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Crl.A.No.55 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.04.2025

PRONOUNCED ON : 16.09.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.55 of 2022

Ajithkumar

... Appellant

Vs.

State By:

The Inspector of Police,
All Women Police Station,
Cuddalore District.
(Crime No.5/2020).

... Respondent

PRAYER: Criminal Appeal is filed under Section 374(2) of Code of Criminal Procedure, to allow the appellant and set aside the conviction and sentence imposed in the judgment dated 30.12.2021 passed in Special Sessions Case No.19 of 2020 on the file of the Special Court (POCSO Cases), Cuddalore.

For Appellant : Mr.R.Bharath Kumar

For Respondent : Mr.L.Baskaran,
Government Advocate (Crl. Side)



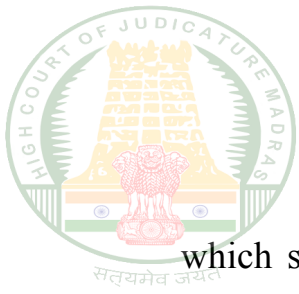
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JUDGMENT

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The appellant was convicted by judgment dated 30.12.2021 in Special S.C.No.19 of 2020 by the learned Sessions Judge, Special Court (POCSO Cases), Cuddalore and sentenced to undergo three years Rigorous Imprisonment and to pay a fine of Rs.2,000/- in default to undergo one month Simple Imprisonment for offence under Section 11 r/w 12 of Protection of Children from Sexual Offences Act, 2012. Challenging the conviction and sentence, this criminal appeal is filed.

2.Case of the prosecution is that the defacto complainant/PW2, father of the victim girl lodged a complaint to the respondent Police on 18.02.2020 stating that on 17.02.2020 at 09.00 p.m., his wife/PW3 came weeping and informed that their daughter, victim girl/PW1, who was studying 9th in CK School of Practical Knowledge, Cuddalore, was regularly subjected to sexual harassment by the Omni Van Driver/appellant for quite sometime. Due to fear, the victim girl/PW1 not informed the sexual harassment to her parents/PW2 & PW3 immediately. In the omni van, the victim girl/PW1 was forced to sit next to the omni van Driver/appellant and the appellant used to keep his hand on the victim girl's thighs and forced the victim to place her hands on his thighs



which she refused and moved to the rear seat. Prior to the occurrence, the mobile number of the victim's mother/PW3 and the appellant were shared by them for communication with regard to school transport. But the same misused by the appellant by sending messages regularly forcing the victim girl/PW1 to send love messages and further he forced the victim girl/PW1 to take nude photographs and send it through Whatsapp. Due to which, the victim girl, a bright student, was unable to concentrate in her studies and her performance dropped down, in fact, she failed in one of the subjects. Unable to bear any further, the victim girl/PW1 had gone weeping and informed her mother/PW3 on 17.02.2020 about the sexual harassment of the appellant. Thereafter, the defacto complainant/PW2 was informed about the incident who lodged a complaint (Ex.P5) to the respondent Police on the next day on 18.02.2020.

3.PW11/Investigating Officer received the complaint (Ex.P5), registered FIR (Ex.P10) in Crime No.5 of 2020 for offence under Sections 11(1) r/w 12 of Protection of Children from Sexual Offences Act, 2012, visited the scene of occurrence, prepared Observation Mahazar (Ex.P6), Rough Sketch (Ex.P11), examined the victim girl/PW1, her parents/PW2 & PW3, recorded their



statements, produced the victim girl/PW1 for medical examination and to the Magistrate for recording 164 statement, thereafter, arrested the appellant and produced him for medical examination. The Doctors/PW6 & PW8 examined the appellant and the victim girl respectively and produced medical records Exs.P7 & P8. On collection of birth certificate (Ex.P2) of the victim girl/PW1 and her 164 statement (Ex.P1), PW11 filed charge sheet before the trial Court.

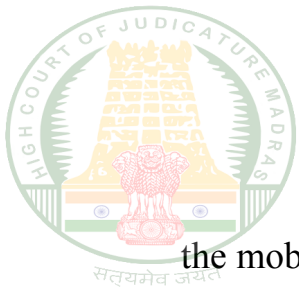
4.During the trial, on the side of the prosecution, PW1 to PW11 examined and Exs.P1 to P11 marked. On the side of the defence, one witness DW1 examined but no document marked. On conclusion of trial, the trial Court convicted the appellant as stated above.

5.The learned counsel for the appellant submitted that the appellant, an Omni Van Driver used to pick up and drop the school children in his van. In his vehicle, more than 15 students from CK School of Practical Knowledge, Cuddalore and other school students used to travel in the van. The victim girl/PW1 along with her younger sister used to travel in the appellant's van. PW1 admits that in the appellant's van along with her one Kanishka, Ajay, Nandakumar and Akash used to travel and she used to sit in the rear seat of the

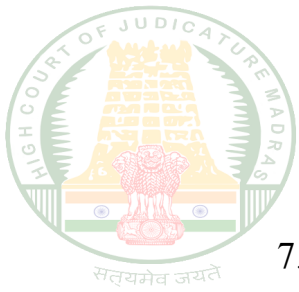


van. PW1 further admits that in the van before picking her and after dropping, there will be students still travelling, hence, she was not alone at any point of time. Even during the school examinations, others students will be travelling and the victim girl never travelled alone. The learned counsel further submits that the victim girl/PW1 very friendly with boys and often touching and playing with them, was objected by the appellant and he warned the victim girl, despite the same, she continued, thereafter, the appellant informed the victim's mother/PW3 about her conduct in the van. This is now become a counterproductive. The victim girl/PW1 being an intelligent girl gave a twist in the complaint (Ex.P5) and projected as though the appellant is the person who misbehaved and caused sexual harassment to her. The victim girl in her 164 statement (Ex.P1) gives one version and in her evidence before the trial Court gives improvised and contradictory statement which was not properly analyzed and considered by the trial Court.

6.The learned counsel further submitted that apart from the sexual harassment during travelling in the van, it was further alleged that the appellant used to regularly send messages stating “I Love You” and other related messages and also directed the victim girl to delete the messages. But

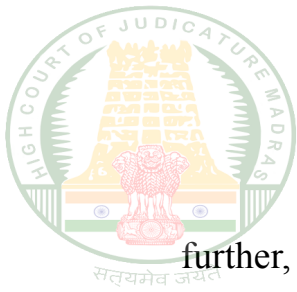


the mobile phone neither of the appellant nor of the victim's mother/PW3 used by the victim girl, seized in this case. Conveniently, the Investigating Officer/PW11 gave evasive answer that on coming to know about the incident the victim's mother/PW3 in anger banged the mobile phone forcefully on the floor and damaged it. This may not be a proper reason. The appellant sending messages to the victim girl or the victim girl sending messages to the appellant, both can be confirmed only if the Call Detail Records collected. But in this case, the Investigating Officer/PW11 failed to take any steps in this regard. Since the entire case rest on the telephonic messages, not collecting these vital documents would cause serious doubt and cut the root of the case. In fact in 164 statement (Ex.P1), the victim girl states that she had been sending messages responding to the message sent by the appellant and she used to delete the messages. Thus, the victim girl to escape from her parents' wrath and gain good name, projected herself as a victim harassed by the appellant and woven an imaginary story intelligently. The Investigating Officer/PW11 not conducted proper and thorough investigation, on the other hand, had merely gone by the version of PW1 to PW3.



7.He further submitted that none of the students who travelled in the omni van of the appellant enquired and examined in this case as witness to confirm the pattern of sitting and travelling in the van. PW5, father of PW3 and maternal grandfather of PW1 examined to show as a corroborative witness. PW3 has not spoken anything about informing her father/PW5 about the sexual harassment of the appellant. Hence, the evidence of PW5 is doubtful. Likewise, PW2, father of the victim girl apart from reiterating the complaint (Ex.P5) as narrated by her wife/PW3, he has not added much. In this case, the other witnesses are Police personnels, who escorted the victim girl and produced appellant for medical examination, and the Doctors (PW6 & PW7), who examined the victim girl and the appellant, the School Headmaster (PW10) examined to confirm the victim girl was a minor on the date of occurrence.

8.He further submitted that in this case, the appellant examined DW1, a minor child, aged about 12 years, who was regularly travelling in the van. DW1 clearly stated that she along with her minor sister are the persons first to get into the van and thereafter only, the victim girl/PW1 gets into the van along with her sister and there are other children who travelled in the van and



further, the front seat would always be occupied by the senior boys and the victim girl as well as DW1 used to sit in the rear of the van. Hence, the story propounded by the victim girl is highly imaginary. To get herself absolved from her own misdeeds, the victim girl shifted the blame on the appellant.

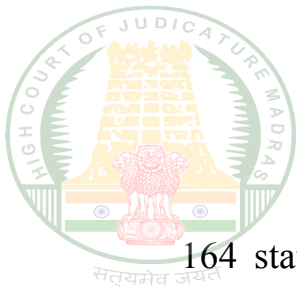
9. In support of his submissions, the learned counsel for the appellant relied on the decision of the Hon'ble Apex Court in *Nirmal Premkumar and Another v. State Rep. By Inspector of Police* reported in **2024 SCC OnLine SC 260** wherein the Hon'ble Apex Court in a similar situation held that there are manifest discrepancies between the statement of the victim recorded under Section 164 Cr.P.C. and her deposition recorded in Court and also considered what is sterling witness and held that the 'sterling witness' should be of a very high quality and calibre whose version should, therefore, be unassailable. Further held that what would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court and there should not be any prevarication in the version of such a witness. In the present case, it is clear there are significant variation between 164 statement (Ex.P1) and deposition before the trial Court by the victim girl. In view of the



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above, the evidence of the victim girl/PW1, her parents/PW2 & PW3 and 164 statement (Ex.P1) of the victim girl are highly doubtful to sustain conviction against the appellant, hence, he prayed for acquittal.

10.The learned Government Advocate (Crl. Side) appearing for the respondent Police filed counter and submitted that the victim girl, aged about 14 years, was studying 9th Standard in CK School of Practical Knowledge, Cuddalore. The victim girl used to travel in the appellant's van to reach her school and to return home. He further submitted that from 01.12.2019, the appellant was causing sexual harassment to the victim girl/PW1 by forcing her to love him and asking her to take nude pictures on her cell phone and to send messages “I love You”. On 17.02.2020, at about 09.00 pm, the victim girl/PW1 informed her mother about the above incident. The father of the victim girl/PW2 lodged a complaint (Ex.P5) on the next day on 18.02.2020. Based on the complaint (Ex.P.5), PW11/Investigating Officer registered FIR (Ex.P.10), took up investigation, visited the scene of occurrence, prepared Observation Mahazar (Ex.P6), Rough Sketch (Ex.P11), examined the victim girl/PW1, her parents/PW2 & PW3, recorded their statements, produced the victim girl/PW1 for medical examination and to the Magistrate for recording



164 statement, thereafter, arrested the appellant, produced him for medical examination. On collection of evidence and materials, PW11 filed charge sheet before the trial Court. During trial, PW1 to PW11 examined and Exs.P1 to P11 marked and on the side of the defence, DW1 examined. The evidence of the prosecution side witnesses are as follows:

<i>Witness</i>	<i>Name of Witness</i>	<i>Deposition</i>
PW1	Victim Girl XXX (aged about 14 years)	Speaks about the incident happened to her
PW2	Venkatesan, Defacto Complainant/Father of the victim girl	Speaks about the occurrence and lodged a complaint (Ex.P5) before the respondent Police
PW3	Udayakumari/Mother of the victim girl	Corroborated the same version of PW2
PW4	Nirmala	Attested in Observation Mahazar (Ex.P6)
PW5	Murugappan/Father of PW3	Corroborated the same version of PW2
PW6	Dr.Dinesh Babu	He examined the accused and issued medical certificate of accused (Ex.P7)
PW7	Vijayalakshmi, HC	Deposed that she had taken the victim girl to Cuddalore Government Hospital for medical examination
PW8	Dr.Suganthi (victim Doctor)	She examined the victim and issued medical certificate of victim (Ex.P8)



Witness	Name of Witness	Deposition
PW9	Sundarapandiayn, HC, AWPS, Cuddalore	Deposed that he had taken the accused to Cuddalore Government Hospital for medical examination
PW10	Divyamary, Headmaster/C.K.School, Cuddalore	She was issued school certificate of victim (Ex.P9)
PW11	Ezhilarasi, Inspector of Police (Investigating Officer)	Deposed that she received the complaint and registered a case and she took up the case for further investigation and went to the scene of occurrence and drew rough sketch and prepared observation mazhar in the presence of witness and examined the witnesses statements and arrested the accused and recorded his confession statement and remanded him into judicial custody. After completion of investigation, filed a charge sheet before the trial Court.

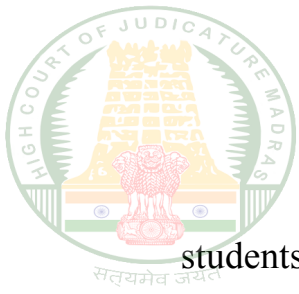
11.He further submitted that non examination of the other children who travelled in the omni van of the appellant and non collection of CDR details will no way affect the case of the prosecution. The victim girl in her 164 statement (Ex.P1) and in her evidence before the trial Court clearly stated the sexual harassment of the appellant in the omni van and the appellant sending love messages and forced her to send her nude pictures. The trial Court finding that the evidence of the victim girl/PW1 is trustworthy, inspiring



confidence and corroborated by the evidence of PW2 and PW3, had rightly convicted the appellant, hence, he prayed for dismissal of the appeal.

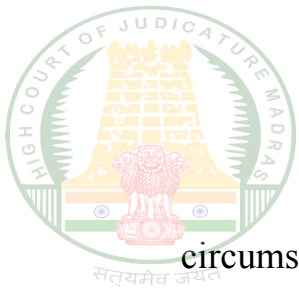
12.This Court considered the rival submissions and perused the materials available on record.

13.In this case, on the date of occurrence, the victim girl was a minor aged about 14 years and studying 9th standard in CK School of Practical Knowledge is not in dispute. The victim girl regularly travelled to school in the omni van driven by the appellant. The other school students also travelled in the same van driven by the appellant. In this case, DW1 is one such student aged about 12 years and she travelled in the omni van of the appellant from 5th std. DW1 identifies the victim girl/PW1 a student who travelled in the omni van of the appellant along with her. DW1 states that she along with her sister are the persons will first to get into the omni van and thereafter, the victim and her sister will board the van and after dropping the victim girl/PW1 in her school, DW1 alights. Hence, the victim girl/PW1 never travelled in the omni van of the appellant alone. DW1 confirms that in the front seat of the omni van senior boys used to sit and she and the victim girl/PW1 and other girl



students usually sit in the rear side of the van. In such circumstances, the question of sexual harassment by the appellant during the travel in the van by placing his hands on victim's thighs and the appellant forced the victim to keep her hands on his thighs, is unbelievable.

14.The other part of sexual harassment is that the appellant used to call in the mobile phone of the victim's mother which was used by the victim girl and he used to send "I Love You" message and other related messages and forcing the victim girl to send nude pictures through Whatsapp. The victim girl/PW1 in her 164 statement (Ex.P1) confirms that she used to send chat messages to the appellant and also delete the same after sometime. This proves her proficiency in handling the smart phone. PW3 is the person using the phone regularly and only when the victim girl comes home, the mobile phone will be given to her for sometime to play game. The victim girl confirms that she and her younger sister would alternatively use the mobile phone of their mother PW3 to play some games for a short while. The time of usage of the mobile phone is not fixed. Hence, sending such messages would be highly risky and there is possibility of the messages coming to the notice of either the victim's sister or to the victim's mother is likely. In such



circumstances, the seizure of the mobile phone of PW3 and appellant and subjecting it to forensic examination and collecting the Call Detail Records will be the right way to determine and confirm culpability and the act of the appellant. PW11/Investigating Officer gives evasive answer for non-seizure of mobile phones that due to frustration, the victim's mother/PW3 banged the mobile phone forcefully to the floor and damaged it. This cannot be accepted for not taking steps to seize the mobile phone of victim's mother/PW3 and appellant and send it for forensic examination. Withholding of this vital material evidences leads to adverse inference. Added to it, the Investigating Officer/PW11 not examined other students who travelled in the omni van of the appellant to confirm the pattern of sitting creates serious doubt in the prosecution case.

15.The observation of the Hon'ble Apex Court in ***Nirmal Premkumar*** case (cited supra) in paragraph No.21 is squarely applicable to the facts and circumstances of the present case. The said paragraph No.21 is extracted hereunder:

“21.Taking a close look at the overall picture, the inference which could reasonably be drawn is that the prosecution's case has been marked by lacklustre efforts,



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revealing a poorly executed endeavour that gives rise to substantial doubts regarding the integrity of the case. The material contradictions apparent in the depositions of prosecution witnesses, including the victim, significantly undermine the credibility of the prosecution version. These inconsistencies in the prosecution's narrative, render it considerably doubtful. On the face of such evident discrepancies, recording conviction becomes untenable, as the foundation of the case crumbles under the weight of doubt. While we might have chosen to overlook other contradictions and solely relied on the victim's account, considering her as a 'sterling witness', her version appears muddled and prevaricated, much less coherent. It is precisely these inconsistencies and contradictions, which are material, that compel us to reject the case set up by the prosecution before the Special Court with which the High Court concurred adopting a flawed approach."

16. In view of the above, it is seen that there are several inconsistencies and contradictions in the prosecution case and further the evidence of the victim girl/PW1, her parents/PW2 & PW3 and 164 statement (Ex.P1) of the victim girl/PW1 does not inspire confidence to sustain the conviction of the trial Court.



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17. In the result, the appellant is acquitted. This Criminal Appeal stands allowed setting aside the judgment dated 30.12.2021 in Special S.C.No.19 of 2020 passed by the learned Sessions Judge, Special Court (POCSO Cases), Cuddalore. Bail bond if any executed shall stand cancelled. Fine amount if any paid shall be refunded.

16.09.2025

Speaking order/Non-speaking order

Index: Yes/No

Internet: Yes/No

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To

1. The Sessions Judge, Special Court (POCSO Cases),
Cuddalore.
2. The Inspector of Police,
All Women Police Station,
Cuddalore District.
3. The Public Prosecutor,
Madras High Court.



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CrI.A.No.55 of 2022

M.NIRMAL KUMAR, J.

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PRE-DELIVERY JUDGMENT IN
CrI.A.No.55 of 2022

16.09.2025