



CrI.A.No.142 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 27.06.2025

CORAM:

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

CrI.A.No.142 of 2023

Prabakaran

...Appellant

Vs.

The State rep. By
The Inspector of Police,
All Women Police Station,
Krishnagiri Taluk & District,
Crime No. 14/2019

...Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C, to call for the records and set aside the order dated 14.03.2022 made in Spl.S.C.No. 21 of 2020 on the file of Sessions Judge, Fast Track Mahila Court, Krishnagiri and acquit the appellant from all the charges.

For Appellant	: Mr.R.Vivekanandan
For Respondent	: Mr.S.Raja Kumar Additional Public Prosecutor

ORDER

This appeal has been preferred against the judgment passed in Spl.S.C.No. 21 of 2020 on the file of the Sessions Judge, Fast Track Mahila



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WEB COURT, Krishnagiri, whereby the appellant was convicted for the offences punishable under Section 366 of I.P.C and Section 5(l) r/w Section 6 of the POCSO Act, 2012.

2. The case of the prosecution is that, on 14.08.2019, the minor victim was kidnapped by the appellant on the pretext of a love affair and marriage, and was taken to Thirupathur, Sivagangai. They stayed in a rented house, where the appellant committed aggravated penetrative sexual assault on the victim. Based on the complaint, the respondent registered an FIR. After completion of investigation, a final report was filed and cognizance was taken for the offences under Sections 363 and 366 of the Indian Penal Code, and under Section Section 5(l) r/w Section 6 of the POCSO Act, 2012.

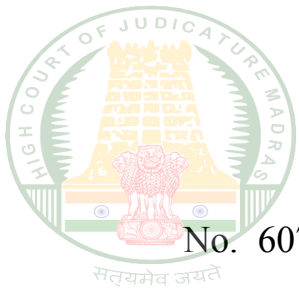
3. In order to bring home the charges, the prosecution examined P.W.1 to P.W.15 and marked Ex.P1 to P22. On the side of the accused, no witnesses were examined and no documents were marked. Upon perusal of the oral and documentary evidence, the Trial Court found the appellant guilty of the offences punishable under Section 366 of IPC and Section 5(l) r/w Section 6 of the POCSO Act, 2012. Aggrieved by the same, the present appeal has been filed.



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4. The learned counsel appearing for the appellant would submit that it is a case of a love affair. Three years prior to the alleged occurrence, the victim fell in love with the appellant and both of them eloped to Thirupathur at Sivagangai. While they were staying together, the appellant only kissed her and did not commit any penetrative sexual assault on the victim girl. Upon learning that the victim's father had lodged a complaint, both of them returned home. In fact, the appellant himself handed over the victim to her father. Further, the prosecution failed to prove the age of the victim in the manner known to law.

5. According to the prosecution, the victim was born on 18.07.2002. However, to prove the same, the prosecution failed to produce any birth certificate. To establish the age of the victim, the prosecution only marked a study certificate as Ex.P6 through the Headmaster, P.W.8. P.W.8 categorically admitted that the study certificate was issued based on the records produced, which were derived from a transfer certificate issued by an earlier school. Therefore, the certificate was not based on any authenticated document. Hence, the prosecution has failed to prove the age of the victim, which is essential to prove the charges. In support of his contention, the learned counsel for the appellant relied upon the judgment in Criminal Appeal



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No. 607 of 2018 in the case of ***Dhanaraj vs. State, represented by the***

Inspector of Police.

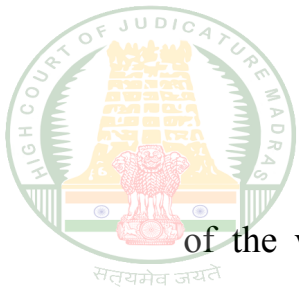
6. Per contra, the learned Additional Public Prosecutor appearing for the respondent would submit that the victim was kidnapped by the appellant on the pretext of a love affair and marriage, and that he committed aggravated penetrative sexual assault on the victim. The appellant kidnapped the victim to Tirupathur and stayed there for two days. Thereafter, the victim girl was rescued and subjected to medical examination. The doctor who examined her, P.W.9, opined that the victim girl had been subjected to sexual intercourse and that her hymen was not intact. Though no injuries were found on her genitalia, it was confirmed that she had sexual intercourse with the appellant while they were staying together at Tirupathur, Sivagangai. The victim was examined as P.W.2, and she categorically deposed that the appellant committed aggravated penetrative sexual assault on her. Therefore, the prosecution has clearly proved the charges, and the Trial Court has rightly convicted the appellant. The conviction does not warrant any interference by this Court.

7. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.



WEB COPY8. The only ground raised by the petitioner/appellant is that the prosecution has failed to prove the age of the victim. According to the case of the prosecution, the victim was born on 18.07.2002. She eloped with the appellant on 14.08.2019. Therefore, she was only 17 years old on the date of elopement and as such, the prosecution charged the appellant under Section 366 of the Indian Penal Code and Section 5(l) r/w Section 6 of the POCSO Act. In order to prove the age of the victim, the prosecution marked Ex.P6, the study certificate of the victim, issued by the Headmaster of the school. The Headmaster was examined as P.W.8. He deposed that Ex.P6 was issued based on the record sheet maintained at the time of the victim's admission, on the basis of the transfer certificate produced by the victim. Originally, the victim joined some other school, and thereafter she got admission to study Plus-1.

9. Further, he deposed that he did not know whether any other proof of the victim's date of birth was produced at the time of her admission to the earlier school. When she was admitted in Plus-1, only the transfer certificate issued by the earlier school was produced and based on that, the record sheet was prepared in the current school. The study certificate was issued based on that record sheet. Therefore, the record sheet maintained by P.W.8 in respect



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of the victim was not based on any original or authenticated proof of the victim's date of birth. Hence, the prosecution has failed to prove the correct age of the victim. That apart, the Accident Register marked as Ex.P8, recorded the age of the victim as 18 years, which was later corrected to 17 years. Likewise, the medical report marked as Ex.P9 also originally recorded the age as 18 years, which was subsequently corrected to 17. Therefore, the prosecution has miserably failed to establish the correct age of the victim so as to attract the provisions of the POCSO Act. In this regard, the relevant portion of the judgment relied upon by this Court in Crl.A.No. 607 of 2018 is extracted hereunder:

“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 :



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“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



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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, Srivaikuntum, 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



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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



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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



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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 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



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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.

10. In view of the above, the order of conviction and sentence imposed by the Trial Court cannot be sustained and is liable to be set aside.

11. Accordingly, the Criminal Appeal is **allowed**. The conviction and sentence imposed by the judgment dated 14.03.2022 in Spl.S.C.No. 21 of 2020 on the file of the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri shall stand set aside.

27.06.2025

Neutral Citation: Yes/No
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G.K.ILANTHIRAIYAN, J.

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To

1. The Inspector of Police,
All Women Police Station,
Krishnagiri Taluk & District.
2. The Additional Public Prosecutor,
High Court of Madras.
3. The Sessions Judge, Fast Track Mahila Court,
Krishnagiri.

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