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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24-11-2026

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

CRL A No. 539 of 2022

CNR: {HCMA010772062022}

Sengottuvel

Case QR

..Appellant(s)

Vs

The State rep. by
The Inspector of Police,
Kodumudi Police Station,
Erode District
(Crime No.121/2019)

..Respondent(s)

Prayer: The Criminal Appeal is filed under Section 374(2) of Cr.P.C., to call for the entire records in connection with Special SC No.47 of 2019 by the Sessions Judge, Magalir Neethimandram, Fast Track Mahila Court at Erode in Judgment dated 03.02.2021 and set aside the conviction and sentence imposed against the appellant the Sessions Judge, Magalir Neethimandram, Fast Track Mahila Court at Erode in Judgment dated 03.02.2021 in Special SC No.47 of 2019.

For Appellant(s): Mr.P.Pugalenthi

For Respondent(s): Mr. R. Thirumoorthy,
Additional Public Prosecutor,
Asst. by Mr.M.Arul Raj

JUDGMENT

The appeal challenges the Judgment passed in Spl.S.C.No.47 of 2019 holding the appellant guilty of the offences under Section 363 IPC and Section 5(1) r/w 6 of the POCSO Act and sentencing him as follows;

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Convicted under Section	Sentence imposed
363 IPC	To undergo 7 years RI and to pay a fine of Rs.1000/- (id) to undergo, 3 months SI
5(l) r/w 6 of the POCSO Act	To undergo 20 years RI and to pay a fine of Rs.5000/- (id) to undergo, 3 months SI

The sentences were ordered to run concurrently.

2.It is the case of the prosecution that the appellant was a person, who was interested in unnatural sex; that he had developed friendship with the victim boy, aged about 14 years and lured him by giving him chocolates and snacks; that on 28.04.2019 at about 08.00 a.m., he gave eatables to the victim and took him to cinema and thereafter, kidnapped him to his native village and confined him in a hut for three days; that during the said period, he had inappropriately applied his mouth to the private part of the victim and thus, committed the aforesaid offences.

(ii) The father of the child gave a complaint for boy missing, which was registered in Crime No.121 of 2019. The victim was secured three days later. Thereafter, the investigation officer/PW11 had altered the offences in the FIR to Section 3(d) r/w 4 and 11(ii)(iv) of the POCSO Act and after examination of witnesses and recording the Section 164 Cr.P.C., statement of the victim, filed

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the final report for the offences under Section 363 and Section 5(l) r/w 6 of the POCSO Act. The trial Court framed charges under Section 363 IPC and Section 5(l) r/w 6 of the POCSO Act and when questioned, the accused pleaded 'not guilty'.

(iii) Before the trial Court, the prosecution examined 11 witnesses and marked 18 documents. When the appellant was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. The appellant had neither examined any witness nor marked any document.

(iv) The trial Court found the evidence of the victim reliable and convicted the appellant for the offences under Section 363 IPC and Section 5(1) r/w 6 of the POCSO Act and sentenced him as stated above.

3.Heard Mr.P.Pugalenthi, the learned counsel appearing for the appellant/accused, and Mr.R.Thirumoorthy, learned Additional Public Prosecutor appearing for the respondent/State.

4.The learned counsel for the appellant would submit that the victim's evidence is not cogent and convincing; that the medical evidence does not corroborate the evidence of the victim; that the prosecution had not established the age of the victim in the manner known to law; that the victim had not stated

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about the exact nature of sexual assault committed on him before the doctor on 03.05.2019 and this is reflected in the accident register Ex.P7; that therefore, the finding of guilt recorded by the Court below for the offences under Section 363 IPC and Section 5(l) r/w 6 of the POCSO Act is liable to be set aside. The learned counsel further submitted that in any case, since the alleged act took place on 28.04.2019, the sentence imposed by the trial Court for the offence under Section 5(l) r/w 6 of the POCSO Act for twenty years, is liable to be reduced, as the minimum sentence provided prior to the amendment to Section 6 of the POCSO Act, was only ten years.

5.The learned Additional Public Prosecutor *per contra* submitted that the victim's evidence is cogent and convincing; that his statement before the Magistrate and his deposition before the Court are consistent; that his evidence has not been discredited in any manner by the appellant; and therefore, prayed for dismissal of the appeal. However, he would fairly concede that the occurrence took place prior to the amendment made in Section 6 of the POCSO Act, prescribing the minimum sentence for the said offence as twenty years rigorous imprisonment.

6.As stated above, the prosecution had examined 11 witnesses. PW1 is the father of the victim and the defacto complainant. PW2 is the victim. PW3 is working as a teacher in a school and is related to the victim. He is a hearsay

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witness. PW4 is the teacher in the school where the victim studied and would speak about the statement of the victim recorded by the investigation officer. He had signed in the observation mahazar Ex.P3. PW5 is a witness to the observation mahazar and has signed in Ex.P4. PW6 is a hearsay witness and has signed in the observation mahazar Ex.P5. PW7 is the witness to the confession of the accused and had signed as a witness in the seizure mahazar Ex.P6. PW8 is the doctor, who had examined the victim and made entries in the accident register Ex.P7. PW9 is the Sub-Inspector of Police, who had registered the FIR/Ex.P8. PW10 is the head master of the school where the victim studied and he had issued Ex.P10, school certificate and marked the birth certificate of the victim Ex.P11. PW11 is the Inspector of Police, who conducted the investigation and filed the final report.

7.The prosecution had proved the age of the victim by marking Ex.P10, school certificate issued by PW10 and also by marking the birth certificate Ex.P11. PW10 had also deposed that the victim studied 9th standard at the time of occurrence. The age of the victim therefore, is proved by the birth certificate, which has not been disputed by the accused. Thus, the victim was aged 14 years at the time of occurrence. The victim, after he was secured, was taken to the doctor. The doctor PW8, who had made entries in Ex.P7, accident register had stated that the victim told him that he was subjected to sex torture by the appellant. This is the earliest version of the victim. The victim’s statement was

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recorded by the Magistrate on 14.05.2019, in which, he had stated that the appellant had inappropriately applied his mouth on the private part of the victim. The victim in his deposition had cogently stated that he was confined in a hut by the appellant for three days and that the appellant had repeatedly applied his mouth to his private part and inappropriately touched his thighs during the said period and thereafter, he had left him in his village and warned him of dire consequences, if he revealed about the said occurrence to anyone.

8.The victim's evidence is cogent and convincing. Nothing has been elicited in the cross-examination to discredit his evidence. The fact that the victim went missing is spoken to by PW1, the father of the victim, who is the defacto complainant and PW3, the son-in-law of the PW1. Thus, the prosecution had established beyond reasonable doubt that the victim (a child aged 14 years) went missing for three days and the fact that he was subjected to penetrative sexual assault as defined under Section 3 of the POCSO Act.

9.Therefore, this Court finds no infirmity whatsoever in the finding of guilt recorded by the Court below and holding the appellant guilty of the offences under Section 5(l) r/w 6 of the POCSO Act. However, considering the fact that the occurrence took place between 28.04.2019 and 02.05.2019 and the act was committed prior to the amendment (that came into force on 16.08.2019) made to Section 6 of the POCSO Act, prescribing 20 years imprisonment as

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minimum punishment, this Court is of the view that the interest of justice would be met, if the minimum sentence of 10 years rigorous imprisonment is imposed on the appellant for the acts committed by him, as prescribed in the Act prior to its amendment. Therefore, the sentence imposed on the appellant for the offences committed under Section 5(l) r/w 6 of the POCSO Act is reduced to ten years rigorous imprisonment and to pay a fine of Rs.5000/- and in default, to undergo simple imprisonment for three months. However, the conviction and sentence imposed for the offences under Section 363 IPC is confirmed. The sentences shall run concurrently.

10.With the above modification in sentence, the appeal is dismissed.

24-11-2026

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

TSG

To
1.The Inspector of Police,
Kodumudi Police Station,
Erode District
(Crime No.121/2019).

2.The Sessions Judge,
Magalir Neethimandram,
Fast Track Mahila Court, Erode.

3.The Superintendent,
Central Prison, Coimbatore.

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4.The Public Prosecutor,
Madras High Court.

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SUNDER MOHAN, J.

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