

Crl.A.No.822 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Reserved on: 26.08.2025	Pronounced on: 10.10.2025
-----------------------------------	-------------------------------------

CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESH**and****THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN**Crl.A.No.822 of 2018

Murugesan @ Murugesh

.. Appellant

Vs.

- 1.The State rep by its
Inspector of Police,
All Women Police Station,
Denkanikottai,
Krishnagiri.
- 2.Anandha Hostel,
Mathigiri Koot Road,
Hosur Taluk, Krishnagiri District.
- 3.The Child Welfare Committee /
District Child Protection Officer,
Londenpet, Krishnagiri – 635 002.

(2nd and 3rd respondent are *suo motu*
impleaded as per the order of this Court
dated 03.04.2019 in Crl.M.P.No.17229 of
2018 in Crl.A.No.822 of 2018)



Crl.A.No.822 of 2018

4.Kavya,
W/o.Murugesan,
Vearigai, V Vearigai Post,
Hosur Taluk, Krishnagiri District.

.. Respondents

Prayer: Appeal filed under Section 374(2) of Cr.P.C., praying to set aside the order made in Spl.S.C.No.30 of 2016 dated 27.09.2018 for conviction u/s.366 IPC for 10 years rigorous imprisonment and fine of Rs.5000/- in default undergone 1 year rigorous imprisonment conviction u/s.5(1) r/w 6 of POCSO Act, 2012 for 12 years rigorous imprisonment with fine of Rs.10,000/-, in default undergo 2 years rigorous imprisonment and conviction u/s.3(2)(v) of SC/ST Act life imprisonment, with fine of Rs.10,000/- in default undergo 2 years rigorous imprisonment by the Sessions Judge, FastTrack Mahila Court, Krishnagiri.

(Prayer amended as per order dated 08.07.2019 in
Crl.M.P.No.9027 of 2019 in Crl.A.No.822 of 2018)

For Appellant	:	Mr.T.Ravi for Mr.R.Dhineshkumar
For R1	:	Mr.A.Damodaran Additional Public Prosecutor Assisted by Ms.M.Arifa Thasneem
For RR 2 & 3	:	No appearance
For R4	:	Mrs.S.Sridevi Legal Aid Counsel



Crl.A.No.822 of 2018

WEB COPY

JUDGMENT

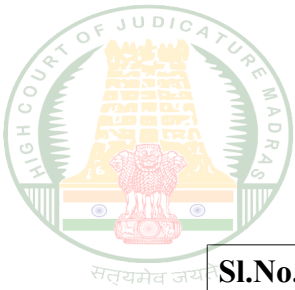
(Judgment of the Court was made by *V.LAKSHMINARAYANAN, J.*)

This appeal assails the legality of the conviction and sentence imposed by the Sessions Judge, Fastrack Mahila Court, Krishnagiri, in S.C.NO.30 of 2016, dated 27.09.2018.

2.This is yet another classic case that reflects the unfortunate position in which vulnerable sections of the society, in particular, children belonging to the Scheduled Caste and Scheduled Tribes (SC & ST), are placed.

3.The appellant is the sole accused. He was convicted and sentenced as follows:

Sl.No.	Conviction	Details of Sentence
1.	under Section 366 of IPC	to undergo 10 years of rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo one year of rigorous imprisonment
2.	under Section 5(l) r/w 6 of	to undergo 12 years of rigorous



CrI.A.No.822 of 2018

Sl.No.	Conviction	Details of Sentence
	POCSO Act	imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo two years of rigorous imprisonment,
3.	under Section 3(2)(v) of SC/ST Act	to undergo life imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo 2 years of rigorous imprisonment.

4.The case of the prosecution is that PW1, K, was a classmate of V, the daughter of the accused. On 22.10.2015, K stayed in the house of V at Soppukuttai. Since it was the Dussehra holidays, K & V taking advantage of the same, had gone over to V's residence. At about 11.00 PM, when K was asleep, the appellant, against her wish had sexual intercourse with her. He, thereafter, threatened her not to disclose the said incident to anyone. Thereafter, whenever K visited V's house, the appellant continued to have sexual intercourse with her against her wish. Eventually, K became pregnant. On coming to know of the same, on 30.04.2016, the accused kidnapped K from her legal guardian and confined her in Coimbatore.



Crl.A.No.822 of 2018

WEB COPY

5.K lodged a complaint on 03.06.2016, at the All Women Police Station at Denkanikottai. A case was registered in Crime No.12 of 2016. As K belongs to a Scheduled Caste (hereinafter referred to as 'SC') community, on the directions of the Superintendent of Police, Krishnagiri, investigation was transferred to the Deputy Superintendent of Police, Denkanikottai. The said officer took over the investigation, and examined the witnesses. He collected the documents and filed a charge sheet.

6.On the side of the prosecution, 20 witnesses, namely PW1 to PW20 were examined and 22 documents, namely, Exs.P1 to P22 were marked. PW1 (K) is the victim. PW2 & PW3 are the father and mother of PW1, respectively. PW4 (V) is the daughter of the accused. PW5 is the mother of the accused. PW6 & PW7 are the siblings of the accused. PW8 is the Doctor who examined PW1. PW9 is the Doctor who issued the Accident Register for PW1. PW10 is the Doctor who conducted the potency test on the accused. PW11 and PW12 are the Village Administrative Officer and his assistant respectively, who signed the observation mahazar. PW13 was examined to prove the arrest and



Crl.A.No.822 of 2018

WEB COPY

confession of the accused. PW14 is the Headmaster of the school in which PW1 and PW4 studied. He marked Ex.P7, age certificate of PW1. PW15 is the Deputy Tahsildar. He was examined for the purpose of verifying the community of the accused. PW16 is the jurisdictional Tahsildar. He spoke about the community of PW1. PW18 is the station house officer, who registered the FIR. PW19 is the Deputy Superintendent of Police – investigating officer. PW20 was the Judicial Magistrate, who recorded Ex.P19, the Section 164 of Criminal Procedure Code statement and marked Ex.P21, the video recording of the statement, and had sent Ex.P22, the records to the learned Trial Judge. After trial, the learned Trial Judge convicted and sentenced the accused as aforesaid. Aggrieved by the same, this appeal.

7.We heard Mr.T.Ravi, for Mr.R.Dhineshkumar in support of the appeal, Mr.A.Damodaran, Additional Public Prosecutor assisted by Ms.M.Arifa Thasneem for the State, and Mrs.S.Sridevi, the Legal Aid Counsel for the victim and 4th respondent.

8.Mr.T.Ravi, after taking us through the evidence of PW1 to PW3,



Crl.A.No.822 of 2018

WEB COPY

contended that none of them had lodged a complaint with the police. He further submitted that the alleged victim was aged about 18 years at the time of the occurrence of the incident. He pointed out, from the evidence of PW2, that the accused and PW1 had married and had been residing in Coimbatore. He argued that the age of the victim had not been proved in a manner known to law, and that the certificate produced through PW14 cannot be relied upon for the purpose of conviction. According to him, the appellant did not have any forcible intercourse with the victim, and that PW4 to PW7 came to know about the incident subsequently. He pointed out that the Trial Court had convicted the appellant on the basis of evidence of PW8 to PW10, namely, the Doctors and the investigating officers. He pointed out that Ex.P20 had been marked through the investigating officer and has no evidentiary value. He pointed out that the witness to the arrest and confession did not support the case of the prosecution. He further urged that the entire case had been foisted by PW5, the wife of the accused, whose brother was working in the Police Department. Hence, he pleaded that the appeal may be allowed and the appellant be acquitted of all charges.



Crl.A.No.822 of 2018

WEB COPY

9.Per contra, the learned Additional Public Prosecutor and the counsel appearing for the victim pointed out that the victim, PW1 was aged about 16 years, and the appellant was aged about 35 years at the time of occurrence. Inviting our attention to the cross examination of PW14, they state that nowhere has the credibility of Ex.P7 ever been challenged. They also pointed out from the evidence of PW1 and PW4, that the fact of sexual intercourse between the appellant and the victim stood proved. They state that as the appellant had sexual intercourse with a child, it attracts the provisions of Protection of Children from Sexual Offences (POCSO) Act, 2012, and since the victim belongs to a SC community, the Trial Court has rightly convicted the appellant under Section 3(2)(v) of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. They point out that the birth of the child to the victim indicates sexual intercourse between the appellant and PW1 and therefore, it satisfies the requirements of Section 5(1) and 6 of the POCSO Act, 2012. They submitted that the Trial Court had considered the evidence in the correct perspective, and that the appeal be dismissed.



CrI.A.No.822 of 2018

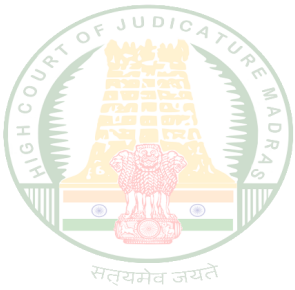
WEB COPY

10.We have carefully considered the arguments and have gone through the records.

11.The first plea of Mr.T.Ravi, that PW1 to PW3 did not lodge any complaint with the police and therefore, no reliance can be placed upon the same does not appeal to us. It is on record, that PW1 had lodged the complaint, and she had stated in her 164 statement before the Magistrate that in fact, she was the one who had given the complaint. In any event, in matters relating to POCSO, Section 19 empowers any person who is aware that such an incident has taken place to lodge a complaint. In the light of the expansive wordings of Section 19, we are not inclined to accept the said plea.

12.We are presented with a case of a rape and the victim is a child. As to how a Court should approach such a case has been settled by the Supreme Court. The position has been enunciated in *State of Maharashtra Vs. Chandraprakash Kewalchand Jain, (1990) 1 SCC 550*. The relevant paragraphs are extracted hereunder:

"15.It is necessary at the outset to state what the approach



WEB COPY



Crl.A.No.822 of 2018

of the court should be while evaluating the prosecution evidence, particularly the evidence of the prosecutrix, in sex offences. Is it essential that the evidence of the prosecutrix should be corroborated in material particulars before the court bases a conviction on her testimony ? Does the rule of prudence demand that in all cases save the rarest of rare the court should look for corroboration before acting on the evidence of the prosecutrix ? Let us see if the Evidence Act provides the clue. Under the said statute 'Evidence' means and includes all statements which the court permits or requires to be made before it by witnesses, in relation to the matters of fact under inquiry. Under Section 59 all facts, except the contents of documents, may be proved by oral evidence. Section 118 then tells us who may give oral evidence. According to that section all persons are competent to testify unless the court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind. Even in the case of an accomplice Section 133 provides that he shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. However, illustration (b) to Section 114, which lays down a rule of practice, says that the



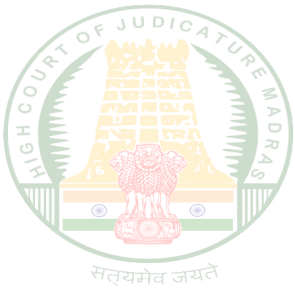
WEB COPY



CrI.A.No.822 of 2018

court 'may' presume that an accomplice is unworthy of credit, unless he is corroborated in material particulars. Thus under Section 133, which lays down a rule of law, an accomplice is a competent witness and a conviction based solely on his uncorroborated evidence is not illegal although in view of Section 114, illustration (b), courts do not as a matter of practice do so and look for corroboration in material particulars. This is the conjoint effect of Sections 133 and 114, illustration (b).

16. A prosecutrix of a sex offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act



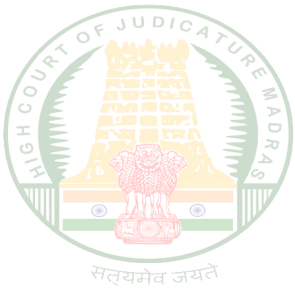
WEB COPY



Crl.A.No.822 of 2018

similar to illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence. We have, therefore, no doubt in our minds that ordinarily the evidence of a prosecutrix who does not lack understanding must be accepted. The degree of proof required must not be higher than is expected of an injured witness. For the above reasons we think that exception has rightly been taken to the approach of the High Court as is reflected in the following passage:

"It is only in the rarest of rare cases if the court finds that the testimony of the



WEB COPY



Crl.A.No.822 of 2018

*prosecutrix is so
trustworthy, truthful
and reliable that other
corroboration may not be
necessary."*

With respect, the law is not correctly stated. If we may say so, it is just the reverse. Ordinarily the evidence of a prosecutrix must carry the same weight as is attached to an injured person who is a victim of violence, unless there are special circumstances which call for greater caution, in which case it would be safe to act on her testimony if there is independent evidence lending assurance to her accusation.

17. We think it proper, having regard to the increase in the number of sex violation cases in the recent past, particularly cases of molestation and rape in custody, to remove the notion, if it persists, that the testimony of a woman who is a victim of sexual violence must ordinarily be corroborated in material particulars except in the rarest of rare cases. To insist on corroboration except in the rarest of rare cases is to equate a woman who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her story of woe will not be believed unless it is corroborated in material particulars as in the case of an accomplice to a crime. Ours is a conservative society where it



WEB COPY



Crl.A.No.822 of 2018

concerns sexual behaviour. Ours is not a permissive society as in some of the western and European countries. Our standard of decency and morality in public life is not the same as in those countries. It is, however, unfortunate that respect for womanhood in our country is on the decline and cases of molestation and rape are steadily growing. An Indian woman is now required to suffer indignities in different forms, from lewd remarks to eve-teasing, from molestation to rape. Decency and morality in public life can be promoted and protected only if we deal strictly with those who violate the societal norms. The standard of proof to be expected by the court in such cases must take into account the fact that such crimes are generally committed on the sly and very rarely direct evidence of a person other than the prosecutrix is available. Courts must also realise that ordinarily a woman, more so a young girl, will not stake her reputation by levelling a false charge concerning her chastity."

The said position has been re-affirmed in *State of Punjab Vs. Gurmit Singh and others, (1996) 2 SCC 384* and *Deepak Vs. State of Haryana, (2015) 4 SCC 762*. Keeping the principles enunciated above, we will approach the case on hand.



Cr1.A.No.822 of 2018

WEB COPY

13.It is not in dispute that the victim and PW4, the daughter of the appellant, were close friends. Right from VII standard, both the children were studying together. PW4 obtained admission in John Britto Higher Secondary School, Denkanikottai first, to pursue her higher secondary education. However, PW1 was not successful in getting the admission. With the assistance of the appellant, PW1 secured admission in the school, as well as, in the hostel. The evidence of PW1 to PW5 would show that, since the distance between PW1's house and the school was considerable in comparison to the distance from PW4's house, PW1 used to go over to the residence of PW4. During the month of October, as the school was closed for Dussehra holidays, PW1 and PW4 went over to the house of PW4. At that time, the appellant, PW1, PW4 and her sibling were at the house.

14.The evidence of PW1 shows that the appellant had invited PW1 to engage in sexual intercourse with him, and they did so. PW1 further adds that on account of the sexual intercourse, she became pregnant and also delivered a child. In the cross examination of PW1, the accused had only elicited that the complaint was not lodged by PW1 or her parents



Crl.A.No.822 of 2018

WEB COPY

PW2 or PW3, and that on the date of giving evidence, namely on 09.10.2017, she was aged about 19 years. Therefore, on the date of the alleged incident, the victim was less than the age of 18. In terms of Section 2(d) of the POCSO Act, a “child” means any person below the age of 18.

15.The question of getting consent from a child for having sexual relationship does not arise at all. The relationship between the appellant and the victim girl, the fact that they had intercourse on 22.10.2015 and on subsequent dates, and that they lived together as man and wife not only in Coimbatore, but also in Bangalore, is clear from the records. The sheet anchor of the case of the appellant is that the age of PW1 was not satisfactorily proved by the prosecution.

16.At this point, Mrs.S.Sridevi, appearing for the victim submits that as per Section 34 of the POCSO Act, if the trial Court comes to a conclusion that the victim is a minor, the same cannot be questioned in the appellate Court. We will discuss this point before going into the submissions of the appellant.



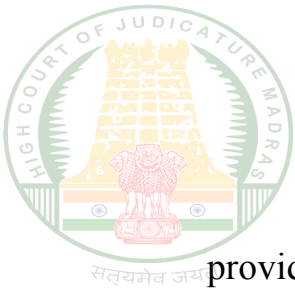
Crl.A.No.822 of 2018

17. Section 34 of the POCSO Act states as follows:

WEB COPY

“34. Procedure in case of commission of offence by child and determination of age by Special Court.—(1) Where any offence under this Act is committed by a child,
such child shall be dealt with under the provisions of 1 [the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016)].
(2) If any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person and it shall record in writing its reasons for such determination.
(3) No order made by the Special Court shall be deemed to be invalid merely by any subsequent proof that the age of a person as determined by it under sub-section (2) was not the correct age of that person.

18.A mere reading of Section 34(1) of the POCSO Act, 2012, shows that it applies when the Special Court under Section 34(1) of the POCSO Act, 2012, is called upon to decide whether a person is a child or not, when a child is accused of an offence. If during the course of such proceeding, the Court comes to a conclusion as regards the age of the accused, then it is called upon to record its reasons in writing. This is

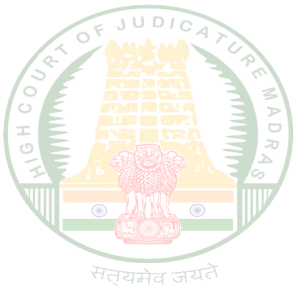


Crl.A.No.822 of 2018

WEB COPY

provided under Sub Section (2) of Section 34. It is such an order which is not deemed to be invalid by any subsequent proof, that the age so determined under Sub Section 2 was not a correct age. A combined reading of Section 34(1) to 34(3) of the POCSO Act, 2012, leads us to the conclusion that this provision applies only when the Court is called upon to decide whether a child, who is an accused under this Act, should be dealt with under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015, and not in a case where the accused is not a child. It is not in dispute that the accused in the present case was 35 years old. In our view, Section 34 of the POCSO Act will not apply in a case where the accused is not a child.

19. Turning to the argument of the appellant that the age of the victim had not been proved, we have to point out that under the POCSO Act, there is no procedure for determining the age of a victim. The procedure that should be followed is as contemplated under Section 94(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015. The provision reads as hereunder:



WEB COPY



Crl.A.No.822 of 2018

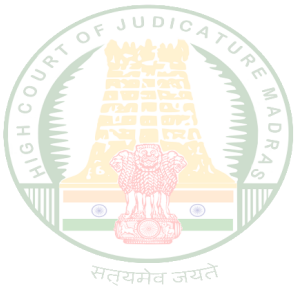
“94.Presumption and determination of age.- (1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board 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



WEB COPY



Crl.A.No.822 of 2018

*determination test
conducted on the orders
of the Committee or the
Board:*

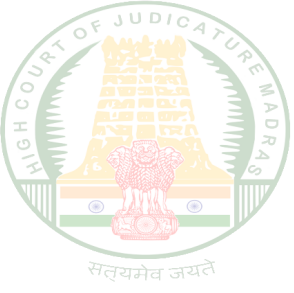
*Provided such age determination
test conducted on the order of the
Committee or the Board shall be
completed within fifteen days from
the date of such order.*

*(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."*

20.A reading of Section 94(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015, makes it clear that where there is a doubt in the mind of the Court as to whether a person before it is a child or not, the manner of proof is as follows:

(i) By the production of date of birth certificate from the school or the matriculation, or equivalent certificate from the concerned examination board, if available;

(ii) in case any of the records mentioned under (i) are not available, then the birth certificate issued by a corporation, or municipal authority, or a panchayat and,



Crl.A.No.822 of 2018

WEB COPY

(iii)only in absence of any of the aforesaid documents in (i) and (ii), then by conducting an ossification test or by any other method developed by medical science for determination of age.

21.Insofar as this case is concerned, PW14 was examined to produce Ex.P7. Ex.P7 certifies that PW1 was born on 20.07.2000. The same was based on the school records available with John Britto School in which PW1 & PW4 studied. As per Section 94(2)(i) of the Juvenile Justice (Care and Protection of Children) Act, 2015, the date of birth certificate from the school takes precedence over even a birth certificate issued by a municipal authority, or Corporation, or a Panchayat. PW14 was not even questioned, as to whether the certificate that has been produced by him, is a proper extract from the school records or not. For ready reference, we are extracting the entire evidence of PW14 as hereunder:

முதல் விசாரணை:

நான் கிருஸ்து பாளையத்திலுள்ள ஜான் கிரிப்டோ
மேல்நிலைப் பள்ளியில் தலைமை ஆசிரியராக
பணிபுரிகின்றேன். சென்ற வருடம் ஜூன் மாதத்திலிருந்து



Crl.A.No.822 of 2018

பணிபுரிகின்றேன். என்னிடம் போலீசார் எங்கள் பள்ளியில் படிக்கும் காவியா த/பெ எல்லப்பா என்பவரின் படிப்புச் சான்றிதழ் கேட்டார். காவியா எங்கள் பள்ளியில் 11ம் வகுப்பு காமெர்ஸ் படித்தார். இவர் ஆதிதிராவிடர் இனத்தை சேர்ந்தவர். இது குறித்து நான் சான்று வழங்கினேன். இந்த சான்று அ.சா.ஆ.7. இந்த வழக்கு குறித்து டிஎஸ்பி என்னை விசாரித்தார்.

எதிரி தரப்பு குறுக்கு விசாரணை:

இல்லை.

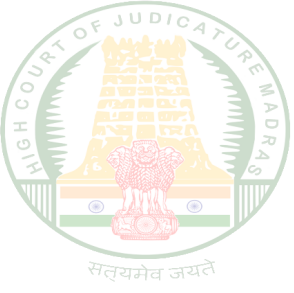
25.04.2018.

Spl.S.C.30/2016, PW14 Tr.Iruthayaraj

சாட்சி மனுவின் பேரில் மீண்டும் அழைக்கப்பட்டு சத்திய பிரமாணம் செய்து வைக்கப்பட்டது.

எதிரி தரப்பு குறுக்கு விசாரணை:

நான் ஜான் பிரிட்டோ பள்ளியில் தலைமையாசிரியராக பணியாற்றுகின்றேன். நான் தலைமையாசிரியராக பணியில் சேர்ந்தது முதல் மாணவர்களை கட்டுப்பாட்டில் வைத்திருக்கின்றேன். 3.6.2016ல் எங்கள் பள்ளியில் படித்த காவ்யா என்பவருக்கு சான்று வழங்கியுள்ளேன். காவ்யா எங்கள் பள்ளியில் படித்த போது வேறு தலைமையாசிரியர்



Cr1.A.No.822 of 2018

WEB COPY

பணியில் இருந்தார். நான் பணிக்கு சேர்ந்த பின்பு காவ்யா
பள்ளிக்கு வரவில்லை. நான் பணிக்கு சேர்ந்த பின்பு
காவ்யா பள்ளிக்கு வரவில்லை என்பதால் அவருடைய
நடத்தை (Conduct Certificate) பற்றி என்னால் சொல்ல
முடியாது.

மறுவிசாரணை:

இல்லை.

22.Since the age of PW1 on 22.10.2015 has been established by Ex.P7 as 15 years 3 months and 2 days, she was obviously a “child” as provided under Section 2(d) of the POCSO Act, when the appellant indulged in penetrative sexual intercourse with her. The result of the intercourse was the birth of a child. PW1 was not even cross examined on the aspect as to whether she and the appellant did or did not indulge in any sexual intercourse. The entire tenor of the cross examination appears to suggest that the sexual relationship between PW1 and appellant was a consensual one. It is too fundamental, however, for the purpose of this case, that we have to reiterate that a child cannot give consent to another, to have sexual relationship with her / him. This discussion leads us to the



Crl.A.No.822 of 2018

WEB COPY

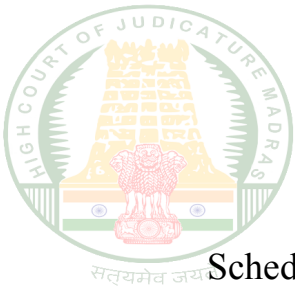
conclusion that the appellant had sexual intercourse with a child, which resulted in a birth of another child to her. In fact, she was 9 months pregnant with her 2nd child when she deposed before the Court. The fact that the appellant had sexual intercourse with a child, directly attracts Section 5(l) and 6 of the POCSO Act, 2012.

23.PW4 is the daughter of the appellant. Her evidence clearly establishes the following:

(i)PW1 & PW4 had come home during Dussehra vacations;

(ii)PW1 was sleeping in a separate bed, and so was PW4 in another bed along with her sibling and father. When PW4 woke up in the morning, she found PW1 and the appellant sharing the same bed. PW4 is not a chance witness, but a natural one. It is expected that when an incident takes place inside a house, witnesses would obviously have to be the family members. Therefore, corroboration of the evidence of PW1 is found in PW4;

24.The evidence also discloses that the appellant was well aware that PW1 belonged to an SC community. Under Section 3(2)(v) of the



Crl.A.No.822 of 2018

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities)

WEB COPY

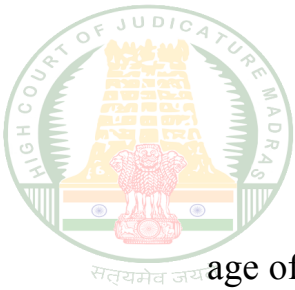
Act, 1989, in case a person commits any offence under the Indian Penal Code, where the act is punishable with an imprisonment for the term of 10 years or more against a person belonging to SC community, knowing that such person is a member of an SC community, then he is liable to be punished with an imprisonment for life with fine.

25.The evidence of PW1 also reveals that when PW1 was still below the age of 16, upon finding that she had become pregnant, the appellant had taken her away from the lawful custody of PW2 & PW3, her parents.

26.Section 359 of the Indian Penal Code defines that kidnapping are of two kinds;

- I)Kidnapping from India; and ,
- II)kidnapping from lawful custody.

27.Under Section 361, whoever takes or entices a minor under the age of 16 (in case of a male child), or whoever takes a minor under the



Crl.A.No.822 of 2018

WEB COPY

age of 18 (in case of a female child), out of the lawful guardianship of the family, is said to have kidnapped the minor. The exception to this Rule being that the person taking a child away should believe that he is the father of the child. The said exception does not apply in the present case.

28.As pointed out above, the evidence shows that PW1 was taken away from the lawful custody of her parents to Coimbatore, and was residing with the appellant. Her statement in 164 stands corroborated by her deposition in Court as PW1. Consequently, the requirement of Sections 361 and 366 of Indian Penal Code are satisfied. Hence, we have to conclude the Act of the appellant had rightly been held by the Trial Court of attracting the aforementioned provisions.

29.At this stage, Mr.T.Ravi took us to a judgment of the Supreme Court in ***P.Yuvaprakash Vs. State rep. by Inspector of Police, 2023 INSC 626***, to urge that the appellant is entitled to the benefit of the said judgment. A careful perusal of the judgment shows that in that case, DW2, who was the Headmaster, had stated that the date of birth had been recorded in the school certificate on the basis of horoscope. DW3 had



Crl.A.No.822 of 2018

WEB COPY

also stated that the birth certificate pertaining to the year 1997 was not available with them. In fact, the Court gave the benefit of doubt to the appellant in that case, on account of the fact that the documents produced by CW1 did not answer to the description of a birth certificate. However, on the case at hand, Ex.P7 clearly states that as per the school records, the date of birth of PW1 is 20.07.2000. Apart from that, the school also records that PW1 is a member of a Scheduled Caste community. If the appellant was serious about the plea that he is raising before us, he would have certainly cross examined PW14 on the aforementioned aspects, as had been done in *P.Yuvaprakash*'s case. When no foundational evidence has been brought out by the appellant, we are not in a position to apply the said judgment to the facts of the present case.

30.It is here we will rely upon Section 29 of the POCSO Act. Under the said Section, where a person is prosecuted for having committed an offence under Sections 3, 5, 7 & 9 of the POCSO Act, the Special Court is called upon to apply the “shall presume” test, that the accused had committed the offence, unless he proves to the contrary. “Shall presume” legally obligates the Court to accept a fact as proven



Crl.A.No.822 of 2018

WEB COPY

unless disproved by the accused. We searched the evidence for such an evidence. It was all in vain.

31.For the above reasons, the conviction and sentence imposed by the Trial Court against the appellant does not require any interference and accordingly, this Criminal Appeal stands dismissed. The appellant shall be apprehended to undergo the sentence as imposed by the Trial Court. The appellant shall be taken into custody forthwith to serve out the sentence imposed by the Trial Court and confirmed by this Court.

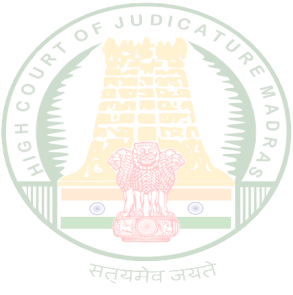
(M.S.R., J)

(V.L.N., J)

10.10.2025

krk

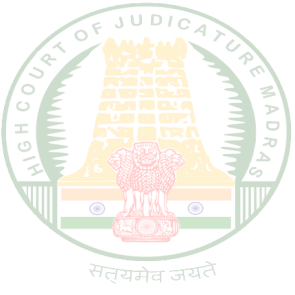
Index : Yes
Internet : Yes
Neutral Citation : Yes



Crl.A.No.822 of 2018

WEB COPY
To

- 1.The State rep by its
Inspector of Police,
All Women Police Station,
Denkanikottai, Krishnagiri.
- 2.Anandha Hostel,
Mathigiri Koot Road,
Hosur Taluk, Krishnagiri District.
- 3.The Child Welfare Committee /
District Child Protection Officer,
Londenpet, Krishnagiri – 635 002.
- 4.The Sessions Judge,
FastTrack Mahila Court,
Krishnagiri.
- 5.The Public Prosecutor,
High Court, Madras.



WEB COPY



Crl.A.No.822 of 2018

M.S.RAMESH, J.
and
V.LAKSHMINARAYANAN, J.

krk

Crl.A.No.822 of 2018

10.10.2025