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Crl.A.No.515 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22-01-2026

CORAM

HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.A.No.515 of 2023

Mr.Raja

...Appellant/Accused

Vs

State rep by
Assistant Commissioner of Police,
Saidapet Range,
W-20, All Women Police Station,
Saidapet, Chennai – 15.

...Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the Judgment dated 24.02.2023 passed by the learned Special Court for Exclusive Trial Cases under POCSO Act, 2012 in Spl.S.C.No.111/2020.

For Appellant : Ms.A.Nethra
Legal Aid Counsel



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Crl.A.No.515 of 2023

For Respondent : Mr.R.Vinothraja
Government Advocate (Crl.Side)

JUDGMENT

The Criminal Appeal challenges the Judgement dated 24.02.2023 passed in Spl.S.C.No.111 of 2020 by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai – 600 104, convicting and sentencing the appellant/accused as follows:

<i>Sl.No.</i>	<i>Offence under Section</i>	<i>Sentence imposed</i>
1.	10 of POCSO Act	To undergo imprisonment for 5 years with a fine of Rs. 25,000/- in default to undergo simple imprisonment for 3 months.
2.	366 of IPC	To undergo imprisonment for 5 years with a fine of Rs. 25,000/- in default to undergo simple imprisonment for 3 months.
3.	342 of IPC	To undergo imprisonment for 6 months.
The sentences were ordered to run concurrently.		

2(a). The case of the prosecution is that on 10.02.2019 at about 5.00 p.m., the appellant/accused had lured the victim girl and took her along with two other children to his apartment; that the victim and her parents were also residing in the same apartment complex; and that after the two other children of the victim had gone out of the house, the appellant had



Crl.A.No.515 of 2023

committed aggravated sexual assault on the victim by inappropriately touching her private parts and thus, committed the aforesaid offences.

(b) On the complaint given by the mother of the victim, who was examined as P.W.1 before the trial Court, an FIR [Ex.P15] was registered in Crime No.1 of 2019 by the Inspector of Police [P.W.9] for the offences under Sections 12 and 18 of the Protection of Child from Sexual Offences Act, 2012 [in short, '**the POCSO Act**']. The investigation was conducted by P.W.9, P.W.10, and P.W.11. P.W.11 filed the Final Report on 10.03.2020 against the accused for the offences under Sections 363, 365, 342, and 354A of the Indian Penal Code, 1860 [in short, '**the IPC**'], Section 9(m) r/w 10 of the POCSO Act, and Sections 3(1)(w)(ii) and 2(v)(a) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, (POA) Act [in short, '**the SC/ST Act (POA) Act**'], before the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai – 600 104.



Crl.A.No.515 of 2023

(c) 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 Spl.S.C.No.111 of 2020 by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai – 600 104, for trial. The trial Court framed charges against the accused initially for the offences under Sections 342, 366 of the IPC and Section 6 of the POCSO Act, 2012 and 3(1)(w) (i) of SC/ST (POA) Act and subsequently the charges altered under Section 366, 342 of IPC and Section 10 of the POCSO Act and Sections 3(1)(w)(i) of the SC/ST Act (POA) Act, and when questioned, the accused pleaded 'not guilty'.

(d) To prove its case, the prosecution had examined 11 witnesses as P.W.1 to P.W.11 and marked 18 exhibits as Exs.P1 to Ex.P18. 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.

(e) On appreciation of oral and documentary evidence, the trial Court acquitted the appellant/accused of the said charge under Section 3(1)(w)(i)



Crl.A.No.515 of 2023

of the SC/ST Act (POA Act) and found him guilty of the offences under Section 10 of the POCSO Act, 2012, and Sections 366 and 342 of the IPC and, accordingly, convicted and sentenced him as stated above. Hence, the accused has preferred the instant appeal challenging the said conviction and sentence.

3. On 12.12.2025, the learned counsel who appeared for the appellant/accused submitted that he handed over the bundle to the appellant. The appellant has not engaged any other counsel. Hence, this Court appointed Ms. A. Nethra (MS.3097/2019), Mob. No. 90256 65506, Address: Portion 8A, No. 47, Oriental Insurance Building, 3rd Floor, Armenian Street, Chennai – 600 001, as Legal Aid Counsel to appear on behalf of the appellant.

4. Ms.A.Nethra, the learned Legal Aid Counsel for the appellant/accused, submitted that the genesis and origin of the occurrence has been suppressed by the prosecution; that a complaint [Ex.P5] was lodged by one G.Kavitha, who is said to be the mother of the victim/P.W.1; that the



Crl.A.No.515 of 2023

prosecution case that P.W.1's name is G.Kavitha @ G.Muniyammal is an afterthought; that all the documents signed by P.W.1 were in the name of G.Muniyammal; that even in the 164 Cr.P.C., statement of P.W.1, she had signed as G.Muniyammal; that the complaint is therefore fabricated; that the victim's evidence does not inspire confidence; that she had given contrary statements at different stages; and that 164(5) of the Cr.P.C., statement is contrary to her deposition and therefore, the impugned Judgment is liable to be set aside.

5. Mr.R.Vinothraja, the learned Government Advocate (Crl.Side), for the respondent, *per contra*, submitted that though there are minor contradictions in the evidence, the victim cannot be disbelieved as her deposition is cogent and convincing; that the appellant was unable to discredit her in any manner; that the fact that P.W.1 was also called as G.Kavitha has been spoken by P.W.1 as well as the Investigating Officer/P.W.9 and therefore, it cannot be said that the complaint was not lodged by P.W.1 and therefore, submitted that the impugned Judgment does not call for any interference and prayed for dismissal of the appeal.



Crl.A.No.515 of 2023

6. As stated earlier, the prosecution had examined 11 witnesses as P.W.1 to P.W.11 and marked 18 documents as Exs.P1 to P18. P.W.1 is the mother of the victim child. P.W.2 is the victim child. P.W.3 is the friend of the victim who accompanied the victim to the house of the appellant and thereafter left the house; P.W.4 is the doctor who had marked Ex.P9, the potency certificate of the appellant. He had, however, not examined the appellant. P.W.5 is the Tahsildar, who had issued Ex.P10 certificate to show that the mother of the victim/P.W.1 belonged to the Scheduled Caste Community. P.W.6 is the Tahsildar, who had issued Ex.P11, the Community Certificate for the victim. P.W.7 is the Tahsildar, who had issued the Community Certificate for the appellant/accused. P.W.8 was playing with the victim child at the time of the occurrence, and he would state that the victim went along with the appellant on the date of the occurrence. P.W.9 is the Inspector of Police who registered the FIR [Ex.P15] on the complaint given by P.W.1 and also conducted the initial investigation. P.W.10 is the Assistant Commissioner who conducted a part of the investigation. P.W.11, Assistant Commissioner, filed the Final Report.



Crl.A.No.515 of 2023

7. The prosecution case primarily rests on the evidence of P.W.1, P.W.2, P.W.3 and P.W.8 to prove the occurrence. P.W.3 is the friend of the victim/P.W.2. She would state that she, along with the victim girl, went to the appellant's house; that P.W.2 went inside the house of the appellant. P.W.8 is another boy aged about 12 years who speaks about the fact that he was playing along with the victim and P.W.3 on the date of occurrence; and that the victim went to the house of the appellant. They also stated that both of them asked P.W.2 when she came out of the house of the appellant as to what happened in the house and P.W.2 did not reveal anything.

8. As stated above, the complaint was lodged by P.W.1, according to the prosecution. P.W.1 had signed as G. Muniyammal in her deposition and in her statement given before the learned Magistrate under Section 164 (5) of the Cr.P.C., The complaint, however, is in the name of one G.Kavitha. The complaint was marked as Ex.P5, and the FIR was marked as Ex.P15. In both the documents, the complainant had signed as G.Kavitha. There is no reference in the complaint that P.W.1 was also called as G. Muniyammal.



Crl.A.No.515 of 2023

9. It is the version of P.W.1 that her name is G.Kavitha, alias G.Muniyammal, However, she had signed as G.Kavitha, in the complaint and as G.Muniyammal in the 164 Cr.P.C., statement. It is highly improbable for a person to have signed in two different ways, even assuming that he or she had two different names. Therefore, it is very difficult to believe the version of P.W.1 that she signed as G.Kavitha in the complaint. In fact, in all other documents, she had signed as G. Muniyammal. A comparison of a signature and a manner of writing in Ex.P1 and the other documents signed by P.W.1, would reveal they could not have been made by the same person. In fact, P.W.5, the Tahsildar, who had issued the Community Certificate of P.W.1 in the name of G.Muniyammal, has stated that as per the records she did not have any other name.

10. From the above discussion, this Court is of the view that the complaint was not lodged by P.W.1. Therefore, the complaint and the FIR have not come into existence in the manner alleged by the prosecution. It is well settled that if the FIR is held to be fabricated, then the entire fabric of the prosecution case would collapse, and it is hard to believe the witnesses.



Crl.A.No.515 of 2023

The Hon'ble Supreme Court in *Marudanal Augusti vs State Of Kerala* reported in (1980) 4 SCC 425, held that if the genesis and origin of the occurrence are suppressed, the witnesses cannot be believed and a conviction cannot be based on the deposition of such witnesses. The relevant portion reads as follows.

“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.”

11. Be that as it may. The victim's version is that the appellant had taken her into the house, had removed her dress and undergarments, and had inappropriately touched her private part. However, the Investigating Officer, P.W.9, had admitted that neither P.W.2 nor P.W.1 had stated the manner of the alleged sexual assault during the course of investigation. The relevant portion reads as follows:

“அ.சா.2 எனது விசாரணையில் கீழே பாத்ரூம் போகும் இடத்தை அவரது கையை வைத்து நோண்டினார். அன்கில் அந்த மாதிரி பண்ணிக்கிட்டே இருந்தார் என்று குறிப்பிட்டு கூறவில்லை.”



Crl.A.No.515 of 2023

12. From the above, it is clear that the victim's version in Court is an exaggeration and an improvement. She had not stated anything about the alleged nature of the sexual assault even before the learned Magistrate in her 164 (5) Cr.P.C., statement. The victim was not subjected to medical examination. The victim's mother had not consented to the medical examination of the victim. P.W.9 has stated that the victim's mother/P.W.1 had refused to medical examination of the victim. The victim also refused to identify the appellant through video conferencing. However, a photo was shown to the victim.

13. Further, the witnesses also admitted that the alleged occurrence took place on a Sunday. The appellant's daughter was also in the house of the appellant at the time of occurrence. This fact also belies the prosecution case that the alleged occurrence took place in the house of the appellant when the appellant and the victim were alone.

14. From the above discussion, it would be clear that the FIR could not have been lodged by P.W.1. The explanation of P.W.1 and the



Crl.A.No.515 of 2023

prosecution that she signed as G.Kavitha in the complaint and as G. Muniyammal in all other documents is artificial, improbable, and opposed to common sense. Further, the signature in the complaint and the signature of P.W.1 in other documents could not have been affixed by the same person, as the manner of signing is totally different. Therefore, it is hard to believe that P.W.1 (G. Muniyammal) had signed in the complaint and in the FIR as G.Kavitha. The victim has made an exaggerated version in her deposition in Court.

15. In the light of the above infirmities, it would be very unsafe to convict the appellant on the sole testimony of the victim. This Court is of the view that the appellant would be entitled to the benefit of the doubt. Hence, the Judgment of the Trial Court convicting the appellant is liable to be set aside.

16. Accordingly, the Criminal Appeal is allowed. The conviction and sentence imposed upon the appellant/accused in S.C.No.111 of 2020 dated 24.02.2023, on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, are set aside. The



Crl.A.No.515 of 2023

appellant/accused is acquitted of the charges. The fine amount, if any, paid by the appellant shall be refunded. Bail bond, if any, executed shall stand discharged.

22.01.2026

Index : Yes/No

Speaking /Non-speaking order

Neutral citation : Yes/No

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Note : The High Court Legal Services Committee, Chennai, is directed to pay the scheduled fee to Ms.A.Nethra, the learned legal aid counsel, who appeared for the appellant.



Crl.A.No.515 of 2023

To

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1. The Sessions Judge,
Special Court for Exclusive Trial Cases under POCSO Act.
2. The Assistant Commissioner of Police,
Saidapet Range,
W-20, All Women Police Station,
Saidapet, Chennai – 15.
3. The Public Prosecutor,
High Court, Madras.



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Crl.A.No.515 of 2023

SUNDER MOHAN, J.

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Crl.A.No.515 of 2023

22.01.2026