



Bail Slip

The Petitioner/Accused Viz., Jegadesan M/23 Years, S/o Munusamy was directed to released on bail as per the order of this Court dated 11/03/2020 in Crl.M.P.No.13283 of 2019 in Crl.A.No.615/2019 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2021

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.615 of 2019

Jegadesan

... Appellant

Vs.

The State rep.by
The Inspector of Police,
All Women Police Station,
Melmaruvathur,
Kancheepuram District.
Crime No.62/2016

... Respondent

Prayer: Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code, to set aside the conviction and sentence passed by the learned Sessions Judge Mahila Court, Chengalpattu in Special C.No.16 of 2017 dated 11.07.2019 and acquit him from all the charges.

For Appellant : Mr. G. Magesh Kumar

For Respondent : Mr. R. Suryaprakash
Government Advocate (Crl.side)

J U D G M E N T

This Criminal Appeal has been filed against the conviction and sentence imposed by the learned Sessions Judge, Mahila Court, Chengalpattu in Special C.No.16 of 2017, dated 11.07.2019.

2. The respondent Police registered a case in Crime No.7 of 2016 for offence under Sections 354(b), 506(i) of IPC and Section 4 of Protection of Children from Sexual Offence Act, 2012 against the appellant on the complaint [Ex.P1] given by



PW1. After completing the investigation, the respondent police laid a charge sheet before the learned Sessions Judge, Mahila Court, Chengalpattu and the same was taken on file in Special C.No.16 of 2017.

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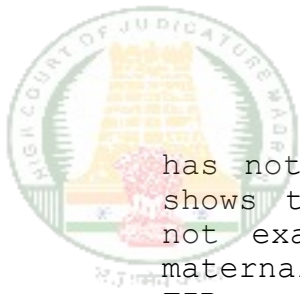
3. After completing the formalities, since there was a prima facie material to frame charges against the appellant, the learned Sessions Judge, framed charges for offences under Sections 354(b), 506(i) of IPC and Section 4 of Protection of Children from Sexual Offence Act, 2012.

4. After completing the trial and hearing the arguments advanced on either side and also considering the oral and documentary evidence, the trial Judge found guilty of the appellant for offence punishable under Section 354(B), 506(1) of IPC and Section 4 of the Protection of Children from Sexual Offence Act, 2012 and convicted and sentenced to undergo rigorous imprisonment for three years and also to pay a fine of Rs.5,000/- i/d to undergo simple imprisonment for 3 months for the offence under Section 354(B) of IPC and to undergo rigorous imprisonment for two years and also to pay a fine of Rs.5,000/- i/d. to undergo simple imprisonment for 3 months for the offence under Section 506(1) of IPC and to undergo rigorous imprisonment for ten years and also to pay a fine of Rs.10,000/- i/d to undergo simple imprisonment for 6 months for the offence under Section 4 of the Protection of Children from Sexual Offence Act, 2012 and acquitted from the charges under Section 354 D(1) (i) of IPC.

5. Challenging the said conviction and sentence, the appellant has preferred this appeal.

6. The learned counsel for the appellant would submit that there was a delay in filing the case. The occurrence said to have been taken place on 19.07.2016 whereas, the complaint was given only on 26.07.2016 at about 4.30 pm. Therefore, there was an inordinate delay in filing the complaint and the delay has not been properly explained on the side of the prosecution and the inordinate delay is fatal to the case of the prosecution. Ex.P1-complaint came into existence after due discussion and deliberation which would fatal to the case of the prosecution.

7. Further he would submit that the prosecution has not produced the birth certificate of the victim girl and proved that the victim girl was a child defined under POCSO Act. The non production of the birth certificate and non proving the age of the victim girl, she is under 18 years and the same is also fatal to the case of the prosecution. From the medical evidence, it is clear that there was no external injury found in the private part of the victim. Therefore, the medical evidence



has not corroborated the evidence of the victim and also which shows that there was no forceful sexual. The prosecution has not examined the father of the victim girl, grandmother and maternal uncle of the victim girl and also delay in filing the FIR creates serious doubt in the case of the prosecution. Only the prosecution has foisted false case, defacto complainant filed a false complaint against the appellant only in order to marry the appellant to the victim and they foisted the false case and also prosecution also without properly conducting the investigation and filed charge sheet. Therefore, warrants interference of this Court.

8. The learned Government Advocate would submit that at the time of the occurrence, the age of the victim girl was only 15 years and she was studying 10th std, when he goes and proposed his love and she refused and one day on the date of occurrence on 19.07.2016, when the victim girl had gone for grazing her cattle, the appellant who came there and pulled her hand, gagged her mouth with his hands, when she shouted, the accused beaten on her chin and threatened her, disrobing her dresses and committed penetrative sexual assault. After returning home she cried and mother asked her why she is crying and she has not stated any thing and P.W.1 mother informed P.W.3 sister of victim and she enquired and the victim girl reveals to her sister and her sister P.W.3 informed her mother P.W.1 and thereafter, mother informed to father and the P.W.1 mother of the victim girl and one Selvan-PW.5, who is the President of the Village went and searched the appellant house but the appellant was not there and he absconded and they waited for sometime since there was no response from the appellant side, P.W.5 advised PW.2 to lodged a complaint to the police. Accordingly, the complaint was lodged on 26.07.2016. Ex.P1 complaint was lodged on 26.07.2016 with the Inspector of Police P.W.13, thereafter, the respondent registered the case in Crime No.7 of 2016 and after completing investigation charge sheet was laid down and after framing the charges and completed the trial.

9. The learned Government Advocate would further submit that the victim girl/PW2 was produced before the learned Judicial Magistrate for recording the statement under Section 164 Cr.P.C. During the trial, the victim girl was examined as PW2 and her mother was examined as PW1. From the evidence of the victim girl/PW2 and her statement recorded under Section 164 (5) Cr.P.C., [Ex.P15] and the evidence of the Doctor/PW7 and her report, the prosecution has clearly established the guilt of the appellant and proved the case beyond reasonable doubt and the victim girl/PW2, at the time of occurrence, was only 16 years old, and the appellant has committed penetrative sexual assault on the victim girl, and therefore, the trial Court has rightly



convicted the appellant, and the appeal is liable to be dismissed.

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 on 19.07.2016 at 18.30 hours, when the victim girl Sarala went for grazing her cattle, the accused came there and pulled her hand and gagged her mouth by his hands and used criminal force with an intention of disrobing her dresses and made her to lay on the floor at the odai and committed penetrative sexual assault on the minor girl and he threatened her as not to disclose the same to anyone. After returning home the PW2 cried continuously and not disclosed anything to her mother PW1. The PW1 called PW3 through the cellphone of PW4. PW3 came there and inquired PW2 and she informed the occurrence to her sister PW3-Sulochana on the same day. Inturn, PW3 informed the same to PW1. PW1 went and complained to PW5, who is the President of the Village about the occurrence. PW.5 went to the house of the appellant and searched him but he absconded. Hence PW.5 advised PW1 to lodge a complaint to the police. Having no other opinion, PW.1 went to Police Station and gave a complaint (Ex.P1) on 26.07.2016.

12. Based on the complaint [Ex.P1] given by PW.1, an FIR in Crime No.7 of 2016 was registered for offence under Sections 354 (D), 506(1) IPC and punishable under Section 4 of Protection of Children from Sexual Offence Act, 2012. After completing investigation, the respondent police laid a charge sheet before the learned Sessions Judge, Mahila Court, Chengalpattu and the same was taken on file in Special C.No.16 of 2017.

13. During the trial, on the side of the prosecution, as many as 14 witnesses were examined and 15 documents were marked but no material object was marked. After completing the evidence of prosecution witnesses, when incriminating circumstances were culled out from the prosecution witnesses put before the accused and questioned under Section 313 of Cr.P.C., he denied the same as false and pleaded not guilty. On the side of the defence, 2 witnesses were examined and no document was marked.

14. After considering the evidence on record and hearing arguments advanced on either side, the learned Special Judge, by judgment dated 11.07.2019 in Special C.No.16 of 2017, convicted and sentenced the appellant as stated above.



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

16. 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.

17. A careful reading of the evidence and materials on records, it is seen that the victim girl/PW2 in her evidence and in the statement recorded under Section 164(5) Cr.P.C., [Ex.P15] has clearly stated about the occurrence. PW2 clearly narrated the events, that on 19.07.2016, at about 18.30 hours, when she went for grazing her cattle, the appellant came there and pulled her hand and gagged her mouth by his hands and used criminal force with an intention of disrobing her dresses and made her to lay on the floor at the odai and committed penetrative sexual assault and threatened her not to disclose the same to anyone. After returning home PW.2 informed about the occurrence to her sister and she informed the same to her mother/PW1. Thereafter, PW1 went and complained to PW.5, who is the President of the Village. PW.5 went to the house of the appellant and searched him, but he was not there and absconded. Thereafter, PW.1 lodged a complaint to the respondent Police and a case in Crime No.7 of 2016 came to be registered.

18. The complaint [Ex.P1] has been lodged by PW1, who is none other than the mother of the victim girl. PW1 in her evidence has spoken about what her daughter/PW2 said to her about the incident and hence, she is in the nature of hearsay.

19. The victim girl/PW2 while recording her statement under Section 164 (5) Cr.P.C., [Ex.P15] and while deposing before the trial Court as PW2, she has clearly narrated the incident happened on 19.07.2016. Therefore, in cases like this, only the evidence of the victim girl alone can be considered for proving the case of the prosecution, unless trustworthiness of the victim girl or any sound reason for discarding the evidence of the victim girl/PW2. In cases of this nature, presence of eye witnesses are mostly improbable. If the evidence of sole witness is cogent, credible and trustworthy conviction is permissible. Under these circumstances, this Court can safely come to the conclusion that the appellant has committed penetrative sexual assault on the victim girl.



20. Though there is a delay in lodging the complaint [Ex.P1], PW1 and PW2 have given proper explanation for delay in preferring the complaint on 26.07.2016 by P.W.1. In cases like this, no mother would suddenly go to the police station and immediately lodge a complaint. First of all, she would think about the reputation of the family and future of the minor daughter and then only, will decide as to whether go to the police station or not. In this case, PW.1 first decided to approach the President of the Village. Thereafter, she decided to go to the Police Station to lodge a complaint. Therefore, the delay is not an inordinate. There is always constraint for women to rush to police station. Normally in the village, if any dispute arise, firstly they approach the elders or President of the Panchayat to resolve the problem. Mere delay in lodging FIR is not fatal if the delay is satisfactorily explained. In this case the delay has been satisfactorily explained. Even though there are contradictions between the evidence of the prosecution witnesses, considering the object of the POCSO Act, this Court is of the view that the contradictions pointed out by the learned counsel for the appellant are not material contradictions to disbelieve the case of the prosecution, but only minor contradictions with regard to the place of occurrence, and that will not vitiate the case of the prosecution.

21. Therefore, on a perusal and consideration of the evidence of the victim girl/PW2, the Doctor/PW9, the complaint [Ex.P1], the statement of the victim girl recorded under Section 164(5) Cr.P.C. [Ex.P15] and the Accident Register-Ex.P.4, the age Certificate of the victim girl [Ex.P5] which shows that at the time of the occurrence, the victim girl was only 15-17 years old, and all other oral and documentary evidence on record, this Court finds that the prosecution has proved its case beyond all reasonable doubt with cogent evidence that the appellant has committed penetrative sexual assault on the victim girl, who was a minor aged 16 years at the time of the occurrence, and therefore, POCSO Act would attract against the appellant. Though the trial Court held that the prosecution has not established the case on the charges levelled against the appellant for offences under Indian Penal Code, rightly convicted the appellant for the offence punishable under Section 4 of the Protection of Children from Sexual Offence Act, 2012.

22. This Court also independently has come to the conclusion that the appellant has committed penetrative sexual assault on the victim girl and therefore, finds that the prosecution has established its case beyond all 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.

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23. Accordingly, this Criminal Appeal is dismissed and the judgment of conviction and sentence passed by the trial Court is confirmed.

24. The suspension of sentence granted in CrI.M.P.No.13283 of 2019 dated 11.03.2020 stands cancelled. The trial Court is directed to secure the appellant and commit him to prison to undergo the remaining period of sentence. The bail bonds executed by the appellant, if any, shall stand canceled.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Sessions Judge Mahila Court,
Chengalpattu.

2.The Inspector of Police,
All Women Police Station,
Melmaruvathur, Kancheepuram District.

3.The Superintendent,
Central Prison, Puzhal, Chennai.

4.The Public Prosecutor,
High Court, Madras.

5.The Deputy Registrar,
Criminal Section,
High Court, Madras.

(with direction to send back the Original records if any to the trial Court)

+lcc to Mr.G.Magesh Kumar, Advocate Sr.13367

CrI.A.No.615 of 2019

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srg 16/07/2021