



CRL A No. 315 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 09-01-2026**

CORAM

**THE HON'BLE MR.JUSTICE SUNDER MOHAN**

**CRL A No. 315 of 2023**

Velayutham

... Appellant/Sole Accused

v.

The State of Tamil Nadu,  
Rep. by Inspector of Police,  
Mettupalayam Police Station,  
Puducherry.  
[Cr.No.116 of 2020]

... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, to set aside the conviction and sentence passed by the learned Special Judge (Under the POCSO Act 2012) Principal Sessions Judge, Puducherry in Spl.SC.5 of 2021 dated 23.02.2023.

For Appellant(s):

Ms. K.Suriya Prabha  
for Mr.R.V.Pradeep

For Respondent(s):

Mr.K.S.Mohandoss  
Public Prosecutor [Puducherry]

### **JUDGMENT**

This Criminal Appeal has been filed by the sole accused, challenging the conviction and sentence imposed upon him for the offence under Section



323 of the IPC and Sections 10 and 12 of the POCSO Act, 2012, vide judgment dated 23.02.2023 in Spl.SC.No.5 of 2021, on the file of the learned Special Judge (Under the POCSO Act 2012) Principal Sessions Judge, Puducherry.

2. (i) The case of the prosecution is that the appellant is the father of the victim girl; that a few years prior to 15.04.2020, the appellant had sexually assaulted the victim girl, who was aged 8 to 9 years at the time of occurrence and aged 13 years at the time of filing of the complaint; that he had inappropriately touched the private part of the victim girl and made the victim girl touch his penis on several occasions; that after the victim girl attained puberty, the appellant made the victim girl to read pornographic books; that the appellant on one occasion peeped into the bedroom of the victim girl, while she was changing her dress after a bath; and thus, committed the offence under Sections 11(i) and 12 of POCSO Act, 2012.

(ii) On the complaint [Ex.P1] given by PW1, the mother of the victim girl, an FIR [Ex.P7] in Cr.No.116 of 2020 was registered on 29.08.2020 by PW7, the Sub Inspector of Police. PW8-Sub-Inspector of Police took up the



investigation and after examination of the witnesses and on completing other formalities such as recording the Section 164(5) Cr.P.C. statement of the victim girl, altered the sections of law and filed the final report on 29.10.2020 against the appellant for the offence under Sections 10 and 12 of the POCSO Act.

(iii) The case was taken on file as Spl.S.C.No.5 of 2021 for trial by the learned Special Judge [under the POCSO Act, 2012] Principal Sessions Judge, Puducherry. The trial Court framed charges against the accused for the offences under Sections 10 and 12 of the POCSO Act, 2012 and Section 323 of the IPC and when questioned, the accused pleaded 'not guilty'.

(iv) To prove its case, the prosecution had examined 8 witnesses as P.W.1 to P.W.8 and marked 11 exhibits as Exs.P1 to Ex.P11, besides 1 material object, viz., 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 examined two witnesses as D.W.1 and D.W.2 and marked 3 documents on his side as Ex.D1 to Ex.D3.



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(v) The trial Court found the appellant guilty of the offences under Sections 10 and 12 of the POCSO Act, 2012 and Section 323 of the IPC and accordingly, convicted and sentenced him as stated below:

| <i>Sl.No.</i>                                   | <i>Offence under Section</i> | <i>Sentence imposed</i>                                                                                |
|-------------------------------------------------|------------------------------|--------------------------------------------------------------------------------------------------------|
| 1                                               | 10 of POCSO Act              | To undergo RI for five years and to pay a fine of Rs.1,000/-, in default to undergo RI for one year.   |
| 2                                               | 12 of POCSO Act              | To undergo RI for one year and to pay a fine of Rs.1,000/-, in default to undergo RI for three months. |
| 3                                               | 323 of IPC                   | To undergo SI for two months and to pay a fine of Rs.2,000/-.                                          |
| The sentences were ordered to run concurrently. |                              |                                                                                                        |

Aggrieved by the said conviction and sentence, the accused had preferred the instant appeal.

3. The learned counsel for the appellant would submit that the complaint lodged by PW1 (mother of the victim), with whom he had matrimonial differences, is attended with malafides; that the complaint was lodged only after the appellant had filed a petition for divorce; that prior to filing of the complaint, PW1 had filed a suit in OS No.55 of 2020 for injunction before the Family Court (Pondicherry); that in the said suit there is



no reference to any of the alleged sexual assaults except for vaguely referring to the alleged act of the appellant peeping in the victim's bedroom; that no independent witness has been examined to prove the alleged occurrences; that only the victim girl, her mother and her grand mother have been examined; that the victim was not subjected to any medical examination; and that in the light of the above facts, the evidence of the witnesses do not inspire confidence and hence, prayed for acquittal.

4. The learned Public Prosecutor (Puducherry) *per contra* would submit that the appellant was in the habit of committing sexual assaults repeatedly; that merely because the complaint was not lodged immediately after the occurrence, the victim or her mother cannot be disbelieved; that there was no reason for the victim girl to depose falsely against her own father; and that the minor contradictions and improvements in the evidence would not discredit the witnesses and hence, prayed for dismissal of the appeal.

5. As stated earlier, the prosecution has examined 8 witnesses. PW1 is the mother of the victim girl and the defacto complainant; PW2 is the victim



girl who was aged 14 years at the time of her deposition in Court; PW3 is the grandmother of the victim girl and mother of PW1; PW4 is related to PW1 and examined to corroborate the evidence of PW1; PW5 is the observation mahazar witness, who turned hostile; PW6 is the police photographer who videographed the statement of the victim girl made to the investigating officer; PW7 is the Sub-Inspector of Police, who registered the FIR; and PW8 is the investigating officer, who filed the final report.

6. According to the witnesses, the alleged occurrences are said to have been committed since the victim girl was aged four years. All three witnesses viz., PW1 to PW3, would in a parrot-like manner state that when the victim was aged 4 years, the appellant had inappropriately rubbed his private part on the victim girl, as a result of which he had ejaculated. The victim was born on 01.11.2007. The alleged first occurrence, according to the three witnesses, took place when the victim was aged 4 years, which possibly could have been in the year 2011. The nature of the said allegation is serious and it is hard to believe that for nine years, the mother-PW1 and her mother-PW3 (i.e., grandmother of PW2), had not taken any action against the appellant.



7. Be that as it may. The second incident spoken about by all the three witnesses, is that when the victim was aged 8 years, the victim was forced to inappropriately touch the private part of the appellant. The victim would state that she was forced to do so since the appellant threatened her that he would admit her to a Government school if she did not do what he said. This occurrence is said to have taken place in the year 2015. Even after this occurrence, neither PW1 nor PW3 chose to give any complaint.

8. The third occurrence, i.e., the appellant had given a pornographic magazine to the victim, is said to have taken place after the victim is said to have attained puberty. The fourth occurrence is said to have taken place in the year 2020, when the appellant is said to have shown pornographic videos on the mobile phone to the victim girl and also peeped into the bedroom while the victim was changing her dress.

9. The question is whether PW1 to PW3 can be believed notwithstanding the delay in lodging of the complaint. All three witnesses have deposed in a parrot-like manner. It is the case of the defence that the complaint was lodged by PW1 after the appellant had filed a petition for



divorce before the Family Court [Pondicherry]. It is on record that the divorce petition [Ex.D1] was filed on 10.06.2020. The complaint which culminated in the prosecution was lodged on 21.08.2020. The conduct of PW1 in not lodging the complaint if the alleged incidences were true is highly improbable and opposed to common sense. It is the version of the witnesses that the appellant and PW1 had a strained relationship for a very long time. It is the version of PW1 that in April 2020, the appellant had beaten her because she questioned the act of the appellant in peeping into the bedroom of the victim girl. However she admitted that she had not stated anything about the alleged act of the appellant in peeping into the bedroom of the victim to the Doctor. The PW1 in her cross-examination would admit that after the COVID lockdown they once again approached the police for registering the complaint and the police refused to register the FIR and thereafter, they approached the Child Helpline, at whose instance the complaint was lodged. She would also admit that the complaint was lodged only after the appellant had initiated divorce proceedings.

10. The appellant had confronted PW1, PW2-the victim and PW3 with the photographs marked as Ex.D3 series, in which the victim, the appellant



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and PW1 are all seen cheerful. The witnesses would state that since they were forced to smile, they had smiled and PW1 and PW2 were not happy at the relevant point of time. The reply of the witnesses when specifically confronted with the photographs appears to be artificial. In fact the photographs, which are marked as Ex.D3 suggests that the victim and her mother were cheerful during all the functions and when they travelled together.

11. Further, it is seen that PW1 had filed a suit for permanent injunction to restrain the appellant from disturbing her possession of the property, which was purchased in the name of the appellant. In the said suit, though PW1 had referred to the alleged act of the appellant in peeping into the bedroom of the victim, there is no allegation of the other alleged sexual assaults said to have been committed by the appellant.

12. That apart, DW1 and DW2, examined on the side of the appellant had deposed that the appellant and PW1 had matrimonial differences. DW2 would specifically state that PW1 demanded that the house in which the



appellant was residing should be transferred in her name by the appellant, which was refused by them.

13. From the above discussion, it could be seen that PW1 had not chosen to give a complaint even though the appellant is said to have committed grave offences when the victim was aged 4 years, 8 years and after she attained puberty. The PW1 had not given a complaint even with regard to the incident said to have taken place in April 2020, when the appellant is said to have peeped into the bedroom of the victim girl. She had only lodged a complaint of assault on her. It is only after she received the notice from the Family Court [Puducherry] in the divorce petition filed by the appellant, PW1 had chosen to give a complaint. The fact that there are matrimonial differences and issues with regard to the sharing of the property is also not in dispute. It is highly unbelievable that the victim girl, who was 14 years at the time when she deposed before the Court had remembered the alleged acts said to have been committed by the appellant when she was four or eight years old. Her reply when she was confronted with the photographs marked as Ex.D3 also makes her version very artificial. In fact, she had stated in her deposition that the appellant had built the house, which was in



dispute, only by pledging the jewels given by her mother. It is clear that a girl aged 14 years has been tutored and made to depose about the source of money for the purchase of the property. There was no necessity for the victim to speak about those facts. That apart the defence of the appellant that he along with PW1 and PW2 were living happily until there were matrimonial difference, appears to be probable as stated above.

14. All the above facts suggest that the versions of the witnesses PW1 to PW3 are exaggerated, attended with malafides and made only to wreak vengeance. Unfortunately, the victim girl has been tutored by her own mother to depose falsely. It appears that the matrimonial differences and the consequential assault said to have been made by the appellant on PW1 and the divorce petition have triggered this false prosecution. Therefore, this Court is of the view that the conviction cannot be sustained on the basis of the evidence adduced on the side of the prosecution and consequently, the impugned judgment is liable to be set aside.

15. Accordingly, the Criminal Appeal stands allowed. The conviction and sentence imposed upon the appellant/accused vide judgment dated



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23.02.2023 in Spl.SC.No.5 of 2021, on the file of the learned Special Judge (Under the POCSO Act 2012) Principal Sessions Judge, Puducherry, are set aside. The appellant/accused 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.

**09-01-2026**

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

To

1. The Special Judge  
(Under the POCSO Act 2012)  
Principal Sessions Judge, Puducherry

2. Inspector of Police,  
Mettupalayam Police Station,  
Puducherry

3. The Public Prosecutor,  
Puducherry.



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**SUNDER MOHAN, J.**

**ars**

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