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Crl.A.No.50 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2026

CORAM

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

Crl. A. No.50 of 2022
and
Crl. M.P. No.647 of 2022

Murugesan,
S/o.Ramasamy,
D.No.11/27, Nadupalayam,
Mettupalayam Post, Vellakovil,
Kangayam Taluk, Tiruppur District.

Appellant(s)

Vs

State Represented by
Deputy Superintendent of Police,
Kangayam Sub Division,
Tiruppur District.

Respondent(s)

PRAYER: Criminal Appeal filed under Section 374 of Cr.P.C. against the judgment dated 09.04.2021 in Spl.S.C.No.47 of 2019 on the file of the Magalir Neethi Mandram (Fast Track Mahila Court), Tiruppur.

For Appellant(s) : Mr.K.Sudhakar

For Respondent(s) : Mr.R.Kishore Kumar
Government Advocate (Crl. Side)

**JUDGMENT**

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This appeal is filed challenging the judgment dated 09.04.2021 made in Spl.S.C.No.47 of 2019 on the file of the Mahalir Neethi Mandram (Fast Track Mahila Court), Tiruppur.

2. The appellant, was convicted and sentenced by the trial court as detailed below:-

<i>Penal Provisions</i>	<i>Sentence of Imprisonment</i>	<i>Fine Amount</i>
<i>7 r/w 8 of POCSO Act, 506(ii) of IPC and 3(1)(w)(i) r/w 3(2) (va) of SC/ST Act</i>	<i>5 Years Rigorous Imprisonment for each of the offence</i>	<i>Rs.1,000/- each in default to undergo 1 Year Rigorous Imprisonment each</i>
<i>Sentences shall run concurrently</i>		

3. It is the case of the prosecution that the victim/PW1 was brought up by her grandparents. Due to family dispute, PW1's mother committed suicide and PW1's father had left the family by conducting second marriage and therefore the victim and her brother were taken care of by her maternal grandparents. The victim was aged 15 years and was staying in a hostel and studying 9th standard. Due to vacation, she had come to her grandparent's house. On 25.09.2019, PW1 along with her grandmother/PW2 had gone for work, who earned her livelihood by doing daily wages. After returning from work, the victim got money from her



grandmother and went to the adjacent shop to buy biscuits. On her return from the shop, the accused who was a Tractor driver, had stopped the victim and enquired her. When the victim answered the accused, all of a sudden the accused had pulled and dragged the victim into a bathroom in the Tractor shed and had committed sexual assault.

4. PW1 had somehow managed to wriggle out and escaped from the clutches of the accused and came home crying. In the meantime, as there was some delay in the grandchild returning home, PW2 also came in search of her and found that the victim was coming home crying. On being enquired, the victim narrated the occurrence of the sexual assault committed by the accused. Immediately, PW2 along with the victim, had gone to the Tractor shed and had enquired with the accused as to why he had misbehaved and committed such an act on the helpless orphan child, that too particularly when they belonged to the Scheduled Caste (SC) community, whereas the accused belonged to Backward Community. The accused threatened PW2 for her life, if she or her granddaughter informed anyone about the alleged incident.

5. PW2 on returning home with the victim informed her husband and both the aged persons, i.e., victim's grandmother and grandfather, had informed the incident to the village elderly people and after ascertaining their views, they took



some time, but on the same day night, PW2 had gone to the Police Station and had lodged the complaint/Ex.P2. PW9 received the complaint and registered FIR/Ex.P9. The Deputy Superintendent of Police (DSP) conducted investigation and filed the final report. Since the DSP had died pending trial, the Inspector of Police who had assisted the DSP had been examined as PW10.

6. The trial court took up the case, issued summons to the accused and complied with Section 207 of Cr.P.C. Thereafter, the trial court framed charges under Section 7 r/w 8 of the POCSO Act, Section 506 (ii) of IPC and Section 3(1)(w)(i) r/w 3(2)(va) of the SC/ST Act. On being questioned, the accused pleaded not guilty and stood trial.

7. The prosecution to prove the charges examined PW1 to PW10 and marked exhibits Ex.P1 to Ex.P14. On completion of the prosecution evidence, when the accused was questioned under Section 313 of Cr.P.C. about the incriminating materials available, he denied the same. However, the accused has neither examined any witnesses nor produced any documents. The trial court, on appraising the evidence and arguments, concluded that the appellant is guilty of all the charges and thereby convicted the appellant and sentenced as stated *supra*. Assailing the conviction and sentence imposed, the accused has preferred the above appeal.



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8. Mr.K.Sudhakar, learned counsel for the appellant argued that there is a delay in lodging the complaint/Ex.P2 and the delay was only due to an afterthought for lodging the false complaint when there was no such alleged occurrence and as such, the delay would be fatal to the case of the prosecution. There was also further delay in producing the victim before the court for recording the statement under Section 164 of Cr.P.C. Due to the delay, the victim has been tutored and was made to give false statement implicating the accused in the case.

9. It is his further contention that when admittedly the accused belonged to a different village and not known to the victim who was studying by staying in a hostel, it was not probable for her to name the accused while informing the incident to PW2 and therefore the entire allegations made implicating the appellant is concocted and exaggerated only due to some other issues between them, which have not been brought on record. He further contended that as per the evidence of P.W.5/Doctor who examined the victim, combined with the medical opinion offered in Ex.P6, there was no injury found on the victim and therefore the entire allegations have been foisted.



10. Lastly, it is contended that, as per the punishment prescribed under Section 8 of the POCSO Act, the minimum sentence of three years could be imposed, extended upto five years but the trial court for no reasons had imposed the maximum punishment and since the appellant had substantially undergone the sentence imposed, the same could be suitably modified considering the nature of the allegations.

11. Per contra, Mr.R.Kishore Kumar, learned Government Advocate (Criminal Side) appearing for the respondent argued that there had been no delay in lodging the complaint. The complaint had been lodged on the same day and FIR was also registered at 1.00 am, which would be the next day and that cannot be construed as a delay. He further submitted that when PW2 and the victim/PW1 had given clear and cogent evidence establishing the guilt of the accused and the prosecution had proved the foundational facts, the accused failed to dislodge the presumption under Section 29 of the POCSO Act. Considering the gravity of the act and also the helpless situation of the victim, the trial court had convicted the accused and imposed the sentence, which needs no interference and sought for dismissal of the appeal.

12. Heard the rival submissions and perused the materials available on record.



13. PW1's mother had died long ago and since her father also had conducted second marriage and left the family, she and her brother had been under the care and protection of her maternal grandparents. PW1 was studying 9th standard by staying in a hostel and due to holidays the victim/PW1 was in her grandmother's house. On 25.09.2019, when PW1 had gone along with PW2, her grandmother, for daily wages work and had returned home, PW2 had given money to PW1 to get biscuits from the nearby shop. While PW1 returned from the shop, the accused who was working as a Tractor driver and was present in the Tractor shed in the way, had intervened and called the victim. When PW1 stopped and answered, the accused pulled the victim's hand, dragged and locked her inside the bathroom in the shed and had committed sexual assault.

14. The birth certificate of PW1 has been marked as Ex.P1. The date of birth of the victim is 29.04.2004 and on the date of occurrence, the victim was aged 15 years. The prosecution has examined the Headmaster of the School as PW8 and the age of the victim is not in dispute and it has been established by the prosecution that the victim was a minor on the date of occurrence for invoking the provisions of the POCSO Act.

15. Immediately after the occurrence at 4.00 pm on 25.09.2019, PW2 had gone and enquired the accused about the sexual assault committed, for which he



had threatened them. PW2 after bringing this to the notice of her husband, had gone and informed the relatives and the villagers. It could be seen that PW2 and her husband are aged persons who undertook the responsibility of bringing up their grandchildren due to the death of their daughter. Any occurrence of this nature on the helpless child would shock any person, particularly PW2 at her age. It was common and not unusual for such a person to inform her husband and consult the villagers and the relatives.

16. On the same day, even at midnight, considering the seriousness of the act committed by the accused, PW2 lodged the complaint/Ex.P2. With no further delay FIR/Ex.P9 has also been registered at early hours, i.e., 1.00 am on 26.09.2019. This by no stretch of imagination could be considered as a delay, particularly in the cases involving such nature and therefore the contention of the learned counsel for the appellant that there had been delay in lodging the complaint and registering the FIR is baseless and rejected.

17. The victim/PW1 has been taken before the Magistrate, where her statement under Section 164 of Cr.P.C. came to be recorded in Ex.P14. The victim had clearly narrated the incident, particularly the accused dragging her inside the shed, locking her in the bathroom and committing the sexual assault. PW1 had also given clear and cogent evidence during trial. Nothing adverse has



been elucidated in the cross-examination. Even though there is minor discrepancy in respect of name of the accused as to whether she knew before or came to know after her grandmother had called the accused by name, that does not in any way dislodge the case of the prosecution.

18. PW2/grandmother, who had lodged the complaint/Ex.P2, had also given cogent evidence in respect of the sexual assault committed by the accused and also the life threat made by the accused that the same should not be divulged to anyone else.

19. It is not in dispute that the victim belonged to SC community and the accused who was working nearby the residence of the victim, belonged to Backward Community, very well knew the family of PW2 and the caste to which they belonged to. By the evidences of PW1 and PW2, the sexual assault committed by the accused has clearly been established by the prosecution. When the victim has been proved to be a minor on the date of occurrence and also the sexual assault committed by the accused has been clearly and cogently proved by PW1 and PW2, prosecution had established the foundational facts and there is a presumption under Section 29 of the POCSO Act. The onus was on the accused to dislodge the presumption, but the accused had not brought in any evidence to discharge his burden.



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20. Further, P.W.5/Doctor had been examined and the Accident Register/Ex.P6 has been marked. The accused has not chosen to cross-examine PW5. Further, the evidence of PW6/Doctor who conducted the potentiality test on the accused and the certificate/Ex.P7 issued, all points towards the guilt of the accused. PW9/Sub Inspector of Police who registered FIR/Ex.P9, had been examined. Since the DSP who conducted the investigation died, PW10 who had assisted him had been examined who had clearly deposed, proving the charges against the accused.

21. The trial court, considering the evidences let in concluded that the charges have been proved, convicted the appellant and imposed the sentence. The trial court had considered the sexual assault committed on the helpless victim who was dragged from a public street. The act of the accused has endangered the child from allowing her to move freely in the society with confidence to progress in life. On reappraisal of the evidences, this Court does not find any irregularity or perversity in the findings arrived at by the trial court warranting interference.

22. A fervent plea is made that since the accused has already undergone major part of the sentence and his sentence itself is coming to end within a period of two months, the sentence could be modified. However, considering the overall



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circumstances and also the fact that the appellant suffered conviction in another case involving offence of similar nature, this Court is not inclined to take any lenient view to modify the sentence imposed. In such view of the matter, the conviction and sentence imposed on the accused/ appellant is confirmed.

23. Accordingly, this Criminal Appeal stands dismissed. Consequently, the connected miscellaneous petition is closed.

12.01.2026

Speaking / Non Speaking Order

Index : Yes / No

Neutral Citation: Yes / No

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To:

1.The Deputy Superintendent of Police,
Government of Tamil Nadu,
Kangeyam Sub Division,
Tiruppur District.

2.The Magalir Neethi Mandram
(Fast Track Mahila Court),
Tiruppur.

3.The Public Prosecutor,
Madras High Court, Chennai.



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G. ARUL MURUGAN, J.

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