



Bail Slip

The Petitioner/Accused Viz Baskar aged 51 years S/o.Rajendran was directed to be released on bail vide order dated 04/02/2020 in Crl.MP.No.584/2020 in CRL.A.No.27/2020 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.06.2021

PRONOUNCED ON : 27.08.2021

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRL.A.No.27 of 2020

Baskar ...Appellant/Accused
.Vs.

State rep.by
Inspector of Police,
W.8 All Women Police Station,
Thirumangalam,
Chennai.

...Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure to set aside the order of Judgment and sentence passed by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai -104 in S.C.No.396 of 2018 dated 27.12.2019.

For Appellant : Mr.N.Iyyakannu

For Respondent : Mr.S.Sugendran
Government Advocate (Crl.Side)

J U D G M E N T

This Criminal Appeal has been filed against the Judgment dated 27.12.2019 in S.C.No.396 of 2018 by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai -104.

2.The case of the prosecution is that on 13.05.2018 at about 4.00 p.m when the victim girl, who is aged about 7 years was playing outside of her aunt's house, the appellant pulled her inside his house and removed his lungi and panties and showed



his private part to the victim girl. The victim girl got frightened and went outside and hidden under the cot of her aunt's house. Again the accused pulled her outside and took her to his house and acted in the same manner and sexually harassed her. Hence, P.W.2/mother of the victim girl filed a complaint/Ex.P1 against the accused/appellant.

3.The respondent-Police registered a case in Crime No.15 of 2018 against the appellant for the offence under Sections 366 (A) and 511 IPC and Section 6 of The Protection of Children from Sexual Offences Act, 2012 [hereinafter referred to as 'POCSO Act' for the sake of convenience] subsequently, altered into Section 12 of POCSO Act. On completion of investigation, the respondent police filed a charge sheet before the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai -104. Since the offence is against the child which falls under the definition of Section 2(1)(d) of POCSO Act, the learned Sessions Judge, taken the case on file in S.C.No.396 of 2018. After completing the formalities, the learned Sessions Judge framed charges against the appellant for the offence under Section 11 of POCSO Act which is punishable under Section 12 of POCSO Act.

4.In order to prove the case of the prosecution before the trial Court, on the side of the prosecution as many as 4 witnesses were examined as P.W.1 to P.W.4 and also marked 6 documents as Exs.P1 to P6 and no material object was marked. After examining the prosecution witnesses, the incriminating circumstances culled out from the evidence of the prosecution witnesses were put before the appellant/accused and questioned under Section 313 of Cr.P.C., wherein he denied all the incriminating circumstances as false and pleaded not guilty. On the side of the defence, no oral and no documentary evidence was produced.

5. The Court below, after hearing the arguments advanced on either side and also considering the materials available on record, found that the appellant is guilty for the offence punishable under Section 12 of POCSO Act and convicted and sentenced to undergo simple imprisonment for a period of one year and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for a period of three months. Besides this the Court below awarded a sum of Rs.20,000/- to the victim girl as per the victim compensation. Challenging the said conviction and sentence, the appellant is before this Court.

6.1 The learned counsel for the appellant would submit that there are discrepancies and contradictions between the evidence of P.Ws.1, 2 and 3. The alleged occurrence is said to have taken place on a Sunday in the month of May 2018. The victim



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girl/P.W.1 has deposed that after returning from the school she was playing nearby her aunt's house, at that time the appellant took her to his house and committed the said offence. The trial Court failed to consider the fact that the alleged date of occurrence i.e on 13.05.2018 is being a Sunday, that too, May vacation, that day may not be a working day and the victim girl might not gone to school, which itself creates a doubt. Further, P.W.4/Investigating Officer, who conducted the investigation has not prepared the observation mahazar and the same is highly in doubtful. During the trial, the victim girl has stated that in the evening hours when she was playing in the street, the appellant took her to his house and committed the said offence, whereas, P.W.3, who is the cousin brother of the victim girl has stated that morning at about 8.00 clock the said occurrence has taken place, which also creates doubt about the time of occurrence. Since there was no penetrative sexual assault, the victim girl was not subjected to medical examination.

6.2 The learned counsel for the appellant would further submit that there was a previous enmity between the appellant and the relatives of the victim girl's family and hence, a false case has been foisted against the appellant. He would further submit that there was no eye witness to the said occurrence and no independent witnesses have been examined. Therefore, the prosecution has failed to prove its case beyond all reasonable doubts. The trial Court has erroneously convicted the appellant only on assumption and sympathy and hence, the judgment of conviction and sentence passed by the trial Court against the appellant is liable to be set aside.

7.1 The learned Government Advocate (Crl.Side) for the respondent would submit that when the victim girl/P.W.1 while playing in the street, the appellant, who is the neighbour of the victim girl took her to his house and removed his lungi and panties and showed his private part and the victim girl immediately escaped from that place and went to her aunt's house. Again, the appellant took her to his house and misbehaved with her and she escaped from that place, due to fear, she did not inform the said incident to anybody. When P.W.3, cousin brother of the victim girl questioned her, she informed the said incident to P.W.3, subsequently, P.W.3 informed the same to P.W.2/mother of the victim girl. Thereafter, the victim girl's family went to the house of the appellant and questioned him about the incident and lodged a complaint against the appellant.

7.2 The learned Government Advocate (Crl.Side) would further submit that during the investigation, soon after the occurrence i.e. on 17.05.2018, the victim girl was produced before the learned Magistrate for recording her statement under Section 164 Cr.P.C and she has clearly narrated the said incident.



Subsequently, on 01.02.2019 she was examined before the trial Court as P.W.2 and she has clearly narrated the said incident. He would further submit that during the trial, the victim girl has stated that after returning from the school, she was playing in the street, at that time, in the evening hours, the appellant took her to his house and misbehaved with her, whereas, before the learned Judicial Magistrate for recording statement under Section 164 Cr.P.C., she has stated that after returning from school, she was playing in the street, at that time the said occurrence has taken place. However, the victim girl was not cross examined by the defence counsel. He would further submit that at the time of recording statement of the victim girl under Section 164 Cr.P.C, the victim girl has stated that she informed the said incident to her cousin brother/P.W.3. Therefore, the learned Judicial Magistrate recorded the statement of P.W.3 under Section 164 Cr.P.C. Further, P.W.3 is not an eye witness to the said occurrence. However, P.W.3 has stated that he saw the appellant took the victim girl to his house and thought that the appellant was playing with the victim girl. Since the victim girl was appeared to be in fear P.W.3 questioned the victim girl what was happened and she revealed the said incident, subsequently, he informed the same to P.W.2/mother of the victim girl. He would further submit that during the trial, victim and her cousin were examined as P.W.1 and P.W.3 respectively, the defence counsel did not cross examine them. Further, the cross examination of P.W.2 and P.W.4, the defence counsel could not bring anything adverse to the case of the prosecution.

7.3 The learned Government Advocate (Crl.Side) would further submit that though the observation mahazar was not prepared by P.W.4/Investigating Officer, she has stated that no untoward incident has taken place and there was no necessity to draw the mahazar. However, the victim girl has clearly stated that the appellant took her to his house and misbehaved with her. Therefore, mere non drawing of mahazar witness is not fatal to the case of the prosecution. There are minor discrepancies and contradictions between the evidence of P.W.1 and P.W.3, which are not material contradictions. The fact remains that on the date of occurrence, the appellant took the victim girl to his house and close the door and misbehaved with her. The defence counsel has not cross examined either P.W.1 or P.W.3 to establish the defence of the appellant. Therefore, the trial Court has rightly appreciated the entire evidence and convicted and sentenced the appellant. Hence, there is no merit in this Criminal Appeal and the same is liable to be dismissed.

8.Heard the learned counsel for the appellant and the learned Government Advocate (Crl.Side) for the respondent and also perused the material available on record.



9. This Court, being an Appellate Court, is a final Court of fact finding, which has to necessarily re-appreciate the entire evidence and give an independent finding.

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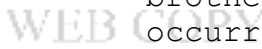
10. In order to prove the case of the prosecution, the victim girl was examined as P.W.1 and she has clearly deposed that at the time of occurrence i.e. on 13.05.2018, the appellant took her to his house and locked the door ; thereafter, the appellant removed his dress and showed his private part and immediately, she opened the latch of the door, which was fixed at the bottom of the door and escaped from that place. Once again the appellant took the victim girl to his house and acted in the same manner and due to fear she did not reveal the said incident to any body. Further, the victim girl has stated that except the appellant, no one was in the place of occurrence and she has clearly stated that she opened the latch of the door, since it was fixed at the bottom side of the door which was reachable to her height and she escaped from that place. However, the same was not cross examined by the defence counsel before the trial Court. Even, the defence counsel has not put any suggestion before the Investigating Officer, there was a latch in the door, which is not reachable to the victim girl.

11. The learned counsel for the appellant pointed out that there was no eye witness to the said occurrence. This Court, time and again, has observed that in cases of this nature no corroboration is necessary, because the prudent man would not commit these type of offence in the presence of adult members and the presence of independent eye witnesses are mostly improbable.

12. Soon after the occurrence i.e on 17.05.2018, the victim girl was produced before the learned Judicial Magistrate for recording her statement under Section 164 Cr.P.C/Ex.P2 and she has clearly narrated the said incident. As already stated in cases of this nature, no eye witness can be expected, if the evidence of the victim girl is cogent, credible and trust worthy, the conviction is permissible.

13. The defence taken by the learned counsel for the appellant is that the investigating officer has not drawn the observation mahazar, however, the same may not be a reason for disbelieving the evidence of the victim girl and the accused cannot be acquitted on the said ground.

14. It is a settled proposition of law that lapses on the part of prosecution should not lead unmerited acquittal, subjected to rider that in such a situation evidence on record should be clinching, so that lapses of prosecution can be



15. During the trial, P.W.1/victim girl and P.W.3/cousin brother of the victim girl clearly narrated the said occurrence. Though P.W.3 is not an eye witness to the said occurrence, he has stated that he saw the appellant took the victim girl to his house and on enquiry the victim girl narrated the said incident to her mother in the presence of P.W.3. However, both P.W.1 and P.W.3 were not cross examined by the defence counsel. Further, discrepancies and contradictions were occurred in the present case regarding time and occurrence. However, at the time of occurrence, the age of the victim girl was only seven years and she has clearly narrated the said incident. Merely because she was not able to say the exact time of the occurrence, which may not be fatal to the case of the prosecution. Considering the age of the victim girl and also considering circumstances and due to fear, she might not be in a position to say the correct time of the occurrence. Further, in cases of this nature, the exact date and time may not be a major contradiction to disbelieve the evidence of the victim girl.

17. In the light of the above facts and circumstances, this Court finds that the evidence of the victim girl is cogent and consistent and except minor discrepancies and contradictions there was no other major contradictions and the same will not affect the case of the prosecution.

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



19. Accordingly, this Criminal Appeal is dismissed and the conviction and sentences passed in S.C.No.396 of 2018 dated 27.12.2019 by the learned Sessions Judge, Special Court for Exclusive Trial of Cases Under POCSO Act, Chennai - 600 104 is confirmed. If the appellant/accused is not in duress, the trial Court is directed to take appropriate steps to secure the presence of the appellant to serve the remaining period of sentence.

Sd/-

Assistant Registrar(CS II)

/True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge,
Special Court for Exclusive Trial of Cases
under POCSO Act,
Chennai -104.
2. -do through- The Principal Sessions Judge,
Chennai.
3. The Inspector of Police,
W.8 All Women Police Station,
Thirumangalam,
Chennai.
4. The Hon'ble Pocso Committee,
High Court, madras - 104.
5. The Public Prosecutor,
High Court, Madras.

Copy to

The Deputy Registrar		with a direction to send back the
(Criminal Section),		original records, if any, to the
High Court, Madras.		trial Court

CRL.A.No.27 of 2020

GPL[co]
NSK 09/11/2021