



Crl.A.No.848 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 25.06.2025

CORAM

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

Crl.A.No.848 of 2024
and Crl.M.P.No.9453 of 2024

Udhayannan
(Appellant amended
as per order dated
04.10.2024 in
Crl.M.P.No.13953 of 2024
in Crl.A.No.848 of 2024)

... Appellant

Vs

State Represented By
The Inspector of Police,
All Women Police Station,
Krishnagiri District.
(Cr.No.10/2020)

...Respondent

PRAYER : Criminal Appeal has been filed under Section 374(2) of Criminal Procedure Code, to set aside the conviction and sentence imposed by the learned Sessions Judge, Fast Track Judge, Mahila Court, Krishnagiri in Spl.S.C.No.17 of 2021 by its Judgment dated 12.12.2023 and allow the appeal.

For Appellant : Mr.C.S.Jeeva Kuralamudhu
For Respondent : Mr.S.Raja Kumar
Additional Public Prosecutor



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JUDGMENT

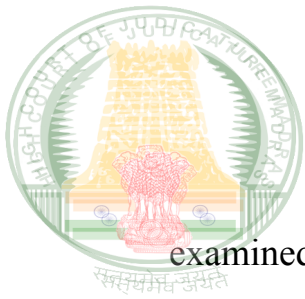
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This Criminal Appeal has been filed as against the order passed in Spl.S.C.No.17 of 2021 dated 12.12.2023, on the file of the Sessions Judge, Fast Track Judge, Mahila Court, Krishnagiri, thereby convicting the appellant for the offences punishable under Sections 5(l) read with 6(1), 5(j)(ii) read with 6(1) and 5(q) read with 6(1) of the POCSO Act, 2012.

2. The case of the prosecution is that the victim girl was allegedly raped by two persons, while she was aged about 17 years. Hence, the complaint.

3. On receipt of the complaint, the respondent Police registered FIR in Crime No.10 of 2020 for the offences punishable under Sections 5(l) read with 6(1), 5(j)(ii) read with 6(1) and 5(q) read with 6(1) of the POCSO Act, 2012. After completion of investigation, the respondent police filed final report and the same has been taken cognizance by the Trial Court in Spl.S.C.No.17 of 2021.

4. In order to bring home the charges, the prosecution had examined PWs.1 to 23 and marked Exs.P1 to 31. On the side of the accused, no one was



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examined and no document was marked. On perusal of oral and documentary evidences, the Trial Court found the appellant guilty for the offences punishable under Sections 5(l) read with 6(1), 5(j)(ii) read with 6(1) and 5(q) read with 6(1) of the POCSO Act, 2012 and sentenced him to undergo 20 years rigorous imprisonment and also imposed fine of Rs.1000/-, in default to undergo one year simple imprisonment.

5. The learned counsel for the appellant would submit that the victim girl had turned hostile. Further, the parents of the victim also turned hostile. He further submitted that, even according to the statement of the victim girl, two persons committed rape on her. However, the other accused person was acquitted, on the ground that the prosecution failed to prove the charge. However, the appellant alone was convicted only on the basis of the DNA report. He also submitted that the petitioner is now suffering from cancer and he is in death bed.

6. The learned Additional Public Prosecutor submitted that the victim girl was examined as PW.2. Though PW.2 turned hostile, her statement recorded under Section 164 Cr.P.C is very clear that the appellant and another



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person raped her. That apart, due to the same, the victim became pregnant and subsequently delivered a female child. Thereafter, the blood samples were collected from the appellant and the child born to the victim. The DNA test result was positive and confirmed that the appellant is the biological father of the child. Therefore, the Trial Court had rightly convicted the appellant and it does not warrant any interference by this Court.

7. Heard both sides and perused the materials available on record.

8. The victim was examined as PW.2 and other relatives were examined as PW.1, PWs.3 to 5. All the witnesses including the victim turned hostile before the Trial Court. The statement recorded under Section 164 Cr.P.C was marked as Ex.P2.

9. A perusal of Ex.P2 revealed that she was raped by two persons. They committed the same by payment of money. In order to prove the age of the victim girl, the prosecution had produced Ex.P30, School Certificate and the same was marked through PW.22, who is the Headmistress of the school, where the victim studied.



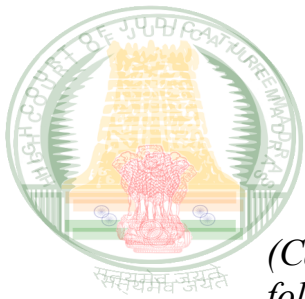
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10. A perusal of the School Certificate revealed that it was issued based on school records. However, the school records do not even whisper that any supportive document was produced at the time of recording the age of the victim girl.

11. In this regard, it is relevant to rely upon the judgment of this Court rendered in Crl.A.No.607 of 2018 dated 11.11.2022, the relevant portion of which is extracted hereunder:

“ 11. The learned counsel for the appellant vehemently contended that the prosecution failed to prove the age of the victim. In order to prove the age of the victim, the prosecution produced Exs.P5 and P6. The school certificate of the victim was marked as Ex.P5. Admission register was marked as Ex.P6. Though the prosecution has produced the school certificate, it failed to prove that the admission of the victim to the school was made on production of date of birth certificate and the date of birth entered in the school register is the correct date of birth of the victim. Further the victim did not produce any date of birth certificate and the prosecution failed to produce any other documents to show that the victim was born on 25.02.2001. In fact, it is also contradictory to the charge since the charge framed against the accused shows as though the victim was born on 14.05.1999. In order to ascertain the age of the minor girl, there is no procedure as contemplated under the POCSO Act. Therefore, the procedure as contemplated under Section Juvenile Justice (Care and Protection of Children) Rules, 2007 should come to surface. In this regard, the law has been settled by the Hon'ble Division Bench of this Court as well as the Hon'ble Supreme Court of India that the procedure prescribed under the Juvenile Justice



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(Care and Protection of Children) Rules, 2007 has to be followed.

12. It is relevant to extract Rule 12(3) of the Juvenile Justice (Care and Production of Children) Rules, 2007 reads as follows :

“12. Procedure to be followed determination of

Age :-

(1) xxxxxx

(2) xxxxxx

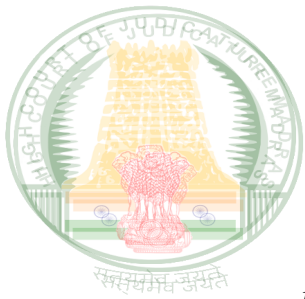
(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining :-

(a)(i) the matriculation or equivalent certificates, if available, and in the absence whereof ;

(ii) the date of birth certificate from the school (other than a play school) first attended ; and in the absence whereof ;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat ;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year and, while passing orders in such case shall, after taking into considerations such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile to conflict with law.



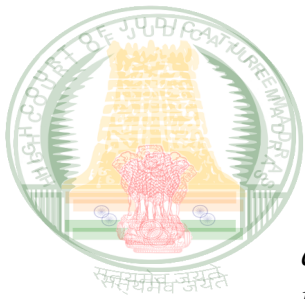
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13. In the case on hand, admittedly, the prosecution failed to prove the date of birth of the victim and also failed to produce any evidence to show that the victim was admitted in the school by producing the birth certificate. It is well settled that an entry of the date of birth made in the school admission register would have evidentiary value only if there is material available based on which the age was so recorded. The Hon'ble Division Bench of this Court in **Criminal Appeal No.487 of 2019** in the case of **M.Marimuthu Vs. The State, represented by the Inspector of Police, All Women Police Station, Srivaikuntam, Titicorin** dated 18.10.2022 held as follows :

“17. In the instant case, the matriculation or equivalent certificate of the victim is not available as she deposed that she gave up studies after 9th class. Rule 12(3)(a) contemplates that in the absence of the matriculation or equivalent certificate, the date of birth certificate from the school first attended can be used as evidence to determine the age of a child. Mr.Ashok Kumar Chaudhary (PW-3), a teacher in the school where the victim has studied, had produced the school records, which showed that the victim was admitted in MC Primary School, Vikas Block Sirsia, District Sarawasti, UP in class-I on 12.08.2005. The school record notes her date of birth as 10.01.2000. However, PW~3 went on to state that there is no other record of admission of the victim available in the school and nor could he state as to what was the nature of the document submitted by the victim's parents at the time of her admission, for recording her date of birth in the school register.

18. It is well settled that an entry of the date of birth made in the school admission register would have evidentiary value only if there is material available based on which the age was so recorded. In the case of **Brij Mohan Singh vs. Priya Brat Narain Sinha and Ors.** reported as AIR 1965 SC 282, the Supreme Court held that an entry of birth recorded in the school register maintained by an illiterate Chowkidar, was not



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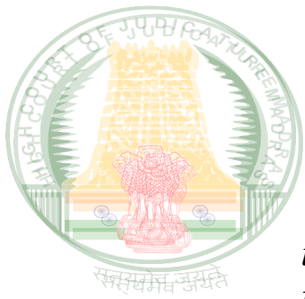
admissible and had no probative value within the meaning of Section 35 of the Indian Evidence Act. For ready reference, Section 35 of the Indian Evidence Act is reproduced below:-

“35. Relevancy of entry in public [record or an electronic record] made in performance of duty.- An entry in any public or other official book, register or [record or an electronic record], stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, or [record or an electronic record] is kept, is itself a relevant fact.”

*19. In **Birad Mal Singhvi vs. Anand Purohit** reported as **1988 Supp. SCC 604**, where a question arose with regard to eligibility of a candidate participating in an election to the State Legislative Assembly, in the context of attaining the age of 25 years as stipulated, the Supreme Court held as below:-*

15.....Section 35 of the Indian Evidence Act lays down that entry in any public, official book, register, record stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duty specially enjoined by the law of the country is itself the relevant fact. To render a document admissible under Section 35, three conditions must be satisfied, firstly, entry that is relied on must be one in a public or other official book, register or record; secondly, it must be an entry stating a fact in issue or relevant fact; and thirdly, it must be made by a public servant in discharge of his official duty, or any other person in performance of a duty specially enjoined by law. An entry relating to date of birth made in the school register is relevant and admissible under Section 35 of the Act but the entry regarding the age of a person in a school register is of not much evidentiary value to prove the age of the person in the absence of the material on which the age was recorded. ...” (emphasis added)

20. The probative value of the entry regarding



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the date of birth made in a school register has come up for consideration by the Supreme Court and the High Courts in several other cases and the common view expressed is that no probative value can be attached to such a record unless and until the parents are examined or the person on whose information the entry may have been made, is examined.

*21. In **Sushil Kumar vs. Rakesh Kumar** reported as **AIR 2004 SC 230**, the Supreme Court held thus:-*

“34. In the aforementioned backdrop the evidences brought on record are required to be considered. The Admission Register or a Transfer Certificate issued by a Primary School do not satisfy the requirements of Section 35 of the Indian Evidence Act. There is no reliable evidence on record to show that the date of birth was recorded in the school register on the basis of the statement of any reasonable person.”

14. Thus, it is clear that the entry of the birth record in the school register is not admissible under Section 35 of the Evidence Act. Therefore, the prosecution failed to prove the age of the victim whether she was minor at the time of occurrence.”

12. In view of the above, the school certificate produced by the prosecution is not enough to prove the age of the victim girl. According to the school certificate, the victim was born on 18.06.2004. On the date of the alleged occurrence, even according to the school certificate, the victim was aged about more than 17 years. That apart, even according to the victim girl, she was paid for the physical relationship by the appellant and another. Though the victim had stated before the learned Magistrate that the appellant and another person raped her on the first instance, they had sexual intercourse for money. That



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apart, the Trial Court had convicted the appellant only on the basis of the DNA report and there is absolutely no other material to prove the charges as against the appellant.

13. Therefore, the prosecution failed to prove the charges beyond any reasonable doubt and the impugned order cannot be sustained and is liable to be set aside. Accordingly, the order passed in Spl.S.C.No.17 of 2021 dated 12.12.2023, on the file of the Sessions Judge, Fast Track Judge, Mahila Court, Krishnagiri, is hereby set aside. The appellant is acquitted from all charges in Spl.S.C.No.17 of 2021. The appellant is directed to be set at liberty forthwith unless his custody is otherwise required in connection with any other case. The fine amount, if any, paid by the appellant shall be refunded. Bail bond, if any, executed by the appellant shall stand cancelled.

14. Accordingly, this Criminal Appeal stands allowed. Consequently, connected Miscellaneous petition is closed.

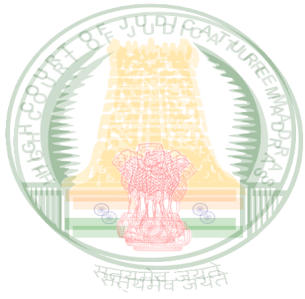
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Speaking order/Non-speaking order

Index : Yes/No

Internet : Yes/No

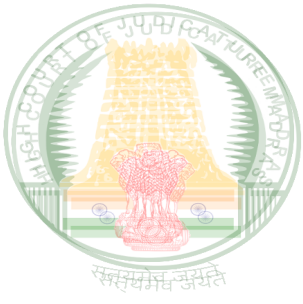
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G.K.ILANTHIRAIYAN, J.

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To

1. The Sessions Judge, Fast Track Judge,
Mahila Court, Krishnagiri.
2. The Superintendent,
Central Prison, Vellore.
3. The Inspector of Police,
All Women Police Station,
Krishnagiri District.
5. The Public Prosecutor,
High Court, Madras.

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