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CRL.A(MD).No.1203 of



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04/02/2026

CORAM

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

**Crl.A(MD)No.1203 of 2025
and
Crl.MP(MD)No.16814 of 2025**

Muthukutti : Appellant/Sole Accused

Vs.

The State of Tamil Nadu
Rep. By the Inspector of Police,
Mukkudal Police Station,
Tirunelveli District.
(Crime No.322 of 2018)

: Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 415(2) of BNSS, 2023 against the judgment of conviction and sentence passed in Special CC No.282 of 2019, dated 07/07/2025 on the file of the Sessions Judge, Special Court for POCSO Act Cases, Tirunelveli and set aside the same and consequently to acquit the appellant.

For Appellant : Mr.S.Ayyanar Prem Kumar

For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor



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JUDGMENT

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

This Criminal Appeal is preferred against the judgment of conviction and sentence passed by the Sessions Judge, Special Court for POCSO Act cases, Tirunelveli, in Special C.C.No.282 of 2019, dated 09/01/2025 and consequently to acquit the appellant.

2. The accused was charged under Section 6 of the POSCO Act by the Trial Court.

3. As per the case of the prosecution, on 17/11/2018 which was a holiday for the victim girl, at 1.30 p.m she was playing in front of her house. Beedi rolling is the avocation of the mother of the victim girl. The child, at the time of the occurrence, was studying 2nd Standard. At the time of the occurrence, the accused was 67 years of age. The complainant who is the mother of the victim girl was informed by one Sivaperumal (PW4) that the accused gave something to the child. Immediately, she went to the house of the accused and witnessed that the accused inserted his penis into the mouth of the victim girl. When she raised an alarm, the accused came and apologised, however, immediately she went to the Police Station and lodged the complaint Ex.P1.



4. Her complaint was received by Mukkudal Police, on 17/11/2018 and a FIR was registered in Crime No.322 of 2018 under Section 376 IPC and Section 4 of POCSO Act on the same day at 16.30 hours by PW14-Tmt.Margret Therasa, Sub Inspector of Police, sent the same to the Court and copies to the higher officials.

5. PW16-Tmt.Sankareshwari, Investigating Officer, took up the case for investigation and went to the place of occurrence and prepared the observation mahazar (Ex.P22) and rough sketch (Ex.P23) and examined the witnesses and recorded the statement of the victim girl and she sent the victim girl for medical examination.

6. PW15-Dr.Subatharadevi examined the victim girl. At the time of examination of the victim girl, she was also informed that the accused had inserted his penis into her mouth. She examined the victim, but did not find any injuries on the external or internal parts of the body and issued the accident register (Ex.P21).

7. Thereafter, PW16 the Investigating Officer arrested the accused on 20/11/2018 at 06.00 a.m and recorded his confession statement under Ex.P24 and recovered his trousers (MO2) under a seizure mahzar (Ex.P9) and sent him for remand. The accused was also sent for medical examination.



8. PW9-Dr.Selvamurugan examined the accused and opined that there is nothing to suggest that he is an impotent. Thereafter, PW16 sent a requisition to record the statement of the victim under Section 164 Cr.P.C under Ex.P13 and thereafter, the victim girl was examined and her statement was recorded under Section 164 Cr.P.C under Ex.P27 and the dresses worn by the accused and the victim girl were also sent for forensic test under Ex.P28. The investigating officer received the forensic report (Ex.P29). After completing the investigation, she filed the charge sheet under Section 376 IPC and Section 4 of the POCSO Act.

9. This case was taken on file as Special CC No.78 of 2019 on the file of the Mahila Court, Tirunelveli. Since the offence is exclusively triable by a Special Court for POCSO Act cases, the Sessions Judge, Mahila Court, Tirunelveli, transferred the case records to the Principal District and Sessions Judge, Tirunelveli. The Principal District and Sessions Judge, Tirunelveli, received the case records and numbered it as Special CC No.282 of 2019 and made it over to the Sessions Judge, Special Court for POCSO cases, Tirunelveli.

10. On receipt of the records, the learned Sessions Judge, Special Court for POCSO Act case, Tirunelveli, framed charges against the accused under Section 6 of the POCSO Act. The charge was read over and explained to the accused. The accused denied the charge and claimed to be tried. Therefore, the case was posted for trial.



11. On the side of the prosecution, 16 witnesses were examined as PW1 to PW16 and 31 documents were marked as Exs.P1 to P31. Material Objects MO1 and MO2 were produced. On the side of the accused, no witness was examined and no document was marked.

12. The Trial Court, on appreciation of the evidence, both oral and documentary, concluded that the accused is guilty and convicted him for the offences under Section 6 of the POCSO Act and sentenced him to undergo life imprisonment and to pay a fine of Rs.10,000/-, in default to undergo 3 years RI.

13. Against the said judgment of conviction and sentence, this criminal appeal is filed by the appellant on the following among other grounds:-

The prosecution has failed to prove the case beyond a reasonable doubt. As per the prosecution, the occurrence took place on 17/11/2018 at 1.30 p.m., and the FIR was registered at 04.30 p.m., on the same day and there was a delay of three hours in registering the FIR, which creates several infirmities in the case of the prosecution. The evidence of the eye witnesses namely PW1 and PW3 are relative witnesses. Except for the above, no eyewitness was examined. PW4 was stated to be an eyewitness, but he turned hostile. He further stated that due to previous enmity against the accused, who is an old man, this false case has been foisted and therefore, the judgment of the Trial Court is liable to be set aside and this appeal is to be allowed by acquitting the appellant.



14. Per contra, the learned Additional Public Prosecutor submitted that the victim girl was aged about six years while the accused at the time of the occurrence was 67 years old and the accused taking advantage of his position, took the victim child inside the house and tried to commit aggravated sexual assault by inserting his penis into the mouth of the victim, which was witnessed by PW4 and immediately he escaped from the place of occurrence. The victim clearly deposed about the occurrence. Her evidence was corroborated by PW2, PW3 and PW7. There is no previous enmity between the accused and the mother of the victim girl. The Trial Court, after considering the entire circumstances has rightly convicted the accused and there is no merit in the appeal and it is liable to be dismissed.

15. Heard both sides and perused the materials available on record.

16. On perusal of the records, it is seen that the victim girl is aged about 6 years at the time of the occurrence. On the fateful day on 17/11/2018 at about 1.30 p.m., the victim girl was playing in the vicinity of the house opposite to the accused, who is aged about 67 years at the time of the occurrence and residing in the neighbourhood. After knowing that she is alone, the accused approached her and handed over Rs.5/- instructing her to purchase a matchbox from a nearby shop. After purchasing the matchbox, she returned to the house of the accused to hand over the same, at which time, the accused suddenly caught hold of her hand, exerting force, and dragged her towards his house located just



nearby. Upon reaching his dwelling, the accused forcibly laid the child and thereafter offered her a sum of Rs.100/- and as categorically stated by the victim, the accused removed his jatti and penetrated his penis into her mouth despite her resistance. When the accused was dragging the victim, PW2 Vellammal was informed by PW4-Sivaperumal who is an eye witness observed that the accused was dragging the victim and immediately informed the same to PW2. Upon realizing the unfolding situation, PW2 immediately rushed to the scene of crime and beaten the accused and rescued her daughter from the clutches of the accused and thereafter, immediately proceeded to lodge a formal complaint before the Police without any inordinate delay at 04.30 p.m and upon receipt of the complaint, immediately FIR came to be registered in Crime No.322 of 2018 under Section 376 IPC and Section 4 of POCSO Act. So, there is no inordinate delay in registering the FIR.

17. The victim girl during her chief examination has clearly stated that when she was studying 2nd Standard, she was playing in her paternal Uncle's house. At that time, the accused asked her to purchase a matchbox and gave her Rs. 5/-. So, she purchased a matchbox and handed it over to the same to the accused. Immediately, she was dragged by the accused and he laid her down and also inserted his penis into her mouth. At that time, the PW4 saw the occurrence and he abused the accused and informed the same to her brother and mother and her mother took her and beat the accused and thereafter, a complaint was lodged.



18. Though it was stated that there was a previous motive, it was not proved what kind of motive existed between the accused and the mother of the victim girl. The mother of the victim girl was examined as PW2. She has also stated that on the date of the occurrence, she was informed by one Sivaperumal that the accused misbehaved with her child and she witnessed the occurrence and abused the accused and immediately, lodged the complaint. Her evidence was corroborated by PW3. Though, the said Sivaperumal was informed about the occurrence, he turned hostile during the trial.

19. PW7 has spoken about the arrest of the accused and the recovery. PW9, Dr.Selvamurugan spoke about the medical examination conducted on the accused. PW10 and PW14 have spoken about the registration of the FIR. The victim girl before the Judicial Magistrate also clearly stated what happened to her by the accused. The Trial Court, after considering the entire evidence, held that there is no delay in registering the FIR and also discussed about the age of the child at the time of the occurrence, which was not disputed by the defence. The evidence of PW1 and PW2 is clear and cogent. The child witness has clearly stated about the act of the accused. There was no material contradiction or omission between the evidence of PW1 and PW2.

20. PW15-Dr.Subathradevi examined the victim girl and in her evidence, she has stated that when there is a specific nature of oral sexual assault



might not leave extensive injuries. Even in the absence of any injury, the prosecution's case cannot be disbelieved when there is strong ocular evidence, corroborated by their testimony of the victim and the account given by her mother regarding the resistance offered. The accused is residing in the same location. After taking advantage of the loneliness and innocence of the victim girl, the accused committed sexual assault on her. The Trial Court, after noticing the demeanour of the witnesses and the mother of the victim inspired unshakable confidence and convicted the accused of the charged offence. There is no inordinate delay in lodging the complaint. This Court does not find any infirmity in the impugned judgment passed by the Trial Court.

21. In the result, this criminal appeal stands **dismissed**, confirming the judgment of conviction and sentence passed by the trial court. Consequently, the connected miscellaneous petition is closed.

(G.K.I., J) (R.P., J)

04/02/2026

Index :Yes/No
Internet :Yes/No

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To,

- 1.The Sessions Judge,
Special Court for Exclusive
Trial of Cases under POCSO Act,
Tirunelveli.
- 2.The Inspector of Police,
Mukkudal Police Station,
Tirunelveli.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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