



Bail Slip

Ebi @ Ebinesar age 25 S/o. Soosainathan accused in Spl.S.C. No. 2/2018 on the file of Special Judge, District and Sessions Judge, Karaikal was enlarged on bail by this Hon'ble Court in Crl.M.P. No. 15615/2019 in Crl.A. No. 742/2019 vide order dated 20.11.2020.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2021

C O R A M

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.742 of 2019

Ebi @ Ebinesar

... Appellant

Vs.

The State Rep. by
Inspector of Police
Neravy Police Station,
Karaikal.

... Respondent

PRAYER: Criminal Appeal is filed under Section 374 (2) of Cr.P.C. to set aside the Judgment and Conviction passed by the learned Special Judge, District and Sessions Court, Karaikal in Special Sessions Case No.2 of 2018, dated 23.08.2019.

For Appellant : S.Sounthar

For Respondent : Mr.D.Bharatha Chakravarthy
Public Prosecutor(Pondicherry)

J U D G M E N T

This Criminal Appeal has been filed against the Judgment of Conviction and Sentence, dated 23.08.2019 made in Special S.C.No.2 of 2018, by the learned Special Judge, District and Sessions Court, Karaikal.

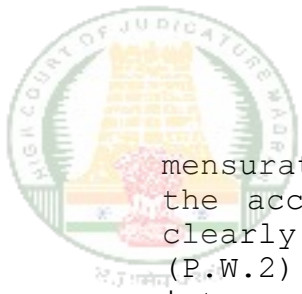
2. The respondent-police has registered a case against the appellant for the offence under Section 4 of Protection of Children from Sexual Offences Act, 2012 (for brevity "the POCSO Act"). After investigation, laid a charge sheet before the learned Special Judge, District and Sessions Court, Karaikal.



3. After considering the evidence on record and hearing on either side, the learned Judge, by Judgment dated 23.08.2019, convicted the appellant for the offence punishable under Section 4 of POCSO Act and sentenced him to undergo 7 years Rigorous Imprisonment and to pay a fine of Rs.5,000/- in default to undergo six months Simple Imprisonment.

5. The learned counsel for the appellant would submit that there are material contradictions in the evidence of P.W.1 and P.W.2. P.W.1 is the mother of the victim girl, P.W.2 is the victim. P.W.1, in her evidence, deposed that when she was admitted as an inpatient in Vinyama Mission Hospital, the appellant came to hospital to meet her (P.W.1) and she had only sent her daughter (P.W.2) along with the appellant to go to her residence and at that time, the appellant had forcibly took her (P.W.2) to hidden place and undergone penetrative sexual intercourse with her daughter and after one month, when her daughter did not attain mensuration, she (P.W.2) revealed entire the occurrence to her (P.W.1). It is further stated that she (P.W.1) has brought her daughter (P.W.2) to the Hospital for medical examination, and thereafter, abortion took place, whereas, P.W.2-victim girl during her evidence had stated that she did not undergo any medical examination with regard to pregnancy test, and her mensuration was normal. Therefore, there is no trustworthy in their evidence, and the prosecution has not proved its case beyond reasonable doubt. Even, P.W.8-doctor during her evidence deposed that the victim girl was not subjected to sexual intercourse. It is further submitted that there was earlier dispute between the family of P.W.2 and the appellant due to which, there was an enmity between them and therefore, there is a motive for P.W.1 to foist a false case against the appellant. However, the learned Judge, without considering the material contractions, convicted the appellant, which warrants interference.

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mensuration and she was pregnant due to sexual intercourse of the accused, however, P.W.2-victim girl, in her evidence has clearly deposed that the appellant had forcibly taken her (P.W.2) to a secluded place and undergone penetrative sexual intercourse with her. However, it is contended by the learned Government Advocate that the contractions pointed out by the learned counsel for the appellant are only minor contractions and the same will not go to the route of the case of the prosecution. P.W.8-Doctor had also on her physical examination found that the hymen was not intact and she has given Ex.P10 report to that effect. Further, P.W.9-Doctor, in her evidence deposed that she examined the accused and there is nothing to suggest that the accused/appellant is not capable of performing sexual act and she has issued Ex.P10-report to that effect. The prosecution has established the case beyond the reasonable doubt and there is no merit in the Appeal and therefore, the Appeal is liable to be dismissed.

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

8. The case of the prosecution is that when P.W.2-the mother of the victim girl was admitted for treatment in Vinayaka Mission Medical College Hospital as an inpatient, the appellant/accused came to see P.W.1 and at that time, P.W.1 sent her daughter-P.W.2 along with the accused and while, they were on the way to home, the accused had taken the victim to a forest area situated at Akkarivattam, and he removed her (P.W.2) pant and had sexual intercourse and thereafter, he dropped P.W.2 at her house. After two months P.W.1 was discharged from hospital and when she questioned P.W.2, as to why she did not attain mensuration, P.W.2 reported about the occurrence. Thereafter, P.W.2 has taken P.W.1 to hospital and child help line and on the advise of member in the child help line, she (P.W.2) filed Ex.P1-complaint before the respondent-Police. Based on which, the respondent-Police, registered a case against the appellant for the offense punishable under Section 4 of POCSO Act. Subsequently, the Investigation Officer, investigated the matter and laid a charge sheet before the learned District and Sessions Judge, Karaikal.

9. In order to prove the case of the prosecution, 11 witnesses were examined as P.W.1 to P.W.11 and 17 documents were marked as Exs.P1 to P17 and 5 Material Objects were exhibited as M.O.1 to M.O.5. After completion of the examination of the prosecution witnesses, the incriminating circumstances culled out from the prosecution witnesses were put before the appellant, the same were denied false and on the side of the defence, neither witness, nor evidence. The learned District and Sessions Judge, Karaikal, after hearing the arguments on



either side and considering all the materials placed on record, found that the accused/appellant is guilty and awarded punishment, as referred above, which is challenged in this Criminal Appeal.

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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 reading of the evidence of the victim girl-P.W.2, before the trial Court, she has clearly deposed that when her mother was admitted in the Vinayaka Mission Medical College Hospital as an inpatient, the accused came to see her mother and her mother (P.W.1), asked the accused to drop her (P.W.2) in her house and during that time, the accused had forcibly taken her (P.W.2) in a secluded place in the forest area situated at Akkariavattam, and removed her pant and had undergone sexual intercourse, and left her in the home. She further deposed that she did not reveal the occurrence any one and when her mother (P.W.2) returned to home, she (P.W.2) informed the occurrence to her mother (P.W.1), and thereafter, she (P.W.1) made a complaint before the respondent-Police. During the investigation, the victim girl was produced before the learned Magistrate for recording statement under Section 164 of Cr.P.C.. The statement recorded by the learned Magistrate under Section 164 of Cr.P.C., was marked as Ex.P4.

11. The mother of the victim girl was examined as P.W.1, in her evidence, she had clearly deposed that when she was admitted in the hospital, the accused came to meet her (P.W.1) and she (P.W.1) sent the victim girl (P.W.2) along with the accused to go to home and at that time, the accused took her to hidden place in the forest area and had undergone penetrative sexual intercourse. When she (P.W.1), returned to home, she has noticed P.W.1 did not attain mensuration, and when (P.W.1) questioned her daughter (P.W.2), she (P.W.2), revealed the entire occurrence and thereafter, she (P.W.1) has taken her daughter (P.W.2) to the hospital and child help line and on the instructions of member in the Child Help Line, gave Ex.P1-complaint before the respondent-Police. The doctor, who treated the victim girl was examined as P.W.8 and in her evidence, she has clearly stated that the hymen was not intact and she has given Ex.P10 report to that effect. A perusal of statement, which was recorded under Section 164 of Cr.P.C., also, it could be seen that the victim girl had narrated the entire occurrence.

12. In the case like this, the Court cannot expect independent eyewitness or witnesses, because, culprits take the chance of loneliness of the victims, and they would commit these type of offences. In the case on hand, after the occurrence, when the victim girl informed to her mother and the mother, who



was examined as P.W.2 has corroborated the evidence of her daughter P.W.1, during her evidence. The date of birth of the victim girl is 16.01.2002 and the alleged occurrence is said to have occurred on 05.05.2017 and at the time of occurrence, the age of the victim girl is only 15 years. Ex.P15 is the birth certificate of the victim girl. Section 4 of POCSO Act, prescribes punishment for penetrative sexual assault, whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine. In the case on hand, the victim was aged about 15 years, at the time of occurrence. P.W.2-mother of the victim girl and P.W.1-victim have clearly deposed the entire occurrence, which was also supported by the evidence of P.W.8-doctor. Therefore, the learned Judge rightly held that the offence committed by the accused would fall under Section 3 of POCSO Act, which is punishable under Section 4 of the POCSO Act.

13. The other contention of the learned counsel for the appellant is that the evidence of the doctor, who examined the victim girl has filed Ex.P10 report stating that she did not find any recent sexual injuries and as such, the evidence of P.W.8 doctor was also not supported the case of the prosecution. P.W.2 in her evidence has clearly stated that the accused took her to forest area and removed her panties and had undergone penetrative sexual intercourse. A combined reading of the evidence of P.W.2, victim girl and also Ex.P10-report of P.W.8, doctor, wherein, she had clearly stated that on examination of the victim girl, she found that the hymen was not intact, and therefore, the learned Judge, had rightly come to the conclusion that the appellant had committed an offence punishable under Section 4 of POCSO Act.

14. Yet another contention of the learned counsel for the appellant is that there are material contradictions in the deposition of the victim girl and mother of the victim girl, regarding the pregnancy and termination. During cross-examination, P.W.1, the mother of the victim girl, has stated that abortion took place for her daughter (P.W.2), and however, P.W.2-during her evidence, has stated that she did not undergo any medical examination with regard to pregnancy test, and her mensuration was normal. Any how, the said contradictions will not go to the route of the case of the prosecution and the appellant cannot be given the benefit of doubt, as admittedly, other evidence of the victim girl with regard to penetrative sexual intercourse is clearly proved. 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. The last contention of the learned counsel for the appellant is that there was a motive to foist a false case against the appellant. In this case, there is no reason to disbelieve or disregard the evidence of the victim girl. Further, there was no necessity to foist such a false serious case against the appellant by spoiling the future of the P.W.2-victim girl. It is pertinent to mention here that parent of the victim girl need not say all these things and also the parent of the victim girl will not spoil the future of the victim girl for any flimsy reason. Therefore, the above contention of the learned counsel for the appellant is rejected. Further, there was no reason to discard the evidence of victim girls. Normally, corroboration of witness is necessary, whereas, offence under POCSO Act, the evidence of the victim girls are sufficient and the Court cannot expect the eyewitness, since it is not the case of the prosecution that the offense had taken in the presence of some other eye witnesses. Further, the defense has not established that for which specific reason, they foisted a false case against the appellant. Though the appellant had taken the defense of motive behind the complaint, but however, it has not been proved in the manner known to law.

16. A perusal of the statement recorded under Section 164 of Cr.P.C., and the evidence of P.W.2- victim girl, it could be seen that the accused had taken the victim girl into secluded place and had undergone penetrative sexual intercourse. Therefore, this Court finds that there is no reason to discard or disbelieve the evidence of P.W.2 victim girl, and there is no doubt about the trustworthiness of the victim girl and under the circumstances, the victim girl aged about 15 years, and she cannot be tutored by the prosecution for these type of offences.

17. Therefore, under the said 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 District and Sessions Judge, Karaikal. Therefore, this Court does not find any merit in the Appeal and the Appeal is liable to be dismissed. Accordingly, the Criminal Appeal is dismissed.

-s/d-

Assistant Registrar(CS-IV)

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Sub-Assistant Registrar

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To

1. The Special Judge, Karaikal.
2. The Special Judge [District and Sessions Court], Karaikal.
3. The Inspector of Police
Neravy Police Station,
Karaikal.
4. The Superintendent,
Central prison, Puducherry.
5. The Public Prosecutor,
Madras High Court, Chennai.

Copy to :

The Honourable POCSO Committee,
High Court, Madras.

+1 CC to Mr.S. Sounthar, Advocate, Sr 7481

Crl.A.No.742 of 2019

SS(CO)
SP(14/07/2021)