



BAIL SLIP

The appellant, namely, Manimuthu (Accused in S.C.No.249 of 2018, dated 06.09.2019 on the file of the Sessions Judge, Mahila Court, Chennai) was released on bail vide order of this court, dated 03.10.2019 and made in CrI.M.P.No.13986/2019 in CrI.A.No.658 of 2019.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2021

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRL.A.No.658 of 2019

Manimuthu

..Appellant/Accused

.Vs.

State Represented by
The Inspector of Police,
W.26, All Women Police Station,
Ashok Nagar, Chennai-83.

..Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure to set aside the conviction and sentence imposed on the appellant/accused by a judgment dated 06.09.2019 on the file of the Sessions Judge, Mahila Court, Chennai and made in S.C.No.249 of 2018.

For Appellant : Mr.G.Ashok Kumar

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

JUDGMENT

This Criminal Appeal has been filed against the Judgment dated 06.09.2019 in S.C.No.249 of 2018 on the file of the Mahila Court/Special Court for Cases Under POCSO Act/Children's Court, Chennai.

2.The respondent police registered a case in Crime No.2 of 2017 against the appellant for the offence punishable under Section 12 of The Protection of Children from Sexual Offences Act, 2012 [hereafter 'POCSO Act' for the sake of convenience]. After investigation, the respondent police filed a charge sheet before the learned Sessions Judge, Mahila Court/Special Court



for Cases Under POCSO Act/Children's Court, Chennai and the same was taken on file in S.C.No.249 of 2018.

3. After completing formalities, the trial Court framed the charges against the appellant for the offences punishable under Section 363 IPC and Section 12 of POCSO Act. The appellant/accused found guilty and convicted for the offence under Section 12 of POCSO Act and sentenced to undergo simple imprisonment for a period of two years and to pay a fine of Rs.5,000/- and in default, to undergo simple imprisonment for a period of six months. The appellant/accused was acquitted from the charge under Section 363 IPC.

4. Being aggrieved by the said judgment of conviction and sentence, the appellant is before this Court.

5.1 The learned counsel for the appellant would submit that though the offence is alleged to have committed on 23.06.2017, but there is a delay in lodging the complaint, which came to be filed on 28.06.2017. The trial Court failed to appreciate that the complaint was preferred after five days and the delay was not properly explained. Such unexplained inordinate delay is fatal to the case of the prosecution. Further, the alleged occurrence said to have taken place in the open place and not in a hidden place. At the time of occurrence, the appellant was aged about 65 years and he was having his grand daughter in his hands and the same was admitted by the victim girl (P.W.1) and the eye witness (P.W.3). Since the accused was having a child in his hands at the time of occurrence, it was not possible for him to commit such a sexual harassment to the victim by lifting his lungi. Therefore, the appellant could not have any intention to commit sexual assault on the victim girl and he might have adjusted his lungi. The victim girl (P.W.1) and the eye witness (P.W.3) misunderstood the action of the appellant and preferred a complaint. Therefore, he has no guilty intention and he has not committed any offence as alleged by the prosecution. He would further submit that the victim girl, while deposing her evidence before the Court has stated the appellant lifted his lungi and showed his private part. Whereas, statement under Section 164 Cr.P.C., the victim girl has stated that appellant lifted her dress and kept his hands on her private part. The trial Court failed appreciate the contradictory statement of the victim girl.

5.2 The learned counsel for the appellant would further submit that after due deliberation, P.W.3 defacto complainant preferred the complaint against the appellant. The respondent police registered the case belatedly, knowing fully well that it is a false case and conducted the investigation and laid a charge sheet before the Court below. He would further submit



that no independent witnesses have been examined. However, the learned trial Judge failed to consider the materials and erroneously convicted the appellant only on assumption and sympathy, and therefore, the judgment of conviction and sentence passed by the trial Court against the appellant, is liable to be set aside.

6.1 The learned Government Advocate (Crl.Side) would submit that at the time of occurrence, the victim girl (P.W.1) is aged about six years and was studying 3rd standard. The appellant is the neighbour of the victim girl. On 23.06.2017 at about 4.45 p.m., when the victim girl was playing down stairs of her house along with her younger sister, the accused/appellant took her to the nearby common water tank and lifted his lungi and showed his private part to the victim girl. P.W.3, who is the neighbour of the victim girl noticed the said incident through the window of her house and shouted the appellant. Thereafter, she informed the same to the mother of the victim girl (P.W.2). After discussion, P.W.3, the neighbour of the victim girl preferred a complaint against the appellant and the respondent police registered the case. Therefore, from the evidence of the eye witness (P.W.3) and the victim girl (P.W.1), the prosecution has proved its case beyond reasonable doubt.

6.2 The learned Government Advocate (Crl.Side) would further submit that prosecution has examined as many as 4 witnesses on its side. During the examination of the witnesses, the victim girl (P.W.1) and the eye witness (P.W.3) have clearly deposed that at the time of occurrence, the appellant with sexual intention called the victim girl and lifted his lungi and showed his private part, which falls under Section 11 of POCSO Act, which is punishable under Section 12 of POCSO Act. He would further submit that the presumption under Section 29 of the POCSO Act can very much be attracted against the accused. Since, in this case, the said presumption has not been rebutted by the accused in the manner known to law. Therefore, the trial Court has rightly convicted the appellant and hence, the appeal is liable to be dismissed.

7. Heard the learned counsel for the appellant and the learned Government Advocate (Crl.Side) for the respondent and also perused the materials available on record.

8. The case of the prosecution is that the victim girl (P.W.1) was aged about 6 years at the time of occurrence i.e. on 23.06.2017. When the victim girl was playing at down stairs of her house, the accused took her to the nearby common water tank and lifted his lungi and showed his private part to the victim girl. P.W.3, who is the neighbour of the victim girl saw the said incident and informed the same to the mother of the victim



girl (P.W.2). After discussion, they preferred a complaint (Ex.P3) to the respondent police and they have registered the case in Crime No.2 of 2017 against the appellant. After completing the investigation, the respondent Police laid a charge sheet before the learned Sessions Judge, Mahila Court/Special Court for Cases Under POCSO Act/Children's Court, Chennai and the same was taken on file in S.C.No.249 of 2018 and charges were framed against the appellant for the offences as referred to above.

9. In order to prove the case of the prosecution before the trial Court, on the side of the prosecution as many as 4 witnesses were examined as P.W.1 to P.W.4 and also marked four documents as Exs.P1 to P4 and no material object was marked. After completion of the prosecution side evidence, the incriminating circumstances were put to the appellant/accused by examining the appellant/accused under [Section 313](#) of Cr.P.C and he denied all the incriminating circumstances as false and pleaded not guilty. On the side of the defence, no oral and documentary evidence was marked.

10. The Court below, after hearing the arguments advanced on either side and also considering the materials available on record, found that the accused/appellant is guilty for the offence and convicted him and imposed sentence as referred to above, which is challenged in this Criminal Appeal.

11. 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.

12. It is the specific case of the prosecution that on 23.6.2017 at about 4.45 p.m., when the victim girl, who was aged about 6 years was playing at her residence, the appellant took her to nearby common water tank and showed his private part. P.W.3, who is the neighbour of the victim girl (P.W.1) noticed the said incident and informed the same to P.W.2/mother of the victim girl. Subsequently, they preferred the complaint against the appellant.

13. At this juncture, the learned counsel for the appellant would submit that no such occurrence has taken place. P.W.1/victim girl and P.W.3/eye witness during their cross examination admitted that the appellant was having his grand daughter in his hands and it was not possible for him to commit such sexual harassment to the victim.

14. On a careful reading of the entire records, it would reveal that soon after the occurrence, the victim girl (P.W.1) was produced before the learned Judicial Magistrate for



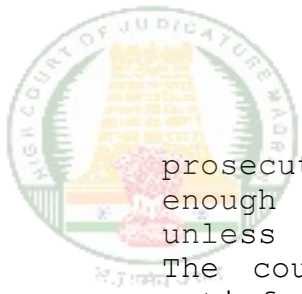
recording statement under Section 164 Cr.P.C. (Ex.P1) and she has stated that the appellant is her neighbour. On 23.6.2017 when she was playing with her younger sister in the upstairs, at that time, the accused, who was standing downstairs of the house asked them to come down and they went down. At that time the accused touched her private part and subsequently, he lifted his lungi and showed his private part. Though the statement recorded under Section 164(5) Cr.P.C is not a substantive evidence. Subsequently, the victim girl was examined as P.W.1 and during her examination she has clearly narrated the said incident. There is a minor contradiction and insignificant discrepancies in the statement of a prosecutrix. Therefore, the statement under Section 164 Cr.P.C was substantiated by examining the victim girl as P.W.1.

15. P.W.3, who is the neighbour of the victim girl and also eye witness of the said occurrence has clearly deposed that when she was standing near the window of her house, in order to see whether her son was returning from the school; at that time, she saw the said occurrence and shouted the appellant. On hearing, the neighbours and mother of the victim girl (P.W.2) gathered there and P.W.3 informed the same to P.W.2. Thereafter, P.W.3 preferred a complaint to the respondent police.

16. Though the occurrence had taken place on 23.06.2017, the complaint was said to have been registered on 28.06.2017 with a delay of 5 days. Mere delay in registering FIR for sexual offence may not be a sole ground to disallow the prosecution evidence. It is a settled law that the conviction can be based on the sole testimony of prosecutrix, if the same is clear, cogent and trustworthy and appears to the Court to be true. When the delay is inordinate and version of the complainant is honest and straight forward, the delay will not be fatal.

17. The main contention of the learned counsel for the appellant is that at that time of occurrence, the appellant was having his grand daughter with his hands and it was not possible for him to commit sexual harassment as alleged in this case, at that time he only adjusted his lungi, the victim girl and the eye witness misunderstood the same and preferred the complaint. However, on combined reading of the evidence of the victim girl (P.W.1) and eye witness (P.W.3), it would reveal that the appellant with sexual intention purposefully misbehaved with the victim girl.

18. This Court held that in cases involving sexual harassment, molestation, etc. the court is duty-bound to deal with such cases with utmost sensitivity. Minor contradictions or insignificant discrepancies in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable



prosecution case. Evidence of the victim on sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration. The court may look for some assurances of her statement to satisfy judicial conscience. The statement of the prosecutrix is more reliable than that of an injured witness as she is not an accomplice. The Court further held that the delay in filing complaint for sexual offence may not be even properly explained, but if found natural, the accused cannot be given any benefit thereof. In this case the presumption under Section 29 of the POCSO Act can very much be drawn against the accused, since the said presumption has not been rebutted by the accused in the manner known to law.

19. Therefore, this Court finds that the appellant has committed the charged offence. There is no reason to discard the evidence of the victim girl. The prosecution has proved its case beyond reasonable doubt. The trial Court, as a fact finding Court has rightly appreciated the entire evidence and convicted the accused/appellant for the offence under Section 12 of POCSO Act and hence, the conviction cannot be interfered with.

20. Considering the age of the appellant and the offence involved in this case and also considering the mitigating circumstances, this Court is of the opinion that the sentence of two years simple imprisonment imposed on the appellant by the trial Court is to be modified to one year simple imprisonment, which will meet the ends of justice.

21. In the result, this Criminal Appeal is dismissed with the above modification with regard to quantum of sentence i.e. the appellant is sentenced to undergo one year simple imprisonment instead of two years simple imprisonment. In all other aspects, the judgement in S.C.No.249 of 2018 by the Sessions Judge, Mahila Court/Special Court for Cases Under POCSO Act/Children's Court, Chennai stands unaltered. If the appellant/accused is not in duress, the trial Court is directed to take appropriate steps to secure the presence of the appellant to serve the remaining period of sentence.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge,
Mahila Court/Special Court for Cases
Under POCSO Act/Children's Court,
Chennai.

2. The Principal Sessions Judge,
Chennai.

3. The Inspector of Police,
W.26, All Women Police Station,
Ashok Nagar, Chennai.

4. The District Collector,
Chennai.

5. The Director General of Police,
Chennai.

6. The Public Prosecutor,
High Court, Madras.

Copy to :

1. The Deputy Registrar | with a direction to send back the
(Criminal Section), | original records, if any, to the
High Court, Madras. | trial Court

2. The Section Officer,
Criminal Section,
High Court, Madras.

3. The Hon'ble POCSO Committee,
High Court, Madras.

+1cc to Mr.G.Ashok Kumar, Advocate, S.R.No.11126

CRL.A.No. 658 of 2019

PBS (CO)
RGA (29/07/2021)