

Bail Slip

The Appellant/Accused namely Bagiyanathan S/o.Sundaram Nadar was directed to be released on bail as per order of this court dated 26/07/2017 in Crl.Mp.9121/2016 in Crl.A.659/2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

CRL.A.No.659 of 2016

Bagiyanathan ... Appellant

Vs

State by
Inspector of Police,
All Women Police Station,
Coimbatore West,
Coimbatore. ... Respondent
(Crime No.14/2013)

PRAYER: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, against the Judgment made in SPL.C.C.No.13 of 2014 dated 22.12.2015, on the file of the Mahila Court, Coimbatore, convicting the appellant.

For Appellant : Mr.C.Veerarahavan

For Respondent : Mrs.T.P.Savitha
Government Advocate (Crl.Side)

JUDGMENT

This criminal appeal is preferred by the appellant/accused against the conviction and sentence passed by the learned Judge Mahila Court, Coimbatore in SPL.C.C.No.13 of 2014 dated 22.12.2015 wherein the learned trial judge convicted the appellant under sections 7 and 8 of the Protection of Children from Sexual Offences Act 2012 and sentenced him to undergo Rigorous Imprisonment for 5 years and imposed a fine of Rs.5,000/- in default to undergo 6 month simple imprisonment.

2. Brief case of the appellant/accused;

The case of the prosecution case is that PW2 is the mother of PW1 and PW3 is sister of PW 1. Since father of PW 1 deserted PWs 1 to 3, PW2 lived with appellant/accused along with PWs 1 and 3. The appellant/accused made sexual torture to PW1 continuously and while PWs 2 and 3 questioned him, the appellant used to assault them. One day while PWs.1 and 3 were alone at home, the petitioner/accused had given them boost with seductive substance and committed sexual offence on PW1 while she was asleep. PW1 informed the same to PW2 even though the appellant/accused continued the sexual torture and after hearing this, PW4 employer of PW1 takes PW1 to the police station and lodged the complaint.

3. PW10 Tmt. Johtimani, then Sub Inspector of Police, based on the above complaint, a case was registered in Coimbatore West All Women Police Station Cr.No.14 of 2013 under section 376 r/w 511 of IPC and section 8 of POCSO Act 2012 on 10.9.2013

4. PW13 Tmt. Munira Begum Inspector of Police conducted further investigation and the victim was taken to the hospital and examined the witnesses and recorded their statements and arrested the accused on 10.9.2013 and remanded him to judicial custody.

5. PW13 sent PW1 to the Medical College Hospital, Coimbatore for medical examination and also obtained the medical report. Then also sent the accused to the hospital for medical examination and obtained the report.

6. On completion of investigation PW13 Inspector of Police filed the charge sheet against the accused under Section 376(ii) of IPC and 3(a) r/w 4 of POCSO on 28.11.2013.

7. During the trial, the prosecution examined PW1 to PW13 and marked Exhibits-P1 to P11. No material objects were marked. Neither witness nor documents examined on the side of the accused.

Witnesses		Speaks about
PW1	Complainant/ victim girl	Speaks about the occurrence and lodge complaint Ex.P1

Witnesses		Speaks about
PW2	Mother of PW1	Hearsay evidence, Treated Hostile
PW3	Sister of PW1	Hearsay evidence, Treated Hostile
PW4 PW5	Employer of PW1 Observation mahazar witness	Told about the occurrence by PW1 and taken PW1 to the police station
PW6	Observation mahazar witness	
PW7	Asst. Headmistress of PW1	Issued Ex.P4 in respect of date of birth of PW1
PW8	Radiologist	Taken X-ray of PW1, X-ray Ex.P5
PW9	Doctor	Examined the accused and issued potentiality certificate Ex.P6
PW10	S.I. of Police	Received the complaint from PW1 and registered FIR in Cr.No.14 of 2013 u/s.376 r/w 511 of IPC and Section 8 of POCSO Act 2012. FIR Ex.P7.
PW11	Doctor	Examined PW1 and issued Accident Register, Ex.P8
PW12	Judicial Magistrate	Recorded 164 Cr.P.C. statement of PW1 Ex.P9
PW13	Investigation Officer	Taken up the investigation and examined the witnesses and arrested the accused on 10.9.2013 and filed charge sheet u/s 376(i) of IPC and 3 (A) r/w 4 of POCSO Act 2012 on 28.11.2013

8.After the trial, the learned Mahila Court convicted the appellant for the offences under sections 7 and 8 of the Protection of Children from Sexual Offences Act 2012, and sentenced him to undergo Rigorous Imprisonment for 5 years and imposed a fine of Rs.5,000/- in default to undergo 6 month simple imprisonment.

9.The learned counsel for the appellant/accused submits that the trial Court failed to see that the prosecution witnesses, deposed with regard to the incident, except the PW1 and PW4 no one is supported the case of prosecution.

10.The learned counsel for the appellant/accused submits that the trial Court failed to see that there is a delay of 5 days in lodging the complaint with the respondent and that delay was not properly explained.

11.The learned counsel for the appellant/accused submits that the trial Court ought to have seen that the star witness in the case is the mother of PW1, turned hostile and not supported the prosecution and the elder sister of the PW1 also not supported the case of prosecution.

12.The learned counsel for the appellant/accused submits that the trial Court ought to have taken great care in the matter of appreciation of evidence in view of the admitted and sustained enmity between PW1 and the appellant/accused, when there is no independent witness.

13.The learned counsel for the appellant/accused submits that the trial Court went wrong in convicting the appellant under section 8 of the Protection of Children from Sexual Offences Act 2012, when no such occurrence is took place as alleged by the prosecution.

14.The learned counsel for the appellant/accused submits that the trial Court failed to see that since the appellant insisted PW1 and PW2 to not go for work with the PW4 workshop in view of the advice given by the appellant and on coming to know about the same, PW4 used PW1 as a sword against the appellant.

15.The learned counsel for the appellant/accused submits that the trial Court failed to see that there is no evidence on the side of prosecution to show that the appellant committed sexual assault. Even assuming without admitting if such act is committed by the appellant definitely PW1 informed to her mother and not to the 3rd party. The said conduct clearly go to shows that the entire case of prosecution is projected by PW1 based on the instruction given by PW4 and in such circumstances the conviction imposed by the Court below is liable to be set aside.

16.The learned Government Advocate (Criminal Side) appearing for the respondent supported the findings of the trial Court and sought for dismissal of the appeal.

17.I have heard Mr.C.Veerarahavan, learned counsel for the appellant and Mrs.T.P.Savitha, learned Government Advocate (Criminal Side) for the respondent and perused the entire materials available on record.

18.It is a case, where a daughter made serious allegations against her father, who is the appellant /accused herein. PW1, the minor Divya, who is the second daughter of the appellant/accused alleged in the box that her father committed sexual assault on her.

19.The complainant Dhivya, in her statement recorded under Section 164 of Cr.P.C. has stated that her father was sexually harassing her while her sister was also there which was not supported by her sister. Thus, the evidence produced by the prosecution also does not appears to be sufficient to establish the charge of POCSO to the complainant.

20.Thus, the prosecution failed to produce any cogent and convincing evidence to establish beyond reasonable doubt that the appellant has committed the alleged crime. Therefore, the learned Trial Court has committed error in appreciating the evidence and also in holding the appellant guilty for the alleged crime.

21.For considering the rival submissions made on either side, the Court has to look into Section 7 of the said Act and the same reads as follows:

" 7. Sexual assault:- whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other Act with sexual intent which involves physical contact without penetration is said commit sexual assault."

22.Even from a cursory look of the provisions of the said section, it is made clear that mere sexual intention is not sufficient and the same should be accompanied with physical

contact. In the instant case, in the first charge, it has been simply mentioned that on 7.3.2013, while the prosecutrix has been sleeping, the appellant/accused has uttered some filthy words with intention to have sexual intercourse with her. Except the said aspects, in the first charge, no mention has been made with regard to physical contact. Therefore, it is needless to say that the appellant/accused cannot be said to have committed the offence mentioned in Section 7 of the said Act. Unless he committed the offence mentioned in Section 7 of the said Act, Section 8 of the said Act cannot be invoked. Therefore, it is quite clear that the first charge framed against the appellant/accused by the trial Court is totally erroneous.

23. Ultimately, the issue revolves around the credibility, worthiness, weight and acceptance of the evidence of P.W.1. Even if there are infirmities and inconsistencies in her evidence, and even if there is a deviation and departure by her at the time of giving evidence in Court compared to her earlier statements, if the residue of her evidence inspires confidence in the mind of Court and there is nothing to show that she had any reason to speak falsehood or that her evidence is completely tainted and the available evidence is sufficient to establish the prosecution case, that will satisfy the requirements of law.

24. There may be inconsistencies with regard to the actual date of assault also. But one should remember that the victim is speaking about an incident which is horrifying and shattering and which has affected her both mentally and physically.

25. It is true that the burden is on the prosecution to establish all the ingredients to attract the offences. The presumption of innocence in favour of the accused increases the burden on the prosecution.

26. What constitutes sufficient evidence to establish a fact is a difficult question to answer. There is no universal formula or rule or law regarding that aspect. One could say that it is that evidence which has the power to satisfy the conscience of the Court about the existence of a fact and that produce belief. One cannot say what exactly is the quantum or kind of evidence that needs to be adduced in this regard.

27.The weight to be given to the testimony of a witness depends to a large measure upon the credibility of the witness. The evidence adduced may be in the form of oral or documentary evidence.

28.In Halsbury's Laws of England, 5th Edition, Vol.11 at page 568 Note 766, it was held as follows:

"766. Weight of evidence; in general. The weight to be given to a particular item of evidence is a matter of fact which will be decided, largely on the basis of common sense, in the light of the circumstances of the case and of the views formed by the jury (or judge where there is no jury) on the reliability and credibility of the witnesses and exhibits. Frequently, a conclusion on the facts will decide a case one way or another, and the burden of proof has not part to play in the resolution of evidential conflict, although it may be the determining factor if evidence is non-existent or evenly balanced."

It is definitely impossible to get absolute certainty. Pragmatic approach and degree of probability are the criterion. The evidence may often fall short of absolute certainty. The law does not insist upon absolute certainty as could be seen going by the definition of 'proved' in the Indian Evidence Act, which reads as follows:

"Proved". - A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists."

No precedents can help in appreciation of evidence. There is no rule that a minimum number of witnesses are necessary to prove a fact and the evidence may consist of the solitary testimony of a prosecutrix. While suspicion cannot take the place of truth, insistence of absolute certainty will be impracticable as well as imprudent. A fact may be proved by any means known to law. Proof is in fact the effect of evidence. In a case built on circumstantial evidence, there is a probability of conjectures and surmises creeping in though it is said "men may lie, but circumstances do not".

One fact is very clear and that is one does not begin to appreciate the evidence with a suspicion or doubt in mind. Sufficiency of material is a question not to be decided on whether more evidence could have been adduced. It is said that in criminal cases, a higher standard of proof is insisted upon, to be more precise, proof beyond

reasonable doubt.

29. In Halsbury's Laws of India, Vol.15 at page 169 Note 145.025 it was held as follows:

"The doubt must be that of a reasonable mind.

Where the evidence raises a reasonable doubt in the mind of the Court regarding the participation in the crime by the accused that doubt must be resolved in his favour, but the benefit of doubt to which the accused is entitled is reasonable doubt, the doubt which rational thinking men will reasonably, honestly and conscientiously entertain."

30. In the decision of the Hon'ble Apex Court reported in Ramesh Harijan v. State of U.P. (AIR 2012 SC 1979) it was held as follows:

"26. Therefore, in such a case the paramount importance of the Court is to ensure that miscarriage of justice is avoided. The benefit of doubt particularly in every case may not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. A reasonable doubt is not an imaginary trivial or merely possible doubt, but a fair doubt based upon reason and common sense."

It is well settled that the evidence has to be read as a whole. By reading the evidence of a witness, his credibility will have to be determined. Creditworthiness means whether the witness is capable of being believed, is he/she is worthy of belief or confidence and of trustworthy.

There is no settled pattern or rule to ascertain the truth. Some of the tests are;

(i) Consistency of the witness's evidence vice versa other evidence.

(ii) The internal consistency of the witness's evidence.

(iii) Consistency with respect to what the witnesses had said on other occasions.

(iv) The demeanour of witnesses.

Sarkar on Law of Evidence, 6th Edn. Vol. 2, at page 2396 would observe as follows:

"Credit.- The credibility of a witness depends upon (1) his knowledge of the facts he testifies; (2) his disinterestedness; (3) his integrity; (4) his veracity; and (5) his being bound to speak the truth by oath or affirmation. Proportioned to these is the degree of credit his testimony deserves from the Court and jury. A witness

is not discredited merely because the cross-examiner asked some questions impeaching his character, when the answers are satisfactory."

Credibility is something instinctive and personal to a Judge and not amenable to precedents. Credibility in short involves the issue whether the witness appears to be telling the truth as he believes it to be. Slight discrepancies and inconsistencies are not to be given undue importance. One should remember that the capacity of perception, retention and reproduction varies from person to person. Variation may occur due to several other factors and due to passage of time. Those minor inconsistencies and contradictions are not to be taken as indicative of the fact that the witness is not telling the truth. Witnesses are prone to exaggerations, embellishments and developments. The test is to see whether the so-called variations are of material nature affecting the prosecution case. It is infact an objective assessment, but a certain degree of subjective satisfaction is bound to creep in.

31. In the decision of the Apex Court reported in *Thoti Manohar v. State of Andhra Pradesh* ((2012) 7 SCC 723) it was held as follows:

"38. Minor discrepancies on trivial matters not touching the core of the matter cannot bring discredit to the story of the prosecution. Giving undue importance to them would amount to adopting a hypertechnical approach. The Court, while appreciating the evidence, should not attach much significance to minor discrepancies, for the discrepancies which do not shake the basic version of the prosecution case re to be ignored. This has been so held in *State of U.P., v. M.K. Anthony*, *Appabhai v. State of Gujarat*, *Rammi v. State of M.P.*, *State of H.P. v. Lekh Raj*, *Laxman Singh v. Poonam Singh* and *Dashrath Singh v. State of U.P.*

39. No evidence can ever be perfect for man is not perfect and man lives in an imperfect world. Thus, the duty of the Court is to see with the vision of prudence and acceptability of the deposition regard being had to the substratum of the prosecution story. In this context, we may reproduce a passage from the decision of this Court in *State of Punjab v. Jagir Singh* wherein H.R.Khanna, L., speaking for the Court, observed thus:

"23. A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the

crime with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the Court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the Court should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures."

32. In the decision of the Apex Court reported in *Alagupandi v. State of T.N.* ((2012) 10 SCC 451) it was held as follows:

"23. Now, we come to the second submission raised on behalf of the appellant that the material witness has not been examined and the reliance cannot be placed upon the sole testimony of the police witness (eye-witness).

It is a settled proposition of law of evidence that it is not the number of witnesses that matters but it is the substance. It is also not necessary to examine a large number of witnesses if the prosecution can bring home the guilt of the accused even with a limited number of witnesses. In the case of *Lallu Manjhi and Anr. v. State of Jharkhand* (2003) 2 SCC 401 : (AIR 2003 SC 854 : 2003 AIR SCW 308), this Court had classified the oral testimony of the witnesses into three categories:- a. Wholly reliable; b. Wholly unreliable; and c. Neither wholly reliable nor wholly unreliable. In the third category of witnesses, the Court has to be cautious and see if the statement of such witness is corroborated, either by the other witnesses or by other documentary or expert evidence.

Equally well settled is the proposition of law that where there is a sole witness to the incident, his evidence has to be accepted with caution and after testing it on the touchstone of evidence tendered by other witnesses or evidence otherwise recorded. The evidence of a sole witness should be cogent, reliable and must essentially fit into the chain of events that have been stated by the prosecution. When the prosecution relies upon the testimony of a sole eye-witness, then such evidence has to be wholly reliable and trustworthy. Presence of such witness at the occurrence should not be doubtful. If the evidence of the sole witness is in conflict with the other witnesses, it may not be safe to make such a statement as a foundation of the conviction of the accused. These are the few principles which the Court has stated consistently and with certainty.

Reference in this regard can be made to the cases of Joseph v. State of Kerala (AIR 2003 SC 507) and Tika Ram v. State of Madhya Pradesh (2007) 15 SCC 760. Even in the case of Jhapsa Kabari and others v. State of Bihar (AIR 2002 SC 312) this Court took the view that if the presence of a witness is doubtful, it becomes a case of conviction based on the testimony of a solitary witness. There is, however, no bar in basing the conviction on the testimony of a solitary witness so long as the said witness is reliable and trustworthy.

In the case of Jhapsa Kabari (supra), this Court noted the fact that simply because one of the witnesses (a 14 years old boy) did not name the wife of the deceased in the fardbayan, it would not in any way affect the testimony of the eye-witness i.e. the wife of the deceased, who had given graphic account of the attack on her husband and her brother-in-law by the accused persons. Where the statement of an eye-witness is found to be reliable, trustworthy and consistent with the course of events, the conviction can be based on her sole testimony. There is no bar in basing the conviction of an accused on the testimony of a solitary witness as long as the said witness is reliable and trustworthy."

33. In the case of Mano Dutt and Anr. v. State of U.P. Reported in CrI. Appeal No. 77 of 2007 decided on 29th February, 2012, the Hon'ble Apex Court held that it is not the quantity but the quality of the evidence which would bring success to the case of the prosecution or give benefit of doubt to the accused. Statement of every related witness cannot, as a matter of rule, be rejected by the Courts.

34. As regards reliability of witness, in the decision of the Hon'ble Apex Court reported in Kuria v. State of Rajasthan (AIR 2013 SC 1085) it was held as follows:

" 'Sterling worth' is not an expression of absolute rigidity. The use of such an expression in the context of criminal jurisprudence would mean a witness worthy of credence, one who is reliable and truthful. This has to be gathered from the entire statement of the witnesses and the demeanour of the witnesses, if any, noticed by the Court. Linguistically, 'sterling worth' means 'thoroughly excellent' or 'of great value'. This term, in the context of criminal jurisprudence cannot be of any rigid meaning. It must be understood as a generic term. It is only an expression that is used for judging the worth of the statement of a witness."

In appreciating the evidence of witnesses, the Court has to make an over all assessment and the function of the Court is to sift the chaff from the grain.

In Halsbury's Laws of India, Vol.15 at page 180 it was observed as follows:

"It is the function of the Court to separate the grain from the chaff and accept what appears to be true and reject the rest. It is only where the testimony of a witness is tainted to the core, the falsehood and the truth being inextricably intertwined, that the Court must discard the evidence in toto. The mere fact, that some witnesses did not admit or had expressed ignorance about certain collateral facts may not be a ground for rejecting their oral account when there is general agreement among them with regard to the substratum of the prosecution case. The Court must consider the worth of evidence of each witness and must give reasons for disbelieving the same on merits. Unless the exaggeration and falsehood in the evidence are on points destructive of the substance of the prosecution story, it is the Court's duty to sift the evidence separating truth from falsehood, and come to its conclusion about the guilt or innocence of the persons accused of the offence. Exaggeration or falsehood on points which do not touch the core of the prosecution story are not to be given undue importance, provided there is trustworthy evidence supporting the real substance and core of the prosecution case. Unless the facts on which an allegation rests are integrally related, so that if part of the case is not proved the rest will fail, then even if some of the facts which are the basis of the allegation are not proved the case may be made out."

35. The duty of the Court in this regard is well settled. In the decision of the Hon'ble Apex Court reported in State of Maharashtra v. Siraj Ahmed Nisar Ahmed ((2007) 5 SCC 161), wherein it was held as follows:

"33. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence, more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence, as a whole, and evaluate them to find out whether it is against the general tenor of the evidence given by the witnesses and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matter not touching the core of matter in issue, hyper-technical

approach by taking sentence out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter, would not ordinarily permit rejection of the evidence as a whole."

36.Guidance is available from the decision of the Hon'ble Apex Court reported in Subal Ghoraï v. State of West Bengal ((2013) 4 SCC 607) regarding the manner in which evidence is to be appreciated:

"Next is the need for corroboration. It is not a rule of law but a rule of prudence. Corroboration becomes necessary when the Court is not satisfied with the evidence of a particular witness. If the evidence of the witness is clear, cogent and convincing, then the Court need not go in search of corroborative items. It is well settled that absence of corroborative evidence does not affect the available evidence. Wigmore on Evidence, Vol.VII at page 342 it was observed as follows:

"The common law, then, in repudiating the numerical system, lays down four general principles: (1) Credibility does not depend on numbers of witnesses. Therefore:

(2) In general, the testimony of a single witness, no matter what the issue or who the person, may legally suffice as evidence upon which the jury may found a verdict.

(3) Conversely, the mere assertion of any witness need not be believed, even though he is unimpeached in any manner, because to require such belief would be to give a quantitative and impersonal measure to testimony.

(4) As a corollary of the first proposition, all rules requiring two witnesses, or a corroboration of one witness, are exceptions to the general principle."

37.In the decision of the Hon'ble Apex Court reported in Narender Kumar v.State (NCT of Delhi) ((2012) 7 SCC 171) it was held as follows:

"20.It is a settled legal proposition that once the statement of prosecutrix inspires confidence and is accepted by the Court as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the Court for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the

given facts and circumstances. Minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case.

A prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. Her testimony has to be appreciated on the principle of probabilities just as the testimony of any other witness; a high degree of probability having been shown to exist in view of the subject matter being a criminal charge. However, if the Court finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or substantial, which may lend assurance to her testimony. (Vide: Vimal Suresh Kamble v. Chaluverapinake Apal S.P. And Anr., AIR 2003 SC 818 : (2003 AIR SCW 253); and Vishnu v. State of Maharashtra, AIR 2006 SC 508 : 2005 AIR SCW 6149)).

Where evidence of the prosecutrix is found suffering from serious infirmities and inconsistencies with other material, prosecutrix making deliberate improvements on material point with a view to rule out consent on her part and there being no injury on her person even though her version may be otherwise, no reliance can be placed upon her evidence. (Vide: Suresh N. Bhusare and Ors. v. State of Maharashtra, (1999) 1 SCC 220 : (AIR 1998 SC 3131 : 1998 AIR SCW 3045)).

38. In the decision of the Apex Court reported in Rai Sandeep v. State (NCT) of Delhi (AIR 2012 SC 3157), it was held as follows:

"To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with

the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other similar such tests to be applied, it can be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

39. In the decision of the Hon'ble Apex Court reported in Dayal Singh v. State of Uttaranchal (AIR 2012 SC 3046), it was held as follows:

"28. Where our criminal justice system provides safeguards of fair trial and innocent till proven guilty to an accused, there it also contemplates that a criminal trial is meant for doing justice to all, the accused, the society and a fair chance to prove to the prosecution. Then alone can law and order be maintained. The Courts do not merely discharge the function to ensure that no innocent man is punished, but also that a guilty man does not escape. Both are public duties of the judge. During the course of the trial, the learned Presiding Judge is expected to work objectively and in a correct perspective. Where the prosecution attempts to misdirect the trial on the basis of a perfunctory or designedly defective investigation, there the Court is to be deeply cautious and ensure that despite such an attempt, the determinative process is not sub-served. For truly attaining this object of a 'fair trial', the Court should leave no stone unturned to do justice and protect the interest of the society as well."

40. Coming back to the evidence in this case, the prosecution has to succeed or to fail depending upon the acceptability or non-acceptability of the evidence of P.W.1. She is a rustic witness though she was tutored by PW4. It is quite unfortunate that misfortune of the present nature has fallen on her. As already noticed, there are certain inconsistencies, developments and contradictions in the evidence of P.W.1. It consists of self

contradictions also. But while evaluating the evidence of the sexual assault, one fact will have to be borne in mind. It is an abhorrent crime, something which is unacceptable to both the victim and to the society. The victim of offence is certain to have moral indignation and absolute hate for the appellant/accused who has robbed her of a very precious asset. Therefore, there will be a tendency to exaggerate and develop at the stage of giving evidence in Court.

41.It is true that there seems to be a lot of confusion regarding the number of times she was subjected to sexual assault. It seems to be on more occasions going by the evidence of P.W.1. Relying on the fact that going by the evidence of P.W.1, on the second day when she was sexually harassed by the appellant, for a long time she was not alone in the house and she could have sought for help, and the inaction on the part of P.W.1 to draw the attention of her sister and mother belies her version.

42.While this criminal appeal is pending, PW1, the victim concerned in this case, present in the Court and filed an affidavit stating that she was instigated to depose against his father /appellant by one Ganesan, PW4.

43.Even without the above said affidavit, I have no hesitation in coming to the conclusion that the entire facts and evidences narrated in this case is nothing but a concocted story and cannot be believed even by a person who is having normal behavior and common sense. Anyway with deep sense of humiliation, I have to point out the hatred wheeled by the vested forces like PW 4, who destroy the blood relationship of a family. Admittedly, the mother of the victim girl and elder sister of the victim girl did not support of the case of the prosecution.

44.In the result:

a) This criminal appeal is allowed and thereby the conviction and sentence imposed on the appellant/accused in SPL.C.C.No.13 of 2014 dated 22.12.2015 passed by the learned Judge Mahila Court, Coimbatore, is set aside;

b) The appellant/accused is acquitted from all the charges and the fine amount if any paid by the appellant/accused shall be refunded by the trial Court;

c) The bail bond if any executed by the appellant/accused is stands cancelled.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Mahila Court, Coimbatore.

2.Inspector of Police,
All Women Police Station,
Coimbatore West,
Coimbatore.

3.The Public Prosecutor,
High Court, Madras.

4.The Superintendent,
Central Prison,
Coimbatore.

5.The Sessions Judge,
Mahila Court, Coimbatore.

6.The Superintendent of Police,
Coimbatore.

7.The Section Officer,
Criminal Section,
High Court, Madras.

+lcc to Mr.C.Veerarahavan, Advocate sr.no.21766

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