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CRL A No. 153 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05-01-2026

PRONOUNCED ON : 20-01-2026

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

CRL A No. 153 of 2023

Adhimoolam

... Appellant/Sole Accused

v.

The State of Tamil Nadu,
Rep. by Inspector of Police,
Thellar Police Station,
Tiruvannamalai District.
Cr.No.70/2016.

... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, to set aside the conviction and sentence passed by the learned Sessions Judge, Special Court for POCSO Act Cases, Tiruvannamalai in Spl.SC.No.120 of 2019 by judgement dated 28.12.2022 and acquit the appellant herein from the charges.

For Appellant :

Mr.K. Balu

For Respondent :

Mr.S.Raja Kumar
Additional Public Prosecutor

JUDGMENT

This Criminal Appeal has been filed by the sole accused, challenging the conviction and sentence imposed upon him for the



offence under Section 5(l) r/w 6 of the POCSO Act vide judgment dated 28.12.2022 in Spl.SC.No.120 of 2019 on the file of the learned Sessions Judge, Special Court for POCSO Act Cases, Tiruvannamalai.

2 (i) The gist of the prosecution case is that on 09.04.2016 at about 5.00 a.m., when the victim girl aged 17 years went to pluck flowers in the neighbouring land, the appellant lured the victim girl pursuant to a love affair and on the promise of marriage, kidnapped the victim girl; that between 09.04.2016 and 11.04.2016, the appellant had tied 'thalli' [தூலி] and made the victim believe that she is legally wedded to the appellant and committed penetrative sexual assault; and thus, committed the offences under Sections 366(A), 376 of the IPC and Sections 3, 4 and 6 of POCSO Act, 2012 and Section 4 of Prohibition of Child Marriage Act.

(ii) On the complaint [Ex.P1] given by PW1 on 09.04.2016 stating that the victim had called him and informed him that the appellant had taken her, an FIR [Ex.P9] in Cr.No.70 of 2016 was registered by PW11, the Inspector of Police, for the offence under Section 366(A) of the IPC.



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(iii) The investigation was conducted by PW11 initially and thereafter, he handed over the investigation to PW13, who filed the final report on 01.08.2018 against the appellant for the offences under Sections 366(A) and 376 of the IPC and Sections 3, 4 and 6 of the POCSO Act, 2012, before the Mahila Fast Track Court, Tiruvannamalai, which was taken on file as Spl.S.C.No.93 of 2018. During the course of the investigation, the victim was subjected to medical examination and the learned Judicial Magistrate, Cheyyar, recorded the Section 164 Cr.P.C. statement of the victim girl.

(iv) On the appearance of the accused, the provisions of Section 207 Cr.P.C., were complied with and charges were framed against the accused for the offences under Section 9 of the Prohibition of Child Marriage Act, Section 5(l) r/w 6 of the POCSO Act, 2012 and Section 366 of the IPC. Thereafter, the case was transferred to the Special Court for Exclusive Trial of Cases under POCSO Act, Tiruvannamalai and was taken on file as Spl.S.C.No.120 of 2019. During trial, when questioned, the accused pleaded 'not guilty'.



(v) To prove its case, the prosecution had examined 13 witnesses as P.W.1 to P.W.13 and marked 11 exhibits as Ex.P1 to Ex.P11. When the accused was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. On the side of the defence, though, none were examined, Ex.D1 to D7 were marked.

(vi) The trial Court found that the prosecution has not established the offences under Section 9 of the Prohibition of Child Marriage Act and Section 366 of the IPC and acquitted the appellant of the said offences. However, the trial Court found the appellant guilty of the offence under Section 5(1) r/w 6 of the POCSO Act, 2012 and sentenced him to undergo rigorous imprisonment for ten years and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for one year. Aggrieved by the said conviction and sentence, the accused had preferred the instant appeal.

3. The learned counsel for the appellant would submit that the allegations are false; that the victim cannot be believed as she had made contrary statements at various stages; that the evidence adduced on the



side of the prosecution at best would suggest that it is a case of love affair; that the victim was aged 17 years and 5 months at the time of occurrence; that the allegation that the appellant had forcibly kidnapped her and had sexual intercourse is an afterthought; that the FIR which is said to have been registered on 09.04.2016 was forwarded to the jurisdictional Magistrate only three days after the victim surrendered; that the Section 164 Cr.P.C. statement of the victim girl was recorded belatedly and the victim girl was tutored to depose against the appellant; that the prosecution had produced the corrected medical report [Ex.P6], which is contrary to Ex.D2 marked on the side of the appellant; that PW7, the Doctor had admitted the inconsistency between Ex.P6 and Ex.D2; that even if the prosecution case is admitted, it is a case of consensual affair; and that therefore, the impugned judgment is liable to be set aside.

4. The learned Additional Public Prosecutor, *per contra* submitted that even assuming that it is a case of consensual affair, consent is immaterial since the victim was a minor at the time of occurrence and that the trial Court therefore, was justified in holding the appellant guilty. He referred to the deposition of the victim and other relatives, who



corroborated the evidence of the victim, in support of his submission that the impugned judgment is justified.

5. As stated above, the prosecution had examined 13 witnesses. PW1 is the father of the victim girl, who lodged the complaint. PW2 is the victim girl. PW3 is the mother of the victim girl. PW4, who is also related to the victim and whose son subsequently married the victim girl, is a hearsay witness; PW5 is the witness to the observation mahazar [Ex.P4]. PW6 is the Head Constable who had taken the victim girl to the hospital for medical examination. PW7 is the Doctor who had issued the Accident Register [Ex.P5]. She had deposed that the victim told her that she was kidnapped and raped by a known person on 09.04.2016, when she was examined on 04.06.2016. PW8 is the constable who took the appellant to the doctor.

6. PW9 was the Doctor working as an Assistant Surgeon in Vandavasi Government Hospital, who had initially examined the victim girl and sent the victim girl for further examination to Chengalpet Government Hospital. She had made entries in the Accident Register



[Ex.P7] and the opinion of the Gynaecologist at Tiruvannamalai Medical College and Hospital, who had examined the victim girl on 23.08.2018. PW10 is the Doctor, who had examined the appellant and issued the Potency Certificate [Ex.P8]. PW11 and PW13 are the investigating officers. PW12 is the Inspector of Police, who had recorded the statement of the victim girl.

7. The victim was born on 04.12.1998. The alleged occurrences as per the charge are said to have taken place on three days between 09.04.2016 and 11.04.2016. The date of birth of the victim has been proved through Secondary School Leaving Certificate, which is marked as Ex.P2. The defence has not challenged the said certificate or the date of birth of the victim girl. Therefore, the prosecution has established that the victim girl was a minor at the time of the alleged occurrence.

8. The occurrence is said to have taken place on 09.04.2016, when the victim is said to have gone with the appellant at about 5.00 a.m. It is the version of the victim that she went to attend nature's call at about 5.00 a.m.; that at that time the appellant had intercepted her and on the



promise of marriage had forcibly taken her in a bike to Melmaruvathur; that she called her father in her mobile phone and later the appellant switched off her mobile phone; that the appellant thereafter took her to Chidambaram and stayed in a lodge with the victim for three days; that he took the victim to Chidambaram temple and tied Thali; that thereafter he had sexual intercourse several times; that she came to know that her father had lodged a complaint as the same was reported in the newspaper; that she voluntarily appeared before the Inspector of Police, Vandavasi Police Station and at the instance of the lawyer for the appellant, she did not disclose any other occurrence to the police; and that thereafter she was sent to her home.

9. The victim's version is that the appellant had forcibly kidnapped her and had forcible sexual intercourse in a lodge at Chidambaram though she protested. According to her, the appellant had threatened her of dire consequences if she did not accede to his demands. However, that version is contrary to her earlier version given to the police. The contradictions have been elicited in her cross-examination.



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10. After the victim appeared before the Inspector of Police, Vandavasi Police Station, she was produced before the District Munsif cum Judicial Magistrate, Vandavasi on 15.04.2016. The victim-PW2 admits that she was produced before the Judicial Magistrate and that she made a statement. The learned District Munsif had passed three orders marked as Ex.D3 to Ex.D5.

11. Ex.D3 is the statement made by the victim, wherein she had stated that she voluntarily went with the appellant and she now intends to pursue further studies and promised that she would not go with the appellant and would stay with her parents till she completed her studies. Ex.D4 is the order passed by the learned Magistrate recording the fact that the victim expressed her desire to go with her parents and about the handing over of the victim to the mother of the victim girl [PW3]. Ex.D5 is a similar order.

12. In Ex.D3, when she was first produced before the learned Magistrate on 15.04.2016, there is no reference to the alleged penetrative



sexual assault committed by the appellant. The victim had also not complained of forcible kidnapping. She had stated that she had voluntarily gone with the appellant.

13. The victim's consent is immaterial and even assuming that she had voluntarily gone with the appellant, the appellant would still be liable for the offence of kidnapping. However, the question is whether the conviction can be recorded on the basis of the victim's evidence for the aforesaid offences under Section 5(l) r/w 6 of the POCSO Act, in the light of her own conflicting versions at different stages during investigation and in trial.

14. It is pertinent to mention here that the appellant was acquitted of the charge under Section 366 of the IPC and for the offence under Section 9 of the Prohibition of Child Marriage Act. The prosecution had not challenged the said finding.

15. It is in the light of the above finding and the statement of the victim girl, which is recorded in Ex.D3, this Court has to see whether the



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victim's evidence can be believed. PW1 and PW3 are parents of the victim girl and they are hearsay witnesses. Their evidence would be relevant only if the victim's evidence is believed.

16. The victim was taken to a doctor [PW7] who had made entries in the Accident Register [Ex.P5] and had recorded the statement of the victim girl that she was kidnapped and raped by a known person on 09.04.2016 for six days, before she was examined by PW7. The victim was taken to the Government Hospital at Vandavasi on 16.04.2016. The Doctor [PW9] would state that since the hospital did not have the requisite facilities, the victim was referred to Chengaplet Government Hospital. In the accident register, it is noted that there are no external injuries. A final opinion was issued on 10.10.2018 stating that the victim had no external injury and rape might have occurred. It is not known as to why there was no medical examination conducted after 16.04.2016 for a period of two months and it is a specific case of PW9 that she had referred the victim to Chengalpet Government Hospital. There is no explanation by the prosecution as to why there was a delay of two months



in taking the final opinion from the Government Hospital, Thirvannamalai and why the victim was not referred to Chengalpet Government Hospital.

17. The victim's Section 164(5) Cr.P.C. statement was also recorded belatedly on 15.11.2016. The delay had also not been properly explained by the investigating officer [PW11]. PW11 would admit that he made a request to record the Section 164 Cr.P.C. statement of the victim only seven months after the victim was secured.

18. The victim's deposition is exactly opposite to her first statement before the District Munsif cum Judicial Magistrate, Vandavasi. She would now depose that she was forcibly kidnapped and was compelled to have the sexual intercourse. Her explanation that she was threatened by a lawyer and hence she did not accuse the appellant when she was first examined has not be substantiated. PW11 the investigating officer would also admit that he had not taken any steps to ascertain in which lodge the appellant and the victim stayed.



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19. The FIR, though, is said to have been registered on 09.04.2016 was sent to the learned Magistrate only on 12.04.2016. This is contrary to PW11's assertion that he sent the FIR on the same day of the registration to the learned Magistrate. PW11 thus had no explanation for the delay in despatching the FIR to the learned Magistrate. PW11 would also admit that it is the version of PW1-father that the victim was taken in a car, which is contrary to the prosecution case. PW1-father would admit in his deposition that when the victim was studying in 12th standard, the appellant approached him and expressed his desire to marry the victim girl.

20. Therefore, from the above discussion and the improvements made by the victim [PW2] in her version, it does not appear to be a case of forcible kidnapping. The prosecution case that the victim was subjected to forcible sexual intercourse is also an afterthought. The victim was aged 17 years and 5 months at the time of occurrence. The appellant and the victim were known to each other. On PW1's own admission, he was aware of their relationship. The victim's version that she had called her father and thereafter, the phone was switched off by



the appellant was also not substantiated by producing the phone and the call records. Her first version before the learned Magistrate only suggests a consensual relationship. For the reasons best known to the prosecution, she was not subjected to medical examination for more than two months, though she was referred by the first doctor [PW9] to the Government hospital, Chengalpet. Her Section 164 Cr.P.C. statement was also not recorded for nearly 7 months. That apart, there is nothing in the medical report to suggest that the victim was subjected to forcible sexual intercourse and there was no external injury. Considering all the above facts, this Court is of the view that the victim has been tutored, as a result of which, she had given an exaggerated and improved version in her deposition.

21. In the light of the above infirmities in the prosecution case and since the victim's testimony, which appears to be artificial, improbable and tutored, cannot be the sole basis to hold the appellant guilty, this Court is of the view that it would be highly unsafe to convict the appellant for the aforesaid offence. Hence, the judgment is liable to be set aside.



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22. Accordingly, the Criminal Appeal stands allowed. The conviction and sentence imposed upon the appellant/accused vide judgment dated 28.12.2022 in Spl.SC.No.120 of 2019, on the file of the learned Sessions Judge, Special Court for POCSO Act Cases, Tiruvannamalai, are set aside. The appellant/accused is acquitted of the charge. The fine amount, if any, paid by the appellant shall be refunded. The bail bond, if any, executed shall stand discharged.

20-01-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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CRL A No. 153 of 2023

SUNDER MOHAN, J.

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To

1. The Sessions Judge,
Special Court for POCSO Act Cases,
Tiruvannamalai.

2. The Inspector of Police,
Thellar Police Station,
Tiruvannamalai District.

3. The Superintendent of Prisons,
Central Prison, Vellore.

4. The Public Prosecutor,
High Court, Madras.

**Pre-delivery judgment in
CRL A No. 153 of 2023**

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