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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.10.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.440 of 2018 and
Crl.M.P.No.15323 of 2022

Ramesh ... Appellant

Vs.

State, represented by
The Inspector of Police,
Portonova Police Station,
Cuddalore District.
(Crime No.289 of 2014). ... Respondent

PRAYER: Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code, to set aside the conviction and sentence imposed in Special S.C.No.2 of 2016 dated 11.07.2018 passed by the Mahila Court, Cuddalore.

For Appellant : Mr.R.Sankarasubbu

For Respondent : Mr.Leonard Arul Joseph Selvam,
Additional Public Prosecutor assisted by
Ms.Harshana.T

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JUDGMENT

The appellant was convicted *vide* judgment dated 11.07.2018 by the learned Sessions Judge, Cuddalore in Special S.C.No.2 of 2016 and sentenced to undergo Rigorous Imprisonment for twenty years and to pay a fine of Rs.25,000/- in default to undergo Simple Imprisonment for two years for offence under Section 6 of Protection of Children from Sexual Offences Act, 2012. Challenging the same, the present Criminal Appeal is filed.

2.Case of the prosecution is that PW3, the victim, a physically challenged person is suffering from Cerebral Palsy and Mental Retardation with immature brain of 70%, PW1/defacto complainant, father of the victim, an agriculture coolie used to leave the house at 08.00 a.m and return back at 05.00 p.m. The mother of the victim grazes cattle in the field, goes out in the morning and return back by 06.00 p.m. On 07.11.2014, as usual, PW1 went to work and came back at 05.30 p.m, on the way, he met his wife who was leading the cattle back home at 06.00 p.m, both PW1 and his wife reached home. The aunt of the victim/PW2 and the victim both were found sitting in a shocked state. When enquired, PW2 informed that at about

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03.00 p.m, when she came to the house of the victim to give food, she saw the victim lying on the sofa without any clothes and appellant found undressed lying on her. On hearing the shout of PW2, the appellant collected his lungi and fled from the scene, thereafter, PW2 dressed the victim and both were sitting in a shocked state. The parents of the victim on hearing the same, they were pushed to a state not knowing of what to do, after three days, they came out from the shock and thereafter, PW1 lodged a complaint (Ex.P1) on 11.11.2014 to PW7/Sub Inspector of Police who received the complaint (Ex.P1), registered FIR (Ex.P7) in Crime No.289 of 2014 for offence under Section 6 of Protection of Children from Sexual Offences Act, 2012, PW7 visited the scene of occurrence, examined the witnesses including the victim, in presence of PW4 prepared Observation Mahazar (Ex.P4), Rough Sketch (Ex.P8) and handed over the investigation to PW8. PW5, Casualty Doctor at Government Hospital, Parangipet examined the victim on 11.11.2014 at 10.30 p.m, referred to her Government Hospital, Cuddalore. PW6, Doctor examined the victim and issued the Accident Register (Ex.P5). PW6 examined the victim on 12.11.2014 and issued the medical report (Ex.P6). The victim produced

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before the Magistrate and 164 Cr.P.C statement (Ex.P3) recorded on 07.04.2015. The appellant arrested and produced for medical examination. PW10, Doctor who examined the appellant on 27.11.2014 and issued the potency report (Ex.P17). PW9, Headmistress of Panchayat Union Primary School, Parangipet, where the victim studied, on verification of records, produced school records (Exs.P13 to P16) confirming the victim's date of birth is 23.03.2002 and she was around 13 years of age on the date of occurrence. After collecting medical records (Exs.P5 & P6) and other documents, PW8 completed the investigation and filed charge sheet before the trial Court.

3.During trial, on the side of the prosecution, ten witnesses examined as PW1 to PW10 and seventeen documents marked as Exs.P1 to P17 and MO1 to MO4 produced. On the side of the defence, no witness examined and no document marked. On conclusion of trial, the trial Court convicted the appellant as stated above.

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4.The learned counsel for the appellant submitted that the victim is a physically challenged person suffering from Cerebral Palsy and Mental Retardation as per Ex.P6 and she used to crawl using her knee. On the date of occurrence, the victim treaded out to the road, the appellant picked her and laid her on the sofa which is projected as though the appellant committed penetrative sexual assault. The victim in her 164 Cr.P.C statement (Ex.P3) confirms that whenever she moves out from the house, passers-by used to pick her and bring into the house. But PW2 for the reasons best known gave statement as though the appellant found undressed lying over the victim and committing penetrative sexual assault. In this case, the alleged occurrence took place on 07.11.2014 but the complaint (Ex.P1) lodged after four days only on 11.11.2014, no reason for the delay given. The learned counsel further submitted that the complaint (Ex.P1) received on 11.11.2014 at 20.30 hours and the FIR (Ex.P7) registered. But the Accident Register (Ex.P5), it is recorded that the victim was brought by her mother much earlier and it is the mother who informed about the incident to the Doctor/PW5. It is recorded in Ex.P5 that on questioning, the victim points her hands towards her breast and genital area and there was no

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injuries or wound found anywhere, thereafter, the victim again examined on 12.11.2014 by another Doctor/PW6 and this Doctor in the report (Ex.P6) confirms age can be determined by a Radiologist and she gives an opinion that the victim may have had sexual intercourse, again no external injuries recorded. Since hymen not intact, it would not lead to any confirmation that the victim was subjected to the penetrative sexual assault in the absence of any other materials or facts. The Doctor in Ex.P6 recorded that the patient's appearance and dental age is 14-16 years, plus or minus two years can be added. As per decision of the Hon'ble Apex Court in ***Jaya Mala v. Home Secretary, Government of Jammu & Kashmir and others*** reported in ***(1982) 2 SCC 538***, thus the victim's age should be calculated only as 18 years, hence, no POCSO Act will get attracted.

5.He further submitted that the victim in her evidence before the trial Court admits that she would listen to her Aunt/PW2 and repeat whatever she says confirming the victim likely to give parrot version as tutored and not deposed on her own but rather deposed the tutored version of PW2. Further, when there are infirmities in the prosecution case, trial Court ought

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to have given the benefit of doubt to the appellant, but on the contrary, the trial Court convicted the appellant for offence under Section 6 of Protection of Children from Sexual Offences Act, 2012 and sentenced to undergo 20 years. Added to it, the alleged occurrence is of the year 2014 and Amendment to Section 6 of POCSO Act brought in the year 2019 but the trial Court sentenced the appellant to undergo twenty years Rigorous Imprisonment an enhanced punished which is not permissible and will would prove the fact that the trial Court on a preconceived notion, convicted the appellant, hence, he prayed for acquittal.

6.The learned Additional Public Prosecutor appearing for the respondent Police strongly opposed the appellant's submissions and submitted that the defacto complainant/PW1 is the father of the victim/PW3, a physically challenged person suffering from Cerebral Palsy and Mental Retardation with immature brain of 70%, which is recorded in the medical report (Ex.P6). The evidence of PW1 is natural who was shocked when PW2 informed about the incident. That is the reason, PW1 was unable to respond immediately and lodge a complaint and it took four days to recover

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from the shock and thereafter lodged a complaint (Ex.P1) to the respondent Police. PW2, Aunt of the victim and sister-in-law of PW1 confirm the parents of the victim both used to go for daily coolie work in the morning and come back in the evening and it is PW2 who will feed the victim during lunch time and it is the normal routine. Likewise on 07.11.2014, at about 03.00 p.m., PW2 went to the victim's house for giving lunch to the victim, at that time, she saw the victim undressed on the sofa and the appellant undressed lying over her. PW2 shouted and abused, the appellant got up from the sofa, collected his lungi and ran away from the scene. In this case, the appellant not seriously disputed his presence at the relevant point of time in the victim's house but gives an explanation by suggesting to PW2 that whenever the victim was found outside the house, the appellant will lift her and put her in the sofa, which confirms the presence of the appellant in the victim's house.

7.He further submitted that in this case, PW2 is the eye witness and PW3 is the victim, a physically challenged person suffering from Cerebral Palsy and Mental Retardation. The victim in her 164 Cr.P.C statement

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(Ex.P3) and before the trial Court deposed the inhuman act committed by the appellant, by her signs and demonstrated how she was subjected to penetrative sexual assault by the appellant. The Doctor/PW5 records in the Accident Register (Ex.P5) the physical features and mental condition of the victim. PW6 another Doctor further examined the victim and gave medical report (Ex.P6) confirming the physical condition and age of the victim. In this case, the evidence and statement of the victim recorded following Sections 26 & 38 of POCSO Act with assistance of a Special Educator. Though a serious attempt made to dispute the age of the victim projecting she was not a minor, for that point, PW9, Headmistress of Panchayat Union Primary School, Parangipet examined and through her Exs.P13 to P16 marked. Ex.P13 is the Admission Application in which the victim's date of birth is 23.03.2002, Ex.P14 is the Admission Register and Ex.P15 is the Copy of Record Sheet maintained in the school showing various classes in which the victim studied. All school documents confirmed the age of the victim. In Ex.P13, the signature of PW1, father the date of birth and age of the victim.

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8.He further submitted that Section 94 of Juvenile Justice (Care and Protection of Children) Act, 2015 stipulates how the age of the minor has to be ascertained the School Certificate is one of the document for age determination. In this case, as per the school documents (Exs.P13 to P16), the date of birth of victim is 23.03.2002 and her age was 13 years on the date of incident and she was a minor. The trial Court finding that the appellant taking advantage of a victim's mental condition and physical disability committed penetrative sexual assault, convicted the appellant for offence under Section 5(k) r/w 6 of POCSO Act. He submitted that the Amendment to Section 6 brought in the year 2019 and the occurrence took place in the year 2014 in the above case.

9.This Court considered the rival submissions and perused the materials available on record.

10.In this case, the victim a physically challenged person suffering from Cerebral Palsy and Mental Retardation and she was crawling using her knees, not in dispute. The victim's mental retardation proved by Ex.P6.

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PW1 & PW2, father and Aunt of the victim confirmed that the victim was not a normal child. Even in 164 Cr.P.C statement (Ex.P3), the mental condition is recorded, Special Educator assistance utilized both when victim's statement recorded before the Magistrate and while she deposed before the trial Court. The victim's parents are daily coolies who used to go for work in the morning and return in the evening. PW2, Aunt of the victim, who is residing nearby, was providing lunch to the victim. On 07.11.2014, PW2 came to the house of the victim to give lunch, at that time, she saw the appellant lying over the undressed victim, and committing penetrative sexual assault. On seeing PW2 and hearing the shout, the appellant collected his lungi and ran away from the scene. The appellant's presence at the relevant point of time is not seriously disputed. The suggestion to PW2 is that the appellant normally lifts the victim when found outside the house and laid her in the sofa. The Aunt of the victim/PW2 has seen the act of the appellant and he running away the scene hearing the shout, the victim/PW3 has demonstrated by sign how she was ravished by the appellant.

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11.PW5, PW6 and medical evidence (Exs.P5 & P6) confirmed the victim was subjected to penetrative sexual assault. The trial Court considering the statement of victim, her evidence and the evidence of Doctors (PW5 & PW6), medical records (Exs.P5 & P6) and other witnesses, rightly found that the appellant had committed penetrative sexual assault on the victim.

12.This Court does not find any illegality or perversity to interfere with the impugned judgment of the trial Court convicting the appellant for offence under Section 6 of Protection of Children from Sexual Offences Act, 2012. As far as sentence of twenty years Rigorous Imprisonment is concerned, it is seen that the occurrence in this case took place in the year 2014 and Amendment to Section 6 of the Act brought in the year 2019 whereby severe and enhanced period of sentence brought in the Act. Hence, the trial Court imposing sentence of twenty years Rigorous Imprisonment is not proper. Hence, this Court modifies the sentence of twenty years Rigorous Imprisonment to ten years and directs the appellant to undergo ten years Rigorous Imprisonment.

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13.With the above modification, this Criminal Appeal is disposed of. Consequently, connected criminal miscellaneous petition is closed.

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Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
Internet: Yes/No
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To

1.The Sessions Judge,
Cuddalore.

2.The Inspector of Police,
Portonova Police Station,
Cuddalore District.

3.The Central Prison,
Cuddalore.

4.The Public Prosecutor,
Madras High Court.

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M.NIRMAL KUMAR, J.

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