



Crl.A.No.35 of 2018

IN THE HIGH Court OF JUDICATURE AT MADRAS

DATED : 19.09.2023

CORAM:

The Honourable MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.A.No.35 of 2018
and
Crl.M.P.No.14934 of 2023

Raj Kannan

...Appellant/Accused

-Vs-

State of Tamil Nadu
Represented by Inspector of Police
Sooramangalam All Women Police Station,
Salem District,
Crime No.13 of 2014

...Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, 1973, to call for the records relating to the proceedings in Spl.S.C.No.2 of 2015 on the file of the learned Sessions Judge, Fast Track Mahila Court, Salem and set aside the order of conviction dated 27.12.2017 and set the Appellant at liberty and pass such further order.

For Appellant : Mr.T.Sai Krishnan

For Respondent : Ms.G.V.Kasthuri
Additional Public Prosecutor



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JUDGMENT

WEB COPY The Appellant is the sole Accused in Spl.S.C.No.2 of 2015 dated 27.12.2017 on the file of the learned Sessions Judge, Fast Track Mahila Court, Salem.

2. The Trial Court, vide impugned judgment dated 27.12.2017, has convicted the Sole Appellant/Accused as follows : -

Conviction under section	Sentence Awarded
417 IPC	To undergo one year of rigorous imprisonment and to pay a fine of Rs.10,000/- and in default, to undergo three months simple imprisonment.
406 IPC	To undergo three years of rigorous imprisonment and to pay a fine of Rs.1,00,000/- and in default, to undergo six months simple imprisonment.
506 (1) IPC	To undergo two years of rigorous imprisonment and to pay a fine of Rs.10,000/- and in default, to undergo three months simple imprisonment.
10 POCSO Act, 2012	To undergo five years of rigorous imprisonment and to pay a fine of Rs.25,000/- and in default, to undergo six months simple imprisonment.

Accused is not found guilty of the offence under Sections 294(b) of IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, 1998, and acquitted under Section 235(1) of Cr.P.C. The Trial Court



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ordered the sentences to run concurrently and has also set off the period of incarceration undergone by the Accused during investigation/trial under Section 428 Cr.P.C..

3. The challenge in this Appeal is to the above said judgment of the learned Sessions Judge, Fast Track Mahila Court, Salem.

4. The brief facts, which are necessary for the disposal of this Criminal Appeal, are as follows:-

4.1. P.W-1 was already married and had two daughters. She was working as Accountant at Jayanthi Industries, Coimbatore. The husband of P.W-1, Velusamy, was working as driver. There had been dispute between the husband and wife. The husband of P.W-1 had driven her out of the matrimonial home along with her younger daughter, who is the victim, P.W-2 in this case. After such incident, the elder daughter was staying with the husband of P.W-1.

4.2. P.W-1 was working at Jayanthi Industries as Accountant and the Accused was serving as Manager in the very same Company (Jayanthi Industries, Coimbatore). In due course of time, on coming to know that P.W-1 is living separately from her husband, the Accused is alleged to have



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made advance to P.W-1. Considering her client sympathy, the Accused is alleged to have offered to marry her and look after her minor daughter as his own daughter. On that pretext, P.W-1 claims that the Accused married her in Koniamman Temple in Town Hall, Coimbatore, in the presence of younger daughter, P.W-2 (victim). After the marriage of P.W-1, the Accused took out rental house at Indira Nagar, Kurangu Chavadi, Salem and had been residing as husband and wife. In the course of such co-habitation, the Accused, Raj Kannan, was working as a Manager in Jayanthi Industries, Coimbatore. He used to go for his job from Salem towards Coimbatore. Subsequently, he represented to P.W-1 that his father is starting business in Coimbatore and that he wanted to develop the business and made such representation. He obtained Rs.2,00,000/- from P.W-1 and her jewels weighing 30 sovereigns for his business purposes. Subsequently, there had been changes in his behaviour towards P.W-1. On 01.02.2014, when P.W-1 went for shopping, the victim, P.W-2, daughter of P.W-1 and the Accused were at home. On her return, she found her daughter P.W-2 weeping. On enquiry, she came to know that he had attempted to misbehave with her daughter, P.W-2. Therefore, she confronted him and sent him out. She had not informed this occurrence to anyone. Subsequently, she contacted Accused on his mobile and requested to return her jewels and



money. For this, the Accused is alleged to have abused her in filthy language. Also, he is alleged to have threatened her. She demands the money and jewels back. Also, he is alleged to have threatened her that he had recorded the videos of the mother and daughter taking bath and he will release it on the internet and expose them. On her enquiry, P.W-1 came to know that prior to her marriage with the Accused, he had married one Velumani, through whom he had minor son. After contracting marriage with P.W-1 and getting her jewels and money, the Accused had contracted the third marriage. Therefore, she had lodged the complaint under Ex.P-1 to the Inspector of Police, All Women Police Station, Suramangalam.

4.3. The Inspector of Police, All Women Police Station, Suramangalam, on receipt of the complaint under Ex.P1, had registered the case in Crime No.73 of 2014 for the offences under Sections 417, 406, 294(b), 506(ii) of IPC and proceeded with the investigation.

4.4. On completion of the investigation, P.W-7 Investigation Officer had laid the final report before the learned Judicial Magistrate. She had arrested the Accused and produced him before the Court.



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4.5. The learned Judicial Magistrate had committed the case to the Court of the learned Sessions Judge, Fast Track Mahila Court, Salem. The Accused was furnished with copies of the final report. After hearing the arguments of the Prosecution and the defence, the learned Trial Judge had framed the charges under Section 417 of IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, 1998, Sections 406, 294(b), 506(2) of IPC and Section 10 r/w Section 9(N) of POCSO Act, 2012. The Accused denied the charges. Therefore, the learned Trial Judge ordered trial. The Prosecution had examined witnesses P.W-1 to P.W-7 and marked documents under Exs.P-1 to P-14.

4.6. P.W-1 is the *De-facto Complainant*, P.W-2 is the victim/daughter of P.W-1. P.W.3 is the Mahazar witness of observation mahazar under Ex.P-2 and rough sketch under Ex.P-6. P.W.4 is the landlord of the house, where P.W-1 and the Accused reside as husband and wife. P.W-5-Vijay is the witness to the arrest of the Accused. P.W-6 is the Assistant Headmistress of SSRM Higher Secondary School, Salem, where P.W-2, daughter of P.W-1 was studying. She had furnished the admission register maintained in the School regarding the date of birth of P.W-2. P.W-6 had stated that the date of birth of P.W-2 was 07.03.1999, as per the School



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register, and she had issued *Bona fide* Certificate under Ex.P-4. P.W-7 is the Investigation Officer/Inspector of Police, All Women Police Station, Sooramangalam, Salem. Based on the investigation, P.W-7 had laid the final report.

4.7. After completion of the Prosecution evidence P.W-1 to P.W-7, Accused was examined under Section 313 of the Cr.P.C. The Accused denied the incriminating evidence against him. The case was posted for defence witnesses – D.W-1 to D.W-5.

4.8. D.W-1 is the Liaison Officer and Tahsildar of the National Highways Authority of India, Salem. He was examined on behalf of the Accused regarding the defence of the Accused that on the alleged date of occurrence and alleged time of occurrence, he was driving the car bearing Registration No.TN-37-B-8879. He stated that six cars had crossed the toll plaza on National Highway Road on 01.02.2014, by 6.10 p.m. from Coimbatore to Salem. D.W-2 is the Senior Manager of the National Highways Authority of India. He was examined by the Accused regarding the defence of the Accused that between 5 p.m and 6 p.m on the alleged date i.e., on 01.02.2014, the Accused was driving the car. D.W-3 is the Inspector



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of Police, All Woman Police Station, Sooramangalam, Salem. She was examined regarding the arrest of the Accused and the entries in the register maintained in the Police Station. D.W-4 is the Executive Officer of Konniamman Temple in Town Hall, Coimbatore. He was examined by the Accused regarding the management of the Temple as to whether it is under the Hindu Religious and Charitable Endowment Department, and whether any marriages are performed in Konniamman Temple. D.W-5 is the Accused, he himself recording deposition and stated that he worked as Manager in the Company where P.W-1-Selvarani was worked as Accountant at Jayanthi Industries, Coimbatore. The ex-husband of P.W-1-Velusamy, was working as Driver in the very same Company. Also, there had been dispute between them. Due to that, both of them left the same organisation. During the time when she was employed in Jayanthi Industries, she had borrowed money from the Accused which accumulated to Rs.6 lakhs. When the Accused sought return of the loan amount, she is alleged to have preferred the complaint against him as though the Accused had married her and had also attempted to misbehave with her daughter. As per the deposition on 01.12.2014, between 4.30 p.m. and 6 p.m., he was driving his car bearing Registration No.TN-37-B-8879 (Maruthi 800) from Coimbatore to Salem. The report is marked as Exs.D-3 to D-13.



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4.9. On assessment of evidence, the learned Trial Judge convicted the Accused for the offences under Sections 417, 406, 506(1) of IPC and Section 10 of POCSO Act and acquitted of the offences under Section 294(b) of IPC and 4 of the Tamil Nadu Prohibition of Harassment of Woman Act.

5. Learned Counsel for the Appellant submitted that the Appellant had been convicted by the learned Sessions Judge, Fast Track Mahila Court, Salem, in Spl.S.C.No.2 of 2015 dated 27.12.2017. Aggrieved by the same, the Sole Accused had preferred this Appeal.

6. It is the submission of the learned Counsel for the Appellant that in the complaint under Ex.P-1, there is no offence attracting ingredients of POCSO Act. Also, in the evidence of P.W-1, she had stated about the alleged occurrence. As per the complaint, the alleged occurrence took place on 01.02.2014 whereas the complaint was lodged only on 16.05.2014. There is a delay of 104 days in lodging the complaint. Further, the learned Counsel for the Appellant submitted that on perusal of the evidence of P.W-1, the evidence of P.W-1 does not inspire confidence in an ordinary prudent manner and the learned Trial Judge had mechanically believed the evidence



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of P.W-1 and her daughter P.W-2.

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7. It is the case of the Complainant, P.W-1, that she had married the Appellant and at the time of marriage, she had a grown up daughter, and it is a case that she had divorced her husband. There is no proof regarding obtaining divorce from competent Civil Court. No document had been marked regarding the decree of divorce obtained from the competent Civil Court. As per the evidence, she had been living with the Accused in Salem in a rented house. In the course of such cohabitation, the Accused is alleged to have obtained 30 sovereigns of gold jewels from her and also Rs.2 lakhs from her (as per the complaint). In the evidence before the Court, she had developed her case by stating that the Accused had borrowed Rs.6 lakhs.

8. Learned Counsel for the Appellant invited the attention of this Court to the cross-examination of P.W-1. In the cross-examination, she states that the Accused married her at Koniamman Temple in Town Hall, Coimbatore in the presence of her 2nd daughter, P.W-2. In the elaborate cross-examination, she had evaded direct question confronting her regarding her earlier marriage. She was confronted with the photographs showing where she was with her earlier husband. She has been confronted



with the fact of identification of the jewels, that she is alleged to have given as loan for the development of the business of the Accused. She had answered in the cross-examination that she had not given description regarding 30 sovereigns of jewels. She admits that she had in the course of cohabitation, received amount from the Accused.

9. Learned Counsel for the Appellant also invited the attention of this Court to the fact that P.W-2 was not subjected to medical examination or the mandatory provision under POCSO Act by the Investigation Officer. In the light of those facts, the learned Trial Judge failed to appreciate the evidence available in the cross-examination of P.W-1 and P.W-2.

10. The learned Judge had mechanically convicted the Accused based on the evidence of P.W-1 and P.W-2 in their examination-in-chief before the Trial Court.

11. The learned Counsel for the Appellant invited the attention of this Court to the evidence of P.W-6, Headmistress of the School where P.W-2 studied and who had marked Ex.P-4, Age Certificate or proof of age. In the evidence of P.W-6, the Headmistress of the School states that the



husband of P.W-1, father of P.W-2 had requested her to appear before the Court and produced document, whereas the Investigation Officer, P.W-7, states that she had summoned P.W-6 and obtained register regarding the proof of age of P.W-2. The P.W-2 minor was not examined under 164 of Cr.P.C before the learned Judicial Magistrate which is a mandatory procedure. Also, P.W-2 was not subjected to cross-examination regarding the alleged offence made against the Accused by P.W-1 and P.W-2. In the cross-examination of P.W-7, she had admitted that she had not subjected P.W-2, minor to medical examination or obtained statement recorded before the learned Judicial Magistrate which is a mandatory procedure. Apart from all these things, the belated complaint with the delay of 104 days from the alleged date of occurrence itself gives suspicious circumstances, which was not considered by the learned Trial Judge.

12. It is the submission of the learned Counsel for the Appellant that during the alleged date and time of occurrence, the Appellant herein was driving a car from Coimbatore to Salem going through 15 Tollgates. One at Kumarapalayam and the second one at Vaiguntham, for which he had examined D.W-1 and marked Ex.D-4, which was also not considered by the learned Trial Judge. The Accused himself was examined as D.W-5. Also,



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the Accused had examined D.W-4, Executive Officer of the Koniamman Temple, who had in his evidence, clearly stated that the alleged marriage took place at Koniamman Temple, which is the Temple, where marriages are not performed and marriages have not been registered. Therefore, the evidence regarding marriage claimed by P.W-1 and in the absence of decree of divorce, the learned Trial Judge had accepted the evidence of P.W-1 and believed the version as stated by P.W-1.

13. Learned Counsel for the Appellant pointed out the contradiction in the evidence of P.W-1 and P.W-2, which was ignored by the learned Sessions Judge, Fast Track Mahila Court, Salem. Therefore, the learned Counsel for the Appellant seeks to set aside the judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Salem.

14. In support of his contention, the learned Counsel for the Appellant invited the attention of this Court to the reported ruling of the Hon'ble Supreme Court in the case of ***Eera Through Dr Manjula Krippendorf Vs. State (NCT of Delhi) and Another*** reported in (2017) 15 SCC 133, wherein it is held as follows:

“25. Section 27 stipulates that medical examination of a child in



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respect of whom any offence has been committed under the Act is to be conducted in accordance with Section 164-A CrPC. It is also significant to note that the said examination has to be done notwithstanding an FIR or complaint has not been registered for the offences under the Pocso Act. I shall refer to Section 164-A CrPC at a later stage. Section 28 of the Pocso Act deals with Special Courts. Section 31 provides that CrPC shall apply to the proceedings before a Special Court. Section 32 requires the State Government to appoint a Special Public Prosecutor for every Special Court for conducting the cases under the provisions of the Pocso Act. Chapter VIII deals with the procedure and powers of the Special Courts and recording of evidence. Section 35 provides for a period for recording of evidence of child and disposal of case. Section 36 stipulates that child should not see the accused at the time of testifying. The said provision protects the child and casts an obligation on the Special Court to see that the child, in no way, is exposed to the accused at the time of recording of evidence. Recording of the statement of a child is through videoconferencing or by utilising single visibility mirrors or curtains or any other device is permissible. This provision has its own sanctity. Section 37 deals with trials to be conducted in camera and Section 38 provides assistance of an interpreter or expert while recording evidence of a child. Section 42-A lays the postulate that the Pocso Act is not in derogation of the provisions of any other law.”

15. Further, he relied on the ruling of this Hon'ble High Court in the case of ***Priyadharshini Vs. The Inspector of Police, Thirumangalam Taluk, Madurai*** in ***Crl.O.P(MD)No.13829 of 2022 dated 02.12.2022***.

16. Also, he had submitted that he had filed Crl.M.P.No.14934 of 2023 in Crl.A.No.35 of 2018, seeking to file additional documents, particularly G.O.No.79, Law (Administration) Department, dated 13.02.2023, before the Judicial Magistrate Court in D.V.O.P. Based on which the Appellant/Accused had filed a complaint with the fact. Based on that enquiry was conducted by the learned Principal District Judge, Salem.



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On the basis of the enquiry report, the Government of Tamil Nadu had issued G.O cancelling the license issued to Notary, who had alleged to have authorised the certificate of P.W-1 regarding the claim of marriage.

17. Learned Additional Public Prosecutor by way of reply, vehemently objected to the line of arguments made by the learned Counsel for the Appellant stating that the Appellant's evidence regarding cohabitation and her claim that she was married to the Accused not before the said Temple. Further, the learned Additional Public Prosecutor submitted that P.W-6, the Headmistress of the School, had furnished documents regarding proof of age of P.W-2. Also, the evidence of P.W-2, minor has to be believed and the Court is duty bound to believe the version of the victim.

18. Further, the learned Additional Public Prosecutor pointed out that the claim of the Accused that he was driving a car from Salem towards Coimbatore on the alleged date and time of occurrence also cannot be accepted as it is the proof of the car passing through the Tollgates only and not the identity of the driver. Therefore, on proper appreciation of evidence, the learned Trial Judge believed the version of the victim and rightly



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convicted the Accused.

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19. Further, the learned Additional Public Prosecutor pointed out that, on proper appreciation of evidence, the learned Trial Judge had acquitted the Accused on charge under Section 294(b) of IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act. Therefore, the learned Additional Public Prosecutor seeks to dismiss the Appeal as having no merits.

20. Heard the learned Counsel for the Appellant and the learned Additional Public Prosecutor for the State.

21. Point for consideration:

Whether the judgment of the learned Sessions Judge, Fast Track Mahila Court, Salem, in Spl.S.C.No.2 of 2015 dated 27.12.2017 is to be set aside as perverse?

22. On perusal of the evidence of P.W-1, the contents of the complaint had been stated by the Complainant under Ex.P-1 and had been cited by P.W-1 in her examination-in-chief. P.W-1 was confronted by the learned Counsel for the Defence in cross-examination, by examining her



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exhaustively. In the cross-examination she had stated as follows:

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“ஏற்கனவே திருமணம் ஆகி அவர் மூலம் தாரணி, அனுப்பிரியா ஆகிய இரண்டு குழந்தைகள். அவருக்கும் எனக்கும் நடந்த திருமணம் டைவர்ஸ் ஆகி விட்டது. அதன் பிறகு தான் ஆஜர் எதிரியும் நானும் திருமணம்செய்து கொண்டோம். அதன் பிறகு தான் எனக்கும் அவருக்கும் கோயம்புத்தூர் கோனியம்மன் கோவிலில் திருமணம் நடந்தது. அதன் பிறகு 2010ம் வருடம் சேலம் மெகாவீர் சவிச்சியர் கம்பெனியில் வேலை கிடைத்தது.

01.02.2014

அன்று

வேலைக்கு

போய்விட்டேன்.....

.....நான் குரமங்கலம் அனைத்து மகளிர் காவல் நிலையத்தில் இது சம்மந்தமாக ஒரு புகார் கொடுத்தேன்.”

23. P.W-2, the daughter of P.W-1, had in her deposition corroborated the evidence of P.W-1. P.W-2 was also cross-examined exhaustively. In her cross-examination, she had stated as follows:-

“இந்த வழக்கு சம்மந்தமாக போலீஸ்ஸார் 16.04.14 அன்று எனது வீட்டில்வைத்து விசாரித்தார்கள். போலீஸ்ஸார் விசாரணையில் எதிரி என்னை கட்டி பிடித்து முத்தம்கொடுத்து என்னை தொடக்கூடாத இடத்தில் எல்லாம் தொட்டார். என்னை கீழே தள்ளிவிட்டு என் மீது படுத்து புரண்டார். இதே போல் நிறைய முறை செய்திருக்கிறார் என்ற விவரத்தை நான் சொல்லவில்லை என்றால் சரியல்ல. சொன்னேன் போலீஸ்ஸார் அதை



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எழுதவில்லை. 01.02.2014 அன்று எத்தனை மணியில் இருந்து எத்தனை மணிவரை இந்த நிகழ்வு நடந்தது என்றால் மாலை 6 மணி முதல் 6.30 மணி வரை நடந்தது. 6.30 மணிக்கு எனது அம்மா வந்த பிறகு இதை என் அம்மாவிடம் சொன்னேன் என்றால் சரி. எதிரி பலமுறை இதுபோல் செய்திருக்கிறார் என்று என் அம்மாவிடம் சொல்லவில்லை என்றால் சரி. என் அம்மாவிற்கும் எதிரிக்கும் எந்த திருமணமும் நடைபெறவில்லை என்றாலும், எதிரி என்னுடைய தகப்பனார் இல்லை என்றாலும் 01.02.2014 அன்று நான் சொன்னது போல் எந்த நிகழ்வும் நடைபெறவில்லை என்றாலும் சரியல்ல.”

P.W-2, in her cross-examination, denies the suggestion of the defence that the marriage between P.W-1 and Accused had not at all taken place. If that is considered, she is wantonly supporting her mother when there is proof before the Court that there is no marriage between P.W-1 and Accused. Therefore, she is under the influence of P.W-1. Therefore, the evidence of P.W-2 itself is to be rejected. Also, the suggestion of the defence that she had deposed false evidence as tutored to her by her mother P.W-1 only to incriminate the Accused for the offence under the POCSO Act was denied by her in the cross-examination.

24. P.W-4 who is the landlord of the house, where P.W-1 and the Accused were alleged to have cohabited. He had stated that P.W-1, P.W-2 and the Accused were residing in the house as tenants. He claims that the



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Accused is the husband of P.W-1. The Accused was introduced as husband of P.W-1 and they had vacated the house. In the cross-examination, he had stated that he did not know about the nature of the case registered against the Accused.

25. P.W.5 – Vijay is a witness to the arrest of the Accused. He states that he was working in the industries where P.W-1 was also working. As per the evidence, he had accompanied P.W-7, Investigation Officer and P.W-1 to Coimbatore, in the Police Jeep belonging to All Women Police Station, Sooramangalam, Salem. He was summoned as a witness by the Court. On complaint by P.W-1 the Accused and the documents maintained in the Police Station regarding arrest of the Accused, regarding usage of vehicle to travel beyond the district, the evidence of then SHO of All Women Police Station, Sooramangalam, Salem, who was examined as D.W-3, was recorded before the Trial Court in which she had stated that there was no entry regarding use of the official vehicle jeep on the date of arrest of the Accused. There is no entry in the registers maintained in the Police Station in the Government Diary on 16.02.2014 and on 17.02.2014 regarding the arrest of the Accused. Therefore, the evidence of P.W-5 is negatived by the evidence of D.W-3.



WEB COPY 26. P.W-6, the Headmistress of the School, had stated in her evidence that the father of P.W-2 requested P.W-6 to produce the age proof as per the School register in Court. Therefore, she had appeared before the Court, whereas P.W-7, the Investigation Officer had stated in her evidence that she had requested P.W-6 to appear and produce the School register regarding the date of birth of P.W-2 as recorded in the admission register maintained in the School.

27. D.W-4 is the Executive Officer of the Koniamman Temple in Town Hall, Coimbatore, who has deposed that in the said Temple marriages are not performed and the marriage register is not maintained.

28. D.W-5 Raj Kannan is the Accused herein. As per his evidence, he was working as a Manager at Jayanthi Industries in Coimbatore. In the very same Company, P.W-1 was working as Accountant, in which her husband Velusamy was working as driver. There had been dispute between husband and wife, in which the staffs of Jayanthi Industries, Coimbatore, used to interfere and console them. He had advanced loan at the request of P.W-1. Subsequent to the dispute between Velusamy (husband) and P.W-1 (wife),



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P.W-1 left the Company and joined another Company in Salem. Therefore, the Accused had sought return of the loan for which she had given a complaint, as though the Accused had threatened her. Further, in his evidence stated that on the alleged date of occurrence on 01.02.2014, between 4.13 p.m. and 6 p.m, he was driving the car Maruthi 800 bearing Registration No.TN-37-B-8579 and he was proceeding from Coimbatore to Salem and by 5.19 p.m. he was at Chengapalli Tollgate. He proceeded towards Chennai to collect money. On 01.02.2014, he had paid the toll at Chengapalli Tollgate by around 5.19 p.m. and Vaiguntham Tollgate by around 6.10 p.m. He had marked Ex.D-13, which was objected by the learned Public Prosecutor before the Fast Track Mahila Court, Salem, stating that the person who drove the vehicle is not the Accused. Therefore, the same is not reliable. He had denied the suggestion by the learned Public Prosecutor before the Fast Track Mahila Court, Salem, that he is in the habit of marrying employed women earning good salary for his lavish spending which was denied by him in the cross-examination.

29. On assessment of the evidence available before the Trial Court, to attract the offence under Section 10 of POCSO Act, P.W-2 ought to have been examined by a Doctor. P.W-1, who is the mother of the minor girl,



would not have waited for 104 days to register the complaint. If what had been narrated by P.W-1 and P.W-2 in their depositions in their examination-in-chief had been true, P.W-1 would have immediately lodged the complaint and would not have waited for 100 days to expire.

30. In cases attracting offence under POCSO Act, there will be immediate action. The complaint under Ex.P-1 does not mention anything about the offence attracting POCSO Act. Ex.P-5 is the FIR registered on the strength of Ex.P-1, and the complaint does not have any reference to the offence attracting POCSO Act. If the deposition of P.W-1 and P.W-2 had to be believed, Ex.P-1, complaint should have contained the averments attracting the offence under POCSO Act. Based on which, Ex.P-5-FIR, also contained the offence under POCSO Act. It is not so. If offences under POCSO Act had been present in the complaint under Ex.P-1, which would have been recorded in Ex.P-5, FIR. If that had been so, the victim would have been produced before the Medical Officer of the Medical College to examine her regarding allegations of POCSO offence committed against her. That was not done in this case.



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31. Immediately, after registration of the FIR, the Investigation Officer gave a requisition before the learned Judicial Magistrate to record the statement of the child witness/victim under Section 164 of Cr.P.C. That was also not done in this case. Only in the deposition of P.W-1, she mention about the conduct of the Accused, attracting POCSO offence, which made her drive out the Accused from the home. Similarly, P.W-2 corroborates the evidence of P.W-1. In the evidence P.W-2, the daughter of P.W-1, denied the suggestion that she had been tutored by her mother to depose false evidence to incriminate the Accused for the offence under POCSO Act. The alleged offence had not at all taken place. In her cross-examination, P.W-1/*De facto Complainant*/mother of the victim denied the suggestion that no marriage had taken place between her and the Accused. The marriage between P.W-1 and her earlier husband, the father of P.W-2, is still subsisting. That is why she was unable to obtain any decree of divorce granted by the Competent Civil Court which was also denied by her. She had countered it stating that she had produced the document executed in the family between elders regarding divorce. That itself goes against her. If there had been a divorce between her and her earlier husband, then what is claimed by her that she married the Accused can be accepted. In the cross-examination, she evaded the direct questions regarding marriage between



her and the Accused. She only states that there was witness to the marriage.

The said witness is her daughter, P.W-2, who is a minor. The evidence of D.W-4, Executive Officer of Koniamman Temple in Town Hall, Coimbatore, had clearly stated that the Koniamman is a presiding Goddess of the Temple and marriages are not conducted in the said Temple. The Temple falls under the administration of Hindu Religious & Charitable Endowment Department. Marriages are conducted and no marriage was registered in the said Temple. Therefore, the evidence of P.W-1 is found unacceptable and unbelievable regarding marriage. Among the documents marked on the side of the Prosecution, no documents had been marked to prove that the earlier marriage between P.W-1 and her husband Velusamy was dissolved through the decree from a Civil Court. When there is no decree of divorce from the Court, the claim made by P.W-1, the elders of the family, entered into panchayat and it was written as an agreement will not be admissible in a Court of law regarding marriage and divorce among the Hindus. Therefore, the suggestion of the defence that P.W-1 claims to have married the Accused during the subsistence of an earlier matrimonial relationship was denied by P.W-1, which has no weightage in the eyes of law. The Court failed to appreciate that evidence in the cross-examination of P.W-1. Also, she claims that she had given 30 sovereigns of jewels. The



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details of each of the jewels and description of the jewels were not given either in the complaint or in the statement to the Police Officials who investigated the case or in the evidence before the Court.

32. The defence of the Accused is that he had advanced loan to P.W-1. When he insisted for return of the amount, P.W-1 had given a false complaint accusing him of involving in offence attracting POCSO Act. Whether the offence attracting POCSO Act is the question to be answered by the Court. The origin of the dispute between P.W-1 and the Accused is with regard to his misbehaviour with the daughter of P.W-1. Whether that theory can be believed.

33. On perusal of the complaint under Ex.P-1, it states that the Accused attempted to misbehave with the daughter of P.W-1 by holding her hand. In the evidence of P.W-1, she states that she saw the Accused touching inappropriately the daughter, P.W-2 and in P.W-2's evidence, she also states so. In the evidence of P.W-2, she states that the Accused, in the absence of P.W-1 in home on the alleged date of occurrence, had embraced her and kissed her. He had ordered her to the ground and layed on her. Therefore, she was weeping. After return of P.W-1, P.W-2 had informed her



mother that she had protested against the Accused, and P.W-1 had driven him out. Subsequently, he did not come back. P.W-1 had sought the money and jewels back, for which the Accused threatened them, stating that he will upload the videos on his mobile about P.W-1 and P.W-2 on the Internet. This part of the evidence was put to the Investigation Officer, P.W-7 in the cross-examination. P.W-7 had clearly stated that P.W-1 had not stated the specific acts done by the Accused to P.W-2. Also, she had stated that P.W-1 had not stated that she had given Rs.2 lakhs to the Accused as loan. Also, she had stated that in the examination of the mobile phone, nothing was found.

34. From the evidence of P.W-1 and P.W-2, it cannot be concluded that the occurrence took place as alleged by P.W-1. P.W-1 claims that she was divorced from her husband but no decree of divorce has been furnished. If that evidence is to be believed, when the marriage was subsisting with her husband, she had cohabited with the Accused. Therefore, she is not a person who can be believed. The evidence of D.W-4, Executive Officer of the Temple states clearly that the temple does not record marriages as marriages are not performed in the said Temple (Koniamman Temple in Town Hall, Coimbatore).



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WEB COPY 35. While so, the evidence of P.W-1 stating that there was divorce with her earlier husband in the village. The elders in the family had recorded agreement of divorce is found inadmissible. When there is no decree of divorce granted from the Competent Civil Court, the claim of marriage and cohabitation is found inadmissible. Apart from that the claim of P.W-1 that she saw the Accused attempting to misbehave with her daughter, P.W-2 also could not be believed as the complaint itself was lodged after more than 100 days. Considering the fact that she had not obtained divorce from her husband, the marriage with her husband is to be treated as subsisting. When the matrimonial relationship is subsisting, the claim of P.W-1 having cohabited with the Accused is found unbelievable. From the evidence available from P.W-1 to P.W-7, and D.W-1 to D.W-5, there had been some money exchange between P.W-1 and the Accused for which P.W-1 is alleged to have given a complaint that the Accused misrepresented her and obtained her money and gold. Since she was not sure of getting back the money and jewels from the Accused, as an after thought she had made her daughter as a Complainant to incriminate the Accused for an offence under POCSO Act. The allegation of POCSO Act is made for the first time in the statement to the Investigation Officer under



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Section 161 of Cr.P.C. Therefore, the Investigation Officer had filed alteration report under Ex.P-13 dated 19.11.2014. When the alleged occurrence is said to have occurred on 01.12.2014, the complaint was given only on 16.05.2014. The alteration report was filed only on 19.11.2014. It creates suspicion to suspect the motive for developing the case to wreck vengeance on the Accused. If the offence of POCSO had taken place, the mother of P.W-2 will not be waiting for 104 days. Therefore, the presumption under Section 29 of POCSO Act that, what had been stated by the child witness is to be taken to be true will not hold good in this case. P.W-1 is found to be a person of has no respect for law and morality. Therefore, the evidence of P.W-1 in the cross-examination when she is confronted with suggestions when she is cornered regarding her divorce with the earlier marriage, she gives evasive replies regarding matrimonial relationship. Believing P.W-1 and convicting the Accused is found to be perverse in the above circumstances. Therefore, the judgment of the learned Trial Judge convicting the Accused for the offence under Section 10 of POCSO Act is found to be unfair and unacceptable.

36. Section 10 of the Protection of Children From Sexual Offences Act (POCSO) Act, 2012, which reads as follows:



“Punishment for aggravated sexual assault

Whoever, commits aggravated sexual assault shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.”

37. In the evidence of D.W-5, the photographs of P.W-1 along with her husband and daughters had been marked as Ex.D-1. In the evidence of P.W-7, the Investigation Officer, had denied the suggestion by the Defence's Counsel that she had not secured the mobile phone or laptop of the Accused regarding the threat posed by the Accused to P.W-1 and P.W-2 with their photographs, which will be uploaded on the Internet. When the Investigation Officer had not secured the mobile and laptop naturally, it is to be considered that the Investigation Officer does not believe the versions of P.W-1 and P.W-2 regarding the threat posed by the Accused. That is why the laptop and mobile were not seized and secured by the Investigation Officer. In the light of the materials available through the evidence of P.W-1, P.W-2, P.W-4 to P.W-7, it is found that the alleged occurrence cannot be believed.

38. The reported ruling of the Hon'ble Supreme Court relied on by the learned Counsel for the Appellant in the case of in ***Eera Through Dr***



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Manjula Krippendorf Vs. State (NCT of Delhi) and Another reported in **(2017) 15 SCC 133**, wherein in this case also the victim was not subjected to medical examination by the Investigation Officer and statement of the victim under Section 164 of Cr.P.C. was not recorded. Therefore, after filing of the alteration report, if the Investigation Officer had sought permission of the Court to record 164 statement of the victim and also subjected the victim to medical examination, the claim of POCSO would have been appreciated. No such steps were taken in this case by the Investigation Officer. Therefore, the conviction recorded by the learned Trial Judge is found to be perverse.

39. In the reported ruling of this Hon'ble High Court relied on by the learned Counsel for the Appellant in the case of **Priyadharshini Vs. The Inspector of Police, Thirumangalam Taluk, Madurai** in **Crl.O.P(MD)No.13829 of 2022 dated 02.12.2022**, this Court on earlier occasion had allowed the Criminal Original Petition filed under Section 482 of Cr.P.C quashing the FIR based on the ruling of this Court in the case of **Dr.Subramanian Swamy Vs. C.Pushparaj** reported in **1998 (1) CTC 300**.



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40. If the alteration report had been proved, the Investigation Officer ought to have invoked the provisions of Information Technology Act regarding the threat posed by the Accused to upload the videos of mother and daughter on the Internet. Since the Investigation Officer had not seized the mobile or laptop, it is presumed that they had found out that there were no such videos available on his mobile or laptop. That is why they had not invoked the provisions of Information Technology Act regarding threat held out against the witness.

41. If the report under alteration has merely threatened words that he would kill P.W-1 and P.W-2 would not be an offence under Section 506(1) of the IPC if it had been alleged to have been used on a mobile phone. The Investigation Officer had not placed reliance on securing or producing the digital proof under the Information Technology Act. Therefore, it has to be presumed that the Investigation Officer specified that the mobile phone of the Accused did not contain those objectionable pictures to be uploaded on the Internet. That is why the Information Technology Act was not invoked in the final report. The Investigation Officer has not produced the digital proof regarding exchange of the objectionable materials. Therefore, the complaint under Ex.P-1, which was spoken to P.W-1 and P.W-2 in their



evidence, is found to be unbelievable, which does not inspire confidence of the Court to attract the provisions of POCSO Act and provisions of Section 506(1) of IPC. Therefore, the judgment of the learned Sessions Judge, Fast Track Mahila Court, Salem, regarding offence under Section 406 of IPC without any documentary evidence regarding handing over 30 sovereigns of jewels regarding loan issued by P.W-1 convicting the Accused for the offence under Section 406 of IPC is also found to be perverse.

42. The evidence of P.W-1 that the Accused married her to attract Section 417 of IPC is also found to be unbelievable when the earlier marriage is subsisting and P.W-1 had not obtained any decree of divorce. In her evidence, the claim made by P.W-1 that the Accused cohabited with her under the pretext of marriage. After receiving gold jewels and money avoided her and contracted the third marriage, which was found to be unacceptable. A Hindu woman without divorce cannot seek cohabitation with another man who is already married. Subsequently, the lodging of complaint. That it had been preferred to attract POCSO was found to be acceptable defence of the Accused. The defence of the Accused through D.W.1 to D.W.5 tilts the case in favour of the Accused. In the evidence attracting POCSO, the Accused has to let in evidence to rebut the evidence



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of Prosecution witnesses. Accordingly, Accused herein in this case as D.W-

1 examined P.W-1 to P.W.5 and proceeds the case of the defence of the Accused through the provisions of Section 29 of POCSO Act was not attracted and failed to appreciate the defence available in the evidence of P.W-1 to P.W-7 and D.W-1 to D.W-5 and the learned Trial Judge had misdirected herself merely on the evidence of P.W-1 and P.W-2. Therefore, the judgment of the learned Sessions Judge, Fast Track Mahila Court, Salem, is found to be perverse, and the same is set aside.

43. As rightly pointed out by the learned Counsel for the Appellant the claim of marriage and the decree of divorce obtained from the husband had not been proved by P.W-1. In the course of the cross-examination, P.W-1 admits that she has borrowed the loan for Rs.3 lakhs from the Accused during the period of cohabitation.

44. On assessment of the evidence of P.W-1 and P.W-2 independently, the version of P.W-1 in the examination-in-chief is found unacceptable in the light of the answers in the cross-examination of P.W-1. Similarly, with P.W-2. The evidence of P.W-1 that she was married to the Accused and the daughter was a witness to the marriage is unacceptable



regarding the claim of marriage regarding proof of marriage when the earlier marriage was subsisting with her husband. The claim of marriage with the Accused was found to be unacceptable and unbelievable. In the course of the cross-examination, she was confronted regarding her earlier marriage regarding handing over her jewels to the Accused or description of the jewels, she was unable to give proper and satisfactory reply.

45. On assessment of her evidence in cross-examination, it does not inspire confidence of the Court. As rightly pointed out by the learned Counsel for the Appellant from the angle of ordinary prudent man, the evidence of P.W-1 is unbelievable and the evidence of P.W-2 is also unbelievable. Therefore, P.W-2 has inclination to support her mother as she had corroborated P.W-1.

46. The evidence of P.W-6, the Headmistress of the School where P.W-2 studied, regarding the husband of P.W-1 and father of P.W-2 had requested the Assistant Headmistress of the School to bring the records regarding proof of age of P.W-2 and the evidence of P.W-7, Investigation Officer, that she had summoned the Assistant Headmistress of her School to bring her records, is found to be contradictory. Therefore, the assessment of



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evidence of P.W-7 gives an indication that the Investigation Officer herself was clear about the case of the Complainant. In the cross-examination of P.W-7, it indirectly admits the loopholes in the investigation. Apart from that, the present Station House Officer of the Police Station was summoned as defence witness regarding the documents available in the Police Station on the alleged date of arrest recorded by the Investigation Officer. Also, D.W-4, Executive Officer of the Temple, had clearly stated that no Hindu marriage was registered and performed in the Temple. Therefore, the evidence of P.W-1 is found to be unbelievable. The learned Trial Judge had miserably failed to appreciate the evidence available before her in the light of the materials available through P.W-1 to P.W-7 under Exs.P-1 to P-14 and D.W-1 to D.W-5 under Exs.D-1 to D-14, who had mechanically convicted the Accused for the offences under Sections 406, 417, 506(1) of IPC, Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act and Section 10 of POCSO Act. The same is to be set aside as perverse.

Accordingly, this Criminal Appeal stands allowed. The judgment of the learned Sessions Judge, Fast Track Mahila Court, Salem in Spl.S.C.No.2 of 2015 dated 27.12.2017 is hereby set aside. The Accused is acquitted of the charges under Sections 406, 417 and 506(1) of IPC, Section



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4 of Tamil Nadu Prohibition of Harassment of Woman Act and Section 10 of POCSO Act. Consequently, connected Criminal Miscellaneous Petition is closed.

The bail bond executed by the Appellant/Accused before the learned Judicial Magistrate (Additional Fast Track Court) Salem, is ordered to be cancelled.

The fine amount already deposited before the learned Sessions Judge, Fast Track Mahila Court, Salem, if any, is also ordered to be refunded to the Appellant.

19.09.2023

cda

Index : Yes/No

Speaking/Non-speaking order



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To

- 1.The Sessions Judge,
Fast Track Mahila Court, Salem.
- 2.The Public Prosecutor,
High Court, Madras.
- 3.The Section Officer, VR Records,
High Court, Chennai.



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SATHI KUMAR SUKUMARA KURUP, J.,

cda

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19.09.2023