



*Crl.A.(MD).No.247/2024*

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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**DATED 13.02.2026**

**CORAM**

**THE HONOURABLE MRS. JUSTICE N.MALA**

**Crl.A.(MD).No.247/2024**

Periyasamy

..

Appellant /Accused

Versus

State represented by  
The Inspector of Police  
Palamedu Police Station  
Madurai District.

..

Respondent

**Prayer:-** Criminal Appeal filed under Section 374[2] of Cr.P.C., to set aside the judgment and conviction dated 22.09.2023 passed by the learned Sessions Judge, Principal Special Court for Exclusive Trial of Cases under POCSO Act, Madurai, in Special Sessions Case NO.35/2022 and acquit the appellant.

For Appellant : Mr.S.Saravana Kumar

For Respondent : Mr.B.Nambi Selvan, APP



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## **JUDGMENT**

(1)The above Criminal Appeal is preferred by the appellant / accused against the judgment of conviction and sentence dated 22.09.2023, made in Spl.SC.No.35/2022, by the learned Sessions Judge, Principal Special Court for Exclusive Trial of Cases under POCSO Act, Madurai, convicting and sentencing the appellant/accused for the offences u/s.342 and 376-AB of IPC and u nder Section 5[m] read with Section 6 of POCSO Act.

(2)The factual scenario as unfolded during the course of trial is as follows:-

(a) The case of the prosecution in brief is as follows:-

On 26.10.2021, the victim girl who was studying 1st standard, was left by her mother [PW1] in the house of her elder sister Pandiselvi [PW3] , at Pondhukampatti, since she had to attend to her son who was admitted in the Government Hospital, at Madurai. After returning home in the evening from the hospital, the victim girl complained to her mother of pain in her private part and thinking that it was due to over heat, PW1 applied oil. On 03.11.2021, when the mother of the victim girl was about to leave her again in her



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elder sister's house at Pondhukampatti, the victim girl refused to accompany her and when enquired about the reason for refusal, the victim girl stated that the moustached Periyasamy Thatha who was the neighbour of PW3 - Pandiselvi, victim's aunt, took her into his house, made her sit on his lap removed her underwear and inserted his finger in her private part, causing immense pain to her and therefore, she hit his hand and ran away. The victim's mother / PW1, the defacto complainant, thereafter lodged a complaint on 04.11.2021, for the offences under Sections 5[m] read with 6 of POCSO Act, before the respondent police.

(b) Based on the complaint under Ex.P1 of PW [mother of victim], the FIR came to be registered under Ex.P.11 in Crime No.272/2021, on 04.11.2021, by PW12-Sub Inspector of Police. PW.13-Mrs.Uma Devi, Inspector of Police, took up the investigation and after examination of witnesses, arrested the appellant/accused. On completion of other formalities like recording the 164[5] Cr.P.C., statements, and the statement of the victim girl [PW2]. PW13 filed the Final Report /Alteration Report under Ex.P15, on 04.02.2022,



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for the offences u/s.342 of IPC and under Sections 3[b], 5[m] and 6 of POCSO Act.

(c) The Final Report/Alteration Report was taken on file by the Trial Court on 23.02.2022, in Spl.SC.No.35/2022. On 18.10.2022, the charges were framed against the appellant/accused for the offences u/s.3[b] read with 4[1] of POCSO Act and u/s.342 of IPC. The appellant/accused denied the charges and pleaded not guilty and thereafter, on examination of the prosecution witnesses on 18.08.2023, charges were altered to, for the offences u/s.5[m] read with 6 of POCSO Act and u/s.342 and 376-AB of IPC. The appellant/accused pleaded not guilty.

(3) The prosecution in order to bring home the guilt of the appellant/accused, examined PW1 to PW13 and filed Exs.P1 to P15.

(4) The Trial Court, on completion of trial, found the appellant/accused guilty of the aforesaid offences and convicted and sentenced him as follows:-

| <b><i>Sl.No.</i></b> | <b><i>Conviction Under Section</i></b> | <b><i>Sentence Awarded</i></b>                                                            |
|----------------------|----------------------------------------|-------------------------------------------------------------------------------------------|
| 1                    | 342 of IPC                             | To undergo 1 year RI and to pay a fine of Rs.1,000/-, in default, to undergo 2 months SI. |



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|   |                                           |                                                                                                                                                                                                                                                                                                                         |
|---|-------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2 | 5[m] r/w 6 of POCSO Act and 376-AB of IPC | To undergo 28 years RI and to pay a fine of Rs.1,00,000/-, in default, to undergo 2 years SI. <i>[Since maximum punishment was awarded for the offence u/s.5[m] r/w 6 of POCSO Act, no separate sentence was awarded for the offence punishable u/s.376-AB of IPC. The sentences were ordered to run concurrently.]</i> |
|---|-------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

(5)The Trial Court, considering the mental trauma undergone by the victim girl, who was aged only 5 years and 9 months at the time of the offence, awarded a compensation of Rs.6 lakhs to her as per Section 33[a] of the POCSO Act. The Trial Court further directed that the compensation amount shall be disbursed from the Tamil Nadu Child Victim Compensation Fund under the POCSO Act, 2012 and that the aforesaid amount shall be invested in a Fixed Deposit in a Nationalised Bank of PW1's choice till the victim attained majority. The defacto complainant / PW1 was permitted to withdraw the interest alone, once in three months for the welfare of the victim child.

(6)Aggrieved by the aforesaid conviction and sentence, the appellant has preferred the above Criminal Appeal for the aforesaid relief.



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(7) The learned counsel for the appellant contended that the evidence of the prosecution regarding the identity of the appellant/accused was neither convincing nor satisfactory and hence, unreliable. The learned counsel contended that the statement of the victim girl was inconsistent, contradictory and wavering with regard to the identity of the appellant/accused. The learned counsel for the appellant elaborately referred to the evidence of the victim girl [PW2], PW1 [mother of the victim girl/defacto complainant], PW4 [father of PW2 and husband of PW1] and PW8 [Doctor who examined the victim girl] and the Medical Report-Ex.P8 issued by PW8 and contended that from the said evidence, it is clear that the victim girl was tutored and that the appellant was falsely implicated in the crime. The learned counsel submitted that the victim girl admittedly did not identify the appellant at the earliest point of time, i.e., at the time of her 164 Cr.PC statement and medical examination by PW8. The learned counsel submitted that even the evidence of the Doctor-PW8 and the Medical Certificate issued by her under Ex.P8, would establish that the victim's offender was a relative and since indisputably, the appellant was only a neighbour of PW3 and not related to the victim's



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family, the prosecution's case was unreliable and doubtful. The learned counsel submitted that as per the evidence of the prosecution witnesses, PW1 and PW4, the victim identified the appellant only through the marriage photo album shown to her and therefore, the failure to produce the marriage photo album is fatal to the prosecution's case. The Trial Court failed to note that the omission to produce the crucial evidence, the marriage photo album warrants an adverse inference against the prosecution had hence the benefit of doubt ought to have been given to the appellant. The learned counsel referring to various contradictions and inconsistencies in the testimonies of the aforesaid prosecution witnesses, submitted that the appellant was falsely implicated in the case and concluded that it is well settled concept of criminal jurisprudence that it is better that several guilty may be allowed to escape than one innocent suffer. Hence, the learned counsel prayed for setting aside of the conviction and sentence of the appellant and allowing of the appeal.

(8)The learned Additional Public Prosecutor appearing for the State submitted that the Trial Court analysed the evidence properly and rendered cogent and logical reasons for its findings. The learned Additional Public



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Prosecutor further submitted that the judgment of the Trial Court calls for no interference since it was based on proper appreciation of the victim's evidence corroborated by the medical evidence of PW8 and Ex.P8-Medical Report. The learned Additional Public Prosecutor contended that there was a statutory presumption under section 29 of the POCSO Act, on the commission of the offence by the appellant, which presumption was not rebutted by the defence. The learned Additional Public Prosecutor relied on the judgment of this Court dated **18.11.2024** made in ***Crl.A.(MD).No. 376/2021 [ Saravanakumar Vs. State rep. by the Inspector of Police, AWPS, Fort, Trichy]*** and the judgment dated **04.10.2021** made in ***Crl.A.No.139/2021 [State rep.by the Inspector of Police, Thirubuvanai Police Station, Puducherry Vs. Ealam Periera]*** in support of the above submission. The learned Additional Public Prosecutor, further submitted that the lacunae or the lapse on the part of the Investigating Officer will not affect the prosecution's case and in support of the said submission, he relied on the judgment of the Hon'ble Supreme Court in ***Manu/SC/ 1673/2025 [ Manojbhai Jethabhai Parmar [Rohit] Vs. State of Gujarat]*** dated **15.12.2025**. The learned Additional Public Prosecutor submitted



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that minor discrepancies, if any, in the victim's testimony as well as in the testimonies of the prosecution witnesses, are not fatal to the prosecution's case. He relied on the judgment of the Hon'ble Supreme Court reported in ***1990 [1] SCC 550 [State of Maharashtra Vs. Chandraprakash Kewalchand Jain and Others]*** to fortify the said submission. The learned Additional Public Prosecutor therefore submitted that the prosecution proved its case beyond reasonable doubt and therefore, the judgment of the Trial Court deserved to be confirmed and the appeal should be dismissed as meritless.

(9) Heard both sides and perused the materials placed on record, including the impugned judgment of the Trial Court.

(10) This Court, earlier on 30.01.2026, upon hearing the arguments advanced on either side, initially was of the view that the Appeal had no merits and deserved to be dismissed. Hence, this Court declared that the appeal was dismissed and the detailed judgment would be dictated in Chambers. However, this Court, on perusal of the entire materials placed on record, in particular, the evidence of the defacto complainant [PW1], the victim girl



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[PW2] and the doctor's [PW8] evidence and the Medical Report [Ex.P8],  
posted the matter under the caption "For Clarification" on 11.02.2026.

(11)When the matter was listed on 11.02.2026, this Court pointed out the various inconsistencies in the prosecution case regarding the identity of the appellant as the perpetrator of the crime, and so, the learned Additional Public Prosecutor, sought time to submit his reply to the same. Hence, at his request, the matter was adjourned to today [13.02.2026].

(12)When the matter was taken up for hearing today [13.02.2026], the learned Additional Public Prosecutor placed his arguments, supported by judgments and contended that the prosecution had proved the case beyond reasonable doubt. After hearing the learned Additional Public Prosecutor, this Court not being convinced with his arguments declared that the appeal is allowed and that detailed judgment would be delivered shortly.

(13)After due deliberation, this Court is inclined to pass the following judgment:

(14)The case of the prosecution in a nutshell is that on 26.10.2021, the appellant/accused who is the neighbour of the maternal aunt [PW3] of the victim girl [PW2], called the victim to his house and committed



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penetrative sexual assault on the victim girl by inserting his finger in her private part. At the time of the occurrence, admittedly the victim girl was 5 years and 9 months old. Since the victim girl was below 12 years of age, and though the appellant was initially charged for the offences u/s.3[b] read with 4 of the POCSO Act and 342 of IPC, the same was altered / modified to one under Section 5[m] read with Section 6 of the POCSO Act and Sections 342 and 376-AB of IPC.

(15)The prosecution, in order to establish its case, has examined 13 witnesses. PW1-Sathya, is the mother of the victim and also the defacto complainant. PW2 is the victim girl who was aged about 7 years and 2 months at the time of her examination before the Court on 13.03.2023. PW3-Pandiselvi is the maternal aunt of PW2/victim girl and the elder sister of PW1. PW4-Raghu is the father of the victim girl and husband of PW1. PW5-Periyapuliayan, is the husband of PW3. PW6-Mani, is the Mahazar Witness. PW7-Anuradha, is the Grade I PC attached to the respondent police station, who accompanied the victim girl to the hospital for medical examination. PW8-Dr.Sophia, examined the victim girl and issued the Medical Certificate under Ex.P8. PW9-Dr.Muniyappan,



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examined the appellant/accused and issued the Medical Certificate under

Ex.P9. PW.10-Radhapriya, is the School Headmistress of the victim girl who issued Ex.P4, Bonafide Certificate. PW11-Selvam, Grade I PC attached to the respondent police station, accompanied the appellant/accused to the hospital for medical examination. PW12-Meenakshi Sundaram, is the Sub Inspector of Police at the relevant time who registered the FIR under Ex.P.11. PW12-Uma Devi, is the Inspector of Police / Investigating Officer, who conducted the investigation and filed the Final Report / Alteration Report under Ex.P15.

(16)The Trial Court found that the victim girl's age as 5 years and 9 months at the time of the occurrence, was established through Ex.P3-Xerox copy of the Birth Certificate and Ex.P4-Bonafide Certificate issued by PW10-School Headmistress and therefore, found that the applicability of the POCSO Act, was established. The Trial Court, analysed the evidence on record and found the evidence of the victim girl stood corroborated by the evidence of Pws.1 and 4. The Trial Court examined the evidence of PW8 and the Medical Certificate under Ex.P8 issued by her and found that the said evidence corroborated the evidence of the victim girl-PW2 and on



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such findings, the Trial Court found that the appellant/accused guilty and convicted and sentenced him as aforesaid.

**Presumption under Section 29 of the POCSO Act:-**

(17) **Section 29** of the POCSO Act, provides that when a person is prosecuted for the offence under Section 3 [Penetrative Sexual Assault] ; Section 5 [Aggravated Penetrative Sexual Assault] ; Section 7 [Sexual Assault] ; or Section 9 [Aggravated Sexual Assault], the Court shall presume that the accused had committed the offence unless the contrary is proved. **Section 30** of the POCSO Act, provides for presumption of culpable mental state. Therefore, under Sections 29 and 30 of the Act, the dual presumptions of *actus reus and mens rea [guilty mind]* are provided. To invoke the aforesaid provisions, the prosecution must first establish the foundational facts beyond reasonable doubt. Only after the foundational facts are established at the threshold, the presumption under Sections 29 and 30 can be triggered. The presumption is not a conclusive one, but a rebuttable one.

(18) The Calcutta, Delhi and Bombay High Courts, have interpreted Section 29 of the Act to the effect that unless the foundational facts are established



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by the prosecution, the presumption u/s.29 would not come into play. In

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***Shahid Hossain Biswas Vs. State of West Bengal [Crl.A.No.736/2016],***

the Calcutta High Court held that establishing the foundational facts by

leading evidence by prosecution, is an essential pre-requisite before the

statutory presumption u/s.29 of the Act is triggered, so as to shift the onus

on the accused to prove the contrary. So also, the Bombay High Court in

***Shagun Trading Co. Vs. State of Maharashtra [Crl.A.No.406/2017],***

observed as follows:- *"It cannot be disputed that no presumption is*

*absolute and every presumption is rebuttable. It cannot be countenanced*

*that the presumption u/s.29 of the POCSO Act, is absolute. It would come*

*into operation only when the prosecution is, first able to establish the facts*

*that would form the foundation for the presumption u/s.29 of the Act to*

*operate. Otherwise, all the prosecution would be required to do is file a*

*charge sheet against the accused under the provisions of the said Act and*

*state that the evidence of the prosecution witnesses have to be accepted as*

*gospel truth and further the entire burden would be on the accused to*

*prove to the contrary. Such a position of law on interpretation of*

*presumption under Section 29 of the POCSO Act, cannot be accepted as it*



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would clearly violate the constitutional mandate that no person would be deprived of opportunity except in accordance with the procedure established by law."

(19)The Delhi High Court, by judgment dated 15.04.2024, **in Crl.A.No. 223/2023 [Veerpal @ Tittu Vs. State]**, had a similar opportunity of interpreting Sections 29 and 30 of the POCSO Act and in paragraph No.20, the High Court has held as follows:-

*"20.Section 29 of POCSO Act provides that Court shall presume that the accused has committed the offence for which he is charged with, until contrary is proved. However, the presumption would operate only when the prosecution proves the foundational facts in the context of allegation against the accused beyond reasonable doubt. After the prosecution establishes the foundational facts, the presumption raised against the accused can be rebutted by discrediting the prosecution witnesses through cross-examination and demonstrating the gaps in prosecution version or improbability of the incident or lead defence evidence in order to rebut the presumption by way of preponderance of probability. "*



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(20)The Hon'ble Supreme Court, in the case of ***Bhanei Prasad Alias Raju***

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***Vs. State of Himachal Pradesh [2025 SCC OnLine SC 1636]***, reiterated

the position that Section 29 of the POCSO Act creates a statutory presumption of guilt once the foundational facts are established.

(21)From the interpretation of Section 29 of the POCSO Act, by the various High Courts stated above and the dictum of the Apex Court, it is unequivocally clear that the presumption under Section 29 of the Act is not absolute but rebuttable. The statutory presumption can be rebutted by disparaging the prosecution witnesses through cross-examination and by demonstrating the lacunae in the prosecution version or improbability of the prosecution's case. The rebuttable of presumption can also be by way of leading defence evidence. Therefore, merely on the basis of the presumption and without proof of foundational facts, the prosecution cannot rest its case since the statutory presumption can be activated only if the foundational facts are established.

(22)The crucial point for consideration is *whether the prosecution has proved the foundational facts beyond doubt, for invoking the statutory presumption under Section 29 of the POCSO Act.*



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**Solitary Testimony of the Victim as basis for Conviction:-**

(23) The learned Additional Public Prosecutor would contend that the conviction and sentence can be imposed based on the solitary testimony of the child victim without any corroboration, if it is found that the testimony of the victim girl is credible, unwavering and trustworthy. There is no dispute about the said legal proposition. The Hon'ble Supreme Court in *Bhanei Prasad's case [referred to above]*, in paragraph No.6, held as follows:-

*"6.It is now well settled that the testimony of a child victim, if found credible and trustworthy, requires no corroboration. The Courts below have not merely accepted the victim's account, they have validated it through unimpeachable scientific evidence. The DNA report sealed the evidentiary chain and has dispelled all doubts in the prosecution case which is sought to be assailed by the petitioner."*

(24) It is no doubt true that the conviction can be based on the uncorroborated testimony of the victim. However, it is to be noted that only if the testimony of the victim is found to be credible, unwavering and trustworthy, it can form the basis for conviction even without



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corroboration. A detailed examination of the records reveals that the case of the prosecution rests entirely on the statement of the victim girl [PW2], the defacto complainant / mother of the victim girl [PW1] and the medical evidence [Ex.P8]. It would be relevant to refer to the sequence of events of the prosecution's case.

(25) On 04.11.2021, at 12.00 p.m., PW1-mother of the victim girl [PW2], lodges a complaint under Ex.P1. In her complaint, she stated that on 26.10.2021, she and her husband [PW4], left PW2, the victim girl, in her sister's [PW3-Pandiselvi] house for taking her indisposed son to the hospital. Thereafter, in the evening, they picked up the victim girl from PW3's house and returned to their house. PW1 stated that the victim girl complained of pain in her private part and thinking that it was due to over heat, PW1 applied oil. Thereafter, on 03.11.2021, when PW1 again wanted to drop her daughter [PW2] in PW3's house, the victim refused to accompany her. On pressing for the reason for refusal, the victim girl narrated that on the earlier occasion, when she was taken to PW3's house, the appellant/accused, the neighbour of PW3, called her to his house and committed sexual assault by inserting his finger in her private part. The



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victim girl cried out of pain, pushed his hand and ran away. PW1 further stated that the victim did not divulge the fact earlier out of fear that she would scold her. PW1 further state that she informed the same to her sister [PW3] and on her advise, she lodged the complaint. In the above complaint filed by PW1 at 12.00 Noon on 04.11.2021, she named the appellant as the offender. In the evening on the very same day, at around 7.10 p.m., the victim girl was taken to PW8-Dr.Sophia, for medical examination. In Ex.P8, PW8 recorded the statement of the victim girl is as follows:-

*"Her story as recorded.*

*Alleged c/o insertion of finger into the child's vaginal region by a known relative on 26.10.2021 at Pondhukampatty at the relative's house."*

(26)Thereafter, on 25.11.2021, the 164 Cr.PC statement of the victim girl was recorded by the learned Judicial Magistrate, Vadipatti, under Ex.P2. In Ex.P2, the victim girl narrated the occurrence as follows:-

"அந்த தாத்தா வந்து கையை விட்டார். அந்த தாத்தா வந்து இங்கேயே கையை விட்டார் என்று சொல்லி சைகையில் குழந்தை பிறப்புறுப்பின் இடத்தில் வைத்து காண்பித்தது. நான் கையை விட்டு அம்மா கிட்ட ஓடிட்டேன். அப்பறம் தாத்தா வீட்டில்



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தான் தக்காளி வாங்க போனேன். தாத்தா வீட்டிற்கு போனேன்.  
உட்கார வைத்தார். கையால தொட்டார். அதுக்குப்பறம் எதுவும்  
செய்யவில்லை. வேறு எதுவும் ஆகல".

(27)It is to be noted that though the victim girl is said to have identified the appellant/accused to her mother, on the basis of which, the complaint was lodged at 12.00 noon on 04.11.2021, the victim did not mention the appellant's name in her statement to the doctor-PW8, recorded at 7.10 p.m., on the very same day. Had she truly identified the appellant/accused, she could atleast have referred to him as the neighbour of PW3-her aunt. However, no such reference was made while giving the medical history. In Ex.P8, the victim stated that the sexual assault was committed by a relative at a relative's house, whereas it is not the prosecution's case that the appellant/accused is the relative of the victim's family. Further, even in her 164 Cr.PC statement, recorded nearly 20 days after the complaint and the medical examination, the victim girl referred to the offender only as "அந்த தாத்தா" and did not disclose the appellants name as "Periyasamy தாத்தா", nor did she describe him as neighbour of her aunt – PW3. From these versions, it becomes evident that the victim girl, at the earliest point of time, did not identify the accused as the perpetrator. The



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inability of the victim to identify the appellant on her own as the offender, is clearly borne out by the evidence on record. PW2- the victim in her chief examination before the Court, named the appellant/accused as her offender and when cross-examined [The Trial Court found PW2 fit for cross examination] by the defence, she stated that she was able to identify the accused only through the marriage photo album shown by her mother, and that, she did not identify the accused until then. The victim girl further accepted by nodding her head, the suggestion that it was her parents who showed the photo and told the name of the appellant/accused. Her statement is as follows:-

"....26.10.2021ம் தேதி என்னை கூப்பிட்ட தாத்தாவின் பெயர் தெரியுமா என்றால் தெரியும். பெரியசாமி மீசைக்காரத்தாத்தா. சம்பவம் பற்றி அன்றைய தினமே எனது பெரியம்மா அ.சா.3 இடமோ, தர்ஷனி சித்தியிடமோ சொன்னேனா என்றால் சொன்னேன். ஒரு வாரம் கழித்து கல்யாண ஆல்பத்தைக் காண்பித்து இவர் என்று எதிரியை எனக்கு அடையாளம் காண்பித்தார்கள் என்றால் ஆமாம் என்று சாட்சி தலையை ஆட்டுகிறார். ஆல்பத்தைக் காண்பித்து என் அம்மா, அப்பா சொன்ன பிறகு தான்



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எதிரி பெரியசாமி தாத்தா என்று தெரியுமா என்றால் சாட்சி ஆமாம் என்று தலையை ஆட்டுகிறார். அதுவரை எனக்கு அவர் யார் என்று தெரியாது. என அம்மா, அப்பா தான் எதிரியின் போட்டோவைக் காண்பித்து அவரது பெயரை சொன்னார்களா என்றால் ஆமாம் என்று சாட்சி தலையை ஆட்டுகிறார்."

(28)A careful scrutiny of the above testimony of the victim before the Trial Court reveals material embellishments in the prosecution case, which cumulatively gives rise to a compelling inference that the subsequent statements are the result of tutoring rather than a true and spontaneous disclosure.

(29)It is clear that the victim girl was not able to distinctively identify the appellant as her offender at the earliest point of time, either by name or by describing him as a neighbour. On the contrary, she referred to the offender only as a known relative in Ex.P8 [Medical Report]. Further, the omission to either name or identify the accused as her offender at the earliest point of time, cannot be ignored as insignificant. This lapse cannot be treated as minor inconsistency attributable to the lack of memory or tender age of the victim, since the identity of the assailant constitutes a



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foundational fact. In such circumstances, the solitary testimony of the victim, uncorroborated by other evidence cannot safely be made the basis for conviction.

**Version of the other prosecution witnesses:-**

(30)The evidence of PW1 [mother of victim] and PW4 [father of victim] further point to the possibility of embellishment and false implication of the appellant in the crime. PW1, when cross examined on the reason for the delay in lodging the complaint on 04.11.2021, attributed the same to the victim's inability to identify the appellant. PW1 stated that initially, the victim referred to the appellant as neighbour of PW3, and subsequently, mentioned his name. PW1 categorically stated that only after showing her marriage photo album to the victim, she identified the accused. Therefore, even when the occurrence was narrated to PW1 by PW2 on 03.11.2021, the identity and the name of the appellant was not given by the victim girl. On further cross examination, PW1 stated that she showed the marriage photo album to PW2 and from the album, PW2 identified the appellant. In her further cross examination, PW1, when asked as to who suggested to her to show the photo album to PW2, she answered that since lot of people



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from her village had attended her marriage, she suo motu showed the Photo album to the victim for identifying the accused.

(31) From the aforesaid statements of PW1, it is clear that many of her village people attended her marriage. It is the specific case of PW1 that PW2 identified the appellant only through the marriage photo album. While so, PW1 ought to have produced the marriage photo album before the Court to establish the presence of the appellant in the marriage of PW1. The failure to produce the marriage photo album which is a vital piece of evidence, relating to the appellant's identity, raises a doubt on the veracity of the prosecution's case. When several persons of the village had attended the wedding of PW1, unless the marriage photo album was produced, the identity of the "தாத்தா" as the appellant only cannot be said to have been established. The withholding of the vital evidence leads to an adverse inference being drawn against the prosecution under Section 114[g] of the Evidence Act. The non-production of the marriage photo album of PW1, mitigates against the prosecution case.

(32) Further, this Court is of the considered view that such an omission amounts to material omission and not a trivial lapse. The said omission



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assumes even greater significance when it is read in conjunction with Ex.P8, wherein the victim herself stated that she was sexually assaulted by a known relative, at the relative's house. The contradiction between Ex.P8, the statement in the FIR and the evidence in cross examination of PW1 and PW2, assumes great importance and in the view of this Court, it strikes at the root of the prosecution's case raising serious doubts on the identity of the appellant as the perpetrator. If really the identification of the appellant was made through such an album, the same constituted a crucial piece of evidence. In the absence of its production, in the view of this Court, the alleged identification remains uncorroborated. It appears from records that the prosecution has not offered any explanation for withholding this material evidence, thereby, not only weakening its case, but also creating doubts over the same. This Court finds that the evidence of PW3 and PW4, who respectively, are the elder sister and husband of PW1, do not provide any independent corroboration. This Court finds that the testimonies of the said witnesses are a mechanical repetition of PW1's version. Therefore, their evidence cannot be relied on to sustain the conviction. The judgments relied on by the learned Additional Public



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Prosecutor contending that lapse in investigation, does not affect the prosecution case, in the view of this Court is not applicable to the fact situation of this case, because this Court is of the view that the prosecution's case fails not only because there is lapse in investigation, but for failure to prove the foundational fact of the involvement of the appellant in the crime.

(33) It is well settled proposition of criminal jurisprudence that a suspicion, however strong, cannot take the place of proof. The prosecution is bound to establish its case beyond reasonable doubt. The material contradictions and omissions as stated above, create a reasonable doubt and therefore, this Court is of the view that the appellant/accused is entitled to the benefit of doubt, as a matter of right. Since the prosecution has failed to prove the foundational fact of the identity and involvement of the appellant in the offence, the presumption u/s.29 of the POCSO Act, is not triggered.

(34) The Hon'ble Supreme Court, in the judgment reported in **2025 INSC 800** *[Vaibhav Vs. State of Maharashtra]* dated 04.06.2025, held that "*.....it is a time tested proposition of law that when a Court is faced with a situation where two different views appears to be reasonably possible, the matter is*



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*to be decided in favour of the accused. The benefit of the counter possibility goes to the accused in such cases."*

(35) In the present case, the cumulative effect of the above discussions can be summarised as follows:-

- (a) The material omission in the complaint regarding the identification of the appellant/accused through the Marriage Photo Album of PW1 ;*
- (b) Contradiction arising from Ex.P8 describing the perpetrator as "known relative" and the place of occurrence as "in a relative's house" ;*
- (c) The non production of the crucial material evidence, namely, the marriage photo album ; and*
- (d) The lack of independent and reliable corroboration creates serious doubt in the mind of this Court about the case of the prosecution.*

(36) This Court therefore finds that the prosecution has failed to establish beyond doubt that the appellant was the offender and thus, the conviction and sentence imposed by the Trial Court cannot be sustained.

(37) Accordingly, the Criminal Appeal stands **allowed and the conviction and sentence imposed on the appellant/accused by the Trial Court vide judgment dated 22.09.2023, in Spl.SC.No.35/2022, are set aside.**



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(38)The appellant/accused is acquitted of all charges levelled against him.

(39)It is reported that the appellant/accused is in jail. Hence, the Superintendent of Central Prison, Madurai, is directed to set the appellant/accused at liberty forthwith unless his presence is required in connection with any other case.

(40)Since the appellant is acquitted by giving the benefit of doubt, this Court deems it appropriate not to direct the refund of compensation amount, if already paid to the victim.

(41)Before parting with the matter, this Court would like to sound a word of caution. The POCSO Act, is no doubt, a beneficial and welfare legislation, to protect the innocent children from sexual exploitation and abuse at the hands of predatory elements who often masquerade as respectable members of the society. The Hon'ble Supreme Court, in ***Nipun Saxena and Another Vs. UOI and Others [2020 [18] SCC 499]***, accepted and directed implementation of the "Compensation Scheme for Women Victims/Survivors of Sexual Assault/Other Crimes, 2018" framed by the National Legal Services Authority. Under the said Scheme, the maximum compensation prescribed for victims is Rs.7 lakhs which could be



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enhanced by 50% in cases involving minor victims. Compensation is granted because the Court feels that justice should not be limited to conviction, it must, where the law so permits, include restitution wherever possible, and the compensation is awarded in order to affirm the constitutional commitment to protect the rights and dignity of child survivors, and also to ensure that complete, compassionate and substantive justice is delivered. Unfortunately, there are occasions like the present one where the beneficial legislation is exploited for various reasons. Therefore, it is the bounden duty of the Courts acting as vigilant sentinels, to ensure that the statute is not misused for ulterior or vindictive purpose. While offenders who prey upon children have to be dealt with firmly in accordance with law, equal care must be taken to protect the innocent from false implication.

13.02.2026

AP

Index: Yes

Internet: Yes

NCC: Yes

Speaking Order : Yes



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To

- 1.The Sessions Judge,  
Principal Special Court for Exclusive Trial of Cases under POCSO Act,  
Madurai.
  
- 2.The Inspector of Police  
Palamedu Police Station  
Madurai District.



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**N.MALA, J.,**

**AP**

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**13.02.2026**