



Bail Slip

The Appellant herein/Accused viz., Meyyappan, S/o. Vellaichamy was released on bail order of this Court dated 21/12/2016 made in Crl. MP(MD).No.10579 of 2016 in Crl.A(MD)No.410 of 2016.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **14.09.2021**

CORAM:

THE HONOURABLE MR.JUSTICE **R.PONGIAPPAN**

Crl.A. (MD)No.410 of 2016

Meyyappan, S/o.Vellaichamy : Appellant/Sole Accused
Vs.

State rep by
The Inspector of Police,
All Women Police Station,
Karaikudi,
Sivagangai District.
(Crime No.7 of 2014) : Respondent/Complainant

PRAYER: This Criminal Appeal is filed under Section 374 of the Code of Criminal Procedure, against the conviction and sentence passed by the learned Sessions Judge-cum-Fast Track Mahila Court, Sivagangai, in S.C.No.5 of 2015, dated 09.05.2016.

For Appellant : Mr.B.Ramkumar
For Respondent : Mr.E.Antony Sahaya Prabahar
Government Advocate (Crl. side)

J U D G M E N T

This criminal appeal is directed against the conviction and sentence, dated 09.05.2016, passed in S.C.No.5 of 2015, on the file of the learned Sessions Judge [Fast Track Mahila Court], Sivagangai.

2.The appellant herein is the sole accused in the above referred case. He stood charged for the offences under Section 5(1) and 5(j)(ii) read with Section 6 of the Protection of Children from Sexual Offences Act [hereinafter referred to as 'the POCSO Act'] and Section 506(i) I.P.C. After full-fledged trial, the learned Sessions Judge found the accused guilty under Section 5(j)(ii) read with 6 of the POCSO Act and sentenced to undergo rigorous



imprisonment for 10 years and to pay a fine of Rs.3,000/-, in default, to undergo rigorous imprisonment for six months.

3.Challenging the said conviction and sentence, the accused is before this Court with this Criminal Appeal.

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4.The case of the prosecution is as follows:-

(i)P.W.1 is the victim girl. She is residing with her mother at Elenthavayal Village. Her father and elder brother are residing with her grandmother separately. When she was studying 9th Standard, she left the School and was in the house. Her mother P.W.2 - Veerammal used to go to construction work daily at 07.00 a.m. and return by 03.00 p.m. At that time, she used to be alone in her house. She attained puberty an year back. The accused, who is residing near her house, prior to seven months, when she was alone, had called through the windows to come out and after she came out from her house, the accused asked her to come to the backyard, there the accused embraced her, removed her Chudidhar and lay upon her had sexual intercourse and then, wore her Chudidhar and gave Rs.20/- and threatened her not to disclose the same to others. Likewise, the accused had sexual intercourse with P.W.1 many times. Then, P.W.2 noted her daughter's belly was enlarged. On 11.04.2014 P.W.2 took the victim girl to a private hospital, wherein the Doctor, who examined her, stated that she was six months pregnant. Then only, P.W.1 enquired how it had happened. P.W.2 informed the same to her elder Aunt - Ulagy and relatives and made enquiry with Meyyappan/accused. But, he denied the same. Ultimately, P.W.1 lodged a complaint under Ex.P.1 before All Women Police Station, Karaikudi.

(ii)On receipt of the said complaint, one Vasantha Devi, the then Inspector of Police, All Women Police Station, Karaikudi, registered a case against the accused in Crime No.7 of 2014 for the offences under Section 6 of the POCSO Act read with Sections 376 and 506(i) I.P.C.

(iii)After registration of the case, the said Vasantha Devi handed over a copy of the F.I.R. to P.W.11 - Maheswari, the then Inspector of Police, for investigation.

(iv)On receipt of the said F.I.R., P.W.11 - Maheswari took up investigation, visited the place of occurrence and in the presence of P.W.6 - Vellaisamy and another person by name Vellaichamy, prepared an Observation Mahazar under Ex.P.2. She drew the Rough Sketch and the same has been marked as Ex.P.9. She examined the witnesses and recorded their statements. On 15.05.2014 through P.W.9 - Rajaselvi, the then Head Constable and through one Rajeswari, the then Grade - I Police Constable, the victim girl was produced before Karaikudi Government Hospital, for medical examination, wherein P.W.7 - Dr.C.M.Selvi examined the victim girl and issued a certificate under Ex.P.3 stating that no evidence of



recent sexual contact and that she was pregnant and the gestational age was seven months. In otherwise, she has stated since the victim girl was a pregnant lady, it would not be possible to take X-ray and therefore, in the absence of Radiological Report, the age of the victim girl could not be ascertained.

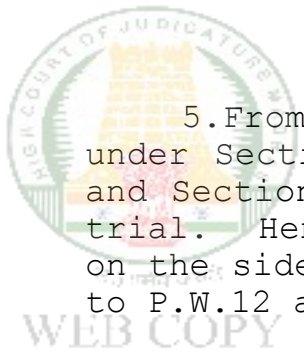
(v) In continuation of investigation, on 16.05.2014 P.W.11 gave requisition [Ex.P.10] before the Chief Judicial Magistrate Court, Sivagangai, for recording 164 Cr.P.C. statement from the victim girl. In turn, in view of the direction given by the learned Chief Judicial Magistrate, Sivagangai, the learned Judicial Magistrate, Devakottai, examined the victim girl and recorded 164 Cr.P.C. statement, which has been marked as Ex.P.13.

(vi) In continuation of investigation, P.W.11 submitted an application before the learned Judicial Magistrate, for conducting medical examination to the accused. In turn, in view of the proceedings issued by the learned Judicial Magistrate, P.W.8 - Dr.Amithkanna attached to Government Medical College Hospital, Sivagangai, examined the accused and issued certificate under Ex.P.5 stating that the secondary sexual characters of the accused were well developed. In otherwise, he has stated since the accused denied for extracting semen for analysis, he was not in a position to give opinion in respect of potency of the accused.

(vii) In the said circumstances, P.W.11 got transferred from the said post, P.W.12 - R.Anbu took up further investigation. She came to know that on 13.07.2014 a child was born to the victim girl in Government Raniyar Hospital, Pudukkottai, thereafter, to ascertain about the paternity of the said child, she submitted an application to Sivagangai Sessions Court, for obtaining FTA Card on 22.08.2014 and after collecting blood samples through FTA Card at Sivagangai Government Hospital from the accused as well as from the child born to the victim girl, produced the same before the Forensic Laboratory, Madurai, through P.W.9 with a requisition [Ex.P.6] to the learned District Sessions Judge, who in turn, had addressed to the Deputy Director Forensic Laboratory through Ex.P.7 for DNA Test.

(viii) One Tmt.Annamery and P.W.10 - Mahalakshmi, Deputy Director of the Laboratory had conducted DNA Test and issued a report under Ex.P.8 as the accused herein is the biological father of the minor child born to the victim girl. The report in respect of DNA Test was marked as Ex.P.8.

(ix) Before concluding investigation, P.W.12 examined the Doctors, who examined the victim girl and the accused and recorded their statements. Ultimately, she came to the conclusion that the accused is liable to be convicted under Section 6 of the POCSO Act and Sections 376 and 506(i) I.P.C. She filed a final report accordingly.



5.From the above materials, the trial Court framed charges under Sections 5(1), 5(j)(ii) read with Section 6 of the POCSO Act and Section 506(i) I.P.C. The accused denied the same and opted for trial. Hence, he was put on trial. In order to prove their case, on the side of prosecution, 12 witnesses have been examined as P.W.1 to P.W.12 and 13 documents were marked as Ex.P.1 to Ex.P.13.

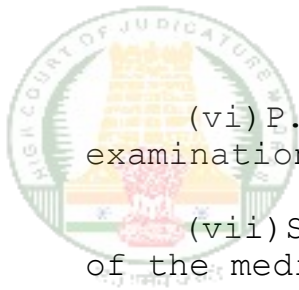
(i)Out of the said witnesses, P.W.1 is the victim girl in the alleged occurrence. She speaks about the occurrence as during the relevant point of time, when she was alone in her house, the accused came near the window and called her to the backyard. In turn, obliging the request made by the accused, she went to the backyard, wherein the accused embraced her and after removing her Chudidhar, lay upon her and had sexual intercourse with her and then, wore her Chudidhar and gave Rs.20/- and threatened her not to disclose the same to anyone.

(ii)P.W.2 - Veerammal is the mother of the victim girl. She gave evidence before the trial Court as during the time of occurrence, her husband and other family members were residing separately and therefore, she alone was residing with the victim girl. For attending regular work, she departed from her house daily at 07.00 a.m. and returned in the evening hours around 03.00 p.m. to 04.00 p.m. During the relevant point of time, since P.W.3 - Murugappan and P.W.4 - Periyakaruppan made complaint about her daughter, she made an enquiry with the victim girl about the enlargement of belly, for which, the victim girl replied as the accused was responsible for the same. Thereafter, since the accused denied the same, she lodged a complaint before All Women Police Station.

(iii)P.W.3 - Murugappan and P.W.4 - Periyakaruppan are residing in the same Village, in which, the victim girl was residing, gave evidence as during the relevant point of time, when both of them went to the Garden, after seeing them, the accused Meyyappan ran away from the said place and on such time, P.W.2 had also found in a naked position. According to them, the same was informed to P.W.2, who in turn, lodged the complaint.

(iv)P.W.5 - Gandhi, who is a resident of the same Village, speaks about the occurrence as when the occurrence came into light, he questioned the accused along with P.W.3 and P.W.4 about the pregnancy of the victim girl. The accused denied the same as false. However, on enquiry, the victim girl has stated that after committing this type of activities, the accused gave Rs.20/- to her.

(v)P.W.6 - Vellaichamy, who is also a resident of the same Village, speaks about the preparation of Observation Mahazar [Ex.P.2] by the Investigation Officer.



(vi) P.W.7 - Dr.C.M.Selvi speaks about the details of examination of the victim girl.

(vii) Similarly, P.W.8 - Dr.Amithkanna gave evidence in respect of the medical examination conducted on the accused.

(viii) P.W.9 - Rajaselvi, the then Head Constable, All Women Police Station, Karaikudi, claims that in view of the directions issued by the Court, she produced the accused and the child born to the victim girl before Sivagangai Hospital, for the purpose of conducting DNA Test.

(ix) P.W.10 - Mahalakshmi, the Assistant Director of Forensic Science Department, Madurai, speaks about the DNA Test, conducted to the accused, P.W.1 and on the minor child born to P.W.1.

(x) P.W.11 - Maheswari and P.W.12 - Anbu, who are the Police Officers, gave evidence in respect of receipt of complaint, examination of witnesses, production of accused and victim girl before the Hospital and about the filing of final report.

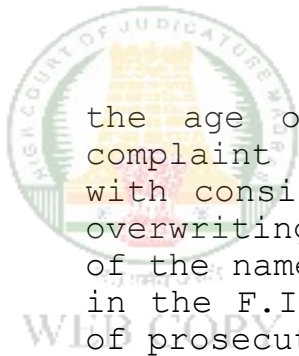
6. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness on his side. On the other hand, he marked a copy of the F.I.R. pertains to Crime No.7 of 2014 as Ex.D.1.

7. Having considered the materials placed before him and on considering the arguments advanced by the learned counsel on either side, the learned Sessions Judge, Fast Track Mahila Court, Sivagangai, found the accused guilty of the offence under Section 5 (j)(ii) read with Section 6 of the POCSO Act, convicted and sentenced him as stated Paragraph 2 of this judgment. In respect of the offence under Section 506(i) I.P.C., the accused was acquitted from the charge. After awarding the sentence as above, by following Rule 7 of the POCSO Rules, 2012, the learned Sessions Judge ordered to pay Rs.2,00,000/- as compensation to the victim girl.

8. Feeling aggrieved over the same, the accused is before this Court with this Criminal Appeal.

9. I have heard Mr.B.Ramkumar, learned counsel appearing for the appellant and Mr.E.Antony Sahaya Prabahar, learned Government Advocate (Criminal side) appearing for the respondent police.

10. The learned counsel appearing for the appellant would contend that before the trial Court, the prosecution has not let in any evidence with respect to the age of the victim girl as well as to the age of the accused. He would further contend that in the absence of any specific evidence in respect of age of the victim girl, it is not proper to hold that the victim girl has not completed



the age of 18 years at the time of occurrence. Further, the complaint pertains to this case had been lodged before the police with considerable delay. It is also his contention that there was overwriting in the complaint alleged to be given by P.W.2 in respect of the name of the accused Meyyappan and also there was a correction in the F.I.R., which leads to suspicious circumstance over the case of prosecution.

11.Per contra, the learned Government Advocate (Criminal side) appearing for the respondent police contended that since the result of the DNA Test conducted in respect of the child born to the victim girl and the accused concluded that the accused is the biological father of the minor child and therefore, the other materials, which are all now elicited by the counsel for the defence are not at all relevant to consider the case in favour of the accused and therefore, interference of this Court in the findings arrived at by the trial Court does not require.

12.I have considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on record.

13.Now, on considering the first and foremost submission made by the learned counsel appearing for the appellant, it is true in order to prove the age of the victim girl, the prosecution has not produced any evidence in the form of Birth Certificate, School Record or Medical Report. In the said circumstances, the evidences given by P.W.1 victim girl and P.W.2 mother of the victim girl are alone available to fix the age of the minor girl. At this juncture, it would be relevant to see Section 34(2) of the POCSO Act, which reads as follows:-

''34.Procedure in case of commission of offence by child and determination of age of Special Court.-

(2) If any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person and it shall record in writing its reasons for such determination.''

The above said Section is very clear and narrow that the Special Court is the competent forum in fixing the age of the victim child for the offence registered under the POCSO Act. Here it is a case, on going through the judgment rendered by the trial Court, there was no reasoning and observation in respect of fixation of age of the victim girl. In fact, before the trial Court, while at the time of cross-examining P.W.1, it was suggested as P.W.1 victim girl had completed the age of 18 years. On the other hand, in order to substantiate the same, no relevant document has been produced on the



side of the accused to show that the victim girl had completed the age of 18 years at the time of occurrence.

14. In the said circumstances, on going through the evidence given by the prosecution witnesses, it seems that P.W.1 victim girl has stated in her evidence as her age was 17 years at the time of giving evidence. On the other hand, P.W.2 - Veerammal had given evidence as while at the time of the alleged occurrence, the victim girl was studying 9th Standard and only after hearing the alleged incident, she has prevented P.W.1 from attending the School. Therefore, it is quite clear that during the time of occurrence, being the reason that the victim girl was studying 9th Standard, it would be appropriate to fix the age of the victim girl at the time of occurrence as 14 years. In otherwise, in respect of the steps taken by the prosecution to determine the age of the victim girl medically, it seems that P.W.8 Dr.Amithkanna, who examined the victim girl, gave evidence before the trial Court as being the reason that the victim girl was a pregnant lady, it would not be possible to take X-ray and therefore, without any X-ray, it could not be possible to determine the age of the victim girl by medically. Therefore, on a conjoint reading of the entire evidence given by the prosecution witnesses in respect of the age of the victim girl, it appears that the victim girl was probably at the age of 14 to 15 years at the time of occurrence, and therefore, it is concluded that the victim girl has not completed the age of 18 years at the time of occurrence.

15. Secondly, the learned counsel appearing for the appellant contended that there was a delay in lodging the complaint before the Police Station. In this regard, he relied on the evidence given by P.W.4 and P.W.5 as they seen the occurrence on 11.04.2014 and reported the same before P.W.2 immediately, but here it is a case, after 34 days from the date of the said incident, the complaint has been presented by P.W.1 before the Police. According to him, the said delay has not been satisfactorily explained by the prosecution and therefore, the same creates a doubt whether the alleged occurrence is true or not.

16. Now, on considering the said submissions with the relevant records, it is true P.W.4 gave evidence as on 11.04.2014 when he went to the Garden along with P.W.3, on seeing them, the accused Meyyappan ran away from the scene of occurrence. Further, at the same time, P.W.1 also found in a naked position and thereafter, after seeing the same, the same was informed to P.W.2 immediately. In this regard, P.W.2 gave evidence as immediately, after knowing the abnormal position of belly of the victim girl, she brought the victim girl to the private hospital Doctor, wherein the Doctor, who examined the victim girl, confirmed the pregnancy and only thereafter, she approached the accused, she has further stated since the accused refused to account the incident, she lodged a complaint independent police.



17. In order to corroborate the said evidence, P.W.5 gave evidence as along with P.W.2, he made enquiry on the accused, wherein the accused denied the allegation as he has not committed any offence as alleged by P.W.1 and thereafter, P.W.1 lodged the complaint.

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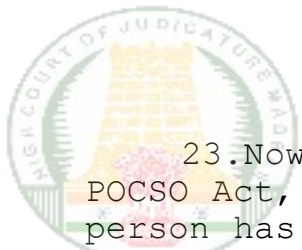
18. Now, on considering the said evidence, in my opinion, the period which elapsed in lodging the FIR of the incident has been fully explained from the evidence on record and no adverse inference can be drawn against the prosecution merely on the ground that the FIR was lodged with the delay of 34 days. There is no hard and fast rule that any delay in lodging the FIR would automatically render the prosecution case doubtful. It necessarily depends upon facts and circumstances of each case whether there has been any such delay in lodging the FIR which may cast doubt about the veracity of the prosecution case.

19. In **Sahebrao and another Vs. State of Maharashtra** reported in **2006 (9) SCC 794**, our Hon'ble Apex Court has held that the delay in filing FIR by itself cannot be a ground to doubt the prosecution case and discard it. The delay in lodging the FIR would put the Court on its guard to search if any plausible explanation has been offered and if offered, whether it is satisfactory.

20. Therefore, in the said circumstances, as already observed, here it is a case, the circumstance now narrated by P.W.1, P.W.2 and P.W.5 are sufficient reasons for the delay in lodging the complaint. Accordingly, I am of the considered opinion that the delay of 34 days in lodging the complaint in the present case would not create any doubt over the case of prosecution.

21. The further submission of the learned counsel appearing for the appellant is that there was overwriting in the complaint, wherein the name of the accused was impleaded as he committed the alleged offence. Therefore, the same would create a doubt whether the accused had committed this offence or not.

22. Now, on considering the said submission, it is true that there was a correction in the complaint given by P.W.2, particularly, in the last three lines. Therefore, it would be necessary to see whether due to the said alteration, the accused got prejudice or not. Now, on going through the entire averments made in the complaint, it seems in first paragraph itself P.W.1 had stated the entire occurrence as alleged by the prosecution. In otherwise, in the corrected area, it was mentioned as for the offence committed by the accused, it would be necessary to take action against him. Therefore, even assuming that there was a correction in the complaint, due to the same, the accused is in no way prejudiced and therefore, it cannot be concluded that the said correction creates a doubt over the case of the prosecution.

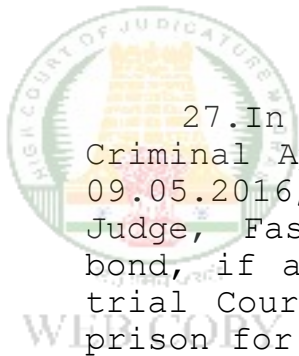


23.Now, in the said circumstances, applying Section 29 of the POCSO Act, it is necessary for the trial Court to presume that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved. Here, it is a case, P.W.10 - Mahalakshmi, Assistant Director of Forensic Science Department, Madurai, gave evidence in respect of DNA Test conducted on the accused. In her evidence, she has stated that the accused is the biological father of the minor child.

24.In otherwise, in respect of evidentiary value of the DNA report, in the case of **Nandilal Wasudeo Badwaik vs. Lata Nandilal Badwaik** reported in **2014 Cri.L.J. 1098 (1103) (SC) : 2014 (2) SCC 576**, our Hon'ble Apex Court has held that Section 112 of the Evidence Act was enacted at a time when the modern scientific advancement and DNA test were not even in contemplation of the Legislature. The result of DNA test is said to be scientifically accurate. Although Section 112 raises a presumption of conclusive proof on satisfaction of the conditions enumerated therein but the same is rebuttable. The presumption may afford legitimate means of arriving at an affirmative legal conclusion. While the truth or fact is known, there is no need or room for any presumption. Where there is evidence to the contrary, the presumption is rebuttable and must yield to proof. Interest of justice is best served by ascertaining the truth and the Court should be furnished with the best available science and may not be left to bank upon presumptions, unless science has no answer to the facts in issue. When there is a conflict between a conclusive proof envisaged under law and a proof based on scientific advancement accepted by the world community to be correct, the later must prevail over the former.

25.Further, in the case of **Kamti Devi Vs. Poshi Ram** reported in **AIR 2001 SC 2226 : 2001 (5) SCC 311**, our Hon'ble Apex Court has held that Section 112 of the Evidence Act was enacted at a time when the modern scientific advancements with deoxyribonucleic acid (DNA) as well as ribonucleic acid (RNA) tests were not even in contemplation of the Legislature. The result of a genuine DNA test is said to be scientifically accurate.

26.Hence, in the above said situation, I am not in a position to accept the case of the prosecution as only due to the sexual assault committed by the accused with the victim child, the victim child got pregnant and delivered a baby. In the said circumstances, to probabalise his case, none have been examined on the side of the accused, as the accused has not committed the offence as alleged by the prosecution. Accordingly, the findings arrived at by the trial Court are all within the ambit of settled law.



27. In fine, in the light of the above observations, this Criminal Appeal is dismissed and the conviction and sentence dated 09.05.2016, imposed in S.C.No.5 of 2015, by the learned Sessions Judge, Fast Track Mahila Court, Sivagangai, is confirmed. Bail bond, if any, executed by the appellant shall stand cancelled. The trial Court is directed to secure the appellant and commit him to prison for undergoing the remaining period of sentence.

Sd/-

Assistant Registrar (Records)

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Sub Assistant Registrar(CS)

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To

1.The Sessions Judge-cum-Fast Track Mahila Court,
Sivagangai.

2.Do through
The Principal District Judge,
Sivagangai.

3.The Judicial Magistrate No -I,
Sivagangai.

4.Do through
The Chief Judicial Magistrate,
Sivagangai.

5.The Superintendent Central Prison,
Madurai.

6.The Superintendent of Police,
Sivagangai District.

7.The Inspector of Police,
All Women Police Station,
Karaikudi,
Sivagangai District.

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



9.The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.

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Criminal Appeal(MD)No.410 of 2016

14.09.2021

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