

Bail Slip

The Appellant/Accused namely Velusamy S/o Muniraj was directed to be released on bail as per order dated 06/07/2015 in Crl.M.P.No.1/15 in Crl.A.No.403 of 2015 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 22.12.2020

CORAM:

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

CRL.A.No.403 of 2015

Velusamy
S/o.Muniraj,
Golden Street,
Dharmapuri,
Dharmapuri District. Appellant

Vs

The State rep. by
The Inspector of Police,
All Women Police Station,
Dharmapuri,
Dharmapuri District. Respondent

Prayer: Criminal Appeal filed under Section 374 of Cr.P.C., praying to set aside the judgment passed in Spl.S.C.No.8 of 2014 passed by the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, dated 15.05.2015.

For Appellant : Mr.S.Doraisamy

For Respondent : Mr.S.Karthikeyan
Additional Public Prosecutor

J U D G M E N T

The present appeal has been filed to set aside the judgment of conviction and sentence dated 15.05.2015 passed in Spl.S.C.No.8 of 2014 on the file of the learned Session Judge, Fast Track Mahila Court, Dharmapuri.

2. The appellant is arrayed as first accused in the above referred case. He stood charged for the offences under Sections 11(iv) r/w 12 of Protection of Children from Sexual Offences

Act, 2012 (herein after referred to as "POCSO Act") and Section 506(i) of IPC. While at the time of framing charges, the trial Court has framed charges for the offence under Section 294(b) of IPC also as against the second accused (now acquitted). By the judgment dated 15.05.2015 the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, convicted the appellant under Section 11(iv) r/w 12 of POCSO Act and sentenced him to undergo one year rigorous imprisonment and to pay a fine of Rs.2,000/- in default to undergo simple imprisonment for one month. The appellant further convicted for the offence under Section 506(i) of IPC and sentenced to undergo three months rigorous imprisonment. Challenging the said conviction and sentence, the appellant/first accused is before this Court by filing this present Criminal Appeal.

3. The case of the prosecution, in brief, is as follows:-

(i) P.W.1 Mahalakshmi was residing at Golden street, Dharmapuri. She was studying 10th standard. On 12.06.2014, at about 7.30 p.m., during the night hours, she went to the public toilet for attending natural calls. When at the time she returned after attending natural calls, the accused herein pulled her thuppatta and squeezed her breast. Due to the same she sustained simple injury in her neck and fell down on the spot itself. After seeing the same, the appellant made a threat as if the same was reported to her parents, he would kill her. But on the other hand, immediately after the said occurrence, P.W.1 ran away from the said place and reported the occurrence to her mother.

(ii) After knowing the same, her parents went to the house of the accused for enquiring the occurrence. At the time, the sister of the accused alone present in the said house. However, the second accused (now acquitted) insulted the parents of P.W.1 by saying abusive words, Due to same P.W.2 Murugambal, who is the mother of P.W.1 went to the police station and lodged complaint against the appellant and others under Ex.P.1.

(iii) On receipt of the complaint P.W.8 Chandrakantha, the then Inspector of Police, All Women Police Station, Dharmapuri, registered a FIR in Crime No.8 of 2014 under Sections 11(iv) r/w 12 of POCSO and Sections 294(b) & 506(i) of IPC. The printed FIR is marked as Ex.P.5. Immediately after registration of case, P.W.8 visited the scene of occurrence and in the presence of witnesses, she prepared observation mahazar under Ex.P.2. She drew rough sketch and the same has been marked as Ex.P.6. On 26.06.2014 at about 5.30 p.m., she arrested the second accused and sent him for remand.

(iv) In continuation of investigation, for ascertaining the date of birth of the victim girl, P.W.8 approached P.W.6

Parvathy, who is the Head Mistress of Municipality Higher Secondary School, Dharmapuri and received a certificate wherein P.W.6 stated that the date of birth of the victim girl is 25.04.1998. The said certificate is marked as Ex.P.3. After receipt of the said certificate, P.W.8 completed the investigation and came to a positive conclusion that the appellant and the another accused committed the offence under Sections 11(iv) r/w 12 of POCSO Act and 294(b), 506(i) of IPC and filed final report.

4. Based on the above materials, the learned trial Judge framed charges under Sections 11(iv) r/w 12 of POCSO Act and 294 (b), 506(i) of IPC against the appellant and another. Both the accused denied the same as false and opted for trial. In order to prove their case, on the side of the prosecution as many as eight witnesses were examined and six documents were marked as Ex.P.1 to Ex.P.6.

(i) Out of the said witnesses P.W.1 Mahalakshmi is the victim girl. She speaks about the occurrence as when she was returned from the public toilet, the appellant herein pulled her thuppatta and touched her breast, further she has stated that due to the same she was fell down on the spot itself. Apart from that the appellant made a threat to her as if she disclosed the said occurrence to her parents, he would kill her. Thereafter, P.W.1 ran away from the place of occurrence.

(ii) P.W.2 and P.W.3 are the parents of the victim girl. P.W.2 Murugambal speaks about the occurrence as, after knowing the occurrence through her daughter, she went to the house of the accused for verifying the same. In half way through, she met the accused and asked the thuppatta which was taken away by the accused from her daughter during the time of occurrence. The accused replied that there was no thuppatta available with him. Therefore, P.W.2 went to the house of the accused and reported the matter to the parents of the accused.

(iii) P.W.3 Shanmugam is the father of the victim girl. P.W.4 Parameshwari is the sister of the victim girl. Both of them gave a similar evidence in support of the evidence given by P.W.2. P.W.5 Prakashkumar is the resident of the same locality. He speaks about the occurrence as on 26.06.2014, the Inspector of Police, All Women Police Station came to the occurrence place and prepared observation mahazar and rough sketch.

(iv) P.W.6 Parvathy is the Head Mistress, working in Municipality Higher Secondary School, Dharmapuri. According to her, on the request given by the investigation officer, she issued certificate with regard to date of birth of the victim girl under Ex.P.3. P.W.7 is also an attesting witness in the observation mahazar prepared by P.W.8.

(v) P.W.8 Chandrakantha, Inspector of Police, Dharmapuri speaks about the receipt of the complaint, examination of witnesses, arrest of the second accused, receiving school certificate from P.W.6 in respect to the age of victim girl and also about the filing of the final report.

5. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., both the accused persons denied the same as false. However they did not choose to examine any witness on their side and mark any documents.

6. Having considered all the material placed and on considering the arguments advanced by the learned counsel appearing on either side, the learned Session Judge, Fast Track Mahila Court, Dharmapuri convicted and sentenced the appellant herein as mentioned above in the second paragraph. Aggrieved over the said conviction and sentence, the appellant is before this Court with this appeal.

7. I have heard Mr.S.Doraisamy, learned counsel appearing for the appellant and Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the State and also perused the records carefully.

8. The learned counsel appearing for the appellant would contend that for attracting the Section 11(iv) r/w 12 of POCSO, the prosecution should prove the repeated act committed by the accused. But here it is a case for the single act committed by the accused, the prosecution filed final report against the accused persons alleging that the appellant committed the offence under Section 11(iv) r/w 12 of POCSO Act, which is erroneous in law. He would further contend that during the time of giving evidence as P.W.1, the victim girl improved her version and the same would amount to contradiction. According to him, the evidence given by the prosecution witnesses are having lot of contradictions. Therefore, he prayed to allow the appeal and set aside the conviction awarded by the Court below.

9. Per contra, the learned Additional Public Prosecutor appearing for the State would contend that the evidence given by the victim girl and her parents are clearly constituted the offence under Section 11(iv) r/w 12 of POCSO Act. Therefore, interference of this Court in the finding arrived at by the trial Court is not necessary and hence he prayed for dismissal of the present appeal.

10. I have considered the rival submission made on either side and perused the materials on record.

11. Initially in respect of registration of case, it is admitted on either side that the occurrence pertains to this case had happened on 12.06.2014 at about 8.30 p.m., but P.W.2 lodged complaint on 26.06.2014 at about 15 hours with the delay of 10 days. In this regard, P.W.8, the then Inspector of Police stated in her evidence as only on 26.06.2014, P.W.2 appeared before her and lodged complaint. It shows that after 10 days from the date of occurrence, the present case has been registered.

12. In the said circumstances, it is necessary on the side of the prosecution to show sufficient explanations for the delay in registering the case. But none of the witness examined on the side of the prosecution offered any explanation for the delay in lodging the complaint. Particularly in the evidence given by P.W.2 and others, nothing has been stated for the delay in lodging the complaint. Accordingly, reasonable explanations has not been put forth by the prosecution witness in respect of delay in lodging the complaint. Therefore, that itself sufficient to disbelieve the case of the prosecution.

13. Secondly, on going through the provisions under Section 11(iv) of POCSO Act, it reads as follows :-

"Section 11 - Sexual harassment.

.....

(iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means;"

Now on going through the said provision, for proving the same the prosecution must show the repeated and constant act of the accused which committed towards the victim girl. But here it is a case, the prosecution laid final report for the single occurrence. Thus the same itself is not sufficient to hold that Section 11(iv) r/w 12 of POCSO Act is attracted.

14. Yet another aspect which has to be necessarily to be decided in this case is that, as per the evidence of P.W.2 immediately after the occurrence the same has been intimated by the P.W.1 to P.W.2. When at the time of intimating the same, P.W.1 has not stated about the touching of her breast done by the accused. Only due to the same, the said specific act attributed against the appellant has not been mentioned in the complaint. On the other hand, at the time of giving evidence as P.W.1, the victim girl improved her version and stated as during the time of occurrence when she was returned from public toilet, the appellant pulled her thuppatta and squeezed her breast. The evidence given by the Investigation Officer/P.W.8 is very clear in this regard that at the time of examination under Section 161 of Cr.P.C., the said version has not been reported by P.W.1 to

the investigation officer. Therefore, in respect of the portion of crime committed by the accused, the evidence given by P.W.1 is appeared as contradicted one.

15. Therefore, in all as already observed, the delay in registering the case and other things which narrated in the earlier paragraphs are create doubts whether the alleged occurrence had happened as stated by the prosecution or not. The impugned version of the evidence given by P.W.1 creates doubts whether alleged occurrence had happened as stated by her.

16. Therefore, in the light of the above discussion I am of the considered opinion that the prosecution has not proved its case beyond all reasonable doubts. The trial Court without considering the said aspects convicted the accused which is erroneous in law. Hence, this Court comes to the conclusion that the conviction and sentence awarded by the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, is liable to be set aside.

17. Accordingly, this Criminal Appeal is allowed . The conviction and sentence imposed by the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, in Spl.S.C.No.8 of 2014 dated 15.05.2015 is hereby set aside. The appellant/first accused is acquitted of all charges. Fine amount, if any paid, shall be refunded to the appellant forthwith. Bail bonds, if any executed, shall stand cancelled.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

rts
To

1. The Sessions Judge,
Fast Track Mahila Court,
Dharmapuri.
2. The Inspector of Police,
All Women Police Station,
Dharmapuri,
Dharmapuri District
3. The Public Prosecutor,
High Court, Madras.

Copy to

1.The Section Officer,
Criminal Section,
High Court, Madras-104.

2.The Hon'ble POCSO Committee,
High Court, Madras-104.

+lcc to M/s.S.Doraisamy, Advocate Sr.42736

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