



Crl.A(MD)No.114 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 08.08.2025

CORAM :

THE HONOURABLE Dr. JUSTICE R.N.MANJULA

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Palanivel

... Appellant/Accused No.1

Vs.

The Inspector of Police,
Vattathikottai Police Station,
Pappanadu Taluk,
Thanjavur District
(In Crime No.9 of 2014)

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 378 of Criminal Procedure Code, against the judgment of the learned Sessions Judge, Fast Track Mahila Court, Thanjavur, in Spl.S.C.No.01 of 2016 dated 24.03.2017.

For Appellants : Mr.M.Jegadeeh Pandian
For Respondent : Mr.R.Meenkshi Sundaram
Additional Public Prosecutor

JUDGMENT

This Criminal Appeal has been preferred challenging the judgment dated 24.03.2017 passed by the learned Sessions Judge, Fast Track Mahila Court, Thanjavur, in Spl.S.C. No.01 of 2016.



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2. The appellant is the sole accused, who has been found to be guilty for the offences under Section 366 IPC, Section 9 of Prohibition of Child Marriage Act, 2006 and Section 6 of POCSO Act. The trial court convicted and sentenced him as under:

Offence u/s	Punishment
366 IPC	10 years (R.I) and a fine of Rs. 1000/- i/d 1 year (S.I)
9 of Prohibition of Child Marriage Act, 2006	2 years (R.I) and a fine of Rs.500/- i/d 1 month (S.I)
6 of POCSO Act	10 years (R.I) and a fine of Rs.1000/- i/d 1 year (R.I)

3. As per the case of the prosecution, the defacto complainant, who was 16 years old, was studying +2 and the first accused was working as driver in the Mini Bus, in which the victim was travelling to her school. During that time, he developed an affair with the victim girl. The mother and brother of the victim had reprimanded the accused and discontinued the education of the victim and started to find an alliance for her. On 31.01.2014 at about 11.30 am, the defacto complainant went to see the first accused, as her parents were searching some other alliance for her.



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During that time, the accused 1 to 4 kidnapped the accused knowing that she was a minor and the first accused married her in Kalamman temple. The accused 2 to 4 have actively assisted for the marriage. Thereafter, the first accused took the victim to Coimbatore and stayed in a rental house. The accused had repeated sexual intercourse with her during that time and due to that, the victim got pregnant. On the complaint as above, a case has been registered and taken up for investigation and after completion of investigation, charge sheet has been filed for the offences under Section 366 IPC, Section 9 of Prohibition of Child Marriage Act, 2006 and Section 6 of POCSO Act.

4. When the charges read over and explained, the accused pleaded not guilty and claimed to be tried. After conclusion of the trial, the accused was found guilty for the offences under Sections 366 IPC, Section 9 of Prohibition of Child Marriage Act, 2006 and Section 6 of POCSO Act and he was convicted and sentenced to undergo the punishment as stated supra. Aggrieved over that, the sole accused preferred the present appeal.



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5. The learned counsel for the appellant submitted that the age of the victim is not proved; she was willing to go with the accused and she fell in love with him; the complaint has been given after several months; there is no question of kidnapping since the prosecution has not proved the age of the victim; the physical relationship happened between the accused and the victim, should be considered as a consensual sex and it is not an offence.

6. The learned Additional Public Prosecutor submitted that the school certificate has been produced to prove the age of the victim; she was a minor at the time of occurrence and the question of consent will not arise when the victim is a minor; the learned trial Judge has rightly fixed the guilt against the accused and convicted properly.

7. This Court gave anxious consideration to the submissions made on either side and carefully perused the materials available on record.



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8. Before proceeding to deal with the merits of the evidence, it is essential to find out whether the age of the victim has been proved. It is the claim of the prosecution that the date of birth is 08.07.1997 and she was kidnapped on 13.01.2014. The Head Master of the school was examined as P.W.12. In his evidence, he had stated that he had issued the certificate after verifying the school records and the victim had discontinued her studies in the year 2013-2014. However, the learned counsel for the appellant claimed that the certificate issued by the Head master was marked as Ex.P.7 and the same is not the certificate within the meaning of Section 94(2) of Juvenile Justice Act. On a perusal of Ex.P.7, it is seen that it is a formal certificate issued by the Head Master by writing the date of birth of the victim as 08.07.1997.

9. For determining the age of the victim of child sexual abuse, the procedure contemplated under Section 94 of the Juvenile Justice Act has to be followed. Section 94(2) of Juvenile Justice Act would read as follows:

94.(2) In case, the Committee or the Board has reasonable grounds



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for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining —14 of 1987.

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

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

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

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

10. Even the POCSO Act has been amended on 16.08.2019, by incorporating the appropriate words about the Juvenile Justice Act under Section 34 of the POCSO Act. For the sake of convenience, Section 34(1) of the POCSO Act is extracted as under:

34. Procedure in case of commission of offence by child and determination of age by Special Court.—



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(1) Where any offence under this Act is committed by a child, such child shall be dealt with under the provisions of 1 [the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016)].

11. As per Section 94(2) of Juvenile Justice Act, the age of the victim can be proved by producing the birth certificate from the Government or Matriculation or equivalent certificate from the concerned examination board. Only if these documents are not available, the birth certificate given by the Corporation and Municipal authorities or Panchayat can be produced. In the absence of two documents, then the age of the victim can be determined by taking ossification test or an other latest examination. Ex.P.7 given by the Head Master is neither be given by the school or the matriculation or equivalent certificate from the concerned examination board. Hence, Ex.P.7 cannot be considered as a valid certificate within the meaning of Section 94(2) of the Juvenile Justice Act.



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12. The above position has already been settled by the Hon'ble Supreme Court of India in **P. Yuvaprakash vs. State, (2023 SCC online SC 846)** and the relevant paragraph of the judgment is worthy for reference:

"14. Section 94 (2)(iii) of the JJ Act clearly indicates that the date of birth certificate from the school or matriculation or equivalent certificate by the concerned examination board has to be firstly preferred in the absence of which the birth certificate issued by the Corporation or Municipal Authority or Panchayat and it is only thereafter in the absence of these such documents the age is to be determined through "an ossification test" or "any other latest medical age determination test" conducted on the orders of the concerned authority, i.e. Committee or Board or Court. In the present case, concededly, only a transfer certificate and not the date of birth certificate or matriculation or equivalent certificate was considered. Ex. C1, i.e., the school transfer certificate showed the date of birth of the victim as 11.07.1997. Significantly, the transfer certificate was produced not by the prosecution but instead by the court summoned witness, i.e., CW-1. The burden is always upon the prosecution to establish what it alleges; therefore, the prosecution could not have been fallen back upon a document which it had never relied upon. Furthermore, DW-3, the concerned Revenue Official (Deputy Tahsildar) had stated on oath that the records for the year 1997 in respect to the births and deaths were missing. Since it did



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not answer to the description of any class of documents mentioned in Section 94(2)(i) as it was a mere transfer certificate, Ex C-1 could not have been relied upon to hold that M was below 18 years at the time of commission of the offence".

13. The prosecution has not produced the victim's birth certificate also and P.W.10, the Doctor stated in the evidence that the victim did not come forward for radiological examination to confirm her medical age as the victim was pregnant when she was examined by the Doctor, P.W.10 and the Doctor thought it not fit to take radiological tests at that stage. So it was advised to the victim that she should come back after delivery of the child. The victim did not go after delivery and hence, medical age of the victim is not determined. If the victim was a child by her appearance as how the children below 12 years of age would look like, the age determination would not be a problem. The victim claimed to be 16 years by the prosecution and the defence claimed that she has crossed 18 years. But, the said fact has not been proved and hence, it has to be concluded that the prosecution did not prove the age of the victim that she was below 18 years at the time of occurrence.



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14. For the very same reason, the victim cannot be presumed to be a major also. The victim can be either a minor or a major. As per the cardinal rule of criminal jurisprudence, when two views are possible, the view, which is more favourable to the accused, has to be taken. Hence, the other view that the victim could be more than 18 years can be taken in favour of the accused.

15. In the event of victim being proved as not a minor, then, the alleged act of penetrative sexual assault committed by the accused would be considered as a rape defined under Section 376 (5) IPC. The accused should prove that it is a consensual sex. He will still be guilty for the offence under Section 376 IPC. In the instant case the victim had stated in her evidence that she was disturbed due to the action taken by her parents and brothers to find some other alliance for her. As the victim was in love with the accused, she did not prefer to loose him. Only after she herself went to meet the accused, she was taken by him. As they had exchanged garlands in the temple, they believed that they got married and were living a family. The evidence of the victim would reveal that



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her 'valaikappu' function was conducted in the house of the accused at Coimbatore. She had further stated that in her evidence that during stay at Coimbatore she socialized with neighbors in a casual manner. The employer of the accused also attended the 'valaikappu' function like other members of the society of their own where they were treated and respected as a couple. All these could have been possible unless the victim had given her active consent knowing pretty well about the events going in her life.

16. In fact, the grandmother of the victim was examined as P.W.4 and in the cross-examination, she stated that the victim was living as a family at Coimbatore and even when she was produced before the Court in Habeas Corpus Petition she did not prefer to go with the parents and the grandmother has taken her and kept her under her custody. The victim went to her parents house after delivery of the child only. The child is said to have died when it was in the womb. The victim and the grandmother P.W.4 had stated about the same.



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17. The Investigating Officer who was examined as P.W.13, after receiving the complaint had enquired the victim on 27.05.2015 at the house of the accused at Coimbatore. But however, she was not recovered and handed over to her parents. She appeared before the police only after Habeas Corpus Petition filed by the grandmother P.W.4.

18. The victim stated in her evidence that she was compelled by the accused to have sexual intercourse. She also admitted that she was living as a family. She did not give any 164 Cr.P.C statement during investigation. As the accused had come to see the victim on 13.01.2014, the victim had voluntarily gone with the accused in order to escape from the alliance fixed by her parents, it cannot be taken that the victim was kidnapped by the accused. However, the learned trial Judge did not consider the above evidence and wrongly found the accused guilty for the offence under Section 366 IPC.

19. The complaint has been given by the mother of the victim on 26.01.2014 which is 13 days from the date of occurrence. P.W.1/the



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defato complainant stated in her evidence that the victim had taken 20 sovereigns of gold jewels and Rs.40,000/- cash, when she had gone out of the house. The cross-examination would reveal that the victim's studies were discontinued after her parents came to know about the love affair between the accused and the victim. Then, the parents of the victim started to find some other alliance and the victim had informed the same to the accused. The evidence of the victim would cumulatively show that the victim had voluntarily gone with the accused because she fell in love with him and the same was not accepted by the parents and therefore, the age of the victim at the time of the occurrence was not proved. The cumulative evidence available on record would show that the relationship between the accused and the victim was voluntary and hence, the accused cannot be found guilty for the offence under Section 4 of the POCSO Act either for penetrative sexual assault or for the offence of rape. As the trial Judge wrongly misguided by himself, the judgment of the trial Judge is liable to be set aside. The same is set aside.



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20. In fine, this appeal **is allowed** and the judgment of the learned Sessions Judge, Fast Track Mahila Court, Thanjavur, in S.C.No.01 of 2016 dated 24.03.2017, **is set aside** and the appellant is **acquitted** from the charges levelled against them. The fine amount, if any, paid by them, shall be refunded to them. Bail bond, if any, executed by the appellants shall stand cancelled.

08.08.2025

Index : Yes/No
Internet : Yes/No
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- To,
- 1.The Sessions Judge,
Fast Track Mahila Court, Thanjavur,
 - 2.The Inspector of Police,
Vattathikottai Police Station,
Pappanadu Taluk,
Thanjavur District
 - 3.The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.



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Dr.R.N.MANJULA, J

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Judgment made in

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