



Bail Slip

That the Appellant/Accused namely Mohammed Sulthan @ Shafeek S/o.Sadiq Ali was released on bail as per order of this Court dated 06/07/2021 made in CrI.M.P.No16575/2019 in CrI.A.No772/2019 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.07.2021

Pronounced on : 30.07.2021

C O R A M

THE HON'BLE MR.JUSTICE P.N.PRAKASH
AND
THE HON'BLE MR.JUSTICE R. PONGIAPPAN

Criminal Appeal No.772 of 2019

Mohammed Sulthan @ Shafeek
S/o.Sadiq Ali

... Appellant / Accused

versus

The State by Inspector of Police,
All Women Police Station,
Tiruppur - South,
Tiruppur.
(Crime No.3 of 2019)

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, to set aside the conviction and sentence dated 31.10.2019 passed in Spl.S.C.No.26 of 2019 on the file of the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Tiruppur.

For Appellant : Mr.S.Suresh

For Respondent : Mr.M.Babu Muthu Meeran
Additional Public Prosecutor



J U D G M E N T

[Judgment of the Court was delivered by R.PONGIAPPAN, J.]

The present appeal is directed against the conviction and sentence dated 31.10.2019 made in Spl.S.C.No.26 of 2019, on the file of the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Tiruppur.

2. The appellant is the sole accused. He stood charged for the offences under Sections 5(1) r/w 6 and 11(v) r/w 12 of the Protection of Children from Sexual Offences Act, 2012 [hereinafter referred to as "POCSO Act"]. The accused denied the charge and opted for trial. Therefore, he was put on trial on the charges. After full-fledged trial, the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Tiruppur, found the appellant / accused is guilty for the offences under Sections 5(1) r/w 6 and 11 (v) r/w 12 of the POCSO Act and sentenced as follows:

Offence	Sentence
5(1) r/w 6 of POCSO Act	Rigorous Imprisonment for life along with fine of Rs.10,000/-, in default, to undergo additional Rigorous Imprisonment for one year.
11(v) r/w 12 of POCSO Act	Rigorous Imprisonment for two years along with fine of Rs.2,000/-, in default, to undergo additional Rigorous Imprisonment for three months.
The sentences are directed to run concurrently.	

3. Challenging the said conviction and sentence, the accused is before this Court, by way of filing the present Criminal Appeal.

4. The case of the prosecution, in brief, is as follows;

4.1. P.W.1-[Ms.X], was aged about 17 years. She was working in a Garments company at Tiruppur. The accused-Mohammed Sulthan @ Shafeek also working in the same company. There is a Jamath found available in the same building near to Garments company. During the relevant point of time, since both the accused and P.W.1, are working in the same company, the accused got acquainted with P.W.1 and proposed his love and made assurance for marrying her.

4.2. Believing the assurance given by the accused, one day P.W.1 committed a mistake with the accused and at the same time, without her knowledge, the same was videographed by the accused. Subsequently, on the next day morning, by showing the



said video to P.W.1, the accused threatened her for giving cooperation to satisfy his lust. In the same way, by showing the said video, the accused blackmailed the P.W.1 and had sexual intercourse with her for about two months.

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4.3. While so, one day both the accused and P.W.1 was in abnormal position, the same was witnessed by one Sadhiq Basha and the members found in the Jamath. On seeing the same, the members of the Jamath summoned the accused and after enquiry, they decided to perform the marriage between the accused and the P.W.1. In this regard, for giving consent to the proposal taken by the Jamath members, the family members of the accused seeks 7 days time.

4.4. In the meantime, P.W.1, her aunt Fathima, her sister Nishath and P.W.1's mother went to the company wherein the accused's uncle was working as a staff and requested to come for settlement, but till 7.30 p.m., he has not turned up. Further, the family members of the accused made arrangements for sending out the accused from Tiruppur. On returning home, on 10.04.2019, at about 8.00 p.m., P.W.1 consumed auramine and she was taken to the Government Hospital, Tiruppur, for treatment.

4.5. On 11.04.2019, while P.W.1 was under treatment, P.W.10-Sheela, the then Inspector of Police, All Women Police Station, Tiruppur, visited the Hospital and recorded the statement from P.W.1, under Ex.P.1. On receipt of the complaint, on the same day, at about 8.00 a.m., a case has been registered against the accused in Crime No.3 of 2019 for the offence under Section 5(1) r/w 6 of POCSO Act. The printed F.I.R. was marked as Ex.P.13. After registering the case, P.W.10 herself took the same for investigation.

4.6. During her investigation, she examined the witnesses and recorded the statements. On the same day, at about 17.00 hours, she visited the scene of occurrence and in the presence of P.W.2-Niyasudheen and one Sadhiq Basha, prepared the Observation Mahazar, under Ex.P.3. She drawn the Rough Sketch and the same was marked as Ex.P.16.

4.7. On 12.04.2019, at about 12.30 hours, near to Usha Theatre bus stop, P.W.10 arrested the accused and during the time of examination, he is willing to give confession statement in respect to the occurrence. Accordingly, in the presence of P.W.4-Kaja Sheriff and P.W.9-Chinnaraju, P.W.10 recorded the confession statement given by the accused. In the confession statement, the accused admitted the commission of offence and produced L.G. Dark Grey colour cell phone (M.O.1), two sim cards (M.O.2 series) and one memory card (M.O.3) and photographs. The said material objects were recovered by P.W.10 in the presence



of the same witnesses, under the cover of Mahazar.

4.8. Immediately, after recovery, P.W.10 prepared the Destruction Mahazar and destructed the photographs, which have been produced by the accused. Thereafter, she submitted an application to the Hospital Authorities for conducting medical examination of the accused and the victim girl.

4.9. On receipt of the requisition given by P.W.10, P.W.7-Dr.Prakash, attached with Government Hospital, Tiruppur, examined the accused and issued a Certificate, under Ex.P.11 stating that, the accused was potent. Further, in respect to the said examination, he issued a Accident Register Copy, under Ex.P.12.

4.10. Similarly, P.W.3-Dr.Ramya, attached with the same Hospital, examined the victim girl. During her examination, she found that the hymen pertains to the victim girl was ruptured. She collected the vaginal smear from P.W.1 and sent the same for chemical examination. Ultimately, after receiving the report, she came to the conclusion that there was no symptoms for recent intercourse by P.W.1. In this regard, she issued Medical Certificate, under Ex.P.4 and Accident Register Copy, under Ex.P.5. She gave final opinion, under Ex.P.6 as, there is no evidence of recent sexual intercourse.

4.11. In continuation of investigation, on 29.04.2019, P.W.10 submitted an application before the learned Judicial Magistrate No.II, Tiruppur, for recording 164 Cr.P.C. statement from the P.W.1. In turn, 164 Cr.P.C. statement has been recorded by the Magistrate and the same was marked as Ex.P.17. Conclusively, after recording the statement from the witnesses, P.W.1 came to the positive conclusion that the accused has committed the offence under Section 5(1) r/w 6 of POCSO Act and accordingly, she filed a Final Report.

5. Based on the above materials, the trial Court framed charges under Sections 5(1) r/w 6 and 11(v) r/w 12 of POCSO Act. The accused denied the same as false and opted for trial. Hence, in order to prove their case, on the side of the prosecution, 10 witnesses have been examined as P.W.1 to P.W.10 and 17 documents were exhibited as Ex.P.1 to Ex.P.17. Besides, 3 Material Objects [M.O.1 to M.O.3].

6. Out of the said witnesses, P.W.1 [Ms.X], is the victim girl in the alleged occurrence. She has stated in her evidence as, during the relevant point of time, by using the opportunity, the accused developed intimacy and after made assurance for marrying her, he committed a mistake along with her. She has further stated that the said mistake committed by



her, was videographed by the accused and afterwards, by showing the said video, the accused threatened her and committed the mistake repeatedly. She would further state that in respect to the marriage between her and the accused, the efforts taken by the members of Jamath, was negatived by the accused and thereby, she consumed auramine and admitted in the Hospital.

7. P.W.2-Niyasudheen, is the resident of Venkateshwara Nagar, Tiruppur. He speaks about the portion of investigation as, on 11.04.2019, at about 5.00 p.m., the Investigating Officer in this case visited the occurrence place and prepared the Observation Mahazar and the Rough Sketch.

8. P.W.3-Dr.Ramya, speaks about the examination of the victim girl and about the issuance of the report.

9. P.W.4-Kaja Sheriff and P.W.9-Chinnaraju, are the witnesses, alleged to be attested in the confession statement given by the accused as well as in the recovery Mahazar prepared by P.W.10. During the time of examination before the trial Court, they are not supported the case of prosecution. Hence, after getting leave from the trial Court, they were treated as hostile witnesses. Further, during their cross examination, they have not supported the case of prosecution.

10. P.W.5-Sharmila Banu and P.W.6-Ashraf Bibi, are the witnesses attested in the Destruction Mahazar prepared by P.W.10. During their examination, since they have not supported the case of prosecution, both of them are treated as hostile witnesses. After getting leave from the trial Court, both were cross examined, but in their cross examination also, they have not supported the case of prosecution.

11. P.W.7-Dr.Prakash, is the Doctor attached with Government Hospital, Tiruppur. He speaks about the examination of the accused and about the issuance of potency certificate.

12. P.W.8-Valarmathi and P.W.10-Sheela, are the Police Officers, who have stated about the receipt of the complaint from P.W.1, registration of the case, details of investigation, arrest of the accused, recovery of material objects and about the filing of the final report.

13. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. On the side of the accused, the mother of the P.W.1. viz. Anarkali, was examined as D.W.1. During her examination, she has stated that during the relevant point of time, she came to know that her daughter was fell in love with one boy, who belongs to Bihar. She has further stated as soon as she gain the knowledge



about the intimacy, she prevented her daughter from going to work. However, while at the time, P.W.1 was in her home, she got used to the guy communicating by mobile phone. Ultimately, P.W.1 consumed auramine and admitted in the Hospital.

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14. Having considered all the above, the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Tiruppur, found the accused guilty of offences under Sections 5 (1) r/w 6 and 11(v) r/w 12 of POCSO Act and convicted him, as stated in para 2 of this judgment. Aggrieved over the said conviction and sentence, the appellant / accused, is before this Court, with the present appeal.

15. We have heard Mr.S.Suresh, learned counsel appearing for the appellant and Mr.M.Babu Muthu Meeran, learned Additional Public Prosecutor appearing for the State and also perused the materials available on record.

16. On 27.07.2021, when the appeal was posted for consideration, P.W.1 (Ms.X), the accused-Mohammed Sulthan @ Shafeek, the parents of the accused (S.Meharun Nisha and Sadiq Ali) and the mother of the P.W.1 (Aanarkali), are all appeared before this Court and made submissions that, in view of the settlement arrived at between them as well as due to the efforts taken by the Jamath people, now the marriage between the accused and the P.W.1, was solemnised on 14.07.2021 and the same got registered by the District Registrar, on 26.07.2021, at Tiruppur. In order to substantiate their contentions, they have produced the extract of the marriage certificates. Further, the learned counsel appearing for the appellant relied on the judgments of our Hon'ble Apex Court pertains to a case (i) G.V.RAO vs. L.H.V.PRASAD & OTHERS reported in 2000 (3) SCC 693, and (ii) JITENDRA RAGHUVANSHI AND OTHERS vs. BABITA RAGHUVANSHI AND ANOTHER reported in 2013 (2) MLJ (Cr1.) 736 (SC), praying this Court to compound the offence committed by the accused.

17. Now, considering the said submissions with the relevant records, it would appear that the cases now relied on by the learned counsel for the appellant, is not relates to the cases registered under the provisions of POCSO Act. But, here it is a case, the charges have been framed against the accused under Sections 5(1) r/w 6 and 11(v) r/w 12 of the POCSO Act, therefore, we are not agreed with the prayer submitted by the learned counsel for the appellant. Accordingly, we are decided to dispose of this appeal only on merits.

18. In respect to the merits of this case, the learned counsel for the appellant would contend that the evidence given by the P.W.1 before the trial Court, is having lot of contradictions, she has not supported the averments found in the



complaint. He would further contend that according to the prosecution, the alleged obscene photographs are destructed in the presence of P.W.4 and P.W.9. But in this regard, both the witnesses examined on the side of the prosecution, have not supported the version stated by the prosecution. More than that, the mother of the victim girl, while at the time of giving evidence as D.W.1 narrated the occurrence as P.W.1 was having affair with one boy, who belongs to Bihar State. Therefore, it cannot be held that the prosecution proved their case beyond reasonable doubt.

19. Per contra, the learned Additional Public Prosecutor appearing for the State would contend that the evidence recorded in the trial Court, is sufficient to hold that the accused herein committed the offence as alleged by the prosecution. According to him, interference of this Court, is not necessary in the findings arrived at by the trial Court.

20. Considering the said submissions with the relevant records, it is an admitted fact that the P.W.1, is not attained the majority at the relevant point of time. However, in respect to the occurrence, in the complaint (Ex.P.1) she has averred that, the accused herein forcibly committed penetrative sexual assault and also he videographed the same. In respect to the said averment, while at the time of giving evidence as P.W.1 she has stated that, the accused committed sexual assault only after getting her consent. More than that, in respect to the offence committed by the accused, she has not stated a specific instance that means, the date, place and the details of the photographs, which have been videographed. Therefore, it is made clear that the evidence given by the P.W.1 in respect to the occurrence, is neither wholly reliable nor wholly unreliable. Accordingly, the evidence given by P.W.1 needs corroboration. Although, the said incident took place within four walls, we did not expect a corroborative oral evidence for the alleged occurrence.

21. When looking at circumstantial situations, the Investigating Officer while at the time of giving evidence as P.W.10 has stated that, during her investigation, she recovered 7 photographs, in which, both the accused and the P.W.1 was found available in abnormal position. She has further stated that after recovering the same, because that the said photographs would be a hindrance to P.W.1's life, she destructed the said photographs through Destruction Mahazar.

22. Now, on going through the Destruction Mahazar, it seems that P.W.4 and P.W.9, are signed as witnesses to the destruction. In this occasion, in respect to the preparation of the said documents, they have not supported the case of the prosecution as the said documents had been prepared in the



presence of the witnesses and thereby, they were treated as hostile witnesses and only the signatures found in the said Mahazar was marked as Ex.P.9 and Ex.P.10. In their chief examination, they had clearly held that their signatures found in the Destruction Mahazar, were obtained from them only in the Police Station. More than that, the recovery Mahazar pertains to the seizure of those material object, is also not exhibited and proved through the witnesses, who are signed in the said document. In the said situation only, the Investigating Officer gave evidence as, after the recovery of the M.O.1 to M.O.3 in the presence of witnesses, those Mahazars are prepared.

23. Furthermore, it was stated by P.W.1 that the cell phone (M.O.1) now recovered by P.W.10, was recovered by the Jamath people before registration of the case. Therefore, in such a situation, it cannot be possible for the Investigating Officer to recover the cell phone (M.O.1) during the time of investigation. Therefore, in this area also, the evidence given by the victim girl, is not corroborated through the substantial evidence. More than that, in the evidence given by the victim girl's mother, she has specifically stated that her daughter was having intimacy with one boy, who belongs to Bihar. If such evidence is true one, we cannot come to the conclusion that the present accused, who is a Tamilian was involved in the alleged occurrence.

24. One another thing, which is necessary to decide in this appeal is that, after the occurrence, Jamath people are attempted to pacify the matter by way of solemnising the marriage between the P.W.1 and the accused. But in this regard, none of the persons, who are all attached with the concerned Jamath, are not examined on the side of the prosecution. The said circumstances also create a doubt whether the story put forth by the prosecution, is true or not. In a case of PHOOL CHAND vs. STATE OF RAJASTHAN reported in AIR 1977 SC 315, our Hon'ble Apex Court has held that, as the evidence of a witness when is neither wholly unacceptable nor wholly impeccable, corroboration is essential.

25. Applying the ratio laid down in the above referred judgment, in this case also, as already observed, the evidence given by P.W.1 in respect to the occurrence, is neither wholly reliable nor wholly unreliable. Therefore, in this case also, the evidence given by P.W.1 needs some piece of corroborative evidence. The witnesses examined to corroborate the P.W.1's evidence, are all not in support of the prosecution case. Therefore, we are of the opinion that the trial Court without considering the said aspect convicted the accused, which is erroneous in our view.



26. Accordingly, this Criminal Appeal is allowed. The conviction and sentence imposed upon the appellant / accused by the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Tiruppur dated 31.10.2019 in Spl.S.C.No.26 of 2019, is set aside.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

sri

To

1. The Sessions Judge,
Magalir Neethimandram
(Fast Track Mahila Court),
Tiruppur.
2. The Inspector of Police,
All Women Police Station,
Tiruppur - South,
Tiruppur.
3. The Superintendent,
Central Prison, Coimbatore.
4. The Public Prosecutor,
High Court, Madras.

Copy to:-

The Section Officer,
Criminal Section,
High Court of Madras 104.

+1cc to Mr.S.Suresh, Advocate SR.No.37042(13/09/2021)

Criminal Appeal No.772 of 2019

MG(CO)
CT/25/08/2021