

CRL.A.(MD)No.835 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON: 18.08.2026

DELIVERED ON: 01.09.2026

CORAM:

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
and
THE HONOURABLE MR.JUSTICE B.MURUGESAN**

CRL.A(MD)No.835 of 2024

Elangovan

... Appellant

Vs.

State rep by
The Inspector of Police,
All Women Police Station,
Vallam, Thanjavur District.
(In Crime No.07 of 2020)

... Respondent

PRAYER: Criminal Appeal filed under Section 415 of BNSS to call for the records and allow the appeal and acquit the accused by setting aside the judgment in Spl.S.C.No.23 of 2021 dated 02.06.2022 on the file of the learned Special Judge for Exclusive Trial of cases under POCSO Act (Sessions Judge), Thanjavur.

For Appellant : Mr.P.Ganapathi Subramanian

For Respondent : Mr.G.Karuppasamy Pandiyan,
Government Advocate(Crl.Side)



CRL.A.(MD)No.835 of 2024

JUDGMENT

[Judgment of the Court was made by **B.MURUGESAN, J.**]

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.....

Lord God Almighty

Sanctify her unique journey

Save her from the claws of the enemy

Shield her against any brutality

Restore her if pain becomes a reality

Embrace her should joy pass swiftly

When emptiness fills her heart severely

May you be her sanctuary!

.....

I may have never met her; I may not know her name

I may not be in her shoes; I may not see her cries

Yet, I grasp her plight

Wherever she is

King of Kings

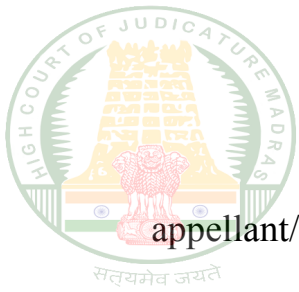
Be with her

Each and every day

I pray for this girl”

- Dr.Gift Gugu Mona, a South African Poet

Assailing the judgment dated 02.06.2022 of the learned Sessions Judge,
Special Court for Exclusive Trial of Cases under POCSO Act, Thanjavur,
hereinafter referred to as 'the trial court', in Spl SC No.23/2021, convicting the



CRL.A.(MD)No.835 of 2024

appellant/sole accused and sentencing him to undergo imprisonment for life which shall mean imprisonment for the remainder of the natural life of the appellant/sole accused without any commutation and to pay a fine of Rs.50,000/-, in default, to undergo rigorous imprisonment for one year, for the offences punishable under S.5(l), S.5(n) and S.5(j)(ii) r/w S.6 POCSO Act, 2012, the appellant/sole accused has preferred this criminal appeal.

02. 15 years old girl child, a motherless, hereafter referred to as 'the child victim', has been in grave peril at the hands of her biological father, hereafter referred to as 'the accused' unless the context otherwise requires.

03. Case of the prosecution would run as under:

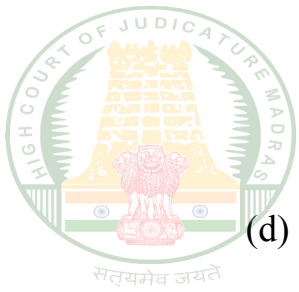
(a) Accused is the father of the child victim, whose date of birth is 01.09.2004, and of her younger sister. After the demise of their mother, the child victim and her sister were under the care and custody of their junior maternal aunt, Parimala, for some time, and thereafter, they were under the care and custody of one Ganesan, who is claimed to be their grandfather, for two years. During May, 2016, the accused took his girl children to his house at Nelluppattu where the child victim started studying in VIII Standard.

(b) One midnight in August, 2017, the accused having consumed alcohol had forcible sexual intercourse with the child victim repeatedly, causing her cry



in pain, and he committed such forcible sexual intercourse on the child victim on many occasions. On knowing the same, her neighbour, Ayyiammal, who is the sister of the maternal grandmother of the child victim, after scolding the accused, took both the girl children to her house. While the child victim was studying in IX Standard, Marimuthu, the husband of Ayyiammal, also had forcible sexual intercourse with the child victim. As and when the child victim raised her voice against such forcible sexual intercourse, technically speaking, 'penetrative sexual assault', Marimuthu used to threaten the child victim.

(c) On 10.01.2019, the child victim attained puberty. Thereafter, during her stay with the accused, he was committing such penetrative sexual assault on the child victim, and during her stay at the house of Marimuthu, he was also committing such penetrative sexual assault on the child victim. As the result thereof, the child victim suffered stomach pain, and her junior maternal aunt, Parimala, and her uncle, Balu, caused the child victim scanned at Senthil Scan Hospital, Thanjavur, and then took her to PHC, Mela Ulur, where the child victim was declared 5 months pregnant. One Shenbagamalar, Child Help Line Member, enquired the child victim at PHC, Mela Ulur. On 01.07.2020, her junior maternal aunt, Parimala, and her uncle, Balu, took the child victim to AWPS, Vallam, where the police recorded her complaint statement, Ex.P1.



CRL.A.(MD)No.835 of 2024

(d) Pursuant to the registration of FIR in Cr No.07/2020 on the file of AWPS, Vallam, based on such complaint statement, Ex.P1, IO took the case for investigation on 01.07.2020, inspected the house of the accused being the place of occurrence and prepared the observation mahazar and rough sketch in the presence of the witnesses, Dharmaraj and Senthil Kumar, and he examined the child victim and recorded her statement. Then, IO examined the witnesses, Parimala, Balu, Dharmaraj, Senthilkumar, Ayyiammal, Devika, Rajamanickam and Senbagamalar, and recorded their statements. On 02.07.2020 at 7.00 am, IO arrested Marimuthu near Nelluppattu bus stop in presence of Rajendran and Ravi, recorded his confession in their presence, examined those witnesses and recorded their statements. On 02.07.2020 at 8.00 am, IO arrested the accused near Eachenkottai River Bridge in presence of Ramesh and Murugesan, recorded his confession in their presence, examined those witnesses and recorded their statements. After such arrest, IO caused those two accused remanded to judicial custody. On a medical intimation, IO caused the child victim examined at Raja Mirazudar Govt Hospital, Thanjavur.

(e) On 03.07.2020, IO examined the witness, Ganesan, and recorded his statement. On 09.07.2020, IO, through the police personnel, Citrarasu and Sundaralakshmi, caused those two accused undergone potency test at Thanjavur Medical College Hospital. On 10.07.2020, IO caused statement of the child



CRL.A.(MD)No.835 of 2024

victim recorded by Judicial Magistrate II, Thanjavur. On 11.07.2020, IO examined the child victim and recorded her further statement. On 25.07.2020, the pregnancy of the child victim got aborted vide the order of this court. On 30.07.2020, the fetus was sent to FSD, Chennai, through Head Constable Mrs.Vimala. On 02.10.2020, the blood samples of the child victim, the accused and Marimuthu were collected in FTA cards and the same were sent to FSD, Chennai, through Constable Mrs. Kalaiselvi. On 20.04.2021, IO examined the doctors, Senthilnathan, Jeya Sri, Indhirani and Saravanan, and recorded their statements. On the same day, IO examined Ramesh, the Sanitary Inspector, Thanjavur Municipality, who issued the report as to the birth certificate of the child victim, and recorded his statement. On 22.04.2021, IO examined the child victim and recorded her further statement. On 25.04.2021, IO examined the police personnel, Elamathi, Sundaralakshmi, Vimala, Kalaiselvi and Citrarasu. On 29.04.2020, IO examined Dr. Mahalakshmi, Deputy Director, FSD, Chennai, and recorded her statement on DNA report. IO examined Mrs. Shanthi, SI, who registered FIR. After such investigation, IO filed the final report against the accused in this case for the offences punishable under S.5(l), S.5(n) and S.5(j)(ii) r/w S.6 POCSO Act,2012.



CRL.A.(MD)No.835 of 2024

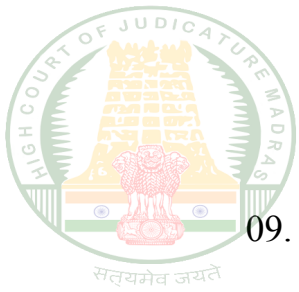
04. As against the other accused, Marimuthu, a separate final report was filed and he was tried simultaneously in Spl SC No.22/2021 on the file of the trial court.

05. On appearance of the accused in this case before the trial court, he was furnished free of cost with the copies of the records relied on by the prosecution, as required under S.207 CrPC.

06. Under S.25(2) POCSO Act, 2012, the child victim was also furnished free of cost with the copies of the records relied on by the prosecution.

07. Thereupon, the learned Public Prosecutor opened the case before the trial court, as under S.226 CrPC, and the learned counsel for the accused was also heard. On due consideration thereof, charges were framed by the trial court against the accused under S.5(l), S.5(n) and S.5(j)(ii) r/w S.6 POCSO Act, 2012, and the same were read over and explained to him by trial court, as under S.228 CrPC.

08. Accordingly, the accused was questioned by the trial court as to the charges framed against him, and he denied the charges as not true, pleaded not guilty and claimed to be tried.



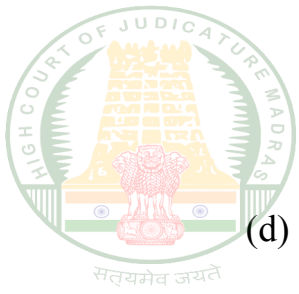
09. Pursuant thereto, trial was ordered, and the prosecution produced evidence in support of its case, and therefore, the prosecution, before the trial court, examined PW1 to PW23, and marked Ex.P1 to Ex.P15 through the competent witnesses.

10. Details of the witnesses and the exhibits on the side of the prosecution before the trial court are as under:

(a) PW1 is the child victim who would speak about the occurrence, the role of her maternal grandmother, Ayyiammal, her junior maternal aunt, Parimala, her uncle, Balu, and Shenbagamalar, Child Help Line Member, the medical examinations she underwent, the lodging of complaint, the recording of her statement under S.164(5) CrPC, the DNA test and her examination by IO. Ex.P1 is the complaint statement, Ex.P2 is the signature of PW1 in the confidential medical report and Ex.P3 is the statement of PW1 recorded under S.164(5) CrPC. Ex.P1 to Ex.P3 were marked through PW1.

(b) PW2 is Parimala, the junior maternal aunt of the child victim, and PW3 is Balu, the uncle of the child victim, and both of them would speak about their role in this case.

(c) PW4 is Senthilkumar, one of the witnesses for the preparation of observation mahazar, Ex.P4, and the rough sketch.



CRL.A.(MD)No.835 of 2024

(d) PW5 is Dr.Senthilnathan, Senthil Scan Centre, Thanjavur, who would speak of Ex.P5, the scan report of PW1.

(e) PW6 is Ravi who would speak of the arrest and confession of the other accused, Marimuthu.

(f) PW7 is Devika, the younger sister of the child victim, who would speak about the events and occurrence relatable to the child victim.

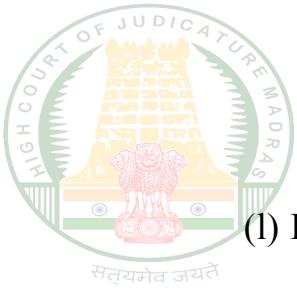
(g) PW8 is Ramesh who would speak of the arrest and confession of the accused in this case.

(h) PW9 is Ganesan, the grandfather of the child victim, whose evidence is hearsay. PW10 is Ayyiammal, the wife of the other accused, Marimuthu, whose evidence is also hearsay.

(i) PW11 is Shenbagamalar, Child Help Line Member, who would speak of her enquiry of the child victim.

(j) PW12 is Dr.Saravanan, Asst. Professor, Thanjavur Medical College Hospital, who would speak of Ex.P6, the potency test of the accused in this case.

(k) PW13 is Ramesh, the Sanitary Inspector, Thanjavur Municipality, who issued a report as to the birth certificate of the child victim, and the copy of birth certificate of the child victim, Ex.P7, and, his report, Ex.P8, were marked through PW13.



(l) PW14 is Head Constable Mrs. Elamathi who took the child victim for medical examination. PW15 is Head Constable Mrs. Sundaralakshmi who took the accused to Thanjavur Medical College Hospital for taking his blood sample. PW16 is Head Constable Mrs.Vimala, who took the fetus to FSD, Chennai. PW17 is Constable Mrs.Kalaiselvi, who handed over the FTA cards of the child victim and the accused to FSD, Chennai.

(m) PW18 is Dr.Jaya Sri, PHC, Mela Ulur, who would speak of the medical examination of the child victim, and her medical note is Ex.P9. PW19 is Dr. Indhirani, Asst. Professor, Thanjavur Raja Mirazdar Hospital, who would speak of the medical examination of the child victim and the consequent abortion, and Ex.P10, the AR copy of the child victim, and Ex.P11, the confidential medical report, were marked through PW19. PW20 is Dr.Arulmathi Kannan, Asst. Professor, Thanjavur Medical College Hospital, who collected the blood samples of the child victim and the accused in FTA cards, and his letter is Ex.P12. PW21 is Dr.Mahalakshmi, Deputy Director, FSD, Chennai, who would speak about the DNA report, Ex.P13.

(n) PW22 is Mrs.Santhi, SI, who would speak of the registration of FIR, Ex.P14. PW23 is Mrs.Kalaivani, IO, who would speak about the investigation in detail and the consequent final report, and Ex.P15, the rough sketch, was marked through PW23.



CRL.A.(MD)No.835 of 2024

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11. While questioning under S.313 CrPC in respect of the incriminating materials appearing against him in the evidence of the prosecution, the accused answered before the trial court that all such evidence is false and that this is a false case.

12. On the other hand, there is no evidence, either oral or documentary, on the side of the accused.

13. Upon such a full fledged trial, the trial court has found the accused guilty and accordingly, the trial court has convicted the accused for the offences under S.5(l), S.5(n) and S.5(j)(ii) r/w S.6 POCSO Act,2012, and sentenced him as aforesaid.

14. Assailing such conviction and sentence of the trial court, the accused has preferred this criminal appeal before us.

15. We have heard the learned counsel for the appellant/accused and the learned counsel for the State (Criminal Side), and we have also perused the records carefully.



CRL.A.(MD)No.835 of 2024

16. Inveighing the judgment of the trial court, the learned counsel appearing for the appellant/accused, with reference to the grounds of appeal, would submit that the prosecution has failed to establish that the accused is the perpetrator of the crime, that when there is another accused, it is false to claim that only this accused has committed the offence, that the evidence of the child victim being tutored on a false complaint cannot be relied on, that the inordinate delay on the part of the child victim in reporting the occurrence would obviously create a suspicion on the veracity of the complaint, that when there was no light in house of the accused and she was not aware of the act committed by the accused as reported by the child victim to PW11, the Child Help Line Member, the conviction of the accused is not sustainable, that the evidence of other witnesses is merely hearsay, that the punishment awarded on the accused is disproportionate to the offence and that therefore, a judgment reversing the finding and sentence of the trial court, and acquitting the accused of all the charges leveled against him needs to be passed.

17. Per contra, the learned counsel for the State (Criminal Side) would submit that since the accused is the father of the child victim having committed continual penetrative sexual assault on the child victim resulting in her pregnancy, the offence committed by the accused is nothing but the offence of



aggravated penetrative sexual assault as under S.5(l), S.5(n) and S.5(j)(ii) POCSO Act, 2012, punishable under S.6 POCSO Act, 2012, as amended, that the unimpeachable evidence per se of the child victim as PW1 is more than sufficient to convict the accused, that the evidence of the child victim stands substantiated by the medical evidence, particularly, the DNA report, Ex.P13, that since the prosecution has established the foundational facts for the offence of aggravated penetrative sexual assault, the prosecution would enjoy the presumption as under S.29 POCSO Act, 2012, that there is nothing on the side of the accused to rebut such presumption, that the punishment awarded on the accused is obviously proportionate to the offence and that therefore, the criminal appeal filed by the accused deserves for dismissal.

18. Point for determination in this appeal is whether the trial court is right in finding the appellant/accused guilty and thereby convicting and sentencing him under S.5(l), S.5(n) and S.5(j)(ii) r/w S.6 POCSO Act, 2012?

19. At the outset, it would be useful to refer to S.5(l), S.5(n) and S.5(j)(ii) POCSO Act, 2012, for the better appreciation of the charges against the accused.

“5. Aggravated penetrative sexual assault.—

(j) whoever commits penetrative sexual assault on a



child, which—

(ii) in the case of female child, makes the child pregnant as a consequence of sexual assault;

(l) whoever commits penetrative sexual assault on the child more than once or repeatedly;

(n) whoever being a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of the child or who is living in the same or shared household with the child, commits penetrative sexual assault on such child; is said to commit aggravated penetrative sexual assault.”

It would also be useful to refer to S.3 (a) POCSO Act, 2012, which would define the offence of penetrative sexual assault as under:

“3. Penetrative sexual assault.—A person is said to commit “penetrative sexual assault” if—

(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person;”

20. Here is a case where the victim is claimed to be a child below the age of 18 years as under S.2(1)(d) POCSO Act, 2012. Ex.P7, the birth certificate of the child victim, and Ex.P8, the report of PW13, the Sanitary Inspector, Thanjavur Municipality, would show that the date of birth of the child victim is



01.09.2004. Ex.P5, the scan report dated 30.06.2020, would show that the child victim was carrying a 21 weeks 3 days old fetus on 30.06.2020 when her age was 15 years and 10 months. It is therefore clear that the victim, during the occurrence, had been a child below the age of 18 years as under S.2(1)(d) POCSO Act, 2012.

21. Coming to the offence of penetrative sexual assault as under S.3 POCSO Act, 2012, said to have been committed by the accused on the child victim, the child victim as PW1 would state specifically in her chief examination that the accused, during August, 2017, penetrated his penis into her vagina and he did it continually, and the child victim would further add that the accused, after her puberty on 10.01.2019, was committing such penetrative sexual assault continually on her. It is, in this connection, more pertinent to note that nothing contrary was elicited during her cross examination. Therefore, we find that the testimony of the child victim, PW1, is found credible and trustworthy, requiring no corroboration.

22. Nonetheless, the child victim, PW1, in her complaint statement, Ex.P1, would also narrate such penetrative sexual assault committed by the accused on her. Further, PW19, Dr. Indhirani, Asst. Professor, Thanjavur Raja



Mirazdar Hospital, in the light of Ex.P10, the AR copy of the child victim, and Ex.P11, the confidential medical report, would state that during the medical examination of the child victim, she told that the accused had committed continual penetrative sexual assault on her. PW11, Shenbagamalar, Child Help Line Member, would also state that during her enquiry, the child victim told that the accused had committed repetitive penetrative sexual assault on her. PW7, the younger sister of the child victim, would also state that she was informed by the child victim of such repetitive penetrative sexual assault committed by the accused on the child victim. Therefore, there are other materials on record, corroborating the testimony of the child victim, and substantiating the case of the prosecution.

23. Besides such evidence or materials against the accused as aforesaid, Ex.P13, the DNA report involving the fetus taken from the child victim vis-à-vis the accused, would conclude in unequivocal terms that the accused is the biological father of the fetus taken from the child victim. In other words, the scientific evidence, Ex.P13, would also prove that the accused being the father of the child victim has committed the offence of aggravated penetrative sexual assault as under S.5(1), S.5(n) and S.5(j)(ii) POCSO Act, 2012, punishable under S.6 POCSO Act, 2012.



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24. As discussed earlier, the prosecution has thus proved the foundational facts for the offences under S.5(l), S.5(n) and S.5(j)(ii) POCSO Act, 2012. It is trite that once such foundational facts are proved, the statutory presumption under S.29 POCSO Act, 2012, would rule the field. S.29 POCSO Act, 2012, would read as under:

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. (italics supplied by this court)

It is therefore clear from the phrase „unless the contrary is proved" that the statutory presumption under S.29 POCSO Act, 2012, is, of course, rebuttable and that the accused is at liberty to rebut such presumption even by the preponderance of probabilities.

25. Taking hold of the delay on the part of the child victim in reporting the occurrence, the learned counsel for the appellant/accused would contend that such delay being inordinate would be fatal to the case of the prosecution. Of course, it is true that the occurrence came to light when the child victim was 5 months pregnant. Now, the question is whether such inaction or such



CRL.A.(MD)No.835 of 2024

inordinate delay on the part of the child victim in reporting the occurrence would affect the case of the prosecution as a contrary having been proved?

Here is a case where the accused, an alcoholic as claimed by the child victim as PW1, is her biological father, who used to deter the child victim after every occurrence (as spoken to by PW11, the Child Help Line Member, who enquired the child victim) and the child victim is a motherless, dependent upon his father. In such circumstances, any such child victim, in our considered view, cannot be expected to complain then and there against such father of such occurrence involving such penetrative sexual assault committed by such father. That apart, inasmuch as a child is a child, the inaction or inordinate delay on the part of a child victim in reporting an offence cannot be placed on par with the inaction or inordinate delay on the part of an adult victim. Therefore, such inaction or such inordinate delay on the part of the child victim in reporting the occurrence cannot be claimed or said to be a contrary having been proved.

26. Giving much emphasis on the evidence of PW11, the Child Help Line Member, that on her enquiry, the child victim told her there was no light in house of the accused and she was not aware of the act committed by the accused, the learned counsel for the appellant/accused would contend that the conviction of the accused is not sustainable on that score itself. Precisely



CRL.A.(MD)No.835 of 2024

speaking, when the offence is proved by scientific evidence, Ex.P13, the DNA report, such contention relatable to the evidence of PW11 would not assume any significance supporting the accused.

27. Relying on the decisions in Ravinder Singh V State of Himachal Pradesh (2009) 14 SCC 201, Asharfi V State of Uttar Pradesh ((2018) 1 SCC 742) and Arumugam V Superintendent of Police, Thiruchuli, Virudhunagar District and another (2026 MHC 2112), the learned counsel for the accused would contend that since the occurrence is claimed to have taken place in the month of August, 2017, the conviction and sentence against the accused under S.6 POCSO Act, 2012, as amended/substituted by the Amendment Act 25 of 2019, with effect from 16.08.2019, is not legal. In other words, the learned counsel for the accused would take a technical plea of prohibition of conviction and sentence under ex post facto laws.

28. Of course, Article 20(1) of the Constitution of India would speak of prohibition of conviction and sentence under ex post facto laws as under:

20. Protection in respect of conviction for offences,- (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which



might have been inflicted under the law in force at the time of the commission of the offence.

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In essence, the sentence imposable on the date of commission of the offence shall be the sentence imposable on the completion of the trial.

29. Before delving deep, it would be appropriate to understand the doctrine of offence de die in diem, or in other words, the doctrine of continuing offence, and this issue is no longer res integra. **State of Bihar V Deokaran Nenshi** (1972) 2 SCC 890 is a case where “continuing offence” has been exemplified and demonstrated as under:

5. A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and reoccurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues, and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an



offence which takes place when an act or omission is committed once and for all.

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30. Continuing offence, with reference to the protection against ex post facto laws, can logically be viewed in four ways.

(a) If the act complained of is not an offence prior to the amendment but is an offence after the amendment and if the act is consummated completely prior to the amendment, the protection against ex post facto laws would be available.

(b) If the act complained of is an offence prior to the amendment but is not an offence after the amendment and if the act is consummated completely prior to the amendment, the protection against ex post facto laws would not be available.

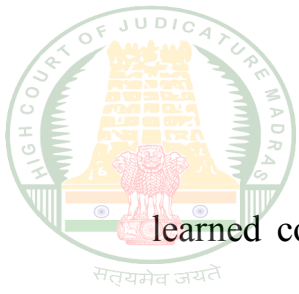
(c) If the act complained of is an offence prior to the amendment and is also an offence after the amendment and if the act/offence is consummated completely prior to the amendment, the protection against ex post facto laws would be available.

(d) If the act complained of is an offence prior to the amendment and is also an offence after the amendment and if the act/offence is continuing from the period prior to the amendment to the period after the amendment, the protection against ex post facto laws would not be available.



31. Coming to this case on hand, the decisions relied on by the learned counsel for the accused are obviously the cases where the offences are stated to have consummated completely prior to the statutory amendment. Here is a case involving the doctrine of *continuing offence* which would mean the offence continuing from the period prior to the amendment to the period after the amendment and thereby constituting a fresh offence every time or occasion on which it continues. Factually speaking, the child victim as PW1 has given evidence in categorical terms that the accused, after her puberty on 10.01.2019, was committing such penetrative sexual assault continually on her. Ex.P5, the scan report dated 30.06.2020, would show that the child victim was carrying a 21 weeks 3 days old fetus on 30.06.2020. Ex.P13, the DNA report, would also prove that the accused is the biological father of the fetus taken from the child victim. Therefore, Ex.P5, the scan report, and Ex.P13, the DNA report, both being medical and scientific evidence, would prove that the accused has committed “continuing offence” from the period prior to the amendment to the period after the amendment. Therefore, the protection against ex post facto laws would not come to rescue the accused.

32. Portraying the facts that the accused is the father of the child victim and that the child victim is a motherless are the mitigating circumstances, the



learned counsel for the accused, relying on a non reportable judgment of the Hon^{ble} Apex Court in *Prem Naresh V State of UP* where, on considering some mitigating circumstances, a higher punishment has been modified and reduced, would contend that the sentence imposed by the trial court needs to be modified and reduced accordingly. *Prem Naresh V State of UP*, the decision so relied on, is a case where the accused is shown to be a stranger to the child victim and no pregnancy is reported. Here is a case where the accused is the biological father of the child victim and also the biological father of the fetus taken from the child victim. Therefore, the logic adopted in the decision relied on by the accused cannot be ushered in this case on hand in view of the factual matrix being different.

33. Apropos thereto, *Bhanei Prasad @ Raju V State of Himachal Pradesh (2025 LiveLaw (SC) 781)* is a case where mitigation in sentencing for the crimes involving incestuous sexual violence has been viewed as under:

“8. This Court has repeatedly underscored that in offences involving sexual abuse, especially against children, the trauma suffered by the victim is lifelong. The scars are not merely physical but psychological, cutting across every fibre of trust, safety, and dignity. When the perpetrator is none other than the father, the natural guardian, the crime assumes a demonic character.



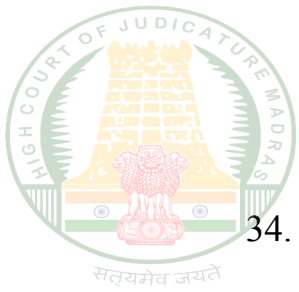
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9. Such offences deserve nothing but the severest condemnation and deterrent punishment. To pardon such depravity under any guise would be a travesty of justice and a betrayal of the child protection mandate embedded in our constitutional and statutory framework.

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13. When a father who is expected to be a shield, a guardian, a moral compass, becomes the source of the most severe violation of a child's bodily integrity and dignity, the betrayal is not only personal but institutional. The law does not, and cannot, condone such acts under the guise of rehabilitation or reform. Incestuous sexual violence committed by a parent is a distinct category of offence that tears through the foundational fabric of familial trust and must invite the severest condemnation in both language and sentence. The home, which should be a sanctuary, cannot be permitted to become a site of unspeakable trauma, and the courts must send a clear signal that such offences will be met with an equally unsparing judicial response. To entertain a plea for leniency in a case of this nature would not merely be misplaced, it would constitute a betrayal of the Court's own constitutional duty to protect the vulnerable. When a child is forced to suffer at the hands of her own father, the law must speak in a voice that is resolute and uncompromising. There can be no mitigation in sentencing for crimes that subvert the very notion of family as a space of security.”



34. In the light of the foregoing discussions, we hold that the appellant/accused has miserably failed to rebut the statutory presumption under S.29 POCSO Act, 2012, and that the trial court is right in finding the appellant/accused guilty and thereby convicting and sentencing him under S. 5(l), S.5(n) and S.5(j)(ii) r/w S.6 POCSO Act, 2012.

35. Before parting with, what stirs our mind is the sentence imposed by the trial court on the accused for the offence punishable under S.5(l), S.5(n) and S.5(j)(ii) r/w S.6 POCSO Act, 2012. Upon a meticulous evaluation of the materials on record, the trial court has imposed a sentence of “imprisonment for life which shall mean imprisonment for the remainder of the natural life of the appellant/sole accused without any commutation” and to pay a fine of Rs.50,000/-, in default, to undergo rigorous imprisonment for one year. Unfortunately, the appellant/accused has not raised any objection against such additional imposition banning “commutation”.

36. It would be relevant to refer to S.6 POCSO Act, 2012, which prescribes the punishment for the offences under S.5 POCSO Act, 2012, the aggravated penetrative sexual assault, as under:

6. Punishment for aggravated penetrative sexual assault.— (1)
Whoever commits aggravated penetrative sexual assault shall be



CRL.A.(MD)No.835 of 2024

punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person and shall also be liable to fine, or with death.

(2) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.

Therefore, what have been classified are (a) imprisonment for a term which shall not be less than twenty years, or (b) imprisonment for life, which shall mean imprisonment for the remainder of natural life of the accused, or (c) death sentence.

37. Now, the questions are whether the trial court is competent under S.6 POCSO Act, 2012, to impose a sentence of such imprisonment for life without any commutation, and whether this court being the appellate court is competent to correct such illegality/error when the appellant/accused fails to raise any objection thereto?

38. **Kiran V State of Karnataka (2025 INSC 1453)** is a case where the Hon"ble Apex Court has held as under:

“9. The sentence of life imprisonment no doubt means the entire life, subject only to the remission and commutation



provided under Cr.PC and also to Articles 72 and 161 of the Constitution of India, which cannot be curtailed by a Sessions Court. ...

13. ... The power to impose punishment of imprisonment for life without remission was conferred only on the Constitutional Courts and not on the Sessions Courts.”

It is thus clear that the trial court is not competent under S.6 POCSO Act, 2012, to impose a sentence of imprisonment for life without any commutation.

39. **Karan Chettri V State of Sikkim** (2026 INSC 659) is a case where the Hon"ble Apex Court, on the doctrine of ex debito justitiae, has upheld a suo motu correction of an illegality/error apparent on the face of the record to bring the sentence in conformity with the mandatory statutory requirement, and the relevant excerpts thereof would read as under:

“24. That being so, the High Court, by substituting the sentence awarded by the trial court with the minimum punishment prescribed by statute, did not exercise a power of enhancement under Section 386(b). It did not impose a harsher punishment in the exercise of appellate discretion. All it did was to discharge its duty to bring the sentence into conformity with the command of the statute. The source of such action lies not in the power to enhance, but in the obligation of the court, acting ex debito justitiae, to correct a patent illegality and ensure that the judgment affirmed by



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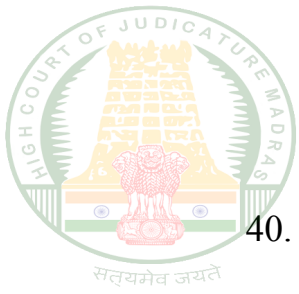


CRL.A.(MD)No.835 of 2024

the judicial process is one which the law authorizes.

25. To hold otherwise would mean that a manifestly illegal sentence, merely because it was challenged by the convict and not by the State or the victim, must be perpetuated despite being contrary to the minimum punishment ordained by Parliament. Such a construction would elevate a procedural limitation over substantive legality and permit the appellate process to become an instrument for preserving an illegality. That, in our view, can never be the outcome. The prohibition under Section 386(b) cannot be understood as conferring upon an accused a right to insist upon the continuance of a sentence which the law forbids. The substitution of the sentence of twelve years with the mandatory minimum of twenty years by the High Court, therefore, is not an enhancement of punishment in the true sense, but a suo motu correction of an error apparent on the face of the record, undertaken to give effect to the law as it is and to restore legality to the sentencing process.”

Therefore, this court, in our considered view, is competent to correct such illegality/error as is relatable to the additional imposition banning the grant of commutation in order to give effect to the law as it is and to restore legality to the sentencing process.



CRL.A.(MD)No.835 of 2024

40. In fine, this criminal appeal is allowed in part, maintaining the finding but modifying the sentence of 'imprisonment for life which shall mean imprisonment for the remainder of the natural life of the appellant/sole accused without any commutation' to the sentence of “imprisonment for life which shall mean imprisonment for the remainder of the natural life of the appellant/sole accused” and leaving the levy of fine unaltered.

[A.D.J.C., J.] [B.M., J.]
01.09.2026

gns

To

1.The Special Judge for Exclusive Trial of cases under POCSO Act (Sessions Judge), Thanjavur.

2.The Inspector of Police,
All Women Police Station,
Vallam, Thanjavur District.

3.The Government Advocate(Crl.Side),
Madurai Bench of Madras High Court,
Madurai.



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CRL.A.(MD)No.835 of 2024

A.D.JAGADISH CHANDIRA, J.
AND
B.MURUGESAN, J.

gns

Judgment made in
CRL.A.(MD)No.835 of 2024

01.09.2026