



*CrI.A(MD)No.255 of 2019*

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

RESERVED ON : 20.07.2022

DELIVERED ON : 10.08.2022

CORAM :

**THE HONOURABLE MR. JUSTICE P.N.PRAKASH  
and  
THE HONOURABLE MRS. JUSTICE R.HEMALATHA**

**CrI.A(MD)No.255 of 2019**

Narayanan

.. Appellant/Sole Accused

Vs.

State rep. by,  
The Inspector of Police,  
Thanjavur Taluk Police Station,  
Thanjavur.  
(Crime No.477/2015)

.. Respondent/Complainant

**PRAYER:** Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, 1973, against the judgment and order dated 05.01.2019 in Spl.S.C.No.18 of 2016 passed by the learned Sessions Judge, Mahalir Neethimandram, (Fast Track Mahila Court), Thanjavur.



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For Appellant : Mr.S.Deenadhayalan

For Respondent : Mr.A.Thiruvadi Kumar  
Additional Public Prosecutor

### **JUDGMENT**

[Judgment of the Court was delivered by **R.HEMALATHA, J.**]

The appellant has filed the present appeal against the judgment and order dated 05.01.2019 passed by the learned Sessions Judge, Mahalir Neethimandram, (Fast Track Mahila Court), Thanjavur, in S.C.No.18 of 2016, wherein the appellant was convicted for the offences punishable under Sections 3 (a) r/w 5(m) r/w 6 (5 counts) of the Protection of Children from Sexual Offences Act, 2012, and sentenced as detailed below:



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Section of Law	Sentence of imprisonment	Fine amount
3 (a) r/w 5(m) r/w 6 of POCSO Act	Life Imprisonment	Rs.1000/-, in default, to undergo simple imprisonment for one year.
3 (a) r/w 5(m) r/w 6 of POCSO Act	Life Imprisonment.	Rs.1000/-, in default, to undergo simple imprisonment for one year.
3 (a) r/w 5(m) r/w 6 of POCSO Act	Life Imprisonment.	Rs.1000/-, in default, to undergo simple imprisonment for one year.
3 (a) r/w 5(m) r/w 6 of POCSO Act	Life Imprisonment.	Rs.1000/-, in default, to undergo simple imprisonment for one year.
3 (a) r/w 5(m) r/w 6 of POCSO Act	Life Imprisonment.	Rs.1000/-, in default, to undergo simple imprisonment for one year.

2. The prosecution case in a nutshell is as follows:

2.1. P.W-1 to P.W-4 and another girl child aged 3 years were all victims in this case of sexual assault. P.W-1 to P.W-4 are less than 9 years of age. Valarmathi (P.W-5) is the mother of P.W-1, P.W-2 and the child aged 3 years. Rani (P.W-7) is the mother of P.W-3 and Senthil Kumar(P.W-8) is the father of P.W-4. P.W-8 is also the brother of



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Valarmathi (P.W-5). P.W-1 and P.W-3 are girl children while P.W-2 and P.W-4 are boys. The child less than 3 years is also a girl baby.P.W-5, P.W-7 and P.W-8 are agricultural labourers and are residents of Norhevankudikadu village, Thiruvaiyaru Taluk, Thanjavur District. On 23.10.2015, P.W-5, P.W-7 and P.W-8 as usual left for work leaving their children in their respective houses and the children were playing together. The appellant, Narayanan, who is the neighbour of Valarmathi (P.W-5) called P.W-1 and her little sister aged 3 years to his house and offered cakes. Thereafter, he forced himself upon both of them. They cried since they could not bear the pain and they were threatened by the appellant not to disclose anything to anyone. Thereafter, the children came home and were crying out of pain. On the same day, the appellant called P.W-4 to the upstairs of his house and did penetrative



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sexual assault by inserting his penis into the mouth of P.W-4.

2.2. Similarly, P.W-3 was also subjected to penetrative sexual assault. On the next day, ie., on 24.10.2015, the appellant called P.W-2 to his house and inserted his penis into his mouth. According to P.W-2, it was disgusting and made him to throw up. P.W-1 and her little sister were found weeping by P.W-5 and when she enquired P.W-1 as to why she is crying, P.W-1 informed her about the sexual assault committed by the appellant.

2.3. P.W-3 and P.W-4 also informed their respective parents about the penetrative sexual assault committed by the appellant.



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2.4. On 29.10.2015 P.W-5 took P.W-1 and her little daughter aged 3 years to a Private hospital for medical treatment. They also informed the son of the appellant about the crime committed by his father expecting him to chide his father. Since no action was taken by him, P.W-5, P.W-7, P.W-8 and P.W-9 approached the elders of the village. Since the elders stated that they cannot ask such 'delicate things' to the appellant, P.W-2 took P.W-1 and the child aged 3 years to Thanjavur Raja Mirasudar Government Hospital, where Dr.Uma Brinda (P.W-9) examined the children. She found no external injuries on both the children. The children also informed the doctor that they had washed their genitals several times. Thereafter, P.W-9 gave intimation to the police and sought for opinion of a Gynecologist. The Accident Register for both the children were marked as Ex.P6 and Ex.P7.



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2.5. P.W-5 thereafter went to Taluk Police Station, Thanjavur on 30.10.2015 and gave a written complaint (Ex.P4) to the police. Tmt. Sasikala (P.W-15), the Sub Inspector of Police, Thanjavur Taluk Police Station received the complaint (Ex.P4) from P.W-15 and registered an FIR in Crime No. 477/2019 against the appellant for the offences punishable under Sections 6,8 and 12 of the POCSO Act. She sent the FIR (Ex.P20) to the concerned Court and thereafter placed the records for investigation before the Inspector of Police. She also sent all the children for medical examination through Tmt.Micheal Mariya (P.W-14), Police Constable attached to Taluk Police Station, Thanjavur.

2.6. Tmt.Anburani (P.W-16) took up investigation in Crime No.477/2015 as per the orders of the Deputy Superintendent



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of Police, Thanjavur and went to the scene of occurrence on 31.10.2015 at about 10.00 a.m. She prepared an observation mahazar (Ex.P) in the presence of witnesses Raja (P.W-6) and Marimuthu (not examined) and a Rough Sketch (Ex.P21). Since the children were already admitted in the Thanjavur Raja Mirasudhar Government Hospital, she went to the hospital and examined the children and their parents and recorded their statements.

2.7. Dr.Jeyarani(P.W-10) examined P.W-1 to P.W-4, and opined that there were no external injuries and also no traces of subjecting the children to sexual assault. Her final opinion was marked as Ex.P10 to Ex.P17. Thereafter, P.W-16 arrested the appellant near Sadayarkovil. Her specific contention is that when she was about to arrest the appellant, he attempted to flee from the place, slipped and fell down and sustained



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injuries. He was therefore admitted in the Thanjavur Raja Mirasudhar Government Hospital for medical aid and was arrested after getting a warrant from the concerned Judicial Magistrate and thereafter remanded to judicial custody. He was also subjected to medical examination.

2.8. Dr.Tamilmani (P.W-13) who examined the appellant gave an opinion that there was nothing to suggest that the appellant was impotent. His opinion was marked as Ex.P19. P.W-16 sent the children (P.W-1 to P.W-4) to the Judicial Magistrate, Thiruvaiyaru for recording their statements under Section 164 Cr.P.C. Thiru.Selvam (P.W-11) videographed the statements of all the witnesses before the Judicial Magistrate, Thiruvaiyaru. The 164 Cr.P.C. statements of P.W-1 to P.W-4 were marked as Ex.P1, Ex.P2, Ex.P3 and Ex.P22 respectively.



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2.9. P.W-16 after collecting medical reports and after completing investigation filed a final report before Mahila Court, Thanjavur in Special S.C.No.18/2016 against the appellant for the offences punishable under Sections 3(2) r/w 5(m) r/w 6(5 counts) of Prevention of Children from Sexual Offences Act, 2012.

2.10. The learned Sessions Judge, Fast Tack Mahila Court, Thanjavur, took up the case on file in Spl.S.C.No.18 of 2016. To the charges framed under Sections 3(2) r/w 5(m) r/w 6(5 counts) of POCSO Act, the appellant pleaded not guilty. Hence, the case was posted for trial.

2.11. In order to establish the guilt of the appellant, the prosecution examined 16 witnesses and marked 22 documents.



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2.12. When the appellant was questioned with regard to the circumstances appearing in evidence against him under Section 313 of the Code of Criminal Procedure, he denied of having committed any offence. He also added that on the date of the alleged occurrence, he was out of station as he went to Orathanadu to purchase peanut seeds. In his separate statement, the appellant had stated that Valarmathi (P.W-5) was in illicit relationship with her brother-in-law, Raja and since he questioned this and also took active part in getting back the stridhana properties of the wife of Raja, a false case was fabricated against him by P.W-5. However, he did not examine any witness on his side.

2.13. The learned Sessions Judge after analyzing the oral and documentary evidence adduced on both sides found the



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appellant guilty of the offences under Sections 3(2) r/w 5(m) r/w 6(5 counts) of POCSO Act, and sentenced him as stated in paragraph No.1. Challenging the same, present appeal is filed by the appellant.

2.14. Heard Mr.S.Deenadhayalan, learned counsel for the appellant and Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor for the respondent.

2.15. The case of the prosecution is that the appellant had committed penetrative sexual assault on the children P.W-1 to P.W-4 who were less than 9 years and also on a girl child (not examined since she was just aged 3 years). The evidence of P.W-1 is that on 23.10.2015 she and her sister aged 3 years were called by the appellant to the upstairs of his house under the pretext of offering cske.. When they went to the house of



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the appellant, the appellant removed P.W-1's skirt and forced himself upon her. P.W-1 cried as she could not withstand the pain. The appellant thereafter performed penetrative sex on her younger sister also who was just 3 years old. She also cried out of pain. Both of them returned home and when they were enquired by their mother P.W- 5, they narrated the entire incident to her.

2.16. The evidence of P.W-2 is that one day when P.W-1, P.W-3 and P.W-4 and another child were playing 'hide and seek' near the house of the appellant, the appellant called him and lured him that he would pay Rs.10/- if he performs oral sex. His further evidence is that since he refused to do the same, he(the appellant) hit him with a stick and forced him to have an oral sex with him. It was disgusting and made him to vomit. According to P.W-2, this act of the appellant continued



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on different occasions for 5 days and he did not inform this immediately to his mother fearing unpleasant consequences. .

2.17. The evidence of P.W-3 is that P.W-1 and P.W-2 are her cousins and on a day when they were all playing near the house of the appellant, the appellant called her to his house and did penetrative sexual assault by forcing himself upon her. When she screamed, the appellant threatened her that he would push her down from upstairs. Thereafter she came back home and informed her mother. The evidence of P.W-4 is that when he was playing with his friends and P.W-2, the appellant called him and P.W-2 to his house forced them to have oral sex with him. He also threatened them that if they did not perform the oral sex with him, he would push them down from the upstairs. The important aspect of the evidence of P.W-4 is extracted hereunder:



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“நாங்கள் விளையாடிக்கொண்டிருந்தபோது எதிரி நாராயணன் என்னையும் பார்த்திபனையும் மாடிக்குஅழைத்து சென்று அவர் கண்ணியை சப்ப சொன்னார். அவர் சொன்னவுடன் நாங்கள் பயந்து சப்பினோம். அதனால் எனக்கு வாந்தி வந்தது. நான் உமட்டினேன். மாடியிலிருந்து பிடித்து தள்ளிவிடுவேன் என்று சொல்லி மீண்டும் எங்களை சப்ப சொன்னார். குச்சியை எடுத்து மிரட்டி சப்ப சொன்னார். திரும்ப நான் சப்பினேன். அவர் குஞ்சிலிருந்து கஞ்சியாக வந்தது எனக்கு உமட்டியது. எனது அம்மா, அப்பா, தாத்தா, ஆத்தா ஆகியோரிடம் இது பற்றி சொன்னேன்.”

3. Mr.S.Deenadhayalan, learned counsel for the appellant has tried his best to dilute the seriousness of the offence by suggesting that



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1. the children were tutored.
2. the parents of the children had grudge against the appellant and therefore falsely implicated him.
3. there was undue delay in lodging police complaint.
4. the doctor who examined the children were unanimous in their conclusion that there was no sign of any sexual assault on the victim children.

4. Let us go through these arguments. The children were tutored is one prime contention put forth by the appellant. It is to be understood that no parent would like their children to suffer even assuming it is to settle personal score with their common enemy appellant. This was also one of the suggestions put forth during cross examination to the parents. In fact the children had withstood the testimony of cross-examination at that young age and such spontaneous replies could not have come out of them if tutoring had been done.



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5. The delay in giving a police complaint is very natural. Complaints in such sensitive cases especially in a village or a small town would not have the precision of a clock. Their limited knowledge on the POCSO Act and their traditional beliefs and inhibitions are to be considered as attributable to this delay. Moreover, the evidence of P.W-5 was clear on this aspect. According to her, all the affected parents informed the son of the appellant and asked him to reprimand him and since no action was taken by him, they informed the elders of the village, who also refused to ask such 'delicate things' to the appellant.

6. The doctors concluding that no injuries were found in the private parts of the children and no sign of sexual assault could be observed does not rule out the “dirty stuff” the appellant had tried on them. It is not a case of rape of an adult. The children oblivious of what is happening to them may not have resisted. In fact, these children were



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threatened that they would be pushed down from the first floor of the house and the evidence of P.W-2 shows that he was attacked with a stick when he refused to do the oral sex. The consequential effects of such sexual abuse can include depression, post-traumatic stress disorder, anxiety, complex post-traumatic stress propensity to further victimization in adulthood.

7. Mere absence of physical injury does not rule out the sexual acts of the appellant. The other effects cannot be assessed by physical examination. An adult, who engages in sexual activity with a child is performing a criminal and immoral act which never can be considered as a normal or socially acceptable behaviour. In our country, children are always revered as an avatar of God for their innocence and truthfulness. They are without any blemish and can never be tutored when they themselves are victims of such sexual offences. The case of the 3 year old toddler is pathetic. The indifference of the society in



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general and the villagers in this particular case is appalling. It is clear from the deposition of P.W-5, P.W-7 and P.W-8 that even the leader of the village was not ready to question the appellant. The son of the appellant also remained mute. With the rising trend of sexual exploitation of children, this recalcitrant attitude of the public that it is not their problem is purely due to the lack of empathy. The sexual abuse of children had become more prevalent and there should be a social movement against it. Moral education should focus on the importance of children and treating them with due care. Today's children are tomorrow's leaders and unless we protect them, this society will face huge crisis in future. It is our duty to make a society which is safe for children.

8. The contention of the learned counsel for the appellant is that the dispute between the appellant and P.W-5 over the issue of the former getting to know of the alleged illicit affair of P.W-5 with her

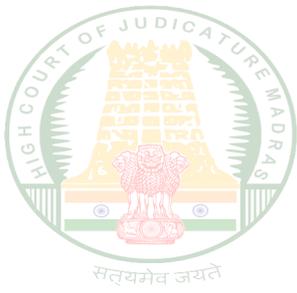


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brother-in-law is the motive for falsely implicating the appellant. According to him, since P.W-7 is a friend of P.W-5 and P.W-8 is the brother of P.W-5, they joined together for falsely implicating the appellant. However, no suggestion to this effect was made to the parents while they were cross-examined. This argument cannot be also accepted as no parent, in order to settle their personal score will use their own children to falsely implicate a person under POCSO Act. This involves the future of their children. Many cases go without any complaint to the police and this had been taken advantage by the persons like the appellant.

9. Another contention of the counsel for the appellant is that there are contradictions in the evidence of P.W-1, P.W-2 and P.W-4. According to him, P.W-1 stated that when she and her little sister were alone in their house they were called by the appellant. Thus, she did not mention the presence of other children. In his deposition, P.W-2 had



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deposed that when all the 5 children were playing, he was called by the appellant. On the other hand, P.W-4 had deposed that he went with P.W-2 to the house of the appellant. It is to be seen that P.W-2 and P.W-4 were boys aged less than 9 years and P.W-2 had clearly narrated that he was asked to do oral sex on different occasions for 5 days. The sum and substance of the evidence of these victims are that they were subjected to penetrative sexual assault by the appellant. We should not forget that the victims are children and it is seen from their deposition that they are narrating the incident clearly and the contradictions in their evidence, in fact, only shows that they were not tutored. It is also to be seen that these children were not cross-examined on the same day when they were examined in chief. They were recalled by the defense after a lapse of three months and were cross-examined. Literally, the children were made to recount the crime committed by the appellant again after narrating the same many times earlier.



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10. This is a case of sexual adventure of an old pedophile. It is also only just a tip of the ice berg. It requires much courage and conviction to come out in open and initiate the legal process on the offender not knowing how it will end or how long it will take to end. The appellant with a perverted sexual appetite has exploited as many as five children all younger than 9 years of age. The appellant himself was about 54 years old when he committed these acts. His modus operandi appears to be a standard one. His target group also was very clear. The depositions of P.W-1 to P.W-4 have one thing in common. They are all the victim children, who knew nothing about the worldly affairs except for the one thing that the appellant behaved with them in an unusual way causing pain and disgust to them. The victim children as prosecution witnesses have categorically stated how they were subjected to sexual assault by the appellant. The appellant being a pedophile has tried for sexual intercourse with girl children and tried



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oral sex with the boys. The manner in which he lured them is typical of a sexual offender. There is nothing in the versions of P.W-1 to P.W-4 which can be doubted. The offender employing the 'carrot and stick' method to make the children submit themselves to him is also clear from the evidence of P.W-1 to P.W-4. P.W-2 and P.W-4 are boys who were lured by offering Rs.10/- and then threatened when the appellant's move was resisted. The girl children P.W-1 and P.W-3 were lured by offering cake and taken home for the penetrative sexual act. The youngest of the children, the sister of P.W-1 and P.W-2, who was just 3 years old was also not spared. This is a tell tale symptom of the perversity of the appellant. The children as witnesses were not aware of dates much less the time. None of them could read even the clock when questioned on that aspect by the trial Court Judge. P.W-5, the mother of three of the five victim children was the one who gathered the courage to lodge the police complaint. Whether there were other complaints by other parents or whether this complaint by P.W-5 was the only one are



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all immaterial in the light of the seriousness of the offence. As already stated, this may just be a tip of the ice berg. The appellant has been a sexual predator of children and the other factors like delay in filing the complaint or absence of injury on the person of the children or the unknown person, who wrote the complaint on behalf of P.W-5 etc., become trivial vis-a-vis the narration of the children. The heart rending experiences of the children as deposed by them have undoubtedly swept away the aspersion cast on the parents of the victim children of falsely implicating the appellant. Hence, we do not see any reason to interfere with the conviction and sentence passed by the trial Court and accordingly, this appeal deserves to be dismissed.

11. In the result,

(i) This Criminal Appeal stands dismissed.

(ii) The conviction and sentence passed by the learned Sessions Judge, Mahalir Neethimandram, (Fast Track Mahila Court), Thanjavur,



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against the appellant in Spl.S.C.No.18 of 2016 dated 05.01.2019, is hereby confirmed.

**[P.N.P., J.] & [R.H., J.]**  
**10.08.2022**

Index : Yes/No  
Internet : Yes/No  
PJJ

To

1. The Sessions Judge,  
Mahalir Neethimandram, (Fast Track Mahila Court),  
Thanjavur.
2. The Inspector of Police,  
Thanjavur Taluk Police Station,  
Thanjavur.
3. The Additional Public Prosecutor  
Madurai Bench of Madras High Court,  
Madurai.



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**P.N.PRAKASH, J  
AND  
R.HEMALATHA, J**

**PJL**

Judgment made in  
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**10.08.2022**