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Crl.A.No.1187 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **08.08.2025**

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.A.No.1187 of 2025
and
Crl.M.P.No.15226 of 2025

Suresh Babu,
S/o. Perumal

... Appellant

Versus

Inspector of Police,
W-6, All Women Police Station,
Ayanavaram, Chennai – 23.
(Crime No.6 of 2019)

... Respondent

PRAYER: Criminal Appeal filed under Section 415(2) of the Bharatiya
Nagarik Suraksha Sanhita, (BNSS), 2023, to set aside the judgment
passed by the learned Sessions Judge in Special Sessions Case No.84 of
2020 dated 28.04.2025.

For Appellant : Mr.V. Jeyaprakasham

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

JUDGEMENT

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2. The case of the prosecution is that the victim was aged 7 years at the time of occurrence. While she was playing with her friend in front of the appellant's shop on 17.08.2020 at about 06.30 P.M., the appellant/accused called her to his salon shop with sexual intention and shut the door. Thereafter, the appellant touched the victim's breast area, left shoulder, left thigh, right side of the hip and held her hands. In continuation of the same, on another day, with a small DVD in his shop, the appellant had shown pornography to the victim child and rubbed her breast, back, and vagina, and also committed sexual assault. On lodgement of the complaint, the respondent registered the First Information Report in Crime No.6 of 2019 for the offence under Section 10 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter "the POCSO Act"). After completion of the investigation, a



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final report was filed before the Trial Court, where the charges were framed for the offences under Sections 8 and 12 of the POCSO Act. In order to bring home the charges, the prosecution examined the witnesses P.W.1 to P.W.6 and marked the documents Exs.P1 to P13. On the side of the accused, D.W.1 to D.W.4 were examined and Exs.D1 to D4 was marked. The prosecution had also produced material evidence, M.O.1 to M.O.3. On perusal of the oral and documentary evidence, the Trial Court found the appellant guilty for the offence under Section 10 of the POCSO Act and sentenced him to undergo 5 years imprisonment and imposed fine of Rs.15,000/-, in default, to undergo 3 months simple imprisonment. Aggrieved by the same, the present appeal has been preferred before this Court.

3. The learned counsel for the appellant submitted that the mother of the victim was examined as P.W.1. She categorically deposed in the examination and admitted that except for her signature found in the complaint, all other portions of the complaint were not written by her. She did not even read the contents of the complaint. Therefore, there is absolutely no opposition to the investigation and also to filing a final



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report. The alleged occurrence took place on 17.03.2019, whereas the complaint was lodged on 18.03.2019; the delay was not explained by the prosecution. In fact, the appellant was not even present on 17.03.2019 at his shop since he had gone to Tirupathy. In support of his contention, on the side of the accused/appellant, D.W.1 to D.W.4 were examined. The witnesses categorically deposed that on 17.03.2019, they celebrated the appellant's sister-in-law's daughter's “Thali Korkkum” function, and on the same day, they went to Tirupathy, and thereafter, the appellant, along with the other family members, returned only on 19.03.2019 from Tirupathy. The appellant had also produced photographs which were taken at that “Thali Korkkum” function which was held on 17.03.2019 at Tirupathy. The photographs were also marked as Ex.D3. Further, he stated that no such occurrence had taken place as alleged by the prosecution and a false complaint has been foisted against the appellant. Even assuming that the appellant was in that place on the date of the alleged occurrence, the testimony of the mother of the victim girl/P.W.1 did not support the case of the prosecution. Even according to her, the appellant had touched all over the body of the victim girl. Further, the victim girl was examined as P.W.2, she deposed that the



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accused/appellant touched her lower abdomen region in an inappropriate manner. The doctor who examined the victim girl was examined as P.W.4, suggested that, the victim did not sustain any injuries on the entire body or genital part, her hymen was intact, and she did attain puberty. Therefore, the prosecution miserably failed to prove any charges.

4. The learned Additional Public Prosecutor appearing for the respondent submitted that the mother of the victim girl/P.W.2 had also categorically sworn in her deposition that the appellant had touched the victim girl inappropriately. Further, the victim child was sexually assaulted by the appellant/accused after showing pornographic film. Therefore, the prosecution had categorically proved the charges. Therefore, the Trial Court rightly convicted the appellant.

5. Heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the respondent, and also perused the materials available on record.

6. Upon perusal of the records, it is seen that the mother of the



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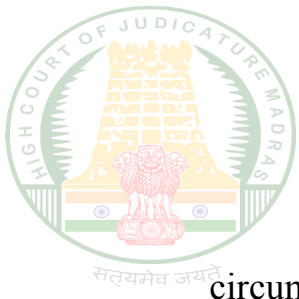
victim was examined as P.W.1 and the victim girl was examined as P.W.2. In the deposition of P.W.1, she stated that she knows the appellant, and he is running a salon shop in her area. The victim girl was aged 7 years at the time of alleged occurrence, and she used to play with other children in their neighbourhood. While the victim child was playing with one boy child, she was called by the appellant and was taken into his salon shop, where he touched the victim girl inappropriately on her lower abdomen region. The alleged occurrence took place on 17.03.2019, however, no complaint was lodged on that day. When she was inquired by P.W.1/the mother of the victim child, P.W.2/the victim girl had stated that the appellant had touched her lower abdomen. Though the victim girl/P.W.2 deposed that the appellant had shown pornography to her and thereafter, touched her inappropriately, she did not whisper about the same, and it was also not corroborated by any of the witnesses. After the registration of the First Information Report, the victim girl/P.W.2 was subjected to the medical examination before the Doctor/P.W.4. She examined the victim child and found that she did not sustain any injuries on her entire body, her hymen was intact, and there is no evidence to show that the victim girl was subjected to sexual assault.



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7. The appellant raised ground of alibi, and in order to substantiate that he attended the function of D.W.2's daughter's “Thali Korkkum” function, D.W.1 to D.W.4 were examined. Apart from the examination of the family members of the appellant/D.W.1 to D.W.4, the appellant had also produced Exs.D1 to D4, and hence, it is evident that on 17.03.2019 itself, he had attended his relatives' “Thali Korkkum” function at Tirupathy, along with his family members. Thereafter, the appellant returned from Tirupathy only on 18.03.2019. Even according to the mother of the victim girl/P.W.1 and the victim girl/P.W.2, the occurrence had taken place on the same day and also on another occasion, but, there are no clear evidence to show at what time exactly the first occurrence had occurred and no complaint was given for the said occurrence. Further, the said alleged occurrence took place on 17.03.2019, and the complaint was lodged on 18.03.2019. However, there was no explanation on the side of the prosecution for the delayed lodgment of the complaint. Though the delay in lodging the complaint may not be material in cases involving sexual offences, in the present case, the delay assumes significance in light of the surrounding

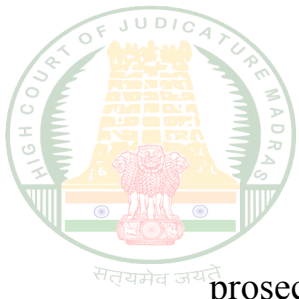


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circumstances. Therefore, the appellant raised an alibi, and also produced Exs.D1 to D4, and examined D.W.1 to D.W.4. The delay is very much concerned in this case. Even according to the case of the prosecution, the appellant touched inappropriately and committed sexual assault on the minor victim girl who was aged about 7 years, however, the doctor who examined the victim girl had clearly deposed that the victim was not subjected to any sexual assault, there was no injury found on her entire body and her hymen was also intact. Therefore, the prosecution had miserably failed to prove the charges, even then, the Trial Court mechanically convicted the appellant and as such, the conviction and sentence imposed on the appellant cannot be sustained and are liable to be set aside.

8. 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



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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.

9. In view of the above, the Judgment dated 28.04.2025 passed in Spl. S.C.No.84 of 2020 by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai, is hereby set aside. The appellant/accused is acquitted of all charges under Section 10 of the POCSO Act.

10. The appellant/accused 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, shall be refunded to the appellant forthwith. The bail bond, if any executed, shall stand cancelled.

11. In the result, this Criminal Appeal stands allowed. Consequently, the connected miscellaneous petition is also closed.



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Index : Yes/No

Speaking/Non-Speaking Order

Neutral Case Citation : Yes/No

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To

- 1.The Sessions Judge,
Special Court for Exclusive Trial Cases under NDPS Act, Chennai,
- 2.The Inspector of Police,
W-6, All Women Police Station,
Ayanavaram, Chennai – 23. (Crime No.6 of 2019)
- 3.The Superintendent of Police, Central Prison, Puzhal, Chennai.
- 4.The Public Prosecutor, High Court, Madras.



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G.K.ILANTHIRAIYAN, J.

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