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.CrI.A.No.86 of 2017.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.04.2024

CORAM :

**THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP**

CrI.A.No.86 of 2017

A.Santhoshkumar

... Appellant/Accused - 1

Vs.

State Rep by  
The Inspector of Police,  
Bommidi Police Station,  
Dharmapuri.  
(Crime No.18 of 2016)

... Respondent/Complainant

**PRAYER:** Criminal Appeals filed under Section 374 of Cr.P.C., against the Judgment passed by the learned Sessions Judge, Dharmapuri in Spl. SC.No.15/2016 dated 21.12.2016 convicting the Appellant to undergo Rigorous Imprisonment of three years for the offence punishable under Section 363 of IPC and also to suffer ten years of Rigorous Imprisonment and also imposed a fine amount of Rs.1,000/- (Rupees One Thousand only) in default to undergo Simple Imprisonment for three months for the offence punishable under Section 5(1) r/w. Section 6 of POCSO Act.



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For Appellant : Mr.S.Deepika for  
Mr.D.Parvendhan

For Respondent : Ms.G.V.Kasthuri  
Additional Public Prosecutor

### **ORDER**

This Criminal Appeal has been filed to set aside the Judgment passed by the learned Sessions Judge, Dharmapuri in Spl. SC.No.15 of 2016 dated 21.12.2016.

The brief facts which are relevant to this case are as follows:

2. It is the case of the Prosecution that on 04.01.2016 during the intervening night, the victim/Prosecutrix had gone out to attend nature's call. At that time, the Appellant herein along with one Ravi @ Ravikumar, Krishnamoorthy and Kalaikumar had insisted the victim/prosecutrix come along with the Appellant. She refused to come. For which, the Appellant stated that “If you want me, come along with me, otherwise go with your parents”. The victim/prosecutrix had gone along with the Appellant, the other Accused had accompanied the



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Appellant on a different two-wheeler and the victim/Prosecutrix was taken on a two-wheeler driven by the Accused. They reached Bommidi Bus Stand from where they got the bus to Salem. From Salem, the victim/Prosecutrix and the Appellant proceeded to Coimbatore by bus. By reaching Coimbatore, the Appellant/Accused took the victim to his friend's aunt's residence where he had informed her that he had married her. On reaching his friend's aunt's house, his friend was not there. Later, his friends came over there and immediately took him/Appellant for searching employment and they returned in the evening. Till such time, the victim was staying in his friend's aunt's house in Coimbatore. After two days, they returned to Bommidi. Before that, they came to know that the father of the victim had lodged a complaint with the Bommidi Police Station, based on which, he had registered a case.

3. The learned Counsel for the Appellant submitted that the Appellant was convicted for the offence under Section 363 of IPC and sentenced him to undergo Rigorous Imprisonment for three years and fine of Rs.1000/-, in default, to undergo Rigorous Imprisonment for three month. The Accused found guilty for the offence under Section 5(1) r/w.



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6 of Protection of Children from Sexual Offences Act, 2012 and  
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sentenced him to undergo Rigorous Imprisonment for 10 years and a fine of Rs.1000/-, in default, to undergo Rigorous Imprisonment for three months. Both sentences to run concurrently.

4. It is the contention of the learned Counsel for the Appellant that the Appellant and the victim in this case were in love. Due to the love affair, the victim/Prosecutrix had eloped with the Appellant during the intervening night on 04.01.2016.

5. Meanwhile, there was a tension in the Village, as the father of the victim/Prosecutrix had stated in the complaint about the involvement of the Appellant and his friends viz., Ravi @ Ravikumar, Krishnamoorthy and Kalaikumar.

6. The Appellant and his friends were residing in P.Mallapuram Village where the victim/prosecutrix belongs to the Most Backward Class and she has been residing in the Village with her parents. Therefore, there was tension due to the possibility of communal rights.



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Instead of caste politics and pressure played on the Inspector of Police, Bommidi Police Station on behalf of the Most Backward Class people, they instigated the Inspector of Police to register the case under the provisions of the POCSO Act. Here, the acquaintance of the Accused sensed trouble and on sensing trouble, the Accused and the victim returned to the Village. The learned Counsel for the Appellant submitted that based on the Complaint preferred by the victim/Prosecutrix, the case was registered under Section 366 A IPC. After securing the Accused and the victim/prosecutrix as per the mandatory procedure, the Investigation Officer had forwarded both the victim and the Accused to the medical examination where the Doctor in the Government Hospital examined the victim and the Accused and issued medical certificate. Also, as per the mandatory procedure, the statement of the victim was recorded under Section 164 of Cr.P.C., before the learned Judicial Magistrate, wherein the victim/prosecutrix had herself stated that she had, on her own volition, gone along with the Accused. She had clearly narrated the facts that she stayed in the friend's aunt's house of the Accused for two days. The Accused was not in the same residence under the same roof. Sensing trouble in the village, both of them returned. Many particulars are



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available in the statement of the Victim/Prosecutrix under Section 164 Cr.P.C. Subsequently, after securing the victim, because of the vested interest of the political outfit belonging to the Most Backward Class, they had insisted and based on their apprehension, the victim/prosecutrix exaggerated the case as though the Accused had sexual intercourse with her for two days, they cohabited in the house of the Accused. On securing the victim, she was aged more than 17 years and he was aged 21 years. In the complaint under Ex.P-1 preferred by the father of the victim/prosecutrix had stated that the victim/prosecutrix was aged 15 years. The father of the victim was running a mechanic shop in Dharmapuri. The learned Counsel for the Appellant invited the attention of this Court to the evidence of P.W-1/father of the victim. He had stated that she was admitted to the Girls High School, Bommidi, studying in 9<sup>th</sup> standard. Earlier, she studied in the School at Erode. The mother of the victim was examined as P.W-3. She had also corroborated the same evidence as stated by P.W-1. The Headmaster of the School where the victim studied, as per the prosecution case, the victim was studying 9<sup>th</sup> standard at the time of her disappearance from the village. By the time she was examined before the Court, she had dropped out of School on





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or even if they are in the Hospital, there would be birth certificates issued by the local bodies. But it was not furnished by the parents of the victim. Further, the learned Counsel for the Appellant submitted that the victim had studied earlier in Erode. When the child is admitted to the School, either a private or government School, the parents or guardian of the child shall furnish details regarding the date of birth. At the first instance, when the child is brought for admission in the School which is to be registered as important for the future of the child and in every entry to be registered. When the child leaves the School, it is the primary evidence regarding the date of birth which is registered at the first instance. Therefore, in the cross-examination of the Headmaster, when he was confronted regarding the given date of birth registered in the Government, he was unable to answer the same. If the Investigation Officer had conducted a fair investigation, he ought to have proceeded to the earlier School, where the child had studied up to 8<sup>th</sup> Standard at Erode. The victim was admitted to the 9<sup>th</sup> Standard in Bommidi Girls High School. Therefore, the register marked as evidence by the Headmaster of the Government Higher Secondary School, Bommidi does not have due weightage regarding the age of the victim herein in this



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case. Further, when the victim was secured by the Police and she was subjected to medical examination, the Doctor had advised examination by a Dentist to determine the correct age of the victim. The Investigation Officer had wantonly not taken the victim for dental examination to determine the age of the victim on a scientific basis. Therefore, the age stated by the complainant's father P.W-1 as 15 years is not true. It is made only with an ulterior motive to bring this case under the POCSO Act and punish the Accused. The learned Counsel for the Appellant also invited the attention of this Court to the reported ruling of this Court in ***Crl.O.P.No.232 of 2021 dated 27.01.2021 in the case of Vijayalakshmi and another Vs. State Rep. By Inspector of Police and another reported in (2021) 2 CTC 191*** wherein love affairs between teenagers and those involving teenagers and men, who just crossed teenage. Therefore, the learned Judge had cautioned the State to consider relaxation in cases of this nature like love affairs involving teenagers. This case attracts the said guidelines.

8. The learned Counsel for the Appellant invited the attention of this Court to the reported decision of this Court in Crl.A.No.490 of 2018



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dated 26.04.2019 in the case of Sabari Vs. Inspector of Police and others reported in 2019 (3) MLJ (Cri) 110 wherein the learned Judge had directed the State to conduct seminars and sensitization programmes in Schools. So that, the teenagers do not get into trouble in love affairs which may attract the Provision of POCSO Act which will result in losing his/her career. In the light of two judgments, the learned Counsel for the Appellant sought to set aside the conviction of the Accused by the learned Sessions Judge, Special Court for exclusive trial of cases arising out of POCSO Act. The learned Counsel for the Appellant submitted that while framing of charges, the learned Sessions Judge, Special Court for POCSO cases had discharged the Accused from the offence under Section 366 of IPC. This was done with an ulterior motive to convict the Accused 2 to 4. The learned Counsel for the Appellant invited the attention of this Court to the deposition of the paternal grandmother of the victim as P.W-5, in her evidence, she stated that her grand-daughter after being secured by the Police in the Police Station when her grand-daughter looked at her she did not look her in the eyes. It gives presumption to the Court that there was intolerance, based on the Most Backward Class communal leaders prevailing upon the family members



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not to interact with people belonging to other communities, which gives such animosity. Also, the learned Counsel for the Appellant invited the attention of this Court to the cross-examination of the Headmaster of the School where the victim studied and the cross-examination of the Police Officials. Based on the answers of the victim in the cross-examination, the learned Counsel for the Appellant invited the attention of this Court to the Court can draw adverse inference and communal tension in Dharmapuri District between the members of the Most Backward Class and Scheduled Caste. Here in this case, where the communal politics played the role of separating lovers who were involved in their teenage. It is the submission of the learned Counsel for the Appellant that on the date of the alleged occurrence, the victim had crossed the age of majority, but only to invoke POCSO, the father of the victim had given a complaint as though she was aged only 15 years. It is not so. Therefore, the learned Counsel for the Appellant seeks to set aside the judgment of conviction imposed against A-1 by the learned Sessions Judge.

9. The learned Additional Public Prosecutor submitted that the argument of the learned Counsel for the Appellant is to be rejected as it is



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based on presumption. There is evidence before the Court through the victim that she had been subjected to penetrative sexual assault by the Accused. It is not a case that the victim was tortured by anyone. The Headmaster of the School had given evidence based on the register maintained by the School. As per the Headmaster's evidence, the victim was aged 17 years as she was a minor and she has not attained majority. The submission of the learned Counsel for the Appellant that the teenagers involved in love, cannot be accepted.

10. The learned Additional Public Prosecutor invited the attention of this Court to the medical evidence of the Doctor who examined the victim. There is sufficient proof that the victim is a minor and not a major. It is true that the victim is aged 17 years on the date of the alleged occurrence. The Appellant is aged 21 years. Still, the Provisions of the POCSO Act is attracted.

11. The learned Additional Public Prosecutor invited the attention of this Court to Ex.P-11 marked through the Doctor regarding medical



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examination of the victim. The Doctor had clearly stated that the victim was subjected to sexual intercourse. Therefore, the offence attracting POCSO Act is made out. Further, the learned Additional Public Prosecutor submitted that the Accused 2 to 5 were acquitted based on the appreciation of evidence. Therefore, the submission of the learned Counsel for the Appellant that the Appellant was convicted only based on communal colour will not hold good. The Court had conducted the fair trial and based on proper appreciation of evidence, the Accused had been convicted. The judgment of conviction and sentence of imprisonment passed by the learned Sessions Judge, Special Court for exclusive trial of the POCSO cases is a well-reasoned judgment, does not warrant interference. This appeal lacks merits and is to be dismissed.

***Point for consideration:***

***Whether the Judgment of conviction and sentence of imprisonment imposed by the learned Sessions Judge, Special Court for exclusive trial of POCSO cases, Dharmapuri in Spl.S.C.No.15 of 2016 dated 21.12.2016 is sustainable?***



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12. Heard the learned Counsel for the Appellant and the learned Additional Public Prosecutor for the Respondent/State. Perused the depositions of P.W-1 to P.W-18, perused the documents under Ex.P-1 to Ex.P-16 and the Judgment passed by the learned Sessions Judge, Special Court for exclusive trial of POCSO cases, Dharmapuri.

13. On consideration of the rival submissions and on perusal of the Judgment, it is found that the Accused 2 to 5 had been acquitted in all the charges. Originally, the charges were framed under Sections 363 and 366 of IPC and Sections 5 and 6 of POCSO Act. At the stage of framing charges, the charge under Section 366 of IPC was dropped and only Section 363 of IPC was framed. In the light of the evidence of P.W-1-victim, P.W-2- father of the victim, P.W-3-mother of the victim, P.W-4-aunt of the victim, P.W-5-grandmother of the victim, P.W-16-Headmaster of the School, P.W-17- Assistant Headmaster of School, the learned Sessions Judge, Special Court for exclusive trial of POCSO cases had arrived at a conclusion that the offence under Sections 5 (1) r/w. 6 of POCSO Act is proved. By her Judgment dated 21.12.2016, had convicted the Accused -1 alone for the offences under Sections 5 (1) r/w.



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6 of POCSO Act whereas the Accused 2 to 5 were acquitted. On perusal of the cross-examination, the circumstances leading to force the Investigation Officer to invoke the offence under POCSO Act is found reasonable as there are materials available to the Court. From the evidence of P.W-1 to P.W-8, they had admitted that there was a Panchayat, it denotes that the persons does not have any role in the administration of justice or administration of law and order had prevailed upon the Police Officials in interfering in a simple love affair. The Police Officer/Investigation Officer is presumed to have acted upon such advice. That is why, he was unable to explain why he had not subjected the victim to a Dental examination to determine the age of the victim. He had clearly admitted in his cross-examination that he had not collected birth certificate of the victim. The School admission register cannot be ignored. The Investigation Officer is not a person, who has less education or some illiterate. He has sufficient knowledge and is world wise. Therefore, he is aware of the legal issues concerning this case. Also, as the Investigation Officer, he can take legal advice from the Additional Public Prosecutor and the learned Judicial Magistrate concerned or the Assistant Director of Prosecution who is in -charge of Prosecution in the



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entire District or the Public Prosecutor attached to the Court concerned is the Special Court for exclusive trial of cases under POCSO Act or the legal Advisor of the Superintendent of Police in the District for guidance. From the cross-examination of P.W-17 and P.W-18, it is found that both of them had not acted fairly in the investigation. That is why, they were unable to produce the materials fairly before the Court including the document regarding the date of birth of the victim.

14. In the light of the wanton conduct of the Investigation Officer not to get the opinion from the Dentist who determines the scientific determination of age of the victim goes to the root of the case. Particularly, Ex.P-11- a copy of the accident register where the victim was examined by the duty Doctor. P.W-14 had issued Ex.P-11 wherein she was advised to get the opinion from the Dentist regarding the age of the victim. In spite of medical advice by P.W-14 to get the opinion of the Dentist, the Investigation Officer had not obtained.

15. Further, as per the evidence of P.W-16 the Headmaster of the School where the victim studied at the time of the alleged occurrence,



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P.W-16 had in his evidence stated that she had issued Ex.P-13, the admission extract from the Register maintained by the School in which the date of birth of the victim was mentioned as 08.04.2000. She was admitted to the School for the academic year 2015-2016 and the admission number is 4120, regarding the proof of the fact that the victim was a minor on the date of occurrence. He was subjected to the cross-examination. In the cross-examination, he had admitted that he had not filled up the details in the Register. It was maintained by the Assistant Headmaster of the School and therefore, as per the entries in the register which is here, the age of the victim/prosecutrix is 17 years.

16. The submission of the learned Counsel for the Appellant that the defence of the Accused is that the Accused and the victim were in love. The victim went on her own volition with the Accused on the date of occurrence. Immediately after the victim was secured, the Investigation Officer in this case had obtained the statement of the victim under Section 164 Cr.P.C., before the learned Judicial Magistrate. As per the statement of the victim, she had gone with the Accused on her own volition. She stayed in the house of the aunt of the friend of the



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Accused/A-5. As per the statement of the victim under Section 164 Cr.P.C., she stayed in the house of the aunt only for two days. In those two days, the Accused had not stayed with her and A-1 and A-5 went on search for a job. By Sunday, she was sleeping in the house of the aunt of A-5, a woman Police Officer came to the residence and she was waken up by the aunt of A-5. The woman Police Officer insisted her to accompany them and they were taken to the Respondent Police Station, Dharmapuri from there. At the earliest point of time, she had not stated anything incriminating about the Accused/A-1 with whom she had gone on her own volition. Subsequently, due to the pressure exerted by the political outfits having affinity to the Most Backward Class community, the elders in the village prevailed upon the victim to incriminate the Accused/A-1. Therefore, in the course of the investigation, she had stated materials in support of her father's complaint. Based on which, the Accused-1 was charged with the Provisions of POCSO Act and the Prevention of Child Marriage Act.

17. The learned Counsel for the Appellant also invited the attention



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of this Court to the charge sheet. Originally there were five charges framed by the learned Sessions Judge, Special Court for POCSO Act cases. The first charge is under Section 366 (A) of IPC, second charge is under Section 366 (A) of IPC r/w Section 34 of IPC, third charge is under Section 9 of Prohibition of Child Marriage Act, fourth charge is under Section 10 of Prohibition of Child Marriage Act and fifth charge is under Section 5 (l) r/w. 6 of POCSO Act.

18. It is the submission of the learned Counsel for the Appellant that the Court had framed the charge for 366, 366 (A) r/w. 34 of IPC but not framed charge under Section 363 of IPC. The learned Sessions Judge, Special Court for POCSO Act, Dharmapuri had acquitted the Accused 2 to 5 from the charges under Section 366 (A) r/w. 34 of IPC, Sections 9 and 10 of the Prohibition of Child Marriage Act and Section 5 r/w. 6 POCSO Act and had convicted the Accused 1 alone for the offence under Section 5(l) r/w. 6 of POCSO Act and Section 363 of IPC. It is the contention of the learned Counsel for the Appellant that it is the case of the Accused and the victim were in love. The Accused was aged 21 on the date of occurrence. As per the Complaint of P.W-2, the father of the



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victim stated that she was aged 15 years on the date of alleged occurrence. As per the evidence of P.W-16, the Headmaster of the School stated that the victim/Prosecutrix was aged 17 years. Combined with the statement of the victim under Section 164 of Cr.P.C., made to the learned Judicial Magistrate and the fact that instead of medical advice that the victim should be subjected to dentist examination to determine the age as per scientific evidence, the Investigation Officer not following it, had given undertaking that if they had done it, the real age of the victim comes to light, thereby the Accused will not be convicted under the Charge of POCSO Act. Since the victim and Accused belong to different community, she belongs to the Most Backward Class as though its political outfit influenced the investigation and the Appellant belonging to Scheduled Caste Community, so that minimum punishment of 20 years is attracted. It is a simple case of love affair. Therefore, the girl aged 17 years and boy aged 21 years having eloped. The case was invoked under the Provisions of POCSO Act just because it attracts not lesser 20 years of punishment.

19. The learned Counsel for the Appellant invited the attention of



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this Court to the observation made by this Court in Crl.A.No.490 of 2018, in its judgment, the observation made by this Court in Crl.O.P.No.232 of 2021 and the suggestion of the learned Single Judge of this Court to avoid punishing teenage lovers, early youth and teenagers under the POCSO Act, thereby putting their lives in peril and therefore this Act requires some amendment. Considering the youngsters and the circumstances, under which they commit acts due to effect of hormones in the teenage and early youth, by which many of them will spoil their lives ending in jail sentences. Therefore, the learned Counsel for the Appellant submitted that this is not a case that comes under POCSO Act, but was invoked suppressing the fact by the influence of the political outfits having affinity to the Most Backward Class. The Investigation Officer had by their conduct surrendered to such political pressure and had failed to act fairly in the investigation. Had it been a fair investigation, they should have taken the original age of the victim from the School, where she was admitted, which record shows the details of the date of birth of the victim. Along with that, the wanton indifference or carelessness of the Investigation Officer to get the Dentist's opinion to



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determine the correct age as per the scientific evidence having not done so. The Court shall draw adverse inference in the facts and circumstances as gathered from the records. Under those circumstances, in the light of the reported ruling of this Court in Crl.O.P.No.232 of 2021 and Crl.A.No.490 of 2018, the learned Counsel for the Appellant seeks to set aside the Judgment of conviction recorded by the learned Sessions Judge, Special Court for exclusive trial of cases under POCSO Act and to set the Appellant free.

20. The learned Additional Public Prosecutor submitted that the reported ruling of the Hon'ble High Court, Delhi, the School certificate by the Headmaster of the School is a valuable evidence regarding the age of the victim which is to be considered as per the Juvenile Justice Care and Protection of Children Act. Therefore, the age as per Ex.P.13 and Ex.P-14 of the victim is 17 years. Still she is a minor and therefore the age of consent is not attracted and the Provisions of POCSO Act is very much applicable. The submission of the learned Counsel for the Appellant is to be rejected and the judgment of conviction and sentence of imprisonment imposed on the Accused is to be confirmed as the



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learned Judge considered all the materials available before the trial Court.

21. In the light of circumstances, the submission of the learned Additional Public Prosecutor relying on the reported ruling of the Hon'ble Delhi High Court will not be applicable to the facts of this case. Here, the father of the victim was examined as P.W-2 and the mother of the victim as P.W-3. Wantonly they had suppressed the fact that the daughter is a major. They had given a complaint stating that their daughter was aged 15 on the date of alleged occurrence. In the light of the fact that the victim was earlier studying in Erode and now transferred and been admitted to a School in Bommidi, Dharmapuri District at the stage of 9<sup>th</sup> standard. While undergoing the studies, she left her home. The fact of the case indicates that it was a love affair. As rightly pointed out by the learned Counsel for the Appellant at the earliest opportunity when the victim was secured and her statement recorded under Section 164 Cr.P.C., indicated that there was no cohabitation in two days. She had stated that she had accompanied the Accused to the residence of the aunt of A-5 at Coimbatore. Immediately on reaching the house, the



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Accused -1 had tied Thali in front of Pooja room in the house of the Aunt of A-5 stating that he had married her. A-5 and A-1 had left the house to search for a job. The victim was sleeping in the house of Aunt of A-5 and she was woken up by the aunt of A-5 stating Woman Police Officers were searching for the residence. On waking up, the victim was enquired by the two Police Officers in the residence of the aunt of A-5 whereupon, she informed the name. Immediately they secured her and took her to the Police Station at Coimbatore. Then, from there she was taken to the Bommidi Police Station in Dharmapuri District. The evidence of P.W-5, paternal grandmother of the victim indicates that she has an aversion towards her grand-daughter accompanying the Accused and eloped with him. She had in her evidence stated that she avoided to look at the face of the grand-daughter out of aversion.

22. On perusal of the judgment of this Court in Crl.A.No.490 of 2018 and Crl.O.P.No.232 of 2021, it is found that their advice to the State and the parties concerned is regarding the teenage lovers and persons who are in their early youth having love affair with teenagers and to protect such kind of relationship, instead of imposing harsh punishment



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under POCSO Act. Here, the intention of the Accused to marry the girl is found to be true, but at the insistence of the village Panchayat, the investigation regarding the other Accused were left out otherwise, if the original case is to be prosecuted then the aunt of A-5 also to be arrayed as Accused in whose house the marriage was alleged to have taken place where Accused 1 is stated to have tied Thali on the neck of the victim. This is a case of embellishment. The Court can draw adverse inference under Section 114 of the Indian Evidence Act in the circumstances as gathered from the records. The Investigation Officer in this case was unable to explain why they did not get dentist's opinion, in their cross-examination. They were not able to answer why they failed to get the dentist's opinion. Apart from that, as per the evidence of P.W-16, the victim was aged 17 years. As per the School records where the victim was studied on the date of occurrence, the Headmaster was unable to answer where the entries were made with regard to the first time the child was admitted to the primary School which is a valuable document and those details were not found. The Investigation Officers in this case P.W-17 and P.W-18, in their cross-examination, are unable to explain the reasons why they could not subject the victim to determine the age based



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on the opinion of the dentist and why they had not taken or collected the School register extract where the child/victim was admitted at the primary level first standard. Under those circumstances, creates a cloud regarding the defence of the Accused -1. These circumstances were created by the prosecution. The circumstances under which the case was registered and the case was investigated. Apart from that, there is evidence through the evidence of Prosecution Witnesses that the Panchayats were held in the Villages, where the occurrence had taken place.

23. In the light of the above circumstances and in the light of the reported decisions of this Court in Crl.A.No.490 of 2018 and Crl.O.P.No.232 of 2021, the facts of the case that it is a bordering love affair with the Accused, who is in his early youth and the victim who is in the late teens. There is clear suppression of age by P.W-1. When P.W-14- Dr.Madeshwari advised to get the Dentist's opinion, the Investigation Officer did not carry out. Also, the first time, when the child is admitted to the School, the details of the date of birth is available from that



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register but it was not taken by the Investigation Officers creates doubt.

Apart from that, at the initial stage of the investigation, when the victim is produced before the learned Judicial Magistrate for recording the statement under Section 164 Cr.P.C., and there is no statement regarding incriminating the Accused that the Accused had sexual intercourse with her. Under those circumstances, the Provisions of POCSO Act, the charge framed under Section 363 IPC and the charge framed under Section 5 (I) r/w. 6 of POCSO Act are considered to be not attracted. Therefore, the finding of the learned Sessions Judge, Special Court for exclusive trial of POCSO Act is set aside.

In the light of the above, the point for consideration is answered in favour of the Accused and against the Respondent. The Judgment passed by the learned Sessions Judge, Dharmapuri in Spl. SC.No.15 of 2016 dated 21.12.2016 is to be set aside.

In the result, this ***Criminal Appeal is allowed.*** The Judgment passed by the learned Sessions Judge, Dharmapuri in Spl. SC.No.15 of 2016 dated 21.12.2016 is set aside.



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The bail bond executed by the Accused/Appellant is ordered to be cancelled. The fine imposed on the Accused are to be refunded.

**17.04.2024**

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Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order



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1. The Sessions Judge, Dharmapuri
2. The Public Prosecutor,  
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**SATHI KUMAR SUKUMARA KURUP, J.**

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**Pre-delivery Judgment made in**  
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