



Crl.A.(MD)No.599 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 31.10.2025

Pronounced on : 19.12.2025

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.A.(MD)No.599 of 2022

Balan @ Balamurugan

... Appellant/
Sole Accused

Vs.

The State by
The Inspector of Police,
Pavoorchathiram Police Station,
Tenkasi District.

... Respondent/
Respondent

Prayer : This Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, to call for records and to set aside the judgment made in Spl.S.C.No.150 of 2019 by the Sessions Court, (Special Court for POCSO Act cases), Tirunelveli dated 30.08.2022.

For Appellant : Mr.D.Venkatesh

For Respondent : Mr.B.Thanga Aravindh
Government Advocate (Criminal Side)



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JUDGMENT

The Criminal Appeal is directed against the judgment of conviction made in Spl.C.No.150 of 2019 dated 30.08.2022 on the file of the Special Court for POCSO Act cases, Tirunelveli.

2. The appellant is the sole accused (hereinafter referred as 'accused') in Spl.C.No.150 of 2019 on the file of the Special Court for POCSO Act cases, Tirunelveli.

3. The Inspector of Police, Pavoorchathiram Police Station, Tenkasi, laid a final report against the accused alleging that the defacto complainant Mariselvan and the accused are belonging to same place, that the defacto complainant's daughter (victim girl) completed her 12th standard in 2018 and the accused, after completing polytechnic course, was working in a spinning mill at Coimbatore, that whenever the accused comes to the native place, by giving false promise to marry the victim girl had sexual intercourse with her, that subsequently, without the knowledge of the victim girl's parents, the accused had kidnapped the victim girl in his TVS



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Sport two wheeler bearing Registration No.TN-76-AZ-4131 and took her to Chennai and Ooty and had physical intercourse with her several times and that thereby, the accused had committed the offences punishable under Sections 366 and 376 IPC and Section 6 of the Protection of Child From Sexual Offences Act, 2012 (hereinafter referred as 'POCSO Act').

4. The learned Sessions Judge, Mahila Court, Tirunelveli, took the charge sheet on file in Spl.C.No.140 of 2018 and furnished the copies of records under Section 207 Cr.P.C. on free of costs. Thereafter, as per the orders of the Principal District and Sessions Court, Tirunelveli dated 19.12.2019, the case was transferred to the file of the Special Court for POCSO Act cases, Tirunelveli and the same was taken on file in Spl.C.No. 150 of 2019 on 20.12.2019. The learned Sessions Judge, on hearing both the sides and on perusal of records, being satisfied that there existed a *prima facie* case against the accused, framed charges under Section 366 IPC and Section 6 of the POCSO Act and the same were read over and explained to him and on being questioned, the accused denied the charges and pleaded not guilty.



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5. The prosecution, to prove its case, examined 15 witnesses as P.W.1 to P.W.15, exhibited 29 documents as Ex.P.1 to Ex.P.29 and marked 2 material objects as M.O.1 and M.O.2.

6. The case of the prosecution emerging from the evidence adduced by the prosecution in brief as follows;

(a) P.W.1 (defacto complainant) is the husband of P.W.3 and P.W.2 (victim girl) is their daughter. P.W.1 along with his wife P.W.3, daughter P.W.2 and a son are residing in Melapavoor. P.W.1 is doing milk vending business, whereas, P.W.3 is working as a noon meal organizer. P.W.2 (victim girl) completed her 12th standard in Tenkasi M.K.V.K. Higher Secondary School and P.W.1 admitted her in Siddha Medical College, Nagercoil by remitting advance amount of Rs.50,000/-. P.W.2 was born on 01.12.2000.

(b) The accused is also residing in the same street. After completing polytechnic, he is working in a spinning mill at Coimbatore. P.W.2 (victim girl) used to go to school through the house of the accused. After coming to know that the accused was in love with P.W.2 (victim girl), P.W.1 warned them. After completion of the annual examination, the accused had



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kidnapped P.W.2 (victim girl) on 04.08.2018. P.W.1 and P.W.3 searched for P.W.2 (victim girl) in all their relatives' house. Since P.W.2 (victim girl) was not found, P.W.1 gave a complaint under Ex.P.1 on 06.08.2018 before Pavoorchatram Police Station. After 81 days, the police, by informing that P.W.2 (victim girl) and the accused were available in the house of the accused's relative at Ooty, secured them and brought them to the police station. Since P.W.2 (victim girl) was not willing to go with her parents, she was sent to home. Thereafter, she was sent to P.W.1's paternal aunt's house. When P.W.2 (victim girl) attained 18 years of age, the accused had again taken her with him. P.W.1 produced the birth certificate of P.W.2 (victim girl) under Ex.P.2

(c) P.W.14 – the then Head Constable attached to Pavoorchatram Police Station was on duty at about 13.00 hours on 07.08.2018. P.W.1 came to the police station and gave Ex.P.1 (complaint). After receiving the same, P.W.14 registered a case in Crime No.398 of 2018 as 'Girl Missing' and prepared the First Information Report under Ex.P.17. He sent the original complaint and FIR to the jurisdictional Magistrate and copies to the higher officials.

(d) P.W.15 – the then Inspector of Police, Pavoorchatram Police



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Station receiving the copy of the FIR took up the investigation and went to the house of P.W.1 at about 14.00 hours and prepared the observation mahazar under Ex.P.18 in the presence of P.W.4 and P.W.6 and drew a rough sketch under Ex.P.19. She examined P.W.1, P.W.3 and P.W.4 to P.W.7 and recorded their statements. Since the accused was not found, she gave the photo of P.W.2 (victim girl) to press and media. On 06.10.2018, P.W.15 received an information at about 11.00 a.m. that P.W.2 (victim girl) and the accused were at Pavoorchatram railway station. Immediately, she went to the railway station and brought both of them to the police station. P.W.15 arrested the accused and recorded the statement of P.W.2 (victim girl) and on that basis, she altered the case to the offence under Sections 366 and 376 IPC and Section 6 of the POCSO Act and submitted an alteration report to the concerned Court under Ex.P.20.

(e) P.W.15 examined the accused and recorded his statement. After getting the information from the accused that the vehicle allegedly used for taking P.W.2 (victim girl) was parked in his house, P.W.15 went to the accused's house and recovered the two wheeler bearing Registration No.TN-76-AZ-4131 (M.O.1) in the presence of P.W.5 and P.W.7 under the cover of seizure mahazar under Ex.P.21. P.W.15 sent the accused to the



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jurisdictional Court for remand. She sent the case property to the Court through Form 91 under Ex.P.22. The police took photographs of M.O.1 vehicle under M.O.2 series.

(f) P.W.15 then sent P.W.2 (victim girl) for medical examination through P.W.9 – Head Constable and P.W.11 – Grade II Constable. P.W.9 and P.W.11 produced P.W.2 (victim girl) before P.W.8 – medical officer at about 12.20 a.m. on 07.10.2018. P.W.2 (victim girl) informed P.W.8 that she was loving one Balamurugan for four years and on 04.08.2018, she went to Chennai and Ooty with Balamurugan and had physical intercourse at a rented house in Chennai. P.W.8 noticed that her hymen was not intact and allowed one finger in private part and took the vaginal smear for sending the same to the Forensic Lab. After receiving the Forensic Lab report under Ex.P.10 that no sperm was detected in the smears, she gave a certificate under Ex.P.8 that there was no evidence of recent sexual intercourse. P.W.15 submitted a requisition under Ex.P.23 to the learned Chief Judicial Magistrate, Tirunelveli for recording statement from P.W.2 (victim girl) under Section 164 Cr.P.C. and the learned Chief Judicial Magistrate passed an order under Ex.P.24 deputing the learned Judicial Magistrate, Sankarankovil to record the statement. Accordingly, the



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learned Judicial Magistrate, Sankarankovil recorded the statement of P.W.2 (victim girl) under Section 164 Cr.P.C. under Ex.P.28 and the signature of P.W.2 (victim girl) found therein is Ex.P.3.

(g) P.W.15 sent a requisition to the concerned Court for sending the accused for medical examination and after getting orders, sent the accused through P.W.12 – Head Constable and P.W.13 – Constable and both of them took the accused from the Central Jail, Palayamkottai and produced him before P.W.10 – medical officer. After examining the accused, P.W.10 issued a certificate under Ex.P.15 giving his opinion that there is nothing to suggest that the accused is not capable of performing sexual act. P.W.15 examined P.W.8 and P.W.10 (medical officers) and the Constables, who had taken the accused and P.W.2 (victim girl) to the hospitals and the Scientific Assistant attached to Forensic Lab and recorded their statements. P.W.15 then sent a requisition to Tenkasi M.K.V.Kandasamy Nadar Matriculation Higher Secondary School for getting the age of P.W.2 (victim girl) and in pursuance of the same, the school authorities gave a copy of the transfer certificate under Ex.P.29, wherein, it was shown that P.W.2's (victim girl) date of birth is 01.12.2000. After completing the investigation, P.W.15 filed the final report against the accused for the



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offences under Sections 366 and 376 IPC and Section 6 of the POCSO Act. With the examination of P.W.15, the prosecution has closed their side evidence.

7. When the accused was examined under Section 313(1)(b) Cr.P.C. with regard to the incriminating aspects against him in the evidence adduced by the prosecution, he denied the evidence as false and stated that a false case has been foisted against him. Though the accused has stated that he is having defence evidence, he has not let in any evidence subsequently.

8. The learned Sessions Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, passed the impugned judgment dated 30.08.2022 convicting the accused for the offence under Section 366 IPC and sentenced him to undergo three (3) years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default to undergo six (6) months rigorous imprisonment and by holding that the prosecution failed to prove the charge under Section 6 of the POCSO Act acquitted him under Section 235(1) Cr.P.C. Aggrieved by the impugned



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judgment of conviction and sentence under Section 366 IPC, the accused preferred the present appeal.

9. The case of the prosecution is that the accused kidnapped P.W.2 (victim girl) from her parents and took her to Chennai and Ooty and by promising to marry her, had physical intercourse several times and that therefore, the accused had committed the offences under Sections 366 and 376 IPC and Section 6 of the POCSO Act.

10. The learned counsel appearing for the accused would submit that P.W.2 (victim girl) has not supported the case of the prosecution and hence, she was treated as hostile, that P.W.1 and P.W.3 (parents of the victim girl) are only hearsay witnesses, that there is absolutely no evidence to show that the accused kidnapped P.W.2 (victim girl), that P.W.1, in his complaint under Ex.P.1, does not say that the accused was the culprit and complaint was only with regard to missing of his daughter, that observation mahazar witnesses and recovery witnesses have also not supported the case of the prosecution and hence, they were also treated as hostile, that the accused and P.W.2 (victim girl) were on love for some



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years and after P.W.2 (victim girl) attaining majority, the accused married her on 10.02.2019, that P.W.2 (victim girl) gave birth for her first male child on 26.10.2019 and second child in the year 2022, that their marriage, which was solemnized on 10.02.2019, was registered on 29.10.2025 before the Marriage Registrar, Sub Registrar Office, Pavoorchatram, that the prosecution has miserably failed to prove the charge under Section 366 IPC but the learned trial Judge, taking note of the hearsay evidence of P.W.1 and P.W.3 and the evidence of investigating officer, has proceeded to convict the accused in a mechanical fashion and that therefore, the impugned conviction is liable to be set aside.

11. The learned Government Advocate (Criminal Side) appearing for the respondent police would submit that considering the evidence available on record, the learned trial Judge has rightly acquitted the accused for the offence under Section 6 of the POCSO Act but taking note of the evidence of P.W.1 and P.W.3 (parents of the victim girl) and also the evidence of investigating officer that both the accused and P.W.2 (victim girl) were secured while they were at the accused relative's house at Ooty and also the fact that the accused had used M.O.1 (two wheeler) to kidnap



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P.W.2 (victim girl) and the said vehicle was recovered, has rightly convicted the accused for the offence under Section 366 IPC and that therefore, the impugned judgment does not warrant any interference.

12. At the outset, it is pertinent to note that the learned trial Judge, by specifically holding that the prosecution miserably failed to prove the charge under Section 6 of the POCSO Act, acquitted the accused for the said offence. Admittedly, the respondent State has not preferred any appeal challenging the acquittal for the POCSO offence and as such, the said decision of the learned trial Judge has attained finality.

13. As already pointed out, the learned trial Judge, by holding that the prosecution proved the charge under Section 366 IPC, convicted the accused.

14. The case of the prosecution is that P.W.2 (victim girl), who was born on 01.12.2000, was a minor on the date of occurrence. The prosecution produced the copies of birth certificate and school transfer certificate of P.W.2 (victim girl) as Ex.P.2 and Ex.P.29 respectively.



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Moreover, P.W.1 to P.W.3, in their evidence, would say that P.W.2 (victim girl) had completed her 12th standard and she was born on 01.12.2000. As rightly pointed out by the learned Government Advocate (Criminal Side), the defence has neither challenged the above evidence nor disputed the documents under Ex.P.2 and Ex.P.29. It is pertinent to mention that as on 04.08.2018 the alleged occurrence date, P.W.2 (victim girl) was aged 17 years 8 months and 3 days.

15. Section 366 IPC contemplates that whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment for a term which may extend to ten years, and also liable to fine.

Ingredients;

1. kidnapping / abduction : evidence proving the accused took or confined woman which likely against her will, defined under Sections 359 to 362 IPC



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2. specific intent (motive) : kidnapping or abduction must be one of the purposes :

- (a) to compel her to marry any person;
- (b) to force or seduce her to illicit intercourse; and
- (c) knowing it is likely that she will be forced or seduced to illicit intercourse.

16. As rightly contended by the learned counsel appearing for the accused, the learned trial Judge relied on the evidence of P.W.1 and P.W.3 (parents of the victim girl) to come to a decision that the charge under Section 366 IPC was proved. P.W.1, in his evidence before the trial Court, would depose that after completion of P.W.2's (victim girl) annual examination, the accused had kidnapped P.W.2 (victim girl) on 04.08.2018 but he would add that he searched for his daughter in the relatives' houses but she was not available and hence, he was forced to lodge a complaint on 06.08.2018 before Pavoorchatram Police. Moreover, he would say that after 81 days, the police had informed him that they had secured P.W.2 (victim girl) and the accused, who were available in accused's relative's house at Ooty. P.W.3, in her evidence, would say that her daughter was found missing from 04.08.2018, that since her daughter was not found



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despite their search, her husband lodged a complaint and that on 06.10.2018, the police had informed that P.W.2 (victim girl) and the accused were secured and brought to the police station.

17. It is pertinent to note, as rightly pointed out by the learned counsel appearing for the accused, that in Ex.P.1 (complaint), P.W.1 does not say anything about the accused. He gave a complaint alleging that his daughter was found missing from 04.08.2018. Though P.W.1 in his evidence has admitted that the accused was in love with his daughter and he warned them earlier, but as rightly contended by the learned counsel appearing for the accused, P.W.1 for the reasons best known to him does not disclose the alleged love affairs or his suspicion about the involvement of the accused. P.W.14, who registered the FIR, and P.W.15, who conducted investigation, in their evidence would say that P.W.1 has not named any suspected person in his complaint but only stated that his daughter was found missing.

18. P.W.15 (investigating officer), in her evidence, would say that she received an information at about 11.00 a.m. on 06.10.2018 that the



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accused and P.W.2 (victim girl) were available at Pavoorchatram railway station and immediately, she went to the railway station and brought both of them to the station but in cross-examination, she would say that she did not disclose the particulars as to who gave the information and that person was not added as a witness. More importantly, as rightly pointed out by the learned counsel appearing for the accused, P.W.15, in her cross-examination, would say that she did not witness the accused kidnapping P.W.2 (victim girl). Moreover, P.W.7 (brother of P.W.1), in his evidence, would feign ignorance about the occurrence but stated that the police had taken his signature in a blank paper and since he identified the signature in seizure mahazar, the same was marked as Ex.P.7.

19. Admittedly, none of the witnesses examined by the prosecution has stated witnessing the accused kidnapping P.W.2 (victim girl). It is not the case of the prosecution that they had examined grandfather of the accused in whose house P.W.2 and the accused were allegedly available at Ooty or the owner of the building at Chennai where P.W.2 (victim girl) and the accused were allegedly residing or any other person, who had seen them both at Chennai or Ooty.



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20. No doubt, as rightly pointed out by the learned Government Advocate (Criminal Side), in the statement under Section 164 Cr.P.C., P.W.2 has stated that she went to Ooty and was with the accused in his grandfather Padmanath's house for two months. But P.W.2 (victim girl), in her evidence before the trial Court, would depose specifically that she gave statement before the learned Magistrate as instructed by her parents and since she admitted her signature only in 164 Cr.P.C. statement, the same was marked as Ex.P.3.

21. P.W.2 (victim girl), in her evidence, has nowhere stated that she was kidnapped by the accused and he took her to Chennai and Ooty. Since there is no substantiative evidence, even assuming that P.W.2 (victim girl) gave Ex.P.28 statement on her own accord, being a corroborative evidence cannot be used. Considering the evidence available on record and as rightly contended by the learned counsel appearing for the accused, there is nil evidence to show that the accused had kidnapped / abducted P.W.2 (victim girl). Moreover, it is not the case of the prosecution that P.W.2 (victim girl) was kidnapped / abducted by compelling her to marry the accused. Though the prosecution has alleged that P.W.2 (victim girl) was



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kidnapped and she was seduced to have illicit intercourse with the accused, as already pointed out, the learned trial Judge, disbelieving the case of the prosecution that the accused had physical intercourse with P.W.2 (victim girl), has held that POCSO charge was not established. Considering the above, this Court has no hesitation in holding that the prosecution has miserably failed to prove the charge under Section 366 IPC.

22. P.W.2 (victim girl), in her evidence, would say that she had married the accused. According to the defence, their marriage was solemnized on 10.02.2019 and she gave birth to her first child on 26.10.2019 and second child in 2022.

23. The learned counsel appearing for the accused would submit that the accused and P.W.2 (victim girl) are happily living as husband and wife along with their two children and their marriage, which was solemnized on 10.02.2019, was registered on 29.10.2025 before the Marriage Registrar, Sub Registrar Office, Pavoorchatram.



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24. In the case of ***S.Varadarajan Vs. State of Madras*** reported in ***1964 SCC Online SC 36***, the Hon'ble Apex Court emphasized that if a woman (close to majority) willingly leaves with a man, it does not constitute "taking her out of the law". The Hon'ble Supreme Court, in ***Tilku alias Tilak Singh Vs. The State of Uttarakhand*** reported in ***2025 LiveLaw (SC) 224***, noting the inconsistencies between the prosecutrix's testimony acquitted the man accused of kidnapping a minor girl ruling that the girl had willingly left with him and living with him as his wife and the relevant passages are extracted hereunder;

“19. From the evidence of the prosecutrix itself, it will be clear that she had voluntarily gone along with the appellant herein, travelled to various places and also resided as husband and wife at Dehradun.

20. In that view of the matter, we find that the learned Single Judge of the High Court was not justified in upholding the conviction for the offences punishable under Sections 363 and 366 of the IPC.”

25. In ***Mafat Lal and another Vs. The State of Rajasthan*** reported in ***(2022) 6 SCC 589***, the Hon'ble Supreme Court has held that Section 366 IPC would come into play only where there is a forceful compulsion



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of marriage, by kidnapping or inducing a woman and more particularly, once the victim girl states that she was in love with the abductor, that she left her home on account of the disturbing circumstances at her parental home as the said relationship was not acceptable to her father and that she married the said abductor on her own free will without any influence being exercised by the accused.

26. Even assuming for arguments sake that the accused had taken P.W.2 (victim girl) to Chennai and Ooty, considering the facts and circumstances of the present case and also the evidence available on record, it can easily be inferred that she accompanied the accused voluntarily and there was no forcible compulsion on the part of the accused.

27. In *Shaheen Parveen and another Vs. State of UP and others* reported in **2015 7 ADJ 713**, Allahabad High Court observed that a girl who has attained the age of discretion on the verge of attaining majority capable of knowing what was good and what was bad for her, cannot be said to be a victim of inducement, particularly when her case is that it was



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on her initiative and on account of her voluntary act that she had gone with the boy and got married to him. In that case, the girl was just below 17 years of age and the High Court quashed the charge under Section 363 r/w 366 IPC observing that the prosecutrix herself has stated that she was neither kidnapped nor abducted but went in the company of the accused willingly and knowingly.

28. Viewing from any angle, the prosecution failed to prove the charge under Section 366 IPC against the accused. The learned trial Judge, in the absence of any substantiative evidence to prove the charge, relying on the corroborative and hearsay evidences, has come to a finding that the charge under Section 366 IPC was established by the prosecution and as such, the impugned judgment is liable to be set aside.

29. In the result, the Criminal Appeal is allowed and the impugned judgment of conviction and sentence imposed by the learned Sessions Judge, Special Court for POCSO Act cases, Tirunelveli.in Spl.C.No.150 of 2019, dated 30.08.2022 is set aside. The appellant is found not guilty for the offence under Section 366 IPC and is acquitted under Section 235(1)



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Cr.P.C. The bail bond, if any, shall stand cancelled and sureties, if any, shall be discharged. Fine amount if any paid, shall be refunded to the appellant.

19.12.2025

NCC :yes/No
Index :yes/No
Internet:yes/No
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To

- 1.The Sessions Judge,
Special Court for POCSO Act cases,
Tirunelveli.
- 2.The Inspector of Police,
Pavoorchathiram Police Station,
Tenkasi District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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Pre-Delivery Judgment made in
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Dated : 19.12.2025