



Crl.A(MD)No.527 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 11.03.2025

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

AND

THE HONOURABLE MS.JUSTICE R.POORNIMA

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Kumareshan

... Appellant/Sole Accused

Vs.

The State rep. by

The Inspector of Police,

All Women Police Station,

Pudukkottai in Cr.No.1 of 2018

Pudukkottai District.

...Respondent/Complainant

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.10 of 2018 on the file of the Sessions Judge, Mahila Court, Pudukkottai, dated 26.10.2021, and set aside the conviction and sentence imposed against the appellant.



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For Appellant : Mrs.M.Krishnaveni

For Respondent : Mr.A.Thiruvadi Kumar,

Additional Public Prosecutor

JUDGMENT

G.JAYACHANDRAN, J.

and

R.POORNIMA, J.

This Criminal Appeal is filed against the conviction and sentence passed against the appellant/sole accused in the judgment dated 26.10.2021 passed by the Sessions Judge, Mahila Court, Pudukkottai, in Spl.S.C.No.10 of 2018 by convicting and sentencing the appellant for the offences punishable under Sections 5(1), 5(j)(ii) r/w.6 of POCSO Act 2012 and sentenced him to undergo imprisonment for life and to pay a fine of Rs.50,000/- in default, to undergo one year simple imprisonment.

2. The case of the prosecution is that the victim girl whose father was away from the home for his avocation, was being enticed by the accused with sweet words and being repeatedly exploited the carnal relationship as led to the pregnancy of the victim girl who was a minor, at



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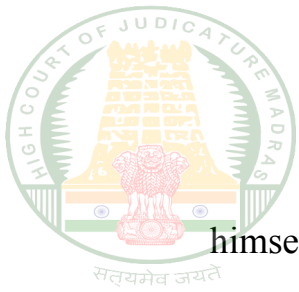
that time point of time. The parents came to know about the pregnancy and thereafter, had sought criminal law into motion by way of a complaint, dated 27.02.2018.

3. The Investigation Officer had arranged for recording the statement of the victim girl under Section 161 Cr.P.C., and thereafter, proceeded further and filed a final report against the appellant herein for having aggravated sexual offence with the minor girl.

4. Based on the materials placed, the Sessions Court framed charge under Section under Section 5(1), 5(j)(ii) r/w.6 of POCSO Act 2012 and tried the accused.

5. To substantiate the charges, prosecution marshalled 9 witnesses, 9 exhibits and the video recording of the victim statement marked as M.O.1. In defence side, the accused has examined 3 witness and no document was let in. The DNA report was marked as Ex.X1.

6. The Trial Court having found that pending trial after the child birth the accused himself has taken out an application to subject



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himself, mother and the child for DNA test to disprove the paternity.

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Unfortunately, in this case, the DNA report had disclosed that the appellant is the biological father of the child. As a result, taking note of the school certificate of the victim girl which discloses her date of birth as 19.11.2001. On the date of alleged occurrence, she was below 18 years old minor child as per POCSO offence and the trial Court had convicted him for offence under Section 5(1), 5(j)(ii) r/w.6 of POCSO Act, 2012 and sentenced him to undergo imprisonment for life.

7. The learned counsel appearing for the appellant submitted that the true age of the victim girl has not been established by the prosecution. The victim girl was in fact major at the time of accident and it was a consensual sex between two adolescent. The admission of the minor girl in the cross examination regarding her affair with the appellant with consent being cited as a ground to challenge the conviction and sentence.

8. The learned counsel for the appellant vehemently argued that the case of consensual sex between two adolescent persons, particularly, when the age of the girl is doubtful and there is every



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possibility that she was major, the rigor of POCSO offence cannot be clamped on the accused.

9. The learned counsel referring to the School Leaving Certificate marked as Ex.P.8 and Transfer Certificate marked as Ex.P.9 *vis-a-vis* the cross examination of P.W.1, the father of the victim as well as P.W.9 the Headmistress of the school submitted that there is sufficient doubt regarding the authenticity of the date of birth mentioned in the School Leaving Certificate and Transfer Certificate. Therefore, she would submit that it is not an offence punishable under the POCSO Act in any event and being a consensual sex even IPC offence under Section 376 IPC will not attract.

10. Per contra, the Additional Public Prosecutor submitted that as far as ascertaining the age of the minor girl, it is a settled principle of law that most authenticated document is the School Certificate. In this case, the prosecution has collected the School Leaving Certificate of the victim as well as the Transfer Certificate. The same has been proved through P.W.9 Headmistress of the school, who is the custodian of the record.



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11. The learned Additional Public Prosecutor further submitted that there cannot be concoction or error in the date of birth for the sake of prosecuting the appellant since the entry in the School register was made several years ago, when the victim girl joined at P.W.9's School in 6th Standard, at about 6 years earlier to the occurrence and regarding the plea of consensual sex, the learned Additional Public Prosecutor submitted that the victim girl both before the Magistrate, while giving her statement under Section 164 Cr.P.C., as well as before the Court had clearly stated that the accused enticed her promising to marry her and had been frequently having sex with her.

12. The learned Additional Public Prosecutor further submitted that the appellant took a plea that the victim girl had in fact affair with one Manikandan and he is the cause for her pregnancy. The appellant had even gone to the extent of taking out an application to subject himself, victim and the child born to the victim for DNA test to establish his defence. However, the DNA report Ex.X1 had revealed that the accused is the biological father of the child. Hence, the trial Court after considering all these factors, had imposed the life imprisonment.



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13. The learned Additional Public Prosecutor would further submit that the appellant after committing aggravated sexual offence on a minor girl had audacity to deny the crime and also tarnish the image of the victim girl making allegations, that too, suspecting her fidelity.

14. The learned counsel for the appellant would submit that the appellant was 23 years old, at the time of occurrence and the commission of offence should not be taken as a grave offence, taking into consideration the fact that it was a consensual sexual relationship between two adolescent and therefore, even to accomplish the offence, he cannot prosecute the appellant.

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

16. As far as the date of birth of the victim girl the School Certificate gains primacy over all other documents. In this case, the prosecution has collected the SSLC mark sheet of the victim girl and Transfer Certificate of the victim girl which are marked as Ex.P8 and



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Ex.P9. There is no contra evidence adduced by the accused though he has ventured to examine three witnesses on his behalf.

17. The victim being a minor girl, the plea that it was a consensual sex between two adolescent also, does not augur well to entertain the submissions. Even if it is to be considered that the victim was about to attain majority and they were in love for a long period and in hope and belief, they would get marry on attaining majority had involved in premarital consensual contact, but the intention to marry could not fructify, has to be taken into account, then the conduct of the appellant should have been different. Even before registration of complaint, he should have married her or assured that he will marry the victim girl. He had not done so. It appears from the record that after conviction, he had moved the Court expressing his willingness to marry the girl, however, the girl has declined the proposal.

18. In the said circumstances, this Court is unable to countenance the argument of the appellant counsel, both regarding the age as well as the plea of consensual sex. Hence, this Court finds no merit in this Criminal Appeal.



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19. The learned counsel for the appellant as a last submission pleaded that the alleged offence has taken place prior to the amendment to the POCSO Act which has come into effect from 16.08.2019, for imposing rigorous imprisonment for a term not less than 20 years or life imprisonment. Prior to the amendment, it was rigorous imprisonment for a term not less than 10 years and which may extend to life imprisonment. Hence, he submitted that the occurrence took place prior to the amendment and the sentence of life imprisonment is to be modified, taking into consideration the age of the appellant.

20. This Court after giving anxious consideration to the above submission and taking into consideration the age of the victim boy who lost his life because of his sexual urge, we modify the sentence imposed by the Trial Court as below :

(i) The sentence imposed by the trial Court stands modified from life imprisonment to rigorous imprisonment for a term of ten years with a fine of Rs.50,000/- in default to pay the fine amount, to undergo Simple Imprisonment for one year.



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21. In the result,

(i) this Criminal Appeal is partly allowed;

(ii) the conviction under Section 5(1), 5(j)(ii) r/w.6 of POCSO Act 2012 passed by the learned Sessions Judge, Mahila Court, Pudukkottai, dated 26.10.2021, in Spl.S.C.No.10 of 2018 is confirmed but the sentence is modified;

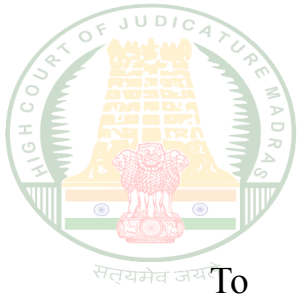
(iii) Accordingly, the sentence of Life Imprisonment passed by the Court below is set aside and the appellant is sentenced to undergo Rigorous Imprisonment for ten (10) years and to pay a fine of Rs.50,000/- (Rupees Fifty Thousand only) and in default to pay the fine amount, to undergo Simple Imprisonment for one year;

(iv) The period of sentence already undergone by the accused/appellant shall be set off under Section 428 Cr.P.C., as against the substantive sentence; and

(v) The compensation award by trial Court is hereby confirmed.

(G.J., J.) & (R.P., J.)
11.03.2025

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
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To
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- 1.The Sessions Judge,
Mahila Court,
Pudukkottai.
- 2.The Inspector of Police,
All Women Police Station,
Pudukkottai in Cr.No.1 of 2018
Pudukkottai 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.

Copy to :

The Superintendent,
Central Prison,
Trichy.



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G.JAYACHANDRAN J.
AND
R.POORNIMA, J.

RM

Judgment in
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