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Crl.A.No.323 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2023

CORAM:

The Hon'ble MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.A.No.323 of 2017

S.Murali

... Appellant/Accused

-Vs-

The State represented by
The Inspector of Police,
Indoor Police Station,
Dharmapuri District.
(Crime No.7 of 2014)

... Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) of Cr.P.C, seeking to set aside the conviction, sentence and compensation passed against the Appellant in Spl.S.C.No.61 of 2015, dated 10.05.2017 on the file of the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri and allow the appeal and consequently acquit the Appellant from all charges.

For Petitioner : Mr.J.Bharathiraja

For Respondent : Mrs.G.V.Kasthuri
Additional Public Prosecutor

ORDER

This Criminal Appeal is filed by the sole Accused, who had suffered conviction, sentence of imprisonment and compensation, challenging the judgment passed by the learned Sessions Judge, Fast Track Mahila Court,



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Dharmapuri, in Spl.S.C.No.61 of 2015, dated 03.09.2015.

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2. The learned Counsel for the Appellant submitted that the Accused was convicted only for the offence under Section 323 of IPC whereas the evidence of the Prosecution witness does not incriminate the Accused for the offence under Section 323 of IPC. Also, he would submit that the Prosecution miserably failed to prove the charges.

3. When the Appeal came up for hearing earlier, the then learned Single Judge of this Court had raised certain questions, for which the learned Government Advocate (Crl. Side) representing the State sought time for getting instructions from the Officers concerned. Accordingly, the case was adjourned.

4. From the records, it is found that on 16.06.2023, the learned Judge of this Court after hearing the arguments for some time raised queries. Only then, the learned Government Advocate (Crl. Side) sought time to get instructions from the Officers concerned. Accordingly, the case was adjourned to 20.06.2023.

5. On 20.06.2023, the learned Government Advocate (Crl. Side)



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produced the letter received from the Superintendent of Police, Dharmapuri District stating that after the query raised by this Court, the Superintendent of Police had taken necessary action by framing charges against the Investigation Officer. Therefore, the learned Single Judge of this Court had adjourned the case by three weeks from 20.06.2023.

6. Subsequently, the case was posted before the Court only on 30.10.2023. When the case came up for hearing on 06.11.2023, this Court had raised queries regarding action taken against the Investigation Officer, with the learned Additional Public Prosecutor.

7. It was because, the learned Counsel for the Appellant submitted that the Appellant in this case was convicted for the offence under Section 323 of IPC and he was acquitted for the offence under Section 3 r/w. 4 of the POCSO Act, 2012 and Section 506(i) of IPC. This Court had sought details regarding action taken against the Investigation Officer concerned and the case was adjourned to 15.11.2023.

8. On 15.11.2023, the learned Additional Public Prosecutor submitted that the present Station House Officer had filed status report regarding the



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action taken by the Superintendent of Police, Dharmapuri District.

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9. On perusal of the status report, it is found that on the query raised by this Court only the Superintendent of Police had initiated departmental action. It is found that as per the status report furnished by the present Station House Officer of Indoor Police Station, the Superintendent of Police had censured the then Investigation Officer/Station House Officer of Indoor Police Station. The Deputy Superintendent of Police, Pennagaram Sub Division is also present in Court. The status report of the present Station House Officer, Indoor Police Station does not inspire confidence of this Court.

10. As per the query raised by the learned Judge of this Court on 16.06.2023, only the learned Government Advocate (Crl. Side) sought time to get instructions. Therefore, it is found that only after query raised by this Court, the Superintendent of Police, Dharmapuri District had issued charge memo. On 15.11.2023, only it is stated that the then Investigation Officer/Inspector of Police was censured by the Ex-Superintendent of Police, it is found not satisfactory.



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11. The entire Police Department treats the major offences particularly offences attracting grave punishment for crimes committed against the innocent children as minor offences. That cannot be treated lightly. This Court directs the Superintendent of Police, Dharmapuri to be present in Court by 2.15 p.m., on 22.11.2023 with relevant files regarding the departmental action taken against erring Police Official in this case Cr.No.7/2014 of Indoor Police Station, Dharmapuri District.

12. Right from the investigation part-1 till the conclusion of the investigation, there had been shoddy investigation. Based on the shoddy investigation, the learned trial Judge acquitted the Accused from the grave offence under Section 3 r/w. 4 of POCSO Act. Therefore, the very same Investigation Officer ought to have filed Appeal or the Superintendent of Police ought to have directed the Investigation Officer to file Appeal. They had not done so.

13. The learned Additional Public Prosecutor vehemently objected stating that the Prosecution had placed all the materials before the trial Court fairly. In spite of the same, the learned Sessions Judge, Fast Track Dharmapuri, had convicted the Accused only for the offence under Section



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323 of IPC. The Appeal lacks merit and is to be dismissed.

Point for consideration:

Whether the judgment of the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri in Spl.S.C.No.61 of 2015, dated 10.05.2017 is to be set aside as perverse?

14. Heard the learned Counsel for the Appellant Mr.J.Bharathiraja and the learned Additional Public Prosecutor Mrs.G.V.Kasthuri, for the State. Perused the deposition of the witnesses P.W-1 to P.W-15, the documents under Ex.P-1 to Ex.P-19 and the judgment of the learned Sessions Judge, Fast Track Mahila Court in Spl.S.C.No.61 of 2015, dated 10.05.2017.

15. On consideration of the rival submissions and on perusal of the judgment of the learned Sessions Judge, it is found that the charge framed against the Accused for offence under Section 323, 506(i) of IPC and Section 4 r/w Section 3 of the Protection of Children from Sexual Offences Act, 2012, were not proved except the charge against Section 323 of IPC. Therefore, the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, on proper appreciation of evidence, had arrived at a conclusion



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that the evidence of P.W-13 Doctor-Selvi who had issued Ex.P-9 had raised doubt regarding the claim of alleged attempted rape/alleged sexual assault. Therefore, the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, had acquitted the Accused for the charges under Section 506(1) of IPC and Section 4 r/w. Section 3 of Protection of Children from Sexual Offences Act, 2012. As per the relationship between the Appellant/Accused and P.W-1 Prosecutrix as cousins, the conviction under Section 323 of IPC is also is set aside. The only conviction is under Section 323 of IPC which is simple hurt caused with hands.

16. In the light of the above discussion, the Point for consideration is answered in favour of the Appellant and against the Respondent. The judgment of the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri in Spl.S.C.No.61 of 2015, dated 10.05.2017 is to be set aside.

17. In the result, **this Criminal Appeal is allowed.** The judgment of the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri in Spl. S.C.No.61 of 2015, dated 10.05.2017 is set aside. The Appellant is acquitted under Section 235 of Cr.P.C. from the offence under Section 323 of IPC. The bail bond executed by the Appellant shall stand cancelled and the fine amount paid by the Appellant, if any, is to be refunded to the



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Appellant.

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18. Since the Criminal Appeal is allowed and the Appellant/Accused is acquitted, the Superintendent of Police, Dharmapuri, Dharmapuri District is advised not to proceed further with the departmental enquiry against the Investigation Officer in Crime No.7 of 2014 on the file of the Indoor Police Station, Dharmapuri District, based on the query raised by this Court earlier.

12.12.2023

srm

Index : Yes/No

Internet : Yes/No

Speaking/Non-speaking order

To

- 1.The Sessions Judge, Fast Track Mahila Court, Dharmapuri.
- 2.The Additional Public Prosecutor, Madras High Court, Chennai-600104.



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SATHI KUMAR SUKUMARA KURUP, J.,

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