

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.07.2018	Pronounced on : 12.09.2018
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CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

AND

THE HON'BLE MRS. JUSTICE S.RAMATHILAGAM

Criminal Appeal No.357 of 2018

Crl.M.P.No.8527 of 2018

Iyyappan

... Appellant / Accused

versus

The State, Represented by the Inspector of Police,
R-6 Kumaran Nagar Police Station,
Chennai

... Respondent

Criminal Appeal filed under Section 374 (2) of the Criminal Procedure Code against the judgment dated 08.05.2018 made in S.C.No.126 of 2009 on the file of the learned Sessions Judge, Mahila Court, Chennai.

For Appellant : Mr. Arun Anbumani

For Respondent : Mrs. M.Prabhavathi, APP.,

J U D G M E N T

(Judgment of the Court was delivered by S.Vimala, J.,)

"This is for the kids who know that the worst kind of fear is not the thing that makes you scream, but the one that steals your voice and keeps you silent." - Abby Norman.

2. For a child, at times, the insecurity sprangs out of the conduct of the society / parents / teachers / relatives / friends or else it may be due to reasons beyond the control of the abused child. But here is a case where the voice of the screaming child is silenced by: (a) fabrication of false documents; (b) choosing the accused; (c) making the accused as a witness and the witness as the accused; and (d) making the power centers to agree for this manipulation.

3. A doting dad has turned into a drama director making his own daughter to make accusations just to make his side-kick to fit in the mould of a Villan (accused) with a dreadful prior history.

4. A person who deserves the place of the accused along with the prosecution has planned to rob even the feeble shrieks

of the battered and abused vulnerable.

5. In respect of the allegation of sexual abuse of the child aged about six years, a person who is supposed to be an accused has suffered punishment as under:-

Conviction	Sentence
U/s 450 IPC	To undergo ten years Simple Imprisonment and to pay a fine of Rs.5,000/- in default to undergo a further period of six months simple imprisonment.
U/s 376 (2) (f) IPC (Prior to 2013 amendment)	To undergo Imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo a further period of six months Simple Imprisonment.
U/s 307 IPC	To undergo Imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo a further period of six months Simple Imprisonment.

5.1. The trial Court has ordered the sentences to run concurrently.

6. Unusually, in this case, the devil is in the detail. It is the case of the accused that he ought to have been the witness and the witness, P.W.8-Kaatu Raja, ought to have been the accused, if the prosecution had come out with a truthful case.

6.1. Presenting a startling beginning the learned counsel appearing for the appellant / accused would submit that this case is replica of the Tamil Feature film "Vazhaku Enn 18/9" as 21 witnesses, 18 documents apart from the material objects, though clearly establish that Kaatu Raja, P.W.8 is the accused and not the appellant herein, the trial court has erroneously convicted the appellant and therefore, it is liable to be set-aside. The further contention is that the real accused must face the trial.

7. The prosecution case is that the victim child X is the daughter of P.W.1-Rajendran and P.W.2-Meenakshi. P.W.6-Dhanalakshmi and P.W.7-Gayathri are the wife and daughter, respectively, of P.W.8-Kaatu Raja.

7.1. On 06.02.2008, in the midnight, the victim child P.W.3 was sleeping along with her parents. The parents were the tenants under P.W.8-Kaatu Raja. P.W.2, the mother of the victim, is a visually challenged lady. There had been disputes and differences of opinion between P.W.2 and P.W.6, i.e., the

wives of P.W.1 and P.W.8. P.W.8-Kaatu Raja insisted that the parents of the victim girl should vacate the house immediately.

7.2. The accused was also residing in the same premises along with P.W.8-Kaatu Raja against whom P.W.7-Child 'Y' has deposed that he is guilty of child sexual abuse.

7.3. While (P.W.3) child "X" was sleeping with the parents, some unknown persons kidnapped the child, sexually abused her, beaten her and left her in a bleeding condition. Those unknown person according to the victim girl and her parents was P.W.8-Kaatu Raja, and for the prosecution, it was the accused herein.

7.4. The father of the victim child on finding that the girl child "X" who was sleeping with them was found missing, cried for help and ultimately found the child in the construction site of P.W.8. There was profuse bleeding from the private part of the victim child apart from head injury and other injuries all over the body. The child lost the consciousness also. According to the child, she was beaten, cruelly treated and was abandoned by P.W.8.

7.5. P.W.1 was able to find out the girl and took her to Corporation Hospital, Saidapet, Chennai and thereafter, to Baby Hospital, Egmore, Chennai, and finally to Government General Hospital, Chennai. While the child was in the hospital, the statement of the father of child was recorded. That complaint is Ex.P-1.

7.6. Even though the complaint did not mention any named accused, the prosecution has chosen to fix a coolie worker under P.W.8-Kaatu Raja as an accused. After few months, the victim child "X" recovered consciousness and her competency to depose was certified by P.W.4-Dr.Jayanthini. The Doctor certified that the child is in a fit state of mind to depose. The statement of the child was recorded and it was over only by 12.30 am. The request of the Inspector of Police is Ex.P-2. The Medical Report given by P.W.4-Dr.Jayanthini is Ex.P-3. The Videographed statement from the victim child 'X' was taken by the Police themselves on 26.06.2008. P.W.5-Dr.Kannan also videographed the statement given by the child 'X'. The video recording was copied in a CD and then it was handed over to the parents of the child. The said CD is marked as M.O.1, though it should have been marked as a document.

7.7. P.W.6-Dhanalakshmi, Wife of P.W.8-Kaatu Raja would state that before eight years, one night, at about 10.00 pm, two people came to their house and after talking for ten minutes, they left. In the midnight she heard a cry just outside the

house, she got up and found P.W.1 was crying and P.W.3 Child 'X' was found in an injured and unconscious state. P.W.5 saw the child in the hospital also.

7.8. P.W.7-Gayathri is the daughter of P.W.8-Kaatu Raja. She would testify that the accused is a man of perversion and go on to narrate a series of incidents implicating the accused in the mould of sexual addict citing some of the incidents, in which sexual favours were demanded from her.

7.9. P.W.16, the then Sub-Inspector of Police of R-6 Kumaran Nagar Police Station, went to the Children's Hospital, Egmore, from there to Government General Hospital, Chennai, where the child was admitted as inpatient. He received the complaint from her father and registered a case in Crime No.182 of 2008 under Sections 376 and 307 IPC and the First Information Report is Ex.P-13.

7.10. P.W.17-Balaji, the then Inspector of Police, took up the investigation. He visited the place of occurrence and prepared the rough sketch Ex.P.14 and observation mahazar Ex.P-15. M.Os.2 to 4 were recovered under Ex.P-5-seizure mahazar. He recovered Chudidhar Phant M.O.5, Hair of 6 Cms in the presence of the above said witnesses under Ex.P-6-seizure mahazar.

7.11. Soil with blood stains M.O.6, soil without blood stains M.O.7, wet grass with blood stains M.O.12 and wet grass without blood stains M.O.13 were recovered under seizure mahazar-Ex.P-7.

7.12. He arrested the accused on 08.02.2008 and recorded the confession statement in the presence of Narayanan and Deenadayalan.

7.13. P.W.19 the Assistant Director of Forensic science department deposed that she compared the blood stain in the lungi and the blood detected thereon was found to be the same as that of the blood of the victim child 'X' and the report was Ex.P-18.

7.14. P.W.18 Rajendran deposed that he assumed charge to the post of Inspector of Police on 06.08.2008. He took up further investigation, perused the case records, enquired the witnesses and after obtaining opinion from the Public Prosecutor, filed the charge sheet under Sections 450, 376 (2) (f) (prior to 2013 amendment) and 307 IPC. In the meantime, this Court passed an order in W.P.No.19348 of 2012 dated 13.07.2015,

pursuant to which, the Mahila Court by the order dated 05.07.2016 ordered further investigation.

7.15. P.W.20-Anandaraj, the Inspector of Police took up further investigation during which he enquired witnesses Rajendran (complainant), his wife, Meenakshi, victim child, Kaatu Raja and Shanker, who were already examined and recorded their statements in the audio and from the audio recording CD, he prepared the statements in writing. His successor P.W.21-Nagarajan took over the further investigation.

7.16. P.W.21 Nagarajan would state that he has taken up further investigation in the case and after perusal of records, he filed further additional final report on 28.12.2016. The additional report again branded the appellant herein as the accused.

7.17. After the examination of the witnesses the incriminating portion of the evidence, which was found against the appellant herein in the prosecution case, was put to the accused under Section 313 (1) (b) of the Cr.P.C., and the accused has stated that a false case has been foisted against him. No defence witness has been examined.

8. The contention of the learned counsel appearing for the appellant / accused is that the findings of guilt as recorded by the trial court are perverse as they are based on no evidence and that the evidence relied upon to convict the accused is a false evidence. It is also contended that the conviction is against the evidence of the main witness namely the injured child witness and her parents and therefore, the conviction cannot be maintained.

8.1. It is pointed out by the learned counsel appearing for the appellant that the accused, in this case, is a chosen accused, chosen according to the choice of P.W.8-Kaatu Raja and in order to develop the case as chosen by Kaatu Raja, the Police Authorities have obliged him to the extent of setting up the arrest card, recovery memo and confession statements. It is contended that the majority of the documents as relied on by the prosecution are fabricated documents and that the police authorities along with Kaatu Raja must be prosecuted for fabrication of false documents.

8.2. According to the appellant, there is interchange in the array of parties and the interchange is between himself and Kaatu Raja and the trial court has assisted Kaatu Raja by ignoring the seemingly unbiased statement of the victim child 'X'.

8.3. Though the victim girl 'X' was able to wake up after three months of treatment to speak out the truth, despite this Court ordering further investigation, the investigating police officers never woke up to the truth and that has resulted in injustice to the appellant herein, is yet another contention canvassed.

8.4. The learned counsel for the appellant went to the extent of comparing the facts of this case with the Tamil Feature Film titled "Vazhaku Enn 18/9" and contended that the fiction is not stranger than the facts.

9. In order to appreciate the contentions raised by the learned counsel appearing for the appellant, it is necessary to find out the reasons which had driven the Court to find the accused guilty. The trial court has relied upon the (i) motive for the offence; (ii) confession leading to discovery of facts and material objects; and (iii) connecting the circumstantial links with the guilt of the accused.

9.1. In respect of the motive for the occurrence, the trial court has discussed the evidence of P.Ws.1 and 2, the father and mother of the victim child 'X' and the evidence of P.W.3, apart from the evidence of P.W.7-daughter of Kaatu Raja. The medical report was given by P.W.13 under Ex.P-11 and based on that it has been concluded that it would establish the involvement of the accused with the crime in question. The motive is stated to be on account of pedophile nature of the accused.

9.2. We are at a loss to understand, how this finding that the evidence of P.Ws.1 to 3, P.W.7 coupled with Ex.P-11 has the linking between the victim child 'X' and the accused. May be that in the evidence of P.W.7 it is stated that the accused had a perverted mind and his behaviour with her was sexually coloured. But, nowhere there is a link between P.W.3, (the victim child 'X',) and the involvement of the accused.

9.3. In the complaint (Ex.P-1) preferred on 07.02.2008 nobody has been implicated as accused. The complaint portrayed how the family of victim had been living in poorly placed condition, i.e., (i) the mother of the victim child had no eyesight; (b) P.W.1 the father was living as a tenant under P.W.8-Kaatu Raja; (c) the accused was working under P.W.8-Kaatu Raja; (d) the main door had no locking facilities inside the house; (e) P.Ws.1 and 2 used to close the door by using a rope and on the day of occurrence also, they had been sleeping along with their children; (f) immediately, after the mid-night when they found the girl child missing, the father made a hue and cry and all the villagers together found the child inside the unfinished

construction portion of the house of P.W.8; there was swelling over the face of the victim child; there was bleeding from the private part; there was bleeding from the mouth; there had been injuries over the face from which P.W.1 concluded that there should have been an sexual assault on the child 'X'.

9.4. It is to be pointed out that nowhere the name of the accused finds a place in the First Information Report. There can be an inference from the conduct of the father. If really his inclination was to implicate P.W.8-Kaatu Raja, on account of previous dispute between both the families, pursuant to the compelled necessity of vacating the rented premises by P.Ws.1 and 2, very easily he could have implicated P.W.8 in the Ex.P-1-complaint itself. It is not done so. Only after the victim child 'X' regaining the consciousness (after few months) and speaking out regarding the participation of P.W.8 in the occurrence, the parents, emboldened by the truth, have taken the stand that it was only P.W.8-Kaatu Raja who is the real culprit in this case.

9.5. P.W.8-Kaaturaja is categorical in saying that immediately on the next day of occurrence, i.e., on 07.02.2008, he was enquired by the Police; the Police asked him as to whether there are any unmarried persons, he pointed out Iyyappan (appellant herein), as an unmarried person; police took him to Velacherry, where Iyyappan was doing carpentry work; thereafter, the police arrested him on the same day and returned home by 09.00 pm.

9.6. P.W.8-Kaatu Raja reiterated the same statement once during 2013 and another time on 29.09.2016 before the Inspector-Anandaraj-P.W.20.

9.7. It seems that P.W.8-Kaatu Raja with an elan and ease of a good script writer had developed the entire prosecution story from an one liner, which spin around his side-kick Iyyappan. The climax sent the innocent behind the bars, while the manipulator went whistling Scott free. The masterful articulation of the P.W.8-Kaatu Raja has two variants of a single knot of a plot, one of which to see that the appellant herein is made to trap in the legal discourse and another one is to get him released at a later point of time, if possible. When there are accused persons ranging from adolescents to octogenarians, it is not known what made the investigating officer to question as to who is the unmarried person in the area. May be to zero-in the accused, this question, though coming from the mouth of the Investigating Officer, must be from the brain of the P.W.8-Kaatu Raja. As it was against his conscience and may be apprehending future problems, he might have thought of wriggling him out, at a later point of time, has

spoken about the recovery of the lungi which is said to be washed and let dried. We are compelled to arrive at such a conclusion because of the fact that the Police have recovered the lungi which allegedly contained blood stains and the said lungi is said to have been analyzed by the forensic experts and found to be clinching the link between the accused and the victim child 'X' by the examination of blood stains found in the lungi through DNA profiling.

9.8. P.W.7 has spoken about the fact that on the day of occurrence she saw P.W.1 bringing his daughter from out of the unfinished construction portion of the house and at that point of time there had been injuries over the face and the body of the child 'X'. Her statement before the learned Magistrate under Section 164 Cr.P.C., has been recorded as Ex.P-4.

10. The learned counsel appearing for the appellant relied upon the decision reported in (1972) 3 SCC 280 (Ram Kishan Singh v. Harmit Kaur and another) wherein it has been held that a statement under Section 164 Cr.P.C., is not a substantive evidence and that it can be used only for corroborating or contradicting the maker of the statement.

10.1. Even in the statement under Section 164 Cr.P.C., the witness P.W.7-Gayathri has spoken about the sexual abuse meted out to her and she has not spoken anything about the sexual abuse meted out to the victim child 'X'. This case is not pertaining to sexual offence meted out to P.W.7-Gayathri. In other words, the aim of trial was not to find out the nature of sexual abuse meted out to P.W.7-Gayathri, but to find out whether the sexual abuse was meted to Child 'X' and if so, by whom.

10.2. Under normal circumstances, if it is brought to the cognizance of the Court regarding sexual abuse to anybody the Court would have and should have taken action against the person against whom the allegations are made. Under the given context, either the prosecution should have filed additional final report in respect of the sexual abuse made to P.W.7. The Court at least would have added additional charges based upon the 164 statement in which sexual abuse to P.W.7 was spoken about. But no steps have been taken. Therefore, in all probability, the evidence of P.W.7 might have been let in only to give a colour of seriousness and truth and not sensibility normally expected of, in such circumstances.

10.3. So far as the parents of the victim are concerned, they are repeatedly claiming that the accused herein is not the person involved in the occurrence, but it is only P.W.8-Kaatu

Raja. Though litigation may not be a luxury for them still they are consistently knocking at the doors of this Court seeking proper investigation in the case.

10.4. P.W.2 the mother of the victim child has filed W.P.No.19348 of 2012 and this Court by the order dated 13.07.2015 has indicated that the trial court can either order further investigation invoking the powers under Section 173 (8) Cr.P.C., or the Court can invoke the powers under Section 319 Cr.P.C., and add the concerned person as accused. However, one week short of one year, the trial court has ordered further investigation.

10.5. The victim child was examined in chief on 21.09.2015 and cross-examination was done after 22 months, namely, on 10.08.2017. The further investigation has been done by P.W.20, but unfortunately without knowing what is investigation and what is further investigation, he would state that he has simply transcribed the statement of witnesses which had been recorded in the CD and that he did not examine and record the further statement of any witnesses.

10.6. In the order of this Court, dated 13.07.2015, several things have been explained. The object of the criminal justice system has been spelt out and the necessity of invoking the power under Section 319 Cr.P.C., has been outlined and it has been specifically stated that Section 319 Cr.P.C., can be invoked to summon the true accused. Despite the warning given to the then Assistant Commissioner of Police regarding the nature and seriousness of the allegation, still further investigation has not been conducted with any sensitivity. In fact, no further investigation has been done.

11. What is the statement of the victim child 'X' before the Court and what is the value to be attached to the statement of the victim?

11.1. She has categorically stated that she did not know the appellant, who was made to stand as an accused at that point of time; she did not recollect whether she had seen him earlier anywhere; on the day of occurrence, (prior to the occurrence) she was hearing a story told by her mother and she slept; she was taken away by Kaatu Raja and she was beaten over the head; thereafter, she was enquired about the incident in the presence of a lady Doctor; she would also state that she told the Doctor that she was beaten by house owner, which indicates Kaatu Raja-P.W.8. When police enquired her after recovery (from injury), she named P.W.8-Kaatu Raja as an accused.

11.2. This Court had an occasion to hear the statement of the victim child 'X' which was available in the form of recording. The evidence of the victim child 'X' appears to be very logical, but nowhere she has stated that she was sexually abused. The father would state that there was bleeding in the private part of the victim child, but this aspect has not been spoken to by her perhaps on account of the fact that there was loss of consciousness on account of head injury. Perhaps, the sexual abuse itself might have taken place after making her unconscious. The very fact that there was bleeding from private part and the very fact that it has been recorded in the accident register copy by the Doctor would clearly prove that she had been sexually abused. Considering the cumulative circumstances, much importance ought to have been attached to the evidence of the child victim 'X'.

11.3. The trial court did not believe the evidence of the victim child 'X' on the ground that the evidence in the chief examination and cross examination is contradictory. In the cross-examination the child has stated that she did not see the face of Kaatu Raja while she was kidnapped from the place at midnight. The witness would fairly concede that as she was sleeping she did not see the face. This part of the cross-examination ought to have been appreciated much, as she was telling the truth. A sleeping child in the midnight is not expected to see the face of the accused especially when the manner in which the child was taken away from the place is not known. However, the child would have got the opportunity to see the face at the time when she had been beaten, sexually abused, etc., She might have identified the accused even by his voice. As the things go on in the natural course, unable to bear the beatings, the child might have cried and during that time naturally the accused would have responded directing her not to cry. Without understanding the situation in a realistic way the Court has simply brushed aside the statement of the victim child 'X'. It is not necessary that the evidence of the child victim 'X' requires corroboration, its all depends upon the circumstances at which the incident happens. At midnight, where the whole world will be sleeping, when a child is taken away even without the knowledge of the parents and when the incident takes place in a secluded place, where to go for independent witness for corroboration is the issue that ought to have been considered by the trial court. This aspect did not clinch the mind of the trial court.

11.4. The only medical report available is dated 18.06.2008 in which no final opinion has been given. But, the medical report indicates that the child was first admitted at Institute of Child Health, Egmore. The following injuries have been noted:-

"Baby

- on endo-tracheal tube:

Left sub-conjunctival hemorrhage present.

Left parieto occipital contusion present.

Left Facial contusion present.

Peri-orbital edema present.

LE : Abrasion present over left labia near labia minora and over the left.

Hymen intact.

Interoital swab taken for semen analysis."

11.5. The Forensic report of Interioital, dated 15.2.2008, disclosed that spermatozoa was not detected on either of the two smears.

12. The entire case sheet relating to the treatment period is not filed before the trial court. It is not necessary that there should be a complete penetration to the extent of hymen being teared or ruptured. Even the slightest penetration is sufficient. Abrasion over labia minora at the time of occurrence would indicate that the child should have been sexually abused.

12.1. When the child has stated once before the Doctor, once before the Police and once before the Court (during 164) that it is only P.W.8-Kaatu Raja, who is the culprit, what is the difficulty for the Court to proceed against P.W.8-Kaatu Raja is a mystery to be found out.

13. What is the value to be attached to the statement of the child victim 'X'? What is the role of the court while analyzing the competency of the child to testify and if found competent, what is the evidentiary value to be attached to the statement of the child 'X'?

13.1. The importance of judicial leadership in cases involving children is expressed by L. Sas in "The Interaction Between Children's Development Capabilities and the Courtroom Environment: The Impact on Testimonial Competency, Research Report (RR02-6e)", [November 2002, Department of Justice, Canada], when she stated thus:

"Children's feelings of goodwill and their high expectations of the adults in court are especially extended towards the judiciary. Children cannot understand how a judge will not believe them when they are telling the truth. Many children have unrealistic expectations of the judge, seeing the judge as someone who will right all the wrongs that have been committed by the accused. It is not surprising that explanations of how a judge arrives at a decision employing a standard of beyond a reasonable doubt is so hard for child witnesses to comprehend. They expect the judge to see the events from their perspective. This is one of the reasons why court preparation is so important for child witnesses?

Competency testing in the present case.

14. On the weight to be attached to child testimony, in para 5 of the case reported at (1997) 5 SCC 341, Dattu Ramrao Sakhare vs. State of Maharashtra, the Supreme Court has made the following valuable observations:-

"A child witness if found competent to depose to the facts and reliable on such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored. There is no rule or practice that in every case the evidence of such a witness be corroborated before a conviction can be allowed to stand but, however as a rule of prudence the court always finds it desirable to have the corroboration to such evidence from other dependable evidence on record?"

14.1. Our attention has been drawn to the Division Bench pronouncement reported at 20 (1981) DLT 55 (DB), Prem Shankar Sachhan vs. State wherein in para 22, the court observed that the testimony of a child witness can be -spontaneous and unsparing, once the child is enabled to overcome the initial shock and awe, and ensured protection, security, compassion, and

given confidence to come out with what was seen? It was thereafter held as follows:-

"The merit of evidence has to be judged on the touchstone of its own inherent intrinsic worth. Courts should also while permitting full scope for cross-examination of such witnesses be careful to see that they are not subjected to unnecessary confusion, harassment or unduly made conscious of the awe of formal court atmosphere and the public gaze."

14.2. Even more important is the fundamental responsibility of every court to ensure the welfare and best interests of the child which has to remain the paramount consideration under all circumstances. Unfortunately, this aspect during the trial is more often a casualty than not. Regrettably the trial court without realizing, are thereby violating with impunity binding judgments of the Supreme Court and this Court. Important statutory provisions are being ignored impacting not only the quality of important child witnesses but the result of the trial. The inevitable consequence is that best interest of the child suffer as well.

15. Coming back to the case of the present appellant, the prosecution relied upon the arrest, confession and the recovery. The way in which the further investigation report has been filed itself is an indication of the fixed mind of the prosecution to target only the present appellant as the accused. The investigating Police Officers have not chosen to examine any witnesses afresh when a further investigation is ordered.

15.1. P.Ws.1 and 2 have spoken about the previous dispute between P.W.8, his wife and themselves. P.W.2 has specifically stated that there was a dispute on 06.02.2008 on the allegation that she had thrown away food items in front of the house of P.W.8. The wife of Kaatu Raja was insisting that P.Ws.1 and 2 should vacate immediately and the request for three months time to vacate was also refused. There was a challenge that even with the expense of Rs.10,000/- she would vacate them by engaging manpower.

15.2. It is stated in the evidence of P.W.8-Kaatu Raja himself that out of nine residential houses, four portions had been occupied by the tenants. He himself has admitted that at about 09.00 pm, his friends Karthick and two others came to his house and they received money from him. It has been suggested that they did not go back after getting money and they had been staying along with him for sometime. This evidence has to be pitted against the evidence of P.Ws.1 and 2, where they have stated that two to three persons came to the house of P.W.8 and

they had been taking liquor. It is also stated that up to 12.00 midnight, they had been talking to each other in a stage of intoxication. There was a suggestion that in order to finish a matter they had brought those persons. This incident of sexual abuse might have taken place immediately thereafter. The inference is that either P.W.8 might have been the culprit or he should have been the culprit along with friends, who had visited him, on the fateful day. These aspects have not been investigated at all.

15.3. Moreover, P.W.15 would state that Police enquired him about one Elangovan who is said to have committed the crime on P.W.3. There is no clue as to how the name of one Elangovan came in the picture and the role played by him in the offence is not made clear.

15.4. P.W.9 Ganesan and P.W.11 Narayanan were the witnesses for recovery. The other two witnesses are P.W.12 Karthikeyan, who would state that the Police did not examine him and P.W.15 who has spoken about the police enquiring him regarding Elangovan.

15.5. From the list of witnesses examined, it is clear that the persons who came to the house of P.W.8-Kaatu Raja and admittedly got money from him have not been examined. The further investigation should have been focused on the examination of those persons especially when specific allegations are levelled against those persons by P.W.2.

Mockery of justice system.

16. So far as recovery and DNA profiling is concerned, the recovery itself is falsified by the evidence of prosecution witnesses themselves, while P.W.8 would say that the accused was arrested on 07.02.2008, the recovery witnesses would state that the accused was arrested on 08.02.2008. Therefore, the arrest, confession and consequent recovery are all proved to be false and it cannot be relied upon.

16.1. Under the circumstances, it is clear that the conviction of the accused is not based on legal evidence and the findings are perverse and the conviction and sentence are liable to be set-aside.

17. In the result, this Criminal Appeal is allowed and the conviction and sentence imposed on the appellant / accused by the learned Sessions Judge, Mahila Court, Chennai, in S.C.No.126 of 2009, by the judgment, dated 08.05.2018, are hereby set-

aside. No costs. Consequently, the connected Crl.M.P is closed.

17.1. The case is remitted back to the trial court, with a direction to implead P.W.8-Kaatu Raja as the accused, as there is sufficient evidence to proceed against him and to proceed with the trial, in accordance with law and the trial shall be completed within a period of three months from the date of receipt of a copy of this judgment.

17.2. The appellant is acquitted of all the charges levelled against him. The accused is directed to be set at liberty, forthwith, unless his presence is required in connection with any other case. Fine amount, if any, paid by the appellant, shall be refunded to him. Bail bond, if any, shall stand discharged. Consequently, the connected Crl.M.P. is closed.

17.3. The judicial propriety requires a quality to read in between the lines what the prosecution relies, claims and to find some hidden agenda sneaked into the scheme by the prosecution.

17.4. In this country of ours, the Judiciary is the salt of the earth. We wish there be no occasion when it is said that the salt has lost its savour, and it is better to remember this Biblical warning. If the salt ever loses its savour, then wherewith shall it be salted?

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

srk

To

1. Sessions Judge, Mahila Court,
Chennai.
2. The XXII Metropolitan Magistrate,
Saidapet, Chennai.
3. do The Chief Metropolitan Magistrate,
Saidapet, Chennai

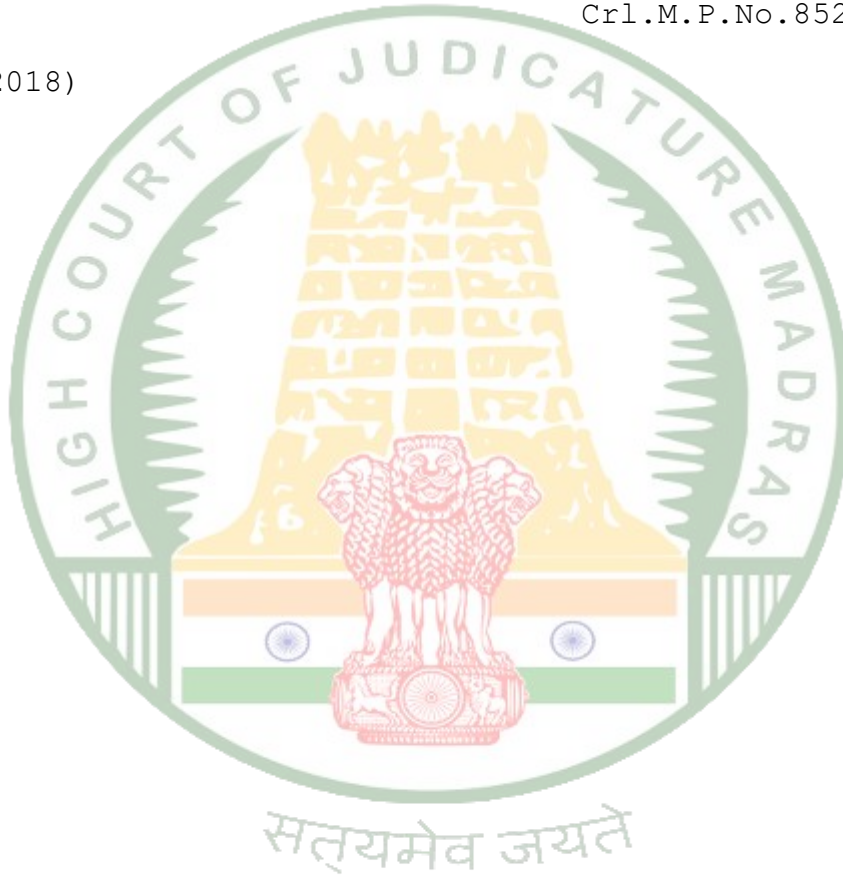
4. The Public Prosecutor,
High Court, Madras.

5. The Section Officer,
Criminal Section,
High Court, Madras. (To Return Records)

+2cc to Mr.Arun Anbumani, Advocate, S.R.No. 64057

Criminal Appeal No.357 of 2018
Crl.M.P.No.8527 of 2018

SSI(CO)
GN(05/10/2018)



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