



BAIL SLIP

The Accused namely Rangaraj, S/o.Vedan, male, aged about 31 / 2014 on your file was released on bail as ordered dated 22.12.2020 made in Crl.M.P.No.728 of 2020 in Crl.A.No.472 of 2020 on the file of the High Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2021

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRL.A.No.472 of 2020

Rangaraj

.. Appellant/Accused

Versus

State Rep.by
The Inspector of Police,
All Women Police Station,
Erode.
Crime No.5 of 2014.

.. Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure to set aside the conviction and sentence passed against the appellant dated 12.08.2020 in Spl.S.C.No.19 of 2018 by the learned Sessions Judge Magalir Neethi Mandram, Fast Track Mahila Court, Erode.

For Appellant	:	Mr.H.Maruthiraj Legal Aid Counsel for Appellant
For Respondent	:	Mr.J.C.Durairaj Government Advocate (Crl.Side)

J U D G M E N T

This Criminal Appeal has been filed against the Judgment dated 12.08.2020 in Spl.S.C.No.19 of 2018, on the file of the Sessions Court, Magalir Neethi Mandram, Fast Track Mahila Court, Erode.

2.The case of the prosecution is that on 24.03.2014, the



mother of the victim child gave a complaint in Sivagiri Police Station against her husband (i.e., child's father) for misbehaving with her mentally retarded child with sexual intention. Based on such complaint, the Sivagiri Police registered a case in Crime No.57 of 2014, on 04.04.2014, against the father of the victim child for the offence under Section 7 r/w Section 8 of the POCSO Act. Later the case was transferred to All Women Police Station for investigation, since the offence is against woman. Thereafter, the respondent/police registered a case in Crime No.5 of 2014, on 19.04.2014, against the appellant for the said offences.

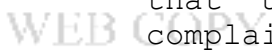
3.After investigation, the respondent/police laid charge sheet before the Special Court, since the offence is against the women, particularly, child under the definition of Section 2(1) (d) of the POCSO Act. The learned Sessions Judge took the charge sheet on file in Spl. S.C.No.19 of 2018. After completing the formalities, charges were framed against the appellant for the above said offences.

4.In order to substantiate the charges framed against the appellant, on the side of the prosecution, as many as 16 witnesses have been examined as P.W.1 to P.W.16 and 18 documents as Ex.P.1 to Ex.P.18, were marked and no material object was produced.

5.After completing examination of prosecution witnesses, when incriminating circumstances culled out from the evidence of prosecution witnesses were put before the accused by questioning him under Section 313 Cr.P.C., he denied the same as false and pleaded not guilty. On the side of the defence, D.W.1 was examined and no document was marked.

6.On conclusion of trial, after hearing the arguments advanced on the either side and considering the materials, the Special court found the appellant guilty and convicted him for the offence under Section 7 of POCSO Act, which is punishable under Section 8 of the POCSO Act, and sentenced him to undergo 5 years rigorous imprisonment and to pay fine of Rs.5,000/-, in default to undergo 2 months simple imprisonment. However, the Trial Court ordered to give set off for the period of imprisonment already undergone by him as per Section 428 of Cr.P.C.

7.Challenging the said Judgment of conviction and sentence,



8. The learned counsel for the appellant/accused submitted that though the date of occurrence was on 24.03.2014, the complaint was given only on 04.04.2014, and therefore, there was delay in filing the complaint. Subsequently the case was also transferred from the Sivagiri Police Station to the respondent/police, where the case was registered on 19.04.2014. It is also recorded that the victim is a mentally retarded person, and the appellant is father of the victim. Victim does not know as to what was happening to her. Therefore, how could the appellant/father, have committed this type of offence, that too against his own mentally retarded daughter. P.W.1/mother of the victim is the wife of the appellant and she had filed a false case and the prosecution failed to establish the case as alleged by the de-facto complainant. There is no medical evidence to show that the victim was subjected to penetrative sexual assault, and therefore, the Trial Court failed to appreciate the evidence and wrongly convicted her father/appellant.

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and also from the statement recorded under Section 164 Cr.P.C., the prosecution has proved its case beyond reasonable doubt that the appellant has committed sexual assault on the mentally retarded victim girl. Hence, the Trial Court rightly convicted the appellant and imposed sentence accordingly.

10.I have heard submissions made by the Learned Counsel on both sides and perused the materials available on record.

11.Since the Appellate Court is a final Court of fact finding, it can re-appreciate the evidence and give independent findings, for which, this Court has carefully gone through the entire materials.

12.It is seen that the Trial Court framed the charge against the appellant, and on the side of the prosecution, totally 16 witness were examined and 18 documents were marked, out of which, the victim was examined as P.W.2. On a reading of the entire evidence of P.W.2, it is seen that the victim girl has clearly stated her father/appellant has committed sexual assault on her. P.W.1 mother of the victim is none other than the wife of the appellant and she has also clearly stated that on the date of occurrence on 24.03.2014 during night hours, she saw the appellant/husband committed the sexual assault on the victim/P.W.2, who is none other than the daughter of P.W.1 and the appellant. It is to be noted that she is also mentally retarded person. Since the victim is mentally retarded person, and she was sleeping with her father on the date of occurrence and the appellant had consumed alcohol. At that time, during night hours, the appellant sexually assaulted his mentally retarded daughter. After seeing the incident, P.W.1 informed the same to her father and took the victim to the hospital. Thereafter, on information, the Sivagiri Police came to the hospital and recorded their statements. Since the offence against women, the case was transferred to the All Women Police Station, Erode and thereafter the respondent police registered the case and after completing investigation filed a charge sheet against the appellant for the offence under Section 7 which is punishable under Section 8 of the POCSO Act. The evidence of the Doctor P.W.6 clearly shows that the victim sustained injuries not only on back side and also on her thigh, breast, shoulder and cheek. The victim girl was medically examined on 03.04.2014 and Ex.P.5/Accident Register, clearly shows that the mentally retarded victim girl was sexually assaulted by a known person and also concerned about the injuries sustained by her.

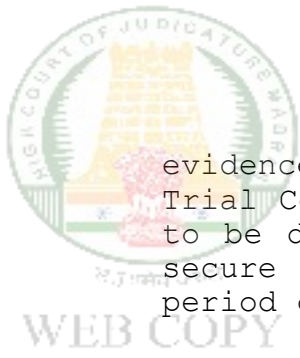
13.From the evidence of P.W.1 and P.W.2, Ex.P.2, Ex.P.3 and statements recorded under Section 164 of Cr.P.C., from P.W.1 to P.W.3, Ex.P.5/Accident Register Copy, Ex's.P.8, P.9, P.12 & P.14 and statements recorded under Section 164 of Cr.P.C., from P.W.7 and



P.W.8, when she was admitted in the hospital, prosecution has proved that the appellant had committed the offence, punishable under the POCSO Act. P.W.1 is an eye-witness, since the occurrence had taken place in the house of the appellant, during the night hours. P.W.1 clearly stated that after hearing the sound of her mentally retarded daughter, immediately, she went to the room and saw the victim's father/appellant without dress. Therefore, the appellant with sexual intention, committed the said offence on his own daughter. This Court does not find any reason to discard the evidence of P.W.1 and P.W.2 and the medical evidence. The age of the mentally retarded victim girl, at the time of occurrence, is only 10 years, which was proved by the prosecution through Ex.P.15/Birth Certificate. As per Ex.P.15/date of birth of the victim is 07.03.2003 and date of the occurrence is on 24.03.2014. Therefore, the age of the victim is at the time of the occurrence is only 11 years and therefore she is a child under the definition of Section 2(1)(d) of the POCSO Act and also she is mentally retarded person. The appellant being own father of the victim has committed sexual assault on his own child, which was witnessed by her wife/mother of the victim. Therefore the evidence of the victim and P.W.1/wife of the appellant is cogent, consistent and also natural, and hence, there is no reason to discard the evidence of P.W.1 and P.W.2. The medical evidence also corroborated with the evidence of P.W.1 and P.W.2 and supported the case of the prosecution. Therefore, this Court does not find any perversity in the appreciation of evidence by the Trial Court.

14. Though there is a delay in filing the complaint, in this case, the victim was only 11 years at the time of occurrence and mentally retarded. Under such circumstances, one cannot expect victim to speak about the sexual assault committed by her own father, immediately soon after the occurrence. Even, she did not understand what was happening to her. Further the discrepancies and contradictions, pointed out by the Learned Counsel for the appellant are not material contradictions, and the same are not to go into the root of the case of the prosecution. Therefore, this Court while re-appreciating the entire evidence, especially, the evidence of P.W.1, P.W.2 and PW.8 and Ex.P.2, Ex.P.3, Ex.P.6, Ex.P.8, Ex.P.9, Ex.P.14, Ex.P.5 and Ex.P.15, finds that the prosecution has proved its case beyond all reasonable doubts.

15. From the evidence of P.W.1 and P.W.2 and also Ex.P.2 and Ex.P.3 and the evidence of P.W.8, it is proved that the appellant has committed the penetrative sexual assault. From the evidence of P.W.6/Doctor and the medical records, the Trial Court found that the appellant guilty for the offence under Section 7 which is punishable under Section 8 of the POCSO Act. Therefore, this Court, while re-appreciating the entire



evidence, does not find any perversity in the findings of the Trial Court and there is no merit in the appeal, which is liable to be dismissed. The Trial Court is directed to take steps to secure the custody of the appellant, to undergo the remaining period of sentence, if any.

Sd/-
Assistant Registrar(Digit)

//True Copy//

Sub Assistant Registrar

klr

To

1. The Sessions Judge Magalir Neethi Mandram,
Fast Track Mahila Court,
Erode.
2. The Judicial Magistrate,
Mettupalayam,
Coimbatore District.
3. The Superintendent of Police,
Central Jail,
Coimbatore.
4. The Inspector of Police,
All Women Police Station,
Erode.
5. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.H.Maruthiraj, Advocate, S.R.No.48439

CRL.A.No.472 of 2020

NR(CO)
SU(18/02/2022)