

**Bail Slip**

The Appellant herein/Accused namely T.Siva S/o.Thangaraj in Spl.S.C.No.35 of 2018 on the file of the Sessions Court, (Fast Track Mahila Court), Tiruppur was ordered to be released on bail by order of this Court dated 05.08.2020 and made in CrI.M.P.No.14155 of 2019 in CrI.A.No.667 of 2019.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2021

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRL.A.No.667 of 2019 and  
CrI.M.P.No.14155 of 2019

T.Siva ..... Appellant/Sole Accused

.Vs.

1. State represented by  
The Assistant Commissioner of Police,  
Tiruppur South,  
All Women Police Station,  
Tiruppur,  
Tiruppur District.
  2. The Inspector of Police,  
All Women Police Station, Tiruppur South,  
Tiruppur District,  
in Crime No.8 of 2018
- ..... Respondents

Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure to call for the records and set aside the order of conviction and sentence passed in Spl.S.C.No.35 of 2018 dated 28.03.2019 on the file of the learned Sessions Judge, Fast Track Mahila Court, Tiruppur and allow this appeal and acquit the Appellant/Accused from the charge levelled against him.

For Appellant : Mr.K.P.P.Raja Raja Chozhan  
Legal Aid counsel

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

## J U D G M E N T

This Criminal Appeal has been filed challenging the conviction and sentence passed in Spl.S.C.No.35 of 2018 dated 28.03.2019 on the file of the learned Sessions Judge, Fast Track Mahila Court, Tiruppur.

2. The respondent police registered a case in Crime No.8 of 2018 against the appellant for the offences punishable under Section 7 r/w 8 of Protection of Children from Sexual Offences Act 2012 (for short 'POCSO Act') and thereafter altered by incorporating Section 3 (1)(w)(i) r/w 3 (2)(va) of SC/ST Act (Prevention of Atrocities) Act. After investigation, charge sheet was laid and taken on file before the Magalir Neethimandram in S.C.No.35 of 2018 for the offence under Section 9 (m) r/w 10 of POCSO Act and Section 3 (1)(w)(i) r/w 3 (2)(va) of SC/ST Act (Prevention of Atrocities) Act.

3. After completing the formalities, the learned Judge framed the charges against the accused and after trial, found the appellant guilty of the offence punishable under Section 9 (m) r/w 10 of POCSO Act and Section 3 (1)(w)(i) r/w 3 (2)(va) of SC/ST Act (Prevention of Atrocities) Act and convicted and sentenced the appellant to undergo rigorous imprisonment for a period of five years with fine of Rs.5,000/- for each of the offences. The above sentences were ordered to run concurrently. Aggrieved by the said conviction, the appellant is before this Court by filing this Appeal.

4. The learned counsel for the appellant submits that a false case has been registered against the appellant and there are material contradictions in the complaint and statement recorded from the victim girl under Section 164 Cr.P.C. In the complaint, she has stated that when the victim girl had gone to attend nature's call at Muthusamy Gounder's North Thottam, the appellant embraced her from the back side, whereas in the statement recorded by the learned Magistrate under Section 164 Cr.P.C. she has stated that when she was attending nature's call in Muthusamy Gounder's Thottam, the appellant came there and on seeing him she started running and the appellant followed her, lifted her and put her on his shoulder. He further submits that the mother and grandmother of the victim girl admitted that they did not know the name of the appellant at the time of lodging the complaint, whereas in Ex.P-2, complaint, the name of the accused is mentioned. He would further submit that the appellant is a resident of Usilampatti and he was working at Tiruppur at the time of occurrence and there was money transaction between the accused and P.W.3, due to which he has been falsely implicated in this case. He would further submit that a case has been registered by the respondent police under Section 7 r/w 8 of POCSO Act 2012, after investigation when they came to know that the victim

belongs to Scheduled Caste community, the charge sheet was altered by incorporating Section 3 (1)(w)(i) r/w 3 (2)(va) of SC/ST Act (Prevention of Atrocities) Act. He further submits that the trial Court also without appreciating the same convicted the appellant for the offence punishable under Section 3 (1)(w)(i) r/w 3 (2)(va) of SC/ST Act (Prevention of Atrocities) Act. He would further submit that as far as POCSO Act is concerned, the prosecution has not established its case beyond reasonable doubt. He would further submit that independent witnesses have not been examined in this case and therefore the Judgment of the trial Court is liable to be set aside.

5. The learned Government Advocate (Crl. Side) would submit that at the time of occurrence the victim girl was below 18 years and when she went to attend nature's call at Muthusamy Gounder's North Thottam, the appellant followed the victim girl, came behind her, lifted her and put her on his shoulders and when she raised alarm, the grandmother of the victim girl came there and shouted at the accused, and thereafter the accused ran away from the place of occurrence. Subsequently, she informed to the mother of the victim girl and thereafter a complaint was lodged against the appellant. He further submits that since there was no penetrated sexual assault, she was not produced before the medical officer for medical examination. He further submit that the victim girl was produced before the learned Magistrate for recording statement under Section 164 Cr.P.C. and she was examined before the Court as P.W.1., and she has clearly narrated the occurrence. The mother and grandmother of the victim girl were examined as P.W.2 and P.W.3 respectively and their version corroborate the statement of the victim girl. He would further submit that from the evidence of P.W.'s 1 and 3, the prosecution has proved its case beyond reasonable doubt and further the appellant has not rebutted the presumption in the manner known to law as mentioned under Section 29 of the POCSO Act. He would further submit that the trial Court has rightly appreciated oral and documentary evidence and convicted the appellant under Section 9(m) r/w 10 of POCSO Act and since the victim girl belongs to Scheduled Caste community and the appellant belongs to backward community, the offence under Section 3 (1)(w)(i) r/w 3 (2)(va) of SC/ST Act (Prevention of Atrocities) Act was also invoked. He would further submit that the prosecution has established its case beyond reasonable doubt and the learned Sessions Judge, rightly appreciated the entire evidence and convicted the accused as stated above and there is no merit in this Criminal Appeal and the same deserves to be dismissed.

6. Heard both sides and perused the records.

7. The case of the prosecution is that on 04.06.2018 at about 7.40 A.M., when the victim girl went to attend nature's call at Muthusamy Gounder's North Thottam, the accused, with

sexual intent, came there followed the victim and hugged her. Thereafter, the victim raised alarm and on hearing the alarm, the grandmother of the victim girl, who was attending her nature's call on the other side of the farm shouted at the accused and thereafter the accused left the victim and ran away from the scene of occurrence. Subsequently, the grandmother of the victim girl informed the said fact to the mother of the victim girl and thereafter a complaint was lodged before the respondent police.

8. In order to prove the case of the prosecution before the trial Court, the prosecution examined as many as 10 witnesses as P.W.1 to P.W.10 and 14 documents were marked as Exs.P1 to P14 and the C.D. was exhibited as M.O.1.

9. After completing the prosecution evidence, the incriminating circumstances culled out from the prosecution witnesses were put before the appellant and the appellant denied it as false, however on the side of the appellant, no witness was examined and no documentary evidence was produced.

10. After considering the evidence on record and after hearing either side, the Magalir Neethimandram vide judgment dated 28.03.2019 in Spl. S.C.No.35 of 2018, convicted and sentenced the appellant as stated supra.

11. Challenging the said 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. As per Ex.P1 birth certificate, date of birth of the victim girl is 09.03.2009. As per the evidence of P.W.1- the victim girl, the date of offence is 04.06.2018 i.e., the victim girl was 17 years, at the time occurrence. Therefore, the victim girl is a child under the definition of POCSO Act. The appellant is liable to be prosecuted under the POCSO Act.

14. The victim girl was examined as P.W.1. A reading of the evidence of the victim girl shows that when the victim girl was attending her nature's call at Muthusamy Gounder's North Thottam, the accused came from backside and hugged her. Thereafter, the victim raised an alarm and after hearing this, the grandmother of the victim girl, who was attending her nature's call on the other side of the Kadu shouted and on hearing the voice of her grandmother, the accused left the victim and ran away from the scene of occurrence. Subsequently she came to her house and informed the occurrence to her mother and thereafter the mother of the victim lodged a complaint. The mother of the victim was examined as P.W.2. and she has deposed that she came to know the alleged occurrence from her daughter and her aunt and thereafter she lodged the complaint against the accused. The grandmother of

the victim girl was examined as P.W.3. She has stated that when she was attending nature's call in Muthusamy Gounder's farm, her granddaughter who was also attending her nature's call on the other side suddenly raised an alarm and on hearing the same, she went to the place of occurrence and saw the accused hugging Manisha and on seeing this, she shouted at the accused, immediately he left her granddaughter and ran away. The evidence of P.W.2 and P.W.3 corroborate the evidence of P.W.1.

15. As far as the contention of the learned counsel for the appellant that in the statement recorded under Section 164 Cr.P.C., the victim girl has stated that when she was attending her nature's call, the accused came there and on seeing him she started to run and the accused followed her and lift and put her in his shoulder and thereafter she raised alarm and on hearing the same, her grandmother came to the place of occurrence and shouted at the accused and thereafter the accused ran away, which does not substantiate the evidence of victim girl before Court. The complaint also states otherwise. It is well settled proposition of law that the complaint is not an encyclopedia and the alleged complaint was given only by the mother based on the information given by her daughter and therefore there may be some contradictions, but the same cannot be taken as a ground to acquit the accused. Further, the grandmother of the victim girl, P.W.3 who is an eye witness to the occurrence has stated that when she went to the place of occurrence, she saw the accused hugging her granddaughter and therefore, this Court does not find any reason to disbelieve the evidence of P.W.1-victim and P.W.3, the grandmother who is an eye witness. Further, the statement of the victim girl that after hearing her noise, her grandmother came to the place of occurrence and shouted at the accused, and the evidence of P.W.s 1 and 3 corroborate each other. Therefore, the trial Court by considering the evidence of P.W.1 to P.W.3, has found that the prosecution has proved its case beyond reasonable doubt for the offence under Section 9 (m) r/w 10 of POCSO Act. This Court does not find any perversity in the Judgment passed by the trial Court with respect of the aforesaid offence. Hence, the conviction and sentence imposed on the accused for the offence punishable under Section 9 (m) r/w 10 of POCSO Act is confirmed.

16. As far as the offence punishable under Section 3 (1) (w) (i) r/w 3 (2) (va) of S.C./S.T. (Prevention of Atrocities) Act is concerned, this Court finds that there is no averment in the complaint with regard to degrading of the victim, by uttering her caste name and the trial Court failed to appreciate the evidence and convicted the accused under Section 3 (1) r/w 3 (2) (va) of S.T./S.T. Act and, hence, the conviction and sentence imposed on the accused with respect to the offence under Section 3 (1) r/w 3 (2) (va) of S.T./S.T. Act has not been established and, accordingly, the same is set aside. The fine amount, if paid, in respect of the said

offence shall be refunded.

17. In the result, this Criminal Appeal is partly allowed, by confirming the conviction and sentence imposed on the accused for the offence punishable under Section 9 (m) r/w 10 of POCSO Act and setting aside with respect to the offence under Section 3 (1) r/w 3 (2) (va) of S.T./S.T. Act. The fine amount, if paid, in respect of the said offence shall be refunded. The suspension of sentence already granted by this Court on 05.08.2020 in CrI.M.P.No.14155 of 2019 stands cancelled. The trial court is directed to secure the appellant for sufferance of the above sentence under Section 9 (m) r/w 10 of POCSO Act. The Legal Aid counsel appointed by this Court is entitled to legal fees, as per rules.

Sd/-  
Assistant Registrar (CS-VII)

//True copy//

Sub Assistant Registrar

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To

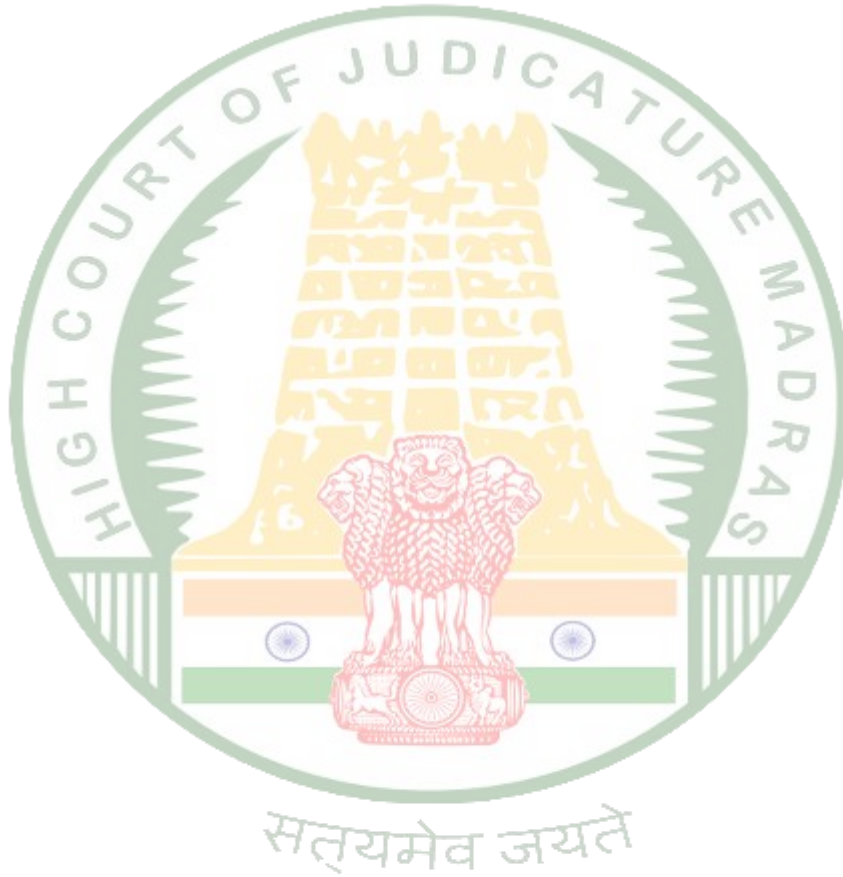
1. The Sessions Judge,  
Fast Track Mahila Court,  
Tiruppur.
2. -DO-Through "The Principal Sessions Judge,  
Tiruppur.
3. The Assistant Commissioner of Police,  
Tiruppur South,  
All Women Police Station,  
Tiruppur,  
Tiruppur District.
4. The Inspector of Police,  
All Women Police Station, Tiruppur South,  
Tiruppur District.
5. The Public Prosecutor,  
High Court, Madras.
6. The Deputy Registrar  
(Criminal Section),  
High Court, Madras.
7. The Secretary,  
Legal Services Authority  
Madras High Court, Chennai.

8. The Superintendent of Prison,  
Central Prison,  
Coimbatore.

+2cc to Mr.K.P.P.Raja Raja Chozhan, Advocate SR.No.13466

CRL.A.No.667 of 2019

SV(CO)  
GMY(06/07/2021)



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