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Crl.A.(MD).No.363 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	31.08.2023
Pronounced on	22.12.2023

CORAM

**THE HON'BLE MR JUSTICE M.S.RAMESH
AND
THE HON'BLE MR JUSTICE M.NIRMAL KUMAR**

Crl.A.(MD) No.363 of 2022

Veniskumar

...Appellant/Accused

Vs.

The State
Rep. by Inspector of Police,
All Women Police Station,
Rajapalayam, Virudhunagar District.
(Crime No.17/2018)

...Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 of Cr.P.C., to call for the records, set aside the judgment and conviction passed by the learned Special Court for Exclusive Trial of Cases under Protection of Children from Sexual Offences Act, 2012 Judge, Virudhunagar District, at Srivilliputhur in Spl.S.C.No.7 of 2019 dated 23.12.2021 and acquit the appellant.

For Appellant : Mr.R.L.Dhilipan Pandian



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for Mr.D.Rajaboopathy

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

JUDGMENT

M.S.RAMESH,J.

The present appeal has been filed against the judgment of the Special Court for Exclusive Trial of Cases under the Protection of Children from Sexual Offences Act, 2012, (hereinafter referred to as 'POCSO Act') Virudhunagar District at Srivilliputhur, dated 23.12.2021, convicting the appellant herein for the offences under Sections 366, 342 Indian Penal Code (hereinafter referred to as 'IPC') and Section 6 read with Section 5(i) and (l) of POCSO Act and imposing various sentences and fine, including life sentence.

2. The brief case of the prosecution is that, the child, who was born on 15.01.2004 and aged about 14 years, 6 months and 15 days at the time of the incident, was sexually assaulted by the appellant herein through aggravated, penetrative sexual assault. As per the final report, the child,



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along with her relative by named Anitha, were studying in the front of the house of her grandfather on 29.07.2018 during night hours. At about midnight on 30.07.2018, after Anitha had gone to her house, the child went inside her grandfather's house for leaving her school books and thereafter, had come out at 00.30 hours for attending nature's call outside the house. At that point of time, the appellant had abused the child with obscene words and threatened her at knife point asking her not to raise her voice and that, if she attracts the attention of her grandfather, he would kill her grandfather too. After that, he had gagged the mouth of the child and pulled her into the neighbour house of one Nagalakshmi and locked the house from inside. In spite of the child begging him to leave her, he threatened to stab her and thereafter had undressed her and committed aggravated, penetrative sexual assault, many times, between 00.30 hours and 04.00 hours, in spite of the child undergoing her menstrual period. The child had suffered injuries in her private parts. Since the accused had uttered obscene words and criminally intimidated her, apart from wrongful confinement and kidnapping and committed aggravated, penetrative sexual assault many times, he was charged for having committed the offences under Sections 294(b), 506(2), 366, 342 IPC and Section 6, read with Section 5(h)(i)(l) of POCSO Act.



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3.1. During the trial, the mother of the child was examined as PW.1, who narrated the incident she heard from the child with regard to the aggravated, penetrative sexual assault.

3.2. PW.2 is the child, who had deposed that, during the month of July, 2018, she was studying in Xth standard and that her date of birth is 15.01.2004. She stated that on 29.07.2018, she had gone to her grandfather's house for studying and that on that said day, till midnight, she along with Anitha were studying together in the front of her grandfather's house. After Anitha had left to her house, the child had left the books inside her house and had come out to change her sanitary pads. At that time, the appellant had come by that side and picked up a normal conversation. Thereafter, he compelled her to come alone and when she refused, stating that she would inform her grandfather, the appellant had wielded a knife and threatened to stab her grandfather. He then gagged her mouth and pulled her into the next door house of one Nagalakshmi and locked the doors from inside. There was nobody in the house of Nagalakshmi at that point of time. He then threatened her saying that he would inform everyone that she had come at



10.00 P.M. itself. Thereafter, he had switched off the light and undressed her and committed aggravated, penetrative sexual assault many times, till about 04.00 A.M. of 30.07.2018. When she woke up at 07.00 A.M. in the morning, she found that the appellant was not there and the door was locked outside. After some time, one Arumugakadavul and Saravanakumar (PW.7) had opened the door. She did not tell anything to them, but went back to her grandfather's house. She then narrated the entire occurrence to her uncle Jayakumar and thereafter, her mother gave a complaint at the All Women Police Station, Rajapalayam on 30.07.2018 at about 03.00 P.M.

3.3. PW.3 is the mahazar witness, before whom the observation mahazar was prepared and marked as Ex.P.5.

3.4. PW.4 is also the mahazar witness, who had identified his signature as Ex.P.6.

3.5. PW.5 is the grandfather of the child. As per his oral testimony, the child was studying in the night on the day of the incident and when he got up around 11.30 P.M., his granddaughter was not to be found. He had then woke up his grandson Arumaikodi and enquired about the child and



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thereafter informed the child's mother. In the morning, he had then left for his work and when he returned at 04.00 P.M., the Police had enquired him.

After two days, the child had informed him about the assault committed by the appellant. In the cross-examination, he had stated that he had not informed the Police about the assault committed by the appellant on his granddaughter or about the opening of the door by two persons, where the child was locked up.

3.6. PW.6 is the uncle of the child, through whom the dresses of the child MO.1 and MO.2 were recovered in his presence and his signature in the seizure report was marked as Ex.P.8.

3.7. PW.7 was treated as a hostile witness by the prosecution.

3.8. The girl Anitha, who was studying with the child, was examined as PW.8. She testified that between 08.00 P.M. and 11.00 P.M. on 29.07.2018, they were studying in the house of PW.5 and thereafter, she had went back to her house.



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3.9. PW.9 is the Grade-I Police Constable, who had taken the First Information Report to the Court on 30.07.2018.

3.10. PW.10, who is the Police Head Constable, is the witness before whom the appellant was arrested and a long knife (MO.5) was marked. So also, the shirt of the appellant was seized in their presence. These seizure reports were marked as Exs.P.10 and P.11 and the admissible portion in the confession statement was marked as Ex.P.12.

3.11. PW.11 is the doctor, who had rendered first aid to the child on 30.07.2018 at 07.50 P.M. In her accident register (Ex.P.13), she had opined that the child may have been subjected to sexual assault, that her hymen was not intact and there were skin ruptures in her genitals.

3.12. PW.12 is the doctor, who had examined the appellant and in his report (Ex.P.14), he had stated that the appellant was sexually virulent.

3.13. PW.13 is the Sub-Inspector of Police, who had registered the FIR (Ex.P.15) in Crime No.17/2018 on 30.07.2018.



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3.14. PW.14 is the Investigating Officer, through whom Form-95 (Exs.P17 to P.19), section alteration report (Ex.P.20) and the biological and serological reports (Exs.P.22 to P.25) were also marked. In his evidence, he had spoken about the investigation conducted by him, the arrest of the appellant and seizure of the material objects.

4. When the trial was pending and the evidence of PW.2/child was closed, the appellant had filed a miscellaneous petition in Crl.M.P.No.976 of 2021 under Section 311 Cr.P.C. to re-call the witness PW.2 for further cross-examination. This application was allowed by the Court on 07.11.2021. In furtherance to the permission granted, PW.2 was re-called and cross examined on 22.11.2021. In the cross-examination, a letter dated 16.10.2021, written by the child to the appellant, was marked through PW.2 as Ex.D.1. A similar letter, also dated 16.10.2021, was received by the trial court on 01.11.2021 through registered post. While the registered cover was marked as Court document Ex.C.1, the letter was marked as Ex.C.2 by the Court.



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5. In this background, the trial court had placed reliance on the oral and documentary evidences before it and had come to the conclusion that the victim was a child born on 15.01.2004 and was 14 years, 6 months and 15 days at the time of incident. Much reliance was placed on the evidence of the child PW.2 and since the child had denied of any love affair with the appellant and also by taking into account that the appellant was a married man, aged about 25 years at the time of the incident, had ruled out the possibility of any love affair. In this background, reliance was placed on the other evidences on record and ultimately, the trial court had come to the conclusion that the appellant was guilty for various offences, including the offence of having committed aggravated, penetrative sexual assault, as defined under the POCSO Act, through its judgment passed in Spl.S.C.No.7 of 2019 dated 23.12.2021.

6. The learned counsel for the appellant mainly placed reliance on Exs.D.1 and C.2 and submitted that, when the child had categorically stated that the statements made by her earlier with regard to the incident was only at the compulsion of her mother (PW.1) and the Police and that she was the author of both Exs.D.1 and C.2, the earlier statements of the child cannot be



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given much credence and hence, the occurrence itself is doubtful.

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7. Per contra, the learned Additional Public Prosecutor submitted that the trial court has taken into account all the evidences on record and had categorically established that the girl was a child aged about 14 years at the time of the incident and in view of her statement, which has been corroborated by the other witnesses about the incident of the appellant threatening her at knife point and committed the assault, the trial court correctly found the appellant guilty and imposed the sentence.

8. We have given careful consideration to the submissions made by the respective counsels.

9. In the original judgment of the trial court, the list of witnesses and the exhibits on the accused side were both shown as 'Nil'. After the judgment was pronounced, an application in Crl.M.P.(MD) No.1189 of 2022 under Section 362 Cr.P.C., was filed seeking for inclusion of Exs.C.1, C.2 and D.1 in the list of documents in the judgment dated 23.12.2021. By an order dated 27.10.2022, this application was allowed, on the ground that the



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mistake of omitting to mention Exs.C.1, C.2 and D.1 in the list of documents was a clerical mistake and accordingly, an order to correct the list of documents in the judgment was made.

10. The appeal revolves around the issue, as to the consequences that may arise, owing to the non-consideration of Exs.D.1 and C.2. In order to analyse such consequences, it would be necessary to deal with the contents of Exs.D.1 and C.2 at first.

11. Ex.D.1 is the original letter dated 16.10.2021, hand-written by PW.2 to the appellant. This letter was marked by re-calling PW.2, pursuant to the order passed in Crl.M.P.No.976 of 2021 filed under Section 311 Cr.P.C. It would be relevant mention here that, originally, the cross-examination of PW.2 was closed on 25.03.2021 and thereafter, when this letter dated 16.10.2021 was discovered, PW.2 came to be re-called and subjected to cross-examination on 22.11.2021. In her cross-examination, PW.2 had made two material statements, namely that the appellant had not caused sexual assault on her by threatening her with a knife and her



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affirmation that the letter was written only by her. The said letter was also marked through PW.2 as Ex.D.1.

12. Likewise, a similar hand-written letter, also dated 16.10.2021, was sent by PW.2 to the trial court through registered post. The registered cover, received by the Court on 01.11.2021, was marked as Court document Ex.C.1 and the hand written letter of PW.2 as Ex.C.2.

13. The entire contents of Ex.C.2 is found in Ex.D.1, apart from a couple of additional sentences in Ex.D.1, whereby PW.2 had expressed her immense love she possessed towards the appellant. Thus, if the contents of the letter (Ex.D.1) is analysed in its entirety, it would serve consideration of Ex.C.2 also.

14. In Ex.D.1, PW.2 had stated, in unequivocal words, about the love she had for the appellant. She had stated that on two previous occasions, she had left her house and had gone away with the appellant, to which her mother had given complaints before the Police Station and that resulted in a



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commotion. The letter also indicates that she was aware that the appellant was already married and that his wife was fighting with him daily, because of the appellant talking with her. She had further stated that her mother had, on several occasions, asked the child to forget the appellant, to which, she had refused, stating that she will not forget the appellant. After her mother had given the present complaint, PW.2 had quarrelled with her mother, stating that she would not come either to the Court or the Police Station, to give her testimony. Thereafter, she states that her mother had deceived her by falsely assuring her that, after she comes to the Court and gives her oral statements, she would permit her to get married to the appellant. In view of this promise made by her mother, she had come to the Court and given her oral testimony, to which, she had expressed her apologies to the appellant. She also added that, because of her mother's promise, she had made the oral statements before the Court, as tutored by her mother and the Police. She further stated that she would cross the age of 18 years in the month of January, 2020 and when she becomes a major, nobody can prevent her from becoming the appellant's wife. Apart from all these statements, she had repeatedly expressed that she was in love with the appellant and that she would marry him only.



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15. All these sentences in Ex.D.1 has been reiterated in Ex.C.2 also, which is the letter sent by the child directly to the Court. For the sake of more clarity, both Ex.D.1 and Ex.C.2 are extracted hereunder:-



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அன்புள்ள மாமா வெங்கட் குடிசை,
நான் கமிஷனும், ராஜ்யம் உதிகள் பலரும்
நினைவிற்குக் கொடுக்கிறேன். நீதித் துறையில் என்னால்
உதவிக் குடியாகு. நா துறையில் என்னால் துறையில் துறையில்
உதவிக் குடியாகு. உதிகள் குடி உதவிக் குடியாகு. துறையில் துறையில்
ராஜ்யம் அம்மா பொலிஸ் ஸ்டேசன்ஸ் மூலம் கொடுத்த
பிரச்சனையை சீர்திருத்த. உதிக் குடியாகு. துறையில் துறையில்
ராஜ்யம் நீதித் துறையில் துறையில் துறையில்
உதவிக் குடியாகு. ராஜ்யம் ராஜ்யம் ராஜ்யம்
உதவிக் குடியாகு. உதிகள் மாநில ராஜ்யம்.
நான் உதிகள். உதிகள் குடியாகு. ராஜ்யம் அம்மா
ராஜ்யம் உதிகள். உதிகள் ராஜ்யம் அம்மா "மூலம்" கொடுத்த
அம்மா உதிகள். உதிகள் ராஜ்யம் உதிகள் "உதிகள்"
உதிகள் அம்மா உதிகள் உதிகள் உதிகள் உதிகள்
அம்மா உதிகள் உதிகள் உதிகள் உதிகள் உதிகள்
நீ உதிகள். ராஜ்யம் உதிகள். உதிகள் உதிகள் உதிகள்
ராஜ்யம் உதிகள். உதிகள் உதிகள் ராஜ்யம் உதிகள்
உதிகள் உதிகள். உதிகள் உதிகள் உதிகள். (I am happy
to see you) உதிகள் 1/2 உதிகள் உதிகள் உதிகள்
உதிகள். கமிஷனும் உதிகள் உதிகள் உதிகள் உதிகள்
உதிகள். உதிகள் உதிகள் உதிகள் உதிகள் உதிகள்
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உதிகள் குடியாகு. உதிகள் உதிகள் உதிகள்.

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I love you Mama  → VR. 
I Miss you chellam...



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சிறீபுத்திரன் ராம ராஜன் போலீஸ் கமிஷனரம் பணிணி
சுரீபுத்திரன் கிணைக் குடியும் நான் உலகனை துணிதேன்
உனவரி லாசம் கமிஷனரம் பணிணி உலகனை. நீ கவனமாய்ப்பா
கிணை மாயா நாய்ம ராஜன் போலீஸ் குடியும் பாரதமும் மிளிர்
குடியாகு. வாழ்ந்த உலகனை கமிஷனரம் கமிஷனரம்
Mama. I Love you mama... நான் உலகனை
சுரீபுத்திரன் life-la miss பணிணை குடியாகு. நீயிக
கிணைந்த வாழ்ந்தை நான்கு கிணைந்தை. அமீதாய்கு
நான்கு அமீதாயும், போலீஸ்-ன் கிணைந்தை. வாழ் சாமின தை,
கிணைந்தை,



I Love You
VENISH

உலகனை கிணைந்தை மனைனி

M. Rajan



தேதி : 16.10.2021

SESSIONS COURT SPECIAL COURT FOR PCCSO ACT CASES SRIVILLIPUTTUR
Spl S.C.No. 77/2021
Exhibit No. 10/2021
Moved by prosecution
Defence witnesses No. 2
on 22.11.2021

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SHERISHADAR
SPECIAL COURT FOR PCCSO ACT CASES
SRIVILLIPUTTUR DISTRICT AT
SRIVILLIPUTTUR



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EX-12 -116-

அதிகார மான ரெனடி கையாண்டு,
நா கிரியையும், ரிதியையும் உங்களை மனம்
நிறைந்தும் கருகுகைன். நீங்க கிரியைப் பண்ணை
கைகை மூடியாது. 'நா கிதங்க மூன்றாடி கிரைந்த தவ
நிலைதரம் உங்க கூட உங்குகைகைன். திரைந்த கிரையம்
எனது அம்மா போலஸ் ஸ்டேசன் புதன் ரெனடி
நிரைனைய பிதமிக்கைன். உங்க ரெனடிமடியும் பிதமி
எனதுடன் நீங்க பேசுகைந்த சனிட போட ரெனடி
கிடுகிறது எனக்கை நிரையும். என் அம்மா என்ன
மூடியாது நிபுருக்காவிக. உங்களை மூங்கை ரெனடி. என்
உங்களை மூங்கை மூடியாதுன்னு எங்க அம்மாகூட ரெனடிமென்.
உங்களை எங்க அம்மா புதன் ரெனடி அபியும் கோட்கை
போலஸ் ஸ்டேசன்கைம். மூடியாதுன்னு எங்க அம்மாகூட
சனிட போடமென். மூங்கை எங்க அம்மா என் எனையை
புதன் கோட்கை கூட மூங்கை. நீ கோட்கை ரெனடிமென்
என். தரியானம் மூன்கைகைன்னு ரெனடிமென். அதுமூ
கோட்கை. எங்க அம்மாகூம், போலஸ்கை ரெனடி மூங்கை
ரெனடிமென். (I am really sorry) உங்க 1 1/2 மூங்கை
மூங்கை என்ரு போதும். கிரையம் உங்களை
நிரைனைய கருகுகைன். எனைய மூங்கைமென் கருகிகை
ரெனடிமென்.



I Love you mama

I Miss you chellam

SAVERIGHADAR
SPECIAL COURT FOR PCCSO ACT CASES
VRIJENAGAR DISTRICT AT
SPRALLPATTUR



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ந் கவனப்பீட்டாம் இந் மரமா நம்ம கய்யணம் பண்ணி
யாநாஷும் பிச்சிக் கொடாது. கய்யணம் நா பண்ணி
வாத்திரம் கொடர் மரம் கய்யணம் பண்ணி செல்லம்
ந் கவனப்பீட்டாம் இந் மரமா நம்ம கய்யணம் பண்ணி
சுத்தினாசமா கொடுப்பாம். அழிந்த உதிகுட நான் கய்யண
சுத்தினாசமா. Mama. எப்படியாவது எங்க அம்மாயும், கோலிஸ்-ம்
கய்யணம் எட்டி கொடுக்க தை.

I love you mama 

I Miss you mama

செய்யுத்கள்

உதிகள் பின்புள்ள மனவழி

A. Rajan

2021.10.16



5/13/97

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VIRAJUNAGAR DISTRICT AT
SRINAGAR



16. With regard to the evidentiary value of Ex.D.1 is concerned, the child had admitted that the same was written by her to the appellant. Three important aspects that are seen in Ex.D.1 are that, the child, on two occasions, left her house to join with the appellant and PW.1 had given two complaints in this connection to the Police; the child was deceived by her mother in giving oral testimony before the Court on the promise that PW.1 would permit PW.2 to get married to the appellant, after giving her statement before the Court; and the child had categorically stated that the oral testimony given by her before the Court was only on the compulsion and tutoring of her mother and the Police.

17. If Ex.D.1 is taken into consideration, the undoubted conclusion that one could arrive at is that the child was having a love affair with the appellant, which was found out by her mother (PW.1) and she was warned not to speak with the appellant. In spite of the same, the child had left her house on her own to join with the appellant on two occasions and the mother had also given two Police complaints against the appellant. Thus, it is seen from Ex.D.1, that there was a love affair between the appellant and the child, to which the mother had opposed and had threatened her to refrain



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from talking to the appellant.

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18. On perusal of Ex.D.1 and Ex.C.2, it is seen that both the letters were written on 16.10.2021. Admittedly, the victim was a minor at the time of occurrence, her date of birth being 15.01.2004, which fact stands confirmed by Ex.P.3/Birth Certificate and PW.1/mother of the victim. The occurrence took place on 29/30.07.2018 between 00.30 hours and 4.00 hours and the complaint/Ex.P1 was lodged on 30.07.2018 at about 3.00 P.M. PW.2/victim girl, in her statement/Ex.P.4 under Section 164 Cr.P.C. made on 31.07.2018 and in her evidence before the Trial Court, had clearly narrated the sequence of events took place on 29.07.2018. PW.2/victim girl had stated that on the fateful day, when she along with Anitha/P.W.8 were studying together in her grandfather's/PW.5 house. After PW.8 went to her house, PW.2/victim girl, who was under her menstrual periods on that day, went out to change her sanitary pads, at which time, the appellant came there and forcibly took the victim to the house of one Nagalakshmi. Though the victim was in friendly terms with the appellant, she resisted and objected to his forcible assault. The appellant bolted the door from inside, switched off the light and committed penetrative sexual assault on PW.2/victim girl,



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which he continued more than once. The appellant's fierce and fury was to such an extent that the victim had suffered injuries on her private parts which was confirmed by PW.11/Doctor, who had examined the victim girl on the next day and recorded the injuries in Ex.P.13/Accident Register. The victim girl used to usually study in the house of her grandfather/PW.5, which was also confirmed by PW.1, PW.2, PW.5, PW.6 and PW.8. Further, the sequence of events and the medical records clearly confirm the aggressive act of the appellant on the victim. Admittedly, the victim girl was a minor at the time of occurrence and from the medical records, it is clear that she was subjected to penetrative sexual assault, more than once and the attendant circumstances stands substantiated through the evidences of PW.1, PW.2, PW.5, PW.6, PW.8, PW.11 and PW.12.

19. The appellant had studied only up to Xth Standard and was employed as a Driver in a delivery van. He was also married and had two children. In the background of this status, he cannot take shelter for his action on the ground that his act was pursuant to the love affair with the victim girl or the victim girl had approval of the same. The appellant cannot take advantage of Ex.D.1 and Ex.C.2 and admittedly those letters were



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written when the victim was a minor. Further, on the fateful day, the victim girl was under her menstrual periods and the appellant had forcibly committed penetrative sexual assault on her. It is only construed as an animal instinct of the appellant, leading to commitment of penetrative sexual assault on the victim girl and hence, the love theory propounded by the appellant is to be rejected outrightly.

20. Further, the victim girl/PW.2, in unequivocal terms, had clearly narrated about she being subjected to penetrative sexual assault. PW. 11/Doctor in the Accident Register/Ex.P.13 recorded injuries in the private parts of the victim, which could have been caused due to the sexual act. PW. 12/Doctor confirms the potency of the appellant and issued Ex.P. 14/Accident Register. Admittedly, the victim girl was a minor at the time of occurrence, aged about 14 years and which was affirmed by Ex.P.3/Birth Certificate. The trial Court had also taken this fact into consideration. Thus, from the above evidences, both oral and documentary, this Court finds no reason to interfere with the judgment passed by the trial Court.

21. Accordingly, the Criminal Appeal stands dismissed and the



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impugned judgment passed by the Special Court for Exclusive Trial of Cases under Protection of Children from Sexual Offences Act, 2012, Virudhunagar District at Srivilluputhur in Spl.S.C.No.7 of 2019 dated 23.12.2021 is confirmed. In this case, since the occurrence took place on 29.07.2018, the punishment to the appellant under Section 6 of POCSO Act shall be applicable, as it stood prior to the amendment brought in by Act 25 of 2019 dated 16.08.2019.

(M.S.R.,J.) (M.N.K.,J.)
22.12.2023

Index: Yes
Neutral Citation: Yes
Speaking order
hvk



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M.S.RAMESH,J.
and
M.NIRMAL KUMAR,J.

hvk

To

- 1.The Inspector of Police,
All Women Police Station,
Rajapalayam, Virudhunagar District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Judgment made in
Crl.A.(MD) No.363 of 2022

22.12.2023