



BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

Reserved on : 21.12.2017

Pronounced on : 09-03-2018

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CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

Criminal Appeal (MD) No. 239 and 498 of 2017

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S. Mareeshwaran .. Appellant in CrI.A. No.239/2017/Accused No.1

Maheswaran .. Appellant in CrI.A. No.498/2017/Accused No.2

Versus

State through
The Inspector of Police
Pandalgudi Police Station
Virudhunagar District .. Respondent/Complainant in both appeals

Appeals filed under Section 374 of Code of Criminal Procedure against the Judgment dated 11.01.2016 passed in S.C. No. 60 of 2015 on the file of the Sessions Judge, Fast Track Mahila Court, Virudhunagar District at Srivilliputhur

For Appellant : Mr. S. Malaikani in CrI.A.No. 239/17

Mr. N. Anantha Padmanaban in CrI.A.No.498/17

For Respondent : Mr. C. Ramesh
Additional Public Prosecutor
assisted by Mr. Thiruvadi Kumar
in both the appeals

COMMON JUDGMENT

R. SUBBIAH, J

The appellant in Criminal Appeal (MD) No.239 of 2017 is the first accused in S.C. No. 60 of 2015 on the file of the learned Sessions Judge, Fast Track Mahila Court, Virudhunagar at Srivilliputhur. The appellant in Criminal Appeal (MD) NO. 498 of 2017 is the second accused in the very same Sessions Case. The first accused stood charged for the offences punishable under Section 377, 450, 302 of IPC and Sections 5 (1) read with Section 6 of The Protection of Children from Sexual Offences Act (in short 'POSCO'). The second accused stood charged for the offences punishable under Section 212 and 302 read with Section 109 of IPC.

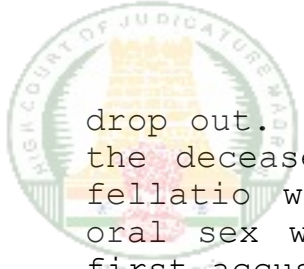
After conclusion of trial, both the accused were convicted and sentenced to various terms of imprisonment as tabulated hereunder:-

Provision of law	Period of sentence	Fine
<u>First Accused</u>		
Section 377 of IPC	To undergo imprisonment life	Rs.25,000/- failing which to undergo simple imprisonment for a period of one year
Section 450 of IPC	To undergo rigorous imprisonment for a period of ten years	Rs.10,000/- failing which to undergo simple imprisonment for a period of six months
Section 302 of IPC	To undergo imprisonment for life	Rs.50,000/- failing which to undergo simple imprisonment for a period of one year
Section 5 (1) read with Section 6 of POSCO Act	To undergo imprisonment for life	Rs.25,000/- failing which to undergo simple imprisonment for a period of one year
<u>Second Accused</u>		
Section 302 read with Section 109 of IPC	To undergo imprisonment for life	Rs.50,000/- failing which to undergo simple imprisonment for a period of one year

2. The sentences imposed against the first accused for the offences under Sections 377, 450 and 302 of IPC were ordered to run concurrently, however, the sentence imposed for the offences under Section 5 (1) and Section 6 of POSCO Act was ordered to run consecutively. The trial court also ordered that the total fine amount of Rs.1,10,000/- imposed on the first accused shall be paid to PW1 and PW2, parents of the deceased, as contemplated under Section 357 (3) of the Code of Criminal Procedure, either before an appeal is preferred or such appeal is concluded

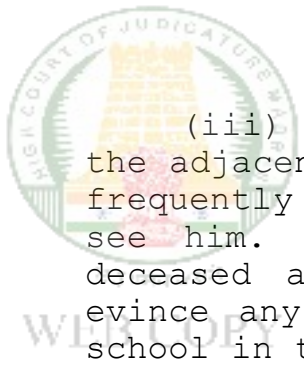
3. The case of the prosecution could succinctly be stated as follows:-

(i) The deceased in this case is Baskaran and he was studying VIII Standard in Government Boys Higher Secondary School, Pandaikudi, at the time of occurrence. PW1 is the father, PW2 is the mother and PW3 is the sister of the deceased. PW3, sister of the deceased, was also studying in the same school along with her brother (deceased). The deceased used to go to the school by travelling in the Government bus. The first accused was a school



drop out. When the first accused was studying in the school, where the deceased was studying, the first accused indulged in acts of fellatio whereby he forced the deceased to indulge in unnatural oral sex with him to give vent to his pent up lust. After the first accused dropped out from the school, in the year 2013, during summer vacation, the first accused made the deceased to indulge in such acts of unnatural oral sex with him. On 02.08.2013, for the purpose of making the deceased to repeat such unnatural oral sex with him to give vent to his carnal desires, the first accused had taken the deceased and four other boys to Tiruchendhur, where, the first accused made the deceased to perform such obscene acts of oral sex with him behind a boat. Such act of unnatural sex the first accused made the deceased to perform was witnessed by the four boys who accompanied the first accused and the deceased. Apart from the four boys who accompanied the deceased and the first accused, PW23, a class X student of the school, where the deceased was studying, also witnessed the obscene acts. Out of inhibition that the incident will be revealed to one and all, the first accused forced and compelled the deceased, the four boys who accompanied them as also PW23 to consume the extract of poisonous seeds and the first accused also consumed the same. After consuming the extract of the poisonous seeds, all of them started vomiting and it was witnessed by the passers-by. On the basis of information provided by Passers-by, the personnel from Fire and Rescue Service Department took the boys to the Government Hospital, Tiruchendur for treatment. In the meantime, PW1, father of the deceased has given a complaint complaining about the missing of the deceased to the Masarpatti Police Station. On the basis of such complaint, a case in Crime No. 91 of 2013 was registered under the caption "boy missing". Pursuant to the complaint, the deceased was handed over to Pws 1 and 2.

(ii) Even after the aforesaid incident, the first accused could not resist his erotic feelings and temptation to have unnatural oral sex with the deceased and therefore, the first accused was frequently disturbing the deceased enroute the school. At one stage, unable to tolerate the nagging of the first accused, the deceased informed his parents, Pws 1 and 2, about the frequent intervention of the first accused. PW1 in turn informed the maternal uncle of the deceased namely Rajapandi about the physical agony caused to the deceased by the first accused in some form or the other. Therefore, the paternal uncle of the deceased, considering the welfare of the studies of the deceased, advised Pws 1 and 2 to change the school where the deceased was hitherto studying namely Karisalkulam Government Middle School. This is how the deceased was shifted from the school where he was earlier studying to the present school namely Government Boys Higher Secondary School, Pandalkudi. Apart from changing the school, Pws 1 and 2 also ensured that the deceased did not, in any way, associate himself with the first accused. However, on one occasion, during summer vacation, PW2, mother of the deceased saw the deceased in the company of the first accused and at that time also the deceased was made to do unnatural oral sex with the first accused. On seeing them engaged in such obscene acts, PW2 shouted at them. PW2 also immediately informed the incident to PW1, father.



(iii) As far as A-1 is concerned, his father sent him to the adjacent Village for his avocation. However, the first accused frequently visited the Village where the deceased was residing, to see him. As advised by his parents and paternal uncle, the deceased avoided the company of the first accused and did not evince any inclination to meet him. The deceased used to go to school in the Government bus along with his sister, PW3. While so, prior to the occurrence, the first accused met the deceased in the bus stop at Pandalkudi and took him to an isolated place, conversed with the deceased and attempted to cajol him to satisfy his lust by performing oral sex with him, but the deceased bluntly refused to accede to his request. This was also witnessed by PW3, sister of the deceased and PW3 informed the said incident to her parents.

(iv) It is the further case of the prosecution that four days prior to the occurrence, when PW22 along with one Saravanan and Sankarraaj of the Village were sitting near the channel in the Village, they saw the first accused and the second accused coming by that side in a TVS Star City bike. PW22 along with the aforesaid duo waylaid the first accused and another person who travelled as a pillion and questioned the first accused as to why he is coming to the Village when he was already warned not to come to the Village. PW22 also enquired as to who is the person, who is seated in the pillion to which the first accused informed that the second accused is his friend. PW22 and others thereafter chased away the accused from entering into the Village. Enraged over the same and also the fact that the deceased did not yield to fulfil his carnal desires, the first accused decided to murder the deceased. Therefore A-1 revealed his intention to commit the murder of the deceased to A-2 and A-2 had taken A-1 to a welding shop of PW31 where they bought a knife. Thus, A-2 is fully aware that for the purpose for committing the murder of the deceased, A-1 has purchased the knife.

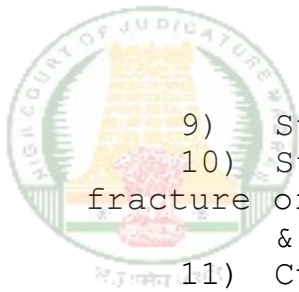
(v) On 28.11.2014, the deceased and his sister, PW3 went to the school in the bus as usual and reached the school. On that day, at about 8.30 am, the first accused, with an intention to murder the deceased accompanied A-2 in his motor cycle. A-1 got down from the motor cycle near the Southern side of the school compound, scaled the compound wall and entered the school. Then, A-1 asked PW6, a VI Standard student, who was playing with other student, to show him VIII A class room where the deceased is studying and accordingly PW6 guided him to the class room where the first accused saw the deceased sitting there along with other students. On meeting the deceased, the first accused showed to him perverted drawings and wanted him to speak to him, however the deceased refused to even see the drawings. Immediately, first accused took the knife from the shoulder bag and stabbed the deceased indiscriminately. After causing several cut injuries, he stabbed the deceased on the temple region where he implanted the knife and it was protruding therefrom, leaving the deceased to fall down in a pool of blood in the class room. On seeing the first accused causing stab injury, the other students, gripped with panic, began to run from the scene of occurrence by raising an alarm. Thereafter, the first accused left the school by once again scaling the compound wall. A-2 was waiting for the arrival of A-1 and on seeing A-1, A-2 ignited the two wheeler in which A-1 sat in

the pillion and zipped fast from the scene of occurrence.

(vi) Soon after the occurrence, the deceased was taken in an ambulance to the hospital by Anandraj (PW25), Physical Education Teacher of the school along with three other students, only to be informed by the Doctor that the deceased was brought dead. Immediately, the occurrence was intimated to the President of the Village, who in turn informed the parents of the deceased and they went to the hospital where the deceased was lying dead. Immediately, PW1 lodged a complaint, Ex.P1, On receipt of the first information report at 10.00 am, PW44, Sub- Inspector of Police attached to Pandalkudi Police Station registered the case in Crime No. 193 of 2014 only against the first accused for the offences punishable under Sections 448 and 302 of IPC. Ex.P37 is the First Information Report, which was forwarded by PW44 to the jurisdictional Magistrate Court and copies of the same were forwarded to the higher officials. PW45, Superintendent of Police, Virudhunagar District, on receipt of the copy of first information report proceeded to the place of occurrence at 10.45 am where he arranged for taking photographs with a digital camera in the presence of Velayudhapuram Village Administrative Officer, Ayyadurai (PW14) and Village Assistant, Murugan and it was also recorded in a compact disc, Ex.P17. Thereafter, PW45 prepared an observation mahazar (Ex.P4) and a rough sketch. He also collected the blood stained cement block (MO3) and also sample cement block (MO4) under a mahazar, Ex.P5 from the place of occurrence. The school bag of the deceased was collected by PW45 and it was produced as MO5 during trial. At 1.45 pm, PW45 proceeded to Government Hospital and conducted an inquest on the dead body of the deceased between 1.45 pm and 3.00 p.m. in the presence of Panchayatars. Ex.P38 is the inquest report. Thereafter, PW45 sent the dead body of the deceased for postmortem through Head Constable Karthikeyan, PW43 with a requisition letter addressed to the Doctor, PW35. Accordingly, postmortem was conducted by PW35 and after conclusion of postmortem, he issued Postmortem report under Ex.P19 wherein it was stated as follows:-

"Appearances found at the postmortem. Moderately nourished male body aged about 13 years was lying supine on the table with the arms by the side. Right eye closed. Left eye opened. Tongue within the oral cavity. The following anti-mortem injuries noted on the body.

- 1) Lacerating cut injury of 8 x 2 x 4 cm noted on the right side forehead exposing the skull with fracture of right frontal bone
- 2) Lacerating cut injury of 12 x 2 x 4 cm noted on the nose extending on both sides of the face along the cheek with fracture of nural bone
- 3) Cut injury 3 x 2 x 2 cm below the left eye
- 4) Lacerating injury 2 x 1 x 1 cm below the left eyebrow
- 5) Cut injury 2 x 1 x 1 cm noted on the left cheek
- 6) Cut injury 3 x 2 x 1 cm noted on the left chin
- 7) Stab injury 3 x 2 x 9 cm noted over the left temporal region with knife in (Nc)
- 8) Stab injury 2 x 2 x 3 cm noted in the front of neck



- 9) Stab injury 4 x 3 x 4 cm noted in the back of neck
- 10) Stab injury 4 x 2 x 4 cm noted over the left chest with fracture of 10th & 11th rib
- 11) Cut injury 1 x 1 x 1 cm noted over the right shoulder
- 12) Lacerating cut injury 10 x 5 x 3 cm noted over the left wrist
- 13) Lacerating cut injury 3 x 2 x 1 cm over the dorsum of left hand
- 14) Cut injury 3x2x1 cm over left ring finger with fracture of middle (Nc)
- 15) Cut injury 3 x 2 x 1 cm over the right middle finger with fracture of middle (Nc)
- 16) Linear cut injury left gluteal region 4 x 1 cm in size

On opening the Thorax fracture of 10th and 11th ribs noted in the left chest. About 200 ml of blood noted in the left thoracic cavity. Both lungs are pale in (Nc). In heart, no blood clots seen. Cut section (Nc) in color. On opening the abdomen partially digested food particles (Nc). The stomach, Intestine empty.

All internal organs like liver, spleen, kidneys are pale in cut section. Hyoid bone intact. On opening the skull, fracture of right frontal bone, left temporal bone seen. Lacerating injury (NC) left temporal lobe seen blood clots. Viscera sent for chemical analysis. Opening as to cause of death.

- (a) Reserved pending report of (NC) Chemical Analysis
- (b) The deceased would appear to have died of.....

4. After getting the chemical analysis report, the Postmortem Doctor, PW35 has rendered his final opinion on 22.11.2014 as under:-

"Regarding the body of a male aged about 13 years named Baskar requisition received at 2 pm on 28.11.2014 from the Inspector of Police, Taluk Police, Aruppukottai Taluk with his letter NO.193/14 dated 28.11.2014. Body in charge of Police Constable No. 1889 named Karthikeyan.

Identification and caste marks:-

- 1) A scar on the right knee
- 2) A scar on the left knee
- 3) A scar on the right leg ant. Aspect

The body was first seen by the undersigned at 2.15 pm on 28.11.2014. The condition then was rigor mortis partially developed in both upper and lower limbs.

Postmortem commenced at 2.45 pm on 28.11.2014

Appearances found at the postmortem

According to Regional Forensic Science Laboratory on examination of

- 1) Stomach & contents
- 2) Intestine & contents
- 3) Liver
- 4) Kidney
- 5) Blood
- 6) Preservative



The above items were examined and poison was not detected in any of them.

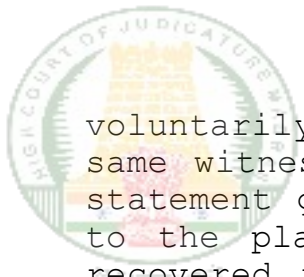
I am of the final opinion that

- 1) Injury to vital organs (Brain and lungs)
- 2) Shock and Hamorrhage due to multiple injuries.

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5. After conclusion of Postmortem, the Doctor handed over the blood stained half pant, shirt, banian and underwear of the deceased to PW46 and they were collected and sent to the Court under Form No.95. The Doctor, PW35 also handed over the knife (MO1) which was implanted by the first accused into the temple region of the deceased to PW45 and it was collected and sent to the Court under a Mahazar by PW45. During the course of investigation, PW45 came to know about the involvement of second accused in the case, therefore, he altered the first information report registered for the offence punishable under Section 448 and 302 of IPC, by including the name of A-2 in the case under Section 448 and 302 of IPC read with 109 of IPC. During the course of investigation, the black colour bag brought by the first accused at the time of occurrence was found near the compound wall of the school and it was handed over to PW45 by the Headmaster of the School and it was collected by PW45 under a Mahazar. On verification of the bag, PW45 noticed certain perverted drawings kept inside the bag. The black colour bag so collected by PW45 was sent to Court by preparing a Form No.95. On 07.02.2014, PW45 recorded the statement of Singappan, Subburaj, Saravanan, Selladurai, Babu, Sub-Inspector of Police. On 08.12.2014, PW45 recorded the statement of Nallamaraj, Jeyapandi and Pandiaraj. On 09.12.2014, he recorded the statement of Premkrishnan, Shankarraaj, Chinnarasu and Saravanan. On the same day, on the request of PW45, the Headmaster of the School handed over records relating to the first accused maintained in the school, including the records relating to proof of age of the first accused.

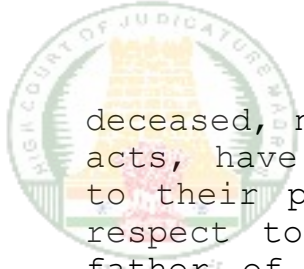
6. During the course of investigation, on 29.11.2014, PW45 came to know that the accused 1 and 2 are hiding at Coimbatore and therefore, he proceeded to Coimbatore in his official vehicle. along with Babu, Sub-Inspector of Police, Parthiban, Sub-Inspector of Police, Ayyadurai, Village Administrative Officer, Velayuthapuram and Murugan, Village Assistant. At about 06.00 pm, when the vehicle was proceeding near Veerapandi Road intersection, PW45 and others identified the accused 1 and 2 and on seeing the vehicle, they attempted to run away, however, they were intercepted and arrested. On such arrest, the first accused gave a voluntary statement, which was recorded by PW45 in the presence of the witnesses brought by him. The statement given by the first accused was recorded in a laptop. During the course of such statement, A-1 also handed over his mobile phone and it was recovered under Form No.95. In the course of the voluntary confession statement given by the first accused, he has informed PW45 that the blood stained blue colour Jeans Pant and white colour full hand shirt were wrapped in a polythene bag and kept in the two wheeler tank cover and that the vehicle was parked in front of a dilapidated house in Udayanadhapuram Road, Indira Colony, Pandalkudi. The admitted portion of the confession statement of the first accused is Ex.P6. Similarly, the second accused has given a confession statement



voluntarily and it was recorded by PW45 in the presence of the very same witnesses. Ex.P10 is the admitted portion of the confession statement given by the second accused. Thereafter, PW45 proceeded to the place where the accused have parked the two wheeler and recovered the blood stained clothes worn by the first accused at the time of occurrence. PW45 also seized the two wheeler - Star City Bike bearing Registration No. TN 63 F 9147 used by the accused in the commission of offence. The accused were brought to the police station where PW45 caused photograph of the tatoo found in the left hand of the first accused with inscription "Baskaran". Thereafter, the accused were sent for remand through the Court. In continuance of investigation, PW45 recorded the statement of several witnesses, who have knowledge about the case and the specific overt act attributable against the accused before filing the charge sheet. On completion of investigation, PW45 laid charge sheet for the offence punishable under Sections 450, 302 and 377 of IPC and Section 5 (1) and 6 of POSCO Act against the first accused and for the offence punishable under Sections 212 and 302 of IPC read with Section 109 of IPC as against the second accused.

7. Before the trial Court, in order to prove the guilt against the accused 1 and 2, the prosecution has examined as many as 45 witnesses as Pws 1 to 45, marked Exs. P1 to P42 and produced Mos 1 to 23. On behalf of defence, neither any one was examined nor any document was marked. When the accused 1 and 2 were questioned under Section 313 of the Code of Criminal Procedure, they pleaded not guilty. Therefore, the trial court, after analysing the oral and documentary, has convicted and sentenced the accused 1 and 2 for the offences morefully described in Para Nos. 1 and 2 of this Judgment.

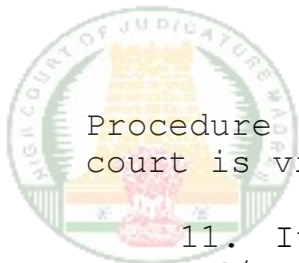
8. The learned counsel appearing for the first accused/appellant would contend that the trial court convicted the first accused/appellant without any material evidence to connect him to the offence. It is his vehement contention that absolutely, there is no evidence to prove the offences alleged against the first accused for having committed acts of fellatio and it was not proved by the prosecution beyond any reasonable doubt. Therefore, the conviction recorded by the trial court as against the first accused is improbable and without any material evidence. It is the specific case of the prosecution that the first accused indulged in acts of fellatio with the deceased, in the summer vacation during the year 2013. It is the further case of the prosecution that on 02.09.2013, the first accused took the deceased and four other students to Tiruchendhur where the four boys, along with PW23, have witnessed the first accused forced the deceased to indulge in acts of unnatural oral sex with the deceased. In this context, the learned counsel for the first accused/appellant invited our attention to the deposition of PW37, Inspector of Police attached to Masarpatti Police Station, who has deposed that on the basis of a complaint given by PW1 on 02.09.2013, he has registered a case in Crime No. 91 of 2013, Ex.P21, only under the caption 'boy missing'. Even though it is the case of the prosecution that the first accused had taken the deceased and four other students to Tiruchendhur, where he had indulged in acts of fellatio with the



deceased, none of the boys, who were alleged to have witnessed such acts, have made any complaint as against the first accused either to their parents or any one. The only complaint given was with respect to missing of the boys on that particular date by PW1, father of the deceased. Therefore, the foundation laid by the prosecution to connect the first accused to the murder of the deceased is very weak and it would only vitiate the case of the prosecution. In any event, the first information report registered in Masarpatti Police Station came into existence atleast 14 months prior to the incident and the said incident cannot be taken into account to prove the alleged motive attributable on the part of the first accused to commit the offence.

9. It is the further submission of the learned counsel for the first accused/ appellant that the very foundation of the prosecution to connect the first accused to the crime is that the first accused had indulged in acts of fellatio with the deceased. The prosecution has specifically referred to an incident on 02.09.2013 whereby the first accused had taken the deceased and four other boys to Tiruchendhur purportedly to have unnatural oral sex with the deceased. The trial court failed to take note of the fact that in the year 2013, the first accused did not complete 18 years of age and he was a minor by then, which is evident from Ex.P40, birth extract of the first accused. Therefore, the trial Court ought not to have convicted and sentenced the first accused for the alleged offences under Section 377 of IPC and Sections 5 (1) read with Section 6 of POSCO Act with respect to the alleged incident that had taken place on 02.09.2013, instead, the trial court, ought to have acquitted the first accused on the charges relating to POSCO Act and for the offence under Section 377 of Indian Penal Code. Further, the learned counsel for the first accused/appellant would contend that even though charges were framed against the first accused/appellant under Section 377 of the Indian Penal Code and Section 5 (1) and 6 of POSCO Act, there was no material to convict the first accused/appellant on those charges. Except the solitary evidence of PW23, there is no evidence available to prove the alleged acts of fellatio committed by the first accused or such evidence of PW23 is corroborated by any other witness. Therefore, the learned counsel for the first accused/appellant would contend that the prosecution has not proved the offences under Section 377 of the Indian Penal Code and Section 5 (1) and 6 of POSCO Act,

10. It is also submitted by the learned counsel for the first accused/appellant that the alleged offence under Section 377 read with Section 5 (1) and 6 of POSCO Act is said to have been committed by the first accused on 02.09.2013, whereas, the alleged offence of murder punishable under Section 302 of IPC had taken place on 28.11.2014 after a period of one year. Therefore, the trial court ought to have conducted separate trial for the offence punishable under Section 377 read with Section 5 (1) and 6 of POSCO Act and the offence punishable under Section 302 of IPC separately and the conviction and sentence imposed on the first accused for both the distinct offences stated above is contrary to the provisions contained under Section 223 of the Code of Criminal



Procedure and therefore, the entire trial conducted by the trial court is vitiated by errors of law.

11. It is next contended by the learned counsel for the first accused/appellant that as regards the charges framed against the first accused/appellant under Sections 450 of IPC for criminal trespass in order to commit the offence punishable with imprisonment for life, the trial court relied on the evidence of Pws 6, 7, 8 and 9. Similarly for the charges levelled under Section 302 of IPC, reliance was placed on the deposition of Pws 4, 5, 6, 7, 8, 9, 11, 12, 35, 36, 40 and 41. The trial court, however failed to note that the deposition of the aforesaid witnesses are self-contradictory with each other and therefore they are not reliable. The learned counsel would further contend that PW4 was a class 8A student where the deceased was studying at the time of occurrence. In the chief examination, PW4 and 5 were projected as an eye witness by the prosecution. Both PW4 and 5 have stated that they were in the class room along with Mathanakumar, Ranjith Veeran, Santhosh, Baskaran and Siva Prabhu and 20 other students, however, both PW4 and 5 have stated in their deposition that the aforesaid students have informed them that the first accused has stabbed the deceased. Further, PW5 in his cross-examination has admitted that he could not remember as to whether those students were sitting inside the classroom at the time of occurrence. Therefore, the testimony of PW4 and 5 are only hear-say and they cannot be relied on to base a conviction as against the first accused. Moreover, prosecution has not come out with any explanation as to why the aforesaid Mathanakumar, Ranjith Veeran, Santhosh, Baskaran, Siva Prabhu and 20 other students were not examined and their non-examination is fatal to the case of the prosecution.

12. The learned counsel for the first accused/appellant proceeded to contend that PW6 along with one Sathish Kumar were stated to have taken the first accused/ appellant to the class room where the deceased was sitting. However, the said Sathish Kumar, was not examined by the prosecution for the reasons best known.

13. The learned counsel for the first accused/appellant would further submit that PW8 was also projected as an eye witness to the alleged incident and he has stated that after committing the offence, first accused rushed to the compound wall and he has witnessed the same until he scaled the compound wall with a bag on his back, MO11. However, PW16, Watchman and PW17, Headmaster have stated that they have found the bag, MO1 near the compound wall and handed it over to the police. Therefore, the version of PW8 is not trustworthy and therefore the evidence of PW8 has to be discarded.

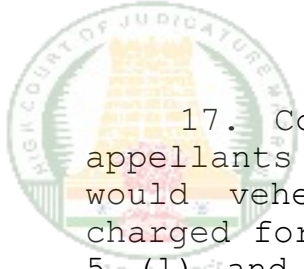
14. It is next contended by the learned counsel for the first accused/appellant that PW1 has given the complaint to the Police. PW1 in his deposition has stated that he along with PW13, his relative went to the police station and it is PW13 who wrote the complaint and both of them have signed it. However, in the original complaint, PW13 did not sign, but some other person has signed, but the name of PW13 was inserted later. Further, PW1 says that the complaint was written in the police station, but PW13 in



his cross-examination has stated that it was written in the Bazaar near Pandalkudi Bus Stand when PW2 was also present. Thus, the complaint was not given by PW1 as has been deposed by him and consequently, the complaint itself was doubtful.

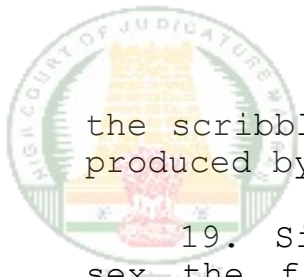
15. Above all, the learned counsel for the first accused/appellant would contend that the prosecution has not proved the charges under Section 450 and 302 of IPC as against the first accused/appellant and therefore, the sentence of life imprisonment awarded as against the first accused is liable to be set aside. According to the learned counsel, Section 8 of Tamil Nadu Borstal Schools Act, 1925 is a bar for such conviction inasmuch as the first accused is below 21 years of age at the time of conviction. In this context, the learned counsel relied on the Full Bench decision of this Court in the case of (Thangammal vs. State) reported in 2008 1 MLJ (Cr1) 832. Even though the said Judgment was subsequently interpreted by the Larger Bench of this Court in the case of (Gowthaman @ Babu vs. State) reported in 2016 (3) MWN (Cr1) 1 (LB), the said Judgment was passed eight months after the impugned judgment was passed by the trial Court and therefore, the Judgment rendered in *Gowthaman @ Babu's* case cannot be applied to the facts of this case. At the time when the Judgment in *Gowthaman @ Babu's* case was delivered by the larger bench of this Court, the first accused was only 21 years and therefore also, the decision rendered by the larger bench of this Court cannot be made applicable to the facts of this case. In effect, it is the submission of the learned counsel for the first accused/appellant that the provisions of the Borstal Schools Act ought to have been applied by the trial Court in favour of the first accused while delivering the impugned judgment on 11.01.2016. On the date of occurrence, the appellant was only 18 years and 4 days and at the time of conviction, he was only 20 years and 47 days. Therefore, the trial court ought not to have awarded life sentence as against the first accused/appellant. The learned counsel for the first accused/appellant therefore prayed for allowing Criminal Appeal (MD) No. 239 of 2017.

16. The learned counsel appearing for the second accused/appellant would submit that there is no evidence at all made available by the prosecution to prove the ingredients of Section 109 of IPC as against the second accused/appellant. According to the learned counsel, there is no direct evidence made available by the prosecution to implicate the second accused in this case. The only charge as against the second accused is that he had purchased knife which was used in the commission of offence from the shop of PW31 along with A-1, however, on examination of the deposition of PW31, he has not clearly stated as to whether A-2 has purchased the knife or not. The deposition of PW31 is generic and it is not trustworthy. The second accused never intended to assist A-1 to commit the murder of the deceased and that A-2 is innocent. The learned counsel for the second accused/appellant therefore prayed for allowing Criminal Appeal (MD) No. 498 of 2017.



17. Countering the submissions made by the counsel for appellants in these appeals, learned Additional Public Prosecutor would vehemently contend that the first accused/appellant was charged for having committed the offences punishable under Sections 5 (1) and 6 of POSCO Act. In order to prove the said offence, prosecution has examined PW2, PW12 and PW23 and their evidence would clinchingly prove the guilt of the first accused. The oral testimony of PW2, 12 and 23 corroborates with each other. Moreover, PW12 and 23 are eye witness to the incident that took place during the summer vacation of 2013. PW23 in his evidence has precisely narrated that the first accused has accompanied the deceased behind a boat where he indulged in acts of fellatio with the deceased. In other words, the first accused made the deceased to perform obscene unnatural oral sex with him which was seen by PW23. The first accused also noticed that PW23 has seen such acts performed by him with the deceased. Soon thereafter, the first accused threatened the four boys accompanied him as also PW23 and made them to consume poisonous drink. PW23 further stated that even though a complaint of 'boy missing' was registered at the instance of PW1 before Masarapatti Police Station, the incident was disclosed to the parents of the first accused and they have apologised for the acts of their son and therefore, no further action was stated to be taken as against the first accused. PW23 also deposed that on the date of occurrence, he was in the school and on hearing the alarm of the students, he went to the class room where the deceased was studying and saw him lying in a pool of blood. PW23 was cross-examined at length but nothing could be elicited from him. Therefore, the learned Additional Public Prosecutor would contend that the acts of fellatio committed by first accused was clearly proved by the prosecution by examining PW23.

18. PW2 is the mother of the deceased. PW2 in her evidence has stated that on hearing the obscene relationship between first accused and her son (deceased) she had complained to the parents of the first accused and she also warned the deceased not to have any friendship with the first accused. PW2 further deposed that on one occasion, when she was returning home from her domestic work, the deceased was not at home and therefore a frantic search was made by her. At that time, PW2 has seen the first accused and the deceased in a compromising position whereby the first accused forced the deceased to do acts of unnatural oral sex with him and she had shouted at the deceased. PW2 has also once again complained to the parents of the first accused about the said incident and asked them to warn the first accused to behave properly. PW2 also referred to the incident that had taken place in Thiruchendhur and stated that they did not want the police to take any action as against the first accused considering his young age, his future and his family. Thus, the deposition of PW23 was adequately and fully corroborated by PW2, who is none else than the mother of the deceased. In support thereof, prosecution also produced MO-13, the perverted drawings/scribblings shown by the first accused to the deceased just before committing the offence of murder. Further, the prosecution also made fervent attempts and established the signature of the first accused contained under Ex.P31 with that of

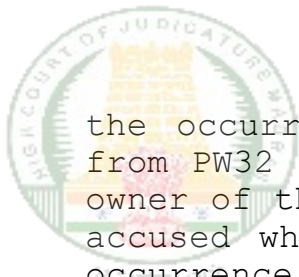


the scribblings made in MO13. This is evident from Ex.P33, report produced by handwriting expert, PW39.

19. Similarly, PW12 had spoken to about the acts of unnatural sex the first accused had with the deceased. PW12 was also a student of Pandalkudi Government Boys Higher Secondary School studying in XI Standard at the time of occurrence. PW12 in his deposition has stated that during summer vacation in the year 2013, when he along with other students were playing, he saw the first accused accompanying the deceased to an isolated place where he made the deceased to perform the acts of fellatio. PW12 clearly stated that he had witnessed the acts of unnatural oral sex the first accused had with the deceased and he had also reportedly informed this to the mother of the first accused. Therefore, according to the learned Additional Public Prosecutor, the prosecution has proved beyond all reasonable doubt that the first accused was in the habit of nagging the deceased frequently to oblige to his demand to have oral sex with him and at a later point of time, when it was refused by the deceased, the first accused, irked by such refusal, unleashed the acts of violence against the deceased and committed his murder.

20. The learned Additional Public Prosecutor appearing for the State would further invite our attention to the deposition of Pws 4, 5 and 6 who have witnessed the occurrence on 28.11.2014. According to the learned Additional Public Prosecutor, the prosecution witnesses 4, 5 and 6 have furnished minute details as to what had transpired at the time of occurrence. The evidence of Pws 4, 5 and 6 are corroborative with each other and they are wholly trustworthy. PW6 had stated that on the request of the first accused, he had taken the first accused to the class room where the deceased was studying and soon after the first accused met the deceased, he had shown him some perverted drawings which the deceased refused to see and thereafter, the first accused stabbed the deceased indiscriminately. The statement recorded from Pws 4, 5 and 6 under Section 164 of the Code of Criminal Procedure has been marked by the prosecution as Exs. P23, 27 and 29 and those statements corroborate their oral testimony before the trial court without any iota of deviation. Further, Pws, 7, 8, 9 and 10 were also students of the school where the deceased was studying and they have seen the first accused leaving the class room after committing the murder of the deceased. Even the statements recorded under Section 164 of Cr.P.C. from Pws 7, 8 and 9 were marked as Exs. P30, 24 and 28 and they have deposed before the trial court clearly about the first accused leaving the school premises and scaling the compound wall. Thus, Exs. P30, P24 and P28 clearly corroborates the oral testimony of Pws 7, 8, 9 and 10 who have witnessed the first accused fleeing along with the second accused in the motorcycle soon after the occurrence

21. The learned Additional Public Prosecutor would further contend that PW31 was running a welding shop business, in whose shop, A-1 and A-2 have purchased the knife and it was used in the commission of offence. PW14 was the Village Administrative Officer in whose presence, on the basis of the confession statement of the first accused, the knife was recovered. Further, few days prior to

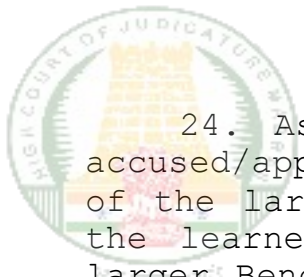


the occurrence, the second accused had purchased the motor cycle from PW32 and it was used in the commission of offence. PW32, the owner of the motorcycle depose that it was the father of the second accused who had paid the consideration for the vehicle after the occurrence.

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22. As regards the second accused, it is submitted by the learned Additional Public Prosecutor that the deposition of PW7 to PW10 clinchingly prove the overt act as against the second accused. According to the learned Additional Public Prosecutor, the deposition of PW7 to 10 would show that the second accused actively participated in the crime and abetted the first accused to commit the murder of the deceased. As per the deposition of PW7 to 10, the second accused was waiting for the first accused to come back from the school and soon after spotting the first accused, the second accused ignited the two wheeler. As soon as the first accused seated on the pillion, the second accused fled away from the scene of occurrence in the motor cycle. PW24, a Van Driver had seen the accused going in the two wheeler soon after the occurrence. PW24 in his deposition has stated that he was the School Van driver and he knows both the accused. He has clearly deposed that on 28.11.2014 at about 7.00 am, he saw both the accused together and in fact he had conversed with them for some time as to their presence in the village. PW24 also given the description of the attire of the first accused, who was clad in a blue colour jeans pant. Therefore, the presence of first accused as well as the second accused at the time of occurrence was clearly established by the prosecution beyond any reasonable doubt.

23. As regards the plea of the learned counsel for the first accused/appellant with respect to mis-joinder of charges, the learned Additional Public Prosecutor would submit that the acts of fellatio was committed by the first accused from the year 2013 continuously and even prior to the date of occurrence, PW2 herself had witnessed such acts committed by the first accused. According to the learned Additional Public Prosecutor, the offences committed in the year 2013 are not distinct and separate with the offence of murder committed on 28.11.2014 and therefore, the same was rightly tried jointly by the trial court. In any event, the acts of fellatio committed by the first accused from the year 2013 can be regarded as and construed to be the motive for the crime which was successfully established by the prosecution. Therefore, the trial court has rightly tried the first accused for the charge under Section 377 of IPC and the charge under Section 5 (1) read with Section 6 of POSCO Act, and consequently, the conviction of the first accused for the offences under the provisions of POSCO Act and the Indian Penal Code are sustainable. As far as the Judgment of the trial Court in ordering to undergo the life sentence imposed on the first accused for the offence punishable under the provisions of POSCO Act and the Indian Penal Code consecutively, it is submitted that given the nature and gravity of the offence committed by the first accused, the first accused deserves such a harsh sentence and therefore he prayed for upholding the conviction and sentence imposed on the accused 1 and 2.



24. As regards the plea of the learned counsel for the first accused/appellant with respect to non-applicability of the decision of the larger Bench of this Court in *N. Gowthaman @ Babu's* case, the learned Additional Public Prosecutor would contend that the larger Bench has categorically held that the Judgment of the Full Bench in *Thangammal's* case does not lay down the correct law and accordingly, it was overruled. When a law laid down by an earlier Bench was overruled by a larger Bench, such decision rendered by the earlier Bench would no more be binding and that the latest decision would only have the binding force. In support of such contention, the learned Additional Public Prosecutor relied on the decision of the Honourable Supreme Court in the case of (*Ramdas Bhikaji Chaudhari vs. Sadanand and others*)^b reported in 1980 Supreme Court Cases (Cr1) 268 as well as the decision of the Honourable Supreme Court in (*Lily Thomas and others vs. Union of India and others*) reported in 2000 Supreme Court Cases (Cr1) 1056. By placing reliance on the aforesaid decision of the Honourable Supreme Court, the learned Additional Public Prosecutor would vehemently contend that the decision rendered by the larger Bench of this Court in *N. Gowthaman @ Babu's* will have retrospective application and consequently, the decision rendered by the Full Bench in *Thangammal's* case, relied on by the learned counsel for the first accused/appellant, will have no force of law.

25. We have given our thought-provoking consideration for the submissions made on behalf of both sides at length and perused the voluminous materials made available. At the outset, we express our shock and grief over the manner in which a young boy was done to death in a barbaric, inhuman and heartless manner in broad daylight. We are also pained to note that the deceased was gored to death by stabbing him indiscriminately in the classroom and the intensity of the stab is such that the knife could not be retrieved from his temple region and it was implanted there. The knife was ultimately retrieved and handed over to the investigation officer by the Doctor who had done postmortem on the dead body of the deceased. The death of the deceased in the blood splattered class room would no doubt send shock waves in the minds of the students studying in the school especially when they have seen the deceased lying in a pool of blood with a knife implanted on his temple region. We have also noted that soon after the occurrence, the school was declared a holiday as a mark of grief to the departed soul.

26. Let us now analyse as to whether the evidence that was made available by the prosecution proves beyond reasonable doubt the guilt of the accused 1 and 2 in this case.

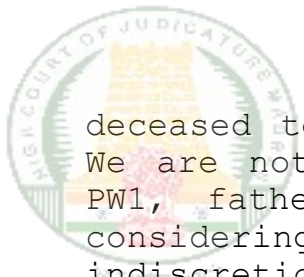
27. The case of the prosecution is that the first accused closely associated with the deceased while both of them were studying in the same school and during the course of such bonding, the first accused had developed the habit of having unnatural oral sex with the deceased. According to the prosecution, on several occasion, the first accused made the deceased to perform such obscene acts to give vent to his carnal desires. Such acts of fellatio committed by the first accused has been witnessed by not



only students studying with him but also by the mother of the deceased, PW2. It is stated that at one stage, when the deceased disassociated himself from having any such relationship with the first accused or when the deceased refused to fulfil the immoral expectations of the first accused, inspite of his repeated demands to the deceased, the first accused has unleashed the act of violence as against the deceased and committed his murder. Thus, the refusal of the deceased to engage himself in acts of fellatio, as demanded by the first accused, is projected as the motive for the first accused to commit the murder of the deceased.

28. In this context, prosecution has roped in several witnesses to speak about the acts of fellatio committed by the first accused. PW23 is one of the witnesses to the acts of fellatio committed by the first accused with the deceased. PW23 in his evidence has stated that during the summer vacation of 2013, when he along with other friends, including the deceased and first accused, were playing cricket, the first accused had taken the deceased to an isolated place and PW23 made a frantic search for the deceased and first accused. Thereafter, PW23 saw the first accused forcing the deceased to perform acts of fellatio with him. PW23 in his evidence went to the extent of deposing that such acts of unnatural sex performed by the first accused was already made known and complained to the parents of the first accused as well as the deceased and they have warned the deceased to disassociate himself from the company of the first accused. PW23 also in his evidence made reference to an incident that had taken place during 2nd September 2013 when the first accused had committed such obscene unnatural oral sex with the deceased at Tiruchendhur behind a boat, which was witnessed by not only PW23 but also other students. Such deposition of PW23 was also corroborated by PW12. PW12 also in his deposition has stated about the incidents that had taken place during the summer vacation, 2013 and the obscene acts performed by the first accused on 02.09.2013 at the sea shore of Tiruchendhur behind the boat. In fact, the first accused, on noticing that the act of unnatural sex he had with the deceased was witnessed by PW23 and other boys, forced and compelled the deceased, the four boys who accompanied them as also PW23 to consume the extract of poisonous seeds which he also consumed. After consuming the extract of the poisonous seeds, all of them started vomiting and it was witnessed by the passers-by. On the basis of information provided by Passers-by, the personnel from Fire and Rescue Service Department took the boys to the Government Hospital, Tiruchendur for treatment. In the meantime, the father of the deceased, who could not trace the whereabouts of the deceased on 02.09.2013, has given a complaint to the Masarpatti Police Station based on which a case in Crime No. 91 of 2013 was registered under the caption "boy missing". Pursuant to the complaint, the deceased was handed over to Pws 1 and 2.

29. The learned counsel for the first accused/appellant, at this stage, would contend that the case in Crime No. 91 of 2013 was only registered under the caption 'boy missing case' and registration of such case will not in any manner prove the case of the prosecution as against the first accused that he had made the



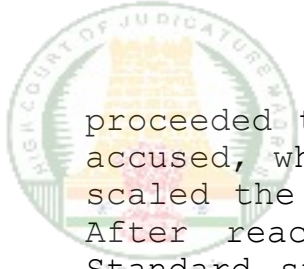
deceased to perform unnatural oral sex with him at Tiruchendhur. We are not persuaded by such submission of the learned counsel. PW1, father of the deceased in his evidence has stated that considering the family decency and with a view to condone the minor indiscretion committed by the first accused as well as his son, the deceased, he did not want to pursue the case in Crime No. 91 of 2013 and therefore it was closed. This was clearly spoken to by PW37, Inspector of Police, Masarpatti Police Station. PW37 in his evidence has stated that since the offenders are all children who are studying, taking note of their future, he did not take any action against them. Moreover, PW1, the complainant himself requested him to drop all further action in that regard and therefore, he has not taken any further action pursuant to registration of the case in Crime No. 91 of 2013.

30. Above all, PW2 is the mother of the deceased and she herself has testified about the acts of fellatio committed by the first accused with her son, the deceased. PW2 in her deposition has narrated clearly and stated about her witnessing such acts performed by the first accused with the deceased and that she shouted at them. PW2 also deposed about the complaint she made to the parents of the first accused and to ensure that their son, the first accused, did not indulge in such acts in future. Thus, Pws 2, 12 and 23 are witnesses, who have witnessed the acts of fellatio performed by the first accused with the deceased. In fact, the oral testimony of PW2, 12 and 13 is supported by MO-13, note book of the first accused and the perverted drawings. Therefore, we hold that the prosecution has successfully proved the illegitimate relationship between the first accused and the deceased in engaging in unnatural oral sex. According to the prosecution, when the aforesaid acts of unnatural oral sex that the first accused and the deceased had on several occasion came to the knowledge of not only the parents of the deceased and first accused but also the Villagers, the deceased refused to accompany the first accused. The first accused on the one hand was unable to resist his temptation or to curtail his erotic feelings to commit acts of fellatio with the deceased and on the other, could not have access to see or meet the deceased. This is said to be the motive for the first accused to commit the murder of the deceased.

31. The prosecution has cemented their case against the accused 1 and 2 in this case for the murder of the deceased on the strength of the several witnesses examined on their side coupled with documentary evidence to prove the complicity of the crime. According to the prosecution, the violence unleashed by the first accused towards the deceased was not only witnessed by the students in the school but the presence of the second accused, who actively aided and abated the offence committed by the first accused, has been adequately proved by examination of independent witness. Therefore, let us examine credibility of the deposition of the prosecution witnesses.

<https://hcservices.ecourts.gov.in/hcservices/>

32. According to the prosecution, on the date of occurrence on 28.11.2014 at about 8.00 am PW3, sister of the deceased and the deceased came to the school in the bus. Both PW3 and the deceased



proceeded to their respective class. At about 8.30 am, the first accused, who came in the two wheeler along with the second accused, scaled the compound wall of the school and came inside the school. After reaching the school, the first accused asked PW6, a VI Standard student as to where VIII-A Section is. PW6 accompanied the first accused and identified him the class room. After seeing the deceased, the first accused showed him perverted drawings, apparently with a view to get his (deceased) memory down the lane when he engaged himself in unnatural oral sex with the first accused. However, the deceased refused to even see the perverted drawings shown to him or he was in no mood to speak to the first accused. Enraged by this, the first accused had picked up the knife from the bag he had brought and started stabbing the deceased indiscriminately. Apparently, the last such attack was made by the first accused on the temple region of the deceased and the force with which he had attacked the deceased is such that the knife could not be retrieved from the temple region and it was implanted there by the first accused. It is needless to mention that panic gripped the students who were present there and they ran helter-skelter for safety. The first accused, after committing the inhuman act, calmly scaled up the compound wall and accompanied the second accused who was waiting in the two wheeler for his arrival. In order to prove the presence of first accused on the date of occurrence as also the manner in which he had stabbed the deceased, prosecution has examined several witnesses. This is more so since the occurrence had taken place in the morning at about 8.30 am in the school premises.

33. PW4 was a student studying VIII Standard in the school, who was present in the class room at the time of occurrence and he has deposed clearly about the presence of the first accused at that time. PW4 also clearly deposed as to the colour of the dress in which the first accused was attired on that day. PW4 proceeded to depose that on seeing the deceased, the first accused had shown him a piece of paper which the deceased refused to see. On such refusal, the first accused stabbed the deceased indiscriminately with the knife. Thereafter, PW4 left the class room along with other students gripped by panic. PW4 also stated that at the time of occurrence, there were about 20 students in the class room. In the cross-examination of PW4, nothing useful could be elicited on behalf of the first accused inasmuch as PW4 remained firm in reiterating the version he made during the chief examination without any omission or exaggeration.

34. Similarly, PW5 and 6 were also students who studied along with the deceased. They have also deposed about the presence of the first accused in the class room on that day, the act of the first accused in asking the deceased to read some thing from a note book and the consequent act of the first accused in stabbing the deceased indiscriminately. Even in the cross-examination of PW5 and 6, the defence could not elicit anything that could add support to their case. Thus, the evidence of PW4, 5 and 6 are corroborative with each other and they point out the presence of the first accused at the time of occurrence and the manner in which the first accused had stabbed the deceased with the knife.



35. In order to substantiate clearly about the presence of the first accused in the scene of occurrence, prosecution has examined PW7 who was a classmate of the first accused. PW7 has deposed that two days prior to the occurrence, he saw both the first and second accused together and that the first accused introduced to him the second accused. According to PW7, on the date of occurrence, when he was parking the cycle in the parking slot in the school, he heard the alarm of the students and a commotion prevailed. At that time, PW7 saw the first accused rushing out of the VIII A Classroom. PW7 specifically stated that there were blood stains in the shirt of the first accused at that time. On seeing the first accused running out of the class room, he along with one Kalimuthu, PW8 ran towards the first accused and saw the first accused staddling in between a small lane intersecting Class VIA and VIB in order to scale the compound wall. PW7 and 8 also scaled the compound wall and saw the first accused accompanying the second accused in the motorcycle which was readily ignited by the second accused, whom the first accused introduced to PW7 two days prior to the date of occurrence. In the cross-examination, PW7 gave detailed account of the geographical location of the school and stood firm in his version given in the chief examination. Similar was the narration given by PW8 both in his chief examination as well as the cross examination.

36. PW9 is also a student of the same school where the occurrence had taken place. PW9 in his evidence has deposed that when he was reaching the school, he saw the second accused in the two wheeler which was ignited near the compound wall. In fact, PW9 casually interacted with the second accused to find as to what is the purpose for which he is waiting here for which the second accused informed him that he came along with the first accused who had gone inside the school in connection with a work. Soon thereafter, he spotted the first accused coming near the motorcycle with blood stained shirt. When PW9 asked as to why there are blood stain in his shirt, he did not give any reply, rather, he boarded the two wheeler and zipped fast in the two wheeler driven by the second accused. PW9 also witnessed some students peeping above the compound wall and later he heard that the first accused had stabbed the deceased.

37. PW10 in his evidence has stated that when he was reaching the school in his cycle, he saw the first accused scaling the compound wall with blood stained shirt. Thereafter, when PW10 went inside the school, he heard from the other students that the first accused had stabbed the deceased with a knife.

38. PW11 in his evidence has deposed that at about 8.10 am he was travelling in the bus to the school in which the deceased and PW9 were also travelling. At that time, the first accused was searching for some one. When the conductor of the bus asked the first accused as to whom he was searching, he replied that he was searching for the deceased and by saying so, he purchased ticket for his journey. PW12 in his evidence has given description of the

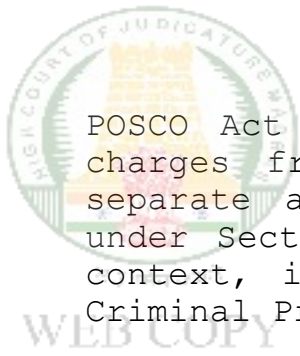


first accused travelling in the bus in the foot board and he searched for some one.

39. Thus, the prosecution has roped in several witnesses to prove the presence of the first accused as well as the second accused at the time of occurrence. Therefore, the submission of the learned counsel for the first accused/appellant that the prosecution has not examined the 20 students who were present in the class room at the time of occurrence is without any substance. The witnesses examined on behalf of the prosecution have given detailed account of the presence of the first accused in the school at the time of occurrence and at the time of his exit from the school by scaling the compound wall. Their evidence is natural, cogent and corroborative. Merely because there were several students present at the time of occurrence, the prosecution need not examine each and every one of the student present in the school. This is more so when the witnesses examined by the prosecution have given a clear and cogent narration of the incident that had taken place at 8.30 am in the morning. While so the prosecution cannot be expected to conduct a lengthy trial to examine all those who were present in the school at the time of occurrence. It is needless to state the prosecution, in order to prove the case projected against the accused, need not examine whoever present at the scene of occurrence as to whether they have witnessed the incident or otherwise, but the credibility of the witness is material to prove the case projected by them. If this principle is applied in this case, we are satisfied that the prosecution has successfully proved the case projected by them as against the accused. Therefore, we hold that the prosecution has proved beyond reasonable doubt as to the presence of the first accused at the time of occurrence and it is he who had committed the inhuman and barbaric act of murder of the deceased. The nature and gravity of the murder committed by the first accused is explicit from the postmortem report , Ex.P19 issued by the Doctor, PW35.

40. The prosecution has examined examined PW24, a Van Driver who had seen the first accused going in the two wheeler driven by the second accused soon after the occurrence. PW24 has clearly deposed that on 28.11.2014 at about 7.00 am, he saw both the accused together and in fact he had conversed with them for some time as to their presence in the village. PW24 has also given the description of the attire of the first accused, who was clad in a blue colour jeans pant. Therefore, the presence of the first accused as well as the second accused at the time of occurrence is clearly established by the prosecution beyond any reasonable doubt.

41. As regards the submission of the counsel for the first accused/appellant that the trial Court ought not to have tried the charges under the provisions of POSCO Act and the Indian Penal Code, as they are separate and distinct with each other, we find that the prosecution has alleged that the acts of fellatio committed by the first accused with the deceased was the motive for the murder. In such circumstances, in our opinion, the trial Court is wholly justified in trying the charges under the provisions of

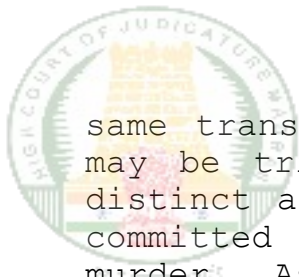


POSCO Act and the Indian Penal Code together inasmuch as such charges framed against the first accused are not distinct and separate and it is in consonance with the provisions contained under Section 220(i) of the Code of Criminal Procedure. In this context, it is relevant to refer to Section 220 (1) of Code of Criminal Procedure, which reads as follows:-

"If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence."

42. A reading of Section 220 (1) of Cr.P.C. would indicate that it can be pressed into service if various offences were committed in the course of the same transaction by the same person. In the present case, the prosecution had established clearly the nexus for the first accused to commit the offences punishable under POSCO Act as well as the murder and therefore, Section 220 (1) of Cr.P.C. can be pressed into service in this case. In the present case, evidence on record would further show that the first accused had earlier taken the deceased and four other minor boys to Tiruchendhur Sea Shore during the summer vacation of 2013 where he made them to consume the extract of poisonous seed and he also consumed the same with an intent to kill the boys and to kill himself. This would only show that the first accused, apart from committing the offences punishable under the provisions of POSCO Act as well as murder punishable under the Indian Penal Code, has also committed the offences punishable under Section 307 and 309 of IPC. This is evident from Ex.P21, the first information report registered by the Tiruchendur Temple Police Station in Crime No. 276 of 2013. This case was registered based on the statement obtained from the first accused, while he was in Government Hospital. Unfortunately, in the said case no investigation has been conducted. Had investigation been conducted in the said case, the offences committed by the first accused, which are punishable under Sections 307 and 309 of IPC would also have formed part of the investigation in the present case as against the first accused, inasmuch as they form part of one and the same transaction as contemplated under Section 220 (1) of Cr.P.C. Therefore, we are not inclined to accept the submissions made by the counsel for the first accused/appellant that the trial court ought to have conducted separate trial for the offences punishable under the provisions of POSCO Act and the Indian Penal Code.

43. It is evident from Section 220 (1) of the Code that if in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with and tried at one trial for every such offence. In other words, if a series of acts or so inter-connected with each other or if one of the acts or transaction forms the basis for commission of the consequential acts or transaction, then Section 220 (1) of the Code can be pressed into service. For invoking Section 220 (1) of the Code, it must be shown that the first act forming the series was committed and commission of the last act ended. The requirements of 'same transaction' are continuity of action and commonness of purpose. Therefore, if series of acts so connected together as to form the



same transaction are committed, the accused committing those acts may be tried together though the offences committed by him are distinct and separate. In the present case, the acts of fellatio committed by the first accused is undoubtedly the motive of the murder. As discussed above, the first accused was apparently irked by the refusal on the part of the deceased to indulge or engage himself in the acts of fellatio with the first accused after the deceased was cautioned and/or warned to disassociate himself from the company of the first accused. Even on the date of occurrence, the first accused made an attempt to bring the memories down the lane by showing some perverted drawings to the deceased, but the deceased bluntly refused to see those drawings. It is on such refusal by the deceased, the first accused committed the inhuman, barbaric, cruel, gruesome and heinous crime leaving the deceased in a blood splattered classroom. At the same time, as rightly contended by the learned counsel for the first accused/appellant, at the time when the acts of fellatio has been committed by the first accused, he was a minor and therefore, he has to be dealt with as a Juvenile as provided under the Juvenile Justice Act. However, we are of the view that the incidents relating to act of fellatio allegedly committed by the first accused in the year 2013 can at best be construed as the motive for the murder committed by the first accused. In this context, reference can also be made to Section 8 of The Indian Evidence Act, which reads as under;-

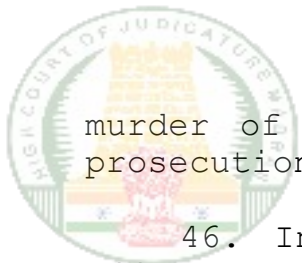
"8. Motive, Preparation and previous or subsequent conduct:- Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact."

44. As regards the second accused, he was charged for the offences of abetment to commit the act of murder which are punishable under Section 109 read with 302 of IPC. Therefore, for conducting a joint trial of the offences committed by the first accused and the second accused, Section 223 (b) can be pressed into service. Section 223 (b) reads as follows:-

"223. What persons may be charged jointly:-
The following persons may be charged and tried together, namely:-

(b) persons accused of an offence and persons accused of abetment of, or attempt to commit, such offence

45. As we have already held, in the present case, the first accused, with the active assistance of second accused, had committed the murder of the deceased. The reason being, the deceased disassociated with the first accused and refused to accede to his demands to engage himself in the acts of fellatio with him. This was clearly proved by the prosecution by examining the witnesses, who have cited the incident that took place in the year 2013. Therefore, the conduct of the first accused in having indulged in acts of fellatio with the deceased is a relevant fact and the refusal of such acts by the deceased had subsequently resulted in the first accused committing the act of murder. Therefore also, as per Section 8 of The Indian Evidence Act, we hold that the motive on the part of the first accused to cause the



murder of the deceased is clearly proved and established by the prosecution.

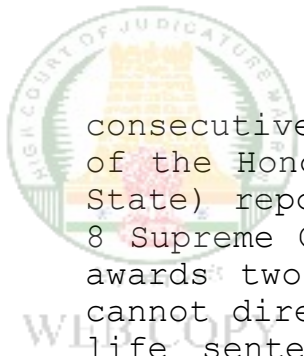
46. In such view of the matter, we are of the view that the offences under Section 5 (1) and 6 of POSCO Act and Section 377 of IPC have been proved against the first accused. However, taking note of the fact that the first accused was a minor at the time when he had committed acts of fellatio, though we are inclined to confirm the conviction imposed on the first accused for the offence under Section 5 (1) and 6 of POSCO Act and Section 377 of IPC, but we set aside the sentence imposed as against the first accused/appellant for the said offences by the trial Court since at the relevant point of time when acts of fellatio was committed by the first accused, he was a juvenile.

47. Yet another contention urged by the learned counsel for the first accused/ appellant is that the conviction of the first accused with respect to the offences punishable under the POSCO Act is not sustainable inasmuch as the provisions of Section 8 of the Tamil Nadu Borstal Schools Act would operate as a bar for such conviction as per the decision of the Full Bench of this Court in *Thangammal's* case mentioned supra inasmuch as on the date of the judgment of the trial court, the first accused was 18 years and 4 days and at the time of conviction he was 20 years and 47 days. It is further contended that even though the decision rendered in *Thangammal's* case was subsequently overruled by the larger Bench of this Court in *Gowthaman @ Babu vs. State* mentioned above, the larger Bench decision will not have retrospective effect. We are unable to accept this submission of the counsel for the first accused/appellant. When the full bench judgment of this Court in *Thangammal's* case was subsequently held to be bad in law by the Full Bench of this Court, it will always have retrospective application unless it is specifically stated so. In the larger bench decision of this Court in *Gowthaman @ Babu* case, the larger Bench did not indicate the effect of the judgment as to whether it will have retrospective or prospective application. In the absence of any such finding, it has to be construed that the larger bench decision will have retrospective application and consequently, the decision of the full bench of this Court in *Thangammal's* case cannot lend any support to the case of the first accused/appellant. In this context, useful reference can be made to the decision of the Honourable Supreme Court in (*Ramdas Bhikaji Chaudhari vs. Sadanand and others*) reported in 1980 Supreme Court Cases (Cr1) 268 wherein it was held as follows:-

"5. Whenever a previous decision is overruled by a larger bench the previous decision is completely wiped out and Article 141 will have no application to the decision which has already been overruled, and the Court would have to decide the cases according to law laid down by the latest decision of this Court and not by the decision which has been expressly overruled."

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48. As regards the sentences imposed by the trial court against the first accused/appellant, we are of the view that the trial court erred in awarding two life sentences to run



consecutively, which is contrary to the decision of the Full Bench of the Honourable Supreme Court in the case of (Muthuramalingam vs. State) reported in (2016) 3 Supreme Court Cases (crl) 259 = (2016) 8 Supreme Court Cases 313 wherein it was held that when the Courts awards two sentences of imprisonment of life to the convict, it cannot direct the sentences to run consecutively. The logic behind life sentences not running consecutively lies in the fact that imprisonment for life is a sentence for the remainder of the life for the offender unless of course the remaining sentence is commuted or remitted by the competent authority as contemplated under the Code of Criminal Procedure. As per the decision of the Honourable Supreme Court, imposing two life sentences to run consecutively is not in accordance with the proviso to sub-section 2 of Section 31 of the Code of Criminal Procedure since the said proviso does not permit any such consecutive life sentence. Therefore also, the judgment of the trial court, in so far as it relates to awarding the life sentences imposed on the first accused to run consecutively, is liable to be set aside.

49. As per Section 357 (3) of The Code, when a Court imposes a sentence of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced. In exercise of such powers conferred under Section 357 (3) of the Code, the trial Court has imposed a total fine amount of Rs.1,10,000/- on the first accused and such amount, if remitted, was directed to be paid to PW1 and 2 as a measure of compensation. We are informed that the first accused did not pay the fine amount imposed on him, depriving the PW1 and 2 to get even the fine amount of Rs.1,10,000/- imposed on the first accused as compensation. In this context, useful reference can be made to the provisions contained under the Tamil Nadu Victim Compensation Scheme, 2013. This scheme was framed by the Government in consonance with Section 357-A of The Code of Criminal Procedure. The object of the scheme was to ensure adequate compensation to the family of the victim or the victim himself/herself. Clause 2 (c) of the Scheme defines 'dependants' which means spouse, father, mother, unmarried daughter, minor children and other legal heirs of the victim. Sub-clause (d) of Clause 2 defines family to mean the parents, children and includes all blood relatives living in the same household. As per clause 3 of the scheme, the fine amount imposed by a competent Court on the accused under Section 357 of the Code shall be deposited by the Courts in a fund constituted thereof namely Victim Compensation Fund. Clause 3 (3) of the Scheme states that The Home, Prohibition and Excise Department of the Government shall act as Nodal Department for regulating, administering and monitoring the scheme. Clause 4 contemplates the person who are eligible for grant of compensation under the scheme. Clause 5 deals with the procedure for grant of compensation. As per sub-clause (b) of Clause 5, *whenever a recommendation is made by the Court under Section 357-A to the State of the District Legal Services Authority, the State of the District Legal Services Authority, as the case may be, shall verify the contents of the claim with regard to the loss or injury*

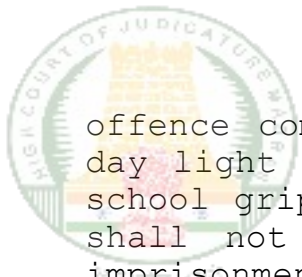


caused to the victim arising out of the reported crime and after verifying the claim the State or the District Legal Services Authority shall award adequate compensation within two months in accordance with the provisions of the Scheme. In the present case, even though the trial court imposed fine amount of Rs.1,10,000/- it was not remitted by the first accused so far and consequently the family of the deceased consisting of Pws 1 to 3 were even deprived of the said amount. We are also given to understand that PW1 has not made any claim for payment of compensation as contemplated under clause 5 of the Scheme.

50. The power under Section 357 (3) of The Code is not only exercisable by a Court of Sessions, but also by the Appellate Court or revisional Court. The State Government has a vicarious liability to pay compensation to victims of homicidal acts. Keeping this principle in mind, having regard to the nature and magnitude of the crime and the shock and trauma that would have confronted the family of the deceased consisting of Pws 1 to 3, on the death of the deceased, we are of the view that the victims in this case, namely Pws 1 to 3 need not wait for the first accused to pay the fine amount imposed by the trial Court in exercise of the power conferred under Section 357 of the Code. We are also conscious of the fact that any amount of monetary compensation paid to the family of the Victims namely Pws 1 to 3 will not compensate the loss of the deceased. At the same time, as Pws 1 and 2 have lost their only son at a tender age due to the homicidal act committed by the first accused and that they would have undergone tremendous mental trauma, disturbance and stress on the loss of the deceased, we feel that this is a fit case to issue a direction to the Director General of Police as well as the Government of Tamil Nadu to pay a sum of Rs.3,00,000/- as compensation to the family of the deceased forthwith. The amount of Rs.3,00,000/- is fixed by us as indicated in the schedule appended to the Scheme whereunder it was stated that a sum of Rs.3,00,000/- shall be paid as compensation for 'loss of life'. It is however made clear that if the first accused, at a later date, pays the fine amount of Rs.1,10,000/- imposed on him by the trial Court, such amount shall be paid to Pws 1 and 2, as directed by the trial Court and they in turn shall return the amount of Rs.1,10,000/- to the Government.

51. In the result,

(i) Criminal Appeal (MD) No. 239 of 2017 is partly allowed by confirming the Judgment dated 11.01.2016 passed in S.C. No. 60 of 2015 on the file of the Sessions Judge with respect to the conviction imposed on the first accused for the offence punishable under Sections 377, 450 and 302 of IPC and Section 5 (1) and 6 of the POSCO Act. However, the sentence imposed on the first accused for the offence under Section 5 (1) and 6 of POSCO Act and Section 377 of IPC alone is set aside, while we confirm the sentence imposed on the first accused for the offence under Section 450 and 302 of IPC. Resultantly, the sentences imposed on the first accused/appellant by the trial Court for the offences under Section 450 and 302 of IPC are ordered to run concurrently. While confirming the conviction and sentence imposed on the first accused/appellant, having regard to the nature and magnitude of the



offence committed by the first accused, particularly during broad day light in the school premises making the other students in the school grip with panic, we direct that the first accused/appellant shall not be released unless he completes 30 years of actual imprisonment without any statutory remission or commutation

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(ii) Criminal Appeal (MD) No. 498 of 2017 filed by the second accused is dismissed by confirming the Judgment of conviction and sentence imposed on him on 11.01.2016 in S.C. No. 60 of 2015 on the file of the Sessions Judge, Fast Track Mahila Court, Virudhunagar District at Srivilliputhur.

Sd/-
Assistant Registrar(T&P)

/True Copy/

Sub-Assistant Registrar

To

1. The Sessions Judge
Fast Track Mahila Court
Virudhunagar District at Srivilliputhur
2. Do through the Principal District and Sessions Judge,
Virudhunagar at Srivilliputhur
3. The Judicial Magistrate, Aruppukottai
4. The Chief Judicial magistrate, Virudhunagar at Srivilliputhur
5. The Inspector of Police, Pandalgudi Police Station,
Virudhunagar District
6. The Superintendent of Police, Virudhunagar
7. The Superintendent , Central Prison, Madurai
(In duplicate to communication the Accused)
8. The District Collector, Virudhunagar
9. The Director General of Police, Mylapore, Chennai-4
10. The Additional Public Prosecutor
Madurai Bench of Madras High Court
Madurai

+One cc to Mr.A.Thiruvadikumar, Advocate, SR.No.54468

Copy to :-
The Section Officer, (2 copies)
ER/Criminal Section,
Madurai Bench of Madras High Court,
Madurai

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