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CRL A No. 290 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2026

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

**CRL A No. 290 of 2023
& CrL.M.P.No.4004 of 2023**

Kumar Vadivel
S/o. Raji (late),
D.No.14/140 J 6, Halan Nagar,
Ketti, Ooty,
Nilgiris.

Appellant(s)

Vs

State by
The Inspector of Police,
All Women Police Station,
Ooty Town, Nilgiris
(Crime No.1 of 2020)

Respondent(s)

PRAYER

This Criminal Appeal has been filed under Section 374(2) of the Criminal Procedure Code, to call for the records and set aside the Judgment dated 09.02.2023 made in Spl.C.C.No.25 of 2020 on the file of the learned Sessions Judge Magalir Neethimandram, (FTMC), Udthagamandalam at Nilgiris.

For Appellant(s): Mr. T.Dhamodharan

For Respondent(s): Mr.S.Raja Kumar
Additional Public Prosecutor

ORDER

The appeal challenges the conviction and sentence imposed on the appellant for the offences under Section 9(m) r/w 10 of the POCSO Act.



2(i) The gist of the prosecution case is that the appellant, who was a tailor, had committed sexual assault on the victim girl, who was 12 years old at the time of occurrence by inappropriately touching her private parts and kissing her chest and also fondling the other parts of her body, when the victim girl approached him for altering the dress belonging to her sister.

(ii) On the complaint given by the victim's mother PW2, an FIR was registered in Crime No.1 of 2020 for the offences under Section 7 and 8 of the POCSO Act. PW13, the Head Constable registered the FIR and investigation was conducted by PW15, the Inspector of Police. PW15, examined the witnesses and made arrangements to subject the victim to medical examination and after conclusion of the investigation, had filed the final report for the offences under Section 7, 8 and 9(m) r/w 10 of the POCSO Act before the Sessions Judge, Magalir Neethimandram (FTMC) Udthagamandalam at Nilgiris. The trial Court framed charges against the accused under Section 7, 8 and 9(m) r/w 10 of the POCSO Act, and when questioned, the appellant pleaded 'not guilty'.

(iii) To prove the case, the prosecution examined 15 witnesses as P.W.1 to P.W.15, marked 16 exhibits as Exs.P1 to P16. When the appellant 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 appellant neither examined any witness nor marked any documents.

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(iv) On appreciation of oral and documentary evidence, the Trial Court found that the prosecution had established the case beyond reasonable doubt, and held the accused guilty of the offences under Sections 9 (m) r/w 10 of the POCSO Act. The Trial Court sentenced him to undergo five years rigorous imprisonment and to pay a fine of Rs.2000/- in default to undergo simple imprisonment for three months and did not impose any punishment for the offense under Sections 7 r/w 8 of the POCSO Act, as the petitioner was convicted for the offenses under Section 9(m) r/w 10 of the POCSO Act. Hence, the accused/appellant has preferred the appeal challenging the said conviction and sentence.

3.Heard Mr.T.Dhamodharan, the learned counsel appearing for the appellant/accused, and Mr.S.Raja Kumar, learned Additional Public Prosecutor appearing for the respondent/State. This Court also perused all the materials available on record.

4. Mr.T.Dhamodharan, the learned counsel for the appellant would submit that the victim cannot be believed; that the complaint was lodged at the instance of PW5, who was a Pastor and had enmity with the appellant, since the



appellant had protested against PW5 for involving himself in religious conversion; that all the witnesses have been tutored; and that therefore, the trial Court ought not to have found the petitioner guilty of the aforesaid offences.

5.The learned Public Prosecutor, *per contra*, submitted that the defence that the appellant and PW5 had a strained relationship and only because of that, the instant complaint has been lodged has not been probablised by the appellant; that the evidence of the victim, which is corroborated by the parents and sister of the victim inspires confidence and there is no reason to disbelieve her testimony; that the victim has been consistent in her version with regard to the act committed by the appellant and therefore, the trial Court was justified in convicting the appellant for the aforesaid offences.

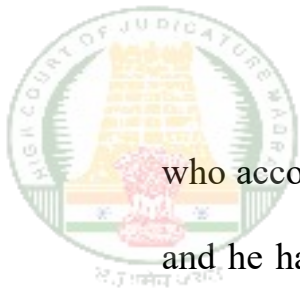
6.As stated earlier, the prosecution examined 15 witnesses. PW1 is the victim. PW2 is the mother of the victim. PW3 is the father of the victim. PW4 is the sister of the victim. PW5 is the Pastor who had assisted the family in giving the complaint and also is a mahazar witness. PW6 is the witness who had assisted PW2 in giving a complaint to the police. PW7 is the Doctor who had examined the appellant and issued the Potency Certificate. PW8 is the Village Administrative Officer, who had attested the confession of the accused. PW9 is the Constable who had taken the victim to the hospital. PW10 is the Constable, who had taken the accused for medical examination. PW11 is the Doctor, who



had issued the medical examination report Ext.P8, in relation to the victim. PW12 assisted the Investigating Officer. PW13 registered the FIR. PW14 is the Head Master who has issued Ext.P12, a letter to the Investigating Officer stating that the victim was born on 26.10.2008. PW15 is the Investigating Officer, who had filed the final report.

7(i) It is the case of the prosecution that the victim girl was sexually assaulted by the appellant, who had fondled the private parts of the victim girl and kissed her private parts inappropriately. The victim in her versions, given before the learned Magistrate under Section 164(5) Cr.P.C., before the Doctor and in her deposition has stated consistently that she went to the appellant's shop, who was a Tailor for altering her sister's dress; that the appellant had committed the said acts of sexual assault, namely kissing the private parts and fondling the chest and her other parts. The appellant had not discredited the victim in the cross-examination. The complaint was lodged on the same day evening by the victim's mother, PW2. The version of the victim is corroborated by PW4, the sister who would state that the victim had informed her about the occurrence immediately after the occurrence.

(ii) Though it is the case of the appellant that the victim's version was tutored by PW5, except for the suggestion made to the witness, nothing has been elicited to probablise the said defence of the appellant. The said Pastor,



who according to the appellant had tutored the witness was also cross-examined and he has also not been discredited. The Doctor, PW11 had also deposed that the victim had told her at the time of examination that a known person has committed “sexual assault by finger and touching of breast and stomach region”.

8.Considering the above facts, it is seen that the prosecution has proved beyond reasonable doubt, their case that the appellant had committed sexual assault on the victim girl. The question is therefore, as to whether the appellant is guilty of the offence under Section 7 r/w 8 of the POCSO Act or Section 9(m) r/w 10 of the POCSO Act. The prosecution case is that the appellant was below 12 years old at the time of occurrence. However, it is seen from the medical examination report that the victim and the victim’s mother have stated the age of the victim as 12 years to the Doctor. In fact, even in the FIR, the age of the victim is shown as 12 years. The prosecution had examined the head master of the school, namely, PW14, to prove the age of the victim. The head master is stated to have issued a letter Ext.P12 to the Inspector of Police on his request. The head master has deposed that the date of birth mentioned in the said letter is based on the school records. However, none of the school records have been produced by the prosecution. It is also seen that strangely, neither PW2 nor PW3 have stated about the date of birth of the victim girl.



9. In such circumstances, this Court is of the view that the prosecution has failed to establish the fact that the victim was below 12 years at the time of occurrence, more so because in the statement made to the Doctor as well as in the FIR it is mentioned that the victim girl was 12 years old at the time of occurrence. Therefore, This Court is of the view that the appellant would be guilty of the offence under Section 7 r/w 8 of the POCSO Act. Considering the facts and circumstances of the case, this Court is inclined to impose a sentence of four years rigorous imprisonment on the appellant, with a fine of Rs.5,000/- and in default, to undergo three months rigorous imprisonment for the offences under Section 7 r/w 8 of the POCSO Act.

10. With the above observations, the appeal is partly allowed. Consequently, the connected criminal miscellaneous petition is closed.

06.01.2026

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



To

1. The Inspector of Police,
All Women Police Station,
Ooty Town, Nilgiris

2. The Sessions Judge, Magalir
Neethimandram, (FTMC),
Udhagamandalam at Nilgiris

3. The Superintendent,
Central Prison,
Coimbatore.

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



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SUNDER MOHAN J.
Tsg

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