



BAIL SLIP

Yoganathan, S/o.Murugan Appellant/Accused in special S.C.No.7/2018 on the file of the sessions Mahalir Neethimandram (Fast Track Mahila Court, Erode) was directed to be released on in and by the Order of by this Hon'ble Court Dated 23/10/2019 made in CRL.M.P.NO.10855 OF 2019 in CRL.A.NO.492 OF 2019.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2021

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRL.A.NO.492 OF 2019

AND

CRL.M.P.NO.10855 OF 2019

Yoganathan

.. Appellant

.Vs.

State, Rep. by
The Inspector of Police
All Women Police Station
Gobichettipalayam
Erode District.
Crime No.3 of 2017

.. Respondent

Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure to set aside the conviction imposed in judgment dated 08.07.2019 made in Spl.S.C.No.7 of 2018 on the file of the Sessions, Mahalir Neethimandram (Fast Track Mahila Court), Erode by allowing this Criminal Appeal.

For Appellant : M/s.R.Lokeshwaran
N.Dhanalakshmi

For Respondent : Mr.R.Suryaprakash
Government Advocate

J U D G M E N T

This Criminal Appeal has been filed against the Judgment dated 08.07.2019 made in Spl.S.C.No.7 of 2018 on the file of the Sessions, Mahalir Neethimandram (Fast Track Mahila Court), Erode.

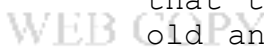


2. The respondent police registered a case against the appellant (A1) in Crime No.3 of 2017 for the offences under Section 366 IPC, Section 4 of the Protection of Children from Sexual Offences Act 2012 (in short 'POCSO' Act) and Section 506 (i) IPC. Based on further investigation, the case was altered from the above said sections to Sections 366 IPC, Section 6 and 6 r/w. 18 of POCSO Act and Section 506(i) IPC against the appellant (A1) and one Anandan @ Anandkumar (A2). After completing the investigation, the police laid charge sheet before the learned Sessions Magalir Neethi Mandram (Fast Track Mahila Court), Erode, for the offences punishable under Section 366 IPC, Section 6 of POCSO Act and Section 506(i) IPC as against the appellant (A1) and for the offences under Section 6 r/w. 18 of the POCSO Act as against Anandan @ Anandkumar (A2), and the same was taken on file in Spl.S.C.No.7 of 2018. After trial, the learned Sessions Judge acquitted the second accused from the charge framed against him and found the appellant (A1) guilty of the offence punishable under Section 6 of POCSO Act, 2012 and Section 506 (i) IPC and convicted and sentenced the appellant as under:-

S.No	Conviction	Sentence
1	U/s. 366 of IPC, Section 6 of POCSO Act 2012	to undergo 12 years of rigorous imprisonment and to pay a fine of Rs.1.000 and in default to undergo 3 months simple imprisonment.
2.	Under Section 506 (i) of IPC	to undergo one year of rigorous imprisonment and to pay a fine of Rs.500/- and in default to undergo one month simple imprisonment.

Both the sentences were ordered to run concurrently. Aggrieved against the same, the appellant (A1) is before this Court by filing this Appeal. For the sake of convenience, the appellant, who was arrayed as A-1 before the trial court, will be referred to as appellant in this appeal.

3. The learned counsel for the appellant would submit that the age of the victim is 18 years at the time of occurrence and further P.W.11- the Doctor who examined the victim girl issued Ex.P16- wherein she has mentioned the age of the victim is above 17 years and below 18 years. He would further submit that the appellant and the victim girl were in love with each other for five years prior to the occurrence and the parents of the victim girl also knew the said fact and victim girl has gone voluntarily with the appellant. He would further submit that there was no sexual intercourse as alleged by the prosecution and the prosecution failed to prove its case beyond reasonable



4. The learned Government Advocate (Crl.side) would submit that the victim girl at the time of occurrence is fifteen years old and the appellant took the victim girl to the place of the second accused and on promising her to marry, the appellant had aggravated penetrative sexual intercourse with the victim girl for three days and after the alleged occurrence, the victim was produced before the Doctor-P.W.11 and she examined the victim girl and found that though there is no external injury, hymen was not intact and therefore there is possibility of sexual intercourse. He would further submit that victim was produced before the learned Magistrate, who recorded her statement under Section 164 Cr.P.C., which clearly shows that the accused has committed the above said offence. He would further submit that birth certificate of the victim has been marked as Ex.P4, which clearly proves that the age of the victim was 15 years at the time of occurrence and therefore the accused is a child below 18 years and therefore the offence under the POCSO Act is attracted.

6. Heard both sides. Perused the records.

8. In order to prove the case, the prosecution before the trial Court, examined as many as 23 witnesses as P.W.1 to P.W.23



and 31 documents were marked as Exs.P1 to P31 and two material objects were marked as M.O.'s 1 and 2.

9. After completing the examination of the prosecution witnesses, all the incriminating circumstances culled out from the evidence of the prosecution witnesses, were put before the appellant u/s 313 Cr.P.C., but they denied the same as false. However, no witnesses were examined on the side of the appellant and no documents were marked.

10. After hearing the arguments advanced on either side and considering the evidence on record, the learned Sessions Judge, vide judgment dated 08.07.2019 in Spl.S.C.No.7 of 2018, convicted and sentenced the appellant as stated above.

11. Challenging the said judgment of conviction and sentence, the present appeal has been preferred by the appellant.

12. 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.

13. A careful reading of the entire materials show that the victim is aged about 15 years who is a child under the definition of Section (1)(d) of POCSO Act and was forcibly taken by the accused to his friend's place, wherein, on promising to marry her, the accused had aggravated penetrative sexual intercourse with her for three days against her wish. Later on, the victim girl being rescued and on coming to know about the happenings, the father of the victim girl, lodged a complaint before the respondent police against the appellant. The victim was produced before P.W.10-Doctor for medical examination and the Doctor, after conducting medical examination, issued certificate - Ex.P15- final opinion, wherein she opined that vagina admits two fingers and hymen not intact and there is possibility of intercourse. She also issued Ex.P16- wherein she opined that the age of the victim is above 17 and below 18 years. Further, the victim child was produced before the learned Judicial Magistrate for recording statement under Section 164 Cr.P.C. The learned Magistrate also after completing the formalities, recorded the statement from the victim child and the same was marked as Ex.P2. The Birth certificate of the victim child was marked as Ex.P4, wherein her Date of Birth is shown as 26.10.2002. A combined reading of evidence of P.W.1- father of victim, P.W.2- victim child, along with statement of victim child recorded under Section 164 Cr.P.C. and also the evidence of P.W.10- Doctor, who conducted medical examination and a perusal of Ex.P4-Birth certificate and Ex.P15-final opinion of the Doctor clearly show that the victim is a child at the time of occurrence and the appellant had



committed the offence as alleged by the prosecution. Though the learned counsel for the appellant contended that the appellant and the victim girl loved each other and she was 18 years at the time of occurrence and the accused had not committed forcible sexual intercourse on the victim, considering the oral and documentary evidence, which is contra to the contention of the learned counsel for the appellant, the said contention is liable to be rejected. Though the Doctor in Ex.P12 has opined that the age of victim is between 17 to 18 years, as per the birth certificate as well as from the deposition of P.W.2-victim girl, the age of the victim has been established to be only 15 years at the time of occurrence.

14. Though the learned counsel for the appellant submitted that the victim child has voluntarily gone with appellant, a perusal of Ex.P2 along with deposition of the victim child, shows that the said contention is not substantiated by any materials and the materials placed by the prosecution prove that the appellant had committed the offences as alleged by the prosecution and therefore the learned Sessions Judge convicted and sentenced the appellant as stated above and this Court finds no reason to disbelieve the evidence of P.W.1, P.W.2 and P.W.10.

15. Under these circumstances, this Court, being a fact finding Court arrives at an independent conclusion that the appellant has committed the offences as stated supra and the learned Sessions Judge has rightly convicted and sentenced the accused and no material to the contra has been placed by the appellant to establish his case to disprove the case of the prosecution. The appellant has not rebutted the presumption. There is no merit in the Appeal and the same is liable to be dismissed.

16. In the result, this Criminal Appeal is dismissed, confirming the Judgment of the Sessions Mahalir Neethimandram (Fast Track Mahila Court), Erode made in Spl.S.C.No.7 of 2018 on 08.07.2019. The suspension of sentence already granted by this Court dated 23.10.2019 in CrI.M.P.No.10855 of 2019 in CrI.A.No.492 of 2019 stands cancelled. The trial Court is directed to secure the appellant for sufferance of the above sentence. Consequently, connected M.P. is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Session Judge Mahalir Neethimandram
(Fast Track Mahila Court), Erode.

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2. -Do Thro' The Principle sessions Judge,
Erode.
3. The Inspector of Police
All Women Police Station
Gobichettipalayam
Erode District.
4. The Superintendent,
Central Prison,
Coimbatore.
5. The Honourable POCSO Committee,
High Court, Madras.
6. The Public Prosecutor,
High Court, Madras.
7. The Deputy Registrar, (Crl.Side)
High Court, Madras.

+2cc to Mr.R.Lokeshwaran, Advocate, S.R.No.7712

CRL.A.NO.492 OF 2019 AND
CRL.M.P.NO.10855 OF 2019

UM(CO)
CT(28/07/2021)