

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.07.2020

Delivered on : 31.07.2020

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

Crl.A.Nos.19 and 55 of 2019

and

Crl.M.P.Nos.16099 of 2019 & 3243 of 2020

M.Rajkumar ... Appellant/A1  
S/o.Maruthamuthu in Crl.A.No.19 of 2019

K.Jaishankar ... Appellant/A2  
S/o.Kadirvel in Crl.A.No.55 of 2019

Vs.

State represented by  
The Inspector of Police,  
Organized Crime Unit,  
Crime Branch CID,  
Coimbatore City. ... Respondent  
in both Criminal Appeals

Criminal Appeals filed under Section 374(2) Cr.P.C.,  
praying to set aside the judgment of conviction and sentence,  
dated 28.12.2018, in S.C.No.404 of 2018, on the file of the  
Special Court for cases related to Elected Members of  
Parliament and Members of Legislative Assembly of Tamil Nadu,  
Chennai.

For Appellant : Mr.ARL.Sundaresan  
Senior Counsel  
for Mr.R.Vivekanandan  
in Crl.A.No.19 of 2019

: Mr.R.Vijayakumar  
in Crl.A.No.55 of 2019

For Respondent: Mr.A.Natarajan  
State Public Prosecutor  
Assisted by Mrs.Kritika Kamal.P.  
Government Advocate (Crl. Side) &  
Mr.M.Mohammed Muzammil  
Government Advocate (Crl. Side)  
in both the appeals

## C O M M O N    J U D G M E N T

These Criminal Appeals have been filed with a common prayer to set aside the judgment of conviction and sentence, dated 28.12.2018, passed by the Sessions Judge, Special Court for cases related to Elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai, in S.C.No.404 of 2018.

2. Originally, seven accused were prosecuted for various offences punishable under Sections 120-B, 363-A, 109 r/w. 363-A, 417, 376, 304, 201 r/w. 304, 465, 304 r/w. 109 IPC and Section 24(1) of the Juvenile Justice (Care and Protection of Children) Act r/w. Section 109 IPC. The trial Court, by impugned judgment, has acquitted A3, A4, A6 and A7 of all the charges framed against them. The charges against A5 were abated, as A5 died during the course of trial. A1 and A2 were convicted and sentenced by the trial Court as follows :

| Accused                                           | Provision under which convicted | Sentence                                                                                                                                  |
|---------------------------------------------------|---------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|
| A1                                                | Section 376<br>IPC              | Rigorous imprisonment for ten years and also a fine of Rs.10,000/-, in default, to undergo simple imprisonment for three months           |
|                                                   | Section 304<br>IPC              | Rigorous imprisonment for ten years and also a fine of Rs.10,000/-, in default, to undergo simple imprisonment for three months           |
| A2                                                | Section 417<br>IPC              | Rigorous imprisonment for one year and also a fine of Rs.2,000/- each, in default, to undergo simple imprisonment for one month           |
| A1 & A2                                           | Section 120-B<br>IPC            | Rigorous imprisonment for ten years each and also a fine of Rs.10,000/- each, in default, to undergo simple imprisonment for three months |
| The sentence of A1 and A2 shall run concurrently. |                                 |                                                                                                                                           |

3. Aggrieved by the said conviction and sentence, A1 has preferred the appeal in CrI.A.No.19 of 2019 and A2 has preferred the appeal in CrI.A.No.55 of 2019 before this Court.

4. The factual matrix leading to filing of these two

appeals in brief, is as follows:-

4.1. The deceased minor girl, aged 15 years, daughter of P.W.1 and P.W. 2, was residing with her parents at Kerala.

4.2. On 22.06.2012, P.W.1 brought her minor daughter along with A5 to Perambalur and handed her over to the custody of A1, an ex-MLA of Perambalur and a member of DMK political party, to work in his house and also to give her better education, besides she would have the company of A1's minor daughter. A2 arranged for lodging of P.W.1 and his daughter at Perambalur. Next day, P.W.1 left his daughter in the house of A1 at Perambalur and left for Kerala. The girl stayed in the house of A1 under his custody from 23.06.2012 to 28.06.2012.

4.3. On 28.06.2012, the girl fell ill and she was admitted in private hospital viz., SKS Hospital, Perambalur, by A1's wife and mother, as the girl was suffering from severe breathing problem. Since the health condition of the patient was serious, P.W.26, the doctor who treated the girl and the hospital authorities advised them to take her to Government Hospital. However, on the request of A1's wife to give atleast first aid to the girl, P.W.26 gave first aid. P.W.27, X-Ray Technician, working under P.W.26, took X-Ray of the deceased. P.W.28, Lab Technician working under P.W.26, took blood test of the girl in the hospital. The deceased girl also informed her name to P.W.28. P.W.29, a Nurse working under P.W.26, also saw the deceased in the hospital.

4.4. Since the girl's health condition was worsening, she was discharged from SKS Hospital, Perambalur, and was taken to Dhanalakshmi Srinivasan Medical College Hospital, Perambalur, in the midnight of the same day, i.e. on 28.06.2012.

4.5. P.W.30 was the Medical Officer working in Dhanalakshmi Srinivasan Medical College Hospital, Perambalur, at the relevant point of time. As the girl was suffering from severe breathlessness, she was put in ventilator support and P.W.30 also verified the medical prescription issued by P.W.26. As the parents of the victim girl were not available at the relevant time, the hospital staff obtained consent from Jaishankar (A2) vide Exs.P10 and P11 for treating the deceased.

4.6. In the meanwhile, A2 called P.W.1 through telephone and informed him that his daughter was not well and asked him to come to Perambalur. P.W.1, immediately sent his wife, P.W.2, to Perambalur. P.W.2 arrived at Perambalur on 29.06.2012 and reached the Dhanalakshmi Srinivasan Medical College Hospital, Perambalur, and found her daughter serious.

4.7. According to P.W.31, who was also a Medical officer working in Dhanalakshmi Srinivasan Medical College

Hospital, Perambalur, the girl was given treatment in their hospital and thereafter, was referred to Trichy hospital.

4.8. The case sheet in respect of the deceased girl was marked as Ex.P13.

4.9. P.W.32, Gynaecologist working in the same hospital examined the girl and collected her vaginal swab for examination, but found no semen or spermatozoa in the swab, however, the report indicates the presence of excessive epithelial cells and pus in vagina.

4.10. P.W.33, a Medical Officer attached to Dhanalakshmi Srinivasan Medical College Hospital, on investigation of the blood sample and other reports in respect of the girl, found that an enzyme called pseudocholinesterase was found in excess in the blood of the girl and also found that the patient may not be asthmatic.

4.11. According to P.W.34, Professor in Dhanalakshmi Srinivasan Medical College Hospital at the relevant point of time, the deceased was under ventilator support in the hospital.

4.12. P.W.35, a Medical officer attached to Dhanalakshmi Srinivasan Medical College Hospital, on the midnight of 28.6.2012, examined the girl and found that she was having breathing problem and she was unconsciousness and hence, he kept the girl in ventilator support and referred her to Intensive Care Unit. He also suspected that the girl might have consumed poison. The case sheet (Ex.P13) shows that certain entries were made on his instructions.

4.13. P.W.36, a Medical Officer attached to Dhanalakshmi Srinivasan Medical College Hospital, also suspected OPC poisoning.

4.14. P.W.37 was the Project Coordinator in Dhanalakshmi Srinivasan Medical College Hospital, who had recorded the ingress and egress of the vehicle.

4.15. P.W.42, Assistant Professor in the same hospital also found the girl suffering from breathlessness.

4.16. P.W.51, a Medical Officer attached to Dhanalakshmi Srinivasan Medical College Hospital, found the oxygen level in the girl's body to be 60% and suspected that there was a possibility of cerebral hypoxia.

4.17. P.W.2, mother of the deceased girl, requested to discharge the girl in order to give her better treatment on the ground that the hospital was not treating her daughter

properly. Accordingly, the girl was discharged from the aforesaid hospital on 30.06.2012 at 12.00 noon and was taken to Kauvery Hospital, Trichy, on the same day at 15.02 hours. P.W.1 also arrived at Trichy.

4.18. P.W.38, Medical Officer attached to Kauvery Hospital, Trichy, treated the victim girl on 30.06.2012. On investigation, he found that there were excessive white blood cells numbering about 33,000 in the blood and therefore, he suspected cancer. They took CT scan and MRI Scan and found that there was swelling in brain. P.W.38 opined that, due to swelling of brain and excessive white blood cells, the girl would have suffered brain fever.

4.19. P.W.39, Neurologist attached to Kauvery Hospital, Trichy, on investigation of the MRI Scan, suspected brain fever and accordingly, treated the girl.

4.20. P.W.40, E.N.T. Specialist in Kauvery Hospital, also examined the victim girl and found that she had sinusitis problem and enquired P.W.2, mother of the deceased girl, for which, P.W.2 informed him that her daughter had only complained of head ache previously.

4.21. P.W.41, Supervisor of Kauvery Hospital, after investigation of CT Scan, suspected brain fever viz., meningitis and the victim girl was given body bath twice. On the basis of case file, he found that the girl was admitted for breathlessness.

4.22. As the health condition of the girl was deteriorating, the girl was discharged from Kauvery Hospital, Trichy and was admitted in the Government Medical College Hospital, Theni, on the same day, i.e. on 04.07.2012 at 09.00 p.m.

4.23. P.W.43, Medical Officer in Government Medical College Hospital, Theni, admitted the deceased in their hospital and registered the Accident Register. Despite treatment in the Intensive Care Unit, the girl died on 05.07.2012 in the Government Medical College Hospital, Theni.

5. P.W.1, father of the deceased girl, lodged a complaint (Ex.P33) with the Perambalur Police Station. On receipt of the complaint, P.W.60, Sub-Inspector of Police, Perambalur Police Station, registered an FIR (Ex.P34) in Perambalur Police Station Crime No.855 of 2012 under Section 174 Cr.P.C. on 07.07.2012.

6. P.W.60 took up the investigation and went to the place of occurrence and prepared Observation Mahazar (Ex.P35) and Rough sketch (Ex.P36). He conducted inquest over the dead body of the deceased girl and prepared inquest report (Ex.P37). He also gave a requisition to conduct autopsy on

the dead body of the deceased girl. P.W.60 also gave a special report (Ex.P38) to the jurisdictional Magistrate in this regard.

7. On receipt of the request made by P.W.60, P.W.53, Medical Officer attached to Government Medical College Hospital, Theni, conducted autopsy over the dead body of the deceased girl and issued the post-mortem certificate (Ex.P26). However, she reserved her final opinion pending pathological, microbiological and chemical examination.

8. The visceral organs of the deceased and the vaginal swab were sent to Forensic Sciences Department for chemical examination. P.W.63, Scientific Officer, Forensic Sciences Department, issued a report Ex.P45 stating that no semen or spermatozoa was found in the vaginal swab of the deceased girl. P.W.66, Junior Scientific Officer, Forensic Sciences Department, issued a report Ex.P64 stating that no poison was detected in the visceral organs of the deceased girl. After post-mortem, the dead body was handed over to P.W.1.

9. Thereafter, on receipt of the forensic reports, P.W.53 issued her final opinion (Ex.P27) stating as follows :

"the deceased would appear to have died of vaginal injury and its complications thereof".

Besides, she also answered certain questions raised by the Investigating Officer with regard to the post-mortem certificate, vide Exs.P28 and P29.

10. However, the villagers where P.W.1's family reside, developed suspicion in the death as well as in the post-mortem conducted on the deceased and therefore, created commotion and agitation in Kerala and at the instance of M.L.A. of their area, P.W.11, a neighbour and friend of P.W.1, lodged a complaint with Kerala Peerumade Police Station and a separate FIR in Crime No.665 of 2012 (Ex.P42) was registered on 08.07.2012.

11. The Inspector of Police, Peerumade Police Station, took up the investigation and examined the parents and teachers of the deceased and prepared inquest report (Ex.P43). He also gave a requisition for re-post-mortem of the deceased.

12. On his request, P.W.55 and P.W.56, Medical Officers of Department of Forensic Science, Government Medical College, Kottayam, Kerala, conducted joint post-mortem on the body of the deceased girl and issued the second post-mortem certificate (Ex.P31). After receipt of report from the Forensic Science laboratory, they gave their final opinion (Ex.P32) stating that the deceased girl died due to pneumonia.

13. P.W.61, Inspector of Police, Perambalur Police Station, continued the investigation in Perambalur Police Station Crime No.855 of 2012, examined witnesses and recorded their statements. Thereafter, the Inspector of Police submitted the alteration report (Ex.P40), altering the case from Section 174 Cr.P.C. to Sections 366-A, 376 and 302 IPC. The case was transferred to CBCID for further investigation vide Ex.P65.

14. On the alleged confession made by A1 (Ex.P66), the CBCID Police seized a white colour blood stained underwear (jatti) (M.O.1) kept inside two polythene bags and a letter dated 04.07.2012 (M.O.2) allegedly written by P.Ws.1 and 2 kept inside two polythene bags, from behind the house of A1, under the cover of seizure mahazar (Ex.P24) in the presence of witnesses.

15. P.W.64 conducted potency test on A1 to A4 and issued potency certificates vide Exs.P50 to Ex.P57. The blood stained underwear (M.O.1) along with seminal stain and salivary stain of A1 to A4 were sent to Forensic Sciences Department for examination. P.W.63, Scientific Officer, Forensic Sciences Department, issued a report Ex.P44 stating that no semen or spermatozoa was found in the blood stained underwear (M.O.1). P.W.65, Scientific Officer, Forensic Sciences Department, vide reports Exs.P58 to P63, opined that the blood grouping tests were inconclusive.

16. P.W.62, Deputy Superintendent of Police, Idukki District, Kerala, took up the further investigation in Peerumade Police Station Crime No.665 of 2012, examined witnesses and recorded their statements and submitted alteration report, altering the case from Section 174 Cr.P.C. to Sections 109, 363 r/w. 34 IPC, Sections 23 and 26 of Juvenile Justice (Care and Protection of Children) Act. Mr.M.N.Ramesh, Deputy Superintendent of Police, filed final report in Crime No.665 of 2012.

17. However, based on the requisition made by CBCID, Coimbatore District, Tamil Nadu, the case files in Kerala Peerumade Crime No.665 of 2012 were transferred by Kerala police to Tamil Nadu police.

18. After completing the investigation, collecting various reports and examining various witnesses, the CBCID Police filed a final report in Crime No.855 of 2012 before the Judicial Magistrate, Perambalur, in P.R.C.No.1 of 2013, for the offences under Sections 120-B r/w. 363, 417, 376 and 304 IPC and Section 24(1) of the Juvenile Justice (Care and Protection of Children) Act r/w. Section 34 IPC and Section 109 IPC, against the accused.

19. On 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 S.C.No.48 of 2014 and was made over to the Sessions Judge, Mahila Court, Perambalur, for trial.

20. The trial Court framed charges against the accused as follows:

- i.A1 to A7 were charged for the offence under Section 120-B IPC.
- ii.A1 to A3 and A5 to A7 were charged for the offence under Section 363-A IPC.
- iii.A4 was charged for the offence under Section 109 r/w. 363-A IPC.
- iv.A2 to A7 were charged for the offence under Section 417 IPC.
- v.A2 to A7 were charged for the offence under Section 24(1) of the Juvenile Justice (Care and Protection of Children) Act r/w. Section 109 IPC.
- vi.A1 was charged for the offence under Section 24(1) of the Juvenile Justice (Care and Protection of Children) Act.
- vii.A1 was charged for the offence under Section 376 IPC.
- viii.A1 was charged for the offence under Section 304 IPC.
- ix.A2 was charged for the offence under Section 201 r/w. 304 IPC.
- x.A1 to A4 and A6 were charged for the offence under Section 465 IPC.
- xi.A2 to A4 and A6 were charged for the offence under Section 304 r/w. 109 IPC.

21. When questioned, the accused pleaded "not guilty".

22. To prove the case, the prosecution examined 67 witnesses and marked 71 Exhibits and two Material Objects.

23. When the accused were questioned under Section 313 Cr.P.C., A1 submitted his detailed explanation. On the side of the accused, no witness was examined, however, Ex.D1 was marked to show that the deceased girl was already treated, before she came to the house of A1.

24. Since A1 in this case is an ex-MLA, the case was transferred to the Special Court for cases related to Elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai, and was renumbered as S.C.No.404 of 2018.

25. During the course of trial, A5 died and hence, the charges against A5 were abated.

26. After considering the oral and documentary evidence on record and hearing either side, the trial Court, by judgment dated 28.12.2018, in S.C.No.404 of 2018, acquitted

A3, A4, A6 and A7 of all the charges, but convicted A1 of the offences under Sections 376, 304 and 120-B IPC and sentenced him to undergo rigorous imprisonment for a maximum term of 10 years and a total fine of Rs.30,000/- and also convicted A2 of the offences under Sections 120-B and 417 IPC and sentenced him to undergo rigorous imprisonment for a maximum term of ten years and a total fine of Rs.12,000/- (stated supra).

27. Challenging the conviction and sentence, A1 and A2 have individually filed these two appeals before this Court.

28. The learned Senior counsel Mr.ARL. Sundaresan appearing for A1/appellant herein vehemently contended that the charge against A1 that A1 conspired with other accused to bring the deceased minor girl to his house in order to exploit her sexually is baseless as there is no piece of evidence even for any inference. His main contention is that the entire case is the result of false implication at the behest of a member of Communist Party at Kerala. Admittedly, P.W.1, father of the deceased minor girl, himself brought the girl to A1's house voluntarily with a fond hope of giving better education to his daughter, so also, his daughter would have a company of A1's daughter who is of similar age. Unfortunately, since the deceased minor girl was suffering breathlessness, she was admitted in hospital. Despite best treatment given by various hospitals, she had succumbed to pneumonia. This is the only circumstance which led to filing of this case. The victim minor girl was staying in A1's house at Perambalur for only four days. The evidence of P.W.1 clearly indicates that he has gone back to obtain Transfer certificate and the victim also telephoned to her father on 25.06.2012. She never alleged anything about the alleged assault made by the accused. Absolutely, there is no evidence to prove the conspiracy or sexual assault by the appellant/A1.

सत्यमेव जयते  
28.2. The learned Senior Counsel further contended that the medical evidence clearly shows that the deceased minor girl suffered many complications and the doctors who examined her even found it very difficult to identify the nature of complication from which she was suffering. The victim girl was admitted in four hospitals in Tamil Nadu, wherein the Doctors who treated her suspected brain fever and also suspected OPC poisoning. However, they found that there were many complications in her body. Absolutely, there is no evidence for the alleged sexual assault by the appellant/A1. Appellant/A1's wife and mother admitted the deceased minor girl in hospital for breathing problem. The evidence of P.W.1 clearly shows that the deceased minor girl was suffering from breathing problem since very long time and she was even treated earlier for such ailment vide Ex.D1.

28.3. Hence, the contention of the learned Senior Counsel is that the evidence of all Medical Officers clearly show that the deceased suffered from various complications apart from bacterial infection in private parts and the same was admitted by P.W.53, who conducted post-mortem on the body of the deceased minor girl. The post-mortem report (Ex.P26) indicates that the deceased minor girl died due to injuries in vagina and its complications, but the evidence of Medical Officers clearly indicate that the injuries in private parts may also be due to bacterial infection and also due to unhygienic conditions. Hence, the learned Senior Counsel submitted that merely on the basis of the evidence of P.W.53, A1 cannot be punished for grave and serious offences of rape and culpable homicide under Sections 376 and 304 I.P.C.

28.4. Further, it is the contention of the learned Senior Counsel that, all the Medical Officers who treated the deceased minor girl categorically stated that there were no external injuries on the body of the deceased minor girl from the inception of admission. Gynecologist report also indicates that no semen or spermatozoa was found in the vagina. Exs.P44 and P45 also prove the same. Even P.W.53 admitted that the deceased died due to cerebral hypoxia.

28.5. The learned Senior Counsel further contended that the joint re-post-mortem conducted by Dr.Zachariah Thomas (P.W.55), Assistant Professor, Forensic Medicine, and Dr.Jiju.V.S. (P.W.56), Lecturer, Forensic Medicine, at Government Medical College at Kottayam, Kerala, also indicates that the deceased died due to pneumonia.

28.6. Hence, the contention of the learned Senior Counsel is that the prosecution failed to establish the alleged occurrence, and merely because the victim minor girl was in the custody of A1, the charges cannot be inferred against A1.

28.7. The learned Senior Counsel concluded his arguments by submitting that the trial Court, without any evidence, has convicted the appellant/A1 and hence, the judgment of the trial Court is liable to be set aside.

29. The learned counsel appearing for the appellant/A2 submitted that there is no piece of evidence even to infer the conspiracy against the appellant/A2. Merely because A2 was present during treatment in hospital and signed some papers in the hospital, giving consent for treatment, as required by the hospital, conspiracy cannot be presumed against A2. P.W.1 himself has stated in his evidence that he voluntarily brought his daughter to A1's house. Therefore, implicating the appellant/A2 for the grave crime with the aid of Section 120-B IPC is baseless and without any evidence.

29.2. The learned counsel further submitted that the trial Court itself has recorded its finding at Paragraph No.149 of the impugned judgment as follows :

"149.As far as this case is concerned, there is no evidence that the accused persons A.2 to A.4 and A.6 abetted the 1<sup>st</sup> accused to do the illegal act and thereby the death was caused."

Having recorded such a finding, the trial Court convicted the appellant/A2 for the offence under Section 120-B IPC. Such finding is against the well settled position of law and is without any evidence.

29.3. It is further contended by the learned counsel that the case of the prosecution is that the accused have conspired one week prior to the occurrence at Perambalur to bring the victim girl to A1's house to exploit her sexually. Absolutely, there is no piece of evidence whatsoever on the side of prosecution to prove the alleged conspiracy. Merely because the appellant/A2 visited the hospital after the alleged occurrence, his visit itself cannot be an evidence to prove conspiracy. There cannot be continued conspiracy since the alleged occurrence was already over. Therefore, the conviction of the appellant/ A2 is without any basis.

29.4. The learned counsel contended that, to convict the appellant/A2 under Section 417 IPC also, absolutely there is no evidence on the side of prosecution, and hence, the judgment of the trial Court is liable to be set aside.

30. Per contra, the learned State Public Prosecutor appearing for the State vehemently contended that the appellant/A1 conspired with the other accused in order to exploit the minor girl sexually, who hailed from a poor family at Kerala, lured her parents (P.W.1 and P.W.2) under the pretext of giving good education to their daughter, and brought the minor girl to his house with the aid of A2 and others. Within four days of her arrival, she had been admitted in hospital for the alleged breathlessness. However, the post- mortem report (Ex.P26) clearly indicates that there were severe injuries in the vagina and she died due to such injuries and its complications.

30.2. The learned State Public Prosecutor further contended that P.W.1 and P.W.2 are poor parents of the victim minor girl. The various complications the victim minor girl suffered are the consequence of the sexual assault by the appellant/A1. Admittedly, the victim minor girl was under the custody of A1 at Perambalur which is not in dispute and she was admitted in private hospital viz., SKS Hospital, Perambalur, on 28.06.2012 by A1's wife and mother for the alleged breathlessness. Despite the advice of P.W.26 at SKS Hospital to take the girl to Government Hospital at the earliest, the deceased minor girl was again taken to a private hospital viz., Dhanalakshmi Srinivasan Medical College

Hospital at Perambalur at midnight and there was a delay of four hours. This is also one of the circumstance against the appellant/A1. There was no proper explanation from the appellant/A1 as to the delay in referring the deceased to the hospital. Therefore, the learned State Public Prosecutor submitted that the conduct of A1 in referring the deceased minor girl to hospital with a delay of four hours is significant under Section 8 of the Evidence Act.

30.3. The learned State Public Prosecutor fairly submitted that though there are many medical evidence from several witnesses right from P.W.26, the evidence of P.W.53, who conducted post-mortem on the body of the deceased alone assumes significance.

30.4. It is further contended that the Doctor (P.W.53), who conducted post-mortem, has noted several external injuries and three internal injuries. Since the nature of injuries have been properly explained to the accused, the burden lies on him to disprove the prosecution case. What transpired to the deceased minor girl after she came under the custody of A1 is exclusive and is only within the knowledge of the appellant/A1. Therefore, in the absence of any proper explanation from the appellant/A1 in this regard, the prosecution has established the case beyond reasonable doubt.

30.5. It is the further contention of the learned State Public Prosecutor that, though initially, Doctors found that the deceased minor girl would have suffered breathlessness and asthma, P.W.33, Medical officer, ruled out such Asthma, whereas they suspected poisoning. Despite all these happenings, no intimation whatsoever was given to the police. Though P.W.2, mother of the victim minor girl, came to the hospital, she has no knowledge as to what did happen in the hospital. Therefore, the medical evidence given by the Doctors at private hospitals cannot be given much importance because each evidence is contradicting the other. The treatment given by them was based on the tests performed on the victim minor girl from time to time. There was no conclusive evidence as to the victim girl's health condition at any of the three hospitals. Therefore, such evidence cannot be given much importance, whereas P.W.53, the Doctor who conducted post-mortem, has clearly spoken about the external injuries which are ante-mortem in nature and also on private parts. The evidence of P.W.55 and P.W.56, who conducted the second post-mortem on the body of the deceased should not be given much credence, since some of the organs were removed during first post-mortem, and they were not available for examination during second post-mortem. Therefore, any opinion given by P.W.55 or P.W.56 about the cause of death will not affect the prosecution case.

30.6. It is further contended by the learned State Public Prosecutor that, when P.W.53 has noted internal injuries in the genitals and pelvic organs, immediately after the death of the victim girl, the evidence of other Doctors have no relevance at all. Further, it is contended that Ex.D1 cannot be given much importance as the Doctor who issued the certificate Ex.D1 was not examined in this regard. Failure of the accused to give any explanation as to the nature of injuries sustained by the deceased minor girl provides additional link to the chain of circumstances.

30.7. The learned State Public Prosecutor further submitted that the appellant/A2 is the main conspirator who participated in the conspiracy from the very beginning. The evidence of P.W.1 clearly shows that the appellant/A2 arranged lodging for P.W.1 at Perambalur and thereafter, he informed P.W.1 that the deceased fell ill. The evidence of P.W.6 and P.W.7 proves that the appellant/A2 travelled by Innova Car to Kerala and the evidence of P.W.9 indicates that the appellant/A2 went to Kerala on 20.06.2012 and 27.06.2012 and the evidence of P.W.54 proves that the Innova car passed through Toll Gate. Further, the appellant/A2 had also given consent for treatment in the hospital, vide Exs.P10 and P11. All these factors clearly prove that the appellant/A2 participated in the conspiracy along with the appellant/A1.

30.8. In support of his submissions, the learned State Public Prosecutor relied upon the following judgments of the Hon'ble Supreme Court of India :

1. Prakash v. State of Madhya Pradesh [2006 (13) SCC 508]
2. Ash Mohammed v. Shiv Raj Singh and Ors. [2012(9) SCC 446]
3. Neel Kumar v. The State of Haryana [2012 (5) SCC 766]
4. State of Rajasthan v. Kashi Ram [2006 (12) SCC 254]

30.9. The learned State Public Prosecutor concluded his arguments by submitting that the judgment of the trial Court does not suffer any infirmity and these two appeals filed by A1 and A2 are liable to be dismissed.

31. This Court gave its anxious consideration to the submissions made by the learned counsel appearing for the appellants and the learned State Public Prosecutor appearing for the State, and also carefully perused the evidence and materials available on record.

32. The crux of the charges as discernible from the materials available on record is that the appellant/A1, ex-MLA belonging to DMK Political Party, along with the appellant/A2 to A7, conspired to bring the victim minor girl, daughter of

P.W.1 and P.W.2, belonging to Kerala, lured her parents under the pretext of giving good education to their daughter and brought the victim minor girl to the house of A1 at Perambalur District. The minor girl was under the custody of the appellant/A1 from 23.06.2012 till 28.06.2012. The appellant/A1 subjected the minor girl to sexual assault and exploited her on several occasions resulting in the minor girl sustaining injuries in her private parts and she was admitted in a private hospital. Thereafter, the girl was taken to two other private hospitals, and finally to Government Medical College Hospital, Theni, where she succumbed to the injuries on 05.07.2012.

33. Though the prosecution has examined as many as 67 witnesses and marked 71 Exhibits and 2 Material Objects, the entire prosecution case mainly rests only on circumstantial evidence. The trial Court, though having framed various charges against the accused persons, viz., A1 to A7, acquitted A3, A4, A6 and A7, but convicted A1 of the offences under Sections 376, 304 and 120-B IPC and A2 of the offences under Sections 417 and 120-B IPC.

34. It is pertinent to note that, as against the acquittal of the accused other than A1 and A2 of all the charges and also the acquittal of A1 and A2 of some of the charges, the prosecution have not filed any appeal challenging the same.

35. Now this Court has to proceed with the charges one by one, under which A1 and A2 are convicted by the trial Court.

36. Firstly, this Court proceeds to decide the charge of conspiracy against A1 and A2 under Section 120-B IPC.

37. Charge under Section 120-B IPC:

37.1. The specific charge of the prosecution under Section 120-B IPC is that, one week prior to 19.06.2012, the accused A1 to A7 hatched a conspiracy at Perambalur to bring the victim girl to A1's house under the pretext of giving better education to her, but to exploit her sexually. Pursuant to such conspiracy, A2 and A3, with the help of A4, arranged an Innova Car bearing Registration No.TN-01-AD-1974, and went to the place called Kuttikkanam in Kerala and stayed there for two days, i.e. on 20.06.2012 and 21.06.2012 and brought the girl to A1's house.

37.2. To prove the charge of conspiracy, the prosecution has mainly relied upon the evidence of P.Ws.1, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 20 and 54 and Exs.P2, P5 to P7, P10 and P11.

37.3. Therefore, it becomes necessary to ascertain as to whether the oral and documentary evidence relied upon by

the prosecution and the circumstances and sequence of events relied upon by the trial Court are helpful in proving the charge of conspiracy against A1 and A2.

37.4. The evidence of P.W.1, father of the victim girl, when read in entirety, indicates that he had voluntarily brought the child to the house of A1 in order to give her better education; when he reached Perambalur, A2 made arrangements for staying in a lodge; thereafter, on 23.06.2012, the girl was left in the house of A1 and P.W.1 went back to his native. In the entire evidence of P.W.1, he never whispered anything about A2 that he (A2) lured or enticed him to bring the girl to A1's house. From the entire evidence of P.W.1, except the statement that A2 made some arrangements for their stay in the lodge, nothing else can be culled out to show that either P.W.1 or P.W.2 (wife of P.W.1), or the family members of P.W.1, were lured to bring the girl to A1's house. The entire evidence of P.W.1, when read in entirety, makes it very clear that P.W.1 has voluntarily brought the child to Perambalur with the help of A5, who is a resident of the same village where P.W.1 resides, and after leaving the child in the house of A1, he immediately went back to his native to obtain the Transfer Certificate from the school where the deceased girl was studying. The evidence of P.W.1 is also silent as to the charge of the prosecution that A1 or A2 met him in their village at the relevant point of time. Therefore, the evidence of P.W.1 is of no help to the prosecution to prove the charge of conspiracy.

37.5. P.W.2 has never supported the case of prosecution in any manner.

37.6. P.W.3, sister of the deceased, has also spoken nothing about the prosecution version, so also P.W.4 and P.W.5, neighbours of P.W.1.

37.7. P.W.6, in his evidence, has stated that Jaishankar (A2) asked him to give him an Innova Car; he informed A2 that he has no Innova Car, but directed Jaishankar (A2) to meet one Ilayaraja (P.W.7). It is pertinent to note here that it is the specific case of the prosecution that A2 has hired the Innova Car through P.W.6. However, P.W.6, in his evidence, has only stated that he directed A2 to meet P.W.7 and nothing more.

37.8. P.W.7, who owns a Travel Agency in Perambalur, in his evidence, has never spoken anything about A2 meeting him. The entire evidence of P.W.7 indicates that one Mahendran and P.W.6 hired an Innova car from him. Therefore, the evidence relied upon by the prosecution to prove the alleged conspiracy in hiring the vehicle by A2 or A1 is not substantiated by any of the above witnesses.

37.9. P.W.8, a resident of Kerala, in his evidence, has stated that he knows Vijayakumar (A6); on 19.06.2012, Vijayakumar (A6) requested him to give one room. His evidence also does not indicate the presence of A2 in the lodge on 19.06.2012. Therefore, the alleged presence of A2, pursuant to the alleged conspiracy, is also not established by this witness P.W.8.

37.10. P.W.9, in his evidence, has stated that he is the Manager of Bigland Dew Castle Resort in Kerala; Vijayakumar (A6) asked two rooms for two days, i.e. on 20.06.2012 and 22.06.2012, and he allotted the rooms accordingly; thereafter, on 27.06.2012, Jaishankar (A2) came to the resort. His evidence also clearly indicates that Jaishankar (A2) came to the village for the purpose of purchase of property.

37.11. Though the prosecution has relied upon a register (Ex.P2) said to have been seized from P.W.9 to show that the accused A2 was staying in the lodge on 20.06.2012, it is relevant to note that in Sl.No.286 in Ex.P2, the name of Jaishankar (A2) has been inserted above the name of Vijayakumar (A6). This fact creates a doubt in the prosecution case. Though the prosecution have allegedly seized this register (Ex.P2), they have not chosen to establish the signature of Jaishankar (A2) in the said register Ex.P2. It is relevant to note that, even assuming to be true that A2 was present in the lodge at the relevant point of time, the above one circumstance cannot be a ground for the prosecution to presume the theory of conspiracy. The evidence of P.W.9 clearly indicates that A2 has informed him that he is visiting the village only in order to purchase a property. Therefore, this evidence (P.W.9) relied upon by the prosecution is not at all helpful to prove the conspiracy against A2 or A1.

37.12. P.W.10, classmate of the deceased, who studied with the deceased in Kerala, has clearly stated in her evidence that, on 22.06.2012, while the deceased was in the school, the deceased's parents took her home informing that their relatives have come. The deceased also informed P.W.10 that she is going to her native and she would not attend the school on Monday. Therefore, the evidence of P.W.10 is no way helpful for the prosecution to infer the alleged conspiracy.

37.13. P.W.11, P.W.12 and P.W.13 are the residents of Kerala and members of Communist Party of India, at whose instance, agitation was held in Kerala after the demise of the minor girl and a separate case was also registered in Kerala Peerumade Police Station Crime No.665 of 2012 on 08.07.2012 on the basis of the information lodged by P.W.11. The FIR has

been lodged separately at Kerala Peerumade Police Station on 08.07.2012 and P.W.62, Deputy Superintendent of Police, Idukki District, Kerala, investigated the matter and finally transferred the case files to the Investigating Agency in Tamil Nadu, who filed the charge sheet in this case. The evidence of P.Ws.11, 12 and 13, when read in entirety, do not show any semblance of conspiracy between the accused.

37.14. P.W.15, who was in-charge of Chidambaram Pillai Government Higher Secondary School, Peerumade at Kerala, where the deceased girl studied, in her evidence, has stated that the parents of the deceased voluntarily took the girl under the pretext of meeting their relatives.

37.15. P.W.16, a teacher in the same school, has also supported the version of P.W.15.

37.16. P.W.17, Tamil teacher in the same school, has stated in her evidence that, on 22.06.2012, the deceased's parents took the deceased to their house saying that their relatives have come. Therefore, these evidence also do not show any material to infer the conspiracy theory put forth by the prosecution.

37.17. P.W.20, Manager of New Everest Hotel and Lodge, Theni, in his evidence, has only stated about the stay of one Loganathan in their lodge on 05.07.2012. His evidence also does not appear to be helpful to the prosecution to prove the charge of conspiracy against the accused.

37.18. P.W.54, an officer working in the Trichy-Padalur Toll Plaza, in his evidence, has stated that an Innova Car bearing Registration No.TN-01-AD-1974 has crossed the Trichy-Padalur Toll Gate on 19.06.2012 and 23.06.2012. According to him, the vehicle proceeded towards Trichy on 19.06.2012 at about 06.10 p.m. and thereafter, returned towards Perambalur on 23.06.2012 at about 01.25 hours. The prosecution also filed a letter (Ex.P30) issued by National Highways Authority of India in this regard. This Court is not able to find any incriminating material from the evidence of P.W.54 or from the document Ex.P30 as against any of the accused. Both merely indicate that the vehicle bearing Registration No.TN-01-AD-1974 has passed through the Toll Gate on particular dates and there is no evidence as to who had travelled in the said vehicle and it cannot be presumed that A2 had travelled in the said vehicle. Even P.W.7, who lent the vehicle, has never stated anything about A2 and as discussed earlier, the evidence of P.Ws.6 and 7 do not prove the charge of conspiracy against A2. Merely based on a fact that the Innova Car has passed through the Toll Gate at the relevant point of time, it cannot be presumed that only A2 travelled in the vehicle. The trial Court has merely believed the evidence of P.W.6 and P.W.7 with regard to the hiring of the Innova Car and has come to the conclusion that A2 went to

Kerala and stayed there, without properly appreciating the entire evidence.

37.19. As far as Ex.P2 is concerned, the trial Court has not even checked the veracity of the same, which is only a photocopy filed by the prosecution and as stated supra, the trial Court has also failed to note that the name of Jaishankar (A2) has been inserted above the name of A6 and has found that it is one of the circumstances to find A2 guilty of the offence under Section 120-B IPC.

37.20. The prosecution has tried to prove the theory of conspiracy by relying upon the presence of A2 in the hospital when the deceased was admitted in Dhanalakshmi Srinivasan Medical College and Hospital, Perambalur, on 29.06.2012 and his signing of the consent letters (Exs.P10 and P11). The evidence of P.W.30 in this regard clearly indicates that, as the deceased was in critical stage at relevant point of time, in order to give her further treatment, as her parents were not available at the relevant point of time, the consent for treatment was obtained from Jaishankar (A2) vide Exs.P10 and P11. Therefore, this Court is unable to accept the contention of the learned State Public Prosecutor that the presence of A2 in the hospital while the deceased was admitted in the hospital also proves the conspiracy, since, there cannot be any continuous conspiracy since the alleged occurrence was already over. Conspiracy has to be proved with regard to the offence. From the evidence of P.W.30, it is very clearly seen that, as the deceased's parents were not available at the relevant point of time, the doctors, in order to proceed further, obtained consent from A2. In fact, it is seen from Exs.P10 and P11 that A2 has signed the consent only as guardian of the girl. Merely because A2 signed the consent as guardian of the girl for the purpose of further treatment, the prosecution cannot rely upon such act to prove the charge of conspiracy against him or A1. In fact, Ex.P10 indicates that the deceased was admitted in the hospital for serious breathlessness and in order to provide ventilator support, the doctors explained him of her serious condition and obtained consent from A2. Such a consent was obtained from A2, who was known to the girl as well as her father P.W.1, and who made arrangements for their stay in a lodge at Perambalur as per the version of P.W.1. When a person, who is already known to the girl and her parents, in the absence of the parents of the girl at relevant time, gives such consent for treatment for severe breathlessness, as required by doctors for treatment, the same cannot be taken as one of the circumstances to prove the alleged conspiracy against him. Giving such a consent for immediate treatment to a girl who is in critical stage is normal human conduct. Such instinct act of the person cannot be construed as one of the circumstances to prove the alleged conspiracy.

37.21. Hence, from the above discussion, this Court is of the view that none of the oral or documentary evidence relied upon by the prosecution proves the charge of conspiracy as against A1 or A2.

37.22. Further, the trial Court, in Para.No.80 of the impugned judgment, has recorded a finding that the Innova Car was driven by A3, for which, there is no evidence available on record. The trial Court, in fact, has recorded the said finding merely on surmises.

37.23. Similarly, in Para No.83 of the impugned judgment, the trial Court has recorded as follows :

"from the evidence of the witness it is clear that the accused A1 & A2 colluded with each other at the instigation of 1<sup>st</sup> accused the 2<sup>nd</sup> accused came in an Innova Car driven by the 3<sup>rd</sup> accused. A2 came to Peermade at Kerala and stayed at a lodge with the help of the local people i.e. 5<sup>th</sup> accused and taken a lodge and stayed and then they identified the victim-girl with the help of 5<sup>th</sup> accused."

Absolutely, there is no evidence to substantiate the aforesaid finding.

37.24. As discussed above, the evidence and the documents relied upon by the prosecution do not prove the guilt of any of the accused for the charge of conspiracy. Neither P.W.1 nor P.W.2 or the neighbours of P.W.1, had made any statement about the presence of A1 or A2 in their village. Moreover, as stated supra, the consent letter was given by A2 merely for the purpose of treatment of the girl at a critical condition, that too after the alleged occurrence, and that itself cannot be construed as a circumstance against A2 to prove his conspiracy with A1. Moreover, on a reading of the evidence on record, which were mainly relied upon by the prosecution to prove the theory of conspiracy, this Court is not able to find any material even to infer that the accused had conspired together one week prior to 19.06.2012 at Perambalur. There is no iota of evidence available on record to substantiate the same. Of course, this Court is also aware of the fact that direct evidence is not possible to prove the charge of conspiracy, since conspiracy normally hatched in secrecy. At the same time, the circumstances relied upon by the prosecution must be capable of establishing the link atleast to show the alleged conspiracy. The circumstances relied upon by the prosecution must be cogent, convincing and should lead only to the conclusion that the accused is guilty of particular charge, whereas, in this case, the circumstances relied upon by the prosecution are not substantiated by any legal evidence.

38. Besides 67 witnesses and 71 exhibits on the side of the prosecution, the trial Court has mainly relied upon the sequence of events and circumstances and has found A1 and A2

guilty of the charge of conspiracy. Now, this Court proceeds to discuss those circumstances one by one in detail :

38.1. The first circumstance relied upon by the trial Court is that P.W.1 was given false promise by the accused that his daughter (deceased) would be given better education. However, there is no evidence on record to show that A2 instigated P.W.1 to bring the victim girl to Perambalur on 23.06.2012. Therefore, the first circumstance relied upon by the trial Court is without any basis.

38.2. The second circumstance relied upon by the trial Court is that, though the girl was left in the house of A1 on 23.06.2012, she was not admitted in any school, as promised by the accused. It is to be noted that P.W.1 himself has clearly spoken in his evidence that he went back to Kerala only in order to get the Transfer Certificate from the school where the girl was studying and in the meanwhile, his daughter fell ill and P.W.2 was sent to Perambalur. Therefore, merely based on the fact that the girl was not immediately admitted in any school, the charge cannot be presumed. Hence, the second circumstance relied upon by the trial Court is also of no help to the prosecution.

38.3. The third circumstance relied upon by the trial Court is that the deceased girl spoke to her parents on 25.06.2012 and expressed her unwillingness to stay in the house of A1 and requested them to take her back home. This fact has not even been spoken by P.W.1 or P.W.2. They have never whispered anything about their daughter expressing her unwillingness to stay in the house of A1. Hence, the trial Court has gone in error in relying upon this circumstance.

38.4. The fourth circumstance relied upon by the trial Court is that, from 23.06.2012 till the girl was admitted in the SKS Hospital, Perambalur, i.e. on 28.06.2012, the girl was not admitted in any school by A1. As already stated above while discussing the second circumstance, it is relevant to note from the evidence of P.W.1 that he returned back to Kerala in order to get the Transfer Certificate from the school where the girl was studying. He has also stated in his evidence that the change of school was due to some eve-teasing problem that occurred in the school where the girl was studying. So, it is obvious that, even before getting the Transfer Certificate, it would not be possible to admit the girl in any of the school. Hence, the fourth circumstance relied upon by the trial Court also fails.

38.5. The fifth circumstance relied upon by the trial Court is that, at the time of admission in SKS Hospital on 28.06.2012, the girl was not able to walk and she was in an unconscious state and was not even able to pass urine. In fact, from the medical evidence, it is very well established that, at the time of admission in SKS Hospital, Perambalur,

the girl was seriously suffering from breathlessness and therefore, this circumstance, along with other circumstances relied upon by the trial Court will be dealt with in detail later while discussing about the evidence of doctors who treated the girl and the other medical evidence available on record.

38.6. From the above discussion, this Court holds that the charge under Section 120-B IPC has not been established against the accused. Hence, the conviction and sentence of A1 and A2 qua Section 120-B deserves to be set aside.

39. Next, this Court proceeds to decide the charge of cheating against A2 under Section 417 IPC.

40. Charge under Section 417 IPC:

40.1. To hold a person guilty of the offence of cheating under Section 417 IPC, the prosecution has to establish the following essential ingredients of the offence of cheating as defined under Section 417 IPC :

- (1) deception of any person
- (2) (a) Fraudulently or dishonestly inducing that person
  - (i) to deliver any property to any person, or
  - (ii) to consent with any person relating to any property; or
- (b) intentionally inducing that person to do which he would not do or omit to do, and that act or omission causes or is likely to cause damage or harm, to that person in body, mind, reputation or property.

Therefore, from the ingredients set out under Section 417 IPC, it is clear that, deception is the essence of the offence. Therefore, to hold an accused guilty of the offence under Section 417 IPC, the prosecution must establish that the accused has caused deception or induced a person to do an act which would be harmful for that person, and the deception may be expressed by word or by conduct by the accused.

40.2. But, on analysis of the entire evidence, this Court finds no material available on record to infer that A2 has induced or incited P.W.1 or the deceased to come to Perambalur, in order to attract Section 417 IPC against A2. The evidence of P.W.1 clearly indicates that he voluntarily took a decision to give his daughter better education in the house of A1. He never spoke anything about the alleged incitement or inducement caused by A2. Therefore, in the absence of any evidence on record to prove the deception or cheating caused by A2, the conviction of A2 under Section 417 IPC also has to fail.

40.3. Hence, this Court is of the opinion that the conviction and sentence of A2 qua Section 417 IPC deserves to be set aside.

41. Next, this Court proceeds to decide the charge of rape against A1 under Section 376 IPC.

42. Charge under Section 376 IPC:

42.1. The prosecution case is that A1, under the pretext of giving better education to the deceased, brought her to his house and repeatedly had sexual intercourse with her.

42.2. As already indicated, the entire prosecution case rests only on the circumstantial evidence. Admittedly, P.W.1, in his evidence, has spoken that only he (P.W.1) brought her daughter to the house of A1 for the purpose of giving her better education at Perambalur with the aid of A1 and left the girl in A1's house. A1, in his explanation under Section 313 Cr.P.C., has clearly stated that, since his wife and mother are also teachers, he wanted to help the girl and admit her in a school. As the Transfer Certificate was not obtained by P.W.1 at that time, he (A1) permitted the girl to stay in his house.

42.3. In the light of the above explanation given by A1 and the other evidence available on record, now, it has to be seen as to whether there was any sexual assault on the girl by A1.

42.4. The learned State Public Prosecutor, relying upon the evidence of the doctor (P.W.53) who conducted post-mortem on the body of the deceased, submitted that, since the doctor (P.W.53) has noted some ante-mortem injuries on the body of the girl in the vaginal area, she (P.W.53) has opined that the death was likely due to the vaginal injuries and the complications thereof, it is for A1 to explain as to what had transpired to the girl while she was in his custody. It is the submission of the learned Public Prosecutor that the accused had neither discharged his burden on him nor explained the facts which are exclusively within his knowledge as contemplated under Section 106 of the Indian Evidence Act.

42.5. It is also relevant to note that, when A2 filed an application for suspension of sentence in earlier occasion and the same was dismissed by this Court on the submission of the Public Prosecutor that additional evidence is also required in this case. Despite the application which was dismissed long back, no attempt whatsoever has been made by the State to adduce any evidence under Section 391 Cr.P.C.

42.6. During the arguments before this Court, the learned Public Prosecutor submitted that there is one photograph available, which was taken by P.W.60, Sub-Inspector

of Perambalur Police Station, and the same has to be marked as additional evidence. When the Court posed a question as to how the prosecution could introduce a mere photograph without any authenticity and relevancy, the learned Public Prosecutor submitted that the photograph is relied only to prove the injuries on the dead body. This Court also posed a question as to how the photograph would be helpful to prove the injuries since P.W.53, who conducted post-mortem, has already noted certain injuries in the post-mortem report and also posed a question as to whether P.W.60, who is said to have taken the photograph, has spoken anything about the photograph during examination before the trial Court, for which, the answer of the Public Prosecutor was in negative. Thereafter, the Public Prosecutor submitted that the Court may proceed with the available materials and decide the requirement of additional evidence. After considering his submission, this Court pointed out that the authenticity of the so-called photograph said to have been taken in mobile phone camera by P.W.60 is questionable inasmuch as he (P.W.60) has never whispered anything about the photograph during his examination before the trial Court. Besides, there is no certificate as required under Section 65-B of the Evidence Act also. Thereafter, the learned Public Prosecutor fairly submitted that the entire prosecution rests on the evidence of P.W.53.

42.7. It is seen from the evidence that the custody of the victim girl under A1 from 23.06.2012 till she was admitted in the hospital is not disputed. However, the evidence of P.W.1 clearly indicates that he voluntarily left his daughter in the custody of A1 and returned to Kerala to get the Transfer Certificate of his daughter. The explanation given by A1 in this regard, read with the evidence of P.W.1, is probable. Be that as it may, the evidence of P.W.1 further indicates that, immediately on coming to know about the health issues of the deceased, he sent P.W.2, wife of P.W.1 to Perambalur from Kerala. P.W.2 also came to the hospital. Her presence in the hospital is also very much established on seeing Ex.P13 series of medical records.

42.8. Now in this background, it is to be analysed whether there was any sexual assault on the victim girl by A1 which resulted to her death. As already indicated, the evidence of P.W.1 itself clearly shows that his daughter was suffering from some ailments and was previously given treatment on 18.06.2012 for stomach pain and even she had breathing problems earlier. Ex.D1 has also been filed by the defence in this regard and the same has been admitted by P.W.1.

42.9. The admitted fact is that the deceased became serious while she was in the house of A1 and she was admitted in the hospital by A1's wife and mother.

42.10. Now, it becomes necessary to analyse the evidence of doctors of various hospitals one by one, who attended and treated the victim girl.

42.11. P.W.26, Doctor in SKS Hospital, Perambalur, who has seen the minor girl first, in his evidence, has stated that, on 28.06.2012 at about 07.00 p.m., a minor girl was brought to their hospital by A1's wife and mother for breathing problem; as the girl's condition was critical, he advised them to take her to the Government Hospital; however, the wife and mother of A1 requested him atleast to give the girl first aid; accordingly, he took X-ray and ECG of the girl, however, could not find anything; whereas, he could not take the urine test, as urine could not be collected; immediately, he handed over the first aid receipt with them. He has also clearly stated that, while examining the girl, he did not notice any external injury on the body of the girl.

42.12. P.W.27, Technician in SKS Hospital, Perambalur, at the relevant point of time, in his evidence, has stated that, he took X-ray of the deceased; while taking X-ray, he did not notice any external injury on the body of the girl.

42.13. P.W.28, Lab Technician, in her evidence, has stated that, she took blood test of the deceased; before taking the blood sample, the deceased told her name to P.W.28, however, the girl was not in a position to speak well; she did not notice any injury on the hand of the girl.

42.14. P.W.29, a staff in the Casualty Section of SKS Hospital, in her evidence, has stated that she saw the deceased with breathing problem; thereafter, the girl was discharged from their hospital.

42.15. P.W.26 to P.W.29, who have seen the deceased girl at the first instance on 28.06.2012, have not spoken anything about any external injury on the body of the girl. P.W.26, the Doctor, who saw the girl at the first instance on 28.06.2012 and gave her first aid, has deposed before the Court that the deceased girl was brought to their hospital in a breathless condition and thereafter, the girl was discharged from their hospital. From the evidence of P.W.26 to P.W.29, there is nothing to infer that the girl had been sexually assaulted or there was any external injury on the body of the deceased girl, at the time of admission in their hospital.

42.16. After discharge from SKS Hospital, Perambalur, the girl was admitted in Dhanalakshmi Srinivasan Medical College Hospital at Perambalur on the same day, i.e. on 28.06.2012 at about 12.15 in the midnight.

42.17. P.W.30, Doctor in Dhanalakshmi Srinivasan Medical College Hospital, in his evidence, has stated that, at the time of admission, the girl was unconscious and was in a

breathless state and her health condition was critical; immediately, he enquired the persons who accompanied the girl and found that the girl was given first aid by P.W.26 and he also verified the first aid prescription given by P.W.26; he kept the prescription in the case sheet of the girl; as the health condition of the girl was worsening, due to non-availability of the girl's parents at that time, he requested a consent letter from someone as guardian for further treatment; accordingly, the consent letters (Exs.P10 and P11) were obtained from A2 as guardian for further treatment; Exs.P12 and P13 are the case sheets of the deceased girl maintained in their hospital. P.W.30 has further stated in his evidence that the consent letter was obtained from Jaishankar (A2) for the purpose of further treatment as the girl was in critical state at the relevant point of time. Thereafter, the various diagnosis and treatment were recorded in the case sheet (Ex.P13).

42.18. The case sheet of the deceased girl maintained at Dhanalakshmi Srinivasan Medical College Hospital (Ex.P13) clearly shows that, while admitting at around 12.00 a.m. on 29.06.2012, the hospital diagnosed the girl for pneumonia and coma and finally diagnosed breathlessness, salivation, unconsciousness, but the cause was not known. The case sheet further indicates that the girl was discharged from the hospital on 30.06.2012, against medical advice, by P.W.2, mother of the girl, who has signed in the record. It also indicates that P.W.2 has also visited the hospital. She has also given a letter discharging the girl against the medical advice, wherein, she has also stated that her daughter was admitted for breathing problems and immediately, she wanted to take her daughter to some other hospital at Trichy. From Ex.P13, it is clearly seen that various investigations were done by the doctors in Dhanalakshmi Srinivasan Medical College Hospital, including the Gynaecologist, who had taken vaginal swab test on the girl. The report of vaginal swab test done by the Gynaecologist at Dhanalakshmi Srinivasan Medical College Hospital shows that no semen was found, but epithelial cells, pus cells and bacteria were present in the vaginal area. Thereafter, the girl was discharged from the Dhanalakshmi Srinivasan Medical College Hospital against medical advice, as could be seen from the letter signed by P.W.2 in Ex.P13 series.

42.19. P.W.31, a resident Doctor at Dhanalakshmi Srinivasan Medical College Hospital, in her evidence, has clearly stated that from early morning on 29.06.2012 till 30.06.2012 noon, the deceased girl was in their hospital and thereafter, the girl was referred to Trichy hospital.

42.20. P.W.32, Gynaecologist in Dhanalakshmi Srinivasan Medical College Hospital, in her evidence, has stated that,

she examined the deceased girl, who was in ventilator support and collected vaginal swab for test and as per the test result, she noted down in the case sheet that no semen or spermatozoa was found. She has also stated in her evidence that she examined the private parts of the girl and did not notice any external injury. In the cross-examination, she has admitted that, if a girl uses an unclean object for masturbation, it may also lead to infection in vagina; further, any infection in urinary tract or unhygienic habits may also cause infection in vagina and such infections may even lead to laceration or abrasion on the interior or exterior parts of the vagina. This evidence of P.W.32 has not even been denied by the prosecution. This Court is of the view that there could be no reason for the Gynaecologist working in the hospital to give any adverse report or evidence.

42.21. P.W.33, Medical Superintendent of Dhanalakshmi Srinivasan Medical College Hospital, has stated in his evidence that, while the deceased girl was in Intensive Care Unit, an enzyme called pseudocholinesterase was found in excess in the blood of the girl and he also found that the patient may not be asthmatic.

42.22. P.W.34, Professor in Dhanalakshmi Srinivasan Medical College Hospital, has stated in his evidence that the deceased girl was in artificial ventilator support in the hospital and her mother wanted to discharge the girl against their medical advice; the patient's pupil also remained contracted.

42.23. P.W.35, Assistant Professor in Dhanalakshmi Srinivasan Medical College Hospital, has stated in his evidence that he fixed the artificial ventilator to the deceased girl, immediately after her admission in their hospital; since the girl did not open her eyes, he suspected OPC poisoning and advised the doctor to give her stomach wash; however, the concerned doctor said that no smell of poison was detected.

42.24. P.W.36, Assistant Professor in Dhanalakshmi Srinivasan Medical College Hospital, has stated in his evidence that he also suspected poisoning; as the blood test report of the deceased girl was not received, he did not inform the police immediately and he was waiting for the blood test results; however, the parents and relatives took the girl to some other hospital. He has also admitted in the cross-examination that, while administering Endotracheal Intubation tube on a patient, some injuries are also possible and while giving her the Endotracheal Intubation, he found no external injury on the body of the girl.

42.25. P.W.42, Assistant Professor in Dhanalakshmi Srinivasan Medical College Hospital, in his evidence, has

stated that the deceased girl was admitted in their hospital for breathlessness.

42.26. P.W.51, a Medical Officer attached to Dhanalakshmi Srinivasan Medical College Hospital, in his evidence, has stated that, when the deceased girl was admitted in their hospital, he found that her heart and lungs were weak and to retrieve the original functioning of the lungs, a tube was inserted and treatment was given; froth was coming out from the mouth of the girl. He has also stated that the oxygen level in the girl's body was only 60% at the relevant point of time and there was a possibility of cerebral hypoxia.

42.27. After discharge from the Dhanalakshmi Srinivasan Medical College Hospital, Perambalur, on 30.06.2012 at 12 noon, the girl was taken to Kauvery Hospital, Trichy, for further treatment, on the same day at 15.02 hours.

42.28. P.W.38, a Medical Officer attached to Kauvery Hospital, Trichy, in his evidence, has stated that the deceased girl was admitted in their hospital on 30.06.2012 and she was referred to Neurologist; they found that the WBC count was excessive around 33 thousand and therefore, they suspected cancer; accordingly, they took CT Scan, MRI Scan and found that there was swelling in the brain; in view of the excessive WBC count and swelling in the brain, they suspected that the girl would have suffered brain fever; the deceased girl was in their hospital till 04.07.2012. He also admitted that, while fixing Endotracheal Intubation tube, some injuries are possible on the face and other parts of the body.

42.29. P.W.39, Neurologist attached to Kauvery Hospital, Trichy, in his evidence, has stated that MRI Scan of the deceased girl was taken at their hospital and they found swelling in the brain; initially, the girl was given treatment in Dhanalakshmi Srinivasan Medical College Hospital at Perambalur for poisoning; since there was swelling of brain, they suspected brain fever and accordingly, treated the girl.

42.30. P.W.40, E.N.T. Specialist in Kauvery Hospital, Trichy, in his evidence, has stated that, since the deceased girl was found to have sinusitis problem as per CT Scan, her case was referred to him; he enquired the mother of the girl (P.W.2) about any previous complications suffered by the girl relating to sinusitis and she (P.W.2) informed him that her daughter was suffering from headache previously.

42.31. P.W.41, Supervisor in Kauvery Hospital, Trichy, in her evidence, has stated that, after taking CT Scan and MRI Scan of the deceased girl, they suspected brain meningitis; on advice, body bath was given to the girl. P.W.41, in her evidence, has also asserted that there was no external injury found on the body of the girl.

42.32. Ex.P15, the medical record issued by the Kauvery Hospital, Trichy, shows that the patient was admitted for vomiting, abdominal pain, seizures, headache and they found cerebral edema with effacement of sulcus spaces and basal cisterns (meningitis). The relevant portion of Ex.P15 is extracted hereunder :

"COURSE IN THE HOSPITAL

15 years old female Miss.C.Sathiya, came to casualty, with unconsciousness, H/o vomiting, H/o abdominal pain, H/o seizures, H/o headache - 3 days. Initial treatment taken at Dhanalakshmi Medical College, Perambalur. Patient was intubated and ventilated treated as OPC Poisoning there. Evaluation revealed mild diffuse cerebral edema with effacement of sulcus spaces and basal cisterns (meningitis). Bilateral maxillary and ethmoid sinustitis. CSF analysis revealed decreased protein. MRI revealed diffuse cerebral edema. Patient serum cholinesterase decreased. Initially patient treated as OPC Poisoning, after confirming with CT and MRI, patient treated as viral meningitis in the ICU. Patient was treated in the Intensive Care Unit with antibiotics, antivirals, antiepileptics, anticholinergics, oximes neuroprotective drugs and other supportive measures. At present patient having spontaneous eye opening, not conscious, paucity of all limbs. Patient prognosis, nature of the disease and risk factors explained to the patient attenders. But patient attenders want discharge, hence discharged the patient AGAINST MEDICAL ADVICE."

42.33. After discharge from Kauvery Hospital, Trichy, on 04.07.2012 at 15.40 hours, the girl was taken to Government Medical College Hospital, Theni, on the same day at 09.00 p.m.

42.34. P.W.43, a Medical Officer in Government Medical College Hospital, Theni, in his evidence, has stated that the deceased girl was admitted in their hospital on 04.07.2012 at 09.00 p.m., after her discharge from the Kauvery Hospital at Trichy; he enquired the mother of the girl (P.W.2) and found that treatment was given for breathlessness, brain fever and OPC Poisoning. He has also admitted in his evidence that he did not find any external injury on the body of the girl.

42.35. From the evidence given by various doctors who attended and treated the deceased girl in four hospitals, viz., SKS Hospital, Perambalur, Dhanalakshmi Srinivasan Medical College Hospital, Perambalur, Kauvery Hospital, Trichy and Government Medical College Hospital, Theni, and also from the case sheets (Exs.P13 and P15) and other medical evidence, it is clear that the girl was suffering from various ailments and the doctors could not diagnose them properly. Initially,

they diagnosed breathlessness, and thereafter, suspected OPC Poisoning and then, brain fever also. Accordingly, they gave various treatments to the girl, including Endotracheal Intubation. However, all the doctors who treated the girl in four hospitals have ascertained that there was no external injury found on the body of the girl while she was given treatment.

42.36. It is relevant to note that, on receipt of information from the house of A1 that the deceased girl fell ill, P.W.2, mother of the deceased girl, immediately rushed to Perambalur on 29.06.2012 and she was present in the Dhanalakshmi Srinivasan Medical College Hospital, Perambalur on 30.06.2012 as could be seen from Ex.P13. Thereafter, she was present along with the deceased girl in all the other hospitals. However, she has never whispered anything in her evidence about the alleged injury said to have been caused by A1. It is seen from the evidence of the doctors in Dhanalakshmi Srinivasan Medical College Hospital, Perambalur that several investigations were carried out by them at the time of admission of the girl in their hospital. It is very clear that the patient was, in fact, very serious at the time of admission itself and even her blood pressure could not be recorded initially.

42.37. Now, in the above background, we shall proceed to discuss the medical evidence of P.W.53, Doctor of Government Medical College Hospital, Theni, where the deceased girl died on 05.07.2012, who conducted autopsy on the body of the deceased and issued the post-mortem certificate (Ex.P26).

42.38. P.W.53, in her evidence, has stated that she found foul smelling greenish discharge from vagina of the deceased girl and also found multiple superficial incisions made on the right leg, left leg, left thigh, right thigh, left knee, right upper arm, left upper arm, but injury Nos.7, 8 and 9 as noted in Ex.P26 were also detected. According to her, all were ante-mortem injuries. She has noted down the following ante-mortem injuries in the post-mortem certificate (Ex.P26) :

- 1.Linear abrasion with scab (nail mark) noted on the left side of neck measuring 0.5cm x 0.25cm.
- 2.Two linear abrasions with scab (nail marks) noted on the left side of the pubic region, measuring 0.5cm x 0.25cm, and 0.75cm x 0.25cm.
- 3.Peeling of skin measuring 2cm x 3cm seen over the left side of cheek (Plaster applied for ET Tube in position)
- 4.Peeling of skin measuring 1cm x 1cm seen over the right side of cheek.
- 5.Abrasion with scab noted on the left side of upper lip measuring 1cm x 0.75cm.
- 6.Abrasion with scab noted on left side of lower lip measuring 1cm x 0.5cm.

7. Dark red coloured contusion of size 3cm x 2cm seen over the right arm.
8. Dark red coloured contusion of size 4cm x 2.75cm seen over the right pubic region.
9. Dark red coloured contusion of size 3cm x 1.5cm seen over the left pubic region.
10. Old scar of size 0.75cm x 0.5cm, 0.5cm x 0.5cm seen over the dorsum of left foot.
11. Central venous catheter with plaster seen on the right side neck.

42.39. From the above evidence, it could be seen that there were multiple superficial incisions found on the body. However, the evidence of the medical officers who treated the girl earlier, have spoken about the possibility of getting some injuries while administering Endotracheal Intubation on a person, and the same cannot be ruled out. P.W.53 has also noted peeling of skin, but the same has been justified that it could have been caused while applying plaster during the treatment of Endotracheal Intubation. It is pertinent to note that P.W.53 reserved her final opinion for pathological, microbiological and chemical examination reports. Thereafter, she (P.W.53) issued her final opinion (Ex.P27) on 24.08.2012 stating as follows :

"The deceased would appear to have died of Vaginal Injury and its complications thereof."

The post-mortem report (Ex.P26) indicates that there were some injuries and the deceased girl died only due to vaginal injury and its complications thereof. But, P.W.53 has not even spoken anything about the reasons for arriving at such a conclusion. Vide Exs.P28 and P29, she has admitted certain suggestions put forth to her by the Investigating Agency, however, what she has admitted in Exs.P28 and P29 are only answers to certain questions asked by the Investigating Agency, but, while deposing before the Court, which is in fact the substantive piece of evidence, she has never stated any reason for arriving at such a final opinion or the answers given by her to the Investigating Agency. Whereas, in the chief-examination, she has clearly stated that, as per the lab report received on 13.07.2012, she found staphylococcus bacteria in the vaginal smear of the deceased girl. Further, she has also stated that, in the vaginal swab, no semen or spermatozoa was found as per Ex.45. In the cross-examination, she has admitted that, when a girl of that age is in the habit of masturbation, the injuries and serious infections noted by her in the vaginal area are possible. It is also to be noted that she has not given the exact time at which the laceration or abrasion found in the vagina of the deceased girl could have occurred and she has also admitted that infection may also lead to such injuries. She has also admitted that Injury No.7 as mentioned above is also possible while fixing the Endotracheal Intubation during treatment in hospital. She has also admitted that the deceased died due to cerebral hypoxia, which has been spoken by P.W.51 also in his evidence.

42.40. It is also relevant to note that, in the case sheet (Ex.P13), it is specifically referred that the deceased girl was treated for respiratory acidosis. Therefore, merely because there were some injuries in the vaginal area and there was greenish discharge which led to some complications thereof, as per the version of P.W.53, it cannot be concluded that the deceased girl died only by way of rape allegedly committed by A1.

42.41. P.W.1 himself, in his evidence, has admitted that the deceased girl was suffering from breathlessness and she was treated previously vide Ex.D1. From the evidence of all the doctors who treated the deceased girl in various hospitals, it is clear that the doctors have taken utmost efforts and have done various investigations to diagnose the ailments of the girl. In fact, the prosecution has not even doubted the veracity of the doctors during trial. Since the doctors' evidence are not in the favour of prosecution, it is unfair on the part of the prosecution to now contend that their evidence are not reliable. If at all the prosecution is of the view that only the post-mortem certificate (Ex.P26) is reliable as medical evidence, then they should have confronted all the doctors with the same and should have treated them hostile. Without resorting to the provision of Section 154 of Evidence Act, advancing such a strange argument now, cannot be appreciated in the eye of law and cannot be countenanced by this Court.

42.42. It is seen from the evidence available on record that, while P.W.1 and the family members of the deceased girl, including the sisters of the deceased, never complained anything about the alleged act of the accused after death of the girl, the villagers of the village where P.W.1 and his family reside, particularly P.Ws.11, 12 and 13, have created some commotion in Government Medical College Hospital at Theni and as a result, the matter was informed to Perambalur Police Station and P.W.60, Sub-Inspector of Police, Perambalur Police Station, registered the FIR in Crime No.855 of 2012 on 07.07.2012. The evidence of P.Ws.11, 12 and 13 make it very clear that the death of the deceased girl in Tamil Nadu was politicized in Kerala at the instance of a MLA of Kerala and a separate FIR was registered in Peerumade Police Station Crime No.665 of 2012 on 08.07.2012 at the instance of P.W.12. The evidence of P.W.12 clearly indicates that, only on their instructions and their involvement in the matter, P.W.1 lodged a complaint with Perambalur Police Station and thereafter, as a result of their agitation, a separate complaint was also lodged with Peerumade Police Station, Kerala, at the instance of MLA of their area and re-post-mortem was done at Government Medical College, Kottayam, Kerala. In fact, P.W.13 belongs to Communist Party of India in Kerala.

42.43. The crime registered with Kerala Police was investigated by P.W.62, Deputy Superintendent of Police, Idukki, Kerala, who examined witnesses, recorded their statements, including the statement of the parents of the deceased and also of the teachers of the school, and examined the attendance register. On 08.07.2012 itself, the Inspector of Peerumade Police Station, had given a requisition to conduct re-post-mortem on the dead body of the deceased girl. Accordingly, joint post-mortem was conducted by P.W.55 and P.W.56, Assistant Professors of Forensic Medicine, Government Medical College, Kottayam, Kerala.

42.44. P.W.55 and P.W.56, in their evidence, have stated that they found only multiple post-mortem incised wounds and they have clearly stated that they did not find any ante-mortem injury on the arms of the dead body and they did not find any ante-mortem nail marks or contusion on the left and right side of the pubic region of the body. They have also stated that they did not see any lacerated injury in the vagina and they gave their final opinion that the redness in vagina may be due to previous post-mortem and the deceased would have died due to pneumonia. Exs.P31 and P32 were also filed in this regard. Both the doctors, P.W.55 and P.W.56, in one voice, found that the deceased died due to pneumonia.

42.45. Exs.P31 and P32, marked by the doctors who conducted second post-mortem, corroborate the evidence of the doctors who gave treatment to the deceased girl for breathlessness, hypoxia, etc. as discussed above. Merely on the basis of some injuries found in vagina, which are also possible due to some other causes like masturbation, urinary tract infection, unclean habits, bacterial infection, etc. as spoken by the medical officers as stated supra, we cannot presume that such injuries were caused only by sexual intercourse allegedly committed by A1, for the only reason that she was in his custody at the relevant point of time. The materials available on record also disclose that A1's wife is a teacher by profession in English and his mother is also residing with him who is also a teacher by profession and he has a girl of same age as that of the deceased.

42.46. P.W.24, Head Master of Government Higher Secondary School, Perambalur, where A1's wife was working, in his evidence, has also clearly stated that, at the relevant point of time, i.e. in month of June 2012, exams were being conducted in their school and therefore, the school would start only at 12.00 noon. The prosecution has examined this witness P.W.24 in order to establish that A1's wife had gone to school at the relevant point of time. However, it is clear from the evidence of P.W.24 that the school starts only after lunch.

42.47. Further, it is worth noting that the mother of A1 was very much present in the house at the relevant point of

time and her presence is not disputed. However, the prosecution is totally silent about this aspect.

42.48. The prosecution has also examined P.W.23, Principal of Golden Gates School, Perambalur, where A1's daughter was studying, to show that the daughter of A1 went to school at the relevant point of time, except one day. Be that as it may, as stated above, the mother of A1 was very much present in the house all the time.

42.49. The conduct of the wife and mother of A1 in taking the girl and pleading the doctor to atleast give her first aid at the first instance at SKS Hospital, Perambalur, appears quite normal. Further, the parents of the deceased girl, especially, P.W.2, who was admittedly present all along with the deceased girl in the hospitals right from 29.06.2012 till the death of the girl, have never spoken anything about the alleged sexual assault by A1. It is also important to note that, at the very inception itself, in Dhanalakshmi Srinivasan Medical College Hospital, Perambalur, vaginal swab was taken for examination by the Gynaecologist, and no semen or spermatozoa was found. Even the doctor (P.W.53), who conducted autopsy, has stated that no semen or spermatozoa was found on the body of the girl. The second post-mortem report is also in similar lines. Even no semen or spermatozoa was found in the underwear (M.O.1), allegedly seized by the prosecution from the house of A1, as per forensic report Ex.P44.

42.50. Hence, from the entire medical evidence available on record, this Court is unable to infer that there was any sexual assault on the deceased minor girl.

43. Now, focusing on the circumstances and events relied upon by the trial Court for convicting the accused, the sixth circumstance relied upon by the trial Court is that, at the time of admission, the deceased girl was unconscious, and despite the direction given by P.W.26 to take the girl to a Government Hospital, the wife and mother of A1 took the girl to a private hospital and there was also a delay in taking her to the private hospital. However, from a reading of the evidence of the doctors of Dhanalakshmi Srinivasan Medical College Hospital, Perambalur, where the girl was initially given treatment, it can be seen that the manner in which various investigations were done by the doctors in the reputed private hospital clearly indicates that the girl was given best treatment at the initial stage, only with a view to save her life. Hence, this circumstance cannot be a ground to prove the charges against the accused.

43.2. The seventh and eighth circumstances relied upon by the trial Court are no way helpful for the prosecution to prove the guilt of the accused, as they are merely admitted facts.

43.3. The ninth to eleventh circumstances relied upon by the trial Court are the injuries noted by P.W.53, mainly in the vaginal part and also all over the body of the deceased girl. As elaborately discussed above while discussing the evidence of P.W.53 and the post-mortem report (Ex.P26), only superficial incisions were noted by P.W.53 during post-mortem and though some injuries were found in the vagina, it is very well established by the evidence of medical officers that such injuries are also possible due to infection and various other causes and the deceased died only of pneumonia. Hence, reliance on these circumstances also has to fail.

43.4. The twelfth circumstance relied upon by the trial Court is that an underwear (M.O.1) with blood-stain was recovered from the house of A1 on his own confession. The underwear (M.O.1) was allegedly seized by the prosecution on 27.07.2012 from behind the house of A1's house, on the basis of the alleged confession of A1 (Ex.P66), said to have been recorded by the Investigating Officer on 12.07.2012. It is relevant to note that, on 12.07.2012, the Perambalur Police are said to have recorded the confession of A1, but they have not recovered anything. Whereas, the underwear (M.O.1) is said to have been recovered by CBCID police on 27.07.2012 with blood stain from the bushes behind the compound of the house of A1. It is the prosecution version that the underwear (M.O.1) with blood stain was kept in polythene bags and was recovered along with M.O.2, a letter said to have been written by P.W.1 and P.W.2 for the alleged receipt of money from A1. However, this Court is of the view that these two recoveries are highly doubtful. P.Ws.1 and 2 have not been confronted with M.O.2 during examination. Further, the act of a person concealing an object inside polythene bags and keeping it under the bushes behind the compound of his house itself, after commission an offence which is serious in nature, is highly unbelievable. Even as per forensic report Ex.P44, it is clear that no semen or spermatozoa was found on the underwear (M.O.1), which was allegedly seized by the prosecution with blood stain. The biological and serological reports marked by the prosecution vide Exs.P58 to P63 also indicate that the blood grouping tests were inconclusive. Even these reports do not show any incriminating materials against A1. Therefore, the twelfth circumstance is also no way helpful to prove the charge against A1.

43.5. The thirteenth circumstance relied upon by the trial Court is the last seen theory. This Court is unable to comprehend as to how last seen theory come into play in this case. While admission in the SKS Hospital, Perambalur, in fact, the deceased girl has told her name to P.W.28 and she was referred for further treatment. Various investigations were carried out by the doctors and the girl was treated for various complications. Therefore, application of last seen theory in the given case does not arise at all.

44. Apart from evidence of various witnesses, the questioning under Section 313 Cr.P.C. attracts consideration of this Court. The answers given by A1 make it clear as to why he allowed P.W.1's daughter, i.e. the deceased girl, to stay in his house, which was only to get Transfer Certificate, since his wife and mother are also teachers by profession. The explanation given by A1 is more probable and plausible. Therefore, the mere custody of the deceased girl under A1 alone cannot be used as a proof to prove the charges against him.

45. Keeping aside the discussion of charges for a while, it is worth mentioning that, only the incriminating circumstances have to be put forth before the accused while questioning under Section 313 Cr.P.C. to make the accused understand the circumstances against him/her so that he/she can give proper explanation before the Court. However, on a reading of the questioning under Section 313 Cr.P.C., it is noticed that the manner in which the questions were framed in this case clearly indicates that the trial Judge has mechanically converted the entire evidence into questions and turned the evidence of P.W.1 as one question, P.W.2 as another question and so on. Such a practice is highly deprecated, since the object of questioning under Section 313 Cr.P.C. is to enable the accused to explain the incriminating circumstances put against him. Transforming the evidence given by each witness during chief-examination in entirety as a single question would defeat the very object of Section 313 Cr.P.C. itself. However, in this case, the manner in which the questions under Section 313 Cr.P.C. have been framed indicates that the learned trial Judge has not applied her mind and has mechanically framed the questions. Trial Judges are directed to avoid such practice in future.

46. Now, resuming back to the discussion of charge against A1, it is also to be noted that the entire case has been investigated by CBCID, since it started at Kerala by the instigation of persons belonging to a different political party. P.W.62, Investigating Officer of Kerala Police has also not given any incriminating evidence against the accused. Merely because the accused happens to belong a different political party and an ex-MLA in Tamil Nadu, it cannot be presumed that every politician or person who held/holds a legislative post is capable of winning over all the witnesses and creating evidence in his favour. Such a presumption cannot be applied mechanically. It is for the prosecution to prove the guilt of the accused beyond doubt. Shifting burden on the accused is not applicable to the present case. A1 has clearly explained as to the circumstances under which the girl was given asylum in his house. Therefore, in the absence of any evidence or material available on record to prove the alleged act of sexual assault by A1 on the deceased girl and the injuries thereof in vagina as a result of the alleged

sexual assault, the prosecution cannot succeed merely on surmises, inasmuch as except post-mortem doctor's evidence, other medical evidence clearly indicate that such injuries are possible in vaginal area due to bacterial infection and some other unhygienic habits also, and the deceased was suffering from various other complications even before she came under the custody of A1, which was also admitted by P.W.1 vide Ex.D1. Hence, this Court is of the view that the prosecution has not proved the guilt of the accused for the offence under Section 376 IPC beyond doubt and the trial Court has convicted A1 of the offence under Section 376 IPC without proper appreciation of evidence, but only on surmises. Hence, the benefit of doubt has to be extended to the accused. Accordingly, the conviction and sentence of A1 qua Section 376 IPC deserves to be set aside.

47. Next, this Court proceeds to decide the charge of culpable homicide against A1 under Section 304 IPC.

48. Charge under Section 304 IPC:

48.1. To convict a person of the offence under Section 304 IPC, it must be established by the prosecution that the death of the victim was a result of an act done by the accused with the intention of causing death or of causing such bodily injury as is likely to cause death or do an act with the knowledge that it is likely to cause death. Only when such ingredients are made out, the offence under culpable homicide can be attracted.

48.2. However, the prosecution has miserably failed in this case to prove that the death had resulted due to such an act of the accused in order to attract the charge under Section 304 IPC. Therefore, merely relying upon the medical evidence of P.W.53 alone, this Court is unable to accept the entire prosecution case. Even the evidence of P.W.53, when read in entirety, projects a contrary view which is in fact favourable to the accused and moreover, her final opinion does not indicate that there was a rape committed on the deceased. Therefore, the prosecution has failed to prove the guilt of the accused beyond doubt. Accordingly, the conviction and sentence of A1 qua Section 304 IPC deserves to be set aside.

49. As far as criminal cases are concerned, imagination or imaginary possibilities have no role to prove the guilt of the accused. The evidence should establish a complete and unbroken chain of events. The evidence relied upon by the prosecution in this case lead to many other hypothesis. Merely because the case acquired a character of sensationalism and became sensational at the relevant point of time, this Court cannot shirk its responsibility in searching for legal evidence. The Court cannot record a finding merely based on imaginary possibilities in the evidence of the prosecution. Admittedly, several doctors have been examined by the

prosecution in this case, but they have not been declared hostile. Even they have not been confronted with the post-mortem report which is mainly relied upon by the prosecution. Moreover, it is seen from their evidence that, there is not even a suggestion, whatsoever, attributing motive, against the doctors for such unfavourable evidence. This Court finds no motive for the doctors of various hospitals to give evidence contrary to truth. In this case, the trial Court has gone beyond the evidence and materials available on record and has only relied upon the circumstances and events and has rendered its finding on surmises and conjectures. Imaginary possibilities cannot be the basis to form legal evidence in a criminal case to prove the grave charges. Mere sympathetic consideration or suspicion can never be a substitute for legal evidence.

50. In the light of the narrative supra, this Court is of the opinion that the prosecution has failed to prove the charges framed against the accused beyond doubt. Hence, the benefit of doubt has to be extended to the accused and accordingly, the conviction and sentence of the accused have to be set aside.

51. In fine, these Criminal Appeals are allowed and the judgment of conviction and sentence, dated 28.12.2018, passed by the Sessions Judge, Special Court for cases related to Elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai, in S.C.No.404 of 2018, is set aside.

52. The appellants/A1 and A2 are acquitted of all the charges. Fine amount, if any, paid by the appellants/A1 and A2 shall be refunded to them. Consequently, connected miscellaneous petitions are closed.

Sd/-

सत्यमेव जयते  
Assistant Registrar

//True copy//

WEB COPY  
Sub Assistant Registrar

mkn/vaan

To

1.The Sessions Judge,  
Special Court for cases related to  
Elected Members of Parliament and Members  
of Legislative Assembly of Tamil Nadu,  
Chennai.

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

2. The Sessions Judge,  
Mahila Court,  
Perambalur.
3. The Judicial Magistrate,  
Perambalur.
4. The Chief Judicial Magistrate,  
Perambalur.
5. The Director General of Police,  
Mylapore, Chennai-600 004.
6. The Inspector of Police,  
Organized crime Unit,  
Crime Branch CID,  
Coimbatore City.
7. The Superintendent,  
Central Prison, Puzhal, Chennai.
8. The Deputy Registrar | with a direction to send back the  
(Criminal Section), | original records to the trial Court  
High Court, Madras. | immediately
9. The Public Prosecutor,  
High Court, Madras.

Crl.A.Nos.19 and 55 of 2019

LN(CO)  
GMY(21/08/2020)

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