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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2023

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.A.No.314 of 2016

Jagadeesan .. Appellant

Versus

State rep. by its
The Inspector of Police,
Kuthalam Police Station,
Nagapattinam District.
(Crime No.273 of 2015) .. Respondent

Prayer : Criminal Appeal filed under Section 374 of Criminal Code of Procedure, to call for the records in S.S.C.No.3 of 2015 on the file of the learned Sessions Judge (Fast Track Mahila Court), Nagapattinam, dated 24.03.2016 and set aside the same.

For Appellant : Mr.R.Shiva Kumar
for M/s.K.M.Vijayan Associates

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

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JUDGMENT

On 13.08.2015, when P.W.8 was on duty at the *Kuthalam* Police Station, *Nagapattinam* district, P.W.1 came to the Police Station and lodged a complaint to the effect that she was studying XII standard in *Kittappa* Municipal Higher Secondary School and while so, at about 6.15 P.M, when she was walking along with her sister near Murthy Complex, the accused approached her and told her that he is in love with her for the past two years and that she is not giving any answer. Further saying that things cannot be left as such, he hugged her and kissed her on cheek. P.W.1 felt disgusting and immediately, a lady, who was present near the place, shouted and one *Anbu* also witnessed the incident and directed her to complain to her mother.

2. Upon the said complaint, a case was registered in Crime No.273 of 2015 under Section 8 of the *Protection of Children from Sexual Offences Act, 2012* (hereinafter referred to as '*POCSO Act*'). P.W.8 further took up the case for investigation and laid a charge sheet before the learned Sessions Judge (Fast Track Mahila Court), *Nagapattinam*. Upon furnishing of copies as per Section 207 of the Code of Criminal Procedure and framing of charge

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under Section 8 read with Section 7 of the *POCSO Act*, the accused denied the charge and stood trial.

3. The prosecution examined P.Ws.1 to 8 and marked ***Exs.P-1*** to ***P-7***. ***M.O.1*** was also produced on behalf of the prosecution. Upon being questioned about the material evidence on record and the incriminating circumstances under Section 313 of the Code of Criminal Procedure, the accused denied the same as false. Thereafter, no evidence was let in on behalf of the defence. The Trial Court then proceeded to hear the learned Special Public Prosecutor on behalf of the State and the learned Counsel for the accused and by a judgment, dated 24.03.2016, found that the prosecution had failed to prove the age of the victim girl to be less than 18 years beyond reasonable doubt and therefore, acquitted the accused for the offence punishable under Section 8 read with Section 7 of the *POCSO Act*, but, however, upon being satisfied that the accused tried to propose and hugged P.W.1 and kissed her on cheek, convicted him for the lesser offence under Section 354-A of the Indian Penal Code and sentenced to undergo Rigorous Imprisonment for a period of one year and to pay a fine of Rs.5,000/- and in default of payment of fine, to undergo Simple

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Imprisonment for one month. Aggrieved by the same, the present appeal is laid before this Court.

4. Heard *Mr.R.Shiva Kumar*, learned Counsel for the appellant and *Mr.R.Kishore Kumar*, learned Government Advocate (Crl. Side) for the respondent.

5. *Mr.R.Shiva Kumar*, learned Counsel for the appellant would submit that in this case, except to examine the sister of P.W.1 and the said *Anbu*, who is also relative to the said person, the other relevant witnesses were not examined. The entire incident happened only for a few moments and absolutely, neither the sexual intent of the accused nor any other misbehaviour has been proved. The learned Counsel would submit that the accused had merely proposed to P.W.1, which is being taken as offensive by P.W.1 and her evidence is with embellishment. Therefore, the learned Counsel would pray that the findings of the Trial Court to be interfered with.

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6. He would also submit that non-framing of the charge under Section 354-A of the Indian Penal Code also causes prejudice in this case as the specific ingredients are not at all there which need to be gone into detail by giving an opportunity to the accused.

7. Per contra, *Mr.R.Kishore Kumar*, learned Government Advocate (Crl. Side) would submit that the offence under Section 354-A of the Indian Penal Code and its ingredients are akin and is a lesser offence as compared to the offence punishable under Section 8 read with Section 7 of the *POCSO Act* and therefore, mere non-framing of the charge will not be in any manner prejudicial to the appellant/accused. The victim, P.W.1, has categorically deposed about the incident and once the accused had made physical contact and committed offence involving unwelcome sexual contact, offence under Section 354-A of the Indian Penal Code is made out. As a matter of fact, only because the birth certificate in ***Ex.P-7***, is not believed by the Trial Court, the accused was convicted for a lesser offence. Therefore, he would submit that there are no merits in the appeal and prayed for its dismissal.

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8. I have considered the rival submissions made on either side and perused the material records of the case. At the outset, it can be seen that the alleged incident occurred while the victim girl was on her way-back from school along with her sister near a commercial complex in the street. As per the statement of P.W.1, victim, the accused tried to propose and not stopping with that, he made physical contact by hugging and kissing her on cheek. Therefore, once P.W.1 had deposed in respect of the details as stated above, I am of the view that no exception can be taken for the findings of the Trial Court that in the absence of proof of age, the lesser offence under Section 354-A of the Indian Penal Code is made out. The age of the accused, at the time of the incident, is 27 years. The offence took place momentously in a manner as to forcefully proposing his love, thereby, invading the bodily privacy of the victim.

9. It is seen that the accused was immediately arrested in this case and was in prison for a period of 28 days. Considering the background of the parties, the manner of the commission of the offence, place of committing the offence and the age of the accused as well as the victim, I am of the view that the punishment imposed by the Trial Court imposing a sentence of one

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year Rigorous Imprisonment is unduly harsh and I am of the view that by considering the seriousness of the offence against 18 year old girl, and the requirement of imposing adequate punishment, future and reformation of the accused, I am of the view that the substantive sentence of Rigorous Imprisonment can be is reduced to the period already undergone by the appellant, which is 28 days.

10. In the result, this Criminal Appeal is partly allowed on the following terms:-

(i) The conviction of the accused for the offence under Section 354-A of the Indian Penal Code is confirmed;

(ii) The substantive sentence imposed by the Trial Court i.e., Rigorous Imprisonment for one year is modified as the period already undergone by the appellant;

(iii) The sentence of fine of Rs.5,000/- remains the same.

02.02.2023

Index : no
Speaking order
Neutral Citation : no
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To

1. The Sessions Judge (Fast Track Mahila Court),
   Nagapattinam.

2. The Public Prosecutor,
   High Court of Madras.

3. The Inspector of Police,
   Kuthalam Police Station,
   Nagapattinam District.

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D.BHARATHA CHAKRAVARTHY, J.,

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