



Crl.A(MD)No.830 of 2022

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**

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Basheer Ahamadkhan

... Appellant/Sole Accused

Vs.

The State rep. by
The Inspector of Police,
All Woman Police Station,
Madurai Town,
Crime No.4/2021.

... Respondent/Complainant

PRAYER:- Criminal Appeal is filed under Section 374(2) of Cr.P.C. to call for the records relating to the judgment in Spl.S.C.No.69 of 2021, dated 25.10.2021, on the file of the Principal Special Court for Exclusive Trial of cases under POCSO Act, Madurai and set aside the same and allow this Criminal Appeal.



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

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.69 of 2021, dated 25.10.2021, on the file of the Principal Special Court for Exclusive Trial of Cases under POSCO Act, Madurai, thereby convicting the appellant for the offences punishable under Sections 5(m), 5(l), 5(i), 6 of POCSO Act.

2. The case of the prosecution is that the victim child was aged about 11 years at the time of occurrence. Her mother died and her father is a drunkard. One of her own brother is blind and he is staying in blind school hostel. Her second brother is also staying in the hostel and is studying in a private school. Therefore, elder sister



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of the victim child and her husband brought the victim child to their house and she was under the care and custody of the elder sister. The victim child's sister and her husband used to go for work in the morning and returned during the night. The accused was residing in the same compound as of victim's house. The victim child used to play with other children in the same compound. The accused's grand-children also used to come frequently to the victim child's house and the victim also used to go to the accused's house to play with his grand-children. At that time, the accused used to provide chocolate and ice-cream to the children including the victim child. While so, on 07.04.2021 and two days prior to that, when the victim child was playing in his house, he gave her ice cream and made her lie down and thereafter, removed her dress and had committed aggravated penetrative sexual assault on her consecutively. The victim child was scared to disclose the said incident to any one. On 07.04.2021 morning the victim child had informed her sister that she is suffering from severe stomach pain. Her elder sister had given her



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some cool drinks and had gone for work. On the same day at about 3.00 p.m., when no one was there in the victim's house and when she was playing in the compound, once again the accused had taken the victim child to his house and had committed aggravated penetrative sexual assault on her. Thereafter, the victim child informed about the occurrence to her sister and she was also crying without being able to tolerate the stomach pain. Immediately, the victim's sister's husband lodged a complaint on the same day at about 10.30 p.m and the victim was taken to Government Rajaji Medical College Hospital at about 11.00 p.m.

3. On the basis of the complaint, the respondent registered an F.I.R in Crime No.4 of 2021 for the offences punishable under Sections 5(l), 5(m) r/w 6 of POCSO Act. After completion of investigation, the respondent 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 5(m)



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r/w 6, 5(l) r/w 6 of POCSO Act and 376(3) of IPC and 5(i) r/w 6 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.13 and Exs.P1 to P17 were marked. On the side of the accused, no witness was examined no document was marked. The Court document Ex.C1 was marked.

5. On perusal of the oral and documentary evidence, the trial Court found the accused guilty for the offences punishable under Sections 5(m), 5(l), 5(i) r/w 6 of POCSO Act. He was sentenced to undergo Life Imprisonment and was imposed a fine of Rs.60,000/-, in default, to undergo one year Rigorous Imprisonment for an offence punishable under Sections 5(m), 5(l), 5(i) r/w 6 of POCSO Act. Out of Rs.60,000/- fine imposed on the accused, Rs. 10,000/- is Government fine and Rs.50,000/- is the compensation to be paid to the victim to meet the medical expenses and rehabilitation



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of the victim girl. Aggrieved by the same, the present appeal has been filed by the appellant.

6. The learned counsel for the appellant submitted that, although the complainant came to know about the alleged occurrence at around 3:30 p.m., the complaint was lodged only at 11:00 p.m. There was a significant delay in lodging the complaint, which was not properly explained by the prosecution. At the time of alleged occurrence, there was a full lockdown due to Covid-19, even then, P.W.1, P.W.3 and P.W.6 had gone to work, and during that time, the accused had allegedly committed the offence. It is a completely unbelievable story that was set out by the prosecution. Therefore, the prosecution has miserably failed to prove the charge under POCSO Act. P.W.1 during her cross-examination, admitted that there was previous enmity between the families since the accused had refused to pay the increased rent. Therefore, P.W.1 pressurised the accused to vacate the premises, and when the accused refused, a



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false case was allegedly foisted against him. P.W.4 is a witness whose evidence is inconsistent and does not corroborate the testimony of the victim child. Further, the evidence of P.W.6 contradicts both the prosecution's case and the testimony of P.W.1. P.W.6 deposed that the victim child had complained about stomach pain, upon which, she applied oil and then went to work. The victim child informed P.W.1 that P.W.6 had knowledge of the alleged occurrence. Therefore, the burden of proof is shifted to the prosecution as contemplated under Section 29 of POCSO Act. In view of the above, it is submitted that the entire conviction and sentence imposed on the appellant cannot be sustained and is liable to be set aside.

7. Per contra, the learned Additional Public Prosecutor appearing for the respondent submitted that the evidence of victim child is the best evidence and is clearly supported by the Doctor. The doctor evidence is very clear that the victim child was subjected



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to penetrative sexual assault. Moreover, there was absolutely no delay in lodging the complaint, that too, in the case of sexual offence. The victim child suffered mental trauma and informed P.W. 1, who in turn informed her husband and lodged a complaint, therefore, the trial court rightly convicted the appellant. 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. It is a pathetic case where the victim child's mother died three months prior to the incident and her father is an alcoholic. One of her brothers is blind and stays in the hostel of a blind school in Palayamkottai. Another brother is also staying in a hostel at Palayamkottai. The complainant is the elder sister of the victim child and was examined as P.W.1. The victim child is in the custody of



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P.W.1. P.W.1 and her husband used to go to work early in the morning and return home only at night. While the victim child was studying in the 5th standard and she used to play inside the compound along with the grandchildren of the accused. The accused used to give ice cream and chocolates to the children. Two days prior to 07.04.2021, while the victim child was playing in the accused's house, he gave her ice cream. Thereafter, he removed her clothes and committed aggravated penetrative sexual assault. He also threatened her not to disclose the incident to anyone. Subsequently, on 07.04.2021, at around 3:00 p.m., when no one else was at the victim child's house, she was playing alone inside the compound. The accused called her to his house and had committed a penetrative sexual assault on the victim child. Immediately after P.W.1 arrived at the house, the victim child informed her about the occurrence. She then informed her husband and lodged a complaint. P.W.11 registered the FIR in Cr. No. 4 of 2021 for offences punishable under Sections 5(1), 5(m) read with Section 6 of the POCSO Act.



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The victim child was subjected to a medical examination, and the doctor, who conducted the examination deposed as P.W.4. The medical certificate was marked as Ex.P5. The victim's statement recorded that she had not attained puberty and that the accused had committed vaginal penetration. She suffered severe abdominal pain and also experienced bleeding. Upon examination, P.W.4 opined that the hymen was congested, indicating a possibility of penetrative sexual assault. The relevant portion of her deposition is as follows:-

“ அந்த சிறுமியை நான் விசாரித்தபோது தன்னை அருகில் குடியிருக்கும் பசீர் அகமது கான் என்பவர் தன்னை அவர் வீட்டிற்கு கூப்பிட்டு திண்பண்டங்கள் வாங்கி கொடுத்து விரல்களை பிறப்புறுப்பில் நுழைத்தும், பின்னர் சிறுமியின் பிறப்புறுப்பில் தன் பிறப்புறுப்பை செலுத்தியும் பாலியல் ரீதியாக துன்புறுத்தியதாக தெரிவித்தார். இதே மாதிரி சம்பவம் இதற்கு முன்னதாக இரண்டு முறை நடந்திருப்பதாக தெரிவித்தார். 11வயது நிரம்பிய சிறுமியாக இருந்தாலும் மிகவும் சிறு குழந்தையாக இருந்தாள், வயதிற்கு வரவில்லை. அடி வயிறு வலிப்பதாகவும் சொன்னாள். ரத்தப்போக்கு இருப்பதாகவும் சொன்னாள்.



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நான் மேற்படி சிறுமியை பரிசோதனை செய்தபோது நான் அடிவயிற்றை தொட்டு பார்த்தபோது வலி இருப்பதை உணர முடிந்தது. பிறப்புறுப்பை பரிசோதனை செய்து பார்த்தபோது ரத்தக்கசிவு இருந்தது, ரத்த நாளங்கள் நெரிசலாக(Congestion) இருந்தது. வயதிற்கு வராத சிறுமிக்கு ரத்தக்கசிவு நுழைத்தலான பாலியல் தாக்குதல் இருந்தால் மட்டுமே ஏற்பட வாய்ப்புள்ளது. எனவே நான் பரிசோதனை செய்த சிறுமி தீவிர நுழைத்தலான பாலியல் தாக்குதலுக்கு உட்படுத்தப்பட்டுள்ளார் என்றும் அதனால் தான் அவருக்கு ரத்தக்கசிவும், ரத்தநாளங்கள் நெரிசலும் ஏற்பட்டுள்ளது என்று சான்று வழங்கினேன்.”

10. The victim child, who deposed as P.W.2, categorically stated that the accused had repeatedly committed aggravated penetrative sexual assault on her. She further stated that he threatened her with dire consequences, which prevented her from disclosing the incident to anyone. Her relevant portion of the evidence is as follows:



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“ஆஜர் எதிர் தாத்தா எங்க வீட்டுக்கு பக்கத்து வீட்ல இருக்காரு. அந்த தாத்தா ஐஸ் கீரிம் கொடுக்குறேனு என்ன வீட்டுக்குள்ள கூட்டிட்டு போயி வரலனா கழுத்த அறுத்துருவேனு சொல்லி கூட்டிட்டு போனாரு. ஐஸ் கீரிம் கொடுத்தாரு. நான் ஐஸ் கீரிம் சாப்டேன். தாத்தா என்ன கீழ படுக்க வச்ச என் ஐட்டியை கழட்டி தாத்தா ஐட்டியையும் கழட்டி அவர் ரீசஸ் போற இடத்தை எடுத்து நான் ரீசஸ் போற இடத்துல வச்ச அழுத்துனாரு. நான் சுத்துனே. என் வாய கையில் மூடிட்டாரு, அந்த மாதிரி தாத்தா என்கிட்ட மூனு நாளு பண்ணுனாரு. தாத்தா நீ அக்கா கிட்ட சொன்னினா கழுத்த அறுத்துருவேனு சொன்னாரு. அதனால நான் உடனே அக்கா கிட்ட சொல்ல, அக்கா வாசர் கம்பெனிக்கு வேலைக்கு போறாங்க. மாமா டிக்கடை வியாபாரம் பாக்குறாங்க. எங்க அக்கா சமையல் எல்லாம் செஞ்சட்டு 9.00 மணிக்கு வேலைக்கு போவாங்க. மாமா காலைல 4.00 மணிக்கு போவாரு. தாத்தா அவர் வீட்டுக்கு என்ன கூப்பிட்டப்போ அக்கா வேலைக்கு போயிருச்சு. பக்கத்து வீட்டு மாமி தான் இருந்தாங்க. நான் எனக்கு வயிறு வலிக்குதுனு கொஞ்ச நாளைக்கு முன்னால சொன்னேன். அக்கா வந்து எண்ணெய் தடவிவிட்டு ஜீஸ் வாங்கி கொடுத்துச்சு. என்ன படுக்க வச்சுட்டு மூனு மணிக்கு சாப்பிட வந்துச்சு. அன்னைக்கும் தாத்தா என்னை கூப்பிட்டாரு, வரலனா கழுத்தை அறுத்துருவேன்னு சொன்னாரு. நான் போகல என்னை கையை பிடிச்சு



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தாத்தா வீட்டுக்குள்ள கூட்டிட்டு போனாரு. என்னை படுக்க சொன்னாரு. படுக்கலனா பிளேட வைச்ச கையை அறுத்துருவேனு சொன்னாரு. நான் வெளியே வந்தனா வாயை பொத்துனாரு. எங்க அக்கா மதியம் வந்தனோ தாத்தா இப்படி பண்ணாருனு சொல்லிட்டேன். எனக்கு பிளட் வந்ததுச்சு, எனக்கு ரீசஸ் போற இடத்துல பிளட் வந்துச்சு, வலிச்சது. அக்காட்ட சொன்னோன அன்னைக்கு நைட்டே போலிஸ் ஸ்டேசன் போனோம்.”

11. When the victim child's sister returned home, the child informed her about the incident. Immediately, her sister, along with her husband, went to the police station and lodged a complaint. The sister deposed as P.W.1, and her husband deposed as P.W.3. Both categorically supported and corroborated the evidence of P.W.2. But the accused did not produce any evidence to rebut the presumption under Section 29 of the POCSO Act. P.W.2 was informed about the occurrence when P.W.1 returned home. Immediately thereafter, they went to the police station and lodged a complaint at about 11:00 p.m. Although the complaint was lodged after 7 to 8 hours, this delay cannot be construed as undue, especially in a case involving a sexual



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offence. Immediately after the registration of the complaint, the victim child was subjected to a medical examination by P.W.4. She examined the victim and recorded her statement, in which, the victim stated that her neighbor, namely the accused, had taken her to his house, given her ice cream, and then committed penetrative sexual assault on her. The victim had not attained puberty and also suffered bleeding. Therefore, the medical evidence clearly indicates that the victim girl was subjected to aggravated penetrative sexual assault by the accused. As a result of the assault, the victim child's vagina and hymen were found congested and bleeding. After the medical examination, the victim child's statement was recorded under Section 164 of the Cr.P.C., which was marked as Ex.P4. It also clearly corroborates the evidence of P.Ws. 1, 2, and 3, as well as the medical evidence. Therefore, the prosecution has proved the charges under the POCSO Act, and the trial court rightly convicted the accused. Accordingly, there is no ground to interfere with the conviction and sentence passed by the trial court.



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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
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To

1.The Principal Special Court for Exclusive Trial of cases
under POCSO Act, Madurai

2.The Inspector of Police,
All Woman Police Station,
Madurai Town,

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

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