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CRL A No. 383 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05-02-2026

PRONOUNCED ON : 12-02-2026

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

CRL A No. 383 of 2023

Vengatesan

..Appellant/Accused

Vs

The Inspector of Police,
All Women Police Station,
Sankari, Salem.
[Crime No.5 of 2019]

..Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, to set aside the conviction and sentence imposed upon the appellant/Accused in Spl.SC.No.99 of 2020 dated 16.06.2022 on the file of the learned Sessions Judge, Special Court for the Exclusive Trial of POCSO Act Cases, Salem.

For Appellant:

Mr.Anantha Narayanan, Sr. Counsel
for Mr.T.N.Rangesh Kanna

For Respondent:

Mr.S.Raja Kumar
Additional Public Prosecutor

Judgment

The Criminal Appeal challenges the Judgement dated 16.06.2022 passed in Spl.S.C.No.99 of 2020 by the learned Sessions Judge, Special Court



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for POCSO Act Cases, Salem, convicting and sentencing the appellant/accused as follows:

<i>Sl. No.</i>	<i>Offence under Section</i>	<i>Sentence imposed</i>
1.	7 r/w 8 of POCSO Act	To undergo rigorous imprisonment for 5 years with a fine of Rs.10,000/- in default to undergo simple imprisonment for 6 months.
2.	5(l) r/w 6 of POCSO Act	To undergo rigorous imprisonment for 20 years with a fine of Rs.10,000/- in default to undergo simple imprisonment for 6 months.
3.	5(j)(ii) r/w 6 of IPC	To undergo rigorous imprisonment for 20 years with a fine of Rs.10,000/- in default to undergo rigorous imprisonment for 6 months.
The sentences were ordered to run concurrently.		

2. It is the case of the prosecution that the victim and the appellant's sister were known to each other; that hence, the victim became acquainted with the appellant; that the appellant expressed his love for the victim; that in the month of July in 2019, when there was no one at home, the appellant called the victim to his house and committed penetrative sexual assault on the victim; that thereafter, during the same month after the “Aadi” festival, he committed penetrative sexual assault; and that on 11.09.2019 at about 12 noon, the appellant had committed penetrative sexual assault on the victim for the third time and that one Tamilarasan, a juvenile also committed penetrative sexual assault on the victim thereafter.



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(b) On the complaint [Ex.P1] given by PW1, the mother of the victim PW11, the Sub-Inspector of Police registered an FIR [Ex.P19] in Crime No.5 of 2019 for the offences under Section 363 of the IPC and 5(l) r/w 6 of the Protection of Children from Sexual Offences (POCSO) Act, 2012 against the appellant and the said juvenile-Tamilarasan.

(c) Thereafter, the investigation was conducted by PW12, the Inspector of Police, who prepared the observation mahazar [Ex.P8] and rough sketch [Ex.P20], arrested the accused and obtained confession statements from the appellant and the juvenile accused-Tamilarasan. PW12 thereafter made arrangements to record the Section 164(5) Cr.P.C. statement of the victim and subjected the victim to medical examination. The blood samples of the appellant and that of the juvenile accused-Tamilarasan, were also taken and sent for comparison with the foetus of the victim's child. After obtaining the DNA report, she filed the final report on 14.08.2020 against the appellant/A1 for the offences under Sections 363, 365 and 506(ii) of the IPC and Sections 5(l) r/w 5(m), 6, 5(j)(ii) r/w 6, 7 r/w 8 of the POCSO Act, 2012 before the



learned Sessions Judge, Special Court for POCSO Act Cases, Salem. A separate charge sheet was filed against the juvenile accused-Tamilarasan before the Juvenile Justice Board, Salem on the same day and the same was taken on file vide J.C.No.95 of 2020 dated 20.10.2020.

(d) On the appearance of the accused, the provisions of Section 207 Cr.P.C., were complied with and on 17.12.2020, the case was taken on file as Spl.S.C.No.99 of 2020 by the learned Special Judge, Special Court for POCSO Act Cases, Salem, for trial. The Trial Court had framed charges for the offences under Sections 7 r/w 8, 5(l) r/w 6 and 5(j)(ii) r/w 6 of the POCSO Act, 2012 and when questioned, the accused pleaded 'not guilty'.

(e) To prove its case, the prosecution had examined 12 witnesses as P.W.1 to P.W.12 and marked 27 documents as Ex.P1 to Ex.P27, besides 1 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. The accused neither examined any witness nor marked any document on his side.



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(f) On appreciation of oral and documentary evidence, the trial Court convicted and sentenced the appellant as stated above. Hence, the appellant has preferred the instant appeal challenging the said conviction and sentence.

3. The learned senior counsel for the appellant would submit that the prosecution had failed to establish that the appellant had committed the offences of penetrative sexual assault; that the allegations, at best, suggest that the victim had a consensual relationship with the appellant; that even according to the victim, two persons had committed penetrative sexual assaults; that the prosecution had not proved the DNA report in the manner known to law; and that, the age of the victim has also not been established by the prosecution beyond reasonable doubt, and hence, prayed for acquittal.

4. The learned Additional Public Prosecutor, *per contra*, submitted that the prosecution had established its case beyond reasonable doubt; that the age of the victim has been proved through the School Certificate [Ex.P4] issued by the Headmaster of the school; that non-marking of the birth certificate is not fatal to the prosecution; that even though the victim had alleged that two



persons had committed the offence, the DNA report suggests that the appellant was the biological father of the foetus removed from the victim; that the appellant had not chosen to cross-examine any of the witnesses; and hence, the prosecution had proved its case beyond reasonable doubt and prayed for dismissal of the appeal.

5. As stated earlier, the prosecution had examined 12 witnesses. PW1 is the mother of the victim and the defacto complainant. PW2 is the victim. PW3 is a resident of the same village and a hearsay witness. PW4 is another resident who turned hostile. PW5 is the Headmaster of the school where the victim is said to have studied for three months and had issued the school certificate [Ex.P4] in which the date of birth of the victim is shown as 10.06.2005. PW6 is a doctor who had examined the appellant and had issued the potency certificate [Ex.P6]. PW7 is the witness to the observation mahazar [Ex.P8]. PW8 is the doctor who had first treated the victim girl and had made entries in the Accident Register [Ex.P9]. She would also state about the fact that the foetus was aborted and was preserved for DNA test. PW9 is the doctor who had issued the Medical Examination Report [Ex.P13] and also made entries in the Accident Register [Ex.P12]. PW10 is the Headmistress of



the school where the appellant studied and she had issued the school certificate [Ex.P18] in which the date of birth of the appellant is shown as 10.09.1998. PW11 is the Sub-Inspector of Police who registered the FIR. PW12 is the investigating officer.

6. From the above narration of the witnesses examined on the side of the prosecution, we find that the prosecution relies upon the evidence of the defacto complainant [PW1], the victim [PW2] and the Doctors [PW8 & PW9] to prove that the victim was subjected to penetrative sexual assault. The prosecution seeks to prove the date of birth of the victim through the evidence of PW5, the Headmaster of the school, where the victim is said to have studied for three months.

7. The complaint given by PW1 is that on the promise of marriage and by luring the victim girl, the appellant had committed penetrative assault and that thereafter one Tamilarasan, who is also a relative of the victim, had committed penetrative assault on many occasions. The victim had not complained about any of these acts to her parents or to anyone else. The mother PW1, would state in her deposition that when the victim had skipped



her periods, she had taken her to the doctor; that the doctor had stated that the victim was pregnant; that it was only thereafter she had given the complaint. She had further deposed that she handed over the birth certificate of the victim to the investigating officer.

8. PW2 in her evidence would state that the appellant is her relative and she had a love affair; that during the Tamil month of 'Masi', in the year 2019, the appellant had fondled her breast and kissed her; that on another occasion, the appellant had threatened her and committed penetrative sexual assault; that subsequently, the appellant committed penetrative sexual assaults once or twice and that thereafter she had severed the relationship with the appellant. She would also admit that thereafter one Tamilarasan, who is also a relative, had committed penetrative sexual assault on several occasions.

9. Thus, the evidence of PW1 and PW2 would clearly show that the appellant and the victim were known to each other and there was a love affair. The Doctor [PW9] had stated that there were no external injuries on the victim. There is nothing on record to suggest that there was any forcible



sexual intercourse, which is also confirmed by the conduct of the victim and the evidence of the two Doctors, PW8 and PW9, who examined the victim. The evidence and the conduct of the victim only suggests that the relationship was consensual.

10. However, if the victim was a child at the time of occurrence, consent is immaterial. The question is whether the prosecution had established that the victim was a child at the time of occurrence. PW1 the mother of the victim would state that she had handed over the birth certificate of the victim to the investigating officer. PW1 does not state the date of birth of the victim in her deposition. However, for reasons best known to the investigating officer, the said birth certificate has not been produced. Thus, the birth certificate has been suppressed by the prosecution. The victim would state that her date of birth is 31.12.2004. However, the certificate issued by PW5, the Headmaster of the school, where the victim is said to have studied for three months states that the victim was born on 10.06.2005. In the said certificate, which is marked as Ex.P4, it is stated that the victim joined the school on 03.06.2009 and had left the school on 23.09.2009. The Headmaster [PW5] has not stated as to on what basis he had stated the date of



birth of the victim as 10.06.2005, especially when the victim herself would state that she was born on an earlier date. There is no evidence as to where the victim studied earlier.

11. Hence, in the light of the admission of PW1 that she had handed over the birth certificate of the victim to the investigating officer, which has been suppressed and since Ex.P4-School Certificate issued by the Headmaster [PW5] which is not based on any record and is contrary to the version of the victim as regards her date of birth, the prosecution has failed to establish that the victim was a child at the time of occurrence. Hence, this Court is of the view that since the evidence suggests that the relationship was consensual and the age of the victim has not been established the offences alleged against the appellant have not been proved.

12. (i) Before parting with this case, this Court is constrained to make the following observations.

(ii) Though this Court had repeatedly held that the victim's age has to be proved beyond reasonable doubt and the documents that can be relied upon (i.e., documents mentioned in Section 94 of the Juvenile Justice (Care



and Protection of Children) Act, 2015) if available, have to be necessarily obtained during investigation, it is seen that the investigating officers in many cases adopt a shortcut method of obtaining a certificate from the Headmaster / Headmistress of the school called the 'Education Certificate' or 'School Certificate'. Invariably the Headmaster / Headmistress is not aware of the basis on which the date of birth is mentioned and even if some documents is stated to be the basis, those documents are not produced. The parents also do not depose about the Date of Birth of the victim. The prosecution and the investigating officer must bear in mind the importance of proving the age of the victim.

(iii). Further, it is the case of the prosecution that the DNA Report suggests that the appellant is the biological father. Unfortunately the chain of custody of the foetus has not been established by the prosecution. The Doctor, who had issued the DNA Report has also not been examined by the prosecution. There is no evidence as to when the blood samples of the appellant were collected and how it was sent to the Forensic Science Department for DNA Analysis. The DNA Report was marked by the investigating officer.



(iv). The prosecution has been conducted in a casual manner. The Hon'ble Supreme Court and this Court had repeatedly held that unless the samples collected are properly documented, packaged and preserved, the DNA Report would be of no consequence. In fact, the Hon'ble Supreme Court in *Manoj Vs. State of Madhya Pradesh*, reported in (2023) 2 SCC 353, while quoting an article published by the Central Forensic Science Laboratory, Kolkata, had observed that where the DNA from another source gets mixed with DNA relevant to the case by someones sneezing or coughing over the evidence or touches his/her mouth, nose, or other part of the face, then the results would not be accurate, though if proper care is taken, DNA testing would be a powerful technique in investigations and criminal trials.

(v). Unfortunately as stated above, the scientific expert was not examined. The chain of custody of the foetus has not been properly proved and in the light of such evidence, the DNA Report would be of no avail to the prosecution. In any case, this Court is of the view that the fact that the appellant and the victim had a consensual sexual relationship has been proved by the prosecution.



(vi). This Court is further constrained to observe that the defence counsel has failed to discharge his duty in the manner required. None of the witnesses have been cross-examined by the defence counsel. Though the victim's deposition is contrary to her earlier statement under Section 164(5) Cr.P.C., unfortunately, the victim was not cross-examined as to her previous statement. There is a dereliction of duty on the part of the defense counsel. The manner in which the investigation and the prosecution have been conducted in this case also leaves much to be desired and on the whole, the trial in this case has been reduced to a farce.

(vii). The learned Sessions Judge ought not to have been a mute spectator in this case. The learned Sessions Judge ought to have impressed upon the prosecution the need to establish their case in the manner known to law besides reminding the defence counsel that he owes a duty to the Court as well as to the accused. The learned Sessions Judge also ought to have informed the accused of his valuable right to cross-examine and in case the defence counsel is ineffective, opportunity should have been given to either engage another counsel or a legal-aid counsel ought to have been appointed. Legal assistance must not be formal and it must be effective. Ineffective



assistance is as bad as no assistance. In a recent judgment in *Ashok v. State of Uttar Pradesh*, reported in (2025) 2 SCC 381, the Hon'ble Supreme Court had reiterated the importance of effective assistance and held that failure to provide legal assistance to the accused would violate the right of the accused under Article 21 of the Constitution of India. In fact, the Hon'ble Supreme Court had observed that it is the duty of the learned Public Prosecutor to point out to the Court the requirement of effective representation for the accused.

(viii) Further, the learned Judge also ought to have borne in mind the observations of the Hon'ble Supreme Court in *Pooja Lal vs. Union of India*, reported in [(2016) 3 SCC 135] which has been reiterated by the Hon'ble Supreme Court in *Gaurav Meni vs. State of Haryana*, reported in 2024 SCC online SC 1669. The relevant portion of the said judgment reads as follows:

“48. A conjoint reading of Section 311 CrPC and Section 165 of the Evidence Act makes it clear that the trial Court is under an obligation not to act as a mere spectator and should proactively participate in the trial proceedings, so as to ensure that neither any extraneous material is permitted to be brought on record nor any relevant fact is left out. It is the duty of the trial Court to ensure that all such evidence which is essential for the just decision of the case is brought on record irrespective of the fact that the party concerned omits to do so.



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49. This Court in the case of Pooja Pal v. Union of India and Others [(2016) 3 SCC 135] examined the ambit of powers of the Courts under Section 311 Cr.PC read with Section 165 of the Evidence Act and held as below: -

“54. It was propounded in Zahira Habibulla case [Zahira Habibulla H. Sheikh v. State of Gujarat, (2004) 4 SCC 158] that in a criminal case, the fate of the proceedings cannot always be left entirely in the hands of the parties, crimes being public wrongs in breach and violation of public rights and duties, which affect the whole community and are harmful to the society in general. That the concept of fair trial entails the triangulation of the interest of the accused, the victim, society and that the community acts through the State and the prosecuting agency was authoritatively stated. This Court observed that the interests of the society are not to be treated completely with disdain and as persona non grata. It was remarked as well that due administration of justice is always viewed as a continuous process, not confined to the determination of a particular case so much so that **a court must cease to be a mute spectator and a mere recording machine but become a participant in the trial evincing intelligence and active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth and administer justice with fairness and impartiality both to the parties and to the community....**



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13. For all the above reasons, this Court is of the view that it would be highly unsafe to convict the appellant for the alleged offences as the prosecution had failed to establish the offences under the POCSO Act. Therefore, 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 16.06.2022 in Spl.S.C.No.99 of 2020 on the file of the learned Sessions Judge, Special Court for POCSO Act Cases, Salem, 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.

12-02-2026

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

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CRL A No. 383 of 2023

SUNDER MOHAN J.

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To

1. The Sessions Judge,
Special Court for POCSO Act Cases, Salem.

2. The Inspector of Police,
All Women Police Station,
Sankari, Salem.

3. The Public Prosecutor,
High Court, Madras.

**PRE-DELIVERY JUDGMENT IN
CRL A No. 383 of 2023**

12-02-2026