

**IN THE COURT OF SESSIONS JUDGE,
(SPECIAL COURT UNDER POCSO ACT) NAGAPATTINAM.**

Present: Tmt. J. Tamilarasi, B.Com., M.L.
Sessions Judge,
Special Court under POCSO Act,
Nagapattinam.

Thursday, the 27th day of February, 2020

SPECIAL SESSIONS CASE NO. 07 of 2018

(Cr.No.139/2017 of Thalainayar Police Station)

1. Name of the Complainant	:	State represented by Inspector of Police, Thalainayar Police Station.
2. Name of the accused	:	Arul @ Aruldass, Age 24/2017, S/o Ravichandran, South Street, Kodiyalathur, Thirukuvalai Taluk.
3. Charges against the accused	:	i) U/s 366 IPC (2 counts) ii) U/s 6 r/w 5(l) of POCSO Act
4. Plea of the accused	:	Not Guilty.
5. Findings of the Judge		Not guilty.
6. Sentence or Order passed by the court	:	In the result, the accused is found not guilty for the offences u/s 366(2 Counts) IPC and u/s 6 r/w 5(l) of POCSO Act and the accused is acquitted u/s 235(1) Cr.P.C. So far as PMO1 to PMO3 in C.P.No.02/2018 are concerned, PMO1-Gold Jimiki and PMO2-Gold Ear Stud have already been returned to PW3 on interim custody as per order in CrI.M.P. No.37/2018 dated 15.02.2018 and he shall retain the same with him and the

	bond executed by him shall be cancelled after lapse of appeal time or if any appeal is preferred, after disposal of appeal. So far as PMO3-Two Wheeler bearing Regn.No.TN-51-AB-2494 is concerned, the same shall be returned to its owner on production of Registration Certificate after lapse of appeal time or if any appeal is preferred, after disposal of appeal. Whereas the C.D. marked as CMO1 by the prosecution is concerned, the same shall be kept with the case records. No compensation is awarded to PW1 under Rule 7(2) of Protection of Children from Sexual Offences Rules, 2012. The bail bond executed by the accused is ordered to be cancelled after lapse of appeal time or if any appeal is preferred, after disposal of appeal.
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This case coming before me for final hearing today in the presence of Tmt.S.Ameer Beevi, Special Public Prosecutor and Thiru.K.Mohandass, Advocate for the accused and upon hearing the arguments of both sides, after perusal of case records and having stood over for consideration till this date, this court pronounced the following

JUDGMENT

The Inspector of Police, Thalainayar Police Station has laid charge

sheet against the accused stating that the victim child is aged 17 years. The accused and uncle of the victim child are residing in the same village. The victim child used to come to the village of her uncle during festivals and holidays. Further, for her convenient going to college, she stayed in the house of the said uncle. The house of the accused is situated opposite to the house of the victim child's uncle. The accused moved with the victim child stating that he loved her. The accused is married and having two children. On 03.07.2017, due to the inducement of the accused, the victim child started from the house of her uncle and she and the accused went to Kachanam and stayed there till 06.07.2017. At that time, the accused pledged the Jimikki of the victim child and got Rs.1,100/- and spent the same. On the next date i.e. 07.07.2017, the accused kidnapped the victim child to Thiruppur and at a place called Vellakkovil, he pledged the Ear Stud of the victim child for Rs.1,500/-. Thereafter, they stayed in J.K. Hotel in Thiruppur from 07.07.2017 to 10.07.2017. During the said stay, the accused had sexual intercourse with the victim child for several times. From there, they went to Valivalam Vadapathy. From that place, the parents of the victim child, with the help of the police, brought back the victim child to the house. On 19.07.2017 the accused induced the victim child to come to Thalainayar and kidnapped her in his two wheeler. He left his two wheeler in Thiruvarur and took the victim child to Tiruchi in a bus. In Tiruchi, the accused pledged the Anklet of the victim child at Palakarai for Rs.1000/-. From Tiruchi, the accused took the victim child to Thiruppur and stayed there and on 22.07.2017, he brought the victim child to Kodiyalathur. Meanwhile, the accused committed penetrative sexual assault on the victim child for several times. Therefore, the accused has been charge sheeted by the police u/s 366 IPC @ 6 r/w 5(1) of POCSO Act.

2) On the above final report, this court has taken up cognizance of the offences and issued summons for appearance of the accused. After appearance of the accused, copies of the police records which were relied upon by the

prosecution were furnished to him u/s 207 Cr.P.C. Thereafter, upon consideration of the case records and the documents submitted therewith, after hearing the submissions on the side of the prosecution and the accused, my predecessor framed charges against the accused u/s 6 r/w 5(l) POCSO Act. When the said charges were read over and explained to the accused, he denied the charges and pleaded not guilty.

3) After perusal of case records, this court has altered the above charges framed against the accused from sec. 6 r/w 5(l) POCSO Act to sec. 366 *IPC* (2 counts) and sec.6 r/w 5(l) of POCSO Act. When the altered charges were read over and explained to the accused, he denied the altered charges and pleaded not guilty.

4) To establish the prosecution case against the accused, the prosecution has examined 4 witnesses, marked 17 Exhibits and exhibited 3 Material Objects as PMO1 to PMO3. One Court Exhibit has been marked as CMO1. From the evidence let in by the prosecution witnesses, the brief case of the prosecution is as follows:-

4(a) PW1 is the victim child. PW2 and PW3 are mother and father of PW1. PW1 is aged 17 years. Her 12th standard Transfer Certificate and Secondary School Leaving Certificate have been marked as Ex.P1-series. The accused and uncle of PW1 are residing in the same village. The accused is married and having two children. PW1 used to come to the village of her uncle during festivals and holidays. Further, for her convenient going to college, she stayed in the house of her uncle. The house of the accused is situated opposite to the house of PW1's uncle. The accused moved with PW1 stating that he loved her. On 03.07.2017, due to the inducement of the accused, PW1 started from the house of her uncle and both of them went to Kachanam and stayed there till 06.07.2017. At that time, the

accused pledged PMO1-series - Jimikki of PW1 and got Rs.1,100/- and spent the same. On the next date i.e. 07.07.2017, the accused kidnapped PW1 to Thiruppur and at a place called Vellakkovil, he pledged PMO2-series - Ear Studs of PW1 for Rs.1,500/-. Thereafter, they stayed in J.K. Hotel in Thiruppur from 07.07.2017 to 10.07.2017. During the said stay, the accused had sexual intercourse with PW1 for several times. From there, they went to Valivalam Vadapathy and from that place, the parents of PW1, with the help of the police, brought back PW1 to the house. On 19.07.2017 the accused induced PW1 to come to Thalainayar and kidnapped her in his two wheeler. He left his two wheeler in Thiruvarur and took PW1 to Tiruchi in a bus. In Tiruchi the accused pledged the Anklets of PW1 at Palakarai for Rs.1000/-. From Tiruchi, the accused took PW1 to Thiruppur and stayed there and on 22.07.2017 he brought PW1 to Kodiyalathur. Meanwhile, the accused committed penetrative sexual assault on PW1 for several times.

4(b) Meanwhile, on 22.07.2017 PW3 gave complaint against the accused in Thalainayar Police Station under Ex.P4. The signature of PW3 in the said complaint has been marked as Ex.P3. The said complaint of PW3 has been received by the Sub-Inspector Thiru.Vetriselvan, who registered a case against the accused u/s 366 IPC in Thalainayar Police Station Crime No.137/2017. The said FIR has been marked as Ex.P5. He thereafter placed the case records before Inspector of Police, Thalainayar Police Station Thiru. Arivazhagan for investigation.

4(c) Inspector Thiru. Arivazhagan took up the case for investigation on 23.07.2017 and he arrested the accused on the same day at about 04.00 a.m. near Thalainayar Bus Stop, after informing him about the ground of arrest, in the presence of witnesses Manian and Karunanithi. At that time, the accused voluntarily gave a confession statement which was recorded by the said investigation officer in the presence of same witnesses. On the basis of the said

confession statement, the investigation officer recovered the TVS Sport two wheeler bearing Regn. No. TN-51-AB-2494 which was used by the accused for the commission of the offence, from the accused under Ex.P6 - Seizure Mahazar in the presence of the same witnesses at 06.00 a.m. Thereafter, he sent the accused to court for remand. On the same day, he inspected the place of occurrence in the presence of the same witnesses and prepared an Observation Mahazar under Ex.P7 and Rough Sketch under Ex.P8. He thereafter altered the section from 366 IPC to 6 r/w 5(l) POCSO Act and submitted Section Alteration Report under Ex.P9 to the Court. Thereafter, the investigation officer examined PW1, PW2, PW3, witnesses Sekar, Murugadass, Senthilnathan, Manian, Karunanidhi and recorded their statements. On the same date, the investigation officer sent PW1 for medical examination through Grade I Police Constable 1168 Tmt.Jancy Vimal Jackulin to Government Head Quarters Hospital, Nagapattinam on the same date. The investigation officer examined Dr.Muthuselvi, who conducted the medical examination of PW1 and recorded her statement. The Accident Register Report given by the said doctor in respect of PW1 has been marked as Ex.P10-series. He also examined the above Police Constable Tmt.Jancy Vimalj Jackulin and recorded her statement.

4(d) On 31.07.2017, the investigation officer produced the accused for medical examination in Government Head Quarters Hospital, Nagapattinam through Special Sub-Inspector Thiru. Panneerselvam and Police Constable 1105 Muthurajasekar. Thereafter, the investigation officer examined Dr.Saravanakumar, who conducted the medical examination of the accused and recorded his statement. The Potency Certificate issued by the said doctor has been marked as Ex.P11-series. The investigation officer also examined Special Sub-Inspector Panneerselvam and Police Constable Muthurajasekar and recorded their statements. On 24.08.2017 the investigation officer produced PW1 before Judicial Magistrate No.I, Nagapattinam through Armed Reserve Police Constable 1105

Sivapriya for the purpose of recording the statement of PW1 u/s 164(5) Cr.P.C. The statement of PW1 has been marked as Ex.P2. The CD containing the said Proceeding has been marked as CMO1. The investigation officer also examined the above Police Constable 1105 Sivapriya and recorded her statement. He also examined Armed Reserve Police Constable 597-Senthilkumar, who Videographed the Proceeding u/s 164(5) Cr.P.C. and recorded his statement. Thereafter, the investigation officer examined the Headmaster of the School wherein PW1 studied in order to ascertain the age of PW1 and recorded his statement. The School Transfer Certificate issued by the said Headmaster has been marked as Ex.P1. On 08.10.2017 at 11.00 a.m., the investigation officer recovered PMO1 - Gold Jimiki of PW1, which was pledged by the accused with one Kannan, owner of Eswari Banker, Panangudi Main Road which was identified and redeemed by her. He examined witness Kannan and recorded his statement. On 10.10.2017 the investigation officer went to Mahalakshmi Mani Gold and recovered PMO2 - Gold Ear Studs of PW1 which was pledged by the accused in the said shop in the presence of witnesses Pradeep and Jayakumar under Ex.P12 - Seizure Mahazar which was identified by PW2. The Pledge Receipts issued by the above said witnesses have been marked as Exs.P13 and P14 respectively. The investigation officer produced the said case properties recovered to the court under Ex.P15-Form 95. The investigation officer examined witnesses Azhagappan and Sekar who were working in J.K. Rooms (Lodge) at Thiruppur wherein the accused and PW1 stayed and recorded their statements. The investigation officer recovered the relevant Extract of Log Book for the stay of the accused and PW1 under Ex.P16-Seizure Mahazar in the presence of witnesses Azhagappan and Sekar. The Extract of the lodge register has been marked as Ex.P17. With this, the investigation officer stopped his investigation and filed charge sheet against the accused on 06.11.2017 u/s 6 r/w 5(l) of POCSO Act.

4(e) PW4 - Selvi Varginia, Inspector of Police, All Women Police

Station, Vedaranyam, has spoken about the investigation conducted by Inspector Arivazhagan since he has been transferred to other District and since PW4 is well acquainted with his handwriting and signature.

5) After closure of the prosecution side evidence, when the accused was examined u/s 313(1)(b) Cr.P.C. in respect of the incriminating materials available against him in the prosecution side evidence, the accused stated that the witnesses have stated falsehood, that a false case has been registered against him and that he has no witnesses on his side.

6) Now, the points for determination are:-

- (i) Whether the prosecution has established the charges against the accused?
- (ii) Whether the accused has to disprove the presumption u/s 29 of POCSO Act, 2012?

7) The learned Special Public Prosecutor has submitted that even though the independent witnesses namely PW1 to PW3 have failed to support the prosecution case, the prosecution is able to establish its case with the help of the evidence of PW4. The Medical Reports of PW1 and the accused further proves the prosecution case. The statement of PW1 recorded u/s 164(5) Cr.P.C. further substantiates the prosecution case whereas, the accused has not rebutted the presumption u/s 29 of POCSO Act and therefore, the accused to be dealt in accordance with law.

8) On the other hand, the learned counsel for the accused has submitted that none of the independent witnesses have supported the prosecution case. The statement of PW1 recorded u/s 164(5) Cr.P.C. is tutored statement. The medical reports of the accused and the PW1 would not help the prosecution case. False

complaint has been given by the PW3 against the accused. Since the prosecution has failed to prove its case against the accused, there is no burden cast upon the accused to rebut the presumption u/s 29 of POCSO Act.

9) This court has taken into consideration the submissions made on both sides along with materials on record.

10) **POINT NO:1** :- According to the prosecution case, the accused has kidnapped PW1 on 03.07.2017 and 19.07.2017 from the lawful guardianship of her parents in order to have illicit sexual relationship with her, taken her to several places and committed penetrative sexual assault on her several times. Therefore, the accused stands charged u/s 366 IPC (2 Counts) and u/s 6 r/w 5(l) of POCSO Act.

11) The prosecution has examined 4 witnesses in this case. PW1 is the victim child. PW2 and PW3 are mother and father of PW1. PW4 has spoken about the investigation conducted in this case.

12) First and foremost, to attract POCSO Act, the prosecution is duty bound to prove that the victim was a child at the time of occurrence. As per sec.2(d) of POCSO Act, "child" means any person below the age of 18 years. In this case, PW1 has been examined as the victim child. Her date of birth is stated to be 31.10.2000. Her School Transfer Certificate and Secondary School Leaving Certificate have been marked as Ex.P1-series to prove her date of birth. The first occurrence took place on 03.07.2017 and several dates thereafter. During the said time, PW1 was 16 years old and therefore, a child as per Sec.2(d) of POCSO Act. On the side of the accused, the date of birth of PW1 is not disputed. In the said circumstances, the fact that PW1 was a child on the date of occurrence stands proved by the prosecution.

13) PW1, the victim child, is a prime witness of the prosecution. However, she has failed to support the prosecution case. She has stated in her evidence that she does not know the accused, that during the year 2017, she was admitted in college and was studying first year in the college. For her convenience, she was staying in the house of her uncle. Since she did not like to go to college, she went to the house of her friend. After staying in the house of her friend for one week, she returned home. Again due to the compulsion of her parents, she went to college but did not like to study and therefore again she went to the house of her friend. Since her parents had given complaint in the police station that she is missing, she returned to the police station fearing that her parents would scold her. The police informed her parents, who come to the police station and took her with them. She was taken to Government Hospital, Nagapattinam for medical examination and was produced in court for giving statement.

14) In the above statement, PW1 has spoken nothing about the alleged charges against the accused. Infact, she has gone to an extent of saying that she does not know the accused. In the said circumstances, the evidence of PW1 is not of any use to the prosecution case.

15) PW2 and PW3 the parents of PW1 but they have also given evidence in the same manner as given by PW1. Therefore, they have also failed to support the prosecution case.

16) Since PW1 to PW3 have not supported the prosecution case, the learned Special Public Prosecutor has treated them as hostile witnesses and cross-examined them with the permission of this court and has dispensed the examination of remaining witnesses cited in the list of witnesses excepting the investigation officer.

17) PW4 - Selvi Varginia, Inspector of Police, All Women Police Station,

Vedaranyam, has spoken in her evidence about the investigation conducted by Inspector Arivazhagan in this case. Through PW4, the prosecution has marked the complaint of PW3 as Ex.P4, the FIR as Ex.P5, the Seizure Mahazar in respect of the two wheeler as Ex.P6, the Observation Mahazar as Ex.P7, the Rough Sketch as Ex.P8, the Section Alteration Report as Ex.P9, the Accident Register Report in respect of PW1 as Ex.P10-Series, the Potency Certificate of accused as Ex.P11, the CD containing the Proceeding u/s 164(5) Cr.P.C. as CMOI, the Seizure Mahazar in respect of recovery of Ear Studs of PW1 as Ex.P12, the Pledge Receipts as Exs.P13, P14, the Form-95 as Ex.P15, the Seizure Mahazar for recovery of Abstract of Log Register as Ex.P16, the Lodge Register Extract as Ex.P17 and the case properties as PMO1 to PMO3 respectively.

18) Though PW4 has spoken about the investigation conducted in this case by the Inspector Arivazhagan, the non-examination of the said investigation officer raises doubt. Even otherwise, the sole evidence of PW4 is not sufficient to hold the accused guilty since the material witness namely PW1 has failed to support the prosecution case.

19) The prosecution has relied upon Ex.P2 - the statement of PW1 recorded u/s 164(5) Cr.P.C. wherein she has spoken about the overtacts of the accused. However, the said statement is not a substantive piece of evidence and therefore, requires corroboration. But as stated above, PW1 has failed to implicate the accused in her evidence. Therefore, no weightage can be given to the said statement of PW1.

20) Though the prosecution has relied upon the medical reports of PW1 and accused, the doctors who have issued the said reports have not been examined by the prosecution. As per the Potency Certificate of the accused under Ex.P11-series, he appears to be capable of sexual act. Likewise, as per the medical reports

relating to PW1 under Ex.P10-series, her hymen appears to have been ruptured and she appears to have undergone sexual contact but in the absence of evidence given by PW1 that the accused is the reason for the same, the medical reports of PW1 and the accused are of no use to the prosecution.

21) In view of the above discussions, this court holds that the prosecution has failed to establish the charges alleged against the accused. Accordingly, Point No.1 is answered.

22) **POINT NO.2:-** So far as the presumption u/s 29 of POCSO Act, 2012 in respect of prosecution for committing or abetting or attempting to commit any offence u/s 3, 5, 7 and 9 of POCSO Act is concerned, the Special Court shall presume that the accused has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved. However, it is an essential prerequisite that the foundational facts of the prosecution case must be established by leading evidence before the said statutory presumption is triggered in to shift the onus on the accused to prove the contrary. Whereas, in the present case, the prosecution has failed to do so. Hence, there is no burden upon the accused to rebut the presumption. Accordingly, Point No.2 is answered.

23) As per Rule 7(2) of Protection of Children from Sexual Offences Rules, 2012, the Special Court may, on its own or on an application filed by or on behalf of the victim, recommend the award of compensation where the accused is convicted, or where the case ends in acquittal or discharge, or the accused is not traced or identified, and in the opinion of the Special Court the child has suffered loss or injury as a result of that offence. However, in the present case, PW1, who is examined as victim child, has spoken nothing about the offence of penetrative sexual assault alleged to have been committed on her by the accused and about any loss or injury suffered as a result of the said offence. Therefore, this court is not inclined to pass any award of compensation to PW1. It is pertinent to mention here

that this court has also not awarded any interim compensation to PW1 under Rule 7(1) of Protection of Children from Sexual Offences Rules, 2012.

In the result, the accused is found not guilty for the offences u/s 366(2 Counts) IPC and u/s 6 r/w 5(l) of POCSO Act and the accused is acquitted u/s 235(1) Cr.P.C. So far as PMO1 to PMO3 in C.P.No.02/2018 are concerned, PMO1-Gold Jimiki and PMO2-Gold Ear Stud have already been returned to PW3 on interim custody as per order in CrI.M.P. No.37/2018 dated 15.02.2018 and he shall retain the same with him and the bond executed by him shall be cancelled after lapse of appeal time or if any appeal is preferred, after disposal of appeal. So far as PMO3-Two Wheeler bearing Regn.No.TN-51-AB-2494 is concerned, the same shall be returned to its owner on production of Registration Certificate after lapse of appeal time or if any appeal is preferred, after disposal of appeal. Whereas the C.D. marked as CMO1 by the prosecution is concerned, the same shall be kept with the case records. No compensation is awarded to PW1 under Rule 7(2) of Protection of Children from Sexual Offences Rules, 2012.

The bail bond executed by the accused is ordered to be cancelled after lapse of appeal time or if any appeal is preferred, after disposal of appeal.

Dictated to the Steno-typist by me and typed by him directly in the computer, corrected and pronounced by me in the open court on this the 27th day of February, 2020.

(Sd) J. Tamilarasi,
Sessions Judge,
Special Court under POCSO Act,
Nagapattinam.

WITNESSES EXAMINED ON THE SIDE OF PROSECUTION:-

P.W.1	Victim child
P.W.2	Mother of Victim child
P.W.3	Father of the Victim child
P.W.4	Selvi Varginia, Inspector of Police, All Women Police Station, Vedaranyam

EXHIBITS MARKED ON THE SIDE OF PROSECUTION :-

Ex.P.1	---	School Transfer Certificate and Secondary School Leaving Certificate of PW1	Xerox Copies
Ex.P.2	24.08.2017	Statement of PW1 recorded u/s 164(5) Cr.P.C.	Original
Ex.P.3	---	Signature of PW3 in the complaint	Original
Ex.P.4	22.07.2017	Complaint given by PW3	Original
Ex.P.5	22.07.2017	FIR	Original
Ex.P.6	23.07.2017	Seizure Mahazar	Original
Ex.P.7	23.07.2017	Observation Mahazar	Original
Ex.P.8	23.07.2017	Rough Sketch	Original
Ex.P.9	23.07.2017	Section Alteration Report	Originals
Ex.P.10 -Series	23.07.2017	Accident Register Report of PW1	Originals
Ex.P.11 -Series	17.08.2017	Potency Certificate of Accused	Original
Ex.P.12	10.10.2017	Seizure Mahazar – Time 11.00 hours	Original
Ex.P.13	07.07.2017	Pledge Receipt issued by Mahalakshmi Money Gold, Vellakovil	Original
Ex.P.14	03.07.2017	Pledge Receipt issued by Eswari Bankers, Kachanam	Original
Ex.P.15	---	Form-95 (3 Nos.)	Originals
Ex.P.16	10.10.2017	Seizure Mahazar – Time 19.00 hours.	Original
Ex.P.17	10.10.2017	Lodge Register	True Copy

MATERIAL OBJECTS MARKED ON THE SIDE OF PROSECUTION:

PMO1 - One Pair of gold Jimiki weighing 1.390 grams

PMO2 - One Pair of gold Ear Stud weighing 0.750 grams.

PMO3 - Two Wheeler bearing Regn.No.TN-51-AB-2494

MATERIAL OBJECTS MARKED BY THE COURT:

M.O.1 – One C.D.

DEFENCE SIDE WITNESSES, EXHIBITS AND MATERIAL OBJECTS : -Nil-

Note: The names of the victim child (PW1), her mother (PW2) and her father (PW3) are withheld for protection of the identity of the victim child.

(Sd) J. Tamilarasi,
Sessions Judge,
Special Court under POCSO Act,
Nagapattinam.

/ true copy /

Sessions Judge,
Special Court under POCSO Act,
Nagapattinam.

Special Court under POCSO Act,
Nagapattinam.
Spl. S.C. No. 07 of 2018
Draft / Fair Judgment
Dated: 27.02.2020.