



Crl.A(MD) No.837 of

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 13.08.2026

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CORAM:

**THE HONOURABLE MR JUSTICE A. D. JAGADISH CHANDIRA  
AND  
THE HONOURABLE MR JUSTICE B.MURUGESAN**

**Crl.A. (MD) No.837 of 2023**

Gurusamy

... Appellant

Vs.

The State rep. by  
The Inspector of Police,  
Rajapalayam All Women Police Station,  
Virudhunagar District.

... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, to call for the records relating to the judgment dated 17.05.2023 made in Spl. S.C. No.119 of 2022 on the file of the Special Court for POCSO Act Cases, Virudhunagar District at Srivilliputhur and set aside the conviction and sentence imposed against the appellant/accused and allow the appeal by acquitting the accused.

For appellant : Mr.G.Karnan  
for Mr.K.M.Karunakaran

For respondent : Mr.G.Karuppasamy Pandiyan  
Counsel for State of Tamil Nadu  
(Criminal Side)



**JUDGMENT**

**A.D.JAGADISH CHANDIRA, J.**

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The instant criminal appeal is filed by the accused (hereinafter referred to as “the appellant”) seeking to set aside the judgment of conviction and sentence passed by the Special Court for POCSO Act Cases, Virudhunagar District at Srivilliputhur, (hereinafter referred to as “the Trial Court”) in Spl. S.C. No.119 of 2022, dated 17.05.2023 (hereinafter referred to as “the impugned judgment”).

2. *Vide* the impugned judgment, the Trial Court convicted and sentenced the appellant as tabulated below:-

| <b>Penal Provision</b>                                                                                                             | <b>Imprisonment</b>                                     | <b>Fine Amount</b>                                               |
|------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------|------------------------------------------------------------------|
| Section 6 of Protection of Children from Sexual Offences Act, 2012                                                                 | Rigorous Imprisonment for the remainder of Natural Life | Rs.5,000/-, in default to undergo six months simple imprisonment |
| Period of detention already undergone by the appellant was ordered to be set off and the sentence was ordered to run concurrently. |                                                         |                                                                  |

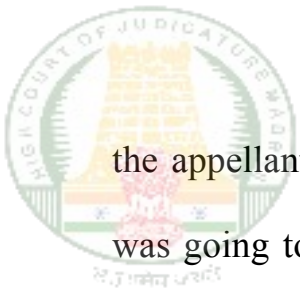
3. The Trial Court also awarded a compensation of Rs.10,00,000/- (Rupees Ten Lakhs only) to the victim child (P.W.2) and directed a copy of the impugned judgment to be sent to the District Collector for disbursing the awarded compensation after adjusting the interim compensation of Rs. 2,50,000/- (Rupees Two Lakhs Fifty only).



4. The case of the prosecution, in a nutshell, is as follows;

4.1. On 02.07.2022, the maternal aunt (hereinafter referred to as "the defacto complainant (P.W.1)") of the victim child (P.W.2) preferred a complaint (Ex.P2) with the respondent police alleging that the victim child's mother who is also her younger sister was given in marriage to the victim child's father who is also her husband's brother. Out of the said wedlock two children namely (yyyy), the victim child's brother (P.W.3) aged 12 years and (xxxx), the victim child (P.W.2) aged 7 years were born to them. While so, due to a misunderstanding with her husband and due to an illicit intimacy with another person, the victim child's mother had left the matrimonial house leaving behind the children under the care and custody of the victim child's father and her father-in-law. The father-in-law who is also the grandfather of the victim child (P.W.2) is the accused in the present case.

4.2. Further according to her complaint, the defacto complainant (P.W.1) alleged that on 01.07.2022, while she was away from home, she received an information from one Kokila, the neighbour of the victim child (P.W.2) that the victim child (P.W.2) had attained puberty and that therefore she came home and on seeing blood stains on the victim child's gown enquired about the same with the victim child (P.W.2). Upon enquiry, she came to know that on 30.06.2022 when the victim child (P.W.2) was home, the appellant gagged the victim child's (P.W.2) mouth with a cloth and further pressed his penis on the victim child's vagina. At that juncture, the victim child's brother (P.W.3) had come inside the house and questioned



the appellant. However, the appellant ignored the questions and left stating that he was going to a temple. Thereafter, the defacto complainant (P.W.1) took the victim child (P.W.2) to a private hospital and there the attending nurse had informed her that the appellant had misbehaved with the victim child (P.W.2). Thereafter, the victim child had also informed her that the appellant had behaved in a similar manner on two earlier occasions. Hence, the complaint (Ex.P2).

4.3. Based on the complaint (Ex.P2), the Sub Inspector of Police (P.W.7) registered an FIR (Ex.P8) in Crime No. 14 of 2022 for the offence under Section 376 of IPC and Section 5(l), 5(m) & 5(n) r/w. Section 6 of the POCSO Act and handed over the case for investigation to the Inspector of Police (P.W.8). The Inspector of Police (P.W.8) seized the victim child's (P.W.2) gown which was handed over by the defacto complainant (P.W.1) under Form-91 (Ex.P9). Following which, the Inspector of Police (P.W.8) examined the defacto complainant (P.W.1) and victim child (P.W.2) and recorded their statements. Thereafter, the Inspector of Police (P.W.8) went to the place of occurrence and prepared an observation mahazhar (Ex.P7) and a rough sketch (Ex.P10) in the presence of independent witnesses i.e. Ashok kumar and Suresh kumar (P.W.6) and therewith recorded their statements.

4.4. On the same day, the Inspector of Police (P.W.8) arrested the appellant near a temple in the presence of the Police Constables i.e. Balaji and Murugan and sent



him to the Rajapalayam Government Hospital for medical examination by Dr. Kalaiselvi (P.W.4). Upon examination, Dr. Kalaiselvi (P.W.4) issued an accident register (Ex.P5) mentioning the drawing of the blood as well as semen samples. Dr. Kalaiselvi (P.W.4) also opined in her accident register (Ex.P5) that there was nothing to suggest that it could be conclusively said that the appellant was either impotent or was incapable of having sexual intercourse. After the medical examination, the Inspector of Police (P.W.8) sent the appellant for remand.

4.5. Similarly, the Inspector of Police (P.W.8) the sent the victim child (P.W.2) to the Rajapalayam Government Hospital for medical examination by Dr. Pratheepa (P.W.5). Upon examination, Dr. Pratheepa (P.W.5) issued an accident register (Ex.P6) mentioning the drawing of a vaginal smear as well as a swab and the drawing of a blood sample. Dr. Pratheepa (P.W.5) also noted that there were no external or internal injuries and that the victim child's (P.W.2) hymen was intact. Thereby, Dr. Pratheepa (P.W.5) opined in her accident register (Ex.P6) that there was nothing to suggest that the victim child (P.W.2) was subjected to sexual intercourse.

4.6. Subsequently, the Inspector of Police (P.W.8) examined the victim child's brother (P.W.3) and recorded his statement. Following the same, the Inspector of Police (P.W.8) examined the Headmaster of the victim child's (P.W.2) school and obtained the victim child's brother's School Certificate (Ex.P.11) and the victim



child's School Certificate (Ex.P.12). Immediately, thereafter, the Inspector of Police (P.W.8) keeping in mind the welfare of the victim child (P.W.2) and the victim child's brother (P.W.3), sent them to the Child Welfare Home.

4.7. On 04.07.2022, the Inspector of Police (P.W.8) examined, the victim child's father, and Kokila, the neighbour of the victim child (P.W.2) and recorded their statements. Thereafter on 06.07.2022, the Inspector of Police (P.W.8) sent the victim child (P.W.2) and victim child's brother (P.W.3) to the Additional Mahila Court, Srivilliputhur for recording their statements under Section 164 of Cr.P.C. On the same day, the Inspector of Police (P.W.8) obtained a further statement from the victim child (P.W.2) and victim child's brother (P.W.3).

4.8. On 25.07.2022, the Inspector of Police (P.W.8), sent the a vaginal smear as well as a swab obtained from the victim child (P.W.2) and the blood as well as the semen samples obtained from the appellant for forensic examination through the Woman Police Constable and thereby obtained two biological reports (Ex.P13 & Ex.P14) and a serological report (Ex.P15). The biological report (Ex.P13) concluded that no semen or spermatozoa was detected from either the vaginal smear or the swab. Further, the serological report (Ex.P15) concluded that the grouping test was inconclusive. Lastly, the Inspector of Police (P.W.8) examined the official witnesses and completed the investigation in Crime No. 14 of 2022 and on 18.08.2022, filed a



final report against the appellant for the offences under Section 376 AB and Section 5(l), 5(m), 5(n) r/w. Section 6 of POCSO Act, 2012.

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5. On appearance of the appellant, the provisions of Section 207 Cr.P.C. were complied with and the Judicial Magistrate took cognizance of the said final report and committed the case to the Court of Session, Srivilliputhur, which made over the case to the file of the Trial Court which was taken up as Spl. S.C. No.119 of 2022.

6. The Trial Court framed charges against the appellants for having committed the offences under Section 5(l), 5(m), 5(n) r/w. Section 6 of POCSO Act, 2012. When the charges were read over and explained to the appellant, he pleaded not guilty.

7. In order to prove the case, the prosecution examined 8 witnesses and marked 15 exhibits and 1 material object.

8. After examination of the prosecution witnesses, when the appellant was questioned under Section 313 of Cr.P.C., on the incriminating circumstances appearing against him, he denied the same as false without offering any explanation whatsoever and he did not examine any witness or mark any document on his side.



9. The Trial Court, after hearing the arguments on both sides, found the appellant guilty and convicted and sentenced them as tabulated at paragraph 2, *supra*, *vide* the impugned judgment and challenging the conviction and sentence, the instant criminal appeal has been filed by the accused i.e. the appellant.

10. The learned counsel for the appellant submitted that the present case against the appellant is a case of false implication. The appellant is the paternal grand father of the victim child (P.W.2). The victim child's (P.W.2) mother had eloped with another person. The victim child (P.W.2) and the victim child's brother (P.W.3) were both under the care and custody of the appellant. While so, the defacto complainant (P.W.1) senior maternal aunt had compelled the appellant to execute certain properties in favour of his children and when the appellant denied to accede to her requests, she resorted to give a false complaint (Ex.P1). The learned counsel further submitted that the prosecution has not proved the charge of penetrative sexual assault as against the appellant beyond reasonable doubt as the scientific and medical evidence in the present case does not support the case of the prosecution to prove penetration of the victim child's genitals by the appellant. As per the evidence of Dr. Pratheepa (P.W.5) and as per the contents of the accident register (Ex.P6), there is absolutely no material whatsoever to probabalize that the victim child (P.W.2) was subjected to penetrative sexual assault. Even the biological report (Ex.P13) and the serology report (Ex.P15) does not go on to probabalize that the victim child (P.W.2) was subjected to penetrative sexual assault. Hence, when the scientific and



medical evidence in the present case negatives the case of the prosecution, the instant criminal appeal may be allowed and the impugned judgment convicting the appellant may be set aside.

11. *Per contra*, the learned counsel appearing for the respondent/State submitted that the evidence of victim child (P.W.2) is cogent and clear and that the appellant having been charged for a offence under Section 5(l), 5(m), 5(n) r/w. Section 6 of POCSO Act, 2012, the prosecution is entitled to the statutory presumption under Section 29 and 30 of the POCSO Act of which has to be rebutted by the appellant. Since, the appellant has failed to rebut the statutory presumption either by adducing cogent evidence, the trial Court was right in convicting and sentencing the appellants as tabulated at paragraph 2, *supra*. Therefore, he would pray that the appeal may be dismissed and the conviction and sentence maybe upheld.

12. Now what is to be seen is whether the prosecution has proved the charges of Section 5(l), 5(m), 5(n) r/w. Section 6 of POCSO Act, 2012 against the appellant beyond reasonable doubt and whether the trial Court is right in finding the appellant guilty and thereby convicting him for the offences charged for.

13. The relationship between the parties are not disputed and as per the victim child's Birth Certificate (Ex.P.1), the victim child (PW2) was born on 06.12.2014



and on the date of complaint i.e, on 02.07.2022 the victim child (PW2) was aged about eight years. The victim child's age is also not disputed by the appellant. As per the complaint (Ex.P.2), the defacto complainant (P.W.1) had averred that the victim child (P.W.2) had informed her that the appellant had two days after the "Kaliyamman Kovil Pongal" festival gagged, the victim child's mouth with a cloth and laid on her. Similarly, on 30.06.2022, the appellant laid on the victim child (P.W.2) and pressed his penis on the victim child's vagina. The victim child (P.W.2) was taken to a private hospital where the nurse (not examined) had informed the defacto complainant (P.W. 1) that someone had misbehaved with the victim child (P.W.2) and urged the defacto complainant (P.W.1) to give a complaint to the police station.

14. Based on the complaint (Ex.P2), a FIR (Ex.P8) was registered on the same day and the victim child (P.W.2) had been taken to hospital on the same day and Dr. Pratheepa (P.W.5) examined the victim child (P.W.2) and issued an accident register (Ex.P6). P.W.5 had not found any external or internal injuries on the victim child's body and she has also found the victim child's hymen to be intact and thereby she opined that there was no sign of any sexual intercourse. For better appreciation the relevant observations of Dr. Pratheepa (P.W.5) from the accident register (Ex.P6) is extracted hereunder:

Breasts- Normal – No injuries

External genitalis- Normal – No injuries

Examination of genitals – Hymen intact



காயங்கள் உடம்பில் எங்கும் தென்படவில்லை

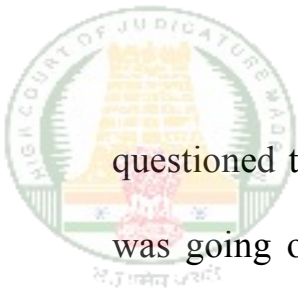
சீருமியின் கன்னித்திரை கிழியவில்லை

சீருமியிடம் உடலுறவு கொண்டதற்கான அடையாளம் தென்படவில்லை

Vaginal smear சேகரித்து கொடுக்கப்பட்டுள்ளது

15. Now coming to the evidence of the victim child (P.W.2), she had in the deck deposed about the incident wherein she had stated that the appellant her grand father had dragged her inside the house, gagged her mouth with a cloth, laid her down, removed her clothes, pressed his penis on her vagina and thereby she cried. She further deposed that at that instance, the victim child's brother (P.W.3) came inside the house where the lights were turned off and when he questioned the appellant, the appellant removed the cloth from her mouth and went away. Following which, she informed her brother that she did not understand what was going on. She also deposed that similarly on the next day when she was playing outside, the appellant repeated his actions, which eventually led to her informing the defacto complainant (P.W.1) and her being taken to the hospital.

16. Consistently, the victim child's brother (P.W.3) had also deposed that during last year on one day when he had returned back to his house after playing outside, he had noticed the lights being switched off and the victim child (P.W.2) being gagged with a cloth by the appellant. The victim child' (P.W.2) hands were tied and when he questioned the appellant as to what he was doing, the appellant had informed that he was going to the temple and thereby left the house. When he had



questioned the victim child (P.W.2) she informed him that she did understand what was going on. After two days, he was informed that the victim child (P.W.2) had attained puberty and however, the same not being true, it was later clarified to him by the defacto complainant that the appellant had misbehaved with the victim child (P.W.2) and that thereby the defacto complainant (P.W.1) had taken the victim child (P.W.2) to the hospital.

17. Dr. Pratheepa (P.W.5) has also collected vaginal smear as well as swab from the victim child's (P.W.2) genitals. The alleged blood stained gown was also recovered and though it was not exhibited before the Trial Court, a piece of gauze cloth alleged to have contained a semen stain was also recovered. Similarly, the blood as well as semen sample from the appellant was also collected. The vaginal smear as well as the swab and the piece of gauze cloth recovered were all sent along side the blood as well as semen sample from the appellant for biological and serological examination. As per the biological reports (Ex.P13 & Ex.P14), no semen or spermatozoa was detected either from the vaginal smear or from the swab. Further, as per the serological report (Ex.P15) the grouping test conducted on the semen stain from the gauze cloth and the blood as well as semen sample from the appellant was also inconclusive.



18. The appellant has been charged for the offence under Section 5(l), 5(m), 5(n) r/w. Section 6 of POCSO Act, 2012. To bring an offence under Section Section 5(l), 5(m), 5(n) r/w. Section 6 of POCSO Act, 2012, the prosecution must first prove that an offence under Section 3 of POCSO Act, 2012 has been committed. Section 3 of the POCSO Act, 2012 read as follows:

3. Penetrative sexual assault. - A person is said to commit

"penetrative sexual assault" if—

(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or

(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or

(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or

(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.

19. While construing the aforesaid provision, a person is said to have committed a penetrative sexual assault if he penetrates his penis into any orifice of



the child's body; or if he inserts any other object or part of the body into any orifice of the child's body; or if he manipulates any part of the child's body so as to cause penetration; or if he applies his mouth to any orifice of the child's body. In all these instances, the penetration or application of mouth is a must to attract the offence. Thus, the act of penetration, is a mandatory requirement for establishing an offence of penetrative sexual assault under Section 3(a), 3(b) and 3(c) of the POCSO Act, 2012 and the act of an application of mouth is a mandatory requirement for establishing an offence of penetrative sexual assault under Section 3(d) of the POCSO Act, 2012.

20. Viewed in that light, from the medical evidence i.e. accident register (Ex.P6), the oral evidence of Dr. Pratheepa (P.W.5), the scientific evidence (Ex.P13 to Ex.P15), and more particularly from the evidence of the victim child (P.W.2) and victim child's brother (P.W.3), we are of the opinion that the prosecution has failed to establish beyond reasonable doubt, the appellant's act of penetration as mandatorily required under Section 3 of POCSO Act, 2012. However, the mere absence of penetration may not absolve the appellant from having sexually assaulted the victim child (P.W.2). From the oral evidence of the victim child (P.W.2) and victim child's brother (P.W.3) it is obvious that the appellant has subjected victim child (P.W.2) to sexual assault.



21. The oral evidence of the victim child (P.W.2) is clear and cogent to establish that the appellant made physical contact with a sexual intent. The appellant having been prosecuted for having committed a sexual offence under the POCSO Act, 2012 the prosecution is entitled to the statutory presumption under Section 29 & 30 of the POCSO Act, 2012. However at the same time a burden is cast on the prosecution to prove the foundational facts before being entitled to the benefit of the statutory presumption. As stated above, taking into consideration the entire evidence on record, the overt act attributed to the appellant would only at the most constitute the offence of sexual assault under Section 7 of the POCSO Act, 2012 and would not constitute an offence of penetrative sexual assault under Section 3 of the POCSO Act, 2012. Further, considering that the victim child (P.W.2) is aged below 12 years and the appellant being a blood relative i.e. grandfather of the victim child (P.W.2) having committed an offence of sexual assault, the same would tantamount to the offence of Aggravated Sexual Assault under Section 9(m) & 9(n) punishable under Section 10 of the POCSO Act, 2012.

22. In the light of the above discussions we are of the firm view that the appellant has not committed the offence of aggravated penetrative sexual assault but has committed the offence of aggravated sexual assault under Section 9(m) & 9(n) punishable r/w. Section 10 of the POCSO Act, 2012. The trial Court without properly



CrI.A(MD) No.837 of

appreciating the evidence on record has erroneously found the appellant guilty for the offence under Section 5(l), 5(m), 5(n) r/w. Section 6 of the POCSO Act, 2012.

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23. In the result, the Criminal appeal stands partly allowed. The impugned judgment of conviction and sentence passed by the Special Court for POCSO Act Cases, Virudhunagar District at Srivilliputhur, in Spl. S.C. No.119 of 2022, dated 17.05.2023 is set aside and the appellant is convicted under Section 9 (m) & (n) r/w Section 10 of the POCSO Act and sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.5,000/-, in default, to undergo six months of simple imprisonment. The period of detention and imprisonment already undergone, if any, shall be set off. Bail bond executed by the appellant shall stand cancelled. The trial Court is directed to take steps to secure the appellant to undergo the remaining period of sentence. There shall be no further order as to compensation and the compensation paid under the impugned judgment shall hold good and and the District Legal Services Authority, Virudhunagar District is directed to ensure that the awarded compensation has been received to the victim child (P.W.2).

**[A.D.J.C., J.]      [B.M., J.]**  
**13.08.2026**

Index: Yes/No  
Internet: Yes/No  
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To

1. The Special Court for POCSO Act Cases,  
Virudhunagar District at Srivilliputhur

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2. The Inspector of Police  
Rajapalayam All Women Police Station,  
Virudhunagar District

3. The Additional Public Prosecutor  
Madurai Bench of Madras High Court  
Madurai

4. The Section Officer  
Vernacular Section,  
Madurai Bench of Madras High Court  
Madurai



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Crl.A(MD) No.837 of  
**A.D.JAGADISH CHANDIRA, J.**  
**AND**  
**B.MURUGESAN, J.**

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Pre-delivery judgment in  
Crl.A. (MD) No.837 of 2023

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