



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11/03/2026

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

Crl.A(MD)No.519 of 2023

Kalidoss : Appellant/Sole Accused

Vs.

State Rep. by
The Inspector of Police,
Aranthangi All Women Police Station,
Pudukkottai District.
(Crime No.2 of 2017)

: Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, against the judgment of conviction and sentence passed by the Mahila Court, Pudukkottai, in Special SC No.22 of 2017, dated 03/01/2023 and to set aside the same and consequently to acquit the appellant.

For Appellant : M/s.A.Arul Jenifer

For Respondent : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor



JUDGMENT

(Judgment of the Court was made by the Hon'ble **P.DHANABAL, J.**)

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This Criminal Appeal has been preferred by the appellant as against the judgment of conviction and sentence passed in Special SC No.22 of 2017 by the Sessions Judge, Mahila Court, Pudukkottai, dated 03/01/2023.

2.The accused was charged for the offences under Section 4 of POCSO Act and Section 506(i) IPC. The Trial Court found the accused guilty, convicted and sentenced him to undergo **Life Imprisonment** and imposed a fine of Rs.2,00,000/-, in default to undergo one year RI for the offence under **Section 4 of POCSO Act, 2012** and also convicted him and sentenced to undergo **2 years RI** and imposed a fine of Rs.10,000/-, in default to undergo 1 year RI for the offence under **Section 506(ii) IPC** and the sentences were ordered to run concurrently. Aggrieved by the said judgment of conviction and sentence, the present appeal has been preferred by the accused as appellant.

3.The case of the prosecution is that the victim girl was aged about 16 years and studying 12th Standard in the year 2017. The date of the birth of the victim is 13/06/2001 and the victim girl used to go to the school in her bicycle. While so, on 19/07/2017, when she returned from the school in her bicycle at about 06.30 p.m, near Sethu Ramanvayal bus stop, the accused who was



standing in the bus stop, had tried to talk with the victim girl, but she avoided.

For that, the accused threatened the victim girl by stating that

“இருடி இன்றைக்கு ராத்திரி உன்னை கவனித்துக்கொள்கிறேன். On 20/07/2017 in the early morning at about 02.00 a.m, when the victim girl had come out of the house to attend nature's call, the accused who was standing near the house of the victim in the dark, had hugged and closed the mouth of the victim and threatened the victim girl not to shout, otherwise he would kill her and taken her to Veeramangalam Kammaikarai and removed her dress and committed sexual assault on her. Thereafter, the victim came to her house and in the morning, when she was weeping, her mother asked her. At that time, she narrated the occurrence to her mother and father. Thereafter, the father of the victim girl (PW1) gave the complaint (Ex.P1) before the respondent Police.

4.On the basis of the complaint, **PW8**-Tmt.Kavitha, Inspector of Police, registered the FIR (Ex.P9) in Crime No.2 of 2017 under Section 4 of POCSO Act and Section 506(i) IPC and thereafter, she went to the place of occurrence and prepared observation mahazar (Ex.P4) and rough sketch (Ex.P10) and examined the victim girl and thereafter, the victim girl was sent for medical examination.



5.**PW3**-Dr.Riyas Fathima conducted medical examination on the victim girl. She also issued Accident Register (Ex.P3) and thereafter, PW8 arrested the accused on 22/07/2017 and the accused had voluntarily given a confession statement and the same was recorded in the presence of the witnesses and thereafter, seized MO4 to MO7 through mahazar Ex.P8 and thereafter, she examined the Doctor and other witnesses and after completion of the investigation, she filed the charge sheet as against the accused for the offences punishable under Section 4 of POCSO Act and Section 506(i) IPC.

6. Thereafter, the Trial Court, after hearing both sides, framed charges under Section 506 IPC and Section 4 of POCSO Act as against the accused. The charges framed against the accused/appellant, were read over and explained to him and he denied the charges. Thereby, the prosecution examined the witnesses PW1 to PW8 and marked documents Exs.P1 to P16, besides produced the material objects MO1 to MO7. After completion of prosecution side evidences, the accused was examined under Section 313(1)(b) Cr.P.C, with regard to the incriminating evidence adduced against him and the same was also denied by the accused and no witness was examined and no document was marked on the defence side.



7.After hearing both sides and considering oral and documentary evidence adduced on either side, the Trial Court found the accused guilty of offences punishable under Section 4 of POCSO Act and Section 506(i) IPC and convicted the accused and sentenced to undergo **Life Imprisonment** and imposed a fine of Rs.2,00,000/-, in default to undergo one year RI for the offence under **Section 4 of POCSO Act** and also convicted and sentenced him to undergo **2 years RI** and imposed a fine of Rs.10,000/-, in default to undergo one year RI for the offence under **Section 506(i) IPC**. The Trial Court directed that the sentences imposed on the accused shall run concurrently and the imprisonment period already underwent by the accused shall be set off under Section 428 of Cr.P.C.

8.Aggrieved by the said judgement of conviction and sentence, the present appeal has been preferred by the appellant/accused.

9.The learned counsel appearing for the appellant would submit that the respondent Police have registered the case against the accused for the offences under Section 506(i) IPC and 4 of POCSO Act. PW1 is the father of the victim girl and there is no eye witness to the occurrence. PW2 victim has not given any complaint. The father of the victim alone gave the complaint, however, the complaint was written by the victim girl. The prosecution has



failed to prove the age of the victim girl. In order to invoke the provisions of POCSO Act, the prosecution has to establish the age of the victim girl and if the victim is a child, then POCSO Act would attract. In order to prove the age of the victim, on the side of the prosecution, examined PW6-Headmaster of the School where the victim was studying and they have not obtained any certificate from the school and only produced the format for school study certificate. The Headmaster of the school who was examined as PW6 has not stated that on what basis, the date of birth of the victim was recorded in the school records. PW8 had not obtained any certificate to assess the age of the victim girl. Therefore, the prosecution has failed to prove the age of the victim girl. The Trial Court failed to consider the same and erroneously held that the accused has not cross examined the victim girl in respect of the age and thereby relied upon the evidence of PW2 to PW6. Further, the Trial Court failed to consider that the mandatory provisions of Section 27 of POCSO Act have not been followed and PW3-Doctor who medically examined the victim girl has also stated that she had not collected any semen and the Investigating Officer has not been followed the provisions of 164(A) Cr.P.C, the same is fatal to the prosecution case and the sexual assault has not been proved. As per the medical evidence, there was no recent sexual assault.



9.1. As per the evidence of PW8, the Investigating Officer, on 20/07/2017 at 16.20 hours, she had sent the victim girl through Woman Police Constable Lalitha to the Aranthangi Government Hospital for medical examination and the Doctor had asked her to produce the victim on the next day and thereafter, the victim girl was produced on 21/07/2017 before the Doctor. Therefore, the case of the prosecution is highly doubtful and the prosecution failed to prove the foundational facts for the commission of the offence. The evidence of PW2 who is the victim girl is unbelievable and unnatural. According to the victim girl, she was sexually assaulted in Veeramangalam Kammaikarai, but as per the rough sketch (Ex.P10), the place of occurrence is a mud road and when the occurrence happened as alleged in the mud road, the victim would have sustained abrasion injuries on her body. PW3-Doctor who medically examined the victim girl has stated that there is no abrasion in the body of the victim girl. The place of occurrence is very near to the house of the victim girl and when the victim girl came out from the house at about 02.00 a.m, after seeing the accused, she could have raised alarm, but she has not raised alarm.

9.2. As per the evidence of PW2, the accused hugged her and thereafter closed her mouth and taken her to Veeramangalam Kammaikarai and had committed penetrative sexual assault. While so, had the occurrence taken



place as alleged by the victim girl, she could have raised alarm, but no alarm has been raised and so, the conduct of the victim girl creates serious doubt over the prosecution case as to whether the occurrence was happened as alleged by the victim girl. However, the Trial Court failed to consider the above said major discrepancies and convicted the accused without proving the foundational facts for the commission of the offence. The Trial Court also relied upon the provisions of Sections 29 and 30 of the POCSO Act. The presumption would arise after proving the foundational facts by the prosecution for the commission of the sexual offence and after proving the foundational facts for the commission of the penetrative sexual assault, the accused has to rebut the presumption under Section 29 of the Act, but the Trial Court failed to appreciate the evidence in a proper prospective and erroneously convicted the accused and therefore, the accused is entitled for acquittal and the appeal is liable to be allowed.

10.The learned Additional Public Prosecutor appearing for the respondent Police would submit that the accused committed the penetrative sexual assault on the victim girl, when she was proceeding to attend nature's call and on the previous day, the accused threatened the victim girl and thereafter, the victim girl went to her house and on the next day earlier morning, the accused came to the house of the victim girl and committed the sexual offence. Therefore, the evidence of PW2 is cogent and natural. Thereafter, the father of



the victim girl gave the complaint and the Medical Officer, who examined the victim girl also stated that on examination, she found that her hymen was not intact and though there were no external injuries, the evidence of the victim itself is sufficient to convict the accused, since the evidence of the victim girl is cogent and natural. The Investigating Officer also fairly investigated the case and filed the final report before the Trial Court and before the Trial Court, all the prosecution witnesses supported the case of the prosecution and thereby, the prosecution has proved the foundational facts for the commission of the offence and it is for the accused to rebut the presumption under Section 29 of the POCSO Act, but there is no rebuttable evidence and therefore, the prosecution has proved their case in accordance with law and the Trial Court also correctly found guilty of the accused and convicted the accused for the charged offences and therefore, the appeal is to be dismissed.

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

12.In this case, the respondent Police have registered the case under Section 4 of the POCSO Act and 506(i) IPC. According to the prosecution case, the victim girl used to go to the school through bicycle. One day prior to the date of the occurrence that is on 19/07/2017, when the victim girl was



returning from the school, the accused was standing in the Sethuramanvayal bus stop, at that time, he tried to speak with the victim girl, but she refused to speak with him, for that the accused stated that “இருடி இன்றைக்கு ராத்திரி உன்னை கவனித்துக் கொள்கிறேன்.. On the next day night, the accused went to the place of occurrence and when the victim girl was proceeding to attend nature's call, he hugged her back and closed her mouth and taken her to kammai and committed the penetrative sexual assault.

13. PW2 who is the victim girl has deposed that when she came out from her house to attend nature's call, the accused hugged her from back and immediately when she tried to the raise alarm, he closed her mouth and taken her to Veeramangalam Kammaikarai, where he removed her dress and had committed the sexual assault. The victim has not stated about the penetration. She only stated that என்னை கெடுத்துவிட்டு ஓடிவிட்டான். The victim girl has not raised any alarm immediately after the hug made by the accused. When the accused had taken the victim girl to Veeramangalam Kammaikarai which is near to the house of the victim girl, a girl aged about 16 years can very well restrain the accused and she could have raised alarm immediately after seeing the accused. According to the victim girl, the accused also removed her dress, by that time also, she has not raised any alarm. Further, the place of occurrence is a mud road and the same is revealed from Ex.P4 observation mahazar, but no any



external injuries to the victim. Therefore, the reasonable doubt would arise about the prosecution case as to whether the occurrence took place as alleged by the prosecution. The conduct of the victim in not raising alarm and non sustaining any injury are also create serious doubt. The residence of the accused is far away from the place of the occurrence. While so, how the accused came there and how the accused arrived to the occurrence place in the midnight, which is far away from his house has not been explained by the prosecution. Even after leave the accused from the place of occurrence, the victim girl had not disclosed anything to her sister, who laid along with her in the house. Thereby, the evidence of the PW2 creates serious doubt. Therefore, it is unsafe to rely upon the evidence of PW2. Moreover, the Doctor, who examined the victim girl has also stated that on her examination, it is found that the her hymen was not intact. However, they were no injuries on the body of the victim. When the occurrence took place as alleged by PW2 and when the accused committed the penetrative sexual assault towards victim girl in the mud road, certainly she would have sustained injuries on her body, but there is no injuries found in the body of the victim, which also creates serious doubt over the evidence of PW2.

14. Further, the prosecution has not produced any school certificate or birth certificate of the victim girl to prove the age of the victim girl. Though the accused has not denied the age of the victim girl, once the prosecution relied



on the evidence of PW6 the prosecution ought to have obtained school certificate to prove the age of the victim. PW6-Headmaster of the school in which the victim was studying failed to produce necessary document to prove the age of the victim girl. The Investigating Officer has not obtained any certificate for the age like date of birth certificate from the school or the matriculation or equivalent certificate from the concerned examination board of the victim girl and only PW6 has produced Ex.P6 which is a school study certificate and PW6 has not stated as to how the date of birth of the victim girl was recorded in the school records. At this juncture, it is relevant to refer the judgment of the Hon'ble Supreme Court in ***P.Yuvaprakash Vs. State rep. By Inspector of Police***, reported in ***AIR 2023 SC 3525*** wherein the Hon'ble Supreme Court held in para 13 and 14 as follows:-

13. It is evident from conjoint reading of the above provisions that wherever the dispute with respect to the age of a person arises in the context of her or him being a victim under the POCSO Act, the courts have to take recourse to the steps indicated in Section 94 of the JJ Act. The three documents in order of which the Juvenile Justice Act requires consideration is that the concerned court has to determine the age by considering the following documents:

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board.

14. Section 94(2)(iii) of the JJ Act clearly indicates that the date



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of birth certificate from the school or matriculation or equivalent certificate by the concerned examination board has to be firstly preferred in the absence of which the birth certificate issued by the Corporation or Municipal Authority or Panchayat and it is only thereafter in the absence of these such documents the age is to be determined through "an ossification test" or "any other latest medical age determination test" conducted on the orders of the concerned authority, i.e. Committee or Board or Court. In the present case, concededly, only a transfer certificate and not the date of birth certificate or matriculation or equivalent certificate was considered. Ex. C1, i.e., the school transfer certificate showed the date of birth of the victim as 11.07.1997. Significantly, the transfer certificate was produced not by the prosecution but instead by the court summoned witness, i.e., CW-1. The burden is always upon the prosecution to establish what it alleges; therefore, the prosecution could not have been fallen back upon a document which it had never relied upon. Furthermore, DW-3, the concerned Revenue Official (Deputy Tahsildar) had stated on oath that the records for the year 1997 in respect to the births and deaths were missing. Since it did not answer to the description of any class of documents mentioned in Section 94(2)(i) as it was a mere transfer certificate, Ex C-1 could not have been relied upon to hold that M was below 18 years at the time of commission of the offence.

On a careful perusal of the said judgment, it is clear that to ascertain the age of the victim the prosecution has to produce documents from school, the date of birth certificate from the school or matriculation or equivalent certificate by the concerned examination board has to be firstly preferred in the absence of which the birth certificate issued by the Corporation or Municipal or Panchayat and if it is only thereafter in the absence of these documents the age is to be determined through “an ossification test” or any other latest medical age determination test”. In this case, the prosecution had obtained only school study



certificate and there is no mention about from where the particulars collected to issue such certificate. The certificate is issued to ascertain the age of the particular person then there should be mentioned about from where those particulars were collected. If the particulars were collected through proper documents then it can be safely relied upon, but in Ex.P6_certificate, there is no mention about where the particulars were collected. Therefore, the said certificate is not sufficient to prove the age of the victim. It is the duty of the prosecution to prove the age of the child particularly where the age of the victim is nearing to attaining the age of majority. Therefore, the prosecution has failed to establish the age of the victim. Therefore, the evidences of the prosecution witnesses are not sufficient to prove the foundational facts for the commission of the offence under POCSO Act. Even assuming that the victim is aged 16 years and child the evidence of PW2 is doubtful and unbelievable. Therefore, the presumption under Section 29 of the POCSO Act would not attract in this case. In order to invoke Section 29 of the Act, the prosecution initially has to prove the foundational facts for the commission of the offence and then only the application of 29 of the Act would arise. Therefore, without proving the foundational facts for the commission of the offence, the Court cannot invoke Section 29 of the Act and thereby, the prosecution failed to prove the case against the accused and therefore, the accused is entitled for acquittal.



15.The Trial Court also failed to consider the discrepancies on the evidence of PW2 and proceeded by relying upon Section 29 of the POCSO Act and also failed to consider that before invoking Section 29 of the POCSO Act, the prosecution ought to be proved the foundational facts for the commission of the offence. Further, the Trial Court also discussed about 161 Cr.P.C statement for corroboration, which is impermissible and the Trial Court had discussed about the age of the victim and failed to discuss about the school certificate, placed the burden on the accused to disprove the age of the victim, since the accused has not cross examined in respect of the age of the victim. The Trial Court relied upon the evidence of PW2. Once the prosecution relied upon the document for the age, it has to produce sufficient legally acceptable document and Ex.P6 is not the legally acceptable document.

16.The Trial Court also failed to consider the fact that the Investigating Officer has not taken any steps to obtain the certificate from school for the age of the victim girl. Therefore, the Trial Court failed to consider the said vital aspect, which is fatal to the prosecution and merely relying upon the doubtful evidence of PW2, convicted the accused. The Trial Court also in the judgment discussed about the penetration, however the victim nowhere stated about the penetration. While so, how the Trial Court used those words of penetration without any evidence, which shows the non-application of mind by



the Trial Court. Therefore, the judgment of conviction and sentence passed by the Trial Court warrants interference by this Court.

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17.In the result, the Criminal Appeal is **allowed**. The judgment of conviction and sentence rendered by the Mahila Court, Pudukkottai in Special Sessions Case No.22 of 2017, dated 03.01.2023 is set aside and the appellant is acquitted from all the charges. Bail Bonds, if any, executed by the appellant shall stand cancelled. The fine amount, if any paid, shall be refunded to the appellant.

(N.A.V.,J) (P.D.B.,J)
11/03/2026

Index:Yes/No
Internet:Yes/No
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To,

- 1.The Sessions Judge,
Mahila Court,
Pudukkottai.
- 2.The Inspector of Police,
All Women Police Station,
Aranthangi.
Pudukkottai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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