



Bail Slip

The petitioner namely Dhinesh @ Veera Dhinesh S/o.Chandran was ordered to be enlarged on bail vide order dated 28/11/2019 made in CrI.Mp.No.15020/19 in CrI.R.C.No.1116 of 2019 on the file of this Hon'ble Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	:	17.08.2021
Pronounced on	:	22.10.2021

CORAM :

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CrI.R.C.No.1116 of 2019

Dhinesh @ Veera Dhinesh,
S/o. Chandran

...Petitioner

-Vs-

The State rep. By
Inspector of Police,
Sooramangalam AWPS,
Salem Dt.
(Crime No.13 of 2016)

...Respondents

Prayer : Criminal Revision Petition filed under Section 397 and 401 of Criminal Procedure Code, praying to call for the records and set aside the judgment dated 10.08.2019 in C.A. No. 01 of 2019 on the file of the Sessions Judge, Mahila Court, Salem, confirming the judgment dated 28.01.2019 in Juvenile Justice Board case No.26 of 2017 on the file of the Principal Magistrate, Juvenile Justice Board, District Court Compound, Salem-7.

For Petitioner : Mr.B.Vasudevan

For Respondents : Mr.S.Sugendran,
Govt. Advocate (CrI. Side)



O R D E R

(This case has been heard through video conference)

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The respondent police registered a case against the revision petitioner, who had arrayed as 2nd Juvenile/2nd accused in Crime No.13 of 2016 for the offence under Sections 5(g), (l), (m) of POCSO Act, which is punishable under Section 6 of POCSO Act.

2. The present petitioner was shown as 2nd accused in the instant case. The respondent police, after completing the investigation, laid the charge sheet before the learned Principal Magistrate, Juvenile Justice Board, Salem against 2nd juvenile in this case. The learned Principal Magistrate, Juvenile Justice Board, after completing formalities, framed charges for the offence under Section 5 (g), (l), (m) of POCSO Act, which is punishable under Sec.6 of POCSO Act and also under Sec.376(d) 326 I.P.C. After completing formalities, the learned Principal Magistrate, Juvenile Justice Board, conducted the trial and during trial before the learned Principal Magistrate, prosecution produced 17 witnesses, who are examined as P.W. 1 to 17, and produced 19 documents, which are marked as Ex.P1 to P19. No material object was produced.

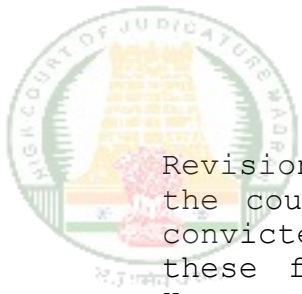
3. On completion of trial, the learned Principal Magistrate, Juvenile Justice Board had convicted the revision petitioner and other accused for offence under Sec.5(g)(l)(m) of POCSO Act, punishable under Sec.6 of POCSO Act, since the accused are juveniles, aged below 18 years, they are sentenced to undergo 3 years under Sec.6 of Juvenile Justice (Care and Protection) Act, 2015. Challenging the said judgment of conviction and sentence, the present Revision Petitioner/2nd accused filed an appeal before the learned Sessions Judge, Mahila Court, Salem and the learned Sessions Judge, Mahila Court taken the appeal on file in C.A.No.1 of 2019. After hearing arguments, the appellate court, as a fact finding court, re-appreciated the evidence and came to the conclusion that the Revision Petitioner has committed the offence and the prosecution had proved its case beyond all reasonable doubt and finding that there is no merit in the appeal and the appeal got dismissed. Challenging the judgment of conviction and dismissal of appeal, the 2nd accused has filed the present Revision Petition before this Court.

4. The learned counsel appearing for Revision Petitioner would submit that the prosecution failed to prove its case beyond all reasonable doubt. He would also submit that P.W.1, mother of victim girl had brought P.W.2, who is victim girl to the Government Hospital on 13.11.2016 at about 03.30 a.m. P.W.8, Dr.Ayeesha, who was a duty doctor in Government Mohan



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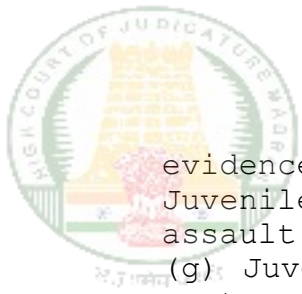
Kumaramangalam Hospital, Salem, made an entry in the accident register. Doctor, P.W.8, deposed that she did not see any external injury on the victim's body, hymen was intact and no external injury on her private part. The mother of victim girl stated to P.W.8 that two persons residing near her house attempted to cause sexual assault on her daughter, P.W.2 for three times in a week and lastly at 09.00 p.m. on 13.11.2016 at 09.00 p.m. The entire evidence of P.W.1 and 2 falsified the evidence of P.W.8. The said fact was not considered by the Juvenile Justice Board and wrongly convicted the revision petitioner and other accused as if they have committed penetrative sexual assault on the victim girl more than once. He would further submit that P.W.1, mother of victim stated in her complaint that she brought P.W.2 victim girl to Government Mohan Kumaramangalam Hospital, Salem on 13.11.2016 at about 03.30 a.m., whereas, P.W.10, Kavitha, who is Head Constable went to Government Hospital and received the copy of accident register and memo Sl. No.2277 and recorded the statement of P.W.1 at 05.00 a.m. on 13.11.2016 and registered the F.I.R. at 06.00 a.m. P.W.2 says that her mother went to the police station and gave a complaint and thereafter, she brought P.W.2 to the Government Hospital, Salem. So, the version of P.W.2 and P.W.10 regarding registration of complaint at Government Hospital is false, and the earlier complaint was suppressed by police. Recording the complaint and also confession statement of P.W.2 alleged to have been obtained against the revision petitioner are totally false and the prosecution has not proved the case, especially, when the medical evidence has not supported the case of prosecution. The victim girl was only aged about 7 years and the accused are juveniles. Therefore, they played hide and seek and only the mother of accused cooked up story and lodged a false complaint against the revision petitioner. The prosecution failed to establish the case beyond all reasonable doubt. The victim is at tender age and the accused also juvenile, hence, they would not have done any activities with the offences under the POCSO Act. The mother of victim falsely gave compliant. The medical evidence also does not clearly show that hymen was intact and no external injury. Therefore, the Juvenile Justice Board miserably failed to consider oral and documentary evidence produced by the prosecution and wrongly convicted on the ground of sympathy. The appellate court, as a fact finding court, it has to necessarily re-appreciate the evidence independently and give an independent finding, whereas, in this case, the appellate court did not re-appreciate the entire evidence and given an independent finding, and simply endorsed the view of Juvenile Justice Board. Further, there is no materials to show that the Revision Petitioner committed offence under Sec.5(g)(1)(m) of POCSO Act, punishable under Sec.6 of POCSO Act. The learned counsel would further submit that even the victim has stated that only A1 has committed the offence, but she does not know anything about the



Revision Petitioner with regard to commission of offence. Both the courts below failed to appreciate the evidence and wrongly convicted the juveniles. The appellate court failed to consider these factual aspects and simply endorsed the view of Board. Hence, it is liable to be set aside, and the revision petition is liable to be allowed.

5. The learned Government Advocate (Crl. Side) appearing for respondent State would submit that the case against the Revision Petitioner and A1 registered by the prosecution for the offence under Sec.5(g)(1)(m) of POCSO Act. In order to substantiate the charges, the victim was examined as P.W.2. She has clearly narrated the events. Therefore, after registering the complaint, victim was produced before the Juvenile Justice Board to record the statement under Sec.164 of Crl.P.C. and the said statement was marked as Ex.P17, in which also, the victim has clearly narrated the events and the acts committed by the revision petitioner. Victim was also produced before the Medical Officer and the Doctor, who conducted medical examination on the victim was examined as P.W. 14. Though Doctor, who examined the victim only stated that there is no external injury, hymen was intact and however, found reddishness in the mouth of the private part of the victim and she had touch pain in her private part. The victim is aged 7 years and the accused are juveniles. There might not be much force, even otherwise as per Section 3 of POCSO Act, extent of penetration is immaterial. So, in the cases of this nature, the extent of the penetration is immaterial. Since because the hymen was intact and no injury was found in the private part of the victim, it does not mean that there was no sexual assault. Section 3 of POCSO Act, especially sub clause (a) of Section 3 would go to show that penetration is to any extent is sufficient to convict the accused for the offence of penetrative sexual assault and the extent of the penetration is immaterial. The provision clearly says that "at any extent". Therefore, the Board has rightly appreciated the evidence and statement of the victim recorded by P.W.8. Even the medical evidence of Doctor shows that though there is no external injury and on the mouth of private part, they found reddishness and also the victim had touch pain. Therefore, the prosecution has proved its case beyond all reasonable doubt. The Juvenile Justice Board as well as Appellate Court rightly appreciated and convicted the accused and there is no mitigating circumstances. Hence, the Revision Petition is liable to be dismissed.

6. The mere delay in filing the complaint and mere pointing out some contradictions are not sole ground to disbelieve the case of prosecution. Whatever contradictions pointed out by the learned counsel for Revision Petitioner are not material contradictions, which would go to the route of prosecution. Therefore, the appellate court has rightly re-appreciated the



evidence and ignored the minor contradictions and found that the Juveniles committed the act of aggravated penetrative sexual assault on the victim and rightly convicted, since as per Sec.18 (g) Juvenile Justice (Care and Protection) Act, only 3 years of sentence alone can be imposed and considering serious nature of offence and the age of the victim, there is no mitigating circumstances.

7. I have heard submissions of either side and perused the records carefully.

8. The case of prosecution is that juveniles 1 and 2 are friends. They are aged about 17 years. Both are studying 12th Std. They saw obscene video in a cellphone. The victim girl was aged about 7 years, who is studying 3rd std. On seeing the victim, both juveniles wanted to have sexual intercourse with the victim. On the next day of Deepavali in the year 2016, while the victim was playing on the road, the juveniles took the victim to nearby building and sat her in a stair case, first juvenile removed innerware of the victim and licked the private part of the victim, inserted his fingers on the private part of P.W.2 victim girl. Hence, the victim girl had touch pain on her private part. Thereafter, the 2nd juvenile, the present Revision Petitioner also committed sexual assault as done by the 1st juvenile on the victim. P.W.1, mother of victim, who gave complaint before the respondent police and P.W.16, who is the investigating officer filed the final report. Since the accused are juveniles, who were aged about 17 years, studying 12th std., therefore, the investigating officer filed the charge sheet before the Juvenile Justice Board as per Juvenile Justice (Care and Protection) Act. The Board, after completing the formalities, framed charges and completed the trial and found that both juveniles have committed the offence and sentenced them to undergo 3 years imprisonment, since the accused are juveniles. Against the Judgment, the revision petitioner filed an appeal before the Sessions Judge, Mahila Court, Salem. The first appellate court, as a fact finding court, re-appreciated the entire evidence and confirmed the conviction judgment of the Board and dismissed the appeal. Challenging the same, 2nd Juvenile/2nd accused is before this Court by way of filing this revision petition.

9. The scope of the revision is very limited. This Court cannot sit in the arm chair of the appellate Court and cannot re-appreciate or re-assess the evidence and substitute its own views on findings of facts. While exercising revisional jurisdiction, as a revision Court, this Court has to see as to whether the trial court and appellate court failed to appreciate the evidence and if there is any perversity in the appreciation of evidence, otherwise findings would be changed. Then, the



Revision Court can interfere with the judgment of trial court as well as appellate court. When there is no perversity in appreciation of evidence, the Revision Court cannot substitute its own reason on the fact finding. The appellate court is also final court of fact finding, normally, the Revision Court will not interfere, unless it finds that there is perversity in re-appreciation of evidence of both the courts below.

10. A reading of entire evidence in this case, admittedly, the accused are juveniles and the revision petitioner is aged about 17 years, who was studying 12th std. The main allegation against the Revision Petitioner, the victim girl was 7 years and who is also a neighbour and the victim girl on the date of occurrence, on the next day of Deepavali, juveniles after seeing obscene video in the cellphone, took the victim to a hidden place and removed her inner garment and licked her private part and inserted their fingers and also pressed their private parts into the private part of victim. The victim girl was produced before the learned Judicial Magistrate to record the statement under Sec. 164 of CrI.P.C. and the said statement was marked as Ex.P17. The said statement recorded under Section 164 of CrI.P.C. was subsequently substantiated by the victim, when she was examined as P.W.2. Therefore, the previous statement, Ex.P17 was corroborated by the evidence of victim P.W.2. Even the victim was produced before the medical officer, P.W.8, who conducted the medical examination has given a certificate, which is marked as Ex.P14. Ex.P14 is the opinion, in which, Doctor has clearly stated that though there is no external injury and hymen was intact, however, found reddishness on the mouth of private part of the victim and the victim also had a touch pain. A plain reading of evidence of P.W.1, mother of victim, P.W.2 victim's statement marked as Ex.P17 and the opinion of Doctor, P.W.8 marked as Ex.P14 and Section 3 of POCSO Act, this Court does not find any perversity in appreciation of evidence of both courts below. Therefore, this Court does not find any merit in this Revision Petition and there is no perversity in appreciation of evidence of both the courts and there is no reason to take a different view on the findings of both the courts below. Therefore, under these circumstances, this Court does not find any merit in this revision and the revision case is liable to be dismissed. Accordingly, this Criminal Revision case stands dismissed.

Sd/-

Assistant Registrar(CS III)

/True Copy//

Sub Assistant Registrar



To

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1. The Sessions Judge, Mahila Court,
Salem.
2. The Principal Magistrate,
Juvenile Justice Board,
District Court Compound,
Salem.
3. The Public Prosecutor,
High Court, Madras.
4. The Inspector of Police,
Sooramangalam AWPS,
Salem Dt.

+1cc to Mr.B.Vasudevan, Advocate, S.R.No.54349

Crl.R.C.No. 1116 of 2019

RSV[co]
NSK 09/11/2021