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CRL A No. 326 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-01-2026

CORAM

**THE HONOURABLE MR JUSTICE P.VELMURUGAN
AND
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN**

CRL A No.326 of 2025

Boopathy
S/o. Vasu
No.19, Mariamman Koil Street
Kodithandalam Village
Madurantagam Taluk, Chengalpattu.

Appellant

Vs

The State Rep by
The Inspector of Police
All Women Police Station-
Chengalpet Police Station,
Chengalpattu
In Crime.No.3/2019

Respondent

Memorandum of Grounds of Criminal Appeal filed under Section 415(2) of BNSS to set aside the Judgment of conviction and sentence dated 09.11.2023 made in Spl.S.C.No.200 of 2019 passed by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under the POCSO Act, Chengalpattu.

For Appellant: Mr.R.Krishna Kumar

For Respondent: Mr.A.Damodaran
Additional Public Prosecutor
assisted by Ms.M.Arifa Thasneem

**JUDGMENT****(Judgment of the Court was made by P.Velmurugan J.)**

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This criminal appeal has been preferred challenging the judgment of conviction and sentence passed by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under the POCSO Act, Chengalpattu in Spl.S.C.No.200 of 2019 dated 09.11.2023, convicting and sentencing the appellant to undergo 10 years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default to undergo 6 months simple imprisonment for the offence under Section 366 IPC and to undergo life imprisonment and to pay a fine of Rs.10,000/-, in default to undergo 1 year rigorous imprisonment for the offence under Section 6 read with 5(1) of the Protection of Children from Sexual Offences Act, 2012.

2. The case of the prosecution is that the victim-Ashwini was studying 12th Standard in the Government Girls Higher Secondary School, Chengalpattu. The accused, being a taxi driver, was known to the victim, since she used to go to the school by bus or in the taxi of the accused. It is also stated that the accused and the victim were in love. On 17.02.2019, at about 5.30 p.m., when the victim was waiting for the bus towards her house at the Chengalpattu hospital bus stop, the accused took the victim in the taxi after informing that he



would drop the victim in her house. However, the accused took the victim to a guava grove near Samuthavapuram for having a chat and though the victim refused, the accused pacified the victim by saying that he would marry her and also had penetrative sexual intercourse. At around 8.00 p.m., when the accused was informed by his friend that the parents of the victim were searching for the victim, the accused took the victim in the taxi saying that he would drop her in the Mamundur bus stand. Since there was no bus, the accused again took the victim to the guava grove and had sexual intercourse twice and were staying there till 10.00 p.m. Thereafter, the accused called his friend and handed over the taxi and took the victim in the bike brought by his friend and dropped her in the backside of her house. The parents of the victim were not available in the house, since they were searching for her whereabouts. The brother of the victim, on seeing her, informed the parents about the arrival of the victim. Thereafter, the victim informed the incident to her parents. When the parents proceeded to the Salavakkam Police Station on the next day to prefer the complaint, the Village President intercepted them and informed that he would arrange for the marriage of the victim with the accused by talking to the family of the accused and the accused also agreed to marry her. However, the accused absconded from the next day. Subsequently, the parents of the victim heard that the accused had married one of his aunt's daughter.



3. Based on the complaint, Ex.P2 given by the de-facto complainant, who is the mother of the victim, the respondent Police registered a case in Crime No.3 of 2019 for the offences punishable under Sections 366(A), 506(i) & 4 of the Protection of Children from Sexual Offences Act, 2012 against the accused. On completion of the investigation, the respondent Police laid a charge sheet before the Mahila Court, Chengalpattu against the accused for the offences punishable under Sections 363, 365, 366, 376(1), 376(2)(n), 506(ii) IPC and Sections 4, 6, 8 & 10 of the Protection of Children from Sexual Offences Act, 2012. After completing the formalities, since the offence was committed under the Protection of Children from Sexual Offences Act, the case was taken on file as Spl.SC.No.58 of 2019 and thereafter, the same was made over to the learned Sessions Judge, Special Court for Exclusive Trial of Cases under the POCSO Act, Chengalpattu as Spl.SC No.200 of 2019, for disposal.

4. After completing the formalities, since there were prima facie materials to frame charges against the accused, the learned Sessions Judge, Special Court for Exclusive Trial of Cases under the POCSO Act, Chengalpattu framed the charges against the accused under Sections 366 & 506(ii) IPC and Sections 6 read with Section 5(l) of the Protection of Children from Sexual Offences Act.

5. During the trial, in order to substantiate the charges against the



accused, on the side of the prosecution, 16 witnesses were examined as PW1 to PW16 and 21 documents were marked as Exs.P1 to P21, besides marking one material object as MO1.

6. On completion of the evidence of the prosecution witnesses, the incriminating circumstances culled out from the evidence of the prosecution witnesses were put to the accused under Section 313 Cr.P.C, for which he denied the same as false. On the side of the defence, no oral or documentary evidence was let in.

7. On conclusion of the trial and upon hearing the arguments advanced on either side and also considering the oral and documentary evidence, the trial Court found the accused guilty and convicted and sentenced him to undergo 10 years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default to undergo 6 months simple imprisonment for the offence under Section 366 IPC and to undergo life imprisonment and to pay a fine of Rs.10,000/-, in default to undergo 1 year rigorous imprisonment for the offence under Section 6 read with 5(1) of the Protection of Children from Sexual Offences Act, 2012. However, the accused was not found guilty of the charge under Section 506(ii) IPC. The trial Court also directed the State Government to pay a compensation of Rs.3,00,000/- to the victim.



8. Challenging the judgment of conviction and sentence passed by the trial Court, the appellant/accused has preferred the above criminal appeal before this Court.

9. The learned counsel for appellant would submit that the learned trial Judge did not properly appreciate the oral and documentary evidence let in by the prosecution and proceeded on the presumption as if the appellant was guilty; that the trial Court also did not frame proper charges and the improper framing of charges had caused great prejudice for the trial of the case; that there was a delay in filing the complaint, which was lodged on 24.02.2019, despite the alleged occurrence said to have taken place on 17.02.2019 and the unexplained delay is fatal to the prosecution case and there is every possibility of embellishment of the complaint; that the trial Court failed to consider the evidence of the doctor, PW14, who has deposed that there were no external injuries on the private parts or any indication for the proof of intercourse at the time of the alleged occurrence or any rupture inside the private part of the victim. He would further submit that the forensic science report, Ex.P14 clearly shows that they did not detect semen on item 1 and spermatozoa on the smear of the slide in item 2. The trial Court failed to note the fact that the entire case of the prosecution is connected out of love affairs and therefore, the Court ought to have shown some leniency. The trial Court also failed to consider that there was



no penetrative sexual assault. Even the evidence of the victim, PW1 itself shows that she was not forcibly taken by the appellant and had a forceful sexual assault. When there are material contradictions between the evidence of the victim, PW1 and also the evidence of the doctor, PW14, who conducted clinical examination on the victim, the prosecution failed to prove its case beyond reasonable doubt. Moreover, Section 29 of the Prevention of Children from Sexual Offences Act clearly shows that the foundational fact has to be proved by the prosecution. In case the prosecution is able to prove the foundational fact, then it is for the appellant/accused to rebut the presumption. Whereas in this case, the prosecution failed to prove even the foundational fact that the victim was subjected to penetrative sexual assault. A reading of the medical records would clearly show that there was no symptom that the victim was subjected to any penetrative sexual assault, muchless any sexual assault. Therefore, the judgment of the trial Court is liable to be set aside and the appeal is to be allowed.

10. The learned Additional Public Prosecutor would submit that in order to substantiate the case, on the side of the prosecution, totally 16 witnesses were examined including the victim, PW1. PW1 has categorically stated that she was subjected to penetrative sexual assault by the appellant/accused and the victim was also produced before the learned Judicial Magistrate to record her statement



under Section 164(5) of Cr.P.C and even before the learned Magistrate at the first instance, she has clearly stated that she was subjected to penetrative sexual assault by the appellant. Further, in cases of this nature, no corroborative evidence can be expected to be produced and in offences of this nature, it will not be in public place or in the presence of any other independent witness and would be always done in a secluded place, and therefore the evidence of the victim alone can be taken into consideration and that in cases of this nature, the quality of evidence alone can be taken into consideration and not the quantity of the witnesses. Since the victim was aged about 17 years at the time of occurrence and was removed from the custody of the natural guardian without the knowledge of her guardian, the trial Court rightly found that the prosecution proved the charge for the offence under Section 366 IPC against the appellant/accused. Further, from the evidence of the victim, PW1, the appellant had a penetrative sexual assault on her more than once and therefore the offence falls under Section 5(1) of the Protection of Children from Sexual Offences Act and so the act of aggravated penetrative sexual assault is punishable under Section 6 of the said Act. Therefore, the trial Court rightly convicted the appellant for the offence under Section 6 read with Section 5(1) of the Protection of Children from Sexual Offences Act and there is no merit in the appeal and the same is liable to be dismissed.



11. We have heard the learned counsel appearing on either side and carefully perused the records.

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12. The specific case of the prosecution is that the victim was aged 17 years at the time of occurrence. She fell in love with the appellant and that the appellant took the victim from the custody of the parents and had a penetrative sexual assault on her more than once. At the time of occurrence, the victim was studying 12th Standard and when she was returning from the school and waiting at the bus stand on 17.02.2019, at about 5.30 p.m., the appellant took her in the taxi stating that he would drop the victim in her house. Instead, the appellant took her to the guava grove and when the same was questioned by the victim, he informed her that she wanted to have a chat with her and thereafter, he tried to have a sexual intercourse and when she refused, he informed that he is going to marry her and therefore he wanted to have sexual intercourse, against her will, and also had a penetrative sexual assault. At 10.00 p.m., he again had sexual intercourse with her. Thereafter, he dropped her in the house and subsequently the complaint was given before the respondent Police by the parents and the respondent Police registered a case and also laid the charge sheet after completion of the investigation.

13. Based on the materials, the trial Court framed three charges against



the appellant for the offence under Sections 366 & 506(ii) IPC as well as under Section 6 read with Section 5(l) of the Protection of Children from Sexual Offences Act. The victim was examined as PW1 and she has stated that she was studying 12th Standard in the Chengalpattu Government Higher Secondary School and was aged about 17 years at the time of occurrence. When she was returning from the school on 17.02.2019 and waiting at the bus stand to proceed to her house, at that time, the appellant came and took her in the taxi at the guise of dropping her in the house. But, however, the appellant did not go to the house of the victim and he took her to the guava grove and had sexual intercourse twice on her. PW2 is the mother of the victim and PW3 is the father of the victim, who are not the eye-witnesses and they are only the hearsay witnesses. They have stated that the victim informed about the occurrence to them. Though PW1 has deposed that she had a friendship with the appellant, in the 164 statement, she has stated that the appellant attempted to commit rape and she refused and avoided and only under compulsion, the appellant had penetrative sexual assault twice on 17.02.2019. The accident register, Ex.P13 also shows that the rape is alleged to have been committed by known persons on 17.02.2019 and she was in love with that person for the past one year. But, however, a reading of the evidence of the doctor, PW14 clearly shows that when the victim was produced by the police before her for clinical examination on 20.02.2019, she found that there was no symptom of penetrative sexual assault



and there was no injury on any of the vital parts of the victim and the hymen was in tact. Even the accident register, Ex.P13 and also the evidence of PW1 did not corroborate with the medical evidence. Though normally in a case of injury, the evidence of eye-witness will prevail over the medical evidence, on the other hand, in cases of this nature, especially penetrative sexual assault or rape, naturally the medical records have to be relied on. However, it is not the case of the prosecution or the victim that the accused attempted to commit sexual assault or has committed sexual assault, which falls under the definition of Section 7 or Section 9 of the Protection of Children from Sexual Offences Act. The evidence of the victim is that she was forcibly subjected to penetrative sexual assault twice on the same day against her will and therefore, certainly, there could be some injury either in the body of the victim or her private parts and that the evidence of the doctor, PW14 and also the medical records clearly show that the hymen was in tact. Though as per the definition under Section 3 of the Protection of Children from Sexual Offences Act, the length of penetration is immaterial, but, however, in this case, the only evidence is the evidence of PW1, who is the victim. She has clearly stated that against her will, the appellant forcibly committed penetrative sexual assault on the same day in the interregnum period of one to two hours. If that be the case, against the will of the victim for a forcible sexual intercourse, certainly, there would be some injuries. On the contrary, the evidence of the doctor, PW14 shows that there was



no symptom for any recent sexual intercourse and the hymen was also in tact and there were no other injuries.

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14. On a careful reading of the materials and also the evidence of the victim, PW1 and the evidence of the doctor, PW14 coupled with the medical records, this Court finds that the evidence of the victim is not reliable and does not inspire the confidence of this Court. If two views are possible, the benefit of doubt should extend to the accused and further, as per Section 29 of the Protection of Children from Sexual Offences Act, there is a presumption. But whereas the presumption is applicable when the prosecution proved its foundational fact and then only, the accused has to rebut the presumption. Whereas, in this case, as already stated, the medical records are totally contra to the evidence of the victim and therefore, this Court finds that the appellant had rebutted the presumption under Section 29 of the Protection of Children from Sexual Offences Act, since the prosecution has not proved its case of penetrative sexual assault in this case. A reading of the statement of the victim under Section 164 Cr.PC also shows that though the parents of the appellant agreed to give the victim in marriage during their talks in the presence of the Village President and the betrothal function was also planned on 24.03.2019, they have proceeded otherwise leading to the registration of a false case against the appellant. Hence, either the charge of offence under Section 366 IPC or the



charge of offence under Section 6 read with 5(1) of the Protection of Children from Sexual Offences Act has not been made out. Therefore, the judgment of conviction and sentence rendered by the trial Court is liable to be set aside.

15. In the result, this criminal appeal is allowed and the impugned judgment of conviction and sentence passed by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under the POCSO Act, Chengalpattu in Spl SC No.200 of 2019 dated 09.11.2023 is set aside. The appellant/accused is directed to be set at liberty forthwith unless his custody is otherwise required in connection with any other case. Fine amount, if any paid, shall be refunded to the appellant forthwith. Bail bond, if any executed, shall stand cancelled.

(P.VELMURUGAN J.) (M.JOTHIRAMAN J.)
07-01-2026

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

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To

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1. The Sessions Judge
Special Court for Exclusive Trial of
Cases under the POCSO Act
Chengalpattu
2. The Inspector of Police
All Women Police Station
Chengalpattu Police Station
Chengalpattu
3. The Public Prosecutor
High Court, Madras



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**P.VELMURUGAN J.
AND
M.JOTHIRAMAN J.**

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