



Crl.A.No.1300 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2025

CORAM

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

Crl.A.No.1300 of 2025

and

Crl.M.P.No.15957 of 2025

Duraisamy

.....Appellant/Accused

Vs

The State of Tamil Nadu,
Rep. by its Inspector of Police,
Kottapatti Police Station,
Crime No.208 of 2017

....Respondent/Complainant

PRAYER : Criminal Appeal has been filed under Section 419 of Bharatiya Nagarik Suraksha Sanhita, 2023, praying to call for the records of the judgement dated 28.01.2025 made in Spl.S.C.No.27 of 2023 on the file of the Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Dharmapuri.

For Appellant : Mr.N.S.Siva Kumar

For Respondent : Mr.A.Gopinath
Government Advocate (Crl. Side)

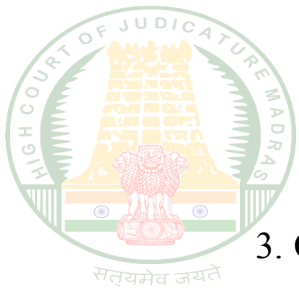


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JUDGMENT

WEB COPY This appeal has been preferred as against the judgement passed in Spl.S.C.No.27 of 2023 dated 28.01.2025 on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Case under POCSO Act thereby convicted the accused for the offence under Sections 363 and 366 of IPC and Section 5(1) read with Section 6 of POCSO Act, 2012.

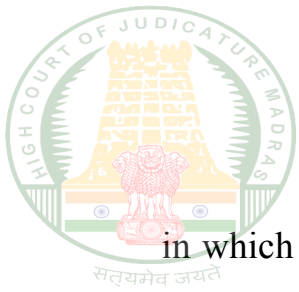
2. The case of the prosecution was that on 31.10.2017 at about 10.00.a.m., the victim girl was kidnapped by the Appellant/Accused and on the pretext of marriage stayed in several places including Tea Estate at Karnataka. While they were staying together, the accused committed penetrative sexual assault on her. Based on the complaint, the respondent registered the FIR in Crime No.208 of 2017 initially under Section 366(A) of IPC and thereafter altered the offences under POCSO Act. After completion of investigation, final report has been filed and the same was taken cognizance by the trial Court. In order to prove the charges, the prosecution has examined PW1 to PW17 and marked Ex.P1 to Ex.P11. On the side of the accused, no one was examined and no documents were marked.



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3. On perusal of the oral and documentary evidence, the trial Court found the accused guilty for the offence under Sections 363 and 366 of IPC and sentenced him to undergo Rigorous Imprisonment for five years with a fine of Rs.5,000/- in default, to undergo Simple Imprisonment for a period of six months and he was also convicted for the offence under Sections 5(1) read with Section 6 of POCSO Act, 2012 and sentenced him to undergo Rigorous Imprisonment for 10 years with a fine of Rs.10,000/- in default, to undergo Simple Imprisonment for six months. Aggrieved by the same, present appeal is filed.

4. The learned counsel for the appellant submitted that the prosecution has failed to prove the age of the victim and she was aged about 18 years on the date of occurrence. Both the victim and the appellant fell in love with each other and eloped somewhere and with consent, they had physical relationship and the same was not on the pretext of marriage. The victim girl was well grown at the time of occurrence and she knows the consequences of physical relationship. They stayed away for thirty days and they had physical relationship. The victim deposed that she was born on 07.02.1999, but the prosecution produced Course completion certificate in order to prove her age,



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in which they had stated the victim's date of birth as 06.05.2000. Therefore the prosecution failed to prove the age of the victim and charged the appellant for the offence under POCSO Act which is not maintainable. Further, the victim never deposed that the appellant kidnapped her without her consent. The victim on her consent, had gone with him to different places and stayed together. The statement of the victim girl was also recorded under Section 164 of Cr.P.C and the same was marked as Ex.P2, wherein she had stated that in order to get marriage, they eloped somewhere and stayed there. Thereafter, they came to their respective residences after the police complaint lodged by her father. The Doctor who had examined the victim girl also did not support the case of the prosecution since there was no injury on her entire body including her genital part. Therefore, the prosecution failed to prove the charge and even though the trial Court had mechanically convicted the appellant.

5. Per contra, learned Government Advocate (Crl. Side) submitted that the victim girl was minor at the time of the occurrence and she was aged about only 17 years. In order to prove her age, the prosecution marked the Course Duration Certificate as Ex.P4 and accordingly, she was born on 06.05.2000. The victim girl was examined as PW2 and her statement under



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Section 164 of Cr.P.C was marked as Ex.P2, wherein she had categorically deposed that she was taken by the appellant and suffered penetrative sexual assault on the pretext of marriage. Infact, he had committed sexual intercourse with the victim on compulsion. Immediately, after registration of FIR, the victim girl was subjected to medical examination and the victim was examined by PW14, in which the Doctor had opined that there was a chance for sexual intercourse and she was not pregnant and therefore the prosecution proved the charges and the trial Court had rightly convicted the appellant which does not warrant any interference by this Court.

6. Heard the learned counsel for the appellant and the learned Additional Public Prosecutor.

7. On the basis of the above submissions, the following points arise for consideration.

(i) Whether the prosecution failed to prove the age of the victim as she was minor at the time of alleged occurrence.

(ii) If the prosecution failed to prove the age of the victim as minor, whether the petitioner is liable to be convicted for any other offence.

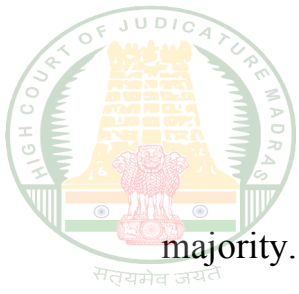


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(iii) Whether medical evidence supports the case of the prosecution.

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8. The father of the victim girl lodged a complaint on 04.11.2017 which was marked as Ex.P1. Accordingly, the victim girl was studying First Year B.A (English) at the time of occurrence. On a previous occasion, on the pretext of love affair, the appellant had already kidnapped the victim and on the complaint, the victim girl was secured and the issue was settled by way of compromise. Once again on 31.10.2017, the victim girl was missing and the father of the victim has gotten to know that the appellant had kidnapped the victim girl. The complaint was lodged after four days from the date of alleged kidnap by the appellant. There was no reason for the delay in lodging the complaint. On the complaint, the respondent registered the FIR in Crime No.208 of 2017 for the offence under Section 366A of IPC. After 15 days from the date of registration of FIR, the victim girl was secured and subjected for medical examination. The victim girl was examined as PW2 and she had deposed that she was born on 07.02.1999 and she also stated that she was not kidnapped by the appellant herein. On the pretext of love affair and in order to get married to the appellant, the victim herself eloped with the appellant with the complete knowledge of the consequences, as she had attained the age of

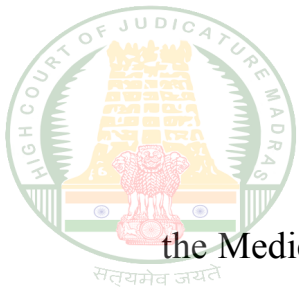


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majority. During their stay, they had also involved in physical relationship.

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9. It was not the case of the prosecution that the appellant had physical relationship on the pretext of marriage and ofcourse they fell in love even prior to 31.10.2017 and both, with mutual consent, eloped somewhere and on the complaint, the victim went to her house and there was no FIR registered as against the appellant. According to PW2, she was major at the time of alleged occurrence, since she was born on 07.02.1999 and the alleged occurrence took place on 31.10.2017 and on that day she completed 18 years. That apart, when the victim came to her house by bus on 16.11.2017 along with the appellant, the respondent had secured them and they were brought to the police station. Immediately, the victim girl was taken to Government Hospital, Harur and the accident register was recorded on 16.11.2017 about 12.20 hrs. After examination of the victim girl, it was recorded that the victim girl went along with a well known person ie., the appellant on 31.10.2017 at about 10.00 a.m., and they had sexual intercourse several time with her willingness. Her age was recorded as 18years in the Accident Register. The victim girl never stated that she was kidnapped by the appellant and that she was compelled to have sexual intercourse with the appellant. On examination,



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the Medical Officer found that the victim's hymen was not intact and there was a chance for sexual intercourse and she was not pregnant. In order to prove the age of the victim girl as minor at the time of occurrence, the prosecution had marked Ex.P4. On perusal of Ex.P4, it was only a course duration certificate and that too obtained from the School. Accordingly, she had completed grade 12 during the academic year 2016-2017 and her date of birth was recorded in the certificate as 06.05.2000. Admittedly, the said course duration certificate was not recorded from any proof of the birth of the victim. Infact, no School Certificate was marked by the prosecution to prove the age of the victim girl.

10. According to the victim girl, she was born on 07.02.1999. Therefore, the prosecution miserably failed to prove the age of the victim as minor at the time of the alleged occurrence and hence no charge is attracted under POCSO Act as against the appellant. Accordingly the first point is answered.

11. Insofar as the second point is concerned, as stated supra, when the victim was major at the time of alleged occurrence, she can give consent for all her activities, since she attained the age of majority. The victim also deposed



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before the Doctor, while recording Accident Register, that she herself on her willingness eloped with the appellant and further on her consent, had physical relationship with the appellant. It was not the case of the prosecution that the appellant had sexual intercourse on the pretext of false promise of marrying her. Infact the victim girl had already eloped with the appellant two months before the date of alleged occurrence and at that time, both were secured and the matter was compromised between the parties. Once again on 31.10.2017, the victim girl eloped with the appellant. Therefore, no other offence is made out by the appellant, since the victim on her own eloped with the appellant and had sexual intercourse.

12. It is also evident from the medical certificate issued by PW14 , which was marked as Ex.P17, the victim's hymen was intact and there was a chance of sexual intercourse and she was not pregnant and there was no injury on the body of the victim girl including her genital part. Therefore, no other offence is made out by the appellant. Since the victim herself had eloped with the appellant, the charge under Section 366 of IPC is not all attracted as against the appellant. PW1 also categorically deposed that she was not kidnapped by the appellant and she had voluntarily eloped with the him.



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13. In view of the above, the prosecution failed to prove the charge beyond any doubt and as such the benefit of doubt goes in favour of the appellant and therefore this Court is inclined to set aside the judgement dated 28.01.2025 made in Spl.S.C.No.27 of 2023 on the file of the Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Dharmapuri and accordingly set aside.

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

21.08.2025

Speaking order/Non-speaking order

Index : Yes/No

Internet : Yes/No

Sma

To

1. Special Court for Exclusive Trial of Cases under POCSO Act, Dharmapuri
2. Inspector of Police,
Kottapatti Police Station,
3. The Public Prosecutor,
Madras High Court



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G.K.ILANTHIRAIYAN, J.

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