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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 03.11.2026

DELIVERED ON: 17.11.2026

CORAM

THE HON'BLE MR.JUSTICE D.LINGESWARAN

Crl.A(MD) No.339 of 2022
CNR:{HCMD010425882022}

and Crl.M.P(MD) No.21651 of 2026

Pandiarajan
Now confined at Central Prison,
Madurai. ..Appellant/Sole Accused

Vs

The Inspector of Police
All Women Police Station,
Virudhunagar District.
(Crime No. 21 of 2016) ..Respondent/Complainant

PRAYER: This Criminal Appeal is filed under Section 374 of Cr.P.C., to call for the records and set aside the conviction and sentence passed in Spl.S.C.No.1 of 2017 dated 11.03.2022 by the Special Court for Exclusive Trial of Cases under POCSO Act, 2012, Virudhunagar District at Srivilliputhur and allow this appeal.

For Appellant :Mr.U.Parivendan

For Respondent :Mr.G.Ganesh Kumar
Government Advocate (Crl.Side)

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JUDGMENT

1. The Case:

(i) The case of the prosecution is that the survivor was a minor girl, stated to be fifteen years old at the time of the occurrence. The appellant, a man of 22 years old, is alleged to have habitually followed and sexually harassed her whenever she went to a grocery shop to buy provisions.

(ii) On 05.09.2016, at about 12.00 noon, while the survivor was playing in front of the house of the appellant, he enticed her and took her inside. At knife-point, he compelled her to drink a cold drink laced with a sedative. When she lost consciousness, he committed penetrative sexual assault on her. A few hours later, PW2 and PW3 rescued her from the house of the appellant. The appellant ran away when the rescue took place.

(iii) A First Information Report was lodged the next day in Crime No.21 of 2016. PW17, the Inspector of Police, investigated the case, recorded the statements of witnesses and collected evidence. On completion of the investigation, he filed a final report before the learned Sessions Judge, Fast Track Mahila Court, Virudhunagar District at

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Srivilliputhur, which took the case on file as Spl.S.C.No.1 of 2017.

(iv) Charges were first framed on 20.09.2017 under Sections 12 read with 11(iv), 6 read with 5(j)(i), and 6 read with 5(l) of the Protection of Children from Sexual Offences Act, 2012 ("POCSO Act"), and under Section 366A of the Indian Penal Code ("IPC"). After all the witnesses had been examined, the charges were altered on 02.11.2021 to Sections 12 and 6 of the POCSO Act and Section 366 IPC.

(v) The prosecution examined 17 witnesses and marked 16 documents and 9 material objects. The Trial Court, on its own motion, marked two further documents, Ex.C1 and Ex.C2, through PW8 (the survivor) to prove her age. The defence examined no witness and marked no document.

(vi) On the evidence, the Trial Court convicted the appellant and sentenced him as follows:

Section	**Sentence imposed by the Trial Court**
366 IPC	10 years of imprisonment and a fine of Rs.1,000/-
12 POCSO Act, 2012	3 years of imprisonment and a fine of Rs.1,000/-
6 POCSO Act, 2012	10 years of imprisonment and a fine of Rs.1,000/-

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The Trial Court directed that the substantive sentences run "consequently", an expression that denotes neither concurrent nor consecutive running. The default sentence for non-payment of each fine is simple imprisonment for six months, likewise directed to run "consequently".

2. The Appeal:

Aggrieved by the judgment of conviction and sentence, the appellant has preferred this appeal. Both sides have been heard.

3. Point for Consideration

Whether the judgment of conviction and the sentence imposed on the appellant by the Trial Court are sustainable?

4. Discussion

A. Age of the survivor

Through the survivor (PW8), a copy of her Aadhaar card and a copy of her SSLC mark statement were marked as Ex.C1 and Ex.C2. Under Section 94(2)(i) of the Juvenile Justice (Care and Protection of Children) Act, 2015, a matriculation or equivalent certificate is admissible for determining age. Ex.C2 records the date of birth of the

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survivor as 06.03.2002, and the appellant did not seriously dispute it. The occurrence took place on 05.09.2016, when the survivor was fourteen years and six months old. She was therefore a "child" within the meaning of Section 2(1)(d) of the POCSO Act, 2012.

B. Summary of the evidence

(i) PW1 is the father of the survivor and the first informant, deposed that he was at work on 05.09.2016 and was informed at about 2.00 p.m. that the survivor was missing. On returning, he learnt that PW2 and PW3 had rescued her from the house of the appellant. The survivor narrated her ordeal to him. He proved the First Information (Ex.P1) and identified the clothing of the survivor, which he had handed over to the police and which was marked as P.M.O.1 to P.M.O.5. In cross-examination, he affirmed that the appellant ran away from the house when the survivor was rescued, and this was not challenged.

(ii) PW2, the paternal aunt of the survivor and the elder sister of PW1, deposed that, while searching for the survivor, she heard voices from the house of the appellant, went inside and, together with PW3, rescued her. The survivor told her that the appellant had given her a cold drink and that she had then lost consciousness. PW2 inferred from the

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circumstances that the survivor had been sexually assaulted. She also stated that the appellant ran away from the house when the survivor was rescued. The defence did not dispute that the survivor was rescued from the house of the appellant or that the appellant fled at that moment.

(iii) PW3 corroborated PW1 and PW2 and was not cross-examined on these material aspects. PW4, a witness to the Observation Memorandum (Ex.P2) and the Seizure Memorandum (Ex.P3), identified the items seized from the house of the appellant; the broken bangle pieces and the Bovonto bottle were marked as P.M.O.6 and P.M.O.7 through her. PW5, a relative of the survivor, corroborated PW1 to PW3 and was not seriously cross-examined. PW6 deposed to the same facts; the defence disputed them in his cross-examination. PW9 went in search of the survivor, but reached the spot only after the rescue and enquired of the survivor about the occurrence. PW10 turned hostile.

(iv) PW8, the survivor, proved her age. She deposed that on 05.09.2016 she was taken inside the house of the appellant and forcibly made to drink a beverage, after which she became unconscious. Three persons, including PW2 and PW3, rescued her, and she had injuries on her body, the cause of which she could not explain. The defence

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suggested that she was deposing falsely; she denied the suggestion.

(v) PW11, the Village Administrative Officer, was cited as a witness to the confession of the appellant, but no disclosure was made in his presence and nothing was marked through him. PW12 deposed that the appellant disclosed where he had kept the clothes he was wearing at the time of the occurrence. The disclosure statement leading to the recovery was marked as Ex.P4, and the clothes as P.M.O.8 and P.M.O.9.

(vi) PW13, Dr.Amarnath, certified that the appellant was potent and capable of sexual intercourse (Ex.P6). PW14 and PW16, the doctors who examined the survivor, noted several injuries on her body (Ex.P7). PW16, Dr.Vaishnavi, recorded injuries on the cheek, ear lobe, shoulder, hand and back, found the hymen ruptured, and certified that penetrative sexual assault had been committed (Ex.P10). PW17, the Investigating Officer, spoke of the registration of the case (Ex.P11), his visit to the scene, the rough sketch (Ex.P12), the examination of witnesses, and the seizure of material objects under the memorandum in Ex.P14. He also spoke of the recording of the statement of the survivor under Section 164(5) Cr.P.C. before the learned Judicial Magistrate (Ex.P15), and of the arrest of the appellant and Police custody. He further proved the

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disclosure statement of the appellant and the recovery of the clothes under the seizure memorandum (Ex.P16). He filed the final report on completing the investigation.

(vii) This Court has carefully considered the entire evidence in the light of the arguments advanced on both sides.

C. Analysis

(i) The contention that the survivor did not speak of the sexual act:

The learned counsel for the appellant submitted that the survivor did not describe the sexual act itself and prayed for an acquittal on that ground. It is true that she did not state in terms that the appellant penetrated her. But her evidence on the surrounding facts is clear. She stated that she refused the beverage offered by the appellant, that he forced her to drink it, and that she lost consciousness. She further stated that her aunts, Vijayalakshmi and Mariyammal, later took her home, that she noticed injuries on her body and could not say how she sustained them, and she rejected the suggestion that they were caused in a quarrel with her father. This evidence is corroborated by PW1, PW2, PW3, PW5, PW6, PW14 and PW16. The absence of a direct account of the act is thus fully explained: the survivor was

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unconscious when it occurred. A witness cannot be expected to describe what she was incapable of perceiving. The question is whether the other evidence, read with the statutory presumption, proves the offence.

(ii) The foundational facts:

a) PW1, PW2, PW3, PW5 and PW6 each deposed that the survivor was found inside the house of the appellant in a traumatized and disheveled state, with her clothing in disarray. Each also deposed that the appellant ran away from his own house when PW2 and PW3 entered it to rescue her. Except in the case of PW6, the defence did not dispute either fact. The prosecution has therefore established that a fourteen-year-old girl, who was taken into the house of the appellant in the afternoon, was found there a few hours later in that condition.

The medical evidence of PW14 and PW16 establishes the following injuries:

(i) a nail scratch measuring 1 x 1 cm on the right cheek;

(ii) an abrasion measuring 1 x 1 cm on the left ear lobe;

(iii) an abrasion measuring 1 x 1 cm on the left cheek;

(iv) an abrasion measuring 0.5 x 1 cm on the left shoulder *(injuries (i) to (iv) are recorded in Ex.P7);*

(v) abrasions on the right ear lobe, the left hand and the back

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(recorded in Ex.P10); and

(vi) a ruptured hymen (Ex.P10).

b) PW16 proved Ex.P10, which records these findings, and opined that the survivor had been subjected to penetrative sexual assault. The foundational facts are therefore these: the survivor was a child of fourteen; she was taken into the house of the appellant; after a few hours she was found there in a traumatised and dishevelled state with her clothing in disarray; she bore multiple injuries; and her hymen was ruptured, which, in the medical opinion, indicated penetrative sexual assault.

(iii) The presumption under Section 29 of the POCSO Act:

a) Section 29 provides that, *where a person is prosecuted for an offence under Sections 3, 5, 7 or 9, the Special Court shall presume that he committed the offence unless the contrary is proved.* Once the foundational facts above are established, the presumption operates and the burden shifts to the appellant. He has discharged none of it. He offered no explanation for taking the child into his house, for making her drink the beverage, or for fleeing when she was rescued. His flight is also conduct relevant under Section 8 of the Indian Evidence Act,

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1872. Flight alone would not prove guilt, but together with the proved facts it strengthens the inference of guilt.

b) The survivor categorically stated that she became unconscious after drinking the beverage and does not know how she was injured. She was thus unable to describe what happened inside the house. This is the gap that the statutory presumption is meant to fill. The prosecution has proved the foundational facts, the presumption stands unrebutted, and the medical evidence supports it. It is accordingly held proved beyond reasonable doubt that the appellant committed penetrative sexual assault on the child and caused her the bodily injuries recorded in the medical evidence.

(iv) Corroboration by the earlier statements of survivor:

In ***Rameshwar v. State of Rajasthan*** (AIR 1952 SC 54), the Hon'ble Supreme Court held that a former statement of a witness relating to the same fact, made at or about the time when the fact took place, may be proved under Section 157 of the Indian Evidence Act, 1872. The statements of the survivor to PW1, PW2, PW3, PW5 and PW6, that the appellant took her into his house, forced her to drink the

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Bovonto and that she was injured, are relevant under Section 8 and Illustration (j) to that section and admissible under Section 157. They were made close in time to the occurrence and corroborate her testimony before the Trial Court. The conviction under Section 6 of the POCSO Act, 2012 is therefore sustained.

(v) Non-examination of the beverage bottle:

The Investigating Officer did not send P.M.O.7, the Bovonto bottle, for forensic analysis to identify the sedative used. This omission is not fatal. The evidence of the survivor that she was forced to drink the beverage and lost consciousness is corroborated by PW1, PW2, PW3, PW5 and PW6 and is supported by the medical evidence in Ex.P7 and Ex.P10. The offence does not depend on identifying the particular substance used. The proved facts show the unconsciousness of the survivor and the sexual assault, and the lapse in the investigation does not weaken them.

(vi) The charge under Section 12 of the POCSO Act:

There is no evidence that the appellant followed the survivor to school or to the shop and harassed her continuously. The finding of the

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Trial Court that this charge was proved has no evidentiary basis. The appellant is therefore found not guilty under Section 12, and his conviction and sentence under that Section cannot be sustained.

(vii) The charge under Section 366 IPC:

The evidence of the survivor shows that the appellant deceitfully induced her to go into his house on the pretext of playing with him. Under Section 362 IPC, a person who by deceitful means induces another to go from any place commits abduction. The offence of abduction was complete when the appellant, by that deceit, took the child into his house. His purpose is shown by what followed: he sedated the child and had sexual intercourse with her. It follows that he took her into the house for that purpose. Abduction committed with such an intention is the aggravated offence punishable under Section 366 IPC. The evidence of PW8, corroborated by the other witnesses named above, proves this offence. The Trial Court rightly held the appellant guilty under Section 366 IPC, and this Court finds no reason to interfere with that conviction.

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5. Conclusion and Sentence:

(i) The prosecution has proved beyond reasonable doubt the charges under Section 366 IPC and Section 6 of the POCSO Act, 2012. The appellant is found not guilty under Section 12 of the POCSO Act, 2012, and is acquitted of that charge.

(ii) On sentence, the Trial Court imposed the statutory minimum of ten years of imprisonment and a fine of Rs.1,000/- under Section 6 of the POCSO Act, 2012. This Court sees no reason to interfere with that sentence.

(iii) Section 366 IPC prescribes no minimum sentence, and the Trial Court imposed the maximum of ten years. Having regard to the age of the appellant, his previous good conduct and the gravity of the offence, this Court considers that the maximum sentence is not warranted and reduces the sentence under Section 366 IPC from ten years to three years of Simple Imprisonment. Because the expression “consequently” used by the Trial Court is ambiguous, it is clarified that all the substantive sentences shall run concurrently. The appellant is entitled to set-off under Section 428 Cr.P.C.

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6. Result:

The Criminal Appeal is partly allowed.

(i) The appellant is found not guilty under Section 12 of the POCSO Act, 2012. His conviction and sentence under that Section are set aside, and the fine paid in respect of that charge shall be refunded to him.

(ii) The conviction and sentence under Section 6 of the POCSO Act, 2012, imposed by the Trial Court in its judgment dated 11.03.2022, are confirmed.

(iii) The conviction under Section 366 IPC is upheld. The sentence is modified from ten years to three years of Simple Imprisonment, with the fine of Rs.1,000/- retained.

(iv) The substantive sentences of imprisonment shall run concurrently.

(v) The appellant is entitled to set-off under Section 428 Cr.P.C.

Consequently, connected Miscellaneous Petition is closed.

17-11-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
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To

1. The Inspector of Police
   All Women Police Station,
   Virudhunagar District.

2. The Additional Public Prosecutor
   Madurai Bench of Madras High Court
   Madurai

Copy To :

Section Officer (VR Section)
Madurai Bench of Madras High Court

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D.LINGESWARAN, J.

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