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Order QR

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11-11-2026

PRONOUNCED ON: 17-11-2026

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

CRL A No. 1273 of 2022

CNR:{HCMA011987812022}

Case QR

Ashok Kumar
S/o. Venugopal,
Old Street, Poonthotam, Vakkur Post,
Chidambaram Taluk, Cuddalore District - 608 001.

..Appellant(s)

Vs

1. State Rep.By
   The Inspector of Police,
   All Women Police Station,
   Sethiyathopu, Cuddalore District.
   (Cr.No.18 of 2021)

2. The Deputy Superintendent of Police,
   Sethiyathopu, Cuddalore District.

3. Malliga
   W/o. Silambarasan,
   Periya Street, Sethiyur,
   Chidambaram Taluk - 608 305.

..Respondent(s)

Criminal Appeal filed under Section 374 (2) of Cr.P.C., to set aside the conviction and sentence of the appellant by the judgment dated 06.10.2022 in Spl.S.C.No.18 of 2022, on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Cuddalore and acquit the appellant.

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For Appellant(s): Mr..N.U.Pressanna
Mr.Shruthan Balaji - Amicus Curiae

For Respondent(s): Ms. Sharada Vivek (for R1 & R2)
Additional Public Prosecutor
Mr. P.G.Thiyagu (for R3)

Judgment

This Criminal Appeal has been filed by the sole accused, challenging the conviction and sentence imposed upon him vide judgment dated 06.10.2022 in Spl.S.C.No.18 of 2022 passed by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Cuddalore.

2 (i) The case of the prosecution is that the accused was working as a teacher in a Panchayat School at Sethiyur village; that the victim was studying in the fifth standard in the said school; that on 24.11.2021, after the lunch time, the students of class 1 to class 5 came to the classroom of the accused; that at about 3.00 p.m., the accused had asked all the students to go out of the class; that the victim and two other students alone stayed back in the class; that at the time the accused is said to have asked the victim to come near him and told her that she was not studying

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properly; that thereafter with sexual intent, had pinched the hip of the victim, put his hands in the skirt and the undergarment of the victim and inappropriately touched the private part of the victim; and thus, committed the offence under Section 5(m) read with 6 of the POCSO Act.

(ii) It is the further case of the prosecution that the victim left the classroom immediately and informed her mother [PW4] at about 3.30 p.m.; that thereafter, PW4 and other relatives went to the school to question the accused; that the accused without responding had left the school; that at about 8:30 p.m., PW1 lodged a complaint [Ex.P2], which was registered by PW13, the Sub-Inspector of Police, as an FIR [Ex.P15], in Crime No. 18 of 2021, for the offence under Section 5(m) read with 6 of the POCSO Act.

(iii) PW13, after registering the FIR, had conducted a part of the investigation and handed over the investigation to PW14, the Inspector of Police. PW14 arrested the accused, examined a few witnesses, subjected the victim to medical examination, made arrangements for recording of

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the 164 Cr.P.C. statement of the victim, and since the investigation disclosed commission of offence under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SC/ST (POA) Act), filed an alteration report [Ex.P17] and handed over the investigation to PW15, the Deputy Superintendent of Police.

(iv) PW15, after examining the remaining witnesses, had filed the final report against the accused for the offences under section 5(m) r/w 6 of the POCSO Act and Section 3(1)(w)(i) of SC/ST (PoA) Act, before the Special Court for Exclusive Trial of Cases under POCSO Act, Cuddalore.

(v) The case was taken on file by the learned Sessions Judge, Special Court for POCSO Cases, Salem, as Spl.S.C.No.18 of 2022 and on the appearance of the accused, the provisions of Section 207 Cr.P.C., were complied with. The trial Court framed charges for the offences under Section 9(m) r/w 10 of the POCSO Act and Sections 3(1)(w)(i) and 3(1)(w)(ii) of the SC/ST (POA) Act and when questioned, the accused pleaded 'not guilty'.

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(vi) To prove its case, the prosecution examined 15 witnesses as P.W.1 to P.W.15 and marked 18 documents as Ex.P1 to Ex.P18. When the accused were questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. The accused did not examine any witness or mark any document on his side.

(vii) The trial Court, after considering the evidence on record, acquitted the accused of the offences under the SC/ST (POA) Act, and held him guilty of the offence under Section 9(m) r/w 10 of the POCSO Act and sentenced him to undergo rigorous imprisonment for seven years and to pay a fine of Rs.2,000/-, in default to undergo simple imprisonment for three months. Hence, the appeal.

3. The learned counsel for the appellant/accused would submit that the victim PW1 and two of her classmates PW2 and PW3 have been tutored; that they had narrated the occurrence in a parrot-like manner; that their depositions are contrary to their earlier versions given to the police and to the version of PW1 before the Magistrate; that PW4, the mother,

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was instigated by a local politician to lodge this complaint as he had a grudge against the appellant and his wife, who was the Headmistress of the school, as they had not yielded to his illegal demands; that there is an unexplained delay in lodging of the complaint; that an earlier complaint has been suppressed by the prosecution and the instant complaint has been made as an afterthought, making false allegations; that the evidence of the doctor belies the version of the witnesses; that the appellant had rebutted the presumption under the POCSO Act; and hence, prayed for acquittal of the appellant.

4 (i) This Court appointed Mr. Shruthan Balaji as *Amicus Curiae* to assist this Court.

(ii) Mr. Shruthan Balaji, the learned *Amicus Curiae*, who reiterated the submissions of the learned counsel for the appellant, would submit that a reading of the evidence of the child witnesses PW1, PW2 and PW3 would show that they have been tutored; that this Court has to be cautious while appreciating the evidence of a child witness; that in a case where the medical evidence cannot corroborate the nature of the act alleged against the appellant, unless the evidence of the child witness is of a

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sterling quality, the Court has to reject the case of the prosecution; and that in this case, the contradictions elicited in the evidence would show that the victim and two other witnesses PW2 and PW3 are totally unreliable witnesses. He would rely upon the judgment of the Hon'ble Supreme Court in ***State of M.P. v. Balveer Singh***, reported in **(2025) 8 SCC 545**, in support of his submission, that if tutoring cannot be ruled out, the evidence of a child witness, has to be discarded.

5. The learned Additional Public Prosecutor, *per contra*, submitted that minor contradictions, which does not go to the root of the matter, cannot be the basis to discard the evidence of the victim, who has been consistent in her version; that the victim's version has been corroborated by the evidence of PW2 and PW3; that in a case instituted for the offence under the POCSO Act, there is a presumption in favour of the prosecution; that the foundational facts have been established; and that the appellant had not rebutted the presumption.

6. Mr.P.G.Thiyagu, learned counsel, representing the 3rd respondent/the defacto complainant [PW4], reiterated the submissions of

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the learned Additional Public Prosecutor, and would vehemently contend that the fact that the victim was subjected to sexual assault has been proved by the evidence of PW1 to PW3; that PW2 and PW3 had no axe to grind against the appellant and there is no reason for them to falsely implicate the appellant; that the presence of a politician would not render the evidence of a child witness [PW1] unreliable, since her version is cogent and convincing; and that the absence of any corroboration in the medical evidence cannot by itself be the reason to discard the evidence of the victim. The learned counsel also submitted that in view of Sections 29 and 30 of the POCSO Act, enabling the Court to draw the presumption specified in those provisions, the impugned judgment does not call for any interference.

7. As stated above, the prosecution examined 15 witnesses. PW1 is the victim. PW2 and PW3 are her classmates and witnesses to the occurrence. PW4 is the mother of the victim and the *de facto* complainant. PW5 is the father of the victim and would corroborate the evidence of PW4. PW6 is the grandmother of the victim and is a hearsay witness. PW7 is the doctor who had examined the victim and had issued

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medical examination report [Ex.P5]. PW8 is the doctor who examined the appellant and had issued potency certificate [Ex.P6]. PW9 is a witness to the observation mahazar [Ex.P7]. PW10 is the Tahsildar, who had issued the Community Certificate of the victim [Ex.P8]. PW11 is the District Educational Officer. He had marked Ex.P10, the Government Order issued by the Government of Tamil Nadu, as regards the manner in which classes are to be conducted after COVID-19 period. He also speaks about the fact that the appellant was suspended and marked Ex.P9 the Deemed Suspension Order. PW12 is the Headmistress of the school at the relevant point of time and is the wife of the appellant. She turned hostile. PW13 is the Sub-Inspector of Police who registered the FIR and made arrangements for recording the statements of the victim under Section 164 Cr.P.C. PW14 is the Inspector of Police who conducted a substantial portion of the investigation and handed over the case to PW15, the investigating officer, who on completion of investigation, filed the final report against the appellant.

8. It is the case of the prosecution that the appellant inappropriately touched the private part of the victim by inserting his hand into the

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undergarment of the victim and it was witnessed by PW2 and PW3. The complaint was lodged at 8:30 p.m. on the day of occurrence. No explanation has been offered by PW4 for the delay in lodging the complaint. Thereafter, the complaint along with the FIR reached the Court only the next day, that is 25.11.2021, at about 2.40 p.m. The explanation for the delay offered by PW13, the Sub-Inspector of Police, who registered the FIR and despatched it to the learned Magistrate, does not appear to be satisfactory.

9. Be that as it may, during investigation, the statement of the victim was recorded by the learned Magistrate under Section 164 Cr.P.C. The victim reiterated the allegation in the complaint made by PW4, viz.,that the appellant had inappropriately touched the private part of the victim and pinched the hip of the victim. The victim was subjected to medical examination and before the doctor [PW7], who examined the victim, the victim's mother had stated that the appellant had touched the private part of the victim at 3.00 p.m., on 24.11.2021. The doctor [PW7] thereafter, in his final opinion had observed as follows:

> "1. No physical injuries.
> 2. No genital injuries

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3. No H/o. Penetrative sexual intercourse
4. However sexual violence cannot be ruled out."

10. When the victim was examined in chief before the trial Court, the victim had stated that the appellant had inserted his hand into her skirt and the undergarment, pinched her private part and also pinched her hip, and this was witnessed by PW2 and PW3. In her cross-examination, when specifically confronted with her earlier statement she made to the doctor and to the police, she would state that she told the doctor and she stated before the learned Judicial Magistrate that the appellant pinched her private part. The relevant portion of her evidence reads as follows:

> "g[fhhpy; vd;d vGjp ,Ue;jJ vd;W vdf;F bjhpahJ/ kUj;Jtu; vd;id tprhhpj;jhu;/ kUj;Jtu; tprhhpj;jnghJ mnrhf;Fkhu; vd;Dila xd;ghu;j;U:k; nghFk; ,lj;jpy; fps;spdhh; vd;W brhy;;ytpy;iy vd;why; rhpay;y brhd;ndd;/ ePjpj;Jiw eLthplKk; mnrhf;Fkhu; vd;Dila xd;ghu;j;U:k; nghFk; ,lj;jpy; fps;spdhh; vd;W brhy;;ytpy;iy vd;why; rhpay;y brhd;ndd;/"

11. However, as stated above, her version in the Section 164 Cr.P.C. statement is that the appellant had only touched her private part. The investigating officer [PW14], in the cross-examination, has stated

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that the victim had not informed during investigation that the appellant pinched her private part. The relevant portion reads as follows:

> “vd;Dila tprhuizapy; ghjpf;fg;gl;l rpWkp jd;Dila thf;FK:yj;jpy; gpwg;g[Wg;gpy; fps;spajhf brhy;ytpy;iy vd;why; rhpjhd;/”

12. Similarly, PW2 and PW3 had parroted the version of PW1 that the appellant had pinched the private part of the victim, and had not stated during investigation that they saw the appellant pinching the private part of the victim. The relevant portion of the evidence of the investigating officer [PW14] reads as follows:

> “….vd; tprhuizapy; m/rh/2 yl;rah. vjphp ghjpf;fg;gl;l rpWkpapd; gpwg;g[wg;gpy; fps;spsajhf brhy;ytpy;iy vd;why; rhpjhd;////
>
> //////m/rh/3 vd;Dila tprhuizapy; m/rh/1 xd;ghj;U:k; nghf;Fk; ,lj;jpy; fps;spsdhu; vd;W ehd; brhy;ytpy;iy vd;why; rhpjhd;////”

However, strangely all the witnesses, i.e., PW1 to PW3, would state during their cross-examination that they informed the police that the appellant had pinched the private part of PW1.

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13. Thus, the victim, PW2 and PW3, who had narrated the incident in a parrot-like manner, have improved their version substantially, as the very charge is about the sexual assault and the said offence would depend on the nature of the act committed by the appellant. Touch and pinching are two different acts and cannot be brushed aside as a minor contradiction. The Consistent version, right from the filing of the complaint, before the doctor [PW7], in the Section 164 Cr.P.C. statement of the victim, in the Section 161 Cr.P.C., statements of the victim, the defacto complainant, and that of the two eye witnesses [PW2 and PW3] is that the appellant touched the private part of the victim. All three witnesses, PW1 to PW3 however, in a parrot like manner have stated in their depositions that the appellant pinched the private part of the victim.

14. It is also not the case of PW2 and PW3 that PW1 informed them about the nature of the act committed by the appellant. It is also seen that both PW2 and PW3 have deposed that after the occurrence, PW1's parents questioned the appellant and subsequently, lodged the complaint. During investigation they had not stated that they saw the

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victim's parents questioning the appellant and about their knowledge of PW4 giving the complaint. This has been confirmed by the investigating officer in the cross-examination. This Court is of the view that PW2 and PW3 have been tutored to suit the prosecution case. There is an improvement in the material fact. PW4, the mother of the victim, in the complaint, had stated that the appellant touched her daughter's private part. However, in the chief-examination, she had also made an improvement that the appellant, besides touching, had also pinched the private part of the victim. The contradictions in her deposition also has been elicited during cross-examination from the investigating officer [PW14]. That apart, PW5, the father of the victim and PW6, the grandmother of the victim would depose in Court that the victim told them that the appellant had pinched the private part of the victim. However, the investigating officer had confirmed that neither of them stated during his interrogation that PW1 told them that the appellant pinched her private part. The relevant portion reads as follows:

> "…m/rh/5 vd; tprhuizapy; m/rh/1d; gpwg;g[cWg;gpy; vjphp fps;spajhf brhy;ytpy;iy vd;why; rhpjhd;/ m/rh/6 vd; tprhuizpay; m/rh/1d; gpwg;g[cWg;gpy; vjhp fps;spajhf brhy;ytpy;iy vd;why; rhpjhd;///"

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The doctor [PW7], in his cross-examination, would state that if a victim is pinched in her private part, it could be found on examination and that he found nothing to suggest that the victim was pinched in her private part.

15. PW5, the father of the victim would state that they had lodged a complaint in which both he and PW4 (mother of the victim) signed and that the said complaint was written by his brother. However, in the complaint [Ex.P2], the signature of PW5 is not found. The evidence of PW5 also probabilises the case of the defence that an earlier complaint was suppressed by the prosecution. It is the specific case of the defence that the appellant and his wife were harassed by a local politician since they did not yield to his demands and it was at his instance, the instant complaint was lodged.

16. The cross-examination of PW1 and the other witnesses would show that a person went along with them while lodging the complaint and also when they came to the Court for deposition. PW5 had also stated

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that the said politician had come to the Court during the examination of witnesses.

17. In ***Balveer Singh's case*** [supra], the Hon'ble Supreme Court had laid down the guidelines as to how to appreciate the evidence of a child witness. The relevant portion from the said judgment reads as follows:

> "67.10. The evidence of a child witness is considered tutored if their testimony is shaped or influenced at the instance of someone else or is otherwise fabricated. Where there has been any tutoring of a witness, the same may possibly produce two broad effects in their testimony; (i) improvisation or (ii) fabrication.
>
> (i) Improvisation in testimony whereby facts have been altered or new details are added inconsistent with the version of events not previously stated must be eradicated by first confronting the witness with that part of its previous statement that omits or contradicts the improvisation by bringing it to its notice and giving the witness an opportunity to either admit or deny the omission or contradiction. If such omission or contradiction is admitted there is no further need to prove the contradiction. If the witness denies the omission or contradiction the same has to be proved in the deposition of the investigating officer by proving that part of police statement of the witness in question. Only thereafter, may the improvisation be

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discarded from evidence or such omission or contradiction be relied upon as evidence in terms of Section 11 of the Evidence Act.

(ii) Whereas the evidence of a child witness which is alleged to be doctored or tutored in toto, then such evidence may be discarded as unreliable only if the presence of the following two factors has to be established being as under:

▪ Opportunity of tutoring of the child witness in question—whereby certain foundational facts suggesting or demonstrating the probability that a part of the testimony of the witness might have been tutored have to be established. This may be done either by showing that there was a delay in recording the statement of such witness or that the presence of such witness was doubtful, or by imputing any motive on the part of such witness to depose falsely, or the susceptibility of such witness in falling prey to tutoring. However, a mere bald assertion that there is a possibility of the witness in question being tutored is not sufficient.

▪ Reasonable likelihood of tutoring—wherein the foundational facts suggesting a possibility of tutoring as established have to be further proven or cogently substantiated. This may be done by leading evidence to prove a strong and palpable motive to depose falsely, or by establishing that the delay in recording the statement is not only unexplained but indicative and suggestive of some unfair practice or by proving that the witness fell prey to tutoring and was influenced by someone else either by cross-examining such witness at length that leads to either material discrepancies or contradictions, or exposes a

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> doubtful demeanour of such witness rife with sterile repetition and confidence-lacking testimony, or through such degree of incompatibility of the version of the witness with the other material on record and attending circumstances that negates their presence as unnatural."

18. As stated above, on facts, this Court finds that there is a material improvement in the version of PW1 to PW4, before the Court, which is totally different from their earlier versions. All the witnesses have uniformly given a particular version in their earlier statements and totally changed their versions in their depositions. Tutoring can be inferred from that fact alone. The cross-examination of the prosecution witnesses and the suggestions made by the defence also probabilises the defence case that the witnesses were tutored. The observations in the judgment extracted above would clearly apply to the facts of the case as the material improvement has not been explained and all the witnesses are guilty of making an improved version with additional particulars.

19. Therefore, this Court is of the view that the victim and the other witnesses are totally unreliable and it is highly unsafe to record a finding

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of guilt on the basis of such testimonies. Hence, the impugned judgment convicting and sentencing the appellant is liable to be set aside.

20. In the result, this Criminal Appeal is allowed. The conviction and sentence passed in Spl.S.C.No.18 of 2019 dated 06.10.2022 on the file of learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Cuddalore, are set aside. The accused/appellant is acquitted of the charge. The fine amount, if any, paid by the accused/appellant shall be refunded. Bail bond, if any, executed shall stand discharged.

21. This Court records its appreciation for the valuable assistance rendered by Mr.Shruthan Balaji, learned *Amicus Curiae*.

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

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SUNDER MOHAN J.

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To

1. The Sessions Judge,
Special Court for Exclusive Trial of Cases under POCSO Act,
Cuddalore.

2. The Inspector of Police,
All Women Police Station,
Sethiyathopu, Cuddalore District.

3. The Deputy Superintendent of Police,
Sethiyathopu, Cuddalore District.

4. The Public Prosecutor,
High Court, Madras.

Pre-delivery judgment in
CRL A No. 1273 of 2022

17-11-2026

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