



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.02.2026

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

Crl.A(MD)No.1336 of 2025
and
Crl.MP(MD)No.19612 of 2025

Thomas Fernando : Appellant/Sole Accused

Vs.

State of Tamil Nadu
Represented by its
The Inspector of Police,
All Women Police Station,
Dindigul Rural,
Dindigul District.
(Crime No.29 of 2024)

: Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 415 of BNSS, 2023 against the judgment of conviction and sentence passed in Special SC No.108 of 2024, dated 24.04.2025 on the file of the Sessions Judge, Special Court for POCSO Act Cases, Dindigul and to set aside the same and consequently to acquit the appellant.

For Appellant : Mr.R.Venkatesan

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



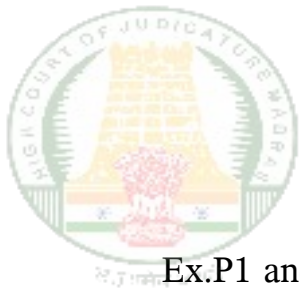
JUDGMENT

(Judgment of this Court made by Hon'ble R.POORNIMA, J.)

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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 S.C.No.108 of 2024, dated 09.01.2025 and consequently to acquit the appellant.

2. The case of the prosecution is that both the accused and the victim girl and her family are living in the adjacent houses. On 20.07.2024 at about 11.00a.m., the victim girl after taking her bath changed her dress and at that time, the accused with the intention to commit penetrative sexual assault trespassed illegally into the house of the child, closed her mouth and abducted her to his house, tied her to a pillar and committed penetrative sexual offence. After the offence, he kept her in a Cauldron and also threatened her with dire consequences that if she revealed the same to anybody, he would kill her. Subsequently, two or three times, he abducted the victim girl from her house to his house and committed the penetrative sexual assault. Hence, he was charged for the offence under Sections 87, 332(b), 127(2), 351(2) of BNS and Section 5(1), 5(m) r/w 6 of POCSO Act, 2012.



3. The complaint was lodged by the mother of the victim girl under Ex.P1 and the same was received by P.W.9-.Tmt.Suseela, Special Sub Inspector of Police, Dindigul Rural AWPS, registered a case in Crime No.29 of 2024 under Sections 96, 127(2), 351(2) BNS and Section 5(l), 5(m) r/w 6 of the POCSO Act, on 05.08.2024 at 14.00 hours.

(a) P.W.10-Tmt.Sumathi, Inspector of Police, after receipt of the copy of the FIR, took up the case for investigation and went to the place of occurrence and prepared observation mahazar (Ex.P2) and rough sketch (Ex.P14) in the presence of the witnesses. She arrested the accused and sent him for remand.

(b) Thereafter, the statement of the victim girl was recorded under Section 161 Cr.P.C. She received the birth certificate of the victim girl Ex.P11.

(c) On 06.08.2024, she sent the victim girl for medical examination. P.W.6-Dr.Muthumamatha examined the victim girl and issued the accident register (Ex.P6) and stated that her hymen is not intact and there are no external injuries. Thereafter, P.W.10 obtained the school certificate of the victim girl (Ex.P5).

(d) She also sent a requisition to the Judicial Magistrate No.3, Dindigul, to examine the victim girl under Section 183(6)(a) of BNS and recorded her statement and it was recorded under Ex.P16.

(e) Thereafter, she sent the requisition for examining the accused for medical examination and Ex.P9 is the medical examination certificate issued to



the accused by Dr. B. Thousif Ahamed, with an opinion that there is nothing to suggest that the accused in the case under reference is incapable of performing sexual intercourse and there is no external injury on the genitalia. She received the forensic report Ex.P17 and medical certificate Ex.P19. After completing the investigation, she filed a final report.

4. This case was taken on file as Special SC No.108 of 2024 on the file of the Special Court for POCSO Act Cases, Dindigul. On receipt of the records, the learned Sessions Judge, Special Court for POCSO Act case, Dindigul, framed the charges against the accused under Sections 332(b), 137(2), 127(2), 351(2) of BNS and Section 5(l), 5(m) r/w 6 of POCSO Act. The charges were read over and explained to the accused. The accused denied the charges and claimed to be tried. Therefore, the case was posted for trial.

5. On the side of the prosecution, 10 witnesses were examined as P.W.1 to P.W.10 and 20 documents were marked as Exs.P1 to P20. On the side of the accused, 3 witnesses were examined as D.W.1 to D.W.3, but no document was marked.

6. The Trial Court, on appreciation of the evidence, both oral and documentary, came to the conclusion that the accused is guilty and convicted him and sentenced to undergo life imprisonment and to pay a fine of



Rs.1,00,000/- in default to undergo 1 year simple imprisonment for the offence under Section 6 of POCSO Act, 2012 and also convicted and sentenced him to undergo 5 years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default to undergo 6 months simple imprisonment for the offence under Section 137(2) of BNS and also convicted him and sentenced to undergo 1 years rigorous imprisonment and imposed a fine Rs.2,000/-, in default to undergo 3 months simple imprisonment and ordered to run all the sentences concurrently.

7. Against which, this present appeal is filed on the following amount other grounds:-

7.1. The Trial Court without any substantial evidence, both direct and circumstantial, came to the wrong conclusion that the appellant had committed the aggravated penetrative sexual assault on the victim girl. The occurrence took place on 01.08.2024, but the FIR was registered only on 05.08.2024 and the statement of the victim was recorded on 08.08.2024, which is a violation of the guidelines issued by the Hon'ble Apex Court in the case of **State of Karnataka Vs. Shivanna** reported in **2014 (8) SCC 91**.

7.2. The prosecution witnesses are interested witnesses and the conviction of the appellant based on the interested witnesses deserves to be rejected.

7.3. Further, the learned counsel relied upon the decision of the Hon'ble Supreme Court reported in the case of **Baij Nath Sah Vs. State of**



Bihar reported in **2010 (6) SCC 736** on the point that mere statement of the prosecution recorded under Section 164 Cr.P.C is not enough to convict the accused and it is not substantive evidence and it can be utilised only to corroborate or contradict the witness's statement made in the Court.

7.4. D.W.1 clearly spoken about the pervious enmity between the appellant's wife and P.W.1 and the house of the accused also situated nearby and there is no sufficient space as stated by the victim girl to commit the offence and the accused was not available on the date of the occurrence as he used to go for work and this case has been falsely foisted against the appellant and therefore, prayed for setting aside the judgment of the Trial Court by allowing the appeal.

8. Per contra, the learned Additional Public Prosecutor appearing for the respondent State contended that the victim categorically deposed about the occurrence before the court and she had earlier stated the same before the Judicial Magistrate, while recording a statement under Section 164 Cr.P.C. [183(6)(a) of BNS]. Her statement was corroborated by her mother. In the case of sexual assault, it is not possible to speak about the occurrence by any independent witness. The statement of the victim girl is sufficient as she is the affected party and her evidence is also supported by the medical evidence. Further, the age of the victim girl was proved through Ex.P4 Transfer Certificate, Ex.P5 School Certificate as well as the birth certificate of the victim girl Ex.P11.



8.1. He admitted that, there is a delay in filing the FIR, but it usually happens in sexual offence cases. Normally the parents of the victim do not come forward to file any complaint due to fear, shame and taking into consideration the future of the victim girl and therefore, mere delay in lodging the complaint, after a delay of 4 or 5 days is not fatal to the prosecution case. The accused in support of his case, examined certain witnesses, their evidence did not inspire the confidence of the Court. Though those witnesses claimed to be residing adjacent to the house of the accused, their houses were not found in the observation mahazar. The Trial Court has rightly appreciated the evidence both oral and documentary and convicted the accused and there is no merit in the appeal and prays for dismissal of the appeal.

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

10. In this case, the victim girl has been examined as P.W.8. In her evidence, she has deposed that her mother used to go for agricultural work in the fields. She further stated that earlier she was staying in a hostel for her studies, but at present she has discontinued her studies.

11. On 25.07.2024, on the date of occurrence when her mother had gone out of the station to attend the funeral ceremony of her grandmother, she was staying alone in her house. On 27.07.2024, the accused called her by stating



that her mother had contacted him and asked her to call back. At that, she came from her grandparents' house and went to take a bath and change her clothes. After finishing, when she locked the house and turned back, she found the accused, who is standing behind her back. He closed her mouth, took her into his house, tied her up inside the house and committed the penetrative sexual assault. At that time she was crying with pain. Subsequently, at 11.00 a.m., her mother called her name. At that time, the accused immediately untied her and also put her dresses, placed her in a cauldron, and closed it. When her mother came and questioned the accused about the whereabouts of her daughter, he stated that he was not aware of the same. Thereafter, her mother left the place. The accused took the victim away from the cauldron and threatened that he would kill her by stabbing her with a knife. Thereafter, she went to her house and when her mother questioned her, she replied that she had gone to play.

12. Subsequently, on 01.08.2024, again the accused committed the same offence. Thereafter, she and her mother intended to go to her grandmother's house. At that time, she saw the accused on the way and became frightened on seeing him. Noticing the unusual behaviour of the child, her mother enquired as to what had happened. Thereupon she narrated the entire incident to her mother. Her mother informed the villagers about the incident and thereafter, the complaint was lodged and the accused was handed over to the police station.



13. The victim girl was examined by the Doctor (P.W.6) and an accident register (Ex.P6) was issued. The victim girl stated to the doctor that she was subjected to sexual assault by the accused under threat. The victim had also stated the same to the judicial magistrate when her evidence was recorded under Section 164(5) Cr.P.C. She identified the accused.

14. According to the appellant, there was a quarrel between the mother of the victim and the wife of the accused, which was denied by the victim and her mother.

15. The evidence of the victim girl is clear, cogent and inspired the confidence of the Court. Her evidence was also supported with the medical evidence (Ex.P6) in which, the Doctor has clearly stated that her hymen is not intact.

16. The age of the victim is proved by Exs.P4, P5 and P11. The evidence of the victim was supported by her mother (P.W.1), who is the complainant and other witnesses namely P.W.2 to P.W.4.

17. It was contended that there was a delay in lodging the complaint. However, the victim girl clearly stated in her evidence that soon after the



occurrence, the accused threatened her that he would kill her with a knife, due to fear she was not able to disclose the incident to anyone. Taking advantage of her loneliness the accused once again committed the offence. Thereafter, when she saw him on the way, she became frightened, noticing her unusual behavior her mother enquired about the reason, whereupon she disclosed the entire incident. Therefore, there is a delay.

18. It is quite natural that in a country like India, a woman may hesitate to lodge a complaint immediately after learning about such an incident from her daughter due to social stigma, fear, and a sense of shame before society. Owing to such hesitation and apprehension, the offences of this nature are often not reported to the police immediately.

19. In India, a large percentage of sexual violence cases go unreported due to social stigma, fear of retaliation and patriarchal attitudes. Survivors often fear being shamed or blamed and believe that the investigating agency may not help, consequently, many such incidents are not reported. These factors contribute to the delay in lodging a complaint immediately. Therefore, the delay in sending the complaint about the crime is not fatal to the prosecution's case.

20. Further, there is no necessity to examine the number of the eye witnesses to the occurrence as the offence of this nature would not ordinarily



take place in the presence of others. The accused after taking advantage of the victim's loneliness, committed the offence when she was alone and kept her under threat. The victim being a child could not have been in a position to express her difficulties. In many such cases, young victims themselves may not clearly understand or articulate what has happened.

21. In a case of sexual offence, the statement of the victim alone is sufficient, when it is corroborated with the medical evidence. The Doctor who examined the victim clearly stated that her hymen was not intact. Since the victim girl was examined after a lapse of 4 to 5 days, there is no chance for any other medical evidence or injuries. Therefore, it is not fatal to the prosecution's case.

22. Though the accused examined certain witnesses on his side, their evidence does not inspire the confidence of this Court. Even during the 313 Cr.P.C questioning, the accused did not plead that there existed a previous enmity between his wife and the mother of the victim. However, in an attempt to escape from the clutches of law, he examined certain witnesses known to him. The Trial Court after considering all the above aspects has rightly convicted the appellant, which does not warrant any interference by this Court.



23. In the result, this Criminal Appeal fails and the same is **dismissed**, confirming the impugned judgment passed by the Trial Court. Consequently, the connected Miscellaneous Petition is closed.

(G.K.I., J) (R.P., J)
05.02.2026

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Internet :Yes/No
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To,

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



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