



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30-01-2026

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

CRL A No.527 of 2023

Dineshbabu
S/o.Ponnusamy,
56-B, Idumban Nagar,
Sivagiripatti,
Palani Taluk,
Dindigul District.

Now at Nadar Street,
Katturputhur,
Dharapuram Taluk,
Tiruppur District.

...Appellant/Accused

Vs

State Rep. by
The Inspector of Police,
All Women Police Station,
Dharapuram,
Tiruppur District.
Crime No.06 of 2022.

...Respondent/Complainant



Prayer : Criminal Appeal filed under Section 374 (2) of Cr.P.C., to set aside the Judgment passed in Spl.S.C.No.62 of 2022 on the file of the Sessions Judge, Magalir Needhi Mandram, (Fast Track Mahila Court) Tiruppur dated 18.08.2022.

For Appellant: M/s.Amala Anathi
for M/S.C.S.Saravanan

For Respondent : Mr.S.Raja Kumar
Additional Public Prosecutor

JUDGMENT

This Criminal Appeal has been filed by the accused, challenging the Judgment dated 18.08.2022 in Spl.S.C.No.62 of 2022 on the file of the learned Sessions Judge, Magalir Neethimandaram, (Fast Track Mahila Court) Tiruppur, by which he was convicted for the offences under Sections 5(l), 5(m), 5(n) r/w 6 and 3(a) r/w 4(2) of the Protection of Children from the Sexual Offences Act, 2012, (hereinafter referred to as the “**POCSO Act**”) and Section 506(ii) of the Indian Penal Code, 1860, (hereinafter referred to as the “**IPC**”) and sentenced him as follows:

Offence under Section	Sentence imposed
Section 5(l), 5(m), 5(n) r/w 6 of the POCSO Act, 2012	To undergo 20 years RI for each count and totally sentenced to 60 years RI and to pay a fine of Rs.2,000/- for each count in default six months SI.
Section 3(a) r/w 4(2) of the POCSO Act, 2012	To undergo 20 years RI and to pay a fine of Rs.1000/- in default to undergo three months SI.
Section 506(ii) of IPC	To undergo imprisonment for 2 years and to pay a fine of Rs.1000/- in default to undergo three months SI.
The sentences were ordered to run concurrently.	



2(a). The case of the prosecution is that the appellant/accused had committed penetrative sexual assault on the victim girl, aged about five years, by inserting his finger in the private part of the victim girl and also by inappropriately touching her breast.

(b). It is further the case of the prosecution that P.W.2, when the mother of the victim girl, returned home after completing her duty in a company, she saw the victim girl sitting on the appellant's lap, and on seeing P.W.2, the appellant removed his hand from the private part of the victim; and that when P.W.2 questioned the victim, P.W.1, told her that the appellant had committed such acts repeatedly and thus, committed the aforesaid offences.

(c). On 24.03.2022, P.W.2, the mother of the victim girl, lodged a complaint [Ex.P1], which was registered as an FIR [Ex.P7] in Crime No.6 of 2022 for the offences under Sections 5(l), 5(m), 5(n) and 6 of the POCSO Act and Section 506 (ii) of the IPC. The complaint was registered by P.W.6, the head constable attached to the respondent police station, and the investigation was conducted by P.W.7, the inspector of police, AWPS, Dharapuram, who, after taking steps to record the 164(5) Cr.P.C. statement of the victim girl and subjecting the victim to medical examination, filed the final report for the



offences under Section 506 (ii) of IPC and Sections 3(a) r/w 4(2), 5(l)(m)(n) r/w 6 of the POCSO Act, as against the appellant before the learned Sessions Judge, Magalir Neethimandaram (Fast Track Mahila Court), Tiruppur.

(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 Spl.S.C.No.62 of 2022 by the learned Sessions Judge, Magalir Neethimandaram (Fast Track Mahila Court) Tiruppur. The trial Court framed the charges against the accused for the offences under Sections 5(l), 5(m), 5(n) r/w 6 and 3(a) r/w 4(2) of the POCSO Act and Section 506 (ii) of IPC. During the trial, when questioned, the accused pleaded 'not guilty'.

(e). Before the trial Court, the prosecution had examined 7 witnesses as P.W.1 to P.W.7 and marked 10 exhibits as Ex.P1 to Ex.P10, besides one material object as 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 neither examined any witness nor marked any document on his side.

(f). The trial Court found that the evidence of the victim girl, P.W.1, and that of her mother, P.W.2, were cogent and convincing and held the accused/appellant guilty of the offences under Sections 5(1), 5(m), 5(n) r/w 6,



and 3(a) r/w 4(2) of the POCSO Act, 2012, and Section 506(ii) of the IPC and sentenced him as stated above. Aggrieved by the said conviction and sentence, the accused had preferred the instant appeal.

3. M/s. Amala Ananthi, the learned counsel for the appellant/accused, would submit that the appellant and P.W. 1 had prior enmity; that the case has been foisted against the appellant; that the huge delay in lodging the complaint is not explained; and that the evidence is based on the sole testimony of the victim and is uncorroborated by the medical evidence, and therefore, the impugned Judgment is liable to be set aside, and she prayed for acquittal.

4. Mr.S.Raja Kumar, the learned Additional Public Prosecutor, for the respondent, *per contra*, submitted that the victim's mother was an eyewitness to the occurrence; that thereafter, when the victim was questioned, she had revealed the acts committed by the appellant; that the medical evidence would show that the hymen of the victim was not intact, though there was no genital injury; and that the impugned Judgment does not suffer from any infirmity, and he prayed for dismissal of the appeal.

5. As stated above, the prosecution had examined seven witnesses as P.W.1 to P.W.7. P.W.1 is the victim girl. P.W.2 is the mother of the victim.



P.W.3 is the doctor in a Government Hospital, Dharapuram, who had examined the appellant and issued the potency certificate. P.W.4 is the doctor who had

examined the victim and had made entries in the Accident Register [Ex.P5].

P.W.5 is the Observation Mahazar witness. P.W.6 is the Head Constable, AWPS, Dharapuram, who registered the FIR, and P.W.7, Inspector of Police, AWPS, Dharapuram, is the Investigating Officer.

6. It is the prosecution case that the appellant is the victim's neighbour and related to P.W.1. The prosecution has proved the date of birth of the victim girl by marking the birth certificate of the victim girl [Ex.P2]. The age of the victim is not in dispute. It is seen that the victim girl's version has been consistent during the investigation and in her deposition before the Court. She would state that the appellant had fondled her private part and had asked whether he could marry the victim. The victim has deposed in a similar manner in the Court as well. There is no cross-examination of the victim so as to discredit her version.

7. The only question put to the victim was as to whether there was a fight between the victim's father and the appellant. P.W.2, the mother of the victim girl, would state that she saw the victim sitting on the lap of the appellant in her house when she returned from work. She also saw the accused removing his



hand from the private part of the victim, and thereafter, she questioned the victim and the victim had stated that the appellant had repeatedly committed such offences against her. Nothing has been elicited in her cross-examination to discredit her. Therefore, from the evidence of both P.W.1, the victim, and P.W.2, the mother of the victim, which are cogent and convincing, the prosecution has established that the appellant had committed sexual assault on the victim, a girl aged about five years.

8. This Court has to examine, in the light of the above evidence as to what is the offence committed by the appellant. The evidence of the doctor, P.W.4, suggests that there were no genital injuries on the victim girl. The relevant portion of the doctor's evidence reads as follows:

“No external injuries”

“Alleged sexual assault by a known person on 19.03.2022 around and in their house. He used his fingers to rub her genitals & breasts area. When her mother enters the house, he left her down and left their house. He had done many times to the baby and threatened her with knife stating that if she tells anybody, he will kill her and her parents.”

The doctor had stated that the hymen of the victim was not intact, and she would further state in the cross-examination that it could have been caused for other reasons as well.



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9. It is also seen from P.W.2's evidence that the appellant had not inserted any part of his body or his hand into the genital part of the victim. Therefore, the prosecution has failed to prove the offence of penetrative sexual assault beyond reasonable doubt. The evidence of the doctor and the evidence of P.W.1 only suggest that the appellant had committed sexual assault. Since the victim was aged five years, the appellant is liable for aggravated sexual assault under Section 9(m), punishable under Section 10 of the POCSO Act.

10. In the light of the above facts, the nature of the allegations, the medical evidence, and the other evidence on record, this Court is of the view that the ends of justice would be met if the appellant is sentenced to five years RI and to pay a fine of Rs.10,000/- in default to suffer three months SI for the offence under Section 9(m) r/w 10 of the POCSO Act. The period of sentence already undergone by the appellant shall be set off under Section 428 Cr.P.C. and if the appellant has not undergone the period of sentence imposed by this Court, or the default sentence for non-payment of fine, he may be secured to undergo the remaining period of sentence forthwith.



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11. With the above modification, the criminal appeal stands partly allowed.

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

1. The Sessions Judge,
Magalir Needhi Mandram,
(Fast Track Mahila Court) Tiruppur.

2. The Inspector of Police,
All Women Police Station,
Dharapuram, Tiruppur District.

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



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SUNDER MOHAN, J.

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