



Bail Slip

The Appellant/Accused namely, Izhansuriyan S/o.Arumugam was ordered to be released on bad vide dated 20/08/2019 made in CRL MP No.11581/19 in CRL Appeal No.513/2019 passed by this Hon'ble High Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2021

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRL.A.No.513 of 2019

Izhansuriyan
S/o.Arumugam

...Appellant

.Vs.

State rep. by
Inspector of Police
All Women Police Station
Palladam
Tiruppur District.

... Respondent

Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure to set aside the judgment passed in Spl.S.C.No.25/2016 dated 08.01.2018 on the file of Magalir Neethimandram (Fast Track Mahila Court), Tiruppur.

For Appellant : Mr.T.Muruganantham

For Respondent : Mr.R.Surya Prakash
Government Advocate (Crl.Side)

J U D G M E N T

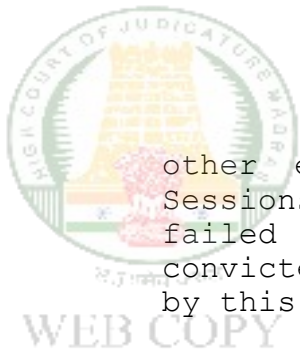
This Criminal Appeal has been filed against the Judgment dated 08.01.2018 made in Spl.S.C.No.25 of 2016 on the file of the Magalir Neethimandram (Fast Track Mahila Court), Tiruppur.

2. The respondent police registered a case in Crime No.168 of 2016 against the appellant for offence under Section 7 r/w 8 of 'The Protection of Children from Sexual Offences Act, 2012' [hereinafter 'POCSO Act' for the sake of convenience]. After investigation, a charge sheet was laid before the learned Sessions Judge, Magalir Neethimandram, (Fast Track Mahila



Court), Tiruppur, since the offence is against a woman especially child. The learned Sessions Judge, after completing the formalities, taken the case on file in Spl.S.C.No.25 of 2016 and framed charge against the appellant for offence under Section 7 r/w 8 of POCSO Act. On completion of trial, the trial Court found the appellant guilty for the offence under Section 7 r/w 8 of POCSO Act and sentenced him to undergo rigorous imprisonment for five years and to pay a fine of Rs.10,000/-; in default to undergo Rigorous imprisonment for one year. Aggrieved by the said judgment of conviction and sentence, the appellant/accused has filed the present appeal before this Court.

3. The learned counsel for appellant would submit that there is a dispute pending between the appellant's family and the victim family with regard to a temple. He further submit that due to the enmity prevailed between the two families, a false case has been foisted against the appellant. All the witnesses examined by the prosecution are relatives of the victim girl and no independent witness was examined on the side of the prosecution. P.W.3, who is the aunt of victim girl came to the scene of occurrence and at that time she saw nothing and no significance can be attached to her evidence. If at all the appellant forcibly bite the lip of the victim girl under the guise of kissing her, then an injury would have been caused. P.W.8-Doctor, who examined the victim girl did not notice any injury on the victim girl, but he found only a contusion on the upper lip of the victim girl, which cannot be caused by bite. It is stated that the occurrence said to have taken place on 08.01.2018 whereas the respondent police had taken the victim girl to the learned Judicial Magistrate, Dharapuram to record a statement under Section 164 Cr.P.C only on 23.03.2018, after a much delay. Therefore, no significance can be attached on the statement recorded under Section 164 Cr.P.C from the victim girl, which is against the provision of POCSO Act. The learned counsel for appellant would submit that the appellant sustained injury and the prosecution has not explained as to how the appellant has sustained injury. There is a material contradiction between the prosecution witnesses and there is no eye witness in this case. P.W.2, P.W.4 and P.W.5 are only hearsay witnesses. Even though P.W.3 is the victim girl's aunt, who is the sole eye witness, has not stated anything about the occurrence. The place of arrest of the accused also highly doubtful and prosecution has not properly investigated the matter and simply supported the case of the victim girl and in order to take vengeance against the accused, false case has been foisted. Unfortunately, prosecution has sailed on the victim family and the investigation was not conducted in a fair manner and the evidence of P.W.1 was not corroborated by any of the



other eye witnesses or the medical evidence. The learned Sessions Judge failed to consider that the prosecution has failed to prove the case beyond all reasonable doubt and only convicted on the ground of sympathy, which warrants interference by this Court.

4. The learned Government Advocate (Crl. Side) would submit that P.W.1 is the victim girl, who was aged about 15 years at the time of occurrence. She was studying X Standard at AVAT School, Shyamalapuram. The appellant/accused was also residing opposite to the house of victim girl. Under the guise of asking black ink pen, the appellant/accused pulled her hand into his house and bit over her upper lip and thereby, committed sexual assault on the minor victim girl. The victim girl informed P.W.3-Aunt about the occurrence and at that time, the appellant/accused went inside his house and locked the door and when the public gathered in front of her house, he escaped from the place during that time he sustained injury. On the same day, the victim girl gave a complaint and the respondent police registered a case and investigated the matter and also produced the victim girl before Judicial Magistrate for recording statement under Section 164 Cr.P.C and the statement was recorded. P.W.8-Doctor, who conducted medical examination, opined that there was a contusion over the right side of her upper lip and no cut injury, which depends upon the force used by the appellant/accused on the lip of the victim girl. The trial Judge has rightly convicted the appellant for the above said charges. There is no merits in this case and liable to be set aside.

5. Heard both sides and perused the materials placed before this Court.

6. The case of the prosecution is that at the time of occurrence, the victim girl is a minor, aged about 15 years and the accused is also residing at the opposite house of the victim girl's house. The victim girl is studying X standard when the occurrence took place. At that time, X standard public examinations were going on, it was a holiday, victim girl alone was in the house, her parents went to the Government Hospital, Tiruppur as her mother was not well and her brother went to attend his +2 examination. The Victim girl's aunt house is situated in the next street. On 21.03.2016, around 10.15 a.m., the victim girl went to her aunt's house to give tiffin to her aunt's daughter and while returning back to her house, the accused, who was standing on the way asked her for the black ink pen. When the victim girl went to her house, took the black ink pen and gave the pen to the accused at his house, he caught hold of her head, hands and bite her upper lip under the guise of kissing and thereby, committed offence under Section 7 r/w 8 of



POCSO Act. P.W.3- Victim girls' aunt, P.W.4 and P.W.5 - neighbours and public gathered in front of the house of the accused and at that time, the accused/appellant escaped from the scene of occurrence. Thereafter, P.W.1 gave a complaint to the respondent police and registered the case and investigated the same and filed the charge sheet. In order to prove the case on the side of prosecution, as many as 12 witnesses were examined as P.W.1 to P.W.12 and 9 documents were marked as Ex.P1 to Ex.P9. When the accused questioned under Section 313 Cr.P.C., in respect of the incriminating materials available in the evidence of prosecution witnesses against him, he denied it as false and pleaded not guilty. On the side of defence, no oral and documentary evidence was produced and learned Sessions Judge after hearing the arguments convicted the appellant as above. Since this Court is an appellate Court, and also final Court of fact finding, has to re-appreciate the entire evidence and come to the independent conclusion.

7. In this case, the victim girl was examined as P.W.1 and she has clearly narrated the facts that at the time of occurrence, she was studying X standard and X standard public examinations were going on and on 21.03.2016 it was a holiday, her parents went to the Government Hospital, Tiruppur as her mother was not well; her brother also went to school for attending +2 examinations; she was alone at her home and her aunt's house is situated in the next street and the appellant/accused was residing at opposite of her house; her aunt's daughter Nandini asked for tiffin, the victim girl took tiffin to her aunt's house and when she was returning back to her house, the appellant/accused was standing on the way asked her for black ink pen, the victim girl took the pen from her house and handed over to the appellant/accused, at that time, he caught hold of her hands and bite her upper lip, she pushed the accused and ran out by raising noise. P.W.3-Aunt went to the scene of occurrence and P.W.4 and P.W.5-neighbours also went to the scene of occurrence, at that time the accused rushed inside his house and locked the door and when they went to assault the accused, he broke open the window and escaped from that place. Thereafter, P.W.1 gave a complaint. Subsequently, a case was registered against the accused. The victim girl was also produced before P.W.8-Doctor and P.W.8 also clinically examined the victim girl and gave a Medical Certificate. P.W.8-Doctor, who has clearly deposed that there was a contusion on the upper lip of the victim girl. The Wound Certificate given by P.W.8 was also marked as Ex.P5. Subsequently, the victim girl was produced before the learned Judicial Magistrate and her statement was recorded under Section 164 Cr.P.C., which was marked as Ex.P7. The mother of the victim girl was examined as P.W.2 and the neighbours of the victim girl were examined as P.W.4 and P.W.5. From the evidence of P.W.1-Victim girl and



P.W.8-Doctor, who has examined the victim girl and the statement recorded by the Judicial Magistrate 164 Cr.P.C. the prosecution has proved its case beyond reasonable doubt.

8. The main contention of the learned counsel for the appellant is that there is enmity between two families and hence, a false case has been foisted against the appellant and he has also sustained injuries. Even though the victim girl has admitted that there is a dispute between two families with regard to a temple, however, defence has not established that due to enmity victim filed false complaint against him. The evidence of the victim girl is cogent. There is no reason to doubt the evidence of the victim girl and there is no reason to discard the evidence. P.W.3, P.W.4 and P.W.5 were not directly in the scene of occurrence. After hearing the noise of victim girl, only P.W.3 came to the scene of occurrence, immediately, the appellant went inside his house and locked the door and when the public gathered, he escaped from that place. P.W.8-Doctor also clearly deposed that there was a contusion in the upper lip of the victim girl and the victim girl was produced before Judicial Magistrate and statement was recorded under Section 164 Cr.P.C. Even though the victim girl was examined belatedly, she has clearly narrated the same and therefore, there is no reason to discard the evidence of P.W.1. From the evidence of P.W.1-victim girl, P.W.8-Doctor, P.W.10-Judicial Magistrate and Ex.P1-Complaint, Ex.P4-Accident Register, Ex.P5-Wound Certificate, Ex.P7 statement recorded under 164 Cr.P.C., this Court finds that the prosecution has proved the case beyond all reasonable doubt in a cogent manner. There is no reason to discard the evidence and material documents. Therefore, this Court is inclined to come to the conclusion that the prosecution has proved its case beyond all reasonable doubt. The prosecution has established that while the appellant escaped from the scene of occurrence, he fell down and sustained injury. Therefore, the victim girl has properly explained the occurrence to the prosecution and proved the case beyond all reasonable doubt with cogent evidence. If the evidence of sole witness is cogent, credible and trust worthy, conviction is permissible. The appellant has not rebutted the presumption under Section 29 of POCSO Act. Hence, the trial Court has rightly convicted and sentenced the appellant/accused by giving cogent reason. Thus, this Court does not find any merits in the appeal and the appeal is liable to be set aside.

9. In fine, this Criminal Appeal deserves to be dismissed and accordingly, the same is dismissed. The conviction and sentence passed in Spl.S.C.No.25/2016 dated 08.01.2018 on the file of Magalir Neethimandram (Fast Track Mahila Court), Tiruppur is confirmed.



10. It is seen from the records that the appellant/accused is at large and therefore, the trial court is directed to take appropriate steps so as to immure him in prison to serve out the remaining period of sentence. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Magalir Neethimandram
(Fast Track Mahila Court), Tiruppur.
2. The Inspector of Police
All Women Police Station
Palladam
Tiruppur District.
3. The Public Prosecutor,
High Court, Madras.
4. The Sessions Judge,
Magalir Neethimandram,
(Fast Track Mahila Court)
Tiruppur.
5. The Superintendent,
Central Prison,
Coimbatore.

CRL.A.No.513 of 2019

RSV[co]
NSK 22/07/2021