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Crl.A.No.428 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.04.2025

PRONOUNCED ON : 16.09.2025

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.428 of 2017

Sankaravarman

... Appellant/Accused

Versus

State by:

The Inspector of Police,

W-18, All Women Police Station, MKB Nagar,

Chennai – 600 039.

(Crime No.5 of 2013)

... Respondent/Complainant

PRAYER : Criminal Appeal filed under Section 374(2) of Cr.P.C. praying to call for the records and set aside the judgment dated 30.05.2017 made in S.C.No.433 of 2013 on the file of the learned Special Court for Cases under POCSO Act/Mahila Court, Chennai.

For Appellant : Mr.K.C.S.K. Balaji

For Respondent : Mr.L.Baskaran

Government Advocate (Crl. Side)



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JUDGMENT

The Appellant/Accused in S.C.No.433 of 2013 was convicted by the trial Court by the judgment dated 30.05.2017 for the offences under Sections 12, 6 r/w. 18 and 10 of Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO Act') and sentenced him to undergo 3 years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo further period of 3 months rigorous imprisonment, for the offence under Section 12 of POCSO Act, sentenced to undergo 5 years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo further period of 3 months rigorous imprisonment, for the offence under Section 6 r/w 18 of POCSO Act and sentenced to undergo 7 years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo further period of 3 months rigorous imprisonment, for the offence under Section 10 of POCSO Act. Aggrieved against the said conviction, the appellant had preferred the above appeal.



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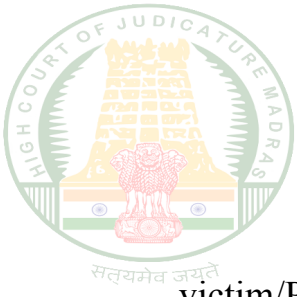
2.The case of the prosecution is that the complainant is the victim and daughter of the appellant. The complainant, her mother, her younger sister and the appellant are staying together, the complainant was aged about 14 years studying 10th standard, her mother was in Indian National Congress, General Secretary, incharge of State of Karnataka, Lakshadeep and Andamon Island. The complainant's mother used to travel in connection with her party work. Her father/appellant in the same party, working as Assistant Returning Officer. On 08.05.2013, her mother had gone to Lakshadeep for her party work, on that day, at about 10.00 p.m., the appellant forced the victim to sit on his lap and at that time, his penis erected, which was irritating to the victim. Further, she was attempted to be molested, she was taken to the bedroom, her dress removed and the appellant undressed and attempted to commit sexual assault. Later on the cry of the victim, he left her.



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2.1. When she questioned the appellant, why he was committing such gruesome act even to his daughter, he replied that she looks similar to his wife/mother of the victim and hence, he got attracted. Normally the victim and her sister used to sleep over in her grandmother's house, which is nearby. The appellant informed that unless she satisfies him, she will not be allowed to go to her grandmother's house. On 09.05.2013, again the appellant sent the younger daughter alone to the grandmother's house and took the victim girl to the bed room, undressed her and attempted to commit penetrative sexual assault. At about 9.30 p.m., she was let off, she went to her grandmother's house and informed to her grandmother about the incident. Since her mother was in Lakshadeep and her uncle and mother's sister's husband both were not in station, they had not complained about the incident immediately. On 13.05.2013, when the victim's mother came back from Lakshadeep, the victim and her uncle had been to the Airport to receive her. On the way, they informed about the incident and victim was weeping. Thereafter the



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victim/PW1, her mother/PW2 and grandmother/PW3, all were taken to the N.T.C. Guest House in Chetpet, where PW5 was the Manager. Thereafter, they went to the respondent police and lodged a complaint.

2.2. PW11 is the Investigating Officer, who received the complaint, registered F.I.R., visited the scene of occurrence, examined the witnesses, prepared observation mahazar and rough sketch, recorded the statements of victim, her mother, Grandmother, uncle and others, arrested the appellant and produced him for remand. The victim was referred to the Doctor/PW8. PW8 examined the victim. The appellant was produced for medical examination. PW10/Doctor examined the appellant. Birth Certificate collected to confirm the victim's date of birth 26.05.1998 and on the date of complaint, the victim was 14 years 5 months and 13 days. The victim herself had given the complaint in this case. On examination of witnesses, collection of documents, charge sheet filed in this case.

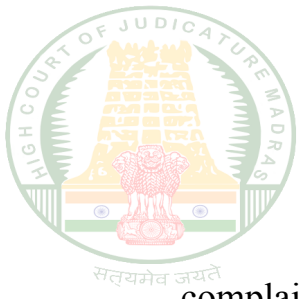


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3. During trial, on the side of the prosecution, PW1 to PW11 examined, Exs.P1 to P13 marked and M.O.1 and M.O.2 produced. On the side of the accused, he examined himself as DW1 and marked Ex.D1. On conclusion of trial, the trial Court convicted the appellant as stated above.

4. The learned counsel for the appellant submitted that in this case no neighbours of the appellant examined to confirm the victim was alone with the appellant and the appellant committed any mis-behaviour or sexual assault on the victim. In this case, all the witnesses are from his wife side, namely, PW2/wife, PW3/mother-in-law, PW4/brother-in-law, PW5/co-brother, all are closely related. The appellant found his wife/PW2 developed an illicit relationship with PW5, his co-brother. Though it was objected, PW2 not taken any corrective measures, on the other hand, the family members kept quite giving silent approval. The appellant gave a written representation to the remanding Magistrate, when he was remanded on 16.05.2013 about his wife's illicit relationship for the past two years with PW5 and he lodged a



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complaint on 14.05.2013 with the respondent police, but the police not taken any action. The respondent police neither called his wife/PW2 nor his co-brother/PW5 and enquired about this complaint. Coming to know about the same, PW2 and PW5 abetted the victim girl and she lodged a false complaint against the appellant. The victim girl admits that though Ex.P1 was given in her name, it was written by one Prasanna, who is the friend of her mother and Andrew. PW5 was also in the police station along with them. Hence concocted story wound around the appellant. Ex.D1 was produced before the remanding Magistrate and the same formed part of the case material. The investigating officer failed to consider the appellant's complaint, proceeded only on statements of the victim, wife/PW2 and her relatives.

5.He further submitted that he was very much available in the house till his arrest on 15.05.2013. Had he been a man with some guilt, he would have absconded. Ex.P6, the confession statement confirms arrest of the appellant from his house. PW9/Security staff of the Apartment confirms the



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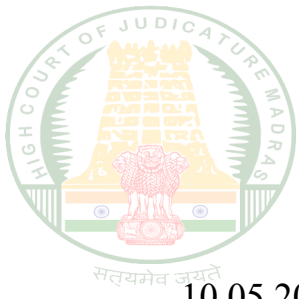
same. It is highly artificial that victim was subjected to sexual assault on 08.05.2013 and she had not disclosed this to her grandmother with whom she slept over at that night. On the other hand, she confirms that on 09.05.2013, she comes back to the house in the morning at about 10.00 a.m. and she was in the house for a whole day along with his sister and again on 09.05.2013 during the late hours when she stayed back, an attempt of penetrative sexual assault made, which defies the normal behaviour of a child. PW3/victim's grandmother confirms that victim not stated anything about 08.05.2013 incident. Only on 09.05.2013 at late hours, victim informed about the same. PW3, who had been in contact with her daughter/PW2, not informed about the incident immediately and gives an explanation that since PW2 was in Lakshadeep, she not informed, otherwise something might happen to his daughter.



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6.As regards her son/PW4, who was employed in HSBC Bank, he was on official trip to Puducherry and he came back only on 09.05.2013 and not made any complaint but on 10.05.2013 sent the victim along with brother-in-law and co-brother of the appellant to stay with him and after PW2 came back the complaint is said to have been lodged on 14.05.2013. Thus from 09.05.2013 to 14.05.2013, the entire family of PW2 and the victim were keeping quiet, not lodged any complaint, which would not be the normal conduct of any person, when found that a minor girl is being subjected to sexual assault by her own father. Coupled with the fact that the appellant was very much available in the house till 15.05.2013, which would prove that the appellant not committed any offence and it is only to cover up the misdeeds of PW2's illegal relationship with PW5. The case has been fabricated using the minor daughter. PW3/mother-in-law, who is a Preventive Officer in Customs Department gives evasive answers that she is unable to recollect what her granddaughter complained on 09.05.2013 and confirms that on



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10.05.2013 and 11.05.2013, she normally attended the office. Though it was pointed out that she had been in contact with her daughter/PW2 during this period, but gives an explanation that mobile phone was not with her.

7.PW8/Doctor, who examined the victim on 17.05.2013, gave medical examination report/Ex.P5 and Accident Register (AR) copy/Ex.P13, which confirm that everything was normal with the victim and her hymen is intact. In the AR copy/Ex.P13 it is recorded that victim was along with her mother. Likewise in the medical examination report/Ex.P5 it is recorded that victim was accompanied by her uncle. Hence, there is every possibility of victim tutored to give false information against the appellant. The Investigating Officer/PW11 admitted that investigation not conducted as per the procedure of law and she just gone by the statement of PW2 and her family members. The learned counsel further submitted that in this case, PW1 and PW2 not subjected to cross examination and evidence will become complete and gain acceptance only when it is tested by cross examination.



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Citing PW1 is a minor victim child, she cannot be recalled for cross examination and PW2/wife committed suicide and passed away in the year 2016, she could not be produced for cross examination. Added to it, in this case, no reason given as to why Section 164 Cr.P.C. statement of the victim girl not recorded. These lacuna's not considered by the trial Court and the trial Court conviction is not sustainable.

8.The learned Government Advocate (Crl. Side) strongly opposed the appellant's contention and submitted that in this case, the victim, aged about 14 years is none other than the elder daughter of the appellant. The appellant was staying with his wife, victim and younger daughter. The appellant's mother-in-law and brother-in-law were staying nearby and the victim and her younger sister go for sleep over in the grandmother's house regularly. PW2/mother of the victim on 08.05.2013 left to Lakshadeep in connection with her party work and she came back only on 13.05.2013. During her stay at Lakshadeep, on 08.05.2013, the appellant made sexual assault on the



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victim and later on the pleadings of the victim she was let to go. Thereafter, on 09.05.2013, again the appellant attempted to commit penetrative sexual assault on the victim. The victim complained to her grandmother on 09.05.2013. Since PW4/son of PW3 was out of station in Puducherry and PW5/son-in-law of PW3 was in Maharashtra and no male members available, PW3 could not immediately react and waited for her son to return back and informed about the incident. Immediately, PW4 sent the victim and her sister to the house of PW5/his brother-in-law for safety of the victim. On 13.05.2013, when PW2/mother of victim came back, she was informed about the incident, thereafter they lodged a complaint on 14.05.2013.

9.It is normal that there will be a shock in the family when such act committed by the father to his own daughter, an inhuman act and it will take some time to come out of the shock, hence, there would be some delay and the delay is acceptable. Thereafter, case registered on 14.05.2013, on the same day, F.I.R. registered. PW11/Investigating Officer registered a case in



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Crime No.5 of 2013, visited scene of occurrence, prepared observation mahazar and rough sketch in presence of PW7, arrested the appellant on 15.05.2013 who gave a confession in the presence of PW9. The victim, her mother and grandmother and maternal uncle's statements recorded by PW11. Thereafter, the victim was referred to medical examination and the accused produced for medical examination, documents and medical records collected and on completion of investigation, charge sheet filed in this case. During trial, on the side of the prosecution, PW1 to PW11 examined, Exs.P1 to P13 marked and M.O.1 and M.O.2 produced. On the side of the accused, he examined himself as DW1 and marked Ex.D1.

10.He further submitted that in this case, the chief examination of victim/PW1, PW2/mother of victim and PW3/grandmother of victim recorded on 05.02.2014. None of the witnesses cross examined. Thereafter, PW4 and PW5 examined on 17.02.2014. PW6 and PW7 examined on 08.03.2014, the witnesses not cross examined then and there. PW8/Doctor,



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who examined the victim, was examined on 19.03.2014. PW9/security of Apartment examined on 19.03.2014 and PW10/Doctor, who examined the appellant, was examined on 19.06.2014 and PW11/Investigating Officer examined on 12.01.2015. Again none of the witnesses cross examined on the same day. In fact, thereafter, petition under Section 311 of Cr.P.C., filed to recall the witnesses, which was allowed except for PW1/victim, since, there is restriction under Section 33(5) of the Act and PW2 committed suicide in the year 2016, hence, they were not cross examined at that time, other witnesses recalled for cross examination. The appellant failed to cross examine PW1 and PW2, it is his own making but now claims that the evidence of PW1 and PW2 is incomplete, not proper. In fact, the petitioner approached this Court challenging the dismissal of recall of PW1 in Crl.O.P.No.12716 of 2016. This Court, by the order dated 30.06.2016, confirmed the order of the trial Court. The trial Court, on the evidence and materials produced, rightly convicted the appellant. Hence, prayed for

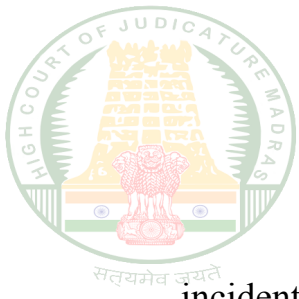


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dismissal of the above appeal.

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11.Considering the submissions made on either side and on perusal of the material, it is seen that in this case, the victim is none other than the daughter of the appellant. The victim is aged about 14 years, which is confirmed by Ex.P2/Birth Certificate. The victim is the elder daughter of the appellant. The victim's mother/PW2, who is a political functionary of Congress party, went to Lakshadeep for a political work on 08.05.2013 and returned back on 13.05.2013. The victim and her sister used to have sleep over at their grandmother's house/PW3, which is nearby. On 08.05.2013, when PW2 was away, the appellant said to have made sexual assault on the victim and after the pleadings of victim, she was let to go. The victim not informed this incident to her grandmother on 08.05.2013. On 09.05.2013, she came back to her house and again an attempt for penetrative sexual assault made by the appellant. Thereafter, she complained about the same to her grandmother, who informed her son/PW4 and son-in-law/PW5 about the



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incident and they were shocked. Not knowing what to do, they were waiting for the mother of the victim to come back on 13.05.2013. Thereafter, on 14.05.2013, lodged a complaint to PW11.

12.In this case, the victim is the complainant and Ex.P1 is the complaint. In the complaint, she narrated her sufferings and happenings of 08.05.2013 and 09.05.2013. It is seen that on 10.05.2013, the victim and her sister sent to the house of PW5 for safety. It is not even suggested by the appellant or to the security staff/PW7 and PW9 or to any of the witnesses, namely, PW2 to PW5 that the victim came to the house of the appellant after 09.05.2013 and she was normal and no such incident of sexual assault on 08.05.2013 and 09.05.2013 happened. The arrest of appellant on 15.05.2013 from his house alone will not prove the fact that he had not committed any sexual assault on the victim. The victim narrated the incident to her grandmother immediately on the night of 09.05.2013 and it was conveyed to PW4 and PW5. It took sometime to come out of the shock, after gaining



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strength, lodged a complaint on 14.05.2013 after PW2/mother came back from Lakshadeep.

13.This is quiet natural in a family, who received such shock after knowing about the gruesome act of the father to his own daughter. The Doctor/PW8, who examined the victim, confirmed hymen intact and there is no injuries on the victim. But that alone will not absolve the appellant and a statutory presumption of Sections 29 and 30 of the POCSO Act starring against the appellant. The appellant examining himself as DW1 and filing Ex.D1 would no way further his case and probabilise his defence. In Ex.D1, allegations against his wife/PW2 and co-brother/PW5 about the illicit relationship. But this fact not put to the relevant witnesses, hence it is nothing but a created defensive document and strategy. The trial Court considering all these aspects rightly convicted the appellant for offence under Sections 12, 6 r/w 18 and 10 of POCSO Act, 2012.



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14.In view of the above, this Court finds no reason to interfere with the judgment of the trial Court as regards conviction and sentence for offence under Sections 12 and 6 r/w 18 of POCSO Act and the same are hereby confirmed. Further, this Court confirms the conviction for offence under Section 10 of POCSO Act but modifies the sentence of imprisonment of seven years to five years.

15.In the result, this Criminal Appeal stands disposed of.

16.09.2025

Index : Yes / No

Neutral citation : Yes / No

Internet : Yes/No

Speaking / Non-speaking order

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To

- 1.The Sessions Judge,
Special Court for Cases under POCSO Act/Mahila Court,
Chennai.
- 2.The Inspector of Police,
W-18, All Women Police Station, MKB Nagar,
Chennai – 600 039.
- 3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

rsi

**Pre-delivery Judgment in
Crl.A.No.428 of 2017**

16.09.2025