

BAIL SLIP

The Appellant herein/Accused viz, Karthick, age 25, S/o.Chinna Abbaiya was directed to be released on bail as per the order of this Court dated 05.09.2019 made in Crl.MP.No. 12777 of 2019 in Crl.A.No. 580 of 2019 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2021

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRL.A.No.580 of 2019
and
Crl.M.P.No.12777 of 2019

Karthick ... Appellant/Sole Accused
.Vs.

State, Rep. by
Inspector of Police,
All Women Police Station,
Denkanikottai,
Krishnagiri District.
(Cr.No.6/2018) ... Respondent /Complainant

Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure to call for the orders passed in Spl.S.C.No.32 of 2018 dated 06.08.2019 by the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri and set aside the same and thereby allow the Criminal Appeal.

For Appellant : Mr.T.Sundaravadanam
For Respondent : Mr.R.Suryaprakash
Government Advocate

J U D G M E N T

This Criminal Appeal has been filed by the sole accused against the Judgment passed by the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri, in Spl.S.C.No.32 of 2018, dated 06.08.2019.

2. Originally, the respondent police registered a case against the appellant/accused in Crime No.6 of 2018 for the offences punishable under Sections 7 r/w 8 of the Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO Act.') and investigation, laid charge sheet before the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri and the same was taken on file in Spl.S.C.No.32 of 2018. After trial, the learned Sessions Judge, found the appellant/accused guilty of the offence punishable under Section 7 r/w 8 of the

Protection of Children from sexual offence Act 2012 and convicted and sentenced his as under:

Conviction	Sentence
U/s. 7 r/w 8 of the Protection of Children from Sexual Offence Act, 2012.	3 years R.I and fine of Rs.1,000/- in default to undergo R.I. for 1 month.

Aggrieved against the same, the accused is before this Court by filing this Appeal.

3. The learned counsel for the appellant would submit that no ingredients for the offence under Sections 7 r/w 8 of the Protection of Children from Sexual Offences Act, 2012 were made out; that the alleged occurrence is said to have taken place on 23.03.2018, whereas, the complaint was given only on 15.04.2018, with a delay of 23 days and there is no proper explanation given for the delay in filing the F.I.R. He would further submit that the witnesses examined by the prosecution viz., P.W.2-elder brother of the victim, P.W.3-father of the victim and P.W.4-mother of the victim are only blood relatives and they are interested witnesses and no independent witnesses were examined in this case. The learned counsel also submitted that in the statement recorded from the victim under Section 161 of Cr.P.C., the victim has not spoken about the alleged offence.

4. He would further submit that there is no corroborating evidence and the place of occurrence has not been specifically given; that in support of their case, the prosecution has not produced either the birth certificate or any other document for the age proof of the victim girl and there is a contradiction between the evidence of P.W.1, P.W.3 and P.W.4 regarding the number of cattles and goats grazing. He would further submit that the brother of the victim girl was not in the scene of occurrence on the alleged date and he was working in the company at Anekal and he used to visit the village once in 15 days, which was deposed by P.W.2-brother of the victim himself. He would further submit that the delay in lodging the complaint itself shows that no such occurrence had taken place and only due to previous enmity, in order to take vengeance, a false complaint has been given against the appellant. It is further submitted that the father of the victim has not given any complaint before the police and only after fifteen days, the complaint was given before the District Collector which is against law. He would further submit that the statement recorded under Section 164 Cr.P.C. does not contain the fact that the appellant had touched the victim girl and now the victim girl is married and settled in life and the learned trial judge failed to appreciate the evidence and simply convicted the accused out of sympathy towards the victim, which warrants interference.

5. The learned Government Advocate (Crl.side) would submit that on the date of occurrence, the victim girl along with her brother went for grazing the cattles and when her brother went to fetch drinking water, the victim was grazing cattles alone and by that time, the appellant came to that place, pulled her hand by saying that he was in love with her for three years and therefore, he cut his hand and when the brother of the victim girl came, the accused immediately ran and escaped by saying that if she informs about the said incident to her parents, he will kill her and therefore, the victim informed about the incident to his brother. He would further submit that on reaching their village, the victim and his brother informed about the incident to their parents, who went to the village head and complained about the behavior of the appellant and thereafter, when the village head went to the house of the appellant and enquired about the incident with his parents, they told that whatever they want to do, they can do and therefore, left with no other option, the father of the victim girl lodged the complaint before the respondent police. He would further submit that the respondent police investigated the matter; laid charge sheet and the same was taken on file by the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri, in Spl.S.C.No.32 of 2018. He would further submit that the Court below, by considering the overall evidence, has come to the conclusion that the victim was aged about 16 years at the time of occurrence and the prosecution has established its case beyond reasonable doubt and thereafter, convicted the accused. He would further submit that since the only allegation is that the accused pulled the hands of the victim, no occasion arose for producing the victim girl before the Doctor for medical examination. He would further submit that the learned Sessions Judge rightly considered all the aspects and convicted the accused which does not warrant any interference by this Court.

6. Heard both sides. Perused the records.

7. The case of the prosecution is that on 23.03.2018 at about 2.30 P.M., the victim girl along with her brother went for grazing the cattles and when her brother went to fetch drinking water, the victim was grazing cattles alone and by that time, the appellant came to that place, pulled her hand by saying that he was in love with her for three years and therefore, he cut his hand and thereafter, when the brother of the victim girl came to the scene, the accused immediately ran and escaped by saying that if she informs about the said incident to her parents, he will kill her and therefore, the victim informed about the incident to his brother. He would further submit that on reaching their village, the victim and his brother informed this incident to their parents, who went to the village head and complained about the appellant and his behaviour and thereafter, when the village head went to the house of the appellant and enquired about the incident with

his parents, they told that whatever they want to do, they can do and therefore, left with no other option, the father of the victim girl lodged the complaint before the respondent police. He would further submit that the respondent police investigated the matter and laid charge sheet and the same was taken on file.

8. In order to prove the case of the prosecution before the trial Court, on the side of the prosecution, as many as 7 witnesses were examined as P.W.1 to P.W.7 and 10 documents were marked as Exs.P1 to P10 and no one witness was examined on the side of the appellant and no document was marked.

9. In order to substantiate the case of the prosecution, the victim girl was examined as P.W.1 and a reading of the deposition of P.W.1 shows that the victim girl has clearly narrated the fact that on 23.03.2018 at about 2.30 P.M., she went along with her brother for grazing the cattles and when her brother left the place for fetching the drinking water, the appellant came there and pulled her hand by saying that for the past three years, he was in love with her and therefore, he cut his hand and asked her to come with him. Thereafter, the brother of the victim girl came to that place and on seeing him, the accused ran away from the scene of occurrence. The victim girl informed about the said incident to her brother and after going to their village, both of them informed the said fact to their parents and their parents immediately informed about the same to their village head and when their village head enquired about the incident to the appellant's parents, they told him that whatever he can do, he can do it and therefore, left with no other option, the victim's father gave a complaint before the police and in that process, there was a delay in lodging the complaint and therefore, the contention of the learned counsel for the appellant that the delay in giving the complaint has not been properly explained, cannot be accepted. Further, it is to be noted that the general practice of the people of villagers in our country is that any untowards incident happens in the village, will be informed to the village head and the same has been done in this case. Normally, in our country, the parents of the girl child is reluctant to inform the police immediately and in this case also, the parents of the victim girl initially approached the village head, who tried to pacify the matter, but because of non co-operation from the accused, left with no other option, the father of the victim girl had approached the police. Therefore, the delay in filing the complaint is not the sole ground to disbelieve the case of the prosecution and in this case, the victim girl was also produced before the learned Magistrate for recording statement under Section 164 Cr.P.C and the learned Magistrate also recorded the statement and the same was marked as Ex.P2. Therefore, a conjoint reading of the evidence of Ex.P2 along with evidence of P.W.'s 1, 2 and 3, clearly shows that the appellant had committed the offence under Sections 7 r/w 8 of

the POCSO Act. Further, the age of the victim girl, at the time of occurrence, is only 16 years and her Date of Birth is 02.03.2003 and she is below 18 years. Therefore, the offence committed by the appellant falls under the provisions of POCSO Act.

10. Though the learned counsel for the appellant submitted that the brother of the victim girl was not in the said village at the time of occurrence and he was working in some other village, the appellant has not substantiated his defense by way of oral and documentary evidence. If at all the brother of the victim girl was not in the place of occurrence on the said date and he was working in Anekal, any one of the co-workers ought to have been examined, but the same has not been done and therefore, the Court below found that the prosecution has proved its case beyond reasonable doubt.

11. On a reading of the evidence of P.W.1 and P.W.2, this Court finds that the appellant has committed the offence punishable under Sections 8 of the POCSO Act. Since, the allegation is that the appellant has only pulled the hands of the victim, the victim was not produced before the Doctor for medical evidence. In this context, it is necessary to extract Section 7 of the POCSO Act:

"7. Sexual assault. - Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault."

12. In this case, the victim has very clearly stated that the appellant pulled her hand by saying that he was in love with her for three years and asked her to come with him, the offence under Section 7 of the POCSO Act would attract. Presumption under Section 29 of the POCSO Act came into play, the appellant has not rebutted the presumption. Therefore, the prosecution has established its case beyond reasonable doubt. There is no merit in the Appeal and the same is liable to be dismissed and accordingly, this Criminal Appeal is dismissed by confirming the conviction imposed by the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri, Coimbatore on the appellant. However, considering the age of the appellant and the act committed by him, in order to meet the ends of justice, the sentence alone is modified from three years to two years.

13. In the result, this Criminal Appeal is dismissed with the above modification. The suspension of sentence already

granted by this Court dated 05.09.2019 in Crl.M.P.No.12777 of 2019 in Crl.A.No.580 of 2019 stands cancelled. The trial Court is directed to secure the appellant for sufferance of the above sentence.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge, Fast Track Mahila Court, Krishnagiri.
2. The Inspector of Police, All Women Police Station, Denkanikottai, Krishnagiri District.
3. The Public Prosecutor Madras High Court
4. The Deputy Registrar (Crl.side) High Court, Madras.

+1cc to Mr.T.Sundaravadanam, Advocate, S.R.No. 7726

CRL.A.No.580 of 2019

BS (CO)
GN(08/07/2021)

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