



Crl.A. No.689 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>RESERVED ON</i>	<i>25.03.2025</i>
<i>PRONOUNCED ON</i>	<i>24.06.2025</i>

CORAM

THE HONOURABLE MR.JUSTICE **M.S.RAMESH**
and
THE HONOURABLE MR.JUSTICE **N.SENTHILKUMAR**

Criminal Appeal No.689 of 2019

Anandh

.. Appellant

Vs.

The State, rep. By
Inspector of Police
Tiruchengode AWPS
Namakkal District
(Crime No.5/2016)

.. Respondent

Prayer : Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code against the judgment of Sessions (Fast Track Mahila) Judge, Namakkal in Spl.C.C. No.35 of 2016 dated 07.12.2018 and to set aside the same.

For Appellant : Mr.B.Vasudevan

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

J U D G M E N T



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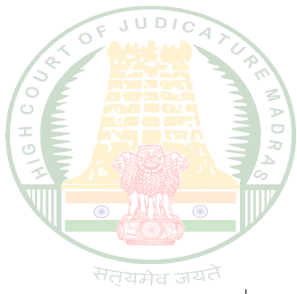
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N.SENTHILKUMAR, J.

Challenging the judgment of conviction and sentence passed by the learned Sessions (Fast Track Mahila) Judge, Namakkal in Spl.C.C. No.35 of 2016 dated 07.12.2018, the sole accused has preferred this appeal.

2. The learned Sessions (Fast Track Mahila) Judge, Namakkal in Spl.C.C. No.35 of 2016, has convicted and sentenced the appellant as follows:-

<i>Offence under Section</i>	<i>Sentence</i>
<i>5(m) r/w 6 of POCSO Act</i>	<i>Life imprisonment and a fine of Rs.2,000/-, in default to undergo six months rigorous imprisonment</i>
<i>11(iv) r/w 12 of POCSO Act</i>	<i>2 Years rigorous imprisonment and a fine of Rs.1,000/-, in default to undergo three months rigorous imprisonment</i>
<i>5(l)(m) r/w 6 of POCSO Act</i>	<i>Life imprisonment and a fine of Rs.2,000/-, in default to undergo six months rigorous imprisonment</i>
<i>366(A) IPC</i>	<i>5 Years rigorous imprisonment and a fine of Rs.1,000/-, in default to undergo three months rigorous imprisonment</i>



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506(i) IPC

1 Year rigorous imprisonment

The sentences are ordered to run concurrently.

3. The case of the prosecution is that the victims in this case are, K1 and K2 (PW2 & PW4), who were aged about 10 years and 9 years respectively, at the time of occurrence. Five days prior to 03.05.2016, at about 5.00 p.m, the accused with an intention to commit sexual intercourse with the victim K2, had committed the offence punishable under Section 5(m) r/w 6 of POCSO Act. On 30.05.2016 at about 3.00 p.m, while K1 and K2, were playing near their house at Sathya Nagar, the accused with an intention to have sexual intercourse with K2, called K2, which is punishable under Section 11(iv) r/w 12 of POCSO Act, 2012 and in furtherance of the same, the accused has kidnapped the victim K1 on the same day for committing sexual intercourse on her. K1 was taken to the house of one Mahadevan, situated at Sathya Nagar, which was unoccupied and thereby the accused committed the offence under Section 366 IPC.



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4. To prove its case, the prosecution had examined 17 witnesses as PW1 to PW17 and marked 17 documents as Exs.P1 to P17. No witness was examined and no document was produced on the side of the appellant herein/accused.

5. PW1, the mother of K1 had stated that on the fateful day, i.e. on 30.05.2016, when she returned home after finishing her collie work, she noticed that her daughter (K1) was missing. At that time, PW9 - Kavitha, who is the neighbour of PW1, had informed PW1 that the accused had removed the panties of the first victim and committed penetrative sex on the private part of the first victim. PW9 had further stated that the accused had committed a similar offence on K2 in the said Mahadevan's house. She further stated that the accused had threatened both the victims that if they reveal the incident to anyone, he will murder them and their parents. However, when PW1 confronted the said fact with the first victim K1, she had stated that the accused threatened by saying that they will be done to death and thereafter, both the victims were taken to hospital through 108 Ambulance and treatment was given to both the victims.

6. Based on the complaint given by PW1, which was marked as Ex.P1, an FIR was registered under Ex.P11. Ex.P2, the birth certificate of K1, the first vic-



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tim, was produced to establish that her age was 10 years at the time of occurrence. K1 had stated that the accused had committed the offence against her by tying her hands and mouth. He had also threatened her by saying that if she reveals the incident to anyone, he will kill her. K1 had further stated that same offence was committed on K2 by the accused.

7. PW3 is the grandmother of PW4/K2, who heard PW4/K2 narrating the crime committed by the accused on her. She had deposed the entire sequence of event as narrated by the second victim. PW4 is the second victim, who had stated that apart from committing the crime on the first victim, the accused has committed the same crime on her. PW5 is observation Mahazar witness. PW16 is the mother of PW4/K2. PW17 is the investigating officer, who registered the complaint, which was marked as Ex.P1 and thereafter, registered a case in crime No.5 of 2016 under Sections 5(l), 5(m) and 6 of POCSO Act, 2012 and Section 506(ii) IPC. The printed FIR was treated as Ex.P11. On 31.05.2016, the investigating officer, PW17 had visited the scene of occurrence at 7.00 a.m and prepared observation mahazar and sketch, which were marked as Ex.P3 and Ex.P12. Thereafter, the accused was arrested on the same day at 12.00 noon. The accused was taken for medical examination and the statements of victims were



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recorded by the learned Judicial Magistrate, Rasipuram. Ex.P14 is the 164 statement of the first victim and Ex.P15 is the 164 statement of the second victim.

8. PW14, the doctor had examined both the victims K1 and K2 and gave her final opinion under Exs.P5 and P6 respectively. PW16 is the mother of PW4/K2, who stated that she came to know that the victims were subjected to physical assault and before she could reach the place, the victims were taken in 108 ambulance to the hospital. The doctor examined the children. A complaint was given by the mother of K1 as against the accused.

9. The learned counsel appearing for the appellant submitted that medical examination was conducted by the doctor, who entered the Accident Registers, which were marked as Ex.P7 and Ex.P8. As per Ex.P7 and P8, it is only an attempted rape. PW1, has stated that PW9 and PW10 are the local residents of the same vicinity, who had deposed that PW2 and PW4 had narrated the crime committed on them. They corroborated the evidence of PW1, PW2 and PW4.

10. The learned counsel appearing for the appellant had lamented that the doctor who had given Exs.P5 and P6 final opinion, in which, she has opined that



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there was no recent forcible sexual intercourse 48 hours prior to her examination of both the victims. The said examination was conducted on the first victim on 31.05.2016 at about 8.55 a.m and with regard to the second victim, the examination was conducted on the same day at 9.05 a.m. The findings are that there was no medical evidence for recent forcible sexual intercourse. The learned counsel submitted that a case was registered in Crime No.5 of 2016 for an offence under Sections 5(l), 5(m) and 6 of POCSO Act and Section 506(ii) of the Indian Penal Code on 31.05.2016. The learned counsel further contended that the 164 statements were recorded before the Magistrate which were marked as Ex.P14 in respect of first victim and Ex.P15 in respect of second victim. Both the statements were recorded on 05.07.2016. In Ex.P14, the statement under Section 164 Cr.P.c. the first victim has categorically narrated the crime committed by the accused, however, in Ex.P15, the 164 statement of the second victim, she has not stated about any crime that has happened against her. There is material contradiction with regard to the deposition of PW4 i.e. the second victim before the Magistrate, who recorded the statement after the occurrence and during the examination before the trial court. The learned counsel further submitted that the appellant is in incarceration from the date of his arrest i.e. from 31.05.2016. He had submitted that the amendment in POCSO Act came into force on



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11. The learned counsel submitted that considering the discrepancies in the statements of PW1 and PW9 and the findings in Exs.P5 to P8, the charges framed and conviction imposed is disproportionate to the facts. He vehemently contended that the prosecution had not proved its case.

12. Per contra, Mr.S.Rajakumar, the learned Additional Public Prosecutor appearing for the respondent police contended that the accused aged about 28 years has committed the occurrence on 30.05.2016 in a broad day light at 3.00 p.m by forcibly taking PW2 and PW4, who were aged about 10 years and 9 years respectively at the time of occurrence and had committed the offence. The evidence of PW2 and PW4 before the court was categorical. Even during cross examination, the young victims have categorically deposed the manner in which the crime has taken place. The learned Additional Public Prosecutor also drew our attention to presumption under Sections 29 and 30 of the POCSO Act.

29. Presumption as to certain offences.—Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section



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9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.

30. Presumption of culpable mental state.—(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

(2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

Explanation.—In this section, “culpable mental state” includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.

13. Heard both sides and perused the materials available on record.



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14. The facts are not in dispute. However, the findings recorded in the Accident Register by the doctor is that there is an attempted rape and the final opinion the doctor under Exs.P5 and P6 is that there was no recent forcible sexual intercourse 48 hours prior to the examination conducted by her. Though the accused was arrested on 31.05.2016 at about 12.00 noon and a confession statement was recorded, the FIR was registered at 2.30 a.m on 31.05.2016 and the investigation commenced thereafter. There is no reason to disbelieve the evidence of PW2 and PW4 who are at tender age. Before conducting the examination on PW2 and PW4, the trial court has posed several questions to the child witnesses to know whether they are capable of understanding the questions and why they have come to the court. After satisfying that both the victims, namely PW2 and PW4 are capable of understanding the questions, their statements were recorded. The child witnesses had categorically deposed that the accused had committed the crime as stated by the prosecution. The said evidence has been corroborated by PW1, who is the mother of PW2.

15. Apart from these witnesses, PW3 is the grandmother of second victim, PW4. PW6 is the paternal grandmother of PW2. PW7 is the father of PW2 and PW9 and PW10 are the witnesses, who have heard the crime



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committed by the accused, while PW2 and PW4 narrated the incident. The evidence of PW2 and PW4 by itself instils confidence as they are capable of narrating the crime committed by the accused, which has been corroborated by the independent witnesses PW9 and PW10, apart from the relatives whose evidence was not disputed during the cross examination. In the absence of any material to discredit the credentials of the independent witnesses and the relatives of PW2 and PW4, the medical evidence which was marked as Exs.P5 and P6 which states victims were not subjected to any recent forcible sexual intercourse 48 hours prior to the examination, has no relevance.

16. The 164 statement of PW4/K2 was recorded by the learned Judicial Magistrate, wherein, K2 had stated that the accused had tied the hands and mouth of PW1/K1 with clothes. Before the trial court, during her chief examination, K2 had stated that the accused had committed the crime against her as well as against K1. Such factum will not support the case of the accused, in the absence of anything elicited with regard to any contradiction in the statements recorded under Section 164 Cr.P.C. Therefore, there could be no inference in favour of the accused. In view of the same, such defence is a very weak piece of evidence to absolve the charges levelled against the appellant.



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17. It is relevant to note that while examining PW14 who had stated that the accused had attempted to commit rape on PW2/K1 and PW4/K2 while the victims were playing. Ex.P7 and P8, Accident Registers would clearly show that the accused has made an attempt to commit the offence and the same was deposed by the doctor who was examined as PW14. Exs.P5 and P6, the medical report of the victims and the AR report which is the earliest version would only show that the accused had committed the offence. In a case of aggravated penetrative sexual assault as against PW2 and PW4, the fact that the hymen was intact cannot be taken into consideration, as PW2 and PW4, who are the victims, had clearly spoken about the crime committed by the accused.

18. During cross examination of PW4/K2, the second victim had categorically stated that the mouth and hands of K1, the first victim was tied by the accused and this answer was a fall out for a question posed by the accused. In the cross examination, the defence itself has brought out as to how the crime was committed by the accused, which does not warrant corroboration of a medical examination. We are at a loss to understand, when a crime is perpetrated against young victims who are covered under Section 2(d) of the POC-



SO Act and when the evidence of PW2 and PW4 is unshakeable and during cross examination of the second victim, namely PW4, much more clarity was given by PW4 as against PW2/K1.

19. PW15, the doctor, who had conducted examination on the accused to prove the potency of the accused person, has opined in Ex.P9 - medical report as follows:

“There is nothing to suggest that the above mentioned person is incapable of performing sexual act. There is no evidence to say that the person is impotent.”

This medical evidence would show that the accused is potent and the evidence of PW2 and PW4 is supported by other independent witnesses to whom PW2 and PW4 have narrated the incident and who have seen the accused fleeing from the scene of occurrence.

20. This court has to take into consideration Sections 19 and 20 of the POCSO Act, which are extracted thus:

19. Reporting of offences.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) any person (including the child), who has apprehension that an offence under this Act is likely to be committed or has



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knowledge that such an offence has been committed, he shall provide such information to, —

(a) the Special Juvenile Police Unit; or

(b) the local police.

(2) Every report given under sub-section (1) shall be—

(a) ascribed an entry number and recorded in writing;

(b) be read over to the informant;

(c) shall be entered in a book to be kept by the Police Unit.

(3) Where the report under sub-section (1) is given by a child, the same shall be recorded under sub-section (2) in a simple language so that the child understands contents being recorded.

(4) In case contents are being recorded in the language not understood by the child or wherever it is deemed necessary, a translator or an interpreter, having such qualifications, experience and on payment of such fees as may be prescribed, shall be provided to the child if he fails to understand the same.

(5) Where the Special Juvenile Police Unit or local police is satisfied that the child against whom an offence has been committed is in need of care and protection, then, it shall, after recording the reasons in writing, make immediate arrangement to give him such care and protection including admitting the child



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into shelter home or to the nearest hospital within twenty-four hours of the report, as may be prescribed.

(6) The Special Juvenile Police Unit or local police shall, without unnecessary delay but within a period of twenty-four hours, report the matter to the Child Welfare Committee and the Special Court or where no Special Court has been designated, to the Court of Session, including need of the child for care and protection and steps taken in this regard.

(7) No person shall incur any liability, whether civil or criminal, for giving the information in good faith for the purpose of sub-section (1).

20. Obligation of media, studio and photographic facilities to report cases.—Any personnel of the media or hotel or lodge or hospital or club or studio or photographic facilities, by whatever name called, irrespective of the number of persons employed therein, shall, on coming across any material or object which is sexually exploitative of the child (including pornographic, sexually-related or making obscene representation of a child or children) through the use of any medium, shall provide such information to the Special Juvenile Police Unit, or to the local police, as the case may be.

21. It is relevant note that Sections 29 and 30 of POCSO Act deal with presumption, which are extracted hereunder:



29. *Presumption as to certain offences.—Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.*

30. *Presumption of culpable mental state.—(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.*

(2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

Explanation.—In this section, “culpable mental state” includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.



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22. As per explanation to Section 30(1) of the Act, “culpable mental state” includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact. In the present case, apart from committing the crime, the appellant had tied the hands and mouth one of the victims, namely PW2/K1 with cloth, which exhibits and demonstrates the ill intention of the accused and there is no semblance of material placed before this court to dislodge the presumption against the accused. The accused has miserably failed to prove that he has not committed the crime as projected by the prosecution.

23. The POCSO Act is a special enactment to protect the vulnerable children from abuse, misuse and to safeguard the interest of the child victims, who are subjected to sexual assault. The prosecution had proved the case beyond reasonable doubt, and there is no semblance of material for the court to disbelieve the evidence of the victims K1/PW2 and K2/PW4. That apart, evidence of other witnesses, namely PW1, PW3, PW6, PW7, PW9 and PW10 would show that the accused had committed the crime.

24. In the evidence of PW2/K1 and PW4/K2, the victims have categorically stated the overt act of the accused, therefore, there is no reason to



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disbelieve the evidence of PW2 and PW4.

25. In view of the same, we do not find any error or infirmity in the judgment of the learned Sessions (Fast Track Mahila) Judge, Namakkal in Spl.C.C. No.35 of 2016 dated 07.12.2018 and the same deserves confirmation. Accordingly, the criminal appeal fails and the same is dismissed.

[M.S.R., J.] [N.S., J.]
24.06.2025

Asr

Index : Yes

Neutral Citation : Yes

To

1.The Sessions (Fast Track Mahila) Judge, Namakkal

2.The Inspector of Police
Tiruchengode AWPS
Namakkal District
(Crime No.5/2016)

3.The Public Prosecutor, High Court, Madras

Copy to:

The Superintendent of Prisons
Central Prison, Salem



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M.S.RAMESH, J.
and
N.SENTHILKUMAR, J.
Asr

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Dated : 24.06.2025