

Crl.A.(MD) No.199 of 2

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 18.06.2025

Pronounced on: 11.07.2025

CORAM:

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA  
and  
THE HONOURABLE MS.JUSTICE R.POORNIMA**

Crl.A.(MD) No.199 of 2022

Rajkumar

... Appellant / Sole Accused

-VS-

The Inspector of Police  
All Women Police Station,  
Keeranur,  
Pudukottai District

... Respondent / Complainant

Criminal appeal is filed under Section 374(2) Cr.P.C., to set aside the judgment and conviction dated 22.11.2021 passed by the Mahila Court, Pudukottai in Spl.S.C.No.12 of 2020 and acquit the appellant.

For Appellant : Mr.K.Balasundaram, Senior Counsel  
for M/s. K.B.S.Law Office

For Respondent : Mr.A. Thiruvadikumar  
Additional Public Prosecutor



## J U D G M E N T

**A.D.JAGADISH CHANDIRA, J.,**

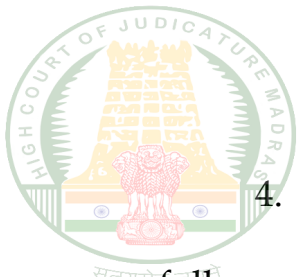
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This Criminal appeal has been preferred by the appellant / sole accused against the Judgment, dated 22.11.2021, made in Spl.S.C.No.12 of 2020, by the learned Sessions Judge, Mahila Court, Pudukottai

2. For the sake of convenience, the accused is herein after will be referred to as "appellant "

3. The appellant stands convicted and sentenced as under:

| Section of Law                        | Sentence of imprisonment            | Fine amount                                                               |
|---------------------------------------|-------------------------------------|---------------------------------------------------------------------------|
| 6(1) of POCSO Act(Amendment Act 2019) | Life Imprisonment                   | Rs.50,000/-, and in default, to undergo simple imprisonment for one year  |
| 328 of IPC                            | Rigorous Imprisonment for ten years | Rs.20,000/-, and in default, to undergo simple imprisonment for one year  |
| 506(i) of IPC                         | Rigorous Imprisonment for two years | Rs.5,000/-, and in default, to undergo simple imprisonment for six months |
| The sentences shall run concurrently  |                                     |                                                                           |



4. The entire events as per the Case of Prosecution in brief as

follows :

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(i) The victim girl 'A' was staying in her aunt's house, studying in Government Higher Secondary School in 12<sup>th</sup> standard and during her holidays she used to go to her parents house. During last year in the month of April 2019, after completing her 11<sup>th</sup> standard she had gone to her parents house and one day morning at about 11.00 a.m., the appellant had offered her cool drinks mixed with sedative and had gone behind the victim girl and had committed aggravated penetrative sexual assault on her and later he also threatened the victim girl not to disclose the same to anybody and if she disclose the same he will kill her and her family. Subsequently by threatening her the appellant had committed aggravated penetrative sexual assault on multiple occasions, due to which the victim became pregnant and she was found to be seven months pregnant.

(ii) P.W.1/mother of the Victim girl had lodged a complaint/Ex.P.1 dated 07.03.2020 to the respondent police, based on which First Information Report/Ex.P8 has been registered by P.W.8 in Crime No. 3 of 2020 against the appellant for the offences under Section 328, 506(i) of IPC and Section 5(l), 5(j)(ii) and 6 of POCSO Act, 2012.



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(iii) Thereafter PW8 on the same day had forwarded the complaint and the First Information Report to the Court and took up the case for investigation and recorded the statements of mother of the victim/P.W.1, Victim/P.W.2, aunt of the victim/P.W.3. Thereafter on the same day at about 14.00 hrs she went to the scene of occurrence and prepared observation mahazar/Ex.P.5 and rough sketch/Ex.P9 in the presence of Alagan/P.W.4, and one Murugesan. Thereafter on the same day based on the secret information received, P.W.8 arrested the appellant near Idayathur bus stop at about 16.00 hrs and during that time the appellant had voluntarily given a confession statement in the presence of one Adaikkan and Rathinam.

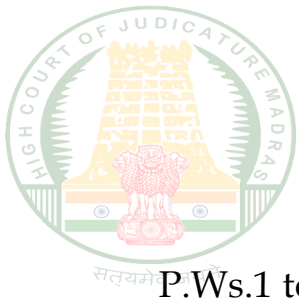
(iv) Thereafter the appellant was remanded to judicial custody on the same day. On 08.03.2020 the victim was sent to medical examination to the Government Hospital and Doctor T.M.Sangeetha/P.W.7 had issued accident register/Ex.P7 stating that victim child is 30 weeks pregnant. On 10.03.2020 the Investigation Officer has sent a requisition to the Mahila Court to send the appellant for medical examination and on 19.03.2020 she had sent the appellant for medical examination as directed by Sessions Judge, Mahila Court, Puddukottai vide letter dated 16.03.2020, Dr. S.Valliappan/P.W.6 had



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conducted medical examination on the appellant on 19.03.2020 at about 11.30 A.M and issued a Certificate which is marked as Ex.P6. On 13.03.2020 a statement under Section 164 Cr.P.C of the victim/ Ex. P2 was recorded in a CD which was marked as Ex.P.10. The learned Trial judge vide letter dated 22.09.2020 had enclosed three items for DNA Testing and the same has been tested and DNA Report/Ex.P11 was issued. Further PW8 recorded the statement of Dr. Boopathi/P.W5 and further she recorded the statement of doctor who conducted medical examination on the appellant. Thereafter she recorded the statements of Grade-I Police-Rani, Head Constable Ponnaiah and Police Akila. Thereafter she received the DNA report which is marked as Ex.P.11.

5. After completion of investigation, the respondent – Inspector of Police/P.W8 had filed a final report before the Mahila Court, Pudukottai, who had taken cognizance of the final report in Spl.S.C.No. 12 of 2020. On the appearance of the appellant, the provisions of Section 207 Cr.P.C., were complied with . The trial Court framed charges against the appellant for the offences under Sections 328 and 506(i) of IPC , Sec 6(1), 5(j) (ii) r/w 6(1) of the POCSO Amendment Act 2019 and when questioned, the appellant pleaded not guilty.



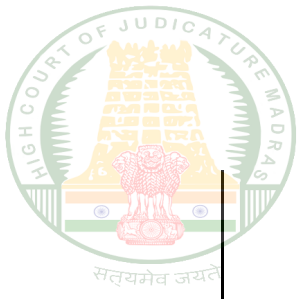
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6. In order to prove the charges the prosecution had examined P.Ws.1 to 8 and marked exhibits Exs.P1 to P11. No material objects were marked.

7. After completing the examination of witnesses, when the incriminating materials and circumstances were put to the appellant / accused under Section 313 Cr.P.C., he denied the evidence of the prosecution side as false, however, no oral and documentary evidence was adduced on the side of the defence.

8. After hearing both sides and after perusing the oral and documentary evidence adduced, the learned Trial Judge, by Judgment dated 22.11.2021, had found the appellant / accused guilty for the offence as tabulated below:

| Convicted Proviso                     | Sentence of imprisonment | Fine amount                                                              |
|---------------------------------------|--------------------------|--------------------------------------------------------------------------|
| 6(1) of POCSO Act(Amendment Act 2019) | Life Imprisonment        | Rs.50,000/-, and in default, to undergo simple imprisonment for one year |



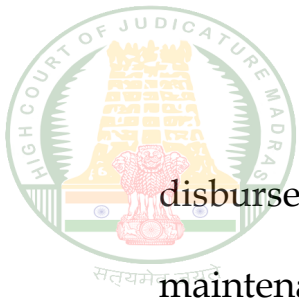
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|                                      |                                     |                                                                           |
|--------------------------------------|-------------------------------------|---------------------------------------------------------------------------|
| 328 of IPC                           | Rigorous Imprisonment for ten years | Rs.20,000/-, and in default, to undergo simple imprisonment for one year  |
| 506(i) of IPC                        | Rigorous Imprisonment for two years | Rs.5,000/-, and in default, to undergo simple imprisonment for six months |
| The sentences shall run concurrently |                                     |                                                                           |

As far as compensation to the victim girl is concerned already interim compensation amount of Rs. 4,00,000/ has been awarded to the victim girl in VCA No.5/2021 on 25.2.2021 and since the victim girl aged about 17 years had suffered repeated aggravated penetrative sexual assault the trial court has awarded a further compensation of Rs.1,50,000/- (Rupees one Lakh fifty thousand only) to the victim girl as per Social Welfare and Nutritious Meal Programme SW (5) (2) Department GO (MS).No.33 dated 03.10.2020 and the said compensation was to paid to the victim girl by the Tamil Nadu Government within a period of 30 days from the date of receipt of copy of the judgment as mentioned in rule 7(5) of POCSO rules 2012 and it is ordered that the compensation amount to be deposited in the name of victim girl in any one of the Nationalized Bank preferred by the victim girl in an interest bearing account. It is further ordered to



disburse the interest amount monthly to the victim girl for her maintenance. Challenging the said conviction and sentence, the appellant / accused has preferred the present Criminal Appeal.

**9. The evidence of the witnesses as culled out from the record reads thus:**

P.W. 1 (Complainant) in Chief had deposed that the victim girl born on 29.03.2003 and was aged about 17 years and studying 12<sup>th</sup> standard during the occurrence of the crime. The victim was attending school staying in her aunt's house and used to return to her home during holidays and that on 06.03.2020 the aunt of the victim contacted PW1 and told her that after attending the school the victim had fainted in the house. PW1 along with her husband rushed to the house of the aunt and enquired her daughter, where her daughter stated that during the first week of April when she was studying 11<sup>th</sup> standard. The appellant who is her neighbour had given cool drinks spiked with some drug and when she had become unconscious after consuming the same had committed intercourse with her near "Kollakkattu Vaari" and threatened her that she should not disclose the same to anyone and also threatened her of dire with consequences and thereafter sexually



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assaulted the victim girl several times. PW1 further deposed that her daughter had informed the appellant that she was suffering with stomach ache and thereupon the appellant had taken her to a private hospital, concealed the victim's identity, furnished her name as Malarvizhi from Illuppur and had taken some scans which revealed that she was seven months' pregnant and thereafter the appellant had left the victim in the school. PW1 after coming to know that her daughter was seven' months pregnant had gone to All Woman Police Station along with her daughter, son and husband and had lodged the complaint/Ex.P.1 against the appellant and later furnished her daughter's birth certificate/Ex.P.3 and had given a statement before the respondent.

10. PW2 is the victim girl aged about 17 years at the time of occurrence of crime. She had deposed that she was studying 11<sup>th</sup> standard, staying in her aunt's house and that she used to go back to her parents house during holidays and that she knows the appellant who is her neighbour and resident of the same village. She further deposed that he had given her cool drinks, and after drinking the same she had gone to the Kollakadu for herding the cows and at that time she



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had felt dizzy and appellant had come behind her and after that she had fainted and when she had woken up she found her dress was crushed and lying in a shabby manner and that the appellant was walking at a distance of 10 feet and 10 days after that the appellant had told her that when she was in dizzy state, he had sexual intercourse with her and if she disclose the same to any one he would kill her and her family members and so fearing that she had not disclosed the same to anybody. She further deposed that she had stomach ache and when she informed the same to the appellant he had taken her to Boopathy Hospital in Ponnamaravathy and there they had told that she was pregnant by 7 -8 months and in the hospital the appellant had given her name as Malarvizhi of Illupur Village and age as 20 and he instructed her that she should not tell the same to anyone and in case people in her house asked her she should say that she was in love with one boy and that boy had died in an accident during last month and that if she informs about the appellant they both would be caught by the police. She has further deposed that the appellant told her that since the issue was concerning a girl they will suppress the matter or otherwise her father and mother fearing shame would hang themselves and advised her not to disclose the same to any one and that without anybody's knowledge they would



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about the child and thereby she had not told anybody about the pregnancy and after that on 6.3.2020 she had gone to school and when she had returned to her aunt's house she had fainted and fallen down. Thereby her aunt had informed her parents through phone and told them that she had fainted and when her mother, father and aunt had enquired her she had revealed the truth to them. Her mother had told all the facts stated by her to her brother and her brother had written the complaint and since it was late night, her mother had given the complaint to Keeranur All Women Police Station on next day morning. The police in order to find out her had asked for her birth certificate and her mother along with her brother and father had all gone to the police station and the police had enquired them. Her date of birth was 29.03.2003. She further deposed that the police had taken her to Government Hospital where a doctor had examined her and scan was taken. She had given statement U/s.164 Cr.P.C before the Keeranur court and the same is marked as Exhibit P4. On 16.5.2020 a boy child was born to her and the child name is "AAA" and the appellant had threatened her many times and had sexual intercourse with her and DNA test was conducted for herself, her child and the appellant and it was found that the appellant Rajkumar is the father of her child.



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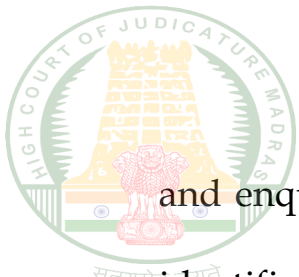
11. PW3 who is the aunt of the victim had deposed that she is residing in Annavasal and working as a cook in the Government Hospital and PW1 is her brother's wife and P.W2, the victim girl is her brother's daughter and the victim girl was studying in Government school and was staying in her house and was studying 11<sup>th</sup> Standard and her mother PW1 and her husband were residing in Kulavaipatti till 10<sup>th</sup> Standard she was with her parents and from 11<sup>th</sup> Standard she was staying with her and studying from her house. She further deposed that on 06.03.2020 after the victim girl had fainted and fallen down after coming back from school and she had sprinkled water on her face and later she had called her parents through phone and asked them to come and after some time, on the same night her parents had come and they had enquired what had happened and the victim girl told her parents that appellant had mixed some substance in the cool drinks and given it to her and after she had consumed the same, she lost consciousness and then he had sexual intercourse with her due to which she got conceived. P.W.3 further deposed that PW1 had taken her daughter and gone to her village and next day they had given complaint to Keeranur police station and the police had come to her house and enquired them and



she had told police that the victim girl had fainted in her house and presently the victim girl had delivered a boy child and the child is one year old now.

12. PW4 Alagan witness to the observation Mahazar witness had deposed that he is an agriculturalist residing in Kulavaipatti and that on 07.03.2020 afternoon at 2.00 p.m. police had prepared the rough sketch Ex. P9 and the observation Mahazaar/Ex P5 and he along with one Murugesan had attested the same and the police had enquired them.

13. P.W.5 Dr.Boopathy,who was working as Doctor in Anbu Clinic at Ponnamaravathy has deposed that one day when she was in her clinic, a person aged about 45 years had brought an unmarried pregnant girl to the clinic and she does not remember the month, date or year and on seeing the girl she become suspicious and after clinically examining the girl she came to know that she was 7 to 8 months pregnant and the appellant asked her to terminate the pregnancy stating that she is her sister's daughter and that his sister had not come to the clinic. She further deposed that she refused to abort the child and asked him to bring her mother to the clinic. After two days a lady came

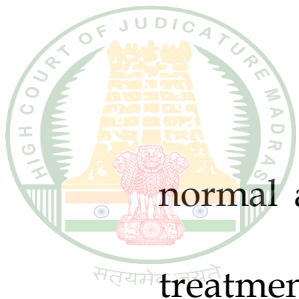


and enquired her and that she is not the mother of the victim. She had identified the appellant to be the person who had brought the victim to the hospital.

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14. P.W.6 Dr.Vallinayagam working in Pudukottai Government Hospital has deposed that on 19.03.2020 at about 11.30 a.m., when he was in duty one Ponnaiah, Head Constable accompanied by one lady police by name Akila had brought the appellant for medical examination and on examination he found that there was nothing to suggest that he was incapable of performing the act of sexual intercourse and he was not impotent and he had issued certificate Ex.P.6.

15. P.W.7. Dr.Sangeetha who had medically examined the victim girl had deposed that she is working as Assistant Professor in the Government Medial College Hospital at Pudukottai and on 08.03.2020 when she was on duty in the hospital at about 11.00 am., one constable Rani and the mother of the victim had brought the victim for medical examination and on enquiring her she stated that she had been sexually assaulted by a known person for the past 11 months and she is pregnant and on examining her blood pressure and pulse she was found to be



normal and she was seven months pregnant and she was advised for treatment and that she had given a report which is marked as Ex.P.7.

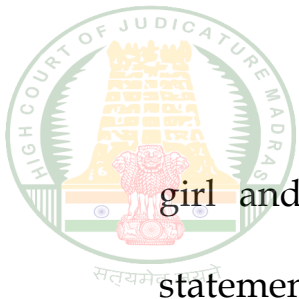
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16. P.W.8, Tmt. Hemalatha the Inspector of Police deposed that she was in-charge of Keeranur All Women Police station and on 07.03.2020 morning at 11.30 a.m when she was on duty PW1/ Kalarani had come to the Police station and had lodged a complaint and she had received the same and registered the case in Cr. No. 3/20 U/s. 328, 506 (i) IPC, 5(l) r/w.6,5(j)(ii) r/w 6 of POCSO Act, 2012 and had sent the FIR and the complaint to Court and had taken up the case for investigation and on the same day had enquired witnesses Kalarani, Kasthuri, Padmanaban and Selvasundari and recorded their statements separately and on the same day at 14.00 hours had gone to the place of occurrence and in the presence of witnesses Alagan and Murugesan had observed the occurrence place and prepared Observation Mahazaar Ex P5 and Rough Sketch Ex.P9 and on the same day on obtaining secret information had arrested the appellant Rajkumar at Edaiyathur bus stop at 16.00 hours and in the presence of witnesses-Adaikan and Rethinam had recorded his voluntary confession and had remanded the appellant to Judicial custody and on 08.03.2020 along with the memo had sent the victim girl



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for medical examination to Pudukkottai Government college Hospital through WPC, Rani and on 10.03.2020 in order to medically examine the appellant, she had filed requisition before the Mahila court and in order to obtain 164 Cr.P.C statement of the complainant as well as the victim girl had filed the requisition before the Judicial Magistrate Keeranur and on 13.03.2020 had produced the witnesses and got the statement of the witnesses recorded under Section 164 of Cr.P.C., and the CD containing the statements under Section 164 Cr.P.C statement is marked as Ex.P10. She has further deposed that on 19.03.2020 she had deputed HC 1415 Ponnaiah and Grade II Constable Selvi for taking the appellant to Pudukkottai Government Medical college Hospital for medical examination and on 15.04.2020 had enquired Dr.Boopathy of Anbu clinic Ponnamaravathy where the appellant Rajkumar had taken the victim girl and on 29.04.2020 had enquired the doctor who had medically examined the victim girl and issued certificate and recorded her statement and obtained medical certificate and had also on the same day enquired the doctor who had medically examined the appellant and issued certificate and recorded her statement and obtained medical certificate, later she had examined Grade I constable Rani and head constable Ponnaiah and Women police Akila who had taken the victim



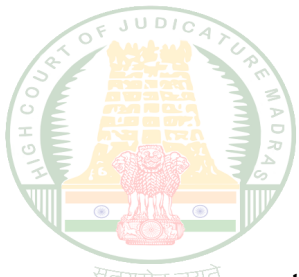
girl and the appellant for medical examination and recorded their statements. She further deposed that later she had taken steps for conducting DNA test for the victim girl, the appellant and the male child and obtained DNA report EXP.11 and on completion of investigation had laid charge sheet as against the appellant U/s. 328, 506 (ii) IPC, 5(1) r/w 6, 5(j)(ii) r/w 6(1) of POCSO Act.

17. Based on the above evidence the trial Court found the appellant guilty for the offences charged and had convicted him as stated above.

18. Assailing the conviction and sentence imposed on the appellant, the present appeal has been filed.

19. The learned Senior Counsel appearing for the appellant made the following submissions:

a)The entire case of the prosecution is bristled with contradictions, exaggerations and embellishments and the trial Court erred in convicting the appellant without any legal basis.



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b) The prosecution has failed to prove the case of the prosecution beyond reasonable doubts.

c) The age of the victim was not proved in accordance with the requirement of Section 94 of the Juvenile Justice Act and in such circumstances the trial Court erred in holding the victim to be a child as defined under the POCSO Act.

d) Without there being any specific mention of time, date and year of alleged commission of offence the trial Court erred in framing charges and convicted the appellant under the amended provisions of the POCSO Act when especially the victim was said to be pregnant by seven months on the date of complaint and said to have given birth to the child after full pregnancy on 16.05.2020.

e) As per Ex.P.7/Accident Register dated 08.03.2020 on which date the Doctor /P.W.6 has given an opinion the victim was found to be pregnant by 28-30 weeks which is equivalent to seven months of pregnancy which would infer that the offence would have been committed either during the last week of July 2019 or during first week of August 2019 which is prior to the coming into effect of the POCSO Amendment Act, 2019 and thereby the entire trial is vitiated on account of framing charges and punishing the appellant under the Amended



provisions which has come into force from 16.08.2019

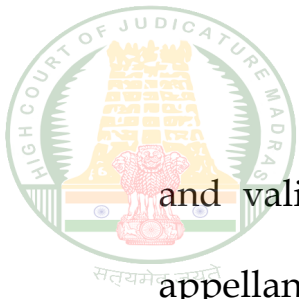
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f) Without there being scientific evidence the trial Court erred in convicting the appellant for offence under Section 328 of IPC.

g) DNA report/Ex.P.11 is only in the nature of opinion evidence as envisaged under Section 45 of the Evidence Act and when there is no documentation for collection of samples and when the Scientific Expert who conducted DNA analysis has not been examined, reliance cannot be placed on Ex.P.11/DNA report.

19.1. The learned Senior Counsel in alternative submitted that when the amended provisions of POCSO Act has come into effect only on 16.08.2019, the judgment of the trial Court framing charges and in convicting the appellant for the offence occurred prior to the amendment act is violative of Article 20(1) of the Constitution of India.

19.2. The learned Senior Counsel appearing for the appellant would further submit that the punishment imposed is disproportionate to the alleged offence and the trial Judge had himself imposed maximum sentence of life imprisonment which is not commensurate to the gravity of offence. He would also submit that without there being any material



and valid reasons the trial Court had imposed life sentence on the appellant and the appellant is a married man having two children and has no bad antecedents and thereby he would seeks for modification of the sentence.

20. In support of his contention the learned Senior Counsel appearing for the petitioner placed reliance on the following Judgments

(i) Rahul Vs State of Delhi reported in (2023) 1 Supreme Court Cases 83 -

(ii) P.Yuvaprakash Vs State Rep. By Inspector of Police reported in 2023 SCC OnLine SC 846

(iii) Santosh Prasad @ Santhosh Kumar vs State of Bihar reported in (2020)1MLJ(Crl) 617 (SC)

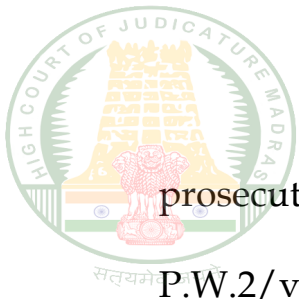
(iv) Sivakumar Vs State Rep. By The Inspector of Police in Crl.A(MD) No. 370/445 of 2022.

21. The learned Additional Public Prosecutor in reply submitted that the appellant had sexually assaulted the victim girl by giving her cool drinks spiked with sedative and continued to sexually assault her since April 2019 resulting in the victim girl becoming pregnant and finding that the victim girl was pregnant had threatened her not to reveal the same to any one. Later since she suffered stomach



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pain, the appellant had taken her to the hospital of P.W.5 and by furnishing false information had conducted scan test and has asked P.W.5 to terminate the pregnancy, however, since the mother of the victim had not accompanied her, P.W.5 had refused to conduct abortion. The Doctor/P.W.5 has specifically identified the appellant to be the person who had accompanied the victim for abortion. He would further submit that the age of the victim has been conclusively proved by Ex.P. 3/Birth Certificate which is extract of the birth register maintained at the office of the Idayathur Panchayat. The appellant having not disputed or objected the authenticity and admissibility of Ex.P.3 during trial cannot dispute the same after this stage. The evidence of victim is cogent and clear with regard to the sexual assault and is corroborated by DNA report/Ex.P.11 which concluded that the appellant is the biological father of the child by 99.99%; samples for DNA test were taken pursuant to the order and the report has been issued by the Government Scientific Expert and the certificate was used as evidence under Section 293 of Cr.P.C., r/w. Section 45 of Evidence Act. He would further submit that the appellant has not made any objection to the marking of Ex.P.11 and not disputed the manner in which the samples had been taken and thereby non examination of the expert will not affect the case of



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prosecution. The prosecution by examining P.W.1/mother of the victim, P.W.2/victim, P.W.3/aunt of the victim and P.W.5/doctor and marking of Ex.P.3/ age certificate and corroborative evidence of Ex.P.11/DNA report has proved the foundational facts and proved the case beyond reasonable doubt; when foundational facts have been proved by the prosecution a bounden duty is cast upon the appellant to rebut the presumption as envisaged under Section 25 of the Evidence Act, whereas the appellant has failed to rebut the presumption and thereby the trial Court rightly taking into consideration the entire evidence on record had found the appellant guilty and convicted him, and thereby he would seek for dismissal of the appeal

22. We have considered the submissions of the learned counsel for the appellant and the learned Additional Public Prosecutor for the State and consciously gone through the evidence and materials on record.

23. P.W.2 is the victim girl who was studying 12<sup>th</sup> standard during the relevant point of time. Her date of birth is 29.03.2003. Ex.P.3 is the extract of birth certificate obtained from the birth register maintained at Idayathur Panchayat for the year 2003 which was marked through P.W.



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1/ mother of the victim. As per Ex.P.3 the age of the victim is proved to be 16 years, 11 months and 9 days and thereby she falls within the definition of child under Section 2(d) of the POCSO Act and thereby she is a child. The complaint was given on 07.03.2020 and on the date of complaint the victim was found to be pregnant by seven months. P.W. 2/victim had categorically spoken about the manner in which the appellant had committed penetrative sexual assault on her. She had further deposed that coming to know of her pregnancy the appellant had taken her to P.W.5 to abort the pregnancy and the doctor finding that the mother has not accompanied the victim had refused to conduct abortion. At that time the appellant had furnished false information with the name and age of the victim girl. P.W.5 had identified the appellant to be the person who had accompanied the victim. P.W.1 mother and P.W.3 aunt of the victim have corroborated the evidence of victim with regard to finding her pregnant and about the complaint and taking her to the hospital. P.W.7/Dr.Sangeetha had spoken about the medical examination conducted on the victim girl and about confirmation of her pregnancy by seven months. P.W.2 had spoken about having given birth to the child on 16.05.2020. Thereafter samples for DNA had been taken from the victim girl, the child born to her and



the appellant pursuant to the orders of the Court and DNA report proved that the appellant is the biological father of the child born to the victim. The appellant during trial had not objected to marking of Ex.P. 3/Birth Certificate of the victim and also DNA report/Ex.P.11.

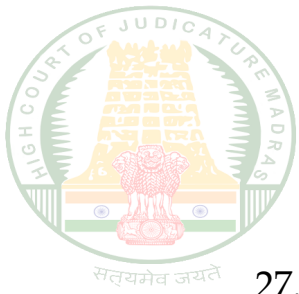
24. Having gone through Ex.P.3, we are of the opinion that the age of the victim child has been proved in accordance with the requirement of Section 94 of the Juvenile Justice Act and further the appellant during trial has not objected to marking of Ex.P.3, challenged the manner of taking samples and not objected to marking the DNA report. In such circumstances, the judgements relied on by the learned Senior Counsel for the appellant in the case of *Rahul Vs State of Delhi* reported in *(2023) 1 Supreme Court Cases 83* and *P.Yuvaprakash Vs State Rep. By Inspector of Police* reported in *2023 SCC OnLine SC 846* will not come to the aid of the appellant. Further the prosecution through the evidence of the victim and the corroborative evidence of P.W.1, P.W. 3,P.W.5,P.W.7 and Exs.P4 and P7 has proved that the appellant is responsible for the pregnancy of the victim and the birth of the child.



25. At this juncture, it is just and necessary to refer to section 29 of the POCSO Act which speaks of presumption as to certain offences which reads as follows:

*"29. Presumption as to certain offence: Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved."*

26. The presumption, arising under Section 29 of the POCSO Act based on the fact proved that that the appellant was the biological father of the fetus in the womb of P.W. 2, at the time of occurrence. Further the appellant had attempted to abort the child in a private hospital which is corroborated by the statement of doctor and the victim. P.W.5, the doctor had identified the appellant to be the person who had brought the child to her hospital. Further DNA report revealed the fact that the appellant is the biological father of the child born to P.W.2 which would go to prove that the appellant had committed penetrative sexual assault on P.W. 2. and the victim was also assaulted on multiple occasion and such act is punishable under Section 6 of the POCSO Act,2012.



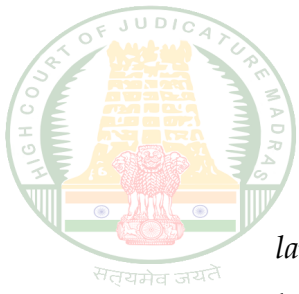
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27. The learned counsel urged that the victim has not spoken about the exact time, date of the occurrence and taking into consideration the oral and documentary evidence the alleged offence could have been committed either during the first week of August or during the last week of July, 2019 which is prior to the coming into effect of POCSO Amendment Act, 2019 which came into force on and from 16.08.2019 and in such circumstances benefit of doubt should be given to the appellant.

28. Admittedly the victim has not spoken about the exact date and time of which the offence of sexual act was committed on her. However taking into consideration the medical evidence that the victim was found to be pregnant by seven months on the date of complaint and that within three months there on had given birth to the child on 16.05.2020 and it could be inferred that the sexual assault was prior to the coming into force of Amendment Act.

29. Article 20 (1) of the Constitution of India, reads as follows:

*"20. Protection in respect of conviction for offences*



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*(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence”.*

30. Though the prosecution was able to prove the case of sexual assault by oral and documentary evidence, it has failed to prove the date of offence, whether it was prior to or after the coming into force of the POCSO Amendment Act, 2019. In such circumstances the benefit of doubt regarding the date of offence should be given in favour of the appellant. The trial Court erred in charging and convicting the appellant for the offence which was not in force at the time of commission of offence. However the appellant is liable for conviction and punishment for offence under Section 6(1) of POCSO Act, 2012.

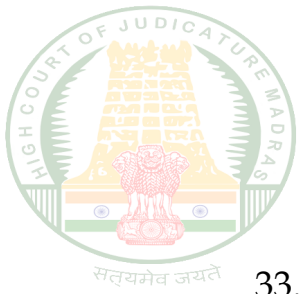
31. In this case, the appellant has been convicted with the maximum punishment of life imprisonment. Now turning into the facts of the case and quantum of punishment, the appellant was aged about 35 years at the time of offence and he has got wife and children and he has to take care of them. As stated above while the holding the appellant guilty for the offence under Section 6 of the POCSO Act this



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Court finds that the sentence of imprisonment for life imposed by the trial Court is disproportionate to the mitigating and aggravated circumstances. Further this Court also finds that the charges under Section 328 and 506(i) of IPC has also not proved by the prosecution beyond reasonable doubts.

32. In the result, the Criminal Appeal is partly allowed. The conviction of the appellant under Section 6(1) of the POCSO Act,2019 passed by the trial court is confirmed, however, the substantive sentence of imprisonment is modified and it is directed that instead of imprisonment for life, the appellant/accused shall undergo rigorous imprisonment for ten years and pay a fine of Rs. 50,000/- in default, to undergo simple imprisonment for a period of one year for the offence under Section 6 of POCSO Act. The appellant is acquitted from the charges under Sections 328 and 506 (i) of IPC and the imposition of fine in respect of the same is set aside. It is further directed that the period of detention already undergone by the appellant/accused shall be given set off under Section 428 of Cr.P.C.



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33. It is informed that out of the compensation amount of Rs.5,50,000/-, only Rs.4,00,000/-has been paid to the victim in VCA No.5 of 2021 on 25.02.2021 and balance amount of Rs.1,50,000/- remains to be paid, thereby we direct the Tamil Nadu Government to pay the balance amount of Rs.1,50,000/- to the victim as per Social Welfare and Nutritious Meal Programme SW (5) (2) Department GO (MS).No.33 dated 03.10.2020 within a period of two weeks from the date of receipt of a copy of this judgment.

[A.D.J.C.,J] [R.P.,J]  
11.07.2025

Internet : Yes / No

Index : Yes / No

aav

To:

1. The Mahila Court, Pudukottai

2. The Inspector of Police  
All Women Police Station,  
Keeranur, Pudukottai District

3. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court, Madurai.

4. The Record keeper  
Vernacular Records, Madurai Bench of Madras High Court,  
Madurai



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**A.D.JAGADISH CHANDIRA, J.  
and  
R.POORNIMA, J..**

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Crl.A.(MD) No.199 of 2022

**11.07.2025**