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Crl.A.No.64 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2025

CORAM :

THE HON'BLE MR. JUSTICE P.VELMURUGAN

and

THE HON'BLE MR. JUSTICE M.JOTHIRAMAN

Crl.A.No.64 of 2022

Mohan

... Appellant / Accused

Vs.

State Rep by
Inspector of Police,
Erode All Women Police Station,
Erode District,
Cr.No.4 of 2017.
(Crime No.4 of 2017)

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 (3) of Criminal Procedure Code, 1973 praying to set aside the judgment of conviction and sentence passed by the Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Erode in Special S.C.No.10/2018 dated 25.10.2019.

For Appellant : M/s.R.Ganesh

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor
Assisted by
Ms.M.Arifa Thasneem

JUDGMENT

(Judgment of the Court was made by M.Jothiraman, J.)

This criminal appeal has been filed by the appellant / sole accused challenging the judgment of conviction and sentence passed by the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court),



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Erode in Special S.C.No.10 of 2018 dated 25.10.2019, in and by which the appellant was convicted under Section 5(n) r/w. 6 of Protection of Children from Sexual Offences Act, 2012 [In short “POCSO Act”] and sentenced to undergo Life imprisonment with a fine of Rs.5,000/- in default to undergo 3 months simple imprisonment.

2. Brief case of the prosecution is as follows:

2.1. The victim girl aged 13 years, who was examined as PW1, deposed that she is staying at Kaspapettai Mariyalaya and studying 7th standard at Girls Higher Secondary School at Amman Kovil. She has one brother called Darnesh. Her mother Annakodi and her father are coolie workers. She attained puberty while she was studying 7th Standard and 15 days thereafter, her father sent her mother and brother to her grandmother's house. She informed that she is also interested to go to her grandmother's house, but her father made her to stay back at home. On that afternoon, her father locked the door, came to her, intimidated to remove her clothes and inner wear and being afraid of her father, she removed. The accused committed penetrative sexual assault on the victim child and she cried of pain. The accused also intimated her not to say to anyone. So she did not inform the same to her mother.



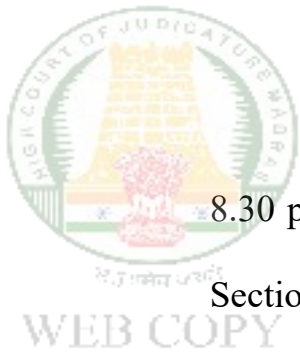
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2.2. When PW1 went to her school, her social teacher Krishnaveni asked her why she was tired and gaining courage, she informed about the same. When the said teacher enquired whether she informed her mother, PW1 said that her mother told that there was nothing to worry and everything will go correctly. The said social teacher informed the same to the Headmistress and Assistant Headmistress and they enquired and ascertained the truthfulness of the statement of PW1. They called “1098” child helpline and the volunteer of child helpline came to the school by evening and took her.

2.3. PW1 was made to stay at Mariyalaya Hostel and on the next day, she was taken to the police station, where PW1 narrated the incident to police, who recorded the same and got her signature. The police searched for PW1’s father and brought him to the police station. The complaint given by PW1 is Ex.P1. Section 164 statement given by PW1 is Ex.P2.

2.4. PW17- Amudha, the then Inspector of Police, All Women Police Station, Erode, on receipt of complaint from PW1 on 5.4.2017 at



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8.30 p.m., registered an F.I.R. in Crime No.4/2017 for the offences under

Sections 5(n) and 6 of POCSO Act, 2012. F.I.R is Ex.P18. On the same day, when the father of the victim girl was examined, he admitted the commission of offence and he was arrested and thereafter, he was sent for judicial custody. PW17 went to the occurrence place and prepared Rough Sketch – Ex.P19 in the presence of witnesses Christudass and Subramani. PW17 examined PW4 and other witnesses separately and recorded their statements. She gave a requisition to record the statement of the victim child under Section 164 CrPC. She made the victim girl to be produced before Judicial Magistrate No.I, through Head Constable Mythili for recording 164 CrPC statement. She examined the Forensic Officer Mr.Venkateswaran and recorded his statement.

2.5. PW2 – Nisha is the Childline volunteer working in childline for the past 8 years. On 04.04.2017 at 3.30 p.m., she received an information from Sivagiri Amman Kovil Government Higher Secondary School that the victim child, who is studying 7th standard in the school found to be sexually assaulted by her father. When they enquired the child, she narrated the incident and at 6.30 p.m., they took the child and left at Mariyalaya Home. On the next day at 8.00 a.m., they took the girl to the



All Women Police Station, Erode and lodged a complaint – Ex.P1.

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2.6. PW10- Mrs.Krishnaveni, social teacher of Government Higher Secondary School, Sivagiri deposed that during 2017, on one day, she found that the victim child looked tiresome and though the victim initially hesitate to express, after consoling words, the victim child narrated that her father has committed penetrative sexual assault on her. PW10 informed the same to the Headmaster, who in-turn called child helpline. Thereafter, PW2 came along with one Jule and they handed over the victim child to them.

2.7. PW5- Mrs.Thangam, the then Headmistress of the Girls Higher Secondary School, Sivagiri spoke about the information given by PW10 to her and thereafter calling the child line.

2.8. PW3, Mrs.Shantha, owner of the house where the victim child family resided, deposed that the accused had the habit of consuming alcohol and assaulting his wife and children. PW4 – Tmt.Pushpa, who is a neighbour speaks of the accused having the habit of consuming alcohol and he used to beat his wife and the children.



2.9. PW6 is the relative of the accused and he identifies and speaks about the Observation Mahazar – Ex.P3. PW15 – Thiru.Siva deposed about witnessing the arrest of the accused by the Investigating Officer.

2.10. PW8- Tmt.Themolizi, the present Headmistress of the school received the requisition letter – Ex.P14 from All Women Police Station, Erode and furnished the School Certificate – Ex.P5.

2.11. PW11- Dr.Pavendan, received the medical memo from All Women Police Station, Erode under Ex.P7 and recorded the Accident Register First Page – Ex.P8. PW12- Dr.Kalayarasi, examined the victim child and gave final opinion that the victim child does not have any evidence of recent forcible sexual intercourse 48 hours prior to her examination. The backs side of Accident Registry Copy given by PW12 is Ex.P9 and her Final Opinion report is Ex.P10.

2.12. PW16- Dr.Sivakumar, Radiologist, who received the requisition under Ex.P7, examined the victim child and issued the Report Ex.P17 opining that the bone age of the person is likely to be above 12



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and below 14 years, based on the findings observed in the bones. The Scan

Reports are M.O.1 series.

2.13. PW13- Tr.Venkateswaran, Scientific Officer, based on the requisition under Ex.P11, received the collected materials and forwarded to the Director, Forensic Science Department. PW14 – Dr.Srinivasan examined the accused and issued Accident Register Copy Ex.P15 and Report Ex.P16 opining that he cannot say that the accused is impotent.

2.14. PW9- Tr.Chinnasamay, Executive Officer of Kodumudi Municipality, based on the requisition received from All Women Police Station, Erode, issued the Birth Certificate of the victim child under Ex.P6.

2.15. On 11.02.2018, PW17 received the medical certificates of the victim child, accused from PW16-Dr.Sivakumar, PW11- Dr.Pavendan, PW12- Dr.Kalayarasi and recorded their statements separately and also received chemical report Ex.P21. On 22.03.2018, PW17 examined PW14- Dr.Srinivasan and received the certificate and recorded his statement. She also filed Ex.P22 – Section Alteration Report altering the



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Sections to Section 5(n), (l) r/w. 6 of POCSO Act and 506(i) IPC. On completion of investigation, PW17 filed the charge sheet, which was taken cognizance in Spl.S.C.No.10/2018 on the file of the Court of Sessions, Magalir Neethimandram (Fast Track Mahila Court), Erode.

2.16. The prosecution in order to bring home the charges, examined 17 witnesses, marked 21 Exhibits and produced 1 Material Object. When the accused was questioned under Section 313(1)(b) CrPC with regard to incriminating materials / circumstances found in the evidence adduced by the prosecution, the accused pleaded not guilty. On the side of defence, none was examined and no document was marked. The Trial Court, upon appreciation of oral and documentary evidence, found the accused guilty for commission of offence under Section 5(n) r/w. 6 of POCSO Act and sentenced him to undergo life imprisonment with a fine of Rs.5,000/- in default to undergo 3 months simple imprisonment. Being aggrieved over the conviction and sentence, the appellant/accused has preferred the present criminal appeal.

3. The learned counsel appearing for the appellant / accused would submit that the alleged occurrence has taken place in the month of



October, 2016, when the victim child attained puberty and the complaint was given only on 04.04.2017 with false allegations against her own father. There is a delay in lodging the complaint and the same is fatal to the prosecution. The evidence of PW12- Doctor, who examined the victim girl clearly states that there was no internal and external injuries and not supported the case of the prosecution. The prosecution has not proved the case beyond reasonable doubt. The conviction and sentence passed by the Court below is contrary to Law and the same is liable to be set aside.

4. *Per contra*, learned Additional Public Prosecutor appearing for the respondent would submit that PW1/victim child has clearly deposed about the penetrative sexual assault continuously committed by her father /accused. There is no suspicious on the complaint – Ex.P1 lodged by the victim girl / PW1. The medical evidence of PW12 corroborates the evidence of PW1. The prosecution has proved the case beyond reasonable doubt. There is no infirmity in the conclusion of the Court below with regard to finding guilt against the accused, conviction and imposing sentence. There is no merit in the appeal and the same is liable to be dismissed.



5. We have considered the submissions made on either side and perused the entire case records.

6. PW10, Mrs.Krishnaveni, Social Teacher of Government Higher Secondary School, Sivagiri deposed that she has noted the psychological change on PW1/victim girl, who was studying 7th standard. When PW10 interacted with PW1, initially PW1 did not come out with her problem. Then, after her consoling words, the victim child narrated that PW1's father has committed penetrative sexual assault on her. PW1/victim girl also expressed her fear to say this to anybody. PW10 informed to the Assistant Headmistress one Kalyani. In turn, the said Kalyani and PW10 both informed the same to Headmistress PW5- Thangam.

7. PW5 informed the Child Helpline "1098" and PW2- Nisha, Child Helpline Volunteer. PW2 deposed that she along with another officer went to school. When they inquired the victim girl, she narrated the incident and they took the victim child and left at Mariyalaya home. On the next day i.e., 05.04.2017, they took the victim girl to the All Women Police Station, Erode and lodged a complaint.



8. PW1 / victim girl deposed that when she was studying 7th standard, she attained puberty. 15 days thereafter, her father sent her mother and brother to maternal grandma's home. When the victim child informed that she is also interested to go to her grand mother's house, her father made her to stay back at home. On that afternoon, her father/accused locked the door, came to her and intimidated her to remove her clothes and inner wear and afraid of her father, she removed. He inserted the male organ into her part of passing urine and she cried of pain. Her father intimidated her not to say to anyone. So she has not stated about this incident to her mother. When she went to school, her Social Teacher – Krishnaveni (PW10) asked her why she is tired and asked her to share her problem. After gaining confidence, she informed about the same.

9. PW3- Tmt.Shantha, owner of the house, deposed that she knows the accused and his family and the accused is having the habit of consuming alcohol and assaulting his wife and children. Similarly, PW4, who is his neighbour deposed that the accused is having the habit of consuming alcohol and used to beat his wife and children.



10. PW8 – Thenmozhi, Headmistress of Girls Higher Secondary School, Sivagiri, based on the requisition under Ex.P4, has issued Ex.P5 – School Certificate stating that the victim child was studying 7th standard “B” Section during the academic year 2016-2017 and her date of birth is 31.03.2005.

11. PW11 – Dr.Paavendan, received the medical memo from All Women Police Station, Erode under Ex.P7 and recorded the Accident Register – Ex.P8. PW12 – Dr.Kalayarasi, examined the victim child and issued Ex.P9 stating that that there was no external injuries, hymen absent, vagina admits tip of little finger and no vaginal discharge. PW12 has also issued Ex.P10 – Final Opinion stating that she did not deduct spermatozoa on the vaginal smears and there is no evidence of recent forcible sexual intercourse 48 hours prior to her examination. PW12 further deposed that victim child’s hymen was not intact.

12. PW16 – Dr.Sivakumar, Radiologist, examined the victim child and gave report under Ex.P7 stating that the bone age of the person is likely to be above 12 years and below 14 years. As per Ex.P5- School



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Certificate issued by PW8 and as per Radiologist Report – Ex.P17 issued by PW16, the prosecution has proved that the age of the victim girl was 12 years at the time of the occurrence. The prosecution has proved the case that at the time of occurrence, the victim child was aged 12 years and there is no necessity for the victim child to implicate her own father as accused. The medical evidence also corroborates with the version of PW1 / victim child.

13. The Court below recorded the demeanor of the victim child during trial, she cried while identifying her father as the accused and during cross examination, when she was asked why she has given false complaint against her father, the victim girl turned angry. The Court below, taking into consideration the demeanor of the victim child, finds that those emotions would go to show that she could not have been tutored by anyone to foist a false case against her own father.

14. POCSO Act, 2012 is a Special Act and the presumption under Section 29 of the Act comes into play once the foundational facts are proved. Section 29 of the POCSO Act provides that Court shall presume that the accused has committed the offence for which he is charged with, until contrary is proved.



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15. It is true that the Court conducting the trial of offences under the POCSO Act can resort to the presumptions incorporated under the Act, *ibid.* They are contained in Sections 29 and 30 of the POCSO Act. The Hon'ble Supreme Court in the case of ***Pappu v. State of Uttar Pradesh [(2022) 10 SCC 321]***, while dealing with an appeal on facts observed thus:

“...foundational facts of the offences are clearly established and the Appellant is liable to rebut the presumption”. On facts it is observed that “he has failed to discharge this burden and as such presumption would lead to the finding of guilt against the appellant.” (para 108)

16. The Hon'ble Supreme Court in ***Sambhubhai Raisangbhai Padhiyar v. State of Gujarat, reported in (2025) 2 SCC 399***, has held that Section 29 comes into play once such foundational facts are proved. It holds as follows:

“33. It will be seen that presumption under Section 29 is available where the foundational facts exist for commission of offence under Section 5 of the Pocso Act. Section 5 of the Pocso Act deals with aggravated penetrative sexual assault and Section 6 speaks of punishment for aggravated penetrative sexual assault. Section 3 of the Pocso Act defines what penetrative sexual assault it...”



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17. The prosecution has cogently discharged the initial burden to prove the main ingredients for the commission of the offence of Section 5(n) r/w. 6 of POCSO Act and therefore, the presumption arises that the accused has committed the offence of aggravated penetrative sexual assault on the victim child for more than once. The prosecution has proved its case beyond reasonable doubt and the Court below, on a proper appreciation of the testimonies of the witnesses and documents, had rightly convicted and sentence the accused. This Court finds no reason to warrant interference with the impugned judgment of conviction and sentence and finds no merit in this appeal.

18. In the result, this Criminal Appeal stands dismissed, confirming the judgment of conviction and sentence passed by the Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Erode in Special S.C.No.10 of 2018 dated 25.10.2019.

(P.V.,J.)

(M.J.R.,J.)

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Index : Yes / No

Internet : Yes / No

Speaking /Non speaking Order



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To

1. Inspector of Police,
Erode All Women Police Station,
Erode District, Cr.No.4 of 2017.

2. Sessions Judge,
Magalir Neethimandram (Fast Track Mahila Court),
Erode.

3. The Public Prosecutor,
High Court, Madras.



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