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Crl.A.No.42 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.10.2025

PRONOUNCED ON : 07.11.2025

CORAM:

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

Crl.A.No.42 of 2022

Sathish Kumar
S/o.Subramaniam,
74, South Street,
Dheevalur Post,
Thittakudi Taluk,
Cuddalore - 606 110.

...

Appellant / A-1

versus

The Inspector of Police,
All Women Police Station,
Cuddalore Main Road,
Virudhachalam,
Cuddalore District - 606 001.
(Crime No.11 of 2016)

...

Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C. against the judgment dated 30.09.2021 in Spl.S.C.No.93 of 2019 on the file of the learned Sessions Judge, Special Court (POCSO Cases), Cuddalore.

For Appellant : Mr.S.Varun
for Mr.S.Manuraj



Crl.A.No.42 of 2022

For Respondent : Mr.J.Subbiah
Government Advocate (Crl. Side)

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JUDGMENT

This Criminal Appeal has been preferred against the judgment dated 30.09.2021 in Spl.S.C.No.93 of 2019 on the file of the learned Sessions Judge, Special Court (POCSO Cases), Cuddalore.

2. The appellant was convicted by the trial court and sentenced as detailed below:-

Accused	Section of law	Sentence
<i>A-1</i>	<i>5(l) r/w Section 6 of POCSO Act</i>	<i>Rigorous imprisonment for 10 years and to pay a fine of Rs.2,000/-, in default to undergo simple imprisonment for 3 months</i>

3. According to the prosecution, the victim/PW1's mother died at early age and as such, she was living with her maternal grandparents. The first accused had contacted the victim over phone and informed her that he was cheated and failed in love. He started to call her repeatedly for solace and later informed PW1 that he was in love with her. Since the first accused



threatened that he would commit suicide, PW1 also fall in love with the first accused and they started to meet very often and chat in isolation.

4. On coming to know about the same, PW1 was reprimanded by her family, due to which, on 05.06.2013, she attempted to commit suicide and when the family members called the first accused and questioned him, he said that he would marry her. PW1 continued to chat with the first accused. On 15.06.2013, when PW1 was in her grandmother's house, the first accused came and on noticing that she was alone, enticed her and without her consent, even when she resisted, the first accused forcibly had a sexual relationship with her. The first accused promised to marry PW1 and asked her not to reveal it to anyone.

5. Even thereafter, when both PW1 and the first accused were in Chennai, they had roamed around several places and the first accused had sexual relationship with PW1 on several instances and the last of such relationship was on 05.05.2016. Later, when the first accused stopped talking with PW1, she informed the same to her grandparents and relatives. PW1 along with her relatives and villagers went to the first accused's house



Crl.A.No.42 of 2022

on 27.05.2016 and questioned the first accused. The accused 2 to 7 had shouted at PW1 with obscene words, humiliated and threatened to kill her, which resulted in lodging of the complaint.

6. On receipt of Ex.P1, the Inspector of Police/PW8 registered FIR/Ex.P5 for offences under Sections 294(b), 354, 506(i) and 376 IPC against the accused 1 to 7. PW8 prepared the Observation Mahazar/Ex.P2 and a rough sketch/Ex.P6 and sent PW1 to the Doctor/PW6 for medical examination. The first accused was examined by the Doctor/PW7 and on completion of the investigation, PW8 filed the final report.

7. The trial court, on taking the case on file, issued summons, complied with the provisions of Section 207 of Cr.P.C. and framed the charges under Sections 417, 376, 506(ii) IPC as against the first accused, Section 294(b) IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002 against the accused 2, 5, 6 & 7 and Section 506(ii) IPC against the accused 3 & 4. When questioned, the accused pleaded not guilty and stood trial. In order to prove the charges, the prosecution examined 8 witnesses as PW1 to PW8 and marked Ex.P1 to



Ex.P11.

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8. When the accused were questioned under Section 313 Cr.P.C., about the incriminating materials available they denied the same as false. However, neither they examined any witness nor did they mark any documents. The trial court, after conclusion of the arguments, finding that as per evidence available PW1 was a child during the occurrence, altered the charges under Section 216 Cr.P.C.

9. The charges were altered by including the offence under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as “the POCSO Act”) as against the first accused. When again questioned on the altered charge, he pleaded not guilty. PW1 was recalled and examined and Ex.P8 and Ex.P9 were marked. The Headmistress of the school was examined as PW9 and Ex.P10, Ex.P11 were marked. Again when questioned on the incriminating materials on the altered charge, the first accused denied the same but had not let in any evidence.

10. The trial court considering the evidences and arguments,



Crl.A.No.42 of 2022

concluded that the charge under the POCSO Act against the first accused stood proved and thereby convicted the first accused and imposed sentence as stated supra in Paragraph 2, but acquitted the first accused for the offences under Sections 417 and 506(ii) IPC. The accused 2 to 7 were acquitted of all the charges. Challenging the conviction and sentence, the first accused has preferred the above appeal.

11. Mr.S.Varun, learned counsel appearing for the appellant made the following submissions:-

(i) There is a material irregularity in the alteration of charge made by the trial court. The charge has been altered by invoking Section 6 of the POCSO Act on 12.04.2019. The alteration is based on the birth certificate and mark certificate, but whereas these evidences were not available before the court on the date of alteration. The two certificates were only produced and marked on 20.11.2019 as Ex.P8 and Ex.P9. When alteration could be done only based on the evidence available on record, the alteration is flawed in the absence of evidence before the court.



(ii) The very invocation of the POCSO Act against the first accused itself is not sustainable, as the alleged occurrence was in August 2012, when the POCSO Act was not in force. When the POCSO Act was notified and came into effect only on 14.11.2012, the charge under Section 6 of the POCSO Act against the first accused is not maintainable, as it was not an offence in August 2012.

(iii) The trial court had altered the charge by invoking Section 6 of the POCSO Act, which is only the punishment section and no charging Section 5 has been invoked against the first accused. Further, the trial court had convicted the first accused under Section 5(1) r/w Section 6 of the POCSO Act. When the first accused was not charged under Section 5(1) of the POCSO Act, the conviction imposed is unsustainable, as the first accused is prejudiced, as he was not put on notice and provided opportunity on the exact charge against him.



(iv) There is gross inconsistency in the statement of PW1 in Ex.P1, Ex.P5 and testimony before the court. The evidence is not clear and cogent. Even in respect of the time of occurrence, there are inconsistencies and discrepancies which cripple the very foundation of the charge and as such the evidence has to be disbelieved.

(v) The trial court ignored the evidence of the Doctor/PW6 and the medical examination report/Ex.P3, which establishes the consensual relationship even according to PW1.

(vi) The charge of promise to marry has not been established by any evidence and the prolonged relationship for more than 4 to 5 years would demolish the allegation of forcible sexual relationship or promise to marry.

(vii) The learned counsel in support of his contentions relied on the decisions of the Hon'ble Supreme Court in the case of



Mahesh Damu Khare Vs. The State of Maharashtra reported in ***2024 INSC 897*** and in the case of ***Biswajyoti Chatterjee Vs. State of West Bengal*** reported in ***2025 INSC 458***.

12. Mr.J.Subbiah, learned Government Advocate (Crl. Side) appearing for the State contended that, the evidence of PW1 and the villager/PW4 clearly revealed that the victim was a child on the date of the alleged occurrence and therefore, the trial court had rightly altered the charge. PW1's evidence, coupled with PW2 to PW5, establishes the relationship of the first accused and his promise made to marry. The first accused had sexual relationship with the victim/PW1, on the false pretext of marriage and cheated her.

13. It is his contention that even if the occurrence had happened in August 2012, still when the first accused was charged under Section 376 IPC, the conviction and sentence imposed on him could be sustained, as always the sentence imposed could be for a minor offence when the first accused was charged for an offence prescribing higher punishment.

14. Heard the rival submissions and gave my anxious consideration



Crl.A.No.42 of 2022

to the submissions and documents available on record.

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15. The victim/PW1 due to the death of her mother at an early age had been brought up by her maternal grandparents. The victim got introduced with the first accused and admittedly she was in love with him. PW1 and the first accused have met on several instances in isolation and they used to chat and spend time together.

16. As per the complaint, when the family came to know about the relationship of PW1 with the first accused, she was scolded and as such she attempted to commit suicide on 05.06.2013. The family members had sorted out the issues and PW1 continued to chat with the first accused. On 15.06.2013, when PW1 was alone in her grandmother's house, at 11.00 p.m. the first accused came, enticed her and forcibly had a sexual relationship. He promised to marry her and also requested not to divulge it to anyone. However as per the evidence of PW1, the occurrence happened in August 2012. The first accused on that day had phone conversation with her till 3.00 a.m. and thereafter he came to the house at 5.00 a.m. The first accused wanted to have sexual relationship but even when PW1 refused, the first



accused had a forcible sexual relationship.

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17. PW1 categorically admitted that after the occurrence, the first accused has gone to Chennai for studies and after one year she also went to Chennai for job. After coming to Chennai also, the first accused had been in sexual relationship with PW1 on several instances at several places and the last of such relationship was on 05.05.2016. When the first accused stopped conversation with PW1, she along with her relatives and some villagers went and questioned, where they were ill-treated and PW1 was threatened for her life.

18. According to Ex.P1 and Ex.P5, the first sexual relationship with the accused was on 15.06.2013. But as per the evidence of PW1, the occurrence was in the month of August 2012. However as per the charges framed, the occurrence was on 10.06.2013 and 15.06.2013. When it is no one's case that the first accused had sexual relationship with PW1 on 10.06.2013, the charges have been framed by including the date of occurrence as 10.06.2013, along with 15.06.2013. Neither in the complaint/Ex.P1 nor in the statement of PW1, the alleged occurrence was stated as 10.06.2013 and even as per the evidence of PW1, the occurrence



Crl.A.No.42 of 2022

was on 15.06.2013 and nothing is stated about any occurrence on 10.06.2013. Admittedly, the first accused has left to Chennai after the occurrence and PW1 also went there after one year and they had continued the relationship. As such, regarding the date of occurrence, there are two different versions in the complaint/Ex.P1 and evidence of PW1, first stating as 15.06.2013 and then as August 2012.

19. PW1 in her complaint/Ex.P1, has mentioned the date of occurrence as 15.06.2013. As per the birth certificate/Ex.P8 and the 10th standard school certificate/Ex.P9, PW1 was born on 15.06.1995. Therefore, on the date of the alleged occurrence i.e. on 15.06.2013, the victim had completed 18 years and she was not a child within the meaning of Section 2(d) of the POCSO Act. As such, the alteration of charges made by invoking the provisions of the POCSO Act, is unsustainable as PW1 has completed 18 years on 15.06.2013 and the Act cannot be made applicable.

20. When PW1 in her complaint/Ex.P1 is clear and specific about the occurrence on 15.06.2013 at 11.00 p.m at her grandmother's house, however the testimony of PW1 is inconsistent and completely a new version is stated that the occurrence was in August 2012. As per PW1, when she was



Crl.A.No.42 of 2022

alone, the first accused had phone conversation till 3.00 a.m. and he came to her house at 5.00 a.m and was talking in the house till 10.00 a.m. Her uncle came and even when he was in the house, the first accused had sexual relationship. PW1 though initially consented for the sexual relationship, later resisted but the first accused had forcible relationship. Later her uncle left the house after her grandmother came at 5.00 p.m. PW1 admits that she has not said any thing about the relationship in August 2012 either in the complaint or in her statement. However, the trial court relying on the evidence of PW1, had taken the date of occurrence as August 2012 and finding that PW1 has not completed 18 years in August 2012, convicted the appellant under the POCSO Act.

21. Even if the occurrence is taken to be in August 2012, the conviction and sentence imposed on the appellant under the POCSO Act is not sustainable, as the Act was not in force in August 2012. The POCSO Act was notified and effected only from 14.11.2012 and if the occurrence is taken to be committed in August 2012, the same would not be an offence under the provisions of the POCSO Act during that time.



Crl.A.No.42 of 2022

22. As per Article 20(1) of the Constitution of India, no person shall be convicted of an offence except for violation of a law in force at the time of commission of the act charged as an offence. When the POCSO Act itself was notified and came into effect only on 14.11.2012, the decision of the trial court convicting the appellant under Section 5(1) r/w Section 6 of the POCSO Act, holding that the alleged occurrence was in August 2012, is unconstitutional. Therefore, the conviction and sentence imposed on the first accused under the provisions of the POCSO Act cannot be sustained. In this regard, it is useful to refer to the decision of this Court in the case of ***M.Loganathan Vs. State, rep. By Inspector of Police, Kadathur Police Station***, reported in (2016) 2 MWN (Cri) 572 (DB). Relevant portion is extracted hereunder for easy reference;

“26. Article 20(1) of the Consttution of India, mandates that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. In the instant case, admittedly, the occurrence was on 28.09.2012 whereas, the POCSO Act, came into force only with effect from 14.11.2012.



Crl.A.No.42 of 2022

Thus, as on the date of the alleged occurrence, the POCSO Act was not in force and therefore, the conviction of the appellant under Section 4 of the POCSO Act, is unconstitutional as it violates Article 20(1) of the Constitution of India, which has been guaranteed as a fundamental right. Therefore, the conviction of the appellant for offence under Section 4 of the POCSO Act deserves to be set aside.”

23. As such, when admittedly the relationship between PW1 and the first accused continued in Chennai which is only after one year of the occurrence, going by both the dates in the complaint/Ex.P1 and PW1 evidence as August 2012 or 15.06.2013, the conviction and sentence imposed under the POCSO Act cannot be sustained. Therefore, the very alteration of charge by invoking Section 6 of the POCSO Act and the conviction and sentence imposed against the first accused under Section 5(1) r/w Section 6 of the POCSO Act are erroneous, unconstitutional and is liable to be set aside. In view of the findings arrived at, the other arguments made in this regard may not arise for consideration.

24. The trial court, in view of the conviction and sentence under the provisions of the POCSO Act, has not imposed any separate sentence under



Crl.A.No.42 of 2022

Section 376 IPC and acquitted the first accused under Section 417 IPC. In view of the findings arrived at, this court would now analyse the materials in respect of the charge under Sections 376 and 417 IPC.

25. Even from the complaint of PW1 and her evidence, there is an inconsistent statement in respect of the alleged occurrence. PW1 states that she consented for the sexual relationship and on the other hand also says that the first accused had forceful relationship. PW1 also admitted that in her complaint she had not stated that prior to 15.06.2013 there had been any sexual relationship with the first accused and also has categorically stated that she had sexual relationship with the first accused from the year 2013 to 05.05.2016.

26. There had been no complaint of any forcible sexual assault by the first accused with the victim at any point of time. PW1 had been in continuous relationship with the first accused for a period of nearly 4 years. Further as per her evidence, they had sexual relationship in different places



Crl.A.No.42 of 2022

and they continued their relationship even after they had migrated to Chennai for work. The long period of relationship, the absence of any complaint at any point of time, the categorical evidence of PW1, Doctor/PW6 and the medical examination report/Ex.P3 would make it evident that the relationship has been consensual.

27. In such circumstances, the ingredients of Section 376 IPC do not get attracted. Further to constitute an offence under Section 417 IPC for having sexual relationship on the pretext of false promise to marry and thereby cheating, the alleged promise should be from the very inception. When nothing has been established that there had been an element of false promise from the inception for having sexual relationship on the pretext of marriage, the charge cannot be sustained.

28. The Hon'ble Supreme Court in the case of ***Mahesh Damu Khare Vs. The State of Maharashtra*** reported in ***2024 INSC 897*** held that the court has to be cautious, as in many cases the consensual relationships going on for prolonged period, upon turning sour, have been sought to be



criminalised by invoking criminal jurisprudence. Relevant portion is extracted hereunder for easy reference;

“22. In our view, if a man is Accused of having sexual relationship by making a false promise of marriage and if he is to be held criminally liable, any such physical relationship must be traceable directly to the false promise made and not qualified by other circumstances or consideration. A woman may have reasons to have physical relationship other than the promise of marriage made by the man, such as personal liking for the male partner without insisting upon formal marital ties. Thus, in a situation where physical relationship is maintained for a prolonged period knowingly by the woman, it cannot be said with certainty that the said physical relationship was purely because of the alleged promise made by the appellant to marry her. Thus, unless it can be shown that the physical relationship was purely because of the promise of marriage, thereby having a direct nexus with the physical relationship without being influenced by any other consideration, it cannot be said that there was vitiation of consent under misconception of fact.

23. It must also be clear that for a promise to be a false promise to amount to misconception of fact within the meaning



of Section 90 of Indian Penal Code, it must have been made from the very beginning with an intention to deceive the woman to persuade her to have a physical relationship. Therefore, if it is established that such consent was given under a misconception of fact, the said consent is vitiated and not a valid consent. In this regard we may refer to the case of “Deepak Gulati v. State of Haryana” MANU/SC/0546/2013 : 2013:INSC:346 : (2013) 7 SCC 675, in which it was held as follows:

“21. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the Accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the Accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the Accused, or where an Accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do



so. Such cases must be treated differently. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the Accused was mala fide, and that he had clandestine motives.”

24. Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the Accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The “failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term “misconception of fact”, the fact must have an immediate relevance”. Section 90 Indian Penal Code cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the Accused had never really intended to marry her.”

29. Further, the Hon’ble Supreme Court in the case of ***Biswajyoti Chatterjee Vs. State of West Bengal*** reported in **2025 INSC 458** held that in every consensual relationship, where a possibility of marriage may exist,



cannot be given a colour of a false pretext to marry, in the event of a fall out.

The relevant portion is extracted here under:-

“20. We find that there is a growing tendency of resorting to initiation of criminal proceedings when relationships turn sour. Every consensual relationship, where a possibility of marriage may exist, cannot be given a colour of a false pretext to marry, in the event of a fall out. It is such lis that amounts to an abuse of process of law, and it is under such circumstances, that we deem fit to terminate the proceedings at the stage of charge itself.”

30. Even in the instant case, from the evidence of PW1, it is clear that there had been a consensual relationship for a long period of 4 years. The alleged occurrence was on 15.06.2013, on which date PW1 was a major and admittedly even after the first accused went to Chennai, PW1 also migrated to Chennai for work, where they had continued their relationship for a long period. Suddenly in the year 2016, the complaint has been lodged alleging having forcible sexual relationship on the false pretext of marriage. When the relationship has been consensual, the same is with the consent of



Crl.A.No.42 of 2022

PW1 and not against her will. There had been no complaint of any forceful relationship at any point of time in the four years. There is no material to establish that the accused had relationship by making false promise to marry even at the inception. In such circumstances, there is no material available or is there any possibility to convict the first accused under Sections 376 and 417 IPC.

31. In view of the above findings, the Criminal Appeal is ***allowed*** and the conviction and sentence imposed on the appellant by the learned Sessions Judge, Special Court (POCSO Cases), Cuddalore, in Spl.S.C.No.93 of 2019 dated 30.09.2021 is 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 cancelled. Even though the appellant has been acquitted, in view of the facts and circumstances of the present case, the victim compensation paid to PW1 need not be disturbed.

07.11.2025

Speaking order

Index : Yes

Neutral Citation : Yes



Crl.A.No.42 of 2022

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To

- 1.The Sessions Judge,
Special Court (POCSO Cases),
Cuddalore.
- 2.The Inspector of Police,
All Women Police Station,
Cuddalore Main Road,
Virudhachalam,
Cuddalore District - 606 001.
- 3.The Public Prosecutor,
High Court, Madras.



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Crl.A.No.42 of 2022

G.ARUL MURUGAN, J.

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Pre-Delivery Judgment made in
Crl.A.No.42 of 2022

07.11.2025