



Crl.A.No.787 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2025

CORAM:

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

Crl.A.No.787 of 2025 and
Crl.MP.No.13092 of 2025

Selvaraj

Vs.

... Appellant

The State,
Represented by the Inspector of Police,
Bhavani All Women Police Station,
Bhavani
(crime No.16 of 2020)

... Respondent

PRAYER: Criminal Appeal filed under Section 415 of BNSS, 2023, praying to call for the records in SC.No.56 of 2020 on the file of the learned Sessions Judge of Magalir Neethi Mandram, Fast Track Mahila Court, Erode and set aside the impugned judgment dated 27.07.2022 and allow this appeal filed by the appellant.

For Appellant : Mr.M.Muthukannan

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

JUDGMENT

This criminal appeal has been filed against the judgment dated 27.07.2022 passed in SC.No.56 of 2020 on the file of the learned



Crl.A.No.787 of 2025

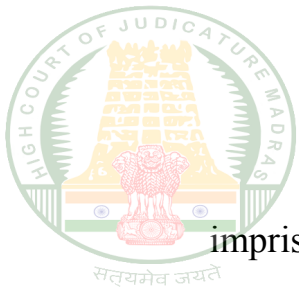
Sessions Judge of Magalir Neethi Mandram, Fast Track Mahila Court,

WEB COPY

Erode, thereby the appellant was convicted for the offences punishable under Section 9(k), (m) punishable under Section 10 of POCSO Act.

2. The case of the prosecution was that a 11-years-old intellectually disabled minor girl, while staying in her grandmother's house during covid-19 period, on 13.07.2020 at about 7.30 a.m., when she was playing in front of the accused's house, he indulged in sexual assault against the minor victim girl. On the complaint, the respondent registered FIR in crime No.16 of 2020 under Sections 7, 8, 9(m), 9(k), 10 of POCSO Act and under Section 3(1)(w)(i) of SC/ST(PoA)Act. After completion of investigation, the respondent filed final report and the same was taken cognizance by the trial court.

3. On the side of the prosecution, they had examined PW1 to PW17 and marked Ex.P1 to Ex.P22. On the side of the accused, no one was examined and no documens were marked. On perusal of oral and documentary evidences, the trial court found the appellant guilty for the offences punishable under Section 9(k), (m) punishable under Section 10 of POCSO Act and sentenced him to undergo five years rigorous



Crl.A.No.787 of 2025

imprisonment and also imposed fine of Rs.3,000/-, in default of which to undergo three months simple imprisonment. Aggrieved by the same, the present criminal appeal has been filed.

4. Heard, the learned counsel appearing on either side and perused all the materials placed before this Court.

5. On perusal of records, it is revealed that the victim girl aged about 11 years at the time of the occurrence, while playing in her grandmother's house, the accused had touched her chest and private part. Further, the appellant had absolutely no knowledge that the victim girl is intellectually disabled minor girl. While protecting her, he touched her chest and private part. On perusal of the statement of the victim as well as her mother, it is further revealed that when the victim girl was protected by the appellant, at that time, he touched her chest and private part. Therefore, the charges under Section 9(k),(m) r/w 10 of POCSO Act would not attract against the appellant and at the worst, he can be convicted only under Section 7 punishable under Section 8 of POCSO Act. Further, during investigation, the appellant was in jail for nearly 60 days and thereafter, from the date of the judgment i.e. 27.07.2022 till



Crl.A.No.787 of 2025

WEB COPY

today, he is in jail. Therefore, the petitioner is incarcerating imprisonment for more than three years. Considering the same, this Court is inclined to partly allow this criminal appeal by modifying the judgment of the trial court.

6. Accordingly, the impugned judgment dated 27.07.2022 passed in SC.No.56 of 2020 on the file of the learned Sessions Judge of Magalir Neethi Mandram, Fast Track Mahila Court, Erode, is modified as follows:

“The order of conviction and sentence of imprisonment imposed on the appellant by the trial court for the offences under Sections 9(k), (m) punishable under Section 10 of POCSO Act, 2012 is set aside. The appellant is now convicted for the offences under Section 7 punishable under Section 8 of POCSO Act, 2012. However, the period of sentence of imprisonment in respect of the conviction for the aforesaid offences shall be the period of sentence of imprisonment which has been undergone by the appellant till now.

7. It is reported by the learned counsel on either side that the appellant is now in incarceration. Therefore, the appellant/accused is



Crl.A.No.787 of 2025

directed to be set at liberty forthwith unless his custody is otherwise
required in connection with any other case.

8. In the result, this criminal appeal stands partly allowed.

Consequently, connected miscellaneous petition is closed.

04.07.2025

Index : Yes/No

Neutral citation : Yes/No

Speaking/non-speaking order

lok

Note: Issue order copy on 04.07.2025



WEB COPY



Crl.A.No.787 of 2025

G.K.ILANTHIRAIYAN, J.

lok

To

- 1.The learned Sessions Judge of Magalir Neethi Mandram, Fast Track Mahila Court, Erode
- 2.The Inspector of Police,
Bhavani All Women Police Station,
Bhavani
- 3.The Central Prison,
Coimbatore
- 4.The Public Prosecutor,
High Court of Madras

Crl.A.No.787 of 2025

04.07.2025