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CRL A No. 570 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 26-02-2026

PRONOUNCED ON: 10-03-2026

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

CRL A No. 570 of 2023

P.Senthil Kumar

..Appellant/Sole accused

Vs

State Rep By
The Inspector Of Police,
Belukurichi Police Station,
Namakkal District.
Cr.No. 42/2019.

..Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 of Criminal Procedure Code, to allow the above Appeal by setting aside the Judgment dated 09.02.2023 passed in Special C.C.No.19 of 2019 on the file of the learned Sessions Judge, Mahalir Neethi Mandram (Fast Track Mahila Court), Namakkal.

For Appellant:

Mr. P.Vimal Raj

For Respondent:

Mr.S.Raja Kumar
Additional Public Prosecutor



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Judgment

This Criminal Appeal has been filed by the sole accused challenging the judgment dated 09.02.2023 in Spl.C.C.No.19 of 2019 on the file of the learned Sessions Judge, Mahalir Neethi Mandram (Fast Track Mahila Court), Namakkal, by which he was convicted for the offence under Sections 450 IPC and Section 5(m) r/w 6 of the POCSO Act, 2012 and sentenced him as follows:

Offence under Section	Sentence imposed
450 IPC	To undergo RI for seven years and to pay a fine of Rs.5,000/- in default to undergo SI for six months.
Section 5(m) r/w 6 of the POCSO Act, 2012	To undergo RI for twenty years and to pay a fine of Rs.5,000/- in default to undergo SI for six months.
The sentences were ordered to run concurrently.	

2.(i) The case of the prosecution is that the accused and the victim child aged about 10 years were known to each other and residing in the same village; that on 07.04.2019 at about 4.00 p.m., when the parents of the victim child were out of station and when the victim child and her brother were alone in the house, the accused went to the house of the victim child, took her and her brother to the terrace of their house; that he



sent the victim child's brother to a shop and thereafter, committed penetrative sexual assault by first kissing the victim child, applying his mouth to the genital organ of the victim child and forcing his private part on the private part of the victim child and also ejaculated sperm on the victim child; and thus, committed the aforesaid offences.

(ii) The victim child had reported about the occurrence to her mother [PW3] who returned home at about 4.30 p.m. PW2, father of the victim child lodged a complaint [Ex.P2] and an FIR [Ex.P13] was registered by PW20, the Sub Inspector of Police against the accused for the offence under Sections 3, 4, 5(m) r/w 6 of the POCSO Act.

(iii) PW21 took up the investigation, subjected the victim child to medical examination, made arrangements for recording Section 164(5) Cr.P.C., statement and after examining all the witnesses, filed the final report against the accused for the offences under Sections 5(m) r/w 6 and Section 450 of the IPC, before the learned Sessions Judge, Mahalir Neethi Mandram (Fast Track Mahila Court), Namakkal.



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(iv) On the appearance of the accused, the provisions of Section 207 Cr.P.C., were complied with and the case was taken on file as Spl.C.C.No.19 of 2019 by the learned Sessions Judge, Mahalir Neethi Mandram (Fast Track Mahila Court), Namakkal. The trial Court framed two charges against the accused for the offences under Section 450 of the IPC and Section 5(m) r/w 6 of the POCSO Act. During the trial, when questioned, the accused pleaded 'not guilty'.

(v) Before the trial Court, the prosecution had examined 21 witnesses as P.W.1 to P.W.21 and marked 17 exhibits as Ex.P1 to Ex.P17, besides 5 Material objects [M.O.1 to M.O.5]. When the accused were questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. The accused neither examined any witness nor marked any document on his side.

(vi) On appreciation of oral and documentary evidence, the trial Court found the accused guilty of both the offences viz., Section 450 of the IPC and Section 5(m) r/w 6 of the POCSO Act and sentenced him as



stated stated in paragraph No.1 of this judgment. Aggrieved by the said conviction and sentence, the accused had preferred the instant appeal.

3. The learned counsel for the appellant would submit that there are vital contradictions in the evidence of victim child [PW1] and her mother [PW3]; that the facts elicited from the cross examination of victim child [PW1] would suggest that the victim child is not a witness of sterling quality; that the victim child had admitted that there was prior enmity between the appellant and her family members with regard to a monetary dispute; that on the date of the occurrence, the appellant had asked for money from the victim child's parents and there was an altercation, which led to a complaint to the police; that the medical evidence would show that there was no mark of violence and no injury in the genital area and therefore, would submit that the prosecution case is false and the case has been foisted by the respondent; and hence, the impugned judgment is liable to be set aside and prayed for acquittal.

4. The learned Additional Public Prosecutor *per contra* submitted that the victim child has been consistent in her version throughout; that



the fact that there was a money dispute would not render the victim child's evidence unreliable; that the evidence of the Doctor would in any case suggest that the victim child was subjected to sexual assault and therefore, the impugned judgment is justified and prayed for dismissal of the appeal.

5. (i) As stated above, the prosecution had examined 21 witnesses. PW1 is the victim child; PW2 is the victim child's father/defacto complainant who would speak about the lodging of the complaint and taking the victim child to the hospital; PW3 is the mother of the victim child and would corroborate the evidence of PW2 that the victim child complained about the occurrence to them. PW4 is the brother of the victim child, who corroborates the version of the victim child. PW5 is grandmother of the victim child and is a hearsay witness. PW6 is the grandfather of the victim child and is also a hearsay witness; PW7, PW8 and PW9, who are neighbours, turned hostile. PW10, PW11 and PW12 are hearsay witnesses. PW13, is the witness to the observation mahazar; PW14 is the witness to the confession statement of the appellant and the seizure mahazar [Ex.P5]. PW15 is the Principal of the school where the



victim child studied and had issued a certificate [Ex.P8], wherein the date of birth of the victim child was shown as 08.03.2009. PW16 is the Special Sub Inspector of Police, who had accompanied the appellant for medical examination. PW17 is the Doctor, who examined the victim child and issued the medical examination report [Ex.P9]; PW18 is the doctor who had examined the appellant and issued the potency certificate [Ex.P10].

(ii) PW19 is the Sub Inspector of Police, who had recorded the statement of the victim child. However, it is seen from PW19's evidence that the statement recorded by her has been marked as Ex.P11. This Court fails to understand as to how the said statement made to the police officer was marked as an exhibit. The learned Additional Public Prosecutor has no explanation. PW19 also speaks about the seizure of the gown [M.O.1] and under garment [M.O.2] of the victim child. PW20 is the Sub Inspector of Police, who registered the FIR and PW21 is the investigating officer.



6. The prosecution case therefore rests on the evidence of the victim child [PW1] and her parents, examined as PW2 and PW3; the other witnesses are hearsay witnesses, some of whom turned hostile as stated above. The prosecution relies upon the medical evidence to corroborate the evidence of PW1 to PW3.

7. The alleged occurrence is said to have taken place on 07.04.2019 at 4.00 p.m. It is the prosecution case that when the victim child and her brother were alone at their house, the appellant has sent the victim child's brother [PW4] to a nearby shop and inappropriately touched and kissed her and thereafter forced his private part on the private part of the victim child. The victim child had informed about the occurrence to her parents PW2 and PW3 on the same day at 4.30p.m. A complaint was lodged on the next day i.e., 08.04.2019 at 9.00 a.m., by PW2. No explanation has been offered by the prosecution for the delay in lodging the complaint. However, PW2 would state that because of the incident he was subjected to trauma and did not want to expose his daughter; and that thereafter, after much deliberation he lodged the complaint on the next day morning.



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8. It is the case of the defence that the appellant and the victim child's father had dispute with regard to a monetary transaction and there was a wordy and physical altercation between the two of them on the date of the occurrence and that in order to wreak vengeance on the appellant, the instant complaint has been lodged. PW1, the victim child would state that there was a wordy altercation between the appellant and the victim child's parents with regard to a monetary dispute. However, PW2 and PW3 also would deny any such occurrence or dispute with regard to a money transaction. PW5, the grandmother and PW6, the grandfather also had denied the suggestion that there was a dispute with regard to the money transaction.

9. The prosecution has proved the date of birth of the victim child as 08.03.2009. The Principal of the school where the victim child studied was examined as PW15. In fact the birth certificate [Ex.P8] of the victim child was marked through PW15. The victim child was aged 10 years at the time of the occurrence. The appellant had not cross-examined the said witness and as such there is no doubt with regard to the age of the victim child.



10. As could be seen from the above narration of the witnesses examined by the prosecution, the prosecution case rests on the sole testimony of the victim child [PW1] and her brother [PW4]. PW4, the younger brother of the victim child offers corroboration to her evidence to the extent of stating that they both went to the terrace of the house along with the appellant and that thereafter he alone went to a shop at the instance of the appellant. The mother [PW3] and the other relatives are hearsay witnesses.

11. It is the version of the victim child [PW1] that on the same day of the occurrence i.e., on 07.04.2019 at about 4.30 p.m., she informed her mother [PW3] about the occurrence that took place at 4.00 p.m. The explanation offered by PW2, the father of the victim child is that he felt that if this incident is revealed to others, it would cause embarrassment to the family and therefore, he did not lodge a complaint on the same day evening. The explanation on the face of it appears to be reasonable. However, the surrounding circumstances and the facts elicited from the cross-examination of PW1 and PW4 would show that the explanation offered by PW2 is artificial and cannot be accepted.



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12. PW1 in her cross-examination had stated as follows:

“கேள்வி - அன்றையதினம் நீ, உன் அப்பா, அம்மா, பாட்டி, சித்தி, தாத்தா எல்லோரும் அதே வீட்டில் தான் இருந்தீர்கள்? என்றால்

பதில் - சரிதான்.

கேள்வி - எதிரி பணம் கேட்டு, இதற்கு முன்னால் வீட்டிற்கு வந்திருக்கிறாரா? என்றால்

பதில் - இல்லை.

கேள்வி - அன்றையதினமும் எதிரி பணம் கேட்டு வந்தபோது தாத்தாவும் இருந்தார் மற்ற எல்லோரும் இருந்தார்கள் என்றால்

பதில் - சரிதான்.

கேள்வி - பணம் கேட்டு வந்தபோது வாக்குவாதம் ஏற்பட்டு அடி தடி ஏற்பட்டது தானே?

பதில் - ஆமாம்.

கேள்வி - உன் அம்மா எதிரியை அடித்தார் தானே?

பதில் - ஆமாம்.

கேள்வி - சம்பவத்தன்று தகராறு ஆனதால் போலீஸ் ஸ்டேசனுக்கு தகவல் சொல்லி போலீஸ் வந்தார்களா?

பதில் - ஆமாம்.

கேள்வி - போலீஸ் வந்து கைது செய்து கூட்டி போனார்களா?

பதில் - ஆமாம்.

கேள்வி - அப்போதே நாங்களும் உடன் சென்று உடனடியாக புகார் கொடுத்தீர்கள்? என்றால்

பதில் - சரிதான்.

கேள்வி - அப்போது போலீஸ் ஸ்டேசனில் நீ, உன் அப்பா, அம்மா, உன் சொந்தக்காரர்கள், எதிரி இன்ஸ்பெக்டர் இருந்தீர்களா? என்றால்

பதில் - ஆமாம் இருந்தோம்.



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கேள்வி - மூன்று நாட்கள் கழித்து தான் உன்னை
மருத்துவமனைக்கு அழைத்துச்
சென்றார்கள் என்றால்
பதில் - சரிதான்.”

13. The above extract of the cross-examination would show that on the date of occurrence there was an altercation between the appellant and the victim child's mother [PW3] with regard to a monetary transaction. The victim child had admitted that pursuant to the altercation, PW3 had slapped the appellant and on the same day, police had come to the house and arrested the appellant. Though, PW2 and PW3 would deny any such altercation on account of a monetary dispute, the evidence of PW4 the younger brother of the victim child, would read as follows:

“கேள்வி - எதிரி என் அப்பா அம்மாவிடம் பணம்
கேட்டுக்கொண்டிருந்தபோது அவர்கள்
எதிரியை சத்தம்போட்டார்கள் தானே
பதில் - இல்லை சும்மா தான் இருந்தார்கள்.
கேள்வி - கும்பல் கூடி போலீஸ் வந்தார்களா?
பதில் - வந்தார்கள்.
கேள்வி - ஆங்கிருந்து எதிரியையும் மற்றவர்களையும்
போலீஸ் ஸ்டேசனுக்கு கூட்டி போனார்கள்
தானே
பதில் - ஆம் கூட்டிபோனார்கள்.
கேள்வி - போலீஸ், என் அம்மா, அப்பா, மற்றும் எதிரி
என்ன பேசிக்கொண்டார்களா?
பதில் - ஆமாம் பேசிக்கொண்டார்கள்.
கேள்வி - என்ன பேசிக் கொண்டார்கள்?



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- பதில் - தெரியாது.
கேள்வி - அன்று மாலையில் எதிரியையும்
மற்றவர்களையும் இன்ஸ்பெக்டர் போக
சொல்லிவிட்டார்கள் தானே
பதில் - ஆமாம்.
கேள்வி - எல்லோரும் வீட்டிற்கு வந்துவிட்டீர்கள் தானே
பதில் - ஆமாம்.”

14. PW4's evidence also would suggest that there was an altercation with regard to a monetary transaction and the family members of the victim child went to the police station on the same day. It is in the light of these admissions that we have to examine the victim child's evidence as the prosecution case solely rests on her testimony.

15. PW4, as stated above is not a witness to the occurrence. PW1 had stated in her statement before the Doctor, in her Section 164(5) Cr.P.C. statement and in her deposition that the appellant kissed her in her private part, inappropriately touched her and also forced his private part on her private part and that she did no shout as the appellant had closed her mouth with a towel.



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16. If an incident of physical altercation on account of monetary dispute on the same day, as admitted by PW1 and PW4 had taken place, then, it is highly improbable that the appellant, who is said to be related to the victim child's parents would indulge in such an act of committing penetrative sexual assault on the victim child. That apart, the victim child had admitted that all the family members including her parents, her grand parents and her aunt were in the house on the date of the occurrence, as could be seen from the above extract, which also improbabilises the prosecution case that the victim child and her brother were alone at the house.

17. Be that as it may. The above aspects by themselves may not be a ground to disbelieve PW1, the victim child. The victim child had stated that she was subjected to medical examination three days after the occurrence. The investigating officer would state that the victim child was sent for medical examination on 08.04.2019, which is contrary to the record, which suggests that the victim child was subjected to medical examination only on 09.04.2019.



18. The Doctor [PW17] who examined the victim child and had given the medical examination report [Ex.P9] had in the general examination has stated “no mark of violence”. In her final opinion, she had stated as follows:

“8. Opinion:

I am of the opinion that **i) No evidence of injury in genitals. ii)**

Vaginal smear – Negative for spermatozoa

for the following reasons:

1. Presence of spermatozoa or semen in the vagina **Absent**
2. Presence of injuries on genitals **No injury**
3. Presence of marks of violence on other parts of body **No mark of violence.**”

Though, she had noted redness in the private part of the victim child, she had categorically stated that the victim child was not subjected to any kind of violence.

19. Firstly, there was no reason why the victim child was not subjected to medical examination on the day of complaint. Secondly, the doctor’s evidence shows that the victim child was not subjected to any violence. She had found no injury in genitals and the vaginal smear also proved negative for spermatozoa. That apart, it is the prosecution case



that the appellant had ejaculated sperm on the victim child. The victim had also not stated about the said fact in her deposition. Though the dress and undergarment of the victim [M.O.1 & M.O.2] and the appellant [M.O.3 to M.O.5] were seized nothing incriminating was found to establish the prosecution case that the appellant had ejaculated sperm on the victim child. The investigating officer [PW21] had admitted in his cross-examination that no sperm was detected in either the dress of the victim or the appellant. Therefore, the medical evidence and the evidence of the investigating officer are totally contrary to the version of the victim child.

20. PW3 the victim child's mother would admit that on 07.04.2019, she had beaten the appellant though she would state that the reason was because the victim child complained about the appellant's act. However, PW2 would deny any such incident. This also raises a doubt.

21. The cumulative effect of the medical evidence and the admissions made by PW1 and PW4, regarding a monetary dispute and a physical altercation on account of the same on the day of the occurrence,



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would raise a serious doubt with regard to the prosecution case that the victim child was subjected to sexual assault by the appellant. Therefore, this Court is of the view that it would be highly unsafe to convict the appellant on the sole testimony of the victim child, who was aged about 10 years at the time of the occurrence and her narration of the occurrence appears to be parrot-like in nature and tutored. Hence, this Court is inclined to set aside the impugned judgment of conviction and sentence.

22. Accordingly, the Criminal Appeal stands allowed. The conviction and sentence imposed upon the appellant vide judgment dated 09.02.2023 in Special C.C.No.19 of 2019, by the learned Sessions Judge, Mahalir Neethi Mandram (Fast Track Mahila Court), Namakkal, are set aside. The appellant is acquitted of all the charges. The fine amount, if any, paid by the appellant shall be refunded. The bail bond, if any, executed shall stand discharged.

10-03-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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SUNDER MOHAN J.

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To

1. The Sessions Judge,
Mahalir Neethi Mandram
(Fast Track Mahila Court), Namakkal.

2. The Inspector of Police,
Belukurichi Police Station,
Namakkal District.

3. The Public Prosecutor,
High Court, Madras.

**Pre-delivery judgment in
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10-03-2026

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