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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 26.10.2026

DELIVERED ON: 19.11.2026

CORAM

THE HONOURABLE MR.JUSTICE D.LINGESWARAN

Crl.A(MD) No.27 of 2017
CNR:{HCMD011054362017}

Mani ..Appellant

Vs

The Inspector of Police,
Orathanadu Police Station,
Thanjavur District.
(Crime No.370 of 2014) ..Respondent

Prayer: This Criminal Appeal is filed under Section 374 of Cr.P.C., to set aside the judgment of conviction passed by the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thanjavur, in Spl.S.C.No.27 of 2014 dated 19.12.2016 and acquit the appellant.

For Appellant :Mr.M.Karunanithi

For Respondent :Mr.A.Robinson
Additional Public Prosecutor

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JUDGMENT

This Criminal Appeal has been filed challenging the judgment of the learned Sessions Judge, Mahalir Neethimandram, (Fast Track Mahila Court), Thanjavur, dated 19.12.2016, made in Spl.S.C.No.27 of 2014. The appellant is the sole accused.

2. The Case:

(i) The accused, Mani, son of Rathinam, is a married man aged 37 years and the uncle of the survivor (PW1), who was then aged 17 years. The prosecution alleges that on 16.09.2014 he enticed her and took her to Chennai and Thiruppur, confined her in hotel rooms and committed aggravated penetrative sexual assault on her, and that he left her in her village on 25.09.2014.

(ii) The survivor lodged a First Information (Ex.P1), which the Sub-Inspector of Police, Orathanadu Police Station, registered as Crime No.370 of 2014. Mr.Radhakrishnan, Inspector of Police (PW15), took up the investigation, examined the witnesses and collected evidence. On completing the investigation, he laid a final report against the accused before the learned Sessions Judge, Fast Track Mahila Court, Thanjavur.

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3. Trial

The Special Court took cognizance and, following due process, framed charges under Sections 365 and 366 of the Indian Penal Code, 1860 (IPC) and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act). The accused pleaded not guilty, and the case went to trial. The prosecution examined 15 witnesses and marked 10 documents; no material object was marked on either side. The accused examined himself as DW1 and marked no document.

4. Conviction and Sentence

After considering the entire evidence and hearing both sides, the learned Trial Judge held that the prosecution had proved the charges beyond reasonable doubt. He convicted the accused and sentenced him as follows:

Section	Imprisonment	Fine	Default sentence
Section 365 of IPC	Rigorous imprisonment for 7 years	Rs.1,000/-	Simple imprisonment for 3 months
Section 366 of IPC	Rigorous imprisonment for 10 years	Rs.1,000/-	Simple imprisonment for 3 months
Section 6 of POCSO Act, 2012	Rigorous imprisonment for 10 years	Rs.1,000/-	Simple imprisonment for 3 months

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The sentences were ordered to run concurrently, and the accused was given the benefit of set-off under Section 428 of the Code of Criminal Procedure, 1973 (Cr.P.C.).

5. Appeal

Aggrieved by the judgment of conviction and sentence dated 19.12.2016, the convict preferred this appeal.

6. Arguments

(i) The learned counsel for the appellant argued that the appellant cross-examined no witness except the doctor (PW9). He therefore submitted that, in order to give the appellant a fair opportunity, the case should be remitted to the Trial Court with a direction to allow him to cross-examine PW1 to PW6, PW14 and PW15. He relied on the following decisions of the Hon'ble High Court of Madras to support his prayer for remand:-

(i) ***M.Kannan Vs. State*** *(2018 Crl.L.J.116);*

(ii) ***Karuppasamy Pandian Vs. State*** *(Crl.A(MD) No.92 of 2021); and*

(iii) ***Murugesan Vs. State, represented by the Inspector of Police, Eriyur Police Station, Dharmapuri District*** *(2025 (1) L.W.(Crl.) 233).*

He further argued that the accused cannot be penalized for the failure and gross dereliction of duty of the counsel he had engaged.

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(ii) Per contra, the learned Government Advocate (Crl.Side) contended that this is not a case of denial of fair trial. In his submission, the appellant and his counsel adopted a deliberate tactic before the Trial Court in order to win over the witnesses, particularly the survivor.

(iii) He pointed out that PW1 to PW4 were examined on 07.05.2015, PW5 and PW6 on 20.05.2015, and PW12 to PW14 on 18.12.2015, and that the Investigating Officer was examined last, on 12.08.2016. The appellant filed his application under Section 311 Cr.P.C. only on 23.08.2016. After considering the objections of the Special Public Prosecutor and the principles laid down in the following decisions, the learned Trial Judge dismissed the application to recall the witnesses:

(i) ***Swaran Singh Vs. State of Punjab*** *(2000 (5) SCC 668);*

(ii) ***State of Uttar Pradesh Vs. Shambu Nath Singh*** *(2001 (5) SCC 667); and*

(iii) ***K.Ramajayam @ Appu Vs. The Inspector of Police, T-4, Maduravoyal Police Station, Chennai*** *(2016 (1) L.W.(Crl.) 145).*

(iv) The learned Government Advocate (Crl.Side) further pointed out that the order of the Trial Court dated 14.09.2016 in Crl.M.P.No.561 of 2016 in Spl.S.C.No.27 of 2014 was challenged before this Court in

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Crl.O.P(MD) No.19655 of 2016, and that this Court, having considered the same decisions, dismissed that petition on 20.10.2016. The appellant, he argued, cannot raise the issue again. He also relied on the decision of the Hon'ble Supreme Court in ***Vinod Kumar Vs. State of Punjab*** (2015 (3) SCC 220) for the proposition that calling a witness for cross-examination after a long lapse of time is anathema to the concept of a proper and fair trial, and prayed that the appeal be dismissed.

7. This Court has carefully considered the rival submissions.

8. <u>Point for consideration</u>

Whether the judgment of conviction and sentence passed by the Trial Court against the appellant is sustainable?

<u>9. Analysis of Evidence</u>

a) The age of the survivor:

The survivor (PW1) stated that her date of birth was 27.01.1997, and her parents (PW2 and PW3) stated that she was 17 years old. Ex.P10, a birth certificate issued by the Municipality, was marked through the Investigating Officer (PW15). The defence did not challenge any of this evidence and did not doubt Ex.P10. The date of birth therefore stands

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proved as 27.01.1997. From the date of the occurrence, 16.09.2014, until the First Information was lodged on 25.09.2014, the survivor was only 17 years and 7 months old. She is therefore a 'child' within the meaning of Section 2(1)(d) of the POCSO Act, 2012.

b) Evidence of the survivor and other witnesses

(i) PW1 deposed that the appellant is a close relative, being the husband of her father's sister. On his invitation, she was sent to her aunt's house for a pooja on the last Tuesday of the Tamil month of *Aavani* in 2014. On the same day, the appellant took her to Chennai on the pretext of getting her a job there, and she went with him. He made her stay in a hotel room and committed penetrative sexual assault on her repeatedly. A few days later, he took her to Thiruppur, booked a hotel room there as well, stayed with her and again committed penetrative sexual assault on her several times. On 25.09.2014, he took her back to her village, left her on the roadside and went away. When her parents (PW2 and PW3) and her aunt Palaninayagi (PW4) questioned her, she told them what had happened, and the First Information (Ex.P1) was lodged thereafter.

(ii) PW1 is the only direct witness to the sexual assault. There was

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no reason for the appellant or his counsel to defer the cross-examination of PW1, yet they chose not to cross-examine her when she was examined. Their purpose is evident: they wished to win over the witness.

(iii) PW2 and PW3 are the parents of PW1, and PW4 is her aunt. They stated that PW1 went to the house of the appellant on 16.09.2014 for a pooja and that she later narrated the incident to them. They confirmed that the appellant left PW1 in the village on 25.09.2014 and went away, and they spoke about the lodging of the complaint. They are not eyewitnesses to the assault, but they establish, consistently and without challenge, that PW1 left for the house of the appellant on 16.09.2014, that he returned her on 25.09.2014, and that she disclosed the incident to them soon afterwards.

(iv) PW5 to PW8 were projected as witnesses who had heard the facts from PW1; PW7 and PW8 were also witnesses to the preparation of the Observation Mahazar and the Rough Sketch. All of them turned hostile. None of the witnesses PW1 to PW8 was cross-examined by the defence. This was a conscious decision of the appellant and his defence team.

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(v) PW9, Dr.Thendral, noted that the hymen of the survivor was not intact and opined that this indicated the possibility of sexual intercourse. The Accident Register she recorded on 27.09.2014 was marked as Ex.P4. The defence suggested that the tear could have another cause, and the doctor accepted that suggestion. The defence cross-examined only this witness and left every other witness untouched. That selective approach shows a settled determination to win over the witnesses who implicated the appellant, in the hope that the passage of time would wear down their resolve or that pressure could be brought on them to turn hostile.

(vi) PW10, Mr.Jayaprakash, Deputy Director of the Forensic Science Department at Thanjavur, analyzed the vaginal swab and pubic hair of the survivor and found no sperm or spermatozoa. This finding does not weaken the unchallenged account of the survivor, and the defence had no occasion to cross-examine him. PW11, Dr.Thamilmani, certified that the appellant was potent (Ex.P6), and the defence likewise had no occasion to impeach him. PW12 and PW13, Police Constables, escorted the survivor and the appellant respectively to the doctors for medical examination, and the defence saw no need to cross-examine these formal witnesses.

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(vii) PW14, the Sub-Inspector of Police, received the First Information from PW1 on 25.09.2014 at 19.00 hours and registered Crime No.370 of 2014 under Section 366A of IPC and Sections 4 and 8 of the POCSO Act, 2012 (Ex.P7). She then forwarded the case file to the Inspector of Police for investigation. The defence did not cross-examine her.

(viii) PW15, the Investigating Officer, spoke about his visit to the place of occurrence, the preparation of the Observation Mahazar (Ex.P8) and the Rough Sketch (Ex.P9), the recording of statements of the witnesses, the arrest of the appellant on 25.09.2014 at 20.15 hours, the medical examination of the survivor and the appellant, and the filing of the final report. He also proved the survivor's birth certificate (Ex.P10). The defence did not cross-examine him either. The dates on which the witnesses were examined are set out below:

Witness	**Name**	**Date of examination**
PW1	The survivor (name withheld to protect the identity of the child)	07.05.2015
PW2	Father of the survivor (name withheld)	07.05.2015
PW3	Mother of the survivor (name withheld)	07.05.2015
PW4	Palaninayagi	07.05.2015

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PW5	Muthusamy	20.05.2015
PW6	Manikandan	20.05.2015
PW7	Navaneetham	20.05.2015
PW8	Dinakaran	20.05.2015
PW9	Dr.Thendral	14.07.2015 (cross-examined the same day)
PW10	Jayaprakash, Deputy Director, Forensic Science Department	14.07.2015
PW11	Dr.Thamilmani	14.07.2015
PW12	Mrs.Gowri, Police Constable	18.12.2015
PW13	Mr.Saravanan, Police Constable	18.12.2015
PW14	Mrs.Madhavi, Sub-Inspector of Police	18.12.2015
PW15	Mr.Radhakrishnan, Investigating Officer	12.08.2016

c) The request for remand

(i) The examination of the prosecution witnesses began on 07.05.2015 and ended on 12.08.2016, a period of one year and three months. The dates show that the police witnesses were examined after considerable gaps. Throughout this period the appellant filed no application to recall any witness. He applied to recall PW1 to PW6, PW14 and PW15 only on 23.08.2016, five days after his examination under Section 313(1)(b) Cr.P.C. on 18.08.2016. This conduct supports the

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inference that he had been waiting all along to win over the witnesses.

(ii) The Special Public Prosecutor opposed the application. The learned Trial Judge noted that it had been filed more than a year after the witnesses were examined and inferred that the delay was meant only to win over or threaten them. He relied on ***Swaran Singh Vs. State of Punjab*** (2000 (5) SCC 668), in which the Hon'ble Supreme Court observed:

> *"It has become more or less a fashion to have a criminal case adjourned again and again till the witness tires and gives up. It is the game of unscrupulous lawyers to get adjournments for one excuse or the other till the witness is won over or is tired. Not only is a witness threatened, he is abducted, he is maimed, he is done away with or even bribed. There is no protection for him. In adjourning the matter without any valid cause a court unwittingly becomes party to miscarriage of Justice."*

(iii) The learned Trial Judge also relied on ***State of Uttar Pradesh Vs. Shambu Nath Singh*** (2001(5) SCC 667) and on ***K.Ramajayam @ Appu Vs. The Inspector of Police, T-4, Maduravoyal Police Station, Chennai*** (2016 (1) L.W.(Crl.) 145), and observed that the Hon'ble Supreme Court has deprecated the practice of defence counsel declining to cross-examine prosecution witnesses immediately and seeking to recall them months later. By order dated 14.09.2016 in Crl.M.P.No.561 of 2016,

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he dismissed the petition to recall PW1 to PW6, PW14 and PW15. That order was challenged before this Court in Crl.O.P(MD) No.19655 of 2016, and by order dated 20.10.2016 this Court upheld it, thereby closing the door to the recall of those witnesses. The appellant did not carry that order to any higher forum, and it has attained finality. The appellant is therefore precluded from seeking a remand to cross-examine the same witnesses, since entertaining the plea would amount to sitting in appeal over this order of this Court in Crl.O.P(MD) No.19655 of 2016.

(iv) A remand would also cause grave prejudice to the survivor and the other witnesses. The survivor was 17 years and 7 months old at the time of the occurrence in 2014 and is now 29 years old. In the twelve years since, she would in all likelihood have married and settled into family life, and recalling her now would disturb that life and reopen old wounds, subjecting her again to serious mental agony. Section 33(5) of the POCSO Act, 2012 specifically requires the Special Court to ensure that the child is not called repeatedly to testify. She was examined on 07.05.2015, and eleven years later, in the name of a fair trial for the appellant, she cannot be asked to relive the ordeal. A fair trial is not meant for the accused alone; it must be fair to the accused, to the survivor and to all concerned, including society.

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(v) In ***M.Kannan Vs. State*** (2018 Crl.J 116), this Court noted that no challenge had been made to the order rejecting the petition to recall the witnesses, owing to the inaction on the part of the defence counsel. Further, the Trial Court had delivered its judgment on 12.04.2016 and this Court remanded the matter on 17.02.2017 within approximately 10 months of the judgment of Trial Court. In contrast, in the present case, the appeal itself has been pending for the past nine years. The substantial difference in the duration and procedural stage of the proceedings distinguishes the present case from ***Kannan's*** case. The other two decisions, which followed **Kannan's** case are also distinguishable on their respective factual matrices. Hence, the principles laid down in those decisions cannot be applied to the facts and circumstances of the present case.

(vi) This is not a case in which the accused was denied an opportunity. He had a fair opportunity during the trial and made an informed choice not to cross-examine the witnesses, in the expectation of winning them over. The Trial Court saw through this and refused to permit a recall, and this Court confirmed that order in 2016. The matter cannot be re-agitated now. Remand is therefore ruled out, and this Court must decide whether the conviction and sentence are sustainable on the evidence on

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record.

d) Findings on the offences under Section 366 IPC and Section 6 POCSO Act

(i) As found above, PW1 was a child on the date of the occurrence. She clearly implicated the appellant and stated categorically that he took her to Chennai and Thiruppur, made her stay in hotel rooms and committed penetrative sexual assault on her repeatedly. None of this was challenged. The appellant has committed penetrative sexual assault on the child more than once, which makes the assault an aggravated penetrative sexual assault under Section 5(l) of the POCSO Act, 2012, punishable under Section 6.

(ii) Her evidence is supported by Dr.Thendral (PW9), who recorded in Ex.P4 that the hymen was not intact, which indicates sexual intercourse. PW2, PW3 and PW4 also support the prosecution case. All of them stated that she was sent to the appellant's house for a pooja on 16.09.2014 and that the appellant returned her to the village only on 25.09.2014. As they were not cross-examined, their evidence stands unrebutted, and it corroborates version o f PW1 and proves the charges under Section 366 IPC and Section 6 of the POCSO Act, 2012.

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e) The evidence of the appellant (DW1)

(i) The appellant examined himself as DW1. He admitted that the child is the daughter of his brother-in-law. He deposed that the child was in love with another boy, that her father warned her of the consequences and beat her, that she then consumed poison and was admitted to hospital, and that she thereafter sought his help. He said he took her to Chennai and obtained a job for her at Triplicane; when the shop owner refused to continue her employment, he took her to Thiruppur and obtained a job for her there. After arranging the job, he returned to his village, where the father of the child came to his house with another person and thrashed him. Only then, he said, did he bring the child back from Thiruppur and leave her in the village.

(ii) In cross-examination by the learned Special Public Prosecutor, the appellant admitted that he produced no record to show that the child had consumed poison and been admitted to hospital after her father beat her. It was suggested to him that he had enticed the child by pretending to be in love with her, taken her to various places and committed penetrative sexual assault on her. He denied the suggestion.

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(iii) The evidence of DW1 shows that he admits taking the child to Chennai and Thiruppur and staying there for some time. He brought her back to her village only after trouble arose in his own village. The evidence as a whole may suggest that the child went with him willingly, but her willingness is no defence: she was a child and consent of a child does not justify taking her away for illicit sex. The evidence establishes that the appellant enticed her, took her to Chennai and Thiruppur and committed penetrative sexual assault on her repeatedly. It was only after her family members raised the matter that the appellant, to escape further consequences, brought the child back to the village, and he was arrested.

(iv) If the appellant had in fact found the child employment in Chennai and Thiruppur, he could have examined the shopkeepers or owners of the establishments in support of his claim. He did not. The case therefore comes down to the word of the survivor against the word of the appellant. A girl whom the appellant had merely helped to find a job would have no reason to implicate him falsely. Moreover, the defence he now puts forward was never suggested to the survivor, because she was not cross-examined. The Trial Court therefore rightly rejected the evidence of DW1 and accepted the evidence of PW1, which is corroborated by the other witnesses, and this Court finds no reason to interfere with that

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finding.

f) A lapse in the investigation

(i) One disturbing feature of the case must be noted. The Investigating Officer did not ascertain from the survivor, or investigate properly, the identity of the hotels in which the appellant made the child stay. He wrongly assumed that he had no authority to visit places outside his territorial jurisdiction. Even if the survivor could not name the hotels in Chennai and Thiruppur, the Investigating Officer could have obtained that information by questioning the accused and other connected witnesses. This lapse, however, did not affect the outcome, because the case does not depend on it. Independently of the evidence about the stay in the hotels, there is ample evidence on record to prove the charges. The appellant himself admitted taking the child to Chennai and Thiruppur, and what happened there was proved beyond reasonable doubt by the survivor herself.

(ii) This Court therefore finds no reason to interfere with the finding of the Trial Court that the charges under Section 366 IPC and Section 6 of the POCSO Act, 2012 are proved beyond reasonable doubt. The conviction

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under both provisions is upheld.

g) The conviction under Section 365 IPC

The Trial Court erred in framing charges under both Section 365 and Section 366 IPC. Kidnapping is defined in Section 359 and abduction in Section 362 IPC. Section 365 is an aggravated form of kidnapping or abduction: where a person is kidnapped or abducted with the intention that he or she be secretly and wrongfully confined, the offender is punishable with imprisonment up to seven years and fine. Section 366 is a graver form still. Where a woman is kidnapped or abducted in order that she may be forced or seduced to illicit intercourse, the offence is punishable under Section 366. Here the survivor, a girl, was abducted, taken to Chennai and Thiruppur, made to stay in hotel rooms and repeatedly subjected to penetrative sexual assault. The charge that fits these facts is the one under Section 366 IPC, along with Section 6 of the POCSO Act, 2012. Both Section 365 and Section 366 rest on the same act of kidnapping or abduction, and since the appellant stands convicted and sentenced under Section 366, he cannot also be convicted under Section 365 for the same act. The conviction and sentence under Section 365 IPC are therefore set aside.

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h) Sentence

(i) As regards the sentence under Section 6 of the POCSO Act, 2012, the Trial Court imposed the minimum sentence of ten years that Section 6 prescribed before the amendment of 2019. There is nothing to interfere with in the sentence of ten years of Rigorous Imprisonment and the fine of Rs.1,000/- under that Section.

(ii) The sentence under Section 366 IPC stands differently. The Trial Court imposed ten years of Rigorous Imprisonment and a fine of Rs.1,000/-, which is the maximum term for that offence, without considering the mitigating circumstances. The child was not taken away by force. She was induced on the pretext of getting a job and was then subjected to repeated penetrative sexual assault, and no physical harm other than the sexual assault was inflicted on her. Since the sentences run concurrently and the ten-year sentence under Section 6 of the POCSO Act remains in place, reducing the sentence under Section 366 IPC does not lessen the overall punishment the appellant must undergo. The term of imprisonment under Section 366 IPC is therefore reduced from ten years to three years, and the fine of Rs.1,000/- is maintained.

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10. Result

In the result, this Criminal Appeal is partly allowed:

(i) The conviction and sentence of the appellant under Section 365 IPC are set aside, and any fine paid in respect of that charge shall be refunded to him.

(ii) The conviction and sentence under Section 6 of the POCSO Act, 2012 are upheld.

(iii) The conviction under Section 366 IPC is upheld, but the sentence of ten years of Rigorous Imprisonment is reduced to three years of Rigorous Imprisonment, and the fine of Rs.1,000/- is maintained.

(iv) The substantive sentences of imprisonment shall run concurrently, and the appellant is entitled to the benefit of set-off under Section 428 Cr.P.C.

19-11-2026

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

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To

1. The Inspector of Police,
   Orathanadu Police Station,
   Thanjavur District.

2. The Additional Public Prosecutor
   Madurai Bench of Madras High Court
   Madurai

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Section Officer (VR Section)
Madurai Bench of Madras High Court

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D.LINGESWARAN, J.

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