



Crl.A.No.338 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2025

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN
AND
THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

Crl.A.No.338 of 2021

M.Manibharathi
S/o.Velu @ Murugavel,
Vinayagar Koil Street, Natham,
Thiruchengkattankudi.

Appellant(s)/Accused

Vs

State represented by
The Inspector of Police,
All Women Police Station,
Nagapattinam. Nagapattinam District.
Crime No.02 of 2015.

Respondent(s)/Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C. against the judgment dated 27.04.2021 passed in S.C.No.114 of 2015 on the file of the Sessions Court, Special Court under the POCSO Act, Nagapattinam and to set aside the same.



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For Appellant(s): Mr.P.Muthamizhselvakumar
Mr.V.Perarasu, *Amicus curiae*

For Respondent(s): Mr.A.Damodaran
Additional Public Prosecutor
assisted by Ms.Arifa Thasneem

JUDGMENT
(delivered by M.Jothiraman, J.)

Challenging the judgment dated 27.04.2021 passed in S.C.No.114 of 2015 on the file of the Sessions Court, Special Court under the POCSO Act, Nagapattinam, the appellant has preferred the above appeal.

2. The brief case of the prosecution is as follows:

2.1 “X” (PW21) is the daughter of PW1 (mother) and PW2 (father) and her date of birth is 18.11.1998, to prove which, her birth certificate was marked as Ex.P22. PW4 and PW8 are the elder sister and brother of “X” (PW21), respectively. As PW2 has agricultural lands, PW1 and PW2 were doing agricultural works.

2.2 On 17.03.2015, when PW1 and PW2 were engaged in agricultural activity in their field, “X” (PW21) sat there and watched them. While so, around 3.00 p.m., the accused signalled “X” (PW21) to come near



him and when “X” (PW21) went near him, he dragged her into his house, forcefully undressed her and inserted his finger into her vagina. When “X” (PW21) shouted, the accused threatened her by saying that he will kill her, if she disclose the occurrence to anybody. Then, “X” (PW21) adjusted her dress and went to the field, where, her parents were working. Thereafter, in the evening hours, when “X’s” (PW21’s) father (PW2) asked her to buy tea, she went to a tea shop owned by one Settu of the same village, but, Settu refused to give tea without money on credit basis and so, she returned. While “X” (PW21) was returning to the fields, the accused waylaid her and taken her to Azhiyan Channel by threatening her and the same was witnessed by PW3 and PW5. Around 6.30 p.m., the accused removed “X’s” (PW21’s) dresses, ravished her and left her in that place. “X” (PW21) heard the howling sound of the wolf in the dark and out of fear, she slept there itself. Later, one Azar of the same village came there, rescued her and taken to her home.

2.3 Meanwhile, PW1 and PW2, mother and father of “X” (PW1), respectively, started searching “X” (PW21). Since they were unable to find “X” (PW21), they went to Nagore Police Station on the same day around 9.00 p.m. and gave a complaint (Ex.P13) to the Sub-Inspector of Police



(PW17), who assigned C.S.R.No.79 of 2015 (Ex.P19). PW17 with the help of Sniffer Dog Squad conducted search for “X” (PW21). During the search, PW17 found a shirt (M.O.1) and underwear (M.O.2) of “X” (PW21), which was identified by PW1 and PW2, under the seizure mahazar (Ex.P2). On the next day morning *i.e.* on 18.03.2015, they found “X” (PW21) in a helpless state in the land of one Elangovan situated South of Azhiyan Channel. They brought her home and asked her as to what had happened and “X” (PW21) narrated about the occurrence that took place the previous day. Hence, PW1 and PW2 took “X” (PW21) to the police station.

2.4 PW19, Special Sub-Inspector of Police, All Women Police Station, Nagapattinam, recorded the complaint statement of “X” (PW21) (Ex.P1) and registered an FIR (Ex.P20) in Crime No.2 of 2015 for the offences under Sections 6 r/w 5(l) and 10 r/w 9(l) of the POCSO Act and handed over the case to PW18, Inspector of Police, All Women Police Station, Nagapattinam, for further investigation.

2.5 PW18, Inspector of Police, All Women Police Station, Nagapattinam, took up the investigation on 18.03.2015, went to the first place of occurrence around 12.45 hours, prepared observation mahazar (Ex.P5) and rough sketch (Ex.P14) in the presence of witnesses PW7 and



one Rajendiran. Thereafter, PW18 went to the second place of occurrence around 13.30 hours, prepared observation mahazar (Ex.P4) and rough sketch (Ex.P15) in the presence of witnesses PW5 and one Elangovan. PW18 recovered the midi tops (M.O.3) and skirt (M.O.4), which were worn by “X” (PW21) at the time of occurrence under Ex.P16 through PW1. Thereafter, on the same day around 16.00 hours, PW18 arrested the accused near Kothaval Savadi, Nagore, in the presence of PW6 and Tamilvanan and recorded the voluntary confessions statement of the accused. Since “X” (PW21) belongs to Adi-dravidar community, PW18 altered the case to one under Sections 6 r/w 5(1) and 10 r/w 9(1) of the POCSO Act and Section 3(2)(v) of the SC/ST (POA) Act under alteration report (Ex.P18).

2.6 PW3 – Thalaiyatti @ Prakash deposed that the on 17.03.2015, PW1 and PW2 were engaged in agricultural works. While so, PW1 sent “X” (PW21) with a vessel for buying tea, but, she returned with empty hands. As PW1 asked him to buy cool drinks, he bought the same and while returning to the fields, he saw the accused speaking with “X” (PW21) by putting his hands on her shoulder and he informed the same to PW1 and PW2. He further deposed that “X” (PW21) is a thickheaded person and she used to leave her parents without informing them. Further, he deposed that they all



went for search of “X” (PW21), but, she was found only on the next day morning.

2.7 PW5-Mani deposed that he has seen “X” (PW21) going to Azhiyan channel along with the accused.

2.8 PW9-Jeyaraj, Deputy Tahsildar, deposed that on the requisition of PW18, he issued a community certificate (Ex.P6) to the accused after perusing the relevant records.

2.9 PW10-Nayaranasamy, Tahsildar, deposed that on the requisition of PW18, he issued community certificate (Ex.P7) to “X” (PW21) after perusing the relevant records.

2.10 Dr.Balaprakash (PW11) deposed that as per the order of the Court, he examined the accused and ascertained his potentiality and on examination, he opined that there is nothing to suggest that the accused is impotent and issued potential test report (Ex.P8).

2.11 PW12-M.S.Manimeghalai, Judicial Magistrate, Seergazhi, in her evidence, has stated that on 15.04.2015 as per the order of the Chief Judicial Magistrate, Nagapattinam, she recorded the statements of “X” (PW21) under Section 164 Cr.P.C and marked it as Ex.P9.



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2.12 Dr.Ragini (PW13) deposed that based on the requisition of PW18, one Dr.Akila conducted medical examination on “X” (PW1) on 18.03.2015 and found that hymen was not intact and also found scratches in the body of “X” (PW1) and recorded the same in the accident register (Ex.P10).

2.13 PW14-Nethaji, Headmaster of the Government Higher Secondary School, Marungoor, Nagapattinam District, deposed that after perusing the original admission register compared with the photocopy of the admission register (Ex.P11) for the year 2013-2014 in Admission No.846 of “X” (PW21), he issued a school certificate (Ex.P12), as per which, “X’s” (PW21’s) date of birth is 18.11.1998.

2.14 After completing the investigation and based on the evidence collected, the Investigating Officer (PW20) filed a final report against the accused for the offences under Sections 6 r/w 5(l) and 10 r/w 9(l) of the POCSO Act and Section 3(2)(v) of the SC/ST (POA) Act.

2.15 On appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.114 of 2015 and was made over to the Special Court under the POCSO Act, Nagapattinam, for trial.



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2.16 The trial Court framed the charges under Sections 6 r/w 5(l) of the POCSO Act and Section 3(2)(v) of the SC/ST (POA) Act and Section 506(II) IPC against the accused. When questioned, the accused pleaded 'not guilty'.

2.17 To prove the guilt of the accused, the prosecution examined twenty one witnesses and marked twenty two exhibits and four material objects.

2.18 After completion of prosecution side evidence, when the accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same stating that a false case has been foisted against him. No witness was examined on the side of the defence, however, marked one exhibit.

2.19 After considering the oral and documentary evidence and upon hearing either side, the trial Court, by judgment dated 27.04.2021 in S.C.No.114 of 2015, has convicted and sentenced the accused as under:

<i>Provision under which convicted</i>	<i>Sentence</i>
Section 4 r/w 3(a) of the POCSO Act	Life imprisonment and fine of Rs.10,000/-, in default to undergo two years simple imprisonment.
Section 3(2)(v) of the SC/ST (POA)	Life imprisonment and fine of



<i>Provision under which convicted</i>	<i>Sentence</i>
Act	Rs.10,000/-, in default to undergo two years simple imprisonment.
Section 506(II) IPC	Seven years rigorous imprisonment.
The aforesaid sentences were ordered to run concurrently.	

The Trial Court also recommended the State Government to pay compensation to “X” (PW21).

2.20 Aggrieved over the same, the accused has preferred the above appeal.

3. The learned counsel appearing for the appellant/accused would submit that there are discrepancies in the chain of events as stated by PW1 to PW3 and PW21, inasmuch as, in one of the statements of PW3 under Section 161 Cr.P.C., he has stated that he saw “X” (PW21) talking to the accused near Pillayar koil and he had informed the same to PW1/mother of “X” (PW21), whereas, in the judgment the trial Judge has stated that when PW1 asked PW3 to get “X” (PW21), PW3 refused to go, since he is in fear that the accused would beat him. He would further submit that the letter given by the Head Master of the school clearly indicates the conflict in the age of “X” (PW21). The date of birth of “X” (PW21) is 18.11.1998 and therefore, while calculating the age of “X” (PW21) based on her date of



birth, it is said to have been more than 16 years, whereas, in the materials on record the age of “X” (PW21) was mentioned as 15 years. The prosecution has failed to establish the age of “X” (PW21) and also failed to prove the case beyond reasonable doubt. To strengthen his contention, he has relied upon the judgment of the Supreme Court in *Ashok Debbarma @ Achak Debbarma Vs. State of Tripura* reported in **2014 (4) SCC 747**, to show that the accused has a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt.

4. *Per contra*, the learned Additional Public Prosecutor would submit that the prosecution has proved the charges against the appellant/accused beyond reasonable doubt. “X” (PW21), who was aged about 16 years at the time of occurrence, has been proved through the evidence of PW1, PW2 and PW14 and as per the school admission register (Ex.P11) and school certificate (Ex.P12) and birth certificate (Ex.P22) of “X” (PW21), the prosecution has proved that “X” (PW21) was aged about 16 years at the time of occurrence. He would further submit that “X” (PW21) has clearly spoken in her evidence about the offence committed by the accused on her was penetrative sexual assault in the field situated South



of Azhiyan Channel and also spoken about the criminal intimidation caused by the accused. Further, the evidence of “X” (PW21) is corroborated by the medical evidence of PW13 and accident register (Ex.P10) issued by PW13. The community of the accused and X” (PW21) was proved by the evidence of Headquarters Deputy Tahsildar (PW9) and Revenue Tahsildar (PW10) and Exs.P6 and P7 issued by them, respectively. Further, the evidence of PWs1 to 4 and 8 proved the commission of the offence of penetrative sexual assault by the accused on “X” (PW21) due to communal hatred. He would further submit that the prosecution has clearly established the case against the accused, whereas, the accused has not rebutted the presumption available under Section 29 of the POCSO Act. Further, he would submit that the receipt (Ex.D1) marked by the accused has nothing to do with this case.

5. We have considered the submissions made on either side and perused the materials on record.

6. It is the case of the prosecution that on 17.03.2015 around 3.00 p.m. the accused has lured “X” (PW21) and taken her into his house and inserted his finger into her vagina and also criminally intimidated her saying



that he would murder her if she discloses the same to anybody; on the same day around 6.30 p.m. the accused lured “X” (PW21) to the land of one Elangovan situated at South of Azhiyan Channel and penetrated his penis into her vagina and committed sexual assault on her.

7. PW1, PW2, PW4 and PW8 are mother, father, sister and brother and of “X” (PW21), respectively. PW3 and PW5 are independent witnesses, who have lastly seen the accused and “X” (PW21) together. PW1 and PW2 have stated that the date of birth of “X” (PW21) is 18.11.1998. Headmaster (PW14) of the school, where “X” (PW21) lastly studied, has also spoken about the date of birth of “X” (PW21) and as per the school certificate (Ex.P12) and school admission register (Ex.P11) on the date of occurrence *i.e.* on 17.03.2015 “X” (PW21) was 16 years. Headmaster (PW14) of the school, where, “X” (PW21) has studied IX Standard clearly deposed that the date of birth of “X” (PW21) is 18.11.1998. Therefore, as per the evidence of PW1 and PW2 and Exs.P11 & P12, the prosecution has proved the fact that “X” (PW21) was aged about 16 years at the time of occurrence.



8. It is seen from the records that the police produced “X” (PW21) and PW1 before the Court on 06.01.2016 for giving evidence and on the said day, the learned Fast Track Mahila Judge, Nagapattinam, has put certain preliminary questions to test as to whether “X” (PW21) is capable of giving evidence and from the answers given by “X” (PW21), came to the conclusion that “X” (PW21) was not capable of understanding the questions put to her and hence, “X” (PW21) was not examined as a witness initially. Further, it is seen from the records that subsequently on 12.12.2019 during the examination of “X” (PW21) in respect of an enquiry in Crl.M.P.No.58 of 2019 for deciding the question about the grant of interim compensation to her, the Court below found that she was quite capable of understanding the question put to her. The Court below also noted that on an interaction with “X” (PW21) revealed that when she was produced before the Court earlier on 06.01.2016 to give evidence, she got very scared of the Court Hall atmosphere and therefore, considering those circumstances, the Court below has ordered the prosecution to examine her as a witness. Accordingly, “X” (PW21) appeared before the Court below on 04.02.2020 with her parents and gave evidence.



9. PW1, in her evidence, has stated that “X” (PW21) has lesser memory power and hence she never used to send “X” (PW21) anywhere and “X” (PW21) does not have much worldly knowledge.

10. “X” (PW21) deposed that on 17.03.2015 when her parents were engaged in agricultural activity in their fields along with some persons, she was sitting there; in the evening hours, PW1 asked her to buy tea. Therefore, “X” (PW21) went to a tea shop, but, the tea shop owner refused to give tea on credit basis without money; hence, “X” (PW21) returned carrying tea container; at that time, the accused caught her hands and pulled her. She asked the accused to leave her hands, but, the accused threatened her with a knife and stated that if she does not come he will murder PW1 and PW2 and the accused gagged her mouth with kerchief and took her to the place of river bed. Even though “X” (PW21) resisted, the accused did not listen her and taken her away and thereafter, the accused removed her shirt, skirt and underwear and when she tried to stop him, he slapped her two times; near a Karuvai tree, he laid over her and he inserted his male organ into her vagina and he left her there itself saying that you may die; during night time, she could not identify the route to go to home and on fear,



she stayed there itself; after some time, she heard the sound of wolf and also dog barking; she was scared and remained in the same place and she fell asleep; at that time, one Azar came there, woke her up, gave a stick, asked her to follow him and left her in her house; thereafter she informed the same to PW1 and PW2; PW1 and PW2 took her to the police station, then to hospital and thereafter, produced her before the Court for recording statement. “X” (PW21) admitted her signature in the statement given before the learned Judicial Magistrate in Ex.P3.

11. From the evidence of “X” (PW21), it is clear that the accused committed penetrative sexual assault on her and also committed criminal intimidation. “X” (PW21) has lodged the complaint (Ex.P1), in which, she has stated that on the day of occurrence, two incidents of penetrative sexual assault were committed by the accused. One in the house of the accused at 3.00 p.m. and another in the field situated South of Azhiyan Channel at 6.30 p.m., but, “X” (PW21), in her evidence, has not stated about the first occurrence and so far as the commission of second occurrence, “X” (PW21) has stated in the complaint that in the evening hours, when she was returning from tea shop, the accused, who was near the Angadi, took her to



the Azhiyan Channel, lured her by saying that he would marry her and undressed her and at 6.30 p.m., the accused squeezed her breast and inserted his male organ into her vagina and she cried out of pain. Thereafter, he left her there and ran away and as she was not able to get up, she remained there and fell asleep. In the morning, she went to her parents and narrated the occurrence to them.

12. The evidence of “X” (PW21) shows the commission of criminal intimidation and penetrative sexual assault by the accused. Moreover, “X” (PW21) has clearly withstood in her cross-examination and she has categorically denied in the cross-examination that there was any previous communal enmity between the accused family and that her family members trespassed into house of the accused, damaged his properties, assaulted his family members before the occurrence and that in order to escape from the anticipated complaint by the people of the accused, she has filed false complaint as tutored by her parents. “X” (PW21) also denied the suggestion put on the side of the accused that she was in the house of one Prabhu of Arivizhimangalam and she deposed that she did not know such person. Therefore, the contention made by the accused that in order to wreak



vengeance due to communal reasons false complaint has been lodged by the

“X” (PW21) is not acceptable one.

13. Dr.Balaprakash (PW11), who examined the accused and issued accident register (Ex.P8), stated that the accused is shown to be performing sexual act. So far as “X” (PW21) is concerned, one Dr.Akila has examined her in the Government Headquarters Hospital and issued accident register (Ex.P10). Since the said aforesaid doctor was on leave, Dr.Rahini (PW13) was authorised by the Superintendent of the said hospital to depose evidence.

14. Dr.Rahini (PW13) deposed that “X” (PW21) was produced by PW16 before Dr.Akila in the Government Headquarters Hospital on 18.03.2015 at 1.15 p.m., who found that “X” (PW21) was conscious and oriented and noted tiny abrasion over her right breast and also linear abrasion in her back. The evidence of Dr.Rahini (PW13) and accident register (Ex.P10) shows that vagina of “X” (PW21) admitted one finger and her hymen was not intact, the vaginal smear and pubic hair cuttings were taken for semen analysis, but, no spermatozoa seen.



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15. Dr.Rahini (PW13), in her cross-examination, deposed that abrasions noted on the body of “X” (PW21) could be caused by soda bottle cap, however, considering the evidence of penetrative assault spoken by “X” (PW21), the version of the defence cannot be accepted. As per the evidence of Dr.Rahini (PW13), the abrasions on the breast and back of “X” (PW21) would go to show that she was subjected to penetrative sexual assault. The evidence of Dr.Rahini (PW13) and accident register (Ex.P10) corroborates the evidence of PW21.

16. As per the evidence of PW1 to 8, “X” (PW21) went missing on 17.03.2015 after evening hours and even after search they could not find her. PW2 has stated in his evidence that he has given complaint on the same day at 9.00 p.m. in Nagore Police Station. PW17, Sub-Inspector of Police, stated in her evidence that she has received the said complaint and assigned C.S.R.No.79 of 2015 under Ex.P19. Hence, after “X” (PW21) went missing, PW2 has preferred the complaint (Ex.P13) within reasonable time.



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17. It is the contention of the defence that “X” (PW21) has given the complaint statement in the police station on 18.03.2015 and thereafter she was sent for medical examination, whereas, the result of the vaginal smear noted behind the Out-Patient slip annexed with accident register (Ex.P10) dated 17.03.2015 and therefore, before the admission of “X” (PW21) in the said hospital, such document has come into picture and therefore, it casts serious doubt in the prosecution case, but, on perusal of accident register (Ex.P10) shows that “X” (PW21) was admitted in the hospital on 18.03.2015 at 1.15 p.m. and the Out-Patient slip of “X” (PW21) is also dated 18.03.2015. In such circumstances, vaginal smear analysis cannot be taken place on 17.03.2015. Moreover, PW16-Police Constable, has clearly stated that she has taken “X” (PW21) for medical examination to Government Headquarters Hospital on 18.02.2015. it has not been disputed on the side of the defence. Moreover x was cross-examined to that effect and that she was admitted in the hospital on 18.03.2015. Therefore, the contention of the defence that the vaginal smear noted in the Out-Patient slip dated 17.03.2015 is not acceptable one.



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18. This Court finds that the evidence of “X” (PW21) is clear, cogent and trustworthy and inspires the confidence of this Court. Further the evidence of “X” (PW21) is corroborated by the medical evidence of Dr.Balaprakash (PW11) and Dr.Rahini (PW13). The evidence of PW1 to 4 and 8 have also corroborated the evidence of “X” (PW21). Hence, the Court below has rightly held that the prosecution has proved the case beyond all reasonable doubts. There is no infirmity in the judgment of the Court below warranting interference with the same. *Ex consequenti*, we find no merit in this appeal and the same is liable to be dismissed.

Accordingly, this criminal appeal is dismissed, confirming the judgment dated 27.04.2021 passed in S.C.No.114 of 2015 on the file of the Sessions Court, Special Court under the POCSO Act, Nagapattinam. The trial Court is directed to secure the custody of the accused and send him to prison to undergo the remaining period of sentence.

(P.V., J.) (M.J.R., J.)
17.12.2025

nsd
Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No



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To

- 1.The Sessions Judge, Special Court under the POCSO Act,
Nagapattinam.
- 2.The Superintendent, Central Prison, Cuddalore.
- 3.The Inspector of Police,
All Women Police Station, Nagapattinam.
Nagapattinam District.
- 4.The Public Prosecutor,
Madras High Court, Chennai – 600 104.



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