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Crl.A.No.1304 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **31.07.2025**

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.A.No.1304 of 2024
and
Crl.M.P.No.14741 of 2024

Udayakumar,
S/o. Kannaiyan

... Appellant

Versus

The State rep. by
The Inspector of Police,
Thondamuthur Police Station,
Coimbatore.
(Crime No.26 of 2020)

... Respondent

PRAYER: Criminal Appeal filed under Section 415 of the Bharatiya Nagarik Suraksha Sanhita, (BNSS), 2023, to call for the records pertaining to Spl.C.C.No.38 of 2021 on the file of the Principal Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore, set aside the order of conviction and sentence dated 21.09.2024 by allowing this appeal.

For Appellant : Mr. K. Samidurai

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

JUDGMENT

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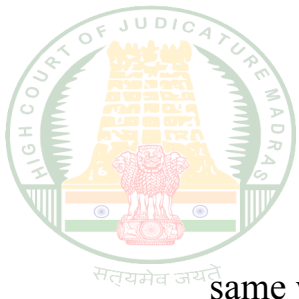
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WEB COPY This Criminal Appeal has been filed against the judgment dated 21.09.2024 in Spl.C.C.No.38 of 2021, passed by the learned Principal Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore, whereby the appellant was convicted for the offences under Sections 6 & 10 of the Protection of Children from Sexual Offences Act, (POCSO), 2012 and Section 506(i) of the Indian Penal Code (IPC), 1860.

2. The case of the prosecution is as follows:

(i) The accused was employed as a teacher in a Government School for the Visually Impaired, at Coimbatore. On 18.11.2019 at about 3:30 P.M., while conducting class, he allegedly called a visually impaired girl student of 5th STD, made her stand and read, and with sexual intention he had kissed her on the cheek, pressed her body and touched her private part.

(ii) Based on the complaint, the respondent registered the First Information Report in Crime No.26 of 2020 for the offences punishable under Sections 6 & 10 of the POCSO Act and Section 506(i) of IPC. After completion of investigation, a final report has been filed and the



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same was taken cognizance by the Trial Court.

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(iii) In order to bring home the charges, on the side of the prosecution, P.W.1 to P.W.17 were examined and documents Ex.P1 to Ex.P19 were marked. Besides, one Court exhibit was marked as Ex.C1. On the side of the accused/defence side, one witness was examined as D.W.1, and one document was marked as Ex.D1.

(iv) Upon appreciation of the oral and documentary evidence, the Trial Court found the appellant guilty for the offences under Sections 6 & 10 of the POCSO Act and Section 506(i) of the IPC, and he was convicted and sentenced as follows:

a) Section 6 of the POCSO Act - 20 years rigorous imprisonment and to pay fine of Rs.10,000/-, in default, to undergo one year simple imprisonment.

b) Section 10 of the POCSO Act - 5 years rigorous imprisonment and to pay fine of Rs.5,000/-, in default of payment of fine, to undergo simple imprisonment of 6 months.

c) Section 506(i) of the IPC - 2 years rigorous imprisonment.

All the sentences were directed to run concurrently. Aggrieved by the same, the appellant has filed the present appeal before this Court.

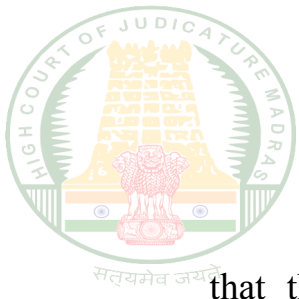


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3. The learned counsel for the appellant contended that there was a huge delay in lodgment of the complaint. The alleged occurrence took place on 18.11.2019, but the complaint was lodged on 07.03.2020. There is absolutely no explanation offered for the enormous delay in lodgment of the complaint on the side of the prosecution. It is to be noted that both the appellant and the victim are 100% visually impaired persons, and the evidence of the victim girl is not at all corroborated with anyone of the evidences, neither oral nor material. The doctor, who examined the victim girl, was examined as P.W.12, who categorically deposed that she did not find any injury on the entire body of the victim girl, and the medical report was marked under Ex.P10. Ex.P10 reveals that there is no possibility of any sexual violence as against the victim girl, and accordingly, the medical evidence did not support the case of the prosecution. Therefore, the prosecution had miserably failed to prove any of the charges against the appellant. Even then, the Trial Court had mechanically convicted the appellant.

4. *Per contra*, the learned Additional Public Prosecutor contended



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that the victim girl was aged about 9 years at the time of alleged occurrence. She was examined as P.W.1. She deposed that the appellant inserted his finger into her private part and thereby committed aggravated sexual assault on her. However, she did not immediately disclose about the occurrence to her parents, since the appellant had threatened her with dire consequences. On 07.03.2020, when the mother of the victim girl/P.W.2 noticed some contusion on her thigh while bathing her, and upon inquiry, the victim girl narrated the incident, therefore, the delay in lodgment of the complaint. Further, he submitted that the delay in lodging the complaint cannot be held as fatal in sexual offence cases, furthermore, this is a special case where the victim girl is visually impaired and she was also threatened by the appellant with dire consequences. The doctor who examined the victim girl, had deposed that she did not find any injury on her entire body, as the victim girl was subjected to medical examination after four months of the said occurrence, and hence, the injuries could not be traced. However, the evidence of the victim girl was clearly corroborated by her parents, and it was thereby proved that the appellant had committed sexual assault on the victim girl, and he had also threatened her with dire consequences. Therefore, the Trial Court rightly



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convicted the appellant and it does not warrant any interference of this Court.

5. Heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the respondent and also perused the materials available on record.

6. Admittedly, the appellant and the victim girl are visually impaired persons. At the time of alleged occurrence that took place on 18.11.2019, the victim was aged about 10 years, studying 5th STD in the appellant's class. The appellant had taken the victim girl into the 4th STD class room at about 3:30 P.M., with an intention to commit sexual assault on her. He had kissed on her cheek and had touched her private part. Though the other students who are partially visually impaired were very well present in the class room at the time of alleged occurrence, none of them were examined. The victim/P.W.1 deposed that she was subjected for sexual assault by the accused/appellant by inserting his finger into her private part and by holding her with hands, and also by threatening her with dire consequences. Her mother/P.W.2 deposed that while bathing the



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victim girl, she noticed some blood contusion on the victim's thigh, after inquiring, the victim girl narrated the entire incident of her being subjected to sexual assault by the appellant. Further, the victim girl stated that she was threatened by the appellant with dire consequences not to disclose the incident to anyone, therefore, she had not revealed the same. Immediately, P.W.2 took the victim girl to the hospital for treatment, and thereafter, P.W.2 went to the respondent's police station, and lodged a complaint. The complaint was lodged only on 07.03.2020 for the occurrence that taken place on 18.11.2019. On receipt of the said complaint, the respondent Police registered a First Information Report in Crime No.26 of 2020, which was marked as Ex.P11. Furthermore, the victim girl was not subjected to medical examination immediately after registration of the First Information Report, and she was only subjected to medical examination on 11.03.2020, before the Doctor/P.W.12. P.W.12 deposed that the victim girl's hymen was intact, and she did not find any injury on her private part or the entire body. Further, the Doctor/P.W.12, categorically deposed that there was no possibility of sexual assault on the victim girl, and accordingly, she issued a medical certificate, which was marked as Ex.P10.



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7. On perusal of Ex.P10, it is revealed that there was no evidence or reasons found in the medical certificate for proving the sexual assault committed on the victim girl, since her hymen was intact and no injuries were found in the entire body of the victim girl. Further, her primary and secondary characteristics are well developed, but she is visually impaired. However, the medical evidence did not support the case of the prosecution. Even assuming that the victim girl was subjected to medical examination belatedly after four months, and even if her deposition is taken into consideration, her hymen would not have remained intact. Further, the mother of the victim, who was examined as P.W.2, did not even explain the delay in lodgment of the complaint. In fact, even if the mother noticed the blood contusion on the victim girl's thigh on 07.03.2020, while the victim was taking bath, there is absolutely no material to establish that the said blood contusion on the thigh was caused by the alleged sexual assault committed by the appellant on 18.11.2019.

8. That apart, on perusal of the deposition of the victim girl, she stated that the alleged occurrence took place approximately two weeks



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after her birthday. Immediately, thereafter, her parents visited the school, however, the victim did not disclose anything about the alleged occurrence either to her parents, to any of the other students, or to the teachers in the school.

9. Admittedly, on the side of the appellant, the mother-in-law of the accused was examined as D.W.1. She deposed that the appellant was taken to the school and was arrested from the school, whereas the prosecution case was that he was arrested at his house. In fact, the appellant was called by his Headmaster on the date of arrest, who was examined as P.W.5, and the appellant was immediately brought to the school by D.W.1 and two others. The Headmaster did not even whisper anything about the alleged occurrence, and the appellant was taken from the school to the Police Station. He was not even informed about the grounds for arrest. Even the appellant in his statement, recorded under Section 313 Cr.P.C., has stated that he was falsely implicated as an accused for not committing any offence as alleged by the prosecution. This Court is of the opinion that the appellant was made an accused in this case for the reasons best known to them. The cumulative effect of the



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above creates serious doubts about the prosecution case.

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10. In the absence of corroborative evidence, coupled with contradictions regarding the arrest, and considering the overall circumstances of the case, the prosecution has failed to prove the charges against the appellant beyond reasonable doubt. As such, the benefit of doubt caused in favour of the appellant. Therefore, this Court is inclined to set aside the order passed by the Trial Court.

11. In criminal jurisprudence, the burden is always on the prosecution to prove its case beyond reasonable doubt. When two views are possible and the one favourable to the accused is equally plausible, the benefit of doubt must necessarily go to the accused. In the present case, the prosecution has failed to discharge its burden convincingly, and the Trial Court failed to properly appreciate the infirmities in the prosecution case. Therefore, the conviction and sentence awarded by the Trial Court in respect of all the charges against the appellant cannot be sustained and are liable to be set aside.



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12. In view of the above, the judgment dated 21.09.2024 passed in Spl.C.C.No.38 of 2021, by the learned Principal Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore, is hereby set aside. The appellant/accused is acquitted of all charges under Sections 6 & 10 of the Protection of Children from Sexual Offences Act, (POCSO), 2012 and Section 506(i) of IPC, 1860.

13. The appellant/accused is directed to be set at liberty forthwith, unless his custody is otherwise required in connection with any other case. The fine amount, if any paid, shall be refunded to the appellant forthwith. The bail bond, if any executed, shall stand cancelled.

14. In the result, this Criminal Appeal stands allowed.

31.07.2025

Index : Yes/No
Speaking/Non-Speaking Order
Neutral Case Citation : Yes/No

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- To
- 1.The Principal Special Court for Exclusive Trial of Cases
under POCSO Act, Coimbatore.
 - 2.The Inspector of Police,
Thondamuthur Police Station, Coimbatore.
 - 3.The Superintendent of Police,
Central Prison, Coimbatore.
 - 4.The Public Prosecutor,
High Court, Madras.



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G.K.ILANTHIRAIYAN, J.

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