



BAIL SLIP

The Appellant/Accused Mani @ Manikandan, Male, aged 29 years, S/o.Late Madhappan was directed to be released on Bail vide order dated 16.12.2020 in Crl.M.P.No.8069 of 2020 in Crl.A.No.500 of 2020 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2021

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.500 of 2020

Mani @ Manikandan

...Appellant

Vs.

The State represented by
The Inspector of Police,
All Women Police Station,
Pennagaram, Dharmapuri District.

...Respondent

This Criminal Appeal is filed under Section 374 of Cr.P.C. to set aside the judgment of conviction and sentence passed in Spl.S.C.No.8 of 2017 dated 05.11.2020 by the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri.

For Appellant : Mr.K.S.Karthik Raja

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

JUDGMENT

The criminal appeal has been filed against the judgment of conviction and sentence passed in Spl.S.C.No.8 of 2017 by the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri.

2.The respondent police registered a case in Cr.No.06 of 2016 against the appellant for the offence under Sections 9(m) r/w 10 and Section 18 of the Protection of Children from Sexual Offences Act, 2012 (for brevity "the POCSO Act"). After completing investigation, the respondent police laid a charge sheet before the learned Sessions Judge, Fast Track Mahalir Court, Dharmapuri, which was taken on file in Spl.S.C.No.8 of 2017. The learned Sessions Judge, after hearing both the accused and the prosecution and after perusing the records, since there



is prima facie case, framed charges against the appellant/accused for the offence under Sections 9(m) r/w 10 and Section 18 of the POCSO Act.

3. Before the trial Court, in order to prove the case of the prosecution, as many as 14 witnesses were examined as P.Ws.1 to 14 and Exs.P1 to P12 were marked and no material object was exhibited. After completing examination of prosecution witnesses, when incriminating circumstances culled out from the evidence of prosecution witnesses were put before the accused by questioning under Section 313 Cr.P.C., he denied the same as false and pleaded not guilty. On the side of the defence, no one was examined and no document was marked and no material object was exhibited.

4.The learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, on completion of trial and hearing arguments advanced on either side, by judgment dated 05.11.2020, convicted the appellant/accused for the offence under Section 11(ii) r/w 12 of the POCSO Act and sentenced him to undergo rigorous imprisonment for a period of three years with fine of Rs.1000/-, in default, to undergo simple imprisonment for a further period of three months besides awarded compensation a sum of of Rs.1.00 lakh under Rule 7 of the POCSO Rules, which was ordered to be recovered from the appellant/accused. Aggrieved against the said judgment of conviction and sentence, the accused has preferred the present criminal appeal before this Court.

5.The learned counsel appearing for the appellant/accused would submit that there are material contradictions among the prosecution witnesses. Even there is dispute with regard to the place of occurrence and identification and arrest of the appellant/accused. There are contradictions between the evidence of the P.W.1 mother of the victim child and P.W.14 the Investigating Officer. Medical evidence does not support the case of the prosecution and therefore commission of offence as projected by the prosecution itself is doubtful and due to previous enmity, false case has been foisted against the appellant/accused and there is no such offence as alleged by the prosecution has taken place. The materials produced by the prosecution does not support the case of the prosecution. The victim girl, who, was aged about 8 years at the time of examination before the Court, was tutored by the police officials and there is no such offence and no such attempt as alleged by the prosecution. There are contradictions between the statement recorded under Section 164 of Cr.P.C. from the victim child P.W.1 and her evidence before the Court. She has improved her version stage by stage. The appellant only helped the victim child to attend nature call by removing her undergarments. Prosecution has failed to prove its case beyond all reasonable



doubts and hence benefits of doubt should have been extended to the appellant. Further, the learned Sessions Judge, without any materials, has erroneously come to the conclusion that the appellant committed offence punishable under the POCSO Act, on the ground of sympathy and convicted the appellant, which is liable to be set aside.

6. The learned Government Advocate (Crl.Side) appearing for the respondent police would submit that the victim child, who was aged about 6 years at the time of occurrence has clearly spoken about the offence committed by the appellant/accused. P.W.2, the mother of the victim child has also deposed the incident before the Court below, which corroborates with the evidence of the victim child/P.W.1. Even though medical evidence does not support the case of the prosecution as contended by the learned counsel for the appellant, when it is not a case of the prosecution that the victim sustained injuries, there is no need of support of medical evidence. In this case, soon after the occurrence, P.W.1, the victim child was produced before the Magistrate and recorded statement under Section 164 of Cr.P.C, which was subsequently substantiated by the victim during examination before the Court. Therefore, from the evidence of P.Ws.1 and 2, prosecution has proved its case and hence the trial Court has rightly come to the conclusion that the appellant/accused committed offence under Section 11(ii), which is punishable under Section 12 of the POCSO Act. There is no merit in the appeal and the same is liable to be dismissed.

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

8. It is the case of the prosecution that P.W.2, the mother of the victim child/P.W.1 has lodged a complaint to the respondent police on 22.09.2016 stating that on 19.09.2016, at about 5.30 p.m., her minor daughter/P.W.1, who was aged about 6 years and studying in Government Urudhu School at Pennagaram was playing near the house. At that time, when P.W.2 went to buy an anklet, the appellant, who was working in Cement Godown, next to the house of the victim, lured the victim child by offering chocolate and taken her into the Cement Godown, removed her undergarments and attempted to kiss. The victim pushed him aside and ran away from there. Hence present case was registered against the appellant.

9. This Court, being an Appellate Court, is a final Court of fact finding, which has to necessarily re-appreciate the entire evidence and give an independent finding. Accordingly, this Court has re-appreciated the entire oral and documentary evidence produced before this Court.



10.P.W.1 is the victim, P.W.2 is mother and P.Ws.3 & 4 are grand fathers of the victim child. When P.W.1 the victim child produced before the Magistrate for recording statement under Section 164 of Cr.P.C., she has clearly stated that the appellant took her into the Cement Godown and removed her undergarments and tried to kiss. Two days later, when P.W.2 her mother was drying the clothes in the Terrace, on seeing the appellant, the victim child started weeping pointing him and when P.W.2 enquired, the victim child narrated the offence committed by the appellant. It is seen that the statement recorded under Section 164 Cr.P.C. from the victim child has subsequently corroborates with the evidence of the victim child during examination before the Court below. P.W.2, after hearing the victim child, immediately informed the same to P.Ws.3 & 4. Thereafter, P.W.1 had gone to the respondent police and lodged the complaint, which was marked as Ex.P2. Hence the delay in lodging the complaint has been properly explained by the victim herself in Ex.P1.

11.Further it is contended by the learned counsel for the appellant that medical evidence not supported the case of the prosecution. When it is not the case of the prosecution that the victim sustained injuries and the appellant committed penetrative sexual assault on the victim child, support of medical evidence is not at all necessary to prove the offence committed by the appellant. Hence the contention of the learned counsel for the appellant is not acceptable. The victim girl is only aged about six years at the time of occurrence and we cannot expect from her that she should reveal everything to her mother immediately soon after the occurrence. Therefore delay in lodging the complaint is not a fatal to the case of the prosecution. A careful reading of the evidence of the prosecution witnesses, it is seen that evidence of P.W.1 the victim and P.W.2 the mother of the victim are cogent and consistent and also are corroborated with the evidence of P.Ws.3 to 5. Therefore prosecution has proved its case beyond all reasonable doubts. It is not the case of the prosecution that there was an eye witness and hence in a cases of this nature, we cannot expect any eye witness or independent witness. The culprit will take a chance of the loneliness of the child and will commit the offence by trying to exploit the innocence of age of the children. It is settled proposition of law that when the evidence of prosecutrix is cogent, consistent and trust worthy and inspires confidence of the Court, conviction can be recorded solely based on the evidence of the victim, unless there is a reason to discord or disbelieve the evidence of the sole witness.

12.In the present case on hand, there is no eye witness except the victim child, who was six years at the time of



occurrence and she has clearly spoken about the incident and the manner in which the offence committed by the appellant. The appellant has not proved that the victim child has been tutored by either by the prosecution or by the parents. In the absence of any compelled circumstances to disbelieve the evidence of the victim, this Court finds that the evidence of the victim child inspires the confidence of the Court. On a careful reading of the evidence of the victim child, this Court finds no reason to disbelieve the evidence of victim child.

13. In fine, this Court comes to the conclusion that there is no merit in the appeal and there is no sound reason to interfere with the judgment of conviction and sentence, since there is no perversity. Accordingly, this criminal appeal is dismissed. Since the appellant/accused tried to commit sexual assault on the child, who was only 6 years old, this Court does not find any mitigating circumstances to reduce the sentence awarded by the trial Court. The trial Court is directed to secure the appellant/accused to serve remaining period of imprisonment, if any.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge,
Fast Track Mahila Court,
Dharmapuri.
 2. The Inspector of Police,
All Women Police Station,
Pennagaram, Dharmapuri District.
 3. The Public Prosecutor,
High Court of Madras.
 4. The Section Officer,
Criminal Section,
High Court, Madras -104.
- +1cc to Mr.K.S.Karthik Raja, Advocate, S.R.No.42511

Cr1.A.No.500 of 2020

MT(CO)
RGA(28/02/2022)