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Crl.A.No.499 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.12.2025

PRONOUNCED ON : 02.01.2026

CORAM :

THE HON'BLE MR. JUSTICE SUNDER MOHAN

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Siranjeevi

... Appellant/Sole accused

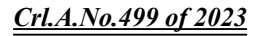
v.

State rep. by The Inspector of Police,
All Women Police Station,
Krishnagiri, Krishnagiri District.
[Cr.No.11 of 2021]

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, against the conviction of the appellant/sole accused and sentence imposed on him in Spl.S.C.No.37 of 2021 dated 18.04.2023 on the file of the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri, Krishnagiri District, and set aside the conviction and sentence and allow this appeal.

For Appellant : Mr.E.Kannadasan
For Respondent : Mr.S.Rajakumar
Additional Public Prosecutor



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victim girl till 12.08.2021; that he committed penetrative sexual assault during that period; and thus committed the aforesaid offences.

(ii) A complaint [Ex.P1] was lodged by PW1, the father of the victim girl stating that the victim girl went missing on 09.08.2021 and on such complaint, an FIR [Ex.P16] in Crime No. 11 of 2021 was registered for the offences under Sections 363 and 366 IPC by PW16-Inspector of Police. PW16, thereafter took up the investigation, examined all the witnesses, made arrangements to record the Section 164 Cr.P.C. statement of the victim, and after completing all the formalities, had filed the final report for the offence under Sections 363 and 366 of the IPC and Section 5(1) r/w 6 of the POCSO Act against the appellant before the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri.

(iii) On the appearance of the accused, the provisions of Section 207 Cr.P.C., were complied with. The case was taken on file as Spl.S.C.No.37 of 2021 by the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri, Krishnagiri District. The trial Court framed charges against the appellant for the offences under Section 366 of the IPC and Section 5(1) r/w



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6(l) of the POCSO Act and when questioned, the accused pleaded 'not guilty'.

(iv) To prove its case, the prosecution had examined 16 witnesses as P.W.1 to P.W.16 and marked 20 exhibits as Exs.P1 to Ex.P20. When the accused was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. Though the accused did not examine any witness, has marked four exhibits as Ex.D1 to Ex.D4 on his side.

(v) On appreciation of oral and documentary evidence, the trial Court found that the appellant, aged about 26 years at the time of occurrence had committed the aforesaid offences and accordingly convicted and sentenced him as stated above. Hence, the appellant has preferred the instant appeal challenging the said conviction and sentence.

3. The learned counsel for the appellant would submit that the victim was born on 21.11.2003; that the alleged occurrence took place on 09.08.2021, when the victim girl was 17 years and 9 months old; that



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admittedly it was a case of consensual affair; that the evidence adduced on the side of the appellant, viz., WhatsApp chat between the appellant and the victim girl [Ex.D1] and the other evidence on record would show that the victim girl claimed that she was a major, born on 21.11.2002 and her Aadhar card also reflected the said date of birth; that the victim girl had also addressed a letter to the Superintendent of Police [Ex.D2], praying for protection as she had married the appellant, in which she stated that her date of birth was 21.11.2002; that therefore the prosecution case that the appellant had committed penetrative sexual assault on a minor girl cannot be sustained; and hence prayed for acquittal.

4. The learned Additional Public Prosecutor, *per contra*, submitted that the evidence of the victim and the other evidence on record would clearly show that the appellant committed penetrative sexual assault on the victim girl who was a minor at the time of the occurrence; that consent of the minor girl is immaterial for the offence under Section 366 of the IPC or for the offence under Section 5(1) r/w 6(1) of the POCSO Act; and that in the light of the evidence adduced, the trial Court was justified in convicting the appellant and sought for the dismissal of the appeal.



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5. As stated, the prosecution had examined 16 witnesses. PW1 is the father of the victim girl who had lodged the complaint; PW2 is the victim; PW3 is the mother of the victim girl who corroborated the version of PW1 and accompanied PW2, the victim to the doctor for medical examination; PW4 had signed as a witness in the observation mahazar and in the confession of the appellant/accused; PW5 is the grandmother of the victim girl and she speaks about the fact that she accompanied her son PW1 to the police station for lodging the complaint; PW6 is the witness to the observation mahazar and the confession of the accused; PW7 is also a witness to the observation mahazar who turned hostile; PW8 is the doctor who had examined the victim girl and had made entries in the Accident Register [Ex.P8]; PW9 is the doctor who had examined the victim girl and had issued the Chemical Analysis Report [Ex.P9] and the opinion [Ex.P10]; PW10 is the brother of PW1 and had signed as a witness in the observation mahazar [Ex.P11]; PW11 is the Headmaster of the school where the victim studied and had issued the certificate [Ex.P12], to show that the victim was born on 21.11.2003; PW12, PW13 and PW15 are the constables who assisted in the investigation; PW14 is the doctor who had issued Potency



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Certificate [Ex.P15] for the appellant; and PW16 is the Inspector of Police who registered the FIR and conducted the investigation.

6. The fact that PW2 left her house on 09.08.2021 and a complaint was lodged by PW1 is not in dispute. It is the prosecution case that the PW2 was born on 21.11.2003. PW11, the Headmaster had certified that the victim studied in the school and had issued a certificate to that effect [Ex.P12]. PW11 had not stated in his deposition as to on what basis he had certified that the victim was born on 21.11.2003, though he would vaguely state that it is based on the school records. He also does not state as to which school record was verified to certify the date of birth of the victim. The prosecution has not produced any other evidence to prove the date of birth of the victim. PW1 though would state that the date of birth is 21.11.2003 had not produced the birth certificate of the victim girl.

7. Be that as it may. PW1 had initially lodged a complaint stating that the victim girl went missing and in his deposition he would state that the victim girl after returning to the house had told him that she went with the appellant and the appellant married her forcibly. PW3 is the mother who



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corroborates the evidence of PW1 and confirms that the victim girl went missing for three days. All other witnesses as stated above are hearsay witnesses and were examined to corroborate the evidence of PW1 to PW3.

8. Hence, it is the evidence of PW2, the victim girl, which is most relevant in this case. PW2 would state that she went with the appellant on 09.08.2021 and stayed in a house where a lady and a man stayed; that she married the appellant and had sexual intercourse with the appellant between 09.08.2021 and 12.08.2021; that after she came to know that a complaint was lodged by her father, she voluntarily appeared before the All Women Police Station, Krishnagiri, where her parents were present; and that subsequently she stayed in a Home and thereafter went with her parents. She also deposed that a week before the occurrence, the parents of the appellant came to her house and requested her parents to get her married to the appellant, which was refused by them. PW2 in her cross-examination had admitted the contents of Ex.D1, which is the WhatsApp conversation between the appellant and the victim girl. She admitted that she had informed the appellant that her date of birth is 21.11.2002. She had also admitted that she had written a letter [Ex.D2] to the Superintendent of



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Police, Tirupathur, where she had stated that her date of birth is 21.11.2002 and her Aadhar card would confirm the said date of birth.

9. The victim as stated above confirms the fact that she had sexual intercourse with the appellant for three days. The victim had told the doctor [PW8] who had made entries in the Accident Register [Ex.P8] that she married a known person one day prior to the date of the examination i.e., 13.08.2021. PW9 the doctor who had issued the Chemical Analysis Report also had recorded that there are no injuries in the private part of the victim; that the victim had told her that she married a known person on 11.08.2021.

10. Even according to the prosecution, the victim was 17 years and 8 months old at the time of occurrence and the victim and the appellant had a love affair. In fact PW3 the mother had in her cross-examination stated that the parents of the appellant approached them to get the victim married to the appellant; that since they belonged to a different caste, they refused; and that even earlier, the victim went missing and lived with the appellant. Therefore, it is the case of the prosecution that there was a consensual relationship between the appellant and the victim.



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11. As stated above the only evidence adduced by the prosecution to prove the age of the victim is the certificate issued by the Headmaster. Though the Headmaster is said to have issued a certificate, based on the school record, he had not stated as to what was the school record that he had verified before issuing such certificate. The prosecution had not marked any 10th standard marksheet or any such certificate to prove the date of birth, though it is their case that the victim was studying in 12th standard. It is in these circumstances the exhibits marked by the defence assume significance. Ex.D1, is the WhatsApp conversation which is admitted by the victim girl. The victim had stated that her date of birth is 21.11.2022. In fact, the victim also admitted to have sent a complaint to the Superintendent of Police which is marked as Ex.D2, in which she had stated that her date of birth is 21.11.2002. If the date of birth is reckoned as 21.11.2002 the victim was above 18 years at the time of occurrence. Even assuming that the said date is not supported by any documentary evidence apart from the contents of the letter admitted by the victim, this Court is of the view that the act of the appellant would be squarely covered under Section 79 of the IPC.



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12. Section 79 reads as follows:

Act done by a person justified, or by mistake of fact believing himself justified, by law.—

Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law, in doing it. “

13. The victim girl had stated to the appellant that her date of birth was 21.11.2002. Therefore, the appellant by reason of a mistake of fact, in good faith had believed that he was justified in law in doing the act. As stated earlier, it is not the case of the prosecution that the appellant had forcible sexual intercourse with the victim girl.

14. In *Raj Kapoor v. Laxman*, reported in (1980) 2 SCC 175, the Hon’ble Supreme Court had held as follows:

“9. The position that emerges is this. Jurisprudentially viewed, an act may be an offence, definitionally speaking; but a forbidden act may not spell inevitable guilt if the law itself declares that in certain special circumstances it is not to be regarded as an offence. The chapter on General Exceptions operates in this province. Section 79 makes an offence a non-offence. When? Only when the offending act is actually justified by



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law or is bona fide believed by mistake of fact to be so justified. If, as here, the Board of Censors, acting within their jurisdiction and on an application made and pursued in good faith, sanctions the public exhibition, the producer and connected agencies do enter the statutory harbour and are protected because Section 79 exonerates them at least in view of their bona fide belief that the certificate is justificatory. Thus the trial court when it hears the case may be appropriately apprised of the certificate under the Act and, in the light of our observations, it fills the bill under Section 79 it is right for the court to discharge the accused as the charge is groundless. In the present case, the prosecution is unsustainable because Section 79 is exculpatory when read with Section 5-A of the Act and the certificate issued thereunder. We quash the prosecution.

10. Two things deserve mention before we close. Prosecutions like this one may well be symptomatic of public dissatisfaction with the Board of Censors not screening vicious Films. The ultimate censorious power over the censors belongs to the people and by indifference, laxity or abetment, pictures which pollute public morals are liberally certificated; the legislation, meant by Parliament to protect people's good morals, may be sabotaged by statutory enemies within. Corruption at that level must be stamped out. And the Board, alive to its public duty, shall not play to the gallery; nor shall it restrain aesthetic expression and progressive art through obsolete norms and grandma inhibitions when the world is wheeling forward to glimpse the beauty of Creation in its myriad manifestations and liberal horizons. A happy balance is to

“... consider, on the one hand, the number of readers they believe would tend to be depraved and corrupted by the book, the strength of the tendency to deprave and corrupt, and the nature of the depravity or corruption; on the other hand, they should assess the



strength of the literary, sociological and ethical merit which they consider the book to possess. They should then weigh up all these factors and decide whether on balance the publication is proved to be justified as being for the public good. [*R. v. Calder and Boyars Ltd.*, (1969) 1 QB 151, 172 : (1968) 3 All ER 644, 650 (CA)]”

15. In *Sushil Ansal vs. State*, reported in (2014) 6 SCC 173, the Hon'ble Supreme Court had quoted with approval the commentaries of Ratanlal and Dhirajlal in their book, '*Law of Crimes*'. The relevant portion in the said judgment reads as follows:

“139. The concept of mistake of fact has been explained by *Russel on Crime* in the following words:

“When a person is ignorant of the existence of relevant facts, or mistaken as to them, his conduct may produce harmful results which he neither intended nor foresaw.

Mistake can be admitted as a defence provided (1) that the state of things believed to exist would, if true, have justified the act done, and (2) the mistake must be reasonable, and (3) that the mistake relates to fact and not to law.”

140. *Ratanlal and Dhirajlal* in their book *Law of Crimes* (23rd Edn.) p. 199 similarly explains the term “mistake” in the following words:



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“5. ‘*Mistake of fact*’.—‘Mistake’ is not mere forgetfulness. It is a slip ‘made, not by design, but by mischance’. Mistake, as the term is used in jurisprudence, is an erroneous mental condition, conception or conviction induced by ignorance, misapprehension or misunderstanding of the truth, and resulting in some act or omission done or suffered erroneously by one or both of the parties to a transaction, but without its erroneous character being intended or known at that time. ...

... ‘It may be laid down as a general rule that an alleged offender is deemed to have acted under that state of facts which he in good faith and on reasonable grounds believed to exist when he did the act alleged to be an offence.’”

In this case, the prosecution has not conclusively established the date of birth of the victim. That apart the appellant believed that he was justified in his act as the mistake of fact relating to the date of birth was reasonable as even according to the victim, she claimed that she was a major. Hence, this Court is inclined to extend the benefit of general exception under Section 79 of the IPC to the appellant to hold that he is not guilty of the offence.

16. In the result, the Criminal Appeal is allowed. The judgment dated 18.04.2023 in Spl.S.C.No.37 of 2021 on the file of the learned



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Sessions Judge, Fast Track Mahila Court, Krishnagiri, Krishnagiri District, convicting and sentencing the appellant for the offences under Section 366 of the IPC and Section 5(1) r/w 6(1) of the POCSO Act, is set aside. The appellant/accused is acquitted of the charges. The fine amount, if any, paid by the appellant shall be refunded. Bail bond, if any, executed shall stand discharged.

02.01.2026

Index : yes/no
Speaking /Non-speaking order
Neutral citation : yes/no
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SUNDER MOHAN, J.

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To

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

Pre-delivery Judgment in
Crl.A.No.499 of 2023

02.01.2026