

BAIL SLIP

The Appellant/Accused namely Hariharan, was directed to be released on bail as per order of this court, dated 23.07.2018, in Crl.MP.No.2555 of 2017 in Crl.A.No.87 of 2017.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRL.A.NO.87 OF 20197

Hariharan .... Appellant/Accused

-Vs-

The State represented by  
The Inspector of Police,  
J-5, Sasthri Nagar Police Station,  
Chennai  
(Crime No.594 of 2014) ... Respondent/Complainant

Nakshatra Intervener/Third party  
(Permitted to interven as per order  
dated 23.07.2018 in Crl.Mp.No.2555 of 2018  
in Crl.A.No.87 of 2017)

Prayer : Criminal Appeal filed under Section 374 of Cr.P.C., 1973 to set aside the order of conviction and sentence passed by the Judgment dated 20.12.2016 made in S.C.No.202 of 2014 on the file of the Special Court for Cases under POCSO Act, 2012, Mahila Court, Chennai, and allow the above Criminal Appeal.

For Appellant : Mr.C.Prabakaran  
For Respondents : Mr.R.Ravichandran  
Government Advocate(Crl.Side) For R1  
: Mr.V.Kannadasan For R2

J U D G M E N T

The present Criminal Appeal has been filed seeking to set aside the judgment of conviction dated 20.12.2016 passed by the learned Special Judge for cases under POCSO Act/Mahila Court, Chennai in S.C.No.202 of 2014.

2 The case of the prosecution is that the age of the victim girl is 6 years. On 23.03.2014 at about 11.00 a.m., While the victim girl was playing with her brother Raj and other children at Orur Kuppam near Palvadi, accused took the victim girl nearer to water tap, removed the trousers and put his private organ into the mouth of the victim girl. When the victim girl did not open her mouth, accused slapped on her cheeks and thereby caused sexual harassment to the victim girl. Then the elder brother of the victim girl asked why he is doing like this, the accused threatened the brother of the victim girl. Based on the complaint preferred by the mother of the victim girl, the respondent registered a case in Crime No. 594 of 2014. After investigation, charge sheet has been filed by the Inspector of Police, against the accused for offence under Section 4 of the Protection of Children from Sexual Offences Act, 2012 and Section 506(ii) of IPC.

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, 2012 and Section 506(ii) of IPC. In order to prove the case of the prosecution, before the trial Court, they have examined P.W.1 to P.W.14 and have marked Ex.P1 to Ex.P16. The prosecution has produced incriminating materials to prove the guilt of the accused. On the side of the appellant/accused, two witnesses were 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 and convicted him for offence under Section 4 of the Protection of Children from Sexual Offences Act, 2012 and sentenced him to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.5,000/- in default, to undergo 6 months Rigorous Imprisonment. Aggrieved by the order passed by the learned Sessions Judge, Mahila Court, dated 20.12.2016, the appellant/accused has preferred the present Criminal Appeal before this Court.

4 The learned counsel for the appellant would submit that the place of the occurrence has not been clearly identified. The occurrence was happened on 23.03.2014 but the complaint was given only on 26.03.2014 i.e, three days later, which creates doubt. The complainant has not properly explained that there was a previous enmity. Hence, complainant filed a false case against the accused. When the complainant gone to the police station at the time, the appellant/accused was there, which also creates doubt in our mind. The prosecution has failed to prove the case beyond reasonable doubt. Hence, the learned counsel for the appellant prays to allow this Criminal Appeal.

5 The learned Government Advocate (Criminal Side) would strongly oppose the contention raised by the learned counsel for

the appellant. The prosecution has proved the guilt of the accused for charge under Section 4 of the Protection of Children from Sexual Offences Act, 2012 . Therefore, the learned Government Advocate prays for dismissing the appeal. Evidences of P.W.1/mother of the victim, P.W.8 and P.W.11/Doctors have clearly stated about the overt act of the accused. Therefore, the learned Special Judge, rightly convicted the accused and there is no grounds to interfere with the judgment passed by the learned Special Judge, which is liable to be dismissed.

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.2 and her statement 161 Cr.P.C. reveals that at the time of occurrence, she was aged about 6 years. Even at that time, the victim girl was playing with her brother and other children at Orur Kuppam near Palvadi. The appellant, took the victim nearer to water tap and had sexual relationship with victim girl. When the brother of the victim girl asked why he is doing like this, the appellant/accused threatened the victim and her brother.

8 The learned counsel for the appellant would submit that the victim girl and the appellant/accused also residing in the same street. But at the time of an occurrence the appellant was not there. Whereas, the evidence of the brother of the victim girl reveals the truth and the same was corroborated by P.W.5 that presence of the victim girl and his brother is nearer to the palvadi and also the presence of the appellant/accused and narrate the occurrence place. P.W.2 and P.W.3 have clearly stated about the incident.

9 The occurrence happened on 23.03.2014 and the complaint was given only on 26.03.2014. But the delay has been properly explained by the defacto complainant/P.W.1 mother of the victim girl that she hesitated to reveal these aspects. Therefore, under these circumstances, the mother of the victim has clearly stated the reason for delay in filing the complaint. The explanation given by the mother of the victim girl P.W.1 is accepted. Though the defence taken by the appellant is due to the previous enmity between neighbours and the relatives they filed a false case, the victim girl and her brother was tutted by their mother is not acceptable and the same is rejected. Statements under Section 161 Cr.P.C. were recorded from the victim girl and his brother and the same were substantiated before the trial Court by examining the witnesses. This Court cannot imagine the said incident can be tutted by the mother and father of the victim girl.

10 The defence taken by the learned counsel for the

appellant is not acceptable and the same is rejected. The evidence P.W.2 and P.W.3 are cogent and there is no reason to discard the evidence of P.W.2 and P.W.3 they are minors aged about 4 and 7 years respectively. At the time of trial they are aged about 7 and 9 years respectively. There is no reason to discard the evidence of P.W.5 Aaya of the palvadi. She has clearly stated the presence of the victim and also his brother P.W.3 and the presence of the appellant nearer by the place.

11 Therefore under the facts and circumstances of the case and also the evidence of the prosecution witnesses especially P.W.1, P.W.2, P.W.3 and P.W.5 the prosecution has proved its case beyond reasonable doubt and there is no reason to discard the evidence of P.W.1, P.W.2, P.W.3 and P.W.5 . The prosecution has proved its case with the cogent and reliable evidence and the learned Special Judge, rightly found guilty of the appellant. This Court does not find any reason to disbelieve the evidence of P.W.1, P.W.2, P.W.3 and P.W.5.

12 Hence, this Court finds that the appellant/accused has committed the offence under Section 4 of the Protection of Children from Sexual Offences Act, 2012. there is no reason to interfere with the judgment passed by the trial Court. Since, this Court as an appellate Court is a final Court of fact findings and it can re appreciate the entire evidence. A perusal of the evidences of P.W.1, P.W.2, P.W.3, P.W.4 and P.W.5 and also the statement recorded under Section 164 Cr.P.C., by the Magistrate from the victim girl, this Court finds that the appellant has committed the offence under Section 4 of the Protection of Children from Sexual Offences Act, 2012.

13 For the above said reasons, this Court finds that the present Criminal Appeal has absolutely no merits and therefore the same is dismissed.

Sd/-

सत्यमेव जयते  
Assistant Registrar(CS III)

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Sub Assistant Registrar

sbn

To

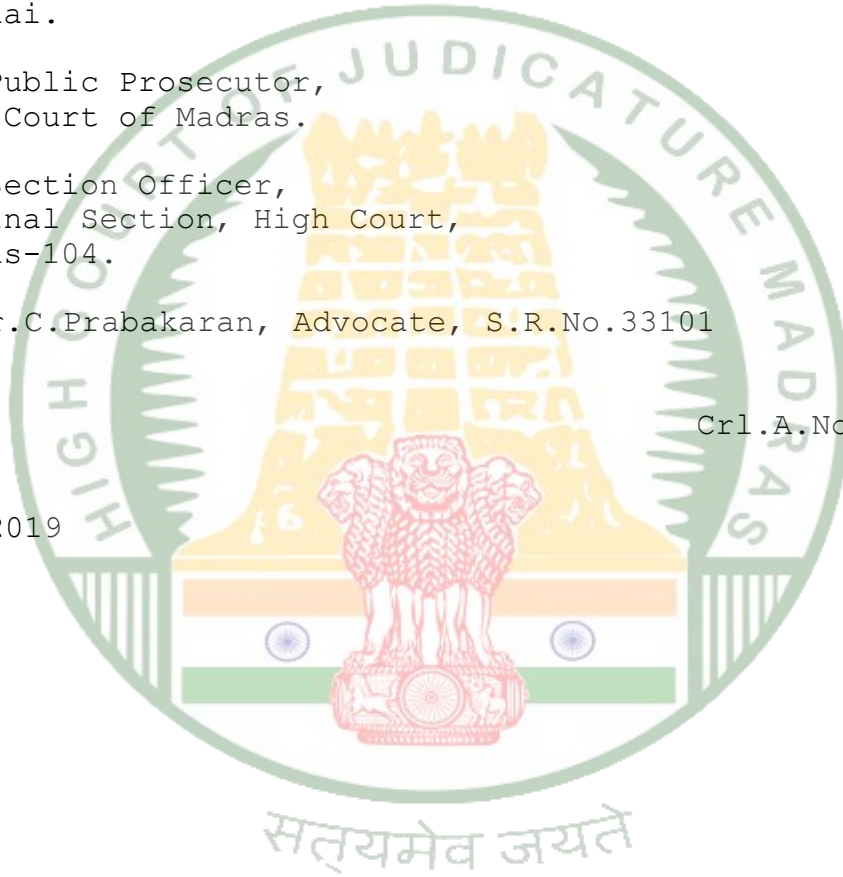
1. The Special Court for Cases Under POCSO Act 2012,  
The Sessions Judge, Mahila Court,  
Chennai.

2. The Metropolitan Magistrate,  
No.IX, Saidapet, Chennai.
3. The Chief Metropolitan Magistrate,  
Egmore.
4. The Inspector of Police,  
J-5, Sasthri Nagar Police Station,  
Chennai.
5. The Superintendent,  
Central Prison, Puzhal,  
Chennai.
6. The Public Prosecutor,  
High Court of Madras.
7. The Section Officer,  
Criminal Section, High Court,  
Madras-104.

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.33101

Crl.A.No.87 of 2017

EV(CO)  
CS/10/12/2019



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