



Crl. A(MD)No.261 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 23.03.2026

CORAM:

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

**Crl. A(MD)No.261 of 2024
and Crl MP(MD) No.6309 of 2026**

Murali

: Appellant(s)

Vs.

**1.The Inspector of Police,
The Deputy Superintendent of Police,
Papanasam,
All Women Police Station, Papanasam,
(Crime No.01 of 2019)**

**2.Durga
(R2 impleaded as per common order dated
24.09.2024 of this Court)**

: Respondent(s)

PRAYER: Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, to call for records and allow this appeal and set aside the judgment and conviction dated 08.03.2023 passed by the Principal Special Court for exclusive Trial of Cases under POCSO Act cases, Thanjavur in Special S.C.No.117 of 2019 and acquit the appellant.

For Appellant

: Mr.A.Sivasubramanian



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For Respondent

: Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor
for R1

J U D G M E N T

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

The appellant (A1) has assailed the judgment passed in Special S.C.No. 117 of 2022, dated 08.03.2023, on the file of the Principal Special Court for exclusive Trial of Cases under POCSO Act cases, Thanjavur, wherein the appellant was convicted and sentenced in the following manner.

<i>Provision under which convicted</i>	<i>Sentence</i>
Sec. 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as “POCSO Act” for brevity) read with 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. 20,000/-, in default to undergo one year rigorous imprisonment
Sec. 363 of IPC	5 years rigorous imprisonment and fine of Rs.10,000/-, in default to undergo 6 months rigorous imprisonment.



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The above sentences were ordered to run concurrently.

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2. The case of the prosecution is that A1 is the son, A2 is the father and A3 is the mother of A1. A2 was running a brick kiln at Ullikadai Village, Puthur and the parents of the victim girl were staying in the brick kiln and were doing brick works. In May 2018, the victim girl was staying with her parents and at that time, A1 is said to have developed a relationship with the victim girl and sometime in the last week of July 2018, when the victim girl was proceeding to home, A1 is said to have promised that he will marry the victim girl and had compelled the victim girl and had forcible sexual intercourse with the victim girl. Even thereafter, he indulged in forcible sexual intercourse repeatedly. As a result, the victim girl became pregnant. When the same was informed to A2 and A3, who are the parents of A1, they are said to have scolded the victim in filthy language and forced the victim girl to abort the child.

3. The above incident was complained to the Panchayathars, but however A1 refused to come to the Panchayat and as a result, a complaint (Ex.P1) was given by PW1 to PW15. Based on the same, an FIR



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(Ex.P12) came to be registered in Crime No.1 of 2019 for offences under Sections 5(j)(ii), 6 and 17 of the POCSO Act and Section 506(i) IPC.

4. PW16 took up the investigation and went to the place of occurrence and prepared observation mahazar (Ex.P3) and the rough sketch (Ex.P13) in the presence of PW4 and another witness. PW16 examined the victim girl and recorded her statement. He also examined PW2 and PW3, who are the mother and father of the victim girl and recorded their statements.

5. The Investigating Officer arrested A1 to A3 and they were produced before the concerned Court and remanded to judicial custody.

6. The victim girl was subjected to medical examination by PW9 on 15.02.2019 and at that point of time, she was eight months pregnant. The necessary entries were made in the accident register, which was marked as Ex.P5.

7. The investigation was continued by PW17 and it was ascertained that the victim girl belonged to Scheduled Caste community



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and the accused person belonged to Ambalakarar community and hence, the offences were altered to Sections 5(l), 5(j)(ii), 6 of the POCSO Act, Section 294(b) of IPC and Section 3(2)(v) of the SC/ST Act, through the alteration report (Ex.P14).

8. The Investigating Officer forwarded A1 for medical examination, which was conducted by PW13, who issued the medical certificate (Ex.P10).

9. The Investigating Officer, in order to ascertain the biological father of the child, took steps to conduct DNA analysis and the same was handed over to PW14, who is the Deputy Director of Forensic Lab, Chennai. The DNA report (Ex.P11) revealed that A1 is the biological father of the child which was born to the victim girl by then.

10. The Investigating Officer recorded the statements of the witnesses under Section 161 of Cr.P.C. and collected all relevant materials and documents and on completion of investigation, laid the final report before the Special Court.



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11. The Special Court framed the charges against A1 for offences under Sections 11(iv) read with Section 12, Section 5(l) read with 6, Section 5(j)(ii) read with Section 6 of the POCSO Act, Section 366(A) of IPC and Section 3(2)(v) of the SC/ST Act. Insofar as A2 and A3 are concerned, charges were framed under Sections 294(b), 506(i) of IPC and Section 3(2)(v) of the SC/ST Act. All the accused persons denied the charges and pleaded not guilty.

12. The prosecution examined PW1 to PW18 and marked Ex.P1 to Ex.P14.

13. The incriminating evidence and circumstances were put to the accused persons when they were questioned under Section 313(1)(b) Cr.P.C., and they denied the same as false.

14. The accused persons did not examine any witnesses nor did they rely upon any documents.

15. The trial court on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to



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the conclusion that the prosecution has not proved the case insofar as A2 and A3 are concerned and accordingly acquitted them from all charges.

A1 was convicted and sentenced in the manner as stated supra.

Aggrieved by the same, the present appeal has been filed.

16. This Court has carefully considered the submissions made on either side and the materials available on record.

17. PW1 is the victim girl, who has clearly spoken about her relationship with the accused person and the manner in which he made a false promise to marry her and forcibly committed penetrative sexual assault on her. As a result of which, the victim girl became pregnant.

18. PW2 and PW3 are the parents of PW1 and their evidence also corroborates the evidence of PW1/victim girl.

19. Insofar as the age of the victim girl is concerned, PW5 has spoken about the date of birth of the victim girl and the issuance of Ex.P4/school certificate, wherein the date of birth has been mentioned as 15.10.2001. This witness has not even been cross-examined on the side



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of the accused person and therefore, there is nothing to rebut the date of birth as is revealed in the certificate issued by PW5.

20. The next important witness is PW9, who speaks about the medical examination conducted on the victim girl and the issuance of Ex.P5 accident register. PW9 has specifically stated that when she examined the victim girl, she was eight months pregnant. She has also stated as to what the victim girl informed her regarding the penetrative sexual assault committed by the accused person.

21. The evidence of PW10 confirms the fact that the victim girl belongs to Scheduled Caste community and the community certificate (Ex.P6) confirms this fact.

22. Insofar as the community to which the accused person belongs, the same has been proved through the evidence of PW12 through whom the community certificates were marked as Exs.P7 to Ex.P9.

23. The evidence of PW1 to PW3, which was corroborated by the evidence of PW5, gets further corroborated by the evidence of PW14,



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who conducted the DNA test and gave the DNA report marked as Ex.P11. This confirmed the fact that A1 is the biological father of the child.

24. Thus, from a collective assessment of the evidence available on record, it is clear that the victim girl was a minor child and A1 committed penetrative sexual assault on the victim girl, which resulted in the delivery of the child for which A1 was confirmed as the biological father. The prosecution not only laid the foundational facts but has actually proved the case beyond reasonable doubts.

25. A careful reading of the evidence of PW1 to PW3 shows that the accused person had an affair with the victim girl and it is stated that he promised to marry the victim girl and had committed repeated penetrative sexual assault on the victim girl. The evidence of PW2 who is the mother of the victim girl shows that it was only the victim girl who was refusing to marry the accused person. That does not in any way detract the fact that the offence under the POCSO Act has been made out and even assuming that there was consent on the side of the victim girl for the sake of arguments, such consent is *non est* in the eye of law.



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26. In the light of the above discussion, the conviction imposed by the trial court under Section 6 of the POCSO Act does not require the interference of this Court.

27. The next charge against the accused person (A1) is under Section 3(2)(v) of the SC/ST Act. The community of the victim girl and the community of A1 has been established. However, that by itself is not a ground for punishing A1 for offence under the SC/ST Act. An offence under Section 3(2)(v) of the SC/ST Act will be attracted only if the offence was committed only because the victim belongs to Scheduled Caste or Scheduled Tribe community and that offence was committed to belittle the victim girl. Useful reference can be made to the judgment of the Apex Court in *Asharfi v. State of Uttar Pradesh*, reported in **2018 (1) SCC 742**. Useful reference can also be made to the judgment of the Apex Court in *Dashrath Sahu v. State of Chhattisgarh*, reported in **2024 (1) MWN (Cr.) 262**. This judgment was followed by this Court in *V.Dhayanithi v. S.Babu*, reported in **2024 (2) MWN (Cr.) 171**.



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28. The prosecution has certainly not proved the charge against A1 for offence under Section 3(2)(v) of the SC/ST Act. It is not even the case of the prosecution that the offence was committed by the accused person (A1) only because the victim girl belonged to the Scheduled Caste community. Therefore, the conviction and sentence imposed by the trial court for offence under Section 3(2)(v) of the SC/ST Act cannot be sustained.

29. Insofar as the offence under Section 363 of IPC is concerned, it is seen that A1 had taken the victim girl to his sister's house at Malaiyanatham and had sexual intercourse. Admittedly, the victim girl was below 18 years at the time of occurrence. Therefore, it clearly amounts the kidnap from lawful guardianship, which is punishable under Section 363 of IPC. Hence, the conviction and sentence imposed by the trial court for offence under Section 363 of IPC does not require the interference of this Court.

30. The last issue is with regard to the sentence to be imposed for offence under Section 6 of the POCSO Act. The trial Court has imposed life imprisonment. However, considering the fact that A1 and the victim



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girl had a relationship and it was going on for sometime and at one point of time, A1 was also willing to marry the victim girl which was refused by the victim girl, the mitigating circumstances outweigh the aggravating circumstances and therefore, it does not warrant the extreme punishment of life imprisonment. As on the date of the commission of the offence, Section 6 provided for rigorous imprisonment for the term not less than 10 years, but which may extend to imprisonment for life. Therefore, this Court is inclined to modify the sentence to 10 years rigorous imprisonment instead of life imprisonment imposed by the trial court.

31. In the result, the conviction and sentence imposed against the appellant is modified as hereunder:

<i>Offence</i>	<i>Sentence</i>
Sec. 6 of the POCSO Act” for brevity) read with	10 years rigorous imprisonment and fine of Rs.20,000/-, in default to undergo 6 months rigorous imprisonment
Section 3(2)(v) of the SC/ST Act	Acquitted from this charge
Sec. 363 of IPC	5 years rigorous imprisonment and fine of Rs.10,000/-, in default to undergo 6 months rigorous imprisonment.

The sentences awarded shall run concurrently.



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32. In the result, this criminal appeal is partly allowed in the above terms. Consequently, connected miscellaneous petition is closed.

[N.A.V., J.] [K.K.R.K., J.]
23.03.2026

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
PKN

To

1.The Principal Special Court
for exclusive Trial of Cases under POCSO Act cases,
Thanjavur.

2.The Inspector of Police,
The Deputy Superintendent of Police,
Papanasam,
All Women Police Station, Papanasam,

3.The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.



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AND
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Judgment made in
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