



Cr1.A(MD)No.785 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 19.11.2025

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

and

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

Cr1.A(MD)No.785 of 2022

Surya

: Appellant/Sole Accused

Vs.

The State Rep. By its
The Inspector of Police,
Allinagaram Police Station,
Theni District

: Respondent/Complainant

Prayer:-This Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code, to call for the records pertaining to the conviction order passed in Spl.S.C. No.24 of 2019 dated 20.12.2019 on the file of the Fast Track Mahila Court, Theni District and set aside the same as illegal.

For Appellant : Mr. S.Ayyanar Prem Kumar
for Mr. R.Sundar

For Respondent : Mr.B.Nambiselvan
Additional Public Prosecutor



Cr1.A(MD)No.785 of 2022

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J U D G M E N T

P.VELMURUGAN, J.,

This Criminal Appeal is filed against the judgment of conviction and sentence passed by the Fast Track Mahila Court, Theni District in Spl.S.C. No.24 of 2019 dated 20.12.2019

2. By the above judgment the trial Court had convicted the appellant and sentenced him, as detailed below:

Penal Provisions	Sentence of Imprisonment	Fine Amount
6 of POCSO Act	Life Imprisonment	Rs.10,000/- i/d to undergo two years rigorous imprisonment

Further, the trial Court has recommended the Government to pay Rs.7,00,000/- as compensation after deducting the paid interim compensation. if any, to child victim/survivor through RTGS or NEFT in her bank account. The Secretary, District Legal Services Authority, Theni, is also directed to forward a copy of the judgment to the District Collector, Theni to comply with respect to the compensation aspect.



Cr1.A(MD)No.785 of 2022

3.The case of the prosecution in brief:-

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3.1 . On 19.02.2019, at about 7.00 pm., when the victim was alone in her house, the appellant herein trespassed into the house of the de facto complainant and committed penetrative sexual assault on the minor victim aged about nine years and escaped from the scene of occurrence. Based on the complaint given by the de facto complainant a case was registered in Crime No. 85 of 2019 for the offence under Section 6 of the POCSO Act.

3.2 After completion of investigation, the respondent police laid a charge sheet before the Fast Track Mahila Court, Theni and the same was taken on file in Spl.S.C. No.24 of 2019.

3.3. The trial Court framed charges against the appellant for the offence punishable under Section 6 of the POCSO Act.

3.4. In order to substantiate the case of the prosecution, the prosecution examined 15 witnesses as P.W.1 to P.W.15 and marked 9 exhibits as Ex.P.1 to P.9. No material objects were marked



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3.5. After examination of prosecution witnesses, when the appellant was questioned under Section 313 of the Code of Criminal Procedure on the incriminating circumstances appearing against him, he denied the same as false. No witness was examined on the side of the accused, nor was any document marked.

4. The trial court, after considering the evidence on record and hearing either side, by judgment dated 20.12.2019, convicted and sentenced the accused as detailed in Paragraph No.2 supra. Challenging the above said conviction and sentence, the accused has filed the present appeal.

5. The learned counsel appearing for the appellant would submit that except P.W.2/victim all the witnesses are only hearsay witness and there is a delay in filing the complaint and such a delay has not been explained, therefore the unexplained delay in filing the complaint itself is fatal to the case of the prosecution. However, there is a contradictory statement made by the victim before the doctor and also before the Court. Even before the doctor there were two dates



Cr1.A(MD)No.785 of 2022

mentioned but whereas before the Court she mentioned only one date.

The materials were collected from the victim and sent for forensic lab for examination as to ascertain whether the victim was subjected to penetrative sexual assault or not. As stated by the victim, if any fluid like semen was discharged, it would be in the dress which she wore during the occurrence and it will reveal as to whether the case of prosecution is genuine. Further in this case the occurrence is said to have taken place on 19.02.2019 whereas the complaint was lodged only on 23.02.2019. Further there is no eyewitness to say that the appellant was present at the scene of occurrence on the date of occurrence.

6. P.W.1 and P.W.3 are the parents of the victim and they are interested witnesses. P.W.4 and P.W.5 are the hearsay witnesses and they were not present at the time of occurrence at the scene of occurrence. The mother of the victim came home at 9'0' clock from the hospital. P.W.3 during the cross examination has stated that she did not see the occurrence. P.W.2 stated that she informed to P.W.4, whereas P.W.4 during cross examination stated that she did not see the occurrence and the same was only informed by the mother of the victim



and in this case no materials have been seized and marked before the trial Court. In the absence of seizure of materials and proving the same, the case of prosecution is highly doubtful. Further there are contradictions in the oral evidence and medical evidence to show that the appellant only committed the charged offence and the trial Court failed to consider the same. Further the trial Court solely based on the evidence of the victim, convicted the appellant, and therefore the conviction recorded by the trial Court is liable to be set aside and the appeal is liable to be allowed.

7. The learned Additional Public Prosecutor would submit that P.W.2 is the victim in this case and while she was alone in the house the appellant who is a neighbour entered into the house and also committed penetrative sexual assault. P.W.11/doctor has also clearly stated that the victim was subjected to penetrative sexual assault. Ex.P.6 Medical Report of the victim given by the doctor also clearly shows that the victim was subjected to penetrative sexual assault. Further he would submit that the age of the victim was about nine years and the date of birth of the victim is 27.04.2010 and the date of occurrence is 19.02.2019



Cr1.A(MD)No.785 of 2022

and as per Section 2(d) of the POCSO Act she is defined as Child, therefore the offence committed by the appellant is termed as aggravated penetrative sexual assault. Further the mother of the victim lodged the complaint before the respondent police and based on that the victim was produced before the doctor for medical examination and subsequently the victim was also produced before the learned Judicial Magistrate for recording statement under Section 164 of Cr.P.C and she also made statement before the Magistrate which was marked as Ex.P.2. The victim was examined as P.W.2 and also the doctor who was examined as P.W.11 corroborated each other. The victim also sustained injuries in her private parts as mentioned in Ex.P.6 and therefore the prosecution has proved its case that the victim was subjected to penetrative sexual assault, hence there is no merit in the appeal and it is liable to be dismissed.

8. We have considered the submissions of the learned counsel for the appellant and the learned Additional Public Prosecutor for the State and have consciously gone through the evidence and materials on record.



Cr1.A(MD)No.785 of 2022

WEB COPY

9. The specific case of the prosecution is that on 19.02.2019 at about 7 '0' clock when the victim was alone in the house, the appellant entered into the house and sexually assaulted the victim and the victim also informed her mother after she arrived at the house. The mother of the victim informed the same to the Social Welfare Officer on 23.02.2019 and thereafter filed the complaint and the respondent police registered a case, investigated the matter and filed the final report.

10. In order to substantiate the case of the prosecution the victim was examined as P.W.2 and even prior to that the victim was also produced before the Judicial Magistrate and her statement was also recorded under Section 164 of Cr.P.C., which was marked as Ex.P.2 . Further, the mother of the victim lodged the complaint before the respondent police which was marked as Ex.P.1.



11. In cases of this nature, no independent witnesses can reasonably be expected. The culprits taking undue advantage of the child and exploiting their loneliness and vulnerability, attempt to misbehave with them. However, merely because such offences are generally committed in secrecy and consequently there are no eyewitnesses, the Court cannot refuse to base a conviction on the sole testimony of the victim, provided such testimony inspires the confidence of the Court and is found to be cogent, consistent and credible.

12. This Court as well as the Hon'ble Apex Court, has repeatedly held that in cases of this nature if the evidence of the victim is cogent, consistent and credible and the same inspires confidence of this Court, the Court can record a conviction on the basis of the evidence of the victim/injured witness alone. In order to prove the case of the prosecution, it is not the quantity of witnesses but the quality of their evidence that matters. Even if single witnesses testimony is cogent, consistent and inspires the confidence of the Court, a conviction can be recorded based on the evidence of the victim. In this case when the



victim was alone in her house, the appellant who is the neighbour entered into the house and taking advantage of the loneliness of the victim committed penetrative sexual assault. Even P.W.1 has stated that before she left for the hospital, she had informed the appellant to take care of the child and had also informed P.W.4 to look after the child. Admittedly, at the time of the occurrence, the victim was alone in the house and no one else was present. Further the victim who was produced before the doctor P.W.11 has clearly stated that a known person had sexually assaulted her and upon the examination the doctor found that there were injuries on the private parts of the victim. Even during the cross examination when the doctor was asked whether the injuries could have been caused in other ways, the doctor has stated that the injuries of this nature could be caused only by penetrative sexual assault. Further the doctor issued certificate Ex.P.6 which also clearly states the injuries sustained by the victim on her private parts, which reads as follows:

“1. பாதிக்கப்பட்ட சிறுமியின் உடம்பில் காயங்கள் ஏதும் உள்ளதா”

ஆம் vaginal outlet lower margin a tear of size 0.95cm
X0.25cmx0.5cm with redness mild tenderness felt over the vaginal outlet
lower margin



Cr1.A(MD)No.785 of 2022

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2. பாதிக்கப்பட்ட சிறுமி உடலுறவு கொண்டதற்கான சாத்திய கூறுகள் உள்ளதா?

ஆம் vaginal outlet lower margin a tear of size 0.95cm X0.25cmx0.5cm with redness mild tenderness felt over the vaginal outlet lower margin

3.பாதிக்கப்பட்ட சிறுமி உடலுறவு கொள்ள தகுதியானவரா?

சட்ட ரீதியாக இல்லை

4.பாதிக்கப்பட்ட சிறுமிக்கு இனப்பெறுக்க உறுப்பில் காயங்கள் ஏதும் உள்ளதா?

vaginal outlet lower margin a tear of size 0.95cm X0.25cmx0.5cm with redness mild tenderness felt over the vaginal outlet lower margin

5. பாதிக்கப்பட்ட சிறுமியின் வயது என்ன ?

பற்களின் வளர்ச்சி 6/6 மற்றும் எலும்புகளின் நுண்கதிர். ஆய்வுகளின் அடிப்படையில் சட்டம் சார்ந்த மருத்துவ துறை பேராசிரியர் அவர்கள் கருத்துபடி 07 வயதுக்கு மேல் 10 வயதுக்கு கீழ்.

13. In cases of this nature, the mothers in Indian Society do not rush to the police station immediately after they come to know of the sexual assault on their children and they will hesitate to go to the police station or to any other third parties, under these circumstances mere delay in filing the complaint is not fatal to the case of the prosecution and the evidence of the victim/P.W.2 clearly shows that the appellant is the one who caused injuries to the victim.



14. From the evidence of the doctor it is seen that the age of the victim is between 7 and 10. Section 2(d) of the POCSO Act reads as follows:

(d) “child” means any person below the age of eighteen years;

As per the prosecution case the victims are covered by the definition “child” and if the appellant has committed any form of penetrative sexual assault against the victims who is below 12 years which falls under Section 5(m) aggravated penetrative sexual assault, he is liable to be punished.

15. Section 5(m) of the POCSO Act states that whoever commits penetrative sexual assault on a child below 12 years is said to have committed aggravated penetrative sexual assault.

16. Ex.P.5 is the certificate given by the Head Mistress of the School in which the victim was studying fourth standard and the date of birth of the victim is 27.04.2010 and the date of occurrence is 19.02.2019, therefore it is clear that the victim is below 12 years and any penetrative sexual assault committed on the child below 12 years is



Cr1.A(MD)No.785 of 2022

WEB COPIED termed into aggravated penetrative sexual assault under Section 5(m) of the POCSO Act which is punishable under Section 6 of the POCSO Act.

17. Considering the evidence of victim/P.W.2 and Ex.P. 1/complaint, the statement of the victim recorded by the learned Judicial Magistrate under Section 164 of Cr.P.C/Ex.P.2 and also the evidence of the doctor /P.W.11 and Ex.P.6/Certificate issued by the doctor, this Court finds that the prosecution has proved its case beyond all reasonable doubt.

18. The trial Court also rightly appreciated the oral and documentary evidence and came to the conclusion that the appellant is the one who committed penetrative sexual assault and thereby caused injuries to the victim/P.W.2.

19. This Court, while re-appreciating the evidence, also found that the evidence of P.W.2/victim the statement recorded by the magistrate from the victim under Section 164 of Cr.P.C.,(Ex.P.2) the evidence of the doctor/P.W.11, the age certificate produced by P.W. 10



Cr1.A(MD)No.785 of 2022

(Ex.P.5) and also Ex.P.6(medical certificate) issued by the doctor establish that the appellant committed penetrative sexual assault on the victim, attracting Section 5(m) of the POCSO Act. Since the victim is under 12 years it is termed as aggravated penetrative sexual assault and falls under Section 5(m) of the POCSO Act which is punishable under Section 6 of the POCSO Act.

20. Therefore this Court finds that the prosecution has proved its case beyond all reasonable doubt.

21. In view of the same, this Court finds no reason to interfere with the judgment of the trial Court either to set aside the conviction or modify the sentence, hence the appeal lacks merit and deserves to be dismissed.

22. In the result the Criminal Appeal stands dismissed confirming the judgment of the trial Court.

(P.V.,J.) (L.V.G.J.,)
19.11.2025

Index : Yes/No
Internet : Yes/No
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Cr1.A(MD)No.785 of 2022

To:

WEB COPY

- 1.The Fast Track Mahila Court, Theni District
- 2.The Inspector of Police,
Allinagaram Police Station,
Theni District
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
4. The Section Officer
Criminal Records,
Madurai Bench of Madras High Court,
Madurai.



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Cr1.A(MD)No.785 of 2022

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and

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Cr1.A(MD)No.785 of 2022

19.11.2025