

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 19.01.2017

Delivered on: 25.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Crl.A.No.629 of 2016

Subru @ Subramani ... Appellant

vs.

State, rep.by
The Inspector of Police,
Royakottai Police Station,
Krishnagiri District, No.370 of 2014 Respondent

Criminal appeals preferred under Section 374(2) Cr.P.C.,
against the judgment, dated 15.10.2015, passed by the learned
Sessions Judge, Fast Track Mahila Court, Krishnagiri, in
S.C.No.30 of 2015.

For Appellant : Mr.Shajahan
for M/s.S.Bagavathiraj

For Respondent : Mr.P.Govindarajan, Addl.P.P.

JUDGMENT

(Judgement of the Court was delivered by S.Nagamuthu, J.)

A gang rapist - it is alleged - who stands convicted for the offences under Sections 341, 323, 506(ii), 392 read with Section 379 IPC, 376(D) IPC and under Section 4 of the Tamil Nadu Prohibition of Women Harassment Act, has come up with this appeal, challenging the conviction and sentences. He is the second accused in S.C.No.30 of 2015, on the file of the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri. There were three other accused in this case, by name, C.Prakash, I.G.Mani @ Mani and T.Prakash. The trial Court framed as many as eight charges against all the four accused, as detailed below:

Sl.No.	Charges (Section of law)	accused
1.	U/s.341 of the Indian Penal Code	A1 to A4
2.	U/s.323 read with Section 34 of the Indian Penal Code	A1 to A4
3.	U/s.506(ii) read with Section 149 of the Indian Penal Code	A1 to A4
4.	U/s.354 of the Indian Penal Code	A1
5.	U/s.392 IPC read with Sec.379 IPC	A1 and A4
6.	U/s.376(D) of the Indian Penal Code	A1 & A4
7.	67(A) Information Technology Act, 2000	A1
8.	Sec.4 of Tamil Nadu Prohibition of Women Harassment Act	A1 to A4

By judgment dated 15.10.2015, the trial Court convicted all the four accused as detailed below:

Sl.No.	Rank of accused	Conviction	sentence
1.	A1 to A4	U/s.341 IPC	Simple Imprisonment for one month with a fine of Rs.500/- each.
2.	A1 to A4	U/s.323 IPC (A1- 2 counts)	Simple imprisonment for one year with a fine of Rs.500/- and Rs.1000/- each.
3.	A1 to A4	U/s.506(ii) IPC	Rigorous Imprisonment for seven years with a fine of Rs.5000/- each.
4.	A1 to A4	U/s.392 r/w.Sec.379 IPC	Rigorous Imprisonment for 10 years with a fine of Rs.5000/- each.
5.	A1 to A4	376(D) IPC	Rigorous Imprisonment for life with a fine of Rs.5,000/- each.
6.	A1 to A4	U/s.4 of T.N.Prohibition of Women Harassment Act	Rigorous Imprisonment for two years with a fine of Rs.10,000/- each.
7.	A1	U/s.354 IPC	Rigorous Imprisonment for two years with a fine of Rs.5000/-.

8.	A1	U/s.67(A) of Information Technology Act, 2000	of Rigorous Imprisonment for two years with a fine of Rs.50,000/-.
----	----	---	--

In respect of the other offences, the trial Court has acquitted them. Challenging the said conviction and sentences, the appellant/the second accused alone has come up with this appeal. The other accused have not filed any appeal so far.

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

(a) P.W.1, a young girl, hardly aged 20 years and a student, doing final year Under Graduate Course in a local College, is the gang rape survivor (victim). She hails from Krishnagiri District. P.W.2 and P.W.8 are the mother and father, respectively, of the victim. P.W.3, a driver by profession, was her lover. He is a close friend of the sister's husband of P.W.1. Along with the sister's husband of P.W.1, P.W.3 used to visit the house of P.W.1 and that is how love developed between them for quite some time.

(b) On 18.07.2014, P.Ws.1 and 3 had a plan to go to a temple together. P.W.1, under the guise of going to her college, in the morning, left her house in college uniform. As already planned, P.W.3 was waiting in a TATA Indica car, near Royakottai Over Bridge. P.W.1, who travelled in a bus, got down from the bus near the Over Bridge at Royakottai and went along with P.W.3, in the car. P.W.3 drove the car. They went to a hotel, had food and then they started their journey in the same car towards Royakottai. At around 4.00 to 4.30 p.m., the car was passing through a village, known as Podampatti. Since P.W.1 had an urge to pass urine, she requested P.W.3 to stop the car. The car was accordingly stopped at the side of the road.

(c) P.W.1 got down from the car, moved for some distance to secluded place for passing urine. P.W.3 was waiting in the car. At that time, to the shock of P.W.1, four persons, who were previously not known to P.W.1, emerged at that place (those four persons have been later on identified as these four accused). On seeing them approaching her menacingly, she tried to escape and also cried. It is alleged that the first accused slapped her and pushed her down. Then all the four accused joined together and one after the other, removed her jewels, namely, a pair of silver anklets (M.Os.6 and 7), a gold ear stud (M.O.8), another ear stud (M.O.9), lady's Sonata watch (M.O.10) and a covering chain. The first accused, by force removed her dress. P.W.3, on hearing the distress call of P.W.1, rushed into the bushes. These four accused attacked him, caused injuries and tied him. Out of fear, P.W.3 also could not raise any alarm.

Thereafter, all these four accused, one after the other, exhibiting a total animal behaviour, raped the girl mercilessly one after the other, not once, but many times. P.W.1 was unable to bear the said torture. These accused are all young boys, aged about 24, 26, 23 and 24, respectively, at the time of occurrence.

(d) P.W.1 is a tiny young college going girl. She was ravished by all the four accused. The girl almost turned out like a rubber toy. She was dragged, pushed, thrown, twisted, kissed, molested, injured, bitten, hugged, squeezed and gang raped.

(e) P.W.4, a resident of Modampatti Village, aged about 39 years, had gone into the forest area to graze his cattle. At around 4.30 to 5.00 p.m., on the day of occurrence, when he was returning to the village with the cattle, he found that one calf was missing. Therefore, again he went to the same place in search of the calf. At that time, he found four persons by the side of a girl lying nude. One of the persons lifted the girl above his head as though he was weight lifting. Shocked to see the same, he further peeped through. He found a boy sitting near the said place, who was found tied. On seeing P.W.4, two of the persons (these accused) started giving a chase. They were talking among themselves that if left, he might inform somebody. Therefore, they aimed to catch him also. P.W.4 ran out of that place and came to the road. He informed few persons whom he met. P.W.4, thereafter, with the help of two others, went in search of the victim girl, the victim boy and the assailants. But they could not see anybody at that place. They, therefore, returned to the main road. They informed the villagers also. Then the villagers went in search of the victim and the assailants.

(f) In the meanwhile, apprehending that P.W.4 would have told the villagers, these four accused shifted P.Ws.1 and 3 to a different place in the same forest area. They went deep into the forest. One of the assailants had gone to the main road, moved the car to a distance, parked it and then returned. Again they raped P.W.1, repeatedly, at that place also. This horror went on for about three hours. The number of occasions, in which the girl was sexually harassed, exploited and ravished, could not be exactly counted by P.W.1.

(g) These accused had the audacity even to go to the extent of video-graphing the rape being committed by them one after the other, by using the cellphone camera belonging to the first accused. They showed the same to P.Ws.1 and 3 and told them that if they disclose about this occurrence to anybody, including the police, they would dare to host the same in

Internet and spoil their entire life. Thus, they warned them not to disclose the occurrence to anybody. One of the assailants told that if no information was passed to anybody and if P.Ws.1 and 3 forget the occurrence, he himself would erase the recordings. With these warnings, they spared P.Ws.1 and 3 to leave the said place and sped away from the scene of occurrence.

(h) Since most of her clothes were torn to pieces by the accused, with the little clothe she was given, she covered her body. There were injuries on her body, which were also visible. With the small piece of saree covering her body, P.W.1 and P.W.3 slowly moved to the main road. When they were nearing the car, the villagers were already near the car. The villagers were searching for the victims and the assailants. Before the arrival of P.Ws.1 and 3 near the car, one of the villagers noticed the address of the owner of the car and the phone number written on the car. They contacted the said person through the said cellphone number. He replied that the TATA Indica car was taken by P.W.3. On the arrival near the car, P.W.3 also told the same thing that the car belonged to his friend and it was driven by him. Thereafter, the villagers having heard about the occurrence, advised P.Ws.1 and 3 to go to the police.

(i) In the meanwhile, it appears that some of the villagers had informed the police and the police came to the scene of occurrence. Then, they took them to a hospital and finally, on the complaint of P.W.1, the present case in Crime No.370 of 2014 was registered at 10.00 p.m. on 18.7.2014. Thus, the occurrence, which commenced at 4.30 p.m., lasted for three hours and ended with the lodging of complaint by P.W.1.

(j) P.W.25 registered the present case. She forwarded P.W.1 to the Government Hospital at Krishnagiri for treatment. She also made a request to the learned Chief Judicial Magistrate to record the statement of P.W.1 under Section 164 Cr.P.C. Then she handed over the case diary to P.W.26 for continuation of the investigation.

(k) On 18.07.2014, P.W.26 took up the case for investigation. He went to the place of occurrence, prepared an observation mahazar and a rough sketch, in the presence of P.W.6 and another witness. She recovered the handbag of P.W.1 from the place of occurrence. A pair of silver anklets were found in the bag. They were also recovered. She examined P.Ws.1, 3 and few more witnesses and recorded their statements.

(l) The investigation revealed that these accused were the assailants. Therefore, at 9.30 a.m., on 18.7.2014, she arrested the accused 2 to 4, in the presence of P.W.7 and another witness. On such arrest, they made voluntary confessions one

after the other, in the presence of the witnesses. The second accused, in his confession, disclosed the place where he had hidden a pair of gold ear studs. The fourth accused Mr.T.Prakash, in his confession, disclosed the place where he had hidden a silver waist guard. The third accused, in his confession, disclosed the place where he had hidden the Sonata Lady's watch and clothes. In pursuance of the said disclosure statement, the second accused took the police and the witnesses to his house and produced a pair of ear studs (M.Os. 8 and 9). In pursuance of his disclosure statement, the fourth accused-T.Prakash took the police and the witnesses to his house and produced a silver waist guard from his house (M.O.4). The third accused, in pursuance of his disclosure statement, took the police and the witnesses to his house and produced a lady's Sonata watch (M.O.10), a Khaki colour pant (M.O.11), dhoti (M.O.15), a T-shirt (M.O.12), a shirt and another dhoti. P.W.26 recovered all these material objects under independent mahazars. On returning to the police station, he forwarded the accused to Court for judicial remand with a further request to forward them for medical examination. The medical examination revealed that all these four accused were sexually potential to perform sexual intercourse with a female. P.W.26 forwarded the material objects to Court.

(m) On 19.7.2014, P.W.24 arrested the first accused in connection with the case in Crime No.376 of 2014, on the file of Kelamangalam Police Station. On such arrest, the first accused made a voluntary confession, in which, he disclosed the place where he had hidden the cellphone and a covering chain. P.W.26 made formal arrest of the accused and she recovered the covering chain (M.O.26), the cellphone (M.O.23) and two sim cards in it (M.O.24). Then the first accused was also sent for medical examination, which revealed that he was sexually potential to perform sexual intercourse with a female. Then the first accused was also remanded to judicial custody in connection with this case. All the four accused were later on put up for Test Identification Parade conducted by P.W.22, during which, P.W.3 identified all the four accused correctly.

(n) During the course of investigation, the cell instrument recovered from the first accused was sent for analysis. On such examination, it was found that it contained a memory card, where there was a recording of the incident of rape repeatedly committed by these four accused. Then, using scientific methods, the said recording was copied in a DVD and forwarded to the Court by the expert (P.W.25). It cannot be denied that the male persons, who were found having sexual intercourse with P.W.1, is none else than these four accused.

(o) The clothes belonging to P.W.1 were sent for chemical examination. The report revealed that in the saree, skirt and the blouse, there were human blood stains noticed. The further examination revealed that there were seminal stains on the saree and the blue colour skirt, worn by P.W.1. However, the D.N.A.reports have not been made available. On completing the investigation P.W.26 laid charge-sheet against all the four accused.

3. Based on the above materials, the trial Court framed charges against the accused, as already elaborated. The accused denied the same as false. In order to prove the case, on the side of the prosecution, as many as 26 witnesses were examined, 34 documents were marked, besides 26 material objects. Out of the said witnesses, P.Ws.1 and 3 have spoken about the entire occurrence. P.W.1 has further spoken about the complaint made by her to the police as well as the statement made by her to the learned Judicial Magistrate under Section 164 Cr.P.C. She has vividly narrated the horror meted out to her at the hands of these accused. P.W.3 has also narrated every part of the incident in a vivid fashion. P.W.2, the mother of P.W.1, had stated that P.W.1, on the day of occurrence, in her college uniform, went to the college. But, in the evening she did not return. From the police Station, P.W.1 informed her over phone about the happenings. Then she, along with her husband P.W.8, went to the police station. P.W.8, the father of P.W.1, has also stated so.

4. P.W.4, is an important eyewitness for the prosecution. He has stated that on 18.7.2014, he went into the forest for grazing his cattle. In the evening at around 4.30 to 5.00 p.m., he took the cattle out of forest and came to the main road. At that time, he found one calf missing. Therefore, he again went into the forest. At that time, from a distance, he noticed that there were four persons and most of them were in a half nude condition. There was a young girl in a nude condition, who was lifted by one of the assailants above his head as though he was doing weight lifting exercise. Another male was sitting there, whose hands and legs were tied. He has further stated that on seeing him, the assailants menacingly rushed towards him. However, he managed to escape. He came to the main road and informed P.Ws.5 and few others. Then, P.Ws.4 and 5 have stated that then they went together into the forest in search of the victims and the assailants, but they were not found there. He has further stated that at around 7.00 p.m., they noticed the car abandoned somewhere near the place of occurrence on the road. Then, when they were in search, P.Ws.1 and 3 reached the car and narrated the entire occurrence. P.W.6 has spoken about the preparation of observation mahazar and a rough sketch and

the recovery of handbag of P.W.1, containing two silver anklets. P.W.7 has spoken about the arrest of the accused 2 to 4, the confession made by them and the recoveries of the material objects, as already elaborated. P.W.9 has stated that at Royakottai, he was running a Cloth Centre. He used to keep the shop open between 7.30 a.m. to 8.30 p.m. According to him, on 18.7.2014, these four accused came to the shop around 8.30 p.m. they purchased four pants and shirts for Rs.1,400/-, for that he issued a bill under Ex.P10. P.W.10 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.11, the Head-Master of the school, where the fourth accused studied, has spoken about the age of the fourth accused. According to him, as on the date of occurrence, he was not a juvenile. P.W.12, the Principal of the College, where P.W.1 was studying, has stated that according to the college records, the date of birth of P.W.1 is 26.07.1994 and thus, as on the date of occurrence, namely, 18.07.2014, she was 20 years old.

5. P.W.13, a Nurse in the Primary Health Center, has stated that P.W.1 was taken to the Primary Health Center at 8.30 p.m. on the day of occurrence. She told her that she was raped by four un-known persons. After giving first aid, P.W.13 advised her to be taken to the Government Hospital. P.W.14, Dr.Anuprabhu has stated that she examined the third accused and found that he was sexually potential to have sexual intercourse with a female. P.W.15, Dr.Thunderchief, has stated that he examined the accused 2 and 4 and found that they were also sexually potential. P.W.16 has spoken about the treatment given to P.W.1. She found that there were injuries. P.W.17 has spoken about the treatment given to P.W.3. She noticed number of injuries on him.

6. P.W.18, the Assistant Director of Regional Forensic Science and Laboratory at Salem, has stated that he examined the material objects chemically and found that there were human blood stains on the saree, blouse and skirt (these clothes were worn by P.W.1, immediately before and after the occurrence). He has further stated that she detected semen on the saree and in the blue colour skirt. P.W.19, the Assistant Director of Forensic Science and Laboratory in Chennai, has spoken about the examination conducted on the cell phone (M.O.23) and the sim cards M.O.24 as well as the memory card contained in the cellphone. During such analysis, she found that the memory card contained the recording of raping of a young girl by four males, one after the other. She sent a report to the Court under Ex.P26, wherein she has concluded as follows:

"The contents of the above video files were pertaining to a rape incident of a female individual, in which, a group of four male

individuals were involved in the activity of sexual, cruel and forcible harassment during the rape incident".

7. The details of the video files contained in the memory card are as follows:

S.No.	File Name	Duration	Created Date and
1.	Videocon A24-VID-20140718-165203.3gp	00:00:03	18/07/2014 04:52:02PM
2	Videocon A24-VID-20140718-165948.3gp	00:06:11	18/07/2014 04:59:48PM
3.	Videocon A24-VID-20140718-174451.3gp	00:00:05	18/07/2014 05:44:50PM

Thus according to this witness, the raping incident was recorded between 4.52 p.m. and 5.44 p.m., in three spells.

8. P.W.20 was a Computer Operator in the District Police Office, Krishnagiri. He ascertained the address of the two sim cards, which were used in M.O.23-Cellphone. According to his verification, the Reliance Company mobile No.8695226221 was in the name of one R.K.Dharman and the Vodafone Mobile No.9750350121 was in the name of one Sivaprakash. Ex.P.27 is his report.

9. P.W.21 has spoken about the statement of P.W.1 recorded by him under Section 164 Cr.P.C. P.W.22, the learned Judicial Magistrate, Krishnagiri, has stated that he conducted Test Identification Parade on 06.08.2014, in which, all these four accused were correctly identified by P.W.3. Ex.P.30 is his proceedings. P.W.23, an expert from the Forensic Science and Laboratory in Chennai, is an important witness for the prosecution. He has compared the admitted photographs of P.W.1 with the recordings in the cellphone camera. He found that the female, in the video file, who was raped, is P.W.1. Similarly, he identified the males, who were found raping the female, as recorded in the cellphone camera, were these four accused. P.W.24 has spoken about the arrest of the first accused and the consequential recovery of the material objects. P.W.25 has spoken about the registration of the case and the initial investigation done and P.W.26 has spoken about the entire investigation and the final report filed.

10. When the above incriminating materials were put to the accused, they denied the same as false. However, they did not choose to examine any witness nor mark any document. Their defence was a total denial.

11. Having considered all the above, the trial Court convicted all the four accused. That is how, the second accused alone has come up with this appeal.

12. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the State. Today, at our direction, the Superintendent of Police, Krishnagiri, and the learned District Public Prosecutor Mr.J.Jayakumar, also appeared before us. We have also perused the records carefully.

13. As we have already narrated, the entire occurrence has been very vividly spoken by P.Ws.1 to 3. They have also identified these four accused as the assailants. But the learned counsel for the appellant would submit that the identification of these accused, made by P.W.1 for the first time in Court, without there being a prior Test Identification Parade, cannot be believed. We find no force at all in this argument. It is not as though P.W.1 had occasion to watch the features of the assailants for a fraction of a second or a minute. As the narration goes, these four assailants ravished P.W.1 at two places, not once, but repeatedly. The horror went on for about three hours. When that be so, P.W.1, a young girl, who was wounded both physically as well as emotionally, would have got the figures of the assailants registered in her mind very strongly. A victim of a rape would not easily forget the features of the assailant. Further, holding a Test Identification Parade is not mandatory under all circumstances. It is also not the law that in the absence of prior Test Identification Parade, the identification made by a victim of the assailant, for the first time in Court, should be disbelieved. Holding Test Identification Parade is only a measure to ensure that there is no false identification or mistaken identification of the individual. It is not the Rule of law, but it is only a Rule of prudence. In a given case, if the Court finds that the identification made by the victim, for the first time in Court, even in the absence of Test Identification Parade, is correct, the Court can very well believe the same, provided, it inspires the confidence of the Court. As defined in Section 3 of the Indian Evidence Act, it is the belief of the Court of the existence of a fact that makes the fact proved.

14. In this case, we have no semblance of doubt regarding the credibility of P.W.1 and her veracity and therefore, we hold that the evidence of P.W.1 inspires the fullest confidence of this Court and we believe the correctness of the identity of these assailants, made by P.W.1, in Court. Therefore, we reject the contrary argument made by the learned counsel for the appellant.

15. P.W.3 is yet another victim. His presence, at the place of occurrence, cannot be doubted. He has sustained injuries, which is corroborated by the medical evidence. He was seen by P.Ws.4 and 5 when P.W.1 returned to the car. The car was driven by P.W.3. The key of the car was also with him. He had duly identified all the four persons in the Test Identification Parade, correctly. Thus, we find no reason to doubt the credibility of P.W.3.

16. Above all, as the saying goes 'men may lie, but not the science'. In this case, the scientific evidence clearly establishes the involvement of these accused in the crime. The Doctors, who examined the accused, more particularly, this appellant, has stated that they were all sexually potential to perform sexual intercourse with a female. The injuries found on P.W.1, more, particularly, on her vagina, would all, corroborate her version that she was raped. Above all, her saree and the skirt were found stained with semen. Her saree, blouse and the skirt were also found to contain blood stains. We find no reason to reject this scientific evidence. But the learned counsel for the appellant would submit that there was no DNA examination conducted to ascertain as to whom the semen and the blood stains on the garments of P.W.1 belonged to. Though the same could have been done, on that score we cannot reject the otherwise convincing scientific evidence.

17. The Cellphone instrument-M.O.23 was recovered from the first accused. It contained a memory card. This was scientifically examined. The memory card contained the recording of the occurrence, in which, a female was being raped by four male persons. Ex.P26, the report of the expert would reveal that the video files in the memory card contained three files. The duration of the first one is three seconds. It was recorded at 4.52.02 p.m., on 18.07.2014. The second file was created on 18.07.2014, at 4.59.48 p.m. The duration of this file is six minutes and eleven seconds. The third file was created at 5.44.50 p.m. on 18.07.2014 and the duration is 0.05 seconds. These three files would go to scientifically prove that a young girl was being raped repeatedly by four males. This scientific evidence would further corroborate the evidences of P.Ws.1 and 3.

18. These video files were further examined in the Forensic Scientific Laboratory, in Chennai. According to P.W.23, on further examination, it was confirmed that the girl was being raped, as recorded in the video files, where P.W.1 and the four males, who raped her, as recorded in the video files, were these three accused. This scientific evidence would conclusively go to prove that these four accused were the perpetrators of the crime.

19. But the learned counsel for the appellant would submit that M.O.25, is not admissible in evidence, in view of the non-compliance of Section 65-B of the Indian Evidence Act and as held by the Hon' ble Supreme Court in ANVAR P.V. VS. P.K.BASHEER AND OTHERS reported in [(2014) 10 SCC 473].

20. Ofcourse, it is true that so far as M.O.25, which is a video copy is concerned, it does not satisfy Section 65-B of the Indian Evidence Act and therefore the same cannot be treated as primary evidence. But, in the instant case, M.O.25 is not the primary evidence, but it is the cellphone (M.O.23), containing the memory card, which is the primary evidence. Since the cellphone with the memory card itself is recovered, there is no question of complying with Section 65-B of the Indian Evidence Act. That was analysed by the experts, who have stated that they contained the recording of the rape committed on P.W.1 by these four accused.

21. As a matter of fact, we offered to play M.O.24 and M.O.23 in Court, in camera, so that, the counsel for the accused could make any comment regarding the same. Both the learned counsel as well as the learned Additional Public Prosecutor submitted that it was not necessary. However, we played the same and found the horror in the recordings. According to the said recording, a female is found mercilessly being raped by four males one after the other and the female is found almost senseless. This scientific evidence, as we have already discussed, would conclusively go to prove the guilt of these four accused. They also duly corroborated the evidences of P.Ws.1 and 3.

22. As we have already pointed out, the accused removed the jewels and the watch, belonging to P.W.1, in the course of the same transaction, in which she was raped. In pursuance of the disclosure statement made by the second accused, the ear studs belonging to P.W.1 were recovered from his possession. The waist guard, belonging to P.W.3, was recovered from him and the Sonata Lady's watch M.O.10 was recovered from the third accused. From the first accused, the covering chain M.O.26, belonging to P.W.1, was recovered. These accused have no explanation to offer in respect of the possession of these properties. This would give rise to a presumption under Section 114 of the Indian

Evidence Act that they were the perpetrators of the entire crime.

23. The learned counsel for the appellant would submit that in the FIR the names of three accused have been mentioned. This according to the learned counsel creates suspicion about the FIR. But we state that the said argument is strange, because P.W.1 has stated that during the occurrence, which lasted for about three hours, the assailants were addressing each other by their names, from out of which, she inferred the names of three persons and that is how, she mentioned the names of three persons in the FIR. Thus, there is nothing unnatural in P.W.1 mentioning the names of these assailants in the FIR itself.

24. From the foregoing discussion and the analysis of the entire evidence with full objectivity, though we were filled with emotion and sorrow, on perceiving the horror, the trauma, the depression, the pain and the sufferings of P.Ws.1 and 3, we did not allow ourselves to be swayed away from the objectivity and unbiased analysis of evidences. Our ultimate thorough analysis clearly would land us only in confirming the conviction of the appellant, rightly passed by the trial Court.

25. Now, turning to the quantum of punishment, the trial Court has imposed only a reasonable punishment, which also does not require any interference at the hands of this Court. At the same time, we need to clarify that the imprisonment for life imposed on these four accused under Section 376-D IPC shall mean imprisonment for the remainder of the natural life of the accused concerned and the same shall not be remitted by the Government for any reason.

26. It is unfortunate that the trial Court had not considered the issue of compensation to be paid to P.W.1, the gang rape survivor. We are doubtful as to whether the learned trial Judge is aware of the Victim Compensation Scheme, which has been introduced by the Government of Tamil Nadu, as required under Section 357-A of the Code of Criminal Procedure, which mandates that in appropriate cases, the trial Court should make a recommendation to the District Legal Services Authority or the State Legal Services Authority, as the case may be, to decide the quantum of compensation to be awarded under the Scheme. Though the issue of recommending payment of compensation to the victim (P.W.1) has not been considered by the trial Court, that would not deter us from ordering appropriate compensation to the victim. The wound, the scar, the trauma, the horror, the depression and the pain suffered by P.W.1 are not only physical but also emotional. It will take decades for P.W.1, if at all possible, to come out of the same. Any amount of compensation to P.W.1, we do not believe, would rescue her from the trauma, soon. However, payment of compensation to P.W.1 in this case is

only an attempt to ease down her sufferings. Though it is difficult to quantify the compensation, for which P.W.1 is entitled for, as the horror, trauma experienced are so grave, we feel, at least, directing the Government to pay Rs.8 lakhs as compensation from the exchequer of the Government, would meet the ends of justice, because, the guardian of the rights and safety of the people, being the Government, should volunteer to pay compensation as a measure of solace. We are conscious of the fact that under the Victim Compensation Scheme, the authority could grant only a maximum amount of Rs.3 lakhs as compensation. But going by the peculiar facts of this case and the nature of the sufferings of P.W.1, we direct the Government to pay Rs. 8 lakhs from out of the Government exchequer to P.W.1.

27. Before parting with this case, we wish to make the following observation:

Mahatma Gandhi, the Father of the Nation, said that real independence would be only when a young girl in this country would be walking alone during midnight with full safety and security to her life and modesty. The facts of this case illustrates that even after 69 years of independence, we are not in a position to ensure the safety of the life and modesty of a young girl. Should we bow in shame for this incident has happened in the land of Mahatma?. Let all of us resolve to preach the words of Mahatma, who wanted to establish a society practicing non-violence and Ahimsa. Let us inform the younger generation, the great teachings of Mahatma. Let us teach them the morals and ethics, our culture and tradition. This alone would wipe out these aberrations in the society.

28. In the result, we find no merit in this appeal. The appeal fails and the same is accordingly dismissed. The conviction and sentence imposed on the appellant is confirmed. It is further directed that the Secretary, Home Police Department, Government of Tamil Nadu, shall pay a sum of Rs.8 lakhs (Rupees Eight Lakhs only) as compensation to P.W.1 within a period of three months from today and to report the same to this Court.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Inspector of Police,
Royakottai Police Station,
Krishnagiri District.

2. The learned Sessions Judge, Fast Track Mahila Court,
Krishnagiri.

3 The Secretary
Home Police Department
Fort St. George, Chennai 9

4 The Director General of Police
Mylapore, Madras 600 004

5 The District Judicial Magistrate
Denkani Kottai Police Station, Krishnagiri District

6 The Superintendent of Central Prison, Vellore

7 The Section officer,
Criminal Section, High Court, Madras

8.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Bagavathiraj, Advocate, S.R.No.5159

ssk(CO)
md(14/02/2017)

Crl.A.No.629 of 2016

सत्यमेव जयते

WEB COPY