

Bail Slip

The Petitioner/Accused viz., Kumar S/o.Kaliyappan, was released on bail as per order of this Court dated 24/02/2016 in CrI.MP.No.2111 of 2016 in CrI.A.155 of 2016 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 23.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.A.No.155 of 2016

Kumar

...Appellant

-Vs-

State rep., by
The Inspector of Police,
All Womens Police Station,
Kottakuppam.
Crime No.10 of 2015

...Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the Judgment and sentence passed by the learned Sessions Judge, Mahalir Neethimandram, (Fast Track Mahila Court), Villupuram in Special S.C.No.24 of 2015 dated 19.02.2016 convicting the appellant for an offence under Section 8 of POCSO Act 2012.

For Petitioner : Mr.K.Selvakumaraswami
For Respondent : Mr.R.Ravichandran
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 and sentence passed by the learned Sessions Judge, Mahalir Neethimandram, (Fast Track Mahila Court), Villupuram in S.S.C.No.24 of 2015 dated 19.02.2016 convicting the appellant for an offence under Section 8 of POCSO Act 2012.

2 The Case of the prosecution is that the defacto complainant is residing of Chinnakottakuppam Village and the accused herein also belongs to the same locality. The minor victim girl aged about 13 years is the daughter of the defacto complainant and was physically challenged. On 13.07.2015 at about 01.00 p.m., when the victim girl was doing her walking exercises on the road, the accused called the victim girl and took her inside his house, hugged and kissed her and also sucked her breast and made her lay down, caught hold of her hands and put his private organ in to her mouth. Based on the complaint

preferred by the mother of victim girl, the respondent registered a case in Crime No.10 of 2015. After investigation, charge sheet was filed by the Inspector of Police, against the accused for offence under Section 4 of the Protection of Children from Sexual Offences Act 2012.

3 After completion of legal procedure and formalities, charges were framed for offence under Section 4 of the Protection of Children from Sexual Offences Act. In order to prove the case of the prosecution, before the trial Court, they have examined P.W.1 to P.W.11 and have marked Ex.P1 to Ex.P7. The prosecution has produced incriminating materials to prove the guilt of the accused. On the side of the appellant, no evidence was examined and no document was marked. The Sessions Court, after completing the trial and hearing the arguments and on perusal of the materials, found the appellant/accused guilty for the offence under Section 8 of POCSO Act, and convicted him for the offence under Section 8 of the POCSO Act, and sentenced him to undergo three years Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default, to undergo one month Simple Imprisonment.

4 The learned counsel for the appellant would submit that except P.W.1 the defacto complainant, no other eye witnesses have been examined in this case. The other witnesses P.W.2 to P.W.5 are not supported the case of the prosecution. Since there is an enmity between the appellant and the parents of the defacto complainant, and due to the vengeance, they foisted a false case against the appellant. Under these circumstances, the learned Special Judge, failed to consider the contradictions between the prosecution witnesses, which warrants interference of this Court.

5 The learned Government Advocate (Criminal Side) would strongly oppose the contention raised by the learned counsel for the appellant. P.W.1 is the victim girl, who has clearly stated about the incident in her deposition and also the statement recorded under Section 164 Cr.P.C., the victim girl before the Magistrate also has clearly proved the case of the prosecution. The cases like this evidence of the victim girl alone to be taken into consideration. The evidence of P.W.1 attracts Section 4 of POCSO Act, the learned Special Judge, failed to consider the evidence of P.W.1 (Victim Girl) and wrongly convicted the appellant under Section 8 of the POCSO Act. However, the conviction made by the learned Special Judge, does not warrant interference.

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 recorded under Section 164 Cr.P.C. reveals that at the time of occurrence, she was aged about 13 years. While, the victim girl was doing her walking exercise on the road, the appellant herein called her and took her to inside his house and committed the offence under Section 4 of POCSO Act, 2012.

8 In this Case, the victim girl was examined as P.W.1 and she has narrated the incident. The mother of the victim girl has given the complaint. The learned counsel for the appellant would submit that due to the enmity they foisted the false case against the appellant. P.W.2 mother of the victim girl is running a tea shop in front of the house of the appellant. Therefore, it clearly shows that if at all really the incident happened the mother of the victim girl would have prevented the same, which shows that the evidence of P.W.1 is not credible and trust worthy.

9 On reading of the entire materials, P.W.1 has stated that the appellant took her to inside his house. On reading of the complaint there is an alteration and correction. Even without alteration and the corrections, the actions of the appellant attracts under Section 8 of the POCSO Act, normally the victim cannot be a complainant in the case like this since they are minor girls. The parents would be a complainant. The parents should hesitate to say the incident to some extent, some parents exaggerate the incident to some extent. Therefore, the Court need not wholly rely on the evidence of the parents. However, the statement recorded under Section 164 Cr.P.C., before the Magistrate by the victim girl, clearly proves that the appellant committed the offence. Considering the statement given by the victim girl this Court also finds that the appellant has committed the offence under Section 8 of the POCSO Act. Though, prosecution has not filed any appeal against the acquittal of the appellant under Section 4 of POCSO Act or they filed any appeal for enhancement of the sentence.

10 As the appellate Court is final Court of fact finding it can re-appreciate and re-assess entire evidence independently with the materials available on record placed before it. At the same time in the appeal filed against the conviction by the appellant this Court cannot go beyond the scope of the appeal. Considering the oral and documentary evidence adduced on the side of the prosecution, this Court finds no reason to interfere with the Judgment of the learned Special Judge.

11 For the above said reasons, this Court finds that the present Criminal Appeal has absolutely no merits and therefore the same is dismissed. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar (CS-III)

// True Copy//

Sub Assistant Registrar

sbn

To

1. The learned Sessions Judge,
Mahalir Neethimandram,
Fast Track Court, Villupuram.
2. The Inspector of Police,
All Womens Police Station,
Kottakuppam.
3. The Chief Judicial Magistrate,
Villupuram. (for information)
4. The Superintendent, Central Prison,
Cuddalore.
5. The Public Prosecutor,
High Court of Madras.

Cr1.A.No.155 of 2016

SPD (CO)
CSR(11/12/2019)

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