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Crl.A. No. 15 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2026

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.A. No. 15 of 2024

Kuttiyandi

..Appellant

Vs.

1.State represented by
The Inspector of Police,
Thavalakuppam P.S.
Pondicherry.(Cr.No.9/2021)

2.XXXX

XXXXX

XXXXX

Puducherry – 605 007.

..Respondents

(R2/defacto complainant is impleaded as
per the order of this Court dated 09.01.2026
in Crl.M.P.No.311 of 2026 in Crl.A.No.15/2024)

Prayer: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973, to set aside the Judgment and order of conviction and sentence dated 04.04.2023, passed in Special SC.No.47/2023 by the Special Court, Pondicherry, thereby acquitting the accused.



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For Appellant :: Mr.R.Sankarasubbu
For Respondents :: Mr.M.V.Ramachandra Murthy,
Public Prosecutor (Puducherry)
for R1
Mr.R.Vivekanandan for R2

J U D G M E N T

The appeal challenges the conviction and sentence imposed on the appellant for the offences under Section 10 of the POCSO Act and Section 506(i) of IPC.

2.(i) The case of the prosecution is that in the Month of May 2019, the appellant had committed aggravated sexual assault on the victim girl, aged about 10 years at the time of occurrence, by touching her private parts on several occasions and thus committed the aforesaid offences.

(ii) The father of the victim girl, PW1, had lodged a complaint against the appellant before the Child Welfare Committee on 01.02.2021 alleging that he came to know from one Manivannan PW6, that the appellant had committed aggravated sexual assault, by touching the chest and the back of the victim girl, in the guise of drying her with a towel after she came out



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of the bathroom. The said complaint was forwarded by PW7 to PW8.

Thereafter, PW8, conducted an enquiry and forwarded the complaint of PW1 to the Superintendent of Police. PW11, the Sub Inspector of Police on receipt of the complaint had registered a case in Crime No.9 of 2021 for the offences under Section 8 of the POCSO Act. The FIR was marked as Ext.P6. Thereafter, the Investigation was conducted by PW12, who filed the final report against the appellant for the offences under Section 10 of the POCSO Act and Section 506(ii) of IPC before the trial Court. The trial Court framed charges against the accused under Section 10 of the POCSO Act and under Section 506(ii) of IPC, and when questioned, the appellant pleaded 'not guilty.

(iii) The prosecution examined 12 witnesses and marked Exts.P1 to P8. When the appellant was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. The appellant had examined DW1 and DW2 and marked Exts.D1 to D4.



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(iv) On appreciation of oral and documentary evidence, the Trial

Court found that the prosecution had established the case beyond reasonable doubt, and held the accused guilty of the offences under Section 10 of the POCSO Act and Section 506(i) of IPC. The Trial Court sentenced him to undergo five years rigorous imprisonment and to pay a fine of Rs.1000/-, in default, to undergo rigorous imprisonment for six months for the offence under Section 10 of the POCSO Act and also sentenced him to undergo one year rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for three months for the offence under Section 506(i) of IPC. Hence, the accused/appellant has preferred the appeal challenging the said conviction and sentence.

3.Heard Mr.R.Sankarasubbu, the learned counsel appearing for the appellant/accused, and Mr.M.V.Ramachandra Murthy, learned Public Prosecutor (Puducherry) appearing for the respondent/State, and also perused the record.



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4.Mr.R.Sankarasubbu, the learned counsel for the appellant would submit that the complaint was lodged 1 ½ years after the alleged occurrence; that PW1 cannot be believed; that according to PW1, he came to know of the occurrence from PW6 Manivannan, who came to know of the occurrence from PW4, the wife of the appellant; that both PW4 and PW6 turned hostile; that the wife of PW1 examined as PW5 also turned hostile; that the prosecution had not established the charge under Section 10 of the POCSO Act and the evidence of the victim does not inspire confidence. He would further submit that the victim was not subjected to medical examination. Therefore, he submitted the trial Court ought not to have found the petitioner guilty of the aforesaid offences.

5.Heard the learned Government Advocate (Crl. Side), who would submit that the victim was a girl aged about 10 years at the time of the occurrence; that her evidence is cogent and convincing; that she has been consistent in her version throughout the investigation and in Court; that there is no reason to suspect the evidence of the victim; and therefore, submitted



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that the trial Court was justified in convicting the appellant for the aforesaid offences.

6.The defacto complainant PW1 has sought the leave of this Court to implead himself in the above appeal. This Court permitted the defacto complainant to implead and file the written submissions. The defacto complainant has also filed the written statement reiterating the facts of the case and submitting that the victim's evidence is cogent and convincing and that nothing has been elicited by the defence to disbelieve PW2, the victim.

7.As stated earlier, the prosecution has examined 12 witnesses on its side. PW1 is the father of the victim girl and the defacto complainant. PW2 is the victim. PW3 is the grandmother, who is a hearsay witness. PW4 is the wife of the appellant. PW5 is the wife of PW1 and the mother of the victim. PW6 is the friend of PW1. PW4 to PW6 turned hostile. PW7 is a worker in the Child Welfare Committee. PW8 is the Chairperson of the Child Welfare Committee, who forwarded the complaint of PW1 to the Police. PW9 is the Police Photographer. PW10 had assisted the investigating



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officer during investigation. PW11 registered the FIR. PW12 is the investigating officer, who filed the final report.

8.The case of the prosecution as narrated in the charge is that the appellant had touched the private parts of the victim inappropriately on several occasions in the Month of May 2019. The alleged occurrence took place on 20.05.2019 as per the FIR. The victim would depose that the appellant had inappropriately touched her chest and her back. According to PW2, the victim, she had informed about the alleged occurrence to her mother PW5; that PW5 had told her not to disclose the said occurrence to any other person, especially PW1, the father and that therefore, she did not disclose the occurrence to any person. PW2 also would state that apart from the occurrence said to have taken place on 20.05.2019, the appellant was in the habit of inappropriately touching her chest while he took her in a bike to drop her in school along with her brother.

9.According to PW1, the father of the victim, he was not aware of the alleged occurrence when the alleged occurrence took place. His version



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is that he came to know of the occurrence through PW6. It is the prosecution case that PW4 had informed PW6 that the appellant had informed PW4 about the occurrence. However, the said fact has not been established as both PW4 and PW6 have turned hostile. It is also seen that PW5, the mother of the victim girl also turned hostile.

10.It is in these circumstances that we have to analyse the evidence of PW1 and PW2. Admittedly, PW1 was not aware of the occurrence and therefore, except for the fact that he is the defacto complainant, he is of no avail to the prosecution to prove the case. The victim PW2 had stated about the alleged sexual assaults committed on her by the appellant. Her version is that she informed PW5 about the occurrence and PW5 told her not to disclose it to anybody else. This fact is also not corroborated as PW5 turned hostile.

11.The question is whether the appellant can be convicted on the sole testimony of the victim girl, who had not disclosed about the alleged occurrence to any person. The fact that PW5, the mother of the victim girl



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has turned hostile assumes significance in this case. It is improbable for the mother not to disclose or tell the victim girl not to disclose the occurrence to any third person, if such an occurrence infact had taken place. Further, the prosecution version that the appellant had informed his wife (PW4) that he had inappropriately touched the victim also appears to be highly improbable. Even assuming that the appellant had committed such an offence, he would not tell his wife that he had committed sexual assault on the victim.

12.In such circumstances, it is highly unsafe to convict the appellant on the sole testimony of the victim girl as it is highly probable that she was tutored by PW1. In a case of this nature, where bad touch is alleged, one cannot expect corroboration from the medical examination also. In this case, the victim was also not subjected to medical examination. It is also seen that the defence have elicited in the cross-examination of PW1 that he had a grudge against the appellant, since he had supported PW1's wife in a matrimonial dispute between PW1 and his wife. Therefore, for all the reasons, this Court finds that the impugned Judgment of conviction cannot be sustained.



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13. In the result, this Criminal Appeal is allowed, and the appellant is acquitted of the charges under Section 10 of the POCSO Act and Section 506(i) of the Indian Penal Code. The conviction and sentence passed in Spl.S.C.No.47 of 2021 on the file of the learned Special Court, Pondicherry dated 04.04.2023 are set aside. The fine amount, if any, paid by the appellant shall be refunded. Bail bond, if any, executed shall stand discharged.

27.01.2026

Neutral Citation: Yes/No

Tsg

To

1. The Special Court, Pondicherry.

2. The Inspector of Police,
Thavalakuppam P.S.
Pondicherry.

3. The Public Prosecutor,
High Court, Madras.

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SUNDER MOHAN,J.

Tsg

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