



BAIL SLIP

V.Veerabathiran, S/o.Veerachamy, Male, Aged about (30/2017), is released on bail, vide the order dated 01.09.2017 made in CrI MP(MD) No.3085 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
28.02.2019	22.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
and
THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CrI.A.(MD) No.112 of 2017

V.Veerabathiran ... Appellant / Accused

-vs-

The State represented through
the Inspector of Police
Karur Town Police Station
Karur District ... Respondent / Complainant
(in Crime No.207 of 2013)

PRAYER: Appeal filed under Section 374 of the Code of Criminal Procedure, to call for the records and set aside the sentence and conviction imposed by the learned Mahalir Neethimandram Fast Track Mahila Court, Karur, in Spl.S.C.No.03 of 2016, dated 12.08.2016.

For Appellant : Mr.S.M.A.Jinnah

For Respondent : Mr.S.Chandrasekar
Additional Public Prosecutor

J U D G M E N T

P.N.PRAKASH, J.,

The sole accused is on appeal against the judgment of conviction and sentence, dated 12.08.2016, in Spl.S.C.No.03 of 2016, on the file the Mahalir Neethimandram, (Fast Track Mahila Court), Karur.

<https://hcservices.ecourts.gov.in/hcservices/>

2. The case of the prosecution, in a nutshell, is as follows:



Chandralekha was only 15 years old when she conceived and delivered a seven month stillborn baby on 12.03.2013, in the Government Hospital, Trichy. On 14.03.2013, Chandralekha died of post-pregnancy complications. On the complaint (Ex.P1) lodged by her stepmother Banumathi (P.W.1), Senthil Kumar (P.W.27), Sub-Inspector of Police, registered a case in Crime No.207 of 2013, on 14.03.2013, for the offence punishable under Section 5(j)(ii) r/w 6 of the Protection of Children from Sexual Offences Act, 2012 (in short, "the POCSO Act") and Section 174 Cr.P.C., against the appellant. Investigation was conducted by Balraj (P.W.32), Inspector of Police, who examined witnesses and collected various reports. After completing the investigation, Balraj (P.W.32) filed a final report before the Mahalir Neethimandram, (Fast Track Mahila Court), Karur, in Spl.S.C.No.3 of 2016, for the offences punishable under Sections 5(j)(ii) & 5(l) r/w 6 of the POCSO Act, against the appellant.

3. On the appearance of the appellant, the provisions of Section 207 Cr.P.C. were complied with and the case was taken on file for trial.

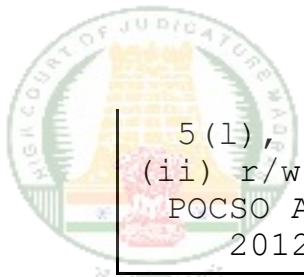
4. The Trial Court framed as many as four charges against the appellant, as detailed below:

Charge	Penal Provisions
1.	5(l) r/w 6 of POCSO Act, 2012
2.	5(j) (ii) r/w 6 of POCSO Act, 2012
3.	5(j) (i) r/w 6 of POCSO Act, 2012
4.	304(II) I.P.C.

5. When questioned, the appellant pleaded "not guilty". To prove its case, the prosecution examined 32 witnesses and marked 28 exhibits. No witness was examined nor any document was marked on the side of the appellant. When the appellant was questioned under Section 313 Cr.P.C. about the incriminating circumstances appearing against him, he denied the same.

6. By Judgment dated 12.08.2016, the Trial Court acquitted the appellant of the charges under Sections 5(j) (i) of the POCSO Act and 304(II) I.P.C. The appellant was, however, convicted and sentenced as under:

Section of Law	Sentence of imprisonment	Fine amount
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5(1), (j) (ii) r/w 6 of POCSO Act, 2012	To undergo imprisonment for life.	Rs.1,000/- in default to undergo simple imprisonment for one (1) month.
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The appellant is, therefore, before this Court, assailing the judgment of conviction and sentence, dated 12.08.2016.

7. Heard Mr.S.M.A.Jinnah, learned counsel appearing for the appellant and Mr.S.Chandrasekar, learned Additional Public Prosecutor for the State.

8. The prosecution have proved the following facts beyond doubt:

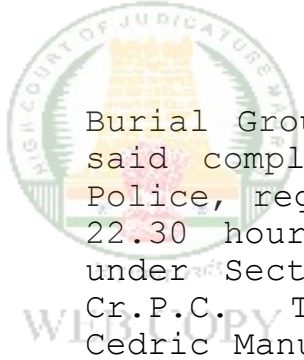
- (a) Chandralekha was the daughter of Sivakumar (P.W.2). Banumathi (P.W.1) was her stepmother. Banumathi (P.W.1) and Sivakumar (P.W.2) are pushcart vendors who eke out their living by buying and selling disposed plastics and scrap iron items from various households.
- (b) Chandralekha studied upto 11th Standard and her date of birth was 23.07.1997, vide the evidence of her School Teacher Kavitha (P.W.14), through whom the 10th Standard Mark Sheet was marked as Ex.P5.
- (c) Manimegalai (P.W.3), paternal aunt of Chandralekha, is the elder sister of Sivakumar (P.W.2).
- (d) Chandralekha's boy baby was born dead on 12.03.2013, at 06.05 p.m., in Mahatma Gandhi Memorial Government Hospital, Trichy, as per the evidence of Dr.Udhaya Aruna (P.W.24).
- (e) After delivery, the stillborn baby was hurriedly buried by Banumathi (P.W.1) and Manimegalai (P.W.3) in Oyamari Burial Ground by bribing the caretaker.
- (f) After delivery, the condition of Chandralekha deteriorated and she died in the same Hospital on 14.03.2013, at 09.30 a.m., as per the evidence of Dr.Udhaya Aruna (P.W.24) and death intimation (Ex.P14).
- (g) On the orders of Bala Dhandayutham (P.W.16), Thasildar, and on showing the place where the body of the child was buried, the body of the child was exhumed by the Police on 16.03.2013 and spot postmortem was done by Dr.Selvaraj (P.W.23). Some of the internal organs were preserved and dispatched, through Court, to the Tamil Nadu Forensic Science Laboratory for D.N.A. Profiling.
- (h) Dr.Thilaga (P.W.30), Assistant Director, D.N.A.Division, Tamil Nadu Forensic Science Laboratory, Chennai, was unable to extract D.N.A.



from the bones of the child for profiling with those of Chandralekha and the appellant. In other words, the D.N.A.Report (Ex.P28) did not incriminate the appellant.

9. It appears that Chandralekha had not disclosed to her parents Banumathi (P.W.1) and Sivakumar (P.W.2) that she had conceived. The cat was out of the bag only when Manimegalai (P.W.3), paternal aunt of Chandralekha, started probing into the reasons for her ill health. Manimegalai (P.W.3) has stated that she came to her younger brother Sivakumar (P.W.2)'s house and found that the legs of Chandralekha were swollen; therefore, she took her to the Government Hospital, Velayuthampalayam, where Dr.Sathyamoorthi (P.W.12) treated her; she complained of vomiting, giddiness and dysentery and hence, she was admitted as an inpatient, on 11.03.2013 at 10.45 a.m; on the same day, around 10.30 p.m., she started gasping for breath; she was, therefore, referred to the Government General Hospital, Karur. Manimegalai (P.W.3) has further stated that instead of taking her to the Government General Hospital, Karur, Chandralekha was taken to a Private Hospital, namely, Amaravathi Hospital, Karur, where Dr.Veluchamy (P.W.15) examined her; he noticed that her stomach was bulging and hence, made her undergo a Urine Test; after the Test, it came to light that she was pregnant; after giving her some preliminary treatment, Chandralekha was discharged on 12.03.2013, at 07.30 a.m., on the request of her relatives, who wanted to take her to the Government Hospital, Karur. Amaravathi Hospital records were marked as Exs.P6 & P7. Manimegalai (P.W.3) has stated that Chandralekha was taken to the Government Hospital, Karur, where she was examined by Dr.Sujatha (P.W.22), on 12.03.2013, at 10.30 a.m. and found that she was seven months pregnant, but the foetus was lifeless; she transfused one unit of blood for Chandralekha, since her Urinary Bladder was not properly functioning, she was referred to the Government Hospital, Trichy; she took Chandralekha to the Government Hospital, Trichy, where she was examined by Dr.Udhaya Aruna (P.W.24), on 12.03.2013 at 05.40 p.m; on the same day, at 06.05 p.m., a stillborn baby was delivered by Chandralekha, at the Government Hospital, Trichy. Manimegalai (P.W.3) has candidly stated that she along with Banumathi (P.W.1) took the stillborn baby to Oyamari Burial Ground in Trichy and buried the baby quietly by bribing the caretaker; post delivery complications set in and the condition of Chandralekha started deteriorating. Her pulse rate declined and she breathed her last on 14.03.2013 at 09.30 a.m., at the Government Hospital, Trichy. Banumathi (P.W.1), Sivakumar (P.W.2) and Manimegalai (P.W.3) have all stated in unison that when they asked Chandralekha as to who was responsible for her pregnancy, she told them that it was the appellant.

10. After the death of Chandralekha, Banumathi (P.W.1), her stepmother, lodged a written complaint (Ex.P1) to the Police, in which she has candidly stated all the facts, including the fact that they had hurriedly buried the body of stillborn baby in Oyamari



Burial Ground, by giving Rs.200/- to the caretaker. Based on the said complaint (Ex.P1), Senthil Kumar (P.W.27), Sub-Inspector of Police, registered a case in Crime No.207 of 2013, on 14.03.2013, at 22.30 hours, against the appellant, for the offences punishable under Section 5(j)(ii) r/w 6 of the POCSO Act and Section 174 Cr.P.C. Thereafter, investigation of the case was taken over by Cedric Manuel (P.W.28), Inspector of Police, who examined witnesses and conducted inquest over the body of Chandralekha. The Inquest Report was marked as Ex.P21. After the inquest, he despatched the body for postmortem. Dr.Renuka Devi (P.W.25) performed autopsy on the body of Chandralekha and in her evidence as well in the Postmortem Certificate (Ex.P17), she has opined as follows:

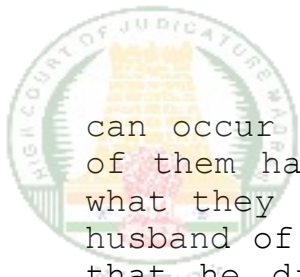
"The deceased would appear to have died of Heart Lungs Liver and Kidney deceases;-
(Viscera Report : Alcohol in other poison was not detected)".

11. The Investigating Officer obtained permission from Bala Dhandayudham (P.W.16), Tahsildar, and had the body of the child exhumed. At the request of the Investigating Officer, spot postmortem was done by Dr.Selvaraj (P.W.23) and the internal organs were sent, through Court, to the Tamil Nadu Forensic Science Laboratory, for D.N.A.Profiling.

12. Dr.Thilaga (P.W.30), Assistant Director, D.N.A.Division, Tamil Nadu Forensic Science Laboratory, has stated that she was unable to extract D.N.A. from the bones of the baby and hence, she was not able to ascertain its paternity. The D.N.A. Report of the child was marked as Ex.P28.

13. Mr.S.M.A.Jinnah, learned counsel appearing for the appellant attacked the evidence of Singaram (P.W.7), Sankar (P.W.8), Valarmathi (P.W.9), Ramani (P.W.10) and Marimuthu (P.W.11), who were examined by the prosecution to prove that they had seen Chandralekha and the appellant having sex.

14. All these witnesses have given parrot-like evidence by saying that six months before, they went to Chandralekha's house; her parents were not there; she prepared tea for them and served; after serving them tea, she went upstairs; after sometime, they also went upstairs and found Chandralekha having sex with the appellant; on seeing them, the appellant ran away. But, none of them has given the date or time at which they went to Chandralekha's house. On reading their depositions, we find that none has spoken to about the presence of the other. Supposing, we were to draw an inference that each of them had gone separately to Chandralekha's house on different dates, then, how is it plausible that Chandralekha served tea uniformly to each of them and immediately go upstairs for having sex with the appellant, without first ensuring that the guest has left the house? Each of them has stated that when they went to the first floor of the house, they saw Chandralekha having sex with the appellant and on seeing them, the appellant ran away. A coincidence



can occur once or twice, but not five times. To cap it all, none of them had informed Banumathi (P.W.1) and Sivakumar (P.W.2) as to what they saw. In fact, Sankar (P.W.8), who is none other than the husband of Manimegalai (P.W.3), in his cross-examination, has stated that he did not tell this even to his wife Manimegalai (P.W.3), though it has been established from the Discharge Summary (Ex.P4) that he had accompanied the deceased Chandralekha to the Government Hospital, Velayuthampalayam, Karur. Sankar (P.W.8) has signed the Discharge Summary as the uncle of Chandralekha, on 11.03.2013, at 10.45 p.m. for shifting her to the Government Headquarters Hospital, Karur. The Doctors had already detected that Chandralekha was pregnant. That being so, it is indeed strange that even at that time, he did not tell Banumathi (P.W.1), Sivakumar (P.W.2) and Manimegalai (P.W.3) that the appellant was responsible for Chandralekha's pregnancy. Therefore, we agree with the submissions of Mr.S.M.A.Jinnah, learned counsel appearing for the appellant, that the evidence of Singaram (P.W.7), Sankar (P.W.8), Valarmathi (P.W.9), Ramani (P.W.10) and Marimuthu (P.W.11) are incredulous and cannot be believed.

15. Now, we are left with the statements of Banumathi (P.W.1), Sivakumar (P.W.2) and Manimegalai (P.W.3) that the deceased Chandralekha told them that it was the appellant, who made her pregnant.

16. Mr.S.M.A.Jinnah, learned counsel appearing for the appellant contended that the name of the appellant does not figure in any of the Hospital records and therefore, no reliance can be placed on the ipse dixit of Banumathi (P.W.1), Sivakumar (P.W.2) and Manimegalai (P.W.3) that Chandralekha told them that the appellant was responsible for her pregnancy. We are unable to appreciate this submission. Chandralekha was 15 years old when she became pregnant. Her natural mother had died and her father Sivakumar (P.W.2) had married Banumathi (P.W.1). Chandralekha was a school dropout. Her parents were pushcart vendors. Chandralekha's premarital pregnancy would have put her parents in such a mental turmoil that they would have wanted to somehow hush up the whole murky affair fearing social embarrassment. This is evident from the evidence of Dr.Parimala Devi (P.W.26), Professor and Head of the Department of Obstetrics and Gynaecology, in the Government Medical College, Trichy, who in her report (Ex.P18) has stated that "Patient had gone for termination of pregnancy to the Government Hospital, Karur. Patient and the attender not disclosed the history properly". After the birth of the stillborn, Banumathi (P.W.1), Sivakumar (P.W.2) and Manimegalai (P.W.3) did not want to publicly acknowledge this fact and that is why, they hurriedly buried the stillborn in Oyamari Burial Ground by bribing the caretaker. Therefore, the absence of the appellant's name in the Hospital records cannot lead to the inference that Chandralekha would not have told Banumathi (P.W.1), Sivakumar (P.W.2) and Manimegalai (P.W.3) that the appellant was responsible for her pregnancy. This statement of Chandralekha to Banumathi (P.W.1), Sivakumar (P.W.2) and Manimegalai (P.W.3) can be



treated as dying declaration relevant under Section 32(1) of the Evidence Act. Section 32(1) of the Evidence Act reads as under:

"32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.- ...

(1) When it relates to cause of death.- When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death and whatever may be the nature of the proceeding in which the cause of his death comes into question." (emphasis supplied)

17. Chandralekha had become pregnant and was hiding that fact from her parents till the 7th month of pregnancy. The medical records of Chandralekha reveal that she had developed complications, because she had attempted to abort the foetus by crude methods. Her parents also did not want the world to know that she had conceived. Her unsuccessful attempt to terminate the pregnancy had resulted in the death of the child in her womb, as could be seen from the evidence of Dr.Sujatha (P.W.22), who has stated that the foetus was seven months old, but lifeless. After the delivery of the lifeless foetus on 12.03.2013, Chandralekha's health condition deteriorated rapidly, as could be seen from the evidence of Dr.Udhaya Aruna (P.W.24), resulting in the death of Chandralekha on 14.03.2013. Therefore, we have no hesitation in concluding that the pregnancy of Chandralekha followed by her unsuccessful attempt to abort the foetus were the internal causative factors in the transaction that eventually led to her demise on 14.03.2013.

18. Hence, the statement of Chandralekha to her parents and aunt that the appellant was responsible for her pregnancy would be a relevant fact admissible under Section 32(1) of the Indian Evidence Act, falling within the sweep of the expression "as to any of the circumstances of the transaction which resulted in his death", since the cause of Chandralekha's pregnancy and her eventual death are the facts in issue in the case at hand.

19. This takes us to the trustworthiness of the evidence of Banumathi (P.W.1), Sivakumar (P.W.2) and Manimegalai (P.W.3), on this aspect. There is no good cause to suspect their testimony on this aspect, because they have no reason to falsely implicate the appellant. The appellant has also not suggested any spite or ill-motive in the cross-examination of Banumathi (P.W.1), Sivakumar (P.W.2) and Manimegalai (P.W.3).



20. At this juncture, it may be relevant to take note of Section 29 of the POCSO Act, which reads as under:

"29. Presumption as to certain offences.- Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved."

21. Unfortunately, the appellant has not brought on record any material to dislodge the aforesaid statutory presumption. Therefore, we have no hesitation in confirming the conviction of the appellant / accused for the offence under Section 5(j)(ii) of the POCSO Act. Since we have disbelieved the evidence of P.Ws.7, 8, 9, 10 & 11, the conviction and sentence of the appellant under Section 5(1) r/w Section 6 of the POCSO Act cannot be sustained, because there is no material to show as to how many times the appellant had sex with Chandralekha. In other words, Chandralekha could have conceived even after the first round of cohabitation with the appellant. The answer to this question is, however, in the realm of imponderables. Hence, the appellant is acquitted of the charge under Section 5(1) r/w Section 6 of the POCSO Act. Coming to the question of sentence, we are of the view that the interests of justice will be subserved, if the appellant / accused is awarded the minimum sentence of ten years rigorous imprisonment, under Section 5 (j)(ii) r/w Section 6 of the POCSO Act.

22. In the result,

- The criminal appeal is partly allowed;
- The appellant / accused is acquitted of the charge under Section 5(1) r/w Section 6 of the POCSO Act;
- The appellant / accused is convicted of the offence under Section 5(j)(ii) r/w Section 6 of the POCSO Act;
- The sentence of imprisonment for life imposed on the appellant / accused by the Trial Court is reduced to ten (10) years rigorous imprisonment and fine of Rs.1,000/- (Rupees one thousand only), in default, to undergo simple imprisonment for one (1) month for the offence under Section 5(j)(ii) r/w Section 6 of the POCSO Act;
- Fine amount paid, if any, is directed to be adjusted towards the fine amount now imposed;
- Suspension of sentence granted by this Court, on 01.09.2017 in Crl.M.P.(MD) No.3085 of 2017, stands cancelled.
- Since the appellant / accused is on bail, it is directed that the Trial Court shall take steps to secure him and to commit him to prison to serve out the period of sentence.



➤ The period of sentence already undergone by the appellant / accused shall be set off under Section 428 of the Code of Criminal Procedure.

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Sd/-

Assistant Registrar (CS II)

Sub Assistant Registrar (CS)

To:

1. The Mahila Judge,
Mahalir Neethimandram,
(Fast Track Mahila Court), Karur.
2. The Inspector of Police
Karur Town Police Station, Karur District.
3. The Superintendent,
Central Prison, Trichy
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
5. The Record Keeper,
Criminal Section (Record),
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

Cr1.A. (MD) No.112 of 2017

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