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Crl A No.556 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2026

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

Crl.A.No.556 of 2023

R.Kumar

... Appellant

Vs

State By:

Inspector of Police,
W-8, All Women Police Station,
Thirumangalam, Chennai.
(Crime No.8 of 2022)

... Respondent

Prayer : This Criminal Appeal has been filed u/s.374 of the Code of Criminal Procedure, praying to set aside the Judgment dated 20.03.2023 in Spl.S.C.No.103 of 2022 passed by the Court of the learned Sessions Judge, Special Court of Exclusive Trial of cases under POCSO Act, in so far as convicting the Appellant / Accused charge u/s.6 of POCSO Act and sentenced him to undergo rigorous imprisonment for 20 years, further imposed with a fine of Rs.25,000/- in default to undergo further period of 3 months simple imprisonment and sentenced to undergo 5 years for charge u/s.366 of IPC and imposed with a fine of Rs.5,000/- in default to undergo further more period of 1 month simple imprisonment and sentenced to undergo 3 years imprisonment for offence u/s.506(ii) of IPC and the period undergone by the appellant / accused is ordered to be set-off u/s.428 Cr.P.C.

For Appellant : Mr.M.S.Ramesh

For Respondent : Mr.S.Raja Kumar
Additional Public Prosecutor



JUDGMENT

The criminal appeal challenges the judgment dated 20.03.2023 passed in Spl.S.C.No.103 of 2022 by the learned Sessions Judge, Special Court of Exclusive Trial of cases under POCSO Act, convicting and sentencing the appellant / accused as follows:

<i>Sl. No.</i>	<i>Offence under Section</i>	<i>Sentence imposed</i>
1.	6 of POC SO Act	To undergo rigorous imprisonment for 20 years with a fine of Rs.25,000/- in default to undergo simple imprisonment for 3 months.
2.	366 of IPC	To undergo imprisonment for 5 years with a fine of Rs.5,000/- in default to undergo rigorous imprisonment for 1 month.
3.	506(ii) of IPC	To undergo imprisonment for 3 years.

2. (a) The case of the prosecution is that the appellant was the land owner of the premises in which the victim's parents were tenants; that the victim was aged about six years at the time of occurrence; that on 24.02.2022, at about 8.30 pm, the appellant called the victim lured her to his house and took her to the bedroom and he removed the victim's dress and applied his mouth on the private part of the victim which had caused irritation to the victim. Thereafter, the appellant is said to have threatened the victim with dire consequences, if she discloses the occurrence to any other person.

(b) It is further the case of the prosecution that the victim's brother,



P.W.4, went in search of the victim, he found that the victim and the appellant came out of the room and he found the victim's dress was distorted and when he enquired, the victim, she did not reveal anything; that thereafter, they informed P.W.2, the mother of the victim who in turn informed P.W.1, the father of the victim P.W.1 lodged the complaint which is marked as Ex.P.3 before the respondent which was registered by P.W.7, who thereafter, conducted the investigation. P.W.7 made arrangements for recording the Section 164(5) Cr.P.C. statement of the victim and sent the victim for medical examination and after examination of all other witnesses filed the final report against the appellant for the offences u/s.366, 354B, 376AB, 506(ii) of Indian Penal Code, 1860 and Section 5(m) r/w. Section 6 of the Protection of Children from Sexual Offences Act, 2012 (in short POCSO Act, 2012).

(c) On the appearance of the accused, the provisions of Section 207 Cr.P.C., were complied with and the case was taken on file in Spl.S.C.No.103 of 2022 by the Sessions Judge, Special Court of Exclusive Trial of cases under POCSO Act, for trial. The trial Court had framed three charges for the offences under Section 6 of the Protection of Children from Sexual Offences Act, 2012 and Sections 366 and 506(ii) of IPC, 1860 and when questioned, the accused pleaded 'not guilty'.

(d) To prove its case, the prosecution had examined 7 witnesses as P.W.1



to P.W.7 and marked 10 exhibits as Exs.P.1 to Ex.P.10. When the accused was questioned, u/s.313 of 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.

(e) On appreciation of oral and documentary evidence, the trial Court convicted and sentenced him as stated above. Hence, the accused has preferred the instant appeal challenging the said conviction and sentence.

3. The learned counsel for the appellant submits that the victim was hardly aged six years, at the time of occurrence; that her evidence is the result of tutoring; that the appellant had asked P.W.1 to vacate the house since he was frequently quarrelling with his wife in an inebriated condition owing to matrimonial differences with his wife; that the medical evidence does not corroborate the version of the victim; that the complaint was lodged three days after the alleged occurrence; that the conviction is based solely on testimony of the victim, which does not inspire confidence due to material inconsistencies in her deposition and hence, prayed that the impugned judgment may be set aside.

4. The learned Additional Public Prosecutor appearing for the respondent police, per contra, submitted that the victim was aged six years at the time of occurrence; that her evidence is corroborated by P.W.4, the brother of the



victim; that the motive for false prosecution suggested by the defence cannot be accepted, as there is no reason for the victim to depose falsely against the appellant; that the minor contributions in her evidence would not make her evidence unreliable and therefore, he submitted that there is no infirmity in the impugned judgment.

5 (a). As stated earlier, the prosecution has examined seven witnesses, P.W.1, is the father of the victim, P.W.2, is the mother of the victim, P.W.3 is the victim, P.W.4, is the brother of the victim, P.W.5, is the Doctor who examined the victim and made entries in the accident register, Ex.P.5 and had prepared the medical examination Report, Ex.P.6 and had given final opinion which is marked as Ex.P.8. P.W.6, is the Doctor who examined the appellant and issued Potency certificate and P.W.7, is the Investigating officer.

(b) It is the version of P.W.1, the father of the victim that the victim and her brother (P.W.1's son) told about the occurrence on 24.02.2022 to him and when he questioned the appellant and also informed his relatives, the appellant had sought for pardon. Thereafter, P.W.1, chose not to give a complaint. However, he had lodged the complaint on 27.02.2022, as instructed by his friend. P.W.1 would admit in his cross examination that there were frequent quarrel between him and his wife, since he had the habit of drinking alcohol; that on one such occasion, when he quarrelled with his wife in an inebriated



condition, the appellant asked him to vacate the house. P.W.2, the mother of the victim girl would state that the victim had told her about the occurrence and that she had an irritation in her private part; that victim also told P.W.2, not to inform anyone else about the occurrence. P.W.2, deposed that thereafter she informed P.W.1 and that both P.W.1 and P.W.2 told their relatives about the occurrence and since the appellant pleaded ignorance and asserted that he had not committed any offence, they decided to give a complaint.

6. It is seen that the explanation offered by P.W.1 and P.W.2 for the delay in lodging the complaint, is contrary to each other. Be that as it may, both P.W.1 and P.W.2 are hearsay witnesses and in fact P.W.4, the brother of the victim, had also not seen the occurrence. However, P.W.4 had seen the victim coming out of the appellant's house.

7. It is seen that the victim was subjected to medical examination and P.W.5, the Doctor observed as follows:

- (i) No evidence of external injuries.
- (ii) Hymen was intact
- (iii) No evidence of external, old or new injuries.

8. In the light of the above medical evidence adduced on the side of the



prosecution, and since the said report does not offer any corroboration, the prosecution case rests solely on the testimony of the victim.

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9. It is at the instance of the victim that the complaint was lodged. As stated above, the prosecution had not explained the delay of three days in lodging the complaint. There are contradiction in the evidence of P.W.1 and P.W.2 in this regard as stated above. In the F.I.R., the allegations are that the appellant had applied his mouth on the private part of the victim. There is no reference to any other act committed on the date of occurrence or any act committed before the date of occurrence in the complaint. In the statement under Section 164 of Cr.P.C., the victim had stated that besides applying his mouth on the private part, the appellant had applied his mouth on the chest of the victim. In her deposition before the Court, the victim had come up with a totally different version claiming that the appellant had committed a penetrative sexual assault by touching his private part on the private part of the victim. During the course of examination of the victim (P.W.3), the learned Judge had asked the victim as to whether the appellant had committed similar offences earlier. The victim had stated that the appellant had committed such offences every day and the Court had further asked the victim as to whether the appellant had committed any other act and for that the victim had deposed that he had applied his mouth on her private part.



10. From the above narration, it is clear that there are improvements in the version of the victim as to the nature of penetrative sexual assault committed by the appellant and as to the whether the appellant had committed the offence, only on the date alleged by the prosecution or had committed it repeatedly. There are material improvements in her version before the Court. It is well settled that the conviction can be based on the sole testimony of the victim if, her testimony is totally reliable and if she is a sterling witness. The contradictions in the evidence of the witnesses have been elicited from the Investigating Officer and that portion of evidence of the Investigation Officer is extracted hereunder for better appreciation of the evidence.

“அ.சா.1 எனது விசாரணையிலோ புகாரிலோ சம்பவம் பற்றி தனது மனைவி சொல்லி தனக்கு தெரிய வந்ததாக கூறவில்லை. பாதிக்கப்பட்ட சிறுமி சம்பவம் குறித்து அ.சா.1யிடமும் அ.சா.2யிடமும் நேரடியாக சொல்லியதாகத்தான் புகாரில் உள்ளது. அ.சா.3-ன் குவிமுசு பிரிவு, 164-ன் கீழான வாக்குமூலத்தை படித்து பார்த்தேன். அ.சா.1 எனது விசாரணையில தான் மது அருந்திவிட்டு வீட்டிற்கு வந்தால்தான் எதிரி என்னை வீட்டை காலி செய்யச்சொன்னதாக கூறவில்லை. அ.சா.1 கொடுத்த புகாரிலும் எதிரி பாதிக்கப்பட்ட சிறுமியின் பிறப்புறுப்பில் பாலியல் தாக்குதல் செய்ததாகத்தான் கூறியுள்ளனர். பாதிக்கப்பட்ட சிறுமி எனது விசாரணையில் பவானியின் ஆயா வீட்டில் அவர் விளையாடிக்கொண்டிருந்ததாக கூறவில்லை. அ.சா.3 எனது விசாரணையில் ரீத்திஸ் தன்னை கூப்பிட்டு எதிரி கூப்பிடுவதாக



கூறியதாக கூறவில்லை. சிறுமி எனது விசாரணையில் எதிரி அவரது மாப்ப, பகுதியிலோ இடுப்ப, பகுதியிலோ பாலியல் தாக்குதல் செய்ததாக கூறவில்லை. அ.சா.3 எனது விசாரணையில் எதிரி அவரை வெளியில் சொன்னால் உன்னை வெட்டி நாயிக்கு போட்டுவிடுவேன் நண்பர்களையும் உன் பெற்றோரையும் கொன்றுவிடுவதாக சொன்னார் என்ற விவரம் குறிப்பிட்டு கூறவில்லை. அ.சா.2, 3 எனது விசாரணையில் சம்பவம் தினசரி நடந்ததாக கூறவில்லை. சிறுமி எனது விசாரணையில் கூறிய சங்கதிகளுக்கும் குவிமுச பிரிவு 164-ன் கீழ் பதிவு செய்யப்பட்ட வாக்குமூலத்தில் உள்ள சங்கதிகளுக்கும் முரண்பாடு உள்ளது என்று சொன்னால் சரிதான்."

11. From the above narration of the facts it is seen that there are contradictions and inconsistencies in the evidence of the victim which has been reiterated by the Investigating Officer in the above extracted portion. Further, as stated above the complaint was lodged belatedly three days after the occurrence and the petitioner has probablised the fact that there was a land lord – tenant dispute between the petitioner and P.W.1. The medical evidence does not corroborate the evidence of the victim in any manner. This Court is of the view that the victim cannot be considered to be a witness of sterling quality for the reasons stated above so as to hold the appellant guilty on her sole testimony.

12. Accordingly, the judgment of conviction passed by the learned learned Sessions Judge, Special Court of exclusive trial of cases under POCSO



Act, Chennai, in Spl.S.C.No.103 of 2022 dated 20.03.2023 is hereby set aside.

The Criminal Appeal is allowed and the appellant is acquitted of the offences under Section 6 of the POCSO Act, 2012 and Sections 366 and 506(ii) of IPC, 1860. The fine amount, if any, paid by the appellant shall be refunded. The bail bond, if any, executed shall stand discharged.

04.02.2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

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To



1. The learned Sessions Judge,
Special Court for Exclusive Trial of Cases under POCSO Act,
Chennai.
2. The Inspector of Police,
W-8, All Women Police Station,
Thirumangalam, Chennai.
3. The Public Prosecutor,
High Court, Madras.

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SUNDER MOHAN, J.

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