

BAIL SLIP

Mr.Rajendran S/o.Chinnasamy accused in Spl.S.C.No.27/2019 on the file of Sessions Judge, Mahila Court, Perambalur was enlarged a bail by this Hon'ble Court, vide order dt 20/11/2019 in Crl.M.P.No.13932 of 2019 in Crl.A.No.656 of 2019.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2021

C O R A M

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.656 of 2019

Rajendran

...

Appellant

Vs.

The State Represented by
Inspector of Police,
All Women Police Station,
Perambalur.
(Crime No.20 of 2018)

...

Respondent

PRAYER: Criminal Appeal is filed under Section 374 (2) of Cr.P.C. to call for the records made in Spl.S.C.No.27 of 2019, on the file of the learned Sessions Judge, Mahila Neethimandram, Perambalur, dated 12.09.2019 and set-aside the same.

For Appellant : Mr.M.Velmurugan

For Respondent : Mr.R.Suryaprakash
Government Advocate

J U D G M E N T

This Criminal Appeal has been filed against the Judgment of Conviction and Sentence, dated 12.09.2019 made in Spl.S.C.No.27 of 2019, on the file of the learned Sessions Judge, Mahila Neethimandram, Perambalur.

2. The respondent-Police registered a case against the appellant in Crime No.20 of 2018, for the offences under Sections 11 (1) r/w 12 of Protection of Children from Sexual Offences Act, 2012 (For brevity "the POCSO Act). After the

investigation, laid a charge sheet before the learned Sessions Judge, Mahila Neethimandram, Perambalur. On appearance of the appellant, the provisions of Section 207 of Cr.P.C., were complied with and the trial Court framed charges for the offence under Section 11 (1) r/w 12 of POCSO Act, against the appellant and conducted the trial.

3. After considering the evidence on record and hearing on either side, the learned Judge, by Judgment dated 12.09.2019, convicted the appellant for the offence under Section 11 (1) of POCSO, Act, which is punishable under Section 12 of POCSO Act and sentenced him to undergo three years Rigorous Imprisonment and to pay a fine of Rs.3,000/-.

4. Challenging the said Judgment of conviction and sentence, the accused /appellant has preferred the present Appeal.

5. The learned counsel for the appellant would submit that based on the information received from the unknown persons to the Child Help Line, the father of the victim girl made a complaint before the respondent-Police against the appellant and however, the person who said to have informed the incident to the Child Help Line has not been examined. Further, the Investigating Officer went to the School only after 10 days of the occurrence, and there was no corroboration in the evidence of the victim girl. There was a misunderstanding between the Headmaster and the appellant and due to which, they foisted a false case against the appellant. Even the victim girl has not stated anything that the appellant had committed any sexual assault on the victim girl and there was no corroboration in the evidence and no eyewitness in this case and further, no one has spoken about the scene of occurrence. The learned Judge, based on presumption and also on the ground of sympathy, convicted the appellant for the offence under Section 11 r/w 12 of POCSO Act, and awarded maximum punishment, which warrants interference.

6. The learned Government Advocate would submit that the the appellant was working as watchman in the school, in which, the victim girl was studying in 9th standard. The appellant had asked the victim girl to remove her shirt, if she agrees, he would pay the amount and the victim girl did not disclose the occurrence to any one, except her friend Aarthi. The occurrence came to know to the father of the victim girl, when he received a call from the Child Help Line, stating that her daughter needs some counselling and asked him to come to the Office, when he had gone to Child Line Office, the occurrence was informed to the father of the victim girl, and on the advise of the Child Welfare Officer, the father of the victim girl gave a police complaint against the accused. Thereafter, the Police went to the School. After enquiry, the respondent-Police found that the

appellant had committed the offence and immediately counselling was given to the victim girl and the statement under Section 164 of Cr.P.C. was recorded by the learned Magistrate and the same was marked as Ex.P8. A perusal of the evidence of the victim girl and the statement recorded under Section 164 of Cr.P.C., the prosecution has proved his case beyond reasonable doubt. Therefore, the learned Judge, rightly appreciated the evidence of the prosecution witnesses and convicted the appellant under Section 11 (1) r/w 12 of POCSO Act and therefore, the learned Government Advocate, prays for dismissal of the Appeal.

7. Heard the learned counsel on either side and perused the materials placed on record.

8. The case of the prosecution is that on 09.08.2018, the father of the victim girl, received a call stating that her daughter needs some counselling and he was asked to come to their Office and when he had gone to the Child Help Line Office, the occurrence was informed to the father of the victim girl viz., on 31.07.2018, at about 09.15 a.m., the appellant had asked the victim girl to remove her shit, if she agrees, he would pay the amount and the victim girl did not disclose the occurrence to any one; and on the advise of the Child Welfare Officer, the father of the victim girl gave a police complaint against the accused. Based on which, the respondent-Police registered a case against the appellant for the offence under Section 11 (1) r/w 12 of POCSO Act. Subsequently, the Investigation Officer, investigated the matter and laid a charge sheet before the learned Sessions Judge, Mahila Neethimandram, Perambalur.

9. In order to prove the case of the prosecution, on the side of the prosecution, 18 witnesses were examined as P.W.1 to P.W.18 and 11 documents were marked as Exs.P1 to P11. After completion of the examination of the prosecution witnesses, the incriminating circumstances culled out from the evidence of the prosecution witnesses were put before the appellant, the same was denied as false and on the side of the defence, no oral and documentary evidence was let in. The learned Sessions Judge, Mahila Neethimandram, Perambalur, after hearing the arguments on either side and considering all the materials placed on record, found that the appellant is guilty and convicted and sentenced, as referred above, which is challenged in this Criminal Appeal.

10. Since this Court is an Appellate Court and also final Court of fact finding, has to re-appreciate the entire evidence and come to the conclusion independently. A careful reading of statement recorded under Section 164 of Cr.P.C., of the victim girl by the learned Magistrate, it could be seen that the victim girl has narrated the entire occurrence that took place on

31.07.2018, which was marked as Ex.P8 and also during evidence, she deposed the entire occurrence. A reading of the evidence of the victim girl, who was examined as P.W.2, has clearly deposed that when she had gone to bathroom on 31.07.2018, the accused was standing in front of the bathroom, asked her to remove her shirt, if she accepts, he would pay amount and immediately, she returned to class and informed the occurrence to her friend Aarthi, but she did not disclose to any one in her family. Thereafter, an Officer came to School and he enquired her in the Office room in the presence of the Headmaster, and she revealed the occurrence to them. Thereafter, her father had come to School and the Officer of Child Line, took the victim girl and her father into their Office and in that Office, when they enquired, she again revealed the entire occurrence. Thereafter, her father made a complaint and she was produced before the learned Judicial Magistrate and statement was recorded, which was marked as Ex.P8.

11. P.W.3, Child Line Officer had adduced evidence that on 01.08.2018, he had received a call from Sudha stating that a person working as Watchman in the Nakkasalem School, doing misbehaviour with the students, who are studying in the school and based on the said information, he along with one Pattu, who is handling the cases relating to victim child, and when they called to the number from which, they received a call, it got switched off, till 04.08.2018, and since on 05.08.2018 Sunday, they didn't go to School and when they had gone to 06.08.2018, the victim girl was on leave and after that on 07.08.2018 and 08.08.2018, the Government announced Holidays, due to funeral of the then Chief Minister. Thereafter, on 09.08.2018, they had gone to School and when enquired the victim child, but she did not respond and thereafter, they got the mobile number of her brother who was studying in the school, and called her father and asked him to come to School, when he arrived, informed the occurrence to him. Thereafter, they were taken to their office and in their presence, the victim girl informed that on 31.07.2018, at about 09.15 a.m., the accused was standing in front of the bathroom, asking her to remove the shirt, if she agrees, he would pay amount to her. Thereafter, counselling was given to the victim girl and subsequently, her father made a complaint before the respondent-Police.

12. A combined reading of the statement of the victim girl, which was marked as Ex.P8, and the evidence of P.W.2, victim girl and also the evidence of P.W.3 Child Welfare Officer, it could be seen that the appellant has committed the offence under 11 (1) r/w 12 of POCSO Act, and the prosecution has proved its case beyond reasonable doubt.

13. Though the learned counsel for the appellant vehemently contended that there is no corroboration and there is no eyewitness, and the victim girl has not stated the alleged occurrence before her father or her brother and even before school teachers, therefore, the case has been falsely foisted against the appellant, is not acceptable, as the Court cannot expect witnesses, especially in POCSO Cases, since the culprit will wait for a chance taking advantage of the loneliness of the victim girl, they used to commit these type of offenses, and therefore, because the victim girl has not informed the occurrence to either her parents or teachers and the court cannot come to the conclusion that the prosecution has not proved its case on the ground of non informing the incident to anyone.

14. Further, there was no reason to discard the evidence of P.W.2. Normally, in criminal cases, corroboration of witness is necessary, whereas, offence under POCSO Act, the evidence of the victim girl is sufficient and the Court cannot expect the eyewitness, since it is not the case of the prosecution that the offense had taken place in the public place or in the presence of some other eye witness. It is not in dispute, at the time of occurrence, the appellant was working as a watchman and he was having access to the ladies bathroom. The victim girl was also attended the school on that day. Therefore, there is no reason to discard or disbelieve the evidence of P.W.2 and there is no reason to doubt about trustworthiness of the victim girl and there is no necessity for the victim girl to make false case against the watchman. If the evidence of sole witness is cogent, credible and trustworthy, conviction is permissible. In cases of this nature presence of eyewitnesses are mostly improbable.

15. Therefore, under the circumstances, this Court also finds that the prosecution has proved its case beyond the reasonable doubt and there is no reason to interfere with the judgement of the learned Sessions Judge, Mahila Neethimandram, Perambalur. Therefore, this Court does not find any merit in the Appeal and the Appeal is liable to be dismissed, accordingly, it is dismissed. Since the appellant is on bail, his bail bonds are hereby cancelled and the learned learned Sessions Judge, Mahila Neethimandram, Perambalur is directed to secure the accused for undergoing the remaining period of sentence.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

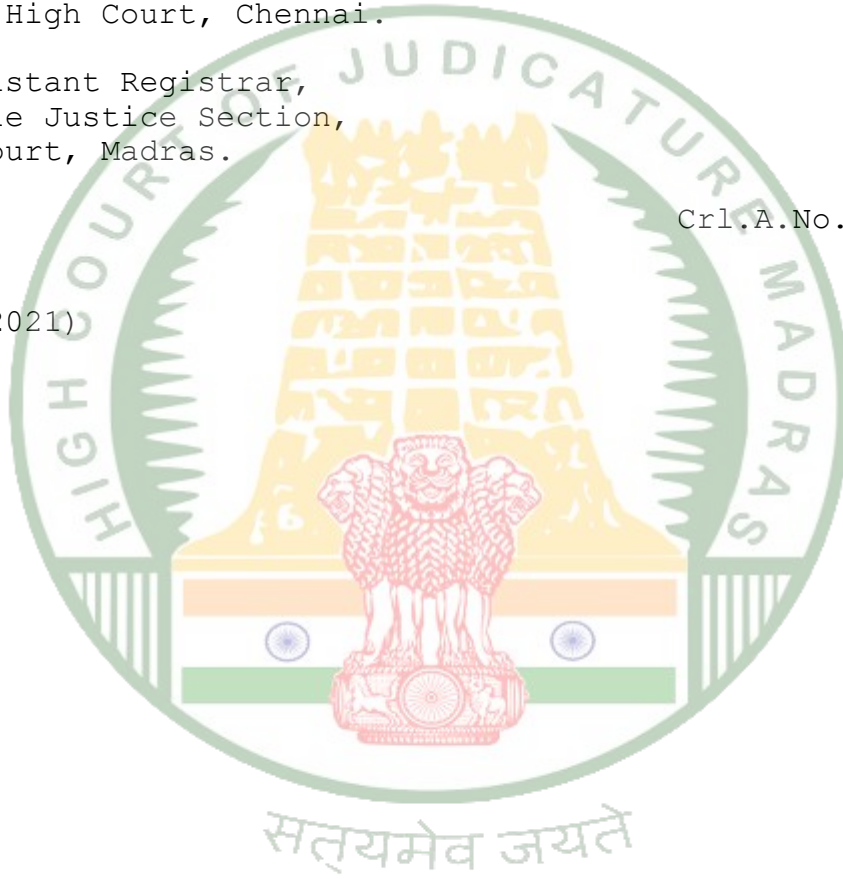
r n s

To

1. The Sessions Judge,
Mahila Neethimandram,
Perambalur.
- 2.The Inspector of Police,
All Women Police Station,
Perambalur.
- 3.The Public Prosecutor,
Madras High Court, Chennai.
- 4.The Assistant Registrar,
Juvenile Justice Section,
High Court, Madras.

Crl.A.No.656 of 2019

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



WEB COPY