



Crl.A.No.506 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2024

CORAM :

THE HON'BLE MR.JUSTICE SUNDER MOHAN

Crl.A.No.506 of 2015

K.Ramesh

...Appellant/ Single Accused

vs.

State Rep. by its
Inspector of Police,
Railway Police,
Katpadi, Vellore District.
Cr.No.456/2014

...Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure, 1973, to set aside the Judgment passed by the learned Sessions Judge, Magalir Neethi Mandram, Fast Track Mahila Court, Vellore passed in Special S.C.No.9/2015 dated 03.08.2017 and allow the present Criminal Appeal.



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For Appellant : Mr.S.Parthasarathay

For Respondent : Mr.E.Raj Thilak

Additional Public Prosecutor

Assisted by Mr.C.Aravind

JUDGMENT

This Criminal Appeal has been filed by the sole accused, challenging the conviction and sentence imposed upon him vide judgment dated 03.08.2017 in Spl.S.C.No.09 of 2015 on the file of the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Vellore District.

2(i). It is the case of prosecution that the appellant and the victim along with her parents and her grandparents travelled in a Chennai Mail Train bearing No.12602, from Pallakatt to Chennai and while, the train was proceeding from Jolarpet Railway Station to Katpadi Railway Station, at about 02.55 hours, when the victim was sleeping in the middle berth, the accused with sexual intent invited her, caused intimidation, fear of violence, touched her chin and thereby had committed aggravated sexual assault without penetration punishable offences under Section 10 r/w 9 (m) of the Protection of Children from Sexual Offences Act, 2012, Section 354 of the Indian Penal Code, 1860, and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002.



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(ii) It is further the case of the prosecution that P.W.1/the father of the victim informed the Railway Police Force and had also stopped the train by pulling the chain; that the Railway Police Force Personnel arrested the appellant; that P.W.1 got down from the train at Katpadi Railway Station and lodged a complaint before the Katpadi Railway Police Station in Crime No.456 of 2014 dated 11.12.2014 at about 9.00 hours; that the said complaint was registered by P.W.6/the Sub Inspector of Police and the FIR was marked by Ex.P2; that the complaint given by P.W.1 was marked as Ex.P1; that after examination of all the witnesses, the respondent filed the Final Report for the offences under Section 10 r/w 9 (m) of the POCSO Act, Section 354 of the Indian Penal Code and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act on 09.03.2015 before the Sessions Court, Magalir Neethi Mandram, (Fast Track Mahila Court), Vellore.

(iii) After copies were furnished under Section 207 Cr.P.C., charges were framed against him for the offences under Section 10 r/w 9(m) of the POCSO Act, Section 354 of the Indian Penal Code, and Section 4 of the Tamil Nadu Prohibition of Women Harassment Act.



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(iv) To prove the case, the prosecution examined 8 witnesses as P.W.1 to P.W.8 and marked 4 exhibits as Exs.P1 to P4. When the appellant was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. The appellant/accused neither examined any witnesses, nor marked any documents.

(v) The trial Court, after considering the evidence on record, found the appellant guilty of all the offences and sentenced him as follows:

<i>Offence under Section</i>	<i>Sentence imposed</i>
10 of the POCSO Act	To undergo Rigorous Imprisonment for five years and to pay a fine of Rs.1,000/-, in default to undergo Simple Imprisonment for a period of one month.
4 of the Tamil Nadu Prohibition of Harassment of Women Act	To undergo Rigorous Imprisonment for one year and to pay a fine of Rs.10,000/-, in default to undergo Simple Imprisonment for a period of one month.
No separate sentence was imposed for the offence under Section 354 of the IPC	
The sentences imposed were ordered to run concurrently.	

3.(i) The learned counsel for the appellant submitted that the complaint is false and since P.W.1 and the accused had an altercation the previous night



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regarding sharing of the berth, he had lodged a false complaint; that in the earliest version, namely in Ex.P1/complaint, no details have been given as to the nature of sexual assault said to have been committed by the appellant, and hence, the First Information Report was registered only for the offence under Section 12 of the POCSO Act, 2012.

(ii) The learned counsel further submitted that there are material contradictions in the evidence of P.W.1 to P.W.4 and that an important witness, namely the Railway Police Force Constable, was not examined by the prosecution.

4(i). Mr.E.Raj Thilak, the learned Additional Public Prosecutor, *per contra*, submitted that the motive suggested by the defence for P.W.1 to make a false complaint is farfetched; that P.W.1 had stayed back at Katpadi to lodge a complaint, and it is improbable that he gave a false complaint only because there was an altercation the previous night between P.W.1 and the appellant.



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(ii) The learned Additional Public Prosecutor further submitted that the evidence of P.W.1 to P.W.4 is cogent, and hence, the trial Court was right in holding guilty of the offences under Section 10 r/w 9 (m) of the POCSO Act, 2012, and for the other offences and prayed for dismissal of the appeal.

5. This Court has carefully considered the rival submissions on either side and perused the record.

6. Ex.P1/complaint lodged by the father of the victim at 9:00 hours on 11.12.2014 states that a person misbehaved with his ten-year-old female child. The nature of the harrassment/assault on the victim is not stated in the complaint. It is the prosecution case that P.W.1 stopped the train at 3:30 hours by pulling the chain after the victim complained to him about the misbehaviour. It is also the case of the prosecution that the victim immediately informed her parents as to what happened and as to how the appellant misbehaved with her. There is no reason why Ex.P1/the complaint does not contain the exact nature of the misbehaviour, especially when the respondent chose to register the case under Section 12 of the POCSO Act, 2012.



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7. Be that as it may. P.W.1/the father of the victim would state that the appellant had touched the cheeks and lips of the victim and called her to his seat.

P.W.2/victim herself would state that the appellant had pinched her cheek and called her to his berth. PW3/the mother of the victim, would state that the victim told her that the appellant pinched her cheek. PW4/the grandfather father of the victim, would state that the victim told him that the appellant woke the victim and called her to his berth. P.W.5/the grandmother of the victim; her evidence is similar to the mother of the victim/P.W.3's evidence.

8. From the above, it would be clear that there are contradictions in the evidence of P.W.1 to P.W.5 as regards to the exact nature of the harassment/assault committed by the appellant on the victim. Further, P.W.1 had not spelt out the details of the harassment in the complaint [Ex.P1]. Therefore, from the overall reading of the evidence, it is not possible to conclude that the appellant touched the cheek of the victim with sexual intent. It is also not possible to hold that the appellant assaulted or used criminal force with the knowledge that it was likely to outrage the modesty of the victim. Therefore, this Court is of the view that the offences under Section 10 r/w 9 (m)



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of the POCSO Act, and Section 354 of the IPC are not made out, and the appellant is entitled to be acquitted of the said offences.

9. However, the complaint given by P.W.1 alleges misbehaviour by the appellant. The victim would also state that the appellant pinched her cheek. She was disturbed in the middle of the night, which prompted P.W.1 to stop the train, inform the Railway Police and thereafter, lodge a complaint. Therefore, the act of the appellant would amount to indecent conduct that had caused intimidation and fear for the victim child. Therefore, the appellant is guilty of the offence under Section 4 of the Tamil Nadu Prohibition of Women Harrassment Act.

10. It is reported by the learned Additional Public Prosecutor that the appellant was in custody for a total period of 188 days. In the circumstances, this Court is of the view that the interest of the justice would be served if the appellant is sentenced to a period already undergone for the offence under Section 4 of the Tamil Nadu Prohibition of Women Harrassment Act and to pay a fine of Rs.20,000/- for the said offence in default to undergo one month Simple



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Imprisonment. The fine amount, if any, paid by the appellant shall be adjusted and the appellant is directed to pay the remaining fine amount, failing which he has to undergo the default sentence imposed on him.

11. Accordingly, the Criminal Appeal is partly allowed.

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Index : yes/no
Neutral citation : yes/no
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To

1.The Sessions Judge,
Magalir Neethi Mandram,
Fast Track Mahila Court, Vellore.

2.The Inspector of Police,
Railway Police,
Katpadi, Vellore District.

3.The Public Prosecutor,
High Court, Madras.



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SUNDER MOHAN,J.

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