



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29-01-2026

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

CRL A No.200 of 2023

Mathiazhagan
S/o.Manickam,
No.3/53, Polachivalam,
Koppampudhur Post,
Mettur Taluk,
Salem District.

..Appellant/Sole Accused

Vs

State Rep. by
Inspector of Police,
All Women Police Station Mettur,
Salem District.
(Crime No.1/2020)

...Respondent/Complainant

Prayer : Criminal Appeal filed under Section 374(2) of Criminal Procedure Code to set aside the Judgement and sentence passed in Spl.S.C.No.24 of 2020 dated 30.08.2020, on the file of Sessions Judge, Principal POCSO Court, Salem and acquit the Appellant.



For Appellant :

M/S.Philip Ravindran Jesudoss

For Respondent:

Mr.S.Raja Kumar
Additional Public Prosecutor

JUDGMENT

This criminal appeal has been filed by the sole accused, challenging the Judgment dated 30.08.2020 in Spl.S.C.No.24 of 2020, on the file of the learned Sessions Judge, Principal POCSO Court, Salem, by which he was convicted for the offence under Section 9(m) r/w 10 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the “*POCSO Act*”) and sentenced him to undergo rigorous imprisonment for 7 years along with a fine of Rs.5,000/- in default to undergo rigorous imprisonment for 1 year.

2(a). The case of the prosecution is that the appellant/accused was the victim's neighbour; that on 12.01.2020 at about 5.30 p.m., when the victim girl went to her friend's house to borrow a note book, the appellant had called the victim girl who was aged below 12 years and inappropriately touched her breast and thus, committed the aforesaid offence.

(b). A complaint [Ex.P1] was lodged by P.W.1, the mother of the victim, on 15.01.2020. On receipt of the complaint, P.W.9, the Inspector of Police, had



registered the FIR [Ex.P15] in Crime No.1 of 2020 for the offence under Section 9(m) r/w 10 of the POCSO Act and conducted the investigation. After subjecting the victim/P.W.2 to medical examination and making arrangements to record her 164(5) Cr.P.C. statement, P.W.9, the Inspector of Police, filed the Final Report against the accused for the offence under Section 9(m) r/w 10 of the POCSO Act before the learned Sessions Judge, Principal POCSO Court, Salem.

(c). On the appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with, and the case was taken on file as Spl.S.C.No.24 of 2020 by the learned Sessions Judge, Principal POCSO Court, Salem. The trial Court framed charges against the accused for the offence under Section 9(m) r/w 10 of the POCSO Act. During the trial, when questioned, the accused pleaded "not guilty."

(d). To prove its case, the prosecution had examined 9 witnesses as P.W.1 to P.W.9 and marked 18 exhibits as Exs.P1 to P8, besides one material object as M.O.1. When the accused was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. On the side of the defence, the accused examined two witnesses as D.W.1 and D.W.2 and had not marked any document.



(e). On appreciation of oral and documentary evidence, the trial Court found that the accused/appellant was guilty of the offence under Section 9(m) r/w 10 of the POCSO Act and sentenced him as stated below. Hence, the appellant had preferred the instant appeal challenging the said conviction and sentence.

4. Mr.Philip Ravindran Jesudoss, the learned counsel for the appellant/accused would submit that the alleged occurrence took place on 12.01.2020; that there was a pathway dispute between the appellant and P.W.3, the father of the victim girl; that on 12.01.2020, there was a Panchayat held between P.W.3 and the appellant and other relatives of both of them relating to the said dispute; that in order to wreak vengeance on account of the said dispute, P.W.1/mother of the victim girl/*de-facto* complainant had filed a false complaint belatedly three days after the alleged occurrence; that the victim's evidence does not inspire confidence; that the medical evidence does not corroborate the evidence of the victim and in view of the same, the impugned Judgment convicting the appellant cannot be sustained and sought for acquittal.

5. Mr.S.Raja Kumar, the learned Additional Public Prosecutor, for the respondent, *per contra*, submitted that a delay in lodging the complaint is not a ground for acquittal; that the victim had made consistent statements both before



the learned Magistrate and before the trial Court and there is no reason for the victim to depose falsely against the appellant; and that in a case of this nature, one cannot expect corroboration from the medical evidence and absence of corroboration would not be a ground to disbelieve the evidence of P.W.2, the victim, and submitted that the trial Court was justified in convicting the appellant and prayed for dismissal of the appeal.

6. As stated earlier, the prosecution had examined nine witnesses to prove its case. P.W.1 is the mother of the victim and the *de-facto* complainant who lodged the complaint. P.W.2 is the victim and according to the prosecution her age was less than 12 years. P.W.3 is the father of the victim. P.W.4 is the Observation Mahazar witness who marked Ex.P3. P.W.5 is the Doctor who had examined the appellant and issued the potency certificate [Ex.P5]. P.W.6 is the Head Master of the School in which the victim studied and issued the educational certificate marked as Ex.P8 mentioning the date of birth of the victim/P.W.2, as 28.11.2008. P.W.7 was the Chairman of Mecheri Panchayat and would speak about the pathway dispute between the appellant and P.W.3/father of the victim. He turned hostile. P.W.8 is the doctor who had examined the victim and had issued the medical examination report [Ex.P10] and the final opinion [Ex.P14]. P.W.9 is the investigating officer who conducted the investigation and filed the Final Report.



WEB COPY

7. As could be seen from the above narration, the prosecution case rests on the evidence of the victim/P.W.2, the evidence of P.W.1/mother of the victim and P.W.3/father of the victim. P.W.1 and P.W.3 heard about the incident from P.W.2, the victim. The prosecution had examined the doctor, P.W.8, who had conducted a medical examination on the victim girl. P.W.8 had given a report, [Ex.P12], in which it is stated as follows:

*“No external injuries
Breast Normal
External genitalia Normal
Hymen intact.”*

The doctor, P.W.8, had stated that there is a possibility of sexual assault on the basis of the information given by the victim/P.W.2. Thus, the medical evidence is of no avail to the prosecution, and it does not offer any corroboration to the evidence of the victim. The prosecution case, therefore, solely rests on the testimony of the victim.

8. It is seen from the evidence of the victim/P.W.2 that she had informed to her mother/P.W.1, about the sexual assault committed by the appellant immediately after the occurrence on 12.01.2020. P.W.1 had not chosen to give any complaint till 15.01.2020. There is no valid explanation offered by the prosecution or by P.W.1 for the delay of three days in lodging the complaint.



9. Be that as it may. It is seen from the evidence of P.W.1 and P.W.3 that the appellant and P.W.3 had a pathway dispute, and there was a Panchayat held on 12.01.2020, between both of them in the presence of their relatives and the Chairman of the Mecheri Panchayat. It is the prosecution case that after the occurrence, P.W.1 went to P.W.7 to complain about the occurrence. P.W.7, the Chairman of Mecheri Panchayat, did not support the prosecution case and he was treated hostile. However, he would state that there was a Panchayat held on 12.01.2020, relating to the pathway dispute. Nothing has been elicited by the prosecution to disbelieve that portion of P.W.7's evidence. From the above, it is seen that there was a pathway dispute between the appellant and P.W.3/father of the victim, and a Panchayat was held on 12.01.2020.

10. This Court is of the view that if the appellant/accused had committed sexual assault and PW.1 and P.W.3 were aware of the same, it is highly improbable that after the commission of the alleged offence, the father of the victim/P.W.3 had participated in the Panchayat to discuss a land dispute with the appellant on the night of 12.01.2020. Further, there was a delay of three days in lodging the complaint.

11. In light of the above evidence and the nature of the allegation against the appellant, this Court is of the view that the conviction cannot be sustained



only on the sole testimony of the victim, whose evidence does not inspire confidence. There are inconsistencies in her evidence, and she had given an exaggerated version in her deposition, as could be seen from her deposition in the cross-examination, and several vital facts were not stated by her during the investigation and in her 164 Cr.P.C. statement.

12. It is the victim's version that the appellant held her in one hand and inappropriately touched her breast, and when the appellant had stretched his hand to pick up the phone, she wriggled out. However, this is contrary to her earlier version, and this has been elicited by the defence in the cross-examination. Thus, there are several inconsistencies and improvements in the evidence of the victim/P.W.2. Further, P.W.2/victim would admit in her cross-examination that she would do and say whatever her parents told her.

13. In such circumstances, this Court is of the view that it is highly unsafe to convict the appellant only on the basis of the sole testimony of the victim/P.W.2, and hence, this Court is inclined to set aside the impugned judgment of conviction and sentence.



14. Accordingly, the criminal appeal stands allowed. The conviction and sentence imposed upon the appellant vide Judgment dated 30.08.2020 by the learned Sessions Judge, Principal POCSO Court, Salem, in Spl.S.C.No.24 of 2020, 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.

29-01-2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

dk



To

1. The Sessions Judge,
Principal POCSO Court,
Salem.

2. The Inspector of Police,
All Women Police Station Mettur,
Salem District.

3. The Public Prosecutor
High Court of Madras,
Chennai – 600 104.



WEB COPY

CRL A No.200 of 2



SUNDER MOHAN, J.

dk

CRL A No.200 of 2023

29-01-2026