



Crl.A.No.1223 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.08.2025

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.A.No.1223 of 2025

and

Crl.M.P.No.15438 of 2025

Budisrinu,
S/o. Adhi Narayan,
No.3-579, Jhansi Lakshmibai Nagar,
Bommuru Rajahmundri Rural Industrial Estate,
East Godavari,
Andhra Pradesh – 533 124.

... Appellant

Versus

The State represented by,
The Inspector of Police,
W-4, All Women Police Station,
Kilpauk, Chennai – 600 010.
(Crime No.3 of 2024)
Accused confined in Puzhal Prison – I.

... Respondent

PRAYER: Criminal Appeal is filed under Section 415(2) of the Bharatiya
Nagarik Suraksha Sanhita (BNSS), 2023, to set aside the order passed in
Spl.S.C.No.163 of 2024 on the file of the Sessions Judge, Special Court for
Exclusive trial of cases under POCSO Act, Chennai.

For Appellant : Mr. Shaikh Mehrunnisa Kasim

For Respondent : Mr. A. Gopinath,
Government Advocate (Crl.side)



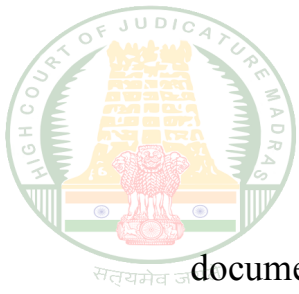
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JUDGEMENT

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This criminal appeal has been filed against the Judgement dated 30.01.2025 in Spl.S.C.No.163 of 2024 on the file of the learned Court of Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai, thereby convicted the appellant for the offence under Section 10 of the POCSO Act.

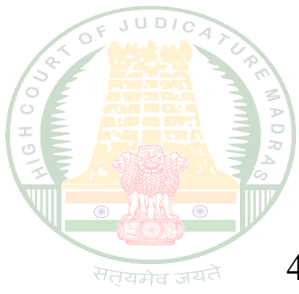
2. The case of the prosecution was that on 28.04.2024, the victim girl and other children were playing in front of her house in the sand heaped nearby for construction purpose. At that time, the accused/appellant was working in a building nearby, had inappropriately touched her chest and private part. Based on the complaint, the respondent registered a First Information Report in Crime No.3 of 2024 for the offence punishable under Section 9(m) r/w Section 10 of the Protection of Children from Sexual Offences Act, (POCSO) 2012. After completion of the investigation, a final report was filed, and the same was taken cognizance by the Trial Court in Spl.S.C.No.163 of 2024. On the side of the prosecution, P.W.1 to P.W.9 witnesses were examined besides 8 documents were marked as Ex.P.1 to Ex.P8. On the side of the accused, no witnesses were examined and no



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documents were marked. On perusal of the records, the Trial Court found the appellant guilty of the offence under Section 10 of the POCSO Act, convicted him, and sentenced him to undergo 5 years imprisonment with a fine of Rs.5,000/-, and in default, to undergo simple imprisonment for one month. Aggrieved by the said conviction and sentence, the present appeal is before this Court.

3. Learned counsel for the appellant submits that the prosecution has failed to prove the charges beyond reasonable doubt, as the victim child did not support the case of the prosecution. Even according to the case of the prosecution, the allegation was that the appellant had inappropriately touched the victim girl; however, the victim girl was only aged about 3 ½ years old at the time of occurrence. In fact, the victim child had not even speaking anything when her statement under Section 164 of Cr.P.C., was recorded. Though the benefit of doubt ought to have been extended to the appellant, the Trial Court, relying solely on the evidence of the other children, who were playing along with the victim child, convicted the appellant. Therefore, the order of conviction and sentence imposed on the appellant cannot be sustained and is liable to be set aside.



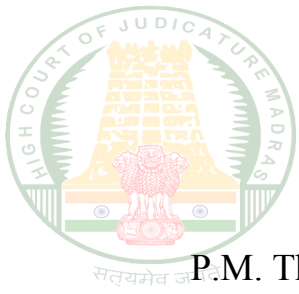
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4. Per contra, the learned Government Advocate (Criminal side) appearing for the respondent submitted that the victim did not depose anything before Trial Court as she was only about 3 ½ years old at the time of occurrence. Therefore, the children who were playing along with the victim child were examined as P.W.4 and P.W.5, whose deposition were considered by the Trial Court. P.W.5/ the brother of the victim child and P.W.4, another girl who was playing along with the victim child, categorically deposed that the appellant had inappropriately touched the victim child. Thus, the prosecution has proved the charges against the appellant, and the Trial Court has rightly convicted him. Therefore, the Judgement and Order passed by the Courts below do not warrant any interference of this Court.

5. Heard the learned counsel for the appellant and the learned Government Advocate (Criminal side) appearing for the respondent and also perused the materials available on record.

6. Admittedly, the victim girl was only aged 3 ½ years at the time of occurrence. The alleged incident took place on 28.04.2024 at about 8:00



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P.M. The father and mother of the victim child were examined as P.W.1 and P.W.2, and both are only hearsay witnesses. P.W.4, who was the child playing along with the victim in the sand kept for construction, stated that the appellant, under the influence of alcohol, had inappropriately touched the victim child, pursuant to which the complaint was lodged. However, the victim in her statement recorded under Section 164 of Cr.P.C., she did not even whisper that the appellant had touched the victim's private part. According to the case of the prosecution, after the other children playing along with the victim child, had left and gone home, the victim alone continued playing in the sand which was kept for construction purposes, and at that juncture, the appellant had inappropriately touched the victim girl. After hearing about the said occurrence, the parents of the victim child, P.W.1 and P.W.2 had lodged the complaint.

7. Further, the appellant is a native of North Indian, as such, his appeal was argued by the Legal Aid Counsel. That apart, the appellant has incarcerated from the date of alleged occurrence to till date. The appellant was under the influence of alcohol, therefore, the action of the appellant was impressed upon under the witness of P.W.4 as if the appellant touched



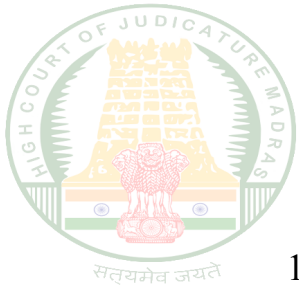
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the victim girl inappropriately. That apart, the victim girl was not subjected to medical examination and there is no evidence to show that she was subjected to the sexual assault. Therefore, the prosecution miserably failed to prove the charges against the appellant, and even then, the Trial Court convicted the appellant, and as such, the conviction and sentence imposed on the appellant cannot be sustained and is liable to be set aside. In view of the same, this Court is inclined to allow the appeal.

8. Accordingly, the Judgment dated 30.01.2025 passed in Spl. S.C.No.163 of 2024 by the learned Court of 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.

9. 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.



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10. In the result, this Criminal Appeal stands allowed.

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Consequently, the connected miscellaneous petition is also closed.

12.08.2025

Index: Yes/No

Speaking/Non-Speaking Order

Neutral Case Citation : Yes/No

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To

- 1.The learned Sessions Judge,
Special Court for Exclusive Trial of Cases under POCSO Act, Chennai.
- 2.The Inspector of Police,
W-4, All Women Police Station, Kilpauk, Chennai – 600 010.
(Crime No.3 of 2024)
- 3.The Superintendent of Police, Central Prison, Puzhal-I.
- 4.The Public Prosecutor, High Court of Madras, Chennai.



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G.K.ILANTHIRAIYAN, J.

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