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CRL A No. 235 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 20-01-2026

PRONOUNCED ON: 23-01-2026

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

CRL A No. 235 of 2023

Devaraj

.. Appellant/A1

Vs

State Rep By
The Inspector of Police,
All Women Police Station,
Denkanikottai,
Krishnagiri District.
Cr.No.6 of 2021.

.. Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, to set aside the Judgment and order passed on the appellant / A1 by the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri by a judgment dated 16.02.2023 made in Spl.S.C.No.22 of 2021 and to acquit the appellant/A1.

For Appellant:

Mr.C.Prabakaran

For Respondent:

Mr.S.Raja Kumar
Additional Public Prosecutor



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Judgment

This Criminal Appeal has been filed by Accused No.1, challenging the conviction and sentence imposed upon him for the offence under Section 366 of the IPC, Sections 5(l), 5(j)(ii) r/w 6 of the POCSO Act and Section 9 of the Prohibition of Child Marriage Act, 2006 vide judgment dated 16.02.2023 in Spl.SC.No.22 of 2021 on the file of the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri.

2 (i) The gist of the prosecution case is that the victim girl aged 14 years at the time of occurrence had a love affair with the appellant herein; that pursuant to the love affair, they got married and lived together; that when the victim became pregnant, she was taken to hospital for treatment; that since the victim was a minor, on information by the hospital authorities, a complaint [Ex.P1] was lodged by the Chairperson of Child Welfare Committee, Krishnagiri [PW1], which was registered as an FIR [Ex.P22] in Cr.No. 6 of 2021 by the Inspector of Police [PW26] for the offence under Sections 363, 366 of the IPC, Sections 5(l), 5(j)(ii) and 6 of the POCSO Act and Section 9 of the Prohibition of Child



Marriage Act, 2006 against the appellant [A1], his sister [A2] and his parents [A3 and A4].

(ii) After completion of investigation, PW26 filed the final report against the accused for the offence under Sections 363, 366 of the IPC r/w Sections 5(l)(j)(ii), 6, 17 and 17 of the POCSO Act and Sections 9, 10 and 11 of the Prohibition of Child Marriage Act, 2006.

(iii) During the course of the investigation, the victim and the appellant were subjected to medical examination and the learned Judicial Magistrate, Denkanikottai, 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 the case was taken on file as Spl.S.C.No.22 of 2021 by the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri. The trial Court framed charges against the appellant/A1 for the offences under Section 366 of the IPC, Section 9 of the Prohibition of Child Marriage Act and Sections 5(l)(j)(ii) and 6 of the



POCSO Act, 2012 and against the other accused/A2 to A4 for the offences under Section 11 r/w 10 of the Prohibition of Child Marriage Act, Sections 16 and 17 of the POCSO Act, 2012. During the trial, when questioned, the accused pleaded 'not guilty'.

(v) To prove its case, the prosecution had examined 26 witnesses as P.W.1 to P.W.26 and marked 35 exhibits as Ex.P1 to Ex.P35. When the accused was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against them, they denied the same. The accused neither examined any witness nor marked any document on their side.

(vi) On appreciation of oral and documentary evidence, the trial Court found that A2 to A4 were not guilty of any of the charges framed against them and found that the appellant/A1 was guilty of the offences under Section 366 of the IPC, Sections 5(l), 5(j)(ii) r/w 6 of the POCSO Act and Section 9 of the Prohibition of Child Marriage Act, 2006 and sentenced him as stated below.



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Offence under Section	Sentence imposed
366 IPC	To undergo RI for four years and to pay a fine of Rs.1,000/- in default to undergo SI for three months.
9 Prohibition of Child Marriage Act	To undergo RI for two years and to pay a fine of Rs.3,000/- in default to undergo SI for three months.
5(1)(j)(ii) r/w 6 POCSO Act, 2012	To undergo RI for twenty years and to pay a fine of Rs.6,000/- in default to undergo SI for one year.
The sentences were ordered to run concurrently.	

Hence, A1 has preferred the instant appeal challenging the said conviction and sentence.

3. The learned counsel for the appellant submitted that the victim and the appellant were living together as husband and wife; that the victim, born on 18.01.2007, is now aged 19 years; that out of the wedlock a child was born and the victim is living happily with the appellant and hence, the impugned judgment may be set aside, as severe hardship would be caused to both the appellant and the victim if the appellant is convicted and sentenced to undergo imprisonment.



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4. The learned Additional Public Prosecutor, on instructions, confirms that the appellant and victim are living together and that the victim has now attained majority.

5. The victim, who is present in Court, was identified by Mrs.Gajalakshmi, WHC-1220, All Women Police Station, Denkanikottai, Krishnagiri and she confirms that she is now living with the appellant and that she does not wish to pursue the case. The victim's mother was also present and she confirms that her daughter is living happily with the appellant and that if the judgment is not set aside, the appellant and the victim would be put to severe hardships. The victim has also filed an affidavit confirming the above facts, which is taken on record.

6. As stated above, the prosecution examined 26 witnesses. PW1, is the defacto complainant and the Chairperson of Child Welfare Committee and she is a hearsay witness. Except PW1, all the witnesses, including the victim, who were examined to speak about the alleged occurrences turned hostile. The prosecution had examined the Doctor and other witnesses to establish that the victim had sexual intercourse. It



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is also not in dispute that a child was born out of wedlock. However, the Hon'ble Supreme Court in the case of ***Mahesh Mukund Patel Vs. State of U.P. And Others reported in 2025 SCC Online SC 614*** had held that in cases of this nature, where the victim, after attaining majority, has married the accused and their marriage is also registered, no useful purpose would be served by continuing the prosecution and that it would cause undue hardship to all the parties concerned.

7. This Court is of the view that the said principle can be applied at the appellate stage as well, as the parties would be put to untold hardship if the judgment of conviction is sustained.

8. Considering all the above facts, this Court is inclined to set aside the impugned judgment and acquit the appellant/A1 of the charges under Section 366 of the IPC, Sections 5(l), 5(j)(ii) r/w 6 of the POCSO Act and Section 9 of the Prohibition of Child Marriage Act, 2006 .

9. Accordingly, the affidavit filed by the victim is taken on file. The Criminal Appeal stands allowed. The conviction and sentence



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imposed upon the appellant/A1 vide judgment dated 16.02.2023 in Spl.SC.No.22 of 2021 on the file of the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri, are set aside. The appellant/A1 is acquitted of all the charges. The fine amount, if any, paid by the appellant shall be refunded. The bail bond, if any, executed shall stand discharged.

23-01-2026

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

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To

1. The Sessions Judge,
Fast Track Mahila Court,
Krishnagiri.
2. The Inspector of Police,
All Women Police Station,
Denkanikottai, Krishnagiri District.
3. The Public Prosecutor,
High Court, Madras.



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SUNDER MOHAN J.

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**Pre-delivery Judgment in
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