

Crl.A.(MD)No.129 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : **03.06.2025**

Pronounced on : **12.08.2025**

CORAM :

THE HONOURABLE **Dr. JUSTICE R.N.MANJULA**

Crl.A.(MD)No.129 of 2017

Saravanan

... Appellant/A1

vs.

The Inspector of Police,
AWPS, Karur.
(in Crime No.11/2015)

... Respondent/Complainant

Prayer : Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the judgment passed by the learned Fast Track Mahila Court, Karur, in S.C.No.2 of 2016 dated 08.03.2017 and acquit the appellant/accused.

For Appellant : Mr.J.William Christopher
For Respondent : Mr.A.Albert James
Government Advocate (Crl.side)

JUDGMENT

This appeal is preferred challenging the judgment passed by the learned Sessions Judge, Fast Track Mahila Court, Karur, in S.C.No.2 of 2016, dated 08.03.2017.

2. The appellant/A1 was convicted for the offence under Sections 366 IPC, Section 5(I) r/w 6 of POCSO Act and Section 4 of Tamil Nadu



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Prohibition of Harassment of Woman Act and sentenced to undergo the punishment as under:

Offence u/s	Punishment
366 IPC	10 years(R.I) and a fine of Rs.10,000/- i/d six months (S.I)
5(I) r/w 6 of POCSO Act	10 years (R.I) and a fine of Rs.10,000/- i/d six months (S.I)
4 of TNPHW Act	3 years (R.I and a fine of Rs.10,000/- i/d six months (S.I)

3. On 01.06.2014, at about 08.30 am., the appellant/A1 alleged to have kidnapped the victim girl, who was aged about 17 years old, to his house and committed penetrative sexual assault against her consent. A2 to A5 have also facilitated the offence by way of beating, scolding and outraging her modesty and confined her illegally in a house. So, a complaint was lodged by the defacto complainant/P.W.1, mother of the victim girl.

4. On completion of investigation, final report has been filed by the respondent police before the learned Judicial Magistrate No.I, Karur. The accused were arrested and produced before the Court. The learned Judicial Magistrate had committed the case to the Court of the learned Sessions Judge, Fast Track Mahila Court, Karur. The Accused were furnished with



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copies of the final report. After hearing the arguments of the prosecution and defence, the learned Trial Judge found the appellant/A1 guilty for the offences under Sections Section 366 IPC, Section 5(l) r/w 6 of POCSO Act, 2012 and Section 4 of TNPHW Act, 2012.

5. When the accused was questioned, he denied guilt and claimed to be tried. In order to substantiate the charges against the accused, the prosecution examined twenty witnesses as P.W.1 to P.W.20 and thirteen documents were marked as Ex.P.1 to Ex.P.13. Besides, MO1 was also marked. On the side of the defence, three witnesses were examined as D.W. 1 to D.W.3 and two documents were marked as Ex.D1 to Ex.D2.

6. After full-pledged trial, the Sessions Judge acquitted A2 to A5 from all charges levelled against them and acquitted the appellant/A1 only for the offence under Section 342 of IPC, but convicted and sentenced the appellant/A1 as under:

Offence u/s	Punishment
366 IPC	10 years (R.I) and a fine of Rs.10,000/- i/d six months (S.I)
5(I) r/w 6 of POCSO Act	10 years (R.I) and a fine of Rs.10,000/- i/d six months (S.I)
4 of TNPHW Act	3 years (R.I and a fine of Rs.10,000/- i/d six months (S.I)



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7. The learned counsel for the appellant/A1 raised the preliminary point of the age of the victim that she will not fall under the definition of child under Section 2(d) of POCSO Act. It is submitted that the school record of the victim girl would show that her date of birth is 18.07.1996, but the birth certificate issued by the corporation shows that her date of birth is 05.06.1997.

8. According to Section 34(2) of POCSO Act, whenever question arise as to the age of a child and a person is a child or not, the said question shall be determined. Section 34(1) of the POCSO Act outlines the procedure for dealing with offences committed by children. Specifically, it states that if an offence under the POCSO Act is committed by a child, the child shall be dealt with under the Juvenile Justice (Care and Protection of Children) Act, 2015. The age of such person shall be determined by obtaining the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available, as a first option. If such certificate is not available, then the birth certificate given by a corporation or the concerned authority can be relied. In the absence of above document showing the age of the person, then the age shall be determined by ossification test or any other latest technology of medical age determination test.



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9. As the question here arises as to the age not with regard to the person, who committed the offence, but the person, against whom, the offence is said to have been committed. In other words, this case involves the determination of age of the victim and not the accused. For the question now involved in this appeal, Section 34(2) of POCSO Act is relevant and extracted hereunder:

“.....If any question arises in any proceedings before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person and it shall record in writing its reasons for such determination”.

10. In this regard, I feel it is appropriate to refer the judgment of Supreme Court held in the case of ***P.Yuvaprakash Vs. State rep. by Inspector of Police*** in Crl.A.No.1898 of 2023 dated 18.07.2023. In the said case, it is held that the procedure adopted to determine the age of a person under the Juvenile Justice Act is applicable to determine the age of victim child also. In the said case, it is held as under:

*“13. It is evident from conjoint reading of the above provisions that wherever the dispute with respect to the age of a person arises in the context of her or him being a victim under the **POCSO Act**, the courts have to take recourse to the steps indicated in **Section 94** of the*



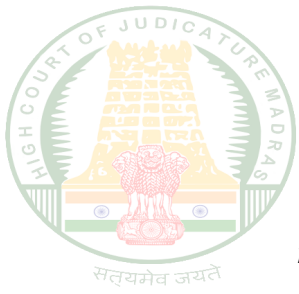
JJ Act. The three documents in order of which the [Juvenile Justice Act](#) requires consideration is that the concerned court has to determine the age by considering the following documents:

"(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".

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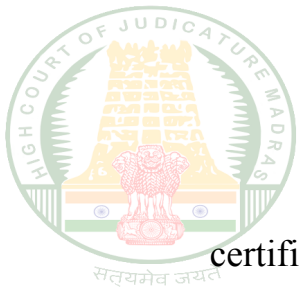
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not answer to the description of any class of documents mentioned in Section 94(2)(i) as it was a mere transfer certificate, Ex C-1 could not have been relied upon to hold that M was below 18 years at the time of commission of the offence".

11. In the instant case, the investigation officer has stated in his evidence that he did not try to get the school certificate. He has relied on the birth certificate issued by the Corporation. While determining the age of the juvenile under Juvenile Justice Act, the birth certificate is reliable, provided if it is obtained from school.

12. Even though the birth certificate is one of the first document, which can stand as the proof for the age in determining the age of victim child and the child in conflict with law, such birth certificate can be considered as the first proof only if it is obtained from the school. In the absence of such a certificate, the matriculation and the equivalent certificate from the Board Examination can be relevant. The birth certificate obtained from the corporation is only next in the order of the documents to be produced for determining the age of the victim child.

13. The investigation officer, who has been examined as P.W.19 has stated in his evidence that though there is contradiction between school



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certificate and the birth certificate obtained from Corporation with regard to the date of birth of victim child, he did not make any enquiry on these two documents in order to ascertain their genuineness.

14. However, the age so determined by the Special Court, after being satisfied and by recording reason, cannot be deemed to be invalid. A difficult situation might arise if any subsequent proof shows that the age of the person so determined is not correct. The school transfer certificate has been produced as defence side document, Ex.D.2. In fact, Ex.D.2 is a document which was very much available even during the investigation and when the charge sheet was filed.

15. The trial Judge has assumed the age of the victim as 17 years and 11 months based upon the school Transfer Certificate without insisting for the matriculation or any other board examination certificate containing the date of birth of the victim child. The age of the victim child is calculated based upon the date of birth shown in the Transfer Certificate and she would have been 17 years and 11 months at the time of occurrence.

16. In the absence of birth certificate obtained from the school or matriculation or any board examination certificate containing the date of

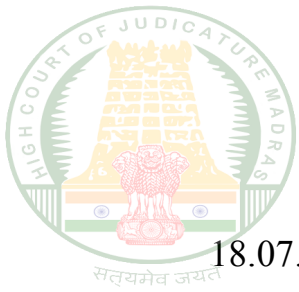


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birth, the birth certificate obtained from the Corporation could be considered as a proof for the date of birth of the victim child. In the instant case, even that has not been produced.

17. On the side of the defence, a copy of the Transfer Certificate has been marked as Ex.D.2 in which the date of birth has been shown as 18.06.1996. Even as per the document, the age of the victim is calculated that she would have been 17 years and 11 months during the time of occurrence. As there is another document to show a different entry with regard to the date of birth of the victim other than her birth certificate Ex.P.3, there is an uncertainty with regard to the actual date of birth of the victim.

18. When it is claimed by the accused that the victim is beyond 18 years, it is incumbent for the prosecution to collect the details of matriculation certificate. From Ex.D.1, it could be seen that the victim had studied upto 12th standard. It would not have been difficult for the investigating agency to get her matriculation certificate to prove the age of the victim child under Section 94 of the Juvenile Justice Act as per the dictum laid down by the Hon'ble Supreme Court of India in ***P.Yuvaprakash Vs. State rep. by Inspector of Police*** in Crl.A.No.1898 of 2023 dated



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18.07.2023.

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19. As the victim is said to be nearing 18 years as per her Transfer Certificate Ex.P.1, atleast ossification test ought to have been done to prove her age. Since the accused claims that the age of the victim is above 18 years at the time of occurrence, the prosecution has not proved that she was below 18 years with acceptable document as per the dictum laid down by the Hon'ble Supreme Court in the judgment cited *supra*, I feel the doubt about the age of the victim can be given to the accused.

20. Even though the victim cannot be presumed to be major at the time of occurrence, there is nothing available to presume that she was a minor. The cardinal principle of criminal jurisprudence is that when there are two view are possible, the view which is in favour of the accused has to be taken. Hence, the victim cannot be presumed to be a minor or a child at the time of occurrence.

21. P.W.1, the father of the victim had stated in his evidence that the accused is known to him and he used to come to his house often. P.W.14, the victim stated that she had accompanied the accused as he told her that her parents asked her to bring her. During the cross-examination, the victim has stated that she has been with the accused for eight months and at that

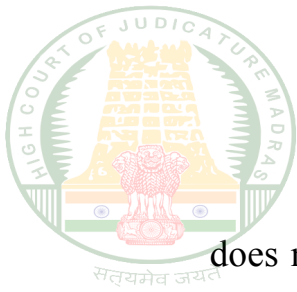


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time, the parents did not come to visit her. She had further stated that she married the accused at Karuppasamy Koil after she accompanied him. As the victim's parents did not give any complaint for eight months, it can be inferred that the victim had gone with the accused on her own volition and she was not abducted by the accused.

22. The victim girl once again asserted in the cross examination that during the interval of eight months her parents did not take any effort to see or give any police complaint. So, the complaint appears to be an afterthought and for some reason, the victim had separated from the accused and the complaint has been given after a delay of several months. Though in normal circumstances, delay in lodging the complaint alleging the offence of sexual assault can be viewed through the lens of social embarrassment and other circumstances, the said yardstick cannot be adopted in the instance case. Because, the victim had chosen to live with the accused for eight months and during which time, her parents did not give any complaint against the accused. After she separated from the accused for reasons unknown, the parents have given a complaint and set the law in motion.

23. The fact that the age of the victim was below 18 years at the time of occurrence has not been proved and that the material available on record



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does not support the case of the prosecution that she was kidnapped by the accused . Her relationship including physical relationship during the period of stay with the accused could only be consensual. This Court is of the view that the trial court ought not to have found the accused guilty for the offences under Section 366 IPC, Section 5(1) r/w 6 of POCSO Act and Section 4 of TNPHW Act.

24. In view of the above discussions, this appeal is allowed. The judgment passed by the learned Sessions Judge, Fast Track Mahila Court, Karur, in S.C.No.2 of 2016 dated 08.03.2017 is liable to be set aside and the same is set aside. The appellant/A1 is acquitted from the charges levelled against him. The fine amount, if any, paid by him, shall be refunded to him. Bail bond, if any, executed by the appellant shall stand cancelled.

12.08.2025.

NCC : Yes/No
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To

- 1.The Fast Track Mahila Court, Karur.
- 2.The Inspector of Police,
AWPS, Karur.
3. The learned Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Dr.R.N.MANJULA, J.

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**Pre-delivery Judgement made in
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