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Crl.A.No.71 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.04.2025
PRONOUNCED ON : 10.09.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.71 of 2022

Nagamuthu

... Appellant

Vs.

The Inspector of Police,
Podhanur Police Station,
Coimbatore.
(Crime No.551 of 2019)

... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., to call for the records and set aside the judgment passed by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore by judgment dated 29.11.2021 in Spl.C.C.No,47 of 2020 and acquit the appellant/accused from the offence under Section 5(1)(i)(ii) of POCSO Act.

For Appellant : Mr.T.N.Murali Moghan

For Respondent : Mr.L.Baskaran
Government Advocate (Crl. Side)



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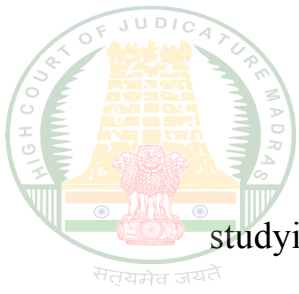
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JUDGMENT

This Criminal Appeal filed to set aside the impugned judgment in Spl.C.C.No,47 of 2020 dated 29.11.2021 by the file of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore.

2.The appellant/accused in Spl.C.C.No,47 of 2020 was convicted by the Trial Court by judgment dated 29.11.2021 and sentenced him to undergo twenty years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default to undergo two years rigorous imprisonment for the offence under section 5(1)(j)(ii) r/w. 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) and to pay a sum of Rs.10,000/- to the defacto complainant/P.W.1 as compensation.

3.The brief facts of the case is that the victim, a minor girl born on 09.03.2001, not completed 18 years of age, residing with her mother and two brothers. Her father died nine years before. When the victim girl was



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studying 10th Standard and when she was alone at her home, the appellant, a neighbour developed friendship with her and used to visit her. Taking advantage of the loneliness, the appellant used to be very close with her. On 15.08.2018 at about 2.00 p.m., when the victim girl was alone at her house, the appellant came to the house of the victim, undressed her, when the victim girl got scared and resisted, he promised her that he would marry her and compelled the victim girl and committed penetrative sexual assault. Thereafter, the appellant committed penetrative sexual assault on several occasions. The victim girl after some months missed her periods and was also looking sick. Her mother took the victim girl to the Hospital where victim found to be pregnant. When the appellant was approached, he initially refused but later both the families agreed and marriage was held between the appellant and the victim girl on 05.02.2019 at Puliyankulam, Mariamman Temple. After marriage, when the victim girl went to the appellant's house, the appellant, his mother and his family members abused the victim girl and questioned her morality. Thereafter the victim girl was chased out of the matrimonial home. The victim girl came to her house on 10.02.2019, the appellant never visited her. On 24.04.2019, the victim girl



gave birth to a female baby in Coimbatore Medical College and Hospital.

The appellant and her family members not visited the victim girl and the new born baby. When the victim girl and her mother questioned the same, the appellant and his family members doubting the paternity of the child and abused the victim girl. Later, a complaint was lodged to the respondent police and thereafter to the District Collector and a case registered, statement of the victim girl and her family members recorded. The appellant/accused was arrested. Thereafter, DNA test conducted on the appellant, victim girl and the new born baby and the DNA report confirmed the appellant's paternity to the child. On completion of investigation, charge sheet filed in this case. During trial, P.W.1 to P.W.5 examined and Ex.P1 to Ex.P10 marked on the side of the prosecution. On the side of the defence, the appellant examined himself as D.W.1 and marked Ex.D1. On conclusion of trial, the Trial Court convicted the appellant as stated above.

4.The contention of the learned counsel for the appellant is that a matrimonial discord between the appellant and his wife/P.W.1 was projected as though the appellant committed penetrative sexual assault on



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the victim taking advantage of the victim age who was short of few months to attain majority but delivered a baby. It is not in dispute that both the appellant and the victim girl hail from similar social status, had love affair between them. Initially their relationship was not known to anyone and they also had physical relationship. The victim girl became pregnant, the appellant and the victim got married in the presence of relatives, family members and others in Puliyanukulam, Mariamman Temple on 05.02.2019. On the same day, the victim came to the house of the appellant and they were living as husband and wife happily. Since it was a new environment, some matrimonial discord arose, the victim went to her parents house and thereafter, she got admitted in the Hospital for delivery. The delivery of the baby not informed and hence, the appellant not visited her. The baby was born on 24.04.2019. Having this in the back of mind, the victim and her family members started to abuse the appellant, complaining that appellant not taken any care to the victim and the new born, the difference got widened and no reconciliation steps taken. Thereafter, complaint was lodged. He further submitted that in this case, the victim/P.W.1, her mother/P.W.2 and brother/P.W.3 not supported the prosecution case, on the



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other hand all confirmed the husband and wife relationship between the appellant and the victim, the other witnesses are P.W.4 and P.W.5/Investigating Officers. No other witnesses examined in this case. The victim had given reason how she was forced and pressurized by Police to implicate the appellant when she was examined by the Doctor and by the Magistrate, her signature alone marked as Ex.P2 in the 164 statement, further no medical records for forceful penetrative sexual assault produced, almost all exhibits marked through the Investigating Officer and not by the author of the documents. The appellant examined himself as D.W.1, admits the marriage, relationship between the appellant and the victim and the birth of the female baby. The marriage between the appellant and the victim girl got registered on 13.10.2021 before the Marriage Registrar, Singanallur and the same marked as Ex.D1. Now the appellant, victim girl/P.W.1 along with their daughter Ramya are living happily. He further submitted that the appellant is a Painter, he is the sole breadwinner for the family, now P.W.1 is pregnant for the second time and he has to take care of his wife, children and aged mothers. If the conviction is sustained, it will be doing more harm than good to the victim and to her children. In similar circumstances,



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considering the welfare of the victim and the children and peaceful harmonious matrimonial life, the Apex Court set aside the conviction in the case of ***K.Dhandapani vs. The State by the Inspector of Police*** reported in ***2022 SCC Online SC 1056***

5.The learned Government Advocate (Crl. Side) submitted that in this case the defacto complainant is the victim girl who lodged a complaint to the respondent Police on 02.07.2019 complaining that the appellant is known to her, who is from her neighbourhood and they were having a love affair. When the victim girl was studying 10th Standard and when she was alone in her house on 15.08.2018 the appellant came to her house, forcibly undressed her and when she resisted, on the promise of marriage he committed penetrative sexual assault. Thereafter, he continued the act on several occasions. The defacto complainant became pregnant and she was not with good health. The victim girl's mother/P.W.2 took the victim girl to the Hospital where it was found that the victim was pregnant. When P.W.2 questioned the victim girl, she disclosed, appellant committing penetrative sexual assault. Thereafter, both the families came to an understanding and



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marriage was held between the appellant and the victim girl on 05.02.2019 at Puliyankulam Mariamman Temple. Few days thereafter on 10.02.2019 the victim girl was chased out of the matrimonial home and no one from the appellant's family visited her. Even when the victim girl delivered a baby girl on 24.04.2019, no one visited her and enquired about her health. In fact when the defacto complainant went to the house of the appellant and questioned the appellant and his mother on 01.07.2019 for not showering love and affection and taking care of the victim and the new born baby, at that time, she was abused and paternity of the baby questioned. Thereafter, the victim girl lodged a complaint to the respondent police. P.W.4/Inspector of Police (Incharge) received a complaint, registered FIR, visited the scene of occurrence, recorded the statement of victim girl, her mother, brother and others. Observation mahazar and rough sketch prepared in the presence of witnesses. On getting information about the appellant, he was arrested and on his arrest, confession recorded. The victim and the appellant sent for medical examination. 164 Cr.P.C. statement of the victim girl recorded on 23.07.2019. Since there was doubt in paternity, the appellant, victim girl and girl baby, all were subjected to



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DNA test and the DNA report/Ex.P10 confirmed the paternity of the appellant. In this case, the defacto complainant/victim was examined as P.W.1, mother and brother of the victim, examined as P.W.2 and P.W.3. The Inspector of Police who initially registered FIR, conducted initial part of investigation as P.W.4 and the regular Inspector of Police as P.W.5, who continued the investigation, recorded the statement of witnesses, collected documents and medical records, filed a final report in this case. During trial, P.W.1 to P.W.5 examined and Ex.P1 to Ex.P10 marked on the side of the prosecution and on the side of the defence, the appellant examined himself as D.W.1 and Ex.D1/marriage certificate marked. The learned Government Advocate (Crl. Side) further submitted that in this case P.W.1 to P.W.3, namely, the victim, her mother and her brother all not supported the case of the prosecution and declared hostile. The Trial Court finding that the victim girl date of birth is 09.03.2001 as per her birth certificate/Ex.P3 and the DNA report/Ex.P10 confirmed the appellant is the reason for victim pregnancy and delivering of the baby, convicted the appellant. Hence prayed for dismissal.



6.Considering the submissions made and on perusal of the materials,

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it is seen that in this case, the defacto complainant is the wife of the appellant. The appellant and the defacto complainant/victim had love affair and they both hail from same locality having similar social background without any disparity. Out of the love affair at their teens, both appellant and the victim had physical relationship and the victim became pregnant. Initially the appellant showed some resistance and later he married the victim in Puliyanikulam, Mariamman Temple on 05.02.2019. There was some matrimonial discord, the victim went to her parents house and the appellant not visited her. Further, the victim girl gave birth to a female child on 24.04.2019 but thereafter to, the appellant not visited his wife and baby. On 01.07.2019 the victim came to the house of the appellant and questioned the appellant and his mother for not showing any interest in the child, not showering any love and affection and not enquiring about the health and wellness of the defacto complainant and the baby. At that time, the appellant used some intemperate words and also questioned the paternity of the child which further manifested the matrimonial discord and a complaint lodged to the respondent police, who registered a case,



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completed investigation and filed charge sheet. Later, the matrimonial discord between the appellant and the defacto complainant got resolved and they are living happily as husband and wife. No doubt the victim was few months short of attaining majority when she became pregnant. The appellant examined himself as D.W.1, confirmed the relationship and also produced the marriage registration certificate/Ex.D1. P.W.1 to P.W.3 confirmed the marriage between the appellant and the defacto complainant and the birth of the girl baby. Now the appellant and the defacto complainant are living happily as husband and wife. The birth certificate of the baby produced, in which, the appellant's name is registered as father of the baby.

7.Further, to confirm the present status of their matrimonial life this Court through the jurisdictional police directed to find out the matrimonial status of the appellant with his wife. The defacto complainant was enquired and she gave a statement in writing on 27.02.2025. A scanned reproduction of the statement given by the defacto complainant is as follows:



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அனுப்புகள்,

27.2-2025

N. விஜயலக்ஷ்மி (அ),

23/51, காபலாஜமரம்,

மேற்காஜா டிராபி. வெள்ளாஜா

தொடர்புமதுர் - 641111

பெருநாள்,

காவல் அங்குசு அங்குசுக்கு,

அங்குசு ஈகாள் காவல் நிலையம்,

மேற்காஜா - 641111

பெருநாள் அங்குசு,

நான் மேற்கண்ட முக்கியப் கடந்த மூன்று

அங்குசு அங்குசு அங்குசு. என் காவல் பெருநாள் நான் மூன்று 10
அங்குசு (Painter) என் பங்கு அங்குசு. நான் இங்கு
பெருநாள் அங்குசு அங்குசு. என் மூன்று மூன்று Ramya(5),
நான் இங்கு 9 மூன்று காவல் அங்குசு அங்குசு அங்குசு.
(Delivery Date: March 16) - என் காவல் மூன்று 2019 அங்குசு அங்குசு
காவல் நிலையத்தில் மூன்று அங்குசு அங்குசு அங்குசு அங்குசு
பெருநாள் அங்குசு, பெருநாள் நான் காவல் மூன்று மூன்று
பெருநாள் அங்குசு அங்குசு அங்குசு. என் காவல் அங்குசு
பெருநாள் அங்குசு அங்குசு. இங்கு அங்குசு அங்குசு அங்குசு
நான் நான் அங்குசு அங்குசு.

இங்குசு

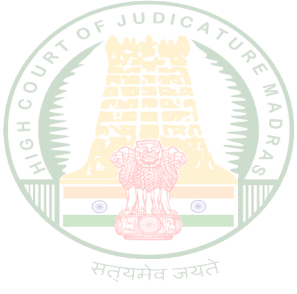
N. விஜயலக்ஷ்மி



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8.Further, the Inspector of Police, All Women Police Station, Coimbatore filed a report on 16.04.2025 confirming that the appellant and the defacto complainant were living happily as husband and wife. It is further stated that the defacto complainant delivered a girl baby on 17.03.2025 for the second time. A scanned reproduction of the report is as follows:



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அனுப்புநர்

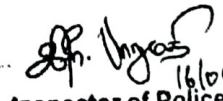
காவல் ஆய்வாளர்
அனைத்து மகளிர் காவல் நிலையம் தெற்கு
கோவை மாநகர்

பெறுநர்

அரசு வழக்கறிஞர் அவர்கள்
சென்னை உயர்நீதிமன்றம்
சென்னை

பொருள்	தண்டனை பெற்ற வழக்கில் அறிக்கை அளிப்பது தொடர்பாக
பார்வை	குற்ற எண் 551/2019 U/S 3(i)5(j) (ii) r/w 6 of POCSO ACT 2012, 506(ii) IPC, & 9 OF PCM ACT.

பார்வையில் கண்ட வழக்கில் தண்டனை பெற்று உள்ள நிலையில் எதிரி நாகமுத்து(35) @ பேச்சி என்பவரும் பாதிக்கப்பட்ட சிறுமி விஜயலட்சுமி (23) என்பவர்களை நேரில் சென்று விசாரித்ததில் நாகமுத்து (35) என்பவர் பெயிண்டர் வேலை செய்து நாள் ஒன்றைக்கு ரூ.800 வருமானம் ஈட்டி வருவதாகவும் வாதியும் எதிரியும் சேர்ந்து வாழ்ந்து வருகிறார். மேலும் முதல் பெண் குழந்தை 24.04.2019 அன்று அரசு மருத்துவக்கல்லூரி மருத்துவமனையில் பிறந்துள்ளது. மீண்டும் இரண்டாவது பெண் குழந்தை கடந்த 17.03.2025 அன்று பிறந்துள்ளது. மேலும் இருவரும் நல்ல முறையில் மகிழ்ச்சியாக சேர்ந்து வாழ்ந்து வருகின்றனர் என்பதை தங்களின் மேலான பார்வைக்கு பணிந்து தெரிவித்து கொள்கிறேன்.


Inspector of Police
WPS South Podanu
Coimbatore City



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10.Accordingly, the judgment dated 29.11.2021 in Spl.C.C.No.47 of 2020 by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore is set aside and the appellant is discharged from the above case.

11.In the result, the Criminal Appeal stands allowed.

10.09.2025

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
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To

- 1.The Inspector of Police,
Podhanur Police Station,
Coimbatore.
- 2.The Sessions Judge,
Special Court for Exclusive Trial
of Cases under POCSO Act,
Coimbatore.
- 3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

cse

Pre-delivery judgment made in

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10.09.2025