

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 24.04.2026

DELIVERED ON 14.07.2026

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.A.No.236 of 2026

Mahath

Appellant/Accused

Vs.

The Inspector of Police
J.J. Nagar Police Station
I/c Thirumangalam All Women Police Station
Chennai District
(Crime No.16/2024)

Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C., 1973, read with Section 415(2) of BNSS, 2023, against the judgment dated 16.02.2026 in Spl.S.C. No.51 of 2024 rendered by the Sessions Judge, Special Court for Exclusive trial of cases under POCSO Act, Thiruvallur.

For appellant : Mr.P.Muthamizhselvakumar

For respondent : Mr.S.Udayakumar
Government Advocate (Criminal Side)

JUDGMENT

The instant criminal appeal is filed by the accused (hereinafter referred to as "the appellant") seeking to set aside the judgment dated 16.02.2026 passed by the Sessions Judge, Special Court of Exclusive

Trial of Cases under the POCSO Act, Thiruvallur District (hereinafter referred to as "the Trial Court") in Spl.S.C.No.51 of 2024 (hereinafter referred to as "the impugned judgment") convicting and sentencing him under Section 366 of IPC, Section 9 of the Prohibition of Child Marriage Act, 2006 and Section 5(l) read with Section 6(1) of the POCSO Amendment Act, 2019.

2. *Vide* the impugned judgment, the Trial Court convicted and sentenced the appellant as tabulated below:

Penal Provision	Imprisonment	Fine Amount
Section 366 IPC	Ten years Rigorous imprisonment	Rs.10,000/- in default of which to undergo three years simple imprisonment.
Section 9 of the Prohibition of Child Marriage Act, 2006	Two years Rigorous imprisonment	Rs.25,000/- in default of which to undergo six months of simple imprisonment.
Section 5(l) r/w. Section 6(1) of the POCSO Amendment Act, 2019	Ten Years Rigorous Imprisonment	Rs.10,000/- in default of which to undergo three years of simple imprisonment.
The aforesaid sentences were ordered to run concurrently		

3. In furtherance of the conviction and fine, the Trial Court noted that an interim compensation of Rs.1,00,000/- was already ordered to be paid to the victim girl (P.W.3) for her future *vide* order dated 08.04.2024 in C.M.P. No.928 of 2024 and therefore, the Trial Court was not awarding any further compensation under the impugned judgment.

4. The case of the prosecution is as follows:

4.1. At the time of the alleged commission of offence, the victim girl (P.W.3) was a child as defined under Section 2(1)(d) of the POCSO Act. Her date of birth is 03.09.2007 and to prove the same, her birth certificate (Ex.P12) was marked.

4.2 The victim girl (P.W.3) aged about 16 years, studying in XII standard in a Government School, fell in love with the appellant, viz., Mahath, who was also a resident of the same locality. Upon learning about her relationship with the appellant, the victim's father (P.W.1) and the victim's mother (P.W.2) advised her to sever her relationship with him.

4.3. While so, the victim girl (P.W.3) went to school as usual on 22.01.2024. At about 4.00 p.m., the father of the victim girl (P.W.1) received a call from mobile phone of the victim girl (P.W.3), during which she informed her father (P.W.1) that she had got married with the appellant and would not return home. Since the father of the victim girl (P.W.1) was unable to trace her whereabouts, he lodged a complaint (Ex.P1) before JJ Nagar Police Station, based on which, a First Information Report (Ex.P2) in Crime No.16 of 2024 was registered by Suryalingam, Inspector of Police, as a girl-missing case.

4.4. Thereafter, the case file was transferred to the file of the Inspector of Police, viz., Vijayalakshmi (P.W.6) [hereinafter referred to as "the I.O. (P.W.6)"] who was on station duty at the All Women Police Station, Thirumangalam, for investigation. Subsequently, the victim girl (P.W.3) was secured, interrogated, and her statement was recorded. She was then sent to KMC Hospital for medical examination. Dr.Deepa (P.W.7), after examining the victim, issued the Accident Register (Ex.P3).

4.5. Thereafter, the I.O. (P.W.6) visited the place of occurrence and in the presence of Ayyappan (P.W.4) and Raj (P.W.5), prepared the observation mahazar (Ex.P4) and rough sketch (Ex.P5). The signatures of Ayyappan (P.W.4) and Raj (P.W.5) were marked as Exs.P6 and P7 respectively. Thereafter, the I.O. (P.W.6) recorded the statement of the victim girl (P.W.3) and filed an alteration report (Ex.P8) on 24.01.2024 for the offences under Section 366-A IPC and Section 9 of the Prohibition of Child Marriage Act.

4.6. On 13.02.2024, the I.O. (P.W.6) took steps to record the statement of the victim girl (P.W.3) under Section 164 Cr.P.C. before the Judicial Magistrate, Additional Mahila Court, Thiruvallur, and the same was marked as Ex.P11. The medical report of the victim girl (P.W.3) was marked as Ex.P9.

4.7. On 21.02.2024, the I.O. (P.W.6) issued a notice to the appellant under Section 41A Cr.P.C./Section 35 of BNSS, 2023, and released him on police bail. Meanwhile, on 27.01.2024, the I.O. (P.W.6) produced the appellant before Dr.Ravikumar (not examined) for medical examination and obtained the medical report regarding potency, which was marked as Ex.P10. She completed the investigation and filed the final report dated 21.02.2014 against the appellant under Sections 366-A IPC, Section 9 of the Prohibition of Child Marriage Act, and Sections 5(I) and 6 of the POCSO Act which was taken up on file on 29.02.2024 by the Trial Court.

4.8. Upon the appearance of the appellant, copies of the documents were furnished to him in compliance with Section 207 Cr.P.C. Thereafter, charges under Sections 366-A IPC, Section 9 of the Prohibition of Child Marriage Act, and Sections 5(1) and 6 of the POCSO Act were framed against him. The charges were read over and explained to him and he pleaded not guilty.

4.9. Though the prosecution cited nine witnesses, they examined only seven witnesses, and marked thirteen documents. On the side of the appellant, neither any witness was examined nor any document was marked.

4.10. On the strength of the oral and documentary evidence let in, the Trial Court found the appellant guilty and convicted him as stated at paragraph 2 (*supra*). Aggrieved against the judgment of conviction and sentence imposed on him, the present criminal appeal has been filed by the accused.

5. Before proceeding further, it is imperative to reproduce the evidence recorded in this case.

5.1. The father of the victim girl (P.W.1) deposed that he was residing at Padi working as a private driver; he has a son and a daughter; he lodged the complaint (Ex.P.1) regarding the missing of his daughter and reprimanded her for not studying properly in school; he was aware of the relationship between his daughter (P.W.3) and the appellant; consequently, on 20.01.2025, he arranged the engagement of his daughter with the appellant and intended to conduct their marriage after she attained the age of 18 years; the complaint (Ex.P1) was lodged only on the ground that his daughter was missing. No cross-examination was made.

5.2. The mother of the victim girl (P.W.2) deposed that her husband lodged a complaint (Ex.P.1) with the police on account of missing of their daughter; since her daughter was not studying properly,

they reprimanded her, owing to which, their daughter informed them that she is going to her friend's house; their daughter was in relationship with the appellant and they had arranged her engagement with the appellant on 20.01.2025, and their intention was to conduct her marriage with the appellant after she attained the age of 18 years. No cross-examination was made.

5.3. XXXX, the victim girl (P.W.3) deposed that in the previous year, when she was studying in IX standard, her parents came to know that she fell in love with the appellant, who lives in their area and her father scolded her and informed her that after completing XII standard, he will arrange for her marriage; as she scored low marks in XII standard, her father reprimanded her and hence, she got angry and went to her friend's house and stayed there for a day; her father misunderstood that she had eloped with the boy with whom she was in love with and thereafter, her father filed a complaint in the police station; next day, when she came back to her home, her father took her to the police station; she also informed her father that she was in her friend's place; she was then subjected to medical examination which does not disclose any misfortune; in the enquiry conducted by the Judicial Magistrate, she stated that she had eloped with the appellant, as tutored by her counsel and that they went to Chidambaram where they

stayed in a hotel and returned on the next day; as the case became serious, she gave statement as tutored by her counsel.

5.4. Ayyappan (P.W.4) deposed that he lives in Thirumullaivoyil and is working as a Carpenter and that he knows nothing about this case; the signature of the witness in the observation mahazar (Ex.P.4) shown to him is not his; the police came to his company and enquired about his address and did not ask him anything else.

5.5. Raj (P.W.5) testified that he is living in Bajanai Koil Street, Padi, and is working in a company; the signature of the witness in the observation mahazar (Ex.P.4) shown to him is not his; the police came to his company and enquired about his address and did not ask him anything else.

5.6. The I.O. (P.W.6) deposed that on 24.01.2024, while she was on duty at the All Women Police Station, a girl-missing case registered in J.J.Nagar Police Station as Crime No.16 of 2024 was taken up for investigation; the victim girl (P.W.3) was produced before her and her statement was recorded; the FIR was marked as Ex.P.2; thereafter, the victim girl (P.W.3) was sent to KMC Hospital for medical examination, where she was examined by Dr. Deepa (P.W.7). The medical certificate received from the hospital was marked as Ex.P.3

(Accident Register); thereafter, she visited the place of occurrence and prepared the observation mahazar (Ex.P.4) and rough sketch (Ex.P.5) in the presence of J.J. Nagar Police personnel; the observation mahazar was marked as Ex.P.4 and the rough sketch was marked as Ex.P.5; the signatures of Ayyapan (P.W.4) and Raj (P.W.5) were marked as Ex.P.6 and Ex.P.7 respectively; she interrogated Ayyapan (P.W.4) and Raj (P.W.5) and recorded their statements; she also interrogated the victim girl (P.W.3) and recorded her statement and altered the case as a girl missing case under Section 366-A IPC and Section 9 of the Prohibition of Child Marriage Act *vide* Alteration Report (Ex.P.8); the medical examination report of the victim girl (P.W.3) was marked as Ex.P.9; on 21.02.2024, a notice under Section 41-A Cr.P.C. was issued to the appellant, and he was taken into police custody; on 27.01.2024, the appellant was sent for medical examination and was examined by Dr.Ravikumar; the medical report relating to the appellant was marked as Ex.P.10; the statement of the doctor was also recorded; on 13.02.2024, the statement of the victim girl (P.W.3) was recorded in camera and the said statement was marked as Ex.P.11; the birth certificate of the victim girl (P.W.3) was marked as Ex.P.12; after completing the investigation, she filed the final report against the appellant for offences punishable under Section 366-A IPC, Section 9 of

the Prohibition of Child Marriage Act and Section 5(l) read with Section 6 of the POCSO Act; the alteration report was marked as Ex.P.13.

5.7. Dr. Deepa (P.W.7) deposed that she was working as an Assistant Professor in the Kilpauk Government Hospital; on 23.01.2024, at about 3.00 p.m., while she was on duty at the hospital, a female Head Constable, Jyothi Lakshmi, brought the victim girl, aged about 16 years, for medical examination; during the course of examination, she questioned the victim girl about the circumstances of the case; the victim girl informed her that she was in love with the appellant and that both of them had got married on 22.01.2024 at the Thiruverkadu Amman Temple; during the medical examination, the victim girl stated that after their marriage, they had been to Chidambaram, where they stayed in a hotel for two days during which period the appellant had sexual intercourse once, with her consent; the victim girl also informed her that she had appeared before the J.J.Nagar Police Station on 24.01.2024 at about 11.30 a.m.; upon examination, no external injuries were found on the body of the victim girl; the hymen was not found to be intact and on examination of her uterus, she was not found pregnant; however, based on the clinical findings and history provided, she opined that the victim girl had engaged in sexual intercourse; samples collected from the genital region of the victim girl were sent for swab analysis; the

forensic report did not reveal the presence of spermatozoa or semen in the samples examined; the medical opinion and the medical examination certificate issued by her were marked as Ex.P.9; during the course of investigation, the I.O. (P.W.6) examined her and recorded her statement.

6. After completion of recording the evidence on the side of the prosecution, the appellant was questioned under Section 313(1) (b) of Cr.P.C., regarding incriminating materials found in the evidence adduced and he denied them as false.

7. The sum and substance of the submissions made by the learned counsel for the appellant is as follows:

(i) The Trial Court committed a grave error in convicting the appellant despite the fact that the father of the victim girl (P.W.1), the mother of the victim girl (P.W.2) and the victim girl (P.W.3) did not support the case of the prosecution during trial; in the absence of their support to establish the prosecution case, the conviction is unsustainable.

(ii) The Trial Court erred in law in convicting the appellant solely on the basis of the statement of the victim girl (P.W.3) recorded under Section 164 Cr.P.C., particularly, when the prosecution failed to

establish the foundational facts of the case through legally admissible evidence; during the course of trial, P.Ws.1 to 3 resiled from their earlier statements, did not support the prosecution case and were consequently treated as hostile witnesses; in such circumstances, a conviction founded primarily on the statement recorded under Section 164(5) Cr.P.C. is legally untenable.

(iii) The Trial Court failed to appreciate that Ayyappan (P.W.4) and Raj (P.W.5), who were cited as witnesses to the preparation of the observation mahazar (Ex.P4) and rough sketch (Ex.P5), also turned hostile and no other independent witness was examined to prove the prosecution case.

(iv) The I.O. (P.W.6) failed to collect any documentary evidence, such as receipts, photographs or other materials, to establish the alleged marriage between the victim girl (P.W.3) and the appellant said to have been performed at Thiruverkadu Temple; likewise, no material was collected, nor any witness examined, to prove their alleged stay at Chidambaram; in the absence of such evidence, the Trial Court erred in holding that the prosecution had proved its case beyond reasonable doubt based on certain stray answers of the witnesses during cross-examination.

(v) The Trial Court erred in invoking the presumptions under Sections 29 and 30 of the POCSO Act without the prosecution first establishing the foundational facts necessary for the application of such statutory presumptions.

8. On the above grounds, the learned counsel for the appellant prayed that the judgment of conviction and sentence passed by the Trial Court be set aside and appeal be allowed.

9. In support of his contention that the Trial Court ought not to have relied on the statement recorded under Section 164 Cr.P.C. to convict the appellant, the learned counsel for the appellant relied on the decision of a Division Bench of this Court in **Palraj vs. The Inspector of Police, Pattiveeranpatti Police Station, Dindigul District**¹.

10. *Per contra*, the learned Government Advocate (Criminal Side) appearing for the respondent/State advanced the following submissions:

(i) The prosecution has established the charges against the appellant beyond reasonable doubt through cogent and reliable evidence and the Trial Court, upon proper appreciation of the oral and

¹ Crl.A. (MD) No.1063 of 2024 decided on 26.08.2026

documentary evidence available on record, rightly convicted the appellant and the same does not warrant interference by this Court.

(ii) Merely because the victim girl (P.W.3) turned hostile during trial, the prosecution case cannot be thrown out in its entirety; the evidence of a hostile witness is not effaced from the record and the Court is entitled to rely upon such part of the testimony which supports the prosecution case and is otherwise found to be credible.

(iii) The statement of the victim girl (P.W.3) recorded under Section 164 Cr.P.C. assumes considerable evidentiary value in the facts and circumstances of the case; the victim girl (P.W.3) had clearly narrated the occurrence before the learned Magistrate at the earliest point of time and there is nothing on record to indicate that the said statement was obtained by coercion or undue influence; even in the statement recorded under Section 161 Cr.P.C., the victim girl (P.W.3) had named the accused to be the person who had taken her to Chidambram after their marriage at Thiruverkadu and committed penetrative sexual assault on her; therefore, the subsequent retraction by her during trial cannot, by itself, render the earlier statement wholly unreliable.

(iv) Ayyappan (P.W.4) and Raj (P.W.5) who were examined with regard to the preparation of the observation mahazar (Ex.P4) and

rough sketch (Ex.P5), turning hostile does not materially affect the core prosecution case; their evidence pertains only to the investigation and not to the occurrence itself; their lapses cannot undo the prosecution's proven case.

(v) The non-production of photographs and receipts relating to the alleged marriage or letting in of evidence regarding the stay of the victim girl (P.W.3) and the appellant at a particular place is not fatal to the prosecution case; it is a settled principle that every omission or lapse in investigation does not necessarily enure to the benefit of the accused when the substantive evidence available on record points towards his guilt.

(vi) The prosecution has successfully established the foundational facts necessary for attracting the statutory presumptions under Sections 29 and 30 of the POCSO Act; once such foundational facts are proved, the burden shifts upon the accused to rebut the statutory presumptions; in the present case, the appellant has failed to rebut such presumption either by cross-examining the prosecution witnesses or by adducing any acceptable evidence.

(vii) Therefore, the findings recorded by the Trial Court are based on a proper appreciation of the evidence on record and do not suffer from any perversity or illegality warranting interference by this Court and hence, the conviction and sentence slapped on the appellant are liable to be set aside and this appeal is liable to be dismissed.

11. Heard the learned counsel for the appellant and the learned Government Advocate (Criminal Side) appearing for the respondent/State and perused the materials available on record.

12. Insofar as submissions (i) and (iii) advanced by the learned counsel for the appellant regarding P.Ws.1 to 5 not supporting the prosecution case, the records reveal that the parents of the victim girl (P.Ws.1 and 2) did not support the prosecution case. The victim girl (P.W.3) was also treated as a hostile witness. Though she was cross-examined by the prosecution, no material could be elicited to substantiate the allegations levelled against the appellant. A significant inconsistency is evident between the statement of the victim (Ex.P.13) recorded under Section 164 Cr.P.C. on 13.02.2024 and her deposition before the Trial Court on 15.04.2025. During her testimony before the Court, the victim girl (P.W.3) categorically stated that her earlier statement under Section 164 Cr.P.C. was false and that she had made such a statement after being tutored by her advocate. According to her

deposition, she had not accompanied the appellant, but had, in fact, stayed at her friend's house. Thus, the victim girl (P.W.3) expressly retracted her earlier statement and disowned the allegations made therein.

13. Further, the medical evidence also fails to lend support to the prosecution case. Although Dr.Deepa (P.W.7) deposed that the victim child's hymen was not intact, she also categorically deposed that no external injuries were found on the victim's body and neither semen nor spermatozoa was detected in the samples sent for forensic examination. Hence, in the absence of supporting oral evidence from the victim girl (P.W.3) regarding sexual assault and in view of lack of medical evidence, the conviction recorded by the Trial Court solely on the basis of the Accident Register (Ex.P3) and the Medical Certificate (Ex.P9) cannot be sustained. More so, merely because the hymen was not found to be intact, it cannot be inferred that the accused is responsible for the same. Further, Ayyappan (P.W.4) and Raj (P.W.5), independent witnesses cited for proving the observation mahazar (Ex.P4) and rough sketch (Ex.P5), were also treated as hostile and did not support the prosecution case. Consequently, all the material prosecution witnesses, viz., P.Ws.1 to 5, failed to corroborate the

prosecution version. In such circumstances, when the victim girl (P.W.3) herself did not support the allegations and the other material witnesses also failed to substantiate the prosecution case, there remained no reliable ocular evidence connecting the appellant with the alleged offences.

14. It is a settled principle of law that a conviction cannot be sustained on mere conjectures, surmises, or on the weakness of the defence. The burden lies on the prosecution to establish the foundational facts through cogent and reliable evidence. Therefore, in the present case, the failure of the victim girl (P.W.3) and the other material witnesses to support the prosecution case with regard to the alleged acts of sexual assault, kidnap and child marriage strikes at the very root of the prosecution story. The foundation of the prosecution case having been demolished, the conviction and sentence imposed by the Trial Court are rendered unsustainable in law.

15. Insofar as submission (iv) made by the learned counsel for the appellant regarding the failure of the prosecution to collect vital documents and evidence, a careful scrutiny of the evidence of the I.O. (P.W.6) discloses certain significant deficiencies in the investigation. The

prosecution case proceeds on the premise that the appellant had allegedly married the victim girl (P.W.3) at Thiruverkadu Temple and thereafter, stayed with her at Chidambaram. However, despite the importance of these allegations to the prosecution case, no documentary evidence was collected during the course of investigation to substantiate the same. Although the I.O. (P.W.6) did not admit in her cross-examination that she had failed to visit the alleged place of marriage for verification, the records reveal that no photographs, marriage records, temple receipts, certificates, registers or any other contemporaneous documents were collected to establish that marriage had, in fact, been solemnized between the victim girl (P.W.3) and the accused at the said temple.

16. Similarly, with regard to the allegation that the victim girl (P.W.3) and the appellant had stayed together at Chidambaram, the I.O. (P.W.6) failed to secure any hotel records, lodge registers, receipts, booking details or other documentary materials capable of corroborating such a stay. No effort appears to have been made to trace or collect independent evidence from the establishments where the parties were allegedly accommodated. It is further evident that no independent enquiry was conducted with the temple authorities, local witnesses, or

the management of any hotel, lodge or place of stay to verify the prosecution allegations. Such enquiries would have constituted the best available evidence to corroborate the prosecution version regarding the alleged marriage and subsequent cohabitation of the victim with the accused. The absence of investigation in those lines assumes significance, particularly, when the material witnesses, including the victim girl (P.W.3), failed to support the prosecution case during trial. The duty of the I.O. (P.W.6) is not merely to record statements but also to collect all available evidence, both oral and documentary, which may throw light on the truth of the allegations. In the present case, the failure to secure basic documentary records relating to the alleged marriage and stay at Chidambaram constitutes a material lapse in the investigation. These omissions have deprived the prosecution of independent corroborative evidence on crucial aspects of its case.

17. Insofar as the submission (v) relating to the applicability of the presumptions under Sections 29 and 30 of the POCSO Act, the learned counsel for the appellant contended that the Trial Court erred in extending the benefit of the statutory presumptions to the prosecution without the prosecution first establishing the foundational facts necessary for raising such presumptions. According to the learned

counsel for the appellant, the prosecution had failed to adduce reliable and cogent evidence to establish the essential ingredients of the alleged offences and, therefore, the burden could not have been shifted to the appellant by extending the benefit of the presumptions contemplated under Sections 29 and 30 of the POCSO Act to the prosecution. *Per contra*, the learned Government Advocate (Criminal Side) submitted that the Trial Court was justified in drawing the statutory presumptions. It was argued that the evidence of P.Ws.1 to 3 disclosed that arrangements had been made for the engagement of the victim girl (P.W.3) with the appellant and that the marriage between them was proposed to be solemnized after the victim attained the age of 18 years. It was further submitted that the defence had admitted the existence of a love affair between the victim girl (P.W.3) and the appellant. Reliance was also placed on the evidence of Dr. Deepa (P.W.7), who issued the Accident Register (Ex.P3) and the Medical Certificate (Ex.P9), to contend that sufficient materials were available before the Trial Court for it to extend the benefit of the presumptions under Sections 29 and 30 of the POCSO Act to the prosecution and to record a finding of guilt against the appellant. While considering the opposing submissions of the learned counsel in this regard, this Court finds that the evidence on record reveals that the parents of the victim girl (P.Ws.1 and 2) did not support

the prosecution case. The victim girl (P.W.3) herself turned hostile and categorically resiled from her earlier statement recorded under Section 164 Cr.P.C. At the cost of repetition, the independent witnesses, *viz.*, Ayyappan (P.W.4) and Raj (P.W.5), also failed to support the prosecution version. Further, the medical evidence of Dr. Deepa (P.W.7) does not furnish any conclusive support to the prosecution allegations. Apart from the failure of the material witnesses to support the prosecution case, the investigation itself suffered from serious deficiencies. As alluded to above, the I.O. (P.W.6) failed to collect and produce material documentary evidence such as marriage records, temple receipts, photographs, proof of stay, hotel or lodge records, or any independent evidence capable of corroborating the prosecution allegations. No independent witness was examined to establish the alleged marriage or the alleged stay of the victim girl (P.W.3) with the appellant. These omissions assume greater significance in view of the hostile stand taken by the principal prosecution witnesses.

18. It is well settled that the presumptions under Sections 29 and 30 of the POCSO Act, do not operate in a vacuum. Before such presumptions can be availed by the prosecution, they must first establish the foundational facts constituting the offence through reliable and acceptable evidence. Only upon the discharge of such initial burden,

does the statutory presumption arise against the accused. Where the prosecution fails to prove the foundational facts as in the present case, the presumption cannot be mechanically invoked to fill gaps in the prosecution case or to compensate for deficiencies in the prosecution's evidence.

19. Insofar as submission (ii) made by the learned counsel for the appellant regarding the evidentiary value of a statement recorded under Section 164 Cr.P.C., the learned counsel contended that the Trial Court had placed undue reliance upon the statement of the victim girl (P.W.3) recorded under Section 164 Cr.P.C., notwithstanding the fact that the victim girl (P.W.3) had subsequently resiled from the said statement during her evidence before the Court. In this regard, it is relevant to refer to the decision of this Court in **Siva vs. The State rep. by the Inspector of Police, Thiruvalem Police Station, Vellore District** - ², wherein, while considering the evidentiary value of statements recorded under Section 164 Cr.P.C., this Court held as follows:

"14. It is a peculiar case where almost all the independent prosecution witnesses including the witnesses to the arrest and seizure of the weapon of offence produced by the prosecution have turned hostile. The alleged author of Ex.P1 complaint, who is the niece of the deceased,

² 2022 (4) MLJ (Crl) 113

has also turned hostile. Virtually, except the official witnesses, no independent witness has supported the case of the prosecution and the prosecution has not taken proper initiative to prove its case. However, the Trial Court has proceeded to rely upon the statements recorded from such witnesses under section 164 Cr.P.C. viz., Exs.P11 to P14 to render the conviction against the appellant.

15. The law is well settled that a statement recorded under Section 164 of the Code of Criminal Procedure is not substantive evidence and it can be used to corroborate the statement of a witness and it can be used to contradict a witness. In **Ram Kishan Singh vs. Harmit Kaur and another (1972) 3 SCC 280**, it has been laid down that a statement recorded under Section 164 of the Code of Criminal Procedure is not substantive evidence and it can be used to corroborate the statement of a witness and it can be used to contradict a witness.

16. In **Baij Nath Sah vs. State of Bihar (2010) 6 SCC 736** also, the Apex Court has held that mere statement of the prosecutrix recorded under Section 164 Cr.P.C. is not enough to convict the appellant and it is not substantive evidence and it can be utilised only to corroborate or contradict the witness vis-a-vis statement made in court.

17. In the case on hand, the Trial Court has held that though the eyewitnesses to the occurrence had turned hostile during their examination in court, their statements recorded under Section 164 Cr.P.C., corroborates the medical evidence viz., the wounds found on the dead body as revealed in the postmortem certificate and thereby found the appellant guilty. However, strangely, the Trial Court has ignored the fact that when the occurrence is said to have taken place on 20.9.2010 and the postmortem certificate was issued on 21.9.2010, the statements from the witnesses had been recorded on 6.10.2010. Such a long delay in recording the statements of the witnesses speaks much.

18. Further, the Trial Court, taking presumption available under Section 80 of the Indian Evidence Act, 1872, had proceeded to rely upon Exs.P11 to P14, the statements recorded from the witnesses under Section 164 Cr.P.C. to render conviction against the appellant.

19. Of course, there a presumption is available under Section 80 of the Indian Evidence Act, 1872 as to the documents produced as record evidence. The legal provision reads as under:-

"80. Presumption as to documents produced as record of evidence.—Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence, or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume— that the document is genuine; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken."

20. The question as to whether such presumption is applicable to the statement (memorandum of identification proceedings) recorded by a Magistrate under Section 164 Cr.P.C. has been elaborately dealt with by a Three Judges Bench in **Sheo Raj vs. State [(1963) SCC OnLine All 123]** and held that a statement made under Section 164, Cr.P.C. is not 'evidence', is not made in a 'judicial proceeding' and is not given under oath. It has been held therein as under:-

" A statement made by a person to a police officer in the course of an investigation cannot be used for any purpose at any enquiry or trial in respect of the offence under investigation (except for contradicting him), vide Section 162; it is open to any person to make a statement or confession before a Magistrate (of a certain class) in to course of an investigation, or at any time thereafter, but before the commencement of an enquiry or trial and the statement or confession will be recorded by the Magistrate under Section 164 and is not subject to the bar imposed by Section 162. Such a statement, being a previous statement, may be used only to contradict the person when he appears as a witness at the enquiry or trial of the offence or to

corroborate him. A statement made by a person before a Magistrate of the required class holding an identification proceeding and recorded by him is a statement governed by Sec. 164; there is no dispute on this point. It is to be noted that [Sec. 164](#) simply mentions “any statement or confession made to him in the course of an investigation” and not “any statement or confession made to him in the course of an investigation by any witness or accused person.” It does not state whose statement of confession is to be recorded by him. Actually at this stage, when the offence is still under investigation, there are no witnesses and no accused persons (except in the sense of persons against whom a charge of having committed the offence is levelled and is under investigation). It is only after the investigation has been completed that the police can decide who is to be the accused of the offence before a Magistrate and who are to be the witnesses in the case. Till then there can be no decision about the status of a person as an accused person or as a witness and all persons examined by the police during the investigation are mere interrogatories or informants or statement-makers. The provisions in the Code relating to investigation do not refer to any person as a witness. Though “witness” is not defined in the Evidence Act, Secs. 118, 119 and 120 of it make it clear that a witness is a person who testifies before a court. Under section 59 all facts may be proved by oral evidence and “oral evidence” is defined in Sec. 3 to mean and include all statements made by witnesses before a court. The definition of “proved” shows that the question of proof of a fact arises only before a court so long as there is no court there is no question of a fact being proved and consequently no question of oral evidence and witnesses. Evidence can be given only in respect of the existence or non-existence of a fact in issue or a relevant fact, vide Sec. 5. Which is a fact in issue or a relevant fact is a matter that arises only before a court because only before a court there can arise the question whether a certain fact is proved or not. These provisions of the Evidence Act make it clear that no person can claim the status of a witness except in relation to a proceeding before a court. It follows that while an offence is still under investigation there is

nobody who can be called "witness" and there is no statement that can be called "evidence."

.....

A Magistrate is certainly authorized by law to take evidence but only in a case of which he has taken cognizance; he is not authorised by law to take evidence in a case pending before another Magistrate or in a case that has already been decided by himself or another Magistrate or in a case that has not yet reached a court. He is not authorized by law to record evidence of any person in any matter and in any circumstance. A Magistrate recording a statement under Sec. 164 is not authorized by law to take evidence for the simple reason that he is not charged with the fluty (sic for "duty") of deciding any case and there is no matter to be proved or disproved before him. The other alternative is that the evidence must have been given in a judicial proceeding. When a Magistrate records a statement under Sec. 164 there are only two proceedings in which it can possibly be said to have been recorded, (1) the investigation by the police and (2) the proceeding of recording the statement itself. The investigation by the police is not a judicial proceeding. "Judicial proceeding" is not defined in the Evidence Act, but since we are concerned with a statement recorded under the Code of Criminal Procedure the question whether it was recorded in a judicial proceeding or not must be decided in the light of the definition given in the code. "Judicial proceeding" is defined in Sec. 4(1) (m) to mean "any proceeding in the course of which evidence is or may be legally taken on oath." If evidence may be legally taken on oath it is enough even though evidence is actually not taken on oath. An investigation is a judicial proceeding only if it can be predicated that in the course of it evidence may be legally taken on oath. "In the course of which" means "in the carrying out of which" or "in the conducting of which" and not "during the pendency of which." Anything that is done while a proceeding is pending is not necessarily done in the course of it; if it is not a part of it or is done by one not connected with it, it is not done in the course of it even though it is done during its pendency. In the course of an investigation no evidence can be legally taken on

oath by anybody concerned in the investigation. The police have no power to administer oath. As I explained earlier, there is no question of evidence being taken in the course of an investigation. If a Magistrate does something while an investigation is pending it is not done in the course of it. An investigation which would not be a judicial proceeding if a Magistrate did not do something during its pendency does not become one simply because he does something, such as recording a statement under Sec. 164. Since an investigation is to be done solely by the police nothing that he does during its pendency becomes a part of it and can be said to have been done in the course of it. Consequently even if a Magistrate can legally administer oath to a person before recording his statement under Sec. 164 the investigation does not become a judicial proceeding.

.....

12. Thus I find that the statement made by a person under Sec. 164 cannot be said to be made in a judicial proceeding. Sec. 80, Evidence Act, is, therefore, not applicable to it."

21. The principles laid down in the above decision make it clear that presumption under Section 80 of the Indian Evidence Act, 1872 cannot be drawn to rely upon the Statements of witnesses recorded under Section 164 Cr.P.C during investigation to render a conviction." (emphasis supplied by this Court)

20. The principle emerging from the aforesaid decision is that a statement recorded under Section 164 Cr.P.C. is not substantive evidence by itself and cannot form the sole basis for conviction. Such a statement can only be used for corroboration or contradiction of the maker of the statement in the manner known to law. Where the maker of the statement does not support the prosecution case during trial and

specifically retracts the allegations contained in the statement recorded under Section 164 Cr.P.C., the evidentiary value of such statement becomes considerably weakened and it cannot, by itself, be treated as proof of the allegations contained therein. In the present case, although the victim girl (P.W.3) had given a statement under Section 164 Cr.P.C. on 13.02.2024, she subsequently resiled from the said statement during her deposition before the Trial Court on 15.04.2025. She categorically stated that the earlier statement was made falsely and that she was tutored by her advocate. Despite being treated as hostile and subjected to cross-examination by the prosecution, nothing substantial was elicited to support the prosecution allegations by contradicting her. In such circumstances, the statement recorded under Section 164 Cr.P.C. could not have been treated as substantive evidence to sustain the conviction of the appellant, particularly, when the victim girl (P.W.3) herself disowned the contents thereof and when there was no independent and reliable corroborative evidence available on record. Therefore, the reliance placed by the Trial Court on the statement recorded under Section 164 Cr.P.C., in the absence of supporting evidence, is legally unsustainable.

21. It is also pertinent to note that even as per the evidence of the parents of the victim girl (P.Ws.1 and 2), they had accepted the

relationship between the appellant and their daughter, performed their engagement, and were intending to solemnize their marriage after the victim girl (P.W.3) attained majority. This aspect of the evidence, which was favourable to the defence, was not accorded due consideration by the Trial Court while appreciating the overall circumstances of the case.

22. In this context, it is relevant to refer to the observations made by a Division Bench of this Court while dealing with a similar issue in **Palraj**, (*supra*), in which, following the earlier Division Bench decision in **Chinnathambi and another v. The Inspector of Police, D-4, R.K. Pet Police Station, Thiruvallur District**³, the Division Bench had strongly deprecated the practice of recording convictions solely on the basis of statements recorded under Section 164 Cr.P.C. during the course of investigation. Having found that the conviction in that case was founded upon such inadmissible material, the Division Bench expressed its concern regarding the manner in which the trial had been conducted and issued appropriate directions to ensure greater judicial sensitivity and adherence to settled principles governing appreciation of evidence.

³Crl. A. Nos.355 & 437 of 2016 decided on 04.08.2016

23. Having carefully examined the entire evidence on record, this Court finds that there is no legally admissible evidence connecting the appellant with the commission of the alleged offences, when especially the victim girl (P.W.3) and her parents (P.Ws.2 and 3) have not supported the case of the prosecution. Further, taking into consideration the facts of the present case, this Court records its utter dismay over the insensitive manner in which the matter has been dealt with.

24. In the light of the foregoing discussion, this Court holds that the conviction and sentence recorded by the Trial Court are unsustainable in law. Accordingly, the conviction and sentence imposed upon the appellant *vide* the impugned judgment are set aside. The appellant is acquitted of all the charges levelled against him and is entitled to all consequential benefits in accordance with law. Bail bond, if any, executed by him shall stand discharged. Fine amount, if any, shall be refunded to him.

14.07.2026

cad

A.D.JAGADISHCHANDIRA, J.

raa

To:

1. The Registrar General
Madras High Court
Chennai 600 104
2. The Sessions Judge,
Special Court for Exclusive trial of Cases
under POCSO Act
Thiruvallur
3. The Inspector of Police
J.J.Nagar Police Station
i/c Thirumangalam All Women Police Station
Chennai District
4. The Public Prosecutor
High Court of Madras
Chennai 600 104

Judgment in
Criminal Appeal No.236 of 2026

14.07.2026