



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 13/10/2025

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**THE HONOURABLE MR JUSTICE P.VELMURUGAN
AND
THE HONOURABLE MRS JUSTICE L.VICTORIA GOWRI**

Crl.A(MD)No.548 of 2022

Sundararajan

: Appellant/Sole Accused

Vs.

State rep. by its
The Inspector of Police,
Srivilliputhur All Women Police Station,
Virudhunagar District.
(Crime No.9 of 2020)

: Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of the Code of the Criminal Procedure, against the judgment of conviction and sentence of imprisonment imposed by the learned Sessions Judge, Special Court for POCSO Act cases, Virudhunagar District at Srivilliputhur, in Special SC No.60 of 2020, dated 20/07/2022 and to set aside the same.

For Appellant

: Mr.S.Ramasamy

For Respondent

: Mr.B.Nambi Selvan
Additional Public Prosecutor



JUDGMENT

(Judgment of the Court was made by the Hon'ble **P.VELMURUGAN J.**)

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This criminal appeal is filed against the judgment of conviction and sentence passed by the learned Sessions Judge, Special Court for POCSO Act cases, Virudhunagar District @ Srivilliputhur, in Special SC No.60 of 2020, dated 20/07/2022 and consequently to acquit the appellant.

2.The case of the prosecution is that PW1 is the mother and the accused is the father of the victim child. On 03/03/2020 at 12.00 noon, when the mother of the victim went out side for nature's call, at that time, her son informed that the accused kissed in the private part of the victim child. When that was questioned, the accused threatened the de-facto complainant with dire consequence. Again, on 30/08/2020 at about 01.00 pm, when the de-facto complainant was in her house, at that time, the accused watching sex film in the TV and later, she heard the sound of the victim child and when she went there, she found the accused licking the private part of the victim child by pouring honey and thereafter, inserted his finger into the private part of the victim and when the same was questioned, she was again threatened by the accused.

3.Based on the complaint (Ex.P1) given by the mother of the victim child, the respondent Police registered a case in Crime No.9 of 2020 against the



appellant for the offences under Sections 3(d) r/w 4, 5(l), (m), (n) r/w 6 of the POCSO Act, 2012 and 506(i) IPC. After completing the investigation, the respondent Police laid charge sheet before the learned Sessions Judge, Special Court for POCSO Act cases, Virudhunagar District @ Srivilliputhur. and the same was taken on file in Special SC No.60 of 2020.

4.After completing the formalities under the provisions of Section 207 Cr.P.C., since there were *prima facie* materials to frame charges against the appellant, the learned Sessions Judge framed charges for the offences punishable under Sections 3(d) r/w 4, 9(n), 9(m), 5(n) r/w 10 of POCSO Act and Section 506(i) IPC.

5.After framing charges, during trial, on the side of the prosecution, in order to substantiate the charges, totally 8 witnesses were examined as PW1 to PW8 and 11 documents were marked as Exs.P1 to P11. Subsequently, on 23/06/2022, the charges framed against the appellant were altered by the trial Court into Section 506(i) IPC and Section 3(d) r/w 6, 5(l) , 5(m), 5(n) r/w 6 of the POCSO Act, 2012 .

6.After completing examination of the prosecution side witnesses, when the accused was questioned under Section 313 Cr.P.C., in respect of the



incriminating circumstances appearing against him based on the evidence adduced by the prosecution, he denied the same as false. On the side of the defence, no witness was examined, but two documents were marked as Exs.D1 and D2.

7.After completing the trial and upon hearing the arguments advanced on either side and also considering the oral and documentary evidence adduced, the learned trial Judge found the guilty, who is appellant herein, for the offences under Sections 3(d) r/w 4, 5(l), 5(n) and 5(m) r/w 6 of POCSO Act, 2012 and convicted thereunder and sentenced him to undergo **20 years Rigorous Imprisonment** and imposed a fine of Rs.5,000/-, in default to further undergo 1 year Simple Imprisonment for each offences under **Sections 3(d) r/w 4 of POCSO Act, 5(l) and 5(n) r/w 6 of POCSO Act**; and also sentenced him to undergo **Life Imprisonment** and imposed a fine of Rs.5,000/-, in default to undergo 1 year Simple Imprisonment for the offence under Section **5(m) r/w 6 of POCSO Act** and all the sentences were ordered to run concurrently. He was acquitted the charge framed under Section 506(i) IPC

8.Challenging the judgment of conviction and sentence, the present appeal has been preferred by the appellant.



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9.The learned counsel for the appellant would submit that the genuineness of the eye witnesses and the injured witness are highly doubtful and some material contradictions between the statement given by the victim child and PW1 to PW3; PW1 to PW3 were produced before the Judicial Magistrate, who recorded the statement of the victim child and the mother and brother of the victim child; and when they were examined before the Court as PW1 to PW3, there are many contradictions between the statement made before the Judicial Magistrate recorded under Section 164 Cr.P.C and the evidence given before the Court during trial. Further, he would submit that when the victim child was produced before the Judicial Magistrate for recording her statement under Section 164 Cr.P.C, she has not stated anything about the previous occurrence and during trial only, she has given elaborate version about the occurrence, which itself is highly doubtful; The victim child was aged about 4 years at the time of the occurrence and she was tutored by her mother and she also admitted during the course of cross examination that her mother only insisted her to say against her father and therefore, the defence has established that the evidence of the victim is under pressure and tutored and therefore, the evidence of the victim child cannot be accepted and also, PW1 who is the mother of the victim child is none other than the wife of the appellant and there was family dispute and also some quarrel between them even day today life and in order wreck vengeance, she tutored the children and no incriminating materials were available against



her own father and therefore, once the evidence of the prosecution is doubtful, the innocent should not be punished and the benefit of doubt has to be extended to the appellant; Whereas the trial Court failed to consider the defence taken by the appellant during the cross examination and the admission made by the victim that she was tutored by her mother and also, no father will do such a thing against his own daughter; and further, PW1 who is the wife of the appellant, in order to wreck vengeance, she used her children; Therefore, the case filed against the appellant is a false one and the medical evidence also shows that there was no injury, either in the private part of the victim child or in any other parts of her body and therefore, the prosecution has failed to prove the case beyond all reasonable doubt; However, the trial Court failed to consider the same and only took the evidence of the interested witnesses and therefore, the judgment of conviction and sentence recorded by the trial Court warrants interference by this court and the appeal is to be allowed.

10.The learned Additional Public Prosecutor for the respondent would submit that the victim child was aged about only 4 years at the time of the occurrence; and the accused is none other than the father of the victim child; The de-facto complainant is none other than the mother of the victim and PW3 is the none other than the son of PW1 and all of them living in the same roof; The evidence of PW1 clearly shows the attitude of the appellant and the brother of



the victim saw the first incident on 03/03/2020 and he informed the same to his mother and since the appellant is none other than the husband of PW1 and the father of the victim child, she has not informed the incident to the neighbours considering the future of the victim and she only warned the appellant, but again, on 30/06/2020, the second occurrence occurred and since all of them living under one roof, no independent witness can be expected; The occurrence took place within four walls of the dwelling house and PW1 and PW3 are the eye witnesses to the occurrence; More so, the victim child has also clearly stated that the appellant has committed penetrative sexual assault which falls under section 3(d) of the POCSO Act, punishable under Section 4 of the POCSO Act; Further, the second occurrence took place on 30/06/2020; and there was clinical examination on the victim child by the Medical Officer (PW5); In the absence of any allegation in the statement of PW1 to PW3 about the injury sustained by the victim child, naturally the medical evidence would not support the case of defence; Further, reading of the evidence of PW1 to PW3, the ingredients of Section 3(d) of the POCSO Act and also Section 4 of the POCSO Act are clearly made out, since because the appellant has committed the penetrative sexual assault against the victim child who was aged below 12 years at the time of the occurrence and therefore, the trial Court has rightly appreciated the evidence, both oral and documentary and convicted the appellant and there is no merit in the appeal and the appeal has to be dismissed.



11.It is the specific case of the prosecution is that the victim child is none other than the daughter of the appellant and she was aged about 4 years at the time of the occurrence and the appellant licked the private part of the victim child and also put his one of the fingers and inserted in the private part of the victim child, who is aged about only 4 years. The evidence of PW1 and PW3 and also the evidence of the victim child/PW2 clearly shows that the appellant has committed the penetrative sexual assault upon the victim child which falls under Section 3(d) of the POCSO Act and therefore, based on the complaint given by the de-facto complainant, the respondent Police registered the case and recorded the statement of the victim child and produced before the Judicial Magistrate for recording the statement under Section 164 Cr.P.C. PW1 and PW3 were also produced before the Judicial Magistrate for recording statement under Section 164 Cr.P.C. They have also categorically stated about the incident. After completing the investigation, the respondent Police laid the charge sheet under Sections 3(d) r/w 4 of the POCSO Act and 5(l),(5(m), 5(n) r/w 6 of POCSO Act and 506(i) IPC against the appellant.

12.Initially, the trial Court framed the charges against the appellant under Sections 3(d) r/w 4 of the POCSO Act, 9(n), 9(m) r/w 10 of the POCSO Act and Section 506(i) IPC and thereafter, on 23/06/2022, the charges framed against the appellant were altered into Sections 3(d) r/w 4 POCSO Act, 5(l),



5(m), 5(n) r/w 6 of the POCSO Act and Section 506(i) IPC. In order to substantiate the charges, on the side of the prosecution, 8 witnesses were examined and 11 documents were marked. The de-facto complainant, who is the mother of the victim was examined as PW1 and the victim child was examined as PW2 and the brother of the victim was also examined as PW3. They were also produced before the Judicial Magistrate for recording the Statement under Section 164 Cr.P.C.

13.At this juncture, it is useful to refer Sections 3(d), 5(l), 5(m) and 5(n) of the POCSO Act, which reads as under:-

“Section 3:Penetrative Sexual Assault: A person is said to commit 'penetrative sexual assault', if

(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 other person.”

Section 5.Aggravated penetrative sexual assault:-

5(l) whoever commits penetrative sexual assault on the child more than once or repeatedly;



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5(m) whoever commits penetrative sexual assault on a child below twelve years;

5(n) whoever being a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of the child or who is living in the same or shared household with the child, commits penetrative sexual assault on such child;

14. Section 4 of POCSO Act reads as under:-

“4. Punishment for penetrative sexual assault

(1) Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than (ten years) but which may extend to imprisonment for life, and shall also be liable to fine.

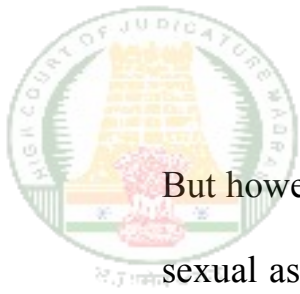
(2) Whoever commits penetrative sexual assault on a child below sixteen years of age shall be punished with imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person, and shall also be liable to fine.

(3) The fine imposed under sub/section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.”



15.A combined reading of the evidence of the prosecution witnesses deposed before the trial Court during trial and also the statement of the victim child made before the Judicial Magistrate under Section 164 Cr.P.C, the ingredient of Section 3(d) of the POCSO Act is clearly made out, which is punishable under Section 4 of the POCSO Act.

16. Though the learned counsel for the appellant would submit that during the course of examination, the victim child has stated that her mother asked to say against her father, but however, a reading of the entire evidence of the victim child and also the statement recorded under Section 164 Cr.P.C by the Judicial Magistrate, even prior to the examination, the Judicial Magistrate raised all the preliminary questions and he satisfied that the victim child, without any compulsion and tutoring has given the voluntary statement. Therefore, in the statement recorded under Section 164 Cr.P.C, the victim child has clearly stated that the appellant has committed the penetrative sexual assault which falls under Section 3(d) of the POCSO Act and subsequently, the victim child was also examined before the trial Court. During the course of chief examination also, the trial Judge has raised all the preliminary questions and satisfied with the answer given by the victim against the questions raised by him. After two years, she was cross examined before the trial Court, wherein also, she has clearly stated about the incident. After two or three years, she cannot expect to say all the incidents.



But however, the main incident is that the father, who had committed penetrative sexual assault on his own daughter. Therefore, the contradiction probablised by the appellatant is not material contradiction and it is only a minor contradiction which will not go to the root of the prosecution case.

17.Further, PW3 says that he is the brother of the victim child and the victim child was aged about 4 years at the time of the occurrence and who has also produced before the Judicial Magistrate for recording the statement under Section 164 Cr.P.C and the Judicial Magistrate also put all the preliminary questions to him and satisfied that he has given statement without any coercion or tutoring or threat. PW1 who is none other than the mother of the victim and the wife of the appellatant has also clearly stated about the occurrence before the Judicial Magistrate, while recording statement under Section 164 Cr.P.C.

18.Though there may be a dispute or quarrel between the husband and wife, but the wife will not go to the extent of giving a false allegation against her husband that her husband sexually assaulted his own child. Further, the child will also not give any such statement against her own father. The Medical Officer, who examined the victim child has spoken that she has not found any injury on the part of the victim child and her hymen was in-tact. But in this case, the medical evidence will not give any support to the defence case.



19.From the evidence of PW1 to PW3, the prosecution has proved the foundational fact that the appellant has committed aggravated penetrative sexual assault. Therefore, Section 29 of the POCSO Act is clear and there is a presumption and it is for the appellant to rebut the presumption in the manner known to law. But in this case, the appellant only took the defence that his wife due to wreck vengeance, made a false complaint against him and that was also not proved on the defence side in the manner known to law. Therefore, this Court finds that the prosecution has established the foundational fact against the appellant and the burden is shifted to the appellant and the appellant has not rebutted the statutory presumption under Section 29 of the POCSO Act. Even in the cases of this nature, no independent witness or any other witness can be expected. Further, the appellant is the father of the victim child and in his own house, the occurrence took place. Therefore, under these circumstances, the evidence of the victim itself is sufficient enough to believe the prosecution case.

20.Further, in this case, PW3 saw the first incident that took place on 03/03/2020 and PW1 saw the the second incident that took place on 30/06/2020. Even thereafter also, the appellant did not change his attitude and therefore, PW1 has made a complaint before the respondent Police and the respondent Police registered the case and investigated the matter.



21. In this case, in order to prove the age of the victim child who is aged below 12 years, the prosecution has produced the birth certificate of the victim child, which was marked as Ex.P3. Reading of Ex.P3, the date of birth of the victim is mentioned as 17/08/2015 and at the of the occurrence, she was only 4 years. Since the victim is aged below 12 years, it is termed as aggravated penetrative sexual assault as per Section 5(m) of POCSO Act, which is punishable under Section 6 of POCSO Act.

22. Therefore, from the evidence of the victim child and the Statement of the victim recorded under Section 164 Cr.P.C, this Court finds that the victim was subjected to penetrative sexual assault on more than once. Since the victim was subjected to aggravated penetrative sexual assault more than once, Section 5(l) of the POCSO Act come into play which is punishable under Section 6 of the Act. Since the appellant is the father of the victim and the victim child is below 12 years at the time of the occurrence and he has committed the offence in his own house, the offence committed by the appellant falls under Section 5(n), 5(m) r/w 6 of the POCSO Act. The evidence of PW1 to PW3 is cogent, consistent and reliable and no reason to discard their evidence. So, the prosecution has proved its case beyond all reasonable doubt. Further, once the prosecution has proved the foundational fact under Section 29 of the POCSO Act, there is a statutory presumption and it is for the appellant to rebut the presumption in the manner known to law.



23.In this case, entire reading of the material evidence, the appellant has not rebutted the presumption under Section 29 of the POCSO Act.

A combined reading of the evidence of PW1 to PW3, this Court finds that the appellant has committed the charged offences. This Court, being an Appellate Court, is a fact finding Court, which has to necessarily re-appreciate the entire evidence and give an independent finding and accordingly, this Court has re-appreciated the evidence both oral and documentary and finds that the prosecution has established the foundational fact that the victim was subjected to penetrative sexual assault on several occasions. The contradictions pointed out by the appellant are not material contradictions, which will not go to the root of the prosecution case. Therefore, this Court finds that the prosecution has proved its case beyond all reasonable doubt and the trial Court has rightly appreciated the evidence both oral and documentary and convicted the appellant. There is no reason to interfere with the judgment of the Trial court.

24.In the result, this Criminal Appeal is **dismissed**, confirming the impugned judgment of conviction and sentence passed by the Trial Court.

(P.V.,J) (L.V.G.,J)
13/10/2025

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To,

- 1.The Sessions Judge,
Special Court for POCSO Act Cases,
Virudhunagar District @ Srivilliputhur.
Trichy.
- 2.The Inspector of Police,
Srivilliputhur All Women Police Station,
Virudhunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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