2026:MHC:4497

Order QR

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27-10-2026

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

CRL A No. 416 of 2018
CNR: {HCMA010362572018}

Gajendiran

..Appellant(s)

Vs

1. The Inspector Of Police,
   All Women Police Station, Vellore District
   Cr.No.50 Of 2014.

2. Indiragandhi
   (R2 is *suo motu* impleaded as per the order dated 09.09.2026 in Crl.A.No.416 of 2018)

..Respondent(s)

Prayer: Appeal filed under Section 374 of the Criminal Procedure Code, to set aside the order of conviction passed by the Fast Track Mahila Court (Sessions Judge) at Vellore in Spl.S.C.No.31 of 2015 dated 07.07.2018, under Section 8(2) and 354(A)(i) of POCSO Act, for rigorous imprisonment of 4 years (2 counts) and to pay a fine amount of Rs.2,000/- each (totally Rs.4,000/-) in default of which sentence to undergo R.I of 3 months by allowing the present criminal appeal.

For Appellant(s): Mr.M.Venkatesh
for Mr.R.Jayaprakash

For Respondent(s): Ms.Sharada Vivek
Additional Public Prosecutor
assisted by Mr.Arul Raj

JUDGMENT

The appeal challenges the judgment passed in Spl.S.C.No.31 of 2015, holding the appellant guilty of the offences under Section 8(2) of the Protection of Children from Sexual Offence Act, 2012[1] and sentencing him to undergo four years rigorous imprisonment (2 counts) and no

[1] *For Brevity, hereinafter referred as "POCSO Act".*

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

WEB COPY

separate sentence was imposed for the offence under Section 354A of the IPC.

2. It is the case of the prosecution that the appellant was engaged by the parents of the victim girls, aged about 10 and 11 years respectively, to erect a pandal in connection with a function held in their house on 26.11.2014; that, at about 12:00 PM on the same day, the appellant took the first victim, the elder daughter of *P.W.1* to the room and inappropriately kissed her, groped her breast and touched her private parts; that at about 12:05 PM, he took the younger daughter of *P.W.1* to the same room and committed the same act, namely kissed her, groped her breast and touched her private parts. It is the further case of the prosecution that the victim girls did not reveal about the occurrence to their mother *P.W.1* on the same day and when the appellant went to their house once again on 27.11.2014 to remove the pandal, the victims informed *P.W.1*, who in turn informed *P.W.4*, her husband, and they apprehended the accused and later handed him over to the Police along with the complaint (*Exhibit P.1*).

3. A complaint is said to have been given at 5:30 PM on 27.11.2014, which was registered in Crime No.50 of 2014 for the offences under Section 8 of the POCSO Act and Sections 376 r/w 375(E) and 506(i) of the Indian Penal Code, 1860. The First Information Report was registered by *P.W.14*. *P.W.15* took up the investigation and subjected the

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

WEB COPY

victims to medical examination. Thereafter, it was found that both the victims belonged to SC/ST Community and the offence under Sections 3(1)(w) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989[2] was included. *P.W.15* thereafter handed over the investigation to the Deputy Superintendent of Police (*P.W.16*). *P.W.16* conducted the investigation and filed the final report for the offences under Section 8 of the POCSO Act and Sections 3(1)(w) and 3(2)(va) of the ST/ST Act.

4. The Trial Court framed charges for both the offences. Prosecution examined sixteen witnesses and marked *Exhibit P.1* to *Exhibit P.22*. The Trial Court found that the appellant had not committed the offence to humiliate the victims due to their caste and acquitted him of offences under Sections 3(1)(w) and 3(2)(va) of the SC/ST Act. The Trial Court further found the appellant guilty of offences under Section 8 of the POCSO Act and Section 354A of the Indian Penal Code, 1860, and sentenced him as stated above.

5. The learned counsel appearing for the appellant would submit that the cross examination of *P.W.2* and *P.W.3* (victims) would reveal that their version cannot be relied upon; that the medical evidence would clearly show that they were not subjected to any sexual assault; that the evidence of *P.W.1*, the mother of the victims, would reveal that the

[2] *In short, hereinafter referred as "ST/ST Act".*

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

WEB COPY

victims *P.W.2* and *P.W.3* cannot be believed; that the suggestion made to *P.W.4* would show that the appellant had prior enmity with the family of the victims and that false prosecution cannot be ruled out and prayed for setting aside the impugned judgment.

6. This Court had earlier directed the prosecution to serve notice on the victims though the appellant was acquitted of the offences under the SC/ST Act. The Inspector of Police has filed a report stating that notice could not be served to the victims, since they were unavailable in their place of residence. This Court is of the view that since the appellant had been acquitted of the offence under Sections 3(1)(w) and 3(2)(va) of the SC/ST Act, further notice to the victims could be dispensed with.

7. The learned Additional Public Prosecutor, *per contra*, submits that in view of the statutory presumption under Sections 29 and 30 of the POCSO Act, the Trial Court was justified in believing the evidence of *P.W.2* and *P.W.3*; that minor contradictions in their evidence would not render their evidence unreliable; and that the absence of corroboration of the medical evidence cannot be the basis to disbelieve the evidence of two young victims and prayed for dismissal of the appeal.

8. As stated above, the prosecution had examined sixteen witnesses. *P.W.1* is the mother of the victims/the *defacto* complainant; *P.W.2* and *P.W.3* are the victim girls, aged 10 and 11 respectively at the time of the occurrence; *P.W.4* is the father of the victim girls; *P.W.5*

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

WEB COPY

signed in the observation mahazar marked as *Exhibit P.2*; *P.W.6* is known to *P.W.4* and is a hear-say witness; *P.W.7* is the Constable who had taken the victims to the hospital for medical examination; *P.W.8* is another Constable who had taken the accused for medical examination; *P.W.9* is the Doctor who had examined the accused and issued the potency certificate (*Exhibit P.4*); *P.W.10* is the Doctor who had examined both the victims and issued the medical examination reports (*Exhibits P.10* and *P.11*) for both the victims; *P.W.11* had issued the age certificates for the victim girls based on the Radiological test (*Exhibits P.12* and *P.13*); *P.W.12* is the Tahsildar who had issued the Community Certificates for both the victims, marked as *Exhibits P.14* and *P.15*; *P.W.13* is the Tahsildar who has issued the Community Certificate for the appellant, marked as *Exhibit P.16*; *P.W.14* is the Inspector of Police, who has registered the First Information Report and conducted a part of the investigation; *P.W.15* is the Inspector of Police who conducted the other part of the investigation and handed over the investigation to *P.W.16*, who had filed the final report.

9. The prosecution's case therefore rests on the evidence of *P.W.2* and *P.W.3* (victims). It is the case of the prosecution that the appellant kissed both the victims, groped their breasts and touched their private parts within a span of five minutes. The occurrence of *P.W.2* is said to have taken place by 12:00 PM and the occurrence of *P.W.3* is said to have taken place by 12:05 PM.

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

WEB COPY

10. The victims would state in their deposition that they informed about the occurrence on the same day to their mother *P.W.1*. Relevant portion of the evidence of the victims is extracted for better appreciation:

> "அன்று இரவு என் அம்மாவிடம் சொன்னோம்."

Whereas, *P.W.1* would state that her daughters informed about the occurrence on the next day afternoon at 12:00 PM:

> "மறுநாள் 12 மணிக்கு தான் என் மகள்கள் என்னிடம் சம்பவத்தை சொன்னார்கள்."

The version of *P.W.1* that she came to know about the occurrence only the next day is contrary to the version of the victims. Thus, the reason for the delay in lodging the complaint is incorrect and the delay has not been explained.

11. Be that as it may, the version of *P.W.2* in her cross examination is that the occurrence took place in a room and that room had no doors. Her version reads as follows:

> "எதிரி என்னிடம் தவறாக நடந்த சமயம் என் தங்கையும் என்னுடன் தான் இருந்தார். நான் என் தங்கை மற்றும் எதிரி ருமக்குள் தான் இருந்தோம். நாங்கள் இருந்த ருமக்கு கதவு இல்லை. முதலில் என்னிடம் தான் எதிரி தப்பாக நடந்து கொண்டார். என்னிடம் எதிரி தப்பாக நடந்ததை என் தங்கை பார்க்கவில்லை. என் தங்கையிடம் எதிரி தப்பாக நடந்ததை நான் பார்க்கவில்லை."

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

WEB COPY

Whereas, *P.W.3* would state that the appellant had closed the doors and misbehaved with her. Her version reads as follows:

> "ரூம் கதவை சாத்திவிட்டு என்னிடம் தவறாக நடந்தார். என்னிடம் எதிரி தவறாக நடக்கும் போது என் அக்காவும் அங்கு தான் இருந்தார். நாங்கள் மூவரும் ஒரே அறையில் தான் இருந்தோம். என் அக்காவிடம் கஜேந்திரன் தவறாக நடந்ததை நான் பார்த்தேன். என்னிடம் கஜேந்திரன் தவறாக நடந்ததை என் அக்கா பார்த்தாரா என்று தெரியாது. என் அக்கா என்னிடம் கஜேந்திரன் அவரிடம் தப்பாக நடந்ததாக சொன்னார்."

12. The extract from the evidence of *P.W.2* and *P.W.3*, would reveal that there are contradictions as regards whether there was a door in the room and as to whether both the victims were present in the room at the same time. According to *P.W.2*, she had not witnessed the alleged assault on *P.W.3.* Whereas, *P.W.3* has stated that she had witnessed the assault on *P.W.2*. Therefore, the version of *P.W.2* and *P.W.3* are contrary in material particulars. That apart, their versions appear to be highly improbable and both the victims have repeated in a parrot like fashion, that similar assaults were committed on both of them.

13. That apart, it is seen from the medical evidence that the Doctor had observed that there were no symptoms of any sexual assault on both the victims. The observation made by the Doctor reads as follows:

> *"I am of the opinion that there are no obvious signs, symptoms of rape.*

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

WEB COPY

No obvious injuries over the breasts and external genitals.

No vaginal swab taken as there was no attempt of penetration/handling of external genitalia."

This has been confirmed by the Doctor in the oral evidence as well. The Doctor has made similar observations in *Exhibit P.10* as well, which is in respect of the other victim.

14. It is also seen that the victims have given a totally different version as regards the place of occurrence in their statements given before the Magistrate. P.W.2 has stated that the occurrence took place in the staircase leading to the terrace. Unfortunately, the defence had not confronted the victims with the said contradictions. On the reading of the evidence, this Court is of the view that the victims have been tutored and their evidence do not inspire confidence. In fact, the defence had suggested to *P.W.4* that the accused had prior enmity with the father *P.W.4* on account of a dispute in a financial transaction.

15. Thus, in view of the above medical evidence, which does not corroborate the evidence of the victims, the contradictions in the evidence of *P.W.2* and *P.W.3* and the evidence of their mother *P.W.1,* and for the aforesaid reasons, this Court is of the view that it would be highly unsafe to hold the appellant guilty in the facts and circumstances of this case.

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

WEB COPY

16. As stated above, *P.W.1* has sought to explain the delay in lodging the complaint by stating that the victims informed her only on the next day. The explanation also does not merit acceptance and there is no other reason for the delay in lodging the complaint.

17. Therefore, for the above reasons, this Court is of the view that the prosecution had failed to establish their case beyond reasonable doubt. Accordingly, the impugned judgment is liable to be set aside and is accordingly set aside. The appellant is acquitted of all charges. The appeal is allowed.

27-10-2026

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

(*drm*)

To:

1. The Inspector Of Police,
   All Women Police Station, Vellore District,
   Cr.No.50 of 2014.

2. The Fast Track Mahila Court (Sessions Judge), Vellore.

3. The Public Prosecutor
   Madras High Court, Chennai.

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

WEB COPY

SUNDER MOHAN, J.

(*drm*)

CRL A No. 416 of 2018

27-10-2026

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