



Crl.A.(MD)No.5 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 30.09.2024

CORAM

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

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Pratap

... Appellant

vs

State represented by
The Inspector of Police,
Andipatti Police Station,
Theni District.

...Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, to call for the records and set aside the order of conviction and sentence passed in S.C. No.14 of 2014 dated 25.11.2016 on the file of the Mahila Court, Fast Track Court, Theni and allow this appeal.

For Appellant : Ms.M.Kamalini
Legal Aid Counsel
For Respondent : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

JUDGMENT

The accused in S.C. No.14 of 2014 on the file of the Mahila Court, Fast Track Court, Theni, has preferred this appeal aggrieved by the judgment dated 25.11.2016.



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2. The accused stands convicted and sentenced as under:

Section of Law	Sentence of imprisonment	Fine amount
341 of IPC	one month simple imprisonment	Rs.500/- in default to undergo one week simple imprisonment
452 of IPC	seven years rigorous imprisonment	Rs.2000/- in default to undergo one year rigorous imprisonment
506(ii) of IPC	seven years rigorous imprisonment	Rs.2000/- in default to undergo one year rigorous imprisonment
Section 12 of POCSO Act	three years rigorous imprisonment	Rs.500/- in default to undergo six months rigorous imprisonment
Section 4 r/w. 18 of POCSO Act	seven years rigorous imprisonment	Rs.5000/- in default to undergo one year imprisonment
The sentences shall run concurrently		

3. The case of the prosecution is that the victim child who was residing with her parents at North Street, T. Anaikaraipatti, Andipatti Taluk, Theni District was studying XI standard at Government Higher Secondary School and while coming back from the school, the accused who was a resident of the same locality had often obstructed her and proclaimed his infatuation with her. On 16.06.2014 in the early morning he had again obstructed her. A day earlier on 15.06.2024 in the night at about 11.30 pm.,



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he had entered her house with an intention to commit sexual assault had touched her and caught hold of her legs and tried to pull her. In continuity of the offence he had also showed a knife to her and threatened her that she should not reveal this fact to her parents as otherwise he would kill her.

4. It is under those circumstances that the accused was charged for the commission of offences punishable under Sections 341,452,506(ii) of IPC and for the commission of offences punishable under Section 12 of POCSO Act and Section 4 r/w. 18 of POCSO Act.

5. It is the evidence of the Investigation Officer/P.W.9/ Nallu, Circle Inspector, Andipatti Police Station, who was the then Inspector of Police, Andipatti Police Station that he had taken up further investigation and registered First Information Report in Crime No. 347 of 2014 for the offences under Sections 341,452,506(ii) of IPC and Section 12 of POCSO Act and Section 4 r/w. 18 of POCSO Act, which was registered on 24.06.2014.at about 9.30 pm. During the course of his investigation, he had recorded statement of witnesses and also made arrangement for recording statements of the victim child under Section 164 of Cr.P.C. and filed



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alteration report on completion of investigation altering the offences to Section 6 of POCSO Act and filed final report. The entire investigation was necessitated by a complaint which was lodged by victim child herself, in which she had named the accused and stated that the accused was often accosting her whenever she came back from school proclaiming his infatuation with her and that on 15.06.2014, he had entered the house when she was alone and when she cried he ran away. Thereafter on the next day he came and threatened her by showing a knife that he would not leave her without committing physical assault on her. It was under those circumstances that the victim child had given complaint against the accused.

6. The learned trial Judge had framed charges under Sections 341,452,506(ii) of IPC and Section 12 of POCSO Act and Section 4 r/w. 18 of POCSO Act.

7. The accused denied the charges and claimed to be tried. The prosecution had examined P.W.1 to P.W.9 witnesses and marked documents Exs.P.1 to P.6. On the side of the accused D.W.1 and D.W.2 had been examined. The prosecution had not produced any material objects.



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8. The victim child was examined as P.W.2. In her chief examination she stated that on 15.06.2024 at about 11.30 pm., when she was sleeping, the accused entered into the house and caught hold of her legs. She further stated that at that time both her parents were sleeping next to her. The victim child gave a loud noise and shouted loudly. The parents then woke up. They then decided to drop the entire issue on the ground that if it is publicized they would only get adverse publicity. Thereafter on the next day morning when the victim child was brushing her teeth, the accused came and by showing her a knife stated that one day he will stab her with the knife. She informed this particular incident after two days to her parents. It was probably on 18.06.2024. The complaint was lodged on 23.06.2024. This in effect is the only direct evidence available for the prosecution.

9. It had been stated by the victim girl that she was sleeping and her parents were sleeping next to her on the night when the accused entered into the house and touched her legs.



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10. The father of the victim was examined as P.W.1 . He stated that on 23rd of either May month or June month, they were all sleeping in the house. He suddenly heard the victim child/ his daughter shouting out loudly and when he put the lights on, the accused ran away. When he enquired the victim child/ her daughter she informed that somebody had pulled her legs. P.W.1 stated that he saw the accused running away. He also stated that as parents, he and his wife decided to drop the issue. Thereafter on 24.06.2014 he went and lodged the complaint.

11. The learned trial Judge on the basis of this evidence had proceeded to convict the accused for the offences under Sections 341,452,506(ii) of IPC and Section 12 of POCSO Act and Section 4 r/w. 18 of POCSO Act.

12. It has to examined whether the ingredients of those provisions are made out on the basis of the available evidence adduced by the prosecution.

13. The material evidence are that P.W.1/father of the victim and P.W.2/victim child. To reiterate it the victim child had stated that on



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15.06.2014 at about 11.30 pm., when she was sleeping in the house and when her parents were sleeping next to her, the accused entered into the house and pulled her legs and when she shouted he ran away. On the next day, when she was brushing her teeth he showed a knife and threatened her. This is the only evidence available for the prosecution.

14. The learned trial Judge had convicted the accused. The only issue has to be decided is whether the conviction and sentence imposed by the learned trial Judge is to be upheld or modified or set aside?

15. To examine that, it will only be appropriate to examine the ingredients of the provisions of law under which the accused had been convicted. Section 341 of IPC is extracted hereunder:

341. Punishment for wrongful restraint —

Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both

16. To convict for the offence under Section 341 of IPC, there must be restraint. Wrongful restraint has been defined under Section 339 of IPC.



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It is obstructing or preventing a person from proceeding in any direction.

There has to be physical restraint to the extent where the person who is restrained is not able to move anywhere.

17. In the instant case the accused had come into the house and pulled the legs of the victim child and had run away. He had never restrained her in any manner what so ever. He had not committed any offence of wrongful restraint. He had not obstructed her. He had not prevented her from proceeding in any direction. She was lying down. Her parents were lying down next to her. After he ran away, she continued to lie down. Her parents also continued to go back to sleep. Therefore the offence under Section 341 of IPC is not made out by any stretch of imagination.

18. The learned trial Judge had also convicted the accused for offence punishable under Section 451 of IPC. This would be house trespass, after preparation of hurt, assault or wrongful restraint. There are two ingredients for section 451 of IPC. The first one is trespass into a house, but it must be after preparation had been done to cause hurt, to commit assault or commit wrongful restraint.



19. In the instant case the evidence of P.W.1/father of victim child is that the victim girl raised a cry that somebody pulled her legs. He then stated that when he went to the terrace he saw the accused running away. Even the victim child in her evidence stated that at about 11.30 pm., in the night the accused had entered into the house and pulled her legs. There was no light. Since it is the evidence of the P.W.1 that when the victim child shouted, her parents including P.W.1 switched on the light, there cannot be any presumption that it was the accused who had entered into the house and pulled her legs. There cannot be any presumption that the accused had entered into the house to wrongfully restrain her. None of the ingredients of the provisions are satisfied. The conviction under Section 452 of IPC does not withstand the scrutiny of the Court.

20. The accused had been convicted for the offence punishable under Section 506(ii) of IPC. This is a provision included by every investigation officer in every offence as a corollary to the principal offence. To attract Section 506(ii) of IPC there must be threat to cause death or grievous hurt. The threat must be to such an extent that it must indicate that it must cause death or it must cause grievous hurt.



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21. The only evidence available is that on 16.06.2014, when the victim girl was brushing her teeth the accused came there and threatened that he would commit physical assault on her. No further details have been given by the victim child. There is no corroboratory evidence to this particular fact. It is well established that the threat should be direct and should be of such intensity that it must put fear of death on the victim. In the instant case, after that particular incident on 16.06.2014 the victim child informed the incident to her parents only after two days and they went as a family on 23.06.2014 to lodge a complaint. There was no fear in the heart or soul of the victim child. She was able to carry on her normal work for two days. His family was also able to carry out their respective work from 15.06.2014 to 23.06.2014 on which date they lodged the complaint. There is no indication and no evidence that during the interregnum period the threat continued and that there was immediate necessity to lodge complaint. I hold that the offence under Section 506(ii) of IPC is not made out on the basis of the available evidence.

22. The accused had also been convicted for commission of offence under Section 4 r/w.18 of POCSO Act. Section 4 of POCSO Act is



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punishable for penetrative sexual assault. Penetrative sexual assault had been defined under Section 3 of POCSO Act. Pulling of the legs of the victim does not come under the stipulations of Section 3 of POCSO Act.

23. Section 18 of POCSO Act is to commit an offence. Again pulling the legs would not be an offence with an intention to commit any of the offences under Section 3 of POCSO Act. Therefore the findings that the accused is guilty for the offence under Section 4 r/w. 18 of POCSO Act is again set aside by me.

24. The accused had also been convicted for the offence under Section 12 of POCSO Act. Section 12 of POCSO Act, reads as follows:

Section 12 of the Protection of Children from Sexual Offences (POCSO) Act of 2012 states that the punishment for sexually harassing a child is up to three years in prison and a fine:

25. Sexual harassment has been defined under Section 11 of POCSO Act and includes making a child exhibit their body for the offender or others to see, showing a child pornographic material, constantly watching or stalking a child online or in person, threatening to use a child's body in a



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sexual act in a film, electronically, or digitally and enticing a child for pornographic purposes

26. It is the evidence of the victim girl that the accused had followed her whenever she came back from the school. The accused would then express his infatuation for her. Under Section 11 of POCSO Act there must be utterance of any word or exhibition of any part of the body or showing of object or following and contacting the child and showing any form of media enticing the child. Even though there is a statement that he used to follow her that evidence is not supported by any corroborative evidence. As a matter of fact she had not lodged any complaint on that aspect.

27. Section 11 is an independent offence and on the date when the accused is said to have followed from school an independent complaint must have been lodged. It had not been done. As a whole an omnibus complaint had been lodged by the victim girl and her parents. Therefore I would hold that the evidence on this evidence does not inspire confidence to sustain the judgment of conviction.



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28. There are two further aspects which this Court will have to express namely that the defacto complainant is the victim girl herself. P.W. 1 had stated that he, his wife and the victim child had gone over to the police station to lodge the complaint on 23.06.2014. The victim girl herself is a minor. If that be the case either of the parents should have taken up the responsibility to be the defacto complainant. It is unfortunate that they had taken the victim child to the police station. This only exposed her further to be unnecessarily enquired by the respondent police.

29. The second aspect is the delay in lodging the complaint . The first incident was continuously following from the school. The dates have not been given. The second incident was on 14.06.2014 at 11.30 p.m., The third incident was on 15.06.2014 when the victim was brushing her teeth in the morning . The complaint was lodged only on 23.06.2014. As a matter of fact it is on record that after the incident on 16.06.2014, P.W.1, the father, P.W.2 the victim child and also the mother went back to sleep. Therefore they had taken a constant decision to drop all further complaints as against the accused. When that being the case lodging of complaint on 23.06.2014 is clearly an after thought.



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30. In view of the above reasons, I hold that the conviction of the accused is not at all sustainable . It is a case of zero evidence.

31.The conviction and sentence passed in S.C. No.14 of 2014 dated 25.11.2016 on the file of the Mahila Court, Fast Track Court, Theni is set aside. The appellant is acquitted of all the charges and is set at liberty forthwith. The Bail bonds, if any, executed by the appellant shall stand cancelled. The fine amount paid, if any, shall be refunded to the appellant.

32. This Court places its deep appreciation to the erudite arguments advanced by the Ms.Kamalini, legal aid counsel and also of Mr.A. Thiruvadi Kumar, learned Additional Public Prosecutor who, as usual, exhibited fairness in presenting the case of prosecution.

30.09.2024

Internet :Yes/No
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To

1. The Mahila Court, Fast Track Court, Theni.
2. The Inspector of Police,
Andipatti Police Station,
Theni District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
4. The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court, Madurai.



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C.V.KARTHIKEYAN, J.

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Judgment made in
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