



BAIL SLIP

Muniyapillai Appellant/Accused in SC.No.78/14 on the file of the sessions Judge, Magalir Needhimandram (FTC) Villupuram was released on bail by the order of this court dated 4/6/2015 and made in Cr1.MP No.1/15 in Cr1.A 214/15 pending on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Judgment RESERVED ON : 05.10.2021]

[Judgment PRONOUNCED ON : 26.10.2021]

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Cr1.A.No.214 of 2015

Muniyapillai

..Appellant/Accused

.. Vs ..

State by

The Inspector of Police,
All Women Police Station,
kallakurichi

Crime No.19 of 2013

...Respondent/Complainant

PRAYER: Petition filed under Section 374 (2) of Cr.P.C, to call for the records pertaining to the judgment rendered by the Sessions Court in S.C.No.78 of 2014 dated 28.03.2015 Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Villupuram and set aside the judgment.

For Petitioner : Mr.A.G.Rajan

For Respondent : Mr.S.Vinoth Kumar,
Public Prosecutor (Cr1.Side)



JUDGMENT

The convicted sole accused is the appellant herein.

2. This Criminal Appeal is filed as against the judgment rendered by the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court) Villupuram in S.C.No.78 of 2014 dated 26.03.2015. The accused was convicted under Section 4 of POCSO Act 2012 and sentenced to Rigorous Imprisonment for seven years and a fine of Rs.500/- and in default of payment of fine, to undergo Rigorous Imprisonment for one month.

3. The respondent police filed a charge sheet in Crime No.19 of 2013, All Woman Police Station, Kallakurichi alleging that the defacto complainant, father of the victim girl was working as coolie at Bangalore during the occurrence time. He had left his minor victim daughter aged about 14 years at the relevant time in the custody of his mother-in-law at Thondanathal village, Sankarapuram Taluk. She was studying 8th standard in the Panchayath school. As such, on 02.06.2013 at about 2.00 p.m., while the grand parents of the victim girl went out for work, the accused herein knowing the victim was alone in the house knocked the door and asked for water. The victim opened the door and went inside to bring water for the accused. At that time, the accused came inside the house and gagged her mouth with a cloth and pushed her down and pressed her breast. When the victim tried to escape from him, he forcibly caught hold of her and committed the offence of rape upon her. Hence the father of the victim girl lodged Ex.P1 complaint before the police. After investigation, the charge sheet has been laid.

4. To prove the case of prosecution P.W.1 to P.W.15 were examined and Exhibits P1 to P11 were marked. On the defence side D.W.1 and D.W.2 were examined and no exhibits marked on the defence side.

5. On consideration of both oral and documentary evidence, the learned Special Sessions Judge (Mahila Court) has laid the conviction and sentence as stated supra and hence the appeal.

6. Heard the learned counsel for the appellant and the learned Public Prosecutor (Crl.Side) appearing for the respondent.



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7. According to the learned counsel for the appellant (i) the occurrence took place on 02.06.2013 at about 2.00 P.M at the house of P.W.5 who is the grandmother of the victim girl (P.W.1). The complaint was lodged before the respondent police by the father of the victim girl namely P.W.2 on 03.06.2013. But the case was registered only on 04.06.2013. [Though it is a serious offence, the case was not registered in time and the delay was not explained by the prosecution.]

(ii) According to the appellant counsel, the occurrence took place at the house of P.W.5. But the evidence of P.W.5 says that the occurrence took place at the opposite house of P.W.5 and it belonged to one Arumugam and it was kept locked. Therefore, it creates a serious doubt regarding the place of occurrence.

(iii) The evidence of P.W.5 is that she along with her grand-daughter victim girl and her son-in-law P.W.2 settu went to the police station to lodge the complaint. But the victim girl was sent to the hospital for medical examination after a lapse of 10 days that is on 12.06.2013. This delay was not also explained by the prosecution.

(iv) According to the evidence of P.W.10, the Doctor who examined the victim girl is that the victim girl did not say that she was raped. Moreover, there is no material evidence to show that the victim girl was raped. This also creates a serious doubt over the case of the prosecution.

(v) A close reading of Sections 4 and 3 of the POCSO Act, the ingredients required for the offence has not been established in this case. The basic facts were not established. The evidence of P.W.1 is quite insufficient to record a conviction under Section 4 of the said Act.

8. The learned Public Prosecutor (Crl.Side) has made submission in support of the order passed by the learned Sessions Judge.

9. POCSO came into force on 14.11.2012. The date of alleged occurrence is on 03.06.2013.

10. The child is a defined under the POCSO Act in Section 2(d) of the Act "any person below the age of 18 years". As per the prosecution, the victim was 14 years and studying 8th standard at the relevant point of time.



have money he was not able to come immediately to his village and after borrowing money from his master he came to the occurrence village on the next day and on 4.6.2013 he had lodged a complaint before the police. It has come out on evidence that P.W.5 informed her son-in-law (P.W.2) over phone and he had come to the house on 3.6.2013 and the police was reported on the next day. The evidence of P.W.2 and P.W.5 is supported and corroborated by the evidence of P.W.3, P.W.6 and P.W.8 respectively. The F.I.R was lodged soon after the father of the victim came to know about the incident. The short delay of 2/3 days has been clearly explained through the evidence of P.W.2.

(ii) The defacto complainant (P.W.2) had testified that on 2.6.2013 he was informed by his mother-in-law that the accused had ravished his daughter and so on the next day he came to the occurrence village. On 4.6.2013 he lodged Ex.P1 complaint before the police. P.W.3 the maternal uncle of the victim had deposed that on 2.6.2013 at about 2.30 p.m., when he was sleeping in his house, he some noise from the victim's house and rushed there. At that time, P.W.1 was narrating the incident to her grandmother (P.W.5). P.W.5 after hearing the occurrence from the victim came out of the house shouting and informed the incident to one shop keeper who advised her to inform the same to her sons. Thereafter, P.W.5 phoned her son and informed about the incident. On the next day his brother Sivakumar (P.W.6) came to the occurrence place and thereafter P.W.5 informed the father of the victim (P.W.2) about the occurrence. The testimonies of the victim (P.W.1) and P.W.5 is corroborated by P.W.2, P.W.3, P.W.6 and P.W.7. Besides, their testimonies has been corroborated by P.W.8 a neighbour shop keeper to whom P.W.5 has reported the incident immediately after the occurrence.

(iii) Though there has been some delay in filing the complaint, the same has been explained by the father of the victim. The fact that he was working as coolie in a different place on the date of occurrence is not disputed. In such circumstances, since the victim was residing with her grandmother and also a minor who was violated, the possibility of there being hesitation on the part of the grandmother until the father had come to lodge a complaint cannot be brush aside slightly. Hence, the factum of delay in filing the complaint would not be fatal so as to vitiate the prosecution case. Accordingly, this point stands rejected and answered against the appellant/accused.



Crime:-

17. The accused stands charged for the offence under Section 4 of the POCSO Act.

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18. Now let us consider whether the evidence of P.W.1 (victim) is reliable and trustworthy.

19. The main contention raised by the appellant counsel is with regard to delay in sending the P.W.1 for medical examination and the medical evidence is not supporting the evidence of P.W.1.

20. In short, P.W.1 victim girl was subject to medical examination after lapse of 10 days from the date of occurrence. She had justified the accused assaulted her and she fell unconscious and she didn't know what had happened her. She was examined by the Doctor she has stated that a person known attempted to rape her. In the statement given to the police that is recorded under Section 161 of the Cr.P.C as well as statement recorded by P.W.13, learned Judicial Magistrate under Section 164 of the Cr.P.C. It is specifically deposed by her that the accused had committed rape upon her.

21. As to the reliability and trustworthy of P.W.1, the evidence of witness to the extent of presence of accused at the place of occurrence is important. The victim (P.W.1) has stated in her evidence at the time of occurrence, she was studying in 8th standard and residing along with her grandmother in the occurrence village. Since her parents went to Bangalore for their avocation she had to stay along with her grandmother. On the occurrence day she was alone in the house. At that time, the accused came there and asked for water. When she was about to bring water to the accused, he followed her and hit her on her face and gagged her mouth with a cloth due to which she fell unconscious. So she was not aware what the accused had done to her. At that time, her grandmother came inside home. She sprinkled water on her face and informed her that she had seen the accused running out and asked her what had happened. P.W.1 narrated the incident to her grandmother and thereafter her grandmother phoned her father and informed him about the incident. Thereafter, her father came and lodged a complaint against the accused.



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22. The victim (P.W.1) had identified the accused in the accused box. In the cross examination also, she reiterated the same thing and denied the suggestion that the father of the victim approached the accused to marry the victim and since he refused to marry her he was falsely implicated in this case.

23. The victim had stated in her statement before the police and the Judicial Magistrate that the accused on the occurrence day came to her house and asked for water and when she was about to bring water, he followed her and gagged her mouth and ravished her. From the above, it appears that the victim did not describe in any great detail as to what individual acts the accused performed but merely stated that the accused gagged her mouth and ravished her. Therefore, the omission pointed out by the appellant counsel cannot totally negate what the victim had stated in her statements before the police and the Judicial Magistrate.

24. (a) It remains to be stated that her testimony has been duly corroborated by P.W.1 father P.W.3 maternal uncle and P.W.5 who found P.W.1 regarding the act of the accused on the private part of the victim girl. Whether the omission of the victim before the police that she had questioned him why the accused is following her which she has denied in the cross examination. I find that the so called omission with regard to alleged questioning as to why the accused followed her inside the house does not amount to contradiction as projected by the appellant counsel.

(b) The presence of the accused in the place of the occurrence is important. The place of the occurrence is the house of P.W.5, (house of grand mother of P.W.1). P.W.2 father and mother are away in bangalore due to avocation. P.W.3 is maternal uncle who resides nearby came to victim immediately after the occurrence. On hearing the hue and cry of P.W.5 (grand mother) At that time P.W.1 was narrating P.W.5 the incident to her grandmother. Thereafter P.W.5 contacted her son and on the next day P.W.6 came to the occurrence and thereafter P.W.5 informed the father of the victim P.W.2 about the occurrence and hence the chain of the events as to the presence of the accused inside the house of the grand mother of the victim girl. When the accused has gained the entry to the house of the grand mother of the P.W.1 under the pretext of asking water in the noon. The presence of the accused is duly spoken to by P.W.1,



P.W.5 and P.W.8 (the neighbouring shop owner) who had seen the accused running away from the scene and the P.W.5 grand mother has hopelessly chasing him shouting that this man ravished her grand daughter and hence I find that a omission to factum of non question of accused after gaining entry to the house before the police does not amounts to contradiction in the version of P.W.1 nor it will creates a suspicion on the otherwise reliable version of P.W.1. Such a omission does not amount to contradiction.

25. The learned counsel for the appellant also raised an objection as to the alleged scene of the crime as projected by the prosecution and he relied upon the a snap answer elicited in the cross examination that P.W.5 who in her cross examination has stated the occurrence has taken place opposite house.

26. On perusal of the cross examination of P.W.5, there is a snap answer. But, in this aspect the investigation officer was not confronted with any such averment. If any question is put to the investigation officer in the cross examination, the investigation officer could have given a explanation or plausible explanation as to the snap answer and I find that except that snap answer, the evidence of P.W.5 is clear, cogent and very natural and inspiring the confidence of this Court on multiple aspects as discussed supra and hence, I find that a snap answer obtained in the cross examination will not crash the otherwise clear and cogent evidence of P.W.5 which found to be duly corroborated on material aspects of the case.

27. In this regard, it remains to be stated that even in Ex.P1 complaint, it is clearly mentioned about the presence of P.W.5 that the grand mother had seen the accused was laying on the body of P.W.1 on seeing her, he run out of the house through the back door, the same is also mentioned by the statement recorded under Section 164 Cr.P.C by the judicial magistrate has admitted by P.W.15 and P.W.13 Judicial Magistrate assumes significance.

28. On perusal of the chief and cross examination as to the point of alleged occurrence, I find that in the chief examination of P.W.5 she had stated that her granddaughter (PW1) was staying along with her and on occurrence day her granddaughter was alone at home and at about 2.00 p.m when she



came home for lunch she had seen the accused laying on the body of P.W.1 and dress of both are not proper and on seeing her the accused running out. Hence, it is clear that the occurrence took place only in her house. Being a rustic village woman she would have misunderstood the question put by the defence counsel and deposed that the occurrence took place in the opposite house which is nobody's case.

29. Hence, this Court finds that both the contention raised by the appellant counsel on scene of the crime and as to the reliability of version of P.W.1 (victim) and P.W.5 (grand mother) was stands rejected. A similar finding, however on different reasoning, rendered by the learned Sessions Judge is hereby confirmed.

30. On the point of delay in sending P.W.1 to the medical examination, the learned counsel for the appellant/accused relied that as per P.W.10's evidence, there is noting mentioned that P.W.1 was raped.

31. On an combine reading of the evidence of P.W.1 coupled with P.W.10, Doctor I find that:

(a) the victim was taken to the Government Hospital after ten days of the alleged occurrence. The victim girl had stated before the Doctor who medically examined her that a known person attempted to rape her.

(b) The victim was hardly 14 years at the time of occurrence. When a tender aged girl like the victim is subjected to sexual act, it cannot be expected from her to explain whether she was raped or been attempted to rape. According to the evidence of Doctor (P.W.10) who examined the victim after 10 days of the alleged occurrence, there was no injury on her private part and the victim had not complained about any pain on her body. But the Doctor had testified that the hymen was not found intact.

(c) The victim was examined by the Doctor only after ten days of the alleged occurrence. It is lapse on the part of the investigating Officer for not subjecting the victim immediately before the Doctor for examination for which the victim or her family who are rustic villagers cannot be blamed.

(d) The victim has categorically stated before the police and the Judicial Magistrate and in her evidence that when the



accused gagged her she fell unconscious. Hence, the non existence of external injuries on the body of the victim is not fatal to the prosecution case. Moreover, it is always not expected that every rape victim should have injuries on her body as it is held in many apex court decisions. Moreover, the medical evidence only confirmatory.

32. (i) P.W.10, Dr.Porselvi had issued Ex.P6 medical certificate for the victim. In Ex.P6 it is mentioned that the patient alleged to have been attempted to rape by one person Muniyapillai, S/o.Manjunathan on 2.6.2013 while she was at her residence (grandma house, Thondananthal).

(ii) Besides,P.W.9, Dr.Senthil Raja deposed that he had examined the accused based on Ex.P3 requisition letter from the Court and issued Ex.P4 potency certificate for the accused in which he had opined that there is nothing to suggest the accused could not perform sexual act.

33. The Doctor who had medically examined the accused had opined in his report that the accused is capable of performing sexual act. Moreover, the victim's evidence clearly establishes the fact that the accused hit her on her face and gagged her mouth with a cloth and caught hold of her tightly and pressed her breast. Since, she fell unconscious she did not know what the accused had done to her. Only when the victim was conscious she would have resisted the act of the accused and would have sustained external injuries in the scuffle.

34. The Doctor who had medically examined the victim had given report that the hymen was not intact and also deposed that she could not confirm that the victim was not subjected to sexual assault. Hence the prosecution has demonstrated that only by penetrative sexual assault the hymen of the victim had been torn.

35. The evidence of P.W.5 on entering the house she find the accused they are laying on the body by her granddaughter P.W.1 and on sprinkling water on P.W.1 she had narrated how the accused has gained the entry to the house in the noon. When P.W.5 entered her house she found that the accused was laying on



the body of P.W.1 the granddaughter hue and cry the accused had escaped through the back door and she chased him and the accused ran away from the house of P.W.5 which was seen by the neighbouring owner of P.W.7 and P.W.8. Besides after the sprinkling the water, P.W.1 has narrated the version of P.W.5 and he has conveyed the message to P.W.3 immediately P.W.3 maternal uncle who came to the scene of the occurrence immediately after the said occurrence and hence the evidence of P.W.1, P.W.2 and P.W.3 are clear and cogent and hence I find that the delay in sending the P.W.1 for medical examination is not fatal to the prosecution and minor discrepancy in her evidence because of lapse of time or tender age and other social background, the same cannot be treated as fatal of the case of the prosecution and hence the above said contention on behalf of the appellant/accused is also stands rejected.

36. Thus based upon the above discussion, this Court holds that the version of P.W.1 victim girl inspires the confidence of this Court as to the fact "act of the accused" on the private parts of the P.W.1 and the presence of the accused inside the house of P.W.5 on the date and the position of the accused on the laying on the body of P.W.1 as spoken to P.W.5 and running of the accused from the house of the P.W.5 was clearly spoken to by P.W.7 and P.W.8. Further, immediately after the occurrence P.W.1 victim girl had narrated the incident to P.W.5 and in the presence of P.W.3 and the factum of the medical condition and the medical evidence of P.W.10 Doctor who had issued Ex.P6 medical certificate for the victim and for that of accused medical evidence P.W.9 Doctor and Potency Report Ex.P4.

37. In view of the clear and cogent evidence let in by the prosecution and also as spoken to by P.W.1, P.W.5, P.W.10 Doctor and P.W.9 Doctor and Ex.P4 Potency Certificate the reasoning assigned in the preceding paragraphs, I find that the version of the victim stands established by the prosecution.

38. Hence, this Court is of the considered view that the prosecution has proved the essential ingredients for the offence section 3 of the POCSO Act and the 'fact' has been proved beyond reasonable doubt.

39. Under Section 30 of the POCSO Act 2012 provides for presumption of culpable mental state of the accused as follows:-



(i) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

(ii) For the purposes of this Section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

40. Hence, in view of the above discussions supra, I hold that the fact said to be proved since the fact is relating to the commission of sexual assault on the private part of the P.W.1 by the accused has been proved beyond reasonable doubt and hence, taking into consideration the entirety of the circumstances, this Court holds that the prosecution has clearly demonstrated the fact of commission of penetrative sexual assault on P.W.1 beyond reasonable doubt as required in 30(ii) of the POCSO Act and in consequence, thereof, the prosecution is entitled for presumption as contemplated under Section 30(1) as to the "culpable mental state" of accused and now it is for the accused to rebut such a presumption as to non existence of such a mental state with respect to the act charged for the offence under Section 4 of the POCSO Act.

41. In an attempt to rebut the statutory presumption, the accused had examined D.W.1 and D.W.2 who are the father and grand father of the accused. After going through their evidence of cross examination, I find that the suggestive case of the defence is that since the accused was related to the victim family, the father of the victim approached him to marry his daughter and since the accused refused to marry her, the father of the victim had falsely implicated the accused in this case in order to threaten him to marry his daughter.

42. But in the cross examination he admitted that the accused misbehaved with the victim. Hence, D.W.1 and D.W.2 did not support the plea of false accusation as stated by the defence. And it is not necessary for the victim family to allow the real culprit to escape and implicate the accused in this case. Moreover, the apex courts observed in rape cases that the



Court should examine the broader probabilities and should not get swayed by minor contradictions or insignificant discrepancies in statement of witnesses. Because rape leaves a permanent scar and has a serious psychological impact on the victim and her family members.

43. Hence, I find that only after filing of the complaint Ex.P1 by the P.W.2 father, through the villagers, they have approached to the father of the victim to marry the daughter and the stories spoken by D.W.1 and D.W.2 is after the incident and not the prior to the incident and therefore, the suggestive case of the defence that accused has falsely implicated falls to ground and therefore, the suggestive case of the defence due to refusal to marry is stands negatived and hence, I hold that the defence has miserably failed to rebut the presumption as required 2nd part of under Section 30(1) of the POCSO Act.

44. Hence, I find that the prosecution has proved the charge under Section 4 of the POCSO Act beyond reasonable doubt and the accused has failed to probablize the suggestive case as contemplated under Section 30 (1) of the POCSO Act. The accused having failed to prove that he had no such mental state for which he had been charged, this Court has held that the accused has failed to rebut the presumption and hence, I hold that the charge under Section 4 of the POCSO Act against the prosecution is proved in the manner known to law and a similar finding rendered the learned Session Judge is hereby confirmed and accordingly, the conviction and sentence passed by the trial Court appears to be just and proper and the 7 years of imprisonment for the above said offence cannot be termed as excessive and hence this Criminal Appeal is devoid of merits and liable to be dismissed.

45. In the result, this Criminal Appeal is dismissed. Since the appellant/accused is on bail, the trial court is directed to take steps to secure his presence to undergo the remaining sentence, if any.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar

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1. The Sessions Judge, Magalir Neethimandram
(Fast Track Mahila Court), Villupuram.

2. The The Inspector of Police,
All Women Police Station,
kallakurichi.

3.The Public Prosecutor,
High Court, Madras.

4.The POCSO Committee,
High Court, Madras.

5.The Superintendent,
Central Prison, Cuddalore.

6.The Section Officer,
Criminal Section,
High Court, Madras.

+1CC to Mr.A.G.Rajan, Advocate, SR.No. 55674

Cr1.A.No.214 of 2015

AK(CO)
B.VC (08/11/2021)