

BAIL SLIP

The Appellant/Accused herein viz., G.Manjunath S/o Gowrappa was released on bail vide order of this Court dated 17/03/2020 made in CRL.M.P.No.3464/2020.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.09.2021

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Criminal Appeal No.192 of 2020

G.Manjunath

... Appellant

Versus

State Rep.by
The Inspector of Police,
All Women Police Station,
Hosur, Krishnagiri District.

... Respondent

Prayer:-

Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to allow this appeal by setting aside the conviction and sentence imposed on the appellant dated 07.02.2020, in Spl.S.C.No.02 of 2019, passed by the learned Session Judge, Fast Track Mahila court, Krishnagiri, Krishnagiri District.

For Appellant : Mr.P.Veera Narayanan,
for Mr.P.Saravanan

For Respondent : Mr.S.Sugendran,
Government Advocate (Crl.side)

JUDGMENT

This Criminal Appeal has been filed against the conviction and sentence imposed on the appellant vide Judgment dated 07.02.2020, made in Spl.S.C.No.02 of 2019, on the file of the learned Session Judge, Fast Track Mahila court, Krishnagiri, Krishnagiri District.

2.The respondent/police registered a case in Crime No.16 of 2018, for the offence under Section 506(i) of IPC., and also for the offence punishable under Sections 3 & 4 of the POCSO, Act, 2012. After completing the investigation, the respondent/police laid a charge sheet before the learned Session Judge, Fast Track Mahila Court, Krishnagiri, Krishnagiri District. Thereafter, the charge sheet was taken on file in Spl.S.C.No.02 of 2019. As against the appellant, charges were framed for the offences under Sections 450 of IPC., and Section 7 r/w Section 8 of POCSO Act, and for the offence under Section 3(c) r/w Section 4 the POCSO Act. After framing the charges, during trial, in order to prove the case of the prosecution, on the side of the prosecution, fifteen witnesses were examined as PW.1 to PW.15 and twenty one documents were marked as Ex.P1 to Ex.P21. No material object was produced.

3.On completion of examination of the prosecution witnesses, incriminating circumstances culled out from the evidence of prosecution witnesses were put to the appellant, during questioning under Section 313 of Cr.P.C., the appellant denied the same as untrue and pleaded not guilty. On the side of the defence, no oral and documentary evidence was produced.

4.On completion of trial, hearing the arguments advanced on either side and after perusal of materials, the learned Session Judge, Fast Track Mahila Court, Krishnagiri, found the accused guilty of the offence under Section 451 of IPC., for which, he was convicted and sentenced to undergo one year rigorous imprisonment and to pay fine of Rs.5000/-, in default, to undergo three months rigorous imprisonment. Further, for the offence under Section 7, which is punishable under Section 8 of the POCSO Act, 2012, he was convicted and sentenced to undergo three years rigorous imprisonment and to pay fine of Rs.5000/-, in default to undergo further period of six months rigorous imprisonment. However, the appellant/accused was acquitted for the offence under Section 3 (c) r/w Section 4 of POCSO Act. Both the sentences imposed against the appellant were ordered to run concurrently and the period already undergone was ordered to be given set off under Section 428 of Cr.P.C.

5.Challenging the said Judgment of conviction and sentence passed by the Session Judge, Fast Track Mahila court, Krishnagiri, Krishnagiri District, the accused/appellant herein has filed the present appeal before this Court.

6.The learned counsel for the appellant would submit that there was delay in filing the complaint before the respondent/police and the delay has not properly explained in the First Information Report. Therefore, the unexplained delay is a fatal to the case of the prosecution. Further, it is the

allegation that the appellant has committed an offence of penetrative sexual assault again and again for 15 minutes on the victim girl, but the medical evidence does not corroborate the same and the evidence of PW.1/victim also not corroborated. Therefore, it is clear that the appellant has not committed the offence as projected by the prosecution. The prosecution has miserably failed to prove its case, whereas, the Trial Court failed to appreciate the evidence of PW.10/Doctor. Though PW.1 has stated that the appellant had intercourse with her for 15 minutes, if he done so, there are possibilities of some marks or injuries on the body of the victim, but no such injuries were found. PW.4 is said to be an eyewitness of this case, who deposed that the appellant was lying down without dress, on seeing her, he immediately ran away from there. It is highly artificial and there is no genuineness in her deposition, since it is clear that no one can run without dress immediately from the place. Therefore, he contended that the deposition of PW.4 is false one and no such incident had taken place in such a manner. The Trial Court failed to appreciate the evidence and did not consider the contradictions on the deposition of PW.4 & PW.1 and erroneously convicted the appellant, which warrants interference of this Court.

7.The learned Government Advocate (crl.side) appearing for the respondent/police would submit that the victim was only 13 years at the time of occurrence. In order to prove the age of the victim, her school Headmaster/PW.9 has given educational certificate of the victim girl, which was marked as Ex.P3 and also Study Certificate, which was marked as Ex.P6. These oral and documentary evidence shows that the date of birth of the victim girl is 03.05.2005 and the date of occurrence is 20.11.2018. Therefore, at the time of occurrence, the victim was 13 years only and she is a child under the definition of 2(1)(d) of the POCSO Act, 2012. Therefore, the offence committed by the appellant falls under the POCSO Act. The victim was examined as PW.1. On reading the evidence of PW.1/victim girl, she has clearly narrated the incident occurred on 20.11.2018, that on that day, due to her illness, she did not go to the School. While the victim's parents went for their work, the victim was alone in the house. The appellant, knowing the loneliness of the victim girl, entered into the house and took her into the kitchen, where he, embraced the victim, squeezed her breast, kissed her, removed her dress and pressed his penis on her vagina. Though the victim girl pushed away the appellant and tried to escape from his hold, she could not do so. When she shouted for help, the appellant threatened her with dire consequence by shutting her mouth and forcibly committed penetrative sexual assault. At that time, PW.4 neighbour came to the house by calling the victim girl's name. On seeing PW.4, the appellant suddenly wore his dress and tried to escape behind

the kitchen. When PW.4, questioned the behaviour of the appellant, he asked apologies to PW.4 and fled away through backside of the kitchen. Subsequently, the incident was informed to the victim's mother and she waited for her husband to take the victim girl to the hospital. The father of the victim, came at late hours, therefore, at that time, it was 1.30 a.m., and the victim was admitted in the hospital, where she took treatment for three days. On the next day, the complaint was registered before the respondent/police. Subsequently, the doctor, who attended the victim girl recorded the statement of the victim and made entries in the Accident Register, thereafter, she was produced before the learned Judicial Magistrate, where her statement was recorded under Section 164 of Cr.P.C., and the same was marked as Ex.P2. All the statements of PW.1/victim girl were cogent and reliable and there is no contradiction. Therefore, the Trial Court rightly appreciated the evidence and convicted the appellant. Hence, the appeal is liable to be dismissed.

8.I have heard both sides and perused the materials available on record.

9.This Court, being an Appellate Court, it can re-appreciate the evidence for giving independent findings, accordingly, this Court re-appreciated the entire evidence and giving the following findings.

10.The Trial Court framed charges against the appellant as stated above.

11.On combined reading the evidence of PW.1 and Ex.P2 and her previous statements, clearly shows that the appellant is a neighbour, who is residing two or three houses ahead of the victim's house. On the date of occurrence, the victim was alone in the house and taking advantage of the loneliness of the victim girl, the appellant committed the sexual assault on the victim. PW.4 is also one of the neighbours of the victim and she is also relative of the victim. She saw the door was simply closed. While PW.4 entered into the house, she saw the appellant without any dress and the victim was also lying down on the floor, without any dress. After seeing PW.4, the appellant left from the place through the kitchen of the victim's house. Though the doctor, who conducted medical examination has stated that her hymen was intact, it cannot be ruled out that the appellant has not committed any sexual offence on the victim girl, since the victim girl is aged about 13 years, and she has clearly narrated about the incident, so it would be sufficient for concluding that the appellant has committed the offence under Section 9(i) which is punishable under Section 10 of the POCSO Act. Further, the appellant caused some uncertainty and touched

the private part of the victim girl, which itself is enough for the offence falls under the definition of Section 3(c) punishable under Section 4 of the POCSO Act, which is also penetrative sexual assault. The Trial Court properly appreciated the evidence of the victim, however, considering the medical evidence, the Trial Court acquitted the appellant for the offence under Section 3(c) punishable under Section 4 of the POCSO Act. The Trial Court on the basis of the evidence, particularly PW4, convicted the appellant for the offences under Section 451 of IPC., instead of Section 450 of IPC., since the appellant trespassed into the house with the only intention of committing penetrative sexual assault on the victim girl, hence, it attracts the Section 451 of IPC. Further, based on the evidence of PW.4 & PW.1 and PW.1's previous statement, the Trial Court rightly convicted the appellant for the offence under Section 7 punishable under Section 8 of the POCSO Act. Therefore, there is no merit in the appeal and it is liable to be dismissed.

12.As far as the age of the victim is concerned, the date of birth of the victim girl was confirmed by the educational certificates under Ex.P3 and P6, which was issued by the School Headmaster/PW.9, where the victim girl studied. Therefore, the prosecution has proved that the victim is a child, under the definition of 2(1)(d) of the POCSO Act and she has not completed the age of 18 years on the date of occurrence. The Medical Officers, who conducted medical examination were examined as PW.10 & PW.13 and they have also stated that the victim is a child.

13.From the evidence of PW.1 to PW.4 and also Ex.P2, it clear that the appellant has committed sexual assault on the victim. PW.1 has clearly narrated the incident, before the learned Judicial Magistrate as well as before the Trial Court that the appellant committed the penetrative sexual assault, however, the medical evidence of the Doctors/PW.10 & PW.13 and Ex.P11, Ex.P12 and Ex.P13 would indicate that hymen of the victim girl is intact and there is no external injuries. This is possible, since according to the evidence of the prosecution, the victim did not attain puberty. The evidence of PW.1 was very clear that the appellant removed her dress and touched the private part of the victim girl, which itself is sufficient for commission of the offence under Section 3(c) of the POCSO Act. The length of having penetrative sexual assault on the victim girl is immaterial. Though the medical evidence shows that her hymen was intact and there is no external injuries, there is no possibility of violent sexual assault, however, from the evidence of PW.1 and her previous statement, the deposition of PW.4/eyewitness of this case, would show that the appellant had committed the penetrative sexual assault on

the victim girl. Therefore, the Trial Court, after considering the medical evidence, acquitted the appellant for the offence under Section 3(c) which is punishable under Section 4 of the POCSO Act.

14.Further, neither the victim nor the State has filed any appeal against the order of acquittal for the above said offence. However, the Trial Court convicted the appellant for the offence under Section 451 of IPC., and Section 7 punishable under Section 8 of the POCSO Act. On reading of the entire evidence of PW.1 & PW.4, it is proved that the appellant, who had committed the offence, on the date of occurrence 20.11.2018 at about 10.00 a.m., Further, he trespassed into the house of the victim and committed the penetrative sexual assault, therefore, the Trial Court has rightly held that the offence under Section 451 of IPC., is established and convicted him for the said offence.

15.As far as the offence of committing penetrative sexual assault is concerned, the Trial Court has stated that the medical evidence and the evidence of PW.1 are exaggerated. However, PW.1 and PW.4 deposed to the extent that the appellant had committed the sexual assault, which is punishable under Section 8 of the POCSO Act, since the appellant trespassed into the house, took the victim into the kitchen, removed the dress and also squeezed her breast and kissed her, before committing the penetrative sexual assault. PW.4 has also seen the victim lying on the floor without dress and the appellant was also nude. On seeing PW4, the appellant wore his dress and escaped from the place through backside of the kitchen.

16.Through the evidence of PW.1, PW.4, Ex.P2, the prosecution has proved its case that the appellant has committed the sexual assault on the victim. Therefore, this Court as an Appellate Court and final Court of fact finding, re-appreciated the entire materials and found the appellant guilty for the offence under Section 451 of IPC., and Section 7 punishable under Section 8 of the POCSO Act. Thus, this Court does not find any merits in the appeal, hence, the Criminal Appeal filed by the appellant is dismissed, by confirming the Judgment of conviction and sentence imposed on the appellant in Spl.S.C.No.02 of 2019, dated 07.02.2020, passed by the learned Session Judge, Fast Track Mahila Court, Krishnagiri, Krishnagiri District.

17.It is reported that pending this Appeal, the substantial portion of sentence against the appellant was suspended by this Court on 17.03.2020 in CrI.M.P.No.3464 of 2020, is cancelled. In view of the dismissal of this appeal, the Trial Court is directed to take steps to secure the presence of the

appellant/accused and to commit him to prison, so as to undergo the remaining period of sentence.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The learned Session Judge, Fast Track Mahila Court,
Krishnagiri, Krishnagiri District.
2. The Inspector of Police,
All Women Police Station,
Hosur, Krishnagiri District.
3. The Public Prosecutor, High Court of Madras.
4. The Section Officer,
Criminal Section, High Court, Madras.

+1cc to Mr.P.Saravanan, Advocate, S.R.No.46639

Cr1.A.No.192 of 2020

SSV(CO)
CT 28/02/2021