

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2021

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRL.A.No.543 of 2020
and Crl.M.P.No.8903 of 2020

R.S.Narendran

.. Appellant

.Vs.

State, Rep. by
The Inspector of Police,
Salem Railway Police Station,
Salem,
Crime No.161 of 2016.

.. Respondent

Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure to call for the records and to set aside the judgment of conviction and sentence passed against the appellant dated 04.12.2020 in Old Spl.S.C.No.9 of 2018 and New Spl.S.C.No.70 of 2019 on the file of the learned Special Judge, Special Court for POCSO Act Cases, Salem and to acquit the appellant from all the charges.

For Appellant : Mr.C.M.Gunasekaran

For Respondent : Mr.R.Surya Prakash
Government Advocate (Crl.Side)

J U D G M E N T

This Criminal Appeal has been filed against the Judgment dated 04.12.2020 in Old Spl.S.C.No.9 of 2018 and New Spl.S.C.No.70 of 2019 passed by the learned Special Judge, Special Court for POCSO Act Cases, Salem.

2.According to the appellant, the respondent police registered a case against him in Crime No.161 of 2016 for the offence punishable under Section 8 of POCSO Act. After investigation, the respondent police laid a charge sheet before the learned District and Sessions Mahila Judge, Salem. The learned Judge initially taken the case on file in Spl.S.C.No.9 of 2018, subsequently, it was renumbered as Spl.S.C.No.70 of 2019. On completion of trial, the learned Sessions Judge by judgment dated 04.12.2020 convicted the appellant for the offence punishable under Section 8 of POCSO Act and sentenced him to undergo rigorous imprisonment for

three years and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for two months. Challenging the said order, the appellant/accused is before this Court.

3. The case of the prosecution is that on 08.08.2016, the victim girl along with his mother and brother were travelled in Palani Express train from Chennai to Dindigul in Coach No.S6. The victim girl was sleeping in berth No.10 and her mother and brother were sleeping in berth Nos.13 and 11, whereas, the accused was also travelled along with the victim girl in the same coach at berth No.14. When the said express train nearer to Salem, the accused sexually assaulted the victim girl, who is aged about 15 years. Immediately, the victim girl informed the same to her mother, thereafter, the mother, in turn, informed the same to T.T.I and Head Constables, those who were travelling as escorts in the said train. Thereafter, they preferred a complaint before the Salem Railway Police Station and registered a case against the appellant/accused. After completing the formalities, the learned Sessions Judge, framed charge and convicted the accused after trial.

4. In order to prove the case of the prosecution before the trial Court, on the side of the prosecution as many as 11 witnesses were examined as P.W.1 to P.W.11 and also marked 11 documents as Exs.P1 to P11 and no material object was exhibited.

5. On completion of the evidence of the prosecution, the accused was questioned under Section 313 Cr.P.C about the incriminating circumstances found in the evidence of prosecution witnesses and he denied each and every circumstances as false and pleaded not guilty. On the side of the defence no witness was examined and no document was marked.

6. The Court below, after hearing the arguments advanced on either side and also looking into the materials available on record, found the accused/appellant guilty and awarded punishments, as referred to above, which is challenged in this Criminal Appeal.

7. Heard the learned counsel for the appellant and the learned Government Advocate (Crl.Side) for the respondent and also perused the materials available on record.

8.1 The learned counsel for the appellant would submit that there are no eye witnesses to the said occurrence. The victim girl only under illusion felt that somebody touched her chest, immediately, she informed to her mother, the mother also not seeing the said occurrence, preferred the complaint against the appellant. The mother of the victim girl was examined as P.W.1, even in the Ex.P1 complaint, the mother

has neither named the appellant nor identified the appellant. She has only deposed that some unknown person tried to misbehave with her daughter, therefore, they preferred the complaint. The First Information Report also does not speak about the overtact against the appellant. At the time of giving evidence before the trial Court P.W.1 has not identified or named the appellant and she has stated that he might be the said person. Even, the victim girl who was examined as P.W.2 also deposed that when she was in deep sleep, she felt that somebody standing nearer to her berth and put their hands on her chest, when she woke up, the person left from that place, again the person came nearer to the berth, immediately she informed to her mother. Therefore, the victim girl has not stated that the appellant made sexual harassment on her, whereas, she has stated that somebody might have misbehaved with her.

8.2 The learned counsel for the appellant would further submit that the victim girl was sleeping nearer to her mother and brother, by illusion, she has stated that somebody misbehaved with her. Further, she has not clearly stated either before the Investigating Officer or the Child Welfare Officer that the accused has committed sexual assault on her. Even P.W.1 mother of the victim has improvised that the appellant misbehaved with her daughter. Therefore, without giving any evidence before the Child Welfare Officer or by affording opportunity under Section 164 Cr.P.C., she has only stated before the learned Sessions Judge during trial. Therefore, improved version cannot be considered for convicting the appellant. Further, he would submit that the victim girl was not subjected to medical examination and though there is no injury, only by illusion, she has stated that somebody might have touched her chest. She should have examined by the doctor or psychiatrist, so that they would have given opinion to the Court, who can give right conclusion. He would further submit that no statement under Section 164 Cr.P.C was recorded from the victim. After ten days from the incident, the Investigating Officer along with the Social Welfare Officer went to the native of the victim and enquired the victim in the presence of her mother. On investigation, the victim girl never stated that the accused has committed sexual harassment on her. Further, the prosecution has not examined the other co-passengers, those who might have seen the occurrence. Therefore, the non-examination of the co-passengers is fatal to the case of the prosecution. After registration of the complaint, all the documents sent to the Court belatedly. However, the learned Special Judge failed to consider all these facts, simply convicted the appellant on the ground of assumption and sympathy. Therefore, the order passed by the learned Sessions Judge warrants interference. Further there is no eye witness to the said occurrence, the victim girl and her mother only have spoken about alleged occurrence and they have not identified or named the appellant. Therefore, benefit of

doubt can be extended to the appellant. Since this Court is the final Court of fact finding can always re-appreciate the evidence and set aside the judgment of the Court below and allow the appeal.

9.1 The learned Government Advocate (Crl.Side) would submit that the victim girl, who is aged about 15 years was travelling in the Palani Express along with her mother and brother and they were boarded at Chennai and travelled to Dindigul. After sometime, every one on deep sleep, when the train was nearing to Salem, the accused/appellant, who was sleeping nearer berth to the victim girl touched her chest and when she woke up, the accused left the place and again he came nearer to the berth, the victim girl informed the same to her mother. The mother, in turn, informed the same to P.W.3 T.T.I (Train Ticket Inspector) and Head Constables P.Ws.4 and 5, thereafter, preferred the complaint before the Salem Railway Police Station against the accused.

9.2 In order to prove the case of the prosecution, the mother of the victim girl was examined as P.W.1 and marked the complaint as Ex.P1. The victim girl was examined as P.W.2 ; the Head Constables those who were travelling as escorts in the train were examined as P.Ws.3 and 4 and T.T.I was examined as P.W.5. The Child Welfare Officer, who examined the victim girl was examined as P.W.7, the Sub Inspector of Police, who registered the case was examined as P.W.10 and the Investigating Officer was examined as P.W.11.

9.3 From the evidence of P.Ws.1 to 5, it is seen that they have given cogent evidence to prove the case. When the girl aged about 15 years was in deep sleep, somebody touched her chest. Further, it was not possible to see immediately. After feeling the same, she woke up, thereafter, the person moved from that place. Since it was night hours, there was no light and they could not identify the person. Definitely even after awaken, she could not feel the same. After some time, the very same person came nearer to her berth, immediately, the victim girl informed the same to her mother. Thereafter, they made the complaint and the same was admitted by P.Ws.3 to 5. In a case of this nature, the evidence of the victim girl is sufficient. Merely on the ground of non-examination of the co-passengers, the case of the prosecution, cannot be brushed aside. Therefore, the prosecution has rightly appreciated the evidence and put forth their case.

10. Admittedly, the victim girl, who was examined as P.W.2 has clearly deposed that on 08.08.2016, while she was travelling along with his mother and brother in Palani Express from Chennai to Dindigul in coach No.S6, berth No.10,11 and 13, the accused also travelled along with them in berth No.14 of the same coach has misbehaved with her. It is seen that the occurrence had happened in the midnight at about 2.30 a.m.

11. It is the case of the appellant that he has not travelled in the train and he has not occupied the berth No.14 in coach S.6. When he travelled in the said train, at the time of boarding, definitely the victim girl and her mother might have seen him, but, they have not identified or named the accused at the time of giving evidence. While, the victim was in deep sleep, unless somebody touched any part of the body, definitely she would not have felt it, but, she felt that somebody touched her chest, immediately she woke up and that person moved from the place and again he came nearer to her berth No.13 definitely she would have noted and identified the person and therefore, there is possibility of seeing the accused who touched her chest. Though the learned counsel for the appellant would submit that the victim girl has not specifically stated that the appellant has touched her chest, she has only deposed that she felt that somebody might have touched. The contention of the learned counsel for the appellant that the victim girl either might have had dream or by illusion felt that somebody touched on her chest. Immediately, she woke up, but, the person moved from the place, again the person came to the said place, who is none other than the co-passenger and also the occupant of berth No.14, the mother also noted the same. If at all the appellant was sleeping in berth No.14, at that time, definitely, the victim girl would have realised that it is only illusion or dream while sleeping. But, at the time of occurrence, the appellant was not sleeping in berth No.14, therefore, the contention of the learned counsel for the appellant is not acceptable.

12. Since there is no injury, only the appellant touched her chest, immediately she woke up and alerted. Therefore the opinion of the medical officer is not necessary and there is no reason or motive attributed by the appellant against the victim and they need not file a false complaint against the appellant. There is no reason to file a false complaint against the appellant, if the appellant was not travelled in the Palani Express along with the victim and committed an offence as referred to above. It is not either the case of the prosecution or the appellant that they are known to each other and that there was an enmity between them. They only travelled in the train as co-passengers on the date of occurrence. After moving of the train from Chennai, in the midnight the occurrence had happened. Immediately P.Ws.3 to 5 came to the said place and they have also enquired and arrested the appellant. The train ticket of the appellant was also recovered, which shows that the appellant travelled in the said train on the date of occurrence and he was allotted berth No.14 of S6 coach, in which, the victim's family members also boarded on that day. The birth certificate of the victim girl also shows that at the time of occurrence, the victim girl was aged about 15 years, therefore, the offence committed by the appellant falls punishable under Section 8 of POCSO Act.

13. Now a days in night hours, both genders are travelling in sleeper coaches in the trains and buses. If the passengers misbehave with the co-passengers during their deep sleep, definitely, they will not feel safe during night hours. If this type of behaviors are encouraged, certainly it will deprive the social justice to the female members. In this case, when the passengers were in deep sleep at midnight, there is no light, therefore, in cases of this nature, the evidence of the victim girl can alone be taken into consideration and no corroboration is necessary. Since the statement under Section 164 Cr.P.C is not recorded by the learned Magistrate. Further, the Child Welfare Officer belatedly met the victim may not be fatal to the case of the prosecution. Since the occurrence taken place in the running train at night hours and the victim girl, who is aged about 15 years cannot stay in the police station in the night hours and wait for all the formalities. Already, the victim girl has suffered mentally. Therefore, the respondent police who registered the case has to come all the way from Salem to the residence of the victim, therefore, delay occurred in recording the statement by the Social Welfare Officer. Mere technicalities should not be allowed to stand in the way of administration of justice.

14. Even though the appellant states that the victim was examined in the house in the presence of her mother and the victim stated that the appellant touched her chest. Therefore, the contention of the learned counsel for the appellant is that the victim girl only stated that she felt it is not an acceptable ground. The occurrence had taken place in the running train, while the victim was in deep sleep, the appellant who travelled along with the victim as co-passenger was misbehaved with her. If the evidence of sole witness is cogent, credible and trustworthy, conviction is permissible.

15. Considering the heinous nature of crime, no leniency can be given to the appellant/accused.

16. Under these circumstances, this Court on a careful perusal of the evidence of P.Ws.1 and 2 and the documents annexed herein, it is found that the appellant has committed the offence punishable under Section 8 of POCSO Act and there is no perversity in the judgment of the trial Court and there is no ground to allow the appeal. The convictions and sentences passed in Old Spl.S.C.No.9 of 2018 and New Spl.S.C.No.70 of 2019 by the learned Special Judge, Special Court for POCSO Act Cases, Salem are confirmed. Accordingly, this Criminal Appeal is dismissed. Consequently, connected miscellaneous petition is closed.

17. It is seen from the records that the appellant/accused is at large and therefore, the trial Court is directed to take appropriate steps so as to immure him in prison to serve out the remaining period of sentence.

Sd/-

Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

ms

To

1. The Chairman,
POCSO Cases,
High Court, Madras.
- 2.The Special Judge,
Special Court for POCSO Act Cases,
Salem.
- 3.The Inspector of Police,
Salem Railway Police Station,
Salem.
- 4.The Public Prosecutor,
High Court, Madras.
- 5.The Section Officer |with a direction to send back the
(Criminal Section), |original records, if any, to the
High Court, Madras. |trial Court

+2cc to Mr.C.M.Gunasekaran, Advocate SR.No.4891

GSM(CO)
GMY(02/07/2021)

CRL.A.No.543 of 2020
and Crl.M.P.No.8903 of 2020

WEB COPY