



WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.11.2025

CORAM:

**THE HONOURABLE MR.JUSTICE P.VELMURUGAN
AND
THE HON'BLE MS JUSTICE R.POORNIMA**

**CRL.A(MD)Nos.488 and 499 of 2021
and
CRL.A(MD)No.741 of 2022**

- | | |
|--------------------------|---|
| 1.Vinoth Kumar | ...Appellant/Accused No.3 in CRL.A(MD)
No.488 of 2021 |
| 2.Anandha Ramalingakumar |Appellant/Accused No.2 in CRL.A(MD)
NO.499 of 2021 |
| 3.Valarmani |Appellant/Accused No.1 in CRL.A(MD)
NO.741of 2022 |

.Vs.

The State, represented by
The Inspector of Police,
Rajapalayam All Women Police Station,
Virudhunagar District.
(Crime No.08 of 2020)

... Respondent/Complainant in all the
appeals

PRAYER in CRL.A(MD)No.488 of 2021 Criminal Appeal filed under Section



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374(4) of Criminal Procedure Code against the judgment of the learned Special Court for Exclusive Trial of Cases under Protection of Children from the Sexual Offences Act, 2012, Virudhunagar District at Srivilliputhur made in Special S.C.No.52 of 2020, dated 11.11.2021 convicting the appellant and sentenced him to 5 years imprisonment and a fine of Rs.10,000/- in default six months imprisonment for the offence under Section 8 r/w Section 7 of POCSO Act, 2012

PRAYER in CRL.A(MD)No.499 of 2021: Criminal Appeal filed under Section 374(4) of Criminal Procedure Code against the judgment of the learned Special Court for Exclusive Trial of Cases under Protection of Children from the Sexual Offences Act, 2012, Virudhunagar District at Srivilliputhur made in Special S.C.No.52 of 2020, dated 11.11.2021 whereby convicting the appellant and sentenced him to 5 years imprisonment and a fine of Rs.10,000/- in default six months imprisonment for the offence under Section 8 r/w Section 7 of POCSO Act, 2012.

PRAYER in CRL.A(MD)No.741 of 2022 Criminal Appeal filed under Section 374 of Criminal Procedure Code against the impugned judgment of the learned Special Court for Exclusive Trial of Cases under Protection of Children from the Sexual Offences Act, 2012, Virudhunagar District at Srivilliputhur made in Special Special S.C.No.52 of 2020, dated 11.11.2021 and to set aside the same.



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For Appellant : M/s.S.Ramasamy
in CRL.A(MD)
No.488 of 2021

For Appellant : M/s.R.Nireesh Kumar
in CRL.A(MD)
No.499 of 2021

For Appellant : M/s.Jegadeesh Pandian
in CRL.A(MD)
No.741 of 2022

For Respondent : Mr.B.Nambi Selvan
in all appeals Addl.Public Prosecutor

COMMON JUDGMENT

(Order of the Court was made by **P.VELMURUGAN.,J**)

These appeals are filed by the appellants against the judgment of the learned Special Court for Exclusive Trial of Cases under Protection of Children from the Sexual Offences Act, 2012, Virudhunagar District at Srivilliputhur made in Special S.C.No.52 of 2020, dated 11.11.2021.

2.The appellants are A1 to A3 and since all the appeals are arising out of the same judgment, all the appeals are taken up and tried together.



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3. The respondent Police registered a case in crime No.18 of 2020 for the offence under section 5(1)(6)(7)(8) of POCSO Act and section 328 and 506(ii) IPC against the appellants. Subsequently, after investigation, laid charge sheet against the appellants and two others for the offence under Section 5(1) r/w section 6,7 r/w 8,16 r/w section 17 of POCSO Act and also Section 328 and 506(ii) IPC before the POCSO Court, Srivilliputhur. Since the offence is against the child, the Special Court took cognizance of the charge sheet on file in Special S.C.No.52 of 2020. After completing the formalities under Section 207 Cr.P.C, framed charges as against the first accused for the offence under Section 328 IPC and under Section 5(1) r/w Section 6 of POCSO Act and also under Section 506(I) IPC. Against the second accused framed charges for the offence under Section 7 r/w Section 8 of POCSO Act, against third accused framed charges for the offence under Section 7 r/w Section 8 of POCSO Act, against the accused 4 and 5, framed charges for the offence under Section 16 r/w Section 17 of POCSO Act. In order to substantiate the charges, during trial, on the side of prosecution as many as 13 witnesses were examined as P.W.1 to P.W.13. Supporting documents were marked as Ex.P1 to Ex.P14. No material object was exhibited.



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4. After examination of the prosecution witnesses, the trial Court culled out the incriminating circumstances appearing against the appellants and put question under section 313 Cr.P.C., for which the appellants denied it as false. On the side of the defense, two witnesses were examined and no document was marked. On completion of evidence and hearing of arguments on either side, the first accused was convicted under Section 6 r/w Section 5 of POCSO Act and sentenced him to undergo life imprisonment and to pay a fine of R.10,000/- in default to undergo six months simple imprisonment and both sentences were ordered to be run concurrently. The second accused was convicted and sentenced to undergo 5 years imprisonment and to pay a fine of Rs.10,000/- in default, to undergo six months imprisonment for the offence under Section 8 r/w Section 7 of POCSO Act, 2012. The third accused was convicted and sentenced to undergo 5 years imprisonment and to pay a fine of Rs.10,000/- in default to undergo six months imprisonment for the offence under Section 8 r/w Section 7 of POCSO Act, 2012.

5. Aggrieved by the judgment of conviction and sentence, the first accused has filed CRL.A(MD)NO.741 of 2022 and the second accused has filed



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the CRL.A(MD)NO.499 of 2021 and the third accused has filed CRL.A(MD)No. 488 of 2021. Since all the appeals are arising out of the same judgment, they are taken up and heard together. However in order to avoid confusion and for better understanding, the parties are referred to as arrayed before the trial Court.

6. The learned counsel for the three accused have made similar submissions, and, in order to avoid repetition, their submissions have been summarized as follows:-

P.W.1 is the mother of the victim, who lodged the complaint turned hostile and not support the case of the prosecution. Once P.W.1 herself did not support the case of the prosecution and disowned her own complaint, the genesis of the case of the prosecution itself is highly doubtful. Further, except P.W.2, the victim girl, no other witnesses has spoken about the involvement of the appellants. Further in the evidence of P.W.2, there are inconsistencies, material contradictions, embellishment and improvements at various stages. In the original complaint, the victim has not stated about the involvement of A4 and A5 and therefore, the trial Court disbelieved the evidence of the victim to that extent



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and acquitted the accused 4 and 5. Once the trial Court had expressed doubts about the genesis of the case and acquitted accused 4 and 5, it ought not to have convicted A2 and A3 based on the very same evidence. Further, there is no corroboration of evidence. Although in the cases of this nature the evidence of the victim ordinarily requires no corroboration, in the present case, the victim's testimony is not reliable. Further the commission of the alleged offence by three accused occurred in different occasions, constituting separate causes of action, which cannot be clubbed together as if one incident or continuation of cause of accident. One accused is not connected with the other, and one occurrence is not connected with the other, except that the victim is the same. However, the accused are different, the offences committed are different, and the causes of action are also distinct. Therefore, the prosecution erred in filing a single charge sheet clubbing all the three cases in one complaint and conducted investigation as if one incident or continuation of incident or one cause of action. Further, the evidence of witnesses shows otherwise and the prosecution has not proved its case beyond all reasonable doubt. The genesis of the complaint itself is highly doubtful and the testimony of the evidence of the victim itself is highly doubtful and therefore, the trial Court failed to consider the said aspects and also had



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erroneously convicted the accused 1 to 3 and for the very same materials, A4 and A5 were acquitted. Therefore, the judgment of conviction and sentence passed by the trial Court against the accused 1 to 3 are liable to be set aside.

7.The learned Additional Public prosecutor appearing for the respondent would submit that the victim is aged about 12 ½ years at the time of occurrence and complaint was not made against A4 and A5 and there was no corroborative materials. Therefore acquitted A4 and A5. Further there is materials available against the appellants. P.W.2, the victim, clearly stated the involvement of the appellants. The victim was subjected to medical examination, and independent witnesses have also stated that they saw the victim lying with the appellants. Therefore, on a conjoint reading of the victim's evidence and the medical evidence, the trial Court convicted the appellants. In the cases of this nature, no corroborative evidence can be expected. In the cases of this nature, the accused used to commit the offence in the secluded place and it is not expected that the offence can be committed in the public place. However, in this case, evidence of the victim supported with medial evidence proved that she was subjected to sexual assault. A1 committed aggravated penetrative sexual assault, and as



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against A2 and A3, prosecution has proved the sexual assault and therefore the offence committed by the appellants are proved by the prosecution. The trial court has rightly appreciated the oral evidence and for want of materials against A4 and A5, the trial Court acquitted them. However, there are sufficient materials available and the prosecution has also proved the case beyond reasonable doubt as against the appellants. Although the trial Court acquitted the appellants of the IPC offence, it convicted them based on the materials available under the POCSO Act. Therefore, the appeals have no merit and are liable to be dismissed

8. Heard the submissions made on either side and perused the materials available on record.

9. The specific case of the prosecution is that A1 has committed the offence of penetrative sexual assault on the victim and thereby has committed an offence under Section 5, punishable under Section 6 of the POCSO Act. The first accused has committed penetrative sexual assault more than once on the victim. Such penetrative sexual assault is termed as aggravated penetrative sexual assault under Section 5(1), punishable under Section 6 of the POCSO Act. Accused A2



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and A3 have committed sexual assault, which falls under Section 7, punishable under Section 8 of the POCSO Act.

10. In order to prove the case of the prosecution, on the side of prosecution 13 witnesses were examined and 14 documents were marked. Out of 13 witnesses, P.W.1 is none other than the mother of the victim, who gave the complaint. However, during evidence before the trial Court, she turned hostile and not supported the case of the prosecution. However, at the time of examination of victim as P.W.2 she has clearly stated about the offences committed by the accused, and after registration of complaint, the victim was also produced before the Doctor for conducting medical examination. The Doctor/P.W.11 who examined the victim has clearly stated the victim was brought by her mother and on examination, he found that the hymen of the victim was not intact. Further, P.W.6 who is an independent witness has stated that he heard about the appellants having illegal intimacy with the victim. The Doctor P.W.11 has also made entry in the accident register, Ex.P6 which also shows the alleged sexual assault by known persons and also stated that the hymen of the victim was not intact. Further, the victim was produced before the learned Judicial Magistrate to



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record the statement under Section 164 Cr.P.C and the said statement was marked as Ex.P2. in which the victim girl clearly stated the specific overt acts committed by the accused 1 to 3. Subsequently, the victim was examined before the trial Court as P.W.2 and during trial, she also stated about the involvement of the appellants 1 to 3. Therefore, for better understanding, the translated version of the evidence of P.W.2 regarding the first accused is as follows:

‘During May 2020, while I was walking on the street, the first accused told me that his mother had called me to her house. Accordingly, I went to his house. He gave me a Bovonto drink, and after consuming the same, I became unconscious. At about 8.00 p.m., the first accused poured water on me and woke me up. When I regained consciousness, I found my clothes lying scattered, and I felt pain all over my body. I then wore my clothes and returned to my house. On 28.05.2020, when I was walking in my street at Chathirapatti, the first accused again called me to his house. When I refused, he told me that his mother had called me. I refused further; however, he insisted repeatedly, stating that his mother had sent for me. When the first accused offered me a Bovonto drink, I refused to consume it. However, he forcibly poured the drink into my mouth, as a result of which I became unconscious. Thereafter, he woke me up at about 10.30 p.m. When I regained consciousness, I questioned him as to what he had done. He replied that he wanted to have sexual intercourse with me and stated that he had done so. When I told him that I would inform my father about the incident, he threatened me by showing a knife and told me that he would stab my father. Thereafter, I returned to my house.’



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Regarding A2, P.W.2 deposed as follows:

“From November 2019, I have known Ananda Ramalinamukar (A2). He told me that he was in love with me and asked me to come near Subam Bakery. When I went to that place, he hugged and kissed me and touched my chest. Thereafter, I left that place. ”

Regarding A3, P.W.2 deposed as follows:

“As there was a COVID-19 pandemic during the previous year, I did not attend school. I went for coolie work in the company of one Ramasubbu. One Vinoth Kumar, who was working as a loadman, was known to me. During March 2021, in the pandemic period, he asked me to come near Subam Bakery. At that time, he told me that he was in love with me, kissed me, and touched my chest. Thereafter, he left the place.”

and also a reading of the statement recorded by the Judicial Magistrate under Section 164 of Cr.P.C and the relevant portion of translated version is extracted hereunder:

Regarding A1, it was recorded as follows:

“On 28.05.2020, when I was walking in my street, the first accused told me that his mother had called me. When I went to his house, no other person was present. At that time, he told me that his mother had gone to the shop. Thereafter,



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he gave me a Bovonto drink to consume. Afterwards, at about 8.00 p.m., he woke me up by pouring water on me. At that time, I noticed that my clothes were not in proper condition. One Guru Karthika gave me clothes to wear. I then returned to my house at about 8.15 p.m. On 02.06.2020 also, the first accused told me that his mother had called me. When I refused to go, he persuaded me. When I went to his house, he gave me a Bovonto drink to consume, after which I became unconscious. At about 10.30 p.m., he woke me up by pouring water on me. When I regained consciousness, I found my clothes lying scattered. Thereafter, I wore my clothes and asked him as to what had happened. He told me that he wanted to have sexual intercourse with me and that he had done so. He also told me that he wanted to marry me.”

Regarding A2, it was recorded as follows:

“One Anandaramalingakumar, son of Rajendran, aged about 20 years, and belonging to my village, has been known to me since the year 2019. He asked me to come near Subam Bakery. In the present year, during the second week of April, on a Wednesday, I went to that place. At that time, he told me that he was in love with me, and thereafter he kissed me and touched my chest.”

Regarding A3, it is recorded as follows:

“One Vinoth Kumar is the son of one Ganesan of Velayuthapuram and is aged about 20 years. He was working as a loadman and used to come to my



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company to reload goods. He told me that he had affection for me. On 21.03.2020, he asked me to come near Subam Bakery during the night time. I went to that place at about 6.00 p.m. As it was the pandemic period, no shop was open. He kissed me and touched my chest. Thereafter, I asked him to leave me and left the place.”

11. Ex.P4 Potency Certificate of A1 and Ex.P6, the accident register of the victim and from the evidence of P.W.2 and also the statement recorded under Section 164 of Cr.P.C., by the learned Judicial Magistrate under Ex.P2 and the evidence of the Doctor-P.W.11 and Ex.P6 accident register and also the evidence of P.W.6 there are corroborative materials, even though the mother of the victim turned hostile. However, in the cases of this nature, the evidence of the victim alone is sufficient. Though the learned counsel for the appellants has not made any submission regarding the true version of the occurrence and has only contended that the evidence of the witnesses is inconsistent and contradictory, and that there are improvements and embellishments, it cannot be said that the accused cannot be convicted solely on the basis of the victim's evidence, even though two of the other accused were acquitted of the charges. However, a reading of the evidence of the victim aged about 13 years shows that the first accused has committed aggravated penetrative sexual assault and the second and



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third accused committed sexual assault. Further upon a reading of the entire materials, it is seen that though the victim has not stated the true version regarding the other aspects and the nature of the offence, considering the age of the victim, she was afraid to speak about the true version about the occurrence on the pretext that the parents would beat her and would not allowed to go outside of the house, hence she has suppressed certain facts. However the fact remains that the allegation against the accused regarding the commission of offence is genuine. The learned counsel for the appellant would submit that since the victim gave letter to A2 and expressed her love to him and A2 refused to accept it, a false case has been foisted and if it is true she would have filed a complaint against A2 alone and there is no need to implicate the other accused. The appellants taking advantage of the age and innocence and also the family background of the victim, they have committed the offence. However, consent is immaterial to the POCSO Offence, since the victim is a child. In order to prove the age, the prosecution has marked the school certificate as Ex.P5 in which the date of birth is mentioned as 13.11.2007 which is marked through P.W.10, who is the Headmistress of the school in which, the victim was studying. Therefore from the evidence of P.W.10 and Ex.P5, the date of birth is 13.11.2007 and the date of



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occurrence is 28.5.2020 and therefore the age of the victim is only 13 years at the time of commission of offence. Therefore the victim is a child and there is no contra evidence let in by the defence to disprove the age of the victim that she was not child under the definition of 2(d) of the POCSO Act.

12. Considering the materials, especially, the evidence of P.W.10 and Ex.P5 this Court finds that the victim is a child who comes under the definition of Section 2(d) of the POCSO Act. Since the first accused has committed the offence of penetrative sexual assault more than once, the offence committed by the first accused falls under section 5(1) which is aggravated penetrative sexual assault punishable under Section 6 of POCSO Act. As far as A2 is concerned, he has committed sexual assault which comes under the definition under Section 7 punishable under Section 8 of the POCSO Act. As far as A3 is concerned, he has committed sexual assault which falls under Section 7 punishable under Section 8 of POCSO Act. From the reading of both oral and documentary evidence, this Court while re-appreciating the evidence finds that the prosecution has proved the case for the offence under the POCSO Act. Though the victim has not spoken true version about the approach of the appellants with her, they cannot take



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advantage of the innocence of the victim child. Since the age of the victim is only 13 years and therefore, consent is immaterial even otherwise the same will not take away the offence committed by the accused 1 to 3 and therefore a reading of the materials and considering the scope and object of the POCSO Act, this Court is of the view that A1 has committed the offence under Section 5(l) which is punishable under Section 6 of the POCSO Act, A2 has committed the offence under Section 7 punishable under Section 8 of POCSO Act and A3 has committed the offence under Section 7 punishable under Section 8 of the POCSO Act. This Court does not find any merit in the appeals and therefore, the same deserves to be dismissed.

13. As far as sentence is concerned, A1 has committed the offence of aggravated penetrative sexual assault and hence, this Court is of the view that there is no mitigating circumstances to reduce the sentence in respect of A1. As far as A2 and A3 are concerned, considering the age of A2 and A3 and the nature of the offence committed by them, the minimum sentence would meet the ends of justice therefore, the sentence insofar as A2 and A3 is reduced from five years to three years, which would meet the ends of justice. The period of imprisonment



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already undergone by the second and third accused is directed to be set off under Section 428 of Cr.P.C. In all other aspects, the order of the Court below remains unaltered.

14. In the result, Crl.A.(MD)No.741 of 2022 is dismissed, and the appeals in Crl.A.(MD)Nos.488 and 499 of 2021 are partly allowed, with the above modification.

[P.V.,J.] [R.P.,J.]
25.11.2025

NCS : Yes/No
Index : Yes / No
Internet : Yes / No
vsn

To

1.The Judge,
Special Court for Exclusive Trial of Cases under
POCSO Act,
Virudhunagar District at Srivilliputhur.

2.The Inspector of Police,
All Women Police Station,
Rajapalayam, Virudhunagar District.
(Crime No.08 of 2020)

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Copy to

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



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P.VELMURUGAN, J.
and
R.POORNIMA.,J.

vsn

COMMON JUDGMENT MADE IN
CRL.A(MD)Nos.488 and 499 of 2021
and
CRL.A(MD)No.741 of 2022

25.11.2025