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Crl.A.No.340 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	30.08.2024
<i>Pronounced on</i>	17.10.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

Crl.A.No.340 of 2021
and
Crl.M.P.No.10101 of 2024

Nanjappan

...Appellant

Vs.

State represented by
 Inspector of Police,
 All Women Police Station,
 Perur, Coimbatore District.
 (Crime No.09/2018)

...Respondent

Prayer: Criminal Appeal filed under Section 374 of the Criminal Procedure Code to call for the records and set aside the judgment and conviction dated 30.03.2021 made in Special Calender Case No.35 of 2019 on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore and acquit the appellant from charge.

For Appellant : Mr.K.Prahalad Bhan

For Respondent : Mr.A.Gokulakrishnan,
 Additional Public Prosecutor



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JUDGMENT

M.S.RAMESH, J.

The charge against the appellant/accused is that on 06.03.2018 at about 08.30 P.M., he had sexually assaulted a 4½ years child by inserting his finger into her vagina and thereby committed the offence punishable under Section 5(m) read with Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO Act'). Subsequently, on 07.03.2018, when the child's mother had questioned the accused, he threatened her stating that if she gives any police complaint, he would kill her husband and therefore, he was also charged of having committed the offence under Section 506(i) of the Indian Penal Code (IPC). The Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore, on the strength of oral and documentary evidences before it, had found the accused guilty of having committed the offences and thereby convicted and sentenced him to undergo imprisonment for the remainder of his natural life and to pay a fine of Rs.55,000/-, in default of payment to undergo one year rigorous imprisonment for the offence under Section 5(m) read with Section 6 of the POCSO Act, as well as to undergo two years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default of which to undergo six months rigorous imprisonment under



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Section 506(i) IPC, through its judgment passed in Special Calender Case No.35 of 2019 dated 30.03.2021. The judgment of the Trial Court is assailed in the present appeal.

2. For the sake of convenience, the parties in the appeal are addressed according to their ranks in the trial Court.

3. The case of the prosecution in brief is that the accused is a Tailor by profession and that the victim is the adopted child of P.W.1 and P.W.3. On 06.03.2018, when the victim child was playing in her neighbour Ayya @ Pattappan's house, the accused had come there and committed sexual assault by inserting his finger into her vagina. Thereafter, the child had come home and informed her mother. When her mother had examined her vagina, she found it to be swollen and red in colour. She then informed her husband when he came home in the night. In continuation of this incident, the next day, when she had questioned the accused, he threatened her that he would kill her husband. Fearing that the accused might cause some harm to them, she had not reported to the Police. She had then taken the child to Roopa Hospital. They had thereafter given a complaint to the Police narrating the occurrence, which was registered in



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Crime No.9 of 2018 dated 16.03.2018.

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4. On completion of the investigation, the respondent police had filed the final report, charging the accused of having committed the offence under Section 5(m) read with Section 6 of the Act and 506(i) IPC. The Trial Court had furnished the copies of the relevant documents relating to the charges under Section 207 Cr.P.C. and thereafter framed charges under Section 5(m) read with Section 6 of the POCSO Act and 506(i) IPC against the accused.

5. In order to substantiate the charges levelled against the accused, 13 witnesses P.W.1 to P.W.13 were examined, 12 documents Exs.P1 to P12 were marked on the prosecution side. The defence had examined 3 witnesses, D.W.1 to D.W.3 and marked 3 documents, Exs.D1 to D3 on their side.

6. To establish the case of the prosecution, the following witnesses were examined:-

6.1. Banumathi (P.W.1) and Sridhar (P.W.3) are the mother and father of the victim child (P.W.2) respectively. As per their statements, the



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victim child was born on 13.11.2013 and they had legally adopted her when she was three months old. Both of them speak about the sexual assault committed by the accused on their child. P.W.1 and P.W.3 state about the incident, as narrated by their daughter. After the occurrence was revealed to the Child Help Line Centre, the child was produced before the Judicial Magistrate, who had recorded her statement under Section 164 Cr.P.C. The prosecution had marked the complaint given by P.W.1 to the Police as Ex.P.1, the birth certificate of the victim child as Ex.P.2 and the statement made by the victim child before the Judicial Magistrate under Section 164 Cr.P.C. as Ex.P.3, through P.W.1.

6.2. P.W.2 is the victim child, who was aged about 4½ years at the time of the incident. According to her statement, the neighbour Tailor had taken her to Pattan Thatha's house by telling her that he would give her *Marudhani*. Therein, he laid her on the bed and after removing her panty, he had inserted his finger inside her vagina. She then states that she bit his hand and ran away from that place. After reaching home, she went to sleep and when she woke up, she informed her mother, when she developed pain in her vagina.

6.3. Anjaline (P.W.5) and Umadevi (P.W.8) are the Counsellor and Co-ordinator of the Child Help Line Centre. As per their statements,



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when they had received a secret information on 16.03.2018, they went to the house of P.W.1 and P.W.3 and conducted an inquiry. They then took the victim child to the Child Welfare Committee and on their advice, P.W.1 had given a complaint to the Police.

6.4. Gandhi (P.W.7) is the landlord of P.W.1 and P.W.3. According to him, he had identified the accused, who was present in the Court and stated that his name was Nanjappan and that he was also known as 'Chinnasamy', as well as 'Tailor'.

6.5. Dr.Saravanapriya (P.W.10), who had examined the victim child on 26.10.2018, had noticed that the victim child's hymen was ruptured and that there was no sign of recent sexual assault. The medical certificate of the victim child was marked as Ex.P.6 and the Medical Memo issued by the Police was marked as Ex.P.7 through P.W.10.

6.6. Tmt.Sharmila, Additional Mahila Court Judge, who had recorded the statement of the victim child under Section 164 Cr.P.C. (Ex.P.8), was examined as P.W.11.

6.7. Amutha (P.W.12) is the Inspector of Police, who conducted the investigation. As per her statement, on recording of the FIR (Ex.P.9), she had prepared the rough sketch (Ex.P.10). Thereafter, when she was of the opinion that the offence of aggravated penetrative sexual assault was



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committed, she had altered the offences through an alteration report (Ex.P.11) for the offence under Section 5(m) read with Section 6 of the POCSO Act and Section 506(i) IPC.

6.8. Dr.Sasikumar (P.W.13) is the Doctor, who had subsequently given treatment to the victim child on 19.03.2018 for chest congestion and at that point of time, the incident of sexual assault made 13 days before, was revealed to him, which incident was recorded by him in the treatment case sheet (Ex.P.12).

7. On completion of the trial and when the incriminating circumstances found in the evidences of the prosecution witnesses were put forth to the accused under Section 313(1)(b) Cr.P.C., he denied the same claiming that it was a false case and that he intended to examine his own witnesses.

8. On the side of the defence, the accused had examined his daughter Saranyadevi (D.W.1), his brother Ayyasamy (D.W.3) and one Perumalsamy (D.W.2), who hails from his Village, who all testified that the accused was an Agriculturist by avocation and not a Tailor and that there was previous enmity between the complainants' family and the



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9. On the strength of the evidences before it, the Trial Court had found the accused guilty of having committed the offence of aggravated penetrative sexual assault, as well as criminal intimidation and thereby convicted and sentenced him to undergo imprisonment, as stated above.

10. The learned counsel appearing for the accused submitted that this is a case of wrong identity of the accused. According to him, the child had not mentioned the name of the accused, but referred to him only as a Tailor. On the strength of the evidences adduced on his side, he would submit that the accused was only an Agriculturist by avocation and not a Tailor and therefore, the prosecution had wrongly proceeded against him. He further submitted that there was an inordinate delay of 10 days in giving the complaint. Though the occurrence had taken place on 06.03.2018, the complaint came to be given only on 16.03.2018, which delay on the very first information is fatal. He also submitted that the child was subjected to medical examination after 13 days from the incident. Hence, the entire delay creates a suspicion with regard to the allegation of sexual assault and creates doubts on the medical evidences



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itself. He further added that the witnesses have given different explanation touching upon these delays and in view of these contradictions, the prosecution's case itself is to be disbelieved. By referring to the pre-existing enmity between the families, as spoken to by the defence witnesses, he submitted that the presumption under Section 30 is dangerous and the possibility of foisting a false case against the accused cannot be ruled out.

11. On the other hand, the learned Additional Public Prosecutor placed reliance on Section 30 of the POCSO Act with regard to the existence of the culpable mental state on the part of the accused and submitted that since the child was 4½ years on the date of occurrence, the accused is deemed to have committed the offence intentionally. He further pointed out to the evidence let in by the victim child before the learned Additional District Judge under Section 164 Cr.P.C., as well as her testimony during the course of trial. From the evidences of the child, he would submit that the child had cogently spoken about the incident both in her 164 Cr.P.C. statement (Ex.P.3), as well as in her oral testimony. With regard to the identity of the accused, the learned Additional Public Prosecutor referred to the evidence of P.W.7, who



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states that the accused, who was present in the Court, is also referred to as a Tailor. Likewise, he also pointed out to the evidence of P.W.1, who clarifies that the accused was also known as a Tailor. Thus, he would state that, merely because the child has not referred the name of the accused, it would not absolve him from the charges.

12. We have given our careful consideration to the submissions made by the respective counsels and have perused the original records available.

13. The mother of the child has been examined as P.W.1 and through her, the child's birth certificate (Ex.P.2) was marked, which evidences that the child was born on 13.11.2013. Ex.P.5 is the Adoption Deed, through which P.W.1 and P.W.3 had adopted the child (P.W.2) as their own daughter. Ex.P.5 also establishes that the child was born on 13.11.2013. The Doctors (P.W.10 and P.W.13), who had examined the child, also refer to her age as 4½ years, at the time of occurrence. The defence could neither rebut the sanctity of Ex.P.2 and Ex.P.5, nor could discredit the oral testimonies of P.W.1, P.W.3, P.W.10 and P.W.13, touching upon the age of the child. On a cumulative appreciation of all



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these evidences, it can be safely held that, as on the date of the occurrence, the child, since born on 13.11.2013, was aged about 4½ years.

14. The learned counsel appearing for the accused made a submission that this is a case of wrong identity of the accused, since the child has not mentioned his name, but referred to one Tailor and since the accused was only an Agriculturist by avocation and not a Tailor, he has been wrongly implicated in this case. According to the oral testimony of P.W.1, the accused is a next door neighbour and after identifying him in the Court, she stated that the accused was also referred to as a Tailor. P.W.7 is the landlord of P.W.1 and P.W.3, who in his oral testimony, had clarified, both during chief and cross examinations, that the accused is also referred to as a Tailor. His oral testimonies before the Trial Court read as follows:-

“முதல் விசாரணை-

எனக்கு கொண்டயம்பாளையம் சொந்த ஊர். கரடிவாவி என்ற ஊரில் தற்போது குடியிருக்கிறேன். பானுமதி, ஸ்ரீதரன் ஆகியோர் 2 வருடமாக எங்கள் வீட்டில் குடியிருக்கிறார்கள். அவர்கள் 4, 5 வருடத்திற்கு முன்பு ஒரு பெண் குழந்தையை



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எடுத்து வளர்த்து வருகிறார்கள். வீட்டில் குடியிருப்பவரின் குாந்தையை டெய்லர் தப்பாக நடந்து கொண்டதாக கேள்விப்பட்டேன். ஆஜர் எதிரி தான் அந்த டெய்லர் அவர் பெயர் நஞ்சப்பன். சின்னசாமி என்றும் கூப்பிடுவார்கள். குறுக்கு விசாரணை-

நான் கடந்த 4 வருடமாக கரடிவாவி கிராமத்தில் குடியிருக்கிறேன். நான் 4 வருடத்தில் ஏதாவது விசேசத்திற்கு 6 மாதத்திற்கு ஒரு முறை கொண்டயம்பாளையத்திற்கு போவேன். டெய்லர் பெயர் சின்னசாமி. ஆஜர் எதிரி தான் சின்னசாமி. எங்கள் ஊரில் வெள்ளிங்கிரி என்ற ஒரு டெய்லர் இருக்கிறார். வெள்ளிங்கிரி டெய்லர் கடை மெயின் ரோட்டில் உள்ளது. நான் கோவில் விசேசத்திற்கு போன போது கேள்விப்பட்டேன். யார் சொன்னார்கள் என்று தெரியாது.”

(Emphasis supplied by us)

15. The victim child was examined as P.W.2. In her oral testimony before the Trial Court, she has categorically stated that the next door Tailor had sexually assaulted her. In her statement made under Section 164 Cr.P.C. (Ex.P.3) also, she narrates the same incident and refers to the aggressor as Nanjappan, which is the real name of the accused. In the light of these evidences, it stands clarified that the reference made by the



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child to the aggressor as a Tailor, would only refer to the accused and hence, it cannot be said to be a case of mistaken identity.

16. The learned counsel for the accused raised a further ground stating that there was an inordinate delay in making the complaint. According to the prosecution, the occurrence had taken place on 06.03.2018 at 07.00 P.M. in the house of one Pattan, which is next to the victim's house. After the occurrence, P.W.1 would state that the child had dinner and went to sleep. Thereafter, at about 11.30 P.M., she woke up crying and got down and passed urine there itself. Subsequently, P.W.3 would state that he had come home around 10.00 to 10.30 P.M., after finishing his work and when he found that the child had passed urine, he had enquired her, at which point of time, the child had narrated the sexual assault by the accused. Thereafter, P.W.1 claims to have given a complaint to the Police, which was not taken up and that she then took the help of the Village Headmen and approached the Child Help Line Centre, through whom, she had later given the complaint. P.W.3 would state that on the next day i.e., on 07.03.2018, he had taken his child to Roopa Hospital, where the child was given first aid treatment. Thereafter, the Child Help Line Centre had received the information about the



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incident and had inquired him. In this background, P.W.1 had given a complaint on 16.03.2018.

17. P.W.5 is the Child Help Line Counsellor and P.W.8 is its Co-ordinator. As per the version of these two witnesses, on 16.03.2018, the Child Help Line Centre had received a secret information about the sexual assault on the child and accordingly, they conducted an inquiry with the parents, as well as the child. After this they had produced the child before the Child Welfare Committee and thereafter advised the parents to file a complaint. In this background, the complaint (Ex.P.1) was made on 16.03.2018 at All Women Police Station, Perur, Coimbatore. In the complaint (Ex.P.1), P.W.1 would state that after the incident occurred on 06.03.2018, she had seen the accused on the next day at 06.00 A.M. When she confronted him about the earlier day's incident, he threatened to kill her husband if she makes any Police complaint. In view of the threat, she claims to have kept silent. However, the Child Help Line Centre had somehow received the information about the sexual assault on the child on 14.03.2018. They had, after making inquiry with them, produced the child before the Child Welfare Committee. In this background, they had advised P.W.1 to give a Police



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complaint, which was made on 16.03.2018.

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18. On an overall appraisal of the statements of P.W.1, P.W.3, P.W.5 and P.W.8, there appears to be some plausible explanation as to the delay in giving a complaint to the concerned Police Station. There are, however, certain minor contradictions. With regard to the claim of P.W.1 and P.W.3 that they had taken the victim child to Roopa Hospital on 07.03.2018 is concerned, it is not supported by any evidence. Hence, their claim that the child was taken on that particular day to the Hospital, cannot be considered as a proved fact.

19. Though P.W.1 claims that she attempted to give a complaint on 07.03.2018 at the jurisdictional Police Station, the complaint was not taken as the Inspector of Police was unavailable at that point of time. Thereafter, it is not known as to why P.W.3 did not give any complaint till 16.03.2018. However, the evidences of P.W.5 and P.W.8 would clearly establish that the Child Help Line Centre had received an information about the sexual assault on the victim child, pursuant to which they had come to the house of the victim child and made inquiries. Accordingly, the child was produced before the Child Welfare Committee and on their



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advise, P.W.1 had given a written complaint (Ex.P.1) on 16.03.2018.

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20. It is a settled proposition of law that merely because there is some delay in making the complaint, the prosecution's case need not be disbelieved, whenever there is satisfactory explanation. In the case of ***Sekaran Vs. State of Tamil Nadu*** reported in (2024) 2 SCC 176, the Hon'ble Supreme Court had held that, in cases where delay occurs, it has to be tested anvil of other attending circumstances. If on an overall consideration of all relevant circumstances it appears to the Court that delay in lodging the FIR has been explained, mere delay cannot be sufficient to disbelieve the prosecution's case. However, if the delay is not satisfactorily explained and it appears to the Court that the cause for the delay had been necessitated to frame the accused, then such a delay would form a part of several factors to vitiate the conviction. In the instant case, the delay requires to be looked into among the other attending circumstances, for which purpose, we shall look into the evidences touching upon the commission of offence.

21. P.W.2 is the victim child, who speaks about the sexual assault committed on her by the accused. When she was produced before P.W.11



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and her statement was recorded under Section 164 Cr.P.C., she had narrated the incident as follows:

“நஞ்சப்பன் 6ம் தேதி மருதாணி தருகிறேன் என்று சொல்லி என்னை அய்யா வீட்டிற்கு அழைத்துச் சென்று அய்யா வீட்டு கட்டிலில் படுக்க ஜட்டியை கழற்றி பொச்சை (பெண்ணுறுப்பு) இரண்டு விரல்களால் நோண்டினார். நான் வலிக்கிறது என்று கத்தினேன் என் வாயை கை வைத்து முடினார். நான் நஞ்சப்பா கையை கடித்துவிட்டு வீட்டிற்கு ஓடி போய்விட்டேன்.”

22. During the time of trial, she had, in a cogent manner, corroborated her statement made under Section 164 Cr.P.C. without any contradiction. A perusal of the evidences of P.W.1 and P.W.3 also reveal the narration of facts of the incident by the victim to them, which was in a like manner, without contradictions. Though P.W.2 was cross examined during trial, the defence could not discredit her statements in any manner, with regard to the manner in which the sexual assault had taken place.

23. P.W.10 is the Doctor to whom the Police had referred the victim child for medical examination. According to P.W.10, she examined the victim child on 26.10.2018 and issued the medical certificate (Ex.P.6). As



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per her version, there was a old healed hymen tear at 6”O clock position.

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24. P.W.13 is another Doctor, who had treated the victim child for chest congestion on 19.03.2018. When the child was produced before the Doctor, he was informed about the sexual assault on the child about 13 days back. The victim was then examined by a female Doctor in his presence and had found her vagina to be swollen.

25. On an overall consideration of the statements made by the victim child, both under Section 164 Cr.P.C., as well as during the course of trial read with the oral testimonies of P.W.1 and P.W.3, to whom the victim had narrated the incident in addition to the statements made by the Doctors (P.W.10 and P.W.13), the fact that the accused had sexually assaulted the victim child on 06.03.2018 by penetrating his finger into her vagina, stands established, beyond reasonable doubts.

26. When the commission of offence itself has been fully established, which is the important circumstance to prove the culpability of the accused, the non-explanation of the delay in making the complaint may not be fatal and it cannot be said that owing to the delay, the accused



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had been foisted into the case.

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27. The Trial Court had appreciated all the evidences against the accused with regard to the occurrence and had rightly found him to be guilty of the offence under Section 5(m) read with Section 6 of the POCSO Act.

28. However, insofar as the offence under Section 506(i) IPC is concerned, though P.W.1 had stated in her complaint (Ex.P.1) that on 07.03.2018 at about 06.00 A.M., when she had confronted the accused about the occurrence, she claims that the accused had threatened to kill her husband if she gives a police complaint. However, during the course of trial, she had not made any reference of such criminal intimidation by the accused. No other witnesses speak about this intimidation on the part of the accused. In the absence of any other evidence, it requires to be held that the charge against the accused for the offence under Section 506(i) IPC has not been established and thus, the accused is entitled to be acquitted for this charge.

29. The consequential issue that arises for consideration is as to



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whether the trial Court was justified in imposing the maximum punishment of imprisonment for life for the reminder of his natural life?

30. In the case of *Alister Anthony Pareira Vs. State of Maharashtra* reported in (2012) 2 SCC 648, as well as in several other decisions of the Hon'ble Supreme Court, it has been held that imposition of sentence should commensurate with the nature and gravity of the crime, which shall depend on the facts and circumstances of each case. The relevant portion reads as follows:-

“84. Sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straitjacket formula for sentencing an accused on proof of crime. The courts have evolved certain principles: the twin objective of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances.”



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31. In the instant case, though we find that the evidence of the victim child cannot be disbelieved, there are certain circumstances which may be relevant for the purpose of interfering with the sentence imposed by the trial Court. According to P.W.1 and P.W.3, both of them claim to have taken the child to Roopa Hospital on 07.03.2018. However, the prosecution has neither examined the Doctor of Roopa Hospital who treated the victim nor any medical evidence touching upon such treatment was produced before this Court. Had the prosecution established this material fact before this Court, the proximity between the occurrence and the injuries of sexual assault on the child could have been more explicit.

32. Had the prosecution let in evidence with regard to the first aid rendered to the child at Roopa Hospital, the accused may have had the benefit of placing reliance on such medical evidence and could have sought for modification of the charge offence into such other offence of a lesser gravity. Though the failure on the part of the prosecution to substantiate the first medical treatment at Roopa Hospital has not been substantiated, it will not absolve the accused from his culpability to the crime for the offence under Section 5(m) read with Section 6 of the POCSO Act, in view of our findings in the preceding portions of this



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judgment. However, these factors would certainly be relevant to interfere with the sentence awarded by the trial Court. In this background, the maximum sentence of life imprisonment awarded to the appellant could be reduced.

33. Section 6 of the POCSO Act came to be amended through Act 25 of 2019, with effect from 16.08.2019, by increasing the minimum punishment from 10 years to 20 years. The occurrence in the present case was on 06.03.2018, which is prior to the amendment. In these given circumstances, we are of the view that the punishment awarded by the trial Court, for the offence under Section 5(m) read with Section 6 of the POCSO Act, could be reduced to the minimum sentence of 10 years, as provided in the pre-amended provision of Section 6.

34. For all the foregoing reasons, the judgment of the trial Court, insofar as holding the appellant guilty of having committed the offence under Section 506(i) IPC, is set aside and he is acquitted from the said charge. Insofar as the charge under Section 5(m) read with Section 6 of the POCSO Act is concerned, the judgment of the trial Court holding him guilty of having committed this offence is upheld. However, the sentence



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of life imprisonment imposed on him, stands modified and reduced to 10 years. The fine amount of Rs.55,000/-, in default of payment to undergo one year rigorous imprisonment, stands confirmed. The period of imprisonment already undergone by the appellant shall be set off as per Section 428 Cr.P.C. Accordingly, the Criminal Appeal stands Partly Allowed. Consequently, connected miscellaneous petition is closed.

[M.S.R., J] [C.K., J]
17.10.2024

Index:Yes

Neutral Citation:Yes

Speaking order

hvk

Note: Issue order copy on 17.10.2024



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M.S.RAMESH, J.
and
C.KUMARAPPAN, J.

hvk

To

- 1.The Sessions Judge,
Special Court for Exclusive Trial of Cases
under POCSO Act,
Coimbatore.
- 2.The Superintendent of Prisons,
Central Prison, Coimbatore.
- 3.The Inspector of Police,
All Women Police Station,
Perur, Coimbatore District.
- 4.The Public Prosecutor,
High Court of Madras.

Pre-delivery judgment made in
Crl.A.No.340 of 2021

17.10.2024