



Crl.A.No.1047 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated: 23.07.2025

Coram:

THE HONOURABLE Mr.JUSTICE G.K.ILANTHIRAIYAN

Crl.A.No.1047 of 2025 &
Crl.M.P.No.14387 of 2025

Manikandan

...Petitioner

Vs.

The State rep. By the Inspector of Police,
All Women Police Station, Gudiyatham
Vellore District

...Respondent

Prayer:

Criminal Appeal filed under Section 415 of BNSS, 2023 to call for the entire records in connection with the Spl.S.C.No.85 of 2018 on the file of the Learned Special Court, (POCSO Act, 2012), Vellore, Vellore District and set aside the Judgment dated 21.12.2020.

For Appellant : Mr.E.Kannadasan

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

J U D G M E N T



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This Criminal Appeal has been filed as against the order passed in Spl.S.C.No.85 of 2018 dated 21.12.2020 by the Special Court POCSO Act, 2012, Vellore, thereby convicted the appellant for offence punishable under Section 5(m) r/w Section 6 of POCSO Act and Sections 366 and 506(ii) of IPC.

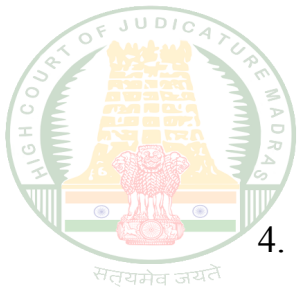
2. The case of the prosecution is that on 14.12.2017 at about 8.00 p.m., the accused kidnapped the minor victim girl to the next house the victim and had committed aggravated penetrative sexual assault on the victim, when the P.W.1 and 4, came to the place of occurrence, the appellant / accused had threatened them with dire consequences and also scolded with filthy language. On complaint, the respondent, registered the FIR in Crime No.7 of 2017 for the offence punishable under Sections 363, 366 of IPC and Section 6 r/w 5(m), 3(a) of POCSO Act and after completion of investigation, filed final report and the same has been taken cognizance by the trial court. In order to prove the charges, the prosecution examined P.W.1 to P.W.8 and marked exhibits Ex.P.1 to P.9 and on the side of the respondent, no one was examined and no documents were marked. On the perusal of the oral and documentary evidence, the trial court found the accused guilty for the offence punishable under Sections 366 and 506(ii) of IPC and Section 5(m) r/w Section 6 of POCSO Act. The appellant was sentenced to



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undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.5,000/- in default, to undergo rigorous imprisonment for a period of three months for offence punishable under Section 5(m) r/w Section 6 of POCSO Act and he was sentenced to undergo seven years rigorous imprisonment for the offence punishable under Section 366 IPC and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for a period of one month and he was sentenced to undergo one year rigorous imprisonment for offence punishable under Section 506(ii) of IPC. Aggrieved by the same, the present appeal has been filed.

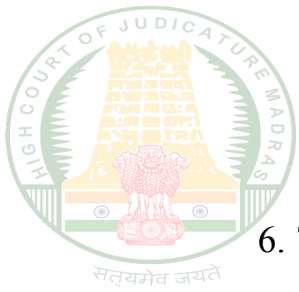
3. The learned counsel for the appellant would submit that the trial court convicted the appellant solely on the basis of the evidence of P.W.1 to 4. The Doctor, who had examined the vicim had deposed as P.W.6 and did not support the case of the prosecution and there was material contradiction between the evidence of P.W.1, 2 and 6. Even assuming that the occurrence had taken place, no charge is made out under Section 5(m) r/w Section 6 of POCSO Act. At the worst, the offence under Section 7 r/w 8 of POCSO Act is only attracted as against the appellant.



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4. Per contra, the learned Additional Public Prosecutor appearing for the respondent would submit that the victim girl was examined as P.W.2 and the victim was aged about 9 years at the time of occurrence and she categorically deposed that the accused entered into her house and he had taken her to the bathroom of the next house and he had kissed her and also pressed her breast. Further, the appellant compelled her to remove her panties and he attempted to commit penetrative sexual assault, the victim girl made alarm and immediately P.W.1, mother of the victim, came there to rescue her. It is also corroborated by P.W.4 and she deposed that the accused is the neighbour to the house of victim girl and they corroborated the evidence of P.W.2, immediately, after registration of FIR, the victim girl was subjected for medical examination before P.W.6, Doctor. The Doctor deposed that there was no injury on the body of the victim including her genitalia part and her hymen was also intact. Further, the Doctor recorded the statement of the minor victim girl that the accused committed penetrative sexual assault on her. Therefore, the trial court convicted the appellant and it does not warrant any interference by this Court.

5. Heard the learned counsel on either side and perused the documents placed on record.



WEB COURT

6. The victim girl was aged about 9 years at the time of occurrence, i.e., on 14.12.2017, in order to prove the age of the victim, the prosecution produced the school certificate, which was marked as Ex.P.5. On 14.12.2017 while the victim girl was doing home work at about 8.00 p.m., she was taken by the appellant to the bathroom of the neighbour's house. He had kissed her and also pressed her breast. According to the case of the prosecution, he had committed penetrative sexual assault on the victim.

7. On perusal of the evidence of P.W.2, it reveals that the accused made an attempt to commit penetrative sexual assault, however, he had kissed her and touched her chest. After hearing the noise of the victim girl, the mother of the victim and the sister of victim's mother came there to rescue the victim, immediately, the accused flew away from the scene of crime and it is also clearly corroborated by P.Ws.1 and 4. Further, there was no penetrative sexual assault on the victim girl by the appellant herein. Next day, a complaint was lodged and FIR has been registered in Crime No.7 of 2017 and thereafter, the victim girl was subjected for medical examination before P.W.6, Doctor. The Doctor deposed that there was no injuries on victim's body including her genitalia part and her hymen was also intact. Therefore, it is clear that the appellant attempted to commit sexual



assault on the victim and there was no penetrative sexual assault on the victim,

therefore, the conviction for the offence under Section 5(m) r/w Section 6 of the POCSO Act cannot be sustainable, but the appellant shall be convicted for offence punishable under Section 7 r/w 8 of the POCSO Act.

8. In so far as the conviction under Section 366 of IPC is concerned, it is relevant to extract the provisions as under:-

366. Kidnapping, abducting or inducing woman to compel her marriage, etc.

“Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable as aforesaid.”

even according to the case of the prosecution, the appellant had taken the victim



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girl to the bathroom of next house to the victim, in fact, the screaming of the victim girl was heard by P.W.1 and P.W.4, therefore, no charge under Section 366 of IPC is made out, hence the conviction under Section 366 of IPC cannot be sustained.

Accordingly, the present Appeal is partly allowed, the appellant is convicted for the offence punishable under Section 7 r/w Section 8 of POCSO Act and sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for a period of three months. Further, the appellant is also convicted for the offence punishable under Section 506(ii) of IPC and the sentence and fine awarded by the trial court as against the offence under Section 506(ii) of IPC stands confirmed. Consequently, connected miscellaneous petition is closed.

23.07.2025

Index : Yes / No
Internet : Yes / No
Speaking Order / Non Speaking Order
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G.K.ILANTHIRAIYAN, J.

ssd

To

1. The Special Court, (POCSO Act, 2012), Vellore,
Vellore District
2. The Public Prosecutor,
High court, Madras

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