WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 13-10-2026

PRONOUNCED ON : 2710-2026

CORAM

THE HON'BLE MR.JUSTICE S.KARTHIKEYAN

CRL A(MD) No. 11 of 2020

CNR:{HCMD011097812019}

1. Eswaran

2. Bharathi

..Appellants

Vs

State represented by,
The Inspector of Police,
Cumbam North Police Station,
Theni District.
(Crime.No. 477 of 2015)

..Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 of Cr.P.C., to set aside the order passed by the District Fast Track Mahila Court, Theni in Spl.S.C.No.04 of 2016, dated 06.09.2019 and allow this Criminal Appeal.

For Appellant : Mr. K.Prabakaran

For Respondent : Mr. G.Ganesh Kumar,
Government Advocate (Crl. Side)

*****

https://www.mhc.tn.gov.in/judis

WEB COPY

JUDGMENT

This Criminal Appeal is directed against the judgment of conviction and sentence passed by the Fast Track Mahila Court, Theni, in Spl.S.C. No. 4 of 2016, dated 06.09.2019.

2. On a careful perusal of the records, it is found that on 11.10.2015, at about 17.00 hours, P.W.15, Mr. Sultan Basha, the then Sub-Inspector of Police, Cumbum North Police Station, received Ex.P1 complaint from P.W.1 Vahitha and registered Ex.P7 First Information Report in Crime No. 477 of 2015, for the offences punishable under Sections 6 and 17 of Protection of Children from Sexual Offences Act (POCSO Act). He forwarded the First Information Report and the original complaint to the learned Judicial Magistrate, Uthamapalayam, and handed over a copy of the First Information Report to the Inspector of Police for investigation.

3. P.W.16 Kumaresan, the then Inspector of Police, Cumbum North Police Station, took up the investigation of the said case on 11.10.2015. At about 18.00 hours, he proceeded to the place of occurrence and prepared Ex.P2 Observation Mahazar and Ex.P8 Rough Sketch in the presence of P.W.6 A0bbas and Jamal Mydeen. Thereafter,

https://www.mhc.tn.gov.in/judis

WEB COPY

he examined P.W.1 Vahitha, P.W.2, the victim girl, P.W.3 Subani, P.W.11 Nelofer Pichaiammal, Thirishath Begum, and P.W.5 Ushman and recorded their statements. He also examined the Woman Inspector of Police who had recorded the statement of the victim and recorded her statement. Further, he examined the Sub-Inspector of Police who had registered the First Information Report and recorded his statement.

4. Thereafter, on 11.10.2015, at about 20.00 hours, he arrested the Accused near Thanga Vinayagar Temple, Cumbum and caused him to be remanded to judicial custody. On 12.10.2015 he sent the victim for medical examination through Woman Police Constable No.2204. He examined Dr. Juliana Jayanthi, who had conducted the medical examination of the victim, and recorded her statement. He also examined the Headmaster of the school in which the victim study and recorded his statement.

5. On 13.10.2015, he produced the victim before the Child Welfare Committee, and thereafter, she was handed over to her parents. On 15.10.2015, pursuant to the orders of the Court, he produced the first Accused for medical examination. He examined the Head Constable/ Iyyappan, and Manikandan, who had produced the Accused for medical examination, and recorded their statements. He also examined Dr. Arun

https://www.mhc.tn.gov.in/judis

WEB COPY

Kumar, who had conducted the medical examination of the first Accused, and recorded his statement.

6. On 16.10.2015, the victim was produced before the learned Judicial Magistrate, Theni, and her statement under Section 164 of the Code of Criminal Procedure was recorded. He examined Woman Police Constable Aarthi and the learned Judicial Magistrate Shri.Vidhya and recorded their statements. Upon completion of the investigation, he laid the final report before the Special Court constituted under the POCSO Act.

7. The trial Court has taken cognizance of the case in Special S.C. No.4 of 2016 and issued summons to the Accused. Upon their appearance, copies of the documents relied upon by the prosecution were furnished to them under Section 207 of the Code of Criminal Procedure.

8. After hearing both sides, charges were framed against the First Accused for the offence punishable under Section 6 of POCSO Act and as against the Second Accused for the offence punishable under Section 6 r/w Section 17 of POCSO Act. The charges were read over and explained to the Accused, which they denied. Therefore, they were tried by the Trial Court.

https://www.mhc.tn.gov.in/judis

WEB COPY

9. On the side of the prosecution, P.W.1 to P.W.16 were examined and Ex.P1 to Ex.P8 were marked. Upon closure of the prosecution evidence, the incriminating circumstances appearing in the evidence against the Accused were put to them under Section 313(1)(b) of the Code of Criminal Procedure. The Accused denied the same as false. They stated that they have witnesses to examine on their side; however, no witness was examined on behalf of the defence. Therefore, the defence evidence was closed.

10. After hearing both sides, the Trial Court has found the First Accused guilty of the offence punishable under Section 6 of POCSO Act and sentenced him to undergo ten years of rigorous imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo six months of simple imprisonment. The Second Accused was convicted for the offence punishable under Section 6 of POCSO Act and sentenced to undergo ten years of rigorous imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo six months of simple imprisonment. The Second Accused was further found guilty of the offence punishable under Section 17 of POCSO Act and sentenced to undergo ten years of rigorous imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo six months of simple imprisonment.

https://www.mhc.tn.gov.in/judis

WEB COPY

11. Aggrieved by the said conviction and sentence, the appellants have preferred the present appeal before this Court. The learned counsel for the appellants and the learned Government Advocate (Criminal Side) appearing for the State were heard. The records of the Trial Court were called for and perused.

12. Point for Determination:-

Whether the conviction and sentence imposed on the appellants by the Trial Court are sustainable?

Answer:-

13. On a perusal of the records, it is found that it is the case of the prosecution that the victim girl was aged about 13 years and was studying 8th standard at the Municipal Girls Higher Secondary School, Cumbum. Both the Accused were residing in her neighbourhood. The First Accused allegedly followed the victim girl whenever she went to school, spoke affectionately to her, and offered her gifts and chocolates. He allegedly took her to the house of P.W.11, who was a friend of the victim girl, and committed penetrative sexual assault on her on several times.

14. It is further alleged that the First Accused called the victim girl

https://www.mhc.tn.gov.in/judis

WEB COPY

for further sexual intercourse. When she refused, he threatened her by stating that he had videographed their sexual acts and would publish the video on the internet if she did not have sexual intercourse with him. By way of such intimidation, the First Accused allegedly committed penetrative sexual assault on the victim girl at her friend's house prior to three months from 11.10.2015. The Second Accused abetted the First Accused in the said crime. Therefore, the actions of the First Accused are punishable under Section 6 of POCSO Act and the actions of the Second Accused under Section 6 r/w Section 17 of POCSO Act. To substantiate the said case, the prosecution examined P.W.1 to P.W.16 and marked Ex.P1 to Ex.P8.

15. On a careful perusal of the evidence of the prosecution witnesses, it is found that the mother of the victim girl was examined as P.W.1. She, in her evidence, deposed that she had two children, the elder one is the victim girl and a younger son. She further deposed that the Accused were known to her and were residing in her neighbourhood.

16. P.W.1 further deposed that the First Accused offered gifts and chocolates to her daughter, expressed his love for her and forced her. She stated that, when nobody was present, he injected the victim girl with sedatives and, after she became unconscious, the First Accused and the

https://www.mhc.tn.gov.in/judis

WEB COPY

victim girl were together. The incident was videographed and the victim girl was threatened by showing her the video. Being frightened, the victim girl informed P.W.4 Dilsath, who, in turn, informed P.W.1 and her husband. Thereafter, P.W.1 and her husband lodged Ex.P1 complaint with the police.

17. The victim girl was examined as P.W.2. She, in her evidence, deposed that, while she was proceeding to school, the First Accused told her that he loves her and gave her chocolates. She further stated that, when she had gone to the house of P.W.11, the First Accused came there and tortured her. P.W.11 allegedly injected a vitamin injection to her, following which she became unconscious, and the Accused misused that. She stated that the incident was videographed and that she was threatened with the video. She did not know how the video had been taken.

18. The victim girl further deposed that the First and Second Accused threatened her. She informed about the same to her maternal aunt, P.W.4 about the same. P.W.4, in turn, informed the mother and father of the victim girl. Thereafter, they lodged a complaint with the police. The victim girl was taken to the hospital, and her statement was recorded by the learned Judicial Magistrate.

https://www.mhc.tn.gov.in/judis

WEB COPY

19. P.W.3 Subhani, in his evidence, deposed in line with the evidence of P.W.1. P.W.4/Dilsath deposed that the victim girl was aged about 13 years and was the daughter of her brother-in-law. The said girl had been subjected to abuse by the Appellant/Easwaran and Bharathi. According to her, the First Accused informed the victim girl that he loves her and established sexual relationship with her. He videographed the same, showed the video to her, and threatened that he would publish it on the internet if she did not come. On 10.10.2015, the victim girl informed P.W.4 about the incident. P.W.4, in turn, informed her husband. Both of them thereafter informed P.W.1 and P.W.3. All four of them went to the Cumbum North Police Station and lodged a complaint. P.W.5 the brother of P.W.3 and husband of P.W.4, deposed in line with the evidence of P.W.4.

20. P.W.6 Abbas, one of the witnesses to the Observation Mahazar, in his evidence, deposed that on 11.10.2015, at about 18.00 to 18.15 hours, the Sub-Inspector of Police, Cumbum North Police Station came to the place of occurrence and prepared Ex.P2 Observation Mahazar in which he and Jamal signed as witnesses.

21. P.W.7, the Head Constable, Iyappan was the person who had taken the First Accused for medical examination.

https://www.mhc.tn.gov.in/judis

WEB COPY

22. P.W.8. Ananda Mohan, the Headmaster of the Municipal Girls Higher Secondary School, Cumbum, issued Ex.P3 School Certificate. According to the Certificate the date of birth of the victim girl is 07.06.2002.

23. P.W.9 Dr. Juliana Jayanthi, deposed that on 12.10.2015, while she was working as a Professor at the Government Medical College Hospital, Theni, K.Vilaku., the victim girl was produced before her by Woman Police Constable/Aarthi. Upon examination, she found that the vagina of the victim girl admitted one finger with difficulty and that her hymen was not intact. The victim girl did not complain of any pain.

24. P.W.9 had answered the questions raised by the Court. In her answers, she stated that the victim girl was aged between 12 and 14 years and that her hymen was not intact and had ruptured. She further stated that the rupture of the hymen discloses sexual intercourse. However, she could not state whether the victim girl had been subjected to sexual intercourse for past three months or not. In this connection, she issued Ex.P4 Medical Report.

25. P.W.10, the Inspector of Police, examined the victim girl on

https://www.mhc.tn.gov.in/judis

WEB COPY

11.10.2015 and recorded her statement. P.W.11, the friend of the victim girl, did not support the case of the prosecution and turned hostile. In her cross-examination, she denied the statement given to the police.

26. P.W.12 Dr. K. Arun Kumar, conducted the potency test on the First Accused. Upon medical examination, he opined that the First Accused was potent and capable of committing sexual intercourse. He further stated that there were no injuries on the private part of the First Accused to indicate that he had sexual intercourse. In this connection, he issued Ex.P5 Medical Report.

27. P.W.13, the learned Judicial Magistrate, Tmt.Shri Vidhya, recorded Ex.P6, statement of the victim girl under Section 164 of the Code of Criminal Procedure. She deposed regarding the recording of the said statement.

28. P.W.14 Aarthi, the Woman Police Constable, deposed that she had taken the victim girl for medical examination to the Government Medical College Hospital at Theni, K.Vilaku on 12.10.2015.

29. P.W.15 Sultan Basha, the Sub-Inspector of Police, registered the First Information Report, while P.W.16 was the Investigating Officer.

https://www.mhc.tn.gov.in/judis

WEB COPY

P.W.16 deposed regarding the preparation of the Observation Mahazar and Rough Sketch, recording of the statements of the witnesses, arrest of the Accused, medical examination of the Accused and the victim girl, collection of the age certificate of the victim girl, recording of the victim girl's statement under Section 164 of the Code of Criminal Procedure, and filing of the final report before the Court.

30. On a careful perusal of the evidence projected on the side of the prosecution, it is found that the alleged occurrence took place at the house of P.W.11, who was none other than the friend of the victim girl. However, P.W.11 did not support the case of the prosecution and completely turned hostile. Even during her cross-examination, the prosecution could not extract anything in its favour.

31. The case of the prosecution entirely rests on the evidence of the victim girl. On going through the evidence of the victim, it is found that she deposed that, while she was proceeding to school, the First Accused told her that he loves her and offered her chocolates. She further stated that, when she went to the house of P.W.11, the First Appellant came there and tortured. According to her, P.W.11 injected a vitamin injection to her, following which she became unconscious. According to her, she was misused and video was taken, and that the Accused threatened her by

https://www.mhc.tn.gov.in/judis

WEB COPY

showing the video. She informed P.W.4 about the incident.

32. From the evidence of the victim girl, it is found that as per her version, the First Appellant had forged relationship with the victim girl by saying that he loves her. He allegedly videographed their intimate relationship and threatened to publish the video on the internet if she did not subject herself to his sexual demands.

33. However, no such video was recovered from the First Appellant. During his cross-examination, the Investigating Officer admitted that he had not recovered the mobile phone of the appellant. Therefore, the learned counsel for the appellant contended that an adverse inference has to be drawn as against the prosecution. This Court found that when the case itself is based on the premises that the appellant had compelled her cooperation for his sexual demands by threatening to publish the video recorded by him. The non-recovery of the mobile phone and the non-production of the alleged videograph would be fatal to the case of the prosecution. Therefore, the prosecution has failed to prove that the First Appellant had videographed the alleged intimate relationship between the victim girl and the Appellant himself.

34. Further, P.W.2, the victim girl, did not depose that the First

https://www.mhc.tn.gov.in/judis

WEB COPY

Appellant had subjected her to penetrative sexual assault. According to her, she became unconscious, a video was taken, and she was threatened with the said video.

35. Though the learned Government Advocate (Criminal Side) contended that the medical evidence disclosed that the hymen of the victim girl was ruptured, on a perusal of the evidence of P.W.9/Dr. Juliana Jayanthi, it is found that the vagina of the victim girl admitted one finger with difficulty. If the victim girl accustomed to sexual intercourse for the past three months, as alleged by the prosecution, her vagina would have admitted one finger easily or even admit two finger. Further, the mere fact that the hymen was ruptured does not, by itself, prove that the victim girl had been subjected to sexual intercourse. Even P.W.9, during her cross-examination, admitted that rupture of the hymen could occur while a girl was engaged in activities such as long jump or as a result of an accident. Therefore, without any substantive piece of evidence to prove that the First Appellant was responsible for the alleged rupture, the said medical finding cannot, by itself, be relied upon to sustain his conviction of the Appellant herein.

36. Further, the Medical evidence being a corroborative piece of evidence, in the absence of any evidence to show that the Appellant

https://www.mhc.tn.gov.in/judis

WEB COPY

herein had committed penetrative sexual assault on the victim girl, the medical evidence, cannot be relied upon to sustain the conviction on the Appellant.

37. Further, the evidence of P.W.1, P.W.3, P.W.4 and P.W.5 are only hearsay. Therefore, their evidence cannot be given any credence.

38. Though the evidence of the victim girl creates suspicion over the First Appellant that he would have committed offence as alleged by the prosecution, it is a settled position of law that suspicion, however grave, cannot substitute the place of proof.

39. Further, on careful perusal of the evidence projected on the side of the prosecution, no incriminating circumstance has been brought on record as against the Second Appellant, to prove his involvement in, or abetment of, the alleged offence committed by the First Appellant.

40. Further, on careful perusal of the judgment of the Trial Court, it is found that, though the Second Appellant was charged for the offences punishable under Section 6 read with Section 17 of POCSO Act, the Trial Court convicted him separately under Sections 6 and Section 17 of the POCSO Act and imposed separate sentences for the said offences. In the

https://www.mhc.tn.gov.in/judis

WEB COPY

present case, the course adopted by the Trial Court, is completely against the canons of criminal jurisprudence.

41. Therefore, this Court is of the considered view that the findings recorded by the Trial Court in convicting the Appellants and the sentences imposed on them are liable to be set aside.

42. In the result, this Criminal Appeal is allowed. The conviction and sentence imposed on the Appellants by the Trial Court in Special S.C. No. 4 of 2016 is hereby set aside. The bail bonds executed by the appellants shall stand discharged. The fine amount, if any, paid by them is ordered to be refunded.

27-10-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

jja

https://www.mhc.tn.gov.in/judis

WEB COPY

To:-

1. The District Fast Track Mahila Court,
   Theni.

2. The Inspector of Police,
   Cumbam North Police Station,
   Theni District.

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

https://www.mhc.tn.gov.in/judis

WEB COPY

S.KARTHIKEYAN, J.
jja

Judgment made in
Crl. A(MD) No. 11 of 2020

27-10-2026

https://www.mhc.tn.gov.in/judis