



Crl.A.No.1266 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.A.No.1266 of 2023
and Crl.M.P.No.17761 of 2023

Murugan
S/o. Kalimuthu
No.42, Jagir Ussain Road,
M.G.R.Nagar,
Chennai – 600 078.

... Appellant

Vs.

The State rep. by
The Inspector of Police,
W-26 All Women Police Station,
Ashok Nagar,
Chennai.

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the judgment imposing sentencing under Section 6 of POCSO Act to undergo Rigorous imprisonment for 20 years with fine of Rs.5,000/- in default to undergo simple imprisonment for one month and sentencing under Section 366 of IPC to undergo imprisonment for five years with fine of Rs.5000/- in default to undergo simple imprisonment for one month against the appellant / accused by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai by order dated 28.09.2022 in Special S.C.No.72 of 2020.



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For Appellant : Mr.R.Muthukumar

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

ORDER

This Criminal Appeal is directed as against the judgment dated 28.09.2022 passed in Special S.C.No.72 of 2020 on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai, thereby convicting the appellant for the offences punishable under Section 366 IPC and Section 6 of the POCSO Act.

2. The case of the prosecution is that on 27.11.2019 at about 04.30p.m. when the minor victim girl went to a shop nearby her house to buy snacks, the appellant called her to his house and kissed her. Thereafter, the appellant had pushed her into the cot and put his mouth on her vagina and committed penile / vaginal penetration on her and threatened her not to disclose it to anybody. The same was enquired by one of the neighbour and informed to the victim's mother. Thereafter, a complaint was lodged and the same has been registered in Cr.No.10/2019 for the offences punishable under Section 365, 366, 506(i) IPC and Section 6 of the POCSO Act.

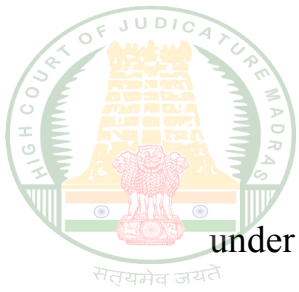


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3. After completion of investigation, final report has been filed and the same has been taken cognizance by the trial Court in Spl.S.C. No.72/2020 on 29.09.2022. The prosecution had examined P.W.1 to P.W.7 and marked Exs.P1 to P12. On the side of the appellant no one was examined and no documents were marked. On perusal of the oral and documentary evidence, the trial Court found the appellant guilty for the offences punishable under Section 366 IPC and Section 6 of the POCSO Act and sentenced him to undergo rigorous imprisonment for 20 years for the offence punishable under Section 6 of the POCSO Act and to undergo five years imprisonment for the offence punishable under Section 366 IPC. Aggrieved by the same the present appeal.

4. The learned counsel for the appellant would submit that the prosecution miserably failed to prove any charges. The alleged occurrence had took place on 27.11.2019 but the complaint was lodged only on 07.12.2019 and the said delay was not at all explained by the prosecution. Therefore, the complaint is only an after thought. In order to wreck vengeance as against the appellant, P.W.5 – neighbour, informed about the alleged occurrence to P.W.1 – mother of the victim and thereafter, she lodged the complaint. The daughter of P.W.5 is a tenant



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under the appellant herein. Therefore there was previous enmity between them and on the instigation of the appellant's tenant's mother, a false complaint has been foisted against the appellant. In fact the victim girl deposed that she did not know P.W.5 and her family. The victim girl did not even whisper anything to P.W.5. P.W.5 misused the victim and induced the mother of the victim to lodge a false complaint. Therefore, the prosecution failed to prove the charges as against the appellant and the entire conviction and sentence imposed by the trial Court is liable to be set aside.

5. Per contra, the learned Additional Public Prosecutor would submit that the victim girl was aged about 10 years on the date of occurrence. When the victim girl went to the shop of the appellant, the appellant called the victim to his house to show a photo album and he locked the door and closed her mouth. Thereafter he had committed bad touch on her and he also removed his dhoti and put his penis into the mouth of the victim. After the victim shouted, the appellant opened the door and warned her not to disclose it to anyone. While the victim was coming outside the appellant's house, P.W.5 was standing there and the victim informed her about the occurrence. The statement of the victim is



clearly corroborated by P.W.5 and P.W.1. Therefore, the prosecution has clearly proved the charge and the trial Court has rightly convicted the appellant and it does not warrant any interference by this Court.

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

7. The victim child was examined as P.W.2. She deposed that while she was proceeding to a petty shop, the appellant called her to his home to show some photo album. Though the victim refused to go with him, the appellant once again called her and as such she went to his house. Thereafter, the appellant locked the door and removed his dhoti and put his penis inside her mouth. After the victim girl shouted, the appellant opened the door and P.W.5 was standing in front of the appellant's house. Therefore, on the date of alleged occurrence P.W.5 was standing outside the house of the appellant.

8. A perusal of deposition of P.W.5 reveals that on the date of occurrence, immediately after coming out from the appellant's house, the victim informed P.W.5 about the sexual harassment by the appellant. However, P.W.5 informed the same to the victim's mother one week



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later. In the cross-examination, P.W.5 categorically admitted that she used to see the victim's mother daily and even then she did not inform the same to her. Further, P.W.5's daughter was a tenant under the appellant. There was a landlord and tenant dispute between the appellant and P.W.5's daughter. In fact she was in arrears of rent. Therefore, there was previous enmity between P.W.5's daughter and the appellant. In order to wreck vengeance as against the appellant, P.W.5 informed to the mother of the victim as if the appellant had committed sexual harassment on the victim child. That apart, the victim girl did not inform anything about the occurrence to P.W.5 on the date of the occurrence.

9. According to the victim, she informed about the alleged occurrence to the P.W.5 only after one week of the occurrence. However she did not whisper the same to her parents. The alleged occurrence was informed only through P.W.5 to the victim's mother. Therefore, only on the instigation of P.W.5, P.W.1 lodged complaint against the appellant. P.W.1 deposed that she did not even know P.W.5. One week after the alleged occurrence, P.W.5 herself came to the victim girl's house and enquired about the mother of the victim. Thereafter only P.W.5 informed about the occurrence to P.W.1.



10. Further, P.W.1 deposed that only on the intervention of P.W.5, the appellant opened the door and the victim was rescued by P.W.5.

However, P.W.5 did not even whisper that she only rescued the victim girl from the house of the appellant. When she was standing outside the appellant's house, the victim girl came out. In fact P.W.5 only informed to the police station and lodged complaint. Apart from P.W.1, P.W.2 and P.W.5, the others are hearsay witnesses and did not support the case of the prosecution. Therefore, the very occurrence itself is doubtful since there was no explanation for the belated complaint.

11. Even according to the case of the prosecution the complaint was lodged after 10 days from the date of alleged occurrence. It is also curious to note that when P.W.5 was standing outside the appellant's house and rescued the victim girl from the hands of the appellant, she would have lodged a complaint on the same day or at least she would have informed the occurrence to the victim's parents. But she did not even whisper to anyone for 10 days and in fact she did not know the victim's parents also.



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12. Admittedly the appellant is the house owner of the daughter of

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Therefore, the prosecution failed to discharge the initial burden to prove the charges and to draw the presumption under Section 29 of the POCSO Act.

13. The alleged occurrence has taken place on 27.11.2019 and the complaint was lodged only on 07.12.2019. The prosecution failed to explain the delay in lodgment of complaint. Normally, the delay is not a concern in the offences punishable under the POCSO Act. But in view of the circumstances under which the alleged occurrence has taken place, the delay in lodgment of complaint is fatal to the case of the prosecution. The contradiction of the evidence of P.W.2 and the statement recorded under Section 164 Cr.P.C., shows that the victim child was tutted and she was used for lodgment of complaint as against the appellant.

14. In view of the above, the prosecution failed to prove any of the charges and the conviction and sentence imposed by the trial Court cannot be sustained and the same is liable to be set aside.



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15. Accordingly the Criminal Appeal is allowed and the judgment dated 28.09.2022 passed in Special S.C.No.72 of 2020 on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai, is hereby set aside. The appellant is set at liberty. Fine amount, if any paid by the accused shall be refunded to him. Bail bond if any executed by the accused shall stand discharged. Connected miscellaneous petition is closed.

26.06.2025

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To

1. The Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai

2. The Inspector of Police,
W-26 All Women Police Station,
Ashok Nagar,
Chennai.

3. The Superintendent,
Central Prison,
Puzhal, Chennai.

4. The Public Prosecutor,
High Court, Madras.

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