



Crl.A.No.207 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2025

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

Crl.A.No.207 of 2023
and Crl.M.P.No.3008 of 2023

Boobalan

... Appellant

Vs

The State represented by
The Inspector of Police,
All Women Police Station,
Arani,
Tiruvannamalai District.

...Respondent

PRAYER : Criminal Appeal has been filed under Section 374(2) of Criminal Procedure Code, to set aside the order of Conviction and sentence passed by the Special Court, POCSO Cases, Tiruvannamalai dated 02.06.2022, made in Special S.C.No.33/2020.

For Appellant : Mr.R.Balasubramanian

For Respondent : Mr.S.Raja Kumar

Additional Public Prosecutor

JUDGMENT

This Criminal Appeal has been filed as against the order passed in Special S.C.No.33 of 2020, dated 02.06.2022 by the Special Court, POCSO Cases, Tiruvannamalai, thereby convicting the appellant for the offences punishable under Sections 9 read with 10 of the POCSO Act on two counts.



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2. The case of the prosecution is that, on 14.11.2013, while the victim girls 1 and 2 were in their home, the appellant had taken the first victim to the house situated opposite to the victim's house and had committed aggravated sexual assault on the first victim. Thereafter, he had also committed aggravated sexual assault on the second victim. Hence, the complaint.

3. On the complaint lodged by the victims' mother, the respondent registered FIR in Crime No.12 of 2013. After completion of investigation, the respondent filed final report and the same has been taken cognizance by the Trial Court for the offences punishable under Sections 6 read with 5(m) of POCSO Act, Section 376(A)(b) of IPC and Section 3(2)(va) of SC/ST Act in Spl.S.C.No.33 of 2020.

4. On the side of the prosecution, they had examined PWs.1 to 18 and marked Exs.P1 to 21. The prosecution had also produced material objects and marked the same as M.Os.1 to 5. On the side of the accused, no one was examined and no document was produced. On perusal of oral and documentary evidence, the Trial Court found the appellant guilty for the offences punishable under Section 9(m) read with Section 10 (two counts) of POCSO Act and



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sentenced him to undergo five years rigorous imprisonment and imposed fine of Rs.5000/- for each count, in default to undergo one year simple imprisonment.

The appellant was also convicted for the offence punishable under Section 451 of IPC and sentenced him to undergo two years rigorous imprisonment and imposed fine of Rs.1000/-, in default to undergo six months simple imprisonment. Further, the appellant was also convicted for the offence under Section 3(2)(va) of SC/ST Act and was sentenced to undergo two years rigorous imprisonment and was imposed fine of Rs.1000/-, in default to undergo six months simple imprisonment and it was ordered that the sentence shall run separately.

5. The learned counsel for the appellant submitted that there is a contradiction in the evidence of PW.1 in respect of place of occurrence. The Doctor, who had examined the victims deposed that there was no attempt and no evidence of sexual intercourse. However, the Trial Court failed to appreciate the above facts and circumstances and mechanically convicted the appellant.

6. The learned Public Prosecutor appearing for the respondent Police submitted that the victims were examined as PWs.2 and 3. They had



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categorically deposed about the occurrence and the victims' evidence are best evidence and credible one. Therefore, the Trial Court had rightly convicted the appellant and it does not require any interference by this Court.

7. Heard both sides and perused the materials available on record.

8. The mother of the victims was examined as PW.1. In her complaint, she had alleged that the occurrence had taken place in a hut situated opposite to her house. But she gave the evidence that the occurrence had taken place in the backside of her house (Kollamedu). In fact, a perusal of the Accident Register which was recorded in the Government Hospital, Arani revealed that the alleged occurrence had taken place on 14.11.2013 at about 12 p.m, backside to her house (Kollamedu) by a known male. In fact, she was examined as eye witness to the occurrence. At that time, PW1 had come to her house to provide lunch to the victims. At that juncture, she had seen the appellant committing offence.

9. The victims were examined as PWs.2 and 3. PW.2 deposed that when she was sleeping in her house, the appellant trespassed into her house and



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had taken her to the house situated opposite to her house. There he had committed sexual assault on her. When she was crying, it was heard by the second victim, who is none other than the younger sister of the first victim. Once again, the appellant had committed the same sexual assault on the second victim also. It was also duly corroborated by the second victim, who was examined as PW.3.

10. Immediately, both the victims were taken to the Government Hospital, Arani and the Doctor, who had examined them, opined that there is no evidence of sexual intercourse. Further, insofar as the first victim is concerned, there is no evidence for attempt of sexual intercourse. The Accident Register in respect of the first victim was marked as Ex.P7. Insofar as the second victim is concerned, the Doctor had opined that there is an evidence of attempt of sexual intercourse. The Accident Register in respect of the second victim was marked as Ex.P8. For both the victims, she opined that no external injuries over breast and external genitalia. As far as the first victim is concerned, her hymen was intact. However, as far as the second victim is concerned, her hymen was ruptured. The Doctor was examined as PW.12. As per the Accident Register, she deposed and confirmed the same.



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11. Though there could be other reasons for the hymen being ruptured, there was an attempt to commit sexual intercourse with regard to the second victim. Therefore, the appellant had committed the offence under Section 7 of the POCSO Act. The charge for the offence punishable under Section 9(m) is not proved by the prosecution.

12. Accordingly, this Criminal Appeal stands partly allowed. Consequently, connected Miscellaneous petition is closed.

13. In view of the above narration, the conviction imposed on the appellant in Special S.C.No.33 of 2020, dated 02.06.2022 by the Special Court, POCSO Cases, Tiruvannamalai stands modified. Accordingly, the offence charged against the accused viz., under Sections 9 read with 10 of the POCSO Act on two counts is hereby modified into one under Section 7 read with 8 of the POCSO Act. Insofar as the sentence is concerned, immediately after the arrest, the appellant was arrested and remanded to judicial custody. He was released on bail after a period of nearly two months. Thereafter, on the date of Judgment viz., 02.06.2022, he was confined to prison and till today, he is in



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incarceration imprisonment. Totally, he has been in prison for more than three years and two months. Therefore, the sentence imposed on him is modified to the period of incarceration which was already undergone by the appellant. Accordingly, the appellant is hereby directed to be set at liberty forthwith, unless he is otherwise required in connection with any other case.

13.06.2025

Speaking order/Non-speaking order

Index :Yes/No

Internet :Yes/No

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To

1. The Special Court, POCSO Cases,
Tiruvannamalai.
2. The Superintendent of Prison,
Central Prison, Vellore.
3. The Inspector of Police,
All Women Police Station,
Arani,
Tiruvannamalai District.
4. The Public Prosecutor,
High Court, Madras.



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G.K.ILANTHIRAIYAN, J.

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