



Crl.A.No.155 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2025

CORAM:

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

Crl.A.No.155 of 2023

G.Loganathan

... Appellant

Vs.

1. The State rep. by.,
The Inspector of Police,
AWPS – Kangeyam Police Station,
Tiruppur District.
Crime No.16/2020

2. Rajeswari
(R2 impleaded as per order dated
27.07.2023 in Crl.M.P.No.10916
of 2023 in Crl.A.No.155 of 2023)

... Respondents

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the judgment and conviction passed in Spl.S.C.No.12/2021 dated 12.09.2022 on the file of the learned Sessions Judge, Magalir Neethimandram, Fast Tract Mahila Court of Tiruppur and allowing the appeal throughout by acquitting the appellant.

For Appellant : Mr.Philip Ravindran Jesudoss
For Respondents : Mr.S.Rajakumar
Additional Public Prosecutor



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JUDGMENT

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This Criminal Appeal has been filed as against the order dated 12.09.2022, passed by the learned Sessions Judge, Magalir Neethimandram, Fast Tract Mahila Court, Tiruppur, in Spl. S.C.No.12 of 2021, thereby convicted the appellant for the offence punishable under Section 9(m) r/w 10 (2 counts), 11(i) r/w 12 (2 counts) of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as “the POCSO Act”) and Section 506(ii) (2 counts) of IPC.

2. The case of the prosecution is that on 27.10.2020 at about 2.00 p.m., when both the victims were playing outside their house, the accused with intention to cause sexual harassment, invited them to his house. Thereafter, the first victim was called to his bedroom and the accused had removed his dress and had shown his private part to the first victim. She was asked to hold and shake the same. Thereafter, he called the second victim and asked him to do the same. He also offered money for the same. He further threatened the victims not to disclose it to anybody. On the complaint, the respondent registered the FIR in Crime No.16 of 2020 for the offences punishable under Section 9(m), 10 of the POCSO Act and Section 506(ii) of IPC. After completion of

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investigation, they filed final report and the same was taken cognizance
in Spl. S.C.No.12 of 2021.

3. On the side of the prosecution, they had examined P.W.1 to P.W.8 and marked documents in Ex.P.1 to Ex.P.15. On the side of the accused no one was examined and no documents were marked. On perusal of the oral and documentary evidences, the trial Court convicted the accused for the offences punishable under Sections 9(m) r/w 10 (2 counts), 11(i) r/w 12 (2 counts) of the POCSO Act and Section 506(ii) (2 counts) of IPC and sentenced him as follows :-

S.No.	Conviction	Sentence
1	Sections 9(m) r/w 10 (2 counts) of the POCSO Act	to undergo rigorous imprisonment for a period of five years for each count and to pay fine of Rs.5,000/-, in default to undergo simple imprisonment for six months.
2	Sections 11(i) r/w Section 12 (2 count) of the POCSO Act	to undergo rigorous imprisonment for a period of three years for each count and to pay fine of Rs.1,000/-, in default to undergo simple imprisonment for six months.
3	Section 506(ii) (2 counts) of IPC	to undergo rigorous imprisonment for a period of two years for each count and to pay fine of Rs.1,000/-, in default to undergo simple imprisonment for six months.

The above sentences are ordered to run concurrently. Aggrieved by the same, the present appeal.



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4. The learned counsel appearing for the appellant submitted that even according to the case of the prosecution, no offence is made out under Section 9(m) r/w 10 of the POCSO Act. The alleged act attracts the offence under Section 11(i) r/w Section 12 of the POCSO Act. The victims are examined as P.W.1 & P.W.2 and there are contradictions to each other. Those contradictions are fatal to the case of the prosecution. Further, both the evidences are unbelievable and liable to be eschewed. While seeing the evidence in Ex.P.2 and Ex.P.4 together with the deposition of P.W.1 and P.W.2 exposes the falsity of the entire case of the prosecution. Further P.W.3 is an interested witnesses and as such it is unbelievable one. Due to previous enmity between the appellant and the defacto complainant, false complaint has been foisted as against the appellant.

5. Per contra, the learned Additional Public Prosecutor appearing for the respondent police submitted that both the victims were examined as P.W.1 & P.W.2 and they categorically deposed the case of the prosecution and proved the charges. P.W.1 & P.W.2 deposed cogently and they were asked to do sexual favours to the appellant. It

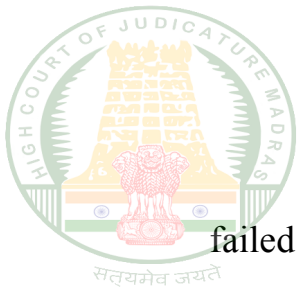


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was duly informed to P.W.3 and the complaint was lodged. The compliant is marked as Ex.P.5. The FIR was marked as Ex.P.8. In order to prove the age of the victims the birth certificates of both the victims were marked as Ex.P.1 and Ex.P.3. They also made statements under Section 164 of Cr.P.C., before the Judicial Officer and the same were marked as Ex.P.2 and Ex.P.4. Further, both the victims belong to SC community and as such all the charges were categorically proved by the prosecution and the interference of this Court is not warranted.

6. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

7. The mother of the first victim lodged complaint. She lodged complaint on 01.11.2020, which was marked as Ex.P.5. According to the complaint, the alleged occurrence had taken place on 27.10.2020 at about 2.00 p.m., when the victims were playing in front of the accused's house, the accused had called the victims to his house one by one. Thereafter, he had shown his private part and asked them to hold it and shake it. The first victim was examined as P.W.1. She deposed that she was playing with P.W.2 and one Surya and Kamalesh. However, the prosecution



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failed to examine the other children who were playing along with P.W.1 and P.W.2. According to P.W.1, she was asked by the appellant to hold and shake his private part. The second victim was examined as P.W.2. He also deposed that he was asked to do the same by the accused. Both the victims did not whisper that whether they had done as directed by the accused. But from their evidences, it is clear that the accused had shown his private part to them.

8. Further the alleged occurrence had taken place on 27.10.2020. However, both the victims did not even whisper about the incident to their parents. However, on 01.11.2020, the first victim, on seeing the accused, informed about the sexual act committed by the accused on 27.10.2020 to her mother and then the complaint was lodged on 01.11.2020. There was no explanation for the delay in lodgment of complaint. The complainant was examined as P.W.3. During the cross-examination, the appellant had put a suggestion that there has been previous enmity between both the families as the victims used to play in front of his house and make noise. When it was questioned by the appellant, there was a quarrel between both the families, due to which false complaint has been foisted as against the appellant. Further the



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victim categorically deposed that the accused had shown his private part to them. Therefore, the prosecution proved the charge under Section 11(i) of the POCSO Act. But the prosecution failed to prove the charge under Section 9(m) r/w. 10 of the POCSO Act. Hence the conviction and sentence imposed for the offence under Section 9(m) r/w.10 of the POCSO Act cannot be sustained and is liable to be set aside.

9. Accordingly, the conviction and sentence imposed on the appellant in the judgment dated 12.09.2022, passed by the learned Sessions Judge, Magalir Neethimandram, Fast Tract Mahila Court, Tiruppur, in Spl.S.C.No.12 of 2021, for the offence punishable under Section 9(m) r/w 10 (2 counts) of the POCSO Act is hereby set aside. However, the conviction and sentence for the offence punishable under Section 11(i) r/w 12 (2 counts) of the POCSO Act and Section 506(ii) (2 counts) of IPC are hereby confirmed. The first respondent is directed to secure the appellant to undergo remaining period of sentence, if any, for the offence punishable under Section 11(i) r/w 12 (2 counts) of the POCSO Act and Section 506(ii) (2 counts) of IPC.



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WEB COPY 10. Accordingly, the Criminal Appeal stands partly allowed.

20.06.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order

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- To
1. The Sessions Judge,
Magalir Neethimandram,
Fast Tract Mahila Court
Tiruppur.
 2. The Inspector of Police,
AWPS – Kangeyam Police Station,
Tiruppur District.
 3. The Public Prosecutor,
Madras High Court,
Chennai.



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G.K.ILANTHIRAIYAN, J.
rts

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