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CRL.A.NO.147 OF 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 12 / 07 / 2023

JUDGMENT PRONOUNCED ON: 09 / 08 / 2023

CORAM:

**THE HON'BLE MR.JUSTICE M.SUNDAR
AND
THE HON'BLE MR.JUSTICE R.SAKTHIVEL**

CRL.A.NO.147 OF 2021

B.Mooventhan

... Appellant

Versus

State of Tamil Nadu
Rep. By Inspector of Police
Sirkazhi Police Station
Nagapattinam District.

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973, praying to set aside the judgment passed against the appellant on 22.10.2020 in Sessions Case No.123/2014 on the file of learned Sessions Judge (Special Court under POCSO Act) Nagapattinam and acquit the appellant / accused from all the charges.



CRL.A.NO.147 OF 2021

For Appellant : Mr.S.Senthilvel
for Mr.S.Sundar

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

JUDGMENT

R.SAKTHIVEL, J.

This Criminal Appeal is preferred by the sole accused in S.C.No.123 of 2014 on the file of Sessions Judge (Special Court under POCSO Act) Nagapattinam, assailing the conviction and sentence awarded by the trial court on 22.10.2020 in which he was convicted for the offences under Section 6 r/w 5(f)(l)(m) of POCSO Act, 2012 (2 counts) to undergo Rigorous Imprisonment for Life for each count (Double Life Imprisonments) and a fine of Rs.10,000/- for each count, in default of payment of fine, he shall further undergo Simple Imprisonment for two years for each default and for the offences under Section 10 r/w 9(l)(m) of POCSO Act, 2012 (1 count) to undergo Rigorous Imprisonment for seven years and a fine of Rs.5,000/-, in default of payment of fine, further undergo Simple Imprisonment for one year.

2.Feeing aggrieved with the conviction and sentence passed by



CRL.A.NO.147 OF 2021

the learned Sessions Judge (Special Court under POCSO Act) Nagapattinam,
the sole accused filed this criminal appeal.

3.The case of the prosecution is that PW 1 is the mother of P.W.6- YY and P.W.7 – XX (hereinafter collectively referred to as 'Victims') who were at the time of occurrence studying 3rd Standard and 5th Standard respectively at a Government Primary School where the appellant was working as a temporary Teacher. One month before 24.01.2014, the accused while taking class in the classroom, made other children hide their face by keeping their books in front of their faces and brought the gap in the skirt of the victims front and inserted his fingers through it into their private part and made them suck his penis. Due to such disgusting activities, the victims fell ill and YY refused to go to school. When P.W.1 enquired about the reason, YY stated that the appellant accused is misbehaving with her and other children, and narrated the incidents of sexual assaults by the appellant. Immediately, P.W.1 preferred a complaint against the appellant and based on the said complaint, a case in Crime No.31 of 2014 under Sections 4 and 8 of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to

3/30



CRL.A.NO.147 OF 2021

as 'POCSO Act' for the sake of brevity and convenience) was registered.

WEB COPY

4.The Inspector of Police, Sirkazhi Circle filed a final report against the appellant / accused under Sections 4 and 8 of POCSO Act. After perusing the records, the learned Sessions Judge found that there were sufficient materials available on record to presume that the appellant / accused committed the alleged offences and framed charges under Section 6 read with 5(f)(l)(m) of POCSO Act (2 counts) and Section 10 read with 9(1)(m) of POCSO Act (2 counts).

5.With a view to prove the case, the prosecution examined 13 witnesses as P.W.1 to P.W.13 and marked 14 documents as Ex.P1 to Ex.P14 and marked one material object as M.O.1. On the side of the appellant / accused, one Thiru. Subash Chandira Bose was examined as D.W.1.

6.After hearing both sides, the learned Sessions Judge found the appellant / accused guilty and thus convicted and sentenced him by judgment dated 22.10.2020 as follows:



CRL.A.NO.147 OF 2021

<i>Appellant's Rank</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
Sole accused	Section 6 r/w 5(f)(1)(m) of POCSO Act (2 counts)	To undergo Rigorous Imprisonment for Life for each count (Double Life Imprisonments) and a fine of Rs.10,000/- for each count, in default of payment of fine, further undergo Simple Imprisonment for two years for each default.
	Section 10 r/w 9(1)(m) of POCSO Act (1 count)	To undergo Rigorous Imprisonment for seven years and a fine of Rs.5,000/-, in default of payment of fine, further undergo Simple Imprisonment for one year
	The substantial period of sentences shall run concurrently. The period of imprisonment, if any already undergone, was ordered to be set off u/s. 428 Cr.P.C.,	

7.P.W.1 in her evidence has deposed along the line of her complaint made to police. In her cross examination, she admitted that she belongs to Most Backward Class and belongs to a particular political party and that the appellant belongs to Scheduled Caste. She further deposed that at the time of lodging complaint, YY also accompanied her to the police station and signed the complaint; that she forgot the name of the person who wrote the complaint; that the Primary School where the victims were studying is situated in a busy area; that in the said school premises, High School for 6th



CRL.A.NO.147 OF 2021

to 10th Standard, one Headmaster room and one kitchen are also located; that

in the Primary School 174 students and in the High School 844 students are studying; that the Primary School is situated in an open space in a manner that the functioning of the school is visible from outside; that victims were admitted as inpatients in a private hospital and received treatment; that thereafter they were referred to Thanjavur Medical College Hospital Thanjavur where they were given treatment for 2 days; that she handed over the medical records to the police six months before the victims informed her about the occurrence; that each Standard has separate Teachers and that the appellant was taking class for YY when she was studying 3rd Standard. P.W.1 denied the suggestion that the appellant was taking class for 1st and 2nd Standard only. Further, P.W.1 admitted that on 24.01.2014 the school was vandalized. Further she admitted that her sister tried for employment at the above mentioned Primary School and that the appellant was working as a temporary Teacher in the said school.



CRL.A.NO.147 OF 2021

8.P.W.2 who is the brother-in-law of P.W.1 deposed that P.W.1 and her husband visited police station along with the victims YY and XX and preferred a complaint about the occurrence.

9.P.W.3 is the mother of one of another victim ZZ of alleged sexual assault by the appellant. She deposed that her daughter was studying 5th standard in the said school; that when she enquired her daughter on 24.01.2014 why she returned home from school at 12'o clock itself, the ZZ replied that the appellant misbehaved with the children in the classroom and that he threatened to kill her parents if she discloses the incident to others. In her cross-examination, she deposed that she and her daughter, neither went to police station nor went to hospital for medical examination.

10.P.W.4 is the witness who signed the observation mahazar. He deposed that on 24.01.2014, the police visited the Primary School and prepared observation mahazar wherein himself and one Raja signed as witness.



CRL.A.NO.147 OF 2021

11.P.W.5 is an official witness who took the accused for medical examination.

12.P.W.6 and P.W.7 are YY and XX respectively who are the victims. YY and XX were examined in court on 23.05.2016. YY in her evidence has stated that she has completed her 5th Standard and going to join 6th Standard; that the appellant / accused was working as a Teacher in her school; that when she was studying 3rd Standard the appellant was taking classes for her; that the appellant inserts his finger into her private parts causing discomfort and burning sensation in her private parts; that the classrooms were partitioned using wood; that he'll make 2 students stand outside the classroom to alert him when someone comes; that he'll ask the other students to cover their faces with book in the front; that he would call the other girl children one by one and repeat the same act; that he misbehaved with her 2, 3 times and that he threatened to kill her parents if she discloses the incident to anyone. PW 6 in her cross examination has deposed that the 1st Standard to 5th Standard classrooms are situated in a row and there is no



CRL.A.NO.147 OF 2021

partition between them. She further deposed that the school is surrounded by open space and one AA is her class Teacher. She further deposed that the said incidents are known to other students and teachers and no one tried to confront or prevent or question the same. She admitted that her aunt has completed teacher training course.

13.XX in her evidence has deposed that there is only a curtain between the 4th standard and 5th standard classrooms; that 5th Standard has a separate class teacher; that the appellant has called her twice to 4th standard and put his hands over her private parts and asked her to remove his pant and suck his penis every time; that he'll make 2 students stand outside to alert him when someone comes: ; that he'll ask the other students to cover their faces with book in front and read. In her Cross examination, she deposed that the appellant was her class teacher while she was studying 4th standard. She further deposed that the police recorded her statement and that only one month after the occurrence she informed the police about it.



CRL.A.NO.147 OF 2021

14.P.W.8 is the Doctor who examined the appellant/accused. He deposed that there is nothing to suggest that the appellant is incapable of performing sexual acts.

15.P.W.9 is the Sub Inspector of Police who registered the Ex.P6 FIR. She deposed that she received the complaint and only registered FIR. In her cross examination, she admitted that people belonging to a particular political party protested by blocking the roads in this regard.

16.P.W.10 is the doctor who examined the victims YY and XX and gave a discharge summaries Ex P7 and Ex P8 respectively. As per her evidence, she conducted medical examination on 24.01.2014 at 7 pm. At that time, XX has stated that she was sexually assaulted by a known person in the school by finger insertion at her female genitalia and by forcing her to suck that person's male genital which took place about one month before the date of examination i.e., 24.01.2014. As per her evidence, XX has no bite mark or injury marks at her breast, abdomen, thigh or genitalia; no injury at labia majora region; forchette intact; no bleeding / white discharge per vagina; her



CRL.A.NO.147 OF 2021

birth organ admits one finger inside and no tenderness and she had only hymen tear. She examined YY at about 7.30 pm on the same day. At that time, YY has stated that she was sexually assaulted by a known person in the school by kissing her, finger insertion at her female genitalia and by forcing her to suck that person's male genital which took place about one month before the date of examination i.e., 24.01.2014. As per her evidence, YY has no bite mark or injury marks at her breast, abdomen, thigh or genitalia; no injury at labia majora region; forchette intact; hymen intact; no bleeding / white discharge per vagina; vaginal opening not widened; clitoria and labia minora were congested which appears to have occurred about one week before her examination; no bleeding / white discharge per vagina and no tenderness.

17.It's pertinent to note that P.W.10 in her cross examination stated that hymen could have ruptured due to various other physical activities too and that labia minora congestion was caused one week before the medical examination.



CRL.A.NO.147 OF 2021

18.P.W.11 is the Judicial Magistrate who recorded statements of XX, YY and ZZ and two other victim children. She deposed that on 10.12.2015, she received an official memorandum for recording the statement of children in Crime No 31 of 2014 under Sections 4 and 8 of the POCSO Act. After issuing summons, she recorded the victims' statements after being satisfied that the victims were in a competent state of mind to give the statement. She marked YY's and XX's statements as Ex.P10 and Ex.P9 respectively. The defense side put a suggestion that the statements were recorded by tutoring the witnesses and the provisions of Oaths Act, 1969 was also not followed which PW 11 denied.

19.P.W.12 who conducted only a part of the investigation, deposed that on 24.01.2014 at 02.30 PM, he visited the scene of occurrence with the help of P.W.9 and in the presence of Veeraperumal (P.W.4) and one Raja and prepared observation mahazar (Ex.P2) and Rough sketch (Ex.P14). He also recorded the statements of mother of the victim XX and YY and others and arrested the appellant at 07.00 pm on the same day near Railway Gate, Vaidheesvaran temple. On 06.08.2014 he sent the accused to

12/30



CRL.A.NO.147 OF 2021

Government Hospital, Nagapattinam for potency test thereafter he got transferred. In his cross examination he admitted that he did not record the statement of the witnesses and that the Observation mahazar and rough sketch were prepared by himself in a handwritten manner. When questioned who collected the statements, he deposed that he did not remember the same and then recalled to state that P.W.9 - Sub Inspector prepared the same and he did not record the statement of P.W.9 in this regard. Further, he admitted that he did not enquire and record the statement of XX and YY; did not examine and record statements of the Headmaster, other teachers and other students of the school; did not specify in the rough sketch where the occurrence happened in the school premises; did not mention about the partition between the classrooms in the rough sketch. Further, he admitted that in the region where the school is located, P.W.1's community people are more in number and thereby is a majority community and the accused belongs to a minor community. He denied the suggestion that on 24.01.2014 one Ravichandran, leader of P.W.1's community vandalized the school and that's why this case has been filed. He further denied the suggestion that since P.W.1's sister did not get a job, there is vengeance between them and the accused. He admitted



CRL.A.NO.147 OF 2021

that in the complaint, it has been stated that the occurrence took place about one month before 24.01.2014. The appellant side put a suggestion that the appellant was taking class in 1st Standard only and the same was denied.

20.P.W.13 who is the successor of P.W.12 deposed that he received the case file on 18.08.2014 and completed the investigation and filed charge sheet on 22.09.2014. He admitted that the witness statements were received by the Court only on 10.10.2014.

21.When the incriminating evidences were put to the appellant and questioned under 313 of Cr.PC, he denied all the evidences as false.

22.This Court has heard both sides arguments and perused the records.

23.The points that arises for consideration in this appeal are as follows:



CRL.A.NO.147 OF 2021

(i) Whether the prosecution has established the foundational facts to invoke the presumption stated in Section 29 of POCSO Act?

(ii) Whether the prosecution has proved the charges levelled against the appellant / accused?

(iii) Whether the conviction and sentence imposed by the Trial Court on the appellant / accused is to be interfered by this Court?

Discussion and Decision for Point Nos.(i) to (iii)

24.Mr.S.Senthilvel, learned counsel representing Mr.S.Sundar, learned counsel on record for the appellant has argued that the respondent police falsely has foisted the case against the appellant; that the trial court miserably failed to appreciate the evidence of P.W.1; that the appellant belongs to Scheduled Caste community and the *defacto* complainant belongs to Most Backward Class community; that the *defacto* complainant belongs to a particular political party; that P.W.1 deposed that the written complaint was

15/30



CRL.A.NO.147 OF 2021

submitted to the Sub Inspector of Police; that at the time of giving complaint, the victim also accompanied P.W.1; that the said incident was videographed by the respondent police; that the Investigating Officer did not record the victim's statement; that the alleged occurrence has taken place within the classroom as per the prosecution but the Investigating Officer has not examined the teachers, Headmaster or any other persons who are working in the school; that this case has been falsely foisted against the appellant with a view to remove the appellant from the post of temporary teacher and appoint relative of the *defacto* complainant in the place of appellant; that the Investigating Officer has not investigated the case properly; that the victim's statements under Section 164 of Cr.P.C., were recorded after the commencement of the trial and that the prosecution has not established the foundational facts and therefore, the presumption stated under Sections 29 and 30 of the POCSO Act would not be attracted in this case.

25.Learned counsel for the appellant further submitted that belated examinations of the victims, that too after commencement of the trial is fatal to the prosecution and create a great suspicion in the prosecution case.



CRL.A.NO.147 OF 2021

The trial court has not considered the above points and wrongly arrived at the conclusion that the appellant committed the alleged offence. Accordingly, the learned counsel for appellant prayed to allow the appeal and thereby, acquit the appellant.

26.Per contra, Mr.A.Gokulakrishnan, learned Additional Public Prosecutor submitted that in this case, there are two victims and there is no reason to disbelieve the evidence of victims and their mother and the medical evidence also corroborate the victims' evidence. The trial court only after considering all the materials and evidences rightly passed the judgment and found that the appellant / accused guilty. There is no necessity to interfere with the trial court's judgment. He further submitted that the prosecution has established the foundational facts by examining the victims, victims' mother and the Doctor who examined the victims. Hence, the prosecution is entitled to the presumption under Sections 29 and 30 of the POCSO Act. Since the prosecution has established the foundational facts, the burden is upon the appellant / accused to rebut the presumption stated in Sections 29 and 30 of the POCSO Act. In this case, the appellant / accused did not rebut the said



CRL.A.NO.147 OF 2021

presumptions. Hence, the prosecution has proved the case beyond reasonable doubt. Hence, there is no warrant to interfere in the trial court judgment.

Accordingly, he prayed to dismiss the Criminal Appeal.

27.This Court has considered the submissions made on either side and perused the evidence and records.

28.Mr.Senthilvel, learned counsel appearing for the accused drew this court's attention to the deposition of P.W.1 and argued that an earlier complaint was suppressed in this case. This Court has carefully considered the deposition of P.W. 1. P.W.1 in her chief examination has stated that she and her husband along with YY went to police station and gave a complaint. She further deposed that the police recorded victim YY's statement on the same day. But in her cross-examination, she deposed that 5 or 6 persons went to the police station and gave a written complaint to P.W.9 - Sub Inspector of police. This Court has perused the Ex.P1 and it is seen that Ex.P1 is information relating to a commission of offence given orally by P.W.1 to the Sub-inspector of police. In Ex.P1, the husband of P.W.1 has signed only as a



CRL.A.NO.147 OF 2021

witness. As per section 154 of the Code of Criminal Procedure, a complaint need not be made in writing. Though this Court finds some contradiction about the Ex.P1 in the evidence of P.W.1, the same does not affect the prosecution case. Hence, this Court rejects the appellant's argument that an earlier complaint was suppressed.

29.The prosecution has established the fact that P.W.1 belongs to Most Backward Class and the appellant belongs to Scheduled Caste and that the victims are children.

30.In Criminal jurisprudence, the prosecution has to prove the case. However, in view of Section 29 of the POCSO Act, where a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 and 9 of the POCSO Act, the Court shall presume that such person has committed or abetted or attempted to commit the offence as the case may be unless the contrary is proved. The presumption to be drawn under Sections 29 and 30 of the POCSO do not absolve the prosecution of its duty to establish the foundational facts. The prosecution has to establish the



prima facie case by adducing evidence. Only when the fundamental and primary facts are established by the prosecution, the accused will be under an obligation to rebut the presumptions by adducing cogent evidence where the standard of proof required to rebut the presumption is preponderance of probabilities. In short, the basic, primary and fundamental facts are to be established by the prosecution.

31.The term 'foundational facts' in the POCSO Act includes the following:

- (i) The victim is a child
- (ii) The alleged incident has occurred
- (iii) The accused has committed the offense
- (iv) Medical evidence to support the physical injury if any.

32.In this case, the prosecution has established that victims YY and XX are children of age 9 and 10 respectively. The alleged occurrence took place in the Primary School. P.W.1 has deposed that in the said school 174 students are studying; that the school is surrounded by open-space on all four



sides; that the windows would be open and that the building is situated in such a way that the functioning of the school can be viewed from outside.

P.W.6 deposed that the classrooms of different standards are partitioned using wood. P.W.7 deposed that the classrooms of standards 1st to 5th are in a row and partitioned by a curtain. P.W.1 deposed that 1st to 5th standard has separate class teacher.

33.The Investigating Officer filed rough sketch and observation mahazar. In the observation mahazar and rough sketch, he has only shown the location and outside settings of the school and not shown any details about the classrooms, how they're partitioned, scene of occurrence etc. On bare perusal of the observation mahazar and rough sketch, it is easily discernible that the Investigating Officer did not enter into the school building where the alleged incident took place. Further, he did not examine the headmaster, other teachers, students including XX and YY and any other persons connected with the school. Since the alleged offence took place in the classrooms, ideally the Headmaster or any Teacher or any other person



CRL.A.NO.147 OF 2021

connected with the school should have been cited as a witness. In the observation mahazar one Veeraperumal-P.W.4 and one Raja were cited as observation mahazar witnesses who are not connected with the school. In view of the above, this Court is of the view that the Investigating Officer has not conducted investigation properly. For the reason to be stated infra, this is a case of zero investigation.

34.The Investigating officer has not recorded the victims' statements despite the fact that victims were not having any disability and were in a position to give their statement. In this case, the final report was filed on 10.10.2014. Before filing final report, the statement of the victims were neither recorded under Section 161 nor under Section 164 of Cr.PC. The procedure for recording statement of the child under Sections 24 to 26 of the POCSO Act were not followed in this case.

35.In this case, charge sheet was filed on 10.10.2014. In the charge sheet, 14 witnesses were cited in the list of witnesses. Among the said witnesses, the Doctor who examined the victims was cited as L.W.10. Despite



CRL.A.NO.147 OF 2021

the fact that statement of examinations of the victims alone is the direct material facts available in the charge sheet, the learned Sessions Judge took cognizance of the offences under Sections 4 and 8 of the POCSO Act and thereafter, framed charges against the appellant on 13.07.2015 under Sections 6 read with 5(f)(l)(m) (2 counts) and Section 10 read with 9(l)(m) (2 counts) and questioned the accused. Since the accused denied the charges as all false and claimed to be tried, trial was ordered. Summons were issued to L.W.1 to L.W.7 witnesses for the hearing date 17.08.2015. Thereafter, fresh summons were issued for the said witnesses on 07.09.2015 and 01.10.2015. At that stage, on 01.10.2015, prosecution filed a petition seeking formal permission to conduct further investigation under Section 173(8) of Cr.P.C., and the said petition was numbered as Crl.MP No.405 of 2015 and the same was allowed on 04.12.2015 and thereby the victims YY's and XX's statements were recorded by P.W.11- Judicial Magistrate on 19.12.2015. To be noted, as per Section 26, the trial court shall record the statement of the witness within 30 days of commencement of trial. In this case, unusually the victims' statements were recorded under Section 164 Cr.P.C., only after commencement of the trial. It is to be noted that statement recorded under Section 164 of Cr.P.C.,



CRL.A.NO.147 OF 2021

can be used to either corroborate or contradict the witnesses, other than which, it has no evidentiary value.

36.The procedure adopted by the prosecution in the name of further investigation is a legally flawed exercise and cannot be allowed. The prosecution cannot improve and fill up its lacunae after commencement of trial. The course adopted by the prosecution would prejudice the rights of the accused. It appears that no additional report has been filed for the case. On the other hand, the statement of the victims recorded under Section 164 of Cr.P.C., alone were filed in the Court. This court is of the view that the fair trial procedures were not adhered by the trial court. In this case, except the FIR, all other documents including the rough sketch, observation mahazar and the statement of the material witnesses under Section 161(3) were received by the court on 10.10.2014 only i.e., they were filed along with the charge sheet only. The unexplained delay creates suspicion and does not inspire confidence over the prosecution case (vide ***In Re: KARUNAKARAN AND OTHERS [1975 (1) MLJ 209]***).



CRL.A.NO.147 OF 2021

37.As narrated above, the contradictions of the P.W.1 and victims' statements, non examinations of the Headmaster, Teacher or the students including YY and XX or any other person connected with the alleged offence by the Investigating Officer creates serious doubts in the prosecution case. The primary facts that the accused was working as a Teacher in the Primary School and was the class Teacher for 4th Standard on the alleged date of occurrence itself were not proved by the prosecution. On the other hand, the accused denied the prosecution evidences as all false while he was examined under Section 313 of Cr.PC. Further, the accused examined D.W.1 who was working as a Teacher at the Primary School at the time of occurrence, as defense witness. D.W.1 deposed that there is no partition in between the classrooms and the functioning of the classes are visible from outside. He further deposed that one Gunasekaran was the Headmaster of Primary School at the time of the alleged occurrence. The appellant was working like a 'odumpillai' (ஒடும்பிள்ளை) for the school. When the prosecution put a suggestion that the appellant was running a tuition center opposite to the said school and that the appellant gave sexual torture to the



CRL.A.NO.147 OF 2021

girl students and that's why the parents vandalized and protested against the school, the witness denied the same as incorrect. Further, the medical evidence does not connect the appellant with the alleged crime as hymen of XX could have got ruptured due to various other physical activities too and the congestion in the labio minora of YY occurred about a week before medical examination while the incident occurred about one month before medical examination.

38.As per Section 118 of the Indian Evidence Act, 1872, child is a competent witness unless they are prevented from understanding the question put them or from giving rational answers to the question. In this case, learned trial Judge formed opinion that victims are competent to give evidence. The prosecution has established the fact that the victims were children at the time of occurrence but has failed to establish the fact that the appellant / accused committed the offence. The prosecution has failed to prove the basic fact that in-between the classrooms there was a division or partition. Further, the prosecution has failed to connect the ruptured hymen of XX and congestion in the labio minora of YY to the accused. In view of the above



CRL.A.NO.147 OF 2021

infirmities and patent absurdities in the prosecution case, this court is of the view that the prosecution has miserably failed to establish the foundational facts of the alleged crime which are necessary to attract the presumption under Section 29 of POCSO Act. Since the prosecution has not established the foundational facts, the prosecution case must fail. Hence, the charges levelled against the appellant / accused are not proved beyond reasonable doubt.

Conclusion

39. In view of the above discussions, this Court is of the view that the prosecution has not proved the case beyond reasonable doubt. Hence, the accused is entitled the benefit of doubt. Hence, this Court is inclined to interfere with the judgment of the Trial Court. The points are answered accordingly in favour of the appellant / accused and against the prosecution.

40. Resultantly, the Criminal Appeal is allowed and the judgment of conviction and sentence dated 22.10.2020 passed in S.C.No.123 of 2014



CRL.A.NO.147 OF 2021

by the learned Sessions Judge (Special Court under POCSO Act)

Nagapattinam is hereby set aside. The appellant / accused is acquitted from all the charges and the bail bond if any, executed by him shall stand discharged. The fine amount if any paid by the appellant / accused shall be refunded to the appellant. The appellant / accused shall be released forthwith, if his custody is not required in any other case / cases.

41.Though the Criminal Appeal is allowed and the appellant / accused is acquitted from all the charges, this Court is of the view that the compensation awarded by the trial Court to the victims shall not be recovered from the victims since parameters for awarding compensation does not depend on the proof of guilt of appellant / accused.

42.Before parting in this case, this Court would like to mention here that the Hon'ble Supreme Court in ***LILLU AND OTHERS VS. STATE OF HARAYANA [2013 (14) SCC 643]*** has held that the two finger test is unconstitutional and violative of fundamental Right to Privacy. Further, the Supreme Court has reiterated the same view by prohibiting two finger test in



CRL.A.NO.147 OF 2021

rape cases and warned that any person performing the said test would be held

guilty of misconduct vide ***STATE OF JHARKHAND VS. SHAILENDRA***

KUMAR RAI @ PANDAV RAI [AIR 2022 SC 5393 : 2022 SCC ONLINE

1494].

(M.S., J.) (R.S.V., J.)

09 / 08 / 2023

Index : Yes

Speaking

Neutral Citation : Yes

TK

P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Cuddalore.

To

1.The Sessions Judge
(Special Court under POCSO Act)
Nagapattinam.

2.The Inspector of Police
Sirkazhi Police Station
Nagapattinam District.

3.The Superintendent
Central Prison, Cuddalore.

4.The Public Prosecutor
High Court of Madras.

29/30



WEB COPY



CRL.A.NO.147 OF 2021

M.SUNDAR, J.

AND

R.SAKTHIVEL, J.

TK

PRE-DELIVERY JUDGMENT MADE IN
CRL.A.NO.147 OF 2021

09 / 08 / 2023