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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29-10-2026

CORAM

THE HONOURABLE MR.JUSTICE D.LINGESWARAN

Crl.A(MD) No.127 of 2019

CNR:{HCMD010345082019}

Madhavan

..Appellant/Accused

Vs

The Inspector of Police,
All Women Police Station,
Pavanasam, Thanjavur.
Crime No.4 of 2015.

..Respondent/Complainant

Prayer: The Criminal Appeal is filed under Section 374(2) of Cr.P.C., to set aside the judgment and conviction dated 13.07.2017 on the file of the learned Sessions Judge, (Fast Track Mahila Court), Thanjavur in S.S.C.No.12 of 2015, allow the appeal and acquit the appellant.

For Appellant :Mr.A.Jayaramachandran

For Respondent :Mr.A.Robinson
Additional Public Prosecutor

JUDGMENT

A. The case of the prosecution

(i) The prosecution states that the victim is a child with special needs, aged 17 years, who suffers from speech and hearing impairments as well as a locomotor disability. On 14 July 2015, at about 12:30 p.m.,

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she was grazing her goat and guarding her family's cotton field. The appellant came to the spot, pushed her to the ground and committed penetrative sexual assault upon her. Hearing her cries for help, her uncle and his son rushed to the scene, whereupon the accused fled.

(ii) The victim was taken home. On the following day, a First Information Report (FIR) was lodged, and Crime No. 4 of 2015 was registered at the All Women Police Station, Papanasam. The Inspector of Police investigated the case, examined witnesses, collected documentary evidence and filed a final report charging the accused under Section 4 of the Protection of Children from Sexual Offences Act, 2012 ("the POCSO Act").

(iii) At trial, the prosecution examined 20 witnesses, marked 15 documents and produced 5 material objects. The defence examined one witness. The learned Sessions Judge, Fast Track Mahila Court, Thanjavur, after evaluating the evidence, held that the prosecution had proved the guilt of the accused beyond reasonable doubt. The trial court accordingly convicted the appellant under Section 4 of the POCSO Act and sentenced him to rigorous imprisonment for seven years and a fine of Rs.1,000, with a default sentence. Aggrieved by that judgment of

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conviction and sentence, the appellant has preferred this appeal.

B. Submissions of the appellant

(i) The learned counsel for the appellant submitted, first, that the trial court committed a grave error in determining the age of the appellant solely on a radiological estimate, in disregard of the mandatory hierarchy prescribed by Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 ("the JJ Act"). He further submitted that the trial court appreciated the evidence selectively: it accepted the radiological report in respect of the appellant, yet rejected the radiological report in respect of the victim without assigning any cogent reason.

(ii) Secondly, he pointed to material inconsistencies and contradictions in the testimony of the prosecution witnesses, which, he contended, cast serious doubt on the prosecution case. The evidence of P.W.2 (the mother of the victim) undermines the credibility of P.W.3, P.W.4 and P.W.5, who claim to have reached the spot immediately and seen the accused flee. The testimony of P.W.6, who says he reached the spot, found the accused standing there and slapped him twice, contradicts the accounts of P.W.3, P.W.4 and P.W.5. Above all, P.W.2 admitted that

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the victim disclosed the alleged penetrative sexual assault only on the following day; this, he argued, destroys the prosecution's narrative of an immediate response and invalidates the testimony of all the witnesses mentioned above.

C. Submissions of the State

Per contra, the learned Government Advocate (Criminal Side) fairly conceded that the learned Trial Judge failed to apply Section 94(2) of the JJ Act to ascertain the age of the appellant, particularly when the Radiologist's certificate showed him to be 18 years old. He contended, however, that no question regarding the appellant's age was raised at the time of trial. He further submitted that the victim, examined as P.W.3, fully supported the prosecution case; that her version was corroborated by P.W.2 to P.W.6 and by the medical evidence of P.W.11; and that the medical report (Ex.P7), proved through P.W.11, records a cut injury measuring 0.3 x 0.1 cm on the vagina, which indicates that the victim was subjected to penetrative sexual assault. He therefore prayed that the conviction and sentence be sustained.

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D. Points for determination

This Court has carefully considered the rival submissions. The questions that arise are: (i) whether the age of the appellant was determined in accordance with law and, if not, what follows; and (ii) whether the prosecution has proved the guilt of the appellant beyond reasonable doubt.

E. Determination of the age of the appellant

(i) The record shows that the Trial Court treated the appellant as a person aged 18 years at the time of the occurrence, relying entirely on the radiological ossification report (Ex.P8) proved through P.W.12, Dr.Balaji. The Investigating Officer (P.W.20) made no attempt to obtain the school records or a birth certificate, and thereby bypassed the procedure prescribed by law.

(ii) Curiously, the prosecution also had the victim (P.W.3) examined by another Radiologist (P.W.14), Dr. Malarvizhi, who opined that she was above 22 and below 25 years of age. The Trial Judge nevertheless accepted the radiological opinion to declare the appellant a major, while rejecting the same kind of evidence in respect

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of the victim.

Section 94 of the JJ Act prescribes a clear and mandatory sequence:

> *"94. (1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.*
>
> (2) *In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining — (i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof; (ii) the birth certificate given by a corporation or a municipal authority or a panchayat; (iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board: Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.*

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(3) *The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person."*

(iii) Although Section 94 speaks of the Committee or the Board, Section 9 of the JJ Act requires any court before which a person claims to have been a child on the date of the offence to determine that claim, and the Supreme Court has held that the Section 94 hierarchy governs such an inquiry. In *Sanjeev Kumar Gupta v. State of Uttar Pradesh and another (AIR 2019 SC 4364)* and *Rishipal Singh Solanki v. State of Uttar Pradesh* [2022 (8) SCC 602] and in a line of other decisions, the Supreme Court has repeatedly held that the school date-of-birth certificate and the matriculation certificate belong to the same first category, and that medical evidence is a last resort. Reliance on the Radiologist's report without first exhausting the school records is therefore a patent error of law, not a mere irregularity.

(iv) The submission that the appellant did not raise the question of age at trial cannot be accepted. A claim of juvenility may be raised at any stage, even after final disposal, and the court is bound to examine it once the material on record raises a reasonable doubt. Here the material did so:

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the appellant was shown to be exactly 18 years old on the estimate of Radiologist, the very margin on which juvenility turns.

(v) The inconsistency in the approach of the Trial Court compounds the error. It accepted the opinion of the Radiologist on the appellant (that he had completed 18 years) but rejected the opinion on the victim (that she was above 22 and below 25 years). The record indicates that the victim's birth certificate (Ex.P6) was marked, and that this was the reason for discarding the radiological opinion regarding her. That course was correct, because a documentary proof of age ranks higher than an ossification test. However, the same exercise was neither undertaken by the police nor by the Trial Judge in respect of the appellant, who stood on the border of majority. If a radiological estimate is not reliable enough to displace a birth certificate in the victim's case, it cannot be treated as conclusive against the appellant in the absence of any documentary enquiry. The same principle must be applied to both sides; applying it to one and not the other is arbitrary.

(vi) Further, radiological age is not conclusive and carries a margin of error of about two years on either side. This has been recognised by the Supreme Court in ***Jayamala v. Home Secretary, Government of Jammu***

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and Kashmir [AIR 1982 SC 1297] and reiterated in ***Jyoti Prakash Rai v. State of Bihar [AIR 2008 SC 1696]***. A report (Ex.P8) stating that the appellant had "completed 18 years" cannot, without more, exclude the reasonable possibility that he was below 18 on thedate of the offence. By adopting the upper end of the estimate mechanically and ignoring the lower end of the margin of error, the Trial Court committed a legal error. Where the evidence on age leaves a real doubt, the benefit of that doubt must go to the person claiming to be a child.

(vii) The next question is the appropriate course. Ordinarily, the matter would be remitted to the Juvenile Justice Board after calling for the school records, and, if the appellant were found to be a child in conflict with law, a preliminary assessment under Section 15 of the JJ Act would follow, to assess his mental and physical capacity to commit the offence and his ability to understand its consequences. In the present case such a course is neither feasible nor just. The appeal is of the year 2019; eleven years have passed since the occurrence; and the appellant has already spent more than two years in prison. The appellant's mental maturity, physical capacity and understanding of consequences as they stood in 2015 cannot be reliably assessed today, and any such assessment would be different now. If a preliminary

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assessment was required, it should have been conducted at the earliest stage and not after eleven years. For these reasons, this Court declines to remit the matter on the question of age and proceeds to examine the other evidence on record. The failure to determine the age of the appellant lawfully is, in any event, a serious lapse that weighs against the integrity of the trial as a whole.

F. Appreciation of the evidence

Evidence of P.W.1 and P.W.2:

P.W.1, the father of the victim, is a hearsay witness, and he admitted in cross-examination that he saw nothing himself. According to him, he went to work as usual on the day after the occurrence and went to the police station only in the evening, with his daughter (P.W.3) and wife (P.W.2), when the First Information Report (Ex.P1) was lodged. For the first time in cross-examination, he claimed that immediately after the occurrence he and his wife had gone to the police station and orally complained, but that the police did not receive the complaint. That version is an improvement, it is inconsistent with his own conduct of going to work the next day, and it is not found in Ex.P1. P.W.2, the mother, is also a hearsay witness. According to her,

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she learnt of the penetrative sexual assault only on the evening of the next day. She also contradicted herself, saying first that the police received a complaint on 14.07.2015 but did not register a case, and then that she lodged the complaint at about 2.00 p.m. on the following day. Her statement that she came to know of the assault only on the next day cannot be reconciled with the case that P.W.3 to P.W.5 knew of it at the scene and accompanied her to the police station.

Evidence of P.W.4, P.W.5 and P.W.6:

P.W.4 is the younger brother of P.W.1, and P.W.5 is son of P.W.4; all are closely related to the victim. Related witnesses are not to be discarded for that reason alone, but their evidence must be scrutinised with care, particularly where it is not consistent. P.W.4 said that when he reached the spot the accused ran away. P.W.5, who allegedly accompanied P.W.4, said that the accused remained standing there until P.W.3 was taken home. These versions are mutually destructive, and the evidence cannot be relied upon even as res gestae evidence. P.W.6, who also arrived only after the occurrence, gave yet another version: that he saw the accused standing at the spot and slapped him twice. He added in cross-examination that the police came to the spot on the very same day. This is inconsistent with the

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registration of the FIR only on the following day and with the accounts of the other witnesses, and it creates further doubt. Where the prosecution's own eyewitnesses to the aftermath contradict one another on whether the accused fled or stayed, and on when the police were informed, the contradictions go to the core of the prosecution case, not to a matter of detail.

The evidence of P.W.3, the victim:

(i) The victim was examined with the help of a Special Educator, Mrs. M. Chithra, in whose words the deposition was recorded; she was later examined as D.W.1. The deposition was not audio-video graphed. P.W.3 supported the prosecution case. The Trial Judge, however, did not take into account what P.W.1 stated in Ex.P1: that P.W.3 has an intellectual in addition to her auditory and speech impairments, that she holds a Government identity card in this regard and receives monetary assistance from the Government, and that a copy of the card was furnished to the police. P.W.11, Dr. Sudha, who examined P.W.3 on 16.07.2015 and prepared Ex.P7, also deposed that the victim was a person with intellectual disability when she examined her. The details in Ex.P7 were recorded only on information furnished by the mother of the victim.

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(ii) A witness with a speech and hearing impairment is competent to testify, and her evidence can be received through an interpreter or special educator. But where a qualified doctor, after examining the victim, has certified an intellectual disability, the Court cannot disregard it, and persons without medical qualification cannot say that the witness was competent to depose reliably. The competency of the witness to understand questions and give rational answers should have been tested by a proper preliminary inquiry and not by a template enquiry and the method of recording her evidence should have been scrupulously safeguarded, including by audio-video recording. Instead, the Trial Court proceeded without considering the medical evidence on her mental condition. Her testimony, as a person vulnerable to tutoring, should have been examined with due care and caution and should have been looked at against independent corroboration. As discussed above, there is none that is reliable.

Medical and forensic evidence:

The cut injury noted in Ex.P7 shows, at best, that there was some injury; by itself it does not identify the author of the injury, and it was recorded two days after the alleged occurrence. The forensic analysis did not detect spermatozoa in the vaginal swab, and no semen was detected

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on the victim's clothes (Ex.P9 and Ex.P10). The absence of semen is not by itself fatal to a case of penetrative sexual assault, but here there is neither a reliable ocular account nor any scientific evidence connecting the accused to the offence. The prosecution therefore gets no support from forensic evidence.

Presumption under POCSO:

The statutory presumption under Section 29 of the POCSO Act arises only after the prosecution has established the foundational facts. Since the foundational facts depend on a witness whose competence is in question and on corroboration that is inconsistent, the presumption cannot be invoked to fill the gaps. A cumulative reading of the entire evidence shows irreconcilable contradictions on the very occurrence, delay and inconsistency in reporting, doubt about the reliability of the sole direct witness, absence of forensic support, and an unlawful determination of the age of the appellant. Together, these create a reasonable doubt as to the case of the prosecution and the involvement of the accused in the crime. The conviction cannot be sustained.

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G. Defect in framing of the charge:

This Court also notes that the charge was wrongly framed. Where penetrative sexual assault is committed on a child who is mentally or physically disabled, taking advantage of that disability, the offence is aggravated penetrative sexual assault under Section 5(k), punishable under Section 6 of the POCSO Act, rather than simple penetrative sexual assault under Section 3, punishable under Section 4. The statute treats the exploitation of a mental or physical disability as an aggravating circumstance, not as a neutral feature of the offence. Here, P.W.3 is not only auditory and speech impaired but also has a locomotor disability and an intellectual disability. This was known to the police and to the Fast Track Mahila Court from the inception (Ex.P1); the charge should therefore have been framed under Section 6 and not Section 4. Trial Courts must apply their minds when framing charges and if an error occurs inadvertently, it should be corrected in time under Section 216 of the Code of Criminal Procedure, (now Section 239 of B.N.S.S., 2023) with proper notice to the accused so that he can defend himself effectively. The acquittal in this case rests on the failure of the evidence, and not on the defect in the charge.

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H. Result

In view of the reasonable doubts raised in the prosecution case, the conviction of the appellant under Section 4 of the POCSO Act cannot be sustained. Accordingly, the conviction and sentence passed by the learned Sessions Judge, Fast Track Mahila Court, Thanjavur, in Spl.S.C.No.12 of 2015 under Section 4 of the POCSO Act are set aside, and the appellant is acquitted of the said charge. The bail bonds executed by the appellant shall stand cancelled. The fine amount, if paid, shall be refunded.

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

Indu/JJA

To

1. The Inspector of Police,
   All Women Police Station,
   Pavanasam, Thanjavur.

2. The Additional Public Prosecutor
   Madurai Bench of Madras High Court
   Madurai

Copy To :
Section Officer (VR Section)
Madurai Bench of Madras High Court.

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D.LINGESWARAN, J.

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