



Bail Slip

The Appellant/Accused namely Pandian, S/o.P.Ramasamy, was released on bail as per the order of this Court dated 11.09.2015 made in MP(MD)No.1 of 2015 in Crl.A(MD)No.294 of 2014.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.12.2019

CORAM:

THE HONOURABLE Mr.JUSTICE M.NIRMAL KUMAR

Crl.A(MD)No.294 of 2014

Pandian

... Appellant / Accused

Vs.

State Rep.by its
The Inspector of Police,
Elumalai Police Station,
Madurai District.
(Crime No.144 of 2013)

... Respondent / Complainant

PRAYER: Petition is filed under Section 378 of Criminal Procedure Code, against the Judgment, dated 01.10.2014, made in Spl. S.C.No.2 of 2013, passed by the learned Sessions Judge, Magalir Neethi Mandram, Madurai

For Appellant : Mr.S.Ramasamy
For Respondent : Mr.K.suyambulinga Bharathi
Govt.Advocate (crl.side)

O R D E R

This Criminal Appeal has been filed by the appellant against the Judgment of the learned Sessions Judge, Magalir Neethi Mandram, Madurai, made in Spl. S.C.No.2 of 2013, dated 01.10.2014, convicting the appellant for an offence under Section 4 of the Protection of Children from Sexual Offences Act, 2012, and sentencing him to undergo 7 years Rigorous Imprisonment and to pay a fine of Rs.1000/- and in default, to undergo six months Simple Imprisonment.

2. The case of the prosecution in brief:

P.W.1 is the victim, studying 9th Standard in Elumalai Government Girls Higher Secondary School, On 29.07.2013, at about 9.30 a.m., when the victim girl child, went to the Noon Meal Office and writing her name in the Muster Roll, / Attendance Register, at that time, the appellant, who was working as 'Noon Meal Organizer', misbehaved the girl child, by touching her private parts. Further, such penetrative sexual assault had continued on the subsequent two days, on 30.07.2019 and 31.07.2019. After few days, the



incident was informed by the girl child to P.W.2 / mother and P.W.3 / father. Based on the complaint, a case in Crime No.144 of 2013, has been registered, on the file of Elumalai Police Station, Madurai.

3. During the course of investigation, the Investigating Officer visited the scene of occurrence, prepared Ex.P.2 / Observation Mahazar; Ex.P8 / Rough Sketch, recorded the statements of witnesses and arrested the accused. Further, the Investigation Officer visited the residence of victim child, recorded the statement of P.W.1 / victim child, in presence of P.W.2 / mother of the victim child and after completion of investigation, filed a charge sheet against the accused for the offences under Sections 3 and 4 of Protection of Children from Sexual Offences Act, 2012.

4. The trial Court framed charges against the accused for the offences punishable under Section 4 of Protection of Children from Sexual Offences Act, 2012, read over and explained to the accused, however, he pleaded not guilty.

5. To substantiate the case of the prosecution, it examined PWs.1 to 15 and got marked Exs.P1 to P8.

6. After closing the prosecution evidence, the appellant was examined under Section 313 of Cr.P.C., wherein, he denied the incriminating evidence lead against him. However, no defence witnesses were examined nor got marked any documents on behalf of the accused. The trial Court, on appreciation of evidence held that the guilt was proved and accordingly, sentenced the accused, as stated supra. Hence, the appeal by the Appellant.

7. The learned counsel appearing for the appellant would submit that P.W.3,/ father of P.W.1, had received a loan of Rs.50,000/- and when the same was asked to repay, the above case has been foisted against him, taking advantage of his minor daughter. It is further submitted that no such incident had taken place, as stated by P.W.1 that is the reasons P.Ws.6 and 8, who were working in the Noon Meal Centre, along with the appellant, were not willing to utter falsehood, which was against the case of the prosecution. Hence, they were treated as hostile. Adding further he would submit that the victim was examined by P.W.13 and from the report of the Doctor it is clear that there is no external injuries and the hymen was intact. He would further submit that there is 8 days delay from the date of alleged occurrence and it is a motivated false complaint. The learned counsel further submitted that the Muster Roll / Attendance Register has not been produced and marked before the trial Court. Further, the investigation has not been properly conducted and the appellant has been falsely implicated in this case, the lower Court, without properly analysing the evidence, convicted the appellant, which needs interference.



8. Per contra, the learned Government Advocate (crl.side) appearing for the State would submit that P.W.1 is the victim girl Child; P.Ws.2 and 3 are mother and father respectively. The evidence of P.W.1 corroborated by P.Ws.2 and 3, to whom P.W.1 had reported about the penetrative sexual assault made by the accused. P.W.4 is Sub-Inspector of Police, who had gone to the residence of victim child, made preliminary enquiry. P.W.5 is the Headmaster of the School, who conducted discreet enquiry with the students and others and found that the complaint of P.W.1 is true. On appreciation of evidence, the trial Court had rightly convicted the accused and therefore, prayed for dismissal of the appeal.

9. I have heard the learned counsels appearing on either side and perused the materials available on record.

10. Insofar as the specific contention of the appellant that there was a delay of 8 days in lodging the complaint is concerned, it is quite natural that the victim girl child was threatened by the appellant that in case, if she reveals the incident before her parents or anybody else, he will not spare her and her study would be spoiled and further, she was shattered unaware of what to be done. P.W.1's evidence is very clear that she had gone to Noon Meal Centre for marking her presence in the Muster Roll / Attendance Register, where the appellant was working and at that point of time, she was subjected to penetrative sexual assault, The timings and the dates have been specifically stated by her. In view of the same, non-production of the Muster Roll / Attendance Register, is not fatal to the case of the prosecution. From the statement of the victim girl child, report of school Headmaster, Doctors and others, it is proved that P.W.1 was subjected to penetrative sexual assault by the appellant and the trial Court on proper appreciation of evidence had rightly convicted the accused. This Court find no infirmity to interfere with the Judgment of the trial Court.

11. In the result, this Criminal Appeal stands dismissed, confirming the Judgment and conviction passed the learned Sessions Judge, Magalir Neethi Mandram, Madurai, in Spl. S.C.No.2 of 2013, dated 01.10.2014, The trial Court is directed to take appropriate steps to incarcerate the appellant in prison so as to serve out the remaining period of sentence.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)



- 1.The Inspector of Police,
Elumalai Police Station,
Madurai District.
2. The Sessions Judge,
Magalir Neethi Mandram,
Madurai,
3. The Superintendent,
Central Prison, Madurai
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 5.The Record Clerk,
Criminal Section, (2 Copies)
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.S.RAMASAMY, Advocate (SR-103378[F] dated 04/12/2019)

Cr1.A(MD)No.294 of 2014

03.12.2019

MK (18.12.2019) 4P 8C