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CRL.A.No.621 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2026

CORAM

THE HON'BLE MR JUSTICE M. NIRMAL KUMAR

CRL.A.No.621 of 2023

R.Vinoth Kumar [M/A-29/2018],
S/o.Radhakrishnan,
No.122, Thideer Nagar,
Purasivakkam,
Chennai 600 007.

..Appellant(s)

Vs

State By:
Inspector of Police,
W-6, All Women Police Station,
Ayanavaram,
Chennai 600023.
[Crime No.02/2018].

..Respondent(s)

PRAYER: Criminal Appeal is filed under Section 374 of Code of Criminal Procedure, to set aside the Judgement dated 31.03.2023 in S.C.No.246 of 2018 passed by the Court of the Sessions Judge, Special Court for exclusive Trial of cases under POCSO Act, Chennai by convicting the Appellant/Accused under Section 10 of POCSO Act and sentencing him to undergo Rigorous Imprisonment for 5 years and imposed with a fine of Rs.5,000/- in default to undergo further period of 1 month Simple Imprisonment and the period already undergone by the Appellant/Accused is ordered to be set-off under Section 428 Cr.P.C.



For Appellant(s):

Mr.M.Nallathambi,
Legal Aid Counsel

For Respondent(s):

Mrs.Sharada Vivek,
Government Advocate (Crl. Side) assisted by
Mr.M.Arul Raj

JUDGMENT

The appellant was convicted vide judgment dated 31.03.2023 in S.C.No.246 of 2018 by the learned Sessions Judge, Special Court for exclusive trial of cases under POCSO Act, Chennai and sentenced to undergo five years imprisonment and to pay a fine of Rs.5,000/-, in default to undergo Simple Imprisonment for one month for offence under Section 10 of Protection of Children from Sexual Offences Act, 2012. Challenging the same, the present appeal filed.

2.Gist of the prosecution case is that in this case, PW1 is the victim and PW2 is her mother and the date of birth of the victim is 19.08.2000. On 26.03.2018 at about 11.00 a.m., when the victim went to the public toilet, the appellant sexually abused her forcefully pressing her breast. When the victim attempted to escape, the appellant hugged, kissed and again pressed her breasts. The incident witnessed by PW3 who intervened to rescue the victim. The appellant pushed PW3 away and fled the scene. Thereafter, the victim returned home crying and informed her mother/PW2, who subsequently questioned the



appellant and lodged the complaint (Ex.P3). PW6, Inspector of Police received the complaint (Ex.P3) and registered FIR (Ex.P10) in Crime No.2 of 2018 for offence under Section 8 r/w 7 of Protection of Children from Sexual Offences Act, 2012, visited the scene of occurrence, prepared Observation Mahazar (Ex.P4), Rough Sketch (Ex.P11), examined the victim, her mother and other witnesses, recorded their statements, arrested the appellant, recorded his confession statement, collected the Birth Certificate of the victim (Ex.P2), examined the Doctor/PW5, collected the medical records (Exs.P6 to P9). PW7, the subsequent Investigating Officer altered the Section from Section 8 of POCSO Act to Section 10 of POCSO Act. On conclusion of investigation, charge sheet filed before the trial Court. During the trial, the prosecution examined PW1 to PW8 and marked Exhibits P1 to P12. On the side of the defence, no witnesses examined and no documentary evidence marked. On conclusion of trial, the trial Court convicted the appellant as stated above.

3.The learned counsel for the appellant submitted that the respondent Police falsely registered the case because the appellant has previous cases pending against him. He further submitted that in this case, the victim in her statement stated that the occurrence took place on 19.05.2018, but in the complaint (Ex.P3) and FIR (Ex.P10) recorded the date of occurrence as 26.03.2018. Added to it, the victim in her statement recorded under Section 164 of Cr.P.C (Ex.P1) stated that the incident occurred on 19.03.2018. He further



submitted that three different dates have been given and that these material contradictions regarding the date of the occurrence severely undermines the prosecution's case. He also pointed out that except for the victim, the independent eye witness projected as PW3, not supported the case of the prosecution.

4.The learned counsel for the appellant further submitted that although the occurrence took place in public toilet, no independent public witness examined by the prosecution. He argued that since the appellant resides opposite to the house of the victim, there was no reason for him to have sudden behavioural change. He further submitted that the mother of the victim runs a roadside eatery at the mercy of the Police and lodged a false complaint at the instigation of the respondent Police due to prior animosity. He also submitted that the medical evidence confirmed the absence of any injury marks on the victim. In view of the above, the appeal to be allowed and conviction to be set aside.

5.Learned Government Advocate (Crl. Side) appearing for the respondent Police strongly opposed the appellant's contentions and submitted that PW1 is the victim whose date of birth is 19.08.2000 duly proved through her school certificate (Ex.P12). She further submitted that the victim forcibly hugged, kissed and molested by the appellant. When the victim raised alarm to rescue



herself, PW3 witnessed the occurrence, intervened and rescued her. Thereafter, the victim informed her mother/PW2 and FIR (Ex.P10) promptly registered.

She further submitted that the mother of the victim is an illiterate woman, who affixes only her thumb impression. Owing to the state of shock minor variations crept in her evidence, which would not seriously affect the core of the prosecution case. She submitted that the statement of the victim recorded under Section 164 of Cr.P.C. (Ex.P1) and the medical evidence sufficiently corroborate the commission of sexual assault on her. She contended that the solitary statement of the victim alone is sufficient to convict the appellant, she prayed for dismissal of the appeal.

6. She further submitted that the appellant resides opposite to the victim's house. The victim is a minor and a school dropout and her mother runs a roadside tiffin shop. PW3, a local resident, witnessed the occurrence. That apart, the evidence of PW1 is clear, categorical and consistent right from the beginning establishing that the appellant hugged, kissed, and molested her. She submitted that considering the socio-economic and educational background of the victim and her mother, minor variances regarding the date of the occurrence are bound to happen. She reiterated that the evidence of PW1 confirms the sexual assault committed on her.



7.Considering the submissions made and on perusal of the materials, it is seen that at the time of the occurrence, the victim was a minor and her date of birth *i.e.*, 19.08.2000, is proved by the evidence of PW8, the Headmistress of TELC Macdalene Girls Higher Secondary School and the School Certificate (Ex.P12). PW1, the victim deposed that on one occasion, when she went to the public toilet, the appellant, who was standing outside, pulled her by hand, kissed and molested her. Aggrieved by the said act, the victim slipped the appellant and informed her mother/PW2. But PW2 not taken the same seriously stating that the appellant might have been in a drunken state.

8.Though the victim/PW1 cross examined in detail, she was unable to recollect the exact date and time of the occurrence. But she consistently stated that on an earlier occasion, in the afternoon hours, the appellant pulled her, kissed and molested her. Though the victim informed her mother about the incident, PW2 not taken the issue seriously at that point of time. Thereafter, when the appellant committed the same act for the second time, the neighbour/PW3 witnessed the occurrence, and the victim again informed her mother. Thereafter, the complaint (Ex.P3) lodged.

9.The victim, in her initial statement, before the Magistrate, and in her deposition before the trial Court, remained consistent, narrating the manner how she was sexually assaulted by the appellant. PW2, the mother of the victim



corroborates the evidence of PW1. In the present case, the victim examined by PW5/Doctor, to whom she narrated the incident and the same recorded in the Accident Register (Ex.P6), Sexual Assault Enquiry Report (Ex.P8) and Opinion (Ex.P9). Thus, the factum of the appellant committing sexual assault on the victim proved. Though there are certain variations with regard to the date and time of the occurrence, such minor discrepancies will not affect the core fact of appellant's sexual assault made on the victim. The evidence of the victim inspires confidence and confirms, victim sexually assaulted by the appellant.

10.To be noted, to attract Section 10 of POCSO Act, the prosecution is to establish that the sexual assault committed by the accused falls within any of the aggravated circumstances contemplated under Section 9 of the Act. In the present case, though the evidence of PW1 establishes that the appellant pulled PW1 by her hand, kissed her and molested her, the prosecution not established any circumstances to attract Section 9 of the Act. The mere fact that the victim subjected to sexual assault, would not bring the act within the ambit of Section 10. The sexual act committed by the appellant will come under “sexual assault”, attracting Section 7 of the POCSO Act. Hence, the appellant is liable to be convicted under Section 8 of the POCSO Act.

11.In view of the above, this Court finds that the conviction of the appellant for the offence under Section 10 of the POCSO Act is not sustainable.



Hence, the conviction of the appellant under Section 10 of the POCSO Act is altered to Section 8 of the POCSO Act. The appellant is sentenced to undergo three years of imprisonment. The fine amount imposed by the trial Court is confirmed. The trial Court is directed to secure the appellant into custody to undergo the remaining period of sentence.

12.In the result, this Criminal Appeal is Partly Allowed.

13.This Court appreciates the efforts putforth by Mr.M.Nallathambi, Legal Aid Counsel appointed by this Court for appellant, for his meticulous review of the case records, thorough preparation and effectively arguing the appeal. The Legal Services Authority, Madras High Court is directed to pay eligible fee/remuneration to the learned counsel.

13.08.2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
jd/vv2



To

1. The Sessions Judge,
Special Court for Exclusive Trial of Cases under POCSO Act,
Chennai.

2. The Inspector of Police,
W-6, All Women Police Station,
Ayanavaram, Chennai 600023.

3. The Public Prosecutor,
Madras High Court.

Copy To:

The Legal Services Authority,
Madras High Court.



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CRL.A.No.621 of 2



M.NIRMAL KUMAR, J.

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CRL.A.No.621 of 2023

13.08.2026