



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26-02-2026

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

CRL A No. 769 of 2023

Vinothkumar @ Vinoth
S/o. Segar, Presently Confined in Puducherry
Central Prison, No.47, Madha Koil Street,
Villianur Puducherry.

..Appellant(s)

Vs

State Rep By
Inspector Of Police, Villianur Police Station,
Crno.159/2017, Puducherry.

..Respondent(s)

Criminal Appeal filed under Section 374(2) of Cr.P.C., praying to set aside the judgement dated 27.06.2022 by the learned Special Judge for Exclusive Trial of Cases under POCSO Act, Puducherry, in Spl.S.C.No.62 of 2019 and convicting him u/s. 366 of IPC and Section 4 of POCSO Act.

For Appellant(s): Mr.R.Sankarasubbu
for Mr.Thiyagu

For Respondent(s): Mr.M.V.Ramachandra Murthy,
Public Prosecutor (Puducherry)
Assisted by
Mr.M.Thamizhmani



JUDGMENT

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The Criminal Appeal challenges the judgement dated 27.06.2022 passed in Spl.S.C.No.62 of 2019 by the learned Special Judge for Exclusive Trial of Cases under POCSO Act, Puducherry, convicting and sentencing the appellant/accused as follows:

<i>Sl. No.</i>	<i>Offence under Sections</i>	<i>Sentence imposed</i>
1.	366 IPC	To undergo 7 years R.I, with a fine of Rs.1,000/- (id) to undergo 3 months S.I.
2.	4 of POCSO Act, 2012	To undergo 10 years R.I, with a fine of Rs.5,000/- (id) to undergo 3 months S.I.
The sentences were ordered to run concurrently.		

2. The case of the prosecution is that the appellant and the victim were known to each other; that the appellant was aged 20 years at the time of occurrence and the victim was aged 14 years; that on 08.08.2017 at about 23.30 hours, the appellant kidnapped the victim girl from the lawful guardianship of her parents, took her to a nearby village and committed penetrative sexual assault, and thereby committed offences under Sections 366 and 376 IPC and Section 4 of the POCSO Act.

3. On the complaint given by the victim's mother (PW3), an FIR was registered for "girl missing" by PW11, the Sub-Inspector of Police. Thereafter, the victim girl was secured and the investigation was handed over to PW12.



PW12 made arrangements to subject the victim to medical examination and also arranged for recording her statement under Section 164(5) Cr.P.C. After examining other witnesses, PW12 filed the final report for the offences under Section 366 IPC and Section 4 of the POCSO Act.

4. The Trial Court framed charges for the aforesaid offences. The prosecution examined 13 witnesses and marked Exs.P1 to P11 to prove its case. Upon appreciation of oral and documentary evidence, the Trial Court found the appellant guilty of the said offences and sentenced him as stated above.

5. The learned counsel for the appellant submitted that the victim had stated to the Doctor after she was secured that she had voluntarily gone with the appellant; that the earliest version of the victim indicated that she and the appellant were in a consensual relationship; and that the date of birth of the victim had not been proved by the prosecution and therefore the offence under the POCSO Act would not be made out.

6. Per contra, the learned Public Prosecutor (Puducherry) for the respondent submitted that the victim herself had stated her date of birth as 13.03.2003 and the appellant had not challenged the same; that in her statement



under Section 164(5) Cr.P.C. and in her deposition before Court, the victim had stated that the appellant committed penetrative sexual assault; that the statement made by the victim to the Doctor has no bearing; and that the prosecution had established its case beyond reasonable doubt and there is no infirmity in the impugned judgment.

7. The learned Public Prosecutor (Puducherry) further submitted that the Doctor had found injuries in the genital part of the victim and therefore it cannot be said that it was a consensual relationship.

8. As stated earlier, the prosecution examined 13 witnesses. PW1 is the victim. PW2 is the uncle of the victim. PW3 is the mother of the victim. PW4 is the witness to the Crime Details Form (Ex.P3). PW5 is the Village Administrative Officer who attested the confession of the appellant. PW6 is the Social Worker in the Social Welfare Department, who recorded the statement of the victim. PW7 is the Police Photographer, who recorded the statement made before PW5. PW8 is the Sub-Inspector of Police who recorded the statement of the victim along with PW12. PW9 is the Doctor who examined the victim and issued the medical examination report (Ex.P6). PW10 is the Doctor who examined the appellant and issued the Potency Certificate (Ex.P8). PW11 is the Assistant Sub-Inspector of Police who registered the FIR (Ex.P9). PW12 is the



Sub-Inspector of Police who conducted the investigation and filed the final report. PW13 is also an Investigating Officer associated with the investigation.

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9. PW2 is the uncle of the victim girl, who secured the victim girl and thereafter lodged the complaint. PW3, the mother of the victim girl, stated that she saw the victim girl in a home on the next day morning after she went missing and, since she was injured, she did not remember what had happened thereafter. Her evidence is of no avail to the prosecution. The other witnesses are either witnesses to the mahazar prepared by the police or the Doctors who examined the appellant and the victim girl, besides the Investigating Officer. Therefore, the prosecution case rests on the sole testimony of the victim girl and the medical evidence.

10. According to PW2, he learnt that the victim was seen with the appellant at the beach and, when he along with PW3 went to the beach, they came to know that the victim had been admitted to a children's home. The victim was examined on the same day after she was secured and PW9, Doctor in the medical report, recorded that the victim stated she had a love affair with the appellant and that she went with him on her own volition. The statement under Section 164 Cr.P.C. was recorded 20 days later. In that statement and in her deposition, the victim stated that it was the appellant who had proposed love



which she rejected.

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11. It is seen that the conduct of the victim and her earlier statement suggest that the relationship was consensual. The evidence of PW2 also suggests that the relationship was consensual. PW3, the mother, had not corroborated the evidence of PW1 with regard to penetrative sexual assault or that her daughter had informed her about such assault.

12. In the light of the above evidence, it has to be seen whether the victim was a child. It is needless to state that if the victim is a child, consent is immaterial. Strangely, in this case, the prosecution has not chosen to prove the age of the victim. Though the victim stated that she was born on 13.03.2003, no document was produced by the prosecution to substantiate the same. The victim also stated that she had passed X Standard examination. Therefore, the prosecution ought to have produced the matriculation certificate or other acceptable document to establish the age of the victim. In the absence of any definite evidence to show that the victim was a minor, this Court is of the view that it cannot be inferred that the victim was a child at the time of occurrence merely because a date has been mentioned by her in the deposition.



13. As stated above, the relationship appears to have been consensual.

The Doctor also observed that in her opinion, there was no evidence of vaginal or urinary intercourse.

14. Considering all the above facts and circumstances, this Court is of the view that it is highly unsafe to convict the appellant, who was also young at the time of the alleged occurrence, on the basis of the evidence adduced by the prosecution. Therefore, this Court holds that the appellant is entitled to the benefit of doubt and is inclined to allow the Criminal Appeal:

(i) The conviction of the appellant for the offence under Section 366 IPC and Section 4 of POCSO Act, 2012, by the learned Special Judge for Exclusive Trial of Cases under POCSO Act, Puducherry, vide judgment dated 27.06.2022 in Spl.S.C.No.62 of 2019, is hereby set aside.

(ii) The appellant is acquitted of the said charges.

(iii) The fine amount, if any paid, shall be refunded.

(iv) The bail bonds, if any, shall stand cancelled.

26-02-2026

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 Special Judge for Exclusive Trial of Cases under POCSO Act,
Puducherry.
- 2.The Inspector of Police,
Villianur Police Station,
Puducherry.
- 3.The Superintendent,
Central Prison, Puducherry.
- 4.The Public Prosecutor,
High Court, Madras.

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