

HIGH COURT OF MADRAS**Bench: THE HONOURABLE MR. JUSTICE K.K.RAMAKRISHNAN****Date of Decision : 19.01.2024**

Crl.A(MD)No.394 of 2022

Sujithkumar @ Sonaimuthu .. Appellant/Sole Accused**Vs.****State, rep. By The Inspector of Police, All Women Police Station,
Thiruparangundram, Madurai District. (Crime No.111/2013) ..
Respondent/Complainant****Legislation:**

Section 374(2) of Cr.P.C.

Section 5(l) r/w 5(J)(ii) r/w 6 of the Prevention of Children from Sexual Offences Act, 2012 (POCSO Act)

Rule 12 of Juvenile Justice (Care and Protection of Children) Rules, 2007

Subject: Appeal against conviction and sentence in a POCSO Act case involving alleged sexual intercourse with a minor on the pretext of marriage.**Headnotes:**

Conviction Under POCSO Act – Challenged by Appellant – Convicted for offenses under Section 5(l) r/w 5(J)(ii) r/w 6 of POCSO Act for sexually exploiting a minor under false marriage promises – Sentenced to rigorous imprisonment for ten years and a fine [Para 1].

Prosecution Case – Sexual Exploitation of Minor – Appellant, a married man with children, accused of having a sexual relationship with a minor girl resulting in pregnancy – Based on the victim's complaint, appellant charged under relevant sections of POCSO Act [Para 2].

Trial Proceedings – Evidence and Witnesses – Prosecution presented P.W.1 to P.W.15 and documents as Ex.P.1 to Ex.P.16 – Accused examined D.W.1 and presented Ex.D.1 in defense [Para 3].

Defense Argument – Victim's Age Disputed – Defense counsel contested the proof of the victim's age, citing a lack of evidence to authenticate the birth date – Relied on the Supreme Court judgment in Yuvaprakash Vs. State [Para 5.1].

Judgment Analysis – Age of Victim Not Proven – Court found prosecution failed to establish the victim's age convincingly as per the guidelines in Yuvaprakash Vs. State – Entry in school records not sufficiently authenticated [Paras 8-9].

Decision – Appellant Acquitted – Court acquitted the appellant due to failure in establishing the victim's age – Conviction and sentence set aside, but compensation to the victim upheld [Para 11].

Referred Cases:

- Yuvaprakash Vs. State Represented by the Inspector of Police, reported in 2023 LiveLaw (SC) 538.

Representing Advocates:

For Appellant: Mr.M.Asif Mohammed for Mr.G.Kannan

For Respondent: Mr.R.Sivakumar, Government Advocate (Crl. Side)

Prayer: This Criminal Appeal is filed under Section 374(2) of Cr.P.C. to call for the judgment Spl.S.C.No.52 of 2016 on the file of the learned Sessions Judge (Special Court-POCSO Act cases), Madurai, dated 28.03.2022 and set aside the same and acquit the accused from the charge framed against him.

JUDGMENT

The appellant, who is the sole accused in Spl.S.C.No.52 of 2016 on the file of the learned Sessions Judge (Special Court-POCSO Act cases), Madurai, filed this criminal appeal challenging the conviction and sentence imposed against him by the learned Sessions Judge (Special Court-POCSO Act cases), Madurai. The learned trial Judge has passed the impugned order, dated 28.03.2022 and found the petitioner guilty, convicted and sentenced him as detailed below:-

<i>Accused</i>	<i>Convicted under Section</i>	<i>Sentence of Imprisonment/ fine imposed</i>

Sole Accused	Section 5(I) r/w 5(J)(ii) r/w 6 of POCSO Act	Rigorous Imprisonment ten years and to pay a fine of Rs. 5,000/-, in default to undergo Simple Imprisonment for one year.
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2. The case of the prosecution is that the appellant/Sole accused is the neighbour of the victim girl/P.W.1. The appellant was already married and he was having two children. The appellant had love affair with the victim girl and he had sexual intercourse with her several times by giving false promise to marry her. Due to which, she became pregnant. On the basis of the complaint given by the victim girl/P.W.1, the respondent police registered the case against the appellant in Crime No.111 of 2013 for the offences under Section 5(I) r/w 5(J)(ii) r/w 6 of Prevention of Children from Sexual Offences Act, 2012, (hereinafter, for the sake of brevity, referred to as "POCSO Act"). Thereafter, the respondent police arrested the accused and conducted investigation and filed the final report. The same was taken on file by the learned Sessions Judge (Special Court-POCSO Act cases), Madurai, in Spl.S.C.No.52 of 2016. The learned trial Judge issued summons to the accused and after his appearance, served the copies under Section 207 Cr.P.C. Thereafter, he framed necessary charges and questioned the accused. The accused pleaded not guilty and hence the trial commenced against the accused.

3. To prove the case, the prosecution examined P.W.1 to P.W.15 and exhibited 16 documents as Ex.P.1 to Ex.P.16. The learned trial Judge thereafter questioned the accused under Section 313 Cr.P.C by putting the relevant question and the accused denied the same as false and thereafter, the case was posted for examination of the witnesses on the side of the

accused. The accused examined D.W.1 and exhibited one document as Ex.D.1.

4. The learned trial Judge, on considering the evidence of witnesses, convicted and sentenced the appellant for the offence as stated supra. Aggrieved over the same, the appellant preferred this appeal.

5. The learned counsel appearing for the appellant submitted that P.W.1 deposed that the appellant had love affair with the victim girl and he had sexual intercourse with her several times by giving false promise of marrying her. Due to which, she became pregnant. Thereafter, he married the victim girl. After the pregnancy, she has not been taken care of by the appellant. Hence, she made a complaint before the respondent police. She turned hostile. In the said circumstances, the above offence under Section 5(I) r/w 5(J)(ii) r/w 6 of POCSO Act is not made out.

5.1. He further submitted that the prosecution failed to prove the age of the victim girl. To prove the age of the victim girl, P.W.11/ retired Headmaster of the Madurai Kaveer Nagar Panchayat Middle School, deposed that the victim girl studied upto 7th standard. He further deposed that there was an entry in the school relating to the date of the birth of the victim girl. As per the entry, the date of the birth of the victim girl is 10.03.1997. He further deposed that he admitted the victim the girl in the fourth standard on 19.06.2008. In this regard, he produced the Xerox copy of the record sheet. From his evidence, it is clear that there was no evidence to prove that the entry was made with proper source of correctness of the date of birth. For which, the learned counsel appearing for the appellant relied upon the judgment of the Honourable Supreme Court reported in **2023 LiveLaw (SC) 538** in the case of **Yuvaprakash Vs. State Represented by the Inspector of Police**. As per

the judgment of the Honourable Supreme Court, the said entry is a valid document to prove the age of the victim girl, when there was a dispute relating to the age. Hence, the offence under Section 5(I) r/w 5(J)(ii) r/w 6 of POCSO Act, against the appellant is not made out. Hence, he seeks to acquit the appellant.

6. The learned Additional Public Prosecutor submitted that the entry in the record is admissible, when P.W.11 was examined to prove the same. He further submitted that even though P.W.11 turned hostile, the appellant had sexual intercourse with her several times by giving false promise to marry her. Hence, the offence under Section 5(I) r/w 5(J)(ii) r/w 6 of POCSO Act is made out against the appellant. Hence, the conviction and sentence passed against him can not be found fault with.

7. This Court has considered the rival submissions made by both parties and perused the records and also the precedents relied upon by them.

8. To prove the age of the victim girl, the prosecution marked Ex.P.7 and Ex.P.8. The said document is the entry in the school record. As per Rule 12 of Juvenile Justice (Care and Protection of Children) Rules, 2007, in the absence of the SSLC certificate, if any document is produced by the school authority, the same to be proved beyond reasonable doubt. The said entry of the date of birth is made with authenticated source. The said requirement was reiterated by the Honourable Supreme Court in the the case of ***Yuvaprakash Vs. State Represented by the Inspector of Police***, reported in **2023 LiveLaw (SC) 538**, the relevant paragraph was held as follows:

“18.Reverting to the facts of this case, the headmaster of M's school, CW1, was summoned by the Court and produced a Transfer Certificate (Ex.C-1). This Witness produced a Transfer

Certificate Register containing M's name. He deposed that she had studied in the school for one year i.e., 2009-10 and that the date of birth was based on the basis of the record sheet given by the school where she studied in the 7th standard. D.W.2 TMT poongothoi, Headmaster of Chinnasolaipalayam Panchayat School, answered the summons served by the Court and deposed that 'M' had joined her school with effect from 03.04.2002 and that her date of birth was recorded as 11.07.1997. she admitted that though the date of birth was 11.07.1997. she admitted that though the date of birth was based on the birth certificate, it would normally be recorded on the basis of horoscope. She conceded to no knowledge about the basis on which the document pertaining to the date of birth was recorded. It is stated earlier on the same issue i.e., the date of birth, Thiru Prakasam, D.W.3 stated that the birth register pertaining to the year 1997 was not available in the record room of his office.

19.It is clear from the above narrative that none of the documents produced during the trial answered the description of “the date of birth certificate from the school” or “the Matriculation or equivalent certificate” from the concerned examination board or certificate by a corporation, municipal authority or a Panchayat.”

9. From the above principle, the P.W.11 is the retired Headmaster. He admitted the victim girl on 19.06.2008 in the fourth standard. It is not evidence of the P.W.11 that he made an endorsement either on the basis of the birth certificate or any other authenticate document. Hence, this Court feels that the prosecution miserably failed to prove the age of the victim girl to constitute the offence under the POCSO Act.

10. In the absence of the age proof, the charge framed against the appellant under Section 5(I) r/w 5(J)(ii) r/w 6 of POCSO Act, is not made out. Without any evidence, on the side of the prosecution to prove that the appellant had sexual intercourse with her with the knowledge that victim is minor, the charge framed under Section 5(I) r/w 5(J)(ii) r/w 6 of POCSO Act is not made out. In the said circumstances, this Court finds that the prosecution miserably failed to prove the charges against the appellant.

Hence, this Court is inclined to interfere with the finding of the learned trial Judge in convicting the appellant under Section 5(l) r/w 5(J)(ii) r/w 6 of POCSO Act, and acquit the appellant for the above stated reasons.

11. In the result, this Criminal Appeal stands allowed. The conviction and sentence dated 28.03.2022, passed by the learned Sessions Judge (Special Court-POCSO Act cases), Madurai, in Spl.S.C.No.52 of 2016 is hereby set aside. The learned trial Judge granted compensation to the victim girl. Even though this Court acquitted the appellant from all the charges, the order of compensation granted to the victim girl is not disturbed. The fine amount, if any, paid by the appellant/sole accused shall be refunded to him. The bail bond, if any, executed by the appellant/sole accused shall stand cancelled.

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