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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.10.2021

PRONOUNCED ON : 02.11.2021

CORAM

THE HON'BLE Mr. JUSTICE C.V.KARTHIKEYAN

CrI.A.No.58 of 2010

State represented by:

The Inspector of Police,
W-1, All Women Police Station,
Thousand Lights, Chennai - 6.
(Crime No.16/05)

...Appellant/Complainant

Vs.

1.Radhakrishnan

2.Perumal

...Respondents/Accused

Prayer: Criminal Appeal filed under Section 378 Cr.P.C., to allow the appeal and set aside the acquittal judgment dated 30.04.2008 in S.C.No.370 of 2005 on the file of the learned Sessions Judge, Mahila Court, Chennai and convict the respondents/accused as charged.

For Appellant .. Mr.E.Raj Thilak

For R1 .. Mr.R.Vijajakumar

R2 .. Died

JUDGMENT

This Criminal Appeal has been under Section 378 of Cr.P.C. by the appellant / complainant / State represented by the Inspector of Police, W-1, All Women Police Station, Thousand Lights, Chennai - 600 006, questioning the judgment dated 30.04.2008 in S.C.No.370 of 2005 passed by the Sessions Judge, Mahila Court, Chennai acquitting the accused therein of all charges.

2.For the sake of convenience even though the complainant is the appellant and the accused are the respondents in this appeal, their nomenclatures in accordance with the Sessions Case would be used to describe them.



3.The complainant / Inspector of Police, W-1, All Women Police Station, Thousand Lights, Chennai, had registered Crime No.16 of 2005 under Section 376 IPC against V.Radhakrishnan S/o. K.Veerasley based on a complaint given by V.Lakshmi W/o. Sridhar who was Project Co-ordinator in Child Line having office at Shenoy Nagar, Chennai.

4.Subsequent to investigation, a final report had been filed by the Investigating Officer against three accused namely, Radhakrishnan - A1 who was in custody and had actually been detained under Tamil Nadu Act 14 of 1982 and two absconding accused P.Perumal and Driver Gopi who were shown as A2 and A3. The driver Gopi - A3 could not be secured and therefore, the case against him was split up.

5.In the final report, it had been stated that the Project Co-ordinator of Child Line V.Lakshmi had given a complaint dated 09.03.2005 to the Assistant Commissioner of Police, Central Zone Chennai, stating that on 05.02.2005 at around 11.50 p.m / 23.50 hours, a call had been received in the Child Helpline that a 15 year old girl (hereinafter called X) was being subjected to sexual assault and harassment at No.30, Ganesh Apartment, Sowrashtara Nagar, 8th Street, Choolaimedu, Chennai, by the person residing in the said apartment. Therefore, a member of the Child Line and the Sub-Inspector of Choolaimedu Police Station visited the said apartment and when the door was opened a person who identified himself as Radhakrishnan working as an officer in the Customs Department opened the door. When questioned, he stated that there is no young girl staying in the apartment. When the Sub-Inspector of Police tried to enter into the apartment, Radhakrishnan then stated that his sister's daughter was staying in the apartment. It was found that she was staying in bed room. When enquired she stated that she was a student of government school in Vaaniyambadi. Later on 06.02.2005, the next morning the member of Child Line along with the Sub-Inspector Choolaimedu Police Station and a lady constable from W-1, All Women Police Station again went to the apartment and at that time the person who identified himself as Radhakrishnan stated that the girl was aged 20 years and that she was his adopted daughter. Therefore, in view of the inconsistent replies given by Radhakrishnan, the girl X was taken into responsible care and was handed over to a hostel. Thereafter, she was sent to medical examination and the reports indicated that she had been subjected to penetrative sexual assault.

6.In the meanwhile, the estranged wife of Radhakrishnan by name Komalavalli who was living separately, came to the Child Line office along with her daughter Swetha. The daughter informed that she had seen her father Radhakrishnan acting inappropriately with X who was in the apartment. Thereafter, the



watchman/Perumal, of the farm house of Radhakrishnan in Sangilikuppam Village in Vaniyambadi and the wife of Radhakrishnan stated that they had four letters from four other young girls who also complained that Radhakrishnan had acted inappropriately and sexually assaulted them. They also produced letters. Thereafter, on the directions of the Assistant Commissioner of Police before whom the entire file was submitted, FIR in Crime No.16 of 2005 had been registered by W-1, All Women Police Station, Thousand Lights, Chennai - 6 against Radhakrishnan under Section 376 IPC.

7. Investigation established that Radhakrishnan had committed the offence of rape of X who was found in his apartment. He was charged with offence under Section 376(1) IPC and under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1998. There were also two other accused and they were charged with offence under Section 376(1) IPC and under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1998 r/w 109 IPC.

8. The final report was submitted before the XIV Metropolitan Magistrate, Egmore, Chennai in P.R.C.No.188 of 2005 and since the offences were triable by the Sessions Court, the learned XIV Metropolitan Magistrate, Egmore, Chennai, committed the case to the Sessions and it was taken cognizance by the Sessions Judge, Mahila Court, Chennai as S.C.No.370 of 2005.

9. Summons were issued to the accused, A1/Radhakrishnan, A2/Perumal and A3/Driver Gopi. A1 and A2 alone answered the summons and appeared before the Court. In spite of efforts taken, A3 remained absconding and the case against him was split up after following due procedure. Copies of the relevant records under Section 207 Cr.P.C were furnished and the following charges were framed against A1 and A2.

10. Against A1 : under Section 376(1) IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1998. Subsequently, an additional charge had been framed against A1 under Section 366 IPC.

11. Against A2 : under Section 376(1) r/w 109 IPC.

12. Both the accused pleaded not guilty when questioned.

13. The prosecution was then invited to substantiate charges. On the side of the prosecution, PW-1 to PW-20 were examined and Exs.P1 to P39 were marked. On the side of the accused, witnesses were not examined, but exhibits D1 to D6 were marked. The prosecution also produced MO-I to MO-5 material objects.

14. On conclusion of the examination of prosecution witnesses, the incriminating evidence was put to the accused



under Section 313 of Cr.P.C and their statements and answers were recorded.

15.Finally on appreciation of the oral and documentary evidence, the Sessions Judge, Mahila Court by Judgment dated 30.04.2008 acquitted the accused under Section 235(1) Cr.P.C.

16.Aggrieved by the said judgment acquitting the accused, the State / Prosecution had filed the present Criminal Appeal.

17.Heard arguments advanced by Mr.E.Raj Thilak, learned Additional Public Prosecutor on behalf of the Appellant / Complainant and Mr.R.Vijayakumar, learned counsel for A1/R1. It has been informed that A2/R2 has died and the appeal is therefore dismissed against A2/R2 as abated.

18.It had been stated in the final report that about five years prior A1, A2 and A3 had gone over to a Village in Vaniyambadi and met the parents of X, who at that time was studying in VI standard. A1 stated that he was willing to take X in adoption and that he would give her good education and promised that she would have a good future. Thereafter, when X had completed IX Standard, during the vacations, A1 brought X to his house at No.30, Ganesh Appartment, Sowrashttra Nagar, 8th Street, Choolaimedu, Chennai and forced her to stay there for four days and gave her milk mixed with drugs and thereafter raped her. X was then taken back to her home in Vaniyambadi. A1 threatened her that she should not disclose the events to her parents and if she does, her studies would come to a halt.

19.Thereafter, again, when X had completed her X standard and was in her house, A1 brought her by car to the house at Choolaimedu in Chennai and once again gave her milk mixed with drugs and again forcibly raped her. He again forcibly raped her on 04.02.2005, in the said house.

20.A1 was therefore charged with commission of offence punishable under Section 376(1) IPC and under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1998.

21.A2 was charged with the abutment of said 376(1) r/w Section 109 IPC for abutment.

22.An additional charge was then framed against A1 under Section 366 of IPC.

23.Even before I proceed further with examination of the merits of the case, I must state that is seen from a perusal of the evidence recorded that none of the witnesses had spoken about the role of A2 in the commission of offence under Sections



366, 376 (1) IPC r/w 109 IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998. As a matter of fact, A2 had informed that A1 committed acts of sexual exploitation on several minor girls in the native village and letters produced by him had been marked as Exs.P3 to P7. The Investigating Officer had however chosen to array him as A2, in view of the fact that he was a watchman at the farm house of A1 where those sexual offence had committed and had not reported the same.

24.It must also be mentioned that during the pendency of the appeal A2 - Perumal had died on 12.10.2011 and a memo had been filed by the learned Additional Public Prosecutor along with the death certificate. In view of that fact, the charges against A2 naturally abate. Even otherwise he had been acquitted of all charges by the Trial Court. Therefore without any further discussion, the present Criminal Appeal is therefore dismissed as against A2 as abated under Section 394 Cr.P.C.

25.A1/Radhakrishnan and PW-2 Komalavalli were spouses. However, Komalavalli was staying separately along with their son Naveen @ Naveenan / PW-9 and daughter Swetha. During the course of trial, it had been stated by PW-2 Komalavalli that she had to take a decision to live separately owing to the attitude and conduct of A1. He used to bring various women to the marital house and stated that they were like his sisters. He continued with that habit inspite of her protestations. He also used to tell her to behave with much freedom with his friends.

26.PW-2 Komalavalli, the wife of A1 in her evidence, before the Court, after narrating the continuous acts of voyeurism of her husband, stated that on 02.06.2004 the son PW-9 had gone over to the house of A1 late in the night and had found X in the bedroom and came back early in the morning and stated this to her. She then passed this information to the telephone No.100 of the police and she went there along with her daughter. The police had also come there, but A1/her husband had left the place. The servant lady who was there confirmed the statement of her son / PW-9. Thereafter, on 05.02.2005, she stated that she again got information that her husband was sexually exploiting X in his house and she then immediately passed this information to Child Line through the helpline telephone number. They called her to come back in the morning at 05.00 a.m and later she and her daughter gave complaints in writing which were marked as Exs.P1 and P2.

27.Thereafter A2, Perumal came to her house from the village at Vaniyampadi and informed her that A1, Radhakrishnan had sexually exploited many young girls in the Village. He stated that he was the watchman of the farm house of A1. He also

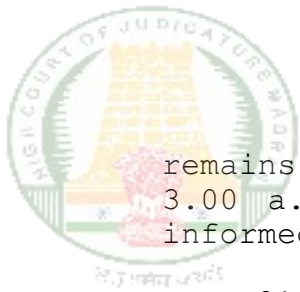


gave several letters to her from the young girls. The letters were marked as Exs.P4 to P7.

28.PW-1 V.Lakshmi, Project Co-ordinator of Child Line in her evidence stated that on 05.02.2005 at around 11.50 p.m., a call was received in their helpline, which was attended by their team member Chandrasekar/PW-3. PW-1 stated that the message was that young girls were being sexually exploited at Ganesh Apartment in Choolaimedu. Chandrasekar went to that particular place to enquire.

29.PW-3, Chandrasekar in his evidence stated that when he was on duty in the night on 05.02.2005, a call was received through the helpline in Child Line from a person called Komalavalli who stated that at Door No.9 in Sowrashttra Nagar, Ganesh Apartment young girls were being sexually exploited by Radhakrishnan. He immediately contacted PW-1 and informed about the message. He was directed to go over to the said apartment immediately and if necessary take the assistance of the police. He therefore telephoned 100 and gave information that a young girl was being sexually exploited at Ganesh Apartment, Choolaimedu and that he was going over to that particular place and that he required police protection. The police patrol van came over to that particular address. The Sub-Inspector of Police from R-5 Police Station Rajiv Prince Aron arrived there. They knocked the door. It was not opened for about ten minutes. Thereafter, the door was opened. The person who opened the door introduced himself as Gopi, driver of Radhakrishnan. When they were talking, from the bed room Radhakrishnan came outside. He enquired. PW-3 and PW-6 identified themselves and informed about the message, which had been received. Initially, Radhakrishnan stated that there were no girls in that apartment. PW-3 stated that he wanted to inspect the rooms. Radhakrishnan then abused him by stating that he was a customs officer. PW-6 stated that if there was nobody in the house there could be no objection for inspecting the rooms. At that time, Radhakrishnan, A1 stated that his adopted daughter was in the bedroom. PW-3 stated that he wanted to see her.

30.However, Radhakrishnan / A1 brought X. Radhakrishnan went inside and PW-3 asked the age of X who stated that her age was 15 years. X then stated that Radhakrishnan / A1 was her uncle. At that time, Radhakrishnan came in and said that the age of the X is twenty and she was his adopted daughter. After A1 stated that the age of X was twenty, PW-3 asked the proof for adoption and Radhakrishnan stated that he had to take her in adoption only thereafter. Since, at that time, there were no women police present, PW-3 told Radhakrishnan to produce X to the police station. However, Radhakrishnan refused to do so. PW-3, thereafter stated that Radhakrishnan should ensure that the X



remains in the house till further enquiries are conducted. At 3.00 a.m he informed the happenings to PW-1 Lakshmi. He also informed PW-2, Komalavalli at around 5.00 in the morning.

31.The next day at around 5.30 in the morning, PW-1 along with women lady constable from R-5 Police Station and another Sub-Inspector of Police and PW-3 went back to the house of A1. They brought A1/Radhakrishnan, X and absconding accused A3 to the police station. The girl was brought to the Child Line office. After obtaining necessary permission, the girl was sent to the children home. When PW-3 came back to the office, PW-2 Komalavalli was there.

32.This evidence of PW-3 was corroborated in all material aspects by PW-6, Rajiv Prince Aron, who was the Sub-Inspector of Police, who had accompanied PW-3 to the house of A1/Radhakrishnan.

33.In his evidence PW-6 also stated that he accompanied PW-3 and went over to the house of Radhakrishnan in the night and knocked the door and somebody opened the door who identified himself as Gopi and thereafter, Radhakrishnan came out and stated he was an officer in the customs and that Gopi was his car driver.

34.It must be kept in mind that Gopi is the absconding A3.

35.When the witness, PW-6 enquired whether any girl was there inside the house, Radhakrishnan initially denied the presence of any girl. Thereafter, he stated that his adopted daughter was at that place. X was in the bedroom. When enquired, she first said that Radhakrishnan was her relative. The witness stated that he had some suspicion, but because there were no women constables, he ensured that Radhakrishnan and the girl would be in the apartment till further enquiries are conducted.

36.Both PW-3 and PW-6 withstood cross-examination. They had corroborated the statements of each other in all material aspects. They both stated that they went to the house of Radhakrishnan late in the night on 05.02.2005. When they knocked the door, the absconding accused A3 opened it. Thereafter, A1 Radhakrishnan came out. He first denied the presence of X in the house. Thereafter, they found X sleeping in the bedroom. She first stated that A1 is her relative. Radhakrishnan / A1 stated that she was his adopted daughter. Thereafter, he was informed to remain in the house till further enquires are conducted.

37.The evidence of PW-3 and PW-6, when carefully analysed would show that as a fact, prosecution has established the presence of X in the intervening night of 05.02.2005 and



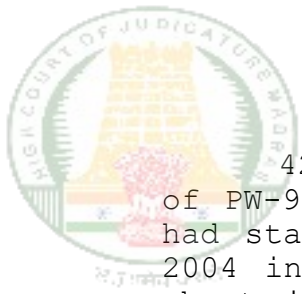
06.02.2005 in the house of Radhakrishnan / A1 and further that A1, Radhakrishnan had tried to state that she was his adopted daughter, while she said that he was her uncle. These contradictory statements are facts established beyond reasonable doubt. The presence of X in the intervening night on 05.02.2005 and 06.02.2005 has been clearly established by the prosecution.

38. Thereafter, X was sent to the children's home. On 06.02.2005, PW-2 also came to the Child Line Office and gave Exs.P1 and P2 signed by her and by her daughter Swetha. She also gave Exs.P3 to P7 letters alleged to have written by other victims girls alleging sexual assault and exploitation by A1.

39. The learned counsel for A1 questioned the authenticity of all these letters. The learned Trial Judge also questioned their authenticity and actually doubted the authenticity of these letters. The learned Trial Judge in the course of analysing Exs.P1 to P7 came to the conclusion that PW-2 Komalavalli, the wife of A1 with the help of an elaborate network had laid a trap for A1 and that all the facts stated by the prosecution are false. This line of defence taken by the counsel for A1 was inspired from the initial remand report filed by PW-19, Mangaiyarkarasi, the Investigation Officer. In that remand report, PW-19 stated about the Child Line Network.

40. This has been interpreted by the learned counsel for A1 to imply that PW-2 had established a network independently, solely for the purpose of trapping A1. The entire reasoning of the learned Trial Judge in this regard is not just faulty. It is also extremely perverse. The physical presence of X in the house of A1 in the middle of the night between 05.02.2005 and 06.02.2005 has been established beyond all reasonable doubt. That X was earlier present in the house of A1 at night time has been stated by PW-9, the son of A1. This statement is consistent with the statement of the father of X, examined as PW-5.

41. PW-5 in his deposition stated that he was residing in a village in Vaniyampadi. He had nine children. The eighth daughter was X. She studied in Government school from 6th standard to 11th standard. His wife was distantly related to A2/Perumal. Through Perumal, A1 came to the house of PW-5 and stated that he wanted to engage X for his domestic house work and that he would look after X and would also give education and would also get a Government job. A1 kept coming back again and again. He stated that PW-5 should send X to Chennai to study 12th standard. On 04.02.2004 to show the school to X, he wanted X to be sent to Chennai. PW-5 stated that he sent X with Radhakrishnan for the first time in February 2004.



42.This statement is directly corroborated by the evidence of PW-9 Naveen @ Naveenan, the son of A1 who in his deposition had stated that when he stayed in the house of A1 in the year 2004 in the night, he saw X in the bedroom and had complained about it to his sister and PW-2 and they also informed the police by dialing 100.

43.Therefore, each and every fact has been corroborated by the prosecution.

44.PW-5 in his evidence further stated that on 04.02.2005, he had sent X to Chennai with A1/Radhakrishnan. On 06.02.2005 in the morning A1 telephoned PW-5 and stated that the police had taken custody of X and therefore, PW-5 should come immediately to Chennai. After that within one hour, the Sub-Inspector of Police, Choolaimedu contacted PW-5 and stated that he was speaking from Choolaimedu, Chennai, and that X was in Choolaimedu Police Station. PW-5 did not know where the police station was. He therefore came to Chennai and went to the house of A1. He asked A1 about his daughter. He was informed that X was in the children home. A1 showed the home to PW-5 who then went to meet X. He cried when he saw his daughter X. The lady there in the home assured that they would look after X. He then came back to see A1. He asked about X. A1 said he need not worry and he would bring out X with the help of an Advocate. After that PW-5 took back X from the home, made her to write the XI standard examination and sent her back to the home.

45.PW-5 specifically further deposed that he and his wife asked X as to what happened. She stated that in the night, A1 gave milk to her and after that she did not know what happened and when she woke up in the morning, she found that her dress totally unscrambled and stained. After X attained age of 18, she was sent back with PW-5.

46.PW-5 again withstood cross-examination. Nothing material had been extracted except to assail that the entire evidence was a result of tutoring by PW-2, Komalavalli, the estranged wife of A1.

47.Prosecution also examined X, as PW-4. In her evidence, she stated that she studied in Government school in a village in Vaniyambadi. When she was in 8th standard, A1 and A2 came to the house and A1 stated to her parents that he would like to take her in adoption to educate her. Her parents refused. They went back. A1 came back again and dressed like a priest. He again asked her father to take her. Her father believed him thinking that he was a good man and informed her that she can go to Chennai for further studies. She refused. A1 stated that he



would get all the school books for her, and that he would give her education and that he would give her a Government job.

48. In the holidays, after the 8th standard examination, A1 came to the house of X and took her. He stated that in his house, his grandmother and A3 were present. He first took her to his house at Sangilikuppam. She refused to stay there. He then took her to the house at Chennai. There, the grandmother and A3 were present. She was there for five days. He then took her back to her house. Again when she was in 9th standard, A1 took her to the house at Choolaimedu. There he gave her milk. She fainted. He sexually exploited her by pressing her breasts and then raping her. When she got up in the morning she found that her dress was stained.

49. In fact, the learned Trial Judge had noted in the evidence, at that point the victim cried. The same torture happened for the next five days. A1, then took her back to her house. He threatened her that she should not tell anything about the incidents to her parents. If she said, her life will go waste. He also told her that if her parents came to know what happened to her, they would commit suicide by hanging. Therefore, he threatened her not to tell anything to her parents.

50. After that again, during the vacations after the 10th standard examination, A1 again came to her house and told her parents that he would take X to Chennai. She refused. Her parents however stated that she can go. She was afraid to say what happened earlier. She was compelled to go with him. She was again taken to Choolaimedu house. Again, A1 gave her milk and she again fainted and she was again sexually exploited. At that time, A1's son, PW-9, had seen her.

51. This corroborates the evidence of PW-9, Naveen @ Naveenan who also stated that on one particular night, when he went to his father's house, he saw X in the bedroom. X examined as PW-4, in her evidence also stated that on one particular night when she was exploited, the son of A1 saw her. There is complete corroboration on this material aspect. She further stated that A1's son brought his sister and they both argued with A1. This fact was also stated not only by PW-9, but also by PW-2, Komalavalli. Again there is corroboration of evidence.

52. Thereafter, A1 again went to her house when she was in 11th standard. A1 telephoned and stated that he wanted to take her to the temple. He then gave a cell phone to her. Her parents again sent her to Chennai. At that night again, A1 again sexually exploited her. She cried. He hit her. At that time at



around 2.00 to 2.30 in the middle of the night, the police came there.

53. This statement directly corroborates the evidence of PW-2 Komalavalli, PW-3 Chandrasekar and PW-6 Raju Prince Aron.

54. When the police asked A1 as to who she was, A1 replied that she was his brother's daughter. She disclosed her name. She also disclosed her father's name. She also disclosed her native place. She then said that A1 was her adoptive father and at another time she said that he was her uncle. This inconsistent statements by her had been spoken directly by PW-3 and PW-6 who were both present at that place.

55. Thus all the three witnesses stated the same facts about the inconsistent statement of A1 and X. Thereafter, they directed them to stay in the apartment itself and they would come back with a lady constable. Again the evidence of PW-3 and PW-6 has been corroborated.

56. In the morning at around 7.00, the lady police came along with PW-1 Lakshmi, which statement again corroborates the evidence of PW-1 and PW-2. They examined X. She again stated that PW-3 had come in the middle of the night. She was then taken to the office of Child Line. Thereafter, she was sent to a home at Kellys. All the evidence corroborates the evidence of PW-1, PW-3 and PW-6.

57. X was thereafter, taken to the hospital for medical examination. That she was taken to medical examination is also corroborated by the medical doctor who examined her. She also stated that she was permitted to go to write her examination and she came back to the home after writing the examination, which again corroborates her father's evidence PW-5. She also stated that her statement was recorded before the Magistrate and she identified that particular statement as Ex.P9.

58. During evidence in chief she cried. During cross-examination she cried. She stated that she cried in the police station. She cried in the Child Line office. She also stated that she was examined by the Child Line officials. She also stated in cross-examination that she gave a statement before the Magistrate, which was marked as Ex.P9. She also stated that from the home she went to her native place to write the 11th examination. She also stated that police examined her.

59. These are statements made during cross-examination. Actually, they are reiteration of the statements in chief examination. Nothing has been elicited during cross-examination. The only focus during the cross-examination was that she was



tutored by PW-2 / Komalavalli. X, the witness stated that she never knew who Komalavalli was. She was asked how many times A1 came to her house. She was asked how A1 came to her native place.

60. In the cross-examination, she again stated that she was confined in the house for five days when she had completed her 7th standard. She stated that A1 used to go to the office and come back. She stated in cross-examination that she was locked up in the house and even if she shouted nobody could hear her.

61. These are aspects which had come out in cross-examination, namely that A1 actually shut her inside the room and locked her inside the room she also stated in the cross-examination, when she banged on the door nobody could hear her. X was asked why she did not inform the incident to her parents or to anybody else. In cross-examination X stated that she comes from an honourable family and cannot say this shame to them. She, in cross-examination stated that during the 10th standard holidays A1 had taken her to Choolaimedu house and exploited her and she stated that these facts had been informed by her to the police and in the 164 statement.

62. I really wonder as to whether the counsel for the accused was taking chief examination or was conducting cross-examination.

63. PW-4 very specifically stated in cross-examination that she had never seen PW-2, Komalavalli, wife of A1. This very significant statement came out of a question in cross-examination and this shatters the case of the accused that she had been tutored by PW-2 Komalavalli. X very categorically stated that she had never even seen PW-2. She denied all suggestions in that regard. She denied all further suggestions that the incidents as stated by her did not happen. One of the suggestions put to her was that she did not state to the police that the son of A1 had seen her on one occasion. There was no suggestion put that such an incident never happened. Conversely it would be an admission on the part of the accused, that the son had actually seen her, but that she had not informed to the police. The fact that the son was there as stated by her in her chief examination has been also stated by PW-9, son of A1.

64. The victim PW-4, X was also examined by PW-15 Dr. Rajalakshmi. She stated that she conducted physical examination and her report had been marked as Ex.P20. Actually, the Accident Register Report has been marked as Ex.P21. The certificate regarding the blood sample was marked as Ex.P22. The HIV report has been marked as Ex.P23. The blood test report with respect to Jaundice was marked as Ex.P24. She stated very



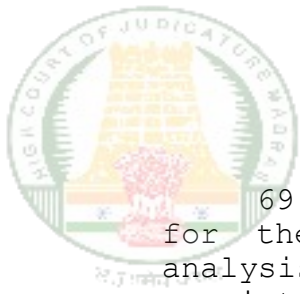
clearly that there were evidences of penetrative sexual assault having been committed on PW-4 / X / the Victim girl.

65. During cross-examination the minor corrections in Exs.P20 and P21 with respect to the name of the father of the victim girl namely, Selvaraj or Sivaraj was pointed out. Whether it is Selvaraj or Sivaraj, is of no significance since it was the medical report of the victim girl and not of the father. The age was struck off and clearly written as 18 and that was pointed out in the cross-examination. The doctor, during cross-examination very clearly stated that consent Ex.P25 was obtained before medical examination from PW-4 / X / the victim girl. The witness withstood cross-examination and reiterated that PW-4 / X / victim girl had been penetratively sexually assaulted.

66. Arguments of the learned counsel for the accused was focused on Exs.P1 to P7 which according to him, set the criminal law in motion. They were letters said to have been given by PW-2 Komalavalli and her daughter Swetha and by other victim girls. The learned counsel stated that PW-2 denied that Ex.P1, letter was in her handwriting. Even if we have to ignore of Exs.P1 to P7, still evidence recorded in the Court will have to analysed by the learned Trial Judge. That evidence is the outcome of the investigation done by the police. The police commences investigation only when the FIR is registered.

67. After FIR is registered, the nature of investigation conducted by the Investigating Officer alone can be questioned during the course of trial. Letters exchanged prior to that date would be of no significance at all. However, the learned Trial Judge had not even written a single line in his judgment regarding the investigation done by the police, but rather concentrated again and again on the alleged network created by PW-2 prior to the registration of FIR allegedly to trap A1. This focus in the judgment by the learned Trial Judge, to put it mildly, is extremely perverse. The learned Trial Judge appears to have had a pre-determined mind to acquit the accused. He assailed the conduct of PW-2 stating that since she was estranged from A1, and therefore she had a motive to trap A1 and therefore, she had built up various stories alleging sexual assault against A1.

68. It must be kept in mind that it was A1 who filed a divorce petition against PW-2 stating that she was mentally unstable. She had not moved away from the marital life. She retained with connection, but she stayed separately, since she did not approve of his behaviour with other women. She stated in her examination that she had to look at her future of her two children and therefore, she stayed away. The divorce case went on and on for nearly six years.



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69. It is therefore seen that the learned Trial Judge had, for the reasons best known to him, completely omitted the analysis of evidence of PW-2, PW-3 and PW-9 who had all consistently stated that the victim girl X was found in the middle of the night in the house of A1. The learned Trial Judge had completely omitted all reference and analysis of the evidence of the medical doctor who very clearly stated that the victim girl had been subjected to penetrative sexual assault and there is an evidence in that regard and had committed herself to that particular statement by giving a certificate. The learned Trial Judge appears to have been swayed by the fact that in the remand report, the Investigating Officer had stated about Child Line network, and had drawn conclusion that it was a network build by PW-2. Unfortunately, Child Line is also a recognized organization under the Juvenile Justice Act. As a matter of fact, even in the definition clause of Juvenile Justice Act, 2000, Child Line Services had been defined in Section 2(25) as a 24 hours emergency out reach service for children in crisis, which links them to emergency or long term care and rehabilitation services.

70. Therefore, the fundamental focus of the learned counsel for the accused that PW-1 and PW-2 have joined together to damage the reputation of A1 falls to the ground, since PW-1 is working in a recognized institution and Child Line is an out reach organization with specific aim to protect, rescue and rehabilitate children in need of care and protection. X was a girl who required care and protection.

71. The entire judgment proceeds on the basis that prior to the giving of the complaint, an elaborate network was formed by PW-2. The learned Judge had also fallen into such a trap either deliberately or unknowingly. There is a strong stench in the judgment under appeal. Material evidence had been refused to be acknowledged by the learned Trial Judge. They had been deliberately overlooked by the learned Trial Judge. Though there is corroboration on each and every aspect, they have been omitted by the learned Trial Judge.

72. In Babu V. State of Kerala, (2010) 9 SCC 189, the Hon'ble Supreme Court had stated the principles to be followed in an appeal against acquittal under Section 378 Cr.P.C. In paragraphs 12 to 19, it had been held as follows:

"12. This Court time and again has laid down the guidelines for the High Court to interfere with the judgment and order of acquittal passed by the trial court. The appellate court should not ordinarily set aside a judgment of acquittal in a



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case where two views are possible, though the view of the appellate court may be the more probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate court. (Vide Balak Ram v. State of U.P. [(1975) 3 SCC 219 : 1974 SCC (Cri) 837] , Shambhoo Missir v. State of Bihar [(1990) 4 SCC 17 : 1990 SCC (Cri) 518 : AIR 1991 SC 315] , Shailendra Pratap v. State of U.P. [(2003) 1 SCC 761 : 2003 SCC (Cri) 432] , Narendra Singh v. State of M.P. [(2004) 10 SCC 699 : 2004 SCC (Cri) 1893 : AIR 2004 SC 3249] , Budh Singh v. State of U.P. [(2006) 9 SCC 731 : (2006) 3 SCC (Cri) 377] , State of U.P. v. Ram Veer Singh [(2007) 13 SCC 102 : (2009) 2 SCC (Cri) 363 : AIR 2007 SC 3075] , S. Rama Krishna v. S. Rami Reddy [(2008) 5 SCC 535 : (2008) 2 SCC (Cri) 645 : AIR 2008 SC 2066] , Arulvelu v. State [(2009) 10 SCC 206 : (2010) 1 SCC (Cri) 288] , Perla Somasekhara Reddy v. State of A.P. [(2009) 16 SCC 98 : (2010) 2 SCC (Cri) 176] and Ram Singh v. State of H.P. [(2010) 2 SCC 445 : (2010) 1 SCC (Cri) 1496]).

13. In Sheo Swarup v. King Emperor [(1933-34) 61 IA 398 : AIR 1934 PC 227 (2)] the Privy Council observed as under : (IA p. 404)

"... the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses."



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14. The aforesaid principle of law has consistently been followed by this Court. (See *Tulsiram Kanu v. State* [AIR 1954 SC 1 : 1954 Cri LJ 225] , *Balbir Singh v. State of Punjab* [AIR 1957 SC 216 : 1957 Cri LJ 481] , *M.G. Agarwal v. State of Maharashtra* [AIR 1963 SC 200 : (1963) 1 Cri LJ 235] , *Khedu Mohton v. State of Bihar* [(1970) 2 SCC 450 : 1970 SCC (Cri) 479] , *Sambasivan v. State of Kerala* [(1998) 5 SCC 412 : 1998 SCC (Cri) 1320] , *Bhagwan Singh v. State of M.P.* [(2002) 4 SCC 85 : 2002 SCC (Cri) 736] and *State of Goa v. Sanjay Thakran* [(2007) 3 SCC 755 : (2007) 2 SCC (Cri) 162] .)

15. In *Chandrappa v. State of Karnataka* [(2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325] this Court reiterated the legal position as under : (SCC p. 432, para 42)

"(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of



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his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

16. In Ghurey Lal v. State of U.P. [(2008) 10 SCC 450 : (2009) 1 SCC (Cri) 60] this Court reiterated the said view, observing that the appellate court in dealing with the cases in which the trial courts have acquitted the accused, should bear in mind that the trial court's acquittal bolsters the presumption that he is innocent. The appellate court must give due weight and consideration to the decision of the trial court as the trial court had the distinct advantage of watching the demeanour of the witnesses, and was in a better position to evaluate the credibility of the witnesses.

17. In State of Rajasthan v. Naresh [(2009) 9 SCC 368 : (2009) 3 SCC (Cri) 1069] the Court again examined the earlier judgments of this Court and laid down that : (SCC p. 374, para 20)

"20. ... an order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused."

18. In State of U.P. v. Banne [(2009) 4 SCC 271 : (2009) 2 SCC (Cri) 260] this Court gave certain illustrative circumstances in which the Court would be justified in interfering with a judgment of acquittal by the High Court. The circumstances include : (SCC p. 286, para 28)

"(i) The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position;

(ii) The High Court's conclusions are contrary to evidence and documents on record;

(iii) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;

(iv) The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;



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(v) This Court must always give proper weight and consideration to the findings of the High Court;

(vi) This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal."

A similar view has been reiterated by this Court in *Dhanapal v. State* [(2009) 10 SCC 401 : (2010) 1 SCC (Cri) 336] .

19. Thus, the law on the issue can be summarised to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference."

73. In paragraph 20, it had been held that the findings of fact recorded by a Court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material.

74. In the instant case, the learned Trial Judge had simply ignored the direct evidence of the victim PW-4, the victim, X and also the direct evidence of PW-3, PW-6 and PW-9 who had all seen X physically in the house at the middle of the night with A1. The evidence of PW-5 was also ignored by the learned Trial Judge. The evidence of PW-1 and PW-2 was criticized by the learned Trial Judge for reasons which this Court cannot understand. The repeated assertions by both the learned counsel for the accused and the learned Trial Judge about a network being formed by PW-2 will have to be simply rejected by this Court.

75. In this connection, it would also be beneficial to examine the investigation done by PW-19, Investigating Officer. Investigation commenced after registration of the FIR. She examined PW-4, X in the home. She obtained all the relevant documents from PW-1, Lakshmi. She then sent a team to Vaniyambadi. She recorded the statements of all the witnesses who were examined in Court. She obtained necessary permission for the medical examination of the victim girl. She also obtained necessary permission to record the 164 statement, not only of the victim, but also of her father. She seized the



material objects. She recorded the confession of the accused. During the course of confession, the accused pointed out the place where Valium tablets, syringes and bottles containing drugs were kept. They were also seized and produced before the Court.

76.The learned counsel for the accused stated that tablets were seized, whereas, PW-4 had stated that she had been given milk to drink. I can only wonder at this arguments advanced. The tablets seized would be mixed in the milk to cause fainting and unconscious to facilitate rape.

77.The entire evidence of the Investigating Officer shows that she had proceeded in manner and procedure laid down by law. That evidence had not been directly questioned during cross-examination. The only aspect pointed out was the remand report in which she had stated about the Child Line network, which was meant to protect and rescue victim girls across the State.

78.This has been interpreted by the learned counsel and the learned Trial Judge as the network created by PW-2. I reject such interpretation.

79.In Vijay Mohan Singh V. State of Karnataka, (2019) 5 SCC 436, the Hon'ble Supreme Court again had an occasion to consider the scope of Section 378 Cr.P.C and with the scope of interference of High Court in an appeal against acquittal. The Hon'ble Supreme Court considered a series of decisions right from 1952 onwards. The Hon'ble Supreme Court had held as follows:

"31. An identical question came to be considered before this Court in Umedbhai Jadavbhai [Umedbhai Jadavbhai v. State of Gujarat, (1978) 1 SCC 228 : 1978 SCC (Cri) 108] . In the case before this Court, the High Court interfered with the order of acquittal passed by the learned trial court on re-appreciation of the entire evidence on record. However, the High Court, while reversing the acquittal, did not consider the reasons given by the learned trial court while acquitting the accused. Confirming the judgment of the High Court, this Court observed [Umedbhai Jadavbhai v. State of Gujarat, (1978) 1 SCC 228 : 1978 SCC (Cri) 108] and held in para 10 as under: (SCC p. 233)

"10. Once the appeal was rightly entertained against the order of acquittal, the High Court was entitled to reappreciate the entire evidence independently and come to its own



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conclusion. Ordinarily, the High Court would give due importance to the opinion of the Sessions Judge if the same were arrived at after proper appreciation of the evidence. This rule will not be applicable in the present case where the Sessions Judge has made an absolutely wrong assumption of a very material and clinching aspect in the peculiar circumstances of the case."

31.1. In Sambasivan [Sambasivan v. State of Kerala, (1998) 5 SCC 412 : 1998 SCC (Cri) 1320] , the High Court reversed the order of acquittal passed by the learned trial court and held the accused guilty on re-appreciation of the entire evidence on record, however, the High Court did not record its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. Confirming the order passed by the High Court convicting the accused on reversal of the acquittal passed by the learned trial court, after being satisfied that the order of acquittal passed by the learned trial court was perverse and suffered from infirmities, this Court declined to interfere with the order of conviction passed by the High Court. While confirming the order of conviction passed by the High Court, this Court observed in para 8 as under: (SCC p. 416)

"8. We have perused the judgment under appeal to ascertain whether the High Court has conformed to the aforementioned principles. We find that the High Court has not strictly proceeded in the manner laid down by this Court in Doshi case [Ramesh Babulal Doshi v. State of Gujarat, (1996) 9 SCC 225 : 1996 SCC (Cri) 972] viz. first recording its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable, which alone will justify interference in an order of acquittal though the High Court has rendered a well-considered judgment duly meeting all the contentions raised before it. But then will this non-compliance per se justify setting aside the judgment under appeal? We think, not. In our view, in such a case, the



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approach of the court which is considering the validity of the judgment of an appellate court which has reversed the order of acquittal passed by the trial court, should be to satisfy itself if the approach of the trial court in dealing with the evidence was patently illegal or conclusions arrived at by it are demonstrably unsustainable and whether the judgment of the appellate court is free from those infirmities; if so to hold that the trial court judgment warranted interference. In such a case, there is obviously no reason why the appellate court's judgment should be disturbed. But if on the other hand the court comes to the conclusion that the judgment of the trial court does not suffer from any infirmity, it cannot but be held that the interference by the appellate court in the order of acquittal was not justified; then in such a case the judgment of the appellate court has to be set aside as of the two reasonable views, the one in support of the acquittal alone has to stand. Having regard to the above discussion, we shall proceed to examine the judgment of the trial court in this case."

31.2. In K. Ramakrishnan Unnithan [K. Ramakrishnan Unnithan v. State of Kerala, (1999) 3 SCC 309 : 1999 SCC (Cri) 410] , after observing that though there is some substance in the grievance of the learned counsel appearing on behalf of the accused that the High Court has not adverted to all the reasons given by the trial Judge for according an order of acquittal, this Court refused to set aside the order of conviction passed by the High Court after having found that the approach of the Sessions Judge in recording the order of acquittal was not proper and the conclusion arrived at by the learned Sessions Judge on several aspects was unsustainable. This Court further observed that as the Sessions Judge was not justified in discarding the relevant/material evidence while acquitting the accused, the High Court, therefore, was fully entitled to reappraise the evidence and record its own conclusion. This Court scrutinised the evidence of the eyewitnesses and opined that reasons adduced by the trial court for discarding the testimony of the eyewitnesses were not at all sound. This Court also observed that as the evaluation of the evidence made by the trial court was manifestly erroneous and



therefore it was the duty of the High Court to interfere with an order of acquittal passed by the learned Sessions Judge.

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31.3. In *Atley* [*Atley v. State of U.P.*, AIR 1955 SC 807 : 1955 Cri LJ 1653] , in para 5, this Court observed and held as under: (AIR pp. 809-10)

"5. It has been argued by the learned counsel for the appellant that the judgment of the trial court being one of acquittal, the High Court should not have set it aside on mere appreciation of the evidence led on behalf of the prosecution unless it came to the conclusion that the judgment of the trial Judge was perverse. In our opinion, it is not correct to say that unless the appellate court in an appeal under Section 417 CrPC came to the conclusion that the judgment of acquittal under appeal was perverse it could not set aside that order.

It has been laid down by this Court that it is open to the High Court on an appeal against an order of acquittal to review the entire evidence and to come to its own conclusion, of course, keeping in view the well-established rule that the presumption of innocence of the accused is not weakened but strengthened by the judgment of acquittal passed by the trial court which had the advantage of observing the demeanour of witnesses whose evidence have been recorded in its presence.

It is also well settled that the court of appeal has as wide powers of appreciation of evidence in an appeal against an order of acquittal as in the case of an appeal against an order of conviction, subject to the riders that the presumption of innocence with which the accused person starts in the trial court continues even up to the appellate stage and that the appellate court should attach due weight to the opinion of the trial court which recorded the order of acquittal.

If the appellate court reviews the evidence, keeping those principles in mind, and comes to a contrary conclusion, the judgment cannot be said to have been vitiated. (See in this connection the very cases cited at the Bar, namely, *Surajpal Singh v. State* [*Surajpal Singh v. State*, AIR 1952 SC 52 : 1952 Cri LJ



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331] ; Wilayat Khan v. State of U.P. [Wilayat Khan v. State of U.P., AIR 1953 SC 122 : 1953 Cri LJ 662]) In our opinion, there is no substance in the contention raised on behalf of the appellant that the High Court was not justified in reviewing the entire evidence and coming to its own conclusions."

31.4. In K. Gopal Reddy [K. Gopal Reddy v. State of A.P., (1979) 1 SCC 355 : 1979 SCC (Cri) 305] , this Court has observed that where the trial court allows itself to be beset with fanciful doubts, rejects creditworthy evidence for slender reasons and takes a view of the evidence which is but barely possible, it is the obvious duty of the High Court to interfere in the interest of justice, lest the administration of justice be brought to ridicule.

80.The Hon'ble Supreme Court in 2020 SCC OnLine 988, Chaman Lal V. The State of Himachal Pradesh again examined the scope of appeal under Section 378 by the State against the Judgment of acquittal and placed reliance on Babu V. State of Kerala, (2010) 9 SCC 189 referred supra and Vijay Mohan Singh V. State of Karnataka, (2019) 5 SCC 436, referred supra and had affirmed the dictums laid therein.

81.It is thus clear that if the learned Trial Judge had acquitted the accused based on deliberate overlooking of material facts and vital evidence, then this Court can interfere with a judgment of acquittal. The parameters laid above exist in this case. As repeatedly pointed out, material evidence had been deliberately overlooked by the learned Trial Judge. Cogent evidence had been produced by the prosecution to prove the presence of the victim girl in the middle of night on two separate occasions in the house of A1. The statement of the victim girl that she had been penetrative sexually assaulted by A1 has not been shaken during cross-examination. That she was raped after giving her intoxicating milk and that when she got up she found that her dress was stained are also evidence which have withstood cross-examination. That threat was exercised on her not to reveal the incidents to her parents by A1 by exercising power and influence and holding out false promises have all been established by the prosecution.

82.As a matter of fact, the sole testimony of PW-4, victim girl X alone is sufficient to hold that by way of false promises he had enticed her away from her natural place of residence at Vaniyambai and brought her to Chennai and sexually exploited her. These constituted commission of offences under Section 376



(1), Section 366 IPC and under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998.

83. Section 376(1) of IPC is as follows:-

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"376. Punishment for rape.-(1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which 1 [shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine].

2.

3."

84. Section 366 of IPC is as follows:

"366. Kidnapping, abducting or inducing woman to compel her marriage, etc.-Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; 1 [and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid]."

85. Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998 is as follows:-

"[4. Penalty for harassment of woman. - Whoever commits or participates in or abets harassment of woman in or within the precincts of any educational institution, temple or other place of worship, bus stop, road, railway station, cinema theater, park, beach, place of festival, public service vehicle or vessel or any other place shall be punished with imprisonment for a term which may extend to three years and with fine which shall not be less than ten thousand rupees.]"



86. In this connection, it would also be beneficial to examine Section 114 A of the Indian Evidence Act, which provides that when it has been established that there has been sexual assault, it has to be presumed, it has been done without the consent of the victim.

87. In (1980) 3 SCC 159, Krishan Lal V. State of Haryana, the Hon'ble Supreme Court had held as follows:

"3. Counsel for the petitioner persistently urged that the evidence of the prosecutrix, without substantial corroboration, was inadequate to rest a conviction under Section 376 IPC. He relied on observations of this Court in Gurcharan Singh v. State of Haryana [(1972) 2 SCC 749 : 1972 SCC (Cri) 793 : AIR 1972 SC 2661] for the proposition that although a prosecutrix is not an accomplice, her evidence, as a rule of prudence, is viewed by courts unfavourably unless reinforced by corroboration "so as to satisfy its conscience that she is telling the truth and that the person accused of rape on her has not been falsely implicated". It is true that old English cases, followed in British-Indian courts, had led to a tendency on the part of Judge-made law that the advisability of corroboration should be present to the mind of the Judge "except where the circumstances make it safe to dispense with it". Case-law, even in those days, had clearly spelt out the following propositions: [Rameshwar v. State of Rajasthan, AIR 1952 SC 54 : 1952 SCR 377, 386 : 1952 Cri LJ 547]

"The tender years of child, coupled with other circumstances appearing in the case, such, for example as its demeanour, unlikelihood of tutoring and so forth, may render corroboration unnecessary but that is a question of fact in every case. The only rule of law is that this rule of prudence must be present to the mind of the Judge or the jury as the case may be and be understood and appreciated by him or them. There is no rule of practice that there must, in every case, be corroboration before a conviction can be allowed, to stand.

It would be impossible, indeed it would be dangerous to formulate the kind of evidence which should, or would, be regarded as corroboration. Its nature and extent must necessarily vary with circumstances of each case



girl and all other surrounding which directly corroborated / sensitized of the victim girl.

89. In (1990) 1 SCC 550, State of Maharashtra V. Chandraprakash Kewalchand Jain, the Hon'ble Supreme Court had held as follows:

"14. The learned counsel for the appellant-State submitted that the entire approach of the High Court in the matter of appreciation of evidence of the prosecution witnesses, particularly PW 2, betrays total ignorance of the psychology of an Indian woman belonging to the traditional orthodox society. He submitted that the prosecutrix of this case came from an orthodox muslim family, was semi-literate having studied up to the VII standard and whose parents considered it a shame to take her back to their fold because she had eloped and married a boy of her own choice. He submitted that the statement of law in the High Court judgment that implicit reliance cannot be placed on a prosecutrix except in the rarest of rare cases runs counter to the law laid down by this Court in *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat* [(1983) 3 SCC 217 : 1983 SCC (Cri) 728 : (1983) 3 SCR 280]. He also submitted that the evidence of the prosecutrix has been rejected on unsustainable grounds which do not touch the substratum of the prosecution case and which can be attributed to nervousness and passage of time. According to him this approach of the High Court has resulted in gross miscarriage of justice which this Court must correct in exercise of its jurisdiction under Article 136 of the Constitution. The learned counsel for the respondent, however, supported the High Court judgment.

15. It is necessary at the outset to state what the approach of the court should be while evaluating the prosecution evidence, particularly the evidence of the prosecutrix, in sex offences. Is it essential that the evidence of the prosecutrix should be corroborated in material particulars before the court bases a conviction on her testimony? Does the rule of prudence demand that in all cases save the rarest of rare the court should look for corroboration before acting on the evidence of the prosecutrix? Let us see if the Evidence Act provides the clue. Under the said statute 'Evidence' means and includes all



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statements which the court permits or requires to be made before it by witnesses, in relation to the matters of fact under inquiry. Under Section 59 all facts, except the contents of documents, may be proved by oral evidence. Section 118 then tells us who may give oral evidence. According to that section all persons are competent to testify unless the court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind. Even in the case of an accomplice Section 133 provides that he shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. However, illustration (b) to Section 114, which lays down a rule of practice, says that the court 'may' presume that an accomplice is unworthy of credit, unless he is corroborated in material particulars. Thus under Section 133, which lays down a rule of law, an accomplice is a competent witness and a conviction based solely on his uncorroborated evidence is not illegal although in view of Section 114, illustration (b), courts do not as a matter of practice do so and look for corroboration in material particulars. This is the conjoint effect of Sections 133 and 114, illustration (b).

16. A prosecutrix of a sex offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to illustration (b) to Section 114 which requires it



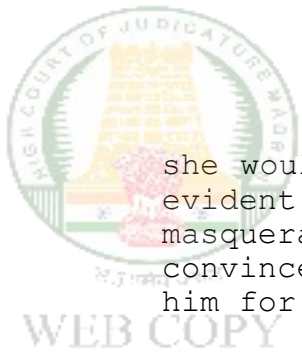
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to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence. We have, therefore, no doubt in our minds that ordinarily the evidence of a prosecutrix who does not lack understanding must be accepted. The degree of proof required must not be higher than is expected of an injured witness. For the above reasons we think that exception has rightly been taken to the approach of the High Court as is reflected in the following passage:

"It is only in the rarest of rare cases if the court finds that the testimony of the prosecutrix is so trustworthy, truthful and reliable that other corroboration may not be necessary."

With respect, the law is not correctly stated. If we may say so, it is just the reverse. Ordinarily the evidence of a prosecutrix must carry the same weight as is attached to an injured person who is a victim of violence, unless there are special circumstances which call for greater caution, in which case it would be safe to act on her testimony if there is independent evidence lending assurance to her accusation."

90. In this case also PW-4, the victim girl X had been the object of the sexual lust of A1. He was in a position to dominate her parents and at all possible times he asserted that he was an official of the Customs Department. Her parents were small coolies in a remote village. They were promised that he would take her in adoption. They were promised that he would give her education. They were promised that he would ensure that



she would get a Government job. They believed him. In fact it is evident that he came and dressed as a holly man. But, he only masqueraded as a holly man. The intention was clear, to somehow convince the parents of the victim girl to allow her to go with him for the only reason to sexually exploit her.

91.In (2000) 5 SCC 30, State of Rajasthan V. N.K The Accused, the Hon'ble Supreme Court had held as follows:

"19. For the offence of rape as defined in Section 375 of the Penal Code, 1860, the sexual intercourse should have been against the will of the woman or without her consent. Consent is immaterial in certain circumstances covered by clauses thirdly to sixthly, the last one being when the woman is under 16 years of age. Based on these provisions, an argument is usually advanced on behalf of the accused charged with rape that the absence of proof of want of consent where the prosecutrix is not under 16 years of age takes the assault out of the purview of Section 375 of the Penal Code, 1860. Certainly consent is no defence if the victim has been proved to be under 16 years of age. If she be of 16 years of age or above, her consent cannot be presumed; an inference as to consent can be drawn if only based on evidence or probabilities of the case. The victim of rape stating on oath that she was forcibly subjected to sexual intercourse or that the act was done without her consent, has to be believed and accepted like any other testimony unless there is material available to draw an inference as to her consent or else the testimony of prosecutrix is such as would be inherently improbable."

92.In (2010) 2 SCC 9, Wahid Khan V. State of Madhya Pradesh, the Hon'ble Supreme Court had held as follows:

"18.Thus, in a case of rape, the testimony of a prosecutrix stands on a par with that of an injured witness. It is really not necessary to insist for corroboration if the evidence of the prosecutrix inspires confidence and appears to be credible.

.....

The evidence of the prosecution witnesses is fully trustworthy and there is no reason to doubt genuineness thereof."

93.The learned counsel for A1 relied on Santosh Prasad @ Santosh Kumar V. The State of Bihar reported in (2020) 3 SCC 443, wherein the Hon'ble Supreme Court had referred to an



earlier judgment in Raju and others V. State of Madhya Pradesh reported in (2008) 15 SCC 133 and extracted paragraph 11 of the said judgment, wherein, it had been held as follows:-

“11. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.”

94. In the instant case, the evidence of victim girl PW-4 is corroborated on every material aspect and therefore, the evidence has to be viewed from its proper perspective. Having committed the offence, A1 cannot seek indulgence from this Court. He had destroyed the victim. Therefore, this is not a case where the Court must bend to protect A1. He must face the consequences of his acts.

95. The learned counsel for A1 relied on Radhu V. State of Madhya Pradesh reported in (2007) 2 MLJ (Cr1) 1835 SC. In that case, the evidence of the prosecutrix was found to be not trust worthy and was full of discrepancies and did not inspire confidence.

96. In the instant case, the evidence of PW-4 inspires confidence and has been corroborated on all material facts. The facts in this case are entirely different.

97. The learned counsel of A1 relied on K. Venkateshwarlu V. The State of Andhra Pradesh reported in (2012) 8 SCC 73, wherein again the evidence of prosecutrix was not trusted by the Court.

98. In the instant case, to repeat, the evidence of the prosecutrix / PW-4 is trust worthy, is convincing and is reliable. The facts are therefore different.

99. The learned counsel for A1 also relied on Jagannivasan V. State of Kerala reported in 1995 SCC (Cri) 826. In that case, the medical evidence did not establish the evidence of the



prosecutrix. It was also seen that the prosecutrix went to a dance performance after the sexual act.

100. In the instant case, the prosecutrix was locked in a room in an apartment, which was also locked when A1 went to office. X clearly stated that her cries could not be heard, that her banging on the door could not be heard by anyone. She was threatened that if, she revealed what happened the her parents would commit suicide by hanging. It must be kept in mind that she was a young girl studying in 9th and 10th standard at those times and therefore, the judgment cited is distinguishable on facts and would not apply to the facts of the case.

101. In view of all the above reasons, particularly because, evidence of the prosecution witnesses have all established the commission of offences punishable under Sections 366, 376(1) and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1998, I hold that the learned Trial Judge had with deliberate motive overlooked reliable testimony of the witnesses, overlooked the corroboration of each and every witness when they deposed before the Court and also overlooked the fact that the witness withstood cross-examination and had therefore come to a very perverse finding acquitting A1. I have no hesitation to set aside such acquittal and convict the accused.

102. In the result,

(i). The Criminal Appeal against A1 is allowed and the order of acquittal passed by the learned Sessions Judge, Mahila Court, Chennai in judgment dated 30.04.2008 in S.C.No.370 of 2005 is set aside.

(ii). The Criminal Appeal against A2 is dismissed as abated in view of the death of A2 on 10.12.2011.

103. I have carefully considered the plea of the accused which had been reduced in a statement.

104. He pleaded that he is an aged person, as on date, suffering from sugar ailment and also retired from service. He also stated that he is innocent of all the charges.

105. However, taking into consideration the gravity of the offence particularly, the fact that he had sexually exploited very young girls, after drugging them and also secluding them from their parents, I hold that this is a fit case to give maximum punishment.

106. In the result, A1 is convicted and sentenced to ten years Rigorous Imprisonment and also fine of Rs.1,00,000/- for



offence punishable under Section 366 IPC, in default, for one year Simple Imprisonment. A1 is convicted and sentenced to ten years Rigorous Imprisonment and fine of Rs.1,00,000/-, in default one year Simple Imprisonment for offence under Section 376(1) IPC. A1 is convicted and sentenced to two years Rigorous Imprisonment together with fine of Rs.50,000/-, in default, for six months Simple Imprisonment for offence under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1988. The substantive sentences are to run concurrently. A1 is entitled for set off under Section 428 Cr.P.C. Total fine amount : Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousand only).

107.I am conscious that A1 has also been convicted in Crl.A.No.49 of 2010 and Crl.A.No.55 of 2010 and also sentenced in those two Criminal Appeals. The sentences in all the Criminal Appeals are to run concurrently. A1 is present and has been taken into custody.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

smv

To

1. The Sessions Judge,
Mahila Court, Chennai.
2. The Inspector of Police,
W-1, All Women Police Station,
Thousand Lights, Chennai - 6.
3. The Superintendent of Central Prison,
Puzhal, Chennai.
4. The Public Prosecutor,
High Court of Madras.

+1cc to Mr.R.Vijayakumar, Advocate, S.R.No.57272

Crl.A.No.58 of 2010

CP[co]
NSK 02/11/2021