



Crl.A.No.167 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2025

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

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Michael @ Manikandan

... Appellant

Versus

State represented by
The Inspector of Police,
All Women Police Station Ooty Rural
(Crime No.1/2019)
Nilgiris District.

... Respondent

PRAYER: Criminal Appeal is filed under Section 378 of Criminal Procedure Code, 1973, to set aside the conviction under Sections 366 of I.P.C, Section 9(m) r/w 10 and Section 5(m) r/w 6 of POCSO Act 2012. The offence under Section 366 of IPC the accused is sentenced to undergo imprisonment if ten years and to pay fine amount of Rs.1000/- and shall undergo simple imprisonment for 3 months. The offence under Section 9(m) r/w 10 POCSO Act, the accused is sentenced to undergo imprisonment for seven years and to pay fine amount of Rs.1000/- and in default he shall undergo simple imprisonment for 3 months. For the offence under Section 5(m) r/w 6 of POCSO Act the accused is sentenced to undergo imprisonment for a period of twenty years and to pay fine amount of Rs.5000/- and in default he shall undergo simple imprisonment for 6 months. Sentenced to undergo imprisonment for a period of Twenty years and to pay fine amount of Rs.5000/- and in default he shall undergo simple imprisonment for 6 months rendered vide judgment dated 28 April 2022, in Special Case No.6 of



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2019 on the file of Session Judge, Old Magalir Neethinmandram, (FTMC),
Udhagamandalam, Nilgiris.

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For Appellant : Mr. R. Vivekanathan

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

JUDGEMENT

This Criminal Appeal has been preferred against the Judgement dated 28.04.2022 passed in Spl.S.C.No.6 of 2019 on the file of the learned Court of Sessions Judge of Magalir Neethimandram, (FTMC), Udhagamandalam at the Nilgiris, thereby convicted the appellant for the offence under Section 366 of the Indian Penal Code, (IPC), 1860, and Sections 9(m) r/w 10 and Sections 5(m) r/w Section 6 of the Protection of Children from Sexual Offences Act, (POCSO) 2012.

2. The case of the prosecution is that the victim girl was aged about 7 years at the time of alleged occurrence. On 31.01.2019, while she was coming out of her house, the appellant forcibly dragged her into the gents' bathroom, kissed her, undressed her, and inserted his finger and penis into her private part. Based on this incident, a complaint was lodged against the appellant. On the strength of the complaint, the respondent registered a

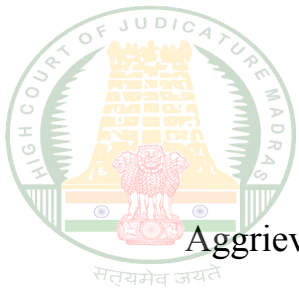


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case in Crime No.1 of 2019 for the offences under Sections 3(b) r/w 4 of the

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Protection of Children from Sexual Offences Act, 2012. After completion of the investigation, a final report was filed and the same was taken cognizance of for the offences under Section 366 of IPC., and Sections 9(m) r/w 10 and Sections 5(m) r/w 6 of the POCSO Act, by the Trial Court in Spl.S.C.No.6 of 2019. In order to bring home the charges on the side of the prosecution, P.W.1 to P.W.19 were examined, and Exs. P1 to P18 were marked. On the side of the accused, no witnesses were examined and no documents were marked. On perusal of the oral and documentary evidence, the Trial Court found the appellant guilty for the offences under Section 366 of IPC., and Sections 9(m) r/w 10 and 5(m) r/w 6 of the POCSO Act. He was convicted and sentenced to undergo 10 years imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 3 months simple imprisonment, for the offence under Section 366 of IPC. He was further convicted and sentenced to undergo 7 years imprisonment and to pay a fine of Rs.1,000/-, in default to undergo 3 months simple imprisonment, for the offence under Sections 9(m) r/w 10 of the POCSO Act. He was also convicted and sentenced to undergo 20 years imprisonment and to pay a fine of Rs.5,000/-, in default to undergo 6 months simple imprisonment, for the offences under Sections 5(m) r/w 6 of the POCSO Act. All the sentences were ordered to run concurrently.



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Aggrieved by the same, the appellant has preferred the present appeal before this Court.

3. The learned counsel for the appellant submitted that the father of the victim girl was examined as P.W.1 and the victim girl was examined as P.W.2. There are material contractions between the evidence of P.W.1 and P.W.2. The doctor who examined the victim girl did not support the case of the prosecution. The evidence of the victim girl was also not corroborated by the statement recorded under Section 164 of Cr.P.C. The doctor further opined that no injury was found on the entire body of the victim girl, and that there was no possibility of sexual assault. Further, there was no proper explanation for the delay in lodgement of the complaint. Therefore, the prosecution failed to prove any of the charges against the appellant, and even then, the Trial Court convicted the appellant.

4. The learned Additional Public Prosecutor appearing for the respondent submitted that the victim girl was aged about 7 years at the time of occurrence. When she was coming out from her house, she was taken by the appellant into the gents' bathroom and subjected to penetrative sexual assault on her. Due to the said circumstances and the mental agony suffered

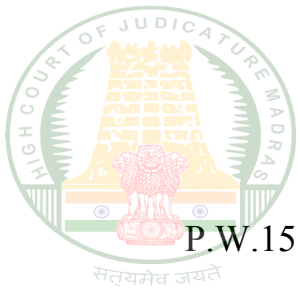


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by the parents of the victim, the complaint was lodged four days belatedly after the occurrence. Therefore, though the medical evidence did not support the case of the prosecution, it is not fatal to the case of the prosecution. After scrutinizing the entire oral and documentary evidence on record, the Trial Court rightly convicted the appellant, and it does not warrant any interference of this Court.

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. The specific case of the prosecution is that on 31.01.2019 at about 06.30 P.M., while the victim girl was playing in front of her house near Indico Tea Factory, Bikkatty, the appellant, who had just come out of the factory after completing his work, took the victim girl on the pretext of giving her a chocolate into the gents' bathroom, which was locked nearby the Bikkaty Industrial Co-operative Tea factory, and thereafter, committed penetrative sexual assault on her by removing her pant. Though the alleged occurrence took place on 31.01.2019, the complaint was lodged on 04.02.2019. Since the complainant did not know the Tamil language,



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P.W.15 recorded his statement and registered the First Information Report under Ex.P15.

7. On perusal of the complaint marked as Ex.P1, it is revealed that although the complaint was lodged on 04.02.2019, it was mentioned therein that it was received on 01.02.2019 at 6.00 hours, and the same was registered as Crime No.1 of 2019 on 04.02.2019. Even assuming that P.W.15 had wrongly mentioned the date in the complaint as 01.02.2019 instead of 04.02.2019, there was still a delay of four days in lodging the complaint. Further, Ex.P1 also reveals that immediately after the alleged occurrence, P.W.1 stated that he saw the victim girl coming out from the gents' bathroom. Since the door was locked, he knocked the door, and thereafter, the door was opened by the appellant, who then came out of the gents' bathroom. Thereafter, the victim girl was brought to home and the victim girl informed about the alleged occurrence to her parents.

8. After the registration of the First Information Report/Ex.P15, the victim girl's statement was recorded under Section 164 of Cr.P.C., on 07.02.2019. On perusal of the statement, it is revealed that the appellant had dragged her into the gents' toilet, and removed her pant with the intention to

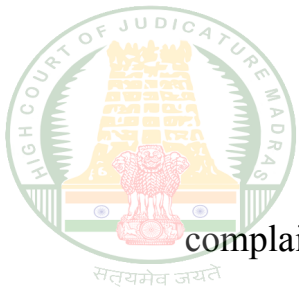


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commit sexual assault, kissed her, and pressed his penis on her back. The victim girl, when examined as P.W.2 deposed that she was dragged into the gents' toilet by the appellant, who inserted his finger into her private part and attempted to commit sexual assault by inserting his penis into her private part. This version is completely contrary to the statement recorded under Section 164 of Cr.P.C., That apart, the alleged occurrence had taken place on 31.01.2019, but the victim deposed that, when she was studying in the 1st standard, one day in the evening time, he committed the offence, but she did not remember the exact date and time of the occurrence.

9. Admittedly, the allegation against the appellant is that, while he was coming out from the factory after finishing his work, he dragged the victim girl, who was playing near the toilet, into the gents' bathroom and committed sexual assault. In fact, the appellant had no intention to commit sexual assault on the victim girl, and it is evident from the witnesses of P.W.1 and P.W.3, including the victim's deposition and statement recorded under Section 164 of Cr.P.C.,. The father of the victim girl was examined as P.W.1 and the mother of the victim girl was examined as P.W.3. Both deposed differently that the appellant inserted the finger into the private part of the victim, and thereby committed sexual assault. However, in the



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complaint, it was alleged that the appellant inserted his penis on her private

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part. These contradictions shall completely weaken the case of the prosecution, especially, in view of the delay of four days in lodging the complaint. Though, delay is not material in cases of sexual offences, as it may be due to mental agony and other circumstances, in the present case, considering the overall circumstances, the delay assumes significance and is fatal to the case of the prosecution.

10. The entire story is artificial in nature. It is alleged that when the appellant was coming out from the factory, he dragged the victim girl into the gents' toilet, in order to commit penetrative sexual assault. On the date of registration of the First Information Report, the victim girl was subjected to medical examination. P.W.10/the doctor, who examined the victim girl, deposed that there was no external injury on the entire body of the victim girl and her hymen was intact. The swab test also revealed that no semen was found in her genitalia area. The medical report was marked as Ex.P11.

11. According to Ex.P.11 and Ex.P12/Accident Register of the



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victim girl, there was no possibility of any sexual assault having been committed on her. Therefore, the medical report also did not support the case of the prosecution. Furthermore, no other employees who were working with the appellant, and had come out from the factory at the relevant time were examined by the prosecution. It is seen that one employee of Indico Tea Factory had accompanied P.W.1, the father of the victim, to the Police Station, and he was also a co-employee of P.W.3, the mother of the victim. However, he was only a hearsay witness. The other employees of the Indico Tea factory were examined as P.W.4 to P.W.6, but, they were also only hearsay witnesses. Hence, their testimonies also did not support the case of the prosecution.

12. Admittedly, the appellant was well-known to all the witnesses, including the parents of the victim girl. He was employed in the Indico Tea factory, along with the parents of the victim, and yet P.W.1 and P.W.3 did not whisper about the said occurrence to any of their co-employees, namely, the witnesses examined as P.W.4 to P.W.6. Therefore, the prosecution has failed to prove any of the charges, and as such, the conviction and sentence imposed on the appellant by the Trial Court are not sustainable and it deserve to be set aside.



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14. 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 had also failed to properly appreciate the infirmities in the 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.

15. In view of the above, the 28.04.2022 passed in Spl.S.C.No.6 of



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2019 on the file of the learned Court of Sessions Judge of Magalir Neethimandram, (FTMC), Udhagamandalam at the Nilgiris, is hereby set aside. The appellant/accused is acquitted of all charges under Section 366 of the Indian Penal Code, (IPC), 1860, and Section 9(m) r/w Section 10 and Section 5(m) r/w Section 6 of the Protection of Children from Sexual Offences Act, (POCSO) 2012.

16. 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.

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

14.08.2025

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G.K.ILANTHIRAIYAN, J.



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To

- 1.The Session Judge of Magalir Neethinmandram,
(FTMC), Udhagamandalam, Nilgiris.
2. The Superintendent of Police, Central Prison, Coimbatore.
- 3.The Inspector of Police, All Women Police Station Ooty Rural.
- 4.The Public Prosecutor, High Court of Madras, Chennai.

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