



Crl.A.No.639 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.04.2025

PRONOUNCED ON : 08.09.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.639 of 2022

S.Vijayarathinam

... Appellant

Vs.

STATE BY:

INSPECTOR OF POLICE,

All Women Police Station,

Gudalur.

(Crime No.5/2017).

... Respondent

PRAYER: Criminal Appeal is filed under Section 374 of Code of Criminal Procedure, to set aside the judgment dated 19.10.2019 in Spl.CC.No.10 of 2018 passed by the Court of the learned Sessions Judge of Magalir Neethimandram (FTMC), Udagamandalam at Nilgiris, in so far as convicting the appellant/accused under Sections 9(m) r/w 10 of POCSO Act and sentencing him to undergo 5 years Rigorous Imprisonment and imposed with a fine of Rs.2,000/- in default to undergo further period of 2 months Simple Imprisonment and convicting the appellant/accused under Section 5(m) r/w 6 of the Protection of Children from Sexual Offences Act 2012 and sentencing him to undergo 10 years Rigorous Imprisonment and imposed with a fine of Rs.3,000/- in default to undergo further period of 3 months Simple Imprisonment and the sentence ordered to run concurrently, and the period already undergone by the accused from 29.11.2017 to 06.03.2018 and 13.11.2018 to 11.01.2019 are ordered to be set off under Section 428 Cr.P.C.



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For Appellant : Ms.K.Meena, Legal Aid Counsel
For Respondent : Mr.L.Baskaran,
Government Advocate (Crl. Side)

JUDGMENT

The appellant was convicted by judgment dated 19.10.2019 in Special C.C.No.10 of 2018 by the learned Sessions Judge, Magalir Neethimandram, (FTMC), Udthagamandalam at Nilgiris and sentenced to undergo five years Rigorous Imprisonment and to pay a fine of Rs.2,000/- in default to undergo two months Simple Imprisonment for offence under Section 9(m) r/w 10 of Protection of Children from Sexual Offences Act, 2012 and further, the appellant was sentenced to undergo ten years Rigorous Imprisonment and to pay a fine of Rs.3,000/- in default to undergo three months Simple Imprisonment for offence under Section 5(m) r/w 6 of Protection of Children from Sexual Offences Act, 2012. Challenging the same, the present criminal appeal is filed.

2.Earlier when the case was listed on 07.02.2025, there was no representation on behalf of the appellant and hence, the case was directed to be listed on 10.02.2025 under the caption 'For Dismissal'. Again when the



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same was listed on 10.02.2025, there was no representation and the case was directed to be listed on 12.03.2025 under the same caption. On 12.03.2025, the case was directed to be listed on 12.03.2025. On 12.03.2025, there is no representation on behalf of the appellant, hence, this Court by order dated 21.03.2025 appointed Ms.K.Meena as Legal Aid Counsel for the appellant.

3.The case of the prosecution is that the defacto complainant/PW1 mother of the victim girl was residing with her husband, one son and two daughters at door No.11/4 D4A6 Kamaraj Nagar, Palavadi, Mullainagar, Ovalley, Gudalur and the appellant was residing in Mullainagar, Ovalley, Gudalur and he was employed as a pickup vehicle driver. The victim girl/PW2, elder daughter of PW1 was studying 1st std in Government High School, Dharmagiri. The appellant is a relative to PW1. On 28.11.2017 at about 17.00 hours, the victim girl/PW2 was returning back from the school, at that time, the appellant picked up the victim girl/PW2 in his bike bearing Reg.No.TN-37-AR-1125 to drop in her house. Since the victim girl's house locked, the appellant informed the victim girl that he would drop her in her maternal grandmother's house. On the way, the appellant took the victim girl to a shed in Shaban's land, threatened her, removed her undergarments,



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stroked her vagina, inserted his penis into her mouth with force and committed aggravated penetrative sexual assault. The appellant dropped the victim girl near her grandmother's house. The parents of the victim girl (PW1 & PW4) came back home after treatment for their younger daughter, at that time, the victim girl rushed to them crying and informed the appellant's act, annoyed over the same, the victim's parents, grandmother and uncle went to the appellant's house and questioned him, but he denied. Thereafter, PW1 lodged a complaint (Ex.P1) to Sub Inspector of Police/PW18 who received the complaint (Ex.P1), registered the FIR (Ex.P14) in Crime No.5 of 2017 for offence under Sections 3(a), 4 r/w 5(m) of Protection of Children from Sexual Offences Act, 2012 and handed over the investigation to PW19/Inspector of Police.

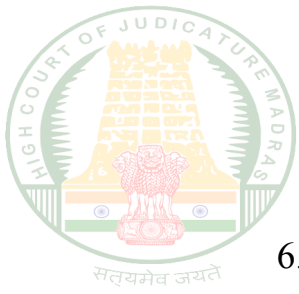
4.PW19 took up further investigation, visited scene of occurrence, prepared Observation Mahazar (Ex.P4), Rough Sketch (Ex.15), examined the witnesses present in the scene of occurrence, recorded their statements, seized material objects (MO1 to MO5), sent the victim girl to Government Hospital, Gudalur for medical examination. The Doctor/PW15 examined the victim girl on 29.11.2017 at 02.20 a.m, issued Accident Register (Ex.P15) and referred



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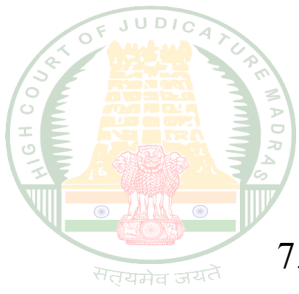
the victim girl to District Headquarters Hospital, Ooty for OG (Obstetrics and Gynaecology) opinion. The Doctor/PW14 in Government Headquarters Hospital, Ooty examined the victim girl on the same day at 06.30 p.m, issued medical report (Ex.P9) recording that “*in external genitalia erythematous and tenderness found*” and “*any force entry cannot be ruled out*”. Thereafter, 164 statements of the victim girl and her mother (Exs.P2 & P3) recorded on 18.12.2017, appellant arrested and produced for medical examination. PW16 examined the appellant and issued potency report (Ex.P12). Thereafter, PW19 sent the material objects (MO1 to MO4) for forensic examination and received biological report (Ex.P16). Based on the evidence and documents, PW19 altered the Sections to 362 IPC and Sections 3(a), 4 r/w 5(m) of Protection of Children from Sexual Offences Act, 2012 *vide* alteration report (Ex.P17) and filed charge sheet before the trial Court.

5. During trial, on the side of the prosecution, PW1 to PW19 examined and Exs.P1 to P17 marked and MO1 to MO5 marked. 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.



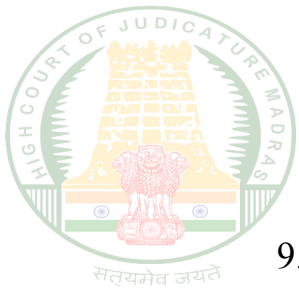
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6.The learned counsel for the appellant submitted that appellant and PW1/defacto complainant are relatives residing adjacent to each other. There was a dispute with regard to supply of water from the appellant's land to PW1's land, due to which, using the victim girl as a weapon, PW1 projected false case against the appellant. Added to it, victim girl being tender of age around 6 years and 11 months, is tutored to give false version as per her parents' wish. He further submitted that medical evidence (PW14 & PW15) and the medical reports (Exs.P9 & P10) are contrary to the ocular evidence. In this case, the complaint is that when the parents of the victim girl (PW1 & PW4) coming back to home from the hospital, the victim girl complained that when she returned back home along with her schoolmate/PW3, at that time, the appellant took both PW3 and victim girl/PW2 in his two wheeler, dropped PW3 in her house, thereafter, took the victim girl to her house and to the scene of occurrence and committed aggravated penetrative sexual assault. PW3 confirms that on the date of occurrence, she was not with the victim girl after school and not travelled in the bike of the appellant. Hence, the origination of the case becomes doubtful.



7.The learned counsel further submitted that in 164 statement (Ex.P3), the victim girl stated that the appellant inserted his hands into the undergarments, stroked her vagina, placed his penis into her mouth. A reading of Ex.P3 and from the narration, it is seen an exaggerated and highly artificial version given. In this case, right from the beginning, it is PW1, mother of victim girl who lodged the complaint (Ex.P1), accompanied the victim girl for medical examination and during recording of 164 statement. In all the places, PW1 is the person who narrated the incident to the Doctors, Police and tutored the victim girl to depose before the Magistrate. This would prove that the victim girl each stage tutored to speak against the appellant for the earlier dispute.

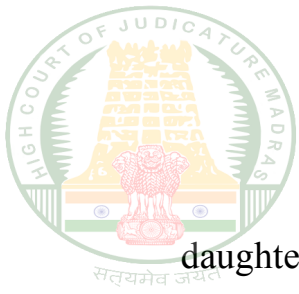
8.The learned counsel further submitted that in this case, PW14 & PW15 are the Doctors who examined the victim girl. In the Accident Register (Ex.P10), it is recorded “*no external injuries noted, oral cavity no injuries noted and external genitalia no injuries noted*” which is further strengthen the case of the appellant. In the medical report (Ex.P9) except for recording tenderness, there is nothing. PW14 confirmed the reddishness found in the genitalia of victim girl might be due to infection.



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9.He further submitted that PW4, father of victim girl states that the appellant patted on the private part of the victim girl and rubbed over it, but nothing about penetration of private part into the oral cavity of victim girl. PW5, the grandmother confirms the version of PW4. PW6, the Observation Mahazar witness states that he is not aware what was written in the Observation Mahazar (Ex.P4). PW7 and PW10 are the witnesses for arrest and confession of the appellant. PW7 confirms he was a witness earlier to a Police case and he is in nature of stock witness and PW10 states that his signature obtained in the Police Station. The only other witness is PW8 who said to have seen the appellant taking the victim girl in his two wheeler. The trial Court merely relied upon the evidence of PW1, PW2, PW4 and PW8 to convict the appellant but failed to look into the contradictions, exaggerations and tutelage of victim girl. In view of the above, the appellant to be acquitted setting aside the impugned judgment.

10.The learned Government Advocate (Crl. Side) on the other hand filed counter and submitted that PW1/defacto complainant was living with her husband, son and two daughters in Mullainagar, Ovalley, Gudalur. PW1 and her husband/PW4 are estate labours. On 28.11.2017 at 05.00 p.m, the younger



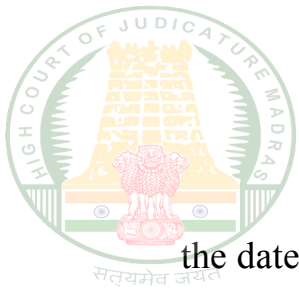
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daughter of PW1 & PW4 was not in good health, hence, they took her to a private hospital to Gudalur. At about 06.00 p.m, when they returned back, the victim girl/elder daughter came running, hugged them and started crying. When questioned, the victim girl informed that when she coming back from the school, at that time, the appellant picked up her and PW3 in his two wheeler in the guise of dropping them at home. On the way, the appellant dropped PW3 in her house and found the victim girl's house locked, thereafter, the appellant took the victim girl to a shed in Shaban's land, threatened her, removed her undergarments, stroked her vagina, inserted his penis into her mouth with force and committed aggravated penetrative sexual assault. Immediately, PW1 lodged a complaint (Ex.P1) on the same day on 28.11.2017 to the respondent Police. PW18/Sub Inspector of Police received the complaint (Ex.P1), registered FIR (Ex.P14) in Crime No.5 of 2017 for offence under Sections 3(a), 4 r/w 5(m) of Protection of Children from Sexual Offences Act, 2012 and handed over the investigation to PW19/Inspector of Police. The victim girl sent to Government Hospital, Gudalur, the Doctor/PW15 examined the victim girl at about 02.30 a.m on 29.11.2017, issued accident register (Ex.P10) and referred the victim girl to District Headquarters Hospital, Ooty. The Doctor/PW14 in the District Headquarters



Hospital examined the victim girl and issued medical report (Ex.P9). PW19 visited the scene of occurrence, prepared Observation Mahazar (Ex.P4), Rough Sketch (Ex.P15) in the presence of witnesses, examined the witnesses namely PW1, PW4, PW5, PW6 and one Sathiyamoorthy and recorded their statements, arrested the accused at about 07.00 a.m in presence of PW7 and PW10, recorded his confession statement (Ex.P7), based on the confession statement (Ex.P7), Lungi (MO4) and two wheeler (MO5) seized. The dress materials of the victim girl collected which are MO1 to MO3. MO1 to MO5 sent to the jurisdictional Court. On collection of evidence and materials, PW19 altered the Section to 362 IPC and Sections 3(a), 4 r/w 5(m) of Protection of Children from Sexual Offences Act, 2012 *vide* alteration report (Ex.P17) and filed charge sheet in this case.

11.He further submitted that in this case, PW2 is the victim girl and PW1 & PW4 are her parents and PW5 is her maternal grandmother who all stated about the victim girl being subjected to aggravated penetrative sexual assault by the appellant. PW8 is a local resident who confirmed seeing the victim girl taken by the appellant in his two wheeler at the relevant point of time. PW11 is the School Teacher produced Bonafide Certificate confirming



the date of birth of the victim girl as 23.12.2011 and the victim girl is a minor.

The victim girl in her 164 Cr.P.C statement (Ex.P3) clearly stated about the victim girl taken to tea leaf shed and the appellant committing aggravated penetrative sexual assault. In this case, the Doctors (PW14 & PW15) examined the victim girl confirmed the victim girl subjected to penetrative sexual assault. Thus, the trial Court on the evidence and materials had rightly convicted the appellant, hence, he prayed for dismissal.

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

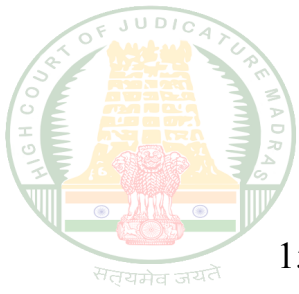
13.It is seen that the trial Court framed two charges against the appellant. The first charge is that the appellant picked up the victim girl/PW2 aged about six years and 11 months studying 1st std in Government Higher Secondary School, Dharmagiri in his two wheeler, informed her that he would drop in her house, took the victim girl to her house, found her parents not available, house locked, thereafter took the victim girl to her maternal grandmother's house. On the way, the appellant took the victim girl to a shed in Shaban's land, threatened the victim girl, removed her undergarments,



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stroked her vagina and thereby the appellant committed aggravated sexual assault on the victim girl. Hence, charge under Section 9(m) r/w 10 of Protection of Children from Sexual Offences Act, 2012 framed. The second charge is that the appellant inserted his penis into the mouth of the victim girl and committed aggravated penetrative sexual assault, hence, charge under Section 5(m) r/w 6 of Protection of Children from Sexual Offences Act, 2012 framed. The trial Court on conclusion of trial convicted the appellant for both the charges. For the first charge, the appellant sentenced to undergo five years Rigorous Imprisonment and to pay a fine of Rs.10,000/- in default to undergo Simple Imprisonment for two months. As regards second charge, the appellant convicted to ten years Rigorous Imprisonment and to pay a fine of Rs.3,000/- in default to undergo three months Simple Imprisonment.

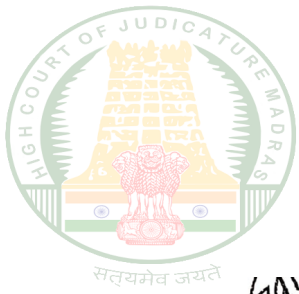
14.To prove the second charge, the evidence of PW1, PW2, PW4, PW8, PW14, PW15 and Exs.P1, P2, P3, P9 & P10 are the materials. Ex.P1 is the complaint, Exs.P2 & 3 are the 164 statements of the PW1 & PW2, Ex.P9 is the medical report issued by PW14 and Ex.P10 is the Accident Register issued by PW15.



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15. In the complaint (Ex.P1), it is recorded that the appellant removed the undergarments of victim girl, stroked her vagina, inserted his penis into her mouth with force and committed aggravated penetrative sexual assault. The same is reiterated in the evidence of PW1, PW2, PW4, PW8 and Exs.P2 & P3. In this case, the occurrence said to have taken place at 04.00 p.m., on 27.11.2018. When PW1 and PW4 came back home at 05.00 p.m, at that time, PW2 came running and cried to her mother disclosing the act of the appellant committing penetrative sexual assault. Thereafter, PW1 went to the Police Station on the same day, lodged the complaint (Ex.P1), FIR registered at 06.00 p.m, investigation commenced and PW1 & victim girl/PW2 referred to Government Hospital, Gudalur with Woman Police Constable Ms.Rajasudha. PW15 is the Doctor who examined the victim girl and issued Accident Register (Ex.P10). In Ex.P10, it is recorded that “*no external injuries noted, oral cavity no injuries noted, around external genitalia no injuries noted*” and the victim girl/PW2 further referred to the Government Head Quarters Hospital, Ooty for OG Doctor (Obstetrics and Gynaecology) opinion.

16. PW14 the Gynaecologist examined the victim girl and issued the medical report (Ex.P9) in which it is recorded as follows:



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① No External injuries noted in oralcavity and all over body and, SS
21/4/2019
② External genitalia - Local Examination
External genitalia - Erythematous and tender.
Any forced entry cannot be ruled out.
Patient may be referred to paediatric
surgeon opinion for further management.

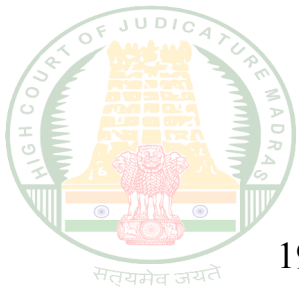
17.PW14 in her evidence stated that PW1 was with victim girl and it was PW1/mother who narrated the sexual assault committed to her daughter/PW2. Before both the Doctors it is the mother/PW1 who narrated the entire incident. Neither in the complaint (Ex.P1) nor before the Doctors (PW14 & PW15), there is nothing recorded that due to insertion of penis in the mouth of victim girl by force, the victim girl sustained pain or sufferings. Had there been forceful penetration hitting hard in the mouth of the victim girl, there should be pain or some abnormality felt and suffered by the victim girl which cannot be unnoticed. In this case, there is no traces of pain or sufferings reported. In this case, the victim girl examined without much loss of time by both the Doctors (PW14 & PW15). Had it been the case of insertion of penis into the mouth of the victim girl, pain should have subsisted,



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a physiological changes felt. This vital fact ought to have been recorded in any of the contemporary documents and the same cannot be missed. In this case there is no reason given for not recording the same. As per Section 27 of Protection of Children from Sexual Offences Act, 2012, the medical examination of a child/victim be conducted in accordance with Section 164A of Cr.P.C wherein the stress is not only on physical examination but also on psychological examination.

18.It is to be noted that the appellant and PW1 are neighbours and prior to the occurrence, there was dispute between them with regard to supply of water, hence, there is possibility of exaggeration and tutelage of the victim girl. In view of the above, this Court finds that the prosecution failed to prove the case as regards the second charge for offence under Section 5(m) r/w 6 of Protection of Children from Sexual Offences Act, 2012 beyond all reasonable doubt. ***Hence, the conviction and sentence imposed on the appellant for offence under Section 5(m) r/w 6 of Protection of Children from Sexual Offences Act, 2012 is set aside.*** The appellant is acquitted from this charge.



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19.As regards the conviction and sentence for offence under Section 9(m) r/w 10 of Protection of Children from Sexual Offences Act, 2012 is concerned, it is seen that in this case, the victim girl/PW2 was a minor aged about 06 years and 11 months as on the date of occurrence is confirmed by the Bonafide Certificate (Ex.P8) marked through the School Teacher (PW11). The medical report (Ex.P9) confirms that on local examination of external genitalia, there was reddishness in the private parts which might be due to injury followed by an infection, hence, there was some contact on the private part of the victim girl. The victim girl informed to her parents immediately on seeing them. Thereafter, the complaint (Ex.P1) lodged, FIR (Ex.P14) registered, the victim girl sent to the Doctor for medical examination and the Doctors (PW14 & PW15) examined the victim girl without loss of time and the tenderness and reddishness found in the private parts recorded in the medical report (Ex.P9).

20.In view of the above, the judgment dated 19.10.2019 in Special C.C.No.10 of 2018 passed by the learned Sessions Judge, Magalir Neethimandram, (FTMC), Udthagamandalam at Nilgiris is confirmed ***in so far as the conviction and sentence of five years Rigorous Imprisonment and to***



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pay a fine of Rs.2,000/- in default to undergo two months Simple Imprisonment for offence under Section 9(m) r/w 10 of Protection of Children from Sexual Offences Act, 2012.

21.In the result, this Criminal Appeal is Partly-Allowed.

08.09.2025

Speaking order/Non-speaking order
Index: Yes/No
Internet: Yes/No
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To

- 1.The Sessions Judge of Magalir Neethimandram,
(FTMC), Udhagamandalam at Nilgiris.
- 2.The Inspector of Police,
All Women Police Station,
Gudalur.
- 3.The Public Prosecutor,
Madras High Court.



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M.NIRMAL KUMAR, J.

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PRE-DELIVERY JUDGMENT IN
CrI.A.No.639 of 2022

08.09.2025