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CRL A No. 500 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 26-02-2026

PRONOUNCED ON : 10-03-2026

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

CRL A No. 500 of 2023

Anandan

..Appellant/A1

Vs

State Rep By
The Inspector of Police
All Women Police Station,
Polur, Thiruvannamalai District.
Crime No. 6/2013

..Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., to call for the records in connection with the Spl SC No. 27 of 2019 on the file of the learned Sessions Judge, Special Court (POCSO) cases Thiruvannamalai, Thiruvannamalai District and set aside the judgment dated 10.04.2023.

For Appellant:

Mr. E.Kannadasan

For Respondent:

Mr.S.Rajakumar
Additional Public Prosecutor



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Judgment

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This Criminal Appeal has been filed by Accused No.1, challenging the judgment dated 10.04.2023 in Spl.SC.No.27 of 2019 on the file of the learned Sessions Judge, Special Court (POCSO Cases), Tiruvannamalai, by which he was convicted for the offence under Sections 376 of the IPC and Section 4 of the POCSO Act, 2012 and sentenced to undergo 10 years rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo one year simple imprisonment.

2.(i) The case of the prosecution is that the appellant and the victim, who was a child at the time of the occurrence, belonged to the same village; that the appellant had lured the victim girl on the promise of marriage and had sexual intercourse with the victim girl 1 ½ months prior to 11.05.2013 and made her pregnant besides warning her of dire consequences if the victim disclosed the said occurrence to any person; that the appellant's wife and his mother, in order to support the appellant, had criminally intimidated the victim and also assaulted the victim and committed the offences under Sections 352 and 506(i) of the IPC; and that the appellant had committed the aforesaid offences.

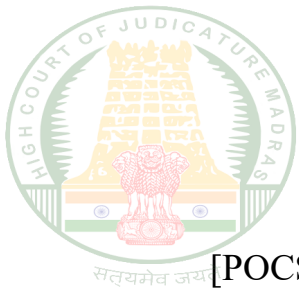


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(ii) On the complaint [Ex.P7] given by the mother of the victim [PW2] on 16.05.2013 an FIR [Ex.P8] in Cr.No.6 of 2013 was registered by PW18, the Sub-Inspector of Police, against the appellant and other two accused, for the offence under Sections 376, 506(i) IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act.

(iii) PW19, the Inspector of Police commenced the investigation and handed over the investigation to PW20. PW20 conducted a portion of the investigation and handed over the investigation to PW21, who handed over the case to PW17. Ultimately, PW17 concluded the investigation and filed a final report against the accused for the offence under Sections 354, 376, 352 and 506(i) of the IPC, Section 4 and 8 of the POCSO Act and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, before the learned Sessions Judge, Special Court [POCSO Cases], Tiruvannamalai.

(iv) On the appearance of the accused, the provisions of Section 207 Cr.P.C., were complied with and the case was taken on file as Spl.S.C.No.27 of 2019 by the learned Sessions Judge, Special Court



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[POCSO Cases], Tiruvannamalai. The trial Court framed the charges against the appellant/A1 for the offences under Sections 376 and 354 of the IPC and Sections 4 & 8 of the POCSO Act and Section 4 of the Tamilnadu Prohibition of Harassment of Women Act and against A2 and A3 for the offence under Sections 506(i) and 352(2 counts) of the IPC. During the trial, when questioned, the accused pleaded 'not guilty'.

(v) Before the trial Court, the prosecution had examined 21 witnesses as P.W.1 to P.W.21 and marked 15 exhibits as Ex.P1 to Ex.P15. When the accused were questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against them, they denied the same. The accused neither examined any witness nor marked any document on their side.

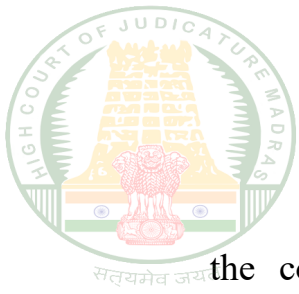
(vi) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had not established the charges against A2 and A3 and convicted the appellant/A1 and sentenced him as stated in paragraph No.1 of this judgment. Aggrieved by the said conviction and sentence, A1 had preferred the instant appeal.



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3. Mr.E.Kannadasan, learned counsel for the appellant would submit that the victim's evidence does not inspire confidence; that the victim had not disclosed the alleged occurrence to her mother; that it is stated that only after the victim became pregnant, the mother came to know of the occurrence; that the prosecution was launched only because the appellant did not accede to the demand for money by the victim and her mother; that there is no evidence to show that the victim was a child at the time of the occurrence; that the DNA report rules out the paternity of the appellant; that the evidence at best suggests a consensual affair and none of the offences are made out; and hence, the impugned judgment is liable to be set aside and prayed for acquittal.

4. The learned Additional Public Prosecutor *per contra* submitted that though no certificate to prove the age of the victim was produced by the prosecution, the doctor who examined the victim had stated that the victim was aged 17 years at the time of occurrence; that the DNA report is not conclusive and if the victim's evidence is cogent and convincing, then, there is no need for any corroboration; and that the delay in lodging



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the complaint in a case of this nature would not be fatal to the prosecution. He further submitted that in this case, the victim's evidence is of sterling quality and that therefore the impugned judgment cannot be faulted and hence, prayed for dismissal of the appeal.

5. (i) As stated earlier, the prosecution examined 21 witnesses. PW1 is the mother of the victim girl and the de facto complainant. PW2 is the victim girl. PW3 is the witness to the observation mahazar [Ex.P2]. PW4 is the father of the victim girl and would state about the fact that the victim became pregnant and thereafter they requested the victim to marry the accused and that he refused. PW5 is the sister of the victim girl and she would speak about taking the victim to the doctor after she became pregnant and approaching the appellant to marry the victim girl. PW6 is the neighbour who had participated in the panchayat between the appellant and the victim's family. PW7 is the son-in-law of PW1 and is a hearsay witness.

(ii) PW8 is the doctor who had examined the victim on 14.06.2013 and had made entries in the Accident Register [Ex.P3]. PW9 is the doctor

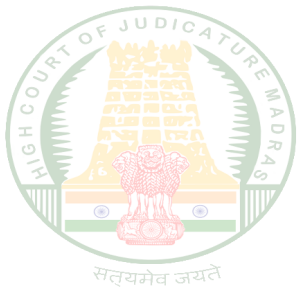


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who had conducted the scan of the victim girl and had issued his report [Ex.P4]. PW10 is the constable who had taken the victim for recording her Section 164(5) Cr.P.C. statement. PW11 is the neighbour and is a hearsay witness. PW12 is the Constable who had taken the appellant for medical examination. PW13 is the constable who had handed over the blood samples of the child of the victim girl, that of the victim and the appellant to the Forensic Science Laboratory for conducting the DNA test. PW14 is the constable who had taken the victim for the medical examination.

(iii) PW15 is the doctor who had conducted the ossification test and had issued the certificate [Ex.P5], certifying that the victim was 17 years old at the time of the occurrence. PW16 is the doctor who had examined the appellant and issued the potency certificate [Ex.P6]. PW17 is the Investigating Officer who filed the final report against the appellant and two other accused, as stated above. PW18 is the Sub-Inspector who registered the FIR. PW19 to PW21 are the investigation officers.



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6. PW2 is the victim girl. Admittedly, she had not complained of the alleged occurrence, which had taken place 1 ½ months prior to 11.05.2013. It is the prosecution case that since she had skipped her monthly periods and her mother had suspected that she was pregnant, she was taken to the hospital and was found to be pregnant and thereafter a complaint was lodged. PW2, the victim girl, had not given any explanation as to why she had not informed her mother about the occurrence.

7. It is the version of PW2, the victim, that she was in the habit of going to the house of the appellant to watch TV and she was the friend of appellant's daughter and that on the day of occurrence (no specific date mentioned) the appellant had removed her clothes and committed rape on the promise of marriage. PW2, in her cross-examination, would state that she had not objected to the act of the appellant since she believed that he would marry her. The relevant portion in her cross-examination is extracted below for better appreciation of her evidence.

“rk;gtk; ele;jJ nk khjk; Mde;jndhL tPl;oy; ehd; o/tp/ ghu;j;j
nghJjhd; ,e;j rk;gtk; ele;jJ/ ehd; ve;j rj;jKk; nghltpy;iy/ mtu; vd;idf;

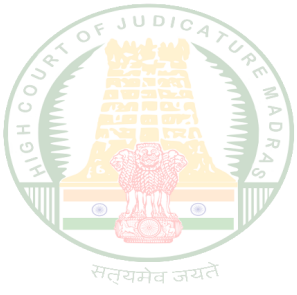


fy;ahzk; gz;zpf;Fthu; vd;w ek;gpf;ifapy; ehd; rj;jk; nghliy/”

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8. Therefore, it is the specific version of PW2 that it is not a case of forcible sexual intercourse and that she consented because the appellant agreed to marry her. It is also not the case of the victim that she was not aware that the appellant had already been married, as even according to her, the occurrence happened when the appellant's daughter and his wife were not at home.

9. The above evidence of PW2 coupled with the fact that she had not complained about the occurrence to any person, even if accepted to be true, would show that the occurrence took place with the consent of the victim. Be that as it may, the charge framed by the Court would suggest that the occurrence took place on various occasions 1 ½ months prior to 11.05.2013 and it was not a case of a single occurrence. PW2 in her cross-examination further admit that when she was examined by the doctor [PW8] on 14.06.2013, she was 14 weeks pregnant.



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10. The conduct of PW2 and the other witnesses, which has been admitted in their cross-examination that they demanded money from the appellant and had he paid money, they would not have pursued the complaint also raises a doubt in the version of the victim. The relevant portion of PW2's cross-examination reads as follows,

“nghyP!; vd;id miHj;J nghd nghJ lhf;lu; 3 khrk;D brhd;dh';f/ me;j
njjp. khjk;. tUIk; vJt[k; vdf;Fj; bjhpahJ/ g";rhaj;J Kothfiy.
mJf;fg;g[wk; FHe;ij gpwe;j gpwF ghu;j;Jf;fyhk;D tpl;L;nld; vdf;F
ehd; nfl;l JI;L bfhLj;jpUe;jh ehd; fUitf; fiyr;rpI;L ntW fy;ahzk;
gz;zpf;fpl;L nghapUg;ngd;/'”

11. The evidence of PW4, the father of the victim, in the cross-examination is that he was aware that the victim had a consensual relationship with the appellant and that if the appellant had married the victim, he would not have gone to the police station. The relevant portion of PW4's evidence reads as follows,

“vd; bgz;nzhl tpUg;gj;njhljhd; ,J khjphp jg;g[ele;jJ vdf;Fj;
bjhpa[k;/ mt';f gzk; jnud;D brhd;dh';f/ ehd; gzk; ntz;lhk; vd;W
brhy;yptpl;nld;/ g";rhaj;Jy eh';f nfl;l khjphp fpilr;rpUe;jh ehd;
nfhul; te;jpUf;f khl;nld; vd;Wk;. fhty; epiyak; nghapUf;f khl;nld;
vd;why; rhpjhd;/ Kjy; vjphpf;F vd; kfisf; fl;of; bfhLf;f ntz;Lk;/'”



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PW5, who is the sister of the victim, also would confirm the said facts in the cross-examination.

12. From the above evidence, it would be clear that the relationship was consensual and that if the appellant had paid money, the victim and her parents would not have pursued the case. The fact that the victim and her parents demanded money alone may not be a reason to disbelieve them. However, it is seen that the prosecution case that the victim's consent was obtained by fraud on the false promise of marriage, is improbable. The victim, even according to her version was aware that the appellant was married. The relationship from the conduct of the victim and the aforesaid admissions made in the cross-examination would only suggest that the consent was not obtained on false promise of marriage. It is to be noted here that the victim had delivered a child and a DNA test was conducted to ascertain the paternity of the child. The prosecution, for the reasons best known to them, had not examined the forensic science expert who had issued the report [Ex.P13]. Ex.P13 was marked through the investigating officer [P.W.17]. In the said report, the final conclusion reads as follows,



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“From the DNA typing results of the above samples, it is found that the alleged father Mr.M.Anandhan is excluded from the paternity of the female child Madhuvathani.”

13. The above report, which rules out the paternity of the appellant to the child born to the victim, also assumes significance, in the light of the infirmities in the evidence of the victim girl, which suggests that her deposition is not of a sterling quality. Therefore, the DNA report cannot be brushed aside as only an opinion evidence. This probabilises the case of the appellant.

14. Even assuming that the DNA report has to be ignored and the victim's evidence could be accepted, as stated above, this Court is of the view that the offence would be made out only if the victim is a child, as this Court has already observed that their relationship was consensual.



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The case of the prosecution is that the victim was aged less than 18 years.

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The charge does not state as to what was the age of the victim at the time of the occurrence. The doctor [PW15] who conducted the ossification test in his report Ex.P5 had stated that the victim could have been 17 years old at the time of the examination. The doctor in the cross-examination had admitted that the said assessment can vary by one year.

15. In the absence of any other evidence, the ossification test can certainly be relied upon, but where the doctor had opined that the victim could be aged 17 years and there could be a margin of error of one year and there is a doubt, this Court has to necessarily presume in favour of the accused. The prosecution therefore has failed to prove that the victim was a child beyond reasonable doubt.

16. That apart, the victim in her cross-examination had stated that she does not know her date of birth, but she has a birth certificate and had not submitted the same. The relevant portion reads as follows:

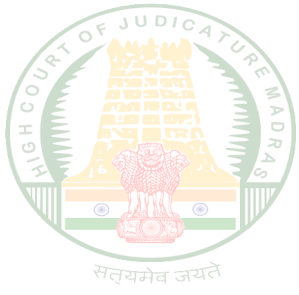
“vd; gpwe;j nijp vdf;F bjhpahJ/ vdf;F gpwg;g[rhd;W
th';fpa[s;nsd;/ mij nfhu;|;oy; bfhLf;ftpy;iy/”



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17. PW1, the mother of the victim would also admit that the victim was studying in school; that she had not handed over the birth certificate to the police; and that she does not remember the age or date of birth of the victim. PW4, the father of the victim would state that he had handed over the birth certificate to the Court. However, no such birth certificate was produced by the prosecution. All the above would show that the prosecution had suppressed the birth certificate of the victim and sought to establish the age through Ossification test, which cannot be the basis to hold that the victim was a child in the facts of this case.

18. In the light of the above evidence and since the relationship was consensual and the fact that the victim was not subjected to intercourse on the false promise of marriage alone and the prosecution had failed to establish that she was a child, this Court is of the view that none of the offences for which the appellant is charged i.e., Sections 376 of the IPC and Section 4 of the POCSO Act, 2012, are not made out and consequently the appellant is entitled to acquittal and this Court is inclined to set aside the impugned judgment of conviction and sentence.



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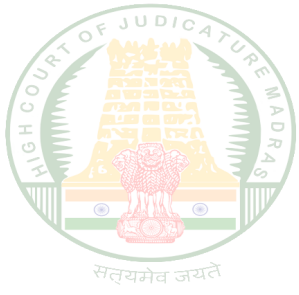
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19. Accordingly, the Criminal Appeal stands allowed. The conviction and sentence imposed upon the appellant/A1 vide judgment dated 10.04.2023 by the learned Sessions Judge, Special Court [POCSO Cases], Tiruvannamalai, in Spl.SC.No.27 of 2019, are set aside. The appellant is acquitted of all the charges. The fine amount, if any, paid by the appellant shall be refunded. The bail bond, if any, executed shall stand discharged.

10-03-2026

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

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SUNDER MOHAN J.

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To

1. The Sessions Judge,
Special Court (POCSO Cases),
Thiruvannamalai,
Thiruvannamalai District.
2. The Inspector of Police
All Women Police Station,
Polur, Thiruvannamalai District.
3. The Public Prosecutor,
High Court, Madras.

**Pre-delivery judgment in
CRL A No. 500 of 2023**

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