



Crl.A.No.1115 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2025

CORAM

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

Crl.A.No.1115 of 2025
and Crl.M.P.No.14704 of 2025

Naseerbazha

... Appellant

Vs

State represented by the
Inspector of Police,
All Women Police Station,
Villupuram.

...Respondent

PRAYER : Criminal Appeal has been filed under Section 415 of BNSS, 2023, to call for the records and set aside the judgment dated 22.01.2025 in Special Sessions Case No.7 of 2020 passed by the Sessions Judge, Special Court for Exclusive Trial of cases under POCSO Act, Villupuram.

For Appellant : Mr.R.Vijayaraghavan

For Respondent : Mr.S.Raja Kumar

Additional Public Prosecutor

JUDGMENT

This Criminal Appeal has been filed as against the order passed in Special Sessions Case No.7 of 2020 dated 22.01.2025 by the Sessions Judge, Special Court for Exclusive Trial of cases under POCSO Act, Villupuram.



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2. The case of the prosecution is that the accused is running a grocery shop at V.Sathanur Village, Vikravandi to Asur Road. While being so, on 05.11.2017, at about 02.00 p.m, the minor victim girl aged about 8 years went to his shop to purchase Airtel SIM Card. At that juncture, the accused, with an intention to cause sexual assault on the victim, took her to a hidden place in the shop and caused penetrative sexual assault. He also threatened her not to disclose it to anybody. Hence, the complaint.

3. On receipt of the complaint, the respondent registered FIR in Crime No.31 of 2017, for the offences punishable under Sections 366A, 341, 506(1) of IPC and Sections 5(m) r/w 6 of POCSO Act. After completion of investigation, final report was filed and the same was taken cognizance by the Trial Court in Special Sessions Case No.7 of 2020.

4. In order to bring home the charges, the prosecution had examined PWs.1 to 12 and marked Exs.P1 to 12. On the side of the accused, he was examined as DW.1 and marked Ex.D1. On perusal of oral and documentary evidence, the Trial Court found the accused guilty for the offence punishable under Section 6 of POCSO Act and sentenced him to undergo 20 years rigorous



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imprisonment and also imposed fine of Rs.10,000/-, in default, to undergo four months simple imprisonment. He was also found guilty for the offence under Section 341 of IPC and sentenced him to undergo one month simple imprisonment. Aggrieved by the same, the present appeal.

5. The learned counsel for the appellant would submit that the prosecution had failed to prove any of the charges. All the witnesses turned hostile. Further, the evidence of the victim girl was not corroborated by the Doctor, who examined the victim girl. Due to previous enmity between the victim's family and the appellant, a false case has been foisted as against the appellant. Except the chief examination of the victim girl, no other evidence is available to prove the charges.

6. Per contra, the learned Additional Public Prosecutor would submit that the the victim girl's evidence is the best evidence and it need not be corroborated by other witnesses. The statement recorded under Section 164 Cr.P.C clearly corroborates with the victim, though the parents of the victim girl turned hostile. It is not fatal to the case of the prosecution. The minor victim girl was subjected to penetrative sexual assault by the appellant. Therefore, the Trial Court had rightly convicted the appellant and it does not warrant any



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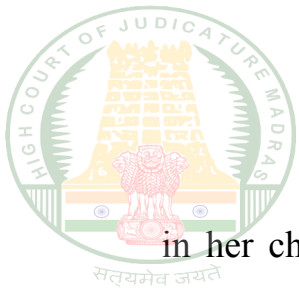
interference by this Court.

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7. Heard the learned counsel on either side and perused the materials available on record.

8. The minor victim girl was examined as PW.3. She deposed that when she went to the shop of the appellant to purchase an Airtel SIM Card, he had taken the victim girl inside the shop in a hidden place and inserted his finger into her private part. Immediately, she pushed him and flew away from the shop. It was informed to her mother. However, she was not subjected for cross examination by the appellant. The said occurrence took place on 05.11.2017. However, the complaint was lodged on 16.11.2017. After registration of FIR, the victim girl was subjected for medical examination before PW.11. PW.11 deposed that she did not find any external injury on the entire body of the victim girl. Her hymen was intact. The victim did not feel any pain on her private part. PW.11 issued medical certificate which was marked as Ex.P5. Therefore, the victim's deposition is not corroborated by the Doctor who examined her.

9. The victim's mother was examined as PW.1. Though she deposed



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in her chief examination about the occurrence, during her cross examination, she turned hostile and deposed that no such occurrence had happened. Due to previous enmity, a false complaint was lodged as against the appellant. The other relatives were examined as PWs.4 and 5 and they also turned hostile. Though the victim girl deposed that the appellant committed penetrative sexual assault on her, it was not proved by medical evidence. Therefore, the victim girl was tutored by her parents to lodge a false complaint as against the appellant. Subsequently, the parents and relatives of the victim turned hostile before the trial Court and even then, the Trial Court, convicted the appellant only on the basis of the chief examination of the victim girl.

10. Further, there was a delay in lodgment of the complaint. Though the delay is not a matter for the sexual offence, when the victim girl felt pain on her private part on the date of occurrence, she was not even taken to the hospital by her parents. Later, the complaint was lodged and thereafter, the victim girl was subjected for medical examination. Therefore, the prosecution had miserably failed to prove any charge and the conviction and sentence imposed on the appellant cannot be sustained and is liable to be set aside.

11. In criminal jurisprudence, the burden is always on the prosecution



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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 prosecution case. Therefore, the conviction and sentence awarded by the trial Court cannot be sustained and is liable to be set aside.

12. Accordingly, the Judgment passed in Special Sessions Case No.7 of 2020 dated 22.01.2025 passed by the Sessions Judge, Special Court for Exclusive Trial of case under POCSO Act, Villupuram, is hereby set aside. The appellant is acquitted from all charges in Special Sessions Case No.7 of 2020 for the offences under Section 6 the POCSO Act, 2012 and Section 341 of IPC. The appellant 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 by the appellant shall be refunded. Bail bond, if any, executed by the appellant shall stand cancelled.

13. In the result, this Criminal Appeal is allowed. Consequently, connected Miscellaneous petition is closed.



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Speaking order/Non-speaking order

Index : Yes/No

Internet : Yes/No

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To

1. The Sessions Judge,
Special Court for Exclusive Trial of cases under POCSO Act,
Villupuram.
2. The Inspector of Police,
All Women Police Station,
Villupuram.
3. The Central Prison,
Cuddalore.
4. The Public Prosecutor,
High Court, Madras.



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G.K.ILANTHIRAIYAN, J.

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