

Bail Slip in CMA 113 of 2016

The Petitioner/Accused Viz., M.Manimaran, S/o Mathiyazhagan be and hereby was directed to be released on bail as per order of this Court dated 02/01/2018 and made in Crl. M.P.No.1563 of 2016 in Crl.A. No.113 of 2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.113 of 2016

M.Manimaran

... Appellant/Accused

-Vs-

The State Represented by
The Inspector of Police,
All Women Police Station,
Cuddalore. (Cr.No.12 of 2013)

... Respondent/Complainant

This Criminal Appeal is filed under Section 374(2) of Cr.P.C. praying to set aside the judgment of conviction and sentence passed by the District Mahila Court, Cuddalore, dated 18.04.2015 made in Spl.S.C.No.04 of 2014 in Crime No.12 of 2013 on the file of the respondent police.

For Appellant : Mr.S.N.Arunkumar

For Respondent : Mr.R.Ravichandran
Government Advocate (Crl.Side)

JUDGMENT

This criminal appeal has been filed against the judgment of conviction dated 18.04.2015 by the learned Sessions Judge, District Mahalir Sessions Court, Cuddalore, in Spl.S.C.No.04 of 2014.

2 The respondent police registered a case against the appellant in Cr.No.12 of 2013 for the offence under Section 366 (A), 376 and 417 of IPC and Section 3 r/w 4, 7 r/w 8 of the Protection of Children from Sexual Offences Act, 2012 (in short

"POCSO Act"), stating that the appellant, on 11.11.2013 at about 3.00 p.m. had kidnapped the victim girl from the legal custodian and had sexual intercourse and thereby committed offence punishable under Sections stated supra. The respondent police, after investigation laid charge sheet before the jurisdictional Magistrate and the same was taken on file in Spl.S.C.No.04 of 2014 by the learned Sessions Judge, District Mahalir Court, Cuddalore.

3 Before the trial Court, in order to prove the case of the prosecution P.W.1 to P.W.10 were examined and Ex.P1 to Ex.P9 were marked and M.O.1 was produced. On the side of the defence, no one was examined and no document was marked.

4 The learned Sessions Judge, after trial found the accused guilty of offence punishable under Section 366 of IPC and Section 4 of POCSO Act and by judgment dated 18.04.2015 has convicted the appellant and sentenced him to undergo rigorous imprisonment for seven years with fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for six months for the offence under Section 366 of IPC and to undergo rigorous imprisonment for ten years with fine of Rs.5,000/-, in default, to undergo rigorous imprisonment for one year for the offence under Section 4 of POCSO Act. Aggrieved against the said judgment of conviction, the accused has preferred the present criminal appeal before this Court.

5 According to learned counsel appearing for the appellant, age of the victim has not been proved and there is no proof to show that the victim girl is a child and below the age of 18 as defined under the POCSO Act. Prosecution has marked the Radiologist's certificate Ex.P6, which is the only document available to prove the age of the victim, even the said certificate also reveal that the victim is between the age of 17 and 18. Therefore, prosecution has miserably failed to prove the age of the victim and hence offence under Section 4 of POCSO Act will not attract and there is no ingredient to convict the appellant under the POCSO Act. There is no evidence to show that the appellant/accused has compelled P.W.1 to have sexual intercourse with him and there was no injury to prove the version of the prosecution. The victim girl, who is aged about according to prosecution 16 years at the time of occurrence, would know what she is doing and what are the consequences and therefore without consent of P.W.1, the appellant could not take the victim girl and further P.W.1 allowed the company of the appellant. As per decision of the Hon'ble Supreme Court, taking away the girl from the legal custody is entirely different from allowing the company of the accused and further once the trial Court comes to the conclusion that the victim is a child and naturally Section 366 will not attract, which says abduct of

women. Therefore, Section 366 of IPC also will not attract. The learned Sessions Judge, has failed to consider the above facts and erroneously convicted the appellant, which warrants serious interference.

6 The learned Government Advocate (Crl.Side) appearing for the respondent police would submit that on 11.11.2013, the appellant, being a married man, had kidnapped P.W.1, who is 16 years old at the time of occurrence and had sexual intercourse with P.W.1. The victim girl/P.W.1 has clearly narrated the occurrence before the Court below, which could not be discarded. The victim girl/P.W.1 in the 164 statement recorded under Section 164 of Cr.P.C, had clearly narrated the entire occurrence and deposed the same in examination before the Court below. P.W.2 and P.W.3 corroborates the version of victim child P.W.1. The Doctor, who was examined as P.W.6, has opined that there is possibility of sexual intercourse and hymen was not intact. Therefore, prosecution has clearly proved its case beyond reasonable doubt and the learned Sessions Judge has rightly appreciated the evidence and convicted the appellant/accused, which does not call for any interference.

7 Heard the learned counsel appearing on either side and perused the materials available on record.

8 The victim child, who is aged about 16 years at the time of occurrence, has clearly narrated the incident and the involvement of the accused in the offence in the statement recorded under Section 164 of Cr.P.C. and deposed the same before the Court below in examination, which would clearly attract offence under Section 4 of the POCSO Act. The learned counsel for the appellant has contended that age of the victim has not been proved. The victim child had completed only 9th standard and prosecution has marked Radiologist's certificate as Ex.P6. P.W.2 and P.W.3 also stated that the victim is aged about 17 years. It is seen that the appellant/accused being a married man, had misguided P.W.1, who is 16 years old at the time of occurrence, that he would marry her and made false promise, and took her from the legal custody and committed offence under POCSO Act. Further it was contended that there was no proof to show that the appellant committed offence as alleged by the respondent police. In the cases of this nature, the evidence of victim child has to be given more weightage and in the case on hand, the victim child, who is 16 years old at the time of occurrence, has clearly narrated the incident. The other defence taken by the appellant/accused would not suffice to rebut the presumption under the POCSO Act. For the offence under the POCSO Act, the accused should be punished with heavy terms of imprisonment, in order to give effective implementation to the

Act. It is seen that the trial Court has convicted the appellant for the offence under POCSO Act and also for the offence under Section 366 of IPC. Once trial Court comes to the conclusion that the victim is a child then the Court cannot convict the appellant for the offence under Section 366 of IPC, which says about abduct of woman. Therefore this Court is inclined to set aside the conviction and sentence for the offence under Section 366 of IPC alone.

9 Accordingly, conviction under Section 4 of POCSO Act made by the learned Sessions Judge, is hereby confirmed and conviction and sentence passed for the offence under Section 366 of IPC is hereby set aside. In the result, the present criminal appeal is partly allowed. The trial Court is directed to secure the appellant/accused to undergo remaining period of sentence, if any.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge, District Mahila Court, Cuddalore.
2. The Inspector of Police, All Women Police Station, Cuddalore.
3. The Public Prosecutor, High Court of Madras.
4. The Judicial Magistrate No.III, Cuddalore.
- 5.-Do- Thro The Chief Judicial Magistrate, Cuddalore.
6. The Superintendent, Central Prison, Cuddalore.

Copy to

The Section Officer,
Criminal Section, High Court, Madras.

+lcc to Mr.S.N.Arunkumar, Advocate Sr.39189

Crl.A.No.113 of 2016

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srg 15/10/2019



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