



BAIL SLIP

The Appellant herein / Sole Accused Viz., Jeeva Bharathi @ Jeeva S/o.Mohandass was released on bail as per Order of this Court dated 06.11.2020 in Crl.M.P.No.1490 of 2020 in Crl.A.No.74 of 2020 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.74 of 2020

Jeeva Bharathi @ Jeeva

...Appellant/Accused

Vs.

The State represented by
The Inspector of Police,
Lawspet Police Station,
Puducherry.
(Cr.No.172/2015)

...Respondent/Complainant

This Criminal Appeal is filed under Section 374 of Cr.P.C. to set aside the judgment of conviction and sentence made in Spl.S.C.No.13 of 2016 dated 06.12.2019 by the learned Special Judge, Under the POCSO Act, 2012, Puducherry.

For Appellant : Mr.R.Johnsathyan for
M/s.Swamisubramanian

For Respondent : Mr.D.Bharatha Chakravarthy
Public Prosecutor (Pondicherry)

JUDGMENT

The criminal appeal has been filed against the judgment of conviction and sentence made in Spl.S.C.No.13 of 2016 dated 06.12.2019 by the learned Special Judge, Under the POCSO Act, 2012, Puducherry.



2 The respondent police registered a case in Cr.No.172 of 2015 against the appellant for the offence under Sections 4 and 6 of Protection of Children from Sexual Offences Act, 2012 (for brevity "the POCSO Act"). After completing investigation, the respondent police laid a charge sheet before the learned Special Judge, Under the POCSO Act, Puducherry, which was taken on file in Spl.S.C.No.13 of 2016. The learned Sessions Judge, after hearing both the accused and the prosecution and after perusing the records, since there is prima facie case, framed charges against the appellant/accused for the offence under Sections 4 and 6 of the POCSO Act.

3 Before the trial Court, in order to prove the case of the prosecution, as many as 19 witnesses were examined as P.Ws.1 to 19 and 19 documents were marked as Exs.P1 to P19 and 6 material objects were exhibited as M.O.1 to M.O.6. After completing examination of prosecution witnesses, when incriminating circumstances culled out from the evidence of prosecution witnesses were put before the accused by questioning under Section 313 Cr.P.C., he denied the same as false and pleaded not guilty. On the side of the defence, no one was examined and two documents were marked as Exs.D1 and D2 and no material object was exhibited.

4 The learned Special Judge, on completion of trial and hearing arguments advanced on either side, by judgment dated 06.12.2019 convicted the appellant/accused and sentenced him to undergo rigorous imprisonment for a period of ten years and imposed fine of Rs.2,000/-, in default, to undergo rigorous imprisonment for a further period of three months for the offence punishable under Section 6 of the POCSO Act. Aggrieved against the said judgment of conviction and sentence, the accused has preferred the present criminal appeal before this Court.

5 The learned counsel appearing for the appellant/accused would submit that the victim P.W.1 and P.W.2 mother of the victim assert that P.W.1 was major at the time of occurrence. To prove the same, the appellant produced Ex.D1 copy of Adhar Card of the victim and Ex.D2, victim girl's horoscope. P.W.1 was a Nursing School Student, who was residing in the appellant's house for sometime, during that stay P.W.1 and the appellant had physical relationship. P.W.1 assert that the act of physical relationship was volunteer and it was on her own will. P.W.2/mother of the victim has also deposed the same. P.W.7/Doctor, who attended delivery of P.W.1 states that during delivery, the victim was aged about 19 years as stated by P.W.1. As per Ex.D1, based on which, the victim was admitted in the Hospital and delivery was attended, the victim was major at the time of occur.



5.1 P.W.2/mother of the victim categorically states that P.W.1 was admitted in the School belatedly, since she was suffering from infirmity and her correct date of birth is 01.03.1996. Since it was late admission, the school authority/P.W.13 recorded the age of the victim as 01.03.1999. The age found in Ex.P13 and Ex.P17 have been recorded by the school authority on their own. P.W.2 mother of the victim assert the same and it is also found that P.W.1 was over age when she got admitted in first standard and there are some discrepancies and contradiction in her age at various places in various documents. Hence when the prosecution failed to prove the age of the victim and she is a child falls under the definition of Section 2(1)(d) of the POCSO Act, offence under the POCSO Act would not at all attract and the appellant cannot be convicted for the offence under the POCSO Act. The victim girl had voluntarily given consent for sexual intercourse with the appellant. The learned counsel would further contend that the trial Court failed to look into the discrepancies with regard to the age of the victim and failed to consider the evidence of P.W.10, Ex.D1 and Ex.D2 and had wrongly convicted the appellant, which is liable to be set aside.

6 The learned Public Prosecutor submitted that in this case P.W.1 had given birth to the female baby and gave the baby for adoption to the office of Child Welfare Committee. P.W.15/The Chairperson of the Child Welfare Committee, on enquiry found that P.W.1 was minor and lodged a complaint to P.W.17. He registered a case, conducted investigation thereafter the case was handed over to P.W.18/Investigating Officer, who took up the further investigation, examined P.W.1 and P.W.2 and recorded their statement. P.W.1 and P.W.2 have also given statement under Section 164 of Cr.P.C. before the Magistrate and in the statement they have categorically stated that the victim was minor and she was subjected to penetrative sexual assault by the appellant. Later, P.W.1 and P.W.2 become complacent with the petitioner and hence turned hostile. Both P.W.1 and P.W.2 have not supported the case of the prosecution. P.W.5, P.W.8 and P.W.15 are the officials from the Social Welfare Department. P.W.6 is the person from the Santhosh Home where P.W.1 was made to stay. P.W.7 is the Doctor who attended delivery of P.W.1. P.W.13 is the school Head Master, who produced transfer certificate, in which the date of birth of the victim was found as 01.03.1999. Thus, the victim being minor had a physical relationship with the appellant and hence her consent could not be considered. The paternity of the child born to the victim is not disputed and the prosecution had proved its case against the appellant by cogent evidence. The trial Court considering the evidence and materials produced had rightly convicted the appellant, which does not call for any interference of this Court and the appeal is liable to be dismissed.

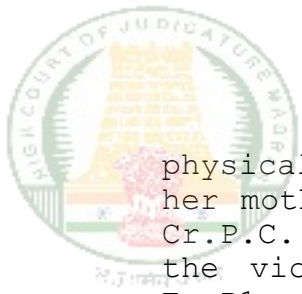


7 Heard the learned counsel for the appellant and the learned Public Prosecutor (Pondicherry) appearing for respondent police and perused the materials available on record.

8 Case of the prosecution is that on 18.11.2015, P.W.1/the victim girl was brought to the office of the Child Welfare Committee along with her baby, where P.W.15 Dr.Vidya Ramkumar, was Chairperson. On perusal of the documents, P.W.15 came to know that the age of the victim girl is 17 years. On enquiry, it was found that the victim girl was subjected to penetrative sexual assault by the appellant. On the same day, P.W.15 obtained a complaint from the victim girl and forwarded the same to the respondent police on 22.12.2015. The said complaint was marked as Ex.P14. P.W.2 mother of the victim girl requested P.W.15 to take action after the adoption of baby and hence there was delay in forwarding the complaint to the respondent police. P.W.17/Sub-Inspector of Police registered a case in Crim No.172 of 2015 under Section 6 of the POCSO Act and 376 of IPC and the FIR was marked as Ex.P15. During the course of investigation, the victim girl was examined at Santhosh Home in the presence of P.W.5 and the same was videographed by P.W.14/ Photographer. P.W.1, the victim girl informed that the appellant is her distant relative. Prior to 3 years, she had sexual intercourse with the appellant with consent and she became pregnant. Thereafter, she went to Government Hospital, Puducherry, along with her mother and obtained some medicines. Later, when she went to Cluny Hospital for check up, her pregnancy was confirmed. On 17.11.2015, a female child was born to P.W.1 and thereafter they went to the Office of Child Welfare Committee for giving the child for adoption, there it was found that P.W.1 was minor, hence, a complaint was obtained from P.W.1 and the same was forwarded to the respondent police. During the course of investigation, P.W.11/Social Welfare Officer, P.W.5/Incharge of Santhosh Home, P.W.7/Doctor from Cluny Hospital, P.W.9 and P.W.10/Doctors from Government Hospital were examined. On completion of investigation, charge sheet was filed and the same was taken on file and ended in conviction.

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. Accordingly, this Court has re-appreciated the entire oral and documentary evidence produced before this Court.

10 It is seen that while recording statement under Section 164 of Cr.P.C, the victim girl/P.W.1 before the Magistrate, has clearly stated that the appellant had sexual intercourse against her will repeatedly and due to which, she became pregnant. The appellant/accused himself admitted the



physical relationship with the victim girl. P.W.1 the victim and her mother P.W.2, while recording statement under Section 164 of Cr.P.C. before the Magistrate have clearly stated that age of the victim is only 17 years at the time of occurrence. In Ex.P1, complaint the victim has stated that she is 17 years old. Subsequently, while examining before the Court, in order to safeguard the appellant/accused, both P.W.1 and P.W.2 have not supported the case of the prosecution.

11 It is the main contention of the learned counsel for the appellant that age of the victim has not been proved and hence offence under POCSO Act would not attract, but, it is seen that to prove the age of the victim girl, prosecution has marked Ex.P13 copy of Transfer Certificate of P.W.1, in which it was clearly mentioned that date of birth of the victim is 01.03.1999. Ex.P13 is a public document and the same is genuine unless the contrary is proved. The appellant has failed to produce any contra evidence against Ex.P13 and hence the Court can safely come to the conclusion that as per Ex.P13, the victim is a child on the date of occurrence as per the definition of Section 2(1) (d) of POCSO Act.

12 Further, as per the evidence of P.W.15, President of Child Welfare Committee, even, before filing of complaint, when the victim along with her mother P.W.2 approached the Child Welfare Committee for adoption of the child born to P.W.1, age of the victim is only 17 years and the proceedings of P.W.15 was marked as Ex.P14. Based on the proceedings issued by P.W.15 i.e. Ex.P14, the present case was registered against the appellant. Hence prosecution, by producing Ex.P13 and by examining P.W.15 and Ex.P14 the document marked through P.W.15, has proved the fact that age of the victim is only 17 years at the time of occurrence,. Therefore, once prosecution has discharged their initial burden, presumption under Section 29 of the POCSO Act would come into play and it is for the appellant/accused to rebut the same in the manner known to law. In this case, the appellant has failed to rebut the presumption.

13 Even though, the learned counsel for the appellant requested this Court to consider the sentence, considering the conduct of the appellant as stated by the learned Public Prosecutor, that the appellant being a married man having two children, already had illegal relationship with another woman and thirdly he cheated this victim child also, this Court is not inclined to reduce the quantum of sentence awarded by the Court below.

14 In fine, this Court come to the conclusion that there is no merit in the appeal and there is no sound reason to interfere with the judgment of conviction and sentence.



Accordingly, this criminal appeal is dismissed. The trial Court is directed to secure the appellant/accused to serve remaining period of imprisonment, if any.

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Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Special Judge,
Under the POCSO Act, 2012,
Puducherry.
- 2.The Inspector of Police,
Lawspet Police Station,
Puducherry.
- 3.The Public Prosecutor,
Pondicherry
High Court of Madras.
- 4.The Superintendent,
Central Prison,
Puducherry.

Copy to:

- 1.The Section Officer,
Criminal Section,
High Court, Madras-104.
- 2.The Honourable POSCO Committee,
High Court,
Madras-104.

+1cc to Mr.Swami Subramanian, Advocate SR. No.35914

CrI.A.No.74 of 2020 and
CrI.M.P.No.1490 of 2020

NRL (CO)
PR (10/12/2021)