

BAIL SLIP

The Appellant/Accused No.2 namely Bhopathy, S/o.Annamalai was directed to be released on bail (Spl.S.C.No.60/15) as per order of this Court dated 09.01.2019 in Crl.M.P.No.9922 of 2017 in Crl.A.485/17 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.485 of 2017

Bhopathy

...Appellant/Accused-A2

-Vs-

The State Rep. by
The Inspector of Police,
Mahendramangalam Police Station,
Dharmapuri District.
(Crime No.90 of 2013)

...Respondent/Complainant

This Criminal Appeal is filed under Section 374(2) of Cr.P.C. to set aside the conviction and sentence imposed on the Appellant herein in Special S.C.No.60 of 2015 by judgment dated 02.01.2017 passed by the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, Dharmapuri District.

For Appellant : Mr.R.Elavarasan

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

JUDGMENT

This criminal appeal has been filed against the judgment in Special S.C.No.60 of 2015 dated 02.01.2017 passed by the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, Dharmapuri District.

2. The appellant is the accused. The respondent police has registered a case against the appellant/accused and other accused, based on the complaint given by P.W.1/father of the victim, for the offence under Sections 363 IPC and 5(1) read

with 6 of Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO Act'). After investigation, the prosecution had filed charge sheet before the learned Sessions Judge, (Fast Track Mahila Court), Dharmapuri, which was taken on file in Spl.S.C.No.60 of 2015. In order to prove the case of the prosecution, before the trial Court P.W.1 to P.W.19 were examined and Ex.P1 to Ex.P17 were marked. When the above incriminating materials were put before the appellant/accused under section 313 Cr.P.C, he denied the same and on the side of the defense, D.W.1 has examined and no document was marked. The learned Sessions Judge, after advertng to the materials placed on record and after hearing both the parties, by judgment dated 02.01.2017 convicted the accused and sentenced him to undergo three years rigorous imprisonment and to pay a fine of Rs.1,000/- in default, to undergo three months rigorous imprisonment for the offence under Section 448 of IPC and sentenced to undergo ten years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo three months rigorous imprisonment for the offence under Section 5(1) read with 6 of POCSO Act.

3. Aggrieved by the said judgment of conviction and sentence, the accused has preferred the present criminal appeal before this Court.

4. According to the learned counsel for the appellant/accused, the accused has not committed any offence and in order to attract the charges levelled against the appellant, there should be physical relationship and the same should be proved by producing medical records. In the present case on hand, there is no eye witness and most of the witnesses are interested witnesses, who would naturally support the case of the prosecution. P.W.1 and P.W.2 are the patents of the victim girl and there is no any reliance on the evidence of them. Ex.P.12/Medical Report clearly reveals that there is no evidence of recent intercourse. It proves the innocence of the appellant. The appellant is innocent person and false case foisted against him. There is a material contradiction in the evidence of P.W.1 and P.W.2 and other witnesses are neighbors of P.W.1. There are five accused persons in the FIR and the Investigation Officer removed the some of the accused names in the Charge Sheet and they have not stated any valid reason, simply deleted the accused persons. It was created the doubt of the case of the prosecution. Under these circumstances, the Court below ought to have acquitted the appellant.

5. According to the learned Government Advocate (Crl.Side) appearing for the respondent that the appellant and his friends kidnapped the victim girl/P.W.16. The Appellant has made a false promise to the victim girl of marrying her and had sexual

intercourse with her against her wish, which would attract offence under the POCSO Act. The trial Court after examining all the witnesses and after hearing both the parties, had come to the conclusion that the accused found guilty of offence punishable under the POCSO Act. There is no reason to interfere with the judgment of conviction, when it is well founded.

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

7. On reading of the entire allegations made against the appellant, it would reveal that cases of this nature under the POCSO Act, the Court cannot expect any eye witness and the evidence of the victim itself would suffice to convict the accused. The victim girl, who is aged about sixteen years at the time of occurrence, has clearly narrated the incident and the involvement of the accused in the offence, which would clearly attract offence under Section 363 IPC and 5(1) read with 6 of Protection of Children from Sexual Offences Act, 2012. In the case on hand, there is no reason to discord the evidence of the victim. Further the appellant/accused examined the D.W.1 whose evidence is not sufficient to prove his innocence. The evidence of P.W.9 and Ex.P6 proved the age of the victim. Evidence of P.W.16 victim girl proves the commission of offence. Evidence of P.W.15/Doctor, one who examined the victim girl clearly proves that the victim girl lost her virginity and medical evidence supported the case of the prosecution. This Court does not find any reason to take a different view in the present case on hand. For the offence under the POCSO Act, the accused should be punished with heavy terms of imprisonment, in order to give effect to the implementation of the Act. The learned Session Judge, Fast Track Mahila Court, Dharmapuri, Dharmapuri District has rightly rejected the defence of the appellant and found that the prosecution has proved its case and convicted the accused, therefore, no need to interfere with the judgment in Special S.C.No.60 of 2015 dated 02.01.2017 and there is no merit in the present appeal and hence this Criminal Appeal is dismissed. Further, this Court is directed the respondent police to secure the custody of the accused.

rli

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Sd/-

Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Sessions Judge,
Fast Track Mahila Court, Dharmapuri.

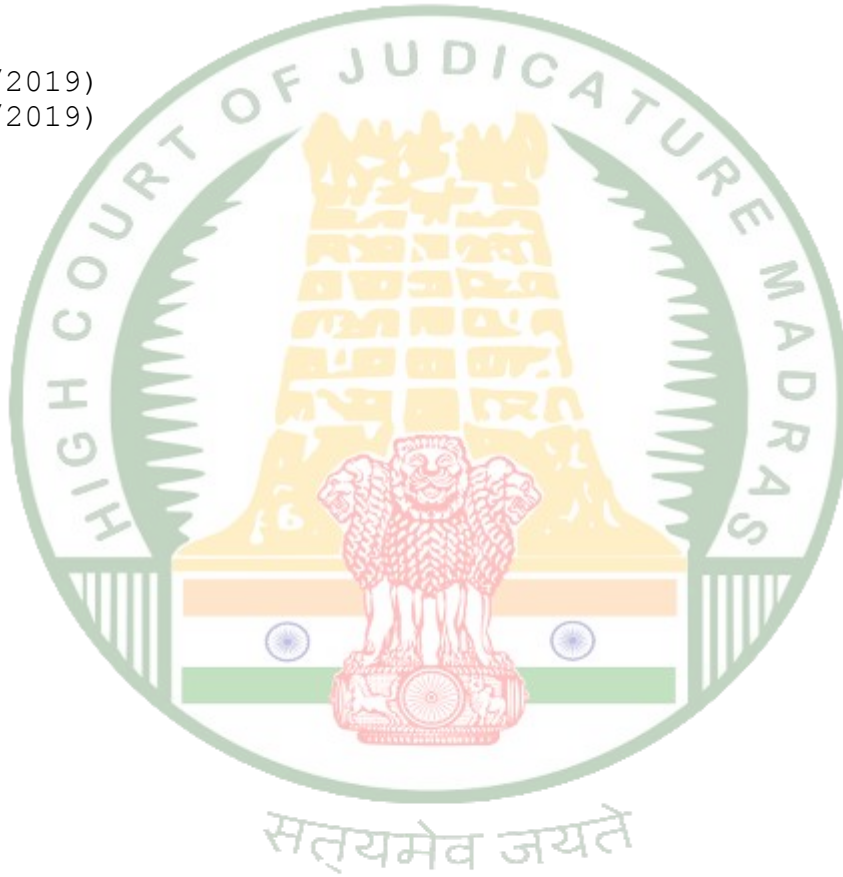
2. The Public Prosecutor,
High Court of Madras.

3. The Inspector of Police,
Mahendramangalam Police Station,
Dharmapuri District.

+1cc to Mr.K.Balu Advocate, SR.No.29008

Crl.A.No.485 of 2017

RV(CO)
Kak(08/07/2019)
Kak(26/07/2019)



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