

WEB COPY

Crl.A.(MD)No.244 of 2017



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 20.06.2025

CORAM:

THE HONOURABLE Dr.JUSTICE R.N.MANJULA

Crl.A.(MD)No.244 of 2017

Boominathan

... Appellant

vs.

State: Inspector of Police,
All Women Police Station,
Kumbakonam.
Crime No.8 of 2015

...Respondent

PRAYER : This Criminal Appeal has been filed under Section 374 of Criminal Procedure Code against the Judgement of the learned Sessions Judge, Fast Track Mahila Court, Thanjavur, dated 31.05.2017 in Special S.C.No.19 of 2016.

For Appellant : Mr.T.A.Ebenezer

For Respondent : Mr.A.Albert James,
Government Advocate (Crl. Side)

J U D G E M E N T

This appeal has been filed challenging the Judgement of the learned Sessions Judge, Fast Track Mahila Court, Thanjavur, dated 31.05.2017 in Special S.C.No.19 of 2016.



WEB COPY

2.1. The appellant is the sole accused, who has been charged under Sections 294(b), 506(1) and 352 IPC and Section 8 of POCSO Act, 2012 and convicted and sentenced by the learned Sessions Judge as under.

Accused	Offences under Sections	Punishment	Fine	In default Sentence
Sole Accused	352 IPC	Simple Imprisonment for 3 months	Rs.500/-	Simple Imprisonment for 15 days
	8 of POCSO Act	Rigorous Imprisonment for 3 years	Rs.1,000/-	Simple Imprisonment for 3 months

2.2. The sentences were ordered to run concurrently. Set off under Section 428 Cr.P.C. is also ordered.

3.1. The case of the prosecution as per the records is that on 13.12.2015, at about 09.00 p.m., when the complainant (PW2) and her sister / victim (PW1) were at their house, the accused came there and asked PW1 to come to the channel side at about 11.00 p.m.. When she went there, he sexually abused her by keeping his hands on her chest. When PW1 objected, the accused abused her in filthy language and when the same was questioned by PW2, the accused pulled PW2 and pushed her into the channel water and threatened to kill her, in case she dared to inform this to anyone.



WEB COPY

3.2. On the complaint given by PW2, a case has been registered in Crime No.8 of 2015 on the file of the All Women Police Station, Kumbakonam. After conclusion of the investigation, charge sheet has been filed against the accused for the offences punishable under Section 8 of POCSO Act, 2012 r/w Sections 294(b) and 506(1) IPC.

3.3. After completing the legal mandate of furnishing copies and all other legal formalities, charges have been framed against the accused for the offences under Sections 294(b), 506(1) and 352 IPC and Section 8 of POCSO Act, 2012. When the accused was questioned, he denied his involvements and claimed to be tried.

3.4. Before the Trial Court, on the side of the prosecution PW1 to PW16 have been examined and Exs.P1 to P11 have been marked. On the side of the accused, no oral or documentary evidence has been marked.

3.5. After the conclusion of trial, the learned Sessions Judge acquitted the accused from the charges under Sections 294(b) and 506(1) IPC and found the accused guilty for the offences under Section 352 IPC and Section 8 of POCSO Act and convicted and sentenced him as



mentioned supra. Aggrieved over that, the appellant / accused has preferred this appeal.

4. Mr.T.A.Ebenezer, learned counsel appearing for the appellant submitted that the evidence given by PW1, PW2, PW3 and PW8 do not disclose any ingredients to make out a charge under Section 8 of POCSO Act as alleged by the prosecution. The cross examination of PW1 and PW2 would itself demolish the case of the prosecution. The contradictions in the evidence of PW1, PW2 and PW3 were not properly appreciated by the learned Sessions Judge. The age of the victim has been determined through ossification test and even that raised doubt whether the victim (PW1) was aged 17 years or 18 years at the time of occurrence. The benefit of doubt should go in favour of the appellant in view of the Judgement of the Apex Court held in the cases of (i) **Ram Suresh Singh v. Prabhat Singh Alias Chhotu Singh and Another reported in 2009 (6) SCC 681** and (ii) **Jyoti Prakash Rai vs. State of Bihar reported in (2008) 15 SCC 223**. The motive for lodging the complaint by PW2 was the previous dispute between the family of the appellant and the family of the complainant; but these were not taken into consideration by the learned Sessions Judge.



WEB COPY

5. Mr.A.Albert James, learned Government Advocate (Crl. Side) appearing for the respondent submitted that in the absence of School Certificate or Birth Certificate, the age of the victim (PW1) has been determined by following the procedures contemplated under Section 94 of the Juvenile Justice Act, which is upheld by the Apex Court in the case of **P.Yuvaprakash vs. State Rep. by Inspector of Police reported in 2023 INSC 676**. Hence, there is no doubt with regard to the ascertainment of the age of the victim. PW1, PW2, PW3 and PW8 have clearly stated in their chief examination about the occurrence and the incriminating act of the appellant and the learned Sessions Judge has rightly dealt with the same.

6. With regard to the determination of age of the victim of sexual offence, the position of law has already been settled by the Apex Court in the case of **P.Yuvaprakash vs. State Rep. by Inspector of Police reported in 2023 INSC 676**. In the said case, it is held that the procedures followed under Section 94 of the Juvenile Justice Act for fixing the age of the child in conflict with law can be adopted for fixing the age of victim involved in POCSO Act cases also.



WEB COPY

7. As per the above procedure for determining the age of the victim, if School Certificate is available that can be taken into consideration. In the absence of the same, the Date of Birth obtained from the School first attended can be taken into consideration. If these two provisions are not available, then Birth Certificate given by the Corporation can be relied upon. In the absence of all the above three documents, then the age of the victim has to be determined by getting medical opinion from the duly constituted Medical Board.

8. In the instant case, the prosecution did not recover School Certificate or Birth Certificate of the victim (PW1). But, they have taken the victim to the Radiologist for the purpose of ascertaining her age. The Radiologist has ascertained her age as 'completed 16 years of age and not completed 17 years of age'.

9. So, it is claimed by the learned counsel for the appellant that the appellant has got the benefit of margin of error on either sides for two years and hence the victim's age can be considered as 'more than 18 years', which means, she is not a child within the purview of the POCSO Act.



WEB COPY

10. The radiological Report of the Doctor states that the victim has 'completed 16 years of age and not completed 17 years of age'. The Report does not say whether the victim child was 16 - 17 years or 17 - 18 years. From the opinion given, the age can be inferred as 17 - 18 years. Because 16 years is found to be completed for sure during the medical examination.

11. The learned counsel for the appellant claimed that the margin of error in such cases is two years and if that benefit is given to the appellant, he cannot be charged under Section 8 of the POCSO Act. But, it has been held repeatedly that the margin of two years cannot be automatically applied in all POCSO Act cases.

12. Attention of this Court was drawn to the Judgement of the Apex Court held in **Rajak Mohammad vs. The State of Himachal Pradesh in Criminal Appeal No.1395/2015, dated 23.08.2018**, wherein it is stated that, while the age of the child determined on the basis of radiological examination may not be an accurate determination and sufficient margin either way has to be allowed, yet, if the totality of the circumstances leave room for doubt with regard to the correct age of the prosecutrix, the benefit of such doubt would go in favour of the accused.



So, it is not only the margin of error which would absolve the appellant from the liability to be charged under Section POSCO Act, but the other aspects of the case should also be taken into consideration before passing the above doubt in favour of the appellant.

13. Sofaras the evidence of the witnesses with regard to the commission of offence by the appellant is concerned, the most relevant evidence would be the evidence of PW1 who is the victim. She has stated in her evidence that the appellant is her paternal uncle and she used to call him 'anna'. As per her evidence, on 13.12.2015, at about 09.30 p.m., when herself (PW1), her step sister (PW2) along with her grandmother (PW8) were in their house, the appellant came in a drunken mode and insisted PW1 to come to channel side without the knowledge of the other members of the family and he threatened to kill her if she did not oblige. PW1 has further stated in her evidence that one week prior to the above occurrence, the appellant had kept his hands on her chest inappropriately. She did not disclose it to her sister as she was frightened. Subsequently, the appellant had stolen one goat from their house. Thereafter only, he called PW1 to the channel side. PW1 revealed the same to PW2 and PW2 shouted at the appellant. Since PW1 revealed it to PW2, the appellant had attacked PW1. At that point of time, one



Velmurugan came there and resisted the accused from beating PW1.

During that time, the son of the appellant also came there and asked the appellant why was he beating Velmurugan who interfered. The appellant told his son that Velmurugan is coming from the house of the victim and hence, he beat him. The appellant and his son pulled PW2, pushed her into the channel water, sat over her and beat her. PW8 came to her rescue, lifted her up and relieved her from the appellant. Thereafter, PW1 informed the occurrence to her mother through phone and her mother arrived the next day.

14. The above evidence of PW1 was in completely contradiction to the complaint given by PW2 which is marked as Ex.P2. In the complaint, it is stated that the occurrence itself had taken place on 13.12.2015. But in the evidence of PW1, it is found that the occurrence had taken place one week prior to 13.12.2015. A third person by name Velmurugan had come to the place of occurrence. But, he was not examined as a witness. PW2, PW3 and PW8 are interested witnesses as they stand in relationships of sister, mother and grandmother. Despite the same, Velmurugan was not examined by the prosecution. The evidence of PW1 states that both the appellant and his son had attacked PW2. Even that part was not found in the complaint.



WEB COPY

15. PW2, who is the complainant has stated in her evidence that she had seen the appellant calling PW1 and she condemned it. But according to the evidence of PW1, the appellant asked her to come without the knowledge of other family members. PW2 had stated that the appellant called PW1 only in her presence and because of the quarrel, third person by name Velmurugan came there and pacified them. During that time, PW2 went to the house of the appellant to bring his son Kesavan and thereafter, the appellant was fighting with Velmurugan as well. PW2 had stated in her evidence that when Kesavan questioned the appellant why was he beating Velmurugan, the appellant told him that, Velmurugan was in the house of the complainant and that enraged him.

16. The complaint was given only on 16.12.2015 despite the mother of PW1 had come back on 15.12.2015. Though in normal circumstances, delay in lodging complaint in offences falling under POCSO Act or other sexual offences cannot be considered as fatal to the prosecution because of the inhibition in the mind of the victim and hesitation in the minds of the family members and relatives, which reduced the possibility for the victim and her family to come forward and lodge a complaint immediately after the occurrence, without making any discussion in the family.



WEB COPY

17. But, in this case, no explanation has been given by the victim or her family members that the delay in lodging the complaint was due to any discussion within the family. The mother of PW1 arrived on 15.12.2015. Even then, they did not give any complaint. In the complaint, it is stated that on 13.12.2015, at about 11.00 p.m., the appellant asked the victim girl (PW1) to come to channel side where the appellant kept his hands on her chest. However, PW1 in her evidence had stated that the appellant kept his hands in her chest one week prior to 13.12.2015. PW2 in her evidence has stated that, PW1 informed her that, the appellant had kept his hands on her chest one week prior to the incidence and she did not inform the same as she was frightened. As there are vital contradictions between the complaint Ex.P2 and the evidence of PW1 and PW2 who are victim and eye witness to the incidence and as there is involvement of third person by name Velmurugan, who has not been examined, there are enough doubts as to the veracity of the statements of PW1 and PW2.

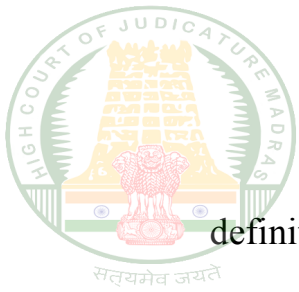
18. PW3, who is the mother of the victim has stated in her evidence that on 16.12.2015 morning, she reported the issue to some third persons by names Baskar and Kamaraj, who disbelieved her version. At that time, the appellant also came there and PW3 enquired



him. PW3 evidence revealed that the appellant used to threaten PW3 not to send her children to School and if she sends them, he would abduct them.

19. It is seen from the evidence that the appellant was very protective and possessive about PW1 and PW2, who are his sister's children. Even according to the evidence of PW1 and PW2, at the time of occurrence, one third person by name Velmurugan was present, who had pacified the appellant when he started to beat PW1 and PW2.

20. Apart from all this contradictory and doubtful circumstances, the age of the victim was also not determined through her School Certificate. No reason has been given by the prosecution as to what prompted them to ascertain the age of the victim through medical examination without attempting to collect the School Certificate or Date of Birth Certificate. Since the age has been determined only through medical examination, marginal error advantage can also be given to the appellant in the extraneous circumstances of the case. As the marginal error can be one or two years on either side and as the victim was found to be 'completed 16 years of age and not completed 17 years of age', it cannot be strictly concluded that the victim is a child within the



definition of POCSO Act.

WEB COPY

21. In view of the marginal error and doubts regarding the age of the victim, the benefit of doubt can be given in favour of the appellant in the extraneous facts and circumstances of the case. Though the marginal error in the case of determination of age through medical examination cannot be an automatic interference, while the totality of the circumstances evaluated and it leaves room for doubt, then such benefit can be allowed to be passed on in favour of the appellant.

22. I view of the above discussions, I feel that the benefit of doubt with regard to the age of victim, contradictions in the complaint Ex.P2 and the evidence of PW1 and PW2 and the non-examination of the third party who has been present during the alleged occurrence, can all be considered as rebuttal circumstances in favour of the appellant which would neutralize the initial presumption that ought to have been taken in favour of the prosecution under Section 29 of the POCSO Act.

23. In view of the above observations, the Criminal Appeal is allowed and the Judgement of the learned Sessions Judge, Fast Track Mahila Court, Thanjavur, dated 31.05.2017 in Special S.C.No.19 of 2016



is set aside, the appellant / accused is not found guilty for the offences under Sections 294(b), 506(1) and 352 IPC and Section 8 of POCSO Act and acquitted of the charges framed against him. The bail bond, if any, shall stand cancelled and sureties, if any, shall be discharged. The fine amount, if already paid, shall be refunded to the appellant / accused. If any compensation awarded by the Trial Court under Section 357 Cr.P.C. or other provision has been paid, the same shall also be refunded.

20.06.2025

mbi

To

- 1.The Sessions Judge,
Fast Track Mahila Court,
Thanjavur.
- 2.The Inspector of Police,
All Women Police Station,
Kumbakonam.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.A.(MD)No.244 of 2017

Dr.R.N.MANJULA, J.

mbi

Crl.A.(MD)No.244 of 2017

20.06.2025