

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 18.02.2020

Judgment delivered on : 21-08-2020

CORAM :

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Criminal Appeal No. 464 of 2018

Udaya Kumar

.. Appellant

Versus

The State of Tamil Nadu
rep. by Inspector of Police
Thali Police Station
Krishnagiri District

.. Respondent

Appeal filed under Section 374 (2) of the Criminal Procedure Code against the Judgment dated 06.07.2018 passed in Special S.C. No. 51 of 2016 on the file of Sessions Judge, Fast Track Mahila Court, Krishnagiri, Krishnagiri District.

For Appellant : Mr. K. Kannan
for Mr. M. Sathish Kumar
For Respondent : Mrs. M. Prabhavathy
Additional Public Prosecutor

JUDGMENT

R. SUBBIAH, J

The appellant is the sole accused in Special S.C. No. 51 of 2016 on the file of Sessions Judge, Fast Track Mahila Court, Krishnagiri. He stood charged for the offences punishable under Section 5 (1) (m) (n) read with Section 6 of The Prevention of Children from Sexual Offences Act, 2012 (in short, POSCO) and Section 302 of the Indian Penal Code (in short, IPC). After conclusion of trial, the trial court, by judgment dated 06.07.2018, found the appellant guilty of the charges and convicted and sentenced him to undergo life imprisonment for the offence under Section 5 (1) (m) (n) read with Section 6 of the POSCO Act with fine of Rs.20,000/-, failing which, to undergo rigorous imprisonment for a period of one year. He was also sentenced to undergo another life imprisonment for the offence punishable under Section 302 of IPC with fine of Rs.5,000/-, failing which, to undergo rigorous imprisonment for a period of one year. However, both the sentences of life imprisonment were ordered to run concurrently. Aggrieved by the judgment dated 06.07.2018 passed by the trial court, the present appeal is filed.

2. The appellant in this appeal is the husband of Swetha/PW1. The deceased in this case is minor female child, by name Pooja Aswini, who was 18 months old at the time of her death. PW1 was earlier married to one Chinna Achary and due to such wedlock, the minor female child Pooja Aswini was born. However, due to matrimonial discord, the husband of PW1 Chinna Achary deserted her and contracted another marriage with a woman. Therefore, PW1 and the minor female child came to Bangalore, where she stayed in her aunt's house. During such stay, PW1 went for an employment as a Gardener, where she met the appellant/accused. The acquaintance between PW1 and the appellant has intensified and therefore, PW1, with the permission of her parents, married the appellant. Thus, the appellant is the second husband of PW1. It is stated that after the marriage, the appellant felt that the minor female child is a hindrance to his matrimonial life with PW1 and therefore, he wanted to get rid of the child from the company of PW1. According to the case of prosecution, on 23.08.2016, Manju, the daughter of the aunt of PW1 had delivered a child in a hospital at Thally and on hearing the same, PW1 went to the hospital at about 10.00 am to assist her by leaving the minor female child in the custody of the appellant. The appellant also requested PW1 to return back as soon as possible, however, PW1 could not return from the hospital and she stayed there. When she was in the hospital at Thally, she was informed that the minor female child sustained injuries due to an accidental fall from the porch and she was taken to the Denkanikottai Government Hospital. She was also informed that on examination of the child at Government General Hospital, Denkanikottai, the Doctor found the female child breathless and declared brought dead. PW1 immediately reached the hospital and noticed swelling on the lips and head and contusion in the vaginal portion of the child. According to the prosecution, PW1 suspected a foul play in the death of the minor female child and informed it to PW2, father and PW3, mother. PW1 also attributed motive against the appellant for the death of the minor female child. Thereafter, PW1, along with her father/PW2, went to Thally Police Station on 24.08.2016 at about 7.00 am and narrated the sequence of events that led to the death of the minor female child. Since PW1 was not acquainted with Tamil language, her statement was recorded in Tamil by PW12, Sub-Inspector of Police and it was reduced into writing in the form of a complaint, Ex.P1. On the basis of such complaint, a case in Crime No. 214 of 2016 was registered by PW12 for the offence under Section 174 of the Code of Criminal Procedure. The copy of the First Information Report is Ex.P11 and it was sent to the higher police officials as well as Court.

3. On receipt of the First Information Report at about 8.15 am on 24.08.2016, PW13, Inspector of Police had taken up the investigation. He proceeded to the house of the appellant, where he had drawn an Observation Mahazar and rough sketch, under Ex.P3 and Ex.P12 respectively in the presence of witnesses Dhanareddy (PW5) and Hari Prasad (PW6). Thereafter, PW13 proceeded to the Mortuary attached to the Government

General Hospital, Denkanikottai, where the dead body of the deceased was kept and conducted inquest. He also sent Ex.P9, requisition letter to the post-mortem Doctor through Ms. Vennila (PW14), Head Constable No.1158 with a request to conduct post-mortem. On the basis of such request, post-mortem was conducted by the Doctor/PW11. After conducting postmortem, PW11 issued Postmortem Certificate under Ex.P10 in which it was opined that the deceased would appear to have died of head injury with evidence of recent penetrating sexual assault. On the same day, PW13 recorded the statement of Swetha (PW1), Thimmarajappa (PW2), Gowamma (PW3), Bhagavandas (PW4), Muralimohan, Dhanarddy (PW5) and Hariprasad (PW6). At about 7.00 pm, when PW13 was in the Police Station, the Village Administrative Officer (VAO) of Saratpalli Village (PW10), along with the Village Assistant Ms.Pushpa, handed over the appellant to PW13 with a special report. On receipt of the special report and after taking the custody of the appellant, PW13 recorded a voluntary confession statement (Ex.P-14) given by the appellant. Pursuant to the confession statement, the appellant was taken to the place of occurrence at about 22.15 hours, where he had handed over (i) sandal colour nylon saree (MO1), (ii) white rose colour gown (MO2), (iii) blue colour underwear (MO3) and (iv) wooden log (MO4) from the backyard of the house, which were used for commission of the offence. The aforesaid material objects were recovered by PW13 under Ex.P8 in the presence of PW5 and PW6. Thereafter, the appellant was sent to the Court for remand. The recovered articles were sent by PW13 to Court under Form No.95 on 25.08.2016. In the meantime, based on the confession statement of the appellant, PW13 altered the First Information Report recorded in this case for the offence under Section 174 of Code of Criminal Procedure into one under Sections 5 (1), (m) and (n) of POSCO Act and Section 302 of IPC. Ex.P13 is the alteration report which was forwarded to the Court of Sessions (Mahila Court), Krishnagiri. In continuation of the investigation, PW13 recorded the statement of Senthil Kumar (PW10), Pushpa, Village Assistant and Srinivas (PW7). On 29.08.2016, he had given a requisition to the Court to subject the appellant for medical test under Ex.P9. He had also given a requisition under Ex.P15 for sending the material objects recovered in the case for forensic examination. PW13 also recorded the statement of Surendran, Head Constable No.937, Dr. Rajkumar (PW8), Dr. Rajasekar (PW11), Arun Prabhu and Savithri, Sub-Inspector of Police (PW12). After conclusion of the investigation, PW13 laid the charge sheet against the appellant for the offences stated supra.

4. In order to prove the charges against the appellant, on behalf of the prosecution, 13 witnesses were examined as PW1 to 13, Exs.P-1 to P-24 were marked and M.Os.1 to 6 were produced. When the appellant was questioned under Section 313 of the Code of Criminal Procedure with respect to the above incriminating materials relied on by the prosecution, he denied his complicity in the crime. The trial court, after conclusion of trial, had convicted and sentenced the appellant as stated in the preceding paragraph.

5. The learned counsel for the appellant submitted that the entire case of the prosecution rests on circumstantial evidence and no one had witnessed the overt act attributed on the part of the appellant. In a case of this nature, the prosecution is bound to prove the entire circumstances without any missing link, but the prosecution failed to prove it. In a case of circumstantial evidence, complete chain of events has to be established pointing out the culpability of the accused person, but it is glaringly missing in this case. In this context, the learned counsel for the appellant relied on the decision of the Honourable Supreme Court in the case of Sangili @ Sangathan vs. State of Tamil Nadu reported in (2014) 10 Supreme Court Cases 264 wherein it has been held as follows:-

"22. To sum up what is discussed above, it is a case of blind murder. There are no eye witnesses. Conviction is based on the circumstantial evidence. In such a case, complete chain of events has to be established pointing out the culpability of the accused person. The chain should be such that no other conclusion, except the guilt of the accused person, is discernible without any doubt. In the present case, we find, in the first instance, that the appellant was roped in with suspicion that it was a case of triangular love and since he also loved PW3, he eliminated the deceased when he found that the deceased and PW3 are in love with each other. However, we are of the view that this motive has not been proved. The evidence of last seen is also not established. Father of the deceased only said that the deceased had received a call and after receiving that call he left the house. In his deposition he admitted that he had not seen the appellant before and he did not recognize his voice either. Therefore, he was unable to say as to whether the phone call received was that of the appellant. Proceeding further, we find that the deceased was not seen by anybody after he left the house. When we look into all these facts in entirety in the aforesaid context, we find that not only the chain of events is incomplete, it becomes somewhat difficult to convict the appellant only on the basis of the aforesaid recoveries."

6. For the same proposition of law, reliance was made to the Judgment of the Division Bench of the Delhi High Court in Chander Dev Rai vs. The State (NCT of Delhi) reported in 2010 (1) Crimes 627, wherein it was held as follows:-

"19. From the perusal of the evidence and some of the relevant documents it is clear that there is no evidence which will show conclusively that the appellant had raped the prosecutrix. It is no more res integra that to base a conviction on circumstantial evidence alone, not only the chain must be complete but the evidence should point inevitably to the conclusion that it was the

accused and the accused alone who was the perpetrator of the offence and other evidence which is brought on record should be incompatible with the innocence of the accused. For bringing home the conviction on the basis of circumstantial evidence, the facts on the record should be consistent with the guilt of the accused and should be incapable of being explained on any other reasonable hypothesis other than that of his guilt."

7. The learned counsel also submitted that there are many flaws and inconsistencies in the case projected by the prosecution and it had rendered the foundation laid by it very weak and fragile. The case of the prosecution is that the appellant felt that the deceased will be a hindrance for his blissful matrimonial life with PW1 and therefore, wanted to get rid of the deceased. It was also the case of the prosecution that PW1, as also PWs 2 and 3, have suspected some foul play on the part of the appellant which led to the death of the deceased. However, PW1 categorically admitted in her deposition that at no point of time, the appellant attempted to get rid of the deceased minor child as being a hindrance to the blissful matrimonial life. Similar was the version of PWs.2 and 3, in their cross-examination, who are parents of PW1 and parents-in-law of the appellant that the appellant never felt the deceased child as a hindrance to the matrimonial life with their daughter PW1. Therefore, the motive for the appellant to commit the alleged offence has not been proved. When that being so, the entire foundation on which the prosecution had built its case, has to fall to the ground. Above all, it was the appellant who had taken the deceased with the help of PW7, a passer-by, to the hospital at 4.00 pm. PW7 in his evidence has clearly stated that at about 4.00 pm on 23.08.2016 he saw the appellant standing on the main road with the minor female child and asked his help to take the minor female child to hospital. It was PW7 who accommodated the appellant and the minor child in his vehicle to the Primary Health Centre at Karthakasam. Since there was no Doctor available in the Primary Health Centre, the minor female child was proposed to be taken to Government General Hospital, Thally. Further, PW2 also in his evidence has stated that at about 7.00 pm, the appellant came to his house with the minor female child and informed him that the female child had sustained injuries due to fall from porch when he went to switch on the motor leaving the child there alone and requested P.W.2 to accompany him to Government Hospital, Denkanikottai, where he was taking the child for treatment. Thus, the learned counsel for the appellant submitted that had the child been sexually harassed as projected by the prosecution, the appellant would not have gone to P.W.2's house along with the child and requested him to accompany him to the hospital. Therefore this is not a case of murder as projected by the prosecution, but the death of the child was due to an accidental fall. While so, the entire case of the prosecution as if the appellant had subjected the minor female child to aggravated penetrative sex, is ill founded and

illusionary.

8. The learned counsel for the appellant submitted that PW2, father of PW1, had stated in his evidence that he along with the appellant, had taken the minor child to the Denkanikottai Hospital at about 10.00 pm on 23.08.2016 and immediately, information was given to the Police. He also deposed that the Police Officials from Thally Police Station have reached the hospital and taken the appellant into custody. Therefore, the deposition of PW13 as if the appellant was produced by the Village Administrative Officer/PW10 along with a special report, is far from truth.

9. The learned counsel for the appellant invited our attention to the deposition of PW4, who is related to PW3. The deposition of PW4, if read as a whole, would show the falsity of the case projected by the prosecution. PW4 in his deposition has clearly stated that he was called upon by the Police to stand as a witness for this case and to say that the minor female child was raped by the appellant. The deposition of PW4, according to the learned counsel for the appellant, is sufficient to acquit the appellant from this case.

10. Inviting our attention to the deposition of PW8, Doctor, the learned counsel for the appellant has stated that PW8, to whom the appellant had taken the child for treatment, has categorically opined that the injuries in the lips and head noticed on the deceased are possible due to a fall from the Porch. He also deposed that the deceased was brought to the hospital by the appellant himself for treatment. Therefore, it is evident that it was the appellant who had taken the deceased to the hospital and attempted to save her life. In any event, there was no evidence to suggest that the deceased was subjected to aggravated penetrative sexual offence by the appellant warranting his conviction. The learned counsel therefore prayed for setting aside the judgment of the trial court.

11. The learned Additional Public Prosecutor appearing for the respondent-Police has opposed the submissions of the learned counsel for the appellant and contended that the prosecution has clearly proved the guilt of the appellant in this case beyond reasonable doubt. It is her contention that PW1 has clearly stated in her complaint that she suspected the role of the appellant for the death of the deceased, inasmuch as he thought that the deceased is a menace to his happy matrimonial life with PW1. According to the learned Additional Public Prosecutor, the deceased was not born to the appellant and PW1 and therefore, he had a dislike towards the deceased from the date of marrying PW1. This was specifically spoken to by PW1 in her complaint. The complaint was given by PW1 voluntarily, as she suspected foul play by the appellant. In fact, the appellant had given a voluntary confession admitting his guilt of having indulged in aggravated sexual assault on a tender child. It is on the basis of such confession that PW13 had altered the First Information Report registered in the case

and proceeded with the investigation. The prosecution has also established the aggravated sexual assault committed by the appellant through examination of PW8/Doctor, who has clearly deposed that there were injuries on the vaginal as well as anal portion of the deceased. Therefore, the defence of the appellant that the deceased had an accidental fall from the porch, is unsustainable. If the minor child had an accidental fall from porch, she could not have sustained such injuries in her vaginal as well as anal portion. Further, PW11, post-mortem Doctor in his report under Ex.P10, has clearly opined that the deceased appear to have died due to injuries in her head with the evidence of recent penetrating sexual assault. Therefore, the evidence of PW.11 post-mortem Doctor makes it abundantly clear that the deceased was subjected to aggravated sexual assault and it was the appellant who had committed it when the deceased was in his custody.

12. The learned Additional Public Prosecutor appearing for the respondent-Police vehemently contended that at the time of occurrence, no one was present, except the appellant. There is no dispute with respect to the fact that the deceased was left to the exclusive custody of the appellant by PW1. Therefore, what transpired at the relevant point of time is within the exclusive knowledge of the appellant who has to offer explanation about the manner in which the injuries were sustained by the deceased in her vaginal and anal portion. When there is lack of explanation on the part of the appellant about the fact, which is exclusively within his knowledge, an adverse inference can be drawn against him as contemplated under Section 106 of The Indian Evidence Act. The appellant, by virtue of the special knowledge about a particular fact, must offer his explanation and the absence thereto, would only lead to the Court drawing an adverse inference against him. To buttress this submission, the learned Additional Public Prosecutor relied on the decision of the Honourable Supreme Court in State of Karnataka vs. Smt. Suvarnamma and another reported in 2015 (1) SCC 323, wherein it was held as follows:-

"....In our considered view, this was a fit case for invoking Section 106 of the Evidence Act, which lays down that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. In Ram Gulam Chaudhary v. State of Bihar (2001) 8 SCC 311) this Court considered the applicability of Section 106 of the Evidence Act in a case somewhat similar to the present case. This Court noted that the accused after brutally assaulting a boy carried him away and thereafter the boy was not seen alive nor his body was found. The accused, however, offered no explanation as to what they did after they took away the boy. It was held that for the absence of any explanation from the side of the accused about the boy, there was every justification for drawing an inference that they had murdered the boy. It was further observed that even though Section 106 of the Evidence Act may not be intended to relieve

the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases like the present, where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding death. The accused by virtue of their special knowledge must offer an explanation which might lead the Court to draw different inference.

13. According to the learned Additional Public Prosecutor, the prosecution has proved all the hypothesis leaving no other reasonable conclusion to be drawn against the appellant. The evidence produced by the prosecution against the appellant invariably point to the guilt of the appellant to show that it was the appellant and none else, who had committed the offence of murder of the deceased. The trial court, on proper appreciation of the evidence on record, has rightly convicted the appellant and it calls for no interference by this Court. The learned Additional Public Prosecutor therefore prayed for dismissal of the appeal.

14. We have given our anxious consideration to the submissions made by the learned counsel for the appellant as well as the learned Additional Public Prosecutor appearing for the respondent-Police and perused the materials placed on record. There is no direct eye witness in this case. The prosecution case solely rests on circumstantial evidence. The burden is therefore on the prosecution to prove beyond all reasonable doubt the charges framed against the appellant. Therefore, whether the prosecution has sufficiently proved the guilt or otherwise of the appellant through oral and documentary evidence, has to be examined.

15. In the present case, on the fateful day, i.e. on 23.08.2016, the deceased was left in the custody of the appellant by PW1, while leaving the house at about 10.00 am to take care of her aunt's daughter, who delivered a child, in the hospital. At about 4.00 pm, the appellant, carrying the deceased with him, sought the help of PW7, a passer-by to reach the hospital. PW7 had also shown gesture and taken the appellant as well as the minor female child to a Primary Health Centre at Karthakasam. As there was no Doctor available in such Centre, the appellant took the child to the house of PW2/Father-in-law and with his help, had taken the child to Government General Hospital, Denkanikottai. P.W.2, the father-in-law of the appellant also stated that he accompanied the appellant to the Government General Hospital, Denkanikottai where the Doctor, on examination, found the deceased breathless and declared brought dead. On intimation, P.W.1 came to the hospital and noticed injuries on the lips and head, besides contusion of the vaginal portion of the child. Suspecting foul play leading to the death of the deceased, PW1 along with his father/PW2 went to Thally Police Station and gave a complaint to the respondent-Police.

16. With respect to the date and time of the complaint, there is a clear discrepancy. According to PW1, when she was in the Government General Hospital, Denkanikottai, the Police Officials attached to Thally police station have reached the hospital. This was conspicuously recorded during the cross examination of PW1 to the effect that "பூஜா அஸ்வினியை திண்ணை மேல் படுக்கவைத்து ஆஜர் எதிரி மோட்டார் போட சென்றுவிட்டார் என்றும், அப்போது திண்ணையிலிருந்து என் மகள் கீழே விழுந்துவிட்டதாக ஆஜர் எதிரி என்னிடம் சொன்னார். ஆஜர் எதிரி என் அப்பாவும் தான் அடிப்பட்ட என் மகள் பூஜா அஸ்வினியை தேன்கனிக்கோட்டை அரசு மருத்துவமனைக்கு எடுத்து வந்தார்கள். இரவு, 10.00 மணி இருக்கும். குழந்தை இறந்த தகவல் போலீசாருக்கு அன்று இரவே கொடுக்கப்பட்டு உடனே போலீசார் மருத்துவமனைக்கு வந்தார்கள். Thus, it is clear that on intimation from the hospital authorities, the Police authorities came to the Government General Hospital, Denkanikottai on the early hours of 24.08.2016 and obtained the signature of PW1 purportedly to use it as a complaint. PW1 however stated that she has absolutely no knowledge about the contents of the complaint in which she was made to sign. Therefore, the factum of death of the deceased was intimated to the Police and they have also reached the hospital on the night of 23.08.2016. However, the First Information Report was not registered on the basis of any complaint said to have been given by PW1 in the hospital. On the other hand, the First Information Report was registered on the basis of a complaint given by PW1 at 7.00 am on 24.08.2016 to PW12 in the police station, in which, it was stated that she doubted the involvement of her husband, the appellant herein, in the murder of the deceased. However, the cross-examination of PW1 had totally derailed the entire case of prosecution, where, PW1 herself deposed that the appellant never felt that the minor female child is a hindrance to their matrimonial life. She also stated that at no point of time, she had stated to the Police that she suspected foul play in the death of her child or attributed motives on the part of the appellant. Precisely, PW1 has stated in the cross-examination that ருஎன் மகள் இறந்தது சம்பந்தமாக ஆஜர் எதிரி மீது சந்தேகம் இருப்பதாக போலீசாரிடம் நான் சொல்லவில்லை." Similar was the version of PW2 and PW3, parents of PW1, who have deposed in unison that "என் பேத்தி இறந்தது சம்பந்தமாக ஆஜர் எதிரி மீது சந்தேகம் இருப்பதாக போலீசாரிடம் நான் சொல்லவில்லை." Therefore, the motive for the appellant to commit the offence has not been established by the prosecution in an acceptable manner.

17. As regards the arrest of the appellant, it was the version of PWs 1, 2 and 3 that on the night of 23.08.2016, intimation was given to the Police regarding the death of the deceased and the Police authorities attached to Thally police Station reached the hospital. Such intimation was in fact given by Doctor/PW8 who declared the deceased brought dead. It was also stated that after receipt of a complaint from PW1 in the hospital itself, the police authorities have taken the appellant to the Police Station. This was also clearly spoken to by PWs 1 to 3 in their chief examination itself. However, for the reasons best known, the prosecution has alleged that the appellant was produced at about 7.00 pm on 24.08.2016 by

the Village Administrative Officer and the Village Assistant of the Village with a special report stating inter alia that the appellant surrendered before them and admitted having committed the murder of the deceased. On such production of the appellant, a confession statement was recorded which formed the basis for altering the offence mentioned in the first information report from Section 174 of Code of Criminal Procedure. This inconsistency in the case projected by the prosecution with respect to the arrest of the appellant casts serious doubt as regards the credibility of the prosecution case and therefore, the manner in which the prosecution had disclosed the arrest of the appellant is wholly unreliable.

18. PW4 is related to PWs 1 to 3 and he is a resident of Pallapalli Village. He, in his deposition, has stated that soon after the occurrence, the Police came to the Village and asked him to stand as a witness in this case and to depose that the deceased was subjected to rape before her death. In spite of such deposition having been made by PW4, the prosecution did not treat him as a hostile witness. The deposition of PW4 speaks volumes about the manner in which prosecution has conducted this case.

19. PW5 is the landlord, in whose land the appellant and PW1 were employed as daily wage labourers. PW5 was treated as a hostile witness in this case. PW5 has clearly deposed that he was made to sign Ex.P2, Observation Mahazar, however he feigned ignorance about the contents of Ex.P2. He also deposed that the Police never obtained his statement or enquired him.

20. Therefore, it is evident that none of the witnesses examined on the side of the prosecution have stated about the motive on the part of the appellant to commit the crime. On the other hand, even according to the case of the prosecution, it was the appellant who had taken the minor female child to the hospital for treatment. This is explicit from the deposition of PW7. PW7 is a resident of Pallapalli Village. According to him, on 23.08.2016, he saw the appellant carrying the minor female child and standing in the main road. The appellant requested PW7 to assist him to take the minor female child to the hospital. Accordingly, PW7 had accommodated the appellant and the minor female child in his two wheeler and dropped them in the Karthakasam Primary Health Centre. However, as there was no Doctor available to treat the injured female child in the Health Centre, the appellant went to the residence of PW2 and both of them went to Government General Hospital, Denkanikottai. It is not as if the appellant, soon after committing the alleged offence, had gone into a hide out. It is also on record that PW1, on reaching the hospital, enquired the appellant as to what happened and he had replied that the female child had an accidental fall from the porch when he left her to switch on the motor. This is also supported by the deposition of Doctor/PW8, who examined the minor female child and declared her dead. The Doctor/PW8 in his deposition has clearly stated that the injuries found on the deceased are possible due to a fall from the cradle. Thus, except the so-called confession statement obtained from the appellant, there

is no other evidence, lest medical evidence, to substantiate that the deceased was subjected to aggravated penetrative sexual assault. In other words, the prosecution failed to prove the circumstances that led to the death of the deceased beyond all reasonable doubt. There are several inconsistencies in the case of the prosecution and the materials placed on record do not form a complete chain pointing the guilt against the appellant/accused beyond doubt. The trial court also, on an erroneous appreciation of the materials placed on record, has rendered a finding of guilt and convicted and sentenced the appellant by imposing life imprisonment.

21. For all the reasons noted above, we set aside the Judgment dated 06.07.2018 passed in Special S.C. No. 51 of 2016 on the file of Sessions Judge, Fast Track Mahila Court, Krishnagiri, Krishnagiri District. The Criminal Appeal is allowed. Since the appellant/accused is in jail, he shall be released forthwith, unless he is required in connection with any other case. The bail bond, if any, executed by the appellant/accused in this case shall stand cancelled and the fine amount, if paid, shall be refunded to him.

Sd/-

Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

rsh/cs
To

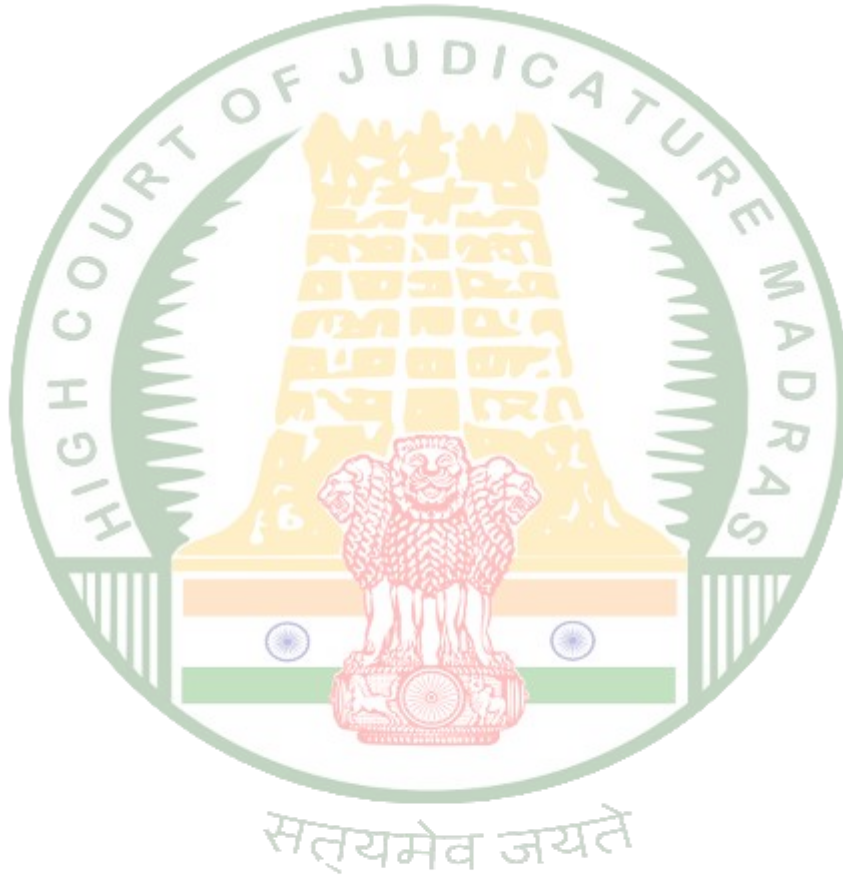
1. The Sessions Judge
Fast Track Mahila Court
Krishnagiri, Krishnagiri District.
2. The Judicial Magistrate,
Krishnagiri, Krishnagiri District.
3. The Chief Presidency Magistrate,
Krishnagiri, Krishnagiri District.
4. The District Judge,
Krishnagiri, Krishnagiri District.
5. The Superintendent
Central Prison,
Vellore.
6. The District Collector,
Krishnagiri.

7. The Director General of Police,
Chennai.

8. The Public Prosecutor
High Court, Madras

Crl.A.No.464 of 2018

RLD(CO)
GMY(02/09/2020)



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