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CRL A No. 790 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16-02-2026

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

CRL A No. 790 of 2023

1. Selvakumar
S/o. Murugesan, No.41,
Thiruvandhipuram, Tolgate, Little
Kancheepuram.

Appellant(s)

Vs

1. The State Rep.By
The Inspector of Police, AWPS,
Kancheepuram. Cr.No.7/2018.

Respondent(s)

PRAYER: Criminal Appeal is filed under Section 374(2) of Cr.P.C. to set aside the conviction and sentence passed by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act Cases in Spl.Case No.170 of 2019.

For Appellant(s): M/s. M.G.Udayashankar

For Respondent(s): Mr.S.Rajakumar

Additional Public Prosecutor

**ORDER**

This Criminal Appeal has been filed by the accused, challenging the Judgment dated 23.06.2023 in Spl.Case.No.170 of 2019 on the file of the learned Sessions Judge, Special Court for Exclusive trial of cases under POCSO Act cases, by which he was convicted for the offence under Section 366 IPC and also under Section 6 r/w 5(l) of the Protection of Children from the Sexual Offences Act, 2012 (hereinafter referred to as the “**POCSO Act**”), and sentenced him as follows:

Offence under Section	Sentence imposed
Section 366 IPC	To undergo 7 years RI and to pay a fine of Rs.5,000/-, in default to undergo SI for six months
Section 6 r/w 5(l) of the POCSO Act, 2012.	To undergo RI for ten years and to pay a fine of Rs.10,000/- in default to undergo SI for one year.

2.(a) The case of the prosecution is that the appellant and the victim belonged to the same village; that they were known to each other and had a love affair; that on the promise of marriage, the appellant had sexual intercourse with the victim on 23.12.2017 and thereafter on several occasions; that the victim was aged 15 years at the time of occurrence; that the victim became pregnant and on 21.08.2018 she delivered a child and that a complaint was lodged on 28.11.2018 by the victim.



(b) P.W.12 - Sub-Inspector of Police attached to the respondent police had registered FIR in Cr.No.7 of 2018 for the offences under Section 363, 366 IPC and Section 6 r/w. 5(1) of POCSO Act. She conducted the investigation and arrested the appellant. Thereafter, she handed over the investigation to P.W.13 who filed the final report for the offences under Section 363, 365, 366A, 376 (2) (n), 417 IPC and Section 4, 6 of POCSO Act, 2012. The trial Court had framed two charges against the appellant for the offences under Section 366 and Section 6 r/w. 5(1) of the POCSO Act.

(c) The prosecution had examined the witnesses P.W.1 to P.W.13 and marked Exs.P1 to P14. The trial Court, on consideration of the evidence, found the appellant guilty of both the charges and sentenced him as stated in paragraph No.1 of this Judgment.

3. Mr.M.G.Udayashankar, the learned counsel for the appellant / accused, would submit that the prosecution case rests on the sole testimony of the victim; that the victim's evidence does not inspire confidence; that the evidence of her mother - P.W.2 is also improbable and that for the alleged occurrence that had took place on 23.12.2017, the complaint was lodged only on 28.11.2018; that the Investigation Officer would show that no effort was taken by P.W.2 or P.W.1 to question the appellant after P.W.2 came to know of the pregnancy or lodge a complaint against him; and that the DNA report had ruled out the paternity of



the appellant; that the impugned Judgment is therefore liable to be set aside, and he prayed for acquittal of the appellant.

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4. Mr.S.Raja Kumar, the learned Additional Public Prosecutor, per contra, submitted that the delay in a case of this nature is not fatal to the prosecution; that the DNA report is not conclusive; that the evidence of P.W.1, P.W.2 and the other witnesses would show that a Panchayat was held and since the appellant refused to marry the victim, the complaint was lodged; and that since the evidence of victim inspires confidence, the impugned judgment does not call for any interference and sought for dismissal of the appeal.

5. As stated earlier, the prosecution had examined 13 witnesses. P.W.1 is the victim and the *de facto* complainant. P.W.2 is the mother of the victim. P.W.3 and P.W.4 are the witnesses to the confession statement of the appellant and their signatures are marked as Ex.P3 and P4 respectively. P.W.5 is the witness to the Observation Mahazar - Ex.P5. P.W.6 a relative of the victim in whose house P.W.2 was employed, had stated that after the victim delivered the child, he asked the appellant to marry the victim and the appellant refused. P.W.7 is the constable who had taken the victim to the Doctor for examination. P.W.8 is the Constable who had sent the DNA samples for forensic examination. P.W.9 was working as Executive Engineer in the Salem Corporation and had marked the birth certificate of the victim – Ex.P7, which shows the date of birth



of the victim as 17.01.2002. P.W.10 is the Doctor who had examined the victim and had made entries in the accident register - Ex.P8. P.W.11 is the Doctor who had examined the appellant and issued potency certificate - Ex.P9. P.W.12 is the Sub-Inspector of Police who had registered the FIR and conducted a part of the investigating. P.W.13 is the Investigation Officer who had completed the investigation and filed the final report.

6. It is the case of the prosecution that the victim was born on 17.01.2002. The birth certificate of the victim was marked through P.W.9. The appellant had not challenged the said birth certificate. Therefore, the prosecution had established the date of birth of the victim. According to the prosecution, the first occurrence of penetrative sexual assault took place on 23.12.2017. It is the version of P.W.1 – victim that she had not informed anyone about the alleged occurrence and the subsequent occurrences said to have taken place in the house of the appellant. It is her further case that the child was born on 21.08.2018 and thereafter, her family members consulted the villagers and efforts were taken to get her married to the appellant for which the appellant refused. Hence, the victim lodged a complaint on 28.11.2018.

7. It is the version of P.W.2 – victim's mother, that she came to know that her daughter was pregnant and after her daughter informed her that the appellant was the cause for the pregnancy, her daughter lodged the complaint. The other



witnesses are witnesses to the Mahazar or confession and those facts are not disputed by the defense. P.W.6 was the employer of P.W.2 and he would speak about the fact that the appellant was called and a Panchayat was convened and all the villagers requested the appellant to marry the victim which was refused by the appellant. P.W.6 does not refer to the date on which such a panchayat took place. Therefore, the prosecution's case rests on the sole testimony of the victim.

8. As stated above the DNA report filed by the prosecution which was marked as Ex.P13 ruled out the paternity of the appellant to the child born to the victim.

9. Admittedly, P.W.1 had not stated about the alleged occurrence to any person including her mother P.W.2. P.W.2 claims that she came to know about the pregnancy three months later and she would only state about the complaint given after the child was born. This conduct of P.W.2 is highly improbable and artificial. P.W.2 had not taken any effort to question the appellant and she waited for her daughter to give a complaint three months after the child was born. P.W.1 - the victim, herself had not thought it fit to give any complaint even after the child was born and she waited for nearly three months after the child was born. There is no evidence let-in on the side of the prosecution as regards the alleged efforts taken by P.W.1 and P.W.2 to attempt any reconciliation, after



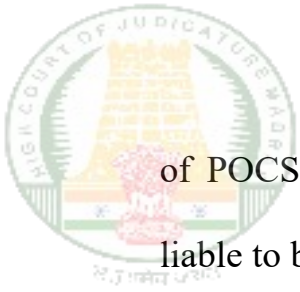
P.W.2 came to know of the occurrence when the victim was three months pregnant.

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10. On the other hand P.W.13, the Investigation Officer and P.W.12, the previous Investigation Officer, would state that after P.W.2 came to know that the victim was pregnant, she neither approached the appellant nor gave any complaint even after the child was born. The relevant portion of P.W.12's evidence reads as follows:

“ சிறுமி கர்ப்பமாக இருந்த காலத்திலிருந்து குழந்தை பிறக்கும் காலமாக 21.08.2018 வரை எதிரியின் வீட்டிற்கு சென்று சிறுமியின் கர்ப்பத்திற்கு காரணம் எதிரிதான் என்றோ எவ்வித பேச்சு வாதத்தையும் நடைபெறவில்லை என்றால் சரிதான். 21.08.2018 முதல் 13.11.2018 வரை சிறுமியின் கர்ப்பத்திற்கு காரணம் எதிரிதான் என்றோ சிறுமிக்கும் எதிரிக்கும் எவ்வித பேச்சு வார்த்தையும் நடைபெறவில்லை என்றால் சரிதான்.”

11. The above admission by P.W.12 would show that the conduct of P.W.1 and P.W.2 in not giving any complaint or not approaching the appellant, raises a serious doubt in their version. It is well settled that if a case rests on a sole testimony of the victim, then the accused can be found guilty only if the victim's evidence is of sterling quality. In this case, this Court finds that the victim's evidence cannot be relied upon as her conduct does not improve confidence for the reasons stated above. Above all, the DNA report rules out the paternity of the appellant. In such circumstances, this Court is of the view that it is highly unsafe to convict the appellant for the offence under Section 6 r/w. 5(1)



of POCSO Act or under Section 366 IPC. Hence the impugned judgment is liable to be set aside.

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12. Accordingly, the Criminal Appeal stands allowed. The conviction and sentence imposed upon the appellant/accused vide judgment dated 23.06.2023 made in Spl.Case.No.170 of 2019 on the file of the learned Sessions Judge, Special Court for Exclusive trial of cases under POCSO Act cases, 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.

16-02-2026

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

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1. The Inspector of Police, AWPS,
Kancheepuram. Cr.No.7/2018.
2. The Sessions Judge, Special Court
for Exclusive trial of cases under
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SUNDER MOHAN J.

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