

Vinodan, vs State of Kerala,

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Court : Kerala

Decided On : Jun-30-2020

Judge : Honourable Mr. Justice P.B.Suresh Kumar

Appeal No. : CRL.A/1477/2019

Appellant : Vinodan,

Respondent : State of Kerala,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR
TUESDAY, THE 30TH DAY OF JUNE 2020 / 9TH ASHADHA, 1942
CRL.A.No.1477 OF 2019 AGAINST THE JUDGMENT IN SC 751/2016
DATED 20-11-2019 OF ADDITIONAL SESSIONS COURT, KOZHIKODE
CRIME NO.174/2016 OF Meppayur Police Station, Kozhikode

APPELLANT/ACCUSED : VINODAN, AGED 43 YEARS, S/O.KANNAN,
MARUTHERIPARAMBATHU, NARAKKODE, KEEZHARIYOOR (P.O.),
PIN - 673 307, KOZHIKODE. BY ADVS. SRI.SANTHARAM.P
SMT.REKHA ARAVIND SRI.PAUL P. ABRAHAM
RESPONDENT/COMPLAINANT : STATE OF KERALA,

REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM - 682 031. BY SMT.PUSHPALATHA M.K., SR.PUBLIC PROSECUTOR THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 30-06-2020, THE COURT ON 30-06-2020 DELIVERED THE FOLLOWING:

P.B.SURESH KUMAR, J.

----- Dated this the 30th day of June,
2020

JUDGMENT

The first accused in S.C.No. 751 of 2016 on the files of the Additional Sessions Court, Kozhikode has come up in this appeal challenging his conviction and sentence in the said case.

2. The second accused in the case was absconding

and as such, he was not tried. The third accused in the case is a 'child in conflict with law' (the child) in terms of the Juvenile Justice (Care and Protection of Children) Act, 2015 and the enquiry against him under the said statute is stated to be pending.

3. The victim in the case is a minor boy. The

accusation in the case is that on 18.05.2016, at about 19.30 hours, the second accused and the child took the victim boy to the premises of a school where the first accused has committed penetrative sexual assault on him with the active assistance of the child and the second accused. The offences alleged are the offences punishable under Section 3(d) read with Section 4 and Section 5(g) read with Section 6 of the Protection of Children from Sexual Offences Act, 2012 (the POCSO Act).

4. On the appellant pleading not guilty of the

charges, the prosecution examined 11 witnesses as PW1 to PW11 and proved Exts.P1 to P17 documents. The appellant was, thereupon, questioned under Section 313 of the Code of Criminal Procedure (the Code) as regards the incriminating evidence brought out by the prosecution. The appellant denied the same and maintained that he is innocent. Since the trial court did not consider the case to be one fit for acquittal under Section 232 of the Code, the appellant was called upon to enter on his defence. The appellant did not adduce any evidence.

5. Among the witnesses examined on the side of the prosecution, PW1 is the doctor who examined the first accused and

issued Ext.P1 potency certificate. PW2 is the Secretary of the Grama Panchayat who issued Ext.P2 ownership certificate in respect of the school building within which the accused have allegedly committed the offences. PW3 is the Headmaster of the school where the victim boy was pursuing his studies. PW3 has proved Ext.P3 extract of the school admission register containing the date of birth of the victim boy. PW4 is the victim boy. He has proved Ext.P4 First Information Statement. PW5 is the mother of the victim boy. PW6 is the doctor who examined the victim boy and issued Ext.P5 wound certificate. PW7 is the Village Officer who issued Ext.P6 site plan. PW8 is a person residing in the neighbourhood of the house of the victim boy through whom, the Public Prosecutor has proved Ext.P7 and Ext.P7(a) contradictions. PW9 is the witness to Ext.P8 scene mahazar. PW10 is the witness to Ext.P9 seizure mahazar. Through PW10, the Public Prosecutor has proved Ext.P10 contradiction. PW11 is the Investigating Officer

in the case. PW11 has proved registration of Ext.P11 First Information Report, Ext.P12 arrest and inspection memos of the first accused, Ext.P13 arrest and inspection memos of the second accused, Ext.P14 report indicating the particulars of the accused, Ext.P15 property list, and Exts.P16 and P17 kychits.

6. On an examination of the materials on record, the

court below found that the appellant is guilty of the offences punishable under Section 3(d) read with Section 4 and Section 5(g) read with Section 6 of the POCSO Act. Upon the said finding, the appellant was convicted and sentenced to

undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.25,000/- and in default of payment of fine, to undergo rigorous imprisonment for one year for the offence punishable under Section 3(d) read with Section 4 of the POCSO Act. Similarly, the appellant was sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.25,000/- and in default of payment of fine, to undergo rigorous imprisonment for one year for the offence punishable under Section 5(g) read with Section 6 of the POCSO Act. The court below also ordered the substantive sentences imposed on the appellant to run concurrently.

7. Heard the learned counsel for the appellant as also the learned Public Prosecutor.

8. The learned counsel for the appellant contended, at the outset, that in a case of this nature, it is obligatory for the prosecution to prove the age of the victim boy. According to the

learned counsel, the age of the victim has not been proved conclusively by the prosecution. Placing reliance on the decision of the Apex Court in *Ravinder Singh Gorkhi v. State of U.P.*,

(2006) 5 SCC 584 and the decision of this Court in *Chandran v.*

State of Kerala, 2013 KHC 469, the learned counsel submitted that the extract of the school admission register containing the date of birth of the victim boy cannot be accepted as conclusive evidence of the age of the victim boy. According to the learned counsel, in a case of this nature, where the prosecution is placing reliance on the extract of the school admission register of the person concerned, it has to adduce, in addition, oral evidence of the person at whose instance the date of birth of the person

concerned was entered into the school admission register. It is argued that it is only then the school admission register can be admitted as conclusive proof of the age of the person. According to the learned counsel, in the absence of any such evidence, the court below ought not have accepted the case of the prosecution

that the victim is a child within the meaning of the POCSO Act. The conviction of the appellant, in the circumstances, is liable to be set aside on that sole ground, submits the counsel. It was pointed out by the learned counsel that the victim boy has deposed that he did not tell his mother that he was in the company of the child when she called him while riding the bike with the child. According to the learned counsel, it is evident from the said deposition that the victim boy was hiding his company with the child from his mother. It was argued by the learned counsel that since the child and others have dropped the victim boy back at home after consuming liquor, it can be inferred that the victim boy has falsely implicated the child and the accused in a case of this nature, to save his face in front of his mother.

9. Per contra, the learned Public Prosecutor, placing

reliance on the decision of this Court in *Maju @ Manu v. State of Kerala*, 2020 (3) KHC 22, submitted that in the absence of any contrary evidence, the school admission register can certainly be accepted by the court as conclusive evidence of the age of the person. It was argued that the appellant has neither adduced any evidence to prove the age of the victim boy, nor established that the age of the victim boy shown in the school admission register is

incorrect. In the said circumstances, according to the learned Public Prosecutor, there is no merit in the contention taken by the counsel for the appellant as regards the age of the victim boy. It was also contended by the learned Public Prosecutor that the evidence tendered by the victim boy in the case is natural and consistent with other materials on record and therefore, the court below cannot be found fault with for having convicted the accused based on the said evidence alone.

10. Having heard the learned counsel for the parties

on either side and having perused the materials on record, it is seen that the point arising for consideration is as to whether the prosecution has established the guilt of the accused under Section 3(d) read with Section 4 and Section 5(g) read with Section 6 of the POCSO Act.

11. Before dealing with the contentions advanced by the learned counsel for the parties, it is necessary to refer to the evidence in the case. As noted, the victim boy was examined in

the case as PW4. He deposed that he was studying in Akshara College for Plus Two course during 2016. He deposed that while he was standing in the bus stop near his house in the evening hours of 18.05.2016, the child who is his friend and another person came to that place in a bike and required him to get into the bike for a ride. He deposed that he got into that bike, and by about 7 O'Clock in the evening, the child and the person accompanied him stopped the bike at a place informing him that the bike has broke down. He deposed that after keeping the bike in the nearby ground, the child called someone over telephone. He deposed that after sometime, the appellant came to the scene. He deposed that the appellant

and the second accused had consumed liquor thereafter. He deposed that later, all of them together took him to a vacant class room in the nearby school, removed his clothes and the first accused then applied his mouth to his penis. He deposed that it was painful for him and he cried aloud. He deposed that thereafter accused Nos.1 and 2 and the child took him in an autorickshaw and dropped him near his house. He deposed that when he was dropped near his house, his mother and a few others were waiting

near his house. He deposed that his mother and others were searching for him then, as he did not return home in the usual time. He deposed that he narrated the occurrence to his mother after some time. He deposed that later, a complaint was lodged to the police. He identified Ext.P4 First Information Report. Though PW4 was cross-examined thoroughly by the counsel for the appellant, nothing was elicited from him, which would discredit the material part of his testimony.

12. PW5, the mother of the victim boy deposed that

the victim boy used to return home normally by about 7 O' clock. She deposed that on 18.05.2016, the victim boy did not return home in the usual time and he did not even attended the phone when called. She deposed that when she went in search

of the victim boy along with her younger son, she saw PW8 on the street

and accordingly, she informed the matter to PW8. She deposed that PW8 then asked her to wait near her house and proceeded with her younger son in search of the victim boy. She deposed that she learnt that after fifteen minutes, somebody dropped the victim boy near her house in an autorickshaw. She deposed that since satisfactory answers were not given by the persons who have dropped the victim boy, the people in the locality informed the matter to the police and the police took them into custody, after leaving the victim boy to the custody of his mother. She deposed that the victim boy was looking sad and when she questioned him, he stated that the child and the second accused brought a driver to the school where they were waiting and they did something on him, after removing his dress. As in the case of PW4, though PW5 was also cross-examined, nothing was brought out to discredit the evidence tendered by her that the victim boy did not return home on the relevant day as usual and that he was dropped by somebody in an autorickshaw while she was searching for him.

13. PW8, a neighbour of the victim boy has deposed

that he has seen the mother of the victim boy and others searching for the victim boy on the date of occurrence when he was coming back home after closing his shop. He deposed that while they were talking, an autorickshaw came to the scene, in which he found the victim along with the child and two others. He also deposed that when he questioned the victim boy then, he told him that he went for learning driving. He deposed that as the answer given by the victim boy was found suspicious, he called the police and the police took the people who came in the autorickshaw to drop the victim boy into custody, after leaving the victim boy to the custody of his mother. It is seen that earlier while questioning, PW8 informed to the police that he knows all the three persons who came in the autorickshaw and that he came to know later that they have abused the victim boy. Since PW8 did not say so in his evidence, he was declared hostile by the prosecution and cross examined with the permission of the court and the aforesaid contradictions have been marked. PW11 is the Investigating Officer. PW11 has admitted in his evidence that the accused have been taken into custody by the flying squad during

their patrolling on a complaint from the local people. The appellant is not attributing any motive to the victim boy or to his family for

implicating him in such a case. In the circumstances, if the evidence tendered by the victim boy is analysed in the background of the evidence tendered by his mother, PW5, the neighbour, PW8, and the Investigating Officer, PW11, it can be seen that the same is natural, truthful and consistent with the other evidence in the matter. There is absolutely no merit in the contention that the victim boy has falsely implicated the child and the other accused in a case of this nature to save his face in front of his mother, for, according to me, it was not necessary for the victim boy to narrate an incident of the instant nature, merely for the purpose of convincing his parents that he was not in a wrong company. I am, therefore, inclined to accept the contention of the learned Public Prosecutor that the evidence tendered by the victim boy is credible and acceptable.

14. I shall now deal with the contention taken by the

learned counsel for the appellant as regards the proof of the age of the victim boy. True, the entry as regards the date of birth of a person in the school admission register cannot be accepted to prove the age of the person concerned. However, in the light of the decisions of the Apex Court in *Jarnail Singh v. State of*

Haryana (2013) 7 SCC 263 and *Mahadeo v. State of Maharashtra* (2013) 14 SCC 637 and the provisions contained in the Juvenile Justice (Care and Protection of Children) Act, 2015, this Court in *Maju @ Manu* held that in the absence of any evidence to the contrary, even a certificate prepared based on the school admission register can be accepted as a conclusive proof of the

age of the victim. In the case on hand, there is no contrary evidence. In the circumstances, the contention raised as regards the age of the victim boy is also rejected. In the result, the appeal is dismissed. Sd/- P.B.SURESH KUMAR, JUDGE rkj

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