



Bail Slip

The Appellant/Accused Manohar was released on bail granted dated 3.11.2016 made in Crl.MP(MD).No.9913/2016 in Crl.A.(MD).No.77/2015.

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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.77 of 2015

Manohar : Appellant/Accused

Vs.

State through the Inspector of Police,
Athoor Police Station in
Crime NO.208 of 2012,
Thoothukudi District. : Complainant

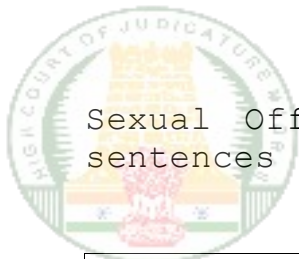
PRAYER: Criminal Appeal filed u/s 374 (2) of the Code of Criminal Procedure, to call for the records and set aside the conviction and sentence imposed on the appellant dated 06.01.2015 made in S.C.No.196 of 2013, on the file of the Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thoothukudi.

For Appellant : Mr.C.Christopher
For Respondent : Mrs.S.Bharathi
Government Advocate (Criminal side)

JUDGMENT

The sole accused in S.C.No.196 of 2013, 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 Sections 450 and 506(ii) I.P.C. and Section 8 of the Protection of Child from Sexual Offences Act, 2012 (POCSO Act).

2. The trial Court, vide impugned judgment dated 06.01.2015 has found him guilty for the commission of offences under Section 506(ii) I.P.C. and Section 8 of the Protection of Child from



Sexual Offences Act, 2012 (POCSO Act) and imposed him with the sentences as follows:

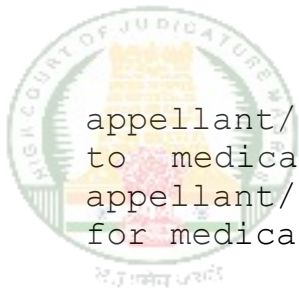
Rank of the Accused	Conviction u/s	Sentence awarded
Sole Accused	506(ii) I.P.C.	To undergo rigorous imprisonment for a period of five years.
	u/s 8 of the Protection of Children from Sexual Offences Act	To undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.3000/- in default to undergo simple imprisonment for a period of six months.

The trial Court acquitted the appellant/accused for the commission of offence under Section 450 I.P.C. The sentences of imprisonment were ordered to be run concurrently. 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 on 07.10.2012 at about 01.30 p.m., when the victim girl - P.W.1 was alone in the house doing homework, the appellant/accused tress passed into the house, bolted the door, undressed her and committed sexual assault on her. When the victim girl - P.W.1 shouted, her neighbour Saraswathy - P.W.3 came and on seeing her, the appellant/accused fled away from the scene of occurrence. When the mother of the accused - P.W.2 questioned the appellant/accused about the same, he threatened her that if she disclosed the fact to anyone, her life would be in danger. Thereafter, P.W.2 lodged a complaint against the accused before the Inspector of Police, Athoor Police Station, which was marked as Ex.P.1.

(ii) P.W.9, upon receipt of the complaint given by P.W.2, under Ex.P.1, has registered a case in Cr.No.208 of 2012 under Sections 376 I.P.C. r.w 511 I.P.C. and 506(ii) I.P.C. The printed F.I.R. is marked as Ex.P.7. P.W.9 proceeded to the scene of occurrence at about 06.00 a.m. on 30.10.2012 and in the presence of P.W.4, prepared observation mahazar, marked as Ex.P.3 and also rough sketch, marked as Ex.P.8. P.W.9 examined the witnesses and recorded their statements under Section 161(3) Cr.P.C. At about 14.00 hours on 30.10.2012, the accused was arrested near Palayakayal bus stop and he voluntarily came forward to give confession statement and he recorded the same in the presence of



appellant/accused for remand. P.W.9, made necessary arrangements to medically examine the victim girl-P.W.1 as well as the appellant/accused for potential test and his requisition letter for medical examination was marked as Ex.P.10.

(iii) P.W.5 was the Doctor, who examined the appellant/accused and he would depose evidence that he had clinically examined the appellant/accused as per the letter of the Judicial Magistrate, Thiruchendur, which was marked as Ex.P.4 and opined that there is nothing to suggest that the accused is impotent by issuing medical certificate, which was marked as Ex.P.5. He would also depose that one Dr.Evangaline sheeba had physically examined the victim girl - P.W.1 and during examination, she had found that as the hymen was intact, there was no evidence of penetrative sex, but attempted rape cannot be ruled out. She has not found any injury on the private parts of the victim girl - P.W.1 and the medical certificate issued by her was marked as Ex.P.6 P.W.6- Grade I Police Constable had produced the victim girl for medical examination on 09.11.2012 and later as per the order of the Judicial Magistrate, Thiruchendur, the victim girl - P.W.1 was handed over to her mother.

(iv) Subsequently, P.W.10 - the Inspector of Police had taken the case for further investigation and on completion of investigation filed final report by altering the charges 376 r/w 511 I.P.C. and 506(ii) I.P.C. to 376 r/w 511, 506(ii) I.P.C. and Sections 4 and 8 of the Protection of Children from Sexual Offence Act 2012 and the alteration report has been marked as Ex.P.11.

(v) 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.196 of 2013. The appellant/accused was summoned to the charges under Sections 450 and 506(ii) I.P.C. and Sections 4 and 8 of the Protection of Children from Sexual Offences Act 2012, 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.

(vi) The prosecution in order to sustain their case, examined P.W.1 to P.W.10, marked Exs.P.1 to P.11.

(vii) 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.

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

(ix) 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 the alleged occurrence was happened on 07.10.2012, however, the complaint was given only on 06.08.2014 and the delay in filing the complaint was not properly explained. Further, the wife of the appellant/accused already made complaint against P.W.1's father and the said complaint is prior to Ex.P.7 - F.I.R., however, the trial Court has not considered the matter in proper perspective manner and convicted the appellant/accused, which is not sustainable one.

5. The learned Counsel for the appellant/accused would further submit that though the Protection of Children from Sexual Offences Act, 2012 came into force on 14.12.2012, as per the said Act, the statement of the victim has to be recorded immediately by the police officer, as per Section 24 of the said Act and further as per Section 27 of the said Act, the victim girl has to be produced before the Medical Officer for clinical examination. However, the said mandatory provisions are not followed in the present case. 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. 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 07.10.2012 at about 01.30 p.m., when she was alone in the house doing homework, the appellant/accused tress passed into the house bolted the door, undressed her and committed sexual assault on her and when she shouted, her neighbour Saraswathy - P.W.3 came and on seeing her, the appellant/accused fled away from the scene of occurrence and further, her evidence is corroborated with the evidence of P.W.3. Further, the victim girl herself deposed that though occurrence was happened on 07.10.2012, her father informed the said occurrence to the Village head men and they assured him to take



appropriate action against the appellant/accused and since no action has been taken by the Village head men, the mother of the victim girl - P.W.2 lodged a complaint before P.W.7 and the delay is not a conventional delay, which will not attribute against the defacto complainant. 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 evidence of P.W.3, has clinched the case of the prosecution that the victim girl, who was aged about 12 years had been physically, forcibly, sexually assaulted 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.3 has inspired confidence and also found trustworthy. The trial Court, rightly, reached the verdict of convicting the appellant/accused for the offences, under Sections 506(ii) I.P.C. and under Section 8 of the of the Protection of Children from Sexual Offences Act, 2012 and imposed the appropriate sentence and hence, prays for dismissal of this Criminal Appeal.

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 evidences of P.W.1 and P.W.3 are sufficient to convict the appellant/accused?"

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

9. P.W.2 is the victim girl and after physically abused and assaulted on the part of the appellant/accused, she would depose that on 07.10.2012 at about 01.30 p.m., when she was alone in the house doing homework, the appellant/accused tress passed into the house bolted the door, undressed her and committed sexual assault on her and when she shouted, her neighbour Saraswathy - P.W.3 came and on seeing her, the appellant/accused fled away from the scene of occurrence and further, her evidence is corroborated with the evidence of P.W.3. Though the trial Court has initially charged for the offences under Section 450 and 506(ii) I.P.C., and Section 8 of POCSO Act, after completing the trial, the trial Court convicted the appellant/accused for the offences under Section 506 (ii) I.P.C. and Section 8 of POCSO Act.

10. In case on hand, the first and third parts of the provisions of Section 7 of POCSO Act attract the appellant/accused, for which the trial Court convicted the appellant/accused for the offence under Section 8 of POCSO Act.



11. P.W.5- the Doctor, who examined the appellant/accused would depose evidence that he had clinically examined the appellant/accused as per the letter of the Judicial Magistrate, Thiruchendur, which was marked as Ex.P.4 and opined that there is nothing to suggest that the appellant/accused is impotent and the said medical report was marked as Ex.P.5.

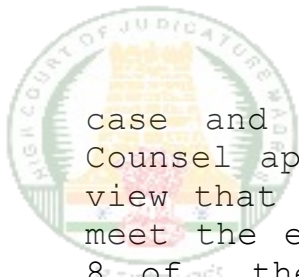
12. Though the learned Counsel appearing for the appellant/accused would submit that the statement of the victim has to be recorded immediately by the police officer, as per Section 24 of the said Act and further as per Section 27 of the said Act, the victim girl has to be produced before the Medical Officer for clinical examination, since the occurrence was happened prior to one month of the Act came into force, the said procedures contemplated under Sections 24 and 27 of the said Act will not 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.3, has clinched the case of the prosecution that the victim girl, who was aged about 12 years had been physically, forcibly, sexually assaulted by the appellant/accused. it is the submission of the learned Government Advocate appearing for the State 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 Sections 506(ii) I.P.C. and under Section 8 of the of the Protection of Children from Sexual Offences Act, 2012 and imposed the appropriate sentence and hence, this Court does not find any merit to interfere with the finding of the trial Court.

14. Section 7 of POCSO Act consists of three parts. The first part relates to whoever, with sexual intent touches the vagina, penis, anus or breast of the child; the second part consists of makes the child touch the vagina, penis, anus or breast of such person or any other person and the third part consists of does any other Act with sexual intent which involves physical contact without penetration is said to commit sexual assault.

15. At this juncture, the learned Counsel appearing for the appellant/accused would submit that the wife of the appellant/accused passed away and the appellant/accused is now facing age old ailments and is having one son, who is aged about 17 years and hence, prays for modification of sentence from the period of five years to three years.

16. 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 that three years rigorous imprisonment would be sufficient to meet the ends of justice under Section 506(ii) I.P.C. and Section 8 of the Protection of Child from Sexual Offences Act, 2012 (POCSO Act). With the above modification, this Criminal Appeal is liable to be dismissed.

17. In fine, this Criminal Appeal is dismissed. The conviction passed under Section 506(ii) I.P.C. and Section 8 of the Protection of Child from Sexual Offences Act, 2012 (POCSO Act) by the trial Court made in S.C.No.196 of 2013, dated 06.01.2015 is confirmed. But the quantum of sentence imposed under the said section is modified as follows:

"The appellant/accused is sentenced to undergo three years rigorous imprisonment for the offences under Section 506(ii) I.P.C. and Section 8 of the Protection of Child from Sexual Offences Act, 2012 (POCSO Act) concurrently. In other aspects, the Judgment passed by the trial Court is confirmed."

18. It is represented that pendency of the Criminal Appeal, the suspension sentence of imprisonment imposed upon the appellant/accused has been suspended and in the light of the dismissal of the appeal and thereby confirmed the conviction and sentence awarded by the trial Court, the bail bonds executed by him, stand cancelled and the immediate necessary steps has to be taken by the respondent to secure the custody of the accused, so as to enable him to undergo the sentence of imprisonment.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

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To

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

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Judicial Magistrate Court, Tiruchendur

3.The Inspector of Police,
Athoor Police Station,
Thoothukudi District.

4.The Superintendent, Central Prison,
Palayamkottai.

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

Copy to:The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court, Madurai

+1 CC to M/s.C.CHRISTHOPHER, Advocate (SR-11874[F] dated
16/03/2020)

JUDGMENT MADE IN
CRL.A.(MD)No.77 of 2015
13.03.2020

SM/ (07.05.2020) 8P 8C