



WEB COPY



Crl.A. No. 618 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2026

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.A. No. 618 of 2023

Sivanankiri @ Koiyaa @ Sivanogowda ..Appellant/Accused

Vs.

The Inspector of Police,
All Women Police Station,
Dhenkanikottai,
Krishnagiri District.

..Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., to call for the entire records in connection with the special S.C.No.79 of 2018 on the file of learned Sessions Judge, Fast Track Mahila Court, Krishnagiri dated 26.04.2023 and set aside the conviction and sentence imposed by the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri in Special S.C.No.79 of 2018 dated 26.04.2023.

For Appellant	::	Mr.P.Muthamizh Selvakumar
For Respondent	::	Mr.S.Raja Kumar, Additional Public Prosecutor



Crl.A. No. 618 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 9(m) r/w 10 of the POCSO Act.

2.(i) The case of the prosecution is that the appellant had committed aggravated sexual assault on the victim girl aged about 6 years on 20.06.2018 by removing her undergarments and placing his private part on the private part of the victim. On the complaint given by PW2, the mother of the victim, PW1, a case was registered by the Sub Inspector of Police PW15 and the investigation was conducted by PW18 and PW19. PW19 filed the final report against the appellant for the offences under Section 5 (m) r/w 6 of the POCSO Act.

(ii) The trial Court framed charges under Section 9(m) r/w 10 of the POCSO Act and when questioned, the appellant pleaded 'not guilty'.



Crl.A. No. 618 of 2023

(iii) The trial Court examined PW1 to PW19 and marked Exts.P1 to P23. 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 Section 9 (m) r/w 10 of the POCSO Act. The Trial Court sentenced him to undergo five years RI and to pay a fine of Rs.1000/- (id) to undergo one year SI. Hence, the accused/appellant has preferred the appeal challenging the said conviction and sentence.

3.Mr.P.Muthamizh Selvakumar, the learned counsel for the appellant would submit that the victim's parents had motive to falsely implicate the appellant; that PW10 and PW11 have spoken about the dispute between the two of them; that the victim's evidence does not inspire confidence; that the victim's evidence is not corroborated by the medical



Crl.A. No. 618 of 2023

evidence; that there are several contradictions between the victim's deposition in Court and her Sec.164 (5) Cr.P.C., statement and that therefore, the impugned Judgment is liable to be set aside.

4.The learned Government Advocate (Crl. Side) per contra submitted that though the respondent had filed the final report for the offences under Section 5(m) r/w 6 of the POCSO Act, the learned Judge has framed the charges under Section 9(m) r/w 10 of the POCSO Act; that the evidence of the victim and her mother is cogent and convincing; that the victim had been consistent in her versions; that therefore, the trial Court had rightly believed her evidence and convicted the appellant; and that there is no reason to interfere with the impugned Judgment.

5.As stated above, the prosecution had examined 19 witnesses. PW1 is the mother of the victim. PW2 is the victim. PW3 is the doctor, who had examined the victim and had opined that there was no possibility of sexual penetration. Her opinion was marked as Ext.P4. PW4 is the father of the victim and would corroborate the evidence of the victim and PW1. PW5



Crl.A. No. 618 of 2023

belongs to the same village and had assisted PW1 in typing the complaint

Ext.P1. PW6 is a hearsay witness and had deposed that after he came to know of the occurrence, he had questioned the appellant. PW7 is the witness to the observation mahazar Ext.P7. PW8 is a witness to the observation mahazar Ext.P8. PW9 is the headmaster of the school, where the victim studied and she had issued Ext.P9, mentioning the date of the birth of the victim as 05.02.2013. PW10 and PW11 are witnesses, who is said to have attested the confession of the appellant. They both turned hostile. PW12 is the constable who assisted the investigating officer and had taken the victim to the doctor. PW13 is the constable who had assisted the investigating officer. PW14 is the constable who had assisted the investigating officer along with PW13. PW15 is the Sub Inspector of Police, who registered the FIR. PW16 is the Doctor, who had examined the victim and had made entries in the accident register Ext.P18. PW17 is the doctor who examined the appellant and issued potency certificate Ext. P19. PW18 and PW19 are the investigating officers.



Crl.A. No. 618 of 2023

6.The prosecution case rests on the evidence of the victim and her mother. The other witnesses, namely, the father PW4 and the villager PW6 corroborate the evidence of the victim. It is seen that though the prosecution had filed the final report for the offence under Seciton 5 (m) r/w 6 of the POCSO Act, the Court had framed charged under Section 9(m) r/w 10 of the POCSO Act. The prosecution had not sought for altering the charge. The entries made in the accident register Ext.P18 by PW16 are as follows;

"Alleged H/O sexual assault by a known peron by taking her to his home and removed her inner clothes and sexually abused her"

7.However, in the column relating to injuries, the entry is "*no external injuries found (except at her private parts)*". The discharge summary of the victim marked as Ext.P22, refers to the sexual assault. PW16, who had made entries in the accident register and has referred to the injuries on the genital parts, would admit that he did not examine the victim. From his evidence, it is clear that PW16, being a male doctor had not examined the victim girl. Therefore, the observation made by the Doctor that '*except at her private parts*' would be of no avail to the prosecution.



Crl.A. No. 618 of 2023

WEB COPY

8.PW3 is the other doctor, who had examined the victim. She had issued Ext.P5 letter to the police and she had observed that she had not found any evidence to prove sexual assault. She has also observed that the '*external genital parts normal and there were no laceration or bleeding in the vaginal region*'.

9.Therefore, from the above evidence of the doctor, it is clear that the prosecution had not established the case of penetrative sexual assault, which was their case in the final report. In any case, they have not sought for alteration of charges as stated above.

10.Therefore, this Court has to examine the evidence of the victim Court and that of PW1. PW1 would state that she came to know of the occurrence on the same day and she lodged the complaint two days later on 22.06.2016 and her explanation is that she complained to the elders in the village about the act of the appellant and since there was no solution and they also asked her to give a complaint, she lodged a complaint. In a case of



Crl.A. No. 618 of 2023

this nature, delay alone would not be a reason to disbelieve the witnesses. In this case, the explanation offered by PW1 for delayed complaint appears to be reasonable.

11.It is seen that the victim had independently deposed stating that the appellant had placed his private part on the private part of the victim. She would clearly state that the appellant removed her under garments and thereafter, placed his private part on the private part of the victim. The appellant had not elicited any information or discredited the victim PW2 in any manner in the cross-examination. The deposition of the victim in the cross-examination further reiterates her version.

12.The learned counsel for the the appellant would vehemently contend that the victim's deposition before the Court is contrary to her 164(5) Cr.P.C., statement before the learned Magistrate. However, the victim was not questioned as to her previous statement under Sec.164 Cr.P.C., In fact, the defence had not even elicited the alleged contradictions from the investigating officer. Therefore, this Court is of the



Crl.A. No. 618 of 2023

view that there is no reason to disbelieve PW2 and PW1. Their evidence is also corroborated by PW4 and PW6, who heard about the occurrence immediately after the occurrence from PW1. The age of the victim has already been established by the prosecution by marking Ext.P9. The victim was born on 05.02.2013, which is not disputed. The alleged occurrence took place in the year 20.06.2018, when she was 5 years and 4 months old.

13. Therefore, since the prosecution has established that the victim was below the age of 12 years, the prosecution had proved that the appellant is guilty of aggravated sexual assault punishable under Section 10 of the POCSO Act. Therefore, this Court finds no reason to interfere with the impugned Judgment and consequently, the appeal is dismissed.

05.02.2026

Neutral Citation: Yes/No

Tsg



WEB COPY



Crl.A. No. 618 of 2023

SUNDER MOHAN,J.

Tsg

To

- 1.The Sessions Judge,
Fast Track Mahila Court, Krishnagiri.
- 2.The Inspector of Police,
All Women Police Station,
Dhenkanikottai,
Krishnagiri District.
- 3.The Public Prosecutor,
High Court, Madras.

Crl.A. No. 618 of 2023

05.02.2026

10\10