



Crl.A.No.745 of 2017

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2025

CORAM :

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.745 of 2017

Sadhasivam,
S/o.Venkatachalam, East Street, Near
Mariamman Temple, Thennangudi Palayam
Village & Post, Attur Taluk,
Salem District

Appellant

Vs

State Rep. By
Inspector of Police,
Malliyakarai Police Station,
Salem District.
Cr.No.126 of 2016

Respondent

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, against the conviction of the appellant/sole accused and sentence imposed on him in Spl.S.C.No.6 of 2017 dated 30.06.2017 on the file of the learned Sessions Judge, Mahila Court, Salem, and set aside the conviction and sentence and allow this appeal.

For Appellant : Mr.V.Parthiban
for Mr.P.Jagadeesan

For Respondent : Mr.L.Baskaran
Government Advocate (Crl.Side)
assisted by Mr.S.Arun Pandi



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JUDGMENT

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This Criminal Appeal has been filed by the sole accused, challenging the conviction and sentence imposed upon him for the offence under Section 4 of the Protection of Child from Sexual Offences (POCSO) Act, 2012, vide judgment dated 30.06.2017 in Spl.S.C.No.6 of 2017, on the file of the learned Sessions Judge, Mahila Court, Salem.

2(i) It is the case of the prosecution that the appellant and the victim, aged about 9 years, were known to each other; that the appellant was working as a school bus driver in a private school and used to park the bus in an open place near the bus stop; that on 02.08.2016 at about 5.00 p.m., when the victim girl and her younger sister were playing in an open place near the bus stop, the appellant, with intent to commit sexual assault, took her to the bus; and that he thereafter inserted his finger in the private part of the victim girl.

(ii) On the complaint given by the victim's mother, PW1, an FIR was registered in Cr.No.126 of 2016 for the offence under Section 3(b) and 4 of



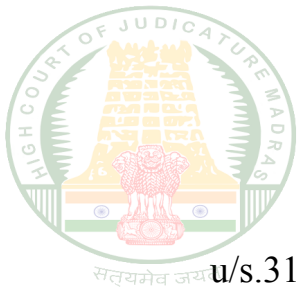
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the POCSO Act, 2012, by PW11 on 02.08.2016, at about 23.00 hours. PW12 took up the investigation, prepared the rough sketch and observation mahazar, examined the witnesses and made arrangements to record the Section 164 Cr.P.C. statement of the victim girl by the learned Magistrate. Thereafter, PW12 handed over the investigation to PW13, who upon completion of the investigation filed the final report against the accused under Section 4 r/w 3 of the POCSO Act, 2012 on 23.12.2016, before the learned Sessions Judge, Mahila Court, Salem.

(iii) On the appearance of the appellant, the provisions of Section 207 Cr.P.C., were complied with, and the case was taken on file as Spl.S.C.No.6 of 2017 and the trial Court framed charges against the appellant/accused for the offences under Section 4 of the POCSO Act, and when questioned, the accused pleaded 'not guilty'.

(iv) To prove its case, the prosecution examined 14 witnesses as P.W.1 to P.W.14 and marked 13 exhibits as Exs.P1 to Ex.P13 besides 3 material objects as M.O.1 to M.O.3. When the accused was questioned,



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u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. The appellant was examined as DW1 and did not mark any document on his side.

(v) On appreciation of oral and documentary evidence, the trial Court found that the accused was guilty of penetrative sexual assault and convicted him for the offence under Section 4 of the POCSO Act. The accused was sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.10,000/-, in default to undergo simple imprisonment for three months. Hence, the accused has preferred the appeal challenging the said conviction and sentence.

3. Mr.V.Parthiban, learned counsel for the appellant submitted that the evidence adduced by the prosecution does not inspire confidence; that there was a prior enmity between the victim's father and the appellant and hence, a false case was foisted against the appellant; that it is the version of all the witnesses that because of the act of the appellant, the victim sustain blood-stained injuries; that the said version is contrary to the evidence of the Doctor and his report, which rules out any blood-stained injury; that the



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investigation had not seized the blood-stained clothes of the

victim; that it is the specific case of PW1 that immediately after the occurrence, a nurse had treated the victim-PW2 and the said nurse was not examined by the prosecution; that the arrest and confession is doubtful; and therefore, the judgment is liable to be set aside.

4. (i) Mr.L.Baskaran, the learned Government Advocate *per contra* submitted that even assuming that the prosecution had failed to prove that the victim had sustained blood-stained injuries, the version of the victim was consistent throughout and was not discredited and that her evidence cannot be brushed aside; that the evidence of the doctor though would suggest that there were no blood-stained injuries, it is clear that the victim was subjected to sexual assault; that the victim was aged 9 years and there was no necessity for the victim, of that age to falsely implicate the appellant; and hence, submitted that the impugned judgment is in accordance with law and there is no reason to interfere with the said judgment.



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(ii) The learned Government Advocate (CrL. Side) further submitted that since the victim was aged 9 years, the learned Judge ought to have framed a charge under Section 6 of the POCSO Act.

5. As stated earlier, the prosecution had examined 14 witnesses. PW1 is the complainant and the mother of the victim girl; PW2 is the victim; PW3 is the neighbour to whom the victim had stated about the sexual assault, immediately after the occurrence; PW4 is the father of the victim; PW5 and PW6 are the neighbours who had heard about the occurrence from PW1 to PW3; PW7 is the witness to the observation mahazar; PW8 is the Headmaster of the school in which the victim girl was studying and he had issued Ex.P5 to prove the date of birth of the victim as 27.05.2008; PW9 is the Manager of the school in which the appellant was working as a driver and had heard about the occurrence; PW10 is the constable who had assisted the investigation and had taken the victim girl to the hospital; PW11 is the Sub Inspector of Police who registered the FIR; PW12 and PW13 are the investigation officers; and PW14 is the Doctor who treated the victim girl at



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Government Hospital, Attur and made entries in the Accident Register-Ex.P12 and had prepared the discharge summary Ex.P13.

6. PW2 (Victim) was 9 years old at the time of occurrence. Her deposition is clear and cogent as regards the sexual assault committed by the appellant. She had stated that at the time of occurrence at about 5.00 p.m., the appellant called her inside the bus after sending her sister to bring a snack from her house. According to PW2, the appellant had committed sexual assault by touching her private part. We shall examine as to what would be the offence committed by the appellant a little later. PW2 had informed PW3, who was residing nearby, about the sexual assault committed by the appellant immediately after the occurrence. PW3 had also corroborated the evidence of PW2, the victim. Similarly, PW1 and PW4 have corroborated the version of PW2 and PW3 as regards the occurrence. This Court finds that nothing has been elicited in the cross-examination to disbelieve the version of PW1 to PW4 as regards the occurrence that took place in the bus in which the appellant was working as a driver. The fact that sexual assault was committed by the appellant has been proved by the



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prosecution.

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7. As regards the nature of sexual assault, it is the prosecution case that the appellant had inserted his finger in the private part of the victim, as a result of which the victim suffered bleeding from her private part. PW3 specifically states that she examined the undergarment of the victim girl and found blood stains in the undergarment. PW2, the victim girl, had also stated that she had sustained blood-stained injuries. PW1 and PW4, also had stated that they saw blood-stains in the private part of the victim girl and also in the undergarment. However, strangely, the investigation officer chose not to seize the undergarment to establish the case. In fact the witnesses also do not speak about handing over the undergarment to the victim.

8. The doctor [PW14] also had not noted any blood stains in the undergarment or in the private part of the victim girl. But however, would state that there was a possibility of the victim girl being subjected to sexual assault. The Doctor in fact had stated that there were no external injuries in



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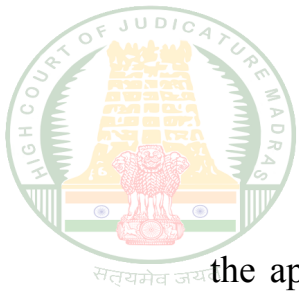
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the private part of the victim and also in her breasts; that there was no evidence of sexual intercourse; and that her hymen was intact.

9. In fact PW1, the mother of the victim, had deposed that she had taken the victim girl to a nurse for treatment immediately after the occurrence. The prosecution had also failed to examine the nurse. This Court is of the view that the prosecution case that the victim had sustained blood-stained injuries on account of the act of the appellant in inserting his finger in the private part of the victim has not been proved. Hence, the offence of penetrative sexual assault would not be made out.

10. At the same time, as stated earlier, the prosecution had established the fact that there was a sexual assault on the victim. Though there has been an exaggeration as regards the exact manner of sexual assault and that the victim had sustained blood-stained injury, which has not been proved by the prosecution, this Court is of the view that the evidence adduced on the side of the prosecution can be accepted to the extent of holding that the appellant committed sexual assault.

11. The appellant chose to examine himself as DW1 and would state that he had quarrelled with the victim's father on the date of occurrence since



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the appellant refused to agree to obtain a job for the victim's father in his school as a driver.

12. This Court is of the view that the above motive suggested by the defence for false implication cannot be accepted and it is highly improbable that the victim, aged about 9 years, would be tutored and would depose falsely for the said alleged motive.

13. The age of the victim has not been disputed by the respondent. The prosecution had proved the age of the victim by examining PW8, the Headmistress of the school in which the victim studied. PW8 had issued the certificate-Ex.P5, mentioning the Date of Birth of the victim [PW2] as 27.05.2008, on the basis of the records available in the School. This has not been disputed by the defence.

14. The other submission made by the learned counsel for the appellant is that the arrest could not have taken place in the manner alleged by the prosecution. Even if it is accepted for argument's sake, it would be only a flaw in the investigation and would not affect the prosecution case in



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any manner in the facts of the case.

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15. It is trite that the maxim “Falsus in uno, falsus in omnibus” is not applicable to our country. Therefore, even if a part of the evidence of victim is disbelieved for want of corroboration or for any other reason, the remaining part if found trustworthy and believable can always be accepted. This Court finds that the victim's evidence insofar as the offence of sexual assault alone inspires confidence and not that of penetrative sexual assault.

16. Therefore, this Court is of the view that the offence committed by the appellant on the victim aged 9 years, would fall under Section 9(m) of the POCSO Act punishable under Section 10 of the POCSO Act viz. for commission of 'aggravated sexual assault', in the facts and circumstances of the case.

17. Considering the evidence adduced by the prosecution, this Court is of the view that the interest of justice would be met if the appellant is sentenced to undergo rigorous imprisonment for five years and to pay a fine



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of Rs.10,000/- in default to undergo simple imprisonment for three months for the offence under Section 10 of the POCSO Act.

18. This Court also is constrained to observe that the trial Court, having found the appellant guilty of penetrative sexual assault, ought to have framed the charge under Section 6 of the POCSO Act and not under Section 4 of the POCSO Act. However, this issue is now academic, as this Court finds that the appellant is only guilty of offence under Section 9 (m) of the POCSO Act, punishable under Section 10 of the POCSO Act.

19. In the result, the Criminal Appeal is Partly Allowed. The judgment of conviction and sentence dated 30.06.2017 made in Spl.S.C.No.6 of 2017 on the file of the learned Sessions Judge, Mahila Court, Salem, is modified as follows:

(i) The conviction of the appellant for the offence under Section 4 of the POCSO Act, is set aside and he is convicted for the offence under Section 9(m) of the POCSO Act, punishable under Section 10 of the POCSO Act;



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(ii) The appellant is sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.10,000/- in default to undergo simple imprisonment for three months;

(iii) It is directed that the period of sentence already undergone by the appellant shall be set off under Section 428 Cr.P.C; and

(iv) The fine amount already paid, if any, shall be adjusted against the fine amount imposed now.

21.07.2025

Index : yes/no

Speaking /Non-speaking order

Neutral citation : yes/no

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To

1. The Sessions Judge,
Mahila Court, Salem.

2. The Inspector of Police,
Malliyakarai Police Station,
Salem District.

3. The Public Prosecutor,
High Court, Madras.



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SUNDER MOHAN, J.

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