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Crl.A.No.560 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.560 of 2022

Sarathkumar

... Appellant

Vs.

State rep. by
The Inspector of Police,
Sendhurai Police Station,
Ariyalur District.
[Crime No.113 of 2019].

... Respondent

Prayer: Criminal Appeal filed under Section 374 of Cr.P.C. to call for the records and set aside the conviction and sentence imposed in Spl.S.C.No.38 of 2019 dated 11.05.2022 on the file of the Fast Track Mahila Court, Ariyalur.

For Appellant : Mr.K.Gandhi Kumar
For Respondent : Mr.L.Baskaran
Government Advocate [Crl. Side]

JUDGMENT

The appellant/accused in Spl.S.C.No.38 of 2019 was convicted by the Trial Court by judgment dated 11.05.2022 for the offence under Section 12



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of POCSO Act and sentenced him to undergo one year rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo three months simple imprisonment. Against which, the present appeal is filed.

2.The case of the prosecution is that the victim girl/P.W.1, who was studying 9th Standard in Government Higher Secondary School, Royapuram, Ariyalur District on 18.06.2019 at about 4.45 p.m. was going back to her house along with two of her schoolmates, P.W.3 and P.W.7, at that time, the appellant gave a small paper with his mobile number written in it, forced the victim girl to speak to him daily during night hours informing that he is in love with her and he will marry her, failing which he would commit suicide. The victim girl not knowing as to what to do complained to her aunt since her parents were not available then, Thereafter, the victim's father P.W.2 was later informed about the incident who thereafter lodged a complaint to P.W.9/Sub-Inspector of Police attached to the respondent Police Station, who registered FIR/Ex.P3. The Sub-Inspector of Police placed the FIR to P.W.10/Investigating Officer who recorded the statement of the victim and her two classmates, P.W.3 and P.W.7, thereafter examined P.W.1/victim girl, P.W.4/aunt of the victim girl, P.W.5/mother of the victim girl and



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collected the age certificate from P.W.6. Thereafter, P.W.10 prepared observation mahazar, rough sketch in the presence of witnesses and the victim girl was produced before the Magistrate where she gave a statement under Section 164 Cr.P.C. which was marked as Ex.C1. On conclusion of investigation, charge sheet filed. During the trial, P.W.1 to P.W.10 examined and Ex.P1 to Ex.P6 marked on the side of the prosecution. On the side of the defence, no witness examined and no documents marked. Before the Trial Court, the appellant was charged for the offence under Sections 294(b), 506(ii) IPC and Section 11(iv) of POCSO Act punishable under Section 12 of POCSO Act. The Trial Court acquitted the appellant for the offence under Sections 294(b), 506(ii) IPC but convicted the appellant for the offence under Section 12 of POCSO Act and sentenced him as stated above.

3.The learned counsel for the appellant submitted that the foundational fact of the case is that the appellant is said to have restrained the victim girl when she was coming back from her School on 18.06.2019 and gave a small paper with his mobile number written in it to contact him, but the said small paper has not been produced. He would submit that the



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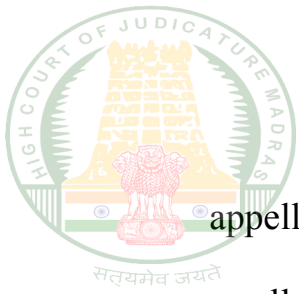
victim girl in her evidence states that she had thrown away the small paper in the scene of occurrence and came home crying, but P.W.2 and P.W.5, father and mother of the victim girl, on the contrary, state that the small paper was collected from the scene of occurrence and it was produced to the respondent police. P.W.10 admits that in Ex.P1/complaint, there is a reference to the mobile number but he has not taken any steps to find out as to who is using the mobile number and in whose name the number was obtained. The specific case of the appellant is that he is not using the mobile number as alleged. In this case, admittedly the complaint was lodged with a delay of two days but no reason given for the delay. The appellant's case is that one Kumar, father of P.W.3 is owning and hiring a Tractor, he dashed against two women who belongs to the Colony and for that reason, the appellant who hails from the Colony has been falsely implicated. Further, the appellant earlier lodged a complaint against Keelapuram Village people under SC/ST Act and this is one more reason for implicating the appellant in the case. In this case, P.W.3/Classmate who come along with the victim gives corroboratory version to P.W.10. P.W.7, another Classmate had not supported the case of the prosecution. In the complaint/Ex.P1, it was recorded that two person restrained the victim girl and the appellant is said



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to have given his mobile number written in a small paper and P.W.10 admits that there is no investigation as regards the other person. The Trial Court disbelieving the evidence of the witnesses acquitted the appellant from the charges under Sections 294(b) and 506(ii) IPC. He would further submit that the charges under Sections 294(b) and 506(ii) IPC are identical to the charge under Section 11(iv) of POCSO Act and since P.W.1 is a minor, charge under Section 11(iv) of POCSO Act also invoked. When the Trial Court disbelieved the evidence with regard to Sections 294(b) and 506(ii) IPC, the natural corollary is that the charge under Section 11(iv) of POCSO Act ought to have been dropped. But on the contrary, to abuse the people who hails from the Colony a case has been projected. The Trial Court also without considering these aspects convicted the appellant. Hence, prayed for acquittal.

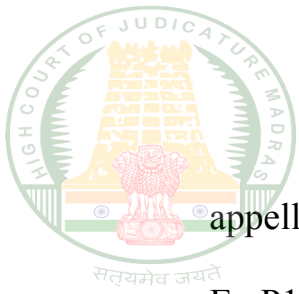
4.The learned Government Advocate (Crl. Side) on the other hand strongly opposed the appellant's contention and submitted that in this case, P.W.2 who is the father of the victim girl lodged a complaint against the appellant. The defacto complainant's daughter along with her classmates, P.W.3 and P.W.7 are coming back from the School, at that time, the



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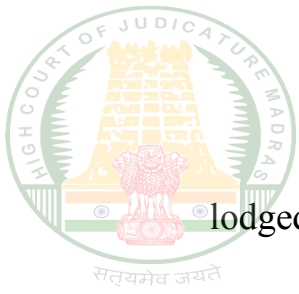
appellant restrained the victim girl, gave his mobile number written in a small paper, forced her to contact him and also threatened her that if she fails to contact him, he will commit suicide. P.W.1/victim girl came home crying, informed her aunt/P.W.4 since her parents were not available and thereafter, complaint was lodged. P.W.9 registered the FIR/Ex.P3, P.W.10 took up the investigation, examined the witnesses, P.W.1/victim girl and the minors, P.W.3 and P.W.7 were examined along with Women Sub-Inspector of Police and their statements recorded. The statement of P.W.1/victim girl under Section 164 Cr.P.C. was also recorded. It is true that the Investigating Officer not collected and produced the small paper containing the mobile number of the appellant but that alone will not entitle for acquittal of the appellant since P.W.1/victim girl, P.W.2/father and P.W.5/mother clearly stated about the act of the appellant in their evidence. He further submitted that the Trial Court on the evidence had rightly convicted the appellant. Hence prayed for dismissal.

5.Considering the submissions made and on perusal of the records, it is seen that in this case, P.W.1 is the victim girl, who is said to have been abused, threatened and was handed over with a piece of paper containing



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appellant's mobile number. The mobile number details is given in Ex.P1/complaint. There is a contradictory version with regard to the small paper. P.W.1 states that she had thrown away the small paper near the Banyan tree and came home crying whereas P.W.2 and P.W.5 state that they collected the small paper from the scene of occurrence and handed over the same to the respondent police. P.W.9 and P.W.10, the Sub-Inspector of Police who registered FIR/Ex.P3 and the Inspector of Police who conducted investigation does not state anything with regard to the small paper. P.W.2 further states that he verified the mobile number which belongs to the appellant and thereafter only, lodged the complaint but P.W.10/Investigating Officer confirms that he has not taken any steps to verify the mobile number as to whether the appellant is using the mobile number. The specific case of the appellant is that the mobile number does not belong to him and there is nothing to show that the appellant is using the mobile number. Hence, the case rests on the small paper and the mobile number which are collected and proved to be that of the appellant. On the other hand, the specific defence of the appellant is that P.W.3's father who is owning and hiring a Tractor caused an accident causing death of two women who belong to the Colony, there was a compromise talk which was refused and the appellant



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lodge a complaint against the Village people under SC/ST Act and there was no cordial relationship between them. In such circumstances, the theory propounded is highly unbelievable and it is also lacking evidence. The Trial Court having acquitted the appellant for the offence under Sections 294(b) and 506(ii) IPC ought to have extended the same for the offence under Section 11(iv) of the POCSO Act, but to the contrary the Trial Court convicted the appellant which is not sustainable both on law and on facts. Hence, this Court is inclined to set aside the conviction and sentence imposed on the appellant.

6. In the result, the Criminal Appeal is allowed setting aside the judgment of the trial Court, dated 11.05.2022 in Spl.S.C.No.38 of 2019. The appellant/accused is acquitted from all the charges levelled against him. The bail bond, if any, executed shall stand cancelled. Fine amount, if any, paid, shall be refunded to him.

10.02.2025

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
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To

- 1.The Inspector of Police,
Sendhurai Police Station,
Ariyalur District.
- 2.The Sessions Judge,
Fast Track Mahila Court, Ariyalur.
- 3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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