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Crl.A.No.111 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2025

CORAM :

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.A.No.111 of 2023

Appuru @ Sengotaiyan

... Appellant

Vs

The State Rep. by
The Inspector of Police,
All Women Police Station,
Gobichettypalayam.
Crime No.7 of 2022

... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, against the Judgment made by the Learned Session Judge Magalir Neethimandram,(Fast Track Mahila Court), Erode in Spl.S.C.No.35 of 2022 dated 07.09.2022.

For Appellant : Mr.C.D.Johnson

For Respondent : Mr.S.Raja Kumar
Additional Public Prosecutor



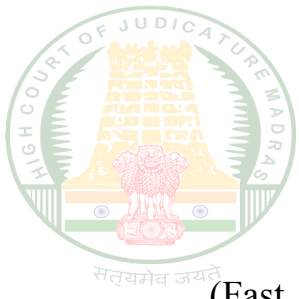
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JUDGMENT

This Criminal Appeal has been preferred as against the judgment dated 07.09.2022 passed in Spl.S.C.No.35 of 2022 on the file of the learned Sessions Judge, Magalir Neethimandrum, (Fast Track Mahila Court), Erode, thereby convicted the appellant for the offence punishable under Section 9(m) r/w 10 of POCSO Act, 2012.

2. The case of the prosecution is that the victim girl was aged about 9 years. On 29.03.2022, due to bus strike, the victim and her brother did not go to school and they were taken to their workshop by their parents. Thereafter, their parents went to collect Aadhar Card. At that juncture, at about 2.30 p.m., the appellant came to their workshop and touched the private part of the victim girl. Hence, mother of the victim lodged a complaint before the respondent police. On receipt of the said complaint, the respondent registered an FIR in Crime No.7 of 2022 for the offences punishable u/s 7 and 8 of Protection of Children from Sexual Offences Act, 2012. After completion of investigation, a final report was filed before the Sessions Judge, Magalir Neethimandram,



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(Fast Track Mahila Court), Erode and the same has been taken cognizance in Spl.S.C.No.35 of 2022 for the offence punishable under Section 9(m) r/w 10 of Protection of Children from Sexual Offence Act, 2012.

3. Before the Trial Court, the prosecution examined nine (9) witnesses as P.W.1 to P.W.9 and marked twelve (12) documents as Ex.P.1 to Ex.P.12. On the side of the accused, no witness was examined and no document was marked.

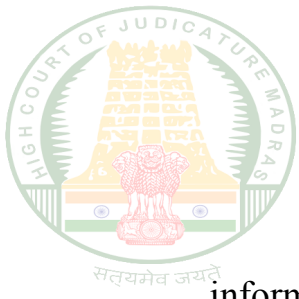
4. On perusal of the oral and documentary evidence, the Trial Court found the appellant guilty, convicted for the offence under Section 9(m) r/w 10 of POCSO Act and sentenced him to undergo rigorous imprisonment of 7 years and to pay fine of Rs.5,000/-, in default to payment of fine, to undergo simple imprisonment for a further period of 3 months. Aggrieved by the same, the present Criminal Appeal has been filed.



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5. The learned counsel for the appellant would submit that the appellant submitted that the prosecution has miserably failed to prove the charges u/s 9(m) r/w 10 of POCSO Act as against the appellant. In fact, the respondent registered the FIR and filed the final report only u/s 7 r/w 8 of POCSO Act, however, the Trial Court without any material mechanically framed charges u/s 9(m) r/w 10 of POCSO Act and discussed about the aggravated sexual assault, when there absolutely no material. Even according to the case of the prosecution on the date of occurrence, there was a bus strike and therefore, the victim and her brother did not go to school and they were brought to their workshop. When their parents went to collect Aadhar Card, the appellant went as usual and touched the private part of the victim girl, who was aged about 9 years. The appellant is not a stranger to the victim and the appellant used to go to their workshop very often. Though the victim had deposed that the appellant touched her private part at the time of alleged occurrence, her younger brother was there, however the prosecution did not examine him in order to corroborate the evidence of victim. Further, immediately when their parents came to their workshop, they were



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informed about the alleged occurrence. However, on 28.03.2022, there was no complaint as against the appellant and only on the next day, i.e., on 29.03.2022, the mother of the victim lodged a complaint and the same was registered by the respondent. Even assuming that the charges are true, the Trial Court ought not to have framed charges u/s 9(m) r/w 10 of POCSO Act. Even according to the case of the prosecution, the appellant had touched the private part of the victim girl.

6. Per contra, learned Additional Public Prosecutor submitted that the victim girl was examined as P.W.2 and she categorically deposed that the appellant had committed aggravated sexual assault on her and the evidence of the mother and father of the victim, who were examined as P.W.1 and P.W.3, corroborates the same. Hence, the order of conviction and sentence does not warrant any interference by this Court.

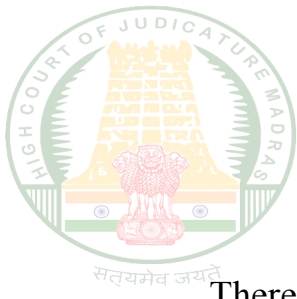
7. Heard the learned counsel appearing for the appellant, the learned Additional Public Prosecutor appearing for the respondent police and perused the materials available on record.



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8. The specific case of the prosecution was that on 28.03.2022, due to bus strike the victim girl and her younger brother did not go to school and her parents, taken them to their workshop. When the parents of the victim went to collect the Aadhar Card, the appellant went to the workshop and touched her private part. Though the victim girl had deposed that the appellant touched her private part and at the time of alleged occurrence, her younger brother was there, however the prosecution did not examine him in order to corroborate the evidence of victim. Further, the mother of the victim, who lodged the complaint was examined as P.W.1 and she deposed that the victim informed about the occurrence to her. However, P.W.1 did not lodge any complaint on the date of alleged occurrence. She lodged the complaint only on the next day i.e., on 29.03.2025. Even thereafter, the victim was not subjected to any medical examination, since even according to the evidence of P.W.1 and the victim, the appellant had touched the private part of the victim. Further, it was revealed on perusal of the records that on 28.03.2025, the appellant lodged a complaint as against P.W.1 and her husband, P.W.3.



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Therefore, on 28.03.2022, there was a quarrel between the appellant and P.W.1 and P.W.3. It was also categorically acted by the Investigating Officer and the Investigating Officer was examined as P.W.9 and she categorically deposed that the alleged occurrence was taken place on 28.03.2022 and the complaint was lodged only on 29.03.2022, whereas the appellant lodged a complaint on 28.03.2022 as against P.W.1 and P.W.3. In that regard, she conducted an enquiry, but no FIR was registered as against P.W.1 and P.W.3. The next day i.e., 29.03.2025, at about 14 hours, the complaint was lodged by P.W.1. Therefore, in order to circumvent the complaint lodged by the appellant, a false complaint has been foisted against the appellant by tutoring the minor victim girl. As stated supra, even according to the case of the prosecution, the charges can be framed against the appellant only u/s 7 r/w 8 of POCSO Act. However, the Trial Court without any material mechanically framed charged u/s 9(m) r/w 10 of POCSO Act. Therefore, the conviction and sentence u/s 9(m) r/w 10 of POCSO cannot be sustained and liable to set aside.



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9. Accordingly, the Criminal Appeal is allowed and the conviction and sentence of the Trial Court is hereby set aside. The appellant is set at liberty forthwith, if he is not required in connection with any other case. Fine amount, if any paid by the accused shall be refunded to him. Bail bond, if any, executed by the accused shall stand discharged.

27.06.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
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To

- 1.The Sessions Judge, Magalir Neethimandran,
(Fast Track Mahila Court), Erode.
- 2.The Inspector of Police,
All Women Police Station,
Gobichettypalayam.
- 3.The Superintendent,
Central Prison, Coimbatore.
- 4.The Public Prosecutor,
High Court of Madras,
Chennai.



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G.K.ILANTHIRAIYAN, J.

sp

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