



Crl.A(MD)No.1084 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.12.2025

CORAM:

**THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA**

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Ajithkumar
(Now detained at
Central Prison, Trichy)

... Appellant/Sole Accused

Vs.

State through by
The Inspector of Police,
All Women Police Station,
Aranthangi,
Pudukottai District.
(In Crime No.3 of 2020)

... Respondent/Complainant

PRAYER:- Criminal Appeal is filed under Section 415(2) of B.N.S.S, 2023, to call for the records and set aside the order of conviction and sentence passed in Spl.S.C.No.14 of 2020, dated 12.11.2021 on the file of the learned Sessions Judge, Mahila Court, Pudukottai and allow this appeal and acquit the appellant/accused from the charge leveled against him.



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For Appellant : Mr.B.Thangamani
For Respondent : Mr.R.M.Anbunithi
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered by G.K.ILANTHIRAIYAN, J.)

This appeal is directed as against the Judgment passed in Spl.S.C.No.14 of 2020, on the file of the learned Sessions Judge, Mahila Court, Pudukottai, dated 12.11.2021, thereby convicting the appellant for the offence punishable under Section 6(1) of the Protection of Children from Sexual Offences Act, 2012 (in short hereinafter referred to as 'the POCSO Act') and sentencing him to undergo imprisonment for life and imposing a fine of Rs.35,000/-, in default, to undergo one year Simple Imprisonment and further convicting the appellant for the offence punishable under Section 341 IPC and sentencing him to undergo one month simple imprisonment.

2.The case of the prosecution was that the victim child was aged about 10 years, who is the daughter of the defacto complainant/ P.W.1. On 02.02.2020 morning at about 08.00 a.m., P.W.1's brother Manikandan was



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working in the fields and at that time, her elder daughter, who is the victim child aged about 10 years, younger daughter and her sister's daughter had gone to the fields to give to him water and the field was close to the house P.W.1 at a walkable distance. While they were returning home, they had gone for nature calls in the fields of Chidhambaram, and at that time the accused had pulled the plait of the victim child with sexual intent and pushed her down and lifted her skirt and removed her panties and had bitten her vagina. Therefore, the victim sustained injury on her private part. On the complaint given by the mother of the victim child, who was examined as P.W.1, the respondent registered the FIR in Cr.No.3 of 2020 for the offences punishable under Section 341 IPC, 5(i), 5(m) r/w 6 of POCSO Act. After completion of investigation, the respondent filed a final report and the same has been taken cognizance by the trial Court in Spl.S.C.No.14 of 2020, on the file of the learned Sessions Judge, Mahila Court, Pudukottai.

3. On the side of the prosecution, in order to bring the charges to home, they had examined P.W.1 to P.W.13 and Exs.P1 to P15 were marked. On the side of the appellant, no one was examined and no document was produced before the Trial Court.



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4. On perusal of the oral and documentary evidence, the Trial Court found the appellant guilty for the offence punishable under Section 341 IPC and Section 6(1) of POCSO Act and sentenced him to undergo imprisonment for life and imposed a fine of Rs.35,000/-, in default, to undergo one-year Simple Imprisonment. Aggrieved by the said conviction and sentence, the present appeal has been filed.

5. The learned counsel for the appellant, though raised several grounds, restricted his arguments to the point that the conviction and sentence may be modified. Even assuming that the prosecution proved all the charges, it would attract only the offence under Sections 9(i) and 9(m) of POCSO Act which are punishable under Section 10 of the POCSO Act.

6. Initially, the prosecution charged the appellant for the offence punishable under Section 341 IPC and the offences under Sections 5(i) and 5(m) read with 6 of POCSO Act. The Trial Court, found the appellant guilty for the offence punishable under Section 341 IPC and 6(1) of POCSO Act. There was no specific overt act to convict the appellant for the offence



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punishable under Section 341 IPC. Further, the medical evidence also did not support the case of the prosecution to attract the charges under Sections 5(i) and 5(m) read with Section 6 of POCSO Act. The doctor, who treated the victim child, has categorically deposed that there is no injury found in the private part of the victim child and only simple lacerated injury is found. Therefore, there is no material to prove the charges under Section 5(i) and 5(m) of POCSO Act. It means that the appellant did not commit aggravated penetrative sexual assault on the victim girl. Even according to the case of the prosecution, the appellant has bitten the private part of the victim girl. He further submitted that the appellant is languishing in jail for the past 5 ½ years.

7. Per contra, the learned Additional Public Prosecutor appearing for the respondent would submit that the act of the appellant clearly attracts the charge under Sections 5(i) and 5(m) of the POCSO Act. Further, he had also involved in another similar case and in that case, he had been convicted for the offence punishable under Section 8 of the POCSO Act and he was sentenced to undergo four years Rigorous Imprisonment with a fine of Rs. 25,000 in Spl.S.C.No.8 of 2021, on the file of the Sessions Judge (Full

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Additional Charge), Mahila Court, Pudukkottai. He further submitted that the Trail Court framed the charges punishable under Sections 341 IPC and the charges under 5(i) and 5(m) read with 6(1) of POCSO Act. Therefore, it cannot be said that the Trail Court without even framing the charge under section 341 IPC found the appellant guilty for the offence under section 341 IPC. Further, the appellant is a repeated offender and hence, the Trail Court has rightly convicted the appellant and it does not require any interference of this Court.

8. Heard the learned counsel appearing on either side and perused the materials available on record.

9. According to the case of the prosecution, the victim child was aged about 10 years, who is the daughter of the defacto complainant/ P.W.1. On 02.02.2020 morning at about 08.00 a.m., P.W.1's brother Manikandan was working in the fields and at that time, her elder daughter, who is the victim child aged about 10 years, younger daughter and her sister's daughter had gone to the fields to give to him water and the field was close to the house P.W.1 at a walkable distance. While they were returning home, they



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had gone for nature calls in the fields of Chidhambaram, and at that time the accused had pulled the plait of the victim child with sexual intent and pushed her down and lifted her skirt and removed her panties and had bitten her vagina. Therefore, the victim had sustained injury on her private part. Immediately, P.W.1, who is the mother of the victim child, finding that the victim child was crying, had taken her to a private hospital on 02.02.2020 where the victim had taken treatment. On 04.02.2020 the defacto complainant lodged a complaint before the respondent. The said complaint was marked as Ex.P1. On receipt of the said complaint, the victim child was subjected to medical examination at the Government Hospital, Aranthangi. The Accident Register was recorded and marked as Ex.P.6. Accordingly, it was revealed that the victim child was not subjected to any aggravated penetrative sexual assault. She did not sustain any injury on her vagina rather she had sustained lacerated wound on the exterior of her private part and there was no evidence for rape. The doctor, who had given the Accident Register, was examined as P.W.8. She deposed that the victim sustained lacerated wound on the exterior of her private part and she had no injury in the inner parts. The statement of the victim child was recorded under Section 164 Cr.P.C., on 17.02.2020 and the same was marked as Ex.P4 and



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in that statement, she deposed that the appellant had bitten her private part and immediately, she was taken to the hospital and was treated by the doctor. After two days from the date of occurrence, P.W.1 lodged a complaint and the same was registered in Cr.No.3 of 2020 by the respondent. Therefore, it is clear that the victim child was subjected to sexual assault by the appellant.

10. Now, the only point for consideration is that, whether the prosecution has proved the charges under Sections 5(i), 5(m) r/w 6(1) of POCSO Act or not?

11. In order to attract the charge under Section 5(i), a person has to commit penetrative sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of a child. In order to attract the charge under Section 5(m) of the POCSO Act, a person has to commit penetrative sexual assault on the child below twelve years of age. Admittedly, the case of the prosecution was that, the appellant had bitten the victim child's private part and had caused lacerated wound on the exterior of her genitalia. But as per the Accident Register, there was no injury found on



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the victim's genitalia or there was no evidence that the victim child was subjected to aggravated penetrative sexual assault.

12. In order to bring the charges under Section 5 of the POCSO Act, the prosecution should have proved that the appellant committed the act of penetration as defined under Section 3 of the Act. It is relevant to extract the provision under Section 3 of the POSCO Act, which reads as follows:

'3. Penetrative sexual assault.—A person is said to commit “penetrative sexual assault” if—

(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or

(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or

(c) he manipulates any part of the body of the child so as to cause penetration into the vagina,



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urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or

(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.”

13. Thus, it is clear that the penetration is a *sine qua non* for an offence of penetrative sexual assault and in order to cause penetration, there must be a clear and cogent evidence to prove that some part of the accused's body has entered into the vagina, anus, urethra or any such body part of a girl child irrespective of the depth or extent of such penetration. Therefore, even the slightest degree of penetration of any part of the accused into the vagina, anus, urethra or any such body part of a girl child is sufficient to hold the accused guilty of the offence of aggravated penetrative sexual assault.

14. However, as per the evidence of prosecution, Sections 9(i) and 9(m) of POCSO Act clearly attracts as against the appellant. The appellant had committed aggravated assault on the victim child. It is punishable under Section 10 of the POCSO Act.



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15. Accordingly, the conviction and sentence imposed on the appellant for the offences under Sections 5(i) and 5(m) r/w Section 6(1) of the POCSO Act, cannot be sustained and is liable to be set aside, but the appellant is liable to be convicted for the offence punishable under Sections 9(i) and 9(m) r/w Section 10 of the POCSO Act.

16. In view of the above, the conviction and sentence imposed on the appellant in Spl.S.C.No.14 of 2020, on the file of the learned Sessions Judge, Mahila Court, Pudukottai, dated 12.11.2021, is modified under Section 9(i) and 9(m) r/w Section 10 of the POCSO Act and this Court is inclined to sentence him to undergo 6 years Rigorous Imprisonment with a fine of Rs.35,000/-, in default, to undergo one year Simple Imprisonment.

17. Insofar as the offence punishable under Section 341 IPC is concerned, the conviction and sentence imposed by the trial Court is confirmed.



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18. Accordingly, the Criminal Appeal is partly allowed. It is also made clear that if the appellant had already paid the fine, it can be adjusted towards the fine amount imposed by this Court in this judgement. The sentences of imprisonment shall run concurrently. The period of imprisonment already undergone by the appellant shall be set off.

**[G.K.I.J.,] & [R.P.J.,]
15.12.2025**

NCC :Yes/No
Index :Yes/No
Internet :Yes
am

To

1.The Sessions Judge,
Mahila Court, Pudukottai

2.The Inspector of Police,
All Women Police Station,
Aranthangi,
Pudukottai District.

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

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G.K. ILANTHIRAIYAN, J.

AND

R. POORNIMA, J.

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