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Crl.A.No.199 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2026

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.199 of 2023

Aravind

... Appellant

Vs.

State rep. by
The Inspector of Police,
Kadathur Police Station,
Erode District.
(Crime No.78 of 2021)

... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., to call for the records and set aside the conviction imposed in the judgment dated 31.01.2023 made in Spl.S.c.No.30 of 2021 on the file of the Court of Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Erode.

For Appellant : Mr.J.Ranjith Kumar

For Respondent : Mrs.Sharada Vivek
Government Advocate (Crl. Side)
Assisted by Mr.M.Arul Raj



JUDGMENT

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The appellant/accused in Spl.S.C.No.30 of 2021 was convicted by the Trial Court by judgment dated 31.01.2023 and sentenced to undergo six months rigorous imprisonment and to pay a fine of Rs.1,500/-, in default, to undergo two months rigorous imprisonment for the offence under Section 451 IPC and to undergo three years rigorous imprisonment and to pay a fine of Rs.3,000/-, in default, to undergo three months rigorous imprisonment for the offence under Section 7 punishable under Section 8 of Protection of Children from Sexual Offences Act, 2012 (POCSO Act). Aggrieved against the same, the appellant preferred the present appeal.

2.The case of the prosecution is that PW1/mother of the victim girl lodged a complaint stating that her second daughter studying 9th Standard was under the care of her maternal grandmother/PW2. On 24.02.2021 at about 3.00 p.m the victim girl went to her house from the house of her grandmother to fold the clothes, at that time, the appellant who is the uncle's son of PW1, entered into the house and asked the victim to kiss him but she refused. The appellant also hugged and kissed the victim. The victim girl became frightened and she raised alarm. PW3/grandmother on hearing the



alarm raised by the victim came to the spot and saw the appellant coming out of the house. The appellant warned her not to disclose to anyone and thereafter, left the place. Since PW1 and PW4, mother and father of the victim girl/PW2 engaged in work in Tiruppur, complaint was lodged three days thereafter to PW7, who registered a case. Thereafter, PW8 took up investigation, examined the victim, recorded the statement of victim, her parents and grandmother, prepared observation mahazar and rough sketch in the presence of witnesses, collected the School certificate, the victim was produced before the Magistrate and 164 statement recorded. On completion of investigation, charge sheet filed. During trial, PW1 to PW8 examined and Ex.P1 to Ex.P12 marked on the side of the prosecution. On the side of the defence, no witness examined and no documents marked. On conclusion of trial, the Trial Court convicted the appellant as stated above.

3.The learned counsel for the appellant submitted that in this case the alleged occurrence is said to have taken place on 24.02.2021 but the complaint was lodged three days later on 27.02.2021 which defies the normal human conduct. The explanation given by PW1 and PW4, parents of the victim, is that both were engaged in work in Tiruppur and hence, the



delay. He would further submit that in this case PW3 is the maternal grandmother of the victim who states that she saw the appellant coming out of the victim's house and she was threatened, hence she could have lodged a complaint but no complaint was lodged. He further submitted that the reason for implicating the appellant is that the appellant's father Arjunan and PW1's father are brothers, earlier for fixing the bore point, they used water diviner to fix the place and a peg was pegged. The appellant removed the peg from that place and placed it in another place. A bore was drilled in that place, there was no water and it was a dry bore. Later it came to know that the appellant removed the peg from the spotted area. Hence there was animosity and a fight. To brook vengeance using the victim, a false case has been projected. He further stated that PW1, PW3, PW4 and PW5 as well as PW8/Investigating Officer, all admit that there are row of houses in the street but no neighbours examined. Further it is also admitted that if any sound is made in one house, it will be heard by others in the street. In this case, it was stated that the appellant entered the house of the victim and kissed her, the victim girl raised alarm but except PW3 grandmother, no other neighbours examined to confirm such incident. On a demurrer, he submitted that even taking the statement of the victim as true, then also there is no offence under



Sections 7 and 8 of POCSO Act is made out. It is stated that the appellant had only kissed her. As per section 7, if a person does any other act other than what has been stated, it should be with sexual intent. Sexual intent is explained in Section 11, wherein it states that any question which involves sexual intent, it should be question of fact. Thus on the factual aspect of the evidence, it cannot be stated that the appellant had any sexual intent. Further referring to Observation Mahazar/Ex.P3 and rough sketch/Ex.P7, he submitted that from both exhibits, nothing can be deciphered where the room is located in the house, how the appellant entered the house and committed any sexual assault. Thus, on an animosity with the appellant, using the victim/PW2, a false case has been projected. Considering the overall facts of the case, it is seen that there is no sexual assault committed by the appellant.

4.The learned Government Advocate (Crl. Side) strongly opposed the appellant's contention and submitted that in this case, the PW/defacto complainant/mother of the victim and PW4/father of the victim, both are working in Tiruppur, only during weekends they come to the native and hence their minor daughter was taken care by PW3/maternal grandmother.



On 24.02.2021 at about 3.00 p.m., the victim went to her house to fold the clothes and she was alone, at that time the appellant entered the house, locked the door and forced the victim to kiss her, the appellant also hugged her and kissed her by force. Thereafter the victim raised alarm. PW3 maternal grandmother on hearing the cry had come there and saw the appellant coming out from the house. The appellant threatened the grandmother and left the place. Three days thereafter when PW1 came back home, PW3 informed the incident and thereafter, complaint lodged and FIR registered by PW7. PW8 took up investigation, prepared observation mahazar and rough sketch in presence of PW5 and another witness, recorded the statement of victim/PW2, parents of the victim/PW1 and PW4, grandmother/PW3, collected School certificate from PW6. On completion of investigation, charge sheet filed. During trial, PW1 to PW8 examined and Ex.P1 to Ex.P8 marked on the side of the prosecution. In this case PW2 is the victim, who right from the initial stage in her statement to the police, before the Magistrate and during evidence is consistent, clearly narrated the sequence of events as to how she was sexually assaulted by the appellant. PW3/grandmother seen the appellant coming out of the house and hence, it is corroborated. In this case, the identity of the appellant is not in dispute.



The defence of the appellant is that there was a dispute with regard to fixing of bore well is an afterthought. Even in his 313 Cr.P.C. questioning, the appellant stated that he has got dispute with PW1 in fixing of borewell and laying of pipeline. It is seen that PW1 was working in Tiruppur and there is no question of dispute in laying pipeline. The Trial Court considering the materials and evidence rightly convicted the appellant. Hence, prays for dismissal of the appeal.

5.Considering the submissions made and on perusal of the materials, it is seen that in this case, the defacto complainant is none other than the mother of the victim. The defacto complainant/mother of the victim and father of the victim/PW4, both employed in textile industry at Tiruppur and they visit their native only during weekends. The victim girl, who is a minor studying 9th Standard was taken care by her maternal grandmother/PW3. On 24.02.2021 at about 3.00 p.m., the victim, who was with her grandmother, went to her house to arrange clothes and she was alone, at that time, the appellant is said to have entered the house and asked for a kiss and further he hugged the victim and kissed her, which was resisted and the victim shouted. In this case, admittedly the occurrence took place on 24.02.2021, three days



thereafter on 27.02.2021, complaint was lodged. For the delay, explanation given is that PW1 was employed in Tiruppur cannot be accepted. In this case, PW3/grandmother is residing along with the victim. Further, it is stated that the street is with adjacent houses, closely located, a shout or noise from one house will be heard by others. Admittedly, none of the residents of the street lodged a complaint or informed the police, which becomes highly doubtful. Added to it, no neighbours and independent witness examined. The explanation of the appellant that there was a dispute with regard to the defacto complainant with regard to fixing of bore point and the appellant is said to have removed the peg from the spotted place and placed it in another place, due to which the bore drilled by the defacto complainant turned dry and failed, which caused huge loss of money, peace, dejection, sufferings and pain. The animosity between the appellant and the defacto complainant not seriously disputed. Now considering the act of the appellant that he hugged and kissed the victim, as per Section 7 of POCSO Act this act must be coupled with sexual intent. Sexual intent as per Section 11 Proviso is a matter of fact. The appellant being an uncle asking for a kiss or kissing the victim girl on the cheeks for once cannot be termed as an act with sexual intent. In view of the above, the foundational fact of the appellant's act to be



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ascribed with sexual intent is not proper. The evidence of witnesses are with contradictions and exaggerations. From the above, it is seen that the prosecution has miserably failed to prove the case beyond reasonable doubt, Hence this Court is inclined to set aside the conviction and sentence imposed by the Trial Court.

6.In the result, this Criminal Appeal stands allowed setting aside the judgment dated 31.01.2023 in Spl.S.C.No.30 of 2021 passed by the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Erode.. The appellant is acquitted from all the charges levelled against him. Fine amount if any paid shall be refunded. Bail bond if any executed shall stand cancelled.

18.08.2026

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
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To

- 1.The Sessions Judge,
Magalir Neethi Mandram
(Fast Track Mahila Court),
Erode.
- 2.The Inspector of Police,
Kadathur Police Station,
Erode District.
- 3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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