

BAIL SLIP

The Petitioner/accused Viz, P.Silambarasan aged 25 years S/o.Pramasivam was directed to be released on bial vide order in CrI.M.P.No.1 of 2011 in CrI.R.A.No.584/2011 dated 17.4.2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 27.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.A.No.584 of 2011

P.Silambarasan ...Appellant/Accused

-Vs-

State Through;
The Assistant Commissioner of Police,
Law and Order (South)
Coimbatore City,
Pothanure Police Station,
Coimbatore.
(Crime No:418 of 2010).Respondent

Prayer Criminal Appeal filed under Section 374(2) of Cr.P.C., to call for the records in SPL.S.C.No.5 of 2011 on the file of the Learned Principal District and Sessions Judge and P.C.R.Judge at Coimbatore, and set aside the judgment and order of conviction dated 05.08.2011 and acquit the appellant by allowing this appeal.

For Petitioner : Mr.R.Ganesh Kumar

For Respondent : Mr.T.Shanmugarajeswaran
Government Advocate (CrI.Side)

J U D G M E N T

The present Criminal Appeal has been filed seeking to set aside the judgment of conviction dated 05.08.2011 passed by the learned Principal District and Sessions Judge and P.C.R.Judge at Coimbatore for cases under POCSO Act in SPL.S.C.No.5 of 2011.

2 The case of the prosecution is that the age of the victim girl was 7 years and she was born on 04.02.2004. Nine years before, on 11.04.2010, the victim girl was studying in 1st standard, in a mid day she was playing in her neighbours house with her friends, while she was in thirst she went to her home for drinking water, at that time, the accused took her to the bathroom and on compulsion, had sexual relationship with her. The said incident was seen by P.W.7, suddenly the appellant thrown a stone on P.W.7. Therefore, P.W.7 went and informed to P.W.8. Mother of the victim girl returned home in the and P.W.7 and P.W.8 have informed to the mother of the victim girl about the incident. The parents of the victim girl went to the appellant's house and asked about the incident, but the appellant has not responded properly. Based on the complaint, preferred by the victim girl's father, the respondent registered a case in Crime No. 418 of 2010. After investigation, charge sheet has also been filed by the Inspector of Police, against the accused for offence under Sections 376 IPC and Section 3 (I) (XII) SC/St Act.

3 After completion of legal procedure and formalities, charges were framed for offence under Section 376 IPC and Section 3 (I) (XII) SC/ST Act. In order to prove the case of the prosecution, before the trial Court, on the side of the prosecution, P.W.1 to P.W.18 were examined and Ex.P1 to Ex.P18 were marked. After completion of the investigation, on the side of the appellant, no witnesses was examined and no document was marked. The Sessions Court, after completing the trial and hearing the arguments and on a perusal of the materials, found the appellant/accused guilty and convicted him for the offence under Section 376 IPC and Section 3 (I) (XII) SC/St Act and sentenced him to undergo 5 years rigorous imprisonment and to pay a fine of Rs.1,000/- in default, to undergo 1 year simple imprisonment. Aggrieved by the Judgment of the learned Principal District and Sessions Judge and P.C.R. Judge at Coimbatore, dated 05.08.2011, appellant/accused has preferred the present Criminal Appeal before this Court.

4 The learned counsel for the appellant would submit that there is no eye witness in this case and the medical records have also not supported the case of the prosecution. Though, the occurrence took place on 11.04.2010, but, the victim girl was produced before the Doctor for medical examination only on 15.04.2010. The Doctor has clearly stated that there is no external injury and there is no possibility of rape. Due to the previous enmity they have foisted a false case against the appellant, and the medical evidence is not supporting the case

of the prosecution. There is no positive reports to prove the ingredients of 376 IPC. Though, the appellate Court found that the offence under Section 376 IPC is not proved but failed to consider the medical evidence and considering the evidence of P.W.2, P.W.7 and P.W.8 convicted the appellant for the offence under Section 376 IPC r/w 511. There is no material to show that there was external injury. Though, the mother of the victim girl has stated that there was a swelling in the private part of the victim, the doctor has stated that there is no possibility of rape. These facts have not been considered by the trial Court, which warrants interference by this Court.

5 The learned Government Advocate (Criminal Side) would strongly oppose the contention raised by the learned counsel for the appellant. P.W.2 is the victim girl who was aged about 7 years, at the time of occurrence no one was in the house. Admittedly, the parents of the victim girl used to go to their coolie work in the morning itself and used to keep the victim girl in the house of P.W.7 and P.W.8. The parents of P.W.7 and P.W.8 also used to go for coolie and selling papers they were also not in the house on the date of occurrence P.W.2 victim girl want to go to her house for drinking water, at that time, the appellant followed P.W.2 and had sexual intercourse with the victim. P.W.7 and P.W.8 also witnessed the same, when P.W.7 seeing the fact the appellant thrown a stone on P.W.7 therefore he left. When the mother of the victim girl returned to the house, the victim girl informed the said incident to her mother. The parents of the victim girl went to the house of the accused and they have questioned the same, but he did not properly respond therefore, they gave a complaint. Though, the learned counsel for the appellant stated that there is a delay in registering the case, this type of case the parents of the minor girl cannot expect and they cannot prepare the police complaint immediately. Further, he would submit that the Tahsildar one who has given the Community Certificate to the victim girl as ST (Scheduled Tribe), and the accused is non Scheduled person therefore, it attracts the SC, ST Act. Further, he would submit that the evidence of P.W.1, P.W.2, P.W.7, P.W.8 and P.W.9 and also the doctors who examined the victim girl and conducted the medical examination and also examined the appellant for potency test, which clearly prove that the appellant is capable on having sexual intercourse. The learned counsel for the respondent would submit that the appellant has three previous cases. In one of the case he has been acquitted, because all the other witnesses turned hostile. Therefore, the conviction rendered by the trial Court does not warrant any interference by this Court.

6 Heard the learned counsel appearing for the appellant and the learned Government Advocate (Crl.Side) appearing for the respondent police and perused the materials placed on record.

7 Before the trial Court, the victim girl was examined as P.W.1 and her statement 161 Cr.P.C. reveals that at the time of occurrence, she was aged about 7 years and she was born on 04.02.2004. Nine years before, on 11.04.2010, the victim girl was studying 1st standard, on a mid day she was playing in her neighbour's house with her friends, while he was in thirst she went to her home for drinking water. At that time, the accused took her to the bathroom and on compulsion, he had sexual intercourse with her. When P.W.7 saw the occurrence, the appellant thrown a stone on him. Therefore, P.W.7 left that place and informed to P.W.8. In the evening the mother of the victim girl returned to her house, when the victim informed to her mother, the parents of the victim girl went to the house of the appellant and questioned about the same but the appellant did not respond properly. Therefore, they filed a complaint against the appellant. Based on the complaint given by the parents of the victim girl the respondent police registered a case and sent the girl for the medical examination and the doctor who has examined the victim girl gave a certificate.

8 On a conjoint reading of the evidences of P.W.1, P.W.2, P.W.7, P.W.8 and P.W.9 there are materials to prove that the appellant has committed the offence under Section 376 IPC and Section 3 (I) (XII) SC/ST Act. Admittedly, in this case the occurrence took place on 11.04.2010 but whereas the medical examination done only on 15.04.2010. Therefore, the trial Court has not given much importance to the medical evidence when the victim girl was not immediately sent for medical examination. However, in this case neither the state nor the defacto complainant filed any appeal. This Court cannot go beyond the scope of the appeal, the appeal filed by the appellant for the conviction under Section 511 for attempted rape.

9 On a perusal of the evidence of P.W.1, P.W.2, P.W.7, P.W.8, neighbours and also friends of the victim girl, admittedly they also witnessed the occurrence. P.W.7 and P.W.8 have corroborated the evidence of P.W.2 victim girl. Cases like this evidence of victim girl itself sufficient and no eyewitness is necessary and even medical evidence also corroborates the evidence of victim girl. There is no reason to discard the evidence of the victim. As already stated that the state has not filed any appeal.

10 Therefore, this Court does not find any sound ground and reason to take different view and there is no reason to interfere with the judgment of the trial Court. The judgment of conviction and sentence passed by the learned District Principal Sessions Judge and P.C.R.Judge at Coimbatore, is hereby confirmed.

11 For the above said reasons, this Court finds that the present Criminal Appeal has absolutely no merits and therefore the same is dismissed. Trial Court is directed to secure the appellant to undergo remaining period of sentence, if any.

Sd/-

Assistant Registrar(DR CJ conf)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Judicial Magistrate,
No.VII, Coimbatore.
 - 2.The Chief Judicial Magistrate,
Coimbatore(for information)
 - 3.The District and Sessions Judge,
Coimbatore.
 - 4.The Assistant Commissioner of Police,
Law and Order (South)
Coimbatore City,
Pothanure Police Station,
Coimbatore.
 - 5.The Superintendent, Central Prison,
Coimbatore.
 6. The Public Prosecutor,
High Court of Madras.
- +1cc to Mr.R.Ganeshkumar, Advocate SR.53396

Crl.A.No.584of 2011

PPA(CO)
CB(30/01/2020)