

Crl.A(MD)No.484 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 08.04.2025

Pronounced on : 30.04.2025

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

AND

THE HONOURABLE MS.JUSTICE R.POORNIMA

Crl.A(MD)No.484 of 2021

Kalimuthu

.. Appellant/Sole accused

Vs.

State rep by its
The Inspector of Police
Sattur All Women Police Station
Virudhunagar District.
(Crime No.7 of 2016)

...Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374 of the Code of Criminal Procedure, to call for the records in the judgment of the Special Court for Exclusive Trial of Cases Under Protection of Children From the Sexual Offences Act, 2012, Virudhunagar District at Srivilliputtur, in Spl.S.C.No.44 of 2016 by judgment dated 13.10.2021 and set aside the same.



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For Appellant : Mr.S.Ramasamy

For Respondent :Mr.A.Thiruvadikumar,
Additional Public Prosecutor

JUDGMENT

Dr.G.JAYACHANDRAN, J.
and
R.POORNIMA, J.

The appellant herein is the sole accused deprived of the judgment of the Special Court for Exclusive Trial of Cases Under Protection of Children From the Sexual Offences Act, 2012, Virudhunagar District at Srivilliputtur,

2.On the complaint given by one Gurusamy, the paternal uncle of the minor girl, aged about 13 years, the respondent police registered the FIR in Crime No.7 of 2016, against the appellant for offence under Sections 450, 366(A), 376, 506(i) IPC and 5(i)(l) r/w 6 of POCSO Act, 2012, on 31.03.2016.

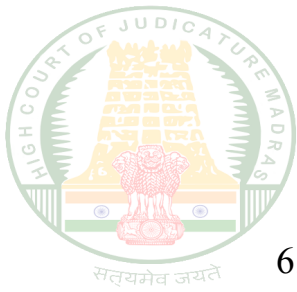
3.The complaint marked as Ex.P.1 was a disclosure of cognizable offence committed by the appellant in the nature of repeated penetrative sexual assault on the victim child.



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4. According to the complainant, the minor child is his brother's daughter. After the demise of her parents, she had been under the care and custody of her paternal uncle. The appellant, who is residing near his house, had befriended the child and been continuously abusing her sexually. When he noticed that the victim child is not concentrating in her studies, he enquired her and then found out that she had been sexually abused by the appellant and been subjecting her to sexual intercourse. While so, P.W.1 asked the victim child to put in writing about what happened to her. Her written statement disclosed that the latest sexual assault was on 30.03.2016, when the appellant went to the school of the victim child at about 11.00 a.m and when the victim child came out from the class room to attend her nature's call, he took her to the gents toilet and forcibly had sexual intercourse.

5. Thereafter, P.W.1 along with the written statement of the minor child went to the respondent police and gave the complaint which was received by the Sub-Inspector of Police, Sattur All Women Police Station, Virudhunagar District.



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6.P.W.17-the Inspector of Police, took up the investigation of the case registered by P.W.16-the Sub-Inspector of Police. Went to the scene of crime and prepared observation mahazar and rough sketch. Recorded the statement of the witnesses and sent the victim child for medical examination. Her statement under Section 164 of Cr.P.C recorded by the learned Judicial Magistrate and marked as Ex.P.11. Thereafter, P.W.17 arrested the appellant on 02.04.2016 and remanded him to judicial custody.

7.The Sessions Court, based o the records furnished along with the final report, framed charges under Section 7 r/w 8 of POCSO Act, 2012, Section 366(A) of IPC and Section 5(l)(m) r/w 6 of POCSO Act, 2012, Section 11(iv) r/w 12 of POCSO Act, 2012 and Section 506(i) IPC.

8.P.W.1-the de-facto complainant had spoken about the complaint given to the police after coming to know that the appellant had been continuously subjecting the minor child with sexual assault and about the incident which alleged to have been happened on 30.03.2016 at 11.00 a.m., in the school toilet. His complaint and the hand written statement of the



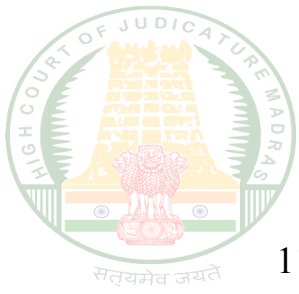
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victim child, annexed to the complaint is marked as Ex.P.1.

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9.P.W.2- the victim child, in the chief examination, had deposed about the act of aggravated sexual assault and penetrative sexual offence committed on her by the appellant on various occasion and particularly, the incident on 30.03.2016 happened in her school toilet. The written statement marked as Ex.P.1. After about three years, the witness was recalled for cross-examination. In the cross-examination, she turned hostile. She had deposed that she wrote Ex.P.1 on the dictation of P.W.1, when she was under his custody. Now, she is in her aunty's house and free from influence. However, after few months, when she was recalled by the prosecution, she reiterated her statement given before the Judicial Magistrate under Section 164 Cr.P.C as well as in the chief examination recorded on 29.12.2016.

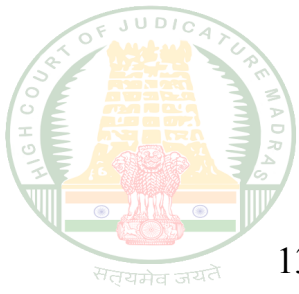
10..P.W.3 is the daughter of P.W.1, she had cowed the line of her father and the chief examination of P.W.2. She had deposed that the victim confided to her that the appellant came to her house and had sexual intercourse with the minor child. In any event, she is only an hear say witness. P.W.4-Kaliswari-classmate of victim girl also an hear say witness.



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11.P.W.5-Tmt.Jansirani, headmistress of School in which the victim girl was pursuing 8th standard had given a certificate marked as Ex.P.3, which is extract of School Admission details . In the said document, the date of birth of the victim is shown as 24.07.2003 and it is further mentioned that she was attending the school up to 30.03.2016 and she stopped attending the school from 31.03.2016. In the cross examination of P.W.5, she had categorically stated that on 30.03.2016 there was no adverse incident in the school campus or in the public toilet brought to her notice.

12.P.W.6-Vairamuthu, is the brother of the victim girl, he tow the line of P.W.1. P.W.7 is the relative of P.W.1. He is a witness to the observation mahazar marked as Ex.P.4. P.W.8 is a witness for the arrest of the appellant on 02.04.2016. P.W.9 is the employer of the appellant had deposed that till on 30.03.2016, the accused/appellant was working in his fire works factory and he had further deposed that one day at about 12.30 noon, he heard that Gurusamy(P.W.1) and Vairamuthu(P.W.6) assaulted the accused/appellant for misbehaviour with a girl.



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13.P.W.10 is the doctor, who conducted potency test for the appellant/accused and his report is marked as Ex.P.5. P.W.11, the doctor was examined the minor child. The biological report is Ex.P.6 and Serological report is Ex.P.7. P.W.12, the doctor who examined the minor child had opined that there is no sign of forcible intercourse, no injury on the private part. Hymen appeared.

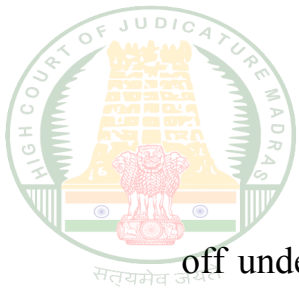
14..The trial Court, taking into consideration the evidence of prosecution witnesses P.W.1 to P.W.17 and Ex.P.1 to Ex.P.12 held the accused/appellant guilty and sentenced to undergo the punishment as under:

(i)For offence under Section 363 IPC, 7 years imprisonment and a fine of Rs.1000/-.

(ii)For offence under Section 8 r/w Section 7 of POCSO Act, 2012, 5 years imprisonment and a fine amount of Rs.1000/-.

(iii)For offence under Section 6 r/w Section 5(l)(m) of POCSO Act, 2012, life sentence and a fine amount of Rs.1000/-

(iv)The period of imprisonment already undergone ordered to be set

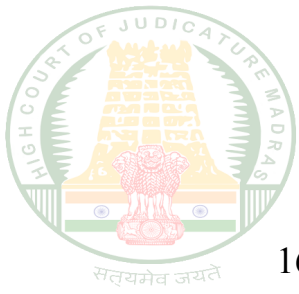


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off under Section 428 Cr.P.C and in default for payment of fine, ordered to undergo six months simple imprisonment for each of the default concurrently.

As far as the charges under Section 366(A) IPC and Section 506(i)IPC and Section 12 r/w 11(iv) of POCSO Act, held that the prosecution has failed to prove the guilty of the accused beyond all reasonable doubt. Hence, entitled for acquittal and a sum of Rs.12 lakhs was ordered to be paid as compensation to the victim child.

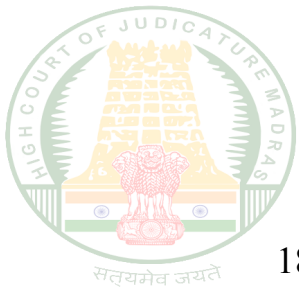
15..Being aggrieved by the conviction and sentence, the present appeal is filed by the appellant on the ground that P.W.1 had animosity against the appellant. P.W.2, the minor child not consistent in her evidence and she had deposed on the tutoring of P.W.1. She admits that she has written Ex.p.1 but on the dictate of P.W.1. Her evidence is not reliable to convict the person for life imprisonment. The presumption under Section 29 of POCSO Act, ought not to have been drawn by the trial Court based on the evidence of P.W.1 and his daughter P.W.3.



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16.The learned Additional Public Prosecutor appearing for the State submitted that the evidence of the victim girl had inspired the evidence of the Court which has noted her demeanour and recorded her statement after ascertaining she was capable of understanding the consequences of her evidence. Her testimony is natural without any influence. After five years of the incident and recording of Section 164 statement by the Magistrate and three years after her chief examination P.W.2 was recalled by the accused for cross-examination. She was tutored by that time and was made to depose contrary to her previous statement. However, soon after she was removed from the influence and by the prosecution again recalled and examined by the prosecution, she has reiterated the previous statements. Therefore, the learned Additional Public Prosecutor submitted the evidence of the victim child coupled with the medical report satisfactorily prove the case of the prosecution as against the appellant.

17.Heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the State.



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18.The appellant herein been prosecuted for a very grave offence of penetrative sexual offence on a minor child aged about 13 years. The crime had come to light on the complaint given by P.W1 who is the care taker of the minor child, since the minor child had lost both her parents. P.W1 was taking care of minor child and her brother(P.W.6). When P.W.1 had noted that P.W.2 had lost interest in her studies, he had enquired her and found that the appellant been sexually exploiting the minor child. P.W.1 had get a statement of the minor child written in her hand writing before lodging a complaint against the appellant. His complaint contains the details about his suspicion on the appellant and his constant surveillance of the minor child and the appellant.

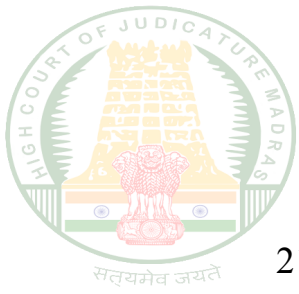
19.According to him, earlier when he came to know about the misbehaviour of the appellant, he warned the appellant and also assaulted him. Then, the appellant shifted the residence and settled at Sattur. On 30.03.2016, at about 11 a.m., he was present inside the school campus and caled the victim child to have sexual intercourse with her. The school extract, Ex.P.3 given by the headmistress examined as P.W.5 and the evidence of P.W.9-Thangapalam, the employer of the appellant, this Court



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finds that the girl had attended the school on 30.03.2016, the appellant had attended the duty on that day. On the very next day, he had not returned to duty. The evidence of P.W.2, the victim child, though she had turned hostile in the course of cross examination, for the reason best known proves the act of penetrative sexual assault for more than once. The medical report of the minor child which is marked as Ex.P.8, though does not not disclose any sign of forcible intercourse, but found hymen torn. It gives an indication that she would have been subjected to sexual intercourse either by consent or against her wish. Either way, being a minor, the act of penetrative sexual assault attracts offence under Section 6 of POCSO Act, 2012.

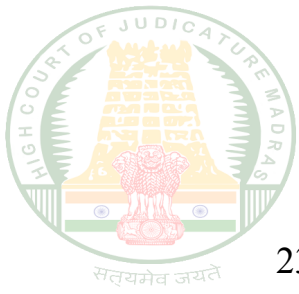
20.Taking into consideration the evidence of school headmistress Jansirani(P.W.5), the allegation found in the complaint about the incident dated 30.03.2016 at about 11 a.m., in the public toilet of the school, appears to be a false, invented to lodge the complaint. The headmistress examined as P.W.5 has categorically stated that no such incident has brought to her notice.



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21. According to P.W.1 as well as P.W.2, during the recess period, she went to toilet and at that time, the accused called her to have sexual intercourse and threatened her that he will expose her if she refuses. This Court is of the view that the alleged occurrence on 30.03.2016 does not find any reliable corroboration. In the cross-examination of P.W.1, he admits that he asked the victim child to write the statement(Ex.P.1). Reading of Ex.P.1, we find P.W.2 had sought mercy of P.W.1 to pardon her and provide her shelter and care. It is suggested to P.W.1 that he had animosity against the appellant in connection with the local body election but he had denied it.

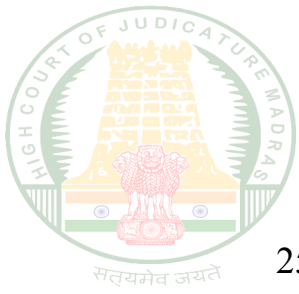
22. The statement of the victim girl gave to the judicial Magistrate under Section 164 Cr.P.C regarding the sexual intercourse with the appellant three or four times earlier stands as corroboration to the testimony of the victim girl who had deposed in the chief examination dated 29.12.2016 proves the sexual intercourse with the appellant on various occasions till he vacated the house.



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23.This being an act of penetrative sexual assault of a child for more than once as defined and punishable under Section 6 of the POCSO Act. Hence, we hold that the appellant has guilt of offence under Section 5(l)(m) r/w Section 6 of POCSO Act. Insofar as the charge under Section 363 IPC Section 8 r/w 7 of POCSO Act, 2012, we find there is no enough evidence for his conviction.

24.The trial Court had imposed life imprisonment for the offence under Section 5(l)(m) of POCSO Act. At the time of occurrence, the child was about 13 years old, but her evidence substantially prove that she had been subjected to penetrative sexual assault for more than once. The occurrence had taken place prior to the complaint which is on 31.03.2016. On the date of occurrence the punishment prescribed under Section 6 for aggravated penetrative sexual assault was rigorous imprisonment not less than 10 years, but which may extent to imprisonment for life and he also be liable to fine. Only after 16.08.2019 by way of amendment, the punishment prescribed been enhanced not less than 20 years.



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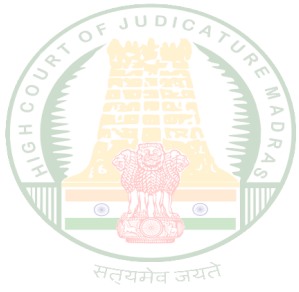
25. Taking into consideration the commission of crime was prior to the amendment, this Court partly allow the appeal and acquit the appellant for offence under Section 363 IPC. The conviction of the appellant for offence under Section 7 r/w Section 8 of POCSO Act and sentenced to 5 years imprisonment and fine of Rs.1000/-, in default to undergo six months simple imprisonment is confirmed.

26. The conviction for offence under Section 5(l)(m) of POCSO Act is confirm. However, the sentence for offence under Section 5(l)(m) of POCSO Act, is modified as 10 years imprisonment and fine of Rs.1000/-, in default to undergo six months simple imprisonment.

27. The period of imprisonment shall run concurrently. The period already undergone by the appellant shall be set off under Section 428 Cr.P.C.

[G.J.,J] & [R.P., J]
30.04.2025

Index : Yes/No
NCC : Yes/No
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**DR.G.JAYACHANDRAN, J.
AND
R.POORNIMA, J.**

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To

- 1.The Special Court for Exclusive Trial of Cases
Under Protection of Children From
the Sexual Offences Act, 2012, Virudhunagar District at Srivilliputtur,.
- 2.The Inspector of Police
Sattur All Women Police Station
Virudhunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

**Predelivery Judgement made in
Crl.A(MD)No.4841 of 2021**

30.04.2025