



Crl.A.(MD)No.417 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 29.09.2023

CORAM

**THE HONOURABLE MR.JUSTICE M.S.RAMESH
AND
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR**

Judgment Reserved On 20.09.2023	Judgment Pronounced On 29.09.2023
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Ananthakumar, S/o.Murugan

... Appellant/Sole Accused

Vs.

The State, Rep. by the
The Inspector of Police,
Silaiman Police Station,
Madurai District.

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 of Cr.P.C., to call for the entire records pertaining to the judgment and conviction delivered by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Madurai, in Spl.S.C.No.107 of 2018, vide judgment, dated 29.07.2021, set aside the same and consequently, acquit the appellant honourably from all the charges referred to in the above said case.

For Appellant : Mr.P.Samuel Gunasingh



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For Respondent : Mr.A.Thiruvadikumar
Additional Public Prosecutor

JUDGMENT

M.NIRMAL KUMAR, J.

This appeal has been filed by the appellant/sole accused as against the conviction and sentence, dated 29.07.2021, made in Spl.S.C.No.107 of 2018, by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under the POCSO Act, Madurai.

2. The appellant / sole accused stood convicted and sentenced to undergo imprisonment as detailed hereunder:-

Conviction under Section	Sentence	Fine amount
u/s.363 I.P.C.	To undergo seven years rigorous imprisonment	To pay a fine of Rs.1,000/-, in default, to undergo one year rigorous imprisonment
u/s.5(m) r/w. 6 of the Protection of Children from Sexual Offences Act, 2012	To undergo life imprisonment	To pay a fine of Rs.5,000/-, in default, to undergo one year rigorous imprisonment.

The Trial Court further directed the appellant/accused to pay Rs.50,000/- as



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compensation to the victim child and ordered the sentences to run concurrently. The accused/appellant challenging the legality of the conviction and sentence awarded by the Trial Court, vide impugned judgment, has filed this Criminal Appeal.

3. The case of the prosecution is that, the victim child [P.W.2], who was aged about 6 years and was studying 1st Standard in a School at Theppakulam, is the daughter of the de-facto complainant [P.W.1]. On 15.07.2016 at 19.00 hours, when the victim child was playing in front of the house of one Alavudeen [P.W.5], situated at L.K.B.Nagar, the appellant/accused on the pretext of giving chocolate, forcibly took her to his house, removed her inner garment, inserted his fingers into her Vagina and thereby, committed the offence.

4. The facts leading to the filing of this appeal, necessary for the disposal of this criminal appeal, are as follows:-

4.1. P.W.I Mathina, who is a resident of Sakkimangalam, is having one daughter [P.W.2], aged about 8 years and son, aged about 6 years. She



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deposed that on 15.07.2016 at 4.00 p.m., her daughter went out for play, returned home at 07.00 p.m. and went to sleep after supper. On the next day *i.e.*, 16.07.2016 at 07.00 a.m., her daughter informed her that she had pain in her private part. P.W.1 enquired her, for which, her daughter informed her that an uncle [appellant/accused] on the pretext of giving a chocolate, took her to his house, removed her inner garment and inserted his hand in her private part. As she had pain, he had left her. P.W.1 enquired her as to whether she knows his house, her daughter informed that she knows the house, took P.W.1 to L.K.B. Nagar, and identified the house of the appellant/accused. The appellant/accused came out of his house. Her daughter identified him. Immediately, P.W.1 went to her house, gave a call to her husband [P.W.3] and asked him to come home immediately. Her husband informed her that they need not ask anything and that they could lodge the complaint. As soon as her husband came, P.W.1 along with her husband and daughter went to the Police Station and preferred the complaint, dated 16.7.2016, which is marked as Ex.P.1. P.W.1 affixed her signature in the complaint and her husband had also affixed his signature, which is marked as Ex.P4. The Police came and enquired P.W.1 on the next day. P.W.1 went along with her daughter for medical examination and also



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P.W.1 went along with her daughter to the Court while recording the statement of her daughter. P.W.1 along with her husband produced Birth Certificate of her daughter, in which, the date of birth of the victim child is recorded as 14.04.2011. The copy of the birth certificate is marked as Ex.P. 2.

4.2. P.W.2, who is the victim child, in her evidence, deposed that she knows the accused. While she was studying 1st Standard, the appellant/accused informed her that he would give her chocolate and took her to his house, inserted his hand inside the inner garment. Thereafter, she came back, played with her friends, came home, had supper and went to sleep. In the morning, she informed her mother [P.W.1] that she is feeling pain and about the appellant/accused taking her to his house. She took her mother [P.W.1] and identified the house of the appellant/accused. P.W.1 gave a call to her father [P.W.3]. P.W.3 came at 2 O'clock and they went to Silaiman Police Station. Thereafter, she was taken to the hospital. At that time, her father, mother, grandfather, grandmother and aunt came there. The victim child gave 164 Cr.P.C. statement before the learned Magistrate, which was marked as Ex.P.3.

4.3. P.W.3, who is the father of the victim child, in his evidence



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deposed that P.W.1 is his wife and P.W.2 is his daughter. He knows the appellant/accused. On 15.07.2016 when his daughter was playing in front of the house after returning from School, the appellant/accused took his daughter to his house, and inserted his hand inside her inner garment. Her daughter (P.W.2) returned home, had supper and slept. On the next day morning, his daughter informed his wife [P.W.1] that she has pain in her Vagina. Immediately, his wife enquired his daughter, for which, his daughter informed the incident to his wife and had taken her to the house of the appellant/accused and identified his house. On that day, P.W.3 had gone out for business. His wife gave him a call at 11.00 a.m. and reported the incident. He returned home at 02.00 p.m. Thereafter, they went to the Police Station. His wife lodged the complaint, in which, the contents were written by the Police and read to him. He also had affixed his signature in the complaint, which is marked as Ex.P4.

4.4. P.W.4 Paramasivam, who is a resident of Sakkimangalam and is working as a carpenter, in his evidence, deposed that he knows the witnesses P.W.1, P.W.2 and P.W.3 and he is residing three houses away from the house of P.W.1. He knew the appellant/accused. On 15.07.2016 when the daughter of P.W.3 was playing in front of his house, the



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appellant/accused had taken her. On the next day, Police came and examined him. He enquired P.W.3, who informed him that the appellant/accused misbehaved with his daughter.

4.5. P.W.5 Alavudeen, who is a resident of Sakkimangalam, Madurai, in his evidence, deposed that he knows P.W.I to P.W.4 and the appellant/accused. On 15.07.2016, in the evening, while he was walking towards the street, he saw the appellant/accused taking the victim child along with him. On the next day, his wife informed him that the appellant/accused has committed penetrative sexual assault on the victim child and that she had identified the house of the appellant/accused. Thereafter, they preferred the complaint before the Police Station.

4.6. P.W.6, Veerar Abdulla, who is a resident of L.K.B. Nagar, Sakkimangalam, in his evidence, deposed that on 16.07.2016 at 05.30 p.m., All Women Police of Melur came and informed him that they are investigating the case related to Silaiman Police Station. The Police informed him that the appellant/accused committed sexual assault on the victim child. The Police drew Rough Sketch and obtained his signature and the signature of one Muthuraja. The Observation Mahazar is marked as Ex.P.5.



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4.7. P.W.7 Manotha, Grade-I Police Constable in Karuppayurani

Police Station, in her evidence, deposed that in the year 2016, while she was serving in Silaiman Police Station, on 16.07.2016 at 08.00 p.m., as per the instruction of the Inspector of Police, she took the victim child, aged about 6 years, along with her mother to Government Rajaji Hospital, Madurai, for medical examination. After completion of medical examination, she sent the victim child along with her mother.

4.8. P.W.8 Dr.Thennarasi, Assistant Professor in Obstetrics and Gynaecology Department, Government Rajaji Hospital, Madurai, in her evidence, deposed that on 16.07.2016 while she was on duty, the victim child, aged about 6 years, was brought to her for medical examination by one Manotha, Police Constable (847), and her mother. She obtained consent from the mother of the victim child and commenced the examination at 10.30 p.m. The victim child not attained puberty. During examination, the victim child was conscious and not anaemic, her lungs and heart were normal, her pulse was normal, the stomach portion was soft, there were no bite marks, nail scratch marks over breasts, abdomen, face, thigh and external genitalia and hymen was intact. The smear was taken and sent for chemical analysis. P.W.8 issued Medical Certificate Ex.P.6.



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4.9. P.W.9 Dr.Rajavel, Assistant Professor, Department of Forensic Medicine, Madurai Medical College, in his evidence, deposed that on 21.07.2016 while he was on duty, he received the requisition letter from the learned Judicial Magistrate, Additional Mahila Court, Madurai, seeking potential test for the appellant/accused, aged about 30 years. On examination, it was found that the appellant/accused was moderately nourished and moderately built, his physical and mental status were normal, his primary and secondary sexual characters were well developed, there was no evidence of external injuries or foreign bodies noted in and around his private part or anywhere on the body and issued Ex.P.7 Medical Certificate. P.W.9 opined as follows:-

- (1) There is nothing to suggest that the appellant/accused is impotent;
- (2) There is nothing to suggest that the appellant/accused is not fit for sexual intercourse; and
- (3) Semen, blood saliva, hair was collected, preserved and sent for analysis.

4.10. P.W.11 Maheswari, Sub-Inspector of Police, in her evidence deposed that on 16.07.2016 while she was on duty, one Mathina, W/o.Mohammed Ussain belonging to Sakkimangalam appeared before her



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and preferred the complaint. She registered a case in Crime No.290 of 2016 under Section 9(m) r/w. Section 10 of the POCSO Act. The first information report is marked as Ex.P.8. She sent the complaint and the first information report to Additional Mahila Court and copies to the Police Officials and she kept the case records for the perusal of the Inspector of Police.

4.11. P.W.12 Ambika, in her evidence, deposed that she voluntarily retired from service in the year 2016 and is residing at Dindigul. Previously, while she was serving as Inspector of Police, Melur, she received order from the Superintendent of Police to investigate the case registered by Maheswari, Sub-Inspector of Police, in Crime No.290 of 2016, Silaiman Police Station under Section 363 I.P.C. and Section 9(m) r/w. Section 10 of the POCSO Act. On 16.07.2016 she took up the case for investigation. On the same day, at 05.30 p.m., she went to the place of occurrence and prepared the Observation Mahazar (Ex.P.5) and Rough Sketch (Ex.P.9) in the presence of the witnesses Veerar Abdulla [P.W.6] and Muthuraja. She examined Mathina (P.W.1), victim child (P.W.2), Mohammed Ussain (P.W.3), Paramasivam (P.W.4), Alavudeen (P.W.5), Veerar Abdullah (P.W.6) and Muthuraja and recorded their statements. Thereafter, she sent the victim child to Government Rajaji Hospital, Madurai, for medical examination



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through Manotha, Grade – I Police Constable (P.W.7) and Maheswari, Sub-Inspector of Police (P.W.11). Dr.Thennarasi (P.W.8) had conducted medical examination of the victim child on 16.07.2016. On 16.07.2016 at 19.00 hours, she arrested the appellant/accused at Kalmedu Bus Stand and produced him before the learned Magistrate. On 20.07.2016, P.W.12 gave a requisition letter to the learned Chief Judicial Magistrate to record 164 Cr.P.C. statement of the victim child. The requisition letter is marked as Ex.P.10. P.W.12 made arrangements to produce the victim child before the learned Judicial Magistrate, Fast Track Court No.I, Madurai. On 26.07.2016, the learned Judicial Magistrate recorded 164 Cr.P.C. statement of the victim child. Thereafter, she gave requisition letter to conduct medical examination for the appellant/accused. On 21.07.2016, Pandian, Grade I Police Constable and Subburayan, Constable (P.W.10) produced the appellant/accused from the Central Prison for medical examination before the Government Rajaji Hospital, Madurai. Dr.Rajavelu (P.W.9) examined the appellant/accused and issued medical certificate (Ex.P.7). At this stage, P.W.12 voluntarily retired from service. The Inspector of Police, Silaiman Police Station, had taken up the case for further investigation.

4.12. P.W.13 Pugalendi, Inspector of Police, in his evidence, deposed



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that he is serving as an Inspector of Police in Tirunelveli Town Police Station. Previously, he served as Inspector of Police in Silaiman Police Station. On 10.09.2016, he perused the records relating to Crime No.290 of 2016 registered under Section 9(m) r/w. Section 10 of the POCSO Act. Ambika, the then Inspector of Police (P.W.12) conducted initial investigation, arrested the appellant/accused and sent him and the victim child for medical examination. He examined Manotha, Police Constable (P.W.7), Pandian, Police Constable and Subburayan (P.W.10), who produced the victim child and the appellant/accused for medical examination and recorded their statements. P.W.13 examined Maheswari, Constable (P.W.11) and recorded her statement. At this stage, as he was transferred, he handed over the case records to the Police Station.

4.13. P.W.14 Dinakaran, in his evidence, deposed that on 25.10.2017 while he was serving as Inspector of Police, Silaiman Police Station, he had taken up the case registered in Crime No.290 of 2016 for further investigation. On 25.10.2017 P.W.14 examined Dr.Thennarasi (P.W.8), who conducted medical examination of the victim child and recorded her statement. On 24.11.2016 the chemical analysis report was received by the Court, which is marked as Ex.P.11. The Forensic Science Report, dated



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29.07.2016, is marked as Ex.P.12. On 15.12 2017, P.W.14 examined the Scientific Officer Vijayendran and recorded his statement. Again, on 28.02.2018, P.W.14 examined the Scientific Officer Vijayendran and recorded his statement. On 15.03.2018 P.W.14 examined Dr.Rajavelu (P.W. 9), who conducted medical examination of the appellant/accused, received the medical certificate and recorded his statement. On 15.03.2018, P.W.14 completed investigation and filed final report against the appellant/accused under Section 363 I.P.C. r/w. Sections 9(m) and 10 of the POCSO Act.

4.14. After the completion of evidence, the Trial Court placed the incriminating evidence against the appellant/accused under Section 313(1) (b) of Cr.P.C. and the appellant/accused denied the same and examined three witnesses on his side and marked exhibits Ex.D1 to Ex.D4.

4.15. The appellant/accused examined himself as D.W.I. He in his evidence deposed that he is doing mason work and is residing at Door No. 2/542, L.K.B. Nagar, Sakkimangalam. There was a quarrel between two Mosques. His wife was a tenant in one shop owned by Muthalif Bai Jamath. The opposite Jamath to the Muthalif Bai informed his wife to vacate the shop, for which, his wife refused. On 16.07.2016, he was in Pandi Kovil from 04.00 p.m. to 06.30 p.m. He was not aware of the name of the



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complainant. As per the instigation of the above said Jamath, a false complaint has been lodged against him and moreover, he and his wife refused to vacate the shop and were giving rent to Muthalif Bai Jamath and were intimate with Muthalif Bai Jamath and hence, a false case had been lodged against him.

4.16. D.W.2 Abdul Muthalif, who is the Vice President of Aljami Jumma Masthith, in his evidence, deposed that he knows the appellant/accused, who is a tenant in the shop belonging to the Mosque for the past seven years. He pays rent once in three months or once in a year and the monthly rent was Rs.600/-. The rival party of the Jamath issued a notice to the appellant/accused to vacate the shop. D.W.2 had also issued notice to him to pay the rent to him. The rival party of the Jamath had given reply notice to the appellant/accused threatening him that he had been harassing the women. The rental agreement entered by the appellant/accused with the Jamath is marked as Ex.D.1. The notice issued by him to the appellant/accused to remit the rent to his Administration is marked as Ex.D.2. The rental receipt is marked as Ex.D.3. The reply notice issued to the appellant/accused by the opposite party is marked as Ex.D.4. At 03.30 p.m., D.W.2 asked the appellant/accused to give the rent, for



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which, the appellant/accused informed him that he would give the rent after returning from the Temple. The opposite party to the Jamath threatened the appellant/accused to vacate the shop and hence, a false case has been filed against him.

4.17. D.W.3 Kasi Viswanathan, in his evidence, deposed that he knows the appellant/accused. On 15.07.2016 he along with the appellant/accused went to Pandi Kovil at 03.30 p.m. and returned at 06.45 p.m. and at that time, Muthalif Bai asked the appellant/accused to pay rent for the shop, for which, the appellant/accused informed that he would give the rent after returning from the Temple. On 15.07.2016 he along with the appellant/accused was in Pandi Kovil from 03.30 p.m. to 06.45 p.m.

4.18. The Trial Court, on consideration and appreciation of oral and documentary evidences and other materials, convicted and sentenced the appellant/accused as stated above and hence, this appeal.

5. The learned counsel for the appellant submits that the Trial Court completely ignored the evidence of P.W.8 Dr.Thennarasi, who examined the victim child and deposed that there is no scratch or bite marks anywhere in her body nor in her private part. He further submits that the learned Trial



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Judge went beyond the scope of the Expert evidence by interpreting the deposition and the medical certificate (Ex.P.6) of P.W.8 Dr.Thennarasi as any swelling, will remain only for 24 hours and that the medical examination was conducted only after 24 hours, hence, there will not be any swelling or any marks in the body of the victim child.

5.1. The learned counsel for the appellant further submits that the conduct of the de-facto complainant (P.W.1) was found untrustworthy, as she went to the house of the appellant/accused along with the victim child, returned to her home, and called her husband (P.W.3) without even shouting at the appellant/accused, which creates serious doubt regarding the conduct of the de-facto complainant as well as the veracity of her complaint. He further submits that the de-facto complainant (P.W.1) in her evidence, deposed that the victim child (P.W.2) informed her about the incident only on 16.07.2016 at 07.00 a.m., whereas the alleged occurrence is said to have taken place on the previous day, *i.e.*, 15.07.2016 at 04.00 p.m. Had the occurrence taken place in the manner as alleged by the de-facto complainant, the victim child might have felt the pain soon after she reached home after the appellant/accused misbehaved with her, rather the victim informing de-facto complainant, a day later, which creates doubts over the



alleged occurrence.

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5.2. The learned counsel for the appellant further submits that even though there is presumption under Section 29 of the POCSO Act, the appellant/accused himself deposed by explaining the clear motive against him and the dispute in the Jamath, where the de-facto complainant and her family members are members, which has been completely overlooked by the Trial Court.

5.3. The learned counsel for the appellant further submits that the offence under Section 363 I.P.C. is not made out. Even assuming that the entire case of prosecution is found to be true as the victim child was kidnapped by the appellant/accused even as per the version of the prosecution, whereas it has been stated by the prosecution that the victim child herself had gone along with the appellant/accused.

5.4. The learned counsel for the appellant further submits that the motive between the appellant/accused and the rivalry in the Jamath had been clearly established by the evidence of D.W.1 to D.W.3 and Exs.D.1 to D.4 which the Trial Court completely failed to consider and hence, the conviction and sentence awarded by the Trial Court are liable to be set



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aside.

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5.5. In support of his contention, the learned counsel for the appellant relied on the judgment of the Hon'ble Supreme Court in the case of **Arbind Singh vs. State of Bihar** reported in **1995 Supp (4) SCC 416**, wherein the Hon'ble Supreme Court held that a child witness is prone to tutoring and hence, the Court should look for corroboration particularly when the evidence prone for tutoring and therefore, the appellant therein was entitled to benefit of doubt.

6. The learned Additional Public Prosecutor submits that the appellant/accused at the time of registration of F.I.R. on the complaint given by the mother of the victim child, initially, charged for the offence under Section 9(m) r/w. Section 10 of the POCSO Act. In this case, P.W.1 to P.W.14 were examined and Ex.P.1 to Ex.P.12 were marked. The victim child was aged about 6 years at the time of occurrence and the incident occurred on 15.07.2016 at about 4 O'clock in the evening and the complaint preferred on 16.07.2016. There is no delay in giving the complaint, since the victim child informed the occurrence to her mother (P.W.1) only on 16.07.2016. Immediately, the mother of the victim child (P.W.1) gave a



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complaint. Hence, there is no delay in giving the complaint and registration of the case. The appellant/accused kidnapped the victim child from the custody of her parents with sexual intention to his house and committed aggravated penetrative sexual assault on the child, who is below 12 years. Hence, the Trial Court altered the charges already framed under Section 363 I.P.C. and Section 3 r/w. Section 4 of the POCSO Act to Section 363 I.P.C. and Section 5(m) r/w. Section 6 of the POCSO Act.

6.1. The learned Additional Public Prosecutor further submits that all the prosecution witnesses corroborated the evidence of the victim child that the appellant/accused took the victim child to his house and the victim child clearly evidenced the offence committed by the appellant/accused.

6.2. It is the contention of the learned Additional Public Prosecutor that the evidence of the victim child (P.W.2), is cogent and convincing and once the evidence of the victim child is found to be trustworthy and believable, the same would be sufficient to hold that the appellant/accused is guilty of the charges levelled against him, which the Trial Court held and rightly too.

6.3. In fine, it is submitted by the learned Additional Public Prosecutor that the appellant/accused has not probalised his innocence.



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The Trial Court, on cogent and convincing reasons and based on oral and documentary evidence, has found the appellant/accused guilty of the charges levelled against him and rightly convicted and sentenced him and, therefore, no interference is called for with the conviction and sentence recorded by the Court below.

7. This Court carefully considered the submissions made on either side and also perused the oral and documentary evidence, to which its attention was drawn.

8. The case of the prosecution is that, on 15.07.2016, at 19.00 hours, when the victim girl (P.W.2) was playing in front of the house of Alavudeen (P.W.5), situated at L.K.B. Nagar, the appellant/accused on the pretext of giving chocolate, forcibly took her to his house, removed her inner garment and inserted his fingers into the vagina of the victim child and thereby, committed penetrative sexual assault. Hence, the present case was registered against the appellant.

9. As far as age proof is concerned, copy of Birth certificate of the victim child was marked as Ex.P2, in which the date of birth of the child mentioned as 14.04.2011 and the date of occurrence is 15.07.2016 and therefore, at the time of occurrence, age of the victim child is about 6 years



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and she is a child under the definition of Section 2 (1) (d) of POCSO Act.

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10. Coming to the commission of offence under Section 5(m) punishable under Section 6 of the POCSO Act by the appellant/accused, the victim child was examined as P.W.2 and her statement recorded under Section 164 Cr.P.C. was marked as Ex.P3, in which the victim child has stated that "a person had inserted his fingers in her Panty". On the next day morning, the victim child shared about her pain in the private part and on hearing the same, when P.W.1 enquired, the victim child narrated everything. Further, when the victim child was examined as P.W.2 before the Court below, she clearly stated about the incident.

11. The victim child (P.W.2) was produced before P.W.8 Doctor to conduct medical examination and copy of medical examination report of the victim child was marked as Ex.P6, in which, it is stated that the victim child not attained puberty and she was conscious and not anaemic, her lungs and heart were normal, her pulse was normal, the stomach portion was soft, there were no bite marks, nail scratch marks over breasts, abdomen, face thigh and external genitalia and hymen was intact.

12. It is contended by the learned counsel for the appellant that due to tenancy dispute, to vacate her wife from the shop owned by Muthalif Bai



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Jamath, false case has been foisted against the appellant. Further, as per the defence, the dispute was between two groups in the mosques. The complaint filed by the mother of the victim child (P.W.1) and she narrated everything in the complaint that on 15.07.2016, at 19.00 hours, when the victim girl (P.W.2) was playing in front of the house of Alavudeen (P.W.5), situated at L.K.B. Nagar, the appellant/accused on the pretext of giving chocolate, forcibly took her to his house, removed her inner garment and inserted his fingers into the vagina of the victim child. On the next day, the victim child got pain in her private part and on enquiry, she informed about the act of the appellant to P.W.1. Upon hearing the same, P.W.1 went to the Police Station along with her husband and the victim child and filed the complaint.

13. As far as the offence under Section 5(m) punishable under Section 6 of the POCSO Act is concerned, the victim child during recording statement under Section 164 Cr.P.C., which is the earliest statement, has stated that a person kept his hand in her inner garments, and the medical evidence confirms that there was no external injury, no scratch mark over external genitalia and no inflammation. The victim child being 6 years old, had she felt pain, definitely she would have complained immediately.



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Further, the victim child after the incident, continued her play, which defies immediate response. It is an admitted fact that the appellant's daughter of similar age was playing with the victim child. This Court, being an Appellate Court, is a final Court of fact finding, which has to necessarily re-appreciate the entire evidence and give an independent finding and while re-appreciating the entire oral and documentary evidence produced before it, finds that prosecution has failed to prove the offence under Section 5(m) of the POCSO Act 'aggravated penetrative sexual assault'. However, from the evidence of the victim child and Exs.P6 to P8, it is proved that the appellant took the victim girl on the pretext of giving chocolate, removed her inner garment and touched her private part and therefore, the act of the appellant falls under Section 9(m) of the POCSO Act 'aggravated sexual assault', which is punishable under Section 10 of the POCSO Act, since the victim was below 12 years at the time of occurrence. It is to be seen that the Trial Court traversed beyond the punishment provided, sentenced the appellant for life, meaning for the remainder of his natural life as per Section 6 of the POCSO Act, failed to consider the amendment to Section 6 of the POCSO Act, come into the statute by Act 25 of 2019 w.e.f. 16.08.2019. Prior to the amendment, as per Section 6 of the POCSO Act, a person, who commits



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aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term, which shall not be less than ten years, but which may extend to imprisonment for life and shall also be liable to fine. Hence, the Trial Court awarding life imprisonment for remainder of natural life to the appellant is not proper.

14. The Trial Court found the appellant guilty for the offence punishable under Section 6 of the POCSO Act, but from the evidence of the victim child (P.W.2), and Exs.P6 to P8, this Court finds that the appellant committed the offence under Section 7 punishable under Section 8 of the POCSO Act and since age of the victim child was below 12 years at the time of occurrence, the offence falls under Section 9(m) punishable under Section 10 of the POCSO Act, for which, minimum sentence is 5 years.

15. In fine, the judgment of conviction and sentence made by the Trial Court is modified to the effect that the appellant is convicted for the offence under Section 9(m) of the POCSO Act punishable under Section 10 of the POCSO Act and sentenced to undergo rigorous imprisonment for a period of five years. Considering the fact that the appellant is only a Mason, daily wage earner, and having four children of tender age, the compensation amount of Rs.50,000/- directed to be paid by the appellant, is



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modified to Rs.5,000/- and the said amount of Rs.5,000/- is directed to be paid by the appellant to the victim girl towards compensation. As regards the direction issued by the Trial Court, by following G.O.(Ms)No.33, Social Welfare and Nutritious Meal Programme (SW5(2)) Department, dated 03.10.2020, directing the Government to pay Rs.5,00,000/- shall remain unaltered. The Government is directed to pay the said compensation amount to the victim child, within a period of two months from the date of receipt of a copy of the judgment, if not already paid. The District Legal Services Authority, Madurai, to take necessary action as per the judgment of the Trial Court. In the event of non-compliance in payment of compensation amount, the victim or her parents can approach this Court for disobedience of the order of this Court by filing appropriate petition.

16. With regard to conviction under Section 363 I.P.C., the conviction and sentence of the Trial Court stands modified to five years rigorous imprisonment and the fine amount of Rs.1,000/- awarded by the Trial Court shall remain intact. This Criminal Appeal is partly allowed. All the sentences are directed to run concurrently and the period of imprisonment



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already undergone by the appellant/accused shall be given set-off under

Section 428 Cr.P.C.

Index : Yes/No
Internet: Yes/No
Neutral Citation: Yes/No
smn2
Copy to:-

(M.S.R., J.) (M.N.K., J.)
29.09.2023

- 1.The Principal Secretary,
Government of Tamil Nadu,
Social Welfare and Women Empowerment Department,
Secretariat, Chennai-600 009.
- 2.The Director of Social Defence,
Chennai.
- 3.The District Collector,
Madurai.
- 4.The District Child Protection Officer,
Madurai.
- 5.The Superintendent of Police,
Madurai.
- 6.The Secretary,
Tamil Nadu District Legal Services Authority,
Madurai.



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To

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1. The Sessions Judge,
Special Court for exclusive Trial of Cases under POCSO Act,
Madurai.
2. The Inspector of Police,
Silaiman Police Station,
Madurai District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Crl.A.(MD)No.417 of 2021

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

smn2

Pre-delivery judgment made in

Crl.A.(MD)No.417 of 2021

29.09.2023