

Crl.A(MD)No.715 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 22.07.2025

CORAM:

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

Crl.A(MD)No.715 of 2025

Kennedy Dharma

... Appellant

Vs

The Inspector of Police,
Ambhathurai Police Station,
Dindigul District.

... Respondent

Prayer: This Criminal Appeal Case filed under Section 374 of Cr.P.C to call for records and set aside the conviction passed in the Judgment, dated 27.05.2025 by the learned Sessions Judge, Special Court for POCSO Cases, Dindigul in Spl.S.C.No.117 of 2024 and acquit the appellant.

For Appellant : Mr. V.Palanichamy

For Respondent : Mr.A.Albert James
Government Advocate (Crl.Side)



WEB COPY



Crl.A(MD)No.715 of 2025

JUDGMENT

The present appeal has been filed against the Judgment of the learned Sessions Judge, Special Court of SC/ST (POA) Cases, Dindigul, dated 27.05.2025, made in Spl.S.C.No.117 of 2024.

2.The appellant is the sole accused, who has been convicted and sentenced in the following manner:

S. No	Provisions under which convicted	Sentence of imprisonment	Fine amount
1	366 IPC	5 Years rigorous imprisonment	Rs.10,000/-, in default to undergo 6 months simple imprisonment
	8 of POCSO Act	5 Years rigorous imprisonment	Rs.50,000/-, in default to undergo 1 year simple imprisonment

The sentences were ordered to be run concurrently.

3.The case of the prosecution is that the victim girl was studying in 9th standard. On 13.01.2024, at about 01.00p.m., the accused asked the victim girl to come to Roja Garden, near Velankanni and took her in a vehicle to Dindigul and stayed in the relative's house and took her to a house, where no one was available and committed sexual assault.



Crl.A(MD)No.715 of 2025

WEB COPY

4.As the charge sheet has been filed and the accused denied his involvement, he was subjected to trial. At the conclusion of trial, the accused was found guilty under Section 366 IPC and Section 8 of POCSO Act and he was convicted and sentenced as stated *supra*.

5.Aggrieved over that, the accused has filed this appeal.

6.The learned counsel for the appellant submitted that the defacto complainant and the victim girl, who were examined as PW1 and PW2 did not support the case of prosecution, and the learned trial Judge has found the accused guilty and convicted him based on just presumptions and assumptions.

7.The learned Government Advocate (Crl.Side) appearing for the respondent submitted that the trial Court has relied on the medical evidence and has stated the acceptable reasons in the Judgment as to why the accused was convicted.



Crl.A(MD)No.715 of 2025

8.I have given my anxious consideration to the submissions

made on either side and carefully perused the records.

9.On perusal of the Judgment of the trial Court, it appears

that the learned trial Judge has relied on the corroborative evidence, even in the absence of any substantive evidence. It is not a case based on circumstantial evidence, without the availability of the evidence of the victim girl of sexual offence.

10.The learned trial Judge has mainly relied on the statement

said to have been given by the victim girl, PW2 to the Doctor that the accused had kissed her on her lips, cheeks and chest. Based upon the statement of the victim girl given before the Doctor, the trial Court got convinced to convict the accused for the offences under Section 366 IPC and Section 8 of POCSO Act. The victim girl has stated to the Doctor that she had gone with the accused to his friends house.

11.The origin of the case is the complaint is given by the

mother of the victim girl, PW1. PW1 has stated in her complaint that her daughter, who was studying in 9th standard at the time of the occurrence



Crl.A(MD)No.715 of 2025

was inattentive towards her studies, therefore, she reprimanded her.

Under these circumstances, on 13.01.2024, when PW1 and her husband gone to work, their three children were at home. The victim girl had gone out of the house, saying that she was going to her friend's house. As she did not return and could not be found out after a thorough search, a complaint has been given on 14.01.2024. After two days of giving the complaint, the victim girl came to the house. When she enquired her, she told that she had gone with the accused. After three days, the accused also surrendered to the police.

12.It is the case of the prosecution that during the stay of victim girl with the accused, he had committed sexual assault on her. During the examination, PW1 did not support the case of the prosecution and stated that after returned to her home, the victim girl told her that she had been to her grandmother's house, as she was angry with PW1. Even the victim girl, PW2 has also stated that she was angry with her mother as she had scolded her, on coming to know that the complaint has been given that she was missing, she returned from her grandmother's house to her mother's house.



Crl.A(MD)No.715 of 2025

WEB COPY

13. Even though the learned trial judge appears to have been prompted by the statement of the victim girl given to the Doctor, that statement is not supported by her before the Court.

14. So far as the occurrence is concerned, the statement given to the Doctor is for a limited purpose of recording the history of the case. The veracity of the statement given before the Doctor or to the Investigation Officer has to be testified only before the Court.

15. If the victim girl has given evidence supporting the case of the prosecution, then the Doctor's evidence could help as a corroborative evidence. But without any substantive evidence, the Court cannot act on the basis of the corroborative evidence alone. Had it been a case based on circumstantial evidence, then there is no possibility to get any substantive evidence about the occurrence and the only available option is to do a thorough examination of the circumstances and to ensure whether each of such links of the circumstances form a chain, so as to, lead to the accused as to the commission of offence.



Crl.A(MD)No.715 of 2025

16.Convicting the accused only on the basis of the corroborative evidence without substantive evidence will be like building a house without foundation.

17.Though the offences falling under the POCSO Act are very serious and has special provisions under Sections 29 and 30 of the POCSO Act to draw initial presumption in favour of the prosecution, once a person is prosecuted for the offence under Section 8 of the POCSO Act, such presumption can be made available to the prosecution, only when the foundational facts are proved before the Court.

18.It appears that the learned trial Judge himself has strongly influenced by the statement of the victim girl given before the Doctor, without appreciating the victim girl's statement given before the Court. Neither the victim girl nor the defacto complainant, who have stated anything incriminating against the accused in order to hold him guilty for the offences under Sections 366 IPC and Section 8 of POCSO Act.



Crl.A(MD)No.715 of 2025

19.As the trial Court has not properly appreciated the evidence by rightly understanding the principles of appreciation of evidence, especially the effect of substantive evidence, I feel the miscarriage should be rectified by setting aside the judgment of the trial Court.

20.Accordingly,

- *the Criminal Appeal stands Allowed and the appellant is acquitted from all the charges levelled against him;*
- *the bail bond executed by the appellant if any, shall stand terminated and the fine amount, if any, paid by the appellant shall be refunded to him;*
- *the compensation awarded by the trial Court to the victim girl shall be refunded to the Government.*

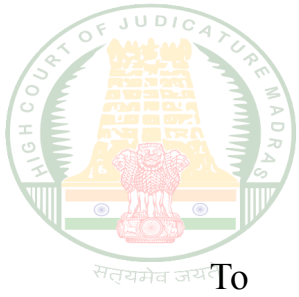
22.07.2025

NCC :Yes/No

Index :Yes/No

Note: Issue copy on 25.07.2025

PNM



Crl.A(MD)No.715 of 2025

To

1.The Sessions Judge,
Special Court for POCSO Cases, Dindigul

2.The Jail Superintendent,
Central Prison, Madurai

3. The Inspector of Police,
Ambhathurai Police Station,
Dindigul District.

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

5.The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



Crl.A(MD)No.715 of 2025

DR.R.N.MANJULA,J.

PNM

JUDGMENT IN

Crl.A(MD)No.715 of 2025

22.07.2025