

CrI.A(MD)No.548 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 03.06.2025

CORAM:

THE HON'BLE MS.JUSTICE R.N.MANJULA

CrI.A(MD)No.548 of 2025
and CrI.M.P(MD) No.6330 of 2025

E.Anthony

... Appellant

Vs

The State of Tamil Nadu,
Rep by the Inspector of Police,
All Women Police Station,
Nanguneri,
Tirunelveli District.
Crime No.09 of 2017.

... Respondent

Prayer: This Criminal Appeal Case filed under Section 374 of Cr.P.C to call for records relating to the Judgment in Spl.S.C.No.39 of 2019, dated 27.03.2025 on the file of learned Sessions Judge, Special Court for POCSO Act Cases, Tirunelveli and set aside the same and allow this appeal.

For Appellant : Mr.S.Vijayakumar

For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor



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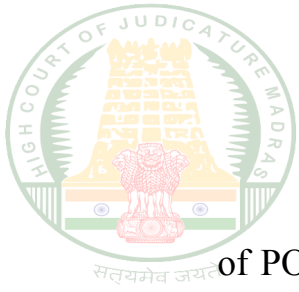
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JUDGMENT

The present appeal has been filed challenging the Judgment of learned Sessions Judge, Special Court for exclusive trial of cases under POCSO Act, Tirunelveli, dated 27.03.2025 made in S.C.No.39 of 2019. The appellant is the sole accused.

2. The case of the prosecution as it appears from the records is that on 11.09.2017 at about 02.00p.m., the accused entered into the house of victim and lifted his Dhoti and asked the victim to touch his penis and the victim refused to do so. The same was witnessed by the mother of victim and she entered a quarrel with the accused. At that time, the accused showed knife and tried to attack the mother of victim. The mother of victim pulled the knife from the accused and she got injured.

3. On receiving the complaint from the mother of victim, a case in Cr.No.9 of 2017 has been registered on 19.09.2017. After completing the investigation, charge sheet has been filed against the accused under Sections Sections 451, 506(ii) IPC and Section 11 r/w 12



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of POCSO Act. After taking cognizance of the charge sheet, copies were furnished to the accused and charges were framed against the accused under Sections 451, 506(ii) IPC and Section 11 r/w 12 of POCSO Act and questioned him. As the accused denied the offence and claimed to be tried, trial was conducted.

4. On the side of prosecution, 12 witnesses were examined as PW1 to PW12 and Ex.P.1 to Ex.P.19 and M.O.1 were marked. When the accused was questioned with regard to the circumstances appearing in evidence against him under Section 313(1)(b) of the Code of Criminal Procedure, for which the accused prayed for mercy. No witness was examined on the side of the accused.

5. After observing the legal mandates consequent to the completion of trial and hearing both sides and appreciating the evidence on record, the trial Court has found the accused not guilty for the offence under Section 506(ii) IPC and found him guilty for the offence under Section 11 r/w 12 of POCSO Act along with Section 451 IPC.



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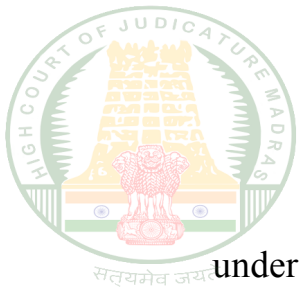
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6. The learned trial Judge has convicted and sentenced the accused by imposing the following punishment:

- Undergo rigorous imprisonment for a period of 3 years and to pay a fine of Rs.3,000/- in default to undergo rigorous imprisonment for a period of 6 months, for the offence under Section 11 r/w 12 of POCSO Act;
- Undergo rigorous imprisonment for a period of 1 month and to pay a fine of Rs.2,000/- in default to undergo rigorous imprisonment for a period of 1 month, for the offence Under Section 451 IPC;
- Both the sentence period shall run concurrently, and
- The remand period already undergone is ordered to be set off under Section 428 of Cr.P.C.

7. Aggrieved over that, the appellant/accused has preferred this appeal.

8. The learned counsel for the appellant submitted that the victim child is physically and mentally challenged child and her statement



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under Section 164 of Cr.P.C was not recorded with the assistance of special educator. He further submitted that there was some motive between the mother of victim and the accused and hence a false complaint was given against the accused.

9. Per contra, the learned Additional Public Prosecutor appearing for the respondent police categorical in his contention that the trial Judge, after viewing the oral and documentary evidence in a right perspective, convicted the accused and therefore, no interference is warranted by this Court.

10. I have given my anxious consideration to the submissions made on either side and carefully perused the records.

11. With regard to the recording the statement of victim child either while obtaining under Section 164 Cr.P.C., or by recording it as evidence before the Court, the Court needs to follow the special provision under Section 26(3) of POCSO Act. The said provision states that ***if the child is having mental or physical disability, the Court shall seek the***



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assistance of a special educator or any person familiar with the manner of communication of the child or an expert in that field.

12. As a mother could understand the language spoken by the child, the Court did not find any necessity to engage special educator to assist the child. Even during the cross examination of investigation officer, the accused did not state that he was aggrieved due to the manner in which, the evidence of the child was recorded before the Court. It is not the contention of the appellant that the victim child could not understand what had happened to her or she was totally incapable of making any communication either by words or by gesture. Even during the evidence of PW1/mother of victim, she has also admitted that her daughter has some physical disability, but she can understand what her mother would speak to her. Hence, it cannot be said that Section 26(3) has not been complied.

13. The sexual offence would rarely have eye witness. In the instant case, the mother of victim girl had seen the occurrence and she has shouted at the accused.



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14. The learned trial Judge while examining the child regarding the question as to whether the child can understand what is true and what is false, the child is found to be knowing the difference. However, she could not pronounce the words clearly and that caused difficulty in allowing her to speak about the occurrence without the assistance of her mother. As her mother could understand the language spoken by the child, she assisted while recording the evidence of victim child. Hence, the trial Judge has recorded in the evidence that section 26(3) of POCSO Act has been complied.

15. The investigation officer, who was examined as PW12 has stated in his chief examination that the child was examined by putting questions and she could understand the questions and tried to say her answers slowly and she was enquired in the presence of her mother. While cross-examining the investigation officer, it was not suggested by the accused that the mentally retarded child could not understand the events occurred around her and that she could not express the same to anyone including her mother and the Court.



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16. The motive attributed by the accused against the complainant/PW1 is that there was some money transaction between PW1 and the accused and when the accused demanded the money, he was attacked and implicated in this case falsely. During cross examination of PW1, it was suggested to her that PW1 tried to purchase the house-site of the accused and he refused to sell the same to PW1 and so, PW1 had developed the motive. PW1 has answered that she was residing in a rental house and she has no wherewithal to purchase a house-site from the accused. The next suggestion put to PW1 was that PW1 has availed a loan of Rs.6,000/- from the accused and that was not repaid. Even for that, PW1 has answered that she had sold her goat and raised money and repaid the loan to the accused.

17. At one point, it was suggested by the accused that PW1 has intended to purchase the house-site of accused and at an another instance, he is told that PW1 has availed a loan of Rs.6,000/-. The above suggestions made by the accused could not demolish the evidence of PW1, who has witnessed the occurrence.



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18. The evidence of PW1, who is the complainant and mother of victim along with the evidence of victim PW2 and other witnesses examined on the side of prosecution were reliable and strong enough to prove the guilt against the accused in respect of the charges framed against him.

19. The learned trial Judge has rightly appreciated the evidence on records in a holistic manner and recorded the reasons for arriving at a conclusion that the accused is found guilty for the offence under Section 11 r/w 12 of POCSO Act and 451 of IPC. It is further observed in the Judgment that the victim child is already vulnerable in view of her physical incapacity and the accused had taken advantage of the same and entered into the house of victim child and harassed her. The essential elements of Section 11 of POCSO Act have been proved to be present in order to punish the accused under Section 12 of the POCSO Act.



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20. In view of the above discussions, I do not find any

grounds made out for hearing under Section 385 of Cr.P.C.

21. In the result,

- *this Criminal Appeal stands dismissed.*
- *The Judgment of learned Sessions Judge, Special Court for exclusive trial of cases under POCSO Act, Tirunelveli, dated 27.03.2025 in S.C.No.39 of 2019, is confirmed.*
- *The trial Court is directed to take the accused into custody for serving the remaining portion of the sentence.*
- Consequently connected miscellaneous petition is closed.

03.06.2025

NCC :Yes/No
Index :Yes/No
Internet:Yes/No
PNM



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To

1. The Sessions Judge,
Special Court for POCSO Act Cases, Tirunelveli

2. The Inspector of Police,
All Women Police Station,
Nanguneri, Tirunelveli District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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R.N.MANJULA,J.

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JUDGMENT IN

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