

Cr1.A(MD)No.716 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	31.10.2025
Pronounced on	09.01.2026

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

and

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

Cr1.A(MD)No.716 of 2022

Rajasekar : Appellant/Sole Accused

Vs.

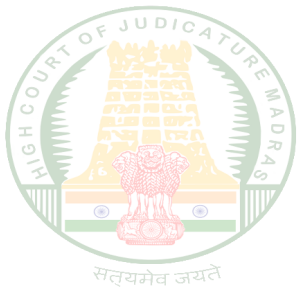
The State, through
The Inspector of Police,
Theriruveli Police Station,
Ramanathapuram District.
(In Crime No.17/2017)

: Respondent/Complainant

Prayer:-This Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code, to call for the records pertaining to the Judgement of conviction and sentences passed in Special S.C.No.5 of 2018 dated 20.12.2019 on the file of the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Ramanathapuram and set aside the same as illegal and acquit the appellant.

For Appellant : Mr. B.N.Raja Mohamed

For Respondent : Mr.B.Nambi Selvan,
Additional Public Prosecutor



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J U D G M E N T

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L.VICTORIA GOWRI, J.,

This criminal appeal is filed against the judgment of conviction and sentence passed by the Special Court for trial of cases under the Protection of Children from Sexual Offences Act, 2012, that is, the learned Judge, Mahalir Neethi Mandram (Fast Track Mahila Court) at Ramanathapuram in Special S.C. No.5 of 2018 dated 20.12.2019. By the above judgment, the learned Trial court had convicted the appellant and sentenced him as detailed below:

2. *Penal Provision:*

Section 5(i)(m) read with Section 6 of the POCSO Act.

Sentence of Imprisonment: Life imprisonment and fine of Rs. 10,000/-, in default to undergo six months' rigorous imprisonment. The sentences shall run concurrently.

3. Further, the learned Trial Court has recommended payment of compensation of Rs.5,00,000/- (Rupees Five Lakhs only) from the State Government's Victim Compensation Fund by depositing the same in a fixed deposit in any nationalised bank for a period of three years. The mother of the victim child is directed to receive the interest on the same till the child attains the age of majority, towards meeting the expenditure



relating to the minor girl's education and medical needs.

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Case of the Prosecution in Brief:

4. The respondent/complainant registered a case against the appellant for alleged offences under Section 5(i)(m) read with Section 6 of the Protection of Children from Sexual Offences Act, 2012 and under Section 324 IPC on the basis of information given by one Vembukani, wife of Munusamy, who is the *de facto* complainant and was examined as PW1, following which a First Information Report came to be registered in Crime No.17 of 2017 on 04.04.2017.

5. The case of the prosecution is that on 03.04.2017, when the *de facto* complainant had gone out for her daily wage job after sending her two children to school after feeding them at 8.00 a.m., she was said to have been called by one Vasuki, wife of Kasi, who was examined as PW2, informing her that her daughter, that is, the victim girl who was examined as PW10, had got injured on her head as she was said to have fallen down, and instructed her to come to the Government Hospital, Mudhukulathur. There, the *de facto* complainant was said to have found the victim girl (PW10) with an injury on the backside of her head and in the vagina. Owing to the injury on the backside of the head and vagina, the *de facto* complainant was advised to take the victim girl to the



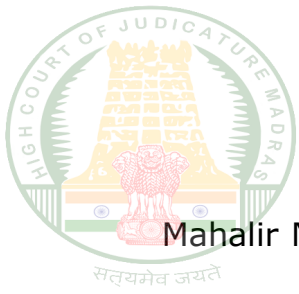
Government Hospital at Ramanathapuram.

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6. At that time, it was revealed to the *de facto* complainant by Vasuki, wife of Kasi (PW2), and her husband Kasi Lingam, who was listed as LW2, that they had peeped into the house of the *de facto* complainant on hearing a sound from the backyard bathing space of the *de facto* complainant's house, where they identified the appellant inserting his fingers into the sexual organ/vagina of the victim girl, while forcibly shutting and compressing her mouth using his other hand, and that he had taken to his heels by pushing the victim girl on the washing stone block. On receipt of the said information, the *de facto* complainant rushed with the victim girl to the Government Hospital, Ramanathapuram, from where she was further taken to the Medical Officer of Government Rajaji Hospital, Madurai.

7. The case was investigated, and a final report was filed before the learned Sessions Judge, Fast Track Mahila Court, Ramanathapuram, as Final Report in FR No.60 of 2017 on 20.10.2017, for alleged offences punishable under Sections 5(i), 5(m), r/w 6 of the Protection of Children from Sexual Offences Act, 2012.

8. On the side of the appellant, the learned Sessions Judge,



Mahalir Neethi Mandram, Fast Track Mahila Court, Ramanathapuram, took cognizance of the offence as Special S.C. No.5 of 2018, where the charge was framed against the appellant for alleged offences under Section 5(i) (m) read with Section 6 of the Protection of Children from Sexual Offences Act, 2012, (hereinafter referred to as POCSO Act), and the case was tried.

9. The prosecution examined as many as 12 witnesses as PW1 to PW12 and marked Exhibits P1 to P12. No material objects were marked. On the side of the defence, neither witnesses nor documents nor material objects were marked.

10. After examination of prosecution witnesses, when the appellant was questioned under Section 313 of the Code of Criminal Procedure, 1973, on the incriminating circumstances appearing against him, he denied the same as false.

11. The learned Trial court, after considering the evidence on record and hearing either side, by judgment dated 20.12.2019, convicted and sentenced the accused as detailed in paragraph number two supra.

12. Challenging the said conviction and sentence, the accused has filed the present appeal.



Arguments of the appellant's counsel:

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13. The learned counsel appearing for the appellant submitted that, the learned Trial Court failed to consider the evidence of the victim girl, PW 10, which would expose the probability of being tutored that got surfaced on perusal of her statement before the learned Judicial Magistrate under section 164 (5) of the Court of Criminal Procedure, 1973, marked as Exhibit P8 and her deposition before the learned Trial Court. It was categorically argued that the learned Trial Court failed to comply with the provisions of Section 36 of the POCSO Act, 2012, in letter and spirit by exposing the child to the alleged accused during trial by asking the victim to identify him. Further, the learned counsel submitted that the learned Trial Court had negated the factum of the failure of the victim girl who was examined PW -10 to name the appellant, which was confirmed by Mrs. Muthu Lakshmi, who was examined as PW - 11, who was the initial investigating officer.

14. The learned counsel categorically contended that the medical evidence pertaining to serology and the forensic science lab does not support the the prosecution versions. The learned counsel further insisted that in the event of absence of relevant evidence as to the presence of the victim girl at home during the working days of the school, it is highly improbable for the existence of the alleged occurrence. The learned



counsel further pointed out that the statement of the *de facto* complainant PW1, that the information was said to have been given before the respondent police on 04.04.2017 at Government Rajaji Hospital, Madurai, gets negated through her evidence in cross examination before the learned Trial Court that the information was given before the respondent police at Hospital, Muthukalathur.

15. Further, he pointed out that the contradiction in the statement made in the first information report and the testimony of PW2 as to her acquaintance as to the alleged occurrence , before the Court itself would falsify the prosecutions story. Further, the learned counsel submitted that, considering the contradictions in the evidence adduced by PW2 in proper perspective, projecting herself that the sole eyewitness than *de facto* complainant, who is nothing but a hearsay witness, the benefit of doubt ought to have been given to the appellant. The learned counsel further insisted that the contradictions elicited on examination of PW2, upon whose evidence the prosecution had built up its case and has established the prosecution's story would obviously disprove the charges levelled against the appellant.

16. Pointing out that the learned Trial Court failed to observe the evidence of one Sathish examined as PW3, who deposed in his Chief



examination that, the victim girl was pushed and pinched on the cheeks, which will not establish any sexual assault. Further, it was pointed out that, PW3 went on deposing that the victim girl has revealed the fact only to him and his mother but not to the *de facto* complainant, PW1. Further, the learned counsel pointed out that in the testimony of the medical officer, Dr. Lakshmi Devi, who was examined as PW-8 while cross examination, she did not mention the depth of the wound rather than mentioning the size of the wound. Elaborating that the prosecution neither recovered any clothes, which would have been worn by the victim girl at the time of the occurrence, or had taken any steps to produce them before the Court to be marked as material objects. The learned counsel insisted that the same would prove to stand to the benefit of the appellant.

17. The learned counsel further pointed out that, PW1 in his cross-examination admitted that the rough sketch markers exhibit P9 is silent upon the alleged place of occurrence and further admitted in her cross-examination that she did not mention about the bathroom of the house of the *de facto* complainant PW1 categorically contending that the investigation itself is perfunctory in nature. The learned counsel insisted for setting aside the learned Trial Court's judgement of conviction and sentence and allow the criminal appeal.

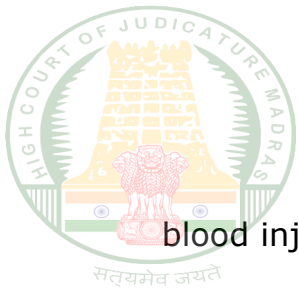


Arguments on behalf of the state:

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18. The learned Additional Public Prosecutor would submit that the victim was only four years and five months old at the time of occurrence and the same has been substantiated by marking the certificate issued by the Head Master of Ravuthar Sahib Primary School, as exhibit P2 and her statement was also recorded under section 164 (5) of Cr.P.C., 1973, by the learned Judicial Magistrate, Thiruvadanai, and the same is marked as Exhibit P8.

19. The *de facto* complainant is the mother of the victim girl, being a coolie worker on 03.04.2017 at 8.a.m after feeding her two children, she had gone for her coolie work. Her elder son is pursuing fourth standard at Ravuthar Sahib Primary School, and the victim girl LKG in the same school. On the said date, at about 2:30 PM., the *de facto* complainant had received a phone call from PW2 Vasuki wife of Kasi in informing her that the victim had fallen down as a result of which she had sustained injuries in her backside of her head and they are taking her to Mudukulathur Government Hospital and directed her to immediately join at Mudhukulathur Government Hospital. While the *de facto* complainant had reached Mudukulathur Government Hospital, she found the victim girl /her daughter, in an unconscious state and her backside of her head was bleeding with blood injury and her vagina was also bleeding with



blood injuries.

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20. On examination of the victim girl, the doctor observing the bleeding of Vagina had directed the *de facto* complainant to take the victim girl for better treatment to Ramanathapuram Government Hospital, from where she was further promptly sent in 108 ambulance to Rajaji Medical College, Madurai. When the *de facto* complainant enquired with Vasuki and her husband, Kasi Lingam, they had informed her that on hearing the screaming voice of the victim girl, they had peeped through their kitchen from where they found that one, the Raja Sekar, that is, the Appellant herein, had indulged in sexual offence by inserting his fingers into the vagina of the victim girl by force, pushing her aside above the washing stone of the bathing space in the backyard of the *de facto* complainant's house, and at the same time he had also closed and compressed and had shut the mouth of the victim girl, preventing her from screaming, and on the indulgence of the Vasuki, he had pushed the child from the bathing stone and had ran away. And when Vasuki and her husband had gone near the victim child, they found the child with blood injuries in the back side of her head and vagina, in an unconscious state and they have taken the child and had admitted the child in Muthukalathur Government Hospital.



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21. Thereafter, at about 5 p.m., for higher treatment from Mudugalathur Government Hospital, the child was admitted at Ramanathapuram Government Hospital, from where she was further referred to Madurai Rajaji Government Hospital in 108 ambulance and reached Rajaji Medical College at 9 PM, wherein the victim was given higher treatment, X-ray and scan were also taken. The *de facto* complainant had given a complaint marked as Exhibit P1, based on which, the investigation was conducted. The victim was produced before the medical officer, who made entries in the accident register, which is marked as Exhibit P4, in which the nature of injuries has been recorded as bleeding from the vaginal region and abrasion over the left side of occiput region and was brought by a relative (Uncle) and since the same is a case of sexual offence, the victim is referred to Government Hospital Ramanathapuram for OG opinion where the child was medically examined and a certificate of examination for sexual offence cases was also issued and the same was marked as Exhibit P6.

22. The victim was later produced before the learned Judicial Magistrate, for statement under 164(5) Cr.P.C., 1973, and the same was also recorded and after investigation, a charge sheet was filed. To substantiate the charges the victim was examined as PW 10, and the doctor who examined the child at Rajaji Government Hospital, Madurai,



was examined as PW8. and the doctor who examined the child at Mudugalathur Primary Health Centre, was examined as PW7. The age of the victim has also been duly substantiated by marking Ex-P2. The prosecution has proved that the victim is a minor child at the time of occurrence.

23. The evidence of the victim combined with the evidence of the doctors proved that the appellant committed penetrative sexual assault, causing bodily harm and injury to the sexual organ of the child, who is less than the age of 12, of the age precisely four years and five months. Through the testimony of the victim, the *de facto* complainant, the statement of the victim recorded under Section 164(5) Cr.P.C., 1973, and the testimony of the doctor's, the prosecution has proved its case, that the victim was subjected to penetrative sexual assault, and hence there is no merit in the appeal and the same is liable to be dismissed.

24. We have anxiously considered the submissions of the learned counsel for the appellant and the learned Additional Public Prosecutor for the State and have consciously gone through the evidence and materials placed on record.



Points for determination:

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25. In the light of the rival submissions and the evidence on record, the following points arise for consideration in this appeal:

(i) Whether the prosecution has proved beyond reasonable doubt that the victim was a “child” below twelve years of age at the time of the occurrence?

(ii) Whether the prosecution has established that the appellant committed penetrative sexual assault on the victim child, attracting Sections 5(i) and 5(m) of the POCSO Act, punishable under Section 6 of the POCSO Act?

(iii) Whether the alleged contradictions, omissions and investigative lapses are of such a nature as to create reasonable doubt regarding the prosecution case?

(iv) Whether the conviction and sentence imposed by the learned Trial Court warrant interference by this Court?

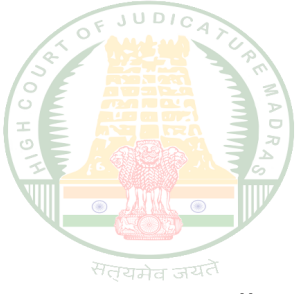
Analysis:

26. The specific case of the prosecution is that, the Appellant had committed penetrative sexual assault causing, bodily harm, and injury to the sexual organ of the child below 12 years. The prosecution followed the due procedures, and after completing the investigation, filed final report before the learned Special Court. In order to substantiate the



case, the prosecution examined 12 witnesses, and out of these, the main witnesses were the victim, who was examined as PW10, the *de facto* complainant, PW1-the mother of the victim, PW2-the neighbour of the victim, who was the eyewitness. The statement of the victim recorded by the learned Judicial Magistrate under Section 164(5) Cr.P.C., 1973, was marked as Exhibit P-8. In order to prove the age of the victim, the age certificate of the victim issued by the school, wherein the victim is studying is marked as Exhibit P2.

27. Therefore, a combined reading of the evidence of PW1 – *de facto* complainant, ocular witnesses - PW2, & PW3, PW10-victim, and the evidence of the doctor's PW-7 and PW- 8, and Exhibits P4 - accident register, Exhibit P6 - the certificate of examination for sexual offences case, Exhibit P-5 would suffice to prove the guilt of the appellant. The final report as to the potency of the appellant leads this Court to find that the learned Trial Court has rightly appreciated the oral and documentary evidence and convicted the appellant. Though the learned counsel appearing for the appellant submitted that there are no ingredients to constitute offences under section 5(i) and (m) r/w Section 6 of the POCSO Act, we are of the considered opinion that the said submission is not sustainable under law.



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28. Though the learned Trial Court has rightly found that the appellant has committed the offences under Section 5(i) &(m) r/w Section 6 of the POCSO Act, 2012. The victim in her statement recorded under Section 164(5) of Cr.P.C has stated as follows:

“विशारण आरम्भित न्हेरु: 5.30 P.M.

केलुवु: डलडल डेडरु एनुनु?

डतुलु: XXXX

केलुवु: एनुनु डलकुतुलुङकु?

डतुलु: L.K.G.

केलुवु: डडडलकु उलुलतल?

डतुलु: तुलुलल

केलुवु: सुलडुडुडुङकुलल? एनुनु सुलडुडुडुङकु?

डतुलु: आडु सुललु, डुनु

केलुवु: एनुनु आसुसु?

सुतुतडुडल एनुनुने तलुलुलुडुडलरु. तललडुलु

रतुतडु वनुततु.

केलुवु: वलुलु एङुकु रतुतडु वनुततु?

(सलडुसु डुलडुडुडुडुडु तलुडुडु कलणुडुतुतु अङुकु रतुतडु वनुततु एनुनु सुललुनुनलरु)

सलडुसुडुडु अतनुडुलुकु डुलडुडुडुडुडु कलणुडुतुतु एवुवलुलु अङुकु रतुतडु वनुततु एनुनु केडुडुडुतु “सुतुतडुडल तलुलुलुडुडु रतुतडु वनुततु” एनुनु सुललुनुनलरु.

केलुवु: सुतुतडुडल डेडरु एनुनु?

तलुलुडुडुतु.”



29. At this stage, it is pertinent to extract section 5(i) &(m) of the POCSO Act, which reads thus:

"(i)whoever commits penetrative sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or

(m)whoever commits penetrative sexual assault on a child below 12 years; or"

30. **Section 6 of the POCSO Act 2012 is extracted as follows:**

6.Punishment for aggravated penetrative sexual assault. - (1) Whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall not be less than 20 years, but which may extend to imprisonment for life, which shall mean imprisonment for the reminder of natural life of that person and shall 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."



31. A combined reading of Sections 5(i), 5(m) and 6 of the POCSO Act and the statement of the victim recorded by the learned Judicial Magistrate, Thiruvadanai, under Section 164(5) Cr.P.C., 1973, in conjunction with the medical reports, as well as the testimony of the medical officers, would make it clear that since the age of the victim is only four years and five months at the time of occurrence, the appellant has committed the offence under section 5 (i) and (m) of the POCSO Act, which is punishable under section 6 of the POCSO Act. The age of the victim was duly proved by the prosecution by the examination of the headmaster of the school, wherein the child is studying as PW4 through whom Exhibit P-2 certificate was marked. That apart, the appellant had dashed the child's head in the stone, subjecting the child to unconsciousness and had committed sexual assault on the child and the same has been substantiated through the testimony of PW1, PW2, and PW3. The testimony of the doctors examined as PW7 and PW8 would corroborate the evidence of PW 1, 2, and 3, that the child was sexually assaulted by the appellant.

32. To add more strength to the prosecution's case, the aggrieved victim has also deposed her evidence, detailing the sexual assault suffered by her. A cumulative reading of the provisions under section 5(i)&(m) and section 6 of the POCSO Act, 2012, along with this



testimony of the PW1, PW2, PW3, PW4, PW7, PW8 and PW10, along with the 164(5) statement of the victim child, would clearly show that the appellant had committed penetrative sexual assault, causing injury to the sexual organ of the child who is less than the age of 12, more precisely at the age of four years and five months.

33. Section 3 of the POCSO Act, 2012, defines the term penetrative sexual assault, and the same is extracted as follows:

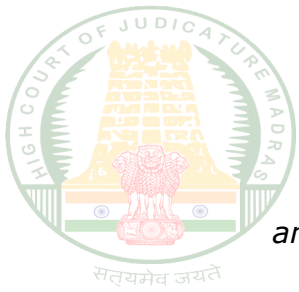
"3.Penetrative sexual assault.- A person is said to commit "penetrative sexual assault" if -

(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; or

(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or

(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or

(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or



any other person."

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34. This clause defines the offence of penetrative sexual assault and provides that if a person penetrates or inserts to any extent, any object or a part of the body, not being the penis into the vagina of the child, he is said to have committed the offence of penetrative sexual assault. In the instant case, the appellant had penetrated the child's vagina, by inserting his fingers forcibly causing bleeding injuries to the sexual organ of the child, by using force on her private part as well her entire body.

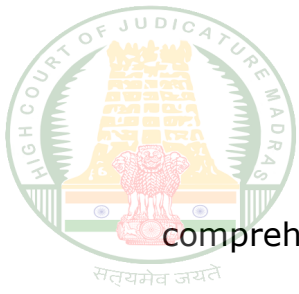
35. This court, being the Appellate Court as the final Court of fact finding, has to re-appreciate the entire evidence, independently and give an independent finding. Though the defence had pressed upon the fact that the victim child is not able to correctly mention the name of the appellant, we are of the considered view that, a child of 4.5 years age is normally not expected to know the name of a relative always and that to in the given circumstances, the child had clearly stated that she was sexually assaulted by her uncle/Chithappa and had consciously explained the injury suffered by her in the back side of her head by the push exerted on her by the offender and the injury suffered by her in her sexual organ, both while deposing evidence as PW10 and in her statement



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recorded under section 164(5) Cr.P.C., 1973. The complainant and also the other witnesses more particularly, doctors, and the documents marked, particularly, age certificate, medical certificates, accident register and the testimony of the ocular witnesses PW2 and PW3, including the *de facto* complainant and PW4 – the Head Master of school would suffice for this Court to find that the appellant has committed the charged offences. Therefore, from the entire material, this Court do not find any reason to interfere with the judgement of the learned Trial Court.

36. Further, the appellant is a person who is known to the family of the victim. The victim has clearly stated that she has suffered sexual assault through her uncle (Chithappa), which had ended in grave injury to her sexual organ, causing bleeding injuries. The child would carry the scar of the sexual abuse throughout her lifetime and will not forget the incident. The sexual assault on the child will have serious repercussion on the physical and mental wellbeing of a child and the same will sustain throughout her life. Child sexual abuse is not merely a statutory offence; it is a profound trespass upon the body, mind and dignity of the most vulnerable members of society. When the victim is below the age of twelve, the offence assumes an aggravated character because the child, being in the formative stage of physical growth and cognitive development, neither possesses the capacity to resist nor the maturity to

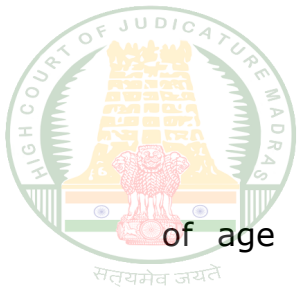


comprehend the gravity of the violation inflicted upon them. The scars borne by such children are not superficial wounds capable of being erased over time; they are deep, indelible imprints that accompany them into adolescence, adulthood and often until the end of their lives.

37. This Court, while adjudicating allegations of sexual violence against minor children, is conscious that the consequences of such crimes transcend the pages of a case diary and the confines of a courtroom. The violation impairs the child's bodily integrity, disrupts their neuro-psychological development, distorts their perception of personal safety and trust, and often leads to enduring disorders such as post-traumatic stress, chronic anxiety, depression, dissociation, fear of relationships, sleep disturbances and behavioural regression.

38. It is within this legal, psychological and societal context that this Court approaches the present case, mindful of the legislative intent behind the Protection of Children from Sexual Offences Act, 2012, the constitutional promise of dignity under Article 21, and the moral duty cast upon every institution of governance to speak on behalf of children who cannot speak for themselves.

39. In the instant case, the victim is a child below twelve years



of age as defined under Section 2(d) of the POCSO Act, 2012. The appellant, taking advantage of his familiarity and proximity to the victim's family, gravely misused the trust reposed in him and exploited the innocent child. In such circumstances, the appellant does not deserve any leniency, and no mitigating factor is available to warrant interference with the sentence imposed by the learned Trial Court.

40. In view of the above, this Court finds no justification to interfere with the judgment of the learned Trial Court, either with respect to the conviction or the sentence. The appeal is devoid of merit and is liable to be dismissed. On a comprehensive and independent re-appreciation of the entire oral and documentary evidence and on consideration of the submissions made on either side, this Court finds that the prosecution has proved the guilt of the appellant beyond reasonable doubt for the offence under Section 5(i)(m) read with Section 6 of the POCSO Act. The conviction recorded by the learned Sessions Judge, Mahalir Neethi Mandram (Fast Track Mahila Court), Ramanathapuram, in Special S.C. No.5 of 2018, and the sentence imposed thereunder, do not suffer from any infirmity or perversity warranting interference by this Court.



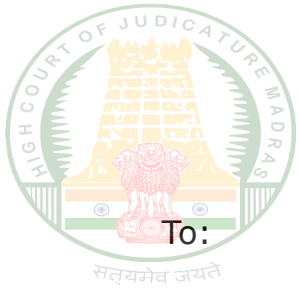
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41. Accordingly, this Criminal Appeal fails and the same is dismissed. The judgment of conviction and sentence dated 20.12.2019 passed in Special S.C. No.5 of 2018 by the learned Sessions Judge, Mahalir Neethi Mandram (Fast Track Mahila Court), Ramanathapuram, is hereby confirmed. The appellant shall continue to undergo the sentence as imposed by the learned Trial Court. The direction issued by the learned Trial Court with regard to compensation to the victim from the Victim Compensation Fund shall also stand confirmed. The learned Trial Court shall ensure that the amount is deposited and operated in accordance with the directions contained in the impugned judgment.

42. Accordingly, the Criminal Appeal stands dismissed, confirming the judgment of the learned Trial Court.

(P.V.,J.) (L.V.G.J.,)
09.01.2026

NCC : Yes / No
Index : Yes / No
Internet : Yes
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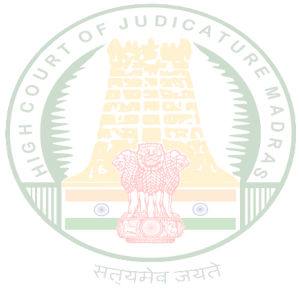


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To:

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- 1.The learned Sessions Judge,
Mahalir Neethimandram
(Fast Track Mahila Court),
Ramanathapuram.
- 2.The Inspector of Police,
Theriruvelli Police Station,
Ramanathapuram District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
4. The Section Officer
Criminal Records,
Madurai Bench of Madras High Court,
Madurai.



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P.VELMURUGAN,J.
and
L.VICTORIA GOWRI,J.

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