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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30-10-2026

PRONOUNCED ON : 05-11-2026

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

CRL A Nos. 853 and 522 of 2023 and 391 of 2024

Case QR

CNR:{HCMA011325782023}

Crl.A.No.853 of 2023

Srinivasan
S/o. Dharmaraj (late),
No.113/67, P.Balasubramaniam Nagar,
Sowripalayam Road, Puliyakulam,
Coimbatore District.
(The Petitioner is confined
at Central Prison, Coimbatore)

..Appellant(s)

Vs

State Rep By
The Inspector of Police,
Ramanathapuram Police Station, Coimbatore City,
Ref.CR.No.455/2019 dt. 08.06.2019
U/s 4 of Girl Missing Non Act.

..Respondent(s)

CRL A No. 391 of 2024

Case QR

CNR:{HCMA010111192024}

Rasappan @ Rasukutti
s/o. Late Kanniappan, No.24-A,
Poorandampalayam, Senjeri Pirivu,
Sulthan Pettai Sulur, Coimbatore.

..Appellant(s)

Vs

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State Rep.By
The Inspector of Police,
Ramanathapuram Police Station, Coimbatore City.
Cr.No.455 of 2019.

..Respondent(s)

CRL A No. 522 of 2023

Case QR

CNR:{HCMA010776182023}

Jose@luvice Joswa
S/o. Late Francis,
No.60/43, Erimedu, Ammankulam,
Sowripalayam Road, Coimbatore.

..Appellant(s)

Vs

State Rep By
The Inspector of Police,
Ramanathapuram Police Station,
Coimbatore City, Coimbatore.
Cr.No.455/2019.

..Respondent(s)

Criminal Appeals filed under Section 374(2) of the Cr.P.C., to call for the records and set aside the judgment dated 27.03.2023 and consequently acquit the appellants in Spl.C.C.No.105/2019 on the file of the learned Sessions Judge, Principal Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore.

For Appellant(s): in CrlA.Nos.522/23 & 391/24	Mr.Selvakumarasami for Mr.Gopi
in Crl.A.No.853/23	Mr. C. Arunkumar for Mr.Deepanuday
For Respondent(s): in all appeals	Ms.Sharada Vivek, Additional Public Prosecutor

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Common Judgment

These Criminal Appeals have been filed by the accused 1 to 3, challenging the conviction and sentence imposed upon them vide judgment dated 27.03.2023 in Spl.C.C.No.105 of 2019, passed by the learned Sessions Judge, Principal Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore. For the sake of convenience, the parties are referred to as per the ranking before the trial Court.

2. The 1st accused is the appellant in Crl.A.No.522 of 2023, the 2nd accused is the appellant in Crl.A.No.391 of 2024 and the 3rd accused is the appellant in Crl.A.No.853 of 2023.

3 (i) It is the case of the prosecution that the 1st accused, who was aged 30 years at the time of occurrence, already married twice and had children, lured the victim girl aged 15 years and 4 months, threatened her and forced her into a relationship; that he had promised to marry the victim; that on 07.06.2019, the mother of the victim came to know of the relationship and warned the victim; that thereafter, the victim went along with accused 1 to 3 and stayed in the house of the sister of the 2nd

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accused; that the 1st accused made the victim believe that she was married to him and committed penetrative sexual assault on several occasions; that the 2nd accused had helped the 1st accused in taking the victim to various places; that the 3rd accused, who was the lawyer for the 1st accused, had also abetted the commission of the offences by allowing the victim to use his SIM card; that the 4th accused also abetted the other accused; and that on 12.06.2019, the victim returned home and narrated the above incidents to her mother.

(ii) It is the further case of the prosecution that the father of the victim [PW2], had lodged a complaint [Ex.P2] on 08.06.2019, which was registered as an FIR [Ex.P9] in Cr.No.455 of 2019, for 'Girl Missing' by PW15. The victim was secured on 12.06.2019 and produced before the police on the same day, and the offences were altered to Sections 366, 376(DA) of the IPC, Section 5(l) r/w 6 of the POCSO Act and Section 9 of Prohibition of Child Marriage Act, r/w 109 of the IPC. The victim was subjected to medical examination. After examining all the witnesses, PW17, the investigating officer filed the final report against the 1st accused for the offences under Sections 366 of the IPC and Section 5(l) r/w 6 of the POCSO Act and Section 9 of Prohibition of Child Marriage

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Act; against the 2nd accused for the offences under Sections 366A r/w 109 of the IPC and Section 16 r/w 17 of the POCSO Act and Section 11 of Prohibition of Child Marriage Act; against the 3rd accused for the offences under Sections 366A r/w 109 of the IPC and Section 16 r/w 17 of the POCSO Act; and against the 4th accused for the offences under Section 16 r/w 17 of the POCSO and Section 109 of the IPC, before the learned Sessions Judge, Principal Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore.

(iii) On the appearance of the accused, the provisions of Section 207 Cr.P.C., were complied with, and the case was taken on file by the learned Sessions Judge, Principal Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore, as Spl.C.C.No.105 of 2019.

(iv) The trial Court framed seven charges against the accused. The 1st charge was against the 1st accused under Section 366A of the IPC; the 2nd charge was against the 2nd and 3rd accused under Section 366A r/w 109 of the IPC and Section 16 r/w 17 of the POCSO Act; the 3rd charge was against the 1st accused under Section 9 of the Prohibition of Child Marriage Act; the 4th charge was against the 2nd accused under Section 11

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of the Prohibition of Child Marriage Act, 2006; the 5th charge was against the 1st accused under Section 5(l) r/w 6 of the POCSO Act; the 6th charge was against the 4th accused under Section 16 r/w 17 of the POCSO Act; and the 7th charge was against the 1st accused under Section 343 of the IPC. When questioned, the accused pleaded 'not guilty'.

(v) To prove its case, the prosecution examined 17 witnesses as P.W.1 to P.W.17 and marked 15 documents as Ex.P1 to Ex.P15. When the accused were questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against them, they denied the same. The accused did not examine any witness or mark any document on their side. The Section 164 Cr.P.C statement of the victim was marked as Ex.C1.

(vi) On appreciation of oral and documentary evidence, the trial Court acquitted the 4th accused of all the charges and found the other accused guilty and sentenced them as follows:

Accused No.	***Offence under Section***	***Sentence imposed***
A1	5(l) r/w 6 POCSO Act	To undergo RI for ten years and to pay a fine of Rs.10,000/-, in default to undergo SI for six months.
	366 IPC	To undergo RI for five years and to pay a fine of Rs.5,000/-, in default to undergo SI for six months.
	343 IPC	To undergo RI for two years

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Accused No.	*Offence under Section*	*Sentence imposed*
A2	366 r/w 109 IPC	To undergo RI for five years and to pay a fine of Rs.10,000/-, in default to undergo SI for six months.
	16 r/w 17 POCSO Act	To undergo RI for ten years and to pay a fine of Rs.5,000/-, in default to undergo SI for six months.
A3	366 r/w 109 IPC	To undergo RI for five years and to pay a fine of Rs.5,000/-, in default to undergo SI for six months.
	16 r/w 17 POCSO Act	To undergo RI for ten years and to pay a fine of Rs.5,000/-, in default to undergo SI for six months.
The sentences were directed to run concurrently.		

Hence, the accused 1 to 3 have preferred the appeals challenging the said conviction and sentence.

4. The learned counsel for the appellants in Crl.A.Nos.522 of 2023 and 391 of 2024, who are accused 1 and 2 respectively, would submit that the evidence of the victim does not inspire confidence; that the victim's evidence suggests that she had willingly gone with the 1st accused; that due to tutoring she had accused the 1st accused of forcible sexual assault; that the evidence of the doctor [PW11] who examined the victim on 17.6.2019 would show that there was no evidence of any recent forcible vaginal sexual act and that there were no physical injuries and hence, the allegation that the 1st accused had forcible sexual intercourse is false; that as against the 2nd accused, there is no evidence to establish that he had

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committed abetment of either kidnapping or offence of penetrative sexual assault; and that, therefore, the impugned judgment is liable to be set aside.

5. The learned counsel for the appellant in Crl.A.No.853 of 2023/3rd accused would submit that the allegations, even if accepted to be true, would not make out an offence of abetment as against the 3rd accused; that the SIM card of the 3rd accused, which is said to have been used by the victim to speak to the 1st accused, has not been seized; and that therefore, the impugned judgment holding the 3rd accused guilty of abetment of the offences under Section 366A of the IPC and the POCSO Act cannot be sustained.

6. The learned Additional Public Prosecutor, *per contra*, submitted that the victim's age is not in dispute; that she was born on 30.01.2004, as per the Birth Certificate [Ex.P1]; that even assuming that the victim had consented to the relationship with the 1st accused, the consent is immaterial; that the 1st accused is a habitual offender; that he was already married twice and had children, and there are 31 cases registered against him for various offences; that the evidence of the witnesses would reveal that the 2nd and 3rd accused had abetted the commission of the offences;

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and that therefore, no interference is called for in the impugned judgment and prayed for dismissal of the appeals.

7. (i) As stated above, the prosecution examined 17 witnesses. PW1 is the victim, PW2 is the father of the victim, PW3 is the mother of the victim, PW4 is the brother of the victim, PW5 is the doctor who had examined the 1st accused and had issued Potency Certificate [Ex.P4]. PW6 is the auto driver who deposed that the victim, the 1st accused and the 2nd accused travelled in his auto from Sowripalayam to Annur on 08.06.2019 at about 11 a.m.

(ii) PW7 is the elder sister of the 2nd accused and would speak about the fact that the 2nd accused brought the 1st accused and the victim to her house and that the 2nd accused had told her that they could arrange the marriage of the 1st accused to the victim; that thereafter on the next day, she saw the victim girl with a ‘thali’, and when she questioned the 2nd accused, he informed her that the 1st accused had tied that ‘thali’ to the victim. She would also speak about the 1st accused and the victim staying in her house for four days. PW8 is the husband of PW7 and would corroborate the evidence of PW7. Since he did not support the

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prosecution case entirely, he was treated hostile in cross-examination by the prosecution as regards the role played by the 4th accused. PW9 is the son of PW7 and PW8 and is also related to the 2nd accused and would corroborate the evidence of PW7.

(iii) PW10 is a witness to the observation mahazar [Ex.P6]. PW11 is the doctor who had examined the victim girl and had issued the medical examination report [Ex.P7] and his final opinion [Ex.P8]. PW12 is the Head Constable who had assisted the Investigating Officer in taking the victim to the hospital. PW13 is the Constable who had taken the victim to the Magistrate for recording her Section 164 Cr.P.C. statement. PW14 is another Constable who had taken the 1st accused for medical examination from the jail. PW15 is the Sub-Inspector who registered the FIR [Ex.P9] for 'Girl Missing'. PW16 is the Inspector of Police, who conducted a part of the investigation and handed over the investigation to PW17, who, on completion of the investigation, filed the final report.

8 (i) The fact that the victim went missing from her house is spoken to by the victim's parents [PW2 & PW3] and her brother [PW4]. The father [PW2] had immediately lodged the complaint, and it is the

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prosecution case that she was secured on 12.06.2019. The fact that she stayed in the house of PW7 also has not been disputed. The evidence of PW7 has not been discredited in any manner. The age of the victim at the time of the occurrence, according to the prosecution, was 15 years and 4 months. Her date of birth was proved as 30.01.2004 by marking the Birth Certificate [Ex.P1] issued by the Government of Tamil Nadu. The defence have not disputed the date of birth of the victim. Therefore, the fact that the victim was a minor at the time of the occurrence, has been established by the prosecution beyond reasonable doubt and the fact that 1st accused, kidnapped the victim has been proved by the evidence of PW1 to PW4 and the evidence of PW7 to PW9. The victim's Section 164 Cr.P.C. statement was not marked by the prosecution. However, it was marked as a court document [Ex.C1].

(ii). It is the defence case that the victim's evidence cannot be relied upon as she had made contradictory versions and that even according to the complaint, the parents had reprimanded the victim for having a love affair and thereafter, she went missing. The element of consent therefore cannot be ruled out, though the victim would in her deposition state that she was taken against her wish. The reading of the evidence of the victim

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and the contradictions elicited in her cross-examination would suggest that the victim had a consensual affair with the 1st accused. The evidence of PW7, PW8 and PW9, relied upon by the prosecution to show that the victim had stayed in the house of PW7 also does not suggest that the victim stayed in their house contrary to her wish. In fact PW2, the father of the victim in his complaint had referred to his knowledge of victim's relationship with the 1st accused. The evidence of PW3, mother of the victim, is also to the same effect.

(iii) The above narration would suggest that the victim was lured by the 1st accused and she was made to believe that he had a genuine love for her and with an intention to commit penetrative sexual assault, had kidnapped her from her house. Since the victim was admittedly a minor at the time of occurrence, consent is immaterial. It is also not the case of a romantic relationship of two innocent young minds. The 1st accused was aged 30 years and was already a married man having children. According to the prosecution, there are 31 cases against him though they do not form part of the record. But in any case, the fact that the victim girl had consented for a relationship is no defence in a case of this nature, where the accused was aged 30 years at the time of the occurrence and was already a married man. The evidence of PW3, PW4 and PW6, the auto

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driver, who speaks about taking the victim along with the 1st accused to Annur, and the evidence of PW7 to PW9, who would state that the victim stayed with the 1st accused at their house, establishes the offences charged and convicted by the trial court, as stated above. This Court finds no infirmity whatsoever in the finding of guilt recorded by the Court below as against the 1st accused, and hence confirmed.

9 (i). As regards the role played by the 2nd accused, it is seen that he had accompanied the 1st accused and the victim and had provided shelter in the house of PW7, his elder sister. The trial Court found that the marriage has not been established, and acquitted all the accused in respect of the offence under the provisions of the Prohibition of Child Marriage Act.

(ii) As stated above, the 2nd charge as against accused 2 and 3 was for the offences under Section 366A r/w 109 of the IPC and Section 16 r/w 17 of the POCSO Act. In the charge, it is stated that when the 1st accused wanted to take the victim girl from her residence, both the accused 2 and 3 are said to have stated to the victim that if she did not go voluntarily with the 1st accused, they would be forced to take her in the bike.

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(iii) It is not known as to how the two charges viz., Section 366A r/w 109 of the IPC and Section 16 r/w 17 of the POCSO Act, were clubbed under one charge. The ingredients of the two offences are distinct and different. It is needless to say that even if there is evidence to infer that there is abetment to commit the offence under Section 366A, it cannot be inferred that the person abetted the commission of the offence under the POCSO Act.

(iv) Be that as it may, to attract both offences, the prosecution's case is that accused 2 and 3 compelled the victim to go along with the 1st accused. As stated above, the evidence only discloses that the victim voluntarily went along with the 1st accused. This Court has held the 1st accused guilty because, the victim was a minor. But there is no evidence to suggest that any of them forcibly kidnapped the victim from her residence. However, consent is immaterial, if the victim was a minor. The evidence of PW6, the auto driver suggests that the victim went along with the accused 1 and 2 from her residence. Therefore, the evidence at best suggests that the 2nd accused abetted the commission of offence under Section 366A of the IPC.

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(v) The charge does not state as to how the 2nd accused had abetted the commission of offence under the POCSO Act. The facts stated in the charge do not attract the offence under Section 16 r/w 17 of the POCSO Act against the 2nd accused. Even assuming that the evidence adduced in this case shows that the 2nd accused knew that the 1st accused and the victim were staying in the house of PW7, who is the elder sister of the 2nd accused, there is no evidence to conclude that the 2nd accused abetted the commission of the offence under Section 6 of the POCSO Act. The evidence of PW7 to PW9 is of no avail to the prosecution to prove the said charge against the 2nd accused as their role in providing shelter to the 1st accused and the victim is the same as that of the 2nd accused.

(vi) Therefore, this Court holds that the 2nd accused is only guilty of the offence under Section 366A r/w 109 of the IPC. He is not guilty of the offence under Section 16 r/w 17 of the POCSO Act.

10. As regards the role played by the 3rd accused, this Court finds that there is absolutely no evidence to infer the commission of either the offence under Section 366 r/w 109 of the IPC or Section 16 r/w 17 of the POCSO Act, except for the allegation in the chief examination of the

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victim, stating that the 3rd accused assured the 1st appellant that he would take care of the consequences of his act. In fact, the defence had also elicited from the investigating officer that no such statement was made against 3rd accused in her earlier statement. It is also the prosecution case that the SIM card in the name of the 3rd accused was used by the victim to talk to the 1st accused. However, the SIM card has not been seized to establish the said fact. There is absolutely no other evidence to infer any of the offences against the 3rd accused. Therefore, this Court is of the view that the conviction against the 3rd accused cannot be sustained and consequently, the same is liable to be set aside.

11. In the result,

(i) the conviction and sentence imposed on the 1st accused [appellant in Crl.A.No.522 of 2023], is confirmed and the Crl.A.No.522 of 2023, stands dismissed. The 1st accused, who has been granted suspension of sentence by this Court, shall surrender before the trial Court within a period of four weeks from the date of receipt of a copy of this judgment, failing which, the trial Court shall take steps to secure the appellant to serve the remaining period of sentence.

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(ii) the 2nd appellant [appellant in Crl.A.No.391 of 2024] is acquitted of the offence under Section 16 r/w 17 of the POCSO Act and convicted for the offence under Section 366 r/w 109 of the IPC, for which, the sentence imposed by the trial Court, is reduced to the period already undergone, as it is reported that 2nd accused was in custody for about two years and eight months, during the investigation and during the appeal. The fine amount and the default sentence, remain unaltered. Consequently, the Crl.A.No.391 of 2024, stands partly-allowed.

(iii) the 3rd accused [appellant in Crl.A.No.853 of 2023], is acquitted of all the charges and the impugned judgment against him is set aside. The Crl.A.No.853 of 2023, is allowed. The fine amount, if any, paid by the 3rd accused shall be refunded. Bail bond, if any, executed shall stand discharged.

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

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To

1. The Sessions Judge,
Principal Special Court for Exclusive Trial of cases
under POCSO Act,
Coimbatore.

2. The Inspector of Police,
Ramanathapuram Police Station,
Coimbatore City.

3. The Superintendent of Prisons,
Central Prison, Coimbatore.

4. The Public Prosecutor,
High Court, Madras.

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**Pre-delivery common judgment in
CRL A Nos. 853 & 522 of 2023
and 391 of 2024**

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