



Bail Slip

The Petitioner/Accused No.3 viz., Joseph Raja S/o.Mariya Francis be and hereby was directed to be released on bail as per order of this Court, dated 22.08.2019 and made in Crl.M.P.No.11154 of 2019 in Crl.A.No.506 of 2019.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 23.02.2022

DELIVERED ON: 21.03.2022

CORAM

THE HONOURABLE Mr. JUSTICE P.N.PRAKASH
AND

THE HONOURABLE Mr. JUSTICE A.A.NAKKIRAN

Crl.A.Nos.130 of 2018, 190 & 506 of 2019
AND

Crl.M.P.No.3169 of 2018 in Crl.A.No.130 of 2018

Pastor Muniyandi @ Ramesh

.. Appellant/A-2
in Crl.A.No.130 of 2018

Vijayakumar

.. Appellant/A-1
in Crl.A.No.190 of 2019

Joseph Raja

.. Appellant/A-3
in Crl.A.No.506 of 2019

Vs.

State represented by
The Inspector of Police,
Gobichettipalayam Police Station,
Erode District.
(Kadathur Police Station Cr.No.209/2016)

.. Respondent/Complainant
in all appeals

Criminal Appeals filed under Section 374 Cr.P.C. against the judgment and order dated 06.11.2017 passed in Special S.C.No.11 of 2017 on the file of the Additional Sessions Court, Magalir Neethi Mandram, (Fast Track Mahila Court), Erode and to set aside the same.



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For Appellant : Mr.V.Gopinath
in Crl.A.No.130 of Senior Counsel for
2018 Mr.Swami Subramanian
Mr.J.Nagarajan

For Appellant : Mr.V.Gopinath,
in Crl.A.No.190 of Senior Counsel for
2019 Mr.S.Mohamed Ansar

For Appellant : Mr.V.Arul
in Crl.A.No.506 of
2019

For Respondent : Mr.M.Babu Muthumeeran
in all appeals Addl.Public Prosecutor

C O M M O N J U D G M E N T

P.N.PRAKASH, J.

These criminal appeals are directed against the judgment and order dated 06.11.2017 passed by the Additional Sessions Judge, Magalir Neethi Mandram, (Fast Track Mahila Court), Erode in Special S.C.No.11 of 2017.

2. The prosecution story runs thus:

2.1 The victim girl "X" (P.W.2) (name not divulged for the sake of anonymity) is the daughter of one Kannamal and at the time of occurrence, she was studying in X standard in Government Higher Secondary School at Mill Medu, Ukkaram. "X" (P.W.2) was residing with her grandmother Mani (P.W.1) in Door No.12/398, Periyar Nagar East, Ukkaram and was going to school from there.

2.2. Vijayakumar (A-1) was already a married man with two children and he (A-1) is the brother of Vasanthakumari (P.W.11), who was a neighbour of Mani (P.W.1). Vijayakumar (A-1) was from Kanniyakumari District and used to frequently visit his sister Vasanthakumari (P.W.11) in Ukkaram. Whenever Vijayakumar (A-1) came there, he (A-1) used to speak to "X" (PW2) and thereby, he (A1) got acquainted with her (P.W.2).

2.3. Vijayakumar (A-1) proposed to "X" (P.W.2) and stated that he was madly in love with her and wanted to marry her as his wife and children had deserted him. "X" (P.W.2) fell for the sweet words of Vijayakumar (A-1). Once, while Vijayakumar (A-1) and "X" (P.W.2) were intimately speaking, they were spotted by Mani (P.W.1) and "X" (P.W.2) was chastised and upbraided. On coming to know of this, Vijayakumar (A-1) suggested to "X" (P.W.2) that unless they go away and get married, they would face trouble frequently from their family members. Therefore, he



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2.9. While the police were in search of Vijayakumar (A-1) and "X" (P.W.2), it appears that, on suspicion, Vijayakumar (A-1) and "X" (P.W.2) were intercepted by the police around 5.30 a.m. on 13.10.2016 at a check post, when they were going in a motorcycle. Since they were not able to give proper answers, they were brought to the police station and on questioning, it



came to light that "X" (P.W.2) is the granddaughter of Mani (P.W.1) and Vijayakumar (A-1) is the accused in Crime No.209 of 2016.

2.10. Accordingly, Vijayakumar (A-1) was placed under arrest on 13.10.2016 at 8.30 a.m. Since "X" (P.W.2) was found to be less than 18 years, Akbar Khan (P.W.21), Inspector of Police, altered the case vide alteration report (Ex.P23) by including the provisions of the Protection of Children from Sexual Offences Act, 2012 (for brevity "the POCSO Act"). Since the POCSO Act provisions were invoked, the investigation of the case was transferred to the file of the All Women Police Station, Gobichettipalayam and the investigation was taken over by Gayathri, (P.W.22), Inspector of Police. The statement under Section 164 Cr.P.C. of "X" (P.W.2) was recorded by the learned Judicial Magistrate No.I, Gobichettipalayam, on 22.10.2016 and the same has been marked as (Ex.P2).

2.11. "X" (P.W.2) was medically examined by Dr.Kalapriya (P.W.17) on 13.10.2016 at 11.35 a.m. vide accident register (Ex.P16) and the examination report (Ex.P17) stated that "X" (P.W.2) has been subjected to coitus. Vaginal swabs were taken, but, the scientific report did not disclose the presence of semen.

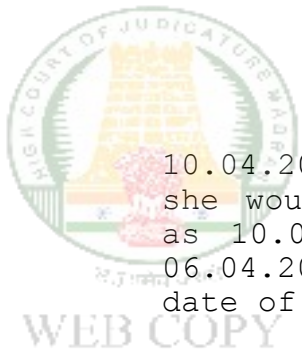
2.12. "X" (P.W.2) was subjected to age determination test by Dr.Kalyani (P.W.14), who, in her evidence as well in her reports (Exs.P8 & P9), has stated that the age of "X" (P.W.2) would be below 15 years and above 14 years.

2.13. The police arrested Pastor Muniyandi @ Ramesh (A-2) on 21.02.2017 and remanded him in judicial custody. However, Joseph Raja (A-3) obtained on anticipatory bail.

2.14. The police examined various witnesses, including Arumairaj (P.W.8), Headmaster of Government Higher Secondary School, Mill Medu and obtained the birth extract from the school record (Ex.P5), which shows the date of birth of "X" (P.W.2) as 10.04.2002.

2.15. The police also examined Gnanasekaran (P.W.18), Sub-Registrar of Births, through whom, the birth certificate of "X" (P.W.2) was marked as Ex.P19, which shows the date of birth of "X" (P.W.2) as 06.04.2002.

2.16. Thus, there is a small discrepancy in the age of "X" (P.W.2), inasmuch as the birth certificate (Ex.P19) shows the date of birth as 06.04.2002, whereas, the school record (Ex.P5) shows the date of birth as 10.04.2002. We find that in the birth certificate (Ex.P19), the date of registration has been shown as



10.04.2002. Mani (P.W.1) is an ordinary unlettered peasant and she would have inadvertently given X's (P.W.2's) date of birth as 10.04.2002, while admitting her in the school, instead of 06.04.2002 and that is why, in the school records, (Ex.P5), the date of birth of "X" (P.W.2) is shown as 10.04.2002.

2.17. Be that as it may, the fact remains that "X" (P.W.2) was studying in X standard at the relevant point of time, as could be seen from the evidence of Arumairaj (P.W.8), Headmaster of the school and other school records and therefore, it cannot be said that she was not a minor at the time of the occurrence.

2.18. After completing the investigation, Gayathri (P.W.22), Inspector of Police, filed a final report in the Special Court for the POCSO Act cases, Magalir Neethimandram, (Fast Track Mahila Court), Erode, in Spl.S.C.No.11 of 2017 against Vijayakumar (A-1), Pastor Muniyandi @ Ramesh (A-2) and Joseph Raja (A-3) for the offences under Section 366 IPC and Sections 9 and 10 of the Prohibition of Child Marriage Act, 2006 (for brevity "the PCM Act") and Sections 6 and 17 of the POCSO Act.

2.19. On the appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the trial Court framed the following charges against them:

Accused	Charges framed against the accused	Punishable under Section
Vijayakumar (A1)	For kidnapping "X" (P.W.2) from her school on the promise of marrying her on 23.08.2016 at 4.30 p.m.	Section 366 IPC
	For tying a "thaali" around the neck of "X" (P.W.2) and marrying her on 25.08.2016 at 7.00 a.m. in the house of Pastor Muniyandi @ Ramesh (A-2) in the presence of Pastor Muniyandi @ Ramesh (A-2) and Joseph Raja (A-3)	Section 9 of the PCM Act
	For committing aggravated penetrative sexual assault on "X" (P.W.2) more than once	Section 5 (1) r/w 6 of the POCSO Act



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Pastor Muniyandi @ Ramesh (A2) and Joseph Raja (A3)	For solemnizing the marriage of Vijayakumar (A-1) with "X" (P.W.2)	Section 10 of the PCM Act
	For abetting the act of Vijayakumar (A-1)	Section 6 r/w 17 of the POCSO Act

When questioned, all the accused pleaded "not guilty".

2.20. To prove the case, the prosecution examined 21 witnesses and marked 28 exhibits and a material object [motorcycle of Vijayakumar(A-1)].

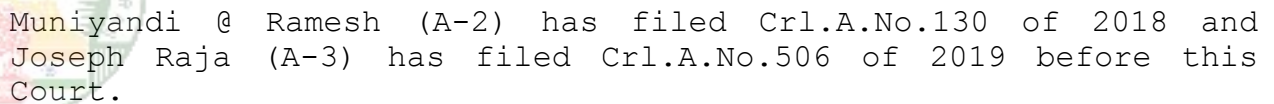
2.21. When the accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them, they simply denied the same and did not give any explanation whatsoever. No witness was examined nor any document marked on behalf of the accused.

2.22. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 06.11.2017 in Spl.S.C.No.11 of 2017, convicted and sentenced the accused, as follows:

Accused	Provision under which convicted	Sentence
Vijayakumar (A1)	Section 366 IPC	10 rigorous imprisonment and fine of Rs.1,000/-, in default to undergo 2 years simple imprisonment
	Section 9 of the PCM Act	2 years rigorous imprisonment and fine of Rs.1,000/-, in default to undergo 6 months simple imprisonment
	Section 6 of the POCSO Act	Life imprisonment and fine of Rs.1,000/-, in default to undergo 2 years simple imprisonment
Pastor Muniyandi @ Ramesh (A2) and Joseph Raja (A3)	Section 10 of the PCM Act	2 years rigorous imprisonment and fine of Rs.10,000/-, in default to undergo 6 months simple imprisonment
	Section 6 r/w 17 of the POCSO Act	Life imprisonment and fine of Rs.10,000/-, in default to undergo 2 years simple imprisonment

The aforesaid sentences were ordered to run concurrently.

2.23. Aggrieved by the above conviction and sentences, Vijayakumar (A-1) has filed CrI.A.No.190 of 2019, Pastor

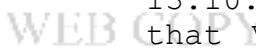


4. At the outset, it can be stated without contradiction that the prosecution has proved the following facts beyond a peradventure:

(b) "X" (P.W.2) was studying in X standard in Government Higher Secondary School, Mill Medu; and

5. Now, coming to the evidence on record, Vasanthakumari (P.W.11), in her evidence, has stated that Vijayakumar (A-1) is her elder brother; Mani (P.W.1) is her neighbour and "X" (P.W.2) is the granddaughter of Mani (P.W.1); her brother Vijayakumar (A-1) used to come to her house very frequently and used to engage in conversation with "X" (P.W.2); on 23.08.2016, it was her elder daughter's birthday, for which, Vijayakumar (A-1) came to her house; on that day, she learnt that Vijayakumar (A-1) took away "X" (P.W.2) with him; that information was conveyed to her by her husband Chinnaraj, and so, she contacted her brother Vijayakumar (A-1) in her mobile and spoke to him and asked him as to where he was, for which, he (A-1) stated that he was in Erode; thereafter, her brother became inaccessible over his mobile. She has further stated that she is aware that Mani (P.W.1) had given a police complaint (Ex.P1). Thus, the evidence of Vasanthakumari (P.W.11) shows that on 23.08.2016, Vijayakumar (A-1) had come to her house and on the same evening, "X" (P.W.2) had gone missing.

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



7. As regards what had transpired between 23.08.2016 and 13.10.2016, we have the evidence of "X" (P.W.2), who has stated that Vijayakumar (A-1) took her first to the house of Joseph Raja (A-3) in Sulur and from there, he (A-1) took her to the house of Pastor Muniyandi @ Ramesh (A-2) in Gudalur; at Gudalur, on the next day, Vijayakumar (A-1) married her by tying a "thaali" around her neck in the presence of Pastor Muniyandi @ Ramesh (A-2) and Joseph Raja (A-3) and thereafter, they lived as husband and wife till their interception on 13.10.2016 by the police.

9. We are afraid that we cannot do it, because, satisfactory materials have been placed before us to show that the date of birth of "X" (P.W.2) is 06.04.2002 and even according to the medical evidence, "X" (P.W.2) was between 14 and 15 years at the time of occurrence. Therefore, consent has no relevance at all in this case, but, can at the most be considered as a mitigating factor, while deciding the question of sentence.

11. Though this argument did appear at the first blush a little convincing, however, in the cross-examination of "X" (P.W.2), she has clearly stated that she was in school uniform, when she was being taken to the house of Pastor Muniyandi @



Ramesh (A-2) and Joseph Raja (A-3). Therefore, Pastor Muniyandi @ Ramesh (A-2) and Joseph Raja (A-3), who were around 39 and 35 years, respectively, at the time of the incident (as could be seen from their statements under Section 313 Cr.P.C.), cannot be heard to say that they believed "X" (P.W.2) was not a minor.

12. That apart, on seeing "X" (P.W.2) in school uniform, their (A-2 and A-3) first reaction should have been to inform the parents of "X" (P.W.2) as responsible citizens and not entertain the request of Vijayakumar (A-1) to perform marriage with just two persons secretly in the house of Pastor Muniyandi @ Ramesh (A-2).

13. As regards Joseph Raja (A-3), in the cross-examination, it has been suggested to "X" (P.W.2) as under:

"கேள்வி - இந்த வழக்கில் 3வது எதிரி உதவி
செய்தாரே தவிர, வேறு தீங்கு எதுவும் செய்யவில்லை என்கிறேன்?
பதில் - சரிதான்."

14. The word "abetment" has been defined under Section 16 of the POCSO Act, which is almost in pari materia with the definition of the word "abetment" in Section 107 IPC. However, explanations in both the provisions differ. Explanation II of Section 16 of the POCSO Act reads as follows:

"Explanation II. - Whoever, either prior to or at the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act."

15. Thus, the act of Pastor Muniyandi @ Ramesh (A-2) and Joseph Raja (A-3) in giving asylum to Vijayakumar (A-1) and "X" (P.W.2) in their house, performing their marriage and facilitating Vijayakumar (A-1) to have sex with "X" (P.W.2) would undoubtedly fall within the meaning of the word "abetment" as defined under Section 16, *ibid.* as punishable under Section 17, *ibid.*

16. That apart, under Section 29 of the POCSO Act, there is a presumption clause, which not only brings in the actual offender, but also the abettor and the burden is on the accused to prove the contrary.

17. Similarly, under Section 30 of the POCSO Act, there is a presumption of mens rea, which is required to be discharged by the accused, when the foundational facts are established. The foundational facts that "X" (P.W.2) was a minor; "X" (P.W.2) was carried away by Vijayakumar (A-1) from her school on 23.08.2016; "thaali" was tied around her ("X's") neck and a sham marriage was solemnized in the house of Pastor Muniyandi @ Ramesh (A-2)



in the presence of Pastor Muniyandi @ Ramesh (A2) and Joseph Raja (A-3); the assertion of "X" (P.W.2) that Vijayakumar (A-1) had sex with her; the evidence of Dr.Kalapriya (P.W.17) that "X" (P.W.2) has had coitus, etc., having been established, then, the reverse burden under Sections 29 and 30 of the POCSO Act would get invoked, which, Vijayakumar (A-1), Pastor Muniyandi @ Ramesh (A-2) and Joseph Raja (A-3) have not satisfactorily discharged. Thus, the prosecution has proved the charges against the appellants beyond doubt.

18. However, the learned counsel for the appellants prayed for reduction of sentence, by submitting that the proved facts show that the victim girl "X" (P.W.2) and Vijayakumar (A-1) were in love with each other and that "X" (P.W.2) had gone with Vijayakumar (A-1) only on her own volition. They also submitted that "X" (P.W.2) is now married to another person and settled elsewhere.

19. The learned Additional Public Prosecutor, on instructions from the police, confirmed that "X" (P.W.2) has got married to another person and is residing in some other village.

20. Taking into consideration the entire facts and circumstances of the case, the conviction of the appellants under various provisions as set out in paragraph 2.22 is confirmed. As for sentence, we are of the opinion that interests of justice will be served, if the life imprisonment that has been awarded on the appellants is reduced to fixed terms as under :

- i. The substantive sentences of 10 years rigorous imprisonment and 2 years rigorous imprisonment imposed on Vijayakumar (A-1) for the offence under Section 366 IPC and Section 9 of the PCM Act, respectively, are confirmed. However, the substantive sentence of life imprisonment imposed on Vijayakumar (A-1) for the offence under Section 6 of the POCSO Act, is reduced to 14 years rigorous imprisonment, without any remission benefits.
- ii. The substantive sentence of 2 years rigorous imprisonment imposed on Pastor Muniyandi @ Ramesh (A-2) and Joseph Raja (A-3) for the offence under Section 10 of the PCM Act is confirmed. However, the substantive sentence of life imprisonment imposed on Pastor Muniyandi @ Ramesh (A-2) and Joseph Raja (A-3) for the offences under Section 6 read with Section 17 of the POCSO Act, is reduced to 10 years rigorous imprisonment.
- iii. The sentence of fine and the default clause



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therefor imposed by the trial Court on all the appellants shall remain unaltered.

iv. The trial Court is directed to take steps to secure the appellants, who have been released on appeal bail and commit them to prison for undergoing the remaining period of sentence, if any.

In the result, these Criminal Appeals are disposed of on the above terms. Connected Miscellaneous Petition stands closed.

Sd/-

Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

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To

1. The Additional Sessions Judge,
Magalir Neethimandam,
Fast Track Mahila Court),
Erode.
2. The Principal Sessions Judge,
Erode.
3. The Inspector of Police
All Women Police Station,
Gopichettipalayam, Erode District.
4. The Superintendent of Prison
Central Prison, Coimbatore
5. The Public Prosecutor
High Court, Madras

Copy To

1. The Section Officer,
Criminal Section,
High Court, Madras.
2. The Hon'ble POSCO Committee
High Court, Madras.



+1cc to Mr.J.Nagarajan, Advocate SR.No.18976

+1cc to Mr.S.Mohamed Ansar, Advocate SR.No.18637

+1cc to Mr.V.Arul, Advocate SR.No.18994

Cr1.A.Nos.130 of 2018

AND

Cr1.A.Nos.190 & 506 of 2019

PA (CO)

GMV (01/04/2022)