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Crl. A. No.48 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 02.04.2026

DELIVERED ON: 05.06.2026

CORAM:

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

Crl. A. No.48 of 2024 and Crl.M.P. No.381 of 2024

Anthoni Raj

Appellant

vs.

The State represented by the  
Inspector of Police  
All Women Police Station  
Jayamkondam  
Ariyalur District  
(Cr.No.18 of 2020)

Respondent

Criminal Appeal filed under Section 374(2) Cr.P.C. to set aside the judgment of conviction and sentence dated 16.10.2023 passed by the Sessions Judge, Fast Track Mahila Court, Ariyalur, made in Special Sessions Case No.42 of 2020 and acquit the appellant.

For appellant  
For respondent

Mr. S. Gopinath  
Ms. J.R. Archana  
Govt. Adv. (Crl. Side)

**JUDGMENT**

The instant criminal appeal is filed by the sole accused (hereinafter referred to as “the appellant”) seeking to set aside the judgment of conviction



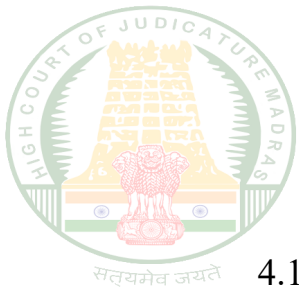
and sentence dated 16.10.2023 passed in Spl. S.C. No. 42 of 2020 (hereinafter referred to as “the impugned judgment”) by the Court of Sessions Judge, Fast Track Mahila Court, Ariyalur (hereinafter referred to as “the Trial Court”).

2. *Vide* the impugned judgment, the Trial Court found the appellant guilty and convicted 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. 5000/- in default to undergo one (1) year of simple imprisonment. |
| Period of detention already undergone by the appellant is to be set off under Section 428 Cr.P.C. |                                         |                                                                       |

3. The Trial Court further recommended that the victim child is entitled to a compensation of Rs.7,00,000/- under the Compensation Scheme for Women Victims/Survivors of Sexual Assault, 2018. The Trial Court also noted that out of the compensation awarded, 80% of the amount shall be deposited in the name of the victim child in any one of the nationalised banks till she attains majority and that the remaining 20% amount shall be used for her medical expenses and welfare.

4. The case of the prosecution as culled out from records is as follows:



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4.1 The victim child/PW1 was aged 4 years, 11 months and 14 days at the time of commission of the offence and the appellant is the father of the victim child's friend.

4.2 On 11.08.2020, the appellant found his daughter/PW3 and the victim child/PW1 playing outside their house and took them in his TVS XL Super/M.O.1 and went to the Ayyanar Koil Lake for giving them a bath. While giving the children their bath, the appellant inserted his finger into the vagina of the victim child/PW1. The victim child/PW1 was crying in pain and hence, the appellant who was afraid of being caught, brought back the children and dropped them at their house.

4.3 The overt act of the appellant was disclosed by the appellant's very own daughter to a neighbour of theirs, viz., Santhi/PW4, who, in turn, informed the victim child's mother/PW2 (hereinafter referred to as "the *de facto* complainant") of the appellant's overt act.

4.4 Owing to the victim child/PW1 suffering in pain and on the advice of the neighbours, the *de facto* complainant/PW4 took the victim child/PW1 to the Anikurichaan Primary Health Care Centre. The staff nurse/PW8 at the said Health Care Centre referred the victim child/PW1 to Jayamkondam

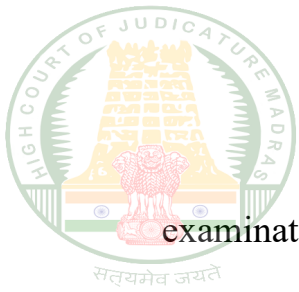


Government Hospital for treatment. The doctor at Jayamkondam Government Hospital, namely Dr. Divya /PW12 examined the victim child/PW1 and observed in the Accident Register/Ex P9 that the victim child's hymen was torn horizontally by 2 mm and opined that she might have undergone penetrative sexual assault.

4.5 As a consequence of such observation, Dr. Divya/PW12 informed the AWPS, Jayamkondam, who, in turn, received a complaint, registered a case in Crime No.18/2020/Ex P11 under Section 363, Section 366-A, Section 376-AB of the IPC, 1860 and Section 5(m) r/w. Section 6 of the POCSO Act.

4.6 The Inspector of Police, AWPS Jayamkondam/PW14, on 12.08.2020, took up the case for investigation and went to the scene of occurrence and prepared an observation mahazar/Ex P2 and rough sketch/Ex P12. Thereafter, based on secret information, she arrested the appellant and recorded his voluntary confession statement under Ex.P6 and seized his TVS XL Super/MO 1.

4.7 P.W.14, on the same day (i.e.12.08.2020), sent a requisition letter for the medical examination of the appellant to the Jayamkondam Government Hospital where the doctor examined the appellant and opined under medical



examination report/Ex.P8 that there were no bloodstains or tissue traces in the nails of the appellant.

4.8 Thereafter, PW 14, on 13.08.2020 and 14.08.2020, examined and recorded the statement of witnesses and on 28.08.2020, took the victim child/PW1 before the Judicial Magistrate No. 2 for recording the statement of the victim child/PW1 under Section 164 Cr.P.C./Ex.C-1. Thereafter, PW 14 was transferred and the succeeding Investigating Officer/PW 15 took up the case for investigation.

4.9 On 18.09.2020, PW15 sent a letter requesting the birth certificate of the victim child/PW1 to the Tahsildar, who, in turn, issued the birth certificate as per the records of the Andimadam Primary Health Care Centre/Ex P5.

4.10 Thereafter, P.W.15 completed the investigation and collated all the materials available and filed a final report before the Trial Court on 25.09.2020.

5. On appearance of the appellant, the Trial Court, in compliance of Section 207 of CrPC, furnished a copy of the final report and other documents to the appellant and framed charges against him for having committed the offence under Section 366 and Section 376-AB of the IPC and Section 6 of the



POCSO Act, (To be noted, though the victim child/PW1 was below 12 years of age on the date of occurrence, the Trial Court did not frame a charge under Section 5(m) of the POCSO Act). When the charges were read over and explained to the appellant, he pleaded not guilty.

6. In order to prove the prosecution case, the prosecution examined 15 witnesses and marked 12 documents. The evidence of key witnesses, in brief, which is germane for deciding this case, is as follows:

6.1 The victim child/PW1 deposed that she knew the appellant and that the appellant took her to the lake and inserted his finger in her vagina. She added that her mother enquired about the incident and that no other person enquired her about the same. During the cross-examination, she clarified that while she was taken to the lake by the appellant, the appellant's daughter had also accompanied them and that the appellant helped the two to take bath in the lake.

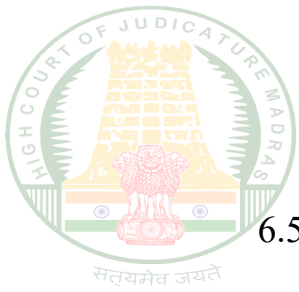
6.2 The *de facto* complainant/PW2 deposed that in the month of August, 2020, she came back home from her agricultural work at around 12 noon and that her neighbours informed her that the appellant had taken the victim child/PW1 to the lake and cashew grove and had touched the victim child's vagina. When she enquired with the victim child/PW1, the latter was



continuously crying and refused to inform her anything. The neighbours advised her to take the victim child/PW1 to hospital and, hence, she took the victim child/PW1 to the Anikurichaan Primary Health Care Centre and thereafter, to Jayamkondam Government Hospital and also gave a complaint/Ex P1 to the AWPS, Jayamkondam, in this regard.

6.3 P.W.3 is the appellant's daughter and the friend of the victim child/PW1. She was continuously crying and also refused to give any statement and hence, her statement was not recorded by the Trial Court.

6.4 P.W.4 is Santhi, a neighbour of the *de facto* complainant/PW2. She deposed that she knew the appellant and that when she went to shop, the appellant's daughter told her that the appellant had taken the victim child/PW1 to give her a bath. Since she did not support the case of the prosecution with regard to the knowledge of sexual assault, she was treated hostile and while being cross-examined by the prosecution, she denied that she had informed the police that the appellant had taken the victim child and had inserted his finger in the victim child's vagina. Lastly, she admitted in the cross-examination by the appellant that she had not informed the police that the appellant had taken the victim child/PW1.



6.5 P.W.8. is a staff nurse at the Anikurichaan Primary Health Care Centre. She deposed that the *de facto* complainant/PW2 brought the victim child/PW1 to the Anikurichaan Primary Health Care Centre complaining that while she was playing outside their house, a known neighbour had inserted his finger into the vagina of the victim child/PW1. She further deposed that she recommended the *de facto* complainant/PW2 to take the victim child/PW1 to the Jayamkondam Government Hospital for proper treatment.

6.6 P.W.9. is the Tasildhar who deposed that the police sent a requisition letter requesting for the birth certificate of the victim child/PW1 and based on such request, he verified the Register of Births and Deaths and provided a birth certificate showing the date of birth of the victim child/PW1 as 28.08.2015.

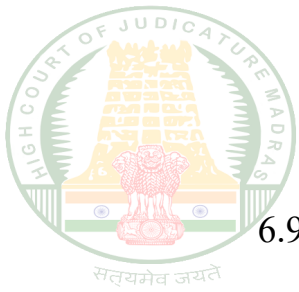
6.7 P.W. 11 is Dr. Mohan, who examined the appellant. He deposed that on 12.08.2020, based on the requisition letter received from P.W14, he examined the appellant's fingers and observed that there were no traces of bloodstains or muscle tissue in the nails of the appellant. He further deposed that when a finger is inserted in the vagina, there may be injuries or there may



not be injuries in the vagina and if there are no injuries, there is no chance of there being any traces of bloodstains or muscle tissue in the nails.

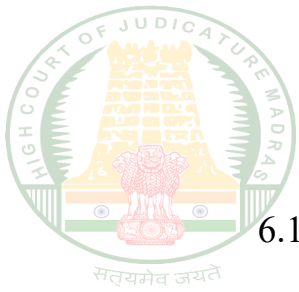
6.8 P.W.12. is Dr. Divya, who examined the victim child/PW1. She deposed that on 11.08.2020, based on the referral slip signed by the staff nurse, Anikurichaan Primary Health Care Centre, the *de facto* complainant/PW2 brought the victim child/PW1 for treatment. Since the victim child/PW1 was continuously crying, she enquired the *de facto* complainant/PW2 who stated that she was informed by her neighbour Santhi/PW4, that the appellant had inserted his finger into the vagina of the victim child/PW1. On examination of the victim child/PW1, there were no internal or external injuries. The hymen of the victim child/PW1 was ruptured to the extent of 2 mm. and thus, it was apparent that the victim child/PW1 had undergone sexual assault, and had given an opinion that there is a possibility of hymen rupture due to insertion of finger. Lastly, during the cross-examination, Dr.Divya/PW12 admitted that she was not enquired by the Police in relation to the case. As per Accident Register/Ex.P.9 issued by Dr. Divya/PW12, the list of injuries noted therein are as follows:

- a. Pain in perineal area
- b. GC fair
- c. PR/88mm
- d. P/A-Soft
- e. No external injuries made out all over the body, breast and external genitalia
- f. Hymen opening is about 2 mm in diameter.



6.9 P.W.14 is Sumathi, the previous Inspector of Police, AWPS,

Jayamkondam, who began the investigation of the case. She deposed that on 12.08.2020, she took up the case for investigation and went to the scene of occurrence and prepared an observation mahazar and rough sketch. Thereafter, based on secret information, she arrested the appellant, recorded his voluntary confession statement and seized his TVS XL Super/MO1. She, on the same day (i.e.12.08.2020), sent a requisition letter for the medical examination of the appellant to the Jayamkondam Government Hospital where the doctor examined the appellant and opined that there were no traces of muscle tissue in the nails of the appellant. Lastly, on 13.08.2020 and 14.08.2020, she examined and recorded the statement of witnesses and on 28.08.2020, took the victim child/PW1 before the Judicial Magistrate No.2 for recording the statement of the victim child/PW1 under Section 164 Cr.P.C. and handed over the case records to Chandrakala, Inspector of Police, AWPS, Jayamkondam Police/PW15. Further, in the cross-examination, she admitted that although in her investigation, she came to know that the appellant had taken his daughter/PW3 and the victim child to the lake for giving them a bath, the rough sketch does not contain the Ayyanar Kovil Lake and that the place of occurrence, according to her, was Durairaj's R.S.Pathy Plantation.

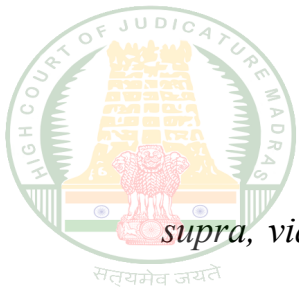


6.10 P.W.15 is Chandrakala, Inspector of Police, AWPS, Jayamkondam

Police who took over the investigation from P.W.14. She deposed that on 18.09.2020, she sent a letter to the Tahsildar requesting the birth certificate of the victim child/PW1, who had, in turn, issued the same as per the records of the Andimadam Primary Health Care Centre. Thereafter, she completed her investigation and collated all the materials available and filed a final report on 25.09.2020. Further, in the cross-examination, she admitted that although it has been mentioned in the final report that the place of occurrence was the Ayyanar Kovil Lake, the observation mahazar and the rough sketch do not contain Ayyanar Kovil Lake at all and that as per the said two documents, the place of occurrence was Durairaj's R.S.Pathy Plantation.

7. Thereafter, when the appellant was questioned under Section 313 of Cr.P.C., on the incriminating circumstances appearing against him, he blatantly denied the same without offering any explanation whatsoever and he did not examine any witness or mark any document on his side.

8. The Trial Court, after hearing the arguments on both sides, found the accused guilty and convicted and sentenced him as tabulated at paragraph 2,



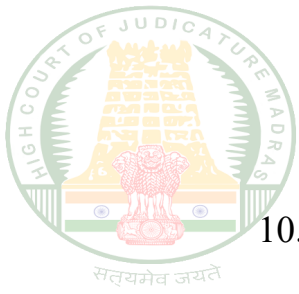
*supra*, vide the impugned judgment challenging which this criminal appeal has been filed by the sole accused.

9. The learned counsel for the appellant made the following submissions:

9.1 The Trial Court failed to properly appreciate the evidence on record and erred in convicting the appellant.

9.2 The evidence on record would go to show that the place of occurrence is doubtful and the Trial Court failed to note that both the Investigating Officers/PW14 & PW 15 had not visited the scene of occurrence and therefore, it creates a serious doubt in the prosecution case.

9.3 PW3 (appellant's daughter) who is said to have accompanied the victim child/PW1 at the time of occurrence has not at all supported the case of the prosecution and Santhi/PW4, neighbour of the *de facto* complainant has not supported the case of the prosecution in respect of the appellant's overt act and in such circumstances, the Trial Court ought not to have believed the case of prosecution and ought to have acquitted the appellant.



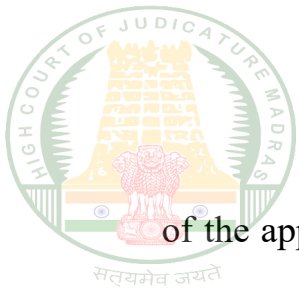
10. Based on the above submissions, the learned counsel for the appellant sought allowing of this criminal appeal.

11. *Per contra*, the learned Government Advocate (Criminal Side) appearing for the respondent advanced the following submissions:

11.1 The age of the victim child/PW1 has been proved and has not been disputed. The victim child/PW1 has also identified the appellant as the perpetrator and further she categorically deposed that the appellant took her to the Ayyanar Kovil Lake and inserted his finger into her vagina.

11.2 The medical evidence as well as the testimony of the *de facto* complainant/PW2 was also consistent with that of the victim child/PW1 and therefore, the Trial Court had rightly relied on the sole testimony of the victim child/PW1 to establish the foundational facts.

11.3 PW3, the friend of the victim child/PW1 is none other than the daughter of the appellant and since she was crying in the dock and refused to answer the questions, the Trial Court could not record her evidence and the fact

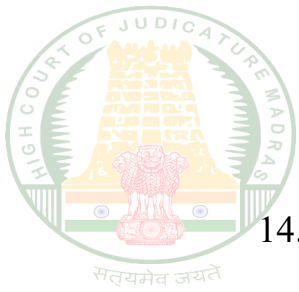


of the appellant's daughter refusing to speak anything and crying in the dock is a pointer itself against the appellant.

11.4 Upon the foundational facts being established, the prosecution is entitled to the benefit of the presumption under Section 29 of the POCSO Act and the minor contradictions and inconsistencies pointed out by the appellant in the police investigation would not be sufficient to rebut the statutory presumption, more particularly, when the testimony of the victim child/PW1 was cogent and consistent with the medical evidence.

12. Based on the above submissions, the learned Government Advocate (Crl. Side) submitted that the Trial Court has rightly believed the testimony of the victim child/PW1 in convicting the appellant for the offence of penetrative sexual assault and hence, the impugned judgment does not warrant interference.

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



14. The appellant has been convicted by the Trial Court under Section 5(m) r/w. Section 6 of the POCSO Act, 2012. As already alluded to at paragraph 5, *supra*, the Trial Court, has not stated in the impugned judgment that the appellant is convicted for the offence under Section 5(m) of the POCSO Act. Be that as it may, now, what is to be proved to make out an offence under Section 5(m) of the POCSO Act is that the victim child is below 12 years and that the appellant has committed penetrative sexual assault. The prosecution by marking the birth certificate/Ex.P5 of the victim child/PW1, has proved that the victim child was born on 28.08.2015 and she was aged less than 12 years on the date of occurrence and it is also not disputed by the appellant. Therefore, it is certainly not in doubt that the victim child/PW1 is below 12 years. Thus, what remains to be proved is that the appellant has committed penetrative sexual assault on the victim child/PW1.

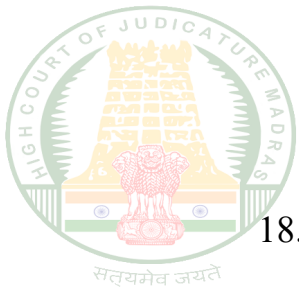
15. The evidence available on record in respect of the penetrative sexual assault are the testimony of the victim child/PW1 supported by the medical evidence as well as the testimony of Dr. Divya/PW12. Although the testimony of the *de facto* complainant/PW2 is consistent with the testimony of the victim child/PW1, it is the case of the appellant that the *de facto* complainant/PW2 came to know about the incident from Santhi/PW4 who is her



neighbour and that the said Santhi/PW4 had not supported the case of the prosecution *qua* sexual assault and that the *de facto* complainant/PW2 is also only a hearsay witness and hence, her testimony cannot be given much credence.

16. Admittedly, it is a case of penetrative sexual assault on a victim child aged less than 12 years. Hence, even eschewing the evidence of the other witnesses, if the Court finds that the evidence of the victim child as supported by medical evidence inspires the confidence of this Court, it would be sufficient for holding the guilt of the accused.

17. The difficulty remains only insofar as connecting the appellant to the overt act of penetrative sexual assault. In this regard, as stated already, the sole evidence available on record, is the testimony of the victim child/PW1 as the other witnesses (i.e. appellant's daughter/ PW3 & Santhi/PW4), have not supported the case of the prosecution. Hence, it becomes imperative to ascertain if the overt act could be pinned on the appellant on the sole basis of the testimony of the victim child/PW1 when the eyewitness/PW3 has not supported the case of the prosecution.



18. In this regard, this Court finds that the question is no longer *res integra* and that the same has been settled by a 3 Judge Bench of the Apex Court in **Nirmal Premkumar v. State**<sup>1</sup>. 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 but the quality and credibility of the testimony must be exceptionally high and the statement of the victim child ought to be consistent from the beginning to the end and from the initial statement to the oral testimony without creating any doubt in the prosecution’s case. In the backdrop of this judgment of the Supreme Court, what is left to be seen is whether the testimony of the victim child/PW1 is of exceptionally high quality and is without material contradictions and inconsistencies.

19. In the case on hand, first and foremost, this Court finds that the victim child’s testimony has been consistent right from her statement under Section 164 Cr.P.C. till her testimony during trial. Further, although this Court is aware that the testimony of the *de facto* complainant/PW2 is hearsay evidence, this Court finds it to corroborate and be consistent with the victim child’s testimony. That apart, the testimony of Dr. Divya/PW12 as well as the medical evidence i.e., Accident Register/Ex.P9 is also very much consistent with the testimony of the victim child/PW1. Therefore, this Court is of the opinion that

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<sup>1</sup>(2024) 20 SCC 293



the testimony of the victim child/PW1 is without any inconsistency throughout and is of sterling and unimpeachable quality so as to inspire confidence of this Court to rely on the same for upholding the conviction of the appellant.

20. Now, coming to the evidence of the victim child/PW1, she had categorically and vividly deposed about the overt act committed by the appellant and her evidence is supported by the evidence of Dr. Divya/PW12 who had issued the Accident Register/Ex.P.9 which clearly indicates a hymen rupture to the extent of 2 mm. which has been clarified by her that the same may be as a result of penetration of the appellant's finger. Therefore, it can safely be held that the offence of penetrative sexual assault has been categorically proved by the prosecution.

21. Lastly, what remains to be seen is whether the contradiction in respect of the place of occurrence in the case of the prosecution would be sufficient to rebut the presumption under Section 29 of the POCSO Act. At this juncture, this Court reminds itself of the settled proposition that when the foundational facts have been established by the prosecution entitling the prosecution to the benefit of presumption under Section 29, it may be presumed that the appellant has committed the offence of penetrative sexual assault,



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unless the contrary is proved by the appellant. Therefore, merely creating a doubt in the police investigation since there is a contradiction with regard to the place of occurrence, would not be sufficient to rebut that presumption as to the commission of the offence. The contradictions in the investigation in the instant case do not create any doubt as to the appellant's overt act and therefore, it cannot be said that the appellant has rebutted the presumption of having committed the offence by preponderance of probabilities. Hence, the contradictions, as pointed out by the learned counsel for the appellant in the police investigation, are not sufficient to rebut the presumption under Section 29 of the POCSO Act.

22. In view of the foregoing discussion, this Court finds that the Trial Court has rightly considered the evidence as a whole and therefore, in the opinion of this Court, the Trial Court is right and just in finding the appellant guilty and sentencing him as tabulated at paragraph 2, *supra*. Accordingly, this Court finds no necessity for interfering with the impugned judgment.

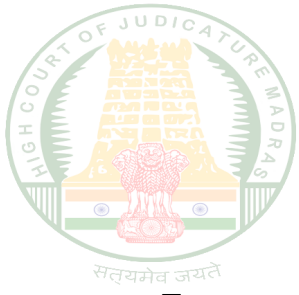


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In the result, the impugned judgment is upheld and this criminal appeal stands dismissed. Consequently, connected miscellaneous petition stands closed.

**05.06.2026**

cad



CrI. A. No.48 of 2021

To  
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1. The Inspector of Police  
All Women Police Station  
Jayamkondam  
Ariyalur District
2. The Sessions Judge  
Fast Track Mahila Court  
Ariyalur
3. The Public Prosecutor  
Madras High Court



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CrI. A. No.48 of 2024

**A.D. JAGADISH CHANDIRA, J.**

cad

Judgment in  
CrI.A. No.48 of 2024

05.06.2026