



BAIL SLIP

The Petitioner/Appellant M. Muniappan S/o. Muthusamy was released on bail order of this court dated 04.11.2016 made in CRL.MP (MD).No. 4791/2016 in CRL.A.(MD).No. 217/2016.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 25.06.2021

Pronounced on : 01.10.2021

CORAM

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.A. (MD)No.217 of 2016

M.Muniappan

... Appellant/Sole Accused

Vs.

State Rep. by
Inspector of Police,
Pasupathipalayam Police Station,
Karur District.
(Crime No.20 of 2014)

... Respondent/Complainant

Prayer:- This Criminal Appeal is filed under Section 374 of Criminal Procedure Code to set aside the judgment and conviction passed by the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Karur in Spl.S.C.No.5 of 2016, dated 20.05.2016 and acquit the appellant herein.

For Appellant : M/s.P.Krishnaveni

For Respondent : Mr.T.Senthil Kumar,
Government Advocate (Crl. Side)

JUDGMENT

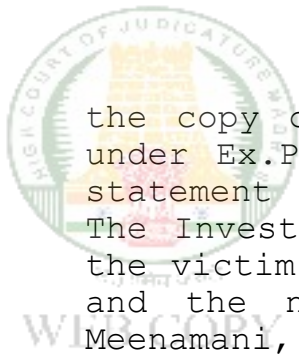
This Criminal Appeal is filed to set aside the conviction and sentence imposed by the Fast Track Mahila Court, Karur in Spl.S.C.No.5 of 2016, dated 20.05.2016.

2.The case of the prosecution in brief are as follows:

2.1.P.W-1-Siva and P.W-3-Meera are husband and wife, they are residing in E.B. Colony, North Gandhigramam in Karur District. Their four years old daughter (herein after referred to as "victim") is P.W-2 in this case. P.W-3 is working as Assistant in the Animal Husbandry Department at Velayuthapalayam. As usual, she went for her work. P.W-1 is working in a Private Company. Their daughter was attending school at Macmillan School at Karur. On 09.01.2014 by around 8.30 a.m., the victim who was playing outside on the street suddenly came crying into the house. P.W-1 was at home at that time. Since it was time for school, he consoled the victim and got her ready to go to school and he left the victim at the school. By 2.45 p.m., the niece of P.W-1, by name Dhanalakshmi, went to the school and picked up the victim. By 3.15 p.m. P.W-3-mother of the



victim returned home early as she had to deposit money in Bank. As the victim was crying, she consoled the victim and thereafter, the child was asked to play as usual. The victim went outside to play. She ran into the house crying within a short time. The victim was pointing her finger outside the house and weeping. On enquiry by P.W-3, the victim informed her that a man standing outside the house on the street had caused pain on her. Suspecting something, the mother of the victim called her husband on mobile and immediately, P.W-1 returned home. On reaching home, he saw crowd outside his house. When he reached in front of his house, the man from the crowd caught hold of the hand of P.W-1 and expressed his apologies. He also stated that he is physically challenged person and P.W-1 has to apologise him. Therefore, with the help of his friends by name Senthil Kumar, Mubarak Ali, Vinodh Kumar, Murali, P.W-1 caught hold of the man who expressed apologies to P.W-1. He took him to Police Station and lodged a complaint under Ex.P-1. On enquiry, P.W-1 came to know that the man who expressed apologies, was a resident of the same street roughly 20 houses away from his house and his name is Muniappan. He is alleged to have pinched the vagina of the victim. Therefore, the child was agitated due to pain. The Woman Sub Inspector of Police, Pasupathipalayam Police Station, Karur District, on receipt of the complaint under Ex.P-1 from P.W-1, registered FIR under Ex.P-6 by 18 hours under Section 8 of the Protection of Children from Sexual Offences Act, 2012 and forwarded the original complaint under Ex.P-1 and original FIR under Ex.P-6 to the Court of the learned Judicial Magistrate, Karur. A copy of the same was sent to P.W-11-Inspector of Police, Pasupathypalayam Police Station, Karur. On receipt of the copy of the FIR, the Investigation Officer proceeded to the house of P.W-1 to P.W-3 and prepared rough sketch under Ex.P-7 in the presence of witnesses P.W-6-Vinodh Kumar and Murali @ Muniappan and Observation Mahazar under Ex.P-3. He had sent a requisition letter to the duty medical Officer, Government Hospital, Karur who examined the child and also to the learned Chief Judicial Magistrate, Karur to nominate a learned Judicial Magistrate to record the statement of the victim under Section 164 of Cr.P.C. The Judicial Magistrate, who was on duty, recorded the statement under Section 164 of Cr.P.C., of the victim as per the mandatory Provisions of the Protection of Children from Sexual Offences Act, 2012. He had arrested the accused who was brought to the Police Station by P.W-1 along with his friends to the learned Judicial Magistrate, Karur along with the requisition letter for medical examination of the accused (Muniappan) and request for remand. The learned Judicial Magistrate had on perusal of the FIR, remand report, arrest copy and other connected papers, remanded the accused. The learned Chief Judicial Magistrate, Karur, had nominated P.W-10-Tmt.S.Mohana Ramya, learned Judicial Magistrate to record statement of the victim under Section 164 Cr.P.C. The victim was forwarded to the duty medical Officer along with her parents who was examined by P.W-8-Dr.Rajeswari. On examination, there was no visible injury on the victim. The examination report of the victim under Ex.P-4. The Investigation Officer also obtained



the copy of the Birth Certificate from the parents of the victim under Ex.P-8. P.W-10-learned Judicial Magistrate had recorded the statement of the victim under Section 164 of Cr.P.C. under Ex.P-2. The Investigation Officer had recorded the statement of parents of the victim viz., P.W-1 and P.W-3 and the statement of P.W-2 -victim and the neighbours and acquaintance from the street as P.W-4-Meenamani, P.W-5-Senthil Kumar and P.W-6-Vinodh Kumar. He had also recorded the statement of P.W-7-Videographer who videographed the recording of statement under Section 164 of Cr.P.C. by the learned Judicial magistrate.

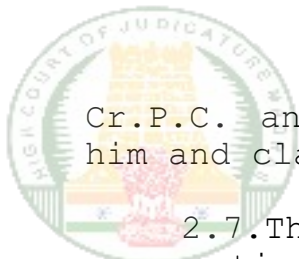
2.2.On completion of investigation, P.W-11-Investigation Officer had laid final report of the investigation under Section 173 of Cr.P.C., before the Court of Judicial Magistrate. He had altered the provisions of law by giving alteration report under Ex.P-9.

2.3.The learned Judicial Magistrate, on perusal of the records and the final report filed by the Investigation Officer, had taken cognizance of the case for offences under Section 9(m) r/w. 10 of the Protection of Children from Sexual Offences Act, 2012. Since the case was triable by the Court of Sessions, the case was numbered as C.M.P.No.423 of 2014 of Judicial Magistrate, Karur. The learned Judicial Magistrate had issued summons to the accused and on appearance of the accused, copies were furnished to him under Section 207 of Cr.P.C and thereafter, committed the case to the learned Sessions Judge, Fast Track Mahila Court, since the offences were triable by Court of Sessions. Therefore, the case records were sent to the Court of learned Sessions Judge, Karur. The Accused was bound over to the Sessions Judge, Fast Track Mahila Court, Karur. On receipt of the records from the Court of Judicial Magistrate, the learned Sessions Judge, Fast Track Mahila Court, Karur, had taken cognizance of the offences and numbered the case in Spl.S.C.No.5 of 2016, since the offence alleged by the prosecution attracts the provisions of Protection of Children from Sexual Offences Act, 2012.

2.4.Taking cognizance of the offence and on receipt of the records, the learned Sessions Judge, Special Court for POCSO Act cases, Fast Track Mahila Court, Karur, had numbered the case in S.C.No.05 of 2016. On appearance of the accused, on perusal of the records and on hearing the prosecution and the defence, charges were framed under Section 9(m) r/w. 10 of the Protection of Children from Sexual Offences Act, 2012. The accused denied the charges and claimed to be tried. Therefore, the learned Sessions Judge, Fast Track Mahila Court had ordered trial.

2.5.During trial, the prosecution had examined the witnesses P.W-1 to P.W-11 and marked Ex.P-1 to Ex.P-9 and M.O-1.

2.6.On closing the prosecution evidence, incriminating evidence against the accused was put to him under Section 313 of Cr.P.C.



Cr.P.C. and the accused denied the incriminating evidence against him and claimed that he has defence to disprove the prosecution.

2.7.The accused had not let in evidence to disprove the prosecution case. Therefore, the prosecution had advanced the arguments. The learned counsel for the accused had replied to the arguments of the prosecution.

2.8.On hearing the arguments of the prosecution and the defence of the accused and on assessment of evidence, the learned Sessions Judge, Fast Track Mahila Court, Karur, had recorded the finding of guilt. The learned Sessions Judge, Fast Track Mahila Court, Karur had convicted the accused under Section 9(m) r/w. 10 of the Protection of Children from Sexual Offences Act, 2012 and sentenced him to undergo rigorous imprisonment of 5 years and to pay a fine of Rs.1,000/-, in default, to undergo one month Simple Imprisonment. The period of detention already undergone was set off under Section 428 of Cr.P.C.

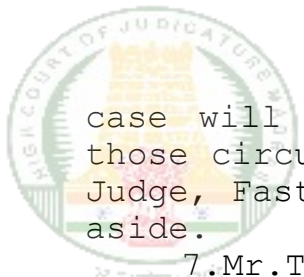
3.Aggrieved by the judgment of conviction and sentence of imprisonment of 5 years and fine of Rs.1000/-, the sole accused/Muniappan had preferred this appeal before this Court.

4.Ms.P.Krishnaveni, learned Counsel was nominated by the Legal Services Committee of the Madurai Bench of Madras High Court for the Appellant/Accused. The arguments of the learned Counsel for the Appellant/Accused is that the victim was scared by the appearance of the accused by his physical appearance and about which the child had explained to its mother. The child was unable to state clearly about the action of the accused attracting the provisions of Section 9(m) r/w. 10 of the Protection of Children from Sexual Offences Act, 2012.

5.Added to that, the parents of the child P.W-1-Siva and P.W-3-Meera, P.W-4-Meenamani, P.W-5-Senthil Kumar and P.W-6-Vinodh Kumar are not at all direct witnesses. They are hearsay witnesses. The victim was crying on seeing the physical appearance of the accused, however, they had presumed things as though the victim had been assaulted sexually by the accused.

6.The child is three years old on the date of alleged occurrence. The child is unable to clearly state what is the "main part". As per the FIR and the deposition of the alleged victim, the accused is alleged to have touched the "main part". Further, the Doctor who had examined the victim had clearly stated that there had not been any visible injury on any part of the body of the victim. It is to be noted that the victim had complained in the morning and the father of the victim consoled her and sent her to school and in the school, she had not cried or complained to her teacher and she had attended the school normally and on return only, this complaint

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case will not stand to scrutiny before the Court of law. Under those circumstances, the conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Karur, is perverse and has to be set aside.

7.Mr.T.Senthil Kumar, learned Government Advocate (Crl. Side) appearing for the respondent had objected to the arguments of the learned Counsel for the Appellant/Accused stating that the learned Trial Judge had considered the evidence of victim herself-a child of three years. It is to be noted that the victim went crying into the house and was consoled by her father and then, sent to school by 8.30 a.m. on the same day and the maternal aunt of the victim took her home and after change of dress and after refreshment, allowed her to play. Again, when she came to street, she started crying and ran into house complaining the act of the accused. Therefore, agitated by the conduct of the child, the maternal aunt had informed the mother and father of the child. Thereupon, both rushed home and on consoling the victim, they enquired the victim. The victim in its childish expression, expressed the pains and sufferings to its mother which resulted in lodging of complaint and registration of FIR.

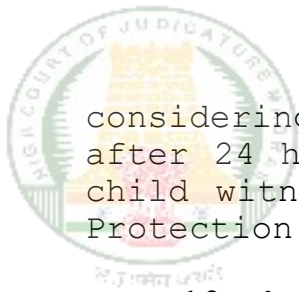
8.Further, the parents of the victim-P.W.1 and P.W-3 had enquired with the accused himself whereupon the neighbours in the street gathered and enquired him. He had surrendered to them seeking apology. This conduct of the accused gives strong presumption that he had indulged in the offence attracting the provisions of Section 9(m) r/w. 10 of the Protection of Children from Sexual Offences Act, 2012. Therefore, the arguments of the learned Counsel for the Appellant/Accused had to be rejected and the appeal may be dismissed.

9.Point for consideration:

Whether the judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Karur, is perverse warranting interference by this Court as Appellate Court?

10.On perusal of the judgment of the learned Sessions Judge, Fast Track Mahila Court, Karur and on perusal of the evidence of P.W-1 to P.W-11, it is found that there was no direct witness to the occurrence. The child is the victim of the act of the accused. The victim had cried because of the suffering and insult. Therefore, the mother cajoled the victim and enquired the victim. The victim had expressed its pain and sufferings in its own childish way to her mother. Therefore, the mother was agitated. That part of evidence is available through the victim as P.W-2. P.W-1 and P.W-3-the parents of the victim.

11.The evidence of P.W-8-Doctor that on examination of the victim, no visible injury was seen, is also found acceptable



considering the fact that the victim was seen and examined by P.W-8 after 24 hours from the time of occurrence. The evidence of P.W-2 child witness had to be accepted as per the provisions of the the Protection of Children from Sexual Offences Act, 2012.

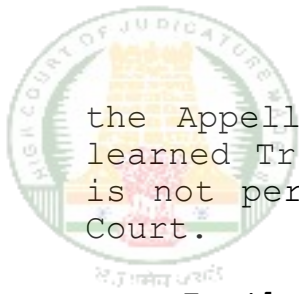
12.The offence under the Protection of Children from Sexual Offences Act, 2012 is entirely different from the offence under general Criminal Law in the Indian Penal Code. The provisions of the general Criminal Law is not applicable strictly to the case under the Protection of Children from Sexual Offences Act, 2012. There is stronger presumption to be drawn towards the evidence of the child. The accused is granted the right to disprove the case through cogent evidence. Only then, the Court can draw presumption or come to the conclusion that the accused had disproved the allegations alleged against the accused by the prosecution.

13.Here in this case, the accused had not entered witness box. Under those circumstances, the discussion of evidence and assessment of evidence by the learned Sessions Judge, Fast Track Mahila Court, Karur, in the discussion in Paragraphs 7 to 19 is found reasonable and acceptable under the provisions of the Indian Evidence Act and under the provisions of the Protection of Children from Sexual Offences Act, 2012.

14.As per the ratio laid down by the Hon'ble Supreme Court, while re-assessing the evidence by the appellate Court, the appellate Court shall not disturb the finding of fact recorded by the learned trial Judge. Even if the appellate Judge arrives at a different conclusion opposite to the conclusion already arrived at by the learned trial Judge, still the appellate Judge shall not disturb the findings of the learned trial Judge on the ground that the learned trial Judge had the advantage of observing the demeanour of the witnesses and the accused. Therefore, the finding arrived at by the trial Judge/learned Sessions Judge, Fast Track Mahila Court, Karur, is given due weightage. If the learned trial Judge had appreciated and assessed the evidence available before him/her, in the light of the provisions of the Indian Evidence Act, the same shall not be disturbed. If the learned trial Judge had erred in assessing the evidence, as per the provisions of the Indian Evidence Act, then the Appellate Court can interfere in the findings of the learned trial Judge.

15.In the light of the above proposition of law laid down by the Hon'ble Supreme Court, the finding of guilt recorded by the learned trial Judge/Sessions Judge, Fast Track Mahila Court, Karur, is found to be proper and not perverse. When it is not perverse, this Court, as appellate Court, cannot dislodge the finding of guilt recorded by the learned trial Judge.

16.In the light of the above discussion, the point for <https://www.secrets.gov.in/services> answered in favour of the prosecution and against



the Appellant/Accused. The judgment of conviction recorded by the learned Trial Judge/Sessions Judge, Fast Track Mahila Court, Karur, is not perverse warranting interference by this Court as Appellate Court.

In the result, this appeal is dismissed as having no merits.

The conviction and sentence passed by the learned Sessions Judge, Fast Track Mahila Court, Karur, sentencing the accused to undergo 5 years Rigorous Imprisonment and to pay fine of Rs.1,000/-, in default, to undergo one month simple imprisonment for the offence under Section 9 (m) r/w. Section 10 of POSCO Act, 2012 are confirmed.

The learned Sessions Judge, Fast Track Mahila Court, Karur, is directed to issue warrant against the accused to forward him to prison to undergo the remaining period of sentence imposed on the accused by judgment dated 20.05.2016 in Spl.S.C.No.5 of 2016. The period of detention already undergone by the Appellant/Accused is set off under Section 428 of Cr.P.C.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

SRM

To

- 1.The Sessions Judge, Fast Track Mahila Court,Karur.
- 2.The Judicial Magistrate no.I,Karur.
- 3.Do Through The Chief Judicial Magistrate, Karur.
- 4.The Inspector of Police,
Pasupathipalayam Police Station, Karur District.
- 5.The Additional Public Prosecutor
Madurai Bench of Madras High Court,Madurai.

Copy to

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

Crl.A.(MD).No.217 of 2016

01.10.2021

PS (CO)

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