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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27-10-2026

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

CRL A No.900 of 2022

CNR: {HCMA011060782022}

Poobathi
S/o.Ponnuraman,
North Street,
Melputhupattu Village,
Villupuram District.

(Now Confined at
Central Prison Cuddalore)

...Appellant/Sole Accused

Vs

State by the Inspector of Police,
All Women Police Station,
Gingee Villupuram District,
(Crime No.44/2019 on the file of the Avalurpet Police Station)

....Respondent/ Complainant

Prayer : Criminal Appeal filed under Section 374 (2) of Cr.P.C., praying to call for the entire records in connection with the Special S.C No.172/2019 on the file of the learned Sessions Judge, Special Court for exclusive trial of cases under POCSO Act, Villupuram and set aside the conviction and sentence imposed by the Learned Sessions Judge, Special Court for Exclusive trial of cases under POCSO Act, Villupuram in

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Special S.C No.172 of 2019 dated 10.03.2022.

For Appellant : Mr.P.Muthamizh Selvakumar

For Respondent : Ms.Sharada Vivek,
Additional Public Prosecutor

Assisted by
Mr.M.Arul Raj

JUDGMENT

This Criminal Appeal challenges the Judgment of the Trial Court in Spl.S.C.No.172 of 2019 which had convicted the appellant/sole accused and sentenced him as follows:

Offence under Section	***Sentence imposed***
449 IPC	To undergo rigorous imprisonment for five years and to pay a fine of Rs.25,000/-, in default to undergo simple imprisonment for further period of six months.
342 IPC	To undergo rigorous imprisonment for one year and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for a further period of two months.
506 (i) IPC	To undergo rigorous imprisonment for two years and to pay a fine of Rs.10,000/-, in default to undergo simple imprisonment for a further period of three months.
376-AB IPC	To undergo rigorous imprisonment for twenty years and to pay a fine of Rs.1,00,000/-, in default to undergo

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	simple imprisonment for a further period of one year.
5(m) r/w 6 of the POCSO Act	No separate sentence was imposed for this offence, in view of the sentence imposed under Section 376-AB IPC
The sentences were ordered to run concurrently.	

2(a). The case of the prosecution is that the appellant is the victim's neighbour and also her maths tuition teacher; that on 14.02.2019 at about 8.00 p.m., when the victim went out of the class for attending nature's call, the appellant followed her; that when the victim entered her house and washed her private parts, after attending the nature's call, the appellant touched the private part of the victim girl; and that at knife point, committed penetrative sexual assault by penetrating his penis into the vagina of the victim girl and thus committed the aforesaid offences.

(b). The victim had reported the incident to her mother on the same day, i.e., on 14.02.2019. The complaint [Ex. P1], however, was lodged on 17.02.2019 and registered for the offences under Section 506(2) of the Indian Penal Code, 1860 (hereinafter referred to as ***"the IPC"),*** and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as "***the POCSO Act")*** in Crime No.44 of 2019.

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The FIR was marked as Ex.P7.

(c) The complaint [Ex.P1] was registered by P.W.14. P.W.18 conducted a part of the investigation and thereafter handed over the investigation to P.W.19. The victim was subjected to medical examination, her statement was recorded under Section 164 Cr.P.C., and after conducting the investigation, the final report was filed for the offences under Sections 449, 342 and 376-AB and 506(i) of the IPC and Sections 9(m) r/w 10 and 5(m) r/w 6 of the POCSO Act before the Mahalir Neethimandram (Fast Track Mahila Court), Villupuram, in Spl.S.C.No.68 of 2019.

(d). On the appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with. In the meantime, as per the proceedings of the learned Principal District and Sessions Judge, Villupuram, in A.No.1093/2019 dated 19.11.2019, the case was transferred to the newly formed Court, and the new number, Special Sessions Case No.172 of 2019, was assigned, before the learned Sessions Judge, Special Court for Exclusive Trial of cases under the POCSO Act, Villupuram. The Trial

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Court framed six charges against the accused/appellant for the offences under Sections 449, 342, 506(i) and 376-AB of the IPC and Sections 10 and 5(m) r/w 6 of the POCSO Act. During the trial, when questioned, the accused pleaded 'not guilty'.

(e). Before the trial Court, the prosecution had examined 19 witnesses as P.W.1 to P.W.19 and marked 12 exhibits as Exs.P1 to P12. 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, after considering the evidence on record, convicted and sentenced the accused/appellant as stated above. Aggrieved by the said conviction and sentence, the appellant had preferred the instant appeal.

3. The learned counsel for the appellant would submit that the medical evidence and the earliest version of the victim girl do not support the case of the prosecution as regards the allegation of the penetrative

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sexual assault; that even assuming that the victim's evidence can be relied upon, the offence at best discloses aggravated sexual assault; and that therefore the finding of guilt and sentence imposed by the Trial Court are liable to be set aside.

4. The learned Additional Public Prosecutor, for the respondent, *per contra*, submitted that the statement of the victim girl before the Doctor would hardly be of any relevance in the light of the victim's cogent and convincing evidence that the appellant had committed penetrative sexual assault on her; and that therefore, there is no reason to set aside the impugned Judgment and sought dismissal of the appeal.

5(a). As stated above, the prosecution had examined 19 witnesses. P.W.1 is the *de-facto* complainant/mother of the victim; P.W.2 is the victim. P.W.3 is the grandmother of the victim who heard about the occurrence from the mother of the victim/P.W.1. P.W.4 is the maternal grandmother of the victim, and she is also a hearsay witness. P.W.5 is the victim's neighbour and he is also a hearsay witness. P.W.6 is a friend of the accused/appellant and would state that both the appellant and the victim were missing from the class on the date of occurrence. P.W.7 and

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P.W.8 are the Observation Mahazar witnesses. P.W.9 is a friend of P.W.5, and is also a hearsay witness. P.W.10 is the Headmistress of the School where the victim studied and had issued the school certificate [Ex.P5] stating that the victim was studying IV standard.

(b). P.W.11 is the Head Constable who had taken the victim to the hospital for medical examination. P.W.12 is the Doctor who had examined the accused and issued Potency Certificate [Ex.P6]. P.W.13 is a hearsay witness who turned hostile. P.W.14 is the Sub-Inspector of Police, who registered the FIR [Ex.P7] in Crime No.44 of 2019. P.W.15 is the Police Constable, who took the accused for medical examination. P.W.16 is the Doctor who had examined the victim and had issued the Medical Examination Report [Ex.P9] and also marked the Forensic Lab Report [Ex.P10]. P.W.17 is the Sub-Inspector of Police who recorded the statement of the victim. P.W.18 is the Inspector of Police, who also conducted part of the investigation and made arrangements for recording 164 Cr.P.C., statement of the victim, and medical examination of the victim. P.W.19 is the Investigating Officer who filed the final report.

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6. The prosecution had proved the date of birth of the victim by marking Ex.P2 certificate which reflects the date of birth as 26.07.2011. This has not been disputed by the defence. This is further corroborated by the school certificate issued by the Headmistress who stated that the victim was studying IV standard at the relevant time.

7. The alleged occurrence is said to have taken place on 14.02.2019. However, the complaint [Ex.P1] was lodged only on 17.02.2019. The explanation offered by P.W.1/*de-facto* complainant/mother of the victim girl, that she had consulted the villagers before lodging a complaint is not satisfactory. There is no reason why P.W.1 had to consult the villagers to lodge a complaint of such a serious nature after three days.

8. Be that as it may. The victim was examined by the Doctor on 16.02.2019. The Doctor (PW16) had made the following entries in the extract of the Accident Register [Ex.P8]:

> "Alleged H/O brought from tuition to her home by known person Bhoopathi (approx. 19 years age).

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jdp miwf;F miHj;Jbrd;W tpsf;if mizj;J tpl;L. Milia fHl;o tpl;L. jdJ nkny gLj;jjhf TWfpwhh;”

Even in the Medical Examination Report [Ex.P9]. P.W.16 had observed as follows :

”tuyl;Rkp jd;id oa[rdpy;;; ,Ue;J (tuyl;Rkp) tPl;ow;F miHj;J te;J. jdp miwf;F miHj;J brd;W. tpsf;if mizj;Jtpl;L. Milia fHl;o tpl;L jdJ nkny gLj;jjhf TWfpwhh;

H/O History S/O Physical abuse”

The Doctor, in the final opinion, had observed that there were no external injuries on the victim girl. The Doctor had further observed as follows:

“Victim bathed, changed clothes, passed urine, motion post incident. Came to hospital, 50 hours after the incident.”

“The Forensic evidence though negative does not mean that sexual abuse has not occurred.”

9. In the light of the victim’s version before the Doctor, the opinion of the Doctor, and the delay in lodging complaint, it is hard to believe that the victim was subjected to penetrative sexual assault.

10. Though the victim in her 164 Cr.P.C., statement and in her

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deposition had stated about penetrative sexual assault, this Court is of the view that the said version is highly improbable and this Court, in the light of the other evidence and for the reasons stated above, is of the view that the victim has been tutored to make an exaggerated version subsequently.

11. However, this Court is of the view that the chaff can be separated from the grain and the victim's evidence insofar as the sexual assault is consistent and her evidence on that aspect cannot be rejected. Since the victim's evidence cannot be totally disbelieved and only suggests sexual assault, this Court is of the view that he appellant is guilty of the said offence. The victim was born on 26.07.2011 and thus she was about aged eight years at the time of occurrence. The age of the victim is not in dispute and the accused has not discredited the prosecution evidence in that regard. The accused is thus guilty of the offence under Section 9(m) r/w 10 of the POCSO Act. For the aforesaid reasons, the finding of guilt as regards the offences under Section 376-AB of the IPC and Section 5(m) r/w 6 of the POCSO is liable to be set aside.

12. The appellant is sentenced to seven years of rigorous imprisonment for the offences under Section 9(m) r/w 10 of the POCSO

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Act. The conviction and the sentence for the other offences 449, 342, and 506 (i) of the IPC are all confirmed. The sentences imposed by this Court are directed to run concurrently.

13. With the above modification in the sentence, the Criminal Appeal is partly allowed. The period of sentence already undergone by the petitioner is directed to be set off under Section 428 Cr.P.C.

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

1. The Sessions Judge,
   Special Court for exclusive trial of cases
   under POCSO Act,
   Villupuram.

2. The Superintendent of Prison,
   Central Prison, Cuddalore.

3. The Inspector of Police

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All Women Police Station,
Gingee Villupuram District.

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4. The Public Prosecutor,
High Court of Madras.

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SUNDER MOHAN, J.

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