



Crl.A(MD)No.338 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.02.2026

CORAM:

**THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA**

Crl.A(MD)No.338 of 2023

Kanthasamy

... Appellant/Sole Accused

Vs.

The State rep. by
The Inspector of Police,
Kamuthi AWPS,
Ramanathapuram District,
Crime No.5/2018.

... Respondent/Complainant

PRAYER:- Criminal Appeal is filed under Section 374(2) of Cr.P.C. to call for the records in Spl.S.C.No.37 of 2018, dated 30.11.2020 passed by the learned Fast Track Mahila Court, Ramanathapuram District and to set aside the same.

For Appellant : Mr.G.Karuppasamy Pandiyan

For Respondent : Mr.R.M.Anbunithi
Additional Public Prosecutor



WEB COPY



Crl.A(MD)No.338 of 2023

JUDGMENT

**(Judgment of the Court was delivered by
G.K.ILANTHIRAIYAN, J.)**

This appeal has been filed as against the Judgment passed in Spl.S.C.No.37 of 2018, dated 30.11.2020, on the file of the Fast Track Mahila Court, Ramanathapuram District, thereby convicting the appellant for the offences punishable under Sections 366, 376(AB), 5(i) r/w 6, 5(m) r/w 6 of POCSO Act.

2. The case of the prosecution is that, the accused had committed penetrative sexual assault on the minor girl, aged about 4 years. On 26.08.2018 at about 04.00 p.m., while the victim girl was playing near Government Pre-school, where her mother is working, she was taken by the accused to a place near the Kalamman temple and had committed penetrative sexual assault on her.



Crl.A(MD)No.338 of 2023

WEB COPY

3. On the basis of the complaint, the respondent registered an F.I.R in Crime No.5 of 2018 for the offences punishable under Sections 5(m) r/w 6 of POCSO Act. After completion of investigation, the respondent filed alteration report altering the charges for the offences punishable under Sections 366, 376-AB of IPC and Section 6 r/w 5(i) & 6 r/w 5(m) of POCSO Act, 2012 and filed a final report. On receipt of the same, the trial Court had taken cognizance and framed the charges as against the accused for the offences punishable under Sections 366, 376-AB of IPC and Section 6 r/w 5(i) and 6 r/w 5(m) of POCSO Act.

4. On the side of the prosecution, in order to bring the charges to home, they examined P.W.1 to P.W.12 and Exs.P1 to P19 were marked. The prosecution also produced Material Objects M.O.1 and M.O.6. On the side of the accused, no witness was examined and no document was marked.



Crl.A(MD)No.338 of 2023

WEB COPY

5. On perusal of the oral and documentary evidence, the trial Court found the accused guilty for the offences punishable under Sections 366, 376(AB) of IPC and Section 5(i) r/w 6 and 5(m) r/w 6 of POCSO Act. He was sentenced to undergo Life Imprisonment, which shall mean imprisonment for the remainder of natural life of the accused and was imposed a fine of Rs.1000/-, in default, to undergo two years Simple Imprisonment for an offence punishable under Section 376(A) of IPC. He was further sentenced to undergo ten year Rigorous Imprisonment and was imposed a fine of Rs.1000/- in default, to undergo two years Simple Imprisonment for an offence punishable under Section 366 of IPC. He was also sentenced to undergo Life Imprisonment and was imposed a fine of Rs.1000/- in default, to undergo two years Simple Imprisonment for the offences punishable under Sections 5(i) r/w 6 of POCSO Act. Aggrieved by the same, the present appeal has been filed by the appellant.



Crl.A(MD)No.338 of 2023

WEB COPY

6. The learned counsel appearing for the appellant submitted that the prosecution miserably failed to prove any of the charges framed against the appellant. The accused had lodged a complaint against the father of the victim child for illegal sand quarrying. Due to this, there was previous enmity between the accused's family and the victim child's family, and hence, a false complaint has been foisted against the accused. All the allegations are false in nature, and the child did not mention any incident of penetrative sexual assault. Further, before recording the statement of the victim child under Section 164 of the Cr.P.C., the learned Magistrate failed to ascertain whether the child is capable of deposing before this Court with a full understanding of the questions. In support of his contention, he relied upon the judgment of the Hon'ble Supreme Court of India in *Agniraj and others vs. State through Deputy Superintendent of Police, CB-CID* reported in *CDJ 2025SC 952*. The relevant portions of the judgment are extracted hereunder:-



“25. Now, we come to the evidence of PW-9 (Nikila). The law is well settled that before proceeding to record the evidence of a minor witness, preliminary questions must be asked by the Court to ascertain whether the witness is able to understand the questions and answer the same. The Court must be satisfied about the capacity of the minor to understand the questions and answer the same. In this case, the age of PW-9 (Nikila) was 10 years. However, preliminary questions were not put to the witness. The Court did not ask any question to the witness to ascertain whether she understands the importance of an oath. Without satisfying himself that the witness understands the importance of an oath, the learned Trial Judge administered oath to her. It is very well known that child witnesses are susceptible to tutoring and therefore, not asking preliminary questions to the minor witness makes her evidence very vulnerable.

26. The witness states that she was able to identify the persons who attacked them on that day. She stated that she had not identified the persons



Crl.A(MD)No.338 of 2023

earlier whom she was now identifying in the Court. The witness identified some of the accused sitting in the Court. She stated that she was seeing them for the first time after the date of the incident. Admittedly, test identification parade was not conducted. She stated that her mother told her in detail what had happened to her and how many days she was in the hospital.

27. As noted earlier, PW-9 (Nikila) was 10 years old on the date of recording of evidence. The Trial Court has not followed the condition precedent before examining a minor witness. Before administering oath, the learned Trial Judge did not satisfy himself that the witness understood the importance of the oath.

28. Moreover, she deposed that after the date of occurrence, for the first time in the Court, she identified several accused. But test identification parade was not held. From the answers given in the cross-examination that her mother told her the details of what happened to her, the possibility of tutoring the witness cannot be ruled out. Minors are prone to



WEB COPY



Crl.A(MD)No.338 of 2023

tutoring and in this case, we are dealing with a minor child who was 10 years old.”

Therefore, the entire conviction and sentence imposed on the appellant cannot be sustained and it is liable to be set aside.

7. Per contra, the learned Additional Public Prosecutor appearing for the respondent submits that the victim child had deposed as P.W.2. Her statement was recorded under Section 164 of the Cr.P.C., which was marked as Ex.P2. It clearly corroborates the evidence of P.W.2. The entire case of the prosecution is also categorically supported by medical evidence, which was marked as Ex.P7. The Serology report was marked as Ex.P10, and the biological report was marked as Ex.P11. When the victim child was subjected to medical examination, an accident report was recorded, which was marked as Ex.P15. The first statement of the victim child was recorded, in which she stated that the accused had committed



Crl.A(MD)No.338 of 2023

WEB COPY

rape against her. The doctor, who examined the victim child and deposed as P.W.10, found injuries on the victim's genital area and observed that her hymen was not intact. The victim child was subjected for penetrative sexual assault. Therefore, the prosecution has clearly proved the charges, and the trial Court rightly convicted the accused. Accordingly, the conviction by the trial court does not call for any interference by this Court.

8. Heard the learned counsel appearing on either side and perused the materials placed on record.

9. The victim child was aged about 4 years at the time of occurrence. On 26.08.2018, at about 04.00 p.m., while the victim child was playing near the Government Pre-school, where her mother is the accused kidnapped the victim child and took her to a place near Kalamman Temple and committed penetrative sexual assault on the victim child after removing her clothes. He also wiped



Crl.A(MD)No.338 of 2023

his semen with the pant, which was worn by the victim. Thereafter, he dressed her up. Thereafter, the victim child informed the said incident to her mother, who was examined as P.W.1 and immediately, she lodged a complaint. The complaint was marked as Ex.P1. The respondent registered the FIR in Cr.No.5 of 2018 on 27.08.2018, which was marked as Ex.P13 and it reached the Court on 28.08.2018 itself and as such, there was no delay in lodging the complaint and also in registration of the FIR. The Medical Officer recorded the Accident Register on 27.08.2018 at about 09.30 a.m., which was marked as Ex.P15. After recording the Accident Register, the victim child was subjected to medical examination. The medical report was marked as Ex.P7. The doctor, who examined the victim child opined that the genetelia part of the victim sustained injury and her hymen was not intact. There is a chance for a penetrative sexual assault on the victim. The dresses which were worn from the accused and the victim child were subjected to chemical analysis in the Regional Forensic Science Laboratory at

10/17



Crl.A(MD)No.338 of 2023

Ramanathapuram. In Item No.6, the pant which was worn by the victim child detected semen. The said biological report was marked as Ex.P9. The Serological report was marked as Ex.P10. It confirms that origin of semen was from a human. Therefore, the medical evidence clearly supports the case of the prosecution. The victim child was examined as P.W.2 and the relevant portion of her deposition is as follows:-

“நான் 1ம் வகுப்பில் படிக்கிறேன் என்னுடன் 20 பிள்ளைகள் படிக்கிறார்கள். ஷாலினி ஸ்கூலில் படிக்கிறேன். நான் சாலையில் இருந்தபோது கந்தசாமி தாத்தா வந்து பக்கத்தில் சறுக்கல் மாதிரி இருந்தது. அதில் துண்டை விரித்தார். காளியாத்தா கோவில் பக்கத்தில் துண்டை விரித்தார். அவர் ஒன்னுக்கு போற இடத்தை என் ஒன்னுக்கு போற இடத்தில் வைத்து அழுத்தினார். எச்சில் மாதிரி வந்தது அதை என் பேண்டை வைத்து துடைத்தார். நான் பேண்ட் போட்டிருந்தேன். அதன் பிறகு எனது ஜட்டியையும் பேண்டையும் மாட்டி விட்டார். அவர் முன்னாடி போனார் நான் பின்னாடி வந்தேன் என் அம்மா எங்கே போனே என்று கேட்டார்கள். நான் என் அம்மாவிடம் எல்லாவற்றையும் சொன்னேன்.”



Crl.A(MD)No.338 of 2023

It clearly corroborates the statement recorded under Section 164 of Cr.P.C., and it was marked as Ex.P2.

10. The learned counsel for the appellant vehemently contended that the trial Court failed to examine whether the victim child was capable of giving evidence. However, on perusal of the evidence recorded, it is evident that the trial Court correctly followed the procedure in accordance with the law and was satisfied that the victim child understood all the questions and answered them promptly. It is also relevant to extract the relevant portion of statement recorded from the victim child under Section 164 of Cr.P.C:-

“நான் யு.கே.ஜி படிக்கிறேன். நான் ஷாலினி ஸ்கூலில் படிக்கிறேன். எங்க வீட்ல அம்மா, அப்பா, நான் இருக்கோம். என் அண்ணா முகேஷ் கண்ணன் ஷாலினி ஸ்கூல படிக்குறான். நானும் அவனும் ஒரே ஸ்கூல படிக்கிறோம். நானும் அவனும் வேன்ல ஸ்கூலுக்கு போவோம். என் வீட்டுகிட்ட தள்ளி ஒரு



Crl.A(MD)No.338 of 2023

WEB COPY

வீடு இருக்கு, அந்த வீட்டுக்கு தள்ளி ஒரு வீடு இருக்கு, அதுக்கு தள்ளி முன்ன ஒரு வீடு இருக்கு, அது தான் கந்தசாமியோட வீடு. (கந்தசாமி சின்னவனா, பெரியவனா என்று சிறுமியிடம் கேட்டதற்கு இரண்டு கையையும் விரித்து பெரியவன் என் காண்பித்தார், அவனை தெரியுமா என்று கேட்டதற்கு தெரியும் என்று கூறினார்.) கந்தசாமி என்ன காட்டுக்குள்ள கூட்டிட்டு போனான். (அது எந்த நேரம் என்று சிறுமியிடம் கேட்டதற்கு சாயந்தரம் என்று சொன்னார்) என் ஜட்டிய அவன் கழட்டுனான். துண்ட விரிச்சான். என்ன படுக்க சொன்னான். நான் படுத்தேன். அவன் என் மேல படுத்தான். அவன் உச்சா இருக்குறத என் உச்சா இருக்குறதுல வச்சான். நான் வலிக்குது வலிக்குதுனு சொல்லி அழுதேன். அவன் கொஞ்ச நேரம் இரு, வீட்டுக்கு போயிறலாம்னு சொன்னான். அவன் உச்சா போறத எடுத்து என் உச்சா போறதுல வச்ச அழுத்தும்போது எச்சி மாதிரி வந்தது. அத அவன் என்னோட கருப்பு பேண்ட எடுத்து தொடச்சான். மேல ஊதா கலர் பனியன் போட்டுருந்தேன். என் பேண்ட் கருப்பு கலர். என் ஜட்டி அரக்கு கலர். (கலர் என்ன என்று தெரியுமா என்று கேட்டதற்கு சிறுமி தெரியும் என்று கூறினார்.) அவன் என் பேண்டையும், ஜட்டியையும் கழட்டுனான்.”

It clearly corroborates the evidence of P.W.1 and the victim child.

13/17



Crl.A(MD)No.338 of 2023

WEB COPY

11. Therefore, the judgment relied upon by the learned counsel for the appellant is not helpful in the present case, as the victim child was in a sound condition to understand the questions and capable of giving evidence at the time of recording her statement and testimony. In any event, the prosecution has clearly proved the charge against the accused. Though the appellant cross-examined P.W.1 regarding a purported previous enmity to lodge a false complaint against the accused, the appellant failed to substantiate the same with any evidence. In fact, the suggestions made to P.W.1 were categorically denied by her. Although some cases are pending against the husband of P.W.1, there is no evidence to show that these were initiated by the accused by lodging any complaint. Therefore, the prosecution successfully proved the charges by adducing both oral and documentary evidence. Accordingly, there is absolutely no ground to interfere with the conviction and sentence passed by the trial court.



Crl.A(MD)No.338 of 2023

12. In view of the above, the criminal appeal is dismissed.

The respondent police is directed to secure the appellant/accused and produce him before the trial Court for taking further steps.

[G.K.I.J.] & [R.P.J.]
13.02.2026

NCC :Yes/No
Index :Yes/No
Internet :Yes
am



Crl.A(MD)No.338 of 2023

WEB COPY

To

- 1.The Fast Track Mahila Court,
Ramanathapuram District
- 2.The Inspector of Police,
Kamuthi AWPS,
Ramanathapuram District,
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.A(MD)No.338 of 2023

G.K. ILANTHIRAIYAN, J.
AND
R. POORNIMA, J.

am

Crl.A(MD)No.338 of 2023

13.02.2026