

BAIL SLIP

The Appellant/Petitioner/Accused namely V.Rajamani S/o.Velayutham was directed to be released on bail as per the order of this Court dated 22/08/2019 in Crl.Mp.No.11703 of 2019 in Crl.A.No.531 of 2019 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2021

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.531 of 2019

V.Rajamani

.... Appellant/Accused

-Vs-

State Represented by
Inspector of Police,
All Women Police Station,
Hosur,
Krishnagiri District.

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure, to allow this appeal by setting aside the conviction and sentence imposed on him passed by the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri, Krishnagiri District in Spl.S.C.No.41 of 2016, dated 18.07.2019.

For Appellant : Mr.S.Suresh
for M/s.M.P.Saravanan

For Respondent : Mr.R.Suryaprakash,
Government Advocate [Crl. Side]

WEB COPY
JUDGMENT

This Criminal Appeal has been filed against the conviction and sentence imposed by the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri in Special S.C.No.41 of 2016, dated 18.07.2019.

2.The respondent Police have registered a case in Crime No.4 of 2016, for offence under Section 7 r/w 8 of Protection of

Children from Sexual Offence Act, 2012 against the appellant on the complaint [Ex.P1] given by PW1. After completing investigation, the respondent police laid a charge sheet before the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri and the same was taken on file as Special S.C.No.41 of 2016.

3.After completing the formalities under Section 207 Cr.P.C., since there was a prima facie material to frame charge against the appellant, the learned Sessions Judge, framed charges for the offence under Section 7 r/w 8 of the Protection of Children from Sexual Offence Act, 2012.

4.After completing the trial and hearing the arguments advanced on either side and also considering the oral and documentary evidence, the learned Sessions Judge found guilty of the appellant for offence punishable under Section 7 r/w 8 of the Protection of Children from Sexual Offence Act, 2012 and convicted and sentenced to undergo three years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo one month Rigorous Imprisonment.

5.The learned counsel for the appellant would submit that the case of the prosecution is false in nature and the evidence of PW.1, PW.2 (victim girl) and PW.4 are untrustworthy and PW.3 is the original accused in this case. PW.3 in order to escape from the illegal act of relationship with PW.2 in collusion with her, this false case has been foisted against the appellant. The learned counsel would further submit that the trial Court failed to note that PW.3 is the one, who narrated about the occurrence first to PW.1 and PW.4, who are the mother and father of the victim girl (PW.2) and he is the one who wrote the complaint (Ex.P1), but without considering these aspects the trial Court has erroneously convicted the appellant.

6.The learned counsel for the appellant would further submit that PW.2 and PW.3 had illicit relationship, which was objected by one Mani. In respect of the same, the said Mani and PW.3 attacked each other and the village panchayat was convened and signature was obtained from both of them. On the date of occurrence, the appellant saw them both together and he objected the same. In order to escape from the above act, PW.2 and PW.3 in collusion, has chosen to lodge the false case, which was not considered by the learned trial Judge.

7.The learned counsel for the appellant would further submit that the medical evidence does not corroborate with the case of the prosecution. PW.10, the Doctor treated the victim girl and issued the Medical Report (Ex.P7) and the Accident Register (Ex.P8). Exs.P7 & P8 reflects that "Hymen not intact, admits one finger". The above medical evidence and Exs.P7 & P8

established the defence case and corroborated the evidence of DW.1 and DW.2. But the trial Court failed to appreciate the same in the judgment. Though PW.2 has stated that she went to attend the nature's call, no independent witness spoke about the same. Further, the dress of the victim girl was not seized by the prosecution and PW.2 one step further deposed that she set fire to the dress, which creates serious doubt on the genuineness of her evidence. Thus, the prosecution has failed to establish the arrest, confession and recovery in this case and all the witnesses are concocted and stage managed in nature. The learned Sessions Judge failed to appreciate the evidence and materials and also the defence taken by the appellant and erroneously convicted him, which warrants interference of this Court.

8.The learned Government Advocate (Crl. Side) appearing on behalf of the respondent Police would submit that the prosecution has established its case beyond reasonable doubt by examining the victim girl as PW.2, her mother and father as PW.1 & PW.4 and the eye witness PW.3. PW.1 and PW.4 are the mother and father of the victim girl. The victim girl has clearly stated that there is no bathroom in her house. The villagers used to go to answer the nature's call only in the vacant land, which covered by bushes. On the date of occurrence, when the victim girl went to answer the nature's call, the appellant tried to sexually assault her and she escaped from him. At that time, PW.3, who was in that area, saw the occurrence and informed the same to the mother of the victim girl (PW.1). PW.1 enquired her daughter about the occurrence and she confirmed the same. Therefore, PW.1 lodged a complaint (Ex.P1) before the respondent Police.

9.The learned Government Advocate (Crl. Side) would further submit that the evidence of PW.1 to PW.4 clearly shows that the appellant had committed the sexual assault on the victim girl. During investigation, the victim girl was produced before the learned Magistrate for recording her statement under Section 164 Cr.P.C. The learned Magistrate recorded the statement and the same was marked as Ex.P17. The Age Certificate of the victim girl issued by the Doctor (PW.6) was marked as Ex.P3. Thus, the prosecution by collecting the evidence and materials, has proved the case against the appellant beyond reasonable doubt. The learned Sessions Judge rightly appreciated the same and convicted the appellant, which need not be interfered with by this Court.

10.Heard the learned counsel appearing for the appellant and the learned Government Advocate [Crl. Side] appearing for the respondent and also perused the materials available on record.

11.The case of the prosecution is that at the time of occurrence, the victim girl was a minor and she was aged about 17 years. On 24.01.2016, at about 07.00 a.m., when the victim girl went to answer nature's call, the appellant against her wish, caught hold her and closed her mouth and dragged her into the bush and removed her dress and tried to assault sexually and also took photo of the victim girl and threatened that he would send the photo to others. The victim girl escaped from him and cried. PW.3 saw the occurrence and informed the same to the mother (PW.1) of the victim girl and thereafter, PW.1 lodged a complaint [Ex.P1] to the respondent Police. The respondent Police registered a case in Crime No.4 of 2016, for offence under Section 7 r/w 8 of the Protection of Children from Sexual Offence Act, 2012. After completing investigation, the respondent police laid a charge sheet before the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri and the same was taken on file as Special S.C.No.41 of 2016.

12.During the trial, on the side of the prosecution, as many as 15 witnesses were examined, 18 documents were marked and no material object has been marked. After completing the evidence of prosecution witnesses, when incriminating circumstances were culled out from the prosecution witnesses put before the accused, he denied as false. On the side of the defence, 2 witnesses were examined and no document was marked. The trial Court has marked one document as Ex.C1.

13.After considering the evidence on record and hearing either side, the learned Sessions Judge, vide judgment dated 18.07.2019 in Special S.C.No.41 of 2016, convicted and sentenced the appellant as stated above.

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

15.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.

16.A reading of the evidence and materials placed before this Court, it is seen that the mother (PW.1) of the victim preferred a complaint (Ex.P1) before the respondent Police stating that when her daughter went for answer the nature's call, the appellant misbehaved with her daughter and sexually assaulted. In order to prove the complaint (Ex.P1) given to the respondent Police, the mother of the victim was examined as PW.1. The evidence of PW.1 has clearly proved the complaint (Ex.P1) given to the respondent Police. In order to prove the occurrence, the victim girl was examined as PW.2 and she was produced before the learned Magistrate for recording statement

under Section 164 Cr.P.C. A reading of the statement recorded under Section 164 Cr.P.C. (Ex.P17), the victim girl has stated that when she went for answering nature's call, the appellant misbehaved with her and sexually assaulted. At that time, PW.3 saw the occurrence. The evidence of PW.2 corroborated the evidence of PW.3. PW.4, the father of the victim girl has stated about what PW.3 informed to his wife (PW.2) about the occurrence. Therefore, from the evidence of the victim girl (PW.2), PW.1, PW.3 and PW.4 and from the statement recorded under Section 164 Cr.P.C., (Ex.P17), it is proved that the appellant sexually assaulted the victim girl and committed the offence.

17. During investigation, the victim girl (PW.2) was subjected to the medical examination. The Doctor (PW.10) conducted clinical examination on the victim girl and issued the Medical Report (Ex.P7) and Accident Register (Ex.P8). During medical examination, the victim girl has stated before PW.10 that a known person sexually assaulted her. As per the Age Certificate (Ex.P3), the age of the victim girl is between 15 to 16 years. In order to prove the Age Certificate (Ex.P3), the Doctor was examined as PW.6. PW.2 in her evidence has stated that she was studying 12th standard. While recording the statement recorded under Section 164 Cr.P.C., (Ex.P17), the victim girl stated that she was studying 10th standard and her age is 15 years. Therefore, from the evidence of the victim girl (PW.2), the Doctor (PW.10) and from the Age Certificate (Ex.P3) and the statement recorded under Section 164 Cr.P.C., (Ex.P17), it is clear that at the time of occurrence, the victim girl was a child under the definition of Section 2(1)(d) of POCSO Act and she was aged below 18 years.

18. The occurrence had taken place on 24.01.2016 and the victim girl was produced before the Doctor (PW.10) for clinical examination on 25.01.2016, at about 11.00 a.m. PW.10 conducted the clinical examination and stated that the victim girl, who was aged about 15 years was produced before her and she conducted examination on her and found "1) Scratch mark - horizontal 1 X 2 cm over left breast upper outer quadrant and 2) Scratch mark 2 X 1 cm horizontal right upper and outer quadrant and 3) Scratch mark 2 X 1 cm in left shoulder." and opined that the victim girl was subjected to sexual assault and issued the Medical Report (Ex.P7) and the Accident Register (Ex.P8).

19. The Medical Report (Ex.P7) and the Accident Register (Ex.P8) clearly proves the injuries sustained by the victim girl. The learned counsel for the appellant argued that the victim girl had illegal intimacy with PW3 and the appellant had seen the same. If at all the victim girl was having illegal intimacy with PW.3 with consent the question of injuries

sustained by the victim girl does not arise. Therefore, the defence taken by the appellant is not believable and acceptable. Since PW.3 has seen the appellant while committing sexual assault on the victim girl and informed the same to her parents, the appellant has taken such a defence that the victim girl has illegal intimacy with PW.3. Therefore, the defence taken by the appellant is not acceptable.

20. On reading of the evidence of the victim girl (PW.2), her mother (PW.1), her father (PW.4), neighbour (PW.3), the Doctor (PW.10) and from the Age Certificate (Ex.P3), the Medical Report (Ex.P7), the Accident Register (Ex.P8) and the statement recorded under Section 164 Cr.P.C., (Ex.P17), this Court can safely come to the conclusion that the appellant has committed sexual assault on the victim girl and therefore, the prosecution has established its case beyond reasonable doubt. 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. Accordingly, the judgment of conviction and sentence dated 18.07.2019, in Special S.C.No.41 of 2016 passed by the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri, is confirmed and the Criminal Appeal is dismissed.

21. The learned Sessions Judge, Fast Track Mahila Court, Krishnagiri, is directed to secure the appellant for sufferance of the remaining period of sentence. The bail bonds executed by the appellant, if any, shall stand canceled.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vv2

To

1. The Sessions Judge, Fast Track Mahila Court,
Krishnagiri.

2. The Inspector of Police,
All Women Police Station,
Hosur,
Krishnagiri District.

3. The Public Prosecutor,
High Court, Madras.

Copy to:
The Deputy Registrar(Records)
High Court, Madras-104.

Cr1.A.No.531 of 2019

VBM(CO)
CB(29/06/2021)



WEB COPY