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CRL.A.No.385 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	04.06.2026
Pronounced on	25.06.2026

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

CRL.A.No.385 of 2018
and
CRL.M.P.No.8882 of 2018

Mathankumar

... Appellant / Accused-1

Vs.

State rep. by
The Inspector of Police,
Anaimalai Police Station,
Coimbatore District.
(Crime No.135/2013)

... Respondent / Complainant

Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, 1973, to set aside the judgment of the Sessions Judge, Mahalir Court, Coimbatore dated 26.11.2015 passed in Spl.C.C.No.60/2014 in erroneously convicting the Appellant herein under Section 5(m) read with Section 6 of the POCSO Act, 2012 convicted 10 years Rigorous Imprisonment and fine 2,000/- default fine 6month Simple Imprisonment and Section 506(i)IPC convicted 1 year Simple Imprisonment and Fine 500/- default fine 1 month Simple Imprisonment and the both sentences are run concurrently.



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For Appellant : Mr.P.Murali

For Respondent : Mrs.Sharada Vivek
Government Advocate (Crl. Side)

JUDGMENT

This Criminal Appeal has been filed against the judgment dated 26.11.2015 passed by the learned Sessions Judge, Mahalir Court, Coimbatore in Spl.C.C.No.60 of 2014.

2. By the impugned judgment, the Trial Court found the appellant guilty of an offence under Section 5(m) read with Section 6 of the POCSO Act, 2012. The appellant has been sentenced to undergo Ten Years Rigorous Imprisonment with a fine of Rs.2,000/-, and in default of the said payment, to undergo Six months Simple Imprisonment.

3. The appellant was also found guilty of the offence under Section 506(i) of the IPC, for which the petitioner has been sentenced to undergo one year of Simple Imprisonment with a fine of Rs.500, and in default of the said payment, to undergo one month of Simple Imprisonment.

4. Originally, the appellant, who was arrayed as A1 in the above case,



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was proceeded along with A2. Earlier, A2 was charged with the following

offences:-

POCSO Act, 2012	IPC
Section 3 read with Section 4 of POCSO Act, 2012	Section 377 read with Section 109 and 506(i) of IPC

However, A2 was acquitted thereafter vide the Impugned Judgment of the Trial Court.

5. The alleged offence is said to have taken place on 23.05.2013 at about 18.30 hours by A1. The victim, who was examined as PW3 before the Trial Court, deposed evidence on 20.01.2015 when he was about 11 years old.

6. Before the Trial Court, the prosecution also examined the victim's father, mother, and the victim himself as PW1, PW2 and PW3, respectively.

7. The Headmistress of the School of the victim was examined as PW4. PW5 is the Mahazar Witness, and rest of the 3 witnesses, namely (i) Sub-Inspector of Police, All Women Police Station, Pollachi, (ii) Inspector



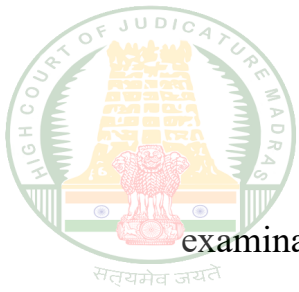
of Police, Anaimalai Police Station, Pollachi and (iii) Inspector of Police, Anaimalai Police Station, Pollachi, were examined as PW6, PW7 and PW8, respectively.

8. On behalf of the appellant, no witnesses were examined. On behalf of the prosecution, the following 5 documents were marked as Exs.P1 to P5.

1	Ex.P1	Complaint
2	Ex.P2	School Certificate
3	Ex.P3	Observation Mahazar
4	Ex.P4	First Information Report
5	Ex.P5	Rough Sketch

9. The challenge to the impugned judgment is primarily on the ground that there is a violation of Sections 25 and 27 of the POCSO Act, 2012, and therefore, presumption under Section 29 cannot be made out.

10. It is submitted by the learned counsel for the appellant that the victim should have been produced before the Magistrate for recording their statement under Section 164 of the Criminal Procedure Code, 1973. It is further submitted that there was no confession by the appellant during the trial. It is moreover submitted that the victim was not subjected to a medical



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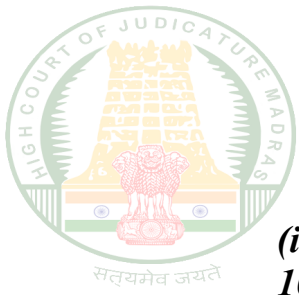
examination in accordance with Section 164A of the Code of Criminal Procedure, as contemplated under Section 27 of the POCSO Act, 2012.

11. On the other hand, the learned Government Advocate for the respondent would submit that although there is a failure to comply with the requirements of Sections 25 and 27 of the POCSO Act, 2012, the deposition of the victim (PW3) makes it clear that the appellant had committed the offence under Section 5(m) read with Section 6 of the POCSO Act, 2012, and therefore, the appellant was rightly convicted and sentenced to undergo the above imprisonment.

12. It is further submitted that the act committed by the appellant could not have been imagined by the victim prior to the complaint filed on 24.05.2013, which culminated in the registration of FIR in Crime No.135 of 2013.

13. In this connection, the learned Government Advocate placed reliance on the decisions of the Hon'ble Supreme Court in the following two cases:

(i) State of M.P. vs. Dayal Sahu, (2005) 8 Supreme Court Cases 122.



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(ii) *Ganesan vs. State Represented by its Inspector of Police, (2020)*
10 Supreme Court Cases 573.

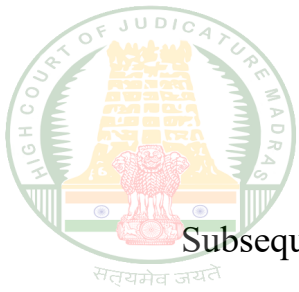
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14. The learned counsel for the appellant would submit that although the alleged offences are said to have taken place on 23.05.2013 at about 06.30 p.m., the Complaint (Ex.P1) was given only on 24.05.2013, and the FIR in Crime No.135 of 2013 was registered only on the following day, i.e. 25.05.2013.

15. I have heard the learned counsel for the petitioner and the learned Government Advocate for the respondent.

16. The case of the prosecution is that the victim visited his maternal grandparents' house during the school vacation. On 23.05.2013, at about 06.30 p.m., the victim was sexually assaulted by the 1st accused. This incident occurred while the victim was being dropped off by the appellant herein (A1) from A2's house, where the victim had gone to play a video game.

17. The case of the prosecution before the Trial Court was that since it was getting late, the 2nd accused, who has been acquitted of the offence, asked the appellant to drop the victim at his maternal grandparents' house.



Subsequently, the appellant took the victim to a nearby canal and sexually assaulted the victim.

18. On the date of the offence, the victim was aged about 9 years and the accused was aged about 24 years. Although the victim was taken to the hospital the next day, as he was allegedly experiencing discomfort and throwing up, the doctor did not find any injury in his mouth. Therefore, the victim was not referred to the Child Welfare Department or the Police Station. The victim was also not examined by the Magistrate under Section 164 of the Criminal Procedure Code. That apart, the FIR in Ex.P4 was registered only on the following day, after the complaint was filed in Ex.P1.

19. The case of the appellant is that the delay in filing the complaint (Ex.P1) and registering the FIR (Ex.P4), along with the failure to examine the witness before the Magistrate under Section 164, is fatal, and therefore, the appellate is entitled to an acquittal.

20. However, the law on the subject is clear. As per the decision of the Hon'ble Supreme Court in *State of M.P. vs. Dayal Sahu [(2005) 8 SCC 122]*, the mere non-examination of a doctor or non-production of a doctor's report



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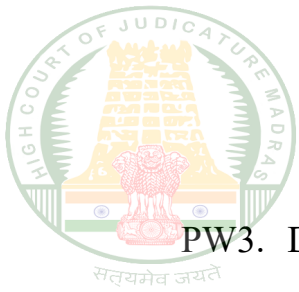
is not, by itself, fatal to the prosecution's case if the statements of prosecutrix and other prosecution witnesses inspire confidence. In the said decision, the Hon'ble Supreme Court extensively discussed the law on the subject, citing the following cases:

- (i) State of Rajasthan v. N.K. (2000) 5 SCC 30 : 2000 SCC (Cri) 898***
- (ii) Ranjit Hazarika v. State of Assam (1998) 8 SCC 635 : 1998 SCC (Cri) 1725***
- (iii) State of Punjab v. Gurmit Singh (1996) 2 SCC 384 : 1996 SCC (Cri) 316***
- (iv) Sk. Zakir v. State of Bihar (1983) 4 SCC 10 : 1983 SCC (Cri) 761***
- (v) Bharwada Bhoginbhai Hirjibhai v. State of Gujarat (1983) 3 SCC 217***

21. Similarly, in ***Ganesan vs. State Represented by its Inspector of Police [(2020) 10 SCC 573]***, the Hon'ble Supreme Court, once again reiterated the above position.

22. The second mentioned case was passed in the context of the POCSO Act, 2012, where the victim, aged about 13 years, was subjected to a sexual offence by the accused therein.

23. A perusal of the evidence of PW1 and PW3 shows that an attempt was made during the cross examination to discredit the evidence of PW2 and



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PW3. During the cross examination, the witness will answer only the legitimate questions that may be put by the opposite side. There are no other questions put by the appellant, who has to discredit the evidence of either PW2 or PW3.

24. As far as PW2 is concerned, an attempt was made to make it appear that there was a rivalry between PW2 and the family of the 2nd accused, which has been stoutly denied. Thus, it was put forward before the Trial Court that a false case was foisted on both the accused to discredit them.

25. As far as the victim (PW3) is concerned, only a few questions were asked in an attempt to discredit the evidence of PW3. The deposition of PW3 during cross-examination clearly states that, on the date of the occurrence, when the victim wanted to go home from the A2's house, the 2nd accused (Kannimuthu), informed the victim that he would be dropped by the appellant herein / 1st accused on his bike. Thereafter, while the victim and the appellant were traveling, the appellant took the victim to a nearby forest and sexually assaulted the victim. The relevant portion of the deposition of PW3 is reproduced below:

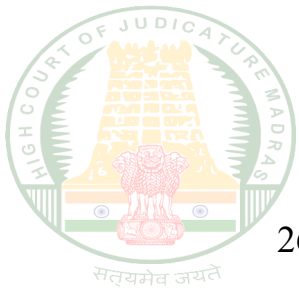


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“..... My father’s name is Kalaiyarasan. My mother’s name is Bhagavathi. I am studying in 6th standard. I study at Sreenukadevi Higher Secondary School, Neikkarapatti. The incident took place in Vettaikaran Puthur near Anaimalai. My grandmother’s name is Kuppatha, My grandfather’s name is Bhagavathiyappan. When the witness was asked about the accused, he looked at the 1st accused and said that his name was Madankumar and the 2nd accused’s name was Kannimuthu.”

The PW3 further deposed as follows:

“On 23.05.2013, brother Kannimuthu called me to play video games. It was 05.00 p.m. at that time. I said that I had to go home. At that time, brother Madankumar also came to Kannimuthu’s house. Kannimuthu asked Madankumar to drop me off at home. Then, Madankumar took me to a place like a forest on his bike. That place was called “Vaikalmedu”. At that time, Madankumar took his penis and put it in my mouth. Then he took saliva and applied it on my buttocks. Then he took his penis and put it in my buttocks. Then he gave me 10 rupees, saying that if I told all this at home, he will kill me. I said I didn’t want. Then Madankumar picked me up on his bike and dropped me off at my grandmother’s house a short distance away. Then, I told the incident to my mother. Kannimuthu didn’t do anything else. He stayed at home.”



26. Thus, there is not even a suggestion from and on behalf of the accused during cross examination of PW2 that the appellant had not committed any sexual assault on the minor child.

27. The Complaint, marked as Ex.P1, was filed on 24.05.2013. This was a few days after the implementation of the POCSO Act, which came into effect on 14.11.2012 vide S.O.2705(E) dated 09.11.2012.

28. The prosecution failed to take note of Section 27 of the POCSO Act. Since the Act was implemented only a few months prior, it can reasonably be attributed that the respondent police were unaware of the procedures under the POCSO Act.

29. As far as the failure to obtain a statement from the victim in terms of Section 164 of the Criminal Procedure Code, as contemplated under Section 25, is concerned, it would arise only where a statement is recorded. If a statement is being recorded in terms of Section 164 of the Criminal Procedure Code, the procedural mandate is that the Magistrate, while recording such statement, shall record the statement as spoken by the child. Failure to examine the child before the Magistrate itself is not fatal, if the

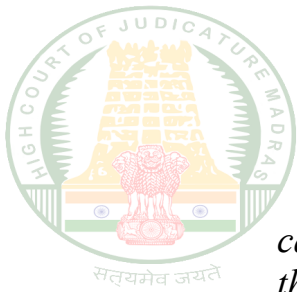


evidence of the victim has inspired confidence.

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30. In this connection, a reference is made to the decision of the Hon'ble Supreme Court in ***Rai Sandeep @ Deepu vs State of NCT of Delhi [(2012) 8 SCC 21]***, wherein it has been observed in paragraph 22 as under:

“22. In our considered opinion, the ‘sterling witness’ should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other similar such tests to be applied, it can be held that such a witness can be



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called as a 'sterling witness' whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

31. A cumulative reading of the complaint, the deposition of PW3 in chief and during cross-examination makes it clear that the minor child or his parents had no motive to file a false complaint against the accused / A1 and A2.

32. Therefore, this Criminal Appeal is liable to be dismissed, and accordingly, dismissed. No costs. Connected miscellaneous petition is closed.

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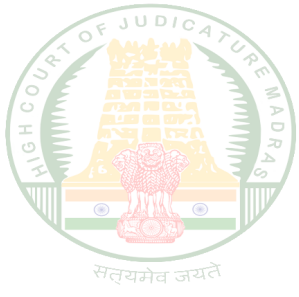
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Neutral Citation : Yes / No

To

1. The Sessions Judge, Mahalir Court, Coimbatore,
2. The Inspector of Police, Anaimalai Police Station, Coimbatore District.
(Crime No.135/2013)

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C.SARAVANAN, J.

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Pre-delivery Judgment in
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