



Crl.A.No.611 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2025

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.A.No.611 of 2023

Gunamoorthy

... Appellant

Vs

State,
Inspector of Police,
Velankanni Police Station,
Nagapattinam District.
Crime No.75 of 2019

...Respondent

PRAYER : Criminal Appeal has been filed under Section 415 of BNSS, 2023, to set aside the Judgment and conviction dated 26.11.2021 in Special SC.No.21 of 2019 on the file of the Learned Sessions Judge (Special Court under POCSO Act), Nagapattinam, and acquit the Appellant.

For Appellant : Mr.U.Kathiravan

For Respondent : Mr.S.Raja Kumar

Additional Public Prosecutor

JUDGMENT

This Criminal Appeal has been filed as against the order passed in Special SC.No.21 of 2019 dated 26.11.2021 by the Sessions Judge (Special Court under POCSO Act), Nagapattinam, thereby convicting the appellant for the offences punishable under Section 4 of Tamil Nadu Prohibition of



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Harassment of Woman act and Section 7 read with 8 of POCSO Act.

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2. The case of the prosecution is that on 22.04.2019, when the victim and their family members, after visiting the beach, were proceeding to their house at about 12.30 p.m, the accused followed them and had pulled the victim's hands and took her to the field of one Muruganandham near Karaikulam channel and attempted to commit penetrative sexual assault on the minor victim girl. Hence, the complaint.

3. On receipt of the complaint, the respondent registered FIR in Crime No.75 of 2019 for the offences punishable under Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 2002, Section 12 of POCSO Act and Section 354(A)(1)(i). After completion of investigation, final report was filed and the same was taken cognizance by the Trial Court in Special SC.No.21 of 2019 for the offences punishable under Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 2002 and Section 3 read with 18 of POCSO Act, 2012.



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4. In order to bring home the charges, on the side of the prosecution, they had examined Pws.1 to 11 and marked Exs.P1 to 9. The prosecution had also produced material object and the same was marked as M.O.1. On side the accused, they had examined D.W.1 and marked Ex.D1. On perusal of oral and documentary evidence, the Trial Court found the appellant guilty for the offence punishable under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act and Section 8 read with 7 of POCSO Act. He was sentenced to undergo three years rigorous imprisonment and also imposed fine of Rs.10,000/-, in default to undergo six months simple imprisonment for the offence punishable under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act and he was also sentenced to undergo five years rigorous imprisonment and also imposed fine of Rs.20,000/-, in default to undergo one year simple imprisonment. Aggrieved by the same, the present appeal.

5. The learned counsel for the appellant would submit that the entire complaint is a false one and in order to wreak vengeance as against the petitioner, a false complaint has been foisted as against the appellant. The appellant is running a juice shop at the beach. On the date of the alleged occurrence, it was an Easter day and as such, there was heavy rush, while



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purchasing juice from the appellant shop and there was a quarrel between the victim's family members and the appellant. Therefore, the appellant was attacked by the appellant and therefore, he sustained injury on his face including his nose. Thereafter, he was taken to the hospital, where he had stated that he was assaulted by multiple known persons, on 21.04.2019 at about 02.00 p.m near his residence. In order to circumvent the said incident, a false complaint has been foisted as against the appellant as if, he had committed sexual assault on the minor victim girl. The alleged occurrence had taken place on 21.04.2019 at about 12.30 p.m. Whereas the complaint was lodged only on 22.04.2019 at about 09.00 a.m. Though the complaint was marked as Ex.P2, dated 21.04.2019, it was received by the Sub Inspector of Police, only on 22.04.2019 and registered the FIR. The Sub Inspector of Police was examined as PW.10. She categorically deposed that the complaint was lodged only on 22.04.2019 and thereafter FIR was registered. It shows that after attacking the appellant, a false complaint has been foisted as against the appellant, in order to escape from the clutches of law. There was heavy rush on account of Easter, even then the prosecution did not examine any independent witness. Even according to the case of the prosecution, when the victim girl along with her family members were proceeding to their home, the appellant came at their



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behind and had taken the victim girl to remote place and committed sexual assault. It is not at all possible, since the victim girl was aged about 17 years at the time of occurrence. That apart, when three family members were going along with her, the occurrence itself is not at all possible. Even assuming that the said occurrence had happened that the appellant pulled her hand and made her to lie down and sat on her, immediately, when he come close to her, she had bitten the nose of the appellant. Therefore, he sustained injury on his nose.

6. Whereas, a perusal of Ex.D1, viz., the Accident Register which was recorded when the appellant went to the hospital, shows that there were injuries on his face as well as on his head. Therefore, it is evident that the appellant sustained injuries after being attacked by the victim's family members in his juice shop. He further submitted that even according to the prosecution, the appellant was known to them. However, in the complaint, it was alleged that an unknown person had committed the offence. All the prosecution witnesses categorically deposed that the appellant was hailing from the neighbouring village and that they knew him very well. The Investigating Officer, who was examined as PW.11, admitted that the appellant was admitted as an in-patient on 21.04.2019 at about 05.00 p.m in the hospital. Only



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thereafter, the complaint came to be foisted as against the appellant. Without

considering the above facts and circumstances, the Trial Court mechanically convicted the appellant.

7. Per contra, the learned Additional Public Prosecutor appearing for the respondent Police submitted that the appellant, being under the influence of alcohol, committed the offence. On 21.04.2019, at about 12.30 p.m, while the victim and her family members, after visiting the beach were proceeding to their home, the appellant attempted to commit sexual assault on the victim. At that time, the victim bit his nose and therefore, he sustained injury, for which he went to the hospital. He further submitted that the complaint was lodged on the date of the alleged occurrence itself. However, the FIR came to be registered by the Sub-Inspector of Police only on 22.04.2019. The complaint was marked as Ex.P2. The other family members, who were proceeding along with the victim were examined as PWs.2 to 4 and they categorically deposed about the occurrence and corroborated each other. Therefore, the prosecution had rightly convicted the appellant and it does not warrant any interference by this Court.



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8. Heard the learned counsel on either side and perused the material

available on record.

9. The alleged occurrence took place on 21.04.2019 at about 12.30 p.m. However, the complaint was received by the Sub-Inspector of Police, only on 22.04.2019 at about 09.00 a.m and the same was registered on 22.04.2019 in Crime No.75 of 2019. The victim was examined as PW.1. She deposed that after visiting the beach and while proceeding to their home, the appellant came from behind and took her to a remote place. However, the victim did not raise any alarm. She was aged about 17 years at the time of occurrence. According to PW.1, when the appellant attempted to commit sexual assault on her by sitting on her, she raised alarm and she had also bit his nose. Thereafter, she was rescued by PWs.2 to 4.

10. Admittedly, on 21.04.2019, there was heavy rush at the beach in on account of Easter. Therefore, it was not at all possible for the appellant to take the 17 year old girl to a remote place, that too while she was going along with PWs.2 to 4 and without their knowledge. Though the complaint was dated as 21.04.2019, it was received by PW.10 on 22.04.2019 at about 09.00 a.m and



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thereafter the FIR was registered. She further submitted that the appellant was also admitted as an in-patient in the hospital for the injuries sustained by him on 21.04.2019 at about 05.00 p.m, which was duly informed to PW.10. However, it was received by her after registering the FIR as against the appellant herein.

11. The appellant had sustained injuries on his face, nose and hands. Therefore, he was taken to the hospital by his brother. He stated before the Doctor that he was assaulted by multiple known persons. Though it was alleged that he was under the influence of alcohol, according to the appellant, only after he was assaulted by the victim's family members, he consumed alcohol and went to the hospital.

12. The Investigation Officer was examined as PW.11. He categorically deposed that, in the arrest memo, he had noted the injuries sustained by the appellant. Even then, the Investigating Officer referred the appellant to the Government Hospital, Nagapattinam. A perusal of Ex.P2 revealed that the appellant was not known to the victim and her family members. However, the father of the victim who was examined as PW.7,



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deposed that he knew the appellant very well even prior to the date of the occurrence. He further deposed that on the date of the alleged occurrence he had visited a local politician and immediately thereafter went to the Police Station and lodged a complaint. Whereas, PW.10 deposed that the complaint was lodged only on 22.04.2019 at about 09.00 a.m.

13. Therefore, these contradictions shows that the appellant was attacked by the victim's family members and thereafter, a complaint was lodged as if the victim had been subjected to sexual assault by the appellant. That apart, the victim girl was not subjected for any medical examination, though she sustained injury. Therefore, the prosecution failed to prove the charge beyond any reasonable doubt.

14. In criminal jurisprudence, the burden is always on the prosecution to prove its case beyond reasonable doubt. When two views are possible and the one favourable to the accused is equally plausible, the benefit of doubt must necessarily go to the accused. In the present case, the prosecution has failed to discharge its burden convincingly, and the trial Court failed to properly appreciate the infirmities in the prosecution case. Therefore, the conviction and



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sentence awarded by the trial Court cannot be sustained and is liable to be set aside.

15. Accordingly, the Judgment passed in Special SC.No.21 of 2019 dated 26.11.2021 by the Sessions Judge (Special Court under POCSO Act), Nagapattinam, is hereby set aside. The appellant is acquitted from all charges in Special SC.No.21 of 2019 for the offences under Section 4 of Tamil Nadu Prohibition of Harassment of Woman act and Section 7 read with 8 of POCSO Act. The appellant is directed to be set at liberty forthwith unless his custody is otherwise required in connection with any other case. The fine amount, if any, paid by the appellant shall be refunded. Bail bond, if any, executed by the appellant shall stand cancelled.

16. In the result, this Criminal Appeal is allowed.

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Speaking order/Non-speaking order

Index :Yes/No

Internet :Yes/No

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To
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1. The Sessions Judge (Special Court under POCSO Act), Nagapattinam.
2. The Inspector of Police,
Velankanni Police Station,
Nagapattinam District.
3. The Public Prosecutor,
High Court, Madras.



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G.K.ILANTHIRAIYAN, J.

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