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CRL.A.(MD)No.1221 of



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 24/11/2025

CORAM

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

Crl.A(MD)No.1221 of 2025

XXX (Step father of the Victim Child) : Appellant/Sole Accused

Vs.

The State of Tamil Nadu
Represented by
The Inspector of Police,
All Women Police Station,
Thiruvaiyaru.
(In Crime No.13 of 2021)

: Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 415(2) of BNSS to call for the records and to set aside the judgment, dated 08/05/2025 in Spl.SC No.4 of 2022 on the file of the Sessions Judge, Principal Special Court for Exclusive Trial of cases under POCSO Act, Thanjavur and pass such further or other orders.

For Appellant : Mr.B.Sekar

For Respondent : Mr.B.Nambi Selvan
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, Principal Special Court for exclusive Trial of Cases under POCSO Act, Thanjavur, in Special SC No.04 of 2022, dated 08/05/2025 and consequently to acquit the appellant.

2.The case of the prosecution is that the victim child is aged about 12 years at the time of the occurrence and she was studying 8th Standard. The de-facto complainant is the mother of the victim child. The accused is the step father of the victim child. The first husband of the de-facto complainant fell in a well and passed away 10 years back. When the de-facto complainant was working in Coimbatore, relationship developed between herself and the accused and thereafter, she lived with the accused along with her son and the victim child, who were born through the deceased first husband. They were working in the brick-kiln. When there was no work in the brick-kiln, the accused went to Karur and doing welding work. In the meantime, on 03/08/2021 at 12.00 midnight, the accused touched the breasts of the victim child, inserted his genital into her genital and had forcible sexual intercourse with her. When the victim child



questioned the accused, he has stated to her that she is not born to him and she is his wife and threatened her stating that if she disclosed the occurrence to anybody, he would leave them in lurch. Again on 15/08/2021, on the independence day at about 05.00 am, he lifted her nighty, touched her breasts and forcibly had sexual intercourse with her.

3. Based on the complaint (Ex.P1) given by the mother of the victim child, the respondent Police registered a case in Crime No.13 of 2021 for the offences punishable under Sections 4(2), 5(1) and 6 of Protection of Children from Sexual Offence Act, (herein-after referred as to 'POCSO Act) against the accused. After completing the investigation, the respondent Police laid a charge sheet before the learned Sessions Judge, Special Court for exclusive Trial of Cases under POCSO Act, Thanjavur, under Sections 5(m), 5(n), 5(l) r/w 6 of POCSO Act and the same was taken on file in Special SC No.04 of 2022.

4. After completing the formalities under Section 207 Cr.P.C., since there was a *prima facie* material to frame charges against the accused, the learned Sessions Judge framed charges for the offences punishable under Section 6 r/w 5(1), (n) of POCSO Act and Section 506(i) IPC.



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5. After framing charges, during trial, on the side of the prosecution, in order to substantiate the charges, totally 18 witnesses were examined as PW1 to PW18 and 14 documents were marked as Exs.P1 to P14.

6. After completing the 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 documentary evidence was adduced.

7. 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 Section 6 r/w 5(l), 5(n) of POCSO Act and 506(i) IPC, convicted him thereunder and sentenced him to undergo **Life Imprisonment** and to pay a fine of Rs.15,000/-, in default to undergo 6 months of Simple Imprisonment for the offence under Section 6 r/w **5(l), 5(n) of POCSO Act**; and sentenced him to undergo **Two years Rigorous Imprisonment for the offence under Section 506(i) IPC**. Both the sentences were ordered to run concurrently.



8.Challenging the said judgment of conviction and sentence,

the present appeal has been preferred by the appellant.

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9.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; the prosecution has failed to prove the presence of the accused at the place and time of the occurrence by independent witnesses; the trial Court failed to appreciate the fact that PW14-Doctor, who examined the victim in the first instance and through whom Ex.A8-Accident Register, Ex.A9-Medical Report and Ex.A10-Forensic Report were marked, had clearly admitted in the cross examination that there was no external injuries to the victim and also she has formed her opinion based on the victim's statement; PW15 categorically admitted that the victim age was arrived based on her Aadhaar Card and also failed to enquire with the school where she studied and therefore, the age of the victim is not proved in the manner known to law; The prosecution has failed to enquire about alleged previous occurrence said to have taken place at Bargur, thus, it is only an afterthought and without any corroborating material evidence, mere victim statement cannot be elevated or treated as proof and hence, PW2-victim



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child statement is not corroborated with the evidence of PW15, who conducted enquiry at the first inception; the prosecution has failed to produce the evidence, when and where the alleged previous occurrence had taken place, as there was no enquiry in this aspect, invoking the offence under Section 5(1) of POCSO Act is not sustainable; There was no evidence to show that the accused had committed the offence previously or more than once or repeatedly; The trial Court ought to have appreciated the admission made by PW15 about the alleged place of occurrence, which is a thatched house and there is no separate room in it; Further, PW2-victim child admitted that she along with her brother and mother-PW1 are staying in the same house and there are various houses situated adjacently, however, the prosecution has failed to enquire the victim brother and others; The PW1-the victim's mother is a hearsay witness, even though PW1 was also at the alleged place of occurrence and time, it is highly unbelievable about the occurrence; The trial Court ought to have appreciated the fact that the prosecution miserably failed to enquire about the alleged previous occurrence and there was no explanation for not disclosing the Bargur incident by PW2 either to PW15 or PW1; The trial Court ought to have appreciated the fact that the prosecution failed to enquire the victim's grandmother, since victim alleged that she disclosed



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her grievances with her grandmother immediately after the occurrence and who consoled her; PW15-Inspector of Police has specifically admitted that there are 2 other persons accompanied with PW1 when she came to police station for lodging the complaint, but the prosecution failed to enquire those persons, who accompanied with PW1; Further PW1's case is that she is not aware of Tamil language, thus the prosecution failed to examine about who wrote the complaint in Tamil and for which, who furnished the information to the writer; The trial Court ought to have appreciated the evidence that there was no evidence in support of prosecution case of aggravated penetrative sexual assault and invoking Section 6 of POCSO Act and punishing the accused is not sustainable; The trial Court ought to have appreciated the admission of PW1 and PW2 about the first complaint lodged with Boothalur Police Station, which was not placed on record; The trial Court ought to have appreciated the fact that there was no evidence to prove the presence of ingredient of offence under Section 506(i) IPC as against the appellant and therefore, extending the benefit of doubt in favour of the appellant, the judgment of conviction and sentence recorded by the Trial Court are to be set aside and the appeal is to be allowed.



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10. The learned Additional Public Prosecutor would submit that the appellant is the step father of the victim child, who is aged about 12 years and committed the penetrative sexual assault and since the victim child is the step daughter of the appellant, the offence committed by the appellant falls under Section 5(n) of POCSO Act, which is punishable under Section 6 of POCSO Act and therefore, considering the nature of the offence and the relationship, the trial Court framed the charges as against the appellant for the offences punishable under Section 6 r/w 5(n) of POCSO Act; Further, since the appellant threatened the mother of the victim child not to reveal the said occurrence to anybody and if she revealed the same, he will desert her and thereby, he committed the offence under Section 506(i) IPC; PW1 is the mother of the victim child, who also gave complaint (Ex.P1) to set the law in motion and the victim was examined as PW2 and she has also clearly stated about penetrative sexual assault committed by the appellant on her; Previously the victim child was produced before the Judicial Magistrate to record the statement under Section 164 Cr.P.C, wherein she has also clearly spoken about the offence committed by the appellant and the said statement was marked as Ex.P3 and therefore, the charges framed against the appellant have been substantiated through the evidence of the victim child and through the statement recorded



by the Judicial Magistrate under Section 164 Cr.P.C; the Accident Register (Ex.P8) also shows that she was subjected to sexual assault by her step father; since the mother of the victim married the appellant as second husband, the victim child was also under the care and custody of the appellant and therefore, he is the step father in relation; the Doctor, who conducted medical examination on the victim was examined as PW13; Since, at the time of the occurrence, the age of the victim child is 12 years, she was defined as 'child' under POCSO Act; Even the confidential medical examination report (Ex.P9) issued by PW14 shows that hymen of the victim child was not in-tact; therefore, from the oral and documentary evidence, the prosecution has proved its case beyond reasonable doubt that the appellant, who is the step father in relation had committed the penetrative sexual assault and therefore, the offence committed by the appellant falls under Section 6 r/w 5(l) of POCSO Act; therefore, the prosecution has proved its case beyond reasonable doubt; the trial Court has rightly appreciated the oral and documentary evidence, which also corroborated with medical evidence and the trial Court has rightly convicted the appellant under Sections 6 r/w 5(l), 5(n) of POCSO Act and imposed Life Imprisonment; Further PW1, who is the mother of the victim child has clearly spoken about the threat made by the appellant and based on the



complaint (Ex.P1) and the evidence of PW1, the trial Court also found that the appellant has committed the offence under Section 506(i) IPC and imposed two years rigorous imprisonment and the trial Court also directed the State Government to pay the compensation amount of Rs.8,00,000/- to the victim child from the Tamil Nadu Child Victim Compensation Fund and under these circumstances, there is no merit in this appeal and the same is liable to be dismissed.

11.Heard the learned counsel for the appellant and the learned Additional Public Prosecutor for the respondent and perused the materials available on record.

12.It is the specific case of the prosecution that the victim child is aged about 12 years at the time of the occurrence and she was studying 8th Standard and the de-facto complainant is the mother of the victim child and she married the accused secondly, since her first husband was no more and the accused is the step father of the victim child and the mother of victim child lived with the accused along with her son and the victim child, who were born through the deceased first husband. On 03/08/2021 at 12.00 midnight, the accused touched the breasts of the victim



child, inserted his genital into her genital and had forcible sexual intercourse with her. Again, on 15/08/2021 at about 05.00 am, the accused had sexual intercourse with her. Based on the complaint given by PW1 who is the none other than the mother of the victim child, the respondent Police registered the case against the appellant for the offences punishable under Sections 4(2), 5(1) and 6 of POCSO Act.

13.The victim child was produced before the Doctor for clinical examination. The Doctor also made entry in the Accident Register and mentioned about the history of the case in brief. The Accident Register was marked as Ex.P8, which shows that on 14/08/2021 at about 06.00 am, the victim child was alleged to have sexually assaulted by her step father and admitted in the hospital at 10.40 pm, on 16/08/2021. The victim child was produced before the PW14 Doctor, who also stated that on 16/08/2021 at about 10.40 pm, she admitted the victim child and the victim child stated that on 14/08/2021 at about 06.00 am, she was sexually assaulted by her step father. Subsequently the victim child also produced before the Judicial Magistrate for recording statement under Section 164(5) Cr.P.C and the learned Judicial Magistrate also recorded the statement of the victim child, which was marked as Ex.P3. Subsequently, during trial, the victim child



was examined as PW2 for testimony, wherein also she has clearly stated about the offence committed by the appellant.

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14.A combined reading of the evidence of PW2, Exs.P3 and P8, the victim child is the daughter of PW1 and the appellant married PW1 second time and therefore, the victim child is residing with her mother, who got second marriage with the appellant and also the victim child was under the custody of the appellant, who is the step father of the victim child.

15.The mother of the victim child was examined as PW1. She has clearly stated about the complaint given to the respondent Police against the appellant for committing the offence. The complaint given by the de-facto complainant was marked as Ex.P1.

16.Perusal of the evidence of PW1 and the complaint (Ex.P1), it is seen that the victim child is the daughter of PW1 born through the deceased first husband and PW1 got second marriage with the appellant. After the second marriage, PW1 along with the victim child residing with the appellant. When they were residing, on the date of the occurrence, even prior to that, the appellant misbehaved with the victim child, which is



defined under POCSO Act and he also committed penetrative sexual assault, which falls under Section 5(l) of POCSO Act and therefore, the act committed by the appellant fall into aggravated sexual assault, which is punishable under Section 6 of POCSO Act.

17.The evidence of PW1 and PW2 would clearly show that the appellant is the step father of the victim child. There is no contra evidence let in to show that the appellant was not the step father of the victim child. Therefore, the relationship between the appellant and the victim child was proved. Further, in order to prove the age of the victim child, the bona-fide certificate issued by the school authorities was marked as Ex.P5 and the school admissions and withdrawals register was marked as Ex.P6. The Headmistress of the School in which the victim child studied was examined as PW12. Through her, Exs.P5 and P6 were marked. Perusal of the same, the date of birth of the victim is mentioned as 05/06/2009. The alleged occurrence took place on 03/08/2021 and subsequently, on 15/08/2021. Therefore, at the time of the occurrence, the age of the victim child is below 12 years and therefore, on the date of the occurrence, the victim child did not complete the age of 18 years. Therefore, the victim is child as defined under section 2(d) of POCSO Act.



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18.Ex.P9 is the confidential medical examination report of the victim child, which shows that the victim child was examined by the Medical Officer, on 16/08/2021 at about 10.40 pm, wherein it is stated that the victim child was subjected to penetrative sexual assault. On medical examination, the Doctor also found that hymen of the victim child was not in-tact. The Doctor, who conducted potency test on the accused was examined as PW13. The Doctor, who conducted medical examination on the victim child was examined as PW14 and through her, Exs.P8, P9 and P10 were marked. Therefore, from the evidence of the victim child, the mother of the victim child and the Doctor, who conducted medical examination on the victim child and Exs.P1, P3 and P5 and the statement recorded by the Judicial Magistrate under Section 164(5) Cr.P.C and also the medical records Exs.P8, P9 and P10, the prosecution has proved that the victim was a child defined under POCSO Act and she was subjected to penetrative sexual assault which termed into aggravated penetrative sexual assault and the appellant, who is the step father of the victim child only committed such an offence.

19.Though the learned counsel for the appellant vehemently contended that the age of the victim child was not proved and the



Headmistress has stated that they are not authorised to make the date of birth of the victim child and the documents produced by the prosecution viz., Exs.P5 and P6 are not the conclusive proof and the prosecution has not proved the age of the victim child and the evidence of PW1 who is the mother of the victim child, PW2 victim child and the evidence of the Doctor PW14 and also Exs.P5 and P6, though it may not be the conclusive proof to prove the age of the victim as 12, however, from the above materials and also in the absence of any contra evidence that the victim is not a child, who has not completed the age of 18, which fact has not been denied by the appellant. There is no contra evidence let by the defence. Even though, the victim child is not below 12 years, but however, the victim child is a child defined under POCSO Act. Therefore, the offence committed by the appellant falls under POCSO Act. Even though, the offence committed by the appellant does not come into the category of aggravated penetrative sexual assault, however from the evidence of PW1, PW2, PW14 and Exs.P1, P3, P8, P9 and P10, the prosecution has proved that the appellant has committed the penetrative sexual assault.

20.Further, the learned counsel for the appellant would submit that the victim child stated that the appellant only attempted to commit the



offence, so the commission of penetrative sexual assault has not been proved. At best, the act of the appellant falls not under Section 5 of the POCSO Act, however, reading of the evidence of PW1 and also the statement of the victim child, the evidence of PW14 and Ex.P3, medical records (Exs.P8 to P10), the prosecution has proved that the appellant has committed penetrative sexual assault, which comes under the definition of Section 3 of the Act, since it is an undisputed fact that the appellant secondly married the mother of the victim child and both the mother and the victim child residing with the appellant. Therefore, the appellant is the step father of the victim child in relation. Therefore, the penetrative sexual assault committed by the appellant falls under section 5(n) of the Act, defined as aggravated penetrative sexual assault which is punishable under Section 6 of the Act. Further, from the evidence of PW2-victim child, it is clear that the appellant has committed penetrative sexual assault more than once. Therefore, the act committed by the appellant falls under Section 5(l) of the Act, which also termed as aggravated penetrative sexual assault. Therefore, a reading of the oral and documentary evidence, the prosecution has clearly proved that the appellant who is the step father of the victim child has committed the penetrative sexual assault on the victim child more than once. Therefore, the offence committed by the appellant falls under



Sections 5(1) and 5(n) of the Act. Therefore, the appellant has committed the aggravated penetrative sexual assault on the victim child, which is punishable under Section 6 of the Act. Therefore, the contention of the learned counsel for the appellant is not acceptable and it is also not tenable in-law.

21.A combined reading of the evidence both oral and documentary and also the medical evidence of the Doctor, this Court while re-appreciating the evidence finds that the evidence of PW1 and PW2 is cogent, consistent and reliable and there is no reason to discard their evidence, which also inspire confidence of this Court. Therefore, this Court while re-appreciating the evidence finds that the appellant who one committed the penetrative sexual assault on the victim child. Since the appellant is the step father of the victim child, the offence committed by him comes into the definition of aggravated penetrative sexual assault. The trial Court has rightly appreciated the evidence both oral and documentary and convicted the appellant. Though the trial Court found that the appellant has committed the offences under Sections 5(1) and 5(n) of the Act, however, the trial Court has given sentence only for one count alone. Even assuming that the prosecution has not proved the case that the appellant has



not committed penetrative sexual assault more than once and the age of the victim child was not below 12 years, however, from the material evidence, this Court finds that the victim is a child as defined in POCSO Act. The appellant is the step father of the victim child, who committed the penetrative sexual assault. Therefore, the offence committed by the appellant falls under Section 5(n) of the Act punishable under Section 6 of the POCSO Act.

22. 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 and 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. Further, while re-appreciating the evidence, this Court also finds that the appellant has committed the charged offences and there is no reason



to interfere with the judgment of conviction and sentence recorded by the Trial Court. Since the victim girl was a child comes under the definition of POCSO Act and she was subjected to aggravated penetrative sexual assault as defined under Section 5 of the POCSO Act, there is no mitigating circumstance to alter the sentence and, therefore, this Court finds that there is no merit in the appeal.

23.For all the reasons stated above, this Court finds no reason to interfere with the impugned order passed by the trial Court and therefore, the appeal is liable to be dismissed and accordingly, it is dismissed.

24.In the result, this criminal appeal is **dismissed**, confirming the impugned judgment passed by the Trial Court.

(P.V.,J) (R.P,J)
24 /11/2025

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To,

1. The Sessions Judge,
Principal Special Court for
Exclusive Trial of POCSO Act cases,
Thanjavur.
2. The Judicial Magistrate,
Thiruvaiyaru,
Thanjavur District.
3. The Inspector of Police,
All Women Police Station,
Thiruvaiyaru,
Thanjavur District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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