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Crl.A.No.328 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2026

CORAM :

THE HON'BLE MR.JUSTICE G.ARUL MURUGAN

Crl.A.No.328 of 2022

Murugan

.. **Appellant**

Vs.

The State of Tamilnadu
Represented by
The Inspector of Police
All Women Police Station
Ammamet, Salem.
(In Cr.No.11 of 2018)

.. **Respondent**

Prayer: Criminal Appeal filed under Section 374 (2) of Cr.P.C., to set aside the conviction and sentence imposed upon him by the Principal Special Judge, Special Court for Trial of Cases under the Protection of Children from Sexual Offences Act, 2012, Salem, made in New Spl.S.C.No.159 of 2019 by a judgment dated 28.02.2022 and grant such or other orders.

For the Appellant : Mr.M.R.Thangavel

For the Respondent : Mr.J.Subbiah
Government Advocate (Crl.Side)



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JUDGMENT

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This Criminal Appeal is filed challenging the judgment dated 28.02.2022 made in New Spl.S.C.No.159 of 2019 on the file of the Court of Principal Special Judge, Special Court for Trial of Cases under the Protection of Children from Sexual Offences Act, 2012, Salem.

2. The appellant/sole accused was convicted for an offence under Section 8 of the Protection of Children from Sexual Offences (POCSO) Act, 2012 (hereinafter referred to as 'the POCSO Act') and sentenced to undergo 5 years rigorous imprisonment and to pay a fine of Rs.20,000/-, in default of payment of fine, to undergo six months simple imprisonment.

3. It is the case of the prosecution that the victim/PW2 was aged 13 years and studying 8th standard in the Sri Sarada Vidyalaya Girls Hr. Sec. School, Salem and she used to go to school in the auto of the accused. As per routine practice, the accused used to pick up the children including the victim from their respective houses in the morning and after school hours, he dropped them in their respective houses in the evening. While so, on 11.08.2018 as usual, the



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accused picked up the children from their respective houses and dropped in the school. However, in the evening, with an intent to sexually assault PW2/the victim girl, the accused had picked up the children one hour late from the school, i.e. at 6.00 pm and when he usually take the Chettichavadi Road, on the date of occurrence, he had taken an alternate route. If the accused had taken the routine route, the victim would have got down in her house before the other children got down. However, since he took an alternate route, after dropping all the other children, the accused drove the auto and went near a hostel. When the victim enquired about taking the new route, the accused informed that he had a call to pick up a customer from the said hostel around 6.30 pm. When the auto was coming near a coconut grove near Erumaikuttaipallam, the accused stopped the auto and on verifying that no other person is nearby, he threatened the victim and pulled her half saree – uniform wore by the victim and touched the right side hip of the victim. The victim immediately screamed and jumped out of the auto and shouted for help. PW4/Dinesh, the person who was grazing the goats came for help and rescued the victim and sent her along with PW10/Mutharasan in the bike to be dropped at her home.



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4. PW2/the victim went home crying and narrated the incident to her mother/PW1. In turn PW1 informed her husband/PW3, who was working at Trichy. After his return to home, both PW1 and PW3 took the victim to the police station on the next day morning, i.e., on 12.08.2018 and lodged the complaint/Ex.P.1. The Sub-Inspector of Police/PW15 registered the FIR/ Ex.P.20. The Inspector of Police/PW16 also sought the assistance of a Childline Helper/PW14 during the investigation and thereafter, sent the victim for medical examination. PW16 took up the investigation and prepared Observation Mahazar/Ex.P.4 and the Rough Sketch/ Ex.P.21. Doctor/PW13, examined the victim and issued the Accident Register copy/Ex.P.14 and medical certificates Ex's.P.15 to Ex.P18.

5. The accused was arrested on the same day and his confession statement was recorded in the presence of P.Ws.6 and 7 and based on his statement, an auto bearing Registration No.TN-50-Y-4375 was recovered and the admissible portion of confession alone was marked as Ex.P.6. The accused was examined by PW12/Doctor, who issued potentiality certificate and the same was marked as Ex.P.11. Through an alteration report/Ex.P.25, the offence was altered to Sections



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7 and 8 of the POCSO Act, Section 506(i) and Section 363 of IPC. Upon
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completion of the investigation, PW16 filed the final report.

6. The Trial Court issued summons and on hearing both sides, framed the charge for an offence under Section 8 of the POCSO Act. On being questioned, the accused pleaded 'not guilty' and stood trial. The prosecution in order to bring home the charge, examined P.Ws.1 to 16 and marked the documents in Exs.P.1 to 25. The number plate and the auto were marked as M.Os.1 and 2. Upon completion of the prosecution evidence, when the accused was questioned under Section 313 of Cr.P.C., about the incriminating materials available, the accused denied the same as false. However, he had not produced any oral or documentary evidence.

7. The Trial Court on completion of the trial, on hearing the arguments and on analyzing the oral and documentary evidences concluded that the appellant / accused is guilty of the charge and convicted the accused for an offence under Section 8 of the POCSO Act and imposed the sentence of rigorous imprisonment for a period of 5 years and to pay the fine amount of Rs.20,000/-, in default of



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payment of fine amount, to undergo six months simple imprisonment. Assailing the conviction and sentence, the accused preferred the present Criminal Appeal.

8. The learned counsel appearing for the appellant/accused argued that the entire case was foisted only due to previous enmity with the victim's family, as the accused had declined to take the victim in his auto, as the auto charges for the past six months was not paid. He further submitted that even the other two children who had not paid the auto charges are P.Ws.8 and 9, who have deposed in favour of the prosecution. The learned counsel further contended that there are certain discrepancies in the testimony of PW1/mother of the victim child and PW2/victim, regarding the occurrence and the subsequent events. Further, he vehemently contended that the fact as to whether the shutters of the auto was opened or closed was not clearly spoken by PW4 on comparison with Ex.P19. When PW10 was also treated as hostile, the entire occurrence becomes doubtful. The Trial Court had not considered these discrepancies and had convicted the accused on mere premises and surmises, which is not sustainable. He further made a fervent appeal that since the Trial Court had imposed the maximum sentence, observing that the accused had threatened the victim's family and the



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witness's family which is factually incorrect, as the said allegations have been dropped even when the charges were framed, therefore the sentence imposed could be modified.

9. Contending contra, the learned Government Advocate (Criminal Side) appearing for the respondent argued that the victim/PW2 had given clear and cogent evidence regarding the sexual assault committed by the accused. The testimony of the victim is almost the same version which she had given in her statement recorded under Section 164 of Cr.P.C/Ex.P.3. He further submitted that the mother of the victim/PW1 had also given cogent evidence which was also in line with the statement of her recorded under Section 164 of Cr.P.C. in Ex.P.2. PW3/father of the victim's evidence had also corroborated the evidence of PWs.1 and 2. PW4/Dinesh, an independent witness who was present at the place of occurrence had come to the immediate aid of the victim and had rescued her and sent her home through PW10. Even though, PW10 was treated as hostile, in his cross-examination, he had clearly spoken about the presence of the accused and the victim with the auto and the fact that he had taken the victim and dropped her at her home. More so, the other two children who were travelling in



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the auto, viz., P.Ws.8 and 9 have also been examined and they have given categorical evidence about the fact that they travelled in the auto on the date of occurrence and that on 11.08.2018, the accused drove the auto in an alternate route. When all the facts have been proved by the prosecution and in the absence of the accused bringing out any material or evidence to rebut the presumption, the Trial Court had rightly raised the presumption under Section 29 of the POCSO Act and had convicted the accused, which is perfectly justified and need no interference.

10. Considered the rival submissions and perused the materials available on record.

11. PW2/Victim is alleged to have been sexually assaulted by the appellant/accused and thereby he has been charged for an offence under Section 8 of the POCSO Act. For invoking the provisions of the POCSO Act, it has to be first established by the prosecution that the victim is a child, within the meaning of Section 2 (d) of the POCSO Act. The school certificate /Ex.P.8 issued by the Headmistress, Sri Sarada Vidyalaya Girls Hr. Sec. School, Salem, reveals that



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the victim was born on 06.02.2006. The bonafide certificate issued by the School is also marked as Ex.P.9. The Headmistress of the school in which the victim was studying has been examined as PW11. The Headmistress/PW11 had deposed that the victim was studying 8th standard in their school in the academic year 2018 – 2019. The date of birth of the victim is 06.02.2006 and pursuant to the request given by PW16, she had issued Ex's.P.8 and P9. The evidence of PW11 coupled with the Ex's.P.8 and P9 establishes the fact that the victim was born on 06.02.2006 and on the date of occurrence, ie. on 11.08.2018, the victim was aged 13 years and studying 8th standard and therefore, the victim is a child.

12. The accused being an auto driver was taking the children from their respective houses in the morning and dropping them at the school and thereafter in the evening picked them from the school and dropped them at their respective houses. The accused used to take around 9 to 10 girl children in his auto and all the children were studying at the Sri Sarada Vidyalaya Girls Hr. Sec. School, Salem. On 11.08.2018, it is alleged that the accused with an intent to sexually assault PW2 had not taken the usual route in the evening but had taken an alternate route to reach the houses of the children. After dropping the other



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children, when the victim was alone remained in the auto, the accused had stopped the vehicle near a coconut grove and sexually assaulted the victim, for which the accused is charged for offence under Section 8 of the POCSO Act.

13. PW1/Mother of the victim had lodged the complaint/Ex.P.1. Pursuant to the complaint, both PW1/mother of the victim and PW2/victim girl were taken before the Magistrate and the statements were recorded under Section 164 (5) of Cr.P.C in Ex's.P.2 and P.3 respectively. As per the statement recorded in Ex.P.3, the victim girl had clearly stated that on 11.08.2018, the accused had taken an alternate route, avoiding the regular route to reach the houses of the children. On being enquired by PW2, the accused informed her that a customer had called from the hostel and therefore, he is going through that route. While so, all of a sudden, the accused stopped the auto near a coconut grove and sexually assaulted the victim by pulling her uniform and placing his hands on her hip. The victim girl pushed the accused and jumped out of the auto and screamed for help. PW4, who was grazing the goats near the place of occurrence came to the rescue of PW2 and rescued her from the accused. With the help of PW10, he sent the victim to her house. PW1/mother of the victim girl had also given statement



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about the sexual assault committed by the accused, which corroborates with the statement of the victim girl.

14. Further PW1 had deposed that on 11.08.2018, her daughter did not return home at 5.00 pm in the evening from school, but, she reached home late only at 7.00 pm and she came home crying. When PW1 enquired her, she narrated the incident that the accused came to pick them up from the school belatedly after one hour than the usual time. When usually she would be dropped earlier before dropping the other children, on that particular day, the accused had taken an alternate route and after dropping all the children, the accused while coming near the coconut grove stopped the auto and pulled the half saree – uniform wore by the victim and had sexually assaulted the victim. Immediately, the victim jumped out of the auto and cried for help. PW4 who was grazing the goats nearby the place, rescued the victim and sent her home along with PW10. The defence side was not able to elicit anything adversely in the cross-examination. In fact, when crossed about the previous enmity, PW1 had clearly deposed that they have not stopped sending PW2 to school in the auto of the accused. As the victim attained puberty, PW3 had taken the victim to school for



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some period. However subsequently, when the father of the victim was transferred out of station for work, the victim was regularly going in the auto of the accused.

15. PW2/victim had clearly and cogently deposed that usually around 9 children travelled in the auto of the accused. While returning from school, the victim used to get dropped before the other children are dropped in their respective houses. However, on 11.08.2018, the accused reached the school an hour late, i.e., around 6.00 pm and had taken an alternate route. When all the children were dropped at their residences, the victim girl alone travelled in the auto and when the auto reached near a coconut grove, the accused stopped the vehicle and sexually assaulted her. On hearing the screaming of PW2, PW4 came to rescue the victim and quarreled with the accused and he sent her home with PW10. PW2 clearly deposed that she had been regularly going in the auto of the accused and had denied the suggestion that the accused stopped taking her to the school six months ago.

16. PW3/Father of the victim had deposed the fact that he was working in



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Trichy. On being informed about the incident by his wife/PW1, he rushed to his house on 11.08.2018 at 11 pm and thereafter, along with P.W's. 1 and 2 went to the police station on the next day morning and lodged the complaint. The evidence of PW3 corroborates with the evidences of PW's.1 and 2 that only for a temporary period, when the victim attained puberty, PW3 had taken her to school. Since he had gone to Trichy for his work, the victim has been regularly travelling in the auto of the accused to reach the school.

17. PW4 is the independent witness, who had clearly spoken about the incident that, on the said day, the accused stopped the auto near the coconut grove and he came out of the driver seat and entered into the backside seat. Immediately, the victim girl jumped out of the auto by pushing the accused and shouted calling for help to save her. The school uniform wore by the victim was not in order and on realizing that the accused had misbehaved with the victim, PW4 went near the auto and helped the victim to reach home through PW10.

18. Even though the learned counsel for the appellant/accused, relying on the cross-examination of PW4, pointed out that there are certain discrepancies, as



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to whether the shutters of the auto were open or closed, such minor inconsistencies, having regard to the nature of the case and the charges involved, do not in any manner discredit the prosecution's case. Furthermore, nothing has been elicited in the cross-examination of PW4, to adversely affect the prosecution's case.

19. P.Ws.8 and 9, friends of the victim, who had travelled in the auto on the date of occurrence had deposed that they have travelled along with the victim and they were dropped before the victim got down from the auto.

20. PW10, had taken the victim from the place of occurrence and dropped her in her house. Though PW10, was treated as hostile in the cross-examination made by the prosecution, based on the 161 statement given by him, he had clearly deposed the fact about the presence of the auto and the accused at the place of occurrence and also the fact that he had seen the victim at the place of occurrence and dropped her at her home.

21. Upon considering the overall evidences and documents, the evidence of PW2/victim girl is clear and cogent in respect of the sexual assault committed



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by the accused. PW2 had clearly deposed about the incident and the testimony is reliable and almost it is in line with the statement given by her under Sec.164(5) of Cr.P.C before the Magistrate. PW's.1 and 3 have also clearly deposed about the occurrence corroborating the evidence of PW2. The evidence of PW4, the independent witness and the evidence given by PW10, another independent witness clearly shows that the victim had travelled in the auto of the accused and the accused stopped the auto near a coconut grove and he sexually assaulted the victim, due to which the victim jumped out of the auto and screamed for help. Upon hearing the screaming of the victim, PW4 rushed to the place of occurrence and rescued her and sent her through PW10 to her home. The said fact has also been clearly spoken by PW10.

22. Therefore, the fact that the victim travelled in the auto of the accused on 11.08.2018 and at around 7 pm, the accused sexually assaulted the victim are proved by the prosecution. The accused on being arrested, confession statement was recorded and the admissible portion of confession statement was marked as Ex.P.6. The said statement was recorded in the presence of PW's.6 and 7. Even though PW6 turned hostile, PW7 had clearly deposed that on the confession



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given by the accused, PW16 recovered the material objects M.O.1 and M.O.2 in his presence. The victim was medically examined by the Doctor/PW13 and PW13 in her evidence had deposed that the victim had informed her that the accused sexually assaulted her in the auto and also narrated about the entire incident. The Accident Register and the Medical certificates issued by PW13 were marked as Ex's.P.14 to Ex.P.18. The accused had also been taken for medical examination before PW12 and on examining the accused, PW12 issued Ex.P.11/Potentiality Certificate and Ex's.P.10 to Ex.P.13.

23. From the oral and documentary evidences, the sexual assault committed by the accused stands proved. When the prosecution has established the foundational facts in respect of the charge under Section 8 of the POCSO Act, the presumption under Section 29 of the POCSO Act arises and it was for the accused to rebut the presumption. Further, when the accused was questioned under Section 313 of Cr.P.C., the accused did not come out with any version about the previous enmity or any explanation and the accused did not also chose to bring any oral or documentary evidence in rebutting the presumption.



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24. When the prosecution had proved the charges against the accused and in the absence of the accused rebutting the presumption, the Trial Court had rightly placed reliance on the presumption under Section 29 of the POCSO Act and had convicted the appellant, for an offence under Section 8 of the POCSO Act. On re-appraisal of the entire evidences, this Court does not found any illegality or perversity in the decision of the Trial Court convicting the accused.

25. In so far as the sentence is concerned, the trial court had imposed five years rigorous imprisonment, by observing that the conduct of the accused after the occurrence is considered for imposing the maximum punishment. The trial court further found that after the occurrence, the accused did not have any remorse and he had gone to the extent of threatening the witness/PW4 and his family and also the victim's family.

26. However from the materials available on record, this Court finds that even though the offences were altered under the alteration report /Ex.P.25, still the charges have been framed only under Section 8 of the POCSO Act. Even in the complaint/Ex.P.1 or in the evidences let in by P.W's.1 to PW4 nothing has



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been deposed or spoken about the conduct of the accused, post the occurrence, in coming to the house of witness and threatening them. In the absence of any such material evidence, the sentence of the Trial Court in imposing the maximum punishment warrants interference.

27. Under Section 8 of the POCSO Act, it is true that even though the minimum prescribed sentence is 3 years, the maximum sentence up to 5 years imprisonment could be imposed. The Trial Court has discretion to impose the maximum punishment considering the gravity of charge and the aggravating circumstances. In the instant case, the conduct of accused in threatening the victim and family is considered as aggravating circumstance for imposing maximum sentence, which is factually not supported by any evidence or materials. In such circumstances, this Court is of the considered opinion that while confirming the conviction imposed on the appellant/accused, the sentence could be proportionally modified from the period of five years rigorous imprisonment to three years rigorous imprisonment.



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28. In view of the above deliberations,

(i) the judgment of the learned Principal Special Judge, Special Court for Trial of Cases under the Protection of Children from Sexual Offences Act, Salem, in convicting the appellant/accused for the offence under Section 8 of the POCSO Act is confirmed. However the imprisonment imposed for five years alone is modified to that of three years rigorous imprisonment;

(ii) In all other aspects, the sentence, including the fine amount shall remain undisturbed.

29. With the above modification, this Criminal Appeal stands partly allowed. The Trial Court shall take steps to secure the appellant /accused to serve the remaining period of sentence.

30.03.2026

Index: Yes
Speaking Order
Neutral Citation: Yes
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G.ARUL MURUGAN, J.

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To

1.The Principal Special Judge,
Special Court for Trial of Cases under
the Protection of Children from Sexual Offences Act, 2012, Salem.

2.The Section Officer
VR Section
High Court of Madras.

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