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Crl.A(MD)No.276 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	29/10/2024
Date of Pronounced	03/12/2024

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Crl.A(MD)No.276 of 2019

State represented by:
The Inspector of Police,
All Women Police Station,
Srivilliputhur,
Virudhunagar district.
(Crime No.02/2016) : Appellant/Complainant

Vs.

Pandiaraj : Respondent/Accused

Prayer: This Criminal Appeal is filed under Section 378(i) of Criminal Procedure Code, to set aside the judgment of acquittal of the respondent/accused in Special SC No.38 of 2016 dated 08/12/2017 on the file of the Fast Track Mahila Court, Virudhunagar District at Srivilliputur.

For Appellant : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

For Respondent : Mr.C.Ezhilarasu



J U D G M E N T

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This Criminal Appeal is filed against the judgment of acquittal passed in Special SC No.38 of 2016, dated 08/12/2017 by the Fast Track Mahila Court, Virudhunagar District at Srivilliputtur.

2.The case of the prosecution in brief:-

The victim girl was studying 1st year B.E Degree Course at Sri Vidya College in Virudhunagar. On 17/12/2015 when she was going with her friends in front of the Abimannan Kalyana Mandapam in Srivilliputtur after getting down from the bus, the accused followed her with sexual intend, wrongfully restrained her, got hold her hand and told the victim that she should love him, otherwise he would abduct her. Thereafter, on 10/02/2016 when she was waiting for bus, the accused told her that if she does not love him, he would spread news that she is unchaste. Upon the occurrence, on the basis of the complaint given by the victim girl, a case in Crime No.2 of 2016 was registered by the police for the offences under sections 341, 354(D), 506(i) IPC and section 9(i) r/w 10 and 11(IV) r/w 12 & 18 of POCSO Act, 2012. After completing the investigation, final report was filed charge sheeting the accused for the offences punishable under sections 341, 506(i) (3 counts), 345(D) of IPC and section 7 r/w 8, 11(iv) r/w 12 of POCSO



Act, 2012 and it was taken cognizance by the Fast Track Mahila Court, Srivilliputhur in SC No.38 of 2016. After completing 207 Cr.P.C proceedings, framed the charges for the offences mentioned above.

3.The following charges were framed against the accused:-

(i)On 17/12/2015 when the victim girl was going with her friends in front of the Abimannan Kalyana Mandapam, the accused followed her with sexual intention, restrained her and thereby the accused committed the offence under section 341 IPC;

(ii)In continuation of the above said occurrence, the accused grabbed her hands with sexual intention and thereby the accused the offence under sections 7 r/w 8 of the POCSO Act, 2012;

(iii)In course of the above said occurrence, at about 08.00 am, the accused grabbed her hands, picked up quarrel, criminally intimidated her stating that he is loving her, unless



WEB COPY



Cr1.A(MD)No.276 of 2019

she loves him he will inform that she is not a moral girl to others; A similar occurrence took place on 02/03/2016 also; On that date also, the accused followed her threatened criminally intimidated and thereby the accused committed the offence under sections 506(1) (3 counts); and

(iv) In the course of the above said occurrence, the accused tried to follow the victim girl and thereby the accused committed the offences under section 354(D) and 11(iv) r/w 12 of POCSO Act, 2012.

4.The accused denied the charges and claimed to be tried.

5.During trial, on the side of the prosecution, 12 witnesses were examined and 7 documents exhibited. On the side of the accused, 2 witnesses were examined and 6 documents marked.

6.**PW1** was studying first year BA Course in Srividya



College, Virudhunagar and on 17/12/2015 as usual, she went to the college along with her friends and waiting for bus in the bus stop near Abimannan Kalyana Mandapam in Srivilliputur. At about 08.00 am, the accused grabbed her hands, picked up quarrel, criminally intimidated her stating that he is loving her; unless PW1 loves him, he will inform that she is not a moral girl to others. A similar occurrence took place on 02/03/2016 also. On that date also, the accused followed her threatened and criminally intimidated. The mother came to that place in the meanwhile and warned the accused. The misbehaviour of the accused was brought to the notice his family members. In spite of that, the accused continued the misbehaviour. Unable to bear the torture, she went to the police station and lodged a complaint under Ex.P1.

7.The complaint was received by **PW10** who was working as the Sub Inspector of Police, All Women Police Station, Srivilliputhur, on 03/03/2006 and registered a case in Crime No.2 of 2016. She submitted the original documents to the Court and the copies to the concerned higher authorities.

8.Investigation was undertaken by **PW11** the



Cr1.A(MD)No.276 of 2019

Investigating Officer attached to Aall Women Police Station, Srivilliputhur and on 03/03/2016, she visited the place of occurrence, prepared observation mahazar and rough sketch in the presence of witnesses under Exs.P4, P5 and P6. On the very same day, at about 01.30 pm, she arrested the accused and took steps to remand to judicial custody. She made a request to the Judicial Magistrate to record the statement of the victim girl under section 164 of Cr.P.C statement. Then she recorded the statement of the witnesses. After completing the investigation, filed a final report on 01/06/2016.

9.**PW2** is the mother of PW1. She corroborated PW1 with regard to the material particulars took place on the particular date as mentioned by PW1 and etc., facts.

10.**PW7** is the brother of PW1. He corroborated PW1 like that of PW2 over the material particulars of the occurrence. Further, he has stated that on 10/02/2016 also the accused criminally intimidated PW1 to marry him.

11.**PW4** was present when the Investigating Officer visited the place of occurrence and signed in the observation mahazar as a witness.



12.**PW5** was present, when the arrest memo was served upon the accused.

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13.**PW6**, **PW8** & **PW9** turned hostile. The other witnesses are not material witnesses. With that, the prosecution side evidence was closed.

14.The accused was questioned under section 313(1) (b) of the Code of Criminal Procedure Code about the incriminating circumstances against him. He denied the evidence of the witnesses as false and stated that a false case has been foisted.

15.At the conclusion of the trial process, the trial court found that the prosecution failed to prove the guilt of the accused beyond all reasonable doubt and acquitted the accused.

16.Against which, this criminal appeal is preferred by the de-facto complainant as appellant.

17.Heard both sides.

18.It is a judgment of acquittal. So, the principles to be taken into account while deciding the



appeal against the acquittal must be kept in mind as detailed in the judgment reported in **Sanwat Singh & others**

WEB COPY

Vs. State of Rajasthan (AIR 1961 SC 715):-

"(i)Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive-inclusive of all evidence, oral or documentary;

(ii)Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground challenge;

(iii)If the Court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;

(iv)If the view of the Trial Court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;

(v)If the appellate Court is inclined to reverse the acquittal in appeal on a re-appreciation of evidence, it must specifically address all the reasons given by the Trial Court for acquittal and must cover all the facts;

(vi)In a case of reversal from acquittal to conviction, the appellate Court



WEB COPY

Cr1.A(MD)No.276 of 2019



must demonstrate an illegality, perversity or error of law or fact in the decision of the Trial Court."

19.It is further settled that the appellate court has full power of reviewing the evidence and can come to its own conclusion; The duty is cast upon the appellate court to record a finding of fact which caused it to differ from the judgment of acquittal; The reason must be assigned for deviating from the view taken.

20.Keeping the above said principles, now let us go to the judgment of the trial court directly, before we go into the evidence on record.

21.There was a delay in lodged the complaint; there is contradiction between the averments made in the complaint under Ex.P1 and the evidence before the trial court and the statement recorded under section 164 Cr.P.C of PW1; There is no corroborating evidence for the occurrence as spoken by PW1 and PW2; There was some property issue between the father of PW1 and the accused. Apart from that, some mistake committed by the Investigating Officer, while arresting the accused is also stated by the trial court.



22.Now in the light of the above said finding of the trial court, we will go to the evidence on record.

WEB COPY

23.PW1 has spoken about two occurrences that took place on 17/12/2015 at about 08.00 am near Abimannan Kanyana Mandapam, Srivilliputhur. According her, as mentioned in the preamble portion, the accused grabbed her hands, compelled her to love him. A similar occurrence took place on 02/03/2016 also. Regarding the first occurrence said to have been taken place on 17/12/2015, except the evidence of PW1, there is no other eye witness, since as mentioned above, the friend of PW1 turned hostile and did not support her. PW2 stated that on 17/12/2015, PW1 went to the college, returned at about 06.00 pm, at that time, she was crying and informed about the misbehaviour of the accused. At that time, one Rajkumar, Ponmalar college student and teacher Umasankar were present. Umasankar informed her husband about the occurrence. At about 08.00 pm, she went to the house of the accused and informed the accused misbehaviour of his parents. They promised that they will warn the accused.

24.Similar is the evidence of PW7, the brother of PW1 regarding the occurrence that took place on 17/12/2015. As mentioned above, PW8 turned hostile and stated that nothing was known to her. Other person namely Muthu Kumar



who was examined as PW9 also turned hostile and did not support the case of the prosecution.

WEB COPY

25.So, the evidence of PW2 and one another regarding the particular occurrence took place on 17/12/2015 is not corroborated by Umasankar and other persons. The witness Ponmar also turned hostile and did not support the prosecution case.

26.Now coming to the second occurrence that took place on 02/03/2016, PW2 has stated that on the next day namely on 17/12/2015, again the accused misbehaved with PW1. But, as mentioned above, PW1 stated that the second occurrence took place on 02/03/2016. PW7 has spoken about some other day namely 10/02/2016 which does not tally with that of the date spoken by PW1 and PW2. Regarding the second occurrence also, there is inconsistent evidence on the side of the prosecution. For the second occurrence, as mentioned above, there is no corroborative evidence. It is has been brought on record that the accused, PW1 and PW2 are neighbours residing in the very same street and the accused is a practising Advocate before the Srivilliputhur court. PW1 was studying in a college at Srivilliputhur.

27.Now in the light of the above said inconsistency, we will go to the argument advanced by the



learned Additional Public Prosecutor appearing for the State. He would submit that the evidence of PW1 itself is sufficient enough, since the motive suggested by the accused was not established. There was continuous teasing, misbehaviour taking advantage of his position as a neighbour of PW1.

28.Regarding the delay, as pointed out by the learned Additional Public Prosecutor, the delay has been explained in the complaint itself.

29.Now we will go to the complaint under Ex.P1. The complaint is dated 03/03/2016. In the complaint, he has stated that for about one year, the accused was troubling her and on 17/12/2015, she was assaulted in the presence of her friends and teachers. Again the same misbehaviour committed on 10/02/2016. But in the complaint, nothing has been stated about the alleged occurrence took place on 02/03/2016 and this contradiction was also brought on record during the course of the cross examination that there is a delay on the part of PW1 in lodging the complaint immediately after the misbehaviour.

30.Now the accused examined himself as DW1 and he has stated that nothing has happened as mentioned by the prosecution, either on 17/12/2015 or 02/03/2016. It appears



that he was a practising Advocate before the Courts in Srivilliputhur. According to him, a false case has been foisted upon him for no reason. But he has not stated any motive. He has stated that as per the information furnished by the Anna University, the examination date scheduled on 17/12/2015 was postponed to 29/01/2016. He has produced the information in the form of Ex.D1. According to the counsel for the respondent, since on 17/12/2015, there was no examination as per the officials records, then the evidence of PW1 itself is not believable. For this particular aspect, absolutely there is no explanation on the part of the prosecution. Even during the cross examination of the accused, the prosecution has not elicited anything in contra facts. The occurrence dated 17/12/2015 is without any basis and PW1 could not have gone to the college for writing the examination. Similarly, on 02/03/2016 also, as mentioned above there are contradictions and inconsistencies between the evidence of PW1, PW2 and PW3. So, in all put together, the trial court has recorded a finding of not guilt.

31.The Advocate, who is practising before the courts ought to have avoided all those unnecessary issues. Even though inconsistency in the evidence of PW1, PW2 and PW7 with regard to the date of the occurrence, the circumstance clearly indicates some sort of misbehaviour



Crl.A(MD)No.276 of 2019

exhibited by the accused to PW1. But in view of the inconsistency with regard to the date of the occurrence, this court is not in a position to record a finding of guilt. So, the view taken by the trial court is a probable view. Even though two views are possible, one view which is in favour of the accused must be taken. In view of the above, I find no reason to interfere into the judgement of acquittal passed by the trial court.

32.In the result, this criminal appeal is **dismissed**, confirming the judgment of acquittal passed by the trial court.

03/12/2024

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To,



Crl.A(MD)No.276 of 2019

- 1.The Sessions Judge,
Fast Track Mahila Court,
Srivilliputtur.
- 2.The Inspector of Police,
All Women Police Station,
Srivilliputhur,
Virudhunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Cr1.A(MD)No.276 of 2019

G. ILANGO VAN, J

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Cr1.A(MD)No.276 of 2019

03/12/2024