



Crl.A.No.374 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.A.No.374 of 2025
Crl.M.P.No.13266 of 2025

Dhivakar

... Appellant

Vs.

State rep. by.
The Inspector of Polce,
All Women Police Station,
Ponneri, Thiruvallur District.
Crime No.30 of 2021

... Respondent

PRAYER: Criminal Appeal filed under Section 415 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to call for the records in Spl.S.C.No.49 of 2022 on the file of the learned Sessions Judge, Special Court for Exclusive Trial of cases under POCSO Act, Thiruvallur and set aside the conviction and sentence imposed upon the appellant by a judgment dated 28.03.2025, by allowing this appeal.

For Appellant : Mr.A.M.Rahamath Ali

For Respondent : Mr.S.Raja Kumar
Additional Public Prosecutor



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JUDGMENT

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This Criminal Appeal has been filed as against the judgment dated 28.03.2025, passed by the learned Sessions Judge, Special Court for Exclusive Trial of cases under POCSO Act, Thiruvallur, in Spl.S.C.No.49 of 2022, thereby convicted the appellant for the offences punishable under Sections 451, 354D(2) & 354A(2) r/w 511 of IPC and Sections 7 r/w.18 r/w.8, 11 r/w.18 r/w.13 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as “the POCSO Act”).

2. The case of the prosecution is that on 15.09.2021, at about 12.30 hrs, when the victim girl was alone in her house and watching television, the appellant trespassed into the house of the victim with an intention to commit sexual assault on her. When the victim girl questioned about his visit, the appellant shut her mouth and tried to commit sexual assault on her. Immediately, the victim raised alarm and then the appellant ran away from her house. It was informed to her mother and a complaint was lodged. On the complaint, the respondent registered the FIR in Crime No.30 of 2021 for the offences under Sections 354A(2), 354C(2) & 451 of IPC and Sections 8 & 12 of the



POCSO Act, against the appellant. After completion of investigation, the respondent filed final report and the same was taken cognizance by the trial Court in Spl.S.C.No.49 of 2022.

3. On the side of the prosecution, they examined P.W.1 to P.W.14 and also marked documents in Ex.P.1 to Ex.P.13. On the side of the appellant, no one was examined and no documents were marked. On perusal of the oral and documentary evidences, the trial Court convicted the appellant for the offences punishable under Sections 451, 354D(2) & 354A(2) r/w 511 of IPC and Sections 7 r/w 18 r/w 8 & 11 r/w.18 r/w. 13 of the POCSO Act and sentenced him as follows :-

Sl. No.	Conviction	Sentence
1.	354D(2) r/w 511 of IPC	to undergo one year simple imprisonment and to pay a fine of Rs.1000/-.
2.	451 of IPC	to undergo two years simple imprisonment and to pay a fine of Rs.1000/-.
3.	Sections 7 r/w 18 r/w 8, 11 r/w.18 r/w. 13 of the POCSO Ac	to undergo one year six months simple imprisonment and to pay a fine of Rs.3,000/-.

The above sentences are ordered to run concurrently. Aggrieved by the same, the present appeal is filed.



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4. The learned counsel appearing for the appellant submitted that the mother of the victim was examined as P.W.1 and the victim girl was examined as P.W.2. Both the evidences revealed that the accused came near her and shut her mouth. When she yelled, he ran away. But P.W.1 stated that the appellant attempted to kiss the victim. Further the prosecution had examined another relative as P.W. 3. No independent witness was examined by the prosecution to corroborate the evidences of P.W.1 & P.W.2. The trial Court without considering the above facts and circumstances, mechanically convicted the appellant.

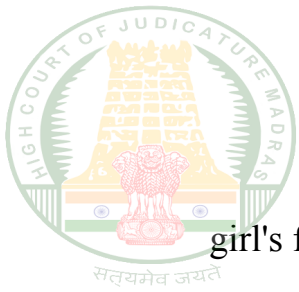
5. Per contra, the learned Additional Public Prosecutor appearing for the respondent submitted that the appellant trespassed into the house of the victim girl and attempted to commit sexual assault on the victim girl. The mother of the victim girl was examined as P.W.1 and the victim girl was examined as P.W.2. After the occurrence, the victim was subjected for medical examination before P.W.10 and she deposed that the victim's hymen was partially ruptured. Therefore, the prosecution clearly proved the charge and the trial Court rightly convicted the appellant and it doesn't require any interference by this Court.



WEB COPY 6. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

7. On perusal of the evidence of P.W.2 viz., the victim girl, it is revealed that the appellant is none other than her neighbour. On 15.09.2021, when she was alone in her house, she was lying on the sofa and was watching television. At that juncture, the appellant came in to her house. When the victim girl questioned about his visit, he shut her mouth. Immediately, the victim removed his hand and started to shout. Therefore, the appellant flew away from her house. Thereafter, the victim girl informed about the incident to her mother and lodged complaint.

8. The mother of the victim girl was examined as P.W.1. She deposed that when the appellant attempted to kiss the victim girl, she shouted and thereafter he ran away from the house. Though the occurrence had taken place on 15.09.2019 at about 12.30 hrs., the complaint was lodged only on next day that too after 5 p.m. Further on cross-examination, the mother of the victim categorically admitted that there was a land dispute between the appellant's family and the victim



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girl's family. Further even assuming that the appellant trespassed in to the house of the victim with intention to commit sexual assault on the victim, when the victim girl shouted, he immediately ran away from the house.

9. The victim girl also deposed that she locked the door in half way and even then, the appellant trespassed in to her house. The entire circumstances of the prosecution revealed that due to previous enmity between both the families, false complaint has been foisted against the appellant. There was a delay in lodgment of the complaint and also no other evidence was corroborated with the evidence of P.W.1 & P.W.2. In fact, there are contradiction between the evidence of P.W.1 & P.W.2 each other.

10. Further, the victim was subjected to medical examination and the doctor who examined the victim deposed as P.W.10. She deposed that there was no injury on the entire body of the victim and her hymen was intact. Even according to the case of the prosecution, the appellant threatened her by closing her mouth. He did not even touch other parts of the body of the victim girl. Therefore, the prosecution failed to prove any of the charges against the appellant.



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11. In criminal jurisprudence, the burden is always on the prosecution to prove its case beyond reasonable doubt. When two views are possible and the one favourable to the accused is equally plausible, the benefit of doubt must necessarily go to the accused. In the present case, the prosecution has failed to discharge its burden convincingly, and the trial Court failed to properly appreciate the infirmities in the prosecution case. Therefore, the conviction and sentence awarded by the trial Court in respect of all the charges against the appellant cannot be sustained and are liable to be set aside.

12. Accordingly, the conviction and sentence imposed by the learned Sessions Judge, Special Court for Exclusive Trial of cases under POCSO Act, Thiruvallur, in Spl.S.C.No.49 of 2022, dated 28.03.2025, for the offence under Sections 451, 354D(2) & 354A(2) r/w 511 of IPC and Sections 7 r/w.18 r/w.8, 11 r/w.18 r/w.13 of the POCSO Act are hereby set aside. The appellant/accused is acquitted of all charges in Spl.S.C.No.49 of 2022 on the file of the learned Sessions Judge, Special Court for Exclusive Trial of cases under POCSO Act, Thiruvallur. Fine amount, if any paid, shall be refunded to the appellant forthwith. Bail bonds, if any executed, shall stand cancelled.



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WEB COPY 13. Accordingly, the Criminal Appeal stands allowed.

Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order

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To

1. The Sessions Judge,
Special Court for Exclusive
Trial of cases under POCSO Act,
Thiruvallur.

2. The Inspector of Polce,
All Women Police Station,
Ponneri, Thiruvallur District.

3. The Public Prosecutor,
Madras High Court,
Chennai.



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G.K.ILANTHIRAIYAN, J.

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26.06.2025