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CRL A No. 1049 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 11-02-2026

PRONOUNCED ON: 13-02-2026

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

CRL A No. 1049 of 2023

Banudurai

... Appellant/Accused

Vs.

State Rep By
Inspector of Police,
All Women Police Station,
Tiruvannamalai.

... Respondent

Prayer: Criminal Appeal filed under Section 397 r/w 401 of Code of Criminal Procedure, to set aside the conviction and sentence in the Judgment dated 11.08.2023 made Spl.S.C.No.82 of 2020 on the file of Special Court (POCSO Cases), Tiruvannamalai District.

For Appellant:

Mr.V.Parthiban

For M/s.R.Thulasi

For Respondent:

Mr.S.Rajakumar

Additional Public Prosecutor

Judgment

This Criminal Appeal has been filed by the accused, challenging the judgment dated 11.08.2023 in Spl.SC.No.82 of 2020 on the file of the learned Sessions Judge, Special Court (POCSO Cases), Tiruvannamalai,



by which he was convicted for the offence under Section 354(A) of IPC, Section 8 r/w 7 of POCSO Act, 2012, Section 451 of IPC & Section 10 r/w 9(1) of POCSO Act, 2012 and Section 506(i) of the IPC and sentenced as follows:

Offence under Section	Sentence imposed
451 IPC	To undergo RI for two years and to pay a fine of Rs.1,000/- in default to undergo SI for one month.
Section 9(1) r/w 10 POCSO Act, 2012	To undergo RI for seven years and to pay a fine of Rs.5,000/- in default to undergo SI for one year.
Section 506(i) IPC	To undergo RI for two years.
Section 354(A) IPC & Section 8 r/w 7 POCSO Act, 2012	No separate sentence is imposed, as the accused has been sentenced for the offence under Section 9(1) r/w 10 of POCSO Act, 2012.
The sentences were ordered to run concurrently.	

2.(i) The case of the prosecution is that the appellant was the landlord of the premises in which the victim aged about 13 years and her mother were staying as tenants; that on 12.06.2020 at about 10.30 a.m., when the victim was playing on the terrace, the appellant had committed sexual assault by inappropriately touching the breast and the hip of the victim, and thus, committed the aforesaid offences.

(ii) On the complaint [Ex.P1] given by the mother of the victim [PW1] on 16.06.2020 against the accused an FIR [Ex.P7] in Cr.No.14 of



2020 was registered by PW10, the Inspector of Police, who conducted the investigation. After making arrangements for recording Section 164(5) Cr.P.C., statement of the victim and after examining the other witnesses had filed the final report against the appellant for the offence under Sections 354A, 451, 506(i) of IPC and Section 8 r/w 7, 10 r/w 9(1) of POCSO Act, 2012 before the learned Sessions Judge, Special Court (POCSO Cases), Tiruvannamalai.

(iii) On the appearance of the accused, the provisions of Section 207 Cr.P.C., were complied with and the case was taken on file as Spl.S.C.No.82 of 2020 by the learned Sessions Judge, Special Court (POCSO Cases), Tiruvannamalai. The trial Court framed three charges against the accused. The first charge was under Section 354(A) of IPC and Section 8 r/w 7 of POCSO Act, 2012. The second charge was under Section 451 of IPC & Section 10 r/w 9(1) of POCSO Act, 2012 and the third charge was under Section 506(i) of the IPC. During the trial, when questioned, the accused pleaded 'not guilty'.



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(iv) Before the trial Court, the prosecution had examined 10 witnesses as P.W.1 to P.W.10 and marked 12 exhibits as Ex.P1 to Ex.P12. When the accused was questioned, u/s.313 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.

(v) On appreciation of oral and documentary evidence, the trial Court found the accused guilty of all the offences and convicted and sentenced him as stated in paragraph No.1 of this judgment. Aggrieved by the said conviction and sentence, the accused had preferred the instant appeal.

3. Learned counsel for the appellant/accused would submit that the victim's mother had not paid rent for the premises and therefore, the appellant had asked the victim to vacate the premises; that in order to wreak vengeance on the appellant, the complaint has been foisted; that independent witnesses examined on the side of the prosecution i.e., PW4, PW5 and PW6, turned hostile; that the complaint was lodged belatedly



four days after the alleged occurrence; that PW1 was working in a Home meant for victims under the POCSO Act; that the victim was also staying in the Home; that it was at the instance of the person managing the Home, the instant complaint was lodged to arm-twist the appellant; and that in view of the inconsistencies in the statement of the victim, the impugned judgment is liable to be set aside and prayed for acquittal.

4. The learned Additional Public Prosecutor, *per contra* submitted that the delay alone cannot be a ground to disbelieve the evidence of the victim and her mother; that merely because the victim's mother was working in a Home in which victims under the POCSO Act were residing and the Manager of the Home had helped the victim's mother to lodge the complaint, the prosecution case cannot be disbelieved; that the victim's evidence is cogent and convincing and therefore, the impugned judgment cannot be faulted and prayed for dismissal of the appeal.

5. As stated earlier, the prosecution examined 10 witnesses. PW1 is the mother of the victim. PW2 is the victim. PW3 is the victim's sister who would corroborate the evidence of PW2. PW4, PW5 and PW6 are



the neighbours, who were examined by the prosecution to show that the appellant went into the house of the victim and turned hostile. PW7 was the Member of Child Welfare Committee and had assisted PW1 in lodging the complaint and corroborates the evidence of PW1. PW8 is the Headmaster of the School, who had issued Educational Certificate [Ex.P4] and had stated that the date of birth of the victim is 06.02.2007. PW9 is the Doctor, who had made entries in the Accident Register [Ex.P5] and had given a final opinion [Ex.P6]. PW10 is the Inspector of Police, who had registered the FIR, completed the investigation and filed the final report.

6. As stated above, PW4 to PW6 are independent witnesses and they turned hostile. The prosecution case therefore rests on the evidence of PW1 to PW3 and PW7, who was the member of the Child Welfare Committee. PW7 is a hearsay witness.

7. PW3 is the sister of the victim and she would state about the fact that the victim went to the terrace and the appellant was also present and that when the victim went inside the house, the appellant came to check



the water supply in the bathroom. Therefore, her evidence is also of no avail to the prosecution case except to prove that the victim and the appellant were present in the terrace and thereafter they were in the house.

8. PW1, the victim's mother, is also a hearsay witness and the defacto complainant. The prosecution, therefore, rests solely on the evidence of the victim [PW2], which is corroborated to some extent by PW3 as stated above. The alleged occurrence is said to have taken place on 12.06.2020. The complaint [Ex.P1] was lodged on 16.06.2020. In a case where sexual assaults are alleged, this Court would not reject the evidence of the victim on the sole ground of delay in lodging the complaint. Whether the delay renders the victim's evidence unreliable would depend upon the facts and circumstances of each case. Therefore, this Court has to examine whether the delay in lodging the complaint renders the prosecution case doubtful.

9. Admittedly, PW1, the mother of the victim, was working in a Home called 'TDH Home'. The said Home had victims of POCSO



offences as residents. The said Home was managed by one Chezhiyan. It is the version of PW1 and PW2 that after the occurrence, both of them stayed in the said Home till they lodged a complaint on 16.06.2020. It is also their version that they informed the said Chezhiyan and others who are incharge of the Home about the alleged occurrences. The relevant portion of the evidence of PW1 and PW2 is as follows:

PW1: “நான் வேலைசெய்த ஹோமில் இந்த வழக்கு போல் பாதிக்கப்பட்ட பிள்ளைகள் வந்து தங்குவார்கள் என்றால் சரிதான். அந்த ஹோமை நிர்வகிப்பவர் பெயர் செழியன் என்றால் சரிதான். நானும் சிறிய வயதில் அந்த ஹோமில் தங்கியிருந்தவர் என்றால் சரிதான்.”

PW2: “நான் ஹோமில் போய் சொல்லும்போது எத்தனை பேர் இருந்தார்கள் என்றால் நிறைய பேர் இருந்தார்கள். 10 பேர் இருக்குமா என்றால் இருந்திருப்பார்கள். யாராவது பெயர் தெரியுமா என்றால் தெரியும், சர்மிளா, மணி, புவனேஸ்வரி ஆண்டி, செழியன், அசோக்குமார், சரஸ்வதி ஆகியோர்கள் இருந்தார்கள்.”



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10. Further, PW1 would state that initially the respondent refused to register the FIR and had directed them to approach the Deputy Superintendent of Police. PW1 would confirm that only at the instance of the said Chezhiyan, the FIR was registered by the respondent police. Strangely, for reasons best known to the prosecution the said Chezhiyan was not examined. This is contradicted by the investigating officer [PW10].

11. The reason offered by PW1 in the complaint for the delay in lodging the complaint is that she had consulted her relatives before lodging the complaint. However, in the cross-examination she would admit that she had not consulted any relatives. The relevant portion reads as follows:

“என் மகள் சொன்னபிறகு உறவினரிடம்
கலந்து ஆலோசித்ததாக சொல்லியிருக்கிறேன்
என்றும் யார் அந்த உறவினர் என்றால் யாரிடமும்
கலந்தாலோசிக்கவில்லை”

Therefore, the explanation offered by PW1 for the delay in lodging the complaint is contradicted by her own deposition.



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12. PW10, the Investigating officer would state that the said Chezhiyan was an influential person. He would also admit that the Home viz., TDH Home was run by him, which housed orphan children and victims of the offences under the POCSO Act. The relevant portion reads as follows:

“...அந்த ஊறாம் யாரால் நடத்தப்படுகிறது என்று தெரியும் என்றால் தெரியும், செழியன் என்பவர் நடத்துகிறார். அந்த ஊறாம் அனாதை குழந்தைகள் தங்குவதற்கும், இதுபோல் போக்சோ வழக்குகளால் பாதிக்கப்பட்ட சிறுமிகள் தங்குவதற்கான ஊறாம் என்றால் சரிதான்.....
..... அந்த ஊறாமில் செழியன் என்பவர் மிகவும் விவரம் தெரிந்த நபர் என்றால் சரிதான்.....”

The investigating officer [PW10] would admit that he had not questioned the said Chezhiyan as to why he had not lodged the complaint on coming to know of the occurrence.

13. From the above admissions made by the witnesses, it would be clear that the complaint was lodged only at the instance of the said Chehziyan, four days after the occurrence. The said Chezhiyan was running the institution/Home in which the POCSO victims were staying.



Therefore, the said Chezhiyan, who is admittedly an influential person, was aware of the seriousness of the offences under the POCSO Act and therefore there was no reason for him to have waited for four days to lodge the complaint. PW1's explanation for the delay is also falsified by her deposition as stated above. Therefore, the explanation offered by the prosecution for the delay in lodging the complaint is unacceptable.

14. It is also seen that the victim and her mother were tenants under the appellant and it is the suggestion of the defence that since there were disputes relating to payment of rent, the instant complaint has been foisted. PW1 would state that she was paying the monthly rent of Rs.1,500/- in her cross-examination. However, she would further contradict that statement by stating that she did not pay monthly rent but had paid Rs.1,00,000/- as a lease amount to the appellant. The above contradictions in her evidence probabalises the defence case that there was a dispute between PW1 and the appellant with regard to the tenancy. It is in the light of the above that the delay in lodging the complaint assumes significance. There is no reason why the prosecution had not examined the said Chezhiyan.



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15. Further, it is seen that the victim had alleged sexual assault on the date of occurrence twice, once at the terrace and the other when she went inside the house. However, before the Doctor [PW9], she had not referred to the second incident in the house which, is confirmed by the Doctor [PW9]. Further, there are contradictions in the manner in which the alleged occurrence took place inside the house. The victim has made improvements in her deposition in Court, which has been elicited in the cross-examination of both the victim and the investigating officer. The relevant portion of the evidence of the investigating officer is as follows:

“புகாரில் பாதிக்கப்பட்ட சிறுமி வீட்டிலோ, மொட்டை
மாடியிலோ இருந்ததாக சொல்லவில்லை என்றால் சரிதான். புகார்
கொடுப்பதற்கு எந்த உறவினர்களை அ.சா.1 கலந்தாலோசித்தார்
என்று அவர்களை விசாரித்து சாட்சியாக போட்டிருக்கிறேனா என்றால்
இல்லை. தான் மொட்டைமாடியில் பட்டத்திற்கு நூல்
போட்டுக்கொண்டிருந்ததாகவும் அந்த நேரத்தில் எதிரி அங்கு வந்து
அ.சா.2ன் கண்ணை முடினார் என்றும் பிறகு எதிரியே
கண்ணில் இருந்து கையை எடுத்துவிட்டார் என்றும் பின்னர்தான்
மார்பு மற்றும் இருப்பில் கையை வைத்தார் என்றும் நான் அதனை
எடுத்துவிட்டேன் என்றும் புகாரில் சொல்லியிருக்கிறாரா
என்றால் இல்லை. மேலும், முதலில் கையை எடுத்துவிட்டபிறகு
மறுபடியும் எதிரி கையை வைத்துக்கொண்டே இருந்தார் என்றும்
பின்னர் கையை எடுத்துவிட்டு தன் தங்கையிடம் சாவியை
வாங்கிக்கொண்டு கீழே வீட்டிற்குள் வந்துவிட்டதாகவும் கதவை
உள்தாழ்ப்பாள் போட்டுக்கொண்டதாகவும், அப்போது எதிரி நிறைய



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தடவை கதவை தட்டிக்கொண்டிருந்ததாகவும் அப்போது அ.சா.2 எதற்காக வந்தீங்க என்று கேட்டதாகவும் அதற்கு எதிரி தண்ணீர் வருகிறதா என்று பார்க்க வந்தேன் என்று சொன்னதாகவும் மேலும் பின்னர் திறந்துவிட்டபிறகு எதிரி உள்ளே வந்து உஸ்தாழ்ப்பாள் போட்டதாகவும், தான் தாழ்ப்பாள் போடதீங்க என்று எதிரியிடம் சொன்னதாகவும், ஏன் என்று எதிரி கேட்டதாகவும், பின்னர்தான் பாத்ரூம் பக்கம் போய், பாத்ரூம்க்குள் பூட்டிக்கொண்டதாகவும் அங்கு எதிரி வந்த பாத்ரூமை திறக்கசொன்னதாகவும் பின்னர்தான் திறந்துகொண்டு கிச்சன்பக்கம் வந்துவிட்டதாகவும், அங்கு வைத்துதான் மீண்டும் எதிரி அ.சா.2ன் மார்பு மற்றும் இருப்பில் கை வைத்தார் என்றும் அப்போது தான் கையை எடுத்துவிட்டதாகவும் புகாரில் அ.சா.1 சொல்லியிருக்கிறாரா என்றால் இல்லை. பின்னர் அ.சா.2 வீட்டைவிட்டு வெளியே வந்துவிட்டதாகவும் எங்கு போறாய் என்று எதிரி கேட்டதாகவும் அதற்கு தான் தன்னுடைய பிரண்டு வீட்டிற்கு போகிறேன் என்று சொன்னதாக அதற்கு எதிரி உன்னடைய தங்கை இருக்கிறார் என்று சொன்னதாகவும் அதற்கு அ.சா.2 பின்னர்தான் கூட்டிக்கிட்டு போறேன் என்று சொன்னதாகவும் புகாரில் இருக்கிறதா என்றால் இல்லை. எதிரி போனபிறகு தான் மேலேபோய் தன் தங்கையை கூட்டிக்கிட்டு கீழே வந்து உஸ்தாழ்ப்பாள் போட்டுக்கொண்டு கொஞ்சநேரம் அழுதுகொண்டிருந்ததாக புகாரில் சொல்லியிருக்கிறாரா என்றால் இல்லை....”

16. Thus it is seen that there are several improvements in the version of the victim in her deposition. Further, it is the case of PW3 that she was also present at the house when the second occurrence is said to



have taken place. However, it is contrary to the evidence of PW2 that her sister PW3 was still at the terrace when the second occurrence took place.

The statement made to the Doctor and the contradictions aforesaid if looked at in isolation would appear to be minor but considering the over all circumstances and the facts discussed above, this Court is of the view that the conviction cannot be sustained on the sole testimony of the victim.

17. Therefore, this Court is of the view that the delay in the lodging of the complaint in this case raises a serious doubt in the prosecution case and the evidence of the victim. The fact that they were staying in a Home managed by the said Chezhiyan, who was aware of the seriousness of the POCSO offences and his non-examination further strengthens the said doubt.

18. For all the above reasons, this Court is of the view that the impugned judgment cannot be sustained and the appellant is entitled to the benefit of doubt and consequential acquittal. Hence, this Court is inclined to set aside the impugned judgment of conviction and sentence.



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19. Accordingly, the Criminal Appeal stands allowed. The conviction and sentence imposed upon the appellant vide judgment dated 11.08.2023 by the learned Sessions Judge, Special Court (POCSO Cases), Tiruvannamalai, in Spl.SC.82 of 2020, are set aside. The appellant is acquitted of all the charges. The fine amount, if any, paid by the appellant shall be refunded. The bail bond, if any, executed shall stand discharged.

13-02-2026

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

1. The Sessions Judge,
Special Court (POCSO Cases), Tiruvannamalai.

2. The Inspector of Police,
All Women Police Station, Tiruvannamalai.

3. The Public Prosecutor,
High Court, Madras.



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SUNDER MOHAN J.

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**Pre-delivery Judgment in
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