



Bail Slip

Petitioner/Appellant/Accused namely Maniyatti @ Chelladurai, was released on bail as per order of this Court dated 27/08/2014 made in MP(MD)No.1/2014 in Crl A(MD)No.208/2014

WEB COPY

BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

RESERVED ON : 22.01.2020
PRONOUNCED ON : 27.01.2020

CORAM

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR
CRL. A. (MD) No. 208 of 2014

Maniyatti @ Chelladurai .. Appellant / Accused

- Vs -

The State represented by
The Inspector of Police,
Thuraiyur, Trichy District. .. Respondent / Complainant

Prayer : Appeal filed u/s 374 (2) of the Code of Criminal Procedure, to call for the records as against the judgment of the learned IInd Additional District Judge, Sessions Judge (FAC), Mahila Court, Trichy, constituted as the Special Court under the Protection of Children from Sexual Offences Act, 2012, convicting the appellant / accused to a sentence of rigorous imprisonment for a period of seven years and to pay a fine of Rs.2,000/- by a judgment dated 30.06.2014.

For Appellant : Mr.V.Singan
For Respondent : Mr.K.Suyambulinga Bharathi
Governement Advocate (Criminal side)

JUDGMENT

This Criminal Appeal has been filed against the judgment and conviction passed by the learned IInd Additional District Judge, Sessions Judge (FAC), Mahila Court, Trichy, in Spl. Sessions Case No.4 of 2013, dated 30.06.2014.

2. The appellant is the sole accused in this case. The Trial Court convicted the Accused for an offence under Section 10 of the Protection of Children from Sexual Offences Act, 2012 and imposed a sentence to undergo seven years rigorous imprisonment and to pay a fine of sum of Rs.2,000/- (Rupees Two Thousand only) under the said Act. The period of Simple Imprisonment The period



of imprisonment already undergone by the accused is ordered to be set off under Section 428 Cr.P.C.

3. The facts of the case are briefly stated hereunder:-

3.(1). The case of the prosecution is that on 05.06.2013 at about 03.00 p.m., the victim girl viz., P.W.1 aged about 07.00 years went to the house of the accused for watching T.V. The accused took P.W.1 to the room at upstairs, lifted her skirt, triggered her private part and committed aggravated sexual assault on her. Thereafter, P.W.1 returned to her home, crying and reported the occurrence to her mother / P.W.2. When P.W.2 questioned the accused, he threatened her to do away with her life. She informed the incident to her husband / P.W.3 and thereafter, P.W.1 was taken to a Private Nursing Home along with her parents. Thereafter, she was taken to the Government Hospital, Thuraiyur on 06.06.2013 at about 09.40 a.m., and was referred to the Government Headquarters Hospital, Trichy on the very same day at about 01.50 p.m. for further treatment.

3.(2). On receiving the information from the Government Headquarters Hospital, Trichy, P.W.12-the then Sub Inspector of Police, attached to the Thuraiyur Police Station went to the Hospital, recorded the statement from P.W.2, registered a case in Crime No.200 of 2013 against the accused for offences under Sections 354, 506 (i) I.P.C. and Sections 7 and 8 of the protection of Children from Sexual Offence Act, 2012 (hereinafter referred as POCSO Act for the sake of brevity and convenience) and sent First Information Report-Ex.P.9 to the higher officials and the Court. On the very same day, at about 04.00 p.m., P.W.13-Investigating Officer, went to the scene of occurrence, recorded the statement of witnesses, prepared Observation Mahazar-Ex.P.10, Rough Sketch-Ex.P.11, and arrested the appellant. Thereafter, P.W.13 completed investigation and filed charge sheet against the appellant for the offences under Sections 354, 506 (i) I.P.C. and Sections 7 and 8 of the protection of Children from Sexual Offence Act, 2012, before the learned IInd Additional District Judge, Sessions Judge (FAC), Mahila Court, Trichy. Aggrieved over the same, the present Appeal has been filed.

4. Before the trial Court, in order to substantiate its case, the prosecution examined P.W.1 to P.W.13 and marked Ex.P.1 to Ex.P.11. No material objects were marked. On the side of the accused, no witness was examined nor any document was marked.

5. When the appellant was questioned u/s 313 Cr.P.C. about the incriminating circumstances appearing against him, he denied the same.

6. The learned trial Judge on completing the trial and considering the oral and documentary evidence and upon hearing both

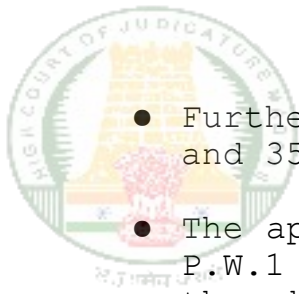


sides, convicted and sentenced the accused as aforesaid, resulting in filing of the present Appeal before this Court.

Submissions

7. The learned counsel appearing on behalf of the appellant made the following submissions:

- P.W.1 / victim along with her parents viz., P.W.2 and P.W.3 are residing in the opposite house of the appellant and there was some civil dispute with regard to the usage of common area between their house.
- There is considerable delay in lodging the complaint. Though the occurrence is said to have taken place on 05.06.2013 at about 03.00 p.m., the complaint was lodged only on 06.06.2013 and no reason was given for the delay.
- According to P.W.2 and P.W.3 / parents of the victim have stated in their evidence that on 05.06.2013, the victim was taken to a private Nursing Home. In this case, no such witnesses have been examined from the Private Nursing Home. Further, on the next day of the occurrence, the victim was taken to the Government Hospital, Thuraiyur and P.W.8-Doctor, attached to the Government Hospital, Thuraiyur, who is a male Doctor in violation of Section 27 of the POCSO Act, this Doctor had issued Ex.P.4-Accident Register Copy recording some tenderness in the lower vagina of the victim. P.W.8 had examined the victim at about 09.40 a.m. and thereafter, the victim was referred to the Government Hospital, Trichy, where P.W.9 had examined the victim and she issued Ex.P.5. In the Accident Register-Ex.P.5 as well as Medical Examination report-Ex.P.6, there is no mention about any tenderness in the private part of the victim.
- According to the appellant, P.W.1 / victim in her evidence had not spoken anything against him and it is only P.W.2 / mother of the victim, who made incriminating remarks against the appellant. Thus, except for P.W.1 to P.W.3 and the official witnesses, no other witnesses have spoken anything against the appellant.
- Apart from P.W.1 to P.W.3, P.W.4 / neighbour, P.W.5 / grandfather of P.W.1, P.W.6-observation mahazar witness as well as P.W.7, have not supported the case of the prosecution. No material objects were recovered and apart from the testimony of the victim girl, there is no other independent witness to support the testimony except her parents.
- P.W.9-doctor, gave evidence stating that she had not found any injuries on the private part of the victim child.
- Further in this case, in violation of Section 26 of the POCSO Act, no video and audio recordings have been made.



- Further, there have been violation of Sections 24, 25, 26, 27 and 35 of the POCSO Act.
- The appellant has been falsely implicated in this case by using P.W.1 / child, who had been tutored by P.W.2 and P.W.3, due to the dispute over the common area between the appellant and P.W.2 and P.W.3.
- The victim and the parents only spoken about the appellant.
- The chain of links on the facts of the case had not been properly proved. Hence, he prays for acquittal.
- In order to substantiate his submissions, the learned counsel appearing for the appellant relied upon the judgments of this Court in the case of **Sundaramahalingam Vs. The State by Inspector of Police, Karungalpalam Police Station, Erode** reported in **[2016 (1) T.N.L.R. 99 9MAD]**, in the case of **Sivakumar @ Ramesh** reported in **2018 (1) MWN (Cr.) 484 (DB)**, and in the case of **Chellappan Vs. State, represented by the Inspector of Police, Gandarvakottai Police Station, Pudukottai District** reported in **(2016) 4 MLJ (Cr1) 611 LNIND 2016 BMM 393** and the Hon'ble Supreme Court in the case of **Chamaru Ram Vs. State of Himachal Pradesh** reported in **2005 Cr1. J. 1943**

7. The learned Government Advocate (Criminal side) appearing on behalf of the respondent Police made the following submissions:

- In this case, on the prosecution side 13 witnesses were examined as P.W.1 to P.W.13 and 11 documents were marked as Ex.P.1 to Ex.P.11.
- In this case, it is proved that the victim is aged about seven years, which has been proved through Ex.P.7-School Certificate issued by P.W.10-Headmistress of the School.
- Further P.W.8 and P.W.9-Doctors, who examined the victim have categorically mentioned in Ex.P.4, Ex.P.5 and Ex.P.6, that the age of the victim is seven years. The victim and her parents have also stated so. Hence, it is clearly proved that the victim was a minor aged about seven years.
- P.W.1 in her evidence had categorically stated about the sexual assault made on her by the appellant and it is proved that she is less than 12 years and hence, the appellant had committed aggravated sexual assault.
- P.W.2's / the mother of the victim evidence is natural, to whom the girl immediately after the sexual assault, had come crying in state of shock, thereafter, revealed the happenings. P.W.2



had questioned the same with the appellant, who threatened her not to approach the Police.

- Further, P.W.2 informed the said incident to her husband / P.W.3 and thereafter, they have taken the victim to the Hospital. The victim complained about the traumatic severe pain. Thereafter, on the very next day i.e., on 06.06.2013, P.W.2 and P.W.3 had taken the victim to the Government Hospital, Thuraiyur and thereafter, the victim referred to the Government Headquarters Hospital at Trichy, where she was treated by P.W.9, as an in-patient. During her treatment, P.W.12-the Sub Inspector of Police, attached to the Thuraiyur Police Station, registered the First Information Report. Thereafter, he sent First Information Report and complaint to the Court and higher officials and P.W.13-Investigating Officer, who took investigation, visited the scene of occurrence, examined the witnesses, recorded the statement, prepared the mahazars and in the meanwhile, he had directed P.W.12-the Women Sub Inspector of Police, who went in plain clothes, recorded the statement of victim and gave report-Ex.P.8. After examining the Doctors and obtaining the medical report, charge sheet came to be filed.
- The trial Court on appreciation of the evidence had rightly convicted the accused in this case, which not to be interfered with.
- There is no violation as contended by the appellant. The safeguards given under Sections 24, 25, 26, 27 and 35 of the POCSO Act, are only in the interest of the victim / child and not for the accused. The appellant had not denied and disputed by way of cross-examination with P.W.1 / victim.

8. This Court has carefully considered the submissions made on either side and the entire oral and documentary evidence.

9. Discussions:-

- It is proved that the victim is of seven years, as could be seen from the evidence of P.W.10, the Headmaster of the School, who issued Ex.P.7-Age Certificate.
- Further P.W.8 and P.W.9, who examined the victim had stated that the victim is of seven years old as could be seen from Ex.P.4, Ex.P.5 and Ex.P.6, which are not disputed.
- P.W.1 / victim in her evidence had clearly mentioned about the abuse and sexual assault made by the appellant on her and immediately, she returned back, crying and informed to her mother-P.W.2, who got rattled was in shock to hear the same and she was in a state of shock, crying and hitting herself, unable to resolve to the fate, which is clearly spoken by P.W.2 confirmed by P.W.7. Thereafter, P.W.2 informed P.W.3. They



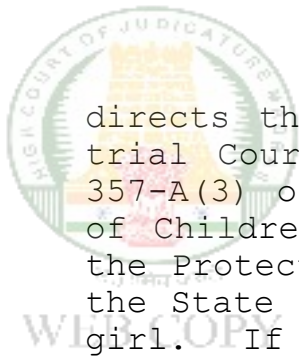
have taken the victim to the Hospital. P.W.8 examined the victim and issued Accident Register copy-Ex.P.4, which reveals the tenderness in the lower vagina, which is in conformity to the evidence of P.W.1. Further, P.W.8 being a male Doctor had taken the service of female Nurse while examining the victim. P.W.1 was taken to the Government Hospital, Thuraiyur at about 09.40 a.m. on 06.06.2013. Thereafter, the victim referred to the Government Headquarters Hospital, Trichy, for further treatment at about 01.50 p.m. While the victim was taking treatment in the Hospital, on receiving information from the Hospital, P.W.12-the Sub Inspector of Police, reached the hospital, recorded the complaint from P.W.2 and registered the case at about 03.00 p.m. thereafter, forwarded the same to Court and P.W.13-Investigating Officer, on the very same day at about 04.00 p.m.. P.W.13 reached the scene of occurrence, prepared observation mahazar, rough sketch, examined the witnesses, First Information Report reached the Court on the same day at about 06.30 p.m. and there is no delay.

- Further, the evidence of P.W.1 / victim inspires confidence.
- Further, from the evidences of P.W.1 to P.W.3 and P.W.7 the occurrence had been proved, which is confirmed by P.W.8 and P.W.9- Doctors, who treated her and proved through medical evidence Ex.P.4 to Ex.P.6.
- The appellant had not dislodged statutory presumption of Section 29 of the POCSO Act, the appellant has not produced any evidence both oral and documentary or from the available evidence to dislodge presumption under Section 29 of the POCSO Act.
- The feeble plea of civil dispute and false implication is without any material, except for making a suggestion to P.W.2 and P.W.3 and there is no other material.
- During 313 questioning also, he has not given any such explanation. In such view of the matter, this Court is not inclined to interfere with the findings of the Trial Court. This Court finds that the conviction and sentence passed by the trial Court which has given a well reasoned judgment not to be interfered with.

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Conclusion

10. In the result, the Criminal Appeal is dismissed. The conviction and sentence imposed on the appellant in Spl. Sessions Case No.4 of 2013, dated 30.06.2014, passed by the learned IInd Additional District Judge, Sessions Judge (FAC), Mahila Court, Trichy, is confirmed. The respondent Police is directed to secure the accused to undergo the remaining period of sentence. This Court



directs the State Government to comply with the directions of the trial Court, wherein, the trial Court under Sections 357-A(2) and 357-A(3) of Cr.P.C. r/w rule 7(3) and rule 7 (4) of the Protection of Children from Sexual Offences Rules 2012 r/w Section 33 (8) of the Protection of Children from Sexual Offences Act, 2012, directed the State to pay a sum of Rs.50,000/- as compensation to the victim girl. If not paid sofar, the State Government shall pay the same within a period of one month from the date of receipt of a copy of this judgment and thereafter, report compliance before this Court.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

Tsg

To

- 1) The IInd Additional District Judge,
Sessions Judge (FAC), Mahila Court, Trichy
 - 2) The Principal Sessions Judge, Trichy
 - 3) The Inspector of Police,
Thuraiyur, Trichy District.
 - 4) The Superintendent,
Central Jail, Trichy
 - 5) The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
 - 6) The Section Officer, Criminal Section, (2 copies)
Madurai Bench of Madras High Court, Madurai.
- +1 CC to Mr.V.SINGAN, Advocate (SR-3232[F] dated 27/01/2020)

JUDGMENT IN
CRL. A. (MD) NO. 208 of 2014
Dated 27.01.2020

MK (07.02.2020) 7P 9C