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CRL A No. 947 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04-03-2026

CORAM

THE HON'BLE MR JUSTICE G.K. ILANTHIRAIYAN

**CRL A No. 947 of 2022
and CRL MP No. 13112 of 2022**

Ramesh
S/o. Samikannu,
Sikkamarandaahalli Village,
Gujjaaraalli Post, Palakad Taluk,
Dharmapuri District.

..Appellant

Vs

State Rep by
Inspector of Police
All Women Police Station,
Pennagaram,
Dharmapuri District.
Cr.No. 3 of 2016.

..Respondent

Prayer : Criminal Appeal filed under Section 374(2) of Criminal Procedure Code to set aside the conviction and sentence imposed in Spl.SC.No.10 of 2016 passed by Session Judge, Fast Track Mahila Court, Dharmapuri, dated 11.04.2022.

For Appellant:

Mr.E.Kannadasan
for Mr.R.Thulasi

For Respondent:

Mr.L.Baskaran
Government Advocate (Crl.Side)



JUDGMENT

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This Criminal Appeal has been preferred as against the Judgment dated 11.04.2022 passed in Spl.S.C.No.10 of 2016 by the Sessions Judge, Fast Track Mahila Court, Dharmapuri, thereby convicted the accused for the offence punishable under Section 5(k)(1) read with 6 of POCSO Act.

2. The case of the prosecution is that the victim is a mentally retarded minor girl who had not completed the age of 18 years. Taking advantage of the mental condition, the accused exploited her vulnerability with the knowledge and intention of committing sexual assault upon her. On 11.03.2016, the victim girl was alone at her house, the accused entered the house and committed sexual assault on her and forcibly raped her. Further, on 21.03.2016, at about 1.00 p.m., the accused again went to the victim's house and forcibly took her to a nearby granite stone quarry and committed rape on her. On 27.03.2016, when the accused again came with the intention of committing rape, he was caught by the witnesses. Based on the complaint, the respondent registered a case in Crime No.3 of 2016. After completion of the investigation, the respondent filed a final report and the same has been taken cognizance by the Trial Court in Spl.S.C.No.10 of 2016.



3. In order to prove the charges, the prosecution had examined P.W.1 to P.W.21 and marked Exs.P1 to P20. The prosecution also produced M.O.1 and M.O.2. On the side of the accused, no witnesses were examined and no documents were marked.

4. On perusal of the oral and documentary evidence, the Trial Court found the accused guilty of the offence under Section 5(k)(1) read with 6 of the POCSO Act and sentenced him to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.10,000/- in default, to undergo simple imprisonment for a period of six months. Aggrieved by the same, the present appeal has been filed.

5. The learned counsel appearing for the appellant restricted his submissions that the accused ought not to have convicted for the offence punishable under Section 5(k)(1) read with 6 of POCSO Act. As per the evidence of the victim, the alleged act would attract only Section 3(a) of the POCSO Act and he would be liable to be punished under Section 4 of the POCSO Act. Since, the occurrence had taken place prior to the amendment, the sentence imposable shall not be less than seven years.



6. The learned Government Advocate (Crl.Side) appearing for the respondent submitted that the victim girl, in her statement recorded under Section 164 of Cr.P.C. did not support the case of the prosecution. However, the evidence of the victim is very clear to attract the offence under Section 5(k)(l) read with 6 of the POCSO Act. That apart, P.W.1 is mentally retarded. Accordingly, the accused committed a very serious and heinous offence as against the minor victim girl. He further submitted that though the respondent filed final report for the offences punishable under Section 7 and 8 of the POCSO Act, the Trial Court rightly convicted the accused for the offence punishable under Section 5(k)(l) read with 6 of the POCSO Act and the same does not warrant any interference by this Court.

7. Heard the learned counsel appearing on either side and perused the materials available on record.

8. The victim was examined as P.W.1. She is a mentally retarded girl. On the date of occurrence, while the victim was grassing cattle, the accused called her and thereafter, committed sexual assault on her. The relevant portion of her statement is as follows :

“ehd; v';fs; tPl;oy; ,Ue;jnghJ ML nka;j;J bfhz;oUe;njd;/ unk!;
vd;gtd; "hapw;WfpHik te;jhd;/
unkRf;F rpf;Fkhuz ms;sp/ ehd; fl;oy; kPJ gLj;jpUe;njd;/ mtd; vd;id
(rhl;rp jd; ifia mirj;J th th vd;W miHg;gJ nghy) irif bra;jhd;/ ehd;



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tukhl;nld; vd;W brhd;ndd;/ mtd; vd;id Fl;ilf;F miHj;J nghdhd;/ ehd;
ML xl;onghFk; tHpapy; xU g[jh; khjphp cs;s Fl;ilf;F miHj;J nghdhd;/
vd;Dila ourl; vy;yhk; fiyj;j khh;ig gpoj;jhd;/ ehd; Fl;ilf;F xd;Df;F
nghFk; ,lj;jpy; mtd; xd;Df;F nghFk; ,lj;ij itj;jhd;/ mk;kh tPl;oy;
J}'f;pf;bfhz;oUe;jh';f/”
,

9. Therefore, the accused had committed sexual assault on the victim girl, which attract the provision under Section 3(a) of the POCSO Act. The victim girl was subjected to medical examination and was examined by P.W.18. The doctor deposed that the victim was aged about 16 years at the time of occurrence and that her hymen was not intact. Further, she did not find any injuries on her genitalia or on the body of the victim. The relevant portion of her evidence is as follows :

“Kdpuj;jpdk; vd;w 16 taJ rpWkpia kUj;Jt ghpnrhjidf;fhf M\$h; bra;jhh;/
nkw;go rpWkpia mil- ahsk; bjhpahj eguhy; ghypay; Jd;g[Wj;jy; bra;jjhf
brhd;dhh;fs;/ nkw;go rpWkpia ghpnrhjid bra;jnghJ
ey;y Raepidtpy; ,Ue;jhh;/ mtUila ghypd cWg;g[fspy; btspg;g[w fha';fs;
vJt[k; ,y;iy. khh;gf';fs; ey;y tsh;r;rpaille;jpUe;jJ/ ,uz;lhk; epiy ghypd
cWg;g[fs; ey;y tsh;r;rp mile;jpUe;jJ/ g[wg;g[Wg;g[fs; ey;y
epiyapy; ,Ue;jJ/ ve;j fha';fSk; ,y;iy/ fd;dpj;jpiu mjDila epiyapy; ,y;iy/
gpwg;g[Wg;g[xUtpuy; EiHa[k; mstpy; ,Ue;jJ/ gpwg;g[Wg;gpy; ,Ue;J
jlty vLf;fg;gl;L

jla mwptpay; Ma;tfj;jpw;F mDg;gg;gl;IJ/ Ma;tfj;jpy; ,Ue;J bgwg;gl;l
mwpf;ifapy; gpwg;g[Wg;gpy; ve;jtpjkhhd jltYk; ,y;iy vd;W mwpf;if



bgwg;gl;lJ/ kdehy kUj;Jthpd; fUj;J bgwg;gl;lJ/ mtuJ fUj;Jg;go rpWkpf;F
rpwpa mstpy; kdehynfshW ,Ue;jjh

fUj;J bjhptpf;fg;gl;oUe;jJ/ nkW;go rpWkp cLYwt[f;F cl;gLj;jg;gl;oUf;fyhk;
vd ehd; fUj;J bjhptpj;njd;/
ehd; tH';fpa rhd;W m/rh/M/9 MFk;/

10. Therefore, it is also corroborated by the evidence of P.W.1. However, the charge under Section 5(k)(1) read with 6 of the POCSO Act is not attracted as against the accused. The respondent filed the final report for the offence under Section 7 read with 8 of the POCSO Act, on the basis of the statement recorded under Section 164 of Cr.P.C. However, P.W.1 categorically deposed that the accused had committed sexual assault on the victim girl. Though the Trial Court framed charges accordingly, it ought to have convicted the accused for the offence punishable under Section 3(a) read with 4 of the POCSO Act instead of 5(k)(1) read with 6 of the POCSO Act.

11. In view of the above, the conviction and sentence imposed on the appellant in Spl.S.C.No.10 of 2016 passed by Session Judge, Fast Track Mahila Court, Dharmapuri, dated 11.04.2022, are hereby set aside. The accused is instead convicted for the offence punishable under Section 3(a) read with 4 of the POCSO Act and sentenced to undergo rigorous imprisonment for seven years and to pay fine of Rs.10,000/-, in default, to undergo simple imprisonment



for a period of six months.

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12. In the result, this Criminal Appeal is partly allowed. Consequently, connected miscellaneous petition is closed.

04-03-2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

LPP

To

1.The Session Judge,
Fast Track Mahila Court, Dharmapuri.

2.Inspector of Police,
All Women Police Station,
Pennagaram, Dharmapuri District.

3.The Public Prosecutor,
High Court, Madras.



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G.K.ILANTHIRAIYAN J.

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