



Crl.A.No.729 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.11.2025

CORAM:

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

CRL.A(MD)No.729 of 2022

Pounraj

(now confined in Central Prison,
Madurai)

... Appellant/Single Accused

.Vs.

The State, represented by
The Inspector of Police,
All Women Police Station,
Madurai District.
(Crime No.18 of 2018)

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code against the judgment of conviction passed in S.C.NO.40 of 2019, dated 10.8.2022 passed by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Madurai convicting the appellant for the offences under Sections 5(k) r/w Section 6 of Protection of Children from Sexual Offences Act, 2012 and sentencing the appellant to undergo life imprisonment



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and to pay a fine of Rs.5,000/- and to pay a compensation of Rs.50,000/-, in default, sentenced him to undergo one year simple imprisonment, dated 10.8.2022.

For Appellant : M/s.R.Yeswanth

For Respondent : Mr.B.Nambi Selvan
Addl.Public Prosecutor

JUDGMENT

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

This Criminal Appeal is filed against the judgment of conviction passed by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Madurai convicting the appellant for the offences under Sections 5(k) r/w Section 6 of Protection of Children from Sexual Offences Act, 2012 and sentencing the appellant to undergo life imprisonment and to pay a fine of Rs. 5,000/- and to pay a compensation of Rs.50,000/-, in default, sentenced him to undergo one year simple imprisonment, dated 10.8.2022.

2.The respondent/Police registered a case against the appellant in Crime No.18 of 2018 on 12.4.2018 for the offence under Sections 3,4, and 5(k) of

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Protection of Children from Sexual Offences Act, 2012. After investigation, laid charge sheet before the Mahila Court, Madurai. Since the offence is against the child, the Special Court took cognizance of the charge-sheet on file in S.C.NO. 40 of 2019 and complied with the proceedings under Section 207 Cr.P.C and framed charges for the offence under Section 21(c) r/w Section 6 of POCSO Act and also framed charge for the offence under Section 506(i) IPC. In order to substantiate the charges, on the side of the prosecution, 18 witnesses were examined as P.W.1 to P.W.18 and 18 documents were marked as Ex.P1 to Ex.P18 and also the victim was examined as a Court witness as C.W.1 and ExC1 was marked. One material object was exhibited as MO1.

3. After examination of the prosecution witnesses, the trial Court culled out the incriminating circumstances appear against the appellant and put question under section 313 Cr.P.C., which the appellant denied as false. On the side of the defence, no oral and documentary evidence was let in. On conclusion of trial and hearing of the arguments, defence of either side, the trial Court convicted the accused for the offence under Section 5(k) r/w Section 6 of POCSO Act, 2012 and sentenced him to undergo life imprisonment and to pay a fine of Rs.5,000/-



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and to pay compensation of Rs.50,000/-, in default, sentenced him to undergo one year simple imprisonment. Challenging the said conviction and sentence, the accused has filed the present Criminal Appeal.

4.The learned counsel for the appellant would submit that the trial Court failed to consider the basic ingredients to attract the offence punishable under Section 5(k) r/w. Section 6 of POCSO Act. In this case, the victim was not at all examined by the respondent/Police during the course of investigation and even before the Court during trial. The provision under Section 25 and 26 of the POCSO Act was not at all followed by the prosecution, which caused serious prejudice to the case. There was enmity between the family of the victim girl and the accused family which was admitted by P.W.1 complainant and the close relative of victim family. P.W.2, P.W.5 and P.W.7 denied the same, which creates serious doubt over the credibility of the above said witnesses and the same was not considered by the trial Court. Further, he would submit that the origin and genesis of the occurrence was pressed by the prosecution. There was enmity between the appellant and the victim family. If that be the case, P.W.5 would not have allowed the accused to take away the victim girl, especially when she was



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asked to take care of the child in the absence of P.W.2 and P.W.3. Even P.W.2 while recording the statement under Section 164 Cr.P.C by the Judicial Magistrate, did not implicate the appellant at all. Therefore, the genesis and origin of the occurrence pressed by the prosecution. Further he would submit that the earlier complaint in this case was suppressed by the prosecution.. The earlier complaint preferred to Peraiyur Police Station and the statement of P.W.1 was suppressed by the prosecution which strengthens the case of the accused and this is a false case to wreck vengeance and to discharge the burden contemplated under section 29 of POCSO Act. The victim girl was used as a tool by P.W.2 to P.W.6 and 7 and settle their family disputes. P.W.5 and P.W.7 on the one hand and the son of the accused on the other end. After extraneous consideration, without conducting any investigation as contemplated under the Code of Criminal Procedure, simply charged the appellant for heinous offence. There were contradictions in the evidence of prosecution witnesses and the same was not properly appreciated by the learned Special Judge. Further he would submit that the place where the offence was said to have taken place is a open place, having no door. Further according to the case of the prosecution, the occurrence was happened in a wire got. The Observation Mahazar and the rough



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sketch did not contain any facts and no explanation was offered by the prosecution for missing of got. There is delay in filing the complaint and forwarding the same to the Court would not at all explained by the prosecution and in this case, not corroborated with the oral evidence adduced on the side of the prosecution. The medical officer P.W.8 categorically stated that there are no external injuries and the hymen of the victim girl and the prosecution has failed to establish the same. Even if the entire case of the prosecution is admitted in its entirety, it will not attract the offence punishable under Section 6 of POCSO Act. The trial Court failed to consider the material contradictions pointed out by the defence counsel and failed to appreciate the oral and documentary evidence and erroneously convicted the appellant and sentenced him to undergo Life imprisonment, which warrants interference by this Court.

5. On the other hand, the learned Additional Public Prosecutor appearing for the respondent/State would submit that originally the case was registered for the offence under Section 34 and 5(k) of the POCSO Act and however after investigation, prosecution laid the charge sheet. Investigation Agency filed the charge sheet against the appellant for the offence under Section 5(k) r/w Section



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6 of POCSO Act and Section 506(i) IPC. In this case, the victim is a mentally retarded person. Therefore she is unable to understand the happenings to her and P.W.4 saw that the appellant took the victim to a secluded place and therefore she informed to P.W.1 and P.W.1 immediately searched the victim and at that time, he saw the occurrence. Therefore filed the complaint and P.W.4 also corroborated the same who has only informed the occurrence to P.W.1 about the fact that the appellant took the victim and further P.W.2, 3, 4, 5 and 6 who are also relatives to the victim and also to the complaint and they are also hear-say witnesses and soon after the occurrence, they have heard about the occurrence and P.W.1 and 2 were produced before the Judicial Magistrate to record the statement under Section 164 Cr.P.C and their evidence was also recorded by the Judicial Magistrate. The victim was also produced before the Medical Officer and from the entry made in the accident register, which is the first document, shows that the victim was subjected to sexual assault by known person on 11.4.2018 at 3.00 p.m. and the doctor who gave treatment to the victim was also examined and has also issued certificate and further the evidence of P.W.1 eyewitness as well as the complaint to set the law in motion and PW5 coupled with medical evidence of the Doctor, the prosecution has proved that the



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appellant committed the offence of penetrative sexual assault and the victim is a mentally retarded person and therefore, he has committed the offence under section 5(k) which is punishable under Section 6 of the POCSO Act. The trial Court has rightly appreciated both oral and documentary evidence and convicted the appellant for the offence under section 5(k) of POCSO Act. Therefore there is no merit in the appeal and the appeal is liable to be dismissed.

6.Heard both sides and perused the materials available on record.

7.Based on the materials, the trial court framed two charges one for the offence under section 5(k) r/w Section 6 of POCSO Act and another charge is for the offence under section 506(i) IPC. In order to substantiate the charges, the trial Court examined 18 witnesses and 18 documents. Since the prosecution did not examine the victim as a witness, therefore, the Court examined the victim as a Court witness as C.W.1 and the statement recorded by the Judicial Magistrate was marked as Ex.C1.Though the victim was produced before the Judicial Magistrate and since the victim is a mentally retarded person, she did not spoke any words to the Magistrate. But considering the demeanour of the victim, the



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Magistrate did not record any statement from the victim and sent report.

8. Admittedly, the victim is a mentally retarded person. Her parents were residing ordinarily in Coimbatore for their livelihood. Therefore, the parents left the victim to their maternal grandmother. At that time on 11.4.2018 at about 3.00 p.m. P.W.1 was in the house of P.W.5 informed her that the appellant took the victim. Immediately, P.W.1 searched the victim and saw them in the cattle shed of the appellant. The appellant laid the victim on the wire got and lying on her. Immediately P.W.1 questioned the appellant and took the victim to his house and the grand-parents of the victim came to the house and informed to them and also informed to the relatives. In order to corroborate the same, the person who informed was said to have informed to P.W.1 was examined as P.W.5 and she has clearly stated that the appellant took the victim girl. Therefore, the evidence of P.W.1 corroborated with the appellant who took the victim. P.W.1 also gave a complaint to the respondent-Police and the respondent-Police also registered a case and conducted the investigation.

9. During the course of investigation, the victim was produced before the



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Judicial Magistrate for recording the statement under Section 164 Cr.P.C. Since the victim is a mentally retarded person, she was not in a position to say anything before the Judicial Magistrate. Therefore the Magistrate did not record any statement from the victim, however, the Judicial Magistrate has sent a report to the Special Court. The said report has been marked as Ex.C1. Though the prosecution did not examine the victim, however, the Court summoned the victim and examined the victim as C.W.1. The victim did not say anything before the Special Court during trial. The victim was examined as C.W.1. She was not able to say anything. Therefore the trial Court did not examine the victim further. Further, the statement of P.W.1 recorded by the Judicial Magistrate under Section 164 of Cr.P.C. was marked as Ex.C1. P.W.2 was also produced before the Judicial Magistrate for recording the statement under Section 164 Cr.P.C. and the said 164 statement of P.W.2 was marked as Ex.P.3 and therefore, from the evidence of P.W. 1 and P.W.2 and Ex.P2 and Ex.P3 which corroborates with the appellant, who had committed the offence of penetrative sexual assault. Since the victim is a mentally retarded person, therefore, the offence is aggravated penetrative sexual assault under Section 5(k) of POCSO Act, which is punishable under Section 6 of POCSO Act.



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10. From the evidence of P.W.1 to P.W.6, it is made clear that the prosecution has proved that the victim is a mentally retarded person and also the evidence of P.W.1 to P.W.6 clearly show that the victim was residing with her maternal grand-mother house, since the parent of the victim went to Coimbatore for eking out their livelihood. The evidence of P.W.5 shows that the victim was lastly seen along with the appellant. The evidence of P.W.1 shows that the appellant was lying on the victim in a compromised position. From the evidence of Doctor who examined the victim and made entry in the accident register was examined as P.W.8, he has clearly stated that on 11.4.2018, the victim was brought by her grand-mother and she told that on 11.4.2018 at about 3.00 p.m. and known person committed penetrative sexual assault on the victim and that the victim was conscious and she did not know to speak and also she appears to be mentally retarded person and on clinical examination, it was found that the hymen was not intact and issued the medical certificate. The Doctor who conducted the potency test on the appellant was examined as P.W.9, who stated that the appellant was potent. P.W.11 stated about the disability certificate issued to the victim. Therefore, as per Ex.P8 and evidence of P.W.8 and 11 clearly show that the victim was a mentally retarded person at the time of occurrence.



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11. Therefore from the oral and documentary evidence, the prosecution has proved that the victim is a mentally retarded person. Taking advantage of the same, the appellant took the victim and sexually assaulted her. Therefore, from the evidence of P.W.1 and 5 and also the evidence of P.W.9 and 14, it is proved that the victim was a mentally retarded person at the time of occurrence and from the evidence of P.W.1 and 5, the appellant is the one who has committed the offence of penetrative sexual assault on her. The evidence of P.W.8 further proved the same. Therefore, when the victim was produced before the Judicial Magistrate for recording the statement under section 164 Cr.P.C. the victim did not say anything to the Judicial Magistrate, since she was not in a position to say anything due to her mental retardness. Therefore she was not examined before the Court. However, the Court examined her as a Court witness. At that time also, during trial before the Court, the victim was not able to speak due to her mental retardness. However, P.W.1, who saw the occurrence, who has clearly stated that the appellant was lying on the victim in the wire cot and therefore, the prosecution has proved its case. From the evidence of Doctor-P.W.8, the offence committed on the victim falls under section 3 of POCSO Act, which is punishable under Section 4 of POCSO Act. Since the victim is a mentally retarded person,



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the offence falls under Section 5(k) of POCSO Act, which is punishable under Section 6 of POCSO Act. If any penetrative sexual assault is made by a person on the victim falls under Section 5(k) of the POCSO Act, then it will automatically be termed into aggravated penetrative sexual assault, which is grave in nature and the punishment is more. However, in this case, the prosecution has proved that the victim is a mentally retarded person. Therefore, the offence committed by the appellant falls under Section 5(K) of POCSO Act, which is punishable under Section 6 of POCSO Act. For better understanding, Section 5(k) and Section 6 of POCSO Act is reproduced hereunder :

5. Aggravated Penetrative Sexual Assault: (a) to (j).....

(k) Whoever, taking advantage of a child's mental or physical disability, commits penetrative sexual assault on the child ; or.....

6. Punishment for aggravated penetrative sexual assault:-- Whoever, commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years by which may extend to imprisonment for life and shall also be liable to fine. ”

12. Therefore, this Court, as an appellate Court, while re-appreciating both



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the oral and documentary evidence, finds that the appellant is the one who has committed the grave offence of aggravated penetrative sexual assault on the victim. Therefore, this Court finds no perversity in appreciation of evidence by the trial Court and therefore, this Court comes to the conclusion that there is no merit in appeal and the same is liable to be dismissed. Regarding payment of compensation at Rs.50,000/- to the victim, this Court finds no reason to interfere with the said order and the same stands confirmed.

13. Accordingly, the Criminal Appeal stands dismissed and the conviction and sentence imposed on the appellant in S.C.NO.40 of 2019, dated 10.08.2022 passed by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Madurai stands confirmed. The order of the trial Court regarding payment of compensation to the victim at Rs.50,000/- stands confirmed and remains unaltered.

[P.V.,J.] [L.V.G.,J.]
18.11.2025

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

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To

1.The Sessions Judge,
Special Court for Exclusive Trial of Cases under
POCSO Act,
Madurai.

2.The Inspector of Police,
All Women Police Station,
Thirumangalam,Madurai District.
(Crime No.18 of 2018).

Copy to

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



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P.VELMURUGAN., J.
and
L.VICTORIA GOWRI.,J.

vsn

JUDGMENT MADE IN
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