



Crl.A.No.662 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2025

CORAM

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

Crl.A.No.662 of 2025
and Crl.M.P.No.14948 of 2025

Boopalan

... Appellant

Vs

State,
Inspector of Police,
All Women Police Station,
Arani,
Tiruvannamalai District.
(Crime No.7 of 2020)

...Respondent

PRAYER : Criminal Appeal has been filed under Section 415(2) of BNSS, 2023, to call for the entire records in connection with the Spl.S.C.No.89 of 2020 on the file of the learned Special Court (POCSO Court), Tiruvannamalai, Tiruvannamalai District and set aside the Judgment dated 29.03.2023.

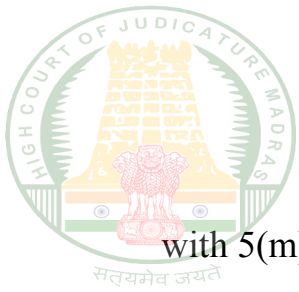
For Appellant : Mr.E.Kannadasan

For Respondent : Mr.S.Raja Kumar

Additional Public Prosecutor

JUDGMENT

This Criminal Appeal has been filed as against the order passed in Spl.S.C.No.89 of 2020 dated 29.03.2023 by the Special Court (POCSO Court), Tiruvannamalai, Tiruvannamalai District, thereby convicting the appellant for the offences punishable under Sections 376(A)(B) of IPC and Section 6 read



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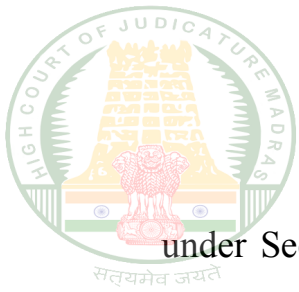
with 5(m) and Section 10 read with 9(m) of POCSO Act.

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2. The case of the prosecution is that on 08.06.2020 at about 7.00 p.m the victim child, aged about 4 years, was playing with other children in the street. She was called for dinner by her mother. However, she came late, crying and holding her panties in her hands. On inquiry by the mother, the victim child revealed that the accused had pressed her breast and bit her private part. She felt pain on her private part. Next day, she was taken to the hospital and after recording the statement from the mother of the victim, FIR was registered.

3. The respondent Police registered FIR in Crime No.7 of 2020, for the offences punishable under Section 376(A)(B) of IPC, Section 6 read with 5(m) and Section 10 read with 9(m) of POCSO Act. After completion of investigation, final report was filed and the same has been taken cognizance by the Trial Court in Spl.S.C.No.89 of 2020.

4. In order to bring home the charges, the prosecution had examined PWs.1 to 10 and marked Exs.P1 to 12. On the side of the accused, no one was examined and no document was marked. On perusal of oral and documentary evidence, the Trial Court found the accused guilty for the offence punishable



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under Section 376(A)(B) of IPC and Section 6 read with 5(m) of the POCSO

Act and sentenced him to undergo 20 years rigorous imprisonment and also imposed fine of Rs.1,000/-, in default, to undergo one year simple imprisonment. He was also found guilty for the offence under Section 10 read with 9(m) of POCSO Act and sentenced him to undergo 7 years rigorous imprisonment and also imposed fine of Rs.1,000/-, in default, to undergo one year simple imprisonment. Aggrieved by the same, the present appeal.

5. The learned counsel for the appellant would submit that the Trial Court convicted the appellant only on the basis of the evidence of the victim. The victim was examined as PW.4. There are material contradictions between the evidence of the victim and the mother of the victim. Even assuming that the case of the prosecution is true, no offence is made out under Section 6 read with 5(m) of the POCSO Act. At the most, the offence under Section 7 of POCSO Act is attracted and the appellant is punishable under Section 8 of the POCSO Act. He further submitted that the victim girl was subjected for medical examination. The Doctor who examined the victim girl, was examined as PW.8. However, her evidence did not support the case of the prosecution, as no injury was found on the body of the victim girl during medical examination. Therefore, the conviction and sentence imposed on the appellant cannot be



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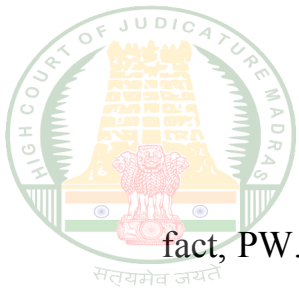
sustained and are liable to be set aside.

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6. Per contra, the learned Additional Public Prosecutor appearing for the respondent Police would submit that the victim girl was examined as PW.4. She deposed that the appellant had bitten her private part and also pinched her breast. She further stated that she suffered pain in her private part and as such, she was taken to the hospital. She had also categorically stated before the Doctor. Though the Doctor did not find any injury, the victim had severe pain in her private part, which was disclosed to the Doctor. Therefore, the prosecution has proved the charges and the Trial Court had rightly convicted the appellant and it does not warrant any interference by this Court.

7. Heard the learned counsel on either side and perused the materials available on record.

8. The victim was aged about 4 years at the time of occurrence. On 08.06.2020, at about 07.15 p.m, the victim was taken by the appellant inside his house and had committed sexual assault on the victim girl. The appellant is the neighbour of the victim girl. The victim's mother was examined as PW.1. In



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fact, PW.1 was also sitting outside her house and watching while the victim girl and others were playing. Thereafter, PW.1 called the victim for dinner. In the meantime, the victim was taken by the appellant and he committed sexual assault on the victim.

9. As per the evidence of the Doctor, who had examined the victim, deposed that the victim girl was aged about 4 years and she did not find any injury in her entire body including her private part. Further, the accused was aged about more than 65 years at the time of the alleged occurrence. Since the victim girl was aged about 4 years, there is no growth on her sexual organs. That apart, the appellant did not take the victim to his house. The victim herself went to his house to give something. Therefore, the appellant had no intention to commit penetrative sexual assault on the victim. However, the victim categorically deposed that he had bitten her private part and pressed her breast. However, on the examination, the Doctor did not find any injury on her entire body. Accordingly, she had recorded the Accident Register, which was marked as Ex.P6.

10. The mother of the victim was examined as PW.1. She was put in suggestion that there is enmity between the appellant family and the victim's



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family with regard to construction of their respective houses. It was also admitted by PW.2, who is the father of the victim girl. Further, the victim was aged about 4 years at the time of occurrence and as such, there is no possibility for committing penetrative sexual assault on the minor victim girl. However, as per the evidence of PW.4, the appellant is liable to be convicted for the offence punishable under Section 7 read with 8 of the POCSO Act, since he had committed sexual assault on the victim girl.

11. Therefore, the conviction and sentence imposed on the appellant is hereby modified to the effect that the appellant is convicted for the offence punishable under Section 7 read with 8 of the POCSO Act and sentenced to undergo period of incarceration which were already undergone by the appellant. The appellant is directed to be set at liberty forthwith unless his custody is otherwise required in connection with any other case. The fine amount, if any, paid by the appellant shall be refunded. Bail bond, if any, executed by the appellant shall stand cancelled.

12. In the result, this Criminal Appeal is partly allowed. Consequently, connected Miscellaneous petition is closed.



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Speaking order/Non-speaking order

Index : Yes/No

Internet : Yes/No

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To

1. The Special Court (POCSO Court),
Tiruvannamalai, Tiruvannamalai District.
2. The Inspector of Police,
All Women Police Station,
Arani,
Tiruvannamalai District.
3. The Central Prison,
Vellore.
4. The Public Prosecutor,
High Court, Madras.



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G.K.ILANTHIRAIYAN, J.

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