



Crl.A.No.359 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2024

CORAM :

**THE HONOURABLE MRS. JUSTICE R.HEMALATHA**

**Crl.A.No.359 of 2018**

1.Maheswari

... Appellant

vs.

1.Silambarasan

2.Rajendran

3.The Inspector of Police,  
Mangalamedu Police Station,  
Perambalur District.  
(Crime No: 236 of 2013)

... Respondents

**PRAYER:** Criminal Appeal filed under Section 378 of Criminal Procedure Code, 1973, against the judgment and orders dated 26.05.2017 passed in Special S.C.No.12 of 2016 by the learned Sessions Judge, Mahila Court, Perambalur.

For Appellant : Mr.K.Balu

For R1 and R2 : Mr.M.Velan  
Legal Aid Counsel

For R3 : Mr.S.Rajakumar  
Additional Public Prosecutor

**J U D G M E N T**



Crl.A.No.359 of 2018

Challenging the order of acquittal dated 26.05.2017 passed by the

Sessions Judge, Mahila Court, Perambalur in Special S.C.No.12 of 2016, the present criminal appeal is filed by one of the victims (P.W.1).

2. The case of the prosecution as could be discerned from the oral and documentary evidence is as follows:

2.1. The Victims (P.W.1 to P.W.3) are the residents of Ogalur Village, Perambalur District and are studying X standard in Government Higher Secondary School, Ogalur. On 15.06.2013 at about 11.00 a.m., they went to school to find out their X Standard results. When they were coming out of the School, the accused (i) Silambarasan; (ii) Rajendran abused their parents in filthy language in an inebriated condition. P.W.1 to P.W.3 tried to escape from them and took shelter in the house of one Arul (not examined). The accused 1 and 2, who chased P.W.1 to P.W.3 attempted to enter inside the house. However, the other Villagers prevented them and also assaulted them.

2.2. Thereafter, P.W.1 to P.W.3 went to Mangalamedu Police



Crl.A.No.359 of 2018

Station, Perambalur District on the same date at about 2.00 p.m., and lodged a complaint (Ex.P1) with Tmt.Jayasree (P.W.9), the then Sub Inspector of Police, Mangalamedu Police Station. P.W.9 recorded the statement of P.W.1 and registered FIR in Crime No.236 of 2013 against the accused for the offences punishable under Section 294(b), 324, 506(ii) IPC and Section 11 (1) read with 12 of Protection of Children from Sexual Offences Act, 2012 (In short hereinafter called as 'POCSO Act'). She then placed the FIR (Ex.P3) and other connected records before the Inspector of Police for investigation.

2.3. Thiru.Sivasubramanian (P.W.10), the then Inspector of Police, Mangalamedu Police Station, took up investigation in Crime No.236 of 2013, went to the scene of occurrence and prepared an observation mahazar (Ex.P4) and a rough sketch (Ex.P5) in the presence of the witnesses Subramani (not examined) and Ravi (P.W.8). He examined all the witnesses including the victims and recorded their statements under Section 161 (3) Cr.P.C. After completing investigation, he laid a final report on the same day before the Sessions Judge, Mahila Court, Perambalur against the accused for the offences punishable under Sections 294 (b) (4 counts), 352 (4 counts), 506(ii) (4 counts) IPC and



Crl.A.No.359 of 2018

Section 11 (1) r/w Section 12 (3 counts) of POCSO Act, against the accused (i) Silambarasan; (ii) Rajendran.

2.4. The learned Sessions Judge, after furnishing copies of records to the accused under Section 207 Cr.P.C., framed charges against the accused for the above said offences.

2.5. In order to bring home the guilt of the accused, the prosecution examined 10 witnesses and marked 6 documents.

2.6. When the respondents 1 and 2/accused were questioned with regard to the incriminating circumstances appearing in evidence against them under Section 313(1) Cr.PC, they denied of having committed any offence. However, they did not examine any witness on their side.

2.7. The learned Trial Court Judge after analysing the oral and documentary evidence on record, acquitted the respondents 1 and 2/accused of all charges framed against them, vide his judgment and orders dated 26.05.2017, aggrieved over which, the present appeal is filed by one of the victims (P.W.1).



WEB COPY

3. Heard Mr.K.Balu, learned counsel appearing for the appellant, Mr.M.Velan, learned Legal Aid Counsel appearing for the respondents 1 and 2/accused and Mr.S.Rajakumar, learned Additional Public Prosecutor appearing for the 3<sup>rd</sup> respondent.

4. Mr.K.Balu, learned counsel appearing for the appellant contended that the Trial Court Judge without considering the evidence adduced by P.W.1 to P.W.3 had acquitted the respondents 1 and 2/accused. They were all children within the meaning of POCSO Act but the same has not been considered by the Trial Court and the Trial Court acquitted the accused mainly on the ground that the prosecution did not file any records to prove the age of the victims even though they were all studying X standard. It is also his contention that P.W.1 to P.W.3 had clearly deposed that the accused 1 and 2 abused them in filthy language and when they attempted to escape from the accused, they followed them. The accused 1 and 2 were infact attacked by the Villagers, who were near the place of occurrence. Therefore, he prayed for setting aside the order of acquittal passed by the Trial Court Judge.



5. Per contra, Mr.M.Velan, learned Legal Aid Counsel appearing for the respondents 1 and 2 would contend that the trial court had, after analysing the oral/documentary evidence, rightly acquitted the accused and therefore, no interference is called for by this court and prayed for dismissal of the Criminal Appeal.

6. Per contra, Mr.S. Raja Kumar, learned Additional Public Prosecutor appearing for the 1<sup>st</sup> respondent would contend that the trial court had not properly appreciated the evidence on record and therefore, he prayed for setting aside the order of acquittal passed by the Trial Court. The State did not think it fit to file an appeal against the order of acquittal.

7. Though it is alleged by the prosecution that all the three victims were less than 18 years on the date of occurrence, no school records have been produced to show that they were less than 18 years. P.W.1 had set the criminal law in motion by lodging a complaint with Tmt.Jayasree (P.W.9), the then Sub Inspector of Police, Mangalamedu Police Station. In the complaint, P.W.1 had stated that when she along with P.W.2 and P.W.3 came out of her school on 15.06.2013 at about 11.00 a.m., the



accused came near them and asked them why they were all standing over there. Immediately, all the victims left the place. However, according to the victims, they were followed by both the accused, who abused them in filthy language. However, P.W.1 in her deposition before the Court below had stated that both the accused in an inebriated condition abused their parents in filthy language and therefore, they took shelter in the house of Arul (not examined). Tmt.Rajakumari (P.W.7), wife of the Arul, in her evidence had deposed that she saw P.W.1 to P.W.3 hiding behind the staircase of their house. When she enquired them, they informed P.W.7 that the accused 1 and 2 abused them in filthy language. When she confronted the accused, both of them abused her also in filthy language and asked her to send the victims out of her house. They further attacked her father and one Veeramuthu with a stick, who also questioned them.

8. On the contrary, in the complaint (Ex.P1), P.W.1 had stated that both the accused attacked one Ariyaputhiran (P.W.4), Veeramuthu (P.W.5), Devaraj (P.W.6) and one Kamaraj. Though P.W.4 and P.W.5 supported the case of the prosecution, their evidence does not fit in with the evidence of P.W.7.



Crl.A.No.359 of 2018

WEB COPY

9. The evidence of P.W.1 to P.W.3 is totally different from the complaint (Ex.P1) in material particulars. Moreover, the Investigation Officer, had not also filed the age certificate of the victims to prove their age. All these aspects have been considered in detail by the Trial Court while acquitting the respondents 1 and 2/accused and I do not find any reason to interfere with the same.

**10. In the result,**

- (i) This Criminal Appeal is dismissed.
- (ii) The judgment and orders dated 26.05.2017 passed in Special S.C.No.12 of 2016 by the learned Sessions Judge, Mahila Court, Perambalur District, is confirmed.
- (iii) This Court places on record its appreciation to Mr.M.Velan, learned Legal Aid Counsel, for his valuable assistance in deciding this case. The High Court Legal Services Committee shall pay a



Crl.A.No.359 of 2018

sum of Rs.10,000/- to the said counsel towards his fee.

WEB COPY

**10.06.2024**

Index : yes/no  
Speaking /Non speaking Order  
Neutral Citation : yes / no  
dm

To

- 1.The Sessions Judge,  
Mahila Court, Perambalur District.
- 2.The Inspector of Police,  
Mangalamedu Police Station,  
Perambalur District.
- 3.The Additional Public Prosecutor,  
High Court, Madras.
- 4.The Section Officer,  
Criminal Section,  
High Court, Madras.

Copy to:

The Secretary, High Court Legal Services Committee,  
High Court Campus, Chennai – 600 104.



WEB COPY



Crl.A.No.359 of 2018

**R.HEMALATHA, J.**

dm

**Crl.A.No.359 of 2018**

**10.06.2024**