



BAIL SLIP

The Petitioner/Accused Palanisamy @ Velu, Male 34 years, S/o.Chinraj was directed to be released on bail vide order dated 23/03/2020 in CrI.Mp.No.2864 of 2020 in CrI.A.No.151/2020 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.A.No.151 of 2020

Palanisamy

...Appellant

Vs.

The State represented by  
The Inspector of Police,  
AWPS, Perur Police Station,  
Coimbatore.  
(Cr.No.02/2017)

...Respondent

This Criminal Appeal is filed under Section 374 of Cr.P.C. to set aside the judgment of conviction and sentence made in Spl.C.C.No.14 of 2019 by the learned Special Judge, The Special Court for Exclusive Trial of cases under POCSO Act, Coimbatore.

For Appellant : Mr.Adithya Varadharajan

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

JUDGMENT

The criminal appeal has been filed against the judgment of conviction and sentence made in Spl.C.C.No.14 of 2019 by the learned Special Judge, The Special Court for Exclusive Trial of cases under POCSO Act, Coimbatore.

2.The respondent police registered a case in Cr.No.02 of 2017 against the appellant for the offence under Sections 7, 8 and 5(m) r/w 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 Mahila Court, Coimbatore, which was taken on file in Spl.C.C.No.9 of 2018 and subsequently the case was transferred to the Special Court for Exclusive trial of cases under POCSO Act, Coimbatore, which was renumbered as Spl.C.C.No.14 of 2019. 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 7, 8 and 5(m) r/w 6 of the POCSO Act.

3.Before the trial Court, in order to prove the case of the prosecution, as many as 12 witnesses were examined as P.Ws.1 to 12 and Exs.P1 to P13 were marked and no material object was exhibited. 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, D.W.1 was examined and no document was marked.

4.The learned Sessions Judge, Special Court for Exclusive trial of cases under POCSO Act, Coimbatore, on completion of trial and hearing arguments advanced on either side, by judgment dated 12.02.2020 acquitted for the offence under Section 5(m) r/w 6 and convicted the appellant/accused for the offence under Section 7 punishable under Section 8 of the POCSO Act and sentenced him to undergo imprisonment for a period of three years with fine of Rs.2,000/-, in default, to undergo simple imprisonment for a period of six months and also directed the Government to pay a sum of Rs.25,000/- to the victim through her mother P.W.1 as compensation. Aggrieved against the said judgment of conviction and sentence, the accused has preferred this criminal appeal.

5.The learned counsel appearing for the appellant/accused would submit that there is no substantial material to convict the appellant for the offence under Section 7 punishable under Section 8 of the POCSO Act. There was previous enmity between the appellant and father of the victim and in order to wreck vengeance, false case has been foisted against the appellant. Even though, in the complaint it was stated that the victim P.W.2 had pain in her private part and there was reddishness, P.W.9 the Doctor, one who examined the victim has clearly stated that there was no injury or reddishness in the private part of the victim and hymen remains intact. Therefore evidence of



prosecution witnesses have not corroborated with the medical evidences, which is fatal to the case of the prosecution and there was no evidence for penetrative sexual assault. Further, the alleged occurrence said to have taken place on 30.12.2016, but the complaint was lodged by P.W.1 only on 03.01.2017 i.e. after three days, and the delay in lodging the complaint was not explained by the prosecution in a proper manner, which clearly shows that there was no such incident as alleged by the prosecution, only after deliberation, P.W.1 & P.W.3, has made false complaint against the appellant. There was civil dispute between the appellant and the father of victim P.W.3 and hence in order to wreck vengeance, the present complaint has been made against the appellant.

5.1.The learned counsel would further contend that the appellant sustained injuries and took treatments for the same, but, the prosecution has not explained the injuries sustained by the appellant. The appellant examined one Thangamani as D.W.1, who has clearly spoken about the previous enmity between the appellant and P.W.3 father of the victim. It was stated that on 31.12.2016 i.e. one day after the alleged occurrence, the victim was taken to Primary Health Centre for fever and P.W.8, the Doctor, one who treated the victim has not stated anything about the pain or reddishness in the private part of the victim. Hence, it is clearly proved that P.W.1 and P.W.3, after deliberation, has made the present complaint against the appellant in order to wreck vengeance. The trial Court has failed to look into the above aspects and erroneously come to the conclusion that the appellant committed the offence under Section 7 punishable under Section 8 of the POCSO Act and convicted accordingly, which warrants interference of this Court.

6.The learned Government Advocate (Crl.Side) appearing for the respondent police would submit that the victim child, who was aged about 5 years at the time of occurrence, has clearly spoken about the manner in which the offence was committed by the appellant. P.W.1, the mother of the victim in her evidence has clearly stated that when she gave bath to her child P.W.2, the victim child had complained pain in her private part and P.W.1 also saw reddishness and when P.W.1 questioned the same, the victim child narrated the incident, which would clearly attract offence under the POCSO Act. Immediately, P.W.1 and P.W.3 made complaint against the appellant. The victim child was produced before the Doctor, after four days of the occurrence and hence it cannot be expected and not possible that the injuries and reddishness as stated by P.W.1 should be in the same vigor. Prosecution has proved its case beyond all



reasonable doubts and since there is no penetrative sexual assault, the learned trial Judge has acquitted the appellant for the offence under Section 5(m) punishable under Section 6 of the POCSO Act and convicted only for the offence under Section 7 r/w 8 of the POCSO Act. Hence, there is no reason to interfere with the judgment of the trial Court and the appeal is liable to be dismissed.

7. Heard the learned counsel for the appellant and the learned Government Advocate (Crl.Side) appearing for respondent police and perused the materials available on record.

8. Case of the prosecution is that on 30.12.2016 at 03.30 p.m. when the victim girl was playing in front of her home, the accused, who is a neighbour went there and took her into his home. The accused kept the victim child in the staircase and removed her dresses and put his finger in the private part of the victim and pinched. On 02.01.2017, since the victim child suffered from fever, P.W.1, the mother of the victim child took her to the Primary Health Centre. Thereafter, when P.W.1 washed the private part of her child, she complained pain and P.W.1 saw reddishness in the private part and when P.W.1 questioned the same, the victim child narrated the entire incident. Hence the present case was registered against the appellant for the offence under Section 7, 8 and 5(m) r/w 6 of POCSO Act.

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. P.W.2 is the victim, P.W.1 is mother and P.W.3 is father of the victim child. When P.W.2 the victim child produced before the Magistrate for recording statement under Section 164 of Cr.P.C., she has clearly stated that the appellant took her into his house and kept her in the staircase and removed her cloths and put his finger into the vagina of the victim child and thereafter she revealed the same to her mother P.W.1. P.W.1 also narrated the entire incident in the complaint Ex.P1 and also during examination before the trial Court. On reading of evidence of P.Ws.1 to 3 and Exs.P1, P3 and P10, prosecution has proved its case beyond reasonable doubt. As per, Ex.P2, birth certificate of the victim child, at the time of occurrence the victim is aged about 4 years and she is a child under Section 2(d) of the POCSO Act. It is seen that the appellant committed the penetrative sexual assault on the victim child, which



offence falls under Section 3(b) of the POCSO Act. Even the trial Court without considering the evidence of prosecution witnesses, acquitted the appellant for the offence under Section 5(m) of the POCSO Act, but, neither the defacto complainant nor the State has preferred an appeal for the same.

11. Further it is contended that medical evidence not supported the case of the prosecution and there was no injury or reddishness in the private part of the victim child as projected by the prosecution. It is seen that the offence was committed on 30.12.2016 at about 3.30 p.m. and the victim was produced before the Doctor on 05.01.2017 for medical examination i.e. after five days of the occurrence and hence it is not possible and also cannot be expected that the injury and the reddishness should be in the same vigor. Hence the contention of the learned counsel for the appellant is not acceptable. The victim girl is only aged about five years at the time of occurrence and we cannot expect from her that she should reveal everything to her mother immediately soon after the occurrence and after a day, since the victim child suffered from fever, P.W.2 took her to the Hospital and thereafter when she gave a bath to the victim child, she came to know about the offence committed by the appellant. Immediately after knowing the offence committed by the appellant, P.W.1 and P.W.3 went to Police Station and made a complaint and therefore, the delay in lodging the complaint is not fatal to the case of the prosecution. On a combined reading of evidence of prosecution witnesses viz. P.Ws.1 to 3 and Exs.P1 to P3, Ex.P9 and Ex.P10, this Court is of the opinion that prosecution has proved its case beyond reasonable doubt. There is no reason to disbelieve the evidence of P.Ws.1 to 3, which are cogent and consistent.

12. In fine, this Court comes 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.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The Special Judge, The Special Court for Exclusive Trial of cases under POCSO Act, Coimbatore.
2. The Inspector of Police, AWPS, Perur Police Station, Coimbatore.
3. The Special Court for POSCO Cases, (Session Court), Coimbatore.
4. The Superintendent, Central Prison, Coimbatore.
5. The Public Prosecutor, High Court of Madras.

+1cc to Mr.A.E.Ravichandran, Advocate SR.No.30660

Crl.A.No.151 of 2020

MT(CO)  
GN(28/02/2022)