



Criminal Appeal No.491 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.10.2025

Delivered on : 30.10.2025

CORAM:

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

Criminal Appeal No.491 of 2022

Arul Doss

.. Appellant

Vs

State rep. By
Inspector of Police,
Vickiramangalam Police Station,
Ariyalur District
Tamil Nadu - 625 207

..Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C. against the judgment dated 25.04.2022 in Special Session Case No.9 of 2020 on the file of the learned Sessions Judge, Fast Track Mahila Court, Ariyalur District.

For Appellant : Mr.S.Shanmugavelayutham,
Senior Counsel for
Mr.H.Mohamed Ghouse

For Respondent : Mr.J.Subbiah,
Government Advocate (Crl.Side)

JUDGEMENT



The appeal is filed challenging the judgment dated 25.04.2022 in Special Session Case No.9 of 2020 on the file of the learned Sessions Judge, Fast Track Mahila Court, Ariyalur District.

2. The appellant was convicted for the offences under Section 8 of the POCSO Act and Section 354A(2) of I.P.C and was sentenced as follows;

<i>Penal Provisions</i>	<i>Sentence of Imprisonment</i>	<i>Fine Amount</i>
<i>8 of POCSO Act and 354A(2) of IPC</i>	<i>3 Years Rigorous Imprisonment</i>	<i>Rs.10,000/- in default to undergo 6 months simple imprisonment</i>

3. It is the case of the prosecution that the victim/PW1, aged 13 years and studying in 7th standard was at home on 05.01.2020 due to the school holiday. At about 05.00 pm, when the victim's mother/PW2 returned from the field in the backyard, PW1 informed her that she was going to pick up the slippers she had left behind in the field. The victim returned home crying and when PW3, her aunt enquired her about the reason for crying, the victim informed that she had fallen down. At that time, since PW3 saw the accused



running away from that place, she informed PW2 to enquire about the same.

Upon being enquired by PW2, the victim informed that while she was picking up her slippers and returning home, the accused pulled her hands, misbehaved and committed sexual assault as he hugged and kissed her. When PW1 wriggled out and ran away, the accused threatened that he would kill her if she disclosed the incident to anyone. PW2 lodged the compliant Ex.P1 before the Vikramangalam Police Station on 07.01.2020. Upon receipt of Ex.P1, the Inspector of Police/PW12 registered FIR/Ex.P9 in Crime No.4 of 2020 for offences under Sections 354A(1)(i), 506(ii) of I.P.C r/w Sections 7 and 8 of the Protection of Children from Sexual Offences (POCSO) Act.

4. PW12 took up the investigation and on visiting the spot prepared the Observation Mahazar/Ex.P2 in the presence of PW6 and prepared the rough plan/Ex.P10. The accused was arrested and his confession statement was recorded in the presence of PW9 and PW10. The victim was examined by the Doctor/PW8 who issued Accident Register/Ex.P4. Statement of PW1 under Section 164(5) of Cr.P.C. was recorded before the Judicial Magistrate on 24.02.2020. After completion of the investigation, PW12 filed the final



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5. The trial Court took up the case, issued summons, complied with Section 207 of Cr.P.C and framed the charges under Section 8 of the POCSO Act, Section 354A(2) and 506(ii) of I.P.C. When questioned, the accused pleaded not guilty and stood trial.

6. To prove the charges, the prosecution examined PW1 to PW13 and marked Exhibits P1 to P10. The statement of the victim under Section 164(5) of Cr.P.C. was also marked as Ex.C1. When the accused was questioned under Section 313 Cr.P.C., about the incriminating materials available, he denied the charges. On the side of the accused, two witnesses, DW1 and DW2 were examined and Exhibits D1 and D2 were marked.

7. After considering the evidences and arguments, the trial court held that the charges were proved, convicted and sentenced the accused as detailed above. However the accused was acquitted for the charges under Section 506(ii) of I.P.C. Assailing the conviction and sentence imposed, the



accused has preferred the above appeal.

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8. Mr S.Shanmugavelayutham, the learned senior counsel appearing for the appellant argued that the case has been foisted against the accused by implicating him under the POCSO Act only to settle score that arose in a political fight. There was an election for local body in which both groups supported the rival candidate. Since the accused did not support the candidate of the complainant's supporter, he lost. Due to which, the complainant's family and their relatives ransacked the house of the accused and assaulted the accused mother. Only to escape, particularly since the victim's father is a government servant, the present false complaint was lodged.

9. The learned senior counsel further contended that there is a delay of 2 days in preferring the complaint and registering the F.I.R and the said delay remains unexplained. Though the initial version of the victim was that she fell down, her version has been improved at every stage and exaggerated only to falsely implicate the accused. PW1 has been tutored which is



explicitly evident from the inconsistent and improvised statements at every stage. He contended that the mother of the accused was assaulted and admitted in the hospital for the injuries sustained and the Accident Register has been marked as Ex.D2. Since no case was registered on the complaint of DW1, she had preferred a private complaint in Ex.D1. The accused, by examining the witnesses and marking the documents, had discharged the presumption but the court had not considered the vital documents while convicting the accused. Only to wreck vengeance and to safeguard themselves from the trespass and assault committed in the house of the accused and against his mother, the complaint has been foisted.

10. Mr.J.Subbiah, learned Government Advocate, appearing on behalf the respondent argued that the delay has been explained and in cases of this nature, it usually takes some time for the victim and the parents to come forward to file a complaint, considering the social stigma and several other factors. Hence, such delay will not be detrimental to the case of the prosecution. The victim has given clear and cogent evidence about the sexual assault to establish the charge against the accused.



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11. The learned Government Advocate further submitted that PW1's evidence is supported by PW2/Mother, PW3/Aunt and PW5/father. The evidence of these witnesses regarding the occurrence is consistent and there is no discrepancy. When the evidence is clear, the alleged assault on the accused's mother is insignificant and would not, in any way, affect the present case. Once the foundational facts regarding the age of the victim and the occurrence has been established, then there is a presumption, and the trial court has rightly appreciated and convicted the accused, which is justified and proper.

12. Considered the rival submissions of the learned senior counsel for the appellant and the learned Government Advocate (Criminal Side) appearing for the State and perused the materials available on record.

13. The victim/PW1 was at home on 05.01.2020 due to the school



holiday, along with her mother/PW2. PW1 and PW2 had gone to the field at backyard and after returning home, PW1 had again went to the backyard to fetch her slippers. At that time, the accused had pulled her hand and also committed sexual assault. PW1 returned home crying and on being noticed by her aunt/PW3, she was questioned. PW1 stated that she had fallen down. However, since PW3 noticed the accused running away from the place, she had informed PW2 to enquire with the victim, about as to what had happened. Then, PW1 narrated the incident to her mother PW2. When the father of the victim/PW5 returned home from office, PW2 informed him about the incident and they lodged a complaint Ex.P1 on 07.01.2020.

14. During trial, the School Certificate of the victim has been marked as Ex.P3 and the Headmaster of the School has been examined as PW7. From the evidences let in, it is established that PW1 aged below 18 years, is a child as per POCSO Act.

15. As per PW1/victim, when she returned home crying and was



questioned by PW3, she informed that she fell down and went home. After reaching home, when PW2 enquired, she had informed about the incident to her mother and thereafter to her father. The victim admitted that both the groups supported rival candidate in panchayat election and as such there was a likely dispute between the families, which was intervened and prevented by the villagers.

16. As per PW2/mother, PW1 came home crying at 05.30 pm. When questioned, she informed that she fell down. However, since she continued crying, PW2 questioned her repeatedly and it was only thereafter PW1 narrated the incident. PW2 explained that, initially she remained silent only to avoid embarrassment to her daughter, but however lodged the complaint on 07.01.2020, two days after the incident. PW2 further admitted that one Indra/DW2 and Karunanidhi had contested the local body election, and her husband had supported Karunanidhi.

17. As per PW3/aunt, and PW4/neighbour, around 5.30 pm, PW1



came home crying, informed that she had fallen down. Since at that time they saw the accused running from there, they followed PW1 to her house and informed PW2 about the same and asked her to enquire the victim about the same and only then, PW1 narrated the incident. But their evidence is not corroborated by PW1 and PW2.

18. As per PW5/father, he is the uncle of the accused and the police station is situated about 10 kms away from their house and it will take 15 minutes to reach there. He has been a government servant for the past 22 years. PW5 admitted that one Indra/DW2 contested and won the panchayat election while he had supported the rival candidate, Karunanidhi who lost. The results were declared on 02.01.2020. Although he had denied the suggestion that he, along with others, assaulted the accused's mother/DW1, he admitted that he came to know about the accused's mother/Malliga, being admitted in the hospital after the complaint/Ex.P1 was given. He explained that, since he believed the issue could be resolved in the village panchayat, there was a delay in filing the complaint. Ex.P1 was ultimately given only after the victim threatened to commit suicide.



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19. The evidence of PW1 is inconsistent and has been improvised from time to time. The averments found in Ex.P1, the statement in Ex.C1 and the testimony of PW1 reveal a marked shift and an improvised version of events.

20. PW8, who examined PW1, gave evidence that PW1 had informed that the accused attempted to rape her on 05.01.2020. The case mainly relies on the sole testimony of victim/PW1. Even though the sole testimony of the victim child is sufficient to convict the accused, if the evidence inspires confidence and is trustworthy, however when the evidence is inconsistent and it is an improvised version then the courts must carefully analyse and rule out the possibility of tutored evidence.

21. The accused, in order to rebut the presumption, has examined his mother as DW1 and the elected panchayat representative as DW2. DW1 was allegedly assaulted on 04.01.2020 by the victim's father/PW5 along with PW2, PW3, and PW4. Accused's house was ransacked and his mother/DW1



sustained injuries and was admitted in the Government Hospital at Jayamkondam. The Accident Register of DW1 dated 04.01.2020 has been marked as Ex.D2. Since FIR was not registered based on the complaint, DW1 had preferred a private complaint before the learned Judicial Magistrate-I, Jayamkondan and the copy of the complaint has been marked as Ex.D1. Since the alleged occurrence is in January 2020 and the private complaint has been prepared in February and filed in March 2020, this Court is not inclined to give much weightage to the same, as there is every possibility that the complaint was prepared at a later stage, as an after thought to counter the instant case. However, the Accident Register in Ex.D2 becomes vital and relevant.

22. Since in the election results declared on 02.01.2020, the candidate supported by the accused family won, there was an assault in the house of the accused on 04.01.2020, in which the accused's mother/DW1 got injured and admitted to the Government Hospital, Jayamkondan, for which the Accident Register/Ex.D2 came to be issued.



23. It is relevant to note that PW5, had categorically admitted the support given to rival candidates by both the parties in the election and further also admitted the fact that the accused's mother DW1 was admitted in the hospital, subsequent to the election results and prior to the complaint. Even PW1 admits knowledge of the election and the rival support.

24. PW13/Investigating Officer had also categorically admitted that she came to know that DW1 was assaulted by PW5, PW2 and relatives of PW1 on 04.01.2020, in which the accused's mother/DW1 got injured and admitted in the Jayamkondan Government Hospital. PW13 also admitted that the Sub Inspector of Police had closed the complaint of DW1 as the statement was inconsistent, without registering an FIR. PW13 further stated no further action was taken to register the FIR and file a final report in the complaint.

25. As per DW1, due to the election dispute she was assaulted by PW5 and his family. Since she had sustained injuries and admitted in the



hospital, Ex.D2 was issued. Only since PW5 was a Government servant who would have lost his job if a case had been registered against him, the present case was foisted against the accused alleging offences under the POCSO Act, in order to escape from the consequences.

26. DW2/elected representative, categorically stated that since the accused's family had supported her, a dispute arose, due to which PW5 along with his family and relatives assaulted DW1 and injured, who was taken to and admitted in a Government Hospital.

27. It is an admitted fact that when both groups supported rival candidates, the results were declared on 02.01.2020 and the candidate supported by the accused's family got elected, whereas the rival candidate supported by PW5's family lost. On 04.01.2020, PW1 to PW5 and their relatives are alleged to have ransacked the accused's house and assaulted the accused's mother/DW1. Due to the injuries sustained, DW1 was admitted in the Government Hospital on 04.01.2020. The complaint lodged by DW1 was not entertained and no FIR was registered. If a case is registered against



PW5, who is a Government servant, it will affect his service.

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28. The complaint/Ex.P1 came to be given only on 07.01.2020 for the alleged occurrence on 05.01.2020. It is highly probable that, as the accused's mother/DW1 was admitted in the hospital and undergoing treatment and there was a need to take some steps by PW5 to protect his family members and his job, Ex.P1 was lodged by levelling serious allegations against the accused so as to invoke the POCSO Act. The mere delay in preferring the complaint may not be fatal, particularly in the cases of this nature where it takes some time for the victim's family to come out to prefer a complaint considering the social stigma and several other factors. However from the facts and circumstances of the present case, the delay of two days in lodging the complaint before the police station which is situated 10 kms away from their house that takes only 15 minutes to reach, becomes more relevant and significant. The reasons adduced for the delay that they intended to resolve the issue with the villagers, lacks credibility.

29. When there is a glaring discrepancy between Ex.P1 and the evidence of PW1 to PW4 regarding the occurrence and considering the



possibility of tutored testimony of victim PW1, as the statement and evidence is improvised at every stage from just falling down to sexual assault and thereafter to that of attempting to rape, the allegations in the complaint becomes doubtful. When PW5 was facing a situation where his family and also the job is to be protected due the assault and injury sustained by the accused's mother/DW1, the complaint Ex.P1, invoking offences under the POCSO Act probably may be only an afterthought, which led to the delay of two days.

30. The accused, by examining DW1, DW2 and by producing evidence particularly Ex.D2, has rebutted the presumption under Section 29 of the POCSO Act. The trial court, had not considered the evidences, particularly Ex.D2, ignoring the same and by invoking presumption under Section 29 of the POCSO Act, convicted the appellant. The trial court has not analysed the evidences in a proper perspective and as such, the conviction and sentence imposed by the trial court cannot be sustained.

31. In the result, the Criminal Appeal stands *allowed* and the



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conviction and sentence imposed by the learned Sessions Judge, Fast Track Mahila Court, Ariyalur District in Special Session Case No.9 of 2020 dated 25.04.2022 is set aside. The appellant is acquitted of all the charges. Bail bond executed, if any, shall stand cancelled. Fine amount, if any paid by the appellant shall be refunded to him. However, the victim compensation paid to PW1 need not be disturbed.

30.10.2025

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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To
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- 1.The Sessions Judge,
Fast Track Mahila Court,
Ariyalur District.
- 2.The Inspector of Police,
Vickiramangalam Police Station,
Ariyalur District.
- 3.The Public Prosecutor,
High Court, Madras.



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Criminal Appeal No.491 of 2022

G.ARUL MURUGAN, J.

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Pre-Delivery Judgment made in
Crl.A.No.491 of 2022

30.10.2025