

IN THE COURT OF FAST TRACK MAHILA JUDGE,DINDIGUL.

Present : Thiru.S.Purushothaman,M.A.,B.L., Sessions Judge, Fast Track Mahila Court,Dindigul.

Wednesday, dated this the 12th day of February,2020.

Special Sessions Case No.01/2019.

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| 1.Name of the Complainant | Inspector of Police, A.W.P.S. Dindigul.
Dindigul Town West P.S. Cr.No.64/2013. |
| 2.Name of the accused | M.Mariselvam (26/2020) S/o Murugan, Palani Road,
Dindigul. |
| 3.Charge Pleaded against the accused by police | U/s 4 of Protection of Children from Sexual Offences Act,2012. |
| 4. Charge framed against the accused | U/s 4 of Protection of Children from Sexual Offences Act,2012. |
| 4. Plea of the accused | Pleaded Not guilty. |
| 5. Finding of the Judge | Accused found not guilty for the offence U/s 4 of Protection of Children from Sexual Offences Act,2012. |
| 6.Finding and Judgment. | In the result, accused found not guilty for the offence U/s 4 of Protection of Children from Sexual Offences Act,2012 and acquitted U/s 235(1) Cr.P.C.

Bail bonds executed by the accused is ordered to be cancelled after expiry of appeal time. No properties in this case. |

This case coming up for final hearing before me on 03/022020 in the presence of

Tmt.R.Kopperundevi, learned Special Public Prosecutor, Dindigul on behalf of State and Thiru.B.Saravanakumar, learned Counsel appeared on behalf of the accused, after hearing the arguments of both sides, upon perusal of oral and documentary evidence, and having stood over for consideration before this court till date, this court passed the following:

JUDGMENT

On the afternoon of 17/03/2013, the accused involved in this case namely one Mariselvam brought the victim child namely one Selvaganapathi (08/13) in the lane situated at Karunanithi Nagar, Dindigul – Palani Road, that the accused committed sexual assault against the victim by way of inserting his penis in to the mouth of the victim, and asked the victim to chew the same in his mouth, and thereby the Inspector of Police, A.W.P.S. Dindigul filed a Charge-Sheet before this Court against the accused for the offence U/s 4 of Protection of Children from Sexual Offences Act,2012.

2. Upon perusal of Charge-Sheet filed by the Inspector of Police, A.W.P.S. Dindigul, case has been taken on file by this Court in Special S.C.No.01/2019. After appearance of the accused, free copies of documents relating to this case were furnished to him U/s 207 Cr.P.C., that upon perusal of relevant case records, since Prima facie case was made out against the accused as alleged in the Charge-Sheet, Charges framed against the accused for the offence U/s 4 of Protection of Children from Sexual Offences Act,2012, that when the accused was explained and questioned with regard to the Charges framed against him by this Court, he denied the Charges levelled against him, and that trial was ordered. On behalf of the Prosecution P.W.1 to P.W.5 were examined and Ex.P.1 to P.12 were marked on the side of Prosecution.

3. The brief case of the Prosecution is as follows:

On 17/03/2013 at 12.00 hours, the Defacto-complainant of this case namely one Rajathi (P.W.1) lodged Ex.P.4 Complaint before Dindigul Town West P.S. that on receipt of Ex.P.4 Complaint, L.W.9 Muthamilselvi, the then S.I. of Police, Dindigul Town West P.S. registered Ex.P.5 First Information Report in Cr.No.64/2013 U/s 377 I.P.C. and Sec.4 of Protection of Children from Sexual Offences Act,2012 against the accused namely 1.Sudhankumar and 2.Mariselvam, then L.W.9 submitted the C.D.File of this case before L.W.10. the then Inspector of Police, Dindigul Town West P.S. that he took this case for investigation, that the L.W.10 visited the place of occurrence in the presence of P.W.4 Gunasekaran and L.W.6 Mariappan and prepared Ex.P.6 Observation Mahazar and Ex.P.7 Rough Sketch, that he enquired the witnesses namely P.W.1 Rajathi, P.W.2 Nagendran, P.W.3 Selvaganapathi,L.W.4 Murugesan, P.W.4 Gunasekaran and L.W.6 Mariappan and recorded their statements U/s 161(3) Cr.P.C. separately, that L.W.10 arrested Juvenile accused Sudhankumar and another accused namely one Mariselvam, sent the Juvenile accused Sudhankumar to Borstal School, and sent the accused Mariselvam for Judicial custody, that on 24/09/2018 L.W.10 gave a requisition before the Court to record Statement U/s 164(5) Cr.P.C. from the victim, and subsequently on 01/10/2018 Statement U/s 164 Cr.P.C. of the victim was recorded by the learned Judicial Magistrate No.I.Dindigul, that on requisition L.W.10 received Ex.P.10 School Certificate of the victim from the Head Master of Saint Francis Xavier Primary School, Muthazhagupatti, that as per the direction of the Dindigul Town Deputy Superintendent of Police, P.W.5 took this case for investigation, that she enquired witnesses involved in this case and recorded their statements U/s 161(3) Cr.P.C. separately from them, and having finished her investigation, P.W.5 filed a Charge-sheet before this Court against the accused Mariselvam for the offence U/s 4 of Protection

of Children from Sexual Offences Act,2012.

4. When the accused was questioned U/s 313(i)(b) Cr.P.C. with regard to the incriminating Prosecution side evidence against him, he denied the evidence of Prosecution side witnesses, and stated that he has no defence witness to examine on his side. There is no oral or documentary evidence adduced on the side of accused.

5. The point for determination in this case is:

Whether the Charge U/s 4 of Protection of Children from Sexual Offences Act,2012 against the accused has been proved specifically by the Prosecution beyond reasonable doubt or not?

6. The learned Special Public Prosecutor, Dindigul submitted that the Charge levelled against the accused for the offence U/s 4 of Protection of Children from Sexual Offences Act,2012 proved by the Prosecution beyond reasonable doubt, through oral and documentary evidence adduced on the side of Prosecution, and prays that the accused has to be convicted for the Charges levelled against him as per law. Per contra, the learned Counsel appearing on behalf of the accused argued that P.W.1 to P.W.4 turned hostile, and they had not categorically narrated about the occurrence alleged to have been took place in this case, and not deposed any piece of evidence as against the accused, and hence he requested that the benefit of doubt may be given to the accused and that the accused may be acquitted.

7. Heard both sides. Perused case records. To substantiate the Prosecution case, P.W.1 to P.W.5 were examined and Ex.P.1 to Ex.P.12 were marked. There is no oral or documentary evidence adduced on the side of defence.

8. On perusal of Chief-Examination of Defacto-Complainant namely one Rajathi

(P.W.1), she stated as follows:

“சுமார் 6,7 வருடங்களுக்கு முன்பு ஒரு நாள் நானும் எனது மகன் செல்வகணபதியும் தெரு பைப்பில் தண்ணீர் பிடிப்பதற்காக சென்றோம். அப்போது தண்ணீர் பிடிப்பதில் எங்களுக்கும், அங்கிருந்தவர்களுக்கும் தகராறு ஏற்பட்டதால், என் மகனை குடத்தை வைத்து தள்ளி விட்டார்கள். அவ்வாறு பிரச்சனை ஏற்பட்டதற்காக நான் காவல் நிலையத்தில் புகார் கொடுத்தேன். என்னுடன் தகராறு செய்தவர் நீதிமன்றத்தில் தற்போது ஆஜராகியுள்ள எதிரி தான். என் மகன் செல்வகணபதியை யாரும், எதுவும் செய்யவில்லை. நான் காவல் நிலையத்தில் வைத்து புகாரில் உள்ள கையெழுத்தை போட்டேன்.”

Since P.W.1/Defacto-Complainant not deposed in favour of the Prosecution, she treated as hostile witness by Prosecution, and even at the time of Cross-examination by Prosecution with the permission of this Court, she doesn't chosen to depose anything in favour of the Prosecution case, which is fatal to the Prosecution. On careful and combined perusal of above said Chief-examination of P.W.1 before this Court dt.18/11/2019 alongwith Ex.P.4 Complaint, she failed to depose evidence categorically reiterating the contents as found in Ex.P.4 Complaint, alleged to have been given by her before Dindigul Town West P.S. against the accused, which is fatal to the Prosecution.

9. On perusal of Chief-examination of Victim namely one Selvaganapathi (P.W.3), he deposed as follows:

“நான் தற்போது 10 ஆம் வகுப்பு திண்டுக்கல்லில் படித்து வருகிறேன். நான் 3 ஆம் வகுப்பு படிக்கும்போது என்ன நடந்தது என்று எனக்கு தற்போது நினைவு இல்லை. இந்த வழக்கு பற்றி எனக்கு எதுவும் தெரியாது. நான் இதற்கு முன்பு மருத்துவமனைக்கோ, நீதிமன்றத்திற்கோ சென்றதாக எனக்கு நினைவு இல்லை. போலீசார் என்னை விசாரித்தார்களா என்று எனக்கு தற்போது ஞாபகமில்லை. போலீசார் கேட்டுக் கொண்டதற்கிணங்க சாட்சியமளிக்க வந்துள்ளேன். கு.வி.மு.ச.பிரிவு 164-ன் படியான வாக்கு மூலத்தில் உள்ள கையெழுத்து என்னுடையது தான்”. Since the P.W.3/Victim not deposed

in favour of the Prosecution case, he treated as hostile witness by Prosecution, and even at the time of Cross-examination by Prosecution with permission of this Court, he doesn't chosen to depose anything in favour of the Prosecution case, which is fatal to the Prosecution in toto. Further, when this Court raised a question with regard to the identification of the accused involved in this case, who appeared before this Court during the course of evidence of P.W.3, he simply answered that “அவர் யார் என்று எனக்கு தெரியாது.” which is fatal to the Prosecution.

10. On perusal of Ex.P.11 dt.01/10/2018, 164 Cr.P.C.Statement recorded by the Judicial Magistrate No.I, Dindigul, when the Judicial Magistrate No.I, Dindigul asked the victim about the alleged occurrence, he simply answered that “சுமார் 5 வருடம் முன்பு நடந்ததால் என்ன நடந்தது என்று ஞாபகம் இல்லை”. The above said version of the victim is fatal to the Prosecution.

11. One Nagendran, who is the father of the victim and husband of the Defacto-complainant was examined as P.W.2 on the side of Prosecution. In his Chief-examination, he deposed as follows:

“ சுமார் 6,7 வருடங்களுக்கு முன்பு நான் கேரளாவில் வேலை செய்து கொண்டிருந்த போது ஏதோ பிரச்சினை என்று எனது மனைவி எனக்கு போன் செய்து கொன்னார். நான் வந்து பார்த்த போது போலீசார் ஸ்டேசனுக்கு வரச்சொல்லி என்னிடம் கையெழுத்து கேட்டார்கள். வேறு எதுவும் எனக்கு தெரியாது. போலீசார் என்னை விசாரிக்கவில்லை.”

Since the P.W.2 not deposed in favour of the Prosecution case, he treated as hostile witness by Prosecution, and even at the time of Cross-examination by Prosecution with permission of this Court, he doesn't chosen to depose anything in favour of the Prosecution case, which is fatal to the Prosecution. One Gunasekaran, who is the attested witness in Ex.P.6

Observation Mahazar was examined as P.W.4 on the side of Prosecution also turned as hostile. P.W.5 is the Investigation Officer, who deposed about the investigation of this case.

12. The evidence of P.W.1 to P.W.4 are unreliable, not supported the case of the Prosecution, and they are fatal to the Prosecution case. On cumulative appraisal of oral and documentary evidence adduced on the side of Prosecution in this case, this Court come to a conclusion that the Prosecution failed to prove the Charge levelled against the accused for the offence U/s 4 of Protection of Children from Sexual Offences Act,2012 beyond reasonable doubt.

In the result, accused found not guilty for the offence U/s 4 of Protection of Children from Sexual Offences Act,2012 and acquitted U/s 235(1) Cr.P.C. Bail bonds executed by the accused is ordered to be cancelled after expiry of appeal time. No properties in this case.

Dictated to the Steno-Typist, typed by him in Computer , corrected and pronounced by me in open Court, this the 12th day of February, 2020.

Sessions Judge,
Fast Track Mahila Court,
Dindigul.

List of witnesses examined on the side of Prosecution:

P.W.1. Rajathi. (Defacto-Complainant).

P.W.2. Nagendran.

P.W.3. Selvaganapathi. (Victim).

P.W.4. Gunasekaran.

P.W.5. Jasmin Mumthaj. (Inspector of Police/Investigation Officer).

List of documents marked on the side of Prosecution:

Ex.P.1.	17/03/2013	Signature of P.W.1 in the Complaint.
Ex.P.2.	01/10/2018	Signatures of P.W.3 in the 164(5) Cr.P.C. Statement.
Ex.P.3	17/03/2013	Signature of P.W.4 in the Observation Mahazar.

Ex.P.4.	17/03/2013	Complaint.
Ex.P.5.	17/03/2013	First Information Report. Observation Mahazar.
Ex.P.6	17/03/2013	Observation Mahazar.
Ex.P.7	17/03/2013	Rough Sketch.
Ex.P.8	31/10/2018	School Certificate of Victim.
Ex.P.9	17/03/2013	Attested true copy of Birth Certificate of the accused Mariselvam.
Ex.P.10	09/11/2018	Section Alteration Report.
Ex.P.11	01/10/2018	164(5) Cr.P.C. Statement.
Ex.P.12	17/03/2013	Remand Report, Arrest Card and Arrest Memo of the the accused Mariselvam.

List of Material objects marked on the side of Prosecution:

Nil.

List of witnesses examined, documents and material objects marked on the side of Accused: Nil.

Sessions Judge,
Fast Track Mahila Court,
Dindigul.

Fast Track Mahila Court,
Dindiugl.
Fair Judgment in
Special S.C.No.01/2019.
Dt.12/02/2020.

	Fast Track Mahila Court, Dindigul. <u>Special Sessions Case No.01/2019.</u>
	<u>Dt.12/02/2020</u>
	Judgment Pronounced in open court. In the result, accused found not guilty for the offence U/s 4 of Protection of Children from Sexual Offences Act,2012 and acquitted U/s 235(1) Cr.P.C. Bail bonds executed by the accused is ordered to be cancelled after expiry of appeal time. No properties in this case. Sessions Judge, Fast Track Mahila Court, Dindigul.

