



Crl.A(MD)No.95 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.01.2026

CORAM:

**THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA**

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1.K.Sivakumar

2.Vengadesh Babu

... Appellants/ Accused

Vs.

The Inspector of Police,
All Women Police Station,
Rajapalayam,
Virudhunagar District.

(Crime No.136 of 2014)

... Respondent/Complainant

PRAYER:- Criminal Appeal is filed under Section 372 (2) of Criminal Procedure Code, to call for the records in Spl.S.C.No.22 of 2022 dated 12.10.2022 on the file of the Special Court for Exclusive Trial of cases

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under POCSO Act, 2012, Virudhunagar District at Srivilliputtur, and set aside the same by acquitting the appellants.

For Appellants : Mr.S.Ramasamy
For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered by R.POORNIMA, J.)

This Criminal Appeal is filed against the conviction and sentence passed against the appellants/ accused in the judgment dated 12.10.2022 made in Spl.S.C.No.22 of 2022 on the file of the Special Court for Exclusive Trial of cases under POCSO Act, 2012, Virudhunagar District at Srivilliputtur, in which judgment, accused had been convicted for offence punishable under Sections, 366, 376 (DB) IPC r/w. Section 3(a) r/w. 4(2) POCSO Act and sentenced to undergo 10 years rigorous imprisonment for both and to pay a fine of Rs.10,000/- each in default to undergo one year rigorous imprisonment for the offence under Section 366 IPC and to undergo life imprisonment until

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their natural death for both and to pay a fine of Rs.1,00,000/- each in default to undergo two years rigorous imprisonment for the offences under Section 376 DB IPC r/w. Section 3(a) r/w.4(2) POCSO Act.

2. The case of the prosecution in brief is as follows :

(a) The accused were charged under Section 366 IPC for kidnapping the victim girl, under Section 3(a) r/w.4(2) POCSO Act, 2012 and Section 376D, 376(DB) and 506(i) IPC.

(b) The complaint was lodged by P.W.1, mother of the deceased Sumathy with the following averments :

The victim girl was studying in 6th Standard at Thombakulam Government Higher Secondary School. On 22.12.2021, she attended her classes as usual. On 23.12.2021, she again went to school and returned home after school hours. However, after returning from school, she did not speak to anyone and appeared to be behaving differently. When her mother enquired about the same, the victim girl did not give any reply.

(c) Normally, she used to go out and play with other children in the neighbourhood, but on that day she did not leave the house, which



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created suspicion in the mind of her mother. On the following day, the victim girl also did not go to school, remained silent and stayed at home. Observing her unusual behaviour, the mother immediately informed her husband that their daughter appeared to be different and that she had also noticed an injury on the cheek of the victim girl.

(d) When the mother enquired about the injury, the victim girl did not reveal anything. Thereafter, the father also enquired with her, but she did not state anything. However, upon repeated enquiry, the victim girl informed that on 23.12.2021, at about 12.45 p.m., after taking lunch at school, she went to throw the sanitary pad in the dust bin. At that time, two people were sitting near the dust bin and called her. When she went near them to enquire why they had called her, immediately they closed her mouth and took her to the eastern side of the compound and they pushed her down and removed her dresses, the first accused committed penetrative sexual assault and the 2nd accused penetrated his penis into her anus and committed sexual assault. Thereafter, they left her and she went back to the classroom. Her class teacher noticed that her pant was torn and asked her to change it in the Physical Education teacher's room.



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Accordingly, she went there and changed her pants.

(e) On hearing the victim girl's version, the mother was shocked and enquired whether she had informed the same to her school teacher, to which the victim replied that she had not informed anyone because the accused had threatened that if she revealed the incident to anybody, they would kill her. She further stated that the accused told her that they would come again and that she should accompany them.

(f) Immediately, PW1 asked her whether she could identify the accused, and the victim stated that she could identify them. Therefore, on 25.12.2021 at about 1.00 p.m., PW1 and her husband, along with the victim child, went near the school where the victim identified both the accused. Thereafter, PW1 lodged a complaint requesting the police to take action against the accused.

(g) P.W.10 Tmt.Vanitha, Sub Inspector of Police, All Women Police Station, received the complaint (Ex.P1) and registered FIR (Ex.P14) in Crime No.20 of 2021 for the offences under Sections 366, 506(2), 376(AB) IPC and Section 3(a) r/w.4 of POCSO Act. She sent the FIR and complaint to the Court and other copies to the higher official for



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further action.

(h) P.W.11 Tmt.Maheswari, Inspector of Police, on 25.12.2021, took up the case for investigation, she enquired P.W.1 and collected the birth certificate of the victim issued by the Primary Health Centre. Thereafter, the dresses worn by the victim (M.O.1 to M.O.5) were handed over to her and the same was received under Form 95 and she sent the same to the Court. At about 19.45 hours, she examined the victim girl and recorded her statement. Thereafter, at about 8.30 hours, she sent the victim girl through Women Constable Surya for medical examination.

(i) P.W.6 Dr.Tamilnila, examined the victim girl on 25.12.2021 at about 10.00 p.m., and issued an accident register (Ex.P.7) with the observation that the victim girl was subjected to sexual harassment and her hymen was not intact but she did not find any injuries on her private part or other parts of the body. Vaginal swab was taken for chemical analysis.

(j) Thereafter, she went to the place of occurrence and prepared observation mahazar (Ex.P.4) and rough sketch (Ex.P.15) in the presence of witnesses Muthelraj (P.W3) and Kannan. Thereafter, she examined the



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witnesses and recorded their statements.

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(k) On 26.12.2021, she handed over the file to the Inspector of Police Mariyapackiyam (P.W.12) who had joined duty after leave.

(l) P.W.12 Tmt.Mariyapackiyam, Inspector of Police took up the case for further investigation and re-examined the witnesses. She examined the father of the victim girl and recorded his statement.

(m) On 26.12.2021 at about 14.00 hours she arrested the accused and recorded their confession statement. She sent both the accused for medical examination.

(o) Dr.Thirumurugan (P.W.7) examined the accused and issued accident register Ex.P8 and Ex.P9 and opined that there is nothing to suggest that both the accused are impotent. Thereafter, sent the accused for remand.

(p) She also obtained the school certificate (Ex.P5) and an admission report (Ex.P6) of the victim girl from the school authorities.

(q) Thereafter, she examined all the witnesses and altered the Section of law under alteration report Ex.P23.

(r) She also obtained the biological report (Ex.P24 and Ex.P25)



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serological report (Ex.P26) from the concerned officer and examined the officer who issued the certificate.

(s) After investigation, she filed the final charge sheet against the accused for the offence under Sections 366, 506(1), 376(DB) IPC and Section 3(a) r/w.4, 5(g)(m) r/w.6 of POCSO Act.

3. On receipt of the records, the Special Court for Exclusive Trial of cases under the POCSO Act, Virudhunagar District at Srivilliputtur, took up the case in Spl. S.C.No.22 of 2022 and issued a summons to the accused. After the appearance of the accused, copies of the entire records were furnished to him free of cost under Section 207 Cr.P.C.

4. After hearing the public prosecutor and the defence counsel, the learned Session Judge framed charges against the accused under Sections 366, 376D, 376DB, 506(1) IPC and Section 3(a) r/w.4 of the POCSO Act. The charges were read over and explained to the accused. The accused denied the charges and claimed to be tried. Therefore, the



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case was posted for trial.

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5. On the side of the prosecution, P.W.1 to P.W.12 were examined and Ex.P1 to Ex.P26 were marked. Material Objects M.O.1 to M.O.5 were produced. On the side of the accused, no oral evidence was examined and one document Ex.D1 was marked.

6. On conclusion of trial, the learned Sessions Judge, Special Court for Exclusive Trial of cases under the POCSO Act, Virudhunagar District at Srivilliputtur, convicted the accused by judgment dated 12.10.2022, against which, the present Criminal Appeal has been filed by the appellants / accused.

7. Mr.S.Ramasamy, learned counsel appearing for the appellants assailing the judgment of conviction and sentence made the following submissions:-

(i) P.W.4 Headmaster of the School stated that on the date of occurrence, the victim girl was attending her Maths class and writing her



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examination and produced Ex.D1 which is a vital document.

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(ii) P.W.5 deposed that she has not given the names of the accused person to the victim girl, or the complainant. But in the complaint, the names of the accused persons were mentioned.

(iii) The medical records did not find any semen in the dresses recovered from the victim girl and the doctor clearly stated that there was no external injury on the victim girl. But the victim girl stated that one of the accused bitten her cheek.

(iv) The prosecution failed to prove the case against the accused and hence, he prayed to set aside the judgment of the trial Court and to acquit the accused of all charges.

8. The learned Additional Public Prosecutor appearing for the State contended that the victim girl, who was examined as P.W.2, clearly narrated the occurrence and the offence committed by the accused, and she also identified the accused. The testimony of the victim girl is duly corroborated by the medical records. Further, the parents of the victim girl have also spoken about the events that took place after the

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occurrence. It was further contended that the victim girl was examined by the Doctor two days after the date of occurrence and therefore, there was no possibility of detecting any physical evidence. But the Doctor clearly stated that her hymen was not intact and that she was subjected to sexual assault.

9. The learned Additional Public Prosecutor further submitted that the occurrence took place during lunch time. The victim girl herself admitted that after the occurrence she returned to the school and attended the class, and therefore there was every possibility for her to write the examination. Though there was a delay in lodging the FIR, the victim girl, due to fear and shock, did not reveal the occurrence immediately as she was threatened by the accused. Because of such intimidation, she did not disclose the incident to her parents initially. Only after repeated enquiries made by her parents did she reveal the occurrence, and immediately thereafter, on receipt of the said information, the FIR was registered. Therefore, the delay in filing the FIR does not affect the prosecution's case.



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10. He further submitted that the defence had produced Ex.D1, the examination answer paper. However, only one answer was written by the victim girl and the time of writing the examination was not noted in the paper. The class teacher would be the proper person to speak about the same. The Headmaster cannot conclusively state that the victim girl was present in the classroom at the time of the occurrence and that she had written the examination. Therefore, the prosecution contended that there is no strong or acceptable evidence to interfere with or set aside the judgment of the trial Court, and hence the Criminal Appeal lacks merit and is liable to be dismissed.

11. Heard the learned counsel on either side and perused the materials available on record.

12. The victim girl was examined as P.W.2, she clearly deposed that she went to dispose of her sanitary napkin outside the school since the incinerator erected in her school was not in working condition. At that time, somebody called her, when she turned, a tall person closed her

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mouth and took her behind the Panchayat primary school and pushed her down and the accused removed their dress and also removed her dress, A1 squeezed her breast, kissed her and committed penetrative sexual assault. A2 also committed unnatural sex by penetrating his penis into her anus, he also squeezed her breast and bit her cheek. She identified the accused in the Court room.

13. The mother of the victim was examined as P.W.1, she clearly narrated the incidents and the circumstances subsequent to the incidents as well as the victim's mental condition.

14. P.W.5, who originally identified the accused deposed that A2 is the tenant opposite to her house and she knows about A1 also. But she turned hostile.

15. P.W.6 Dr.Tamilnila categorically stated that the victim's hymen was not intact and also found that the child was subjected to sexual assault. During cross-examination, some indecent questions were



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put to the Doctor without taking into account that the victim is a minor child. Such questions do not advance the case of the appellant/accused in any manner. The learned defence counsel is expected to exercise restraint and avoid putting questions of such nature. It is also the duty of the Court to intervene and prevent questions that are indecent, scandalous, or unnecessary, especially when they concern a minor.

16. In cases involving sexual offences against a child, the sole testimony of the victim is sufficient to sustain a conviction, provided it is trustworthy and inspires confidence. In this case, the testimony of the victim girl is duly corroborated by medical evidence. Further, the appellants have not established any enmity or motive on the part of the victim's family to falsely implicate them in such a heinous crime.

17. The victim is an innocent minor girl aged about 10 years. All of a sudden during school hours, she was subjected to a traumatic incident and also threatened by the accused. Due to shock and fear, she was unable to disclose the occurrence either to her parents or to the



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school authorities immediately. Therefore, there was a delay in lodging the complaint as well as in conducting the medical examination. However, such a delay, is not fatal to the prosecution's case.

18. As the prosecution proved the case beyond a reasonable doubt, there is no merit in this Criminal Appeal. The trial Court after appreciating the oral evidence and documentary evidence rightly held the accused guilty of the offence and convicted them, which is proper, and there is no merit in this appeal and the same is liable to be dismissed.

19. In the result, this Criminal Appeal is dismissed and the Judgment dated 12.10.2022 passed in Spl.S.C.No.22 of 2022 on the file of the Special Court for Exclusive Trial of cases under POCSO Act, 2012, Virudhunagar District at Srivilliputtur, is hereby confirmed.

**[G.K.I.J.,] & [R.P.J.,]
27.01.2026**

NCC :Yes/No
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Copy to

- 1.The Special Court for Exclusive Trial of cases
under POCSO Act, 2012,
Virudhunagar District at Srivilliputtur,
- 2.The Inspector of Police,
All Women Police Station,
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Virudhunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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