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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30-10-2026

PRONOUNCED ON : 05-11-2026

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

CRL A No. 351 of 2022

CNR: {HCMA010334452022}

1.Vijayakumar
S/o.Palaniswamy, Thathapuram,
Edapadi Taluk, Salem District.

2.Chinnapayan @ Munniyappan
S/o.Srirangar,
Cholakondan, Kaaveripati Agrahagaram, Edapadi
Taluk, Salem District.

..Appellant(s)

Vs

State Rep By
The Inspector of Police,
Edapadi Police Station, Salem District.
Cr.No.110/2018.

..Respondent(s)

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, to call for the entire records in connection with Spl.S.C.No.116 of 2019 (Old Spl.SC.No.72 of 2018) on the file of the learned Sessions Judge, Special Court for POCSO Cases, Salem and set aside the Judgment dated 20.10.2020.

For Appellant(s): Mr.M.Rajkumar,
for Mr.T.Muruganantham

For Respondent(s): Ms.Sharada Vivek,

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Additional Public Prosecutor

JUDGMENT

This Criminal Appeal has been filed by the accused, challenging the conviction and sentence imposed upon them vide judgment dated 20.10.2020 in Spl.S.C.No.116 of 2019 (Old Spl.SC.No.72 of 2018) passed by the learned Sessions Judge, Special Court for POCSO Cases, Salem. For the sake of convenience, the parties are referred to as per the ranking before the trial Court.

2 (i) It is the case of the prosecution that the 1st accused is aged about 21 years and had a romantic relationship with the victim girl, aged about 17 years at the time of occurrence; that on the promise of marriage, the accused kidnapped the victim on 02.04.2018; that on 03.04.2018, he married the victim in the presence of the 2nd accused; that the victim and the 1st accused stayed in the house of one Govindaraj; that the 1st accused committed penetrative sexual assault on the victim; and thus, the accused committed the offences under Section 5(1) r/w 6 and Section 16 r/w 17 of the POCSO Act, Sections 363, 366, 366A of the IPC and Sections 9 and 10 of the Prohibition of Child Marriage Act.

(ii) On the complaint [Ex.P1] given by the father of the victim

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[PW1], an FIR in Cr.No.110 of 2018, was registered by PW10, for 'girl missing' on 03.04.2018 at about 1.00 p.m. In the complaint, there is a reference to the fact that the victim was friendly with the 1st accused.

(iii) PW13, the Inspector of Police, commenced the investigation and secured the victim at a bus stand on 07.05.2018. Thereafter, the offence was altered to Sections 363, 366, 366A of the IPC r/w Sections 5(l) & 6 of the POCSO Act, 2012. The alteration report was marked as Ex.P17. The victim was subjected to medical examination. Her statement under Section 164 of the Cr.P.C. was recorded. After examining all the witnesses, the investigating officer [PW14] filed the final report on 09.08.2018 against the accused for the offences under Sections 366A of the IPC, Sections 9 and 10 of the Prohibition of Child Marriage Act and Sections 5(l), 6 and 16 r/w 17 of the POCSO Act, before the learned Sessions Judge, Special Court for POCSO Cases, Salem.

(iv) On the appearance of the accused, the provisions of Section 207 Cr.P.C., were complied with, and the case was taken on file by the learned Sessions Judge, Special Court for POCSO Cases, Salem, as Spl.S.C.No.116 of 2019 (Old Spl.SC.No.72 of 2018).

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(v) The trial Court framed seven charges against the accused. The 1st charge was against both the accused under Section 363 IPC; the 2nd charge was against the 1st accused under Section 366 IPC; the 3rd charge was against the 2nd accused under Section 366A of the IPC; the 4th charge was against the 1st accused under Section 9 of the Prohibition of Child Marriage Act, 2006; the 5th charge was against the 2nd accused under Section 10 of the Prohibition of Child Marriage Act, 2006; the 6th charge was against the 1st accused under Section 6 of the POCSO Act, 2012; and the 7th charge was against the 2nd accused under Section 17 of the POCSO Act, 2012. When questioned, the accused pleaded 'not guilty'.

(vi) To prove its case, the prosecution examined 14 witnesses as P.W.1 to P.W.14 and marked 19 documents as Ex.P1 to Ex.P19. When the accused were questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against them, they denied the same. The accused did not examine any witness or mark any document on their side.

(vii) On appreciation of oral and documentary evidence, the trial Court found that the accused were guilty of all charges leveled against them and sentenced them as follows:

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Accused No.	*Offence under Section*	*Sentence imposed*
A1	363 IPC	To undergo RI for three years and to pay a fine of Rs.5,000/-, in default to undergo SI for three months.
	366 IPC	To undergo RI for five years and to pay a fine of Rs.10,000/-, in default to undergo SI for six months.
	9 of Prohibition of Child Marriage Act	To undergo RI for one year.
	5(l) r/w 6 of POCSO Act	To undergo RI for ten years and to pay a fine of Rs.10,000/-, in default to undergo SI for six months.
A2	363 IPC	To undergo RI for three years and to pay a fine of Rs.5,000/-, in default to undergo SI for three months.
	366A IPC	To undergo RI for five years and to pay a fine of Rs.10,000/-, in default to undergo SI for six months.
	10 of Prohibition of Child Marriage Act	To undergo RI for one year.
	16 r/w 17 of POCSO Act	To undergo RI for ten years and to pay a fine of Rs.10,000/-, in default to undergo SI for six months.
The sentences were directed to run concurrently.		

Hence, the appeal.

3. (i) The learned counsel for the accused/appellants would submit that the victim's evidence with regard to forcible sexual intercourse is a tutored version and is an afterthought; that her earlier version would show that she had voluntarily gone with the 1st accused due to the romantic relationship, and that the allegation of forcible intercourse therefore cannot be believed; and that the victim's age has not been established by the prosecution in the manner known to law.

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(ii) The learned counsel relied upon the judgment of this Court in Crl.A. No. 1090 of 2023 dated 09.10.2026 and prayed for acquittal.

4. The learned Additional Public Prosecutor *per contra* submitted that at the time of occurrence, the victim, born on 25.05.2001, was a minor; that the evidence of the doctor would corroborate the evidence of the victim that she was subjected to penetrative sexual assault; that even assuming that there was consent by the victim, the consent is immaterial as she was a minor; and that the trial Court therefore, is justified in holding the accused guilty of all the offences charged against them; and hence, prayed for dismissal of the appeal.

5. As stated above, the prosecution examined 14 witnesses. PW1 is the father of the victim and the *de facto* complainant, PW2 is the mother of the victim. PW3 is the victim. PW4 is a relative of PW1 and would state about the kidnapping of the victim girl and about the role played by the 2nd accused. PW5 is a witness to the Observation Mahazar [Ex.P3] and to the confession made by the accused. PW6 is the doctor who had examined the victim and made entries in the Accident Register [Ex.P6].

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She had issued the medical examination report [Ex.P7]. She would state that the victim informed her that she had sexual intercourse several times with a known person between 02.04.2018 and 07.05.2018. PW7 is the Headmaster of the school, where the 1st accused studied and had marked the 12th Std. Mark Sheet [Ex.P11], which reflects the date of birth of the 1st accused as 08.06.1997. PW8 is the Headmaster of the school where the victim is stated to have studied and had issued the Bonafide Certificate [Ex.P12], to prove the date of birth of the victim as 25.05.2001. PW9 is a friend of the 2nd accused and would state that the 2nd accused brought the 1st accused and the victim to his house and they stayed in his house on 02.04.2018. PW10 is the Sub-Inspector of Police, who registered the FIR [Ex.P13] in Crime No.110 of 2019, for 'Girl Missing'. PW11 is the doctor who examined the 1st accused and issued the Potency Certificate [Ex.P15]. PW12 would state that both the accused, brought the victim to his house on 04.04.2018 and he made them to stay in his father's house for nearly 20 days. PW13 is the Inspector of Police, who commenced the investigation after registration of the FIR, examined a few witnesses and also made arrangements for recording the Section 164 Cr.P.C. statement of the victim. He later handed over the investigation to PW14, the investigating officer, who on completion of the investigation, filed the

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final report.

6. It is the case of the prosecution that the 1st accused, who was born in the year 1997 and aged about 21 years at the time of occurrence, had a romantic relationship with the victim, who, according to the prosecution, was born on 25.05.2001. Even in the complaint, the father of the victim had admitted the said romantic relationship. The victim has stated in all her earlier versions made to the doctor and to the Magistrate that she had voluntarily gone with the 1st accused and with the help of the 2nd accused, she stayed in the house of the relative of 2nd accused.

7. The cross-examination of PW3 would reveal that her allegation of forcible sexual intercourse was an afterthought. It is useful to extract the relevant portion for better appreciation of her evidence.

> “vjphp tp$aFkhu; vd;id fl;lhag;gLj;jp flj;jp brd;whu; vd;W nghyp!; tprhuizapy; brhy;ytpy;iy vd;why; ehd; gjl;lj;jpy; vd;d brhd;ndd; vd;W epidt[,y;iy/ tp$aFkhu; vd;id fl;lhag;gLj;jp jpUkzk; bra;J bfhz;lhu; vd;W brhy;ytpy;iy/ tp$aFkhu; vd;id fl;lhag;gLj;jp vd;Dld; clYwt[bfhz;lhu; vd;W brhy;ytpy;iy/ clYwt[bfhz;lhu; vd;Wjhd; brhy;ypa[s;nsd;/ 4. 5 Kiw vjphp rPuflt{hpy; itj;J clYwt[bfhz;lhu; vd;W jw;bghGJ Kjy; Kiwahf TWfpnwd; vd;why; rhpjhd;/

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tp$aFkhu; vd;id miHj;J brd;wnghJ ehd; kWj;jnghJ kUe;ij Foj;JtpLntd; vd;W brhd;djhf jw;bghGJjhd; Kjd; Kiwahf Twfpnwd; vd;why; rhpjhd;/ vjphp tp$aFkhu; j';fj;jpy; vdf;F jhyp fl;odhu; vd;W Kjd; Kiwahf TWfpnwd; vd;why; rhpjhd;/ rpd;digad; jhj;jh vd;id fl;lhag;gLj;jp jpUkzk; bra;J itj;jhu; vd;W Kjd; Kiwahf TWfpnwd; vd;why; rhpjhd;/"

8. From the above extract, it would be clear that for the first time in her deposition she had alleged that the 1st accused had forcibly taken her and had forcible sexual intercourse and her earlier version was different. That apart, two relatives of the accused, viz., PW9 and PW12, in whose house the victim stayed, have not stated that the victim complained of any threat or coercion. Therefore, this Court is of the view that the deposition of the witnesses insofar as she accuses the accused of using force to kidnap her and to commit penetrative sexual assault, cannot be believed. On the other hand, there is overwhelming evidence to suggest that she had a romantic relationship with the 1st accused and it is because of mutual love and trust, she had left the house and stayed with the 1st accused. However, if the victim was a minor at the time of occurrence, consent would be immaterial.

9. The prosecution had examined PW8, the Headmaster of the

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school, where the victim is stated to have studied and marked the Bonafide Certificate, as Ex.P12, which reads as follows,

> "nryk; khtl;lk;. ,ilg;gho tl;lk;. muR kfspu; nky;epiyg;gs;sp. ,ilg;ghoapy; 2017?18 k; fy;tpahz;oy; gd;dpbuz;lhk; tFg;g[fzpj?caphpay; gphptpy; nfhfpythzp j-bg/bjhz;ilkhd; vd;w khztp gapd;whu;/ ,tuJ gpwe;j njjp gs;sp Mtz';fspd;go 25/05/2001 vdr; rhd;wspf;fg;gLfpwJ/"

10. Interestingly, the prosecution had marked the Higher Secondary Course Certificate issued by the Department of Government Examinations, to prove the age of the 1st accused. Having done so, very strangely, the investigating officer has not chosen to collect any other document, which would have higher probative value to prove the age of the victim. The victim, according to the prosecution, was studying in the 12th Standard at the time of occurrence. It is not known why the prosecution has not collected the 10th Standard Mark Sheet or the Matriculation or equivalent certificate, issued by the State Government.

11. Be that as it may. The Bonafide Certificate [Ex.P12] which is extracted above and the evidence of Headmaster [PW8], who marked the said Bonafide Certificate, reveal that he had issued the certificate based on the records maintained at the school. This Bonafide Certificate was

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issued at the instance of the police during the course of the investigation. In such circumstances, the investigating officer must have necessarily collected the records on the basis of which the Bonafide Certificate was issued by PW8. The Bonafide Certificate also does not state as to which record was verified before such a certificate was issued.

12. In ***Yuvaprakash v. State, Rep. by Inspector of Police***, reported in **2023 LiveLaw (SC) 538**, the Hon'ble Supreme Court had made a reference to Section 94 of the Juvenile Justice Act, which lists out the relevant documents for determining the date of birth of the victim. Para 13 of the said judgment is extracted for better understanding.

> "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;

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> (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".

Therefore, the learned Additional Public Prosecutor contended that the date of birth certificate from the school should be considered as a valid document to prove the age of the victim.

13. It has to be remembered that Section 94 of the Juvenile Justice was not enacted for determining the date of birth of the victim in POCSO cases. It is only due to the interpretation of the Hon'ble Supreme Court in the above-referred case, that the provision of the Juvenile Justice Act was made applicable for determining the age of the victim in POCSO cases. The age of the victim in a POCSO case, is the most important foundational fact that has to be established by the prosecution to invoke the provisions of the POCSO Act. Thus, the prosecution has to prove the date of birth of the victim beyond any doubt, whatsoever, especially in a case where the victim is around 18 years old and the relationship is consensual.

14. In the regard, it would be useful to refer to the following

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observations of the Hon'ble Supreme Court in ***Birka Shiva v. The State of Telangana [in Crl.A.No….of 2025 (Arising out of SLP (Crl.) No.1445 of 2025) dated 16.07.2025]***.

7. The prosecution has relied primarily on Ex.P11, the birth certificate issued by the Zilla Parishad High School, to establish that the victim was below the age of sixteen years on the date of the alleged offence, i.e., 4th August 2012. According to Ex.P11, the victim's date of birth was 3rd November 1996, which, if accepted, would make her approximately 15 years 9 months old at the relevant time.

8. The evidentiary value of such an entry made in public or official registers may be admissible in evidence under Section 35 of the Indian Evidence Act, 1872. However, admissibility is distinct from probative value. While such documents may be admitted into evidence, their evidentiary weight depends on proof of their authenticity and the source of the underlying information. Mere production and marking of a document as exhibited by the Court does not amount to proof of its contents. Its execution has to be proved by leading substantive evidence, that is, by the 'evidence of those persons who can vouchsafe for Hereinafter referred to as the 'Evidence Act' the truth of the facts in issue'. [See: Narbada Devi Gupta v. Birendra Kumar Jaiswal ((2003) 8 SCC 745)] We may refer to a few judicial pronouncements of this Court in this regard:

> *8.1. This Court, in Birad Mal Singhvi v. Anand Purohit (1988 Supp SCC 604), held that the entries contained in the school register are relevant and admissible but have no probative value unless the person who made the entry or provided the date of birth is examined. It was observed:*
>
> > *"14. … If entry regarding date of birth in the scholar's register is made on the information given*

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by parents or someone having special knowledge of the fact, the same would have probative value. … The date of birth mentioned in the scholars' register has no evidentiary value unless the person who made the entry or who gave the date of birth is examined. The entry contained in the admission form or the scholar's register must be shown to be made on the basis of information given by the parents or a person having special knowledge about the date of birth of the person concerned. If the entry in the scholar's register regarding date of birth is made on the basis of information given by parents, the entry would have evidentiary value, but if it is given by a stranger or by someone else who had no special means of knowledge of the date of birth, such an entry will have no evidentiary value. …

15. Section 35 of the Indian Evidence Act lays down that entry in any public, official book, register, record stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duty specially enjoined by the law of the country is itself the relevant fact. To render a document admissible under Section 35, three conditions must be satisfied, firstly, entry that is relied on must be one in a public or other official book, register or record; secondly, it must be an entry stating a fact in issue or relevant fact; and thirdly, it must be made by a public servant in discharge of his official duty, or any other person in

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performance of a duty specially enjoined by law. An entry relating to the date of birth made in the school register is relevant and admissible under Section 35 of the Act, but the entry regarding the age of a person in a school register is of not much evidentiary value to prove the age of the person in the absence of the material on which the age was recorded. … The courts have consistently held that the date of birth mentioned in the scholar's register or secondary school certificate has no probative value unless either the parents are examined or the person on whose information the entry may have been made is examined…" Emphasis Supplied)

This decision has been consistently followed by this Court in Pratap Singh v. State of Jharkhand ((2005) 3 SCC 551); Babloo Pasi v. State of Jharkhand ((2008) 13 SCC 133); Murugan v. State of T.N. ((2011) 6 SCC 111); State of M.P. v. Munna ((2016) 1 SCC 696); C. Doddanarayana Reddy v. C. Jayarama Reddy ((2020) 4 SCC 659); and Manak Chand v. State of Haryana (2023 SCC OnLine SC 1397).

8.2. A coordinate Bench of this Court in State of Chhattisgarh v. Lekhram ((2006) 5 SCC 736), through S.B. Sinha, J., clarified that though entries in school registers are admissible under Section 35 of the Evidence Act, their evidentiary value improves only when corroborated by oral testimony of persons who are aware of its content, such as

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parents or the person who made the entry at the time of admission. It held as under:

> *"12. A register maintained in a school is admissible in evidence to prove date of birth of the person concerned in terms of Section 35 of the Evidence Act. Such dates of births are recorded in the school register by the authorities in discharge of their public duty. PW 5, who was an Assistant Teacher in the said school in the year 1977, categorically stated that the mother of the prosecutrix disclosed her date of birth. The father of the prosecutrix also deposed to the said effect.*
>
> *13. …The materials on record as regards the age of the prosecutrix were, therefore, required to be considered in the aforementioned backdrop. It may be true that an entry in the school register is not conclusive, but it has evidentiary value. Such evidentiary value of a school register is corroborated by oral evidence as the same was recorded on the basis of the statement of the mother of the prosecutrix."*

8.3. Similarly, this Court in Satpal Singh v. State of Haryana [(2010) 8 SCC 714], stated that though a document may be admissible, but to determine whether the entry contained therein has any probative value, may still be required to be examined in the facts and circumstances of a particular case. It held as follows:

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"26. In Vishnu v. State of Maharashtra [(2006) 1 SCC 283 : (2006) 1 SCC (Cri) 217] while dealing with a similar issue, this Court observed that very often parents furnish incorrect date of birth to the school authorities to make up the age in order to secure admission for their children. For determining the age of the child, the best evidence is of his/her parents, if it is supported by unimpeccable documents. In case the date of birth depicted in the school register/certificate stands belied by the unimpeccable evidence of reliable persons and contemporaneous documents like the date of birth register of the municipal corporation, government hospital/nursing home, etc., the entry in the school register is to be discarded.

x x x

28. Thus, the law on the issue can be summarised that the entry made in the official record by an official or person authorised in performance of an official duty is admissible under Section 35 of the Evidence Act but the party may still ask the court/authority to examine its probative value. The authenticity of the entry would depend as to on whose instruction/information such entry stood recorded and what was his source of information. Thus, entry in school register/certificate requires to be proved in accordance with law. Standard of proof for the same remains as in any other civil and criminal case."

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8.4. In Madan Mohan Singh v. Rajni Kant [(2010) 9 SCC 209], this Court held that the entries made in the official record may be admissible under Section 35 of the Evidence Act, but the Court has a right to examine their probative value. The authenticity of the entries would depend on whose information such entries stood recorded. It was held as follows :

> *"20. So far as the entries made in the official record by an official or person authorised in performance of official duties are concerned, they may be admissible under Section 35 of the Evidence Act but the Court has a right to examine their probative value. The authenticity of the entries would depend on whose information such entries stood recorded and what was his source of information. The entries in school register/school leaving certificate require to be proved in accordance with law and the standard of proof required in such cases remained the same as in any other civil or criminal cases.*
>
> *21. … For determining the age of a person, the best evidence is of his/her parents, if it is supported by unimpeachable documents. In case the date of birth depicted in the school register/certificate stands belied by the unimpeachable evidence of reliable persons and contemporaneous documents like the date of birth register of the Municipal Corporation, government hospital/nursing home, etc., the entry in the school register is to be discarded. …"*

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8.5. This Court, in Alamelu v. State [(2011) 2 SCC 385], while dealing with a similar factual matrix, held that the prosecution had failed to prove that the girl was a minor at the relevant date since the transfer certificate of a Government School showing age was not duly proved by witnesses. It observed as under:

> *"40. Undoubtedly, the transfer certificate, Ext. P-16 indicates that the girl's date of birth was 15-6-1977. Therefore, even according to the aforesaid certificate, she would be above 16 years of age (16 years 1 month and 16 days) on the date of the alleged incident i.e. 31-7-1993. The transfer certificate has been issued by a government school and has been duly signed by the Headmaster. Therefore, it would be admissible in evidence under Section 35 of the Evidence Act, 1872. However, the admissibility of such a document would be of not much evidentiary value to prove the age of the girl in the absence of the material on the basis of which the age was recorded. The date of birth mentioned in the transfer certificate would have no evidentiary value unless the person who made the entry or who gave the date of birth is examined.*
>
> *41. We may notice here that PW 1 was examined in the Court on 9-8-1999. In his evidence, he made no reference to the transfer certificate (Ext. P-16). He did not mention the girl's age or date of birth. PW 2 was also examined on 9-8-1999. She had also made no reference either to her age or to the transfer certificate. It appears from the record that a*

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> *petition was filed by the complainant under Section 311 CrPC seeking permission to produce the transfer certificate and to recall PW 2. This petition was allowed. … In her cross- examination, she had merely stated that she had signed on the transfer certificate, Ext. P-16 issued by the school and accordingly her date of birth was noticed as 15-6-1977. She also stated that the certificate has been signed by the father as well as the Headmaster. But the Headmaster has not been examined. Therefore, in our opinion, there was no reliable evidence to vouchsafe for the truth of the facts stated in the transfer certificate." (Emphasis supplied)*

9. In the attending facts, we find that the evidentiary value of Ex.P11 is significantly undermined in the absence of corroborating material. We say so for the following reasons:

(i) PW-13, who is the Headmaster of Zilla Parishad High School, Chandanapur, Peddapalli District (erstwhile Karimnagar District), stated that the victim studied in his school from 2007 to 2013, i.e., 6th Class to 10th Class and that the Admission Register records her date of birth as 3rd November 1996. However, in his cross-examination, he admitted that he had no personal knowledge as to the source or basis on which the date of birth was recorded therein or if the recorded date of birth was correct or not. The relevant part of his testimony is extracted hereunder:

> *"…In our school there is not clerk to maintain records. I did not produce any certificate pertaining to earlier school I, In which P.W.3 studies up to 5th Class. There must be basis for entering date of birth of a student in our school such as her earlier school*

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record. I do not have personal knowledge as to what record was produced by parents of P.W. 3 as basis to enter her date of birth in our school as I was not Head Master in 2007.

I cannot say in which school P.W.3 studied up to 5th Class. In the nominal roll register of our school, the signature of P.W.3 was obtained. I do not have personal knowledge whether the said date of birth of P.W.3 was correct or not and I am giving evidence only on the basis of record." (Emphasis Supplied)

(ii) The prosecution has failed to examine the person who had made the entry in the Admission Register to ascertain on what basis such an entry was made. More so, the entry in respect of the date of birth of the victim in the primary school register, i.e., 1st Class to 5th Class, has not been produced and proved before the Courts below to verify the age as per its records. It is also not possible to ascertain from the records as to whether the date of birth was provided by the parents or simply entered at the behest of another party, without verification, at the time of admission to Zilla Parishad High School.

(iii) The testimonies of PW-1, PW-2 and PW-3 are also telling that none of them mentioned the victim's age with specificity. There is no reference to Ex.P11, and no attempt was made by the prosecution to adduce corroborative testimony regarding the victim's date of birth from her family members.

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Thus, while examining the issue at hand, on the anvil of the principles elucidated above, it is essential to notice that the prosecution has failed to toe the line of legal requisites. There is nothing on record to corroborate the date of birth of the victim as recorded in the birth certificate (Ex.P11) issued by the school. Therefore, it cannot be relied upon to definitely determine the age of the victim and held with certainty that the victim was below sixteen/eighteen years of age."

15. The above observations are self-explanatory. Let us turn to the facts of the instant case. The prosecution case is that the victim was studying in 12th Standard. Therefore, admittedly, the victim must have had a 10th matriculation certificate. There is no reason for not collecting that document to prove the age. Neither of the parents has deposed about the age of the victim. The Headmaster [PW8] cannot claim personal knowledge of the date of birth. Unless the record, on the basis of which this certificate was issued, is collected and produced, the certificate issued by the Headmaster during the course of the investigation would be of no avail to the prosecution. The relevant documents that would have higher probative value have been burked by the investigation. Therefore, the certificate issued by PW8, even assuming it to be admissible, would have no probative value in view of the failure of the investigation to collect the relevant records maintained at the school, which was the basis for issuance of such a certificate.

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16. Therefore, this Court is of the view that the prosecution has miserably failed to prove the date of birth of the victim, and consequently, since this Court had found that the victim's act was consensual, none of the offences alleged against the accused can be sustained. Hence, this Court is of the view that the impugned judgment is liable to be set aside.

17. In the result, this Criminal Appeal is allowed. The conviction and sentence passed in Spl.S.C.No.116 of 2019 (Old Spl.SC.No.72 of 2018), dated 20.10.2020 on the file of learned Sessions Judge, Special Court for POCSO Cases, Salem, are set aside. The accused/appellants are acquitted of all the charges. The fine amount, if any, paid by the accused/appellants shall be refunded. Bail bond, if any, executed shall stand discharged.

05-11-2026

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

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To

1. The Sessions Judge,
Special Court for POCSO Cases, Salem

2. The Inspector of Police,
Edapadi Police Station,
Salem District.

3. The Public Prosecutor,
High Court, Madras,

https://www.mhc.tn.gov.in/judis

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SUNDER MOHAN, J.

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Pre-delivery judgment in
CRL A No. 351 of 2022

05-11-2026

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