

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.08.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

CRL.A.No.255 of 2016

A.M.Abdul Hakim @ Gym Hakim .. Appellant/A1

Vs

State by
The Inspector of Police,
B.4, Race Course Police Station,
Coimbatore. ... Respondent/Complainant

Appeal filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence passed by the learned District and Sessions Judge, Mahila Court, Coimbatore, made in S.C.No.214 of 2009 dated 23.09.2014.

For Appellant : Mr.C.M.Gunasekaran
for Mr.V.Purushothaman
For Respondent : Mr.M.Maharaja,
Addl. Public Prosecutor

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J U D G M E N T

[Judgment of the court was delivered by S.NAGAMUTHU, J.]

The appellant is the 1st accused in S.C.No.214 of 2009 on the file of the learned Sessions Judge, Mahila Court, Coimbatore. There were totally seven accused in this case. The 7th accused Mr.Anandaraj absconded during trial. Therefore, the

case against him was split up and tried separately. Thus, the appellant herein and the accused 2 to 6 faced the trial. The Trial Court framed as many as 7 charges against the accused Nos.1 to 6, as detailed below :-

Sl.No.	Charge Number	Rank of Accused	Penal Provision
1	Charge No.1	Accused Nos. 1 to 6	147, 148, 366 IPC
2	Charge No.2	Accused Nos.1, 2 and 4- Accused Nos.3, 5 and 6	343, 392 read with 397 IPC -- 343, 393 r/w.397 r/w.109 IPC
3	Charge No.3	Accused No.1 & Accused Nos.2 to 6	354 and 506(i) IPC 354, 506(i) r/w.109 IPC
4	Charge No.4	Accused Nos.2, 3, 5, 6	147, 148, 366 IPC
5	Charge No.5	Accused No.1 & Accused Nos.2 to 6	376 r/w.506(ii) IPC 376 r/w.109 IPC
6	Charge No.6	Accused 1 to 6 Nos.5, 6&9	120-B IPC
7	Charge No.7	Accused 1 to 6	147, 148, 366, 343, 392 r/w.397, 354, 506(ii) and 376 r/w.120-B IPC

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By judgment dated 23.09.2014, the trial court convicted the accused 1 to 6 and sentenced them as detailed below :

Rank of the Accused	Conviction	sentence
A1 to A3, A5 and A6	Convicted under section 148 IPC	Sentenced to undergo rigorous imprisonment for 1 year and to pay a fine of Rs.1,000/- each, in default, to undergo simple imprisonment for 3 months.
A1 to A3, A5 and A6	Convicted u/s.366 (2 counts) of IPC	Sentenced to undergo rigorous imprisonment for 10 years for each count and to pay a fine of Rs.10,000/- for each count, in default, to undergo simple imprisonment for 1 year for each count.
A1 and A2		
A1, A2, A3, A5 and A6	Convicted u/s.342 IPC	Sentenced to undergo rigorous imprisonment for 1 year and to pay a fine of Rs.1,000/- each, in default, to undergo simple imprisonment for 3 months.
A1	Convicted u/s.397 IPC	Sentenced to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.10,000/- each, in default, to undergo simple imprisonment for 1 year.
	Convicted u/s.506(ii) of IPC	Sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for 3 months.
A1		
	Convicted under Section 376(1) of IPC	Sentenced to undergo imprisonment for life and to pay a compensation of Rs.1,00,000/- to the victim P.W.2.
	Convicted under Section 120-B of IPC	Sentenced to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for one year.

Challenging the said conviction and sentence, the appellant/1st accused is before this Court with this appeal.

2. The appeal filed by the accused 2 and 6 in Crl.A.No.542 of 2014 and the appeal filed by the 5th accused in Crl.A.No.556 of 2014 have already been disposed of by this Court

by judgment dated 27.10.2015. The present appeal has been filed by the 1st accused.

3. The case of the prosecution in brief is as follow:

(a) The appellant is a resident of Idayarpalayam in Coimbatore District. The accused 2 to 6 and the absconding accused Anandaraj are his associates. P.W.1 Anand was residing at Thudiyalur in Coimbatore. He was already married, having a son. He owned a TATA Ciara Car bearing Registration No.TN 37 P 4747. P.W.2 was a young girl at the time of occurrence, aged hardly 22 years. She was doing MBA Degree Course in a local institution at Coimbatore. She was residing at a place known as Red Peace. Her father and the father of P.W.1 were together working in an office and in such a way, both the families were known to each other. In due course, P.Ws.1 and 2 had become friends. P.W.1 helped P.W.2 in the preparation of her project work. On 21.11.2008, P.W.2 wanted to express her thanks to P.W.1 for his help and she had invited him to come to Coffee Day Restaurant near Red Peace in Coimbatore. Around 07.00 p.m., she was waiting just in front of the said restaurant for P.W.1. P.W.1 came in his TATA Ciara Car. He parked the car in front of the restaurant. P.W.2 got into the seat on the left side of the driver's seat. P.W.1 was in the driver seat. They were engaged in some discussion for a while.

(b) Around 08.30 p.m., a tall man, dark in complexion, came near the car and tapped at the door near the driver's seat. He had a wireless phone on his hand. He told that he was a policeman. He, by force, opened the door of the car near the driver's seat. He questioned P.W.1 as to what she was doing. Then, he forced P.W.2 to go into the back seat of the car. He got into the left front seat of the car. Then, he directed P.W.1 to drive the car to the police station. P.W.1, believed that he was a policeman.

(c) When this was going on, 3 other persons, came to the spot. (Those 3 persons have been later on identified as the accused 1, 2 and 3). These accused 1 to 3 shouted at the dark complexed man who was inside the car and forced him to get out of the car. They told that the said man was a very bad man with worst characters. That was why, according to them, they forced him to get out of the car. They further told that the said man was not in fact a policeman. These 3 accused pretended as though they were protecting P.Ws.1 and 2. The 1st accused got into the car and sat on the driver's seat. He wanted, P.Ws.1 and 2 to sit in the back seat. The accused 2 and 3 also got into the car. They told P.Ws.1 and 2 not to be afraid of as they were only protecting them. The 1st accused drove the car. P.Ws.1 and 2, within a short while, became perplexed. They felt

some foul play. The car proceeded through Neelambur Bypass. P.Ws.1 and 2 found that there was another car following their car.

(d) Realising that there was some danger to their life, P.Ws.1 and 2 were about to cry. The car was then proceeding on the Trichy Road. The inmates of the car slapped P.Ws.1 and 2 on their cheek and wanted them to lie down behind the front seat of the car. Then, the car took a turn in a small branch road from Sulur Road and reached a building under construction. They took P.Ws.1 and 2 into the said building and kept them in two different rooms. They demanded that they would release them, if only, P.Ws.1 and 2 could make arrangement for a ransom of Rs.5,00,000/-.

(e) In the room where P.W.2 was kept, the 1st accused threatened her at knife point. He enquired about her family background. At that time, there was a phone call to the cell phone of P.W.2. The 1st accused snatched the cell phone, disconnected the communication and switched off the cell phone. P.W.2 started weeping and begging to the 1st accused to release her. The 1st accused returned the cell phone of P.W.2 and wanted her to call her father and inform him that he had gone to the house of her friend. Out of fear, P.W.2 did so. Then, he wanted her to speak to her friend and inform that in the event, her father enquired her, she should inform that P.W.2 was at her house. Out of fear, P.W.2 called her friend and informed accordingly. However, she told her friend Anbarasi that her condition was not good. She believed that her friend would realise that she was in danger. Quickly thereafter, the 1st accused demanded sexual favour from P.W.2. She wept and declined. The 1st accused tried to have sexual intercourse with her by force. She raised a distress call. But, the 1st accused did not stop. He undressed P.W.2, made her nude and then photographed her in his cell phone. Then, he returned her clothes to her and wanted her to wear. Then, he called the 4th accused into the room.

(f) As directed by the 1st accused, the 4th accused, at knife point, snatched away a gold chain weighing 2 1/2 sovereigns with a dollar, a gold ring, another gold ring with pearl, a pen drive and a cash of Rs.2,500/- from her. The 2nd accused entered into the room. She saw the jewels at the hands of the 4th accused. Then, he kissed P.W.2 on her cheek. When the 1st accused called him by name, P.W.2 realised that he was a Christian. P.W.2 pleaded to the 2nd accused that being a Christian, he should not cause any harm to her. The 2nd accused told that his religion would not deter him from satisfying his gratification. The 3rd accused came to the room and told the

2nd accused that the girl was not important for them, but what was important for them was only money. Then, leaving the 1st accused, others left the room. Thereafter, two other persons came to the room. They wanted P.W.2 to come out from the house. She refused. They dragged her out of the building. The 1st accused also dragged her out.

(g) Outside the building, it was pitch dark. There were plants and trees. The 1st accused and the other person took her to the said secluded place. There were already five other persons including the 4th accused. They lighted a candle. It was a very old Bungalow in a dilapidated condition. At that time, she noticed in the dim candle light that P.W.1 was sitting in a corner with his hands and legs tied. They attacked him demanding money from him. The 1st accused simultaneously attacked P.W.1 on his head and his cheek. P.W.1 told that he did not have such huge amount to satisfy the demand. P.W.1 begged to release them and offered to give all the jewels, he was wearing. Leaving the 1st accused alone in that old bungalow with P.W.2, all the others left.

(h) Within a short while, some of the accused returned with barotta. They offered the same to P.W.2 to eat. P.W.2 declined. The 1st accused was holding a knife and all through, he bandished the same against P.W.2. Then, he untied P.W.1 and brought him to the place where P.W.2 was kept. Then, the 1st accused slept for some time. Again, the 4th accused came into the room. The 1st accused and the 4th accused had a small discussion.

(i) The 1st accused undressed P.W.1 also and after making him nude, he took videograph of P.W.1 in nude condition. The 1st accused snatched the watch belonging to P.W.1. Then, the accused 1 to 4 and 4 more persons took P.W.1 in a car to his house. P.W.2 was kept in the dilapidated building itself. The TATA Ciara Car of P.W.1 was also retained by them. The accused 2, 3, 5 and 6 took P.W.1 in an Omni Car. Around 02.30 a.m., the car reached Sai Baba Colony at Coimbatore. On the way, the 3rd accused wanted them to stop the car and he had nothing to do with the entire occurrence and he had been unnecessarily brought into the picture. He got down from the car. After returning the cell phone of P.W.1 to him, P.W.1 wanted the accused to stop the car in front of his friend by name Bharath on assuring that he would get money from him. Accordingly, they stopped the car. He went into the house of Bharath. Fearing that they were in some danger, the accused fled away from the place of occurrence along with the Omni Car. From the house of Bharath, P.W.1 informed the police over phone about the occurrence.

(j) On receipt of the same, Mr.Nehru, the Inspector of Police, Sai Baba Colony Police Station, along with a group of policemen, came to the house of Bharath. P.W.1 told them about the entire occurrence. Then, they took P.W.1 to the place where P.W.2 was kept. The police rounded up the building. Inside the building, P.W.2 and the 1st accused alone were there. In the meanwhile, by force, the 1st accused had raped her. She veiled and told that the 1st accused had rapped her. Then, the Inspector of Police, took the 1st accused into custody and also the TATA Ciara Car of P.W.1. He brought P.W.1, P.W.2, the first accused and the car to B.4, Race Course Police Station at 06.30 a.m. on 22.11.2008. P.W.1 made a complaint Ex.P.1.

(k) P.W.17 Sakthivel, the then Sub-Inspector of Police, on receipt of the said complaint, registered a case in Crime No.1532 of 2008 under Sections 170, 147, 148, 366, 342, 392 read with 397, 354, 506(ii) and 376 read with 120-B of IPC. Ex.P.22 is the First Information Report. He forwarded both the documents to court which were received by the learned Magistrate at 9.00 p.m. on 22.11.2008.

(l) P.W.21 took up the case for investigation. He examined P.W.2 and recorded her statement. He arrested the 1st accused at 08.30 a.m. on 22.11.2008. On such arrest, in the presence of P.W.3 and another witness, he gave a voluntary confession. Then, P.W.21 visited the place of occurrence and prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.3 and another witness. Then, he went to the place where P.W.1 was kept and prepared an Observation Mahazar and a Rough Sketch in the presence of the same witnesses. He recovered the car bearing Registration No. TN 37 T 4737 under a Mahazar. Then, he forwarded P.W.2 and the 1st accused for medical examination.

(m) P.W.9 Dr.Vatsala Devi, an Assistant Professor at Coimbatore Government Hospital, examined P.W.2 on 22.11.2008 at 07.00 a.m. She was conscious. P.W.2 told the Doctor that she was abducted by 6 persons and out of them, one person raped her. On examination, the Doctor noticed bite marks on her vagina. The hymen was found ruptured. There was also fresh bleeding through the vaginal cavity. P.W.9 collected vaginal discharge and pubic hair for the purpose of examination.

(n) P.W.6 Doctor Sivaprakasam examined the 1st accused on 22.11.2008. The medical examination revealed that the 1st accused was sexually potent to have penile sexual intercourse with a woman. P.W.6, collected the vaginal discharge and the pubic hair gathered by P.W.9 and forwarded the same to the Forensic Lab for DNA examination. P.W.8 Doctor Bhuvana also

accompanied P.W.6 when she examined the 1st accused. But the 1st accused refused to co-operate with the Doctor to give blood samples for the purpose of DNA examination.

(o) P.W.21 during the course of investigation, at 11.30 a.m., arrested the 4th accused in the presence of P.W.3 and another witness. On such arrest, he made a voluntary confession. Then, at 12.30 p.m., on the same day, at the same place, he arrested the 5th accused in the presence of the same witnesses. From his pocket, he took out a watch and handed over the same to P.W.21. He recovered the same (That watch was later on identified as the one snatched away by him from P.W.1). In pursuance of the disclosure statement made by the 4th accused, he took the police and the witnesses to the place of hide out and produced a gold chain weighing 1 1/2 sovereigns. Then, on the same day, at 04.00 p.m., he arrested the 3rd accused in the presence of the same witnesses. On his disclosure statement, a half sovereign gold ring was recovered from the place of hide out. On 24.11.2008 at 8.00 a.m., P.W.21 arrested the 2nd accused and the 6th accused at Pollachi Main Road. On such arrest, the 2nd accused gave a voluntary confession in which he disclosed the place where he had hidden a Maruthi Omni Car bearing Registration No. 07 Z 8836. He took up the police and the witnesses to the place of hide out and produced the said vehicle. P.W.21 recovered the same (This was the vehicle, according to the prosecution, which was used by the accused to take P.W.1 to Sai Baba Colony lastly).

(p) At the request made by P.W.21, the Finger Print Expert had come. As requested by P.W.21, he examined the car belonging to P.W.1. There were chance finger prints found in the same. He enlarged the same and photographed the same. The 2nd accused produced a knife, a Cell phone with Sim Card. P.W.21 recovered the same in the presence of one Uma Shankar and Nandakumar. Then, the 6th accused produced a gold ring, a knife and an ATM Card from the car from his possession. He recovered the same. Then, he forwarded the accused to court for judicial remand and handed over the material objects also to court. The investigation was continued thereafter by his successor. P.W.22, on completing the investigation, laid charge sheet against the accused.

3. Based on the above, the trial court framed charges against the accused as detailed in the first paragraph of the judgment. The accused denied the same as false. In order to prove the case, on the side of the prosecution, as we have already pointed out, 22 witnesses were examined and 30 documents and 18 material objects were also marked.

4. Out of the said witnesses, P.Ws.1 and 2 are the victims. They have vividly spoken about the entire occurrence as we have herein above narrated. P.W.1 has further stated as to how he escaped from the clutches of the accused. He has further stated that on his information, Mr.Nehru, Sai Baba Colony Police Station Inspector along with a police party, came to the house of Bharath from where he took them to the Bungalow where P.W.2 was detained by the 1st accused. He has further stated that P.W.2 was rescued and the 1st accused was taken up into the police custody. He has spoken further about the complaint made by him. He has identified the material objects snatched away from him and from P.W.2. P.W.3 has spoken about the preparation of the Observation Mahazar and the Rough Sketch at both the places of arrest and also the arrest of the accused and the consequential recoveries made as already narrated by us herein above. P.W.4 was the then Deputy Director of Forensic Lab, Chennai in DNA Division. During the course of investigation, the clothes worn by P.W.2 at the time of occurrence and the clothes worn by the 1st accused at the time of occurrence were received by him for DNA Examination. During such examination, she did not find semen and stains on any of the material objects numbering 8. She has further stated that she received a parcel containing the vaginal smear taken from P.W.2 and the pubic hair. On examination, she found spermatozoa in the vaginal smear in the pubic hair.

5. Similarly, P.W.4 received a parcel containing Saliva and blood samples of the 1st accused collected by the Doctor at the Government Hospital, Coimbatore, who treated him. But they were found to be unfit for Serology examination. But, DNA was extracted from the blood sample of the 1st accused. The DNA drawn from the blood stains on the jetti worn by P.W.2 and the DNA extracted from the blood of the 1st accused tallied. (Thus, according to the prosecution, it has been established that the 1st accused had sexual intercourse with P.W.2). Similarly, the semen collected by the doctor from the 1st accused was also sent for examination. Since there was no more blood sample available from the 1st accused, no further examination could be conducted on the said DNA examination.

6. P.W.5 Doctor Selvaraj has stated that on 02.12.2008, he collected blood and saliva samples from the 1st accused and forwarded the same to P.W.4 for DNA Examination. P.W.6 Doctor Sivaprakasam has stated that on 22.08.2008, when he wanted the 1st accused to give blood sample, he refused. P.W.7 Nehru was the then Inspector of Police at Sai Baba Colony Police Station. According to him, on 22.08.2008 around 02.30 a.m., he received a message from the Control Room to speak to the Cell Phone No.98944 99604. Immediately, he contacted that Cell Phone. The

said Cell Phone was used by one Grade I Police Constable. He told him that he was at the house of one Bharath at Chinthamani Nagar where he had gone on the information furnished by P.W.1. Immediately, P.W.7 rushed to the house of Bharath along with yet another Head Constable by name Meganathan. When they reached the house, P.W.1 narrated the entire occurrence. He has further stated that thereafter, he took P.W.1 to the place where P.W.2 was illegally detained by the 1st accused. He has also stated that he rescued P.W.2 and took the 1st accused into custody and then, returned to Race Course Police Station and produced P.W.2, P.W.1 and the 1st accused.

7. P.W.8 Doctor Bhuvana has stated that she examined the 1st accused on 22.11.2008 along with Doctor Sivaprakasam. According to her, the 1st accused was sexually matured and he was sexually potential to have sexual intercourse with a woman. Ex.P.16 is the Accident Register. P.W.9 Doctor Vatsala Devi has stated that she examined P.W.2 on 22.11.2008. At that time, P.W.2 was conscious. She told that she was kidnapped by four persons out of whom one raped her. She found that there were bite marks on her vagina and other private parts. The hymen was found ruptured. There was fresh bleeding through vagina. He collected vaginal smear and pubic hair and forwarded the same for chemical examination to the Forensic Lab. P.W.10 Doctor Natarjan has stated that on 01.07.2009, he examined the 1st accused and he gave opinion that he was sexually potential and he was capable of performing sexual intercourse with a woman. Ex.P.18 is the Certificate issued by him.

8. P.W.11 is a Woman Police Constable. She was the owner of the house under construction where the occurrence had taken place. According to her, the accused 1 and 4 were known to her. They pretended as though they belonged to rich families. They offered to purchase the house belonging to P.W.11 under construction. Believing them as genuine persons, she handed over the key to them. That is how the accused had utilised the house for the commission of the above crime. P.W.12 is a Head Constable, who accompanied P.W.7, when he went to rescue P.W.1 and P.W.2. He has narrated the entire occurrence. P.W.13, the learned Judicial Magistrate has stated that he recorded the statement of P.W.1. He has also spoken about the Test Identification Parade conducted and the identification of the accused 2 to 6. P.Ws.1 and 2 have participated in the Test Identification Parade. They identified them correctly. P.W.14, is the Finger Print Expert. At the request made by P.W.21, he examined the Maruthi Omni Van bearing Registration No.TN 07 8806 which was recovered from the possession of the accused in which he found sound finger prints which later on found to tally with

the chance finger prints of the 2nd accused and the 5th accused.

9. P.W.15 is a neighbour of the house where the occurrence had taken place. According to him, on 20.11.2008 around 9.00 p.m., two cars came to the house under construction. Within half-an-hour, one car left the said place. On the next day early morning, police came to the said place and arrested the 1st accused. According to him, the said house belongs to P.W.11 Police Constable. P.W.16 was a student studying 2nd year B.Com. Course during the relevant point of time. According to him, he had gone to Coffee Day Restaurant at 06.00 p.m. on 21.11.2008. At that time, he found a car parked near Coffee Day Restaurant bearing Registration No.TN 37 B 4737. He found two people getting into the car. He also heard a weeping of a woman from inside. Then, the car went away. P.W.17 has spoken about the registration of the First Information Report on the complaint of P.W.1. P.W.18, the then Sub-Inspector of Police has stated that she took P.W.2 to the hospital for examination. P.W.19 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.20 was a driver. He was driving a Call Taxi. According to him, on 24.11.2008 around 08.00 to 8.30 a.m., when he was returning through Pangaliamman Koil, the police arrested the accused 3 and 6. He has spoken about the confession given by them and the recoveries made out of the said disclosure statement. P.Ws.20 and 22 have spoken about the investigation done and the filing of the final report.

10. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., they denied the same as false. However, they did not choose to examine any witness nor to mark any documents on their side. Having considered all the above, the Trial Court convicted the accused 1 to 6 as detailed in the first paragraph of the judgment. The 7th accused has been absconding and therefore, he was not tried. As we have already pointed out, the appeals filed by the accused 2 and 6 and 5 in CrI.A.Nos.542/2014 and 556/2014 have already been disposed of by this Court by judgment dated 27.10.2015. Thus, the present appeal filed by the 1st accused/appellant alone is before this Court for disposal.

11. We have heard the learned Counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

12. As we have already pointed out, there are two victims in this case, namely, P.Ws.1 and 2. They have vividly spoken about the part played by the 1st accused from the beginning till the end until he was arrested by the police. P.W.1 has spoken

about the manhandling of him by the 1st accused. P.W.2 has spoken about the said fact and she has further stated that she was raped by the 1st accused. P.W.2 was rescued by P.W.7 from the building belonging to P.W.11. She was then under the captivity of the 1st accused. The 1st accused was arrested and taken into custody by P.W.7 and handed over to P.W.17. The medical examination conducted on P.W.2 has revealed that there were teeth bite marks on her vagina and other private parts. P.W.2 has also stated that it was done only by the 1st accused. P.W.9 Doctor, who examined her, found rupture of the hymen and there was also fresh bleeding indicating that she has been subjected to sexual intercourse recently. The vaginal smear taken by P.W.9 was found to contain spermatozoa. Thus, it has been clearly established by the medical evidence that P.W.2 had been subjected to sexual intercourse.

13. Apart from that, the blood sample taken from the 1st accused tallied with the blood found on the jetti of P.W.2. The DNA extracted from the blood of the 1st accused also tallied with the DNA extracted from the jetti of P.W.2. Thus, the medical evidence would clearly corroborate the eye-witness account of the victim, namely, P.W.2. The very fact that P.W.2 was in the custody of the 1st accused at the house of P.W.1 and she was rescued from his custody by P.W.7, the Inspector of Police, would go to further corroborate the version of P.W.2. Thus, from the evidence of P.W.2 coupled with the medical evidence and that of the evidence of P.W.1, it has been clearly established that it was this accused who raped P.W.2. Similarly, it was he who committed robbery of the jewels with the companion of the others. That has also been established by the recovery of the stolen articles from the possession of the accused on the disclosure statements made. P.W.1's evidence is duly corroborated by P.W.2's evidence and thus, from the evidences of P.Ws.1 and 2, it has been clearly established that these accused had committed crimes for which they have been charged.

14. The learned Counsel for the appellant would submit that there was no Test Identification Parade conducted, so far as the 1st accused is concerned, though Test Identification Parade was conducted in respect of two other accused. Therefore, according to the learned Counsel for the appellant, the Identification of the 1st accused made by P.W.1 and P.W.2, in court cannot be given weightage of.

15. This argument deserves a summary rejection because it is not as if the 1st accused was noticed by P.Ws.1 and 2 for a fraction of second or a minute. P.Ws.1 and 2 were kept by the 1st accused for such a long time, the 1st accused brandished

knife and he only raped P.W.2. Therefore, P.Ws.1 and 2 would have had complete imprint of the image of the 1st accused in their mind. Apart from that, the 1st accused was arrested by the police, when he was keeping P.W.2 in captive. Therefore, there was no need to conduct any Test Identification Parade. In such view of the matter, we reject this argument of the learned Counsel for the appellant.

16. The learned Counsel for the appellant would next contend that the TATA SUMO Car belonging to P.W.1 had not been marked. This creates doubt in the case of the prosecution. We do not think so. There is no dispute that it is in evidence that P.Ws.1 and 2 were taken only in that car to the place of P.W.11. The failure to mark the said car in evidence would not in any manner cause any harm to the veracity of P.Ws.1 and 2. It should be mentioned that the Omni Car which was used by the accused to follow the car in which the accused, P.Ws.1 and 2 were taken and which was used to take P.W.1 to the house of his friend to collect money has been marked. The car contains the finger prints of two other accused. This would go to prove the involvement of the said car. This also adds strength to the case of the prosecution.

17. The learned Counsel for the appellant would further submit that in the FIR itself, the names of 3 accused including that of the 1st accused have been mentioned. When these accused were not known already, according to the learned Counsel, it is not known as to how P.W.1 had mentioned the names of these accused. This argument does not persuade us for the simple reason that the 1st accused was arrested and he was taken into custody by P.W.7 and at that time, it is quite natural that he would have disclosed his name and others and thus, it would have come to the knowledge of P.W.1. Similarly, he would have mentioned about the names of the others also. That is how P.W.1 has mentioned the names of 3 accused including the 1st accused in the FIR. Thus, there can be no doubt raised in respect of the genuineness of the FIR.

18. The learned Counsel would next contend that the First Information Report is said to have been registered at 06.30 a.m. on 22.11.2008 whereas it reached the hands of the learned Magistrate only at 9.00 p.m. on 22.11.2008. There is no explanation for the same, the learned Counsel contended. Therefore, according to the learned Counsel for the appellant, this delay also creates doubt in the case of the prosecution. It is true that there was enormous delay in forwarding the FIR to the court. The delay was caused only by the police for which P.W.1 cannot be held responsible. In the instant case, since the evidences of P.Ws.1 and 2, who are the victims, inspire the

fullest confidence of the court, the delay caused by the police in forwarding the First Information Report to the court would not cause any harm to the case of the prosecution, nor would it create any doubt in the case of the prosecution. Therefore, this argument is also rejected.

19. From the foregoing discussion, it is crystal clear that the 1st accused was the gang leader, who abducted P.Ws.1 and 2, committed robbery at knife point and mercilessly raped P.W.2, a young Post Graduate, who is a spinster. Therefore, the trial court was right in convicting the 1st accused/appellant under all the charges.

20. Now turning to the quantum of punishment, the trial court has dealt with the aggravating as well as the mitigating circumstances very elaborately. The trial court has even cited a couplet from Thirukural which reads as follows:

' 'கொலையில் கொடியாரை வேந்தொறுத்தல் பைங்கூழ்
களைகட் டதனோடு நோ. (குறள் 550)' '

It means that for a king to punish the criminals with death, it is like destroying of the weeds from the crop. In our considered view, the trial court was right in imposing the maximum sentence of life on the appellant. Though the learned Counsel for the appellant pleaded for mercy, we find it very difficult to persuade ourselves to show any mercy on this accused. The accused deserves for the maximum punishment. Thus, we do not find any reason to interfere with the quantum of punishment imposed also.

21. In the result, the appeal fails and the same is accordingly dismissed. The conviction and sentence imposed on the appellant are hereby confirmed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

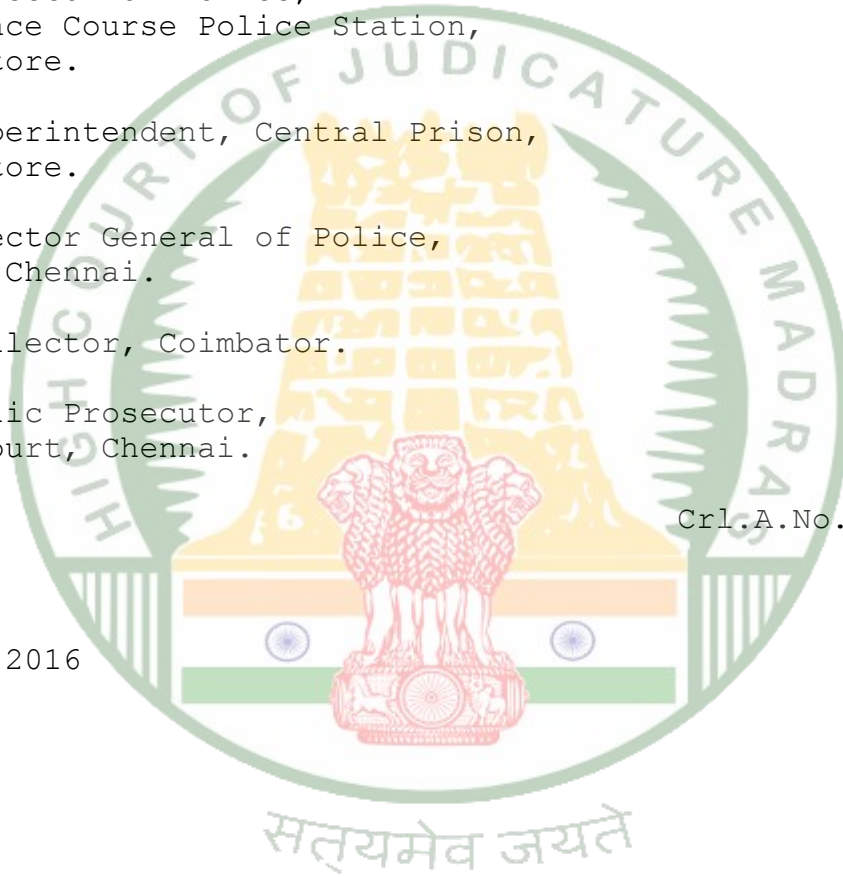
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To

1. The Judicial Magistrate No.3, Coimbatore
2. Do thro The Cheif Judicial Magistrate, Coimbatore
3. District and Sessions Judge,
Mahila Court, Coimbatore
4. Do Thro The Principal Sessions Judge, Coimbatore
- 5.The Inspector of Police,
B.4, Race Course Police Station,
Coimbatore.
6. The Superintendent, Central Prison,
Coimbatore.
- 7.The Director General of Police,
Mylapore, Chennai.
8. The Collector, Coimbatore.
- 9.The Public Prosecutor,
High Court, Chennai.

Crl.A.No.255 of 2016

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