



Crl.A.No.4 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08-01-2025

CORAM :

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.4 of 2023

Sathiyaraj

...

Appellant/Accused

vs.

The Inspector of Police,
Nellikuppam Police Station,
Cuddalore
(Crime No.1433/2020)

...

Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, 1973, to call for the entire records in Spl.S.C.No.22 of 2021 on the file of the learned Special Court for Exclusive Trial of Cases under POCSO Act, Cuddalore and set aside the Judgment dated 30.08.2022 made in Spl.S.C.No.22 of 2021.

For Appellant : Mr.P.Muthamizh Selvakumar
For Respondent : Dr.C.E.Pratap,
Govt. Advocate (crl.side)

JUDGMENT

This Criminal Appeal has been filed by appellant challenging the



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conviction and sentence imposed upon him vide judgment dated 30.08.2022 made in Spl.S.C.No.22 of 2021 by the learned Special Judge for Exclusive Trial of Cases under POCSO Act, Cuddalore

2(i) It is the case of the prosecution that the victim girl was aged 15 years at the time of occurrence; that the appellant and the victim were known to each other and had a love affair ; that the father of PW1, coming to the know of the love affair, had reprimanded the victim and beaten her; that on 24.08.2020, at about 1.00 p.m., the appellant is said to have told the victim that he would take her to his friend's house and accordingly, asked her to come out of her house and that, on 25.08.2020 at 3.00 a.m., the appellant took the victim to his friend's house and thereafter had sexual intercourse with her.

2(ii) PW2 - the father of the victim, on coming to know that her daughter was missing, had lodged a complaint Ex.P3 which was registered in Crime No.1433 of 2020 for “girl missing”. PW12 – registered the FIR and conducted the investigation. The victim was traced on 25.08.2020 by



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the respondent and on further investigation, the respondent came to know that the appellant had committed the offence under Section 366 & Section 4 of POCSO Act and hence the alteration report (Ex.P14) was filed by the respondent, altering the offences to Section 366 IPC and Section 3 r/w 4 of POCSO Act. PW14, thereafter took up the investigation. The statement of the victim under 164 Cr.P.C (Ex.P1) was recorded by the learned Judicial Magistrate No.I, Panruti on 08.10.2020. PW14, after subjecting the victim and the appellant to medical examination, had handed over the investigation to PW16 who filed the final report for the offence under Sections 366 and 3 r/w 4 of POCSO Act. The prosecution had examined sixteen witnesses and marked Exs.P1 to P15. The accused examined DW1.

2(iii) The trial court, after considering the oral and documentary evidence held that the prosecution had not established the offence under Section 4 of POCSO Act. However, it convicted the appellant for the offence under Section 7 r/w 8 of POCSO Act and Section 366 IPC and imposed the following sentence -



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<i>Offence under Section</i>	<i>Sentence imposed</i>
366 IPC	To undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for three months.
7 and 8 of POCSO Act	To undergo rigorous imprisonment for five years and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for three months.

Hence, the appellant has preferred the present appeal challenging the said conviction and sentence.

3. The learned counsel for the appellant submitted that the evidence of the victim - PW1 does not inspire confidence; that the victim's version even with regard to the offence under Section 7 r/w 8 of POCSO Act cannot be believed; that she was treated hostile by the prosecution; that her version that the appellant took her to his friend's house at Uraiyur cannot be believed as she had made contradictory statements at different stages and hence the trial court ought not to have convicted the appellant for the offence under Section 7 r/w 8 of POCSO Act and prayed for acquittal of the appellant.



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4. The learned Government Advocate (Crl.side), per contra would submit that the trial court was right in convicting the appellant for the offence under Section 7 & 8 of the POCSO Act since the victim's evidence with regard to the inappropriate touch by the appellant is corroborated by the evidence of PW3-mother of the victim and since nothing adverse had been elicited in the cross examination of these two witnesses, their testimony has to be accepted.

5. Heard the learned counsel for the appellant as well as the learned Government Advocate (crl.side) and perused the records.

6. As stated earlier, the prosecution had examined 16 witnesses. PW1 is the victim, PW2 - the father of the victim would speak about the fact that the victim was missing from 25.08.2020 to 26.08.2020 afternoon and about his lodging the complaint. PW3 who is the mother of the victim corroborates the evidence of PW1 and PW2. PW4 & PW5 are the neighbours who corroborate the evidence of the victim and her parents as



regards the fact that she went missing on 25.08.2020. PW6 is the brother of the victim. PW7 is the neighbour who signed as a witness in the observation mahazar and the rough sketch. PW8 to PW10 are the constables who assisted the investigating officer. PW11 is the Head Mistress of the School in which the victim studied and had issued school certificate – Ex.P7, admission register - Ex.P8 and transfer certificate - Ex.P9 to prove the date of birth of the victim. PW12 is the Sub-Inspector of Police who registered the FIR. PW13 is the doctor who examined the appellant and issued potency certificate. PW14 is the Inspector of Police who had conducted investigation; PW15 is the doctor who had examined the victim and had issued Ex.P13. PW16 is the Inspector of Police, who had filed the final report.

7. From the list of witnesses referred to above, it could be seen that PW1, PW3 & PW6 corroborate the evidence of PW1, the victim as regards the prosecution case that the victim was taken by the appellant to his friend's place. As stated earlier, PW2 the father of the victim had lodged a complaint and FIR was registered which was marked as Ex.P10 for “girl



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missing”. PW4 & PW5, the neighbours of the victim also had supported the prosecution case that the victim went missing from the house on 25.08.2020 at 5.00 a.m. Nothing has been elicited in the cross examination to disbelieve the evidence of these witnesses. Therefore, this court is of the view that the prosecution had, by clear and cogent evidence of the witnesses, including that of the victim had established the offence under Section 366 IPC.

8. As regards the occurrence said to have taken place at the house of the appellant's friend, it is the prosecution case that the appellant had sexual intercourse with the victim. However, the victim had not supported the prosecution case as regards the alleged sexual intercourse. However she deposed that the appellant hugged and kissed her. Even in the statement made under 164 Cr.P.C., before the learned Judicial Magistrate, there is no reference to the alleged hugging and kissing by the appellant. Further, since the victim did not support the prosecution case fully, she was treated hostile. The evidence of other witnesses as regards the alleged acts of the appellant in his friend's house, is only hearsay. Therefore, this court is left only with



the evidence of the victim as regards the offence under Section 7 r/w 8 of POCSO Act. In the light of the contradictions that had been pointed out, it would be highly unsafe to convict the appellant on the sole testimony of the victim for the offence under Section 7 r/w 8 of POCSO Act. Therefore, this court is of the view that the prosecution has not established the offence under Section 7 r/w 8 of POCSO Act beyond reasonable doubt. Hence, the appellant is acquitted of the said offence.

9. It is the admitted case that the appellant and the victim had a love affair. It is also an admitted case that the victim was reprimanded by her father and beaten up by him before the occurrence for continuing her relationship with the appellant. In the light of the said circumstances and considering the age of the appellant, this court is of the view that it would subserve the interest of justice, if the appellant is sentenced to **three years** rigorous imprisonment for the offence under Section 366 IPC and to pay a fine of Rs.1,000/- and in default to undergo three months simple imprisonment.



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10. With the above observations, this **Criminal Appeal is Partly Allowed** and the judgment dated 30.08.2022 made in in Spl.S.C.No.22 of 2021 on the file of learned Special Court for Exclusive Trial of Cases under POCSO Act, Cuddalore is modified to the effect that the appellant is convicted for the offence u/s 366 IPC and sentenced to undergo **Three years** Rigorous Imprisonment and to pay a fine of Rs.1,000/- and in default to undergo three months simple imprisonment. The period of incarceration already undergone by the appellant shall be set off. The appellant is granted three (3) weeks time, from the date of receipt of a copy of this order, to surrender before the learned Special Judge to serve the remaining period of sentence.

08.01.2025

Index : yes/no
Neutral citation : yes/no
Speaking/Non-speaking order
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SUNDER MOHAN,J.

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Copy to:

1.The Special Court for Exclusive Trial
of Cases under POCSO Act,
Cuddalore.

2.The Inspector of Police,
Nellikuppam Police Station,
Cuddalore

3. The Superintendent of Prison,
Central Prison,
Cuddalore.

4.The Public Prosecutor
High Court, Madras

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