



Crl.A.(MD).No.1300 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated 16.02.2026

CORAM

THE HONOURABLE MRS. JUSTICE N.MALA

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Mahesh

..Appellant / Sole Accused

Versus

State represented by
The Inspector of Police
Nagercoil AWPS,
Kanyakumari District.
[Crime No.12/2018]

..Respondent

Prayer:- Criminal Appeal filed under Section 374(2) of Cr.P.C. & 415(2) of BNSS, to call for the entire records connected to the judgment, dated 23.06.2025 in Spl.SC.No.24 of 2020 on the file of the Special Court for Exclusive Trial of Cases under the POCSO Act, Kanyakumari @ Nagercoil and set aside the conviction and sentence imposed against the appellant and acquit the appellant.

For Appellant : Mr.K.Karnan

For Respondent : Mr.A.Thiruvadikumar,
Additional Public Prosecutor



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JUDGMENT

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(1)The above Criminal Appeal is preferred by the appellant / accused against the judgment of conviction and sentence, dated 23.06.2025, made in Spl.SC.No.24/2020, by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under the POCSO Act, Kanyakumari @ Nagercoil, convicting and sentencing the appellant/accused for the offences u/s.366 of IPC and under Section 5(l) r/w. Section 6 of POCSO Act.

(2)The factual scenario as unfolded during the course of trial is as follows:-

(a)The case of the prosecution, in brief was that, the victim girl was aged 16 years, at the time of occurrence and her date of birth is 01.12.2002. One Magesh, who is a friend of the victim's elder brother had developed acquaintance with the victim girl on his arrivals to meet the victim's brother to their home. Subsequently, on 03.03.2018, the appellant/accused conveyed his love for the victim girl through mobile phone and his desire to marry her. The victim told the appellant that her parents planned for her marriage against her willingness. Later, the appellant insisted the victim to leave her



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parental home so as to get married to him. Later, the victim girl left her home on 04.03.2018, at about 05:00 a.m. When her parents, (P.W.3 & P.W.4) found her missing, they contacted her through phone and enquired about the reason for her leaving home, to which she conveyed that she left home for pursuing her desired employment opportunity at Tiruppur. On the same day of occurrence i.e. on 04.03.2018, the appellant/accused took the victim girl to his uncle's house and married her there. The victim girl stated that soon after her marriage with the accused and till his arrest on 05.04.2018, the accused repeatedly committed sexual assault on her. Later, on 05.04.2018, through an anonymous call to 1098 (Child Help Line), P.W.15, District Children Protection Officer, went to the accused's relative house with P.W.11, P.W.16 and P.W.2, took both the appellant/accused and the victim girl and handed over their custody to the All Women Police Station, A complaint Ex.P.1 was lodged by the victim girl, based on which, FIR (Ex.P.14) was registered in Crime No.12 of 2018, dated 05.04.2018, for the alleged offences under Section 5(l) r/w. 6 of POCSO Act, 2012.

(b)Based on the complaint of PW1/victim under Ex.P1, the FIR



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came to be registered under Ex.P.14 in Crime No.12 of 2018 on 05.04.2018. PW.14-Tmt.Hemalatha, Sub-Inspector of Police, took up the investigation and sent the copy of the FIR to the Juvenile Justice Board, Nagercoil and forwarded the Case Diary to PW17-Tmt.Shanthakumari, Inspector of Police, who conducted the further investigation. After examination of witnesses, the accused/appellant was sent to Juvenile Justice Board, Nagercoil for custody on 05.04.2018, and on completion of other formalities like recording the 164 Cr.P.C., statements of the victim girl, P.W.17 filed the Final Report. The Charge Sheet No.333 of 2018 was filed before the Juvenile Justice Board for the offences punishable under Section 5(l) r/w. Section 6 of POCSO Act.

(c)After conducting medical examination and confirming that the accused, after knowing fully the consequences of his Act, committed the crime, a Final Report was sent to the Mahila Fast Track Court, Nagercoil, on 02.08.2019, for further enquiry. Based on the order passed by the Principal District and Sessions Judge in ROC.No.196/19A, dated 16.12.2019, the case was transferred to the Special Court for POCSO Act Cases, Kanniyakumari at Nagercoil



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on 09.01.2020 and the same was taken on file by the Special Court on the same day in Spl.SC.No.24/2020. On 15.02.2021, the charges were framed against the appellant/accused for the offences u/s.366 of IPC and section 5(1) r/w.6 of POCSO Act. The appellant/accused denied the charges and pleaded not guilty.

(3)The prosecution in order to bring home the guilt of the appellant/accused, examined PW1 to PW17 and filed Exs.P1 to P23.

(4)The Trial Court, on completion of trial, found the appellant/accused guilty of the aforesaid offences and convicted and sentenced him as follows:-

Sl.No	Conviction under Section	Sentence Awarded
1	366 of IPC	To undergo 5 year RI and to pay a fine of Rs.1,000/-, in default, to undergo 6 months SI
2	5[1] read with 6 of POCSO Act	To undergo 20 years RI and to pay a fine of Rs.2,000/-, in default to undergo 6 months SI

The Sentences were ordered to run concurrently

(5)Aggrieved by the aforesaid conviction and sentence, the appellant preferred the above Criminal Appeal for the aforesaid relief.

(6)The learned counsel for the appellant contended that, the victim was romantically involved with the appellant, is clear from her admission in the FIR and the statement under Section 164 of Cr.P.C. The victim in her earliest



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statements, did not make any allegation against the appellant, but later, she contradicted her statements. The learned counsel contended that the subsequent statements of the victim established that she contradicted her earlier statements under influence of the prosecution. The learned counsel further contended that the records revealed that the victim joined the appellant/accused voluntarily and independently. The learned counsel further contended that since the testimony of the victim girl was inconsistent, contradictory and wavering, in the absence of any corroboratory evidence, the trial Court ought not to have relied on the same. The learned counsel further contended that the prosecution's case taken as a whole did not disclose the commission of the offence by the appellant. The learned counsel, therefore, prayed for acquittal of the appellant.

(7)The learned Additional Public Prosecutor, appearing for the State submitted that the Trial Court analysed the evidence properly and rendered cogent and logical reasons for its findings. The learned Additional Public Prosecutor, further submitted that the judgment of the Trial Court called for no interference since it was based on proper appreciation of the victim's evidence corroborated by the medical evidence of PW10 under Ex.P.9A. The learned Additional Public Prosecutor, therefore, prayed that the appeal be



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dismissed as meritless.

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(8) Heard both sides and perused the materials placed on record, including the impugned judgment of the Trial Court.

(9) The prosecution, in order to establish its case, examined 17 witnesses. PW1-victim girl. PW2-Field officer, District Children Protection Unit, who gave a complaint to Social Welfare Department. PW3-mother of the victim. PW4-father of the victim. PW5-Latha, is residing at Shenbagaraman Puhur, Samathuvapuram and is working in a hotel, who has signed as witness in the enquiry report. PW6-Baskar, who is paternal uncle of the victim girl. PW7-Tmt.Arockia Martinal Selvarani, Head Constable, who brought the victim to the hospital for medical examination. PW8-Manikandan, is friend of victim's father. PW9-Dr.Rajesh, is working as Doctor, Government Medical Collage, Kanniyakumari, who conducted medical examination on the appellant/accused and issued the medical certificate under Ex.P.8. PW10-Dr.Anuba, is working as Doctor at Government Hospital, who conducted medical examination on the victim and issued the certificate under Ex.P.9. PW11-Thanga Jemila, who was working at District Children Protection Officer. PW12-Kannan, is the paternal uncle of the appellant/accused. PW13-



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Head Constable, who brought the victim to the medical examination along with P.W.7. PW14-Sub-Inspector, who received the complaint from the victim and based on which, registered an FIR in Crime No.12 of 2018 (Ex.P. 14) for the offences punishable under Sections 5(l) r/w. 6 of POCSO Act. PW15-Buela, District Social Welfare Officer, who visited the occurrence place after receiving the phone call to 1098 help line and gave a report under Ex.P.15. P.W.16-Sub Inspector, Anti-Human Trafficking Unit. PW17-Shanthakumari, Inspector of Police, who conducted investigation and prepared mahazar (Ex.P.16) and Sketch (Ex.P.17).

(10)The genesis of the prosecution case appears to be interlined with the romantic relationship that ended acrimoniously, warranting careful appellate scrutiny of the allegations and the surrounding circumstances.

(11)**The case of the prosecution** is that the victim developed acquaintance with the appellant, who was the friend of her elder brother. The appellant, on 03.03.2018 conveyed his love for the victim and his desire to marry her through a telephonic conversation. Since the victim's parents planned for her marriage against her willingness, the appellant insisted the victim to leave her parental home to get married to him. On 04.03.2018 at about 5.00 a.m., the victim left her parental home, joined with the appellant and went to his



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uncle's house. There, the appellant married the victim. The prosecution's case was that the appellant indulged in continuous sexual assault of the victim till his arrest on 05.04.2018. On 05.04.2018, on receipt of a phone call to the child help line, District Children Protection Officer, went to the appellant's relative's house and took both of them to AWPS and handed over their custody. There, the victim lodged a complaint under Ex.P.9, on which basis, FIR was registered in Crime No.12 of 2018 for the offences punishable under Sections 5(l) r/w. 6 of POCSO Act.

(12) At the time of occurrence, the appellant as well as the victim were minors. The victim was aged about 16 years 1 month and the appellant/accused was 17 years old. To prove the age of the victim, Ex.P.3 (xerox copy of birth certificate) and Ex.P.4 (xerox copy of Transfer Certificate) were filed through P.W.1 victim girl. Based on the aforesaid documents, the age of the victim was determined and the proceedings under the POCSO Act commenced.

(13) This Court finds that Ex.P.3 and Ex.P.4 are xerox copies of birth certificate and Transfer Certificate of the victim, which have been deposed by the victim. Non production of originals of Ex.P.3 and Ex.P.4 have not been explained. The victim, who was examined as P.W.1, categorically stated that



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the originals of Ex.P.3 and Ex.P.4 were very much available. It is settled legal proposition that secondary evidence can be admitted only if proper and justifiable explanation is offered for non production of the primary evidence. Even as per the admission of P.W.1 / victim, originals of the birth and transfer certificate were available and hence, the prosecution should have produced the originals of Ex.P.3 and Ex.P.4. Secondary evidence is inadmissible until the non-production of the original is accounted in a manner that brings the case within the specific exceptions provided in Section 65 *[Tharammel Peethambaran and Another Vs. T.Ushakrishnan and Another* reported in *2026 CC OnLine 169]*. The trial Court, before accepting Ex.P.3 and Ex.P.4 in evidence ought to have considered their admissibility. The failure to note that Ex.P.3 and Ex.P.4 were inadmissible and placing heavy reliance on them to determine the age of the victim, is a fatal error committed by the trial Court.

(14)It is trite that primary evidence is the rule and secondary evidence an exception. A party is required to produce the best evidence, if available. The primary evidence [i.e] the original of Ex.P.3 and Ex.P.4, being the best evidence and admittedly available, ought to have been produced. Ex.P.3 and Ex.P.4 are only secondary evidences, being xerox copies of the aforesaid documents and therefore, in the absence of a specific case being made out for



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their production, the Trial Court ought to have rejected them. Hence, this Court is of the view that Ex.P3 and Ex.P4 ought to have been discarded. If Ex.P3 and Ex.P4 are discarded, then the prosecution's case falls to the ground, since the foundational fact regarding the age of the victim stands unproved. Hence, this Court finds that the Criminal Appeal deserves to be allowed on this short ground.

(15)Accordingly, **the Criminal Appeal is allowed** and the judgment of conviction and sentence passed in Spl.S.C.No.24 of 2020, dated 23.06.2025, by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under the POCSO Act, Kanyakumari at Nagercoil, is set aside.

(16)The appellant is acquitted of all charges levelled against him. It is reported that the appellant is in jail. Hence, he is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

(17)Before parting with the case, this Court finds that this is a typical case of consensual adolescent sexual relationship ending on a discordant note due to parental differences. In cases involving consensual relationship between adolescents, it is often the young boy, who ultimately bears the consequences. Under parental pressure, the girl may be compelled to marry another person, following which criminal proceedings are initiated against



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the boy under the POCSO Act, resulting in his prolonged incarceration. Even the Delhi High Court noted that POCSO Act cases filed at the behest of the girl's family, objecting the romantic involvement with young boys, have become common place resulting in the boys languishing in jail.

(18)The Hon'ble Supreme Court in ***State of U.P. Vs. Anurudha and Another [2026 SCC OnLine SC 40]***, referred to the judgments of the Delhi High Court and Gujarat High Court and noted that there was a misuse of the POCSO Act. The Hon'ble Supreme Court directed to circulate a copy of the judgment to the *"Secretary, Law Department, Government of India, to consider initiation of steps as may be possible to correct this menace inter alia, the introduction of a Romeo Juliet clause exempting genuine adolescent relationships from the stronghold of this law; enacting a mechanism enabling the prosecution of those persons who, by the use of these laws seeks to settle scores etc."*

(19)This Court is of the opinion that wide publicity to POCSO Act and its stringency, will be helpful in controlling the menace, as pointed out by the Hon'ble Supreme Court. The legislature in its wisdom being cognizant of the rigid provisions of the Act, directed wide publicity of it.

(20)Section 43 of the POCSO Act reads as follows:



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43.Public awareness about Act.—The Central Government and every State Government, shall take all measures to ensure that— (a) the provisions of this Act are given wide publicity through media including the television, radio and the print media at regular intervals to make the general public, children as well as their parents and guardians aware of the provisions of this Act; (b) the officers of the Central Government and the State Governments and other concerned persons (including the police officers) are imparted periodic training on the matters relating to the implementation of the provisions of the Act.

(21) In the considered opinion of this Court, if the provisions of Section 43 of the POCSO Act, are followed in letter and spirit, the menace as pointed out by the Apex Court, to an extent, can be curbed. It is fundamentally due to lack of knowledge of the Act and its draconian provisions that the same is misused.

(22) This Court, therefore, is inclined to issue the following directions to the Chief Secretary of the State of Tamil Nadu :-

[A] To take immediate and positive steps to comply with Section 43 of the POCSO Act, in order that awareness is created in the general public, children and parents on the uncompromising provisions of the Act.



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[B] Apart from the measures provided under Section 43 of the Act, the Chief Secretary, shall consider conducting camps in Government Schools and Colleges, for creating awareness about the POCSO Act and its dire consequences.

[C] The Chief Secretary shall at his discretion, consider conducting similar Camps/Seminars in Private Schools and Colleges.

[D] The Chief Secretary shall file a Status Report on the measures undertaken as directed herein, in furtherance of the provisions of Section 43 of the POCSO Act.

(23) To file Status Report, post on **03.06.2026.**

16.02.2026

Indu/AP

Index: Yes

Internet: Yes

NCC: Yes/ No

Speaking Order : Yes



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To

- 1.The Special Court for Exclusive Trial of
Cases under the POCSO Act,
Kanyakumari @ Nagercoil.
- 2.The Inspector of Police
Nagercoil AWPS,
Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy To:- The Chief Secretary of the State of Tamil Nadu,
Secretariat, Fort St George, Chennai.



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N.MALA, J.,

Indu/AP

Judgment in
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