



Bail Slip

The Appellant / Accused Sathish, S/o. Sivakamu Reddiar was released on bail granted as per order dated 09.02.2016 made in MP (MD)No.1/2015 in Crl.A.(MD)No.331/2015.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated :21.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.A(MD)No.331 of 2015

Sathish

... Appellant / Sole Accused

Vs.

The State Represented by
the Inspector of Police,
Eppodumvendran Police Station, Thoothukudi.
[Crime No.327 of 2013]

... Respondent / Complainant

PRAYER: Appeal filed under Section 374(2) of the Code of Criminal Procedure, to call for the records relating to the Judgment made in Spl.S.C.No.20 of 2014 dated 27.05.2015 on the file of the learned Sessions Judge, Fast Track Mahila Court, Thoothukudi and set aside the same by allowing this criminal appeal.

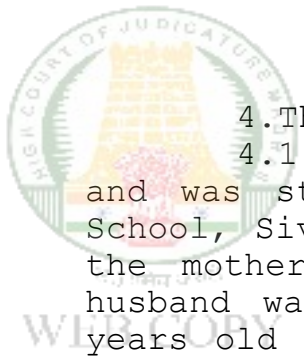
For Appellant	: Mr.N.Mohideen Basha Legal Aid Counsel
For Respondent	: Mr.A.Robinson, Government Advocate (Crl side)

JUDGMENT

This appeal is filed as against the conviction and sentence imposed on the appellant in Spl.S.C.No.20 of 2014, dated 27.05.2015 by the learned Sessions Judge, Fast Track Mahila Court, Tuticorin.

2.This appellant / sole accused was tried for the offence under Section 6 of the Protection of Children From Sexual Offences Act, 2012 [in short POCSO Act] and under Section 506 (I) of Indian Penal Code [in short 'IPC'] before the learned Sessions Judge, Fast Track Mahila Court, Tuticorin in Spl.S.C.No.20 of 2014.

3.In conclusion of the trial, the trial Court by its judgment dated 27.05.2015 found this appellant not guilty for the offence under Section 506(I) IPC and found him guilty, for the offence under Section 6 of the POCSO Act, convicted and sentenced him to undergo ten years of rigorous imprisonment, with a fine of Rs.5,000/- and in default of payment of fine amount, sentenced to undergo six months rigorous imprisonment. Aggrieved over the conviction and sentence imposed on the appellant, the present appeal has been filed.



4.The case of the prosecution in brief is as follows:

4.1.PW2 the victim child in this case was born on 15.02.2002 and was studying 6th standard in the Government Higher Secondary School, Sivagnanapuram at the time of occurrence. PW1 Muthuselvi is the mother of the victim child. PW1 was grazing goats and her husband was selling toffees and candies. The victim girl was 11 years old on the date of occurrence. On 01.12.2013, around 5.00pm, the appellant / accused by luring the victim child that he would show some film in his mobile phone, took her to a Noon Meal Centre attached to the Panchyat Union School at Sivagnanapuram, removed her dress, made her to lie down and had penetrative sex on the victim child. The victim girl [PW2] cried out of pain and wanted to go to her mother. Even then, the accused did not let her, but criminally intimidated her. Her inner wears became wet in the incident. Thereafter, PW2 returned to her house and informed the incident to her mother [PW1].

4.2.PW1 informed the incident to her husband. However they were not in a position to decide as to the further course of action. Since the child was crying with pain, they took her child to Madurai to the house of PW7 her Niece, for providing treatment to the victim child. PW7 suggested them that since it is an offence, no Doctor will provide treatment without complaint and even for taking treatment, they have to lodge a complaint. Therefore PW1, PW2 and PW7 went to the Eppodhumvendran Police Station on 03.12.2013 and lodged a complaint before the Sub Inspector of Police. PW15 Parvathi, a Woman Sub Inspector of Police, on receipt of the complaint [Exp1] registered the same in Crime No.327 of 2013 on 03.12.2013 at about 5.00pm, for the offence under Sections 376 and 506 (II) IPC and under Section 4 of the POCSO Act. She, immediately referred the victim child with a medical Memo No.107/Medicalmemo/V7PS/TUT/13, to the Government Hospital, Tuticorin through one Constable Murugeswari. Dr.Rajakumari [PW10] Medical Officer at Tuticorin Medical College cum Hospital, examined the victim child on 03.12.2013 at about 11.45pm and noted that ex.genitals congested. She also recorded the narration of the victim child on the manner of the occurrence in the Accident Register [Exp3].

4.3.Vanitharani [PW16], Inspector of Police, took up the investigation in Crime No.327 of 2013, on 03.12.2013 around 6.30pm, went to the place of occurrence prepared an observation mahazar [Exp2] and a rough sketch [Exp9] in the presence of one Balakrishnan and another. She also examined the witnesses PW1 to PW8, recorded their statements and also arrested the accused on 03.12.2013 at about 9.00am at Sivagnanapuram bus stop. The accused was also subjected to medical examination. PW13 Dr.Nareshkumar, Assistant Professor at Kovilpatti Government Hospital examined the appellant/accused on 05.12.2013 and issued a certificate in Exp6 that the accused is potent and had well developed genital organs.

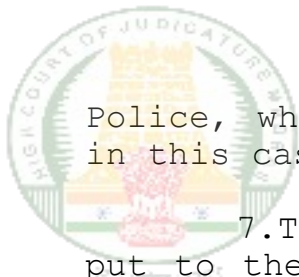


4.4.PW16 also made arrangements for recording the statement of the victim child under Section 164 CrPC. On the direction of the learned Chief Judicial Magistrate, Tuticorin the learned Judicial Magistrate No.I, Kovilpatti PW14 recorded 164 CrPC statement of the victim child on 09.12.2013. PW16 also recovered the dresses of victim girl [PW2], namely, inskirt [MO1], banian [MO2] and underwear [MO3] under a cover of mahazar [Exp5] in the presence of PW12 the grand father of the PW2. PW16 also took steps to send the recovered materials for the chemical examination, but the chemical examination report was not placed before the Court. She also examined the Doctor [PW10], who examined the victim child and issued the accident register [Exp3] and the Doctor [PW13], who examined the accused and issued the accident register [Exp6]

4.5. While so, on 29.01.2014, PW16 was transferred to some other place and therefore, the further investigation in this case was conducted by PW17. After examining other witnesses and after collecting the materials, PW17 filed the final report as against this appellant / accused for the offence under Sections 379 and 506 (I) IPC and Section 4 of the POCSO Act.

5.During the trial, on the side of the prosecution 17 witnesses were examined, 10 documents were marked besides, 3 materials objects were produced.

6.PW1 is the mother of the victim child and she states about the complaint [Exp1] lodged by her. PW2 is the victim child and she has narrated the incident. PW3 to PW6 are the residents of the Sivagnanapuram and they were examined that they only rescued the victim child from the accused. Since they did not support the case of the prosecution, they were treated as hostile. PW7 Shanmugakani is the aunty of PW2 and also a resident of Madurai. After the occurrence, PW2 was taken to PW7's house for providing treatment and on her advice, the complaint [Exp1] was lodged. PW8 was examined for the purpose of observation mahazar [Exp2]. PW10 Dr.Rajakumari, is the Doctor, who examined the victim child Karthiga on 03.12.2013 and issued the accident register [Exp3]. PW11 is the Headmaster i/c of the Government Higher Secondary School, Sivagangapuram, who gave the certificate that the victim child was studying 6th standard at the time of occurrence and her date of birth as per the school records is 17.05.2002. Through PW11, the school certificate was marked as Exp4. PW12 is the grand father of PW2, in whose presence, the clothes of the victim child were recovered by the Investigation Officer. PW13 is the Doctor, who examined the accused on 05.02.2013 and issued a potency certificate. PW14 is the then learned Judicial Magistrate of Kovilpatti, who recorded the statement of the victim child under Section 164 CrPC. PW15 is the Woman Sub Inspector of Police, who received the complaint [Exp1] on 03.12.2013 and registered the same in Crime No.327 of 2013 [Exp8]. PW16 is the Investigation Officer, who



Police, who completed the investigation and filed the final report in this case.

7.The incriminating materials from the prosecution case were put to the accused under Section 313 CrPC and he denied the same. Though the accused has stated that there are witnesses on his side, he neither examined any witness nor marked any document.

8.In conclusion of the trial, the trial Court found this appellant guilty, convicted and sentenced him as stated supra. As against the same, the present appeal is filed.

9.Though the appeal was listed for final hearing, there was no representation for the appellant. When the matter was taken up for hearing on 15.07.2020, there was no representation, despite the Counsel on record for the appellant was informed over phone about the listing of the case before this Court and the matter stood adjourned to 22.07.2020. When the appeal was taken up for hearing on 22.07.2020, Mr.S.P.Veerapandian, learned Counsel for the appellant sought time till 03.08.2020 and on his request the case was adjourned to 03.08.2020. But on 03.08.2020, he did not appear and he could not be contacted also. Hence, the appeal was posted on 04.08.2020 with a specific direction that if there is no representation for the appellant on the next date of hearing, the appeal would be proceeded with as per Section 386 CrPC. Section 386 CrPC mandates that after perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and in case of an appeal under section 377 or section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal.

10.This appeal is pending before this Court from the year 2015. Though the appellant has availed the suspension of sentence, has not made any arrangements to proceed with the appeal. Though this appeal was listed before this Court on 10.07.2020, 15.07.2020, 17.07.2020, 22.07.2020, 03.08.2020 and 04.08.2020 the appellant has not come forward to proceed with the appeal. Therefore, this Court by order dated 04.08.2020 appointed Mr.Mohideen Basha, who is having rich experience in criminal side, as a Legal Aid Counsel to proceed with the appeal on behalf of the appellant.

11.Heard Mr.Mohideen Basha, learned Counsel for the appellant and Mr.Robinson, learned Government Advocate [Crl Side] appearing for the State.

12.Mr.Mohideen Basha, learned Counsel for the appellant submitted the occurrence is alleged to have taken place on 01.12.2013 at about 7.00pm, but the complainant was lodged only on 03.12.2013 and the FIR also reached the Court only on 04.12.2013 at

<https://hccservices.com/india/crimes>



He further submitted that according to the prosecution, the accused took the child that he would show the film in his mobile phone, but the said mobile is not recovered from the accused, to prove the case of the prosecution.

13.The learned Counsel further submitted that according to PW1 and PW2, the occurrence has taken place on a Sunday and PW1 in her cross examination has stated that her daughter the victim child was wearing school uniform. The learned Counsel also submitted that according to PW2, her inner wears got wet, but PW1 says that she had washed the clothes of PW2, which is unbelievable. There are different versions stated by the witness in respect of the handing over of the clothes of the victim child to the investigation officer. In these types of charges, the clothes play an important role in proving the case. But there are different versions, which creates suspicion over the very case of the prosecution.

14.The learned Counsel further submitted that according to the prosecution, the occurrence has taken place on a Sunday and the gate of the School was closed, however, they have climbed up the gate since it was three feet height and went inside the occurrence place. He further submitted that it is unbelievable that the gate was three feet height and the compound wall of the school would be more high and therefore, it creates suspicion over the prosecution case. Therefore, he prayed that the appeal be allowed.

15.Per contra the learned Government Advocate [Crl Side] submitted that the victim child was aged about 11 years at the time of occurrence. The appellant / accused by enticing her that he would show some film in his mobile phone, took the child to the Noon Meal Centre of the Government School, on a Sunday and committed the Aggravated Penetrative Sex. The learned Counsel further submitted that the Doctor, who examined the victim child, has noted down the nature of injury and the evidence of PW2, PW1 and PW7 established the case of the prosecution and therefore, the trial Court rightly found the appellant guilty, convicted and imposed punishment.

16.This Court paid its anxious consideration to the rival submissions and perused the available records.

17.Admittedly, the victim child [PW2] was studying 6th standard at the time of occurrence in the Government Higher Secondary School at Sivagnanapuram and her date of birth is 17.05.2002 as recorded in the school certificate and on 04.12.2013, Tmt.Jeen Nirmala, Headmaster i/c of the Government School Sivagnanapuram, based on the school records, issued the certificate [Exp4] disclosing the date of birth of the victim child [PW2].

18.In this case, the appellant / accused, by enticing the victim child that he would show some film in his mobile phone, took the child to a School on a Sunday, removed her clothes and



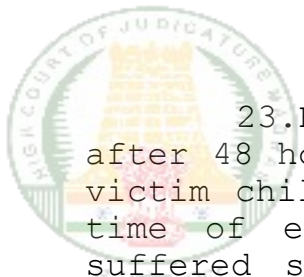
had committed aggravated penetrative sex. The victim girl sustained injuries on her private part. She was crying with pain and she also requested the accused to send her to her mother. However, the accused did not send her, but intimidated.

19.The child was rescued by some of the villagers. Since the child was crying with pain, the mother [PW1] took her to the house of PW7 her Niece, who was residing at Madurai, for providing treatment. On knowing the incident, PW7 advised the mother of the victim child that since it involves an offence, no Doctor would provide treatment without any complaint and therefore, they went to the respondent Police Station on 03.12.2013 and lodged the complaint [Exp1]. PW15 the Sub Inspector of Police, registered a case on 03.12.2013 at 5.00pm and referred the victim child to the Government Hospital, Tuticorin with a medical memo. Dr.Rajkumari [PW10], who examined the victim child, noted that the victim girl's genital got congested and issued an accident register in Exp3.

20.On the same day itself, the accused was also arrested and he was also subjected to medical examination. The Doctor [PW13], who examined the accused has certified that he is potent. Though some of the witnesses, who are the residents of the Sivagnapuram Village, rescued the victim girl from the accused at the time of occurrence, did not support the case of the prosecution and therefore, they were treated as hostile.

21.PW2 the victim child in her evidence has stated about the occurrence in a clear and cogent manner. The trial Court has also put questions and examined the victim child after fulfilling the requirements for examination of a child witness. The victim child has stated that on the date of occurrence, this appellant / accused has taken her by enticing her that he would show some film, removed her dress, made her to lie down and had also committed the penetrative sex. Consequently, she also suffered injury on her private part. The victim child has stated that her clothes got wet at the time of occurrence. The clothes were also recovered in the presence of PW12, her grand father marked as MO1 to MO3 and also sent for chemical examination, but the chemical examination report was not placed before the Court.

22.In fact, the occurrence has taken place on 01.12.2013 at about 6.00pm. But the complaint was lodged only on 03.12.2013 at 5.00pm. After the occurrence, the child was crying with pain. The mother PW1 was not able to take a decision, called her husband and informed him about the incident. Her husband also went in search of the accused and on seeing him, the accused ran away from a shop. Thereafter, for providing treatment to their child, they took the victim child to Madurai to the house of PW7. On the advice of PW7, they have realised that since it involves an offence, no Doctor would provide treatment without a complaint being preferred, went to the respondent Police Station on 03.12.2013 and lodged the complaint.



23. Even when the victim child was examined on 03.12.2013 after 48 hours of the incident, the Doctor [PW10], who examined the victim child has noted down a contusion on her private part at the time of examination. The victim child at the age of 11 years suffered such an assault of aggravated penetrative sex has also stated that she was crying with pain and therefore, they chose to provide treatment to the child and also took the child to Madurai. PW1 has also stated that she was worried about the future of the child in lodging the complaint. On the advice of PW7, only in order to provide treatment to the victim child, PW1's husband went and reported the incident on 03.12.2013 before the respondent Police. The evidence of PW1, PW2 and PW7 sufficiently explained the reason for the delay. In this kind of offence, this delay cannot be considered as a material defect. Even when the child was examined on 03.12.2013, she was having symptoms of injury on her private part.

24. The age of the victim girl has sufficiently been established by the prosecution by examining the Headmaster i/c [PW11] and through the certificate [ExP4] he issued. It is well settled that in the absence of any proof for age, the School certificate can be taken as a material evidence for the age of the victim.

25. The evidence of PW1, PW2 and PW7 would establish that the victim child was crying with pain and therefore, they have taken the victim child to Madurai for providing treatment and also lodged the complaint only for the purpose of providing treatment to her. The Doctor, who examined the victim child on 03.12.2013 has also noted down the injury on her private part, existing even after 48 hours of the occurrence. PW2 was examined under Section 164 CrPC by the learned Judicial Magistrate [PW14] on 03.12.2013 and she was also examined before the Court on 04.05.2015. PW2 in her statement recorded under Section 164 CrPC by the learned Judicial Magistrate [PW14], during the examination by the Doctor [PW10] and also before the Court has consistently stated that the accused removed her dress, made her to lie down, overlaid on her and has also inserted his penis into her private part. She further stated that her clothes got wet during the occurrence. The available evidence discloses clearly that the accused has committed aggravated penetrative sexual assault on the victim child. The victim child was 11 years old at the time of occurrence and therefore, this Court is of the view that the trial Court has rightly found this appellant guilty, convicted and also imposed a minimum punishment for the offence under Section 6 of the POCSO Act and therefore, there is no reason to interfere with the orders of the trial Court.

26. In the light of the above discussion,

- the appeal is dismissed;
- the judgment dated 27.05.2015 made in Spl.S.C.No.20 of 2014 by the learned Sessions Judge, Fast Track Mahila Court, is hereby confirmed;



- the trial Court is directed to secure the appellant/accused and confine him to prison to undergo the remaining period of sentence;
- Bail bonds, if any executed by the accused, shall stand terminated.

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27.This Court places on record its appreciation to Mr.Mohideen Basha, learned Counsel and the Legal Services Authority is directed to pay a sum of Rs.10,000/- to Mr.Mohideen Basha.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

- 1.The Judicial Magistrate No.1, Kovilpatti.
- 2.The Chief Judicial Magistrate, Tuticorin District.
- 3.The Sessions Judge,
Fast Track Mahila Court, Tuticorin.
- 4.Do-Through The Principal District and Sessions Judge,
Tuticorin District.
- 5.The Inspector of Police,
Eppodumvendran Police Station, Thoothukudi.

Copy to

- 1.The Record Keeper (2 copies)
Criminal Section,
Madurai Bench of Madras High Court, Madurai.
- 2.The Superintendent,
Central Prison, Palayamkottai, Tirunelveli District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 4.The Officer-In-Charge,
Legal Services Authority,
Madurai Bench of Madras High Court, Madurai.

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21.09.2020

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