

Bail Slip

The Petitioner/Accused No.1 namely Sasikumar S/o. Nagaraj was released on bail vide order dated 08.11.2019 in CrI.M.P.No.16253/2019 in CrI.A. No. 761 of 2019.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 23.02.2021
Judgment pronounced on: 16.04.2021

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN
Criminal Appeal No.761 of 2019

Sasikaumar ... Appellant

Versus

The State Rep.by
The Inspector of Police,
Bhavanisagar Police Station,
(Investigated by All Women Police Station
Sathyamangalam)
Erode District. ... Respondent
(Crime No.95 of 2018)

Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to set aside the conviction and sentence dated 22.10.2019 in Spl.S.C.No.18 of 2018, passed by the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Erode.

For Appellant : Mr.K.M.Subheramaniam

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

JUDGMENT

This Criminal Appeal has been filed against the conviction and sentence imposed on the appellant vide Judgment dated 22.10.2019 in Spl.S.C.No.18 of 2018, passed by the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Erode.

2.The respondent police registered a case in Crime No.95 of 2018 against the appellant and yet another accused for the offence under Sections 294 (b), 323 and 506(ii) of I.P.C., and

laid the charge sheet before the learned Sessions Judge, Magalir Neethi Mandram (Fast Tract Mahila Court), Erode.

3.The Sessions Court has considered the capitalized of the offence in the charge sheet, and the case was taken on file in Spl.S.C.No.18 of 2018. Charges were framed against the appellant for the offence under Section 11(i)(iv) of the Protection of Children from Sexual Offences Act, 2012, (in short POCSO Act) and 294(b), 323 and 506(ii) of I.P.C.

4.After framing charge, in order to prove the case, during the trial, prosecution has examined as many as 14 witnesses as PW.1 to PW.14, 16 documents were marked as Ex.P1 to Ex.P16. Besides, material objects have been exhibited as M.O.1 to M.O.3. On the side of the defence, one witness was examined as DW.1 and 4 documents were marked as Ex.D1 to Ex.D4.

5.After completion of examination on the prosecution side witnesses, incriminating circumstances culled out from the evidences of the prosecution were put before to the accused persons. They denied the same as false.

6.After completing trial and hearing of the arguments on either side, the Special Court acquitted the second accused/A2 for the offence under Sections 235(i) & 506(ii) of IPC., and convicted the appellant/A-1 for the offence under Sections 294 (b), 323 and 506(ii) of IPC., and for the offence under Section 11(i) of POCSO Act, sentenced him to undergo 3 years Rigorous Imprisonment and to pay fine of Rs.1,000/- in default of payment of fine, to undergo further 3 months Simple Imprisonment. Challenging the said conviction and sentence, first accused/appellant filed the present appeal before this Court.

7.The learned counsel for the appellant would submit that there was a love affair between the appellant and the victim girl. The victim girl was taken by her father to prevent the appellant from meeting her. The complaint was originally given by the father of the victim only for the offence under Sections 294(b), 323 and 506(ii) of IPC., subsequently they altered it into one of Sections 294(b), 323 and 506(ii) of IPC., along with Section 11(i)(iv) of POCSO Act. The complaint does not reveal anything about the offence under POCSO Act, however, in order to threaten the appellant and to segregate the victim child from the appellant's love affair, the father of the victim girl coerced and threatened the victim to give false statement against the appellant. According to the appellant, there is no offence made out under the POCSO Act and he was falsely implicated in this case. The trial judge failed to appreciate the evidence of PW.1 and also the allegations in Ex.P1/original complaint given by the father of the victim girl. Though the

court disbelieved the prosecution case for the offence under Sections 294(b), 323 and 506(ii) IPC., however, wrongly convicted the appellant for the offence under Section 11(i)(iv) of POCSO Act. Even in the complaint under Ex.P1, he has not stated anything about the ingredients of the said Act. In any event the statement given by the victim girl before the Judicial Magistrate was not considered by the trial Judge. The appellant expressed his willingness to marry the victim girl. The witness DW.1, who is the uncle of the second accused, clearly deposed that the appellant and the second accused has not committed any offence as alleged by the prosecution. The learned Trial Judge failed to appreciate the evidence of the said witness. Further, Ex.D.1 is the photograph of the appellant and the victim child, in which, the appellant and the victim girl were seen together, which clearly shows that the victim child was so close to the appellant. In order to segregate his daughter from the appellant, the father of the victim girl forced her to give a false statement. The victim girl was threatened by her father and she made a false evidence. The learned Trial Judge failed to appreciate those things and wrongly convicted the appellant. Therefore, the Judgment of the Trial Court is liable to be set aside.

8.Per contra, the learned Government Advocate (Crl.side) appearing for the respondent/police would submit that the appellant followed the victim child regularly. This fact came to the knowledge of the father of the victim child. The father of the victim child warned the appellant and subsequently, he took the victim child and kept her in a relative house to prevent the appellant from meeting her. On the date of occurrence, when the father of the victim girl was sitting nearby the house, the appellant and another accused came in an Omni Van and made the victim child to accompany them by pulling her hand and by saying "we will go and marry". When she made an alarm, at that time, father of the victim girl scolded the appellant. Thereafter, the appellant shouted towards the father of the victim girl, slapped him on his cheeks. Subsequently the other accused come and told that he would dash the van against PW.1/father of the victim girl. At that time, neighbours gathered there, the appellant and other accused escaped from that place. Therefore, the deposition of PW.1, PW.2/victim child and PW.3, the mother of the victim girl have categorically stated about the incident. PW.4 and PW.5 are relative and neighbour of PW.1/father of the victim child and they have corroborated the evidence PW.2/victim child. The Trial Court rightly considered the case on merit and acquitted the other accused/A-2 but convicted the appellant for the offence under Sections 294(b), 323 and 506(ii) of IPC and Section 11(i)(iv) of the Protection of Children from Sexual Offences Act, 2012. There is no merit in the appeal and it is liable to be dismissed.

9. Heard both sides and perused the materials available on record.

10. The case of the prosecution is that on 10.05.2018 at 5.00 p.m, the appellant followed the victim girl along with his friend/A2 in an Omni van. Since the appellant and the victim child were in love, the matter came to the knowledge of her father, he kept the victim girl in his relative home to segregate the victim child from the appellant. The appellant traced and followed the victim girl and on seeing her, he pulled her hand and told that let us go and marry. On hearing the screaming of his daughter/victim child, the father of the victim shouted towards the appellant and the other accused. The appellant scolded the father of the victim girl with filthy language and slapped him on his cheeks and threatened him with dire consequences. Thereafter, the appellant and other accused/A2 fled away from that place. In respect of the same, the father of the victim child/ PW.1 gave a complaint/Ex.P1 against the appellant and the other accused. Hence, the case was registered by the respondent/police and the same was taken on file in Spl.SC.No.18 of 2018. After analysing all the oral and documentary evidences, the trial Court convicted and sentenced the appellant and acquitted the other accused/A-2. Aggrieved against the said conviction, the appellant preferred this Criminal Appeal before this Court.

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. Charges were framed against the appellant for the offence under Section 11(i)(iv) of the Protection of Children from Sexual Offences Act, 2012, (in short POCSO Act) and 294(b), 323 and 506(ii) of I.P.C.,

(i) During trial, in order to prove the charges, on the side of the prosecution totally 14 witnesses were examined out of which the victim girl was examined as Pw.2, the father of Pw.2 was examined as Pw.1 and the mother of Pw.2 was examined as Pw.3. The neighbours and the relatives were examined as Pw.4, Pw.5 and Pw.6. Besides one Doctor was examined as Pw.10, whose medical examination disclose the age of the victim child is 17 years at the time of occurrence.

ii) According to the prosecution, the appellant has pulled the hands of the victim child with sexual intention and the version of the victim girl under Section 164 of Cr.P.C. also reveals the same. In order to save his daughter from the appellant, the father of the victim child shouted towards the appellant. At that time, the appellant slapped him, quarreled

with him, scolded in filthy language and threatened the father of the victim girl with dire consequences.

13. But the case of the defence is that the appellant and the victim child had fallen on love and they loved each other. The father of the victim child came to know about the fact and filed a false case against the appellant to segregate his daughter from the appellant.

14. On a careful reading of the complaint given by PW1/father of the victim child, it is seen that in the said complaint also, PW1 has not stated about the sexual harassment made by the appellant. The victim child, subsequently stated during her evidence and even prior to that it was recorded under Section 164 Cr.P.C. before the Judicial Magistrate that the appellant pulled her hand by saying the words "come and we will marry". Further, on a careful reading of the evidence of Dw.1, though, he denied the arrest of the second accused, since Dw.1, was admitted in the hospital on the date of occurrence, the second accused was along with him up to 10.00 p.m. As per the evidence of Dw.1, Ex.D2 is the certificate given by the hospital authority, which shows that Dw.1 was admitted in the hospital and Ex.D3 & D4 were the relevant documents issued by the hospital authority to Dw.1.

15. A careful reading of the entire materials on record as well as Ex.D1/photograph clearly reveals that the appellant and the victim child fell in love. As per the evidence of Pw.10/Doctor, the age of the victim girl was 17 years at the time of occurrence. Having gone through the evidence of Ex.D1/photograph it shows that the appellant has not made any sexual harassment under Section 11(i)(iv) of the POCSO Act. Section 11(i)(iv) of the POCSO Act reads as follows:-

"(i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or

(iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or"

As per the ingredients of Sub-clause (i) & (iv) of the said Act, there must be sexual intention. In this case, there is no evidence to show that the appellant, with sexual intention, pulled the hand of the victim girl. Even in the complaint filed against him also, it was not disclosed that he pulled her hand with sexual intention. It is also revealed that the appellant quarreled with the father of the victim child, since the parents of the victim child prevented him to meet their daughter and

lodged the complaint. Thereafter, the appellant proposed to her and called her to accompany him to get married. On the reading of the evidence of Pw.1 and Pw.3 it shows that the appellant and victim child were friends. According to the victim child, she talked with the appellant and treated him as a brother, but the appellant wrongly made a propaganda that he fell in love with her and proposed her to marry him. When those things came to knowledge of the parents of the victim child, they warned the appellant and they wanted to segregate each other and kept the victim child at their relative home. Subsequently, the appellant went to the place where the victim child was kept by their parents and pulled her hand by saying "come we will go and marry". While visualizing Ex.D1/photograph, the victim child was so close with the appellant, which shows that she has not treated the appellant as a brother. Therefore, the evidence of the victim child and Pw.1 & Pw.3 are doubtful and there is no trustworthiness in their evidence.

16.As already stated that in the complaint also, there is nothing mentioned about the sexual harassment made by the appellant. Since the victim girl also fell in love with the appellant, the parents of the victim child warned the appellant and the appellant called the victim girl only to chat. Therefore, by exaggerating such incident, the father of the victim child gave a false complaint against the appellant for the reasons best known to him.

17.Further on reading of the entire materials on record and on seeing Ex.D1/photo, it creates doubt that the appellant has pulled the victim child's hand with sexual intention. Though the Trial Court acquitted the second accused, as against his acquittal, no appeal has been filed by PW1 or Government. Therefore, on a careful reading of the entire materials, this Court finds that the prosecution failed to prove its case beyond reasonable for the offence under Section 11(i)(iv) of the POCSO Act.

18.Thus, this Court does not find that the appellant, with sexual intention misbehaved with the victim girl. On seeing Ex.D1/photo, there is no doubt in the minds of this Court that the appellant did not misbehave with the victim child. Therefore, this Court extending the benefit of doubt and finds that the prosecution failed to prove its case beyond reasonable doubt. The prosecution has not proved the offence of sexual assault or aggravated sexual assault committed by the appellant. As already stated Ex.D1/photo is very clear that the victim child was so attached with the appellant. Therefore, it clearly shows that both loved each other, but under the compulsion of the father/PW1, she made such statement against the appellant.

19.Further, the complaint also shows that there was no sexual intention, therefore, in the absence of evidence to prove that the appellant with sexual intention misbehaved with the victim child, the conviction of the appellant under POCSO Act cannot be sustained. Therefore, the Judgment of conviction and sentence passed by the Trial Court under Section 11(i)(iv) of the POCSO Act is liable to be set aside.

20.Therefore, under these circumstances, the criminal appeal is allowed. The impugned judgment of conviction and sentence dated 22.10.2019 in Spl.S.C.No.18 of 2018, passed by the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Erode is set aside and the appellant is acquitted. Bail bond executed by the appellant shall stand cancelled. Fine amount, if any paid by the appellant is ordered to be refunded forthwith.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

- 1.The Sessions Judge,
Magalir Neethi Mandram (Fast Track Mahila Court), Erode.
- 2.The Inspector of Police, Bhavanisagar Police Station,
(Investigated by All Women Police Station
Sathyamangalam) Erode District.
- 3.The Public Prosecutor,
High Court of Madras.

Copy to
The Chairman
POSCO Committee
High Court, Madras 104.

+1 CC to Mr.K.M. Subramaniam, Advocate sr 23506.

Criminal Appeal No.761 of 2019

RLD(CO)
SP(18/06/2021)