



Crl.A.No.1328 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2026

CORAM

THE HONOURABLE MR JUSTICE M.NIRMAL KUMAR

Crl.A.No.1328 of 2022

S.Mohammed Asan

... Appellant

Vs

State by the Inspector of Police,
All Women Police Station (West),
Coimbatore.
(Crime No.01/2020).

... Respondent

PRAYER: Criminal Appeal is filed under Section 374(2) of Code of Criminal Procedure, to call for the entire records in connection with S.C.No.137 of 2021 on the file of the Mahila Court/Additional Special Court for Exclusive trial of cases under POCSO Act, Coimbatore and set aside the conviction and sentence imposed by the learned Mahila Court/Additional Special Court for Exclusive trial of cases under POCSO Act, Coimbatore in S.C.No.137 of 2021 dated 22.11.2022.

For Appellant : Mr.M.Mohamed Saifulla

For Respondent : Mr.S.Udaya Kumar,
Government Advocate (Crl. Side) assisted by
Ms.Harshana.T



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JUDGMENT

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The appellant was convicted by judgment dated 22.11.2022 in S.C.No.137 of 2021 by the learned Sessions Judge, Mahila Court/Additional Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore (trial Court) and sentenced to undergo one year Imprisonment and to pay a fine of Rs.1,000/-, in default to undergo three months Simple Imprisonment for offence under Section 451 IPC and also sentenced to undergo two years Imprisonment for offence under Section 354(A)(i) IPC. Challenging the same, present Criminal Appeal filed by the appellant.

2.Case of the prosecution is that the victim/PW2 aged about 21 years having less Intelligent Quotient (IQ) than a normal person was sexually assaulted by the appellant. The victim was residing with her parents (PW1 & PW3), brother and sister in South Ukkadam, Coimbatore District. The victim's mother PW1 and victim's sister are housemaids and victim's father was working privately. Due to mental illness, the victim will be left behind in home. The appellant, a neighbour, was residing in the same compound. Taking advantage of the victim's health condition, the appellant trespassed into the victim's house when she was alone and made improper touch on her private parts. On 04.01.2020 when the victim went to bathroom, the



appellant entered the bathroom, made improper touch and committed rape on her. PW5, a neighbour saw the appellant and victim coming out from the bathroom and questioned the same and the victim disclosed forcible sexual assault committed by the appellant. On 06.01.2020 victim's mother/PW1/defacto complainant due to sickness not gone for work and she was at home. PW5 informed the incident happened on 04.01.2020 to PW1. PW1 enquired the victim about appellant committing sexual assault. The victim confirmed the same and also informed that even prior to 04.01.2020 the appellant misbehaved with her.

3. On 07.01.2020 PW1 went to the respondent Police Station along with her son-in-law/PW4 and lodged a complaint (Ex.P1) to PW15, Sub Inspector of Police who received the complaint (Ex.P1), registered FIR (Ex.P9) in Crime No.1 of 2020 for offence under Section 376(2)(1) IPC against the appellant. On that day, the regular Inspector was on leave, FIR (Ex.P9) sent to the Incharge Inspector/PW16 who received the same, visited the scene of occurrence, prepared Observation Mahazar (Ex.P3), Rough Sketch (Ex.P10) in presence of PW6 & PW7, enquired the witnesses (PW1 to PW5) present in the scene of occurrence, recorded their statements, sent the victim to Coimbatore Medical College and Hospital for medical examination where the



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Doctor/PW12 examined the victim and issued medical report (Ex.P6) and opinion (Ex.P7). On getting information about the appellant, on the same day at 02.00 p.m. appellant was arrested in presence of PW8, confession recorded, later appellant brought to Police Station at 03.30 p.m.

4.PW17, regular Inspector joined duty on 09.01.2020 and the case file handed over to her. PW17 took up investigation, sent the victim to Coimbatore Medical College and Hospital, for psychiatric examination where the Doctor/PW10 examined the victim and issued the medical report (Ex.P5) confirming the victim found to have Intelligent Quotient (IQ) of 44. Thereafter, the victim's statement (Ex.P11) under Section 164(5) Cr.P.C recorded and videographed by PW9 and Memory Card and three DVDs (MO1 to MO4) produced. The victim was sent to Institute of Mental Health, Kilpauk where she was admitted as inpatient from 10.03.2020 to 14.03.2020. In the meanwhile, the appellant was sent to Coimbatore Medical College and Hospital for medical examination where the Doctor/PW13 examined the appellant and issued potency report (Ex.P8). On collection of evidence and materials, PW17 altered Section *vide* alteration report (Ex.P13) from 376(2) (l) IPC to Sections 376 (2)(l), 376 (2)(n) & 450 IPC and filed charge sheet before the trial Court.



5. During trial, the prosecution examined PW1 to PW17 and marked Exs.P1 to P14 and MO1 to MO4 produced. On the side of the defence, no witness examined and no document marked. On conclusion of trial, the trial Court convicted the appellant as stated above.

6. Learned counsel for the appellant submitted that in this case, the appellant is a neighbour to the victim's family. Since the appellant had some dispute with victim's family and other neighbours, the victim was used by her parents (PW1 & PW3) and neighbour to falsely implicate the appellant. The victim's mother/PW1 admits that she had no direct knowledge about the incident and it was PW5, a neighbour informed the incident to her. In this case, PW5 not supported the case of the prosecution, hence, the case was cut off at the root. Apart from the victim, the other witness namely PW3/victim's father confirmed that he had no direct knowledge and he was only informed about the incident. PW4, son-in-law of PW1 & PW3 stated he was informed about the incident by PW1. PW6 & PW7 are witnesses to Observation Mahazar (Ex.P3) and Rough Sketch (Ex.P10). PW6 not supported the case of the prosecution. The evidence of PW7 is that on 07.01.2020 at 10.30 a.m. the Police came to the scene of occurrence, prepared Observation Mahazar



(Ex.P3) and Rough Sketch (Ex.P10) in presence of the appellant. On the other hand, the arrest of the appellant projected to have taken place at 02.00 p.m., hence, the evidence of PW7 is unbelievable. The witness for arrest PW8 admits that he is a friend of PW4/Son-in-law of PW1 & PW3 and gives an exaggeration version as though he saw PW2 crying. PW9 is the Police Photographer who produced the memory card (MO1) and three DVDs (MO2 to MO4) containing 164(5) statement of victim (Ex.P11), he admits that he has not given any 65B Certificate, hence, the electronic evidence cannot be considered in evidence. PW10, Doctor from Coimbatore Medical College and Hospital attached to Psychiatry Department confirms that he examined the victim and found that the victim was with Intelligent Quotient (IQ) of 44 and issued medical report (Ex.P5). Though PW10 in Ex.P5 recorded that the victim was thereafter referred to Institute of Mental Health, Kilpauk, Chennai for assessing IQ by Clinical Psychologist and as per the Clinical Psychologist Report, she is found to have an Intelligent Quotient (IQ) of 44, but no witness examined and no document from the Institute of Mental Health, Kilpauk, Chennai produced in this case. PW11, Grade-II Police Constable stated that she accompanied the victim to Institute of Mental Health, Kilpauk, Chennai where the victim took treatment as inpatient from 09.03.2020 to 14.03.2020. PW12, another Doctor examined the victim on 07.01.2020 and



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gave medical report (Ex.P6) confirming she found only old scars in the hymen and gave opinion (Ex.P7) that “*the examined person has no evidenece of any recent forcible sexual act*”.

7.Learned counsel further submitted that though the prosecution initially projected the case as though appellant committed rape on the victim, the trial Court finding that ocular evidence not supported the medical evidence, convicted the appellant for sexual harassment and trespass. The trial Court failed to consider that the prosecution not proved the case and the appellant was victimized because of dispute with his neighbours. In support of his submissions, learned counsel for the appellant relied on the decision of the Hon’ble Apex Court in the case of ***Nirmal Premkumar & Anr., v. State, rep. by Inspector of Police*** reported in ***2024 (1) MWN (Cr.) 321 (SC)*** for the point that the statement of Prosecutrix ought to be consistent from the beginning to the end without creating any doubt qua the prosecution case. He further placed reliance on the decision of Karnataka High Court in the case of ***Sri.Samangouda v. State of Karnataka and others*** reported in ***2025 (4) KantLJ 528*** for the point that the requirement under Section 164(5A)(a) Cr.P.C. proviso is that at the time of recording the statement of a person, if the said person is found to be temporarily or permanently, mental or physically



disabled, the learned Magistrate shall take the assistance of an Interpreter or a Special Education and the same shall be videographed, only then it shall be considered in evidence.

8.Making the above submissions and relying upon the above decisions, learned counsel for the appellant prays to set aside the conviction and allow the appeal.

9.Learned Government Advocate (Crl. Side) appearing for the respondent Police submitted that PW1/defacto complainant and PW3 are parents of the victim/PW2. PW5, neighbour informed PW1 that on 04.01.2020 at the night hours, she saw the victim and appellant coming out from bathroom and earlier on occasions saw the appellant near the victim's house. PW1 questioned the victim, she confirmed the sexual assault and exploitation by the appellant. In this case, the victim was mentally ill and she had a childish approach and attitude with less IQ. On 07.01.2020 PW1 took the victim along with her son-in-law/PW4 to respondent Police Station and lodged the complaint (Ex.P1) to PW15 who registered FIR (Ex.P9) in Crime No.1 of 2020 for offence under Section 376(2)(1) IPC against the appellant. Since the regular Inspector was on leave, PW15 forwarded the FIR to PW16,



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Incharge Inspector. PW16 took up investigation, visited the scene of occurrence, prepared Observation Mahazar (Ex.P3), Rough Sketch (Ex.P10) in presence of PW6 & PW7, examined the victim/PW2, her parents (PW1 & PW3), PW4/son-in-law of PW1, PW5/neighbour and others present in the scene of occurrence, recorded their statements, sent the victim to Coimbatore Medical College and Hospital where PW12/Doctor examined the victim and issued medical report (Ex.P6) and opinion (Ex.P7). On getting information about presence of appellant, PW16 arrested the appellant in presence of PW8, recorded confession statement, brought him to Police Station and then produced for remand. PW17, regular Inspector joined duty, took up investigation, sent the victim to Coimbatore Medical College and Hospital for psychiatric examination where the Doctor/PW10 examined the victim and issued the medical report (Ex.P5) confirming that the victim is found to have Intelligent Quotient (IQ) of 44. Thereafter, the victim's statement (Ex.P11) under Section 164(5) Cr.P.C recorded by PW17 and videographed by PW9 and Memory Card and three DVDs (MO1 to MO4) produced. Thereafter, the victim sent to Institute of Mental Health, Kilpauk where she was admitted as inpatient from 10.03.2020 to 14.03.2020. In the meanwhile, the appellant produced in Coimbatore Medical College and Hospital for medical examination where the Doctor/PW13 examined the appellant and issued



potency report (Ex.P8). The swab and smear test conducted, FSL Report (Ex.P14) received. On conclusion of investigation, PW17 altered the Section *vide* alteration report (Ex.P13) from 376(2)(l) IPC to Sections 376 (2)(l), 376 (2)(n) & 450 IPC and filed charge sheet before the trial Court. During trial, PW1 to PW17 examined and Exs.P1 to P14 marked and MO1 to MO4 produced.

10.He further submitted that since the victim was found to be a person with less IQ of 44 and suffering with mental illness, the victim's statement (Ex.P11) videographed and recorded following Section 164(5) Cr.P.C. When the victim was examined by the Doctor and when she deposed before the trial Court, the victim's understanding and analysing capacity tested, thereafter finding the victim answering logically, the victim's evidence recorded. In this case, the victim clearly identified the appellant is the person who committed sexual assault on her. In view of the above, the judgment of trial Court to be confirmed and appeal to be dismissed.

11.Considering the submissions and on perusal of the materials, it is seen that in this case, the victim found to have Intelligent Quotient (IQ) of 44 which is confirmed by PW10 and medical report (Ex.P5). Though the



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prosecution failed to produce the medical records from the Institute of Mental Health, Kilpauk, Chennai and not examined the Doctor who treated the victim in Institute of Mental Health, Kilpauk, Chennai, that may not seriously affect the prosecution case. Here, in this case, PW10/Doctor attached to Psychiatric Department, Coimbatore Medical College and Hospital in his evidence stated that he examined the victim and issued medical report that the victim found to have Intelligent Quotient (IQ) of 44 based on the Clinical Psychologist Report.

12.PW12, Doctor attached to Coimbatore Medical College and Hospital examined the victim and issued medical report (Ex.P6) and opinion (Ex.P7) found old healed hymen tears, not of any recent one and old scars might be for various other reasons. The victim was able to understand and analytically answer, but she was with less IQ. Further the victim was looking and speaking childish is confirmed by PW12/Doctor who examined her. Though the case projected that the appellant committed rape on the victim as per Ex.P1 and in her statement to Police under Section 161 Cr.P.C., but in 164(5) Cr.P.C (Ex.P11) and in her evidence before the trial Court she stated only about sexual assault, nothing more particularly any penetrative sexual assault.



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13. In this case, PW5, the anchor witness not supported the case of the prosecution, thereby, the evidence of PW1, PW3 & PW4 becomes hearsay. Added to it, none from the Institute of Mental Health, Kilpauk, Chennai who assessed IQ of the victim by Clinical Psychologist examined. The Doctors reports viz., Ex.P5 (PW10) and Ex.P7 (PW12) are based on the Institute of Mental Health, Kilpauk, Chennai which is the primary document not produced. Though there might be some infirmities in the prosecution case, the victim in this case clearly identified the appellant and confirmed improper touch and sexual assault committed by him. The trial Court on proper analyzation of evidence and material, rightly convicted the appellant for sexual harassment.

14. In view of the above, the conviction of the appellant for offence under Sections 451 IPC and 354(A)(i) IPC are confirmed. It is seen that the appellant was in prison from 07.01.2020 to 07.11.2020 and from 22.11.2022 to 03.01.2023 (in total 347 days). Considering the same, this Court modifies the sentence of imprisonment to period already undergone by the appellant.



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15. In the result, this Criminal Appeal is Partly-Allowed.

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Speaking order/Non-speaking order

Index: Yes/No

Neutral Citation: Yes/No

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To

1. The Sessions Judge,
Mahila Court/Additional Special Court for Exclusive Trial of Cases
under POCSO Act,
Coimbatore.
2. The Superintendent,
Central Prison, Coimbatore.
3. The Inspector of Police,
All Women Police Station (West),
Coimbatore.
4. The Public Prosecutor,
Madras High Court.



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M.NIRMAL KUMAR, J.

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