



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. 450 of 2016

A. Kalimuthu .. Appellant/Sole Accused

Versus

State represented by
The Inspector of Police,
All Women Police Station,
Madurai Town,
Madurai.

.. Respondent/Complainant

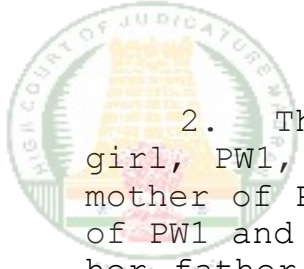
Appeal filed under Section 374 (3) of Code of Criminal Procedure against the Judgment dated 25.04.2016 passed in Special S.C. No. 27 of 2015 on the file of Sessions Judge for Mahila Court - Mahalir Neethimandram, Madurai, Madurai District.

For Appellant	:	Mr. M. Shankar for Mr. R. Babu Jaganath
For Respondent	:	Mr. C. Ramesh Additional Public Prosecutor

JUDGMENT

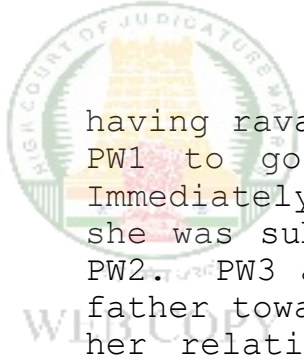
R. SUBBIAH, J

The appellant in this appeal is the sole accused in Special Sessions Case No. 27 of 2015 on the file of Sessions Judge for Mahila Court, Madurai. He stood charged for the offences punishable under Sections 5 (1) read with 6 of The Protection of Children from Sexual Offences Act (in short 'POSCO'). The trial court, after conclusion of trial, passed the judgment dated 25.04.2016 convicting the appellant for the offences punishable under Sections 5 (1) read with 6 of POSCO and sentenced him to undergo imprisonment for life together with fine of Rs.5,000/- failing which to undergo simple imprisonment for a period of one year. By the said Judgment dated 25.04.2016, the trial Court also directed the Government to pay a sum of Rs.10,00,000/- as compensation to the victim child for the trauma and mental disturbance suffered by her on account of the act of the appellant.



2. The accused/appellant is the father of the minor victim girl, PW1, who was 16 years at the time of occurrence. PW2 is the mother of PW1 and wife of the accused/appellant. PW3 is the brother of PW1 and son of the accused/appellant and PW2. According to PW1, her father is a drunkard addicted to alcoholic drinks and also had the habit of taking narcotic substances. According to the prosecution witnesses, the accused/appellant was jobless. On the other hand, PW2 was undertaking domestic work and running the family with the meagre income she earns. The accused/appellant used to quarrel with PW2 and often demanded money from her for taking alcoholic drinks. Whenever she refused to pay, the accused/appellant used to assault PW2 and forcibly snatch the amount from her.

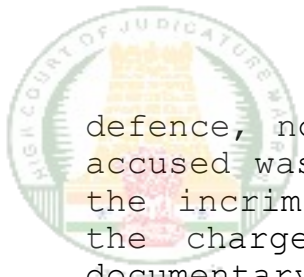
3. It is stated that PW1 attained puberty two years prior to the date of occurrence. While so, three months prior to the occurrence, when PW1 was alone in the house, the accused misbehaved with his own daughter by pulling her hands and pressed her breasts under the influence of alcohol. This was complained by PW1 to PW2, mother. PW2 therefore questioned the accused and quarrelled with him. When the accused was confronted by PW2 as to why he had indulged in such acts with his own daughter, the accused threatened PW2 with a knife not to disclose it to any one, failing which he will kill Pws 1 to 3. After this incident, it is stated that PW2 stayed in the night in the house of her junior grand mother situated opposite to their house and PW1 was made to stay in the house of her aunt nearby. While so, on 30.05.2015, when PW1 was in her aunt's house, the accused called PW1 to come to the house to have food prepared by PW2. The aunt of PW1 also asked PW1 to go to her house to have food as requested by her father. Accordingly, PW1 went to her house along with the accused at about 11.00 pm. When PW1 stepped into her house, the accused forcibly pushed her inside the room and locked it from inside. Immediately, PW1 pleaded with the accused to leave her so that she can go to her aunt's house. Unmindful of such request, the accused, under the influence of alcohol and narcotic substances, kicked PW1 in her abdomen and she fell down. The accused continuously assaulted PW1 and she was gripped with panic. At that time, PW3, brother of the PW1 was sleeping beneath the cot in the room. The accused thereafter demanded PW1 to remove the cloths by herself, which she bluntly refused. On such refusal, the accused forcibly undressed PW1 by removing her dress. When PW1 pleaded with the accused to relive her, he threatened her with a knife. Thereafter, the accused pressed the breasts of PW1/his own daughter and caused aggravated penetrative sexual assault. At the time of ejaculation, during withdrawal phase, with strong belief to eliminate any trace of seminal fluid in the private part of PW1 and also led by misplaced caution, had let the semen drop outside the vaginal area of PW1. PW1 wept in pain and unmindful of her cries, the accused repeated his acts of penetration atleast thrice thereafter till 6.00 am in the morning. At all times when the accused was about to ejaculate, he let the sperm to spill out of the vaginal portion cautiously. After



having ravaged PW1 with aggravated penetrative acts, the accused let PW1 to go out of the house at about 6.30 am in the morning. Immediately, PW1 complained about the acts of sexual assault which she was subjected to at the instance of the accused to her mother, PW2. PW3 also complained to PW2 about such acts perpetrated by his father towards his sister. PW2 immediately narrated the incident to her relatives namely junior paternal uncle Kumar, Pandiammal and thereafter, PW2 decided to give a complaint to the police. Accordingly, a complaint dated 31.05.2015 was given by PW1 to the Inspector of Police, All Women Police Station, Madurai Town, Madurai District. On the basis of such complaint, a case in Crime No. 111 of 2015 was registered by PW25 as against the accused for the offence punishable under Section 3 and 4 of POSCO Act. Ex.P11 is the First Information Report, which PW25 forwarded to the higher authorities as well as to the Court of the Judicial Magistrate concerned.

4. After registering the complaint, PW25 proceeded to the place of occurrence and prepared an observation mahazar in the presence of Pws 4 and 5. PW25 also drew a rough sketch in the presence of the same witnesses. Thereafter, PW25 sent PW1, victim girl, for medical examination along with PW13, Grade-I Police Constable and PW15 to Government Rajaji Hospital, Madurai. On 01.06.2015, PW25 recorded the statement of the victim girl. PW25 also recorded the statement of Ariyammal (PW8), Shanmugam (PW6), Rani (PW7), Kumar (PW9), Murugan (PW10), Kalimuthu (PW11) and Saraswathi (PW12). On 02.06.2015, on the basis of a tip-off, PW25 went to the Police outpost near Rajaji Government Hospital where she arrested the accused at 16.00 hours. After such arrest, the accused was produced before the Judicial Magistrate, Tirumangalam for remand on the same day. On 06.06.2015, PW1 was produced before the Judicial Magistrate, Tirumangalam who recorded her statement under Section 164 of the Code of Civil Procedure. On 11.06.2015, PW25 recorded the statement of Karthikayini (PW16), Head Constable, Balamurugan (PW17), Police Constable Pandian (PW14), who have accosted the accused and had taken him to the hospital for examining him to ascertain whether he is potent to perform sexual intercourse. On 13.07.2015, PW25 produced PW3, brother of PW1 and who had witnessed the occurrence from beneath the cot in the room, and his statement was recorded by the Judicial Magistrate, Vadipatti under Section 164 of Cr.PC. On 24.07.2015, PW25 recorded the statement of Dr. Poomatha (PW22) and Dr. Pandiya Rajalakshmi (PW19). On 27.07.2015, PW25 recorded the statement of Dr. Sadhasivam (PW20) and Vijayendran (PW21), Child Line Officer. On 28.07.2015, PW25 recorded the statement of the Headmaster of the School, who has issued the birth extract of PW1. After concluding the investigation, PW25 has filed the final report against the accused by altering the charges under Section 5 (1) and 6 of POSCO Act.

5. In order to prove the complicity of the offences against the accused, prosecution has examined 25 witnesses as Pws 1 to 25, marked Exs. P1 to P15 and produced Mos 1 to 5. On the side of the



defence, no witness was examined or any document marked. When the accused was questioned under Section 313 of Cr.P.C. with respect to the incriminating materials made available against him, he denied the charges. The trial court, upon considering the oral and documentary evidence held the accused guilty of the charges complained of and sentenced and convicted him for the offences morefully set out in the preceding paragraph of this Judgment.

6. The learned counsel appearing for the accused would submit that Pws 1, 2 and 3 are interested witnesses and their testimony cannot be relied on to convict the accused. Pws 4, 5, 6 and 7 are related to the PW1/victim besides they are hear say witnesses. According to the learned counsel for the accused, in the statement of the accused recorded under Section 313 of Cr.P.C. he has clearly stated that he was in relationship with another lady and aggrieved by the same, his wife and children, have foisted a false case against him to take revenge. It is further stated the since the accused was not employed and leading a wayward life, Pws 1 to 3 have weaved a story as though the accused had misbehaved with his own daughter. Furthermore, there is no concrete evidence made available against the accused for having committed aggravated penetrative offence. PW1 in her deposition before PW23, Judicial Magistrate, has stated that the accused had committed aggravated penetrative assault four times under threat. However, in Ex.P1, complaint, she has not stated that she was subjected to aggravated penetrated assault four times continuously. Thus, the version of PW1 in her deposition is exaggerated. PW1 was made to say so by inducement by none other than PW2, mother of PW1. Further, PW3, brother of PW1 has stated that at the time of occurrence, he saw his father/accused bring his sister to his house and at that time, he was inside the house, but his presence was not known even to his sister, PW1. On the contrary, in the statement given under Section 164, before PW24, he had stated that at the time when his father brought his sister to the house, he also accompanied them from his aunty's house. This creates a doubt as to the presence of PW3 at the time of alleged commission of offence and therefore, the evidence of PW3 is wholly unreliable. Above all, the learned counsel for the accused/appellant would further contend that if this Court comes to a conclusion that the accused is guilty of the offence complained of, leniency may be shown to the accused by reducing the sentence imposed upon him considerably.

7. Per contra, the learned Additional Public Prosecutor would only contend that the offence committed by the accused has been clearly proved by the prosecution beyond reasonable doubt. The offence committed by the accused/appellant is a heinous crime and he deserves maximum sentence. The learned Additional Public Prosecutor would vehemently contend that the deposition of Pws 1, 2 and 3 are natural and corroborative with each other. In a case of this nature, even though independent witness cannot be examined by the prosecution, the prosecution has examined several witnesses and many of them have spoken to about the character of the accused. In any



event, the deposition of PW1, victim, alone is sufficient to convict the accused. If the deposition of PW1, as a whole, is scrutinised, it would clearly indicate the gruesome and inhuman sexual assault committed by the first accused, who is none other than the father of PW1. The trial court has extensively analysed the evidence made available by the prosecution and rightly convicted the accused/appellant. The learned Additional Public Prosecutor therefore prayed for dismissal of this appeal.

8. We have given our anxious consideration to the rival submissions made and perused the materials placed on record. The accused is the father of PW1 and the offence complained against him is that he had caused aggravated penetrative assault on his own daughter, PW1. Given the nature of offence complained of by PW1 against her father, who is the accused in this case, we are conscious of the fact that there cannot be any direct evidence, who would have witnessed the occurrence in this case. Therefore, with the witnesses and evidence adduced on the side of the prosecution, it has to be analysed as to whether the appellant is guilty of the offence complained of or not.

9. PW1/victim was a child within the meaning of POSCO Act and therefore she was examined by the court below in an in-camera proceedings. We have gone through the deposition of PW1 in entirety. At the time of giving the evidence, PW1 was aged about 16 years. PW1 had narrated the sequence of events in her own childish language befitting her age. PW1 has categorically stated that her father stripped her naked and indulged in aggravated penetrative sexual assault unmindful of her protest or objections. She wept throughout the night but notwithstanding the same, she was mercilessly assaulted by the accused. It was the deposition of PW1 that her father indulged in such obscene act four times and whenever he was likely to ejaculate, he let the sperm out of her vaginal portion. It is further deposed that only in the morning at about 6.30 pm, her father left the house. In her cross-examination, nothing useful could be ascertained from her in support of the defence. Such deposition of PW1 inspires our confidence that there cannot be any reason to either disbelieve or discard such deposition of PW1. There is no reason for PW1 to implicate her own father. We also notice that at the time when PW1 was examined in the in-camera proceedings, PW3 mother was present as also the accused. Therefore, the chance of tutoring or for any reason requiring the PW1 to depose against her own father is very remote. Therefore, we hold that the sole testimony of PW1/victim girl is sufficient and adequate to hold that the prosecution had succeeded in proving the guilt of the accused on the basis of the sole testimony of PW1/victim girl.

10. PW2 is the mother of PW1. In her deposition, PW2 had narrated the character and attitude of her husband/accused herein, who, under the influence of alcohol, would assault her and the children. According to PW2, the accused was jobless and he led a wayward life. PW2 also narrated the incident that had taken place

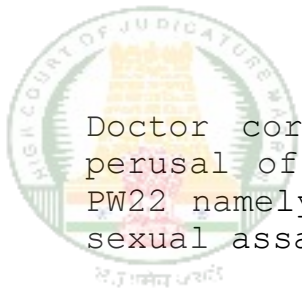


three months prior to the instant occurrence, when the accused had misbehaved with PW1 and that when she questioned the same, the accused brandished a knife and threatened her with dire consequences. It is the deposition of PW2 that because of such attitude of the accused in misbehaving with his own daughter, PW1, she used to stay in her sister's house and PW1 was made to stay in her Junior Grand mother's house. While so, PW1 complained to PW2 about the inhuman and obscene acts of the accused in having subjected her to aggravated sexual assault on the next day. Such version of PW1 was confirmed by PW3, who was stated to be staying beneath the cot in the room at the time of occurrence. PW2 also narrated the incident to his relatives and thereafter proceeded to the police station where PW1 has given a complaint which was attested by her. In the cross-examination of PW2, no worthy question was put to her, particularly as regards the past conduct and character of the accused. In other words, in the cross-examination of PW2, no useful version was obtained from PW2 to lend support to the defence.

11. PW3 is the brother of PW1 and son of the accused and PW2. He was 12 years old at the time of occurrence. According to PW3, on the date of occurrence, he was sleeping beneath the cot and he heard the cries of his sister, PW1 and that she murmured and pleaded to his father to leave her. He would further depose that when he came out of the cot to drink water, he saw his sister nude. He further proceeded to depose that after drinking water, he again went beneath the cot and slept. In the morning, when he woke up, he could not see his father and he saw his sister crying. In the cross-examination, PW3 stood firm and reiterated firmly as to what he has stated in his chief-examination. In the cross-examination, to a specific question put to him, he had reiterated that he was staying beneath the cot at the time of occurrence and that his father did not see him lying there. He also stated that he accompanied his mother, PW2 and sister, PW1 to the police station at the time of giving the complaint.

12. PW4, PW5 and PW6 are related to the accused and Pws 1 to 3. PW4 and 5 are the witness to the Observation Mahazar drawn by PW25. PW4 in his evidence had stated that on hearing the obscene act committed by the accused from PW2, he and other relatives advised to her to give a complaint to the police. Similarly, PW5 in his evidence has stated that he came to know about the occurrence from PW2 and thereafter PW1 to 3 went to the police station and lodged a complaint. PW6 in his evidence has stated that the accused was jobless and he led a wayward life. PW6 further stated that he accompanied PW1 to 3 to the police station and gave the complaint.

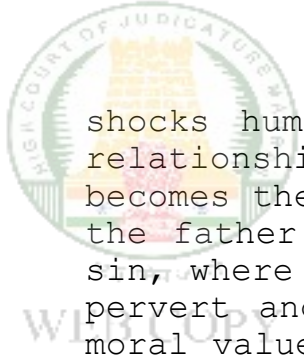
13. Further, PW22 is the Doctor, who examined PW1 on the date of occurrence. After examining PW1, PW22 has given a certificate, which was marked as Ex.P8. In Ex.P8, it was stated that the hymen of PW1 was not intact, thereby indicating that PW1 was subjected to aggravated sexual assault. Thus, the medical opinion given by PW22,



Doctor corroborates the oral testimony of PW1 to 6. On careful perusal of the deposition of PW1 to 6 as also the report given by PW22 namely Ex.P8, it is clear that PW1 was subjected to aggravated sexual assault by none other than by her own father.

14. Chapter II of POSCO Act deals with Sexual Offences against Children. Section 5 of the POSCO Act defines *Aggravated Penetrative Sexual Assault* and Section 6 deals with the punishment for the offenders who indulged in such aggravated penetrative sexual assault. Section 5 (1) of the POSCO Act makes it a punishable offence if "*whoever commits penetrative sexual assault on the child more than once*". Section 6 of the POSCO Act prescribes punishment, for such offences as contained under Section 5 of the Act, for a term which shall not be less than ten years but which may extend to imprisonment for life and shall be liable for fine. In the event of the the present case, PW1, victim girl, has given clear narration of the manner in which she was ravaged by none else than her father. It is the version of PW1 that her father had committed aggravated penetrative sexual assault for four times. In a case of this nature, we are of the view that the sole testimony of the victim girl, PW1, if it is clear and cogent, is sufficient to hold the accused guilty of the offence complained of. On careful examination of the deposition of PW1, coupled with the deposition of PW2 and 3, we are of the view that their testimony is cogent and corroborative with each other. We also take note of the fact that the accused, in his statement under Section 313 of Cr.P.C. has stated that his wife and children have given a false complaint against him because she was in relationship with another women. Even though such a statement was made by the accused, he did not prove it in a manner known to law, either by examining any witness or marking any document to that effect. In the absence of any evidence to substantiate the allegations made by the accused against his wife and children, we are not inclined to accept such an allegation made by the accused in his statement under Section 313 of Cr.P.C.

15. The accused is none other than the father of the victim girl, PW1. The accused, in our opinion, has behaved like a beast and committed a brutal, inhuman and shameful act on his own daughter. The assault which the accused made on his own daughter, will undoubtedly remain as an invisible scar in the mind of the young girl throughout the rest of her life. The mental disturbance, trauma and agony which PW1 to 3 were subjected to, by reason of such inhuman act of the accused, is immeasurable. The relationship between a father and a daughter is always unique in this world than any other relationship. The accused, as a father, is expected to remain as a fortress for his wife and children and to protect them from any external abuse or interference and to remain as a person of dependant, On the contrary, in the present case, he stood himself as a fence which had eaten the crop. A daughter always looks up to her father as a shield of her dignity and honour which is an intrinsic facet of a family especially of father-daughter relationship. It



shocks human conscience when the sanctity of father and daughter relationship is ravaged in such a sordid manner and the protector becomes the violator. There can never be a graver heinous crime than the father being charged of raping his daughter. It is the gravest sin, where the most platonic relationship is shattered by an extreme pervert and shameful act of nonetheless but one's own father. The moral values of individuals of the society have gone down to such a level that seldom we come across such an aberration which shudders our mind and soul. We have become accustomed to saying that females are not safe outside the house but in few cases, it is seen that they are not even safe inside their homes, where the epitome of God's beautiful creation, a child is ravished by her own father for his momentary sexual needs and pleasure which is heart-rending and odious.

16. At this moment, we feel it relevant to quote the words of Poet Abbey, which reflects the empathy of this Court, for the victim child, who had been abused.

*I am broken. I was only a girl
Hiding under my sheets
You took away all my innocence.
Left me dead inside
You left me alone
To work it all out by myself, confused and lost
I walked through the tunnels of pain
You left me alone those nights
My silent tears never heard
My roar inside left to burn out
You stole me from my cave, abused my soul and took my trust
ditched it in a hole and left me in the cold.
I'm broken now, torn and ripped in pieces
I fight to repair the damage
But your breath remains on my chest."
-Abbey*

17. We are also fortified by the decision of the Apex Court in the case of **Bharwada Bhoginbhai Hirijibhai vs. State of Gujarat** reported in **AIR 1983 SC 753** wherein the Apex Court had an occasion to deal with the uncorroborated testimony of a victim of sexual assault and ultimately it was held as under:-

9. In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? To do so is to justify the charge of male chauvinism in a male dominated society. We must analyze the argument in support of the need for corroboration and subject it to relentless and remorseless cross-examination. And we must do so with a logical, and not an opiated, eye in the light of

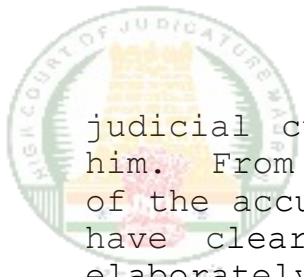


probabilities with our feet firmly. planted on the soil of India and with our eyes focussed on the Indian horizon. We must not be swept off the feet by the approach made in the Western World which has its own social milieu, its own social mores, its own permissive values, and its own code of life. Corroboration may be considered essential to establish a sexual offence in the backdrop of the social ecology of the Western World. It is wholly unnecessary to import the said concept on a turn-key basis and to transplant it on the Indian soil regardless of the altogether different atmosphere, attitudes, mores, responses of the Indian Society, and its profile. The identities of the two worlds are different.....

18. In yet another occasion, the Hon'ble Apex Court has enunciated principles which the Court shall consider while assessing as to what could be an appropriate sentence especially in cases where rape is committed upon a minor child. In State of Rajasthan vs. Vinod Kumar, reported in AIR 2012 SC 2301, it was held as under:-

"The measure of punishment in a case of rape cannot depend upon the social status of the victim or the accused. It must depend upon the conduct of the accused, the state and age of the sexually assaulted female and the gravity of the criminal act. Crimes of violence upon women need to be severely dealt with. The socio-economic status, religion, race, caste or creed of the accused or the victim are irrelevant considerations in sentencing policy. Protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing an appropriate sentence."

19. In the present case, as we have held above, the sole testimony of PW1 inspires the confidence of this Court and that itself is sufficient to hold the accused guilty. We do not find any reason for the minor victim girl to hurl such an accusation against her own father. Further, such version of PW1 is corroborated by PW2 to 8. Even PW4 to 8 are related to the accused and the prosecution witnesses 1 to 3 and therefore, it cannot be said that they have supported PW1 to 3 and implicated the accused falsely. The fact remains that none of the prosecution witnesses namely Pws 1 to 8 have spoken to the effect that the accused is of good character and he would not have committed such offence. On the other hand, soon after PW2 informed the other prosecution witnesses about the inhuman act of the accused, they only asked Pws 1 to 3 to go to the police station to lodge a complaint. It is noteworthy to mention that there is no reason for Pws 1 to 8 to depose against the accused, especially with a complaint of this nature. Further, on examination of the statement of PW1 recorded under Section 164 of Cr.P.C. she has stated that the accused had been arrested and remanded to



judicial custody in connection with various offences committed by him. From the said deposition of PW1, we could infer the antecedent of the accused as well. In any event, all the prosecution witnesses have clearly pointed out the guilt of the accused and it was elaborately narrated by the trial Court while convicting the accused. Therefore, we see no reason to interfere with the judgment of conviction and sentence passed by the trial court.

20. We feel remorse to observe that no words of solace and comfort, no amount of compensation, no amount of punishment to the accused can undo the damage done to the child and her innocence. We hope and believe that time, the great healer, will restore her back to normalcy. At the same time, we could only observe that given the nature and magnitude of the offence committed by the accused, even though we feel that the sentence imposed on the accused/appellant is inadequate, we could not also enhance the sentence imposed on the accused/appellant than the one our legislators have indicated under the POSCO Act for the offences punishable under Section 5 (1) and 6 thereof. Therefore, we are only left with the option to confirm the judgment passed by the trial Court.

21. Accordingly, we confirm the Judgment dated 25.04.2016 passed in Special S.C. No. 27 of 2015 on the file of Sessions Judge for Mahila Court - Mahila Court, Madurai, Madurai District.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The Sessions Judge, Mahila Court, Madurai.
2. The Principal Sessions Judge, Madurai.
3. The Judicial Magistrate, Thirumangalam.
4. The Chief Judicial Magistrate, Madurai.
5. The Inspector of Police,
All Women Police Station,
Madurai Town, Madurai.
6. The Superintendent of Police, Madurai.
7. The Superintendent, Central Prison, Madurai.
8. The District Collector, Madurai.
9. The Director General of Police, Mylapore, Chennai-4
10. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

RSH

TE/SKN-RSK/SAR-1 : 28/03/2018 : 10P/11C