



Crl.A(MD)No.29 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.08.2025

Pronounced on : 19.08.2025

CORAM :

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

AND

THE HONOURABLE MS.JUSTICE R.POORNIMA

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Palraj

... Appellant

Vs.

The Inspector of Police,
Rajapalayam North Police Station,
Virudhunagar District.
(Crime No.672/2015)

...Respondent

PRAYER: Criminal Appeal filed under Section 374 of the Criminal Procedure Code to call for the entire records connected to the Judgment in Spl.S.C.No.37 of 2016 on the file of the Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Virudhunagar District at Srivilliputhur, dated 08.10.2021 and set aside the same as illegal.



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For Appellant : Mrs.M.Krishnaveni

For Respondent : Mr.A.Thiruvadi Kumar,

Additional Public Prosecutor

JUDGMENT

(Judgment of this Court was delivered by **R.POORNIMA, J.**)

This Criminal Appeal is filed against the conviction and sentence passed against the appellant / Sole Accused in the judgment dated 08.10.2021 passed by the Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Virudhunagar District at Srivilliputhur, dated 08.10.2021 in Spl.S.C.No.37 of 2016 by convicting and sentencing the appellant for the offence punishable under Sections 363, 341, 342 of IPC, under Sections 8 r/w7 of Protection of Children from Sexual Offences Act, 2012, under Section 10 r/w 9(k),(l) of Protection of Children from Sexual Offences Act, 2012 and under Section 6 r/w.5(l) (m) of Protection of Children from Sexual Offences Act, 2012 and sentenced him to undergo seven years imprisonment and to pay a fine of Rs.1,000/- for the offences punishable under Section 363 of IPC and sentenced him to undergo three months imprisonment and to pay a fine of Rs.1,000/- for the



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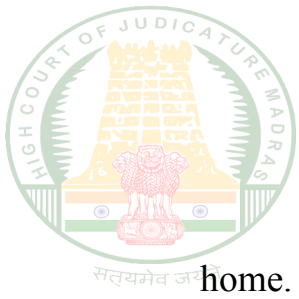
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offences punishable under Section 341 of IPC and sentenced him to undergo one year imprisonment and to pay a fine of Rs.1,000/- for the offences punishable under Section 342 of IPC and sentenced him to undergo five years imprisonment and to pay a fine of Rs.1,000/- for the offences punishable under Section 8 r/w.7 of Protection of Children from Sexual Offences Act, 2012, and sentenced him to undergo seven years imprisonment and to pay a fine of Rs.1,000/- for the offences punishable under Section 10 r/w.9(k), (l) of Protection of Children from Sexual Offences Act, 2012 and sentenced to undergo imprisonment for life and to pay a fine of Rs.1,000/- for the offence under Section 6 r/w.5(l) (m) of Protection of Children from Sexual Offences Act, 2012. If the fine amounts are not paid by accused, he shall undergo six months simple imprisonment each concurrently. All sentences shall run concurrently.

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

(a) As per the prosecution's case, the complainant's daughter was suffering from severe fever at the age of 6, which resulted in a mild intellectual disability and therefore, she was not sent to School.

(b) One year back, the complainant along with her other children had gone out, leaving behind her victim daughter xxx alone at



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home. Upon their return, they saw the accused coming out of their house.

The complainant and her sons shouted at him.

(c) She was informed by witnesses Valarmathy and Bhuvaneshwari that about ten months ago, when her daughter xxx was walking along the roadside, the accused forcibly took her to his house and locked her inside and had committed penetrative sexual assault. Due to the assault the victim raised alarm. The passersby Valarmathi and Bhuvaneshwari had knocked the door of the house and the accused had opened the door after some time and the said Valarmathi and Bhuvaneshwari rescued the victim child and conveyed the same to the complainant and the complainant reached the place and enquired her daughter and she had informed that the accused forcibly took her into his house and had committed aggravated penetrative sexual assault on several occasions for quite some time. In order to protect her daughter she did not permit her to go out of the house. Subsequently, they came to know that the victim was pregnant. To avoid disgrace to the family, they attempted to terminate the pregnancy and took her to Palayamkottai High Ground Government Hospital for an abortion. The doctor examined the victim and stated that she was unfit to undergo abortion. Therefore, she was provided



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medical treatment once a month until delivery of the child at Palayamkottai High Ground Government Hospital. On the Tamil month Puratashi 5th day, a boy child was born to the victim girl. Hence, the complaint.

(d) Based on the information received from the Deputy Superintendent of Police, P.W.20 Mrs.Viji, Inspector of Police, on 04.11.2015 at about 9.00 hours enquired the victim girl (P.W.2) and her mother (P.W.1) and based on the statement (Ex.P1) recorded from the mother (P.W.1) registered FIR (Ex.P11) in Crime No.672 of 2015 for the offence under Sections 363, 366(A), 376 IPC and 5 (i), (j) (ii), (l), (k), (u) r/w 6 of POCSO Act and forwarded the statement (Ex.P1) and FIR (Ex.P11) to the concerned Court.

(e) P.W.21 Tmt.Amutha, Inspector of Police, after receipt of the FIR took up the case for investigation. On 04.11.2015, at about 12.00 hours, she went to the place of occurrence and prepared Observation Mahazar (Ex.P3), Rough Sketch (Ex.P12), in the presence of witnesses Marikannan (P.W.8), Muthu Ganesan. She examined the victim girl xxx and other witnesses and recorded their statements.

(f) On 04.11.2015 at about 15.00 hours she arrested the accused and sent him for remand.



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(g) On the same day, at about 17.00 hours she sent the victim girl to the Government Hospital, Rajapalayam for a medical check-up through a Women Constable. P.W.16 Dr. Seema Arul Brindha examined the victim girl on 04.11.2015 at about 7.15 hours and issued accident register (Ex.P.8) by stating that there was no external injury but her hymen was not intact.

(h) The investigating officer sent a requisition letter to the Chief Judicial Magistrate, Virudhunagar District @ Srivilliputtur to record the statement of the victim under Section 164(5) Cr.P.C. As per the proceedings of the Chief Judicial Magistrate dated 05.11.2015, the Judicial Magistrate No.I, Sattur recorded the statement (Ex.P.13) of the victim girl under Section 164 (5) Cr.P.C.

(i) Thereafter, on 19.11.2015, the accused was sent to Virudhunagar Government Hospital for medical examination. Dr. Ganesh (P.W.19) examined the accused and issued Accident Register (Ex.P.10) opined that there is nothing to suggest that he is impotent.

(j) Thereafter, she sent a requisition letter to the Judicial Magistrate to obtain FTA card for a DNA Test and as per the direction, she obtained FTA card from the Forensic Science Department, Madurai on 17.12.2015.



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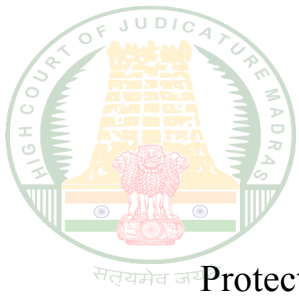
(k) On 21.12.2015 the victim girl, her minor boy and the accused Paulraj were examined by the Doctors in Rajapalayam Government Hospital and blood samples were collected and sent to the Forensic Department.

(l) On 25.01.2016, she examined the witness Ponnusamy and recorded his statement. On 29.01.2016 she examined the witnesses Tmt.Padmavathi (P.W.12) Sub Inspector of Police, Thiru.Rajendaran (P.W. 9) Sub Inspector of Police, Thiru.Murugan (P.W.10) Head Constable, Thiru.Senthilkumar, Constable, Tmt.Radha (P.W.11) Women Constable and other witnesses recorded their statements

(m) On 08.03.2016 she examined the witnesses Tmt. Jeyaseeli (P.W.22) Headmistress, who had issued the age certificate of the victim girl (Ex.P.16), Tmt.Malarvizhi (P.W.13) Village Administrative Officer, and recorded their statements.

(n) Thereafter, on 31.03.2016 she went to the place of occurrence namely, the house of the victim girl and prepared observation mahazar (Ex.P9) and rough sketch (Ex.P14) in the presence of witnesses Seetharaman (P.W.18) and Murugan (P.W.10).

(o) On 07.04.2016, she altered the offence under Sections 451, 341, 366, 354(a) IPC and Sections 8 (k) (i) r/w.10 and 5(1) r/w.6 of



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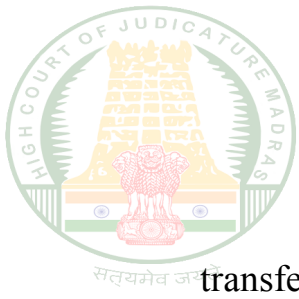
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Protection of Children from Sexual Offences Act, 2012, and filed the alteration report (Ex.P.15) and thereafter, she completed the investigation and filed a final report against the accused.

3. On receipt of the records, the Fast Track Mahila Court took up the case in Spl.S.C.No.186 of 2019, issued summons to the accused. After the appearance of the accused, copies of the entire records were furnished to him at free of cost under Section 207 Cr.P.C.

4. After hearing the learned Public Prosecutor and the defence counsel, the learned Session Judge framed charges against the accused under Sections 450, 354(B), 366(A), 341, 342 of IPC, Section 8 r/w.7 of Protection of Children from Sexual Offences Act, 2012, Section 10 r/w. 9(k), (l) of Protection of Children from Sexual Offences Act, 2012 and Section 6 r/w.5(1) (m) of Protection of Children from Sexual Offences Act, 2012. The charges were read over and explained to the accused. The accused denied the charges and claimed to be tried.

5. Therefore, the case was posted for trial. During parted trial, on 18.12.2019, after formation of the POCSO Court, the case was

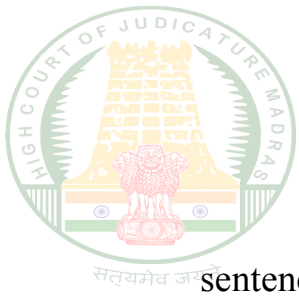


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transferred from Fast Track Mahila Court to the Special Court for Exclusive Trial of cases under the POCSO Act, Virudhunagar District at Srivilliputtur.

6. On the side of the prosecution, P.W.1 to P.W.22 were examined and Ex.P1 to Ex.P16 were marked. No Material Objects were produced. Neither oral nor documentary evidence was adduced by the accused.

7. After a full trial, the trial Court convicted the accused for the offence punishable under Sections 363, 341, 342 of IPC, Section 8 r/w. 7 of Protection of Children from Sexual Offences Act, 2012, Section 10 r/w. 9(k), (l) of Protection of Children from Sexual Offences Act, 2012 and Section 6 r/w.5(1) (m) of Protection of Children from Sexual Offences Act, 2012 and sentenced him to undergo seven years imprisonment and to pay a fine of Rs.1,000/- for the offences punishable under Section 363 of IPC and sentenced him to undergo three months imprisonment and to pay a fine of Rs.1,000/- for the offences punishable under Section 341 of IPC and sentenced him to undergo one year imprisonment and to pay a fine of Rs.1,000/- for the offences punishable under Section 342 of IPC and



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sented him to undergo five years imprisonment and to pay a fine of Rs.1,000/- for the offences punishable under Section 8 r/w.7 of Protection of Children from Sexual Offences Act, 2012, and sentenced him to undergo seven years imprisonment and to pay a fine of Rs.1,000/- for the offences punishable under Section 10 r/w.9(k), (l) of Protection of Children from Sexual Offences Act, 2012 and sentenced to undergo imprisonment for life and to pay a fine of Rs.1,000/- for the offence under Section 6 r/w.5(1) (m) of Protection of Children from Sexual Offences Act, 2012. If the fine amounts are not paid by the accused, he shall undergo six months simple imprisonment each concurrently, against which, the present Criminal Appeal has been filed.

8. Mrs.Krishnaveni, learned counsel appearing for the appellant assailing the judgment of conviction and sentence made the following submissions:-

1) The trial Court erred in convicting the accused based on embellishments and inconvenience in the statement of witnesses.

2) The trial Court erred in believing the reliance of Ex.P.16 to fix the age of the victim.



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3) The trial Court failed to take into consideration the inconsistencies in the evidence of witnesses regarding the occurrence. The case of consensual relationship has been falsely projected as case of rape of a minor.

4) The prosecution has exaggerated the case and had failed to prove that the victim is a mentally retarded girl either by oral medical or scientific evidence.

Hence, she prayed to set aside the judgment of the trial Court and to acquit the accused from all charges.

9. The learned Additional Public Prosecutor appearing for the State argued that the victim girl is a minor, aged about 15 years and the accused, who is aged about 38 years had taken the minor girl to his residence locked her inside his house, and had forcible sexual intercourse with her, the victim narrated the same to the learned Judicial Magistrate when her statement was recorded under Section 164 (5) of Cr. P.C. The victim's evidence was supported by medical evidence and the DNA report proved that the accused is the biological father of the child born to the victim girl. The school certificate produced reveals her date of birth, and at the time of the occurrence, she was about 15 years old. The judgment of



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the trial Court is proper, and there is no valid ground in this Criminal Appeal, and therefore, he prays to dismiss the Criminal Appeal.

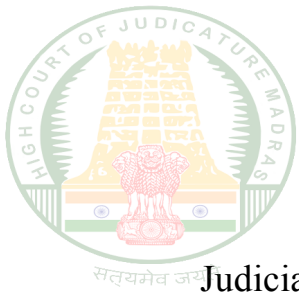
10. Heard the learned counsel on either side and perused the materials available on record.

11. Now this Court has to decide whether the prosecution has proved its case by cogent evidence beyond reasonable doubts and whether the trial Court is right in conviction.

12. We carefully analyzed the entire records and evidence.

13. In this case, the victim girl was examined as P.W.2. She categorically narrated the incident by deposing that the accused took her to his residence, not allowed her to go outside and continuously committed penetrative sexual assault. Thereafter, neighbours opened the house and released her. Thereafter she explained everything to her mother (P.W.1). Subsequently, she became pregnant and gave birth to a child.

14. Victim girl (P.W.2) statement was recorded by the learned



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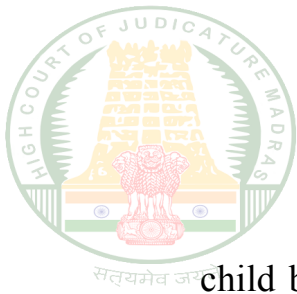
Judicial Magistrate under Section 164 Cr.P.C. The statement before the learned Judicial Magistrate is consistent with her deposition before this Court.

15. Further P.W.2 evidence was corroborated by P.W.1, who is the complainant and the mother of the victim. She had clearly stated that her daughter was abducted by the accused and locked inside the house and committed penetrative sexual assault. The evidence of P.W.1 was corroborated with medical evidence.

16. In this case, Dr.Seema Arul Brindha (P.W.16) stated that the victim was brought for medical examination, she was found to be pregnant, she recorded the same in the accident register, which was marked as Ex.P8.

17. P.W.15 Dr.Pamila deposed that the victim girl gave birth to a male child on 05.09.2015 and issued a certificate Ex.P7.

18. Further more, DNA test was conducted and the result conclusively established that the accused is the biological father of the



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child born to the victim. The evidence of victim girl is clear, cogent and without any embellishment, her evidence was corroborated with medical evidence.

19.P.W.17, who collected the blood samples of the victim, new child born to her and the accused for the DNA test and sent the same to Forensic Lab. Ex.P.5 DNA test result as follows:

“.... is not found excluded from the paternity of the male child xxx under any of the 15 STR loci tested. Hence, the cumulative probability of paternity of Mr.Palraj for being the father of male child xxx and the cumulative chance of exclusion of any random man from the paternity of the male child xxx were computed.

i) The cumulative probability of paternity of Mr.Palraj for being the father of the male child xxx is found to be 99.9999997%

ii) Cumulative chance of exclusion of any random man from the paternity of male child xxx is 99.9999999999999%

Conclusion :

From the DNA typing results of the above blood samples, it is found that in the absence of identical twins, Mr.Palraj is the biological father of the male child xxx.”



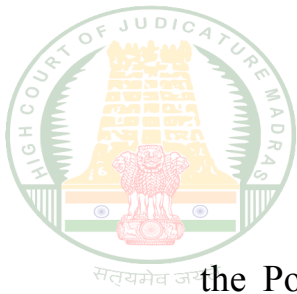
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20. The learned counsel for the appellant drew the attention of this Court to certain lapses in the prosecution case and submitted that on account of such lapses, the prosecution has failed to prove the case beyond reasonable doubt, thereby entitling the accused to an order of acquittal. The learned counsel for the appellant argued the following submission firstly, disputed the delay in lodging the complaint and stated that the complaint was lodged only after the birth of the child to the victim, but the delay is not properly explained by the prosecution.

21. It is true that there is a delay in lodging the complaint. In the cases of sexual offence, delay in reporting the incident to the Police authorities is not necessarily fatal to the prosecution's case. The delay may occur due to various factors, including social stigma, fear, or shame. It is no doubt that the complaint was filed only after the victim girl delivered the child.

22. The Investigating Officer (P.W.21) stated that the complaint was recorded only from P.W.1 after receiving a report from the Organ Theft Prevention unit of Virudunagar. Upon receipt of the report,



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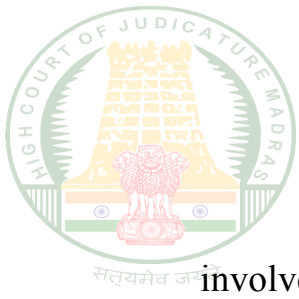
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the Police recorded the statement of the complainant and registered an

23. P.W.1/ the mother of the victim in her statement clearly stated that, upon hearing that, her daughter was pregnant, she decided to terminate the pregnancy to avoid social stigma and shame. However, the Doctors were unable to perform the procedure due to the medical condition of the victim. Therefore, the complaint was lodged after the birth of the child.

24. In a Country like India, the people often believe that the family's honor is tied in their daughter's conduct. As a result, the incidence of sexual assault is seen as bringing shame to the entire family, which makes both the victim and her family reluctant to speak out. Even today, many women are not aware of their rights, the support services available to them, or the legal process for seeking justice.

25. Various High Courts and the Supreme Court have held that delay in filing the FIR in cases of sexual assault should not be viewed with the same standard, as in other types of criminal cases as such incident



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involved trauma, stigma, and other emotional distressed, which may reasonably cause, hesitation, or delay on the part of the victim.

26. In this regard, we rely upon the judgment in ***Satpal Singh vs. State of Haryana***, reported in **2010 (8) SCC 714** in which the Hon'ble Supreme Court has held as follows:

“16. However, no straight jacket formula can be laid down in this regard. In case of sexual offences, the criteria may be different altogether. As honour of the family is involved, its members have to decide whether to take the matter to the court or not. In such a fact-situation, near relations of the prosecutrix may take time as to what course of action should be adopted. Thus, delay is bound to occur. This Court has always taken judicial notice of the fact that "ordinarily the family of the victim would not intend to get a stigma attached to the victim. Delay in lodging the First Information Report in a case of this nature is a normal phenomenon"

Therefore, we hold that the delay in reporting the case is not fatal to the prosecution's case.

27. The learned counsel for the appellant further argued that the date of birth certificate, Ex.P16 issued by P.W.22 is not an original



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record, but a fabricated document. She further stated that the victim was not a minor at the time of occurrence. The original date of birth issued by the competent authority was deliberately suppressed by the Investigating Officer and that the said fact is supported by the cross-examination of P.W.1, who admitted to having handed over her daughter's original birth certificate to the Investigating Officer. The suppression of this vital document appears to be intentional and raises serious doubt about the integrity of the investigation. She therefore stated that Ex.P22, appears to have been created with sole motive to implicate the accused with the offence.

28. Ex.P16, is a certificate about the age of the victim girl, issued by the Headmistress P.W.22, Tmt.Jayaseeli of Sahaya Rani Middle School, Virudhunagar. It contains the particulars of the date of birth of the victim, the date of initial admission of the victim to the school and the date of leaving the school. P.W.22 the Headmistress certified that the details mentioned in the School certificate were furnished based on the official records maintained by the school records.



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29. We raised a question to the learned Additional Public Prosecutor as to whether the certificate issued by the Headmistress is a valid one, whether any other document had been produced by the mother of the victim to the Investigating officer.

30. In response, the learned Additional Public Prosecutor appearing for the State submitted that the mother / P.W.1, did not hand over any other certificate to prove the date of birth certificate of the victim to the Investigation Officer. He further stated that certificate Ex.P16 is valid in the eyes of law as per Section 7A of of Juvenile Justice (Care and Protection of Children) Act, 2000 and Rule 12 of Juvenile Justice (Care and Protection of Children) Rules, 2007.

31. Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000 r/w. Rule 12 of Juvenile Justice (Care and Protection of Children) Rules, 2007 which empowers the Court to seek evidence from juvenile to prove the date of birth.

Section 7A Juvenile Justice (Care and Protection of Children) Act, 2000 (1) Whenever a claim of juvenility is raised before any Court or a Court is of the opinion that an accused person was a juvenile on the date of commission of



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the offence, the Court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be.

Rule 12 (3) of the Juvenile Justice (care, and protection of children) Rules, 2007 indicates that (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



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juvenile by considering his/her age on lower side within the margin of one year; and, while passing orders in such case shall, after taking into consideration 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 in conflict with law.”

32. Section 94 of the above Act indicates as follows :

94. Presumption and determination of age.—

(1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining—



(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.

33. Section 34 of the Protection of Children from Sexual Offences Act, 2012, also specifies the procedure for determination of the age of the child. Section 34 provides that where any offence under this Act is committed by a child, such child shall be dealt with under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015.



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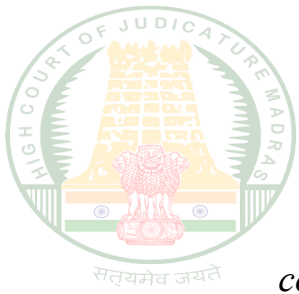
34. We find that Section 7A, Section 94, with Rule 12(3) of the Juvenile Justice (Care and Protection of Children) Act and Section 34 of the POCSO Act lays down the procedure for determining the age of a child in conflict with law. These provisions are silent on the procedure for ascertaining the age of the victim and no provisions in the said Acts prescribes such a procedure to ascertain the age of the victim girl.

35. The learned Additional Public Prosecutor produced the following judgments rendered by the Hon'ble Supreme Court to determine the age of a juvenile :

Jarnail Singh Vs. State of Haryana reported in 2013(7) SCC 263

has held as follows :

“23. Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even for a child who is a victim of crime. in our view, there is hardly any difference in so far as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime. Therefore, in our considered opinion, it would be just and appropriate to apply Rule 12 of the 2007 Rules, to determine the age of the prosecutrix VW -PW6. The manner of determining age



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conclusively, has been expressed in sub-rule (3) of Rule 12 extracted above. Under the aforesaid provision, the age of a child is ascertained, by adopting the first available basis, out of a number of options postulated in Rule 12(3). If, in the scheme of options under Rule 12(3), an option is expressed in a preceding clause, it has overriding effect over an option expressed in a subsequent clause. The highest rated option available, would conclusively determine the age of a minor. In the scheme of Rule 12(3), matriculation (or equivalent) certificate of the concerned child, is the highest rated option.....”

36. The above judgment, clearly stipulates that in the absence of any specific provision available in the Juvenile Justice (Care and Protection of Children) Act, as well as POCSO Act, for determining the age of the victim, it is appropriate to adopt the procedure contemplated under Rule 12 (3) of Juvenile Justice (Care and Protection of Children) Rules, 2007 which is intended for determining the age of the child in conflicting with law, for ascertaining the age of the victim girl as well.

37. We therefore hold that the certificate issued from the School marked as Ex.P16, containing the details of date of birth of the



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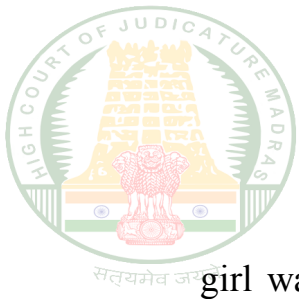
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victim, date of first attended, and the date of the victim relieving from the school is proper and sufficient to prove the age of the minor girl.

38. The learned counsel for the appellant further contended that the incident would not amount to a penetrative sexual offence as it allegedly occurred with the consent of the victim girl.

39. The consensual sexual intercourse with a minor constitutes statutory rape and is punishable under law. The objective of the Protection of Children from Sexual Offences Act, 2012 is rooted in Article 15 of the Constitution of India, which, inter alia confers power upon the State to make special provisions for children. Therefore, the Protection of Children from Sexual Offences Act, 2012 was enacted to safeguard the rights and dignity of children. Under this Act consent is irrelevant.

40. As per P.W.15 Dr.Pamila, a child was born to the victim on 05.09.2015, accordingly, the date of the incident would be approximately 10 months before the occurrence, around December 2014. As per the age certificate Ex.P.16, the date of birth of the victim is 18.04.1999. Therefore, it reveals that at the time of occurrence, the victim



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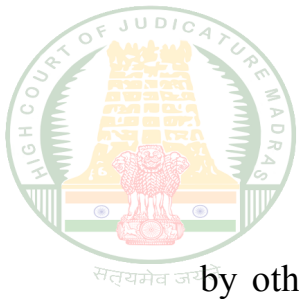
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girl was about 15 years old, while the age of the accused was about 37 years. The victim XXX did not state in her examination or in her cross examination that she had given consent to that sexual intercourse. Any sexual activity involving a minor is treated as an offence, always speak about whether the child appears to have given consent. The argument advanced by the defence counsel is unsustainable.

41. Though it was alleged that the minor girl was mentally retarded, no medical evidence or record has been produced to substantiate such a claim.

42. After careful analysis of entire material records we find that the evidence of victim girl is clear, cogent and without any embellishment, her evidence was corroborated with medical evidence. The accused was approximately 37 years old, and stood in a trust akin to a father figure to the victim, betrayed that trust by subjecting her to sexual abuse thereby gravely affecting her physical and psychological well being.

43. It is well settled that in cases of sexual abuse, the sole testimony of the victim is sufficient to sustain a conviction. Corroborating



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by other witness is not legal necessity. Even in the absence of medical evidences, the testimony of the victim if found to be credible and trustworthy is sufficient to convict the accused. However, in this case the medical evidence also supported the victim girl version. DNA test proved that the accused is the biological father of the child born to the victim girl.

44. We satisfied that the Prosecution in all probability, proved the guilt of the accused beyond all reasonable doubt. The trial Court after considering the evidence and materials held the accused guilty for the offence punishable under Sections 363, 341, 342 of IPC and Sections 8 r/w. 7, 10 r/w. 9(k), (l) and 6 r/w.5(1) (m) of Protection of Children from Sexual Offences Act, 2012 and in the result he was convicted under Sections 363, 341, 342 of IPC and Sections 8 r/w. 7, 10 r/w. 9(k), (l) and 6 r/w.5(1) (m).

45.However upon examination, we find that there are certain errors in the framing of charges as well in the conviction, which necessitate reconsideration for the following reasons :

Firstly the accused was charged under Section 341 as well as 342 IPC for wrongful restraint and wrongful confinement. The



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prosecution established that the accused confined the victim girl in his residence and committed penetrative sexual assault which is not merely restraint but it is wrongful confinement under Section 342 IPC. Therefore, the accused is liable to be punished under Section 342 IPC not additionally under Section 341, because Section 342 IPC is a specific and graver form of restraint which includes the element of Section 341 IPC, punishment under both Sections 341 and 342 IPC for the same act would amount to double punishment for the same offence. Therefore, the accused is acquitted from the offence under Section 341 IPC.

46. The accused was punished under section 10 r/w 9(k)(l) of the POCSO Act. Section 9 (k) defines as whoever, taking advantage of a child's mental or physical disability, commits sexual assault on the child. In this case apart from the oral testimony of P.W.1, the prosecution failed to produce any substantive evidence to establish that the minor child/victim suffers from mental or physical disability. No medical records or experts opinion were submitted to support the claim that she is mentally retarded. Furthermore, during trial proceedings, certain questions were posed by the Court to the victim to assess her mental capacity, to



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which the victim girl understood of the questions, she responded appropriately, demonstrating an understanding. The prosecution failed to establish that the victim girl is a mentally retarded girl. The charge under Section 9(k) of POCSO Act against the accused is not proved. Therefore he is liable to be acquitted from the above charge.

47. The accused is also punished under section 8 r/w. 7 of the POCSO Act. As far as the offence under Sections 8 r/w. 7, 10 r/w. 9(k),(l) of Protection of Children from Sexual Offences Act, 2012 is concerned, Section 7 and 8 defines as follows :

7. Sexual assault.—Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.

8. Punishment for sexual assault.—Whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine.

Section 9 (l) defines as whoever commits sexual assault on the child



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more than once or repeatedly.

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48. Section 10 of the POCSO Act indicates punishment for aggravated sexual assault. This applies when sexual assault falls under any of clauses of Section 9 of POCSO Act which defines aggravated sexual assault, for which punishment not less than 5 years, which may extend to 7 years.

49. As per evidence of the victim girl, the accused touched her body inappropriately, before he committed the penetrative sexual assault which is part of the same transaction, the accused need not be separately punished under Sections 8 r/w.7 and 10 r/w. 9 of POCSO Act.

50. However the prosecution is able to establish that the accused committed aggravated penetrative sexual offence.

51. Though it was proved that the accused was committed penetrative sexual assault. But the accused was punished under Section 6 r/w. 5(m) of POCSO Act. Section 5(m) of the POCSO Act which indicates that whoever commits penetrative sexual assault on a child below twelve



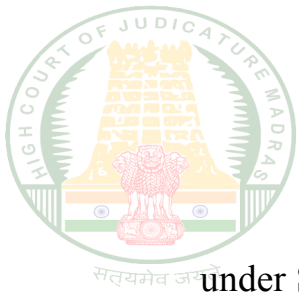
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years, punishable with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person and shall also be liable to fine, or with death. However, the victim is not a child below 12 years.

52. Therefore, the offence committed by the accused not falls under Section 5(m). Instead it falls under Section 5(j)(ii) of POCSO Act for making the victim child pregnant as a consequence of sexual assault and section 5(l) of the above Act for committed penetrative sexual assault on the child more than once or repeatedly. Accordingly the accused is liable to be punished under Section 6 of the POCSO Act for the aggravated circumstances involving penetrative assault. The act provides that if it is proved that the accused committed penetrative sexual assault and it resulting in pregnancy of the child the offender shall be punished with rigorous imprisonment not less than 20 years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of the offender.

53. The trial Court convicted the accused for the offence



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under Section 6 r/w. 5 (m) of the POCSO Act which is not proper liable to be set-aside. Instead he should be convicted under Section 5(j)(ii) and 5(l) of the POCSO Act.

54. Now the question arises is whether the accused having been not charged under Section 5(j) (ii) of the POCSO Act and whether he can still be punished under the said provision. Therefore, the matter has been posted for clarification on 31.07.2025.

55. The learned counsel for the appellant argued that according to Section 216 Cr.P.C., if the Court intends to amend the charge such amendment or alteration must be formally carried out and any failure to do so vitiate the trial and the accused should be provided with opportunity to answer or denying the charges, if the accused is not afforded a fair and reasonable opportunity to respond to the altered charge the entire proceedings would stand vitiated in the eyes of law. She also relied upon the judgment in ***S.V.L.Murthy Vs. State, Rep. by C.B.I., Hyderabad*** reported in ***AIR 2009 SC 2717***, has held as follows :-

*“Appeal against conviction - Exercise of power -
Accused persons were found to be charged under wrong*



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provisions -Proper charges not framed against them - Concurrent findings of fact as regards commission of offence by accused arrived at by Trial Court as also High Court-Plea that it cannot be interfered with in exercise of powers under Art. 136-Not tenable.”

56. The learned Additional Public Prosecutor argued that P.W. 2, the victim girl clearly stated in her evidence that the accused took her to his residence and committed penetrative sexual offence and continued to do over a period of time. But the same was not seriously disputed by the appellant.

57. Further more, the accused was specifically questioned under Section 313(1) (a) of Cr.P.C but he did not offer any specific denial.

58. The learned Additional Public Prosecutor appearing for the State referred Section 221(2) Cr.P.C which provides as follows :

221. Where it is doubtful what offence has been committed.

(2) If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged



under the provisions of sub-section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

59. He also relied upon the judgment in ***Kamil Vs. State of U.P.*** reported in **2019 (12) SCC 600** has held as follows :

13. Following the Constitution Bench in Willie Slaney case, the bench of three Judges of this Court in Gurbachan Singh v. State of Punjab, AIR 1957 SC 623 observed that the Court is not to looking into technicalities, but to the substance and held as under:-

“7.in judging a question of prejudice, as of guilt, courts must act with a broad vision and look to the substance and not to technicalities, and their main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was given a full and fair chance to defend himself.....”

14.....

17. The following principles relating to Sections 212, 215 and 464 of the Code, relevant to this case, become evident from the said enunciations:

(i)



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(ii)

(iii) *In judging a question of prejudice, as of guilt, the courts must act with a broad vision and look to the substance and not to the technicalities, and their main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly, and whether he was given a full and fair chance to defend himself.*

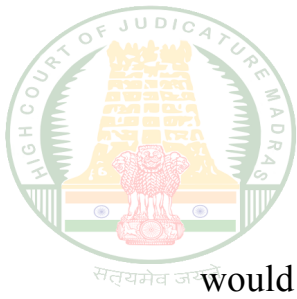
(Underlining added)

60. We also referred Section 464 Cr.P.C., defines as follows :

464. Effect of omission to frame, or absence of, or error in, charge.

(1) No finding, sentence or order by a court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.

A minor error or omission in the charge or even a complete lack of charge



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would not automatically invalidate the Court decision unless it is proved that the error or omission actually resulted in a failure of justice.

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61. In ***K.Prema S.Rao and another Vs. Yadla Srinivasa Rao***

and Others reported in **2003 (1) SCC 217** has held as follows :

“23. The provision of sub-section (2) of Section 221 read with sub-section (1) of the said Section can be taken aid of in convicting and sentencing the accused No. 1 of offence of abetment of suicide under Section 306 of IPC along with or instead of Section 498A of IPC.

24. Section 215 allows criminal court to ignore any error in stating either the offence or the particulars required to be stated in the charge, if the accused was not, in fact, misled by such error or omission in framing the charge and it has not occasioned a failure of justice. See Section 215 of Cr. P.C. which reads:-

"215. Effect of errors - No error in stating, either the offence or the particulars required to be stated in the charge, and no commission to state the offence or those particulars, shall be regarded any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.

25. As provided in Section 215 of Cr.P.C. commission



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to frame charge under Section 306 IPC has not resulted in any failure of justice. We find no necessity to remit the matter to the trial court for framing charge under Section 306 IPC and direct a retrial for that charge. The accused cannot legitimately complain of any want of opportunity to defend the charge under Section 306, IPC and a consequent failure of justice. The same facts found in evidence, which justify conviction of the appellant under Section 498A for cruel treatment of his wife, make out a case against him under Section 306 IPC of having abetted commission of suicide by the wife. The appellant was charged for an offence of higher degree causing "dowry death" under Section 304B which is punishable with minimum sentence of seven years rigorous imprisonment and maximum for life. Presumption under Section 113A of the Evidence Act could also be raised against him on same facts constituting offence of cruelty under Section 498A, IPC. No further opportunity of defence is required to be granted to the appellant when he had ample opportunity to meet the charge under Section 498A, IPC."

62. In ***Willie (William) Slaney Vs. State of Madhya Pradesh***

reported in ***1955 (2) SCC 340*** has held as follows :

“Penal Code, 1860-S. 304 Pt. 11 and Ss. 300 to 304/Ss. 34, 149 and 114 -Charge framed under S. 302



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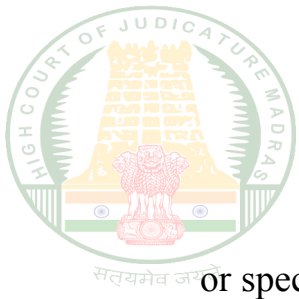


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r/w S. 34 IPC ambiguous- Omission to frame alternative charge under S. 302 simpliciter, held (per curiam), cannot affect conviction if it does not cause any substantial prejudice to the accused - And whether there is prejudice is a question of fact which has to be ascertained from facts of each case In present case omission to frame said alternative Rationale for and appreciation of charge has not caused any prejudice evidence.

-Mere mistakes in procedure cannot vitiate trial unless accused shows There must be full and fair trial in accord with substantial prejudice natural justice and other established norms-Manner in which errors in trial are to be dealt with indicated in CrPC Court has to give effect to express commands of CrPC Courts can exercise discretion only when no express provision is made - Court is not suggesting that laxness of procedure should be encouraged-But mere irregularity, is not illegal unless there is prejudice -Whether prejudice caused, is a question of fact. ”

63. As rightly pointed out by the learned Additional Public Prosecutor, the victim girl had clearly deposed that the accused repeatedly committed penetrative sexual assault on her. Although the accused was given ample opportunity to cross examine the witness, he did not seriously



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or specifically deny the said allegations during such cross examination.

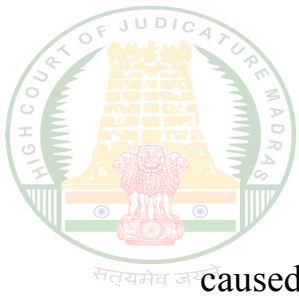
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64. Further during the examination under Section 313 Cr.P.C., the incriminating evidence of repeated sexual assault emerged against him. However, he did not offer any specific denial or furnish any plausible response to the said allegations.

65. Section 221 Cr.P.C., provides that if the accused is charged with one offence and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of sub Section (1) he may be convicted of the offence which he is shown to have committed, although he was not charged it.

66. We satisfied that during trial, the accused was duly explained about the nature of offence committed by him. But he has not objected and not seriously disputed the same.

67. Though the accused was not specifically charged under Section 5(j) (ii) of the POCSO Act, the material on record establishes that he had committed the said offence and therefore, no prejudice will be



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caused if he is punished under Section 5(j) (ii) of the POCSO Act. Hence, the accused is liable to be punished under Section 5(j) (ii) of POCSO Act, though it differ from the original charge.

68. We placed on record our appreciation for the valuable assistance rendered by Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor during the course of argument.

69. We also issue strict instructions to the trial Court to properly frame charges in all cases after thoroughly examining the entire records. The Court is not bound to frame charges as mentioned in the charge sheet filed by the erring officials.

70. Since we decided to impose punishment on the accused under Sections 6 r/w.5(j)(ii) and 5(l) of the POCSO Act for aggravated penetrative sexual assault, the offence committed by him should be treated as a single continuous offence warranting punishment for the graver offence. As the greater punishment is prescribed under Section 6 of the POCSO Act, there is no necessity to impose separate punishment under for Sections 7, 8, 9 and 10 of the POCSO Act.



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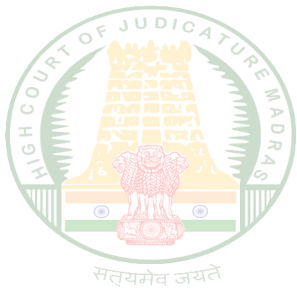
71. Therefore, we set aside the conviction under Section 341 IPC and Sections 8 r/w. 7 and 10 r/w. 9(k), (l) of the POCSO Act as against the accused and acquit him from the charges under Section 341 IPC and Sections 8 r/w. 7 and 10 r/w. 9(k), (l) of the POCSO Act.

72. The accused is liable to be punished for the offence under Sections 363, 342 of IPC and under Section 6 r/w. 5 (j)(ii) and 5(l) of Protection of Children from Sexual Offences Act, 2012. Accordingly, trial Court convicted and sentenced him under the above provision, for which we do not wish to interfere.

73. In the result,

(i) This Criminal Appeal is partly allowed;

(ii) The conviction under Section 341 and Sections 8 r/w. 7 and 10 r/w. 9(k),(l) of the POCSO Act as against Accused passed by the learned Special Court for Exclusive Trial of Cases under the POCSO Act, Virudhunagar District at Srivilliputhur, dated 08.10.2021, in Spl.S.C.No.37 of 2016 is set aside and the accused is acquitted of from the above charges;



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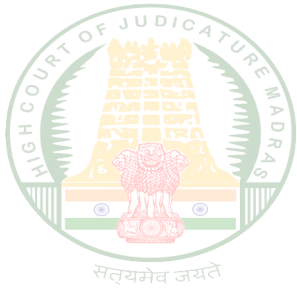
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(iii) Insofar as the charges under Sections 363 and 342 of IPC are concerned, the judgment of the trial Court is confirmed;

(iv) The conviction under Section 6 r/w. 5(l), (m) of Protection of Children from Sexual Offences Act, 2012 is modified to one under Section 6 r/w. 5(j)(ii) and 5 (l) of Protection of Children from Sexual Offences Act, 2012.

(v) Accordingly, the accused is sentenced to undergo seven years rigorous imprisonment and to pay a fine of Rs.1,000/- for the offence punishable under Section 363 IPC; to undergo one year rigorous imprisonment and to pay a fine of Rs.1,000/- for the offences punishable under Section 342 IPC and to undergo rigorous imprisonment for life, (remainder of his natural life) and to pay a fine of Rs.1,000/- for the offence punishable under Section 6 r/w. 5(j)(ii) and 5(l) of Protection of Children from Sexual Offences Act, 2012. If the fine amounts are not paid by accused, he shall undergo six months simple imprisonment each. All sentences shall run concurrently;

(vi) The period of sentence already undergone by the



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accused/appellant shall be set off under Section 428 Cr.P.C.,
as against the substantive sentence; and

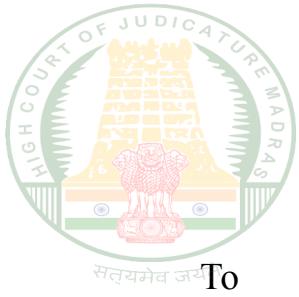
(vii) The trial Court is directed to secure the accused
and commit him to the Prison to undergo the remaining
period of sentence.

(A.D.J.C., J.) & (R.P., J.)
19.08.2025

Index : Yes / No

NCC : Yes / No

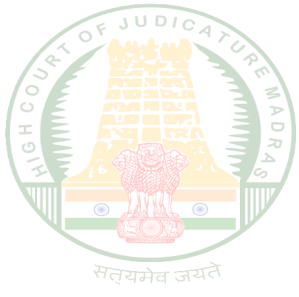
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To
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- 1.The Sessions Judge
Special Court for Exclusive Trial of Cases under POCSO Act,
Virudhunagar District at
Srivilliputhur.
- 2.The Inspector of Police,
Rajapalayam North Police Station,
Virudhunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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CrI.A(MD)No.29 of 2022

A.D.JAGADISH CHANDIRA, J.
AND
R.POORNIMA, J.

rm

Judgment in
CrI.A(MD)No.29 of 2022

19.08.2025