



Crl.A.No. 227 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2025

CORAM:

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

Crl.A.No.227 of 2024 &
Crl.M.P.No.11070 of 2025

Chellappan

... Appellant

Vs.

The State Rep by
The Inspector of Police,
All Women Police Station, Ammapettai,
Salem District
(Crime No.9 of 2019)

... Respondent

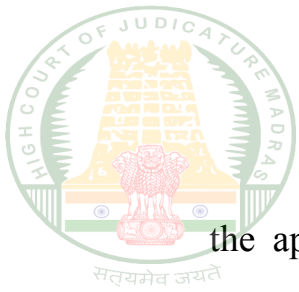
PRAYER: Criminal Appeal filed under Section 374 (2) of Cr.P.C., to call for the entire records in connection with Spl.S.C.No.18 of 2020 dated 06.06.2022 on the file of the learned Sessions Judge, Special POCSO Court, Salem, Salem District and set aside the same.

For Appellant : Mr.E.Kannadasan

For Respondent : Mr.A.Gopinath
Government Advocate (Crl.Side)

JUDGMENT

This Criminal Appeal is directed as against the judgment passed in Spl.S.C.No.18 of 2020 dated 06.06.2022 on the file of the learned Sessions Judge, Special POCSO Court, Salem District thereby convicting



Crl.A.No. 227 of 2024

WEB COPY

the appellant for the offence punishable under Section 5(m) r/w 6 of Protection of Children from Sexual Offence Act, 2012, [for brevity, hereinafter referred to as POCSO Act] and sentenced to undergo rigorous imprisonment for 20 years and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for a period of six months.

2. The case of the prosecution is that the victim is residing four houses next to the house of the appellant. The victim was friend and playmate to one Meena, who is none other than the sister-in-law of the appellant and therefore, the appellant was known to the victim and her family members. While being so, on 23.04.2019, at about 1.00 P.M., when the appellant saw the victim going to the neighbour's house to get cool water, he called the victim into his house with an intention to cause sexual assault on her. Thereafter, the victim was taken to the accused house and the accused removed her clothes and made her nude and committed aggravate penetrative sexual assault on the victim girl. The appellant also threatened the victim not to disclose the same to anybody. On the complaint lodged by the defacto complainant, the respondent registered FIR in Crime No.9 of 2019 for the offence punishable under Section 5(m) r/w 6 of POCSO Act. After completion of investigation, the

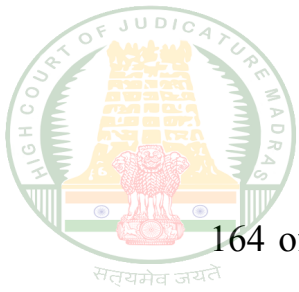


Crl.A.No. 227 of 2024

respondent filed final report and the same was taken cognizance by the trial court in Spl.SC.No.18 of 2020.

3. On the side of the prosecution, they examined P.W.1 to P.W.12 and marked exhibits Ex.P1 to Ex.P.22. The prosecution also produced material objects i.e. M.O.1. On the side of the appellant, no one was examined and no documents were marked. On perusal of oral and documentary evidence, the trial court found the appellant guilty for the offence under Section 5(m) r/w 6 of POCSO Act, 2012 and sentenced him to undergo rigorous imprisonment for twenty years and to pay a fine of Rs.10,000/- in default to undergo simple imprisonment for six months. Aggrieved by the same, the present Criminal Appeal has been filed by the appellant.

4. The learned counsel appearing for the appellant would submit that the trial court convicted the appellant on the basis of inconsistent evidence of P.W.1 and P.W.2. The victim girl was examined as P.W.2, her mother was examined as P.W.1 and victim girl's father was examined as P.W.3. The Doctor, who examined the victim deposed as P.W.8, even according to the Doctor, there were no symptoms of penetrative sexual assault on the victim in the hands of the appellant. The learned counsel also relied upon the statement recorded under Section



Crl.A.No. 227 of 2024

164 of Cr.P.C., and indicated that there was no allegation of aggravated penetrative sexual assault. Further, the alleged occurrence took place on 23.04.2019, however, the trial court convicted the appellant on the basis of the Amended Act, which came into effect from 16.08.2019.

5. Per contra, the learned Government Advocate (Crl.side) appearing for the respondent/police submitted that the victim girl was aged about only 12 years on the date of occurrence. When the victim girl was proceeding to get cold drinking water from her sister's house, which is situated four house next to her house and on crossing the appellant house, he pulled her hands into his house, after closing her mouth by cloths tied both her legs and hands and removed her dress and he had committed penetrative sexual assault on her. Immediately, P.W.2, the victim was subjected for medical examination and the Doctor, opined that the victim girl suffered penetrative sexual assault. Therefore, the trial court convicted the appellant and does not warrant any interference from this Court, thereby pleaded to dismiss the appeal.

6. Heard the learned counsel appearing on either side and perused the material placed before this Court.

7. The specific case of the prosecution is that on 23.04.2019 at



WEB.COM

about 1.00 P.M., when the victim girl was going to get water from her sister's house, which is situated four houses after her house, while crossing the appellant's house, she was pulled by the appellant into his house and the appellant has committed penetrative sexual assault on her. However, it was not even disclosed to her parents, namely, P.W.1 and P.W.3. The own sister's daughter of the appellant is a close friend and playmate of the victim. While there was misunderstanding between them, immediately, the victim informed the said alleged occurrence to her mother on 27.04.2019 and on the same day, the complaint was lodged by P.W.2. However, on perusal of typed deposition of witnesses P.W.1 to 3, there was absolutely no explanation for the delay in the lodgment of complaint. When the victim girl suffered aggravated penetrative sexual assault that too at the age of 12 years, she would have suffered not only physically but also mentally. After registration of FIR, the victim girl was subjected for medical examination before P.W.8. On examination, P.W.8 found that there was no external injury and there was also no injury on her private parts and her hymen was intact. Further, no sperm was found in the swab test and finally P.W.8 opined that victim girl was not subjected to any sexual intercourse.



Crl.A.No. 227 of 2024

8. That apart, the investigation report with regard to sexual offence of the victim was marked as Ex.P.13 and the visera report was marked as Ex.P.14, forensic science report was marked as Ex.P.15 and the final opinion was marked as Ex.P.16 and all the said documents would reveal that the victim girl was not subjected to any sexual intercourse and there was no finding of any sperm.

9. Also the statement recorded under Section 164 of Cr.P.C., of the victim was marked as Ex.P.3. On perusal of the same, it reveals that the appellant pulled the victim hand and misbehaved with the victim with an intention to involve in sexual intercourse. The victim, immediately shouted and there was a sound of knocking at the door and immediately the victim jumped towards the compound wall and came out of the appellant's house. Therefore, even according to the victim, there was no aggravated penetrative sexual assault committed by the appellant. However, there was some misbehavior by the appellant, therefore, the prosecution has made out a case of the offence punishable under Sections 7 and 8 of the POCSO Act and the prosecution failed to prove the charge under Section 5(m) r/w 6 of POCSO Act.



Crl.A.No. 227 of 2024

WEB COPY

10. It is pertinent to note that even according to the case of the prosecution, the alleged occurrence was taken place on 23.04.2019, i.e., before the date of amendment of the POCSO Act and the amendment came into force from 16.08.2019. Also, the prosecution charged offence under Section 506(i) of IPC and since the prosecution failed to prove the same, the appellant was acquitted for charge under Section 506(i) of IPC. The sentence of 20 years of imprisonment for offence under Section 5(m) r/w 6 of POCSO Act that was imposed by the trial court, cannot be sustained and is liable to be set aside.

11. In view of the above, the conviction and sentence imposed on the appellant under Sections 5(m) r/w 6 of POCSO Act, in Special S.C.No.18 of 2020 dated 06.06.2022, on the file of the learned Sessions Judge, Special POCSO Court, Salem, is hereby modified. The appellant is convicted for the offences under Sections 7 read with 8 of POCSO Act and the sentence imposed on him is modified to the period of incarceration which was already undergone by the appellant. So far, the petitioner is incarcerated from the date of Judgment viz., 06.06.2022 till today. Therefore, the appellant is directed to be set at liberty forthwith unless his custody is otherwise required in connection with any other



Crl.A.No. 227 of 2024

case. The fine amount, if any, paid by the appellant shall be refunded.

WEB COM Bail bond, if any, executed by the appellant shall stand cancelled.

12. With the above modification, this Criminal Appeal stands partly allowed. Consequently, connected miscellaneous petition is closed.

16.06.2025

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

1. The Sessions Judge,
Special POCSO Court, Salem,
Salem District.
2. The State Rep by
The Inspector of Police,
All Women Police Station, Ammapettai,
Salem District
(Crime No.9 of 2019)
3. The Public Prosecutor,
Madras High Court,
Chennai.



WEB COPY



Crl.A.No. 227 of 2024

G.K.ILANTHIRAIYAN, J.

ssd

Crl.A.No.227 of 2024

16.06.2025