

BAIL SLIP

The Accused/Appellant Mr.Sathiyaraj @ Sakthi, S/o. Pandian, Male, was released on bail as per the order of this Court Made in CRL MP(MD)1 of 2015 in CRL A(MD)No.344 of 2015, dated 25/11/2015.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.07.2020

CORAM:

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

Crl.A. (MD) No.344 of 2015

Sathiyaraj @ Sakthi : Appellant/Sole Accused

Vs.

The Inspector of Police,
Alvarthirunagari Police Station,
Tuticorin District.
(Crime No.148 of 2013)

: Respondent/Complainant

PRAYER: Appeal filed under Section 374(2) of the Criminal Procedure Code to call for the records in connection with the judgment of conviction and sentence ordered by the learned Sessions Judge, Mahalir Neethimandram / Fast Track Mahila Court, Tuticorin, in Spl.S.C.No.20 of 2015, dated 30.10.2015 and set aside the same.

For Appellant : Mr.N.Anandakumar

For Respondent : Mr.A.Robinson,
Government Advocate (Crl. Side)

JUDGMENT

This appeal is arising out of the conviction and sentence imposed by the trial Court, namely, Fast Track Mahila Court, Tuticorin, for the offence punishable under the Protection of Children from Sexual Offences [inshort "POCSO"] Act, 2012. This appellant / sole accused was charged for the offence under Sections 11(i) r/w 12 of the POCSO Act and the learned Sessions Judge, Fast Track Mahila Court, Thoothukudi, in conclusion of the trial, found this appellant guilty for the offences he was charged for, convicted and sentenced him to undergo one year rigorous imprisonment and directed to pay a fine of Rs.3000/-, with a default clause to undergo simple imprisonment for one month. Aggrieved over the same, the present appeal is filed.



2. The brief fact of the prosecution case, in nutshell, is as follows:

2.1. PW2-Jeyanthi was studying 9th standard at St.John Girls Higher Secondary School at Nazareth, during the relevant point of time and her date of birth is 19.01.2000. On 24.08.2013, at about 12.00 noon, when she was alone in her house, the appellant / accused, who is a neighbour, verified the availability of her parents and on knowing that they are away, entered into the house, pulled PW2's hands, embraced her and also suggested to have sex with him. PW2 pushed him down and reported the same to her parents, who were working in their field at the time of occurrence.

2.2. PW2's father, Subramanian [PW1] lodged the complaint before the Alvarthirunagari Police Station on 26.08.2013 in Ex.P1 and the same was received by the Sub-Inspector of Police [PW5]. PW5 registered the case in Alvarthirunagari Police Station Crime No.148 of 2013, under Sections 11(4) r/w 12 & 18 of POCSO Act and the printed FIR is marked as Ex.P3.

2.3. The Inspector of Police [PW7], on receipt of information about the case, went to the place of occurrence around 12.30 pm, prepared an observation mahazar [Ex.P2] and a rough sketch [Ex.P5] in the presence of one Sathishkumar [PW4]. He also examined PWs.1 to 3 and the mahazar witnesses and recorded their statements. He arrested the accused near Paulkulam Junction on 26.08.2013 at 03.00 pm and remanded him to judicial custody. He also collected the School Certificate from the Headmistress of St.John Girls Higher Secondary School, where PW2 studied then. After completing the investigation, he filed the final report as against this appellant on 27.08.2013.

2.4. During the trial, seven witnesses were examined and five documents were marked on the side of the prosecution. PW2 is the victim in this case. PWs.1 & 3 are her parents. They are examined as hearsay witnesses. PW4 is the mahazar witness for the observation mahazar and PW5 is the Sub-Inspector of Police, who registered the FIR. PW6 is the Headmistress, who issued the Certificate for the Date of Birth of the victim [PW2] and PW7 is the investigation officer, who conducted the investigation and filed the final report.

2.5. After the prosecution evidence was closed, the incriminating materials were put to the accused under Section 313 Cr.P.C and the accused denied the same. Though the accused stated that there are witnesses on his side, he neither examined any witness nor produced any documents in support of his case. The trial Court, in conclusion of the trial, found the appellant guilty for the offence under the POCSO Act, convicted and sentenced him as stated supra. Aggrieved, the appellant has preferred the instant appeal.



3. Heard Mr.N.Anandakumar, learned Counsel appearing for the appellant / accused and Mr.A.Robinson, learned Government Advocate (Crl. Side) appearing for the respondent / State.

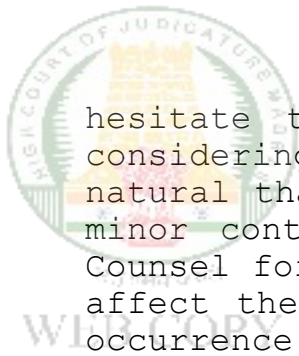
4. Mr.N.Anandkumar, learned Counsel for the appellant submits that there is a delay of two days in lodging the complaint. The occurrence is said to have taken place on 24.08.2013, whereas, the complaint was lodged only on 26.08.2013. As per the evidence of the complainant [PW1], he reported the incident to the Police Station immediately and the Police also came to the place of occurrence, but only after two days, a complaint was obtained from the complainant. PW2 has also admitted in her evidence that immediately the complaint was lodged and the Police has also conducted enquiry for two days, but they obtained the complaint only on 26.08.2013. Therefore, according to the learned Counsel for the appellant, the very first information of the complainant on 24.08.2013 has been suppressed and has been substituted by the complaint [Ex.P1] dated 26.08.2013.

5. The learned Counsel for the appellant would further submit that both PW2 and PW3 admit in their evidence that the close relatives are residing nearby their house. But after the occurrence, the victim did not chose to inform any of her relatives, but went to the field in a distance of 15 minutes walk and reported to her parents. Moreover, there is no independent witness in this case, though the observation mahazar [Ex.P2] and rough sketch [Ex.P5] disclose that there are houses nearby the place of occurrence.

6. The learned Counsel has also pointed out the contradiction between the complaint [Ex.P1] and the evidence of the prosecution witnesses. In the complaint [Ex.P1], it is only referred that the accused misbehaved with PW2. But, in the evidence, the complainant [PW1] as well as other witnesses exaggerated as if the appellant pulled the hands, hugged her and also called her to have sex with him. These averments in their evidence are not available in the complaint [Ex.P1] and therefore, the evidence of the witnesses PWs.1 to 3, who are all closely related and interested witnesses, cannot be taken into consideration to sustain the conviction. He also referred that the complainant and the accused are neighbours and there is a dispute between their family with regard to the Compound Wall and on account of that, the case has been foisted against him. Therefore, the learned Counsel prays for interference.

7. Per contra, Mr.A.Robinson, learned Government Advocate (Crl. Side) submits that the evidence of PW2 is trust worthy and she has narrated the occurrence in a cogent manner. There is no exaggeration as alleged by the learned Counsel for the appellant and the First Information Report is not an encyclopedia, where every minute details has to be stated.

8. Insofar as the delay is concerned, the learned Government Advocate submits that for these nature of complaint, anybody would



hesitate to lodge a complaint immediately after the occurrence, considering the future of their child and therefore, it is quite natural that they have taken some time to lodge this complaint. The minor contradictions, which have been referred to by the learned Counsel for the appellant, are not material defects and it would not affect the prosecution case. PW2 has specifically stated about the occurrence that the appellant / accused has pulled her hands, embraced her and also called her to have sex with him, when she was alone in her house. The victim, who suffered this incident, cannot be expected to report the same to her relatives first and then report to her parents. Her parents are working in the nearby field and therefore, she immediately went and informed her parents and thereafter, PW1, with great deliberation, lodged the complaint after two days. Therefore, there is no reason to interfere with the orders of the trial Court and prayed for confirming the conviction and sentence, by dismissing this appeal.

9. This Court paid its anxious consideration to the rival submissions and also to the materials placed on record.

10. Admittedly, PW2 and the accused are neighbours and on the date of occurrence, ie., on 24.08.2013, at about 12.00 noon, when her parents were working in the agricultural field and her sister was playing outside, the accused entered into the house, ascertained that her parents were not available, attempted to misbehave with PW2 by pulling her hands, embracing her and also inviting her to have sex. No doubt, these averments have not been mentioned in the First Information Report [Ex.P3]. But, in the complaint [Ex.P1], PW1, the father of the victim, has mentioned that the accused has misbehaved with his daughter [PW2].

11. A specific defence has been taken by the accused during the trial that there was a dispute between PW1 and the Grandmother of the accused with regard to tying of Cattle near the Compound Wall. But, to substantiate the same, no materials were placed. This suggestion made on behalf of the accused was also denied by all the witnesses, viz., PWs.1 to 3. The occurrence was taken place inside the house of PW2 and that too, at about 12.00 noon, when all the people are working in their agricultural field in the village. Therefore, non-examination of any other witnesses as independent witnesses cannot affect the prosecution case.

12. PW2, the victim, in a clear and categoric term, has narrated the occurrence before the trial Court and her evidence has not been retracted sufficiently by the accused. Her evidence appears to be true and in the absence of any materials, there is no reason to disbelieve the evidence of PW2. Though PWs.1 & 3 are hearsay witnesses in this case, their evidence is similar in line with that of PW2. Their evidence also appears to be natural and being a villager and as a father of the victim, it would be difficult for PW1 to lodge a complaint of this nature immediately after the occurrence. Therefore, there is no delay in lodging the complaint.



13. For establishing the age of the victim, the prosecution has also marked the victim's School Certificate as Ex.P4, through the Headmistress [PW6]. Therefore, the age of the victim has also been sufficiently proved by the prosecution and this Court is of the opinion that there is no reason to interfere with the well considered judgment of the trial Court.

14. At this juncture, the learned Counsel for the appellant intervened and submitted that the appellant is unmarried, living with his mother, who is aged about 78 years and there is no one to take care of his mother. Therefore, the learned Counsel, as an alternate plea, requested for modification of sentence, considering the plight of his mother.

15. Considering the submissions made by the learned Counsel for the appellant, this Court is inclined to modify the sentence alone. Accordingly, the conviction imposed by the learned Sessions Judge, Mahalir Neethimandarm, Fast Track Mahila Court, Tuticorin, in Spl.S.C.No.20 of 2015, dated 30.10.2015, stands confirmed, however, the sentence of imprisonment is modified to six months rigorous imprisonment, instead of one year rigorous imprisonment as ordered by the trial Court. The fine amount as well as default clause remain unaltered. The trial Court is directed to secure the appellant / accused and commit him in prison to undergo the remaining period of sentence. Bail bonds, if any executed, shall stand terminated.

16. With the above modifications, this appeal is partly allowed.

Sd/-

Assistant Registrar(Records)

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/ /2020

Sub Assistant Registrar(CS)

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To

1.The Sessions Judge,
Mahalir Neethimandram / Fast Track Mahila Court,
Tuticorin.

2.The Inspector of Police,
Alvarthirunagari Police Station,
Tuticorin District.



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

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

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17.07.2020

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