



CRL.A.NO.271 OF 2017

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**JUDGMENT RESERVED ON : 08 / 08 / 2023**

**JUDGMENT PRONOUNCED ON: 29 / 09 / 2023**

**CORAM:**

**THE HON'BLE MR.JUSTICE R.SAKTHIVEL**

**CRL.A.NO.271 OF 2017**

Ramesh ... Appellant / Accused

*Versus*

State Represented by  
The Inspector of Police  
T. Palur Police Station,  
Ariyalur District.  
(Crime No.32/2017)

... Respondent / Complainant

**PRAYER:** Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, to allow this Appeal and set aside the Judgment, Conviction and Sentence vide Judgment dated 28.04.2017 in Spl.S.C.No.07 of 2017 on the file of Fast Track Mahila Court, Ariyalur.

For Appellant : Dr.G.Krishnamurthy

For Respondent : Mr.A.Gokulakrishnan  
Additional Public Prosecutor



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## **JUDGMENT**

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This Criminal Appeal is preferred by the sole accused in Spl.S.C.No.07 of 2017 on the file of Fast Track Mahila Court, Ariyalur, assailing the judgment passed by the trial court on 28.04.2017 in which he was convicted and sentenced as follows:

| <b><i>Appellant's Rank</i></b> | <b><i>Provision under which convicted</i></b>                                                                                                                          | <b><i>Sentence</i></b>                                                                                                                           |
|--------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|
| Sole accused                   | 8 of POCSO Act, 2012                                                                                                                                                   | Four years Rigorous Imprisonment and ordered to pay a fine of Rs.5,000/-, in default, to undergo Simple Imprisonment for a period of six months  |
|                                | 451 of IPC                                                                                                                                                             | One year Rigorous Imprisonment and ordered to pay a fine of Rs.2,000/-, in default, to undergo Simple Imprisonment for a period of three months. |
|                                | The substantial sentence of imprisonment shall run concurrently. The period of detention if any undergone by the accused shall be set off under Section 428 of Cr.P.C. |                                                                                                                                                  |

2. The case of the prosecution, in brief, is as follows:

2.1. The appellant is the sole accused before the Sessions Court.

The appellant / accused and the victim's family are neighbours residing next



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to each other. According to the prosecution, on 30.01.2017 at about 18.00 hours, when the victim girl aged 17 years was alone at her house, the appellant / accused aged 40 years with an intention to commit sexual assault barged into her house, offered money and grabbed and pulled her hand seeking sexual favours and thereby committed sexual assault.

2.2. When the victim's parents returned home and learned about the incident of sexual assault, a complaint (Ex-P.1) was lodged the next day i.e. 31.01.2017 by the father of the victim (P.W.1). The police registered the said complaint in Community Service Register (C.S.R) No.44 of 2017 and thereafter, on 04.02.2017, the Special Sub-Inspector of Police (P.W.7), registered case in Crime No.32 of 2017 under Section 448 of 'The Indian Penal Code (45 of 1860)' [hereinafter referred to as "IPC" for the sake of brevity] and under Section 4 of Tamil Nadu Prohibition of Women Harassment Act, 2002, and visited the place of occurrence and prepared a Rough Sketch and Observation Mahazar. Thereafter, he arrested the appellant/accused on the same day at 13.00 hours. During the investigation, he found that the victim girl was a minor on the date of offence. Hence, he



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filed an alteration report (Ex-P.7) after which he handed over the case file to the Inspector of Police (P.W.8).

2.3. P.W.8 - Inspector of Police received the case file on 17.02.2017 and started his investigation. He examined the witnesses once again and recorded their statements. He examined the Head Master of Government Higher Secondary School, T.Palur and obtained Education Certificate (கல்விச்சான்று). Thereafter, he took steps to record the statement of the victim under Section 164(5) of Code of Criminal Procedure, 1973' [hereinafter referred to as "Cr.P.C." for the sake of brevity] and then filed a Final Report under Section 448 of IPC and Section 8 of 'The Protection of Children from Sexual Offences Act, 2012' [hereinafter referred to as "POCSO Act" for the sake of brevity] before the Special Court.

2.4. The Special Court, namely Fast Track Mahila Court, Ariyalur, took cognizance of the police report filed under Section 173 of Cr.P.C. Since the appellant / accused was on bail, the Fast Track Mahila Court, Ariyalur issued summons to the appellant / accused and on his



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appearance, furnished a copy of all materials to him under Section 207 of Cr.P.C. After hearing the learned Special Additional Public Prosecutor and the learned counsel for the appellant / accused, the learned Sessions Judge, found that there are sufficient materials available on record to presume that the appellant / accused committed the offence and therefore, framed charges under Section 451 of IPC and Section 8 of POCSO Act against the appellant / accused and read it over and explained the charges to him. The appellant / accused pleaded not guilty to the charges. Hence, trial was ordered.

2.5. The prosecution in order to prove its case, examined 8 witnesses as P.W.1 to P.W.8 and marked Ex-P.1 to Ex-P.8. The appellant / accused side examined one Kamali-daughter of appellant / accused as D.W.1.

2.6. After analysing the oral and documentary evidence, the trial court came to the conclusion that the charges under Section 451 of IPC and Section 8 of POCSO Act were proved against the appellant / accused and thereby, convicted and sentenced him as stated supra.

2.7. Feeling aggrieved by the conviction and sentence, the appellant / accused has preferred this Criminal Appeal.



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3. The points that arise for consideration in this appeal are as

follows:

i) Whether the prosecution has proved the offence under Section 8 of POCSO Act against the appellant / accused?

ii) Whether the prosecution has proved the offence under Section 451 of IPC against the appellant / accused?

iii) Is there any reason for this Court to interfere with the judgment passed by the trial Court?

**Discussion and decision for Point Nos.(i) (ii) and (iii)**

4. The learned counsel for the appellant / accused argued that the trial court didn't evaluate the evidence properly; that the trial court miserably failed to consider the prior dispute and grudge between the appellant /



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accused and the victim's family; that the trial court did not consider the delay in registering the FIR and that the trial court failed to appreciate the contradictions in the evidence of witnesses and the defects in the investigation. He further submitted that the appellant / accused and the victim are neighbours and the appellant / accused had no intention to commit the offence as alleged. Further, he submitted that, even while assuming that the prosecution case is true, the materials and evidence available on record would not be sufficient to attract the offence under Section 8 of POCSO Act and the offence under Section 451 of IPC. Accordingly, he prayed to allow the appeal and acquit the appellant / accused from the charges.

5. Per Contra, the learned Additional Public Prosecutor has submitted that on the date of the offence, the victim girl was 17 ½ years old. The prosecution has proved it by producing the Higher Secondary Course Certificate (Ex-P.5) and the Education Certificate (கல்விச்சான்று) (Ex-P.8) issued by the Head Master concerned. The learned Additional Public Prosecutor further submitted that P.W.1 to P.W.6 are residing in the same locality and they have no animosity against the appellant / accused. In these

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circumstances, the evidence of P.W.1 to P.W.6 is trustworthy and believable and there is no reason to reject their evidence. Further, the evidence of the victim girl is corroborated by other witnesses. Hence the prosecution has proved the charges under Section 451 of IPC and Section 8 of POCSO Act beyond reasonable doubt. The trial court after considering the materials and evidence thoroughly has passed the judgment. Accordingly, he prayed to dismiss the appeal and sustain the judgment passed by the trial court.

6. Heard the submissions made on either side and perused the entire materials available on record.

7. P.W.7 - Special Sub-Inspector of Police prepared a rough sketch (Ex-P.3) and Observation Mahazar (Ex-P.4). As per Ex-P.3, the victim's house and the appellant / accused house are situated on the South of East West Mud Road. The houses of P.W.5, P.W.6 and witness Kolanjinathan are situated on the North of East West Mud Road i.e. opposite the victim's house. The said facts were not denied by the appellant / accused.

8. P.W.1 is the father of the victim. He deposed that the victim



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was aged 17 years and pursuing 1<sup>st</sup> Year Engineering Course and that the appellant / accused residing in the same street owns a backyard near P.W.1's house. He further deposed that, the victim narrated the incident when he returned home on the day of the alleged occurrence and thereafter, P.W.1 lodged the complaint marked as Ex-P.1 with the T.Palur Police Station .

9. P.W.2 is the victim in this case. She deposed that the appellant/ accused is a resident of the same street and the alleged occurrence happened on 30.01.2017 at about 18.00 hrs. P.W.2 further deposed that after her mother went to the Bank along with the appellant / accused's wife, the appellant / accused entered the house leaving the door ajar without bolting it and pushed her onto the cot asking her to sleep with him (இப்போது படு படு என்று சொன்னார்). This flashed in her mind a previous haumatic incident that took place a month ago, in which appellant / accused offered a sum of Rs.100/- seeking sexual favours from the victim for which the victim being shocked reacted by throwing away the money sobbing. Consequently, she pushed the appellant / accused aside and ran out of the house sobbing and found the daughter of the appellant / accused Kamali, Susila and Reeta

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outside fetching water from a public tap. P.W.2 narrated the incident to them and thereafter, she went to her cousin Pitchaipillai's (P.W.4) house and told him about the incident. After the arrival of the victim's parents, P.W.2 and others informed them about the incident. The complaint (Ex-P.1) was lodged on the next day morning.

10. P.W.3 is the mother of the victim. She deposed that on the date of occurrence, she left the victim in the house at about 17.00 hours and went to Bank and that she learnt about the incident from her daughter and others when she returned home.

11. P.W.4 is the cousin of the victim. He deposed that on the date of occurrence, the victim girl came to his house at about 06.30 p.m. and narrated about the occurrence. P.W.4 pacified her and sent her home along with her mother when she returned from the bank.

12. P.W.5 is Tmt.Susila residing opposite the victim's house. She



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deposed that on the date of occurrence at about 06.00 p.m., the victim girl (P.W.2) hurriedly ran out of her house screaming towards P.W.5's house.

P.W.5 further deposed that when she enquired the victim, the victim told her that the appellant / accused trespassed into her house and assaulted her sexually.

13. P.W.6 - Vaithiyalingam deposed about the preparation of Rough Sketch Ex-P.3 and Observation Mahazar Ex-P.4 by the Special Sub-Inspector of Police (P.W.7).

14. P.W.7 - Thiru. Kamaraj, Special Sub-Inspector of Police who was attached to T.Palur Police Station deposed that on 31.01.2017 at about 10.00 a.m., while he was on duty, P.W.1 came to the Police Station in person and filed a written complaint. He registered the complaint in C.S.R.No.44 of 2017. On 04.02.2017 he realized that it was a cognizable offence and then registered F.I.R. in Crime No.32 of 2017 (Ex-P.6) and started investigation. He deposed that he arrested the appellant / accused on 04.02.2017 at 13.00 hrs. He further deposed that since the age of the victim girl was below 18



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years on the date of occurrence, he altered the section of law accordingly. The alteration report was marked as Ex-P.7. He then handed over the case file to the Inspector of Police for further investigation.

15. P.W.8 – Thiru. Radhakrishnan is the Inspector of Police. He deposed that he examined the witnesses and recorded their statements. He further deposed that he examined the Headmaster of Government Higher Secondary School, T.Palur and obtained the Educational Certificate (Ex-P.8) of the victim and that after completing the investigation, he filed a charge sheet under Section 448 of IPC and Section 8 of POCSO Act.

**Age of the victim:**

16. The victim girl (P.W.2) deposed that she studied 1<sup>st</sup> standard to 6<sup>th</sup> standard in her own village and 6<sup>th</sup> standard to 12<sup>th</sup> standard in Government Higher Secondary School, T.Palur. She deposed that her date of birth is 21.06.1999 and the same matches with the date of birth mentioned in her Higher Secondary Course Certificate marked as Ex-P.5 and the Educational Certificate marked as Ex-P.8.

17. Learned counsel for the appelleant argued that Ex-P.8



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Education Certificate was not marked through the author of the document.

Hence, the said document is inadmissible in law.

17.1. Further he argued that the P.W.2 was pursuing 1<sup>st</sup> year Engineering Course. Hence she naturally ought to have completed 18 years of age. He drew the attention of the Court to Ex-P.1 and argued that on the date of alleged occurrence, P.W.2 was a major.

17.2. He further submitted that the prosecution did not collect Ex-P.5 - Higher Secondary Course Certificate during investigation and copy of the same was also not furnished to the appellant. Surprisingly, Ex-P.5 was marked while P.W.2 was examined in Court. Hence, no opportunity was provided to the appellant / accused to disprove Ex-P.5. The Trial Court thus, failed to adhere the principles of natural justice. The procedure adopted by the trial court while marking Ex-P.5 is incorrect causing prejudice to the appellant / accused. Accordingly, he prayed that Ex-P.5 should not be considered as evidence.

18. This Court perused the P.W.2's evidence along with Ex-P.5



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and Ex-P.8.

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18.1. PW 2 was pursuing her 1<sup>st</sup> year Engineering Course at the time of alleged occurrence which doesn't necessarily mean that she was a major at that time.

18.2. The Inspector of Police collected Ex-P.8 document from the Headmaster of Government Higher Secondary School, T.Palur. In Ex-P.8, date of birth of P.W.2 is mentioned as 21.06.1999. Ex-P.8 was marked through P.W.8. The appellant / accused side neither raised any objection nor questioned about Ex-P.8.

18.3. It's true that Ex-P.5 - 12<sup>th</sup> Higher Secondary Course Certificate was marked while examining P.W.2 and copy of the same was not furnished to the appellant / accused under Section 207 of Cr.P.C. It's apposite to mention here that while marking Ex-P.5 the appellant / accused did not raise any objection for marking the same. The appellant / accused side put a suggestion to P.W.2 that at the time of admission in school the age of the

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victim was understated, which she denied.

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18.4. A combined reading of the evidence of P.W.1 to P.W.3, Ex-P.5 and Ex-P.8 would prove that on the date of occurrence, P.W.2 was a minor. Hence, the prosecution has proved that the date of birth of the victim is 21.06.1999. Therefore, on the date of the alleged offence, the victim has completed 17 ½ years only and not 18 years of age. Hence, the victim was a 'child' as per Section 2(d) of POCSO Act.

**Presumption under Sections 29 and 30 of POCSO Act:**

19. The victim girl (P.W.2) in her evidence has deposed that on 30.01.2017 while she was alone in her house as her mother went to the Bank along with the appellant / accused's wife, the appellant / accused entered the house leaving the door ajar without bolting it and pushed her onto the cot asking her to sleep with him (இப்போது படு படு என்று சொன்னார்). The victim further stated that she pushed the appellant / accused aside and ran out of the house. This evidence is supported by other witnesses. Hence, this



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Court is of the view that the prosecution has established the foundational facts beyond reasonable doubt and therefore the prosecution is entitled to the presumption under Section 29 and Section 30 of POCSO Act which reads thus:

***'29.Presumption as to certain offences.-***

*Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.*

***30.Presumption of culpable mental state***

*(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.*

*(2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist*



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*beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.'*

Therefore, the onus is now upon the appellant / accused to rebut the presumption.

**Defence of the appellant / accused:**

20. The fact that P.W.1 and the appellant / accused are neighbours residing next to each other; that the appellant/accused purchased a backyard land from one Kaliyaperumal who is a cousin of P.W.1 and that there was a quarrel between P.W.1 and the appellant / accused while fetching water from public tap a year before the alleged occurrence are not disputed by the prosecution. The defence of the appellant / accused is that, the above facts led to foisting the false complaint against him.

20.1. D.W.1. in her evidence deposed that on 30.01.2017 (Friday) due to rain, water stagnated near the victim's house. While she was fetching water from the public tap, which is situated nearby victim's house, her father (appellant / accused) walked past the said place slipped and



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suddenly fell down. She further deposed that her father (appellant / accused) at that time shouted at P.W.1 saying that 'you should have cleared the stagnant rain water by filling with mud.' (மழை பெய்து தண்ணி கிடக்கிறதே மண்வெட்டி இந்த இடத்தில் போட மாட்டீர்களா). She further deposed that no such occurrence as alleged by the prosecution occurred and if really so, she herself would have filed a complaint against her father (appellant / accused).

20.2. The defense of the appellant / accused till the stage of examination under Section 313(1)(b) of Cr.P.C. was that the victim's family had purchased land from the cousin of P.W.1 and the wordy quarrel with regard to fetching of water from the public water tap one year before the date of alleged occurrence. But all of a sudden D.W.1 has introduced a new defence which does not inspire confidence of this court.

20.3. It's to be noted, D.W.1 in her deposition has deposed that she and the victim are close friends and on the date of the alleged occurrence the victim's mother and her mother went outside together. P.W.2 also deposed



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that her mother went out with D.W.1's mother (appellant / accused's wife) to

Bank. It is also a fact that P.W.1 to P.W.6 are residing in the same locality.

From these evidence, it is clear that there is no animosity between the witnesses and the appellant / accused. Therefore, this Court is of the view that there is no grudge between both families. Hence, the defence of the accused deserves to be rejected.

21. Learned counsel for the appellant / accused submitted that the evidence of P.W.2 does not attract Section 7 read with 8 of POCSO Act. This Court has carefully considered the above submission. Section 7 of POCSO Act reads thus:

***'7.Sexual assault***

*Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.*

22. P.W.2 clearly deposed that after her mother went to the Bank



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along with the appellant / accused's wife, the appellant / accused barged into the house leaving the door ajar without bolting it and pushed her onto the cot asking her to sleep with him (இப்போது படு படு என்று சொன்னார்). Her evidence has been corroborated by the other witnesses. The conduct of the accused would clearly show his intention to commit sexual assault. The act of barging in and pushing the victim onto bed with sexual intent and asking her to sleep with him or seeking other sexual favours would amount to sexual assault.

23.In this regard, it is apposite to cite the decision of the Hon'ble Apex Court in ***ATTORNEY GENERAL FOR INDIA VS. SATISH AND ANOTHER [2022 (5) SCC 545: 2021 SCC ONLINE 1076]*** wherein it is held thus:

*'44. In the light of the afore-discussed legal position, if the findings recorded by the High Court are appreciated, it clearly emerges that the High Court fell into error in case of the accused-Satish in holding him guilty for the minor offences under Sections 342 and 354 of IPC and acquitting him for the offence under Section 8 of the POCSO Act. The*



*High Court while specifically accepting the consistent versions of the victim and her mother i.e. informant about the accused having taken the victim to his house, having pressed the breast of the victim, having attempted to remove her salwar and pressing her mouth, had committed gross error in holding that the act of pressing of breast of the child aged 12 years in absence of any specific details as to whether the top was removed or whether he inserted his hands inside the top and pressed her breast, would not fall in the definition of sexual assault, and would fall within the definition of offence under [Section 354](#) of the IPC. The High Court further erred in holding that there was no offence since there was no direct physical contact i.e. “skin to skin” with sexual intent.*

*45. The interpretation of [Section 7](#) at the instance of the High Court on the premise of the principle of “ejusdem generis” is also thoroughly misconceived. It may be noted that the principle of “ejusdem generis” should be applied only as an aid to the construction of the statute. It should not be applied where it would defeat the very legislative intent. As per the settled legal position, if the specific words used in the section exhaust a class, it has to be construed that the legislative intent was to use the general word beyond the class denoted by the specific words. So far as [Section 7](#) of the POCSO Act is concerned, the first part*



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*thereof exhausts a class of act of sexual assault using specific words, and the other part uses the general act beyond the class denoted by the specific words. In other words, whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, would be committing an offence of “sexual assault”. Similarly, whoever does any other act with sexual intent which involves physical contact without penetration, would also be committing the offence of “sexual assault” under Section 7 of the POCSO Act. In view of the discussion made earlier, the prosecution was not required to prove a “skin to skin” contact for the purpose of proving the charge of sexual assault under [Section 7](#) of the Act.'*

Hence, this Court is of the view that the act of the appellant/accused clearly falls within the meaning of “any other act with sexual intent” under Section 7 of POCSO Act.

24. Further, learned counsel for the appellant / accused has submitted that even while assuming the alleged occurrence to be true, the said act would attract only Section 11 of POCSO Act (Sexual Harassment).



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Physical contact with sexual intent is what differentiates Sexual assault from Sexual Harassment. This Court is of the view that in this case since there is clear physical contact involved, Section 7 would be attracted and not Section 11 of POCSO Act.

25. The trial court considered the evidence and materials and rightly concluded that the prosecution proved the offences under Section 451 of IPC and Section 7 read with 8 of POCSO Act beyond reasonable doubt. There is no reason to interfere with the conviction recorded by the trial court. The trial court imposed sentence of four years rigorous imprisonment for the offence under Section 7 read with 8 of POCSO Act. Considering the facts and circumstances of the case and the gravity of the alleged act of the appellant / accused, this Court is of the view that imposing three years rigorous imprisonment would be proportionate to the offence. Accordingly, this Court reduces the sentence for the offence under Section 7 read with 8 of POCSO Act from four years to three years while sustaining the conviction. The sentence for the offence under Section 451 of IPC shall be sustained.

26. Resultantly, the Criminal Appeal is partly allowed in the



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following manner:

(i) Conviction and sentence under Section 451 of IPC is sustained;

ii) The Conviction for the offence under Section 7 read with Section 8 of POCSO Act is sustained;

iii) The sentence for the offence under Section 7 read with Section 8 of POCSO Act is modified to three years with a fine of Rs.5,000/-, in default of payment of fine, the appellant/accused shall undergo simple imprisonment for a period of three months;

iv) Substantial sentence of imprisonment shall run concurrently;

v) The period of detention if any,



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underwent by the appellant / accused shall be  
given set off under Section 428 of Cr.P.C.;

vi) Out of the total fine amount, a sum of  
Rs.5,000/- shall be paid to the victim under  
Section 357 of Cr.P.C.

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Neutral Citation: Yes  
Speaking  
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To

- 1.The Fast Track Mahila Court  
Ariyalur.
- 2.The Inspector of Police  
T. Palur Police Station,  
Ariyalur District.
- 3.The Public Prosecutor  
High Court of Madras.



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**R.SAKTHIVEL, J.**

SPP/TK

**PRE-DELIVERY JUDGMENT MADE IN**  
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