



CrI.A.No.788 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2024

CORAM

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CrI.A.No.788 of 2016

Kaliyappan
S/o. Saminathan

... Appellant

Vs.

The State by
The Inspector of Police,
Town Police Station,
Karaikal (Cr.No.72/2013)

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) Criminal Procedure Code, 1973 to set aside the judgment and orders passed in Spl.C.C.No.2 of 2015 dated 08.04.2016 by the Additional Sessions Judge, Karaikal.

For Appellant : M/s. D.Sathya
Legal Aid Counsel

For Respondent : Mr.M.V. Ramachandramurthy
Additional Public Prosecutor (Puducherry)
Assisted by Mr. M.Thamizhmani
Advocate (Puducherry)



CrI.A.No.788 of 2016

JUDGMENT

WEB COPY Challenging the conviction and sentence dated 08.04.2016 passed by the learned Additional Sessions Judge, Karaikal, in Spl.C.C.No.2 of 2015, the present Criminal Appeal is filed by the accused.

2. The appellant is the accused in Spl.C.C. No.2 of 2015 and is convicted and sentenced by the learned Additional Sessions Judge, Karaikal, as detailed hereunder:

<i>Conviction</i>	<i>Sentence</i>
9(f) and 9(m) r/w Section 10 of the POCSO Act.	Rigorous Imprisonment for a period of six years and a fine of Rs.5,000/-, in default, to undergo Simple Imprisonment for a period of two months for each offence. .
11(i) r/w Section 12 of the POCSO Act.	Rigorous Imprisonment for a period of one year and a fine of Rs.2,500/-, in default, to undergo Simple Imprisonment for one month.
The aforesaid sentences shall run concurrently. The period of sentence already undergone is set off under Section 428 Cr.P.C.	

3. The case of the prosecution as could be discerned from the oral and documentary evidence is as follows:

3.1. Thiru. Saravanan (P.W.1) is a fisherman and he has four



children. His daughter (victim) was studying IV Standard in Pakkirisamy Government High School, Karaikal Medu Village. On 25.03.2013 when he came back home from work by about 3 p.m, he saw two women talking with his wife. He enquired his wife and came to know that her daughter was subjected to sexual harassment by the appellant in the school on 01.03.2013. P.W.1 called his daughter (victim) and enquired her. The victim girl (P.W.2) in turn confided in him that on 01.03.2013 she and her friend Shobana (P.W.4) were taken to the terrace of their school and were locked inside a room by the appellant, who was the watchman of the school. Subsequently he sent Shobana (P.W.4) alone outside the room and removed his shirt. P.W.4 did not go down stairs and was in fact hiding behind a water tank in the terrace. The appellant asked the victim girl to remove her dress and when the victim child refused, he gave a hundred rupee note to her and put his hands on her shoulders. Since she started crying, he left the place after wearing his shirt.

3.2. P.W.1, went to Karaikal Town Police station and lodged a written complaint (Ex.P1) with Thiru. Sabapathi (P.W.11), the then Station House



CrI.A.No.788 of 2016

Officer, Karaikal Town Police Station. P.W.11 received the complaint from P.W.1 and registered FIR (Ex.P6) in Crime No.72/2013 of Karaikal Town Police Station against the appellant for the offences punishable under Sections 9(f) and 9(m) and 11(i) r/w 10 and 12 of the Protection Of Children from Sexual Offences Act, 2012 (in short POCSO Act). He then placed the records before the Inspector of Police for investigation.

3.3. Tmt.Ahalya (P.W.12), the then Sub Inspector of Police, Karaikal Town Police Station, took up investigation in Crime No.72/2013, went to the scene of occurrence, prepared an Observation mahazar (Ex.P7) and a rough sketch (Ex.P8) in the presence of the witnesses Danasekar (P.W.5) and M.Gandhi (not examined).

3.4. Tmt. Vijayarani (P.W.3) is a team member of Child Line and her evidence is that she received a call on 25.03.2013 at about 1 p.m about the misbehaviour of the appellant with the school children. She went to the house of the victim child and enquired her parents and the victim child who in turn informed her the incident.



WEB COPY 3.5. Ms.Preethi (P.W.13) is one of the teachers of the school in which the victim child was studying. Her house is closer to the school and she can see the school from her house. On 01.03.2013, she saw the appellant holding the hands of a girl child at about 5.15 p.m. in the terrace. She was wondering as to why the children are in the school at that odd hour even though the school was over by 4.30 p.m. She informed the incident to her father Jeevanandham (P.W.6), who in turn asked her to complain the same to the Head Master (P.W.7) of the school. She immediately contacted Arokiaraj (P.W.8), the P.T. teacher of the school over phone, who in turn informed the Head Master (P.W.7) of the school. After the arrival of the Headmaster, P.W.13 went to the school along with her father Jeevanandham (P.W.6). P.W.6 corroborated the version of P.W.13.

3.6. P.W.8, the P.T. Teacher in his evidence has deposed that on 01.03.2013 at about 5.30 p.m he received a call from P.W.13 stating that the appellant was found with the children in the terrace of the school. In fact P.W.13 asked him to go over to the school immediately. He informed the



CrI.A.No.788 of 2016

Head Master of the school about this as he could not immediately rush to the school.

3.7. Thiru.Arivu Selvam (P.W.14), the Sub Inspector of Police, Karaikal Town Police Station, took up further investigation in Crime No.72/2013, produced the victim girl before the Judicial Magistrate I, Karaikal, for recording her statement under Section 164 Cr.P.C., after getting necessary orders from the Chief Judicial Magistrate. Thiru.Vaiyapuri (P.W.10) after observing necessary legal formalities recorded the statement of the victim (Ex.P5) under Section 164 Cr.P.C. After completing investigation, P.W.14 laid a final report against the appellant for the offences punishable under Sections 9(f) and 9(m) r/w Section 10 and 11(i) r/w Section 12 of POCSO Act.

3.8. The learned Sessions Judge, framed charges against the appellant for the aforesaid offences.



CrI.A.No.788 of 2016

WEB COPY

3.9. In order to bring home the guilt of the accused the prosecution examined 14 witnesses and marked 8 documents.

3.10. The appellant, when questioned under Section 313 Cr.P.C with regard to the incriminating circumstances appearing in evidence against him, denied of having committed any offence. However, he did not examine any witness on his side.

3.11. The learned Sessions Judge, Karaikal, after analysing the oral and documentary evidence on record, found the appellant guilty of the offences under Sections 9(f) and 9(m) r/w Section 10 of POCSO Act and 11(i) r/w Section 12 of POCSO Act and convicted and sentenced him as stated in Paragraph No.2.

4. Heard Ms. D.Sathya, learned Legal Aid Counsel for the appellant and Mr.M.V. Ramachandramurthy, learned Additional Public Prosecutor (Puducherry) assisted by Mr. M. Thamizhmani, learned counsel for the



respondent/State.

WEB COPY

5. The victim in the instant case is studying IV standard in Pakkirisamy Government High School, Karaikal, in which the appellant was the watchman. The incident took place on the 1st of March 2013 but came to light to the Child Line officials on 25.03.2013 and to the police on 26.03.2013. According to the prosecution, the watchman took the two girls (the victim and her friend) to the terrace of the school building into a room and after sending out the friend (P.W.4) held the victim (P.W.2) and forced her to remove her top which the victim girl had refused to. He even offered her Rs.100/- but of no avail. By then the accused himself had removed his shirt and when the victim resisted and started crying the accused let her go. The victim's friend who waited just near the door behind a water tank immediately rushed down with the victim and made good their escape.

6. The prosecution case is that all children play on the ground in the school compound daily in the evening. The prosecution version is that the day when the incident reportedly happened, the PT Master Thiru.Arokiaraj (P.W.8) had left early and was not there with the children and the watchman



was emboldened to commit this act. Preethi (P.W.13) a teacher of the school was an eyewitness to the presence of the two girls with the watchman on the terrace. She also reportedly saw the watchman holding the victim's hand. She in turn informed her father Jeevanandam (P.W.6) who advised her to inform the Head Master of the school Thiru. Marimuthu (P.W.7). She called up the P.T. Master (P.W.8) who in turn called up the Head Master (P.W.7). The Head Master went to the school along with P.W.6 and enquired the two girls who only told that the watchman had called up them to the terrace and that he pulled the hand of the victim and that they ran away. The watchman explained that his pen was taken away by the children and he had tried to retrieve it. The Head Master reprimanded the watchman and warned the children to go home early. As such on 01.03.2013 it did not get precipitated. The parents were not informed, neither the District Education Officer (P.W.9). It was only on 25.03.2013 that a phone call reached the Child Line based on which Tmt. Vijayarani (P.W.3), a team member of Child Line along with one Thavaselvi went to the house of the victim girl and it was then the victim's parents were informed about the alleged incident on 01.03.2013. Subsequently, the police complaint was



given by P.W.1 (the father of the victim).

WEB COPY

7. Ms.D.Sathya, learned Legal Aid Counsel for the appellant argued that the case of the prosecution fails on the following grounds:

- a) The incident is alleged to have taken place on 01.03.2013 while the police complaint was filed on 26.03.2013 by the father (P.W.1) of the victim. This inordinate delay creates suspicion.
- b) There are glaring contradictions in the evidence of the prosecution.
- c) Neither the Maths teacher Preethi (P.W.13) nor the Head Master (P.W7) went beyond a certain point of investigation which can be easily inferred as that they did not suspect any foul play.
- d) Many of the teachers did not like the watchman and wanted to oust him from the school.
- e) There was no such incident earlier to cast doubt on the accused especially when he was the one who used to tell the children to leave the ground and go home once it gets late in the evening.
- f) There was inordinate delay of more than two years in sending the statements recorded under Section 161 (3) Cr.P.C. to the Court.



WEB COPY

- g) There was no iota of evidence for any sexual overtone by the accused towards the victim girl and the entire story was made up later to bring it under POCSO Act.

8. Per contra the learned Public Prosecutor would contend that

- a) the delay in filing complaint is not fatal to the case of the prosecution.
Since normally in such cases, there is hesitation in going to the police. However, in the instant case, the parents of the victim knew it only on 25.03.2013 and approached the police without much delay;
- b) there was no other reason for the accused to have taken the two girls to the terrace and his intention was further obvious when he removed his shirt;
- c) a ten year old girl (the victim) did not have any reason to twist the facts or make false allegations against the accused and the trial court rightly believed her version;
- d) there was no evidence for any personal enmity between the teachers and the watchman.



CrI.A.No.788 of 2016

9. It is true that there are contradictions in the deposition of the prosecution witnesses as highlighted hereunder:

- The victim (P.W.2) in her statement, under Section 164 Cr.P.C., before the Judicial Magistrate I, Karaikal, had stated that she along with her friends were on the terrace of the school and the appellant came there and on the other hand, in her deposition before the trial Court, she has stated that she and her friend were taken to the terrace by the appellant.
- P.W.6 in his deposition stated that he along with the PT master were present with the Head Master on 01.03.2013 when the Head Master enquired the watchman, while the P.T. Master (P.W.8) has deposed that he was not there when the Head Master enquired the children and the appellant.
- The Head Master (P.W.7), in his deposition stated that he had informed about the incident on 4th March (Monday) itself to the District Education Officer (P.W.9) while the District Education Officer (P.W.9) has deposed that he was informed only on 26.03.2013.



WEB COPY

- P.W.9 has deposed that the Head Master told him that on 02.03.2013 itself there was a compromise between the appellant and the panchayat persons while Dhanasekar (P.W.5), a panchayat member did not mention about it.
- The Head Master (P.W.7) in his deposition stated that the two children never showed any signs of fear or anxiety and were normal after the incident. They also attended school like other days.
- One of the teachers of the school by name Vijayanthi Mala was the one who informed the Child Line. But she was not examined.
- Preethi (P.W.13), the Maths teacher, for reasons best known to her, was very indifferent in her deposition. She being the first independent witness for having seen the victim with the accused seems to have remained docile without being proactive.
- P.W.1's 164 Cr.P.C. statement is that her father knew about the incident much before the date of police complaint while P.W.2 stated that he knew it only on 25.03.2013.
- Even assuming that such contradictions are of lesser importance in the light of the P.W.1's deposition, the Head Master who was the first to



CrI.A.No.788 of 2016

WEB COPY

enquire the children and the appellant on the same day that too immediately after the alleged incident, has stated that both the children were not visibly upset or disturbed. This raises a doubt about the veracity of the child's claim.

- The children who got terrified with the alleged misbehavior of the appellant did not show any sign of having cried or that they were in a state of shock.
- The victim had not informed the Headmaster (P.W.7) that the appellant asked her to remove her tops after removing his shirt.
- We may assume that she was hesitant as she was just 10 years old. But she has not uttered a word about the appellant to the Head Master (P.W.7) on the date of alleged incident.
- According to P.W.7, the appellant had called them to terrace and pulled the hand of the victim and that they ran away, was their statement made to the Head Master (P.W.7) on the date of occurrence. In fact, during the cross examination, P.W.7 has admitted that “அந்த சமயத்தில் எதிரி சட்டையை கழட்டிவிட்டு பாலியல் ரீதியாக துன்புறுத்தியது சம்பந்தமாக எதுவும் சொல்லவில்லை”.



WEB COPY

- The victim child's deposition was that she was locked in a room in the terrace and on the contrary the rough sketch prepared by the Investigation Officer does not show any room on the terrace.
- Ms.Preethi, the Maths Teacher, who had seen the appellant holding the hands of a child did also not bother to inform the child line and was keeping quiet.
- Statements recorded under Section 161(3) Cr.P.C. by the police were sent to court after two years. This delay creates a suspicion with regard to the entire case of prosecution.

10. Section 29 of POCSO Act provides that the court shall presume that the accused has committed the offence for which he is charged with, until the contrary is proved. But this presumption would operate only when the prosecution proves the foundational facts beyond reasonable doubt in this context of allegation against the accused. Whether the defence, rebutted the presumption by discrediting the prosecution witnesses through cross examination is the crux of the issue in the instant case. This is mainly because of the full reliability placed on the victim's version to prove the guilt



CrI.A.No.788 of 2016

of the appellant.

WEB COPY

11. It is also well settled that the victim's version has to be unassailable, trust worthy and so strong that it should hold the accused guilty based on the solitary evidence of the victim. Whether this solitary evidence is unassailable though it is the victim's version, is a million dollar question as far as the present case is concerned.

12. This Court is not able to believe the victim's version fully and therefore, the benefit of doubt naturally goes to the appellant. In such circumstances, this court concludes that the prosecution has failed to substantiate the charges against the appellant.

13. In the result,

- i. The Criminal Appeal is allowed.
- ii. The judgment and orders passed in Spl.C.C.No.2 of 2015 dated 08.04.2016 by the Sessions Court, Karaikal, is set aside.
- iii. The appellant (accused in Spl.C.C. No.2/2015) is acquitted from all



CrL.A.No.788 of 2016

WEB COPY

the offences, of which he is charged. Bail bonds, if any, shall stand cancelled. Fine amount, if already paid, shall be refunded.

iv. This Court places on record its appreciation to Ms. D.Sathya, learned Legal Aid counsel, for her valuable assistance in deciding this case. The High Court Legal Services Committee shall pay her fee, as per rules.

05.07.2024

Index : yes/no
Speaking /Non speaking Order
bga

To

1. The Sessions Judge, Karaikal
2. The Inspector of Police,
Town Police Station,
Karaikal (Cr.No.72/2013)
3. The Public Prosecutor, High Court, Madras.



WEB COPY



Crl.A.No.788 of 2016

R.HEMALATHA, J.

bga

Crl.A.No.788 of 2016

05.07.2024