

Bail Slip in Crl.A.No.300 of 2019

The Appellant/Accused Viz., Rajan S/o Kalaiya was released on bail as per the order of this Court dated 04/07/2019 in Crl.M.P.No.6801 of 2019 in Crl.Appeal No.300 of 2019 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2021

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRL.A.No.300 of 2019

Rajan

... Appellant

.Vs.

State by
Inspector of Police,
All Women Police Station,
Udhagamandalam Town, The Nilgiris,
Crime No.4 of 2018.

... Respondent

Criminal Appeal filed under Section 374 of Code of Criminal Procedure to set aside the conviction and sentence imposed upon the appellant vide judgment dated 29.04.2019 on the file of the Sessions Judge, Magalir Neethimandram (FTMC) Uthagamandalam, the Nilgiris in Spl.C.C.No.13 of 2018 and acquit the appellant herein from the said charges.

For Appellant

: Mr.T.Shanmugam

For Respondent

: Ms.T.P.Savitha
Government Advocate (Crl.Side)

J U D G M E N T

This Criminal Appeal has been filed against the Judgment dated 29.04.2019 in Spl.C.C.No.13 of 2018 by the learned Sessions Judge, Magalir Neethimandram (FTMC) Uthagamandalam, the Nilgiris.

2.The case of the prosecution is that on 12.07.2018 at 16.00 hours when the victim girl P.W.2, who was studying 5th standard, came out of her house to pluck the dried flowers from the plants, the accused/appellant came in front of her house, with a sexual intent lifted his white dhoti and pulled down his underwear and caught hold of his private part in his hand and shook it and asked the victim girl to come near to him. At that time, neighbours P.W.3, P.W.4 and P.W.5, came there and scolded the accused and immediately, the accused moved away from that place and thereafter, they informed the said occurrence to the mother of the victim girl. Subsequently, (P.W.1) the mother of the victim girl lodged a complaint (Ex.P1) against the appellant.

3.On receipt of the complaint, the respondent police registered a case in Crime No.4 of 2018 against the appellant/accused for the offence punishable under Section 11(i) r/w 12 of The Protection of Children from Sexual Offences Act, 2012 [hereafter referred to as 'POCSO Act' for the sake of convenience]. After investigation, the respondent police filed a charge sheet before the learned Sessions Judge, Magalir Neethimandram (FTMC), Udhagamandalam at Nilgiris and the same was taken on file in Spl.C.C.No.13 of 2018. After trial, the trial Court framed charges against the appellant for the offence under Section 11(i) r/w 12 of POCSO Act.

4.In order to prove the case of the prosecution before the trial Court, on the side of the prosecution as many as 16 witnesses were examined as P.W.1 to P.W.16 and Exs.P1 to P12 were marked and no material object was marked. After completion of the prosecution side evidence, incriminating circumstances culled out from the evidence of the prosecution witnesses were put against the appellant/accused and the appellant/accused was questioned under Section 313 of Cr.P.C., wherein he denied all the incriminating circumstances as false and pleaded not guilty. On the side of the defence, no oral and documentary evidence was produced.

5.The Court below, after hearing the arguments advanced on either side and also considering the materials available on record, found that the accused/appellant is guilty and convicted for the offence under Section 11(i) r/w 12 of POCSO Act and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.3,000/-, and in default, to undergo simple imprisonment for a period of one month and also awarded Rs.50,000/- as compensation to the victim girl under Section 33 (8) of the POCSO Act.

6. Being aggrieved by the said judgment of conviction and sentence, the appellant is before this Court.

7.1 The learned counsel for the appellant would submit that as the occurrence said to have taken place in the open place, where the public movement are available, no prudent man would commit the said offence in the open place. He would further submit that there was a previous enmity between the appellant and P.W.1, the mother of the victim girl regarding money transaction and hence, a false case has been foisted against the appellant. There are discrepancies and contradictions in the complaint and the statement of the victim girl recorded under Section 164 Cr.P.C and also the evidence before the trial Court. P.Ws.3 to 8 are interested witnesses as they are close relatives and friends of P.W.1. Further, the prosecution has examined the neighbours as witnesses in a pick and choose method. Further, P.W.3 and P.W.4, who have witnessed the said occurrence are not at all reliable and acceptable, since they go for job along with P.W.1 and hence, their evidence could not be taken for supporting the case of the prosecution. Further, P.W.2, the victim girl was tutored by the police to give such a false evidence during trial. He would further submit that the appellant was aged about 65 years and suffering from Cancer in advanced stage, and that he has not committed such type of offence. Hence, this Court can show some leniency in the sentence of the appellant.

8. The learned Government Advocate (Crl.Side) would submit that at the time of occurrence, the victim girl, was aged about 9 years and studying 5th standard. On 12.07.2018 at about 16.00 hours, when the victim girl P.W.2 came out of her house to pluck dried flowers from the plants, the appellant, who is the neighbour of the victim girl, with sexual intent exhibited his private part to the victim girl and sexually harassed the victim girl. At that time, P.Ws.3 and 4, who are the neighbours of the victim girl, came there for dumping the rubbish material saw the said occurrence and shouted at the appellant, for which, the accused told them that he has not done anything and he came there only to give biscuits to the dog. On hearing the noise, P.W.5, who is one of the neighbours of the victim girl enquired P.W.3 and P.W.4 and she also scolded the accused and they advised the victim girl to go inside the house. Subsequently, when the mother of the victim girl came to her house, the victim girl narrated the said occurrence and that P.W.3 to P.W.5 had also informed the said incident to P.W.1. Thereafter, P.W.1 lodged complaint against the appellant to the respondent police. After lodging the complaint, the victim girl was produced before the learned Judicial Magistrate for recording statement under

Section 164 Cr.P.C, which was marked as Ex.P2 and the victim girl had clearly narrated the said occurrence. Thereafter, the victim girl was produced before the Doctor P.W.10 for medical examination and she has opined that there was no internal or external injury or marks on the body of the victim girl and her hymen is intact and she was not subjected to penetrative sexual assault and it was only a gesture. The evidence of the victim girl during the trial was corroborated with the statement of the victim girl recorded under Section 164 Cr.P.C. She would further submit that the eye witnesses to the said occurrence viz., P.W.3 to P.W.5 and their evidences were corroborated with the evidence of the victim girl (P.W.2). Therefore, the prosecution has proved its case beyond reasonable doubt from the evidence of P.W.2 to P.W.5. There was no motive as against the appellant as attributed by the learned counsel for the appellant. The trial Court has rightly appreciated the entire evidence and convicted the appellant for the offence under Section 11(i) r/w 12 of POCSO Act. Considering the age of the appellant, the trial Court has taken lenient view and awarded only one year rigorous imprisonment instead of three years rigorous imprisonment and hence, there is no merit in this appeal and the same is liable to be dismissed.

9. Heard the learned counsel for the appellant and the learned Government Advocate (Crl.Side) for the respondent and also perused the materials available on record.

10. 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.

11. On a careful reading of the complaint (Ex.P1), it reveals that the appellant had sexually harassed the victim girl on 12.07.2018 and that the mother of the victim girl preferred the complaint. According to the prosecution, on 12.07.2018 the victim girl, who was aged about nine years, was plucking dried flowers from the plants in front of her house, at that time the appellant, who is residing nearby her house, came there and misbehaved with her and committed the said offence. P.W.3 to P.W.5, saw the said incident and they scolded the appellant and advised the victim girl to go inside her house. Subsequently, the victim girl informed the said occurrence to her mother and the parents of the victim girl went to the house of the appellant, but, the appellant was not in the house and they informed the said incident to the son of the appellant. Thereafter, P.W.1 preferred complaint against the appellant before the respondent police, they registered the case in Crime No.4 of 2018. After completing formalities, the trial Court framed charges for the offence under Section 11(i) r/w 12 of POCSO Act.

12. In order to prove the case of the prosecution, the mother of the victim girl was examined as P.W.1. Though she was not an eye witness to the said occurrence, she has heard about the occurrence from P.W.2 to P.W.5 and gave evidence clearly about the information received from P.W.2 to 5. Further, the victim girl was examined as P.W.2 and she clearly deposed the said incident, which was corroborated with the evidence of P.Ws.3 to 5 and also statement of the victim girl recorded under Section 164 Cr.P.C. The victim girl was produced before the Doctor (P.W.10) and she has opined that there was no sexual assault and it was only a gesture.

13. The learned counsel for the appellant would submit that there was some discrepancies and contradictions in the evidence of the prosecution. But, on a careful reading of the evidence of the victim girl and her statement recorded Section 164 Cr.P.C., the contradictions and discrepancies pointed out by the learned counsel for the appellant are only immaterial, which are not material contradictions and it will not go to the root of the case of the prosecution. Further, the evidence of P.W.3 to P.W.5 are corroborated with the evidence of P.W.2.

14. Further the defence taken by the learned counsel for the appellant is that there was previous enmity between the appellant and the mother of the victim girl and hence, a false case has been foisted against the appellant. However, it has not been established by the defence that, due to such enmity, the P.W.1 lodged the complaint against the appellant. However, P.W.3 to 5 have clearly deposed that they had seen the said occurrence and the same was corroborated with the evidence of P.W.2. There was no material contradictions in the evidence of the prosecution and this Court finds that the prosecution has established its case with cogent and convincing manner and there is no reason to discard the evidence of P.W.2 the victim girl.

15. The learned counsel for the appellant would submit that P.W.3 to P.W.5, who are the neighbours of the victim girl, are interested witnesses and their evidence not supported the case of the prosecution. However, the victim girl P.W.2 clearly narrated the said incident and also deposed that P.W.3 to P.W.5 are the eye witness to the said occurrence and they have also corroborated the same.

16. Therefore, this Court finds that the appellant has committed the charged offence. There is no reason to discard the evidence of the victim girl. The prosecution has proved its case beyond all reasonable doubt. The trial Court, as a fact finding Court has rightly appreciated the entire evidence and convicted

the accused/appellant for the offence under Section 11(i) r/w 12 of POCSO Act and hence, the conviction cannot be interfered with.

17.Considering the age of the appellant and the offence involved in this case and also ailment of the appellant, who is suffering from Cancer in advanced stage and also considering the mitigating circumstances, this Court is of the opinion that the sentence of one year rigorous imprisonment imposed on the appellant by the trial Court has to be modified to six months rigorous imprisonment, which will meet the ends of justice.

18.In the result, this Criminal Appeal is dismissed with the above modification with regard to quantum of sentence i.e. the appellant is sentenced to undergo six months rigorous imprisonment instead of one year rigorous imprisonment. In all other aspects, the judgement in Spl.C.C.No.13 of 2018 by the Sessions Judge, Magalir Neethimandram (FTMC), Udhagamandalam at Nilgiris stands unaltered. If the appellant/accused is not in duress, the trial Court is directed to take appropriate steps to secure the presence of the appellant to serve the remaining period of sentence.

19.With the above modification, this Criminal appeal deserved to be dismissed and accordingly, dismissed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Sessions Judge,
Magalir Neethimandram (FTMC)
Uthagamandalam @ The Nilgiris.

2.The Inspector of Police,
All Women Police Station,
Udhagamandalam Town,
The Nilgiris.

3.The Public Prosecutor,
High Court, Madras.

4.The Deputy Registrar | with a direction to send back the
(Criminal Section), | original records, if any, to the
High Court, Madras. | trial Court

5.The Superintendent of Police,
Central Prison,
Coimbatore.

+lcc to Mr.T.Shanmugam, Advocate Sr.21251

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srg 05/07/2021



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