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Crl.A(MD)No.229 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	30/10/2024
Date of Pronounced	30/01/2025

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Crl.A(MD)No.229 of 2019

Ajith Kumar : Appellants/Accused (single)

Vs.

State rep. by
Inspector of Police,
All Women Police Station,
Ponmalai, Trichy.

(In Crime No.17 of 2018) : Respondent/Complainant

Prayer: This Criminal Appeal is filed under Section 374(2) of the Criminal Procedure Code, to call for the records pertaining to Special SC No.60 of 2018 on the file of the Sessions Judge, Mahila Court, Trichy, dated 24/04/2019 and set aside the conviction and sentence by acquitting the appellant.

For Appellant : Mr.K.Vinayagan

For Respondent : Mr.M.Sakthi Kumar
Government Advocate
(Criminal side)

J U D G M E N T

This Criminal Appeal is filed against the judgment of conviction and sentence passed in Special SC No.60 of 2018, dated 24/04/2019 by the Sessions Judge, Mahila Court, Trichy.



2.The case of the prosecution in brief:-

The de-facto complainant namely Gayathri is the resident of Bharathy Nagar, Airport, Trichy. She is doing 1st year of B.Com at M.I.E.T College, Trichy. When she is doing her 12th Standard, the accused became her friend. They spoke daily through mobile phone. At this juncture, the de-facto complainant joined B.Com Degree at M.I.E.T College, Trichy and wanted to discontinue the friendship. Due to which, she did not meet the accused for sometime. Thereafter when the accused met her, she was abused in filthy language. On 24/09/2016, the accused alleged to have edited the photo of the de-facto complainant from her Face-Book D.P and included his photo with her and uploaded the same in the whatsapp. On seeing the above said picture, the de-facto complainant went to the house of the accused on 25/09/2018 at about 10.00 am and questioned the attitude of the accused. On 26/09/2018 at about 12.00 noon the brother of the de-facto complainant went to Muniswamy Temple, at that time, there was wordy altercation between the brother of the de-facto complainant and the accused and he was also threatened by the accused with dire consequences. Upon the above said occurrence, a case in Crime No.17 of 2018 was registered by the respondent police for the offence under section 11 r/w 12 of POSCO Act and section 294(b) and 506(ii) IPC. After completing the investigation, final report was filed. It was taken



cognizance in Special SC No.60 of 2018 by the Mahila Court, Trichy. After completing 207 Cr.P.C proceedings, framed the following charges against the accused:-

(i)When the de-facto complainant doing her 12th Standard, the accused became her friend; after completing the school education, she joined in a private college at Trichy; so, the accused followed her and compelled to love him; when the de-facto complainant refused, the accused restrained and teased her, thereby the accused committed an offence punishable under section 354(D) of IPC;

(ii)In continuation of the above said occurrence, on 24/09/2016, the accused said to have edited the photo of the de-facto complainant from the Face-Book D.P and included his photo with her and uploaded the same in the Whatsapp; On seeing the same, the de-facto complainant along with her brother went to the house of the accused on 25/09/2018 at about 10.00 a.m and questioned the attitude, the accused abused her brother in filthy language and thereby he committed an offence punishable under section 294(b) IPC;

(iii)In furtherance of the above said occurrence, there was wordy altercation between the brother of the de-facto complainant and the accused, the accused



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threatened the brother of the de-facto complainant with dire consequence, thereby the accused committed an offence punishable under section 506(i) IPC; and

(iv) In continuation of the above said occurrence, the accused edited the photo of the de-facto complainant from her Face-Book D.P and include his photo with her and uploaded the same in the whatsapp and thereby, the accused committed an offence under section 12 of POCSO Act.

3. During trial, on the side of the prosecution, 11 witnesses were examined and 12 documents marked. On the side of the accused, no oral evidence was let in, but two documents were marked.

4. PW1 victim girl was studying in Periyar Maniyammai Higher Secondary School. She was undergoing special tuition class with one Sundari in her house. She used to go to the tuition class by bicycle. The accused is a neighbour. He was following the victim girl, pressurizing her to love him. She was criminally intimidated if not love him. she was threatened that he will spread her photo through social media. After the occurrence, she completed 12th standard and joined in a college. Even in the college days, torture continued. When she was refused to speak with him, he



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mapped her photo, spread in the social media network connecting her with him. On 24/09/2018 at about 11.45 in the night, on came to know about the Face-Book posting, she picked up quarrel on the next day with the accused. Even at that time, the accused insisted her to love him and otherwise, he will continue the activity. She informed the same to her brother. Her brother enquired the accused on 29/05/2018. at that time, he was abused, scolded and threatened. After the above said occurrence, she lodged a complaint under Ex.P1.

5.Ex.P1 complaint was received by PW10, the Sub Inspector of Police, who was working in All Women Police Station, Thiruvarangam, registered registered a case in Crime No.17 of 2018 for the offence under section 11 r/w 12 of POSCO Act and sections 294(b) and 506(i) IPC, on 26/09/2016. He recovered the photos posted by the accused in the social media, handed over the same to the Investigating Officer. The Investigating Officer namely PW11 Kalaivani took up the investigation, visited the place of occurrence at about 26/09/2018 at about 08.00 pm, recorded the statement of the witnesses, prepared parvai mahazar and sketch under Exs.P10 and P11, submitted the photos to the court under Form-95, arrested the accused on 29/07/2016 at about 10.00 am, recorded his statement. After completing the investigation filed a final report charge sheeting the accused for the offence stated above.



6.PW2 and PW3 are the parents of the PW1. They corroborated PW1 over the material particulars, enquiry made by them with the accused over the posting of photo and etc. facts.

7.PW4 is the brother of PW1. He also corroborated with PW1 over the material particulars.

8.Other witnesses are not the material witnesses. With that, the prosecution side evidence was closed.

9.The accused was questioned under section 313(1) (b) of the Code of Criminal Procedure Code about the incriminating circumstances against him. He denied the evidence of the witnesses as false and stated that a false case has been foisted. No witness was examined on the defence side.

10.At the conclusion of the trial, the trial court found the accused guilty of the offence under section 12 of POCSO Act, 2012 and 354(D) IPC and sentenced him to under 3 years RI for each of the offence and imposed a fine of Rs.5,000/- each in default to undergo one year RI and the sentences were directed to run concurrently.



11. Against which, this criminal appeal is preferred by the appellant.

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12. Heard both sides.

13. Only short point arises for consideration.

14. At the time of hearing, a joint compromise memo was filed by the victim girl and the appellant herein. The birth certificate of the de-facto complainant is annexured along with the joint compromise memo, wherein the date of the de-facto complaint is mentioned as 29/12/2000, which shows she was 17 years 9 months at the time of the occurrence. Now she attained majority. In the compromise memo, it has been stated by them that the appellant got married two years back, having a female about one year age. The de-facto complainant got engaged with another man. The marriage is fixed in the month of March 2025. So, they want to lead a peaceful life forgetting the past bad events.

15. Even though the joint compromise memo is not admissible at the appellate stage, the learned counsel for the appellant at the time of argument would submit that during the course of the cross examination, PW1 admitted that she was in talking terms with the accused, during that time, they used to exchange the messages.



16. Reading of the cross examination of PW1 does indicate that she was also consenting party for continuous conversation and exchange of messages. Further reading of the cross examination also does indicate that when their relationship became known to the parents, problem has arisen. So, the complaint was given by PW1 stating that the accused used to follow her frequently, compelled her to love him.

17. It appears that she has exaggerated the facts. So, the evidence of PW1 does not indicate that she is not a reliable person.

18. Now back to the allegation of spreading or merging the photo of PW1 with the accused, it is the case of the prosecution that PW4 the brother of PW1 first saw the post and told the same to the parents and later enquired the same with the accused. But PW4 the brother of the victim has stated that the above said posting came to the mobile number of his sister in law. The phone link was connected to the accused. On enquiry with PW1, it was told by PW1 that the accused by taking the photos in the Face-Book Display Picture has merged the same and posted in the social media. So, the evidence of PW4 does not corroborate the evidence of PW1 as to the sending of the post.



19.PW9 is running a studio called 'Krisha' near Trichy Airport. According to him, on 26/11/2018 one Chidambaram brought a mobile phone, asked him to design the photo of a girl and boy. Later he was enquired by the police and identified Exs.P7 and P8. His evidence only support the case accused and not the prosecution. Who is that Chidambaram, there is no explanation on the side of the prosecution. Similarly, the mobile phone used by the accused for posting the photo was not recovered by the police during the course of investigation. From which ID, it was posted, there is no clear identification.

20.The trial court recorded a finding that from the ID mentioned in the photo, the involvement of the appellant was sufficiently proved. But as mentioned above, no steps were taken by the Investigating Officer to identify the mobile phone through which the above said post was made in ID, through which the posting was sent, there was no proper investigation.

21.On that sole ground, the judgment of conviction and sentence passed by the trial court is liable to be interfered and accordingly, it is interfered.



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22. Even though the finding of the trial court shows that it creates doubt as to the involvement of the appellant in question, but the suspicion will not partake the character of the proof. In a criminal case, guilt of the accused must be proved beyond all reasonable doubt, the finding should not be recorded on mere surmises and conjunctures. Recording of the trial court on this aspect is purely on suspicion and surmises.

23. For all the reasons stated above, this court is of the considered view that the judgement of conviction and sentence passed by the trial court is liable to be set aside and accordingly, set aside.

24. In the result, this criminal appeal is **allowed**. The impugned judgment of conviction and sentence are set aside. The appellant is acquitted from the charges framed against him. Fine amount, if any, paid shall be refunded to the appellant.

30/01/2025

Index : Yes/No
Internet : Yes/No
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To,

- 1.The Mahila Court,
Trichy.
- 2.The Inspector of Police,
All Women Police Station,
Ponmalai, Trichy.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G. ILANGO VAN, J

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