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Crl.A.No.489 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2026

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.A.No.489 of 2018

Vijayakanth

... Appellant

Vs.

STATE BY THE INSPECTOR OF
POLICE, ALL WOMEN POLICE STATION, BARGUR,
KRISHNAGIRI DISTRICT.
(CR.NO. 4 OF 2016)

... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C. praying to call for the entire records in connection with the Special SC.no.38 of 2016 on the file of the learned Sessions Judge, Fast Track Mahalir Court, Krishnagiri and set aside the conviction and sentence imposed by the learned Sessions Judge, Fast Track Mahalir Court, Krishnagiri in Spl.SC.No.38 of 2016 dated 25.07.2018.

For Appellant : Mr.V.Paarthiban

For Respondent : Mr.L.Baskaran,
Government Advocate (crl.side)

ORDER

This criminal appeal has been filed praying to set aside the order of conviction and sentence imposed by the learned Sessions Judge,



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Fast Track Mahalir Court, Krishnagiri in Spl.SC.No.38 of 2016 dated 25.07.2018, thereby convicting the accused for the offence punishable under Section 3 r/w 4 of POCSO Act

2. The case of the prosecution is that the victim was born on 07.04.1998 as per her transfer certificate issued by her Headmaster and while she was studying 12th standard, the accused promised to marry her and due to falling in love on the pretext of marriage, they had physical relationship, due to which she got pregnant. The pregnancy was terminated by administering medicine. Thereafter, once again the victim girl had physical relationship with the accused and got pregnant. Second time also she was administered some medicine and her pregnancy got aborted. Thereafter the accused refused to marry her and as such, she lodged complaint. On the complaint, the respondent registered FIR in crime No.4 of 2016 for the offences punishable under Section 3 and 4 of POCSO Act. After completion of investigation, final report was filed and the same was taken cognizance by the trial court and charges were framed under Section 3 r/w 4 of POCSO Act.

3. In order to bring the charges to home, the prosecution had examined PW1 to PW13 and marked Ex.P1 to Ex.P17. On the side of the

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accused, no one was examined and no documents were produced to disprove the charges. On perusal of oral and documentary evidences, the trial court found the accused guilty for the offence under Section 3 r/w 4 of POCSO Act and sentenced him to undergo 7 years rigorous imprisonment with fine of Rs.1,000/-, in default of which to undergo six months rigorous imprisonment. Aggrieved by the same, the present criminal appeal has been filed by the accused.

4. The learned counsel appearing for the appellant would submit that the prosecution failed to prove the age of the victim. Admittedly the accused and the victim fell in love and they had living relationship. Though the victim girl got pregnant, on her own, she aborted the child. Further, the victim had absolute knowledge that the accused is a married person and even then, she fell in love with him and had physical relationship. When the victim insisted the accused to marry her, when the accused refused to do so since he is already a married person, a false complaint was foisted as if the victim girl was only 17 years at the time of the alleged occurrence, thereby FIR was registered.

5. Per contra, the learned Government Advocate(crl.side) appearing for the respondent submitted that the transfer certificate of the

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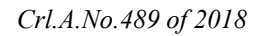
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victim was marked as EX.P2. It was recorded only from the records which were very much available at the time of admitting the victim girl in school. The birth certificate was marked through PW9, who was none other than the Headmaster of the school in which the victim studied 12th standard. Further, the medical evidence also clearly proves that she got pregnant twice and the pregnancy got aborted. Therefore, the prosecution categorically proved the charges and the trial court rightly convicted the accused. As such, the impugned order of conviction and sentence does not warrant any interference by this Court.

6. Heard, the learned counsel appearing on ether side and perused all the materials placed before this Court.

7. The respondent registered FIR by recording the statement from the victim. The statement of the victim was marked as Ex.P13. As per Ex.P13, she categorically admitted that after completion of her 12th std, she fell in love with the accused and they lived together as husband and wife for three years and during their relationship, she got pregnant twice and the pregnancy got aborted by administering of pills. Further, she did not want to register any case as against him since she hoped that he would come one day and marry her. She categorically stated in her

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did not produce any record to show that the victim girl was born on 07.04.1998. The relevant portion of his evidence is as follows:

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முதல் வினாவுகளை:

நான் தற்போது பெரியதள்ளபாடி அரசு மேல்நிலைப்பள்ளியில் உதவி தலைமை ஆசிரியராக பணிபுரிகின்றேன். எங்கள் பள்ளியில் சசிகலா து/பிபகேஷித்தன் என்பவர் 2013-14ல் பிளஸ் 1 படித்தார், 2014-15ல் பிளஸ் 2 முடித்து விட்டு போய்விட்டார். பரகர் காவல் நிலைய ஆய்வாளர் சசிகலாவின் பள்ளி மாற்றுச்சான்றிதழை கொடுத்து எங்கள் பதிவேட்டில் உள்ள ஆவணங்களின் படி சரியாக இருக்கின்றதா என்று கேட்டிருந்தார். நாம் ஆய்வாளர் கொடுத்த சசிகலாவின் பள்ளி மாற்றுச்சான்றிதழை எங்கள் பதிவேட்டில் சரிபார்த்தோம். சரியாக இருந்தது. சசிகலாவின் பிறந்த தேதி 07.04.1998 எனவே அந்த சான்றிதழில் நாங்கள் உண்மை நகல் என்று எவ்வாறு செய்து கொடுத்தோம். சசிகலாவின் பள்ளி மாற்றுச்சான்றிதழ் நகல் அ.சா.ஆ.10 இந்த வழக்கு சம்பந்தமாக போலீசார் என்ன விசாரிக்கவில்லை.

எதிர் தரப்ப குறுக்கு வினாவுகளை:

அசல் பள்ளி மாற்றுச்சான்றிதழ் சசிகலாவிடம் இருக்கும். போலீசார் ஜெராக்ஸ் தான் கொண்டு வந்தார்கள். அசல் பள்ளி மாற்றுச்சான்றிதழை கொண்டு வரவில்லை. ஆய்வாளர் சான்றிதழை சரிபார்த்து சொல்லும்படி ஆய்வாளர் எழுதிருப்பவாறு லேஅன்/கேள் கடத்தம் கொடுத்தார். 10ம் வகுப்பு சான்றிதழ் கொடுத்ததை வைத்து நாம் பிளஸ் 1ல் சேர்த்தோம். பிறப்பு சான்றிதழ் எதுவும் எங்கள் வசம் இல்லை. அ.சா.ஆ.10ல் உள்ள தேதி சசிகலாவை பள்ளியில் சேர்க்கும்போது அவர்களால் கொடுக்கப்பட்ட தேதி தான். எங்களுடைய ஆவணத்தின் படி இது தான் சசிகலாவின் பிறந்த தேதி.

9. Thus it is clear that the transfer certificate was not issued on the verification of records which was produced at the time of her admission. The victim was admitted in her 11th standard by getting transfer certificate of the earlier school in which she completed 10th standard. Except the transfer certificate, the prosecution failed to produce any piece of evidence to show that the victim was born on 07.04.1998.

That apart, her parents had deposed as PW2 and PW3. They had also admitted that that PW1 fell in love with the accused and they lived



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together for more than three years. Further PW2 also categorically admitted that the age of the victim was 19 years at the time of the alleged occurrence. There was also money transaction between the accused and PW2 & PW3. They were due to pay some loan amount to the accused. In overall circumstances, it shows that the victim girl was aged about 19 years and at the time of the occurrence, the victim lived together with the accused in live-in relationship. During their live-in relationship, they had physical relationship and due to which she got pregnant. Subsequently the pregnancy was aborted by consuming some pills. In order to convict the accused under POCSO Act, the age of the victim has to be proved beyond doubt. However, prosecution failed to prove the age of the victim in accordance with law. In this regard, it is relevant to rely on the judgment of this Court rendered in Crl.A.No.607 of 2018 dated 11.11.2022, wherein it is held as follows:

“11. The learned counsel for the appellant vehemently contended that the prosecution failed to prove the age of the victim. In order to prove the age of the victim, the prosecution produced Exs.P5 and P6. The school certificate of the victim was marked as Ex.P5. Admission register was marked as Ex.P6. Though the prosecution has produced the school certificate, it failed to prove that the admission of the victim to the school was made on production of date of birth certificate and the date of birth entered in the school register is the correct date of birth of the victim. Further the victim did not produce any date of birth



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certificate and the prosecution failed to produce any other documents to show that the victim was born on 25.02.2001. In fact, it is also contradictory to the charge since the charge framed against the accused shows as though the victim was born on 14.05.1999. In order to ascertain the age of the minor girl, there is no procedure as contemplated under the POCSO Act. Therefore, the procedure as contemplated under Section Juvenile Justice (Care and Protection of Children) Rules, 2007 should come to surface. In this regard, the law has been settled by the Hon'ble Division Bench of this Court as well as the Hon'ble Supreme Court of India that the procedure prescribed under the Juvenile Justice (Care and Protection of Children) Rules, 2007 has to be followed.

12. It is relevant to extract Rule 12(3) of the Juvenile Justice (Care and Production of Children) Rules, 2007 reads as follows :

“12. Procedure to be followed determination of Age :-

(1) xxxxxx

(2) xxxxxx

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining :-

(a)(i) the matriculation or equivalent certificates, if available, and in the absence whereof ;

(ii) the date of birth certificate from the school (other than a play school) first attended ; and in the absence whereof ;

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



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(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year and, while passing orders in such case shall, after taking into considerations such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile to conflict with law.

13. In the case on hand, admittedly, the prosecution failed to prove the date of birth of the victim and also failed to produce any evidence to show that the victim was admitted in the school by producing the birth certificate. It is well settled that an entry of the date of birth made in the school admission register would have evidentiary value only if there is material available based on which the age was so recorded. The Hon'ble Division Bench of this Court in Criminal Appeal No.487 of 2019 in the case of ***M.Marimuthu Vs. The State, represented by the Inspector of Police, All Women Police Station, Srivaikuntam, Titicorin*** dated 18.10.2022 held as follows :

“17. In the instant case, the matriculation or equivalent certificate of the victim is not available as she deposed that she



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gave up studies after 9th class. Rule 12(3)(a) contemplates that in the absence of the matriculation or equivalent certificate, the date of birth certificate from the school first attended can be used as evidence to determine the age of a child. Mr.Ashok Kumar Chaudhary (PW-3), a teacher in the school where the victim has studied, had produced the school records, which showed that the victim was admitted in MC Primary School, Vikas Block Sirsia, District Sarawasti, UP in class-I on 12.08.2005. The school record notes her date of birth as 10.01.2000. However, PW-3 went on to state that there is no other record of admission of the victim available in the school and nor could he state as to what was the nature of the document submitted by the victim's parents at the time of her admission, for recording her date of birth in the school register.

18. It is well settled that an entry of the date of birth made in the school admission register would have evidentiary value only if there is material available based on which the age was so recorded. In the case of Brij Mohan Singh vs. Priya Brat Narain Sinha and Ors. reported as AIR 1965 SC 282, the Supreme Court held that an entry of birth recorded in the school register maintained by an illiterate Chowkidar, was not admissible and had no probative value within the meaning of Section 35 of the Indian Evidence Act. For ready reference, Section 35 of the Indian Evidence Act is reproduced below:-

“35. Relevancy of entry in public [record or an electronic record] made in performance of duty.- An entry in any public or other official book, register or [record or an electronic record], stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of



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the country in which such book, register, or [record or an electronic record] is kept, is itself a relevant fact.”

19. *In Birad Mal Singhvi vs. Anand Purohit reported as 1988 Supp. SCC 604, where a question arose with regard to eligibility of a candidate participating in an election to the State Legislative Assembly, in the context of attaining the age of 25 years as stipulated, the Supreme Court held as below:-*

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 performance of a duty specially enjoined by law. An entry relating to 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. ...” (emphasis added)

20. *The probative value of the entry regarding the date of birth made in a school register has come up for consideration by the Supreme Court and the High Courts in several other cases and the common view expressed is that no probative value can be attached to such a record unless and until the parents are examined or the person on whose information the entry may*



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have been made, is examined.

21. In Sushil Kumar vs. Rakesh Kumar reported as AIR 2004 SC 230, the Supreme Court held thus:-

“34. In the aforementioned backdrop the evidences brought on record are required to be considered. The Admission Register or a Transfer Certificate issued by a Primary School do not satisfy the requirements of Section 35 of the Indian Evidence Act. There is no reliable evidence on record to show that the date of birth was recorded in the school register on the basis of the statement of any reasonable person.”

14. Thus, it is clear that the entry of the birth record in the school register is not admissible under Section 35 of the Evidence Act. Therefore, the prosecution failed to prove the age of the victim whether she was minor at the time of occurrence. The evidence shows that the victim fell in love with the accused and had physical relationship.....”

10. Thus it is clear that the entry of the birth recorded in the school register is not admissible under Section 35 of Evidence Act without production of any supporting document. There is no reliable evidence on record to show that the date of birth was recorded in the school register on the basis of the statement of reasonable person. Hence, the entry recording the age of a person in a school register is of not much evidenciary value to prove the age of the person in the absence of material on which the age was recorded in the school register. Therefore,



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the prosecution miserably failed to prove the age of the victim whether she was minor at the time of the alleged occurrence. As such, the above judgment is squarely applicable to the case on hand, since the prosecution failed to prove the age of the victim girl. Therefore, the benefit of doubt goes in favour of the accused.

11. In view of the above discussion, the impugned order is liable to be set aside. Accordingly, this criminal original petition is allowed and the impugned order of conviction and sentence imposed by the learned Sessions Judge, Fast Track Mahalir Court, Krishnagiri in Spl.SC.No.38 of 2016 dated 25.07.2018 is set aside.

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Neutral citation : Yes/No
Speaking/non-speaking order
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- 1.The learned Sessions Judge, Fast Track Mahalir Court, Krishnagiri
- 2.STATE BY THE INSPECTOR OF
POLICE, ALL WOMEN POLICE STATION, BARGUR,
KRISHNAGIRI DISTRICT.



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