



Crl. A(MD)No.606 of 2019

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
31.10.2022	08.11.2022

CORAM:

THE HONOURABLE Mrs.JUSTICE J.NISHA BANU

AND

THE HONOURABLE Mr. JUSTICE N.ANAND VENKATESH

**Crl. A. (MD)Nos.606 of 2019, 37 and 234 of 2020 and
58 and 343 of 2021**

Sivakumar

.. Appellant/A6 in
Crl.A.(MD) No.606/2019

Kumudhavalli

.. Appellant/A2 in
Crl.A.(MD) No.37/2020

Saranya @ Kalaiselvi

.. Appellant/A1 in
Crl.A.(MD) No.234/2020

Mani

.. Appellant/A7 in
Crl.A.(MD) No.58/2021



WEB COO Kalpana

Crl. A(MD)No.606 of 2019

.. Appellant/A3 in
Crl.A.(MD) No.343/2021

Vs.

State rep by
The Inspector of Police,
All Women Police Station,
Karur District.
(in Crime No.14 of 2017)

.. Respondent/Complainant

Appeals filed under Section 379 of Criminal Procedure Code, against
the judgment and order dated 19.11.2019 in S.S.C.No.17/2018, on the file of
the Mahila Court, Karur.

For Appellants
Crl.A(MD) No.606/2019
& 234/2020

: Mr.V.Kathirvelu
Senior counsel for
Mr.R.Meenakshisundaram
(CA No.606/2019) and
for Mr.S.Gokulraj
in CA Nos.234/2020

For Appellants in
CA Nos.58/2021
& 37/2020

: Mr.E.Somasundaram

For CA No.343/2021

: Mr.R.Alagumani

For Respondent

: Mr.A.Thiruvadikumar
Additional Public Prosecutor



Crl. A(MD)No.606 of 2019

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COMMON JUDGMENT

J.NISHA BANU
AND
N.ANAND VENKATESH

These criminal appeals have been filed by A6, A2, A1, A7 and A3 respectively against the judgment and order passed by the Additional Sessions Judge, FTC, Mahila Court, Karur, made in SC No.17/2018 dated 19.11.2019, convicting and sentencing the appellants in the following manner:

Provisions under which convicted (under section/s)	Rank of the accused	Sentence of imprisonment	Fine amount
366(A) IPC	A1	To undergo rigorous imprisonment for ten years	Rs.25,000/-, in default, to undergo simple imprisonment for six months.
4(1) of ITP Act	A1 to A3 and A7	To undergo rigorous imprisonment for ten years each	Rs.25,000/-, each, in default, to undergo simple imprisonment for six months each. (2 counts)
14(2) (3) & 17 of POCSO IPC	A1 to A3 and A7	To undergo life imprisonment each	Rs.50,000/- each
120(B) IPC	A1 to A3 & A7	To undergo life imprisonment each	Rs.50,000/- each



Crl. A(MD)No.606 of 2019

WEB COPY

Provisions under which convicted	Rank of the accused	Sentence of imprisonment	Fine amount
344 IPC	A1 to A3 & A7	To undergo rigorous imprisonment for three years each	Rs.10,000/- each, in default, to undergo three months simple imprisonment
5(1) and 6 of POCSO Act	A6	To undergo life imprisonment	Rs.50,000/-
14(2) (3) & 17 of POCSO Act	A6	To undergo life imprisonment	Rs.50,000/-

The sentences were ordered to run concurrently.

2.The case of the prosecution is that the victim girl is the daughter of P.W.1 and P.W.3, who are Srilankan refugees and were staying with their daughter and two sons at Vengamedu. The victim girl was aged about 13 years and since she was not doing well with her studies, the education was stopped. The further case of the prosecution is that A1 to A4 are engaged in running brothel with the help of A7. On 18.11.2017, at about 8.00 a.m., the victim girl was standing near her house and at that point of time, A1, who is her neighbour, is said to have enticed the minor girl that she will purchase her dress materials, make up items and eatables. Believing the same, the



Crl. A(MD)No.606 of 2019

WEB COPY

victim girl went along with A1 and A1 along with A2 took the victim girl from Karur to Tiruppur. The victim girl was taken to a beauty parlour leased to A3 and A7 and the victim girl was taken to the upstairs of the house belonging to A4. Thereafter, A1 to A4 and A7 are said to have called A5 and A6 and informed them about the availability of the victim girl. A5 and A6 are said to have come to the house and sexually assaulted the victim girl more than once. The victim girl, who left along with A1 and A2 on 18.11.2017, came back from Tiruppur on 30.11.2017, at about 3.30 p.m., and informed her mother P.W.1 about the entire incident. P.W.1 lodged Ex.P1 complaint on 06.12.2017 and based on the same, P.W.20 registered the FIR Ex.P17.

2.1.The investigation was taken up by P.W.21 and on completion of investigation, a final report came to be filed before the Court below as against seven accused persons. After supplying the copies of the documents under Section 207 Cr.P.C., charges were framed by the Court below in the following manner:



Crl. A(MD)No.606 of 2019

Charge Nos.	Charge	Rank of the Accused
1	366 (A) IPC	A1 to A3
2	120(B) IPC	A1 to A4 and A7
3	342 IPC	A1 to A4 and A7
4	4(1) of the ITP Act r/w 14(2) (3) and 17 of POCSO Act 2012	A1 to A4 and A7
5	5(L)(g) and 6 r/w 14(2)(3) and 17 of POCSO Act	A5 and A6

3. The prosecution examined P.W.1 to P.W.21 and marked Ex.P1 to Ex.P27 besides M.O.1 and M.O.2.

4. The accused persons were questioned under Section 313(1)(b) of Cr.P.C. regarding the incriminating materials that were collected in the course of evidence and they denied the same as false.

5. The Court below, considering the facts and circumstances of the case and on appreciation of the evidence, acquitted A4 and A5 and convicted and sentenced the other accused persons in the manner stated supra. Aggrieved by the same, the present criminal appeals have been filed before this Court.



Crl. A(MD)No.606 of 2019

WEB COPY

6. Heard Mr.V.Kathirvelu, learned Senior counsel for the appellants/A1 and A6, Mr.E.Somasundaram, learned counsel for A2, Mr.R.Alagumani, learned counsel for the A3 and the learned Additional Public Prosecutor for the respondent State. Mr.E.Somasundaram, learned counsel, was appearing for A7 also. However, at the time of hearing, the learned counsel informed that he is withdrawing his memo of appearance. Since this Court is considering the claim made by all the accused persons, it will substantially cover the interest of A7 also and hence, this Court did not deem it fit to appoint a separate counsel for A7.

7. The learned counsel for the appellants made the following submissions:

- The evidence of P.W.2 suffers from too many inconsistencies since she was not clear as to whether she was staying with her mother or her grandmother and as to how she was taken from Karur to Tiruppur and how she returned back home alone on 30.11.2017;
- The earlier complaints given by P.W.1 and the victim girl has been concealed by the prosecution;



Crl. A(MD)No.606 of 2019

WEB COPY

- There was absolutely no explanation as to why the complaint was given by P.W.1 only on 06.12.2017 and this exorbitant delay was not explained;
- The victim girl was not induced to go along with A1 and it is clear from her evidence that she on her own went along with A1 and hence, no offence is made out under Section 366(A) IPC;
- The offence under Section 4(1) of the Immoral Traffic (Prevention) Act, 1956 (hereinafter referred to as 'the ITP Act'), Section 14(2)(3) of the POCSO Act and consequently Section 17 of the POCSO Act have not been made out;
- The allegation was against A5 and A6, as if they committed penetrative sexual assault on the victim girl, whereas the victim girl conveniently omitted to name A5, who was acquitted and this conduct of the victim girl touches upon the veracity of the statement made by her;
- There was no specific overt act as against A2 and A3 and even if the statement made by the victim girl is taken as it is, no offences is made out against them;



Crl. A(MD)No.606 of 2019

WEB COPY

- A1, A2, A3 and A6 were granted bail during the pendency of the appeals and they have paid compensation to the tune of Rs.8,50,000/- to the victim girl and the same should be taken into consideration by this Court;
- The character of the victim girl assumes significance since even after the disposal of the case by the trial Court, the victim girl was booked for two cases involving immoral trafficking;
- The victim girl is involved in immoral trafficking and she has given a false case against the accused persons only to arm-twist them and extract money.

8. Per contra, the learned Additional Public Prosecutor made the following submissions:

- The evidence of the victim girl read along with the evidence of the Doctor P.W.12 and the Accident Register Ex.P6 clearly establishes that A6 has committed penetrative sexual assault;
- The age of the victim girl has been substantially proved by examining P.W.9 and P.W.10 through whom Ex.P3 and Ex.P4 were marked and it



Crl. A(MD)No.606 of 2019

WEB COPY is clear that the victim girl was hardly 13 years at the time of the incident;

- The sexual assault committed by A6 coupled with the medical evidence shows that the victim girl was subjected to multiple sexual assaults and the charge under Section 5(L) of the POCSO Act has been proved;
- The phone calls between the accused persons, which have been spoken by P.W.16 and P.W.18 and through whom Ex.P.12 to Ex.P14 were marked, clearly shows that all the accused persons had joined together with a clear meeting of minds and the victim was subjected to penetrative sexual assault;
- The offence of criminal conspiracy has been made out under Section 120(B) of IPC;
- The abetment on the part of A1, A2, A3 and A7 has been clearly made out and hence, they are liable to be convicted with the aid of Section 17 of the POCSO Act;
- The presumption under Section 29 of the POCSO Act has not been rebutted by the accused persons;



Crl. A(MD)No.606 of 2019

WEB COPY

- The charge of Section 366(A) IPC has been made out against A1 and the ingredients under Section 366(A) IPC has been satisfied;
- The charge under Section 4(1) of the ITP Act has also been made out, since the victim girl has been pushed into prostitution and the same was done only to earn and the victim girl was admittedly aged about 13 years at the time of the incident; and
- The subsequent conduct of the victim girl or the compensation paid by the accused persons as a condition for suspension of sentence will not have any bearing, while dealing with the merits of this case.

9. This Court has carefully considered the submissions made on either side and the materials available on record.

10. The most important evidence to be considered is the evidence of the victim girl, who was examined as P.W.2. The victim girl has explained the entire incident right from 18.11.2017 onwards. It is true that the victim girl was not very consistent as to the mode of transport used when she was taken to Tiruppur from Karur. However, she is very clear with regard to the



Crl. A(MD)No.606 of 2019

WEB.COM

allegations made by her as against A1, A2, A3, A6 and A7 and the part played by each of them. It must be borne in mind that the victim girl was aged about 13 years at the time of the incident and the same is clear from the evidence of P.W.9 and P.W.10 through whom Ex.P3 and Ex.P4 were marked, which shows that the victim was born on 24.11.2004. A girl of that tender age, when she is subjected to a sexual assault by taking her to a different place, she is bound to make mistakes on certain facts, particularly, when she was examined nearly after nine months from the date of incident. Mental trauma takes its toll while recalling such an incident. While appreciating the evidence of the victim girl, this Court must keep in mind the judgment of the Apex Court in *State of Punjab v. Gurmit Singh* reported in **1996 SCC Crl. 316**. The Apex Court held as follows:

“8. ... The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable.



Crl. A(MD)No.606 of 2019

WEB COPY

Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self-inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding.



Crl. A(MD)No.606 of 2019

WEB COPY

Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable.”



Crl. A(MD)No.606 of 2019

WEB COPY 11. This Court has to deal with cases of this nature with more sensitivity and in cases of sexual molestation, supposed consideration, which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such, which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. This is more so in a case involving a minor girl, who was hardly 13 years at the time of incident.

12. The victim girl in her evidence has stated about the role played by each of the accused person, which ultimately ended in the penetrative sexual assault committed by A6. The evidence of P.W.2 has been substantitally corroborated by the medical evidence of P.W.12 and it will be relevant to extract the findings and the final opinion in the Accident Register marked as Ex.P6:

“(1) பாதிக்கப்பட்ட குழந்தையின் மார்பகங்களில்
காயங்கள் ஏதும் இல்லை.

(2) உடலுறவு நடந்ததற்கான அறிகுறிகள் மேற்
கூறியவாறு இருந்தது.

(3)ஆம். பாதிக்கப்பட்ட குழந்தையின் கன்னித்திரை



Crl. A(MD)No.606 of 2019

WEB COPY

கிழிந்து வீங்கிய நிலையில் இருந்தது.

(4) ஆம். பாதிக்கப்பட்ட குழந்தையின் மர்ம உறுப்பில் காயம் மற்றும் வீக்கம் உள்ளது.

(5) விந்தணுக்கள் ஏதம் உள்ளதாக பரிசோதனையில் தெரியவில்லை.

(6) பாதிக்கப்பட்ட பெண் கர்ப்பமாக இருப்பதாக தற்போதய பரிசோதனையில் தெரியவில்லை.”

13. It is clear from the above that the victim girl has been subjected to penetrative sexual assault and there was swelling in the vagina and it was infected and the Doctor was not able to do internal examination due to the pain suffered by the victim girl.

14. The counsel appearing on behalf of the appellants submitted that the vagina of the victim girl admitted only the tip of a finger and hence, penetrative sexual assault could not have been committed by A6. This submission has no substance since under Section 3(a) of the POCSO Act, it is enough if the penis penetrates to some extent. It is not necessary that there must be complete penetration of the penis in order to constitute an offence of penetrative sexual assault. The recordings noted under Ex.P6



Crl. A(MD)No.606 of 2019

clearly show that there was penetrative sexual assault committed against the victim girl. Hence, the evidence of P.W.12 and Ex.P6 marked through this witness, corroborates the statement made by the victim girl regarding the incident.

15. The next issue is as to whether there was any contact as between the accused persons during the relevant period when the incident took place. For this purpose, the prosecution has examined P.W.16 and P.W.18, who are the nodal officers of Vodafone and Airtel. Through these witnesses, Ex.P12 to Ex.P14 were marked, which are the CDR and the 65B certificates. On carefully going through this evidence, it is seen that there has been regular phone contacts between A1, A2, A3, A5, A6 and A7 during the period from 15.11.2017 to 06.12.2017. In view of the same, it is established that the accused persons were in touch with each other during the relevant point of time and this clearly establishes that there was meeting of minds between the accused persons, which ultimately ended with the victim girl being subjected to penetrative sexual assault by A6. This finding has to be arrived at since the accused persons did not explain when they were questioned as



Crl. A(MD)No.606 of 2019

WEB COPY

to the reason why phone calls are made with each other very regularly during the relevant point of time.

16. In cases of this nature, the delay in lodging the complaint by itself cannot be put against the prosecution since normally there is some hesitation in approaching the police station immediately. On going through the evidence, it is seen that the mother and the victim girl had given some complaints immediately after the victim girl returned back to Karur and this was not acted upon. The law was ultimately set in motion by P.W.1, when she gave a complaint on 06.12.2017. This resulted in registration of an FIR, which reached the Court on 07.12.2017 at about 1.00 p.m. Delay assumes significance only in cases where the evidence available is not wholly reliable and there is an attempt to rope in more persons as accused through deliberation. In cases involving sexual assault on a minor, the Court cannot employ the same test that is applied in regular IPC offences.

17. After the victim girl went missing, P.W.1 to P.W.3 had gone in search of the victim girl and this has been spoken to by P.W.4. Therefore, it



Crl. A(MD)No.606 of 2019

WEB COPY

is not a case where the parents did not care about their girl missing and they had taken efforts to find her whereabouts.

18. P.W.13, who was the Doctor, who examined A6, has issued Ex.P10, which establishes the potency of A6.

19.P.W.6 is the owner of the house in which the beauty parlour was run and he had leased it to A3 and A7. Even though this witness was treated as a hostile witness, his evidence can be relied upon to substantiate the involvement of A3 and A7 in this case.

20. Insofar as the charge under Section 366(A) of IPC is concerned, A1 has been convicted and sentenced under this charge. The learned Senior counsel appearing on behalf of A1 submitted that this charge has not been made out.

21. To make out an offence under Section 366(A) IPC, it must be established that the accused induced the girl and that the girl was under the



Crl. A(MD)No.606 of 2019

WEB COPY

age of 18 years and that the accused had induced the victim girl knowing that it is likely that she will be forced to illicit intercourse and that such intercourse must be with that person other than the accused and lastly, the inducement must have caused the girl to go to the place where she is forced to an illicit sexual intercourse.

22. In the present case, the evidence of P.W.2 makes it very clear that A1 had enticed her to go along with her and after the victim girl had food, A1 took her to A2 and thereafter it all ended with the victim girl taken to Tiruppur and subjected to sexual assault by A6. Insofar as inducement is concerned, it is not necessary that force should be employed. The provision is very widely worded and it says that inducement can happen through any means. The legislature has intentionally worded the provision very widely since a minor girl under the age of 12 years can be induced even with some trivial cause and in the present case, A1 enticed the victim girl and provided her with food and the victim girl fell for it.

23. The Court below, while dealing with this issue, has rightly come



Crl. A(MD)No.606 of 2019

WEB COPY

to the conclusion that the offence under Section 366(A) IPC has been made out only as against A1.

24. Insofar as the aggravated penetrative sexual assault is concerned, this Court has already held that it is clearly made out as against A6 and hence, offence under Section 5(L) read with 6 of the POCSO Act has been made out.

25. The ultimate penetrative sexual assault committed by A6 on the victim girl was as a result of the abetment on the part of A1, A2, A3 and A7. Hence, they are liable to be punished under Section 17 of the POCSO Act. The penetrative sexual assault committed by A6 was only a consequence of the abetment of the other accused persons and hence, they are liable to be punished with the punishment provided for the offence under Section 5(L) read with 6 of the POCSO Act.

26. Section 29 of the POCSO Act provides for reverse burden and there is a statutory presumption against the accused persons, which has to be



CrI. A(MD)No.606 of 2019

WEB.COM rebutted, failing which, it will be presumed to have committed the offence.

This presumption is applicable to both Sections 5 and 17 of the POCSO Act equally. As stated supra, the charge under this provision has been proved by the prosecution and the same does not stand rebutted on the side of the accused persons. This is one more reason as to why the accused persons are liable to be punished under the provisions of the POCSO Act.

27. In the considered view of this Court, the conspiracy and the abetment charges are further established through the evidence of P.W.16 and P.W.18 through whom the call details were marked along with the necessary certificate under Section 65(B) of the Evidence Act, as Ex.P12 to Ex.P14. During the relevant point of time, the accused persons were regularly in contact with each other and this clearly shows that all the accused persons had conspired and the last person to get into the last limb of the conspiracy was A6, who has been regularly contacted over phone by A2, A3 and A7. When this material was put to the accused persons while they were questioned under Section 313(1)(b) of Cr.P.C., they did not give any explanation as to why they were contacting each other with such regularity.



Crl. A(MD)No.606 of 2019

WEB COPY

28. Insofar as the charge under Section 4(1) of the ITP Act is concerned, it can be seen that the victim girl was subjected to sexual assault by the accused persons and the accused persons would not have indulged in such an act without they being benefitted through the earnings which they get by allowing others to prey upon the victim girl. It is not necessary for the prosecution to specifically establish how much was earned by the accused persons. Hence, the charge under Section 4(1) of the ITP Act also stands proved.

29. Insofar as the charge under Section 14(2)(3) of the POCSO Act is concerned, the same has not been made out by the prosecution, since it is not even the case of the prosecution that offence under Section 5 of the POCSO Act was committed on the victim girl for pornographic purposes. In view of the same, Section 17 of the POCSO Act also will not lie against the accused persons insofar as the offence under Section 14(2)(3) of the POCSO Act. To that extent, the conviction and sentence passed by the Court below requires the interference of this Court.



Crl. A(MD)No.606 of 2019

WEB COPY

30. The Court below has properly appreciated the evidence available on record and has given cogent reasons while convicting and sentencing the appellant. This Court does not find any ground to interfere with the same except to the extent indicated hereinabove.

31. It is quite unfortunate that the character of the victim girl was projected at the time of arguments and this Court was requested to take note of the subsequent cases filed against the victim girl under the ITP Act. In the first place, the subsequent events are totally immaterial while dealing with the facts of the present case. That apart, the accused persons had exposed the victim girl to sexual assault when she was 13 years old and this victim girl was living with her parents in a refugee camp. If really the victim girl has taken up prostitution to eke her livelihood, the accused persons must be held responsible for having pushed for pushing the victim girl to take such an extreme decision in her life.

32. Insofar as the compensation amount that was paid by the appellants as a condition for suspension of sentence, the same is irrelevant



Crl. A(MD)No.606 of 2019

WEB COPY

while deciding the main case. The appellants by paying the compensation cannot wipe off a dastardly crime committed by them against the victim girl and no amount of compensation will bring back the honour of the victim girl and even according to the appellants, she has already been forced to take up prostitution as a means of livelihood.

33. In view of the above discussion, this Court finds that the conviction and sentence imposed by the Court below against the appellants for offence under Section 366(A), 120(B), 344 IPC and Section 5(L) read with 6 and 17 of the POCSO Act and Section 4(1) of the ITP Act are liable to be sustained. The conviction and sentence imposed under Section 14(2) (3) read with Section 17 of the POCSO Act is liable to be set aside. To that extent, the conviction and sentence imposed by the Court below stands modified.

34. In the result,

(a) The criminal appeal Nos.606 of 2019, 37 and 234 of 2020 and 58 and 343 of 2021 are allowed in part to the extent indicated as follows:

25/29



Crl. A(MD)No.606 of 2019

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Provisions under which convicted (under section/s)	Rank of the accused	Sentence of imprisonment	Fine amount	Set aside/ / confirmed
366(A) IPC	A1	To undergo rigorous imprisonment for ten years	Rs.25,000/-, in default, to undergo simple imprisonment for six months.	Confirmed
4(1) of IT Act	A1 to A3 and A7	To undergo rigorous imprisonment for ten years each	Rs.25,000/-, each, in default, to undergo simple imprisonment for six months each. (2 counts)	Confirmed
14(2) (3) & 17 of POCSO IPC	A1 to A3 and A7	To undergo life imprisonment each	Rs.50,000/- each	Set aside
120(B) IPC	A1 to A3 & A7	To undergo life imprisonment each	Rs.50,000/- each	Confirmed
344 IPC	A1 to A3 & A7	To undergo rigorous imprisonment for three years each	Rs.10,000/- each, in default, to undergo three months simple imprisonment	Confirmed
5(1) and 6 of POCSO Act	A6	To undergo life imprisonment	Rs.50,000/-	Confirmed
14(2) (3) & 17 of POCSO Act	A6	To undergo life imprisonment	Rs.50,000/-	Set aside



Crl. A(MD)No.606 of 2019

WEB COPY

(b) This Court had suspended the sentence and enlarged the appellants/A1,A2,A3 and A6 on bail by order dated 23.12.2020, 18.01.2021, 21.09.2021 and 12.10.2020 respectively and the appellants are, therefore, directed to surrender before the Judicial Magistrate, Karur, on or before 25.11.2022 to serve the remaining period of sentence. If the appellants do not surrender before the Court below, the respondent police is directed to secure the appellants and produce them before the Court below in order to enable the Court below to send them to custody to serve the sentence.

(c) The sentences are ordered to run concurrently;

(d) The bail bond shall stand cancelled; and

(e) The period of sentence already undergone shall be given set off under Section 428 Cr.P.C.

[J.N.B., J.] & [N.A.V., J.]
08.11.2022

Index : Yes
Internet : Yes
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Crl. A(MD)No.606 of 2019

WEB COPY

To

- 1.The Mahila Court, Karur.
- 2.The Inspector of Police,
All Women Police Station,
Karur District.
- 3.The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.
- 4.The Record Keeper,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl. A(MD)No.606 of 2019

**J.NISHA BANU, J
AND
N.ANAND VENKATESH, J**

RR

**Judgment made in
Crl. A. (MD)Nos.606 of 2019, 37 and 234 of 2020 and
58 and 343 of 2021**

08.11.2022