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CrI.A.No.1089 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2025

CORAM:

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

CrI.A.No.1089 of 2024
and CrI.M.P.No.12016 of 2024

Subramaniyan

... Appellant

Vs.

The State rep. by
The Inspector of Police,
All Women Police Station,
Ariyalur,
Ariyalur District.
Crime No.38 of 2021

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C., to call for the records in Spl.S.C.No.06 of 2022 on the file of the Fast Track Mahalir Court at Ariyalur, set aside the judgment and order of conviction dated 15.03.2023 against the appellant/accused and thereby allow the appeal.

For Appellant : Mr.Conscious Elango
For Mr.D.Arun

For Respondent : Mr.S.Rajakumar
Additional Public Prosecutor



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JUDGMENT

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This Criminal Appeal has been filed as against the order dated 15.03.2023 passed by the learned Sessions Judge, Fast Track Mahalir Court, Ariyalur, made in Spl.S.C.No.06 of 2022, thereby convicting the appellant for the offences punishable under Sections 323, 354A(2) of IPC and Section 10 of the Protection of Children from Sexual Offences (hereinafter referred to as “the POCSO Act”).

2. The case of the prosecution is that the victim girl is none other than own daughter of the accused and he used to give sexual torture to the victim girl from she was studying in sixth standard. On 02.10.2021, at about 10.00 am., while the victim girl was preparing breakfast at her grandmother's house, the accused entered through back side of the house and attempted to throw a fish pot on the victim girl. Though, she escaped, she sustained injury on her right hand. On the complaint, the respondent registered the FIR in Crime No.38 of 2021 for the offences punishable under Section 9(1)(n) r/w 10 of the POCSO Act. After completion of investigation, the respondent filed final report and the same has been taken cognizance in Spl.S.C.No.06 of 2022.

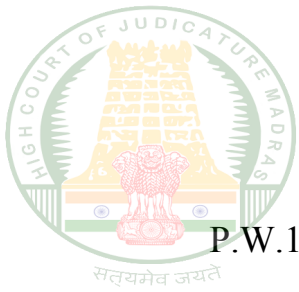


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3. On the side of the prosecution, they had examined P.W.1 to P.W.10 and marked documents in Ex.P.1 to Ex.P.11. The Court marked one document in Ex.C.1. On the side of the accused, D.W.1 and D.W.2 were examined and no documents were marked. On perusal of the oral and documentary evidence, the trial Court found the accused guilty for the offences under Sections 323, 354A(2) of IPC and Section 10 of the POCSO Act and sentenced him to undergo seven years rigorous imprisonment and to pay a fine of Rs.50,000/- in default to undergo further period of six months simple imprisonment for the offence under Section 10 of the POCSO Act and to undergo one year rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo further period of three months simple imprisonment for the offence under Section 323 of IPC. Aggrieved by the same, the present appeal.

4. The learned counsel appearing for the appellant submitted that the prosecution miserably failed to prove the charges. There was a property dispute between the appellant and his wife. In fact, the appellant was working in gulf country and thereafter returned to India. Immediately after returning to India, false complaint has been lodged in order to grab the property by his wife. The victim was examined as



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P.W.1. She deposed that even from her sixth standard, the appellant harassed her by giving sexual torture. In her cross examination, she admitted that the appellant was in abroad for four years, while the victim was studying from sixth standard to eighth standard. Further, she did not know when the appellant returned India. Except P.W.1 & P.W.2, there is no independent witness has been examined in order to prove any of the charge. He further submitted that now the petitioner incarceration from the date of judgment passed by the trial Court. Even before that, during investigation, the petitioner was arrested and remanded to judicial custody for the period of two months and thereafter, he was enlarged on bail. Hence, he prayed to allow this appeal.

5. The learned Additional Public Prosecutor submitted that the victim was examined as P.W.1 and she categorically deposed that the appellant had given sexual torture to her even she was studying sixth standard. One day when the electricity was not there in their house, the accused asked her to remove her dress and compelled her to touch his private part. She further submitted that whenever her mother not there in house, the accused indulged in same kind of illegality. While being so, on the date of occurrence, the accused also attempted to put a fish tank



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on her. Fortunately, she escaped but however she had injury on her right hand. Thereafter, the appellant also slapped her. The victim girl's mother lodged the complaint and she was examined as P.W.3. She also corroborated the evidence of P.W.1 and as such the prosecution proved the charges. Hence the trial Court rightly convicted the appellant and prayed for dismissal of the appeal.

6. Heard the learned counsel appearing on either side and perused the material placed on record.

7. P.W.1 is none other than own daughter of the appellant. P.W.3 is his wife. P.W.2 is the close relative of P.W.3. The crux of the prosecution was that there was a quarrel between the appellant and his wife due to which, his wife used to go to her parent's house. During that time, the appellant insisted the victim to remove her dress and compelled her to touch his private part. While being so, on 02.10.2021 at about 10 a.m., the appellant went into the house of the victim girl on backside and attempted to put a fish tank on the victim girl. Fortunately, the victim girl escaped. Even then she has sustained injury on her right forearm.



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8. The victim girl was examined as P.W.1. On perusal of her deposition, it is revealed that whenever her mother was not there, the appellant used to give sexual torture to her. However, it was not informed to anybody. On the first time, viz., on 02.10.2021, when the appellant attempted to put a fish tank on the victim girl, P.W.3 lodged complaint, alleging that the appellant gave sexual torture to the victim girl. She further alleged that when the victim girl escaped, immediately the appellant attempted to hug her and pushed down. Therefore, she fell down and sustained injury on her forehead. She further deposed that due to the torture given by the accused, she was studying in her aunt house viz., own sister of the appellant and she studied up to eighth standard.

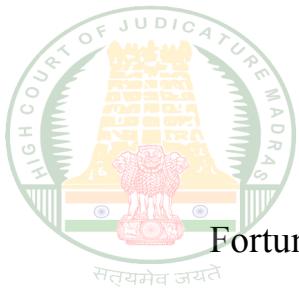
9. After the complaint, the victim girl was subjected for medical examination and also she was treated for the injury sustained by her on her right forearm. However, there was no evidence for the sexual torture. There is no evidence to show that victim girl had sexual relationship. P.W.9 the Doctor, who examined the victim girl deposed that the victim girl was subjected for medical examination and she found no injury on her private part. She certified that the victim girl had no sexual intercourse.



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11. Insofar as the offence under Section 323 of IPC is concerned on 02.10.2021, the appellant entered into the house of the defacto complainant and attempted to put a fish tank on the victim girl.



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Fortunately, she escaped, even then she sustained injury on her right forearm. Thereafter, he also slapped her and also pushed her down.

Therefore, she sustained injury on her forehead. Immediately she was taken to hospital at about 12 noon. P.W.9 examined her and found one laceration wound on her right forearm and there was swelling on her forehead. She certified that both the injuries are simple in nature. Therefore, the prosecution proved the charges under Section 323 of IPC and the trial Court rightly convicted the appellant for the offence under Section 323 of IPC.

12. Insofar as the offence punishable under Section 354A(2) of IPC is concerned the victim girl categorically deposed that on 02.10.2021, the appellant attempted to hug her and when the victim refused, he pushed her down. Therefore, she fell down and sustained injury on her forehead. She also deposed that even before 02.10.2021, the appellant had made demand to his sexual needs and also shown obscene photographs. Therefore, the prosecution proved the charges under Section 354A(2) of IPC. Though the trial Court convicted the appellant for the offence under Section 354A(2) of IPC did not impose any sentence for the said offence, since the appellant was convicted and

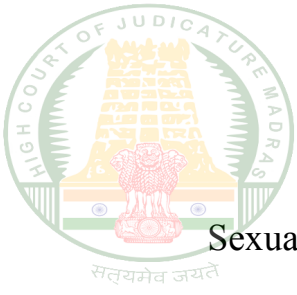


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sentenced to undergo seven years rigorous imprisonment for the offence under Section 10 of the POCSO Act. Now the conviction and sentence imposed for the offence punishable under Section 10 of the POCSO Act is set aside.

13. Accordingly, the judgment dated 15.03.2023 passed by the learned Session Judge, Fast Track Mahalir Court, Ariyalur, in Spl.S.C.No.06 of 2022, is set aside insofar as the conviction and sentence imposed on the appellant for the offences punishable under Section 10 of the Protection of Children from Sexual Offences Act alone and the conviction and sentence imposed on the appellant for the offences punishable under Sections 323 & 354A(2) of IPC are hereby confirmed. However, the trial Court failed to sentence the appellant for the offence under Section 354A(2) of IPC, since the appellant was convicted and sentenced to undergo seven years rigorous imprisonment for the offence punishable under Section for the offence under Section 10 of the Protection of Children from Sexual Offence Act. Hence, the appellant is sentenced to undergo imprisonment for the period already undergone by him for the offence under Section 354A(2) of IPC. The appellant is acquitted of the charge under Section 10 of Protection of Children from



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Sexual Offence Act. The appellant/accused is directed to be set at liberty forthwith unless his custody is otherwise required in connection with any other case. Fine amount, if any paid, shall be refunded to the appellant forthwith. Bail bond, if any executed, shall stand cancelled.

14. In the result, this Criminal Appeal is partly allowed. Consequently, connected miscellaneous petition is closed.

19.06.2025
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Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order

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- To
- 1.The Session Judge,
Fast Track Mahalir Court,
Ariyalur.
 - 2.The Inspector of Police,
All Women Police Station,
Ariyalur,
Ariyalur District.
 - 3.The Superintendent,
Central Prison,
Trichy.
 - 4.The Public Prosecutor,
High Court, Madras.



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G.K.ILANTHIRAIYAN, J.

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