

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved On : 27.02.2017

Judgment Pronounced On : 04.08.2017

CORAM

THE HONOURABLE MR.JUSTICE **S.BASKARAN**

Crl.A.No.18 of 2010

Sumathi

... Appellant

vs.

State by
The Inspector of Police,
V-7, Nolambur Police Station,
Chennai-600 037.

... Respondent

Criminal Appeal preferred under Section 374(2) r/w
Section 382 Cr.P.C., against the judgement dated 05.01.2010
passed by the learned Additional Sessions Judge, (Fast Track Court
No.II), Poonamallee, in S.C.No.146 of 2009.

For Appellant : Mr.R.Syed Mustafa

For Respondent : Mr.E.Raja
Additional Public Prosecutor

JUDGMENT

The appellant herein is the sole accused in S.C.No.146 of
2009 on the file of the learned Additional Sessions Judge, (Fast
Track Court No.II), Poonamallee. The appellant stood charged for

offence under Section 307 IPC, and by judgment dated 05.01.2010, the trial Court found the accused guilty and convicted him under Section 307 IPC and sentenced him to undergo rigorous imprisonment for seven years and to pay a fine of Rs.10,000/- in default to undergo simple imprisonment for one year. Aggrieved over the same, the sole accused/appellant has come forward with this criminal appeal, challenging the said conviction and sentence.

2. The case of the prosecution in brief is as follows:-

2.1. The complainant and the accused are neighbours and the victim minor girl/P.W.4 Harishree is the daughter of P.W.1 Rajarajeswari and P.W.7 Vijayaraghavan. On 13.12.2008 at about 6.15 p.m., the minor victim girl P.W.4 Harishree who was aged about 9 years went to a nearby shop to buy chocolates and on her way back, the appellant/accused, who is a neighbour and well known to the victims family, called P.W.4 and asked her to go to nearby ground to find out the doll lying there, which belonged to P.W.4. Thereafter, as the victim girl has reluctantly accompanied the deceased and no doll was found in the nearby ground, the appellant deliberately took the victim girl to the well situated nearby and made the victim girl to stand in the parapet wall of the well and subsequently pushed her down into the well. As the victim girl/P.W.4 cried for help, the people who were present nearby came

there and the parents of the victim girl also rushed to the well and the victim girl was rescued.

2.2. Thereafter, P.W.1/the mother of the victim girl has given complaint before the respondent police on 14.12.2008. The respondent police registered a case in Crime No.448 of 2008 for the offence under Section 307 IPC and prepared first information report[Ex.P8] and secured the accused on the same day at about 1.00 p.m. On completion of investigation, P.W.11/the Inspector of Police laid the charge sheet against the accused under Section 307 IPC on 26.06.2009.

3. Based on the above material, the trial court framed charges as stated above and the same was denied by the accused. The prosecution in order to prove the guilt of the accused examined P.Ws.1 to 11 and produced Exs.P.1 to P.12 and material object was marked.

4. P.W.1 who is the mother of the victim girl and complainant in this case stated that she is working in a private concern and her husband P.W.7 is also employed in a private company. They are having two children and elder one is P.W.4 Harishree and the younger son is one Mukund. P.W.1 further stated that the accused is living in a flat near by and few days prior to the

occurrence, the accused took P.W.1's son out side and when the boy came back, his gold chain weighing 1-1/2 sovereigns was missing and when the accused was enquired about the same by P.W.1, he denied any knowledge about the chain. P.W.1 deposed that on 13.12.2008, around 6.15 p.m., her daughter P.W.4 asked for chocolate and in response P.W.1 gave her some money to purchase chocolate. At that time, P.W.7/Vijayaraghavan, the father of the victim girl returned from the office and after giving coffee to him, as P.W.4 has not returned back, P.W.1 went down and she heard huge noise and saw the people standing around the well and she found out that her child P.W.4 has fallen into the well. Immediately, she called her husband/P.W.7 and immediately he rushed to the well and rescued the child from the well. Since P.W.4 was not in a position to speak, she was taken home and after giving her bath, she was taken to hospital. According to the prosecution even at home, P.W.4/the victim girl only stated that the accused came there and did not say anything else. However, according to P.W.1, her child/P.W.4 informed her about the accused taking her to the parapet wall of the well and then pushed down P.W.4 inside the well. It is only after hearing the same, P.W.1 lodged Ex.P1 complaint with the respondent police.

5. P.W.4/the minor victim girl stated in her evidence that she is studying in 5th standard and she knew the accused Sumathi auntie. On 13.12.2008, when she asked for chocolate from her mother/P.W.1 her mother gave money and asked her to get chocolates from nearby shop. P.W.4 further stated that when she was coming back from the shop, the accused called her and took her to the nearby ground promising to produce her doll from the ground, but as no doll was found in the ground, she was returning to her home. However, the accused took her to the well and asked her stand on the parapet wall to find out the doll. While she was looking out for the doll, the accused pushed her down into the well and as the victim girl came out of the water, she cried for help. Immediately, the accused put down a small stick and asked her to come out by holding the stick. P.W.4 further stated that she continued shouting and the people who were present nearby rushed to the well to assist her. After some time, her mother P.W.1 came and on seeing her, she shouted and called her father/P.W.7. Then, P.W.7 came there and jumped into the well and rescued her. Subsequently, P.W.4 was taken to Senthil Nursing Home in Thirumangalam.

6. P.W.7/the father of the victim girl in his evidence stated that on 13.12.2008, after he returned from his office, he found his

wife teaching his daughter/P.W.4 for her half early examination and as his daughter answered correctly to the questions, his wife P.W.1 gave money to the victim girl P.W.4 to purchase chocolates and sent her to the nearby shop. According to P.W.7, normally, the child will return within 5 minutes, but on that day as P.W.4 failed to return, his wife opened the door to look out for the child and hearing huge noise, she went out and found that P.W.4 has fallen into the well. Thereafter, on hearing his child shouting and crying, P.W.7 himself rushed there and jumped into the well and rescued his daughter P.W.4. He was assisted by one Danial and they immediately took P.W.4 to her house and as the child was not in a position to speak anything and after giving her bath, took her to the Hospital in Anna Nagar, where she was examined by P.W.2, Doctor Srilatha. Thereafter, P.Ws.1 and 7 along with P.W.4 went to the house of P.W.7's parents and there only P.W.4 informed them about the accused taking her to the well and pushing her down into the well. Thereafter, P.W.7 went to the police station at about 9.00 p.m., and lodged a complaint. They were examined by the police and subsequently on the same day of occurrence, the accused was summoned by the respondent police and after enquiry her separately, the respondent police asked P.W.7 to come back on the next day. Accordingly, P.W.7 went to the police station on the next day and he was examined by P.W.10, the Inspector of Police and

thereafter, the case was registered. P.W.7 also stated that during the month of November, 2008 the accused took P.W.7's son out side and on return the chain worn by him was found missing. Since the accused and the complainant were living in the same apartment, P.W.7 did not lodge any complaint against the accused about the missing of his son's chain.

7. the Doctor who treated the minor girl on the date of occurrence, while deposing as P.W.2 stated that on 13.12.2008 at about 7.15 p.m., a minor girl aged about 9 years was brought to the hospital by her father and he informed that the child was pushed into the well by a neighbour and after examining the child, who was found tense, and on there was no other serious problem, she sent them away prescribing some medicine. The prescription issued by her is produced as Ex.P2.

8. P.W.3 deposed that he is practising medicine and running Raju Nursing Home in Mugappair, Chennai. While he was on 14.12.2008 at about 3.00 p.m., P.W.4 Harishree was brought by her father and on examination found some scratches on her hand, right chest and the same was found to be of simple injury. The certificate issued by her in that regard is marked as Ex.P3.

9. P.W.9, the Sub Inspector of Police, deposed that while on duty in Nolambur Police Station on 14.12.2008 at about 9.00 a.m., P.W.1 Rajeswari appeared and lodged a complaint and on receipt of the same, he registered a case in Crime No.448 of 2008 for the offence under Section 307 IPC and the said FIR is marked as Ex.P9.

10. P.W.10, the Inspector of Police stated that on 14.12.2008 while he was on patrol duty, he was informed over the phone by Sub Inspector of Police/Ganasekaran about the case registered in Crime No.448 of 2008 and he took up the case for investigation and reached the place of occurrence at about 9.30 a.m., and examined P.Ws.1,4 and 7 and recorded their statements. Thereafter, in the presence of P.W.5/Muniswaran and P.W.6/Pandian, prepared Ex.P10 observation mahazar and Ex.P11 rough sketch in the occurrence spot. Thereafter, on the same day at about 1.00 p.m., he arrested the accused and recorded the confession statement given by the accused voluntarily in the presence of witnesses. Thereafter, he sent the accused for judicial custody. subsequently, he examined P.Ws.2 and 3 and recorded their statements. On 16.12.2008, he gave requisition letter [Ex.P12] to the Judicial Magistrate, Thiruvallur seeking permission to record the statement of victim girl under Section 164 Cr.P.C.

Thereafter, he handed over the file for further investigation to P.W.11.

11. P.W.11, the Inspector of Police, deposed that he took up the case in Crime No.448 of 2008, Nolambur Police Station for further investigation from P.W.10 and on completion of investigation, he laid the charge sheet against the accused on 26.06.2009 under Section 307 IPC.

12. When the above incriminating materials were put to the accused during enquiry under Section 313 Cr.P.C., he denied the same as totally false. After considering both the documentary and oral evidence placed before it, the trial court found the accused guilty of the offence and convicted him as stated in paragraph 1 of this judgment. Challenging the same, the appellant/accused is before this court with this criminal appeal.

13. I have heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the State and perused the materials available on record.

14. The learned counsel appearing for the appellant would submit that due to previous enmity, a false complaint has

been lodged against the accused and there is discrepancy and contradiction about the alleged occurrence in the evidence of P.Ws.1,4 and 7 and the same has not been considered properly by the trial Court. It is further submitted that apart from the evidence of victim minor girl, there is no other evidence to the occurrence and in such circumstances, unless and until there is acceptable corroborative evidence, the conclusion arrived at by the trial Court on the basis of a minor girl's evidence alone is not proper. The learned counsel appearing for the appellant further contended that the complaint originally lodged by the complainant on the alleged occurrence date itself is suppressed and Ex.P1 complaint produced before the Court is subsequently created for the purpose of this case and that itself will create doubt over the claim of the prosecution. The learned counsel further contended that the first information report itself was prepared only on 14.12.2008 at about 5.00 p.m., but the claim of the prosecution that the accused was arrested on 14.12.2008 at 1.00 p.m., itself is highly improbable. Further, it is pointed out that the minor victim girl has admitted in her cross examination that she was instructed by the police about deposing before the Court and it will categorically established that she is a tutored witness. In such circumstances, her evidence was not appreciated by the trial Court properly. On these grounds, the learned counsel appearing for the appellant contended that the

finding and conclusion arrived at by the trial Court is not proper and the same is liable to be set aside.

15. On the other hand, the learned Additional Public Prosecutor appearing for the state would submit that the evidence of the victim girl is clear cut and there is no need for her to falsely implicated the accused in this case and the trial Court has appreciated the materials placed before it properly and arrived at just and correct conclusion holding the accused guilty of the offence alleged against him. Hence, the prosecution contends that there is no need to interfere with the conviction and sentence imposed by the trial Court and seeks to dismiss the appeal.

16. As stated above, it is the contention of the prosecution that the minor victim girl was taken by the accused and subsequently pushed down into the well with an intention to kill her. The complaint about the occurrence is lodged by P.W.1 who is the mother of the victim girl/P.W.4 and the same is produced as Ex.P1. As per the prosecution case, the occurrence took place on 13.12.2008 around 6.15 p.m. The complainant/P.W.1 stated in her evidence that she lodged a complaint on 13.12.2008 itself. According to her, she went to the police station along with her husband/P.W.7, brother-in-law, father-in-law and step mother-in-

law. Similarly, her husband/P.W.7 also stated in his chief examination that they went to the police station at 9.00 p.m. on 13.12.2008 itself and lodged a complaint. Thus, according to P.W.1 and P.W.7, they went to the police station at 9.00 p.m. on 13.08.2012 and lodged a complaint. However, according to P.W.9, the Sub Inspector of Police, it was only on the next day on 14.12.2008 morning at about 9.00 a.m., the complainant/P.W.1 came to the police station and lodged complaint and on the basis of the same, he registered a case in Crime No.448 of 2008 and prepared first information report[Ex.P9]. Thus, it is to be seen as to when really the complaint was lodged and whether really Ex.P1 is the first complaint or any complaint was given earlier and the same was suppressed.

17. The complainant/P.W.1 having stated in her chief examination that on the night of 13.12.2008 itself they went to the police station and gave complaint, deposed in her cross examination that after taking the child for medical treatment, they went to her mother-in-law house and her husband/P.W.7 talked with his friends over the phone for 45 minutes and thereafter they went to the police station and gave a complaint. P.W.1 further stated that they told in detail about the occurrence and P.W.4/the minor victim girl was also examined by the police. P.W.1 also stated that she went

with the police and identified the accused to the police and they took the accused to the police station. P.W.1 further stated in her cross examination that the police enquired them about the occurrence on 13.12.2008 itself, but they did not register any case. On further cross examination P.W.1 stated that her step father-in-law Ramanujam asked the accused and her husband to admit their guilt and if they do so, the police will not be informed. However as the accused failed to admit her guilt, they lodged a complaint on the next day morning around 9.00 a.m. to 10.30 a.m. Thus, P.W.1 stated in her chief examination about the lodging of the complaint on the night of 13.12.2008 itself, but in her cross examination stated that she lodged the complaint on the next day morning around 9.30 a.m., only.

18. Similarly, P.W.7/the husband of the complainant in his chief examination stated that they went to the police station on 13.12.2008 at about 9.00 p.m., and lodged a complaint but contradicted the same in his cross examination. P.W.7 stated that after taking the victim/P.W.4 to the Hospital, he went to his parents house at about 8.20 p.m., with his child and there P.W.4 informed P.W.7's mother that she was pushed down by the accused Sumathi and then they decided to lodge a complaint with the police and immediately they went to the police station at about 9.00 p.m.,

According to P.W.7, when he went to the police station, the women Sub Inspector of Police one Vanitha was present and he lodged a complaint with her. The said women Sub Inspector of Police has not been examined by the prosecution before the Court. P.W.7 also stated that himself, P.W.1 and P.W.4 were examined separately for 15 minutes each and they were informed by the said women Sub Inspector of police that first information report cannot be registered as the Inspector of Police is not available. P.W.7 also stated that P.W.9, the Sub Inspector of Police, namely, Ganasekaran was present at that time and it is also evident from the evidence of P.W.7 as he identified P.W.9 who was present in the Court at the time of his examination in the court. P.W.7 also stated that they were examined by the women Sub Inspector of Police, namely, Vanitha as well as P.W.9 Ganasekaran and two policemen were sent to secure the accused on the night of 13.12.2008 and his daughter/P.W.4 and her cousin went with them to identify the accused. Thereafter, the accused was brought to the police station and enquired. At that time, P.W.7, his wife P.W.1 and daughter P.W.4 remained out side the police station and even after examination of the accused on 13.12.2008 night, no FIR copy was given to P.W.7. Thereafter, P.W.7 as well as his wife and daughter were asked to go back and come on the next day morning, as the Inspector of Police was not available on that day. P.W.7 also stated

that they reached the police station at about 9.00 a.m., on the next day and even by 11.30 a.m., the officials were not available except the Sub Inspector of Police Vanitha and Ganasekaran/P.W.9. According to him, P.W.10, the Inspector of Police arrived at 11.30 a.m., and conducted enquiry for 20 minutes. P.W.7 also stated that even after such enquiry, the accused was not secured by the police and as the Inspector of Police was not willing to register the complaint till evening time, his wife P.W.1 sent a petition to the CM cell and then only he was furnished a copy of the FIR in the evening around 4.30 p.m., to 5.00 p.m., P.W.7 stated that after furnishing the FIR copy, the police informed him that they are arresting the accused and took the accused in a car to unknown place.

19. Similarly, the victim girl P.W.4 in her cross examination stated that after the occurrence, she was taken to the hospital and then they went to her the Grand mother's house and she remained there for half an hour. She further stated that her father's cousin wanted to give police complaint and after remaining in her grand mother's house for half an hour, they went to the police station. P.W.4 further stated that the police did not examine her, but her parents were examined. She also stated that complaint was lodged only on the next day. Thus, the evidence of P.Ws.1, 4 and 7 categorically established the fact that on the night of alleged

occurrence itself they went to the police station and informed the police about the occurrence, but no case was registered on that day.

20. It is also evident from P.Ws.1,4 and 7 evidence that the police enquired them and also secured the accused on the same day i.e., on 13.12.2008 itself, but they were sent back and asked to report on the next day morning. However, contrary to the evidence of P.Ws.1,4 and 7, the Sub Inspector of Police, who registered the case while deposing as P.W.9 has categorically stated that the complaint was lodged only on the next day 14.12.2008 at about 9.00 a.m. Further, P.W.9 also categorically stated that himself, P.W.10, the Inspector of Police Ponnusamy and women Sub Inspector of Police Vanitha were present in the police station on the occurrence date viz., 13.12.2008 but P.Ws.1, 4 and 7 were sent by him only on 14.12.2008 for the first time. He also stated that on 13.12.2008, after 8.30 p.m., he did not meet any of them and he was on patrol duty from 4.00 p.m., to 9.30 p.m. He further stated that the women Sub Inspector of Police Vanitha was also on patrol duty and returned back only at 9.30 p.m. Then, the Sub Inspector of Police who deposed as P.W.9 has categorically stated in his evidence that on 13.12.2008 after 9.30 pm., PWs.1, 4 and 7 did not come to the police station and he also denied the claim of P.Ws.1,4 and 7. They were examined by P.W.9 and women Sub Inspector of Police Vanitha on 13.12.2008 night itself. According to him, it is not

correct to say that due to the absence of P.W.11 Inspector of Police on 13.12.2008, the case was not registered inspite of P.W.1 lodging the complaint. P.W.9 also stated that only at 9.00 am on 14.12.2008, P.Ws.1,4 and 7 came to the police station and lodged a complaint and nobody else accompanied them. He also categorically stated that within 10 to 15 minutes of receiving the complaint, he registered the first information report.

21. Similarly, P.W.10, the Inspector of Police also stated that on 13.12.2008, he was on patrol duty from 7.30 p.m., and returned to the Nolambur Police Station by 9.30 p.m., only. He also denied the claim of P.W.1 that on the occurrence day itself the complaint was lodged with the police and they were examined on the night on 13.12.2008 itself. Thus, while P.Ws.1,4 and 7 categorically stated that they went to the police station on 13.12.2008 at 9.00 p.m., itself and informed the police about the occurrence and lodged the complaint, the same is denied by police officials viz., P.Ws.9 and 10.

22. In such circumstances, it is pointed out by the learned counsel appearing for the appellant that the respondent police who received the complaint on the day of occurrence itself have suppressed the same and subsequently received another complaint on 14.12.2008 and registered this case falsely. The learned counsel

appearing for the appellant also contended that as per the version of P.Ws.1,4 and 7, on the night on 13.12.2008 itself, the police have enquired the P.W.1 complainant, P.W.4 victim girl as well as P.W.7 and also the accused but only on the next day, the case has been registered and it should create doubt about the genuineness of the complaint itself. He also pointed out that there is categorically assertion on the part of P.W.7 that only after they sent a petition to CM cell, the case was registered around 4.00 p.m., on 14.12.2008 and that itself would go to show that there is undue delay in registering the case even after the complaint was lodged on previous day itself.

23. It is also pointed out that from the endorsement in the First Information Report [Ex.P9], it is seen that the complainant has received the copy at 5.00 p.m., only and that also will go to show that the complaint was registered only in the afternoon on 14.12.2008. The learned counsel appearing for the appellant also pointed out that even as per the evidence of P.W.9, the Sub Inspector of Police, the complaint was received on 14.12.2008 morning at 9.00 a.m., but the FIR copy was furnished to the complainant only at 5.00 p.m., on 14.12.2008 and coupled with the evidence of P.W.7 that he was available in the police station for the entire day, it will clearly establish the fact that there is a long delay

in registering the case even after the complaint as claimed by the prosecution was given at 9.00 a.m., on 14.12.2008. In such circumstances, the learned counsel appearing for the appellant/accused relying upon the ruling of the Hon'ble Apex Court reported in **1993 CrI. L.J 3684(1) in STATE OF A.P., v. PUNATI RAMULU AND OTHERS**, contended that the delay in registering the complaint and lodging of complaint after deliberation, consultation and discussion will vitiate the same and it will not be safe to rely upon such complaint and investigation should be treated as tainted investigation. It is also pointed out that the first information report registered in this case cannot be treated as such and it will be hit by Section 162 Cr.P.C. In the said ruling it is held as follows:-

5. According to the evidence of PW 22, Circle Inspector, he had received information of the incident from police constable No. 1278, who was on 'bandobast' duty. On receiving the information of the occurrence, PW 22 left for the village of occurrence and started the investigation in the case. Before proceeding to the village to take up the investigation, it is conceded by PW 22 in his evidence, that he made no entry in the daily diary or record in the general diary about the information that had been given to him by constable 1278, who was the first person to give information to him on the basis of which he had

proceeded to the spot and taken up the investigation in hand. It was only when PW 1 returned from the police station along with the written complaint to the village that the same was registered by the circle inspector, PW 22, during the investigation of the case at about 12.30 Noon, as the F.I.R., Ex. P-1. In our opinion, the complaint, Ex. P-1, could not be treated as the F.I.R. in the case as it certainly would be a statement made during the investigation of a case and hit by [Section 162, Cr.P.C.](#) As a matter of fact the High Court recorded a categorical finding to the effect that Ex. P-1 had not been prepared at Narasaraopet and that it had "been brought into existence at Pamidipadu itself, after due deliberation". Once we find that the investigating officer has deliberately failed to record the first information report on receipt of the information of a cognizable offence of the nature, as in this case, and had prepared the first information report after reaching the spot after due deliberations, consultations and discussion, the conclusion becomes inescapable that the investigation is tainted and it would, therefore, be unsafe to rely upon such a tainted investigation, as one would not know where the police officer would have stooped to fabricate evidence and create false clues. Though we agree that mere relationship of the witnesses PW 3 and PW 4, the children of the deceased or of PW 1 and PW 2 who are also related to the deceased, by itself is

not enough to discard their testimony and that the relationship or the partisan nature of the evidence only puts the Court on its guard to scrutinise the evidence more carefully, we find that in this case when the bona fides of the investigation has been successfully assailed, it would not be safe to rely upon the testimony of these witnesses either in the absence of strong corroborative evidence of a clinching nature, which is found wanting in this case.

24. It is clear from the above said discussion that the prosecution has not come forward with clean hands and something has been suppressed about when the complaint was actually lodged with the police and there is no proper and valid acceptable explanation as to why there was such long delay in registering the case and as the prosecution has not produced any movement register to show as to whether really P.Ws.9 and 10 were on patrol duty and they are not available in the police station as claimed by the prosecution on 13.12.2008, the lodging of complaint itself appears to be doubtful and the contention of the accused that Ex.P1 complaint cannot be relied upon is to be accepted. Therefore, it is clear that the claim of prosecution about the time and date of complaint

being lodged and the information received by them is not genuine and doubt exists about when the complaint was received by them. In such circumstances, the contention of the learned counsel appearing for the appellant/accused following the above said ruling that Ex.P1 complaint was subsequently prepared for the purpose of the case and the first information report registered in this case is not genuine one is to be accepted and the finding of the trial Court contrary to the same is unsustainable.

25. Now, it is to be seen whether the prosecution has established with acceptable evidence, the alleged occurrence as stated above. The allegation is that the accused intentionally took the victim girl P.W.4 and after making her stand in the parapet wall of the well pushed her down into the well with intention to kill her. The occurrence is stated to have taken place around 6.15 p.m. on 13.12.2008. P.W.1, the mother of the victim stated that when she was at home, her daughter P.W.4 asked for chocolate and so she gave money and took ask her to get the chocolate. At that time, her husband/P.W.7 returned from the office and she prepared

coffee for him. Since her daughter failed to return till then, she went down to see her and on hearing the huge noise and on seeing the people standing around the well, she went there and found her daughter inside the well. On the other hand, her husband/P.W.7 stated that in his chief examination that on 13.12.2008, when he returned from office, his wife was taking class for the daughter P.W.4. and thereafter money was given to her daughter to buy chocolate and she went away. Since the victim girl normally returned within five (5) minutes and on that day, as P.W.4 failed to come back, his wife opened the door of the house and on hearing huge noise, he himself went out and found that his daughter has fell into the well. Immediately he jumped in to the well and rescued the child and in doing so he was assisted by one Danial. Immediately, the girl was taken back to their home by P.W.7 himself. On the other hand, P.W.1 who is the wife of P.W.7 in her cross examination stated that she normally used to send her daughter to the nearby shop and she will come back within 5 minutes, but on that day, as the child did not return even after 15 minutes, P.W.1 came down and found her daughter inside the well. He also saw Danial, his wife Mathavi,

Muniswaran and others as well as the accused also near the well. P.W.1 also stated that nobody came to her house to inform that P.W.4 has fall down into the well. Likewise, P.W.7 also stated that when he went near the well he saw one Danial, Muniswaran, Pandian and others around the well and he immediately jumped in to the well and brought out his child. P.W.1 also stated that on seeing her daughter inside the well, P.W.1 shouted from outside and her husband came down. On the other hand, P.W.7 stated that while he was drinking coffee in the hall, his wife went out and returned within two minutes to the house and his wife cried that their child has fell into the well and then only he came down to the well. Thus there is lot of contradiction between the evidence of P.W.1 and 7 as to whether the victim P.W.4 was inside the house when P.W.7 returned home and also as to who went out of the house first to find the victim and as to how they were informed about the fall of the child into the well and the contradiction as pointed out above creates doubt in the mind of the court as to what really happened.

26. Further there is contradiction in between the

evidence of P.W.1 and P.W.7 as to who went down first to see the child and how they were informed about the manner of occurrence. According to P.W.1, after the child was taken out of the well as she was not in normal condition and not able to speak she told only that the accused came there and thereafter she was taken to the Doctor and given treatment. Only after the child become normal and enquired by P.W.1, the child/P.W.4 informed her about the accused asking her to go with her to see the doll and thereafter as the child was near by the well, pushed her down. P.W.7 also stated that after the child was taken out of the well, she was not in a position to talk and after pacifying her and give her a bath, the victim was taken to the hospital in Anna Nagar, when P.W.2, the Doctor, examined the child. After getting treatment, P.W.7 took the victim to his parents house at Kolathur and there only the victim girl told about the accused asking her to go with her to see the doll and then pushing her into the well. Further, P.W.7 in his cross examination stated that the child was unconscious, they went to the hospital and she was not in a position to say any thing. According to him, they reached the hospital around 7.45 p.m., and his wife also came to the Hospital. Thus,

according to P.Ws.1 and 7, the victim girl has not stated anything about the accused pushing her into the well till they reached the parents house of P.W.7. P.W.4, the victim girl also stated in her cross examination that the accused forced her to stand on the parapet wall of the well and then pushed her inside the well. P.W.4 also stated that she told about the said occurrence to her grand parents first and did not tell P.Ws.1 and 7 about the same. She further stated that she did not know swimming and since she fell into the well, she caught hold of the pipe and at that time, except the accused nobody else was present. Thus, P.W.4 also clearly stated that she did not inform about the accused pushing her into the well to her parents and only told her grand parents about it. As stated above, the victim girl / P.W.4 was first taken to the hospital when P.W.2 treated her and thereafter only she went to her grand parents home. As per the evidence of P.Ws. 1, 4 and 7, it was only at the grand parents home, P.W.4 told about the act of the accused for the first time. In such circumstances, it is pointed out that the evidence of P.W.2 Doctor is totally contrary to the evidence of Prosecution Witnesses 1, 4 and 7. P.W.2 Doctor stated that on 13.12.2008 around

7.15 p.m., P.W.4 was brought to her by her father P.W.7 and he informed him that P.W.4 was pushed into the well by a person living in their apartments and she gave treatment to the child. P.W.2 also stated that the father of the victim girl alone came to the Hospital and did not remember about P.W.1 coming with the child. P.W.2 also stated that the father of the victim girl told her that the girl was pushed into the well by a neighbour and the victim girl has informed him so. Thus, while the evidence of P.Ws.1, 4 and 7 are clear about the fact that for the first time the child informed about the act of the accused only at her grand parents house after visiting the Doctor. It is impossible for P.W.4 or P.W.7 to inform the P.W.2 Doctor about the act of the accused. Thus, the doubt arises as to whether really P.W.2 was informed about the act of the accused as claimed by her.

27. Further, the victim girl/P.W.4 stated in her cross examination that she along with her parents went to the police station on the same day night and on the next day the complaint was lodged. According to her, on the first day when she went to the police station, she did not tell them about the accused Sumathi pushing her into the well, but on the next day she informed them that she was pushed into the well by accused Sumathi. P.W.4 also stated that on the occurrence day, she told the police that she is not

sure as to whether she fell down on her own into the well or fell down due to the accused pushing her inside the well. P.W.4 stated in her evidence is as follows:-

முதல் நாள் காவல் நிலையம் சென்றபோது சுமதி ஆன்ட்டி தள்ளிவிட்டதை சொல்லவில்லை. மறுநாள் போகும்போது நிச்சயமாக சுமதி ஆன்ட்டிதான் தள்ளிவிட்டார்கள் என்று சொன்னேன். முதல் நாள் காவல் நிலையத்தில் நானாக கிணற்றில் விழுந்தேனா இல்லை சுமதி ஆன்ட்டி தள்ளிவிட்டு விழுந்தேனா என்று எனக்கு தெரியவில்லை என்று சொன்னேன். முதல் நாள் போலிஸாரிடம் சொல்லியபோது நானாக விழுந்தேனா அல்லது சுமதி ஆன்ட்டி தள்ளிவிட்டார்களா என்று எனக்கு தெரியவில்லை என்று சொன்னேன். மறுநாள் போலிஸாரிடம் சுமதி ஆன்ட்டி தான் தள்ளிவிட்டார்கள் என்று சொல்லிவிட்டேன்,

Thus, the victim girl itself has stated differently about the date of occurrence to the police. Further, P.W.4 stated that she is fond of accused Sumathi auntie and when she went to Senthil Nursing Home, her parents alone came and no body else accompanied them. P.W.4 further stated that she informed the Doctor that she fell into the well, but her mother P.W.1 only told that the accused has pushed her into the well. Thus, it is clear from the above said evidence that the victim is not sure as to whether she fell into the well on her own or pushed down by the accused.

28. Further as stated earlier P.Ws.1 and 7 having stated that the victim was not able to say anything about the occurrence

till they reached the parents house of P.W.7, they have not informed by P.W.2 about the accused pushing the victim into the well is also not explained. Pointing out it, the learned counsel appearing for the accused contended that the evidence of child witness P.W.4 alone is not sufficient to conclude that the accused committed the alleged act. In support of the same, he relied upon a Ruling in the case of **STATE OF U.P. v. ASHOK DIXIT AND ANOTHER** reported in **2000(1) CrI.L.J. 675(S.C.)**, wherein, the Hon'ble Supreme Court has held that unless there is acceptable corroborative evidence, the evidence of child witness should not taken into consideration. The learned counsel for the appellant relied upon the Ruling in the case of **State of Karnataka Vs. Ningappa Bimappa Uppar and others** reported in **2000 CrI.L.J.1757** and contended that the evidence of P.W.4 cannot be looked into to prove the guilt of the accused. In the said Ruling, it is held as follows:-

"The only question put to this witness in cross-examination, which he has admitted is that he was brought to the Court by Mahadevappa and told what to depose by this person...."

"This position gets aggravated because as indicated by us above, Gurupadappa admits that he was brought to the Court by Mahadevappa and was told what to depose.

This brings him squarely within the mischief that that Courts are also worried about namely the fact that evidence of children and young persons becomes suspect because of the very high possibility of their coming under the influence of other persons. The admission of P.W.16 fully establishes this last factor and that is the strongest reason why we find it impossible to ascribe to this evidence the high quality that would be necessary in order to base a conviction."

In the case on hand, as stated earlier, there is a contradiction among the above said prosecution witnesses about the occurrence and as to when the victim girl informed for the first time about the role of the accused is also in doubt. Thus the prosecution has not established beyond doubt the allegation against the accused that she pushed down the P.W.4 child into the well and the finding of the trial Court convicting to the same is unsustainable.

29. The further contention of the learned counsel appearing for the appellant is that there was previous enmity and misunderstanding between the accused and the complainant and further the victim girl P.W.4 has stated clearly about the being instructed by parents before giving evidence Court about the occurrence. P.W.4 in her cross examination stated that during the examination time her parents will teach her as to how to right

exams and similarly she was instructed by her parents as to how to answer the question in the court on that date. She also stated that only because of teaching of our parents, she is able to give answer like that P.W.4 stated in her cross examination is as follows:-

தேர்வு நேரத்தில் மம்மி, டாடி எவ்வாறு பரிட்சை எழுத வேண்டும் என்று சொல்லி கொடுப்பார்கள். அதே போல் இன்று நீதிமன்றத்தில் கேட்கும் கேள்விகளுக்கு எப்படி பதில் சொல்ல வேண்டும் என்று மம்மி டாடி சொல்லி கொடுத்தார்கள். இதற்கு முன்பு மம்மி டாடி சொல்லி கொடுத்து ஐட்ஜ் முன்பாக சொன்னது இல்லை. மம்மி டாடி சொல்லி கொடுத்ததால் தான் நான் இவ்வாறு பதில் சொல்ல முடிகிறது.

Thus, it is a clear cut admission of P.W.4 that she was instructed by her parents as to how she should answer in the court and only because of that she is able to answer in such a manner. As the only eye witness to the occurrence P.W.4 herself is in doubt as to whether she fell down on her own or pushed down by the accused and it is only on the 2nd day after interacting with her parents she changed her and stands started saying that she was pushed into the well by the accused herein. It is true that the victim girl has given statement under Section 164 Cr.P.C. before the then Judicial Magistrate, Thiruvallur, who has deposed as P.W.8, and the statement recorded by her is produced as Ex.P8. However, in view of the admission by P.W.4 that he was instructed and trained by her parents to give answers in Court proceedings and in the light of the contradiction in the prosecution side evidence of P.Ws.1,4 and 7,

occurrence as alleged by the prosecution.

30. Further, the victim girl P.W.4 stated in her evidence that as soon as she fell down into the well, she caught hold of the pipe and the water level was up to her chest level only. P.W.4 also stated that she did not swallow any water. On the other hand, her father P.W.7 stated that he jumped into the well brought out P.W.4 and found the child has drunk water and in unconscious state of mind. He further stated that his wife P.W.1 gave first aid to the child by pressing the back of the child to get the water out from her body. But, the mother of the victim girl/who deposed P.W.1 has not stated any thing like that. When P.W.4 herself has stated that she has not swallowed any water and she caught hold of the pipe and the water level was up to her chest only. P.W.7 evidence is contrary and it is unbelievable. The same also create doubt as to whether really the child was pushed into the well and swallowed water as claimed by the prosecution.

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31. P.W.1 further admitted in her evidence that the accused was present near the well and also came to their house after the child was rescued from the well. The Mahazar witness who turned hostile while deposing as P.W.5 stated that he knew the accused as well as the complainant. On 13.12.2008 at about 6.30 p.m., he saw

and heard the accused shouting that the child has fallen into the well and he immediately rushed there to save the child. It is therefore clear that the accused was present near the occurrence place till the child was taken home and she was also present in the house of the complainant. In such circumstances, as rightly contended by the learned counsel appearing for the appellant that if really the accused has committed the alleged act, she would not have stayed back there and took steps to rescue the child. In such circumstances, it appears that the prosecution has not proved beyond doubt the fact that the accused only pushed the victim girl into the well.

32. Further, as stated earlier, it appears that there was misunderstanding and previous enmity between the complainant and the accused. The complainant/P.W.1 in her evidence stated that six months prior to the occurrence, she put her house key with the accused for three days and during that period, several household articles were found missing and they suspected the accused for the same, but they decided not to give complaint against the accused. P.W.1 further stated that 10 days prior to the occurrence, the accused took the son of P.W.1 and on return P.W.1 found that the gold chain of her son weighing two sovereigns was found missing. However, P.W.1 stated that they did not lodge any police complaint

in that regard also. It is also evident from the available evidence that there was some dispute about distribution of water from the well and bore among the residents of the apartments where the deceased and complainant were living. Similarly, P.W.7 also stated that they suspected the accused regarding missing of two sovereign gold chain of his son and they were thinking of lodging the complaint against the accused herein. He also admitted that there was some ill feeling in that record against the accused. Thus, considering the same, it is clear that there was some misunderstanding and ill feeling between the complainant and the accused. Pointing it out, the learned counsel appearing for the appellant contended that only due to the ill feeling and previous enmity, this complaint has been lodged against the accused without any basis.

33. It is clear from the evidence of P.W.1 that herself along with her husband P.W.7 and her child P.W.4 were in the police station on 14.12.2008 from morning 9.30 a.m., till evening and the accused was also present there throughout the day. P.W.7 also stated that he went to the police station around 9.00 a.m., on 14.12.2008 and they remained in the police station from morning to evening. Similarly, the accused was also in the police station throughout the day. The Doctor, who deposed as P.W.3 stated in

her evidence that on 14.12.2008 at about 3.00 p.m., the victim girl was brought to her clinic by her father P.W.7. In his cross examination, P.W.3 stated that she saw the child for the first time on that day and her parents were present. Accident Register copy issued by him is produced as Ex.P3. While P.W.7 clearly stated that they remained in the police station from 9.00 a.m., to 6.00 p.m., and it is corroborated by the facts that Ex.P9 FIR copy was received by the complainant/P.W.1 only at 5 p.m, it is doubtful as to whether really P.W.4 the victim girl was taken to P.W.3 Doctor by P.W.1 and P.W.7 at 3.00 p.m., on that day as claimed by P.W.3 Doctor. In such circumstances, the veracity of the evidence given by the prosecution witnesses is doubtful.

34. According to the prosecution, the complaint is registered only in the evening of 14.12.2008. However, P.W.10, the Inspector of Police stated that he arrested the accused at 13 hours on 14.12.2008. On the other hand, as stated earlier, P.Ws.1 and 7 stated about the complainant sending the petition to CM Cell in the afternoon on 14.12.2008, as the police was reluctant to register the case and also stated that the accused was present throughout the day in the police station. In such circumstances, the claim of P.W.4 that the accused was secured on 13 hours and confession statement given by her was recorded in the presence of

P.Ws.5 and 6 appears to be doubtful. Further, the mahazar witness P.Ws.5 and 6 were treated as hostile and they have denied any knowledge about the accused giving confession as claimed by the prosecution. The signature of P.W.5 in the observation mahazar and the confession statement alone is marked as Exs.P4 and Ex.P5. Similarly, the signature of P.W.6 in the confession statement of the accused is marked as Ex.P6 and Ex.P7. It is clear that the evidence of P.Ws.5 and 6 is not supporting the case of the prosecution. As stated above, the claim of the prosecution about the date and time of arrest of the accused also seems to be doubtful.

35. In the case on hand, as rightly pointed out by the learned counsel appearing for the appellant there is lot of contradiction in the evidence of P.Ws.1, 4 and 7 about the alleged occurrence, and there is no proper explanation on the side of the prosecution as to why there was such delay in registering the case, even after they received the information on 13.12.2008 night itself. Likewise in view of the admission of P.W.4 that she was instructed by her parents to give answers to the question in the court proceeding and also the fact that P.W.4 herself is not definite as to whether she fell down on her own or pushed into the well by the accused, it is to be concluded that the prosecution has not placed sufficient materials before the Court to prove the guilt of the

accused beyond reasonable doubt. In such circumstances, the conclusion of the trial Court finding the accused guilt of the offence alleged against him is unwarranted and unsustainable. For the reasons stated above, the appeal has to be entertained and the point is answered accordingly.

36. In the result, this Criminal Appeal is allowed. The conviction and sentence imposed by the learned Additional District and Sessions Judge, (Fast Track Court No.II), Poonamallee, in Sessions Case No.146 of 2009 dated 05.01.2010 is set aside and the appellant/accused is acquitted and bail bond, if any executed by her shall stand cancelled and the fine amounts, if any, paid by her is ordered to be refunded forthwith.

04.08.2017

rrg

To

1.The Additional District and Sessions Judge,
Fast Track Court No.II,
Poonamallee at Thiruvallur.

2.The Inspector of Police,
V-7, Nolambur Police Station,
Chennai - 600 037.

3.The Public Prosecutor,
High Court, Madras.

S.BASKARAN.J.,

rrg



Judgment in
Crl.A.No.18 of 2010

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04.08.2017

The learned counsel also relied upon the Ruling in the case of ***Chhagan Dame Vs. The State of Gujarat*** reported in **1994 Crl.L.J.56** and contended that child witness are under influence of tutoring and it is not safe to rely upon their evidence. In the said ruling, it is held as follows:-

"In the case, her answers to the questions in the cross-examination clearly indicate that she was tutored and she was made to give evidence in accordance with the earlier statement recorded under Section 162. Therefore, we find it highly unsafe to place reliance on her evidence. P.W.3 was another child eye-witness and the son of the appellant and the deceased. He deposed that on the day of incidence, he was going to the residence of P.W.6 along with the deceased and P.W.2 was also there and they were going with their mother when their father namely, the appellant came there with two more persons with cycles and started beating the deceased. He then went to his grand-mother and told her that his father had killed the deceased. In the cross-examination, he admitted that he was informed by one lady about the incident and that was how he indicated to his grandmother."