



Crl.A.(MD) No.72 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 02.03.2026

CORAM:

**THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH
and
THE HONOURABLE MR.JUSTICE P.DHANABAL**

Crl.A.(MD) No.72 of 2023

Jayaraj

... Appellant

-vs-

The Inspector of Police
All Women Police Station,
Kumbakonam

...Respondent

Criminal appeal filed under Section 374(2) of Cr.P.C., to call for the records and set aside the judgment dated 23.12.2022 passed in Spl.S.C.No.64 of 2019 on the file of the learned Principal Special Court for trial of cases under POCSO Act, Thanjavur

For Appellant : Mr.C.Muthusaravanan

For Respondent : Mr.A.Thiruvadikumar
Additional Public Prosecutor



Crl.A.(MD) No.72 of 2023

J U D G M E N T

WEB C P.DHANABAL, J.

Challenging the conviction and sentence rendered by the Principal Special Court for trial of cases under POCSO Act, Thanjavur, in Spl.S.C.No.64 of 2019 dated 23.12.2022, the present criminal appeal has been filed by the accused.

2. The accused has been charged for the offences under Sections 448, 366 of IPC and Section 6 r/w.5(i) and 6 r/w.5(j) of POCSO Act.

3. The trial Court has convicted the accused as follows:

Penal Provisions	Sentence of Imprisonment	Fine Amount
5(i) r/w.6 of POCSO Act	Life Imprisonment	Rs.2,00,000/- i/d to undergo one year rigorous imprisonment
448 of IPC	One year rigorous imprisonment	Rs.1000/- i/d to undergo three months rigorous imprisonment
366 of IPC	Seven years rigorous imprisonment	Rs.10,000/- i/d to undergo six months rigorous imprisonment



Crl.A.(MD) No.72 of 2023

4. The case of the prosecution is that on 14.10.2017 while the victim was alone in her house the accused trespassed into the house from the backyard and took the victim girl who is aged about 15 years to his house kitchen and committed penetrative sexual assault. The complaint was lodged by the mother of the victim girl on the same day at about 6.30 p.m. Based on the complaint given by the mother of the victim before the All Women Police Station, Kumbakonam First Information Report was registered in Crime No. 12 of 2017 for the offences under Sections 3(a) r/w 4 of POCSO Act @366 of IPC, Section 6 r/w.5(i),8 r/w7, 3(a)r/w.4 of POCSO Act. Thereafter the Investigation Officer had conducted investigation went to the place of occurrence and prepared observation mahazhar/Ex.P.4, rough sketch/Ex.P.13 and examined the mahazhar witnesses/P.W.6 and P.W.7. Further the investigation officer sent the victim for medical examination and P.W.11/doctor had examined the victim girl and issued medical certificate/Ex.P.6 . Thereafter the Investigation officer had taken steps to record the statement of the victim before the Court under Section 164 of Cr.P.C and the statement of the victim was also recorded. The accused was medically examined through the doctor/P.W.12 and the doctor issued



Crl.A.(MD) No.72 of 2023

certificate/Ex.P.5. Thereafter the Investigation Officer examined all the witnesses and recorded the statement of the victim, other witnesses, collected materials and filed final report.

5. After filing of final report, the trial Court has framed charges for the offences under Sections 448,366 of IPC and Section 5(i) r/w.6, 5(j) r/w.6 POCSO Act. The above charges were read over and explained to the accused. The accused denied the charges and claimed to be tried.

6. The prosecution examined P.W. 1 to P.W.17 and marked exhibits Ex.P.1 to P.15 and marked material objects M.O.1 to M.O.3. After completion of prosecution witnesses the accused was questioned under Section 313 (1)(b) of Cr.P.C., with regard to the incriminating circumstances appearing against him, he denied the same. No defence evidence was adduced on the side of the accused.

7. After analysing the evidence and upon hearing both sides, the trial Court has convicted the accused for the offences as stated supra.



Crl.A.(MD) No.72 of 2023

8. The learned counsel appearing for the accused/appellant would submit that the respondent police has registered a case based on the false compliant given by the mother of the victim for the offences under Sections 3(a) r/w 4 of POCSO Act @366 of IPC, Section 6 r/w.5(i),8 r/w7, 3(a)r/w.4 of POCSO Act and the respondent police without conducting proper investigation filed final report against the accused. The trial Court without any *prima facie* materials framed charges for the offences under Sections 448, 366 of IPC and Section 5(i) r/w.6, 5(j) r/w.6 POCSO Act. In order to prove the case of the prosecution the accused examined P.W. 1 to P.W.17 and marked exhibits Ex.P.1 to P.15 and marked material objects M.O.1 to M.O.3. So far as charge under Section 5(i) is concerned no proper words have been employed in the charge and the words in respect of the penetrative sexual assault are missing and the contents of the of the charge under Section 5(i) of POCSO Act., have not been properly explained to the accused to understand the charge. Whereas the trial Court had convicted the accused without framing proper charges, therefore the accused is prejudiced and it would affect the root of the case of the prosecution. Further the evidence of P.W.1 is not trust worthy. There are so many contradictions



Crl.A.(MD) No.72 of 2023

and discrepancies in the evidence of P.W.1. The evidence of medial witness/P.W.11 is not tallied with the evidence of P.W.1/victim. The trial Court failed to consider the major contradictions and discrepancies between the evidence of P.W.1 and P.W.11 and the prosecution failed to prove the foundational facts for the commission of crime. Therefore the prosecution failed to prove the charges levelled against the accused and the accused is entitled for acquittal.

9. The learned Additional Public Prosecutor would submit that on the date of occurrence the accused trespassed into the house of the victim and taking advantage of the absence of her parents kidnapped her to his house kitchen and committed grave offence of penetrative sexual assault. After arrival of mother of victim the occurrence was informed to her and thereby the mother of the victim had lodged complaint . Based on the complaint the First Information Report has been registered in Crime No.12 of 2017 and the victim was subjected for medical examination. The medical officer found injuries on the body of the victim and also on her private parts. P.W.1 has categorically deposed about the incident and the evidence of P.W.1 is corroborated



Crl.A.(MD) No.72 of 2023

by the medical evidence/P.W.11 and Ex.P.6/medical certificate. All the witnesses have deposed about the prosecution case. P.W.16 has deposed about the investigation and P.W.17 has deposed about the further investigation, thereby the prosecution has proved the case. As per Section 29 of the POCSO Act, there is a presumption and the accused has not rebutted the presumption. Therefore the trial Court has rightly convicted the accused and awarded sufficient punishment and the appeal is liable to be dismissed

10. This Court heard both sides and perused the materials available on record.

11.The point for determination in this appeal is whether the prosecution has proved the charges levelled as against the accused for the offences under Sections 448,366 of IPC and Section 5(i) r/w.6, 5(j) r/w.6 POCSO Act, thereby the judgment and conviction of the trial Court are sustainable?



WEB COPY 12. In this case there is no dispute that the victim was aged about 15 years and she was a child on the date of occurrence. According to the case of prosecution the accused on the date of occurrence i.e., 14.10.2017 at about 03.00 pm., when the victim's parents went for work the accused taking advantage of the victim was alone in her house trespassed into the house from the backyard and took her into his house kitchen and committed penetrative sexual assault on the victim. The victim informed the same to her mother on the same day when her parents arrived to their house and thereafter complaint/ Ex.P.2 was lodged. Thereafter P.W.16 registered a case in Crime No.12 of 2017 and also conducted investigation. P.W.17 completed investigation and filed final report.

13. P.W.1 in her evidence has categorically deposed about the occurrence. According to her evidence on 14.10.2017 when she was alone in her house at about 3.00 p.m., while she was cooking in the kitchen the accused who is a neighbour came through the backyard of the house and taken her to his house kitchen and he committed



penetrative sexual assault and also caused injuries on her breast and private parts. The doctor who examined the victim was examined as P.W.1 and she also deposed about the injuries sustained by the victim. The doctor /P.W.11 has categorically deposed that on 15.10.2017 when she was on duty the victim was brought for medical examination. At that time she found the following injuries on the body of the victim:

“Linear abrasion measuring 3x0.1x0.1cm on her right breast and contusion over right breast upper measuring 2x2cm and 1x1cm. Hymen not intact and vaginal fourchette congested” and issue medical certificate/Ex.P.6

14. Therefore from the evidence of P.W.1, P.W.11 and Ex.P.6 it is clear that the victim was subjected for penetrative sexual assault by the accused and the victim also identified the accused before the Court. There is no enmity between the victim and the accused for false implication of the accused. The prosecution witnesses have categorically deposed about the occurrence and the evidence of P.W.1 is natural, cogent and trust worthy. Therefore the prosecution has proved the foundational facts for the commission of penetrative sexual



Crl.A.(MD) No.72 of 2023

assault and there is a presumption under Section 29 of the POCSO Act and thereby the accused has to rebut the presumption. There is no sufficient evidence adduced by the accused to rebut the presumption. Therefore the prosecution has established the case beyond reasonable doubts.

15.The trial Court in this context after elaborate discussion came to the conclusion that the charges have been proved .

16. So far as offence under Section 448 and 366 of IPC and Section 6 of POCSO Act are concerned, the victim has clearly deposed about trespass of the accused into her house and taken her to the house of the accused and had committed penetrative sexual assault after gagging her mouth and removing the clothes and also causing injuries on her private parts and thereby the charges under Sections 448 and 366 of IPC and Section 5(i) of POCSO Act have been proved by the prosecution.

17. So far as arguments of the learned counsel appearing for the accused that no proper charges have been framed and the trial Court



Crl.A.(MD) No.72 of 2023

framed charges for the offence under Section 5(i) of POCSO Act without

mentioning penetrative assault is concerned, this Court carefully perused the charges and the trial Court framed charges under Sections 5(i) r/w.6 of POCSO Act and in that charge the word 'penetrative sexual assault' is missing, whereas in the fourth charge framed under Section 5(j) r/w.6 of POCSO Act it is mentioned about penetrative sexual assault on the victim. The trial Court has not convicted for the offence under Sections 5(j) but only convicted the accused for the offence under Section 5(i) of POCSO Act. Whereas the fourth charge framed under Section 5(j)r/w.6 of POCSO Act was explained to the accused about the commission of offence for the penetrative sexual assault by committing bodily injury on the private parts of the victim. The accused has adequate knowledge about the charges and he also faced the trial for the penetrative sexual assault with bodily injuries and the framing of charges is to bring the knowledge of the accused about the accusation and nature of offence and sufficient opportunity was given to the accused and the accused also answered the charges and he has not raised any objection before the trial Court.



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18. Mere a omission of word in one of the charges when in another charge the words have been employed , no prejudice would be caused to the accused and it is only a curable defect and no prejudice would be caused to the accused. The words omitted in the charge under Section 5(i) of POCSO Act would no way affect the case of prosecution when in another charge the word in respect of penetrative sexual assault has been found. In the fourth charges it has been clearly mentioned about the offence. Infact there are no material to frame charge for the offence under Section 5(j)r/w.6 of POCSO Act and without any material the trial Court framed charges under Section 5(j) of POCSO Act. It is true that the trial Court has not acquitted the accused for the offence under Section 5(j)r/w. 6 of POCSO Act. As per Section 354 of Cr.P.C., the trial Court ought to have acquitted the accused from the charges under Section 5(i)r/w.6 of POCSO Act and the same no way cause prejudice to the accused and will not vitiate the proceedings and it is only a curable defect, therefore the arguments of the learned counsel appearing for the accused is not acceptable to that regard.



Crl.A.(MD) No.72 of 2023

WEB COPY

19. So far as discrepancies in the evidence of P.W.1 is concerned, the learned counsel appearing for the accused pointed out some minor discrepancies that the investigating agency has not followed the procedures while recording the statement of the victim. There are contradictions between the evidence of victim under Section 161 of Cr.P.C., and the statement recorded under Section 164 of Cr.P.C., and the evidence of victim/PW.1. Further the evidence of P.W.2 to P.W.7 are also contradict to each other. On careful perusal of the evidence of prosecution there are no major discrepancies as alleged by the learned counsel appearing for the accused. The so called contradictions have not been pointed out through the evidence by bringing knowledge of the witnesses, thereby the contention of the learned counsel appearing for the accused is not acceptable. The minor contradictions will not affect the case of prosecution. The evidence of P.W.1/victim is trust worthy and the evidence of P.W.1 is corroborated by the medical evidence of doctor /P.W.11 and Ex.P.6 which clearly established the case of prosecution and the trial Court correctly appreciated the evidence and there is no perversity in the judgment of the trial Court.



Crl.A.(MD) No.72 of 2023

20. Therefore the conviction rendered by the trial Court are upheld. As far as quantum of punishment is concerned, the trial court sentenced the accused with life imprisonment for the offence under Section 6 of POCSO Act, this Court finds that the sentence of imprisonment for life imposed by the trial Court is disproportionate considering the age, family, background and no previous cases are pending against the accused and considering the mitigating circumstances this Court is inclined to impose minimum punishment. As per Section 6 of POCSO Act the minimum punishment is 10 years. Therefore it is appropriate to impose 10 years rigorous imprisonment to the accused for the offence under Section 6 of POCSO Act. As far as other offences are concerned the sentence awarded by the trial Court are confirmed.

21. In the result the criminal appeal stands partly allowed. The accused is acquitted from the charge under Section 5(j) r/w.6 of POCSO Act. The conviction passed in Spl.S.C.No.64 of 2019 on the file of the learned Principal Special Court for trial of cases under POCSO Act,



Crl.A.(MD) No.72 of 2023

Thanjavur is confirmed, however the substantive sentence of imprisonment for the offence under Section 5(i)r/w.6 of POCSO Act is modified and it is directed that the instead of life imprisonment the accused shall undergo rigorous imprisonment for ten years and to pay a fine of Rs. 2,00,000/- in default to undergo rigorous imprisonment for one year. In all other aspects the judgment of the trial Court shall remain intact. The period of detention already undergone by the accused shall be set off under Section 428 of Cr.P.C., All the sentences shall run concurrently.

[N.A.V.,J] [P.D.B.,J]
02.03.2026

Internet : Yes / No

Index : Yes / No

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To

1. The Principal Special Court for trial of cases under POCSO Act, Thanjavur
2. The Inspector of Police
All Women Police Station,
Kumbakonam



Crl.A.(MD) No.72 of 2023

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

4. The Record keeper
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai



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Crl.A.(MD) No.72 of 2023

**N. ANAND VENKATESH, J.
and
P.DHANABAL, J.**

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Crl.A.(MD) No.72 of 2023

02.03.2026