



BAIL SLIP

Thiru.Anthony Prabhakaran @ Kamaraj S/o.Gnanaprakasam, Male, Aged 23/2016 was released on bail vide Order dated 16.09.2016 made in Crl.M.P(MD).No.7726 of 2016 in Crl.A(MD).No.316 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 30.06.2021

DELIVERED ON : 30.07.2021

CORAM

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.A. (MD)No.316 of 2016

Anthony Prabhakaran @ Kamaraj : Appellant / Sole Accused

Vs.

State through
The Inspector of Police,
All Women Police Station,
Vilathikulam,
Thoothukudi District.
(in Crime No.04 of 2015)

: Respondent / Complainant

PRAYER: Criminal Appeal filed under Section 374 of Criminal Procedure Code, to call for the records in S.C.No.31 of 2015 on the file of the Sessions Court, Mahila Neethimandram (Fast Track Mahila Court), Thoothukudi and to set aside the judgment, dated 17.08.2016 passed in S.C.No.31 of 2015.

For Appellant :Ms.C.Arockia Selvi
For Respondent :Mr.T.Senthil Kumar
Government Advocate (Crl.side)

JUDGMENT

This Appeal is filed as against the judgment of conviction and order of imprisonment passed by the learned Sessions Judge, Fast Track Mahila Court, Thoothukudi, in S.C.No.31 of 2015, dated 17.08.2016.

2.Heard Mrs.C.Arockiaselvi, learned Counsel for the Appellant and Mr.T.Senthil Kumar, learned Government Advocate (Crl.side) appearing for the respondent.

3.As per the arguments of Mrs.C.Arockiaselvi, learned Counsel for the Appellant, the appellant is the accused before the Trial Court. He was convicted and sentenced to undergo one year

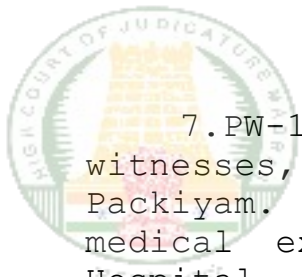


rigorous imprisonment for the offence under Section 448 of IPC and to undergo three years rigorous imprisonment along with fine of Rs.1,000/- under Section 8 of Protection of Children from Sexual Offence Act, 2012.

4. It is the case of the appellant/accused that this case had been foisted against him due to a previous dispute between his neighbour, PW-2, and him over fishing rights. There had been previous complaint to the police by the accused herein and PW-2 against the the accused.

5. The case of prosecution is that the accused herein had tress passed into the house of PW-2, Joseph Stalin, when his granddaughter, PW-1, was alone at home on 20.06.2015 at about 19.30 hours, he had forced her telling "you love me, I will marry you, if you love anyone and marry any other person, other than me, I will kill you and other man". By uttering these words, he got hold of her hands behind her back and touched her breast. She was wriggling to get out of the house and get out of his custody. Suddenly, PW-2, Joseph Stalin, entered the house. On seeing the scene, he shouted and rushed towards the accused. On seeing this, the accused is alleged to have hit the old man, PW-2, the grandfather of PW-1 and kicked him out of the house. PW-1, the victim then shouted and cried for help and the neighbours came and rescued her. Subsequently, PW-1 and PW-2 went to the All Women Police Station, Vilathikulam, and lodged a complaint under Ex-P1. PW-12, Ms.Kala, Sub Inspector of Police, All Women Police Station, Vilathikulam, had received the complaint under Ex-P1 and registered a case in Cr.No.04 of 2015, under Ex-P8, for the offence under Sections 448, 294b, 323 and 506(1) IPC r/w Section 11 of Protection of Child from Sexual Offences Act, 2012 and sent complaint under Ex-P1 and the FIR under Ex-P8 to the Court of learned Judicial Magistrate. The copies of the same was also sent by her to her higher officials including the Inspector of Police.

6. PW-13, Pitchaiah, Inspector of Police, on receipt of the FIR and complaint, proceeded with the investigation. PW-13, Inspector of Police, had proceeded to the scene of occurrence and prepared the observation mahazer under Ex-P3 and rough sketch under Ex-P9 in the presence of witnesses, PW-6, Packia Mary, and Packaim and thereafter, recorded the statements of PW-1, victim girl, PW-2, Joseph Stalin and PW-3, Sasintha Mary, mother of the victim girl. PW-13, Inspector of Police had arrested the accused in Vilathikulam Kamaraj Nagar entrance. The accused, on arrest, had voluntarily given confession. The accused was forwarded to the Judicial Magistrate with the request for remand of the accused along with the request for medical check up for the accused. Thereafter, the investigation was handed over to PW-14, Shanmugam.



7.PW-14, Shanmugam, Inspector of Police, had examined the witnesses, PW-4, Antoniammal, PW-5, Seenithai and Saveriya Packiyam. The victim girl, PW-1 and the accused were sent to the medical examination in Thoothukudi Government Medical College Hospital. The PW-1, was examined by Dr.Shobana and she issued Accident Register under Ex-P4, wherein, it had been mentioned that on examination of the victim, no nail markings or bite markings seen in breast or any part of the victim. The victim is alleged to have stated to the Medical Officer that the an unknown person had touched her inappropriately, when she was alone at home. On examination, her hymen is found normal and not ruptured. The vagina showed no injury. No blood or semen seen in the vagina.

8.The accused was examined by PW-9, Dr.Sugantha Kumar, and issued Accident Register under Ex-P6 regarding potency and health status of the accused. The Inspector of Police in this case had recorded the statement of the Doctors, who treated the victim and the accused and obtained copy of the accident register from the Doctors.

9.The Inspector of Police, had examined the witnesses from the surrounding areas regarding the occurrence and recorded their statements. After receiving the report from the Doctor and recorded the statements of witnesses, the Inspector of Police had laid charge sheet against the accused under Section Sections 448, 294b, 323 and 506(1) IPC r/w Section 11 of Protection of Child from Sexual Offences Act, 2012

10.The learned Judicial Magistrate, took cognizance of the final report filed and numbered the case as P.R.C.No. and sent summons to the accused. On appearance of the accused and on consideration of the materials available from the case records, the learned Judicial Magistrate was of the opinion that this case is triable by the Court of the Sessions. Therefore, the case was committed to the learned Special Judge, Fast Track Mahila Court, Tuticorin. After furnishing copies to the accused and questioned him regarding his ability to engage a Counsel and defend the case effectively, he had answered with positively and therefore, the case was committed to the Court of the Session. The learned Special Judge, Fast Track Mahila Court, Tuticorin, on receipt of the PRC case records had taken cognizance and numbered the case as S.C.No.31 of 2015.

11.On consideration of the materials placed before the Court by the Inspector of Police, the learned Trial Judge had framed the following charges under Sections 448, 294b, 323, 354(a)(i) and 506 (2) IPC r/w Section 8 of Protection of Child from Sexual Offences Act, 2012. When the charges were read over to the accused, the accused pleaded not guilty and claimed to be tried. Therefore, the

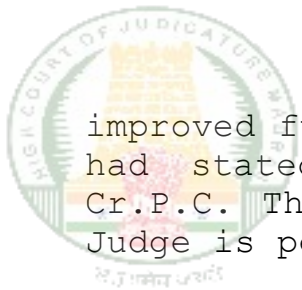


trial proceedings was initiated and summons were issued directing the witnesses to appear before the Court of the learned Special Judge, Fast Track Mahila Court, Thoothukudi. Accordingly, PW-1, victim girl, PW-2, Joseph Stalin, grandfather of the victim, PW-3, Sasinth Mery, mother of the victim PW-4, Anthonyammal, PW-5, Seenithai, PW-6, Packiy Mery, PW-7, Senthil Murugan, PW-8, Dr.Shobana, PW-9, Dr.Sugantha Kumar, PW-10, Manthiramoorthy, PW-11, Veeranan, learned Judicial Magistrate, who recorded the 164 Statement of victim girl, PW-12, Kala, Sub Inspector of Police, PW-13, Pitchaiya, Inspector of Police, PW-14, Shanmugam, Inspector of Police and PW-15, Dheivanai, Inspector of Police, were examined and marked Ex-P1 to Ex-P11 and no material object was marked. On behalf of the accused, no one was examined and no exhibits were marked.

12.The incriminating evidence available against the accused was put to him under proceeding under Section 313(1) of Cr.P.C. When confronted with the evidence incriminating the accused, the accused replied that he is innocent and the case had been foisted against him. After grant of sufficient opportunity for the accused/respondent to appear before the Court to let in evidence as defence witness, since the accuse himself had not appeared, as witness, the arguments were heard and the learned Special Judge, Fast Track Mahila Court, Thoothukudi, pronounced the judgment of conviction found the accused guilty and sentenced him to undergo one year rigorous imprisonment for the offence under Section 448 of IPC and to undergo three years rigorous imprisonment along with fine of Rs.1,000/- under Section 8 of Protection of Children from Sexual Offences Act, 2012. Aggrieved by the same, the present Appeal is filed.

13.Mrs.C.Arockia Selvi, learned Counsel for the Appellant submitted that the order of the conviction passed by the learned Trial Judge is perverse, especially when the witnesses had turned hostile. Except PW-1, victim girl and PW-2, grandfather of the victim girl, none of the independent evidence had spoken to about the occurrence. PW-1 and PW-2 were independent witnesses. It is the case of the accused that this is a foisted case. What had been stated in the complaint under Ex-P1 was developed during the course of 164 Cr.P.C., statement recorded by the learned Judicial Magistrate. The victim had improved her statement by letting out more facts inflicting the accused. Since the accused did not let in evidence, the evidence for the defence was closed.

14.It is the case of the appellant that the victim girl had given a false complaint. After giving the complaint under Ex-P1, the victim girl improved her statement, when she appeared before the learned Judicial Magistrate, who recorded her statement under Ex-P1. PW-1 was examined in-chief, PW-1, victim girl,



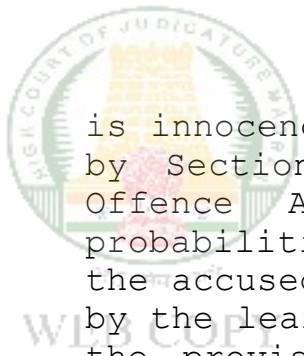
improved further from what she had stated under Ex-P1 and what she had stated before the learned Judicial Magistrate under 164 Cr.P.C. Therefore, the finding arrived at by the learned Special Judge is perverse and is to be set aside.

15.Mr.T.Senthil Kumar, learned Government Advocate (Crl.side) submitted his arguments by way of reply. Mr.T.Senthil Kumar, learned Government Advocate submitted that the finding arrived at by the learned Trial Judge was in accordance with the provisions of the Indian Evidence Act. Therefore, nothing perverse in the finding of guilt recorded by the learned Trial Judge. The learned Trial Judge had discussed in detail the defence of the accused and the evidence available before him in paragraph Nos. 11 to 15. Further, this being a special enactment, the learned Trial Judge has to consider the presumptions available under Sections 29 and 30 of Protection of Children from Sexual Offence Act, 2012. Therefore, by the principle of probabilities of the case, the Court has to stand by the victim and impose punishment on the accused. When the accused has valid defence, it is for him to let in evidence and disprove the case of the prosecution. The submission of the learned Counsel for the Appellant that the finding of the guilt recorded by the learned Trial Judge is on a wrong appreciation of evidence cannot at all be considered.

16.Mr.T.Senthil Kumar, learned Government Advocate invited the attention of this Court to the discussion of the learned Trial Judge in paragraph Nos. 13 to 15, wherein, the learned Trial Judge had discussed the defence of the accused in the light of the evidence available before him and on a strong reasoning, had rejected the evidence of the accused.

17.It is the case of the appellant that the victim girl and her grandfather had preferred a complaint before the All Women Police Station, Vilathikulam. Earlier, they had given a complaint before the Soorangudi Police Station. Therefore, there had been two complaints and two FIRs. The earlier complaint was suppressed. Therefore, the case against the accused cannot be considered. The prosecution had not placed all the materials before the Court for a fair trial. Under those circumstances, the benefit of doubt has to be extended to the accused and the accused is to be set free.

18.Mr.T.Senthil Kumar, learned Government Advocate rejected the said contentions of the learned Counsel for the Appellant quoting Sections 29 and 30 of Protection of Children from Sexual Offence Act, 2012, wherein, the Court has to presume that the occurrence regarding the crime mentioned by the victim of the crime particularly, minors, has to be presumed to be true. The technicalities, which are taken as defence by the accused, has no relevance in the light of the presumption. If really the accused



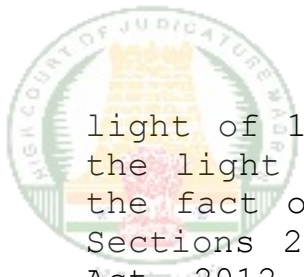
is innocence, he ought to have discharged the burden cast upon him by Sections 29 and 30 of Protection of Children from Sexual Offence Act, 2012. He had not done so. Therefore, the probabilities of the case probabalise the acquisition made against the accused by the victim. In the light of the reasoning putforth by the learned Trial Judge on appreciation of the evidence, as per the provisions of Indian Evidence Act, the contention of the learned Counsel for the Appellant cannot at all be accepted and is to be rejected. There is nothing available before this Court to consider that the finding of guilt recorded by the learned Trial Judge is perverse and warranting interference. Under those circumstances, this Court, as Appellate Court, shall not disturb the findings of guilt recorded by the learned Trial Judge, particularly, when the Trial Judge has the benefit of observing the demeanor of the witnesses and accused. Under those circumstances, this Appeal lacks merits and is to be dismissed.

.The point for consideration:

Whether the finding of the learned Trial Judge is perverse and is to be set aside?

19. In the light of the submissions made by the learned Counsel for the Appellant and in the light of the submissions made by the learned Government Advocate and on perusal of the records in S.C.No.31 of 2015, it is found that PW-1 and PW-2 alone had supported the prosecution case. In support of PW-1, PW-8, the Doctor, who examined the victim, PW-1 at the earlier stage and had issued accident register under Ex-P4, had deposed that on examination of the victim, no injury or bite marking or nail marking were seen in breast or thigh or in the body of the victim and on examination, her hymen was found intact. The arguments putforth by the learned Counsel for the Appellant is that the family of the accused and family of the victim girl are known to each other and are not strangers. Under those circumstances, the victim informing the PW-8, the Doctor, that unknown person entered into her house and touched her breast. Therefore, it is not the accused herein can not at all be accepted. When the doctor's certificate under Ex-P4, accident register states that there is no bite marking or no injury on the body of the victim girl, the Court shall presume that it is a foisted case. That is why, the victim girl could not states that who had caused harassment. Not only that, she had improved her version regarding the sexual assault in Ex-P1 and in Ex-P2, the 164 statement and in the evidence before the Court as PW-1. Those things, as stated by the learned Counsel for the Appellant, are true, but those improvements will not negative the claim of the PW-1 and can be used against PW-1.

<https://hcservices.courts.gov.in/hcservices> 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light of 164 Cr.P.C., statement and in the light of Ex-A1 and in the light of the evidence of PW-1, the Court has to presume that the fact of occurrence stated by the victim girl are true as per Sections 29 and 30 of Protection of Children from Sexual Offence Act, 2012. If what had been stated in the arguments of the learned Counsel for the Appellant is true, what prevented the appellant/accused from letting in evidence, as a defence witness. He had not done so. That gives the presumption to the Court that the accused is scared of entering into the witness box. When he has let in evidence denying the evidence let in by the victim, then the Public Prosecutor has to cross examine PW-1. In which cases, PW-1 will be forced to accept certain truth, which may go against him. That is the only presumption available before the Court when he has not entered into the witness box and avoided the witness box for fear that he may be forced to open up in cross examination. Therefore, in the absence of the accused himself entering into the witness box and letting in evidence as DW-1, when the law under Protection of Children from Sexual Offence Act, 2012, gives a right to the accused to let in evidence to deny the evidence of the victim, the appellant was failed to disprove the case of the prosecution, even though statutory right had been given to the accused to probablise the case against the victim girl, in the light of Sections 29 and 30 of the Protection of Children from Sexual Offence Act, 2012. Further, on appreciation of evidence of PW-1, victim girl, and PW-2, the grandfather of the victim girl, PW-9, the Doctor, Ex-P1, complaint, Ex-P2, 164 Cr.P.C., statement made by the victim girl before the Court of the learned Judicial Magistrate, it is found that the evidence of Doctor, PW-9 and the accident register copy issued by PW-9 under Ex-P4, supports the claim of the victim girl.

21. Further on reading through the judgment of the learned Trial Judge in paragraph Nos. 11 to 15, it is found that the learned Trial Judge had discussed in detail the defence of the accused and the evidence let in by the prosecution witness is proved beyond reasonable doubt that the accused herein had trespassed into the house of PW-2, the grandfather of the victim girl. Therefore, the learned Trial Judge had properly appreciated the evidence available before the Court in the light of the Indian Evidence Act. The same cannot be held perverse.

22. Only if the finding arrived by the learned Trial Judge is perverse, the Appellate Court can exercise the discretion vested with him or her to set right the miscarriage of justice that had taken place before the Trial Court. Not only that, it is an established rule of prudent enunciated by the Honourable Supreme Court that if the appeal is heard by the Appellate Court and on perusal of the evidence, the Appellate Judge arrives at a



learned Trial Judge, still the Appellate Judge shall not disturb the findings recorded by the learned Trial Judge, if the learned Trial Judge arrives at such a finding based on proper appreciation of evidence as per the provisions of Indian Evidence Act. This is because, the learned Trial Judge has the benefit of observing the demeanor of witness and the accused, whereas, the Appellate Court does not have the benefit of the same. Therefore, the weightage is given to the findings arrived at by the learned Trial Judge.

23. Under those circumstances, the argument put forth by Mrs.C.Arockia Selvi, learned Counsel for the Appellant cannot be accepted and the same is rejected. The arguments of Mr.T.Senthil Kumar, learned Government Advocate is found reasonable and the same is accepted. Since the finding of guilt recorded by the learned Trial Judge is as per the law, the same cannot be set aside.

In the light of the above discussion, the point for consideration is answered in favour of the prosecution and against the accused.

In the result, this appeal is dismissed and the judgment of conviction imprisonment passed by the learned Sessions Judge, Fast Track Mahila Court, Thoothukudi, in S.C.No.31 of 2015, dated 17.08.2016 is confirmed. The learned Sessions Judge, Fast Track Mahila Court, Thoothukudi, is directed to issue warrant directing the accused to surrender before the Court, so that the remaining period of sentence has to be undergone by him. Bail bond if any executed by the appellant shall stand cancelled.

Sd/-

Assistant Registrar (CS II)

// True Copy //

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Sub Assistant Registrar (CS)

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To

1. The Sessions Judge,
Fast Track Mahila Court, Thoothukudi.

2. The Judicial Magistrate, Vilathikulam,
Thoothukudi District.

3. The Chief Judicial Magistrate,
Thoothukudi District.

<https://hcservices.courts.gov.in/hcservices>



4.The Inspector of Police,
All Women Police Station,
Vilathikulam,
Thoothukudi District.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

CRL.A. (MD) No.316 of 2016
30.07.2021

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