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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16-12-2025

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THE HONOURABLE MR.JUSTICE SUNDER MOHAN

CRL A No. 905 of 2023

E.Azarudeen

Appellant(s)

Vs

The State Represented by
The Inspector of Police,
Podanur Police Station,
Coimbatore District.
Crime No. 1170 of 2020.

Respondent(s)

PRAYER: Criminal Appeal filed under Section 374 (2) Cr.P.C., to set aside the judgment and conviction and passed in Spl.CC.No.13/2021 dated 17.03.2023 on the file of the learned Sessions Judge, Principal Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore and allow the Appeal throughout by acquitting the appellant.

For Appellant(s): Mr.S.Bharanidharan

For Respondent(s): Mr.S.Rajakumar
Additional Public Prosecutor

JUDGMENT

This appeal has been filed challenging the judgment and sentence imposed on the appellant for the offences under Sections 450 IPC, Sections 5(1), 5(j) (ii) r/w Section 6 of the POCSO Act and Section 9 of the Prohibition of Child Marriage Act, 2006.



2. The gist of the allegation against the appellant is that the appellant had love affair with the victim girl and had sexual intercourse with the victim girl when she was a minor and thereafter, the victim girl became pregnant; that the appellant married the victim girl when she was a minor and thus committed the aforesaid offences.

3. On the complaint given by the Child Protection Officer PW6, an FIR was registered by the Sub Inspector of Police, PW13 and the same was marked as Ex.P11; that the Inspector of Police, PW14 took up investigation and after subjecting the victim to medical examination, taken steps to record statement of the victim under Section 164(5) Cr.P.C.; that after examination of all the witnesses, PW14 had filed the final report.

4. To prove the case, the prosecution had examined 14 witnesses PW1 to PW14 and marked Exs.P1 to P16. Ex.C1 was also marked. When the accused was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. On the side of defence, no oral and documentary evidence was let in.

5. On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established its case beyond reasonable doubt and held the appellant/accused guilty under Section 235(2) Cr.P.C. for the offences under Sections 5(l), 5(j) (ii) r/w Section 6 of the POCSO Act and convicted and



sentenced him to undergo twenty years of rigorous imprisonment and to pay a fine of Rs.10,000/-, in default to pay the fine, to undergo simple imprisonment for one year; under Section 450 IPC to undergo five years of rigorous imprisonment and to pay a fine of Rs.5,000/-, in default of payment of fine, to undergo six months simple imprisonment. Challenging the above conviction and sentence, the accused has filed the instant appeal.

6.Heard Mr.S.Bharanidharan, learned counsel for the appellant and Mr.S.Rajakumar, learned Additional Public Prosecutor appearing for the respondent.

7.The learned counsel for the appellant submitted that the victim had married the appellant; that three children were born out of the wedlock; that the trial Court had observed that the victim had married the appellant and still the trial Court convicted the appellant for the aforesaid offences; that the victim has now filed an affidavit stating that she is living happily with the appellant and hence, the impugned judgment may be set aside.

8.The learned Additional Public Prosecutor confirms the fact that the victim had married the appellant and three children were born out of the wedlock and fairly submitted that all the witnesses, other than the official witnesses, turned hostile.



9. It is seen from the records that PW1 victim was treated hostile by the prosecution as she had not supported the prosecution case. PW2 father, PW 3 mother and PW4 brother also turned hostile. PW 5 and PW6, Child Protection Officers speak about lodging of the complaint. PW7, who is the uncle of the victim girl also turned hostile. PW8 is the Doctor who had examined the accused/appellant and issued a potency certificate. PW 9 is the Doctor, who had examined the victim girl and had issued the discharge summary Ex.P6 stating that the child was born to the victim and the medical certificate was marked as Ex.P7. PW 10 is the Head Master of the school, who had marked the transfer certificate Ex.P10 and also the extract of the attendance register Ex. P9.

10. PW11 is the uncle of the victim, who turned hostile. PW12 is the Special Sub Inspector. PW13 registered the FIR. PW14 is the Inspector of police as stated above. The victim had deposed that no such incident as alleged by the prosecution had taken place. The prosecution had cross examined the witnesses and though she admitted that she made certain statements to the police, nothing has been elicited from her to convict the appellant of the alleged offences.

11. The learned counsel for the appellant would submit that the learned Trial Judge had convicted the appellant by relying upon the statement recorded under section 164 (5) Cr.P.C. It is needless to state that the said statement is not



a substantive evidence and the trial Court ought not to have relied upon the said statement to arrive at any conclusion.

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12. That apart, admittedly, the appellant and the victim girl are living together and three children were born out of the wedlock. The Hon'ble Supreme Court in the case of *Mahesh Mukund Patel Vs. State of U.P. and others* reported in **2025 SCC Online SC 614**, while quashing the proceedings under the POCSO Act, held that no useful purpose would be served by continuing the proceedings as continuation of the proceedings would not be in the interest of any of the parties concerned.

13. In this case, this Court is of the view that the same principle can be extended as the judgment of conviction and sentence against the appellant in these circumstances is likely to cause hardship, both to the appellant and the victim girl, who are now living happily with three children. Hence this Court, considering the evidence on record and the aforesaid facts, is inclined to set aside the judgment of conviction and sentence imposed on the appellant.

14. In the result, this Criminal Appeal is allowed. The judgment of conviction and sentence passed on 17.03.2023, in Spl.C.C.No.13 of 2021, by the learned Sessions Judge, Principal Special Court for Exclusive Trial of Cases



under POCSO Act, Coimbatore, are set aside and the appellant/accused is acquitted of all the charges. Fine amount, if any, paid shall be refunded. Bail Bonds, if any, executed shall stand cancelled.

Index: Yes/No

16-12-2025

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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To

1. The Sessions Judge,
Principal Special Court for Exclusive
Trial of Cases under POCSO Act,
Coimbatore.

2. The Inspector Of Police,
Podanur Police Station,
Coimbatore District.
Crime No. 1170/2020.

3. The Public Prosecutor,
High Court, Madras.



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SUNDER MOHAN, J.

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