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Crl.A.No.66 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 29.04.2026

DELIVERED ON: 24.06.2026

CORAM:

THE HON'BLE MR. JUSTICE A.D. JAGADISH CHANDIRA

Crl.A.No.66 of 2024

Saravanan

Appellant

vs.

State by the Inspector of Police
All Women Police Station
Thirupathur
Thirupathur District
(Cr.No.2 of 2022)

Respondent

Criminal Appeal filed under Section 374(2) Cr.P.C. to call for the entire records in connection with Spl.S.C.No.105 of 2022 on the file of the Special Court for Exclusive Trial of Cases under the POCSO Act, 2012, Vellore, Vellore District and set aside the judgment of conviction and sentence dated 25.09.2023 made therein.

For appellant

Mr. E. Kannadasan

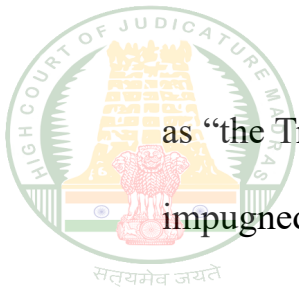
For respondent

Ms. J.R. Archana

Govt. Advocate (Crl. Side)

JUDGMENT

The instant criminal appeal is filed by the accused (hereinafter referred to as “the appellant”) seeking to set aside the judgment of conviction and sentence dated 25.09.2023 passed by the Court of Special Judge for Exclusive Trial of Cases under POCSO Act, 2012, Vellore, Vellore District (hereinafter referred to



as “the Trial Court”) in Spl. S.C. No. 105 of 2022 (hereinafter referred to as “the impugned judgment”).

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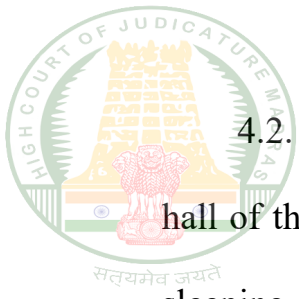
2. *Vide* the impugned judgment, the Trial Court convicted the appellant and sentenced him as tabulated below:

Penal Provision	Imprisonment	Fine Amount
Section 5(l), Section 5(m), Section 5(n) r/w. Section 6 of POCSO Act, 2012	Twenty Years Rigorous Imprisonment	Rs.5,000/- in default, to undergo three months of simple imprisonment.
Period of detention already undergone by the appellant was ordered to be set off		

3. In furtherance of the conviction and fine, the Trial Court noted that considering the facts and circumstances of the case, the type of abuse, absence of injuries suffered by the victim child (P.W.2) and the nature of employment/economic status of the mother of the victim child (P.W.2), the Trial Court was not inclined to grant compensation as under Rule 9(2) of POCSO Rules, 2020.

4. The case of the prosecution, in a nutshell, is as follows;

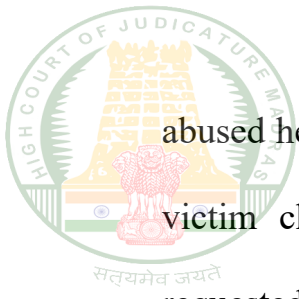
4.1. The victim child (P.W.2) was aged 12 years at the time of occurrence of the offence and the accused is the appellant, who is the father of the victim child (P.W.2).



4.2. On 11.02.2022, when the victim child (P.W.2) was sleeping in the hall of their grandparent's house, the appellant carried her from where she was sleeping and brought her to another room where he and his wife [hereinafter referred to as "the de facto complainant"] (P.W.1)] were sleeping and inserted his finger into the vagina of the victim child (P.W.2) and further pressed her breasts. The victim child (P.W.2) felt uncomfortable and pushed the appellant and turned to the other side and continued to sleep. The appellant, thereafter, continued to wrap his legs around the victim child (P.W.2) and fell asleep.

4.3. On the next day (i.e.12.02.2022), the victim child (P.W.2) confided the above events to her brother and upon his insistence, she informed the de facto complainant (P.W.1) of the above events, pursuant to which, the de facto complainant (P.W.1) questioned the appellant as to the allegations reported to her. Though the appellant initially denied the allegations made by the de facto complainant (P.W.1), thereafter, he admitted the same and further threatened the de facto complainant (P.W.1) that if she reveals the same to anyone, he would cut her and her family members into pieces.

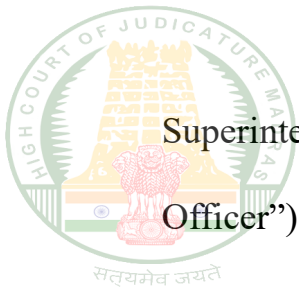
4.4. On 27.02.2022, the victim child (P.W.2) contacted the Child Helpline No.1098. On receipt of the call, the members from the Chennai Office informed the Thirupathur office. As per the information received from the Chennai Office, the victim child (P.W.2) complained that her father had sexually



abused her. Thereafter, a member (P.W.5) from the Child Helpline contacted the victim child (P.W.2) directly through phone and the victim child (P.W.2) requested that since it was a Sunday, they may come the next day. On the next day, the member (P.W.5) from the Child Helpline met the victim child (P.W.2) and enquired her and the de facto complainant (P.W.1). Since both of them requested for a case to be registered against the appellant, the member (P.W.5) informed the AWPS, Tirupathur.

4.5. Hence, the de facto complainant (P.W.1) gave a complaint (Ex.P.1) to the AWPS, Thirupathur on 01.03.2022 seeking action against the appellant who belongs to Caste Hindu community for sexual abuse of the victim child (P.W.2) who belongs to Adi Dravidar Community. On receipt of the complaint (Ex.P.1), the Inspector of Police, AWPS, Thirupathur (hereinafter referred to as “the Inspector”) – P.W.10 registered an FIR (Ex.P.11) in Crime No.2 of 2022 dated 01.03.2022 against the appellant for the offences under Sections 5(l), 5(m), 5(n), r/w. Section 6 of POCSO Act r/w. Section 506(I) of IPC.

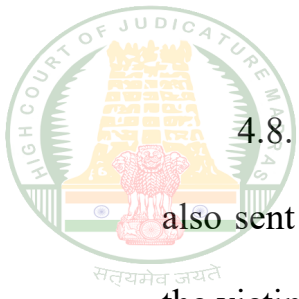
4.6. Upon registration of the case, the Inspector (P.W.10) examined the victim child (P.W.2) and the de facto complainant (P.W.1) in the presence of a member (P.W.5) from the Child Helpline and recorded their respective statements. Thereafter, the Inspector (P.W.10) placed the file before the Deputy



Superintendent of Police (P.W.13) (hereinafter referred to as “the Investigating Officer”) for investigation.

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4.7. The Investigating Officer (P.W.13) took up the file for investigation vide proceedings dated C.No.41/SJ and HR/VLR/2022 dated 01.03.2022. On the same day (i.e. 01.03.2022) at 9:00 a.m., the Investigating Officer (P.W.13) visited the scene of occurrence and prepared an observation mahazar (Ex.P.3) along with rough sketch (Ex.P.15). Thereafter, at 10:00 a.m., the Investigating Officer (P.W.13) arrested the appellant from the backyard of his house and recorded his confession statement and sent him for medical examination to the Government Hospital, Thirupattur, where, a medical certificate was issued on examining him to the effect that he was capable of having sexual intercourse and reproduction, and also he sent the appellant for remand to judicial custody. Simultaneously, the Investigating Officer (P.W.13) sent the victim child (P.W.2) for medical examination to the Government Hospital Thirupattur, where the victim child (P.W.2) was examined and a medical certificate stating that there were no injuries as would generally be present in sexual abuse cases, was issued. Thereafter, the Investigating Officer (P.W.13) examined the Headmaster of the Government Higher Secondary School in which the victim child (P.W.2) studied and obtained a school certificate reflecting the age of the victim child (P.W.2).



4.8. Following that, on 24.03.2022, the Investigating Officer (P.W.13)

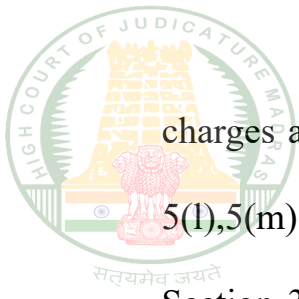
also sent a requisition to the Judicial Magistrate II, Thirupattur, for recording the victim child's (P.W.2) statement under Section 164(5) of Cr.P.C.

4.9. On 02.04.2022, the Investigating Officer (P.W.13) examined the RDO (P.W.8) and obtained the community certificate of the victim child (P.W.2) and the de facto complainant (P.W.1).

4.10. Lastly, the Investigating Officer (P.W.13) examined and recorded the statements of various witnesses and concluded his investigation and further obtained an opinion from the Directorate of Prosecution. On the basis of the opinion received, the Investigating Officer (P.W.13), by way of an alteration report, altered the offences registered already to include Section 3(2)(va) of the SC/ST (Prevention of Atrocities) Act, 2015.

4.11. Subsequently, the final report was filed by the Investigating Officer (P.W.13) against the appellant for the offences under Sections 5(l), 5(m), 5(n) r/w. Section 6 of POCSO Act r/w. Section 506(I) of IPC and Section 3(2)(va) of SC/ST (Prevention of Atrocities) Act, 2015.

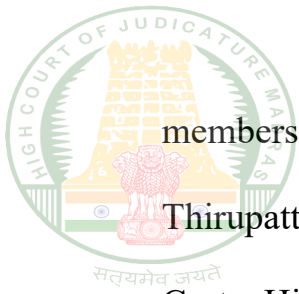
4.12. The copy of the final report and other documents were supplied to the appellant under Section 207 of Cr.P.C. Thereafter, the Trial Court framed



charges against the appellant for having committed the offences under Section 5(1),5(m),5(n) r/w. Section 6 of the POCSO Act r/w. Section 506(I) of IPC and Section 3(2)(va) of the SC/ST (Prevention of Atrocities) Act, 2015. When the charges were read over and explained to the appellant, he pleaded not guilty.

5. In order to prove the prosecution case, the prosecution examined 13 witnesses and marked 7 documents.

5.1. The de facto complainant (P.W.1) deposed that she was a teacher in Kanthali Panchayat Union Middle School and that she has one male (elder) and one female child (younger); the victim child (P.W.2) was studying Kasinayakanpatti Government Higher Secondary School; on 11.02.2022, when the victim child (P.W.2) was sleeping in the hall of their grandparent's house, the appellant carried her from where she was sleeping and took her to another room where he was sleeping with her and inserted his finger into the vagina of the victim child (P.W.2) and further, pressed her breasts; the victim child (P.W.2) felt uncomfortable and pushed him and turned to the other side and continued to sleep; the appellant thereafter continued to wrap his legs around the victim child (P.W.2) and fell asleep; once the victim child (P.W.2) informed the above events to her, she questioned the appellant as to the allegations made by her; the appellant denied the allegations made by her by stating that she was levelling such allegations only to have an extramarital affair and further threatened her that if she revealed the same to anyone, he would cut her and her family



members into pieces; hence, she gave a complaint (Ex.P.1) to the AWC, Thirupathur on 01.03.2022 seeking action against the appellant who belongs to Caste Hindu community for sexual abuse of the victim child (P.W.2) who belonged to Adi Dravidar Community.

5.2. In her cross-examination, she stated that the scene of occurrence was her mother's house and that she had left the matrimonial rental house and come to her mother's house about two years before the occurrence. She also admitted in her cross-examination that she knew one military man by name Raman and that she would frequently go out with him while being accompanied by her children and his children but not alone with him; the appellant had often stopped her from going out along with the said Raman and that thereafter, she has not gone out alone with him. Lastly, she stated in her cross-examination that the said Raman is her friend and denied the claim of the appellant that she is having an extramarital affair with the said Raman.

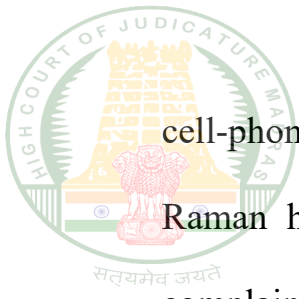
5.3. The victim child (P.W.2) deposed that on 11.02.2022, when she was sleeping in the hall, the appellant carried her from there and took her to another room where he and her mother were sleeping; she felt that the appellant might have kept his hand on her breasts and vagina; she felt uncomfortable and pushed the appellant and turned to the other side and continued to sleep; the appellant thereafter continued to wrap his legs around her and due to fever, she



fell asleep; the next morning, she confided the above events to her brother and upon his insistence, she informed her mother of the above events; she was thereafter informed by the de facto complainant (P.W.1) that when the appellant drove the de facto complainant (P.W.1) to drop her off at her school, the de facto complainant (P.W.1) questioned the appellant as to the allegations made by her; though the appellant initially denied the allegations made by the de facto complainant (P.W.1), later, he admitted to the same and further, threatened the de facto complainant (P.W.1) that if she reveals the same to anyone, he would eliminate her; thereafter, the de facto complainant (P.W.1) gave a complaint and she was examined by the police; the de facto complainant (P.W.1) gave her statement (Ex.P.2) under Section 164 Cr.P.C. before the Judicial Magistrate No. II, Thirupathur.

5.4. When the Trial Judge posed a question to her as what else had happened, she deposed that the appellant inserted his finger into her vagina and that she had not stated the same earlier as she was afraid to state the same.

5.5. In her cross-examination, she admitted to having known one Raman, who would go out with the de facto complainant (P.W.1) to temples and that both (i.e. P.W.1 and Raman) would be accompanied by their children but not by their spouses; she had taken a photograph of the de facto complainant (P.W.1) lying on the lap of the said Raman in the de facto complainant's (P.W.1)



cell-phone and that it was true that the de facto complainant (P.W.1) and the said Raman have gone alone to a dam; the appellant had warned the de facto complainant (P.W.1) not to have any association with the said Raman and that the appellant and the de facto complainant (P.W.1) would have fights over the said issue; in the event of a fight between the appellant and the de facto complainant (P.W.1), she would support the de facto complainant (P.W.1).

5.6. Jayapal (P.W.3) who is the grandfather of the victim child (P.W.2) and the father of the de facto complainant (P.W.1) deposed that about one year ago, the police came to his house and investigated as to sexual abuse committed by the appellant; while doing so, the police prepared a confession statement, an observation mahazar and a rough sketch and he and his wife signed in the said documents; he was shown the observation mahazar (Ex.P3) and confession statement and he admitted that the signature on the said documents was his. Lastly, he added that he was examined and his statement was recorded by the police and that he signed in the said statement.

5.7. Jeeva (P.W.4) who is the grandmother of the victim child (P.W.2) and the mother of the de facto complainant (P.W.1) deposed that she was shown the observation mahazar and the confession statement and she admitted that the signature on the said documents was hers. According to her, the de facto



complainant (P.W.1) gave a complaint (Ex.P.1) to the police and upon receipt of the complaint (Ex.P.1), the police came to her house for investigation.

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5.8. P.W.5 is a member from the Child Helpline. She deposed that she knew the victim child (P.W.2) and that on 27.02.2022, the victim child (P.W.2) contacted the Child Helpline No.1098; on receipt of the call, the members from the Chennai Office informed their Tirupathur office; as per the information received from the Chennai Office, the victim child (P.W.2) complained that her father had sexually abused her; thereafter, she contacted the victim child (P.W.2) directly through phone and the victim child (P.W.2) requested that since it was a Sunday, they may come the next day; on the next day, she and her colleague Sugapriya went to Tirupathur New Vasantham Nagar to meet the victim child (P.W.2) where they enquired her; she also enquired the de facto complainant (P.W.1); since both of them requested for a case to be registered against the appellant, she informed the AWPS, Tirupathur; the Inspector enquired the victim child (P.W.2), the de facto complainant (P.W.1) and herself.

5.9. Devi (P.W.6), a neighbour of the de facto complainant (P.W.1), deposed that she knew the de facto complainant (P.W.1) and the appellant. According to her, in March, 2022, the police were conducting an investigation near the de facto complainant's (P.W.1) house; she asked the de facto complainant (P.W.1) as to why the police was conducting an investigation, to



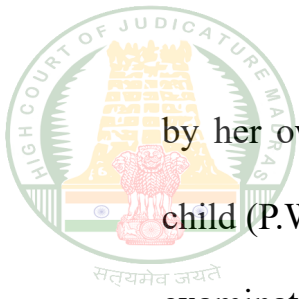
which the de facto complainant (P.W.1) informed that the appellant had misbehaved with the victim child (P.W.2).

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5.10. Revathy (P.W.7), Deputy RDO at the Tirupathur District Collector's office, deposed that on 10.03.2022, she gave a certificate (Ex. P6) reflecting that the appellant belonged to the Most Backward Community.

5.11. Sivaprakasam (P.W.8), RDO, Tirupathur, deposed that as per the requisition received from the Inspector of AWPS, Tirupathur in connection with Crime No.2/2022, he investigated the Village Administrative Officer, Revenue Officer and the Block Development Officer and issued a community certificate (Exs. P7& P8) certifying the victim child (P.W.2) and the de facto complainant (P.W.1) as belonging to the Adi Dravidar Scheduled Caste.

5.12. Dr. Ilamparuthy (P.W.9), doctor who examined the appellant, deposed that as per the requisition received from the Inspector of AWPS, Tirupathur, he medically examined the appellant and concluded in his accident register (Ex.P9) pertaining to the appellant and medical certificate (Ex.P10) that the appellant's genitals were intact and that there is nothing to suggest that the appellant was incapable of sexual intercourse; the police brought the victim child (P.W.2) for medical examination and that the de facto complainant (P.W.1) informed him that the victim child (P.W.2) had been subjected to sexual abuse



by her own father; in the accident register (Ex. P17) pertaining to the victim child (P.W.2), he referred the victim child (P.W.2) to a gynaecologist for medical examination and certification.

5.13. Gowri (P.W.10), the then Sub Inspector of Police, AWPS Tirupattur, deposed that based on the complaint (Ex.P.1) received from the de facto complainant (P.W.1), she registered an FIR (Ex.P.11) in Crime No. 2 of 2022 under Section 5(l), Section 5(m), Section 5(n) r/w. Section 6 of POCSO Act r/w. Section 506(I) IPC and Section 3(2)(va) of SC/ST (Prevention of Atrocities) Act 2015; further, based on the instructions received from the Investigating Officer (P.W.13), she visited the victim child's (P.W.2) house and recorded her statement (Ex.P2) in the presence of the de facto complainant (P.W.1) and one Benita from the Child Helpline.

5.14. Dr. Tamilselvi (P.W.11), the doctor who examined the victim child (P.W.2), deposed that as per the requisition received from the Inspector of AWPS, Tirupathur, she medically examined the victim child (P.W.2) and concluded in her medical certificate (Ex. P12) that there were no internal or external injuries on the genitals of the victim child (P.W.2) and that there were no injuries to suggest sexual abuse and further her hymen was intact; before the examination, she was informed that the victim child (P.W.2) was subjected to



sexual abuse by her own father on 11.02.2022 and that during the time of such overt act, the de facto complainant (P.W.1) was not at home.

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5.15. Janardanan (P.W.12), the Headmaster of the victim child's (P.W.2) school, deposed that the victim child (P.W.2) was born on 18.07.2009 and that her register number was XXXX; he issued a Bona fide Certificate (Ex. P13) reflecting that during the annual year 2021-2022, the victim child (P.W.2) was studying 8th standard.

5.16. Santhalingam (P.W.13), Investigating Officer, deposed that he took the file for investigation vide proceedings dated CNo. 41/SJ and HR/VLR/2022 dated 01.03.2022; on the same day (i.e. 01.03.2022) at 9:00 a.m., he visited the scene of occurrence and prepared an observation mahazar along with a rough sketch; thereafter, at 10:00 a.m., he arrested the appellant at the backyard of his house and recorded his confession statement; thereafter, he sent the appellant for medical examination to the Government Hospital, Thirupattur, where, a medical certificate was issued on examination of the appellant to the effect that the appellant was capable of sexual intercourse and reproduction, on completion of which, he sent the appellant for remanding him to judicial custody; likewise, he sent the victim child (P.W.2) for medical examination to the Government Hospital, Thirupattur, where the victim child (P.W.2) was examined and a medical certificate certifying that there were no injuries as would generally be



present in sexual abuse cases, was issued; thereafter, he examined the

Headmaster of the Government Higher Secondary School in which the victim child (P.W.2) studied and obtained a school certificate reflecting the age of the victim child (P.W.2), following which, on 24.03.2022, he sent a requisition to the Judicial Magistrate II, Thirupattur, for recording the statement of the victim child (P.W.2); on 02.04.2022, he examined the RDO (P.W.8) and obtained the community certificate of the victim child (P.W.2) and the de facto complainant (P.W.1); lastly, he examined and recorded the statements of various witnesses and had concluded his investigation and further obtained an opinion from the Directorate of Prosecution; on the basis of the opinion, by way of an alteration report, he altered the registered offences [i.e. Section 5(l), Section 5(m), Section 5(n) r/w. Section 6 of POCSO Act r/w. Section 506(1) of IPC, 1860] to include Section 3(2)(va) of SC/ST (Prevention of Atrocities) Act, 2015, subsequent to which, he filed the final report against the appellant for the offences under Section 5(l), Section 5(m), Section 5(n) r/w. Section 6 of POCSO Act r/w. Section 506(1) of IPC, 1860 and Section 3(2)(va) of SC/ST (Prevention of Atrocities) Act, 2015.

6. After examination of the prosecution witnesses, when the appellant was questioned under Section 313 of Cr.P.C., on the incriminating circumstances appearing against him, he blatantly denied the same without



offering any explanation whatsoever and he did not examine any witness or mark any document on his side.

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7. The Trial Court, after hearing the arguments on both sides, found the accused guilty and convicted and sentenced him as tabulated at paragraph 2, *supra*, and acquitted him of the charges under Sections 506(I) IPC and Section 3(2)(va) of SC/ST (Prevention of Atrocities) Act, 2015 as amended, *vide* the impugned judgment and challenging his conviction and sentence, this criminal appeal has been filed by the sole accused.

8. The learned counsel for the appellant would submit that the de facto complainant (P.W.1) has falsely implicated the appellant to protect her extramarital affair with one Raman and to substantiate the same, the counsel for the appellant would further submit as follows:

8.1. First and foremost, the testimony of the victim child (P.W.2) as well as the de facto complainant (P.W.1) would clearly demonstrate that the de facto complainant (P.W.1) was having an extramarital affair with one Raman and that the appellant and the de facto complainant (P.W.1) would often quarrel over the same. Hence, the vengeance harboured by the de facto complainant (P.W.1) as against the appellant as well as the de facto complainant's (P.W.1) self interest in protecting her extramarital affair are both strong motives for the de facto complainant (P.W.1) to tutor the susceptible victim child (P.W.2) to



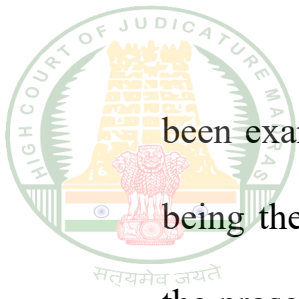
falsely implicate the appellant in the case at hand in order to protect her extramarital affair.

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8.2. Secondly, the victim child (P.W.2) also categorically deposed that the appellant has warned the de facto complainant (P.W.1) not to have any association with the said Raman and that the appellant and the de facto complainant (P.W.1) would often quarrel over the same. The victim child (P.W.2) also deposed that in the event of a fight between the appellant and the de facto complainant (P.W.1), she would support the de facto complainant (P.W.1). These statements by the victim child (P.W.2) would go to demonstrate a reasonable likelihood of her being susceptible to tutoring by the de facto complainant (P.W.1).

8.3. Thirdly, in the light of the aforesaid strong motive of the de facto complainant (P.W.1) and further in the light of there being a reasonable likelihood of the victim child (P.W.2) being tutored, a bare perusal of the victim child's (P.W.2) statement (Ex.P2) under Section 164(5) of Cr.P.C. and the victim child's (P.W.2) testimony before the Trial Court would go to show various improvements and embellishments rendering her testimony unreliable.

8.4. Fourthly, the victim child (P.W.2) had first confided about the said offence to her elder brother who has neither been investigated by the police nor



been examined by the prosecution as a witness. Similarly, scene of occurrence being the grandparents' house and the grandparents having been examined by the prosecution before the Trial Court, the grandparents have remained silent as to the alleged overt act of the appellant. Therefore, the material witnesses having not testified as to the alleged overt act of the appellant adds to fortify the doubt as to the victim child (P.W.2) having been tutored by the de facto complainant (P.W.1).

8.5. Fifthly, irrespective of the victim child (P.W.2) having been tutored by the de facto complainant (P.W.1), the victim child (P.W.2) herself has testified that she felt like the appellant might have kept his hand on her breast and vagina and therefore, the victim child (P.W.2) has not conclusively deposed as to the overt act of penetrative sexual assault by the appellant. Hence, the mere apprehension and suspicion of the victim child (P.W.2) cannot be the basis for conviction of the appellant.

8.6. Sixthly, there is no medical evidence to support the case of the prosecution and therefore, the testimony of the victim child (P.W.2) being inconclusive in nature, cannot be the sole basis for the conviction of the appellant and hence, the conviction having no legs to stand, is liable to be set aside.



9. *Per contra*, the learned Government Advocate (Criminal Side) appearing for the respondent submitted as follows:

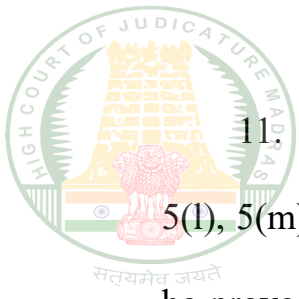
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9.1 The age of the victim child (P.W.2) has been proven by the prosecution and the age of the victim child (P.W.2) was such that she would not be malleable to such tutoring as alleged by the appellant.

9.2 The victim child (P.W.2) categorically deposed that the appellant inserted his finger into her vagina and therefore, the Trial Court rightly relied on the sole testimony of the victim child (P.W.2) to establish the foundational facts.

9.3 Upon the foundational facts being established, the prosecution is entitled to the presumption under Section 29 of the POCSO Act and although the appellant has pointed out some minor contradictions, the same would not be sufficient to rebut the statutory presumption and hence, the Trial Court has rightly believed the sole testimony of the victim child (P.W.2) and rightly convicted the appellant for the offence of penetrative sexual assault.

10. Heard the learned counsel appearing for the appellant and the learned Government Advocate (Criminal Side) appearing for the respondent and perused the materials on record.



11. The appellant has been convicted by the Trial Court under Section 5(l), 5(m), Section 5(n) r/w. Section 6 of the POCSO Act. Therefore, what is to be proved to make out an offence under Section 5(l), 5(m) and Section 5(n) of the POCSO Act is that the appellant, who is a blood relative, committed penetrative sexual assault more than once on the victim child (P.W.2) aged below 12 years.

12. It is not disputed that the appellant is the father of the victim child (P.W.2). Similarly, the age mentioned in the birth certificate (i.e. 18.07.2009) is also not disputed by the appellant. However, the alleged overt act pertains to separate instances of which the date of occurrence of the first incident is not known and the date of occurrence of the second incident is 11.02.2022. On the date of the second incident, the victim child (P.W.2) was 12 years and 7 months old and was studying 8th standard. However, since the first incident was said to have occurred when the victim child (P.W.2) was studying 6th standard, it may be safely assumed that the victim child (P.W.2) was less than twelve years on the date of the first incident. Therefore, what remains to be proved is that the appellant, being the father of the victim child (P.W.2), had committed penetrative sexual assault on her more than once.

13. The sole evidence available on record in respect of the penetrative sexual assault is the testimony of the victim child (P.W.2), whereas, the medical



evidence does not support her testimony. Hence, it is necessary to ascertain ¹¹ conviction and sentence could be rendered solely on the basis of the testimony of the victim child (P.W.2) when the medical evidence is inconsistent with her testimony. This Court finds that this question is no longer *res integra* and that the same has been settled by a 3 Judge Bench of the Supreme Court in **Nirmal Premkumar v. State**¹. As per the ratio of the said ruling, the Court can rely on the sole testimony of the victim child as a ‘sterling witness’ without any further corroboration but the quality and credibility of the testimony must be exceptionally high and the statement of the victim child ought to be consistent from the beginning to the end from the initial statement to the oral testimony without creating any doubt in the prosecution’s case. The relevant extract of **Nirmal Premkumar**, *supra*, is as follows;

“24. What flows from the aforesaid decisions is that in cases where witnesses are neither wholly reliable nor wholly unreliable, the Court should strive to find out the true genesis of the incident. The Court can rely on the victim as a “sterling witness” without further corroboration, but the quality and credibility must be exceptionally high. The statement of the prosecutrix ought to be consistent from the beginning to the end (minor inconsistencies excepted), from the initial statement to the oral testimony, without creating any doubt qua the prosecution's case. While a victim's testimony is usually enough for sexual offence cases, an unreliable or insufficient account from the prosecutrix, marked by identified flaws and gaps, could make it difficult for a conviction to be recorded.”

(emphasis supplied by this Court)

1 (2024) 20 SCC 293



14. In the light of the above judgment, what is to be ascertained is whether the testimony of the victim child (P.W.2) is of exceptionally high quality and is without material contradictions and embellishments. But, before venturing into that exercise, this Court finds it imperative to delve into the settled principles governing the appreciation of the testimony of a child witness. In this regard, this Court finds that various principles have been enumerated and summarised by the Supreme Court in **State of M.P. v. Balveer Singh**². The relevant extract of **Balveer Singh**, *supra*, is as follows;

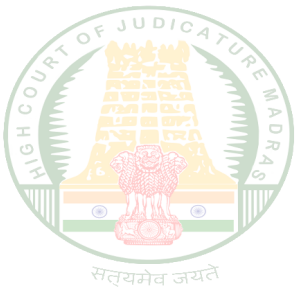
“67. We summarise our conclusion as under:

67.1. The Evidence Act does not prescribe any minimum age for a witness, and as such a child witness is a competent witness and his or her evidence cannot be rejected outrightly.

67.2. As per Section 118 of the Evidence Act, before the evidence of the child witness is recorded, a preliminary examination must be conducted by the Trial Court to ascertain if the child witness is capable of understanding sanctity of giving evidence and the import of the questions that are being put to him.

67.3. Before the evidence of the child witness is recorded, the Trial Court must record its opinion and satisfaction that the child witness understands the duty of speaking the truth and must clearly state why he is of such opinion.

67.4. The questions put to the child in the course of the preliminary examination and the demeanour of the child and their ability to respond to questions coherently and rationally must be recorded by the Trial Court. The correctness of the opinion formed by the Trial Court as to why it is satisfied that the child witness was capable of giving evidence may be gone into by the appellate court by either scrutinising the preliminary examination conducted by the Trial Court, or from the testimony of the child witness or the



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demeanour of the child during the deposition and cross-examination as recorded by the Trial Court.

67.5. The testimony of a child witness who is found to be competent to depose i.e. capable of understanding the questions put to it and able to give coherent and rational answers would be admissible in evidence.

67.6. The Trial Court must also record the demeanour of the child witness during the course of its deposition and cross-examination and whether the evidence of such child witness is his voluntary expression and not borne out of the influence of others.

67.7. There is no requirement or condition that the evidence of a child witness must be corroborated before it can be considered. A child witness who exhibits the demeanour of any other competent witness and whose evidence inspires confidence can be relied upon without any need for corroboration and can form the sole basis for conviction. If the evidence of the child explains the relevant events of the crime without improvements or embellishments, the same does not require any corroboration whatsoever.

67.8. Corroboration of the evidence of the child witness may be insisted upon by the courts as measure of caution and prudence where the evidence of the child is found to be either tutored or riddled with material discrepancies or contradictions. There is no hard-and-fast rule when such corroboration would be desirable or required, and would depend upon the peculiar facts and circumstances of each case.

67.9. Child witnesses are considered as dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded and as such the courts must rule out the possibility of tutoring. If the courts after a careful scrutiny, find that there is neither any tutoring nor any attempt to use the child witness for ulterior purposes by the prosecution, then the courts must rely on the confidence-inspiring testimony of such a witness in determining the guilt or innocence of the accused. In the absence of any allegations by the accused in this regard, an inference as to whether the child has been tutored or not, can be drawn from the contents of his deposition.

67.10. The evidence of a child witness is considered tutored if their testimony is shaped or influenced at the instance of someone else or is otherwise fabricated.



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Where there has been any tutoring of a witness, the same may possibly produce two broad effects in their testimony; (i) improvisation or (ii) fabrication.

(i) Improvisation in testimony whereby facts have been altered or new details are added inconsistent with the version of events not previously stated must be eradicated by first confronting the witness with that part of its previous statement that omits or contradicts the improvisation by bringing it to its notice and giving the witness an opportunity to either admit or deny the omission or contradiction. If such omission or contradiction is admitted there is no further need to prove the contradiction. If the witness denies the omission or contradiction the same has to be proved in the deposition of the investigating officer by proving that part of police statement of the witness in question. Only thereafter, may the improvisation be discarded from evidence or such omission or contradiction be relied upon as evidence in terms of Section 11 of the Evidence Act.

(ii) Whereas the evidence of a child witness which is alleged to be doctored or tutored in toto, then such evidence may be discarded as unreliable only if the presence of the following two factors has to be established being as under:

▪ Opportunity of tutoring of the child witness in question—whereby certain foundational facts suggesting or demonstrating the probability that a part of the testimony of the witness might have been tutored have to be established. This may be done either by showing that there was a delay in recording the statement of such witness or that the presence of such witness was doubtful, or by imputing any motive on the part of such witness to depose falsely, or the susceptibility of such witness in falling prey to tutoring. However, a mere bald assertion that there is a possibility of the witness in question being tutored is not sufficient.

▪ Reasonable likelihood of tutoring—wherein the foundational facts suggesting a possibility of tutoring as established have to be further proven or cogently substantiated. This may be done by leading evidence to prove a strong and palpable motive to depose falsely, or by establishing that the delay in recording the statement is not only unexplained but indicative and suggestive of some unfair practice or by proving that the witness fell prey to tutoring and was influenced by someone else



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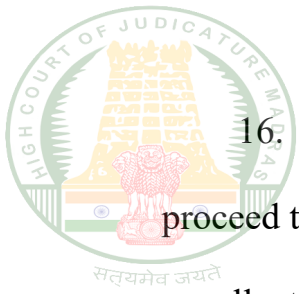
either by cross-examining such witness at length that leads to either material discrepancies or contradictions, or exposes a doubtful demeanour of such witness rife with sterile repetition and confidence-lacking testimony, or through such degree of incompatibility of the version of the witness with the other material on record and attending circumstances that negates their presence as unnatural.

67.11. Merely because a child witness is found to be repeating certain parts of what somebody asked her to say is no reason to discard her testimony as tutored, if it is found that what is in substance being deposed by the child witness is something that he or she had actually witnessed. A child witness who has withstood his or her cross-examination at length and able to describe the scenario implicating the accused in detail as the author of crime, then minor discrepancies or parts of coached deposition that have crept in will not by itself affect the credibility of such child witness.

67.12. Part of the statement of a child witness, even if tutored, can be relied upon, if the tutored part can be separated from the untutored part, in case such remaining untutored or untainted part inspires confidence. The untutored part of the evidence of the child witness can be believed and taken into consideration for the purpose of corroboration as in the case of a hostile witness.”

(emphasis supplied by this Court)

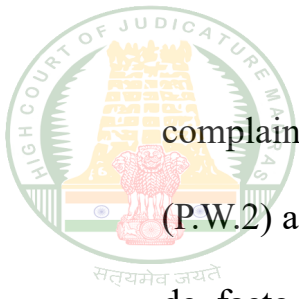
15. Therefore, what flows from **Balveer Singh**, *supra*, is that corroboration of the evidence of a child witness may be insisted upon by the Courts as a measure of caution and prudence where its evidence is found to be either tutored or riddled with material contradictions and when its evidence is alleged to be tutored *in toto*, then, such evidence may be discarded as unreliable only if the presence of (i) the opportunity of tutoring of the child witness and (ii) the reasonable likelihood of tutoring, has been established.



16. Being guided by the aforesaid principles, this Court will now proceed to appreciate the testimony of the victim child (P.W.2) to ascertain if the appellant's allegation of the victim child (P.W.2) being tutored by the de facto complainant (P.W.1) can be sustained. In this regard, this Court finds that in the instant case, the procedure as contemplated in Section 162 Cr.P.C. has not been followed in respect of the improvements claimed by the counsel for the appellant and therefore, the improvements in the testimony of the victim child (P.W.2) cannot be discarded in themselves. However, the allegation of the appellant in respect of fabrication still deserves to be tested.

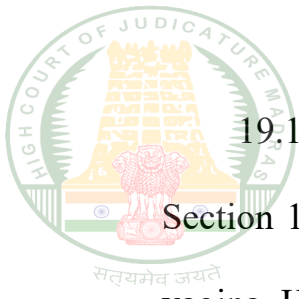
17. For the allegation of fabrication to succeed, the appellant has to establish that the de facto complainant (P.W.1) had the opportunity of tutoring of the victim child (P.W.2) and that there was a reasonable likelihood of the victim child (P.W.2) being tutored.

18. The victim child (P.W.2) categorically deposed during her cross-examination that she had taken a photograph of the de facto complainant (P.W.1) lying on the lap of one Raman in the de facto complainant's (P.W.1) cellphone and that it was true that the de facto complainant (P.W.1) and the said Raman have gone alone to a dam. Further, the victim child (P.W.2) deposed that the appellant has warned the de facto complainant (P.W.1) not to have any association with the said Raman and that the appellant and the de facto



complainant (P.W.1) would often quarrel over the same. The victim child (P.W.2) also deposed that in the event of a quarrel between the appellant and the de facto complainant (P.W.1), she would support the de facto complainant (P.W.1). Therefore, this Court cannot slightly brush aside the fact that the de facto complainant (P.W.1) had a very strong motive to tutor the victim child (P.W.2) and also had a very good opportunity to make use of the susceptibility of the victim child (P.W.2) to be tutored to falsely implicate the appellant in order to protect her extramarital affair. Hence, the appellant has, by way of extensive cross-examination, categorically established a serious doubt in the mind of this Court that the de facto complainant (P.W.1) who had a very strong motive and a very good opportunity to tutor the victim child (P.W.2) might very well have tutored her into falsely implicating the appellant.

19. Having found that the de facto complainant (P.W.1) had a very good opportunity to tutor the victim child (P.W.2), what remains to be seen is that whether there was reasonable likelihood of the victim child (P.W.2) being tutored. In that regard, on a perusal of the victim child's (P.W.2) statement (Ex.P2) under Section 164(5) Cr.P.C. and the testimony of the victim child (P.W.2) before the Trial Court, this Court finds the following observations as imperative for identifying the likelihood of the victim child (P.W.2) being tutored:



19.1. Firstly, the victim child (P.W.2), in her statement (Ex.P2) under Section 164 Cr.P.C., states that the appellant attempted to touch her breast and vagina. However, during her examination in chief, she deposed that she felt like the appellant touched her breast and vagina following which, the Trial Court posed a question to her as what else had happened, to which she deposed that the appellant inserted his finger into her vagina and that she had not stated the same earlier as she was afraid to state the same. From these statements, this Court finds that the victim child (P.W.2) has constantly improved her statement from alleging an attempt, to alleging the commission of the offence.

19.2. Secondly, the victim child (P.W.2), in her statement (Ex.P2) under Section 164 Cr.P.C., states that the appellant attempted to touch her breasts and vagina on 11.02.2022 and that a similar incident had occurred when she was studying 6th standard and that she had not disclosed the previous incident as she was not aware back then.

19.3. Thirdly, the victim child (P.W.2), in her statement (Ex.P2) under Section 164 Cr.P.C., states that she was sent out of the room when the de facto complainant (P.W.1) confronted the appellant as to his overt act. However, during her examination in chief, she deposed that she was thereafter informed by the de facto complainant (P.W.1) that when the appellant was dropping the de facto complainant (P.W.1) at her school, the de facto complainant (P.W.1) had

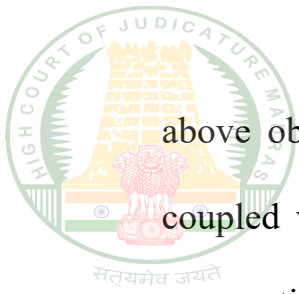


questioned the appellant as to the allegations made by her (P.W.2). From these statements, this Court finds a need for caution in appreciating the victim child's (P.W.2) testimony owing to the nature of nuanced details in her improved statements.

20. Beyond the above observations, this Court also finds that although the case of the prosecution has been that on 27.02.2022, the victim child (P.W.2) had contacted the Child Helpline No.1098 and that as per the information received, the member (P.W.5) of the Child Helpline had informed the AWPS, Tirupathur whereafter the Inspector therein had enquired the victim child (P.W.2) and a complaint (Ex.P.1) came to be filed by the de facto complainant (P.W.1), neither the victim child (P.W.2) nor the de facto complainant (P.W.1) have deposed as to the events concerning their encounter with the member (P.W.5) of the Child Helpline. This omission, in the eyes of this Court, is material as this Court finds that the prosecution is required to explain why the de facto complainant (P.W.1), on learning the overt act of the appellant, waited for the victim child (P.W.2) to approach the Child Helpline to prefer a complaint (Ex.P.1) with the police.

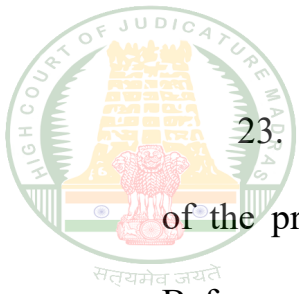
21. Although this Court has already held that the omissions and improvisations/improvements have not been proven in accordance with the procedure contemplated under Section 162 Cr.P.C., this Court still finds that the

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above observed glaring omissions and nuanced improvisations/improvements coupled with the strong motive of the de facto complainant (P.W.1) and the prosecution's failure to examine the victim child's (P.W.2) elder brother to whom she is said to have confided immediately after the alleged occurrence, exposes a doubtful demeanour of the victim child (P.W.2) and the testimony of the victim child (P.W.2) is, hence, confidence-lacking in nature. Therefore, this Court further finds that the appellant has, in furtherance to establishing that the de facto complainant (P.W.1) had the opportunity of tutoring of the victim child (P.W.2), has also categorically established that there was a reasonable likelihood of the victim child (P.W.2) being tutored. Inferring so, the inevitable conclusion that this Court arrives at is that the evidence of the victim child (P.W.2) was tutored *in toto* and hence, such evidence is liable to be wholly discarded as unreliable by this Court.

22. Having found that the victim child's (P.W.2) testimony is unreliable, this Court is willing to heed way to the rule of prudence and require the prosecution to provide material to corroborate the testimony of the victim child (P.W.2). Owing to the lack of material to corroborate the victim child's (P.W.2) testimony, this Court finds it difficult to confirm the alleged overt act of the appellant. Hence, the appellant has succeeded in raising a serious doubt as to the alleged overt act of the appellant.



23. Lastly, this Court finds that the Trial Court has extended the benefit

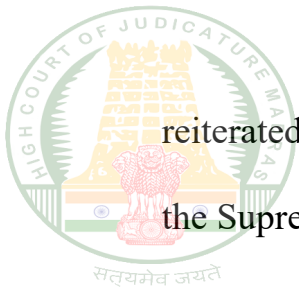
of the presumption under Section 29 of the POCSO Act to the prosecution.

Before advertng to whether the Trial Court was right in doing so, this Court deems it fit to set out the following principles governing the said presumption:

23.1. Section 29 of the POCSO Act, provides that where a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 and Section 9 of the POCSO Act, the Trial Court shall presume, that such person has committed or abetted or attempted to commit the offences, unless the contrary is proved.

23.2. It is trite in criminal law that the initial burden exists upon the prosecution to prove the foundational facts and only when it stands satisfied, would the legal burden shift to the accused. Even then, the standard of proof required for the accused to prove his innocence is not as high as that of the prosecution. The standard of proof required to prove the guilt of the accused on the prosecution is 'beyond all reasonable doubt', whereas, the standard of proof required to prove the innocence of the accused is 'preponderance of probabilities'. If the foundational facts so as to attract the presumption are not established by the prosecution, the offence by the accused cannot be said to have been established by the prosecution. The very same principle has been

categorically held by the Supreme Court in Noor Aga v. State of Punjab³, and
3(2008) 16 SCC 417



reiterated by a catena of rulings, including the ruling of the 3 Judge Bench of the Supreme Court in **Pappu v. State of U.P.**⁴.

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23.3. Similarly, the 3 Judge Bench of the Supreme Court has, in **Sambhubhai Raisangbhai Padhiyar v. State of Gujarat**⁵, held that the presumption under Section 29 of the POCSO Act would be available only where the foundational facts exist for the commission of an offence under Section 5 of the POCSO Act.

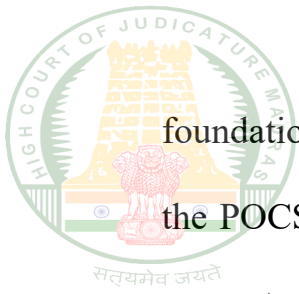
23.4. The Gauhati High Court has, in **Bhupen Kalita v. State of Assam**⁶, held that if the prosecution is successful in establishing the foundational facts and the presumption is raised against the accused, the accused can rebut the same either by discrediting the prosecution witnesses through cross-examination or by adducing his own evidence to demonstrate that the prosecution case is improbable based on the principle of preponderance of probability.

24. Now keeping in mind, the facts of the instant case and applying the principles of the evidence as provided above, this Court finds that the confidence-lacking testimony of the victim child (P.W.2.) cannot establish the

4 (2022) 10 SCC 321

5 (2025) 2 SCC 399

6 2020 SCC OnLine Gau 2230



foundational facts, thereby giving rise to the presumption under Section 29 of the POCSO Act. Moreso, when the evidence of the victim child (P.W.2.) is not supported by the medical evidence, the Trial Court ought not to have erroneously extended the benefit of the presumption under Section 29 of the POCSO Act.

25. Even assuming that the prosecution has established the foundational facts that would entitle them to have the benefit of the presumption under Section 29 of the POCSO Act, the appellant has sufficiently rebutted the presumption by creating sufficient doubt as to the alleged overt act of the appellant by eliciting admissions during cross-examination of the victim child (P.W.2.) about the extramarital affair between the de facto complainant (P.W.1.) and Raman and that the de facto complainant (P.W.1.) used to go out with him and thereafter, by eliciting from the victim child (P.W.2.) that whenever there was a quarrel between the de facto complainant (P.W.1) and the appellant, she would take the side of the de facto complainant (P.W.1.). Further, at the cost of repetition, it is worth pointing out that the victim child (P.W.2.) was subjected to medical examination and the doctor (P.W.11) who examined the victim child (P.W.2) deposed that there were no internal or external injuries on the genitals of the victim child (P.W.2) and that there were no injuries to suggest sexual abuse. That apart, the grandparents (of the victim child (P.W.2)), have also not whispered anything in their testimony about the alleged overt act of the appellant

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albeit they had, in unison, deposed about the police investigation. Superadded to, there is no reason worth the salt forthcoming from the prosecution for not examining the elder brother of the victim child (P.W.2) to whom the victim child (P.W.2) had first confided. Hence, it can safely be held that by creating a doubt in the prosecution's case, the appellant has categorically rebutted the presumption raised and thus, shifted the burden of proof to the prosecution. Hence, the burden having been successfully shifted by the accused, the prosecution is required to prove its case beyond reasonable doubt, which, in the instant case, the prosecution has not.

26. Hence, this Court finds that the Trial Court has erred in failing to consider the evidence as a whole and has erroneously overlooked the strong motive of the de facto complainant (P.W.1) to tutor the victim child (P.W.2) to falsely implicate the appellant. Owing to the said error, the Trial Court has found the appellant guilty of the alleged overt act. However, as already held by this Court, the testimony of the victim child (P.W.2) is wholly unreliable and hence, without the testimony of the victim child (P.W.2), the case of the prosecution falls flat for want of reliable evidence and therefore, the conviction of the appellant by the Trial Court has no footing to stand on.

27. Ultimately having found that the Trial Court has erred in convicting the appellant and in the light of there being no evidence whatsoever against the appellant, the appellant herein is entitled to acquittal.



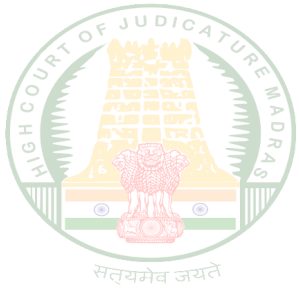
In the result, this Criminal appeal stands allowed. The impugned judgment of conviction and sentence passed by the Trial Court is set aside and the appellant is acquitted of all the charges. Bail bond executed, if any, shall stand cancelled. Fine amount paid, if any, shall be refunded to the appellant.

24.06.2026

cad

To

1. The Special Judge for Exclusive Trial of Cases
under the POCSO Act
Vellore
Vellore District
2. The Inspector
All Women Police Station
Thirupathur
Thirupathur District
3. The Public Prosecutor
Madras High Court
Chennai 600 104



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Crl.A.No.66 of 20



A.D. JAGADISH CHANDIRA, J.

cad

Judgment in
Crl.A.No.66 of 2024

24.06.2026