



Crl.A(MD)No.283 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 05.06.2025

CORAM :

THE HONOURABLE MS. JUSTICE R.N.MANJULA

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Selvam ... Appellant/Accused No.1

Vs.

The State by
The Inspector of Police,
Usilampatti Taluk Police Station,
Madurai District
(In Crime No.110 of 2016)

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to call for the entire records and set aside the order of conviction and sentence passed in S.C.No.46 of 2016 dated 06.07.2017 on the file of the District Sessions (Mahila) Court, Madurai District at Madurai.

For Appellant : Mr.R.Balamuruganantham

For Respondent : Mr.A.Albert James

Government Advocate (Crl.side)



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JUDGMENT

This Criminal Appeal has been filed by the first accused against the judgment dated 06.07.2017 passed by the District Sessions (Mahila) Court, Madurai District at Madurai, in S.C.No.46 of 2016.

2. The brief facts of the case are as follows:

i) On 06.04.2016, at about 5.30 p.m, the victim girl (P.W.2) and the mother of the victim girl (P.W.1) were in their house. At that time, the first accused came and pulled the hands of the victim girl, who was standing in front of the house. The first accused abused the victim girl in filthy language and threatened her that if she did not love him, he would murder her. When P.W.2 questioned the first accused, he abused her also in filthy language and pushed her down, due to which, P.W.2 got internal injuries over her knees. One Mariammal and one Chinnasamy, who were in the scene of occurrence, tried to pacify the first accused. At that time, the second accused came there and shouted in filthy language against P.W.1 and tried to slap her with chappal. When the victim girl and her mother were trying to go away from there, the accused Nos. 1 and 2



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threatened them by saying that if they come to town, they will kill them.

Based on the complaint given by P.W.1, a case has been registered;

ii) After completion of investigation, charge sheet has been laid against the first accused for the offences under Sections 294(b), 323 and 506(1) IPC, Section 4 of TNPWH Act, 2012, and Section 12 of POCSO Act and against the second accused for the offences under Sections 294(b) and 506(1) IPC.

iii) After completing legal formalities, the Sessions Court has taken cognizance of the offences in S.C.No.46 of 2016.

iv) After furnishing copies of records to the accused under Section 207 of the Code of Criminal Procedure, the substance of the charges was explained to the accused. The accused denied the offences and claimed to be tried.



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v) In order to establish the guilt of the accused, 10 witnesses were examined as P.W.1 to P.W.10 and 2 documents were marked as Ex.A.1 and Ex.A.2. No witness was examined and no document was marked on the side of the accused.

vi) At the conclusion of the trial and after complying the legal mandates and after appreciating the oral and documentary evidence on record, the District Sessions (Mahila) Court, Madurai District at Madurai, found the second accused not guilty for the offences charged against him since the charges were not proved by the prosecution beyond reasonable doubt and hence, acquitted him.

vii) The District Sessions (Mahila) Court, Madurai District at Madurai, found the first accused guilty for certain offences and convicted and sentenced him, which is tabulated herein under:



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Offences	Sentence
Section 12 of POCSO Act	To undergo six months rigorous imprisonment and to pay fine of Rs.1000/- in default to undergo one month simple imprisonment
Section 294(b) (2 counts)	To undergo one month rigorous imprisonment for each count and to pay fine of Rs.500/- in default to undergo one week simple imprisonment
Section 323 IPC	To pay fine of Rs.500/- in default to undergo two weeks simple imprisonment
Section 4 of TNPWH Act	To undergo six months rigorous imprisonment and to pay Rs. 10,000/- in default to undergo one month rigorous imprisonment

The sentences are ordered to run concurrently and the period in which the first accused was in jail was ordered to be reduced from the sentence imposed on him under Section 428(1) Cr.P.C.

viii) Aggrieved over the order of conviction and sentence, the first accused has filed the present appeal.



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3. The learned counsel for the appellant/A1 has submitted the following points in his argument:

i) P.W.1 is the mother of the victim girl and P.W.3 and P.W.4 are relatives. The trial court, without appreciating the fact that they are interested witnesses, relied on their evidence;

ii) There is contradiction in the evidence of P.W.3 and the evidence of P.W.1 and P.W.2 in respect of the place of occurrence;

iii) Mere proposal of love will not amount to sexual harassment;

iv) There was no ingredient to attract Section 11 of POCSO Act in order to convict the appellant/A1 under Section 12 of POCSO Act.

v) The father of the victim girl has not been examined as witness even though the victim girl, in the statement recorded under Section 164 Cr.P.C, stated that the first accused had attacked her father on his head and caused injuries with stick on earlier occasion.

vi) There is delay in lodging the First Information Report. The occurrence is said to have been taken place on 06.04.2017 at 5.30 p.m but the complaint was given only on 07.04.2017 at 11 a.m.



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4. The learned Government Advocate (Crl.side) submitted that after analyzing the oral and documentary evidence in a right perspective, the learned Sessions Judge has rightly convicted the first accused and no interference is required by this Court. The learned Government Advocate (Crl.side) further submitted that there is delay in lodging First Information Report. He prayed for dismissal of this appeal.

5. I gave anxious consideration to the submissions made on either side and carefully perused the materials available on record.

6. When the same incident occurred on earlier occasion, P.W.1 and P.W.2 have been suffering till P.W.2's father reached the place of occurrence. Even when P.W.2's father was attacked, they had not lodged a complaint by thinking that it will affect the study of P.W.2. So in view of all these factors, the delay in lodging the complaint is justified and hence, I do not find the delay would vitiate the whole proceedings or to make the case of the prosecution falsify.



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7. It is further submitted that the Investigating Officer did not examine independent witnesses. Though independent witness can strengthen the case of the prosecution, it only depends on all other facts and circumstances.

8. It is seen from the evidence of the victim girl (P.W.2) that the first accused is a relative, who stands in "மாமா முறை". As it revealed from the evidence of P.W.1 and P.W.2 on 06.04.2017 at about 5.30 p.m, the first accused came in an inebriated mood and quarreled with P.W.1 and P.W.2, by saying that P.W.2 should be given to him in marriage. He also pulled the hands of P.W.2. P.W.1 objected to his acts. The first accused abused P.W.1 and P.W.2 and pushed down P.W.1.

9. P.W.2 has given statement under Section 164 Cr.P.C and stated that the first accused was in the habit of asking her to marry him on her way to school and on 06.04.2017, he came in a drunken mood and fetched up a quarrel by compelling her to marry him.



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10. It was suggested to P.W.2 that a person, who stands in "மற்ற முறை" is used to tease the girls like P.W.2 playfully. It may be true that such kind of banter happens between persons of marriageable relationships. But when it crosses the limit, it becomes harassment and it cannot be considered as just a playful conversation. The first accused is said to have consumed liquor and came to P.W.1's house and shouted that P.W.2 should be given in marriage to him. P.W.2 has also stated the same in her evidence as well.

11. P.W.1 and P.W.2 stated in their evidence that the occurrence has been witnessed by P.W.3 and P.W.4. The evidence of P.W.3 and P.W.4 also corroborated the evidence of P.W.1 and P.W.2. During the cross-examination of P.W.2, it was suggested to her that the accused used to ask her to marry him on the way to school. So the occurrence is continuation of the said demand in an ugly manner. No doubt, there are some exaggeration in the statement given by P.W.2, where she had stated that on the date of occurrence her father was also present and the first accused had attacked her father with stick and broken his head. During



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cross-examination of P.W.2, she has stated that a quarrel was invited by the accused; she informed it to her father and he assured to come but could not come due to some pain over his legs.

12. On reading the entire evidence of P.W.1 to P.W.4, there appears no material contradiction so as to reject their evidence. So far as the involvement of the accused 1 and 2, the date, time and the place of the occurrence are concerned, there is no contradiction. P.W.3 has stated in her evidence that her house is also situated in the same vicinity and the first accused had come in front of the house of P.W.1 on the date of occurrence and abused her. During the cross examination of P.W.3, she has stated that the accused did not utter her name or her son's name. She stated that 'என் பெயரையோ என் மகன் பெயரையோ குறிப்பிட்டு பேசவில்லை மந்தையில்ல்தான் பேசினார்'. The word 'mandhai' used by P.W.3 is in the meaning that it is a different place. A reading of full sequence and the relevant portion of cross examination of P.W.3 would show that there is no difference in indicating the place of occurrence.



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13. P.W.4 also came to the place of occurrence while hearing the noise of P.W.1 and P.W.2. P.W.2 stated in his evidence that the first accused has been frequently quarreling by demanding to give P.W.2 in marriage to him. One day he also broke the head of P.W.3's son. While P.W.3 referred the said occurrence she has stated that it did not happen on the date of occurrence referred in this case. No complaint has been given for the earlier occurrence by considering the fact that P.W.2 was studying and it would affect her studies.

14. The accused repeated the same act and intensified the harassment. Then, P.W.1 gave a complaint and a case has been registered. Only suggestion made to the witnesses is that P.W.1 has requested her daughter to be married to the first accused and for which her parents refused. But this was stoutly denied by all the witnesses.

15. The real story is otherwise and it is consistently stated by P.W.1 to P.W.3. The statement given by P.W.2 under Section 164 Cr.P.C also seems to be consistent. During the cross examination of P.W.2, it was



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suggested to her that the first accused used to tell P.W.2 that she should marry him. Even though the suggestion would falsify the motive suggested on behalf of the prosecution that first accused interested to marry P.W.2 and with that intention, he approached P.W.2 and her family. However, this would not fall under the acts prescribed under Section 11 of POCSO Act in order to convict the appellant/first accused under Section 12 of POCSO Act.

16. For the sake of convenience, it is appropriate to extract Section 11 of POCSO Act, which states about the overt act which would constitute the offence punishable under Section 12 of POCSO Act. Section 11 of POCSO Act reads as follows:

11. Sexual harassment:

A person is said to commit sexual harassment upon a child when such person with sexual intent,—

(i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or



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(ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or

(iii) shows any object to a child in any form or media for pornographic purposes; or

(iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or

(v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or

(vi) entices a child for pornographic purposes or gives gratification therefor. Explanation.—Any question which involves “sexual intent” shall be a question of fact.

17. Mere utterance of words indicating an expectation of a person that the other person should love him would not by itself amount to sexual intent as contemplated by the legislature. If the real intention is to drag in the angle of sex, the appellant/A1 would not have forced her to marry him, that too, before the mother of the victim girl.



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WEB COPY 18. The similar issue was dealt with in the case of **Bandu**

Vittharlrao Borwar Vs. State of Maharashtra reported in **2016 SCC**

OnLine Bom 16128, the Bombay High Court has held as follows:

9. *A bare perusal of the above referred clause of Section 11, together with the explanation, would indicate that it is necessary that the utterances are made by the accused with “sexual intent”. The expression “sexual intent” has been made a question of fact by the legislature and it would show that the legislature has not confined the meaning of the expression sexual intent, in any predetermined format or structure and has left it to be determined by the Court in the light of the facts and circumstances of each case. But, even for such a determination, plain and ordinary meaning of these two words would have to be considered so that the real intention of the offender can be ascertained from the facts and attendant circumstances.*

10. *In the instant case, the victim, PW 5, has deposed that on 30th August, 2013, in the morning, this appellant asked her as to why did she not love him and when she declined, the appellant slapped her in the face. Now, in order to understand the intention of the appellant behind such utterances, we would have to look into the entire evidence of the prosecution. After all intention of a person is his state of mind and has to be*



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discerned from the surrounding facts and circumstances. If one cannot, as a human being, physically enter into a mind of another to read and see what is being cooked there, one can surely know it by evaluating all that which is perceivable or felt by human senses such as words, body-language, gestures, reactions and everything that is a physical manifestation of working of human mind. If somebody says that he is in love with another person or asks another person as to why the other person does not love him, such expression of a feeling or expectation of a particular feeling from another person would not by itself amount to an intent exhibiting some sort of sexuality. Such utterance, in a given case, can have an overtone of sexuality as well provided, it is made in a manner, as illustrated by eye expressions, gestures, voice modulations and the like, steeped in sexuality. Question is what constitutes such sexuality or sexual intent and what is not. Perhaps understanding the generally accepted meaning of the words “sexual” and “intent” will help us in finding out an answer. The words ‘sexual’ and ‘intent’ have not been defined anywhere in the Act and, therefore, it would be useful to understand their meaning as are commonly understood in english language. For this purpose, a reference to the English dictionary would be useful. In Webster's New Explorer Encyclopedic Dictionary,



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Sexual:

“1: of, relating to, or associated with sex or the sexes (sexual differentiation) (sexual conflict)

2: having or involving sex (sexual reproduction)” Intent:

“1a: the act or fact of intending: PURPOSE; especially: the design or purpose to commit a wrongful or criminal act (admitted wounding him with intent).

b: the state of mind with which an act is done: VOLITION. 2: a usually clearly formulated or planned intention: AIM 3a MEANING, SIGNIFICANCE

b: CONNOTATION”

In the case on hand, the appellant/first accused interested to marry P.W.2 and with that intention, he approached P.W.2 and her family. It cannot be said that the appellant with the sexual intent approached P.W.2. Hence, the offence under Section 11 of POCSO Act is not made out. It is for the Sessions Court to confine the first accused guilty for the offence under Section 294(b) IPC (2 counts).



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19. During the course of occurrence, the first accused had pulled the hands of P.W2 knowing well that it caused pain to her. The learned counsel for the appellant/A1 submitted that there is no wound certificate to show that P.W.1 and P.W.2 had suffered injuries. Any one can suffer pain without any external injuries and hence the evidence of P.W.1 and P.W.2 is sufficient in which they have stated that they suffered pain due to the act of the accused. The learned Sessions Judge is right in appreciating the above evidence along with the other circumstances and held that the accused had committed offence under Section 323 IPC.

20. So far as the offence of women harassment is concerned, it is defined under Section 2(a) of Tamil Nadu Prohibition of Harassment of Women Act, 1998. 'Harassment' means any indecent conduct or act by a man which causes or is likely to cause intimidation, fear, shame or embarrassment, including abusing or causing hurt or nuisance or assault or use of force.



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21. The act of the accused is no doubt an indecent one. It could have caused intimidation, shame and embarrassment and created fear in the mind of P.W.1 and P.W.2. Hence, the Sessions Judge is right in finding the appellant/first accused guilty for the offence under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act. Section 3 of the said Act would state that harassment at any place is prohibited. It is with the object to ensure privacy, dignity and equality between the genders.

22. Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act reads as under:

"Whoever commits or participates in or abets harassment of women in or within the precincts of any educational institution, temple or other place of worship, bus stop, road, railway station, cinema theatre, park, beach, place of festival, public service vehicle or vessel or any other place shall be punished with imprisonment for a term which may extend to three years and with fine which shall not be less than ten thousand rupees".



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23. The above definition is inclusive of any place where the offence of harassment of women is committed or abetted or participated. It would have been sufficient for the Sessions Court to find the first accused guilty for the offences under Sections 294(b) and 323 IPC along with Section 4 of Tamil Nadu Prohibition of Harassment of Women Act.

24. At this juncture, the learned counsel for the appellant/A1 pleaded before this Court that the appellant is the first offender and this Court may show leniency in punishing him. He relied on the judgment of Punjab & Haryana High Court in **Ram Singh v. State Of Haryana** dated 23.09.2017.

25. The relevant portion of the said judgment is extracted herein under:

23. However, keeping in view the facts and circumstances of the present case and in view of the fact that the appellant is the first offender; no other case is pending against the appellant; he is facing the criminal proceedings since 2000 and also in view of the fact that he has already undergone the



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sentence of 02 years, 02 months and 17 days out of 07 years as per the custody certificate dated 23.09.2017, the sentence imposed upon the appellant is reduced to the period already undergone by him".

26. The accused is the first offender and he was aged 22 years at the time of occurrence. Hence, I am inclined to show a bit leniency in the matter of punishment. The accused had already been in judicial custody for the period from 07.04.2016 to 31.05.2016. I feel that the said period itself can be considered as punishment of imprisonment and allowed to be set off under Section 428 Cr.P.C.

27. In the result, this Criminal Appeal is partly allowed by modifying the judgment passed in S.C.No.46 of 2016 dated 06.07.2017 on the file of the District Sessions (Mahila) Court, Madurai District as under:



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Offences U/Section	Trial Court's Punishment	Modified by this Court
12 of the POCSO Act	<u>Punishment:</u> Six months (R.I) <u>Fine:</u> Rs.1,000/- <u>Default Clause:</u> to undergo one month (S.I)	Set aside
294(b)IPC (2 counts)	<u>Punishment:</u> One month (R.I) for each count <u>Fine:</u> Rs.500/- <u>Default Clause:</u> to undergo one week (S.I)	Guilt and conviction is confirmed. Sentence is modified.
323 of IPC	<u>Punishment:</u> - <u>Fine:</u> Rs.500/- <u>Default Clause:</u> to undergo two weeks(S.I)	Confirmed
4 of TNPWH Act	<u>Punishment:</u> Six months(R.I) <u>Fine:</u> Rs.10,000/- <u>Default Clause:</u> to undergo one month(R.I)	Guilt and conviction is confirmed. Sentence is modified.

i) Sentence of imprisonment for the offences under Section 294(b) IPC and Section 4 of TNPHW Act is modified by reducing the imprisonment to the period **(from 03.03.2011 to 03.06.2011)** already undergone by the accused.

ii) So far as the fine amount is concerned, the trial court imposed totally Rs.11,000/- for the offences under Sections 294(b) and 323 IPC and Section 4



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of TNPHW Act. The fine amount is enhanced to Rs.51,000/-, out of which, Rs.40,000/- will be paid as compensation to the victim (P.W.2) on filing appropriate application. If the total fine amount of Rs.11,000/- imposed by the trial court has already been paid by the accused, the same shall be adjusted against the fine amount now enhanced.

ii) The enhanced fine amount shall be paid within a period of one week from the date on which this judgment is uploaded in the official web-site.

iii) Bail bond executed by the appellant/A1 shall stand cancelled.

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Internet : Yes/No
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To,
1.The District Sessions (Mahila) Court,
Madurai District at Madurai.

2.The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.



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Dr.R.N.MANJULA, J

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Judgment made in
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