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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2021

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.394 of 2019 and
Crl.M.P.No.17172 of 2019

Manikandan

...Appellant/Accused

-Vs-

State by:

The Inspector of Police,
All Women Police Station,
Neyveli,
Cuddalore Dist.
(Cr.No.121 of 2016).

...Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure, to call for the records of the judgment of the learned Sessions Judge, Mahila Court, Cuddalore in Spl.S.C.No.24 of 2018, dated 31.01.2019 and set aside the said conviction of the lower Court.

For Appellant : Mr.A.Arasu Ganesan

For Respondent : Mr.R.Suryaprakash,
Government Advocate [Crl. Side]

JUDGMENT

This Criminal Appeal has been filed against the conviction and sentence imposed by the learned Sessions Judge, Mahila Court, Cuddalore in Special S.C.No.24 of 2018, dated 31.01.2019.

2.The respondent Police have registered a case in Crime No.121 of 2016, for offence under Sections 294(b), 323, 506(i) IPC and Section 4 of Prohibition of Harassment of Woman Act, 1998 against the appellant/A1 and two others/A2 & A3 on the complaint [Ex.P1] given by the father of the victim (PW.1. After completing investigation, the respondent police laid a charge sheet before the learned Sessions Judge, Mahila Court, Cuddalore and the same was taken on file as Special S.C.No.24 of 2018.

3.After completing the formalities under Section 207 Cr.P.C., since there was a prima facie material to frame charge against the appellant, the learned Sessions Judge, farmed



charges under Sections 12 of Protection of Children from Sexual Offence Act, 2012 (hereinafter referred to as 'POCSO Act') r/w 34 IPC and Section 10 of POCSO Act r/w 34 IPC and Sections 450 and 323 r/w 34 IPC.

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4. After completing the trial and hearing the arguments advanced on either side and also considering the oral and documentary evidence, the learned Sessions Judge found guilty of the appellant for offence punishable under Sections 12 of POCSO Act, 2012 r/w 34 IPC and 10 of POCSO Act, 2012 r/w 34 IPC and Sections 450 and 323 r/w 34 IPC and convicted and sentenced as follows:-

- For offence under Section 12 of Protection of Children from Sexual Offence Act, 2012 r/w 34 IPC, the appellant/A1 sentenced to undergo Rigorous Imprisonment for a period of three years and ordered to pay a fine of Rs.1,000/-, in default to undergo Simple Imprisonment for six months.
- For offence under Section 10 of Protection of Children from Sexual Offence Act, 2012 r/w 34 IPC, the appellant/A1 sentenced to undergo Rigorous Imprisonment for a period of seven years and ordered to pay a fine of Rs.5,000/-, in default to undergo Simple Imprisonment for one year.
- For offence under Section 450 IPC, the appellant/A1 sentenced to undergo Rigorous Imprisonment for a period of ten years and ordered to pay a fine of Rs.5,000/-, in default to undergo Simple Imprisonment for two years.
- For offence under Section 323 r/w 34 IPC, the appellant/A1 sentenced to undergo Rigorous Imprisonment for a period of one year and ordered to pay a fine of Rs.1,000/-, in default to undergo Simple Imprisonment for three months.

5. The learned counsel for the appellant would submit that already the 2nd and 3rd accused have filed the Criminal Appeal in C.A.No.113 of 2019 before this Court against the Judgment of the trial Court, in which, this Court, by judgment, dated 30.04.2019, partly-allowed the appeal and modified the sentence from one under Sections 12 of POCSO Act, 2012 r/w 34 IPC and 10 of POCSO Act, 2012 r/w 34 IPC to the effect that the 2nd and 3rd accused have committed the offence under Section 354 IPC and ordered to undergo Rigorous Imprisonment for two years each and to pay a 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. Since the sentence imposed on the co-accused/A2 & A3 have already modified by this Court, the same can be followed in respect of the appellant. The learned counsel would further submit that the appellant has not committed any offence under the POCSO Act, 2012 as alleged



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by the prosecution and there was no common object to commit a sexual assault on the victim girl. All the witnesses adduced by the prosecution are interested witnesses and no independent witness was examined by the prosecution to prove the guilt of the appellant.

6. The learned counsel for the appellant would further submit that the father and mother of the victim girl were examined as PW1 and PW3 and the victim girl was examined as PW2. The mother of the victim girl (PW3) stated that the neighbour (PW.5) informed her about the occurrence while she was working in agricultural field all the accused assaulted her daughter and humiliated by uttering derogatory words. Immediately, the mother of the victim girl (PW3) had rushed to her house where she had seen the appellant was present along with village people unravel the knot from her daughter's neck. Since she had attempted to commit suicide by hanging, in order to save her life pored water on her face, even thereafter, she could not regain the conscious. Then, the appellant made arrangement one Auto to take her to hospital. Accordingly, one auto driver has taken the victim girl to Government Hospital, Kurinjipadi along with PW.3. At the time of admission in the hospital, the mother of the victim girl (PW3) has stated to the Doctor (PW8) about the cause of the incident that her daughter made attempt to commit suicide by hanging.

7. The learned counsel for the appellant would further submit that the father of the victim girl (PW.1) went to the Police Station on 28.05.2016, at about 08.30 p.m., and lodged a complaint (Ex.P1) that on 27.05.2016, at about 11.00 a.m., all the accused picked up quarrel with his daughter and assaulted her repeatedly, then PW.5, who is an eye witness in this case had informed the occurrence to the mother of the victim (PW.3). The 2nd accused pored water in the mouth to regain conscious, since the victim girl had tried to commit suicide by hanging. Thereafter, the victim girl was taken to the Government Hospital, Cuddalore, then only the father of the victim girl (PW.1) came to the Government Hospital, Cuddalore and saw the victim girl, where she was unconscious, then only he made a complaint (Ex.P1) to the respondent Police based on the information given by his wife (PW3). Therefore, the parents of the victim girl (PW.1 and PW.3) are not eye witnesses. In this case, the neighbour (PW.5) alone is the eye witness and subsequently, he did not support the case of the prosecution. According to the evidence of the victim girl, she regained conscious only after five days in Jipmer Hospital, Puducherry. Under these circumstances, there is no possibility that the victim girl has narrated the incident to her parents, since she was unconscious continuously, but in the meantime during the course of investigation, the respondent Police had developed the



case with false allegations. Based on that only, the charge sheet was filed for offence under Sections 294(b), 323, 506(i) IPC and Section 4 of Prohibition of Harassment of Woman Act, 1998.

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8. The learned counsel for the appellant would further submit that as per the evidence of the parents of the victim girl, all the accused have committed the penetrative sexual assault on her daughter. Due to which, the victim girl alleged to have sustained bleeding injury on her thighs, breast, mouth and nose. On the contrary, the Doctor (PW.7) has stated that at the time of admission, the victim girl was being unconscious and the Doctor asked the mother of the victim girl about the nature of the case. The mother of the victim girl informed that due to the epilepsy attacked on her suddenly. But at the same time, the Doctor, who was examined as PW.9 gave evidence based on the Accident Register (Ex.P3) referred in Government Hospital, Cuddalore reveals that the victim girl attempted to commit suicide by hanging and also contradictory evidence available regarding the victim allegedly have bleeding injury on her mouth, nose, head, but it was denied by the Doctor (Ex.P7) in her cross examination that when she was examined the victim girl, no bleeding injury and swelling and abrasion found on her and could not find any identification mark on the neck.

9. The learned counsel for the appellant would further submit that the evidence of PW.1, PW.2, PW.3 are contradictory to each other for the reason that the father of the victim girl (PW1) has stated that the respondent Police had examined him and his daughter only after discharge from the Jipmer Hospital, Puducherry after three months, but the victim girl has stated that after the occurrence, she has become unconscious and she was taken to the Government Hospital, Kurinjipadi and the Government Hospital, Cuddalore, thereafter, five days, she was taken to Jipmer Hospital, Puducherry, then only she became conscious and thereafter only she has narrated about the incident to her mother (PW.2) about the occurrence. Based on that only, the complaint (Ex.P1) was given by PW.1. Further, PW.1 has stated before the trial Court that after receiving the information about the occurrence from PW.3, he made a complaint (Ex.P1) to the respondent Police and also stated in the cross examination that the respondent Police had examined him and his daughter after discharge of the victim girl from the Jipmer Hospital, Puducherry. Therefore, the evidence shows that the victim only regained conscious after five days, while so how PW.3 could be possible to know the entire incident at the time of making complaint to the Police on the next day. Thus, the evidence of the prosecution are contradictory to each other and the same is unbelievable and not trustworthy.



10. The learned counsel for the appellant would further submit that the victim girl was unconscious for five days while taking treatment at Jipmer Hospital, Puducherry. Then only she was produced before the learned Judicial Magistrate on 07.11.2016, at about 03.30 p.m., to record the statement under Section 164 Cr.P.C. The victim girl has given a statement that on the date of occurrence i.e., on 27.05.2016, all the three accused intercepted her when she went to Anganvadi Centre to get some milk powder. The accused used filthy language against her, for which, the victim girl told against them that she would beat them with footwear. Thereafter, the 2nd accused alleged to have driven motor cycle on her private part and the appellant alleged to have pulled her and slapped her. At that time, PW.5 alleged to have intervened the accused to save her, but PW.5 did not support the version of the victim girl. Thereafter, the appellant entered the house and kicked her with chappal on chest, then he touched her breast. At that time, A2 alleged to have tried to remove the leggings of the victim girl and A3 closed her mouth. Due to the attack, the victim girl sustained bleeding injury on her mouth, head and nose. Then immediately she became unconscious and she could not regain conscious while taking treatment at Government Hospital, Kurinjipadi and the Government Hospital, Cuddalore and she gained conscious in Jipmer Hospital, Puducherry. The victim girl stated before the learned Judicial Magistrate that she had bleeding injuries on her head, nose and mouth, but the evidence of the Doctors (PW7 to PW9) did not corroborate the same and they have not supported the case of the prosecution.

11. The learned counsel for the appellant would further submit that PW.1 to PW.3 have concocted the story and developed the case and their evidences are improvised one. Further, the evidence of PW1 to PW3 are contradictory to each other and the only witness (PW.5) stated to have been as eye witness also not supported the case of the prosecution. The evidence of the Doctors, who gave treatment to the victim girl have not corroborated the evidence of the victim girl. Therefore, the prosecution has failed to prove the case beyond reasonable doubt and the judgment of the trial Court warrants interference of this Court.

12. The learned Government Advocate (Crl. Side) appearing on behalf of the respondent Police would submit that all the accused with common intention sexually assaulted the victim girl and attempted to commit penetrative sexual assault. Due to the violent act of all the accused, the victim girl got fainted and become unconscious. The neighbour (PW5), who had seen the occurrence, informed the mother of the victim girl (PW3). At the time of occurrence, the father of the victim girl (PW1) was not in station and nobody was at home. After receiving

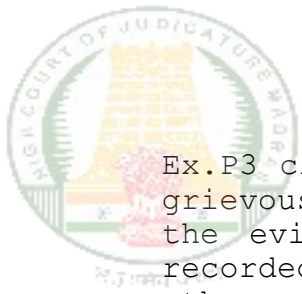


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information, the mother of the victim girl rushed to the house along with her mother-in-law and saw the accused pouring water on the victim girl. When the mother of the victim girl and her mother-in-law questioned the accused, they kicked them and escaped from the scene of occurrence. Then, the victim girl was taken to the hospital, but she did not regain consciousness and she regained consciousness only after few days. Thereafter, the father of the victim girl (PW1) lodged a complaint [Ex.P1] to the respondent Police. After completing the investigation, the respondent Police laid a charge sheet before the learned Sessions Judge, Cuddalore. In order to prove the case of the prosecution, the mother of the victim girl was examined as PW3. PW3 identified all the accused and she deposed that on 27.05.2016, the victim girl was alone in the house and she was working in nearby agricultural field. The neighbour (PW.5) informed her that the accused were assaulting her daughter by uttering derogatory words, then she and her mother-in-law immediately rushed to the house. When she came to the house, the victim girl was unconscious and the 2nd accused was pouring water on the mouth of the victim girl. When she questioned the accused, the accused kicked them aside and escaped from the scene of occurrence.

13.The learned Government Advocate would further submit that the victim girl was examined as PW.2 and she has clearly narrated the fact that she was sexually assaulted by the appellant and other accused and also stated that after she regaining consciousness, informed the occurrence to her mother (PW3), in turn her mother informed the same to her husband (PW1). The neighbour, who had seen the occurrence, was examined as PW5 and he deposed that he heard noise and quarrel near the house of the victim girl and informed the same to the mother of the victim girl (PW3). Even though PW5 was not fully supported the case of the prosecution, he stated that on the date of occurrence, there was a quarrel in the house of the victim girl.

14.The learned Government Advocate would further submit that the evidence of PW1 to PW3 and also the statement of the victim girl recorded under Section 164 Cr.P.C., clearly shows that the appellant along with other accused committed the penetrative sexual assault. Further, the Doctor (PW7) has spoken about the medical certificate given to the victim girl and the medical records would go to show that at the time of admitting the victim girl, she sustained grievous injuries. Even though at the time of admitting the victim girl in the hospital she was unconscious, the evidence of the Doctor (PW.7) and also the medical records of the Jipmer Hospital, Puducherry, shows that she was taken treatment for three months. The Accident Register (Ex.P6) of the Government Hospital, Cuddalore clearly shows that at the time of admitting the victim girl she was unconscious and



Ex.P3 clearly shows the injuries sustained by the victim girl is grievous in nature. Therefore, the evidence of the Doctors and the evidence of PW1 to PW2 and statement of the victim girl recorded under Section 164 Cr.P.C., are corroborated to each other and the prosecution has proved its case beyond reasonable doubt. The trial Court had appreciated the evidence and materials and rightly convicted the appellant. Even though this Court modified the sentence imposed on the 2nd and 3rd accused, there is specific overtact against the appellant herein. Hence, the appellant cannot be placed on the same footing as that of 2nd and 3rd accused and the judgment of the trial Court is liable to be confirmed.

15. Heard the learned counsel appearing for the appellant and the learned Government Advocate [Crl. Side] appearing for the respondent and also perused the materials available on record.

16. The case of the prosecution is that at the time of occurrence, the age of the victim girl was only 14 years and she just passed SSLC. On 27.05.2016, at about 10.30 a.m., when the victim girl was going towards Anganvadi Centre, a person known to her asked her as to whether she passed SSLC, for which, she replied in affirmative. At that time, the appellant along with two other accused, who were standing under the Tamarind tree, asked her as to whether she would sleep and fuck with that person alone. The victim girl got irritated and told to them that she would beat them with footwear. Immediately, the appellant along with other 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 girl was running to her home, which was few meters away from the Tamarind tree. The accused attacked her nearby 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 neighbour (PW5) noticed the same and informed to the mother (PW3) of the victim girl and she rushed to the house along with her mother-in-law and saw all the three accused were sprinkling water on the victim girl. 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 conscious and she regained conscious only after several days. Thereafter, the father of the victim girl (PW1) lodged a complaint [Ex.P1] to the respondent Police. After completion of investigation, the respondent Police laid a charge sheet as stated above.

17. During the trial, on the side of the prosecution, as many as 12 witnesses were examined, 14 documents were marked and 3



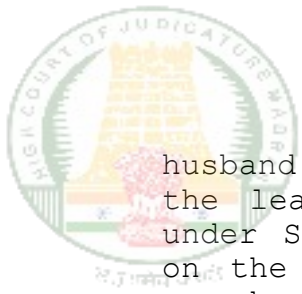
material objects were exhibited. After completing the evidence of prosecution witnesses, when incriminating circumstances were culled out from the prosecution witnesses put before the accused, they denied as false. On the side of the defence, 2 witnesses were examined and 2 documents were marked.

18. After considering the evidence on record and hearing on either side, the learned Sessions Judge, Mahila Court, Cuddalore vide judgment dated 31.01.2019 in Special S.C.No.24 of 2018, convicted and sentenced the appellant as stated above.

19. Challenging the judgment of conviction and sentence, the present appeal has been preferred by the appellant.

20. This Court, being an Appellate Court, is a fact finding Court, which has to necessarily re-appreciate the entire evidence and give an independent finding.

21. In order to prove the case of the prosecution, the victim girl was examined as PW2 and her parents were examined as PW1 and PW3 and the neighbour, who is an eye witness was examined as PW5. PW2 has clearly deposed that on the date of occurrence on 27.05.2016, at about 10.30 a.m., while she was going towards Anganvadi Centre, one person asked her as to whether she passed SSLC, for which, she replied in affirmative. At that time, the appellant along with two other accused, who were in nearby Tamarind tree, asked unwanted questions and also abused her. She got irritated and told them that she would beat them with footwear. Thereafter, all the three accused mounted on the motor cycle and told 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 girl entered the house and the accused also trespassed into the house. The appellant has beaten the victim girl with footwear and the 2nd and 3rd accused followed the appellant and entered the house and beaten her and to escape from them, the victim girl rushed to her concrete house. When the neighbour (PW5) had intervened and attempted to prevent the attack, the accused did not give any response and they continued their harassment and assaulted the victim girl. The appellant pressed the breast of the victim girl and attempted to bite her breast. When she tried to prevent the same, the 3rd accused caught hold of her hands. At that time, the appellant laid on her and attempted to commit penetrative sexual assault. The appellant slapped her on neck and she unable to bear the torture, she became unconscious. As per the evidence of the victim girl, she regained conscious in Jipmer Hospital, Puducherry. When the victim regained conscious, her mother asked her as to whether she committed suicide, she denied the question and narrated the incident in detail to her mother, in turn the mother of the victim girl informed the same to her



husband. Further, the victim girl narrated the incident before the learned Judicial Magistrate while recording the statement under Section 164 Cr.P.C. The neighbour (PW5) has stated that on the date of occurrence, at about 11.00 a.m., there was a sound and quarrel in the house of the victim girl. PW5 has turned hostile and not supported the case of the prosecution. Though PW5 has not supported the case of the prosecution, he has stated that on the date of occurrence there was a quarrel in the house of the victim girl.

22.Immediately after the occurrence, the victim girl was taken to the Government Hospital, Kurinjipadi and thereafter to the Government Hospital, Cuddalore and then shifted to Jipmer Hospital, Puducherry, where she was admitted as inpatient and taken treatment for more than three months. All the medical records (Exs.P3 to P8) clearly shows that after the occurrence, the victim girl was continuously unconscious for sometime and the injuries sustained by her are grievous in nature. Though the victim girl was unconscious immediately after the occurrence and she could not brought the entire episode in the complaint (Ex.P1), after regaining conscious from Jipmer Hospital, Puducherry she clearly narrated the incident to her father and mother. The father of the victim girl (PW1) informed the same to the respondent Police and subsequently, the respondent Police altered the case and conducted the investigation. After completing the investigation, laid the charge sheet before the trial Court. Subsequently, the case was tried by the learned Sessions Judge, Mahila Court, Cuddalore. Therefore, in cases like this, no eye witnesses can be expected. At the time of occurrence, nobody was there in the house of the victim girl and only the neighbour (PW5) on hearing the noise and quarrel, rushed to the house of the victim girl and saw the appellant and the other accused were assaulting her and informed same to her mother.

23.The evidence of the victim girl and Doctors and the statement of the victim girl recorded under Section 164 Cr.P.C., and the medical records collected clearly proved that though all the three accused were present at the time of occurrence, the appellant alone had pressed the breast of the victim girl and laid on her and tried to bite her breast and attempted to commit penetrative sexual assault.

24.Though the trial Court has framed charge against the appellant under Section 12 of POCSO Act read with 34 IPC and Section 10 of POCSO Act r/w 34 IPC, the prosecution has not proved that the appellant had common intention or object with the other accused to commit the penetrative sexual assault, therefore he cannot be convicted under Section 10 of POCSO Act, r/w 34 IPC and 12 of POCSO Act, 2012 r/w Section 34 IPC.



25. This Court in C.A.No.113 of 2019, dated 30.04.2019, modified the conviction and sentence imposed on the 2nd and 3rd accused considering the overtact against them. The victim girl has clearly stated that the appellant pressed her breast and tried to bite her breast and when she prevented the same, again he laid on her and pressed her breast and tried to bite her breast and attempted to commit penetrative sexual assault and further, the appellant kicked her stomach and slapped her on ear, due to which, she fell down and sustained bleeding injuries in her mouth, nose and head. The medical records also corroborated the same. Hence, the involvement of the appellant cannot be compared with the involvement of the other accused. Thus the prosecution has proved the case against the appellant that he has committed the offence under Section 12 of POCSO Act, 2012 and not r/w 34 IPC and also he has committed the offence punishable under Section 10 of POCSO Act, 2012 and not r/w 34 IPC, besides, the appellant has committed the offence under Sections 450 and 323 IPC.

26. Taking into consideration of the facts and circumstances of the case, this Court is inclined to modify the conviction imposed on the appellant one from Sections 10 of POCSO Act r/w 34 IPC and 12 of POCSO Act r/w 34 IPC to the offence punishable under Sections 10 and 12 of POCSO Act, 2012.

27. Therefore, the conviction imposed on the appellant is modified from Sections 10 of POCSO Act r/w 34 IPC and 12 of POCSO Act r/w 34 IPC to the offence punishable under Sections 10 and 12 of POCSO Act, 2012. Rest of the finding given by the learned Sessions Judge, Mahila Court, Cuddalore remains as unaltered. Subject to the above modification, this Criminal Appeal is, accordingly, dismissed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge, Mahila Court,
Cuddalore.



2. The Inspector of Police,
All Women Police Station,
Neyveli, Cuddalore District.
3. The Superintendent Central Prison,
Cuddalore.
4. The District Collector,
Cuddalore.
5. The Director General of Police,
Mylapore, Chennai - 4
6. The Honourable "POSCO Committee"
High Court, Madras - 104
7. The Public Prosecutor,
High Court, Madras.

Copy To

The Section Officer,
CrI Section,
High Court,
Madras.

CrI.A.No.394 of 2019

KV(CO)
RGA(22/07/2021)