



Crl.A.No.565 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2026

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.565 of 2022

Shanmugam

... Appellant

Vs.

State by
The Inspector of Police,
All Women Police Station,
Thirukoilur, Villupuram District.
(Crime No.38 of 2018)

... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the judgment dated 19.05.2022 made in New Spl.S.C.No.232 of 2019 (Old Spl.S.C.No.24 of 2019) on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Villupuram.

For Appellant : Ms.M.Nandhitha
for Mr.A.Nagarajan

For Respondent : Mr.S.Udayakumar
Government Advocate (Crl. Side)
Assisted by Ms.Harshana.T



JUDGMENT

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The appellant/accused in New Spl.S.C.No.232 of 2019 (Old Spl.S.C.No.24 of 2019) convicted by the Trial Court by judgment dated 19.05.2022 for the offence under Section 9(m) r/w. 10 of Protection of Children from Sexual Offences Act, 2012 (POCSO Act) and sentenced to undergo five years rigorous imprisonment and to pay a fine of Rs.1,25,000/-, in default, to undergo three months simple imprisonment. Aggrieved against the same, the appellant preferred the present appeal.

2.The case of the prosecution is that the defacto complainant/mother of the victim lodged a complaint to PW9 stating that on 11.11.2018 at about 7:30 p.m., the victim/PW2, who is aged about 11 years studying 6th standard was playing outside their house with her friends, at that time, the appellant gave Rs.10/- to the victim girl and asked her to buy beetle leaf and nuts from the nearby shop. Thereafter, he followed her from behind and attempted to misbehave with her. When she resisted and raised an alarm, he lifted and threw her in the nearby bush and fled. The defacto complainant's husband, who is a cook employed in Chennai, was informed and on the next day, he came to his native. On 12.11.2018, complaint was lodged and a case



registered. The victim enquired and statement recorded. PW9 visited the scene of occurrence, prepared observation mahazar and produced the victim before the Magistrate, 164 statement recorded. The accused arrested and thereafter, PW10 took up the investigation and collected school certificate of the victim. PW11/Headmaster confirmed the age of the victim and on completion of investigation, charge sheet filed in this case. During trial, PW1 to PW11 examined and Ex.P1 to Ex.P8 marked on the side of the prosecution. On the side of the defence, no witness examined and no documents marked. On conclusion of trial, the Trial Court convicted the appellant as stated above.

3.The contention of the learned counsel for the appellant is that the appellant falsely implicated in this case. The appellant and the defacto complainant are relatives and neighbors, having dispute over a common area behind their house and for herding of sheep near the house by the defacto complainant. The case projected is that the victim raised alarm and on hearing the same, the defacto complainant came out and saw the appellant following the victim from behind, saw the appellant hugging the victim and dragging her. On hearing the shout of PW1, the appellant lifted the victim



and threw her in the nearby bush, due to which, the victim sustained injuries on her hands and on her back. The evidence of PW2/victim girl and PW3/father of the victim is that injuries sustained and blood oozing out from the body of the victim. But the Investigating Officer in this case deposed that he was not informed about any injury sustained by the victim. He further qualifies by stating that had there been any injury and oozing out of blood, he would have referred the victim to a Doctor for medical treatment. The victim was not referred to any Doctor and no medical records produced. The victim has been used by the defacto complainant since there was some property dispute between the appellant and the defacto complainant. In this case, PW4/brother's son of PW3, PW5/cousin who is said to be present along with PW4 and PW7 are the projected eyewitnesses, all not supported the case of the prosecution. PW6 and PW8 are the witnesses for observation mahazar. PW6 admits that he signed the observation mahazar in the police station, at that time, he was informed that he was signing the mahazar for a theft case. PW8, the other observation mahazar witness, confirms that his father is the Panchayat President and the appellant was a supporter of one Kannan, who is the rival contestant to his father Rajangam. In this case, there have been contradictions in the evidence of PW1/defacto complainant



and PW2/victim. Further, the occurrence took place at night hours and there was no light available at the scene of occurrence. PW1/defacto complainant states that she heard the cry of the victim and found the victim being taken by the accused and thrown her in the nearby bush. PW2/victim states that the appellant chased and thrown her into the bush. From the evidence of PW1 and PW2, it can be seen that there was no sexual intent. Further, with regard to the fact of throwing her on the thorny bush, the Investigating Officer's evidence confirms that no injuries found, on the contrary PW2 and PW3 confirm there was bruises and injuries with blood. Thus, PW1/defacto complainant, PW2/victim and PW3/father of the victim, all have given exaggerated and contradictory statements. The appellant and the defacto complainant are relatives, having some dispute, magnified and false case projected which the Trial Court failed to consider.

4.In support of her contention, the learned counsel for the appellant relied upon the judgment of the Delhi High Court in the case of ***MRP (Identity Withheld) vs. State (NCT of Delhi)*** reported in ***(2025) 1 High Court Cases (Del) 189*** and submitted that when a person is charged and convicted for the offense under Section 10 of the POCSO Act, it is important



to determine whether the allegations against the accused satisfy the ingredients. In this case, the admitted position is that the victim was followed and thereafter she was lifted and thrown into a bush. This act by no stretch can be construed as an act overtly of sexual nature, driven by sexual intent.

5.The learned Government Advocate (CrI. Side) submitted that in this case PW1/defacto complainant is the mother of the victim and the victim/PW2 is a minor aged about 11 years. PW11/Headmaster confirms the victim's age and the birth certificate/Ex.P2 produced. The victim was playing outside the house on 11.11.2018 at about 7:30 p.m., when the defacto complainant went to close the door and call the victim, she found the appellant hugging the victim and dragging her. The victim raised alarm and defacto complainant shouted at the appellant and the appellant lifted the victim and thrown her away in the thorny bush. PW1 retrieved her and carried the victim back home who suffered injuries on her legs and back. PW7 saw the victim being carried by the defacto complainant. The defacto complainant is a rustic villager, not knowing what to do immediately informed her husband, who was a Cook in Chennai. On the next day, the



father and mother of the victim questioned the appellant and later, PW1 went to the Police Station. Since PW1 was an illiterate and knows only to sign her name, the complaint was written by PW4 and she signed the same. PW9, on receipt of the complaint enquired the victim, her mother, father, PW4 and PW5, who had seen the appellant following and taking the victim. PW6 and PW8 are the witnesses for observation mahazar and PW7 on coming to know about the incident, went to the house of PW1, at that time, he saw PW1 carrying the victim and bringing her home. All the witnesses confirmed that the appellant followed the victim, thereafter he lifted her and when she resisted, the victim was thrown to the thorny bush. The appellant attempted to commit sexual assault on the victim. PW10/Investigating Officer, on completion of investigation filed charge sheet in this case. On conclusion of trial, the Trial Court had rightly convicted the appellant. Hence, prayed for dismissal.

6.Considering the submissions made and on perusal of the materials, it is seen that in this case PW1/defacto complainant/mother of the victim and PW2/victim are the witnesses to speak about the occurrence proper. PW1 in her complaint stated that she found the appellant following the victim and



attempted to touch the victim with sexual intent and on hearing the shout of the defacto complainant, the appellant threw the victim in the nearby thorny bush. The victim in her evidence states that the appellant followed her from behind and placed his hand on her body and threw her in the thorny bush. The above overtly act cannot be said to be driven by sexual intent. Further, the victim not stated that the act of the appellant overtly is of sexual nature. Though PW1, PW2, PW3 and PW4 state that the victim sustained injuries due to being thrown in the thorny bush and sustained bruises on the legs, hands, back and blood oozing out, the Investigating Officer/PW10 confirms that no complaint of any bruises was made and found no bruises or injuries and further, he found no oozing of blood. Thus, throwing the victim into the thorny bush and causing injuries is nothing but a falsehood. In this case, the evidence of PW1 and PW2 is with contradictions, improvements and highly doubtful. There is some property dispute between the appellant and the defacto complainant's family with regard to enjoyment of a common backyard and also herding of sheep, appears to be the motive and a magnified version given. In view of the above, this Court set aside the conviction and sentence imposed by the Trial Court.



Crl.A.No.565 of 2022

7.In the result, this Criminal Appeal stands allowed setting aside the judgment dated 19.05.2022 in New Spl.S.C.No.232 of 2019 (Old Spl.S.C.No.24 of 2019) passed by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Villupuram. The appellant is acquitted from all charges. Bail bond if any executed shall stand cancelled. Fine amount if any paid shall be refunded.

22.01.2026

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
cse

To

- 1.The Sessions Judge,
Special Court for Exclusive Trial of Cases
under POCSO Act,
Villupuram.
- 2.The The Inspector of Police,
All Women Police Station,
Thirukoilur, Villupuram District.
- 3.The Public Prosecutor,
High Court, Madras.



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Crl.A.No.565 of 2022

M.NIRMAL KUMAR, J.

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Crl.A.No.565 of 2022

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