



WEB COPY

CRL A No. 506 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26-02-2026

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

CRL A No. 506 of 2023

Saravanakumar
S/o. Late Palanisamy, D/449,
Water Tank Back Side, Sampath Nagar,
Collectorate Post, Erode District.

..Appellant(s)

Vs

Inspector of Police
All Women Police Station, Erode.
Cr.No.27/2021.

..Respondent(s)

Criminal Appeal filed under Section 374(2) of Cr.P.C., praying to set aside the judgment passed in Spl.S.C.No.9 of 2022 by the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Erode, dated 15.10.2022 by allowing this appeal

For Appellant(s): Mr.R.Vivekananthan

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



JUDGMENT

The Criminal Appeal challenges the judgement dated 15.10.2022 passed in Spl.S.C.No.9 of 2022 by the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Erode, convicting and sentencing the appellant/accused as follows:

<i>Sl. No.</i>	<i>Offence under Sections</i>	<i>Sentence imposed</i>
1.	5(m), 5(n), 5(l) punishable under Section 6 of the Protection of Children from Sexual Offences, Act, 2012	To undergo 20 years R.I, with a fine of Rs.5,000/- (id) to undergo 3 months S.I.
2.	506(i) IPC	To undergo 2 years R.I, with a fine of Rs.5,000/-.
The sentences were ordered to run concurrently.		

2. The case of the prosecution is that the appellant is the father of the victim child, who was aged about 16 years at the time of the occurrence; that after the victim attained puberty in the year 2017, the appellant had inappropriately touched her and committed penetrative sexual assault on several occasions on various dates; that he was also in the habit of hugging her, kissing her and inappropriately touching her private parts; and that the victim girl, unable to bear the sexual assaults, lodged a complaint on 24.09.2021, based on which PW10, the Sub-Inspector of Police, registered an FIR (Ex.P13) in Crime No.27 of 2021 for the offences under Sections 5(m), 5(n), 5(l) r/w 6 of Protection of Children from Sexual Offences Act, 2012.



3. The investigation was thereafter conducted by PW11, the Inspector of Police, who subjected the victim to medical examination and made arrangements for recording her statement under Section 164(5) Cr.P.C. After examining all the witnesses, PW11 filed the final report for the offences under Sections 5(m), 5(n), 5(l) r/w 6 of Protection of Children from Sexual Offences Act, 2012, and under Section 506(i) IPC.

4. The Trial Court framed charges for the aforesaid offences. The prosecution examined 11 witnesses and marked Exs.P1 to P17 to prove its case. Upon appreciation of oral and documentary evidence, the Trial Court found the appellant guilty of the said offences and sentenced him as stated above.

5. The learned counsel for the appellant submitted that the impugned judgment cannot be sustained as both the victim and her mother turned hostile; that the evidence of the Doctor does not corroborate the earlier version of the victim; that the Trial Court erroneously convicted the appellant on the basis of the victim's statement under Section 164(5) Cr.P.C., which was brought on record during cross-examination; and that, in the absence of substantive evidence, the impugned judgment is erroneous and liable to be set aside.



6. Per contra, the learned Additional Public Prosecutor for the respondent submitted that the victim had initially supported the case during investigation and subsequently turned hostile in her deposition; that in her cross-examination she admitted portions of her statement made under Section 164(5) Cr.P.C.; and therefore the impugned judgment does not warrant interference.

7. As stated above, the prosecution examined 11 witnesses. PW1 is the victim. PW2 is the mother of the victim. PW3 is the witness to the observation mahazar. PW4 is the Doctor who examined the appellant and issued the Potency Certificate (Ex.P4). PW5 is the Doctor who examined the victim and made entries in the Accident Register (Ex.P9). PW6 is the Headmaster of the School where the victim studied and issued the School Certificate (Ex.P11), showing the date of birth of the victim as 22.09.2005. PW7 and PW8 are witnesses to the arrest and confession of the appellant and both turned hostile. PW9 is the Doctor who examined the victim and issued the medical examination report (Ex.P12). PW10 is the Sub-Inspector of Police who registered the FIR. PW11 is the Investigating Officer.

8. It is the case of the prosecution that the appellant had continuously committed penetrative sexual assault and other sexual assaults on various dates after the victim attained puberty on 07.01.2017, and that it was only when the



victim turned 16 years old that she lodged the complaint. It is not in dispute that the victim had also given a statement before the learned Magistrate confirming the version set out in the complaint. However, PW1, in her deposition before the Court, stated that she lodged the complaint and made a statement under Section 164(5) Cr.P.C. before the learned Magistrate at the instance of the police, since her mother and father had matrimonial differences, and the police suggested that filing a complaint under the POCSO Act would be effective. The prosecution cross examined the victim elaborately. The victim reiterated that she lodged a complaint and made a statement under Section 164(5) Cr.P.C., but however stated that the contents thereof were not true and that what she deposed before the Court is true.

9. Though it is found in her deposition that an admitted portion of the statement under Section 164(5) Cr.P.C. was marked as Ex.P2, it is seen that Ex.P2 is a letter and not the statement under Section 164(5) Cr.P.C. The statement under Section 164(5) Cr.P.C. was marked as Ex.P16 through the Investigating Officer.

10. It is needless to state that a statement recorded under Section 164 Cr.P.C. is not substantive evidence. It can only be used for the purpose of corroboration or contradiction. The prosecution confronted the witness with her



previous statement, thereby attempting to discredit her. It is well settled that the evidence of a hostile witness can be relied upon to the extent that it inspires confidence and is consistent with other evidence on record.

11. In the present case, the prosecution itself suggested that the witness was making a false statement before the Court. In any event, her statement under Section 164 Cr.P.C. cannot form the basis for conviction. Similarly, PW2, the mother of the victim, also turned hostile. Though she admitted lodging the complaint, she stated that she did so only at the instance of the police. Her admission that she made certain statements before the learned Magistrate is again of no avail to the prosecution. She further stated that she had matrimonial differences with her husband who had an extramarital relationship.

12. The other witnesses are of no assistance to the prosecution, as their evidence is only in support of PW1 and PW2. PW9, the Doctor who issued the medical examination report (Ex.P12), stated that there were no external injuries around the genital area or on other parts of the victim's body. In her cross-examination, she stated that rupture of the hymen could occur due to sports activities and need not necessarily be the result of sexual assault.



13. In the light of the above evidence, this Court is of the view that the appellant ought not to have been convicted. The conviction recorded by the Trial Court is not sustainable and this Court is inclined to allow the Criminal Appeal:

(i) The conviction of the appellant for the offence under Sections 5(m), 5(n), 5(l) r/w 6 of Protection of Children from Sexual Offences Act, 2012, and Section 506(i) IPC, by the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Erode, vide judgment dated 15.10.2022 in Spl.S.C.No.9 of 2022, is hereby set aside.

(ii) The appellant is acquitted of the said charges.

(iii) The fine amount, if any paid, shall be refunded.

(iv) The bail bonds, if any, shall stand cancelled.

26-02-2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

cda



WEB COPY

CRL A No. 506 of 2



SUNDER MOHAN J.

cda

To

1. The Sessions Judge,
Magalir Neethi Mandram (Fast Track Mahila Court), Erode.
2. The Inspector of Police,
All Women Police Station, Erode.
3. The Superintendent,
Central Prison, Coimbatore.
4. The Public Prosecutor,
High Court, Madras.

CRL A No. 506 of 2023

26.02.2026