



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 07.09.2021

Delivered on : 21.09.2021

CORAM

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

AND

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRL.A (MD) No.476 of 2018

Kaleeswaran

.. Appellant/Sole Accused

-vs-

The State represented by
The Inspector of Police,
Palani Taluk Police Station,
Dindigul District.
(Crime No.113 of 2014).

.. Respondent/Complainant

Criminal Appeal filed under Sections 374(2), 397 and 401 of the Code of Criminal Procedure against the judgment of the learned Sessions Judge, Fast Track Mahila Court, Dindigul, in Spl.S.C.No.2 of 2015, dated 15.05.2017.

For Appellant

:: Dr.R.Alagumani

Legal Aid Counsel

For Respondent

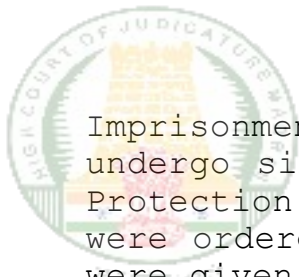
:: Mr.S.Ravi

Standing Counsel for State

JUDGMENT

(Judgment of the Court was delivered by V.BHARATHIDASAN, J.)

The appellant is the sole accused in Spl.S.C.No.2 of 2015, on the file of the learned Sessions Judge, Fast Track Mahila Court, Dindigul. He stood charged for the offences under Sections 449, 302 (2 counts), 380, 366(A), 376(2)(i) I.P.C. and Section 4 of Protection of Children from Sexual Offences Act, 2012, and convicted for the offences under Sections 449, 302 (2 counts), 380 and 363 I.P.C. and Section 4 of Protection of Children from Sexual Offences Act, 2012. The appellant was sentenced to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 6 months Imprisonment for the offence under Section 449 I.P.C.; sentenced to undergo Double Life Imprisonment and to pay a fine of Rs.1,000/- for each count, in default to undergo six months Imprisonment for each count for the offence under Section 302 (2 counts); sentenced to undergo seven years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default to undergo six months Imprisonment for the offence under Section 380 I.P.C.; sentenced to undergo seven years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default to undergo six months Imprisonment for the offence under Section 363 I.P.C. and sentenced to undergo Life



Imprisonment and to pay a fine of Rs.1,000/- , in default, to undergo six months Imprisonment for the offence under Section 4 of Protection of Children from Sexual Offences Act, 2012. The sentences were ordered to run concurrently and the sentence already undergone were given set off under Section 428 Cr.P.C. However, the accused was acquitted for the offence under Section 376(1) and 366(A) I.P.C. Challenging the aforesaid conviction and sentence, the appellant is before this Court with this Criminal Appeal.

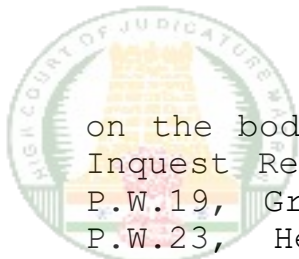
2.The case of the prosecution in brief as follows:

The appellant/accused, Kaleeswaran, was working as a driver under one Dhanush (first deceased, hereinafter called as D1) and the accused has developed illicit intimacy with her. Subsequently, one Senthilkumar (second deceased, hereinafter called as D2), developed an illicit intimacy with D1, and she ignored the accused. Hence, he was having a serious animosity against her. One day prior to the occurrence, D1, borrowed a sum of Rs.23,54,000/- for the purpose of constructing a school, and kept it in his bed room. The accused on coming to know about the same, on 22.03.2014, at about 2.00 a.m., trespassed into D1's bed room with bill-hook and attacked D1 and D2, who were sleeping in the room and caused their death. Thereafter, he has stolen a sum of Rs.23,54,000/- from the bed room. While it was seen by P.W.4, a minor daughter of D1, he forcibly put her in the car belongs to D1, and went to Ooty along with her.

3.In the early morning, P.W.1, father of D1 - Dhanush, found D1's bed room locked from outside and when they opened the door, they found both D1 and D2 dead with multiple injuries in a pool of blood. Immediately, P.W.17 informed the police over phone and the police came to the scene of occurrence. Thereafter, P.W.1 has given a complaint (Ex.P.31) before the respondent police at about 9.00 a.m. on 22.03.2014.

4.Based on that complaint, an F.I.R. has been registered by P.W.40, Sub-Inspector of Police, in Crime No.113 of 2014, under Sections 302, 449, 380 and 366(A) I.P.C. and Section 12 of Protection of Children from Sexual Offences Act, 2012, and he sent the original F.I.R. (Ex.P.32) to the Judicial Magistrate at 12.10 p.m. and copies to the higher officials and she also sent a copy to P.W.41, Inspector of Police, for investigation.

5.On receipt of the F.I.R., P.W.41, Inspector of Police commenced the investigation and he visited the scene of occurrence along with forensic expert and sniffer dog, where he prepared Observation Mahazar (Ex.P.6) and Rough Sketch (Ex.P.33) in the presence of the witnesses and also took photographs at the scene of occurrence. P.W.41 also recovered bloodstained bill-hook (M.O.1), bloodstained tiles (M.O.2), ordinary tiles (M.O.3) and yellow colour bag (M.O.4) in the presence of the same witnesses, then, sent the Material Objects to Court. At about 12.00 noon, he conducted inquest



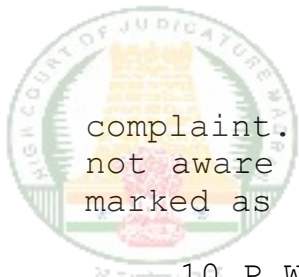
on the body of D1 and D2 in the presence of witnesses and prepared Inquest Reports (Exs.P.35 and 36) and sent the body of D1 through P.W.19, Grade - I Police Constable, and the body of D2 through P.W.23, Head Constable, for postmortem autopsy to the Palani Government Hospital along with memos. He recovered the bloodstained dresses of both D1 and D2 and sent the same to the Judicial Magistrate Court through Form 95. Since the accused and P.W.4 were found missing, he formed a special team and searched for them at various places, including Ooty, Coimbatore and Goa, finally on 07.06.2014, at about 20.00 hours, both were found in Coimbatore Moffusil Bus Stand, where he arrested the accused. On such arrest, he voluntarily come forward to give a confession and the confession statement was recorded in the presence of P.W.5 and P.W.17, and he has also seized the cellphone (M.O.10) of the accused. Based on the admissible portion of the confession statement of the accused (Ex.P.39), P.W.41 along with P.W.5 and P.W.17 took the accused to Ooty, where the accused identified the car, which was covered by Tarpaulin, and he recovered the car and a rexine bag containing a sum of Rs.17,50,000/- (M.O.13, M.O.11 and M.O.12) kept inside the car under Seizure Mahazar Ex.40 and sent the accused for remanded in judicial custody.

6.In the meantime, P.W.32, Doctor, working in the Government Hospital, Palani conducted postmortem autopsy on the body of D1 and D2 and gave postmortem certificates Ex.P.12 and Ex.P.14 and he was the opinion that the deceaseds would appear to have died on Shock and Hemorrhage due to the injuries sustained.

7.P.W.41, continued the investigation, recorded the statements of witnesses and after concluding the investigation filed the final report on 15.12.2014 under Sections 302, 449, 380, 366-A and Section 4 of Section 4 of Protection of Children from Sexual Offences Act, 2012.

8.Considering the above materials, the trial Court framed charges as mentioned above and the accused denied the same as false. In order to prove its case, the prosecution examined as many as 41 witnesses, marked 45 documents and also produced 14 material objects.

9.Out of the witnesses examined, P.W.1 is the father of D1. According to him, he stayed along with D1 in the house and the accused was working as car driver with D1. On the date of occurrence, early morning, he wake up and asked P.W.3, one of the servants working in D1's house to get milk, then he went to the kitchen and found the gas cylinder was missing. Then, P.W.3 went to D1's bedroom and found it locked from outside, when they opened the room they found both D1 and D2 were dead with multiple injuries. Immediately, he asked P.W.17 - Rajendran, to inform the police, the police also came to the scene of occurrence and he had lodged the



complaint. Since, P.W.1 stated in his chief-examination that he was not aware of the contents of the complaint, his signature alone was marked as Ex.P.1.

10.P.W.2, related to D1, is only a hearsay witness. P.W.3, a nephew of D1, also residing in the house of D1 and doing menial works. According to him, the accused was working as a driver. On the date of occurrence, the gas cylinder was found missing in the kitchen, while searching for it, it was found that the bed room of D1 was locked from outside. He opened the door and found D1 and D2 dead with multiple injuries and found the gas cylinder in the room with its lid opened. Further, he found accused and P.W.4 were missing and the money kept in the room also was missing. After three months, P.W.4 was rescued and she told him that the accused has sexually assaulted her.

11.P.W.4, daughter of D1, was a minor on the date of occurrence. According to her D2 is related to them, and on the date of occurrence he came to their house. Since, she had examinations, she slept at 9.00 p.m. On the early morning, while she was going to the rest room, found the accused in front of her mother's bed room with M.O.1 - bloodstained bill-hook. When she questioned him, he closed her mouth, put her in the car belonging to D1, and took her to Ooty. When she tried to raise alarm, he criminally intimidated her, then took her to Mysore, then to various places and finally to Goa, where they stayed in a Hotel, and the accused gave cool drinks mixed with intoxicants and on the next day morning she found that the accused has sexually assaulted her. When questioned, he criminally intimidated her not to disclose the same to anybody and continued to assault her sexually several times. Finally the accused took her to Chennai, where the police arrested him and sent her to home.

12.P.W.5 is another driver of D1. According to him, the accused was also working as driver with D1, since the accused was irregular in attending duties, D1 contemned her. On the date of occurrence, at about 12.50 a.m., the accused asked him to switch on the motor, after that he slept. At about 2.30 a.m., he saw a car (M.O.13) going out of the house and both the accused and P.W.4 were found inside the car. As the accused used to take P.W.4 to hospital frequently, he was under the impression that the accused taking her to hospital. At about 5.00 a.m., he went to the kitchen and found the gas cylinder was missing. Then, he informed the same to P.W.3, who went to D1's bed room, which was closed from outside. P.W.3 opened it and found both D1 and D2 died with multiple injuries. He also found the cylinder in the bed room. After three months, he was taken to Coimbatore, where he identified the accused and the police arrested him. After arrest, the accused gave confession statement in his presence. In the cross-examination, he has clearly stated that based on the confession of the accused, he went along with the police and



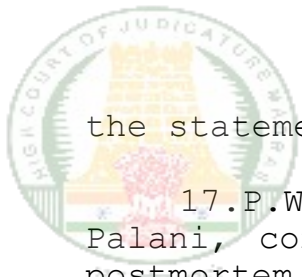
the accused to Ooty, where the police recovered the car and money.

13.P.W.6 was employed in D1's house. He spoke about the motive. According to him, since the accused did not attend duty, D1 has contemned him and refused to grant leave to him. P.W.7, another employee of D1, also stayed in D1's house. According to him, he along with P.W.5 went to the kitchen and found that the cylinder was missing. Then they found the dead bodies of D1 and D2 in the bed room and both the accused and P.W.4 were missing. P.W.8 is the neighbour of D1's house. He is a witness to the Observation Mahazar (Ex.P.6) and also rough sketch (Ex.P.33).

14.P.W.9 is the father of D2 and his evidence has no substance. P.W.10, mother of D2, turned hostile. P.W.11, brother of D2, also turned hostile. P.W.12, was working in the school run by D1, according to her, D1 and D2 along with one Dhivya and Saravanakumar, took her to Karur, where they borrowed money. On the next day morning, she was informed that the accused has murdered D1 and D2 and took money and kidnapped P.W.4. P.W.13 is a driver, who know both the accused and D1. P.W.14, neighbour of D1, turned hostile. P.W.15 was employed in D1 house and his evidence has no substance. P.W.16 is the wife D2 and she turned hostile. P.W.17 owned a tea stall near D1's house and he identified the accused to the police and he is also witness to the arrest, confession and also recovery of car and money. In the cross-examination he has stated that he along with police went to Ooty, where they recovered the car and money.

15.P.W.18, Head Constable, produced the accused for medical examination before Madurai Government Hospital. P.W.19, Head Constable, handed over the body of D1, for postmortem and she handed over the dresses of D1 to P.W.41, Investigation Officer. P.W.20, Head Constable and P.W.22, Sub-Inspector, who were part of the police team searching for the accused, on 07.06.2014, they arrested the accused, recorded the statement of P.W.4, produced them before Judicial Magistrate, Palani and handed over the custody of P.W.4 to her grand father. P.W.21, Head Constable, took the accused for medical examination. P.W.23, Head Constable, identified the body of D2 for postmortem. P.W.24, Ambulance Driver, took the bodies of D1 and D2 to hospital.

16.P.W.25, is a Financier, at Karur, according to him, on 21.03.2014, he paid a sum of Rs.23,54,000/- to D1 and D2, subsequently, he came to know that they were no more. P.W.26, filled the pronote for the money borrowed by D1 and D2. P.W.27, is attestor of the pronote and spoke about the money borrowed by D1 and D2 from P.W.25. P.W.28 is related to D1, his evidence has no substance. P.W.29, is also related to D1 and he came to the scene of occurrence and found that D1 and D2 were dead. P.W.30, another relative of D1, is a hearsay witness. P.W.31, Judicial Magistrate, Palani, recorded



the statement of P.W.4 under Section 164 Cr.P.C.

17.P.W.32 is a doctor, working in the Government Hospital, Palani, conducted postmortem autopsy on the body of D1 and issued postmortem certificate (Ex.P.12) , which reads as follows:

"The body was first seen by the undersigned at 4.30 PM on 22.3.14.

Its condition then was RM P all four limbs.

Post-mortem commenced at 4.30 PM on 22.3.14.

Appearance found at the postmortem:

Well built female body lying on its back at GH mortuary. Eyes depressed, tongue inside jaws cleansed.

- 1.Laceration c clear cut edges at the junction of forehead and eyes 12x1cm x brain depth.
- 2.Laceration 5 x 2 forehead clean edges.
- 3.Laceration on vertex of scalp 10 x 12 x brain depth exposing brain matters c clean edges.
- 4.Laceration 6 x 3 muscle-depth (L) forearm.
- 5.Laceration base of (L) side with total amputation of index finger.
- 6.Laceration to III finger @ c amputation distal to middle phalanx.

On opening scalp fracture both parietal bones, membrane ruptured in which partial loss of Brain matter. Base of skull # present.

On opening thorax, Heart Chamber empty, lungs pale. Hyoid intact. Stomach contain 500ml of undigested food. All internal organs - liver, spleen, kidney pale. (nc) absent. Viscera preserved sent for chemical analysis.

The deceased would appear to have died 14-20hrs prior to autopsy.

Opinion reserved pending chemical analysis report.

P.W.32, conducted postmortem autopsy on the body of D2 and issued postmortem certificate (Ex.P.14) , which reads as follows:

"The body was first seen by the undersigned at 5.30 PM on 22.3.14.

Its condition then was RM (P) all four limbs.

Post-mortem commenced at 5.30 PM on 22.3.14.

Appearance found at the postmortem:

Well built male body lying on its back at GH mortuary. Eyes closed, tongue inside.

- 1.Laceration 3x1cm (L) temple.
2. Laceration 3x4xbone depth with partial (nc) of external ear.
3. Laceration 10 x 3 x (clear cut edges) bone depth (L) parietal region/scalp.
4. Laceration in outer skull vessel 25 x 20 x brain depth with commuted # parietal bones loss of skull membrane with partial loss of brain matter.



5. Laceration 5 x 4 cm III veb (L) hand.
 6. Linear abrasion 15 x 5 cm (L) shoulder and arm.
- On opening scalp commuted # both parietal bones, frontal bone, loss/membrane and partial brain matter. On opening thorax, Heart Chamber empty, lungs pale. Hyoid intact. Stomach 300ml brownish black semisolid matter with partial digested food. Liver, spleen, kidney pale. Bladder empty. Viscera preserved sent for chemical analysis.

The deceased would appear to have died 14-20hrs prior to autopsy.

Opinion reserved pending chemical analysis report.

He was of the opinion that the deceased D1 and D2 would have died 14 to 20 hours prior to autopsy, due to shock and hemorrhage.

18.P.W.33, Head Constable, handed over the original F.I.R. to the Judicial Magistrate Court. P.W.34, Photographer, took photographs of the scene of occurrence. P.W.35, Doctor working at Palani Government Hospital, examined the accused and issued a certificate that he is potent. P.W.36, Radiologist, working in the Government Hospital, Dindigul, examined P.W.4, and issued certificate that, she was aged above 15 years and below 18 years. P.W.37, Doctor, who examined P.W.4 and according to her, she told her that she was taken to Goa and the accused has not sexually assaulted her. However, on examination, she found that the hymen was absent and the private part easily admits two fingers and gave a certificate Ex.P.24.

19.P.W.38, Scientific Officer, Forensic Lab, Madurai, examined the material objects and issued Biological Report (Ex.P.25) and Serological Report (Ex.P.26). P.W.39 is also another Scientific Officer, examined the internal organs of the deceased and issued reports (Exs.P.29 and 30). P.W.40 is the Sub-Inspector of Police, who registered the F.I.R. in Crime No.113 of 2014. P.W.41, Inspector of Police, conducted inquest, recorded statements of witnesses, arrested accused, recovered the material objects and on completion of investigation, filed the final report.

20.The above incriminating materials were put to the accused under Section 313 Cr.P.C.. The accused denied the same as false and he has examined his wife as D.W.1 and according to her, D1 has stopped the accused from service and after two months, the respondent police came to their house and took him, subsequently, she was informed that he was implicated in the criminal case. The accused has not produced any document on his side.

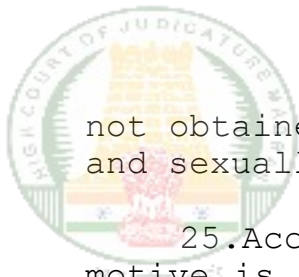
21.Having considered the above materials, the trial Court convicted the appellant/accused and sentenced him as stated above. Challenging the aforesaid conviction and sentence, the appellant is before this Court with this Criminal Appeal.



22.Dr.R.Alagumani, learned counsel appearing for the appellant submitted that, the prosecution has not proved the case beyond reasonable doubt. According to the prosecution, after the occurrence, P.W.17, informed the police over phone and within 30 minutes, the Police came to the scene of occurrence, took P.W.1, to the Police Station, where P.W.1 said to have given the complaint. However, the earliest statement of P.W.17, has been suppressed. P.W.1, who is the author of the F.I.R., deposed that he neither read the complaint nor know who has given the complaint. The attestor of the complaint, P.W.2, also turned hostile. Hence, Ex.P.31 - complaint is highly doubtful.

23.The next contention of the learned counsel is that the witness, to which, the trial Court has given much reliance is P.W.4, the daughter of D1, who said to have been kidnapped by the appellant/accused. There are lot of material contradictions in her testimony and it cannot be believed that the accused kidnapped her and kept her in his custody for three months. Though P.W.4 stated that the accused took her to various places, she has not come forward to give any complaint in those places. Hence, the very charge of kidnapping and rape could not be believed. Regarding the weapon used by the accused, there is a material contradiction. That apart, P.W.4 also did not say that the appellant/accused has sexually assaulted her before P.W.37, Doctor, who examined her at the earliest point of time. In the statement given under Section 164 Cr.P.C., she did not mention about the sexual assault. Further, P.W.4, has clearly stated that, she was against the illegal intimacy of D1 and D2 and she has told that D1 should die, and the above earliest statement of P.W.4, was not sent to the Court, which is also admitted by the Investigation Officer. That apart, statement of P.W.4, under Section 164 Cr.P.C., was also not recorded immediately after the occurrence. Hence, it is highly unsafe to convict the appellant based on the doubtful evidence of P.W.4. Further, P.W.4 was stated to be minor, but no documentary evidence was produced to prove the same, but the trial Court based on the report of the radiologist came to conclusion that she is a minor and convicted the appellant under Protection of Child From Sexual Offence Act, 2012.

24.The learned counsel for the appellant would further submit that the petitioner was arrested long after the occurrence, the recovery of Car and Money said to have been made on the confession of the accused. There is a clear doubt regarding the arrest of the accused. According to P.W.4, the accused was arrested at Chennai, but P.Ws.5 and 17, the witnesses to arrest of the accused had stated that he was arrested at Coimbatore moffussil bus stand. Therefore, the arrest and recovery of material objects are also highly doubtful. Regarding recovery of Cellphone of accused, there is clear contradiction between the evidence of P.W.5 and P.W.17 and that was not noticed by the trial Court. Even though the respondent police recovered the cellphone of the accused, the mobile call details were



not obtained to show that the appellant took P.W.4 to various places and sexually assaulted her.

25. According to the learned counsel for the appellant, the motive is also very trivial. According to prosecution D1 has abused the accused and terminated him from service, which was motive for the murder. However, the prosecution admitted that on the date of occurrence, he was working as driver and therefore, the motive alleged is not proved. The learned counsel would further add that there is a considerable delay in recording the statements of the witnesses and also sending the same to the concerned judicial Magistrate Court and it also creates doubt that the appellant has been falsely implicated in this case. Finally, the learned counsel would submit that the trial Court without considering the above circumstances, mainly, relying upon the inconsistent evidence of P.W.4 and the doubtful recovery of car and money convicted the appellant.

26. Per contra, Mr.S.Ravi, learned Standing Counsel for the State would contend that, the appellant was working as a driver in D1's house. The occurrence took place on 22.03.2014 early morning. P.Ws.1, 3 and 4, who are all residing in the house of D1 clearly spoke about the occurrence. P.W.4, the minor daughter of D1, is the main witness in this case. According to her, while she was going to rest room crossing D1's bed room, he saw the accused with the bloodstained weapon, when she questioned it, the accused hacked her, put her in the car and took her to Ooty. He left the car at Ooty and took her to various places, and criminally intimidated her not to disclose anything to police, and sexually assaulted her several times. The medical evidence also corroborates the evidence of P.W.4 that she has been subjected to sexual assault.

27. Further, the accused was found missing from the scene immediately after the occurrence and he was arrested only after three months along with P.W.4 in the presence of P.W.5, another driver working in D1's house and P.W.17, who is having a Tea Shop near the house of D1, and there is no explanation from the accused for absconding for three months. After arrest, he has voluntarily given a confession in the presence of P.Ws.5 and 17, and based on his confession, the Car of D1 was recovered along with more than Rs.17 Lakhs money stolen from D1's house. The arrest and recovery was also clearly proved through P.Ws.5 and 17, is the next circumstance against the appellant.

28. So far as the motive is concerned, the testimony of the witnesses stayed in the house of D1 will clearly prove that the appellant has motive against D1. So far as recovery of money is concerned, P.Ws.25 and 26, financiers from Karur were examined to prove that D1 and D2 have borrowed money immediately prior to the occurrence and kept it at her home and part of the money was



recovered on the confession of the accused. All those circumstances, clearly prove that the accused only caused the death of D1 and D2, stolen money and kidnapped P.W.4 and sexually assaulted her.

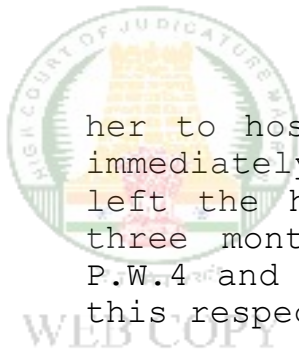
29.Learned Standing Counsel appearing for the State would further submit that even though there is a minor discrepancy in the evidence of P.W.4 regarding the arrest of accused, P.Ws.5 and 7 have clearly stated that at Coimbatore bus stand, he was arrested along with P.W.4 and the discrepancies pointed out are not material in nature to disprove the case of the prosecution. So far as lodging complaint is concerned, according to the learned Standing Counsel for the State, it is clear from the evidence of P.W.17, that he has informed the police that D1 and D2 were found dead, thereafter, the police came to the occurrence place and only based on the complaint given by P.W.1, father of D1, the F.I.R. was registered. Hence, there is no suppression of the earliest statement.

30.Learned Standing Counsel for the State further submitted that all the circumstances clearly pointing to the guilt of the accused. The trial Court after considering all those circumstances, rightly convicted the accused and there is no valid ground to interfere with the well considered judgment of the trial Court.

31.We have considered the rival submissions and also perused the records carefully.

32.It is a case of double murder. The accused was working as a driver in D1's house. P.W.4 is the minor daughter of D1. D2 in this case, said to be a relative of D1, and has had intimacy with D1 and used to come to D1's house frequently and staying with her. P.W.1 is the father of D1, he was staying in D1's house. P.W.3 - Balagurusamy is a nephew of D1, he was also staying in D1's house. P.W.5 is another driver of D1. He was also staying in that house. At the time of occurrence, P.Ws.6 and 7, employees of D1, they were also staying in the house of D1. It is the consistent evidence of all the above witnesses that on the date of occurrence, the accused/ appellant was available in D1's house.

33.P.Ws.3, 5 and 6 spoke about the motive that, two days prior to the occurrence, as the accused has taken leave frequently, D1 had scolded the accused and severely warned him. The evidence of P.W.4 minor daughter of D1 is a crucial witness in this case. According to her, she saw the accused with the bloodstained M.O.1, bill- hook in front of D1's bed room. When she questioned him, he immediately hacked her, put her in the car of D1 and left the house. While she was trying to shout, he criminally intimidated her. P.W.4, a minor girl out of fear, kept quite. P.W.5, another driver of D1, he saw the accused taking the car at about 2.30 a.m. and he had also find P.W.4 inside the car. According to him, he was under the impression that the accused was taking P.W.4 to hospital, as he used to take



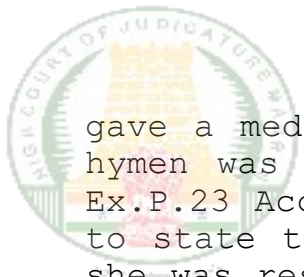
her to hospital frequently. From their evidence, it is clear that immediately after the occurrence, the accused took the money and left the house along with P.W.4 and was absconding for more than three months. Finally, he was arrested on 07.06.2014 along with P.W.4 and there is no explanation forthcoming from the accused in this respect. It is another strong circumstance against him.

34.The next circumstance is recovery of car and money. P.W.5 and P.W.17, another driver of D1, and neighbour of D1, are the witnesses to the arrest and recovery. According to the prosecution, on a secret information that accused was seen in Coimbatore police took P.Ws.5 and 17 to Coimbatore moffussil bus stand, where they identified the accused and P.W.4, thereafter, he was arrested and P.W.4 was rescued, then he was taken to the respondent police station. Where the appellant has voluntarily given a confession (Ex.39), which was attested by P.Ws.5 and 17 and based on the admissible portion of the confession that he had parked the car in Ooty and kept the money therein, the accused was taken to Ooty along with P.W.5 and P.W.17, where the accused identified the car and the respondent police seized the car along with money, by that the prosecution has clearly proved the recovery of money and car based on his confession and we find no reason to disbelieve it.

35.So far as recovery of money, the prosecution has also clearly proved through P.Ws.25 and 26, financiers at Karur that, one day prior to the occurrence i.e., on 21.03.2014, D1 and D2 borrowed a sum of RS.23,54,000/- from P.W.25 and that money has been kept in D1's bed room, which was found missing and subsequently, recovered from the appellant/accused.

36.Even though there is some inconsistency regarding arrest of the accused, as according to P.W.4, the accused was arrested at Chennai but the arrest was shown at Coimbatore mofussil bus stand, P.W.4 is a minor girl, who was under the custody of the accused for more than three months and it is the evidence of P.Ws.1 and 3 that when she was rescued from the accused she was totally shattered and in a pathetic condition, she may not be in a position to identify the place. In those circumstances, a minor discrepancy bound to happen and it is not a material discrepancy, which goes to the root of the prosecution case and it could not be considered as fatal to the prosecution.

37.Nextly, from the evidence of P.W.4, she saw the accused with the bloodstained bill-hook in front of her mother's bed room, while she questioned, he hacked her and put her in the car and took her to Ooty, then to Mysore, from there they gone to Goa, where the appellant has intoxicated her, sexually assaulted her. It is also her evidence that he has sexually assaulted her many time. The medical evidence also corroborates the evidence of P.W.4. P.W.37, Doctor working at Government Hospital, Palani, examined P.W.4 and



gave a medical report Ex.P.24, wherein she clearly stated that the hymen was absent and the private part clearly admits two fingers, Ex.P.23 Accident Register also support the same, which clearly goes to state that, P.W.4, was subjected to sexual assault, and finally she was rescued from the custody of the accused by the police three months after the occurrence. We find no reason to disbelieve her evidence. With all those evidences, the prosecution has established that, the accused committed offence under Section 4, Protection of Children from Sexual Offences Act, 2012.

38.It is the contention of the learned counsel for the appellant that the age of P.W.4, was not established by the prosecution and school certificate of P.W.4 was not produced by the prosecution. P.W.4 was examined by a radiologist - P.W.36, who has given a certificate (Ex.P.21) that the victim was aged above 15 years and below 18 years. Hence, it cannot be contended that P.W.4 was not a minor at the time of occurrence.

39.From the evidence of Doctor, P.W.32, who conducted postmortem autopsy on the bodies of D1 and D2 and gave postmortem reports (Exs.P.12 and 14) found multiple injuries on the bodies of the accused and has given the opinion (Exs.P.13 and 15) that the deceased died of shock and hemorrhage due to the multiple injuries sustained by them. From his evidence, the prosecution has proved that the death of D1 and D1 was homicidal.

40.Finally, the learned counsel for the appellant would content that earliest statement said to have been given by P.W.17 is concerned was suppressed. On a perusal of the testimony of P.Ws.1 and 17, it is seen that on hearing about the occurrence, P.W.17 rushed to D1's house and according to P.W.1 he asked P.W.17 to inform it to the police. P.W.17 did not say anything about informing the police and nothing was elicited from P.W.41, the investigation officer, regarding the alleged information given by P.W.17. Hence, only based on the complaint given by P.W.1, the F.I.R. was registered, investigation was conducted and there is no earliest statement from P.W.17 as alleged by the learned counsel for the appellant.

41.The cumulative circumstances stated above, clearly proved that it is only this accused has committed the murder and kidnapped the minor girl and sexually assaulted her. Considering those materials, we are of the considered view that, the prosecution has established the guilt of the accused beyond reasonable doubt, and the trial Court, rightly convicted the accused and we find no error or illegality in the judgment of the trial Court. We find no merit in the appeal and the same deserves to be dismissed.

42.In the result, Criminal Appeal is dismissed and the conviction and sentence imposed on the appellant/accused, by the



Sessions Judge, Mahila Fast Track Court, Dindigul, in Spl.S.C.No.2 of 2015, by the judgment dated 15.05.2017, are hereby confirmed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

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Sub Assistant Registrar(CS)

sj

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Sessions Judge,
Fast Track Mahila Court,
Dindigul.
- 2.The Inspector of Police,
Palani Taluk Police Station,
Dindigul District.
- 3.The Superintendent, Central Prison, Madurai.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to
The Section Officer, (2c)
Criminal Records,
Madurai Bench of Madras High Court,
Madurai.

Criminal Appeal No.(MD) No.476 of 2018
21.09.2021

kmv (CO)
KB(28.09.2021) 13P 7C