

BAIL SLIP

The appellants/Accused namely 1) Ravanan S/o.Esonthu Rangan, 2) Rajadurai S/o.Kuppusamy @Ravi were directed to be released on bail as per order of this court dated 29/07/2019 in CrI.MP.No.10314/2019 in CrI.A.No.468/2019 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2021

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.A.No.468 of 2019

1.Ravanan
2.Rajadurai

... Appellants/Accused

Vs.

State Rep. by
The Inspector of Police
All Women Police Station
ARNI, Tiruvannamalai District
Crime No.20/2015

... Respondent/Complainant

PRAYER : Criminal Appeal filed under Section 374(2) Cr.P.C., praying to set aside the judgment passed against the Appellants on 06.07.2019 in Spl.Sessions Case No.22/2016 on the file of Fast Track Mahila Judge, Tiruvannamalai and acquit them from all the charges.

For Appellants

: Dr.G.Krishnamurthy

For Respondent

: Mr.K.Madhan, Govt.Advocate (CrI.Side)

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O R D E R

This Criminal Appeal is filed challenging the judgment passed on 06.07.2019 in Spl.Sessions Case No.22/2016 on the file of Fast Track Mahila Judge, Tiruvannamalai.

2. The respondent police registered the case against the appellant under Section 354(A) IPC and Section 12 of POCSO Act

in Crime No.20/2015 on the file of All Women Police Station, Arani. The respondent police, after investigation, laid the charge sheet before the Special Court, Tiruvannamalai (FT, Mahila Court). The Mahila Court taken the case on file in Special S.C.No.22 of 2016 and framed charges against the appellant.

3. Upon perusing the relevant records, the trial court has framed 1st charge against both the accused under Section 354 of the Indian Penal Code (hereinafter called as "IPC"); 2nd charge under Sections 8 and 12 of Protection of Children from Sexual Offences Act, 2012 (hereinafter called as "POCSO Act" and the same have been read over and explained to them and the accused have denied the charges and claimed to be tried.

4. After framing charges, in order to prove the case, on the side of the Prosecution, P.Ws.1 to 9 have been examined, Exhibits 1 to 11 have been marked.

5. When the accused have been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against them, they denied their complicity in the crime.

6. After closing of the prosecution witnesses, there is no defence witness. After trial, the trial court acquitted the appellants under Section 8 of the POCSO Act and convicted them for the offence under Section 354(A) IPC (4 counts) and imposing fine of Rs.1000/- each, failing to pay the fine amount, to undergo imprisonment for one month. Further, the appellants are convicted under Section 12 of POCSO Act, and sentenced to undergo one year Simple Imprisonment and fine of Rs.1000/- in default, to undergo 3 months imprisonment.

7. Challenging the said judgment, the appellants/accused filed the present criminal appeal before this court.

8. The learned counsel for the appellants would submit that the prosecution has not proved the case as projected by the prosecution and also referred to Section 72 of IPC and further he has submitted that there is no intention on the part of the appellants. It is only a minor harm and the victim girls, if really aggrieved that the appellants committed offence under POCSO Act and that they uttered obscene words which is sexually harassing, then they ought to have filed complaint immediately. But in this case, they have not filed the complaint immediately, but they have informed their parents and their parents informed the villagers, thereafter, father of P.W.2, lodged complaint. He would further submit that the prosecution has not made out the case either Section 354-A IPC or under Section 12 of POCSO Act

and further he referred to Section 42 of POCSO Act and submitted that the Court cannot punish the accused under both the Acts for similar offence but either they can convict under IPC or POCSO Act. But under both Acts, the accused cannot be punished.

9. Further, the learned counsel for the appellants submitted that there is land dispute between the complainant parties and the appellants/accused and hence, with motive, the victim's father lodged false complaint. P.W.2 also admitted that there is land dispute between them. There is exchange of complaints between them. The trial court failed to consider these aspects and convicted more particularly under Section 354(A) IPC when they were acquitted under Section 8 of POCSO Act. Therefore, the trial court did not consider Section 42 of POCSO Act and convicted the appellants under Section 354(A) IPC as well as Section 12 of POCSO Act. Therefore, the conviction is liable to be set aside.

10. The learned counsel for the appellants also pleaded before this court that considering the age of the appellants, the punishment awarded by the Special Court is disproportionate to the proven charges. Therefore, the punishment may be set aside. Further, the learned counsel submitted that if the court is convinced, lesser punishment can be imposed.

11. Mr.K.Madhan, learned Government Advocate (Criminal Side) would submit that there are four victims in this case and they are minors. Though the complainant P.W.1 is the father of P.W.2 and it is not P.W.2 alone is the victim girl. Further, intention of the appellants cannot be interpreted and it has to be gathered from the evidence of the victim girls and therefore, the submission made by the learned counsel for the appellants that there was no intention in the occurrence, cannot be sustainable. The evidence of P.W.2 to 4 has clearly established that with an intention, the appellants have harassed the victim girls. They have given statement before the Magistrate about the occurrence and the indecent act committed by the accused. So the evidence gathered from the entire materials on record supported the case of the prosecution. Further the trial court rightly appreciated the evidence and awarded punishment.

12. Heard the learned counsel for the appellants and the learned Government Advocate (Criminal Side).

13. The case of the prosecution is that on 22.12.2015 at about 5.45 p.m., when the victim girls P.Ws.2, 3, 4 and 5 viz., Saranya, Malathy, Ramya and Abirami returned back from their school and while going near the lands of Elangovan at Kalpoondi Village, the appellants teasing the victim girls, uttered indecent words and thereby committed sexual harassment of victim

girls. Therefore, the respondent police registered the case. Based on the complaint given by P.W.1, father of P.W.2, Police registered the case under Section 354(A) (4 counts) IPC and under Sections 12 of POCSO Act 2012. After investigation, the police laid the charge sheet before the Special Court, Tiruvannamalai, u/s.354(A) IPC and under Sections 8 and 12 of POCSO Act. The Special Court also taken the case on file in S.C.No.22 of 2016. After trial, the appellants were convicted for the offence u/s.354(A) (4) counts IPC and 12 of POCSO Act. Challenging the same, the appellants are before this court.

14. To prove the case of the prosecution, 9 prosecution witnesses were examined and 11 Exhibits were marked. Among 9 prosecution witnesses, P.W.2 to 5 are the victim girls. P.W.1 is the complainant and father of P.W.2. A careful reading of the evidence of P.Ws.2 to 5 the victim girls, it is seen that they have narrated the events on the date of occurrence in the occurrence place. Though they have initially informed to their parents, who in turn informed to the villagers. The Villagers warned the appellants. But they failed to adhere to the words of villagers. Therefore, father of P.W.1 lodged complaint before the Police.

15. The appellants, with intention had intercepted the victim girls and uttered obscene words with an intention to harass, falls under Section 11 (i) of the POCSO Act. The learned counsel for the appellants would submit that though the trial court given the reason for acquittal under Section 8 of POCSO Act, not given reason for convicting the appellants under Section 354(A) IPC and Section 12 of POCSO Act. Since this court is appellate court and also final court of fact finding, if the materials are available, it can reappraise the entire evidence and can give own reasons for convicting the appellants. Therefore, though the learned counsel for the appellants stated that the trial court has not given any specific reason separately for convicting the appellants under Section 354(A) IPC and Section 12 of POCSO Act, this court has got very power to reappraise the entire evidence which is available on record and give independent finding.

16. Further it is stated by the learned counsel for the appellants that as per Section 42 of POCSO Act, when the offence is made out under Section 354(A) IPC and offence under section 12 or 8 of POCSO Act, the court can convict the accused under any one of the Act. Section 42 of the POCSO Act reads as follows:-

42. Alternative punishment.-

Where an act or omission constitute an offence punishable under this Act and also under any other law for the time being in force, then,

notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment only under such law or this Act as provides for punishment which is greater in degree.

Therefore, the language used in the section is that "such law or this Act as provides for punishment which is greater in degree." Therefore, under Section 12 of POCSO Act, the trial court convicted the appellants, and at the same time, convicted the appellants under Section 354(A) of IPC as well. Therefore, conviction recorded by the Fast Track Mahila Judge, Tiruvannamalai, under Section 354(A) is set aside.

17. A reading of the complaint together with the statement of victims P.W.2 to 5 recorded under Section 161 Cr.P.C., and the evidence of P.Ws.2 to 5 shows that the appellants intentionally intercepted the victim girls and also uttered indecent words. Though the learned counsel for the appellants would submit that there is no intention on the part of the appellants and so the victim girls did not give Police complaint immediately, but only after informing the villagers and on the advice of the villagers, complaint has been lodged, it is to be seen that normally in the villages, if any occurrence happens like this, the girls would only inform to the parents and the parents in turn also inform to the village elders. They try to pacify any dispute or problems in the village among the villagers. Though the village elders tried to pacify the issue with settlement and since the appellants not yielded to the advice of the elders, victim party tried to sort out the disputes.

18. In this case, the victim girls are minors. They directly not gone to the police and given complaint. But they informed to their parents. Their parents informed to the villagers. Villagers also tried to pacify and they failed in their attempts and therefore, they approached Police Station. Hence, this court is not able to accept the contention of the learned counsel for the appellants.

19. The other submission made by the learned counsel for the appellants is that the act of appellants are petty in nature. If the victims are aggrieved, they would have approached court for offence under IPC and the act of the accused would not come under POCSO Act. The said submission is not legally sustainable. Though the learned counsel for the appellants would submit that

the dispute is between the family of P.W.1 and appellants and therefore, the complaint has been falsely foisted against the appellants, as rightly pointed out by the learned Government Advocate (Criminal Side), P.W.2 is not the only victim in this case, but P.Ws.3, 4 and 5 are also victim girls. Therefore, even the suggestion made by the defence counsel that P.W.1 is having dispute between the village people of appellants, is not acceptable for the reason that P.Ws.3 to 5 are also victim girls harassed by the appellants along with P.W.2. Therefore, in order to support P.W.1, to take vengeance against appellants, P.Ws.3 to 5 would not go to the extent of making allegations against the appellants that the appellants harassed them by uttering obscene words. Under these circumstances, the submissions made by the learned counsel for the appellants is not acceptable.

20. Therefore, a reading of the evidence of P.Ws.2 to 5 would make out a case against the appellants and in such cases, offence committed is the one mentioned herein, corroboration is not necessary. P.W.2 to 5 are victim girls and they have narrated the nature of occurrence taken place on the date of occurrence. The appellants intercepted the victim girls with bad intention and misbehaved with the victim girls. This court finds that the appellants have sexually harassed the girls and the act of the appellants falls under Section 11(i) of POCSO Act.

21. Therefore, a reading of the evidence of P.Ws.2 to 5 victim girls, clearly shows that the offence committed by the appellants are punishable under Section 12 of POCSO Act. The trial court has rightly acquitted the appellants under Section 8 of POCSO Act. Considering the nature of offence involved and in view of Section 42 of POCSO Act, the conviction of appellants under Section 354(A) (4) counts IPC is liable to be set aside. This court finds that appellants have committed the offence under Section 12 of the POCSO Act. Therefore, though it is stated by the learned counsel for the appellants that there is no specific reason to convict appellants under Section 12 of POCSO Act, a reading of the evidence of P.Ws.2 to 5, would go to show that the ingredients of Section 11(i) of POCSO Act is made out. Therefore, this court finds that appellants have committed offence under Section 12 of the POCSO Act.

22. In the light of the above reasonings, there is no merit in the appeal and the appeal is liable to be dismissed. However, considering the facts and circumstances of the case and the age of the appellants, sentence of one year imposed by the trial court has been modified to six months, which will meet the ends of justice. Thus, the conviction passed by the trial court

against the appellants under Section 12 of POCSO Act is confirmed. However, quantum of sentence imposed under the said section is alone modified as stated supra. If the appellants/accused are not in duress, the trial court is directed to take appropriate steps so as to imprison them to serve out the remaining period of sentence.

23. In the result, the criminal appeal is partly allowed with the above modification.

Sd/-

Assistant Registrar (CS II)

/true copy/

Sub Asst. Registrar

nvsri

To

1.The Sessions Judge
Fast Tack Mahila Court, Thiruvannamalai

2.-do-Thro Principal Sessions Judge,
Tiruvannamalai

3.The Inspector of Police
All Women Police Station
ARNI, Tiruvannamalai District
Crime No.20/2015

4.The Hon'ble POCSO Committee,
High Court, Madras

5.The Public Prosecutor
High Court Madras

Copy to

The Section Officer
Criminal Section
High Court, Madras

+1 cc to Mr.S.L.Venkatesan Advocate sr2406

CrI.A.No.468 of 2019

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