



Crl.A.No.96 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2025

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.96 of 2025

N.Prabhakaran @ Prabu

... Appellant

Vs.

State by its

Inspector of Police

Ariyankuppam Police Station

Puducherry

(Crime No.110 of 2017)

... Respondent

Prayer: Criminal Appeal filed under Section 415 (2) of B.N.S.S. to set aside the conviction and sentence imposed upon the appellant vide judgment dated 24.01.2024 in Special S.C. No.22 of 2023 on the file of the Fast Track Court exclusively to deal with offences under the POCSO Act, Puducherry and acquit the appellant.

For Appellant : Mr.D.Senthilkumar

For Respondent : Mr.K.S.Mohandas

Additional Public Prosecutor (Puducherry)

Assisted by Mrs.N.Danalatchummy

Advocate



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JUDGMENT

This Criminal Appeal has been filed by the appellant/accused challenging the conviction and sentence imposed on him, vide judgment dated 24.01.2024 in Special S.C. No.22 of 2023 on the file of the Fast Track Court Exclusively to deal with offences under the POCSO Act, Puducherry and to acquit him.

2. The brief facts of the case are that, on 10.08.2017, a complaint was given by P.W.1/mother of the victim before the respondent-Police alleging that her daughter aged 14 years was found missing and requested to trace out her daughter. Based on the complaint, the respondent-Police registered a case in Crime No.110 of 2017 for the offence under Section 363 IPC on 10.08.2017 at 23.30 hrs. On the next day evening i.e. on 11.08.2017 at about 4 p.m., the victim was traced out by her father from the grove near their house. Immediately, the victim was taken to the respondent's Police Station. However,



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the victim did not reveal anything to the respondent/Police. Subsequently, she

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was sent to Kirubalaya Home for safe custody wherein, she stayed for 10 days

from 11.08.2017 to 21.08.2017. Thereafter, the respondent-Police recorded the

statement of the victim girl in which, she stated that on 10.08.2017 at about

15.00 hrs., the appellant had called her to Kolli (field) located opposite to her

house and she went there to speak to him and when she was about to return,

her father was standing outside her house. So they were hiding in the Banana

Grove and thereafter in the Mango grove, wherein, the appellant had sexual

intercourse with her. Again on the next day morning, the appellant had sexual

intercourse with her. Thereafter, they planned to go to Velankanni and hence,

the appellant went out to take dress. At that time, her father secured her and

took her to their residence, wherein, she changed her clothes and thereafter, she

was produced before the Police by her father. Based on the said statement, the

appellant was arrested by the respondent-Police on 22.08.2017 and the offence

was altered from Section 363 IPC to Sections 363, 342 IPC and Section 6 read



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with 5 (I) of POCSO Act. The victim girl was also produced before the Magistrate for recording statement under Section 164 Cr.P.C. and she was also subjected to medical examination. Thereafter, on completion of investigation, the respondent-Police filed the charge sheet and the same was taken on file in S.C. No.22 of 2023 and the same was made over to Fast Track Court exclusively to deal with offences under the POCSO Act, Puducherry.

3. The learned Sessions Judge, on appearance of the accused, framed charges for the offences under Sections 363, 342, 376(3) IPC and Section 6 of POCSO Act. The charges were then read over and explained to the accused and when he was questioned about the charges framed against him, he pleaded not guilty. Hence, proceedings were issued for trial.

4. To prove the charges framed against the accused before the trial Court, on the side of the prosecution, 15 witnesses were examined as P.W.1 to P.W.15 and 12 documents were marked as Ex.P.1 to Ex.P.12, besides 6 material objects were marked as M.O.1 to M.O.6. On the side of the accused, one witness was



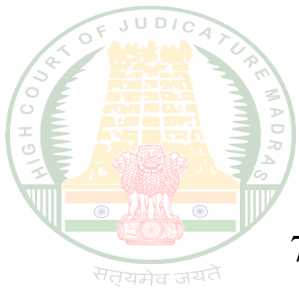
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examined as D.W.1.

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5. The learned Sessions Judge, on conclusion of trial, found the appellant guilty and convicted and sentenced him to undergo 3 years rigorous imprisonment and to pay fine of Rs.1000/-, in default of payment of fine, to undergo simple imprisonment for two months for the offence under Section 363 IPC; to undergo one year rigorous imprisonment and to pay fine of Rs.1000/- in default of payment of fine, to undergo simple imprisonment for two months for the offence under Section 342 IPC; and to undergo 10 years rigorous imprisonment and to pay fine of Rs.2,000/- in default of payment of fine, to undergo simple imprisonment for three months for the offence under Section 6 of the POCSO Act. The trial Court ordered the sentences to run concurrently. Since the accused was sentenced under Section 6 of POCSO Act, no separate punishment was awarded for the offence under Section 376 IPC.

6. Aggrieved by the judgment of conviction and sentence passed by the trial Court, the accused has filed the present appeal.



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7. The learned counsel for the appellant/accused submitted that the conviction and sentence imposed by the trial Court as against the appellant is unsustainable both in law and on facts. When the victim girl was brought to the Police Station, she did not make any allegation as against the appellant. Even the victim girl/P.W.2 in her cross examination, confirmed that she did not state anything about the occurrence to anyone until appearing before the Police on 11.08.2018. She also admitted that she had not made any allegation against the appellant, whereas the mother of the victim/P.W.1 totally lied the facts in order to implicate the appellant.

7.1. The learned counsel further submitted that according to the prosecution version, the victim was traced out by her father on 11.08.2017 and when she was produced before the respondent/Police, she did not make any allegation against the appellant and subsequently, she was sent to Home for safe custody and only after 10 days, i.e. on 21.08.2017, the respondent-Police recorded the statement of the victim under Section 161 Cr.P.C. Only after

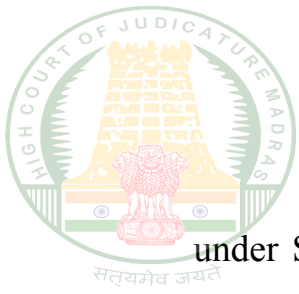


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lapse of 10 days from the date of occurrence, the appellant was roped in this

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case. Therefore, the delay in recording statement from the victim is fatal to the case of the prosecution. After much deliberations, on the instigation of the parents of the victim, the statement of the victim had been recorded to suit their convenience by implicating the appellant. Though the victim/P.W.2 admitted that she did not disclose anything about the occurrence as well as about the appellant to her parents, namely P.W.1 and P.W.3, contrary to the same, P.W.1 and P.W.3 falsely deposed as if the victim informed them that she went along with the appellant to the grove, wherein, the appellant had sexual intercourse with her. If at all the victim had informed them about the occurrence prior to producing her before the Police, the parents of the victim would have given a complaint as against the appellant at the time of producing the victim before the Police. Therefore, the evidence of P.Ws.1 and 3 is totally contradictory and the same is not reliable. Further, the statement recorded from the victim by the Investigating Officer, the statement recorded from the victim by the Magistrate



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under Section 164 Cr.P.C. and the evidence given by the victim as P.W.2 are

inconsistent. There is no reliable and cogent evidence to prove that the appellant committed sexual assault on the victim girl. When there is no substantive evidence to prove that the appellant committed penetrative sexual assault on the victim girl, the trial Court erroneously convicted the appellant and sentenced him to undergo imprisonment.

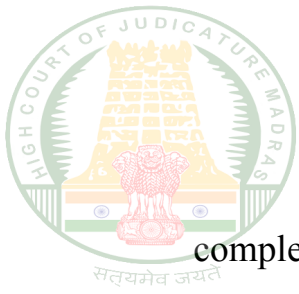
7.2. He further submitted that when the victim had not pleaded that she was kidnapped or abducted by the appellant, the offence under Sections 363 and 342 IPC would not attract. Further, the victim was not secured from the appellant. The parents of the victim have clearly stated that they secured the victim girl from a grove-house near their house and subsequently, they brought her to the Police Station. Further, during enquiry, the victim never stated that the appellant kidnapped her and had forcible sexual intercourse with her. Even the medical evidence does not show anything that the victim was subjected to forcible penetrative sexual assault. Therefore, the conviction recorded by the



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trial Court is perverse. The trial Court has not appreciated the evidence in a right perspective and erroneously convicted the appellant. Therefore, the judgment of the trial Court is liable to be set aside and the appellant may be acquitted.

8. The learned Additional Public Prosecutor (Pondicherry) appearing for the respondent-Police submitted that the appellant is the neighbour of the victim. He took the victim girl who was aged 14 years, to the Banana and Mango grove and kept her for two days and during that time, he committed penetrative sexual assault on the victim. Though the Doctor's evidence shows that there was no symptoms of forcible sexual intercourse, the medical records clearly shows that there was penetrative sexual assault on the victim. Even assuming that the victim had not objected or given consent to the appellant for the penetrative sexual intercourse, it does not mean that the act committed by the appellant would not attract the charged offences. The fact remains that the victim was hardly 14 years at the time of alleged occurrence and she had not



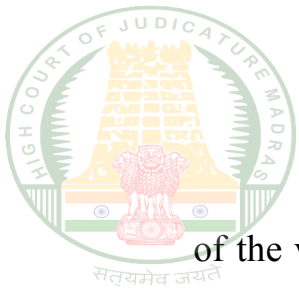
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completed the age of 18 years and therefore, she was a child under the definition of the POCSO Act. Even before the Doctor and the Magistrate, the victim has clearly stated that the appellant is the one who committed penetrative sexual assault on her. Therefore, the prosecution has proved its case beyond all reasonable doubts and that there are no merits in the appeal. Hence, the appeal is liable to be dismissed.

9. Heard both sides and perused the materials available on record.

10. It is seen from the records that initially the parents of the victim had lodged a complaint before the respondent-Police for girl missing and the same was registered in Crime No.110 of 2017 for the offence under Section 363 IPC on 10.08.2017 at 23.30 hrs. On 11.08.2017 at about 4 p.m., the victim was secured by her father from a grove near their house and she was produced before the Police by her father. But the victim had not stated anything about the occurrence and subsequently, she was sent to Home for safe custody and she was retained there till 21.08.2017. Thereafter, the Police recorded the statement

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of the victim wherein she has stated that the appellant took her to banana and

mango grove near their residence, where they were staying for two days and at that time, the appellant had committed sexual intercourse with her.

11. Though initially the victim had not revealed anything about the occurrence on the date of securing and producing before the Police, however, when she was in the Home, the parents met her and at that time, she revealed the occurrence to them and subsequently, she also revealed the same before the Investigating Officer, Doctor, and also before the Judicial Magistrate while recording the statement under Section 164 Cr.P.C. Though the medical records and the evidence of the Doctor show that there were no symptoms for forceful sexual intercourse, however, it shows that the victim was subjected to penetrative sexual assault. Admittedly, there is no eye-witness to the occurrence and the only witness is the victim one who stayed with the appellant for two days. At the time of alleged occurrence, the victim was only aged 13 years and 9 months and she had not completed the age of 18 years and



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in other words, the victim was a child under the definition of the POCSO Act.

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Even assuming that the victim had not objected or prevented and had given consent to the appellant for sexual intercourse, the consent is immaterial, since the victim was a child at the time of occurrence under the definition of the POCSO Act. The language of consent is unknown to POCSO Act. Therefore, the offence committed by the appellant falls under Section 5 of the POCSO Act, which is punishable under Section 6 of POCSO Act. Since the accused was sentenced under Section 6 of the POCSO Act, no separate punishment was ordered by the trial Court for the offence under Section 376 IPC.

12. Though the appellant contended that there is no material to convict the accused for the offence under Sections 363 and 342 IPC and even the victim had not pleaded that she was kidnapped or abducted by the appellant, a perusal of the statement and evidence of the victim clearly shows that the appellant is the one who took the victim away from her parents to Banana and Mango grove, wherein they stayed for two days without the knowledge of her



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lawful guardian/parents. Since the victim was a child at the time of occurrence, the act of the appellant falls under Sections 363 and 342 IPC.

13. In the cases of this nature, the Court cannot expect an eye-witness or independent witness. The only corroborative evidence is the medical evidence. In this case, the victim has clearly stated that she was subjected to penetrative sexual assault by specifically naming the appellant.

14. Therefore, on a perusal of the statement of the victim girl recorded under Section 164 Cr.P.C., the evidence of the victim recorded before the trial Court as P.W.2 and also the medical evidence, this Court finds that the prosecution has proved the charges levelled against the appellant with cogent evidence and there is no reason to disbelieve or discord the evidence of the victim.

15. Though initially the victim had not stated anything about the occurrence or named the appellant, in the cases of this nature, one cannot expect a victim child to disclose the facts immediately soon after she is



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secured.

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16. The scope and object of the POCSO Act is to protect children from sexual abuse. Under the Act, if a child is a victim of a sexual offence, they must be provided with medical assistance and psycho-social support, including counseling if needed. In the cases of this nature, the immediate response cannot be expected from a victim.

17. In this case, though the victim had not revealed anything about the occurrence on the date of securing and producing her before the Police, when she was sent to the Home, subsequently she recovered and after coming back to normal position, she has disclosed the facts before the Investigating Officer, her parents, Doctor and to the Magistrate while recording statement under Section 164 Cr.P.C. and the same was also reiterated by the victim during her evidence before the trial Court.

18. Though there are some discrepancies here and there, that itself is not sufficient to disbelieve the evidence of the victim girl and there is no material



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contradiction. A reading of the evidence of the victim is clearly coupled with the evidence of the Doctor/P.W.12.

19. This Court as an appellate Court and final Court of fact finding while re-appreciating the entire evidence of the prosecution and also the scope and object of the POCSO Act, finds that the appellant/accused had committed the charged offences and the prosecution proved its case beyond all reasonable doubts that the victim who was a child, was subjected to penetrative sexual assault by the appellant. This Court does not find any compelling reasons to interfere with the judgment of the trial Court and there are no merits in this appeal.

20. Accordingly, this Criminal Appeal is dismissed.

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Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes/No
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To

1. The Fast Track Court Exclusively to deal with offences
under the POCSO Act,
Puducherry
2. The Inspector of Police
Ariyankuppam Police Station
Puducherry
3. The Public Prosecutor (Pondicherry)
High Court of Madras

Copy To

The Section Officer

V.R. Section, High Court of Madras



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P.VELMURUGAN. J.

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