



Crl.A(MD)No.75 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.02.2026

CORAM:

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

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Marimuthu

... Appellant/Accused

Vs.

The State represented by,
The Inspector of Police,
Keelakarai All Women Police Station,
Ramanathapuram,
Tamil Nadu.
(Crime No.2 of 2020).

... Respondent/Complainant

PRAYER:- Criminal Appeal is filed under Section 374(2) of Cr.P.C to call for the records and set aside the Judgment passed in Spl.S.C.No.22 of 2020 on the file of the learned Sessions Judge (Fast Track Mahila Court), Ramanathapuram dated 18.02.2021.



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For Appellant : Mr.Sankarasubbu
for Mr.S.Manoharan

For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

JUDGMENT

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

This appeal is directed as against the Judgment passed in Spl.S.C.No.22 of 2020, dated 18.02.2021, on the file of the learned Sessions Judge (Fast Track Mahila Court), Ramanathapuram, thereby convicting the appellant for the offence punishable under Sections 376(2)(f) (2 counts), 376(2)(n) (2 counts), 376 (AB) (2 counts), Section 506 (1) (2 counts) of I.P.C and Section 5(l) read with 6 (2 counts), 5(n) read with 6 (2 counts), 5(m) read with 6 (2 counts) and 11(i) read with 12 (2 counts) of the Protection of Children from Sexual Offences (Amendment) Act, 2019 (in short hereinafter referred to as “the POCSO Act”).



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2.The case of the prosecution is that the accused fell in love with one Isakkiyammal and married her. Out of their wedlock, they had two female children. The accused used to consume alcohol daily and abuse his wife and children. He also compelled his wife to have a physical relationship with him in the presence of the children.

3.While being so, on 26.08.2020, when the accused was alone in the house, with the intention to cause sexual assault on his own daughters, he compelled them to remove their dress and committed penetrative sexual assault on them. He also asked them not to disclose the same to anybody and threatened that he would kill them if they disclosed the same. Continuation of the same, on 06.12.2019, when the wife of the accused quarrelled with him and left the matrimonial home, the accused had committed penetrative sexual assault on his two minor children. Further, on 10.01.2020 when the wife of the accused went to Aadhiparasakthi Temple, the

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accused had again committed penetrative sexual assault on his minor daughters and he threatened them with dire consequences, if they disclosed it to anybody.

4.On the complaint, the respondent registered the F.I.R in Crime No.2 of 2020 for the offences punishable under Sections 376(2)(f)(n), 376 (AB), Section 506 (ii) (2 counts) of I.P.C and Section 5(l)(m)(n) read with 6 (2 counts) and 11(i) read with 12 of the POCSO Act. After completion of the investigation, a final report was filed and the same was taken cognizance by the Trial Court.

5.In order to bring the charges to home, the prosecution examined P.W.1 to P.W.18 and marked Exs.P1 to P19. On the side of the accused, no witnesses were examined and no documents were produced before the Trial Court.



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6.On perusal of the oral and documentary evidence, the trial Court found the accused guilty for the offences punishable under Sections 376(2)(f) (2 counts), 376(2)(n) (2 counts), 376 (AB) (2 counts), Section 506 (1) (2 counts) of I.P.C and Section 5(l) read with 6 (2 counts), 5(n) read with 6 (2 counts), 5(m) read with 6 (2 counts) and 11(i) read with 12 (2 counts) of the POSCO Act. He was sentenced to undergo Life Imprisonment (2 counts) and imposed a fine of Rs.1,000/- each in default, to undergo two years Simple Imprisonment each for the offence punishable under Section 376(2) (n) (2 counts); he was sentenced to undergo Life Imprisonment (2 counts) and imposed a fine of Rs.1,000/- each in default, to undergo two years Simple Imprisonment each for the offence punishable under Section 376(2)(f) (2 counts) and 5(n) read with 6 (2 counts); he was sentenced to undergo Life Imprisonment (2 counts) and imposed a fine of Rs.1,000/- each in default, to undergo two years Simple Imprisonment for the offence punishable under Section 376

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(AB) (2 counts) of I.P.C and 5(m) read with 6 (2 counts) of POCSO Act; he was sentenced to undergo three years Rigorous Imprisonment and imposed a fine of Rs.1,000/- each in default, to undergo six months Simple Imprisonment each for the offence punishable under Section 11(i) read with 12 of POCSO Act and he was sentenced to undergo two years Rigorous Imprisonment each for the offence under Section 506(1) (2 counts) of I.P.C. Aggrieved by the same, the appellant has filed the present Criminal Appeal.

7.The learned counsel appearing for the appellant submitted that the wife of the accused had left the matrimonial home and gone to her parents' house, and returned to the matrimonial home after two days; as such, she could not have witnessed the offence allegedly committed by the accused. One of the victim girls was examined as P.W.2. She deposed that she did not menstruate and that her periods had been delayed for three months. However, she did not inform her mother about the same. The entire case has been

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foisted as against the accused on the ground that he and his wife frequently quarrelled due to misunderstanding. Therefore, it is alleged that his wife tutored her own children to lodge a false complaint against him.

8.The learned counsel appearing for the appellant further submitted that the doctor who examined the victim girls deposed that there were no symptoms to indicate that they had been subjected to penetrative sexual assault. The doctor found no external or internal injuries on their genitalia. Further, the victim girls are very weak and did not have the physical capacity to engage in sexual activity. Therefore, their menstrual cycles were irregular. Hence, the medical evidence does not support the case of the prosecution, and the evidence of the victim girls appears to be artificial in nature. It is a clear case of misuse of the POCSO Act, that too by the accused's own daughters.



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9.Per contra, the learned Additional Public Prosecutor appearing for the respondent submitted that the mother of the victim girl was examined as P.W.1 and she categorically deposed about the conduct of the accused and the manner in which he committed the sexual assault. Both the victim girls were examined as P.W.2 and P.W.3 and their evidence clearly corroborates the testimony of P.W.1. Their evidence is cogent and trustworthy and there are absolutely no circumstances to disbelieve it. Further, the doctor who examined the victims deposed that the victim girls were very weak and the doctor did not completely rule out the possibility that they had been subjected to penetrative sexual assault. The evidence of the victims is the best evidence, even though the medical evidence did not fully support the case of the prosecution. Hence, the prosecution has proved the charges, and the Trial Court rightly convicted the appellant and the same does not warrant any interference of this Court.

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10.Heard the learned counsel appearing on either side and perused the materials available on record.

11.The accused is the father of two minor daughters. He fell in love with P.W.1 and married her. Out of their wedlock, P.W.2 and P.W.3 were born. At the relevant time, the first victim was studying in the 7th standard and the second victim was studying in the 5th standard. There were quarrels between the accused and P.W.1.

12.While being so, on 26.08.2019, when P.W.1 was not at home, the accused, in an inebriated condition, compelled the victims to remove their dresses and committed penetrative sexual assault on them. On 06.02.2019, when P.W.1 left the matrimonial home due to misunderstanding between her and the accused and went to her parents' house, the accused once again committed penetrative sexual

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assault on the victims. Further, on 10.01.2020, when P.W.1 went to the temple, he also committed penetrative sexual assault on the victims.

13. According to P.W.1, she had complete knowledge of the alleged penetrative sexual assault committed by the accused against their own children. Even then, she did not lodge any complaint. Further, from the evidence on record, it is revealed that the accused and P.W.1 used to quarrel very often, and that the accused would come home daily after consuming alcohol. The accused used to harass her for money and other reasons. Therefore, P.W.1 decided to lodge a complaint with these allegations after a period of six months from the date of the first alleged occurrence. The complaint was lodged on 01.02.2020, and the same was registered in Crime No.2 of 2020 on the file of the respondent herein. There is absolutely no explanation for the delay in lodging the complaint. P.W.1 simply stated that the victim girls had been threatened by the accused.

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14. That apart, P.W.1 deposed that the accused had sexual relationship with her in the presence of children. It being so, no prudent person would remain silent without lodging a complaint. It is not the case of the prosecution that the victims did not depose about the penetrative sexual assault committed by their father to P.W.1. P.W.1 had full knowledge about the alleged occurrence committed towards victim girls. Even then, P.W.1 did not lodge any complaint and did not disclose to anybody. Therefore, though delay in lodging a complaint is not material in cases of sexual offences, in the case on hand, the delay has played a major role in falsifying the case of the prosecution.

15. The victims had deposed as P.W.2 and P.W.3. The first victim categorically deposed that in their presence, accused and PW1 had sexual intercourse. Though she deposed that she was threatened by the accused not to disclose to anybody, when the



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accused and P.W.1 had sexual intercourse in the presence of children, definitely P.W.2 and P.W.3 could have informed about the occurrence to P.W.1. She further deposed that she had no periods continuously for three months. Therefore she was taken to hospital for treatment. The doctor advised that she had no energy and as such she had irregular cycle and she was advised to have energetic food. Therefore, it revealed that though P.W.2 and P.W.3 were aged about 12 years and 10 years at the time of alleged occurrence, they had no full growth and they were very weak. They could not be subjected for any sexual assault. Further she deposed that whenever the accused committed the alleged penetrative sexual assault, she had pain on her genitalia part and she used to go to hospital. Even then, the victims did not disclose the same to anybody about the alleged penetrative sexual assault committed by the accused. But one fine morning, they deposed to P.W.1 and it was informed through 1098 and the case was registered as against the accused.



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16.The second victim girl had deposed as P.W.3. PW3 also reiterated the evidence of P.W.2 and corroborated with each other. She also deposed that P.W.2 had pain on her genitalia part and as such, she was taken to hospital. However, the doctor said that P.W.2 was very weak and advised to have good energetic food. Even then, no one disclose the alleged offence committed by the accused to anybody. Further, immediately after registration of the F.I.R, both victim girls were subjected to medical examination. The doctor who had examined the victim girl deposed as P.W.16. She deposed that there was absolutely no possibility to have any sexual relationship with the victims since they are very weak. More particularly their hymen were intact. They had no energy to have such energy.

17.The relevant portion of the deposition of P.W.16 is as follows:

“பாதிக்கப்பட்ட சிறுமி முருகேஸ்வரியை



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விசாரித்தபோது அவர் என்னிடம் கன்னிராஜபுரத்தில் உள்ள அவரது வீட்டில் வைத்து 2019ம் அவரது தகப்பனார் அடிக்கடி உதட்டில் முத்தம் கொடுத்ததாகவும், அவரது ஆண்குறியை எடுத்து சிறுமி முருகேஸ்வரியின் பிறப்புறுப்பில் வைத்து அழுத்தியதாகவும். என்னிடம் சொன்னார். பாதிக்கப்பட்ட சிறுமி முருகேஸ்வரிக்கு நான் மருத்துவ பரிசோதனை செய்தபோது சிறுமியின் வயது பல் மருத்துவரின் அறிக்கையின் படி அவரின் வயது 11 முதல் 12 வயது இருக்கலாம். பாதிக்கப்பட்ட சிறுமியின் உடல் உறுப்புகளில் வெளிப்புற காயங்கள் எதுவும் காணப்படவில்லை. அவரின் இரத்த வகை B+ve, பாதிக்கப்பட்ட சிறுமியின் உடம்பில் மற்றும் பிறப்புறுப்பில் காயங்கள். சிராய்ப்பு காயங்கள் ஏதும் தென்படவில்லை. பாதிக்கப்பட்ட சிறுமிக்கு உடல் உறவை தாங்கும் சக்தி கிடையாது. பாதிக்கப்பட்ட சிறுமி உடல் உறவு கொண்டதற்கான அறிகுறி ஏதும் காணப்படவில்லை. கன்னிச் சவ்வு கிழியவில்லை. பாதிக்கப்பட்ட குழந்தைக்கு பிறப்புறுப்பு, மார்பகங்கள். உதடுகள் மற்றும் மற்ற உடலின் பகுதிகளில் காயங்கள் எதுவும் தென்படவில்லை. பிறப்புறுப்பில் உள் நுழைத்து உடலுறவு கொண்டதற்கான அறிகுறிகள் ஏதும் இல்லை. அடிக்கடி உடலுறவு கொண்டதற்கான காயங்கள் அவரது பிறப்புறுப்பில் காணப்படவில்லை.

அதன்பின்பு பாதிக்கப்பட்ட சிறுமி
ஆர்த்திசெல்விக்கு நான் மருத்துவ பரிசோதனை



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செய்தபோது சிறுமியின் வயது பல் மருத்துவரின் அறிக்கையின் படி அவரின் வயது 10 முதல் 11 வயது இருக்கலாம். பாதிக்கப்பட்ட சிறுமி ஆர்த்திசெல்வியை விசாரித்தபோது அவர் என்னிடம் கன்னிராஜபுரத்தில் உள்ள அவரது வீட்டில் வைத்து 2019ம் ஆண்டில் ஒரு மாதத்திற்குள் அவரது தகப்பனார் அடிக்கடி உதட்டில் முத்தம் கொடுத்ததாகவும், நான்கு தடவைகள் அவரது ஆண்குறியை எடுத்து சிறுமி ஆர்த்திசெல்வியின் பிறப்புறப்பில் வைத்து அழுத்தியதாகவும், என்னிடம் சொன்னார் பாதிக்கப்பட்ட சிறுமியின் உடம்பில் வெளிப்புறக் காயங்கள் எதுவும் காணப்படவில்லை. அவரின் இரத்தம் B+ve வகையைச் சார்ந்தது. பாதிக்கப்பட்ட சிறுமியின் உடம்பு மற்றும் பிறப்புறப்பில் காயங்கள், சிராய்ப்பு காயங்கள் இல்லை. சிறுமிக்கு உடல்உறவை தாங்கும் சக்தி இல்லை. பாதிக்கப்பட்ட சிறுமியின் கன்னித்திரை கிழியவில்லை. அவருடைய உடம்பிலோ, மார்பகங்களிலோ காயங்கள் எதுவும் இல்லை. அவரது பிறப்புறப்பில் ஒரு சுண்டுவிரலின் நுனிப்பகுதி மட்டும் அனுமதித்திருந்தது. பாதிக்கப்பட்ட சிறுமி முருகேஸ்வரிக்கு நான் வழங்கிய மருத்துவ அறிக்கை அ.சா.ஆ.6. சிறுமி ஆர்த்திசெல்விக்கு நான் வழங்கிய மருத்துவ அறிக்கை அ.சா.ஆ.7. மருத்துவ குறிப்பேடு பாதிக்கப்பட்ட சிறுமி முருகேஸ்வரிக்குரியது அ.சா.ஆ.8. குறிப்பேடு மருத்துவ ஆர்த்திசெல்விக்குரியது அ.சா.ஆ.9. என்னை விசாரித்தார். பாதிக்கப்பட்ட சிறுமி இது சம்மந்தமாக ஆய்வாளர் என்னை



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விசாரித்தார்.”

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18.Thus, it is clear that both victims did not have the physical strength to engage in any sexual activity. They could not have withstood such acts. In fact, even before the said examination, P.W.2 was taken to the hospital for her irregular periods. The doctor advised her to take nutritious food as she was very weak. Therefore, the medical evidence does not support the case of the prosecution.

19.In the overall circumstances, the entire case appears to have been foisted against the accused only to wreak vengeance on him, since he used to come home daily under the influence of alcohol and allegedly tortured P.W.1.

20.Today, P.W.1 appeared before this Court and deposed that she had lodged a false complaint against the accused because he used to come home under the influence of alcohol and tortured her.

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She stated that he did not commit any of the offences alleged in the complaint. She further deposed that she had tutored P.W.2 and P.W.3 to depose before the Court as if the accused had committed penetrative sexual assault on them. This is also corroborated by the medical evidence. She further deposed that she lodged the complaint making these allegations without understanding the consequences of the offences allegedly committed by the accused. Now, she has realized her mistake and deposed that she lodged a false complaint against the accused.

21.In view of the above, the conviction and sentence imposed on the appellant in Spl.S.C.No.22 of 2020, dated 18.02.2021, on the file of the learned Sessions Judge (Fast Track Mahila Court), Ramanathapuram, cannot be sustained and are liable to be set aside.

22.In the result, this Criminal Appeal is allowed and the



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Judgment made in Spl.S.C.No.22 of 2020, dated 18.02.2021, on the file of the learned Sessions Judge (Fast Track Mahila Court), Ramanathapuram, is hereby set aside and the appellant is acquitted of all the charges. The bail bond, if any, executed by the appellant shall stand cancelled. The fine amount, if any paid, shall be refunded to the appellant. The appellant shall be set at liberty forthwith, if he is no longer required in connection with any other case.

**[G.K.I.J.,] & [R.P.J.,]
24.02.2026**

NCC :Yes/No
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To

1.The Sessions Judge (Fast Track Mahila Court),
Ramanathapuram.

2.The Inspector of Police,
Keelakarai All Women Police Station,
Ramanathapuram,
Tamil Nadu.

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



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