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Crl.A.No.688 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.12.2025

PRONOUNCED ON : 02.01.2026

CORAM :

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.688 of 2023

K.Sekar

... Appellant/Sole Accused

v.

State: Rep. by
The Inspector of Police,
All Women Police Station,
Panruti, Cuddalore District.
[Cr.No.21 of 2019]

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, against the conviction of the appellant/sole accused and sentence imposed on him in Spl.S.C.No.132 of 2019 dated 25.03.2022 on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Cuddalore, and set aside the conviction and sentence and allow this appeal.

For Appellant : Mr.S.Jeyakumar
Legal Aid Counsel

For Respondent : Mr.S.Rajakumar
Additional Public Prosecutor



Crl.A.No.688 of 2023

JUDGMENT

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The Criminal Appeal challenges the judgment dated 25.03.2022 passed in Spl.S.C. No. 132 of 2019 by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Cuddalore, convicting and sentencing the appellant/sole accused as follows:

<i>Sl.No.</i>	<i>Offence under Section</i>	<i>Sentence imposed</i>
1.	506(i) IPC (2 counts)	For each counts, to undergo two years RI and to pay a fine of Rs.1,000/-, in default to undergo three months SI;
2.	9(m) r/w 10 POCSO Act (2 counts)	For each counts, to undergo seven years RI and to pay a fine of Rs.2,000/-, in default to undergo three months SI;
The sentences were ordered to run concurrently.		

2. (i) It is the case of the prosecution that the appellant had committed sexual assault on the victim girls, both aged about 8 years, on 08.09.2019 at about 4.00 p.m., when the victim girls had gone to the sugarcane field for attending nature's call; that the appellant deliberately dropped two numbers of five-rupee coins and two numbers of two-rupee coins; that when the victim girls came to hand over the coins to the appellant, the appellant had exposed his private part to the victim girls; and that he had removed the undergarments of



Crl.A.No.688 of 2023

the victim girls and applied his mouth to their private parts and also fondled their breasts; and thus committed the aforesaid offences.

(ii) On the complaint [Ex.P.5] given by PW3, mother of the first victim [PW1], an FIR [Ex.P12] was registered in Cr.No.21 of 2019 by PW12, the Inspector of Police. PW12 thereafter conducted the investigation and after examination of all the witnesses and collection of evidences filed the final report against the appellant before the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Cuddalore, for the offences under Section 5(m) r/w 6 of the POCSO Act and Section 506(i) of the IPC.

(iii) On the appearance of the accused, the provisions of Section 207 Cr.P.C., were complied with. The case was taken as Spl.S.C.No.132 of 2019 on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Cuddalore. The trial Court initially framed charges under Section 7 r/w 8 of the POCSO Act (2 counts) and Section 506 (i) of the IPC (2 counts) against the appellant and thereafter the first charge was altered to the offence under Section 5(m) r/w 6 of the POCSO Act (2 counts) and when questioned, the accused pleaded 'not guilty'.



Crl.A.No.688 of 2023

WEB COPY

(iv) To prove its case, the prosecution had examined 12 witnesses as P.W.1 to P.W.12 and marked 13 exhibits as Exs.P1 to Ex.P13. 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.

(v) The trial Court found that the offence under Section 5(m) r/w 6 of the POCSO Act has not been proved. It however held the appellant guilty of the offence under Section 9(m) r/w 10 of the POCSO Act (2 counts) and also the offence under Section 506(i) of the IPC (2 counts) and accordingly, convicted and sentenced him as stated above. Hence, the accused has preferred the instant appeal challenging the said conviction and sentence.

3. The learned counsel for the appellant would submit that the impugned judgment suffers from various infirmities; that the victim girls had given contradictory versions before the learned Magistrate under Section 164(5) of the Cr.P.C. and in their deposition before the Court; that the evidence of victim



girls viz., PW1 and PW2 do not inspire confidence; that the trial Court ought not to have believed the evidence of both PW1 and PW2; that the incident is said to have taken place on 08.09.2019 and the complaint was lodged with an enormous unexplained delay on 26.09.2019; and that the impugned judgment is liable to be set aside.

4. The learned Additional Public Prosecutor, *per contra*, submitted that the prosecution had established the offences alleged against the appellant; that the appellant had not discredited the two victims, who are aged about 8 years; and that the trial Court was therefore justified in convicting the appellant for the aforesaid offences and prayed for dismissal.

5. As stated earlier, the prosecution had examined 12 witnesses. PW1 is the first victim; PW2 is the second victim; PW3 is the mother of the first victim [PW1]; PW4 is the mother of the second victim [PW2]; PW5 is the father of PW1; PW6 is the brother of PW1; PW7 and PW8 are witnesses to the observation mahazar; PW9 is the doctor who had examined the accused and had issued the Potency Certificate [Ex.P7]; PW10 is the doctor who had examined PW1 and PW2 and had issued the Medical Examination Reports,



Crl.A.No.688 of 2023

Ex.P8 and Ex.P9, respectively; PW11 is the Headmaster of the school in which PW1 studied and had marked the Transfer Certificate [Ex.P11], to establish that the victim [PW1] was born on 24.07.2014. PW12 is the Inspector of Police, who registered the FIR and also filed the final report.

6. On Perusal of the complaint [Ex.P5], it is seen that the alleged occurrence had taken place on 08.09.2019, according to the complainant. The explanation offered by the complainant for the delay in lodging the complaint on 26.09.2019, is that the victim girls were threatened by the appellant that if they disclosed the incident to any person, he would kill their parents. It is seen that none of the witnesses have been cross-examined by the appellant though sufficient opportunity was given. The appellant had not chosen to recall those witnesses. Though the learned counsel had pointed out certain contradictions in the statements under Section 164(5) of the Cr.P.C. made by the victim girls before the learned Magistrate, it is seen that the defence had not confronted the witnesses with the said contradictions.

7. Though the charges were framed under Section 5(m) r/w 6 of the POCSO Act, the trial Court found the appellant guilty of the offence under



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Section 9(m) r/w 10 of the POCSO Act. The trial Court found that the appellant was not found guilty of the penetrative sexual assault. The evidence of the victims is cogent and convincing as regards the offences of aggravated sexual assault as the victims are less than 12 years old admittedly.

8. Therefore, considering the evidence of the victims, their parents, doctors and other evidence on record, this Court on re-appreciation of the evidence finds that there is absolutely no infirmity in the finding of the trial Court that the appellant is guilty of offence under Section 9(m) r/w 10 of the POCSO Act. It is seen that the appellant is in custody for about 4 years now. Considering the facts and circumstances of the case and the nature of the evidence, this Court is of the view that ends of justice would be met if the sentence imposed by the trial Court for the offence under Section 9(m) r/w 10 of the POCSO Act is reduced from seven years to five years rigorous imprisonment and to pay a fine of Rs.10,000/- and in default to suffer three months simple imprisonment.



9. This Court finds no reason to reduce the sentence imposed by the trial Court for the offence under Section 506(i) of the IPC viz., two years rigorous imprisonment with fine of Rs.1,000/- in default to suffer three months simple imprisonment.

10. In the result, the Criminal Appeal is partly-allowed. The conviction and sentence imposed on the appellant/accused vide the judgment dated 25.03.2022 in Spl.S.C.No.132 of 2019 on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Cuddalore, is modified as follows:

(i) The conviction of the appellant for the offence under Section 9(m) r/w 10 of the POCSO Act (2 counts) is confirmed. However, the sentence imposed for the said offence is reduced from seven years to five years rigorous imprisonment with fine of Rs.10,000/- and in default to suffer three months simple imprisonment for each counts;

(ii) The conviction and sentence imposed by the learned Sessions Judge for the offence under Section 506(i) of the IPC (2 counts) viz., two years rigorous imprisonment with fine of Rs.1,000/- in default to suffer three months simple imprisonment for each counts, are confirmed;

(iii) The sentences are ordered to run concurrently;



Crl.A.No.688 of 2023

WEB COPY

(iv) The fine amount already paid, if any, shall be adjusted

against the fine amount imposed now.

(v) The period of sentence already undergone by the appellant shall be set off under Section 428 Cr.P.C.

11. The High Court Legal Services Committee, Chennai, is directed to pay the scheduled fee to Mr.S.Jayakumar, the learned legal aid counsel, who appeared for the appellant.

02.01.2026

Index : yes/no

Speaking /Non-speaking order

Neutral citation : yes/no

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To



Crl.A.No.688 of 2023

SUNDER MOHAN, J.
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1. The Sessions Judge,
Special Court for Exclusive Trial of Cases under POCSO Act, Cuddalore,
2. The Inspector of Police,
All Women Police Station,
Panruti, Cuddalore District.
3. The Superintendent of Prisons,
Central Prison, Cuddalore.
4. The Public Prosecutor,
High Court, Madras.

Pre-delivery Judgment in
Crl.A.No.688 of 2023

02.01.2026