



Bail Slip

This Appellant namely Rajagopal, S/o.Gopalasami Nayakkar was released on bail as per order of this Court dated 17.08.2015 made in MP(MD).No.1/2015 in Crl.A.(MD).No.188/2015.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.03.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.A.(MD)No.188 of 2015

Rajagopal : Appellant/Accused
Vs.
The State represented by
The Inspector of Police,
All Women Police Station,
Kovilpatti,
Thoothukudi District.
(Crime No.2 of 2013) : Respondent/omplainant

PRAYER: Criminal Appeal filed u/s 374 of the Code of Criminal Procedure, to call for the records pertaining to the judgment rendered by the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thoothukudi, Thoothukudi District in Special Sessions Case No.7 of 2014, vide her judgment dated 10.08.2015 and set aside the same.

For Appellant : Mr.R,Anand

For Respondent : Mrs.S.Bharathi

Government Advocate (Criminal side)

JUDGMENT

The sole accused in S.C.No.7 of 2014, on the file of the Court of Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thoothukudi, is the appellant. The appellant/accused stood charged and tried for the commission of the offences under Section 18 of the Protection of Children from Sexual Offences Act 2012 r/w 3.

2. The trial Court, vide impugned judgment dated 10.08.2015 has found him guilty for the commission of offences under Section 11(iv) r/w 12 of the Protection of Children from Sexual Offences Act and imposed with the sentence to undergo rigorous imprisonment of one (1) year and to pay a fine of Rs.3000/-, in default to undergo rigorous imprisonment for one (1) month. The trial Court has also granted set-off under Section- 428 Cr.P.C. The appellant/accused, aggrieved by the said conviction and sentence awarded by the trial Court, has filed this Criminal Appeal.

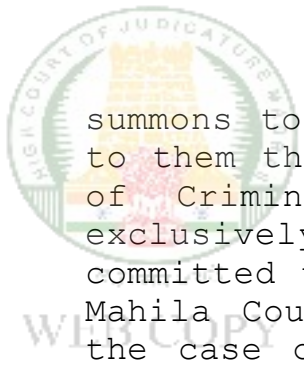
3. The facts leading to the present appeal, relevant for the purpose of disposal, briefly narrated, are as follows:



The case of the prosecution is that P.W.1 - Victim girl Sandhiya is studying 7th standard in lakshmi Mills School, Kovilpatti and residing along with her parents and P.W.2 and P.W.7 are her father and mother. The appellant/accused is their neighbour and he used to go to the house of the victim. Prior to two years, when P.W.1- victim girl was alone in the house, the appellant/accused went to her house, used filthy language, embraced her, kissed her and did wrongful act and when the victim girl told him that she would report the matter to her parents about the same, the appellant/accused threatened her life to danger. While so, on 16.09.2011 at about 07.45 a.m., when P.W.1- victim girl was waiting in Viswanatha Nagar bus stop, Nalattinpuhur, the appellant/accused came in the two wheeler and told her that he would leave her in the school and took her in the two wheeler and while riding the two wheeler, asked her to fulfil his wish and that she would get accustomed to the same and committed verbal harassment. Again on 09.01.2013 at 07.45 a.m., when P.W.1-victim girl was standing in the Viswanatha Nagar bus stop, Nalattinpuhur, appellant/accused came in the same two wheeler, pulled her hand and asked her to get in the vehicle, but P.W.1-victim girl refused and escaped from him. Due to the said act of the accused, P.W.1-victim girl was mentally depressed and lodged a complaint against the appellant/accused before P.W.6- the Inspector of Police, All Women Police Station, Kovilpatti, which was marked as Ex.P.1.

(ii) P.W.6, upon receipt of the complaint given by P.W.1, under Ex.P.1 registered a case in Cr.No.2 of 2013 for the offence under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act and 506(ii) I.P.C., and the printed F.I.R., is marked as EX.P.4 and thereafter, sent a copy of the complaint and the First Information Report to the learned Judicial Magistrate No.1, Kovilpatti. Subsequently, she enquired P.W.1 - Victim girl, P.W.2-father of the victim girl, P.W.7- mother of the victim girl and other witness - P.W.3 and recorded their statements under Section 161(3) Cr.P.C. On 26.01.2013 at about 06.15 hours, the appellant/accused was arrested near Nalattinpuhur bus stop and on that date also, P.W.6 filed alteration report which was marked as Ex.P.5 by altering the offences under Sections under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act and 506(ii) I.P.C., and Section 12 of POCSO Act. On 30.01.2013, she seized the vehicle bearing Registration No.TN-69-5707, which was involved in the occurrence and marked as M.O.1. Thereafter, she prepared athatchi under Ex.P.3 in the presence of witnesses viz., Muthuraj - P.W.5 (Village Administrative Officer) and Krishnan and thereafter she obtained school certificate of P.W.1. After completing the investigation, P.W.6 filed final report on 06.02.2013.

(iii) The Trial Court, upon filing of the final report, issued



summons to the appellant/accused and on his appearance, furnished to them the copies of the documents under Section 207 of the Code of Criminal Procedure, 1973 and having been the case is exclusively tried by the Sessions Court, the same has been committed to the Sessions Court, Mahalir Neethimandram (Fast Track Mahila Court), Thoothukudi. The said Court, in turn, has taken the case on file as S.C.No.7 of 2014. The appellant/accused was summoned to the charges under Section 18 of the Protection of Children from Sexual Offences Act 2012 r/w 3, were filed and he was questioned. The appellant/accused pleaded not guilty to the charges framed against him and prayed for trial of the case.

(iv) The prosecution in order to sustain their case, examined P.W.1 to P.W.7, marked Exs.P.1 to P.5 and M.O.1

(v) The appellant/accused was questioned under Section 313(1)(b) of the Code of Criminal Procedure, 1973, with regard to the incriminating circumstances made out against him in the evidence tendered by the prosecution and he denied it as false.

(vi) On behalf of the appellant/accused, neither oral nor documentary evidence was let in.

(vii) The trial Court, on consideration of the oral and documentary evidences and other materials, found the accused guilty and convicted and sentenced the appellant/accused as stated above vide the impugned judgment and challenging the legality of the same, the present Criminal Appeal has been filed.

4. The learned Counsel appearing for the appellant/accused would submit that though admittedly the occurrence was said to have been happened as against P.W.1-victim girl on 09.01.2013, the first occurrence was said to have been happened on 16.09.2011 at 07.45 a.m. and there was no specific allegation against the appellant/accused relating to the fact that the appellant/accused made sexual attempt to P.W.1-victim girl and she refused and jumped from the two wheeler. The learned Counsel would further submit that except the evidence of P.W.1, there is no other evidence corroborating her version. He would further add that since the earlier occurrence allegedly taken place two years back, which has also not been reported immediately, such occurrence could not be clubbed in the form a charge along with the charge levelled in connected with the occurrence alleged to have been taken place on 09.01.2013. He would further submit that there was an inordinate and unexplained delay in giving the complaint by P.W.1-victim girl and though the occurrence was said to have been taken place on 09.01.2013, the complaint was lodged on 25.10.2013, for which there was no plausible explanation offered by the prosecution.



5. The learned Counsel for the appellant/accused would further submit that the third daughter of the appellant/accused is the classmate of P.W.1-victim girl and there was a close relationship between the family of P.W.1-victim girl and the appellant/accused, however, the said relationship was not disclosed in the chief-examination of P.W.1 and during the cross-examination of P.W.1, all those facts were elucidated from P.W.1, which itself shows the contradictory and the said contradictory itself is sufficient for acquittal of the accused. He would further add that the materials placed by the prosecution did not constitute the ingredients to the offence, for which, the appellant/accused was charged and in the light of the very many infirmities and inconsistencies in the prosecution case, the trial Court, ought to have awarded the benefit of doubt and acquitted him and hence, prays for allowing the Criminal Appeal and thereby setting aside the conviction and sentence imposed by the trial Court.

6. Per contra, the learned Government Advocate appearing for the State would submit that P.W.1 is the victim girl and in her evidence, she clearly deposed that on 16.09.2011 at about 07.45 a.m., when she was waiting in Viswanatha Nagar bus stop, Nalattinuthur, the appellant/accused came in the two wheeler and told her that he would leave her in the school and took her in the two wheeler and while riding the two wheeler, asked her to fulfil his wish and that she would get accustomed to the same and committed verbal harassment. Again on 09.01.2013 at 07.45 a.m., when she was standing in the Viswanatha Nagar bus stop, Nalattinuthur, the appellant/accused came in the same two wheeler, pulled her hand and asked her to get in the vehicle, but she refused and escaped from him. Due to the said act of the accused, she was mentally depressed and lodged a complaint against the appellant/accused before P.W.6- the Inspector of Police, All Women Police Station, Kovilpatti, which was marked as Ex.P.1. Further the learned Government Advocate would submit that the date of incident has been clearly mentioned in the complaint - Ex.P.1 and in the evidence of P.W.1-victim girl. The testimony of P.W.1 is corroborated by the evidences of P.W.2 - father of P.W.1-victim girl and P.W.7- mother of P.W.1-victim girl and there is no reason to disbelieve the testimony of P.W.1-victim girl, as no girl would ever lie on such a vital issue and further the evidence of P.W.1 is sufficient to implicate the appellant/accused and the testimony of P.W.1 - victim girl, coupled with the evidences of P.W.2 and P.W.7, has clinched the case of the prosecution that the victim girl, who was aged about 11 years had been verbally harassed by the appellant/accused. It is the submission of the learned Government Advocate appearing for the State that the testimony of the victim girl corroborated by the testimony of P.W.2 and P.W.7 has inspired confidence and also found trustworthy. The trial



Court, rightly, reached the verdict of convicting the appellant/accused for the offences, under Section 11(iv) r/w 12 of the Protection of Children from Sexual Offences Act and imposed the appropriate sentence and hence, prays for dismissal of this Criminal Appeal.

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7. This Court paid its anxious consideration on the rival submissions and also considered the oral and documentary evidences and other materials and also perused the original records.

8. Considering the facts and circumstances of the case, the questions arise for determination in this Criminal Appeal are

"(i) Whether the appellant/accused committed a sexual harassment upon the victim girl repeatedly or any other means?

(ii) Whether the conviction and sentence awarded by the trial Court to the appellant/accused is sustainable or not?"

9. Considering the facts and circumstances of the case, it is clear that P.W.1 is the victim girl and in her evidence, she deposed that on 16.09.2011 at about 07.45 a.m., when she was waiting in Viswanatha Nagar bus stop, Nalattinpuhur, the appellant/accused came in the two wheeler and told her that he would leave her in the school and took her in the two wheeler and while riding the two wheeler, asked her to fulfil his wish and that she would get accustomed to the same and committed verbal harassment. Again on 09.01.2013 at 07.45 a.m., when she was standing in the Viswanatha Nagar bus stop, Nalattinpuhur, the appellant/accused came in the same two wheeler, pulled her hand and asked her to get in the vehicle, but she refused and escaped from him. Due to the said act of the accused, she was mentally depressed and lodged a complaint against the appellant/accused before P.W.6- the Inspector of Police, All Women Police Station, Kovilpatti, which was marked as Ex.P.1. It is also evident from the evidence of P.W.1 that though she did not disclose the earlier relationship of the accused in the complaint - Ex.P.1, in her evidence, she deposed that she knew the appellant/accused from 5th standard onwards and the appellant/accused was also neighbour of P.W.1-victim girl and initially sexual attempt was made, when P.W.1-victim girl was studying 5th standard and on 16.09.2011 at about 07.45 a.m., when P.W.1-victim girl standing near the bus stop, the appellant/accused approached P.W.1-victim girl, as if her father instructed him to drop her to the school and on the way while travelling with the appellant/accused, the appellant/accused made sexual attempt and thereby, P.W.1-victim girl jumped from the two wheeler. Thereafter, there was no allegation against the appellant/accused. However, in the year 2013, when P.W.1-victim girl was standing in the same bus stop, at that time the



appellant/accused approached P.W.1-victim girl and made sexual harassment and thereafter, the complaint - Ex.P.1 was lodged against the appellant/accused.

10. According to the learned Counsel for the appellant/accused, except the evidence of P.W.1, no other evidence was available to implicate the accused in the present case. It is needless to point out that the legal position as to the reliability of the testimony of prosecutrix is no longer *res integra* and it is useful to refer the decision rendered by the Honourable Supreme Court of India in ***Hem Raj Vs. State of Haryana*** reported in ***(2014)2 Supreme Court Cases, 395***, wherein it is stated that it is well settled position of law that if the testimony of the prosecutrix is found to be credible and if it inspires total confidence, it can be relied upon even sans corroboration.

11. On a perusal of evidence of P.W.1-victim girl, though there are lot of contradictions in chief examination and cross-examination, there are lot allegations against the appellant/accused to in order to attract the provision of Section 11 of POCSO Act. A reading of Section 11(iv) r/w Section 12 of the said Act makes it clear that whoever is said to commit sexual harassment upon a child when such person with sexual intent repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine. In the case on hand, right from the year 2011, the appellant/accused followed P.W.1-victim girl and threatened her life as well as made sexual attempt.

12. On the submission made by the learned Counsel appearing for the appellant/accused that there is an inordinate and unexplained delay in lodging the complaint, this Court is of the considered view that when an offence of this nature is committed, the parents of the victim girl usually wait so as to take a decision whether to lodge a report with the police as the reputation, prestige of the family and the career on the future of the young child is involved in this case and the Indian Women has the tendency to conceal such offence because it involves her prestige as well as the prestige of her family. At the outset in a case of sexual assault, one cannot expect the victim of the crime to go and disclose to every one and also to rush to the police station immediately. The future marriage prospects of the victim girl would also be affected in spite of that if a woman is coming forward to disclose the factual aspect which actually happened. Hence, P.W.1-victim girl is a minor who was violated, the possibility of there being hesitation on the part of the parents to lodge a complaint cannot be overruled. Hence, the



factum of delay in filing the complaint would not be fatal so as to vitiate the case of the prosecution.

13. The evidence of P.W.1 is sufficient to implicate the appellant/accused and the testimony of P.W.1 - victim girl, coupled with the evidence of P.W.2 and P.W.7, has clinched the case of the prosecution that the victim girl, who was aged about 11 years had been physically, forcibly, sexually harassed by the appellant/accused. It is the submission of the learned Government Advocate appearing for the State that the testimony of P.W.3 has inspired confidence and also found trustworthy. The trial Court, rightly, reached the verdict of convicting the appellant/accused for the offences, under Section 11(iv) r/w 12 of the Protection of Children from Sexual Offences Act and imposed the appropriate sentence and hence, this Court does not find any merit to interfere with the finding of the trial Court.

14. At this juncture, the learned Counsel appearing for the appellant/accused would submit that the relationship of the appellant/accused and the family of P.W.1-victim girl is continued to be cordial and after the occurrence, the appellant/accused shifted to some other place and again sending the appellant/accused to the jail, it will collapse his entire family circumstances and the family of the victim girl and hence, he seeks modification of the sentence.

15. Considering the above said facts and circumstances of the case and also considering the submissions made by the learned Counsel appearing for the appellant/accused, this Court is of the view to modify the sentence under Section 11(iv) r/w 12 of the Protection of Children from Sexual Offences Act to one of period undergone.

16. In fine, this Criminal Appeal is allowed in part. The conviction passed under Section 11(iv) r/w 12 of the Protection of Children from Sexual Offences Act by the trial Court made in S.C.No.7 of 2014, dated 10.08.2015 is confirmed. But the quantum of sentence imposed under the said section is modified to one of period undergone.

Sd/-

Assistant Registrar (Record)

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Sub Assistant Registrar (CS)



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To

1.The Sessions Court, Mahalir Neethimandram
(Fast Track Mahila Court), Thoothukudi.

2.The Inspector of Police,
All Women Police Station,
Kovilpatti,
Thoothukudi District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

4.The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court, Madurai.

JUDGMENT MADE IN
CRL.A. (MD)No.188 of 2015
13.03.2020

SM/ (08.05.2020) 8P 5C