

Crl.A.Nos.56 of 2023 and 368 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2025

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.Nos.56 of 2023 and 368 of 2025

Vijayakuamr

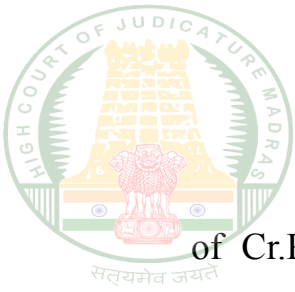
... Appellant in Crl.A.No.56/2023 &
Respondent in Crl.A.No.368/2025
Vs.

State represented by
The Inspector of Police
Wellington Police Station
Wellington,
The Nilgiris District.

... Respondent in Crl.A.No.56/2023 &
Appellant in Crl.A.No.368/2025

Prayer in Crl.A.No.56 of 2023: Criminal Appeal filed under Section 374(2) of Cr.P.C. to set aside the judgment made in SCC No.33 of 2021 on the file of the Sessions Judge, Magalir Needhimandram (FTMC), Udthagamandalam at Nilgiris dated 30.11.2022.

Prayer in Crl.A.No.368 of 2025: Criminal Appeal filed under Section 378(1)



Crl.A.Nos.56 of 2023 and 368 of 2025

of Cr.P.C./419 of B.N.S.S. to set aside the order of acquittal rendered in

judgment dated 30.11.2022 made in Special Calender Case No.33 of 2021 on the file of the Sessions Judge Magalir Needhimandram, (FTMC), Udhagamandalam at Nilgiris.

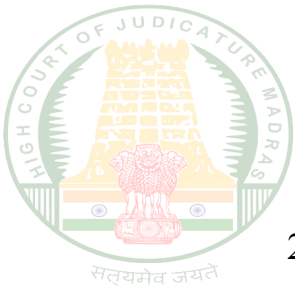
In both Crl.Appeals:

For Appellant in Crl.A.No.56/2023 &
Respondent in Crl.A.No.368/2025 : Mr.T.Shanmugam

For Respondent in Crl.A.No.56/2023 &
Appellant in Crl.A.No.368/2025 : Mrs.G.V.Kasthuri
Additional Public Prosecutor

COMMON JUDGMENT

Crl.A.No.56 of 2023 has been filed by the accused to set aside the judgment of conviction and sentence made in Special Calender Case No.33 of 2021 on the file of the Sessions Judge, Magalir Needhimandram (FTMC), Udhagamandalam at Nilgiris dated 30.11.2022 for the offence under Sections 363 and 343 of IPC.



Crl.A.Nos.56 of 2023 and 368 of 2025

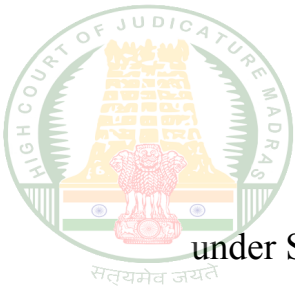
2. Crl.A.No.368 of 2025 has been filed by the State to set aside the order

of acquittal rendered in Special Calender Case No.33 of 2021 dated 30.11.2022

by the Sessions Judge Magalilr Needhimandram, (FTMC), Udhagamandalam

at Nilgiris.

3. The case of the prosecution is that based on the complaint preferred by the father of the victim girl, originally the case in Crime No.419 of 2020 was registered by the respondent police "for girl missing. Subsequently, the victim girl was secured and based on her statement, the respondent police altered the offence into Sections 363 IPC and 5(l) read with 6 of POCSO Act, 2012 @ 363 and 343 IPC @ 5(l) read with 6 of PCSO Act, 2012 and after completion of investigation, they laid charge sheet and the same was taken on file in Special Calender Case No.33 of 2021 on the file of the Sessions Judge Magalilr Needhimandram, (FTMC), Udhagamandalam at Nilgiris. The trial Court after completion of trial, though convicted the accused for the IPC offences viz. Sections 363 and 343 IPC, acquitted the accused from the offence



Crl.A.Nos.56 of 2023 and 368 of 2025

under Section 5(1) read with 6 of POCSO Act.

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4. Aggrieved by the judgment of conviction and sentence passed by the trial Court for the offence under the POCSO Act, the accused has filed the appeal in Crl.A.No.56 of 2023 and challenging the judgment of acquittal of the accused from IPC offence, the State has preferred the appeal in Crl.A.No.368 of 2025.

5. The learned counsel for the accused submitted that the victim and the accused were neighbours and they fell in love with each other and after coming to know about the same, there was a quarrel between the parents of the victim and the accused and thereafter, the accused shifted his house to other place. Thereafter, the parents of the victim, made arrangements for the marriage of the victim with some other person and therefore, the victim herself left her home and approached the accused and with no other option, the accused took the victim to the relatives house and stayed there for some time and after coming to know that the parents of the victim have given complaint and the local police



Crl.A.Nos.56 of 2023 and 368 of 2025

are in search of the victim and the accused, the accused brought her back to her

native. Subsequently, the police identified the victim and secured her and took her to the police station and even in the police station, she had not stated anything about the physical relationship. Thereafter, the victim was produced before the Magistrate for recording statement under Section 164 Cr.P.C. and even before the Magistrate, she had not stated anything about physical relationship. Even the doctor nowhere stated that the victim had stated that there was repeated penetrative sexual relationship between the accused and the victim and that the Doctor has stated that it cannot be stated that the victim is not a virgin. Therefore, the charge levelled against the accused for the offence under Section 5(1) read with 6 of POCSO Act is un-sustainable. Further, there is no materials to show that there was a penetrative sexual assault on the victim girl. Even in the statement recorded by the Magistrate under Section 164 Cr.P.C., the victim had not stated that they had physical relationship during their stay. Even when the victim was examined as P.W.1, she had not stated

5/29



Crl.A.Nos.56 of 2023 and 368 of 2025

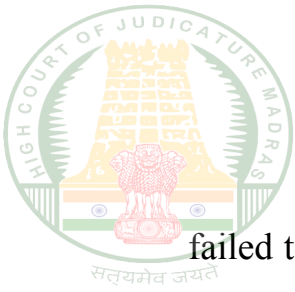
anything about the penetrative sexual assault and not supported the case of the

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prosecution and therefore, the victim was declared as hostile witness. Only in order to fix the accused under POCSO offence, the prosecution filed a false case against the accused. Since the prosecution had not substantiated the charges levelled against the accused by oral or documentary evidence, the trial Court rightly appreciated the evidence and acquitted the accused from the charge under the POCSO Act. Hence, the appeal filed by the State in Crl.A.No.368 of 2025 is liable to be dismissed.

6. Insofar as the charges for the offence under Sections 363 and 343 IPC are concerned, the learned counsel for the accused submitted that it is not the case of the prosecution or the case of the victim that the accused kidnapped or abducted the victim. The victim herself clearly stated that due to fear that her parents would get her into marriage with some other person, she had voluntarily left her home and approached the accused and therefore, the offence under Sections 363 and 343 IPC is not made out. However, the trial Court

6/29



Crl.A.Nos.56 of 2023 and 368 of 2025

failed to consider the statement of the victim and convicted the accused for the

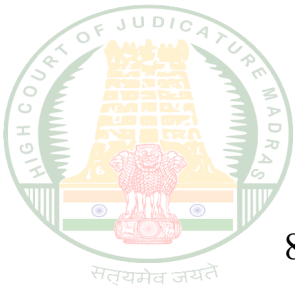
offence under Section 363 and 343 of IPC. Therefore, the appeal filed by the accused in Crl.No.59 of 2023 is liable to be allowed and the judgment of conviction and sentence passed by the Special Court for the offence under Sections 363 and 343 of IPC has to be set aside.

7. In support of his contentions, the learned counsel for the accused placed reliance on the following judgements:

1. S.Varadarajan Vs. State of Madras reported in AIR 1965 SCC 942

2. Mahesh Mukund Patel Vs. State of U.P. reported in Criminal Appeal No.001005 of 2002 dated 28.02.2025.

3. Parvat Sing Vs. The State of Madhya Pradesh reported in AIR ONLINE 2020 SC 271.



Crl.A.Nos.56 of 2023 and 368 of 2025

8. The learned Additional Public Prosecutor appearing for the State

submitted that originally the parents of the victim gave a complaint for girl missing and during investigation, the victim girl was secured and she stated that she was in love with the accused who was her neighbour and since her parents were making arrangements to give her into marriage with some other person, she approached the accused and the accused took her to Mysore wherein they stayed in the relatives house of the accused and during their stay, they had physical relationship. In the Police Station, the victim refused to go with her parents and therefore, she was sent to home. Subsequently, based on the statement of the victim girl, the offence was altered to Sections 363 IPC and 5(l) read with 6 of POCSO Act, 2012 @ 363 and 343 IPC and 5(l) read with 6 of POCSO Act, 2012. The victim was subjected to medical examination and also produced before the Magistrate for recording evidence under Section 164 Cr.P.C. Thereafter, on completion of investigation, the respondent police laid charge sheet for the offence under Sections 363 and 343 IPC and 5(l) read

8/29



Crl.A.Nos.56 of 2023 and 368 of 2025

with 6 of POCSO Act, 2012 and the same was taken on file in Special Calender

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Case No.33 of 2021 on the file of the Sessions Judge Magalilr
Needhimandram, (FTMC), Udhagamandalam at Nilgiris.

9. The learned Additional Public Prosecutor submitted that the date of birth of the victim was 22.10.2023 and at the time of occurrence, the victim girl was aged 17 years and had not completed the age of 18 years and therefore, she was a child at the time of occurrence under the definition of POCSO Act. In support thereof, the bonafide certificate issued by the College of Nursing where the victim girl was studying was marked as Ex.P.13. There was no challenge on the side of the accused on the age of the victim. Since the victim was a child at the time of occurrence under the definition of POCSO Act, there is no question of elopement or consent. Since the victim who was a child, was taken away from the custody of her parents without their knowledge by the accused and kept her in his custody for few days, the offence under Sections 363 and 343 of IPC would attract. Therefore, the contention of the accused that the victim only

9/29



Crl.A.Nos.56 of 2023 and 368 of 2025

voluntarily left her parental home and stayed with the accused is not

acceptable. The trial Court also rightly convicted the accused for the offence under Sections 363 and 343 IPC. Therefore, the appeal filed by the accused in Crl.A.No.56 of 2023 is liable to be dismissed.

10. The learned Additional Public Prosecutor further submitted that as far as the charge levelled against the accused for the offence under Section 5(1) read with 6 of POCSO Act is concerned, pending trial, the victim married to the accused and therefore, when the victim was examined as P.W.1 during trial, she turned hostile and the family members of the victim viz.P.W.2 to P.W.4 also turned hostile and therefore, P.W.1 to P.W.4 were declared as hostile witnesses. But, the victim girl in her statement recorded under Section 164 Cr.P.C. has clearly stated that she left her home and the accused took her to Mysore wherein, they stayed in house of the relatives of the accused during their stay, they were together. When the victim was produced before the doctor, the doctor after examining the victim found that the hymen of the victim is not intact. But,

10/29



Crl.A.Nos.56 of 2023 and 368 of 2025

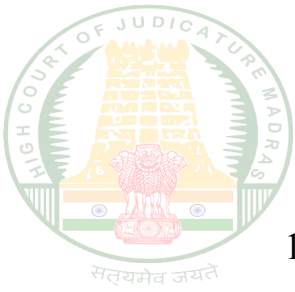
the trial Court to failed to consider the medical evidence and the statement

recorded by the Magistrate under Section 164 Cr.P.C. and also the scope and object of POCSO Act and acquitted the accused, which warrants interference and the appeal filed by the State in Crl.A.No.368 of 2025 has to be allowed.

11. Heard both sides and perused the materials available on record.

12. A reading of the FIR shows that the parents of the victim gave a complaint to the police stating that their daughter was missing from their home. Hence, originally the case was registered for girl missing. Subsequently, after securing the victim and after recording her statement, the respondent police altered the offence into Section 363 IPC and 5(l) read with 6 of POCSO Act, 2012 @ 363 and 343 IPC and 5(l) read with 6 of POCSO Act, 2012 and after completion of investigation, laid charge sheet for the offence under Section 363 and 343 IPC and 5(l) read with 6 of POCSO Act, 2012 and the same was taken on file in Special Calender Case No.33 of 2021 on the file of the Sessions Judge Magalilr Needhimandram, (FTMC), Udhagamandalam at Nilgiris.

11/29



Crl.A.Nos.56 of 2023 and 368 of 2025

13. In order to substantiate the case of the prosecution, on the side of the

prosecution, 9 witnesses were examined as P.W.1 to P.W.9 and 18 documents were marked as Ex.P.1 to Ex.P18, however, no oral and documentary evidence was produced on the side of the defence.

14. Before the trial Court, the victim was examined as P.W.1. A reading of the evidence of the victim shows that she had not supported the case of the prosecution as far as the charge under the POCSO Act is concerned and therefore, she was declared as hostile witness. When the prosecution put a suggestion to the victim during cross examination regarding penetrative sexual assault by the accused, she denied the same. But during cross examination on the side of the accused, when a suggestion was put to the victim that during college days she involved in sports and used to ride cycle and two wheeler, she admitted the same.

15. It is an admitted fact from the case of the prosecution, the case of the defence and cross examination of the victim and also the grounds taken by the

12/29



Crl.A.Nos.56 of 2023 and 368 of 2025

accused in the appeal that the accused knows the victim very well and they

both were neighbours once upon a time and that the victim and the accused were in love with each other. When the parents of the victim came to know about the same, there was a quarrel between the parents of the victim and the accused. Therefore, the accused shifted his house to some other place.

16. From the evidence of the victim it is seen that since her parents arranged marriage with some other person, the victim left her home and approached the accused. The accused who had been a neighbour and lover of the victim girl, he knows very well that the victim did not attain majority at the relevant point of time. Even assuming that the victim only voluntarily left her home and approached the accused due to fear that her parents would give her into marriage with some other person, the accused ought to have informed the same either to the police or any other competent authority or Social Welfare Officer. Now a days, the youngsters very well aware that when two adult persons who were in love with each other and if their parents arranges marriage

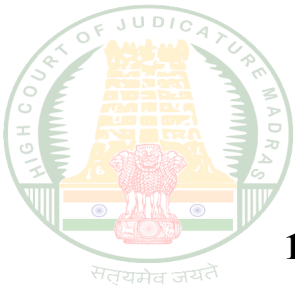


Crl.A.Nos.56 of 2023 and 368 of 2025

against their wish, they can approach either police or they can seek help from

the concerned authorities through social media. If at all the intention of the accused was to safe guard the victim from the alleged marriage, as soon as the victim approached him, the accused ought to have intimated the same to the competent authority to stop the marriage whereas, the accused without intimating to any of the competent authority, took the victim to many places and finally to his relatives house in Mysore wherein they have together for few days. Once the victim was a child at the time of occurrence, there is no question of elopement and consent. Since the victim had not completed the age of 18 years at the time of occurrence, she was a child under the definition of POCSO Act, the offence under Sections 363 and 343 of IPC is made out. Therefore, the trial Court rightly convicted the accused for the offence under Section 363 and 343 of IPC. The grounds taken by the accused is not sustainable and there is no merits in the appeal filed by the accused and the same is liable to be dismissed.

14/29



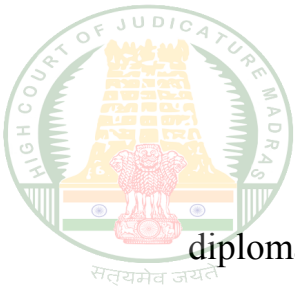
Crl.A.Nos.56 of 2023 and 368 of 2025

17. Accordingly, the appeal filed by the accused in Crl.A.No.56 of

2023 is dismissed.

18. As far as the appeal filed by the State against the acquittal of the accused from the charge under the POCSO Act is concerned, after securing the victim, her statement was recorded by woman police, in which, the victim has clearly stated that she left her parental home and approached the accused and that the accused took her to Mysore wherein they stayed in the relative's house and during their stay, they had sexual intercourse. Subsequently, the victim girl was produced before the Magistrate and the statement of the victim was recorded under Section 164 Cr.P.C. and during that time also, the victim has clearly stated that they went to Mysore and stayed in the unclce's house of the accused for two days and thereafter, they stayed in his Aunt's house for one week and at that time "they were together", which corroborated the medical evidence. Though in the statement recorded under Section 164 Cr.P.C., she has not used the exact word that they had physical relationship, however in a

15/29



Crl.A.Nos.56 of 2023 and 368 of 2025

diplomatic manner the victim has used the language that "they were together"

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during their stay in Mysore. Since the statement under Section 164 Cr.P.C. was recorded by Male Magistrate and the victim being a village girl, due to shyness or embarrassment she might have used the diplomatic word that they were together instead of uttering the words that they had physical relationship or sexual intercourse. Even the doctor, who examined the victim has also clearly stated that the hymen is not intact. Further, in the earlier statement recorded by the woman police under Section 161 Cr.P.C., the victim has stated that the accused had sexual intercourse with her. Though the statement recorded by the police under Section 161 Cr.P.C. is not an admissible in evidence, the same can be used for contradictions.

19. Further, as stated above, when the victim was examined as P.W.1, she turned hostile and not supported the case of the prosecution as far as the charge under the POCSO Act is concerned and hence she was declared as hostile witness. It is seen that when the prosecution put a suggestion to the victim



Crl.A.Nos.56 of 2023 and 368 of 2025

during cross examination regarding penetrative sexual assault by the accused,

she denied the same, and during cross examination on the side of the accused,

when a suggestion was put to the victim that during college days she involved

in sports and used to ride cycle and two wheeler, she admitted the same.

Therefore it is clear, to safeguard the accused and in order to project the

opinion of the doctor that that the hymen was not intact, in a different way,

defence tried to say that it was not due to intercourse with the accused.

However, no evidence was produced and no independent witness was

examined on the side of the accused. It is seen that pending trial, the accused

married the victim and in order to safeguard the accused, the victim/P.W.1

turned hostile before the trial Court. Even the family members of victim viz.,

P.W.2 to P.W.4 have turned hostile.

20. The trial Court failed to consider the language used by the victim that

during their stay "they were together" in the statement recorded under Section

164 Cr.P.C. by a Male Magistrate and subsequently during preparation of



Crl.A.Nos.56 of 2023 and 368 of 2025

judgment, the trial Court recalled victim/P.W.1 who was already declared

hostile and to clarify the said statement and taking advantage of the same, the victim stated that she meant that they were staying in the house" and thereby, the trial Judge come to the conclusion that the oral evidence of the victim not supported the charge of sexual assault and thereby, acquitted the accused from the offence under Section 5(1) read with Section 6 of the POCSO Act.

21. However, a perusal of the material evidence, it is clear that the accused removed the victim from the lawful custody of her parental home and they both stayed in his relatives' house and during their stay, they had physical relationship and the medical evidence also confirmed the same. Therefore, the act committed by the accused, falls under Section 3 punishable under Section 4(1) of POCSO Act.

22. In the cases of this nature, the Court cannot take evidence of the witness in an absolute manner here and there. A reading of the materials right from the top to end, it is seen that it is not as if the accused and the victim are



Crl.A.Nos.56 of 2023 and 368 of 2025

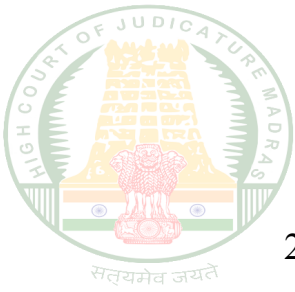
strangers. Even the defence itself stated that the accused and the victim fell in

love with each other and they went to Mysore and stayed together in their relative's house.

23. This Court, being an appellate Court, as a final Court of fact finding, while re-appreciating the entire evidence produced by the prosecution and considering the scope and object of POCSO Act and also the statement of the victim, finds that the accused has committed the offence under Section 3 punishable under Section 4(1) of POCSO Act.

24. Further, the offence under the POCSO Act is not against individual and it is against the Society. Hence, the subsequent marriage between the accused and the victim, will not take away the offence committed by the accused when the victim girl was a child. If the defence of subsequent marriage or the elopement is accepted, then the purpose of enactment of the POCSO Act would get defeated. In case this proposition is accepted, in my opinion, it will lead to disastrous consequences.

19/29



Crl.A.Nos.56 of 2023 and 368 of 2025

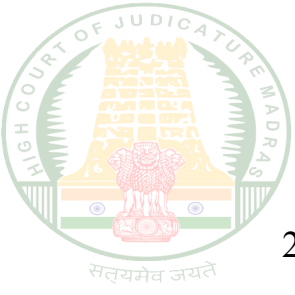
25. The decision referred by the learned counsel for the accused is not

applicable to the present case on hand since those are not applicable to the POCSO Act cases. Prior to POCSO came into force, the accused taking advantage of the innocence of the victim girl committed the offence and took a defence of consent or elopement. But POCSO Act is very clear and there is no question of consent or elopement before the age of 18 years.

26. Therefore, the appeal filed by the State in **Crl.A.No.368 of 2025** is **allowed** and the accused is convicted for the offence under Section 3 punishable under Section 4(1) of POCSO Act.

27. Since the accused was acquitted by the Special Court from the offence under Section 5(1) punishable under Section 6 of POCSO Act and now this Court reverses the judgement of the trial Court and convicting the accused for the offence under Section 3 of POCSO Act which is punishable under Section 4(1) of the POCSO Act, the accused has to be heard for question of sentence before awarding punishment.

20/29



Crl.A.Nos.56 of 2023 and 368 of 2025

28. Hence, the accused is directed to appear before this Court on

28.04.2025 “for question of sentence”.

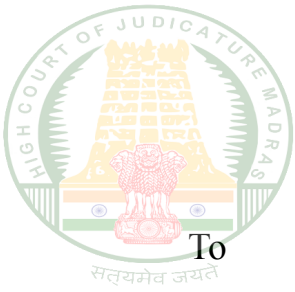
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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No

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Crl.A.Nos.56 of 2023 and 368 of 2025

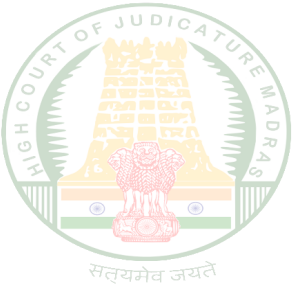
To

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1. The Sessions Judge, Magalir Needhimandram (FTMC),
Udhagamandalam at Nilgiris
2. The Inspector of Police
Wellington Police Station
Wellington, The Nilgiris District.
3. The Public Prosecutor
High Court of Madras

Copy to

The Section Officer
Criminal Section



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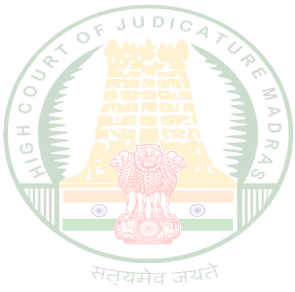
Crl.A.Nos.56 of 2023 and 368 of 2025

P.VELMURUGAN. J.

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Crl.A.Nos.56 of 2023 and 368 of 2025

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Crl.A.Nos.56 of 2023 and 368 of 2025

Crl.A.Nos.56 of 2023 and 368 of 2025

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P.VELMURUGAN,J.

This Court while disposing the appeals in Crl.A.Nos.56 of 2023 and 368 of 2025 by its order dated 21.04.2025, convicted the accused and directed him to appear before this Court on 28.04.2025 for hearing on the question of sentence to be imposed on him.

2. But when the matter came up before this Court on 28.04.2025, the accused was not produced by the police due to administrative reasons and hence, at the request of the learned Additional Public Prosecutor, the matter was ordered to be listed today (29.04.2025).

3. Today (29.04.2025), the accused was produced before this Court and he was explained about the conviction made by this Court for the offence under Section 3 punishable under Section 4(1) of the POCSO Act. When the accused was questioned regarding the sentence to be imposed on him, he stated that he is the only person, who is the taking care of his wife/victim and his mother and



Crl.A.Nos.56 of 2023 and 368 of 2025

now the victim is in the family way. He further stated that there is no elder to take care of them. Therefore, if he is put in jail, the victim, who is now pregnant, would suffer a lot. At last, he stated that without knowing the consequences and rigorous nature of the offence under the POCSO Act, he committed the offence and he requested this Court to release him.

4. The learned counsel for the appellant submitted that now the victim is pregnant and the accused is the only person, who takes care of the victim and therefore, the sentence may be considered on the ground of sympathy.

5. Heard the accused and the learned counsel for the appellant/accused.

6. Admittedly, on the date of occurrence, the victim was a child under the definition of POCSO Act. The accused himself admitted that the victim herself approached him on fear of marriage arranged by her parents and therefore, he took her to various places and thereafter to Mysore in Karnataka wherein, they stayed in their relatives house and at that time, both the accused and the victim were together. As stated above, since the victim, who was a



Crl.A.Nos.56 of 2023 and 368 of 2025

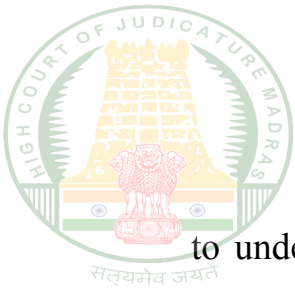
child at the time of occurrence, was subjected to penetrative sexual assault and

the same falls under Section 3 punishable under Section 4(1) of POCSO Act.

7. Therefore, this Court finds that the accused has committed the offence under Section 3 punishable under Section 4(1) of the POCSO Act. Considering the mitigating circumstances, since the minimum sentence for the offence under Section 3 punishable under Section 4(1) of the POCSO Act is 10 years, this Court has no authority to give punishment less than the minimum sentence provided under the Special Act.

8. Under these circumstances, the accused is sentenced to undergo the minimum sentence of 10 years simple imprisonment and to pay fine of Rs.1,000/- (Rupees One Thousand Only) and in default of payment of fine amount, to undergo simple imprisonment for a further period of six months. Since the accused himself married to the victim, this Court is not inclined to order any compensation to the victim

9. The accused was already convicted by the trial Court and sentenced



Crl.A.Nos.56 of 2023 and 368 of 2025

to undergo simple imprisonment for a period of one year and to pay fine of

Rs.1000/-, in default, to undergo further period of simple imprisonment for three months for the offence under Section 363 of IPC and he was directed to pay a fine of Rs.1000/-, in default, to undergo simple imprisonment for a period of three months for the offence under Section 343 IPC. The sentence now awarded by this Court and the trial Court for the above said offence shall run concurrently.

29.04.2025

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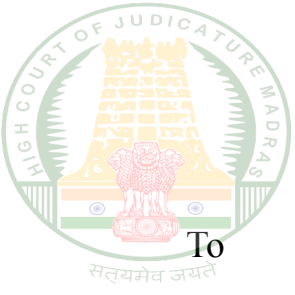
Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No

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Note: Issue Order Copy on 29.04.2025.



Crl.A.Nos.56 of 2023 and 368 of 2025

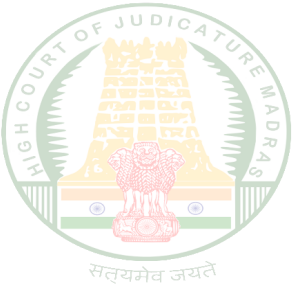
To

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1. The Sessions Judge, Magalir Needhimandram (FTMC),
Udhagamandalam at Nilgiris
2. The Inspector of Police.
Wellington Police Station.
Wellington, The Nilgiris District.
3. The Superintendent of Prison,
Central Prison, Coimbatore.
4. The Public Prosecutor
High Court of Madras

Copy to:

The Section Officer
Criminal Section, High Court of Madras



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Crl.A.Nos.56 of 2023 and 368 of 2025

P.VELMURUGAN. J.

Ksa-2

Crl.A.Nos.56 of 2023 and 368 of 2025

29.04.2025

(1/2)