



BAIL SLIP

Maharajan, S/o.Arumuga Thevar, aged 23/2015, was released on bail vide court order dated 09.10.2015 in MP(MD).No.1 of 2015 in CRL A(MD).275 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.10.2020

Pronounced on : 06.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

Cr1.A. (MD) No.275 of 2015

Maharajan ... Appellant / Sole Accused
versus

State represented by
The Inspector of Police,
All Women Police Station,
Pudukottai,
Thoothukudi District.
(Cr.No.2/2014)

... Respondent / Complainant

Appeal filed under Section 374 (2) of Criminal Procedure Code, against the Judgment dated 14.09.2015 made in Special Sessions Case No.12 of 2015, on the file of the Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thoothukudi.

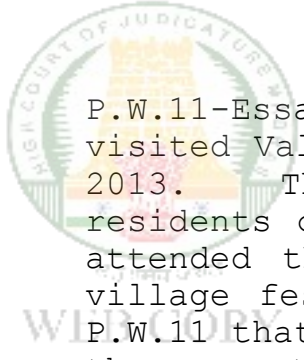
For Appellant : Mr.A.Thiruvadi Kumar
For Respondent : Mr.A.Robinson, Government Advocate

JUDGMENT

The appellant was tried for the charge under Section 4 of Protection of Children from Sexual Offences Act 2012 (hereinafter called as POCSO Act for brevity), before the Sessions Court, Mahalir Neethimandram (Fast Track Mahila Court), Thoothukudi in S.C.No.12 of 2015. The trial Court, by its Judgment dated 14.09.2015, found this appellant guilty for the charge, convicted and sentenced him to undergo rigorous imprisonment for seven years and to pay a fine of Rs.2,000/-, in default to undergo one month rigorous imprisonment. Aggrieved over the conviction and sentence imposed by the trial Court, the present Criminal Appeal is filed.

2. The brief facts of the prosecution, in a nut shell, are as follows:

(i) The defacto complainant [P.W.1] had studied up to 12th Standard, by staying at her grandmother's house in Vallanadu.



P.W.11-Essakkimathi is her cousin residing at Ambasamuthram and she visited Vallanadu for a Village Temple Festival in the month of May 2013. The appellant-Maharajan and his friend-Velmurugan are residents of Seevalaperi Village, Palayamkottai Taluk and they also attended the village festival in the month of May 2013. In the village festival, the appellant met P.W.1-Thambiratti and informed P.W.11 that he likes P.W.1 and intends to love her. P.W.11 informed the same to P.W.1 and P.W.1, after some hesitation, accepted his call, moved closely with him, roamed around Tirunelveli to various places. On 29.05.2013, around 4.00 p.m., after filling up petrol from one Mariappan Petrol Bunk, the appellant/accused took her to a bush, had a physical relationship on the pretext that they are going to get married. He also repeated the same three more days. Even in the month of August, the appellant/accused took her to a Temple at Seevalaperi and forcibly had sexual relationship. The victim [P.W.1] got a job at a Spinning Mill in Erode and when she was working in the Mill, she fainted and when she was referred to a Hospital, the Doctor informed her that she is pregnant. Therefore, she returned to her grandmother's house and since her grandmother did not permit her, she stayed at P.W.11's house for some time and thereafter, she went to a home. She lodged a complaint [Ex.P1] on 18.02.2014 before the Pudukottai All Women Police Station, on the advice of P.W.10-Petchaiammal, a Social Worker.

(ii) P.W.12-Kavitha, a Constable in Pudukottai All Women Police Station, received the complaint [Ex.P1] and registered FIR in Cr.No.2/2014 under Section 4 of POCSO Act on 18.02.2014 at 2.00 p.m. The printed copy of the FIR in Ex.P8 was also communicated to the higher officials and it reached the concerned Judicial Magistrate, Srivaikuntam, on 18.02.2014 at 9.00 p.m.

(iii) P.W.13-Tmt.Santhakumari, Inspector of Police, All Women Police Station, Pudukottai, on receipt of the complaint, went to the place of occurrence, prepared a mahazar [Ex.P3], rough sketch [Ex.P9] in the presence of P.W.5-Nelliappan and another, examined P.W.1 to P.W.4, the grandmother of P.W.1 and recorded their statements. He also arrested the appellant/accused at Thootukudi on 18.02.2014 at 8.00 p.m. and subjected him for medical examination before P.W.7-Doctor and the Doctor, who examined the appellant/accused, in his certificate (Ex.P5) has stated that there is no evidence to suggest that he is not potent. P.W.13 referred the victim girl for medical examination. P.W.8-Dr.Sobana examined P.W.1 on 19.02.2014 that she was 28 weeks' pregnant and the victim has told her that a known person, by name, Maharajan had sexual intercourse with her for several times. The Accident Register issued by P.W.8-Dr.Sobana is marked as Ex.P6.

(iv) The Investigation Officer also collected a certificate from the Headmistress, V.T.V.D. Government Higher Secondary School, Vallanadu, in Ex.P7, filed an alteration report for altering the



transferred on 09.07.2014. Thereafter, the investigation was taken over by P.W.14-Tmt.Vanitharani. P.W.14 made a request to the concerned Judicial Magistrate for recording the statement of the victim under Section 164 Cr.P.C., examined the Doctors and other witnesses and filed the final report on 08.04.2015.

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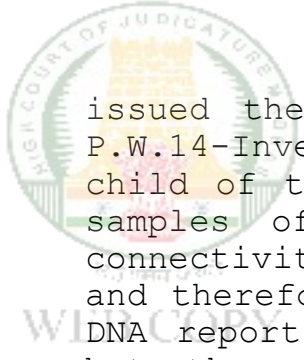
(v) During trial, 14 witnesses were examined on the side of the prosecution and 11 exhibits were marked. However, no material object was produced in this case. DNA report dated 20.11.2014 is marked as Ex.D1 through P.W.14-Tmt.Vanitha Rani, Inspector of Police.

(vi) The available evidence from the prosecution side is that P.W.1- victim states about her complaint [Ex.P1] and 164 statement (Ex.P2) recorded by the learned Judicial Magistrate. P.W.2 and P.W.3 are uncle and aunt of P.W.1, but, they did not support the case of the prosecution. P.W.4 is the son of P.W.2 and P.W.3 and he is a hearsay witness. P.W.5 is the witness for observation mahazar and P.W.6 is the learned Judicial Magistrate, who recorded 164 statement. P.W.7 and P.W.8 are the Doctors, who examined the accused and the victim respectively. P.W.9 is the Headmistress of the school, where P.W.1 studied. P.W.10-Petchiammal is a Social Worker and on her advice, the complaint was lodged. P.W.11 is the cousin of P.W.1, who introduced the accused to P.W.1 and the accused has also informed his desire to love the victim only through P.W.11. P.W.12 is the Constable, who registered the FIR and P.W.13 is the Inspector, who conducted the preliminary investigation and P.W.14 is the Inspector, who filed the final report.

(vii) The incriminating materials were put to the accused under Section 313 Cr.P.C. but, the accused denied the same. The accused has not examined any witnesses, but, the DNA report is marked as Ex.D1 through P.W.14- Inspector of Police. In conclusion of trial, the trial Court found him guilty and convicted and sentenced as stated supra. Aggrieved over the same, the present appeal is filed.

3. Heard Mr.A.Thiruvadikumar, learned counsel for the appellant and Mr.A.Robinson, learned Government Advocate (CrI. Side) for the State.

4. Mr.A.Thiruvadikumar, learned counsel for the appellant, submits that the entire prosecution case rests on the evidence of P.W.1; there is no corroborative evidence; the testimony of P.W.1 is not supported and therefore, the conviction and sentence imposed by the trial Court based on untrustworthy evidence is not proper. He further submits that there is an inordinate delay in reporting the incident and the age of the victim has not been sufficiently established. Further, this appellant was known to the victim through one Velmurugan and the non-examination of the said Velmurugan and the non examination of the Scientific Expert, who



issued the DNA report, are fatal to the prosecution case. The P.W.14-Investigating Officer had collected the samples from the child of the victim and sent the same for comparison with the DNA samples of the accused. As per the DNA test, there is no connectivity for the appellant/accused with the child of the victim and therefore, the respondent Police suppressed the same. But, the DNA report was marked as Ex.D1 through the Investigating Officer, but the same was not appreciated by the trial Court. The appellant/accused has projected the defence version that P.W.1 was in love with one Subash, son of a Superintendent of Police and he is responsible for the pregnancy, but, this appellant is made as a scapegoat. Ex.D1-DNA report is corroborated by the defence version and thereby, the appellant/accused has rebutted the presumption under Section 29 of POCSO Act, but, instead, the trial Court has erroneously convicted this appellant/accused for the offence under Section 4 of POCSO Act. In support of his contention, the learned counsel for the appellant has also relied upon the following Judgment:

- (i) 2006 (2) SCC (Crl.) 632 (Ravinder Singh Gorkhi vs. State of U.P.);
- (ii) 2014 (2) SCC 576 (Nandlal Wasudeo Badwaik vs. Lata Nandlal Badwaik and another);
- (iii) 2015 (1) SCC 365 (Dipanwita Roy vs. Ronobroto Roy);
- (iv) 2015 Crl. L.J. 3209 (State of Gujarat vs. Jayantibhai Somabhai Khant).

5. Per contra, Mr.A.Robinson, learned Government Advocate (Crl. Side) submitted that the evidence of P.W.1 is supported by her cousin (P.W.11) and the evidence of P.W.8-Dr.Sobana, who examined the victim. P.W.1 has narrated the sequence of incident that had taken place that this appellant, who met the victim in a Village Temple Festival, took advantage of her position, promised her to marry, took her to various places and exploited her by having sexual relationship. Consequent to that, the victim girl became pregnant and also delivered a baby. The evidence of P.W.1 and P.W.11 are cogent in this regard and the DNA report is not a substantive piece of evidence.

6. After his oral argument, the learned Government Advocate (Crl. Side) has also taken out a petition in Crl.M.P.(MD)No.4652 of 2020 to permit the prosecution to produce the Transfer Certificate dated 22.06.2012 as well as SSLC mark statement as additional evidence on 11.09.2020.

7. The learned counsel for the appellant objects this petition on the ground that this petition has been filed after his arguments and after the receipt of the written submission dated 30.07.2020. Therefore, this petition cannot be entertained.

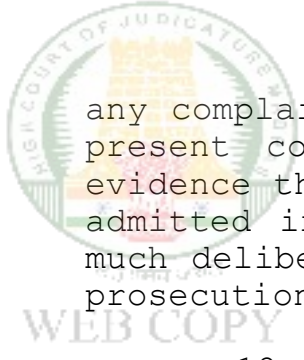
8. This Court paid its anxious consideration to the rival submissions made and also perused the available records.



9. The victim [P.W.1] was studying 12th Standard at V.T.V.D. Government Higher Secondary School, Vallanadu. She discontinued her studies and was staying with her grandmother at Vallanadu. The appellant/accused, friend of P.W.11, visited the victim's village during the temple festival, seduced her that he fell in love with her, promised her to marry, took her to different places and had physical relationship. Consequent to that P.W.1 got pregnancy and delivered a child. Thereafter, at the instance of P.W.10, a social worker, P.W.1 lodged the complaint [Ex.P1] before the respondent Police and the victim girl was subjected for medical examination and P.W.8-Dr.Sobana, who examined the victim girl, in her evidence, stated that the victim is 28 weeks pregnancy at the time of examination. The Investigating Officer collected the certificate from the Headmistress of V.T.V.D. Government Higher Secondary School, for the age of the victim, altered the offence and arranged for recording the statements under Section 164 Cr.P.C.

10. It is the consistent case of the accused that the victim P.W.1 was in love with one Subash, son of a Superintendent of Police and in order to protect Subash, a case has been foisted against this appellant and he is made as a scapegoat. According to P.W.1, she met the appellant/accused in the month of May 2013 in a Village Festival through her cousin (P.W.11). The occurrence took place on 29.05.2013, but, the complaint [Ex.P1] was lodged on 18.02.2014, i.e. after eight months. The delay cannot be a material defect in a case like this. The delay of eight months in reporting the incident, that too at the instance of P.W.10, a Social Worker, is having a bearing on deciding the issue.

11. The victim girl, while she was working at Erode in a spinning mill, fainted and she was taken to a Hospital and the Doctor, who examined her at Erode, has informed her about the pregnancy, but, soon after the same, no complaint was lodged. The victim said to have informed the same to the appellant/accused, but, the appellant/accused replied that he is not aware of her. Even then, she did not prefer any complaint. The father of the victim died on 24.12.2013 and thereafter, she was admitted in a Empower Women Welfare Home at Thootukudi on 28.12.2013. P.W.10-Petchiammal, a Social Welfare in the Empower Women Welfare Home, in her evidence, stated that the victim girl was taken to the Tuticorin Government Medical College and Hospital on 30.12.2013 and the Doctor, who examined her in the Government Medical College and Hospital, instructed her to lodge a complaint and only thereafter, the present complaint [Ex.P1] was lodged after 48 days, i.e. on 18.02.2014. Therefore, the delay in reporting the incident has a significant in this case. The victim, after coming to know about the pregnancy, contacted the appellant/accused and informed him and the accused replied that he is not aware of her, but, she has not preferred any complaint and the Doctor, who examined her on 30.12.2013, suggested her to lodge a complaint and even at that time, she did not prefer



any complaint and belatedly, i.e. on 18.02.2014, she preferred the present complaint. The Social Worker [P.W.10] admitted in her evidence that they were aware that P.W.1 was pregnant, while she was admitted in their home. Therefore, the complaint was lodged with much deliberation and thereby, it raises a doubt on the case of the prosecution.

12. P.W.2 and P.W.3, the maternal uncle and aunt of P.W.1 were also examined by the prosecution, but, they did not support the case of the prosecution and they were treated as hostile. The evidence of P.W.1 alone is available to make out a case against this appellant. According to P.W.1, this appellant is a friend of one Velmurugan. They visited the village during a temple festival in the month of May 2013 and this appellant/accused proposed his love through P.W.11-cousin of P.W.1 and thereafter, they roamed around Tirunelveli and had physical relationship on the promise of this appellant to marry P.W.1. P.W.11 has also stated in the same line. But, the conduct of P.W.11 that she has not informed the same to the father of the victim and the grandmother of the victim lacks credibility on her evidence. P.W.11 is none other than the cousin of P.W.1 and she appears to have facilitated the affair between the appellant/accused and P.W.1 and after the pregnancy, when P.W.1 informed the appellant/accused about the pregnancy, the appellant/accused replied that he is not aware of P.W.1. Even then, P.W.1 has not informed the same to P.W.11. P.W.11, who facilitated their affairs, has not taken any steps either to question the appellant/accused or prefer any complaint. But, the complaint was lodged only at the instance of Doctor, who examined the victim at Thootukudi Government Medical College and Hospital on 30.12.2013. During the investigation, the victim [P.W.1] has also delivered a baby and the P.W.14-Investigating Officer has also subjected the parties for DNA examination during the investigation and samples were sent for examination to the Regional Forensic Science Laboratory, Madurai, through the concerned Judicial Magistrate, Srivaikuntam, Thoothukudi on 12.09.2014. Dr.V.Annammal Mary Stella, Deputy Director and Assistant Chemical Examiner to Government, Regional Forensic Science Laboratory, Madurai, has examined the samples and concluded that in the female child Ranjitha, one of the alleles present in each of the nine STR loci and FGA is the maternal allele contributed by the biological mother Ms.Thamburatti, hence, the other alleles present in each of the above eleven STR loci ought to have been the paternal alleles contributed by the father of this child, but, these alleles are not present in the alleged father Mr.Maharajan. The Scientific Officer, in a Letter No.MDU/DNA/PAT/41/2014 dated 20.11.2014, forwarded her report that in view of the observation, Mr.Maharajan is excluded from being father of the female child Ranjitha. The report of the Forensic Science Department was also received by the learned Judicial Magistrate on 26.11.2014, but, the same has not been marked by the prosecution. Instead, it has been marked as a defence document by the Investigating Officer. The available Scientific



evidence confirms the biological mother as P.W.1 and it excludes the appellant as a biological father. P.W.14-Investigating Officer filed the final report on 08.04.2015, without even collecting the report from the Forensic Science Laboratory and without even examining the Scientist from the Forensic Science Laboratory.

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13. In this context, this Court has carefully considered the consistent case of the defence that P.W.1 was having a relationship with one Subash, son of a Superintendent of Police and this appellant is made as a scapegoat. P.W.1, though denied her relationship with Subash, admitted that she knows the person, by name, Subash. Similarly, P.W.11-her cousin has also admitted that Subash, Maharajan and Velmurugan are friends. But, when a specific question was made regarding Subash, she denied that she does not know Subash. This part of her evidence raises a doubt on the credibility of the witnesses, namely, P.W.1 and P.W.11. P.W.1 and P.W.11, who know about Subash, deliberately denied the question made about Subash. Further, P.W.2 and P.W.3, who are close relatives of P.W.1, did not support the case of the prosecution. The DNA report has also been suppressed by the prosecution. Therefore, the available evidence is not sufficient to sustain the conviction.

14. The learned counsel for the appellant/accused has taken a plea that the age of the victim has not been sufficiently established by the prosecution. The prosecution, by producing a certificate [Ex.P7] issued by the Headmistress of V.T.V.D Government Higher Secondary School, Vallanadu, Thoothukudi District, projected the date of birth of P.W.1/victim as 19.06.1997. Mr.Thiruvadikumar, learned counsel for the appellant has also raised a ground on the admissibility of Ex.P7 issued by P.W.9, by referring the provision of Section 35 of the Evidence Act that the certificate [Ex.P7] was issued on 08.04.2015 and it is not a document maintained in discharge of official duty. When the victim-P.W.1 studied up to 12th standard, neither SSLC Certificate nor the Transfer Certificate was produced and in the absence of any primary evidence to prove the age of the victim, the certificate [Ex.P7], a secondary evidence, cannot be relied upon to ascertain the age of the victim girl and it is also not admissible as per Section 35 of the Indian Evidence Act. He further submitted that though the victim girl was produced before the Doctor, she was not subjected to Ossification Test. Therefore, the prosecution has not proved the age of the victim girl to make out the case under POSCO Act.

15. Mr.A.Robinson, learned Government Advocate (Crl. Side) has taken out a petition on 11.09.2020 in Cr.M.P.No.4652 of 2020 stating that Transfer Certificate dated 22.06.2012 as well as the SSLC Mark Statement are very much available in the CD file and sought for permission to take those documents as additional documents to this appeal.



16. This appeal was taken up for hearing in the month of July 2020. The written submission was also filed on behalf of the appellant on 30.07.2020 and thereafter, this application is taken out by the learned Government Advocate (Crl. Side) on 11.09.2020.

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17. This is yet another example as to how the Police are prosecuting the case. The charge under POCSO is made based on the age of the victim and the Investigating Agency has collected the Transfer Certificate as well as the SSLC Mark Sheet and it also forms part of the CD file. But, instant, the certificate Ex.P7 was marked before the Trial Court. Similarly, DNA samples have been collected and sent for examination, but, without even collecting the DNA report and without even examining the scientific analysis, the final report has been filed which exposes the quality of Investigation and quality of Supervision by the Higher Officials. Though the Investigating Officials are provided with instructions vide Police Standing Orders and periodical circulars, the investigation and prosecution are made in such a careless manner without realizing their duties and responsibilities. Though the Government had directed the respective Departments to fix the responsibility and accountability on the erring officials, the Departments are not taking serious action apprehending that there are boomerangs against them. It is a sorry state of affairs and poor victims are at the mercy of these Investigating Officers and Prosecuting Officers.

18. Though this Court appreciates the endeavour made by the learned Government Advocate (Crl. side), allowing this application after the written argument is filed by the appellant would reopen the appeal once again. Moreover, besides, the age proof, the prosecution has not proved its case beyond any reasonable doubt and allowing the application would not serve any purpose to establish the case of the prosecution. Accordingly, this application is dismissed.

19. As discussed above, the evidence of P.W.1 is not creditworthy and the delay in reporting this incident is a material defect and the available scientific evidence exposes that this appellant is not a biological father of the victim's child.

20. Further, this Court, in the case of **Siva @ Sivakumar vs. State represented by Inspector of Police, W-21, All Women Police Station, Guindy, Chennai**, reported in **2020 2 L.W. (Crl.) 491**, held that a false allegation of rape can cause equal distress, humiliation and damage to the accused and the accused must also be protected against the possibility of false implication. The relevant portion of the Judgment reads as under:



"12.a false allegation of rape can cause equal distress, humiliation and damage to the accused and the accused must also be protected against the possibility of false implication and when there is no material projected by the prosecution corroborating the evidence of the victim girl, in such view of the matter, as held by the Apex Court, no presumption could be raised for assuming that the statement of the victim girl is always correct or without any embellishment or exaggeration. The victim girl during the course of her evidence stated that she was threatened by the accused not to disclose the incident to others and the prosecution case is that the accused had threatened the victim girl not to disclose the incident to any one, or else, he would murder her and thus, committed the offence punishable under Section 506(ii) IPC. However, quite contrary to the abovesaid version, the victim girl would depose that the accused had threatened her that he would kill her parents and maternal uncle in the event of her disclosing the incident to others and therefore, when it is found that the victim girl's testimony cannot be solely relied upon as there is a possibility of embellishment or exaggeration and her assertion that she had no sexual intercourse with anyone other than the accused is belied by the DNA report.

13. The trial Court without considering the abovesaid factors in the right perspective, particularly, the evidence of P.W.8 and the DNA report and also the failure of the Investigation Officer in not redirecting the investigation on Rajendran to exclude his responsibility for the pregnancy of the victim girl and when there is no reason to disbelieve the evidence of D.Ws.1 and 2, particularly, the evidence of D.W.1 alleging that it is only her husband who is having illicit relationship with the victim girl, in such view of the matter, the reasonings and conclusion of the trial Court for maintaining the conviction of the accused under Sections 376 and 506(ii) IPC cannot be upheld as per law and accordingly, as rightly contended by the accused counsel, it is found that the accused had been falsely implicated in the matter without any basis and when the evidence of the victim girl is found to be not inspiring and reliable and as above pointed out, her evidence not supported by any medical evidence, on the whole, it would be unsafe to base the conviction of the accused wholly on the unreliable and unacceptable solitary testimony of the victim girl."



21. In view of the decision rendered by this Court, this Court of the view that the conviction of the appellant cannot be sustained and he is entitled for an acquittal. Therefore, the conviction and sentence imposed by the Trial Court as against this appellant/accused are liable to be set aside.

22. Accordingly, the Criminal Appeal is allowed. The Judgment of the trial court is set aside and the appellant is acquitted of all the charges framed against him.

Sd/-

Assistant Registrar(CS-III)

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Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The learned Sessions Judge,
Mahalir Neethimandram
(Fast Track Mahila Court),
Thoothukudi.
2. The Inspector of Police,
All Women Police Station,
Pudukottai,
Thoothukudi District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Judgment in
Cr1.A. (MD) No.275 of 2015
06.11.2020

NA(CO)
TR(04.12.2020) 10P 4C