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Crl.A. No. 300 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2026

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

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Elangovan

..Appellant/Sole Accused

Vs.

The State Rep. By its
The Inspector of Police,
Avinasi All Women Police Station,
Crime No.5 of 2022.

..Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the conviction and sentence against the appellant in Spl.S.C.No.87 of 2022 on the file of the learned Sessions Judge, Magalir Neethi Mandaram (Fast Track Mahila Court), Tiruppur dated 30.01.2023 and allow this appeal.

For Appellant	::	Mr.B.Shruthan
For Respondent	::	Mr.S.Raja Kumar
		Additional Public Prosecutor



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J U D G M E N T

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The appeal challenges the conviction and sentence imposed on the appellant for the offences under Section 376 AB of IPC and under Section 5(i) r/w 6(1) of the POCSO Act.

2.(i) The case of the prosecution is that the appellant is known to the victim girl aged about 2 years; that when the victim girl was playing in the room of the appellant, the appellant had removed the undergarment of the victim girl and had inserted his finger in the private part of the victim girl and thus committed the offences under Section 5(m) r/w 6 of the POCSO Act.

(ii) On the complaint given by PW2, the mother of the victim girl, an FIR was registered by PW10, the Sub Inspector of Police for the offences under Section 5(m) r/w 6 of the POCSO Act in Crime No.5/2022. The FIR was marked as Ext.P13. PW11 took up the investigation, subjected the victim to medical examination and after recording the statements of the witnesses, had filed the final report against the appellant under Sections



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5(m) r/w 6, 3(b) r/w 4(1) of the POCSO Act and Section 376 (AB) of IPC.

The trial Court framed charges under Sections 5(m) r/w 6, 3(b) r/w 4(1), 5(i) r/w 6 of the POCSO Act and Section 376 AB of IPC and when questioned, the appellant pleaded 'not guilty'.

(iii) The prosecution examined 11 witnesses and marked 16 documents to prove its case. When the appellant was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. The appellant neither examined any witness nor marked any documents.

(iv) On appreciation of oral and documentary evidence, the Trial Court found that the prosecution had established the case beyond reasonable doubt, and held the accused guilty of the offences under Sections 5(i) r/w 6(1) of the POCSO Act and Section 376 AB of IPC. The Trial Court sentenced him to undergo 20 years RI and to pay a fine of Rs.5000/-, (id), to undergo 1 year RI for the offence under Section 5(i) r/w 6 of the POCSO Act and also sentenced him to undergo 20 years RI and to pay a fine of Rs.5,000, (id), to undergo one year RI for the offense under 376 AB of IPC.



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Hence, the accused/appellant has preferred the appeal challenging the said conviction and sentence.

3.Heard Mr.B.Shruthan, the learned counsel appearing for the appellant/accused, and Mr.S.Raja Kumar, learned Additional Public Prosecutor appearing for the respondent/State. This Court also perused all the materials available on record.

4.Mr.B.Shruthan, the learned counsel for the appellant would submit that the victim's mother had never stated in her earlier version, including in her complaint, that the victim was subjected to penetrative sexual assault or rape; that the allegations with regard to the offence of penetrative sexual assault is an afterthought; that there is no evidence to suggest that the appellant had committed the offence of rape or penetrative sexual assault; that the medical evidence is contrary to the evidence of PW2; and that the victim had not stated about any of the alleged occurrences in her deposition and therefore, the impugned Judgment convicting the appellant under Section 5(i) r/w 6(1) of the POCSO Act is liable to be set aside.



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5.The learned Additional Public Prosecutor *per contra* submitted that the complainant had stated in her complaint that the victim was subjected to penetrative sexual assault by the petitioner by inserting his finger in the genital part of the victim; that merely because the victim was unable to state the manner of occurrence, the impugned Judgment cannot be set aside; that the medical evidence would show there was swelling in the private part of the victim; and the victim had injuries in her private part and prays for dismissal of the petition.

6.As stated above, the prosecution had examined 11 witnesses. PW1 is the victim. PW2 is the victim's mother and the defacto complainant. PW3 is the Doctor, who examined the victim and had made entries in the accident register Ext.P4. PW4 is the Doctor, who also examined the victim and had given the certificate Ext.P6. PW5 is the observation mahazar witness and has marked Ext.P7 and his signature marked in Ext.P8. He was treated hostile by the prosecution. PW6 is the observation mahazar witness and the witness to the confession of the appellant and his signature marked



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in Ext.P9. PW7 is the Doctor, who had given the scan report for the child, Ext.P10. PW8 is another doctor who speaks about the scan report. PW9 is the Doctor, who had examined the appellant and issued the potency certificate, Ext.P12. PW10 is the Sub-Inspector who registered the FIR. PW11 is the investigating officer.

7.The version of PW2 is that, she heard the victim's cry inside the room of the appellant on the date of occurrence ie., on 23.04.2022; that when she asked the appellant to open the door, he asked her not to disturb him and thereafter, when the victim came out of the room, she saw the victim had blood stain injuries and her undergarments had blood stains; and that when she asked the victim, the victim pointed to the appellant. The complaint was lodged on 24.04.2022. The victim was examined on 24.04.2022 at about 12.05 p.m. PW2 has stated to the doctor that the victim's undergarments had blood stains.

8.It is seen that the prosecution has failed to seize the said blood stained undergarments. PW2 also does not state as to whether she handed



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over the undergarments to the investigating officer. It is strange when the allegation is that the victim's under garments had blood stains, neither PW2 had handed over the same, nor the investigating officer has collected the same from PW2.

9.Be that as it may, the Doctor(PW3), who had examined the victim on 24.04.2022, had stated in her deposition that the victim's private part was swollen and there was an lacerated injury measuring 1 x 1/2 cm on both sides of her thighs. The Doctor had not noted any blood stains in the private part and also had not stated about the possibility of the victim sustaining blood stain injuries.

10.The victim is two year old child. Her deposition in chief reads as follows;

"குழந்தையிடம் யாராவது ஏதாவது செய்தார்களா என்று கேட்டபோது தன்னுடைய வலது கையால் விரலை வைத்து யூரின் போகும் இடத்தை சுட்டிக்காட்டியது. ஆஜர் எதிரியை குழந்தை சுட்டிக்காட்டியது"

The victim was not cross-examined.



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11. The victim was subjected to medical examination during investigation. A scan was taken and the Doctor who conducted the scan and issued Ext.P10 report would state that there were no external injuries on the body and there was a *healed linear vertical abrasion over perinial region*. The scan was taken on 27.02.2022.

12. Therefore, as stated above, the victim's evidence does not suggest that there was any penetrative sexual assault and the victim, a two year old, obviously cannot be expected to state beyond what was stated. If the medical evidence suggested that the victim was subjected to penetrative sexual assault, even in the absence of the victim elaborating the nature of assault, the appellant can be found guilty of the offence of penetrative sexual assault. The doctors, who had medically examined the victim have not stated about the possibility of the penetrative sexual assault in any of their reports. As stated above, the blood stained clothes also were not seized. PW3, the doctor who had made entries in the Accident Register (Ext.P4) had observed in the said register that there was no bleeding or discharge from the vagina of the victim, though she had noted abrasions measuring 1 x 1/2 cm on both



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sides of the genital part of the victim. From the above, it is clear that there is no evidence to suggest that the victim was subjected to penetrative sexual assault within the meaning of Section 3 of the POCSO Act.

13. Therefore, it would be highly unsafe to convict the appellant for the offence of penetrative sexual assault. However, it is seen that the victim was found in the room of the victim on the date of occurrence and the victim complained of pain in her genital part after she came out of the said room. She was subjected to medical examination soon thereafter and the delay in lodging the complaint cannot be said to be unexplained. Therefore, this Court is of the view that the prosecution had proved that the victim was subjected to aggravated sexual assault by the appellant as the victim was below 12 years.

14. Considering the nature of the offence, the evidence adduced and the age of the appellant, this Court is of the view that ends of justice would be met if the appellant is sentenced to 5 years RI and to pay a fine of Rs.25,000/- and in default to undergo three months SI for the offences under



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Section 9(m) r/w 10 of the POCSO. Act. Consequently, the appellant is acquitted of the offense under Section 376 AB of IPC. The appellant shall be secured for serving the period of sentence. The period already undergone be set off.

15.The Criminal Appeal is accordingly partly allowed

18.02.2026

Neutral Citation: Yes/No

Tsg

To

- 1.The Sessions Judge,
Magalir Neethi Mandaram
Fast Track Mahila Court, Tiruppur
- 2.The Inspector of Police,
Avinasi All Women Police Station,
Crime No.5 of 2022.
- 3.The Public Prosecutor,
High Court, Madras.

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SUNDER MOHAN,J.

Tsg

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