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CRL A. No. 23 of 2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28-11-2025

CORAM

THE HONOURABLE MR JUSTICE N. SATHISH KUMAR

AND

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

CrI.A.No.23 of 2021

and

CRL MP No. 19631 of 2025

Elavarasan
S/o.Kolappandiponnusamy,
No.2/26, Sethupilapatti,
Vasalurpatti Post, Thinnanurnadu,
Namakkal District.

Petitioner(s)

Vs

State Rep by,
The Inspector of Police,
All Women Police Station, Namakkal,
Namakkal District.
Cr.No.03/2015.

Respondent(s)



Prayer :

This Criminal Appeal filed under Section 374(2) of Cr.P.C. to set aside the judgment made in Spl.C.C.No.40 of 2015 on the file of the Sessions (Fast Track Mahila) Court, Namakkal, dated 09.12.2020 and acquit the accused.

For Petitioner(s): Mr. R.Sankarasubbu
Mrs.S.Sengkodi

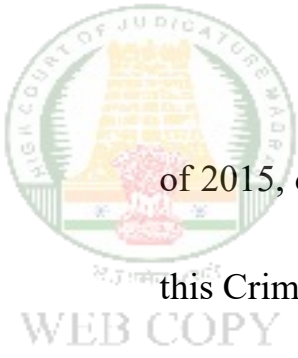
For Respondent(s): Mr. A.Damodaran,
Addl. Public Prosecutor,

Assisted by
Mr. M.Arifa Thasneem

ORDER

(Order of the Court was made by N.Sathish Kumar J.)

Challenging the judgment of conviction and sentence passed by the learned Sessions Judge, Fast Track Mahila Court, Namakkal, in Spl.C.C.No.40



of 2015, dated 09.12.2020, the appellant/sole accused is before this Court with this Criminal Appeal.

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

At the time of occurrence, the victim(P.W.2), aged about 14 years, was studying 9th standard at GTR School, Kolli Hills. The victim used to go to school along with her friend (P.W.4) and, after school hours, both of them were usually picked up by P.W.6.

(ii) On 24.06.2015, the victim(P.W.2) along with her friend (P.W.4), went to school. After school hours, while they were waiting for bus at the Semmedu Bus Stop, the accused, who is cousin brother of P.W.4, came there and picked up both of them on his motorcycle, stating that he would drop them at their home. When they were crossing near Madha Temple, the accused stopped the motorcycle and informed them that he would speak to his sister's daughter and and thereafter drop them. Again, near Arikkalpatti Bus Stop, he stopped the



motorcycle and told P.Ws.2 and 4 that there was no petrol in the vehicle and received water bottle on the pretext of buying petrol and immediately thereafter instructed P.W,4 to wait near the motorcycle and took the victim(P.W.2) with him. The accused took the victim(P.W.2) to the backside of a house and against her will, forcibly committed rape on her. When the victim attempted to raise alarm, he tied her mouth and threatened her. As he was unable to succeed vaginal intercourse, he committed anal and mouth intercourse with her.

(iii) Meanwhile, P.W.1(father of the victim), P.W.3(mother of the victim) and P.Ws,5, 14 to 20, searched for the victim in the surrounding areas, but she could not be traced. Only the undergarment and other clothes of the victim were found. On the next day morning, the victim(P.W.2) was located and thereafter, her father P.W.1 lodged a complaint (Ex.P.1) before the respondent police.

(iv) Upon receiving the complaint, P.W.27, Sub Inspector of Police, registered a case in Crime No.3 of 2015 under Sections 366 and 506(ii) IPC and 3 r/w. 4 of POCSO Act and prepared First Information Report (Ex.P.13) and



forwarded the First Information Report to the jurisdictional Court and the Investigation Officer.

(v) P.W.28, Inspector of Police, took up the case for investigation and proceeded to the Kollimalai Vazhavantthinadu bus stop and prepared Observation Mahazar-I (Ex.P.14) and drew Rough Sketch-I (Ex.P.15) in the presence of P.W.7, Elangovan and P.W.8, Durairaj. Then, he recorded the statement of the witnesses. Thereafter, he proceeded to the plantations of casuarina, pepper and coffee and prepared Observed Mhazar-II(Ex.P.6) and Rough Sketch-II(EX.P.16) in the presence of Village Administrative Officer Madhaiyan(P.W.9) and one Murugasan and recovered M.O.1 to 6 in the presence of the same witnesses under Seizure Mahazar,Ex.P.7.

(vi) Then, he arrested the accused and recorded his confession statement in the presence of P.W.9 and Murugesan. He recorded the statement of the witnesses. Thereafter, he sent a requisition for medical examination of the



accused and the victim .

(vii) P.W.21, Medical Officer attached to the Government Hospital, Namakkal, examined the victim and issued Medical Certificate (EX.P.9) stating that there is no redness, injuries , wounds in external genitalia , hymen intact.

(viii) P.W.22, Medical Officer, attached to the Government Hospital, Namakkal, examined the accused and issued a Medical Certificate (Ex.P.10) stating that there was nothing to suggest that the accused was incapable of performing sexual intercourse.

(ix) P.W.25, Head Master of the Vazhavandhanadu, Kollimalai , where the victim(P.W.2) was studying, issued a school certificate (Ex.p.12) to show that the date of birth of the victim(P.W.2) is 31.05.2001.

(x) P.W.28, recorded the statement of the victim under section 164 Cr.P.C., as well as the statement of P.W.4, who accompanied the victim on the



date of occurrence. After recording the statements of the witnesses and the doctors, who conducted the medical examination on the victim and the accused, he laid charge sheet under Section 366 IPC , 3(a)(b) r/w.4 of POCSO Act 2012 and 506(i) IPC.

3. The Trial Court, after hearing arguments of both sides and upon perusing the relevant records, framed a charge against the accused for offence under Sections 366(A) IPC, 5(1) r/w. 6 of POCSO Act 2012 of IPC and the same have been read over and explained to the accused. The accused has denied the charges and claimed to be tried.

4. In order to prove the case of the prosecution, on the side of the prosecution, as many as twenty eight witnesses were examined as P.Ws.1 to 28 and eighteen documents were marked as Ex.Ps.1 to 18. Besides, six Material Objects were marked as M.Os.1 to 6.

5. When the above incriminating materials were put to the accused under



Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness nor mark any documents on his side.

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6. The Trial Court, on appreciation of the entire evidence on the side of the prosecution and the exhibits marked, including the materials objects, had convicted and sentenced the appellant/accused as follows:

	Offence	Imprisonment	Fine
	366(A)IPC	Seven years rigorous Imprisonment	Rs.1000/-, in default, to undergo Simple Imprisonment for six months.
	5(1) R/W. 6 of POCSO Act	Imprisonment for life	Rs.1,000/- in default to undergo Simple Imprisonment for six months.

Challenging the said finding, the appellant has filed the present appeal.

7. Mr. Sankarasubbu, learned counsel appearing for the appellant/accused would submit that absolutely, there is no evidence to show that the accused had committed penetrative sexual assault. Even the entire evidence of P.W.2, at the



most, brings the act only within the ambit of ordinary sexual assault. Therefore, the accused would be liable only for the maximum punishment of seven years under Section 8 of the POCSO Act. However, the Trial Court has imposed life imprisonment.

8. He would further submit that the evidence of P.W.21, Medical Officer, clearly shows that there were no external injuries even to infer sexual assault or penetrative sexual assault. Hence, the prosecution has not established the charge against the accused. It is further submitted that the accused was not given proper opportunity to place his defence, the the case was not properly represented by his counsel. In support of his submission, reliance was placed on the judgment reported in **2006(9) SCC 713**, which held that when there are no external injuries on the private part of the victim, the hymen is intact and there is no sign of penetration, the punishment cannot be sustained.

9. Whereas the learned Additional Public Prosecutor appearing for the respondent would submit that the evidence of the victim(P.W.2) and P.W.4 not only



proves the kidnapping, but also clearly establishes the penetrative sexual assault.

the evidence of P.W.2 proves penetrative sexual assault. The victim was kept in confinement throughout the night, which has been witnessed by **P.Ws. 1, 3, 5, and 14 to 20.** He would further submit that in order to prove penetrative sexual assault, injury on the private part of the victim and the rupture of hymen are not mandatory. The evidence of the victim (P.W.2) clearly establishes penetrative sexual assault committed on her. In support of his submission, he has also relied upon the judgment holding that conviction can be sustained solely on the testimony of the prosecutrix reported in **2005 SCC 2020 (10) 573.**

10. We have considered the matter in the light of the submissions made by the learned counsel on both sides and perused the materials available on records carefully.

11. It is not disputed that the victim was a minor at the time of occurrence and her date of birth is 31.05.2001 and the same was proved by the evidence of the Head Master, P.W.25 and Ex.P.12, School Certificate. Both the victim(P.W.2) and



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P.W.4 were studying in the same school. The evidence of the victim(P.W.2) and P.W.4 and P.Ws.1 and 3, the parents of the victim, clearly shows that both P.W.2 and P.W.4 used to go to the school together and return home together, P.W.6, who is maternal uncle of P.W.4, normally picked them up.

12. On the date of occurrence, i.e. on 24.06.2015, as P.W.6 did not come as usual to pick them up after school hours, they proceeded to Semmedu bus stop and waited for the bus. At that time, the accused arrived there on a bike(M.O.5) and since he is also cousin brother of P.W.4, he took both of them, P.W.2 and P.W.4 on his bike under the pretext of dropping them at their home . On the way, he stopped the bike and returned after consuming liquor, by stating that he went to meet his sister's daughter. Later, near Arikkalpatti bus stand, he again stopped the bike and asked P.W.4 to stand there, stating that he would go to collect petrol and left the place along with P.W.2. Since they did not come back, P.W.4 informed her father about the incident. As the victim(P.W.2) did not return home, the same was informed to the victim's family members. P.Ws.1, 3, 13 to 20 went in search of the victim. However, they could not find P.W.2, whereas they found only the dress



of the victim(P.W.2). On the next day morning they found the victim(P.W.2) undressed condition. Immediately, she narrated about the incident to them.

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13. The entire evidence of the victim(P.W.2) when carefully scrutinised, clearly shows that the minor was confined throughout the night and was subjected to penetrative assault. The evidence of the victim(P.W.2) clearly shows that the accused inserted his penis into her Vagina and as he was unable to complete vaginal intercourse he penetrated her anus and mouth and repeatedly did the same throughout the night. The evidence of P.W.2, coupled with the evidence of all other witnesses, shows that there was no motive whatsoever for the victim or her family to falsely implicate the accused, especially when they were searching for the minor girl through out the night.

14. We are of the considered view that the testimony of P.W.2 cannot be discarded merely on the ground that the medical officer did not find any external injuries on the private parts, and that hymen was intact. It is relevant to note that the absence of external injury is not determinative of penetrative sexual assault.



Section 3 of Protection of Children from the Sexual Offences Act defines the penetrative sexual . For better appreciation, Section 3 of POCSO Act is extracted hereunder:-

“ Section 3 – Penetrative Sexual Assault

“ A person is said to commit ‘ penetrative sexual assault ’ if-

(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or

(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do with him or any other person; or

(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of the body of the child or makes the child to do so with him or any other person; or

(d) he applies his mouth to the penis, vagina, anus or urethra of the child or makes the child to do so to such person or any other person ”

15. The Act makes it clear that if the accused penetrates his penis, to any extent, into vagina, mouth, urethra or anus of the child or makes the child to do so



with him or any other person or if any object or part of the body, not being the penis, into the vagina, urethra or anus or makes the child to do so with him or with any other person, or even manipulates any part of the body so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person or if he applies his mouth to the penis, vagina, anus, or urethra of the child or makes the child to do so, the same shall amount to penetrative sexual assault. Therefore, it cannot be said that only when the penis is penetrated the offence of penetrative sexual assault will be proved, when any part of the body used by the accused to penetrate the child, even the mouth it constitutes penetrative sexual assault.

16. The evidence of P.W.2 clearly shows that the accused had also penetrated the penis in her mouth and anus and had repeatedly done so throughout the night. There is also evidence to show that before that, he drunk alcohol and kept the minor child throughout the night. Therefore, merely because no external injuries were noted by the medical officer, it cannot be said that no penetrative sexual assault had taken place. Further the evidence of P.W.2 also clearly shows



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that repeated penetrative sexual assault was continuously done on the victim throughout the night. Therefore, once it is established that such act have been done more than once on the minor, the act of the accused will fall within the ambit of Section 5(l) of the Act. Under such case, the punishment shall not be less than 10 years. Prior to the substitution of the Act 25 of 2019, the punishment shall not less than 10 years. Only after the substitution, which came into effect on 16.08.2019, the minimum punishment period shall not be less than 20 years, which may extend to the imprisonment for life, which shows that minimum imprisonment can also be imposed along with fine. The Courts are empowered to impose life imprisonment and not be restricted to minimum punishment.

17. Considering the fact that the accused was 21 years old at the relevant point of time and P.W.2 and P.W.4 are also closely moved him and also the considering the nature of the main evidence, we are of the view that P.W.2 voluntarily gone with the accused cannot be ruled out. Our view is also fortified by the evidence of P.W.,4. In fact, P.W.4 clearly deposed that when the accused left to collect the petrol, P.W.2 also went with him. Therefore, though she was a minor



at that stage, following the accused on her own volition cannot be ruled out.

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18. Mr. Sankarasubbu has emphasised the argument based on the judgment in the case of ***Yerumallalatchaiah /vs/ State of A.P.*** reported in ***2006(9) SCC page***

713. Paragraph 3 of the said judgment reads as follows:-

“ 3. In the present case, age of the victim was only eight years at the time of alleged occurrence. Immediately after the occurrence, she was examined by Dr. K.Sucheritha (PW.7) who has stated in her evidence that no injury was found on any part of the body of the victim, much less on private part. Hymen was found intact and the doctor has specifically stated that there was no sign of rape at all. In the medical report, it has been stated that vaginal smears collected and examined under the microscope but no sperm detected. The evidence of the prosecutrix is belied by the medical evidence. In our view, in facts and circumstances of the present case, the High Court was not justified in upholding the conviction.

19. On a careful perusal of the said judgment, the same cannot be applied in



this case since the facts of the case arose under Section 376 IPC, much prior to the

POCSO Act coming into force, whereas the judgment of the Hon'ble Supreme

Court in *the case of Ganesan /vs/ State rep. By its Inspector of Police* reported

in **2020(10) SCC 573** held as follows:-

“ 10.1.. In State of U.P. /vs. Pappu this Court held that even in a case where it is shown that the girl is a girl of easy virtue or a girl habituated to sexual intercourse, it may not be a ground to absolve the accused from the charge of rape. It has to be established that there was consent by her for that particular occasion. Absence of injury on the prosecutrix may not be a factor that leads the court to absolve the accused. This Court further held that there can be conviction on the sole testimony of the prosecutrix and in case, the Court is not satisfied with the version of the prosecutrix, it can seek other evidence, direct or circumstantial, by which it may get assurance of her testimony. The Court held as under:(SCC P.597, para12)

‘ 12. It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted upon without corroboration in



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material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if the Court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice, would do.”

20. In the case of ***State of H.P./vs/ Asha Ram*** reported in ***2005 (13) SCC***

766, the Hon’ble Supreme Court held as follows:-

“ It is now a well-settled principle of law that conviction can be founded on the testimony of the prosecutrix alone unless there are compelling reasons for seeking corroboration. The evidence of a prosecutrix is more reliable than that of an injured witness. The testimony of the victim of sexual assault is vital, unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty in acting on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. It is also a well-settled



principle of law that corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement

of law but a guidance of prudence under the given circumstances.

The evidence of the prosecutrix is more reliable than that of an injured witness. Even minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case.”

21. Considering the above judgment, the entire evidence and further, since there are no compelling reasons established on record to disbelieve the evidence of the prosecutrix and also P.W.4, who accompanied P.W.2 on the same day, and there was no reason for P.W.4 to implicate her own cousin brother, and other villagers also searched the victim girl on the same day, we are of the view that the testimony of the victim is also reliable. All these reasons, along with the fact that they had no motive whatsoever to falsely implicate him, lead us to conclude that the evidence of the victim is credible.



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22. Considering the age of the accused, 21 years at the relevant point of time, and the medical officer having opined that he had not committed any intercourse on the private part of the victim, we are inclined to reduce the punishment imposed by the Trial Court to the minimum prescribed under Section 6 before the substitution of the Act, i.e. 10 years Rigorous Imprisonment for the offence under Section 5(I) r/w. 6 of the POCSO Act under unamended Act, i.e. Act 25 of 2019.

23. As far as the punishment imposed under Section 366-A of IPC is concerned, we are of the view that the imposition of punishment is not proper. Admittedly, the accused has not induced the minor girl with intent that she might be forced or seduced to have intercourse with any other person than the accused. Therefore, the offence under Section 366-A IPC would not be made out as the ingredients of the said offence are not made out. At the most, the accused can be punished only under Section 363 IPC alone since the medical evidence ruled out



the intercourse. However, the accused accompanied the minor girl, his act certainly falls within the ambit of Section 363 of IPC. We therefore will impose the punishment of 3 years Rigorous Imprisonment for enticing the minor girl under Section 363 of IPC.

24. In the result,

(i) The Criminal Appeal is partly allowed.

(ii) The conviction of the appellant/accused for the offence under Section 5(1) r/w.6 of the POCSO Act is confirmed. However, the sentence of life imprisonment imposed by the Trial Court is modified and reduced to 10 years Rigorous Imprisonment.

(iii) The conviction and sentence imposed by the Trial Court under Section 366-A IPC is set aside instead he is found guilty under Section 363 IPC(137 BNS) and sentence to 3 years Rigorous Imprisonment for enticing the minor girl.



(iv) The sentences shall run concurrently.

(v) The period of sentence already undergone by the appellant shall be

given set off as per Section 428 Cr.P.C.(468 BNSS)

(iv) Consequently, connected miscellaneous petition is closed.

(N.SATHISH KUMAR J.) (M.JOTHIRAMAN J.)

28-11-2025

Speaking/Non-speaking order

Neutral Citation: Yes/No

mrp

To

1. The Sessions Judge,
Fast Track Mahila Court,
Namakkal.

2. The Inspector of Police,
All Women Police Station,
Namakkal, Namakkal District.

3. The Public Prosecutor,



High Court of Madras, Chennai.

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