

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.03.2021

PRONOUNCED ON : 26.04.2021

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH
AND

THE HONOURABLE Mr.JUSTICE V.SIVAGNANAM

R.T.No.1 of 2020 and CrI.A.No.119 of 2020

R.T.No.1 of 2020:

State by
The Inspector of Police
All Women Police Station
Thudiyalur, Coimbatore District
Crime No.168 of 2019

Complainant

vs.

Santhoshkumar

Accused

CrI.A.No.119 of 2020

Santhoshkumar

vs.

.. Appellant

State by
The Inspector of Police
All Women Police Station
Thudiyalur, Coimbatore District
Crime No.168 of 2019

.. Respondent

R.T.No.1 of 2020 : Referred Trial under Section 366 Cr.P.C. on the judgment and order dated 27.12.2019 passed in Spl.C.C.No.76 of 2019 on the file of the Sessions Court, Special Court for the Exclusive trial of cases under the POCSO Act, Coimbatore.

CrI.A.No.119 of 2020 : Criminal Appeal filed under Section 374 (2) Cr.P.C. seeking to set aside the judgment and order of conviction and sentence dated 27.12.2019 passed in Spl.C.C.No.76 of 2019 on the file of the Sessions Court, Special Court for the Exclusive trial of cases under the POCSO Act, Coimbatore.

For accused/appellant
Robinson

Mr.N.Ponraj & Mr.Kingsley Paul

For respondent/State

Mr.K.Prabakar

Additional Public Prosecutor

C O M M O N J U D G M E N T

V. SIVAGNANAM, J.

Referred trial (R.T.) No.1 of 2020 is a reference made by the learned Sessions Judge, Special Court for Exclusive Trial of POCSO Act Cases, Coimbatore (for brevity "the trial Court") under Section 366 Cr.P.C., for confirmation of the death sentence awarded to the appellant in Spl.C.C. No.76 of 2019. CrI.A.No.119 of 2020 is an appeal under Section 374 Cr.P.C. filed by the accused challenging his conviction and sentence in Spl.C.C.No.76 of 2019 vide judgment and order dated 27.12.2019.

2. The prosecution story runs thus:

2.1. Since it is a case under the Protection of Children from Sexual Offences Act, 2012 (for brevity "the POCSO Act"), where, the victim is a minor girl, for the sake of anonymity, we refer to her as "X". The appellant hails from Melchithiraichavadi village in Uliyampalayam, Coimbatore and was temporarily residing with his grandmother Iyyammal, who was aged about 75 years, in a hut in Kasturi Naicken Pudur (for short "K.N. Pudur") in Pannimadai village. "X" was aged about 7 years and she was residing with her mother Vanitha (P.W.1) and a younger sister Rithikasree, aged 5 years, in Door No.2/72, K.N. Pudur, Pannimadai village. The house of "X" and the house of Iyyammal are in the same lane, but diagonally opposite as shown in the rough sketch (Ex.P.38). Though the two houses are on the opposite rows, yet, both their entrances face the east.

2.2. On 25.03.2019, around 05.30 p.m. "X" and her sister Rithikasree were playing in the street and around 06.00 p.m., Rithikasree alone returned home. When Vanitha (P.W.1) asked Rithikasree about "X", the latter replied that "X" was playing in the street. Since "X" did not return home even after sunset, Vanitha (P.W.1) became anxious. She went to the shop of one Soundarrajan (P.W.2) in the village and made enquiries about "X". Soundarrajan (P.W.2) told her that "X" and Rithikasree came to his shop in the evening for purchasing betel leaf and nut and thereafter, he had not seen them. Since "X" was not found anywhere, Vanitha (P.W.1) went to Thadagam Police Station at 09.00 p.m. to lodge a complaint.

2.3. Boopathy (P.W.21), Sub Inspector of Police, Thadagam Police Station told Vanitha (P.W.1) that the Government has not yet empowered Thadagam Police Station to register cases and therefore, took her to Thudialur Police Station. On a written complaint (Ex.P.1) given by Vanitha (P.W.1), Boopathy (P.W.21), Sub Inspector of Police, registered an F.I.R. in Thudialur P.S. Cr. No.168 of 2019 for "girl missing" at 22.00 hrs. on 25.03.2019 and prepared the printed F.I.R. (Ex.P.23), which reached the Judicial Magistrate No.I, Coimbatore at 06.00 p.m. on 26.03.2019, as could be seen from the endorsement thereon.

2.4. Investigation of the case in Thudialur P.S.Cr. No.168 of 2019 was taken up by Balamurali Sundaram (P.W.24), Inspector of Police, who, for the sake of convenience, is hereinafter referred to as "the first I.O.". He went to the house of "X" and prepared an observation Mahazar (Ex.P.4) and a rough sketch (Ex.P.28) in the presence of one Santhanam (not examined) and Sivakumar (P.W.6).

2.5. On 26.03.2019, around 07.00 a.m., one Dhanalakshmi (P.W.4), whose house is also diagonally opposite the house of "X", saw the body of "X" in a narrow alley behind the house of one Maniammal and raised an alarm. She found "X" covered with a cement colour T-shirt with black stripes (M.O.1). On hearing her hue and cry, villagers gathered there and Vanitha (P.W.1) found "X" unconscious with injuries on her body. Immediately, an ambulance was called for and one Ismail (P.W.5), ambulance driver, took "X" and Vanitha (P.W.1) to Lakshmi Hospital, Thudialur, where Dr.Navaneeth Kumar (P.W.16) examined "X" in the ambulance itself and referred her to the Coimbatore Medical College and Hospital, Coimbatore (for brevity "the CMC Hospital"). Accordingly, "X" was rushed to the CMC Hospital, where, Dr.Bhuvana (P.W.15), upon examination, declared her as "brought dead". Copy of the Accident Register was marked as Ex.P.19 and intimation was given to the Inspector of Police, Thudialur Police Station, by the CMC Hospital.

2.6. The first I.O. received this information at 09.00 a.m. on 26.03.2019 and proceeded to the mortuary of the CMC Hospital, where, he recorded the statements of Dhanalakshmi (P.W.4), Santhamani (not examined) and Vanitha (P.W.1). He returned to the police station and altered the case in Thudialur P.S. Cr.No.168 of 2019 from "girl missing" to one under Section 302 IPC vide alteration report (Ex.P.29) and sent the same to the Judicial Magistrate No.I, Coimbatore. He went back to the mortuary and conducted inquest over the body of "X" in the presence of panchayatdars and the inquest report was marked as Ex.P.30. He despatched the body of "X" through Saravanan (P.W.19), Grade-I Head Constable, for post-mortem. He then proceeded to the place where the body of "X" was found in Pannimadai village and prepared a second Observation Mahazar (Ex.P.5) and a second rough sketch (Ex.P.31), in the presence of Anand (P.W.7) and Murugesan (not examined). He also seized the T-shirt (M.O.1) under a seizure mahazar (Ex.P.6). On 26.03.2019, at 9.00 p.m., the first I.O. further altered the penal provisions to 376-A IPC and Sections 5(l) and 5(m) read with Section 6 of the POCSO Act vide alteration report Ex.P.32.

2.7. Since the preliminary investigation revealed that "X" was subjected to sexual assault, upon the orders of the Superintendent of Police, the case was transferred from the file

of the Inspector of Police, Thudialur Police Station to the file of the Inspector of Police, All Women Police Station (AWPS), Thudialur on 27.03.2019. On such transfer, Meenambigai (P.W.26), Inspector of Police, AWPS, Thudialur, took up the investigation of the case. She would, hereinafter be, referred to as "the second I.O." for the sake of convenience.

2.8. Meanwhile, Dr.Peranantham (P.W.17) performed autopsy on the body of "X" and in his evidence as well in the post-mortem certificate (Ex.P.20), he has noted the following injuries and has also furnished his opinion for the cause of death :

"The following ante mortem injuries seen in the body:

1.Reddish abrasions 2 x 2 cm noted over right forehead just above right eyebrow, 2 x 1cm noted over right zygomatic region, 1 x 1, 1 x 1 cm noted over right side of nose, 0.5 x 0.5 cm three in numbers noted over right upper lip, 1 x 0.5, 0.25 x 0.25 noted over dorsum of right hand, 0.25 x 0.25 cm two in numbers noted over outer aspect of left arm, 1 x 1, 0.5 x 0.5 cm noted over left wrist, 1 x 1 cm noted over front of right leg, 1x1cm noted over back of right thigh, 1x1, 0.5 x 0.5 cm noted over right side of lower abdomen, 3 x 1 cm noted over left side of chest, 1cm above the nipple.

2.Linear reddish abrasions 0.25 x 0.25 cm three in numbers with surrounding abrasion covering an area of size 7 x 4 cm noted over right cheek and mouth, 0.25 x 0.25 cm noted over right lower lip and 4 x 1, 4 x 1.5 cm noted over back of left leg and knee.

3.Reddish pressure abrasion 2 x 1cm noted over chin.

4.Reddish contusions 5 x 3 cm noted over inner aspect of left elbow, 2 x 1cm noted over back of left elbow, 5 x 3, 3 x 2 cm noted over front of right thigh, 3 x 2 cm noted just above left nipple, 2 x 1, 1 x 1 cm noted over left hip, 1 x 0.5 cm noted over inner aspect of mid upper lip.

5.Multiple reddish imprint abrasions covering an area of size 6 x 4 cm noted over front of both lower thighs.

- A complete transversely placed ligature mark with intermittent contusions measuring 22 x 1cm noted over entire neck at the level of thyroid cartilage.

The anatomical landmarks of the ligature abrasion

marks are

- 5 cm below to right ear lobe,
- 5 cm below to chin,
- 5 cm below to left ear lobe.

On bloodless dissection of Neck: The base of the ligature is softened and intermittently bluish in colour. Reddish contusion 1x1cm noted over posterior pharyngeal wall.

On dissection of Scalp, Skull and Dura: Diffuse Sub arachnoid hemorrhage seen over both parietal and right temporal region.

On examination of pubic region:

- Vulva found congested.
- The external orifice of vagina found congested.
- Lower part of right labia minora found contused, reddish in colour.

On dissection of Vaginal Canal:

- Hymen not intact.
- Contusion 2 x 1 cm noted over upper part of vaginal mucosa.
- Vaginal os found dilated and admits two fingers.
- Uterus shows mucous secretions.

On examination of Anus:

- Found dilated and patulous
- Normal folds and rugosity of the anal verge found lost.
- Old healed scar seen over anal orifice at 7'o clock and 8'o clock position.

On dissection of Thorax and Abdomen: Contusion of size 6 x 4 cm muscle deep noted over psoas muscle on the left side.

OTHER FINDINGS:

- Peritoneal and Pleural cavities : empty. Hyoid bone-intact.
- Heart: All chambers contain few cc fluid blood. Coronaries:Patent.
- Stomach contains about 150 grams of partially digested rice particles, no specific smell, mucosa pale.
- Small intestine contains about 10 ml of bile stained fluid, no specific smell, mucosa pale.

- Brain, Liver, Spleen, Lungs, Kidney, cut section pale. Urinary bladder:empty.
- Viscera preserved and sent for chemical analysis report.
- Blood preserved for analysis.
- Vaginal swab and slide preserved for analysis.
- Uterus swab and slide preserved for analysis.
- Cervix swab and slide preserved for analysis.
- Anal swab and slide preserved for analysis.
- High anal swab and slide preserved for analysis.
- Oral swab and slide preserved for analysis.

OPINION: The deceased would appear to have died of ASPHYXIA DUE TO VIOLENT COMPRESSION OF NECK BY LIGATURE MATERIAL (STRANGULATION) and SMOTHERING. There is an evidence of recent forcible Sexual Act. The time of death 6 to 12 hours prior to body kept in cold storage."

2.9. After post-mortem, the apparel of "X" viz. M.Os. 2, 3, 4 and 5 were handed over by the post-mortem Doctor to Saravanan (P.W.19), Head Constable, who, in turn, handed them over to the first I.O. with a special report (Ex.P.22) on 26.03.2019. The special report (Ex.P.22) and the apparel of "X" (M.Os.2 to 5) reached the Judicial Magistrate No.I, Coimbatore on 27.03.2019. Prior to the post-mortem, Saravanan (P.W.19), Head Constable had taken three photographs of the dead body of "X" and those photographs were marked as M.Os. 6, 7 and 8.

2.10. The second I.O. went to Pannimadai village and prepared a third Observation Mahazar (Ex.P.7) and a third rough sketch (Ex.P.37), in the presence of one Lavanya Devi (P.W.8) and Sudha (not examined). On 27.03.2019, she recorded the statements of Vanitha (P.W.1), Soundarrajan (P.W.2), Hariharan (P.W.3), Dhanalakshmi (P.W.4), Senthilkumar (P.W.20), Lavanya Devi (P.W.28) and all other witnesses. There was no breakthrough in the case till 30.03.2019.

2.11. On 31.03.2019, the appellant appeared before Thangaraj (P.W.10), Zonal Deputy Tahsildar, North Coimbatore and Vijaya (P.W.12), Revenue Inspector, at their office at 08.00 a.m. and gave an extra-judicial confession. These two officials were present in the office, as they were on election duty during the Parliamentary elections then. Thangaraj (P.W.10) recorded the extra-judicial confession of the appellant in Tamil and the same was marked as Ex.P.9. The free English translation of the said extra-judicial confession is as under :

"Today, that is 31.03.2019 at 8.00 a.m., when I,

V.Thangaraj, Regional Deputy Tahsildar, Coimbatore North and Tmt.R.Vijaya, Firka Revenue Inspector, Thudiyalur were on election duty at the office of the Tahsildar, Coimbatore North, one Santhosh Kumar, aged 34 years S/o. Kanagaraj belonging to Uliyampalayam Melchithiraichavady, Thondamuthoor, Coimbatore District appeared in person before me and stated that he had committed sexual assault and murder of a girl of 7 years of age belonging to Kasthuri Naickenpudur near Pannimadai, Thudiyalur, on 25.03.2019 and on further enquiry, gave a confession statement, the details of which are as follows :

My native place is Melchithiraichavady, Uliyampalayam near Thondamuthoor. Presently, I am staying in my grandmother's home in Pannimadai near Kasthuri Naickenpudur, Thudiyalur. My father and mother are residing in Uliyampalayam. I have studied upto X standard in Government High School in Thondamuthoor. My mother Vijayammal is a housewife doing household chores. My father Kanagaraj is a driver by occupation. At present, I am employed in glass fixing interior works. I got married to one Kokilamani in the year 2012. My wife quarreled with me and went to her mother's (natal home) house. We do not have any children. My grandfather Ponnusamy died in the month of November 2018. Because of this, I am staying as a support to my grandmother Ayyammal in Kasthuri Naicken Pudur from the month of February. When I used to go to Kasthuri Naicken Pudur to meet my grandfather and grandmother now and then, "X" 7 years of age, daughter of Vanitha, hailing from the same village, used to move very affectionately with me. Owing to this, I was attracted towards that child. When I used to go there, I used to get her biscuit and chocolate, thereby keeping her in my grips. When I stayed in Kasthuri Naicken Pudur itself to look after my grandmother who was not keeping good health in the month of February, using this opportunity I got chocolate for "X" and spoke to her affectionately and took her to my grandmother's house and had anal sexual intercourse with her, and sent her saying that she must not tell this to anyone. Again, 25 days ago also, I made "X" come to my grandmother's house and committed sexual assault on her by way of anal sexual intercourse and gave her the dairy milk chocolate which I had brought and asked her not to tell her what had happened there to anyone and sent her. Giving heed to my words, that girl child did not tell anyone of this. Owing to this, I had been visiting my

grandmother's house and staying there without any fear. On 25.03.2019, at about 5.45 p.m., when I was there at the entrance of my grandmother's house, "X" and Rithikashree, children of the said Vanitha, were playing catching game in front of their house. After some time, around 6.00 p.m., she (Vanitha) had gone inside her house. "X" alone was playing in the street. At that time, deciding that I should somehow call her and have sex with her, I was staring at her remaining in the entrance. When "X" came running in that street, I pulled her trying to catch her and when she tried to run away from me, she tripped and fell down. Because of this, she sustained bleeding injuries on her forehead, chin, hands and legs. Since nobody in the neighbourhood had seen me lifting her, I carried her in my shoulder and went to my grandmother's house. Since my grandmother was not keeping good health, she did not notice me carrying "X". Then, in the room next to the room where my grandmother was there and where old things were dumped, I, about 7.00 p.m., pressed both my knees on X's thighs and for the first time, placed my penis on her vagina and attempted to force myself and she, unable to bear the pain, started screaming and thinking that the noise would be heard outside, I pressed my right hand on her nose and mouth and pushed my left hand index finger into her vagina and pressed. She fainted at that time because of this. After that, I lifted her and turned her making her lie facing the ground and inserted my penis into her anus and had sex. While doing so, I pressed X's head on the mud floor and pressed my legs on the back side of her thighs and took the red coloured scarf which was lying there nearby and put it around her neck and tightened it and then, took that scarf and left it in the same room in a corner and made her lie down in a corner of the same room amidst the things there so that no one could get to know of it and came out. Later, I came out and was sitting for some time. It would have been about 7.30 p.m., my uncle and junior maternal aunt had brought food for my grandmother and were feeding her. I ensured that nobody came to the room where "X" was kept hidden. Till the time there was no public movement, I stayed in the house itself and suddenly, about 9.00 p.m., my grandmother started to suffer from breathing problem. My junior maternal aunt also had come there at that time. In a few minutes, my grandmother had died. Having come to know of this, the neighbours came to my grandmother's house and were condoling her demise. In the meantime, persons were searching for "X" in the whole of Kasthuri Naicken

Pudur. I stayed at home and ensured that no one came to the room in which "X" was kept hidden. After that, out of anxiety, I consumed the brandy which I had already kept with me. I could not get sleep. When I touched and felt "X" who was kept hidden inside the house, her body was cold. The persons who came to condole the demise went to sleep scattered outside the house. I came out of the house to find out whether there was any public movement. Further, since the relatives who were in the house had slept and as there was no public movement in the street, about 03.30 hrs. in the early morning, I concealed the body of "X" in my ash coloured 'T' shirt and threw the body in the lane at the backside of Maniammal's house and Vijayakumar's house and returned home. After that, I had folded and kept, without anyone's knowledge, the shirt and the lungi which I had worn at the time of occurrence and the red coloured scarf which I had used to commit the murder of "X" by strangulating her neck, behind the old door that was kept leaning in a corner of the wall of the same room in which the old things were stored. Later, on 26.3.2019, about 7 a.m., our villagefolk who saw the corpse of "X" were crying. Later, I was told that Vanitha had taken the child to the hospital. I pretended of not knowing anything and occupied myself in the obsequies of my grandmother. After that, several policemen were making more enquiries on the death of "X", the daughter of Vanitha. Then, after three days, I also came to know that the police were making enquiries about me. Hence, being frightened, that the police would somehow conduct inquiries and would find out me, I started from my house on 31.03.2019 early in the morning and came to the Tahsildar's office situated in Coimbatore North and appeared before you and narrated what had taken place. You save me.

All the above mentioned details were written down by me, Regional Deputy Tahsildar as narrated by Santhosh Kumar."

2.12. After recording the confession statement of the appellant (Ex.P.9), Thangaraj (P.W.10) and Vijaya (P.W.12) produced him along with a requisition letter (Ex.P.10) to the second I.O. at 11.00 a.m. on 31.03.2019. The second I.O. placed the appellant under arrest at 11.30 a.m. and recorded his police statement. Based on the disclosures made by the appellant in the extra-judicial confession (Ex.P.9) as well in the police statement (admissible portion marked as Ex.P.12), she went to the house of the appellant's grandmother Iyyammal in Pannimadai village, where she prepared a fourth Observation Mahazar

(Ex.P.8) and a fourth rough sketch (Ex.P.38) in the presence of witnesses Lakshmi (not examined) and Aruchamy (P.W.9). From behind a dismantled wooden door in the northern portion of the house of Iyyammal, the second I.O. recovered the following items under the cover of a mahazar (Ex.P.13) at 14.30 hours on 31.03.2019 in the presence of the aforesaid witnesses :

1. A blood stained pink and black checked full shirt (M.O.9)
2. A blue and white checked lungie (M.O.10)
3. Red colour woolen scarf (M.O.11)

Thereafter, the second I.O. went to the police station and altered the case in Thudialur P.S. Cr.No.168 of 2009 from one under Section 302 IPC @ 376-A IPC and Sections 5(1) and 5(m) r/w Section 6 of the POCSO Act to Sections 363, 376-A and B, 302, 201 IPC and Sections 5(1), 5(m) read with Section 6 of the POCSO Act and prepared the alteration report (Ex.P.39). The alteration report (Ex.P.39) was forwarded to the trial Court and not to the Judicial Magistrate No.I, Coimbatore, because, by then, it was clear that the case was exclusively triable by the Special Court for exclusive trial of POCSO Act Cases (trial Court) without the case being committed to the Court of Session under Section 209 Cr.P.C. The appellant was produced before the trial Court on 31.03.2019 and was remanded in judicial custody. The case papers were, thereafter, transferred from the file of the Court of Judicial Magistrate No.I, Coimbatore, to the file of the trial Court.

2.13. At the request of the second I.O., the trial Court sent the appellant from the prison to the CMC Hospital, where, Dr.Peranantham (P.W.17) examined the appellant on 04.04.2019 with regard to his potency and issued the potency certificate (Ex.P.21), wherein, he has opined as, "There is nothing to suggest that he is impotent."

2.14. The second I.O. examined Sivagami (P.W.11), the Headmistress of the school in which "X" studied and obtained the progress report (Ex.P.14) and the bona fide certificate (Ex.P.15) of "X" to show that her date of birth is 17.11.2012.

2.15. At the time of post-mortem of "X", her sample blood was collected and was preserved in the CMC Hospital. Therefore, the second I.O. made a requisition (Ex.P.35) to the trial Court, for sending the sample blood of "X" to the Regional Forensic Science Laboratory, Coimbatore (for brevity "the RFSL") and accordingly, on the orders of the trial Court, (Ex.P.36), Palaniammal, WHC-2066, handed over the blood sample to the RFSL on 25.04.2019. The second I.O. gave a requisition dated 15.04.2019 (Ex.P.42) to the trial Court, for sending the following items to the RFSL for examination :

M.O.1	T-shirt that was found covered over the body of "X" when Dhanalakshmi (P.W.4), who first saw "X"	Seized by the first I.O. on 26.03.2019 behind Maniammal's house
M.O.2	Green colour T-shirt worn by "X"	Handed over to the first I.O. at the time of post-mortem on 26.03.2019
M.O.3	Green colour panty of "X"	
M.O.4	Red colour thread that was worn by "X"	
M.O.5	Red colour waist cord worn by "X"	
M.O.9	Pink & black checked full seelved shirt	Seized by the second I.O. on 31.03.2019 on the disclosure of the appellant
M.O.10	Blue & white checked lungie	
M.O.11	Red colour woolen scarf	

Accordingly, with the covering letter dated 24.04.2019 (Ex.P.43), issued by the trial Court, Palaniammal, WHC-2066, handed over the aforesaid articles to the RFSL on 25.04.2019.

2.16. Munirasan (P.W.22), Deputy Director and Assistant Chemical Examiner, RFSL and Thanuja Banu (not examined) Junior Scientific Officer, RFSL, examined the aforesaid articles, viz. M.Os.1 to 5 and 9 to 11 and detected blood in M.Os.1 and 9. They also detected semen in M.Os.2 and 3 vide biology report (Ex.P.25). The articles in which blood and semen were detected, were further subjected to serological examination by Munirasan (P.W.22) and Thanuja Banu and the serology report that has been marked by the trial Court as Ex.P.25 (though it should have been marked as a separate exhibit) shows that the blood detected in M.Os.1 and 9 is human blood. As regards the semen test, the semen found in M.Os.2 and 3 is of human blood group "B". Munirasan (P.W.22) and Thanuja Banu conducted serological examination of the blood of "X" that was taken during post-mortem and found that her blood group is "O" vide their serology report dated 23.05.2019 (Ex.P.26).

2.17. To recapitulate, Dr.Peranantham (P.W.17), who conducted autopsy on the body of "X", had sent 12 items viz. swabs and smears through Saravanan (P.W.19), Head Constable to the RFSL and they were examined by Munirasan (P.W.22) and Thanuja Banu. Their biology report dated 01.04.2019 (Ex.P.24) reads as under :

"I. An envelope labeled "X"/7 YRS/FEMALE ...
Cr.No.168/19 ... THUDIYALUR PS ... PM NO.1042/19 ... VAGINAL
SWAB AND SLIDE ... UTERUS SWAB AND SLIDE ... ANAL SWAB AND

SLIDE ... and containing

Item 1:	A cotton swab kept in a test tube marked "VAGINAL SWAB"
Item 2:	A glass slide with whitish smear marked as "VAGINAL"
Item 3:	A cotton swab kept in a test tube marked "UTERUS SWAB"
Item 4:	A glass slide with whitish smear marked as "UTERUS"
Item 5:	A cotton swab kept in a test tube marked "ANAL SWAB"
Item 6:	A glass slide with whitish smear marked as "ANAL"

II. An envelope labeled ""X"/7 YRS/FEMALE .. Cr.No.168/19 ... THUDIYALUR PS ... PM NO.1042/19 ... ORAL SWAB AND SLIDE ... HIANAL SWAB AND SLIDE ... CERVIX SWAB AND SLIDE ... " and containing

Item 7:	A cotton swab kept in a test tube marked "ORAL SWAB"
Item 8:	A glass slide with whitish smear marked as "ORAL"
Item 9:	A cotton swab kept in a test tube marked "HIANAL SWAB"
Item 10:	A glass slide with whitish smear marked as "HIANAL"
Item 11:	A cotton swab kept in a test tube marked "CERVICAL SWAB"
Item 6:	A glass slide with whitish smear marked as "CERVICAL"

Report :

Detected semen on items 3, 7 and 11 but not on any of the items 1, 5 or 9.

Detected spermatozoa on the smears of items 4, 8 and 12 but not on any of the items 2, 6 or 10.

DNA report from the Director, Forensic Sciences Department, Chennai-4 will be sent separately."

2.18. Since semen was detected in three items and spermatozoa in three items, they were forwarded to the DNA

Laboratory in Chennai for DNA analysis. It is apposite to state here that the presence of spermatozoa presupposes the presence of semen but not vice versa. DNA profiling was done by Dr.Mahalakshmi, Deputy Director (not examined) and Dr.Thilaga, Assistant Director (P.W.23). In the DNA analysis, they detected male DNA in the items and therefore, they sent a wireless message on 16.04.2019 (Ex.P.44) to the I.O. to depute a Police Constable to collect the FTA card for drawal of blood sample of the accused in the case. Accordingly, on the orders of the trial Court, one Dhillipa, WGr.I-856 was deputed to collect the FTA card from the DNA division of the Tamil Nadu Forensic Science Laboratory, Chennai.

2.19. On the directions of the trial Court vide Ex.P.47, the appellant was produced from the prison to the CMC Hospital, where, his blood was taken in the FTA card and the same was submitted to the trial Court. The trial Court sent the FTA card containing the blood sample of the appellant to the DNA division of the Tamil Nadu Forensic Science Laboratory, Chennai, vide communication dated 27.05.2019 (Ex.P.48) for DNA profiling. DNA profiling of the appellant's blood was conducted qua the items in which semen and spermatozoa were found in the swabs and smears that were taken from the body of "X" by Dr.Peranantham (P.W.17) at the time of autopsy.

2.20. As stated above, Dr.Mahalakshmi and Dr.Thilaga (P.W.23) performed DNA profiling and issued four reports dated 30.10.2019 and all of them have been marked in the trial Court as Ex.P.27 giving room to much confusion. The Public Prosecutor conducting the trial in the trial Court should have marked each of the reports as a separate exhibit. Therefore, we are constrained to cite the four DNA reports by referring to the certificate number viz. DNA.116/2019, DNA.164/2019, DNA.180/2019 and DNA.181/2019.

DNA.116/2019:

This report relates to extraction of DNA from the swabs and smears of "X" that were taken during post-mortem and also about the extraction of DNA from the FTA card of the appellant.

DNA.164/2019:

This report relates to extraction of DNA from the blood stains found on the blood card (FTA card) extracted from the appellant. In this report, it is stated that the seminal stain on item No.4 (uterus smear) does not tally with the DNA of the appellant, but, it belongs to another male.

DNA.180/2019:

This report relates to extraction of DNA from the apparel of "X" viz. M.O.s.2 and 3 and extraction of DNA from the alleged clothes of the appellant viz. M.O.s.1 and 9. No separate opinion has been given in this report and instead, it is stated that a comprehensive opinion has been given in DNA.181/2019.

DNA.181/2019:

This report relates to the extraction of DNA from the control blood of "X". The conclusion in this report is extracted verbatim:

"Conclusion : From the DNA typing results of the above samples, it is found that

i. the female DNA profile of the seminal stain on items 3,4,7,8, 11, 12 (of ref 3) and blood stain on items 5 and 6 (of ref 5) belong to one and the same female individual and are that of the victim "X".

ii. the seminal stain on items 1 and 2 (of ref 5) belong to one and the same male

iii. A mixed DNA profile of the seminal stain of item 1 (of ref 5) is that of the deceased "X", alleged accused Santhosh Kumar (of ref 4) and a male DNA profile of item 4 (of ref 3).

iv. A mixed DNA profile has been obtained from the seminal stain on items 3, 7, 8, 11, 12 (of ref 3) wherein the alleged accused Santhosh kumar and deceased "X" are partial contributors of the profile. In addition to their partial profile a 15 STR DNA profile of a male individual was obtained. This profile is found to be consistent with DNA profile obtained on item 4 uterus smear (of ref 3)."

2.21. On gleaning through the aforesaid reports, it is seen that the DNA extracted from M.Os.2 and 3 tallies with that of the appellant and in M.O.2, apart from the DNA of the appellant, a male DNA profile identical to the one found in the uterus smear (item No.4) is also found. Similarly, the DNA extracted from the semen and spermatozoa that were detected in item Nos.3, 7, 8, 11 and 12 viz. the swabs and smears that were taken from various parts of the body of "X" during post-mortem, were found to contain the DNA of the appellant and of another male.

2.22. The second I.O. examined various witnesses, including the experts, who conducted the post-mortem, biological, serological and DNA examinations and after completing the investigation, filed a final report on 06.06.2019 against the appellant, in the trial Court for the offence under Sections 354, 364, 376-A and B, 302 and 201 IPC and Sections 5 (1), 5(m) read with Sections 6 and 7 read with 8 of the POCSO Act.

2.23. On production of the appellant from the prison, he was furnished with the relied upon documents under Section 207 Cr.P.C. At that time, he stated that he does not have the means to engage an advocate and therefore, the trial Court made arrangements with the Legal Services Authority and Mr.S.Kingsley Paul Robinson, Advocate, was nominated to defend the appellant.

2.24. The trial Court framed charges for the offences under Sections 5(1), 5(m) read with Section 6 of the POCSO Act and Sections 302 and 201 IPC against the appellant.

2.25. When questioned, the appellant pleaded "not guilty". To prove the case, the prosecution examined 26 witnesses and marked 51 exhibits and 11 material objects. When the appellant was questioned under Section 313 Cr.P.C., he flatly denied the incriminating circumstances.

2.26. On the side of the appellant, 9 witnesses including the appellant, who examined himself as D.W.8, were examined and 3 exhibits were marked.

2.27. After hearing either side and after considering the evidence adduced by both sides, the trial Court, by a judgment and order dated 27.12.2019 in Spl.C.C.No.76 of 2019, has convicted and sentenced the appellant as under:

Provision under which convicted	Sentence
Sec. 5(1) and 5(m) r/w Sec. 6 of the POCSO Act	Life imprisonment till his natural death and to pay a fine of Rs.1,000/-, in default to undergo 1 year rigorous imprisonment
Section 302 IPC	Captial punishment of hanging till death and to pay a fine of Rs.1,000/-, in default to undergo 1 year rigorous imprisonment

Provision under which convicted	Sentence
Section 201 IPC	7 years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo 6 months rigorous imprisonment

Besides, the trial Court has also recommended to the Government to pay a compensation of Rs.10,00,000/- to the mother of "X" under Section 33(8) of the POCSO Act, read with Rule 7(2) of the Rules made thereunder from the Victim Compensation Scheme. Since the DNA reports disclosed the involvement of another male, the trial Court directed the Superintendent of Police, Coimbatore, to appoint an efficient female investigating officer for further investigation.

2.28. Since the trial Court has imposed a sentence of death, the case has been sent up to us for confirmation under Section 366 Cr.P.C. The accused has filed Crl.A. No.119 of 2020 challenging his conviction and sentence.

3. Heard Mr.K.Prabakar, learned Additional Public Prosecutor appearing for the State and Mr.Ponraj and Mr.Kingsley Paul Robinson, learned counsels for the appellant.

4. The prosecution has proved the following facts beyond cavil :

- i. "X" was the daughter of Vanitha (P.W.1) and was a resident of K.N.Pudur in Pannimadai village. She was studying in the I standard in the Panchayat Union Middle School, Thippanur and at the time of occurrence, she was aged 6 years and 4 months. Her younger sister is Rithikasree.
- ii. "X" went missing in the evening of 25.03.2019. She was found around 07.00 a.m. on 26.03.2019 by Dhanalakshmi (P.W.4), lying unconscious with M.O.1 (T-shirt) covered on her face in the alley behind the house of Maniammal. She was alive but unconscious, when she was examined by Dr.Navaneeth Kumar (P.W.16).
- iii. "X" was dead when she was examined by Dr.Bhuvana (P.W.15) at the CMC Hospital at 08.55 a.m. on 26.03.2019 vide Accident Register copy (Ex.P.19).
- iv. "X" was subjected to sexual assault.
- v. "X" was a Dalit. The appellant is also a Dalit.
- vi. The house of Iyyammal, the grandmother of the appellant is located in the row opposite the house of "X".

5. The following facts are admitted by the appellant (D.W.8), in his evidence :

- i. He is the son of Kanagaraj (D.W.4) and Vijayammal (D.W.5) and that he was 35 years old, when he gave evidence on 13.12.2019. He belongs to Uliyampalayam village.
- ii. Iyyammal was his grandmother and she was living in K.N. Pudur in Pannimadai village. Since his grandmother was sick, he went to her house in Pannimadai on 15.03.2019 and had stayed there for 10 days to nurse her.
- iii. Though he did not know how "X" went missing, but, on 25th, he knew that the family members of "X" were searching for her in the village.
- iv. His grandmother Iyyammal died at 08.30 p.m. on 25th March and was cremated the next day.

6. The moot question that falls for the consideration of this Court is: who was the perpetrator of this dastardly crime? The prosecution case rests on circumstantial evidence. At this juncture, it may be apposite to refer to a sapient passage from the judgment of the Supreme Court in Hanumant vs. State of Madhya Pradesh¹:

"10. In dealing with circumstantial evidence the rules specially applicable to such evidence must be borne in mind. In such cases there is always the danger that conjecture or suspicion may take the place of legal proof and therefore it is right to recall the warning addressed by Baron Alderson to the jury in Reg v. Hodge [(1838) 2 Lew 227] where he said:

"The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual, the more likely was it, considering such matters, to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete.

It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to

1 AIR 1952 SC 343

be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused. In spite of the forceful arguments addressed to us by the learned Advocate-General on behalf of the State we have not been able to discover any such evidence either intrinsic within Exhibit P-3-A or outside and we are constrained to observe that the courts below have just fallen into the error against which warning was uttered by Baron Alderson in the above mentioned case."

Bearing in mind the aforesaid proposition of law enunciated by the Supreme Court, we now propose to discuss the evidence on record adduced by both sides.

7. The prosecution relies upon the following circumstances :

- i. Hariharan (P.W.3) had seen the appellant around 05.30 p.m. on 25.03.2019, carrying "X" with him and going towards his grandmother's house.
- ii. "X" was found lying unconscious in the same alley, but, a little away from the house of Iyyammal behind the house of Maniammal.
- iii. The extra-judicial confession (Ex.P.9) of the appellant to Thangaraj (P.W.10) and Vijaya (P.W.12), the revenue officers.
- iv. The recovery of the apparel viz. M.Os.9 and 10 of the appellant with stains and also the recovery of the red scarf (M.O.11), based on the disclosure of the appellant.
- v. The injuries found on the person of "X" during post-mortem and the detection of semen and spermatozoa from the swabs and smears that were taken from various parts of the body of "X" during post-mortem.
- vi. From the blood stain found in the T-shirt (M.O.1-item No.5 in DNA report no.180/2019), DNA was

extracted and it was found to be that of "X".

vii. From the blood stains found in the full shirt (M.O.9-item No.6 in the DNA report No.180/2019), DNA was extracted and it was found to contain the DNA of "X".

viii. From the seminal stains found in the T-shirt of "X" (M.O.2-item No.1 in the DNA report No.180/2019) and panty of "X" (M.O.5-item No.2 in the DNA report No.180/2019), DNA was extracted and it tallied with the DNA of the appellant vide DNA report No.181/2019.

ix. From the seminal stains found in the 6 smears and swabs that were taken from the body of "X" during post-mortem, two male DNAs were found, of which, one belongs to the appellant.

x. The DNA reports conclusively disclose the presence of DNA of the appellant in three swabs and two smears, viz., uterus swab, oral swab, oral smear, cervical swab and cervical smear.

8. Mr. Ponraj, learned counsel for the appellant attacked the F.I.R. (Ex.P.23) by contending that the complaint (Ex.P.1) was not lodged on 25.03.2019 as asserted by Vanitha (P.W.1) and Boopathy (P.W.21), but, it was lodged only on 26.03.2019. In support of this contention, he took this Court through the complaint (Ex.P.1), wherein, at the top, the date has been given as 26.03.2019. That apart, in the complaint (Ex.P.1), the following averment finds place :

"நேற்று 25.03.2019ஆம் தேதி மாலை சுமார் 05.30 மணியளவில் நான் வீட்டில் படுத்துக்கொண்டு இருந்தேன் ." (emphasis supplied)

(free English translation - Yesterday, on 25.03.2019 at 05.30 p.m., I was resting in house.) Whereas, the printed F.I.R. (Ex.P.23) shows as if the case was registered on 25.03.2019 and in the body of the printed F.I.R. (Ex.P.23) which contains the complaint averments, it is stated as, "இன்று 25.03.2019. மாலை சுமார் 05.30 மணியளவில் நான் வீட்டில் படுத்துக்கொண்டு இருந்தேன் ." (emphasis supplied) (free English translation - Today, 25.03.2019, at 05.30 p.m., I was resting in house).

9. Mr. Prabakar, learned Additional Public Prosecutor explained this incongruity by drawing our attention to the evidence of Vanitha (P.W.1), who has stated in her chief-examination that, she has inadvertently written the date as 26th in the complaint (Ex.P.1) instead of 25th. We are unable to concur with the explanation offered by the prosecution.

10. In this case, "X" went missing in the evening of 25.03.2019. In the complaint (Ex.P.1), it is dated as 26.03.2019

and in the body of the complaint, it is stated as, "Yesterday, on 25.03.2019 at 05.30 p.m., I was resting in house." If Vanitha (P.W.1) had given the complaint on 25.03.2019, as asserted by her in the chief-examination, she would not have stated "yesterday", but, would have stated as "today, 25.03.2019".

11. This Court will not lay the blame on a layperson like Vanitha (P.W.1), but, would squarely hold the police responsible for this incongruity. The printed F.I.R. should verbatim contain the complaint averments. When the complaint states, "நேற்று 25.03.2019", the printed F.I.R. cannot say "இன்று 25.03.2019". It is possible that Vanitha (P.W.1) would have gone to Thadagam Police Station on 25.03.2019 and would have sought the help of the police for securing her child. As is their wont, the Thadagam police would have procrastinated the issue and in order to cover it up, they might have set up a theory that the F.I.R. could not be registered in Thadagam Police Station, as the Government had not given permission and therefore, they took Vanitha (P.W.1) to Thudialur Police Station. Or inter alia, the police would have made Vanitha (P.W.1) run from Thadagam Police Station to Thudialur Police Station and when the situation became serious after "X" was found in a critical condition in the morning of 26.03.2019, the police would have developed cold feet and got the present complaint from Vanitha (P.W.1) and that is why, the present complaint (Ex.P.1) bears the date "26.03.2019" at the top and in the body, it states "yesterday, 25.03.2019 at 05.30 p.m., I was resting in house." To safeguard their interest, the police have prepared the printed F.I.R. as if the case was registered on 25.03.2019.

12. The question, however is, what is the fall out of the aforesaid discrepancies in the complaint (Ex.P.1) and the printed F.I.R. (Ex.P.23). In our considered view, this discrepancy can have no bearing on the evidence of the witnesses who have stated that "X" went missing in the evening of 25.03.2019; that they went looking out for her everywhere; that "X" was found in a critical condition on 26.03.2019 at 07.00 a.m. in a narrow alley behind Maniammal's house; that "X" was rushed by an ambulance to Lakshmi Hospital where she was examined by Dr.Navaneeth Kumar (P.W.16), who advised "X" to be taken to the CMC Hospital, where Dr.Bhuvana (P.W.15) examined her at 08.55 a.m. and declared "she was brought dead". That apart, in the complaint (Ex.P.1) that was given by Vanitha (P.W.1), she has not implicated anyone much less, the appellant. She has merely stated that her child went missing on 25.03.2019 and sought the help of the police to trace the missing child. Therefore, the discrepancies pointed out by Mr.Ponraj in the F.I.R. will not, in any manner, enure to the advantage of the appellant. However, we cannot leave this matter at rest and we direct the Director General of Police to order an enquiry by an officer of the rank of Deputy Inspector General, with regard to

aforesaid discrepancies in the complaint (Ex.P.1) and the printed F.I.R. (Ex.P.23) and fix responsibility on the officers and take departmental action against them and send an action taken report to this Court. The trial Court is directed to conduct an enquiry to find out if Thadagam Police Station was empowered to register an FIR on 25.03.2019. In this regard, the Superintendent of Police, Coimbatore, shall place all the necessary materials before the trial Court. If it is found during the enquiry that the Thadagam Police Station was empowered to register an FIR as on 25.03.2019, then, the trial Court shall conduct an enquiry under Section 340 Cr.P.C. against Boopathy (P.W.21) and take appropriate action for perjury.

13. In the light of the fact that the appellant has adduced evidence in order to controvert the prosecution case, it becomes imperative to discuss the defence evidence at this juncture, bearing in mind the judgment of the Supreme Court in State of U.P. vs. Babu Ram², wherein, it was held that the testimony of the defence witnesses should be given equal weight as that of the witnesses of the prosecution.

13.1. Rajendran (D.W.1) is the maternal uncle of the appellant. In his evidence, he has stated that, on 25.03.2019, around 05.30 p.m., he went to his mother Iyyammal's house in Pannimadai village and stayed there till 07.30 p.m; the appellant was also with him; her condition was critical as there was no intake of food; around 07.30 p.m., he left for his house which is a little away, as he had some other work; thereafter, he received a call from the appellant that Iyyammal's condition had further deteriorated and therefore, he rushed back to her house by which time, she was no more; she was cremated on the next day i.e., on 26.03.2019 around 03.00 p.m.; on 28.03.2019, while they were all relaxing in the house, the police picked up the appellant around 04.00 p.m. and a few days later, he was implicated in the present case.

13.2. Sasikumar (D.W.2) who is a relative of the appellant, has, in his evidence, stated that, on 25.03.2019, around 05.30 p.m., he was in the house of Iyyammal; she was very critical and the appellant was also with him; Iyyammal died around 09.00 p.m., for which all the relatives assembled in the house and were mourning; on the next day, i.e., on 26.03.2019, there was a hue and cry in the village around 06.00 a.m. and he saw "X" being carried by villagers; Iyyammal was cremated around 03.00 p.m. on 26.03.2019 and the third day ceremonies were performed on 27.03.2019; while they were all in the house on 28.03.2019, the police picked up the appellant at 04.30 p.m. and thereafter, implicated him in the present case.

13.3. Karthik Kumar (D.W.3) is the younger brother of the appellant. He has stated in his evidence that, on

25.03.2019, on getting the information that his grandmother Iyyammal had died, he went there around 09.00 p.m. and was there for 3 days; on 28th (Thursday), the police picked up the appellant and thereafter, he was implicated in this case.

13.4. Kanagaraj (D.W.4) is the father of the appellant and Vijayammal (D.W.5) is the mother of the appellant. Their evidence is also on the same lines. They have stated that they were available in the house of Iyyammal from 25.03.2019 onwards; the appellant was also with them; Iyyammal died around 09.00 p.m. on 25.03.2019; there was a search for "X" in the village; on 26.03.2019, Iyyammal was cremated and on 28.03.2019, around 04.00 p.m., the appellant was taken into custody by the police and thereafter, he was implicated in this case.

13.5 Thus, the parrot-like evidence of Rajendran (D.W.1), Sasikumar (D.W.2), Karthik Kumar (D.W.3), Kanagaraj (D.W.4) and Vijayammal (D.W.5), all close blood relatives of the appellant, is to the effect that they were all in Iyammal's house along with the appellant from 25.03.2019 onwards; that Iyammal died around 8.30 p.m. on 25.03.2019; that she was cremated on 26.03.2019; that the appellant was taken into custody by the police on 28.03.2019 and was falsely implicated in this case. Thus, through these witnesses, the defence wants to establish that when so many relatives were present in Iyammal's hut from 25.03.2019 onwards, the possibility of the appellant committing the offence stands ruled out. Concededly, Iyammal was staying alone in the hut in K.N. Pudur, Pannimadai. D.W.1 to D.W.5 were not residing in K.N. Pudur in Pannimadai village and were residing elsewhere. It is the specific defence of the appellant that from 15.03.2019, he started staying with his grandmother Iyammal in the Pannimadai hut. In his Section 313 Cr.P.C. statement, the appellant has not whispered about the presence of D.W.1 to D.W.5 in Iyammal's hut. During the local inspection of K.N. Pudur in Pannimadai village on 06.03.2021, we observed that the entire village is a small one with row houses. The house of Iyammal is diagonally opposite the house of "X". The prosecution has examined 9 witnesses from Pannimadai village and none of them has stated either in the chief-examination or in the cross-examination that they happened to see D.W.1 to D.W.5 on 25.03.2019. All this makes us view the evidence of D.W.1 to D.W.5 with a pinch of salt.

13.6. Mohan Kumar (D.W.6), in his evidence, has stated that he was working as a news reporter for Sun TV in Coimbatore area and on getting information about this case, he went to Pannimadai village and took videos and the same was telecast in the news channel of Sun TV. Sun TV telecast, which was uploaded in the YouTube channel was downloaded and recorded in a CD and the said CD was marked through Mohan Kumar (D.W.6), but, strangely M.O. number was not given by the trial Court and instead, it has been marked as Ex.D2. The defence has examined

this witness, in order to show that the police gave free access to the media in order to whip up public opinion that the rape and murder of a Dalit girl was perpetrated by the appellant, which is evident from the fact that in the news reporting, the entire confession statement that was allegedly given by the appellant finds a place even before the appellant was remanded in judicial custody.

13.7. Padmavathy (D.W.7), in her evidence, has stated that, she is the Manager-HR in Ganga Hospital, where one Murugan and his wife Dhanalakshmi (P.W.4) were employed. Murugan did not report for duty from 24.03.2019 to 30.03.2019. This evidence was adduced by the defence, in order to show that the police had rounded up several suspects, including the appellant, Hariharan (P.W.3) and Murugan, husband of Dhanalakshmi (P.W.4) in this case and that is why, Murugan did not go for work for 4 days.

13.8. The appellant examined himself as D.W.8 and in his evidence, has stated that, he hails from Uliyampalayam village; he had studied till 10th standard and completed I.T.I.; he was into aluminium fabrication work; from March 15th, he did not go for work and was staying with his grandmother Iyyammal in Pannimadai village as she was sick; he was taking care of her; while he was there, his mother and aunt were staying about 1 km. from the house; his mother came to Iyyammal's house on Saturday, 23rd and stayed there; though he does not know as to how "X" went missing, yet, he knew that the villagers were searching for "X"; since his grandmother was very sick, they were all attending to her; his uncle Rajendran (D.W.1) came to Iyyammal's house at 05.30 p.m. and was there for some time; after he left, his grandmother died at 08.30 p.m.; on coming to know of it, several relatives came for mourning; when they engaged drummers, the police who were searching for "X", restricted the playing of drums; on 26th morning, sniffer dog came to the village for tracing the whereabouts of "X"; the cremation of Iyyammal was done on 26th; on 27th, they had the third day ceremony; on 28th (Thursday), after all of them had their lunch and were resting, the police picked him up; his mobile was seized by the police; they asked him for the password of his mobile which he gave; he was not taken to the police station; instead, he was kept in a marriage hall in Thoppampatti junction; like him, the police had picked up Sudharsan, Santhosh and Vijayakumar; after he was picked up, the police brought Murugan, husband of Dhanalakshmi (P.W.4) and Hariharan (P.W.3) for interrogation; they removed his dress and started torturing him; they threatened him saying that they will kill him in an encounter; on the 30th night, they shifted him to another place viz. PRS; on the 31st morning, Ravikumar, Sub Inspector of Police and Vijayakumar, Sub Inspector of Police, Vadavalli Police Station came; during interrogation, he told them that he was innocent, but, they did

not accept his version; he told them that he is prepared to undergo any test; at 01.30 p.m., an hour later, the police took his fingerprints and asked him for his sperms; he said that he was weak; nevertheless, the police insisted and got his sperms on 31.03.2019 in the afternoon; on the same night at 10'o clock, the police took him in a car to various places and later, to the house of a Judge; since, it was late, the Judge asked the police to produce him in the open Court; however, at 05.00 a.m., they took him to the house of another Judge near Kidney Centre, who remanded him in 15 days custody; while he was in custody, the police took his signatures in various papers and he was not permitted to read them; they also took his signature in blank papers.

13.9. Jayakumar (D.W.9), in his evidence, has stated that, he is the Nodal Officer of Bharti Airtel Ltd.; he found the tower location and call details of 3 mobile numbers viz. 95973 77182, 99448 82434 and 82201 70568 and marked the call detail records of these 3 mobile numbers as Ex.D.2; (The trial Court has wrongly assigned Ex.D.2 to the call details in the deposition, but, in the exhibit list, the call details have been marked as Ex.D.3.); the mobile number 95973 77182 stands in the name of Santhosh Kumar, S/o.Kanagaraj, resident of 4/3 West Chithiraichavadi, Uliyampalayam, Coimbatore 641 109; the mobile number 99448 82434 stands in the name of Prakash, S/o.Antony, residing at No.92, Type-1, Bharathi Nagar, Tuticorin 628 005; and the mobile number 82201 70568 stands in the name of Murugan, S/o.Rangasamy, residing at No.2/80, K.N. Pudur, Pannimadai, Coimbatore 641 017. He has further spoken to about various tower locations of the mobile number 95973 77182 and has further stated that there were no incoming or outgoing calls from this mobile number on 29.03.2019 and 30.03.2019.

14. The defence had examined nine witnesses in order to show that the appellant was taken in custody from Pannimadai on 28.03.2019; his mobile was with the police and he was kept in illegal detention by the police in various places as shown in the tower locations; and along with the appellant, two other persons were kept in illegal detention.

15. Mr.Ponraj, learned counsel for the appellant attacked the various circumstances set out in paragraph 7 above and submitted that the defence has successfully broken the links of the chain. Mr.Ponraj submitted that according to the prosecution, the appellant appeared before Thangaraj (P.W.10) and Vijaya (P.W.12) at 08.00 a.m. on 31.03.2019 and gave an extra-judicial confession (Ex.P.9), wherein, he has stated that he carried "X" while she was playing in the street in the evening of 25.03.2019, subjected her to sexual assault, strangulated her with a scarf, kept the body beneath the cot, where his grandmother Iyyammal was lying; when Iyyammal died in the night, before relatives could gather in, he placed the body

of "X" behind the house of Maniammal at 03.00 a.m. on 26.03.2019, by covering it with a T-shirt (M.O.1).

16. As regards the first circumstance viz. that Hariharan (P.W.3) saw the appellant carrying "X" to his grandmother's hut, we find it hard to believe it for the following reasons: If Hariharan (P.W.3) had really seen the appellant carrying "X", he would have informed this to Vanitha (P.W.1) and other villagers, who were searching for "X" from the evening of 25.03.2019. The explanation of Hariharan (P.W.3) that he went off to his friend's house and returned only on 27.03.2019 and thereafter, gave a statement to the police is highly unbelievable. Except the ipse dixit of Hariharan (P.W.3) that he went off to his friend's house on 25.03.2019 and returned on 27.03.2019, there is no other evidence in this regard. The fact remains that Hariharan's (P.W.3's) house is one house away from the house of "X". In the cross-examination, when he was asked as to the mode of transport by which he went off to his friend's house on 25.03.2019, he stated that he went by bus, whereas, in his police statement, he has stated that he had gone by his motorcycle. This contradiction in his evidence qua police statement has been confronted to him as well to the second I.O. as required by Section 145 of the Evidence Act. That apart, in the cross-examination, Hariharan (P.W.3), has stated that, his mobile number is 99448 82434. In order to show that he had given a wrong number, the defence examined Jayakumar (D.W.9), Nodal Officer from Bharti Airtel Ltd., who has stated that the mobile number 99448 82434 stands in the name of Prakash, S/o. Antony, a resident of Tuticorin. The tower location of the said mobile number also shows that it was operated in Tuticorin area during the relevant time and not in Coimbatore area. Finally, if the police had come to know from examining Hariharan (P.W.3) on 27.03.2019 that the appellant had carried "X" with him, they would have started a manhunt for the appellant. There is absolutely no evidence in this regard. According to the police, the appellant suddenly surfaced on 31.03.2019 at 8.00 a.m. before Thangaraj (P.W.10), Tahsildar, for giving the extra-judicial confession (Ex.P.9). For the reasons assigned in this paragraph, we are unable to persuade ourselves to place reliance on the testimony of Hariharan (P.W.3).

17. As regards the second circumstance, viz., that "X" was found in the alley behind Maniammal's house on 26.03.2019 around 7.00 a.m., the evidence of Dhanalakshmi (P.W.4), Vanitha (P.W.1) and other villagers has established the same beyond doubt.

18. Coming to the third circumstance viz. the extra-judicial confession (Ex.P.9), Mr. Ponraj submitted that after the news that a Dalit child has been ravished broke out, there was a huge protest and road roko by the villagers and various Dalit outfits and the general elections to the Parliament was slated to be conducted on 18.04.2019, on account of which, there was so

much of campaign heat by political parties.

19. Mr.Ponraj took this Court through the evidence of the first I.O., who, in the cross-examination, has admitted that the leader of the opposition in the Assembly and other political leaders came to the house of "X" to pay homage. The first I.O. has also stated that the villagers conducted road roko for bringing the guilty to justice expeditiously.

20. Dhanalakshmi (P.W.4), in her cross-examination, has admitted that, she and other villagers also participated in the road roko for a brief while. Saravanan (P.W.19), Head Constable, who was entrusted with the task of handing over the body of "X" to her parents, has stated, in his evidence, that since the relatives of "X" did not come forward to take the body, the police were forced to keep the body a day more in the mortuary.

21. Mr.Ponraj contended that since the police were under great pressure, they rounded up several suspects, including the appellant and fixed responsibility on the appellant because, he was a Dalit, so that, the Dalit outfits can be silenced; therefore, they got the appellant's signature in blank papers, manufactured an extra-judicial confession, leaked it to the media, gave full access to the media to create a negative public opinion against the appellant and hurriedly charge sheeted the appellant, who is otherwise innocent.

22. Mr.Ponraj expanded the aforesaid contention by submitting that it would have been impossible for the appellant to have ravished "X" in the presence of his grandmother Iyyammal and kept the body of "X" in the same hut without being detected by the mourners, who had gathered for Iyyammal's death.

23. This argument of Mr.Ponraj did raise a serious doubt in our mind and therefore, exercising powers under Section 310 Cr.P.C., we went to the place of occurrence for local inspection on 06.03.2021, after due intimation to both sides. That an appellate Court is entitled to do this is no longer res integra. In Khushal Rao vs. State of Bombay³, the Supreme Court affirmed the judgment of the Nagpur High Court (Hidayatullah, C.J. and Mangalmurti, J.), where the learned Judges had conducted a local inspection while hearing a death reference. During inspection, apart from the four I.Os., Mr.Prabakar, Additional Public Prosecutor and Mr.Kingsley Paul Robinson, defence counsel were present. We inspected the spot and had the hut of Iyyammal measured. We found that the measurement tallied with the measurements shown in the rough sketch (Ex.P.38). We also found that the rough sketch (Ex.P.38) that was prepared by the second I.O. depicted a fairly correct topography of the place. We also viewed the Sun TV news reporting that has been recorded in a C.D. (Ex.D.2) and were shocked to find that right in the

presence of the police, the Sun TV reporter was freely taking videos inside the hut of Iyyammal and narrating the averments in the confession of the appellant. The news reporter Mohan Kumar (D.W.6) clearly says that Santhosh Kumar (appellant) has been arrested and he is likely to be produced before the Court later.

24. Fundamental rules of investigation demand that the police should protect the place of occurrence and ensure that evidence is not destroyed. They can even requisition the services of forensic experts to comb the place of occurrence for gathering clue materials. Instead, what the police had done is that they had freely permitted the media to have a field day and whip up a public outcry, which we very strongly deprecate and direct the Director General of Police to order an enquiry by an officer of the rank of Deputy Inspector General in this regard and take suitable action against the officer, who was responsible for this recklessness.

25. Mr. Prabakar, learned Additional Public Prosecutor, placed reliance on Section 65-B of the Evidence Act and also on the recent judgment of the Supreme Court in Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal and others⁴ and submitted that in the absence of a certificate under Section 65-B, *ibid.*, no reliance can be placed on the compact disc (Ex.D.2) and the call detail records (Ex.D.3). There is force in this submission of Mr. Prabakar. Though these exhibits tend to support the case of the appellant, yet, our hands are tied and we cannot place reliance on them in the absence of the requisite certificates under Section 65-B, *ibid.* On the flip side, we are constrained to observe that at present, Section 65-B, *ibid.*, has become a shield for the guilty and is used as a sword against the innocent. The Parliament represents the will of the people. It is presumed that the Parliament is aware of the judicial metamorphosis that Section 65-B, *ibid.*, has been undergoing. Yet, the Parliament has, in its wisdom, not thought it fit to intervene. If it is the will of the Parliament that the guilty should escape and the innocent should suffer, so be it. Of course, a certificate under Section 65-B, *ibid.*, is not required for the enquiry on the orders of the Director General of Police, which we have ordered in paragraph 24, *supra* and the delinquent police officers cannot take umbrage under it.

26. The discussion on the extra-judicial confession (Ex.P.9) need not be dilated further, in that, all confessions are required to pass the twin test of voluntariness and truthfulness. In this case, the DNA reports clearly show the involvement of two males, one of them, the appellant and the other is unknown, in the sexual assault of "X". Whereas, the appellant has appropriated to himself the entire blame in his extra-judicial confession (Ex.P.9). Thus, there is no truthfulness in the extra-judicial confession (Ex.P.9).

Probably, the appellant wanted to give a red herring to the police or consciously wanted to save his companion and this is a question which can be answered only in the further investigation that has been ordered by the trial Court.

27. Mr. Ponraj vehemently contended that if this Court does not place reliance on the extra-judicial confession (Ex.P.9), the entire prosecution case has to fall to ground, inasmuch as, it is not proved as to where the rape and murder of "X" was committed. Therefore, he submitted that when an important link in the chain of circumstances breaks, the whole prosecution case has to fall like a pack of cards and consequently, the Court should not place reliance upon the DNA reports at all.

28. Though these submissions of Mr. Ponraj appear attractive, there lies an underlying fallacy that impels us to reject them. It is settled law that while marshalling facts in a case of circumstantial evidence, the Court must consider the cumulative effect of the evidence as a whole. The chain of circumstances cannot be viewed and weighed in isolation. In other words, it is not open to the Court to cut up the various links in the chain and then assess them independently. That would be completely contrary to the settled principles governing the appreciation of evidence in cases of circumstantial evidence [See Ram Avtar vs. State (Delhi Administration)⁵]. What the Court is required to do is to carefully scrutinize the various circumstances alleged and then examine, on a cumulative reading of the evidence before it, whether the circumstances so established are consistent with the hypothesis of the guilt of the accused. (See Sharad Birdhichand Sarda vs. State of Maharashtra⁶). In the backdrop of the aforesaid principles, the following facts may be noticed:

29. There is no quarrel by the defence that "X" was carried from K.N.Pudur in Pannimadai village in an unconscious state to Lakshmi Hospital and from there, to the CMC Hospital, where, she was declared brought dead. As a matter of routine, on the request of the police, Dr. Peranantham (P.W.17) conducted post-mortem on the body of "X" on 26.03.2019 at 03.40 p.m. During post-mortem, Dr. Peranantham (P.W.17) has taken vaginal swab and slide, uterus swab and slide, cervix swab and slide, anal swab and slide, high anal swab and slide and oral swab and slide. He has sent these swabs and slides on 26.03.2019 through Saravanan (P.W.19), Police Constable to the Forensic Sciences Department for examination.

30. According to the evidence of the appellant, he was taken into illegal custody only on 28.03.2019 and his sperms were forcibly taken on 31.03.2019 in the afternoon, notwithstanding his plea that he was weak (see his evidence).

5 1985 Supp SCC 410

6 (1984) 4 SCC 116

Swabs and slides that were taken by Dr.Peranantham (P.W.17) reached the RFSL on the very next day of post-mortem i.e., on 27.03.2019 and in the biological examination that was conducted by Munirasan (P.W.22) and Thanuja Banu, semen and spermatozoa were detected. Therefore, the items were sent to the DNA division for DNA extraction. In such view of the matter, the contention of Mr.Ponraj that semen was forcibly collected from the appellant and it was sprinkled in the slides and swabs by the police deserves outright rejection because, these items had gone from one expert, Dr.Peranantham (P.W.17), to another expert viz. Munirasan (P.W.22) directly on 27.03.2019, much before 31.03.2019 the date on which, according to the appellant, the police obtained his semen forcibly.

31. When DNA profiling of these items was done by Dr.Mahalakshmi and Dr.Thilaga (P.W.23), they found male DNAs in some of the items. This prompted them to send a wireless message (part of Ex.P.44) to the police to obtain blood samples of the appellant in the FTA card. Accordingly, on the orders dated 20.05.2019 (Ex.P.47) passed by the trial Court, the appellant was produced from the prison to the CMC Hospital, where the doctors extracted his blood in the FTA card provided by the trial Court and sent the same to the trial Court. The trial Court, in turn, by communication dated 27.05.2019 (Ex.P.48) sent the FTA card to the DNA division of the Forensic Sciences Department. Here also, there has not been any intervention of the I.O. The DNA of the appellant was extracted from the FTA card and was mapped with the one that was extracted from the swabs, smears and apparel of "X" and they were found to match.

32. Apart from the extraction of male DNA from the swabs and slides, the experts had extracted male DNA from the apparel that were worn by "X", viz. T-shirt (M.O.2) and panty (மடல், M.O.3). These items were handed over by Dr.Peranantham (P.W.17) after post-mortem on 26.03.2019 to Saravanan (P.W.19), who, in turn, handed over the same to the first I.O. on the same day with a special report (Ex.P.22). These items were handed over along with the said special report (Ex.P.22) to the Judicial Magistrate No.I, Coimbatore on 26.03.2019 with Form-95 (Ex.P.33). The learned Magistrate has received it in his residence on 26.03.2019 at 11.45 p.m. and directed these items to be produced on the next day. Accordingly, on 27.03.2019, they were produced before the learned Magistrate, as could be seen from the date seal in Form-95 vide Ex.P.33. Thus, these items were in the custody of the Judicial Magistrate No.I, Coimbatore till the case was transferred to the Mahila Court. On such transfer, these items were produced before the trial Court on 03.04.2019, as could be seen from the seal of the Mahila Court on Ex.P.33. From the trial Court, the articles have gone to the RFSL on 25.04.2019 (See Ex.P.25). Thereafter, various tests, including DNA extraction were performed on those articles. When

the DNA extracted from the seminal stain found in the T-shirt (M.O.2) and panty of "X" (M.O.3) were profiled with the DNA extracted from the FTA card of the appellant, they got tallied vide report DNA.181/2019 (part of Ex.P.27).

33. However, Mr. Ponraj attacked the recovery of the apparel of the appellant (M.Os.9 & 10) and the scarf (M.O.11) by contending that the prosecution had failed to prove, from which area of the hut, the same were recovered. He also drew the attention of the Court to the seizure mahazar (Ex.P.13), wherein, the altered penal sections find place, whereas, according to the second I.O., the alteration of the penal provisions was done only at 16.30 hrs. on 31.03.2019. He further submitted that these items were not sent to the Court immediately, but were with the second I.O. inasmuch as, she, in her evidence, has categorically stated that she examined the post-mortem doctor by showing him the scarf (M.O.11); hence, the presence of human blood in the shirt (M.O.9) and the DNA extracted therefrom which shows that as that of the deceased "X" (vide report DNA.181/2019), becomes suspect. We are unable to countenance this submission for the following reasons :

i. Though there is some discrepancy in the evidence of the second I.O. and the recovery witness with regard to the place from where the apparel of the appellant (M.Os.9 & 10) were recovered, yet, the discrepancy is not that material so as to destroy the very seizure. We inspected the hut and found it to be very small measuring 16' x 22' as shown in the rough sketch (Ex.P.38). The alleged discrepancy is with regard to the exact place in the hut from where the objects were seized, inasmuch as, the mahazar witness has stated that it was seized from the southern portion of the hut, whereas, the second I.O. says that it was from the northern portion of the hut. Thus, both, the mahazar witness and the second I.O. say that the items were seized from the hut, but, the disagreement is whether it was seized from the southern side or northern side. Independent witnesses may sometimes falter in matters relating to directions and that cannot be a good ground to reject their testimony and overlook the very seizure. It is a settled law that even if an independent witness to the seizure turns hostile, the evidence of the police officer can be relied upon, if the same inspires the confidence of the Court. As regards mentioning of the amended penal provisions in the seizure mahazar (Ex.P.13), it cannot be said to be fatal, because, the alteration of the penal provisions was done by the second I.O. on her own understanding of the law and not on the orders or directions of the Court. Therefore, mentioning of the amended penal provisions in the seizure mahazar that was prepared at 14.30 hrs. on 31.03.2019 and later, after going to the police station, preparation of an alteration report (Ex.P.39) at 16.30 hrs. cannot have the effect of vitiating the very seizure in the facts and

circumstances of the instant case.

ii. Mr.Ponraj's contention that the police have sprinkled the blood of "X" on the appellant's shirt (M.O.9) is indeed farfetched, because, the blood of "X" was extracted by Dr.Peranantham (P.W.17) during post-mortem and it would be in the realm of fantasy to imagine that he colluded with the police and permitted them to sprinkle X's blood on the appellant's shirt (M.O.9).

34. Thus, we have no good reasons to suspect Dr.Peranantham (P.W.17), Munirasan (P.W.22), Dr.Thilaga (P.W.23) and the trial Judge, under whose orders, the blood of the appellant was extracted in the FTA card.

35. From a cumulative reading of the aforesaid evidence, we are of the considered view that the unshaken scientific evidence in this case nails the appellant from all sides and fully establishes the hypothesis of his guilt. Furthermore, we may also notice that in *Gajraj v State (NCT of Delhi)*⁷, while dealing with a case of circumstantial evidence, the Supreme Court has categorically held that even serious discrepancies in other evidence will have to yield to conclusive scientific evidence.

36. In the course of appreciation of evidence, the necessity of weighing scientific evidence over other evidence has been explained by the Supreme Court in the following passage in *Dharam Deo Yadav v. State of U.P.*⁸

"30. The criminal justice system in this country is at crossroads. Many a times, reliable, trustworthy, credible witnesses to the crime seldom come forward to depose before the court and even the hardened criminals get away from the clutches of law. Even the reliable witnesses for the prosecution turn hostile due to intimidation, fear and host of other reasons. The investigating agency has, therefore, to look for other ways and means to improve the quality of investigation, which can only be through the collection of scientific evidence. In this age of science, we have to build legal foundations that are sound in science as well as in law. Practices and principles that served in the past, now people think, must give way to innovative and creative methods, if we want to save our criminal justice system. Emerging new types of crimes and their level of sophistication, the traditional methods and tools have become outdated, hence the necessity to strengthen the forensic science for crime detection. Oral evidence depends on several facts, like power of observation, humiliation, external influence,

7 (2011) 10 SCC 675

8 (2014) 5 SCC 509

forgetfulness, etc. whereas forensic evidence is free from those infirmities. Judiciary should also be equipped to understand and deal with such scientific materials. Constant interaction of Judges with scientists, engineers would promote and widen their knowledge to deal with such scientific evidence and to effectively deal with criminal cases based on scientific evidence. We are not advocating that, in all cases, the scientific evidence is the sure test, but only emphasising the necessity of promoting scientific evidence also to detect and prove crimes over and above the other evidence."

(emphasis supplied)

37. In the case at hand, even if one were to factor in the various embellishments and discrepancies in the evidence of Hariharan (P.W.3) as well as the extra-judicial confession of the appellant (Ex.P.9), the fact remains that the scientific evidence in this case has not been successfully assailed and has come out unscathed during cross-examination. The chain of circumstances, discussed from paragraphs 29 to 34, supra, fleshed out by the scientific evidence, are clear, consistent and conclusive in nature and are of an unimpeachable character in establishing the guilt of the appellant.

38. As we have chosen not to act upon the extra-judicial confession of the appellant (Ex.P.9), the only consequence is that there is no legal evidence to show that the appellant had sexually assaulted "X" in Iyyammal's hut. It does not, however, follow that in the absence of the extra-judicial confession of the appellant (Ex.P.9), the appellant cannot be connected with the crime. As stated supra, in the teeth of the overwhelming scientific evidence, it would matter very little if we choose not to act upon the extra-judicial confession of the appellant (Ex.P.9). To say that the case of the prosecution must be jettisoned on account of us not placing reliance on the testimony of Hariharan (P.W.3) and the extra-judicial confession (Ex.P.9) is like throwing the baby out with the bathwater.

39. We are also of the considered opinion that the appellant has not satisfactorily discharged the burden under Sections 29 and 30 of the POCSO Act which read as under:

"29. Presumption as to certain offences.-

Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3,5,7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved.

30. Presumption of culpable mental state.-

1. In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

2. For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

Explanation.- In this section, "culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact."

It must be borne in mind that the reverse onus clause contained in Section 30, *ibid.*, requires the appellant to prove the absence of a culpable mental state not on a standard of balance of probabilities, but on the standard of proof beyond reasonable doubt. Given the nature of the scientific evidence against the appellant, it is impossible for us to conclude that, on facts, the appellant has discharged this onus.

40. In view of the foregoing discussion, we have no incertitude in concluding that the appellant and another person had sexually abused the 7 year old girl. Further, we find that the little girl was subjected to not only vaginal penetration but also oral sex. We say so because in the oral swab and smears, semen and spermatozoa were detected (See Ex.P.24). Therefore, we hold that the prosecution has amply proved the charge against the appellant under Sections 5(1) and 5(m) read with Section 6 of the POCSO Act.

41. Coming to the charge under Section 302 IPC, the opinion of Dr.Peranantham (P.W.17) is that, the deceased would appear to have died of asphyxia due to violent compression of neck by ligature material (strangulation) and smothering. The scarf (M.O.11) that was recovered from the hut of Iyyammal on the disclosure of the appellant on the basis of the admissible portion of the police confession (Ex.P.12), which is relevant under Section 27 of the Evidence Act, was shown to Dr.Peranantham (P.W.17), while he was in the witness box and he has opined that the same could have been used for strangulating "X". With the available evidence discussed above, we have no hesitation in inferring that the appellant and another person had sexually assaulted "X" and had thereafter, smothered her, resulting in she becoming unconscious initially and later, succumbing to the injuries. Even otherwise, if a full grown man like the appellant and another person were to fall upon a 7 year old girl and sexually assault her by not only penetration of her

vagina, but also by penetration of her anus and mouth, death would have naturally ensued to her in the ordinary course. Accordingly, we confirm the conviction of the appellant of the offence under Section 302 IPC. Since we are unable to determine the actual place of occurrence as we have not placed reliance on the extra-judicial confession of the appellant (Ex.P.9), the conviction of the appellant of the offence under Section 201 IPC and cannot be sustained. He is, therefore, acquitted of the said charge.

42. The next question is, whether the sentence of death imposed by the trial Court ought to be confirmed. Section 354(3) Cr.P.C imposes a mandatory obligation on the Court to record special reasons for imposing the death penalty. In *Ravishankar @ Baba Vishwakarma v State of Madhya Pradesh*⁹, a 3 Judge Bench of the Supreme Court took note of the "residual doubt" doctrine where the accused is given the benefit of any residual doubts about his guilt at the stage of sentencing, despite the satisfaction of the "beyond reasonable doubt" standard at the stage of conviction. These residual doubts would act as mitigating circumstances in the final balance. However, in *Shatrughna Baban Meshram vs. State of Maharashtra*¹⁰, another 3 Judge Bench has held that the theory of residual doubt is theoretically unsound and cannot be applied as a mitigating factor at the sentencing stage.

43. Without resting on this aspect of the matter, we are satisfied that this case does not come within the category of "rarest of rare cases" by applying the principles laid down by the Supreme Court in *Bachan Singh v State of Punjab*¹¹. It has not been demonstrated to us that the appellant was addicted to crime and that he is a menace to society, thereby ruling out any possibility of reformation. In the facts of this case, we are unable to persuade ourselves to hold that a sentence lesser than the death penalty is completely foreclosed. As life imprisonment is the rule and death sentence is the exception, the sentence of death awarded by the trial Court is commuted to imprisonment for life with the rider that the appellant will not be entitled to any statutory remission or commutation until he has completed 25 years of actual imprisonment. We are entitled to say so in law in the light of the judgment of the Constitution Bench of the Supreme Court in *Union of India vs. V. Sriharan @ Murugan and others*¹².

44. As stated supra, since the DNA reports disclosed the involvement of an unidentified male in the crime, the trial Court had directed the Superintendent of Police, Coimbatore, to appoint a female investigating officer to conduct further

9 (2019) 9 SCC 689

10 (2021) 1 SCC 596

11 (1980) 2 SCC 684

12 (2016) 7 SCC 1

investigation into the matter. We are upholding this direction in exercise of our powers under Section 482 Cr.P.C, as, in our considered opinion, a strong prima facie case has been made out to sustain this course of action. That such a direction can be given by the High Court in exercise of powers under Section 482 Cr.P.C while hearing an appeal is no longer res integra (See Popular Muthiah v State¹³).

45. In the result:

- i. The conviction and sentence of the appellant under Sections 5(1) and 5(m) read with Section 6 of the POCSO Act are confirmed;
- ii. The conviction of the appellant under Section 302 IPC is confirmed. However, the sentence of death is modified to one of imprisonment for life with a rider that the appellant shall not be released under any statutory remission or commutation scheme until he has undergone 25 years of actual imprisonment, inasmuch as it is a crime against a hapless minor girl. The appellant is also liable to pay a fine of Rs.1 lakh, in default thereof, to undergo simple imprisonment for one year;
- iii. The conviction and sentence of the appellant under Section 201 IPC are set aside;
- iv. The direction of the trial Court that the case requires further investigation by appointing an efficient female investigating officer is upheld;
- v. The compensation of Rs.10 lakhs awarded by the trial Court is affirmed and the same shall be disbursed to Vanitha (P.W.1), mother of "X", within a period of three months from today, if not already disbursed;
- vi. The Director General of Police is directed to order an enquiry by an officer of the rank of Deputy Inspector General with regard to the discrepancies in the complaint (Ex.P.1) and the printed F.I.R. (Ex.P.23) and fix the responsibility on the officers concerned and take departmental action against them. An action taken report shall be submitted to this Court within a period of six months from the date of receipt of a copy of this judgment;
- vii. The trial Court shall conduct an enquiry to find out if Thadagam Police Station was empowered to register an FIR as on 25.03.2019. In this regard, the Superintendent of Police, Coimbatore, shall place all necessary records before the trial Court. If it is found that the Thadagam Police Station was indeed

empowered to register an FIR as on 25.03.2019, the trial Judge shall conduct an enquiry under Section 340 Cr.P.C. and take further action against Boopathy (P.W.21).

viii. The Director General of Police is further directed to order an enquiry by an officer of the rank of Deputy Inspector General to take suitable action against the officer, who was responsible for permitting the media to have free access to the place of occurrence. For this purpose, the police may obtain a copy of the SUN TV report recorded in Ex.D.2 from the trial Court.

46. Before bringing the curtains down, we must observe that the appellant was an undertrial prisoner throughout the trial. Since he did not have means to engage an advocate, Mr.Kingsley Paul Robinson, advocate, was nominated by the Legal Services Authority to defend him. We find that Mr.Kingsley Paul Robinson has conducted the defence of the accused with dexterity. Concocting evidence is a bane that plagues the police investigation in this country which makes it very easy for a focused defence counsel like Mr.Kingsley Paul Robinson to call the bluff and expose the falsity in the prosecution evidence. We place on record our appreciation to Mr.Kingsley Paul Robinson for his forensic ability as well for his commitment to the cause he had taken knowing full well that his remuneration will be very meager. In fact, we found him rendering able assistance to the counsel before the High Court during all the hearings for which we are aware that he would not have been paid any remuneration by the Legal Services Authority.

To sum up, the criminal appeal and the reference under Section 366 Cr.P.C. are disposed of on the terms set out in paragraph 45, supra.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gya/cad

To

1. The Sessions Judge
Special Court for the Exclusive trial
of cases under the POCSO Act
Coimbatore

2. The Chief Secretary
Government of Tamil Nadu
Fort St. George, Chennai-9
3. The Secretary to Government
Home Department, Fort St. George, Chennai-9
4. The Secretary to Government
Finance Department, Fort St. George, Chennai-9
5. The Director General of Police
Dr.Radhakrishnan Salai
Mylapore, Chennai-4
6. The Superintendent of Police, Coimbatore
7. The Superintendent,
Central Prison, Coimbatore.
8. The Director
Tamil Nadu Forensic Sciences Department
"Forensic House", 30-A, Kamarajar Salai
Mylapore, Chennai 600 004
9. The Inspector of Police
All Women Police Station
Thudiyalur, Coimbatore District
10. The Inspector of Police
Thadagam Police Station, Coimbatore
11. The Public Prosecutor,
High Court, Madras - 600 104
12. The Hon'ble POCD committee,
High Court, Madras.
13. The Secretary,
Legal Service Authority,
High Court, Madras.
14. The Section Officer,
Criminal Section,
High Court, Madras.
15. The District Collector,
Coimbatore.

R.T.No.1 of 2020 & CrI.A.No.119 of 2020

GSM(CO)
GN(29/06/2021)