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CRL A No.188 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11-02-2026

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

CRL A No.188 of 2023

Mariyasoosai
S/o.Jebastiyan,
Madha Kovil Street,
Sevanthinathapuram,
Nannilam, Tiruvarur District.

...Appellant/Accused

Vs

The State rep by,
The Inspector of Police,
All Women Police Station,
Nannilam, Tiruvarur District.
Crime No.10 of 2019.

...Respondent/Complainant

Prayer : Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the conviction and sentence passed by the Trial Court in Spl.S.C.No.31 of 2019 dated 11.02.2021, on the file of the Sessions Judge/Fast track Mahila Court (FTMC), Tiruvarur.



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For Appellant :

Mr.Gowtham
Legal Aid Counsel

For Respondent:

Mr.S.Raja Kumar
Additional Public Prosecutor**JUDGMENT**

The Criminal Appeal challenges the Judgment dated 11.02.2021 passed in Spl.S.C. No.31 of 2019 by the learned Sessions Judge, Fast Track Mahila Court, Tiruvarur, convicting the appellant/sole accused for the offence under Section 10 r/w 9(m) of the Protection of Children from Sexual Offences (POCSO) Act, 2012 (hereinafter referred to as the “**POCSO Act**”), and sentencing the appellant as follows:

<i>Offence under Section</i>	<i>Sentence imposed</i>
10 r/w 9(m) the POCSO Act	To undergo five years RI and to pay a fine of Rs.1,000/-, in default to undergo five months RI;

2 (a) The case of the prosecution is that the appellant/accused, aged about 70 years, had committed aggravated sexual assault on the victim child, aged 2.5 years at the time of occurrence on 02/08/2019 at 6.30 p.m., by removing her undergarment and had inappropriately kissed on her cheek and thus committed the aforesaid offence.



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(b) On the complaint [Ex.P1] given by P.W.1, the mother of the victim child, a case was registered in Crime No.10 of 2019 on 03.08.2019 at 6.00 a.m., for the offence under Section 10 r/w 9(m) of the POCSO Act by P.W.8, the Inspector of Police, who conducted the investigation. After examination of the witnesses, P.W.8 filed the Final Report against the appellant before the learned Sessions Judge, Fast Track Mahila Court, Tiruvarur, for the offence under Section 10 r/w 9(m) of the POCSO Act.

(c) On the appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with. The case was taken on file as Spl.S.C.No.31 of 2019 on the file of the learned Sessions Judge, Fast Track Mahila Court, Tiruvarur. The trial Court framed charges under Section 10 r/w 9(m) of the POCSO Act against the accused. During the trial, when questioned, the accused pleaded 'not guilty.'

(d) To prove its case, the prosecution had examined P.W.1 to P.W.8 and marked 5 exhibits as Exs.P1 to P5. When the accused was questioned, u/s.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.



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(e) The trial Court found the accused guilty of the offence under Section 10 r/w 9(m) of the POCSO Act on the basis of P.W.1's evidence, who was examined as an eyewitness, and accordingly, convicted and sentenced him as stated above. Hence, the accused has preferred the instant appeal challenging the said conviction and sentence.

3. Though the appeal was filed through a learned counsel, there is no representation, and hence, this Court appointed Mr. Gowtham (MS. No. 5931/2021) as Legal Aid Counsel to assist this Court on behalf of the appellant.

4. Mr. Gowtham, the learned counsel for the appellant/accused, submitted that the impugned prosecution is an abuse of process of law; that the victim's grandmother, who happens to be the mother-in-law of P.W.1, had a personal grudge against the appellant/accused; that to wreak vengeance, the instant complaint has been lodged; that the nature of the allegation would show that it is improbable and there was no reason why the appellant, aged about 70 years, had kissed the victim child, aged about 2 ½ years, with sexual intent; and that the evidence of P.W.1, the mother of the victim child, does not inspire confidence; and that therefore, the impugned Judgment is liable to be set aside, and prayed for acquittal.



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5. Mr.S.Raja Kumar, the learned Additional Public Prosecutor, for the respondent, *per contra*, submitted that there is no reason to disbelieve P.W.1, the mother of the victim child; that even assuming there was a dispute between the appellant and the victim's grandmother, that would not render the prosecution case unreliable, and in the light of the evidence adduced on the side of the prosecution, the impugned Judgment is justified, and prayed for dismissal of the appeal.

6. As stated earlier, the prosecution had examined eight witnesses. P.W.1 is the mother of the victim child. P.W.2 is the grandmother of the victim child. P.W.3 is the father of the victim child. P.W.4 is the relative of P.W.1, mother of the victim child. P.W.5 is a hearsay witness and would corroborate the evidence of P.W.1. P.W.6 is the mahazar witness. P.W.7 is the witness to the confession of the appellant and is known to both the appellant and the victim's family. P.W.8 is the Investigating Officer who registered the FIR and also filed the Final Report.

7. Thus, the prosecution case rests on the evidence of P.W.1, the mother of the victim child, which is sought to be corroborated by P.W.2, the grandmother of the victim child. P.W.5 is a hearsay witness. It is the version of



P.W.1, the mother of the victim child, that she heard the victim cry from the house of the appellant, and when she went into the house, she saw the appellant without any dress and the appellant had removed the undergarment of the victim child and had kissed her. P.W.2 is the mother-in-law of P.W.1 and grandmother of the victim child. She would state that she heard about the occurrence from P.W.1. P.W.4 and P.W.5 are the neighbours of P.W.1, who corroborate the evidence of P.W.1 and would state that they saw P.W.1 crying, and when they enquired, P.W.1 told them about the occurrence. Therefore, it has to be seen whether P.W.1 can be believed.

8. It is the specific case of the defence that the appellant/accused and P.W.2, the victim's grandmother, used to go for cattle grazing and there was prior enmity between the appellant and P.W.2. However, P.W.2, would deny that she had ever gone for cattle grazing. In fact, P.W.7, the witness to the confession and who belongs to the same village, would state that there was a Panchayat held between the appellant's family on the one side and the victim's family on the other side three months prior to the occurrence with regard to the dispute. P.W.2 had denied the above-said facts. There was no reason for P.W.2 to deny the said fact. This raises a doubt as regards her version that there was no prior enmity between her and the appellant. In fact, P.W.4, the son of P.W.2, admits that his mother, P.W.2, used to graze cattle. In the light of the above



evidence, this Court is of the view that the defence has probabalised their version that there was a prior enmity between the victim's grandmother, P.W.2, and the appellant/accused.

9. The nature of the allegation against the appellant is that he hugged and kissed the victim child after removing her undergarment. There is no allegation that the appellant had attempted to commit penetrative sexual assault. In any case, the allegation on the face of it appears to be highly improbable. If the appellant had removed his dress, he would not have kept the door open for P.W.1, the mother of the victim child, to witness the occurrence. Therefore, the version of P.W.1 suffers from inherent improbability. In fact, P.W.5 would state that P.W.1 had told him about the occurrence, and from his version, it could be seen that P.W.1 had not told him that the appellant had removed the undergarment of the victim child. Further, there is no reason why the complaint was not lodged immediately after the occurrence, said to have taken place on 02.08.2019 at about 6.30 p.m.

10. The dispute between P.W.2, the grandmother of the victim child, and the appellant is sought to be suppressed by both P.W.1 and P.W.2, which also raises a serious doubt in their version. Hence, for all the above reasons, this Court is of the view that it is highly unsafe to convict the appellant on the basis



of P.W.1's evidence. Therefore, this Court is inclined to set aside the impugned Judgment of conviction and sentence.

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11. Accordingly, the Criminal Appeal stands allowed. The conviction and sentence imposed upon the appellant/accused vide Judgment dated 11.02.2021, by the learned Sessions Judge, Fast Track Mahila Court, Tiruvarur, in Spl.S.C.No.31 of 2019, are set aside. The appellant is acquitted of all the charges. The fine amount, if any, paid by the appellant shall be refunded. The bail bond, if any, executed shall stand discharged.

12. This Court records its appreciation for the valuable assistance rendered by the learned Legal Aid Counsel, Mr.Gowtham, who appeared for the appellant.

13. The High Court Legal Services Committee, Chennai, is directed to pay the scheduled fee to Mr.Gowtham, the learned Legal Aid Counsel, who appeared for the appellant.

11-02-2026

Speaking/Non-speaking order
Neutral Citation: Yes/No
dk



To

1. The Sessions Judge,
Fast Track Mahila Court,
Tiruvavarur.
2. The Inspector of Police,
All Women Police Station,
Nannilam, Tiruvavarur District.
3. The Public Prosecutor
High Court of Madras
Chennai – 600 104.

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SUNDER MOHAN, J.

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