

Crl. A(MD)No.125 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 10.06.2026

PRONOUNCED ON : 15.06.2026

CORAM:

**THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH
AND
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN**

Crl. A(MD)No.125 of 2024

Arumugam

: Appellant(s)

Vs.

1.The Deputy Superintendent of Police
Thiruchuli Utkottam
Virudhunagar District.
Crime No.67 of 2020.

2.Vennila

: Respondent(s)

(R2 impleaded as per the order of this Court
dated 24.09.2024)

PRAYER: Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, to call for records and set aside the conviction and sentences imposed by the learned Additional Mahila and Sessions Judge, Srivilliputhur, in Spl.S.C.No.19 of 2021 dated 29.12.2023 and thereby render justice.

For Appellant

: Mr.A.Thiruvadi Kumar
for Mr.PNSSM Ammaar

For R1

: Mr.G.Karuppasamy Pandian
Counsel for the State (Crl. side)



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JUDGMENT

**(Judgment of the Court was
delivered by N.ANAND VENKATESH, J.)**

The sole accused has assailed the judgment of the learned Additional Mahila and Sessions Judge, Srivilliputhur, in Special S.C. No. 19 of 2021 dated 29.09.2023 by way of filing of this appeal. The accused person was convicted and sentenced in the following manner:

Offence	Sentence
Section 306 r/w 511 of IPC	10 years rigorous imprisonment and fine of Rs.2,000/- in default to undergo 3 months rigorous imprisonment.
Section 5(l), 5(j)(ii) r/w Sec. 6 of the “POCSO (Amendment) Act, 2019” (hereinafter referred to as “POCSO Act” for brevity)	Imprisonment for the remainder of natural life of the appellant and fine of Rs.5000/-, in default to undergo one year rigorous imprisonment
Section 3(2)(v) of the “Scheduled Castes and the Scheduled. Tribes (Prevention of Atrocities) Amendment Act, 2015” (hereinafter referred to as “SC/ST Act” for brevity)	Life Imprisonment and fine of Rs. 5,000/-, in default to undergo one year rigorous imprisonment
Section 3(1)(w)(i) of the SC/ST Act	5 years rigorous imprisonment and fine of Rs.1,000/- in default to undergo 3 months simple imprisonment.

The above sentences were ordered to run concurrently.



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2. The case of the prosecution is that the victim girl belongs to the Scheduled Caste community and that the accused and the victim had been acquainted with each other since the victim girl was studying in the 8th standard. When the victim girl was studying in the 11th standard, the accused person proposed his love. During the first week of August 2019, the accused person contacted the victim over phone and induced her to come to Chettioorani situated near S.Vagaikulam Village, behind her house. The accused person promised that he will marry the victim girl. Believing the same, the accused person repeatedly had sexual intercourse with the victim girl and as a result of which, she became pregnant.

3. The victim girl informed the accused person that she was three months pregnant and at that point of time, it is alleged that the accused person denied responsibility for the pregnancy and refused to marry the victim girl, stating that she belongs to the Scheduled Caste community. On 04.05.2020, when the victim girl was in the advanced stage of pregnancy, she again approached the accused person requesting him to marry and the accused person refused and asked her to go and die. Hence, on 05.05.2020 at about 10:00 AM the victim girl allegedly



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consumed rat poison at her house in an attempt to commit suicide. She was admitted to the Government Hospital, Thiruppuvanam and while undergoing treatment, she delivered a female child on 06.05.2020 at about 4:50 AM.

4. PW1, who is the mother of the victim girl, gave a complaint (Exhibit P1) to PW10, who registered an FIR (Exhibit P14) in Crime No. 67 of 2020 on 07.05.2020 for offences under Section 5(1), 5(j)(ii) r/w Sec. 6 of the POCSO Act.

5. PW12 took up the investigation and prepared the alteration report (Exhibit P17) by adding the offences under Section 306 r/w 511 of IPC, Section 3(1)(w)(i) of the SC/ST Act and Section 3(2)(v) of the SC/ST Act.

6. PW12 also went to the scene of crime and prepared the observation mahazar (Exhibit P13) and the rough sketch (Exhibit P16). He recorded the statements of the victim girl and other witnesses under Section 161(3) of Cr.P.C. The accused person was arrested on the same day at 11:00 AM and was remanded to judicial custody.



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7. The investigation was taken over by PW13 based on the proceedings of the Superintendent of Police, Virudhunagar, dated 14.05.2020. The investigation officer made a requisition to the Revenue Tahsildar to confirm the caste status of the victim girl. The police officer went to the Government Hospital where the victim girl had delivered the child and recorded her statement. The community certificate was collected from PW4. The accused person was taken on police custody and was produced before PW7/doctor and the doctor certified the potency and the accident register was marked as Exhibit P11. PW5, Doctor, took the blood samples for DNA test (Exhibit P8).

8. PW5/doctor took the blood samples for DNA test under Exhibit P8. Steps were taken to record the statements of the victim girl under Section 164(5) of Cr.P.C. before the concerned Magistrate (Exhibit P2).

9. In order to ascertain the date of birth of the victim girl, the statement of the Headmaster/PW8 was recorded and Exhibit P12 is the certificate issued by the Headmaster which shows the date of birth of the victim girl as 18.05.2003.



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10. PW13, after recording the statements of some of the witnesses, was transferred and therefore, further investigation was taken up by PW14. The said police officer collected the forensic analysis report (Exhibit P20 series) and also the employment certificate of the accused (Exhibit P21) and on completion of investigation, the final report was filed before the Special Court.

11. The trial court framed charges against the accused person for offence under Section 5(1), 5(j)(ii) r/w Sec. 6 of the POCSO Act, Section 3(2)(v) of the SC/ST Act, Section 3(1)(w)(i) of the SC/ST Act and Section 306 r/w 511 of IPC. When questioned, the accused denied the charges.

12. The prosecution examined PW1 to PW14 and marked Exhibits P1 to P21.

13. The incriminating circumstances and evidence was put to the accused person when he was questioned under Section 313(i)(b) of Cr.P.C. and he denied the same as false.



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14. The accused did not examine any witnesses nor relied upon any documents.

15. The trial court, on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, came to the conclusion that the prosecution has proved the case beyond reasonable doubts and accordingly convicted and sentenced the accused person in the manner stated above. Aggrieved by the same, the present criminal appeal has been filed before this Court.

16. The first contention that was raised by the learned counsel for the appellant is that the prosecution had failed to prove the age of the victim girl. The prosecution in this case has relied upon Exhibit P3 birth certificate and Exhibit P4 mark sheet. The Headmaster/PW8, was examined in this regard. It is contended that the Headmaster did not possess the birth certificate in school records and it is not clear on what basis the date of birth was originally entered in the mark sheet. That apart, even insofar as the birth certificate is concerned, even though the victim girl was born in 2003, the birth certificate was issued only in the year 2016, after nearly 13 years. Therefore, it is contended that even the



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birth certificate cannot be relied upon. This Court does not find any force in the arguments made by the learned counsel for the appellant. Exhibit P4 birth certificate is a public record and the birth certificate has been issued as early as in the year 2016 and the actual dispute in this case had arisen only in the year 2020. Therefore, this is not a document which came into existence after the dispute started. Even otherwise, the entry in the Secondary School Leaving Certificate is also a public document, which carries the same date of birth namely, 18.05.2003. Thus, the prosecution has proved beyond doubt that the actual date of birth of the victim girl was 18.05.2003 and at the time of the incident, she had not completed 18 years and hence, she comes within the definition of a 'child' under the POCSO Act.

17. The next submission made by the learned counsel for the appellant is that there was a consensual romantic relationship between the victim girl and the accused person and even as per the case of the prosecution, there was no coercion, threat or force right from the inception of the relationship. Therefore, the boy, who was hardly about 19 years and the victim girl had physical intercourse, which is part and parcel of their romantic relationship. In view of the same, the POCSO



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Act does not contemplate a situation like this and the said Act is not meant for punishing teenage persons who had a relationship with a proper understanding.

18. The above submission made by the learned counsel for the appellant sounds very attractive and romantic, but however, the POCSO Act nowhere contemplates any romantic relationship and grants exception where a child has been subjected to sexual assault or penetrative sexual assault. Even assuming that it was consensual, the very object of the Act is to safeguard the right and interest of the child. There is no question of a child giving consent and such an eventuality is not even contemplated under the POCSO Act. If consent is taken as a ground and the Court acts upon it, it will have very serious consequences and it will militate against the very objective of the POCSO Act. A child below 18 years is incapable of giving consent in the eyes of law and therefore, even in a case where there is consensual romantic relationship with a child, it will attract the provisions of the Act and the concerned person has to face the consequences.



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19. In the case in hand, the prosecution has proved that the accused person committed penetrative sexual assault repeatedly and as a result the victim girl became pregnant and delivered a child. Exhibit P20, which is the forensic analysis report, makes it abundantly clear that the accused is the father of the child. Therefore, there is no escape for the accused person with regard to the charge under Section 5(l), 5(j)(ii) read with Section 6 of the POCSO Act.

20. The next contention raised is that the offences under the SC/ST Act have not been proved by the prosecution. There are two provisions under which the accused person has been convicted and sentenced under the SC/ST Act. The first charge is under Section 3(1)(w)(i) of the SC/ST Act. The second charge is under Section 3(2)(v) of the SC/ST Act.

21. In order to constitute an offence under Section 3(1)(w)(i) of the SC/ST Act, it must be proved that the concerned accused person has intentionally touched a woman belonging to Scheduled Caste or Scheduled Tribe knowing that she belongs to Scheduled Caste or Scheduled Tribe and such act of touching is of a sexual nature and is without the recipient's consent. In order to prove the charge under

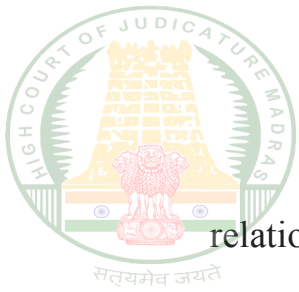


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Section 3(2)(v) of the SC/ST Act, it must be proved that an offence has been committed against a member of Scheduled Caste or Scheduled Tribe for any offence under the Indian Penal Code which is punishable with imprisonment for the term of ten years or more and which is punishable under the SC/ST Act with imprisonment for life.

22. The prosecution certainly has proved the community of the victim girl by marking Exhibit P6 through PW3. The community of the accused person is also proved through Exhibit P7 which was marked through PW4. It is quite apparent that the victim girl belongs to the Scheduled Caste community.

23. The next question is whether the offence has been made out against the accused person just because the victim girl belongs to Scheduled Caste community. It is proved through records that the victim girl and boy were acquainted with each other from the time the victim girl was studying in the 8th standard. The actual dispute started much later in the year 2020 when the victim girl was studying in the 12th standard. As stated supra, their relationship resulted in both the accused person and the victim girl engaging in physical intercourse repeatedly. This

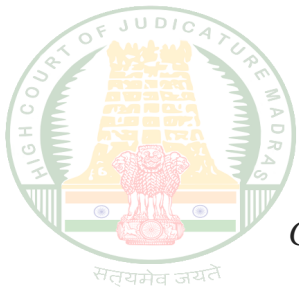


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relationship and consequent physical intercourse was not on account of the victim girl belonging to the Scheduled Caste community and on the other hand, it was a natural attraction between a boy and girl, which never had the caste as its basis. The Section 164 statement (Exhibit P2) and also the deposition of the victim girl makes it clear that it was not a one-off relationship and it was a relationship over a period of time. Therefore, the charge under Section 3(1)(w)(i) of the SC/ST Act has not been made out in this case.

24. Insofar as the charge under Section 3(2)(v) of the SC/ST Act is concerned, this Court wants to rely upon the judgment of this Court in ***Suresh v. State***, reported in ***2019-1-L.W.(Crl.) 738***. That was also a case where there was a relationship between a boy and a girl and ultimately the boy seems to have refused to marry the girl, as a result of which she committed suicide. One of the charge was under Section 3(2)(v) of the SC/ST Act. While dealing with this issue, the Court held as follows:

“24.Though Section 8 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989 imposes presumption as to the offences, in our opinion in the given facts of the case, presumption u/s 8 of the Act cannot be invoked against the appellant/accused. Even if presumption under Sec 8 of the Scheduled



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Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989 Act is to be invoked it must meet the tests of reasonableness and liberty enshrined in Articles 14 and 21 of the Constitution and thereby a strict duty is cast upon the prosecution to prove the foundational facts in its case before shifting the burden on the accused. In this case, an initial burden is cast upon the prosecution to prove the foundational fact that the appellant/accused committed the offence on the ground that the deceased was a member of the scheduled caste community and only after the initial burden is discharged presumption can be invoked against the appellant/accused.

*25.Presumption of Innocence and Burden of Proof are important and Fundamental Principles in Criminal Law and key elements in a Criminal Trial. With regard to principles regarding Burden of Proof and Doctrine of Innocence, it would be beneficial to refer to the Judgment of the Hon'ble Apex Court in **Babu Vs. State of Kerala** reported in (2010) 9 SCC 189, wherein it has been held as under :*

“27. Every accused is presumed to be innocent unless the guilt is proved. The presumption of innocence is a human right. However, subject to the statutory exceptions, the said principle forms the basis of criminal jurisprudence. For this purpose, the nature



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of the offence, its seriousness and gravity thereof has to be taken into consideration. The courts must be on guard to see that merely on the application of the presumption, the same may not lead to any injustice or mistaken conviction. Statutes like Negotiable Instruments Act, 1881; Prevention of Corruption Act, 1988; and the Terrorist and Disruptive Activities (Prevention) Act, 1987, provide for presumption of guilt if the circumstances provided in those Statutes are found to be fulfilled and shift the burden of proof of innocence on the accused. However, such a presumption can also be raised only when certain foundational facts are established by the prosecution. There may be difficulty in proving a negative fact. 28. However, in cases where the statute does not provide for the burden of proof on the accused, it always lies on the prosecution. It is only in exceptional circumstances, such as those of statutes as referred to herein above, that the burden on proof is on the accused. The statutory provision even for a presumption of guilt of the accused under a particular statute must meet the tests of reasonableness and liberty enshrined in Articles 14 and 21 of the Constitution. (Vide: Hiten P. Dalal v. Bratindranath Banerjee, (2001) 6 SCC 16; Narendra Singh v. State of M.P., AIR 2004 SC 3249; Rajesh Ranjan Yadav v. CBI, AIR 2007 SC 451; Noor Aga v. State of Punjab & Anr., (2008) 16 SCC 417; and Krishna Janardhan Bhat v. Dattatraya G. Hegde, AIR 2008 SC 1325)."



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25. An offence under Section 3(2)(v) will be attracted only if the offence was committed only because the victim girl belongs to SC/ST community and to belittle that person. The law was settled by the Apex Court in this regard in *Asharfi v. State of Uttar Pradesh*, reported in 2018 (1) SCC 742. Useful reference can also be made in *Khuman Singh v. State of Madhya Pradesh*, reported in AIR 2019 SC 4030. As observed supra, the relationship between the accused person and victim girl was over a period of time and the offence was committed under the POCSO Act not because the victim belonged to Scheduled Caste community. It constituted an offence because the victim girl was below 18 years of age and therefore it attracted the provisions of the POCSO Act. In view of the same, the charges under Sections 3(1)(w)(i) and 3(2)(v) of the SC/ST Act have not been made out against the accused person.

26. The last charge against the accused person is under Section 306 r/w 511 of IPC. To attract an offence of abetment of suicide, the prosecution has to establish that there was intention to instigate or actively provoke the victim to attempt to commit suicide. As per the case of the prosecution, the accused person is said to have told the victim girl



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to go and die. That statement made by the accused person by itself will not constitute instigation within the meaning of Sections 107 and 306 of IPC.

27. Apart from the above, even the medical evidence creates some doubt regarding the allegation that the victim had consumed poison. Even the doctor who was examined as PW6 has admitted in cross examination that if the victim had actually consumed poison, the same would have had very serious effect on the foetus and it is clear from the records that the child was born almost immediately in a normal condition.

28. In the considered view of this Court, the prosecution has not established that the accused person intended the victim to commit suicide or that he actively provoked the commission of the act. There is also a doubt as to whether the victim girl actually consumed poison. In view of the same, the charge under Section 306 r/w 511 of IPC has not been proved by the prosecution and the accused person is entitled for acquittal from this charge.



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29. This Court will finally go into the issue of sentence that has been imposed against the accused person for offence under the POCSO Act.

30. The trial court has sentenced the accused person for offence under Section 5(l) and 5(j)(ii) r/w Section 6 of the POCSO Act imposing life imprisonment for the remainder of natural life of the accused person. The sentence was imposed based on the amendment that was brought in through Act 25 of 2019, which came into effect from 16.08.2019.

31. The learned counsel for the appellant submitted that the victim girl had specifically deposed that the penetrative sexual assault had taken place on 07.08.2019 and thereafter, the accused person had sexual intercourse with the victim girl repeatedly. The victim girl delivered the child on 06.05.2020. It is therefore contended that the act of penetrative sexual assault had taken place prior to 16.08.2019 and hence the appellant can only be subjected to the punishment prescribed under the 2012 Act and not the enhanced punishment introduced by Amendment Act of 2019. To substantiate this submission, the learned counsel for the appellant relied upon the following judgments:



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- (a) ***Ravinder Singh v. State of Himachal Pradesh***, reported in AIR 2010 Supreme Court 199;
- (b) ***Khuman Singh v. State of Madhya Pradesh***, reported in AIR 2019 Supreme Court 4030;
- (c) Criminal Appeal No.487 of 2019; and
- (d) ***The State of Uttarpradesh v. Anurudh & Another***, reported in 2026 INSC 47

32. The ground that has been raised by the learned counsel for the appellant is based on Article 20(1) of the Constitution of India, which gives protection from conviction and sentence in criminal proceedings under *ex post facto* law. In this regard, useful reference can be made to the judgment of the Apex Court in ***Ravinder Singh*** case (referred supra) and the relevant portions are extracted hereunder:

“10. It is trite law that the sentence imposable on the date of commission of the offence has to determine the sentence imposable on completion of trial. This position is clear even on a bare reading of Article 20(1) of the Constitution of India, 1950 (in short, 'the Constitution'). The said provision reads as under:

"20. Protection in respect of conviction for offences.-(1) No person shall be convicted of any offence except for violation of a law in force



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at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence."

11. Wills in his Constitutional Law of the United States (at page 516) brought out a lucid classification of the penal law which are ex post facto :

- (i) when they make criminal an act which was innocent when done;*
- (ii) when they make a crime greater than it was when it was committed;*
- (iii) when they make the punishment greater than the punishment was at the time the act was committed;*
- (iv) when they change the rule of evidence as to deprive a defendant of a substantive right; and*
- (v) when they make retrospective qualifications for an offence which are out a proper exercise of the police power.*

Under Article 20(1) of the Constitution what is prohibited is the conviction and sentence in criminal proceedings under ex post facto law."

33. In the case in hand, even as per the version given by the victim girl, the penetrative sexual assault occurred on 07.08.2019 and subsequently. The consequence is the child delivered by the victim girl



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on 06.05.2020, which is relatable to the penetrative sexual assault committed by the accused person. When the same is taken into consideration, it is quite clear that the offence had been committed prior to coming in to the force of the amendment Act on 16.08.2019. The above judgment makes it clear that Article 20(1) of the Constitution of India prohibits conviction and sentence in criminal proceedings under *ex post facto law*. The amendment of Section 6 of the POCSO Act, which enhanced the punishment, cannot be put against the appellant for an act which was committed by him before the coming into force of the amendment Act.

34. Prior to amendment of Section 6 of the POCSO Act, the punishment prescribed was rigorous imprisonment for a term which shall not be less than 10 years and which can extend to imprisonment for life. In view of the same, this Court has to see as to whether the minimum prescribed punishment of 10 years rigorous imprisonment must be imposed or the facts of the case warrant life imprisonment.

35. The accused person is known to the victim girl for a long period of time. The accused person was hardly 19 years at the time of



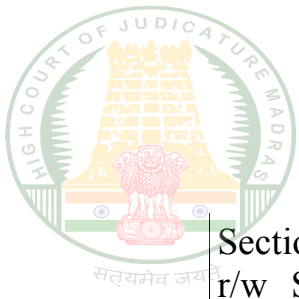
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commission of the offence. Considering the relationship between the accused person and victim girl, this Court cannot rule out the adverse impact of hormonal changes that takes place in that age. Ex. Consequenti, the sentence imposed by the trial court is harsh and severe which requires modification.

36. In the light of the above, this Court is inclined to modify the sentence for offence under Section 5(l) and 5(j)(ii) read with Section 6 of the POCSO Act to rigorous imprisonment for a term not less than ten years and to pay a fine of Rs.5,000/- and in default to undergo one year simple imprisonment.

37. In the result, this criminal appeal is partly allowed in the following terms:

Offence	Finding	Sentence
Section 306 r/w 511 of IPC	Appellant acquitted from this charge	-
Section 3(1)(w)(i) of the SC/ST Act	Appellant acquitted from this charge	-
Section 3(2)(v) of the SC/ST Act	Appellant acquitted from this charge	-



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Section 5(l), 5(j)(ii) modified r/w Section 6 of the POCSO Act	Ten years Rigorous Imprisonment and to pay a fine of Rs.5,000/- in default, to undergo one year Simple Imprisonment
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[N.A.V., J.] [K.K.R.K., J.]
15.06.2026

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- 1.The Additional Mahila and Sessions Judge, Srivilliputhur
- 2.The Deputy Superintendent of Police
Thiruchuli Utkottam
Virudhunagar District.
- 3.The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.



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Judgment made in
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