



BAIL SLIP

The Appellant/Accused namely Manikandan was directed to be released on bail as per Order of this Court dated 28.10.2020 made in Crl.M.P.No.6414 of 2020 in Crl.A.No.419 of 2020.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2021

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRL.A.No.419 of 2020

Manikandan

... Appellant/Accused

Vs

The State,
Represented by the Inspector of Police
All women Police Station
Sooramangalam,
Salem District
(Crime No.3 of 2017)

...Respondent/Complainant

prayer: Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure is praying to call for the records and set aside the order of conviction and sentence passed in Old Spl.S.C.No.51 of 2017, New Spl.S.C.No.54 of 2019 dated 13.08.2020 by the learned Sessions Judge, Special Court for Cases under the Protection of Children from Sexual offences Act, Salem, and allow the appeal and acquit the Appellant/Accused from the charge leveled against him.

For Appellant : Mr.R.Lingakumar

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

J U D G M E N T

(The case has been heard through video conference)

This Criminal Appeal has been filed against the Judgment dated 13.08.2020 made in Old Spl.S.C.No.51 of 2017, New Spl.S.C.No.54 of 2019 passed by the learned Special Court for Cases under the Protection of Children from Sexual offences Act, Salem.

2. The respondent police registered the case in Crime No.3



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of 2017 against the appellant for the offence under Section 11 (1) which is punishable under Section 12 of POCSO Act and after investigation, they filed the charge sheet against the appellant before the learned Sessions Judge, since the offence is against a child under the definition of POCSO Act. The learned Special Judge originally taken the case on file in Spl.S.C.No.51 of 2017 and subsequently, after establishment of POCSO Court, transferred the case to the Special Court for Cases under the Protection of Children from Sexual offences Act, Salem and re-numbered as Spl.S.C.No.54 of 2019. The learned Special Judge, after completing the formalities, framed the charges as against the appellant for the offence punishable under Section 12 of POCSO Act.

3. In order to substantiate the charges during trial, on the side of the prosecution as many as 9 witnesses were examined as P.W.1 to P.W.9 and 8 documents were marked as Ex.P.1 to P.8. Besides, one Material object was exhibited as M.O.1

4. After completing the examination of the prosecution witnesses incriminating circumstances culled out from the evidence of prosecution witnesses were put before the appellant by questioning under Section 313 Cr.P.C. However, he denied the same as untrue and pleaded not guilty. On the side of the defence, no oral or documentary evidence were produced.

5. On completion of trial and hearing of the arguments advanced on either side and considering the materials, the trial Court found the appellant guilty for the offence punishable under Section 12 of POCSO Act and convicted and sentenced him to undergo 3 years rigorous imprisonment and pay fine of Rs.20,000/- in default to undergo 3 months simple imprisonment. Challenging the said Judgment of conviction and sentence, the appellant has filed the present appeal before this Court.

6. The learned counsel for the appellant would submit that a false case has been foisted against the appellant and no such occurrence has taken place as projected by the prosecution. Since, the appellant had earlier given a complaint against the family members of the victim for beating him, in order to wreck vengeance, they have set up the victim and foisted the false case against the appellant. Further, the prosecution has not produced the said counter case of the appellant before the Court and the appellant had sustained injury during the assault made by the family of the defacto complainant and the prosecution has not proved as to how the appellant sustained injury. The non explanation of the injury sustained by the appellant is fatal to the case of the prosecution. Though the grandfather of the victim has lodged the complaint, he is not an eye witness to the occurrence and P.W.6 who has been shown as witness is the



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cousin brother of the victim and he is an interested witness. Except P.W.6, there is no eyewitness in this case and the other witnesses are hearsay witnesses. Since, there is no penetrative sexual assault or aggravated sexual assault, there is no medical evidence in this case. Therefore, even the presumption under Section 29 or 30 of the POCSO Act would not attract for the offence under Section 11 punishable under Section 12 of POCSO Act. Further, the victim girl has not stated anything about the physical assault stated to have been committed by the appellant and it is for the prosecution to prove the case beyond all reasonable doubt. Whereas, in this case the prosecution has failed to prove the case beyond all reasonable doubt. The relative witnesses have been set up against the appellant and foisted a false case against him and the trial Court also failed to appreciate the evidence that in order to wreck vengeance, all the relatives joined together and foisted the false case against the appellant, and wrongly convicted the appellant which warrants interference of this Court.

7. The Learned Government Advocate (Crl. Side) would submit that the victim girl was aged about only 15 years and she was studying 10th standard at the time of occurrence. On 08.02.2017, while the victim girl was returning from school, the appellant followed her and caused sexual harassment on her. At that time, P.W.6 saw the same and questioned the appellant for which, the appellant beaten him. In fact, P.W.6 is the cousin brother of the victim. Hence, he informed the same to the grandfather of the victim. In turn, the grandfather informed the same to the parents of the victim and subsequently, they all reached the place of occurrence. Thereafter, P.W.1/grandfather of the victim lodged the complaint before the respondent police. After registration of the complaint, the victim girl was produced before the learned Judicial Magistrate for recording statement under Section 164 Cr.P.C. and the learned Magistrate also recorded the statement in which, the victim girl has clearly narrated that on the date of occurrence, while she was returning from school, the appellant waylaid her and made sexual harassment on her. On seeing the same, P.W.6 who is the cousin brother of the victim interfered the appellant for which, the appellant beaten him. Further, P.W.6/the cousin brother of the victim was examined and he has also clearly narrated the incident. When the victim was examined as P.W.2, she clearly deposed regarding the commission of offence made by the appellant and the evidence of P.W.2 is corroborated with the evidence of P.W.6. The statement recorded under Section 164 Cr.P.C. also shows that the appellant committed the charged offence and therefore, the prosecution proved its case beyond all reasonable doubt. Further, in order to prove the age of the victim, the school certificate in which, the victim studied was marked as Ex.P.8 through the Head Master of the School/P.W.9 and



as per Ex.P.8, the date of birth of the victim is 01.05.2002. Therefore, it is proved that at the time of occurrence, the victim was only 15 years old and she was a child under the definition of POCSO Act at the time of occurrence and since, the prosecution proved its case beyond all reasonable doubt regarding the commission of offence made by the appellant, the trial Court rightly appreciated the evidence and convicted the appellant for the offence punishable under Section 12 of POCSO Act. Therefore, there is no merit in the appeal and the appeal is liable to be dismissed.

8. Heard the learned Counsel for the appellant and the learned Government Advocate (Crl. Side) and also perused the materials on record.

9. The case of the prosecution is that the victim girl who was aged about 15 years was studying 10th standard and the appellant being the resident of the same locality, well known to the victim girl and her family. While being so, on 08.02.2017, at about 5.30 p.m, while the victim girl was returning from her school, near Chinnayeri, Vattakkadu, the appellant came there and teased her and asked her to come to Chinnayeri for enjoying by eye winking. Hence, she raised alarm and on hearing the same, the relative of the victim/P.W.6 who was nearby the place, went there and questioned the appellant. By the time, the parents and relatives of the victim reaching the scene of occurrence, the appellant had escaped from the place. Thereafter, the grandfather of the victim lodged the complaint before respondent police.

10. This Court being an Appellate Court as a final Court of fact finding, it has to necessarily re-appreciate the entire evidence and to give its findings independently. Accordingly, this Court re-appreciated the entire evidence and gives its findings independently.

11. In order to substantiate the charges framed against the appellant, on the side of the prosecution, totally 9 witnesses were examined out of which, the victim was examined as P.W.2 and she has spoken about the occurrence. The cousin brother of the victim was examined as P.W.6 who corroborated with the evidence of P.W.2/victim. P.W.1 is the grandfather of the victim and he has spoken about the complaint given by him before the respondent police.

12. After registration of the F.I.R., the victim girl was produced before Judicial Magistrate for recording statement under Section 164 Cr.P.C. and the statement was marked as Ex.P.2. In order to prove the age of the victim, the school certificate of the victim was marked as Ex.P.8 through P.W.9/the



Head Master of the school in which the victim girl was studying. As per the evidence of P.W.9 and Ex.P.8, the date of birth of the victim is 01.05.2002 and according to the prosecution, the date of occurrence is on 08.02.2017. Therefore, the prosecution has proved that at the time of occurrence, the age of the victim girl was only 15 years and she was a child under the definition of POCSO and that the defence has not rebutted the presumption regarding the age of the victim. Hence this Court finds that on the date of occurrence, the victim girl was a child under Section 2(1)(d) of POCSO Act.

13. As far as the sexual harassment is concerned, the victim girl has clearly stated that when she was studying 10th standard, one day i.e. 08.02.2017 while she was returning home from school, the appellant followed her and teased her. Hence, she warned him. However, the appellant continued to follow her and committed sexual harassment on her and thereby, she raised alarm. On hearing the same, P.W.6 who is the cousin brother of the victim interfered the appellant and questioned him and also informed the same to the family members of the victim and before the family members of the victim reaching the spot, the appellant escaped from the place of occurrence. Therefore, from the evidence of P.W.2/victim and P.W.6/cousin brother of the victim, it is clearly proved that the appellant committed the offence under Section 11 of POCSO Act which is punishable under Section 12 of POCSO Act.

14. Though the learned counsel for the appellant contended that there was a case in counter, neither he has produced the F.I.R. registered in the counter case, nor he put a suggestion before any of the witnesses and therefore, the contention of the learned counsel for the appellant is rejected. If at all there was a case in counter and if the prosecution had not taken any action on the same, definitely, the appellant would have approached the Superior Officer or otherwise filed a private complaint. Further, the appellant has not marked the F.I.R. either through any of the witnesses or through the Investigating Officer. Therefore, the contention of the learned counsel for the appellant is not acceptable.

15. Therefore, in this the case, the complaint of the defacto complainant is proved and the victim was produced before the learned Judicial Magistrate for recording statement under Section 164 Cr.P.C. and the same was also recorded wherein, the victim girl has clearly narrated the entire incident. Though, the statement recorded under Section 164 Cr.P.C. is not an substantiated evidence however, it can be substantiated through witness during trial. While the victim girl was examined as P.W.2, she clearly stated that earlier her statement was recorded by the Judicial Magistrate.



16. A complete reading of evidence of P.W.1/grandfather of the victim who lodged the complaint, P.W.2/victim, P.W.6/the cousin brother of the victim, and Ex.P.2/the statement of the victim recorded under Section 164 Cr.P.C., this Court also finds the guilt of the accused for the offence punishable under Section 12 of POCSO Act. Since, the presumption clause would not attract for the offence under Section 11 of POCSO Act, it has to be proved by the prosecution as any other criminal case beyond all reasonable doubt. In the present case on hand, as already stated above that the prosecution by examining the victim as P.W.2 and the occurrence witness as P.W.6 and from the previous statement of the victim/Ex.P.2, clearly established that the appellant has committed the offence punishable under Section 12 of POCSO Act.

17. Even nowadays also, in villages, most of the parents are reluctant for sending the girl children to schools and if such things are allowed to take place, they would think of sending the female children to schools which would affect the future of the girl children. Therefore, considering the facts and circumstances of the case, this court does not find any mitigating circumstances for considering the quantum of sentence and this Court as a final Court of fact finding, finds the guilt of the appellant and there is no merit in the appeal.

18. Accordingly the Criminal Appeal is dismissed. The Judgment dated 13.08.2020 made in Old Spl.S.C.No.51 of 2017, New Spl.S.C.No.54 of 2019 passed by the Special Court for Cases under the Protection of Children from Sexual offences Act, Salem, is hereby confirmed. Hence, the trial Court is directed to secure the appellant/accused to undergo the remaining period of sentence, if any. The period of incarceration already undergone, shall be given set off.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge,
Special Court for cases under the Protection of Children
from Sexual offences Act, Salem.
2. The Inspector of Police,
All women Police Station,
Sooramangalam, Salem.
3. The Superintendent,
Central Prison,
Coimbatore.
4. The Superintendent,
Central Prison,
Salem.
5. The Public Prosecutor Officer,
High Court, Madras.
6. The Section Officer,
Criminal Section,
High Court, Madras.
7. The POCSO Committee,
High Court, Madras-104.

CRL.A.No.419 of 2020

EV(CO)
CT 11/02/2022