

BAIL SLIP

The Accused/Appellant namely Suresh S/o.Shanmugam was directed to be released on bail as per order of this Court dated 24/10/2017 made in Crl.MP.No. 2029/2017 and subsequently the same is revoked by this Court in its order dated 22/04/2019.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 10.06.2019

DELIVERED ON: 05.07.2019

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.A. No.235 of 2016

Suresh

Appellant/Accused

vs.

State represented by
the Inspector of Police
All Women Police Station - Udhagamandalam
Udhagamandalam
The Nilgiris District
(Cr. No.1 of 2015)

Respondent/Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C. seeking to set aside the judgment of conviction and sentence dated 27.11.2015 passed in Spl. S.C. No.4 of 2015 on the file of the Mahila Court (Fast Track Court), Udhagamandalam, The Nilgiris District.

For appellant : Mr. C. Samivel
Legal Aid Counsel

For respondent : Mrs. Kritika Kamal P.
Government Advocate (Crl.Side)

JUDGMENT

This criminal appeal has been filed challenging the judgment of conviction and sentence dated 27.11.2015 passed in Spl. S.C. No.4 of 2015 on the file of the Mahila Court (Fast Track Court), Udhagamandalam, The Nilgiris District.

2 Shorn of the minute facts, the germane facts leading to the institution of this criminal appeal are succinctly stated as under:

2.1 It is alleged by the prosecution that the appellant had sexually assaulted P.W.2, a girl named "X" (actual name not disclosed for the sake of anonymity), who was 13 years old, on two days, viz., 21.02.2015 and 28.03.2015, when she was alone in her house. When "X"'s mother Shanthi Kumari (P.W.1) returned home from work, she complained to her of the appellant's act.

2.2 Pursuant thereto, Shanthi Kumari (P.W.1) lodged a written complaint (Ex.P.1) to Maragatham (P.W.11), Inspector of Police, based on which, a case in Udhagai Nagar A.W.P.S. Cr. No.1 of 2015 under Section 3(a) and 4 of the Protection of Children from Sexual Offences Act, 2012 (for short "the POCSO Act") and Section 506(II) IPC was registered on 28.03.2015 at 3.00 p.m. The printed FIR (Ex.P.15) was prepared on the same day and it reached the jurisdictional Court at 10.20 p.m. on 28.03.2015, as could be seen from the endorsement thereon.

2.3 Maragatham (P.W.11), the Investigating Officer, (for brevity "the I.O.") went to the place of occurrence and prepared the observation mahazar (Ex.P.11) and rough sketch (Ex.P.16). "X" was produced before Dr.Rajasekar (P.W.3) at the Government Hospital, Ooty, who examined her on 28.03.2015. When questioned by him, "X" stated that an unknown person had sexually assaulted her at 4.00 p.m. on 21.02.2015. Dr. Rajasekar (P.W.3) referred "X" to Dr. Lakshmi Priya, Obstetrician (not examined) for thorough examination. Dr. Lakshmi Priya examined "X" on 28.03.2015 (wrongly typed in the deposition as 19.03.2013) at 8.45 p.m. (wrongly typed in the deposition as 4.00 p.m.) and issued medical certificate (Ex.P.14). She did not find any external injury on the body of "X", including her genital organs and "X"'s hymen was intact. "X" was referred to Radiologist for age determination. Dr. Seeman (P.W.5), Radiologist examined "X" radiologically and determined her age as between 15 and 17 years. Micky Vedakumar (P.W.7), Headmaster of C.S.I. Hr. Sec. School, Kethi, where, "X" studied upto VIII standard, was examined to prove her date of birth entry in the school records vide Ex.P.3, as per which, her date of birth is 22.10.2002.

2.4 The I.O. requisitioned the services of Joseph Ponraj (P.W.6), Member, Child Welfare Committee, to counsel "X". The I.O. arrested the appellant and subjected him to medical examination by Dr. Lakshmanan (P.W.4). Dr. Lakshmanan (P.W.4) examined the appellant on 15.04.2015 at the Government Hospital, Ooty and issued a copy of the accident register (Ex.P.7), the relevant portion of which reads thus:

"20.04.2015 - Opinion

Blood group : B +ve
Semen Analysis : Normal
General physical examination : Moderately built and
nourished
Secondary sexual characters : Normal
NPT : Positive

I am of the opinion that there is nothing to suggest that this patient (Suresh 27/M) cannot indulge in sexual intercourse."

2.5 At the request of the police, Section 164 Cr.P.C. statement of "X" was recorded by the Judicial Magistrate, Coonoor on 31.03.2015 and the same was marked as Ex.P.2.

2.6 After completing the investigation, the I.O. filed a final report before the Special Court for POCSO Act cases, Ooty, which was taken on file as Spl. S.C. No.4 of 2015.

2.7 On the appearance of the appellant, the provisions of Section 207 Cr.P.C. were complied with and the Trial Court framed charges against the appellant for the sexual assault by him on "X" on 21.02.2015 and 28.03.2015 under Section 452 IPC (2 counts), Sections 3 read with Section 4 and Section 7 of the POCSO Act. When questioned, the appellant pleaded "not guilty".

2.8 To prove its case, the prosecution examined 11 witnesses and marked 16 documents. When the appellant was questioned under Section 313 Cr.P.C. about the incriminating circumstances appearing against him, he denied the same. On the side of the appellant, no witness was examined nor any document marked.

2.9 After considering the evidence on record and hearing either side, the Trial Court, by judgment dated 27.11.2015 in Spl. S.C. No.4 of 2015, acquitted the appellant of the charge for the 28.03.2015 incident, but, convicted him for the 21.02.2015 incident and sentenced him as under:

Provision of law under which convicted	Sentence
S.7 r/w S.8 of the POCSO Act	3 years rigorous imprisonment, fine of Rs.5,000/- and compensation of Rs.1 lakh, in default to undergo two years simple imprisonment.

2.10 In addition to the compensation to be paid by the appellant, the Trial Court further ordered that a compensation of Rs. 2 lakhs be paid to "X" by the District Legal Services

Authority, The Nilgiris, from the Victims Assistance Fund as per Section 357-A Cr.P.C.

2.11 Challenging the aforesaid sentence slapped on him, the appellant is before this Court.

3 The appellant filed the instant appeal in 2016 through Mr.J.T.Rajasuriya, advocate. In CrI.M.P. No.2029 of 2017 filed by the appellant, this Court, on 24.10.2017, suspended the sentence and ordered his release on bail. Thereafter, whenever the matter was taken up for final hearing, the learned counsel for the appellant either remained absent or simply sought adjournments. Therefore, this Court, by order dated 22.04.2019, cancelled the bail and directed the police to take the appellant into custody. On the directions of this Court, Mr.Samivel was appointed as the Legal Aid Counsel for the appellant.

4 Heard the learned counsel for the appellant and the learned Government Advocate (CrI. Side) appearing for the respondent-State.

5 "X" in her evidence before the Trial Court has stated that she had lost her father and was living with her mother and younger sister; the appellant came to their house for selling dictionary and at that time, her mother told him that he should not come to their house, because, there is no male member in their family and asked him to go away; on 14th, the appellant came to their house once again and asked for water to drink; when she gave him water, he told her that he loves her and asked her for her mobile number, which, she gave; thereafter, he called her on her mobile phone and told her that he is in love with her and that she should reciprocate his love; on 21.02.2015, when her mother and younger sister had gone out to the town, the appellant came to her house around 2.00 p.m. and forcibly laid her on the bed and fondled her; he placed his private part on hers and pressed her; she felt pain and she also bled and hence, she shouted; at that time, he told her not to raise alarm and after threatening her so, left the place; again, on 28th, he came to their house around 2.00 p.m. and asked her as to why she did not attend his call and tried to push her on the bed; when she raised a hue and cry, he fled; when her mother returned home, she did not tell her anything initially; but, when her mother started questioning her repeatedly, she told her what all had happened; her mother informed her aunt and grandfather and together, all of them went to the police station, where, her mother lodged the complaint. She was subjected to medical examination and thereafter, she was produced before the Magistrate, before whom, she stated everything. The Section 164 Cr.P.C. statement given by her was marked as Ex.P.2. In her evidence, she has stated that her date

of birth is 22.10.2002 and her school certificate was marked as Ex.P.3.

6 In the cross-examination, "X" has admitted that the appellant spoke to her over mobile frequently, but, she explained it away by saying that as he started calling her repeatedly, she had no other option but to speak to him. She has further admitted that the appellant was lame in one leg and that she learnt about it only when he sexually assaulted her.

7 As regards the 28.03.2015 incident, she has stated that when she raised alarm, the appellant ran out of their house and at that time, her mother came home. She has admitted that on 28.03.2015, the appellant did not sexually assault her. Ultimately, it was suggested to her that she has several boy friends and that only in order to cover up her fear, she has falsely implicated the appellant to her mother, which suggestion, she has denied.

8 As regards the evidence of Shanthi Kumari (P.W.1), she has only stated that she was away on 21.02.2015 and that she learnt about the 21.02.2015 incident only on 28.03.2015 from her daughter after she returned home from work.

9 Renuka (P.W.8), "X"'s aunt and Thyagaraj (P.W.9), her grandfather, were examined and they have also stated that they were informed about the incident by Shanthi Kumari (P.W.1) and thereafter, they went to her house and together, they all went to the police station and lodged the complaint.

10 Thus, we have the evidence of "X", which stands adequately corroborated by her previous statement (Ex.P.2) recorded under Section 164 Cr.P.C. It must be borne in mind that "X" was about 13 years old at the time of the incident and she hails from a poor background. She is a fatherless girl and is taken care of by her mother who is the breadwinner of their family and works in a tea estate in Ooty.

11 The learned counsel for the appellant contended that when Dr.Rajasekar (P.W.3) examined "X", she told him that she was sexually assaulted by an unknown person and her evidence in the Court that it was the appellant who sexually assaulted her, deserves to be rejected. In the opinion of this Court, not much credence can be given to her statement to the doctor, because, the appellant had come to her house to sell dictionary only a few days prior to 21.02.2015 and taking advantage of her being alone, he has collected her mobile number and had been in touch with her; she must have been in a state of trauma on 28.03.2015 when she was examined by Dr. Rajasekar (P.W.3); she was given

counselling by Joseph Ponraj (P.W.6), Member, Child Welfare Committee.

12 In the opinion of this Court, even if "X" had invited the appellant out of infatuation, yet, that cannot be a justification since she was only 13 years of age and the appellant was 27 years of age at the time of the incident. The finding of the Trial Court that "X" was not sexually assaulted on 28.03.2015 and that there was no penetrative sexual assault on "X" does not suffer from any infirmity. However, on a complete reading of the evidence of "X", this Court has no hesitation in holding that the prosecution has satisfactorily established that on 21.02.2015, the appellant had sexually assaulted "X". That apart, the appellant had failed to discharge the burden under Sections 29 and 30 of the POCSO Act and has merely suggested that a false case has been put against him.

13 In view of the foregoing discussion, the judgment of conviction and sentence dated 27.11.2015 passed by the Mahila Court (Fast Track Court), Udhagamandalam, The Nilgiris District in Spl. S.C. No.4 of 2015 is upheld.

As a sequitur, this criminal appeal stands dismissed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

Cad

To

1. The Sessions Judge,
The Mahila Court (Fast Track Court),
Udhagamandalam,
The Nilgiris District.
- 2 The Additional Sessions Judge,
Fast Track Mahila Court,
Nilgiris at Uthagamandalam.
- 3 The Inspector of Police
All Women Police Station - Udhagamandalam
Udhagamandalam
The Nilgiris District

4. The Superintendent,
Central Prison,
Tiruchi.

5 The Public Prosecutor
High Court of Madras
Chennai 600 104

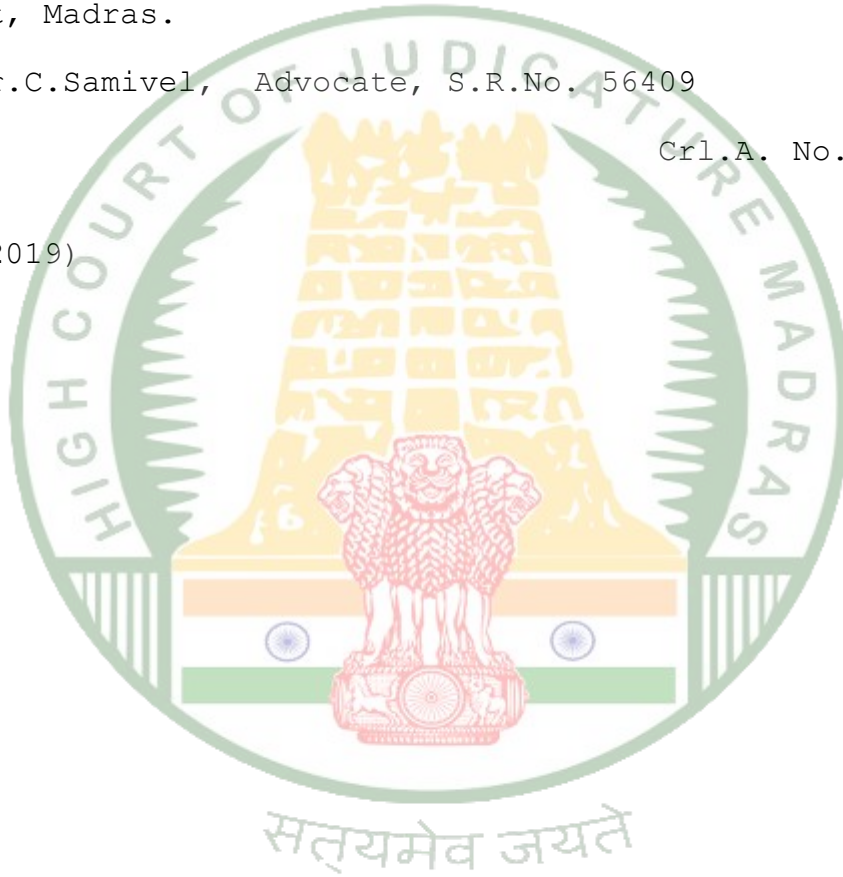
Copy TO

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

+1cc to Mr.C.Samivel, Advocate, S.R.No. 56409

Cr1.A. No.235 of 2016

EV(CO)
GN(24/07/2019)



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