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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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30.09.2019	16.10.2019

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THE HONOURABLE MR.JUSTICE V. PARTHIBAN
CRL. A. (MD) NO. 386 OF 2019
and CRL.MP. (MD) .NO.7634 OF 2019

I.Anand

.. Appellant/Accused No.2

-Vs-

The State of Tamil Nadu
rep. By The Inspector of Police,
All Women Police Station
Sattur, Virudhunagar District.
(Crime No.19 of 2015)

.. Respondent/Complainant

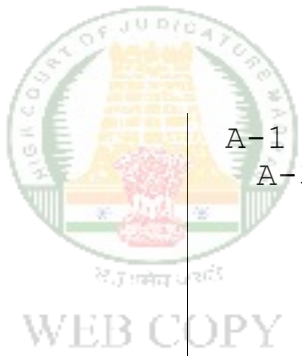
Criminal Appeal filed under Section 374 of the Criminal Procedure Code, praying to set aside the order passed by the learned Sessions Judge, (Fast Track Mahila Court), Virudhunagar at Srivilliputtur, in Special Special Case No.1 of 2016 by the judgment, dated 06.08.2019 convicting the Appellant under Section 366 of IPC, 7 r/w 8 and 3 r/w 4 of Prevention of Children from Sexual Offences Act, 2012, in Crime No.19 of 2015 on the file of the Respondent Police.

For Appellant : Mr.I.Pinaygash
For Respondent : Mr.V.Neelakandan, APP

JUDGMENT

The appellant/A-2, along with two other accused, who were arrayed as A-1 and A-3, were charged and tried before the learned Sessions Judge, Fast Track Mahila Court, Virudhunagar @ Srivilliputtur, in Spl. S.C. No.1/2016, for the offences u/s 366 IPC and Sections 7 r/w 8 and 3 r/w of the Prevention of Children from Sexual Offences Act (for short 'POCSO Act') and on being found guilty, was convicted and sentenced as under :-

Accused	Section	Sentence
A-1 & A-2	U/s 366 (b) IPC	Convicted and imposed a fine of Rs.2,000/-, in default to undergo rigorous imprisonment for a period of one year.



A-1 to A-3	U/s 7 r/w 8 of the POCSO Act	Convicted and sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.2,000/-, in default to undergo rigorous imprisonment for a period of six months.
A-1 to A-3	U/s 3 r/w 4 of POCSO Act	Convicted and sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.5,000/-, in default to undergo rigorous imprisonment for a period of two years.

The sentences were directed to run concurrently and set off u/s 428 Cr.P.C. was also ordered. Aggrieved by the said conviction and sentence, the present appeal has been preferred by the appellant/A-2.

2.The victim in the present case is P.W.2, who, according to the prosecution was aged 13 years at the time of occurrence. A-2 is a , a neighbour of the victimA-1 to A-3 had committed the act of sexual assault on the victim.

3.P.W.2 is the victim and P.W.1 is the mother of P.W.2. P.W.3 is the grandmother of P.W.2. At about 5.30 p.m. on 8.10.15, P.W.1, on returning from work, found P.W.2 crying in the house. When enquired as to why P.W.2 was crying, the victim stated that since she did not oblige A-1 by going to the backyard, A-1 has scolded her using filthy words and when further enquired whether A-1 had misbehaved with her, P.W.2 stated that on 26.9.15, A-1 had indulged in sexual acts with P.W.2 and further on 13.7.14, A-2 along with A-3 had indulged in sexual acts at the house of P.W.2 when there were no one in the house and, thereby, had committed the act of sexual assault on the victim. Therefore, immediately P.W.1 went to the Sattur All Women Police Station and lodged the complaint, Ex.P-1.

4.P.W.12 is the Sub-Inspector of Police attached to the All Women Police Station, Sattur. On receipt of the complaint, Ex.P-1 from P.W.1 on 9.10.2015, P.W.12 registered the case in Crime No.19/2015 for the offences u/s 342, 354 (b), 376 IPC r/w 5 (u) and 6 of the POCSO Act against the accused and prepared the printed FIR Ex.P-15, which was forwarded to the jurisdictional Magistrate and also to her senior officials.

5.P.W.13, the Inspector of Police, attached to All Women Police Station, Sattur, who was conversant with the handwriting of Vijaya, the Investigating Officer, deposed before the Court, as the



investigating officer, Vijaya, who had conducted investigation was mentally incapacitated to give evidence.

6. On receipt of the FIR, Ex.P-15, Vijaya, the Investigating Officer at the relevant point of time, attached to the All Women Police Station, Sattur, commenced investigation. The investigating officer went to the scene of occurrence and in the presence of P.W.s 4 and 5, prepared observation mahazars, Ex.P-2 to P-4 and drew rough sketch, Exs.P-16 to 18. Thereafter, the investigating officer, sent the victim, P.W.2, through P.W.11 to the hospital for the purpose of medical examination.

7. P.W.11, the Head Constable, pursuant to the direction of the investigating officer, produced the victim, P.W.2 before P.W.7, the doctor, who examined P.W.2 and issued the accident register, Ex.P-8 opining that there were evidences that the victim was subjected to sexual pleasure. The doctor, P.W.7, collected swab samples and sent the same for biological examination.

8. Continuing with the investigation, the he investigating officer took steps to produce the victim before the Magistrate for recording her statement. The investigating officer also examined witnesses and recorded their statements. On 10.10.15, near the Kalliamman Temple, the investigating officer arrested the accused and, thereafter, the accused were produced before the Magistrate and remanded to judicial custody. Requisition was given to the Magistrate for subjecting the accused for medical examination. The investigation officer took steps to establish the age of the victim by examining the Head Master of the school in which the victim was studying. On completion of the investigation, the investigation officer filed the final report, Ex.P-19, against the accused charging them for the offences as noted above.

9. On the appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in Spl. S.C. No.1/12 and made over to the Sessions Judge, Mahila Fast Track Court, Virudhunagar @ Srivilliputtur, for trial.

10. To prove the case, the prosecution examined P.W.s 1 to 13 and marked Exs.P-1 to P-19. No material objects were marked. When the accused were questioned u/s 313 Cr.P.C. about the incriminating circumstances appearing against them, they denied the same. No witness was examined nor any document marked on the side of the accused.

11. The trial Court, on the basis of the oral and documentary evidence, convicted and sentenced the accused as aforesaid and



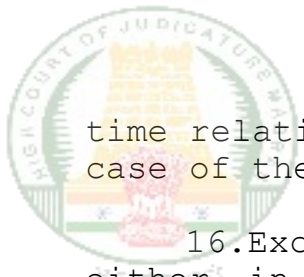
challenging the legality of the said conviction and sentence, the present appeal has been filed by the appellant/A-2.

12. Learned counsel appearing for the appellant/A-2 submits that the case of the prosecution bristles with very many contradictions and embellishments and that it is not a case of evidence falling short, but it is a case of no evidence. It is the further submission of the learned counsel for the appellant that though the initial act was said to have been committed by A-2 way back on 13.07.2014, the victim had come out with the same only on 8.10.15, that too with regard to the questioning of the victim by P.W.1 relating to the incident narrated by the victim, that is said to have taken place on 26.9.15. The delay in the victim narrating the initial incident after a period of almost a year and a quarter and the further occurrence that is alleged to have taken place on 26.9.15, which culminated in the registering of a case on 9.10.15, later in point of time, casts a serious doubt in the veracity of the prosecution case.

13. It is the further submission of the learned counsel for the appellant that though P.W.1 has deposed that she reached her home at around 5.30 p.m. on 8.10.15 and, thereafter, she enquired her daughter as to why she was crying, whereinafter she came to know about the alleged occurrences, yet the entries in the FIR reflects that the complaint had been lodged only at 5.00 p.m. on 9.10.15, much after a delay of almost 24 hours, for which delay there is no proper explanation by the prosecution.

14. Learned counsel appearing for the appellant further submitted that there is no evidence connecting the appellant with the commission of rape on the victim, as P.W.7, the doctor, who examined the victim neither found any bodily injury on the victim nor the report given by P.W.9, the Forensic Expert found any semen in the blood of the appellant. Therefore, the medical evidence is not in consonance with the theory projected by the prosecution. It is submitted by the learned counsel for the petitioner that the medical evidence, being not in consonance with the evidence of the witnesses, necessarily in cases of this nature, medical evidence has to be given high standard of acceptance and, therefore, the theory projected by the prosecution has to be disbelieved.

15. It is the further submission of the learned counsel for the appellant that it is beyond one's comprehension to understand as to how it was possible for the victim to remember the dates on which the alleged act of sexual assault was committed by the accused on her. Further, when dates of commission of offence was projected by the prosecution, however, curiously no time has been stated as to when the accused have committed the said act. The non-mentioning of



time relating to the commission of act of rape is detrimental to the case of the prosecution.

16. Except for the evidence of the victim, no other evidence, either in the form of independent witness or in the form of circumstantial evidence has been placed by the prosecution to prove that the accused had indeed committed the act of sexual assault on the victim. Further, one of the witnesses, who ascribed his signature in the observation mahazar turned hostile.

17. In fine, it is the submission of the learned counsel for the appellant that once the evidence placed by the prosecution falls to the ground, as submitted above, no presumption can be drawn u/s 29 of the POCSO Act and, necessarily the case of the prosecution has to be discarded in toto and, therefore, the appellant is entitled for an acquittal.

18. Learned counsel for the appellant, in support of his contentions, placed reliance on the following decisions :-

i) *Govinda Reddy - Vs - State of Mysore* (AIR 1960 SC 29) ;

ii) *Marudanal Augusti - Vs - State of Kerala* (1980 SCC (Cr1.) 985) ;

iii) *State of Gujarat - Vs - Kishanbhai & Ors.* (2014 (5) SCC 108) ;

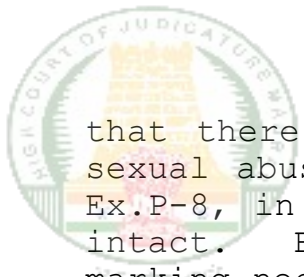
iv) *Chellappan - Vs - State, rep. by Inspector of Police, Gandarvakottai Police Station, Pudukottai District* (2016 (4) MLJ (Cr1.) 611) ;

v) *Manivannan - Vs - State, rep. by Inspector of Police, All Women Police Station, Ariyalur District* (Cr1. A. No. 164 of 2019 - dated 3.1.2019) ; and

vi) *State, rep. by Inspector of Police, Odaipatti Police Station, Uthamapalayam Taluk, Theni District - Vs - Sundararaj & Ors.* (2018 (1) MWN (Cr1.) 506).

19. Per contra, learned Addl. Public Prosecutor appearing for the respondent submits that sufficient evidence, both oral and documentary were placed before the trial court, which, on proper appreciation, has accepted the theory placed by the prosecution and convicted the accused. It is the contention of the learned Addl. Public Prosecutor that the evidence of the victim, P.W.2, is cogent and convincing and that the victim has narrated the entire sequence of incidents that happened on 13.7.2014, 28.6.15 and 26.9.15 and once the evidence of the victim is found to be trustworthy and believable, the same would be sufficient to return a verdict of guilty, which the court below has done so and rightly too.

20. Learned Addl. Public Prosecutor further submitted that P.W.7, the doctor, who examined the victim has categorically deposed



that there are evidences showing that the victim was subjected to sexual abuse, which is further evident from the Accident Register, Ex.P-8, in which there is a categorical entry that the hymen is not intact. Further, the age of the victim had been established by marking necessary certificate issued by the Headmaster of the school in which the victim was studying. Once the age of the victim stood established, it is necessary for the accused to prove his innocence and failure to do so would definitely attract an adverse presumption u/s 29 of the POCSO Act. Therefore, the evidence of P.W.7 coupled with Ex.P-8 and the statement of the victim, unequivocally point to the accused and the presumption drawn u/s 29 of the POCSO Act by the court below to the extent that the accused has not proved his innocence is totally justified. In fine, it is submitted by the learned Addl. Public Prosecutor that the trial court, on cogent and convincing reasons and based on oral and documentary evidence has found the appellant and the other accused guilty of the offence charged against them and rightly convicted and sentenced them and, therefore, no interference is called for with the conviction and sentence recorded by the court below.

21.This Court bestowed its best attention to the contentions advanced by the learned counsel appearing on either side and also perused the evidence, both oral and documentary to which its attention was drawn and also the decisions relied on by the learned counsel for the appellant.

22.Before proceeding to analyse the evidence on record, it would be apposite to have a bird's eye view of the ratio laid down in cases relating to offences under the POCSO Act.

23.In **Govinda Reddy - Vs - State of Mysore (AIR 1960 SC 29)**, the Hon'ble Supreme Court has held that in case of circumstantial evidence, the evidence should be conclusive nature so as to exclude every hypothesis but the one proposed to be proved and that the chain of evidence should be so very complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused. For better clarity, the relevant portion, as is found in para-5 of the said decision is extracted hereunder :-

"5. The mode of evaluating circumstantial evidence has been stated by this Court in Hanumant Govind Nargundkar v. State of Madhya Pradesh, 1952 AIR(SC) 343, and it is as follows :

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so



established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

Having regard to the aforesaid principle, the learned Sessions Judge and, on appeal, the High Court definitely found the circumstantial facts relating to each of the accused and drew the inference from them that the accused conjointly participated in the commission of the murder and the other offences with which they were charged. On that finding, the learned Sessions Judge convicted them on the counts on which they were charged. On the first count they were sentenced to death and on the other counts they were sentenced to various terms of imprisonment. On appeal, the High Court confirmed the conviction as well as the sentences except in regard to the fourth count, as in its opinion, the offence of theft being an ingredient of the offence of robbery, they should not have been convicted twice over the same offence. The aforesaid appeals were filed by the accused against the sentences of death and imprisonment."

24. In **Marudanal Augusti - Vs - State of Kerala (1980 SCC (Cr1.) 985)**, the Honourable Supreme Court held that delay in lodging the FIR would lead to the conclusion that the FIR is a fabricated one and the entire prosecution case would collapse on that ground alone.

25. In **Chellappan - Vs - State (2016) 4 MLJ (Cr1.) 611**, a Division Bench of this Court highlighted the need for sending the victim for medical examination at the earliest point of time and in the context of the said case, held as under :-

"14. Secondly, the minor victim, who was subjected to a serious offence namely sexual violence, was not even sent for medical examination immediately, despite filing of the First Information Report on the very same day, rather, for the reasons best known to the prosecution, she was sent to medical examination only on 05.06.2013. Similarly, even though the accused was arrested on 03.06.2013 itself, he too was sent for medical examination belatedly i.e. on



05.06.2013. The prosecution has not come with any plausible explanation for the long delay of about 2 to 3 days in sending the victim and the accused for medical examination. Passing here, if one looks at the complaint under Ex.P1 lodged by the father of the victim, the story takes a different form deviating from the deposition of PW1/father. To put it clear, while the evidence of PW1 proceeded to the effect that it was his daughter/victim who informed him on the way about the occurrence. Ex.P1/complaint proceeds as if that after reaching the residence, the victim told the alleged incident to her mother from whom the father/PW1 came to know it and thereafter lodged the complaint. Since there are contradictions and infirmities in the version of Pws1 to 3, coupled with the fact that Ex.P1 complaint gives a different version, leaving a strong room for after thought, as rightly pointed out by the learned counsel for the appellant, it is not safe to rely on the evidence of the above witnesses to base conviction against the appellant/accused. In this background, if this Court looks into the medical evidence given by doctor PW13, she has categorically stated that there was no external injury on the private part of the victim and also there was no tearing of hymen and no semen specimen could be taken. In such circumstances, both the external and internal injuries on the private part of the victim having been clearly ruled out by the medical officer, this Court entertain a strong doubt on the evidence of victim girl and her parents."

26. An almost identical circumstance arose in the case of **Manivanan - Vs - State (Cr1.A.164 of 2016 - dated 03.01.2019)**, wherein, this Court, after detailed analysis of the evidence placed before it on the question of medical examination, lodging of FIR, etc., held as under :-

"23. In the instant case, admittedly the evidence of the Doctor is that there was no visible injury on the victim girl and the victim girl could have had sexual intercourse in the past. The evidence of the Doctor is on the basis of his examination of the victim girl. Nowhere it is suggested that there was a penetrative sexual assault on the particular day. May be this was due to the fact that the girl was taken to the hospital after a delay of three days and the complaint itself was lodged only on that day i.e., after three days. Another important thing



which this Court has to see is that there were no material objects recovered or marked in the trial. In the absence of such material objects establishing the fact of sexual assault, the prosecution theory of committing offence under the provisions of POCSO Act becomes questionable. Admittedly, the clothes worn by the victim girl were subsequently washed and burnt as per the evidence of PW2. Unfortunately, the investigating officer was not alert enough to recover the clothes worn by the victim girl on the date of occurrence. May be, at the time when the complaint was lodged after three days, it became too late for the investigating officer to recover any such clothes or the material objects, since PW2 herself has stated that the clothes were burnt in the meanwhile. It is also an admitted fact that Panchayat was held in the village between the date of occurrence and the date of lodging of complaint and although it was not clear as to what transpired in the Panchayat, but it can be reasonably inferred that the relationship of the appellant/accused and the victim girl ought to have been the topic of discussion in the Panchayat. Further, as rightly contended by the learned counsel appearing for the appellant/accused, the reason given for lodging the complaint after three days from the date of occurrence, is not acceptable, as on the same date of occurrence, PW2 the mother of the victim girl, had gone to the house of the accused along with two male members, one happened to be a close relative and what prevented them from lodging a complaint immediately thereafter was not properly explained, except stating that there was no male member in the family. Any delay in lodging of a complaint will always raise serious doubt about the theory of prosecution. One other factor this Court has to seriously take note of is that both Constables, who had accompanied the accused, for medical examination, viz., PW15 and PW10 have stated that after examination, the accused was left in the Borstal School. In which event, the age of the accused was not properly ascertained, so as to come to a conclusion as to whether the accused himself was a minor or not. No proper medical certificate has been obtained by subjecting the victim girl for medical examination in order to establish the fact of sexual assault on her. In such a case, the opinion of the Doctor assumes larger significance and in this case, the opinion of the Doctor, viz., the evidence PW9



hardly supports the case of the prosecution. The Doctor has clearly stated in his evidence that the hymen of the victim girl was not intact in view of the fact that she could have had sexual intercourse earlier on several occasions and there was absolutely no injury suffered by the victim girl.

24. Although there is no doubt that the trial Court can place reliance on the cogent evidence given by the victim girl herself in order to come to a conclusion in respect of the offences under the POCSO Act, particularly with reference to the presumption in favour of the prosecution, at the same time, one cannot lose sight of the fact that the evidence of the victim girl, in all probabilities, must establish the ingredients of Section 3 of the POCSO Act, warranting conviction under Section 4 of the POCSO Act. After all, the victim girl being a minor could have exaggerated the incident unwittingly from peer pressure.

25. From the materials and the evidence and the submissions made on behalf of the counsels on both sides, this Court is of the considered view that the investigation has not been properly conducted. May be it was due to the fact that the victim girl's family had approached the police belatedly after three days of the date of occurrence, and no clinching evidence has been produced in order to support the evidence of PW1. This was more so when two young classmates of the victim girl have turned hostile and refused to acknowledge the initial fact that they accompanied the victim girl on the date of occurrence. The trial Court has held that the burden cast upon the accused under the provisions of the POCSO Act has not been discharged. This Court finds that such reason by the trial Court is without reference to lack of materials on the side of the prosecution. It is always possible for the defence to rely on the prosecution evidence to prove the contrary and in this case, in the opinion of this Court, the defence was able to establish that the incident could not have happened on that day. No doubt, the evidence of the victim girl cannot be brushed aside in its entirety as no motive could be attached to the young girl to come and depose in the trial. At the same time, in the facts and circumstances, the evidence of the victim girl appears to be not fully inspiring the confidence of this Court in view of several infirmities as



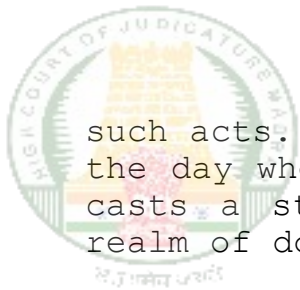
pointed out by the learned counsel appearing for the appellant/accused."

(Emphasis supplied)

27. Though certain other decisions have also been referred to by the learned counsel for the appellant, which this Court has noted above, however, it is not necessary to multiply the decisions, as the above decisions quoted above have clearly laid down the ratio in appreciation of evidence in a case involving penal provisions.

28. In the light of the ratio laid down relating to cases falling under the POCSO Act, more especially u/s 3 r/w 4 and 7 r/w 8 of the POCSO Act, the evidence of the victim gains more weight even in the absence of other corroborating and attributing factors, provided the said evidence inspires the confidence of the Court in which event, the ball falls in the court of the accused to discharge the presumption u/s 29 of the POCSO Act. Lack of inspiration in the evidence of the victim and the corroborating and attributing factors not coming to the aid of the victim in bolstering up her testimony would necessarily lead to the inference that the presumption u/s 29 of the POCSO Act stood discharged on the basis of the evidence let in by the prosecution and no separate evidence need to be let in by the accused to prove their innocence. Keeping the above said legal proposition in mind, this Court now proceeds to analyse the evidence of the prosecution witnesses as also the documentary evidences in relation to the evidence of the victim to see whether the conviction and sentence recorded by the trial court is justifiable.

29. Even according to evidence of P.W.1, while the complaint was lodged on 9.10.15, the sexual exploitation on the victim by the accused had taken way back on 26.9.15, 28.6.15 and 13.7.14. It is the evidence of P.W.1 that on seeing the victim crying, when enquired, P.W.1 was informed by the victim that she was verbally abused by A-1 and the victim had further gone on to state, on further enquiry by P.W.1, that she was sexually exploited by the accused on different occasions at different places. Though P.W.2, the victim had given specific dates on which she was sexually exploited, however, curiously it is seen that the time when the said act of sexual exploitation was committed has not been given by the victim. Even according to the prosecution, the victim is a student studying in school and that P.W.1 is a working mother, who returns home from work by 5.30 p.m. every day. Therefore, the time when the sexual exploitation, as alleged, has taken place gains much more significance. When the victim is able to remember the dates when such alleged acts have taken place with ease, then equally the victim should also be able to remember about the time when such acts were perpetrated on her. However, her evidence is silent on this aspect and more so, the prosecution has not put any particular questions to the victim with regard to the time of commission of

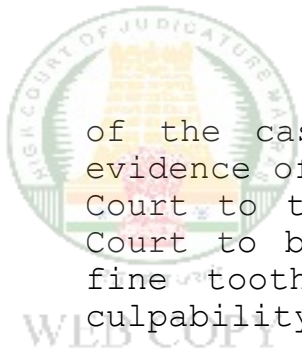


such acts. Non-examination of the victim in chief about the time of the day when the sexual exploitation is alleged to have taken place casts a stigma on the prosecution theory and pushes it into the realm of doubt.

30. It is true that the evidence of the victim alone is suffice and corroborating and attributing factors need not be placed for rendering a conviction under the POCSO Act. However, the said ratio laid down in a catena of decisions is subject to just exceptions. The evidence of the victim should be such that it should leave no room for any doubt as to the evidence and the said evidence should inspire the confidence of the court that no amount of ambiguities otherwise would shake the substratum of the evidence of the victim. However, in the case on hand, contradictions galore in the evidence of P.W.s 1 and 2 vis-a-vis the evidence of P.W.s 12 and 13.

31. While it is the evidence of P.W.1 that on 8.10.15, at about 5.30 p.m., coming to know about the details of sexual exploitation from P.W.2, she immediately went to the police station and lodged a complaint and that the criminal machinery was set in motion. However, the evidence of P.W.12 is otherwise, as according to P.W.12, the Sub Inspector of Police, who registered the complaint and prepared the FIR, the said complaint was registered only on 9.10.15 at about 5.00 p.m., which is almost 24 hours after the time when P.W.2 had stated about giving the complaint. Further it is the evidence of P.W.1 and 2 that they were examined at the police station upto 12 midnight by the police officers and that the accused were taken to the police station between 0100 and 0200 hours on the early morning, however, the evidence of P.W.13, the Inspector of Police, who deposed on behalf of the investigation officer, the accused were arrested on 10.10.15 near Kaliyamman Koil. In fact, it is the evidence of P.W.2, the victim in this case, that the accused were in the police station when they lodged the complaint. These contradictions in the lodging of the complaint, which culminated in the registering of the FIR and the presence of the accused at the time of the lodging of the complaint, raises a grave doubt in the theory projected by the prosecution.

32. Further, the doubt in the dates relating to giving of the complaint and its consequent registration raises a doubt as to the real culpability of the accused in the commission of the offence. A cursory examination of Ex.P-1, the complaint alleged to have been given by P.W.1 reveals that it was given only on 9.10.15 and not on 8.10.15, as deposed by P.W.1. Neither any steps have been taken by the prosecution to address the contradiction, nor any explanation has been furnished by the prosecution explaining the delay in lodging the complaint, leading to the registration of the FIR. The above delay in lodging the complaint throws a doubt on the veracity



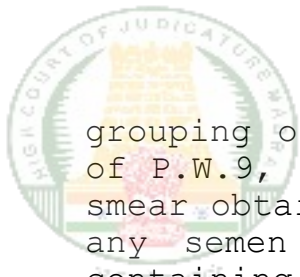
of the case projected by P.W.1. The said contradiction in the evidence of P.W.1, vis-a-vis the documentary evidence, leads to this Court to the irrefutable conclusion that it is necessary for this Court to browse through the evidence of P.W.2, the victim, with a fine toothed comb to appreciate its sufficiency in fixing the culpability on the accused.

33. Much reliance has been placed on the evidence of the victim to suggest that the said evidence, standing alone, is in itself sufficient to establish the charge against the accused. This Court has gone through the evidence of the victim in chief as also her evidence in cross. To say the least, the evidence in chief, to the mind of this Court, does not inspire confidence and it reveals only a parrot like version being stated by the victim, which can only be inferred as a tutored version and not otherwise. Further, the evidence of the victim clearly shows that her school starts at 9.00 a.m. and that she returns home after school at 3.30 p.m. It is to be remembered that P.W.1, after her work, returns home at 5.30 p.m. Therefore, time assumes significance in establishing the hand of the accused in sexually exploiting the victim. While the defence has elicited the time when the victim is at home and the possibility of sexual exploitation, however, for reasons best known, the prosecution has not taken any effort to establish the time when the sexual exploits are said to have taken place.

34. A conspectus reading of the evidence of P.W.s 1 and 2 as also the evidence of P.W.s 12 and 13 and taking into consideration the evidence of the victim leads this Court to the undeniable conclusion that the evidence of the victim alone cannot be sufficient in the present case to establish the charge against the accused.

35. The last piece of jigsaw in the case of the prosecution is the medical evidence, both oral and documentary. According to the prosecution, it is the evidence of P.W.s 1 and 2 that P.W.2 was sexually exploited, at least thrice, by the accused. A perusal of Ex.P-8, accident register, reveals that the hymen of the victim was not intact, meaning thereby, that the victim has already been subjected to sexual pleasure, either voluntarily or through pressure. However, it is the case of the prosecution that the offence of sexual assault has been perpetrated on the victim. However, Ex.P-8 reveals that there are no external injuries on the private parts of the victim.

36. The evidence of P.W.7, the doctor, who examined P.W.2 also is to the same effect as Ex.P-8. P.W.7 has categorically deposed that the victim was subjected to sexual pleasure. It is the further evidence of P.W.7 that the smear of P.W.2, when subjected to serological test returned a negative result to the effect that



grouping of the semen was not conclusive. Similarly, the evidence of P.W.9, the forensic analyst, who tested the swabs containing the smear obtained from P.W.2 has deposed that the smear did not contain any semen and had further deposed that analysis of the slides containing the semen of the A-1 and A-2, the blood group was not detectable and to that effect had issued Ex.P-12. Therefore, from the above evidence, it is categorically clear that the involvement of the accused in the alleged offence has not been established by the prosecution, except for the evidence of P.W.s 1 and 2, which suffers with grave contradictions.

37.From an overall analysis of the evidence, both oral and documentary, it is manifestly clear that the case projected by the prosecution by the accused does not fall short of evidence, but it is clearly a case of no evidence. The contradictions in the evidence of P.W.s 1 and 2, the medical evidence, which does not in any way further the case of the prosecution, except for the fact that the victim had been subjected to sexual exploitation coupled with the delay in lodging the complaint clearly stares at the prosecution theory and this Court is left with no other alternative but to set aside the conviction and sentence awarded by the Court below.

38.In the result, the criminal appeal is allowed. The conviction and sentence imposed on the appellant/A-2 by the Sessions Judge, Fast Track Mahila Court, Virudhunagar @ Srivilliputtur, in Spl. S.C. No.1/2016 dated 06.08.2019 are set aside and the appellant/A-2 is acquitted of all the charges framed against him. It is reported that the appellant is on bail. Bail bonds, if any, executed by the appellant/A-2 shall stand cancelled. Fine amounts, if any, paid by the appellant/A-2 shall stand refunded. Consequently, connected miscellaneous petition is closed.

Sd/-

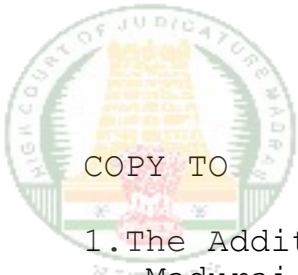
Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar(CS)

TM
To

- 1.The Sessions Judge, Fast Track Mahila Court, Virudhunagar at Srivilliputtur.
- 2.The Superintendent of Prison, Central Prison, Madurai.
- 3.The Inspector of Police, All Women Police Station, Sattur, Virudhunagar District.



COPY TO

1.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

2.The Section Officer, Criminal Records,
Madurai Bench of Madras High Court, Madurai.(2 COPIES)

+1CC TO MR.I.PINAYGASH, Advocate Sr. No. 92176

**PRE-DELIVERY JUDGMENT IN
CRL. A (MD) NO. 386 OF 2019
Pronounced on 16.10.2019**

TR(18.10.2019) 15P 8C