



Crl.A(MD)No.800 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 31.07.2025

CORAM:

THE HON'BLE DR.JUSTICE R.N.MANJULA

Crl.A(MD)No.800 of 2025

and Crl.M.P(MD) No.9804 of 2025

Anbalagan @ Kadu
Petitioner

...

Vs

The State of Tamil Nadu,
Rep by the Inspector of Police,
Dindigul Taluk Police Station,
Dindigul District.

Crime No.239 of 2023.
Respondent

...

Prayer: This Criminal Appeal Case filed under Section 374 of Cr.P.C to call for records and set aside the Judgment and sentence, dated 16.12.2024 imposed in Spl.S.C.No.271 of 2023 on the file of the learned Sessions Judge, Special Court for Exclusive Trial for cases under POCSO Act, Dindigul.

For Appellant : Mr. S.Sudhanthiran

For Respondent : Mr.A.Albert James

Government Advocate (Crl.Side)



Crl.A(MD)No.800 of 2025

WEB COPY

JUDGMENT

This appeal has been preferred challenging the judgment passed in Spl.S.C.No.271 of 2023 dated 16.12.2024 on the file of the learned Sessions Judge, Special Court for Exclusive Trial for cases under POCSO Act, Dindigul.

2. The appellant is the sole accused, who has been guilty and convicted and sentenced to undergo the following punishment.

Found guilty for the offence u/s	Punishment
366 of IPC r/w 3(2)(va) of SC/ST Act	To undergo 10 years (R.I) and to pay a fine of Rs.10,000/-, i.d., to undergo six months (S.I)
4 of the POCSO Act	20 years (R.I) and to pay a fine of Rs. 50,000/-, i.d., to undergo one year (S.I)
9 of Prohibition of Child Marriage Act	Two years (R.I) and to pay a fine Rs. 10,000/-, i.d., to undergo six months (S.I)
3(1)(w)(i) of SC/ST Act	Six months (R.I) and to pay a fine of Rs.1,000/-, i.d., to undergo two months (S.I)

3. The case of the prosecution is that on 11.04.2023, the Extension Officer of Reddiyarchathram Panchayat Union, received an email from the District Child Protection Unit regarding a suspected child marriage

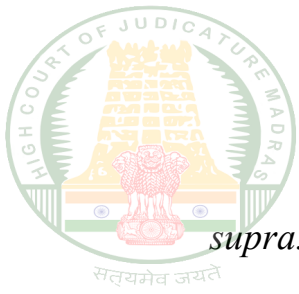


Crl.A(MD)No.800 of 2025

involving a minor girl from Nallendrapuram Colony, Dindigul District.

Thereafter, an enquiry was conducted and it was revealed that the victim was a minor and she had completed upto 8th standard and she was employed in a fruits shop near the Palani Bypass for about eight months. At that time, the accused fell in love with her. On 20.02.2023, the accused picked up the girl under the guise of taking her to a wedding. That evening, he took her to an unoccupied house and forcibly committed penetrative sexual assault on her. On the next day morning i.e., 21.02.2023, at the Kaliamman Temple, the accused and the victim exchanged garlands and married her. Thereafter, the Extension Officer of Reddiarchathram Panchayat Union lodged a complaint against the accused.

4. Based on the complaint given by PW1, FIR has been registered and investigation has been conducted. After completing the investigation, charge sheet has been filed against the accused under Section 366 IPC r/w 3(2)(va) of SC/ST Act, Section 4 of the POCSO Act, Section 9 of Prohibition of Child Marriage Act, 2012, Section 3(1)(w)(i) of SC/ST Act. At the conclusion of trial, the accused was found guilty under Section 366 IPC r/w 3(2)(va) of SC/ST Act, Section 4 of the POCSO Act, Section 9 of Prohibition of Child Marriage Act, 2012, Section 3(1)(w)(i) of SC/ST Act and convicted and sentenced as stated



Crl.A(MD)No.800 of 2025

supra. Aggrieved over the same, the accused has filed this appeal.

WEB COPY

5. The learned counsel appearing for the appellant submitted that the learned trial Judge erred in convicting the accused, despite the fact that the material witness, namely the victim, had not deposed in her evidence regarding the offence of penetrative sexual assault.

6. The learned Government Advocate (Crl.Side) submitted that the learned trial Judge has relied on the statement given by the victim to the Doctor and he left the rest to the merits of the matter to the Court.

7. I have given my anxious consideration to the submission made on the either side and perused the records. On perusal of the judgment of the trial Court and the materials, it is seen that the defacto complainant in this case is the Extension Officer of the Panchayat Union. She has stated that she got an information about a child marriage on 11.04.2023. So, she went along with the Panchayat Clerk and Counsellor of Child Welfare Office to the house of the victim girl and enquired. The enquiry revealed that the victim girl discontinued her studies and was working in a private shop and during that time, she developed an affair with the accused. On 20.02.2023 at about 8.30 a.m., she had gone with the accused to her relative's marriage and thereafter, they went to the house of the accused and stayed there. At that time, the accused on the pretext of marrying her, had sexual intercourse with the victim. On 21.02.2023



Crl.A(MD)No.800 of 2025

at about 10.30 a.m., they had exchanged garlands and on knowing that, the victim girl's parents came there and took her away.

8. Originally the case was registered under the POCSO Act based on the complaint given by PW1, who heard the information about the child marriage. The defacto complainant/Extension Officer, the Panchayat Clerk and the Counsellor have been examined as PW1, PW5 and PW6 respectively and they have stated about the intimation received by them with regard to the child marriage. They enquired with the victim's father and filed a complaint against the accused. So PW1, PW5 and PW6 are hearsay witnesses and out of whom PW1 is the complainant who set the law in motion.

9. One of the important witnesses in this case is the victim/PW2. She has stated in her evidence that she had not gone along with the accused and she did not have sexual intercourse with him. She has been treated as a hostile witness and in the cross examination also she did not admit anything. The mother and father of the victim, who were examined as PW3 and PW12 respectively have also not supported the case of prosecution and they were also treated hostile.

10. PW4, who is the Headmistress of the School, where the victim studied has deposed about the issuance of School Certificate stating that the date of birth of the victim is 20.03.2007. As per the case of the



prosecution, the alleged occurrence had taken place on 22.02.2023 and 21.02.2023. If the age of the victim girl as per the details given by the Headmistress is true, she would have been 15 to 16 years as on the date of occurrence. No doubt, she would come within the definition of '*child*' under Section 2(d) of the POCSO Act.

11. The Doctor, who was examined as PW7, has done the potency test on the accused and he has stated that there is nothing to suggest that the accused is not potent. PW16 is the Doctor, who had examined the victim girl and she has stated that the hymen of the victim was not intact and the victim had told her that she had sexual intercourse with the accused on 22.02.2023.

12. The Investigation Officer, who has filed the charge sheet was examined as PW15. She has stated that she had assisted the victim to be produced before the Court for recording 164 Cr.P.C., statement. The victim has not stated anything against the accused or there is no ingredients found in the 164 Cr.P.C., statement to make out an offence of penetrative sexual assault under Section 4 of the POCSO Act.

13. No doubt, there are evidences to show that the victim belonged to scheduled caste community and the accused belonged to non-scheduled caste community. Even though there is no substantive evidence on the side of the prosecution to prove the charges under



Crl.A(MD)No.800 of 2025

Section 366 IPC r/w 3(2)(va) of SC/ST Act, Section 4 of the POCSO Act, Section 9 of Prohibition of Child Marriage Act, 2012, Section 3(1)(w)(i) of SC/ST Act, the learned trial Judge has proceeded to find the accused guilty for all the charges levelled against him.

14. As far as the offence of penetrative sexual assault under Section 4 of the POCSO Act is concerned, the learned trial Judge has chosen to rely on the statement given by the victim to the Doctor, who had examined her. In order to convict the accused for the offence under Section 3(1)(w)(i) of SC/ST Act, the learned trial Judge has relied only on the fact that the victim belonged to scheduled caste community. Despite there is no evidence on record to make out an offence under Section 366 IPC, the learned trial Judge has proceeded to find the accused guilty under Section 366 IPC r/w 3(2)(va) of SC/ST Act also.

15. It is reiterated that the basis for registering the case is the complaint given by PW1, who is a Public Officer. As per her evidence, on receiving the information she went to the house of the victim girl and made enquiry with the victim's father. He had stated that the victim girl had gone to the house of the accused, on the pretext of attending marriage and the accused had sexual intercourse with the victim on 20.02.2023 and thereafter, he married the victim on the next day, ie.,

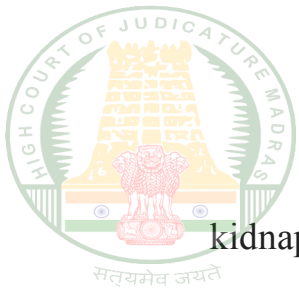


21.02.2023 by exchanging garlands in a temple. All that stated by PW1 in her complaint is the statement she heard from the father of the victim.

16. The father of the victim, PW12 has not supported the case of the prosecution. During his evidence, he has not stated the facts, which he had stated to PW1. Even according to PW1, neither of the parents were present during the alleged 'marriage'. The mere exchange of garlands between the accused and the victim would not amount to marriage, unless it is proved before the court that they have intended to exchange the garlands only with an intention to marry each other.

17. The parents of the accused or the parents of the victim or any of their relatives were not present at the time of the alleged 'marriage'. The investigation officer has not collected any materials like receipts to show whether the accused had paid any fees to convene a marriage in the temple. None of the temple authorities have also been examined to show that the marriage has been convened between the accused and the victim.

18. The best person, who would speak about the occurrence is the victim child PW2. However, PW2 in her evidence has stoutly denied the allegations against the accused as seen in Ex.P1 complaint and all the subsequent events. The father and mother of the victim, PW12 and PW3 have also turned hostile, without supporting the case of prosecution. In the absence of any other evidence to prove that the accused had



Crl.A(MD)No.800 of 2025

kidnapped the victim and had sexual intercourse against her will, on the presumption that such an event would have taken place, no presumption can be drawn in favour of prosecution under Sections 29 and 30 of the POCSO Act.

19. The sexual offence against children not only endangers the safety of the children, but it is a social evil. Hence, the cases filed under the POCSO Act have to be dealt with due sensitivity. There cannot be any second thought on these aspects in view of the avowed object of the POCSO Act. Only because of the sensitivity attached to the above Act, the Act has been strengthened with special provisions under Sections 29 and 30. According to the above provisions, once a person is prosecuted for the offence punishable under Sections 4, 6, 8 and 10 of the POCSO Act, it has to be presumed that the person prosecuted has committed the offence and it is for the accused to reverse the presumption through rebuttal proof.

20. Now, the question is whether the initial presumption can be drawn in favour of the prosecution, even when the prosecution failed to prove that the accused had kidnapped the victim girl, had sexual intercourse and married her. The said facts have not been stated by neither the victim girl nor her parents in their respective evidence before the court. Only when the foundational facts are established, the courts



can presume under Sections 29 and 30 of the POCSO Act in favour of the prosecution and in such case, the accused has to prove the contrary.

In other words, in the absence of any proof to establish the foundational facts, the Court cannot draw initial presumption in favour of the prosecution.

21. When there is no foundational facts at the first level to draw the initial presumption under Sections 29 and 30 of the POCSO Act, it is surprising that the learned trial Judge has convicted the accused. The trial Court did not stop there, it converted such mistake of initial presumption into conclusive proof and found the accused guilty for the offence under Section 366 IPC r/w 3(2)(va) of SC/ST Act, Section 4 of the POCSO Act, Section 9 of Prohibition of Child Marriage Act, 2012, Section 3(1)(w)(i) of SC/ST Act.

22. The evidence of the victim girl is an essential and indispensable requirement in a case alleging sexual assault on her in order to convict the accused. In the absence of ground material to prove the foundational facts, it is dangerous to draw the initial presumption in favour of the prosecution. Even in such cases where such initial presumption is drawn subsequent to the proof of foundational facts, the presumption would get rebutted or neutralized, when the contrary is proved.



WEB COPY

23. It is possible for the victim to state the history of her case with a certain amount of spontaneity to the Doctor who does the medical examination of the victim. But such statements if any given by the victim should be spoken before the court also during her examination as a witness. Only then it will attain the status of evidence and more specifically, the substantive evidence. Since the statement of the crucial witnesses like injured victims and eye-witnesses give the direct account of the occurrence, their evidence is considered as material evidence. And the statements of other witnesses who support these statements of material witnesses are considered as corroborative evidence. In the absence of the material evidence, the statement of the victim given before the Doctor remains a mere statement without having the utility value as corroborative evidence. In the offences against person, if the evidence of the affected party is not available or such witnesses give different account of the occurrence without supporting the case of the prosecution, the evidence of other witnesses cannot be considered in isolation to fix the guilt of the accused.

24. The evidence of the affected witness is different from other. It can at the best be considered as a contradiction and the benefit of which will go in favour of the accused. In the cases which has the advantages of initial presumption in favour of the prosecution, such material



contradiction can serve as rebuttal evidence.

WEB COPY

25. The statement given by the witnesses before the Police or before the Court under Section 164 Cr.P.C., are helpful for the investigating agency to find out the truth and to file a charge sheet for the purpose of conducting trial. Only during the trial, the veracity of such statements produced by the prosecution can be tested. So, the testimony of the witnesses given before the Court are substantive and material, because of its substantive value. The other evidence supporting the said material evidence is corroborative evidence. The accused cannot be found guilty without the substantive evidence of the material witnesses, but basing on the statement of the supporting witnesses alone.

26. In this regard, it is apposite to note the observation of the Hon'ble Gujarat High Court in **State of Gujarat v. Kishorbhai Devjibhai Parmar and Ors.**, reported in MANU/GJ/2009/2022, wherein it was held that,

“....when substantial evidence is lacking to connect the respondents accused with the crime or not brought on record sufficient evidence to establish the guilt, other corroborative evidence loses its significance or needs any consideration to upset the findings and therefore, there is no need to



WEB COPY



Crl.A(MD)No.800 of 2025

overburden the judgment anymore or needs any discussion of such evidence.”

27. I have also elaborately dealt with the insignificance of corroborative evidence without the substantive evidence in ***Crl.A(MD) No.715 of 2025, dated 22.07.2025*** and the relevant portion is extracted hereunder:

“14.So far as the occurrence is concerned, the statement given to the Doctor is for a limited purpose of recording the history of the case. The veracity of the statement given before the Doctor or to the Investigation Officer has to be testified only before the Court.

15.If the victim girl has given evidence supporting the case of the prosecution, then the Doctor's evidence could help as a corroborative evidence. But without any substantive evidence, the Court cannot act on the basis of the corroborative evidence alone. Had it been a case based on circumstantial evidence, then there is no possibility to get any substantive evidence about the occurrence and the only available option is to do a thorough



WEB COPY



Crl.A(MD)No.800 of 2025

examination of the circumstances and to ensure whether each of such links of the circumstances form a chain, so as to, lead to the accused as to the commission of offence.

16.Convicting the accused only on the basis of the corroborative evidence without substantive evidence will be like building a house without foundation.

17.Though the offences falling under the POCSO Act are very serious and has special provisions under Sections 29 and 30 of the POCSO Act to draw initial presumption in favour of the prosecution, once a person is prosecuted for the offence under Section 8 of the POCSO Act, such presumption can be made available to the prosecution, only when the foundational facts are proved before the Court.

18.It appears that the learned trial Judge himself has strongly influenced by the statement of the victim girl given before the Doctor, without



WEB COPY



Crl.A(MD)No.800 of 2025

appreciating the victim girl's statement given before the Court. Neither the victim girl nor the defacto complainant, who have stated anything incriminating against the accused in order to hold him guilty for the offences under Sections 366 IPC and Section 8 of the POCSO Act.

19.As the trial Court has not properly appreciated the evidence by rightly understanding the principles of appreciation of evidence, especially the effect of substantive evidence, I feel the miscarriage should be rectified by setting aside the judgment of the trial Court.”

28. No doubt, the offences of sexual assault against the children are to be taken with utmost seriousness. But an amount of caution should also be exercised in holding the accused guilty without the statement of the victim before the Court. Because conviction of the accused, even in the absence of the positive evidence of the victim would lead to undesirable consequences of not just affecting the interest of the accused but also the victim.

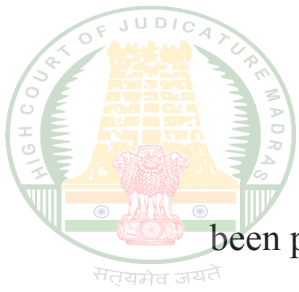
29. A girl or a woman who comes and says before the court that she has not been molested or raped by an accused should not be



Crl.A(MD)No.800 of 2025

compelled to undergo embarrassment and inconvenience due to the finding of the court that she has been molested or raped. This will eventually embarrass her family, friends and relatives. And others in the society may also tend to be either judgemental or proceeds to find the accused guilty of such offences against the girl or the woman and that will eventually embarrass their families, friends and relatives. The courts need to be cautious about such undesirable social consequences on the lives of the individuals due to verdicts given against the accused in the absence of the incriminating evidence of such principal witnesses.

30. In the instant case, the trial Court has gone to the extent of presuming that the victim has not come out with the truth as it would defeat her desire to marry the person of her love. In fact, the trial Court has relied upon the evidence of the official witnesses PW1, PW5, PW6 and PW14 in order to arrive at a conclusion about the guilt of the accused, though they happened to be the hearsay witnesses about the alleged marriage between the victim and the accused. It is already observed that the investigation officer has neither collected any evidence from the temple nor examined any of the eyewitnesses to show that a marriage was convened between the accused and the victim. In fact, neither of the parents of the victim and the accused were alleged to have



been present during the alleged marriage.

WEB COPY

31. So, the manner in which the learned trial Judge has analysed the evidence would show that he has the pre-conceived idea to convict the accused, though the evidence available on record is not supportive to fix the guilt on him. Unlike other offences, there may be so many reasons for the victims of sexual offences, especially in the matters involving minor love for being not supportive to the prosecution. Without the evidence of the victim in the offence of sexual assault, finding the accused guilty based on the initial presumption would also defame the victim and embarrass her family.

32. The trial Court has also awarded a compensation of Rs.2 lakhs to the victim, on the observation that the victim girl had been affected both mentally and physically. When the victim herself has not stated that she is subjected to penetrative sexual assault and there is no material available to substantiate the same, there is no fairness or reasonableness in awarding compensation of a hefty sum of Rs. 2 lakhs to be payable from the State fund and it can only be an extravaganza.

33. The learned trial Judge has failed to understand the implication of the presumption under Sections 29 and 30 of the POCSO Act and the significance of the corroborative evidence, in the absence of substantive



Crl.A(MD)No.800 of 2025

evidence and the justification for compensation.

WEB COPY

34. In view of the above, the judgment of the trial Court has to be set aside in *toto*. Accordingly, ***the Criminal Appeal stands Allowed and the appellant is acquitted from all the charges levelled against him; the bail bond executed by the appellant if any, shall stand terminated and the fine amount, if any paid by the appellant shall be refunded to him; the compensation awarded by the trial Court to the victim, if disbursed, shall also be refunded to the State and if it is not disbursed, the order awarding compensation is also set aside.*** Consequently, connected miscellaneous petition is closed.

31.07.2025

NCC : Yes/No

Index : Yes/No

PNM

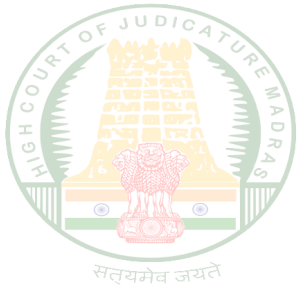


Crl.A(MD)No.800 of 2025

WEB COPY

To

1. The Sessions Judge,
Special Court for Exclusive Trial for cases under POCSO Act,
Dindigul
2. The Jail Superintendent,
Central Prison, Trichy
3. The Inspector of Police,
Dindigul Taluk Police Station,
Dindigul District.
Crime No.239 of 2023.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
5. The Section Officer,
Criminal Record Section,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



Crl.A(MD)No.800 of 2025

DR.R.N.MANJULA, J.

PNM

JUDGMENT IN

Crl.A(MD)No.800 of 2025

and Crl.M.P(MD) No.9804 of 2025

31.07.2025



WEB COPY



Crl.A(MD)No.800 of 2025