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Crl.A. No. 561 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2026

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.A. No. 561 of 2023

Mohammed Irsath

..Appellant/Accused

Vs.

The State Represented by
The Inspector of Police,
Ariyankupppam Police Station,
Puducherry District,
(Crime No.15/2016)

..Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the conviction and sentence imposed in Special S.C.No.10/2016 dated 28.04.2023 on the file of Special Judge at Puducherry (Under the POCSO Act 2012, Puducherry).

For Appellant	::	Mr.R.Sankarasubbu for Mr.R.Thiyagu
For Respondent	::	Mr.M.V.Ramachandra Murthy, Public Prosecutor (Puducherry)



Crl.A. No. 561 of 2023

J U D G M E N T

WEB COPY

The appeal challenges the conviction and sentence imposed on the appellant for the offences under Section 363 & 376 of IPC and Under Section 5(I) r/w 6 of the POCSO Act.

2.(i) It is the case of the prosecution that the appellant, who was aged about 19 years at the time of occurrence had a love affair with the victim girl, who was aged about 16 years at the time of occurrence; that he had kidnappted the victim girl from the lawful guardianship of her parents, took her to his friend's house and committed penetrative sexual assault on 25.01.2016 at about 9.30 p.m and thus, committed the aforesaid offences.

(ii) It is the further case of the prosecution that after the occurrence, the victim was dropped at a bus stand; that the respondent on suspicion enquired the victim and the appellant's friend Jilla (not examined) and thereafter, the victim was admitted to a children's home on 27.01.2016; and that while she was at the home, the victim gave a complaint to the child welfare committee, Ariyankuppam on 01.02.2016. On 02.02.2016, the



Crl.A. No. 561 of 2023

complaint of the victim was forwarded to the respondent and an FIR was registered on the same day by PW12, the Sub Inspector of Police. The investigation was conducted by PW13, PW14 and PW15. PW15 filed a final report for the offences under Section 5(I) r/w 6 of the POCSO Act and Sections 363, 376 of the IPC. The trial Court framed charges under Section 363, 376 and Section 5(I) r/w 6 of the POCSO Act, and when questioned, the appellant pleaded 'not guilty'.

(iii) The prosecution examined 15 witnesses and marked 13 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 363 & 376 of IPC and Sections 5 (I) r/w 6 of the POCSO Act. The Trial Court sentenced him to undergo three years rigorous imprisonment and to pay a



Crl.A. No. 561 of 2023

fine of Rs.1000/-, in default, to undergo imprisonment for one year for the offence under Section 363 of IPC and also sentenced him to undergo 10 years rigorous imprisonment and to pay a fine of Rs.5,000, in default, to undergo imprisonment for one year for the offense under Section 6 of the POCSO Act. The trial Court found the appellant guilty of all the charges and since the appellant was sentenced to 10 years sentence as stated above, no separate sentence was awarded for the offence under Section 376 of the IPC. Hence, the accused/appellant has preferred the appeal challenging the said conviction and sentence.

3.Heard Mr.R.Sankarasubbu for Mr.R.Thiyagu, the learned counsel appearing for the appellant/accused, and Mr.M.V.Ramachandra Murthy, learned Public Prosecutor (Pondicherry) appearing for the respondent/State. This Court also perused all the materials available on record.

4.Mr.R.Sankarasubbu, the learned counsel for the appellant would submit that the victim had turned hostile in the cross-examination; that the



Crl.A. No. 561 of 2023

medical examination of the victim does not corroborate the version of the victim; that the victim did not lodge any complaint and it was only at the instance of the Child Welfare Committee, a complaint was obtained; and considering the age of the appellant and the victim, the impugned Judgment is liable to be set aside.

5.The learned Government Advocate (Crl. Side) submitted that the victim had turned hostile only in the cross-examination, which was conducted 5 years after the occurrence; that in the meantime, the victim married another person and did not want to pursue the case against the appellant; that the earlier versions of the victim clearly point out to the guilt of the appellant and therefore, the impugned Judgment is justified and prayed for dismissal of the appeal.

6.As stated above, the prosecution examined 15 witnesses. PW1 is the victim. PW2 is the Chairman of Child Welfare Committee. PW3 is the Assistant Sub Inspector of Police, who first saw the victim girl at a bus stand and had taken the victim girl to PW4. PW4 had admitted the victim girl in a



Crl.A. No. 561 of 2023

children's home. PW5 is the father of the victim, who turned hostile. PW6 is the second wife of PW5 and turned hostile. PW7 is a social worker and was present while the statement of the victim was recorded. PW8 is the witness to the confession of the appellant. PW9 is the Police Photographer, who recorded the statement of the victim at the children's home. PW10 is the Doctor who had examined the appellant and had issued Ext.P7 potency certificate. PW11 is the Sub-Inspector of police, who recorded the statement of the victim at the children's home. PW12 is the Sub Inspector of police, who had registered the FIR. PW13 to PW15 are the investigating officers.

7.It is seen from the records that the prosecution had marked Ext.P12, the birth certificate of the victim, who was born on 03.10.2000. The age of the victim is not disputed. Therefore, the prosecution has established that the victim was a child.

8.The Doctor, who had examined the victim was not examined by the prosecution for the reasons best known to them. However, the report of the Doctor was marked through PW13, the investigating officer. Ext.P13 is



Crl.A. No. 561 of 2023

the medical report of the Doctor, which reads as follows;

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"There are no physical injuries, lab report negative for presence of semen, there are no signs suggestive of penetration of vagina/anus at present."

9.It is seen that the victim's father PW5 and his wife PW6 turned hostile. He would also state that after giving the complaint, he came to know that the appellant had nothing to do with the victim.

10.Be that as it may, it is in the light of the above evidence this Court has to examine the evidence of the victim. The victim in her deposition in chief would state that she stayed in a children's home; that she gave a statement under Section 164(5) Cr.P.C., that the appellant had committed penetrative sexual assault. However, in her cross-examination, though conducted belatedly after 5 years, she would totally disown her deposition in Court. The question is whether the victim can be believed in such circumstances. The relevant portion of the victim's evidence in the cross-examination is as follows;

"நான், என் அப்பா, ஏன் அம்மா ஆகியோர் காவல் நிலையம் சென்று
புகார் கொடுத்தோமா என்றால் சாட்சி இல்லை என்று கூறுகிறார். இந்த வழக்கு



Crl.A. No. 561 of 2023

சம்மந்தமாக என்னை போலிசார் விசாரிக்கவில்லை. அ.சா.1 புகாரில் நான் யாரையாவது காதலித்ததாகவோ யாருடனாவது சென்றதாகவோ சொல்லியிருக்கிறேன் என்றால் சாட்சி சொல்லவில்லை என்று கூறுகிறார். ரிசாந்த் என்பவரை எனக்கு தெரியாது."

11.The trial Court had put several questions to the victim when she had denied her earlier statements. However, nothing was elicited from the victim for the Court to accept her deposition in the chief examination. The cross-examination done by the prosecution also was of no avail to the prosecution. The suggestion put to the witness is that her deposition in the cross-examination is false. Therefore, an attempt was only made to discredit her. It is well settled that the evidence of hostile witness can be relied upon only if the witness is not discredited. In this case, even the prosecution had made an attempt to discredit her deposition in cross-examination. That apart, as stated above, the allegation of penetrative sexual assault is not supported by the medical evidence. Stangely, as stated above, the doctor who had examined the victim was not examined by the prosecution. However, her report would suggest that there were no signs suggestive of penetration of vagina/anus.



Crl.A. No. 561 of 2023

12. In such circumstances, this Court is of the view that it would be highly unsafe to the convict the appellant on the sole testimony of the victim, which has been disowned by her in the cross-examination. The appellant therefore is entitled to benefit of doubt as the findings under the POCSO Act has been rebutted.

13. In the result, this Criminal Appeal is allowed, and the appellant is acquitted of the charges under Sections 363 and 376 IPC and Section 5(I) r/w 6 of the POCSO Act. The conviction and sentence passed in Spl.S.C.No.10 of 2016 on the file of the learned Special Judge at Puducherry (under the POCSO Act 2012, Puducherry) is set aside. The fine amount, if any, paid by the appellant shall be refunded. Bail bond, if any, executed shall stand discharged.

05.02.2026

Neutral Citation: Yes/No

Tsg

SUNDER MOHAN,J.



WEB COPY



Crl.A. No. 561 of 2023

Tsg

To

- 1.The Special Judge at Puducherry (Under the POCSO Act 2012,
Puducherry)
- 2.The Inspector of Police,
Ariyankupppam Police Station,
Puducherry District,
- 3.The Public Prosecutor,
High Court, Madras.

Crl.A. No. 561 of 2023

05.02.2026

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