



BAIL SLIP

The Petitioner/accused viz., Logu @ Muthusamy aged 39 Years
S/o Ponnusamy was directed to be released on bail vide order in
M.P.No 6802 of 2019 in Crl.A.No.301/2019 Dated 22/08/2019.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2021

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRL.A.No.301 of 2019
and
Crl.M.P.No.6802 of 2019

Logu @ Muthusamy
S/o.Ponnusamy

.. Appellant

.Vs.

The State Rep. by its
The Inspector of Police
Mettur All Women Police Station
Mettur Dam
Salem District.

.. Respondent

Criminal Appeal filed under Section 374 (2) of Code of
Criminal Procedure to set aside the judgment passed in
Spl.S.C.No.1/2016 by the Hon'ble Sessions Judge, Mahila Court,
Salem dated 20.05.2019.

For Appellant : Mr.A.Sundaravadhanan

For Respondent : Mr.R.Surya Prakash
Government Advocate (Crl.Side)

J U D G M E N T

This Criminal Appeal has been filed against the Judgment
dated 20.05.2019 made in Spl.S.C.No.1 of 2016 on the file of the
learned Sessions Judge, Magalir Neethimandram, Salem.

2. The respondent police registered a case in Crime No.4 of
2015 against the appellant for the offence punishable under
Section 363 of 'Indian Penal Code' [hereinafter called as 'IPC']
and Section 8 of 'The Protection of Children from Sexual
Offences Act, 2012' [hereinafter 'POCSO Act' for the sake of
convenience]. The respondent police, after investigation, laid



a charge sheet before the learned Sessions Judge, Magalir Neethimandram, Salem. Since the offence is against a minor girl, the Sessions Judge, after completing the formalities, taken the case on file in Spl.S.C.No.1 of 2016 and framed charges against the appellant for the offences punishable under Section 363 IPC and Section 8 of the POCSO Act.

3. On completion of trial, the appellant was found guilty for the offence punishable under Section 363 IPC and sentenced him to undergo rigorous imprisonment for three years and to pay a fine of Rs.5,000/-; in default to undergo simple imprisonment for three months and for the offence punishable under Section 8 of the POCSO Act, sentenced to undergo Rigorous imprisonment for three years and to pay a fine of Rs.10,000/-, in default to undergo simple imprisonment for six months. The sentences are ordered to run concurrently.

4. Aggrieved by the said judgment of conviction and sentence, the appellant/accused has filed the present appeal before this Court.

5. The learned counsel for appellant would submit that there is enmity between the appellant and victim girl's family, due to which a false case has been foisted against the appellant. P.W.13-Doctor, who examined the victim girl did not notice any injury on the victim girl. The victim girl has deposed that the appellant took her to the scene of occurrence and asked her to remove the dress, whereas, P.W.4-victim girl's grand mother has stated that the victim girl ran away from the scene of occurrence and there is material contradiction between the evidence of P.W.2 and P.W.4 and the place of occurrence is also in doubtful and the prosecution had failed to prove the case beyond all reasonable doubt. P.W.1-victim girl's mother and P.W.3-victim girl's father were not in the village, whereas P.W.4-victim girl's grand mother has stated that she called P.W.3 through the phone of P.W.6, but P.W.6 has denied it and therefore, the information given to P.W.1 & P.W.3 is highly doubtful. The learned Sessions Judge failed to consider the material contradiction and the delay in filing the complaint and however, convicted the appellant on the ground of sympathy. There is no eye witness to the case and the Doctor evidence also did not support the case of prosecution. The learned Sessions Judge failed to consider that the prosecution had failed to prove the case beyond reasonable doubt and only on the ground of sympathy, convicted the appellant, which warrants interference by this Court.

6. The learned Government Advocate (Crl. Side) would submit that P.W.2 is the victim girl, who was aged about 7 years at the time of occurrence. P.W.2-victim girl deposed that on



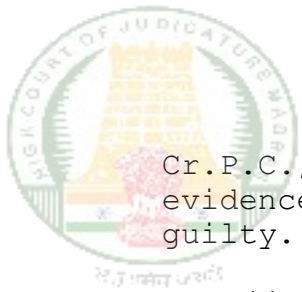
21.10.2015 at about 3.00 p.m. when she went to attend nature's call, the appellant took her to the scene of occurrence, asked her to remove the dress and sexually assaulted her, at that time, she raised alarm and ran away from the scene of occurrence and explained the same to P.W.4-her grand mother. P.W.1-Victim girl's mother and P.W.3-Victim girl's father went to Bangalore for their routine work and the victim girl was under the care and custody of P.W.4. Thereafter, P.W.4 gave information over phone to P.W.1 and P.W.3. Later, P.W.1 gave a complaint before the respondent police and the victim girl was produced before the learned Magistrate for recording the statement under Section 164 Cr.P.C and the statement recorded by the learned Magistrate also revealed the same and therefore, the appellant has committed offence punishable under Section 363 IPC, since he took the victim girl without the knowledge of her lawful guardian. The appellant also committed the offence punishable under Section 8 of the POCSO Act, since with the intention of sexually assaulting the victim girl, he took her to the scene of occurrence and forced her to remove her dress. The trial Judge has rightly convicted the appellant for the above said charges. There is no merit in this case and hence, the same is liable to be dismissed.

7. Heard both sides and perused the materials placed before this Court.

8. The case of the prosecution is that on 21.10.2015 at about 3.00 p.m. the victim girl went to attend nature's call, at that time, the appellant took her to the scene of occurrence, forced her to remove her dress and sexually assaulted her. The victim girl raised alarm and ran away from the scene of occurrence and explained the same to P.W.4-her grand mother. P.W.1-Victim girl's mother and P.W.3-Victim girl's father went to Bangalore for their routine work and the victim girl was under the care and custody of P.W.4. Thereafter, P.W.4 gave the information over phone to P.W.1 and P.W.3. After receiving the information, they came from Bangalore and subsequently, gave a complaint before the respondent police and a case in Crime No.4 of 2015 was registered and charge sheet was filed. After completing the formalities, the learned Special Judge framed the charges against the appellant for offence punishable under Section 363 IPC and punishable under Section 8 of the POCSO Act.

9. In order to prove the case of prosecution, on the side of the appellant, 15 witnesses were examined viz., P.W.1 to P.W.15 and 16 documents were marked viz., Ex.P1 to Ex.P16, besides one material document was exhibited. On the side of defendants, no oral and documentary evidence was marked.

10. When the accused was questioned under Section 313



Cr.P.C., in respect of the incriminating materials available in evidence against him, he denied it as false and pleaded not guilty.

11. On a careful perusal of the materials placed before this Court, it is seen that P.W.1 is the de facto complainant, who made the complaint against the appellant before the respondent police. P.W.3 is the adoptive father of the victim girl and the victim girl was examined as P.W.2, P.W.1 is the adoptive mother and P.W.4 is the grand mother of the victim girl. The victim girl was under the care and custody of P.W.4. After receiving information, P.W.1 and P.W.3 came to the native place and gave a complaint before the respondent police. The appellant, taking advantage of the loneliness of the victim girl, tried to sexually assault her. Therefore, it is very clear that when she was alone, the appellant took her to the scene of occurrence and forced her to remove her dress, which itself shows the intention of the appellant. However, the learned counsel for the appellant submitted that there is material contradiction regarding the position of the victim girl and the information given by P.W.4-grand mother to P.W.1 and P.W.3. From the evidence of P.W.2, it is very clear that the contradiction pointed out by the learned counsel for the appellant, according to the Court, is not material contradiction which will not go to the root of the case of the prosecution.

12. The case of the prosecution is that when the victim girl, aged about 8 years, went to attend nature's call, the appellant forced her to remove the dress. When the victim girl was produced before the learned Magistrate, she has narrated the same and the statement was recorded under Section 164 Cr.P.C. and the victim girl also gave evidence before the trial Court as P.W.2. It is not the case of penetrative sexual assault and there is no injury on the private part or body of the victim child, and therefore, the evidence of the Doctor will not be helpful to the present case. P.W.1 and P.W.3 adoptive parents are not in the native place at the time of occurrence and the victim girl was under the care and custody of P.W.4-grand mother. P.W.4 has clearly stated that the victim girl went to attend nature's call. Since the victim girl has not returned home, P.W.4 went in search of her. At that time, she heard alarm from the scene of occurrence. In cases of this nature, the evidence of the victim girl is to be taken into consideration, unless doubt about the trustworthiness of the evidence of the victim child. In this case, there is no reason to discard or disbelieve the evidence of the victim girl as there is no reason for attributing a false case as against the appellant. Therefore, there is no necessity to file a false case as against the appellant as no parents would come forward to give such a complaint and spoil their own child's life.



presence of the appellant to serve the remaining period of sentence. Consequently, connected miscellaneous petition is closed.

WEB COPY

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mk

To

1. The District and Sessions Judge,
Mahila Court, Salem.
2. The State Rep. by its
The Inspector of Police
Mettur All Women Police Station
Mettur Dam, Salem District.
3. The Public Prosecutor,
High Court, Madras.
4. The Superintendent,
Centre Prisons Salem.

CRL.A.No.301 of 2019and
Crl.M.P.No.6802 of 2019

PPA(CO)
CT(28/07/2021)