

BAIL SLIP IN CRL.A.No.454 OF 2019

The Petitioner/Accused Viz.T.Albert S/o.Damiunraj was released on bail as per the order of this Court Dated 20/12/2019 in Crl.M.P.No.9863/2019 in Crl.A.No.454 of 2019 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2021

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRL.A.No.454 of 2019

T.Albert

.. Appellant

.Vs.

The State Rep.by its
The Inspector of Police,
All Women Police Station,
St.Thomas Mount, Chennai.

... Respondent

Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure to set aside the judgement dated 09.07.2019 passed in Special C.No.24 of 2017 by the Sessions Judge, Mahila Court, Chengalpattu.

For Appellant : M/s.S.Uma Maheswari
Legal Aid Counsel

For Respondent : Mr.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 09.07.2019 passed in Spl.C.No.24 of 2017 by the Sessions Judge, Mahila Court, Chengalpattu.

2.The case of the prosecution is that on 04.04.2016, when the victim girl was alone in her house, the accused/appellant entered into her house and threatened her and committed aggravated penetrative sexual assault. Thereafter, on 14.11.2016, once again he has committed the said offence. Subsequently, the parents came to know about the incident P.W.1, the mother of the victim girl lodged a complaint against the

appellant.

3.The respondent police registered a case in Crime No.7 of 2016 for the offence punishable under Section 4 of The Protection of Children from Sexual Offences Act, 2012 [hereafter 'POCSO Act' for the sake of convenience] and Section 376 IPC. On the basis of the complaint, the respondent police investigated the matter and filed a charge sheet before the learned Sessions Judge, Mahila Court, Chengalpattu. Since the offence is against a child, it falls within the meaning of POCSO Act and the learned Sessions Judge had taken cognizance of the charge sheet in Spl.C.No.24 of 2017. After completing formalities, the trial Court framed the charges against the appellant for the offence under Section 6 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 15 witnesses were examined as P.W.1 to P.W.15 and also marked Exs.P1 to P16 and no material object was marked. After completion of the prosecution side evidences, the incriminating circumstances culled out from the evidences of 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 marked.

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 punishable under Section 6 of POCSO Act and sentenced to undergo Rigorous Imprisonment for a period of ten years and to pay a fine of Rs.25,000/- and in default to undergo simple imprisonment for a period of six months, besides that awarded a sum of Rs.3,00,000/- to the victim girl as per the victim compensation.

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

7.1 The learned legal aid counsel appearing for the appellant would submit that there was a material contradiction in the statement of the victim girl recorded under Section 161 (3) Cr.P.C and 164(5) Cr.P.C and during the trial. The Doctor, P.W.10, who examined the victim girl has deposed that there was no external injury or any other mark and also there was no recent possibility of sexual intercourse, hence, the medical evidence not supported the case of the prosecution. Therefore, there is no material or medical evidence to prove that the

victim girl was subjected to aggravated penetrative sexual assault and thus, the conviction and sentence imposed against the appellant is not in accordance with law. Further, P.W.1, the mother of the victim girl has deposed that the appellant used to come to her house when they are available in the house; the father of the victim girl P.W.3 has deposed that he know the appellant for the few months, he used to come to his house only when they are available in the house; whereas, the victim girl has deposed that the appellant and his sister used to come to her house. Therefore, there is a material contradiction between the evidence of P.Ws.1, 2 and 3. He would further submit that there was a delay in filing the complaint. Even though, the delay in preferring the complaint has not been properly explained, however, the learned judge failed to consider the unexplained delay and convicted the appellant, which is fatal to the case of the prosecution and it creates a doubt about the case of the prosecution.

7.2 The learned counsel would further submit that the victim girl, who was examined as P.W.2 has deposed that the alleged occurrence is said to have taken place on two occasions, i.e. on 04.04.2016 and 14.11.2016, however, the victim girl (P.W.2) has not informed about the first incident i.e on 04.04.2016 to anybody, only she informed the second incident to her friends. There was no eye witness to the said occurrence. The prosecution witnesses i.e. P.W.1 mother of the victim girl, P.W.3 father of the victim girl, P.W.8 teacher of the victim girl are only hearsay witnesses to the said occurrence. Further, the prosecution has failed to establish the age of the victim girl by producing her birth certificate. The learned counsel would further submit that the appellant never visited the house of the victim girl in the absence of her parents. Therefore, the appellant has not committed any offence and a false case has been foisted against the appellant and thus, there was no materials to convict the appellant for the offence punishable under Section 6 of POCSO Act. However, the learned Special Judge failed to appreciate the contradictions and discrepancies between the evidence of the prosecution witnesses in a right manner and simply convicted the appellant on the grounds of assumption and sympathy, which warrants interference of this Court.

8.1 The learned Government Advocate (Crl.Side) would submit that at the time of occurrence, the victim girl is aged about 12 years, when she was alone in her house, the appellant committed penetrative sexual assault with her on two occasions i.e. on 04.04.2016 and 14.11.2016. The victim girl has not informed the first incident to anybody, since the appellant threatened her if she does not cooperate for the same he would put her parents behind the bar and also damage her character and had committed

the said offence. Subsequently, again on 14.11.2016, the appellant had committed penetrative sexual assault on the victim girl. On the next day, she disclosed the said incident to her friends; one of her friend informed the same to her class teacher (P.W.8). Thereafter, the teacher enquired the victim girl, who in turn, informed the same to the mother of the victim girl (P.W.1). P.W.1 informed the said incident to her husband (P.W.3). Since the age of the victim girl is 12 years and by thinking about her future and reputation of the family, they have not responded for the same immediately. On 25.11.2016, the mother of the victim girl (P.W.1) gave the complaint to the Nandhampakkam Police Station, after enquiry, on the point of jurisdiction the case was transferred to the respondent/police and the case in Crime No.7 of 2016 was registered on 30.11.2016. The learned Government Advocate (Crl.Side) would further submit that the delay in preferring the complaint has properly explained by P.W.1 the mother of the victim girl. Therefore, mere delay in filing the complaint against the appellant is not fatal to the case of the prosecution. She would further submit that no mother or parents would take risk on the reputation of the family by involving their child's life.

8.2 The learned Government Advocate (Crl.Side) would further submit that P.W.10 the Doctor, who examined the victim girl has deposed that on her examination she found that the victim girl was subjected to sexual intercourse and she issued the certificate Ex.P.4. P.W.11 the Doctor, who conducted Radiology test on the victim girl, opined that the age of the victim girl is 10-12 years (Ex.P5) and the age of the appellant is 19-21 years (Ex.P6). P.W.14, the Headmistress, who gave the bonafide certificate (Ex.P13) stating that the date of the birth of the victim girl is 17.09.2004, which clearly shows that at the time of occurrence, the age of the victim girl is 11 years. From the evidence of the victim girl P.W.2, the teacher P.W.8, the Doctor P.W.10, the Doctor P.W.11, who gave the age certificate of the victim girl (Ex.P5) and the age certificate of the appellant (Ex.P6) and also Ex.P16 the statement of the victim girl recorded by the learned Judicial Magistrate under Section 164 (5) Cr.P.C, the prosecution has established its case that the appellant has committed aggravated penetrative sexual assault with the victim girl, who was aged below 12 years and hence, he has committed the offence punishable under Section 6 of POCSO Act. The trial Court has rightly appreciated the entire evidence and convicted the appellant and also considering the age of the appellant awarded minimum sentence of ten years 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 assaulted the victim girl on two occasions i.e. 04.04.2016 and 14.11.2016 and that the mother of the victim girl preferred the complaint. The respondent police registered the case against the appellant for the offence punishable under Section 4 of POCSO Act and Section 376 IPC. After completing formalities, the learned Sessions Judge, Mahila Court, Chengalpattu framed the charges against the appellant for the offence punishable under Section 6 of POCSO Act, since the victim child not completed the age of 12 years.

12. In order to prove the case of the prosecution on the side of the prosecution the victim girl was examined as P.W.2 and she has categorically deposed that on 04.04.2016, when she was alone in her house the appellant threatened her if she does not cooperate he would put her parents behind the bar and also damage her character and had committed aggravated penetrative sexual assault. Due to fear, she has not informed about the said incident to anybody. Subsequently, on 14.11.2016, again the appellant has committed the said offence, on the next day she informed the said incident to her friends, one of her friends informed the same to their teacher P.W.8, who in turn informed the same to victim girl's mother and thereafter, P.W.1 gave the complaint. After registering the complaint, the victim girl was produced before the learned Judicial Magistrate for recording statement under Section 164 (5) Cr.P.C., which was marked as Ex.P16 and the same was corroborated with the evidence of the victim girl during the trial. P.W.10, the Doctor, who examined the victim girl has deposed that the victim girl was subjected to sexual intercourse and also deposed that hymen of the victim girl was not intact and two fingers were freely allowed in the vagina of the victim child and the same was mentioned in the Accident Register (Ex.P4).

13. The teacher, who was examined as P.W.8 has clearly deposed that after the second incident, the victim girl informed about the same to her friends, one of her friends informed the same to her, thereafter, she enquired the victim girl in a private place and found that the girl was the victim of sexual assault, who in turn, informed the same to her mother on 16.04.2016. P.W.1 the mother of the victim girl spoken about the information given by the teacher (P.W.8) in the complaint. Therefore, the evidence of P.W.1 and P.W.8 are corroborated with the evidence of the victim girl (P.W.2).

14. In order to prove the age of the victim girl, the prosecution examined P.W.11, the Doctor who conducted radiology test on the victim has opined that the age of the victim girl is 10-12 years and issued age certificate, which was marked as Ex.P5 and P.W.14, the Head mistresses issued the bonafide certificate (Ex.P13) stating that the date of birth of the victim girl is 17.09.2004. Needless to say that, as per Section 2(1)(d) of POCSO Act, the child would be below the age of 18 years. Therefore, as per the evidence of P.W.11, P.W.14 and Ex.P5 and Ex.P13, the prosecution has proved its case beyond reasonable doubt that at the time of occurrence, the victim girl was aged below 12 years. Since she is a minor child not completed 18 years, it comes under the definition of POCSO Act.

15. The learned counsel for the appellant pointed out the contradictions regarding delay in filing the complaint and visiting of the appellant to the house of the victim girl. All these contradictions are minor contradictions, it will not affect the case of the prosecution. As per the delay in filing the complaint is concerned, the victim girl herself has stated that she has not informed the first incident occurred on 04.04.2016 to anybody; whereas she informed the second incident occurred on 14.11.2016 to her friends. The mother of the victim girl also clearly explained why they have not preferred complaint immediately. It is a pathetic situation to the family, naturally the parents of the victim girl think about her future and reputation of the family, certainly it will take some time to take decision. No mother or parents would take risk on the reputation of the family by involving their child's life. Therefore, mere delay in filing the complaint is not fatal to the case of the prosecution and this Court finds that the delay has been properly explained. Further, the delay in filing FIR for sexual offence may not be even properly explained, but if found natural, the accused cannot be given any benefit thereof. When the delay is not inordinate and the version of the mother of the victim child is honest and straightforward, the delay will not be fatal.

16. Further, the defects in investigation is also not a sole ground to reject the case of the victim girl and also to acquit the appellant. Lapse on the part of the prosecution should not lead unmerited acquittal, subjected to rider that in such a situation evidence on record should be clinching, so that lapses of prosecution can be condoned. Therefore, on entire reading of the evidences, particularly the evidence of the victim girl (P.W2), teacher (P.W.8), the Doctors (P.Ws.10 and 11), the complaint (Ex.P1), Age certificate of the victim girl (Ex.P5), Age certificate of the appellant (Ex.P6), statement of the victim girl recorded under Section 164 (5) Cr.P.C. (Ex.P16),

this Court finds that the prosecution has proved its case beyond reasonable doubts. As per Ex.P6, the age of the appellant is 21 years at the time of said incident and as per Ex.P13 bonafide certificate, the age of the victim girl is below 12 years and thus, the offence committed by the appellant is punishable under Section 6 of POCSO Act.

17. The learned counsel for the appellant further pointed out that there was no eye witness to the said occurrence. In cases like this, one cannot expect eye witness, since the culprits will take a chance only on the loneliness of the minor children and make use of their innocence and exploit them sexually and also threaten them to take away their life of their kith and kin. Hence, the victim girl will hesitate to reveal the truth to her parents. Admittedly, in this case, the victim girl was alone in her house, the appellant entered into her house and committed the said offence on two occasions and the same was confirmed by the Doctor, who had given the medical report. In cases of this nature, presence of eye witnesses are mostly improbable. If the evidence of sole witness is cogent, credible and trustworthy, conviction is permissible.

18. This Court held that in cases involving sexual harassment, molestation, etc. the court is duty-bound to deal with such cases with utmost sensitivity. Minor contradictions or insignificant discrepancies in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration. The court may look for some assurances of her statement to satisfy judicial conscience. The statement of the prosecutrix is more reliable than that of an injured witness as she is not an accomplice.

19. Admittedly, in this case, the victim girl has clearly narrated the incident before the trial Court as well as before the Doctor that she was subjected to penetrative sexual assault and that the appellant is the one who had committed the penetrative sexual assault on her on two occasions. The said evidence is also corroborated by the medical evidence of the Doctor (P.W.10).

20. Under these circumstances, this Court safely come to the conclusion that the appellant has committed aggravated penetrative sexual assault on the victim child and thus, the prosecution has established its case beyond all reasonable doubt and also substantiated the charged offence punishable under Section 6 of POCSO Act. In the light of the above discussion, this Court does not find any merit in this appeal and the appeal

is liable to be dismissed.

21.In fine, this Criminal Appeal deserves to be dismissed and accordingly, the same is dismissed. The conviction and sentences passed in Spl.C.No.24 of 2017 by the learned Sessions Judge, Mahila Court, Chengalpattu is confirmed.

22.The Legal Aid counsel appointed by this Court is entitled to legal fees as per Rules.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Sessions Judge,
Mahila Court,
Chengalpattu.
- 2.The Inspector of Police,
All Women Police Station,
St.Thomas Mount, Chennai.
- 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
Central Prison, Puzhal.
- 6.The Member Secretary,
Legal Aid Centre, Chennai.
- 7.The Hon'ble POCSO Committee
High Court, Madras-104.

+1cc to M/s.S.Uma Maheswari, Legal Aid Counsel, S.R.No.18020
+1cc to Mr.G.V.Sridharan, Advocate, S.R.No.17657

CRL.A.No.454 of 2019

GSM(CO)
CB(09/07/2021)