



Bail Slip

The Appellant/ Accused namely Mr.K.Arulraj, S/o Kesavan was directed to be released on bail as per order of this Court dated 16.12.2020 in CrI.M.P.No.6474 of 2020 in CRL.A.No.424 of 2020 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2021

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CRL.A.No.424 of 2020

K.Arulraj,
S/o, Kesavan

... Appellant/Single Accused

Versus

State represented by
The Inspector of Police,
Hosur,
Krishnagiri District.

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, to allow this appeal by setting aside the conviction and sentence imposed on him passed by the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri, Krishnagiri District in Spl.S.C.No.47 of 2018 dated 18.03.2020.

For Appellant : Mr.Naveen Kumar Murthi

For Respondent : Mr.S.Sugendran

Government Advocate, (Criminal Side)

JUDGEMENT

Challenge in this Criminal Appeal is made to the judgment and decree dated 18.03.2020 passed in Spl.S.C.No.47 of 2018 on the file of the Sessions Judge, Fast Track Mahila Court, Krishnagiri.

2. The respondent police registered a case in Crime No.12 of 2018 against the appellant herein for the offence under section



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7 punishable under section 8 of POCSO Act and also under section 3 punishable under section 4 of the POCSO Act. After investigation, laid a charge sheet before the Mahila Court, Krishnagiri, since the offence is against the child under the POCSO Act. The learned Special Judge took cognizance of the charge sheet in Spl.S.C.No.47 of 2018 and after completing the formalities, framed charges against the appellant for the offence under section 7 punishable under section 8 of POCSO Act and also under section 3 punishable under section 4 of the POCSO Act. After framing charges, in order to prove the case, on the side of the prosecution, 18 witnesses were examined as P.Ws.1 to 18 and 19 documents were marked. On the side of the defence, no oral or documentary materials were produced.

3. After examining all the prosecution witnesses, the incriminating circumstances which were culled out from the evidence of the prosecution witnesses was read before the accused on questioning under Section 313 Crpc, and he denied the same as false and pleaded not guilty.

4. On completion of trial, after hearing the arguments of either side and perusing the materials, the trial court found the accused guilty for the offence under section 7 punishable under section 8 of POCSO Act and also under section 3 punishable under section 4 of the POCSO Act, convicted and sentenced to undergo three years rigorous imprisonment and to pay a fine of Rs.1000/- in default to undergo three months rigorous imprisonment for the offence under section 7 punishable under section 8 of POCSO Act and also he was convicted and sentenced to undergo 7 years rigorous imprisonment and to pay a fine of Rs.1000/- in default to undergo one year rigorous imprisonment for the offence under section 3 punishable under section 4 of the POCSO Act.

5. The learned counsel for the appellant submitted that the age of the victim girl is 15 years and the age of the appellant is 25 years. They fell in love with each other and there is no offence that has taken place as projected by the prosecution. He also submitted that the debate in the Rajya Sabha regarding amendment to the Protection of Children from Sexual Offences Act and also the report of the adhoc Committee of Rajya Sabha stated about the menace of Child Pornography on social media and it has affected on children and society.

6. Further submitted that the victim is in adolescent stage and she fell in love with the appellant and except that no offence has been made out against the appellant. Further even assuming that there are allegations of some offences committed by the appellant like penetrative sexual assault, however even in the complaint she has not stated that there was penetrative



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sexual assault and further except the victim child, all the witnesses ie., parents and relatives of the victim child have stated that only the victim child informed that she was sexually assaulted and did not say anything about penetrative sexual assault.

7. The doctor also opined that there is no external injury and therefore under the said circumstances, he has not committed any offence under section 3 of POCSO Act which is punishable under section 4 of POCSO Act. The trial court failed to appreciate the evidences and wrongly convicted the appellant for the offence under section 3 punishable under section 4 of POCSO Act. No witnesses have spoken about penetrative sexual assault. Though P.W.2 is said to have been the eye witness, he has not supported the case of the prosecution and he has not stated that he has seen the penetrative sexual assault made by the appellant on the victim child. Therefore, the prosecution failed to establish its case through independent witness and in this case all other witnesses are hearsay witnesses and they are not supporting the case of the prosecution. Further he would submit that the alleged occurrence said to have been taken place on 07.07.2018 at 7.30 pm, whereas the complaint was given only on 09.07.2018 at about 9 'o clock. Therefore, the delay in filing the complaint is not properly explained and after discussion they filed the complaint and even in the complaint, the victim child has not stated that she was subjected to penetrative sexual assault, but simply stated that she was only subjected to sexual assault. Afterwards she was tutored by the parents and relatives and made the improvement and gave the complaint. The evidence of the parents of the victim child and other evidence clearly show that there was no penetrative sexual assault made by the appellant and therefore under such circumstances, the trial court is failed to appreciate the evidence and convicted the appellant for both the offences under sections 7 and 3 of POCSO Act.

8. The learned Government Advocate appearing for the respondent submitted that age of the victim child was only 15 years at the time of occurrence and the appellant fell in love with the victim child. Both are staying in the Sri Lanka Refugee Camp and the appellant asked the victim child to come out side the camp and he committed sexual assault on her and she refused and then he forcibly had penetrative sexual assault. She informed to her mother about the same and on the date of occurrence her father was not in station and hence, the next day after her father came, victim child's mother informed to the father about the occurrence and he gave the complaint. The victim child was produced before the Doctor for medical examination and the Doctor who examined the victim has deposed that the victim child was subjected to penetrative sexual



assault. Subsequently, she was produced before the Judicial Magistrate to record the statement under section 164 Crpc which was marked as Ex.P2. The doctor who examined the victim child was examined as P.W.6 and the medical certificate was marked as Ex.P.13. The complete reading of the evidence of P.W.1 victim child, P.W.6 Doctor and also the statement recorded under section 164 Crpc Ex.P.2, Medical Certificate Ex.P.13 would clearly prove that the appellant has committed the offence under section 3 of the POCSO Act and also under section 7 of POCSO Act and which are punishable under sections 4 and 8 respectively. The trial court also appreciated the entire evidence and convicted the accused and there is no merit in the appeal.

9. Heard the learned counsel appearing for the appellant and the learned Government Advocate (Criminal Side) appearing for the official respondent and perused the materials.

10. Since this Court is the Appellate Court as a Final Court of fact finding in order to give independent finding it has to reappreciate the entire evidence independently, accordingly this Court also independently re-appreciated the entire evidence.

11. The trial court framed charges against the appellant for the offences under section 3 punishable under section 4 and also under section 7 punishable under section 8 of POCSO Act. In order to substantiate the charges above against the appellant, totally 18 witnesses were examined and 19 documents were marked. Out of the 18 witnesses, the victim child was examined as P.W.1. On a reading of the deposition of the victim child, she has clearly narrated the entire incident which attracts the offence under section 3 and also under section 7 of the POCSO Act. P.W.2 is the victim's father. But his evidence is only hearsay. Though in this case, P.W.12 is said to have been the eye witness, but has turned hostile and however, in the chief examination, he has admitted that he saw the appellant with the victim child on 07.07.2018 at 7.30 pm near the river side when he went to answer the nature's call. But, however he has not stated that he has seen the occurrence. However he stated that he saw the appellant and the victim child together on the date of occurrence at the relevant point of time, near the river side. Therefore it clearly shows that on the date of occurrence, the victim child went to the river side. The evidence of the victim child shows that the victim child fell on love with the appellant and on the date of occurrence, she went to the river side at the time, the appellant misbehaved with her and subsequently she refused and also he had penetrative sexual assault on her. The victim child informed her mother about the incidence after that the victim child went along with her father before the respondent police and her father gave a complaint in



which the victim child signed. Then the victim child was produced before the doctor on 09.07.2018. The victim child was produced before P.W.16 and he conducted the medical examination on the victim child and stated that the victim child informed that no person sexually assaulted her. He has given the opinion that her hymen was not in tact and also she was subjected to penetrative sexual assault. Subsequently, the victim child was produced before the Judicial Magistrate for recording statement under section 164 Crpc and the said statement marked as Ex.P.2. The reading of Ex.P.2 clearly shows that the appellant is the known person to the victim child and both are staying in the Sri Lanka Refugee Camp and they loved each other and when the appellant called the victim child on the date of occurrence near the river side, at that time, the appellant misbehaved with her and also had penetrative sexual assault on her.

12. P.W.12 stated to have been the eye witness but he has not supported the case of the prosecution. However he stated in the chief examination that he saw the appellant with the victim child in the river side on the date of the occurrence. Though he turned hostile, not stated that he has seen the occurrence, however he saw the victim child and the appellant at the time of occurrence. It is the well settled proposition of law, the evidence of the hostile witness need not be totally rejected, if spoken in favour of the prosecution or the accused, but required to be subjected to close scrutiny and the portion of the evidence which is consistent with the case of the prosecution or the defence can be relied upon. Where as in this case, the victim child P.W.1 has clearly stated on 07.07.2018, the appellant called the victim child to the river side and she went there at 7.30 pm, the appellant tried to misbehave and she resisted, and despite he had penetrative sexual assault on her. Though P.W.12 has stated that before the police that he saw the occurrence, but subsequently before the Court, he has stated that he saw the appellant with the victim child on the date of occurrence ie., on 07.07.2018 at about 7.30 pm. However, he has stated that he has not seen the occurrence. Therefore the said witness has stated the portion that he saw the appellant and the victim child on the date of occurrence at the relevant point of time at the place of occurrence. Therefore the evidence of the victim child would corroborate in the sense that on the date of occurrence the appellant and the victim child went to the river side and she talked with the appellant. Though there is no eye witness for the occurrence, the victim child has clearly stated that on the date of occurrence the appellant misbehaved with her and committed sexual assault and subsequently he had penetrative sexual assault. Therefore she informed to her parents and gave the complaint.



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13. The medical evidence of P.W.6 also clearly shows that the victim child was subjected to penetrative sexual assault and in the nature of the case like this, no eye witness can be expected. It is a settled proposition of law that if the evidence of sole witness is cogent, credible and trustworthy, the conviction is permissible.

14. Since in this case, the victim child is only the sole witness and there is no reason to discredit her witness and her evidence is cogent and consistent. The learned counsel for the appellant pointed out and submitted that the victim child has not stated anything regarding the offences with regard to the second charge and she has not spoken anything about the penetrative sexual assault and subsequently even the parents have not stated anything about the victim child informed to them anything about the penetrative sexual assault, however, subsequently the victim child made the improvement and there is a contradiction regarding the penetrative sexual assault. But in this regard, in the complaint itself she has stated the sexual assault was committed and there is no detail about the penetrative sexual assault. Therefore it is the well settled proposition of law that F.I.R is not an encyclopaedia. Every minute detail need not be mentioned in F.I.R. Therefore in F.I.R, the detail of the commission of the offence has not been mentioned, the case of the prosecution cannot be thrown away. Therefore the victim child was produced before the doctor and before the doctor she mentioned that known person assaulted both physically and had penetrative sexual assault. Subsequently she was produced before the Magistrate for recording statement under section 164 Crpc., the statement is Ex.P2 which reveals that the victim clearly stated that the appellant committed penetrative sexual assault.

15. A complete reading of the evidence of the victim child, the doctor, and the statement recorded under section 164 Crpc, the victim child has clearly stated about the incident and the evidence of the victim child is cogent and consistent and there is no improvement as stated by the learned counsel for the appellant. Though there are some discrepancies and contradictions are here and which are not material contradictions and it will not go to the root of the case of the prosecution and in case of this nature, no independent witness can be expected and no eye witness can be expected and even if there are eye witnesses, some time the independent witness will not support the case of the prosecution. However the evidence of the victim child is cogent and consistent which is corroborated by the medical evidence. Therefore from the evidence of the victim child, she was subjected to penetrative sexual assault made by the appellant and the evidence of the doctor P.W.6, the victim child was subjected to penetrative



there is no merit in the appeal. Accordingly the Criminal Appeal is dismissed.

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Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge,
Fast Trac Mahila Court,
Krishnagiri, Krishnagiri District.
2. The Inspector of Police,
Hosur,
Krishnagiri District.
3. The Superintendent
Central Prison
Vellore.
4. The Public Prosecutor,
High Court,
Madras.

Copy to

The Section Officer,
Criminal Section,
High Court,
Madras.

+1cc to Mr.Naveen Kumar Murthi, Advocate, S.R.No.34924

CRL.A.No.424 of 2020

SRA(CO)
CT 30/12/2021