



Crl.A.No.46 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.46 of 2023

Desingu

... Appellant

Vs

1. The Deputy Superintendent of Police,
Porto Novo, Cuddalore.

2. The State Rep By Its,
The Inspector of Police,
Parangipettai Police Station,
Buvanagiri Taluk,
Cuddalore District.
Cr.No.170 of 2019.

3. Xxxx,
Xxxx, Cuddalore.

...Respondents

PRAYER : Criminal Appeal has been filed under Section 374(2) of Criminal Procedure Code, to call for the entire records and set aside the order passed in Special S.C.No.5 of 2020 on the file of the Spl.Court (POCSO cases), Cuddalore, dated 18.03.2022.

For Appellant : Mr.M.Karthik, legal aid counsel
For R1 and R2 : Mr.S.Raja Kumar
Additional Public Prosecutor

JUDGMENT



Crl.A.No.46 of 2023

This Criminal Appeal has been filed as against the order passed in

WEB COPY Special S.C.No.5 of 2020 dated 18.03.2022, on the file of the Special Court (POCSO cases), Cuddalore, thereby convicting the appellant for the offences punishable under Sections 5(m) and 6 of POCSO Act, Sections 3(1)(r), 3(1)(w)(i), 3(2)(v) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2012.

2. The case of the prosecution is that on 12.12.2019, when the minor girl, aged about 3 years was playing in front of her house, the accused allegedly taken her to his house and touched her genitalia and inserted his fingers into her genitalia. Therefore, the victim girl suffered pain during her natural calls. It was informed to her grand mother and thereafter, it was informed to the mother of the victim. Hence, the complaint.

3. On receipt of the complaint, the second respondent registered FIR in Crime No.170 of 2019 for the offences punishable under Sections 5(m) and 6 of POCSO Act, Sections 3(1)(r), 3(1)(w)(i), 3(2)(v) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2012. After completion of investigation, filed final report and the same has been taken cognizance by the Trial Court in Special S.C.No.5 of 2020.



Crl.A.No.46 of 2023

WEB COPY

4. On the side of the prosecution, they had examined PWs.1 to 14 and marked Exs.P1 to P24 and also produced M.O.1. On the side of the accused, no one was examined and no document was marked. On perusal of oral and documentary evidences, the Trial Court found the appellant guilty for the offences punishable under Sections 5(m) and 6 of POCSO Act and sentenced him to undergo 20 years rigorous imprisonment and to pay a fine of Rs.2000/-, in default to undergo three months simple imprisonment and for the offence punishable under Section 3(1)(w)(i), of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2012, sentenced him to undergo two years rigorous imprisonment and to pay a fine of Rs.2000/-, in default to undergo three months simple imprisonment. The appellant was acquitted for the offences under Sections 3(1)(r), 3(2)(v) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2012

5. The learned counsel for the appellant would submit that the prosecution failed to prove the offences under Sections 5(m) and 6 of POCSO Act. The Trial Court convicted the appellant only on the basis of circumstantial evidence. Though the victim girl deposed that the appellant inserted his finger into her genitalia, it was not corroborated by the evidence of the Doctor. The



Crl.A.No.46 of 2023

Doctor, who examined the victim was examined as PW.8. On examination of the victim, PW.8 found no injury on the private part of the victim and her hymen was intact. Therefore, the prosecution has miserably failed to prove any of the charges. In fact, though the respondent filed a final report for the charges under SC/ST (Prevention of Atrocities) Act, the Trial Court acquitted the appellant for the offences under Sections 3(1)(r), 3(2)(v) of SC/ST (Prevention of Atrocities) Act.

6. Per contra, the learned Additional Public Prosecutor submitted that the victim was examined as PW.1, her mother was examined as PW.2, the her father was examined as PW.3 and her grand mother was examined as PW.4. All the evidences corroborates each other and clearly proved the charges. Therefore, the Trial Court had rightly convicted the appellant and it does not warrant any interference by this Court.

7. Heard the learned counsel for the appellant and the learned Additional Public Prosecutor for the respondents 1 and 2 and perused the materials available on record.



Crl.A.No.46 of 2023

8. A perusal of records revealed that the victim was examined as

WEB COPY PW.1. PW.1 deposed that while she was playing in front of her house, the appellant had took her into his house and touched her private part. However, she did not depose that he inserted his finger into her genitalia. She informed to her grand mother. The grand mother of the victim was examined as PW.4. However, PW.4 deposed that the appellant had taken the victim and inserted his finger into her genitalia. Immediately, the victim was taken to the hospital. The Doctor, who examined the victim was examined as PW.8. PW.8 stated that on medical examination, the victim had not sustained any injury sustained to her private part, nor was there any lacerated wound. She further stated that the victim's hymen was intact.

9. The Accident Register and the medical report was marked as Ex.P9. Ex.P9 revealed as follows:-

“ Opinion:

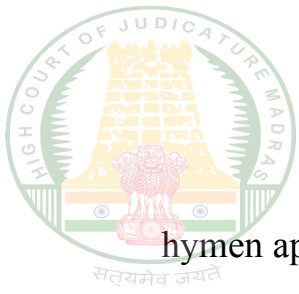
I am of the opinion that after careful examination of above victim

(1) There is possibility of inserting finger in genitalia with history.

(2) No e/o of injuries in genitalia.

(3) No evidence of violence marks, injuries all over body.”

10. To the contrary, PW.8, in her cross examination deposed that the



Crl.A.No.46 of 2023

hymen appeared intact and that there was no possibility of inserting finger in the genitalia. However, she opined in the medical report that there was a possibility of inserting finger in the genitalia. Therefore, the prosecution failed to prove the offences under Sections 5(m) and 6 of POCSO Act beyond any reasonable doubt. However, as per the evidence of PW.1, viz., the victim girl, the appellant had touched her private part. Therefore, the prosecution has made out a case of the offence punishable under Sections 7 and 8 of the POCSO Act.

11. In view of the above, the conviction and sentence imposed on the appellant under Sections 5(m) and 6 of POCSO Act, in Special S.C.No.5 of 2020 dated 18.03.2022, on the file of the Special Court (POCSO cases), Cuddalore, is hereby modified. The appellant is convicted for the offences under Sections 7 read with 8 of POCSO Act and the sentence imposed on him is modified to the period of incarceration which was already undergone by the appellant. So far, the petitioner is incarcerated from the date of Judgment viz., 18.03.2022 till today. Therefore, the appellant 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 by the appellant shall be refunded. Bail bond, if any, executed by the appellant shall stand cancelled.



Crl.A.No.46 of 2023

12. With the above modification, this Criminal Appeal stands partly

WEB COPY allowed.

26.06.2025

Speaking order/Non-speaking order

Index : Yes/No

Internet : Yes/No

mn



WEB COPY



Crl.A.No.46 of 2023

G.K.ILANTHIRAIYAN, J.

mn

To

1. The Special Court (POCSO cases),
Cuddalore.
2. The Deputy Superintendent of Police,
Porto Novo, Cuddalore.
3. The Inspector of Police,
Parangipettai Police Station,
Buvanagiri Taluk,
Cuddalore District.
4. The Superintendent of Prison,
Central Prison,
Cuddalore.
5. The Public Prosecutor,
High Court, Madras.

Crl.A.No.46 of 2023

26.06.2025