



BAIL SLIP

The Petitioner herein/Accused Viz., Shahees was released on bail in CrI.M.P.No.1 of 2015 in CrI.A.No.51 of 2015 dated 22.06.2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Criminal Appeal No.51 of 2015

Shahees

... Appellant/Accused

-Versus-

State Rep. by
The Inspector of Police,
W25, All Women Police Station,
T.Nagar,
Chennai 600 017.
[Crime No.2 of 2013]

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C. challenging the conviction and sentence imposed on the appellant by the learned Sessions Judge, Magalir Neethimandram, Chennai, in S.C.No.247 of 2013 dated 22.12.2014.

For Appellant : Mr.V.K.Sathiamurthy

For Respondent : Mr.M.Maharaja,
Additional Public Proscutor



JUDGEMENT

(Judgement of the Court was delivered by S.NAGAMUTHU, J.)

The appellant is the sole accused in S.C.No.247 of 2013 on the file of the learned Sessions Judge, Magalir Neethimandram, Chennai. He stood charged for offences under Sections 376(f) (g), 324 and 506(i) of IPC and Sections 5(g) and 6 of The Protection of Children from Sexual Offences Act, 2012 [In short, "the POCSO Act"]. The trial court, by judgement dated 22.12.2014, convicted the accused under Section 5(g) and 6 of The Protection of Children from Sexual Offences Act, 2012 and under Section 324 of IPC. The trial court, however, acquitted the accused from the charge under Sections 376(f)(g) and 506(i) of IPC. For the offence under Section 324 of IPC, the trial court sentenced the accused to undergo rigorous imprisonment for two years and for the offence under Section 5(g) and 6 of the POCSO Act sentenced him to undergo imprisonment for life. Challenging the above said conviction and sentence, the accused has come up with this criminal appeal.

2. The case of the prosecution in brief is as follows:- P.W.1 is the mother of P.W.2, a female child hardly aged 3 years and 9 months at the time of occurrence. P.W.1 was deserted by her husband. She was living along with P.W.12 and a male child. P.W.2 is the mother of P.W.1. The appellant/accused and P.W.1 were residing in their respective house located in the very same compound at Pachaiyappan Nagar, Chennai. The accused was running a readymade garment stores at Ramanathan Street, T.Nagar, Chennai. P.W.1 used to go to the said shop for purchasing garments. Thus, P.W.1 became very close to the accused. P.W.1 was working in a massage centre. It was her practice, to leave her child [P.W.12] in the custody of the accused at his shop whenever she would go for her job. She would usually return from her work spot between 07.00 p.m. and 08.00 p.m. and take her child back to her house. Thus, the child would normally be in the custody of the accused every day between 10.30 a.m. to 07.30 p.m. in his shop.

3. On 16.01.2013 at 10.30 a.m., in the usual course, the child was left in the custody of the accused in the shop by P.W.1. By about 02.00 p.m. on the same day, it is alleged that the accused took the child behind the garments rack fixed in the garments shop of the accused, undressed her, hugged her and bite her and also sexually exploited her by inserting his penis into her vagina. One Mr.Mohammed Kani, who was a juvenile accused and was working under the accused, aided him to commit the said crime. Since the child cried out of pain, in order to make her silent, it is alleged that the accused attacked her with stick and also criminally intimidated her not to shout and



not to disclose about the occurrence to anybody. According to the further case of the prosecution, at 07.30 p.m., P.W.1 took back her child [P.W.1] from the shop to her house. She found that there were injuries on the person of the P.W.12. When she inquired, the child told that the accused and juvenile accused-Mohammed Kani had sexually exploited her and attacked her. It is the further case of the prosecution that on 17.01.2012 P.W.1 took the child to Kanchi Kamakoti Child Trust Hospital at Chennai. On intimation from the hospital, on 17.01.2012, P.W.21, the Inspector of Police, All Women Police Station, Thiyagaraya Nagar, went to the hospital, recorded a statement from P.W.1 and on returning to the police station, she registered a case in Crime No.2 of 2013 under Sections 324, 354, 376, 511, 506(ii) of IPC and Sections 7 r/w 8 of the Protection of Children from Sexual Offences Act, 2012 against the accused and the juvenile accused-M.Mohammed Kani. Ex.P.1 is the complaint and Ex.P.14 is the FIR. She forwarded both the complaint and the FIR to the court and took up the case for investigation.

4. P.W.21, thereafter, went to the place of occurrence, prepared an observation mahazar and a rough sketch in the presence of witnesses. At 02.00 p.m. , he arrested the accused and the juvenile accused in the presence of the witnesses. She forwarded both the accused and the juvenile accused to the doctor for medical examination. The doctors opined that the accused and the juvenile accused were capable of performing penile sexual intercourse with a woman. P.W.21 in the course of investigation, examined the doctors who treated P.W.12. She also examined many more witnesses and recorded their statements. On completing the investigation, P.W.21 laid charge sheet against the accused. So far as as the juvenile accused-M.Mohammed Kani is concerned, he has been proceeded against before the juvenile justice board.

5. Based on the above materials, the trial court framed charges as detailed in the first paragraph of this judgement. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 21 witnesses were examined, 15 documents and 7 material objects were marked.

6. But, unfortunately, no vital witness, who was expected to speak about the occurrence or circumstances relating to the occurrence has supported the case of the prosecution including P.W.1. P.W.1 in her evidence has stated that on 15.01.2013, when she was returning in her motor cycle along with P.W.12, she and her child [P.W.12] fell down from the motor cycle in which P.W.12 sustained injuries. On 16.01.2013 with the said injuries on the person of P.W.12, she left her in the custody of the



accused in the garments shop. She has further stated that on returning from her work place between 07.30 p.m. and 08.00 p.m. she took back P.W.12 to her house. She has also stated that for the purpose of treatment for the injuries sustained on 15.01.2013, she took the child [P.W.12] to the hospital. In the hospital police came and obtained her signatures in a few blank papers. Thus, she has not stated anything incriminating against the accused. She was treated as hostile.

7. P.W.2 is the mother of P.W.1. She has stated that she did not know anything about the occurrence. She was also treated as hostile. P.W.3 is an auto driver. He has stated that P.W.1 took a child [P.W.12] in his auto around 10.00 a.m. - 10.30 a.m. on 16.01.2013 and left her at Ramanathan Street, T.Nagar, Chennai. P.W.4 has stated about the preparation of the observation mahazar and the rough sketch by the police at the place of occurrence. P.W.5 is yet another auto driver. He has stated that, one day, a woman travelled in his auto-rickshaw. He has not stated anything about P.W.1 or the accused. P.W.6 is the owner a shop situated near the place of occurrence. He has stated that he heard about the occurrence. P.W.7 is yet another owner of a shop situated near the place of occurrence. He turned hostile and he has not stated anything against the accused. P.W.8 has spoken about the arrest of both the accused as well as the juvenile accused on 17.01.2013. P.W.9 is the landlord of the accused. He turned hostile. P.W.10 is the husband of P.W.1. He has stated that P.W.1 is living separately along with P.W.12. He has also not stated anything incriminating against the accused. He has spoken about the occurrence only on hearsay information. P.W.11 has spoken about the photographs taken at the place of occurrence.

8. P.W.12 is the alleged victim. At the time of occurrence she was hardly aged 3 years and 9 months old and at the time when she was examined in court, she was 4 years and 6 months old. She has not stated anything against the accused at all. During the course of examination, she has stated that the injuries on her were sustained on the previous day when P.W.12 lastly left at the shop of the accused. Although a number of questions were put to her in an attempt to elicit something against the accused, she has not uttered anything incriminating against the accused. She has gone to the extent of saying that when the doctor asked her as to how she had sustained injuries, she gave the details. She has further stated that the accused looked after her well. Thus, she has not uttered even a single word against the accused. P.W.13 has not stated anything incriminating and he has only stated that the accused and the juvenile accused were staying in a room which was under his control.



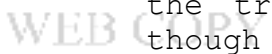
9. P.W.14 is the doctor by profession. According to him, on 17.01.2013, when she was working at Kanchi Kamakoti Child Trust Hospital, P.W.12 was brought before him by P.W.1 for treatment. The child was then weeping. There were contusions on the person of the child. P.W.1 told that the father of the child had beaten the child. PW.14, the doctor, has further stated that after treatment the child was discharged from the hospital at 1.30 p.m. on the same day.

10. P.W.15, Dr.Sumathi, has stated that P.W.1 along with the child [P.W.12] was brought to the Government Women and Children Hospital, Egmore at 05.30 p.m. on 17.01.2013 by the police. She found a number of injuries on the person of the child. Vaginal swab was taken from the child, but, according to the report, there was no spermatozoa detected. P.W.16 Dr.Vasanthi has stated that P.W.12 was under treatment at Kanchi Kamakoti Child Trust Hospital from 17.01.2013 onwards and on 18.01.2013 she examined her. She also found a number of contusions on the person of P.W.12. P.W.17 Dr.Mohanavel, has stated that the child was brought to the Government Children Hospital, Egmore, on 17.01.2013. He found as many as 11 contusions on the body of the child. He admitted her in the hospital. P.W.18 Dr.Thiurvenkatam has stated that he examined the accused and gave opinion that he was fully matured and capable of performing penile sexual intercourse with a woman. P.W.19, Dr.Varadhan, has spoken about the treatment given to the child in the hospital. P.W.20, the then XXIII Metropolitan Magistrate, Chennai has stated that she had recorded the statements of P.Ws.1 and 12 under Section 164 of Cr.P.C. According to her, P.W.1 refused to make any statement. She has further stated that P.W.12 was unable to make any statement due to immaturity. Therefore, according to P.W.20, no statement was recorded from P.W.12. P.W.21 has spoken about the registration of the case and the entire investigation done by her and also the filing of charge sheet against the accused.

11. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C. he pleaded innocence. However, he did not choose to examine any witness nor did he mark any document on his side.

12. Having considered all the above, the trial court convicted the appellant/accused as detailed in the first paragraph of this judgement. Challenging the above said conviction and sentences, the accused is now before this Court with the present criminal appeal.

13. We have heard the learned counsel appearing for the appellant/accused and the learned Additional Public Prosecutor



14. The learned counsel for the appellant would submit that the trial court has convicted the appellant on mere surmises though there is no evidence at all against him to prove the charges.

16. Even to raise the presumption under Section 29 of the POCSO Act, 2012, there are no fundamental facts available to give a rise to such presumption. At any rate, in our considered view, the trial court has convicted the accused only on mere surmise which is illegal. Thus, we hold that the prosecution has failed to prove the case beyond all reasonable doubts and so, the appellant/accused is entitled for acquittal.



17. In the result, this criminal appeal is allowed. The conviction and sentences imposed on the appellant by the trial court are set aside and he is acquitted from the charges under Section 324 of IPC and Sections 5(g) and 6 of the Protection of Children from Sexual Offences Act, 2012 also. Fine amount already paid, if any, shall be refunded to him. The bail bond executed by the appellant shall stand terminated.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

svki /kmk

To

- 1.The Sessions Judge,
Magalir Neethimandram,
Chennai.
- 2.The Inspector of Police,
W25, A.W.P.S.T.Nagar,
Chennai-600 017.
- 3.The Superintendent,
Central Prison,
Puzhal, Chennai.
- 4.The Chief Metropolitan Magistrate,
Egmore, Chennai (For Information)
- 5.The 17th Metropolitan Magistrate,
Saidapet, Chennai.
- 6.The Public Prosecutor,
High Court, Chennai.
- 7.The Section Officer,
Criminal Section,
High Court, Madras.

+3cc's to Mr.C.Rajan, Advocate, S.R.No.30732

Cr1.A.No.51 of 2015

PUR(CO)
CA(22/08/2016)