



Bail Slip

That the Appellant/Accused namely Suresh S/o.Kandha Vadivel was released on bail as per order of this Court dated 21.05.2015 made in MP No.1/15 in CrI.A.No.292 of 2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2021

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

CrI.A.No.292 of 2015

Suresh

... Appellant

Vs

State rep. by
The Inspector of Police,
All Women Police Station,
Nannilam,
Thiruvarur District.
[Crime No.221 of 2013]

... Respondent

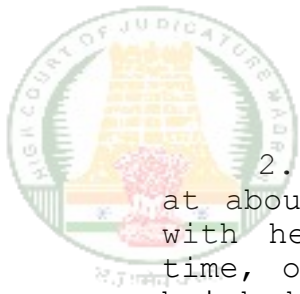
PRAYER: This Criminal Appeal is filed under Section 374 of Cr.P.C., against the judgment and sentence passed in S.S.C.No.2 of 2013 on the file of the Court of Magalir Neethimandram, (Fast Track Mahila Court, Tiruvarur) convicting the appellant under Section 8 of the POCSO Act and sentenced to undergo R.I., for three years with a fine of Rs.5,000/- i/d to undergo R.I., for six months.

For Appellant : Mr.Sarath Chandran
for M/s.K.M.Associates

For Respondent : Mr.A.Gopinath
Government Advocate (CrI.Side)

JUDGMENT

This Criminal Appeal has been preferred by the appellant/accused challenging the judgment of the learned trial Judge of Magalir Neethimandram, (Fast Track Mahila Court, Tiruvarur), dated 28.04.2015 made in Special S.C.No.2 of 2013.



2. According to the case of the prosecution, on 07.05.2013 at about 9.00 a.m., the victim girl, aged 14 years, went along with her younger sister for grassing the cattle. During that time, one of their sheeps ran away from the herd to the nearby brick kiln. So the victim girl followed the sheep in order to bring it back. At that time, the accused came there and caught hold of her, slapped her and removed her cloth. She tried to push him but the accused over powered her and pushed her down and closed his mouth in one hand and inserted his left hand finger into her vagina. After that, she escaped from the place of occurrence and made a complaint under Ex.P1. On the basis of the said complaint, a case has been registered by PW13, Sub-Inspector of Police in Crime No.221 of 2013 of Peralam Police Station under Sections 4 and 8 of the POCSO Act, 2012 and prepared the First Information Report, Ex.P7.

3. PW11, Gr.I Constable took the victim girl for medical examination. PW14, Inspector of Police, All Woman Police Station, Nannilam took up the case for investigation after getting direction from her Superior Officers. She went to the place of occurrence, prepared Observation Mahazar and Rough Sketch in the presence of witnesses. She examined the victim girl and other witnesses and recorded their statements. On the same day, at about 3.30 p.m., she arrested the accused and recorded his confession statement in presence of witnesses. The accused was also sent for medical examination after giving request to the Court under Ex.P8. She examined the Doctors, who had conducted medical examination on the victim and the accused and obtained medical certificates from them. After completing the investigation, she filed the charge sheet against the accused for the offence under Sections 4 and 8 of POCSO Act.

4. After the case was taken on file, the learned Sessions Judge, furnished copies to the accused and complied the legal mandates. The charges against the accused have been framed for the offence under Sections 4 and 8 of the POCSO Act and the accused was questioned. Since the accused denied his involvement in the said offence, the trial was conducted.

5. On the side of the prosecution, 14 witnesses were examined as PW1 to PW14 and 10 documents have been marked as Exs.P1 to P10. On the side of the defence, no witness was examined and no document was marked.

6. After considering both oral and documentary evidence, the learned Trial Judge convicted the accused for the offence under Section 8 of the POCSO Act and sentenced him to undergo Rigorous Imprisonment for three years and imposed a fine of Rs.5,000/-, i/d., to undergo six months Rigorous Imprisonment. Aggrieved over the same, the accused has preferred this Appeal.



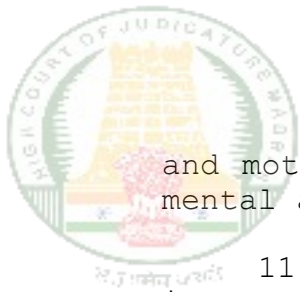
7. The learned counsel for the appellant submitted that the learned trial Judge has not properly weighed the offence on record; PW4, one Amutha, to whom the victim girl reported about the occurrence did not support the case of the prosecution; the learned trial Judge had omitted to examine the suspicious circumstances in which, Ex.P1-complaint has been given; the complaint given to Peralam Police Station was a fresh one and the medical evidence of the Doctor did not corroborate the case of the prosecution; by making such submissions, the learned counsel for the appellant prayed this Court to set aside the Judgment of the Trial Court and acquit the accused.

8. The learned Government Advocate (Crl.Side) appearing for the State, submitted that in the cases of sexual offences against children, the evidence of the victim plays a significant role and the Trial Court has properly appreciated her evidence and therefore, there is no reason to interfere with the judgment of the trial Court.

9. Points for consideration:

Whether the conviction and sentence of the accused for the offence under Section 8 of the POCSO Act, by the learned Sessions Judge is fair and proper?

10. PW1 is the victim girl and her evidence would reveal that in the morning of the date of occurrence, she was going along with her younger sister, PW3 for grassing the cattle. One of the sheeps ran away from the herd and hence she was forced to chase the sheep in order to bring it back. At that point of time, she felt some one was hugging her behind. So she started to shout. She later recognised the person as the accused, she pushed him away. But she was slapped by the accused and he pushed her down and removed her shirt and clothes and kept his finger on her private parts. He also threatened her that she should not tell about this to others. The victim girl pushed him aside and escaped from the place of occurrence and came by crying. The younger sister(PW3) of the victim girl has stated in her evidence that she also went with PW1 on the date of occurrence. But, she saw her sister crying and coming and thereafter, they came to their home. The mother of PW1 was examined as PW2 and she has stated that on the date of occurrence, after grassing the cattle, her daughters came home. But PW1/victim girl was crying. One Amutha has also seen the children and she enquired PW1/victim girl and came to know about the occurrence. Thereafter they went to Peralam Police Station and the victim herself had given the complaint to the Police. Being a girl of 14 years, such kind of sexual assault on her would have disturbed her mental peace. Both the victim's sister



and mother have found the victim crying and that would show the mental agony of the victim.

11. As per Section 29 of the POCSO Act, whenever a person is prosecuted for committing an offence punishable under Section 8 of POCSO Act, the initial presumption has to be taken in favour of the prosecution. The import of Section 29 of the Act is as follows:

''Presumption as to certain offences: Where a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.''

12. The above provisions throw the reverse burden on the accused. Once a person is prosecuted for the offence punishable under Section 8 of the Pocso Act, the initial presumption would be that the person had committed the offence as alleged by the complainant. If, the victim can substantiate the same and her evidence is found to be reliable, the initial presumption would become conclusive, unless the same was rebutted by the defence.

13. In this case, it is submitted by the learned counsel for the appellant that the accused being an youth of the village, played a prominent role in recovering the panchayat ground/property designated for constructing a gym, from the occupation of the complainant's family and only because of this action, this case has been foisted against him. PW2 has stated in her evidence that a place belonging to Panchayat Board was occupied by her husband and it was designated for constructing a gym. However, she denied the fact that the accused played a prominent role in recovering the same. It is submitted by the learned counsel for the appellant that the above evidence of PW2 would show the previous motive, the family of the victim had with the accused.

14. The accused is in no way related to the affairs of the Panchayat Board. He is neither an office bearer of any of the Youth Association formed in the Village. Even during 313 questioning, he has not stated about the said motive. None of the Authorities of Panchayat Board was examined to rebut the evidence of PW1 on the basis of the above submission made by the learned counsel for the appellant.

15. In sexual offence against women in general and against children in particular, the evidence of the victim assumes a larger significance. The evidence of victim child is like that of the evidence of the injured witness and it does not require



any corroboration. In this regard, it is relevant to refer the judgment reported in Ganesan Vs. State Represented by its Inspector of Police [(2020) 10 SCC 573)].

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11. In State of Punjab v. Gurmit Singh, (1996) 2 SCC 384, this Court held that in cases involving sexual harassment, molestation, etc. the court is duty-bound to deal with such cases with utmost sensitivity. Minor contradictions or insignificant discrepancies in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration. The court may look for some assurances of her statement to satisfy judicial conscience. The statement of the prosecutrix is more reliable than that of an injured witness as she is not an accomplice. The Court further held that the delay in filing FIR for sexual offence may not be even properly explained, but if found natural, the accused cannot be given any benefit thereof. The Court observed as under: (SCC pp. 394-96 & 403, paras 8 & 21)

"8. ... The court overlooked the situation in which a poor helpless minor girl had found herself in the company of three desperate young men who were threatening her and preventing her from raising any alarm. Again, if the investigating officer did not conduct the investigation properly or was negligent in not being able to trace out the driver or the car, how can that become a ground to discredit the testimony of the prosecutrix? The prosecutrix had no control over the investigating agency and the negligence of an investigating officer could not affect the credibility of the statement of the prosecutrix. ... The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. ...



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Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. ... Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. ...

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21. ... The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations."

(emphasis in original)

12. In *State of Orissa v. Thakara Besra*, (2002) 9 SCC 86, this Court held that rape is not mere physical assault, rather it often distracts (sic destroys) the whole personality of the victim. The rapist degrades the very soul of the helpless female and, therefore, the testimony of the prosecutrix must be appreciated in the background of the entire case and in such cases, nonexamination even of other witnesses may not be a serious infirmity in the prosecution case, particularly where the witnesses had not seen the commission of the offence.

13. In *State of H.P. v. Raghubir Singh*, (1993) 2 SCC 622 this Court held that there is no legal compulsion to look for any other evidence to corroborate the evidence of the prosecutrix before recording an order of conviction. Evidence has to be



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weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate against her veracity. A similar view has been reiterated by this Court in *Wahid Khan v. State of M.P.* (2010) 2 SCC 9 placing reliance on an earlier judgment in *Rameshwar v. State of Rajasthan*, AIR 1952 SC 54.

14. Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix."

16. The learned Trial Judge has rightly understood the rules of evidence in POCSO cases and given due significance to the evidence of the victim. The victim did not have any personal motive against the accused to implicate him falsely in this case, by risking her own reputation. Neither her parents would be willing to bring shame to their daughter by giving a false case against the accused. Even before PW9 Doctor who had examined the victim girl, she has stated the similar facts about the occurrence. Hence, the evidence of PW1 is consistent and reliable.

17. The learned counsel for the appellant submitted that the medical evidence did not support the case of the prosecution, since the Doctor has not noticed any injury on the body of the victim. The manner in which the offence had taken place need not necessarily cause an injury on the body of the victim. Hence, absence of injury cannot falsify the case of the prosecution.

18. The age of the victim girl was not in dispute. At the time of occurrence, she was below 18 years and falls within the definition of the child as defined under the Pocso Act.

19. The learned counsel for the appellant stressed that in her evidence PW1 has stated that she had given the complaint twice i.e., one before the Peralam Police Station and another before the All Women Police Station, Nannilam. Whenever complaints for sexual offence against children are given, it is the habit of the Police to send the victim to All Women Police Station in order to give the complaint there. Instead of forwarding the complaint to the jurisdiction station, the police adopt a different practice. Hence, the victims might need to re-write the complaint. That does not mean that the earlier



complaint was suppressed by the appellant. In fact, the Investigating Officer, herself has stated that on the orders of her superiors only she had taken up the case for investigation. These are the practical difficulties faced by the victims and the same cannot be taken as a rebuttal ground for the accused.

20. It is true that 164 statement of the victim, which ought to have been obtained, was not recorded in this case. Unless the victims are informed, they may not know their rights and opportunities. The flaw on the part of the investigation cannot be allowed to affect the interest of the victim. Since the Court below has properly appreciated the evidence and found the accused guilty, I do not find any reason for interference.

In the result, this Criminal Appeal is dismissed and the judgment of the learned Sessions Judge, Magalir Neethimandram, (Fast Track Mahila Court), Tiruvarur, dated 28.04.2015 made in Spl.S.C.No.2 of 2013 is confirmed. The accused is on bail. Hence, the learned trial Judge is directed to issue Non-Bailable Warrant for securing the accused and sending him to prison for undergoing the sentence.

Sd/-

Assistant Registrar(CS-VII)

//True copy//

Sub Assistant Registrar

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To

1. The Sessions Judge,
Court of Magalir Neethimandram,
(Fast Track Mahila Court),
Tiruvarur.
2. The Inspector of Police,
All Women Police Station,
Nannilam,
Thiruvarur District.
3. The Public Prosecutor,
High Court of Madras,
Chennai.

CrI.A.No.292 of 2015

MG(CO)
GMY(10/02/2022)