



Crl.A.No.20 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2025

CORAM:

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

Crl.A.No.20 of 2023

Sanjeevkumar

... Appellant

Vs.

The State rep by,
Inspector of Police,
Kadathur Police Station,
Dharmapuri District
crime No.94 of 2016

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C.,
praying to set aside the conviction, sentence and fine awarded against the
appellant in Special Sessions Case No.6 of 2017 dated 16.02.2022 on the
file of the Fast Track Mahila Court, Dharmapuri and allow the appeal and
consequently acquit the appellant from all charges.

For Appellant : Mr.R.John Sathyan,
Senior Counsel
for Mr.J.Bharathiraja

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

JUDGMENT

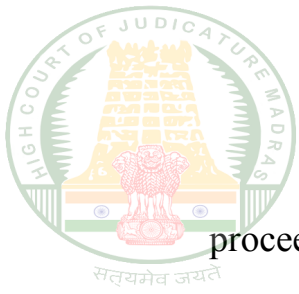


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This criminal appeal has been preferred against the judgment

passed in Special Sessions Case No.6 of 2017 dated 16.02.2022 on the file of the Fast Track Mahila Court, Dharmapuri, thereby the appellant has been convicted for the offence punishable under Section 363 of IPC and Section 6 of POCSO Act.

2. The case of the prosecution is that when the victim was studying 12th standard, she fell in love with the appellant. Both belongs to the same community. However, there was objection from their parents due to previous enmity. After completion of the final examination of her twelfth standard on 01.04.2016, the victim eloped with the appellant and stayed in a private lodge at Dharmapuri. Thereafter, they went to the house of one of the relatives of the appellant and stayed there. There, they had physical relationship. On next day i.e. 02.04.2016, they went to a murugan temple and the appellant tied 'thali' to the victim. Thereafter, they went to Vridhachalam. Both had informed their relatives that they got married and that they are living together as husband and wife. The appellant also joined a bakery for work. While being so, on 13.04.2016, the appellant was called by the victim's family through phone and had spoken as if they had accepted their marriage. Therefore they were

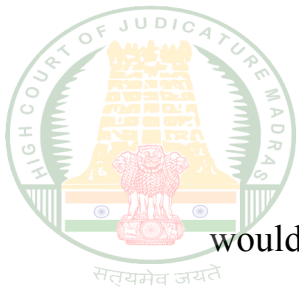


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proceeding to her house along with the relatives of the appellant. The victim alone was taken away by her parents and was compelled to remove her 'thali'. Thereafter, she was brought to the respondent's police station. On complaint, the respondent registered FIR in crime No.94 of 2016 for the offence punishable under Sections 366A of IPC and Section 5(l) r/w 6 of POCSO Act. After completion of investigation, they filed final report and the same was taken cognizance by the trial court.

3. In order to prove the charges, the prosecution examined PW1 to PW18 and marked Ex.P1 to P19. On the side of the appellant, he had examined DW1 and marked Ex.D1 & Ex.D2. On perusal of the oral and documentary evidences, the trial court found the appellant guilty for the offence punishable under Section 363 of IPC and sentenced him to undergo three years rigorous imprisonment with fine of Rs.3,000/- in default to undergo six months simple imprisonment. He was also convicted for the offence punishable under Section 6 of POCSO Act and was sentenced to undergo 10 years rigorous imprisonment and was imposed a fine of Rs.8,000/- in default to undergo six months simple imprisonment. Aggrieved by the same, the present criminal appeal has been filed.

4. The learned Senior Counsel appearing for the appellant

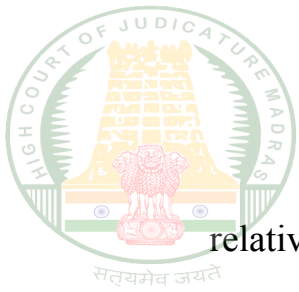


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would submit that the prosecution failed to prove the age of the victim.

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Even according to the victim, her date of birth was mentioned as 10.07.1999 and thereafter it was corrected as 10.05.1999. Therefore, she attained majority on the date of the alleged occurrence. The appellant never kidnapped the victim. On her wish, she herself went along with appellant and also got married. They had physical relationship with consent of both. Therefore, it was consensual sex and no question of any offence under POCSO Act arises. In fact, both lived as husband and wife in the place in which they stayed and the person who owned the premises was not examined by the prosecution. They both lived together as husband and wife for 14 days. Even according to the prosecution, the victim was born on 10.05.1999 and she completed 17 years and 1 month on the date of the alleged occurrence. During her adolescent age, she fell in love with the appellant and eloped with him. Therefore, the appellant alone cannot be punished under the POCSO Act. He also relied upon the statement recorded under Section 161 of Cr.P.C. and the deposition of PW1, who categorically deposed that she fell in love and on her own, she eloped with the appellant. The appellant never compelled her to come with him and he never compelled to have physical relationship with him. In fact, both the victim's family as well as the appellant's family are close

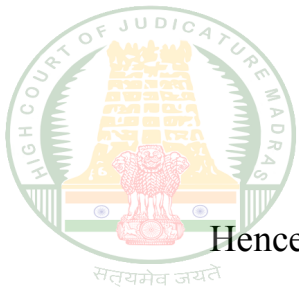


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relatives and belong to the same community. Due to previous enmity, between both the family members, they did not agree for their marriage and as such, the victim herself eloped with the appellant. In fact, the victim herself, after completion of her twelfth examination, had calculatively called the appellant to take her just before her parents could come and pick her up. Thereafter, they both went to the appellant's relative's house .

5. He further submitted that after the victim was produced before the respondent, the victim did not want to go with her parents. Therefore, she was sent to Government home. Without considering the above facts and circumstances, the trial court mechanically convicted the appellant under the POCSO Act.

6. Per contra, the learned Additional Public Prosecutor submitted that the age of the victim girl was proved by the prosecution as she was aged about only 17 years and 1 month on the date of the occurrence. Therefore, the offence under POCSO Act is clearly made out against the appellant. Admittedly, the victim was taken by the appellant and he committed penetrative sexual assault on the minor victim girl.



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Hence, the victim girl supported the case of the prosecution and it was also corroborated by the doctor's evidence who was examined as PW17, who categorically deposed that the hymen of the victim was not intact. There is evidence to show that she had physical sexual intercourse. Therefore the trial court rightly convicted the appellant under POCSO Act and the said conviction does not warrant any interference by this Court.

7. Heard, the learned counsel appearing on either side and perused, all the materials placed before this Court.

8. The case of the prosecution is that the minor girl was kidnapped by the appellant and he had penetrative sexual assault on her. The victim girl was examined as PW1. On perusal of her evidence, it is revealed that on the date of the completion of her twelfth standard examination, she was taken by the appellant to the house of one, Govindasamy. There, they had physical relationship. The next day, they went to a murugan temple at Periamatti, where they got married by tying 'thali'. In fact, the appellant and the victim had purchased silk saree and 'thali'. Thereafter, they got married in a temple. From the date of their

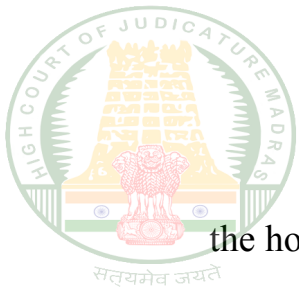


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marriage, they had physical relationship. Thereafter, they went to Athur and stayed in the house of a friend of the appellant i.e. Premkumar. The said Premkumar was working in a bakery. He informed to his owner and got employment for the appellant in the bakery. Both the appellant and the victim had informed to him that they got married and are living together as husband and wife. Therefore, he provided shelter to them. Thereafter, on 14.04.2016, the appellant was called by the victim's family and as such both went to the bus stand of Athur, where the parents of the appellant took them in their car and reached Kadathur. In Kadathur, the parents of the victim picked the victim alone leaving the appellant and his relatives. She was immediately taken to the police station and on the way, her 'thali' was forcefully removed by them and was thrown into River Bhavani. Immediately, she was handed over to the respondent police. Thereafter, the victim refused to go with her parents and as such, she was sent to Government home. Thereafter, the respondent altered the offence into offences under Section 363, 366(A) of IPC r/w Sections 5 and 6 of POCSO Act in crime No.94 of 2016. The victim was examined as PW1. The father of the victim was examined PW2.

9. On perusal of evidence of PW1, it is revealed that after completion of her twelfth examination, she was taken by the appellant to



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the house of one, Govindasamy at Periampatti. Both families are relatives and they had previous enmity. Thereafter, they got married and lived together as husband and wife. In order to prove the age of the victim, the prosecution produced certificate which was marked as Ex.P6, which was issued by the Headmaster of the school where the victim had studied her twelfth standard. Accordingly, her date of birth was mentioned as 10.05.1999. The headmaster who issued Ex.P6 was examined as PW14. He deposed that he had issued Ex.P6 as per the admission register of the students. Except the certificate issued by the Ex.P14, the prosecution did not produce any document to prove the age of the victim.

10. In this regard, it is relevant to rely on 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



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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 (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 ;



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(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.

*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 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



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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)*



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20. *The probative value of the entry regarding 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. The evidence shows that the victim fell in love with the accused and had physical relationship.....”

11. The prosecution produced age certificate issued by the Department of Forensic Medicine which was marked as Ex.P10. Accordingly, it was opined that the victim was aged about 20 years and below 22 years. It was certified on 26.04.2016 However, it was not taken



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into consideration by the trial court since on the date of occurrence, as per the age certificate issued by the Department of Forensic Medicine, the victim completed her 20 years of age. Therefore, the prosecution miserably failed to prove the age of the victim. Even assuming that the victim was minor at the time of occurrence, she completed her age of 17 years. As stated supra, the victim fell in love with the appellant and both eloped after completion the final examination of her twelfth standard. They got married and had physical relationship. Therefore, the question of kidnapping the victim does not arise since the prosecution failed to prove the age of the victim. The question of kidnapping whether arises are not, however the prosecution failed to prove the age of the victim and as such, the kidnapping of the victim does not arise. Further, the victim got married the appellant and had physical relationship. There was no forcible sexual intercourse by the appellant. In fact, they lived together for 14 days as husband and wife under the same shelter. They had physical relationship with consent of both. It amounts to consensual sex and no offence is made out under the POCSO Act. The doctor who examined the victim was examined as PW17. She deposed that on examination of the victim, there was no injury on her body. Her hymen was not intact and there was possibility of her sexual intercourse.



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Therefore, there was no forcible physical relationship by the appellant with the victim. The love letter written by the victim and the greeting cards given by the victim were marked as Ex.D1 and Ex.D2. On perusal of Ex.D1 and Ex.D2, it is revealed that the victim fell in love with the appellant and wrote love letters. Thereafter, they eloped and got married in a temple. The appellant was examined as DW1. On perusal of his evidence, it is revealed that the same corroborated with the love letter and greeting cards given by the victim. Further, the appellant is none other than the victim's own uncle's son. In fact, after knowing their love affair, PW2 had beaten the appellant and warned him not to indulge in any love affair with the victim since already there was previous enmity between both the family members. Therefore, it is clear that both fell in love and eloped without compulsion and without any forcible act.

12. In one of the similar circumstances, the Hon'ble High Court of Bombay, in the case of *Ashik Ramjali Ansari Vs. State of Maharashtra and another*, reported in **2023 SCC Online Bom 1390** held as follows:

“73. A provision which does not take into consideration our societal realities and proceed on an assumption, that every sexual indulgence with a minor, irrespective of whether she was capable of being an equal



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participant in the act, has definitely created a situation, resulting in acquittal of the accused in cases of consensual sexual relationship, where the gap in the age of accused and that of victim is small.

76. This is a peculiar case, where the evidence on record has clearly made out a case for consensual sex, as no where in the examination-in-chief or her cross-examination, the prosecutrix has alleged that sexual intercourse was forcible and without her consent and throughout her deposition, she is consistent on the said stand though state that she was informed that the accused was already married to some other woman.

77. In the wake of the clear case of consensual sex, emerging from the prosecution case, between a girl aged 17 years and 5 months and a man aged 25, merely because the statute provide punishment for an act of sexual indulgence, as the girl has not attained the age of maturity i.e. 18, when it can be specifically inferred from her conduct that she was capable of understanding the consequences of her act, I am of the opinion that the learned Special Judge has erred in convicting the appellant for committing the offence of rape under Section 376 of IPC as well as the offences under Sections 4 and 6 of the POCSO Act and awarded him the sentence in the impugned judgment.

78. In the wake of the aforesaid discussion, since I am unable to concur with the conclusion derived by the learned Judge, merely on the ground that though the sexual



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intercourse was consensual, but the girl was minor and based on this aspect, the appellant, in my considered opinion, cannot suffer the sentence, in case of a consensual sexual act.

79. As a result of the above discussion, the impugned judgment dated 21/02/2019 passed by the learned Special Judge in POCSO Special Case No. 203 of 2016 is set aside.”

13. The Hon'ble High Court of Bombay further observed in the above judgment with regards to the age of the victim and the age fixed under the POCSO Act as 18 as follows:

“36. The version of the love affair, which has come through the PW 4 i.e. the prosecutrix, make it evident that as an adolescent, crossing the age of 17, but not yet attained the age of majority i.e. 18 years, she was in the gray area of age, where she was smitten, but at the same time was unable to decide herself, legally and validly considering that she was a minor and still required some more months to pass, till she attain majority. The prosecutrix was clear in her version and about her expectation from her own life, fully aware and ready for taking the consequences flowing from the relationship, she was maintaining with the accused, a man aged 25 years. In such a scenario, a question arises, when there is a consensual relationship maintained between the two and the prosecutrix never alleged that the physical relationship was maintained by the accused with her, without her consent or against her will, whether the conviction of the



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accused under Section 376 of IPC and Sections 4 and 6 of the POCSO Act is justiciable.

37. The POCSO Act, which is specifically enacted for protection of a “child” being defined as any person below the age of 18 years, is not dependent upon the factor of “consent”. In offence of sexual assault, since Section 375 is attracted whenever a man commits an act of “rape” with a woman with or without her consent, when she is under 18 years of the age, that is making the consent of a girl, who has not attained majority, immaterial and, hence, inconsequential.

38. The need was felt for special enactment to protect the children from sexual assault, sexual harassment and pornography, keeping in mind Clause (3) of Article 15 of the Constitution, which empower the State to make special provision for the children and the Government of India having acceded to the Convention on the Rights of the child, contemplated by the General Assembly of the United Nations, which prescribe a set of standards to be followed by all State parties in securing the best interest of the child. A law was, therefore, needed which would operate in the best interest and well being of the child, to be regarded as being paramount importance at every stage, to ensure his healthy, physical, emotional, intellectual and social development. Apart from this, Article 39 of the Constitution of India, also provided that the State shall, in particular, direct its policy towards securing that the tender aged children are not abused and their childhood and youth is protected against exploitation, so that they are afforded opportunities and



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facilities to develop in a healthy manner, conditioned with freedom and dignity.

39. The salient features of the Act enacted by the Parliament in form of the POCSO Act, 2012, being a gender neutral enactment, which regarded the best interest and well being of the child as of paramount importance at every stage, so as to cater the physical, emotional, intellectual and social development of a child, considered as vulnerable, to exploitation.

40. All those acts covered by the POCSO Act of 2012, whether it is an act of 'aggravated penetrative sexual assault', 'aggravated sexual assault', 'sexual assault' with a definite meaning assigned to it under the enactment, amount to offence, when committed against a child i.e. a person below age of 18 years.

41. It is little more than a decade that the special Act is in operation and pertinent to note that at the time of introduction of the POCSO Act, "age of consent" for unmarried girl was 16 and it was presumed that any one below this age cannot lawfully consent to sexual intercourse. The POCSO Act raised the "age of consent" to 18 years and following the recommendations of Justice J.S. Verma Committee, in the wake of a gruesome incident, which took place in NCT, Section 375 of IPC was also amended by the Criminal Law (Amendment) Act, 2013.

42. As a consequence of the aforesaid provisions, an act of sexual indulgence with a girl below 18 years, would attract the rigors of the POCSO Act as well as the offence



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under Section 376 of IPC, being immaterial, whether it is a consensual relationship, as the law presume that a girl below 18 years is not capable of consenting to sexual intercourse and in such a scenario, even if a girl below 18, consent to a sexual intercourse, her consent must be ignored and the other party Shall be guilty of committing an offence under the POCSO Act. 43. This provision, though definitely intended to target sexual exploitation of children i.e. a male or a female, however, has created a gray area, as it has definitely resulted in criminalizing consensual adolescence/teenage relationship and after the POCSO Act raised the age of consent from 16 to 18, even in case of a consensual sexual activity, where one of the party is an adolescent and other a major, the act of the other party is liable for criminal action.

44. In a case like the one before me, where the prosecutrix is of 17 years and 5 months when the FIR is lodged and she had indulged into sex voluntarily with the accused with her will and consent, clearly reflecting a romantic relationship between the two, the question is whether merely because she has not touched 18, and barely a few months away from attaining majority as per law, whether the act of sexual intercourse would attract the offence under the POCSO Act and would it amount to an offence of rape, as Section 375 contemplate, an act of penetration of penis into the vagina of a woman would amount to rape, even if it has occurred with her consent, just because she is under 18 years of age.

45. Pertinent to note that Section 375 itself by virtue of Explanation 2, define “consent” to mean an unequivocal



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voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act, with a proviso being appended that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

46. The essence of “consent” lies in the surrounding circumstances, which would lead to an inference of “consent” and which is accorded by a woman by the manner set out in Explanation 2.

47. Sexual Autonomy encompasses both, the right to engage in wanted sexual activity and right to be protected from unwanted sexual aggression. Only when both aspects of adolescent's rights are recognized, human sexual dignity can be considered to be fully respected.

48. Development of sexuality starts as early as in intrauterine life following conception and continues through infancy, childhood, adolescence, adulthood till death. Self-awareness about sexuality evolves during the childhood. Adolescence is a phase of transition during which major developments of sexuality takes place, with puberty being marked as a major landmark in the journey of sexuality. It is during this period, cognitive development takes place and it result into development of thinking and reasoning. This is also a phase of emotional development, which would necessarily involve, social involvement, peer interaction, as well as sexual interest.



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49. *Different behavioral experimentation is seen in early adolescence, risk taking in middle adolescence, followed by stage of assessing their own risk factoring, accompanied with change in lifestyle due to urbanization, migration, education, and mixing of cultures, each factor contributing in it's own way towards the development and its manner. Adolescence is a period during which individual's thought perception as well as response gets colored sexually. It is an age to explore and understand sexuality. Sexual curiosity in the adolescence often lead to exposure to pornography, indulgence in sexual activities, and also increase in the vulnerability for sexual abuse.*

50. *Sometimes it is difficult to control the feelings arising in an adolescent, in the wake of many critical biological as well as psychological changes occurring during this phase. Development of secondary sexual characteristics and psychological changes are often aid these challenges. These are supplemented by family and society's attitude as well as cultural influence, particularly at the time of puberty. Various factors would play a major role in deciding the adolescent's sexual behaviour after puberty.*

51. *With the advent of easy accessibility of information made available and as Internet has become widely used resource for sexual information, especially amongst the adolescents, where the appeal lies in the ease and anonymity where the Online seeker can obtain information regarding sensitive topics and this generates curiosity, which may have positive as well as negative influences, upon the youth of today.*



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52. *In the era where the adolescents have free access to the Internet, Mobile, OTT Platform, Movies, which create a deep impact upon their minds, coupled with inquisitiveness about sex alongwith physical attraction towards other sex and infatuation, which is definitely a matter of research as the question of youthful sexuality has to be tackled in the current society, by appropriately moderating their behaviour.*

53. *The United Nations formally defines “adolescent” as the party between 10 and 19 years of age and “young people” as between 10 to 24 years of age in the South Asia Region. The roots of the age of consent are traced back to a 19th century, case of Phulmoni Dasi, a minor woman, who married a man aged 35, when she was 11 and who died when her husband forcibly consummated the marriage. This incident, allegedly rape committed by a man upon a minor girl, served a way for enacting the legislation in form of the Age of Consent Act, 1891. Though the husband was acquitted of rape charge, he was found guilty of causing death by rash and negligent act.*

54. *Over the time, the age of consent has been increased by various statutes in India and it was maintained at 16 from 1940 till 2012, when POCSO Act raised the age of consent to 18 years, probably one of the highest ages globally, as majority of countries have set their age of consent in the range of 14 to 16 years. Children in the age group of 14 are considered capable of giving consent to sex in countries like Germany, Italy, Portugal, Hungary etc. In London and Wales, the age of consent is 16. Among Asian countries, Japan has set the age of consent as 13. In*



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Bangladesh, Section 9(1) of the Women and Child Abuse Prevention Act, 2000 define 'rape' as sexual intercourse with a woman, with or without her consent, when she is below 16 years of age. Similarly, in Srilanka, the age of consent is 16.

55. In comparison, as far as India is concerned, the age of marriage for male and female is fixed as 21 and 18 years as per Child Marriage Prohibition Act, 2006. The definition of the term "child" varies from statute to statute and as per the POCSO Act any person below 18 years is considered to be "child" and it criminalizes all sexual activities for those under the age of 18 years, even if the act was committed by consent.

14. This issue has been dealt with by this Court in the case of ***Vijayalakshmi and another Vs. State represented by Inspector of police and another*** reported in (2021) 2 CTC 191, the relevant portion of the judgment is extracted hereunder:

10. This Court is instantaneously reminded of an earlier order passed by a learned Single Judge of this Court, in Sabari v. Inspector of Police reported in (2019) 3 Mad LJ (Cri) 110, wherein he had discussed in detail about the cases in which persons of the age group of 16 to 18 years are involved in love affairs and how in some cases ultimately end up in a criminal case booked for an offence under the POCSO Act. The relevant portions of the judgment are extracted here under for proper appreciation:



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“21. When this case was taken up for hearing, this Court became concerned about the growing incidence of offences under the POCSO Act on one side and also the Rigorous Imprisonment envisaged in the Act. Sometimes it happens that such offences are slapped against teenagers, who fall victim of the application of the POCSO Act at a young age without understanding the implication of the severity of the enactment.

26. In addition to the above, this Court is of the view that ‘warning’ of attraction of POCSO Act must be displayed before screening of any film, which have teenage characters suggesting relationship between boy and girl.

27. Apart from the above, this Court is of the view that as per the 3rd respondent's report, majority of cases are due to relationship between adolescent boys and girls. Though under Section 2(d) of the Act, ‘Child’ is defined as a person below the age of 18 years and in case of any love affair between a girl and a boy, where the girl happened to be 16 or 17 years old, either in the school final or entering the college, the relationship invariably assumes the penal character by subjecting the boy to the rigours of POCSO Act. Once the age of the girl is established in such relationship as below 18 years, the boy involved in the relationship is sure to be sentenced 7 years or 10 years as minimum imprisonment, as the case may be.

28. When the girl below 18 years is involved in a relationship with the teen age boy or little over the teen age, it is always a question mark as to how such relationship could be defined, though such relationship would be the result of



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mutual innocence and biological attraction. Such relationship cannot be construed as an unnatural one or alien to between relationship of opposite sexes. But in such cases where the age of the girl is below 18 years, even though she was capable of giving consent for relationship, being mentally matured, unfortunately, the provisions of the POCSO Act get attracted if such relationship transcends beyond platonic limits, attracting strong arm of law sanctioned by the provisions of POCSO Act, catching up with the so called offender of sexual assault, warranting a severe imprisonment of 7/10 years.

29. Therefore, on a profound consideration of the ground realities, the definition of 'Child' under Section 2(d) of the POCSO Act can be redefined as 16 instead of 18. Any consensual sex after the age of 16 or bodily contact or allied acts can be excluded from the rigorous provisions of the POCSO Act and such sexual assault, if it is so defined can be tried under more liberal provision, which can be introduced in the Act itself and in order to distinguish the cases of teen age relationship after 16 years, from the cases of sexual assault on children below 16 years. The Act can be amended to the effect that the age of the offender ought not to be more than five years or so than the consensual victim girl of 16 years or more. So that the impressionable age of the victim girl cannot be taken advantage of by a person who is much older and crossed the age of presumable infatuation or innocence”.

11. There can be no second thought as to the seriousness of offences under the POCSO Act and the object it seeks to achieve. However, it is also imperative for this Court



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to draw the thin line that demarcates the nature of acts that should not be made to fall within the scope of the Act, for such is the severity of the sentences provided under the Act, justifiably so, that if acted upon hastily or irresponsibly, it could lead to irreparable damage to the reputation and livelihood of youth whose actions would have been only innocuous. What came to be a law to protect and render justice to victims and survivors of child abuse, can, become a tool in the hands of certain sections of the society to abuse the process of law.

12. As rightly recognized by the Learned Single Judge of this Court in Sabari's Case (cited supra), incidences where teenagers and young adults fall victim to offences under the POCSO Act being slapped against them without understanding the implication of the severity of the enactment is an issue that brings much concern to the conscience of this Court. A reading of the Statement of Objects and Reasons of the POCSO Act would show that the Act was brought into force to protect children from offences of sexual assault, sexual harassment and pornography, pursuant to Article 15 of the Constitution of India and the Convention on the Rights of the Child. However, a large array of cases filed under the POCSO Act seems to be those arising on the basis of complaints registered by the families of adolescents and teenagers who are involved in romantic relationships with each other. The scheme of the Act clearly shows that it did not intend to bring within its scope or ambit, cases of the nature where adolescents or teenagers involved in romantic relationships are concerned.



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13. *This Court, therefore, deems it fit and necessary to take a moment to delve into an important aspect, the awareness of which is crucial in understanding and dealing with cases of this nature. It is crucial to be aware of the science and psychology of adolescence and young adulthood at this juncture. 'This is because social and biological phenomena are widely recognized as determinants of human development, health, and socioeconomic attainments across the life course, but our understanding of the underlying pathways and processes remains limited. Therefore, a "biosocial approach" i.e. one that conceptualizes the biological and social as mutually constituting, and draws on models and methods from the biomedical and social/behavioral sciences, is required.'* (McDade, T.W., & Harris, K.M. (2018). *The Biosocial Approach to Human Development, Behavior, and Health Across the Life Course. The Russell Sage Foundation journal of the social sciences : RSF*, 4(4), 2-26.)

15. Therefore, the prosecution failed to prove the charges under POCSO Act and as such the conviction and sentence imposed by the trial court cannot be sustained and the same are liable to be set aside.

16. In criminal jurisprudence, the burden is always on the prosecution to prove its case beyond reasonable doubt. When two views are possible and the one favourable to the accused is equally plausible, the benefit of doubt must necessarily go to the accused. In the present



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case, the prosecution has failed to discharge its burden convincingly, and the trial Court failed to properly appreciate the infirmities in the prosecution case. Therefore, the conviction and sentence awarded by the trial Court in respect of all the charges against the appellant cannot be sustained and are liable to be set aside.

17. Accordingly, this criminal appeal is allowed and the judgment passed in Special Sessions Case No.6 of 2017 dated 16.02.2022 on the file of the Fast Track Mahila Court, Dharmapuri is set aside. The petitioner is acquitted of all the charges for the offences under Section 363 of IPC and Section 6 of POCSO Act. The bail bond, if any executed by the appellant, shall stand cancelled. Fine amount, if any paid, shall be refunded to the appellant forthwith.

12.06.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
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To

- 1.The Fast Track Mahila Court, Dharmapuri
- 2.Inspector of Police,
Kadathur Police Station,
Dharmapuri District
- 3.The Public Prosecutor,
Madras High Court.



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G.K.ILANTHIRAIYAN, J.
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