



BAIL SLIP

The Appellant/Sole Accused Thiru.Thangaraj, S/o.Beeniyovan, is released on bail vide order dated 19/09/2016 made in CRL.MP(MD).No.2816 of 2016 in CRL.A.(MD).No.105 of 2016.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED ON : 17.08.2021

JUDGMENT DELEVERED ON : 02.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.A.No.(MD)No.105 of 2016

Thangaraj : Appellant/Sole Accused

Vs.

State, rep. by
The Inspector of Police,
All Women Police Station,
Vilathikulam,
Tuticorin District.
(Crime No.1 of 2015)

: Respondent/Complainant

PRAYER: The Criminal Appeal is filed under Section 374 of the Code of Criminal Procedure, to call for the judgment, dated 08.03.2016 made in Special S.C.No.27 of 2015, on the file of the Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Tuticorin and set aside the same.

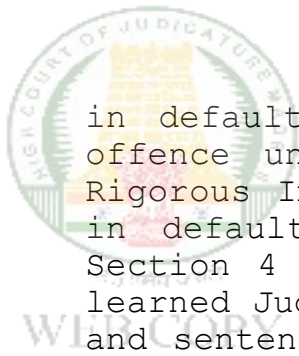
For Appellant : Mr.Mayilvahana Rajendran
For Respondent : Mr.M.Muthumanikkam
Government Advocate (Crl.side)

JUDGMENT

The present criminal appeal is directed against the conviction and sentence, dated 08.03.2016, made in Special S.C.No.27 of 2015, on the file of the Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Tuticorin.

2. The appellant is the sole accused. He stood charged for the offences under Sections 450, 506(ii) of IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred as "POCSO Act").

3. After full-fledged trial, the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thoothukudi, came to the conclusion that the appellant was found guilty for the offence under Section 450 of IPC and Section 4 of POCSO Act and accordingly, the appellant was convicted and sentenced to undergo Rigorous Imprisonment for 1 year and to pay a fine of Rs.1,000/-,



in default, to undergo Rigorous Imprisonment for 1 month for an offence under Section 450 of IPC. Further, sentenced to undergo Rigorous Imprisonment for 10 years and to pay a fine of Rs.2,000/- in default to undergo Rigorous Imprisonment for one year under Section 4 of POCSO Act. In respect of Section 506(ii) of IPC, the learned Judge acquitted the accused. Challenging the said conviction and sentence, the appellant is before this Court, by way of filing the present Criminal Appeal.

4. The relevant facts of the case, which gave rise to filing of this appeal are necessary to be recapitulated for the disposal of this appeal:-

(i) P.W.1 is the victim girl in this case. After completing 10th standard, due to the poverty, she has not continued her further studies and stayed in her home. Her date of birth is 06.12.1999. The appellant/accused is her relative. Seven months prior to the occurrence, the accused had a casual talks with P.W.1, on such time, the accused told to her that he would marry her. On 08.04.2015, around 01.00 p.m., knowing that P.W.1's mother was not in the house, the accused came there and after saying that he would marry her, attempted to commit rape on P.W.1. While at the time, P.W.1 refused to oblige the obligation raised by the accused, he pulled her nighty, gagged her mouth forced her to lie down and committed rape by inserted his male organ into her female organ. In respect of the said occurrence, P.W.1 lodged a complaint on 22.04.2015 under Ex.P2 before P.W.12 Kala, the then Special Sub-Inspector of Police, All Women Police Station, Vilathikulam.

(ii) On receipt of the said complaint, P.W.12- Kala, on 22.04.2015 at about 17.45 hours registered a case against the accused in Cr.No.1 of 2015 for the offence under Section 4 of POCSO Act and Sections 506(i) of IPC. The printed copy of the FIR was marked as Ex.P10. After registration of the case, she handed over the same to P.W.13-Theivanai, the then Inspector of Police, All Women Police Station, Vilathikulam, for investigation.

(iii) On receipt of the copy of the FIR, on 22.04.2015 around 20.15 hours, P.W.13-Theivanai visited the scene of occurrence and in the presence of P.W.6-Selvarani and one Mariasusila, she prepared an Observation Mahazar under Ex.P4. She drawn the Rough Sketch and the same has been marked as Ex.P.11. She examined the witnesses and recorded their statements.

(iv) On 23.04.2015 through one Guruvammal, who is the Police Constable, P.W.13 sent the victim girl to the Medical College Hospital, Tuticorin, for medical examination.

(v) On such production, P.W.7-Dr.Shobana, Assistant Surgeon in Tuticorin Medical College Hospital on 23.04.2015 around 11.00 a.m., issued an Accident Register under Ex.P5 by noticing



the following symptoms:-

"Nature of injury and treatment:

(State simple, grievous or opinion-reserved) H/o rape by a known

per (Mr.Thangaraj) on 08.04.2015 at her residence at 1.00 p.m.,

O/E Patient Conscious, Oriented,

afebrile

not anemic

PR: 84/mt.

LMP- 16.4.15

CVS/RS/NAD M/M 3/30 Rm

Breasts well developed.

Pubic hair and axillary hair present.

P/A-Soft

P/V.

Hymen not intact.

Vaginal introitus admits 2 fingers easily.

Cx (N.C) AV NS FF

Cervical Smear, Vaginal Smear taken & sent for examination.

No external injuries in external genitalia and breasts.

1)HIV test Negative

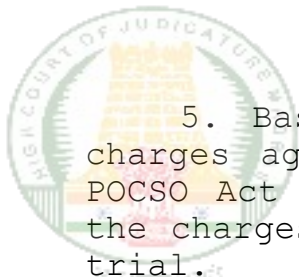
2)VPT-Negative

3)Blood group-A+ve

4)Victim girl sent to radiology department for age estimation."

(vi) In continuation of investigation, P.W.13 submitted an application to the concerned Judicial Magistrate praying to record 164 Cr.P.C., Statement of the victim girl. In turn, on 27.04.2015, P.W.10-Tmt.Asha Gowsalya Santhini, the then Judicial Magistrate, Kovilpatti examined P.W.1 and recorded her statement. After completing the above formalities, since P.W.13 on went Medical Leave, she handed over the entire case records to her successor for further investigation. In the meantime, the accused herein, surrendered before the Court and thereafter, upon the requisition given by Investigating Officer, P.W.9-Dr.Prabakaran examined the accused and issued the certificate under Ex.P9 stating that the accused is a potent man.

(vii) On 21.09.2015, P.W.13 again took the case for investigation and sent a requisition letter to the Commissioner, Kovilpatti Municipality for issuing the birth certificate pertains to the victim girl and in due course, the Commissioner, Kovilpatti Municipality issued the birth certificate of victim girl-P.W.1. The birth certificate issued by the Commissioner, Kovilpatti Municipality was marked as Ex.P1. On 21.09.2015, she completed the investigation and came to the positive conclusion that the accused is liable to be convicted under Section 4 of POCSO Act and Sections 450 and 506(i) of IPC. Accordingly, she filed a final report.



5. Based on the above materials, the trial Court framed the charges against the accused for the offences under Sections 4 of POCSO Act and Sections 450 and 506(ii) of IPC. The accused denied the charges and opted for trial. Therefore, the accused was put on trial.

6. During the course of trial proceedings, in order to prove their case, on the side of the prosecution, 13 witnesses have been examined as PW1 to PW-13 and 12 documents were exhibited as Ex.P1 to Ex.P12.

7. Out of the above said witnesses, PW1 being the victim girl speaks about the occurrence as alleged by the prosecution.

(I) P.W.2-Anandhamery is the mother of P.W.1. She claims that after the occurrence, P.W.1 consumed a poison and due to the same, she was admitted in Government Hospital, Vembar, wherein she disclosed the fact that after getting acquaintance with her and later the accused had ravaged her. As soon as, after came into the knowledge of the occurrence, P.W.2 has given a complaint to the Village President viz., Arockiyaraj about the same. The said Arockiyaraj advised the accused to marry the victim girl, for which the accused refused to marry the victim girl. So she had lodged a complaint before the police.

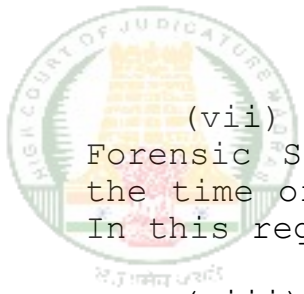
(ii) P.W.3-Selvi is residing in the same locality. She knows the accused and P.Ws.1 & 2. She speaks about the occurrence as while at the time P.W.1 was in the hospital for taking treatment in respect of consumption of Tablets, she disclosed the occurrence as the accused after got acquaintance came into her house and committed the offence.

(iii) P.W.4-Arulraj is the relative of P.W.1. He speaks about the occurrence as during the relevant point of time after made sexual assault on P.W.1, he along with P.Ws.1 & 2 reported the same to the Village President. In turn, on enquiry, the accused told to the said Arulraj as he had not done any wrong.

(iv) P.W.5-Aroackiyaraj also gave evidence in support of the evidence given by P.W.4.

(v) P.W.6-Selvarani being the resident of Siluvaipuram speaks about the preparation of Observation Mahazar by P.W.13.

(vi) P.W.7-Dr.Shobana, attached with Toothukudi Medical College Hospital, gave evidence in respect of the medical examination conducted over P.W.1. According to him, during the time of examination, she collected cervical smear and vaginal smear of P.W.1 and sent the same for Chemical examination.



(vii) P.W.8-Dr.Balamurugan, Scientific Officer in Regional Forensic Science Laboratory, Tirunelveli, gave evidence as during the time of examination, Spermatozoa was not detected on the smear. In this regard, he issued a report under Ex.P7.

(viii) P.W.9-Dr.Prabakaran, Assistant Surgeon speaks about the examination of accused. According to him, he has given a opinion that there is nothing to suggest that he is impotent.

(ix) P.W.10-Asha Kousalya Santhini, the then District Munsif, Srivaikundam, speaks about the details in respect of 164 Cr.P.C., statement recorded from the victim girl.

(x) P.W.11-Sasikala, serving as a Commissioner of Kovilpatti Municipality, claims that upon the requisition given by P.W.13, she issued a birth certification pertains to the birth of P.W.1. According to her, date of birth of P.W.1 is 06.12.1999 and the said birth was registered on 10.12.1999.

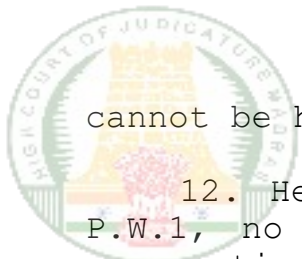
(xi) P.Ws.12 & 13 are the Police Officials, speaks about the receipt of complaint, registration of the case, examination of witness, examination of the victim girl and the accused and about the filing of final report.

8. When the above incriminating materials were put to the accused under Section 313 Cr.P.C. the accused denied the same as false. The accused filed a statement stating that Ex.P1 birth certificate pertains to the victim girl is not a genuine one. He has further stated in the said statement as when at the time, P.W.1 was compelled to marry her, due to the family circumstances, he refused to marry her, however, he asked some time for performing their marriage. In otherwise, he did not chose to examine any witness on his side.

9. The learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Tuticorin, after perusing all the above materials and on considering the arguments advanced by the learned counsel on either side, convicted and sentenced the appellant as stated supra. Aggrieved by the said conviction and sentence, the appellant is before this Court with this appeal.

10. I have heard Mr.Mahilvahana Rajendran, learned counsel appearing for the appellant/accused and Mr.M.Muthumanikkam, learned Government Advocate (Crl.side) appearing for the State. I have also perused the records carefully.

11. The learned counsel appearing for the appellant would contend that before the trial Court the alleged birth certificate pertains to the victim girl was marked as Ex.P1. Though the said birth certificate has been registered on 10.12.1999. Only on



cannot be held that the said certificate is a valid one.

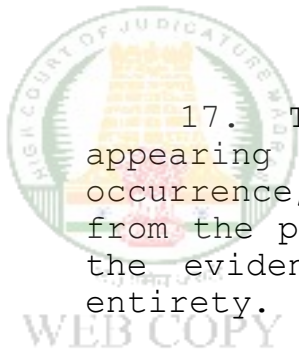
12. He added further as in order to support the testimony of P.W.1, no substantial document has been produced on the side of prosecution. Further, in order to prove the date of birth, Headmistress of the School, in which, P.W.1 was studied, has not been examined. More than that, the doctor, who examined the victim girl, has not stated about the symptoms of physical contact and accordingly, it is necessary to held that the case of the prosecution is not proved beyond reasonable doubt.

13. Per contra, the learned Government Advocate (Crl.side) appearing for the respondent would contend that the evidence given by the prosecution witnesses is sufficient to accept the case of the prosecution with entirety. He further submitted that during the relevant point of time, P.W.1 has not completed the age of 16 years. Hence, the alleged consent given by her is not a legal consent and therefore, the same cannot be taken into account for considering the issue raised in this case. According to him, the interference of this Court in the finding arrived at by the trial Court does not require.

14. I have considered the rival submissions made by the counsel appearing on either side.

15. The first and foremost submission made by the learned counsel appearing for the appellant is that the age of the victim girl has not been proved by the prosecution by producing the substantial evidence. Now, on considering the said submission with relevant records produced before the trial Court, the birth certificate pertains to the victim girl has been marked as Ex.P1. Now, on going through the contents of the said document, it seems that the date of birth of the victim girl is 06.12.1999, further, the said birth has been registered on 10.12.1999. Therefore, it is quite clear that within four days from the date on which P.W.1 is born, the same has been entered into the register of Birth and Death maintained by the concerned Municipality and the said circumstances is evident to held that the date of birth of P.W.1 is genuine. In this occasion, it is not in dispute that the said birth certificate was issued by the Commissioner, Kovilpatti Municipality who is the competent person to say the date of birth.

16. It is a well settled law that primary evidence is a bast evidence of a document, when it is expected in a case, the same cannot be easily thrown away expecting some corroborative evidence. Accordingly, in view of section 74 & 76 of Indian Evidence Act, I am of the opinion that contents of the said document is sufficient to accept the case of the prosecution as the age of the victim girl at the time of occurrence is 15 years. In otherwise, expecting the evidence from the School authorities is not necessary for proving the age of the victim girl.



17. The another submission made by the learned counsel appearing for the appellant is that in order to prove the occurrence, except the testimony of P.W.1, no evidence is available from the prosecution side. Therefore, without any corroboration to the evidence given by P.W.1, the same cannot be accepted with entirety.

18. Now, on going through the said submission, it is true that in order to prove the occurrence, the evidence given by the victim girl alone found available on the side of the prosecution. In this regard, it is necessary to understand that the alleged offence committed by the accused has been took place within four walls. Therefore, it is not necessary to expect some corroboration to the evidence given by the victim girl.

19. Now, on going through the evidence given by the victim girl, the same is in the form of inspiring the confidence of this Court. Further, the evidence given by P.Ws.2 & 3 are all relevant in respect of the consumption of Taplets. According to them, after came into the knowledge about the sexual assault committed by the accused, they approached the accused and requested to marry the victim girl. For which, the accused denied to marry the victim girl and thereafter only, they approached the police and lodged a complaint. So, the subsequent contact of P.Ws.1 to 3 is also a relevant factor. Under Section 8 of the Evidence Act as the evidence given by P.W.1 is a genuine one.

20. Further, on going through the entire cross-examination of P.W.1 in respect of the alleged occurrence, no material is found that the evidence given by the victim girl in her chief-examination, is falsity.

21. Now, on going through the evidence given by the doctor, who examined the victim girl, it seems that there was no evidence in respect of the sexual assault as alleged by the prosecution. However, when at the time the victim girl was produced before the doctor, she had reported the occurrence as on 08.04.2015 around 01.00 a.m., she was raped by one known person in her house, further, she gave an opinion that the victim girl is indulged in sexual intercourse two or three times. Accordingly, the evidence given by the Medical Officer is also in support of the evidence given by the victim girl.

22. As a general Rule Court can and may act on the testimony of a single witness though uncorroborated, that unless corroboration is insisted upon by statute the court should not insist upon corroboration except in cases where the nature of testimony of a single witness itself requires the same as a rule of prudence. Here, it is a case, the victim girl is aged about 16 years at the time of giving evidence, therefore, being the fact that the evidence given by the victim girl is natural, expecting corroboration is



unnecessary.

23. Yet another submission made by the learned counsel appearing for the appellant is that the cross-examination of P.W.1 reveals the fact that during the time of occurrence, both the victim and the accused fell in love with each other and both are working in the same institution. Further, they are regularly chatting through the Mobile Phone, therefore, the said circumstances has to be presumed that the alleged occurrence had happened with the consent of victim girl. He has further added that the learned trial Judge without considering the said aspect convicted the accused and therefore, the same needs changes.

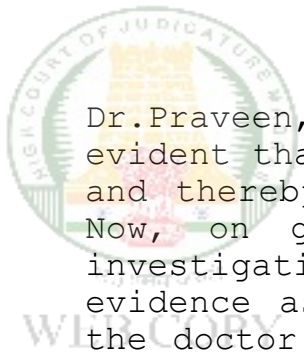
24. Now, on considering the said submission, it is true that in her cross-examination P.W.1 has stated that before the occurrence, nearly about 7 months they were fell in love with each other, further by using the mobile phone, they were chatting in respect of other aspects. In the said circumstances, even assuming that the victim girl had given consent to the accused for sexual intercourse, being the reason that the victim girl is aged about 16 years at the time of occurrence, in view of section 375 Proviso 6 of IPC, the same cannot be taken into account for considering the offence of rape. Therefore, in this aspect also, the submission made by the learned counsel for the appellant is not having any much force. In fact, in respect of the occurrence, the victim girl has narrated the occurrence as follows:-

"2015 ஏப்ரல் 8ம் தேதி 1 மணிக்கு என் அம்மா வீட்டில் இல்லாததை தெரிந்துகொண்டு எதிரி என் வீட்டிற்கு வந்தார். நான் திருமணம் செய்துகொள்வேன் என்று என்னை ரேப் செய்வதற்கு வந்தார். என் கையை பிடித்தான். நான் தட்டி விட்டேன். வெளியே ஓடிவிடலாம் என்று நினைத்தேன். அதற்குள் என் நைட்டியை பிடித்து இழுத்து வாயில் துணியை வைத்து பொத்தினான். என்னை கட்டாயப்படுத்தி என் மீது படுத்து என்னை ரேப் செய்தான். ரேப் செய்தான் என்றால் என்னை கீழே படுக்க வைத்து அவனுடைய ஆண்குறியை எடுத்து என் பெண்குறியில் வைத்து உடலுறவு கொண்டு கற்பப்பளித்தான்."

Accordingly, I am of the view that the said evidence is narrow and inspire the confidence of the Court.

25. In otherwise, in the judgment relied on by the appellant counsel in **Santosh Prasad alias Santosh Kumar Vs. State of Bihar** reported in **2020 (2) SCC (Cri) 77**, it has been observed that the medical evidence given by the doctor does not support the case of prosecution and also there was a land dispute going on between both the parties. Therefore, the judgment relied on by the learned counsel for the appellant is no way helpful to the case of the appellant.

26. An another submission made by the learned counsel appearing for the appellant is that the doctor, who treated the victim girl, ~~at the same time when the victim girl consumed tablets for ie.,~~



Dr.Praveen, is not examined and therefore the said circumstances is evident that something was suppressed on the side of the prosecution and thereby, the accused is entitled for the relief of acquittal. Now, on go through the said submission it is true that the investigating officer in this case when at the time of giving evidence as P.W.13 stated before the trial Court that he examined the doctor Praveen and recorded the statement. On the other hand, he has not been examined as a witness on the side of the prosecution. On the other hand, the Accident Register issued by the said doctor was marked as Ex.P12 through the Investigating Officer. In this regard, P.W.13 investigating officer is not a competent person to say the contents of said document. However, on go through the evidence given by P.W.13 it seems when at the time the said document was marked as exhibit, on the side of the accused objections has not been raised alleging that P.W.13 is not a competent person to say the contents of the said documents. Therefore, the said act committed by the accused is nothing but amounts to admitting the contents of the said document. More than that, in view of section 29 of POCSO Act, it is necessary, the Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.

27. In fine, it is a case in which the relationship between the accused and the victim girl has not been disputed and also the evidence given by P.W.1 in respect of the alleged occurrence is found reliable, the minor lapse found in the prosecution is not at all relevant to disbelieve the entire case of the prosecution. Accordingly, I am of the view that the evidences given by the witnesses examined on the side of the prosecution are sufficient to accept the entire case of the prosecution.

28. In view of the above discussion, this Criminal Appeal is dismissed by confirming the conviction and sentence awarded dated 08.03.2016 by the Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Tuticorin in S.C.No.27 of 2015.

Sd/-

Assistant Registrar ()

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Sub Assistant Registrar(CS)

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To:-

1. The Sessions Judge, Mahalir Neethimandram
(Fast Track Mahila Court), Tuticorin.

2. The Judicial Magistrate,
Vilothikulam.

3. do through
The Chief Judicial Magistrate, Tuticorin District.

4. The Superintendent, Central Prison, Palayamkottai.

5. The Inspector of Police,
All Women Police Station,
Vilathikulam,
Tuticorin District.

6. The Additional Public prosecutor,
Madurai Bench of Madras High Court, Madurai

7. The Section Officer, (2C)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.SEEMARAJ, Advocate (SR-28257[F] dated 06/09/2021)

Crl.A(MD)No.105 of 2016
02.09.2021

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