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IN THE HIGH COURT OF JUDICATURE OF MADRAS

Reserved on : 25.09.2026

Pronounced on : 30.10.2026

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.A.No.1173 of 2024
and
CRL MP.No.12762 of 2026

CNR: {HCMA011669782024}

Surya Prakash @ Surya ... Appellant / Sole Accused

Vs.

State through
The Inspector of Police,
Moolanur Police Station
Tiruppur District
(In Crime No.615 of 2021) ... Respondent / Complainant

PRAYER: Criminal Appeal is filed under Section 415(2) of the Bharatiya Nagarik Suraksha Sanhita, against the Judgment, dated 16.10.2023, passed in Special S.C.No.94 of 2021, by the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Tiruppur.

For Appellant : Dr.R.Alagumani

For Respondent : Mrs.Sharada Vivek,
Additional Public Prosecutor

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JUDGMENT

This Criminal Appeal has been preferred by the appellant, the sole accused in Spl.S.C.No.94 of 2021, on the file of the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Tiruppur, challenging the Judgment, dated 16.10.2023, by which he was convicted and sentenced for the offences under Section 5(l) read with Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for brevity, 'the POCSO Act'), Section 9 of the Prohibition of Child Marriage Act, 2006 (for brevity, 'the PCM Act') and Sections 366 and 342 of the Indian Penal Code, 1860 (for brevity, 'IPC').

2.For the sake of convenience, the parties are referred to in this judgment as they arrayed before the trial Court, i.e., the appellant as 'the accused' and the respondent as 'the prosecution'. In keeping with Section 23(2) of the POCSO Act, the name and identifying particulars of the victim girl and of her family are not mentioned; she is referred to as 'the victim' or PW1 and her mother as PW2.

3. The case of the prosecution, as unfolded in the final report, is briefly as follows:-

(i) The victim and the accused came to know each other through social media platform 'Instagram' and thereafter, used to

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speak over mobile phone. The accused professed love for the victi and expressed a desire to marry her. On 13.09.2021, at about 10.30 a.m., the victim left her house and reached the Tiruchirappalli Central Bus Stand at about 2.30 p.m., where the accused waiting. From there, the accused took her to the 'Irattaimalai Ondikaruppan Temple', where, at about 3.30 p.m., he tied a Thali. Thereafter, the accused took her to the house of his friend Selvakumar at Mahalakshmipuram, K.K.Nagar, Tiruchirappalli, kept her there and, by claiming “we are already married, we can live as husband and wife”, had sexual intercourse with her repeatedly, against her wish, between 13.09.2021 and 20.09.2021. It is alleged that the victim was born on 12.02.2005, aged about 16 years and 7 months on the date of occurrence.

(ii) On 18.09.2021, PW2, mother of the victim, lodged a complaint (Ex.P3) at the Moolanur Police Station, on the basis of which, a case was registered in Crime No.635 of 2021 as ‘Girl Missing’ (Ex.P10, the First Information Report). PW9, Inspector of Police, took up the investigation, inspected the place from where the victim gone missing, prepared observation mahazar (Ex.P4) and rough sketch (Ex.P11) and examined witnesses. Thereafter, PW11, Inspector of Police, took over the investigation.

(iii) On 21.09.2021, he traced the victim near the Moolanur bus stop, noticed a yellow thread around her neck, enquired her, arrested the accused at the same place and brought him to the police station. On the statement of the victim, the sections of law altered to Section

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363 IPC, Section 9 of the PCM Act and Section 5(l) read with Section 6 of the POCSO Act. The victim sent to the Government Hospital, Dharapuram, where she examined by PW5, Dr.Sakthisree (Ex.P6), and the accused examined by PW6, Dr.Periyasamy (Ex.P7). PW11 inspected the Irattaimalai Ondikaruppan Temple (Ex.P9 – observation mahazar and Ex.P13 – rough sketch) and the house of Selvakumar at K.K.Nagar, Tiruchirappalli (Ex.P8 – observation mahazar), obtained a certificate regarding the date of birth of the victim from the Headmaster of the Government Higher Secondary School, Kilankundal (Ex.P15), the victim's statement under Section 164 Cr.P.C. recorded by the learned Judicial Magistrate, Dharapuram on 27.09.2021 (Ex.P2), and forwarded the vaginal smear and swab to the Forensic Science Department, Coimbatore, on 29.09.2021. After obtaining the opinion of the Deputy Director of Prosecution, the sections were altered on 22.10.2021 (Ex.P16) to Sections 366 and 344 IPC, Section 9 of the PCM Act and Section 5(l) read with Section 6 of the POCSO Act, and the final report was filed on 02.11.2021 before the trial Court.

4. The final report taken on file as Spl.S.C.No.94 of 2021 under Section 33(1) of the POCSO Act. After furnishing copies of the documents under Section 207 Cr.P.C., charges were framed against the accused under Sections 366 and 344 IPC, Section 9 of the PCM Act and Section 5(l) read with Section 6 of the POCSO Act. The accused denied the charges and claimed trial. The trial was conducted *in camera*.

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5. To bring home the charges, the prosecution examined PW1 to PW11 and marked Exs.P1 to P16. No material object was produced. The incriminating circumstances appearing in the prosecution evidence put to the accused under Section 313(1)(b) Cr.P.C., which he denied as false and stated, “It is a false case. I only spoke to the girl over the phone; for that they have lodged a case.” He examined his friend Selvakumar as DW1; no document marked on the defence side.

6. The learned Sessions Judge, by the impugned judgment dated 16.10.2023, held that the victim was a ‘child’ within the meaning of Section 2(1)(d) of the POCSO Act, on the basis of the evidence of PW1, PW2 and the school Transfer Certificate (Ex.P1), which recorded her date of birth as 12.02.2005. Observing that no suggestion put to the victim or to her mother disputing the date of birth, and finding the evidence of the victim to be reliable, the trial Court held that the foundational facts established, the presumptions under Sections 29 and 30 of the POCSO Act available and not rebutted, and the delay of five days in lodging the complaint satisfactorily explained. The evidence of DW1 held not to affect the prosecution case. The accused found not guilty of the offence under Section 344 IPC, but found guilty of the offences under Section 5(l) read with Section 6 of the POCSO Act, Section 9 of the PCM Act and Sections 366 and 342 IPC and sentenced as follows:

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Sl. No.	Offence	Sentence	Fine	Default
1.	Section 5(l) r/w 6 of the POCSO Act	Rigorous Imprisonment for 20 years	Rs.1,500/-	Rigorous Imprisonment for 1 year
2.	Section 9 of the Prohibition of Child Marriage Act, 2006	Rigorous Imprisonment for 1 year	Rs.1,000/-	Rigorous Imprisonment for 6 months
3.	Section 366 IPC	Rigorous Imprisonment for 7 years	Rs.1,000/-	Rigorous Imprisonment for 6 months
4.	Section 342 IPC	Rigorous Imprisonment for 1 year	–	–

7. The trial Court ordered the sentences to run concurrently, directed the period of detention from 21.09.2021 to 22.02.2022 to be set off under Section 428 Cr.P.C., and directed payment of Rs.2,00,000/- as compensation to the victim under Section 33(8) of the POCSO Act, adjusting the interim compensation ordered in C.M.P.No.33 of 2022, dated 25.02.2022. Placing reliance on the decision of this Court in ***State rep. by the Public Prosecutor, High Court, Madras v. Dandayutham @ Kannan and others (Crl.A.No.482 of 2016)***, the trial Court further directed a copy of the judgment to be sent to the Commissioner/Director of Social Defence, Tamil Nadu, to examine the condition of the accused's wife, who, according to the accused, would be rendered destitute if he imprisoned. Aggrieved by the same, the accused is before this Court.

8. Dr.R.Alagumani, the learned counsel for the appellant would contend that the impugned judgment is contrary to law and the

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weight of evidence and the prosecution failed to prove its ca beyond reasonable doubt. The age of the victim, which is the very foundation of the charges under the POCSO Act, the PCM Act and Section 366 IPC, not proved. No birth certificate produced. The school Transfer Certificate marked through the victim herself; the Headmaster or any other official of the school, who maintained the admission register not examined. No independent witness examined on the point and no ossification or other age-determination test conducted. The prosecution has thus not complied with Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

9. The victim herself says that she came to know the accused through 'Instagram', he contacted her on 13.09.2021 and she travelled on her own to the Tiruchirappalli Bus Stand. The mobile phones of the victim and the accused not seized and no call details collected, which makes the prosecution story a cooked-up version. The prosecution failed to prove from where the victim allegedly taken, where the marriage took place and where she was allegedly sexually assaulted. No independent witness – neither the priest of the temple, nor the auto driver, nor any person from the neighbourhood of the house of Selvakumar – examined, and the yellow thread (Thali) not seized. DW1, Selvakumar, in whose house the victim said to have kept for eight days, categorically deposed that the accused never came to his house with any girl.

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10. The complaint lodged on 18.09.2021 though the victim said to be missing from 13.09.2021, and this inordinate delay of five days is highly doubtful. The arrest of the accused on 21.09.2021 near the Moolanur Bus Stop is not proved, since PW4, the witness to the arrest, turned hostile and no independent witness spoken to the arrest or to having seen the victim along with the accused. The medical evidence does not corroborate the prosecution case. PW5 found no external injury on the victim and the ultrasound scan showed the uterus to be normal. The report of the Forensic Science Department on the vaginal smear and swab not produced. The accused aged about 19 years at the time of the occurrence and has been falsely implicated, and the trial Court ought not to have believed the interested and uncorroborated version of the victim.

11. The learned counsel, in support of his above contentions, has relied on the Judgment of ***The State of Uttar Pradesh Vs. Anurudh and another*** reported in ***2026 SCC online SC 40; Karan Kumar Vs. State and anr (2025 SCC Online Del 4239); Sunil Kumar Nishad Vs. State of Chhattisgarh (2025 SCC Online Chh 3012); The State Vs. Hitesh (2025 SCC Online Del 962); Riyaz Vs. State (Govt. of NCT of Delhi) 2924 (SCC Online Del 5918); Arifkhan Vs. The State (2024 SCC Online Del 138); P.Yuvaprakash Vs. The State (2024) 17 SCC 684; Ashik Ramjan Ansari Vs. The State of Maharashtra (2023 SCC Online Bom***

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1390; Arjun Kumar Vs. State of Bihar (2021 SCC Online Bo 1390); Vijayalakshmi and another Vs. The State (2021 SCC Online Mad 317); Sabari Vs. The State (2019) SCC Online Mad 18850; Rajak Mohammed Vs. The State of Himachal Pradesh (2018) 9 SCC 248; Alamelu and Another Vs. The State (2011) 2 SCC 385.

12. Per contra, Mrs.Sharada Vivek, the learned Additional Public Prosecutor appearing for the respondent would support the impugned judgment and submit that the victim aged 16 years and 7 months on the date of occurrence, as is established by her evidence, the evidence of her mother (PW2) and the school Transfer Certificate (Ex.P1), the date of birth not having been challenged in cross-examination. The victim given a consistent and cogent account of the accused having enticed her with a promise of marriage, tied a 'Thali' at the temple and had sexual intercourse with her repeatedly at the house of his friend. The conviction can safely rest on her sole testimony. The medical evidence shows that her hymen not intact. Once the foundational facts established, the presumptions under Sections 29 and 30 of the POCSO Act, gets attracted and the accused failed to rebut them. The delay in lodging the complaint properly explained. DW1, being a friend of the accused, he is an interested witness whose evidence rightly rejected. He would further submit that the appeal deserves to be dismissed.

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13. This Court heard the learned counsel on either side and carefully perused the materials available on record, including the evidence adduced and the Judgment impugned.

14. The following points arise for consideration in this appeal:

(i) Whether the prosecution has proved beyond reasonable doubt that the victim was a ‘child’, i.e., below 18 years of age, on 13.09.2021?

(ii) Whether, in the absence or presence of such proof, the prosecution has otherwise established the charges under Section 5(l) read with Section 6 of the POCSO Act, Section 9 of the PCM Act and Sections 366 and 342 IPC., against the accused beyond reasonable doubt?

(iii) Whether the conviction and sentence recorded by the trial Court warrant interference?

15. The offences under the POCSO Act and the PCM Act, as well as the offence under Section 366 IPC., as framed in this case, presuppose that the victim was a minor. Under Section 2(1)(d) of the POCSO Act, a ‘child’ means any person below the age of eighteen years. The charge under Section 9 of the PCM Act requires proof that the marriage contracted was a child marriage, i.e., the bride was below eighteen years. Likewise, the finding of the trial Court under Section 366 IPC proceeds on the footing that the victim, being under

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eighteen years, was 'taken or enticed', keeping her from lawful guardian within the meaning of Section 361 IPC. Age is therefore not a peripheral matter. It is a fact on which the whole case of the prosecution rests, and, like every other ingredient of the offence, it has to be proved by the prosecution beyond reasonable doubt.

16. The trial Court itself, while explaining the presumptions under Sections 29 and 30 of the POCSO Act, extracted the decision in ***Sri Joubansen Tripura v. The State of Tripura (CDJ 2021 THC 050)***, wherein it has been held that prosecution is legally bound to establish the foundational facts, which include the proof that the victim is a child, before the presumption against the accused is available. The Hon'ble Supreme Court in ***Attorney General for India v. Satish ((2022) 5 SCC 545***; held that the presumption operates only on the basis of the foundational facts proved by the prosecution. Hence, unless the prosecution first establishes that the victim was a child, the statutory presumptions never come into play, and the burden does not shift to the accused.

17. The manner in which the age of a person who is a victim of an offence under the POCSO Act is to be determined is also well settled. Section 34(2) of the POCSO Act empowers the Special Court to determine the age of the person, and the Hon'ble Supreme Court, in ***Jarnail Singh v. State of Haryana ((2013) 7 SCC 263)***, held that the principles contained in the Juvenile Justice Rules for

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determining the age of a child in conflict with law apply equally determining the age of a child victim. In ***P. Yuvaprakash v. State rep. by Inspector of Police (2023 SCC OnLine SC 846)***, the Hon'ble Supreme Court held that, after the Juvenile Justice (Care and Protection of Children) Act, 2015 came into force, Section 94 of that Act governs the determination of the age of a child victim, and that the order of preference prescribed therein must be followed. Section 94(2) provides that the age shall be determined by taking, in the first instance, (i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination board, if available, and in its absence, (ii) the birth certificate given by a corporation, municipal authority or panchayat; and only in the absence of both, (iii) by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board.

18. Tested on these principles, the evidence on the age of the victim in this case is unsatisfactory. The materials on which the trial Court relied are the oral evidence of PW1 and PW2 and Ex.P1, the school Transfer Certificate recording the date of birth as 12.02.2005. Ex.P1 marked through PW1, the victim herself. She is neither the author of the document nor the person who made the entry, and she cannot speak to the basis on which the date of birth recorded in the school at the time of admission. The school official who issued Ex.P1, or who maintained the admission register of the school in which the

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victim first admitted, not examined as a witness. The admissi register or the application form of admission, from which the entry in Ex.P1 drawn, not produced. The person who furnished the date of birth at the time of admission also not shown. Though PW11 said to have obtained a certificate (Ex.P15) from the Headmaster of the Government Higher Secondary School, Kilankundal, on 24.09.2021, the Headmaster not examined, and the certificate marked only through the Investigating Officer, who has no personal knowledge of the contents of the school records and cannot prove them. Mere marking of document will not suffice.

19. The evidentiary value of an entry regarding the date of birth in a school record depends upon the proof of the basis on which it was made. In ***Birad Mal Singhvi v. Anand Purohit (1988 Supp SCC 604)***, the Hon'ble Supreme Court held that entries in school registers or certificates relating to the date of birth have no probative value unless the person who gave the information, or the basis of the entry, is proved by the evidence of the person who made it or by other acceptable materials. The same principle applied by the Hon'ble Supreme Court in ***Alamelu v. State ((2011) 2 SCC 385)***, where it was held that a school transfer certificate, though a public document, can be of use only to the extent that the entry therein is shown to have a reliable foundation, and that without the evidence regarding the source of the entry the age of the prosecutrix cannot be held to be proved. In ***P. Yuvaprakash,*** the Hon'ble Supreme Court

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further pointed out that a transfer certificate which is not shown be a date of birth certificate issued by the school as contemplated in Section 94(2)(i) of the Act cannot, by itself, be treated as conclusive proof of age. In the present case, the prosecution not even attempted to place before the Court the primary documents, namely the admission register of the first school attended by the victim or a birth certificate issued by the local authority.

20. Further, though the victim sent to the Government Hospital, Dharapuram, and examined by PW5, no ossification test or any other medical age-determination test conducted, and neither Ex.P6 nor Ex.P7 contains any opinion as to her age. The oral statement of PW1 that she born on 12.02.2005 and the oral statement of PW2 to the same effect, unsupported by any birth record, hospital record or primary school record, are, in the circumstances of this case, not sufficient to prove the age of the victim beyond reasonable doubt, particularly when the consequences of a finding that she was a child are as grave as a sentence of twenty years' rigorous imprisonment.

21. The trial Court sought to fill this gap by observing that no suggestion put to PW1 and PW2 disputing the date of birth. This Court is unable to agree. The burden of proving every ingredient of the offence is on the prosecution and does not shift to the accused merely because no question put in this regard. The accused is not required to disprove a fact that the prosecution not legally proved,

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and, as noticed above, the presumption under Section 29 of t POCSO Act also does not relieve the prosecution of the obligation to prove first that the victim is a child. The absence of a suggestion cannot convert an inadmissible or unproved entry in a school certificate into legal proof of age. Further, the trial Court not recorded that the transfer certificate was shown to have been prepared from the admission register or that the primary document verified. The finding that the victim aged 16 years and 7 months on 13.09.2021 is thus not supported by legally acceptable evidence.

22. It is also relevant to note that the appellant, in his answer to the question put under Section 235(2) Cr.P.C. on the quantum of sentence, stated that his marriage taken place only seven months earlier and that his wife would become destitute if he sent to prison. This statement made at the stage of hearing on sentence, after the finding of guilt rendered, and can neither be regarded as evidence nor be used to supply the missing proof of the prosecution. Even if taken at its face value, it says nothing about the age of the girl he claims to have married. The marriage of two adults, if that is what it was, is not an offence. In his statement under Section 313 Cr.P.C., the appellant admitted nothing more than speaking to the girl over the mobile phone, and no admission as to her age or as to any offence can be culled out from it. Admittedly, no electronic evidence produced to prove both appellant and victim were together during the relevant period.

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23. In view of the above, this Court holds that the prosecution failed to prove beyond reasonable doubt that the victim was below 18 years of age on 13.09.2021. The finding of the trial Court to the contrary is perverse and is liable to be set aside. The Point No.1 is answered accordingly in favour of the appellant.

24.In view of the finding on Point No.(i), the very basis of the convictions under Section 5(l) read with Section 6 of the POCSO Act, Section 9 of the PCM Act and Section 366 IPC, as recorded by the trial Court, is lost. The accused not charged under Section 376 IPC, and the prosecution not put to proof of the lack of consent of an adult woman, which never the case of the prosecution. Nonetheless, since this Court is the Statutory Court and the trial Court held the evidence of the victim to be wholly reliable, it is necessary to examine whether, even on its own terms, the evidence on record establishes the remaining ingredients of the offences beyond reasonable doubt.

25. The Hon’ble Supreme Court classified witnesses as wholly reliable, wholly unreliable, and neither wholly reliable nor wholly unreliable, in ***Vadivelu Thevar v. State of Madras (AIR 1957 SC 614)***, a classification followed in the decision relied on by the trial Court. In the third category, the Court has to be circumspect and look for corroboration in material particulars by reliable testimony, direct or circumstantial. As the Supreme Court has stated in the very

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passage extracted by the trial Court from ***Sri Joubansen Tripura***, POCSO cases an onerous duty is cast on the trial Court to ensure a more careful scrutiny of the evidence, especially where it consists of the oral testimony of the victim alone and is not corroborated by other oral, documentary or medical evidence. The question is whether the victim's evidence here is of such sterling quality that no corroboration is required.

26. The victim's account is that she came to know the accused through Instagram. On 13.09.2021, the accused called her over phone to "meet"; although she told him that her mother and father would scold her, she travelled from her house to the Tiruchirappalli Bus Stand, as asked. From there, they went in an auto belonging to the accused's friend, 'Jersey Anna', to the Irattaimalai Temple. She told the accused that she did not want to marry him. He told her that he would die, if they did not marry. He tied a Thali at the temple, they then went by the same auto to the house of 'Selvakumar', no one was in the house, she asked him to take her home as her mother would scold her, but he said that he would take her the next day, he had sexual intercourse with her against her wish on that night, and during the eight days, she stayed there, he had intercourse with her three times. She says that after eight days she asked to see her mother, he brought her via Vellakovil to the bus stand and the Dharapuram All Women Police caught them there.

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27. On a careful scrutiny, this Court finds that the version of the victim is not corroborated in any material particular, and several features of the prosecution case leave the Court unable to rely on it as sterling. The victim's own version shows that she voluntarily left her house, travelled by herself to the bus stand at the accused's call, accompanied him in an auto to the temple and then to the house of his friend, stayed there for eight days. She does not say that she was carried away by force, threatened with any weapon, or physically restrained at any stage. There is no evidence of her raising any alarm, seeking help from any person, or attempting to leave during eight days. Her case is that the accused expressed a desire to marry and said that he would take his own life if she refused, it is on this basis she says the marriage was solemnised.

28. As regards the marriage at the temple, there is no evidence other than the victim's word. Neither the priest or any person from the temple, nor the auto driver examined. No photograph, no invitation, no receipt and no Thali or yellow thread recovered. Though PW11 says that he noticed a yellow thread around the victim's neck on 21.09.2021, it was not seized and no material object produced before the Court. Ex.P9, observation mahazar of the temple, and Ex.P13, the rough sketch, merely describe a place. they do not prove that any marriage took place there on 13.09.2021. As regards stay at the house of Selvakumar, the prosecution relies

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upon the victim's statement and Ex.P8, observation mahazar of t house. DW1, Selvakumar, deposed that he himself, his wife, his son (a new-born child) and his mother in the house during that period. The accused never brought any girl to the house, and the accused not even come there as alleged. The trial Court rejected DW1's evidence mainly because the victim's version to be wholly reliable. This is a circuitous reasoning, which is not permissible. The prosecution not examined the inmates of the house or any neighbour, nor did it place any evidence, apart from the victim's word, to show that the victim stayed there for eight days. The only witness who spoke about Ex.P8, PW7, deposed to nothing more than the preparation of the mahazar.

29. The evidence of PW2 raises further doubts. She deposed that when she called the victim's phone number, a woman answered the call, introduced herself as the mother of the victim's friend, and asked to send the girl home, the girl did not return. when PW2 called again, the victim herself told her not to search for her. as she "found her own life". The woman who answered the call, whose identity and role is unexplained, not traced or examined. Neither the victim's mobile phone nor the accused's mobile phone seized, and no call detail records collected to show where the victim was, and with whom, between 13.09.2021 and 21.09.2021. The statement of the victim to her mother is also not consistent with the prosecution theory of eight days of forcible confinement in a house with the family of a third party.

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30. The arrest and the recovery of the victim on 21.09.2021 are spoken to only by PW11, the Investigating Officer, as the arrest witness, PW4, turned hostile. There is a difference between the victim's version, (that the All Women Police at Dharapuram caught them at the bus stand) and the version of PW11 (that he himself traced her near the Moolanur bus stop and arrested the accused there). It is not explained where the victim and the accused were between the end of the alleged stay on 20.09.2021 and the arrest on 21.09.2021.

31. The medical evidence not corroborated the allegation of forcible sexual intercourse. PW5 found no external injury on the victim, the urine pregnancy test was negative and the ultrasound scan showed the uterus to be normal. The finding that the hymen not intact and the vagina admitted two fingers, at best, indicates past sexual activity or physical exertion. It neither indicates that it was without consent nor does it connect the accused with it. Although the vaginal smear and swab sent to the Forensic Science Department, Coimbatore, on 29.09.2021, no report produced to show the presence of semen or any other material connecting the accused to the offence, and the reason for this is not explained. PW6 deposed to the extend the accused capable of sexual intercourse.

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32. The prosecution case therefore rests solely on t testimony of the victim, which is not corroborated with any material particular and is, for the reasons given above, not of such unimpeachable quality as to be accepted without corroboration, particularly since the prosecution has failed to prove the essential foundational fact of age. The trial Court, in relying on the principles for appreciating the evidence of an injured eye-witness extracted from ***Balu Sudam Khalde v. State of Maharashtra,*** and on the decision of the Hon'ble Supreme Court in ***Mahendra Singh v. State of M.P.***, has not examined the above omissions and infirmities.

33. As far as the delay in lodging the complaint is concerned, the Court considered the decisions in ***State of Himachal Pradesh v. Gian Chand ((2001) 6 SCC 71)*** and ***Deepak v. State of Haryana ((2015) 4 SCC 762)***, relied on by the trial Court, which hold that delay in lodging a complaint in a sexual offence is not by itself a ground to discard the prosecution case where it is explained. The trial Court accepted the explanation offered by PW2. This Court does not hold the delay of five days, by itself, to be fatal to the prosecution. The conviction cannot, however, be sustained for the reasons stated above on age and on the absence of corroboration of the victim's account.

34. Even otherwise, assuming that age had been proved, the offence under Section 366 IPC requires that the victim is kidnapped

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or abducted with the intent that she may be compelled to marry a person against her will or be forced or seduced to illicit intercourse. In ***S. Varadarajan v. State of Madras (AIR 1965 SC 942)***, the Hon'ble Supreme Court distinguished between 'taking' a minor out of keeping of the lawful guardian and the minor's voluntarily accompanying a person who did nothing to induce her to leave. On the victim's own showing, she herself left home and reached the bus stand on her own accord, after she had been speaking to the accused on the mobile phone regularly. It is not the prosecution case that the accused came to her house or used force or any other inducement at the time of her leaving it; and the prosecution not proved that she compelled to marry against her will. In the absence of proof of age, the question of 'taking' from lawful guardianship under Section 361 IPC does not arise, and the ingredient of abduction under Section 362 IPC, namely compulsion by force or inducement by deceitful means, has not been established on any acceptable evidence.

35. Section 342 IPC punishes wrongful confinement, which requires that a person be wrongfully restrained in such a manner as to prevent that person from proceeding beyond certain limits. The victim not stated that she was locked in a room, guarded, or prevented from leaving the house at any time during her stay. According to her, the accused promised to take her home the next day. Such a statement cannot by itself amount to wrongful confinement. The trial Court, having found that the offence under

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Section 344 IPC not made out, held the accused guilty of Section 34 IPC on the basis of the same stay of eight days at the house of Selvakumar, which, as discussed above, has not been established by any reliable evidence other than the uncorroborated word of the victim. The conviction under Section 342 IPC is also unsustainable.

36. The offence under Section 9 of the PCM Act. The offence requires that the accused, a male above eighteen years of age, contracts a child marriage, and, for that, the prosecution has to prove (a) that the bride was below eighteen years, and (b) that a marriage between her and the accused was actually performed. As held on Point No.(i), the prosecution not proved that the victim was below eighteen years, and, as discussed in paragraph above, the evidence of the solemnisation of the marriage is confined to the victim's word alone. The conviction under Section 9 of the PCM Act cannot be sustained.

37. The offence under Section 5(l) read with Section 6 of the POCSO Act. The offence of aggravated penetrative sexual assault requires proof that victim was a 'child' and that the accused committed penetrative sexual assault on her more than once or repeatedly. The prosecution failed to prove that the victim was a child, and the other ingredient, the commission of the acts of penetration by the accused, rests solely upon the testimony of the victim, which is uncorroborated by medical, forensic or any other

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evidence. The presumptions under Sections 29 and 30 of the POCSO Act cannot be invoked in the absence of proof of the foundational facts. The conviction under Section 5(l) read with Section 6 of the POCSO Act is therefore unsustainable.

38. The above discussion shows that the learned Sessions Judge not appreciated the evidence in accordance with the settled principles. The trial Court erred in treating the unproved Ex.P1 as proof of age on the basis of the absence of any suggestion in cross-examination, in treating the victim's evidence as wholly reliable without insisting on corroboration, in rejecting the evidence of DW1 for no reason other than the acceptance of the victim's version, and in not considering the material omissions in the investigation. The prosecution not proved its case beyond reasonable doubt, and the benefit of doubt must go to the accused. Points Nos.(ii) and (iii) are answered accordingly.

39. In the result, this Criminal Appeal is allowed. The conviction and sentence imposed on the appellant/accused by the Judgment, dated 16.10.2023, passed by the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Tiruppur, in Spl.S.C.No.94 of 2021, are set aside, and the appellant is acquitted of all the charges. The appellant, who is now confined in the Central Prison, Coimbatore, shall be released forthwith, unless his custody is required in connection with any other case. The fine amount, if any,

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paid by the appellant shall be refunded to him. Consequent connected miscellaneous petition is closed.

40. The order of the trial Court directing payment of compensation of Rs.2,00,000/- under Section 33(8) of the POCSO Act, and the consequential directions to the Commissioner/Director of Social Defence, Tamil Nadu, and the District Child Protection Officer, Tiruppur, with regard to the victim and to the appellant's wife, stand set aside. However, any interim compensation already disbursed to the victim pursuant to the order, dated 25.02.2022, shall not be recovered from her.

41. The Registry is directed to ensure that the name and identifying particulars of the victim and her family do not appear in the records or in the copy of the judgment that is made public, in terms of Section 23(2) of the POCSO Act.

42. The Registry is directed to send a copy of this judgment to the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Tiruppur, along with the records, and to the Superintendent, Central Prison, Coimbatore, for necessary action.

30.10.2026

Index : Yes / No
Internet : Yes / No
mpk

Note : Registry is directed to issue order copy forthwith.

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To

1. The Sessions Judge,
   Magalir Neethimandram
   (Fast Track Mahila Court),
   Tiruppur.

2. The Superintendent,
   Central Prison,
   Coimbatore

3.The Inspector of Police,
  Moolanur Police Station
  Tiruppur District

4. The Commissioner/Director of Social Defence,
   Tamil Nadu.

5. The District Child Protection Officer,
   Tiruppur.

6. The Public Prosecutor,
   High Court,
   Madurai.

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M.NIRMAL KUMAR, J.

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Pre-Delivery Judgment made in CRL.A.No.1173 of 2024

30.10.2026

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