

Crl.A(MD)No.436 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 20.01.2026

PRONOUNCED ON : 10.02.2026

CORAM:

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

Crl.A(MD)No.436 of 2023

Joseph Raja ... Appellant/Accused

Vs.

The Inspector of Police,
All Women Police Station,
Rajapalayam.
Crime No.9 of 2022. ... Respondent/Complainant

PRAYER:- Criminal Appeal is filed under Section 374 (2) of Cr.P.C to call for the records pertaining to the Special Sessions Case No.84 of 2022 on the file of the Special Court of Exclusive Trial of Cases under POCSO Act, Srivilliputhur.

For Appellant : Mr.K.Samidurai

For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor



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JUDGMENT

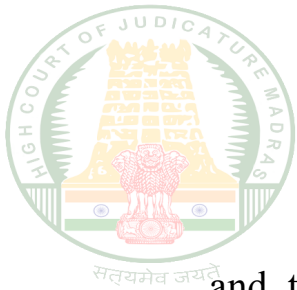
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**(Judgment of the Court was delivered by
G.K.ILANTHIRAIYAN, J.)**

This appeal is filed challenging the order of the Special Court for Exclusive Trial of case under POCSO Act, Virudhunagar at Srivilliputhur, in S.C.No.84 of 2022 dated 20.04.2023, thereby convicting the appellant/accused for the offence punishable under Section 6 of the Protection of Children from Sexual offences Act, 2012 (herein after referred to as “the POCSO Act”).

CASE OF THE PROSECUTION:

2.The case of the prosecution is that, on 03.05.2022 at around 09:00 p.m., the victim girl and her mother had gone to the Church that they usually go to. The appellant is a pastor and he runs the Church. The victim’s mother left her at the church under the appellant’s care and had gone out to meet someone. When she returned, the appellant had panicked and ran away after seeing her



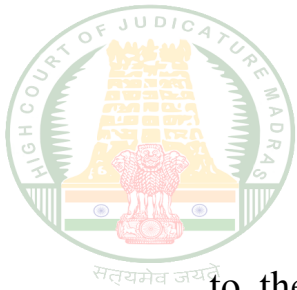
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and the victim was found in a pathetic condition with her shirt unbuttoned and pants rolled up. The next day when the victim's mother inquired about the situation, the victim informed her that the appellant had sucked her breasts and had subjected her to aggravated penetrative sexual assault. It was submitted by the prosecution that the victim girl was 70% disabled, has moderate intellectual disability and is speech impaired. Therefore, the appellant had taken advantage of the victim girl's disability and had subjected her to aggravated penetrative sexual assault.

3.The victim's mother had later confronted about the incident to the appellant and he and his family had apologized and begged to not disclose it to anybody and later that night, the victim and her mother had informed about the incident to her father. Later, on 09.05.2022, they had informed the same to one Esther, who had further inquired the victim girl about the alleged incident. With a lot of hesitation, they had also gathered a group of people and had gone

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to the appellant to confront him, but in front of them he denied committing the alleged offence.

4. Aggrieved by the same, the victim's mother went to the police station and lodged a complaint on 11.05.2022. A final report was filed and the same was taken cognizance by the Trial Court on 15.07.2022.

5. To bring the charges to home, the prosecution had examined 9 witnesses i.e., P.W.1 to P.W.9 and produced 15 documents which were marked as Exs. P1 to P15. The appellant had examined 2 witnesses i.e., D.W.1 and D.W.2 and no documents were marked. No material object was marked by either side.

6. On perusal of the oral and documentary evidences, the Trial Court found the appellant guilty of the offences under Section 5(f) and 5(k) read with Section 6 of the POCSO Act along with



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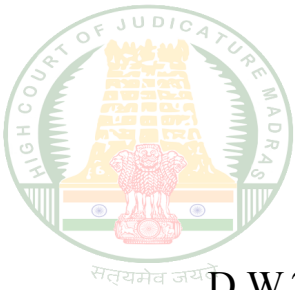
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Section 92(d) of the Rights of Persons with Disabilities Act, 2016 and sentenced him to undergo imprisonment for life i.e., imprisonment for the remainder of his natural life and imposed a fine of Rs.1,00,000/- and in default of the same, to undergo 2 years simple imprisonment. Aggrieved by the same, the appellant has preferred this present appeal.

**ARGUMENTS BY THE LEARNED COUNSEL APPEARING
FOR THE APPELLANT:**

7.The learned counsel appearing for appellant advanced his arguments by raising various grounds:

7.1.It was contented that though the church was a common place and despite the presence of other people at that time, the prosecution failed to examine any independent eye witness to prove the guilt of the appellant beyond reasonable doubt. D.W.2 was the person that the victim's mother had gone to meet. It was stated that

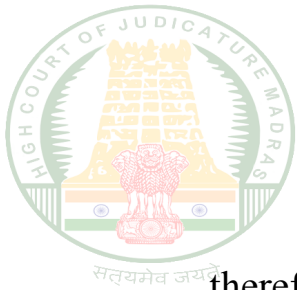


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D.W.2 turned hostile, however his evidence, though crucial, was disregarded by the Trial Court.

7.2.Further, it was stated that, the evidence of P.W.1, who is the mother of the victim girl and is also the defacto complainant, was afterthought and the chief examination was exaggerated from that of her complaint. Furthermore, it was submitted that the Trial Court failed to take into consideration the fact that the medical evidence did not support the case of the prosecution. The victim girl was examined by the doctor who deposed as P.W.3 and after examination she issued a certificate which is marked as Ex.P4. She deposed that there is no injury on the breasts of the victim and there is no evidence of intercourse on the genitals of the victim girl. The victim girl's physical disability was also not proved by the prosecution as Ex.P8, which was the medical report of the victim girl's mental disability does not reveal about her physical disability percentage. This contradiction is fatal to the case of the prosecution and



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therefore the appellant is not guilty of the offences alleged by the prosecution.

7.3.It was further submitted that, the Trial Court failed to take into consideration the delay in lodgment of the complaint. Even according to the case of the prosecution, P.W.1 had come to the knowledge of the alleged occurrence on 04.05.2022 but had lodged the complaint only on 11.05.2022 with about 8 days of delay, but the prosecution had failed to provide a valid reason for the delay.

7.4.He also pointed out that the prosecution failed to examine the family members of the appellant as it was claimed by P.W.1 that the appellant's mother-in-law was present when she left the victim girl in their custody. Further, the appellant's wife, father and other close relatives were claimed to be present when she allegedly confronted him about the crime, but none of them were examined by the prosecution to prove its case.



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7.5.Further it was stated that, the Church which was the alleged place of occurrence, was not owned or run by the appellant and the prosecution also failed to prove that it was run by the appellant for convicting him under Section 5(f) of the POCSO Act. He also contented there was previous enmity between P.W.1 and the appellant and as such to wreak vengeance, this false case was foisted against him. Therefore, it is his grievance that the Trial Court without considering the above details, had mechanically convicted the appellant.

ARGUMENTS OF THE LEARNED ADDITIONAL PUBLIC PROSECUTOR APPEARING FOR THE STATE:

8.Per contra, the learned Additional Public Prosecutor submits that the victim girl who was examined as P.W.2, had categorically described the alleged occurrence and the same was



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corroborated by her mother who was examined as P.W.1. The victim girl had properly and categorically described the incident by way of both actions and words. Further Ex. P4, which was the medical examination report, clearly reveals that the victim girl's hymen is not intact. This proves that the appellant had subjected the victim girl to aggravated penetrative assault. The medical evidence might not reveal the injuries caused by the appellant during the alleged occurrence since, the victim girl was subjected to medical examination after 8 days of the occurrence. Since, the parents of the victim girl were scared of the social implications and consequences, they were not aware as to what had to be done after the occurrence and they sought for the help of several other members of the village due to their helplessness and finally gave a complaint after 8 days. He submits that delay is immaterial in POCSO cases and the appellant cannot take this as a defence to escape from the clutches of law.



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9.He further submits the victim girl is 70% disabled as one of her hands does not function and she is speech impaired. As per Ex.P8, it is revealed that her IQ is 36 which is much lesser than the normal IQ levels i.e., 90. Therefore, though her physical disability percentage was not explicitly stated, her mental disability was proved which is sufficient to convict the appellant for the offences under Section 5(k) of the POCSO Act and Section 92(d) of the Rights of Persons with Disabilities Act, 2016.

10.He states that the minor contradictions and discrepancies pointed out by the appellant are not fatal to the case of the prosecution. The case of prosecution is based on a complete chain of highly incriminating circumstances which irrefutably point towards the guilt of the appellant and after scrutinizing the entire oral and documentary evidence on record, the Trial Court rightly convicted the appellant, and it does not warrant any interference of this Court.

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FINDINGS AND CONCLUSION:

11.The specific case of the prosecution is that, on 03.05.2022 at around 09:00 p.m., the victim girl/P.W.2 and her mother/P.W.1 had gone to the Church that they usually go to. The appellant is a pastor and he runs the Church. The victim's mother left her at the church under the appellant's care and had gone out to meet one Jermiah, who was examined by the accused as D.W.2. According to the case of the prosecution, D.W.2 had borrowed a sum of Rs. 2000/- from the victim's mother and on the day of occurrence he had called her to repay the money, for which she had left the victim girl at the Church and had gone to meet D.W.2 to get the money back.

12.When she returned, the appellant ran away and the victim was found in a pathetic condition with her shirt unbuttoned and pants rolled up. The next day when the victim's mother inquired



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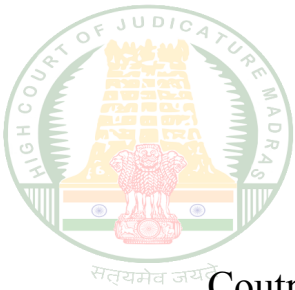
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about the situation to the victim girl, she had informed that the appellant had sucked her breasts and had subjected her to aggravated penetrative sexual assault.

13.To move forward, this Court is inclined to form the following issues in furtherance of deciding the case on hand:

- i. Whether there was previous enmity between P.W.1 and the appellant's family?
- ii. Whether offences under Section 5(f) and 5(k) of the POCSO Act and Section 92(d) of the Rights of Persons with Disabilities Act, 2016 were made out by the appellant?
- iii. Whether the evidences submitted by the prosecution irrefutably, in spite of the minor discrepancies, point towards the guilt of the appellant?

14.On perusal of the evidences of P.W.1 and P.W.2, admittedly, P.W.1 had gotten into a fight with the appellant in

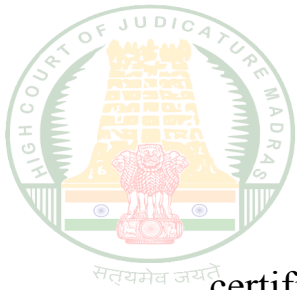


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Coutrallam, and at that time the appellant had asked P.W.1 not to visit his Church then on. But it is revealed that after the said occurrence, both the families did not stop meeting each other and P.W.1 never stopped visiting the church on a regular basis. In fact, the victim girl and P.W.1 had a habit of sleeping in the church frequently, whenever there was a quarrel between P.W.1 and her husband. It is further revealed that, even on the date of the alleged occurrence, P.W.1 had left the victim girl under the care of the appellant and his family members while she had to go out and meet Jeremiah. Moreover, both P.W.1 and P.W.2 had stayed over in the Church that night and only had left for their home the next morning. Therefore, the it was made clear that there was no previous enmity between P.W.1 and the appellant's family and they had been in an amicable relationship even till the day of the alleged occurrence.

15.In the present case, the age of the victim is not under challenge as it is well established by Ex.P1 which is the birth



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certificate of the victim girl. It reveals that the victim girl was only 17 years 3 months and 3 days on the date of occurrence.

16.At this juncture, it is relevant to rely upon Section 5(f) and 5(k) of the POCSO act and Section 92(d) of the Rights of Persons with Disabilities Act, 2016 and the same are extracted hereunder:

“Section 5(f) and 5(k) of the POCSO Act:

“5. Aggravated penetrative sexual assault.—

(f) whoever being on the management or staff of an educational institution or religious institution, commits penetrative sexual assault on a child in that institution; or

(k) whoever, taking advantage of a child's mental or physical disability, commits penetrative sexual assault on the child; is said to commit aggravated penetrative sexual assault.”



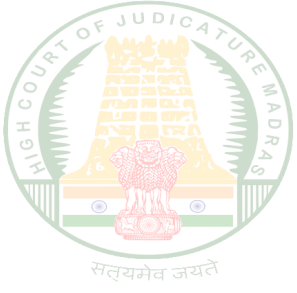
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***Section 92(d) of the Rights of Persons
with Disabilities Act, 2016:***

*“92. Punishment for offences of
atrocities.—Whoever,—*

*(d) being in a position to dominate the
will of a child or woman with disability and uses
that position to exploit her sexually,
shall be punishable with imprisonment for a term
which shall not be less than six months but which
may extend to five years and with fine.””*

17. On perusal of the oral and documentary evidences, it is revealed that on the next day of the alleged occurrence, when P.W.1 inquired about the occurrence to victim girl, she stated that the appellant had sucked her breasts and had subjected her to aggravated penetrative sexual assault. When P.W.1 returned to pick up the victim girl from the appellant's care, she was found with her shirt unbuttoned and her pants rolled up. The victim girl also categorically stated the same in her chief examination, the relevant portion of which is extracted hereunder:

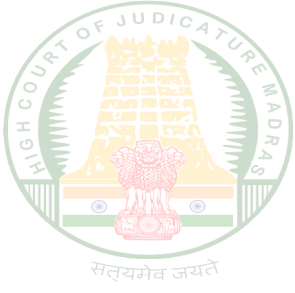


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“நான் சர்ச்சில் இருந்தேன். எனது அம்மா துட்டு வாங்குவதற்காக வெளியே போனார். அப்போது பாஸ்டர் மாமா என்னை தள்ளிவிட்டு அவர் ஒண்ணுக்கு இருக்கும் இடத்தை வைத்து எனது ஒண்ணுக்கு இருக்கும் இடத்தில் வைத்து அழுக்கினார். (பாதிக்கப்பட்ட சிறுமி அவரது பிறப்புறுப்பை கை வைத்து காட்டுகிறார்). அவர் எனது இரண்டு மார்பகங்களையும் கடித்தார். (பாதிக்கப்பட்ட சிறுமி அவர் அவரது மார்பகங்களை கை வைத்து காட்டுகிறார்.)”

18. Therefore, it can be seen that the evidences of P.W.1 and the victim girl rightly corroborate with each other and there were no contradictions found. Though, the appellant alleges that P.W.1 had foisted a false case against him by tutoring the victim girl, the same cannot be believed as victim girl is admittedly suffering from moderate intellectual disability and this Court is not inclined to assume that a girl with such mental disability can be successfully tutored and be made to falsely depose against the appellant.



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19. On perusal of the evidence of P.W.3, the doctor who examined the victim and issued a medical examination report which was marked as Ex.P4, it is revealed that there were no injuries found on the breasts of the victim girl. She had further stated that the victim girl's hymen was not intact and that there was no trace of sexual intercourse. Relevant portions of her deposition are extracted here under:

“3.என்னுடைய பரிசோதனையில்
1.பாதிக்கப்பட்ட சிறுமியின் மார்பகத்தில் காயம்
எதுவும் இல்லை என்றும் 2.சிறுமியின் கன்னித்திரை
கிழிந்திருந்தது என்றும் 3.உடலுறவு கொண்டதற்கான
அடையாளம் இல்லை என்றும் 4.பாதிக்கப்பட்ட
சிறுமியின் சிறுநீர் பரிசோதனையில் கர்ப்பத்திற்கான
பரிசோதனையில் நெகட்டிவ் என்றும்
5.சிறுமியிடமிருந்து வெஜினல் ஸ்மியர்
சேகரிக்கப்பட்டது என்று விபத்து பதிவேட்டில்
பதிவுசெய்து சான்று வழங்கினேன். அந்த சான்று
(அசாஆ 4). இது சம்பந்தமாக ஆய்வாளர் என்னை
விசாரித்தார்.”



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20. At this juncture, it is relevant to rely upon the Judgement of the Hon'ble Supreme Court in the case of ***Punjab v. Gurmit Singh [(1996) 2 SCC 384]*** wherein it was observed as follows:

"In the absence of injury on the private part of the prosecutrix, it cannot be concluded that the incident had not taken place or the sexual intercourse was committed with the consent of the prosecutrix. The prosecutrix being a small child of about nine years of age, there could be no question of her giving consent to sexual intercourse. The absence of injuries on the private part of the prosecutrix can be of no consequence in the facts and circumstances of the present case.

.....

In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution



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case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook."

21.Keeping in mind what's been stated above and also the fact that the victim's hymen was not found to be intact, this Court feels that, there is no reason to disbelieve the evidence of the victim girl/P.W.2 and as such, the medical evidence sufficiently corroborates the same.

22.The judgment also recognizes the innate hesitation a woman experiences in speaking about the sexual trauma inflicted upon her, particularly when the perpetrator is not a stranger but someone closely associated with her family. Regrettably, society has yet to overcome the stigma and moral judgment that continue to attach themselves to such disclosures. Even when a victim musters the courage to speak, she may not always find encouragement, or



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even acceptance, from her own parents, who may view such disclosure as undesirable or damaging. To overcome these deep-rooted psychological and social barriers and to ultimately approach the police is neither immediate nor effortless; it is a process that understandably consumes time. Viewed in this backdrop, and recognizing that the reporting of sexual offences is far from a simple or mechanical act, this Court is inclined to hold that the delay of eight days between the date of occurrence and the lodging of the complaint is wholly immaterial.

23.It is the contention of the prosecution that the occurrence had taken place at the Church which had been run by the appellant. The appellant states that the Church in question is neither run by him nor his family members and that the prosecution failed to prove that the church was run by him. This contention of the appellant cannot be countenanced to for the simple reason that even D.W.1 and D.W.2, who were examined on the side of the appellant

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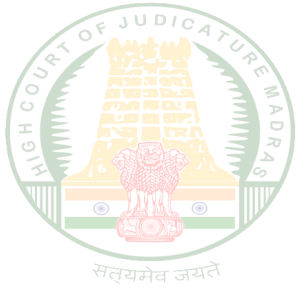
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clearly state in their chief examination that the church in question is under the management of the appellant's father. Further, no documents were marked by the appellant to prove that the title of the church does not belong to him or his father. Therefore, there is no doubt in the management or ownership of the Church and the occurrence clearly attracts Section 5(f) of the POCSO Act.

24. That been said, now it is pertinent to see whether the offence attracts Section 5(k) of the POCSO Act and Section 92(d) of the Rights of Persons with Disabilities Act, 2016. On perusal of the evidence of P.W.7 and Ex. P8, it is revealed that P.W.2 has features of moderate intellectual disability and her IQ is 36.

25. The relevant portions of the deposition of P.W.7, the doctor who examined the mental ability of P.W.2 is extracted hereunder:



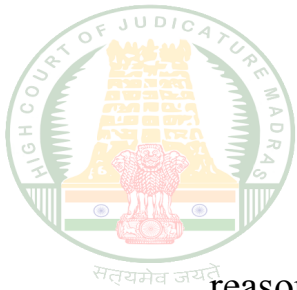
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“5. நான் அவரை பரிசோதனை செய்தபோது பாதிக்கப்பட்ட சிறுமிக்கு அறிவுசார் குறைபாடு மிதமான அளவில் இருந்ததாகவும் அதற்கான காரணங்களையும் அசாஆ8ல் குறிப்பிட்டுள்ளேன். பாதிக்கப்பட்ட சிறுமிக்கு அறிவுத்திறன் குறியீடு 36 இருந்தது என்று குறிப்பிட்டுள்ளேன்.

6. ஒரு சராசரி மனிதனுக்கு அறிவுத்திறன் குறியீடு 90க்கு அதிகமாக இருக்கவேண்டும். அறிவுத்திறன் குறியீடு 70க்கு கீழே இருந்தால் அறிவுசார்குறைபாடு இருப்பதாக கருதப்படும். இது சம்பந்தமாக ஆய்வாளர் என்னை விசாரித்தார்.”

26.On keen observation of the said records, it can be seen that there is no mention of disability percentage as alleged by the appellant. But this minor contradiction shall not deplete the case of the prosecution as both the provisions namely, Section 5(k) of the POCSO Act and Section 92(d) of the Rights of Persons with Disabilities Act, 2016 as extracted above, are observed to be mentioning “physical or mental disability” and not just physical disability. Since, the mental disability of the victim is proved beyond



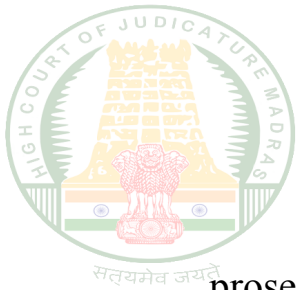
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reasonable doubt, the contention of the appellant shall be disregarded.

27.The appellant had further pointed out various contradictions in the case of the prosecution. One of which is that the prosecution failed examine any of the eyewitnesses. According to P.W.1, she had left the victim girl at the church at around 09:00 PM on day of the occurrence. She had also stated that the usual prayer time in the Church is 07:00 PM to 08:00 PM and that there will be no prayer meets after that. This Court is also not inclined to assume that there would have been devotees during the closing time of the Church.

28.Another contention of the appellant was that, the prosecution did not examine the close relatives of the appellant namely, his mother-in-law, wife and father. This ground raised by the appellant is nothing but absurd for the simple reason that the



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prosecution has no onus to examine the accused side interested witnesses knowing that they eventually turn hostile to the prosecution's case.

29. In respect of both the aforesaid contentions raised by the appellant, this Court is of the considered view that it was always open to the appellant to examine the said persons as witnesses in support of his case. Had such evidence been adduced, this Court would have subjected the same to careful scrutiny and evaluated the merits of the case in that light, exercising due caution. However, the appellant, having failed to take any steps to examine such witnesses, cannot now seek to draw adverse inferences or derive benefit from their absence. Further though the appellant had examined D.W.2 (Jeremiah), wherein he states that P.W.1 did not give him any money and he did not call her on the date of occurrence to pay her money back, the appellant did not corroborate the said evidence further to attract the confidence of this Court.

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30. At this juncture, it is relevant to rely upon the Judgment of the Hon'ble Supreme Court in the case of State represented by Inspector of Police Vs. Saravanan and another (2008) 17 SCC 587, wherein it is held as follows:

"18. The High Court also held that as there were some discrepancies and improvements in the statement of the witnesses, their evidence should not be relied upon. In [State of U.P. v. M.K. Anthony](#), [(1985) 1 SCC 505] this Court has laid down the approach which should be followed by the Court in such cases:

While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to



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render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper- technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross- examination is an unequal duel between a rustic and refined lawyer....."



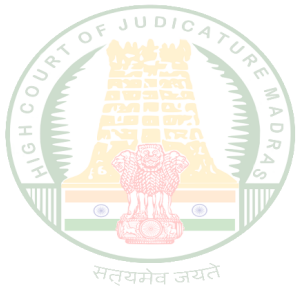
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Even otherwise, it has been said time and again by this Court that while appreciating the evidence of a witness, minor discrepancies on trivial matters without affecting the core of the prosecution case, ought not to prompt the court to reject evidence in its entirety. Further, on the general tenor of the evidence given by the witness, the trial court upon appreciation of evidence forms an opinion about the credibility thereof, in the normal circumstances the appellate court would not be justified to review it once again without justifiable reasons. It is the totality of the situation, which has to be taken note of. Difference in some minor detail, which does not otherwise affect the core of the prosecution case, even if present, that itself would not prompt the court to reject the evidence on minor variations and discrepancies.”

31. In view of the above, this Court is of the opinion that all the discrepancies pointed out by the appellant are minor in nature and do not in any way shake the core of the prosecution's case.



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32.It is relevant to rely upon Section 29 of the POCSO Act

which states as follow:

*“29. Presumption as to certain offences.—
Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.”*

33.Though this presumption is not absolute, the accused did not rise any doubt that is significant enough to disprove the case of the prosecution and per contra, the prosecution has proved its case beyond reasonable doubts.

34.The Trial Court has correctly applied Section 42 of the POCSO Act, and rightly awarded the higher punishment prescribed under Section 6 of the Act, considering that the offence under Section 92 of the Rights of Persons with Disabilities Act, 2016 also



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prescribes a minimum punishment. This Court finds no perversity, illegality, or mis-appreciation of evidence warranting interference with the well-reasoned judgment of conviction. The prosecution evidence is found to be reliable, cogent, and trustworthy. The Trial Court's appreciation of evidence is in consonance with the statutory scheme of POCSO Act and the principles governing sexual offence cases.

35.The cumulative effect of the circumstances of the admissible public documents establishing the victim's age, the unshaken testimony of the victim, medical findings that the hymen of the victim is not intact, the statutory presumption under Section 29 of the POCSO Act, and failure of the appellant to rebut the presumption, incontrovertibly establishes the guilt of the appellant. For the foregoing reasons, this Court finds that the conviction of the appellant does not suffer from any legal infirmity, perversity, or evidentiary deficiency.



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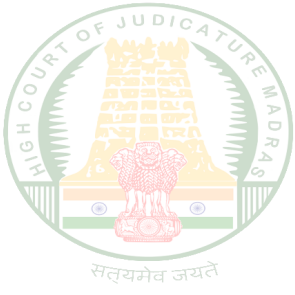
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36.In view of the above, this Court finds no merit in this appeal. The conviction of the appellant for offences under Section 6 of the POCSO Act is sustained. The sentence imposed by the learned Trial Court is appropriate and proportionate to the gravity of the offence.

37.In the result, the Criminal Appeal stands dismissed. No costs.

[G.K.I.J.,] & [R.P.J.,]
10.02.2026

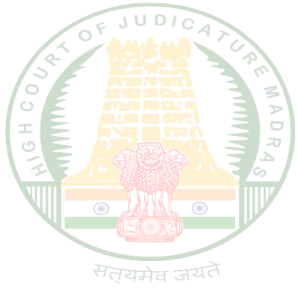
NCC :Yes/No
Index :Yes/No
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- 1.The Special Court of Exclusive Trial of Cases
under POCSO Act, Srivilliputhur.
- 2.The Inspector of Police,
All Women Police Station,
Rajapalayam. Station,
Karur District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.K. ILANTHIRAIYAN, J.
AND
R. POORNIMA, J.

PS

**Pre-Delivery Judgment made in
Crl.A(MD)No.436 of 2023**

10.02.2026