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Crl.A.(MD) No.124 of 2



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 15-09-2026

DELIVERED ON : 12-10-2026

CORAM

THE HON'BLE MR.JUSTICE S.KARTHIKEYAN

CRL A(MD) No.124 of 2019

1.Pandidurai

2.Ramachandran

3.Soundarapandi

4.Jeyaraj

5.Suresh

6.Karthickraja

..Appellants/Accused

Nos.1 to 6

Vs.

The State of Tamil Nadu
Rep. by the Inspector of Police
Palanichettypatti Police Station,
Theni District
(In Crime No.515 of 2016)

..Respondent/Complainant

Prayer: Criminal Appeal is filed under Section 374(2) of Cr.P.C, to call for the records pertaining to the conviction and sentence passed in Spl.S.C.No.8 of 2017 on the file of the learned Sessions Judge, Fast Track Mahila Court, Theni dated 12.03.2019 and set aside the same as illegal and acquit the appellants.

For Appellants : Mr.K.Sivabalan

For Respondent : Mr.A.Robinson
Government Advocate (Criminal Side)



JUDGMENT

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This Criminal Appeal is directed against the judgment of conviction and sentence passed by the learned Sessions Judge, Fast Track Mahila Court, Theni in Spl.S.C.No.8 of 2017, dated 12.03.2019.

2. On careful perusal of records, it is found that PW9 Mr.Murugesan, the then Sub-Inspector of Police, Palanichettipatti, received Ex.P1 complaint from PW1 on 20.09.2016 at around 14.00 hours and registered Ex.P4 First Information Report in Crime No.515 of 2016 for the offences punishable under Sections 147, 294(b), 506(i) of IPC and Section 12 of POCSO Act, 2012. He placed the said First Information Report for the investigation of Inspector of Police. PW10 Mr.A.Manimaran, the then Inspector of Police, Palanichettipatti Police Station, took up investigation of the said case on 20.09.2016; on the same day, he visited the place of occurrence and prepared Ex.P2 Observation Mahazar and Ex.P5 Rough Sketch in the presence of witnesses Murugan and PW5 Amritharaj. Thereafter, he examined the defacto complainant and other witnesses and recorded their statements. Woman Sub-Inspector of Police, Tmt.Dhanalakshmi, had recorded the statement of the victim. On the same day, at around 17.30 hours, he arrested the Accused and caused them to be remanded in judicial custody. He examined the witnesses Rajesh, Satheeskumar, Selvaraj, Suruli Lingasamy, Sub-Inspector Murugesan, Woman



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Sub-Inspector of Police Tmt.Dhanalakshmi and recorded their statements. He produced the victim before the learned Judicial Magistrate for recording her statement under Section 164 of Cr.P.C. Thereafter, he handed over the case diary to his successor. PW11 Tmt.Ramalakshmi, received the case diary and took up investigation of the said case on 27.11.2016; she visited the place of occurrence and examined the witnesses and since they repeated their statements before her predecessor, she did not record any further statement; on the same day she laid final report before the Court.

3. The Fast Track Mahila Court has taken cognizance of the final report in Spl.S.C.No.8 of 2017 and issued summons to the Accused. On their appearance, after hearing both sides, the Trial Court has framed charges against the first Accused for the offences punishable under Section 147, 294(b), 506(i) and Section 12 of POCSO Act, 2012 and as against the Accused Nos. 2 to 6 for the offences punishable under Sections 147, 294(b), 506(i) and Section 12 read with Section 17 of POCSO Act, 2012. The charges were explained to the Accused and they denied the said charges. Therefore, they were tried by the Trial Court.

4. On side of the prosecution, PW1 to PW12 were examined and exhibits P1 to P7 were marked. Upon closure of the evidence of the prosecution



witnesses, the incriminating materials appearing in the evidence were put to the

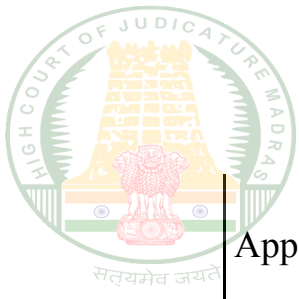
Accused under Section 313(1)(b) of Cr.P.C., the Accused denied them as false

and reported that they have witnesses on their side. However, no witness was

examined on their side, but Ex.D1 was marked.

5. After hearing both sides, the Trial Court found the 1st appellant guilty of the offences punishable under Section 147, 294(b), 506(i) of IPC and Section 12 of POCSO Act. Further, the Trial Court has found the appellants 2 to 6 guilty of the offences punishable under Sections 147, 294(b), 506(i) and Section 12 read with Section 17 of POCSO Act, 2012 and sentenced as below:

Rank of the Appellant	Section of Law	Sentence of imprisonment	Fine amount
Appellants 1 to 6	147 of IPC	Two years Simple Imprisonment	Rs.500/- each i/d to undergo six months Simple Imprisonment
Appellants 1 to 6	294(b) of IPC	Three months Simple Imprisonment	Rs.500/- each i/d to undergo three weeks Simple Imprisonment
Appellants 1 to 6	506(i) of IPC	Two years Simple Imprisonment	Rs.1000/- each i/d to undergo six months Simple Imprisonment
1 st appellant	Section 12 of the POCSO Act	Three years Simple Imprisonment	Rs.2000/- each i/d to undergo six months Simple Imprisonment



Appellants 2 to 6	Section 12 r/w. Section 17 of the POCSO Act	Three years Simple Imprisonment	Rs.2000/- each i/d to undergo six months Simple Imprisonment
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Aggrieved by the said conviction and sentence, the Accused had presented the present appeal before this Court.

6. Point for determination:

Whether the judgment of conviction and sentence passed by the Trial Court is sustainable?

Answer:

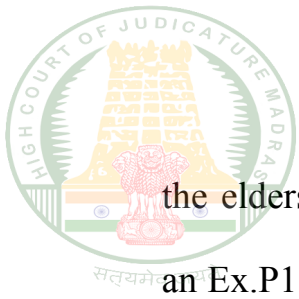
7. On careful perusal of records, it is found that it is the case of the prosecution that on 17.09.2016 at around 5.00 p.m., when the victim was returning from the school to her house by walk, near Sivalinganayakkanpatti bus stop, the first appellant herein compelled her to love him and marry him. She did not reply to the same. Therefore, all the Accused asked her to reply and threatened her that if she did not reply, they would kidnap her. On hearing that, the defacto complainant reprimanded the first appellant. Due to this motive, on 18.09.2016 at around 17.00 hours, the appellants 1 to 6 have gone to the house of the defacto complainant, abused him in filthy language and threatened him by saying ஏலே தேவடியா மகனே எங்கடா உன் மகள் அவளை



தூக்குவோம் இல்லாவிட்டால் உன்னை கொல்வோம். Therefore, according to the prosecution, the appellants are liable to be punished under Sections 147, 294(b), 506(i) of IPC and Section 12 r/w.17 of the POCSO Act, 2012.

8. On careful perusal of record, it is found that the father of the victim was examined as PW1. PW1 is the one who set the criminal law in motion. He, in his evidence, deposed that his wife died three years back. He is the one who has given studies to his children. When the victim had gone in the bus for school, the first appellant threatened her to love him and marry him. The other Accused/appellants, had gone in aid of him and threatened her by saying that she should marry only A1, otherwise they would kidnap her. On 17-9-2016, the said incident was happened and on the same day evening, the victim had informed the same to PW1. PW1 informed the parents of the first appellant and asked them to reprimand him.

9. PW1 further deposed that on the next day, on 18-9-2016, the appellants herein came in front of the defacto complainant's house, abused him in filthy language and threatened him by saying ஏ தேவடியா மகனே எங்கடா உன் பொண்ணு, என்றைக்காவது உன் பொண்ணை தூக்கிவிடுவோம் இல்லாவிட்டால் உன்னை கொன்று விடுவோம். The witnesses Rajesh, Satheesh and Selvaraj intervened and saved them off. He has informed



the elders, however, no steps were taken. Therefore, on 20-9-2016, he lodged an Ex.P1 complaint with Palanichettipatti Police Station. PW2 Rajesh and PW3 Satheesh Kumar are deposed in line with PW1.

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10. The victim was examined as PW4. She, in her evidence, deposed that she was studying 10th standard at the time of occurrence. She used to go to school by government bus. She used to go to school by getting down at Banglamedu bus stop and used to walk. Again after the school, she will come by auto up to Sivalinganayakkanpatti Vilakku and thereafter, used to go to her house by walk. When she boarded the government bus for attending the school, the first appellant stood near her seat and threatened her to love him. Daily he has done that. She has not reported the same to her father.

11. PW4 further deposed that on 17-09-2016, she boarded the same bus and got down at the Banglamedu bus stop and when she was proceeding towards the school, he followed her and threatened her to love him and marry him, failing which he would kidnap her. Thereafter, at around 5.00 p.m., she has gone in an auto and thereafter, proceeding towards her house by walk. At the time, the first appellant herein followed her. The first appellant asked her as to why there is no reply for his question and then he threatened her by saying if she does not give a favourable reply, he would kidnap her. The other appellants



were also threatened her by saying if she has not given favourable answer to A1, they would kidnap her and marry her with A1. Therefore, she had walked fast. Further, they threatened her by saying today she has escaped and one day she would be caught by them.

12. PW4 further deposed that she reported the same to her father. Her father informed the father of A1 and asked him to reprimand him. On 18-9-2016, the victim and her father were in the house, at that time, the appellants came there and abused them in filthy language by saying *எங்கடா உன் பொண்ணு அவளை என்னைக்குனாலும் நாங்கள் தூக்கிப்போய்விடுவோம் என்னை நீ கண்டித்தால் உன்னையும் உன் குடும்பத்தையும் வெட்டிவிடுவோம்*. The neighbours Rajesh and others came and intervened. Therefore, they have gone away. PW1 has given complaint to Palanichettipatti Police Station. The victim/PW4 has given statement before the learned Judicial Magistrate. She was examined by the Women Constable.

13. Witnesses to the mahazar/Ex.P2. Amirtharaj was examined as PW5 and he has spoken about the preparation of observation Mahazar by the Investigation Officer. PW6, the learned Judicial Magistrate, has spoken about the recording of Ex.P3 164 statement of the victim. PW7 Selvaraj has also deposed in line with PW1. PW8 Tmt.Dhanalakshmi, is the one who recorded



the statement of the victim. PW9 is the one who registered the first information report. PW10 and 11 are the Investigation Officers and they have deposed about the investigation done by them.

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14. On careful reading of evidence projected on the side of the prosecution, it is found that, as per the case of the prosecution, the occurrence was happened on 17.9.2016 and 18.9.2016. In so far as the occurrence said to have happened on 17.9.2016, there is no other witnesses except the victim. In so far as the occurrence said to have happened on 18.9.2016, the occurrence is said to have happened in front of the house of PW1, which was witnessed by PW2, PW3, PW7.

15. On careful reading of the evidence of victim, it is found that the appellant herein followed her and compelled her to love and marry him. When it was reported to PW1, he has informed the parents of the first appellant to reprimand him. Due to which, all the appellants assembled unlawfully, abused PW1 in filthy language and threatened him. However, on careful perusal of records, it is found that PW1, in his evidence, deposed that on 18.9.2016, all the Accused assembled unlawfully in front of his house, abused him by saying that ஏ தேவடியா மகனே எங்கடா உன் பொண்ணு உன் பொண்ணை தூக்கிவிடுவோம் இல்லாவிட்டால் உன்னை கொன்று விடுவோம். No doubt, the



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said word is a vulgar word. PW2 did not say that the appellants herein had abused PW1 by saying the said word. PW3, though deposed that the appellants had abused PW1 in filthy language, he has not stated the exact word said to have used by the appellants herein. PW7 has not spoken that the appellants herein had abused PW1 by filthy language. Further, the case of the prosecution that all the six Accused assembled in front of the house of PW1 and abused him by saying ஏ தேவடியா மகனே எங்கடா உன் பொண்ணு உன் பொண்ணை தூக்கிவிடுவோம் இல்லாவிட்டால் உன்னை கொன்று விடுவோம் is hard to believe. No two persons, unless there is a prior meeting of mind prior to the occurrence that they have to use a particular word to abuse the victim, could utter exactly the same words at the same time. Absolutely, no materials are produced before the Trial Court to show that the Appellants have met early and decided to speak the same words as against PW1.

16. Further, this Court in ***Savarimuthu Nadar & Others Versus State represented by Sub Inspector of Police, Ambasamudram & Another reported in 1994 (1) MLJ (Crl) 154*** held as follows.:-

4. I have carefully considered the submissions made by the rival counsels. I shall first take up the submissions regarding offence under Sec.294(b), I.P.C. Sec.294(b), I.P.C. reads as follows:

"294. Obscene acts and songs: whoever, to the annoyance of others.



(a).....

(b) *Sings, recites or utters any obscene songs, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both".*

The word "obscene" is not defined in Indian Penal Code. But there is reference to the word "obscene" in Sec.292, I.P.C. Sec. 292(1) reads as follows:

"292. Sale etc., of obscene books etc.: (1) For the purposes of sub-sec. (2), a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, or (where it comprises of two or more distinct items) the effect of any one of its items, is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it". The very reading of the section would show that only for the purpose of sub-sec. (2) the word "obscene" is defined in the manner specified therein. But yet it is indicative of the meaning of the word" "obscene".

5. In Jafar Ahmad Khan v. State, A.I.R. 1963 All. 105, a single Judge of the Allahabad High Court had pointed out that no precise or arithmetical definition of the word "obscene" which would cover all possible cases can be given. It will have to be judged on the facts of each case whether in the context of its surroundings the questioned act is obscene or not. In the Lexicon Webster Dictionary, meaning of "obscene" is given as "objectionable or repugnant to acceptable standards of decency of morality; indecent



pornographic; offensive in language or action: tending to incite lust or depravity”.

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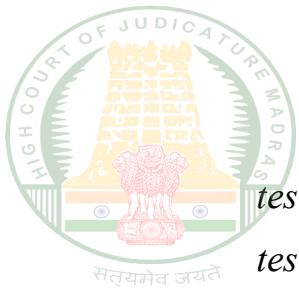
6. In *P.T.Chacko v. Nainan Chacko* 1967 M.L.J. (Crl.) 815, the Kerala High Court had occasion to consider “obscenity” with reference to Sec.294 (b) I.P.C. The learned Single Judge had observed as follows:

*“The only point argued was that the 1st Accused had not committed an offence punishable under Sec.294 (b) Indian Penal Code by uttering the words above mentioned. The Courts below have held that the words uttered were obscene and the utterance caused annoyance to the Public. I am not inclined to take this view. In *The Queen v. Hicklin*, Cockbura, C.J. laid down the test of ‘obscenity’ in these words: “.....the test of obscenity in this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences.”*

*This test has been uniformly followed in India. The Supreme Court has accepted the correctness of the test in *Ranji D. Udeshi v. State of Maharashtra*. In *Samuel Roth v. U.S.A.*, Chief Justice Warren said that the test of ‘obscenity’ is the “Substantial tendency to corrupt by arousing lustful desires.” Mr.Justice Harlan observed that in order to be ‘obscene’ the matter must tend to sexually impure thoughts“. I do not think that the words uttered in this case have such a tendency”.*

With respect, I agree with the view expressed by the Kerala High Court, I am fortified in expressing such a view by the indication given in Sec.292, I.P.C. with regard to the obscene books.

7. If the words uttered in this case are examined, in the light of the



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test, with which I have agreed, evidently it would not satisfy the test. The words used might have no doubt annoyed the person towards whom those words were used. It may be vulgar words. But they cannot be equated to “obscene” words. So I accept the first submission made by Miss.Shymala that the allegations would not make out the offence under Sec.294(b) I.P.C.

From the above decision, it is clear that the word 'obscene' should satisfy that it should be in the nature to deprave and corrupt those whose minds are open to such immoral influences. No doubt, the word is a vulgar word and it cannot be said to be an obscene word. Therefore, this Court is of the considered view that the prosecution has failed to prove the offence under Section 294(b) of IPC beyond all reasonable doubts.

17. It is the further case of the prosecution that all the Accused assembled and threatened the father of the victim, PW1 that they would kidnap his daughter, or else they would murder him. However, though the occurrence was said to have happened on 18.09.2016, the complaint was lodged only on 20.09.2016 at around 14.00 hours, with a delay of 2 days. According to PW1, the complaint is typed one and further, he has to look for his livelihood and therefore, he has given complaint with a delay of one day. On careful perusal of Ex.P1 complaint, it is found that he has not given any such reason. The



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complaint is typed one and the complaint is dated 19-09-2016. PW1 in his cross-examination has admitted that he does not remember in which computer centre the complaint was typed. Further, he admitted that the complaint was typed and brought from Theni and he signed. Further, he answered that he does not know who has typed and brought the complaint. Therefore, it is clear that PW1 has disowned his complaint. It is not typed to his dictation but typed by somebody and he has only signed in the said complaint. In the said circumstances, there is a serious doubts in the genesis of Ex.P1 complaint.

18. Further, on careful perusal of Ex.P1 complaint, it is found that though the said complaint was said to have given at 14.00 hours on 20.09.2016, it reached the Court only at 9.20 p.m. on 20.09.2016. There is a delay of 7.20 hours. There is no explanation for the delayed dispatch to the Court. Further, the conduct of PW1 in looking after his livelihood and signing the complaint brought by someone makes it clear that he is casual and was not intimidated by the words spoken by the appellants. It is useful to refer to the judgment of this Court reported in (1988) L.W.(Crl.)178 ([Noble Mohandass V. State](#)) and the relevant paragraph is extracted hereunder:

“7. As far as the offence under Section 506(2) is concerned, the learned counsel for the revision petitioner contended that the threat was not a real one, that it was of the kind of words which are currently and frequently used by people when they are angry

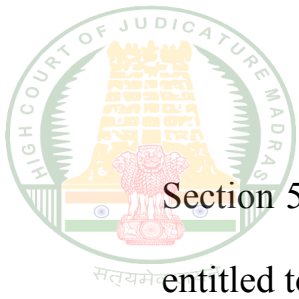


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and that further the threat was not spoken to by P.W. 3 and P.W. 4 who by that time had already come to the scene of occurrence.

It is, in fact, found from the records that the threat would have been lashed out after P.Ws. 3 and 4 came to the place and separated both the husband and wife. Therefore, the evidence of P.W. 1 should have been corroborated by the evidence of P.W. 3 and P.W. 4 who were necessary witnesses to the occurrence. Since they did not corroborate the testimony of P.W. 1 in this aspect, the offence cannot be held to be proved. Further for being an offence under Section 506(2) which is rather an important offence punishable with imprisonment which may extend to seven years, the threat should be a real one and not just a mere word when the person uttering it does exactly mean what he says and also when the person at whom threat is launched does not feel threatened actually. In fact P.W. 1 when she filed the complaint to the police officer, did not express any fear for her life nor asked for any protection. Therefore, the offence under S. 506(2) is not made out.”

Therefore, it is clear that the threat should be a real one and not just a mere words when the person uttering it does exactly mean what he says and also when the person at whom threat is launched does not feel threatened actually. Further, the case of the prosecution that all the appellants uttered the same words at the same time also highly improbable. Therefore, this Court is of the considered view that the prosecution has failed to prove the offence under

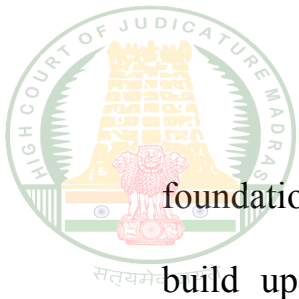


Section 506(i) of IPC beyond all reasonable doubts and the Accused herein are entitled to the benefit of doubts.

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19. Insofar as the threatening said to have made to the victim, it is the case of the victim that the first appellant compelled her to love and marry and threatened her. The first appellant is aged about 21 years. It appears that attracted to the victim, he expressed his love in a strong tone that he will go to the extent of kidnapping her to marry her. His strong tone was misunderstood by the victim as threatening. Therefore, the said action would not come under the purview of Section 506(i) of IPC.

20. Further, it is the case of the prosecution that the first appellant herein had compelled her to love and marry him. The careful reading of Section 11 of the POCSO Act makes it clear that to establish an offence under Section 11 of the POCSO Act, the Accused should have committed any of the acts mentioned in Clause (i) to (vi) of Section 11 of the POCSO Act with sexual intent. The charge is not clear as which clause the action of the Accused would fall. In the absence of specific charge, it would be difficult for the Accused to defend. The possible prejudice is to be presumed. Further, in view of the admission of the defacto complainant that he does not know who has typed the complaint, this court is of the considered view that the first information being the



foundation of the criminal case, if it is found to be doubtful, then the edifice build up on the said foundation would fall to the ground. The delay in registering the first information report and its delayed dispatch to the court also creates further doubts in the case of the prosecution. Therefore, this court is of the considered view that the Appellants herein are entitled to the said benefit of doubts.

21. In the given circumstances, the present Criminal Appeal is allowed and the appellants are acquitted from the charges. Bail bonds executed by the appellants are ordered to be discharged. The fine amount, if any, paid is ordered to be refunded to the appellants.

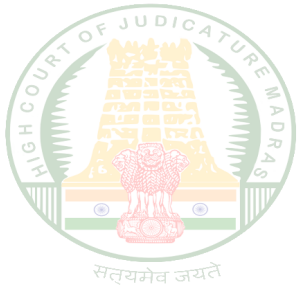
12-10-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

Indu

To

- 1.The Inspector of Police,
Palanichettypatti Police Station,
Theni District.
- 2.The learned Additional Public Prosecutor
Madurai Bench of Madras High Court, Madurai.



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Crl.A.(MD) No.124 of 2



S.KARTHIKEYAN, J.

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