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Cr1.A(MD)No.333 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	29/10/2024
Date of Pronounced	02/12/2024

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Cr1.A(MD)No.333 of 2016

Chandrasekar : Appellant/Accused

Vs.

The State rep. by
The Inspector of Police,
Watrap Police Station,
Virudhunagar district : Respondent/Complainant

Prayer:- This Criminal Appeal is filed under Section 374(2) of the Criminal Procedure Code, to call for the records to the judgment, dated 23/08/2016 made in SC No.190 of 2014 on the file of the Fast Track Mahila Court, Srivilliputhur and set aside the conviction and sentence imposed against the appellant/accused.

For Appellant : Mr.G.Karuppusamy Pandian
for Mr.R.Karunanithi

For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

J U D G M E N T

This Criminal Appeal is filed against the judgment, dated 23/08/2016 passed in SC No.190 of 2014 by the Fast Track Mahila Court, Srivilliputhur.



2.The case of the prosecution in brief:-

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The accused and the deceased are close relatives and living in the same village. The accused proposed his love with the deceased when she was studying in a school where the accused was working as a part-time teacher. On 31/05/2014 at about 07.00 a.m, when the deceased was proceeding to a common toilet, the accused restrained her and kissed her on the right cheek and informed that no one would dare to marry her. Subsequently, on the very same day at about 11.30 a.m, she committed suicide by pouring kerosene. Upon the above said occurrence, a case in Crime No.115 of 2014 was registered by the respondent police for the offences under section 8 of the POCSO Act, 2012 and section 4 of the TNWH Act. After completing the investigation, final report was filed charge sheeting the accused for the offences punishable under sections 354-A, 306 IPC and section 7 r/w 8 of the POCSO Act and it was taken cognizance by the Fast Track Mahila Court, Srivilliputhur in SC No.190 of 2016. After completing 207 Cr.P.C proceedings, framed the charges for the offences punishable under sections 354-A, 306 IPC and sections 7 and 8 of the POCSO Act.



3.The following charges were framed against the
accused:-

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(i)The deceased was studying 8th Standard in the school where the accused was working as a part-time teacher; the accused proposed his love with the deceased and used to threaten her that she has to accept his love proposal and teased her by touching her body and thereby the accused committed an offence under section 354(A) IPC;

(ii)In continuation of the above incident, the complainant Thangammal told her mother about the misbehaviour of the accused in order to reprimand him; the accused removed from the school where the victim girl was studying; the accused told Thangammal that he was in love with her while she was going to school and on her way back; If she did not love him, he would spread the rumour in the village stating that she has affair with one boy and he would not let her study further; On 31/05/2024 when the complainant Thangammal went to the public toilet, at 7.00 a.m the accused went there and pulled Thangammal's hand near the toilet with sexual intent and kissed her on the right cheek and threatened her that no one would dare to marry her and thereby the accused committed an offence under sections 7 and 8 of the POCSO Act; and



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(iii)That on 31/05/2014 at about 11.30 am, in pursuance of the above said occurrence, the deceased committed suicide by pouring kerosene and thereby the accused committed an offence under section 306 IPC.

4.The accused denied the charges and claimed to be tried.

5.During trial, on the side of the prosecution, 15 witnesses were examined and 11 documents exhibited. Apart from that, 2 material objects were marked. On the side of the accused, no oral and documentary evidence was adduced.

6.**PW1** is the father of the deceased. Some one year prior to the occurrence, the deceased child told him that the accused misbehaved with her frequently. During that time, the accused was working as temporary teacher. On the particular date of the occurrence, the accused stated to have called the deceased, had a conversation and touched her badly and told her that he is in love with the deceased and willing to marry her. That was not liked by the victim girl and she informed the incident to her parents. When the bad activities of the accused were informed to his parents, they did not respond properly. So, decided to complain the same to the school authorities. They contacted the Headmaster of the school and informed the misconduct of



the accused. They promised that after the examination is over, he will remove the accused from the employment. Apart from that, they asked them not to give any police complaint. On the next day itself, the accused was removed from the employment. Even after that, the accused continued his misconduct.

7. On 31/05/2014 at about 07.00 am, when the deceased went to bathroom, the accused grabbing her hands, kissed her, abused and criminally intimated, unless the victim loves him, he will spread the news to others. On one occasion, the misconduct was noticed by one Santhakumar. On seeing Santhakumar, the accused ran away from that place. Again, it was intimated to him by the deceased. They decided to inform the bad conduct of the accused to the villagers. In the meantime, the victim girl poured kerosine herself and set fire. She was immediately taken to the Government hospital, Watrap, where from her statement was recorded. Later shifted to the Government Rajaji Hospital, Madurai where from her dying declaration was recorded by the Judicial Magistrate. On 04/06/2014 at about 01.00 am, she died without responding to the treatment.

8. **PW13** received the intimation from the Government Hospital, Watrap at about 01.15 pm. He went to the hospital, recorded the statement of Thangammal and



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registered a case in Crime No.115 of 2014 under section 8 of POSCO Act. 2012 and section 4 of TNWH Act, submitted the original documents to the court and copies to the concerned higher authorities.

9.**PW14** the Inspector of Police attached to All Women Police Station, Srivilliputhur, took up the investigation, visited the place of occurrence at about 07.00 am and prepared observation mahazar and sketch in the presence of the witnesses, recovered the matchbox and 10 litre white colour kerosene cane through athachi. She recorded the statement of other witnesses. On 01/06/2014 at about 12.00 noon, she arrested the accused, took steps to remand him. On 04/06/2014, she received intimation that the victim girl namely Thangammal died in the hospital. She made arrangements to conduct inquest and also made a request for conducting postmortem. After completing the formalities, handed over the body to the parents, filed alternation report altering the offence from section 8 of POCSO Act and 4 of TNWH Act to section 306 IPC. After that, she recorded the statement of the Medical Officer and other witnesses and filed a report.

10.In the meantime, she was transferred, later the further investigation was taken by **PW15** who is the



successor. After perusal of the records, she obtained legal opinion and filed final report for the offences under section 354A IPC and 7 r/w 8 POSCO Act, 2012 and 306 IPC.

11.PW2 is the mother of the victim girl. She corroborated PW1 over the major portion of the material particulars.

12.PW3 Santhakumar was the eye witness to the occurrence that took place on 31/05/2014 at about 07.00 am, wherein the accused was found misbehaving with the victim girl.

13.PW4 and PW5 are the neighbours who witnessed the suicide attempt of the deceased.

14.PW6 is the another neighbour and she is hearsay witness to the occurrence of suicide.

15.PW7 was working as Headmaster in Thambipatti Panchayat Union Middle School. According to him, the victim girl/deceased was studying in their school. At that time, the accused was working as temporary teacher. He would say that in 2012, PW1 made a complaint that the accused beaten the deceased. He advised the accused not to indulge in such type of activities. The accused was residing in the very same area. After that, the victim completed 8th standard.



He came to know that after that, the present occurrence said to have taken place.

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16.PW8 recorded the Dying Declaration of the deceased.

17.PW9 was working as Medical Officer in the Government Hospital, Watrap. On 31/05/2014 at about 12.10 pm, when he was on duty, the deceased was brought by her mother. The victim was conscious and told him that at about 11.30 am, he suffered burnt injuries at the time of cooking. On his examination, he found 75% of the burn injuries.

18.PW10 conducted postmortem on the body of the deceased. On 04/06/2014 during the postmortem he found that the deceased found 80% of the burn injuries. The cause of death, according to him was because of complication of 80% burns.

19.PW11 and PW12 are are not the material witnesses. With that, the prosecution side evidence was closed.

20.The accused was questioned under section 313(1) (b) of the Code of Criminal Procedure Code about the incriminating circumstances against him. He denied the



evidence of the witnesses as false and stated that a false case has been foisted. No witness was examined on the defence side.

21.At the conclusion of the trial process, the trial court recorded a finding of guilt and sentenced the accused to undergo **5 years Rigorous Imprisonment** and to pay a fine of Rs.10,000/- in default to undergo 6 months simple imprisonment for the offence under section **7 r/w 8 of the POCSO Act, 2012**; sentenced to undergo **7 years Rigorous Imprisonment** and to pay a fine of Rs.10,000/- in default to undergo 6 months simple imprisonment for the offence under **section 306 IPC** and directed the sentences to run concurrently.

22.Against which this criminal appeal is preferred by the accused as appellant.

23.Heard both sides.

24.The fact that the accused/appellant was working as temporary teacher is not denied. Further the fact that he was removed from the temporary employment from the school is also not denied. The time gap between the date of the occurrence and the date of the death is the point, which is relied on by the appellant.



25.Now we will see the dates and events for better appreciation of the facts.

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(i)January 2012, the accused was appointed as temporary staff by PW7 in the school called Thambipatti Panchayat Union Middle School.

(ii)The deceased was studying 6th Standard in 2012.

(iii)A complaint was given by the deceased father stating that the accused assaulted the deceased.

(iv)In the same year, the accused was removed from the temporary employment. The deceased continued her studies and completed 8th standard thereafter. The Dying Declaration says that after removal from the employment, the accused continued the harassment for about two years. The occurrence is on 31/05/2014.

26.This sequence of events indicate the fact that the accused was removed from the employment because of the misbehavior. But however, according to the deceased, as mentioned above torture continued for about two years. Further reading of the Dying Declaration under Ex.P3 indicates that the accused is related to the deceased. According to her, by relationship he is a Junior Paternal Uncle.



27. Whether the time gap from the date of removal of the employment and to the date of suicide assumes importance is a matter to be considered in the light of the evidence on record.

28. Before entering into the above said issue, the preliminary point raised by the appellant must be addressed.

29. According to him, as per the case of the prosecution, the deceased suffered 85% burn injuries. A person, who suffered 85% of the burn injury is incapable of understanding the things and may not be in position to give proper accounts of facts. When the physical and mental condition of the deceased was not sufficiently established by the prosecution, then it must be disbelieved. He is referring to the judgment of the Hon'ble Supreme Court in **Jayamma and another Vs. State of Karnataka [(2021)3 SCC (Cri) 8]**, wherein the following para is highlighted by the learned counsel for the appellant on record.

"14.2. In Chacko Vs. State of Kerla (2003)1 SCC 112, this Court declined to accept the prosecution case based on the dying declaration where the deceased was



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about 70 years old and hand suffered 80 per cent burns. It was held that it would be difficult to accept that the injured could make a detailed dying declaration after a lapse of about 8 to 9 hours of the burning, giving minute details as to the motive and the manner in which he had suffered the injuries. That was of course a case where there was no certification by the doctor regarding the mental and physical condition of the deceased to make dying declaration. Nevertheless, this Court opined that the manner in which the incident was recorded in the dying declaration created grave doubts to the genuineness of the document. The Court went on to opine that even though the doctor therein had recorded "patient conscious, talking" in the would certificate, that fact by itself would not further the case of the prosecution as to the condition of the patient making the dying declaration, nor would the oral evidence of the doctor or the investigating officer, made before the



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*court for the first time, in any manner
improve the prosecution case."*

30. So in the light of the above said contention, now we will go to the evidentiary value of the same, since it is contended by the learned Additional Public Prosecutor that dying declaration was recorded in a proper manner, absolutely nothing is available on record to indicate that the deceased was not in a fit position physically and mentally to give dying declaration. He would rely upon the judgment of the Hon'ble Supreme Court in ***State of Uttar Pradesh Vs. Veerpal and another [2022(4) SCC 741]***.

31. PW8 was working as Judicial Magistrate during the relevant time. She has stated in her evidence that on 31/05/2014, she was working as Judicial Magistrate No.6, Madurai, received intimation from the Government Hospital, Madurai to record dying declaration of Thangammal. At about 03.50 pm, she went to the hospital, made preliminary enquiry with regard to the physical and mental condition of the deceased. At that time, the Medical Officer was also present. The Medical Officer certified that the deceased was in fit state of mind and capable of giving statement. She personally enquired the deceased on that aspect and satisfied that she was in sound statement of mind and capable of giving statement.



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32.PW2 is the mother of the deceased. She has stated that when the victim girl was admitted in Government Rajaji Hospital, Madurai, her statement was recorded by a Judge. After 4 days, she died. We find the certificate of the Medical Officer in Ex.P3 that

"Patient was conscious and oriented while recording dying declaration."

33.Apart from that, the Judicial Magistrate has recorded her preliminary enquiry, after subjective satisfaction of the mental and physical condition of the deceased.

34.Against this evidence, the learned counsel appearing for the appellant would draw the attention of this court by the evidence of PW9, the Medical Officer who admitted and gave first aid treatment to the deceased in the Government Hospital, Watrap. She has stated in her evidence that on 31/05/2014 at about 12.10 noon, the deceased was brought to the hospital. At that time, she was conscious and informed her that at about 11.30 am, when she was preparing food, she suffered burn injuries. On her examination, found 70% burn injuries. She referred the



deceased to the Government Rajaji Hospital, Madurai for further treatment.

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35.From her evidence, it is seen that she suffered 70% of the burn injury, but she was in conscious. But she was of the opinion that if a person suffered 70% of burn injury, he/she will not be in a position to speak. So, the question which arises for consideration is whether this piece of opinion will override the subjective satisfaction recorded by PW8.

36.General opinion of the Medical Officer may not and will not overtake the subjective satisfaction of the Recording Officer. There is nothing on record to discard the evidence of PW8 as to the mental and physical condition of the deceased to give statement. As mentioned above, the general opinion will not par take the character of subjective satisfaction. The evidence of PW8 is corroborated by PW2. So, I am of the considered view that the deceased was in sound state of mind when her statement was recorded.

37.To discredit the evidence of PW8, another argument advanced by the learned counsel for the appellant is that in the dying declaration, since the deceased had burn injuries, her left leg thumb impression was obtained;



So, this itself does indicate that the deceased was not in sound state of mind and body. But the certificate of the Medical Officer as well as the Judicial Magistrate namely PW8, there is a clear indication that not only at the time of commencement of the statement, but she was conscious and fit and the very same stage continued till completion. This is sufficient enough to show that the dying declaration was validly recorded after assessing the both mental and physical capacity of the deceased. Nothing is available on record to discard the evidence of PW8. So, the preliminary point made by the appellant is rejected outright.

38. Another argument touching the dying declaration is that two statements in the form one before the Doctor and another before PW8; The Doctor who certified the capacity of the deceased was not examined on the side of the prosecution.

39. In this context, the learned counsel appearing for the appellant would submit that in view of the above said, Ex.P1 complaint itself is doubtful. We will deal about Ex.P1 after some-time.

40. Now we will see whether there were two dying declarations. Probably this argument is advanced on the ground that the information by the deceased to the Medical Officer namely PW9 regarding the manner of occurrence.



41.As mentioned above, she has stated before PW9 that she suffered burn injuries at the time of cooking. But against this, before PW8, she has stated many things. In the light of the above said, whether the dying declaration reliability will be considered later. But the statement of the deceased before PW9 on this aspect cannot be termed as dying declaration. If at all it can be taken as a statement before the Medical Officer.

42.Now let us come to the main allegation against the accused I.e., the offence sections 7 and 8 of the POCSO Act.

43.Before we go into the dying declaration, we will see the oral evidence of PW1. The father of the deceased stated that the misbehaviour on the part of the accused was brought to his notice, he brought to the notice of the same to the accused parents. But they did not give any proper response. So, he informed the Headmaster of the school. But the Headmaster has not removed the accused from the employment on the date of the occurrence itself.

44.PW2 the mother of the deceased corroborated PW1 on this aspect. Except contradicting PW1 on the aspect of information to the school authorities over the misbehaviour, she has narrated the incident, informed to her by the deceased.



45.PW3 is the brother of PW1. He has stated that on 31/05/2014 at about 07.00 am, he was returning to his house from his field, there was a public toilet in that area. He found the accused grabbing the hands of the deceased, kissing her, criminally intimidated. On seeing him, the accused ran away from that place. After sometime, he heard the suicide attempt committed by the deceased.

46.Whether the evidence of PW3 on this aspect is reliable is the another point to be considered in the light of the dying declaration. That is not stated by the deceased in the dying declaration. More specifically, PW1 and PW2 have not stated in their evidence about the particular incident.

47.In the light of the above, the specific occurrence said to have been taken place on 31/05/2014 as stated by her in Ex.P1 the statement given before PW13, nothing is brought on record to discard the evidence of PW1 to PW3 on this aspect, which is supported by the statement of the deceased before PW13. So, we can take that specific occurrence took place on 31/05/2014 at about 07.00 am is fully established by the prosecution beyond all reasonable doubt.



48.Coming back to the occurrence that said to have been taken place in the school, in the dying declaration she has stated that when other childrens were not available, she was called by the accused to a secluded place. At that time, he misbehaved with her. So, this piece of her information in the dying declaration is corroborated by the evidence of PW1 and PW2 as mentioned above.

49.Coming to Ex.P1 the earlier statement, she has stated that the accused used to touch, kiss her and later he started saying that he is loving her. So, conjoint reading of the evidence of PW1, PW2, Exs.P1 and P3 dying declaration corroborated each other with regard to the occurrence that said to have been taken place in the school.

50.Regarding the further occurrence said to have been taken place after the accused was removed from the school employment, except the occurrence on 31/05/2014, there is no other occurrence established.

51.In this context, the learned counsel appearing for the appellant would submit that Ex.P1 is doubtful, since when both fingers were found burnt, the endorsement that Thangammal put her thumb impression is unbelievable. May be a mistake on the part of PW13, but the father signed



as witness in Ex.P1. Absolutely, there is no possibility for PW13 to record the statement without the statement of the deceased. So, this mistake committed by PW13 in endorsing that left thumb impression was obtained is not sufficient enough to discard the evidence to show that PW1 evidence is doubtful.

52. Another argument of the appellant is that PW2 has stated that when she admitted in the Government Hospital, Watrap, her statement was recorded by the police. That statement was not produced by the prosecution. But a careful reading of the evidence of PW2 does not indicate to the effect that statement was recorded by the police when the deceased was admitted in the Government Hospital, Watrap. She has simply stated that the police proceeded to Watrap does not mean that it referred to the Government Hospital Watrap. May be the Government Hospital, Madurai. So, this argument is also without any substance and is rejected. There is no major issue worth considering has been brought on record by the accused.

53. Per contra, as observed by the trial court the evidentiary value of the dying declaration was correctly upheld and relied since it is corroborated by the evidence of PW1, PW2 and Ex.P1.



54.Coming to the charge under sections 7 and 8 of the POCSO Act, section 7 of the Act reads as under:-

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"7.Sexual assault.—Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault."

55.Now the question which arises for consideration is whether the allegation made against the appellant comes under the definition of section 7 of the Act. So, touching the body of the child with criminal intention will attract section 7 of the Act. Not only the touch made by the accused in the school, but more particularly grabbing of the hands of the deceased and kissing her, criminally intimidating her on 31/05/2014 will attract section 7 of the Act.



56.Regarding the finding of the trial court on this aspect, section 7 of the Act is absolutely legal. No interference is called for.

57.Regarding the offence under section 306 IPC, the learned Additional Public Prosecutor would submit that persisting misbehavior, torture and more particularly misbehavior on 31/05/2014 created circumstance which drove the deceased to commit suicide; the offence under section 306 IPC is clearly made out. So recording the finding by the trial court requires no interference.

58.Per contra, the learned counsel appearing for the appellant would submit that there is no proximity between the sexual misbehavior and the commission of suicide. Absolutely no evidence is available on record that he abetted the commission of suicide. In support of his contention, he relied upon the judgment of the Hon'ble Supreme Court in **Prabhat Kumar Mishra @ Prabhat Mishra Vs. State of U.P and another [2024]3 S.C.R.157: 2024 INSC 172]**

59.In this context, it is submitted by the appellant that in Ex.P3, there is no reference to the occurrence on 31/05/2014 that the accused kissed her and because of that only, she committed suicide. More-over, in



the statement before the Medical Officer namely PW13, she has stated that as if she suffered burn injuries at the time of cocking. This, according to the appellant, shows that there is inconsistency in the case of the prosecution for the charge under section 306 IPC. But the circumstance clearly indicates that this argument is not correct. Why, she has given such a statement, there is no occasion for the prosecution to verify since she died within 4 to 5 hours from the time of admission. Based from this alone, other reliable evidences cannot be thrown away. If it is established that that the accused has created circumstances, which drove the deceased to commit suicide, it is sufficient enough to attract the offence under section 306 IPC.

60.The overall assessment of the sequence of events clearly indicate that the accused persistently following the deceased, caused sexual assault which drove the deceased to commit suicide. Thus, I am of the considered view, this will fall under section 306 IPC.

61.For all these reasons stated above, I find that the judgment of conviction and sentence passed by the trial court requires no interference.



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62.In the result, this criminal appeal is **dismissed**, confirming the judgment of conviction and sentence passed by the trial court.

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To,

- 1.The Fast Track Mahila Court,
Srivilliputhur.
- 2.The Inspector of Police,
Watrap Police Station,
Virudhunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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