WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20-11-2026

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

CRL.A.No.224 of 2022

CNR:{HCMA010233202022}

Case QR

Sekar
S/o.Nagu @ Nagaraj

..Appellant(s)

Vs

State Represented by
The Inspector of Police,
All Women Police Station,
Krishnagiri, Krishnagiri District,
Crime No.147 of 2014

..Respondent(s)

Criminal Appeal filed under 374(2) of Cr.P.C., against the judgment in Spl.S.C.No.51 of 2015 on the file of the Sessions Judge, Fast Track Mahila Court, Krishnagiri, Krishnagiri District dated 31.10.2019.

For Appellant(s): Mr.V.Rajamohan

For Respondent(s): Mr.R.Thirumoorthy,
Additional Public Prosecutor

J U D G M E N T

The appeal challenges the judgment passed in Spl.S.C.No.51 of 2015 by the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri, holding the

https://www.mhc.tn.gov.in/judis

WEB COPY

appellant guilty and sentencing him as follows :

Under Section	*Conviction and Sentence*
363 IPC	To undergo rigorous imprisonment for seven years and to pay a fine of Rs.5,000/-, and in default, to undergo rigorous imprisonment for six months.
7 read with 8 of the POCSO Act	To undergo rigorous imprisonment for three years and to pay a fine of Rs.5,000/-, and in default, to undergo rigorous imprisonment for three months.
5(m) read with 6 of the POCSO Act	To undergo rigorous imprisonment for fourteen years and to pay a fine of Rs.5,000/-, and in default, to undergo rigorous imprisonment for one year.
5(l) read with 6 of the POCSO Act	To undergo rigorous imprisonment for fourteen years and to pay a fine of Rs.5,000/-, and in default, to undergo rigorous imprisonment for one year.
	The substantive sentences were ordered to run concurrently.

2. It is the case of the prosecution that on 04.03.2014, at about 4.00 p.m., when the victim aged about 9 years was returning from school, the appellant had taken her to a secluded place and near a bush and committed penetrative sexual assault on her; that thereafter, he had taken the victim girl to a community hall and committed penetrative sexual assault on her twice; that thereafter, he had left the victim near a bus stand; and thus, he had committed the offences under Section 7 read with Section 8 of the POCSO Act, Section 361 IPC and Section 5(l) read with Section 6 of the POCSO Act.

https://www.mhc.tn.gov.in/judis

WEB COPY

3. On the complaint given by the father of the victim (P.W.1), an F.I.R. (Ex.P11) was registered in Crime No.147 of 2014 for the offences under Section 366(A) IPC, Sections 8, 9 read with 10 of the POCSO Act. P.W.13, the Special Sub Inspector of Police, registered the F.I.R., and the investigation was conducted by P.W.16, the Inspector of Police. P.W.16 arrested the accused and recorded his confession on 09.03.2014. He had also taken steps to record the statement of the victim under Section 164 Cr.P.C., and, after examining all the witnesses, filed the final report for the offences under Section 361 IPC and Section 7 read with Section 8 and 5(l) read with Section 6 of the POCSO Act. The trial Court framed the aforesaid three charges against the accused, and when questioned, the appellant pleaded 'not guilty'.

4. To prove the case, the prosecution examined 16 witness as P.W.1 to P.W.16, marked 26 documents as Ex.P1 to Ex.26, and marked 12 material objects as M.O.1 to M.O.12. When the appellant was questioned under Section 313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. On the side of the defence, the accused examined Sathish Kumar and Ravi, as D.W.1 and D.W.2. No document was marked on the side of the defence.

5. The trial Court held the appellant guilty, convicted and sentenced him

https://www.mhc.tn.gov.in/judis

WEB COPY

as stated above.

6. The learned counsel appearing for the appellant submitted that the allegations are false; that the complaint was lodged belatedly; that the evidence of D.W.1 and D.W.2 would show that the appellant could not have committed the offence; that, in any event, the victim had not stated in her deposition that the appellant had committed penetrative sexual assault on her; that the medical evidence does not suggest that the victim was subjected to penetrative sexual assault; and that, therefore, the impugned judgment is liable to be set aside.

7. The learned Additional Public Prosecutor appearing for the respondent, *per contra,* submitted that the delay in lodging the complaint, in a case of this nature, could not affect the prosecution case in any manner; that merely because the victim had not deposed the exact nature of the assault committed by the appellant, her evidence cannot be disbelieved, particularly when she was hardly aged 9 years at the time of occurrence; and that, therefore, the impugned judgment holding the appellant guilty on the basis of the evidence abused by the prosecution does not suffer from any infirmity.

8. I have carefully considered the rival submissions and perused all the relevant materials available on record.

https://www.mhc.tn.gov.in/judis

WEB COPY

9. As stated above, the prosecution examined 16 witnesses. P.W.1 is the father of the victim; P.W.2 is the victim; P.W.3 is the friend of the victim; P.W.4 is the mother of the victim; P.W.5 is a witness to the observation mahazar; P.W.6 is the Village Administrative Officer, who speaks about the surrender of the appellant before him and the extra-judicial confession given by the appellant, which was marked as Ex.P3; P.W.7 is the Doctor who first examined the victim and made entries in the Accident Register (Ex.P12); P.W.8 is the Doctor who examined the appellant and issued the potency certificate (Ex.P9); P.W.9 is another mahazar witness, who turned hostile; P.W.10 is a witness to the rough sketch (Ex.P10); P.Ws.11 and 12 are the hearsay witnesses, who turned hostile; P.W.13 is the Special Sub-Inspector of Police, who registered the F.I.R.,(Ex.P11); P.W.14 is the Doctor who gave the final opinion regarding the injuries sustained by the victim; P.W.15 turned hostile; and P.W.16 is the Inspector of Police, who conducted the investigation. The accused examined two witnesses to establish his plea of alibi.

10. The prosecution case rests on the evidence of the victim (P.W.2), her friend (P.W.3) and the parents of the victim (P.W.1 and P.W.4). It is the version of the victim that, on 04.03.2014, while she was returning from school at about 5.00 p.m., the appellant took her to a house near a river, laid himself over her, and thereafter, dropped her near a bus stand. Thereafter, her father took her from the bus stand at 4.00 a.m. on the next day.

https://www.mhc.tn.gov.in/judis

WEB COPY

11. P.W.3, the friend of the victim, corroborates the version of the victim and stated that she saw the appellant taking the victim towards a nearby bush. P.Ws.1 and 4 spoke about the fact that the victim girl went missing on 04.03.2014 and that they searched for her throughout the night and, on receiving information, went to the bus stand and rescued the victim. The appellant had not discredited any of these witnesses although they were cross-examined at length. Though prior enmity was suggested, the witnesses denied the same. In any event, this Court is of the view that the evidence of the victim, insofar as the offences of kidnapping and sexual assault committed by the appellant are concerned, is cogent and convincing. Even in her earlier statement before the learned Magistrate, the victim had spoken about the sexual assault committed by the appellant.

12. The relevant portion of the deposition of the victim (P.W.2) is extracted hereunder for better understanding:

"04.03.2014 தேதி மாலை 5.00 மணி அளவில் ஸ்கூல் விட்டு வீட்டிற்கு வந்தபோது என்னை கோர்ட்டில் இருக்கும் நபர் ஆற்று ஓரமாக ஒரு மாடி வீட்டின் மேல் பகுதிக்கு தூக்கி சென்றார். துணி எல்லாம் கழற்றிவிட்டு என் முகத்தில் எல்லாம் நகத்தில் கீறினார். மாடி வீட்டில்

https://www.mhc.tn.gov.in/judis

WEB COPY

கொஞ்சம் நேரம் இருந்தோம். பின்பு துணி எல்லாம் போட்டு விட்டு கெச மேடு பஸ் நிலையத்தில் விட்டு சென்றார்."

13. From the above extract, it is clear that the appellant had sexually assaulted the victim girl. However, the victim had not specified the exact nature of the sexual assault. Though the appellant examined D.W.1 and D.W.2 to establish his plea of alibi, this Court finds that the evidence of both the witnesses is not reliable, as the prosecution has elicited that D.W.1 is a friend of the appellant and D.W.2 is a relative of the appellant.

14. The next question is as to what the offences are made out for the evidence adduced. The appellant has committed the offence of kidnapping, as spoken to by the victim (P.W.2) and her friend (P.W.3). Apart from kidnapping, the appellant has also been charged for the offences under Section 7 read with Section 8 of the POCSO Act and Section 5(l) read with Section 6 of the POCSO Act.

15. The Doctor (P.W.14), who made entries in the Accident Register (Ex.P12), had recorded that "alleged history of kidnapping and sexual assault by a known person". The victim was thereafter, examined by P.W.7, the Doctor attached to the Government Hospital, Krishnagiri. She marked Ex.P7, the Forensic Science Laboratory Report. In Ex.P7, it is stated that no spermatozoa

https://www.mhc.tn.gov.in/judis

WEB COPY

were detected in the smear slides or the vaginal smear. She also issued Ex.P8 and deposed that the microscope slides containing brownish stains did not contain spermatozoa, blood or tissue. In her chief examination, however, she deposed that she had issued a certificate to the effect that the victim could have been subjected to sexual assault, however, no such certificate or report was marked on the side of the prosecution.

16. Thus, the medical evidence does not suggest that the victim was subjected to penetrative sexual assault. The evidence of the victim, as extracted above, is not clear as to the exact nature of the assault. This, coupled with the fact that the medical evidence does not clearly indicate that the victim was subjected to penetrative sexual assault, would make it highly unsafe to hold the appellant guilty of the offence of penetrative sexual assault. However, the victim's evidence, insofar as commission of sexual assault is concerned, is reliable and also supported by her earliest version to the Doctor.

17. It is the case of the prosecution that the appellant had given an extra-judicial confession to the Village Administrative Officer. It is seen from the records that there was no necessity for the appellant to confide in a stranger like the Village Administrative Officer, especially, when the police were in search of the appellant. Admittedly, the Village Administrative Officer was a total stranger to the appellant. Further, a reading of the confession does not suggest

https://www.mhc.tn.gov.in/judis

WEB COPY

it to be voluntary and trustful. Therefore this Court discards the extra-judicial confession, which was marked as Ex.P3. In this regard, it is useful refer to the judgment of the Hon'ble Supreme Court in Hon'ble Supreme Court in ***Pawan Kumar Chourasia v. State of Bihar,*** *reported in* ***2023 SCC Online SC 259,*** wherein it is held as follows :

> *"5. As far as extra-judicial confession is concerned, the law is well settled. Generally, it is a weak piece of evidence. However, a conviction can be sustained on the basis of extra-judicial confession provided that the confession is proved to be voluntary and truthful. It should be free of any inducement. The evidentiary value of such confession also depends on the person to whom it is made. Going by the natural course of human conduct, normally, a person would confide about a crime committed by him only with such a person in whom he has implicit faith. Normally, a person would not make a confession to someone who is totally a stranger to him. Moreover, the Court has to be satisfied with the reliability of the confession keeping in view the circumstances in which it is made. As a matter of rule, corroboration is not required. However, if an extra- judicial confession is corroborated by other evidence on record, it acquires more credibility."*

18. Therefore, this Court is of the view that the appellant cannot be held guilty of the offence of penetrative sexual assault solely on the basis of the said confession.

https://www.mhc.tn.gov.in/judis

WEB COPY

19. However, this Court is of the view that the appellant is guilty of the offence under Section 9(m) read with Section 10 of the POCSO Act. Considering the age of the victim, this Court is of the view that the appellant is liable to be sentenced to the maximum punishment of seven years rigorous imprisonment and to pay a fine of Rs.20,000/-, and in default, to undergo one year rigorous imprisonment for the said offence. Consequently, the conviction for the offences under Section 7 read with Section 8, 5(m) read with Section 6 and 5(l) read with Section 6 of the POCSO Act, are liable to be set aside. Thus, the appellant is convicted and sentenced as follows:

(a) convicted for the offence under Section 363 IPC and sentenced to undergo seven years rigorous imprisonment and to pay a fine of Rs.20,000/-, and in default, to undergo one year rigorous imprisonment;

(b) convicted for the offence under Section 9(m) read with Section 10 of the POCSO Act and sentenced to undergo seven years rigorous imprisonment and to pay a fine of Rs.20,000/-, and in default, to undergo one year rigorous imprisonment; and

(c) the sentences shall run concurrently.

(d) the appellant shall be secured and committed to prison to undergo the remaining period of sentence.

https://www.mhc.tn.gov.in/judis

20. With the above modifications, this Criminal Appeal is partly allowed.

WEB COPY

20-11-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
ms

To

1. The Sessions Judge,
   Fast Track Mahila Court,
   Krishnagiri, Krishnagiri District.

2. The Inspector of Police,
   All Women Police Station,
   Krishnagiri, Krishnagiri District.

3. The Public Prosecutor,
   High Court, Madras.

https://www.mhc.tn.gov.in/judis

WEB COPY

SUNDER MOHAN J.

ms

CRL.A.No.224 of 2022

20-11-2026

https://www.mhc.tn.gov.in/judis