



WEB COPY



Crl.A.No.95 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2025

C O R A M

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

AND

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

Crl.A.No.95 of 2022 and

Crl.M.P.No.5573 of 2024

Deva @ Devaraj

... Appellant/Sole Accused

-VS-

The State Rep. by
The Inspector of Police,
All Women Police Station,
Salem Town, Salem District.
(Crime No.8 of 2017)

... Respondent/Complainant

Prayer: Criminal Appeal is filed under Section 374 (2) of Cr.P.C. against conviction and sentence passed by judgment dated 30.11.2021 in Old No.Spl.S.C.No.60 of 2017 in New Spl.S.C.No.58 of 2019 on the file of the Principal Special Court for POCSO Act Cases, Salem.

For Appellant : Mr.S.Shanmugha Velayutham
Senior Counsel
For Mr.B.Vasudevan

For Respondent : Mr.A.Damodaran
Addl. Public Prosecutor
Assisted by Mr.M.Karthikeyan
Advocate



WEB COPY



Crl.A.No.95 of 2022

J U D G M E N T

(By N.Sathish Kumar, J.)

This appeal arises against the judgment of learned Principal Special Judge for POCSO Act Cases, Salem, passed in Old No.Spl.S.C.No.60 of 2017 in New Spl.S.C.No.58 of 2019 dated 30.11.2021.

2.Brief Facts of the Prosecution case are as follows:

2.1. P.W.2 is the victim girl aged about 9 years at the time of occurrence, who is the daughter of P.W.1. The mother (P.W.1) of the victim girl is a divorced woman and had been residing with her 2nd husband P.W.3 (Shankar). The accused is P.W.1's paternal uncle son. On 28.08.2017, the mother of P.W.1 informed over phone that the accused took away P.W.2 and the same has been seen by P.W.5 (Manikandan). Thereafter, villagers and others caught hold of the accused and Police came to the spot. P.W.1 was informed that the accused had committed oral sex with P.W.2. P.W.2 in her statement deposed that the accused, under the pretext of buying sweets, took her in his motor cycle to the place of occurrence and removed his underwear and inserted his penis in her mouth and on seeing P.W.5, the



Crl.A.No.95 of 2022

accused ran away and thereafter, the complaint (Ex.P1) was given. P.W.4 is the grand mother of the victim girl, who had heard about the occurrence.

P.W.5, who was in intoxicated stage, noticed that a boy and girl were proceeding to the place of occurrence and P.W.5 found only the girl and he did not see any male member there and Police also came there later. P.W.6 also heard about the occurrence and had seen the accused on the same day. P.W.7 is the brother of P.W.1, who had witnessed the Observation Mahazar (Ex.P2) prepared by the Police. P.W.8 enquired P.W.2 and she also heard about the occurrence.

2.2. According to P.W.9, the accused was caught hold by villagers and Police were also present there. P.W.10 / Headmistress issued certificate Ex.P4 to prove the age of the victim girl. P.W.11 / Headmaster issued Ex.P5 to show the age of the accused. P.W.12 / Medical Officer examined the accused as per Ex.P6 and also examined radiology and issued certificates under Ex.P7 & Ex.P8. P.W.13 examined the victim girl on 29.08.2017 at 1.25am and issued Ex.Ps.10 to 12 and she had stated that she did not find any external injury and her statement has been recorded as



Crl.A.No.95 of 2022

stated by the child and her mother. Ex.P13 is the report issued by the Forensic Sciences Department, based on which, Ex.P14 has been issued by the Doctor / P.W.13. P.W.14 / Sub-Inspector of Police received the complaint (Ex.P1) from P.W.1 and registered the same against the accused for offences under Section 8 r/w 7 of POCSO Act, 2012 and Section 506(i) IPC under Ex.P15. P.W.15 / Inspector of Police took up the investigation, went to the scene of occurrence on 28.08.2017, prepared Observation Mahazar (Ex.P16), rough sketch (Ex.P17) recorded the statement of P.W.5 (Manikandan) and other witnesses, arrested the accused on 29.08.2017, seized the motor cycle and sent to the Court under Ex.P18 (Form-91) and gave requisition to P.W.12 / Medical Officer to examine the accused and the victim girl and recorded the statement of the victim girl under Section 164 Cr.P.C. P.W.15, on completion of investigation, laid a charge sheet for offences under Sections 6 r/w 5(l) (m) and (n) of POCSO Act and Section 506(i) IPC.

2.3. Before trial Court, prosecution examined 15 witnesses and marked 22 exhibits and 2 material objects. On behalf of defence, 2 witness



Crl.A.No.95 of 2022

were examined and 3 exhibits marked. On questioning under Section 235

(2) Cr.P.C., accused denied charges. On appreciation of evidence, oral and documentary, the Trial Court, under judgment dated 30.11.2021, convicted and sentenced him as follows:

Offences	Sentence
Section 363 IPC	3 years R.I. and fine of Rs.10,000/- i/d 3 months S.I.
Section 5(m) (n) r/w 6 of POCSO Act	Life imprisonment and fine of Rs.20,000/- i/d 6 months S.I.
Section 506(1) IPC	2 years R.I. and fine of Rs.5,000/- i/d 3 months S.I.

Trial Court directed that sentences shall run concurrently and the period already undergone was ordered to be set off. Against the said judgment, the present appeal has been filed by the accused.

3. Learned Senior Counsel for the appellant submitted that the accused has been undergoing incarceration since the date of conviction and at present, he is confined in the Central Prison, Salem. Since the father of the accused refused to marry P.W.1, the accused has been made as a scapegoat by giving a false complaint by using the minor girl. This fact has



Crl.A.No.95 of 2022

been clinchingly established by the evidence of D.Ws.1 to 3. All the witnesses relied upon by P.W.1 are interested witnesses and the evidence of the victim girl is nothing, but a tutored version. He further submitted that no evidence is available to show that the victim girl was taken by the accused at the relevant point of time. P.W.12 / Medical Officer clearly deposed that there was no external injury found on the chin of the victim girl and in case the accused inserted his penis in her mouth and has repeatedly done the said act, there must be abrasion in her mouth, which has not been noticed by P.W.12 / Medical Officer. Further, the statement given by P.W.2 before the Judicial Magistrate under Section 164 Cr.P.C., would belie her evidence. Though the entire theory of the prosecution rests on the evidence of P.W.5, he had never spoken about the accused. He also submitted that FIR has been registered belatedly and reached the Court only at 5.30pm on the next day. This fact itself clearly indicates that the case has been framed after due deliberations and consultations. Due to the refusal by the father of the accused to marry P.W.1, the child has been used as a tool to wreak vengeance on the father of the accused.



Crl.A.No.95 of 2022

4. Learned Additional Public Prosecutor contended that P.W.2 has clearly spoken on the nature of the act committed by the accused and there was no necessity for the victim child to falsely implicate the accused and therefore, the Trial Court rightly convicted the accused to undergo sentences as afore-stated. The judgment of the Trial Court does not warrant any interference by this Court.

5. We have heard the learned counsel on either side and perused the material documents available on record.

6. Normally, if the evidence of a victim girl relating to sexual assault inspires confidence, even if there are contradictions, deviations and bereft of materials, Courts would tend to believe the evidence of a victim, provided the same inspires confidence, particularly, when her evidence does not suffer from any infirmities or does not contain any artificiality. In the given case, the evidence of the child is attached with a lot of serious artificialities and the possibility of tutoring cannot be ruled out. While scrutinizing the evidence of the victim girl, it is noticed that the child is



Crl.A.No.95 of 2022

used as a tool to wreak vengeance in the personal matter. In the above background, if the evidence of the victim girl is analyzed, it is the specific case of the prosecution that P.W.2 was taken by the accused in his motor cycle on 28.08.2017 to a secluded place, where he had oral sex with the victim girl. The case of the prosecution is that the accused was seen together with the child by P.W.5. But, P.W.5 had not spoken anything about the accused being in the company of the victim girl, whereas he simply stated that he noticed the weeping of the child and later, he brought the victim girl back. Moreover, it is not the case of the prosecution that the accused is an unknown person to the witnesses and P.W.1, as the accused is none other than P.W.1's paternal uncle's son. If really such sexual assault has been carried out by the accused on the minor girl of tender age, P.W.12 / Medical Officer at least would have noticed some minor abrasions in and around of her face.

7. It is the specific case of the prosecution that the accused slapped the victim on the chin during oral sex. The victim girl was taken to the hospital on the same day and if really the accused slapped the victim



Crl.A.No.95 of 2022

girl on her chin and inserted his penis continuously for several minutes, there should be abrasions or contusion on her chin. But, P.W.12 / Medical Officer had not noticed any such thing. Further, FIR is said to have been given on the same day, but reached the Court on the next day. The inordinate delay in reaching the Court has not been explained. The evidence of P.W.12, when carefully analyzed, unravels the fact that only the mother had given the statement as if the accused had committed sexual assault on her daughter and in the cross examination, this aspect has been clearly admitted. P.W.12 / Medical Officer also in her cross examination stated that only at the instance of P.W.1, the statement is recorded in the Accident Register copy.

8. It is not the case of witnesses that the accused is unknown to them. D.Ws.1 to 3 filed exhibits to prove the fact that P.W.1 was residing with D.W.2, who is none other than the father of the accused. It is further case of the defence that P.W.1 insisted father of the accused to marry her and when he refused to marry her, the false complaint has been given. Though the very factum of P.W.1 residing with D.W.2 itself was denied, the



Crl.A.No.95 of 2022

public document, namely, School Certificate (Ex.P4) issued by P.W.10 proves otherwise. In fact, while the victim child was admitted in the school, her father's name has been shown as Raja / D.W.2. This has been clearly admitted in the evidence and established by the defence.

9. P.W.2 in her statement gave a parrot like version that the accused has committed sexual assault. But in her statement recorded before the Judicial Magistrate under Section 164 Cr.P.C., she never stated that the accused was the root cause and he was present on the date of alleged occurrence. If really the victim child was accurate in giving minor details, she would have narrated the incident and in fact, given the name of the accused. It is not that the accused is not known to the child, as they are very closely connected and relatives. Therefore, non mentioning the name of the accused at the earlier point of time, when the statement was recorded under Section 164 Cr.P.C., itself is a doubtful version of the child and the possibility of tutoring the child cannot be ruled out.



Crl.A.No.95 of 2022

10. The defence also clearly established that P.W.1 got divorce from P.W.3 and in support thereof filed Ex.D3 (affidavit of marriage dissolution entered into between P.W.1 and P.W.3), whereas P.W.1, in her evidence, stated as if she has been residing with P.W.3. This indicates that her evidence is highly doubtful and the child has been used as a tool to settle her score with D.W.2. The alleged sexual assault on the minor child by the accused has not been established beyond reasonable doubt. There is no iota of evidence even to infer that the child was subjected to sexual assault in any form. If the accused has really committed such act, as narrated by the child and stated by P.W.1, P.W.12 / Medical Officer must have noted abrasions or contusions on the face of the child, but P.W.12 categorically stated that no external injury was found on her chin.

11. Considering the fact that there are serious flaws in the case of the prosecution and also the fact that the Trial Court has not appreciated the evidence in its proper perspective, we are of the view that the judgment of the Trial Court has no legs to stand and requires interference by this Court.



Crl.A.No.95 of 2022

12. In the result, this Criminal Appeal is allowed. The conviction and sentence imposed on the appellant / accused, namely, **Deva @ Devaraj**, S/o.Raja in Old Spl.S.C.No.60 of 2017 in New Spl.S.C.No.58 of 2019 on the file of the Principal Special Court for POCSO Act cases, Salem, are set aside and the appellant / accused is acquitted of all the charges. The appellant/accused is directed to be released forthwith, unless his custody is required in any other case. Fine amount, if any, paid shall be refunded. Bail bonds, if any, executed shall stand cancelled. Consequently, connected Criminal Miscellaneous Petition is closed.

(N.S.K,J.) (M.J.R,J.)
10.11.2025

Index: Yes / No
Internet: Yes / No
ar



WEB COPY



Crl.A.No.95 of 2022

To:

1. The Principal Special Judge for POCSO Act Cases,
Salem.
2. The Inspector of Police,
All Women Police Station,
Salem Town, Salem District.
3. The Superintendent,
Central Prison,
Salem.
4. The Public Prosecutor,
High Court, Madras.



WEB COPY



Crl.A.No.95 of 2022

N.SATHISH KUMAR,J.
AND
M.JOTHIRAMAN,J.
ar

Crl.A.No.95 of 2022

10.11.2025