

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2019

C O R A M

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Criminal Appeal No.113 of 2019

1. Kumar @ Selvakumar

2. Vairamuthu

... Appellants/Accused2 & 3

-Vs-

The State rep. by
The Inspector of Police,
All Women Police Station,
Neyveli
Cuddalore District.
(Crime No.121/2016)
Kurinjipadi Police Station

... Respondent/Complainant

Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, praying to call for the records and set aside the judgment dated 31.01.2019 made in Spl.S.C.No.24 of 2018 passed by the learned Sessions Judge, Mahila Court, Cuddalore.

For Appellants : Mr.S.Paneer Selvam
Legal Aid Counsel

For Respondent : Mr.R.Ravichandran
Government Advocate (Crl.Side)

J U D G M E N T

This appeal arises out of the judgment dated 31.01.2019 made in Spl.S.C.No.24 of 2018 passed by the learned Sessions Judge, Mahila Court, Cuddalore, in and by which, the appellants/accused were convicted for the offence under sections 12 of POCSO Act, 2012 r/w 34 IPC, 10 of POCSO Act r/w 34 IPC, 450 and 323 r/w 34 IPC and sentenced as follows:-

Accused	Offence & Sentence	
A2	Section 12 of POCSO Act r/w 34 IPC	2 years Rigorous Imprisonment and fine of Rs.1,000/-, in default, 6 months Simple Imprisonment
	Section 10 of POCSO Act, 2012 r/w 34 IPC	5 years Rigorous Imprisonment and fine of Rs.1,000/-, in default, one year Simple Imprisonment
	Section 450 IPC	5 years Rigorous Imprisonment and fine of Rs.1,000/-, in default, one year Simple Imprisonment
	Section 323 r/w IPC	One year Rigorous Imprisonment and fine of Rs.1,000/-, in default, 2 months Simple Imprisonment.
A3	Section 12 of POCSO Act r/w 34 IPC	1 year Rigorous Imprisonment and fine of Rs.500/-, in default, 2 months Simple Imprisonment
	Section 10 of POCSO Act, 2012 r/w 34 IPC	5 years Rigorous Imprisonment and fine of Rs.1,000/-, in default, one year Simple Imprisonment
	Section 450 IPC	2 years Rigorous Imprisonment and fine of Rs.1,000/-, in default, 3 months Simple Imprisonment
	Section 323 r/w IPC	One year Rigorous Imprisonment and fine of Rs.1,000/-, in default, 2 months Simple Imprisonment.

2. The case of the prosecution is that the victim was aged about 14 years at the time of occurrence. On 27.05.2016 at 10.30 a.m, when the victim was going towards Anganwadi Centre, a person known to her asked her as to whether she passed SSLC, for which, she replied in affirmative. At that time, all the three accused asked her as to whether she would sleep and fuck with that person alone. She got irritated and said to them that she would beat them with footwear. Thereafter, all the three accused mounted on the motor cycle and said to her that they would run over her private part with the motor cycle and raced the motor cycle towards her and chased her. The victim was running to her home. All the accused attacked her near her

house. When the victim went inside her house, all the accused trespassed into the house with an intention to commit penetrative sexual assault on her, due to which, the victim girl got fainted and became unconscious. The eye witness Rajamudali informed the mother of the victim and she rushed to the house along with her mother-in-law and saw all the three accused sprinkling water on the victim. When they questioned all the three accused about their activities, they kicked them aside and escaped from the scene. Then, the victim was taken to the hospital, but did not regain consciousness and she regained consciousness only after several days. When the victim was admitted in the hospital, her house was also burnt by two of the accused. PW-1/father of the victim girl lodged a complaint against the accused persons. The respondent police registered a case in Crime No.121 of 2016 for the offences under Sections 294 (b), 323, 506(i) IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002. Upon completion of the investigation, the respondent police laid a charge sheet against all the three accused before the learned Sessions Judge, Mahila Court, Cuddalore, informing the commission of offences under Sections 12 of POCSO Act r/w 34 IPC, 450 IPC, 10 of POCSO Act r/w 34 IPC and Section 323 r/w 34 IPC and the same was taken on file in Spl.S.C.No.24 of 2018. The appellants herein are arrayed as A2 and A3.

3. Before the trial Court, prosecution examined PWs.1 to 12 and marked Exs.P1 to P14 and 3 Material Objects. After completing the evidence, incriminating circumstances were culled out from the prosecution witnesses, which were put before the accused and they denied the same as false. After completing the prosecution evidence, on the side of the defence, 2 witnesses were examined and 2 documents were marked. After hearing the arguments, the learned Sessions Judge, by judgement dated 31.01.2019, found the appellants/accused guilty of the offences under Sections 12 of POCSO Act r/w 34 IPC, 450 IPC, 10 of POCSO Act r/w 34 IPC and Section 323 r/w 34 IPC and convicted and sentenced them as stated above. Challenging the same, the present appeal has been preferred by A2 and A3 before this Court.

4. The learned counsel for the appellants would submit that the appellants have not committed any offence as alleged by the prosecution. There is no eye-witness in this case. The victim girl, when admitted in the hospital, was unconscious. PW-7, Doctor also recorded that the patient is disoriented, based on the information given by PW-3/mother of the victim girl. Though PW-3 stated that she was informed by PW-5 that there was a quarrel in their house, PW-5 has not supported the prosecution. Subsequent to the occurrence, another case was also registered against the appellants/accused. The statement under Section 161 Cr.P.C., of the victim has been recorded before the Court below

and in that statement, the victim girl stated that the appellants found the house of the victim girl. The previous statement made by the accused is admissible in evidence and the same was not shown to the victim by the prosecution at the time of recording the evidence. Though PW-11/Investigation Officer initially denied the statement he subsequently admitted the same. The signature has been marked as Ex.D2. In the complaint also, PW-3/mother of the victim girl has stated that the appellants/accused had assaulted her daughter. Either in the complaint or before the Medical Officer, to whom the victim was admitted at the time of admission in the hospital and the statement under Section 161 Cr.P.C., recorded from the victim, the prosecution has failed to prove its case beyond reasonable doubt. The learned Sessions Judge has failed to consider these aspects and there are material contradictions between the prosecution witnesses and PWs-2 & 3. Therefore, the judgment of the Sessions Court warrants interference.

5. The learned Government Advocate (Crl. Side) appearing for the respondent would submit that PW-1 is the father of the victim girl, who made the complaint before the respondent and PW-3 is the mother of the victim girl, who saw the victim girl lying on the floor and one of the accused poured water on her face and when PW-3 questioned the accused, they have escaped. Thereafter, the victim was immediately taken to the hospital and she was not conscious at the time of admitting in the hospital. She took treatment in the hospital for more than one month. After that, she regained consciousness and revealed the facts. In this case, the evidence of the victim girl should be taken into consideration. Except the victim girl, no eye witness can establish the occurrence. From the evidence of PW-2, victim girl, it is clear that the appellant/accused committed the offence. Therefore, the Sessions Judge rightly appreciated the entire evidence and convicted the accused. There is no reason to interfere with the judgement of the learned Sessions Judge.

6. Heard the learned counsel appearing for the appellant and the learned Government Advocate (Crl. Side) appearing for the respondent and perused the materials available on record.

7. The case of the prosecution is that on 27.05.2016 at about 10.30.a.m, when the victim was going towards Anganwadi Centre, a person known to her asked her as to whether she passed SSLC, for which, she replied in affirmative. At that time, all the three accused asked her as to whether she would sleep and fuck with that person alone. She got irritated and said to them that she would beat them with footwear. Thereafter, all the three accused mounted on the motor cycle and said to her that they would run over her private part with the motor cycle and raced the motor cycle towards her and chased her. The victim

was running to her home. All the accused attacked her near her house. When the victim went inside her house, all the accused trespassed into the house with an intention to commit penetrative sexual assault on her, due to which, the victim girl got fainted and became unconscious. The eye witness Rajamudali informed the mother of the victim and she rushed to the house along with her mother-in-law and saw all the three accused sprinkling water on the victim. When they questioned all the three accused about their activities, they kicked them aside and escaped from the scene. Then, the victim was taken to the hospital, but did not regain consciousness and she regained consciousness only after several days. When the victim was admitted in the hospital, her house was also burnt by two of the accused. After completion of the investigation, the respondent police laid charge sheet as stated above.

8. In this case, PW-1, the father of the victim has spoken about the preferring the complaint before the respondent police. The mother of the victim was examined as PW-3. She has stated that PW-5 informed her that there was a quarrel in their house. PW-3 went to the place of occurrence along with her mother-in-law and she found her daughter in unconscious state and one of the accused person sprinkled water on her face. When they questioned the accused, they ran away from the place. PW-5, during examination, has stated that he did not know anything about the occurrence and hence, he has not supported the case of the prosecution. Though he admitted that when he crossed the house of PW-3, he heard the noise, but he did not speak about the occurrence. PWs-8 & 9, Doctors have spoken that there was no external injuries and hymen was intact and there was no symptoms of sexual assault. Though the situation was put before PWs-11 & 12, there was a case registered against the accused and from the statement of the victim recorded under Section 161 Cr.P.C, the complaint-Ex.P1, it is seen that there was no sexual assault. Though the prosecution has stated that PW-5 was the eye-witness in this case, he has not supported the prosecution. PW-2, the victim girl has stated that while she was going to Anganwadi, one known person asked her as to whether she has passed SSLC and also pulled her duppatta. Afterwards, she told that she would slap them with foot wear. Immediately, they followed her to her house. On a conjoint reading of the entire evidence, this Court finds that the appellants have not committed the offence under POCSO Act, whereas, on a reading of the evidence of PW-2/victim girl and other medical evidence, it is seen that the appellants have committed the offence under Section 354 IPC. On a perusal of the medical evidence, it reveals that there was no external injury. PW-9, Doctor has also clearly stated that there was no external injury and there was no symptom of sexual assault. Though PW-5 has not supported the case of the prosecution, the statement of the victim girl

clearly shows the involvement of the accused. Therefore, this Court finds that the prosecution has proved its case with cogent and reliable evidence. The entire records reveal that the appellants/accused created trouble to the victim girl and assaulted her with an intent to outrage her modesty. Though the appellants have not committed the offence under POCSO Act, they have committed the offence under Section 354 IPC.

9. Taking into consideration the above facts and circumstances of the case, this Court is inclined to modify the conviction and sentence imposed on the appellants from one under Sections 12 of POCSO Act, 2012 r/w 34 IPC, 10 of POCSO Act r/w 34 IPC to Section 354 IPC.

10. Accordingly, this Criminal Appeal is partly allowed. The sentence imposed on the appellants is modified from one under Sections 12 of POCSO Act, 2012 r/w 34 IPC, 10 of POCSO Act r/w 34 IPC to the effect that the appellants have committed the offence under Section 354 of IPC and shall undergo the Rigorous Imprisonment for 2 years each and to pay fine of Rs.1,000/, each, in default, one year Simple Imprisonment. Rest of the finding given by the learned Sessions Judge shall remain the same as unaltered.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

kmi

To

1.The Sessions Judge,
Mahila Court,
Cuddalore.

2.The Inspector of Police,
All Women Police Station,
Neyveli, Cuddalore District.
(crime No.121 of 2016)
(kurinjipadi police station)

3.The Superintendent
Central Prison, Cuddalore

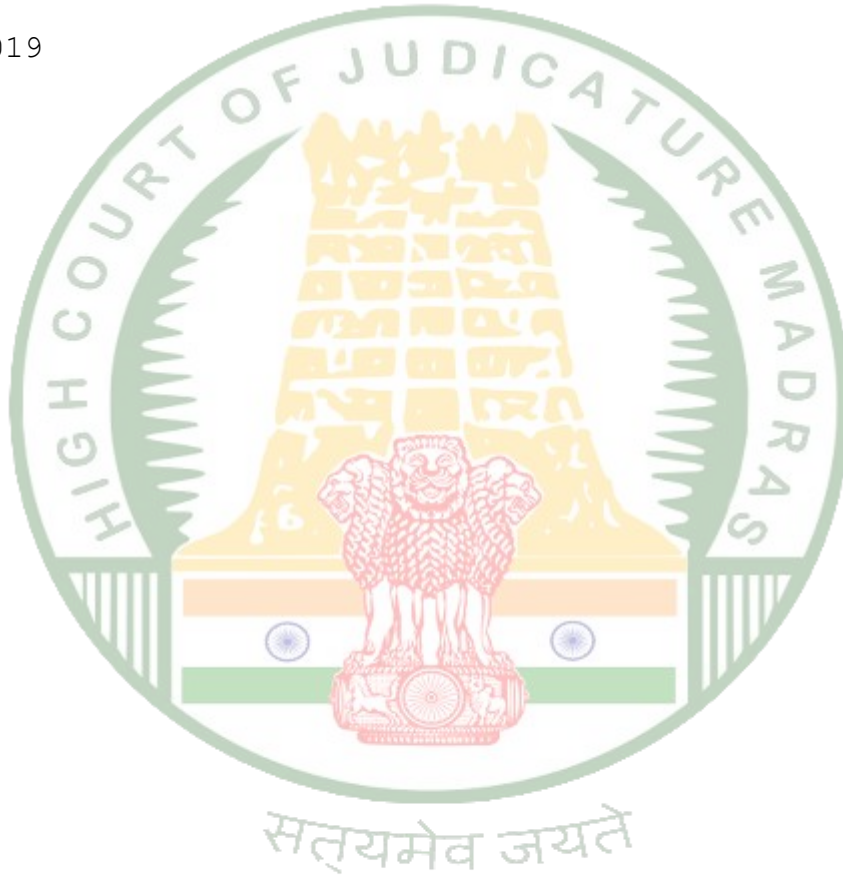
4.The Public Prosecutor,
High Court,
Madras -104.

5.The Section Officer
Criminal Section(Records)
High court Madras

+1 cc to Mr.P.Paneerselvam Advocate sr42568
+1 cc to Mr.V.Balaji Advocate sr43081

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