No.406 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.12.2025

PRONOUNCED ON : 02.01.2026

CORAM :

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.406 of 2023

Muniappan @ Bhavathi

... Appellant/A1

v.

State rep. by The Inspector of Police,
All Women Police Station,
Pennagaram, Dharmapuri District.
[Cr.No.3 of 2015]

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, against the conviction of the appellant/sole accused and sentence imposed on him in Spl.S.C.No.37 of 2015 dated 27.03.2023 on the file of the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, and set aside the conviction and sentence and allow this appeal.

For Appellant : Mr.N.Manoharan
For Respondent : Mr.S.Rajakumar
Additional Public Prosecutor



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JUDGMENT

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The Criminal Appeal challenges the judgment dated 27.03.2023 passed in Spl.S.C.No.37 of 2015 by the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, convicting the appellant/A1 for the offence under Section 307 of the IPC and sentencing him to undergo seven years rigorous imprisonment and to pay a fine of Rs.25,000/-, in default to suffer six months simple imprisonment.

2. (i) The case of the prosecution is that the appellant, arrayed as A1 before the trial Court had illicit relationship with A2, (who has been acquitted by the trial Court); that the victim, aged about 3 years, is the daughter of A2 born out of the wedlock with PW2, the defacto complainant; that whenever A2 met the appellant, she took the minor child along with her; that on those occasions, the appellant committed penetrative sexual assault by applying his finger on the private part of the victim; that A2 had abetted the commission of the said offence; that the appellant had twisted the arms and legs of the victim child and had caused fracture to the legs of the victim girl, and thus, committed the aforesaid offences.



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(ii) PW2, the father of the victim girl [PW1] had lodged a complaint [Ex.P24] which was registered by PW44 as an FIR [Ex.P26] in Crime No. 3 of 2015 for the offences under Sections 324, 326 and 376 of the IPC and Section 5 (l) and 6 of the POCSO Act. Thereafter, PW44 conducted the investigation and filed the final report before the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, against the appellant for the offences under Section 307 of the IPC and Section 5(m)(l) r/w 6 of the POCSO Act and against A2 for the offence under Sections 5(m)(l) r/w 6 and 16 r/w 17 of the POCSO Act.

(iii) On the appearance of the accused, the provisions of Section 207 Cr.P.C., were complied with. The case was taken as Spl.S.C.No.37 of 2015 on the file of the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri. The trial Court framed charges against the appellant/A1 for the offences under Section 307 of the IPC and Section 5(m)(l) r/w 6 of the POCSO Act and as against A2 for the offences under Section 307 r/w 109 of the IPC and Section 5(m)(l) r/w 5 r/w 16 r/w 17 of the POCSO Act and when questioned, the accused pleaded 'not guilty'.



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(iv) To prove its case, the prosecution had examined 45 witnesses as P.W.1 to P.W.45 and marked 34 exhibits as Exs.P1 to Ex.P34, besides 4 material objects, viz., M.O.1 to M.O.4. The Medical Report/Orthopaedic Outpatient Card for treating one Sivani at DNV Ortho Care, was marked through PW15-Doctor as Ex.X1. When the accused was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against them, they denied the same. The accused neither examined any witness nor marked any document on their side.

(v) On appreciation of oral and documentary evidence, the trial Court found that A2 was not guilty of any of the charges framed against her and found that the appellant/A1 was not guilty of the offences under Section 5(m)(1) r/w 6 of the POCSO Act and found him guilty of the offence under Section 307 IPC and sentenced him as stated above. Hence, A1 has preferred the instant appeal challenging the said conviction and sentence.

3. Mr. N. Manoharan, the learned counsel for the appellant would submit that the trial Court having disbelieved the prosecution case in respect



of the offence under Section 5(l)(m) r/w 6 of the POCSO Act ought not to have convicted the appellant for the offence under Section 307 of the IPC; that A2 was rightly found not guilty by the trial Court and the reasons for holding her not guilty would hold good for the appellant as well and ought to have acquitted the appellant; that PW2, the complainant turned hostile and all other material witnesses turned hostile; that the trial Court had not appreciated the evidence of the victim in the proper perspective; that the victim had not identified the appellant in the dock; and considering the infirmities in the evidence adduced by the prosecution, sought for acquittal.

4. The learned Additional Public Prosecutor, *per contra*, submitted that the appellant was working as a driver in S.A.M.S. Transport Company; that the victim girl had in her deposition clearly stated that the driver had caused injuries to her and thereby she sustained a fracture; that even though PW2 and the other relatives turned hostile, the medical evidence and the evidence of victim, are sufficient to hold the appellant guilty of the offence under Section 307 of the IPC; that the trial Court had rightly separated the *chaff from the grain* and accepted the victim's evidence to the extent of holding the appellant guilty of the offence under Section 307 of the IPC; and



that there is no infirmity in the said finding and sought for dismissal of the appeal.

5. (i) As stated earlier, the prosecution examined 45 witnesses. PW1 is the victim girl who was aged 3 years at the time of the occurrence; PW2 is the father of PW1 turned hostile; PW3 is the Child Protection Officer who had marked M.O.1-video, which is said to contain the statement made by the victim girl to PW3; PW4 is the Centre Coordinator, Childline, who received information from the hospital stating that the child could have been attacked and had not fallen accidentally as claimed and she informed the said fact to the Child Welfare Officer; and PW5 is the Chairperson of the Child Welfare Committee. She came to know that the victim was subjected to sexual assault and had forwarded the complaint to the Child Welfare Committee.

(ii) PW6 is the Child Protection Officer who had signed in the confession and the seizure mahazar; PW7 is the Director of the Childline who had also signed in the confession and the seizure mahazar; PW8 is the Chairperson of the Child Welfare Committee who directed PW6 and PW7 to protect the interest of the child; PW9 is the grandmother of the victim girl



who turned hostile; PW10 to PW13 are the relatives of PW2 who turned hostile; PW14 is the doctor who had treated one Sivani on 22.02.2015; PW15 is the other doctor who treated one Sivani and marked Ex.X1; PW16 is the witness to the Observation Mahazar [Ex.P6]; PW17 is the Nurse working in the Public Health Center, who had treated the victim and stated that the mother of the victim girl informed her that a stick by mistake had poked into the private part of the victim girl and thus injured; PW18 and PW19 are the witnesses to the observation mahazar; PW20 is working in a X-ray center and would depose that he had taken X-ray of the victim's leg; PW21 is the doctor who had issued Ex.P8 to Ex.P10 and had certified the potency of the appellant; PW22 to PW25 were the doctors who were part of the Medical Board who had given Ex.P11-Medical Report, after examining the victim girl. They had certified that the victim girl had sustained a fracture in both the legs and her hymen was torn.

(iii) PW26 is witness to the Observation Mahazar [Ex.P6]. PW27 is the doctor who had issued a Medical Report [Ex.P12] on 21.05.2015. PW28 is the witness to the Observation Mahazar and Rough Sketch [Ex.P13]. PW29 and PW30 would state that they were asked by the police to depose



and they did not know anything about the occurrence. PW31 is running a Travels Agency in the name of S.A.M.S in which the appellant was employed as a driver. PW32 is the Manager, working under PW31. PW33 is the Conductor, working in the said travels. PW34 is the Technician in the X-ray center, who had marked M.O.3; PW35 is the another witness who had signed as a witness to the observation mahazar [Ex.P13] and Rough Sketch; PW36 is the X-ray technician who had issued the Receipt [Ex.P14]; PW37 to PW39 are the Constables who had assisted the investigation; PW40 and PW41 are the Village Administrative Officer and the Village Assistant, respectively, who had witnessed the arrest and confession of A2; PW42 is the doctor at a Private Medical College and Hospital at Pondicherry, who had treated a patient by the name Sivani on 06.03.2015; PW43 is the Childline Officer; PW44 is the investigating officer; and PW45 is the learned Chief Judicial Magistrate, Erode, who recorded the Section 164 Cr.P.C. statements of the victim and PW2, which are marked as Ex.P33 and Ex.P34, respectively.

6. As stated above, PW2, the complainant and the husband of A2 turned hostile. His complaint was that the victim had sustained a fracture;



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that he came to know that the appellant had taken the victim to a temple; and that the appellant had committed penetrative sexual assault by applying his finger on the private part of the victim and also beaten the victim on the hip and on the legs with an iron rod and caused a fracture. In his deposition, he would state that the victim sustained the injuries because she fell down and he had stated so, even before the police. The prosecution hence treated him hostile and had cross-examined PW2. The prosecution was unable to elicit any information which can be read as evidence to prove the involvement of the appellant in the alleged occurrence. All the relatives viz.,PW9 to PW13 who are either related to A2 or PW2, turned hostile.

7. Very strangely, the prosecution had examined 45 witnesses and most of the witnesses have been examined for no purpose. For instance, PW29 and PW30 have just deposed that they were called to be the witness and they did not know anything about the occurrence. Many of the witnesses have been examined to prove the very same fact, which is not disputed. Unfortunately, the prosecution has failed to advert to Section 134 of the Indian Evidence Act, which reiterates that it is the quality of the evidence and not the quantity, which is important in any case.



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8. Be that as it may. The report of the Medical Board [Ex.P11] and the X-rays suggest that the victim had sustained a fracture in both her legs and her hymen was not intact. The Doctors viz., PW22 to PW25, who were members of the said Medical Board would state in their deposition that they were unable to render a definite opinion as to why the hymen was torn. The victim also has not spoken about any alleged sexual assault. Hence, the appellant was acquitted of the offence under the POCSO Act.

9. Since PW2, the complainant and the other relevant witnesses, namely relatives have also turned hostile and the other witnesses are only hearsay, the prosecution case only rests on the evidence of the victim girl. Before this Court examines the evidence of PW1, this Court also has to record the fact that PW2 and A2 had two children. The name of the first child is Sivani and the victim is the second child. PW42, who had marked Ex.P18 to Ex.P23 had spoken about the treatment given to a child named Shivani. The said medical records would show Shivani as the patient. Thereafter the name was struck off and the name of the victim has been incorporated and the ink also differs. To a specific question put to the



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Doctor in the cross-examination, the Doctor had stated that she had changed the name in those exhibits since the persons who admitted the child had requested for change in the name stating that the victim used to be called as Shivani at the house and they had wrongly given that name and requested to change the name. When there were two children born to them and the elder child was known as Shivani, it is highly doubtful whether the victim was taken for treatment to PW42. In any case, the victim was examined by the medical board who had issued Ex.P11. Hence, notwithstanding the above discrepancy, this Court is of the view that the prosecution had established that the victim sustained a fracture though there are serious deficiencies in the investigation and the manner in which the prosecution was conducted.

10. Now let us advert to the evidence of the victim [PW1]. It is not in dispute that the appellant was working as a driver. The victim was aged 3 years at the time of occurrence and about 3½ years when she was examined. The appellant had not cross-examined the victim. The victim had stated that ‘the driver’ had broken her leg; that she used to call the driver as uncle; and that she went with the said uncle to a temple. In the later part of her deposition, she stated that the said uncle did not do anything to her. The



victim's version is not definite and clear. Even otherwise, the victim only refers to a driver. The prosecution failed to elicit that the driver refers to the appellant.

11. Be that as it may. Unfortunately, the prosecution had not called upon the victim to identify the appellant. In the light of the victim's deposition, which is inconsistent, the prosecution should have at least asked the victim to identify the appellant. For reasons best known to the prosecution, they have not done so. It is not the case of the prosecution that the appellant was not present when the victim was examined in Court. In fact, the Court had recorded the fact that the appellant was present and the victim was made to stand in such a way that they could not see each other. Therefore, this Court is of the view that it would be highly unsafe to record a finding of guilt for the offence under Section 307 of the IPC as against the appellant on the sole testimony of the victim, for the reasons stated above.

12. Above all, PW2, the father of the victim and all other witnesses have turned hostile. Further, A2 who is said to have taken the victim to meet the appellant was acquitted by the trial Court. Both A2 and PW2 had



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informed the doctors concerned that the victim fell down and sustained injuries. In fact, it is only on suspicion that the Childline stepped in and thereafter a complaint was obtained from PW2.

13. In the light of all those infirmities and since the evidence of PW1, cannot be the basis to hold the appellant guilty of causing injuries on her leg, this Court is of the view that the prosecution had failed to establish the offence under Section 307 of the IPC as against the appellant.

14. In the result, the Criminal Appeal is allowed. The judgment dated 27.03.2023 in Spl.S.C.No.37 of 2015 on the file of the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, convicting and sentencing the appellant for the offences under Section 307 of the IPC, is set aside. The appellant/accused is acquitted of the charge. The fine amount, if any, paid by the appellant shall be refunded. Bail bond, if any, executed shall stand discharged.



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15. This Court also makes it clear that if any compensation has been paid to the victim, pursuant to the direction in the impugned judgment, the same shall not be recovered from the victim, considering the facts and circumstances of the case.

02.01.2026

Index : yes/no
Speaking /Non-speaking order
Neutral citation : yes/no
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SUNDER MOHAN, J.

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To

1. The Sessions Judge,
Fast Track Mahila Court, Dharmapuri.
2. The Inspector of Police,
All Women Police Station,
Pennagaram, Dharmapuri District..
3. The Public Prosecutor,
High Court, Madras.

Pre-delivery Judgment in
Crl.A.No.406 of 2023

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