

Bail Slip

The Appellant herein/Accused namely M. Karuppaiah, aged 20 years, S/o. Mathiyalagan was directed to be released on bail as per the order of this Court dated 27.11.2020 made in CrI.M.P. No. 17455/2019 in CrI.A.No.810/2019.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2021

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CrI.A.No.810 of 2019

M.Karuppaiah ... Appellant/Accused

-Vs-

The State rep by its,
The Inspector of Police,
All Women Police Station,
Perambalur.

(Crime No.14 of 2018). ... Respondent/Claimant

PRAYER: Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure, to call for records pertaining to Special S.C.No.19 of 2019 on the file of the Sessions Judge (Mahila Court) Perambalur dated 04.10.2010 and set-aside the conviction and sentence against appellant.

For Appellant : Mr.E.C.Ramesh

For Respondent : Mr.R.Suryaprakash,
Government Advocate [CrI. Side]

JUDGMENT

This Criminal Appeal has been filed against the conviction and sentence imposed by the learned Sessions Judge, Mahila Court, Perambalur in Special S.C.No.19 of 2019, dated 04.10.2019.

2.The respondent Police have registered a case in Crime No.14 of 2018 for offence under Sections 294(b), 323, 506(i) of IPC and Sections 5(1) and 6 of Protection of Children from Sexual Offence Act, 2012 against the appellant on the complaint [Ex.P1] given by PW1. After completing investigation, the respondent police laid a charge sheet before the learned Sessions Judge, Mahila Court, Perambalur and the same was taken on file as Special S.C.No.19 of 2019.

3.After completing the formalities under Section 207 Cr.P.C., since there was a prima facie material to frame charges against the appellant, the learned Sessions Judge, framed charges under Sections 294(b), 506(i), 450 of IPC and Section 3 r/w 4 of Protection of Children from Sexual Offence Act, 2012.

4.After completing the trial and hearing the arguments advanced on either side and also considering the oral and documentary evidence, the trial Judge found guilty of the appellant for offence punishable under Section 3 r/w 4 of the Protection of Children from Sexual Offence Act, 2012 and convicted and sentenced to undergo seven years Rigorous Imprisonment and to pay a fine of Rs.3,000/- and acquitted from the charges for offences under Sections 294(b) and 506(ii) IPC. Since the appellant was convicted under Section 3 r/w 4 of the Protection of Children from Sexual Offence Act, 2012, Section 450 of IPC is deleted.

5.The learned counsel for the appellant would submit that the offence alleged to have been taken place on 04.06.2018, whereas the victim girl/PW8 was admitted in Vinayaga Private Hospital on the same day evening. The evidence of DW1 is very clear that on the date of the occurrence, the victim girl/PW8 was taken treatment for three days in Vinayaga Private Hospital for consuming kerosene, since she was failed in 10th std. The learned counsel for the appellant would further submit that on 05.06.2018, the appellant had arrears exam and he went to the college for writing examination. In order to prove the same, the appellant was examined as DW2 and marked the copy of the hall ticket as Ex.D3. DW3, the Doctor from Government Hospital, Perambalur stated that on 05.06.2018, at about 08.30 p.m., the victim girl/PW8 was admitted in the hospital and taken treatment for injuries. DW3 has not intimated the same to the Police. The appellant being a graduate in the village, PW1 approached him to marry her daughter/PW8. Since the appellant refused the same, PW1 foisted a false case against him by using her relative, who is an Advocate.

6.The learned counsel for the appellant would further submit that PW1 is the mother of the victim girl/PW8 and PW6 is the mother-in-law of PW1 and grand mother of the victim girl/PW8. There are contradictions in the evidence of PW1 and PW6. Further, both PW1 and PW6 are relatives and they are same village and same caste. No independent witness was examined by the prosecution to prove the guilt of the appellant and the time of the occurrence and the time of PW8 meeting the appellant in his house on the next day and the time of admitting the victim girl/PW8 in the hospital. Further, the prosecution has not proved the case by corroborating evidence and materials. The Doctor/PW4, who examined the victim girl/PW8 stated that the

victim girl/PW8 has not made any complaint of pain. Therefore, the medical evidence/PW4 also not supported the case of the prosecution. The learned counsel would submit that the learned Sessions Judge failed to consider the material contradictions and mechanically convicted the appellant only on assumptions and on sympathy, and therefore, the judgment of conviction and sentence passed by the trial Court against the appellant, is liable to be set aside.

7.The learned Government Advocate [Crl. Side] appearing on behalf of the respondent Police would submit that on the date of occurrence, the victim girl/PW8 was a minor and aged about 17 years. In order to prove same, the Transfer Certificate of the victim girl/PW8 was marked as Ex.P4 through PW3, in which, the date of birth of the victim girl/PW8 is mentioned as 08.01.2002. Since the occurrence had taken place on 04.06.2018, the victim is a minor girl and she did not complete 18 years age on the date of occurrence and she is a 'Child', which comes under the definition of Section 2(1)(d) of the Protection of Children from Sexual Offence Act, 2012.

8.The learned Government Advocate would further submit that when the victim girl/PW8 was alone in her house on 04.06.2018, the appellant entered into the house, caught hold her, touched her breast, kissed her and had penetrative sexual assault. When she resisted the appellant, he forcibly committed the sexual assault and also threatened her not to reveal the same to anyone, otherwise he would take away her life. On the next day i.e., on 05.06.2018, PW1 and the victim girl/PW8 went to the house of the appellant to question about the happenings, at that time, the appellant ill-treated and assaulted the victim girl/PW8 and threatened them. Thereafter, they had gone to the Police Station and lodged a complaint [Ex.P1] to the respondent Police on 06.06.2018. The reason for delay in lodging the complaint [Ex.P1] has been properly explained by PW1. Further, PW1, the mother of the victim is an illiterate village lady and she did not know the exact time and date of incident, meeting the appellant in his house and lodging the complaint [Ex.P1]. Therefore, mere discrepancy in the time and date may not fatal to the case of the prosecution. The Doctor/PW4, who examined the victim girl/PW8 clearly spoken about the injuries sustained in her breast and the hymen was not intact. The evidence of the Doctor/PW2, who examined the appellant is not important one.

9.The learned Government Advocate would further submit that the victim girl/PW8 was produced before the learned Judicial Magistrate for recording the statement under Section 164 Cr.P.C. During the trial, the victim girl was examined as PW8 and her mother was examined PW1. From the evidence of the victim girl/PW8 and her statement recorded under Section 164 Cr.P.C.,

[Ex.P8] and the evidence of the Doctor/PW4 and her report [Ex.P6], the prosecution has clearly established the guilt of the appellant and proved the case beyond reasonable doubt and the victim girl/PW8, at the time of occurrence, was only 17 years old, and the appellant has committed penetrative sexual assault on the victim girl, and therefore, the trial Court has rightly convicted the appellant, and the appeal is liable to be dismissed.

10. Heard the learned counsel appearing for the appellant and the learned Government Advocate [Crl. Side] appearing for the respondent and also perused the materials available on record.

11. The case of the prosecution is that on 04.06.2018, at about 01.00 p.m., when the victim girl/PW8 was alone in her house, the appellant entered into the house and had penetrative sexual assault on her. On the same day, when the mother of the victim/PW1 came to the house at about 05.00 p.m., the victim girl/PW8 informed the same. PW1 and PW8 decided to go to the house of the appellant to question about the incident. On 05.06.2018, at about 03.00 p.m., they had gone to the house of the appellant and questioned the same, at that time, the appellant ill-treated and assaulted the victim girl/PW8 and also threatened them. Having no other option, PW1 and PW8 went to the Police Station and gave a complaint [Ex.P1] on 06.06.2018. Thereafter, they went to the Government Hospital, Perambalur and the victim/PW8 took treatment for injuries sustained.

12. Based on the complaint [Ex.P1] given by PW1, an FIR in Crime No.14 of 2019 was registered for offence under Sections 294(b), 323, 506(i) and Sections 5(1) r/w 6 of Protection of Children from Sexual Offence Act, 2012. After completing the investigation, the respondent police laid a charge sheet before the learned Sessions Judge, Mahila Court, Perambalur and the same was taken on file in Special S.C.No.19 of 2019.

13. During the trial, on the side of the prosecution, as many as 11 witnesses were examined, 13 documents were marked and no material object was exhibited. After completing the evidence of prosecution witnesses, when incriminating circumstances were culled out from the prosecution witnesses put before the accused, he had denied as false. On the side of the defence, 3 witnesses were examined and 6 documents were marked.

14. After considering the evidence on record and hearing on either side, the learned Sessions Judge, vide judgment dated 04.10.2019 in Special S.C.No.19 of 2019, convicted and sentenced the appellant as stated above.

15.Challenging the judgment of conviction and sentence, the present appeal has been preferred by the appellant.

16.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.

17.A careful reading of the evidence and materials, it is seen that the victim girl/PW8 in her evidence and in the statement recorded under Section 164 Cr.P.C., [Ex.P8] has clearly stated about the occurrence. PW8 clearly narrated the events that on 04.06.2018, at about 01.00 p.m., when she was alone in her house, the appellant entered into the house, caught hold her hand and when she resisted, he embarrassed her and when she tried to make a noise, he bite her lips and had penetrative sexual assault and also threatened her not to reveal the same to any one, otherwise he would take away her life. After her mother/PW1 coming to the house, she informed about the happenings. PW1 and the victim girl/PW8 discussed with the family members and decided to go to the house of the appellant to question the same. Accordingly, on the next day i.e., on 05.06.2018, they had gone to the appellant's house and questioned the happenings, at that time, the appellant ill-treated and assaulted the victim girl/PW8 and threatened them. Thereafter, PW1 has lodged a complaint to the respondent Police and a case in Crime No.14 of 2018 came to be registered.

18.The complaint [Ex.P1] has been lodged by PW1, who is none other than the mother of the victim girl. PW1 in her evidence has spoken about what her daughter/PW8 said to her about the incident and hence, her evidence is in the nature of hearsay. The grand mother of the victim, who was examined as PW6 has spoken about what her daughter-in-law/PW1 and grand daughter/PW8 said to her and she is also a hearsay witness. Though in this case there is no eye witness, it is the case of the prosecution that when the victim girl/PW8 was alone in her house, the appellant entered the house and had penetrative sexual assault with her. It is seen that no one was there and therefore, the offences like this, cannot expect any corroborative evidence or eye-witness or any other independent witness. The only corroborative evidence is the medical evidence. The victim girl/PW8 has stated that the appellant had penetrative sexual assault with her. During the course of investigation, the victim girl/PW8 was produced before the Doctor, who was examined as PW4, and the Doctor/PW4 has deposed in her evidence that the hymen was not intact. The defence has not established that the hymen was not intact not because of the assault or otherwise during sports. When the defence tried to establish by way of cross examination, the victim girl/PW8 denied that she is not a

sports woman or an athlete. The evidence of the Doctor/PW4 and also the Medical Report [Ex.P6] of the victim girl indicate that there are possibilities of sexual assault and the hymen of the victim girl was also not intact. Therefore, the evidence of the Doctor/PW4, coupled with the Medical Report [Ex.P6], confirms that the victim girl was subjected to penetrative sexual assault, and therefore, the only question that has to be decided is, whether the appellant has committed the penetrative sexual assault on the victim girl or not?

19.The victim girl/PW8 while recording her statement under Section 164 Cr.P.C., [Ex.P8] and while deposing before the learned Sessions Judge as PW8, she clearly narrated the incident happened on 04.06.2018. Therefore, the offences like this, only the evidence of the victim girl/PW8 can be considered for proving the case of the prosecution, unless trustworthiness of the victim girl/PW8 or any sound reason for discarding the evidence of the victim girl/PW8. Under these circumstances, this Court can safely come to the conclusion that the appellant has committed penetrative sexual assault on the victim girl.

20.Though there are contradictions between the evidence of the prosecution witnesses, PW1 and PW6, they are only hearsay witnesses. PW1 and PW8 clearly stated that on the subsequent day of the occurrence i.e., on 05.06.2018, they went to the appellant's house, whereas the appellant has established that on 05.06.2018, he went to college for writing arrears examination and to prove the same, the defence has examined DW2 and marked Hall Ticket [Ex.D3]. But no doubt even assuming that the appellant went to the college for writing arrears examination, neither the victim girl/PW8 nor PW1 stated that they went to the appellant's house between 2.00 p.m., to 5.00 p.m. During cross examination, PW1 stated that she and her daughter/PW8 went to the appellant's house on 05.06.2018 at about 03.00 p.m and when put a suggestion before PW1, that the appellant had gone to write the examination, she stated that she did not know on what time they went to the appellant's house. Admittedly, PW1 is an illiterate village lady and she did not know exact time, except pointing out the facts remains them.

21.The victim girl/PW8 along with her mother/PW1 went to the appellant's house on the next day of occurrence on 05.06.2018 at about 03.00 p.m. Even assuming that the appellant was not in his house at about 03.00 p.m., but however it is admitted that the college is only a reachable place. Even as argued by the learned counsel for the appellant, within 1 ½ hours, the appellant can reach the college and there is a possibility of return back to the home in the evening hours.

22.It is not the case of the defence that the plea of alibi, the appellant was not at all in the station on 05.06.2018 and he was somewhere else. The only defence taken is that on 05.06.2018, at about 03.00 p.m., the appellant was not present in his house. At about 02.00 p.m., to 05.00 p.m., he was in college to write the arrears exam. It is not the specific defence taken by the appellant that on 05.06.2018, he never been in his house.

23.PW1 is a illiterate lady and she may not know the exact time and what time she went to the appellant's house to question about the incident. Under these circumstances, though the learned counsel for the appellant tried to make a plea of alibi is not on the date of the occurrence but it is on the next day of the occurrence when they stated to have approached the appellant on the next day. On the very next day of the occurrence, at about 02.00 p.m., to 05.00 p.m., the appellant was not in the house and he went to the college. Since he already stated that it is not the case of the defence, he never been in the house on 05.06.2018. Therefore, the defence taken by the learned counsel for the appellant is not acceptable and however, the appellant has not taken the defence that on 04.06.2018, he was not in the native place and the place of occurrence. As even as stated by him during that time, the arrears examination was going on and on the next day of the occurrence, he had gone to college to attend the examination. Therefore, on 04.06.2018, the appellant was very much available in the native place. Under these circumstances, there is no reason to doubt the trustworthiness of the evidence of the victim girl/PW8.

24.Though there is a delay in lodging the complaint [Ex.P1], PW1 and PW8 clearly gave explanation that PW1 preferred the complaint on the next day on 06.06.2018. The offence like this, no mother would suddenly go to the police station and immediately lodge a complaint. First of all, she would think about the reputation of the family and future of the minor daughter and then only, will decide as to whether go to police station or the accused's house. In this case, PW.1 first decided to approach the appellant, when the appellant acted rudely, she decided to go to the police station to lodge a complaint. Therefore, the delay is not an inordinate delay in the nature of offence. Even though there are contradictions between the evidence of the prosecution witnesses, P.W.1, P.W.2 and PW.8, considering the object of the POCSO Act, this Court is of the view that the contradictions pointed out by the learned counsel for the appellant are not material contradictions to disbelieve the case of the prosecution, but only minor contradictions with regard to the place of occurrence, and that will not vitiate the case of the prosecution.

25. Therefore, on a perusal and consideration of the evidence of the victim girl/PW8, the Doctor/PW4, the complaint [Ex.P1], the statement of the victim girl recorded under Section 164 Cr.P.C. [Ex.P8] and the Medical Report of the victim girl [Ex.P6], the Transfer Certificate of the victim girl [Ex.P4] which shows that at the time of the occurrence, the victim girl was only 17 years old, and all other oral and documentary evidence on record, this Court finds that the prosecution has proved its case beyond reasonable doubt that the appellant has committed penetrative sexual assault on the victim girl, who was a minor aged 17 years at the time of the occurrence, and therefore, POCSO Act would attract against the appellant. Though the trial Court held that the prosecution has not established the case on the charges levelled against the appellant under Indian Penal Code, rightly convicted the appellant under Section 3 r/w 4 of the Protection of Children from Sexual Offence Act, 2012.

26. Hence, this Court can safely come to the conclusion that the appellant has committed penetrative sexual assault on the victim girl and therefore, the prosecution has established its case beyond reasonable doubt. In the light of the above discussion, this Court does not find any merit in this appeal and the appeal is liable to be dismissed.

27. Accordingly, this Criminal Appeal is dismissed and the judgment of conviction and sentence passed by the trial Court is confirmed.

28. The trial Court is directed to secure the accused and commit him to prison to undergo the remaining sentence. The bail bonds executed by the appellant, if any, shall stand canceled.

s/d-
Assistant Registrar (CS-VI)

True Copy

Sub-Assistant Registrar

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To

1. The Sessions Judge, Mahila Court,
Perambalur.

2.The Inspector of Police,
All Women Police Station,
Perambalur.

3.The Superintendent
Central Prison
Tiruchirapalli

4.The Public Prosecutor,
High Court, Madras.

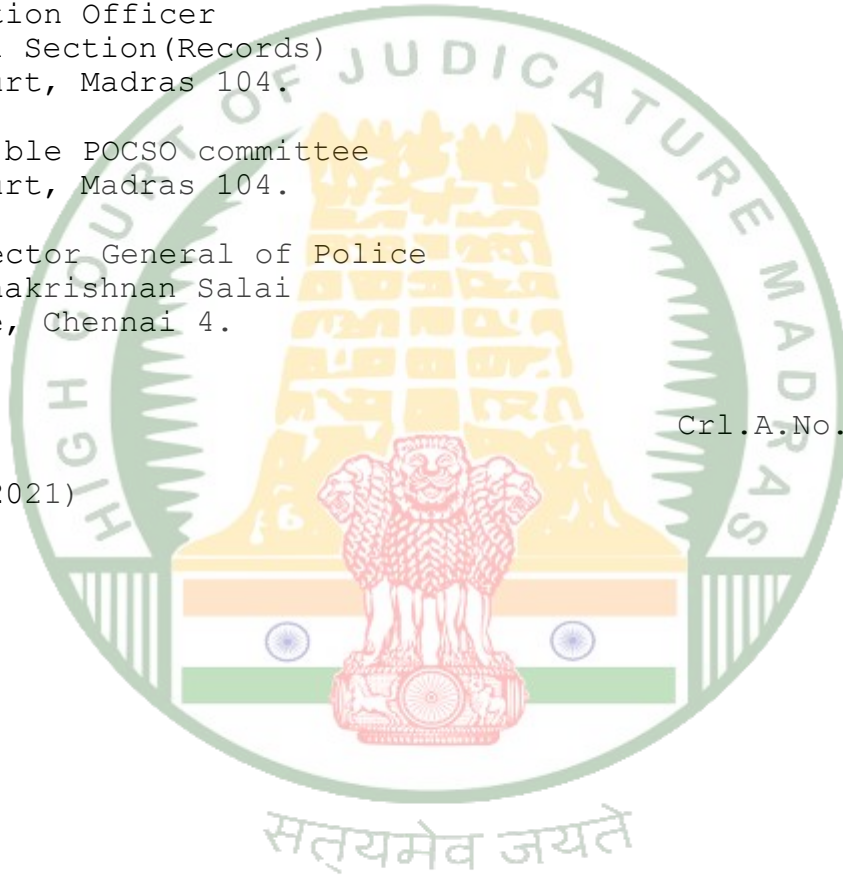
5.The Section Officer
Criminal Section(Records)
High Court, Madras 104.

6.The Hon'ble POCSO committee
High Court, Madras 104.

7.The Director General of Police
Dr. Radhakrishnan Salai
Mylapore, Chennai 4.

Crl.A.No.810 of 2019

BS(CO)
SP(09/07/2021)



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