



WEB COPY

CRL A No. 1546 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 21-01-2026

PRONOUNCED ON : 27-01-2026

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

**CRL A No. 1546 of 2023
and CRL MP No. 19513 of 2023**

1. Akbar

2. Banu

... Appellants/A1 & A2

Vs.

1. The Deputy Superintendent of Police,
Vandalur,
Chengapattu District.

... 1st Respondent

2. The Inspector of Police,
Guduvancherry Police Station,
Chengalpattu District.

... 2nd Respondent/Complainant

3. Thenmozhi

... 3rd Respondent/Defacto Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, to Set side the Judgment of Conviction made in Spl.SC.13 of 2021 dated 27.10.2023 on the file of the learned Sessions Judge, Special Court for POCSO Cases, Chengalpet and set the appellants at liberty

For Appellants:

Mr.Manuraj

For Respondents:

Mr.S.Raja Kumar, (for R1 & R2)
Additional Public Prosecutor

Mr.R.Raguraj (for R3)
Legal Aid Counsel
(vide Court Order Dated 16.12.25)



Judgment

WEB COPY This Criminal Appeal has been filed by the accused, challenging the conviction and sentence imposed upon them vide judgment dated 27.10.2023 in Spl.SC.No.13 of 2021 on the file of the learned Sessions Judge, Special Court for POCSO Act Cases, Chengalpet.

2 (i) The gist of the prosecution case is that the victim belongs to the Scheduled Caste Community; that during her school holidays after her 10th standard examination, she worked in a Leather Company, run by the 1st accused; that the 2nd accused is his wife; that on 01.07.2020 at about 11.30a.m., the 1st accused asked the victim girl to work in a separate room; that the 1st accused went to the said room hugged the victim girl and fondled her breasts, besides exposing his private part to the victim girl; that thereafter the victim girl informed to her mother [PW2] about the said incident; and that when PW2 questioned the said act of the 1st accused, the 2nd accused had attacked the victim girl's mother [PW2] with hands and abused her in filthy language.

(ii) On the complaint [Ex.P1] given by PW1 on the same day i.e., 01.07.2020, an FIR [Ex.P16] in Cr.No.3112 of 2020 was registered by PW15, the Sub-Inspector of Police, for the offence under Sections 7 r/w8 and 11(1) r/w 12 of the POCSO Act.



(iii) PW16, the Inspector of Police, took up the investigation and in view of the allegation under the SC/ST (POA) Act, PW17-the Deputy Superintendent of Police, conducted investigation and filed the final report against the appellants for the offences under Sections 354(A)(2), 354, 355, 323 of the IPC and Sections 8, 12 of the POCSO Act, 2012 and 3(1)(W)(i), 3(2), 5(A) of the SC/ST (POA) Act [Amendment Act, 2019], before the Special Court for POCSO Cases, Chengalpet, which was taken on file as Spl.S.C.No.13 of 2021. During the course of the investigation, the victim and the 1st accused were subjected to medical examination and the learned Sessions Judge, Special Court for POCSO Cases, Chengalpet, recorded the Section 164 Cr.P.C. statement of the victim girl [PW1], her mother [PW2] and other witnesses viz., PW3 and PW4.

(iv) On the appearance of the accused, the provisions of Section 207 Cr.P.C., were complied with and charges were framed against the 1st accused for the offences under Sections 8 and 12 of the POCSO Act and Section 3(1)(w)(i) of the SC/ST Act (POA) Amendment Act of 2016 and against the 2nd accused for the offences under Sections 354 and 323 of the IPC. During the trial, when questioned, the accused pleaded 'not guilty'.

(v) To prove its case, the prosecution had examined 17 witnesses as P.W.1 to P.W.17 and marked 22 exhibits as Ex.P1 to Ex.P22. When the



accused were questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against them, they denied the same. The accused neither examined any witness nor marked any document on their side.

(vi) On appreciation of oral and documentary evidence, the trial Court found that the accused were guilty of the offences charged against them and sentenced them as stated below.

Accused No.	Offence under Section	Sentence imposed
A1	8 POCSO Act	To undergo RI for three years and to pay a fine of Rs.2,000/- in default to undergo SI for six months.
	12 POCSO Act	To undergo RI for three years and to pay a fine of Rs.2,000/- in default to undergo SI for six months.
	3(1)(w)(i) SC/ST (POA) Act	To undergo RI for one year and to pay a fine of Rs.1,000/- in default to undergo SI for three months.
A2	354 IPC	To undergo RI for one year and to pay a fine of Rs.1,000/- in default to undergo SI for three months.
	323 IPC	To undergo RI for one year and to pay a fine of Rs.1,000/- in default to undergo SI for three months.
The sentences were ordered to run concurrently.		

Aggrieved by the said conviction and sentence, the accused have preferred the instant appeal.

3. The learned counsel for the appellants would submit that the judgment of the trial Court cannot be sustained since both the victim and her mother turned hostile during the cross examination; that the age of the victim girl has not been established by the prosecution; that the prosecution has failed to



establish the foundational facts to draw the presumption under Sections 29 and 30 of the POCSO Act; that the offence under the SC/ST (POA) Act would not be made out as it is not the case of the prosecution that the offence was committed because the victim belongs to a particular caste; that the reliance placed on by the trial Court on the evidence of hearsay witnesses is erroneous; and that therefore, the impugned judgment is liable to be set aside.

4. The learned Additional Public Prosecutor, *per contra* submitted that both victim [PW1] and her mother [PW2] had supported the prosecution case in their chief examination and in their cross examination, which was done 20 months later they turned hostile; that the conduct of the witnesses suggests that both PW1 and PW2 were either threatened or won over by the appellants and hence, their deposition in the cross examination has to be ignored; that there are other witnesses examined by the prosecution to prove the case and is consistent with the depositions of PW1 and PW2 in their chief examination; and therefore, the conviction recorded by the trial Court is justified.

5. Though notice to the defacto complainant/3rd respondent [PW1] was served, none entered appearance. Hence, this Court appointed Mr.Raguraj, as learned counsel for the defacto complainant.



6. Mr.Raguraj, referred to the evidence and submitted that the hostile witnesses cannot be disbelieved fully and that the portion of their evidence which are consistent with the other evidence on record can be taken into consideration by the Court and reiterated the submissions made by the learned Additional Public Prosecutor. The learned counsel also filed a 'Notes of Submissions'.

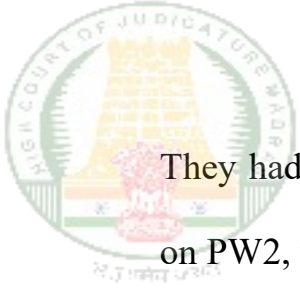
7. As stated earlier, the prosecution had examined 17 witnesses and marked Ex.P1 to P22. PW1 is the victim girl and PW2 is the mother of the victim; PW3, PW4 and PW5 are witnesses who worked along with the victim girl and her mother, in the leather company run by the 1st accused/1st appellant. Their evidence is to the effect that PW1 had informed them that the 1st appellant/1st accused committed sexual assault by inappropriately touching her. PW6 is the husband of PW4, who has heard the incident from PW4; PW7 is the observation mahazar witness; PW8 is the witness to the confession statement of the 1st accused; PW9 is the uncle of PW1 and is the witness to the confession statement. PW10 is the Constable, who assisted in recording the confession of the victim. PW11 is the Physics Teacher and the Headmaster (incharge) of the School in which PW1 studied. He had issued the Bonafide Certificate [Ex.P9] stating that the date of birth of the victim as 03.10.2004. PW12 is the Doctor who had examined the 1st accused and had issued the Potency Certificate



[Ex.P11]. PW13 is the Doctor who had examined the victim and made entries in Accident Register [Ex.P14] and marked the Lab report [Ex.P13]; PW14 is the Tasildhar, who had issued the community certificate [Ex.P15] to the victim. PW15 is the Sub Inspector of Police, who registered the FIR [Ex.P16]. PW16 is the Inspector of Police and who conducted the initial investigation and PW17 is the Deputy Superintendent of Police, who filed the final report.

8. The community of the victim girl is not in dispute. PW14, who had issued the certificate [Ex.P15], which is a digital community certificate of PW1 established the said fact. The age of the victim girl according to the prosecution was 16 years and 9 months at the time of occurrence. Her date of birth according to the 10th mark sheet [Ex.P19] marked through PW16, the investigating officer is 03.10.2004. Though the learned counsel for the appellant would state that the said document was not marked through the Headmaster, the defence had not disputed the said certificate in any manner. Therefore, this Court is of the view that her date of birth as 03.10.2004 has been established by the prosecution beyond reasonable doubt.

9. It is also seen that PW3 to PW5 the employees who worked along with PW1 and PW2 in the appellants' company have all deposed that the victim girl had informed them about the alleged sexual assault committed by the 1st appellant/1st accused and about exposing his private part to the victim girl.



They had also deposed about the attack made by the 2nd appellant/2nd accused on PW2, when she questioned the conduct of the 1st appellant/1st accused. PW6 is the husband of PW4 and heard about the occurrence from PW4. His evidence is of no avail to the prosecution as PW4 herself is a hearsay witness.

10. The other evidence relied upon by the prosecution besides the evidence of PW1 and PW2 is that of the Doctor [PW13] who had examined the victim girl and made entries in the Accident Register [Ex.P14]. PW13 had opined that there were no physical / genital injuries and there were no signs of use of force. The Doctor had also observed that sexual violence cannot be ruled out. PW13 in her cross examination had stated that she had not informed the police that the victim girl told her that she was sexually assaulted by a known person and he had exposed his private part to the victim girl.

11. As stated above, both the victim girl [PW1] and her mother[PW2] had supported the prosecution case in their chief examination conducted on 27.12.2021. They were recalled on 28.08.2023 and cross-examined. PW1 in her cross-examination had stated as follows:

“நான் சொல்வது போன்று சம்பவமே நடக்கவில்லை என்றால் சரிதான், போலிசார் 1ம் எதிரி அக்பரை காவல் நிலையத்திற்கு அழைத்து சென்று கேஸ் எழுதி கொண்டார்கள். அதில்தான் நான் கையெழுத்து போட்டேன் என்றால் சரிதான். போலிசார்



சொல்லி கொடுத்துதான் நீதிமன்ற முதல்
விசாரணையில் நான் சாட்சியம் அளித்துள்ளேன்
என்றால் சரிதான்”

Similarly, PW2, in her cross-examination had stated as follows:

“நான் சொல்வது போன்று சம்பவம் எதுவும்
நடக்கவில்லை என்றால் சரிதான், போலீசார் சொல்லி
கொடுத்துதான் நீதிமன்ற முதல் விசாரணையில் நான்
சாட்சியம் அளித்துள்ளேன் என்றால் சரிதான்”

12. Thus, in their cross examination, both the material witnesses had totally disowned their version. PW1 would state that no such occurrence took place. PW2 also had stated that no such occurrence took place and both the witnesses have stated that their deposition in chief was at the instance of the police. Both PW1 and PW2 therefore were treated hostile by the prosecution and cross-examined. The suggestion put forth by the prosecution is that the said witnesses are deposing falsely as they were threatened by the appellants. Apart from the suggestion nothing has been elicited from the witnesses to probabalise the case of the prosecution that they were won over or threatened.

13. The law relating to appreciation of the evidence of a hostile witness is well settled. The evidence of a hostile witness cannot be rejected merely because the hostile witness had not supported the prosecution case on certain aspects, unless the witness has been totally discredited. It is equally well settled that whenever the witness turns hostile in the cross-examination which has been



done long after the chief examination, if the Court finds that the version in the cross-examination is not true, then the Court can ignore the deposition in the cross-examination, provided the deposition in chief examination is corroborated.

14. In the light of the above legal position we have to examine the evidence of both PW1 and PW2, who disown their complaint as well as their earlier versions in the chief examination. The alleged occurrence is said to have taken place in a closed room. PW3 to PW5 had deposed that the victim had told them about the alleged occurrence after she came out of the room. All the three versions are based on what PW1 told them and there are contradictions in their evidence with regard to the manner in which PW2 is said to have been attacked by the 2nd appellant/2nd accused. Hence, if the victim and her mother cannot be believed, the evidence of PW2 to PW5 would be of no avail to the prosecution.

15. This is not a case where there was a penetrative sexual assault or any other type of sexual assault, which can be corroborated by medical evidence. In fact, there is no evidence of PW2 taking treatment in any hospital. However, the victim (PW1) was subjected to medical examination, which was conducted by PW13-Doctor, who had made entries in the Accident Register[Ex.P14]. As stated above, the Doctor had opined that there were no physical / genital injuries and there were no signs of use of force on the victim. Her opinion that the



victim could have been subjected to sexual assault is based on the information given by the victim. Therefore, in a case of this nature where sexual assault by touch is alleged, corroboration of the version by medical evidence is also not possible.

16. In the light of the above facts, this Court has to examine the conduct of PW1 and PW2. Considering the nature of the offence alleged against the appellant and the manner in which the alleged occurrence took place, the whole case rests on the evidence of the victim. The victim [PW1] and her mother [PW2] both had disowned their versions in the their cross-examination, though conducted belatedly, which clearly reveals their intention. The evidence of such witnesses cannot be trusted. In any case, their depositions reveal that they are not interested in the prosecution. In such circumstances, the evidence of other witnesses who heard the incident from PW1 cannot be the basis to hold the appellant guilty.

17. It is also seen that the prosecution has mechanically invoked Sections 3(1)(W)(i), 3(2), 5(A) of the SC/ST (POA) Act [Amendment Act, 2019]. The provisions of the SC/ST (POA) Act cannot be invoked mechanically only because the victim belongs to a Scheduled Caste community. The offences must have been committed with the knowledge that the victim belongs to a Scheduled Caste community and with an object to humiliate the victim and



commit offences on account of the victim's caste. This also has not been established in this case. Further, both PW1 and PW2 by their conduct and deposition have rendered the presumption under the POCSO Act nugatory. Hence, this Court is of the view that the conviction of the appellants on the basis of the above evidence cannot be sustained and is inclined to set aside the judgment of conviction and sentence.

18. Accordingly, the Criminal Appeal stands allowed. The conviction and sentence imposed upon the appellants/accused vide judgment dated 27.10.2023 in Spl.SC.No.13 of 2021, on the file of the learned Sessions Judge, Special Court for POCSO Act Cases, Chengalpet, are set aside. The appellants/accused are acquitted of all the charges. The fine amount, if any, paid by the appellants shall be refunded. The bail bond, if any, executed shall stand discharged. Consequently, the connected Criminal Miscellaneous Petition stands closed.

27-01-2026

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

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Note:

The High Court Legal Services Committee is directed to pay the scheduled fees to Mr.R.Raguraj, legal-aid counsel appointed by this Court, to assist this Court on behalf of the 3rd respondent/defacto complainant.



WEB COPY

CRL A No. 1546 of 2



SUNDER MOHAN J.

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To

1. The Sessions Judge,
Special Court POCSO Cases, Chengalpet.
2. The Deputy Superintendent Of Police,
Vandalur, Chengapattu District.
3. The Inspector of Police,
Guduvancherry Police Station,
Chengalpattu District.
4. The Public Prosecutor,
High Court, Madras.

**PRE-DELIVERY JUDGMENT IN
CRL A No. 1546 of 2023**

27-01-2026