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CRL A No. 622 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 25-02-2026**

CORAM

**THE HON'BLE MR.JUSTICE SUNDER MOHAN**

**CRL A No. 622 of 2023**

Agilan  
S/O. Nagadass, No.50, Mariamman Koil Street,  
Ayimicherry, Kunnam Post, Walajabad,  
Kancheepuram District.

..Appellant(s)

Vs

The Inspector Of Police  
All Women Police Station,  
Kanchipuram.  
Cr.No.8/2016.

..Respondent(s)

Criminal Appeal filed under Section 374(2) of Cr.P.C., praying to set aside the Judgment passed against the appellant on 20.03.2023 in S.C.No.50 of 2019 of New Special Sessions Court and SC.No.4 of 2018 of old Special Sessions Court, by the POCSO Court at Chengalpattu, Kancheepuram District and acquit him of all the Charges.

For Appellant(s): Mr.R.Anbalagan

For Respondent(s): Mr.S.Raja Kumar  
Additional Public Prosecutor

### **JUDGMENT**

This Criminal Appeal has been filed to set aside the judgment passed in New S.C.No.50 of 2019 and Old S.C.No.4 of 2018 on the file of the Special



Sessions Court, POCSO Court, Chengalpattu, Kancheepuram District, by which the petitioner was convicted and sentenced for the offences as follows:

| Under Section               | Sentence                                              |
|-----------------------------|-------------------------------------------------------|
| 366 IPC                     | 7 years R.I and fine of Rs.5,000/-, I/d. 6 months S.I |
| 417 IPC                     | 1 year S.I                                            |
| 6 r/w 5(j)(ii) of POCSO Act | 10 years R.I and fine of Rs.10,000/-, I/d. 1 year R.I |

2. It is the case of the prosecution that the appellant and the victim girl, who was aged about 16 years according to the prosecution were in a love affair; that on 09.03.2016, the appellant lured the victim girl, and on the promise of marriage, took her to a remote place and committed penetrative sexual assault on her, and thus committed the aforesaid offence.

3. On the complaint given by P.W.1, the father of the victim girl, on 12.10.2016, an F.I.R was registered by P.W.11 in Crime No.8 of 2016 for the offence under Sections 417 and 376 IPC. The investigation was thereafter conducted by P.W.13, who, after subjecting the victim to medical examination and recording her statement under Section 164 Cr.P.C., filed the final report before the Special Court. The Special Court framed three charges under Sections 366 and 417 IPC and Section 6 read with 5(j)(ii) of POCSO Act.



4. Before the Trial Court, the prosecution examined 13 witnesses and marked Ext.P.1 to Ext.P13. The Trial Court found the appellant guilty of all the offences and sentenced him as stated above.

5. The learned counsel for the appellant would submit that the victim had throughout stated that her age was 21 years at the time of occurrence; that even in the complaint given by her father, the victim's age was mentioned as 21 years; that the relationship between the appellant and the victim was consensual; and that in any case, the victim, in her cross examination, had disowned her earlier versions and therefore, the prosecution has failed to establish its case and hence, the impugned judgment is liable to be set aside.

6. Per contra, the learned Additional Public Prosecutor appearing for the respondent submitted that the victim turned hostile two years after her examination-in-chief; and that she had been won over by the appellant; that the prosecution had established the age of the victim by marking the certificate issued by the Head Master of the school in which the victim had studied and therefore, the victim's perception of her age is immaterial; and that the Trial Court was justified in convicting the appellant for the aforesaid offences and prayed for dismissal of the Appeal.



7. Heard the learned counsel on either side and perused the materials available on record.

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8. As stated above, the prosecution examined 13 witnesses. P.W.1 is the father of the victim; P.W.2 is the victim child; P.W.3 is a witness to the Observation Mahazar (Ext.P3); P.W.4, a relative of P.W.1, who corroborated the evidence of P.W.1 and stated that the victim became pregnant; P.W.5 is a witness to the alleged confession of the appellant, who turned hostile; P.W.6 is the Head Master of the school where the victim had studied and who issued the certificate (Ext.P4), in which the date of birth of the victim is mentioned as 02.04.2001; P.W.7 is the nurse who conducted pregnancy test on the victim and signed the Lab Register (Ext.P5); P.W.8 is the doctor who had examined the appellant and issued the Potency Certificate (Ext.P6); P.W.9 is the doctor who examined the victim and had issued the Age Certificate (Ext.P8) and also certified that the victim was pregnant and had given Medical Examination Report marked as Ext.P7; P.W.10 is a witness to the confession of the appellant; P.W.11 is the Inspector of Police who registered the F.I.R and conducted the initial part of the investigation; P.W.12 is an Expert from the Forensic Science Laboratory who had issued the DNA report (Ext.P12); P.W.13 is the Investigating Officer who completed the investigation and filed the final report.



9. It is the prosecution case that the victim and the appellant had a consensual affair. The DNA report also confirms that the appellant is the biological father of the child born to the victim. The victim had not complained about the alleged occurrence to her parents. Though the occurrence is stated to have taken place on 09.03.2016, the complaint was lodged only on 12.10.2016, when the victim was found to be pregnant by her parents. Therefore, on the basis of the evidence adduced, the prosecution had only established that there was a consensual affair.

10. It is seen from the F.I.R that the father of the victim girl had stated that the victim girl's age was 21 years in the year 2016. In fact, P.W.4, a relative of P.W.1, also had deposed that the victim was aged about 20 years at the time of the occurrence. In the Medical Examination Report (Ext.P7), in the Column relating to 'History', it is also mentioned that the victim about was 21 years. Though the prosecution claims that the victim was born on 02.04.2001, the only evidence produced by the prosecution is the record marked through the Head Master of the Primary School where the victim is said to have studied from 2<sup>nd</sup> Standard to 5<sup>th</sup> Standard. The Head Master was examined as P.W.6. In his cross examination, P.W.6 stated that the original of the record marked as Ext.P4 was in the School. He would also admit that he is not aware of the basis on which date of birth was entered in the said record. Further, P.W.1, the father of the victim has not stated that the victim was born on 02.04.2001. Therefore, except



for the said school record, there is no other evidence to establish that the victim was born on 02.04.2001.

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11. P.W.2, the victim herself, when cross-examined, though belatedly, stated that her age was 21 years at the time of the occurrence. This version of hers is contrary to her deposition in the chief examination. She further deposed that she had an affair with another person by the name Madurai and that she became pregnant only because of that relationship. She had totally disowned the version given by her in the chief examination and further added that was deposed by her in the chief examination was due to the tutoring and coercion of the police.

12. The relevant portion of the P.W.2's evidence in the cross examination is as follows:

"எனக்கு 3 வருடங்களுக்கு முன்பு, திருமணம் ஆகிவிட்டது. என கணவரின் பெயர் மதுரை. 2016ம் வருடம் எனக்கு 21 வயது இருக்கும் என்றால் சரிதான். நான் 2016ம் வருடம் மதுரை என்பவருடன் தான் பேசி பழகி வந்தேன். அவர் மூலமாகதான் நான் கர்ப்பமானேன். என கர்ப்பத்திற்கு வேறு யாரும் காரணம் இல்லை. நான் எந்த பள்ளியிலும் படிக்கவில்லை என்றால் சரிதான். போலிசார் சொல்லி கொடுத்தது போன்று நான் பயத்தில் என முதல் விசாரணையில் அவ்வாறு சாட்சியம் அளித்திருக்கிறேன். என முதல் விசாரணையில் கூறியுள்ள விவரங்கள் தவறானவை என்றால் சரிதான். திரையை விலக்கி ஆஜர் எதிரியை காண்பித்த போது அவர் யார் என்றே எனக்கு



தெரியாது என்று சாட்சி சொன்னார். போலிசார் எந்த காலத்திலும் என்னை விசாரிக்கவில்லை என்றால் சரிதான். போலிசாரிடம் நான் எந்த வாக்குமூலமும் கொடுக்கவில்லை என்றால் சரிதான். எதிர்க்கும் இந்த வழக்கிற்கும் எவ்வித சம்பந்தமும் இல்லை என்றால் சரிதான்.”

13. In the cross examination, the prosecution had suggested to the victim that she had turned hostile due to the threat of the appellant. However, nothing has been brought on record by the prosecution to substantiate that.

14. Be that as it may, even assuming that the victim was subjected to penetrative sexual assault and she turned hostile for extraneous reasons, this Court is of the view that the prosecution had failed to establish that the victim was a child at the time of occurrence. The victim has consistently taken the stand that she was a major and was aged about 21 years at the time of occurrence and the appellant could also have been under the *bona fide* impression that the victim was a major. The prosecution had not marked any acceptable document to prove the age of the victim. The certificate issued by the Head Master is of no avail as admittedly, he was not aware of the basis on which the date of birth was rendered.

15. Further as stated above, the victim had totally disowned her earlier version in her cross examination. The prosecution case rests on the sole



testimony of the victim. In the light of the contradictory statements made by the victim, it cannot be held that the victim is a witness of sterling quality so as to base a conviction solely on her testimony.

16. Therefore, this Court is of the view that the impugned judgment cannot be sustained in the light of the above evidence. Accordingly, the impugned judgment is set aside and the appellant is acquitted of all the charges.

17. This Criminal Appeal stands allowed accordingly.

**25-02-2026**

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

ANU

To  
1.The Inspector Of Police  
All Women Police Station, Kanchipuram.  
Cr.No.8/2016.

2.The Sessions Court, POCSO Court at Chengalpattu,  
Kancheepuram District



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**SUNDER MOHAN, J.**

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