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CRL A No. 384 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29-01-2026

PRONOUNCED ON : 02-02-2026

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

CRL A No. 384 of 2023

Vijayakumar

..Appellant/A1

Vs

The Inspector of Police,
AWPS Jayankondam,
Ariyalur District.
(Crime No.16/2020)

..Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, to set aside the judgment of conviction and sentence imposed upon by the appellant dated 22.02.2023 by the learned Sessions Judge, Fast Track Mahila Court, Ariyalur in Spl.SC.37 of 2020 and allow the appeal.

For Appellant:

Mr.S.Karthikeyan
For M/s P.Parthikannan

For Respondent:

Mr.S.Rajakumar
Additional Public Prosecutor

**Judgment**

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This Criminal Appeal has been filed by Accused No.1, challenging the judgment dated 22.02.2023 in Spl.SC.No.37 of 2020 on the file of the learned Sessions Judge, Fast Track Mahila Court, Ariyalur, by which he was convicted for the offence under Section 366 of the IPC and Section 6(1) of the POCSO Act, 2012 and sentenced as follows:

Offence under Section	Sentence imposed
366 IPC	To undergo RI for ten years and to pay a fine of Rs.10,000/- in default to undergo SI for one year.
Section 6 (1) of the POCSO Act, 2012	To undergo RI for twenty years and to pay a fine of Rs.1,00,000/- in default to undergo SI for one year.
The sentences were ordered to run concurrently.	

2.(i) The case of the prosecution is that on 14.06.2020 the appellant/A1 on the promise of marriage pursuant to a love affair had kidnapped the victim girl aged 17 years and 10 months at the time of occurrence, along with his friend i.e., A2-Sathish @ Sathishkumar, from the lawful custody of her parents and committed penetrative sexual assault on 15.06.2020 thrice at another friend's house; that thereafter the appellant/A1 abandoned the victim in his friend's house and when the victim called him over the phone, the appellant/A1 had asked her to go



back to her house as he did not wish to marry her and thus, committed the aforesaid offences.

(ii) On the complaint [Ex.P1] given by the victim [PW1] on 06.08.2020 against the accused an FIR [Ex.P12] in Cr.No.16 of 2020 was registered by PW13, the Sub-Inspector of Police, on the same day at about 6.00 p.m., for the offences under Sections 366(A) and 376(2)(n) of the IPC and Sections 5(l) and 6 of the POCSO Act, 2012.

(iii) PW14, the Inspector of Police took up the investigation, recorded the statement of the victim and the other witnesses and handed over the investigation to PW15, who thereafter filed the final report against the 1st accused/appellant herein for the offence under Sections 366(A) and 376(2)(n) of the IPC and Sections 5(l) r/w 6 of the POCSO Act, 2012 and against the co-accused/A2 who was friend of the appellant/A1 under Section 366-A of the IPC before the learned Sessions Judge, Fast Track Mahila Court, Ariyalur.



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(iv) On the appearance of the accused, the provisions of Section 207 Cr.P.C., were complied with and the case was taken on file as Spl.S.C.No.37 of 2020 by the learned Sessions Judge, Fast Track Mahila Court, Ariyalur. The trial Court framed the charges against A1 for the offences under Section 366 of the IPC and Section 6(1) of the POCSO Act, 2012 and against A2 for the offence under Section 366(A) and Section 6(1) r/w 17 of the POCSO Act. During the trial, when questioned, the accused pleaded 'not guilty'.

(v) Before the trial Court, the prosecution had examined 15 witnesses as P.W.1 to P.W.15 and marked 14 exhibits as Ex.P1 to Ex.P14, besides one material object i.e., M.O.1 [White-coloured TATA Indica Car bearing Regn.No.TN01 AD 3255]. When the accused were questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against them, they denied the same. The accused neither examined any witness nor marked any document on their side. The Section 164(5) Cr.P.C. statement of the victim was marked as Ex.C1.



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(vi) On appreciation of oral and documentary evidence, though the trial Court found the 2nd accused not guilty of the charges levelled against him and acquitted him, held that the charges levelled against the 1st accused as proved and convicted and sentenced him as stated in paragraph No.1 of this judgment. Aggrieved by the said conviction and sentence, the 1st accused had preferred the instant appeal.

3. Mr.S.Karthikeyan, learned counsel for the appellant/A1 would submit that the trial Court found that the prosecution had not established its case against the 2nd accused and acquitted him; that the learned Judge who acquitted the 2nd accused ought to have acquitted the appellant as well; that the complaint was lodged belatedly two months after the alleged occurrence; that it is the case of the prosecution that the victim informed her mother about the occurrence on the very same day, which is contradicted by the victim's mother, who was examined as PW11; that the prosecution has not established the age of the victim in the manner known to law; that admittedly the victim was studying in a college at the time of occurrence and instead of producing the matriculation certificate or the 12th standard certificate, the certificate [Ex.P7] issued by the



School Headmaster [PW8] showing the date of birth as 30.06.2002 was marked; and that since the prosecution has not established the age of the victim and the evidence suggests that the relationship was consensual, the impugned judgment is liable to be set aside and prayed for acquittal.

4. The learned Additional Public Prosecutor *per contra* submitted that the victim's evidence is cogent and convincing and merely because the 10th marksheet has not been produced, the age of the victim cannot be doubted; that the delay in lodging of the complaint has been properly explained by the victim; and that even assuming that there was consent, since the victim was a minor, the consent is immaterial and prayed for dismissal of the appeal.

5. (i) As stated earlier, the prosecution examined 15 witnesses. PW1 is the victim. PW2 is related to the victim. He would depose that the victim is like a daughter to him and he speaks about the fact that the victim went missing on the date of occurrence i.e., 15.06.2020 and thereafter, she was brought by the appellant on the next day. PW3, who is known to both the appellant and the victim deposed that he saw them



both in the bus stand together on 16.06.2020. PW4, mother of appellant's friend, would state that the appellant along with his friend and another girl came to her house and sought her house on rent about eight months prior to her examination on 17.03.2021. PW5 has signed in the observation mahazar [Ex.P2]. PW6 had signed in the observation mahazar [Ex.P3]. PW7 is the Doctor who had examined the appellant and issued the Outpatient Slip [Ex.P4], Semen Test Report [Ex.P5] and Potency certificate[Ex.P6].

(ii) PW8 is the Headmaster of the school, in which the victim studied and had issued a certificate [Ex.P7] wherein the victim's date of birth is shown as 30.06.2002. PW9 is the Doctor working in the Government Hospital, Jayakondam, who examined the victim and had issued Ex.P8-Report and the opinion-Ex.P9. PW10 is the witness who is said to have witnessed the confession of the accused and he turned hostile. PW11 is the mother of the victim who would state that the victim was staying in her mother's house for the purpose of studies and that she came to know of the occurrence from her daughter. PW12 is said to have witnessed the confession. He also turned hostile. PW13 is the Sub-



CRL A No. 384 of 2023

Inspector of Police, who registered the FIR; PW14 and PW15 are the investigation officers, as stated above.

6. The version of the victim is that she was born on 30.06.2002; that on 14.06.2020 at about 10.00pm in the night the appellant called her over phone and asked her to meet him near a stream; that when she went there, the appellant accompanied by his friend the 2nd accused, was waiting in the car; that thereafter they kidnapped her; that the victim had objected to the same; that the appellant's parents also had called the appellant and asked the appellant to drop the victim at her house; that the appellant refused to do so; that the appellant thereafter took the victim to his friend's house at a village called Pattinangkurichi and had committed penetrative sexual assault on 15.06.2020 thrice; and that thereafter the appellant left the house and when the victim contacted the appellant over phone, he had asked the victim to go to her house and that he was not interested in marrying her. She would further state that she had made a similar statement before the learned Magistrate.



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7. In the cross-examination, the victim had stated that she had a love affair with the appellant for about two years prior to the occurrence. She would also admit in the cross-examination that they went together to Virudhachalam on the date of occurrence and thereafter they went to the house of the appellant; that when her grandmother visited the house she refused to go with her grandmother. Her evidence would suggest that the victim and the appellant had a consensual relationship. That apart this version of hers that after they stayed elsewhere they came to the house of the appellant, is contrary to her version that the appellant had abandoned her in his friend's house.

8. It is the case of the prosecution that the victim was born on 30.06.2002. PW1 would admit that she was studying in a college at the relevant point of time. PW2 had deposed that the victim was pursuing B.E. Degree and was in the 2nd year at the time of occurrence. Strangely, the prosecution had not chosen to mark the matriculation certificate, birth certificate or any other record, which would prove the date of birth of the victim. On the other hand, they chose to examine the Headmaster of the school where the victim once studied. The Headmaster [PW8] had issued



the certificate [Ex.P7] called the '*Education Certificate*' and the date of birth of the victim is shown as 30.06.2002. The cross examination of the Headmaster is extracted herein for better appreciation of his evidence.

“ehd; gs;spr; rhd;W tH';fpa nijpapy; me;j khztp v';fs;
gs;spapy; gof;ftpy;iy/ gpwg;g[rhd;wpjHpid ghprPypj;J gs;spr;
rhd;W tH';ftpy;iy/ me;j khztpia gs;spapy; nru;f;Fk; nghJ
gpwg;g[rhd;wpjiH ghprPypj;jhu;fsh vd;w tpguk; vdf;F bjhpahJ/
khztpapd; gpwe;j nijp Kd;Df;F gpd; Kuzhf ghprPypf;ftpy;iy vd;W
brhd;dhy; rhpay;y/”

9. Thus, the above evidence would show that the certificate issued by PW8 is of no consequence as PW8 has admitted that he had not verified the birth certificate before issuing the said certificate. The prosecution has also not collected the admission register, which PW8 claims to have verified before issuing the said certificate. Therefore, this Court is of the view that the prosecution has miserably failed to prove the date of birth of the victim as 30.06.2002.

10. That apart, the alleged occurrences is said to have taken place on 15.06.2020. It is the case of PW1 that she had informed her mother about the occurrence on the very same day of the occurrence. However,



PW11 the mother's version is contrary to the said version. PW11 would state in her deposition that she had lodged the complaint immediately.

The relevant portion of PW11's evidence reads as follows:

“fhty; epiyaj;jpy; g[fhu; bfhLj;j md;Wjhd; vdJ kfs; ele;j
tpguj;ij brhd;dhu;/ mjd;gpwF fhty; epiyaj;jpy; g[fhu; bfhLj;njd;
vd;W brhd;dhy; rhpjhd;/ g[fhu; bfhLg;gjw;F Kd;g[k; vdJ kfs; vdJ
mk;kh tPl;oy;jhd; ,Ue;jJ/ vdJ kfis vdJ mk;khjhd; Muk;gj;jpypUe;nj
gs;spapy; nru;j;J gof;f itj;jhu; vd;why; rhpjhd;/ g[fhu; bfhLg;gjw;F
Kjy; ehs; vdJ kfis (m/rh/1) vjphp miHj;Jr; brd;W kWehs;
bfhz;Lte;J tPl;lhu; mjd;ngypy;jhd; g[fhu; bfhLj;njkh; vd;W
brhd;dhy; rhpjhd;/”

11. The above portion of PW11's evidence therefore raises a doubt as to the date of the alleged occurrence. PW11's version is also contrary to the victim's version that she was abandoned by the appellant. PW1 had stated that both of them returned together. Thus it is seen that there is a doubt with regard to the manner in which the alleged occurrence took place and that in any case, the prosecution has not explained the reason for delay in lodging the complaint. PW1 had stated that her date of birth is 30.06.2002 and the alleged occurrence took place on 15.06.2020. The above facts raises a reasonable suspicion that both the date of occurrence



CRL A No. 384 of 2023

and date of birth has been falsely stated only to invoke the provisions of the POCSO Act.

12. From the above discussion, it would be very clear that the relationship between the appellant and the victim was consensual. The conduct of the victim in meeting the appellant on his request in a remote place outside the house and her subsequent conduct confirms the said fact. The victim's evidence that she was forcibly kidnapped and subjected to sexual intercourse is contrary to her earlier version that she had a love affair with the appellant for about two years. The evidence therefore suggests that it is a case of relationship that turned sour, since the appellant could not get married to the victim.

13. As stated earlier, the prosecution has not established the age of the victim and since the victim was studying in a college in the 2nd year, the prosecution could have produced any authentic document such as 10th or 12 marksheet which they failed to do so. PW8's evidence and the certificate [Ex.P7] would not be of any avail to the prosecution as it is not based on any relevant document. Further, there is no necessity for the



CRL A No. 384 of 2023

prosecution to obtain a certificate from the school where the victim studied when they could have obtained a certificate from the college where she was studying. From the above discussion, it can be seen that the prosecution has neither established the date of birth of the victim nor the date of occurrence and consequently its case beyond reasonable doubt and hence, this Court is inclined to set aside the impugned judgment of conviction and sentence.

14. Accordingly, the Criminal Appeal stands allowed. The conviction and sentence imposed upon the appellant/A1 vide judgment dated 22.02.2023 by the learned Sessions Judge, Fast Track Mahila Court, Ariyalur in Spl.SC.37 of 2020, are set aside. The appellant is acquitted of all the charges. The fine amount, if any, paid by the appellant shall be refunded. The bail bond, if any, executed shall stand discharged.

02-02-2026

Speaking/Non-speaking order
Neutral Citation: Yes/No
ars

SUNDER MOHAN J.



CRL A No. 384 of 2023

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To

1. The Sessions Judge,
Fast Track Mahila Court, Ariyalur.

2. The Inspector of Police,
AWPS Jayankondam,
Ariyalur District.

3. The Public Prosecutor,
High Court, Madras.

**Pre-delivery Judgment in
CRL A No. 384 of 2023**

02-02-2026

Page14 of 14