



Crl.A.(MD).No.320/2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 11.02.2026

Delivered On : 27.02.2026

CORAM

THE HONOURABLE MRS. JUSTICE N.MALA

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Mahendran @ Mahesh

...Appellant / Sole Accused

Versus

State through
The Inspector of Police
Kadambur Police Station
Thoothukudi District.
[Crime No.51/2014]

...Respondent/Complainant

Prayer:-Criminal Appeal filed under Section 374[2] of Cr.P.C., to call for the entire records connected with the judgment in Spl.SC.No.33/2014 on the file of the learned Sessions Judge, Fast Track Mahila Court, Thoothukudi dated 20.10.2015 and set aside the conviction and sentence imposed against the appellant.

For Appellant : Mr.R.Arasumani

For Respondent : Mr.B.Nambi Selvan, APP

JUDGMENT

(1)The above Criminal Appeal is preferred by the appellant/sole accused against the judgment of conviction and sentence dated 20.10.2015, made



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in Spl.SC.No.33/2014, by the learned Sessions Judge, Fast Track Mahila Court, Thoothukudi, convicting and sentencing the appellant/accused for the offences under Section 366 of IPC and under Section 4 of POCSO Act.

(2)The factual scenario as unfolded during the course of trial is as follows:-

(a) The case of the prosecution in a nutshell:

The victim girl was 14 years old at the time of occurrence as per her recorded date of birth, 30.12.1999. The victim was residing in her aunt Murugeswari's house in Rajapalayam and was pursuing her studies there. During summer vacation / holidays, the victim used to visit her parents and assist her father [PW1] in vegetable business. While so, she developed acquaintance with the appellant/accused, a resident of neighbouring Village, Govindanpatti. On 20.05.2014, the victim went to the house of PW3-sister of PW4, in Uttudanpatti to attend a temple festival. On 22.05.2014, when PW3 was away from her house, the appellant/accused, who went to the Village of Uttudanpatti, to install radio set for the temple festival, finding that the victim was alone, kidnapped her to his grandfather's house at Mel Eral and committed sexual assault on her. Thereafter, he took



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the victim to Andhra, and returned to his grandfather's house with the victim and repeatedly committed sexual assault on her. Meanwhile, PW3, who is the Chithy/younger maternal aunt of the victim informed PW1, the father of the victim that the victim was missing from her house. After searching the victim girl for two days, PW1 lodged a complaint before the Kadambur Police Station on 24.05.2014, under Ex.P1.

(b) Based on the complaint (Ex.P.1) of PW1 (the father of the victim), the FIR came to be registered under Ex.P.4 in Crime No.51/2014, on 24.05.2014, by PW7-Grade II PC. PW.13-Mr.Balasundaram, Inspector of Police, took up the investigation and after examination of witnesses, arrested the appellant/accused on 08.06.2014, altered the FIR from "Girl Missing" to one under Section 366-A and 376 of IPC, under Ex.P11 and forwarded the Case Diary to PW14-Maarichami, Inspector of Police, who conducted the further investigation and on completion of other formalities like recording the 164[5] Cr.P.C., statements, the statement of the victim girl [PW2] , altered the Final Report /Alteration Report under Ex.P14,



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on 24.10.2014, for the offences u/s.366 of IPC and under Section 4 of POCSO Act.

(c) The Final Report/Alteration Report was taken on file by the Trial Court on **23.02.2022**, in Spl.SC.No.33/2014. On **18.10.2022**, the charges were framed against the appellant/sole accused for the offences under Section 366[A] of IPC and under Section 4 of POCSO Act. The appellant/accused denied the charges and pleaded not guilty and thereafter, on examination of the prosecution witnesses, charges were altered to, for the offences u/s.366 of IPC and under Section 4 of POCSO Act. The appellant/accused pleaded not guilty.

(3) The prosecution in order to bring home the guilt of the appellant/accused, examined PW1 to PW14 and filed Exs.P1 to P14.

(4) The Trial Court, on completion of trial, found the appellant/accused guilty of the aforesaid offences and convicted and sentenced him as follows:-

<i>Sl.No.</i>	<i>Conviction Under Section</i>	<i>Sentence Awarded</i>
1	366 of IPC	To undergo 1 year RI and to pay a fine of Rs.1,000/-, in default, to undergo 1 month RI.



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2	4 of POCSO Act	To undergo 7 years RI and to pay a fine of Rs.2,000/-, in default, to undergo 1 month RI. <i>The Sentences were ordered to run conucrrrently.</i>
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(5)Aggrieved by the aforesaid conviction and sentence, the appellant has preferred the above Criminal Appeal.

(6)Though several issues were raised in the grounds of appeal, the learned counsel for the appellant at the time of hearing restricted his arguments to the lack of clarity regarding age of the victim. The learned counsel submitted that the foundational fact *viz.* the age of the victim was not proved in accordance with law and therefore, the very foundation of the prosecution case stood shaken. The learned counsel for the appellant further submitted that the trial court erred in relying on the sole evidence of P.W.2 and Ex.P.5 for finding that the victim girl was a minor at the time of the occurrence. The learned counsel submitted that Ex.P.5 was marked through P.W.8, the Head Master of the school, who admittedly was not the person who made the entry in the school records and further, no material was produced by P.W.8 to establish the basis on which Ex.P.5 was issued.



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The learned counsel submitted that the trial court erred in assuming that P.W.1 had given the date of birth to the school authorities simply because he stated that he possessed the Birth Certificate. The learned counsel submitted that in the present case, the foundational fact namely, the age of the victim was not proved and therefore, the presumption under Section 29 of POCSO Act, was not triggered. The learned counsel further submitted that a genuine and serious doubt arose regarding the age of the victim girl, since even the medical evidence was against the age stated by the prosecution. The learned counsel therefore submitted that the appeal be allowed and the judgment of conviction and sentence passed by the trial court be set aside.

(7)The learned Additional Public Prosecutor, appearing for the State submitted that the Trial Court analyzed the entire evidence properly and rendered cogent and logical reasons for its findings. The learned Additional Public Prosecutor, further submitted that the judgment of the Trial Court called for no interference since it was based on proper appreciation of the victim's evidence corroborated by the medical evidence of PW12 and Ex.P.10. The learned Additional Public Prosecutor, therefore



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prayed that the appeal be dismissed as meritless. The learned Additional

Public Prosecutor submitted a report of the Inspector of Police, Kadambur Police Station, Thoothukudi, wherein it is stated that the accused married another person and has a 18 months old girl child; that the victim graduated in B.Sc.,(Physics) and that the victim would abide by the decision of this Court.

(8) Heard both sides and perused the materials placed on record, including the impugned judgment of the Trial Court.

(9) The prosecution case is that on 22.05.2014, the accused, who came to install radio set in the Village, kidnapped the victim girl aged about 14 years, studying 9th Standard, to his grand father's house in Uttudanpatti. Thereafter, he committed sexual assault on the victim girl several times. On information provided by P.W.3, the father of the victim girl (P.W.1) lodged a complaint, (Ex.P.1.). Based on the complaint, FIR was registered and investigation was made and thereafter charge sheet came to be filed. The case was taken on file by the Sessions Judge, Mahalir Neethimandram, Fast Track Mahila Court, Thoothukudi, in S.C.No.33 of 2014. After a full-fledged trial, the accused was convicted for the offence



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of penetrative sexual assault under Section 4 of POCSO Act and sentenced to undergo seven years rigorous imprisonment with a fine of Rs.2,000/- in default to undergo one month rigorous imprisonment and also convicted for the offence under Section 366 IPC and sentenced to undergo one year rigorous imprisonment with a fine of Rs.1,000/- in default to undergo one month rigorous imprisonment.

(10)The prosecution, in order to establish its case, has examined 14 witnesses. PW1-Karuthapandi, was a resident of Salanaickkenpatti Village and the defacto complainant. PW2-victim is his daughter. PW3-Deivanai is the Chithy/younger maternal aunt of the victim/PW2. PW4-Mariyammal, is the mother of the victim. PW5-Gothandaraman, is the son of PW3 and cousin brother of the victim girl. PW7-Karuppusamy, Grade-II PC, received the complaint under Ex.P1 from PW1 and registered the case in Crime No.51/2014 for the offence under "Girl Missing" and sent the FIR under Ex.P4 to the Judicial Magistrate Court and to the superior officials. PW8-Azhagarasan, School Headmaster who issued the Birth Certificate of the victim/PW2 under Ex.P5. PW9-Venkatesan, the District Munsif-cum-Judicial Magistrate, Vilathikulam, recorded the 164 Cr.PC.,



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statement of the victim. PW10-Dr.Balaji, conducted medical examination of the appellant/ accused and issued Ex.P6-Medical Certificate. PW11-Dr.Radha Ramani, is the Forensic Expert who examined the sample hair and the sperm of the appellant/accused and issued Ex.P7-Certificate. PW12-Dr.Kaleeswari, Assistant Surgeon in Kovilpatti Government Headquarters Hospital, examined the victim girl/PW2 and issued Ex.P10-Medical Certificate. PW13-Balsundaram, was the Investigating Officer at the relevant time who arrested the accused ; altered the FIR from "Girl Missing" to one u/s.366[A] and 376 of IPC and forwarded the case file to PW14 for further investigation. PW14-N.Maarichamy, the Investigating Officer conducted the further investigation and filed the Final Report / Alteration Report for the offences u/s.366 of IPC and Section 4 of POCSO Act under Ex.P14.

(11)A scrutiny of the trial court judgment shows that the trial court on the basis of Ex.P.5, issued by P.W.8 and the statement of the victim girl held that the victim girl had not completed 18 years of age at the time of the occurrence. The said finding of the trial court is questioned in this appeal. The victim girl was examined as P.W.2. In her chief examination, she



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stated that she was born on 30.12.1999. The trial court observed that during the cross-examination of P.W.2, the age was not disputed and therefore, the age of P.W.2 remained unchallenged. On the probative value of Ex.P.5, the trial court found that it had only corroborative value since the person, who prepared the entry at the time of admission of the victim in school was not examined. However, based on Ex.P.5 and on an assumption that P.W.1 and P.W.4,(Parents of the victim) may have given information to the school authorities at the time of her admission in school, the trial court concluded that the date of birth of the victim girl was 30.12.1999. This finding of the trial court is assailed by the appellant. No doubt, P.W.2(victim) speaks of her date of birth as 30.12.1999. However, the finding of the trial court that the same was not disputed during cross-examination and remained unchallenged is factually incorrect. The trial court failed to note that a suggestion was put to P.W.2 in her cross-examination regarding her age and to the said suggestion, she answered as follows:-

"எனக்கு தற்போது 18 வயதுக்குமேல் ஆகிறது என்றால் சரியல்ல

எனக்கு தற்போது வயது 16"



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(12) At this juncture, it would be relevant to point out that P.W.1, the father of the victim girl, during his cross-examination, admitted that he possessed the birth certificate of his daughter (P.W.2). When the primary evidence in the form of birth certificate was available with P.W.1, the school certificate, which is the secondary evidence (Ex.P.5) was produced without citing any reasons for non-production of the primary evidence. Only in the absence of primary evidence, the secondary evidence could have been relied on. The trial court itself on the probative value of Ex.P.5, found that it had only corroborative value. Further, P.W.8, the School Head Master, in his evidence deposed that he issued Ex.P.5, on the basis of admission register, the application and the counter-foil of the transfer certificate issued in 8th Standard. When Ex.P.5 was issued on the basis of the aforesaid documents, any one of the documents could have been produced before the trial court. The failure to produce the documents on the basis of which Ex.P.5 was prepared is fatal to the prosecution's case. Further, P.W.8 (Head Master of the school) admittedly had no personal knowledge as to the entries made in the school register. The person who made the entry was not examined and even though P.W.1, the father of the



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victim was examined, he did not state that he furnished the date of birth of the victim girl. The trial court on mere assumption held that P.W.1 and P.W. 4 (parents) gave the date of birth of the victim girl at the time of her admission in school. The finding of the trial court on the basis of mere assumption and presumption cannot be accepted. Per force, this Court is constrained to hold that no reliance could have been placed on Ex.P.5. P.W.1, the father of the victim girl did not speak of the date of birth of the victim girl, but merely stated that he possessed the birth certificate. Though P.W.1 stated that he possessed the birth certificate, the same was not produced before the court. Had P.W.1 produced the birth certificate, the cloud on the correct age of the victim girl would have been cleared. This Court is therefore of the view that since P.W.1 admitted that he possessed the birth certificate, for non-production of the birth certificate, an adverse inference ought to have been drawn against the prosecution.

(13) No doubt, in the priority of documents to establish the age of the victim, ossification report/medical evidence is the last. However, from the evidence of P.W.12, Doctor Kaleeswari, who examined the victim girl, it is clear that age as stated by the prosecution was doubtful. P.W.12 in her



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evidence stated as follows:

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“அவருடைய பெண் பால் உறுப்புகள் நன்கு வளர்ச்சி அடைந்து காணப்பட்டது. அவருடைய பெண் உறுப்பு சாதாரண நிலையிலும் காயங்கள் இல்லாமல் இருந்தது. மார்பகங்கள் நன்கு வளர்ச்சி அடைந்திருந்தது. அவருடைய பிறப்புறுப்பில் கன்னித்திரை காணப்பட வில்லை. அவரது வெஜினா 2 விரல் அனுமதிக்கத்தக்கதாக இருந்தது. அவருடைய காப்பப்பை கீழ்நோக்கியும் சரியான அளவிலும் இருந்தது. சாதாரண அளவில் இருந்தது”.

(14)P.W.12, the Doctor further stated that she assessed the age of the victim girl at 17 - 18 years, on the basis of the radiologist's report. P.W.12 specifically stated that she gave a written request to the radiologist regarding the radiologist report. However, the report was not produced before the court by the prosecution. The aforesaid evidence of P.W.12 fortifies the contention of the learned counsel for the appellant that there is no clarity on the correct age of the victim. Therefore, this Court is of the view that the benefit of the doubt should be given to the accused. This Court on a conspectus of the evidence on record, is of the view that the prosecution has failed to prove the correct age of the victim girl on the date of occurrence and therefore the presumption under Section 29 of POCSO Act is not activated. In the absence of proof of the foundational



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fact regarding the age of the victim, this Court finds that the conviction for the offence under Section 4 of POCSO Act is not sustainable. For the aforesaid reasons, this Court is inclined to interfere with the conviction of the trial court.

(15) In the final/alteration report dated 24.10.2014, the charges were framed for offences under Section 366 of IPC and Section 4 of the POCSO Act. On 18.10.2022, the charges were framed under Section 366A of IPC and under Section 4 of the POCSO Act. Thereafter, on examination of the prosecution witnesses, the charges were altered to offences under Section 366 of IPC and under Section 4 of the POCSO Act. The trial court placed heavy reliance on the statement of P.W.2/victim and finding it to be reliable, convicted the accused under Section 366 IPC. On going through the evidence of P.W.2 before the Court and her statement recorded under Section 164 Cr.P.C before the Magistrate, this Court finds that P.W.2 was romantically attracted and attached to the accused and that on 22.05.2014, at 1.30 p.m, while at the bus stop it was she who called the appellant. Only thereafter the appellant went there. P.W.2 further admitted that she was found by the police and thereafter she was sent to Kadambur Police



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Station. A perusal of her statement recorded under Section 164 Cr.P.C shows that she did not call her parents even once during the period of 15 days when she was alleged to have been kidnapped by the accused. If the accused had really forcibly kidnapped her, she would have informed her parents. The victim in her cross-examination before the trial court very clearly stated as follows:

"எனக்கு உடலுறவு என்பதும் கர்ப்பளிப்பு என்றால் தெரியும். காதலிப்பது என்ன என்பதும் தெரியும். நான். அ.சா.ஆ.2 - ல் நீதித்துறை நடுவரிடம் நானாகத்தான் போனேன் என்று சொல்லியுள்ளேன்"

P.W.2 in her 164 Cr.P.C statement clearly admitted that the accused was her lover, that she was the one who called the accused and on her request, he went there. Her statement is as follows:

"22.05.2014 அன்று மதியம் 1.30 மணிக்கு வீட்டைவிட்டு கிளம்பிவிட்டேன். கோவில்பட்டி பேருந்து நிலையத்திற்கு போனவுடன் நான் ஏற்கனவே காதலித்த மகேந்திரனுக்கு போன் போட்டேன். அவர் கோவில்பட்டிக்கு வந்தாங்க"

(16)P.W.2 for the first time in her chief examination stated that she objected for physical relationship before marriage and that the accused promised to marry her and had sexual intercourse with her. From the statement of the



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victim recorded under Section 164 Cr.P.C and her testimony before the trial court, it is clear that her statements are wavering, inconsistent and totally unreliable. This Court is of the view that the trial court has failed to properly assess the evidence of P.W.2 and therefore, the basis of conviction under Section 366 IPC, founded on such unreliable evidence of P.W.2 cannot be sustained.

(17)In view of the foregoing discussions, the judgment of conviction and sentence in Spl.SC.No.33/2014 on the file of the learned Sessions Judge, Fast Track Mahila Court, Thoothukudi dated 20.10.2015, is set aside. The appellant is acquitted of the charges.

(18)In fine, this appeal is allowed.

(19)It is reported that the appellant is on bail. The bail bond if any, executed by him, shall stand terminated. Fine amount, if any paid, shall be refunded to him.

27.02.2026

CM/AP
Index: Yes
Internet: Yes
NCC: Yes/ No
Speaking Order : Yes



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To

- 1.The Sessions Judge,
Fast Track Mahila Court
Thoothukudi District.
- 2.The Inspector of Police
Kadambur Police Station
Thoothukudi District.



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Judgment in
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