



BAIL SLIP

Rajan @ Soosairajan, S/o. Thangaraj, aged about 34 years, Sole Accused was released on bail vide order of this Court dated 30.09.2016 made in CRL MP(MD).No.9431 of 2016 in CRL A(MD).No.356 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.06.2021
DELIVERED ON : 03.09.2021

CORAM

THE HONOURABLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**

CRL.A.(MD)No.356 of 2016

Rajan @ Soosairajan : Appellant/Sole Accused

Vs.

The Inspector of Police,
Kulasekaram Police Station,
Kanyakumari District.
(in Cr.No.192 of 2002)

: Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to call for the records in S.C.No.54 of 2004, dated 30.08.2016 on the file of the Mahila Fast Track Court, Nagercoil, Kanyakumari District and to set aside the same.

For Appellant : Mr.Karuppasamy Pandian
for Mr.F.Deepak

For Respondent : Mr.T.Senthil Kumar
Government Advocate (Crl.side)

JUDGMENT

This appeal is filed as against the judgment of conviction passed by the learned Sessions Judge, Fast Track Mahila Court, Nagercoil, Kanyakumari in S.C.No.54 of 2004, dated 30.08.2016.

2.Heard Mr.Karuppasamy Pandian, learned Counsel for Mr.F.Deepak, learned Counsel for the appellant and Mr.T.Senthil Kumar, learned Government Advocate (Crl.side).



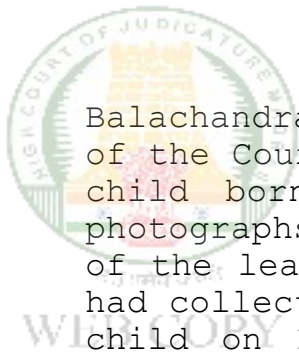
3.As per the contents of the complaint and FIR, it is stated by the victim girl that her mother, father and elder brother are working as daily wage labourers used to leave the house in the morning and come back in the evening. The accused herein was also residing in the same area. They were neighbours. Taking advantage of the fact that the victim girl was alone at home, he developed friendship with her and in due course of time, he told her that he will marry her. By promising to marry her, he had intercourse ten months prior to the date of lodging of the complaint. When the victim girl came to know that she was pregnant by two months, she informed the accused prior to the lodging of complaint. When the victim girl was five months pregnant, the accused did not come to the residence of the victim girl and did not come forward to marry her. Therefore, she felt that she had been cheated. Therefore, with the help of her mother, father and elder brother, she approached the police and gave a complaint under Ex.P-1.

4.P.W-15-Mr.Muthu Kumar, Sub Inspector of Police, Kulasekaram Police Station, had received the complaint under Ex.P-1 and registered FIR under Ex.P-8 for the offences punishable under Sections 376 and 417 of IPC. After registration of FIR, P.W-16, Venu Gopalakrishnan, then Inspector of Police, Kulasekaram Police Station, examined the victim girl and recorded her statement. He also recorded the statement of the parents of the victim girl, viz., P.W-2-Murugan, father of the victim girl, P.W-3- Emily, mother of the victim girl and P.W-4-Sathish, elder brother of the victim girl. He also recorded the statement of P.W-5-Manikandan, P.W-6-Vasanth, P.W-7- Valliammai and P.W-8-Thangam.

5.P.W-16-Inspector of Police also visited the residence of the victim girl and prepared rough sketch under Ex.P-9 and observation mahazer under Ex.P-3. He had also obtained age certificate of the victim girl from P.W-12-Sister Alphonsa Fathima Mary, Head Mistress of St.Ursula's Girls High School, Kulasekaram, under Ex.P-5. He had obtained the age certificate regarding the accused from P.W-11, Gnanadass, Head Master, Kulasekaram Government Higher Secondary School, under Ex.P4. He also sent a letter to the learned Judicial Magistrate, Padmanabhapuram, seeking DNA test for the child born to the prosecutrix regarding the paternity of the child. On his transfer, he handed over the case diary file to his successor, P.W-17- Mohan Singh, Inspector of Police.

6.As per the statement of P.W-17, he had examined all the witnesses. Since they had given statements, as what was given earlier to the then Inspector of Police, P.W-16-Venu Gopalakrishnan, he had not recorded their statements afresh. He had recorded the statement of P.W-13-Dr.Jesu Thangam, who had examined the victim girl and found no external injury over face, breast or thigh and issued the certificate that the victim girl was 26 weeks pregnant.

<https://hccwscs.courts.mys.in/cases/> of Police, Kulasekaram, had examined P.W-14-Radhika



Balachandran, Forensic Expert, who had taken DNA test on the orders of the Court of the learned Judicial Magistrate, on the victim girl, child born to the prosecutrix and the accused. Based on the photographs of the child, mother and the accused sent from the Court of the learned Judicial Magistrate, the Forensic Science Laboratory had collected the sample blood from the accused, victim girl and the child on 16.06.2003. P.W-14-Radhika Balachandran had issued DNA test result under Ex.P-7, wherein, it is stated as follows:

"Report-The individuals shown in the photographs above viz: Mr.T.Rajan @ Soosai Rajan, Ms.xxxxx and a female Child xxxxx, the parties concerned in the above case have appeared at this department on 16.06.2003, accompanied by HC 212 Tr.Denison, HC 1687, Tr.Anthony and WHC 19, Tmt.Jesy, for paternity testing.

Blood sample from each of the above individuals was drawn with their consent on 16.06.2003. The DNA extracted from each of the above blood sample was typed using PC amplified technique for 15 ST Loci after taking due care for the integrity of each sample.

The results of the DNA typing for each of the above individuals are shown in the enclosed annexures I to III. The electrogram of the DNA typing results of the above individuals are given in the annexure IV. A comprehensive analysis of the above results and the interpretations thereof are given in the annexure V. A technical note on the DNA typing technique is given in the annexure VI. The personal data, consent, donor cards and declarations of the above persons are also enclosed herewith.

From the comprehensive analysis of the test results as shown in the axxexure V,

(1)The cumulative probability of the paternity of Mr.T.Rajan @ Soosai Rajan for being the father of this child xxxxx is found to be 99.999999998/-.

(ii)the cumulative chance of exclusion of any random man from the paternity of child xxxxx is 99.99999999995/-.

As per AMA-ABA guidelines, the verbal assertion for the cumulative probability of paternity of 99.999999998/- is practically proved.

Opinion: The DNA typing results infer that in the absence of identical twins, Mr.T.Rajan @ Soosai Rajan is



found to be the biological father of child xxxxx."

7.The charge sheet was filed before the learned Judicial Magistrate, Padmabhapuram and numbered as P.R.C.No.62 of 2003. Thereafter, the case was committed to the Court of Sessions in the year 2004 and numbered as S.C.No.54 of 2004. The Court of Sessions had made over the case to the Court of the Assistant Sessions Judge, Padmanabhapuram and bind over the Accused to the Court of the Assistant Sessions Judge, Padmanabhapuram. The charges were framed by the learned Assistant Sessions Judge, Padmabhapuram, on 07.04.2004 under Sections 376 and 417 of IPC. The trial commenced before the Special Court for offences against the Women and Children, constituted as per the orders of the Honourable Supreme Court in all the District Head Quarters. Therefore, the trial, that was pending before the learned Assistant Sessions Judge, Padmanabhapuram, was transferred to the Court of the Special Judge for offences against the Women and Children at Nagercoil.

8.Before the learned Special Judge, the prosecution had examined witnesses P.W-1 to P.W-17 and marked documents Ex.P-1 to Ex.P-9.

9.P.W-1 was examined on 23.02.2006 and she was not cross examined on the date of her deposition as witness and she was recalled on an application filed by the accused on 13.04.2006 and she was not cross examined. P.W-2-Murugan, father of the victim girl was examined on 07.06.2006. P.W-3-Emily, mother of the victim girl was examined on 07.06.2006. P.W-4-Sathish, brother of the victim girl was examined on 05.07.2006. P.W-5-Manikandan, examined on 05.07.2006. P.W-6- Vasantha, examined on 05.07.2006. P.W-7-Valliammai, examined on 05.07.2006. P.W-8-Thangam examined on 26.07.2006. P.W-9-Varghees, examined on 26.07.2006. P.W-10-Pauldass, examined on 26.07.2006. P.W-11-Gnanadass, examined on 07.12.2006. P.W-12-Alphonsa Fathima Mary, examined on 07.12.2006. P.W-13-Dr.Jesu Thangam, examined on 24.01.2007. P.W-14-Radhika Balachandran, Forensic Expert, examined on 27.06.2007. P.W-15-Muthukumar, Sub Inspector of Police, examined on 11.07.2007. P.W-16-Venu Gopalakrishnan, Inspector of Police, was examined on 25.07.2007. P.W-17-Mohan Singh, Inspector of Police, examined on 05.03.2008. The accused was examined on 09.04.2008 regarding the incriminating evidence against him.

10.As per Ex.P-5, the certificate issued by P.W-12-Head Mistress of St.Ursula's Girls High School, Kulasekaram, the date of birth of the victim girl is 09.01.1986. Therefore, on the date of registration of FIR, the victim girl was not major and she is a minor and on the date of occurrence, the victim girl's age was 15 and at the time of registration of the FIR, the victim girl's age was 16. As per Ex.P-4, the certificate issued by P.W-11-Head Master, Government Higher Secondary School, Kulasekaram, the date of birth of the accused is 22.06.1983. Therefore, at the time of



registration of FIR, the accused was aged about 18 years.

11.Relying on the evidence of P.W-1, the Forensic Science Expert, who had conducted DNA test from the blood of the accused, child of the victim girl and the victim girl under Ex.P-7, DNA test report, wherein, the photographs of the accused, victim girl and child were affixed and the conduct of the accused in preferring revision over the petition to recall the witnesses having been dismissed, the learned Trial Judge had pronounced the judgment and recorded the finding of guilt against the accused and passed order sentencing the accused to undergo ten years rigorous imprisonment with fine of Rs.25,000/- for the offence under Section 376 of IPC, in default, one year simple imprisonment and to undergo one year rigorous imprisonment and fine of Rs.1,000/- for the offence under Section 417 of IPC, in default, to undergo one month simple imprisonment. Aggrieved by the same, the present appeal is filed by the accused.

12.The learned Counsel for the appellant submitted that except, P.W-1 to P.W-4, there was no corroborating witness. P.W-5 to P.W-8 turned hostile. P.W-9 to P.W-17 are official witnesses and they were not cross examined. The learned Trial Judge, without affording opportunity to the accused to cross examine the witnesses, had pronounced the judgment and recorded the finding of guilt against the accused.

13.The only ground for appeal is that the judgment convicting the accused is against the principles of fair trial guaranteed to the citizens of this country under the Constitution of India. The learned Trial Judge had not afforded opportunity to the accused to recall the witness for cross examination. Therefore, this Court, in the light of the principles of fair trial and speedy trial, which is guaranteed to the citizens of the country, shall pass orders, thereby, remanding the case to the learned Trial Judge in order to afford opportunity to the accused to recall the witness for cross examination.

14.The learned Counsel for the accused insisted for remand, for recall of witnesses, placing reliance on the ruling reported in **2017 (2) MLJ (Cr1.) 1 in the case of M.Kannan Vs. State rep. by Inspector of Police** which reads as follows:

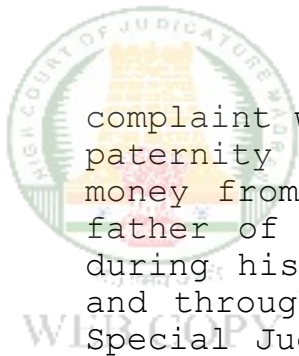
Kidnapping - Denial of Fair Trial - Indian Penal Code, 1860 (Code 1860), Sections 312 and 366 - Protection of Child from Sexual Offences Act, 2012 (Act 2012), Sections 6, 35, 36 and 37 - Constitution of India, 1950, Article 21- Appellant/accused alleged to have kidnapped victim/girl aged 16 years, repeated sexual intercourse with her, which resulted in her pregnancy and administered drugs to victim and caused miscarriage of foetus - Appellant prosecuted for



offences under Section 366 and 312 of Code 1860 and Section 6 of Act 2012 - Trial Court convicted Appellant - Challenging said conviction and for denial of fair trial, Appellant preferred appeal -Whether conviction of Appellant justified - Whether there was denial of fair trial to Appellant - Held, there was gross dereliction of professional duty by counsel engaged by Appellant to appear before Trial Court - Counsel did not show interest in providing legal assistance to Appellant which is his legal obligation under law, though he was paid his legal fees - Appellant was deprived of proper legal assistance because of failure of Counsel engaged by him - For failure and gross dereliction of duty of Counsel engaged, Appellant cannot be penalized - Without legal assistance, trial cannot be regarded as reasonable, fair and just - Supreme Court held that it is essential ingredient of reasonable, fair and just procedure to Appellant who is to seek his liberation through Court process that he should have effective legal assistance and there is denial of fair trial to Appellant and conviction and sentence cannot be allowed to sustain - Matter needs to be remanded back to Trial Court to afford sufficient opportunity to Appellant to cross examine witness - Sections 35 to 37 of Act 2012, reassures fair trial to victim as guaranteed under Article 21 of Constitution - Rights of Appellant to cross examine victim and right of victim to privacy should be measured meticulously and without causing harm to any of these rights - While victim is under examination, Trial Court shall follow provisions of Act 2012 - Case remanded back to Trial Court - Appeal allowed.

15.Mr.T.Senthil Kumar, learned Government Advocate (Crl. Side), by way of reply, had objected to the line of arguments put forth by the learned Counsel for the appellant. The learned Government Advocate invited the attention of this Court to Page No.84 of the typed set of papers, which is FIR, under Ex.P-8, wherein, the case was registered as Cr.No.192 of 2002. The date of registration of the case was 26.03.2002 for the offence punishable under Sections 376 and 417 of IPC. The occurrence is stated to be ten months before the date of registration of FIR. At the time of registering the FIR, the de-facto complainant/victim girl was aged about 16 years.

16.The learned Government Advocate (Crl. Side) invited the attention of this Court to paragraph 25 of the judgment, wherein, the learned Special Judge had discussed about the conduct of the accused. In paragraph 14, the accused had himself defended his case and argued that the victim girl developed relationship with one Sindhu prior to the contact with the accused and she had eloped with the said Sindhu and the father of the victim girl had lodged a



complaint with the police against the said Sindhu and suspecting the paternity of the child, the father of the victim girl had demanded money from the accused herein for Rs.3,00,000/- and he is not the father of the child born to the victim girl. He had stated that during his detention, the said Sindhu had married the victim girl and through their relationship, she had two children. The learned Special Judge had discussed about the evidence available before the Court and relied on the Rulings of the Hon'ble Supreme Court reported in **2016 Cr1. Law Journal 297** in the case of **Ramapada Monda vs. State of West Bengal**.

17.The learned Government Advocate (Criminal Side) submitted that except P.W-1 to P.W-4, the rest of the witnesses turned hostile. When there is scientific evidence through DNA test, there cannot be any defence that the accused is not involved in the offence. He cannot take any defence. That is why, he had protracted the trial over a period. Further, the learned Government Advocate relying on the order of this Court in Crl.R.C(MD)No.934 of 2008, the relevant portion of the said order reads as follows:

"6. This Court has admitted the revision on 04.11.2008 and granted blanket order of interim stay until further orders, on the same day. Thereafter, the revision was listed on 22.12.2008 and it was directed to be called after vacation holidays.

7. When the revision was called on 27.03.2015, this Court directed the parties to find out the latest position and also the availability of witnesses.

8. The Honourable Supreme Court in Vinod Kumar v. State of Punjab reported in (2015) 1 MLJ (Crl) 288 (SC), has come down very heavily with regard to the grant of adjournments sought on drop of a hat by counsel even though witness is present in the Court, contrary to 4 principles of holding trial. It is relevant to extract hereunder paragraph 41 of the above said decision:

"41. Before parting with the case we are constrained to reiterate what we have said in the beginning. We have expressed our agony and anguish the manner in which trials in respect of serious offences relating to corruption are being conducted by the trial courts. Adjournments are sought on the drop of a hat by the counsel, even though the witness is present in court, contrary to all principles of holding a trial. That apart, after the examination-in-chief of a witness is over, adjournment is sought for cross examination and the disquieting feature is that the trial courts

<https://hcservices.ecourts.gov.in/hcservices/>. The law requires special reasons to be



recorded for grant of time but the same is not taken note of. As has been noticed earlier, in the instant case the cross-examination has taken place after a year and 8 months allowing ample time to pressurize the witness and to gain over him by adopting all kinds of tactics. There is no cavil over the proposition that there has to be a fair and proper trial but the duty of the court while conducting the trial to be guided by the mandate of the law, the conceptual fairness and above all bearing in mind its sacrosanct duty to arrive at the truth on the basis of the material brought on record. If an accused for his benefit takes the trial on the path of total mockery, it cannot be countenanced. The Court has a sacred duty to see that the trial is conducted as per law. If adjournments are granted in this manner it would tantamount to 5 violation of rule of law and eventually turn such trials to a farce. It is legally impermissible and jurisprudentially abominable. The trial courts are expected in law to follow the command of the procedure relating to trial and not yield to the request of the counsel to grant adjournment for nonacceptable reasons. In fact, it is not all appreciable to call a witness for cross-examination after such a long span of time. It is imperative if the examination-in-chief is over, the cross-examination should be completed on the same day. If the examination of a witness continues till late hours the trial can be adjourned to the next day for cross-examination. It is inconceivable in law that the cross-examination should be deferred for such a long time. It is anathema to the concept of proper and fair trial. The duty of the court is to see that not only the interest of the accused as per law is protected but also the societal and collective interest is safe-guarded. It is distressing to note that despite series of judgments of this Court, the habit of granting adjournment, really an ailment, continues. How long shall we say, "Awake! Arise!". There is a constant discomfort. Therefore, we think it appropriate that the copies of the judgment be sent to the learned Chief Justices of all the High Courts for circulating the same among the learned trial Judges with a command to follow the principles relating to trial in a requisite manner and not to defer the cross-examination of a witness at their pleasure or at the leisure of the defence counsel, for it eventually makes the trial an apology for trial and compels the whole society to suffer chicanery. Let it be remembered that law cannot allowed to be lonely; a destitute."



9. The fact remains that the witnesses were examined from 23.02.2006 till 05.03.2008 and the present petition came to be filed only on 18.06.2008 and though the revision petitioner/accused was defended by the Counsel, as to why his Counsel did not choose to cross-examine the witnesses while they were in the box, remains a mystery.

10. Though the learned Counsel for the revision petitioner/accused made a feeble attempt by submitting that the learned Counsel for the revision petitioner/accused before the trial Court has not performed his professional duty properly, this Court is unable to accept the same for the reason that the Advocates being the members of a 'Noble Profession' are expected to discharge their duties fairly and properly by taking into consideration the interest of the clients and the cause of justice.

11. Though the revision petitioner/accused was having an option to proceed against his Counsel either before the Ethic body or Consumer Forum, he did not do so and came forward to file this revision challenging the said order. Even if this revision is allowed, on account of passage of time, the witnesses may not be available in the said addresses and in the light of the observations made in the above cited decision of the 7 Honourable Supreme Court that "... If an accused for his benefit takes the trial on the path of total mockery, it cannot be countenanced. The Court has a sacred duty to see that the trial is conducted as per law. If adjournments are granted in this manner it would tantamount to violation of rule of law and eventually turn such trials to a farce. It is legally impermissible and jurisprudentially abominable. ... In fact, it is not all appreciable to call a witness for cross-examination after such a long span of time. It is imperative if the examination-in-chief is over, the cross examination should be completed on the same day. ... The duty of the court is to see that not only the interest of the accused as per law is protected but also the societal and collective interest is safe-guarded. ...", coupled with the factual reasons, this Court is of the view that the impugned order warrants no interference.

12. In the result, this Criminal Revision Case is dismissed. The Court of Assistant Sessions Judge, Padmanabhapuram, is directed to complete the trial and



pronounce the verdict as expeditiously as possible and the respondent/prosecution is also directed to extend their maximum co-operation so as to enable the trial Court to do so. Consequently, the connected miscellaneous petition is dismissed."

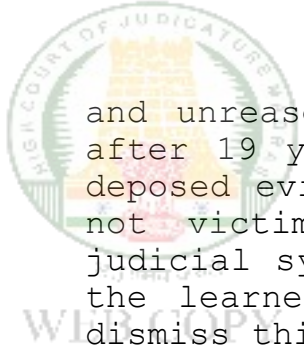
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18. Therefore, the learned Government Advocate (Crl. Side) objected to the request of the learned Counsel for the accused demanding this Court to remand the case records back to the Trial Court and to grant the accused the chance to recall the witnesses and cross examine the witnesses. On the earlier occasion, before the judgment was pronounced by the learned Trial Judge, the petition filed by the Accused under Section 311 Cr.P.C., was dismissed by the learned Trial Judge, against which, he had filed Crl.R.C.(MD)No.934 of 2008, before this Court, wherein, this Court had dismissed the revision, against which, the accused had not preferred any Special Leave Petition before the Hon'ble Supreme Court. When that being the case, this Court cannot remand the case back to the Trial Court to recall the witnesses for cross examination. It amounts to harassment caused to the victim of crime.

19. Here, in this case, the victim was a minor girl on the date of occurrence. During the trial, the accused had taken a defence that he was not involved in the alleged offence and questioning the chastity of the victim girl. The Court had, at preliminary stage of the trial, ordered DNA test, whereupon, DNA test was available under Ex.P-7 and the documents regarding DNA test available from page No.63 to 88 of typed set of papers. In the light of Ex.P-7, there cannot be any recall and cross examination. The purpose of cross examination is to find out the truth. Also, in Crl.R.C.(MD)No.934 of 2008, the learned Single Judge of this Court had observed that the trial was stalled during the pendency of revision and from 2002 till the date of judgment, i.e., 31.03.2015, almost 14 years, the accused had cleverly protracted the proceedings. Crl.R.C.(MD)No.934 of 2008 was disposed on 31.03.2015. In those circumstances, recalling witnesses, when the revision itself has been dismissed, amounts to violation of principles of speedy trial.

20. The principles of fair trial and speedy trial is guaranteed to the citizens by the Constitution of India. It is very same accused knowing fully well that he has no valid defence wantonly delayed the trial by adopting methods to delay the trial. Therefore, the ruling of the Hon'ble Supreme Court in **Vinoth Kumar vs State of Punjab**, reported in **(2015) 1 MLJ (Crl.) 288 (SC)**, had been followed by the learned Single Judge of this Court to dismiss the Crl.R.C.(MD)No.934 of 2008 filed by this accused.

21. In the light of the said ruling of the Hon'ble Supreme Court, the request of the accused herein, as appellant, to remand the case records to the Trial Court, is condemnable, unacceptable



and unreasonable. It amounts to harassing the victim of crime, after 19 years, after the occurrence of the crime, where, she had deposited evidence in 2006. After 14 years, she is recalled. It is not victim friendly judicial system. It is accused friendly judicial system defeating the principles of fair trial. Therefore, the learned Government Advocate (Crl. Side) prayed this Court to dismiss this Appeal.

22.I, as a Presiding Judge over the criminal Courts, in my judicial experience, had seen that in cases where the prosecution had placed all the materials fairly before the Trial Court and the witnesses had deposed against the accused, the learned Counsel appearing for the accused seeks time to recall the witnesses as of right invoking the powers under Section 311 of Cr.P.C., on the ground that they have the right to cross examine the witnesses and cross examination of witnesses then and there is not mandatory and in the course of the trial, the accused fails to appear and the learned Counsel, who filed memo of appearance for the accused, does not attend the Court on the ground that they have no instruction from the accused (presumption that the accused had not paid fee). Therefore, the trial cases come to a grinding halt by issuance of non bailable warrant against the accused. After some years, when the non bailable warrant is recalled, many of the witnesses, who are cited in the final report by the Investigation Officer, will not be available in the place of residence and therefore, the trial remains pending part-heard.

23.The repeated instruction from the High Court to the learned Trial Judges both the Magistrate and Sessions Judge, to dispose of the trial cases earlier is an empty formality. This is due to the attitude of the learned Counsel appearing for the accused. This is a glaring example in all cases. For an offence under Section 376 Cr.P.C., a Special Court had been formed for the crimes against the Women and Children. Those cases, which are pending in Courts in the District, had been transferred to the Special Court. The Advocate, who have been engaged by the accused, did not cross examine the witnesses, when the witnesses were available in Court, ignoring the direction of the Hon'ble Supreme Court that in criminal trial, the witnesses had to be cross examined then and there.

24.When P.W-1 was available for recall on 13.04.2006, as per the noting of the learned Trial Judge, the accused had filed Crl.R.C.(MD)No.934 of 2008 before this Court staying the proceeding. The Crl.R.C.(MD)No.934 of 2008, was disposed of by the learned Single Judge of this Court, dated 31.03.2015, observing that as of right, they cannot invoke the provision of Section 311 of Cr.P.C. The learned Single Judge had observed that the accused herein, who had paid fees to the learned Counsel to safeguard his right, had not demanded damages from the Counsel through Consumer Forum or preferred any complaint to the Ethic Body of the Bar Council. This



criminal trials. Therefore, the request of the learned Counsel for the appellant now before this Court placing reliance on the rulings of the Hon'ble Division Bench of this Court to remand the matter to the trial Court after this length of period from 2003 till 2021, is found to be against the observation of the Hon'ble Supreme Court for speedy trial and fair trial concerning Sessions cases, particularly, against the crimes against the Women and Children.

25.The insistence of the learned Counsel for the accused that the Single Judge is bound by the judgment of the Hon'ble Division Bench and therefore, seeking order to remand the matter to the Trial Court to recall the witness is found unacceptable and unsustainable, considering the pain suffered by the victim of crime. Therefore, for effective trial, for speedy trial and for fair trial, the cooperation of the accused and the Counsel for the accused, who employed methods to delay the trial, has to be put an end by the High Court by framing appropriate rules guiding the Trial Judges to proceed with due diligence and to curtail the conduct of the accused causing interference of the administration of justice delivery by adopting methods in delaying the trials.

26. I am bound by the Rulings of the Hon'ble Supreme Court regarding fair trial and speedy trial which is relied on in the order passed by His Lordship Mr.Justice M.SATHYANARAYANAN. Therefore the argument of the learned counsel for the Appellant/Accused placing reliance on the reported decision of the Division Bench of this Court to remand the case back to the trial Court for recall and cross examination of recalled witnesses is found contrary to the principles of speedy trial and fair trial as laid down by the Hon'ble Supreme Court. Therefore, the argument of the learned counsel for the Appellant seeking remand of the case back to trial Court is rectified. From my own experience as a Trial Judge, I had found that invariably in all cases, where, prosecution had a good case for conviction, the accused have a upper hand to defeat and derail the criminal justice system.

27.On perusal of the records, it is found that the appellant herein had filed Crl.R.C.(MD).No.934 of 2008 against the order of dismissal of petition under Section 311 of Cr.P.C., by the trial Court in Crl.M.P.No.445 of 2008. It is relevant to extract the order of learned Single Judge of this Court, which reads as follows:

2. The revision petitioner/accused has filed C.M.P.No.415 of 2008 under Section 311 Cr.P.C. to summon P.W.1/victim stating among other things that the revision petitioner/accused was not fully grown up adult and he could not give instructions to his Counsel to conduct the cross-examination. Though all the witnesses were examined in chief, none of the witnesses was cross-examined on his



behalf and therefore, an opportunity may be given to cross-examine all the prosecution witnesses to establish his innocence.

3. The said petition was opposed by the prosecution by contending that at the time of hearing of the application, out of 18 witnesses, 17 witnesses were examined by the prosecution and it was further pointed out that P.W.1 was examined on 23.02.2006; P.W.2 and P.W.3 were examined on 07.06.2006; P.W.4 to P.W.7 were examined on 05.07.2006; P.W.8 to P.W.10 were examined on 26.07.2006. P.W.11 and P.W.12 were examined on 07.12.2006; P.W.13 was examined on 24.01.2007; P.W.14 was examined on 27.06.2007; P.W.15 was examined on 11.07.2007 and P.W.17 was examined on 05.03.2008 and at the belated point of time only, the petition dated 18.06.2008, came to be filed and no steps have been taken on behalf of the revision petitioner/accused to recall the witnesses within a reasonable time and hence, prayed for the dismissal of the petition.

28. The learned Single Judge of this Court had admitted the revision on 04.11.2008 and granted a blanket order of interim stay until further orders. Thereafter, the revision was listed on 22.12.2008. Subsequently, the revision came up for hearing only on 27.03.2015. At that time, the Hon'ble Mr. Justice. M.SATHYANARAYANAN was the presiding Judge of the Bench. His Lordship sought latest position from the trial Court and the availability of the witnesses and after hearing the learned Public Prosecutor, the learned single Judge had disposed of the Criminal Revision Case on 31.03.2015. The learned Single Judge had quoted the decision of the Hon'ble Supreme Court rendered in the case of **Vinod Kumar v. State of Punjab** reported in **(2015) 1 MLJ (Cr1) 288 (SC)**.

"41. Before parting with the case we are constrained to reiterate what we have said in the beginning. We have expressed our agony and anguish the manner in which trials in respect of serious offences relating to corruption are being conducted by the trial courts. Adjournments are sought on the drop of a hat by the counsel, even though the witness is present in court, contrary to all principles of holding a trial. That apart, after the examination-in-chief of a witness is over, adjournment is sought for crossexamination and the disquieting feature is that the trial courts grant time. The law requires special reasons to be recorded for grant of time but the same is not taken note of. As has been noticed earlier, in the instant case the cross-examination has taken place after a year and 8 months allowing ample time to pressurize the witness and to gain over him by adopting all kinds of tactics. There is no



cavil over the proposition that there has to be a fair and proper trial but the duty of the court while conducting the trial to be guided by the mandate of the law, the conceptual fairness and above all bearing in mind its sacrosanct duty to arrive at the truth on the basis of the material brought on record. If an accused for his benefit takes the trial on the path of total mockery, it cannot be countenanced. The Court has a sacred duty to see that the trial is conducted as per law. If adjournments are granted in this manner it would tantamount to violation of rule of law and eventually turn such trials to a farce. It is legally impermissible and jurisprudentially abominable. The trial courts are expected in law to follow the command of the procedure relating to trial and not yield to the request of the counsel to grant adjournment for nonacceptable reasons. In fact, it is not all appreciable to call a witness for cross-examination after such a long span of time. It is imperative if the examination-in-chief is over, the cross-examination should be completed on the same day. If the examination of a witness continues till late hours the trial can be adjourned to the next day for cross-examination. It is inconceivable in law that the cross-examination should be deferred for such a long time. It is anathema to the concept of proper and fair trial. The duty of the court is to see that not only the interest of the accused as per law is protected but also the societal and collective interest is safe-guarded. It is distressing to note that despite series of judgments of this Court, the habit of granting adjournment, really an ailment, continues. How long shall we say, "Awake! Arise!". There is a constant discomfort. Therefore, we think it appropriate that the copies of the judgment be sent to the learned Chief Justices of all the High Courts for circulating the same among the learned trial Judges with a command to follow the principles relating to trial in a requisite manner and not to defer the cross-examination of a witness at their pleasure or at the leisure of the defence counsel, for it eventually makes the trial an apology for trial and compels the whole society to suffer chicanery. Let it be remembered that law cannot allowed to be lonely; a destitute."

29. The learned Single Judge in his order observed that from 23.02.2006 till 05.03.2008, the witnesses were examined and the petition under Section 311 of Cr.P.C., came to be filed on 18.06.2008. Though the accused was defended by his counsel, as to how his counsel did not choose to cross-examine the witnesses, while they were in the box, remains a mystery.

9. The fact remains that the witnesses were examined from 23.02.2006 till 05.03.2008 and the present petition came



to be filed only on 18.06.2008 and though the revision petitioner/accused was defended by the Counsel, as to why his Counsel did not choose to cross-examine the witnesses while they were in the box, remains a mystery.

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10. Though the learned Counsel for the revision petitioner/accused made a feeble attempt by submitting that the learned Counsel for the revision petitioner/accused before the trial Court has not performed his professional duty properly, this Court is unable to accept the same for the reason that the Advocates being the members of a 'Noble Profession' are expected to discharge their duties fairly and properly by taking into consideration the interest of the clients and the cause of justice.

11. Though the revision petitioner/accused was having an option to proceed against his Counsel either before the Ethic body or Consumer Forum, he did not do so and came forward to file this revision challenging the said order. Even if this revision is allowed, on account of passage of time, the witnesses may not be available in the said addresses and in the light of the observations made in the above cited decision of the Honourable Supreme Court that "... If an accused for his benefit takes the trial on the path of total mockery, it cannot be countenanced. The Court has a sacred duty to see that the trial is conducted as per law. If adjournments are granted in this manner it would tantamount to violation of rule of law and eventually turn such trials to a farce. It is legally impermissible and jurisprudentially abominable. ... In fact, it is not all appreciable to call a witness for cross-examination after such a long span of time. It is imperative if the examination-in-chief is over, the crossexamination should be completed on the same day. ... The duty of the court is to see that not only the interest of the accused as per law is protected but also the societal and collective interest is safe-guarded. ...", coupled with the factual reasons, this Court is of the view that the impugned order warrants no interference.

12. In the result, this Criminal Revision Case is dismissed. The Court of Assistant Sessions Judge, Padmanabhapuram, is directed to complete the trial and pronounce the verdict as expeditiously as possible and the respondent/prosecution is also directed to extend their maximum co-operation so as to enable the trial Court to do so. Consequently, the connected miscellaneous petition is dismissed.



30.The Criminal revision had been dismissed based on the Ruling of the Hon'ble Supreme Court in the case of **Vinod Kumar v. State of Punjab** reported in **(2015) 1 MLJ (Cr1) 288 (SC)**. The ground of appeal is based only on the reason that the accused was denied the opportunity of cross examination by the learned trial Judge. The said submission of the learned counsel for the appellant/accused cannot be entertained at all. Considering the valuable right guaranteed to the citizens of India by the Constitution of India, the accused had been granted the right to cross examine witnesses under the principles of fair trial and speedy trial. However, as observed by the Hon'ble Supreme Court in the case of **Vinod Kumar v. State of Punjab** reported in **(2015) 1 MLJ (Cr1) 288 (SC)**, a petition under Section 311 of Cr.P.C. to cross examine the witnesses, after allowing ample time, on the whims and fancies of the accused, causes delay in criminal trials and thereby the justice delivery system is delayed resulting in injustice and miscarriage of justice, cannot be entertained at all. The accused is duty bound to cross examine the witnesses, as and when the witnesses are available before the Court. Only in exceptional cases, the petition under Section 311 of Cr.P.C may be filed. After the prosecution evidence is closed, the petition to recall witnesses is filed mechanically and hence, the same cannot be entertained on the basis of the said rulings of the Hon'ble Supreme Court, which affects the criminal trial under the principles of speedy trial and fair trial guaranteed not only to the accused but also to witnesses. The accused himself delaying the trial resulting in injustice to the victim of trial. Here, the valuable right of the accused/appellant was agitated before the Hon'ble High Court in Crl.R.C.No.934 of 2008 and he had succeeded in delaying the trial from 2008 to till the disposal of the Criminal Revision Case on 31.03.2015. Only after disposal of the Criminal Revision Case, the learned Single Judge had directed the Assistant Sessions Judge, Padmanabhapuram, to complete the trial and pronounce the verdict as expeditiously as possible, only after this judgment had been delivered.

31.The appellant herein, as accused, had delayed the trial and not cross examined the witnesses, when they were available and attempted to delay further by filing a petition for cross examination of all the witnesses, which was not allowed by the learned trial Judge based on the rulings of the Hon'ble Supreme Court reported in the case of **Vinod Kumar v. State of Punjab** reported in **(2015) 1 MLJ (Cr1) 288 (SC)**. Now, the same defence is taken here in appeal which cannot be entertained at all.

32.From the evidence available before the trial Court, which was perused by the appellate Court and from the judgment of the learned trial Judge, the case was disposed of by the learned Sessions Judge, Fast Track Mahila Court, Nagercoil and not by the



Assistant Sessions Judge. The trial was transferred to the file of the Fast Track Mahila Court on the directions of the Hon'ble Supreme Court, after creation of the Mahila Court in all the Districts in India. Therefore, the case was disposed of by the learned District and Sessions Judge, Fast Track Mahila Court.

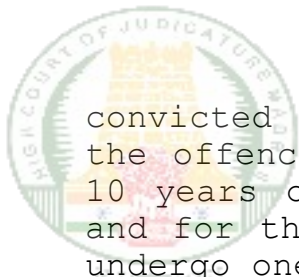
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33.The scientific evidence through DNA test report was marked as document Ex.P-7 and the forensic experts were also examined as witnesses regarding the defence of the accused that he had not indulged in sexual intercourse with the prosecutrix. Before the investigation completed, the prosecutrix had delivered the child. The paternity of the child was disputed by the accused. Therefore, blood samples of the child, accused and prosecutrix were taken up and accordingly, report of DNA test was obtained by the Investigation Officer through the Court. The learned trial Judge had, in her judgment, discussed the evidence available under Ex.P-7, wherein the accused had been confirmed as the father of the child born to the prosecutrix at 99.91% and the procedure regarding DNA test elicited in the deposition of P.W-14-Radhika Balachandran.

34.As per Section 114 of Indian Evidence Act, it has to be presumed that the accused had been examined by the officials of the Government in accordance with law. The Forensic Expert's opinion regarding DNA test and the result of the test under Ex.P-7 has to be accepted, in the light of the evidence of the prosecutrix. Therefore, the scientific evidence under Ex.P-7 proves the prosecution case beyond all reasonable doubts. That is why, in the trial proceedings, the accused had not cross examined the witnesses, when the witnesses were available in Court ignoring the principles of speedy trial and fair trial.

35.In cases where there are evidence, which cannot be disproved by the accused, he may indulge in tactics to delay and deny justice to the victim of the crime. The counsel appointed by the accused appeared on memo of appearance and when the trial was in progress, there was no instructions. The accused remained absent, the trial came to a standstill and warrants were issued. Likewise, many dilatory tactics were adopted by the accused.

36.Here in this case, the accused had obtained a blanket stay order in CrI.RC.(MD).No.934 of 2008 in the year 2008, thereby the trial was stayed. When the learned Single Judge had disposed of the Criminal Revision Case based on the rulings of the Hon'ble Supreme Court in the case of ***Vinod Kumar v. State of Punjab*** reported in ***(2015) 1 MLJ (CrI) 288 (SC)*** and directed the trial Judge to dispose of the sessions case as expeditiously as possible, only then the learned Judge had concluded the trial based on the evidence before the learned Sessions Judge, Fast Track Mahila Court, Nagarcoil. The learned Sessions Judge by her judgment dated 30.08.2016 disposed of the case, recording the guilty of the accused/appellant herein and



convicted the accused under Section 376 of IPC and 417 of IPC for the offence under Section 376 of IPC, and sentenced him to undergo 10 years of Rigorous Imprisonment and pay the fine of Rs.25,000/- and for the offence under Section 417 of IPC, and sentenced him to undergo one year simple imprisonment and pay a fine of Rs.5000/-.

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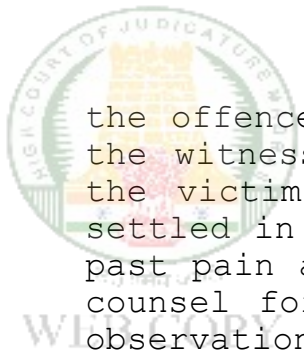
37.If the submission of the learned counsel for the appellant is accepted, then the delay would go against the Rulings of Hon'ble Supreme Court in the case of **Vinod Kumar v. State of Punjab** reported in **(2015) 1 MLJ (Cr1) 288 (SC)**, which cannot be accepted. When the Constitution of India has guaranteed the valuable right to the accused to fair trial, it is the duty of the accused to engage a counsel and agitate his right. Instead of agitating his right, the accused had cleverly delayed the trial by allowing the prosecution to examine all the prosecution witnesses and by filing petition to recall the witnesses at the whims and fancies of the accused as a fundamental right, which was dismissed by the learned trial judge based on the rulings of Hon'ble Supreme Court reported in the case of **Vinod Kumar v. State of Punjab** reported in **(2015) 1 MLJ (Cr1) 288 (SC)**, against which, the accused had preferred the criminal revision. Under these circumstances, the valuable right had not been exercised by the accused, for which the Court cannot be blamed.

38.As rightly observed by the learned Single Judge, the accused had not preferred any complaint before the Ethics Body of the Bar Council regarding the conduct of the counsel appointed by the accused to defend him when the witnesses were available in the Court to protect the valuable right of the accused. Under these circumstances, the same defence cannot be accepted in the appeal.

39.Also the learned counsel for the accused while winding up the submission in appeal had prayed that this Court shall remand the case back to the trial Court and this court, appellate Court shall not pronounce the judgments. This observation or prayer of the learned counsel for the Appellant/accused is against the said ruling of the Hon'ble Supreme Court in the case of the **Vinoth Kumar Vs. State of Punjab**.

40.In the infamous case of **assassination of Former Prime Minister Rajiv Gandhi**, the accused Murugan had not engaged a counsel. That did not prevent the Court from proceeding with the trial against him and the Court had convicted him along with the other accused. The same had been confirmed by the Hon'ble Supreme Court, and the same rule applies in this case also. Here, the accused had engaged a counsel but he did not exercise the valuable right of cross examination and for his own fault, he cannot blame the learned trial Judge.

41. Ignoring the Hon'ble Supreme Court ruling and remanding the case back to the trial Court for cross examining the witnesses for



the offence committed by the accused in the year 2002 and recalling the witnesses in the year 2021, amounts to injustice meted out to the victim of the crime. The victim of crime by now would have settled in life and will be living a normal life, having forgot the past pain and sufferings. Therefore, the submission of the learned counsel for the accused/appellant is rejected in the light of the observation of the Hon'ble Supreme Court and which was reiterated by the learned Single Judge in the Crl.RC.(MD).No.934 of 2008 connected to this case.

42. Even in this Criminal Appeal, it is found that when the case came up for hearing on 18.02.2021, there was no representation for the Appellant, therefore, the case was adjourned to 11.03.2021. On 11.03.2021 again there was no representation for the Appellant and the case was adjourned to 01.04.2021. When the case came up for hearing on 01.04.2021, the case was adjourned to 27.04.2021 at the request of the learned counsel for the appellant. On 27.04.2021, there was no representation for the appellant. Therefore, it was observed by me, as the present presiding judge of this Appellate Court, which reads as follows:-

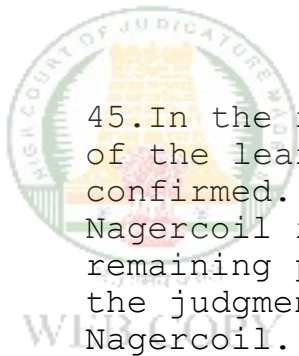
"Today, 21.06.2021, when the case came up for hearing, the learned counsel attached to the office of the counsel on record seeks further one week time.

The learned counsel for the appellant is directed to furnish the written arguments by 28.06.2021, failing which, this Criminal Appeal will be dismissed and trial Court will be directed to issue warrant against the appellant and proceed with the remaining period of sentence."

Accordingly, the case was heard on 28.06.2021."

43. Mr. T. Senthil Kumar, the learned Government Advocate (Crl.Side) had placed reliance on the rulings of the Hon'ble Supreme Court in the case of **Vinod Kumar v. State of Punjab** reported in **(2015) 1 MLJ (Cr1) 288 (SC)** and observation made by His Lordship M.SATHYANARAYANAN while disposing of the Crl.RC.(MD).No.934 of 2008 and submitted that appeal lacks merits. For the conduct of the accused in delaying the trial till 2015, the Accused himself is responsible for which the Court need not show any leniency and the appeal has to be dismissed. This Court accepts the submission of the learned Government Advocate (Crl. Side).

44. In the light of the above discussion, this Court arrives at a conclusion that the Point for Consideration raised in the appeal does not warrant any interference in the finding of guilt recorded by the learned Sessions Judge, Fast Track Mahila Court, Nagercoil. Therefore, this appeal lacks merits and it is dismissed.



45. In the result, this Criminal Appeal is dismissed and the judgment of the learned Sessions Judge, Fast Track Mahila Court, Nagercoil is confirmed. The learned Sessions Judge, Fast Track Mahila Court, Nagercoil is directed to issue warrant to the accused to undergo the remaining period of sentence and to collect the fine amount, as per the judgment of the learned Sessions Judge, Fast Track Mahila Court, Nagercoil. The period of detention already undergone by the appellant/accused is set off under Section 482 of Cr.P.C.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

cmr/dh

To

1. The Sessions Judge, Fast Track Mahila Court,
Kanniyakumari at Nagercoil.

2. The Judicial Magistrate,
Padmanabhapuram.

3. Do through
The Chief Judicial Magistrate,
Nagercoil, Kanyakumari District.

4. The Inspector of Police,
Kulasekaram Police Station,
Kanyakumari District.

5. The Superintendent,
Central Prison, Palayamkottai.

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

7. The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s. F. DEEPAK, Advocate (SR-28255[F] dated 06/09/2021)

CRL.A. (MD) No. 356 of 2016

03.09.2021

RK (28.09.2021) 20P 10C