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Crl.A.(MD).No.117 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 02.09.2024

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.A.(MD).No.117 of 2019

Thangamariappan

... Appellant/Sole Accused

Vs.

State,
through the Inspector of Police,
Vilathikulam Police Station,
Tuticorin District.

... Respondent/Complainant

Prayer: Criminal Appeal has been preferred under Section 374 (2) Cr.P.C.,
to set aside the Judgment passed in Spl.S.C.No.19 of 2016, dated
03.12.2018 by the learned Fast Track Mahila Judge, Tuticorin.

For Appellant : Mr.Ka.Raamakrishnan

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

J U D G M E N T

This Criminal Appeal has been filed by the appellant against the
Judgment passed in Spl.S.C.No.19 of 2016, dated 03.12.2018 by the learned
Fast Track Mahila Judge, Tuticorin.



2.The case of the prosecution:-

The defacto complainant namely Muthurani, lodged a complaint with the respondent police stating that the victim girl was studying 10th standard in Girls Higher Secondary School, Tharuvaikulam. Whenever the victim girl was going to the school, the accused used to stand near Palarpatti AVL Salt Company and used to misbehave with her and also teased her. Particularly on 19.10.2015 at about 7.30 a.m., when the victim girl was going to the School, the accused teased her by singing song like "கல்யாணம்தான் கட்டிகிட்டு ஓடிப்போலாமா இல்ல ஓடிப்போய் கல்யாணம் தான் கட்டிக்கலாமா". After singing song, he insulted and abuse her. On the same day evening, the occurrence was intimated to the defacto complainant. On the next day, namely on 20.10.2015, complaint was lodged. Upon which, a case in Crime No.175 of 2015 was registered for the offence punishable under Section 11(1) r/w 12 of the POCSO Act and after completing the investigation, final report was filed before the Special court and the same was taking cognizance in S.C.No.19 of 2016.

3.Charge against the accused person:-

The following charges were framed after securing the presence of the accused.

(i)the charge reads that the victim girl is aged about 15 years and



studying 10th standard in Girls Higher Secondary School, Tharuvaikulam.

On 19.10.2015 at about 7.30 a.m., near Palarpatti AVL Salt Company, the

accused sing a song as "கல்யாணம்தான் கட்டிகிட்டு

ஓடிப்போலாமா இல்ல ஓடிப்போய் கல்யாணம் தான் கட்டிக்கலாமா"

and thereby the accused committed offence punishable under Section 11(i)

r/w Section 12 of the POCSO Act.

The accused namely, the appellant herein denied the charges and claim to be tried.

4.In pursuance of the above said plea, the trial before the trial Court commenced and to prove the prosecution case, on the side of the prosecution 9 witnesses were examined and 8 documents were marked. No material objects were marked in this case. On the side of the accused person no witness was examined and no documents were marked.

5.The case of the prosecution as narrated through the evidence:-

5.1.As stated in the preamble portion, the defacto complainant is the mother of the victim girl. Misbehavior of the accused was brought to her notice on the evening of 19.10.2015. So on that basis, she lodged a complaint under Ex.P1. The complaint was received by PW5, the Sub



Inspector of Police on 20.10.2015 at 01.00 p.m. Along with the defacto complainant the victim girl, who aged about 15 at the time of occurrence, was also present. He received the complaint and registered the case in Cr.No.175 of 2015 under Section 12 of the POCSO Act.

5.2.PW7 the then Inspector of Police, took up the investigation on 20.10.2015, visited the place of occurrence, prepared the documents in the presence of the witnesses, the observation mahazar Ex.P7, Ex.P8 sketch and recorded the statement of the witnesses.

5.3.Thereafter, it was taken up for further investigation by PW8, the then Inspector of Police on 12.11.2015 and arrested the accused at 6.30 a.m. near SIPCOT. He made arrangements to record the statement of the victim girl under Section 164 Cr.P.C.

5.4.From PW8, further investigation was taken up by PW9, the then Inspector of Police, who was holding additional charge of Tharuvaikulam Police Station, collected the Birth Certificate of the victim girl, recorded the statement of the District Welfare Officer. After completing the official formalities, he filed the final report against the accused.

5.5.PW2 is the victim girl. PW3 is the father of the victim girl, supported the evidence of PW1 and PW2. PW4 was working as District Munsif cum Judicial Magistrate, Tiruchendur. He recorded the statement of the victim girl on 27.11.2015 at about 3.50 p.m. Ex.P2 is the statement of



the victim girl.

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5.6.PW6 is the official attached to the Corporation, Tuticorin. He issued the Birth Certificate of the victim girl at the request made by the Investigating Officer. As per the date of Birth Certificate, her date of birth is 15.02.2000.

6.After examination of all the witnesses are over, the accused was subjected to Section 313 Cr.P.C proceedings. He denied the facts narrated by the prosecution witnesses. Even though he was granted time to examine defence witnesses, none was examined on his side and no document was marked.

7.At the conclusion of the trial process, the trial Court found the accused guilty for the offences under Sections 11(i) r/w 12 of the POCSO Act, convicted and sentenced him to undergo one year simple imprisonment and imposed fine of Rs.1,000/-, in default three months simple imprisonment. Set off under Section 428 Cr.P.C. was also ordered.

8.Against the judgment of conviction and sentence the accused is before this Court by way of this appeal.



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9.Heard both sides.

10.At the time of argument, the learned counsel for the appellant would submit that absolutely there was no intention on the part of the appellant to utter derogatory remarks or singing song attracting the offence punishable under Section 11(i) of POCSO Act. He would further submit that the victim girl is the close relative of the appellant, PW1, is his aunt. Because of the relationship only, he made a proposal to marry the victim girl. But, that was not liked by the parents of the victim girl. On that ground such a false complaint has been given.

11.Now not only the victim girl, but, also the appellant got married with some other person. Now the victim girl is the mother of two children. According to him, in the advanced stage of the maturity of the appellant as well as the victim girl, no purpose, is going to be served in sending the appellant herein to imprisonment. He would further submit that it is only friendly way of proposal and nothing happened as stated in the complaint.

12.Section 11(i) reads as under:



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“11. Sexual harassment.—A person is said to commit sexual harassment upon a child when such person with sexual intent,—

(i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child;”

By pointing out this, the learned counsel for the appellant would submit that absolutely, there is no intention on his part either to harass or annoy or discomfort the victim girl. He would further submit that absolutely there is no evidence on record except the statement of the victim girl about the alleged occurrence.

13.In the light of the above said submission, we will go to the evidence of the victim girl. She stated that such a misbehavior was exhibited by the accused on several occasions. In those occasions, she remained silent. But, on 19.10.2015, when he repeated the very same, she could not bear it, so informed her parents.

14.During the cross examination, the victim girl has stated that she used to go to the school along with three friends from Tharuvaikulam.



Near the place of occurrence, several persons used to be available. But, on the particular date of occurrence, her friends did not come along with her. A motive suggested to PW1 by the accused that there was a issue between the one Arunachalam, who is her uncle. She was not aware that whether there was any issue between the Arunachalam and the accused. Even before the present complaint another complaint was given by her before Tharuvaikulam Police Station. What happened to that complaint is not disclosed by the prosecution. In respect of which subject, the above said complaint was given by PW1 is also not known.

15.It is also admitted by PW1 that she dictated the complaint to PW2. That was reduced into writing by the victim girl. These are also admitted by the victim girl stating that the complaint was dictated by her mother. That was reduced into writing by her. PW3, the father of the victim has admitted that there was previous motive or issue between the accused and PW1. As mentioned above what was the earlier complaint and what was the subject involved absolutely, there is no explanation from both sides. So why the earlier complaint was suppressed by the prosecution is also not explained. When there is prior motive between PW1 and the accused, whether the uncorroborated testimony of the victim alone can be taken into account for record a finding that too with sexual intention the accused



misbehaved with the victim girl by teasing or singing a song, is the point which arises for consideration.

16. But, I am of the considered view that it should not be, because already there was motive between PW1 and accused has been admitted by PW1 herself and more particularly, the complaint itself was dictated by the PW1 to the victim girl. It is a day occurrence. So naturally, several persons could have been available in the place of occurrence, apart from the friends of the victim girl as mentioned above. She admitted that she used to go to the school along with three friends hailing from her home village. But, on the particular day of occurrence, she would say that none was along with her, which also creates doubt.

17. The learned counsel for the appellant would refer to the Judgment of the Hon'ble Supreme Court made in the case of ***Nirmal Premkumar & Another Vs. State rep. by Inspector of Police***, reported in ***CDJ 2024 SC 191***, which is exactly on this point.

“11. Law is well settled that generally speaking, oral testimony may be classified into three categories, viz.: (i) wholly reliable; (ii) wholly unreliable; (iii) neither wholly reliable nor wholly unreliable. The first two category of cases may not pose serious



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difficulty for the Court in arriving at its conclusion(s). However, in the third category of cases, the Court has to be circumspect and look for corroboration of any material particulars by reliable testimony, direct or circumstantial, as a requirement of the rule of prudence.”

18. After this observation, the Honourable Supreme Court is of the view that the solitary testimony of the victim girl can be discarded, if it is found untrustworthy. Para 15 of the judgment reads further.

“15. What flows from the aforesaid decisions is that in cases where witnesses are neither wholly reliable nor wholly unreliable, the Court should strive to find out the true genesis of the incident. The Court can rely on the victim as a “sterling witness” without further corroboration, but the quality and credibility must be exceptionally high. The statement of the prosecutrix ought to be consistent from the beginning to the end (minor inconsistencies excepted), from the initial statement to the oral testimony, without creating any doubt qua the prosecution’s case. While a victim’s testimony is usually enough for sexual offence cases, an unreliable or insufficient account from the prosecutrix, marked by identified flaws and gaps, could make it difficult for a conviction to be recorded.”



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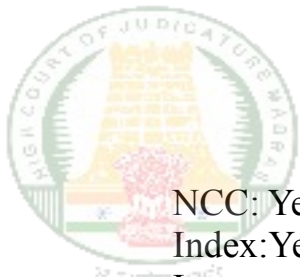


19.In the light of the settlement of law by the Honourable Supreme Court that now we will examine the evidentiary value of the victim girl, PW1 and PW3.

20.In the light of the above said discrepancies in the case of the prosecution, I am of the considered view that uncorroborated testimony of PW2 alone is not sufficient to hold the accused guilty under Section 11(1) of the Act. But, one thing must be placed on record that absolutely, it is not the case of the appellant before the trial Court that there was a proposal by the appellant to marry the victim girl.

21.In view of the above said discussion, the judgment of the conviction and sentence passed by the trial Court requires to be set aside. Accordingly, the Judgment of conviction passed against the appellant in Spl.S.C.No.19 of 2016, on the file of the Sessions Judge, Fast Track Mahila Court, Tuticorin, is hereby set aside. The accused/appellant is acquitted from the charges framed against him, by giving the benefit of doubt. Fine amount paid, if any, shall be refunded. This criminal appeal stands allowed.

02.09.2024



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NCC: Yes/No
Index: Yes/No
Internet: Yes/No
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To

- 1.The Sessions Judge, Mahalir Neethimandam, Fast Track Mahila Court,
Tuticorin.
- 2.The Inspector of Police,
Vilathikulam Police Station,
Tuticorin District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGOVA, J

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