



BAIL SLIP

The Appellant/Accused namely B.Kesavan, S/o.Bairappa was directed to be released on bail vide order dated 18.06.2020 made in Crl.M.P.No.3856 of 2020 in Crl.A.No.215 of 2020 passes by this Hon'ble High Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2021

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CRL.A.No.215 of 2020

B.Kesavan
S/o Bairappa

...Appellant

Versus

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

...Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, to allow this appeal by setting aside the conviction and sentence imposed on him passed by the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri, Krishnagiri District in Spl.S.C.No.45 of 2018 dated 28.02.2020.

For Appellant : Mr.P.Veeranarayanan
for M/s.M.P.Saravanan &
Mrs.A.Veeramarthini
Legal Aid Counsel

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



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JUDGMENT

This Criminal Appeal has been filed to set aside judgment dated 28.02.2020 passed in Spl.S.C.No.45 of 2018 on the file of the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri.

2. The respondent police registered a case in Crime No.7 of 2018 for the offence under Section 5(1) of POCSO Act, which is punishable under Section 6 of POCSO Act. After investigation, laid a charge sheet before the Sessions Judge, Fast Track Mahila Court, Krishnagiri, since the offence is against child. The learned Special Judge taken the charge sheet on file in S.C.No.45 of 2018. After completing the formalities, framed the charge against the appellant for the offence under Section 5(1) of POCSO Act, which is punishable under Section 6 of POCSO Act. During trial, in order to substantiate the charge, on the side of the prosecution, totally 16 witnesses were examined as P.Ws.1 to 16. 23 documents were marked as Exs.P1 to P23. On completion of examination of the prosecution witnesses, incriminating circumstances culled out from the evidence of the prosecution witnesses put before the accused by questioning under Section 313 Cr.P.C. He denied the same as untrue and pleaded not guilty. On the side of the defence, one witness was examined as D.W.1 and one document was marked as Ex.D1.

3. On completion of trial and hearing the arguments advanced on either side and considering the materials placed, the trial court found the appellant guilty for the offence under Section 5 (1) of POCSO Act, which is punishable under Section 6 of POCSO Act and convicted the appellant and sentenced him to undergo 10 years rigorous imprisonment and to pay a fine of Rs.30,000/- in default, to undergo one year rigorous imprisonment. Challenging the said judgment of conviction and sentence, the accused has filed the present appeal before this Court.

4. The learned counsel for the appellant would submit that there are two complaints filed by P.W.1. The prosecution suppressed the earlier complaint filed by the victim and foisted a false case against the appellant. No offence has taken place as alleged by the prosecution. The respondent police without conducting proper investigation, filed the charge sheet. There is no eye witness in this case. The prosecution failed to prove its case beyond reasonable doubt. He would further submit that from the medical evidence, it is seen that there is no mentioning about forcible sexual intercourse and external injury. It is only a consent sexual intercourse. Since she has completed 18 years on the date of occurrence, she is not a child under the definition of POCSO Act. Therefore, offence under Section 5(1) POCSO Act would not attract. The trial court failed to appreciate the same. Both the appellant and the



victim loved each other and with the consent of the victim only, the appellant committed the alleged sexual intercourse.

5. The learned Government Advocate (Criminal Side) appearing for the respondent would submit that the date of occurrence is 21.03.2018. The date of birth of the victim is 06.08.2002. Therefore, the age of the victim is only 16 years at the time of occurrence. The appellant misrepresented that he would marry her and had sexual intercourse with her and subsequently he refused to marry her and therefore, the victim approached the respondent. The respondent advised the appellant. Since he did not respond, she has no other option, gave a complaint. The victim was examined as P.W.1. She has clearly narrated the incident. P.W.6 is the doctor one who conducted medical examination on the victim, has clearly deposed that the victim was subjected to penetrative sexual assault. Even in A.R entry, it is mentioned that one known person committed sexual assault on the victim girl. Further, he would submit that though doctor has stated that no external injury, however, stated that the victim was subjected to sexual intercourse. Therefore, evidence of P.W.1 corroborate with the medical evidence. The victim girl was produced before the Magistrate, for recording the statement under Section 164 Cr.P.C., which has been marked as Ex.P2 and before the Magistrate also she narrated the entire incident, which also corroborate the evidence of P.W.1. On a reading of evidence of P.W.1, medical evidence P.W.4, Ex.P2 statement recorded under Section 164 Cr.P.C and also Ex.P3, final report, Ex.P9 medical report, it clearly shows that she was subjected to penetrative sexual assault. Therefore, the trial court rightly appreciated the evidence and convicted the appellant. Hence, there is no merit in the Appeal and the same is liable to be dismissed.

6. Heard the learned counsel for the appellant and the learned Government Advocate (Criminal Side) appearing for the respondent and perused the materials.

7. The case of the prosecution is that the appellant misrepresented that he loved the victim girl and made a false promise that he would marry her and had sexual intercourse with her. When the victim approached the appellant to marry her, he refused to do so. Hence the complaint.

8. This Court is the appellate court, as a final court of fact finding appreciated the entire evidence in accordance with law. The trial court framed the charges against the appellant for the offence under Section 5(1) of POCSO Act, which is punishable under Section 6 of POCSO Act.

9. In order to substantiate the charge, on the side of the



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prosecution totally 16 witnesses were examined and 23 documents were marked. Out of 16 witnesses, victim was examined as P.W.1. P.W.2 is the cousin sister of P.W.1. P.W.3 is the mother of victim, P.W.4 is the doctor one who conducted medical examination of the victim girl. The victim was produced before the Judicial Magistrate for recording statement under Section 164 Cr.P.C and the same was marked as Ex.P2. Ex.P3 is the final report given by the doctor and Ex.P4 is the medical analysis report. Though the victim deposed in Kannada language, the same was translated through the competent witness. From the evidence of P.W.1- victim girl, she has clearly stated that the appellant approached her and made a false promise that he would marry her, had sexual intercourse. Subsequently, the appellant refused to marry her. Hence the victim made a complaint before the respondent police on 17.02.2018, and the police advised the appellant. Since the appellant has not accepted the advice, she filed a complaint. After registering the complaint on 21.03.2018, the respondent police registered the case in Crime No.7 of 2018 against the appellant for the offence under Section 5(1) of POCSO Act, which is punishable under Section 6 of POCSO Act. In this case, from the evidence of P.W.4-Doctor, it clearly shows that the victim was subjected to penetrative sexual assault and in his medical report, he has clearly mentioned that, the vagina admitted insertion of two fingers. P.W.1 has also narrated the incident before the Judicial Magistrate and subsequently she was examined as witness before the Court. While examining as P.W.1, she has clearly deposed that the appellant has committed penetrative sexual assault on her. On a combined reading of evidence of P.W.1 and P.W.4, Ex.P2- statement recorded under Section 164 Cr.P.C, medical report, final opinion-Ex.P3, the prosecution proved its case beyond all reasonable doubt. In order to prove the age of the victim, the prosecution produced Ex.P15, the education certificate. As per Ex.P15, the date of birth of the victim is 06.08.2002. The date of occurrence is 21.03.2018. Therefore, age of the victim is only 16 years and she is a child under the definition of Section 2(1)(d) of POCSO Act. The prosecution proved the age of the victim by producing school certificate of the victim and also further proved that the victim was subjected to penetrative sexual assault. Since the victim is a child and the appellant committed penetrative sexual assault on her more than once, which falls under Section 5(1) of POCSO Act, which is punishable under Section 6 of POCSO Act. Even assuming that the victim gave consent for sexual intercourse, the said alleged consent is immaterial since victim is minor at the time of occurrence. Once the prosecution proved its case beyond all reasonable doubt and the trial court rightly appreciated the entire evidence and come to the conclusion that the appellant has committed the charged offence and imposed the sentence, this Court is the appellate court, as the final Court of fact



finding, re-appreciated the entire evidence and come to the conclusion that the appellant has committed the offence under Section 5(1) of POCSO Act, which is punishable under Section 6 of POCSO Act. This Court finds that there is no merit in the appeal and the same is liable to be dismissed. Accordingly the Criminal Appeal is dismissed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

1. The Sessions Judge,
Fast Track Mahila Court,
Krishnagiri,
Krishnagiri District
2. The Inspector of Police,
All Women Police Station,
Krishnagiri,
Krishnagiri District.
3. The Public Prosecutor,
High Court, Madras.
4. The Jail Superintendent,
Central Jail,
Vellore.

+1cc to Mr.M.P.Saravanan, Advocate, S.R.No.48413

+2cc to Mrs.A.Veeramarthini, Advocate, S.R.No.48765

CRL.A.No.215 of 2020

RSV(CO)
RGA(24/02/2022)