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Crl.A.No.549 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2025

C O R A M

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

AND

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

Crl.A.No.549 of 2019

M.Ajith

... Appellant/Accused

-VS-

State Represented by
Deputy Superintendent of Police
Neyveli Sub Division
Neyveli, Cuddalore District

... Respondent/Complainant

Prayer: Criminal Appeal is filed under Section 374 (2) of Cr.P.C. against the judgment passed by the learned Sessions Judge, Mahila Court, Cuddalore in Special Sessions Case No.51/2018 dated 21.12.2018.

For Appellant : Mr.K.Raja

For Respondent : Mr.A.Damodaran
Addl. Public Prosecutor
Assisted by Ms.M.Arifa Thasneem
Advocate



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J U D G M E N T

(By N.Sathish Kumar, J.)

Challenging the judgment of conviction and sentence, dated 21.12.2018 in Special S.C.No.51 of 2018 passed by the Sessions Judge, Mahila Court, Cuddalore, the appellant / accused has filed the present criminal appeal.

2. The accused was convicted and sentenced by the trial Court as follows:

Sl.No.	Conviction	Sentence
1.	Section 366 IPC	To undergo Rigorous Imprisonment for a period of five years with fine of Rs.1,000/- (Rupees One Thousand only), in default to pay fine, to undergo Simple Imprisonment for a period of one year.
2	Section 6 of POCSO Act read with Section 3(2)(v) of SC/ST (POA) Act, 1989 as amended by 2015 Act (Act 1 of 2016)	To undergo Imprisonment for life, with fine of Rs.20,000/- (Rupees Twenty Thousand only), in default to pay fine, to undergo Simple Imprisonment for a period of two years.
These sentences were ordered to run concurrently		



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WEB COPY 3. Brief Facts of the Prosecution case are as follows:

3(i) the victim, aged 11 years, is a mentally retarded child and daughter of PW1. PW1, who was working as a coolie, used to leave the child with her father (PW4). On 20.07.2017, PW1 as usual went to coolie work leaving the victim child with her father. At about 03.00p.m, when the child was playing in front of the house, the accused took the child to the nearby sugar cane field. PWs 2 and 3, on hearing the sound of the child, rushed to the spot and found the child, who is mentally retarded, undressed and the accused has concealed himself in the sugar cane field. PWs 2 and 3 caught hold of the accused and brought the accused and child and they informed the occurrence to PW1, the mother of the child. PW1 also rushed to the spot and the child has identified the accused.

3(ii) Immediately, PW1 lodged the complaint (Ex.P2) before PW9, who has registered the First Information Report in Crime No.207 of 2017 under Sections 5(k) and 6 of POCSO Act under Ex.P6 and forwarded the FIR to the Court and took up the investigation. Thereafter, PW9 went to the place of occurrence and prepared Observation Mahazar (Ex.P3) and Rough



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Sketch (Ex.P7) and examined the witnesses and recorded the statement and also sent the child to the hospital. PW7, the Medical Officer attached to the Government Hospital, Cuddalore examined the child, the child complained of pain in both thighs and her dresses were torn. According to psychiatrist, the child has 70% mental disability. The Medical Officer also found scratch marks on the forearm and arm. Though there were no external injuries on genitalia and no seminal stains found on the cloths, tenderness is noted by the Medical Officer on labia majora and issued Ex.P4 in this regard. PW8 (Dr.Kanagavel), the Medical Officer attached to Government Hospital examined the accused and conducted potency test and issued Ex.P5. PW10 (Tmt.Jansirani), who was working as Personal Assistant to District Supply Officer in the Office of the District Collector, Cuddalore, issued the Community Certificate under Ex.P10 to the victim and PW11, the Revenue Tahsildar, issued Community Certificate to the accused stating that he belongs to Most Backward Community. PW12 (Sub-Inspector of Police) recorded further statement of the victim and finally arrested the accused, completed the investigation and laid the final report.



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4. In order to bring on the guilt of the accused, the prosecution has examined as many as 13 witnesses and exhibited 13 documents and 4 material objects.

5. The trial Court, after appreciation of evidence, found the accused guilty of offences under Section 366 IPC, Section 6 of POCSO Act, 2012 read with Section 3(2)(v) of the SC/ST Act, convicted the accused and sentenced him as above. The trial Court mainly framed charges for offence under Section 366 of IPC for taking the child to the sugar cane field from the guardian, Section 6 of POCSO Act for committing aggravated penetrative sexual assault and Section 3(2)(v) of SC/ST Act as the victim child belongs to Schedule Caste and the accused belongs to Most Backward Caste, the offence committed by the accused has become an offence against a member of the schedule caste. Challenging the said judgment, the accused has filed the instant appeal.

6. It is the contention of the learned counsel for the appellant that the entire case of the prosecution is highly doubtful and the charge under Section 6 of POCSO Act has not been made out as there is no penetrative



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sexual assault on the victim even as per the evidence of PW7, the Medical officer attached to Government District Head Quarters Hospital, Cuddalore.

It is his further contention that even the charge under Section 3(2)(v) of SC/SC Act has not been made out. According to the learned counsel, the evidence of PWs 2 and 3 is inconsistent and improved in every stage and PW1's evidence is also contrary to her earlier statement in Ex.P1. Therefore, in the absence of any evidence to show that the child was subjected to sexual assault, the appellant/accused cannot be convicted for such a grave crime. It is submitted that the appellant / accused is also a coolie worker and when he visited the sugar cane field, since he belong to other community, he has been falsely implicated. Therefore, according to learned counsel, the entire prosecution case is highly doubtful.

7. Per contra, the learned Additional Public Prosecutor would submit that the evidence of PWs 2 and 3 clearly prove that the accused was seen in the sugar cane field where the victim child was also seen undressed and and the accused was caught red handed by PW2 and PW3 and the child has also clearly pointed out the finger at the accused. The accused was immediately taken to the police station. He would further submit that



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medical evidence also would clearly indicate that there is tenderness in labia majora and scratch marks were also seen in the right arm and forearm and this, in fact, substantiates the sexual assault on the victim, who is aged about 11 years. As the victim is a mentally retarded child, the accused taking advantage of the same, tried to entice the victim and therefore, his act would certainly come within the definition of penetrative sexual assault.

8. Since the victim is a mentally retarded child, she was not in a position to give rational answers, except repeating the name of the accused and hence, her statement could not be recorded by the trial Court. The trial Court also assessed the mental capacity.

9. Be that as it may, admittedly PW7, the Medical Officer who examined the child at the earlier point of time, has deposed to the effect that the child is suffering from mental retardation upto 70%. In such cases, the Court cannot expect that statement of the child, who was subjected to sexual assault, to be recorded and brought on record in every case. It is the evidence of PWs 1 and 4 that the child, used to be with PW4 when PW1



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goes for regular coolie work. On the date of occurrence also i.e., on 20.07.2017, the child was left in the house of PW4, the father of PW1.

While so, when the child was playing in front of the house of PW4, the accused enticed the child and took her to the nearby sugar cane field and caused aggravated penetrative sexual assault on the child aged about 11 years. To substantiate these charges, PWs 2 and 3 in their evidence, has stated that on hearing the cry of the child, when they rushed to the spot, they found the child undressed and the child was pointing out towards the accused and the accused was very much present in the place of occurrence and in fact, the accused has concealed under the sugar cane, immediately the accused was caught by PWs 2 and 3 and brought to the village. PWs 2 and 3 informed the occurrence to PW1, the mother of the victim child PW1 and thereafter, the accused was taken in an auto and handed over to the police and PW1 has given Ex.P2 complaint. The law was set in motion on the basis of Ex.P2 complaint and immediately, the investigation was commenced by PW9 and the victim girl was produced before the Medical Officer. The Medical Officer (PW7) has examined the victim, though there was no evidence of seminal stains or other foreign bodies on the private



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parts, the dresses of the child were torn and there were scratch marks in the forearm and tenderness is also noticed in labia majora. The child was, in fact, rescued from sugar cane field by PWs 2 and 3 where the accused was very much found. It is not the case of the accused that he never went to the sugar cane field. During cross-examination, he has stated that he went to the sugar cane field and on seeing the accused in the sugar cane field, the child has become panic and started crying. It is relevant to note that there was no need whatsoever for the child to go to the sugar cane field alone. Therefore, we are of the view that the evidence of PW2 and PW3 cannot be brushed aside and there was no motive whatsoever established for the false implication of the accused.

10. Further, when the child was seen by PW2 and PW3, the child was found undressed and the child was in fact standing alone and the accused was found in the place of occurrence itself. Their evidence clearly indicate that only the accused committed some act of sexual abuse on the child, more so in the absence of any explanation as to how he happens to be at the place of occurrence. There was no motive whatsoever established for the implication of the accused by PW2 and PW3 and there was also no



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previous enmity between the accused and PW 2 or PW3 for singling out the accused for such heinous crime.

11. It is to be noted that only suggestion put up by the accused is that since the witnesses caste is inimical towards the accused caste, he has been falsely implicated. Such contention in our view has no legs to stand without any evidence in this regard. His presence in the place of occurrence at the relevant point of time is also admitted. Admittedly, the child was pointing out the finger at the accused and PWs 2 and 3 has no axe to grind against the accused and they rushed to the spot only on hearing the sound of the child and in fact, they found the victim's mouth gagged with cloth. Therefore, their evidence clearly indicate that on seeing PWs 2 and 3, the accused ran away. These facts clearly establish the complicity of the accused with the crime. We find that investigation proceeded in the right direction and we do not see any infirmity in the investigation.

12. Admittedly, the child is below 12 years of age. Therefore, even though it is the contention of the appellant that no penetrative sexual



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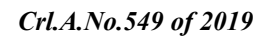
assault has been established, it is to be noted that to bring the person within the ambit of penetrative sexual assault, it is sufficient for the prosecution to establish the fact that any object or a part of the body, not being the penis, is inserted into the vagina, urethra or anus of a child. Such act will certainly constitute a penetrative sexual assault as per Section 3 of POCSO Act. The very nature of the injuries and the tenderness found on the private part makes it clear that in fact the accused has inserted a part of his body though there is no direct evidence for inserting the penis, it has to be necessarily held that a part of body or object was inserted which caused the tenderness on the labia majora. Therefore, his act will definitely fall within the ambit of penetrative sexual assault. As the child is below 12 years of age and is also mentally retarded, the act of the accused causing penetrative sexual assault would fall under the aggravated penetrative sexual assault. Therefore, we find that the accused is certainly punishable for the aggravated sexual assault besides for enticing the child and removing the child from the natural guardian. The charge under Section 366 IPC and Section 6 of POCSO Act has been clearly established as against the accused. Though the trial Court has also found the accused guilty of the



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offence under Section 3(2)(v) of SC/ST (POA) Act, on a careful perusal of the entire materials, we are of the view that the trial Court finding the guilt of the accused under Section 3(2)(v) is not sustainable. Absolutely there is no evidence on record to show that the entire offence itself purported only on the ground of caste of the minor. The entire evidence projected by the prosecution clearly shows that only on seeing the child, he took the child. It is not the case of the prosecution that the accused is already aware of the child's caste and he committed such offence knowing that the child belongs to a particular community. Therefore, in our view the charge under Section 3(2)(v) of SC/ST (POA) Act is not made out. Hence, the finding recorded by the trial Court in this regard is liable to be set aside. However, the finding recorded by the trial Court as far as the proof of charge under Section 366 IPC and Section 6 of POCSO is upheld.

13. With regard to the punishment, as far as Section 366 of IPC is concerned, we confirm the punishment. In respect of offence under Section 6 of POCSO Act is concerned, the trial Court has awarded life imprisonment. It is to be noted that the period of life imprisonment was introduced by Act 25 of 2019 with effect from 16.08.2019. Prior to that for



Accordingly, the appeal is allowed in part and the conviction rendered by the trial Court under judgment dated 21.12.2018 in Special Session Case No.51 of 2018 for the offences under Section 366 of IPC for a period of 5 years and for the offence under Section 6 of POCSO Act is confirmed and the sentence of life imprisonment imposed by the trial Court for offence under Section 6 of POCSO Act is modified to 10 years of rigorous imprisonment and the fine imposed by the trial Court is confirmed.



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The conviction rendered by the trial Court under Section 3(2)(v) of the SC/ST Act is set aside. The sentences shall run concurrently. The trial Court shall take steps to secure the appellant to serve the remaining period of sentence.

(N.S.K,J.,) (M.J.R,J.,)
12.11.2025

Index: Yes
Internet: Yes
gpa

To:

1. The Sessions Judge, Mahila Court,
Cuddalore
2. The Deputy Superintendent of Police
Neyveli Sub Division
Neyveli, Cuddalore District
3. The Public Prosecutor,
High Court, Madras.



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