



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.03.2021

Pronounced On : 08.06.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

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CRL.A(MD) .No.26 of 2016

Adaikkan

.. Appellant/Sole Accused

Vs.

State Inspector of Police,
All Women Police Station,
Kulithalai, Karur District.
Crime No.5 of 2014.

.. Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 (2) of Cr.P.C, to set aside the judgment dated 16.09.2015 passed by the Fast Track Mahalir Neethimandram, Karur in Spl.S.C.No.5 of 2014 and acquit the appellant.

For Appellant : Mr.T.Senthil Kumar
(Legal Aid Counsel)

For Respondent: Mr.V.Neelakandan,
Additional Public Prosecutor

JUDGMENT

The Criminal Appeal is directed against the judgment of conviction passed in Spl.S.C.No.5 of 2014, dated 16.09.2015 on the file of Fast Track Mahila Court, Karur.

2.The Deputy Superintendent of Police, Kulithalai Sub-division, Karur District, has laid the final report against the accused alleging that the defacto complainant residing in *****Village, belongs to Hindu Pallar community; that the accused residing at South Mayiladi Village belongs to Hindu Muthuraja community; that the complainant is studying tenth standard in Government Adi-Dravidar Welfare School at *****; that on 20.06.2014, at about 5.30 p.m., when the defacto complainant after attending special class was returning in her bicycle to her home and near Kannan's Plantain field in Pazhaya Mayiladi, the accused who was in the plantain fields of the Kannan had asked the defacto complainant to come and lift the grass bundle; that when the complainant went to that place, the accused had tied her mouth and by threatening that he would kill her, taken her to the Sugarcane fields of Gopal; that the accused after removing her chudidhar pant lay on her and committed penetrative sexual assault and that thereby, the accused had committed the offence punishable under Sections 5 and 6 of Protection of Children from Sexual Offences



Act, 2012 (in short POCSO Act) under Section 506(1) I.P.C r/w 3(i) (w) (i) and 3(2) (v) of SC/ST (POA) Amendment Ordinance, 2014.

3. The learned Judicial Magistrate-II, Kulithalai, on perusal of the final report and other records and after compliance under Section 25(2) of POCSO Act, had submitted the case records to the Fast Track Mahila Court, Karur and the case was taken on file in Spl.S.C.No.5 of 2014, on the file of Fast Track Mahila Court. After appearance of the accused, copies of records were furnished to him under Section 207 of Cr.P.C on free of cost. The learned Sessions Judge, on perusal of records and on hearing both the sides, being satisfied that there exist a *prima facie* case against the accused, framed charges under Section 506(1) I.P.C under Section 3 r/w 4 of POCSO Act and under Section 3(i) (w) (i) and Section 3(2) (v) of SC/ST (POA) Act and the same were read over and explained to him and on being questioned, the accused denied the charges and pleaded not guilty.

4. The prosecution, in order to prove its case, had examined 20 witnesses as P.W.1 to P.W.20 and exhibited 25 documents as Ex.P.1 to Ex.P.25 and seven material objects as M.O.1 to M.O.7.

5. The case of the prosecution emerging from the evidence adduced on their side, in brief is as follows:

P.W.1-victim (defacto complainant) is the daughter of P.W.2 and P.W.3. P.W.1 was born on 15.03.2000 and she was studying tenth standard at ***** Government Adi-Dravidar Welfare High School. P.W.4 and P.W.5 are the classmates of P.W.1. P.W.1 to P.W.6, P.W.10 and P.W.14 are residents of ***** of Kulithalai Taluk. P.W.2 and P.W.3 are agriculture coolies. On 20.06.2014, at about 5.30 p.m., when P.W.1 after attending her special class was returning to her house in her bicycle and near Pazhaya Mayiladi Vazhakattai, one person who was lying in the plantain fields wearing black pant and black and white colour checked full hand shirt asked PW1 to come and lift the grass bundle. P.W.1 parked her cycle and went into the plantain fields. After proceeding to some distance, the accused had closed the mouth of P.W.1 with her duppatta and threatened that if she raises voice, he would kill her and taken her to nearby sugarcane field. Accused thereafter removed the chudidhar pant of PW1 and his own pant and placed his private part on the private part of the victim and rubbed the same. Victim had managed to escape from him by throwing sand on his eyes and returned to the road. P.W.4, P.W.5 and two other classmates of P.W.1 were standing near her bicycle and asked her as to what had happened as her eyes were red and she was tensed. P.W.1 would reply that she went there to lift the grass bundle and fell down. Thereafter, victim took her cycle and went to her house and immediately informed to her parents about the incident. P.W.2, P.W.3 and their relatives visited the occurrence place and no one



was found there. Thereafter, P.W.1 along with her parents went to the All Women Police Station on the next day and gave the complaint statement under Ex.P.1.

6. P.W.19-Thamizharasi, the then Inspector of Police, All Women Police Station, on 21.06.2014 at about 2.30 p.m., on the basis of the complaint statement given by the P.W.1, registered a case in Crime No.5 of 2014 under Sections 5 and 6 of POCSO Act and Section 506(1) I.P.C and prepared the First Information Report under Ex.P.17. Thereafter, she recovered the dress (M.O.1 to M.O.3) of the victim in the presence of P.W.2 and one Lakshmi through Seizure Mahazar under Ex.P.3. P.W.19 then visited the occurrence place and inspected the scene of occurrence in the presence of P.W.6-Vengainathan and one Sellaiah and prepared the observation mahazar under Ex.P.4 and drew a rough sketch under Ex.P.18. She also examined the witnesses and recorded their statements. On 22.06.2014, she sent the victim girl to the Government Hospital, Karur, for medical examination through P.W.16 constable Latha and another constable Tmt.Chithra. P.W.7-Dr.Kasturi examined the victim girl on 22.06.2014 and noticed that she had not attained puberty, that there were no injuries on her private part or on the other parts of the body and that her hymen was intact and issued the Accident Register under Extract P.5. P.W.19 had then produced the victim girl before the Judicial Magistrate and thereafter, handed over the said girl to her parents. She submitted a requisition for recording of victim statement under Section 164 of Cr.P.C., that she subsequently altered the case into under Sections 5 and 6 of POCSO Act, 506(1) I.P.C r/w 3(1)(w)(i) and 3(2)(v) of SC/ST (POA) Amendment Ordinance 2014 and submitted the alteration report under Ex.P.20. She also submitted a requisition to the concerned Court under Ex.P.21 for sending the M.O.1 to M.O.3 dress of the victim for chemical examination.

7. P.W.20-Jameem, the Deputy Superintendent of Police, Kulithalai Subdivision, as per the orders of the Superintendent of Police under Ex.P.22, had taken up the investigation and taken steps for production of victim girl for recording of statement under Section 164 of Cr.P.C. On 03.07.2014, he arrested the accused near Kottaimedu bus stand in the presence of P.W.15-Kumarapandian, Village Administrative Officer, and his Assistant Mani and on enquiry, the accused gave the voluntary confession statement. P.W.20 recorded the confession and recovered the Dhoti and the shirt under M.O.5 and M.O.6 in the presence of the same witnesses through seizure mahazar under P.14. He sent the accused for remand and submitted the case properties to the Court along with the requisition for sending the same for chemical examination under Ex.P.23. Thereafter, he submitted a requisition to the Chief



Judicial Magistrate, Karur, to depute a Judicial Magistrate for conducting Test Identification Parade. P.W.18-Judicial Officer has conducted identification parade at Trichy Central Prison and submitted his report under Ex.P.16. P.W.20, has then submitted a requisition to the Judicial Magistrate for sending the accused for medical examination. P.W.8-Dr.Saravanan has examined the accused and gave his opinion that there is nothing to suggest that the accused is impotent and that there were no signs suggestive of recent sexual intercourse under Ex.P.6. P.W.13 Dr.Stalin attached to the Radiology Department has taken X-Rays and gave his opinion that the accused is above 18 years of age on the date of examination under Ex.P.13. P.W.20 examined the Medical Officers and the Police Constables and recorded their statements. He received the community certificate of the victim as well the accused, examined the concerned Tahsildars and recorded their statements. P.W.9-Scientific Officer attached to the Trichy Regional Forensic Laboratory after examining the clothes received from the Court of the Judicial Magistrate-II, Kulithalai, sent their biological reports under Ex.P.8 and Ex.P.10 stating that semen or blood was not detected in any of the five items received. P.W.20 has then received the transfer certificate of P.W.1 from Government Higher Secondary School, under Ex.P.25, examined the Head Master and recorded the statement. After completing the investigation, he laid final report on 30.09.2014 under Sections 5 and 6 of POCSO Act, u/s 506(1) of IPC and u/s 3(1)(w)(i) and 3(2)(v) of SC/ST (POA) Act. With the examination of P.W.20, the prosecution has closed their evidence.

8. When the accused was examined under Section 313(1)(b) of Cr.P.C., with regard to incriminating aspects against him, he denied the evidence as false and further stated that a false case has been foisted against him and also filed statement under Section 233(2) of Cr.P.C and whereunder, he had stated that he was no way connected with the occurrence, that due to the previous enmity he was falsely implicated and that the victim girl had not identified him at the Police Station as well before the Revenue Divisional Officer, Kulithalai. Though the accused has stated that he is having defence evidence, he has not adduced any oral evidence, but only exhibited the news item published in news paper under Ex.D1 during the cross examination of P.W.4.

9. Heard Mr.Mr.T.Senthil Kumar, learned counsel appearing for the appellant and Mr.V.Neelakandan, learned Additional Public Prosecutor appearing for the respondent.

10. Whether the impugned judgment dated 16.09.2015, passed in Spl.S.C.No.5 of 2014, on the file of Fast Track Mahila Court, Karur, is liable to be set aside ?, is the point for



11. The case of the prosecution is that on 20.06.2014 at about 5.30 p.m., P.W.1 victim after attending special class was returning home in her bicycle. When she neared the plantain fields of Kannan at Pazhaya Mayiladi, the accused who was lying in the plantain fields asked her to come and lift the grass bundle. The victim obliged and went to the plantain fields, the accused had then tied her mouth with the help of her duppatta, took her to the nearby sugarcane fields and threatening to kill her if she raises her voice, made her to lie on the ground, removed her chudidhar pants, then he took his male organ and rubbed the same on the private part of the victim. When he attempted to penetrate, victim had thrown sand on his eyes and escaped from him and that thereby the accused had committed the offence of penetrative sexual assault punishable under the POCSO Act along with other offences punishable under IPC and under the provisions of SC/ST (POA) Act.

12. Before entering into further discussion, it is necessary to refer Section 29 of POCSO Act, which deals with reverse burden and the same reads as follows:

"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."

13. The beginning words of the above section "where a person is prosecuted" covers a complete exercise on the part of the prosecution to prove the charge framed against the accused during the course of trial, which is rebuttable subject to developing a strong defence contrary to that established by prosecution during cross examination by defence.

14. It is pertinent to note that the concept of reverse burden of proof can only be made applicable in a case, where prosecution has already let substantial evidence with regard to the offence complained of. Moreover, proof of penetrative sexual assault is *sine-qua-non* prior to making application of the presumption available under Section 29 of the POCSO Act. In order to invoke Section 29 of the said Act, so as to make the presumption applicable, the prosecution is duty bound to produce foundational evidence revealing the ingredients of the offence and only upon laying such foundation by leading cogent and reliable evidence, the onus gets shifted to the accused to prove the contrary in order to discharge the reverse burden of proof.

15. P.W.1 victim before the trial Court would say:

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

"...20.06.2014 அன்று மாலை சுமார் 5.30 மணிக்கு நான் ஸ்பெஷல் கிளாஸ் முடித்து சைக்கிளில் வீட்டிற்கு வருவதற்காக பழைய மைலாடி அருகில் உள்ள பாலக்கட்டையில் வந்து கொண்டு இருந்தேன். அப்போது வாழத்தோட்டத்தில் கட்டிலில் படுத்திருந்த கருப்பு பேண்ட் கருப்புச் சட்டையும் வெள்ளை கட்டம் போட்ட முழுக்கை சட்டை அணிந்திருந்த நபர் ஒருவர் என்னை பார்த்து இங்கே வா பாப்பா புல்லுக்கட்டை தூக்கிவிட்டு போ என்று அழைத்தார். நான் சைக்கிளை நிறுத்திவிட்டு நான் வாழத்தோட்டத்தின் உள்ளே போனேன். சிறிது தூரம் போனவுடன் அந்த நபர் நான் போட்டிருந்த துப்பட்டாவால் என்னுடைய வாயை கட்டி கத்தினால் கொன்றுவிடுவேன் என மிரட்டி வாழத்தோட்டம் வழியாக கரும்பு தோட்டத்திற்கு கூட்டிக்கொண்டு போனார். என்னுடைய சுடிதார் பேண்டை கழற்றியபோது ஐட்டியும் பேண்டுடன் சேர்ந்து வந்து விட்டது. அந்த நபர் போட்டிருந்த அவருடைய பேண்டை கழற்றி அவருடைய ஆண் உறுப்பை எடுத்து எனது பெண் உறுப்பில் வைத்து அழுத்தி தேய்த்தார். சத்தம் போட்டால் கொன்றுவிடுவேன் என மிரட்டியதால் நான் பயந்துகொண்டு நான் சத்தம்போடவில்லை. பின்னர் நான் மண்ணை எடுத்து அந்த நபரின் கண்ணில் தூவிவிட்டு ரோட்டுக்கு வந்தேன்..."

16. P.W.1 in her P.1 complaint has narrated the above incident and further stated "...பிறகு அந்த ஆள் அவருடைய பேண்டை கழற்றி என்னை படுக்கவைத்து என் மீது அவனும் படுத்து அவனது ஆண் உறுப்பை எடுத்து எனது பெண் உறுப்பில் வைத்து அழுத்தி என்னை கற்பழித்தான். பின்பு நான் உடனே எழுந்து எனது சுடிதார் பேண்டை போட்டுக் கொண்டு ரோட்டிற்கு வரும்போது..."

17. In the statement recorded under Section 164 of Cr.P.C., under Ex.P.2, P.W.1 had stated "...அப்போது என் பின்னால் வந்த அந்த பையன் நான் அணிந்து இருந்த துப்பட்டா சால்வையை எடுத்து என் வாயை கட்டினார். பின்னர் என்னைக் கீழே தள்ளிவிட்டார். நான் கத்தினேன். அப்போது நான் அணிந்த பேண்டை அவிழ்த்தார் அவர் அவருடைய ஆண் உறுப்பை எடுத்து என் பெண் உறுப்பில் வைத்து தேய்த்தார். திணித்தார். அப்போது சத்தம் போட்டேன். நீ கத்தினால் சுட்டுபடுவேன் என்று திட்டினார் பின்னர் மண் அள்ளிப்போட்டு ஓடிவந்துவிட்டேன்..."

18. Considering the above, it is clear that P.W.1 has given evidence before the trial Court more or less reiterating her version given under Ex.P.2 Statement. No doubt, Section 3 of POCSO Act provides that if a person penetrates his penis to any extent into the vagina would amount to penetrative sexual assault and rubbing or even touching the private parts of the child would only amount to sexual assault punishable under the provisions of the POCSO Act. The material contradiction, as rightly pointed out by the defence that P.W.1 in her evidence before the trial Court as well in the statement under Section 164 of Cr.P.C has specifically stated that when the accused was attempting sexual assault, she had thrown sand on his eyes and escaped from him, but such an important aspect does not find place in the complaint. P.W.19- Investigation Officer, in her cross examination, would admit that P.W.1 during her examination has not stated that she had thrown sand on the face of the accused and escaped from him.

19. The main aspect of the present case is that the culprit was a total stranger for all the witnesses and more particularly, At this juncture, it is necessary to refer the



sequence of events for better appreciation;

1. Date and time of the alleged occurrence ...20.06.2014at5.30 p.m.
2. Date and time of lodging complaint ...21.06.2014at14.30 hours
3. Date of Medical Examination of victim ...22.06.2014
5. Alteration report for adding the provision of SC/ST (POA) Act ...26.06.2014
4. Date of taking up of investigation by P.W.20 ...27.06.2014
5. Date of recording of 164 statement from victim ...30.06.2014
6. Date of arrest of accused ...03.07.2014
4. Date of Medical Examination of the accused ...10.07.2014
5. Date of Test Identification Parade ...16.07.2014

Considering the above, it is clear that the accused was not at all identified till 03.07.2014 for more than twelve days since the date of occurrence.

20. It is evident from the testimonies of the prosecution witnesses that since the accused was not traced out, P.W.3 and the people of his locality had conducted agitations and also staged dharna before the Office of the Revenue Divisional Officer, Kulithalai and that thereafter, RDO has conducted an enquiry. P.W.1 in her cross examination would say that after medical examination on 22.06.2014, she has appeared before the Revenue Divisional Officer on the next day. The RDO had enquired her, and she has not seen properly as to whether the accused came to the RDO Office and further adds that since the accused came there after shaving, she could not identify him. Subsequently she went to the All Women Police Station, Kulithalai, and she had identified the accused at the Police Station, when he was brought there.

21. P.W.2, the mother of P.W.1 in her cross examination would admit the enquiry conducted by RDO, Kulithalai and she would say "எனது மகளிடம் வருவாய் கோட்டாட்சியர் சம்பவத்திற்கு யார் காரணம் என்று கேட்டார். அடைக்கணைக் காட்டி இவர்தான் சம்பவத்திற்குக் காரணமா என்று கேட்டார். இல்லை என்று எனது மகள் சொன்னாள்". She would also admit that since the accused was not arrested, her husband and hundred persons belonging to their place came to the RDO office and conducted agitation; and that they have produced the brother-in-law of the accused in the Police Station. P.W.1, P.W.4 and Investigation Officer would admit that the occurrence was flashed in the media and that P.W.4, friend of P.W.1 would admit the publication of news item under Ex.D1. P.W.19, the First Investigation Officer in her cross examination would admit that the parents of the victim girl and their



relatives have conducted agitation before the Office of the RDO, but she would deny the enquiry allegedly conducted by RDO and production of the accused and victim before the RDO. P.W.20-Investigation Officer has also not deposed about the RDO enquiry, but in cross examination would deny the suggestion that since the victim's parents and relatives had conducted agitation before the RDO, Kulithalai, he has filed the charge sheet falsely implicating the accused.

22. More importantly, the accused after conclusion of the Test Identification Parade and on being questioned by P.W.18 Judicial Officer, he has stated that he has not done anything wrong, that the victim girl has informed that the accused who was present at the Police Station and subsequently at the RDO office was not the culprit and it is necessary to reproduce the statement given by the accused:

"சத்தியமாக எந்த தப்பும் செய்யவில்லை. 2 பையன்கள் ஒரு பெண் குழந்தை உள்ளது. என் பெண் அறிய எந்த தப்பும் செய்யவில்லை. ஆபரேஷன் ஆனதால் எங்கு சென்றாலும், வந்தாலும் என் மனைவியுடன் தான் செல்வேன், வருவேன். குளித்தலை ஸ் டேஷனில் என்னை வந்து இப்போது அடையாளம் காட்டிய பெண் என்னை பார்த்தது. பின்னர் என்னை குற்றவாளி இல்லை என அது கூறியது. ஆர்.டி.ஓ ஆபீஸ் கூட்டிச் சென்று கேட்ட போதும் இல்லை என்று தான் கூறியது."

23. Moreover, the accused during the enquiry under Section 313 (1) (b) of Cr.P.C., has submitted a statement u/s 233(2) of Cr.P.C., whereunder he had reiterated the same contentions. During the time of investigation, even after the accused has specifically stated that the victim had not identified him at the RDO enquiry, the investigation officer has not chosen to examine the RDO during investigation nor taken steps to examine him before the trial Court. Moreover, the investigation officer has not taken any steps to ascertain as to whether such an enquiry was conducted by the RDO, whether the victim and accused were produced before him and whether the victim has failed to identify the accused before the RDO, as this was an enquiry at the earliest point of time relating to the occurrence. As already pointed out, there is ample evidence to show that after the victim's parents and their relatives agitation, RDO enquiry was conducted and that the victim and accused were produced before him. It is very much shocking and surprising to note that the investigating officer has concealed or suppressed the entire RDO proceedings, just like the age old saying "concealing a full pumpkin in a plate of cooked rice", when the entire evidence brings out the true picture. As already pointed out, P.W.9 had denied the RDO enquiry and whereas P.W.20 has no where whispered about the RDO enquiry.

24. It is the specific case of the prosecution that after receiving an information, P.W.20 arrested the accused near Kottaimedu bus stand on 03.07.2014 in the presence of P.W.15-Village Administrative Officer and his Assistant, that on enquiry

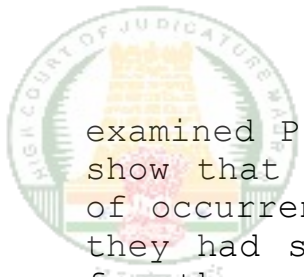


the accused has given a voluntary confession statement and that thereafter, P.W.20 recovered the dress worn by the accused through seizure mahazar. It is pertinent to mention that P.W.20 in his evidence would say that he has already given information to the Village Administrative Officer and his Assistant to be available on the morning of 03.07.2014. P.W.15 in his evidence would say that on 03.07.2014, P.W.20 had contacted him at about 5.30 a.m. through phone and directed him and his assistant to come to the Kottaimedu bus stop. Since the occurrence was allegedly held on 20.06.2014, this Court is at loss to understand as to why the investigation officer has recovered the dress worn by the accused on 03.07.2014. It is not the case of the prosecution that the accused had informed them that he was continued to wear the same dress, since the occurrence.

25. P.W.1 in her evidence as well in her complaint has specifically stated that the culprit was wearing black pant and black and white checked full hand shirt at the time of occurrence. But P.W.20 has recovered maroon colour dhoti and black and brown colour shirt. P.W.3 father of P.W.1 would say in the cross examination that three days after lodging of the complaint P.W.1 has stated the accused was not wearing pant at that time and he was only wearing dhoti and that the Police had obtained further statement in this regard. As rightly pointed out by the defence, P.W.1 in her chief examination evidence has specifically stated that the accused was wearing black pant and again while narrating the occurrence, she has specifically stated that after disrobing her chudidhar pant he has removed his pant.

26. Considering the above facts and circumstances and also the specific admission of P.W.1, that she had identified the accused at the Police Station on 23.06.2014, the case of the prosecution that the accused was arrested on 03.07.2014 appears to be false.

27. It is pertinent to mention that P.W.1 to P.W.3 would admit that the father-in-law of the accused was doing money lending business, P.W.1 and P.W.2 would admit that P.W.3 has also borrowed loan from him, but the same was repaid. But P.W.3 would say that he has not borrowed any amount from the father-in-law of the accused. The prosecution has proceeded on the premise that the perpetrator was a stranger or a person not known to the victim, this was the reason the accused was allegedly identified at Police Station and later a Test Identification Parade. If the accused was known to the victim or her family even earlier, due to the business and transaction, they had with the father in law of the accused, there was no necessity to aver and depose that a person wearing a particular colour pant and shirt asked her to help him lift the grass bundle and straightaway it would have been referred that the accused had committed the offence. This again causes a doubt with regard to the prosecution version. The prosecution has



examined P.W.10-Semban and P.W.14-Chinnadurai, as the witnesses to show that they had seen the accused along with P.W.1 at the time of occurrence. P.W.10 and P.W.14, in their evidence would say that they had seen the accused lying in the plantain fields of Kannan for the past ten days prior to the occurrence and that they had seen the victim and the accused were found talking and were moving towards the plantain fields. Both the said witnesses would admit in their cross examination that P.W.1's family was not known to them for the past several years. Moreover P.W.10 in his cross examination would say that on the next day of occurrence, Police have taken him and Chinnadurai to the occurrence place at about 8.00 a.m. and they were examined by the Police at the occurrence place. It is pertinent to mention that P.W.19 the First Investigation Officer in her cross examination would admit that she came to know that the accused was involved in the occurrence after examination of P.W.10. As already pointed out, P.W.20 was appointed as Investigating Officer on 27.06.2014 and he had taken up the investigation on that day itself. In the chief examination, P.W.19 would say that he had examined P.W.10 and P.W.14 on 25.06.2014. But as rightly pointed out by the defence, the date of examination was not noted in their statement and that the same was admitted by her during the cross examination. If P.W.19 came to know about the accused on 25.06.2014 itself, I am at loss to understand why they have waited till 03.07.2014 for arresting the accused and it is not their case that though they had identified the accused, his whereabouts were not known.

28. It is the specific case of the prosecution that P.W.1 along with her parents came to the Police Station on 21.06.2014, that her complaint statement was recorded and that on the basis of the same, FIR came to be registered. P.W.1 in her cross examination would say that Head Constable has written the complaint and that her mother P.W.2 had subscribed her signature. Subsequently she would say that in the complaint given by her, she alone had subscribed her signature. P.W.2 in her cross examination would also admit that she subscribed her signature in the complaint lodged by P.W.1. As already pointed out, P.W.10 would say that the Police had taken him and P.W.14-Chinnadurai at about 8.00 a.m on the next day of occurrence i.e., on 21.06.2014. Considering the above, as rightly pointed out by the defence, the prosecution has suppressed another complaint lodged with respect to the occurrence.

29. As rightly pointed out by the defence, since the accused was shown to P.W.1 three days after the occurrence, the factum of identifying the accused at the parade conducted by the Judicial Officer loses its significance. No doubt, the Medical Officer who examined the victim has specifically stated that there were no injuries on the private part and that the hymen is intact.



Considering the above, the medical evidence does not support the case of the prosecution. Hence, this Court has no hesitation to hold that the prosecution has miserably failed to prove the basic and foundational facts to the case projected by them and as such, the question of burden shifting to the accused does not arise at all.

30. Even assuming for argument sake, that the prosecution has proved the basic and foundational facts, the accused through the evidence of prosecution witnesses has successfully rebutted the presumption. The prosecution story as regards the rape or penetrative sexual assault involving the accused has not been satisfactorily established as their evidence is full of inconsistencies, infirmities and absurdities. The learned trial Judge has not appreciated the evidence of the prosecution in proper legal perspective and misread the evidence. Hence, this Court has no other option but to hold that the prosecution has miserably failed to prove the guilt of the accused beyond reasonable doubt and consequently, the judgment of conviction and sentence passed by the trial Court is liable to set aside.

31. In the result, the **Criminal Appeal is allowed** and the impugned judgment of conviction and sentence imposed by the Fast Track Mahila Court in Spl.S.C.No.5 of 2014, dated 16.09.2015 is set aside and the appellant/accused is Acquitted Fine, if any, paid, same shall be refunded to him. Bail bond, if any, shall stand cancelled.

Sd/-

Assistant Registrar (AS)

// True Copy //

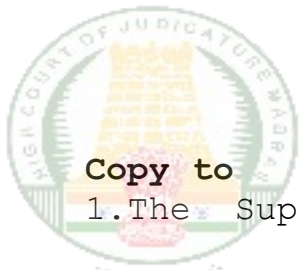
/ /2021

Sub Assistant Registrar(CS)

Pkn

To

- 1.The Principal District and Sessions Judge, Karur District.
2. The Judge Fast Track Mahila Court,Karur.
3. The Judicial Magistrate, No.II Kulithalai, Karur Dist.
- 4.The Inspector of Police,
All Women Police Station,
Kulithalai, Karur District.



Copy to

1.The Superintendent of Prison, Central Prison, Trichy.

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

3.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court, Madurai.(2 copies)

+1 CC to M/s.T.SENTHILKUMAR, Advocate (SR-19067[F] dated 09/06/2021)

order made in
CRL.A(MD) .No.26 of 2016
08.06.2021

CN(16.08.2021) 11P 10C