



BAIL SLIP

The Petitioner/Accused, Viz., 1.Udayamoorthy, S/o.Ganesan, 2.Rajavalli, W/o.Ramakrishnan, 3.Anandraj, S/o.Govindarajan, were released on bail as per Order of this Court dated 17/07/2018, 04/09/2018 & 22/10/2019 in CrI.M.P. No. 8749 of 2018 in CRL.A. NO. 370 OF 2018, CrI.M.P. No. 11105 of 2018 in CRL.A. NO. 370 OF 2018, CrI.M.P. No. 14898 of 2019 in CRL.A. NO. 370 OF 2018 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2022

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CRL.A. NO.370 OF 2018

1.Anandraj
2.Udayamoorthy
3.Rajavalli

.. Appellants/Accused

vs.

State by
Inspector of Police,
Sethiathoppu Police Station,
Cuddalore District.

.. Respondent/Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C. against the sentence and order passed in Spl.S.C.No.29 of 2017 dated 05.06.2018 by the Mahila Court, Cuddalore.

For Appellants .. Mr.V.Sivaraman
for Mr.K.Balu for A1
Mr.R.Thamaraiselvan
for A2 and A3

For Respondent .. Mr.M.Babu Muthumeeran,
Addl. Public Prosecutor



JUDGMENT

(Judgment of the Court was delivered by P.N.PRAKASH, J)

WEB COPY This criminal appeal is directed against the judgment and order dated 05.06.2018 passed in Spl. S.C. No.29 of 2017 on the file of the Sessions Court (Mahila Court), Cuddalore, in and by which, the appellants herein, who have been arrayed as A1, A2 and A4, were convicted and sentenced as under:

(i) A1 is convicted for the offence under Section 366 IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for brevity "the POCSO Act"); for the offence under Section 366 IPC, A1 is sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for a period of one year; for the offence under Section 6 of the POCSO Act, A1 is sentenced to undergo rigorous imprisonment for a period of fifteen years and to pay a fine of Rs.50,000/-, in default, to undergo simple imprisonment for a period of three years.

(ii) A2 is convicted the offence under Section 366-A IPC and Section 6 r/w 17 of the POCSO Act; for the offence under Section 366-A IPC, A2 is sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.2,000/-, in default, to undergo simple imprisonment for a period of six months; for the offence under Section 6 r/w 17 of the POCSO Act, A2 is sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.25,000/-, in default, to undergo simple imprisonment for a period of one year.

(iii) A4 is convicted for the offence under Section 6 r/w 17 of the POCSO Act and sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for a period of six months.

2. The prosecution story runs thus:

2.1 The victim girl "X" (P.W.2) is the daughter of P.W.1. Her date of birth is 31.07.2000. She is a native of Allur village in Chidambaram Taluk. She was studying in 10th standard in the year 2015 in a school in Parangipet. A1, A2 and A3 are also from the same village and they were known to the family of "X". A1 and "X" were in love with each other and they both were



found talking to each other very frequently in the village river bed. On one occasion, "X's" mother saw both of them together and chided her daughter and asked her not to move with A1. When "X" informed this to A1, he asked "X" to come to the river bed on 03.05.2015 at 7 in the evening and accordingly she went there. A1 and A2 were there waiting for her in a motorbike. When "X" told A1 that her mother is not allowing her to speak to him, he appears to have told "X" that her mother should be taught a lesson by staying away for two days. Accordingly, "X" got into the motorbike of A2 along with A1 and all of them went to Kaikalar Kuppam village to the house of A4. A4 is a distant relative of A1. On seeing A1 with a girl, A4 asked A1 to send the girl away. However, A1 appears to have told A4 that he wants to stay only for two days and asked for accommodation. A4 did not agree to it but A4 left her house and went elsewhere. A2 also left A1 and "X" in the house of A4 and went away.

2.2 On 04.05.2015, A1 is said to have tied a thali around the neck of "X" saying that he is marrying her. Thereafter, A1 took a house for rent in Kaikalar Kuppam village belonging to Selvam (P.W.8) and lived with "X" as husband and wife. In the meanwhile, on the complaint given by P.W.1 that her daughter has gone missing, Sethiathope police registered a case in Sethiathope P.S. Crime No.102 of 2015 on 04.05.2015 at 21.00 hours for 'girl missing' and prepared the Printed FIR (Ex.P6).

2.3 In the complaint, P.W.1 has stated that he suspects the involvement of A1 in the case. While the police were looking out for "X", P.W.1 filed a HCP in the High Court for the production of "X". On 01.07.2015, "X" was secured by the police and a statement under Section 164 Cr.P.C. was recorded. The case was altered from one of 'girl missing' to the offence under Sections 366-A IPC and Sections 3 and 4 of POCSO Act. Medical examination and age determination of "X" was done by Dr.Parameswari (P.W.6), who in her opinion, has stated that the age of "X" would be between 14 and 16 vide Ex.P4. As regards sexual examination, the report (Ex.P4) states as follows:

Opinion:

I am of the opinion that

1.Age as per radiologist opinion appears to be between 14-16 yrs of age.

2.No. Hymen is not intact.

3.No. There is no evidence of any external injuries anywhere in the body.

For the following reasons:



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1. Presence of spermatozoa or semen in the vagina

.. No evidence of single spermatozoa seen either motile or non-motile in both wet or stained preparation.

2. Presence of injuries on genitals .. No injuries of genitals

3. Presence of marks of violence on other parts of body

.. No marks of violence on other parts of body.

2.4 A1 was arrested by the police on 01.07.2015 by Alice Mary (P.W.11) and he was subjected to medical examination by Dr.Sampath Kumar (P.W.7), who in his evidence as well in his report (Ex.P5) has stated as follows:

I am of the opinion that there is nothing to suggest that the above examined individual is impotent.

2.5 During the course of investigation, the involvement of A2, A3 and A4 came to light and after completing the investigation, the police filed a final report in the Special Court for POCSO Act cases in Special S.C.No.29 of 2017 against A1, A2, A3 and A4.

2.6 On the appearance of the accused A1 to A4, the provisions of Section 207 Cr.P.C. were complied with and the Trial Court framed the following charges against them:

- A1 - Section 366 IPC, Section 9 of the Prohibition of Child Marriage Act and Section 6 of POCSO Act, 2012
- A2 - Section 366-A IPC and Section 6 r/w 17 of POCSO Act, 2012
- A3 - Section 6 r/w 17 of POCSO Act
- A4 - Section 6 r/w 17 of POCSO Act

When questioned, the accused pleaded not guilty.

2.7 To prove the case, the prosecution examined 11 witnesses and marked 14 exhibits.



2.8 When the accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them, they denied the same. No witness was examined from the side of the accused nor any document marked.

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2.9 After considering the evidence on record and on hearing either side, the Trial Court by judgment and order dated 05.06.2018 in Special S.C. No.29 of 2017 acquitted A3 but convicted A1, A2 and A4 and sentenced them as under:

(i) A1 is convicted for the offence under Section 366 IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for brevity "the POCSO Act"); for the offence under Section 366 IPC, A1 is sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for a period of one year; for the offence under Section 6 of the POCSO Act, A1 is sentenced to undergo rigorous imprisonment for a period of fifteen years and to pay a fine of Rs.50,000/-, in default, to undergo simple imprisonment for a period of three years.

(ii) A2 is convicted the offence under Section 366-A IPC and Section 6 r/w 17 of the POCSO Act; for the offence under Section 366-A IPC, A2 is sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.2,000/-, in default, to undergo simple imprisonment for a period of six months; for the offence under Section 6 r/w 17 of the POCSO Act, A2 is sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.25,000/-, in default, to undergo simple imprisonment for a period of one year.

(iii) A4 is convicted for the offence under Section 6 r/w 17 of the POCSO Act and sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for a period of six months.

3. Challenging the conviction and sentence, A1, A2 and A4 are before this Court.

4. Heard Mr.V.Sivaraman, learned counsel for the first appellant, Mr.R.Thamaraiselvan, learned counsel for appellants 2 and 4 and Mr.M.Babu Muthumeeran, learned Additional Public Prosecutor appearing for the respondent.



5. The prosecution has proved the following facts beyond a peradventure:

(i) Date of birth of victim girl "X" is 31.07.2000 and as on 03.05.2015, she was 14 years 10 months and above. She was studying in the 10th standard.

(ii) She went missing from 03.05.2015 to 01.07.2015.

6. The point for consideration is whether the evidence on record is sufficient for confirming the conviction and sentence of the appellants.

7. This Court carefully examined the evidence of victim girl "X". In her evidence, she had stated that A1 used to talk to her frequently which was not to the liking of her mother and when she told the above to A1, he asked her to come at 7'o clock to the river bed on 03.05.2015. When she went there, A1 and A2 were there in a motor bike; at that time, A1 told her "உன் உன்னை திட்டினாங்கல்ல, என் கூட வந்து இரண்டு நாள் இரு. அப்போதுதான் உங்கம்மாவக்கு கஷ்டம் தெரியும்"; "X" agreed to that and went along with A1 to the house of A4. "X" has further stated that when they went to the house of A4, A4 stated that "இந்த பெண்ணை கொண்டுபோய் விட்டுவிடு"; thereafter, A4 went elsewhere. It appears that A1 has used that opportunity to stay in the house of A4 on that night.

8. It is also the evidence of "X" that A2 had also left the company of A1 and "X". Thereafter, it is in the evidence of "X" that A1 took the house of Selvam (P.W.8) and they lived in that house and A1 had sex with her. She has further stated that on 01.07.2015, A1 brought her to Sethiathope Cross Street and police secured her. In the statement under Section 164 Cr.P.C., "X" had not implicated A2 and A4 at all. This has been confronted to her in her cross-examination. Except the ipse dixit of "X" that she went to A4's house, there is no other material. Even according to "X", A4 did not entertain them in her house and after she had left the house on some other work, A1 and "X" occupied the house.

9. Similarly, Panneerselvam (P.W.3) and Anjalidevi (P.W.4) in their evidence had stated that they had seen only A1 and "X" together in the river bed and not A2. It may be pertinent to state that "X" had not revealed anything about the involvement of A2 in her earlier statement to the Magistrate. In her statement, she had stated that she was in love with A1 and gone on her own volition with A1 to A1's aunt's house in Neyveli. Of course, the statement under Section 164 Cr.P.C. is not a



substantive piece of evidence and can be used only for corroboration or for contradiction. In this case, the defence has contradicted the testimony of "X" with her 164 Cr.P.C. statement. Even according to the testimony of "X", even assuming for a moment that A2 was present at the river bed along with A1, A1 had taken "X" stating that her mother should be taught a lesson by being away for two days. Hence, we find no material to sustain the conviction of A2 and A4.

10. As regards A1, the fact remains that he had sex with "X" in the house of Selvam (P.W.8.). Just because it was consensual, A1 cannot be absolved of the criminal liability for the reason that "X" was a minor. Therefore, the 'consent' or 'no consent' is irrelevant in a prosecution in POCSO Act.

11. In the result,

(i) The criminal appeal is partly allowed;

(ii) The conviction and sentence of Anandraj (A1) for the offence under Section 366 IPC is confirmed;

(iii) The conviction of Anandraj (A1) under Section 6 of POCSO Act is confirmed but the sentence is reduced from 15 years rigorous imprisonment to 10 years rigorous imprisonment;

(iv) The Trial Court is directed to take steps to secure the custody of Anandraj (A1) to undergo the remaining part of the sentence;

(v) Udayamoorthy (A2) and Rajavalli (A4) are acquitted of all the charges;

(vi) Fine amount, if any paid by Udayamoorthy (A2) and Rajavalli (A4) shall be refunded to them; and

(vi) The bail bonds executed by Udayamoorthy (A2) and Rajavalli (A4) shall stand cancelled.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
Sethiathoppu Police Station,
Cuddalore District.
2. The Sessions Judge,
(Mailha Court), Cuddalore.
3. The Superintendent,
Central Prison, Cuddalore.
4. The Public Prosecutor,
High Court, Madras.
5. The Superintendent, Central Prison,
Vellore.
6. The Judicial Magistrate I,
Cuddalore.
7. The Judicial Magistrate II,
Chidambaram.
8. The Chief Judicial Magistrate,
Cuddalore.
9. The District Collector,
Cuddalore.
10. The District General of Police,
Mylapore.

+1cc to Mr.R.Thamaraiselvan, Advocate, S.R.No.14077

+1cc to Mr.K.Balu, Advocate, S.R.No.14271

Crl.A.No.370 of 2018

NRL (CO)
RLP (21/03/2022)