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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 25-09-2026

PRONOUNCED ON : 27-10-2026

CORAM

THE HON'BLE MR.JUSTICE S.KARTHIKEYAN

CRL A(MD) No. 591 of 2019

CNR:{HCMD011170392019}

Sankar

...Appellant/Sole Accused

Vs

The State, Rep by,
The Inspector of Police,
Pattukkottai Taluk Police Station,
Thanjavur District.
(Crime No. 313 of 2013)

..Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C., to call for the records in Special Sessions Case No. 11 of 2014 on the file of the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thanjavur, Thanjavur District and set aside the judgment dated 16.10.2019 and acquit the appellant of the charges levelled against against him.

For Appellant : Mr. A.Thiruvadi Kumar.

For Respondent : Mr. A.Robinson,
Government Advocate (Crl. Side)

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JUDGMENT

This Criminal Appeal is directed against the judgment of conviction passed against the appellant herein by the Fast Track Mahila Court, Thanjavur in Spl. S.C.No.11 of 2014 dated 16.10.2019.

2. On a careful perusal of the records, it is found that on 11.11.2013, P.W.14 Muthulakshmi, the then Sub-Inspector of Police, Pattukkottai Taluk Police Station, received Ex.P1 complaint statement from P.W.1 and registered Ex.P7 First Information Report in Crime No.313 of 2013 for the offences punishable under Section 4 of the POCSO Act and Section 506(ii) of IPC. He forwarded the original complaint and the First Information Report to the learned Judicial Magistrate, Pattukkottai, and placed a copy of the First Information Report before the Inspector of Police for investigation.

3. P.W.15 Sengamalakannan, the Deputy Superintendent of Police, took up the investigation of the case. On the same day, he visited the place of occurrence at about 13.45 hours and prepared Ex.P8 Observation Mahazar and Ex.P9 Rough Sketch in the presence of witnesses P.W.5 Balakrishnan and P.W.6 Rajendiran. He examined P.W.1 Dhanalakshmi, P.W.2 Muruganandham, P.W.3 Vedhavalli, Kokila, Kanagi, and P.W.4 Soodamani and recorded their statements. He also examined the mahazar

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witnesses and recorded their statements.

4. On 11.11.2013, at about 15.00 hours, he arrested the Accused at Aaladikumulai, Pattukkottai. At about 15.30 hours, he caused the Accused to be remanded in judicial custody. On the same day, he examined the Special Sub-Inspector of Police Gandhi, Women Police Constable 176 Sivasankari, and forwarded the victim to the Government Hospital, Pattukkottai, for medical examination.

5. On 12.11.2013, he forwarded a requisition, through the Special Sub-Inspector of Police, Rajendiran to the Government Hospital, Pattukkottai, for conducting the potency test of the Accused. On 19.11.2013, he produced the victim before the Child Welfare Committee through the Special Sub-Inspector of Police Gandhi. On 21.11.2013, he recovered the Birth Certificate of the victim through the Sanitary Inspector.

6. On 31.12.2013, he examined the Special Sub-Inspector of Police Rajendiran and recorded his statement. On the same day, he examined the Special Sub-Inspector of Police Gandhi, Dr.Baskar, Women Police Constable Sivasankari, Dr.Meena, Sub-Inspector of Police Muthulakshmi, the Child Welfare Committee official Palaniappan and the Sanitary Inspector Ravichandran and recorded their statements. On

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completion of the investigation, on 31.12.2013, he filed the final report before the Special Court.

7. The final report was taken cognizance by the Special Court in Spl.S.C.No.11 of 2014, and summons was issued to the Accused. On his appearance, the copies of the documents relied upon by the prosecution were furnished to him under Section 207 of Cr.P.C.

8. After hearing both sides, the Trial Court has framed charges against the Accused for the offences punishable under Section 4 of POCSO Act, 2012 and Section 506(ii) of IPC. The charges were read over and explained to the Accused, which he denied. Therefore, he was tried before the trial court.

9. To prove its case, the prosecution has examined P.W.1 to P.W.15 and marked Ex.P1 to Ex.P9. After closure of the prosecution side evidence, the incriminating materials appeared in the evidence were put to the Accused under Section 313(1)(b) of Cr.P.C. He denied the same as false. Though he claimed that he had witnesses to examine on his side, no witness was examined and, therefore, the defence side evidence was also closed.

10. After hearing both sides, the Trial Court has found the

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appellant guilty of the offences punishable under Section 4 of POCSO Act and Section 506(ii) of IPC and sentenced him as follows:

10(i). For the offence punishable under Section 4 of the POCSO Act, to undergo ten years of imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo one year simple imprisonment.

10(ii). For the offence punishable under Section 506(ii) of IPC, to undergo one year imprisonment and to pay a fine of Rs.1000/-, in default, to undergo three months simple imprisonment. Both the sentences were ordered to run concurrently.

11. Aggrieved by the said judgment of conviction and sentence, the Accused has preferred the present appeal before this Court. Heard the learned counsel appearing for the appellant and the learned Government Advocate (Criminal Side) appearing for the State. The Trial Court records have been called for and perused.

12. **Point for Determination:**

"Whether the conviction and sentence imposed on the appellant is sustainable?"

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Answer:-

13. On a careful perusal of the records, it is found that it is the case of the prosecution that the victim was below the age of 14 years and that the appellant had committed penetrative sexual assault upon her. To substantiate the said case, the prosecution examined P.W.1 to P.W.15 and marked Ex.P1 to Ex.P9.

14. On a careful perusal of the records, it is found that the prosecution has produced Ex.P2 Birth Certificate of the victim. As per Ex.P2, the date of birth of the victim is 03.10.2001. The occurrence is alleged to have taken place on 10.11.2013. Therefore, at the time of the occurrence, the victim was a child within the meaning of the POCSO Act.

15. On careful perusal of records, it is found that the victim was examined as PW1. PW1, in her evidence, deposed that on 10.11.2013, at about 4.00 p.m., she had gone to play kabaddi at the backside of the house of the appellant. She, along with her friends Dhanalakshmi, Kasturi were playing kabaddi. At that time, the appellant also came there and offered to play kabaddi. Along with the appellant, two or three other persons were present. In all, there were five persons. They formed one team, while the appellant and his friends formed the other team, and they played kabaddi.

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16. P.W.1 further deposed that at about 5.45 p.m., she went to her house to drink water and thereafter proceeded to answer nature's call. While she was answering nature's call, the Accused gagged her mouth with a hand kerchief and took her to his house. He locked her inside the house. When she attempted to take the kerchief, the Accused pushed her down and thereafter lying down on top of her. He removed her clothes, lifted her inner skirt and pressed his private part into her private part. She experienced pain and cried with pain and became unconscious. At that time, the mother of the appellant came there, tapped on the door and called out the appellant by name. Thereafter, the victim removed the kerchief from her mouth and called out, “Aatha, Aatha” to his mother; however, the same did not reach her ears.

17. P.W.1 further deposed that the appellant thereafter brought her out of the house and threatened her that, if she disclosed this to anyone, he would murder her sister and parents. He threw her clothes outside and pushed her out of the house. She then heard the sound of her mother coming in search of her. She went to her mother and informed her about the occurrence and cried. Her mother asked the victim's paternal uncle to enquire about the same with the parents of the appellant. However, they closed the doors and they were not inclined to see them.

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18. P.W.1 further deposed that she was bleeding from her private part and subsequently suffered from fever (somebody told them to save the child). Her mother took her to a private hospital, where first aid was given and they were advised to take her to the Government Hospital. Since her elder and younger sisters were alone at home, her mother brought her back home. On the next day, they went to the Government Hospital, Pattukkottai. As there was no doctor available, at about 12.00 to 12.30 p.m., she went to the Pattukkottai Police Station [the witness stated that she was not sure of the name of the police station] and lodged Ex.P1 complaint. Thereafter, a male police officer took her to the Government Hospital, where a lady doctor examined her and applied medicine on the injury. The police, having found that the occurrence was true, arrested the Accused. P.W.1 further deposed that she had sustained a small nail-mark injury below her right thumb and that she gave a statement before the Woman Police Officer.

19. P.W.2 Muruganandham, the father of the victim has not deposed anything about the occurrence. P.W.3/Vedhavalli, the mother of the victim, is only a hearsay witness. She in her evidence deposed that, about three and a half years prior, when she returned from the field, she went in search of her daughter. At that time, she found her daughter

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coming out of the lane by weeping. She noticed bleeding from her private part. When she questioned her, the victim informed her that the appellant herein had pressed his male organ into her private part. She further stated that she had gone to the house of the appellant and pleaded to save her daughter. They closed the doors and did not open. Thereafter, she took the victim to a private hospital at Pattukkottai, where they were advised to admit her in the Government Hospital and to give a complaint before the police. However, they thought that the matter could be settled through the intervention of elders and, therefore, did not immediately lodge a complaint. She also stated that, through the paternal uncle of the victim, they pleaded with the father of the appellant to save her daughter, for which he replied that they could do whatever they wanted.

20. Thereafter, they took the victim to the Government Hospital, Pattukkottai. As there was no doctor, they went to the Police Station. The police took the victim to the hospital. Thereafter, the Accused was arrested.

21. P.W.4 Soodamani, the friend of the victim, turned hostile and did not depose anything about the occurrence. PW5 Balakrishnan also did not support the case of the prosecution. P.W.6 the then Special Sub-Inspector of Police, Pattukkottai Taluk Police Station, took the appellant

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to the Government Hospital, Pattukkottai, for medical examination on 11.11.2013. P.W.7 is the Special Sub-Inspector of Police, Pattukkottai Taluk Police Station, who took the victim to the Government Hospital, Pattukkottai, for medical examination. PW8 Rajendiran, did not support the case of the prosecution and was treated as hostile.

22. P.W.10 is a member of the Child Welfare Committee. He, in his evidence, deposed that, on 19.11.2013, the victim was produced before the Child Welfare Committee by the Inspector of Police, Pattukkottai. The victim was enquired and she narrated the occurrence. Her statement (Ex.P4) was recorded by one of the members, Nishkath Apsha. He thereafter forwarded Ex.P3 report to the Inspector of Police.

23. PW11 Dr.Meena, who conducted the medical examination of the victim, deposed that, on 11.11.2013, at about 6.00 p.m., the victim was produced before her for medical examination. The victim stated that, on 10.11.2013, at about 6.00 p.m., while she was playing near the house of a person aged about 27 years, the said person took her to his house, laid her down and touched her private part and harassed her.

24. On examination, PW11 found the victim was aged about 13 years. The secondary sexual organs had not developed. She had sustained a small abrasion on her right thumb and no other external injuries were

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found. On examination of the private part, she found no hair growth and no external injuries. The vagina admitted one finger. She took a vaginal swab and forwarded the same to the Forensic Science Laboratory. The report revealed that neither semen nor spermatozoa was detected in the swab. PW11 opined that, as the vagina admitted one finger, the victim might have been subjected to sexual harassment. Ex.P5 is the Accident Register.

25. P.W.12 Dr. Baskaran, the doctor who conducted the medical examination of the Accused, deposed that, on examination, he found that there was nothing to suggest that the appellant is impotent. In this connection, he issued Ex.P6 Medical Certificate.

26. P.W.13 is the police official who produced the victim before the Government Hospital, Pattukkottai, for medical examination. P.W.14 Muthulakshmi, the then Sub-Inspector of Police, Pattukkottai Taluk Police Station, recorded Ex.P1 complaint of the victim and registered Ex.P7 First Information Report.

27. PW15 Sengamalakannan is the Investigating Officer. He deposed with regard to the investigation conducted by him, preparation of the Observation Mahazar and Rough Sketch, examination of witnesses, arrest of the Accused, production of the Accused and the victim for

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medical examination, collection of the birth certificate of the victim and filing of the final report before the Trial Court.

28. On a careful perusal of the evidence of the prosecution witnesses, it is found that, insofar as the occurrence is concerned, except the evidence of the victim, no other direct evidence is available on record. The evidence of P.W.3, the mother of the victim, is *res gestae* with regard to the occurrence and does not constitute direct evidence as regards the occurrence.

29. In her evidence, P.W.1 has stated that, while she was answering nature's call, the Accused gagged her mouth with a kerchief, took her to his house, committed penetrative sexual assault upon her and thereafter threw her out of the house along with her clothes on the date of occurrence.

30. It is the case of the victim that she was profusely bleeding from her private part, which was noticed by her mother, who questioned her about the same. She further stated that thereafter they went to the house of the Accused and tapped on the doors, seeking justice. P.W.1 and her mother also claimed that they thereafter went to a private hospital and obtained treatment. However, the prosecution has not produced any medical records to prove the treatment allegedly taken at the private

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hospital.

31. Further, PW1 claimed that on the next day, they went to the Government Hospital, Pattukkottai, where no doctor was available, and thereafter Ex.P1 complaint came to be lodged before the police. On careful perusal of Ex.P1 complaint, it is found that the victim has not stated in her complaint that she was bleeding from her private part. Instead, she stated that she found a white, viscous fluid on her private part. Therefore, the evidence of PW1 and her mother that the victim was profusely bleeding from her private part after the occurrence is nothing but an exaggeration, which was not supported by Ex.P1 complaint.

32. Further, the said statement of the victim regarding bleeding from her private part is not supported by the medical evidence also. Though the victim and her mother claimed that she was taken to a private hospital for treatment, no records relating to such treatment have been produced by the prosecution.

33. PW11 Dr.Meena, in her evidence, has clearly deposed that she did not find any injury on the body of the victim except a small abrasion over the right thumb. Even according to the victim, she had been playing kabaddi before the occurrence. Therefore, the said injury could also have

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been sustained during the game of kabaddi.

34. It is also curious to note that the doctor has not deposed anything with regard to rupture of the hymen. She deposed that a vaginal swab was taken and forwarded to the Forensic Science Laboratory. The Forensic Science Laboratory report discloses that no semen or spermatozoa was detected in the said swab. Therefore, the statement of the victim in Ex.P1 complaint that she found a white, viscous fluid on her private part is also not corroborated by the lab report.

35. Though the occurrence is said to have taken place on 10.11.2013 at about 5.45 p.m., the complaint came to be lodged only on 11.11.2013 at about 13.00 hours. The First Information Report reached the Court only on 11.11.2013 at about 9.00 p.m. Therefore, the possibility of improvement, exaggeration and embellishment cannot be completely ruled out.

36. Further, P.W.1, in her cross-examination, has admitted that, after they went to the private hospital, the doctor advised them to approach the Police Station. However, they did not immediately go to the Police Station, though it was situate very near to the said hospital. She has also admitted that she did not go to the Government Hospital on the

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same night.

37. The defence has also elicited certain contradictions in the evidence of P.W.1 and her complaint statement, Ex.P1. In Ex.P1, the victim has not stated that the appellant gagged her mouth with a kerchief and took her to his house. According to her statement, she was taken to the house of the Accused, laid on the ground and thereafter she became unconscious. She regained consciousness only when the mother of the appellant came there.

38. Therefore, on a careful consideration of the evidence of the victim, it is found that it is not corroborated by her own statement, Ex.P1. Further, the statement under Section 164 of Cr.P.C. of the victim was not recorded. In view of the contradictions found in the evidence of the victim, including on material particulars, this Court is of the considered view that it would be highly hazardous to sustain the conviction on the basis of her uncorroborated testimony. Therefore, this court is of the considered view that the benefit of doubts expressed above need to be extended to the appellant and he shall be acquitted from the charges framed against him.

39. In the result, this Criminal Appeal is allowed. The conviction

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and sentence passed by the Trial Court in Spl. S.C.No.11 of 2014 dated 16.10.2019 is hereby set aside. The bail bond executed by the appellant shall stand discharged. The fine amount, if any paid, shall be refunded to the appellant.

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

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To:-

1. The learned Sessions Judge,
   Mahalir Neethimandram (Fast Track Mahila Court),
   Thanjavur,
   Thanjavur District.

2. The Inspector of Police,
   Pattukkottai Taluk Police Station,
   Thanjavur District.

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

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S.KARTHIKEYAN, J.

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