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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.A.No.356 of 2018

Sureshkumar ... Appellant/accused

Vs.

State represented by
The Inspector of Police,
Rasipuram Police Station,
Namakkal District
(crime No.493 of 2016) ... Respondent

PRAYER:

Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure, to set aside the judgment dated 31.05.2018 passed in Spl.CC.No.32 of 2016 by the learned Sessions (Fast Track Mahila) Judge, Namakkal.

For Appellant : Mr.S.N.Arunkumar

For Respondent : Mr.A.Gopinath,
Government Advocate(crl.side)

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JUDGMENT

This criminal appeal is filed as against the judgment dated 31.05.2018 passed in Spl.CC.No.32 of 2016 on the file of the learned Sessions (Fast Track Mahila) Judge, Namakkal, thereby convicted the appellant for the offence punishable under Section 11 r/w 12 of POCSO Act and Section 305 r/w 116 of IPC.

2. The case of the prosecution is that the victim was aged about 16 years. Her parents were no more and she lived in her maternal aunt house. While she was studying 10th std at Government Girls Higher Secondary School at Annasalai, Rasipuram, she used to go to school by walk. While being so, the accused waylaid the victim to talk with him. The victim refused to talk with him and it was informed to her family members. Thereafter, her uncle along with other person went to the house of the accused and warned him. Even then, while the victim was studying 12th std in the year 2016 and while she was going to school by her bicycle, the accused waylaid her and pulled her hand to love him. He also threatened with the photograph of the victim to love him. Immediately, she consumed 'all out' liquid (mosquito preventive poison). Unfortunately, she was saved and lodged complaint. On receipt of the said complaint, the respondent registered FIR in crime No.493 of 2016 for the offence under Section 11 r/w 12 of

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POCSO Act and Section 305 r/w 116 of IPC. After completion of investigation, the respondent filed final report and the same has been taken cognizance for the offence under Section 11 r/w 12 of POCSO Act and Section 305 r/w 116 of IPC in Spl.CC.No.32 of 2016.

3. On the side of the prosecution, examined PW1 to PW14 and marked Ex.P1 to Ex.P12. On the side of the accused, examined DW1 and DW2 and marked Ex.D1 series. On the side of the prosecution, they produced cell phone as material object i.e. MO1. On perusal of oral and documentary evidence, the trial court found him guilty for the offence under Section 11 r/w 12 of POCSO Act sentencing to undergo two years simple imprisonment along with fine of Rs.1,000/-, in default to undergo three months simple imprisonment and for the offence under Section 305 r/w 116 of IPC sentencing to undergo two years simple imprisonment. Aggrieved by the same, the present criminal appeal has been filed.

4. The learned counsel for the appellant would submit that the victim only fell in love with the appellant. She had written love letter including by her own blood which was marked as Ex.D1. Unfortunately the trial court did not even discuss about Ex.D1 and no reason stated to disbelieve the case of the appellant. Originally the victim fell in love with the appellant. When it came to the knowledge

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of her family members, she consumed 'all out' liquid only to threaten her family members since she consumed only little bit of liquid and she went to school. It was reacted later and started vomiting. Immediately, she was admitted into hospital and she was treated as in-patient for four days. In fact, she did not even whisper before the doctor about the reason for consuming the 'all out liquid'. The said doctor who treated the victim was examined as PW11. He deposed that she consumed poison by deliberately to self harm injury. PW5 went to the house of the accused and warned him along with another person.

4.1 He further submitted that the another person was examined as PW6 and turned hostile and failed to support the case of the prosecution. Therefore, PW5 is none other than his own uncle and interested person. Therefore, the prosecution failed to prove the case beyond any doubt. He further submitted that when the appellant refused to get marry the victim and the same came to the knowledge of her parents, she consumed poison. Therefore, the appellant did not commit any offence as alleged by the prosecution. Even according to the case of the prosecution, he had only love affair with the victim and he never tortured the victim to love him. Even without considering the facts and circumstances, the trial court convicted the appellant.

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5. Per contra, the learned Government Advocate(crl.side) appearing for the respondent / police would submit that the victim was examined as PW1 and she categorically deposed that even while she was studying 10th std, the accused had given love torture to her. Therefore, it was informed to her family members and PW5 and PW6 went to the house of the accused and warned him. He assured that he will not indulge in any kind of similar activities. Thereafter, when she was studying 12th std and while she was going to school by bicycle, again the appellant used to give her love torture. He also shown the photograph of the victim and threatened her. Therefore, the victim felt humiliated and consumed 'all out' liquid to commit suicide. Unfortunately, she was admitted into the hospital immediately and she was saved by the doctor. She was admitted into the hospital as in-patient for four days. In support of her contention, PW2 to PW5 categorically deposed that the appellant had given love torture to the victim.

5.1 He further submitted that after consuming poison, she went to school. She started vomitting and the same was questioned by her Headmaster and she told him that because of the love torture given by the appellant, she consumed 'all out' liquid. The headmaster was examined as PW9, who categorically supported the case of the prosecution. The doctor who treated the victim was examined as PW11, who categorically deposed that the victim consumed poison and she was admitted

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into the hospital as in-patient from 19.07.2016 to 23.07.2016. The accident register was marked as Ex.P7. Therefore, the trial court rightly found the appellant as guilty and convicted him.

6. Heard, Mr.S.N.Arunkumar, the learned counsel appearing for the appellant and Mr.A.Gopinath, learned Government Advocate(crl.side) appearing for the respondent / police.

7. The case of the prosecution is that when the victim was studying 10th std, the appellant followed her and expressed his love affair. It was informed to her family members and the appellant was warned by them. Thereafter, there was no love torture by the appellant for two years. Again while the victim was studying 12th std and when the victim was going to school by her bicycle, again the appellant followed her and tortured her to love him, due to which the victim consumed 'all out' liquid and went to school on 19.07.2016. She was found vomiting and immediately, she was taken to Government Hospital, Rasipuram. She was treated for four days as in-patient. It is seen that the victim did not state the date of the alleged occurrence such as when the appellant waylaid the victim and when he disclosed about his love affair. However, she consumed poison on 19.07.2016. After consuming poison and after two hours, she was found vomiting and admitted

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into the hospital. PW2 is a maternal uncle of the victim, who deposed that she already informed about the love affair expressed by the appellant. While she was studying 10th std, the appellant was warned by PW5 and PW6. PW5 is also an uncle of the victim, who deposed that he was warned by him about his expression of love affair. However, PW6 who accompanied with PW5 turned hostile.

8. It is also seen that the doctor who examined the victim girl was examined as PW11, who recorded her statement in the accident register which was marked as Ex.P7. The victim did not even whisper about the reason for consuming poison. Therefore, PW11 opined that 'deliberate self harm injury'. That apart, the court below failed to consider Ex.D1 which was written by the victim. On comparison of Ex.D1 letters, this Court felt that the said letters were written by the victim to the appellant. Therefore, there was love affair between the victim and the appellant. In fact, the victim had not sent for Ex.D1 for handwriting expert opinion, though she denied the signature. Immediately, the appellant filed application to send for Ex.D1 for handwriting expert opinion. It was dismissed by the trial court. Aggrieved by the same, the appellant filed revision before this Court in Crl.RC.No.116 of 2018. Unfortunately, though this Court allowed the revision, before the reaching the order, the trial court pronounced the judgment. Ex.D1 also shows that some letters were written by blood. Ex.D1 runs several pages and all the

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letters are one and the same. The signature of the victim also one and the same. Therefore, it shows there was love affair between them and when it came to the knowledge of her family members, she consumed poison. Therefore, though there is material to attract provision under Section 11 r/w 12 of POCSO Act and Section 305 r/w 116 of IPC for conviction, this Court is inclined to reduce the sentence imposed by the trial court.

9. As such, the judgment dated 31.05.2018 passed in Spl.CC.No.32 of 2016 by the learned Sessions (Fast Track Mahila) Judge, Namakkal is modified as follows:

(i)	The conviction rendered by the trial court for the offence under Section 11 r/w 12 of POCSO Act and Section 305 r/w 116 of IPC is confirmed.
(ii)	The sentence of imprisonment imposed by the trial court is reduced to the period already undergone by the appellant.
(iii)	The trial court imposed fine of Rs.1,000/- for the offence under Section 11 r/w 12 of POCSO Act and the same is hereby confirmed.
(iv)	On payment of fine, the appellant is directed to be set at liberty forthwith, unless his custody is required in

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	connection with any other case. The bail bond, if any executed by the accused, shall stand cancelled.

10. Accordingly, this criminal appeal is partly allowed.

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Speaking/non-speaking
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G.K.ILANTHIRAIYAN, J.

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To

1.The learned Sessions (Fast Track Mahila) Judge,
Namakkal
2.The Inspector of Police,
Rasipuram Police Station,
Namakkal District
3.The Public Prosecutor,
High Court of Madras

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