

Bail Slip

The Appellant herein/Accuses Viz., Karthick, aged 31 years, S/o Palanisamy, was directed to released on bail as per the order of this Court made in Crl.M.P.No.5668 of 2020 in Crl.A No.291 of 2019 dated 23.12.2020.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2021

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRL.A.No.291 of 2019 and
Crl.M.P.No.5668 of 2020

Karthick ... Appellant/Sole Accused

.Vs.

State: Inspector of Police,
All Women Police Station,
Palladam,
Tirupur District.
(Crime No.1/2018) Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure to set aside and revise the conviction and sentence passed by the learned Fast Track Mahila Judge, Tiruppur in Spl.S.C.No.14 of 2018 dated 29.04.2019.

For Appellant : Ms. Thamizharasi
Legal Aid counsel

For Respondents: Mr.R.Suryaprakash
Government Advocate

J U D G M E N T

This Criminal Appeal has been filed against the Judgment dated 29.04.2019, made in Spl.S.C.No.14 of 2018, on the file of the learned Magalir Neethimandram.

2. The respondent police registered a case against the appellant in Crime No.1 of 2018 for the offences punishable under Section 7 r/w 8 of Protection of Children from Sexual Offences (in short 'POCSO') Act, 2012 . After investigation,

charge sheet was laid and taken on file in Spl.S.C.No.14 of 2018, by the learned Magalir Neethimandram, Tiruppur.

3. After completing the formalities, the learned Sessions Judge framed charges against the accused for the offence under section 7 r/w 8 of POCSO Act 2012.

4. After trial, the learned Sessions Judge found the appellant guilty of the offences punishable under Section 7 r/w 8 of POCSO Act, 2012 and convicted and sentenced the appellant to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.5,000/-, in default to undergo one year rigorous imprisonment. Aggrieved against the same, the accused is before this Court by filing this Appeal.

5. The learned counsel for the appellant submits that there is previous enmity between the appellant family and the victim family with regard to fetching of water from the common pipe, due to which a false case has been foisted against the appellant. He further submits that the trial Court failed to consider the evidence of D.W.1-mother of the appellant. He further submits that P.W.4- the Doctor who examined the victim has clearly stated that there is no injury found on the lips of the victim girl and therefore the evidence of P.W.4 is contradictory to the evidence of P.W.1 and does not support the case of the prosecution, but the learned Judge failed to consider the same.

6. He would further submit that there is no eye witness with regard to the said incident and there are contradictions in the statements made by P.W.1-victim and P.W.2- mother of the victim. He further submits that the ingredients under Section 7 r/w 8 of POCSO Act, are not made out and the prosecution failed to establish its case beyond reasonable doubt and therefore the Judgment and sentence imposed on the appellant is liable to be set aside.

7. The learned Government Advocate (Crl.side) submits that the victim girl was examined as P.W.1, who has clearly stated that on 14.01.2018 at about 5.00 P.M, when the victim went to attend nature's call at Goundatch Kaadu situated near her house, the accused came there, shut her mouth, took her, made her to lie down on the grass and laid down over her and bit her lip and pressed her breast and on hearing the alarm raised by P.W.1, P.W.2-the mother of the victim girl came to the scene of occurrence and on seeing her the accused ran away and thereafter the victim girl narrated the entire incident to her mother.

8. The learned Government Advocate (Crl.side) would further submit that after the incident the victim was taken to

Government Hospital, Tiruppur on the very same day and P.W.3- Doctor who examined and admitted the victim girl in the hospital, has clearly stated that there is a bite mark and swelling in the lips of the victim girl. He further submits that when the victim was examined by P.W.4- Doctor, on the next date, at that time swelling might have come down and bite mark might have disappeared. He further submits that even as per Ex.P3- Accident Register, there is a bite mark in the lip of the victim girl. He would submits that in Ex.P13, the statement recorded from the victim girl u/s 164 Cr.P.C., it is clearly stated that the accused had bitten her lips and pressed her breast and in view of the direct evidence of P.W.1, the case of the prosecution stands proved beyond reasonable doubt and there is no necessity for any supporting documents to substantiate the case against the accused. The learned trial Judge on considering the oral and documentary evidence has rightly convicted and sentenced the appellant and same does not warrant interference.

9. Heard both sides. Perused the records.

10. The case of the prosecution is that on 14.01.2018 at about 5.00 P.M, when the victim went to attend nature's call at Goundatchi Kaadu situated near her house, the accused came there, shut her mouth, took her, made her to lie down on the grass and laid down over her and bit her lip and pressed her breast and on hearing the alarm raised by P.W.1, P.W.2-the mother of the victim girl came to the scene of occurrence and on seeing her the accused ran away and thereafter the victim girl has narrated the entire incident to her mother and immediately the mother of the victim had taken her to the Government Hospital, Tiruppur and when the victim girl was taking treatment in the Government Hospital, the police came to the hospital and recorded her statement and thereafter registered a case against the appellant.

11. In order to prove the case, the prosecution, before the trial Court, examined as many as 10 witnesses as P.W.1 to P.W.10 and 13 documents were marked as Exs.P1 to P13 .

12. After completing the examination of prosecution witnesses, the incriminating circumstances culled out from the evidence of prosecution witnesses were put before the appellant and the appellant denied it as false and the mother of the accused was examined as D.W.1 as defence witness and no documentary evidence was produced.

13.After hearing the arguments advanced on either side and considering the evidence on record, the learned Sessions Judge, vide judgment dated in Spl.S.C.No.14 of 2018, convicted and sentenced the appellant as stated above.

14.Challenging the judgment of conviction and sentence, the present appeal has been preferred by the appellant.

15.This Court, being an Appellate Court, is a fact finding Court, which has to necessarily re-appreciate the entire evidence and give an independent finding.

16. A careful reading of evidence of P.W.1- the victim girl, shows that on the date of occurrence i.e, on 14.01.2018 at about 5.00 P.M., when the victim went to attend nature's call at Goundatchi Kaadu situated nearby her house, the accused came there, shut her mouth, took her, made her to lie down on the grass and laid down over her and bit her lips and pressed her breast, which clearly proves that the appellant had committed the offence. Since at the time of offence the victim girl was below 18 years and she is a child under the definition of 2(1) (d) of POCSO Act. Therefore he has committed the offence under POCSO Act.

17. Further, the victim girl was produced before the learned Magistrate and the learned Magistrate recorded her statement under Section 164 Cr.P.C. and she narrated the entire incident and the said statement is marked as Ex.P13. Further, the birth certificate of the victim was marked as Ex.P1, in which the Date of Birth of the victim is mentioned as 26.05.2000 and therefore it is clear that at the time of occurrence the victim has not completed 18 years of age and P.W.3- the Doctor who admitted the victim in the hospital and conducted medical examination has clearly deposed that there is a bite mark and swelling in the lips of the victim girl and as the victim was examined by P.W.4- Doctor, the next date, at that time swelling might have come down and bite mark might have disappeared and therefore she deposed that there is no bite mark on the lips of P.W.1. A combined reading of evidence of P.W.1, P.W.2 P.W.3 and on perusal of Exs.P1, P3 P4 and P13 as well as the entire documents on record, this Court finds that the accused had committed the offence as alleged by the prosecution. Though the mother of the appellant was examined as D.W.1 and stated that due to previous enmity, a false case has been foisted against the appellant, there are no materials to prove the same. If the appellant denies the charges framed against him, he has not rebutted the same in the manner known to law. In this context, it is useful to extract Section 29 of the POCSO Act, which reads as follows:

"29. Presumption as to certain offences.-Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.

18. In the case on hand, the appellant has failed to rebut the presumption that he had not committed the aforesaid offences and therefore under these circumstances this Court finds that the prosecution proved its case beyond reasonable doubt and the trial Court rightly appreciated oral and documentary evidence and convicted and sentenced the appellant as stated supra. There is no merit in this appeal and the same is liable to be dismissed.

19. In the result, the criminal appeal is dismissed, and judgment of conviction and sentence dated 29.04.2019 made in Spl.S.C.No.14 of 2018 by the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Tiruppur is hereby confirmed. The suspension of sentence already granted by this Court on 23.12.2020 in Crl.M.P.No.5668 of 2020 stands cancelled. The trial court is directed to secure the appellant for sufferance of the above sentence. The Legal Aid counsel appointed by this Court is entitled to legal fees, as per rules.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
All Women Police Station,
Palladam, Tirupur District.
2. The Sessions Judge,
Magalir Neethimandram,
The Fast Track Mahila Court,
Tiruppur.

3. The Superintendent,
Central Prison,
Coimbatore.
4. The Deputy Registrar (Crl.side)
Madras High Court.
5. The Secretary,
Legal Aid Services Authority,
High Court, Madras.
6. The Public Prosecutor,
High Court of Madras.
7. The Chairman,
The Hon'ble POCSO Committee,
High Court, Chennai.
8. The section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.S.Thamizharasi, Advocate Sr.9577

CRL.A.No.291 of 2019

BS(CO)
srg 01/07/2021



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