

BAIL SLIP

Aravindan @ Vivekanandan, Petitioner/Appellant was released on bail order of this Court dated 20.12.2016 made in CRL.MP(MD) No.11126 of 2016 in CRL.A(MD)No.431 of 2016

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 25.06.2021

DELIVERED ON : 01.10.2021

CORAM

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.A.(MD)No.431 of 2016

Aravindan @ Vivekanandan

S/o. Ayyakannu

: Appellant/Sole Accused

Vs.

State Rep. By,
Inspector of Police,
Ammappettai Police Station,
Thanjavur District.
(Cr.No.82 of 2014)

: Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to call for the records and set aside the judgment and conviction dated 27.04.2016 by the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thanjavur in Spl.S.C.No.16 of 2014 and acquit the Appellant.

For Appellant : Mr.A.Senthil Kumar
Legal Aid Counsel

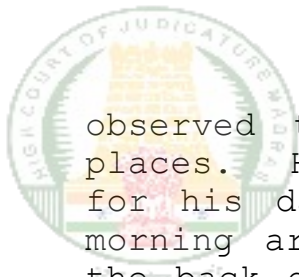
For Respondent : Mr.T.Senthil Kumar
Government Advocate (Crl.side)

JUDGMENT

This appeal is filed as against the judgment and conviction dated 27.04.2016 passed in Spl.S.C.No.16 of 2014 by the learned Sessions Judge, Fast Track Mahila Court, Thanjavur.

2. The brief facts, which are relevant for consideration in this appeal as stated by the Prosecution, are as follows:

2.1. It is the case of the Prosecution that the Appellant/Accused had taken away the victim to the grassland of Deen Rabiyaakani which is three houses away from the house of the victim and had sexual intercourse with the victim. P.W-1 is the mother of the victim, she is the de-facto complainant. As per her complaint, on 27.02.2014, since her TV was in repair, she went away from home searching for TV mechanic, leaving her 13 year old daughter alone at home. By 9.30 p.m., when she returned home she



observed that her daughter was missing. She searched nearby places. Her husband returned home at 11 p.m. He also searched for his daughter but they could not locate her. In the early morning around 5.30 a.m., her daughter came, she herself opened the back door of the house. P.W-1-mother of the victim enquired the victim, for which, the victim informed her mother that for the past three months she had been in a relationship with the Appellant/Accused. He assured to marry her. When she went to meet him on the date of occurrence, she had intercourse with the Accused.

2.2. P.W-1-Ganga-mother of the victim had preferred a complaint to the Inspector of Police, Ammapettai Police Station, Thanjavur District under Ex.P-1. Based on the complaint of P.W-1, P.W-13-Ms.Kowsalya-Sub Inspector of Police, Ammapettai Police Station had registered a case in Cr.No.82 of 2014 under Section 4 of Protection of Children from Sexual Offences Act, 2012. She had sent the original complaint under Ex.P-1 and Original FIR under Ex.P-18 to the Court of the learned Judicial Magistrate, Thanjavur and the copies of the same sent to the higher officials in Police Department including P.W-14-Muthukumar-Inspector of Police.

2.3. On receipt of the FIR under Ex.P-18, P.W-14-Inspector of Police had proceeded to the house of the victim and examined the witnesses and also prepared the Observation Mahazar under Ex.P-3 and Rough Sketch under Ex.P-19 in the presence of witnesses viz., P.W-8-Sundaram and other witness. He had forwarded the victim to the Government Hospital to subject her to medical examination. He had obtained her date of birth mentioned in the *Bona fide* Certificate from the School record under Ex.P-20 from the Head Mistress of Regina Caeli Girls Higher Secondary School, Ammapet. He had arrested the Accused and forwarded the Accused along with the remand request to the Court of learned Judicial Magistrate, Thanjavur and also sent requisition letter to the learned Judicial Magistrate to forward the Accused for medical examination before the Government Hospital. On request of the Investigation Officer, the learned Judicial Magistrate had addressed the Duty Medical Officer, Medical College Hospital, Thanjavur regarding the medical examination of P.W-2-Victim and the Accused. Accordingly, Investigation Officer, with a woman constable escort to the victim and a male constable to the Accused, forwarded them to Medical College Hospital, Thanjavur and obtained their medical examination report under Ex.P-9 for the victim and Ex.P-17 for the Accused. He had seized the dress materials of the victim and prepared seizure Mahazar under Ex.P-11 in the presence of witnesses and the seized dress materials worn at the time when she was found in the company of the Accused in their house on the date of occurrence and these materials were forwarded to the Court along with

<https://hccs.court.gov.in/cservices/> forward them to forensic analysis laboratory.



Accordingly, the learned Judicial Magistrate had addressed the Forensic Laboratory to subject the seized dress materials for Forensic Examination by the Forensic Department. Accordingly, Forensic Officer had analysed the dress materials and the result of the analysis was sent to the Court of the learned Judicial Magistrate under Ex.P-12 to Ex.P-16. The Investigation Officer had also addressed the learned Chief Judicial Magistrate, Thanjavur to nominate a learned Judicial Magistrate to record the statement of the victim under Section 164 of Cr.P.C. Accordingly, the learned Chief Judicial Magistrate, Thanjavur had nominated the learned Judicial Magistrate, Thiruvaiyaru to record the statement of the victim under Section 164 of Cr.P.C.

2.4. After completion of the investigation, he had laid the final report under Section 173 of Cr.P.C., before the Court of the learned Special Judge, Fast Track Mahila Court at Thanjavur attracting the offences against the Accused under Sections 363, 366 of IPC and Sections 4 of the Protection of Children from the Sexual Offences Act, 2012. The learned Special Judge, Fast Track Mahila Court had issued summons to the Accused and had taken cognizance of the offences under Sections 363, 366 of IPC and Sections 4 of the Protection of Children from the Sexual Offences Act, 2012.

2.5. On appearance of the Accused, copies were furnished under Section 207 of Cr.P.C. After hearing the Prosecution and the defence, charges were framed for the offences under Sections 363, 366 of IPC. The Accused denied the charges and claimed to be tried. Therefore, the learned Special Judge had ordered trial.

2.6. During trial, the Prosecution had examined witnesses P.W-1 to P.W-14 and marked documents under Ex.P-1 to Ex.P-20 and M.O-1 to M.O-5.

2.7. From the evidence of Prosecution witnesses, the incriminating portion available were put to the Accused and he was examined under Section 313 of Cr.P.C. The Accused denied the incriminating evidence against him. After completion of proceedings under Section 313 of Cr.P.C., the Accused did not let in evidence on his behalf. Therefore, the argument of the Prosecution was heard, the learned counsel for the defence replied to the Prosecution arguments. After conclusion of the arguments, the learned Sessions Judge, Fast Track Mahila Court, Thanjavur on assessment of evidence through witnesses P.W-1 to P.W-14 and documents under Ex.P-1 to Ex.P-20 and materials under M.O-1 to M.O-5 had arrived at a just conclusion that the charges framed against the Accused by the Court under Section 4 of Protection of Children from Sexual Offences Act was proved and acquitted from the charges for the offences under Sections 363, 366 of IPC.



3. Mr.A.Senthil Kumar, learned Counsel for the Appellant/Accused nominated by the Legal Service Committee attached to the Madurai Bench of this Court had submitted his oral arguments and also furnished written arguments.

WEB COPY

4. The learned counsel for the Appellant/Accused invited the attention of this Court to the following particulars in evidence of the Prosecution witness. In her evidence, P.W-1 had stated that in the early morning on the date of occurrence, her daughter knocked on the back door. P.W-1 had opened the back door after hearing the sound. P.W-2-victim had stated in her evidence that she called her mother and her mother opened the door. Also P.W-2-alleged victim had stated that when she entered the house, her neighbour also was present. P.W-3 is the father of the victim. As per his evidence, on the date of occurrence around 5.30 a.m., P.W-1 and P.W-3 heard a sound, his wife P.W-1 opened the door. Therefore, witnesses P.W-1, P.W-2 and P.W-3 had made contradictory statement regarding the arrival of the victim to the house on the date of occurrence. As per the complaint, the family members came to know about the alleged occurrence on the morning of 27.02.2014. They had preferred a complaint only on 28.02.2014 at about 16 hours. The delay in lodging the complaint had not been explained by the Prosecution. Further, P.W-2 had categorically stated that on the date of occurrence itself P.W-3-father of the victim had caught hold the Appellant/Accused and handed him over to the Police. P.W-14-Investigation Officer in this case had in his evidence deposed that he had arrested the Accused at Ammapettai Police Station. Except P.W-1, P.W-3 and other family members, no other witness had supported the Prosecution. P.W-6 who is the Paternal uncle of the victim had in his evidence deposed that there was love affair between the victim and the Appellant/Accused. Both of them went away from the home and they were caught hold by the family members. In pursuant to the same, the Appellant was handed over to the Police with a cooked-up story. The trial Court failed to consider the statement of the Doctor who had clearly stated that there is no evidence indicating that the victim had sexual intercourse with the Accused. P.W-11-Scientific Officer from the Regional Forensic Science Laboratory, Thanjavur, had deposed that there was no semen in M.O-2 and he could not speak about semen found in the other material objects belonging to the Appellant. It is pertinent to note that the Prosecution has failed to prove the penetration which is essential to convict the Accused under Section 4 of the Protection of Children from Sexual Offences Act, 2012. Therefore, the learned Counsel for the Appellant/Accused urged this Court to consider the judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Thanjavur, as perverse and it has to be set aside.

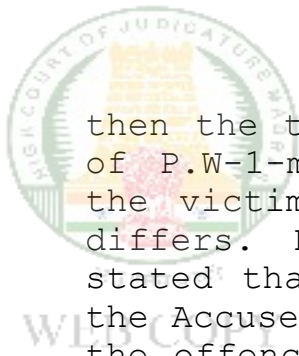


5.The learned Counsel for the Appellant/Accused submitted that the learned Sessions Judge, Special Court for the offences under POCSO Act Cases had framed charges under Sections 363, 365 of IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012. He further submitted that there is a delay of 11 hours in lodging the FIR. P.W-9-Dr.Prasanna, who had in her evidence stated that the victim had not been subjected to sexual intercourse recently. P.W-11-Forensic Expert stated that semen not matched with the Accused. Penetration had not been proved through evidence. The evidence of P.W-2 had not been corroborated by other witnesses and medical records. The material contradiction by the Prosecution had been ignored by the learned Sessions Judge. The exhibits relied on by the Prosecution had not supported the case of the Prosecution. There is contradiction regarding the arrest of the Accused, as per evidence of victim and as per the evidence of Investigation Officer. The learned trial Judge ignored these points in arriving at a conclusion and thereafter, convicted the Accused. Therefore, the judgment of conviction recorded by the learned Sessions Judge for the offences under POCSO Act Cases is to be set aside as perverse.

6. Mr.T.Senthil Kumar, learned Government Advocate (Crl. Side) by way of reply submitted that the offences against women and children stand on a different footing from the offences under the Indian Penal Code. The presumption of innocence under the general criminal law is not applicable to the case under the offence against women and children, particularly POCSO Act cases. Also, the Hon'ble Supreme Court had held that in cases of sexual assault, if the evidence of the victim inspires confidence, then the learned trial Judge can convict the Accused. In cases of sexual assault, there may not be witnesses directly or indirectly to corroborate the evidence of the prosecutrix. If that yardstick is applied, then not a single case will be convicted under the Provision of the Protection of Children from Sexual Offences Act, 2012.

7.Similarly, the delay in lodging the FIR has no bearing. Regarding the offence of sexual assault, there are very many reasons for delay in lodging the FIR considering the social stigma against the victim prevailing in the society. Therefore, the family of the victim thinks again and again before lodging the FIR. Therefore, the arguments of the learned counsel for the Appellant/Accused regarding the delay in lodging the FIR has to be rejected.

8.Also, there are judgments of the Hon'ble Supreme Court regarding contradictions between medical evidence and the evidence of the victim. If the evidence of the victim inspires confidence,



then the trial Judge can convict the Accused. Here, the evidence of P.W-1-mother of the victim, P.W-2-victim and P.W-3-father of the victim regarding the time of arrival of the victim to home differs. P.W-6-Paternal Uncle of the victim, in his evidence, stated that there had been a love affair between the victim and the Accused. It does not protect the Accused for having committed the offence of sexual assault on a minor girl aged about 13 years on the date of occurrence. Therefore, the learned trial Judge had clearly assessed the evidence and discussed the law and fact in paragraph Nos.13 to 18 and arrived at a conclusion that the victim had been assaulted sexually by the Accused. On the date of occurrence, the victim was aged 13 years. Also, the Doctor had examined the victim only after two or three days after the alleged date of occurrence. Therefore, there will not be any visible signs on the body of the victim. Similarly, in the dress worn by the victim and Accused even if it contains semen, it would have been damaged due to weather conditions and natural conditions like fungus. The evidence of the Forensic Expert and the Doctor will not help the Accused to wriggle out from the culpability of the offence of sexual assault under the Protection of Children from Sexual Offences Act, 2012. The evidence of P.W-6-relative of the victim stating that the victim and the Accused are lovers. Therefore, it was a consensual sexual intercourse also cannot be accepted considering the age of the victim as she was 13 years on the date of occurrence. Therefore, consent of the victim for sexual intercourse is immaterial which is not a valuable defence in the offence under the Protection of Children from Sexual Offences Act, 2012. Therefore, the learned Government Advocate (Crl. Side) prayed this Court to reject the arguments of the learned counsel for the Appellant/Accused and dismiss the appeal as having no merit and confirm the finding of guilt recorded by the learned trial Judge.

9. Point for Consideration

Whether the judgment of conviction recorded by the learned trial Judge, Special Judge, Fast Track Mahila Court, Thanjavur, dated 27.04.2016 is perverse warranting interference by this Court, as Appellate Court?

10. Perused the judgment of the learned trial Judge in Spl.S.C.No.16 of 2014 dated 27.04.2016 and perused the evidence of P.W-1 to P.W-14, Ex.P-1 to Ex.P-20. On perusal of the same, it is found that the victim had clearly stated in her deposition regarding the sexual intercourse that the Accused had with the victim. P.W-1 and P.W-3 are parents of the victim and they are hearsay witnesses. P.W-9-Dr.Prasanna, who is the women Doctor, had examined the victim on 01.03.2014 by 12.30 hours in the morning and as per the statement given to the Doctor, the victim



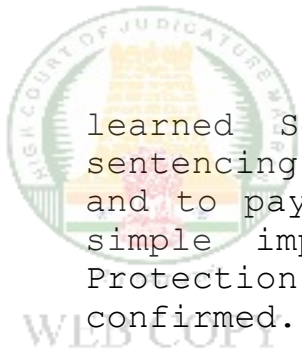
had stated that she had intercourse with the Accused on 27.02.2014. P.W-9-Dr.Prasanna had issued Ex.P-4 regarding the medical examination of the victim. P.W-12 is Dr.Tamilmani, who had examined the Accused regarding the potency and issued certificate under Ex.P-17 regarding the potency. P.W-11-Scientific Examiner had in his deposition stated that semen was not detected in the articles sent to him under M.O-1 to M.O-5. The evidence of P.W-1 to P.W-3 alone will be sufficient to convict the Accused for the sexual assault alleged to have been committed by the Accused. Therefore, the learned Sessions Judge, Special Court for the offences under POCSO Act Cases, in his judgment in paragraph Nos.13 to 18 had exclusively assessed the evidence and discussed the evidence in the light of the provisions of law and arrived at a safe conclusion that the Accused herein committed sexual assault on the minor victim. In the light of the above discussion, this Court is of the opinion that the judgment of conviction recorded by the learned Sessions Judge, Special Court for the offences under POCSO Act Cases is not perverse. Therefore, this Court cannot interfere with the finding of guilt recorded by the learned Sessions Judge, Special Court for the offences under POCSO Act Cases, Thanjavur.

11.As rightly pointed out by the learned Government Advocate (Crl. Side), in cases of this nature, if the evidence of the prosecutrix alone inspires confidence, the learned trial Judge can convict the Accused. Also, victim being a minor, the defence of consensual sex is not available to the Accused. The Accused does not have the advantage of shoddy investigation in cases of this nature. As pointed out by the learned Government Advocate (Crl. Side), there was a delay in lodging the FIR but regarding the same, it had been argued by the learned Government Advocate (Crl. Side) that the family of the victim in sexual assault always ponder over several time before ever deciding to lodge the FIR. Therefore, invariably, in cases of sexual assault, there will be a delay. Therefore, as rightly pointed out by the learned Government Advocate (Crl. Side), the arguments of the learned counsel for the Appellant/Accused is rejected. The appeal lacks merits and hence, dismissed.

12.In the light of the above discussion, the point for consideration is answered in favour of the Prosecution and against the Accused. The judgment of conviction recorded by the learned trial Judge, Special Judge, Fast Track Mahila Court, Thanjavur, dated 27.04.2016 is not perverse warranting interference by this Court.

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

<https://hcservices.ehubs.gov.in/cases> of conviction and order of sentence passed by the



learned Sessions Judge, Fast Track Mahila Court, Thanjavur, sentencing the Accused to undergo 7 years Rigorous Imprisonment and to pay fine of Rs.1,000/-, in default, to undergo six months simple imprisonment for the offence under Section 4 of the Protection of Children from Sexual Offences Act, 2012 is confirmed.

The learned Sessions Judge, Fast Track Mahila Court, Thanjavur, 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 27.04.2016 in S.C.No.16 of 2014. 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 //

/ /2022

Sub Assistant Registrar(CS)

dh

To

- 1.The Sessions Judge,
Special Court for the offences under POCSO Act Cases, Thanjavur.
- 2.The Sessions Judge,
Fast Track Mahila Court, Thanjavur.
- 3.The District Munsif Cum Judicial Magistrate, Papanasam.
- 4.Do through-The Chief Judicial Magistrate,
Thanjavur District at Kumbakonam.
- 5.The Officer Incharge,
Borstal School, Pudukottai.
- 6.The Inspector of Police,
Ammapettai Police Station, Thanjavur District.
- 7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to

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

CRL.A.(MD)No. 431 of 2016
01.10.2021