



Crl.A.No.320 of 2016

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DATED : 19.07.2024

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

Crl.A.No.320 of 2016

1.Sakthivel (Deceased)

2.Kaveri Ammal

3.Rajamani

4.Anest Raj

5.Jeans Kumar

... Appellants

Vs.

The State represented by

Inspector of Police,

All Women Police Station,

Pennagaram,

Dharmapuri District.

... Respondent

(Crime No.2 of 2015)

Prayer : Criminal Appeal filed under Section 374(2) of Criminal Procedure Code 1973, to set aside the judgement and orders dated 18.04.2016 passed in Spl.C.C.No.40/2015 by the Fast Track Mahila Court, Dharmapuri.



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For Appellant : Mr.R.Sankarasubbu
For Respondent : Mr.S.Raja Kumar
Additional Public Prosecutor

JUDGMENT

The appellant Sakthivel is dead and his legal heirs are continuing this appeal.

2. This is a case of alleged sexual harassment of as many as eight girl students studying IV and V Standard, aged 9 and 10 years, in Solappadi Government Primary School, Palacode Taluk, Dharmapuri District. The appellant Sakthivel (since deceased) had misbehaved with these girls (P.W.1 to P.W.8) making some of them sit on his lap and invariably pinching the girls either in the thighs or the shoulders or chest region. It appears from the prosecution case that there were only 2 teachers in the school and the deceased appellant used to teach for the I to III standard and the Headmaster Thangavel (P.W.14) used to take classes for IV and V standard students. All the victims were categorical in deposing that the accused was in the habit of targeting the girl students in



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3. On 10.03.2015, the childline organisation received a call in which it was informed by the caller that one of the victims (P.W.1) was subjected to sexual harassment by the appellant Sakthivel.

4. Thiru.Kalyanasundaram (P.W.9), the District Child Protection Officer who got the information from the childline organisation plunged into action immediately taking with him Mrs.Saravana (P.W.10) Child Protection Officer, Mrs.Anandhi (P.W.11), Childline Director and one Mohankumar, Childline member and other officials. They visited the child's house (P.W.1) and met the child (P.W.1), her mother Sundari (P.W.12), who complained that the appellant had pinched her chest and also touched her private parts. According to the statement of the victim child (P.W.1), this incident had happened on 27.02.2015. Further enquiry by them revealed the truth in it and therefore they intimated the same to the District Collector. The victim was subjected to medical examination on 17.03.2005 at 04.15 P.M. by Dr.Rani Priya (not



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examined) in the presence of her mother (P.W.12). This medical examination was conducted in P.W.1's home. She referred the child to Gynaecologist attached to Government Hospital, Dharmapuri. In the meanwhile, a police complaint (Ex.P1) was filed on 18.03.2015 by Thiru.Kalyanasundaram (P.W.9). Tmt.Vijayalakshmi (P.W.20), the then Sub Inspector of Police, Mahendramangalam Police Station, registered FIR (Ex.P8) on 18.03.2015 in Crime No.2 of 2015.

5. On the basis of the complaint (Ex.P1) Tmt.Chandrakantha (P.W.23), the then Inspector of Police, All Women Police Station, Dharmapuri, took up investigation as per the proceedings of Deputy Superintendent of Police in C.N.C.1/8997/2015. She examined the witnesses and recorded their statements. She produced the victim child before Tmt.K.R.Jothi (Ex.P22), the Judicial Magistrate, Harur, for recording her statement under Section 164 Cr.P.C. Accordingly, P.W.22 after observing necessary legal formalities recorded the child's statement under Section 164 Cr.P.C. (Ex.P12).



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6. Dr.Suchitra (P.W.19), Gynaecologist attached to Government Hospital, Dharmapuri, examined the child (P.W.1) on 18.03.2015 and found an inflammation on her right breast. The child stated that it was paining. On further examination the doctor found that her hymen was intact. A copy of Accident Register (Ex.P4), O.P. Chit (Ex.P5) and referral slip (Ex.P7) were marked through P.W.19.

7. Tmt.Palaniammal (P.W.13), Assistant Elementary Education Officer (AEO) in her deposition revealed that the District Elementary Education Officer (DEO) called her over phone on 03.03.2015 itself stating that there was a complaint from childline that the appellant was in the habit of pinching the students and therefore, an enquiry was to be conducted on the said allegation. She visited the school on 04.03.2015 and met the Headmaster Thiru.Thangavel (P.W.14), parents of the children and the general public of the village. The appellant was on medical leave. On enquiry, it was found that the general opinion of the parents and the villagers was that the appellant / teacher was beating the students and therefore, should be transferred to some other school. A



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letter to this effect was given to her and the appellant / teacher was transferred to Nathahalli Panchayat Union Primary School on 09.03.2015 when he returned duty. However, on 11.03.2015, there was yet another complaint from childline in which it was alleged that P.W.1 was pinched on her chest by the appellant due to which there was a swelling. This prompted her to visit the Solapadi Village once again and report the findings to her superiors consequent upon which the deceased appellant / teacher was placed under suspension.

8. The Headmaster Thangavel (P.W.14), deposed that even as early as 02.03.2015 there was a crowd of people from the village who had grievances against the appellant. Their grievance was relating to the irregular attendance of the appellant to the school and also the complaint of beating the children. He also confirmed the visit of Tmt.Palaniammal (P.W.13), Assistant Elementary Education Officer (AEO) on 04.03.2015 and again on 11.03.2015 by which time the appellant was transferred initially and then placed under suspension with effect from 12.03.2015. The headmaster also certified the age of the victim girl (P.W.1) vide his



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certificate (Ex.P2) and that she was studying in IV standard.

9. Mr.R.Sankarasubbu, learned counsel for the legal heirs of the appellant would contend that the trial court did not take a holistic view of the entire case and had convicted the appellant for the offences punishable under Section 7 r/w. 8 of POCSO Act. According to him, two of the prosecution witnesses has spoken the truth thereby exposing the hollowness of the claim made by the prosecution. The first such prosecution witness is Tmt.Palaniammal (P.W.13), Assistant Elementary Education Officer (AEO), who made it very clear that on 04.03.2015 when she visited the school, the nature of allegation against the appellant / teacher was not sexual in nature. In fact, she has specifically stated that no parent including the mother of P.W.1 complained about the teacher pinching the girl students. It was also reiterated by the learned counsel that the allegation of pinching the students, especially, pinching P.W.1 came up for enquiry only on 11.03.2015. It was also his contention that the Headmaster (P.W.14) of the school was also present on both the occasions i.e. on 04.03.2015 and 11.03.2015 when P.W.13 had come



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down to make an enquiry into the allegation. According to Mr.R.Sankarasubbu, the entire theory of prosecution is a concocted one and was invented as an afterthought.

10. Per contra Mr.S.Raja Kumar, learned Additional Public Prosecutor for the respondent contended that there are eight victims (P.W.1 to P.W.8) who have deposed before the trial court about the sexual harassment meted out to them. Therefore, according to him the conviction and sentence by the trial court is justified and should not be interfered with.

11. It is pertinent to mention that P.W.1 to P.W.8 have alleged that the appellant harassed them sexually by making them sit on his lap, pinching them on their shoulder, chest region and thighs. All the eight victims have given a parrot like version thereby causing a doubt as to whether they are tutored. Generally a tutored witness deposes in a parrot like fashion and a natural witness is bound to commit mistakes.

12. Even a bare perusal of all their depositions appear to be



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very similar to each other. None of their parents except for P.W.1 came forward to give a written or oral complaint to the Assistant Elementary Education Officer (AEO) or the Headmaster of the school. As stated earlier no such allegation was made against the teacher on 02.03.2015 to the Headmaster (P.W.14) and to the AEO (P.W.13) on 04.03.2015 even by the mother of P.W.1 who was very much present in the school. It is incomprehensible as to why P.W.1's mother kept quiet even when AEO (P.W.13) and the Headmaster (P.W.14) along with group of parents and villagers were present on 02.03.2015 and 04.03.2015. In fact the specific allegation from the child line against the deceased appellant on 04.03.2015 was regarding the act of pinching the girl children. The AEO (P.W.13) has been specifically deputed to go into this allegation. The only demand there was transfer of the teacher to some other school which was also acceded to. The present complaint came much later after the teacher was transferred as per their demand. It is not that the belated complaint is unacceptable but the nature of complaint is totally different. Both P.W.13 and P.W.14 had clearly deposed that such a complaint of sexual harassment did not come up on 02.03.2015 and 04.03.2015. This



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creates a very serious doubt in the minds of this court as to whether the alleged sexual harassment took place. Section 29 of the POCSO Act provides that the court shall presume that the accused had committed the offence for which he is charged with until the contrary is proved. However, this presumption would operate only when the prosecution proves the foundational facts in the context of allegations against the accused that too beyond reasonable doubts. Lack of clarity in the evidence of P.W.1 to P.W.8 as to the date or time of occurrence or other details also cast doubt on their veracity. In the complaint (Ex.P1) it is stated that the occurrence took place on 27.02.2015. The specific contention of the victim children was that the deceased appellant would take classes for them also whenever the Headmaster (P.W.14) of the school is on leave. Ex.D1, the Attendance Register shows that the Headmaster (P.W.14) of the school was very much present in the school on 27.02.2015.

13. As already discussed the overwhelming evidence of P.W.13



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and P.W.14 weaken the prosecution case. In such circumstances, this court concludes that the prosecution has failed to prove their case against the deceased appellant. Accordingly, the Criminal Appeal is allowed and the conviction and sentence passed by the trial court is set aside.

14. In the result,

- i. The Criminal Appeal is allowed.
- ii. Judgment and orders dated 18.04.2016 passed in Spl.C.C.No.40/2015 by the Fast Track Mahila Court, Dharmapuri, is set aside.
- iii. The fine amount paid if any, shall be refunded to the appellants 2 to 5 (legal heirs of the deceased appellant).

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Index : yes/no
Speaking /Non speaking Order
mtl



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To

- 1.The Fast Track Mahila Court, Dharmapuri.
- 2.The Public Prosecutor, High Court, Madras.
- 3.The Section Officer, Criminal Section, Madras High Court, Chennai.

R. HEMALATHA, J.



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