



Bail Slip

The Appellant/Petitioner, Accused No.1 namely Mr.Manikandan, S/o.Nagaiya was directed to be released on bail as per the order of this Court dated 05.05.2021 in Crl.M.P.No.5656/21 in Crl.A.No.230 of 2021 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.09.2021

PRONOUNCED ON : 28.10.2021

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CRL.A.No.230 of 2021

M.Manikandan,
S/o.Nagaiya

... Appellant/Accused No.1

Vs.

State Rep. By the Inspector of Police,
All Women Police Station,
Hosur,
Krishnagiri District.
(Crime No.23/2017)

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, to call for the entire records in connection with the Spl.S.C.No.14/2018 on the file of the learned Sessions Judge (Fast Track Magalir Neethimandram), Krishnagiri, Krishnagiri District and set aside the judgment dated 09.02.2021.

For Appellant : Mr.V.Parthiban for M/s.E.Kannadasan

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

JUDGMENT

This Criminal Appeal has been filed to set aside the judgment in Spl.S.C.No.14 of 2018, dated 09.02.2021 on the file of the learned Session Judge (Fast Track Magalir Neethimandram), Krishnagiri, Krishnagiri District.



2. The respondent police initially registered a case in Crime No.23 of 2017 against the appellant and yet another for the offence under Sections 7 and 8 of The Protection of Children from Sexual Offences Act, 2012 [hereafter referred to as 'POCSO Act' for the sake of convenience], subsequently altered into Section 10 of POCSO Act, which is punishable under Section 9(1) of POCSO Act. The appellant is shown as A1. After investigation, the respondent police laid a charge sheet before the Mazhila Court, Krishnagiri. The learned Special Judge taken the charge sheet on file in S.C.NO.14 of 2018. After completing the formalities, the learned trial Judge framed the charges against accused Nos.1 and 2 for the offence under Section 9(1) of POCSO Act, which is punishable under Section 10 of POCSO Act and against this appellant, the learned trial Judge also framed the charges for the offence under Section 11 of POCSO Act, which is punishable under Section 12 of POCSO Act.

3. After framing charges, in order to prove the case of the prosecution, during trial, on the side of the prosecution as many as 19 witnesses were examined as P.W.1 to P.W.19 and 48 documents were marked as Exs.P.1 to P.48.

4. After completing the examination of the prosecution witnesses, incriminating circumstances were culled out from the evidence of the prosecution witnesses and put before the accused by questioning under section 313 Cr.P.C., with reference to the incriminating circumstances appears on the side of the prosecution witnesses and the same was denied by the accused as false and pleaded not guilty. On the side of the defence, one witness was examined as D.W.1 No document was produced.

5. On completion of trial, hearing the arguments advanced on either side, considering the materials, the trial court found that the second accused is not guilty. However, the trial Court found that the appellant is guilty for the offence under Section 7 of POCSO Act, which is punishable under Section 8 of POCSO Act and convicted and sentenced to undergo three years Rigorous Imprisonment with fine of Rs.2500/- in default to undergo two months Rigorous Imprisonment. Challenging the said judgment of conviction and sentence, the first accused has filed the present appeal before this Court.

6. The learned counsel for the appellant would submit that no students had given any complaint against the appellant and no witnesses have supported the case of the prosecution. All the witnesses had turned hostile and a false case has been foisted against the appellant. Though the learned trial Judge found not guilty of the second accused from the very same charges, he has wrongly convicted this appellant/A1 for the alleged offence.



The school, in which the victims studied have not given any complaint and the Headmistress and other teachers have stated that there is no allegation of this nature were received from any of the students so far. The prosecution has failed to prove its case beyond all reasonable doubt and there were a material contradiction between the evidence of P.W.1 and P.W.19 regarding the date of complaint and recording of statements. P.W.1 has categorically stated that she had given a complaint along with statements of victim girls on 01.11.2017, whereas the Investigating Officer, who was examined as P.W.19, has categorically stated that she received a complaint from P.W.1 only on 22.11.2017 and there was no reference about the receipt of statements of victims in her evidence.

7. The learned counsel for the appellant would further submit that the evidence of P.W.2 is an artificial one and she had made several allegations against the appellant in her chief examination. To the contrary, she denied all the allegations in her cross examination that "while at that time of learning dance, there is no vulnerability from the side of the appellant, but she was beaten by him" which shows that she was compelled to give evidence against the appellant. Further she had deposed that after attending TV programme, she did not go to dance class after lapse of one month. P.W.3 has not supported the case of the prosecution and she is only a hear say witness. She was not subjected to sexual assault from the hands of the appellant and other accused A2. The records reveal that P.W.19-Investigating Officer has started the investigation even prior to receive the complaint. P.W.3 had categorically stated that she was examined by P.W.1- defacto complainant and P.W.19-Investigating Officer on 02.11.2017 in the school campus itself. P.W.4 also not supported the case of the prosecution and she is only a hear say witness and she was also not subjected to sexual assault. The evidence of P.W.6-Headmistress of the school would go to show that the case of the prosecution is false. P.W.8-P.T. Assistant of the school also not supported the case of the prosecution and she denied all the allegations against the appellant. The evidence of P.W.11 is also hear say witness. She had deposed her evidence based on hear say, her evidence is an artificial one and cannot be believable.

8. The learned counsel for the appellant would further submit that there are material contradiction between the evidence of victims and other prosecution witnesses. Most of the victims turned hostile and not supported the case of the prosecution. Even the other witnesses has also not stated that they directly suffered for the action committed by the appellant. The prosecution also failed to examine the building owner, where the dance class was running by the appellant and no document was produced by the prosecution. The non examination



of the vital witness is fatal to the case of the prosecution. D.W.1 disproved the case of the prosecution, since D.W.1 has stated that she alone taken the dance class and coaching given in her presence and there was no suggestion put forth by the prosecution to disbelieve the evidence. The prosecution failed to prove its case beyond all reasonable doubt. The trial Court failed to appreciate the same and wrongly convicted the appellant for the offence punishable under Section 7 of POCSO Act, which is punishable under Section 8 of POCSO Act. Therefore, the Judgment of the trial court warrants interference.

9. The learned Government Advocate (Crl. Side) would submit that the appellant was running the dance class by name "Gurugulam" and he approached the schools and canvassed the students to come to dance class. Some of the victim girls also attended the dance class. At that time, the appellant misbehaved with them and used to touch their hip and breast. P.W.1 has received a complaint against the appellant about the sexual assault committed by the appellant from the students, who are attending the dance class. Therefore, as per the instructions of the Superior Officer, P.W.1 gave a complaint to the respondent police and they registered a case. Though in the investigation, some of the students have given evidence, some of the students afraid about their future and other circumstances, not supported the case of the prosecution. However, from the evidence of P.W.1 to P.W.3, it is clear that the appellant has committed the offence of sexual assault, which is punishable under Section 10 of POCSO Act. None of the witnesses has spoken about the involvement of A2 and hence, the trial Court acquitted him. However, P.W.1 to P.W.4 have spoken about the involvement of the appellant and therefore, the trial Court rightly convicted the appellant for the offence punishable under Section 7 of POCSO Act, which is punishable under Section 8 of POCSO Act. However, the learned trial Judge acquitted the second accused. As against the said acquittal, neither the prosecution nor the victim filed the appeal. Now the accused alone has challenged the judgment of conviction and sentence. The trial court appreciated the entire materials and convicted the appellant. There is no merit in the appeal and the same is liable to be set aside.

10. Heard the learned counsel for the appellant and the learned Government Advocate (Criminal Side) appearing for the official respondent and perused the materials available on record.

11. It is the case of the prosecution that the appellant was running a dance school by name "Gurugulam" and taking advantage of the same, the appellant misbehaved with the students and used to touch their hip and breast. P.W.1 has received a complaint



against the appellant about the sexual assault committed by the appellant from the students, who are attending the dance class. Therefore, as per the instructions of the Superior Officer, P.W.1 gave a complaint to the respondent police and they registered a case.

12. Since this Court is the appellate court, it is a final court of fact finding and in order to give reasons, it has to re-appreciate the evidence and finding independently. Accordingly this Court also correctly perused the entire materials.

13. The trial court framed the charges against the appellant and other accused as stated above.

14. In order to substantiate the charges framed against the appellant, on the side of the prosecution, totally 19 witnesses were examined and 48 documents were marked. Out of 19 witnesses, P.W.1 has spoken about the complaint given to the respondent police and their office received the complaint against the appellant. Though she has stated that their office has received a complaint however, not specifically stated from whom they received it. In the cases of this nature, normally neither the informant may not disclose their identity nor appear before either the Social Welfare Officer or the police for giving complaint. P.W.2 is one of the student, who originally attended the school and she has clearly deposed that since the appellant demanded money, she could not attend the dance class, due to poverty and subsequently, she heard about the attitude of the appellant. P.W.3 is one of the victim girl, she is clearly narrated the incident. Though she has not stated that the appellant touch her hip and also breast, however, she has stated that the appellant tried to touch her hip and breast and subsequently, she also stopped from going to dance class.

15. The modus operandi of the appellant is that he used to canvass the students to come to dance class and also used to choose a poor girls and tried to misbehave with them and when they resists or protests, he threatened them and also used to give a complaint before their parents that they are not performing well and also give a false promise that if they learnt dance well, he will take their children to the TV Channels for dancing and their dance would telecast through any of the prominent channels. Taking advantage of the same, he exploited the innocent children. Some of the witnesses turned hostile. Some of them have ambition to go to TV channel for dancing and also considering their future and life, they do not reveal the entire things. Even the school teachers also stated that they did not receive any complaint. Exs.P12, P14 and P16 are the Section 164 Cr.P.C. Statements of the victims viz.,



Karunya, Birunda and Shylaja Sri, in which they have stated that they went to dance class and the appellant tried to misbehave with them. Further, some of the students also informed the authorities about the ill-treatment of the appellant. Even though none of the witnesses have stated that they have been directly suffered by the appellant's misbehaviour, one of the witnesses had clearly stated that the appellant tried to misbehave or attempted to misbehave with her and when the students resist to the action of the appellant, he threatened them and also made a false allegation against them with their parents that they are not coming to dance class and they are not trying to learn the dance properly. The appellant has also made a false promise to their parents that if they learnt dance well, he will take their children to the TV Channels for dancing and their dance would telecast through any of the prominent T.V. channels and in such a way, he canvassed the parents and the children.

16. The fact remains that the appellant conducted a dance class in the name of "Gurugulam" and the girl children used to go to that school for learning dance and at that time, taking advantage of the manner of teaching, the appellant used to touch the hip of the children and also used to touch their breast with the sexual intention. Some of the students do not reveal the same to their parents, because they are afraid that their parents won't send them either to school or to dance class. Taking advantage of the same, the appellant misbehaved with the children, those who are coming to him for dance coaching. The trial Court acquitted the second accused, since none of the witnesses have spoken about the offence committed by the second accused. However, P.W.1 to P.W.4 have spoken about the offence committed by the appellant. Based on the same, the trial Court, has rightly found that the appellant committed the offence under Section 7 of POCSO Act, which is punishable under Section 8 of POCSO Act. In the cases of this nature, it can not be expected that any affected girl child would openly disclose all those things either to their parents or to the elders. However, some of the students informed to their parents about the attitude of the appellant and when they enquired about the same to the appellant, he did not give proper reply. Therefore, some of the parents considering the future of the children stopped to send their children for dance class. However, the Social Welfare Officer received a complaint and P.W.1 also enquired the same and sent a complaint to the respondent police and they investigated and found that the allegations received against the appellants are true. However, none of the students have come forward to reveal that they suffered by the action of the appellant. Only two of the students have stated that the appellant tried to misbehave with them. In the cases of this nature, it cannot be expected from the school going children



that they would reveal all those things before the school teachers, before the parents and before the friends. They would hesitate to say about their exact suffering.

17. Considering the facts and circumstances of the case, this Court is of the view that naturally the dance teacher while giving instructions to the students would touch their body. However, the victim can easily understand what is the good touch and bad touch and what is the intention of the person, who touches the body of the other persons. Therefore, as a male teacher, the appellant should be very cautious, while teaching the girl students and if the students feel that the touch of the appellant is bad touch, then it is for the appellant to rebut the presumption.

18. It is not in dispute that the appellant is running the dance school by name "Gurugulam" and he admitted the students directly or some times through the schools. Some of the students made complaint to their parents about the attitude of the appellant and some of the students informed to their friends and classmates. However, a complaint was received by Social Welfare Officer and P.W.1 also enquired the same and found that the appellant used to misbehave with some of the students. Normally, in the cases of this nature, the culprit used to choose the poor students, those who are hesitate to inform or disclose to any other persons and committed this type of offence and also used to threat them directly or indirectly about the future of the children. Therefore, under these circumstances, even though there is no independent evidence regarding the commission of offence, this Court believed the evidence of P.Ws.1, 2 and 3 and found that the appellant has committed the offence under Section 7 of POCSO Act, which is punishable under Section 8 of POCSO Act. The trial Court rightly appreciated the evidence and convicted the appellant. Hence, this Court does not find any reason to interfere with the judgment of the trial court and this appeal is liable to be dismissed.

19. In the result, the Criminal Appeal is dismissed by confirming the Judgment of conviction and sentence dated 09.02.2021 made in Spl.S.C.No.14 of 2018 on the file of the Sessions Judge (Fast Track Magalir Neethimandram), Krishnagiri, Krishnagiri District.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar



WEB COPY

- 1.The Sessions Judge (Fast Track Magalir Neethimandram),
Krishnagiri, Krishnagiri District.
- 2.The Inspector of Police,
All Women Police Station,
Hosur,
Krishnagiri District.
3. The Public Prosecutor,
High Court,
Madras.
- 4.The Section Officer,
Criminal Section,
High Court, Madras.
- 5.The Hon'ble POCSO Committee,
High Court, Madras.

+lcc to Mr.E.Kanndasan, Advocate, S.R.No.55751

CRL.A.No.230 of 2021

BR(CO)
CB(10/11/2021)