



Crl.A.No.194 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2025

CORAM :

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.A.No.194 of 2023

Deepan

... Appellant

Vs

State Represented by,
The Inspector of Police,
Cuddalore Police Station,
Cuddalore District.
(Crime No.138 of 2020)

... Respondent

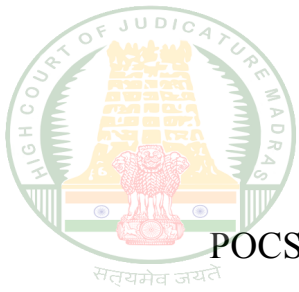
Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, to set aside the Judgment dated 25.01.2023 in Special Sessions Case No.26 of 2020, on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Cuddalore.

For Appellant : Mr.Swamisubramanian

For Respondent : Mr.S.Raja Kumar
Additional Public Prosecutor

JUDGMENT

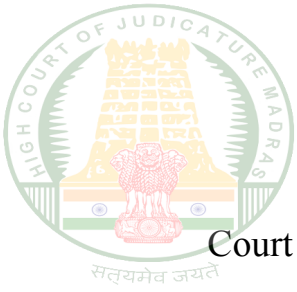
This Criminal Appeal has been preferred as against the judgment dated 25.01.2023 passed in Spl.S.C.No.26 of 2020 on the file of the learned Sessions Judge, Special Court for Exclusive Trial of cases under



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POCSO Act, Cuddalore, thereby convicted the appellant for the offence punishable under Section 366 of IPC & Sections 5(l) and 6 of POCSO Act, 2012.

2. The case of the prosecution is that the victim girl was aged about 17 years. The victim girl had been in love with the appellant from her 8th Standard of studying. It came to the knowledge of her parents and as such, they had warned her not to continue the relationship with the appellant. Therefore, the victim contacted the appellant and asked him to take her to some place to get married her. On receipt of the call, on 25.05.2020 at about 12.00 a.m., the victim had eloped with the appellant and thereafter, they went to the premises of a temple and stayed there. From the next day, i.e. on 26.05.2020 to 30.05.2020, they stayed in and around the temple and had physical relationship. On 30.05.2020, when they got to know about the complaint lodged by the parents of the victim, they themselves appeared before the respondent police. On the complaint, the respondent registered an FIR in Crime No.138 of 2020 for the offence punishable u/s 366 of IPC and Sections 5(l) and 6 of Protection of Children from Sexual Offences Act, 2012. After completion of investigation, a final report was filed before the Sessions Judge, Special



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Court for Exclusive Trial of cases under POCSO Act, Cuddalore and the same has been taken cognizance in Spl.S.C.No.26 of 2020 for the offence punishable under Section 366 of IPC and Sections 5(1) and 6 of Protection of Children from Sexual Offence Act, 2012.

3. Before the Trial Court, the prosecution examined fourteen (14) witnesses as P.W.1 to P.W.14 and marked nineteen (19) documents as Ex.P.1 to Ex.P.19. On the side of the accused, he examined two (2) witnesses and no document was marked.

4. On perusal of the oral and documentary evidence, the Trial Court found the appellant guilty, convicted for the offence under Section 366 of IPC and sentenced him to undergo rigorous imprisonment of 10 years and to pay fine of Rs.2,000/-, in default to payment of fine, to undergo simple imprisonment for a further period of 3 months and also convicted for the offence u/s 5(1) and 6 of POCSO Act and sentenced him to undergo rigorous imprisonment of 10 years and to pay fine of Rs.2,000/-, in default to payment of fine, to undergo simple imprisonment for a further period of 3 months. Aggrieved by the same, the present Criminal Appeal has been filed.



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5. The learned counsel for the appellant would submit that it is a case of love affair and elopement. Though the victim was minor on the date of occurrence of elopement, she completed the age of 17 years. In fact, the victim only called the appellant to take her to somewhere and get married, since their love affair came to the knowledge of her parents. Therefore, the prosecution has failed to prove the charge u/s 366 of IPC. The parents of the victim were examined as P.W.2 and P.W.3. Though originally they deposed and supported the case of the prosecution, subsequently, they were recalled and turned hostile, since there was a love affair between the appellant and the victim and no physical relationship between them. That apart, the victim got married to another person and is living with her husband happily. After registration of FIR, the victim was subjected to medical examination and the medical report also did not support the case of the prosecution. Even then, the Trial Court mechanically convicted the appellant. Therefore, the conviction and sentence imposed by the Trial Court cannot be sustained and liable to be set aside.

6. Per contra, learned Additional Public Prosecutor submitted that

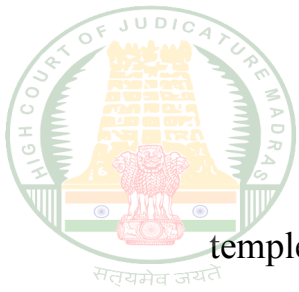


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on the complaint lodged by the mother of the victim girl, the FIR was registered in Crime No.138 of 2020 which was marked as Ex.P.12. On 25.05.2020, the appellant kidnapped the minor victim and had committed aggravated penetrative sexual assault on her. The victim categorically deposed to prove the charges. Though P.W.2 and P.W.3 turned hostile, it would not be a fatal to the case of the prosecution. Immediately, after the registration of FIR, the victim was subjected for medical examination and the victim was examined by P.W.6. It revealed that the victim's hymen was not intact and there is a chance for sexual intercourse. Therefore, the Trial Court rightly convicted the appellant and the same does not warrant any interference by this Court.

7. Heard the learned counsel appearing for the appellant, the learned Additional Public Prosecutor appearing for the respondent police and perused the materials available on record.

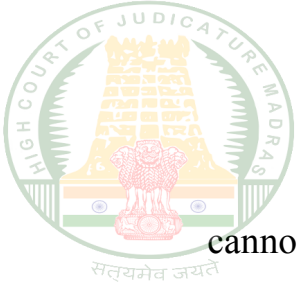
8. Admittedly, the victim fell in love with the appellant at the age of 17 years. She called the appellant through phone since their love affair came to the knowledge of her parents and they arranged her marriage with someone else. After the said call, the appellant has taken her to a



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temple and they stayed together for 5 days and during their stay, they had physical relationship. After knowing about the complaint lodged by the victim's parents, the appellant and the victim came to respondent-police station and immediately, the appellant was remanded to judicial custody. Thereafter, the victim was subjected for medical examination. At that juncture, i.e., on 30.05.2020, she was undergoing her second day of periods. Further, her hymen was not intact and there was hard possibility for sexual intercourse. However, she was not conceived and there was no injury found in her genitalia. The medical report was marked as Ex.P.6. Therefore, there was no possibility for physical relationship during victim's periods.

9. The parents of the victim were examined as P.W.2 and P.W.3. Though initially they supported the case of the prosecution, thereafter, they were recalled and deposed that no such occurrence had taken place and they turned hostile and failed to support the case of the prosecution. P.W.2, P.W.3 and victim girl do not want to proceed the case as against the appellant, since the victim got married and is living happily with her husband. In view of the above peculiar circumstances, the conviction and sentence u/s 366 of IPC and Sections 5(1) & 6 of POCSO Act, 2012



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cannot be sustained and liable to be set aside.

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10. Accordingly, the Criminal Appeal is allowed and the conviction and sentence of the Trial Court is hereby set aside. The appellant is set at liberty forthwith, if he is not required in connection with any other case. Fine amount, if any paid by the accused shall be refunded to him. Bail bond, if any, executed by the accused shall stand discharged.

27.06.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
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To
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- 1.The Sessions Judge,
Special Court for Exclusive Trial of Cases under POCSO Act,
Cuddalore.
- 2.The Inspector of Police,
Cuddalore Police Station,
Cuddalore District.
- 3.The Superintendent,
Central Prison, Cuddalore.
- 4.The Public Prosecutor,
High Court of Madras,
Chennai.



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G.K.ILANTHIRAIYAN, J.

sp

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