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Crl.A.No.7 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 08.04.2026

DELIVERED ON: 01.07.2026

CORAM:

THE HON'BLE MR. JUSTICE A.D. JAGADISH CHANDIRA

Crl.A. No.7 of 2024 and Crl.M.P. No.31 of 2024

Loganathan

Appellant

vs.

State

Represented by

The Inspector of Police

All Women Police Station

Erode District

(Cr.No.29/2021)

Respondent

Criminal Appeal filed under Section 374(2) Cr.P.C., 1973, to call for the records in Special Sessions Case No.62 of 2022 on the file of the Sessions Court, Magalir Neethi Mandram (Fast Track Mahila Court), Erode and set aside the judgment dated 10.02.2023 passed therein.

For appellant

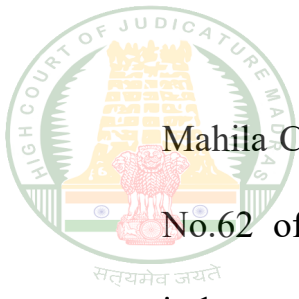
Ms. A. Niyamath Nisha
for Mr. K. Govindan

For respondent

Ms. J.R. Archana
Govt. Advocate (Crl. Side)

JUDGMENT

The instant criminal appeal is filed by the accused (hereinafter referred to as “the appellant”) seeking to set aside the judgment of conviction and sentence passed by the Court of Sessions Judge, Magalir Neethi Mandram (Fast Track



Mahila Court), Erode (hereinafter referred to as “the Trial Court”), in Spl. S.C. No.62 of 2022 dated 10.02.2023 (hereinafter referred to as “the impugned judgment”).

2. *Vide* the impugned judgment, the Trial Court convicted the appellant and sentenced him as tabulated below:

Penal Provision	Sentence of Imprisonment	Fine Amount
Section 5(m) r/w. Section 6 of the POCSO Act, 2012	Twenty (20) Years Rigorous Imprisonment	Rs. 5,000/-, in default of which to undergo three (3) months of simple imprisonment.
Period of detention already undergone by the appellant was ordered to be set off		

3. The Trial Court also recommended to the State Government of Tamil Nadu to pay a compensation of Rs.2,00,000/- to the victim child (P.W.2) who had suffered physical and mental injury as a result of the offences committed by the appellant. The Trial Court further noted that that an interim compensation of Rs.20,000/- was already ordered to be paid to the victim child (P.W.2) *vide* order dated 15.12.2021 in Crl. MP. No. 721 of 2021 and that the compensation awarded in the impugned judgment includes the compensation awarded earlier *vide* the aforesaid order dated 15.12.2021.

4. The case of the prosecution, in a nutshell, is as follows;

4.1. The victim child (P.W.2) was aged 5 years at the time of occurrence of the offence and the appellant was a neighbour of the victim child (P.W.2). On



03.10.2021, the victim child (P.W.2) was playing outside her house and at around 2:00 p.m., the mother of the victim child (P.W.2) [hereinafter referred to as “the de facto complainant (P.W.1)”] came out of her house in search of her daughter and found her daughter to be missing. When she was loudly calling out the victim child’s (P.W.2’s) name and coming in search of her, she found the victim child (P.W.2) coming running out of the appellant’s house crying. She enquired with the victim child (P.W.2) as to why she was crying and in response, the victim child (P.W.2) informed the de facto complainant (P.W.1) that the appellant removed her clothes, kissed her and inserted his hand into her vagina. On hearing the same, the de facto complainant (P.W.1) questioned the appellant along with her neighbours, to which the appellant denied all such allegations. Thereafter, the de facto complainant (P.W.1) took the victim child (P.W.2) to her house and waited for her husband to return home from his work.

4.2. After the husband of the de facto complainant (P.W.1) returned home late in the night, the de facto complainant (P.W.1) discussed the aforesaid events with her husband and after consulting with him and various other known members, on 04.10.2021 lodged a complaint (Ex.P1) before the Erode All Women Police Station. The complaint (Ex.P1) was taken on record by Saraswathi, Sub Inspector of Police (P.W.8) and FIR (Ex.P14) was registered by her and the records were forwarded to Neelavathy, Inspector of Police [hereinafter referred to as “the Investigating Officer-(P.W.10)”] who, thereafter, inspected the scene of occurrence and in the presence of independent witnesses,



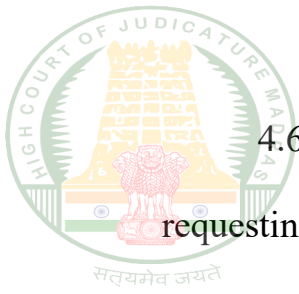
prepared an observation mahazar (Ex.P3) and a rough sketch (Ex.P16) of the scene of occurrence.

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4.3. During the course of the investigation, based on secret information received, on the same day (i.e.04.10.2021) at around 5 p.m., the Investigating Officer (P.W.10) arrested the appellant near Keerthi Bakery at Soolai and when questioned, the appellant voluntarily confessed to have committed the offence. The Investigating Officer (P.W.10), in the presence of independent witnesses, recorded the confession given by the appellant and sent the appellant and the victim child (P.W.2) for medical examination to the Government District Headquarters Hospital, Erode.

4.4. The appellant was examined by one Dr. E. Laxminath (P.W.4) who concluded that it could not be conclusively said that the appellant was either impotent or was incapable of having sexual intercourse. The victim child (P.W.2) was examined by one Dr. T. Suganya (P.W.7) who concluded that the victim child's (P.W.2)'s vagina permits one little finger and that there were no injuries on her vagina or breasts.

4.5. On 18.10.2021, the statement (Ex.P15) of the victim child (P.W.2) and the de facto complainant (P.W.1) under Section 164 Cr.P.C. were recorded before the Judicial Magistrate, Additional Mahila Court, Erode.



4.6. On 01.11.2021, the Investigating Officer (P.W.10) sent letters requesting the school certificate and the birth certificate of the victim child (P.W.2) to the Headmaster of the Government School, Chinnasemur and the Registrar of Births and Deaths (P.W.6), respectively.

4.7. On 19.11.2021, the Investigating Officer (P.W.10) obtained the school certificate (Ex.P18) of the victim child (P.W.2) from the Headmaster of the Government School, Chinnasemur.

4.8. On 21.11.2021, the Investigating Officer (P.W.10) obtained the birth certificate (Ex.P12) of the victim child (P.W.2) from the Registrar of Births and Deaths (P.W.6).

4.9 Thereafter, on 23.11.2021, the Investigating Officer (P.W.10) examined and recorded the statement of the doctors and other police officials involved and prepared and filed a final report on 23.12.2021 before the Trial Court.

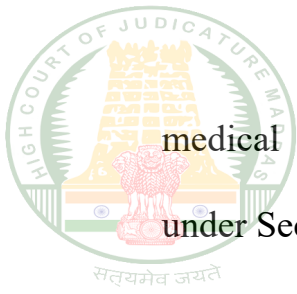
4.10. The copy of the final report and other documents were supplied to the appellant under Section 207, Cr.P.C. Thereafter, the Trial Court framed charges against the appellant for having committed the offences under Section 5(m) & Section 5(n) r/w. 6 of the POCSO Act.



4.11. When the charges were read over and explained to the appellant, he pleaded not guilty. Thereafter, the charges were modified by the Trial Court to Section 5(m) r/w. 6 of the POCSO Act and again, when the charges were read over and explained to the appellant, he pleaded not guilty.

5. In order to prove its case, the prosecution examined ten witnesses and marked eighteen documents. The evidence of P.W.1 to P.W.10 and the documents marked through them, in brief, are as follows:

5.1. The de facto complainant (P.W.1) deposed that she has two children and that while she was taking care of her younger child who was 1 year old, her elder daughter, the victim child (P.W.2) was playing outside her house; since it was 2:00 p.m., she came in search of the victim child (P.W.2) to give her lunch; however, she found the victim child (P.W.2) crying and coming running out from the adjacent house of the appellant; when she enquired with the victim child (P.W.2) as to why she was crying, she informed her that the appellant kissed her and removed her clothes and inserted his hand into her vagina; thereafter, she, along with her neighbours, enquired with the appellant who denied the allegations; the appellant was under the influence of alcohol; thereafter, she took the victim child (P.W.2) to her house and waited for her husband to come home from his work; her husband returned home only on the next day and hence, on 04.10.2021, she lodged a complaint (Ex.P1) before the Erode All Women Police Station; the police referred the victim child (P.W.2) for



medical examination and the statement (Ex.P15) of the victim child (P.W.2) under Section 164 Cr.P.C. was also recorded.

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5.2. The victim child (P.W.2) deposed that the appellant lured her in the guise of giving her chocolates and took her inside and kissed her; he inserted his hand into her vagina; she screamed in pain and came running outside and informed the de facto complainant (P.W.1).

5.3. Vijay (P.W.3), senior paternal uncle of the victim child (P.W.2) and a witness to the observation mahazar (Ex.P3) and rough sketch (Ex.P16), deposed that the police were making a sketch near his younger brother's house; the police asked for his signature and hence, he and the other independent witness affixed their signature; during the police investigation, he showed the appellant's house to the police.

5.4. Dr. E. Laxminath (P.W.4) who examined the appellant, deposed that the appellant was brought to hospital at around 6:50 p.m. on 04.10.2021; he examined the appellant and concluded that it could not be conclusively said that the appellant was impotent and that he was incapable of having sexual intercourse; the victim child (P.W.2) was brought at 7:20 p.m. and he sent the victim child (P.W.2) for examination by a gynaecologist.

5.5. Ramamoorthy (P.W.5), an independent witness to the confession statement of the appellant, deposed that he was having tea near Keerthi Bakery



when the police were questioning the appellant; when he and the other witnesses enquired the police as to what happened, they briefed him and asked him to be a witness to the confession which was agreed to by him; the appellant was not having tea at Keerthi Bakery and the police prepared the confession of the appellant; however, the appellant refused to sign the confession statement prepared by the police.

5.6. Moorthy (P.W.6), Registrar of Births and Deaths, deposed that the police requested him for the birth certificate (Ex.P12) of the victim child (P.W.2) and that he issued the same to the police.

5.7. Dr. T. Suganya (P.W.7) who examined the victim child (P.W.2) deposed that the victim child (P.W.2) was brought for examination at around 8:45 p.m. on 04.10.2021 by the de facto complainant (P.W.1) and the two of them informed her that a known man committed sexual assault on the victim child (P.W.2) by removing her clothes and further, by trying to insert his middle finger into the victim child's (P.W.2's) vagina and kiss her. She further deposed that in her medical examination, she concluded that the vagina permits one little finger only and that there were no injuries on the vagina or breast of the victim child (P.W.2).

5.8. Saraswathi, the then Sub-Inspector of Police (P.W.8), deposed that she received the complaint (Ex.P1) from the de facto complainant (P.W.1) at



around 2:30 p.m. on 04.10.2021 and that she registered the same as Crime No.29/21 (Ex.P14); thereafter, she placed the same before her superior officer to take action.

5.9. Dharani (P.W. 9), the then Judicial Magistrate, Additional Mahila Court, Erode, deposed that on 18.10.2021, the police requested her to record the statement (Ex.P15) of the victim child (P.W.2) and the de facto complainant under Section 164 Cr.P.C.; she began the recording of the statements at 4:07 p.m. and concluded the same by 4:20 p.m. She did not administer oath to the victim child (P.W.2) as it was aged 4 years old.

5.10. The Investigating Officer (P.W.10), the then Inspector of Police, deposed that she inspected the scene of occurrence and in the presence of independent witnesses, prepared an observation mahazar (Ex.P3) along with a rough sketch (Ex.P16) of the scene of occurrence; based on secret information received, she, on the same day (i.e. 04.10.2021), found the appellant near Keerthi Bakery at Soolai and on questioning the appellant, he voluntarily confessed to have committed the offence; in the presence of independent witnesses, she recorded the confession statement given by the appellant; thereafter, the appellant and the victim child (P.W.2) were sent for medical examination to the Government District Headquarters Hospital, Erode; on 18.10.2021, the statement (Ex.P15) of the victim child (P.W.2) under Section 164 Cr.P.C. and the de facto complainant (P.W.1) were recorded before the



Judicial Magistrate, Additional Mahila Court, Erode; on 01.11.2021, she sent a letter requesting school certificate of the victim child (P.W.2) and the birth certificate, to the Headmaster of the Government School, Chinnasemur and the Registrar of Births and Deaths respectively; on 19.11.2021, she obtained the school certificate (Ex.P18) of the victim child (P.W.2) from the Headmaster of the Government School, Chinnasemur; on 21.11.2021, she obtained the School Certificate (Ex.P18) of the victim child (P.W.2) from the Registrar of Births and Deaths (P.W.6); on 23.11.2021, she examined the doctors and recorded their statements and other police officials involved and filed a final report on 23.12.2021 before the Trial Court.

6. Thereafter, when the appellant was questioned under Section 313,Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. The appellant further stated that the de facto complainant's (P.W.1's) family sought sale of his house and that he refused to sell and hence, they have given a false complaint against him owing to animosity.

7. In order to prove the appellant's case, the appellant examined his mother Jabamalai as D.W.1 but marked no documents in his defence. She deposed that she cannot walk and that she has been living with the appellant who prepares and provides her food. on 03.10.2021, she was in the appellant's house the whole day and none, especially children, came to their house on that day; she knew the de facto complainant (P.W.1) well and the de facto



complainant's (P.W.1's) house was 10 houses away from the appellant's house; the de facto complainant's (P.W.1) family earlier compelled her to sell her house and on her refusal to sell and only as an act of wreaking vengeance, the de facto complainant's (P.W.1) family has given a false complaint against the appellant and that the appellant has nothing to do with the case.

8. The Trial Court, after hearing the arguments on both sides, found the appellant guilty and convicted and sentenced him as tabulated at paragraph 2 *supra*, *vide* the impugned judgment challenging which this criminal appeal has been filed by the sole accused.

9. The learned counsel appearing for the appellant made the following submissions in support of the grounds raised in the criminal appeal:

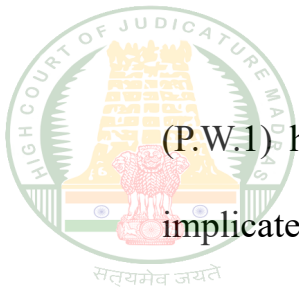
9.1. The de facto complainant (P.W.1) has continuously made various improvements in her statements, starting from her complaint (Ex.P1) to her statement under Section 164 Cr.P.C. to her oral evidence. The de facto complainant (P.W.1) has not mentioned in her complaint (Ex.P1) or statement under Section 164 Cr.P.C. that she was searching for the victim child (P.W.2) as it was time to feed her, but had, in her oral evidence, deposed that she came in search of the victim child (P.W.2) as it was time to feed lunch for the victim child (P.W.2) and this a significant improvement in her story. Further, the de facto complainant (P.W.1) had also, for the first time, deposed in her oral evidence that the appellant was under the influence of alcohol during the



commission of the offence. Hence, the evidence of the de facto complainant (P.W.1) shall be disbelieved as there are continuous improvements in the statements leading to her finding the victim child (P.W.2).

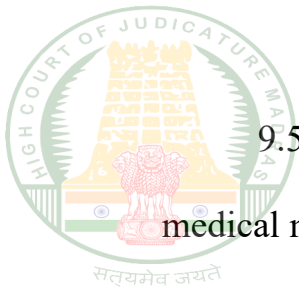
9.2. The de facto complainant (P.W.1) falsely claimed that the appellant's house was adjacent to her house; the rough sketch (Ex.P16) clearly shows that the appellant's house was not next or adjacent to the de facto complainant's (P.W.1's) house. Further, the Investigating Officer (P.W.10) clearly deposed that it is not true to state that the appellant's house was adjacent to that of the de facto complainant (P.W.1) but it is notable that the appellant's house was one street away.

9.3. There was a delay in lodging the complaint (Ex.P1) which was not reasonably explained by the de facto complainant (P.W.1). According to the de facto complainant (P.W.1), the offence occurred on 03.10.2021, whereas, she had given the complaint (Ex.P1) only on 04.10.2021. Accordingly, there was sufficient time to fabricate a story to falsely implicate the appellant. The de facto complainant (P.W.1), initially, in her complaint (Ex.P1), stated that her husband returned late in the night on 03.10.2021. However, contrary to the same, she had deposed in her oral evidence that her husband had returned only on the next day. Similarly, the victim child (P.W.2) has also deposed in her oral evidence that at the time of commission of the offence, only she, her younger sister and her father were present at her house. Hence, the de facto complainant



(P.W.1) has wantonly fabricated a story with major contradictions to falsely implicate the appellant and therefore, the evidence of the de facto complainant (P.W.1) is to be disbelieved.

9.4. The narrative of the prosecution is inconsistent insofar as how the appellant had lured the victim child (P.W.2) to his house. The Investigating Officer (P.W.10), in her requisition for recording the statement under Section 164 Cr.P.C. to the Judicial Magistrate (P.W.9), categorically stated that upon investigation of the offence and examining the victim child (P.W.2), the de facto complainant (P.W.1) and the other witnesses, she found that while the victim child (P.W.2) was playing outside her house, the appellant lured the victim child (P.W.2) under the guise of allowing her to watch TV at his house and thereafter, gave her chocolates, kissed her, removed her clothes and committed penetrative sexual assault. However, the victim child (P.W.2) has categorically deposed in her oral evidence that there is a TV in her house itself and that she is under the regular habit of watching TV after coming home from school. Further, it is notable that the Investigating Officer (P.W.10) has categorically deposed in her oral evidence that she did not mention in her investigation that she identified a TV in the appellant's house. Moreso, since the de facto complainant (P.W.1) and the victim child (P.W.2) have neither deposed nor stated anywhere about the appellant's TV, it is highly doubtful whether the appellant had a TV in the first place to lure the victim child (P.W.2).



9.5. The place and time of arrest of the appellant is uncertain. The medical memo (Ex.P4) provides that the medical examination took place at 6:50 p.m., whereas, the Investigating Officer (P.W.10) has categorically deposed that the enquiry of the appellant and recording of his confession statement was from around 5.45 p.m. to 6.45 p.m. Therefore, it was impossible for the Investigating Officer (P.W.10) to have taken the appellant to the hospital within 5 minutes from Keerthi Bakery. On the other hand, the Investigating Officer (P.W.10) had deposed that the appellant was apprehended by her near Keerthi Bakery, but, *per contra*, the independent witness to the confession statement has categorically deposed that he did not know the whereabouts of the appellant at the time of his arrest and that after finishing his tea from Keerthi Bakery, he stepped out and enquired with the police as to why there was a crowd. About then, the police had been arresting and obtaining a confession from the appellant. Therefore, there are contradictions in the versions of the prosecution witnesses in respect of the arrest of the appellant and hence, the benefit of doubt is to be given to the appellant.

9.6. The evidence of Dr. Suganya (P.W.7) shows that there is no possibility of penetration as the vagina permits only a little finger. The theory of the prosecution has been inconsistent insofar as the de facto complainant (P.W.1) and the victim child (P.W.2) referring to the hand of the appellant and not the fingers of the appellant. Therefore, there is no material on record to



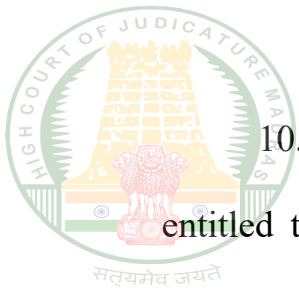
prove penetration and therefore, on this score also, the appellant is entitled to the benefit of doubt.

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9.7. This Court has, in **Ganesan v. State [Crl. A. No. 618 of 2017 decided on 22.06.2022]**, allowed the appeal against conviction for offences under Section 5 r/w Section 6 of the POCSO Act, when there were infirmities in the prosecution case which cumulatively led to a conclusion that the accused has discharged the reverse burden by preponderance of probabilities and that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt. Therefore, the same principle is applicable to the instant criminal appeal and the appellant is, hence, entitled to acquittal.

10. *Per contra*, the learned Government Advocate (Criminal Side) appearing for the respondent submitted as follows:

10.1. The victim child (P.W.2) identified the appellant as the perpetrator and further categorically deposed that the appellant had lured her in the guise of giving her chocolates and had taken her inside his house, where he kissed her and inserted his finger into her vagina. Therefore, the Trial Court had rightly relied on the sole testimony of the victim child (P.W.2) to establish the foundational facts.



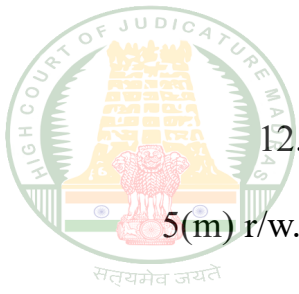
10.2. Upon the foundational facts being established, the prosecution is entitled to the benefit of presumption under Section 29 of the POCSO Act.

Although the appellant has examined his mother as D.W.1 and has pointed out some minor contradictions and inconsistencies, the same would not be sufficient to rebut the statutory presumption.

10.3. Although the victim child (P.W.2) identified the appellant during the oral evidence, in her statement (Ex.P15) under Section 164 Cr.P.C. she has stated that the perpetrator was one “Mohan”. The Trial Court had dealt with the said inconsistency and categorically held that children identify people by physical features and not by names.

10.4. The same is a minor inconsistency and in **Dinesh Kumar Jaldhari v. State of Chhattisgarh [2025 INSC 1317]**, the Supreme Court upheld the conviction although the victim had not named the accused. Hence, the Trial Court, by believing the sole testimony of the victim child (P.W.2), has rightly convicted the appellant for the offence of penetrative sexual assault.

11. Heard the learned counsel appearing for the appellant and the learned Government Advocate (Criminal Side) appearing for the respondent and perused the materials on record.



12. The appellant has been convicted by the Trial Court under Section 5(m) r/w. Section 6 of the POCSO Act. Therefore, what is to be proved to make out an offence under Section 5(m) of the POCSO Act, 2012 is that the victim child (P.W.2) is below 12 years and that the appellant has committed penetrative sexual assault on her.

13. Although there is a minor contradiction in the age mentioned in the birth certificate (Ex.P12) (i.e.08.03.2017) and the school certificate (Ex.P18) (i.e. 08.03.2016), it is not disputed by the appellant and it is certainly not in doubt that the child is below 12 years. Therefore, what remains to be proved is that the appellant has committed penetrative sexual assault on the victim child (P.W.2).

14. The evidence available on record in respect of the penetrative sexual assault is the testimony of the victim child (P.W.2), whereas, the medical evidence does not support the testimony of the victim child (P.W.2). Hence, it is necessary to ascertain if conviction and sentence could be rendered on the sole basis of the testimony of the victim child (P.W.2) when the medical evidence is inconsistent with the said testimony. This Court finds that this question is no longer *res integra* and that the same has been settled by a 3 Judge Bench of the Supreme Court in **Nirmal Premkumar v. State [(2024) 20 SCC 293]**. As per the ratio of the said ruling, the Court can rely on the sole testimony of the victim child as a 'sterling witness' without any further corroboration, provided the



quality and credibility of the testimony are exceptionally high. In other words, the statement of the victim child ought to be consistent from the beginning to the end i.e., from the initial statement to the oral testimony without creating any doubt in the case of the prosecution. Thus, what is required to be seen is whether the testimony of the victim child (P.W.2) is of exceptionally high quality and is without material contradictions and inconsistencies.

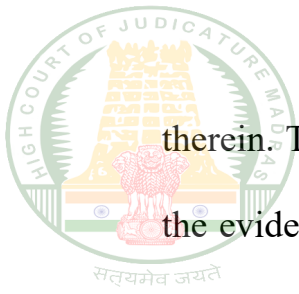
15. On a critical examination of the testimony of the victim child (P.W.2) and her statement (Ex.P15) under Section 164, Cr.P.C., this Court finds that the victim child (P.W.2), in her statement (Ex.P15) under Section 164 Cr.P.C., stated that one Mohan committed penetrative sexual assault on her. However, the victim child (P.W.2) deposed during her oral evidence that the appellant lured her in the guise of giving her chocolates and took her to his house where he kissed her and inserted his hand into her vagina. This is the only contradiction that the appellant has been able to point out before this Court. Although the victim child (P.W.2) has mentioned the name of the perpetrator wrongly, the Trial Court has come to the conclusion, upon taking into consideration the demeanour of witness, that the victim child (P.W.2) of 5 years would remember and recollect a person by their appearance than by his name. This conclusion arrived at by the Trial Court is further supported by the fact that the victim child (P.W.2) identified the appellant as the perpetrator. When the victim child (P.W.2) has identified the appellant, the contradiction as to the name, stands clarified and pales into insignificance and thus, the appellant



cannot be permitted to harp upon such a minor contradiction. Other than the said contradiction, there is no other contradiction or inconsistency in the victim child's (P.W.2's) evidence and therefore, this Court is satisfied and convinced that the victim child's (P.W.2's) testimony is of exceptionally high quality and hence, this Court is inclined to confirm the conviction of the appellant based on the sole basis of the testimony of the victim child (P.W.2) without requiring further material to corroborate her testimony.

16. At this juncture, this Court highlights that corroboration is not a rule of thumb and is merely a rule of prudence, and therefore, the appellant cannot seek corroboration as a right. The testimony of the victim child (P.W.2) has inspired confidence of the Trial Court and on critical scrutiny of the same, it still continues to inspire confidence of this Court and hence, this Court is inclined to rely upon the same without any further material for corroboration.

17. It was in this regard that the learned Government Advocate placed reliance on **Dinesh Kumar Jaldhari**, *supra*, wherein the Supreme Court upheld the conviction although the victim child therein had not named the accused therein. However, this Court finds that the facts in **Dinesh Kumar Jaldhari**, *supra*, were that when the oral evidence of the child victim therein was being recorded, the accused therein was shown to the victim therein for her to identify the accused therein. When the accused therein was shown to the victim therein, the victim therein was startled and scared by the presence of the accused



therein. Therefore, the Trial Court therein was not able to further continue with the evidence of the victim child therein and hence, the victim child therein had not named the accused therein. But, in the instant case, the victim child (P.W.2) had identified the appellant as the perpetrator of the crime and had further given her testimony before the Trial Court. Therefore, the reliance on **Dinesh Kumar Jaldhari**, *supra*, cannot be applied to the facts of the present case. However, it would be irrelevant at this juncture, as this Court has already held that the contradiction in naming the appellant, is not fatal to the prosecution's case.

18. Next, the appellant pointed out that there was delay in giving the complaint (Ex.P1) and that there were certain investigatory lacunae with respect to the arrest of the appellant and the drawing of the rough sketch (Ex.P16) and observation mahazar (Ex.P3). However, the appellant has not proved them in accordance with the procedure contemplated under Section 162 Cr.P.C. and hence, the appellant is not entitled to rely on them to disprove the prosecution's case. Further, these aspects do not and cannot, by themselves, entitle the appellant to acquittal and it is for the appellant to demonstrate that these aspects have resulted in prejudice to him to entitle him for acquittal. Thus, this Court finds that although the appellant has attempted to demonstrate these lacunae by way of cross-examination, the appellant has neither satisfied the procedure under Section 162 Cr.P.C. nor taken any initiative to demonstrate prejudice. Hence, owing to lack of prejudice, these aspects pointed out by the appellant cannot be said to be fatal to the case of the prosecution. Therefore,



when the prosecution has established the foundational facts that would entitle them to the benefit of presumption under Section 29 of the POCSO Act, the appellant has to sufficiently rebut the presumption by preponderance of probabilities and not by mere suggestion of minor contradictions, which have not been established by the appellant in the manner contemplated under law.

19. In this regard, the appellant has placed reliance on **Ganesan, supra**, to claim that when the infirmities in the prosecution case cumulatively lead to a conclusion that the accused has discharged the reverse burden by preponderance of probabilities, he is entitled to acquittal. Although this Court does not differ with the law laid down therein, this Court finds that in the instant case, the infirmities have been attempted to be established by drawing contradictions in the statement of various witnesses and as held in the preceding paragraph, such contradictions have not been established in the manner contemplated under law. Therefore, when the contradictions do not stand established, the infirmities claimed cannot be drawn from them to entitle the appellant to acquittal.

20. Having found so, this Court still finds that the appellant's attempt to demonstrate that the prosecution has not been able to establish penetration, needs to be looked into, to confirm a conviction under Section 6 of the POCSO Act. In that regard, this Court finds that the treatment particulars (Ex.P13) of Dr.Suganya (P.W.7) provide that a known man had committed sexual assault on the victim child (P.W.2) by removing her clothes and trying to insert his middle



finger into her vagina. Supporting the said treatment particulars (Ex.P13), Dr. Suganya (P.W.7) deposed that the victim child (P.W.2) and the de facto complainant (P.W.1) had informed her that a known man had committed sexual assault on the victim child (P.W.2) by removing the victim child (P.W.2)'s clothes and trying to insert his middle finger into her vagina. But, to the contrary, the case of the prosecution is that the appellant had committed penetrative sexual assault by inserting his hand. In this regard, the Trial Court has considered that the victim child (P.W.2) may not know the difference in the usage of the words 'hand' and 'finger' and the victim child (P.W.2) might have used the words interchangeably. Assuming so, the prosecution case is still contrary to the evidence of Dr. Suganya (P.W.7), inasmuch as, firstly, Dr. Suganya (P.W.7) deposed that it was an attempt and that there was no actual penetration and secondly, she deposed that the attempt was for insertion of the middle finger. To be noted, the attempt to insert the middle finger without injuries was impossible as Dr. Suganya (P.W.7) concluded her examination by stating that the victim child's (P.W.2's) vagina permits only the little finger. To put it differently, had really the appellant attempted to insert his middle finger into the vagina of the victim child (P.W.2) who was in the age group 5 or 6 years, there ought to have been injuries in her vagina. But, it is the candid deposition of Dr. Suganya (P.W.7) that there were no injuries in the vagina of the victim child (P.W.2). To further add, the evidence of the victim child (P.W.2) is also not coherent. Therefore, it is doubtful as to whether there was only an



attempt to penetrate or penetration of the finger or hand, as per the version of the prosecution. (emphasis supplied)

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21. Taking into consideration the above, this Court finds that it is highly improbable that the appellant had committed the penetrative sexual assault on the victim child (P.W.2) and therefore, this Court concludes that the offence under Section 5(m) of the POCSO Act has not been established beyond doubt to convict/sentence the appellant under Section 6 of the POCSO Act.

22. However, although penetration has not been established by the prosecution, the same does not rule out sexual assault under Section 9(m) of the POCSO Act. The victim child (P.W.2) has categorically deposed that appellant had removed her clothes and fiddled with her vagina and therefore, even though penetration has not been established, the appellant having removed the clothes of the victim child (P.W.2) gives rise to only one conclusion that he had touched the vagina of the victim child (P.W.2) with a sexual intent, which may be presumed by virtue of Section 30 of the POCSO Act. The presumed sexual intent in the instant case, has not been rebutted by the appellant and therefore, having come to the conclusion that the appellant has touched the victim child's (P.W.2's) vagina with a sexual intent, the appellant shall be liable to be convicted under Section 9(m) r/w Section 10 of the POCSO Act.

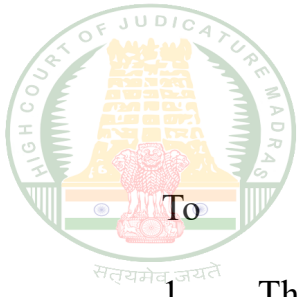
23. In the result, the Criminal appeal stands partly allowed. The impugned judgment passed by the Trial Court is set aside and the appellant is



convicted under Section 9(m) r/w Section 10 of the POCSO Act and sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.5,000/-, in default, to undergo three months of simple imprisonment. The period of detention and imprisonment already undergone, if any, shall be set off. There shall be no further order as to compensation and the compensation paid under the impugned judgment shall hold good. Consequently, connected miscellaneous petition stands closed.

01.07.2026

cad



- To
1. The Inspector of Police
All Women Police Station
Erode District
 2. The Sessions Judge
Magalir Neethi Mandram
(Fast Track Mahila Court)
Erode
 3. The Public Prosecutor
Madras High Court
Chennai 600 104



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Crl.A.No.7 of 2



A.D. JAGADISH CHANDIRA, J.

cad

Judgment in
Crl.A. No.7 of 2024

01.07.2026