



Crl.A.No.182 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10-02-2026

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.A.No.182 of 2024

A.Annadurai

... Appellant

Vs.

The State
Rep. By the Inspector of Police,
All Women Police Station,
Polur, Tiruvannamalai District.

... Respondents/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, praying to set aside the judgment passed in Special S.C. No. 48 of 2021 dated 16.12.2022 by the Special Court for trial of cases under POCSO Act.

For Appellant : Mr.V.Parthiban
for M/s.S.B.Viswanathan

For Respondent : Mr.S.Raja Kumar
Additional Public Prosecutor

J U D G M E N T

This criminal appeal has been filed challenging the judgment dated 16.12.2022 passed in Special S.C. No. 48 of 2021 by the learned Judge, Special Court for Trial of cases under POCSO Act, Thiruvannamalai,
Page No.1 of 12



Crl.A.No.182 of 2024

convicting the appellant for offences under Sections 341 and 354(B) of IPC and Section 11(ii) read with 12 of POCSO Act, 2012, Section 9(m) read with 10 of POCSO Act 2012, Section 376AB read with 511 of IPC and Section 6 read with 18 of POCSO Act, 2012 and sentencing him as follows:-

Offence under Section	Sentence imposed
341 IPC	To undergo rigorous imprisonment for 1 month
354(B) IPC and Section 11(ii) read with 12 of POCSO Act, 2012	To undergo rigorous imprisonment for 3 years and to pay a fine of Rs.500/-, in default to undergo simple imprisonment for 1 month.
9(m) r/w 10 POCSO Act, 2012	To undergo rigorous imprisonment for 5 years and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for 1 year.
376(AB) r/w 511 IPC and 6 r/w 18 POCSO Act, 2012	To undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for 1 year.
Sentences are ordered to run concurrently.	

2(i) The case of the prosecution is that the appellant and victim belong to the same village; that the appellant on 26.05.2021, at about 2.30 p.m., on seeing the victim and her sister taking bath in a pump set, had chased away



the victim's sister and thereafter removed the undergarment of the victim, made her lie on the cot and thereafter he laid over the victim and at that time, the uncle of the victim (PW3) came to the place of the scene of occurrence.

(ii) On the complaint given by PW1, mother of the victim, the case was registered by PW12, Inspector of Police(In-charge), and thereafter, investigation was conducted by PW13, Inspector of Police, who after examining the witnesses and making arrangements to record statement of the victim under Section 164(5) of the Cr.P.C., had filed the final report against the appellant for the offences under Section 376(AB) read with Section 511 IPC and Section 9 read with Section 10 and Section 6 read with Section 18 of POCSO Act, 2012.

(iii) On the appearance of accused, the provisions of Section 207 Cr.P.C. were complied with and the case was taken on file as Spl.S.C. No. 48 of 2021 by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Thiruvannamalai, for trial. The Trial Court had framed charges against the accused for the offences under Sections 341 of



CrI.A.No.182 of 2024

IPC, 354(B) of IPC and Section 11(ii) read with 12 of POCSO Act, 2012, Section 9(m) read with 10 of POCSO Act 2012, Section 376AB read with 511 of IPC and Section 6 read with 18 of POCSO Act, 2012 and when questioned, the accused pleaded 'not guilty'.

(iv) To prove its case, the prosecution examined PW1 to PW13 and marked Exhibits P1 to P13. When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. The accused neither examined any witness nor marked any document on his side.

(v) The trial Court found the appellant guilty for the offences under Sections 341 of IPC, 354(B) of IPC and Section 11(ii) read with 12 of POCSO Act, 2012, Section 9(m) read with 10 of POCSO Act 2012, Section 376AB read with 511 of IPC and Section 6 read with 18 of POCSO Act, 2012 and sentenced as stated above.



3. The learned counsel for the appellant would submit that the occurrence did not take place in the manner alleged by the prosecution, that PW3, uncle of the victim, who is said have first seen the victim, has turned hostile. PW8, sister of the victim could not have been an eyewitness; that the prosecution case that she is an eyewitness is an afterthought; that the victim's evidence only suggests that the appellant had committed aggravated sexual assault and there is no reference to any attempt to commit rape or penetrative assault; and that the impugned judgment is liable to be set aside.

4. The learned Additional Public Prosecutor *per contra* submitted that none of the witnesses have been cross-examined by the appellant; that PW5, the victim's evidence is cogent and convincing; that even the alleged contradiction in her statement recorded under Section 164(5) of the Cr.P.C. and in her deposition have not been elicited either from the victim or from the investigating officer; that the victim's evidence has to be accepted; that the prosecution has proved its case beyond reasonable doubt; and that therefore, there is no infirmity in the impugned judgment.



5. As stated above, the prosecution had examined 13 witnesses. PW1 is the mother of the victim and is the defacto complainant. PW2 is the father of the victim. PW3, who is the uncle of the victim, was examined as an eyewitness, and he turned hostile. PW4 is a hearsay witness. PW5 is the victim. PW6 and PW7, who are observation mahazar witnesses, turned hostile. PW8 is the sister of the victim, who was examined as an eyewitness. PW9, is the Headmistress of the School where the victim studied. She had issued Ex.P6-Educational Certificate, wherein the date of birth of the victim is shown as 13-01-2012. PW10 is the Doctor, who had examined the accused and had issued Potency Certificate, Ex.P7. PW11 is the Doctor, who had examined the victim and made entries in the accident register, Ex.P8. PW11, the doctor did not find any external injuries on the victim's body or around her genitalia. PW12 is the Inspector of Police (In-charge), who had registered the FIR, Ex.P9, and had conducted investigation till 17.06.2021. PW13 had continued the investigation from 17.06.2021 and filed the final report as aforesaid.

6. The prosecution case rests upon the evidence of PW5, victim, and the evidences of PW3 and PW8. As stated above, PW3 turned hostile. PW8



is the sister of the victim. It is seen from the FIR that the presence of the PW8 has not been spoken to by PW1, mother of the victim. Further, PW8 was not examined by the first investigation officer, who had conducted the investigation till 17.06.2021. Only after the PW13 took over the investigation that PW8 was examined during investigation, on 21.06.2021. If PW8 had been an eyewitness to the occurrence, there is no reason as to why the first investigating officer had not examined her, as she was the best witness for the prosecution. Therefore, the presence of PW8 is highly doubtful.

7. Be that as it may, the prosecution case therefore rests on the evidence of the victim, PW5. It is seen from the evidence of PW2 that he had heard about the occurrence from PW3, who stated that after removing the undergarment, the appellant had slapped the victim. This is contrary to the prosecution case.

8. In the light of the above evidence, the Court has to examine the evidence of the victim, PW5. Unfortunately, in this case, the victim has not been cross-examined by the defence. The victim's evidence, even if accepted



at face value, would not suggest that the appellant had done any act to infer that he had attempted to commit rape. In any case, the victim's evidence is not corroborated by any other evidence. PW3, who is said to be the eyewitness, as stated above, had turned hostile. Evidence of the Doctor is that there are no injuries on the victim's body. The Doctor made entry in the accident register, Ex.P8, reads as follows:-

".... There is no external injuries all over the body. There is no injuries around external genitalia however non penetration sexual assault cannot ruled out.

2. There is no external/ internal injuries in the external genitalia.

3. Age 8 – 10 years as per dental."

9. Thus, it could be seen that there is no evidence to show that any attempt was made to commit penetrative sexual assault. However, the victim's evidence and the entries made in the Accident Register [Ex.P8] by the Doctor, suggests that the appellant had committed sexual assault in the aforesaid manner. The age of the victim has been established by the prosecution by marking Ex.P6, the certificate issued by PW9. The accused has not challenged the said certificate also, as there is no cross-examination



of the witness. Therefore, the prosecution has established the fact that the victim's age was less than 12 years.

10. From the above evidence, this Court is of the view that the prosecution had not established the offence of attempt to commit penetrative sexual assault or attempt to commit rape. The prosecution, however, has established the offence of sexual assault and since the victim is aged less than 12 years, the appellant is liable for the offence of aggravated sexual assault, which is punishable under Section 10 of the POCSO Act, 2012.

11. Therefore, in the result,

(i) the conviction and sentence imposed on the appellant by the trial Court for the offence under Section 376AB r/w Section 511 and Section 6 r/w Section 18 of the POCSO Act, are set aside;

(ii) the conviction and sentence imposed on the appellant for the offences under **Section 341 of the IPC, Section 354(B) of the IPC and Section 11(ii) r/w 12 of the POCSO Act, 2012 and Section 9(m) r/w 10 of the POCSO Act, are upheld;**



CrI.A.No.182 of 2024

WEB COPY

- (iii) The sentences are ordered to run concurrently;
- (iv) The fine amount already paid, if any, shall be adjusted against the fine amount imposed now; and
- (v) The period of sentence already undergone by the appellants shall be set off under Section 428 Cr.P.C.

12. In the result, the Criminal Appeal is partly allowed.

10-02-2026

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
Maya/ars



CrI.A.No.182 of 2024

To

WEB COPY

1.The Special Court Judge for Exclusive Trial of Cases
under POCSO Act, Cuddalore.

2.The Inspector of Police,
Polur All Women Police Station,
Tiruvannamalai District.
Crime No.5/2021.

3.The Public Prosecutor,
High Court, Madras.



WEB COPY



Crl.A.No.182 of 2024

SUNDER MOHAN, J.

Maya

Crl.A.No.182 of 2024

Dated : 10-02-2026