



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12-02-2026

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

CRL A No.553 of 2023

WEB COPY

Rajesh
S/o.Dhuraiyan Ramesh,
Residing at :
Door No.2/178, AD Colony,
Ganesapuram, Karukkampalayam,
Chinneripalayam, Avinashi, Tiruppur

..Appellant/Sole
Accused

Vs

The State rep. by
The Inspector of Police
All Women Police Station - Avinashi,
Tiruppur District.
(Crime No.2/2021)

...Respondent/
Complainant

Prayer : Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, 1973, to call for entire records relating to the Judgment dated 26.04.2022 made in Spl.S.C.No.25 of 2021 on the file of the learned Mahila Court (Sessions Judge Full in Charge) of Tiruppur and set aside the same.

For Appellant:

Mr.N.S.Siva Kumar

For Respondent:

Mr.S.Raja Kumar
Additional Public Prosecutor



JUDGMENT

WEB COPY

This Criminal Appeal has been filed by the sole accused, challenging the Judgment dated 26.04.2022 passed in S.C.No.25 of 2021 by the learned Sessions Judge, (full in charge), Mahila Court, Tiruppur, convicting him and sentencing him as follows:

Offence under Section	Sentence imposed
5(l) r/w 6 of the POCSO Act, 2012	To undergo RI for 20 years and to pay a fine of Rs.10,000/- in default to undergo RI for one year.
7 r/w 8 of the POCSO Act, 2012	To undergo RI for 5 years and to pay a fine of Rs.5,000/- in default to undergo RI for six months.
366 of the IPC	To undergo RI for 10 years and to pay a fine of Rs.10,000/- in default to undergo RI for six months.
9 of the Prohibition of Child Marriage Act	To undergo RI for two years and to pay a fine of Rs.5,000/- in default to undergo SI for three months.
The sentences were ordered to run concurrently.	

2(a) The case of the prosecution is that the appellant/accused, aged about 19 years at the time of occurrence, and the victim girl, aged about 17 years at the time of the occurrence, had a love affair; that on the promise of marriage, on 24.01.2021, the appellant kidnapped the victim girl from the lawful guardianship of her parents and took her to Thiruvannamalai, tied thali on 25.01.2021 in a temple, and thereafter committed penetrative sexual assault till 27.01.2021, and thus committed the aforesaid offences.



(b) On the complaint [Ex.P2] given by P.W.2, the mother of the victim, after the victim, P.W.1, returned to her parent's house on 27.01.2021, an FIR was registered by P.W.8, Head Constable. P.W.9, the Inspector of Police, who conducted the investigation and made arrangements to record the Section 164(5) Cr.P.C., statement of the victim, subjected the victim to medical examination and filed the Final Report against the accused/appellant for the offences under Sections 5(l) r/w 6, 7 r/w 8 of the POCSO Act, Section 366 of the IPC, and Section 9 of the Prohibition of Child Marriage Act, 2006, before the learned Sessions Judge (full in charge), Mahila Court, Tiruppur.

(c) 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.25 of 2021 by the learned Sessions Judge (full in charge), Mahila Court, Tiruppur. The trial Court framed charges against the accused for the offences under Sections 5(l) r/w 6 and 7 r/w 8 of the POCSO Act, Section 366 of the IPC, and Section 9 of the Prohibition of Child Marriage Act, 2006, and when questioned, the accused pleaded 'not guilty.'

(d) To prove its case, the prosecution had examined 9 witnesses as P.W.1 to P.W.9 and marked 13 exhibits as Exs.P1 to Ex.P13, besides one material object as M.O.1. When the accused was questioned, u/s.313 Cr.P.C., on the



incriminating circumstances appearing against him, he denied the same. The accused neither examined any witness nor marked any document on his side.

WEB COPY

(e) On appreciation of oral and documentary evidence, the Trial Court found the appellant guilty of the offences under Sections 5(1) r/w 6 and 7 r/w 8 of the POCSO Act, 2012, Section 366 of the IPC, and Section 9 of the Prohibition of Child Marriage Act, 2006, and accordingly, convicted and sentenced him as stated in the first paragraph of this Judgment. Hence, the accused has preferred the instant appeal challenging the said conviction and sentence.

3. Mr.N.S.Siva Kumar, the learned counsel for the appellant/accused, would submit that admittedly the relationship between the appellant/accused and the victim, P.W.1, was consensual; that the victim's evidence does not inspire confidence; that there are vital contradictions in the evidence of P.W.1, the victim, and P.W.2, the mother of the victim, as regards the date on which the alleged occurrence took place; that the earliest version of the victim, P.W.1, given before the Doctor was that the victim was subjected to sexual assault and not penetrative sexual assault; that the victim was forced to allege the commission of penetrative sexual assault by her mother; and that in the absence of any evidence to corroborate the version of the victim, whose evidence not



inspire confidence, the trial Court ought not to have convicted the appellant, and hence prayed for acquittal.

WEB COPY

4. Mr.S.Raja Kumar, the learned Additional Public Prosecutor for the respondent, would submit that minor variations in the dates mentioned by P.W.1, the victim, and P.W.2, the mother of the victim girl, would not discredit the witnesses in any manner; that P.W.1 in her evidence had stated cogently that the occurrence took place on 25.01.2021 at Thiruvannamalai; that there is no reason to discredit the evidence of P.W.1; and that the impugned Judgment does not call for any interference and prayed for dismissal of the appeal.

5. As stated earlier, the prosecution had examined 9 witnesses. P.W.1 is the victim. P.W.2 is the mother of the victim. P.W.3 is the witness who had signed the Observation Mahazar [Ex.P3]. P.W.4 is the witness who had signed in the confession statement of the appellant, and the signature is marked by Ex.P4. P.W.5 is the Doctor, who had examined the victim, P.W.1, and had made entries in the Accident Register, Ex.P5, and had given the final opinion, Ex.P6. P.W.6 is the Doctor, who had examined the appellant and made entries in the Accident Register, Ex.P7. P.W.8 is the head constable of police, who registered the FIR [Ex.P9]. P.W.9 is the Investigating Officer who filed the Final Report.



6. It is the version of P.W.1, the victim, that she left the house on 24.01.2021 and went along with the appellant to Thiruvannamalai; that the appellant tied a thali in a Temple at Thiruvannamalai and thereafter committed penetrative sexual assault on 25.01.2021; that thereafter on 25.01.2021, she had fever, and she had asked the appellant to take her to her mother; that the appellant refused; that on 28.01.2021, the appellant came to know through his relatives that the victim's mother, P.W.2, had lodged a complaint, and thereafter, the appellant and the victim went to the police station on 28.01.2021. The victim had not stated anything about any alleged occurrence of penetrative assault after 25.01.2021. Before the Doctor, P.W.5, the victim, had stated that she was subjected to sexual assault by a known person with her consent on 26.01.2021. The two versions are contrary to each other.

7. Be that as it may. It is the version of P.W.2, mother of the victim girl, in the complaint that the victim left the house only on 26.01.2021, and she stayed in the house till that time; and that the victim returned home on the night of 27.01.2021, and since the victim, P.W.1, returned home late, P.W.2 lodged a complaint about the alleged occurrences on 28.01.2021. This version of P.W.2 in her complaint is contradicted by her own deposition wherein she had stated that both the appellant and the victim came to the police station at Thiruvannamalai on 28.01.2021. These contradictions cannot be brushed aside



as minor. The manner in which the complaint was lodged has been suppressed by the victim's mother, P.W.2.

WEB COPY

8. It is well settled that if the FIR is held to be fabricated or brought into existence not in a manner alleged by the prosecution, then the entire fabric of the prosecution case would collapse and the evidence of the witnesses would become unreliable. In ***Marudanal Augusti vs State Of Kerala*** reported in ***(1980) 4 SCC 425***, the Hon'ble Supreme Court had held as follows:

“The High Court seems to have overlooked the fact that the entire fabric of the prosecution case would collapse if the FIR is held to be fabricated or brought into existence long after the occurrence and any number of witness could be added without there being anything to check the authenticity of their evidence.”

9. That apart, the evidence of P.W.2 and P.W.1 is contrary to each other. The victim, P.W.1, would state that she left the house on 24.01.2021, and she was subjected to penetrative sexual assault on 25.01.2021. Whereas, the evidence of P.W.2 is that the victim left the house on 26.01.2021, and the alleged occurrence took place on the night of 26.01.2021. If the victim's version that she left the house on 24.01.2021 has to be believed then there is no explanation by the prosecution as to why no complaint was lodged by P.W.2 till 28.01.2021. P.W.2's evidence is totally contrary to the prosecution case. She would state that the victim left the house only on 26.01.2021. Her stand



probably was to counter the accusation against her that she did not give any complaint. Even assuming that the victim had left the house only on 26.01.2021, there is no reason why no complaint was lodged till 28.01.2021.

10. Further, P.W.5, the Doctor who examined the victim, had not specifically stated that the victim was subjected to forcible sexual intercourse, though she would say that the hymen of the victim was not intact. Above all, the investigating officer had not conducted any investigation as to where and when the occurrence took place. The relevant portion of his admission in the cross-examination is as follows:

"திருவண்ணாமலையில் எந்த முருகன் கோவிலில் வைத்து தாலி கட்டினாள் என்றும், அங்கு ஒரு அறையில் வைத்து உடல் உறவு, கொண்டதாகவும் சொல்லியுள்ள நிலையில் அந்த அறையை பார்வையிட்டு அங்கு அருகில் உள்ளவர்களை விசாரித்துள்ளேனா என்றால் இல்லை."

11. Therefore, this Court is of the view that it would be highly unsafe to believe the victim, P.W.1, as regards the alleged occurrences of kidnapping and the offence under the POCSO Act. That apart, admittedly, the appellant and the victim were known to each other. The appellant was 19 years at the time of the



occurrence. For all the above reasons, this Court is inclined to set aside the impugned judgment of conviction and sentence.

WEB COPY

12. Accordingly, the Criminal Appeal stands allowed. The conviction and sentence were imposed upon the appellant/accused vide judgment dated 26.04.2022. by the learned Sessions Judge, (full in charge), Mahila Court, Tiruppur, in Spl.S.C.No.25 of 2021, are set aside. The appellant 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.

12-02-2026

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

To

1. The Sessions Judge, (full in charge),
Mahila Court,
Tiruppur.
2. The Inspector of Police,
AWPS Avinashi, Tiruppur District.
3. The Public Prosecutor
High Court of Madras,
Chennai – 600 104.



WEB COPY

CRL A No.553 of 2



SUNDER MOHAN, J.

dk

CRL A No. 553 of 2023

12-02-2026