



CrI.A.(MD).No.316 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 20.12.2023

Pronounced on:19.03.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CrI.A(MD)No.316 of 2022

Tamil Selvan

.. Appellant/Sole Accused

Vs.

State, rep. by
The Inspector of Police,
All Women Police Station,
Rajapalayam,
Virudhunagar District.
(Crime No.18/2018)

.. Respondent/Complainant

Prayer: This Criminal Appeal is filed under Section 374(2) of Cr.P.C. to call for the records in Spl.S.C.No.29 of 2018 on the file of the Special Court for Exclusive Trial of cases under Protection of Children from the Sexual Offence Act, 2012, Virudhunagar District, at Srivilliputtur and set aside the judgement dated 25.08.2012 and acquit the accused from the charge framed against him.

For Appellant : Mr.V.Kathirvelu,
Senior Counsel
for Mr.K.Prabhu

For Respondent : Mr.M.Muthumanikkam
Government Advocate (Crl. Side)



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JUDGMENT

WEB COPY The appellant, who is the sole accused in Spl.S.C.No.29 of 2018 on the file of the Special Court for Exclusive Trial of cases under Protection of Children from the Sexual Offence Act, 2012, Virudhunagar District, at Srivilliputtur, has filed this criminal appeal challenging the following conviction and sentence imposed against him by the Special Court for Exclusive Trial of cases under Protection of Children from the Sexual Offence Act, 2012, Virudhunagar District, at Srivilliputtur. The impugned judgment, dated 25.08.2021 is as follows:

<i>Accused</i>	<i>Convicted under Section</i>	<i>Sentence of Imprisonment/ fine imposed</i>
Sole Accused	Section 363 of IPC	Rigorous Imprisonment for seven years and to pay a fine of Rs.5,000/-, in default to undergo Simple Imprisonment for six months.
	Section 10 r/w 9(f) of POCSO Act, 2012	Rigorous Imprisonment for seven years and to pay a fine of Rs.5,000/-, in default to undergo Simple Imprisonment for six months.
		Run consequently



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2. The appellant is the Physical Education Teacher of the Government

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Higher Secondary School, Sivaganapuram, Vilathikulam Taluk, Tuticorin District. The victim girl was studying in the said school and she was a Kabadi player. On 04.08.2018, a National Level Kabadi event was proposed to be held at P.M.Marimuthu Nadar Higher Secondary School, Dhalavaipuram, Virudhunagar District, for which, the victim girl was selected to participate in the said State Level Event. Therefore, P.W.11 the Headmaster of the school asked the appellant to accompany the said victim girl to participate in the said events. Hence, on 03.08.2018, the victim girl got permission from her parents and reached Ettayapuram bus stand, as per the directions of the appellant. From Ettayapuram bus stand, the appellant and the victim girl travelled to Rajapalayam. In Rajapalayam, there was a plan to stay at the house of relative of the appellant. But, the appellant changed his plan and brought the victim girl to Rajapalayam Jeyasantham Lodge and booked a room and committed sexual assault upon the victim girl by inviting the victim girl to share the bed with him. The same was resisted by the victim girl. Thereafter, the appellant held the hands of the victim girl with sexual intent and once again asked her to sleep with him. The victim girl questioned the appellant's behaviour and took the cell phone and rushed



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into the rest room, locked herself and called her relative through phone.

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Thereafter, the said information was conveyed to the jurisdictional police officer. The jurisdictional police officer visited the lodge and found that the victim girl had locked herself inside the rest room and on the request of the police constable, she opened the door and came out and disclosed about the sexual assault committed by the appellant. Thereafter, P.W.15 received the complaint and registered the case in Crime No.18 of 2018 for the offence under Section 363 of IPC and Section 10 r/w 9(f) of the Prevention of Children from Sexual Offences Act, 2012, (hereinafter, for the sake of brevity, referred to as “POCSO Act”) and Section 3(1)(w)(i) and 3(2)(va) of SC/ST (POA) Amendment Act, 2015, under Ex.P.13. After the receipt of the FIR by P.W.15, the investigation was commenced by examining the victim child and other witnesses and he also prepared the observation Mahazer and arrested the accused and conducted the Medical Test and took steps to record the statement under Section 164 of Cr.P.C. After conducting the investigation and examining the further witnesses, P.W.16 filed the final report before the Special Court for Exclusive Trial of cases under Protection of Children from the Sexual Offence Act, 2012, Virudhunagar District, at Srivilliputtur. The same was taken on file in Spl.S.C.No.29 of 2018 by the



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Special Court for Exclusive Trial of cases under Protection of Children from

the Sexual Offence Act, 2012, Virudhunagar District, at Srivilliputtur. The

learned trial Judge issued summons to the accused and after his appearance, served the copies under Section 207 Cr.P.C. Thereafter, he framed necessary charges and questioned the accused. The accused pleaded not guilty and hence, the trial commenced against the accused.

3. To prove the case, the prosecution examined PW.1 to PW.16 and exhibited 21 documents as Ex.P1 to Ex.P21 and produced one material object as M.O.1. The learned trial Judge thereafter questioned the accused under Section 313 Cr.P.C by putting the incriminating material that arose from the evidence of prosecution witnesses. The accused denied the same as false and thereafter, the case was posted for examination of the witnesses on the side of the accused. The accused neither produced any documents nor examined any witnesses on his side. The Court marked a document as Ex.C1.

4. The learned trial Judge, on considering the oral and documentary evidences, convicted and sentenced the appellant for the offence as stated supra. Aggrieved over the same, the appellant preferred this appeal.



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5. Mr.V.Kathirvelu, learned Senior counsel appearing for the appellant made the following submissions:

5.1. The charge under Section 9(f) of the POCSO Act is not made out in this case. According to the learned Senior Counsel, the appellant was P.Ed.(Physical Education) Teacher, but he has not committed any sexual assault in the premises of the educational institution. There was an allegation that he committed sexual assault in the lodge. But no such incident happened. Hence, the conviction and sentence imposed under Section 9(f) of POCSO Act, is liable to be set aside.

5.2. The learned Senior Counsel further submitted that the prosecution has not proved the age of the victim girl. He relied upon the Judgment of the Honourable Supreme Court in the case of *Yuvaprakash Vs. State Represented by the Inspector of Police* reported in *2023 LiveLaw (SC) 538* and stated that the document produced by the prosecution is not enough to prove the age of the victim girl. According to the learned Senior counsel, the original certificate has not been filed and no evidence was produced on the side of the school management to prove the authenticated source of the date of birth made in the said Ex.P9. The victim was +2 student. Even as



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per the evidence, she is more than 17 years and three months. In the said circumstances, without disclosing the correct date of birth, the offence under the POCSO Act is not made out.

5.3. The learned Senior Counsel further submitted that the case of the prosecution that the appellant took the victim girl to the said lodge is not proved with clear evidence. The receipt issued by the Jaisantham Lodge under Ex.P7, does not contain either the name of the appellant nor the signature of the appellant. Hence, the stay at the lodge itself is not proved. In the lodge book, the departure time is mentioned and no check in time is mentioned. Hence, in all aspects, the stay at lodge is not proved.

5.4. The learned Senior Counsel further submitted that to prove the State level events, no evidence is produced. The case of the prosecution that the victim girl was called to participate in the said event is not proved.

5.5. The learned Senior Counsel further submitted that according to the victim girl, she rushed to the rest room and locked herself and called her relative through cell phone. The said relative informed the same to the



police officer. Thereafter, the Police Officer went to the occurrence place.

But, the victim girl admitted that she had no cell phone. Hence, in the absence of the recovery of the cell phone and call details, there is a doubt over the prosecution case.

5.6. The learned Senior Counsel further submitted that according to the Doctor's evidence, there was no injury on the body of the victim girl. In the said circumstances, the sexual assault committed by the appellant has not been proved. He further submitted that not only the victim girl, and also the prosecution witnesses, namely, the mother and the relative of the victim girl admitted that there was no cell phone in the hands of the victim girl and her mother. In the said circumstances, the story of the prosecution that the victim girl informed the occurrence to the relative is not proved.

5.7. He further submitted that the victim girl never stated about which hand was held by the appellant. In the said circumstances, all the infirmities have not been properly considered by the learned trial Judge and conviction was recorded without any proof of the ingredients of the charges.



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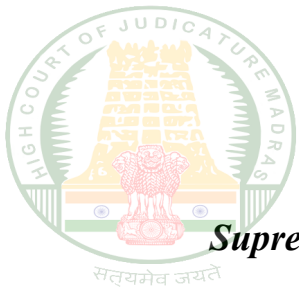
5.8. The learned Government Advocate argued that the fact that the victim never stated which hand was held by the appellant, is not material in this case. To prove the events to be held at Thalaivaipuram, P.W. 11/Headmaster of the school clearly deposed about the incidents. Further, there was no denial on the part of the appellant during the course of the 313 questioning. The evidence of P.W.11 and the victim girl is sufficient to hold that there was a State Level Kabadi Event.

5.9. The learned Senior Counsel further argued that after two and half hours journey only they reached Rajapalayam. During the journey, no mischief was committed by the appellant which is a circumstance to disbelieve the evidence of the victim girl that there was sexual assault at the hands of the appellant in the lodge.

5.10. The learned Senior Counsel relied upon the following judgments of the Honourable Supreme Court:

(i) In the case of *Birad Mal Singhvi Vs. Anand Purohit*, reported in **1988 (Supp) Supreme Court Cases 604**.

(ii) In the case of *Sunil Vs. State of Haryana* reported in **(2010) 1**



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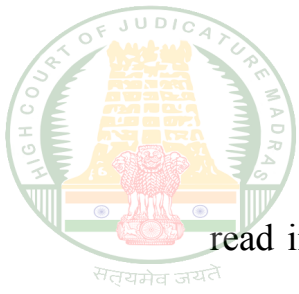
Supreme Court Cases 742.

WEB COPY (iii) In the case of **Suresh Vs. State of Tamil Nadu** reported in (2021) 2 LW (CrI) 495.

(iv) In the case of **Yuvaprakash Vs. State Represented by the Inspector of Police** reported in 2023 LiveLaw (SC) 538.

6. The learned Government Advocate (CrI. Side) submitted that to prove the age of the victim, SSLC Certificate was produced under Ex.P.9 and the Headmaster of the School was also examined under P.W.11. He specifically deposed that she was studying in +2 Standard. Apart from that, P.W.1 and P.W.2 also deposed the same. From the above circumstances, it is clear that the date of birth of the victim girl is 25.05.2001. The same was proved satisfactorily. The SSLC Certificate, is the primary document to prove the age as stated in the Juvenile Justice Act. Hence, the age was clearly proved.

6.1. The learned Government Advocate (CrI. Side) further submitted that the evidence is to be assessed in entirety and evidence of absence of the phone in the hands of victim girl during the cross examination cannot be



read in isolation. The evidence of the police officer and the lodge workers show that the victim girl came out of the rest room only after the arrival of the police officer and disclosed about the occurrence. The non production of the cell phone and other particulars is not material. Upto the arrival of the police party, the victim girl was found inside the bathroom. In the said circumstances, the prosecution proved that the victim girl was subjected to sexual assault. The appellant accompanied the victim girl. He is duty bound to explain under Section 106 of Evidence Act. There was no explanation on the side of the appellant during 313 questioning.

6.2. He further submitted that to prove the stay at lodge, the prosecution examined P.W.4 and P.W.7, who are the staff of the lodge and also produced CD under M.O.1. The Ex.P.7 and Ex.P.8 also were produced. P.W.4 and P.W.7 categorically deposed that the appellant brought the victim girl to stay at the lodge. Apart from that, P.W.8 constable, has seen the victim girl coming out of the rest room in the lodge. Hence, the prosecution clearly proved that the appellant and the victim girl stayed at the lodge.



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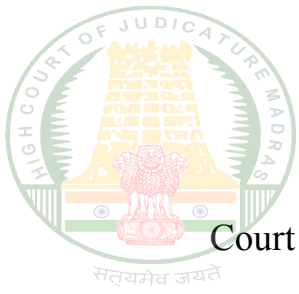
6.3. The learned Government Advocate submitted that in all aspects, the prosecution proved the case beyond reasonable doubt. In the said circumstances, the learned trial Judge correctly appreciated the evidence and convicted the appellant for the above said offences.

7.This Court has considered the rival submissions made by either side and perused the records and also the precedents relied upon by them and the impugned judgment.

7.1.Now the question is whether the conviction and sentence imposed by the Court below against the appellants can be sustained or not?

8.Proof of offence under Section 9(f) and 7 of the POCSO Act:

8.1. The appellant is the P.Ed teacher, in the school of the P.W.11. He called the victim girl to participate in the State Level Kabadi Events. To prove the evidence, P.W.11 deposed before the Court. P.W.11 is the Headmaster of the school. He specifically stated that he got permission to participate in the said event along with the victim girl and also obtained the entry form. The said evidence of P.W.11/Headmaster corroborated the evidence of the victim girl. The victim girl specifically deposed before the



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Court that she was selected to participate in the said events and the same was informed by the appellant. The appellant asked the victim girl to come to the Ettayapuram bus stand. In the Ettayapuram bus stand, the victim girl joined with the appellant to reach the place of the competition namely, P.M. Marimuthu Nadar High Secondary School, Dhalavaipuram, Virudhunagar District on 04.08.2018. The appellant took the victim girl to participate in the State Level Kabadi Events to be held on 04.08.2018. The relationship between the appellant and victim girl is the student and teacher relationship. The victim girl went along with the appellant as he was her school teacher. In the said circumstances, the offences under Section 9(f) of POCSO Act, is clearly made out. Giving a restricted meaning for the word “institution” is against the object of the act. Section 9(f) of POCSO Act, is to be interpreted purposively. By applying the purposive interpretation, the learned senior counsel's argument has no substance. Therefore, this Court concurs with the findings of the learned trial Judge, that the appellant has committed offence under Section 9(f) of POCSO Act.



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8.2.Proof of age of the victim:

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The prosecution produced SSLC Certificate under Ex.P.9 to prove the age of the victim girl. According to the victim girl, her date of birth is 25.05.2001 and the same is corroborated by Ex.P.9. The Headmaster of the school was also examined and he deposed that he produced the said mark statement during the course of the investigation. From the above evidence, the age of victim girl is clearly proved as 25.05.2001. Ex.P.9 is an admissible document and the said document is a primary document to prove the age of the victim girl. As per Section 12 of the Juvenile Justice Act, the SSLC mark Statement is the evidence to be considered as the material document to prove the age of the victim girl. In this aspect, the learned senior counsel appearing for the appellant relied upon the judgments mentioned supra, but they are not applicable to the present case. In all the above cases, the entry in the school records were produced before the Court and the corresponding officer from the school was examined. In the above cases, the SSLC certificate were not produced. In the said circumstances, in the above cases, the Honourable Supreme Court on factual aspects held that the entry in the school record without source of the registration of the date of birth in the entry is not admissible and insufficient to prove the age of the



victim girl. But in the present case, the primary document namely SSLC certificate has been produced, as contemplated under the Juvenile Justice Act.

8.2.1.To fortify the same, it is relevant to extract the Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007, as follows:

*“12.Procedure to be followed in determination of age:
(1) in every case concerning a child or a juvenile in conflict with law, the Court or the Board or as the case may be the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.*

(2)The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining

(a) (i) the matriculation or equivalent certificates, if



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available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child.....”

8.2.2. From the above reading of the rule, the primary evidence to prove the age of the victim is SSLC Certificate. In the absence of the said certificate, other documents are to be looked into. Only, in the category of the “other documents”, the contents of the document relating to the date of birth has to be proved. In this case, it is not necessary to prove the same. Further, the Ex.P.9 is the SSLC Mark Statement and the same is admissible and the same has statutory force to prove the age of the victim. Even the accused has not pleaded anywhere that the victim girl is more than 17 years. In the said circumstances, the age of the victim was below 18 at the time of the occurrence and hence the learned Senior Counsel's submission that the POCSO Act is not applicable, cannot be accepted.



9.Proof of offence under Section 7 of the POCSO Act:

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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.

The said Section 7 of the POCSO Act clearly states that ***“thus any other act with sexual intend which involves physical contact without penetration would amount to sexual assault”***. In this case, the appellant, being a physical Education Teacher at the school where the victim is studying, called to participate in the State Level Kapadi events proposed to be held on 04.08.2018 at P.M.Marimuthu Nadar Higher Secondary School, Dhalavaipuram, Virudhunagar District. P.W.11, Head Master of the School



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gave permission to take the victim girl and participate in that event.

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Therefore, appellant asked the victim girl to join him at Ettayapuram Bus stand in order to take her to Dhalavaipuram. After their journey from Ettayapuram to Dhalavaipuram, the appellant took a room at lodge. Apart from the victim's evidence, P.W.4 and P.W.7 have also deposed that the appellant brought the victim girl to stay at the lodge. Ex.P.7 and Ex.P.8 also produced. Further, M.O.1(CD) has also been marked. In the room, the appellant and the victim girl alone stayed. At that time, when the victim was asked to sleep with him, she resisted. The appellant held the hand of the victim girl with sexual intent and misbehaved with her and forced her to sleep with him in his bed. Immediately, she got frightened seeing the behaviour of the appellant, she took the cellphone and rushed into the rest room and locked herself and called her relative through her phone. The relative conveyed the message to the Jurisdiction Police and the information reached the police officers. P.W.6, 7 and P.W.8 entered into the room of the appellant. Only after all the witnesses asked her to open the door, the appellant opened the door with fright. The said circumstance itself, shows the appellant's guilt intention. After opening the main door, the victim girl did not open the door of the rest room. Only after hearing to



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voice of P.W.8 who was the police officer, the victim girl opened the rest room door and came out and disclosed about the sexual assault committed by the appellant to P.W.6, P.W.7 and P.W.8. The evidence of the victim girl is cogent and trustworthy and she withstood the cross examination. This Court finds that no motive was attributed against the victim to make the false allegation against the appellant and no circumstances were elicited during the examination of the prosecution witnesses. The police officers/ P.W.6 and 7 are neither inimical to the appellant nor deposed with motive against the appellant. In the said circumstances, the prosecution clearly proved all the ingredients of the sexual assault. Therefore, this Court concurs with the finding of the learned trial Judge that the appellant committed the offence of sexual assault upon the victim girl.

10. Non recovery of Cellphone:

The learned senior Counsel seeks to disbelieve the evidence of the victim and police Officers on the ground of non-recovery of cellphone. According to the learned senior Counsel, the prosecution case is that only through the cellphone the information was transmitted. In that event, recovery of the cellphone is a material one. The appellant never disputed the



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company of the victim girl in the lodge. He also did not dispute the arrival of the police Officers and opening of the door of the lodge room. P.W.6, P.W.7, and P.W.8 clearly deposed about the company of the appellant with the victim in the room and only after ascertaining the voice of P.W.8 namely Police Officer, the victim girl came out of the rest room and informed about the sexual assault committed by the appellant to P.W.8. In this aspect, evidence of the victim and the evidence of P.W.6, P.W.7 and P.W.8's are cogent and trustworthy. There is no reason to disbelieve their evidence. When the evidence of the victim, P.W.6, P.W.7 and P.W.8 are cogent and trustworthy, the lapse on the part of the investigating Agency to recover the cellphone is not a material one. Hence, this Court rejects the argument of the learned senior Counsel that the court has to disbelieve the prosecution case on the ground of the non recovery of the cellphone.

11.Other contentions raised by the appellant:

The submission of the learned Senior Counsel that the victim girl has not specifically stated as to which hand was held by the appellant, is not material. The above omission is not material in this type of case. The victim girl has clearly stated that he asked her to share the bed and also caught her



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hand. The learned Senior Counsel submitted that they travelled two hours in the bus to reach Rajapalayam without committing any mischief. It is not a ground to disbelieve her evidence about the alleged sexual assault upon her in the room. Initially, the appellant promised to stay at his relative house. The shifting of the place of residence is a strong circumstance to prove his guilty mind to commit sexual assault on the victim girl. In the said circumstances, this Court finds no reason to accept the contention of the learned senior Counsel.

11.1.Therefore, in all aspects, this Court finds no merits in the contention of the appellant and the conviction passed by the learned trial Judge is well merited and this Court finds no reason to interfere with the findings rendered by the learned trial Judge and upholds the conviction under Section 9(f) and 7 of the POCSO Act imposed against the appellant in the impugned judgment.

12. A physical education teacher should have acted as a Guru to give utmost care and encouragement to the said victim girl, in order to uplift her life and display her talent and ability to the nation. More particularly, the physical education teachers should act as a parent of the victim girl and his



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relationship should be in the nature of parental propinquity. The teachers should understand the difference between platonic relationship and amorous relationship. High morality is expected from them. The Physical Education teacher should have “in loco parentis” approach towards students. The said requirement from the physical educational teacher is the need of the hour.

12.1.The father of the victim girl had died. The victim girl's family belongs to Scheduled Caste and her mother is a coolie worker. She was studying +2. She was one of the best Kabadi players. Even as per the evidence of the P.W.11, among number of students she was the most deserving person to participate in the State Level events and she was waiting for the participation in the State Level competition. The poor victim girl already lost her father. In the said circumstances, the mother of the victim girl who belongs to the Scheduled Caste with all trust entrusted the custody of the victim child with the appellant, who is none other than her Physical Educational Teacher, with expectation that he would help her to reach the top position. The said trust was completely destroyed by the appellant by committing this type of sexual assault. When the victim girl refused at the first instance, the appellant should have realized his responsible duty and avoided the incident. But his lust drove him to abuse

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the girl. Immediately, the victim girl rushed to the bathroom and locked the door during the night hours till the Police Officers reached to save her.

Unfortunately, the appellant's mind was corrupt with the sexual pleasure which has led to this horrible incident.

12.2. Similar circumstances have arisen before the Hon'ble Supreme Court and in a similar prayer for reduction of punishment in the case of the domestic enquiry, i.e., from dismissal from service for the charge of sexual abuse on female students, the Hon'ble Supreme Court refused to accept the same and observed as follows in the case *Avinash Nagra v. Navodaya Vidyalaya Samiti* reported in **1997 (2) SCC 534**:

Education to the girl children is nation's asset and foundation for fertile human resources and disciplined family management, apart from their equal participation in socio-economic and political democracy. Only of late, some middle-class people are sending the girl children to co-educational institutions under the care of proper management and to look after the welfare and safety of the girls. Therefore, greater responsibility is thrust on the management of the schools and colleges to protect the young children, in particular, the growing up girls, to bring them up in disciplined and dedicated



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pursuit of excellence. The teacher who has been kept in charge, bears more added higher responsibility and should be more exemplary. His/her character and conduct should be more like Rishi and as loco parentis and such is the duty, responsibility and charge expected of a teacher. The question arises whether the conduct of the appellant is befitting with such higher responsibilities and as he by his conduct betrayed the trust and forfeited the faith whether he would be entitled to any reduction of sentence? In the considered opinion of this Court, his request to reduce the sentence deserves to be rejected.

In the said circumstances, this Court declines to reduce the sentence imposed by the learned Trial Judge.

13. Enhancement of the Compensation:

Due to the above incident, the victim girl has not continued her education. The career of a child who was eligible and competent to be a State level player has come to an end with the said event. The learned trial Judge only awarded Rs.50,000/- as a compensation. Considering the fact that the victim girl is hailing from poor schedule caste fatherless family and she is unable to continue her study and also she has undergone humiliation



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at the hands of accused at odd hours till the arrival of the police Officers,

this Court is inclined to enhance the compensation from Rs.50,000/- to Rs. 5,00,000/-.

14.Conclusion:

Accordingly, this Criminal Appeal stands dismissed and the conviction and sentence passed by the Special Court for Exclusive Trial of cases under Protection of Children from the Sexual Offence Act, 2012, Virudhunagar District, Srivilliputtur, in Spl.S.C.No.29 of 2018, dated 25.08.2012 is hereby confirmed and the victim compensation authority is directed to give the enhanced compensation to the victim within four(4) weeks from the date of receipt of copy of this Order.

15.Direction to the State Government:

“ Imparting Education is the most important function of State. In these days, it is doubtful that whether any child may reasonably be expected to succeed in life if he is denied the opportunity of education.¹ Education is the means to promote intellectual, moral and social democracy². Education kindles its flames for pursuit of excellence, enables and ennobles the young mind to sharpen his or her intellect more with reasoning than blind faith to



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reach intellectual heights and inculcate in him or her to strive for social equality and dignity of person³. Education, therefore, transforms the social order by promoting a healthy nationalism and the spirit of internationalism.⁴

15.1. It is the Constitutional obligation of the state, to impart sports education and promote sports culture. As sequel, it is a paramount duty to identify and nurture suitable talented sports persons without any discrimination based on caste, community or religion. To achieve the same, State should take dedicated steps to prevent sexual harassment and sensitize coaches on prevention strategies, since they as “gurus” are grooming and nurturing the young talents into future champions.

15.2. The right to enjoy a safe and supportive sport environment is fundamental right of every female sport person. A healthy sport system needs the prevention of sexual harassment and abuse inside and outside sport. Safeguarding athlete’s development and pushing for achievement are two sides of performance coin. Performance success is linked to support and nurturing as much as it is to “mental toughness”.



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15.3.The constitutional obligation of this Court does not end with granting enhanced compensation to the victim of this case, it continues to remind the statutory authorities to see no such incidents happen. Therefore this Court perused volumes of the report relating to the “*prevention of harassment and abuse in sport*” all over world including the various reports of “UNODC”, “Canada Prevention of harassment and abuse in sports policy (PHAS)” and USA's Special Act, namely, “*protecting the young victims from sexual abuse and safe sport authorisation Act*” and various UN declaration of Child Rights and Women Rights. This Court also perused the report published on 08.07.2022 in “UNGANDER” under the name “the sexual harassment in sports in India” in which, it is observed that sexual harassment in sports in India is at an all time high. Therefore, this Court inclines to deliberate the discussion of this case to further the interest of the future of the Women Sports system.

15.4.It is relevant to note the following statement of Kirsty Duncan the Canadian Deputy Leader of the Government in the house of Commons, relating to the sexual abuse in Canadian sport:



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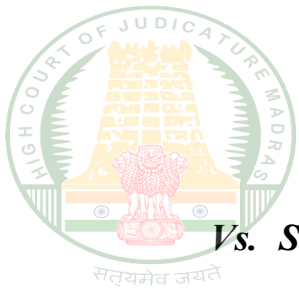
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“Abuse is a dirty hidden secret in sports and what people are seeing is the tip of the iceberg.”

“The problem of sexual assault, abuse, and harassment in sport is multifaceted and deep rooted. It is about the assault, abuse, and harassment of athletes by coaches and trainers and their support staff”.

15.5.Therefore, this Court feels to act swiftly and impose tough punishment on the person who is found guilty of sexually harassing sport women. Perpetrator of the said crimes are also to be suitably punished and to take prompt action new form of measurement in the form of legislature is timely required. Therefore, this Court issues direction to the Chief Secretary Government of Tamilnadu, to address the issue of protection of women participants in sports from sexual harassment in the interest of the sports Education and transparent participation of women in sport within a period of six months from the date of receipt of a copy of this order.

15.6.Till the Government addresses the above issue, this Court further cast upon the duty to protect the poor sport victim from the sexual harassment. The Hon'ble Supreme Court in the case of *Vishaka and others*



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vs. State of Rajasthan reported in **1997 (6) SCC 241** has framed the following guidelines till the suitable legislature is brought on record with the following observation:

“16. In view of the above, and the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at workplaces, we lay down the guidelines and norms specified hereinafter for due observance at all workplaces or other institutions, until a legislation is enacted for the purpose...”

and also other cases the Hon'ble Supreme Court framed its guidelines till the legislature would occupy the field in the said area. Here, from the various reports, it is clear that women athletes are subjected to open invitation for sexual intercourse, stroking, squeezing, groping, offensive comments, offensive texts and e-mails, rape and attempt to rape. Subtle forms include staring, Intimidating through innuendos; and, victimization includes termination of contract on grounds of indiscipline, withdrawal of tasks or sports related sanctions transfer, isolation, altering job responsibility etc. Research demonstrates that sexual harassment and hazing/ bullying in sport seriously and negatively impact on women athletes' physical and

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psychological health. It can result in impaired performance and lead to athlete drop-out, and serious health consequences include psychosomatic illnesses, anxiety, depression, substance abuse, self harm and suicide.

15.7.In this case also, after this incident, the victim has not continued her studies and she also discontinued her participation from the sport event. Therefore, in the interest of justice and also to achieve the social justice, this Court issues direction to the State Government to accommodate either parents or guardian of the girl at the state cost during sports competition in order to avoid sexual harassment at the hands of coaches and organizers of competition”.

16.List this case for reporting compliance in the 2nd week of February 2025.

19.03.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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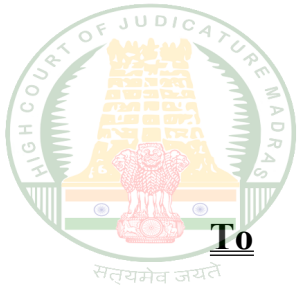
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To

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1. The Special Court
for Exclusive Trial of cases under Protection
of Children from the Sexual Offence Act, 2012,
Virudhunagar District,
at Srivilliputtur.
2. The Inspector of Police,
All Women Police Station,
Rajapalayam,
Virudhunagar District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
4. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN,J.

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Pre delivery Judgment made in
CRL.A(MD).No.316 of 2022

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