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CrI.A.No.26 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2024

CORAM :

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Appeal No. 26 of 2017

1. Tamilarasan
2. Murugammal

.. Appellants

Versus

The State of Tamil Nadu
Rep by Inspector of Police
All Women Police Station
Pennagaram
Dharmapuri District
Crime No. 238 of 2015

.. Respondent

Criminal Appeal filed under Section 374 (2) of Cr.P.C., to set aside the judgment dated 05.01.2017 in Spl. Sessions Case No. 7 of 2016 on the file of the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri.

For Appellants : Ms. S. Sridevi
Legal Aid Counsel

For Respondent : Mr. S. Vinoth Kumar
Government Advocate (CrI.side)

JUDGMENT

This Criminal Appeal is filed by the Appellants/Accused Nos. 1 and 2, seeking to set aside the judgment dated 05.01.2017 passed in Special Sessions

Case No. 7 of 2016 on the file of the learned Sessions Judge, Fast Track



Mahila Court, Dharmapuri.

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2. The case of the Prosecution, as could be culled out from the deposition of P.W-1, is as follows:-

2.1. P.W-1 is the father of the deceased. According to P.W-1, the deceased is his second daughter and she was studying Higher Secondary (+2) in Mallupatti. It is his statement that the first Accused used to follow his daughter when she goes to the School and comes back. According to P.W-1, the first Accused has given a love letter to his daughter and when she refused to receive it, she was compelled by the first Accused to receive the love letter failing which he will make a false propaganda in the village that he had raped her. When this was informed to P.W-1 and given the love letter, he consoled the deceased and asked to concentrate on her studies. P.W-1 also went to meet the Accused Nos. 1 and 2 in their house, but he was informed that they have gone to Bangalore and not available there. On coming to know about the visit of P.W-1 to their house, the second Accused, who is the mother of the first Accused, went to the classroom where the deceased was studying and reprimanded her as to why the love letter given by her son was disclosed to P.W-1. The second Accused also scolded the deceased in filthy language in front of the students and Teachers which had caused shame to the deceased.

Therefore, the deceased left the School along with Ajithkumar, the son of



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brother of P.W-1, who is also studying in the same School. On coming to know about this, P.W-1, along with his son Mani and the above said Ajithkumar went to the Police Station and given a complaint. Thereafter, the deceased refused to go School. Since P.W-1 and his wife have to go to Palacode, the deceased was left in the house of his grandparents. When the deceased was in her grandparent's house, the second Accused went there and scolded the deceased in filthy and vulgar language. Unable to bear the same, the deceased left her grandparents, went to her house where she poured kerosene on her and immolated herself. Immediately, the deceased was taken to the hospital in an ambulance by the brother of P.W-1. On intimation, P.W-1 rushed to the hospital where he saw that a dying declaration was recorded by the learned Judicial Magistrate in front of the Police Officials. After recording the dying declaration, it was shown to P.W-1 and he also signed it. The deceased was in the hospital for about 5 days and inspite of treatment, she died.

2.2. In the meantime, based on the dying declaration obtained from the deceased, a case in Crime No. 238 of 2015 was registered on 02.11.2015 for the offences punishable under Sections 11 and 12 of the Protection of Children from Sexual Offences Act, 2012. On receipt of a copy of the First Information Report, P.W-27 proceeded to the Government Medical College Hospital,



Dharmapuri, where she recorded the statement of P.W-1, his wife P.W-2, Mani (P.W-3), brother of P.W-1, Chinnadurai (P.W-4), Palanisamy (P.W-5) and Elavarasi (P.W-6). On the next day i.e., 03.11.2015, P.W-27 proceeded to the scene of occurrence and prepared Observation mahazar. She has recovered the empty kerosene Can in the presence of P.W-7-Karupannan and one Murugesan. Thereafter, P.W-27 proceeded to the house of the Accused and arrested both of them. After their arrest, P.W-27 recorded the voluntary confession statement given by the Accused 1 and 2. At 10.45 a.m on 03.11.2015, both the Accused were brought to the Police Station and remanded to judicial custody.

2.3. On 08.11.2015, the deceased succumbed to the burn injuries. On intimation, P.W-27 went to the Government Medical College Hospital at 10.00 a.m. where she had conducted inquest between 10.00 a.m. and 12.00 noon in the presence of witnesses. Ex.P-22 is the Inquest report. P.W-27 also altered the offences in the First Information Report into one under Sections 11 and 12 of the Protection of Children from Sexual Offences Act, 2012 and Section 306 of the Indian Penal Code. Ex.P-23 is the Alteration report. In the process of investigation, P.W-27 recorded the statement of witnesses Indira (P.W-15), Sathya (P.W-25), Aiswarya (P.W-23) and Malarkodi (P.W-16). After completing the investigation, P.W-27 has filed the charge sheet against the



Appellants/Accused Nos. 1 and 2.

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2.4. On appearance of the Appellants/Accused, the copies of the documents relating to the case have been handed over to them as required under Sections 207 of the Code of Criminal Procedure. Later, charges have been framed against the Appellants/Accused and when they were questioned, they have replied that they are innocent and a false case has been foisted against them. Therefore, trial commenced during which on behalf of Prosecution P.W-1 to P.W-27 have been examined, Ex.P-1 to Ex.P-23 were marked and M.O-1, the Kerosene Can used by the deceased was produced. On behalf of the defence, neither any witness was examined nor any document was marked. The trial Court on considering the oral and documentary evidence, convicted the first Accused for the offences under Section 11 read with Section 12 of the Protection of Children from Sexual Offences Act, 2012 and sentenced him to undergo simple imprisonment for a period of three months, with fine of Rs.1,000/-, in default, to undergo one month simple imprisonment. As regards the second Accused, she was convicted for the offence under Section 306 of the Indian Penal Code and sentenced to undergo five years rigorous imprisonment, with fine of Rs.1,000/- in default, to undergo three months simple imprisonment. In other words, the first Accused was acquitted by the trial Court for the offence under Section 306 of the Indian



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Penal Code. Challenging the Judgment of conviction passed on 05.01.2017 in Special Sessions Case No.7 of 2016, the present Criminal Appeal is filed.

3. When this Appeal came up for hearing on 07.06.2023, the learned Counsel for the Appellants submitted that he has no instruction from the first Appellant. As regards the second Appellant, due to Covid-19, she has not signed before the Court concerned and she has moved necessary application to dispense with her appearance. Therefore, this Court posted the Appeal for hearing on 03.10.2023. On 03.10.2023, there was no representation for the Appellants. Therefore, this Court directed the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, to secure the Accused in the light of the judgment of conviction recorded in Special S.C.No.7 of 2016 and to produce them before the Court. A further direction was issued to delete the name of the Counsel for the Appellants and instead, print the name of the Appellants. Accordingly, the case was adjourned to 10.10.2023. The Registry was also directed to appoint a Counsel from Legal Aid Committee attached to this Court. On 10.10.2023, the Accused-2 alone was secured and produced by the Inspector of Police, All Women Police Station, Dharmapuri, before this Court. At that time, Accused-1 was not produced. So the case was further adjourned to 17.10.2023. On 17.10.2023 the Accused-1 was secured and produced by the



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Inspector of Police, All Women Police Station, Dharmapuri, before this Court.

Further, the learned Counsel nominated by Legal Aid Committee attached to this Court submitted that she had taken instructions from Appellants on 10.10.2023 and is ready to proceed with the arguments.

4. The learned Counsel for the Appellants invited the attention of this Court to the evidence of the classmates of the deceased, who were examined as P.W-16/Malarkodi, P.W-23/Aishwarya, P.W-25/Sathya. The statements given by them under Section 164 of Cr.P.C., before the learned Judicial Magistrate were marked as Ex.P-11, Ex.P-16 and Ex.P-19. As per the evidence of the classmates, the deceased was in love with the Accused-1. The father and brother of the deceased objected to the same and alleged to have beat her on the date of occurrence. The mother of the Accused-1 alleged to have scolded her for receiving love letter from Accused-1. Whereas the Prosecution had shifted the blame on the Accused-2 for the cause of death of the deceased for committing suicide. Also the learned Counsel for the Appellants invited the attention of this Court to the dying declaration recorded by the learned Judicial Magistrate/P.W-24 which was marked as Ex.P-17, wherein it was stated that the Accused-1 stalked the deceased. The mother of Accused-1, the Accused-2 scolded the deceased and had uttered words which



provoked her to commit self-immolation. On the date of the alleged occurrence, Accused-1 had given birthday gift for the birthday of the deceased, based on which, there had been issues at the Victim's home. In this regard, the learned Counsel for the Appellants invited the attention of this Court to the evidence of P.W-14, Sakthivel, the Post Graduate Teacher who had deposed that during special class hours, the Accused-2 scolded the deceased in front of all the students in the class. P.W-14, was however, unable to understand the language in which she scolded the deceased. Even when the class Teacher objected the Accused-2, she continued scolding the deceased in a language not known to P.W-14. On enquiry with the deceased, she replied that it was nothing but a family problem and she left the School. On the same day afternoon the deceased committed suicide. It is the contention of the learned Counsel for the Appellants that nowhere in the deposition of the Classmates or the Teacher it was stated that the words uttered by Accused-2 had provoked the deceased to commit suicide.

5. The learned Counsel for the Appellants invited the attention of this Court to the post-mortem report under Ex.P-12 wherein it was stated as;

“External Injuries:

Diffuse irregular dermo epidermal infected burns with marginal redness covered with yellowish slough seen on the following

[regions:](https://www.mhc.tn.gov.in/judicial-regions)



1. *Entire face*
2. *Front, sides and back of neck*
3. *Front, left side and back of chest*
4. *Front of upper part of abdomen*
5. *Entire both upper limbs, except on back of four fingers on left hand, back of right hand and inner aspect of upper part of right arm.*
6. *Entire both lower limbs, except on back and soles of both foot.”*

6. By referring to the postmortem report, the learned Counsel for the Appellants contended that due to failure of the Doctors who treated the Victim, the deceased died. The learned Counsel for the Appellants also submitted that at the time of admission of the deceased in the hospital, she was alive with 80% burn injuries. By referring to the dying declaration, the learned Counsel for the Appellants submitted that at the time of recording it, there were two relatives of the deceased beside her in the Accident ward and when the learned Judicial Magistrate visited the Ward to record the dying declaration, he had asked those relatives to leave the Ward to enable him to record the dying declaration. Thus, the deposition of the deceased was made as has been suggested by the relatives of the deceased.

7. It is the contention of the learned Counsel for the Appellants that

P.W-1 to P.W-6 were relatives of the deceased. They have vested interest to



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screen their fault in objecting to the love affair which resulted in committing self-immolation by the deceased and blamed Accused-2, the mother of the Accused-1. She also submitted that the dying declaration also cannot be believed since it was influenced by the relatives who were beside the deceased at the time of the visit of the learned Judicial Magistrate. The deceased had been under the influence of the relatives who wanted to screen their own fault and blamed Accused-2, the mother of the Accused-1. Further the learned Counsel for the Appellants submitted that nowhere in the evidence of the Prosecution, the age of the deceased was mentioned. On the date of the alleged occurrence, the Accused-1 was aged 19 years. It was purely a love affair which was objected to by the father and brother of the deceased. It was witnessed by the classmates of the deceased P.W-16, P.W-23 and P.W-25. On the alleged date of occurrence, Accused-1 was alleged to have given her the birthday gift. When the father and brother of the deceased came to know about it, they had hit her and objected to the love affair. The parents of the deceased however, shifted the blame on Accused-2. In any event, the deceased had taken the extreme step only due to the opposition of the deceased for contacting the Appellant-1 and having a love affair with him. Unable to bear the same, the deceased committed self-immolation. In fact, the trial Court acquitted the Appellant-1 of the offence under Section 306 of I.P.C but erroneously



convicted the second Appellant for the alleged offence. The judgment of the trial Court is perverse and it was erroneous. Therefore, it is submitted by the learned Counsel for the Appellants that the judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri is to be set aside.

8. The learned Counsel for the Appellants also relied on the following judgment by the Hon'ble Supreme Court in the cases of;

(i) S.S.Chheena -vs- Vijay Kumar Mahajan and another in Crl.A.No.1503 of 2010,

(ii) Yaddanapudi Madhusudhana Rao -vs- The State of Andhra Pradesh in Criminal Appeal No.901 of 2017.

(iii) Judgment of this Court in the case of B. Velmurugan -vs- the State in Crl.O.P.No.17777 of 2016.

9. By placing reliance on the unreported judgment of this Court, the learned Counsel for the Appellants submitted that the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri without assessing the entire evidence and materials available before the Court, erroneously convicted the Appellants based on the dying declaration. It is a case of love affair between the first Appellant and the deceased. When it was objected by the parents of the deceased, she had committed suicide. The evidence of the relatives who



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wanted to have an interest in screening the original fault has been accepted by the trial Court and convicted the Appellants.

10. Per contra, the learned Additional Government Advocate (Crl.side), Mr.Vinoth Kumar vehemently objected to the line of arguments of the learned Counsel for the Appellants and relied on the provisions of the Section 11(IV) of the Protection of Children from Sexual Offences Act, 2012, which is attracted in this case. As per the dying declaration given by the deceased before the learned Judicial Magistrate, she committed self-immolation because of the act of the second Appellant. Further, he would submit that the Teacher who had handled the class at the relevant point of time Thiru.Sakthivel had deposed before the Court as P.W-14. The Headmaster of the School also deposed as P.W-13. The evidence of the Prosecution witnesses P.W-1 to P.W-27 had cogently supported the Prosecution case. In any event, there cannot be any suspicion in the version of the deceased in her dying declaration which was recorded by the learned Judicial Magistrate. On careful examination of the dying declaration, the trial Court is wholly justified in convicting the Appellants. In fact, the trial Court ought not to have acquitted the Appellant-1 of the charge under Section 306 of I.P.C. Even though the Prosecution has not filed any Appeal there against, it is submitted that the trial



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Court has given lesser period of sentence to both the Appellants. While so, the conviction and sentence imposed by the trial Court need not be interfered with.

The Appeal lacks merit and it has to be dismissed.

Point for consideration:

Whether the judgment of the learned Sessions Judge, Fast Track Mahila Court in Special S.C.No.7 of 2016 dated 05.01.2017 is to set aside as perverse?

11. Heard the learned Counsel for the Appellants, Ms. S. Sridevi (Legal Aid) and the learned Government Advocate (Crl.side) Mr. S. Vinoth Kumar. Perused the judgment of the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri in Spl.S.C.No.7 of 2016.

12. On consideration of the evidence of the P.W-1/Venkatesan/father of the deceased, P.W-2/Sarasu/mother of the deceased, P.W-3/Mani/brother of the deceased and P.W-4/Chinnathurai/paternal uncle of the deceased in the cross examination, it was noticed that the father, uncle and elder brother of the deceased had hit her and objected for receiving love letter from the Accused-1. They scolded and cursed her to end her life (செத்துப் போ) which made her to end her life. Further, in the dying declaration recorded by P.W-24/learned Judicial



Magistrate under Ex.P-17, the deceased stated that Accused-1 had given her torture by stalking her and Accused-2, the mother of the Accused-1 had scolded her. Therefore, she had committed self-immolation. The dying declaration is cryptic and only this information was available in the dying declaration.

13. In the cross examination of P.W-24/the learned Judicial Magistrate, he had stated that he recorded Ex.P-17/dying declaration at 6.10 p.m. and completed it by 6.25 p.m. He also stated that while he entered the Accident Ward to record the dying declaration, two of the relatives of the deceased were beside her and he had asked them to leave out of the ward to enable him to record the dying declaration. If that evidence is considered, the relatives of the deceased had been beside the ward and they had prevailed upon her that when the learned Judicial Magistrate comes, she has to state the facts in such a way. Naturally, being an unmarried woman, she will blame the mother and Son/Accused-1 herein for the cause. What prompted her to commit suicide was not available. In fact, the words said to have been uttered by the second Appellant/second Accused was not available in the dying declaration. It is merely stated that the second Appellant scolded her. It was not stated that the second Appellant scolded her by using the word '*you go and die*' and '*why*



don't you die'. These sort of words were not found in the dying declaration.

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14. P.W-14/the Post Graduate Teacher who handled Physics class on the particular day had also in his evidence deposed that the Accused-2, mother of the Accused-1 had come to the School and scolded her in a language not known to him. When he asked the deceased - what was the problem she had replied as nothing but family problem". So saying, she went out of the class. In the evening, they came to know that she committed suicide. What were the words used by the Accused-2 was not available before the Court even through the deposition of P.W-14. Except the words of P.W-1 who claimed that the Accused-2, mother of the Accused-1 had scolded the deceased saying that *'you end your life'* there is nothing to hold that it was the Appellants, who have, in any manner, provoked the deceased to take the extreme step. A person who was not either mother or father, when scolded the deceased, it will not have a greater impact on her to commit suicide. The second Appellant was not related to the deceased. As mother of the first Appellant, with whom the deceased has a love affair, the second Appellant is a stranger to the deceased. When a stranger scolds or indulges in a quarrel with a person, the normal human conduct will not drive the deceased to end her life. From the available materials, it was found that it was a love affair as pointed out by the learned



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Counsel for the Appellants that the Accused-1 had given birthday gift as per the evidence of P.W-23 and P.W-25 who were classmates of the deceased at the relevant point of time. Such an affair was opposed by the parents of the deceased. P.W-16/Malar Kodi was a classmate of the deceased. She had in her cross examination admitted that the deceased had shown her injuries caused to her by the attack of her elder brother and father. P.W-23/ Aishwarya also have given her statement under Section 164 of Cr.P.C before the learned Judicial Magistrate which was marked as Ex.P-16. P.W-25 Sathya was also a Classmate of the deceased. The statement under 164 Cr.P.C given by PW25/Sathya was marked as Ex.P-19 in which she had stated that deceased had some problems at home, because the Accused-1 was alleged to have given a birthday gift to the deceased. The Father of Sathya/P.W-25 had advised her not to have link with the deceased as she had developed love affair and because of which there was problem in her family. The statement under Section 164 of Cr.P.C recorded from Aishwarya another Classmate of the deceased was marked as Ex.P-16 in which P.W-23/Aishwarya had stated that the deceased was in love affair with Accused-1 and he had given her a birthday gift. On coming to know about the same, the deceased was attacked by her family members. This was informed to her Classmate Aishwarya by the deceased, subsequent to the scolding of the Accused-2 in her School. From the



available materials, the conduct of the Accused had given rise to an inference that the deceased had developed love affair and accepted the gift from the Accused-1. When this affair came to the knowledge of the elders in the family they scolded her. Therefore a minor girl aged 17 years studying in 12th standard was confused mentally. She had emotional outburst against herself, against her elders and against the conduct of the mother of the Accused-1 also which resulted in her self-immolation to wriggle out of these difficulties. Teenagers of that age undergo several conflicts psychologically. On the one hand, they had to focus on their education, on the other hand, they get into these emotional issues and if there was no understanding from the elders of the family, there is likelihood of persons like the deceased taking such extreme decisions to end her life. Here the deceased had decided to end her life to escape from the circumstances in which she had landed for which elders in the family of the deceased were also responsible.

15. As rightly pointed out by the learned Counsel for the Accused-1 and Accused-2, the entire blame cannot be shifted on the Appellants. It is a love affair between the first Accused and the deceased. The medical certificate regarding the admission of the deceased at the time when she was admitted indicates her age and name. It was found that she was aged 17 years old at that



time. The Accused-1/Appellant-1 was aged 19 years at the time of the occurrence in the year 2015. Therefore, it was a teenage love affair and the helpless victim died by self-immolation in the absence of guidance from the elders of the family in an emotional turmoil. To escape from the turmoil, she had ended her life. Even though it was a painful circumstance, it cannot be entirely blamed on the Accused-1 and Accused-2. There was evidence in the Prosecution witness through the classmates of the deceased who were her companions. One of the witnesses in the evidence stated that her Father had advised her not to have any link with the deceased as she had developed love affair and because of which there was a problem in the family. Another witness, also a Classmate of the deceased stated that the deceased had shared her problems that, after accepting gift from the Accused-1, her Brother and Father had assaulted her and she had exposed the injuries/wound to her classmates P.W-16/Malarkodi, P.W-23/Aishwarya and P.W-25/Sathya. Therefore, as rightly pointed out by the learned Counsel for the Appellants, the evidence of the prosecution witnesses who were related to the deceased cannot be solely relied on, in the light of evidences of the classmates of the deceased P.W-16/Malarkodi. P.W-23/Aishwarya P.W-25/Sathya. There was suppression of the fact that the Father/P.W-1 and elder brother/P.W-3 had assaulted the deceased and caused bodily injuries for having developed a love



affair with the first Appellant. In the cross examination, the learned Counsel for the Prosecution had confronted them regarding the same which was stoutly denied by them. The version of the close friends and classmates of the deceased P.W-16/Malarkodi, P.W-23/Aishwarya and P.W-25/Sathya inspires confidence in the minds of this Court.

16. From the materials available, it could be inferred that it was a love affair between the first Appellant and the deceased. It was true that in the dying declaration it was specifically stated by the deceased that she committed self-immolation because of the stalking by the first Accused and scolding by the second Accused in her class rooms. But what were the words uttered that provoked her to end her life was not available in the dying declaration. Also the evidence of P.W-1 to P.W-6, P.W-13, the Headmaster, P.W-14, Post Graduate Teacher and P.W-15/Younger sister of the deceased also confirmed the fact that the Accused-2 had scolded her. None of them spoke about the words uttered by the Accused-2/mother of the Accused-1. Two days prior to the occurrence, the Accused-1 was alleged to have given her birthday gift, which she had shown to her classmates and close friends. However, the Parents who came to know about it have scolded and hit her. The deceased also shown the marks of injury to her friends. Therefore, a helpless situation



had been created in the family of the deceased for which, the Appellants alone cannot be blamed.

17. In the light of those facts, the unfortunate incidence of ending life of a teenager by herself in an emotional outburst cannot be attributed towards the act of the Appellants. Therefore, the discussion of the evidence by the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri and consequently convicting the Appellants is found unacceptable. Except the fact that the mother of the Accused scolded the victim/deceased, what were the words used to provoke the teenager/the victim to commit self-immolation were not available. The argument of the learned Counsel for the Appellants that the dying declaration cannot be given due weightage even though it is a presumption in law that the person in the verge of death will not speak false. Here the dying declaration is cryptic and it only mentioned the circumstances which led to the extreme step, but it does not give the details of it. The evidence of the learned Judicial Magistrate who recorded the dying declaration that before his entry, there were two relatives of the deceased were in the ward, could have given her indication that when she was in pain and suffering, they had persuaded her to speak to the learned Judicial Magistrate in such a way that they had made her to speak. That is why, she had not given details of the



occurrence in the dying declaration. Therefore based on dying declaration it cannot be held that the Appellants are guilty of the offences.

18. At this juncture, some useful reference could be made to the book titled “SUICIDE – A study in sociology” authored by Emile Durkheim and the relevant passages from the said book are extracted below:

“Melancholy suicide. —This is connected with a general state of extreme depression and exaggerated sadness, causing the patient no longer to realize sanely the bonds which connect him with people and things about him. Pleasures no longer attract;”

- Émile Durkheim, Suicide: A Study in Sociology

“Maniacal suicide. —This is due to hallucinations or delirious conceptions. The patient kills himself to escape from an imaginary danger or disgrace, or to obey a mysterious order from on high, etc.”

- Émile Durkheim, Suicide: A Study in Sociology”

19. The learned Judge of this Court in the case of ***Sabari @ Sabarinathan @ Sabarivasan -vs- The Inspector of Police, Belukurichi Police Station, Namakkal District***, reported in ***Criminal Appeal No.490 of 2018*** observed as follows:

“26.Apart from the above, this Court is of the view that as per the 3 rd respondent's report, majority of cases are due to relationship between adolescent boys and girls. Though under Section 2(d) of the Act, 'Child' is defined as a person below the age of 18 years and in case of any love affair between a girl and a boy, where the girl happened to be 16 or 17 years old, either in the School final



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or entering the college, the relationship invariably assumes the penal character by subjecting the boy to the rigours of POCSO Act. Once the age of the girl is established in such relationship as below 18 years, the boy involved in the relationship is sure to be sentenced 7 years or 10 years as minimum imprisonment, as the case may be.

27. When the girl below 18 years is involved in a relationship with the teen age boy or little over the teen age, it is always a question mark as to how such relationship could be defined, though such relationship would be the result of mutual innocence and biological attraction. Such relationship cannot be construed as an unnatural one or alien to between relationship of opposite sexes. But in such cases where the age of the girl is below 18 years, even though she was capable of giving consent for relationship, being mentally matured, unfortunately, the provisions of the POCSO Act get attracted if such relationship transcends beyond platonic limits, attracting strong arm of law sanctioned by the provisions of POCSO Act, catching up with the so called offender of sexual assault, warranting a severe imprisonment of 7/10 years.

28. Therefore, on a profound consideration of the ground realities, the definition of 'Child' under Section 2(d) of the POCSO Act can be redefined as 16 instead of 18. Any consensual sex after the age of 16 or bodily contact or allied acts can be excluded from the rigorous provisions of the POCSO Act and such sexual assault, if it is so defined can be tried under more liberal provision, which can be introduced in the Act itself and in order to distinguish the cases of teen age relationship after 16 years, from the cases of sexual assault on children below 16 years. The Act can be amended to the effect that the age of the offender ought not to be more than five years or so than the consensual victim girl of 16 years or more. So that the impressionable age of the victim girl cannot be taken advantage of by a person who is much older and crossed the age of presumable infatuation or innocence.

29. In this regard, the respondents 3 to 5 are directed to place the decision before the competent authority and initiate appropriate steps to explore whether the suggestions made by this Court are acceptable to all stakeholders. The respondents are directed therefore to take the issue forward as they deem fit, as



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expeditiously as possible.”

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20. In the light of the above discussion, point for consideration is answered in favour of the Appellants and against the Prosecution. The judgment of the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri convicting the Appellants for the offence under Section 11 r/w.12 of the Protection of Children from Sexual Offences Act, 2012 and Section 306 of I.P.C is found perverse. Therefore the conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri against the Accused-1 and Accused-2 are set aside.

21. In the result, **this Criminal Appeal is allowed.** The judgment dated 05.01.2017 passed in Spl. Sessions Case No. 7 of 2016 on the file of the learned Fast Track Mahila Court, Dharmapuri is set aside. The bail Bond executed by Accused-1 and Accused-2 is ordered to be cancelled. The fine imposed on the Accused-1 and Accused-2, if any, paid are to be refunded.

11.03.2024

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Index : Yes/No

Speaking/Non-speaking order



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SATHI KUMAR SUKUMARA KURUP, J.,

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To

1. The Inspector of Police
All Women Police Station
Pennagaram, Dharmapuri District
2. The Sessions Judge,
Fast Track Mahila Court,
Dharmapuri.
3. The Additional Public Prosecutor,
High Court, Madras.
4. The Section Officer, VR Section,
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