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Crl.A.No.224 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.12.2025

PRONOUNCED ON : 15.12.2025

CORAM :

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.224 of 2023

Karuna @ Karunagaran

... Appellant/Sole Accused

v.

1. State rep. by the Deputy Superintendent of Police,
Vaniyambodi Sub-Division,
All Women Police Station,
Vaniyambodi, Thiruppathur District.
(Vellore District).

... 1st Respondent/Complainant

2. xxx [PW1]

... 2nd Respondent/Victim

*[R2 impleaded as per order of this Court [VSGJ] dated 09.03.2023 in
Crl.M.P.No.3489 of 2023 in Crl.A.No.224 of 2023]*

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, against the conviction of the appellant/sole accused and sentence imposed on him in Spl.S.C.14 of 2016 dated 18.07.2018 on the file of the learned Sessions Judge, Fast Track Mahila Court, Vellore and set aside the conviction and sentence and allow this appeal.



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For Appellant : Mr.E.Kannadasan
For Respondents : Mr.S.Rajakumar (for R1)
Additional Public Prosecutor.
No appearance (for R2)

JUDGMENT

This Criminal Appeal has been filed by the sole accused, challenging the conviction and sentence imposed upon him for the offence under Section 366 of the IPC and Sections 6 r/w 5(m) of Protection of Children from Sexual Offences Act [in short, '*the POCSO Act*'], vide judgment dated 18.07.2018 in Spl.S.C.No.14 of 2016, on the file of the learned Sessions Judge, Fast Track Mahila Court, Vellore.

2(i) The gist of the allegation against the accused is that the accused and the victim girl aged about eight years, at the time of occurrence, were neighbours; that on 15.03.2015, at about 11.00 a.m., when the victim child was playing with her sisters and grandparents, the accused who is not a member of the Scheduled Caste, with an intention to commit rape on the victim girl, gagged her mouth, forcibly abducted her from the place, kept her in wrongful confinement and committed penetrative sexual assault and thus,



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the accused committed the offences under Sections 365, 368 r/w 376(2)(i) of the IPC and Section 4 of the POCSO Act and Section 3(2)(v) of the SC/ST Act.

(ii) On the complaint given by the victim, who was examined as PW1 before the trial Court, an FIR [Ex.P16] was registered in Cr.No.1 of 2015 by the Inspector of Police, Thirupathur [PW13] for the offences under Section 3(i)(x)(xii) of the SC/ST Act, Sections 376 and 354 of the IPC and Sections 6, 10 of the POCSO Act. Thereafter, the case was assigned to the Deputy Superintendent of Police, Vanniyambadi [PW14] by the Superintendent of Police, for investigation. On completion of investigation, PW14 filed the final report on 13.04.2015 against the accused for the offence under Sections 365, 368 r/w 376(2)(i) of the IPC and Section 4 of the POCSO Act and Section 3(2)(v) of the SC/ST Act, before the learned Judicial Magistrate No.III, Thirupathur.

(iii) On the appearance of the accused, the provisions of Section 207 Cr.P.C., were complied with, and was committed to the Court of Sessions i.e., Principal Sessions Judge, Vellore. The case was taken on file as



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Spl.S.C.No.37 of 2015 and was made over to the learned Sessions Judge, Fast Track Mahila Court Vellore, for trial, which was taken on file as Spl.S.C.No.14 of 2016. The trial Court framed charges against the accused for the offences under Sections 366, 376(2)(i) of the IPC and Section 6 r/w 5(m) of the POCSO Act and Sections 3(1)(W)(i) and 3(2)(v) of the SC/ST Act and when questioned, the accused pleaded 'not guilty'.

(iv) To prove its case, the prosecution had examined 16 witnesses as P.W.1 to P.W.16 and marked 24 exhibits as Exs.P1 to Ex.P24, besides 6 material objects as M.O.1 to M.O.6. When the accused was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. The accused neither examined any witness nor marked any document on his side.

(v) On appreciation of oral and documentary evidence, the trial Court acquitted the appellant/accused of the said charges under Sections 3(1)(W)(i) and 3(2)(v) of the SC/ST Act and found him guilty of the offences under Sections 366, 376(2)(i) of the IPC and Section 6 r/w 5(m) of the POCSO Act and accordingly, convicted and sentenced him as follows:



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<i>Sl.No.</i>	<i>Offence under Section</i>	<i>Sentence imposed</i>
1	366 IPC	To undergo imprisonment for seven years and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for one month.
2.	6 r/w 5(m) of the POCSO Act, 2012	To undergo rigorous imprisonment for ten years and to pay a fine of Rs.2,000/- in default to undergo rigorous imprisonment for two months.
3.	376(2)(i) of the IPC	No separate sentence imposed as the accused was sentenced under Section 6 r/w 5(m) of the POCSO Act, 2012.
The sentences were directed to run concurrently.		

Hence, the accused has preferred the instant appeal challenging the said conviction and sentence.

3. The learned counsel for the appellant/accused would submit that the appellant and the grandfather of the victim girl had a property dispute; that the appellant has been falsely prosecuted, on the basis of the evidence of the child witness, which is not trustworthy; that there are several contradictions in the evidence of PW1 to PW4, with regard to the manner in which the occurrence took place; that the evidence of PW12-Doctor and Ex.P15 Accident Register, do not corroborate the evidence of the victim and the other witnesses; that there are contradictions in the deposition and in the



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Section 164 Cr.P.C. statement of the victim; and that therefore, it would be highly unsafe to convict the appellant on the basis of the victim's testimony.

4. The learned Additional Public Prosecutor *per contra* submitted that the victim girl, aged eight years, had no *axe to grind* against the appellant; that her evidence is cogent and convincing; that minor contradictions in the evidence would not affect the prosecution case in any manner and referred to the evidence of the victim and the other witnesses, in support of his submission; and hence, prayed for dismissal of the appeal.

5. As stated earlier, the prosecution had examined 16 witnesses. PW1, is the victim child aged about eight years; PW2 is the great grandmother of PW1, who corroborates the version of PW1; PW3 is the elder sister of PW1, who also corroborates the evidence of PW1; PW4 is the neighbour and is a hearsay witness; PW5 is the mother of PW1, who was at Bangalore at the time of occurrence and came to know of the occurrence from PW2; PW6 is the witness to the seizure [Ex.P7] and the observation mahazar [Ex.P6]; PW7, who is said to have witnessed the appellant taking the victim girl to his house turned hostile; PW8 is the Tahsildar who had certified that



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the victim belonged to Scheduled Caste community and marked the requisition letter [Ex.P9] and the Certificate [Ex.P10]; PW9 is the Tahsildar, who had certified that the appellant belonged to Vanniyar community and has marked the requisition letter [Ex.P11] and the Certificate [Ex.P12]; PW10 is the Doctor who had first treated the victim girl and had made entries in the Accident Register [Ex.P13]; PW11 is the Doctor who examined the appellant and issued the Potency Certificate [Ex.P14]; PW12 is another Doctor, who had issued the Accident Register [Ex.P15] after examining the victim on 16.03.2015; PW13 is the Inspector of Police, who had registered the FIR [Ex.P16] on the complaint given by PW1; PW14 is the Deputy Superintendent of Police, who had conducted the investigation; PW15 is the Additional Director in the Forensic Sciences Laboratory, who had issued the Serology Report [Ex.P23]; and PW16 is the Joint Director in the Forensic Sciences Laboratory. He had examined the dress materials of the appellant and had opined that there were no traces of semen in his dresses and issued the Chemical Analysis Report [Ex.P24]. He had forwarded the blood stained dress of the appellant to the Serologist.



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6. From the above narration, it would be clear that the prosecution rests on the evidence of PW1 to PW3. As stated above, all the other witnesses are hearsay witnesses. The prosecution seeks to rely upon the evidence of PW10 and PW12, the doctors who had examined the victim girl and PW11 the doctor who had examined the appellant to corroborate their versions. The other aspects of the case viz., that the appellant belonged to the Vanniar Community and the victim belonged to the Scheduled Caste community, are not in dispute.

7. The charge against the appellant as stated above is that he had committed rape on the minor girl and thus is liable for the offence under Section 376(2)(i) of IPC and Section 6 r/w 5(m) of the POCSO Act. As stated above, the appellant was acquitted of the offences under the SC/ST Act.

8. It is the case of the appellant that the impugned prosecution was initiated since there was a property dispute between the appellant and PW2. Except for the suggestion in the cross-examination, the defence has not probalised that defence by letting in any evidence.



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9. The victim in her deposition would state that the appellant had removed his dress and that of the victim and committed penetrative sexual assault by penetrating his private part into the private part of the victim. The evidence of PW2 who is the great grandmother of PW1 is that when she went in search of the victim girl, she could hear the victim making a strange noise in the house of the appellant; that when she went to the house of the appellant, she saw the appellant lying on the bed and thereafter, she found the victim girl under the cot. PW3 is the elder sister of the victim who corroborates the version of PW2 and states that she along with PW2 went to the house of the appellant and brought the victim from the house. PW4 is the hearsay witness and the other witnesses are either hearsay witnesses or would speak about the age of the victim and other aspects, which are not in dispute.

10. PW1, the victim in the cross examination would state that she had stated in her statement under Section 164 Cr.P.C., that the appellant had committed penetrative sexual assault by forcing his private part into her private part. However, the evidence of the investigating officer would show



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that the victim during his investigation had only stated that the appellant was lying on the victim and there is no specific reference to penetration. The investigating officer confirms that the victim even in her statement under Section 164 Cr.P.C., did not specifically state about the penetration. In the Accident Register [Ex.P15], which is recorded by the Doctor [PW12], there is an entry which reads as follows:

“alleged h/o. attempted rape on 15.03.2015 by her neighbour around 11.00am.”

The Doctor further would state that there was no excoriation, no nail marks and the hymen was intact. The Doctors viz., PW10 and PW12, who made entries in the Accident Registers i.e., Ex.P13 and Ex.P15, respectively, have deposed that the victim had told them that a known person attempted to rape her.

11. It is thus seen that though in the FIR lodged by PW1 there is a reference to penetrative sexual assault, the other versions viz., in the Section 164 Cr.P.C statement and in the statement before the Doctor at the time of medical examination, there is no reference to penetration and those versions suggest that there was an attempt to commit rape. PW2 and PW3 have not



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spoken about the penetrative sexual assault on the victim. In the light of the contradictions in the evidence of PW1 in her earlier version before the learned Magistrate and before the Doctor, this Court is of the view that it would be highly unsafe to convict the appellant for the offence of penetrative sexual assault under Section 6 r/w 5(m) of the POCSO Act.

12. However, this Court is of the view that PW1's evidence cannot be totally disbelieved. PW1's evidence can be believed to the extent that there was sexual assault committed by the appellant and that there was an attempt to commit rape by the appellant. The prosecution had established that the victim was aged less than 12 years. Therefore, the act of the appellant would fall under Section 9(m) of the POCSO Act, which penalises sexual assault on a child below 12 years, punishable under Section 10 of the POCSO Act.

13. Considering the nature of evidence let in against the appellant and the act that has been proved against him, this Court is of the view that ends of justice would be met if the appellant is sentenced to undergo five years rigorous imprisonment and to pay a fine of Rs.25,000/- and in default to



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undergo three months simple imprisonment, for the offence under Section 9(m) r/w 10 of the POCSO Act.

14. This Court for the very same reason is inclined to reduce the sentence of seven years imposed for the offence under Section 366 of the IPC to five years, with the fine of Rs.1000/- in default to suffer one month simple imprisonment.

15. The trial Court has not imposed separate sentence for the offence under Section 376(2)(i) of the IPC, since the appellant was convicted under Section 6 r/w 5(m) of the POCSO Act. As this Court finds that the appellant had only attempted to commit rape, is not inclined to impose a separate punishment for the offence of attempt to commit rape i.e., Section 376 r/w 511 IPC since the appellant is found guilty of the offence under Section 9(m) r/w 10 of the POCSO Act and convicted and sentenced for the said offences.

16. In the result, the Criminal Appeal is partly-allowed. The conviction and sentence imposed on the appellant/accused vide the



judgment dated 18.07.2018 in Spl.S.C.No.14 of 2016, on the file of the learned Sessions Judge, Fast Track Mahila Court, Vellore, is modified as follows:

(i) The conviction of the appellant for the offence under Section 6 r/w 5(m) of the POCSO Act, is set aside and he is convicted for the offence under Section 9(m) r/w 10 of the POCSO Act and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.25,000/- in default to undergo simple imprisonment for three months;

(ii) The sentence imposed by the learned Sessions Judge for the offence under Section 366 of the IPC is reduced and the appellant is sentenced to undergo simple imprisonment for five years, with a fine of Rs.1000/- in default to undergo simple imprisonment for one month;

(iii) No separate sentence is imposed for the offence under Section 376(2)(i) r/w 511 of the IPC, since the appellant was convicted and sentenced for the offence under Section 9(m) r/w 10 of the POCSO Act;

(iv) The sentences are ordered to run concurrently;

(v) The fine amount already paid, if any, shall be adjusted against the fine amount imposed now.

(vi) Since this Court had suspended the sentence on 21.04.2023 in Crl.MP.No.3195 of 2023, the period of sentence already undergone by the appellant shall be set off under



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Section 428 Cr.P.C. and if the appellant has not undergone the period of sentence imposed by this Court, or default sentence for non-payment of fine, he may be secured to undergo the remaining period of sentence, forthwith.

15.12.2025

Index : yes/no
Speaking /Non-speaking order
Neutral citation : yes/no
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Issue order copy by 18.12.2025



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1. The Sessions Judge,
Fast Track Mahila Court,
Vellore.
2. The Deputy Superintendent of Police,
Vaniyambodi Sub-Division,
All Women Police Station,
Vaniyambodi, Thiruppathur District.
3. The Public Prosecutor,
High Court, Madras.



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SUNDER MOHAN, J.

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Pre-delivery Judgment in
Crl.A.No.224 of 2023

15.12.2025