

Crl.R.C.Nos.1058 & 1059 of 2018

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.10.2024

Pronounced on : 18.12.2024

CORAM : JUSTICE N.SESHASAYEE

Crl.R.C.Nos.1058 & 1059 of 2018

S**

.... Petitioner in both Crl.R.Cs /
Accused

Vs

1.The State, Rep by
Inspector of Police
W-10, AWPS
Kothawalchavadi
Chennai - 600 001.

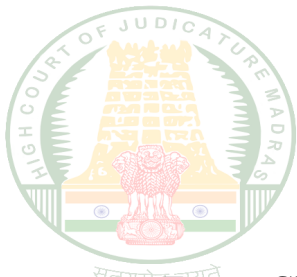
.... 1st Respondent in Crl.R.C.No.1058/2018
.... 2nd Respondent in Crl.R.C.No.1059/2018 /
Complainant

2.

.... 1st Respondent in Crl.R.C.No.1059/2018 /
Defacto complainant

** Since the disclosure of the name of the revision petitioner may lead to the disclosure of the identity of the minor-victim, this Court deems it appropriate to screen the same.

Prayer in Crl.R.C.No.1058 of 2018 : Criminal Revision Petition filed under Section 397 and 401 Cr.P.C., praying to set aside the judgment passed against the revision petitioner by the learned III Metropolitan Magistrate, George



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Town, Chennai, in C.C.No.1873/2012 dated 22.06.2017, which was confirmed by the learned XVII Additional Sessions Judge, Chennai, by its order dated 07.09.2018 passed in C.A.No.168/2017 and thereby acquit him from all charges levelled against him.

Prayer in Crl.R.C.No.1059 of 2018 : Criminal Revision Petition filed under Section 397 and 401 Cr.P.C., praying to set aside the judgment conviction passed against the revision petitioner by the learned III Metropolitan Magistrate, George Town, Chennai, in C.C.No.1873/2012 dated 22.06.2017, which was enhanced by the learned XVII Additional Sessions Judge, Chennai, by its order dated 07.09.2018 passed in C.A.No.231/2017 and thereby acquit him from all charges levelled against him.

For Petitioner : Mr. A.Ramesh, Senior Counsel
Assisted by Mr.C.Aswin Kumar

For Respondent : Dr.C.E.Pratap
Government Advocate [Crl. Side]

In Crl.R.C.No.1059 of 2018 :

For Petitioner : Mr. A.Ramesh, Senior Counsel
Assisted by Mr.C.Aswin Kumar

For Respondents : Mr.D.Ashok Kumar
for Mr.D.Vijay Krishnan for R1

Dr.C.E.Pratap
Govt Advocate [Crl. Side] for R2



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COMMON ORDER

1.1 These revisions are preferred by the accused/revision petitioner challenging the judgments in C.A.No.168 of 2017 and C.A.No.231 of 2017, both dated 07.09.2018 on the file of XVII Additional Sessions Court, Chennai. The appeals before the Sessions Court arose out of the judgment in C.C.No.1873 of 2012 dated 22.06.2017, by which the trial Court had convicted the revision petitioner herein, for offences which are alleged to involve sexual assault by the father on his 14 year old daughter.

1.2 Indeed, the revision petitioner faced trial for charges under Section 354 IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998. The trial Court found the revision petitioner guilty and sentenced him to undergo 6 months rigorous imprisonment for offence under Sec.354 IPC, and one year rigorous imprisonment for offence under Sec.4 of TNPWH Act along with fine. Challenging this judgment, the revision petitioner approached the Sessions Court with C.A.No.168 of 2017, whereas the defacto complainant (P.W.1), the mother of the victim, had preferred C.A.No.231 of 2017 for enhancement of sentence.



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1.3 The appellate Court dismissed C.A.No.168/2017 (preferred by the revision petitioner) and confirmed the judgment convicting the revision petitioner. And it allowed C.A.No.231 of 2017 (preferred by the defacto complainant) and enhanced the sentence from six months R.I to two years R.I. for offence under Section 354 IPC, and one year R.I. to three years R.I. for offence under Section 4 of TNPHW Act. Hence, these two revisions. For narrative convenience, the petitioner would be referred to as accused.

2.1 The case of the prosecution begins with the introduction of few characters, all of whom are relations as between them. P.W.1 is the wife of the accused. P.W.2 is their only daughter, who was the victim of the crime attributed to the accused. She was 14 years at the relevant time. P.W.3 is the brother of P.W.1 (brother-in-law of the accused) and P.W.4 and P.W.10 are parents of P.W.1. Besides P.W.2, the couple had a son, who at the relevant time when the crime was alleged to have taken place was about 16 years old. He was not examined.

2.2 While so, on 13.06.2012, P.W.1 preferred Ext.P1 complaint to the



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Assistant Commissioner of Police, Flower Bazaar Range, and this came to be forwarded to the respondent police where P.W.11, the Inspector of Police registered Ext.P2 FIR. The allegations in the FIR are:

- a) That P.W.1 along with the accused and her two children which included P.W.2, were living in a two-bedroom apartment at Sowcarpet, Chennai. While the family of the accused (which includes him, his wife P.W.1, his daughter P.W.2 and his son) occupied one of the two bedrooms, the other room was occupied by the accused's brother and his wife. Along with them lived the parents of the accused (parents-in-law of P.W.1) who also used to sleep in the hall.
- b) Ordinarily, in the night, both the children of the accused and P.W.1 would sleep in the bedroom along with their mother (P.W.1). So far as the accused is concerned, he had the habit of sleeping very late in the night, even well beyond midnight, till about 2 a.m, as he was addicted to watching television for long hours during nights.
- c) When the accused came to sleep in his bedroom, he would require both his children to go to the hall and sleep.
- d) Of late (no specific date or time was given), when the accused came



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to the bedroom for sleeping, he used to send only his son to sleep in the hall but not the daughter. And the accused would lie down next to his daughter, and like an animal he would *feel her private parts* while she was asleep. Because she was asleep she did not realise what was happening to her. P.W.1 would be fast asleep then.

- e) About six months prior to Ext.P1 complaint, when the accused and P.W.2 were alone, the former had ran over his hand all over P.W.2's body, and told her that he was merely checking if P.W.2 had grown properly. P.W.2 however, did not realise the intention of her father then and remained silent as it was her father. And, he was also alleged to have told her not to divulge this to anyone.
- f) Since then, the accused had been physically abusing P.W.2 on various occasions, which included instances of lifting her night dress while she was sleeping, and sucking her breast, besides feeling her body and private parts. And this he did to P.W.2 several times till March, 2012. P.W.2 however, did not know how to react and she would walk angrily to the hall.
- g) P.W.2 did not share her tormenting experience to P.W.1 out of fear



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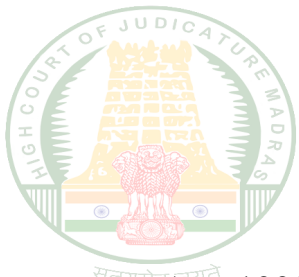
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for her father. Besides she was also in a confused state of mind as she did not realise that what the accused was doing to her was grave and barbaric.

- h) In March 2012, there appeared a news item in a daily about a father raping his daughter, and this news came to be discussed within P.W.2's friends' circle in the school. It was then P.W.2 realised that what her father was doing to her was a serious abuse, and she came home crying and informed it to P.W.1.

2.3 On registering the FIR, P.W.11 would then commence her investigation, visited the SOC, but still did not prepare any Observation Magazar or rough -sketch of the SOC. She had also recorded the statements of the witnesses. During the course of investigation, a statement of P.W.2 (Ext.P4) came to be recorded by the III Metropolitan Magistrate under Sec.164 Cr.P.C. After completing the investigation, P.W.11 laid her final report.

3. As outlined earlier, the trial Court would now frame charges against the accused for offences under Section 354 IPC and Sec.506 Part II of IPC as well as under Section 4 of the Tamil Nadu Prohibition of Harassment of Women



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Act, 1998 and proceeded to try the accused for the charges so framed. During trial, the prosecution examined P.W.1 to P.W.11 and marked Ext.P1 to P4. For the defence, the accused examined D.W.1 to D.W.4 and also had examined himself as D.W.5, and he had also filed Ext.D1 and Ext.D2.

Approach of the Trial Court:

4. The nature of the accusation being what it is, the accused had taken up a position that the accusation was foisted on him, as there had been a strong disagreement between the accused and P.W.1 over moving out of the joint family and starting their separate home. The trial court had opined that for commencing a separate home for themselves, no mother or daughter would risk their honour and would make a false accusation as serious as the one that had been made, and proceeded to believe the P.W.1 and P.W.2's narrative on the incident, and proceeded to hold the accused guilty and sentenced him as below:

<i>Offences</i>	<i>Sentence imposed</i>
354 IPC	Six months rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, one month simple imprisonment
4 of TNPWH Act	One year rigorous imprisonment and to pay a fine of Rs.10,000/- in default, one month simple imprisonment.



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The accused however, was acquitted vis-a-vis the charge under Sec.506 Part II IPC.

5.1 As stated earlier, challenging the said conviction, the accused preferred an appeal in C.A.No.166/2017, whereas P.W.1, the defacto complainant had preferred a separate appeal in C.A.No.231 of 2017, seeking enhancement of sentence. The appellate court has recorded contentions of the accused far more pointedly than the trial court. The broad line of contentions of the accused/revision petitioner (which also figured prominently during the course of the arguments here) are:

- a) That P.W.1 wanted to start a separate home and that there was strong disagreement between the spouses and that this issue was even discussed with certain Thiru.Vinoth Maradia, an octogenarian Advocate (now had passed away) and one who commanded considerable respect within the Jain community in Chennai. He was not examined by the prosecution.
- b) That owing to the said dispute, P.W.1, her parents (P.W.3 and P.W.10) and her brother (P.W.4) had decided to put P.W.2 in a



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certain S- School (school name screened), which is about 7 k.m. from the residence of the accused. P.W.3 admits to this fact. While P.W.3 has deposed that change of school for P.W.2 was decided since the accused began to follow P.W.2, after the crime had surfaced, P.W.11, the IO in her testimony had confirmed that P.W.3 had not stated anything about the circumstances for changing the school of P.W.2 in his statement tendered under Sec.161(3) Cr.P.C.

- c) That P.W.2, though had ample opportunity to share her alleged bad experience with her mother or brother immediately, but it was not done.

5.2 The Sessions Court however, did not find the line of argument convincing enough to overshadow its view that no mother and no child would risk one's honour for levelling any accusation, as grave as the one alleged. In the end, the first Appellate Court confirmed the judgment of the trial Court and dismissed the appeal preferred by the accused, and it allowed the appeal in part, preferred by P.W.1 by enhancing the sentence imposed on the accused as below :



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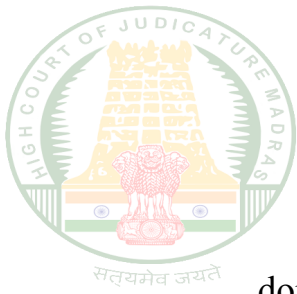
<i>Offences</i>	<i>Sentence imposed</i>
354 IPC	Two years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment.
4 of TNPWH Act	Three years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo three months simple imprisonment.

The sentences are directed to run concurrently. These revisions are directed against the judgment of the appellate court, the XVII Additional Sessions Court, Chennai.

The Arguments:

6. Thiru.A.Ramesh, the learned senior counsel for the accused opened his argument with a strong opening statement. It is a prelude statement of caution:

- a) That the nature of the offence as alleged by the prosecution, if it were true and believable, it is heinous, shocking and depraving. That a father should predate on his daughter whom he is under a duty to care, could hardly be permitted or tolerated in any civil society. However, it is imperative that the Court has a duty to stay neutral, and hence may have to guard itself against the emotional content of the accusation



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dominating its conscience since the accused deserves a fair opportunity to establish if the accusation as was thrown up against him holds a conclusive possibility that it could have happened.

- b) Eventually, a crime is a crime, and mere emotional-response which a crime, more particularly, a crime as alleged by the prosecution in this case sans evidence should not form the foundation for holding an accused guilty.
- c) While it is on record that P.W.2 had shown her accusing finger on her father, and had also spoken on oath about the nature of abuse, still the Court may not ignore its duty to correlate and corroborate every material pieces of whatever evidence which the prosecution has made available. After all the burden of proof continues to rest with the prosecution to prove the guilt of the accused beyond all reasonable doubt, and the fact that the nature of the accusation involves a sexual assault does not exempt the prosecution to adopt a different standard of proof, argued the counsel.
- d) It is unassailable that the Hon'ble Supreme Court had held that a solitary evidence of a victim of sexual assault is sufficient to prove the crime, but the Court has also added a rider that such evidence of the victim



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must be of sterling character to sustain its ability to stand on its own strength.

- e) So far as the present case is concerned, argued the learned counsel, that the offence is said to have taken place in a two bed room apartment, a small one according to P.W.10, the mother-in-law of the accused, where nine persons, including P.W.2 were living at the relevant time. And the SOC at all times is the bed room of the accused (one of the two bed rooms in that 2BHK apartment). It is hence correlating the evidence of P.W.2 with other evidence on record may not be avoided, and the internal inconsistencies that they exhibit should not be ignored while ascertaining if the prosecution had established the guilt of the accused beyond all reasonable doubt

7.1 The learned counsel would submit:

- a) Of the witnesses who were examined by the prosecution, evidence of P.W1 and P.W.2 alone are the most relevant. And evidence of P.W.3, P.W.10 and P.W.11 set the right pieces of evidentiary fact which are critical for the possibility of the occurrence.
- b) Turning to P.W.1's evidence, in her Ext.P1 complaint, which she had



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preferred on 13.06.2012, she does not give any specific date or month since when the accused had begun abusing her daughter. However, she states that about six months prior to the date of complaint, the accused had ran his hand all over the body of P.W.2. This approximately fixes the time of commencement of the alleged sexual abuse in January, 2012. In her chief examination, P.W.2 has also deposed that the alleged abuse had commenced in January, 2012. The complaint further states that it continued till March, 2012, and between the said three months, the father had abused his daughter several times. Both Ext.P1 and P.W.2 speak to this fact.

c) In the context of possibility of an offence of this nature happening several times over a period of time, following evidence becomes critical:

- It is a two-bedroom apartment, in which one bedroom was occupied by the accused and his family of four, which included his wife (P.W1), his 14 year old daughter (P.W.2) his 16 year old son P (name screened, who was not examined). P.W.10, the mother of P.W.1 (and the mother -in-law of the accused), states that it is a small apartment and P.W.1 admits that it is a



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rented one. And, both P.W.1 and P.W.10 admit that there is a cot inside that bed room of the accused.

- In the second bedroom, the brother of the accused and his wife have been living. Besides them, the parents of the accused have been living along with a certain Dimple, the 30 year old sister of the accused. This implies that in a small 2 BHK apartment, there were 7 adults and two children namely P.W.2 and her elder brother P were living as a joint family. Of these nine, including P.W.1 at least there were four adult women in the house. They are P.W.1 (mother of the victim), her sister-in-law (wife of accused brother Nithesh), D.W.3, the mother of the accused (mother-in-law of P.W.1), and Dimple, the sister of the accused (sister -in-law of P.W.1).
- The SOC on all the occasions when P.W.2 was said to have been abused was the bedroom of the accused. Ext.P1 complaint indicates it, and both P.W.1 and P.W.2 very categorically speaks about it in their cross examination.

7.2 This is the setting. And, the possibility of the offence happening in this



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over crowded apartment needs to be ascertained, where there are multiple versions:

- a) P.W.1 says, she along with her daughter P.W.2 and son P would be sleeping in the bed room, that the accused would enter the bed room well past midnight and require both the children to go to the hall and sleep, but of late, he had only required his son to go and sleep in the hall;
- b) P.W.2, (the alleged victim girl) in her evidence would depose that her father would return home after his day's work at 10 p.m. and that before his return, both she and her brother P would sleep in the hall, that indeed they would go to sleep even at around 8.30 p.m., that her mother (P.W.1) herself would go to sleep by 9 p.m. She then changed it and has deposed that she, her brother and mother would sleep in the hall at around 11 p.m. But, it is not even the case of P.W.1 that she was not sleeping in the bed room.
- c) P.W.2 would further depose that she was abused only in the bed room, that after she was abused she would come back to the hall.
- d) P.W.10, the mother of P.W.1 would depose that at around 2.30 in the night, P.W.1 along with her son P would leave the bed room,

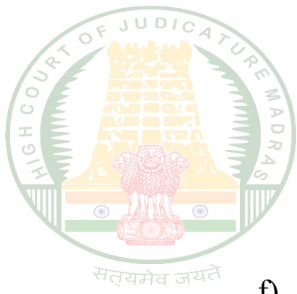


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implying thereby that only P.W.2 would be in the bed room, something P.W.1 did not speak. While P.W.10's testimony can only be a hearsay evidence for her source of information could well be from her daughter P.W.1, what it highlights is how each one who knew something about the allegation either directly or otherwise kept improving their statements on a simple fact as to where P.W.1, P.W.2 and P slept. That the witnesses should assume a wobbling stands on what appears as an innocuous fact assumes significance in the context of ascertaining the opportunities, which P.W.1 or any other adult inmates of the apartment have had to know about the alleged nocturnal behaviour of the accused towards his daughter. After all, the crime, according to the prosecution, was not an one-off happening but was repeated assaults over a period of about three months.

- e) But irrespective of where P.W.1 and P.W.2 had actually slept, the fact remained that on all occasions when the accused was said to have sexually abused his daughter, P.W.1 was inside the bedroom, sleeping. And, in her cross-examination, P.W.1 had admitted that she was not on a sleeping-pill.



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- f) Next to the nature of very abuse. The accusation in Ext.P1 complaint was that the accused used to lift the night garments of P.W.2, feel her private parts, and also suck her breasts. Could it have happened every time without P.W.2 ever realising it, or P.W.1 did not ever getting disturbed even if she was in deep sleep, at least once? After all P.W.1 was sleeping in the same cot, and she was not on a sleeping pill. If ordinary course of human conduct is not discarded as the basis for appreciating evidence, then the specific overt act as attributed to the accused by the prosecution is not incapable of being noticed at least by P.W.1.
- g) The next fact is whether P.W.2 did not realise the seriousness of what was happening to her at the hands of her father immediately? According to prosecution, she realised it only in March, 2012, when a news item in an English daily became the subject matter of discussion among her classmates in the school. But this is belied by at least two facts. First, P.W.2 herself concedes that (i) she knew what was happening to her was inappropriate even on day one; (ii) she had attained puberty at the relevant time, and since was studying in a co-education school then, her mother had given a broad instruction how



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she should conduct herself. Secondly, in the complaint it is averred that after P.W.2 was abused (regularly) she would walk out of the bed room angrily, which implies she knew what was happening to her was bad; and thirdly P.W.2 had deposed that she would first sleep in the hall, then go to the bed room and would thereafter return to the hall after the accused has abused her for the day, and significantly she states that her mother (P.W.1) had enquired her as to why she would go to the bed room.

- h) Therefore the theory that P.W.2 realised that she was abused for the first time only in March, 2012 when a news item in an English daily (which she refers to as 'The Hindu') could not be true.

It is difficult to believe that a young girl, aged 14 years, and who was duly instructed as to how she should behave as she was in a co-education school in the city, would not share her agonising experience with anyone – her mother, two aunts and grandmother, or friends or teachers, for the next three months even after she knowing that she was being abused from the first day, literally makes the prosecution case in serious doubt. And, going by Ext.P1 complaint or testimony of P.W.2, the child was not seen to be in any grave threat or



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intimidation from her father should she shared with others what was happening to her.

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7.3 Turning to the investigator's approach to the case, the learned counsel argued:

- a) From the date of first occurrence, the complaint was delayed by six months. From about the time when P.W.1 walked off from her matrimonial house sometime in March, 2012 (the exact date differs if the testimonies of witnesses is are analysed), then Ext.P1 complaint was delayed anywhere between two and a half months to three months. This delay was not explained.
- b) And, P.W.11, the IO, did not ascertain the truth of the news item said to have been published in the English daily, which according to P.W.1 and P.W.2 had triggered a discussion among the schoolmates or classmates of P.W.2 about sexual abuse of a child by her father. Ext.P1 does not name the daily, whereas P.W.2 would say it was in 'The Hindu' where the said news item was published. If the girl knew that she was abused on day one when it had happened sometime in January, 2012, then the alleged news item in 'The Hindu' could not have been the reason for her



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to realise it. Is this newspaper story invented to explain the delay or a cover up for some other underlying issue between the spouses?

7.4 The last point is why should P.W.1 use her child to level a serious accusation such as the one alleged against the accused? The learned counsel argued:

- a) the family of the accused is a middle class family, that they were living only in a rented apartment, whereas P.W.1 hails from a relatively more affluent family though might not be rich. And, P.W.1 had been living in a joint family with her children for more than 16 years, and she wanted a separate home, which the accused had been resisting. This has triggered major differences between the couple, so much so that both P.W.1 and the accused had met Thiru. Maradia, an octogenarian Advocate (now no more) and a much respected person in the Jain community. P.W.1, admits that she had met Mr. Maradia after the incident, which is partly corroborated by P.W. 3 during his cross examination. P.W.11, the IO also admits that in the course of her investigation, she came to know about the couple's meeting with Maradia, but has deposed that she did not think that interrogating



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Thiru.Maradia was necessary. Given the inconsistencies in the case of the prosecution, examining Maradia was necessary, but the appellate court has held that the accused could have examined him. The thumb rule in criminal trial is to presume that an accused is innocent till the guilt is proved beyond reasonable doubt, and not vice versa, and given the fact that P.W.11 had come to know about Maradia's role, which had happened after P.W.1 had left the company of her husband, it is the prosecution which should have examined him as a witness.

- b) Secondly, without disclosing to any, P.W.1 had secretly obtained admission for P.W.2 in S-School (name of the school screened as it might enable tracing the identity of P.W.2) at Purasaiwakkam where the parents and the brother of the P.W.1 were living, even on 01.02.2012. D.W.1 the Principal of the said S-School speaks to this fact through Ext.D1. If according to the prosecution till March, 2012, neither P.W.2 had realised the seriousness of what her father had been doing to her, nor P.W.1 had known it, why at all should P.W.1 arrange for a seat in a school of which D.W.1 was the Principal? Here, P.W.3, the brother of P.W.1, would depose that they had



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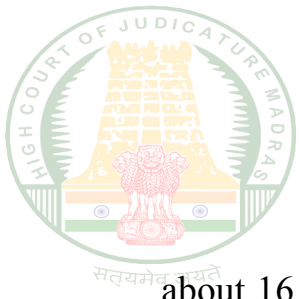


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secured admission in the S-School essentially to save the child (P.W.2) from her father, but how did they know that the child must be saved from the accused at least one month even before the child itself had realised that she was being abused? When the prosecution has an obligation to ensure that its case does not leave loose ends, the appellate court cast the burden on the accused.

- c) This apart, till 12th June, 2012, both the accused and P.W.1 were in touch through cellphonic conversation, and on the very next day (13.06.2012) the complaint was laid. Indeed, P.W.1 had admitted to this conversation in her cross-examination, though without pointed reference to the date. The accused as D.W.5 himself has deposed about it with the date, and this part of his testimony was not cross-examined. Does not the behaviour of P.W.1 appear strange under these circumstances?

8. Heard the learned Prosecutor and also the counsel for P.W.1, the respondent in Crl. R.C.No.1059/2018. The prosecutor explained the gravity of the offence and argued that no mother from a noble family would ever make a daring statement risking the honour of her minor daughter, nor the girl, who was



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about 16 years when she testified before the Court would have put her honour in peril when she testified to what she had testified. Relying on the dictum in *State of Rajasthan Vs Biram Lal* [(2005) 10 SCC 714], the learned Prosecutor argued that when once the victim points a finger at someone who offended her dignity sexually, it deserves utmost respect and consideration and can be acted upon without any corroboration. These are the offences that chiefly take place in the secrecy of privacy and often in darkness. Therefore, only the victim of the crime knows who the offender is. So far as the present case is concerned, why should the daughter at all accuse her own father? And, for starting a separate home, will ever a mother and daughter make a serious allegation such the one they had made, unless it is true? The line of defence adopted is far too weak for the reasonable man of law to believe it.

Discussion & Decision:

9. First to the prelude statement on the accused's anxiety bullet-pointed in paragraph 6 above. It was a long, defensive and a cautiously manoeuvred prelude. It appears to be a fair reminder to the consciousness of the court that its conscience should not lose its sense of balance and neutrality and get swayed the way the emotion flows, since the content of the crime is sexual



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abuse of a daughter by the father. It is understandable. In a society that suffocates under the dense and inescapable layers of toxic public opinion of the uninformed, and at times the motivated, carefully manicured through the social media, the judges may also become an easy victim to believe in the guilt of the accused, when their duty is to presume his innocence. A judge's job is not easy. He is a human being after all, and unless he has trained his mind to forewarn himself not to let his conscience to be influenced by his own biases and prejudices, he may fall a victim to anything that may excite his emotions. More similar to the untrained human minds. The accused is worried (or is it his counsel?) that this Court may pre-judge the charge against him.

10. The allegation against the accused is that he had outraged the modesty of his own 14 year old daughter. For a lay person nothing can be a shocker than the depravity of a father's behaviour towards her. The social outrage will be instantly conveyed. However, the court may not react the way the social sentiments work. The society and its passion driven arm in the social media may instantly react and deliver its views, but the criminal jurisprudence understands an accusation only as an accusation, no matter what its contents are. Court therefore, cannot react. Its job is to stay neutral and not to take



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sides and kick the ball with the litigants, to draw an analogy from football, or be a by-runner for the prosecution for the latter to score its runs, if one prefers cricket to football. Dispassion and neutrality are Court's virtues. And this Court is conscious that its role is limited to ascertaining whether an accusation is established through admissible and relevant evidence which the prosecution has presented before it on the thumb-rule of '*ordinary course of human conduct*'. Court does not ask the question, '*how on earth an offence can happen?*', for it carries a moral overtone. Instead it probes if an offence could have happened the way it is told. It uses observable facts spoken to by the witnesses, scientific facts established through experts and spreads them on a plane coated with ordinary course of human behaviour and logic, to recreate the offence, forewarning all the time that it may neither supply nor supplant its own views of morality, emotional responses and impulses. For, the Court cannot react. It only responds.

11. The arguments on either side are carefully evaluated. It essentially revolves around appreciating the testimony of P.W.2 backed by the evidence of P.W.1 and ascertaining their believability in the company of other evidence. Prosecution advocates to trust P.W.2 even to the exclusion of other evidence,

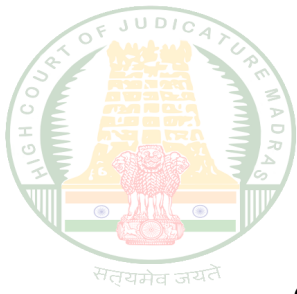


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whereas the accused pushes the opposite: Understand the testimony of the alleged victim in conjunction with available evidence. It suits its strategy, for it is seen on an endeavour to establish that the offence could not have happened the way it was presented through evidence.

12.1 Can the solitary statement of an alleged victim of a sexual assault accusing her father of sexual abuse be adequate enough to relieve the prosecution's burden to prove the guilt of the accused? As indicated earlier, the prosecution chiefly relies on: (a) the testimony of P.W.2, corroborated by her mother P.W.1; and (b) a presumption that in the ordinary course of human conduct, no woman or girl would risk wagering one's honour unless the allegation is true. Here, the following passage from **Biram Lal case** [(2005) 10 SCC 714] is significant:

“15. We, therefore, find it difficult to sustain the order of acquittal passed by the High Court in respect of the offence under Section 376 IPC. It is not the law that in every case version of the prosecutrix must be corroborated in material particulars by independent evidence on record. It all depends on the quality of the evidence of the prosecutrix. If the court is satisfied that the evidence of the prosecutrix is free from blemish and is implicitly reliable, then on the sole testimony of the prosecutrix, the

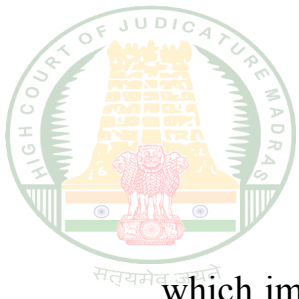


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conviction can be recorded. In appropriate cases, the court may look for corroboration from independent source or from the circumstances of the case before recording an order of conviction. In the instant case, we find that the evidence of the prosecutrix is worthy of credit and implicitly reliable. The other evidence adduced by the prosecution, in fact, provides the necessary corroboration, even if that was considered necessary. The High Court on a clear misreading of the evidence on record, acquitted the respondent of the charge under Section 376 IPC while upholding his conviction under Section 450 IPC. “

This ratio is followed in ***Tasleem @ Pappu Vs State (NCT Govt. of Delhi)***, [2011 SCC OnLine Del 1214]; ***Gudun and others Vs State of U.P.***, [2023 SCC OnLine All 696].

12.2 The adequacy of a solitary statement of a prosecutrix to fix an accused in cases of sexual offences is essentially limited to cases where the manner of commission of crime leaves no trail to corroborate it. If a man assaults a child or a woman sexually when she is alone, it will be near impossible to secure independent evidence to corroborate it. However, where the question is if an offence could have taken place set in the circumstances where the victim was not alone, then the Court cannot ignore other associated facts,



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which implies that the evidence of the victim will have to be tested if it syncs well with other evidence on material particulars. After all, dynamics of every crime vary. It is hence, the Supreme Court has cautioned that before relying on the solitary statement of the victim, it should be tested for its sterling quality, blemishlessness and durability in logical scrutiny. Hence, whether to act on the exclusive and uncorroborated testimony of a victim of a sexual crime depends largely on the facts of every case, and indeed it can even vary with every case.

12.3 If after due filtration of the testimony of the prosecutrix, its believability raises doubts, necessarily benefit of doubt should go to the accused, for the defence only needs to create a probability that the accusation of prosecution is improbable on evidence.

13.1 The legal plane is set, on which would be now tested the evidentiary facts.

The incontrovertible facts that emerge from the evidence are:

- a) That the family of the accused lived in a small 2BHK apartment in the congested Sowcarpet locality in the city. And at the relevant time, to be specific till P.W.1 walked off from the matrimonial home



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with her daughter P.W.2 and her son P, there were nine inmates in that small apartment. And of them, including P.W.1 there were four adult women.

- b) That the offence was alleged to have taken place only in the bed room of the accused over a period of three months, between January, 2012 to March, 2012. Testimony of P.W.2 coupled with allegation in Ext.P1 complaint renders an inference on this aspect possible. And curiously, P.W.11, the IO has not even cared to provide a rough sketch or observation magazar of the SOC for the benefit of the court.
- c) During the three months period, there were multiple sexual assaults – acts constituting molestation, on P.W.2. And it happened only during late nights since the accused had the habit of watching television for long hours during nights, and at all times P.W.1, the mother of the child was also in the same cot in the bedroom. And, the mother was not on sleeping pills.
- d) Now, contrary to the case of the prosecution (based on Ext.P1 complaint) that P.W.2 realised the gravity of what she was undergoing at the hands of her father only in March, 2012, after she had either read a news item in 'The Hindu', or happened to be part of



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a discussion on it by her classmates, in her cross examination she had deposed that she did realise the seriousness of what was happening to her even when it happened on the first occasion, and makes it certain that she realised it so at least two months prior the new item was published in the daily.

- e) Has she reacted to her horrible experiences? Ext.P1 complaint says that the girl '*would walk angrily*' from the bed room. She did react.
- f) There is no case that the girl was gloomy or psychologically affected or that she missed her school, which commonly occur when a girl is abused to her knowledge. But she says that she would go to school at 8 a.m. everyday in the morning.

13.2 But P.W.2 did allege that her father had misbehaved with her. And the accused questions that, given the major facts that are established by the prosecution (as enumerated above), in the ordinary course of human conduct, was there a possibility at all for a crime of this nature happening on multiple occasions over a period of three months? This now essentially requires this court to test the conduct of P.W.2 and P.W.1:

- a) If the girl knew that her father's nocturnal behaviour was not



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appropriate even in January, 2012, why the story of she realising it only in March, 2012 was invented by P.W.1?

- b) If the girl has started reacting angrily, how this young girl of 14 years could remain peaceful and passive like a zen monk for next couple of months, accommodating the same experience?
- c) As to where P.W.2 would ordinarily sleep goes, she comes with certain details which are irreconcilable with ordinary course of human conduct. She would depose, that she and her brother would sleep in the hall; then she would depose that she would go to the bedroom and sleep with her mother; and that after her father's misdeeds, she would again come and sleep in the hall. For a girl of 14 years, knowing well that her father's behaviour to her was inappropriate, why should she go to bed room from the hall and return to the hall after letting her father abuse her? It should not be forgotten that she was 16 years when she deposed.
- d) And to the more specific overt act, seriously distasteful, if the allegation is that the accused had lifted the night dress of P.W.2 and felt her private parts and also sucked her breasts, how come P.W.1, the mother, who, as per her testimony was not on any sleeping pill,



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was not disturbed by the acts allegedly happening next to her in the same cot for three months? Ordinarily, mothers will have a natural instinct to protect their adolescent and puberty-attained daughters, and at most times they would be awake almost instinctively if there is any unusual movement in the cot where the daughter also sleeps? Does it not appear strange? But will a mother let her husband to sleep next to her daughter?

- e) Was the child under any serious threat not to divulge her bad experiences at the hands of her father? Indeed, the trial court has framed charges under Sec.506 (II) IPC, but the trial court had acquitted the accused of the said charges. Even otherwise, both Ext.P.1 and the testimony of P.W.2 only indicates that P.W.2 did not share what she was going through because her father had told her not to do so. Therefore, here is a 14 year old girl, who knew that her father was not behaving appropriately to her during nights, and was under no threat still has chosen not to share her experience with any of the four adult women in her house. It does appear strange and is not compatible with ordinary course of human behaviour.
- f) Was then the story of news item in 'The Hindu', dated sometime in



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March, 2012, triggering the consciousness of P.W.2 could it true?

Interestingly the IO did not care to produce the copy of the daily for the court to ascertain that the news item indeed could have triggered P.W.2 into action.

- g) Let it be presumed that P.W.2 realised the inappropriateness of her father's behaviour only in March, 2012, and no sooner, P.W.1 left the company of her husband. However, she was in cell-phonic conversation with him till a day before she lodged her Ext.P1 complaint on 13.06.2012. P.W.1 partially admits it in her cross examination, whereas when the accused deposed on it as D.W.5, he was not cross examined on the same. Again, given the ordinary course of human conduct, would a mother ever show interest to talk to a man who had misbehaved with her daughter for close to three months and till the day before she filed her complaint? Does it not indicate there should be something more than that which meets the eye?

Thus where the Court looks for certain behaviour consistent with ordinary course of human conduct, they were missing. And, where some facts could have been produced they were not. How then to act solely on the statement of P.W.2?



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14. Now this has to be co-related with another fact. Going back to prosecution line of the accusation, P.W.2 came to realise the significance of her father's improper behaviour only in March, 2012. But on 01.02.2012, new admission was obtained for her in a school nearer to the parental home of P.W.1. And P.W.3, the brother of P.W.1 would depose that it was obtained because the accused began following P.W.2. If it were true, that could have been only after P.W.1 had left the company of the accused along with her children, for it is not even the case of the prosecution that till P.W.1 stayed with her husband, the latter had stalked his own daughter. Is this a contradiction or a cover-up?

15.1 Now comes the line of defence: Both the accused and P.W.1 were at loggerheads in starting their separate home, and that they even consulted certain Maradia, an octogenarian advocate from the Jain community who commanded respect among the community-members. P.W.1 concedes to it. P.W.3 also knew something about it. And interestingly P.W.11, the IO also knew about it. Was it not then appropriate for the IO to have interrogated Mr.Maradia, more so because P.W.1 was on cell-phonic talks with her husband till the day before her complaint.



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15.2 Here the learned Sessions Judge had observed: (a) for as petty and silly a reason as a dispute over commencing a separate home, no woman would wager on her daughter's honour; (b) that if the petitioner/accused was keen then Maradia should have been examined by him on his side.

15.3 So far as these two aspects are concerned, merely because the defence has failed to establish the motive for what it may term as a pre-cooked accusation, it does not imply that the prosecution is relieved of its burden in law to prove the guilt of the accused beyond all reasonable doubt. Prosecution at all times must be fair, and when P.W.1 was on talking terms with the accused till the day previous to the day on which she laid her complaint, it is only appropriate for the IO to ascertain every facts associated therewith, instead of rushing with a final report based on a half-hearted investigation to give the dog a bad name and to hang it.

16. To sum up, P.W.2 had spoken to what she had spoken: that her father behaved most inappropriately during nights. And P.W.1 supports her version. But when their evidence is read beyond the accusations levelled therein, and



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also in combination with other evidence, there arises a lingering doubt strong enough to suspect the possibility of the happening of the very crime. The accusation surely is serious but the prosecution's effort to establish it did not match it. While the opening statement to this case introduces P.W.2 as a victim of a shocking molestation of a young girl by her father, the closing chapter to this case seems to indicate that she is more likely to be a victim of psychological manipulation. This Court will never know who did it, for its assignment is only to evaluate if the evidence in this case establishes the guilt of the accused beyond all reasonable doubt. Here the prosecution fails by a fair distance.

17. Turning to the judgments of the appellate court and the trial court, it becomes apparent that they have evidently wondered why should PW2 be disbelieved, when they ought to have thrown up a question: Can P.W.2's accusation be believed? The difference is subtle but critical, since the former implicitly presumes the guilt of the accused whereas the latter tends to presume his innocence, something which the law mandates. If the Court were to start with a first impression based on P.W.2's version of the accusation, then it invariably will start discounting the other evidence on record as well as their



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inter-connect. What, in the opinion of this Court which the Courts below appear to have missed is that, by opting to believe P.W.2's version based on the presumption that a victim's statement need not be disbelieved, it omitted to ascertain whether her version fits in well with the circumstances in which the offence is alleged to have taken place. A common mistake which often seeps into the judicial consciousness while appreciating the evidence in cases of molestation or sexual assaults is the tendency to keep the victim's statement as a constant and to treat every other evidence as a variable, when ideally even the testimony of the victim should be treated as a variable. When appreciation of evidence commences with a belief in the version of the victim, then the mind tends to justify this belief, which may not let it to probe if an offence could have happened. And the premise that the victim's evidence is believable because she would not wager her honour unless the accusation is true is only a judicial statement in situations where corroborative evidence might not be available from the very nature of the crime, but it cannot be used as a rule of the thumb. It is hence the Supreme Court has cautioned that such evidence must be blemishless or unshakable. Here this court finds the courts below have been in error, which, as stated is a common mistake often done. After all an



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accused only needs to establish so much of facts as are adequate to create an improbability of the prosecution case happening, for an accused need not prove his defence beyond all reasonable doubts. When P.W.2's statement is maintained as a constant, defence may not be able to establish the improbability of the prosecution case. It is precisely for this reason this Court was constrained to discuss the evidence and chose to interfere with the judgment of the appellate court.

18. In conclusion, this Court allows both the revisions and the judgment passed against the revision petitioner/accused by the learned XVII Additional Sessions Judge, Chennai, in C.A.No.168/2017 and C.A.No.231/2017, both dated 07.09.2018 confirming the judgment of the learned III Metropolitan Magistrate, George Town, Chennai, in C.C.No.1873/2012 dated 22.06.2017, is set aside and the revision petitioner is discharged of all the charges levelled against him. The fine amount if any has been paid is directed to be refunded to the revision petitioner.

18.12.2024

Index : Yes / No

Neutral Citation : Yes / No
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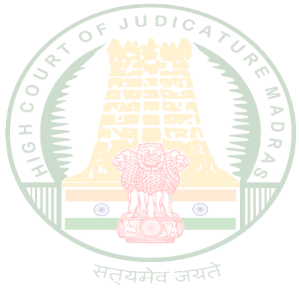


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To:

- 1.The III Metropolitan Magistrate,
George Town, Chennai.
- 2.The XVII Additional Sessions Judge
Chennai.
- 3.The Public Prosecutor
High Court, Madras.



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N.SESHASAYEE.J.,

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Pre-delivery order in
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18.12.2024