

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T. SELVAM
AND
THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

CrI.A.No.424/2017

Sivakumar @ Ramesh

.. Appellant /Accused

Vs.

State rep. by,
The Inspector of Police
All Women Police Station
Gobichettipalayam,
Erode District.
[Cr.No.6/2016]

.. Respondent/Complainant

Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code calling for the records to the judgment dated 23.06.2017 made in Spl.SC.No.9/2017 on the file of the learned Additional Sessions Judge, Mahalir Neethi Mandram [Fast Track Court], Erode and set aside the same by allowing this Criminal appeal.

For Appellant : Mr.N.Manokaran
For Respondent : Mr.V.Arul, APP

JUDGMENT

[Judgment of the Court was delivered by N.SATHISH KUMAR, J.,]

Appellant, arrayed as A-3 in the Charge Sheet, was tried separately in Spl.SC.No.9/2017 on the file of the Court of the learned Additional Sessions Judge, Mahalir Neethimandram, Fast Track Court, Erode, for offences u/s.366 IPC and section 6 of the Protection of Children from Sexual Offences Act, 2012 [in short POCSO Act] read with section 506[ii] IPC. The Trial Court, under impugned Judgment dated 23.06.2017, acquitted the appellant/accused of the sections u/s.366 and 506[ii] IPC and found him guilty of offence u/s.4 of POCSO Act, 2012 and sentenced him imprisonment for life and a fine of Rs.5,000/-, with a default sentence of 2 years simple imprisonment. Aggrieved over the said conviction and sentence, the present appeal came to be filed by the appellant/accused.

2 The brief facts of the prosecution case, are as

follows:-

[a] Since the alleged victim is a minor, we are not proposed to refer her name in the Judgment. She is, hereinafter referred to as "Y".

[b] Y was aged about 14 years in the year 2016. She had attained puberty in the said year and she was residing with her grandmother - Backiyalakshmi at Periyapuliyur Village. After she attained puberty, she was sexually abused by one Sembulingam, an old man in the village and had sexual intercourse with her by offering some sweets. He continued such activities with Y twice or thrice. Similarly, one Murugesan @ Murugan, also abused her sexually in a similar manner as that of Sembulingam. Likewise, one Sivakumar @ Ramesh, the appellant/accused herein and one Vijayakumar, had also abused Y sexually.

[c] As far as the appellant/accused is concerned, on 08.09.2016, Y was playing with the appellant/accused daughter Aswathi-D.W.1, and when D.W.1 went to washroom, the appellant/accused abused Y-victim [P.W.2].

[d] P.W.1-Meenachi, is the relative of P.W.2-victim and Backiyalakshmi. When P.W.1 took P.W.2 to her house on 23.09.2016 during Quarterly Exams Holidays, P.W.2 informed P.W.1 about the sexual abuse meted out by her by four persons. Immediately, P.W.1 informed the same to her brother Vijayakumar-P.W.17 and Backiyalakshmi and lodged the First Information under Ex.P.1 with the All Women Police Station, Gobichettipalayam.

[e] P.W.21-Nagamani, Sub Inspector of Police attached to the respondent Police Station, received Ex.P.1 from P.W.1 and registered the crime in Cr.No.6/2016 for offences u/s.366 and 506[ii] IPC and sections 5 and 6 of the POCSO Act under Ex.P.24-FIR.

[f] P.W.22-Gayathri, Inspector of Police attached to the said Police Station, on receipt of Ex.P.24-FIR, took up the case for investigation and examined the victim Y and recorded her statement. The victim, thereafter, was taken by Indumathi, Grade I PC, for medical examination, along with a requisition. P.W.22 went to the place of occurrence and prepared Ex.P.22-Observation Mahazar [Xerox copy] and Ex.P.25-Rough Sketch [Xerox copy]. On receipt of secret information, she effected the arrest of all the four accused ; recorded the voluntary confession statement given by A-1-Sembulingam, in the presence of P.W.14 and one Prakasam. The accused were sent for medical examination.

[g] P.W.3-Sivasankar, Medical Officer attached to the Government Hospital, Gobichettipalayam and he examined one Sembulingam, aged 66 years ; Sivakumar @ Ramesh, aged 41 years [the appellant/accused herein] ; Vijayakumar, aged 34 years ; and Murugesan @ Murugan, aged 31 years under Requisition-Ex.P.3 and issued Accident Registers-Ex.P.4 and Ex.P.7 and Final

Opinion-Ex.P.5 and Ex.P.8, wherein he had opined that there is nothing to suggest that the accused is impotent.

[h] P.W.5-Dr.Kalyani, Senior Assistant Surgeon, attached to the Government Hospital, Gobichettipalayam, examined the victim-Y [P.W.2], a minor Radiologically and issued the Age Certificate [Xerox copy] under Ex.P.9, wherein she had opined that the victim is aged about 14 - 15 years.

[i] P.W.6-Dr.Kalapriya, Senior Civil Surgeon, examined P.W.2-victim on 25.09.2016 and found that Hymen was not intact and there is a possibility of sexual abuse on the body of the minor. After collecting the vaginal smear for test, she had issued Accident Register - Ex.P.12 and Final Opinion under Ex.P.13, wherein she had opined that there is a possibility of the victim being subjected to sexual abuse.

[j] P.W.7-Dr.Anandakumar, Assistant Surgeon attached to the Government Headquarters Hospital, Erode, also examined the victim girl and issued the Report [Xerox Copy] under Ex.P.15, wherein he had given his opinion that the IQ level of the victim [P.W.2] is less and her mental age is below 13 years [as per the Psychologist Screening Report] and she is having a mild mental retardation.

[k] P.W.8-Parthasarathy, Scientific Officer issued Ex.P.16-Report [Xerox copy] regarding the Vaginal Smear of the Victim, wherein it has been opined that no detection of spermatozoa on the vaginal smear and Ex.P.17-Report to forward the semen of the appellant/accused to the Director of Forensic Science Department, Chennai.

[l] P.W.9-Mrs.Malliga, Headmistress of the Government High School, Periyapuliur, has issued Ex.P.19-Course Certificate [Xerox Copy] and Ex.P.20-Progress Report [Xerox copy] to prove the age of the victim-P.W.2. P.W.11-Hariharan attested the Observation Mahazar.

[m] P.W.12-Selvaraj, a resident of Periyapuliur, had seen the victim - P.W.2, standing in front of the house of one Sembulingam and she was crying at that time.

[n] P.W.13-Dr.Jayaprakash, Psychiatrist attached to the Government Headquarters Hospital, Erode, examined the victim and found that the mental age of the victim is less and it is about 64 - 66% only. He issued the Report [Xerox Copy] under Ex.P.23 in that regard.

[o] P.W.14-Vadivel had spoken about the arrest of the accused persons. P.W.15-Vasuki is a relative of P.W.2 and on 29.05.2016, she along with Backiyalakshmi went to see the

horoscope of the victim, leaving victim at home and when they came back, they saw the victim coming out of one Vijayakumar's house. On enquiry, though initially she told nothing ; subsequently, she informed one Ruchika, granddaughter of P.W.15 about being sexually abused by the said Vijayakumar. Ruchika, in turn, informed of the same to Nandheeswaran, son of P.W.15 and he informed P.W.15. P.W.15 enquired the victim-P.W.2 and Vijayakumar, who refuted the allegation.

[p] P.W.16-Mrs.Arulmani, deposed that she saw the victim coming near the toilet in the village, in a crying manner and at that time, one Murugesan @ Murugan, was also coming from that side. P.W.17-Vijayakumar, a resident of the same village deposed that the victim [P.W.2] had informed one Mageswari, wife of P.W.17's maternal uncle, about the sexual abuse. Mageswari, in turn, had informed the same to her husband Santhanam. On 20.09.2016, Santhanam contacted P.W.17 and narrated the incident to him and asked P.W.17 to enquire about it. On 23.09.2016, P.W.17 asked P.W.1 to enquire the victim. On coming to know of the happening of the sexual abuse meted out by P.W.2 by four accused, P.W.17 went along with P.W.1 and lodged a complaint, as dictated by P.W.1.

[q] P.W.22, the Investigating Officer, in continuation of her investigation, examined the witnesses ; recorded their statements ; collected various documents relating to the case including the Medical Reports and on completion of investigation, filed the Final Report u/s.366 and 506[ii] IPC and section 4 of POCSO Act against Sembulingam and the appellant/accused and u/s.366 and 506[ii] IPC and section 6 of POCSO Act against Murugesan @ Murugan and Vijayakumar, before the Trial Court.

[r] Though the prosecution has filed charge sheet against four persons for different occurrences, allegedly committed as against the victim-P.W.2, each accused were tried separately by the Trial Court after splitting of the cases and the case, insofar as the appellant/accused is concerned, was tried in SC.NO.9/2017. The Trial court issued summons to the appellant/accused and on his appearance, furnished him the copies of the documents u/s.207 Cr.P.C. and framed the charges as stated above and questioned him. The appellant / accused pleaded not guilty to the charge framed against him.

[s] The prosecution examined P.Ws.1 to 22 and marked Exs.P.1 to 27.

[t] The appellant/accused was questioned under section 313 [1][b] Cr.P.C., with regard to the incriminating circumstances against him in the evidence rendered by the

prosecution and he denied it as false. On the side of the defence, D.W.1-Aswathi [daughter of the appellant/accused] ; D.W.2-Karuppusamy [father of the appellant/accused] ; and D.W.3-Jayapal [Maintenance Manager of School Buses in Reliance Matric Higher Secondary School] were examined.

[u] D.W.1-Aswathi deposed that she never played with the victim [P.W.2] as there exist enmity between two families on account of breeding of dog and a false case has been foisted against her father, the appellant/accused herein. D.W.2-Karuppusamy, deposed that the entire complaint was written by P.W.17-Vijayakumar at the instructions of police. D.W.3-Jayapal deposed that the appellant/accused, working as Cleaner, attended duty on 08.09.2016 and he has also produced Ex.C.2-Attendance Register pertaining to Non-Teaching Staff, wherein it is seen that the appellant/accused had signed the Attendance Register.

[v] The Trial Court, on consideration and appreciation of the oral and documentary evidence and other materials, has acquitted the appellant/accused of the offences u/s.366 and 506[ii] IPC and convicted and sentenced the appellant/accused for the offence u/s.4 of POCSO Act, 2012, and hence, this appeal.

3 Mr.N.Manokaran, learned counsel appearing for the appellant made the following submissions:-

- The entire prosecution case is doubtful and the appellant/accused and other accused were made as scapegoats and they were falsely implicated, due to personal motive of one Backiyalakshmi, grandmother of the victim-P.W.2.
- A careful reading of the evidence of P.W.2, so-called victim of sexual abuse, would clearly show that this is a clear case of false implication.
- Ex.P.1 was registered with an undue delay and it is the result of due deliberation of the interested witnesses.
- The prosecution has not examined the father and the grandmother of the victim-P.W.2. This throws a serious doubt about the entire occurrence.
- The medical evidence though suggest that the hymen was not intact in the body of the victim, the same would clearly reveal that the alleged sexual abuse repeatedly by adult persons, 4 in number, is highly improbable.
- P.W.2 is a girl of less intelligence and her IQ level is

below average. Besides, she is also suffering from mild mental retardation, as evidenced from the medical evidence. This would amply prove that the prosecution case is a foisted one for the reason that giving of minute details about the alleged occurrence by P.W.2, having such mental illness, is not possible. This would show that P.W.2 was tutored by the vested interest one, in order to get conviction of the appellant/accused.

- The evidence of P.W.2 is also vague and nowhere in her evidence, she had mentioned about the date and time of the alleged occurrences of sexual abuse by each of the accused persons.
- The prosecution has not proved the charge of sexual abuse against the appellant/accused beyond reasonable doubt. The specific charge against the appellant/accused is that on 08.09.2016, while the victim girl was playing with the daughter of the appellant/accused, he sexually abused her and committed penetrative sexual assault. But, absolutely there is no evidence on record to show that the victim went to the house of the appellant/accused on 08.09.2016. On the contrary, the presence of the appellant/accused for duty in the School was amply substantiated from the evidence of D.W.3 supported by Ex.C.2 - Attendance Register, wherein, the appellant/accused had signed the same.
- It is the further contention of the learned counsel that merely because the charges and allegations are severe in nature and connected with sexual abuse of the children, that by itself is not a ground to presume the charge, particularly, when the evidence suggest false implication.
- Admittedly, the appellant/accused is a deaf and dumb person and therefore, he reposing confidence on P.W.2 and subjecting her to sexual intercourse, is highly improbable and the prosecution version is highly doubtful in this regard and hence, prayed for allowing of this criminal appeal.

4 Mr.V.Arul, learned Additional Public Prosecutor fairly conceded before this Court that the father and grandmother of the victim - P.W.2 has not been examined and they have not given any complaint and Ex.P.1 was given by P.W.1-aunt of P.W.2 with much delay and due deliberation. However, the learned Additional Public Prosecutor submitted that the victim is having less IQ level and therefore, the possibility of sexual abuse is more and she has given evidence and the appreciation of evidence and reliability of the same, would depend upon the other facts

and circumstances of the case. Hence, he prays for dismissal of the criminal appeal.

5 We have perused the entire materials and evidence on record.

6 In the light of the above submissions, we have to analyse whether the prosecution was able to bring home the guilt of the appellant/accused beyond all reasonable doubt.

7 The appellant/accused faced trial for the offences u/s.366 and 506[iii] IPC and section 6 of POCSO Act, 2012. The specific charge against the appellant/accused framed by the Trial Court is as follows:-

“மேற்கண்ட 1 ஆவது குற்றச்சாட்டில் கண்ட குற்றச் செய்கையைத் தொடர்ந்து 08.09.2016 அன்று உமது மகள் அசுவதியுடன் விளையாடுவதற்காக குழந்தை கனிமொழியை அழைத்து வந்திருந்தபொழுது, உமது மகள் அசுவதி பாதிடும் சென்ற நேரத்தில், நீர் குழந்தை கனிமொழியிடம் தப்ப, செய்யலாம் என்று கேட்டுள்ளீர். அதற்கு குழந்தை கனிமொழி செய்யக்கூடாது என்று சொல்லியுள்ளார். அதற்கு நீர், அப்படித்தான் செய்வேன் என்று சொல்லி குழந்தை கனிமொழியை கீழே தள்ளி படுக்க வைத்தபோது, கத்த முயன்ற குழந்தை கனிமொழியின் வாயை துணியை வைத்து அடைத்து, அவரது மார்பை கசக்கி, சுடிதார் பேண்டை கழற்றி எறிந்துவிட்டு, குழந்தை கனிமொழியின் மீது படுத்து, ஆவரது பெண் உறுப்பில் உமது ஆண் உறுப்பை வைத்து அழுத்தி, அவரது விருப்பத்திற்கு மாறாக பாலியல் உள்நுழைத்தல் செய்துள்ளீர். அதன் பின்னரும் குழந்தை கனிமொழியின் வீட்டிற்கு பின்னால் வைத்து, 2 முறை அவருடன் பாலியல் உள்நுழைத்தலில் ஈடுபட்டுள்ளீர். அதன் மூலம் நீர் பிரிவு 6 பாலியல் குற்றங்களிலிருந்து குழந்தைகளை பாதுகாக்கும் சட்டம் 2012 இன் கீழ் தண்டிக்கத்தக்கதும் இந்நீதிமன்றத்தால் விசாரிக்கத்தக்கதுமான குற்றத்தை புரிந்துள்ளதாகவும்,”

8 It is the specific charge of the prosecution that on 08.09.2016 while P.W.2-victim girl was playing with D.W.1, the appellant/accused called the minor girl and sexually abused her. P.W.2, referred to as Y, in her evidence before the Court, had stated that her age is 14 years and she has narrated several incidents and once such incident is, while the victim was playing with D.W.1-daughter of the appellant/accused, D.W.1 left for washroom and at that time, the appellant/accused had abused her by placing his private part over the private part of P.W.2 and pressed her chest. Though P.W.2 is aged 14 years, she has not mentioned the date on which the alleged occurrence took place. But her evidence, when considered along with other

materials, shows it clear that she attained puberty in the year 2016. The law was set in motion under Ex.P.1, lodged by P.W.1. P.W.1 claims to be a relative of P.W.2. According to P.W.1, she took P.W.2 to her house during Quarterly Holidays and P.W.2 narrated the sexual abuse made by four persons, viz., Sembulingam, aged 66 years ; Sivakumar @ Ramesh, aged 41 years [the appellant/accused herein] ; Vijayakumar, aged 34 years ; and Murugesan @ Murugan, aged 31 years. It is the evidence of P.W.1 that on 23.09.2016, she was informed by P.W.2 about the alleged sexual abuse. But, P.W.1 did not lodge a complaint immediately to the police. Whereas, the complaint came to be filed only on 25.09.2016. The conduct of P.W.1 in not rushing to the police station immediately, after hearing of the serious sexual abuse meted out by P.W.2, creates some doubt about the origin of the occurrence itself. This doubt is further fortified by the evidence of the Investigating Officer-P.W.22. In cross, P.W.22 had categorically admitted that P.W.1-Meenachi ; and P.W.17-Vijayakumar came to know about the alleged occurrence on 20.09.2016 itself. Similarly, one Mageswari and her husband Santhanam also claimed to have become aware of the alleged occurrence on 20.09.2016. From the evidence of the Investigating Officer, it is crystal clear that the fact of P.W.1 becoming aware of the alleged occurrence only on 23.09.2016, as evidenced from her evidence, falls to ground and it throws considerable doubt on the evidence of P.W.1. But, Ex.P.1-First Information came to be lodged only on 26.09.2016. This also, once again cause a serious doubt about the genesis of the occurrence.

9 It is further to be noted that admittedly, P.W.2-victim was residing with her grandmother Backiyalakshmi and her father. The said Backiyalakshmi and the father of P.W.2 did not even make any attempt whatsoever, to bring to the notice of the police about the serious sexual assault on P.W.2. There was no reason whatsoever given by the prosecution for the non-examination of the grandmother and father of P.W.2 before the Court of law.

10 P.W.1 claims to be the close relative of P.W.2 and in her cross-examination, she has stated that she is only a distant relative of P.W.2. This aspect also throws some doubt in the genesis of the crime. If P.W.1 was a distant relative, P.W.2 accompanying P.W.1 for holidays, is also highly doubtful. The normal human conduct and the immediate reaction of the grandmother or the father of the victim girl when they come to know of the alleged sexual abuse committed by four persons/adults repeatedly, would be to lodge a police complaint. But, neither P.W.2's father nor her grandmother had whispered the same to anyone. These aspects cannot be ignored altogether. Though P.W.2, in her evidence, had narrated about the repeated sexual abuse committed by four persons, viz., Sembulingam, aged 66 years ; Sivakumar @ Ramesh, aged 41 years [the

appellant/accused herein] ; Vijayakumar, aged 34 years ; and Murugesan @ Murugan, aged 31 years, after she attained puberty, her evidence when carefully scanned would reveal that after every sexual abuse, she was threatened by the accused persons not to disclose the same to anyone and one cannot expect such a minute details from a minor girl, particularly, when the victim in the instant case has less intelligence and her IQ level is also below average. As per the evidence of the doctors-P.W.7 and P.W.13, this Court may also accept the version of the prosecution to certain extent that the victim cannot give minute details about the incidents ; but at the same time, a perusal of the entire medical evidence, particularly, the evidence of P.Ws.7 and 13, we are of the view that the narration of the incidents by the victim itself, is highly impossible. As per the prosecution version the alleged occurrence took place immediately after the victim's attainment of puberty in the month of April 2016. The complaint was lodged during September 2016. Further, where P.W.2 is having below average intelligence, besides suffering from mild mental retardation, as per the evidence of the Medical Officers under Exs.15 and 23, she could not remember the alleged occurrences meticulously. This aspect also creates a serious doubt. In fact, P.W.13-Psychiatrist has clearly admitted that when he examined P.W.2, she was not in a position to remember things which has happened six months back. When such being the position, it is not safe to place reliance upon the evidence of P.W.2 narrating incidents said to have taken place six months back, particularly, she is in a position to repeat whatever tutored to her. P.W.13 in his evidence has stated that the victim-P.W.2 is capable of repeating whatever tutored to her. Hence, the evidence of P.Ws.7 and 13 coupled with the medical evidence under Exs.P.15 and 23, cannot be given less weightage. The possibility of tutoring cannot be ruled out in this case, particularly, when the delay in filing the FIR is analysed along with the conduct of the father and grandmother of P.W.2, in not approaching the police/lodging the complaint immediately on coming to know of the alleged occurrences. It is worthwhile to note that P.W.2 is residing all along with her grandmother and father only. This vital aspect of their non-giving of the complaint to the police, cannot be ignored altogether.

11 Further, the medical evidence shows that Hymen was not in tact when the victim was examined. Merely because the hymen was not in tact, we cannot presume penetrative sexual assault. If really P.W.2 was repeatedly subjected to sexual intercourse by four persons, taking advantage of her mental illness/retardation and mental age, as projected by the prosecution, there should have been some symptoms on the body of the victim or at least the doctor could have found out that she was subjected to sexual intercourse regularly. Whereas the medical evidence does not even suggest that vagina admits a

finger and except the absence of hymen, the Medical Officer was not able to give any definite opinion about the repeated penetrative sexual assault.

12 It is the version of the prosecution that all four accused had committed such heinous act more than twice or thrice. The above version is also not supported by the medical evidence. Of course, when the evidence of the victim is strong and inspires the confidence of the Court, the medical evidence assumes insignificance. But, as discussed, in the instant case, the question of placing reliance and credence upon the evidence of P.W.2 does not arise, particularly, when taking into consideration, the medical evidence about her mental age and her capacity and having regard to the same, this Court finds it difficult to place reliance her version and the same is highly doubtful. Also, the conduct of the father and grandmother of P.W.2 and other witnesses, allegedly knowing the occurrence on 20.09.2016 itself and remaining silent all along and lodging the complaint on 23.09.2016, creates a serious doubt about the prosecution version. Except the official witnesses, all other witnesses are highly connected and related to each other. There exist enmity between the grandmother of P.W.2 and the family of the appellant/accused, as evidenced from the statements of D.Ws.1 and 2 - daughter and father of the appellant/accused. Therefore, the possibility of implicating the appellant/accused by P.W.1 and other witnesses, cannot be ruled out.

13 Of course, sexual offences, particularly against children are heinous and any perpetrator, who commit such heinous offence on the young and tender children, should be punished severely. But, at the same time, merely because the charges are severe in nature, that itself cannot be a ground to charge a person, especially, when there is no ample evidence to substantiate the said charge against the said person. The prosecution has to bring home the guilt of the accused beyond all reasonable doubt. Even to apply the statutory presumption under the POCSO Act in the instant case, the initial onus of the prosecution, to prove the charges, will not be relieved. Admittedly, in this case, the specific charge of the prosecution is that the appellant/accused had committed the said offence on 08.09.2016. In fact, the appellant/accused was charged for an offence u/s.6 of POCSO Act, whereas the Trial Court has convicted the appellant u/s.4 of the Act without any charge being framed against the appellant/accused. Even There is no evidence available on record to attract the ingredients of section 3 of POCSO Act, in order to convict him u/s.4 of the Act. The evidence of P.W.2, the so-called victim coupled with the medical evidence, throws a serious doubt on the very charge itself. In fact, the evidence of D.W.3-Jayapal, Maintenance Manager of the vehicles of the Reliance School, examined on the side of the appellant/accused would reveal that the appellant/accused was very much available at the work place and

to substantiate the same, he has also produced Ex.C.1-Attendance Register. There was no reason whatsoever for D.W.3 to create a document in favour of the appellant/accused. This aspect also clearly establish the fact that the appellant/accused went to his job on 08.09.2016. Hence, the prosecution theory projected as if the appellant/accused committed the offence on 08.09.2016, falls to ground.

14 The yet another aspect shown in Charge No.2 is that when the victim was playing with D.W.1-daughter of the appellant/accused, the appellant/accused took her inside and committed sexual assault. Merely because a defence witness supports the accused, the evidence of the said witness cannot be rejected in toto and the same should be analysed carefully along with the other material aspects. In the instant case, on a careful perusal of the evidence of D.W.1, it is seen that she has clearly and categorically stated in her evidence that she never played with the victim-P.W.2 and she does not know P.W.2 at the relevant point of time. Further, the appellant/accused is a deaf and dumb person. Therefore, when such is the position of the appellant/accused, his calling P.W.2 and reposing confidence on her and committing sexual assault, particularly, when his own daughter is also playing in the same place, is also high improbable.

15 Therefore, in view of the series of improbabilities, infirmities and discrepancies coupled with the factum of delay in lodging the FIR and also the abnormal conduct of the father and grandmother of P.W.2 and the unusual conduct of P.W.1 and others in approaching the police belatedly, viz., after a week, even after coming to know of the alleged occurrence earlier, we are of the view that it is highly unsafe to convict the appellant/accused with the grave crime.

16 In the result, the criminal appeal is allowed and the conviction and sentence imposed on the appellant/accused by the Trial Court vide impugned Judgment in Spl.SC.No.9/2017 dated 23.06.2017 are set aside and he is acquitted of all charges levelled against him.

17 It is reported that the appellant/accused is in jail. Hence, he is directed to be released forthwith unless his presence / custody is required in connection with any other case/proceedings.

Sd/-

Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

AP

To

- 1.The Additional Sessions Judge
Mahalir Needhimandram, Fast Track Court
Erode, Erode District.
- 2.-do-Thro'The Principal District and Sessions Judge
Erode District.
- 3.The Judicial Magistrate No.I,
Gobichettipalayam.
- 4.The Chief Judicial Magistrate,
Erode District.
- 5.The Inspector of Police
All Women Police Station,
Gobichettipalayam, Erode District.
- 6.The District Collector
Erode District.
- 7.The Director General of Police
Mylapore, Chennai-4.
- 8.The Superintendent of Police,
Erode, Erode District.
- 9.The Superintendent of Prison
Central Prison, Coimbatore.
10. The Public Prosecutor,
High Court, Madras.
11. The Section Officer(Record),
Criminal Section, High Court,
Madras.

+1cc to Mr.N.Manokaran, Advocate SR.No.9852

NRJK(CO)
GN(26/02/2018)

Cr1.A.No.424/2017