



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28-01-2026

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

CRL A No.381 of 2023

Sekar

S/o.Kathirvel,

No.102, Ajeesh Nagar 2nd Street,

Amman Koil Street,

Tondiarpet, Chennai - 600 081.

..Appellant/Accused

Vs

The State of Tamil Nadu

represented by Inspector of Police,

H-6, R.K.Nagar Police Station,

W-13, All Women Police Station,

Tondiarpet, Chennai - 600 081.

(Crime No.312/2018)

...Respondent/Complainant

Prayer : Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the order of conviction imposed as against the appellant by the Judgment dated 20.12.2022 made in S.C.No.120 of 2019 passed by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai - 600 104 and acquit the appellant from all charges.



For Appellant:

Mr.S.Subramaniya

WEB COPY

For Respondent:

Mr.S.Rajakumar

Additional Public Prosecutor

JUDGMENT

This Criminal Appeal has been filed by the sole accused/appellant, challenging the Judgment dated 20.12.2022 in S.C.No.120 of 2019 on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai - 600 104, by which he was convicted for the offence under Section 4 of the Protection of Children from Sexual Offences Act, 2012, (hereinafter referred to as the “***POCSO Act***”) and sentenced to imprisonment for seven years with a fine of Rs.5,000/- in default to undergo simple imprisonment for one month.

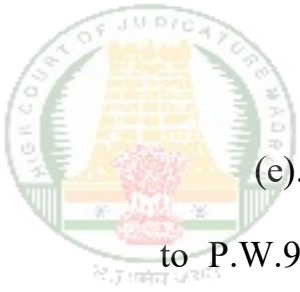
2 (a). The case of the prosecution is that the appellant/accused and a boy/victim aged about 13 years at the time of occurrence were known to each other; that on 12.03.2018, at about 6:00 p.m., the appellant had called the victim to assist him in his house; that when the victim went to the house, the appellant closed the door and committed penetrative sexual assault on the victim by manipulating his penis into the mouth of the victim and in the anus and thus committed the aforesaid offence.



(b). A complaint was lodged by P.W.2/father of the victim boy, which was marked as Ex.P3 on 12.03.2018, and the same was registered as an FIR [Ex.P6] in Crime No.312 of 2018 by P.W.9/Inspector of Police at about 10.00 p.m. on 12.03.2018 for the offences under Sections 4 and 3(a) of the POCSO Act.

(c). P.W.9, the Inspector of Police, took up the investigation and arrested the accused on 13.03.2018 at about 13.15 hours. The victim's statement was recorded by the learned Magistrate on 20.03.2018 under Section 164 of the Cr.P.C. P.W.9, after examining the other witnesses, had filed the Final Report against the accused/appellant for the offence under Section 4 of the POCSO Act, before the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai - 600 104.

(d). On the appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with, and the case was taken on file as S.C.No.120 of 2019 by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai – 600 104. The trial Court framed charges against the accused for the offence under Section 4 of the POCSO Act. During the trial, when questioned, the accused pleaded "not guilty."



(e). To prove its case, the prosecution had examined 9 witnesses as P.W.1 to P.W.9 and marked 7 exhibits as Exs.P1 to P7. 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. The Court had examined the doctor who had initially treated the victim boy as a court witness, i.e., C.W.1.

(f). On appreciation of oral and documentary evidence, the trial court found that the accused/appellant was guilty of the offence under Section 4 of the POCSO Act and sentenced him as stated below. Aggrieved by the said conviction and sentence, the accused had preferred the instant appeal.

4. Mr.S.Subramaniya, the learned counsel for the appellant/accused would submit that the FIR has been fabricated; that the arrest of the accused was not made in the manner alleged by the prosecution; that the victim has made several improvements in his deposition in the Court contrary to his statement before the learned Magistrate under Section 164 of Cr.P.C.; that the medical evidence does not corroborate the evidence of the victim; that there are inconsistencies in his evidence; that the victim's father and the land lord had prior enmity against the appellant; that they had tutored the victim boy to depose falsely against the appellant; and that therefore, the impugned Judgement may be set aside and prayed for acquittal.



5. Mr. S. Rajakumar, the learned Additional Public Prosecutor, for the respondent, *per contra*, submitted that minor contradictions in the evidence of the victim would not discredit him; that the victim's evidence is cogent and convincing and the appellant had not discredited the said witness in any manner in the cross-examination; that P.W.3, the sister of the victim, corroborates the evidence of the victim; and that, therefore, the Judgment of the trial court is justified and the appellant has not rebutted the presumption under Sections 29 and 30 of the POCSO Act and prayed for dismissal of the appeal.

6. As stated earlier, the prosecution had examined 9 witnesses. P.W.1 is the victim boy. P.W.2 is the father of the victim. P.W.3 is the sister of the victim. P.W.4 is the landlord of the premises in which the victim and the appellant were tenants in two different portions. He speaks about the fact that the victim came running out of the house of the appellant in the evening on the day of the occurrence. P.W.5 is a neighbour who turned hostile. P.W.6 is another neighbour who turned hostile. P.W.7 is the doctor, who had examined the appellant and found that he had injuries in his body and had issued Ex.P.4. P.W.8 is the doctor who had examined the victim and made entries in the Accident Register [Ex.P5]. P.W.9 is the Inspector of Police, who registered the FIR and filed the Final Report after conducting an investigation.



7. As stated above, it is the case of the prosecution that the victim was subjected to penetrative sexual assault by the appellant by forcing his private part into the mouth and anus of the victim. The alleged occurrence, according to the prosecution, took place at 06.00 p.m. on 12.03.2018. However, the entries made in the Accident Register [Ex. P5] by doctor P.W.8 would show that the occurrence took place on 12.03.2018 at 3.30 p.m.

8. According to the prosecution, the complaint was lodged by P.W.2, the father of the victim boy, at about 10.00 p.m. on 12.03.2018. It is seen from the evidence of the victim, P.W.1, that a complaint was lodged by P.W.3, sister of the victim boy, much before the lodging of the complaint by the father of the victim boy, P.W.2. The victim would state that he, along with his sister, P.W.3, and grandmother, was taken to the police station in the evening of 12.03.2018. He also stated in the cross-examination that at that time, the accused/appellant was in custody at the police station and her sister, P.W.3, had lodged a complaint.

9. P.W.3 also confirmed that she went to the police station along with her mother and she had lodged a complaint in the evening of 12.03.2018. It is thus seen that the prosecution had suppressed the said complaint. It is well settled that if the FIR is held to be fabricated, the entire fabric of the prosecution case



would collapse. In this regard, this Court relies upon the following observations of the Hon'ble Supreme Court in *Marudanal Augusti vs. State of Kerala*, reported in **(1980) 4 SCC 425**.

“The High Court seems to have overlooked the fact that the entire fabric of the prosecution case would collapse if the F.I.R. is held to be fabricated or brought into existence long after the occurrence and any number of witnesses could be added without there being anything to check the authenticity of their evidence.”

10. Be that as it may. It is seen that P.W.8, the doctor who had made entries in the Accident Register [Ex.P5], had not noted any injury on the body of the victim and had observed as follows:

“No obvious external injuries.”

It appears that the victim was taken for further examination to Government Stanley Hospital, Chennai, and was examined by C.W.1, who was summoned as a court witness. C.W.1 had stated that the victim had not spoken about the nature of the sexual assault.

11. It is pertinent to note that when the victim was earlier examined by P.W.8/Doctor, the victim had not stated anything about the nature of the alleged sexual assault. The doctor had deposed that the genital organs of the victim were found normal and there were no injuries in his anus. It is not known as to why the prosecution had not chosen to examine the said doctor on their own.



Thus, it would be seen that there is no corroboration from the medical evidence to the version of the victim. It is seen that the victim had not stated about the nature of the alleged sexual assault in his statement before the learned Magistrate. He had stated that the appellant had behaved indecently.

12. It is also seen that the appellant/accused had suggested to the witnesses that the victim's father and the landlord had prior enmity with the appellant and were taking steps to evict the appellant from the premises.

13. From the above discussion, it would be seen that the earliest complaint has been suppressed by the prosecution; that the victim has made improvements in his deposition, and his deposition is contrary to the statement made before the learned Magistrate; that the victim's version is not corroborated by the medical evidence; that there was also a prior enmity between the appellant and the victim's father and the landlord on the other hand. Therefore, this Court is of the view that considering all the above facts, it would be highly unsafe to convict the appellant for the alleged offence and hence, 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 20.12.2022 by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai - 600 104 in S.C.120 of 2019, 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.

28-01-2026

Index : Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

dk

To

1. The Sessions Judge,

Special Court for Exclusive Trial of Cases under
POCSO Act,

Chennai - 600 104

2. The Inspector Of Police

H-6 R.K.Nagar Police Station,

W-13 Awps Tondiarpet,

Chennai – 600 081.

3. The Public Prosecutor

High Court of Madras.



WEB COPY

CRL A No.381 of 2



SUNDER MOHAN, J.

dk

CRL A No. 381 of 2023

28-01-2026