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CRL.A.(MD).No.624 of



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 14/10/2025

CORAM

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

CrI.A(MD)No.624 of 2022

T.Murugesan

Vs.

: Appellant/Sole Accused

State through:-

The Inspector of Police,
Alangudi All Women Police Station,
Pudukkottai District.
(Crime No.09/2021)

: Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 of the Code of the Criminal Procedure, against the judgment of conviction and sentence of imprisonment imposed by the learned Sessions Judge, Mahila Court, Pudukkottai, in Special SC No.28 of 2021, dated 14/03/2022 and to set aside the same.

For Appellant

: Mr.S.Malaikani

For Respondent

: Mr.T.Senthil Kumar
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, Mahila Court, Pudukottai, in Special SC No.28 of 2021, dated 14/03/2022 and consequently to acquit the appellant.

2.The case of the prosecution is that the victim child is the daughter of the de-facto complainant. The accused is the brother of the de-facto complainant. On 10/11/2020, the mother of the de-facto complainant was not well and so, the victim child was sent for help by the de-facto complainant to her mother's house. At that time, the accused with sexual intent had hugged the victim girl and kissed her. When the said fact was told by the victim child to her mother, they decided to get married the victim child to the accused, after she attaining the age of 18. In the meantime, when the victim child was alone in the house in between 05/07/2021 and 07/07/2021, the accused had committed penetrative sexual assault forcibly on the victim child.



3.It is the further case of the prosecution that the accused had relationship with one Anjammal and after the alleged occurrence, on 11/08/2021, the accused married the said Anjammal and she had been pregnancy of 7 months.

4.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 2021 for the offences under Sections 5(1), 5(n), which are punishable under Section 6 of Protection of Children from Sexual Offence Act, 2012 (herein after referred as to 'POCSO Act) against the accused. After completing investigation, the respondent Police laid a charge sheet under Sections 5(1), 5(n) r/w 6(1) of the POCSO Act, 2019 before the learned Sessions Judge, Mahila Court, Pudukottai and the same was taken on file in Special SC No. 28 of 2021.

5.After completing the formalities under the provisions of Section 207 Cr.P.C., since there was a *prima facie* material to frame charge against the appellant, the learned Sessions Judge framed charge for the offence punishable under Section 6(1) of POCSO Amendment Act, 2019.



6. After framing the charge, during trial, on the side of the prosecution, in order to substantiate the charge, totally 7 witnesses were examined as PW1 to PW7 and 11 documents were marked as Exs.P1 to P11.

7. 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 oral and document evidence was adduced.

8. 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 5(l), 5(n) r/w 6(1) of the POCSO Amendment Act, 2019, convicted him thereunder and sentenced him to undergo **Life Imprisonment** and to pay a fine of Rs.30,000/-, in default to undergo one month Simple Imprisonment for the offence under Section 5(l), 5(n) r/w 6(1) of POCSO Amendment Act, 2019. The period of detention already undergone by the accused is ordered to be set off under Section 428 Cr.P.C.



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9.Challenging the said judgment of conviction and sentence,

the present appeal has been preferred by the appellant.

10.The learned counsel for the appellant would submit that a false case has been foisted against the appellant and there is no material to show that the appellant had committed the penetrative sexual assault on the victim child; Since the victim child did not attain majority, they decided to marry the victim to the appellant, after she attaining the age of 18. He would further submit that the Trial Court has failed to consider the fact that there is no eye witness to the occurrence and the prosecution has not proved its case beyond all reasonable doubt. Therefore, the judgment of conviction and sentence recorded by the Trial Court are liable to be set aside and the appeal is to be allowed.

11.The learned Additional Public Prosecutor would submit that the victim child who is aged about 15 years was subjected to penetrative sexual assault by the appellant and therefore, the case has been registered against the appellant for the offence punishable under Section 5(l), 5(n) and 6(1) of POCSO Act; At the conclusion of the trial, the Trial Court found that the appellant has committed the offences punishable under Sections



5(i), 5(n) r/w 6(1) of the POCSO Act and therefore, the conviction and sentence recorded by the Trial Court does not call for any interference by this Court.

12.Heard both sides and perused the materials available on records.

13.The specific case of the prosecution is that on 10/11/2020 the mother of the de-facto complainant was not well and so, she sent the victim child to help her mother and at that time, the accused hugged the victim child and kissed her and when the same was informed to her mother by the victim child, they decided to give the victim child in marriage to the accused after she attaining the age of 18 and thereafter also, on the subsequent days I.e., on 05/07/2021, 06/07/2022 and 07/07/2021, when the victim child was alone in the house, the appellant had committed forcible penetrative sexual assault on her.

14.In order to substantiate the charges levelled against the appellant, the mother of the victim child was examined as PW1, who gave the complaint to set the law in motion. Based on her complaint (Ex.P1), the



respondent Police registered the case in Crime No.9 of 2021 and conducted investigation and laid a charge sheet against the appellant for the offences punishable under Sections 5(l), 5(n) r/w 6 of POCSO Act, 2019. During investigation, the victim was examined under Section 164 Cr.P.C and her statement was recorded by the Judicial Magistrate.

15.In order to substantiate the case, the victim child was examined as PW2. She has clearly deposed that the appellant is the none other than her maternal uncle and she was aged about 15 years at the time of the occurrence and when she was alone in her house, the appellant taking advantage of the relationship had committed aggravated penetrative sexual assault upon her on three occasions viz., on 05/07/2021, 006/07/2021 and 07/07/2021. As per the evidence of PW2, the appellant has committed the penetrative sexual assault. The victim child was subsequently produced before the Judicial Magistrate for recording the Statement under Section 164 Cr.P.C and the statement of the victim child recorded under Section 164 Cr.P.C was marked as Ex.P4. In Ex.P4 also, the victim has clearly stated before the Magistrate that she was subjected to penetrative sexual assault by the appellant. Thereafter, the victim was produced before the Medical Officer (PW5), who conducted clinical medical examination also



gave a certificate that the victim child was subjected to penetrative sexual assault and she opined that her hymen was not in-tact.

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16. Therefore, a combined reading of the evidence of the victim before the Court and the statement made before the Judicial Magistrate and also before the Doctor clearly shows that the appellant, who one has committed the penetrative sexual assault on the victim child. PW1, who is the mother of the victim also spoken about the same before the Judicial Magistrate and made a complaint. Therefore, the evidence of PW2 was corroborated by the evidence of PW1. PW5 Doctor, who examined the victim child has also clearly spoken that the victim child was brought by her mother to the hospital and at the time of her medical examination, the victim has stated that the appellant who one committed the penetrative sexual assault on her. Though, there was a cross examination in this aspect on the defence side, the same was not challenged by the appellant. In the cases of this nature, no independent witness can be expected. The evidence of the victim girl alone can be relied, unless there is a reason to discard or disbelieve the evidence. Therefore, a reading of the evidence of PW5- Doctor and the statement of the victim child recorded under Section 164 of Cr.P.C by the Judicial Magistrate and the Accident Register (Ex.P8), the



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evidence of the victim girl is cogent, consistent and reliable and there is no reason to disbelieve the evidence of the victim child. When there is no reason to disbelieve or discard the evidence of the victim child, no independent witness is necessary to corroborate the evidence of the victim. More so, the victim child was produced before the Judicial Magistrate and her statement was recorded under Section 164 Cr.P.C and subsequently, the victim child was also examined before the Trial Court, where she has clearly deposed the incident. Though there may be some discrepancies and contradictions, unless the Court finds that there are material contradictions which would go to the root of the prosecution case and there are reasons for discarding the evidence of the victim, the evidence of the victim child has to be taken into consideration to arrive at a conclusion that the accused has committed the charged offences.

17. In this case, in order to prove the age of the victim/PW2, the prosecution has produced the birth certificate of the victim and the same was marked as Ex.P2, in which the date of birth of the victim is mentioned as 28/02/2006. The date of the first occurrence is 10/11/2020 and thereafter, on 05/07/2021, 06/07/2021 and 07/07/2021, the subsequent occurrences took place. Therefore, at the time of the occurrence, the age of the victim



was below 18 years. Since, the victim child is below 18 years at the time of the occurrence and is a child under the definition of 2(1)(d) of POCSO Act and the victim child/PW2 was subjected to sexual assault, the offence falls under POCSO Act.

18. Therefore, from the evidence of the victim child and Ex.P4/statement of the victim recorded under Section 164 Cr.P.C., Ex.P8 medical document and the evidence of PW5-Doctor, this Court finds that the victim child 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(1) of the POCSO Act come into play which is punishable under Section 6 of the Act. Since the appellant is the close relative of the victim, the offence committed by the appellant falls under Section 5(n) r/w 6(1) of the Act. So, the prosecution has proved its case beyond all reasonable doubt. Further, once the prosecution has proved the foundational facts 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.



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19. Entire reading of the material evidence, the appellant has not rebutted the presumption under section 29 of the POCSO Act. In this case, from the reading of the evidence of PW1 the mother of the victim child, PW2 victim, PW5 Doctor, who gave treatment, this Court finds that the prosecution has established the foundational fact that the victim was subjected to penetrative sexual assault on several occasions. In such circumstances, when Section 29 of the POCSO Act creates statutory presumption of guilt against the appellant, the appellant has to rebut such presumption. Therefore, 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 entire oral and documentary evidence produced before this Court. This Court finds that the prosecution has proved its case beyond all reasonable doubt with available materials. 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 and the materials and convicted the appellant.



20.In the result, this Criminal Appeal is **dismissed**, confirming
the impugned judgment passed by the Trial Court.

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(P.V.,J) (L.V.G.,J)
14/10/2025

Index:Yes/No
Internet:Yes/No

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To,

- 1.The Sessions Judge,
Mahila Court,
Pudukottai.
- 2.The Inspector of Police,
All Women Police Station,
Pudukkottai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI,J
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