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CRL A No. 351 of 2019



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12-11-2025

CORAM

THE HONOURABLE MR JUSTICE N. SATHISH KUMAR

AND

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

CRL A No. 351 of 2019

Santhana Beeroli
S/o.Abdul Hakkim,

Appellant(s)

Vs

State By
Inspector of Police,
All Women Police Station,
Udumalpet, Tiruppur District.
Cr.No.08/2017.

Respondent(s)

PRAYER

This Criminal Appeal filed under Section 374(2) of Cr.P.C. to set aside the judgment of conviction and sentence passed in Spl.S.C.No.20 of 2018 dated 30.01.2019 on the file of the Hon'ble Fast Track Mahila Court, Tiruppur.



For Appellant(s): Mr.B.Mohan

For Respondent(s): Mr A.Damodaran,
Addl. Public Prosecutor

Asstd., by
Mrs.M.Arifa Thasneem

ORDER

(Order of the Court was made by N.Sathish Kumar J.)

The conviction and sentence passed in Special Sessions Case No.20 of 2018 by the Sessions Judge, Magalir Neethimandram, Fast Track Mahila Court, Tiruppur, are being challenged in the present Criminal Appeal.

2. The case of the prosecution, in brief, is as follows: -

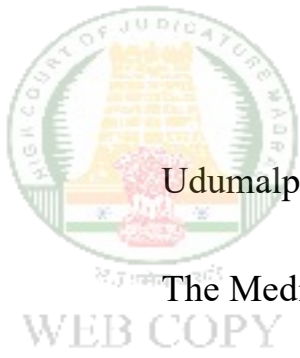
When the minor victim/P.W.1 was studying XI Standard, the accused forcibly had sexual intercourse with the minor victim girl in the year 2017 and



due to which, she became pregnant. According to minor victim girl/P.W.1, her date of birth is 19.05.2021. P.W.2, mother of the victim, lodged a complaint, Ex.P.3 with P.W.10, Sub Inspector of Police. Subsequently, on 23.11.2017 a female child was born to her at the Government Hospital, Udumalpet.

(ii) P.W.10, Sub Inspector of Police, registered the case in Crime No.8 of 2017 for the offences under Sections 5(j)(ii), 5(I) r/w.6, Section 7 r/w. 8 of Protection of Children from Sexual Offences Act 2012 and prepared First Information Report, Ex.P.10. Thereafter, P.W.10 forwarded the FIR to the Court and the copy to the investigation officer.

(iii) P.W.12, on receipt of the First Information Report, took up the case for investigation and went to the place of occurrence and prepared Observation Mahazar(Ex.P.7), Rough sketch (Ex.P.11) in the presence of P.W.7 and another witness, namely, Shanthu Mohammed. She had also examined other witnesses and sent the victim girl for medical examination to the Government Hospital,



Udumalpet and she examined the Medical Officer, and recorded her statement.

The Medical Officer, upon examination, found that the victim girl was 32 weeks pregnant and issued the Accident Register along with her medical opinion (Ex.P.4) and the chemical examination report is Ex.P.5. Then, P.W.12 arrested the accused on 27.09.2017 and on enquiry, he voluntarily given confession admitting his guilt and P.W.12 recorded his confession in the presence of P.W.8 and another witness. Later, he sent the accused for potential test to P.W.4.

(iv) P.W.4, Assistant Doctor, Government Hospital, Udumalpet, conducted potential test on the accused and issued Medical Certificate, Ex.P.6. P.W.5, Doctor, working in the Government Hospital, Udumalpet, in her evidence stated that on 21.11.2017, P.W.1 was admitted as inpatient for delivery and a female child was born to her on 23.11.2017. P.W.6, who is working in the said hospital, collected the blood sample from the child and P.W.1 and sent it through a constable to Court.



(v) P.W.12 recorded the statement of P.W.6 and obtained the birth certificate of the child born to P.W.1. She has also sent the blood samples of the victim, the child and the accused for analysis. Since, P.W.12 was transferred, she handed over the case records.

(vi) P.W.9, Assistant Director, Forensic Science Laboratory, Chennai, examined the blood sample collected from P.W.1, the child and the accused, compared the same and issued DNA report (Ex.P.9 series) with the opinion that the accused is the biological father of the child born through P.W.1.

(vii) P.W.13, Inspector of Police, continued the investigation and obtained the DNA Report and examined the Assistant Director, P.W.9. On 18.05.2018, P.W.13 recorded the statement of the Sub Inspector of Police, Chellammal, who registered the case. On completion of the investigation, P.W.13 laid a charge sheet against the accused.



3. The Trial Court, after hearing arguments of both sides and upon perusing the relevant records, framed charges against the accused for offences under Sections 5(j)(ii) r/w.6 and 5(I) r/w. 6 of POCSO Act and the same have been read over and explained to the accused. The accused has denied the charges and claimed to be tried.

4. In order to prove the case of the prosecution, on the side of the prosecution, as many as thirteen witnesses were examined as P.Ws.1 to 13 and twelve documents were marked as Ex.Ps.P.1 to 12. Besides, one Material Object was marked as M.O.1.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness nor mark any documents on his side.



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6. Based on the entire evidence on the side of the prosecution and the exhibits marked, including the material objects, the Trial Court, on appreciation, found that the charge against the appellant/accused under the above said sections were proved and convicted and sentenced to undergo life imprisonment with a fine of Rs.10,000/- for each of the offences. Further, the victim is recommended for compensation of Rs.3,50,000/- from the “Victim Compensation Fund” under Rule 7(3)(iii) POCSO for the loss of her education opportunity and for mental trauma undergone by the victim.

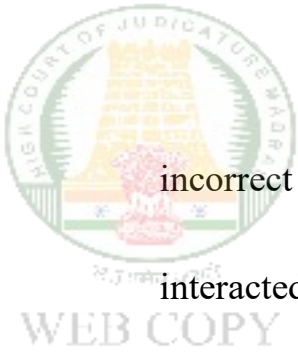
7. The learned counsel for the petitioner would submit that though the case has been projected as if the victim was a minor, her age was actually more than 18 years at the time of the consensual relationship, which continued for some time, and resulted in P.W.1 becoming pregnant and giving birth to a female child. He would further submit that the accused and P.W.1 were married. Ex.P.2, Birth Certificate of the female child born through P.W.1, clearly shows that the accused is the father of the child. His further contention is that



even now, the child is living with the appellant/accused. Unfortunately, P.W.1, the mother, died in a road accident. In the absence of proof of the age of P.W.1 at the relevant point of time, the offence under the POCSO is not maintainable,

8. The learned Additional Public Prosecutor would submit that though the prosecution has not filed any independent document, the mark sheet filed by P.W.1 herself is exhibited as Ex.P1, which shows her age. Further he submitted that both the accused and P.W.1 were married. On 26.04.2025, P.W.1 died in a road accident. The death certificate and legal heir certificate of P.W.1 have been issued in this regard, which clearly show that the accused is the husband of P.W.1 and the child is also living with the father.

9. As per the direction of this Court, the child was produced before this Court through P.W.2, the grandmother. On enquiry, P.W.2, stated that her daughter, P.W.1 had married the accused long back and that she was a major at the time of alleged occurrence. The school certificate appears to bear an



incorrect date, which was given only for the purpose of admission. When we interacted the child, who is now aged 8 years, she stated that she is living with the accused, who is also present. Though such statements cannot be treated as additional evidence, this has been recorded only to reflect what transpired in the court.

10. In light of the above submissions, it is now to be seen whether the prosecution has proved the guilt of the accused.

11. No doubt, the offences against children are very serious in nature and perpetratory crimes cannot be left lightly. The very object of the POCSO Act is to prevent the atrocities against minors. Whereas, in this case, the alleged occurrence is said to have happened some time ago and the relationship continued for a considerable period. Under the POCSO Act, the age limit has been fixed by statute.



12. In the above background, now we have to see whether the prosecution has proved the entire charges. Though the prosecution version is that P.W.1 was below 18 years of age at the time of occurrence, it appears that the prosecution has not proved the age convincingly to show the victim was, in fact, below 18 years. The evidence of P.W.1 itself clearly indicates that she became pregnant and that there was a consensual relationship between her and the accused.

13. In her cross examination, it is also suggested to P.W.1 that she has already completed 18 years. Though she was examined under Section 164 Cr.P.C., she has not stated anything contrary. It is interesting to note that Ex.P.1, the document relied upon by the Trial Court, is a mark sheet said to have been issued by the school. This document was filed by P.W.1 herself. However, one mere entry in the school records is not a sufficient proof regarding age unless there is corroboration. No one from the school, including the Headmaster, was examined to prove that the document was genuinely issued by the school. Therefore, the prosecution has not proved Ex.P.1. P.W.2, in her Cross



examination clearly indicates that there was no birth certificate filed to prove the age of P.W.1. P.W.2, in her evidence that she only admitted P.W.1 in the school. It is also suggested to P.W.2 that a different date was given in the school records.

14. It is relevant to note that when a child is born, especially after the year 2000, the birth would automatically be registered by the concerned local authorities. If the child was indeed born in a hospital, such records would exist and there must be an original birth certificate of P.W.1. However, the prosecution has not even attempted to produce the original birth certificate of P.W.1.

15. Even before the Medical Officer, P.W.1 has stated that she had a consensual relationship with one person. No radiology test was conducted to determine her age. The child was born to the accused, and the DNA report and



the evidence of P.W.9, clearly indicate that the accused is the biological father of the child. Now, the child is aged about 8 years and is living with the accused.

This is also not disputed by the prosecution.

16. Therefore, we are of the view that though any sexual act with a minor would certainly fall within the ambit of the offence under the POCSO Act, as discussed above, we are of the view that the prosecution has failed to produce the concrete evidence to prove the age of P.W.1 at the time of occurrence. The evidence on record indicates that it was only the mother of P.W.1, who admitted her in the school and furnished a different date of birth. Merely relying on Ex.P.2, whose authenticity is not proved, and which is not spoken to by the person who issued the certificate, cannot be given importance. The certificate was obtained only after the occurrence, i.e., in the year 2017. Therefore, unless the authenticity of Ex.P.2 is established, the same cannot be relied upon.



17. The evidence otherwise indicates that P.W.1 and the accused were in a consensual relationship, and as a result, the child was born. In fact, even at the time of the child's birth, the accused's name is shown as the husband of P.W.1. The prosecution has also not disputed these facts.

18. Further more, it is stated that only the accused and P.W.1 were living as husband and wife. Unfortunately, P.W.1 died in a road accident recently. This fact has also been confirmed by the mother of P.W.1, namely P.W.2, who is present before this Court along with the child born to P.W.1.

19. Considering the overall circumstances, and particularly the fact that the prosecution has not established the age of P.W.1, we are of the view that conviction recorded by the Trial court cannot be sustained in the eye of law and the appellant/accused is certainly entitled to the benefit of doubt and the conviction and sentence imposed by the Trial Court are liable to be set aside.



20. In the result, this Criminal Appeal is allowed. The judgment of conviction and sentence passed by the Trial Court is set aside. The appellant/accused is acquitted of the charges framed against him. Bail bond, if any executed, shall stand discharged. The fine amount, if any, paid by the appellant shall be refunded to him.

(N.SATHISH KUMAR J.) (M.JOTHIRAMAN J.)
12-11-2025

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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To

Magalir Neethimandram,
Fast Track Mahila Court,
Tiruppur.

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2. The Inspector Of Police,
All Women Police Station,
Udumalpet, Tiruppur District.
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