



BAIL SLIP

The Petitioners/Accused / Viz Ram @ Ramlal was released on bail as per the order of this court dated 30.11.2020 in CrI.M.P.No.6142/2020 in CrI.A.No.401 of 2020 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.A.No.401 of 2020
and
CrI.M.P.No.6142 of 2019

Ram @ Ramlal

...Appellant/Accused

Vs.

The State represented by
The Inspector of Police,
G-7 Chetpet Police Station
Chennai - 600 0031.

...Respondent

This Criminal Appeal is filed under Section 374 of Cr.P.C. to set aside the judgment of conviction and sentence made in S.C.No.229 of 2015 by the learned Sessions Judge, Mahila Court / Special Court for Cases under POCSO Act/Children's Court, Chennai, dated 08.03.2019

For Appellant : Mr.C.H.Vinobha Gandhi

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 S.C.No.229 of 2015 by the learned Sessions Judge, Mahila Court / Special Court for Cases under POCSO Act/Children's Court, Chennai, dated 08.03.2019

2. The respondent police registered a case in Cr.No.637 of 2014 against the appellant for the offence under Section 10 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 Sessions Judge,



Mahila Court /Special Court for Cases under POCSO Act/Children's Court, Chennai, which was taken on file in S.C.No.229 of 2015. 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 punishable under Section 10 of the POCSO Act.

3. Before the trial Court, in order to prove the case of the prosecution, on the side of the prosecution, as many as 8 witnesses were examined as P.Ws.1 to 8 and Exs.P1 to P8 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, no one was examined and no document was marked.

4. The learned Sessions Judge, Mahila Court / Special Court for Cases under POCSO Act/Children's Court, Chennai, on completion of trial and hearing arguments advanced on either side, found the appellant/accused guilty for the offence punishable under Section 10 of the POCSO Act and hence by judgment dated 08.03.2019 convicted the appellant/accused for the offence punishable under Section 10 of the POCSO Act and sentenced him to undergo simple imprisonment for a period of five years with fine of Rs.5,000/-, in default, to undergo simple imprisonment for a further period of six months and also directed the Government to pay a sum of Rs.20,000/- to the victim child 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 punishable under Section 10 of the POCSO Act. In this case, victim child was not examined and she is only aged about 3½ years as projected by the prosecution. The appellant residing at 3rd floor and mother and father of the victim child are residing at 2nd floor and no mother would allow her child, who is aged about only 3½ years to go to upstairs and hence it is clear that prosecution has foisted false case against the appellant. Further, the appellant and P.W.1 & P.W.2 and the victim child are residing in the three storied building, which belong to P.W.3, who is the owner of the house and there was previous enmity between the appellant and the landlady. In order to wreck vengeance, the landlady made use of P.W.1 and foisted false case against the appellant. P.W.1 in her evidence has stated that she knows only Bengali, whereas, P.W.8, the Investigating Officer, in his evidence has stated that P.W.1 has



spoken Hindi. Neither the victim child, nor her mother P.W.1 know Tamil or Hindi, they only know Bengali. Even the scribe of the complaint has not been examined, which is fatal to the case of the prosecution. It was stated that the victim child, while passing urine, complained pain in her private part and when P.W.1 mother of the child questioned the same, the victim child stated that the appellant put his finger in her private part and thereafter they took the child to Hospital and on information received from the Hospital, Police officials came and obtained the complaint, whereas, P.W.8, the Investigating Officer, stated that P.W.1 went to Police Station and made complaint. Hence there are contradictions in the evidence of prosecution witnesses.

5.1 The learned counsel further contended that there was no external injury or any other injury on the parts of the body of the victim child, but, it was stated that the victim child complained pain in her private part and no medical evidence supported the case of the prosecution. P.W.1 to P.W.3 are not eye witnesses and all are only hearsay witnesses and the only eye witness is the victim child, but she was not examined before the Court. The trial Court has failed to look into the above aspects and observed that P.Ws.1 to 3 were not subjected to cross examination and the evidence of P.W.1 is unchallenged and hence erroneously come to the conclusion that the appellant committed the offence punishable under Section 10 of the POCSO Act and convicted accordingly. It is to be noted that the appellant, while questioning under Section 313 of Cr.P.C, has pleaded the defence of previous enmity between the appellant and the landlady, which is not at all considered by the trial Court. It is settled proposition of law that prosecution has to prove its case beyond all reasonable doubt and it should not take advantage of the weakness in the defence. Hence, the conviction and sentence made against the appellant by the learned trial Judge warrants interference of this Court.

6. The learned Government Advocate (Crl.Side) appearing for the respondent police would submit that the victim child was aged about 3 ½ years only at the time of occurrence and even she could not speak any of the language and hence there is no use of examination of the victim child and hence non examination of the victim child is not a fatal to the case of the prosecution. Even though, P.W.1 did not know either Tamil or Hindi and she can only speak in Bengali, P.W.2 husband of P.W1 knows Tamil and Bengali. The victim child narrated the entire incident to her mother P.W.1 and P.W.1 informed the same to P.W.2 and immediately the victim child was taken to Hospital. Before the Doctor/P.W.6, P.W.1 informed the sexual assault committed by the appellant in Bengali and P.W.2 translated the same in Tamil and P.W.6, the Doctor made entry in the Accident Register Ex.P5.



Even though the victim child was not examined, but, P.W.1, the mother of the victim child has been examined before the Court and also recorded statement under Section 164 of Cr.P.C/Ex.P2. in which, she has clearly narrated the incident, which corroborates with the evidence of P.W.2. Further it is contended that there was enmity between the appellant and the landlady and hence false case has been foisted against the appellant making use of P.W.1, but the fact remains that the appellant neither cross examined P.W.1 nor P.W.2, even after giving several opportunities. Hence the defence taken by the appellant is after taught and the same need not be considered. The trial Court, after appreciating the evidence of prosecution witnesses in a proper manner, has recorded the conviction, which does not call for any interference 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 05.08.2014 at about 06.00 p.m. the appellant/accused who was living at 3rd floor, removed panties and penetrated his finger into the private part of the victim child, who was aged about 3 years and thereby committed offence punishable under the POCSO Act. Hence the present case was registered against the appellant for the offence punishable under Section 10 of the 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.1 is mother and P.W.2 is father of the victim child. P.W.1 deposed that on 05.08.2014 at about 2.00 a.m., the victim child told that she wanted to go to toilet and while passing urine, she complained pain in the private part and when P.W.1 questioned the same, the victim child stated that the appellant inserted his fingers into her private parts. Since at that time, P.W.2 husband of P.W.1 was not in station, on the next day, when he came to home, immediately they went to Hospital and informed about the sexual assault committed by the appellant. On information received from the Hospital, P.W.8 went there and obtained complaint from P.W.1, in which she has clearly stated about the offence committed by the appellant. P.W.2 has spoken about the incident, which was informed by his wife P.W.1. P.W.3 is landlady of the appellant as well P.W.1 & P.W.2 and she has also spoken about the incident as she heard from P.W.1.

11. Admittedly, at the time of occurrence the victim child



was aged about 3½ years, which is not disputed by the defence and she is a child under definition of Section 2(d) of the POCSO Act. It it was not the case of the prosecution that the appellant committed aggravated penetrative sexual assault on the victim child, it was stated in Ex.P.1 complaint that the appellant inserted his fingers into the vagina of the victim child and hence it is not necessary to produce medical evidence for the same as contended by the learned counsel appearing for the appellant. It is admitted that the victim was only 3 ½ years at the time of occurrence and she could not speak any of the language and hence it is not useful to examine the victim child before the Court as witness and the same is not fatal to the case of the prosecution. P.W.1, mother of the victim child was examined and statement under Section 164 of Cr.P.C was also recorded, in which she has clearly spoken about the offence committed by the appellant. P.W.1 was examined in chief on 07.10.2015 and appeared on 10.08.2018 for cross examination, but, even after three years of chief examination, the appellant did not cross examine P.W.1, when she appeared before the Court on 10.08.2018. P.W.3, the landlady also examined in chief on 18.08.2016, but the defence side did not cross examine P.W.3. Once the appellant took the defence of previous enmity between the appellant and the landlady, he should have cross examined either P.W.1 or P.W.3 to prove his defence. But, the appellant, even after giving sufficient opportunities, did not come forward to cross examine the mother of the victim child/P.W.1 and the landlady/P.W.3 and hence mere denial of charge framed against the appellant at the time of questioning under Section 313 of Cr.P.C. stating that there was previous enmity between him and the landlady cannot be given much importance.

12. The trial Court, after appreciating the evidence of prosecution witnesses in a proper manner, has rightly observed that the appellant has failed to cross examine P.W.1 and P.W.2 to prove his defence. Cases of this nature, we cannot expect any eye witnesses and evidence of sole witness would suffice to convict the accused, if it is cogent and consistent. On reading of evidence of P.Ws. 1 to 3 and Exs.P1 and P2, it is clear that the appellant committed offence under Section 9 of the POCSO Act, which is punishable under Section 10 of the POCSO Act. The contradictions pointed out by the learned counsel appearing for the appellant is not a material contradictions and the same will not go into the root of the case of the prosecution. There is no reason to disbelieve the evidence of P.Ws.1 to 3, which are cogent and consistent.

13. In fine, this Court come 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. Consequently connected



miscellaneous petition is closed. The trial Court is directed to secure the appellant/accused to serve remaining period of imprisonment, if any.

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Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge, Mahila Court /Special Court for Cases under POCSO Act/Children's Court, Chennai.
2. The Sessions Judge,
Mahila Court, Chennai.
3. The Inspector of Police,
G-7 Chetpet Police Station
Chennai - 600 0031.
4. The Public Prosecutor,
High Court of Madras.
5. The XIV Metropolitan Magistrate Court,
Egmore, Chennai.
6. The Chief Metropolitan Magistrate,
Egmore, Chennai.
7. The Superintendent,
Central Prison,
Puzhal, Chennai.

+1cc to Mr.CH.Vinodha Gandhi, Advocate, S.R.No.31775

Cr1.A.No.401 of 2020
and
Cr1.M.P.No.6142 of 2019

KV(CO)
RGA(06/01/2022)