



Crl.A.No.827 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2026

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN
AND
THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

Crl.A.No.827 of 2018

S.Govindaraj,
S/o.Sampath,
274, Vellakal Village, Ambur Taluk,
Vellore District.

Appellant(s)/Accused

Vs

State represented by
The Inspector of Police,
All Women Police Station.
Vaniyambadi, Vellore District.
(Crime No.3 of 2017)

Respondent(s)/Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C. against the judgment dated 03.08.2018 passed in Spl.S.C.No.66 of 2017 on the file of the Fast Track Mahila Court, (Sessions Court), Vellore, Vellore District and to set aside the same.



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For Appellant(s): Mr.M.Palanivel
For Respondent(s): Mr.A.Damodaran
Additional Public Prosecutor
assisted by Ms.Arifa Thasneem

JUDGMENT
(delivered by P.Velmurugan, J.)

Challenging the judgment dated 03.08.2018 passed in Spl.S.C.No.66 of 2017 on the file of the Fast Track Mahila Court, (Sessions Court), Vellore, Vellore District, the appellant has preferred the above appeal.

2. The brief case of the prosecution is as follows:

2.1 During the village festival in the year 2016, the appellant is said to have developed friendship with the victim girl “X” (PW1), who was aged about 15 years. While so, on 09.10.2016 around 10.00 a.m., the appellant, on the promise of marriage, has forcible sexual intercourse with “X” (PW1), due to which, “X” (PW1) got pregnant. On 02.04.2017, “X” (PW1) along with her father (PW2) and grandmother went to the appellant’s house and informed above the pregnancy of “X” (PW1) and asked the appellant to marry her, for which, the appellant said that he will not marry “X” (PW1)



and if they demand for the same, he will kill “X” (PW1). Subsequently, “X” (PW1) gave birth to a female child on 11.07.2017.

2.2 On the complaint (Ex.P1) dated 03.04.2017 given by “X” (PW1), the respondent/police registered a case in Crime No.3 of 2017 for the offences under Sections 376, 506(II) IPC and Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012 (for brevity “the Act”).

2.3 After completing the investigation and based on the evidence collected, the respondent/police filed the chart sheet against the appellant for the offences under Sections 417 and 506(II) IPC and Section 6 r/w 5(j)(ii) of the POCSO Act before the Fast Track Mahila Court, (Sessions Court), Vellore District and the same was taken on file in S.C.No.66 of 2017, for trial.

2.4 On appearance of the appellant, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in Spl.S.C.No.66 of 2017 and was made over to the Fast Track Mahila Court, (Sessions Court), Vellore, Vellore District, for trial.

2.5 The trial Court framed the charges under Sections 366 and 506(II) IPC and Section 5(j)(ii) r/w 6 of the POCSO Act against the



appellant herein. When questioned, the appellant pleaded 'not guilty'.

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2.6 To prove the guilt of the appellant, the prosecution examined ten witnesses and marked sixteen exhibits.

2.7 After completion of prosecution side evidence, when the appellant were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. No witness was examined on the side of the appellant nor any document marked.

2.8 After considering the oral and documentary evidence and upon hearing either side, the trial Court, by judgment dated 03.08.2018 in Spl.S.C.No.66 of 2017, has convicted and sentenced the appellant as under:

<i>Provision under which convicted</i>	<i>Sentence</i>
Section 366 IPC	Seven years rigorous imprisonment and fine of Rs.1,000/-, in default to undergo one month rigorous imprisonment.
Section 506(II) IPC	One year rigorous imprisonment.
Section 5(j)(ii) r/w 6 of the POCSO Act	Life imprisonment and fine of Rs.2,000/-, in default to undergo two months rigorous imprisonment.
The aforesaid sentences were ordered to run concurrently.	

2.9 Aggrieved over the same, the appellant has preferred the above appeal.



3. The learned counsel appearing for the appellant would submit that the appellant only with the consent of “X (PW1) had sexual intercourse with her and therefore, it cannot be stated that the appellant has committed forcible penetrative assault on “X” (PW1). He would further submit that since “X” (PW1) was minor at the time of occurrence, the appellant did not marry her, but, subsequently, after she attained majority, the appellant married “X” (PW1). Further, he would submit that the appellant never kidnapped “X” (PW1) and had sexual intercourse with her and therefore, the offence under Section 366 IPC would not attract. He would further submit that “X” (PW1) was not medically examined initially and therefore, the prosecution has not proved that the appellant had committed penetrative sexual assault on “X” (PW1) without her consent and therefore, the appellant cannot be convicted under the POCSO Act. Hence, he would submit that the conviction and sentence imposed on the appellant have to be set aside by allowing this appeal.

4. The learned Additional Public Prosecutor would submit that “X” (PW1), in her evidence, has categorically stated about the specific overt act against the appellant that he has committed penetrative sexual assault on



her. He would further submit that as per the birth certificate (Ex.P4) and transfer certificate (Ex.P3) of “X” (PW1), at the time of occurrence “X” (PW1) was only 15 years and she is a ‘child’ under the definition of the POCSO Act. He would further submit that “X” (PW1) was produced before the Judicial Magistrate for recording statement under section 164 Cr.P.C. and the same was marked as Ex.P2, which was corroborated by the evidence of the father (PW2) of “X” (PW1). Further, he would submit that the Medical Officer, who treated “X” (PW1) in the hospital, was examined as PW5 and she has clearly stated when “X” (PW1) was brought to the hospital, she was five months pregnant and the accident register was marked as Ex.P8 and medical records were as Exs.P9 and P10. It is his further submission that the Forensic Expert was examined as PW9, who has clearly spoken about the DNA test conducted and the DNA test report (Ex.P14) clearly shows that the appellant is the biological father of the infant child born to “X” (PW1) and the birth certificate of the child was also marked as Ex.P5, as per which, “X” (PW1) gave birth to the child on 10.07.2017. Therefore, he would submit that the evidence of “X” (PW1) and medical evidence clearly shows that “X” (PW1) was subjected to penetrative sexual assault and from the evidence of “X” (PW1) and DNA test report (Ex.P14),



it is clear that the appellant is the one, who committed penetrative sexual assault on “X” (PW1). He would further submit that since “X” (PW1) was aged about 15 years at the time of occurrence and got pregnant due to the penetrative sexual assault committed by the appellant, the offence falls under Section 5(j)(ii) of the POCSO Act, which is punishable under Section 6 of Act, *ibid.* and hence, the prosecution has proved the case beyond all reasonable doubts. Therefore, the trial Court has rightly convicted and sentenced the appellant and this criminal appeal is liable to be dismissed as the same is devoid of merits.

5. Heard the learned counsel on both sides and perused the records.

6. The specific case of the prosecution is that on 09.10.2016 around 10.00 a.m. the appellant had committed forcible penetrative sexual assault on “X” (PW1), due to which, she got pregnant and on the fifth month of her pregnancy, since she developed pain, she was taken to the hospital. On clinical test, the doctor found that “X” (PW1) was pregnant and therefore, the complaint (Ex.P1) has been lodged against the appellant. The



case was initially registered for the offences under Sections 376 and 506(I) IPC and Sections 4 and 8 of the POCSO Act and subsequently, during investigation the case was altered to one under Sections 363, 366, 3769i), 417 and 506(II) IPC and Sections 4 of the POCSO Act. After receiving DNA test report (Ex.P14), again the case was altered to one Sections 366 and 506(II) IPC and Section 4 of the POCSO Act. Subsequently, after completing the investigation, the prosecution found that “X” (PW1) was only aged about 15 years at the time of occurrence and since “X” (PW1) also got pregnant, the charges were again altered to one under Section 5(j) (ii) r/w 6 of the POCSO Act.

7. “X” (PW1), who is the victim, in her evidence, has clearly stated that she was subjected to forcible penetrative sexual assault and her date of birth is 09.01.2001 and the date of occurrence is 09.10.2016.

8. In order to prove the age of “X” (PW1), school transfer certificate (Ex.P3) and birth certificate (Ex.P4) were marked, as per which, the date of birth of “X” (PW1) is only 09.01.2001. As per the evidence of “X” (PW1), the date of occurrence is 09.01.2016 and therefore, on the date



of occurrence, “X” (PW1) was only aged about 15 years and therefore, “X” (PW1) is a ‘child’ under the definition of Section 2(d) of the POCSO Act.

Further, from the evidence of “X” (PW1), it is seen that on 09.10.2016, “X” (PW1) had forcibly sexual intercourse with “X” (PW1) and in order to substantiate that the said occurrence, “X” (PW1) was clearly made statements before the Judicial Magistrate under Section 164 Cr.P.C., which was marked as Ex.P2.

9. A reading of the confessions statement (Ex.P2) of “X” (PW1), which is the first statement made by “X” (PW1) before the Judicial Magistrate, clearly shows that “X” (PW1) was subjected to penetrative sexual assault and also she was five months pregnant at the time of giving complaint (Ex.P1). A perusal of medical report (Ex.P9) would substantiate that “X” (PW1) was subjected to penetrative sexual assault. From the evidence of “X” (PW1) and also DNA test report (Ex.P14) clearly shows that the appellant is the biological father of the female child born to “X” (PW1) on 11.07.2017. Though the penetrative sexual assault falls under Section 4 of the POCSO Act, since the victim got pregnant thereafter, the said offence comes under the ambit of aggravated penetrative sexual assault



as per Section 5(j)(ii) of the POCSO Act, which is punishable under Section 6 of the POCSO Act. Therefore, in a case of this nature, no independent witness can be expected and the victim/injured witness is the best witness. Unless the Court has a reason to disbelieve the evidence of the victim, conviction can safely be recorded based on the evidence of the injured witness/victim.

10. In the case on hand, as per the evidence of “X” (PW1), she got pregnancy and DNA test also proved that the appellant is the biological father of the child born to “X” (PW1). Even assuming for a moment that “X” (PW1) did not object for penetrative sexual assault, since “X” (PW1) is a ‘child’ under Section 2(d) of the POCSO Act, consent is immaterial and the appellant cannot take advantage of the innocence of “X” (PW1).

11. This Court is the final Court of fact finding, while re-appreciating the evidence. In a case of this nature, no independent witness can be expected and the accused will take advantage of the aloofness of the child and by taking advantage of their innocence and age, commit offences in a secluded place. When “X” (PW1) was subjected to forcible penetrative



sexual assault by the appellant, which is apparent from the oral and documentary evidences, then, the conviction of the appellant for the offence under Section 5(j)(ii) of the POCSO Act, which is punishable under Section 6 of the POCSO Act, is valid. Therefore, this Court finds no reason to interfere with the proven charge under Section 5(j)(ii) r/w 6 of the POCSO Act.

12. Though a reading of the evidence of “X” (PW1) shows that the appellant has committed forcible penetrative sexual assault on her without her consent, there is no evidence to show that “X” (PW1) was either kidnapped or abducted by the appellant from the custody of her guardians or parents and there is also no other independent witness to say that “X” (PW1) was kidnapped or abducted by the appellant. Therefore, under these circumstances, this Court finds that there is no material to prove that “X” (PW1) was kidnapped by the appellant and therefore, the conviction and sentence imposed on the appellant under Section 366 IPC are set aside.

13. As far as the charge under Section 506(II) IPC is concerned, “X” (PW1) came to know that she became pregnant after medical



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examination and when she informed the same to the appellant, he intimidated her by threatening her with death and therefore, this Court finds that the appellant has committed an offence under Section 506(II) IPC.

14. In the result:

- i. This criminal appeal is partly allowed;
- ii. The appellant is acquitted of the offence under Section 366 IPC;
- iii. The conviction and sentence imposed on the appellant for the offences under Section 506(II) IPC and Section 5(j)(ii) r/w 6 of the POCSO Act, are confirmed; and
- iv. The trial Court is directed to secure the custody of the appellant/accused and send him to prison to undergo the remaining period of sentence.

(P.V., J.) (M.J.R., J.)
06.01.2026

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



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To

- 1.The Sessions Judge, Fast Track Mahila Court, Vellore.
- 2.The Superintendent, Central Prison, Vellore.
- 3.The Inspector of Police,
All Women Police Station.
Vaniyambadi, Vellore District.
- 4.The Public Prosecutor,
Madras High Court, Chennai – 600 104.



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P.VELMURUGAN, J.
and
M.JOTHIRAMAN, J.

nsd

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