

Bail Slip

The Appellant/Petitioner/Accused namely Prabakaran S/o.Manivannan was directed to be released on bail as per the order of this court dated 05/04/2016 in CrI.MP.No.1759/2016 in CrI.RC.No.127 of 201 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CrI.A.No.127 of 2016

Prabakaran

Appellant/Accused

Vs.

State by Inspector of Police,
All Women Police Station, Jayakondam
Ariyalur District

Respondent/Complainant

Prayer:- This Criminal Appeal is filed, against the judgement of conviction and sentence, dated, 5.2.2016, made in Spl.SC.No.11 of 2015, by the Sessions Court, Fast Track Mahila Court, Ariyalur.

For Appellant : Mr. K.Gandhi Kumar

For Respondent : Mr.M.Mohamed Riyaz-APP

JUDGEMENT

1.This Criminal Appeal is filed, against the judgement of conviction and sentence, dated, 5.2.2016, made in Spl.SC.No.11 of 2015, by the Sessions Court, Fast Track Mahila Court, Ariyalur, thereby (a) convicting and sentencing the Appellant/Accused for the offence under Section 506(i) of IPC to undergo one year Rigorous Imprisonment and to pay a fine of Rs.5,000/-, in default to undergo Simple Imprisonment for three months, (b) convicting and sentencing the Appellant/Accused for the offence under Section 8 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act), to undergo Rigorous Imprisonment for four years and to pay a fine of Rs.20,000/- in default to undergo Simple Imprisonment for one year and (c) ordering the sentences to run concurrently.

- 2.The case of the Prosecution is that the victim girl, aged about 14 years as on 2015, belonged to SC Community, was studying 9th Standard in a Government School at Chinnavalayam Village and that the Appellant/ Accused, aged 25 years, belonged to Hindu Vanniyar Community and is the friend of the elder brother of the victim. On 06.04.2015, when the victim was walking towards her School, near a rice godown at Chinnavalayam Village, the Appellant/Accused, with an intention to sexually assault her, came behind the victim in an unregistered black colour Pulsar Motorcycle, had tapped forcefully on the back of her head and gagged her mouth with a handkerchief and carried her to the nearby eucalyptus grove belonged to one Elangovan, dropped her down, mounted on her, attempted to kiss her and when the victim resisted him, he slapped on her cheeks and he bite victim on her cheek, lips and caused nail injuries on the breasts of the victim and he tore the side of the uniform pant of the victim and attempted to commit penetrative sexual assault on her and at that time, when the accused heard some noise, the accused walked a distance to see what the noise was and using the said opportunity, the victim escaped from there and ran to the main road and the Appellant/Accused followed the victim and threatened her that he would kill and bury her if she revealed it to any body. On the above allegations, the Appellant/Accused was charge sheeted for the offences punishable under Sections 9 (1) read with 10 of the POCSO Act, 2012, Section 506(i) of IPC and Section 3(1)(w)(i)(ii) of the SC/ST (POA) Amendment Ordinance Act, 2014.
- 3.The case was taken on file in Spl.SC.No.11 of 2015, by the Sessions Court, Fast Track Mahila Court, Ariyalur and necessary charges were framed. The accused had denied the charges and sought for trial. In order to bring home the charges against the accused, the Prosecution examined PW.1 to PW.18 and also marked Exs.P1 to P22 and Mo.1, chudidhar pant and tops and MO.2, Motorcycle used by the Appellant/Accused.
- 4.On completion of the evidence on the side of the Prosecution, the accused was questioned under Section 313 Cr.PC as to the incriminating circumstances found in the evidence of prosecution witnesses and the accused has come with the version of total denial and stated that he has been falsely implicated in this case. On the side of the defence, DW.1 to DW.3 were examined.
- 5.The court below, after hearing the arguments advanced on either side and also looking into the materials available on record, while acquitting the Appellant/Accused for the offence under Section 3(1)(xi) of the SC/ST (POA) Act, found the accused/appellant guilty for the offences under

Sections 506(i) of IPC and Section 8 of the POCSO Act and awarded punishments, as referred to above, which is challenged in this Criminal Appeal.

6.This court heard the learned counsel on either side.

7.The learned counsel for the Appellant/Accused would submit that the Trial Court erred in convicting the Appellant/Accused for the offence under Section 506(i) of IPC and Section 8 of the POCSO Act and that the Trial Court had also failed to take into consideration the contradictions in the evidence of the Prosecution witnesses, regarding the identity of the person, who committed the offence and that the Trial Court had also failed to take into consideration the embellishments in the documents filed by the Prosecution. He would further submit that the alleged occurrence was said to have happened on 6.4.2015 at 9.00 a.m. while the victim was going to the School and that the complaint was given belatedly after about 12 hours of the alleged occurrence and that the First Information Report had reached the Court on 8.4.2014 at 10.00 a.m. and thereby, creating a grave doubt in the case of the Prosecution.

8.The learned counsel for the Appellant/Accused would further submit that as per the evidence of DW.1, the victim was said to have informed him that she was sexually assaulted by an unknown person, based on which, the complaint was given by DW.1, stating that the accused was unknown, whereas contradictorily, the victim PW.1 has stated that the complaint was written by the victim PW.1. He would further submit that the Trial Court had failed to take into consideration the corrections made in Ex.P9, accident register, issued by PW.12, Doctor that the accused was said to be an unknown person and that PW.12 had categorically admitted that she had made an entry as if the accused was not known and later, letters "un" have been struck off and that PW.12 had also admitted with regard to the corrections made in Ex.D1, medical memo, where corrections have been made after admission. He would further submit that PW.12 had admitted that the corrections have been made in Ex.D1 by whitener and that the Trial Court has failed to take into consideration the contradictions between the evidence of PW.1, PW.3, PW.4 and PW.5. He would further submit that PW.6, brother of the victim has turned hostile and that PW.7, PW.8, PW.9, PW.15 and PW.16, who are independent witnesses, have also turned hostile and that PW.10, aunt of the victim had been treated as hostile by the Prosecution, since she did not support the case of the Prosecution.

9.The learned counsel for the Appellant/Accused would further submit that the occurrence was said to have taken place on 6.4.2015 and the Appellant was said to be arrested on

7.4.2015 at 7.45 p.m. and that the copy of the complaint Ex.P1, printed First Information Report, Ex.P15 and the alteration report Ex.P18, had reached the Court on the next day i.e. 8.4.2015 after the arrest of the accused and thereby creating a grave doubt in the case of the Prosecution. He would further submit that as per the evidence of PW.1, the accused is said to have known to her, being the friend of her brother and if that is so, she would have clearly mentioned about the name of the accused to her sister and brother in law, whom she had met after the incident, whereas it is the evidence of PW.3 and PW.4 that when PW.1 met her, she had told her that she did not know the accused and that according to PW.1, the accused was not known and that according to PW.5, father of the victim, she had initially told that she was assaulted by one Gopi and thereafter, the name of the Appellant/Accused was stated by him and hence, it is a case of mistaken identity and that though there is a presumption against the Appellant, the Prosecution is bound to prove the foundational facts and that the Prosecution has failed to prove that the Appellant is the person, who had involved in the crime and in such circumstances, the Appellant/Accused is liable to be acquitted.

10. On the other hand, the learned Additional Public Prosecutor for the Respondent Police would submit that there was no reason for the victim to falsely implicate the Appellant/Accused and that the Appellant/Accused and the victim are hailing from the same place and that even as per Ex.P9, the Doctor had categorically stated that he is a known person and that the corrections will not falsify the case of the Prosecution and that if the document would have been written by an unknown person, she would have stated that the victim was alleged to have been attempted to be raped by an unknown person, whereas she has only stated as if by a known person and much significance cannot be attached to such corrections since in all other documents, namely, Ex.P1, complaint, Ex.P15, printed First Information Report and Ex.P18, alteration report, the name of the Appellant was found mentioned. He would further submit that much reliance cannot be placed on the medical evidence, when especially the injured victim has specifically stated about the involvement of the Appellant in the crime and that there is no reason for the victim to falsely implicate the Appellant and would pray for dismissal of this Criminal Appeal.

11. At this juncture, the learned counsel for the Appellant/Accused would submit that the victim was said to have been sent to the Hospital with Ex.D1 medical memo on the same day at 9.45 p.m. and that if the complaint had been registered on 6.4.2015 at 9.00 a.m., the medical memo would

have contained the crime number, whereas the medical memo does not contain the crime number and the corrections have been made and that PW.17, Investigating Officer has not given any explanation for the same and that further, no explanation was given by the Investigating Officer with respect to the grave delay of two days in the First Information Report reaching the Court, when there is a mandate under the Act that the First Information Report should reach the Court within 24 hours of the occurrence, whereas, in this case, the First Information Report had reached the Court after much delay.

12.I have given my careful and anxious consideration to the rival contentions put forward by either side and thoroughly scanned through the entire evidence available on record and also perused the impugned judgement of conviction.

13.On analysing the evidence, PW.3 and PW.4 are sister and brother in law of the victim and as per their evidence, the victim was said to have informed them that while she was going to the School along, Chinnavalayam Rice Godown, some person had hit on her head and thereafter, taken her to the eucalyptus grove and attempted to misbehave with her and thereafter, she had escaped from there. Further, it is the evidence of PW.5, father of the victim that PW.1 victim has initially spoken about a person, called Gopi and thereafter, the name of the Appellant/ accused.

14.As per the evidence of PW.6, brother of the victim, he had also corroborated the evidence of PW.3 and PW.4 and had stated that his sister had told him that somebody had come from behind and hit on her head and taken her to eucalyptus grove and later on enquiry, he had come to know that the Appellant/Accused is the person who had committed the sexual assault on his sister and the brother of the victim, PW.6 had been treated as hostile. Further, PW.7, PW.8, PW.9 and PW.10 have not supported the case of the Prosecution and they have been treated as hostile. PW.11 is the Tahsildar, who had issued the community certificate.

15.Now, while further analysing the evidence, PW.12, Doctor, in her cross examination had stated that there was a correction made in Ex.P9 and that there was no reference to crime number in the medical memo, which was marked as Ex.D1. She had also admitted that when she had enquired the victim, she had informed that she was assaulted by an unknown person and further she had admitted that abrasions and the injuries found on the victim were not of recent occurrence and they could have been sustained two days prior to the occurrence, whereas it is the case of the Prosecution that the victim was taken to the Hospital immediately on the same day of occurrence.

16.PW.15 and PW.16 have been treated as hostile. PW.17 is the Inspector of Police, who had registered the First Information Report and she had stated that PW.1 had appeared before him and given the complaint, but, in her cross examination, she had stated that though the Magistrate Court is very near to the Police Station, within a five minutes of walking distance, there was a delay in the complaint reaching the Court and there was no explanation for the delay.

17.PW.18 is the Deputy Superintendent of Police and he had admitted the above corrections made in Ex.D1 medical memo and he had also admitted about the delay in the First Information Report reaching the Court and no explanation has been given for the delay in sending the First Information Report to the Court.

18.On the side of the defence, one Elakkiyadasan, who belonged to the community of the victim and who is the State Vice President of the Labour Wing of a Political Party and who is also a distant relative of the victim, had been examined as DW.1. He had deposed that on 6.4.2015 at 2.00 p.m., PW.5, the father of the victim had called him over phone and informed him that some person had hit his daughter on her head while riding a motorcycle and that she had fallen down and sustained injuries and that he had asked him and her daughter, PW.1 to come to his house and that PW.1, PW.4 and PW.5 and his relative one Mohan had come and when he had enquired the victim, she had informed that some unknown person, who had come in a bike, had pushed her and she fell down and sustained injuries and that a complaint was given to the Respondent Police around 8.30 p.m. and that the complaint was written by him and that the victim, PW.1 had signed the complaint and thereafter, the Respondent Police referred her to the Government Hospital and that he had also admitted that in the complaint written by him he had mentioned the accused as an unknown person.

19.Taking into consideration the entire evidence on record, admittedly, as per the complaint, the accused is an unknown person to the victim. It is the evidence of PW.1 that the Appellant/Accused is the friend of her brother and known to her. If that is so, she would have immediately informed it to her sister, brother in law and brother, who are PW.3, PW.4 and PW.6 that the Appellant is the person, who had assaulted her. Whereas it is the evidence of PW.3, PW.4, PW.6 that PW.1 had informed them that the accused is unknown to her. Further, taking into consideration the corrections made in the crucial documents, this Court is unable to believe the version of the Prosecution. Further, it is the categorical evidence of PW.5, the father of the victim, that the victim PW.1 had told him about another person, namely,

Gopi, who had assaulted her and thereby creating a doubt in the entire case of the Prosecution.

20. In view of the above said infirmities and grave contradictions in the evidence, this Court finds that the evidence of the witnesses, does not inspire confidence and analysing it with the evidence of DW.1 who is a relative and person belonging to the Community of the victim, this Court is of the opinion that the Trial Court had not properly appreciated the evidence and thereby, erred in finding the Appellant guilty and convicted him. Further, the Prosecution has miserably failed to prove its case beyond all reasonable doubts, and thereby the Appellant is entitled to the benefit of doubt and consequently, he is liable to be acquitted from the charges levelled against him.

21. In the result, this Criminal Appeal is allowed. The impugned judgement of conviction and sentence is set aside. The Appellant is acquitted of the charges levelled against him. The bail bond if any executed by the Appellant shall stand cancelled and the fine amount if any paid by the Appellant shall be refunded to him.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

Srcm

To:

1. The Additional Sessions Judge,
Fast Track Mahila Court, Ariyalur.

2. The Judicial Magistrate,
Jayankondam.

3. The Chief Judicial Magistrate,
Perambalur(for information).

4. The Inspector of Police,
All Women Police Station,
Jayakondam, Ariyalur.

5. The Sessions Court,
Fast Track Mahila Court,
Ariyalur.

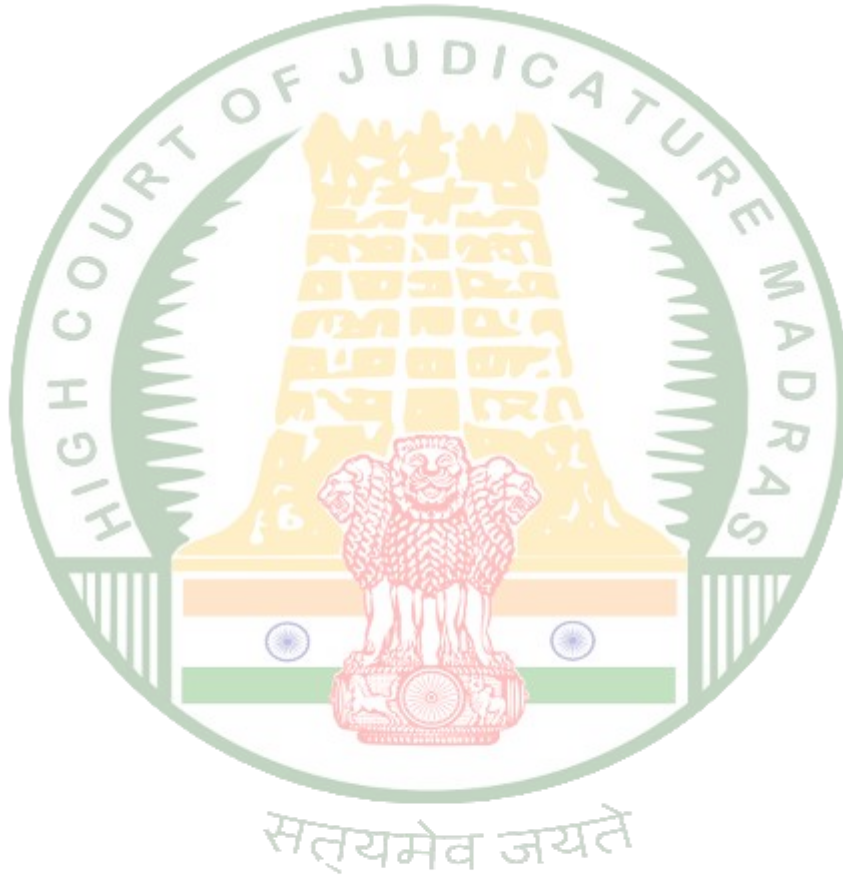
6.The Superintendent,
Central Prison, Trichy.

7.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.K.Gandhikumar, Advocate SR.86030

CrI.A.No.127 of 2016

VBA(CO)
CB(02/01/2020)



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