



CrI.A.No.132 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 16.04.2025

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.A.No.132 of 2025

Prakash

...Appellant

-Vs-

State Rep. by

1. The Deputy Superintendent of Police,
Tiruvannamalai Town,
Tiruvannamalai District.

2. The Inspector of Police,
Chetpet Police Station,
Tiruvannamalai District.
Cr.No.118/2022

3. Mariyammal

...Respondents

This Criminal Appeal is filed under Section 374(2) of Cr.P.C. praying to set aside the judgment of conviction and sentence passed by the Special Court for POCSO Cases, Tiruvannamalai, in Spl.S.C.No.63 of 2022, dated 05.12.2024 and acquit the accused.

For Appellant : Mr.C.S.S.Pillai,
Legal Aid Counsel



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For Respondents : Mrs.G.V.Kasthuri,
Additional Public Prosecutor
for R1 & R2

R3 – No Appearance

JUDGMENT

This criminal appeal has been filed against the judgment of conviction and sentence dated 05.12.2024 passed by the learned Sessions Judge, Special Court (POCSO Cases), Thiruvannamalai.

2 The appellant is the accused. Based on the complaint given by the third respondent, the second respondent police registered a case in Cr.No.118 of 2022 against the appellant/accused for the offence under Sections 341, 354A(1)(i), 506(1) IPC, Section 7 and 8 of the Protection of Child from Sexual Offences Act, 2012 (in short ' POCSO Act') and Section 3(1)(w)(ii) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015(in short ' SC/ST Act'). After completing investigation, charge sheet was laid and the same was taken on file in

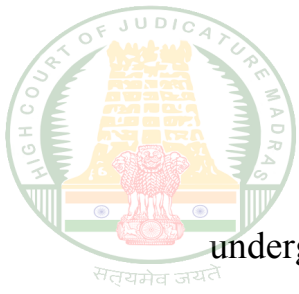


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Spl.S.C.No.63 of 2022 by the learned Sessions Judge, Special Court
(POCSO Cases), Thiruvannamalai.

3 In order to prove the case of the prosecution, before the trial Court, 17 witnesses were examined as P.W.1 to P.W.17, 19 documents were marked as Ex.P1 to Ex.P19 and one material object was exhibited as M.O.1 series. On the side of the defense, no one was examined and no document was marked.

4 The learned Sessions Judge, after advertng to the materials placed on record and after hearing both the parties, by judgment dated 05.12.2024 convicted the accused for the offence under Section 354A(1)(i) of IPC, Section 12 and 8 of POCSO Act and Section 3(1)(w)(i) and 3(2)(va) of SC/ST Act. The appellant/accused was sentenced to undergo rigorous imprisonment for a period of three years each with fine of Rs.5,000/-, in default, to undergo simple imprisonment for a further period of six months for the offence under Section 354(A)(1)(i) of IPC, to undergo rigorous imprisonment for a period of five years with fine of Rs.5,000/-, in default, to



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undergo simple imprisonment for a period of one year for the offence under

Section 8 of the POCSO Act, to undergo rigorous imprisonment for a period of three years with fine of Rs.5000/-, in default, to undergo simple imprisonment for a further period of six months for the offence under Section 3(1)(w)(i) of the SC/St Act, and sentenced to undergo rigorous imprisonment for a period of three years with fine of Rs.5000/-, in default, to undergo simple imprisonment for a further period of six months for the offence under Section 3(2)(va) of the SC/ST Act. Further the learned trial Judge awarded compensation of Rs.1,00,000/- to the victim.

5 Aggrieved against the said judgment of conviction and sentence, the accused has preferred the present criminal appeal before this Court.

6 It is the case of the prosecution that on 24.02.2022 at about 1.00 p.m., when the victim, who belongs to Scheduled Tribes community, after grazing the cattle, returning home via Melvillivanam Lakshore mud road, the appellant/accused came by Bajaj CT-100 Two Wheeler with



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Reg.No.TN-10-AV-9136 and with sexual intent, waylaid her and asked her that I was standing there for you, why didn't you come?. Thereafter the appellant/accused pulled the victim's hair and pressed her breast and thereby sexually assaulted the victim, who was 17 years old at the time of occurrence. Therefore the case in Cr.No.118 of 2022 was registered for the offence under Sections 341, 354A(1)(i) IPC, Section 12, 8 of the POCSO Act and Sections 3(1)(w)(i) and 3(2)(va) of the SC/ST Act.

7 The learned legal aid counsel for the appellant/accused would submit that there is no eye witness and none of the witnesses have supported the case of the prosecution. The entire case of the prosecution falls under the circumstantial evidence and moreover there is no witness to substantiate the charges against the appellant/accused. P.W.1 who is the defacto complainant and mother of the victim girl had admitted in her evidence that the police came to the scene of crime on information. Further P.W.1 had admitted that on the date of occurrence she had given the complaint at police station, which was written by a known person and she did not know the recitals of the same, since she did not know read and write Tamil and

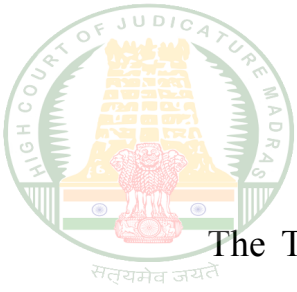


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she had only signed on the complaint. But, P.W.1 the victim girl had admitted that on the next day only they made complaint in the Police Station and she further stated that the complaint was written by police only. Therefore who written the complaint is most doubtful and the earlier complaint as stated by P.W.1 was suppressed and hence Ex.P1 is hit by Section 162 Cr.P.C.

7.1 There are contradictions between the evidence of P.W.2 and the statement recorded under Section 164 Cr.P.C from the victim with regard to the place of occurrence. P.W.3 father of the victim in his evidence stated that there is no proper road to access his land and they used the land of the accused to access their land. Therefore it is clear that there is pathway dispute between the victim's family and the accused and hence in order to wreck vengeance, the parent of the victim foisted false case against the appellant.

7.2 P.W.6 and P.W.7, who are the witnesses to Mahazar and Rough Sketch, were turned hostile and did not support the case of the prosecution.



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The Tahsildar, who issued the caste certificate stated that he issued only report and not certificate and hence there is doubt in the genuineness of the caste certificate Ex.P4. The Head Master of the School, where the victim studied, was examined as P.W.12, and in his evidence he admitted that he issued only a report regarding the date of birth of the victim girl and he did not verify any document to compare the date of birth. Therefore there is no clear proof for the age of the victim and the date of birth of the victim is doubtful. Further the Medical Officer P.W.13 admitted that no external injury on the body of the victim girl. The learned Special Judge failed to appreciate the oral and documentary evidence in a right perspective and convicted the appellant only on the ground of sympathy. Therefore the conviction recorded by the trial Court warrants interference of this Court.

8 Learned Additional Public Prosecutor for the respondents police would submit that at the time of occurrence, the victim was only 17 years and she was a child under the definition of POCSO Act and further she belongs to Scheduled Tribes community. On the date of occurrence i.e. 24.02.2022 at about 1.00 p.m. the victim went for grazing the cattle and at



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that time the appellant, who came by Two Wheeler bearing

Reg.No.TN10AV9136 Bajaj pulled her hair and with an intention to give sexual assault towards the victim, he touched her breast. The victim informed about the same to her mother P.W.1, who set law into motion by giving complaint before the second respondent police station. P.W.17, the Deputy Superintendent of Police took up the investigation, since the offence involved is under SC/ST Act and after completing investigation, charge sheet was laid. The victim was examined as P.W.2, mother of the victim was examined as P.W.1 and father of the victim was examined as P.W.3.

8.1 Even though other witnesses are not eye witnesses, it cannot be stated as circumstantial evidence, since it is not the case of the prosecution that somebody witnessed the occurrence and it is the fact that the only occurrence witness is the victim and she informed the incident to her mother, who made the complaint before the second respondent police. The victim was produced before the Judicial Magistrate and her statement under Section 164 Cr.P.C. was recorded and thereafter she was produced before the Doctor for medical examination. Therefore there is no question of non

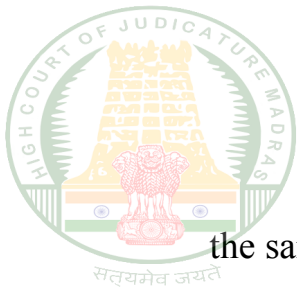


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examination of eye witness since the victim herself examined as P.W.2 and she narrated the entire incident before the Magistrate while recording statement under Section 164 Cr.P.C, which was also marked as Ex.P.18.

8.2 The mother of the victim, who made the complaint was examined as P.W.1. P.W.13 is the Doctor, who examined the victim, in her report Ex.P.8 has stated that the victim at the time of examination informed her that she was sexually assaulted by the accused. P.W.14 is the Medical Officer, who gave Ex.P10 Ultra Sound Scan Report of the victim. P.W.15 is the Doctor, who examined the appellant/accused, has given his report Ex.P12 stating that the accused is potent.

8.3 P.W.9 is the Tahsildar and he issued Ex.P4, which is the proof of caste of the victim, which shows that she belongs to Scheduled Tribe community and Ex.P5 is the community proof of the appellant/accused. Therefore prosecution, through oral and documentary evidence, proved its case beyond reasonable doubt and the trial Court rightly appreciated the evidence and convicted the appellant and there is no merit in the appeal and



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the same is liable to be dismissed.

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9 Heard the learned legal aid counsel appearing for the appellant and the learned Additional Public Prosecutor for the respondents police and perused the materials available on record.

10 It is the main defence of the appellant/accused that in this case no eye witness was examined and all the witnesses are interested witnesses. The victim herself examined as P.W.2 and she has clearly stated in her evidence that there was no one else at the time of occurrence and she informed about the occurrence to her mother and her mother gave complaint. Even though there is contradiction between the evidence of P.W.1 and P.W.2 regarding the person who written the complaint as contended by the learned legal aid counsel for the appellant, a careful reading of the evidence of P.W.1, P.W.2 the victim and P.W.3, it is clear that P.W.2 was sexually assaulted by the accused on 24.02.2022 at about 1.00 p.m. and she informed the same to her brother P.W.4 and he informed the same to his mother through phone and thereafter P.W.1 and P.W.3, who

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went out for their job, arrived on the same day and made complaint before the second respondent police.

11 In the cases of this nature under the POCSO Act, the Court cannot expect any eye witness and in this case, on reading of the entire allegations made against the appellant, it would reveal that the evidence of the victim itself would suffice to convict the accused. The victim, being a village girl, who is aged about 17 years at the time of occurrence, has clearly narrated the incident and the involvement of the accused in the offence, which would clearly attract offence under the POCSO Act. In the case on hand, there is no reason to discard the evidence of the victim.

12 Further normally, in a village, the victim girl, who was affected by sexual assault, would not react immediately and make complaint before the police and they would worry about the society and hence it will take some time for them to take legal actions. Therefore the discrepancies pointed out by the learned legal aid counsel for the appellant are not material contradictions. The fact remains that the appellant waylaid the



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victim girl when she was alone and committed the charged offence and the victim has clearly stated about the sexual assault made by the appellant/accused before the Judicial Magistrate, while recording the statement under Section 164 Cr.P.C. Thereafter, the victim was produced before the Medical Officer P.W.13, who examined the victim has stated that at the time of examination of the victim she informed about the sexual assault committed by the accused. Ex.P8 is the Accident Register, wherein also it is clearly stated that when the victim was alone the appellant/accused came and made sexual assault on the victim. Thereafter the victim was examined before the court as P.W.2 and there also she narrated the entire event.

13 Therefore a combined reading of the evidence of P.Ws.1, 2 and 3 and Exs.P1, 4, 5, 7, 8, 11, 12 and 18, it is clear that the victim was subjected to sexual assault made by the appellant. Even though the other witnesses are not eye witnesses, in the cases of this nature, the Court cannot expect any independent witness. P.Ws.1 to 5 supported the case of the prosecution stating that the victim took the cattle for grazing and at that



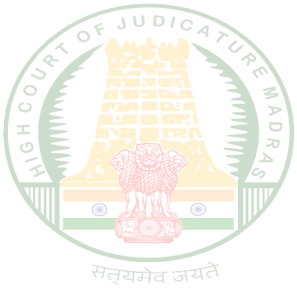
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time the appellant/accused made sexual assault on the victim.

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14 The case was only for the offence punishable under Section 8 of the POCSO Act and the act of the appellant/accused falls under the definition of sexual assault and hence the victim evidence is of paramount consideration and there is no reason to disbelieve the evidence of the victim. The cases of this nature, in the absence of any other reason to discard the evidence of the victim, the Court has to accept the evidence of the victim, unless there exist any special reason for discarding her evidence.

15 From a careful reading of the entire materials, this Court does not find any reason to discard the evidence of the victim, which is cogent and consistent and there is no reason to disbelieve the evidence of the victim. From the oral and documentary evidence, it is clear that the victim was a child under the definition of POCSO Act at the time of occurrence. Further from the evidence of Tahsildar P.W.9 and Ex.P4, prosecution proved that the victim belongs to Scheduled Tribes community.



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WEB COPY 16 A combined reading of the evidence of P.W.1 mother of the victim, who set the law into motion, P.W.13 to P.W.15 doctors' evidence, evidence of P.W.9 Tahsildar and P.W.12 Head Master of the School, where the victim studied and the medical records, it is clear that prosecution proved that the victim was a child and belongs to Scheduled Tribes community and she was subjected to sexual assault by the appellant/accused, which is punishable under Section 8 and 12 of the POCSO Act. The trial Court rightly appreciated the evidence of prosecution witnesses and accepted that the prosecution has proved the charges and this Court does not find any special circumstances to take a different view in the present case on hand. Therefore the conviction recorded by the trial Court is confirmed.

17 As far as sentence of five years imprisonment awarded by the trial Court for the offence punishable under Section 8 of the POCSO Act is concerned, the act of the appellant does not fall under the definition of Penetrative Sexual Assault and it is sexual assault and hence this Court is



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inclined to reduce the sentence to three years.

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18 Accordingly, the sentence of rigorous imprisonment of five years awarded by the trial Court for the offence punishable under Section 8 of the POCSO Act is hereby reduced to three years. Further compensation of Rs.1.00 lakh awarded by the trial Court is hereby enhanced to Rs.5.00 lakhs, which would meet the ends of justice. All other conviction and sentence rendered by the trial Court shall remain intact.

19 With the above modifications, this Criminal Appeal stands disposed of.

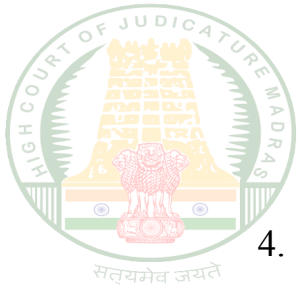
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To

1. The Sessions Judge, Special Court for POCSO Cases, Tiruvannamalai.
2. The Deputy Superintendent of Police, Tiruvannamalai Town, Tiruvannamalai District.
3. The Inspector of Police, Chetpet Police Station, Tiruvannamalai District.

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4. The Public Prosecutor, High Court of Madras.

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