



Crl.A.No.1517 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 17.07.2025

PRONOUNCED ON : 07.08.2025

CORAM:

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

Crl.A.No.1517 of 2024

State of Tamil Nadu
Represented by
The Inspector of Police,
W-5, All Women Police Station,
Vepery, Chennai.
(Crime No.9 of 2022)

..... Appellant

Vs

Ashok Kumar

..... Respondent

PRAYER: Criminal Appeal filed under Section 415(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023 praying to set aside the order of acquittal rendered in Judgment dated 14.09.2023 made in Spl.S.C.No.77 of 2023 on the file of the Court of Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai, allowing this criminal appeal and convict the accused as charged.

For Appellant : Mr.S.Raja Kumar
Additional Public Prosecutor

For Respondent : A.Padmanabhan



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JUDGMENT

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This Criminal Appeal has been preferred as against the Judgment dated 14.09.2023 passed in Spl.S.C.No.77 of 2023 on the file of the Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai, thereby acquitted the appellant for the offence punishable under Section 10 of the Protection of Children from Sexual Offences Act, 2012.

2. The case of the prosecution is that the mother of the minor victim girl entered into a second marriage with the accused. While they were residing together in the house of the victim's mother, the accused made the child to sit on his lap and hugged her. Therefore, the mother of the victim shifted her residence in an apartment. While the victim girl was alone at her room, the accused used to touch her and he had also sexually abused her by rubbing her thighs. Further, it is alleged that on 18.12.2022, the defacto complainant, the accused and the victim went out and returned, when the victim girl went to her room, the accused gave a kiss on her lips. Therefore, the victim screamed and informed the same to her mother about the continuous abuse when the victim was alone with the accused in the house.



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3. On the receipt of the complaint from the mother of the victim, the respondent police registered a case in Crime No.09 of 2022 for the offence punishable under Section 10 read with 9(n)(m) of the POCSO Act, 2012. After completion of the investigation, a final report was filed and the same has been taken cognizance by the Trial Court.

4. In order to bring home the charge, the prosecution had examined P.Ws.1 to 9 and marked Exs.P1 to P7. On the side of the accused, he had examined D.W.1 and marked Exs.D1 to D5.

5. On perusal of the oral and documentary evidence, the Trial Court found the respondent not guilty and accordingly acquitted him of the charges. Aggrieved by the said order of acquittal, the present Criminal Appeal has been filed by the appellant.

6. The learned Additional Public Prosecutor submitted that the victim was examined as P.W.2 and she had categorically deposed that the accused had inappropriately touched her on several occasions. He had also hugged her and had kissed her on her lips. It is also clearly corroborated by



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P.W.1, who is none other than the mother of the victim. At the time of the

incident, the victim was only eight years old. In fact, her servant maid had also witnessed the accused making the child sit on his lap and rubbing her thighs. The servant maid was examined as P.W.4 and she categorically deposed that the accused had touched the victim inappropriately. Despite such cogent and consistent evidence, the Trial Court acquitted the accused on flimsy grounds. The conviction can be done on the basis of the deposition of the sole eye witness, it is found to be trustworthy and reliable. Though there was delay in lodging the complaint, in case of sexual assaults on children, the delay in lodging the complaint can never be a ground to dismiss the case of the prosecution, since the complaint is given after a lot of hesitation, fearing social repercussions.

7. Per contra, the learned counsel appearing for the respondent/accused submitted that the prosecution miserably failed to prove the charge without providing any cogent evidence. There was huge delay in lodging the complaint. Therefore, it is only after thought in order to foist a false case against the step father of the victim who has been the sole breadwinner of the family and he has also been taking care of the victim and



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her mother from the date of their marriage. Due to dispute between the accused and the P.W.1, a false complaint has been foisted and as such, the Trial Court rightly acquitted the accused.

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

9. The victim was examined as P.W.2. The complainant was examined as P.W.1, who is none other than the mother of the victim. The neighbour of the victim was examined as P.W.3. The servant maid was examined as P.W.4. The sewage worker in the Corporation was examined as P.W.5. In order to disprove the case of the prosecution, the accused was examined as D.W.1. A perusal of the evidence of D.W.1 reveals that he is an impotent. In fact, two of his earlier marriages had ended in divorce. After divorcing his two wives, he was living with his parents. After demise of his father, his mother alone was living with him. On the compulsion of the accused's mother, he got married to the mother of the victim on 21.04.2022. He has taken out a flat for rent and has been paying monthly rent and has also paid the advance. Apart from that he is also paying monthly maintenance.



10. Due to misunderstanding between the accused and P.W.1,

with regards to the money, there had been frequent quarrel between them.

Further the respondent used to go to his shop at about 9.00 a.m and returned home only at 10.00 p.m. since there were frequent quarrels between the accused and his wife, he decided to stay in the hotel. At that juncture, the accused had received a call from his mother stating that P.W.1 visited her house and had created problem by threatening her that, if she fails to provide money, her son will be killed and a false sexual abuse complaint will be lodged against him. Immediately, the appellant approached an advocate for advice and lodged a complaint before the appellant - Police. However, his complaint was not taken for consideration and it was marked as Ex.D3. Subsequently, P.W.1 lodged a complaint, for which, the accused approached this Court for anticipatory bail. In fact, P.W.1 objected the same by filing intervening petition. Thereafter, the accused sent a letter to the police station and it was marked as Ex.D5. In fact, the said complaint was enquired by the police and subsequently, it was closed. Therefore, the complaint was lodged only to extract money and nothing else. Therefore, the evidence of P.W.2/victim is not wholly reliable one and it is not trustworthy. Further, the first complaint lodged by the accused was also suppressed in the second



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complaint lodged by the P.W.1. There was huge delay in lodgement of complaint.

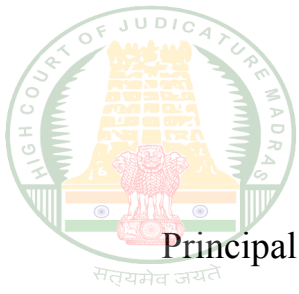
11. Further, on perusal of the evidence of P.W.2 and the statement recorded under Section 164 of Cr.P.C, reveals that there is contradiction. In her evidence, she categorically deposed that the respondent badly touched her on her private part and neck, but in the statement recorded under Section 164 of Cr.P.C neither the victim nor her mother had whispered about the existence of the sole eye witness viz.,P.W.4 during the narration of the occurrences.

12. A perusal of the deposition of P.Ws.4 and 5 reveals that the respondent had touched the victim inappropriately and they had witnessed the same. However, the victim tried to improve the case by stating that the accused had kissed on her lips. There is absolutely no corroboration in this regard. Further, the alleged occurrence took place on 18.12.2022. But the complaint was lodged only on 30.12.2022. There is absolutely no proper explanation by the prosecution for the delay in lodging the complaint. It is true that in case of sexual offence, mere delay in lodging the complaint is immaterial and it does



not automatically turns fatal to the case of the prosecution. However, over all circumstances shows that it is a false complaint, since the accused had already lodged a complaint regarding the money dispute and subsequently, P.W.1, suppressing the same, had lodged this complaint under the POCSO Act. In fact, the victim deposed that the said occurrence was immediately informed to P.W.1. However, P.W.1 lodged the complaint after twelve days from the date of alleged occurrence.

13. Further, mere fact that a view other than the one taken by the Trial Court can be legitimately arrived at by the Appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the Trial Court in dealing with the evidence was blatantly illegal or the conclusions arrived at by it were wholly untenable. Further, it has to be seen that whether the findings of the Trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable, if not the acquittal cannot be disturbed. Further, after the order of acquittal, the respondent and P.W.1 filed a petition for divorce on the ground of mutual consent under Section 13-B of Hindu Marriage Act, 1955 in O.P.No.2796 of 2024 before the II Additional



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Principal Family Court, Chennai and the same was decreed by an order dated

01.08.2024, in view of the settlement to the tune of Rs.50,00,000/- in favour of

P.W.1. Accordingly, the matter has been settled between them.

14. In view of the above, this Court finds no ground to interfere with the order of acquittal dated 14.09.2023 passed in Spl.S.C.No.77 of 2023 by the Sessions Judge, Special Court for exclusive trial of cases under POCSO Act, Chennai. Accordingly, this Criminal Appeal stands dismissed.

07.08.2025

Index : Yes/No

Internet : Yes/No

Speaking/Non Speaking order

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To

1.The Sessions Judge,
Special Court for Exclusive Trial of Cases under POCSO Act,
Chennai

2.The Inspector of Police,
W-5, All Women Police Station,
Vepery, Chennai.

3.The Public Prosecutor,
High Court, Madras.



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G.K.ILANTHIRAIYAN. J.

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Pre-delivery Judgment in
CrI.A.No.1517 of 2024

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