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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2021

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.551 of 2020
and Crl.M.P.No.8974 of 2020

1.Shankar
2.Pratheepraj
3.Karuppaiah

... Appellants

Versus

State of Tamilnadu,
represented by
The Inspector of Police,
Mangalamedu Police Station,
Perambalur District.
Crime No.379 of 2018

... Respondent

PRAYER: Criminal Appeal is filed under Section 374(ii) Cr.P.C., seeking to set aside the order dated 27.11.2020 passed in Spl.S.C.No.7 of 2019 on the file of the Mahila Court, Perambalur, by allowing this Criminal Appeal.

For Appellants : Mr.W.M.Abdul Azeez

For Respondent : Mr.R.Suryaprakash

J U D G M E N T

This Criminal Appeal has been filed seeking to set aside the order dated 27.11.2020 passed in Spl.S.C.No.7 of 2019 on the file of the Mahila Court, Perambalur.

2. The respondent police registered a case against the appellants and yet another accused who was juvenile. He was dealt with under the provisions of the Juvenile Justice (Care and Protection of Children) Act as per the section 34 of POCSO Act. After investigation, the respondent police laid the charge sheet. Since the offence committed has been charged under POCSO Act, the Special Judge taken the charge sheet on file in Spl.S.C.No.7 of 2019. After trial, the trial court convicted the appellants for the offence under section 11(1) r/w. 12 of the POCSO Act and sentenced to undergo rigorous imprisonment for 3 years each and to pay a fine of Rs.3,000/- each and in default



to pay the fine to undergo a simple imprisonment for 6 months. Against the judgment of conviction, the appellants are before this Court.

3. The learned counsel for the appellants would submit that the charge levelled against the appellants are not attributed under section 11(1) r/w.12 of POCSO Act. Though they have been charged for the offence under section 294(b) and 506(i) IPC, the learned trial Judge found that they are not found guilty for the offence under section 294(b) and 506(i) IPC, however found that the appellants are guilty for offence under section 11(1) r/w.12 of the POCSO Act. It is further submitted that the evidence of P.W.3/victim girl itself is very clear that it does not attribute offence under section 11(1) r/w.12 of POCSO Act and to attract the offence under Section 11 of the POCSO Act, there should be an intention to assault sexually. In this case, no intention has been attributed by any of the witnesses. Even corroborative evidence of P.W.4 has not supported the case of the prosecution. The only eye witness according to the victim was P.W.4. She entered into P.W.4's house but evidence of P.W.4 has not supported the case of the prosecution. Even P.W.3 victim girl has stated that she entered the house of P.W.4 and appellants used filthy language in the presence of P.W.4. Whereas P.W.4 has not supported the case of the prosecution. Mahazar witness are also relevant witnesses and they also stated the same. All the appellants are only young boys and even one of the accused is juvenile and therefore they are only by infatuation did the above act and uttered such words before the victim. The victim has stated that she is not aware of the appellants, whereas P.W.1 and P.W.2, parents of the victim girl stated that the appellants are all known persons and further they would submit that though they have been examined by the Investigating Officer on the date of occurrence, the fact remains that they have not been examined by Special Court even within the statutory period.

4. The learned Government Advocate appearing for the respondent would submit that victim girl P.W.3 has clearly deposed about the word uttered by the appellants and also the prosecution examined the witnesses viz., P.W.3 victim girl and P.W.4, aunty of the friend of the victim girl. Even a fair reading of the evidence of the victim girl would clearly shows that the offence committed would attract offence under section 11(1) r/w.12 of the POCSO Act. Therefore the learned trial Judge has rightly convicted the appellants.

5. Heard both sides.

6. The case of the prosecution is that on 09.09.2018, the victim while going by cycle, the appellants and a juvenile



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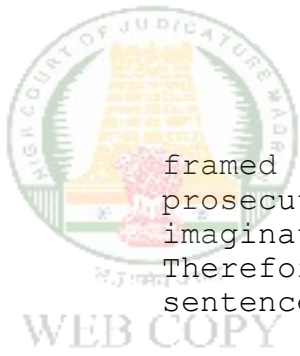
followed her. According to the evidence of the victim girl, the appellants followed her and told that there is very low air in her cycle and so she is going to cycle shop; but the victim girl also stated that the appellants also told that her cycle is having more air and so she will not be going to cycle shop for filling air, but she may go to some other place and let us follow her. The victim girl also stated that at that time, appellants and the juvenile accused used filthy language in a public place, therefore, she entered the house of P.W.4 who is the aunty of the friend of the victim girl. P.W.4 questioned the act of the appellants. The victim girl also told the aunty of her friend about the occurrence. Therefore P.W.4 informed about the occurrence to the parents of the victim girl. The parents lodged a complaint before the respondent Police. The police, after investigating the matter, filed a charge sheet.

7. A careful reading of evidence of P.W.3, victim girl, show that the appellants had no intention to sexually harass the victim girl. As stated by the learned counsel for the appellants, the appellants are teenage boys and they have also uttered words for fun and there is no intention to cause sexual harassment.

8. It is not a case of the prosecution that the appellants tried to misbehave with the girl or they intended to cause sexual harassment or sexual abuse. Therefore as pointed out by the learned counsel for the appellants, the prosecution has failed to prove the charges. Since P.W.4 has not supported the case of the prosecution and P.W.4 has not corroborated the evidence of P.W.3 victim girl, the trial court acquitted the appellant for the offence under section 294(b), 341 and 506(1) IPC, however convicted the appellants for the offence under section 11(1) r/w.12 of the POCSO Act.

9. It is to be noted that the words alleged to have uttered by the appellants in this case was before P.W.4. However, P.W.4 the prime eye witness has not supported the case of the prosecution. Further the victim girl also has not stated anything against the appellants or that she was sexually harassed by the appellants. Therefore, under these circumstances, though the scope of POCSO Act is very stringent, however considering the age of the appellants and also the evidence of P.W.3/victim girl, this Court does not find any material that attract the ingredients of Section 11 of the POCSO Act. Therefore, this court is of the considered view that the learned Special Judge failed to consider the evidence of P.W.3 and P.W.4 but recorded the conviction without any substantive evidence which warrants interference of this Court.

10. On a reading of the entire materials and the charge



framed against the appellants and the evidence of the prosecution witnesses, it is very clear that at no stretch of imagination, Section 11 of the POCSO Act is proved in this case. Therefore, in view of the above reasonings, the conviction and sentence passed in S.C.No.7 of 2019 is liable to be set aside.

11. Therefore, under these circumstances, the criminal appeal is allowed. The conviction and sentence passed by the trial court in Sessions Case No.7/2019 are set aside and the appellants are acquitted. Bail bond executed by them shall stand cancelled. Fine amount, if any paid by them are ordered to be refunded forthwith. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

mpa

To

- 1.The Mahila Court, Perambalur.
2. The Inspector of Police,
Mangalamedu Police Station,
Perambalur District.
- 3.The Chairman,
POSCO Act Committee,
High Court, Madras/.
- 4.The Public Prosecutor Officer,
High Court, Madras.
- 5.The Section Officer,
Criminal Section, High Court,
Madras.

+4cc to Mr.W.M.Abdul Majeed, Advocate, S.R.No. 5488

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and Crl.M.P.No.8974 of 2020

RLD(CO)
GN(13/07/2021)