



**BAIL SLIP**

Ulaganathan, (aged 28 years), S/o.Karuppaiah, Appellant/  
Accused was released on bail of this Court order dated 06.10.2016  
made in Crl MP(MD)No.2872 of 2016 in Crl A(MD)No.343 of 2015.

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Dated : 31.07.2020

CORAM:

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

**Crl.A(MD)No.343 of 2015**

Ulaganathan

... Appellant /Accused

Vs.

State represented by  
the Inspector of Police,  
All Women Police Station,  
Fort Station,  
Trichy City.

[Crime No.22 of 2013] ... Respondent/ Complainant

**PRAYER:** Appeal filed under Section 374(2) of the Code of Criminal Procedure, to allow this appeal and setting aside the judgment dated 21.01.2014 made in Spl.S.C.No.6 of 2013 on the file of the II Additional Sessions Judge(FAC), Mahila Court, Tiruchirappalli.  
[Prayer amended as per order dated 26.10.2016 vide Crl.M.P(MD) No.10449 of 2016]

For Appellant : Mr.N.Anandakumar

For Respondent : Mr.Robinson

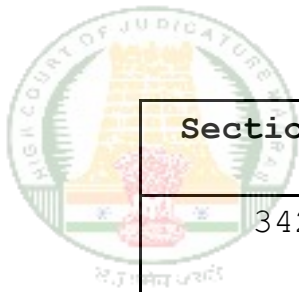
Government Advocate (Crl Side)

**JUDGMENT**

This appeal is filed as against the conviction and sentence imposed on the appellant in Spl.S.C.No.6 of 2013 by the learned Sessions Judge, Mahila Court, Tiruchirappalli dated 21.01.2014.

2.This appellant/sole accused was tried for the offence under Sections 342, 323 and 506(II) of Indian Penal Code, 1860 [in short 'IPC'] and under Section 6 of the Protection of Children from Sexual Offences Act, 2012 [in short 'POCSO Act'] by the learned Sessions Judge, Mahila Court, Tiruchirappalli.

3.The learned Sessions Judge, Mahila Court, by order dated 24.01.2014 in Spl.S.C.No.6 of 2013, found this appellant not guilty for the offence under Section 323 IPC and found guilty, convicted and sentenced him as follows:



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| Section of Law | Sentence of imprisonment                        | Fine amount (in Rs)                                                  |
|----------------|-------------------------------------------------|----------------------------------------------------------------------|
| 342 IPC        | To undergo rigorous imprisonment for one year   | 500/-, in default, to undergo simple imprisonment for one month      |
| 506(II) IPC    | To undergo rigorous imprisonment for five years | 500/-, in default, to undergo simple imprisonment for one month      |
| 6 of POCSO Act | To undergo rigorous imprisonment for ten years  | 1,000/-, in default, to undergo simple imprisonment for three months |

The sentences were ordered to run concurrently. Aggrieved over the conviction and sentence, the appellant/ accused filed this present appeal.

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

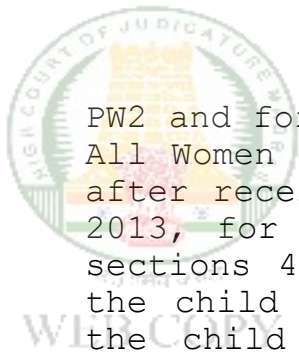
(i)The occurrence in this case took place on 25.05.2013. On the date of occurrence, PW1 namely Divya, the daughter of Amina @ Shenbagavalli [PW2] was seven years old and was studying second standard. On 25.05.2013, when the child was playing with her friends, the appellant / accused Ulaganathan came to the place of occurrence, gave chocolate to the children and sent them to their home. He also gave chocolate to the child, sent her to home and followed her. Then he locked the doors and insisted the the child to remove her undergarment. But, the child refused to do so. However, the accused himself removed her undergarment and also attempted to penetrate his private part into her private part. He also put his fingers on her private parts. When the child started crying due to pain, this accused left the place, by intimidating her that she should not reveal the incident to anyone.

(ii)One Faritha Begum [PW9] their neighbour also informed them about the accused fleeing away from their house. Since the child was weeping with pain, the mother of the child [PW2] enquired with her and the child narrated the incident to her. PW2 after informing the same to her husband Ravi [PW3] the father of the child, took the child to the Government Hospital at Trichy.

(iii) Dr.Nagamani[PW6] at Mahatma Gandhi Memorial Government Hospital at Trichy treated the child at 9.46pm on the same day, found the reddishness of vulva present and recorded the same in the accident register[Exp5].

(iv) On an intimation from the Government Mahatma Gandhi Memorial Hospital, the Sub Inspector of Police Gopinath went to the Government Hospital on 26.05.2013 and recorded the statement from

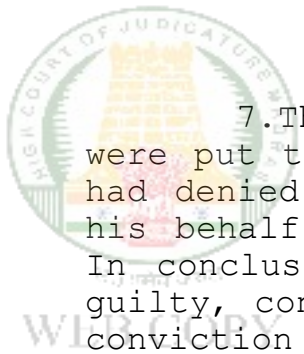
<https://hcservices.cemil.in/Hcservices/>



PW2 and forwarded the statement to the Inspector of Police [PW14] at All Women Police Station, Fort Station, Trichy city. PW14 Vasantha, after receiving the intimation, registered a case in Crime No.22 of 2013, for the offence under sections 376 and 506(I) IPC and under sections 4 and 8 of POCSO Act and went to the hospital, enquired the child [PW1] and her mother [PW2] and recovered the clothes of the child in Exp12. She also went to the place of occurrence, examined the witnesses, prepared the observation mahazar [Exp4] and rough sketch [Exp13] in the presence of witnesses PW8 and another. She also arrested the accused on the same day at about 12.30 noon, recorded his confession statement and also recovered the clothes MO.1 and MO.2 worn by him at the time of the occurrence offence, under a cover of mahazar [Exp3]. PW14 made a request to the Doctor for examination of the child and the accused and also arranged for recording the statement of the child under Section 164 CrPC and accordingly, the statement of the child was also recorded. She also made a request for sending the clothes of the child and the accused to the Forensic Science Laboratory for analysis, recorded the statement of the witnesses, collected report from the Forensic Science Department and filed a final report before the learned Sessions Judge, Mahila Court, against the appellant / accused under Sections 342, 376(II), 323 and 506(II) IPC and under Section 6 of the POCSO Act.

5. During the trial on the side of the prosecution 14 witnesses were examined and 16 documents were marked besides 4 material objects.

6. The child / victim girl was examined as PW1 and she narrated the manner of the occurrence; PW2 mother of the victim girl also stated about her complaint Exp1; PW3 father of the victim girl was examined as hearsay witness; PW4 Village Administrative Officer speaks about the arrest of the accused, his confession statement and the recovery of MO.1 and MO.2 from him; PW5 and PW8 were examined as mahazar witnesses to the observation mahazar [Exp4]; PW6 is the Doctor, who treated the victim girl on 25.05.2013, issued the accident register [Exp5] and histopathology report [Exp6]; PW7 is the Doctor, who examined the accused and issued potency certificate [Exp7]; PW9 is the neighbour of PW1 and she stated about the accused fleeing away from the house of the accused after commission of the offence; PW10 another neighbour was treated as hostile, as she did not support the prosecution's case; PW11 Assistant Director at Regional Forensic Science Laboratory at Tiruchirappalli has issued the certificate in Exp8 and according to him, there was no blood or spermatozoa in the examined material objects; PW12 is the then Judicial Magistrate No.VI, Tiruchirappalli, who recorded the statement of PW1 and PW2 under Section 164 CrPC; PW13 is the Sub Inspector of Police, who recorded the statement of PW2 in Exp1; PW14 is the Investigation Officer;



7.The incriminating materials from the prosecution's case were put to the accused under Section 313 CrPC and the accused had denied the same. Though he stated that there are witnesses on his behalf, no witness was examined and no document was produced. In conclusion of the trial, the trial Court found this appellant guilty, convicted and sentenced him as stated supra. As against the conviction and sentence imposed on the appellant/accused, he has preferred the present appeal.

8.Heard Mr.R.Andanakumar, learned Counsel appearing for appellant and Mr.Robinson, learned Government Advocate (Crl Side) appearing for the State.

9.The learned Counsel for the appellant submits that PW1, PW2 and PW3 have stated that the accused was a stranger to them and they did not know him earlier. Therefore, in order to identify the accused, a Test Identification Parade should have been conducted by the investigation agency and further, PW1, PW2 and PW3 are interested witnesses. The evidence of PW1 does not inspire confidence, since there are many contradictions in her evidence insofar as the occurrence is concerned.

10.The learned Counsel further submitted that according to the prosecution, the victim was playing with other children. But, no other child was examined in this case. Therefore, non examination of any other child is a fatal to the prosecution case. He also submitted that according to the victim girl, the accused inserted stick into her private part, whereas, the Doctor deposed that no injury was found on the private part of the victim and in fact, she found the hymen was also in tact.

11.It is further submitted that the evidence of the witnesses is not corroborated by the medical evidence. As per the biological report, no sperm, blood or any foreign body was found in the clothes of the victim. Further the evidence of PW9 neighbour cannot be relied upon, for the reason that there are contradictions in her evidence, in respect of she informing PW2 about the accused's presence and her enquiry with other children. Therefore, the very case of the prosecution itself is doubtful and the learned Counsel prayed that the appeal be allowed.

12.Per contra, Mr.Robinson, learned Government (Crl Side) submitted that the victim girl at the time of occurrence was seven years old and she has been subjected to sexual assault by the accused. The victim girl was taken to the hospital immediately after the occurrence, the Doctor, who admitted the victim girl issued accident register [Exp5], noted the reddishness mark found on the private part of the victim girl. The evidence of the victim girl is also corroborated by the the evidence of her mother [PW2], who lodged the complaint and also by the evidence of the neighbour [PW3]. Further PW9 witnessed this accused fleeing away from



the house of the victim at the time of occurrence. The evidence of the Doctor and her report clearly makes out the case against this accused and the trial Court has rightly appreciated the evidence and convicted this appellant/accused in accordance with law. The prosecution has proved its case and therefore, prayed for dismissal of this appeal.

13.At this stage, the learned Counsel for the appellant made an alternate plea that even as per the the prosecution's case the accused has committed only 'sexual assault' as defined under Section 7 of the POCSO Act and 'not aggravated penetrative sexual assault' as defined under Section 5 of the POCSO Act and therefore the offence committed by the appellant falls under Section 7 of the POCSO Act and therefore, pleaded that the conviction and sentence may be modified to that of under section 8 of POCSO Act.

14.This court paid its anxious consideration to the rival submissions made on either side and perused the available records.

15.It is not in dispute that the child / victim girl[PW1] was seven years old on the date of occurrence and as such she was a child below eighteen years on the date of occurrence. When the child was playing with her friends, the appellant gave chocolate to them and sent them to their house so also the victim. The appellant followed the victim alone, went to her house and insisted to remove her undergarment. He is said to have attempted to put his private part into the private part of the child. Since the child cried, he left the child and ran away from the place of occurrence. While the accused was fleeing away from the house of the child, PW9 neighbour noticed him. She also informed the same to PW2 mother of the child, who in turn enquired with the child, the reason for her cry and the child narrated the incident that had taken place. The child was also taken to the hospital immediately and admitted in the Mahatma Gandhi Memorial Government Hospital at Trichy at 9.45pm. The accident register issued by the Doctor is marked as Exp5, wherein the Doctor [PW6] has noted down as follows:

*"Assault by a known person Ulaganathan on 25.05.2013 at 6.00pm at her residence. O/E No injuries over breast, abdomen or thighs.*

*L/E Redness of vulva present. Hymen Intact. No discharge/ injuries made out.*

16.The Investigation Officer [PW14], on receipt of the information went to the Government Hospital, collected the clothes of the victim and also arrested the accused on the next day at about 12.30 noon, recovered the clothes of the accused and also sent all the recovered materials to the Forensic Science Laboratory for analysis. The Scientific Officer, on examination of the material objects MO.1 to MO.4 gave her report in Exp8 that no semen, spermatozoa, blood or foreign body was detected in the clothes [MO1 to MO4]. But the evidence of the Doctor discloses that the victim



girl was sexually assaulted on the date of occurrence.

17. At this stage, it would be relevant to refer to Section 7 of the POCSO Act, which read as hereunder:

**"7. Sexual Assault:** Whoever, with sexual intent to touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault."

18. The trial Court found this appellant guilty for the offence under Section 6 of the POCSO Act, convicted and sentenced him as stated supra. Section 6 of the POCSO Act refers to 'Aggravated Penetrative Sexual Assault', which is defined under Section 5 of the POCSO Act.

19. The available evidence does not disclose any material that there was aggravated penetrative sexual assault on the victim girl. In fact in the complaint ExP1, it is mentioned by PW2 that the accused attempted to put his private part into the private of the victim girl and also put his fingers on her private part and the victim girl also stated certain exaggerated version during the trial as if the accused inserted a stick into her private part.

20. Though there is averment as to the aggravated penetrative sexual assault, the evidence of the Doctor discloses that there is no injury on the victim except the reddishness mark, which was noted by the Doctor on her private part. In view of the medical evidence and the Scientific Expert's evidence and their report in ExP8, this Court comes to the conclusion that the appellant has committed only a sexual assault, as defined under Section 7 of the POCSO Act. Accordingly, the appellant/accused is found guilty for the offence under Section 8 of the POCSO Act and he is convicted and sentenced to undergo three years rigorous imprisonment, with a fine of Rs.1,000/- (Rupees One Thousand) and in default of payment of fine amount, to undergo three months simple imprisonment.

21. Insofar as the offence under Section 506 (ii) is concerned, there is no material to show that the appellant was armed with any weapon. In view of the fact the appellant was not armed with any weapon, the sentence imposed by the trial Court for the offence under Section 506(ii) IPC is modified from five years rigorous imprisonment to three years rigorous imprisonment and the fine amount and the default sentence shall stand unaltered.

22. The conviction and sentence imposed on the appellant by the trial Court for the offence under Section 342 IPC is hereby confirmed. The sentences shall run concurrently.



23. In fine, this Criminal Appeal is partly allowed. The conviction and sentence imposed by the learned Sessions Judge, Mahila Court, Tiruchirappalli vide impugned judgment dated 21.01.2014, in Spl.S.C.No.6 of 2013 is modified to the extent indicated above. The trial Court is directed to secure the appellant and confine him to prison to undergo the remaining period of sentence.

Sd/-

Assistant Registrar (AS)

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/ /2020

Sub Assistant Registrar(CS)

dsk

**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 Sessions Judge,  
Mahila Court,  
Tiruchirappalli.

2. The Inspector of Police,  
All Women Police Station,  
Fort Station,  
Trichy City.

Copy to:

1. The II Additional District Judge,  
Sessions Judge(FAC),  
Mahila Court, Tiruchirappalli.

2. The Superintendent,  
Central Prison, Trichy.

3. The Record Keeper (2 copies)  
Criminal Section,  
Madurai Bench of Madras High Court,  
Madurai.

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

**Crl.A(MD)No.343 of 2015**

**31.07.2020**