



CrL.A.No.495 of 2017

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2025

CORAM :

THE HON'BLE MR. JUSTICE SUNDER MOHAN

CrL.A.No.495 of 2017

A.Mohamed Irfan

... Appellant/Sole Accused

v.

State rep. by
The Inspector of Police,
Town Police Station,
Karaikal.

(Crime No.73 of 2015)

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, against the conviction of the appellant/sole accused and sentence imposed on him in Spl.C.C.No.11 of 2016 dated 31.07.2017 on the file of the learned Sessions Judge, Karaikal, and set aside the conviction and sentence and allow this appeal.

For Appellant : Mr.R.Vivekananthan

For Respondent : Mr.M.V.Ramachandramurthy
Additional Public Prosecutor (Puducherry)

assisted by Mr.A.Alexander
Government Advocate (Puducherry)



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JUDGMENT

This Criminal Appeal has been filed by the sole accused, challenging the conviction and sentence imposed upon him for the offence under Section 12 of the POCSO Act, vide judgment dated 31.07.2017 in Spl.C.C.No.11 of 2016, on the file of the learned Sessions Judge, Karaikal.

2(i) It is the case of the prosecution that the victim, a school girl was repeatedly and constantly stalked by the appellant, who had made inappropriate remarks against the victim, whenever she walked along the road, starting from the first week of February 2015; that on 10.04.2015 at about 7.00 p.m., while the victim was riding a two-wheeler in which her mother travelled as a pillion rider, the appellant came in his two-wheeler in a rash and negligent manner and dashed against the two-wheeler of the victim girl and caused injuries to both the victim and her mother; and thus, committed the offences.

(ii) On 07.05.2015, PW1 the father of the victim had lodged a



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complaint [Ex.P1] stating the aforesaid facts, which was registered by the Inspector of Police [PW7] as an FIR [Ex.P6] in Cr.No.73 of 2015 for the offence under Sections 12 of POCSO Act and Section 354 D and 506(1) of the IPC.

(iii) PW8 the Inspector of Police, took up the investigation and filed a final report against the accused for the offences under Sections 12 of the POCSO Act and Section 506(i) of the IPC, before the Sessions Court, Karaikal.

(iv) On the appearance of the appellant, the provisions of Section 207 Cr.P.C., were complied with, and the case was taken on file as Spl.C.C.No.11 of 2016 and the trial Court framed charges against the appellant/accused for the offences under Section 12 of the POCSO Act and Section 506 (i) of the IPC, and when questioned, the accused pleaded 'not guilty'.

(v) To prove its case, the prosecution examined eight witnesses as P.W.1 to P.W.8 and marked seven exhibits as Exs.P1 to Ex.P7. When the



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accused was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. The accused neither examined any witness nor marked any document on his side.

(vi) On appreciation of oral and documentary evidence, the trial Court found the appellant guilty of the offence under Section 12 of the POCSO Act and acquitted the appellant of the offence under Section 506(1) of the IPC. The appellant was convicted to undergo simple imprisonment for one year and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for one month for the offence under Section 12 of the POCSO Act. Hence, the accused has preferred the appeal challenging the said conviction and sentence.

3. Mr.R.Vivekananthan, learned counsel for the appellant would submit that there is a huge delay of nearly 27 days in lodging the complaint; that the allegations in any case are false; that since the appellant had lodged a complaint against the victim girl for riding the vehicle without a valid licence, the instant complaint was lodged; that the mother of the victim girl who is said to have travelled along with victim girl was not examined by the



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prosecution; that though it is claimed by PW1 and PW2 (victim), that the delay in lodging the complaint was due to the fact that the victim and her mother took treatment in an hospital, no evidence has been produced to substantiate the said explanation; and therefore, prayed for acquittal.

4. The learned Additional Public Prosecutor (Puducherry) appearing for the respondent *per contra* submitted that in a case of this nature, the delay by itself would not be a ground for acquittal in light of the cogent evidence of the victim girl [PW2], who had spoken about the harassment she had suffered since February 2015. He also pointed out the evidence of PW2 to show that the delay in lodging the complaint was due to the fact that she was taking treatment in a hospital. Therefore, the learned Additional Public Prosecutor (Puducherry) submitted that the trial Court was right in convicting the appellant for the offence under Section 12 of the POCSO Act.

5. As stated earlier, the prosecution had examined eight witnesses. PW1 is the father of the victim girl; PW2 is the victim; PW3 is the Social Welfare Officer, who had assisted the police in recording the statement of



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the victim girl; PW4 is known to PW1 and had corroborated the evidence of PW1 with regard to the warning given to the appellant when he had earlier teased the victim girl. He also signed as a witness in the rough sketch; PW4 though had claimed that he along with PW1 had warned the appellant earlier, had admitted in the cross-examination that he had no personal knowledge of the alleged incident that took place on 10.04.2015; PW5 is a hearsay witness to the occurrence and also signed as a witness to the rough sketch; PW6 is the Magistrate, who had recorded Section 164 Cr.P.C. statement of the victim girl; PW7 is the investigation officer, who had registered the FIR and conducted the investigation; PW8 is the Inspector of Police, who had filed the final report after completion of investigation.

6. Though the prosecution had examined PW1, PW2 and PW4 to prove the occurrence on 10.04.2015, as stated earlier PW4, admitted that he had no personal knowledge of the occurrence. Therefore, the prosecution case rests on the testimonies of PW1 and PW2. It is the case of both PW1 and PW2 that PW2 was subjected to harassment by the appellant, as he persistently stalked her and made inappropriate remarks whenever she



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walked along the road since February 2015. However, no complaint, admittedly was lodged against the appellant for those occurrences. The incident that prompted PW1 to lodge the complaint is said to have taken place on 10.04.2015. Concededly, PW1 was not a witness to the said occurrence. According to the prosecution, the appellant rode his two-wheeler in a rash and negligent manner and collided with the vehicle ridden by the victim girl and caused injuries to her and her mother.

7. Strangely, the prosecution had not examined the mother of the victim girl to establish the said occurrence. It is needless to say that the mother of the victim would have been the most credible witness for the prosecution. Failure to examine her raises a doubt with regard to the version of the witnesses, especially, in light of the delay in lodging the complaint and all other circumstances to disbelieve their version pointed out by the defence. It is also not known as to how the victim girl could have ridden a 100 CC bike, according to the prosecution, without a valid licence. In fact, PW1 in his cross-examination would state that her daughter had a valid licence even while she was studying in school to ride a 100 CC two-wheeler.



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This portion of the evidence of PW1, is alone sufficient to disbelieve his version.

8. Be that as it may. The complaint was lodged on 07.05.2015 for the alleged occurrence that took place on 10.04.2015 and other occurrences that took place earlier. The only explanation offered by the prosecution and PW1 for the delayed complaint is that the victim was taking treatment in a hospital and PW1 was mentally disturbed due to the incident. However, the witnesses had not produced any document to prove the fact that PW2 and her mother took treatment in a hospital.

9. The investigation officer also did not care to ascertain this fact by verifying the hospital records as to whether the victim and her mother took treatment. PW7 in his cross-examination, admitted that he had not examined the hospital records or examined the witnesses to ascertain if the explanation offered by the witnesses was true. That apart, it is seen that PW1 was disbelieved with regard to the alleged threat made by the appellant earlier.



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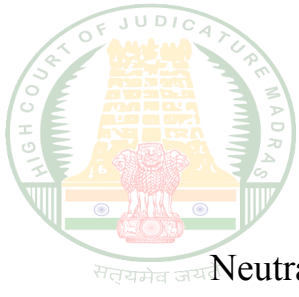
10. In the light of the above facts, the case of the defence that the complaint against the appellant was lodged since PW1 did not want to suffer a prosecution for letting his minor daughter ride a two wheeler, without a valid licence, appears to be probable. Hence, this Court is of the view that it is highly unsafe to convict the appellant on the testimonies of PW1 and PW2 and therefore, the conviction recorded by the trial Court is liable to be set aside.

11. As a result, this Criminal Appeal is allowed. The conviction and sentence passed in Spl.C.C.No.11 of 2016, dated 31.07.2017 on the file of learned Sessions Judge, Karaikal, are set aside. The appellant is acquitted of the offence under Section 12 of the POCSO Act. The fine amount, if any, paid by the appellant shall be refunded. Bail bond, if any, executed shall stand discharged.

20.06.2025

Index : yes/no

Speaking /Non-speaking order



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Neutral citation : yes/no

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To

1. The Sessions Judge,
Karaikal.
2. The Inspector of Police,
Town Police Station,
Karaikal.
3. The Public Prosecutor,
Puducherry.



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SUNDER MOHAN, J.

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