



Crl.A(MD)No.19 of 2017

Bail Slip

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Kannan,S/o.Kayambu, aged about 32 years, Sole accused was released on bail vide order of this Court in dated 06/04/2017 in CRL.M.P.(MD)No.2592 of 2017 in CRL A(MD)No.19 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.06.2025

CORAM:

THE HON'BLE MS.JUSTICE R.N.MANJULA

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Kannan

... Petitioner

Vs

The Inspector of Police,
All Women Police Station, Manamadurai,
Sivagangai District.

... Respondent

Prayer: This Criminal Appeal Case filed under Section 374 of Cr.P.C to call for records relating to the Judgment in Spl.S.C.No.09 of 2015 of the learned Fast Track Mahila Judge, Sivagangai, dated 27.12.2016 and set aside the same and acquit the appellant/accused for the charges leveled against him.

For Appellant : Mr. P.Aju Tagore

For Respondent : Mr.K.Gnanasekaran
Government Advocate (Crl.Side)



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JUDGMENT

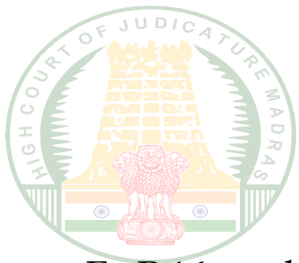
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The present Criminal Appeal has been filed challenging the Judgment of the learned Special Judge, Fast Track Mahila Court, Sivagangai, dated 27.12.2016 made in S.C.No.09 of 2015. The appellant is the sole accused in this case.

2.The case of prosecution as it appears from the records is that on 24.02.2015 at about 08.00a.m., the accused had taken the victim girl aged about 10 years to the terrace of his house and committed the offence of penetrative sexual assault.

3.On receiving the complaint from the father of victim, a case in Cr.No.7 of 2015 has been registered on 27.02.2015. After completing the investigation, charge sheet has been filed against the accused under Sections 5(m) r/w 6 and 5(l) r/w 6 of POCSO Act. After taking cognizance of the charge sheet, copies were furnished to the accused and charges were framed against the accused under Sections 5(m) r/w 6 and 5(l) r/w 6 of POCSO Act and questioned him. As the accused denied the offence and claimed to be tried, trial was conducted.

4.On the side of prosecution, PW1 to PW17 were examined and Ex.P.1 to



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Ex.P.16^a and M.O.1 were marked. After observing the legal mandates and concluding the trial and on appreciating evidence, the learned trial Judge had convicted the accused for the offence under Sections 5(m) r/w 6 and 5(l) r/w 6 of POCSO Act and sentenced him to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.3,000/-, in default, to undergo rigorous imprisonment for a period of 6 months, for each offence and ordered to run the sentence period concurrently. Aggrieved over that, the accused has filed this appeal.

5.The learned counsel for the appellant submitted that the evidence of victim child, PW3 is completely contradictory to her earlier statements given before the police under Section 164 Cr.P.C. PW3 in her evidence, has not stated anything about the commission of penetrative sexual assault by the accused; she has stated that the accused has touched her body and kissed on her private parts; as alleged by the prosecution, there is no repeated occurrence to attract the offence under Section 5(l) of POCSO Act.

5.1.The learned counsel for the appellant further submitted that despite intimation received from the School of the victim child, the investigation authorities has not examined the Teacher to whom the victim child has stated about the



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occurrence, the victim has stated in her 164 of Cr.P.C statement that she has informed the occurrence to her Teacher, who called through phone to the Child Helpline No.1098; the said facts has not been stated by her in her evidence; the mother of victim, PW2 has stated that the Teacher has given the complaint; in fact, the complaint has been given by father of the victim, PW1; PW3 has stated in her evidence that she has gone to the police station only from School.

6.Per contra, the learned Government Advocate (Crl.Side) appearing for the respondent police categorically submitted that the trial Judge after appreciating the oral and documentary evidence in a right perspective, convicted the accused and therefore, no interference is warranted by this Court.

7.I have given my anxious consideration to the submissions made on either side and carefully perused the records.

8. Originally, the complaint, Ex.P.1 is said to be given by the father of victim child. In the complaint, PW1 has stated that his wife had seen blood oozing from the private part of her child and on seeing that she got frightened and enquired the child and the child had stated that the accused had committed the act of



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penetrative sexual assault on her at the terrace. He has further stated in the complaint that the wife of PW1 herself had warned the accused already, but informed the same to PW1 only on 27.02.2015 and thereafter, PW1 has given the complaint. However, during the cross examination of victim child, PW3 has stated that she had been to the police station straight from the School.

9. It appears from the records that the information has been given to the Child Helpline from the School and thereafter, the victim was taken to the police station. In the statement under Section 164 of Cr.P.C., the victim child has stated that she had stated about the occurrence to her Teacher by name Jamesha. The said Teacher who had the knowledge of the occurrence by hearing directly from the child, could have been examined as a witness. But her evidence is not available.

10. PW1 has given the complaint by stating that he learnt that the accused had committed the penetrative sexual assault on the child. But he has not stated these facts in his evidence. He had stated in his evidence that the accused was in habit of pinching the victim child on her cheeks and pulling of her skirt when she was going to School. Even during the police investigation, he had only stated that the accused used to kiss her daughter on her cheeks or try to remove her skirt.



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11. The mother of PW2 stated in her evidence when similar such occurrences happened earlier they had ignored. She has further stated in her evidence that the complaint was given by her daughter's school teacher.

12. In the evidence of PW3, who is the victim child, she has stated that she has already informed the above act committed by the accused to her mother and her mother had also warned him. In yet another incident, the accused had asked the victim child to come with him to the School. This was also reported by her to the teacher and the teacher had called the Child Helpline.

13. In 164 Cr.P.C., statement, the victim has stated that blood came from her vagina. However, in the evidence of the victim child, she has not stated anything about the act of penetrative sexual assault committed by the accused, though she had stated that the accused used to cause discomfort and embarrassment by making body contact through unwelcome kisses.

14. The victim child has stated about the act of sexual assault in her 164 Cr.P.C., statement to her mother and to her Teacher. When the mother of victim



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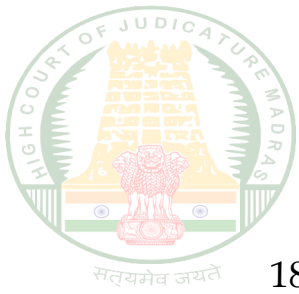
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child had learnt about the sexual assault caused on her daughter by a neighbour, she would have taken some immediate action either by reporting the same to her husband or to the police. Nothing of that sort has been done by her. The Teacher who had known the occurrence from the victim child, informed the same to the Child Helpline. However, she was not examined. In fact she has not even been cited as a witness in the list of prosecution side witnesses.

15. There is no consistency in the evidence of prosecution witnesses including the victim child and it has been elaborated above. More over, the complaint has also been given only after a delay of 3 to 4 days from the date of occurrence. It is strange to comprehend the evidence of PW1 that she ignored similar assaults committed on the victim already.

16. The Doctor, who examined the victim child after 3 days of occurrence he did not notice any wounds on her private parts.

17. The child told about the sexual assault to her teacher and she had called the child helpline. The prosecution has not given any acceptable reason for the non-examination of the said Teacher. These inadequacies and contradictions appear to be strong enough to affect the case of the prosecution. Looking at the case from whichever angle, would only reveal that the prosecution has not proved guilt against the accused beyond reasonable doubt.



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18. In view of the above discussions, this Court is of the considered view that the prosecution has failed to prove the case beyond reasonable doubt against the appellant and the judgment of the learned Special Judge, Fast Track Mahila Court, Sivagangai, dated 27.12.2016 made in S.C.No.09 of 2015 requires interference.

19. Accordingly,

- *the Criminal Appeal stands Allowed and the appellant is acquitted from all the charges levelled against him;*
- *The bail bond executed by the appellant if any, shall stand terminated and the fine amount, if any paid by the appellant shall be refunded to him.*

Sd/-

Assistant Registrar(CS I)

// True Copy //

/2025

Sub Assistant Registrar
(CS - I/ II / III /IV)

PNM

To

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



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2. The Inspector of Police,
All Women Police Station, Manamadurai, Sivagangai District.

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

Copy to
The Section Officer,
Criminal Records Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 CC to M/s.P.AJUTAGORE, Advocate (SR-32423[F] dated 06/06/2025)

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Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023