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BAIL SLIP

That the Appellant herein/Accused namely, Nanjundan was released on bail vide CrI.MP.No. 6574/2019 in C.A.No. 273/2019 dated 09.05.2019.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2021

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.A.No.273 of 2019

Nanjundan

Versus

... Appellant/Accused

State represented by its
The Deputy Superintendent of Police,
Coonoor Sub Division in Coonoor,
All Women Police Station
Crime No.3 of 2015.

... Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374(2) Cr.P.C seeking to set aside the judgment of conviction and sentence passed in Spl.C.C.No.4 of 2016 dated 06.02.2019 on the file of the Sessions Judge Magalir Neethimandram (FTMC) Uthagamandalam, Niligiri convicting the appellant under section 3(1)(XI) of the Schedule Caste/Schedule Tribe (Prevention of the attracity Act, 1989 and sentenced to undergo 6 months RI and imposed fine of Rs.1,000/- in default to under go one month simple imprisonment and for offence under section 7 r/w.8 of the POCSO Act sentenced to under go three years RI and imposed fine of Rs.3,000/- in default to under go 3 month simple imprisonment.

For Appellant : Mr.S.Sarath Chandran

For Respondent : Mr.R.Suryaprakash
Government Advocate

J U D G M E N T

This Criminal Appeal has been filed seeking to set aside the judgment of conviction and sentence passed in Spl.C.C.No.4 of 2016 dated 06.02.2019 on the file of the Sessions Judge Magalir Neethimandram (FTMC) Udhagamandalam, Nilgiris, convicting the appellant under section 3(1)(XI) of the Schedule Caste/Schedule Tribe (Prevention of the Atrocities Act, 1989 and sentenced to undergo 6 months RI and imposed fine of Rs.1,000/-



in default to undergo one month simple imprisonment and also convicted for offence under section 7 of the POCSO Act and sentenced to undergo three years RI and imposed fine of Rs.3,000/- in default to undergo 3 month simple imprisonment.

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2. The respondent police registered a case against the appellant for the offence punishable under section 3(1)(XI) of the Scheduled Caste/Schedule Tribe (Prevention of Atrocities Act, 1989 and section 8 of the POCSO Act in crime No.3 of 2015. After registering the case, the respondent police investigated the matter and laid a charge sheet before the Sessions Judge, Magalir Neethimandram (FTMC) Udhagamandalam, Nilgiris. Since the offence against the child falls under the POCSO Act, the learned Sessions Judge, after completing the formality, framed the charge against the appellant for offence under sections 3(1)(XI) of the Scheduled Castes/Schedule Tribes (Prevention of Atrocities Act, 1989 and section 7 of the POCSO Act. After framing of charges, the learned Sessions Judge conducted the trial. After trial, the learned Sessions Judge found the guilt of the appellant for the above said charges and sentenced to undergo rigorous imprisonment for 6 months and to pay a fine of Rs.1,000/- and in default of payment of the said fine amount, the accused is further sentenced to undergo simple imprisonment for one month and accused is convicted for offence under section 7 of POCSO Act and for committing offence under section 7 of POCSO Act, the accused is sentenced to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.3,000/- and in default of payment of the said fine amount, the accused is further sentenced to undergo simple imprisonment for three months and the above sentences imposed on the accused are ordered to run concurrently. Challenging the said judgment of conviction and sentence, the appellant has filed the present appeal before this Court.

3. The learned counsel for the appellant would submit that the appellant is the neighbour to the victim girl and the appellant has no child. Therefore the victim and her elder sister used to visit the house of the appellant frequently and even the appellant used to help their education and also extended monetary benefits also. The father of the victim girl borrowed money from the friend of the appellant and for which, the appellant also executed a surety. The father of the victim girl failed to repay the amount. There was a quarrel between them. Further he would submit that the appellant is the president of the village and during his tenure as village head, asked the complainant/father of the victim girl to vacate the houses constructed by him abutting highways and so there is enmity between the appellant and defacto complainant. That apart, the defacto complainant thought that the accused who took care of PW.3 and P.W.4 as if they are his own daughters would



bequeath his properties to P.W.3 and 4, but the appellant executed a will bequeathing his two houses and other properties in favour of appellant's sister's grand son and grand daughter. Therefore, they developed enmity and once the appellant beaten the complainant. Therefore, in order to take vengeance of the enmity, the defacto complainant/father of the victim girl foisted a false case. He would further submit that after the said alleged occurrence, the defacto complainant went to the house of the appellant and shouted at him.

4. The neighbours were examined in order to prove the case and they deposed that there was a wordy quarrel between the appellant and the defacto complainant. Therefore, there is corroboration regarding some quarrel between the appellant and the defacto complainant on the date.

5. The learned counsel would further submit that since the appellant has no issues and the complainant has two daughters, he always used to visit the house of the appellant and they also taken care as they are their children and therefore no possibility of causing any sexual assault. Therefore, the occurrence would not attract the offences under section 3(1)(XI) of the Schedule Caste/Schedule Tribe (Prevention of the Atrocities Act, 1989. Further he would submit that the medical witness/doctor does not say that the victim girl had sustained injury. The defacto complainant/father of the victim girl was examined as P.W.1, mother of the victim girl was examined as P.W.2, the victim girl was examined as P.W.3 and sister of the victim girl was examined as P.W.4 and there is material contradiction between these witnesses and there is no eye witness and there is no corroboration to substantiate the evidence of P.W.3/the victim girl.

6. According to the defence, there is motive between the appellant and the defacto complainant and it was very much established. But the learned Sessions Judge failed to consider the said fact and failed to appreciate the entire evidence showing that there was an enmity between the appellant and the defacto complainant and based on the premotive only, the complainant foisted the false case.

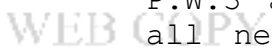
7. Further there is delay in giving the complaint; the date of alleged offence was on 06.11.2015 at 8 pm., but the complaint given only on 09.11.2015 and the prosecution has not given proper explanation for delay in filing the complaint. Therefore, it is fatal to the case of the prosecution. Further the evidence reveals that the defacto complainant consulted with the advocates and after deliberation, at the instance of ill advise of the advocates, foisted the false case and thereby meeted out the POCSO Act and the SC/ST Act. Therefore in order to get the



compensation, the advocate had given ill advice to the defacto complainant to file a complaint under SC/ST Act. Therefore the complaint filed by the defacto complainant is only pre planned and in order to encroach the house of the appellant and also to take vengeance ,on the appellant, the defacto complainant foisted the false case. Ultimately the prosecution failed to investigate the matter in a fair manner and supported the false case of the defacto complainant. The learned Sessions Judge also failed to appreciate the entire evidence of prosecution and defence. Based on the evidence of interested witnesses and on the sympathy ground, the trial court convicted the appellant under both the offences, which cannot be sustainable and the same to be set aside.

8. The learned Government Advocate (Criminal Side) would submit that P.W.3 is the victim girl and P.W.4 is the elder sister of the victim girl. The appellant and the victim girl's family are neighbours. The victim girl and her sister used to go to the house of the appellant. On the occurrence date i.e., on 06.11.2015, since school was a holiday, they were in the house. At that time, the parents of the victim girl left for work. Whenever there was a holiday, the victim girl and her elder sister used to go to the house of the appellant. On the date of occurrence, when the victim girl came to her house was crying, the parents of the victim girl asked the reason. She narrated that the appellant along with his wife, victim girl and the elder sister of victim girl were warming themselves by lighting fire and when the fire went off and smoke came, the wife of appellant, sister of accused and the elder sister of victim girl went to kitchen to cook and at that time the appellant made the victim girl sit on his lap and then appellant lifted the T shirt of the victim girl and stroked the breasts of the said victim girl with his hands and sucked the breasts of the said victim girl by applying his mouth. Immediately she was crying and called her elder sister to the house. P.W.3 and P.W.4 came to house at about 8.30 hours and father returned home. On seeing the victim girl crying, he enquired her. The victim girl narrated the occurrence to the parents of the victim girl. After they came to know the said occurrence, the mother of the victim questioned him, for which the appellant told to the mother of the victim girl that he did not do so.

9. On 06.11.2015 at about 9 hours, the parents of the victim girl also went to the house of P.W.6 and narrated the said occurrence. Then father of the victim girl went to the house of P.W.5 and narrated the said occurrence to him, for which P.W.5 told to the father of the victim to approach All Women Police Station. Then the father of the victim discussed with his relatives and friends and later on 09.11.2015, at about 4 p.m., the father of the victim girl went to the Coonoor All Women



10. Prosecution has proved its case through P.W.1, P.W.2, P.W.3 and P.W.4 and also through P.W.5 and P.W.6 and they are all neighbours to the victim and after discussing with them, they filed the complaint before the respondent police. Therefore, there is a delay in filing complaint. Further he would submit that the victim girl was examined by the Magistrate under section 164 Cr.P.C., in which also, victim girl clearly narrated the events and occurrence. Therefore, the prosecution has proved the case beyond all reasonable doubt. The age of the victim girl is only 12 years at the time of occurrence, the appellant committed the offence under section 7 which is punishable under section 8 of POCSO Act and the victim girl belongs to Scheduled Caste, therefore the appellant knowing fully well that she belongs to Scheduled Caste, has committed the offence on the victim girl. Therefore, it is clear that the appellant committed offence under section 3(1)(XI) of the Schedule Castes/Schedule Tribes (Prevention of the Atrocities Act, 1989. The learned trial Judge appreciated the evidence and convicted the appellant under both the Acts and there is no interference warranted on the findings of the trial court.

12. Based on the complaint, the respondent police investigated the matter and filed charge sheet. Since the crime against the child, the offence falls under section of POCSO Act and laid charge sheet before the Special Court. The Special Court taken cognizance of the offence under section of SC/ST Act. The learned Sessions Judge taken the case on file. After completing the formalities and framing the charges, during the trial, the Trial Court in order to prove the case of the prosecution, on the side of the prosecution as many as 13 witnesses were examined as P.W.1to P.W.13 and 15 documents were marked as Exp. P1 to P15. No material object was exhibited.

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witnesses and put before the appellant. The appellant denied the same as false and pleaded not guilty. On the side of the defence, three witnesses D.W.1 to D.W.3 were examined and six documents were marked as Ex..D1 to D6. After completing the trial and hearing the arguments, the learned Special Judge convicted the appellant and passed the sentences as stated above.

14. The specific case of the prosecution is that the victim girl is aged about 12 years only. She belongs to Scheduled Caste. The case of the prosecution is that the appellant is the neighbour and victim girl and her sister visited the house of the appellant on 06.11.2015 at 8 p.m. Since it is a winter season, the appellant along with his wife, victim girl and her elder sister were warming themselves by lighting fire and when the fire went off and smoke came, the wife of the appellant and elder sister of the victim girl went inside the house for preparing food for dinner. At that time, the appellant made the victim girl to sit on his lap and then appellant lifted the T shirt of the victim girl and stroked the breasts of the said victim girl with his hands and sucked the breasts of the said victim girl by applying his mouth. Then she immediately called her elder sister to go to the home. When the parents came to the home, the victim girl was crying and she informed the entire incident to her parents. The parents of the victim girl questioned the same to the appellant. The appellant denied the same and shouted the complainant's family. Thereafter, the defacto complainant discussed with the family members and villagers and preferred the complaint on 09.11.2015.

15. In order to substantiate the case of the prosecution, on the side of the prosecution 13 witnesses were examined in which P.W.1 is the father of the victim girl, P.W.2 is the mother of the victim, P.W.3 is the victim girl, P.W.4 is the elder sister of the victim girl. P.W.5 is the village head and he has spoken about the occurrence with defacto complainant/P.W.1. Then P.W.1 came to house of P.W.6 and informed about the occurrence and he asked to go the Magalir Police Station. P.W.8 is the doctor who was examined the victim girl. P.W.7 has spoken about the preparation of the observation mahazar and also signed as witness in the said mahazar. P.W.8 is the doctor, who examined the victim girl and gave medical certificate and other witnesses are official witnesses.

16. A careful reading of the evidence of P.W.1 to P.W.4 especially the evidence of P.W.3/victim girl shows that victim girl has narrated the entire events and also she was examined before the learned Magistrate and the statement of the victim girl was recorded under section 164 Cr.P.C. The said statement recorded by the Magistrate under section 164 Cr.P.C was marked as Ex.P.4. Further in order to prove the fact that the victim



girl was only 12 years at the time of the occurrence, a copy of birth certificate was marked as Ex.P.3.

17. The case of the prosecution is that at the time of occurrence, the age of the victim girl was only 12 years and the same was proved by producing birth certificate Ex.P.3. Further in order to prove the community of the victim girl, xerox copy of the community certificate of the victim girl was marked as Ex.P.2. Therefore by producing Ex.P.3, the age of the victim girl is 12 years and by producing Ex.P.2 community certificate victim girl belongs to Scheduled Caste community has been proved. P.W.5 has clearly stated that he is the village president of the said village, parents of the victim came to him and informed about the occurrence; he only advised them to go to All Women Police Station.

18. Further the evidence of P.W.1 to 4 is that on the date of occurrence, the victim girl along with her elder sister went to the house of the appellant on 06.11.2015 at 8 p.m., the victim girl, elder sister and wife of the appellant went to prepare dinner; Even though the victim girl is only 12 years, she has narrated the entire events and even before the Magistrate, she has also narrated the occurrence. The Magistrate recorded the statement under section 164 Cr.P.C. In cases like this, one cannot expect eye witness, since the culprits will take a chance only on the loneliness of the minor children and make use of their innocence and exploit them sexually and also threaten them.

19. In this case, the appellant is the neighbour. He has no issue and the victim girl used to visit frequently and they are such a way very close and therefore the victim girl believed and trusted him. But the appellant misused the relationship and trust and he misbehaved with the victim girl. Due to night hours, since the appellant is not stranger and no one can doubt about the victim girl sitting with the appellant. Under these circumstances, there is no reason to disbelieve the evidence of victim girl. In such type of circumstances, no eye witness can be expected and no corroboration for the occurrence can be expected. However soon after the occurrence, the victim girl approached the sister and called her to go to their home. When they came to home, immediately they informed to the parents. Since the victim girl is only 12 years and also taking into consideration that the appellant helped in somany ways to the victim girl, they first approached the appellant. He denied the fact. Therefore they approached P.W.5/the president of the village and on his advise they later approached the police station. In cases like this, one cannot expect immediately soonafter the occurrence, with the victim girl, the parents would rush to the police station and inform the Police. Further,



the parents hesitated to inform in this case, because of the closeness between their families prior to the occurrence. The parents of the victim girl also not wanted to open this matter immediately to others considering the future of the victim girl and reputation of the family. Therefore, initially in cases like this, the parents approach the elders very secretly or any relatives and after discussion, they approached Police Station. Further in view of the fact that both the appellant and victim family are illiterates and it is a hill area, and night hours, it is very difficult to take a decision immediately. The parents of the victim approached the appellant first in this case. Then, they approached the president of the village. Later on, they approached the Police. So there is delay in filing the case. Therefore, mere delay in filing the complaint is not fatal to the case of the prosecution and this court finds that the delay has been properly explained. Further, 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.

20. From the materials both oral and documentary, the prosecution has proved that the victim girl is aged about 12 years. Though the doctor has examined the victim girl, doctor has given certificate stating no injury. It is not case of the prosecution or victim that victim sustained injury on her private parts. So, the evidence of doctor will not be helpful to this case.

21. Though the learned counsel for the appellant would submit that both appellant and victim girl family are neighbours, and the appellant used to help the victim girl family. However, due to certain issues, P.W.1 the father of the victim girl had previous enmity with the appellant and therefore, P.W.1 foisted false case against the appellant. This defense taken by the appellant cannot even taken into consideration, since among the adult members, there would have been dispute, but the children used to go to the appellant house to visit them. Even assuming that P.W.1 has got the enmity, it will not go to extent of sacrificing his daughter's future and lodge a complaint that the appellant has committed sexual offence against his daughter as they would think about the future of the victim girl and reputation of their family.

22. In this case, the evidence of the victim girl is very clear and cogent and therefore there is no reason to disbelieve or discard the evidence of victim girl. Though there is previous enmity between the appellant and the father of the victim girl, to prove the said enmity, nothing is produced before the court to substantiate the said defence. There is no material to show that after quarrelling between the elders of the two families, the victim girl never went to the house of the appellant. Even a

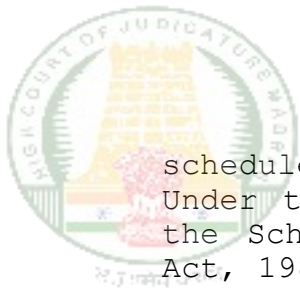


careful reading of the entire evidence would go to show that the defence counsel not even put suggestion before the victim girl that she did not go to the house of the appellant on the date of the occurrence. The victim girl also given statement u/s.164 Cr.P.C in which also she narrated the entire incident. The same has been subsequently substantiated by the victim child during the trial.

23. Therefore under these circumstances, the prosecution has proved its case beyond all reasonable doubt that the appellant committed the offence under section 7 which is punishable under section 8 of the POCSO Act.

24. As far as offence under SC/ST is concerned, the case of the prosecution is that both the appellant and the family of the victim girl are neighbours and the appellant has no issue. The victim girl frequently visit the house of the appellant and appellant also helped the victim girl in her studies. Even on the date of the occurrence, the elder sister of the victim girl along with wife of the appellant went to the kitchen and prepared food. In this case, there is no specific allegation that the appellant and his wife ill treated the victim girl or her sister or family members because of they belong to Scheduled Caste community. However P.W.1 to 4 admitted that the appellant is not relative to them, but the victim girl used to visit the appellant frequently and he also helped a lot for victim's education and also other things. Therefore there is no evidence to show that the appellant ill treated the victim just because the victim girl belongs to Scheduled Caste community.

25. Though the trial Court has convicted the appellant under the SC/ST Act and Ex.P.2 shows that the victim girl belongs to Scheduled Caste community, as per section 3(1)(XI) of the Schedule Caste/Schedule Tribe (Prevention of the Atrocities Act, 1989), if the appellant family knowing fully well that the victim girl belongs to Scheduled Caste and purposely ill treated, then only the offence would attract SC/ST Act. But in this case, there is no material to show that the appellant knowing the caste of the victim girl, ill treated and molested her. Therefore, the object or the intent of the section cannot be applied to the case on hand. The evidence clearly shows that the victim girl/P.W.3 and her elder sister frequently used to go to the house of the appellant and his wife also taken care of the children. Even they were permitted to move all the places including kitchen in his house. The appellant family also provided food and other things to the victim and her sister. So prior to the occurrence, the appellant never ill-treated the victim just because she belongs to Scheduled Caste community. Therefore, under these circumstances, it cannot be concluded that for the sole reason that the victim girl belongs to



scheduled case community, the appellant has molested the victim. Under these circumstances, conviction under section 3(1)(XI) of the Schedule Caste/Schedule Tribe (Prevention of the attracity Act, 1989) is set aside.

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26. In view of the foregoing observations, the appeal is partly allowed. The judgement in Spl.C.C.No.4 of 2016 dated 06.02.2019 on the file of the Sessions Judge Magalir Neethimandram (FTMC) Uthagamandalam, Niligiri is set aside in so far as conviction and sentence for offence under section 3(1)(XI) of the Schedule Caste/Schedule Tribe (Prevention of the attracity Act, 1989). For the offence under section 7 punishable under section 8 of the POCSO Act, the conviction and sentence are confirmed.

27. In the result the appeal is partly allowed and the trial court is directed to take appropriate steps to secure the presence of the appellant to serve the remaining period of sentence.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

mpa

To

1. The Sessions Judge Magalir Neethimandram (FTMC)
Uthagamandalam, Niligiri.
2. Do Through The Principal Sessions Judge,
Magalir Neethimandran,
Uthagamandalam.
3. The Deputy Superintendent of Police,
Coonoor Sub Division in Coonoor,
All Women Police Station.
4. The Public Prosecutor,
High Court of Madras, Chennai.

+1cc to Mr.S.Sarath Chandran, Advocate, S.R.No. 6717

Cr1.A.No.273 of 2019

RSI (CO)
GN(23/07/2021)