



CRL.A.NO.190 OF 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 18 / 08 / 2023

JUDGMENT PRONOUNCED ON: 29 / 09 / 2023

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

CRL.A.NO.190 OF 2018

Palanisamy

... Appellant

Versus

State rep. by
The Inspector of Police
Pulampatti Police Station
Edapadi Taluk, Salem District.
Crime No.242 of 2012

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973, to set aside the judgment dated 22.02.2018 passed by the learned Mahila Court at Salem in Sessions Case No.326 of 2014 and acquit the appellant.

For Appellant : Mr.N.Manokaran

For Respondent : Mr.C.E.Pratap
Government Advocate (Criminal Side)



CRL.A.NO.190 OF 2018

JUDGMENT

This Criminal Appeal is preferred by the appellant / sole accused in S.C.No.326 of 2014 on the file of Sessions Judge, Mahila Court, Salem, assailing the judgment passed by the trial court on 22.02.2018, in which he was convicted for the offence under Section 376(1) of 'The Indian Penal Code, 1860' (hereinafter referred to as 'IPC' for the sake of brevity and convenience) and sentenced to undergo seven years rigorous imprisonment with a fine of Rs.10,000/-, in default, to undergo six months simple imprisonment and also ordered to pay the entire fine amount of Rs.10,000/- as compensation to the victim under Section 357(1) of Code of Criminal Procedure [hereinafter referred to as “Cr.P.C.” for the sake of brevity and convenience]

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

2.1. P.W.1 is the victim married to P.W.2 and has a son and a daughter. On 20.12.2012 at about 10.00 p.m., P.W.1 went to attend nature's call to a silk garden (Mulberry farm). At that time appellant / accused had followed her and put his hands on her back and when she questioned the



CRL.A.NO.190 OF 2018

same, the appellant threatened the victim and forcibly lifted her dress and committed rape on her. During that time, the victim raised an alarm and on hearing the same, P.W.2 came running and on seeing P.W.2, the appellant / accused escaped from the scene of occurrence.

2.2. On the next day (i.e.) on 21.12.2012, P.W.1 and P.W.2 went to the respondent police to prefer a complaint but thereafter due to unavailability of the Inspector and a long wait of 2 hours, without filing complaint, they went to Government Hospital, Edapadi. P.W.2 was treated as outpatient and P.W.1 was treated and then referred to Government Hospital, Salem for further treatment where the Sub Inspector of Police, Pulampatti Police Station examined and recorded the victim's complaint statement (Ex-P.1). Based on Ex-P.1, an First Information Report (F.I.R.) was registered in Crime No.242 of 2012 on 22.12.2012 for the offences under Sections 376 and 506 (i) of IPC and later the same was altered to Sections 376(1) and Section 506(ii) of IPC. After completion of Investigation, the Inspector of Police, Edappadi filed a final report dated 25.03.2013 on 03.10.2013 under Section 376 of IPC against the appellant / accused. The case was numbered



CRL.A.NO.190 OF 2018

as PRC. No. 19 of 2013 on the file of the learned Judicial Magistrate No.1, Sankari. A copy of all documents and materials was supplied to the appellant / accused as required under Section 207 of Cr.P.C., and thereafter, since the offence under Section 376 of IPC is exclusively triable by the Sessions Court, the learned Magistrate committed the case to Principal Sessions Court, Salem and numbered as S.C.326 of 2014 and the same was made over to Mahila Court, Salem.

2.3. After hearing submissions of both sides, the learned Sessions Judge, framed charges under Sections 376(1) and 506(ii) of IPC against the appellant / accused and when it was read over and explained to the accused / appellant, he pleaded not guilty. Hence, trial was ordered.

2.4. The prosecution in order to prove its case, examined 8 witnesses as P.W.1 to P.W.8 and marked Ex-P.1 to Ex-P.24. and MO-1. The appellant / accused side examined one Settu alias Sivachandran as D.W.1. After a detailed trial, the learned Sessions Judge acquitted the appellant / accused for the offence under Section 506(ii) of IPC and convicted the



CRL.A.NO.190 OF 2018

appellant / accused for the offence under Section 376(1) of IPC and sentenced him as stated supra.

2.5. Feeling aggrieved by the conviction and sentence, the appellant / accused preferred this Criminal Appeal under Section 374(2) of Cr.P.C.

3. The points that arise for consideration in this appeal is as follows:

i) Whether the prosecution has proved the offence under Section 376(1) of IPC against the appellant / accused?

ii) Is there any reason to interfere with the judgment passed by the learned Sessions Judge?

Discussion and decision for Point Nos.(i) and (ii):

4. The learned counsel for the appellant / accused has submitted that the trial court did not consider the evidence properly; that the trial court has failed to note the contradictory statements of the victim (P.W.1); that the



trial court failed to note that there was existing enmity pertaining to money transactions and a settlement was arrived in the presence of Police and the said statement was admitted by P.W.1 and P.W.2; that the trial court failed to note that Sub Inspector of Police from the respondent Police Station had visited the house of P.W.1 and P.W.2, at request of P.W.2's phone call as admitted in the evidence of P.W.2; that the trial court failed to note the fact that P.W.6 in his evidence has stated that P.W.2 had told him that he admitted in the hospital with a view to strengthen the case against the appellant / accused; that the trial court failed to note the earlier statement given by the victim and P.W.2 to the Doctor Lavanya was that there was an assault in front of her house at about 10.00 am on 20.12.2012; that the trial court failed to note that in the accident register Ex-P.24 and Ex-P.25 some portion of writings in Tamil were inserted; that the author of Ex-P.24 and Ex-P.25 was not examined by the prosecution; that P.W.1 and P.W.2 went to the police station and thereafter without lodging a complaint had taken treatment in the hospital where P.W.1 was referred to Government Hospital, Salem.

4.1. The learned counsel for the appellant / accused further



argued that as per the version of P.W.1, the appellant / accused had forcibly closed her mouth, made her to lie on the ground and raped her in spite of her efforts to escape from the clutches of the appellant. However, no injury on the body or inside the mouth was noted by the doctors. The version of P.W.1 raises suspicion for the reason that when a well built man who is forcibly trying to rape an adult woman, definitely there would be injury on her elbow, mouth, legs, etc., and that the trial court did not consider the above said aspects.

4.2. Further, the learned counsel for the appellant / accused brought to light the contradictory statements of P.W.1 and P.W.2. As per the version of P.W.1, the appellant / accused ran away immediately on seeing P.W.2. However, the version of P.W.2 is that when he went to see P.W.1, she stood alone crying. P.W.1 in her version also stated that P.W.2 had seen the appellant lying on her, however, P.W.2 had denied that he had seen the appellant whereas he had only seen P.W.1 crying. He argued that these contradictory statements were not appreciated by the trial court.

4.3. Further, the learned counsel for the appellant / accused



CRL.A.NO.190 OF 2018

argued that there is delay in sending the F.I.R to court which creates suspicion over the prosecution case. He submitted that on 20.12.2012, at about 10.00 am there was a scuffle between the P.W.2 and the victim in front of their house pursuant to some chit fund transactions. With a view to defeat and defraud the money payable by P.W.2 to the appellant / accused and pursuant to some prior enmity, the complaint was falsely foisted against the appellant / accused. Hence, the learned Sessions Judge failed to appreciate the defence put forth by the appellant / accused. Accordingly, he prayed to allow the appeal, set aside the conviction and sentence and acquit the appellant / accused from the charge.

5. Mr.C.E.Pratap, learned Government Advocate (Crl. Side) submitted that the testimony of the victim and P.W.2 are trustworthy and reliable. He further submitted that the occurrence happened at 10.00 p.m., and it is quite natural that the victim and her husband went to Government Hospital, Edapadi, the next day and admitted the victim as in-patient and victim's husband (P.W.2) was treated as out patient. The Doctor examined the victim and referred her to Government Mohan Kumaramangalam Medical



CRL.A.NO.190 OF 2018

College Hospital, Salem for further treatment. He further submitted that to attract Section 376 of IPC, external or internal injury is not necessary. The learned Sessions Judge after considering the entire materials and evidence available on record had passed the judgment and there is no warrant to interfere with the said judgment. Accordingly, he has prayed to dismiss the appeal.

6. Heard the submissions made on either side and perused the entire materials available on record.

7. Victim was examined as P.W.1. Admittedly at the time of alleged offence she was a major. The appellant / accused and the victim are known persons. P.W.1 deposed that on 20.12.2012 at 10.00 p.m, when she went to Mulberry Farm to attend nature's call, the appellant / accused followed her and put his hands on her backside and raped her in the Mulberry Farm. She cried for help and immediately on hearing it, her husband P.W.2 came there and shouted at the appellant / accused 'Hey Hey'. On seeing her



CRL.A.NO.190 OF 2018

husband the appellant / accused ran away from the scene of occurrence. On the next day morning, P.W.1 and her husband went to Police Station. Since the Sub Inspector of Police was not available at the station, the victim and her husband went to Government Hospital, Edapadi. Victim's husband was treated as out patient and the victim was given first aid and thereafter referred to Government Mohan Kumaramangalam Medical College Hospital, Salem, for further treatment. P.W.1 further deposed that the Police came there and recorded her complaint statement (Ex-P.1). Thereafter, she was subjected to medical examination.

8. P.W.1 in her cross-examination has admitted that at the time of the incident her family and the appellant / accused were not on proper terms. The appellant / accused was running a chit business. She further admitted that she lived in a terraced house and though bathroom facility was available, toilet facility was not available at the time of the incident. Further, she admitted that her husband joined the chit conducted by the appellant / accused and withdrew the amount in the second month itself. She further admitted that there was a dispute between the appellant / accused with regard



CRL.A.NO.190 OF 2018

to chit transaction; that the police obtained signature in Ex-P.1 complaint after reading it out to her. When the appellant / accused side drew her attention to relevant portion of Ex-P.1 complaint, wherein it is stated that the appellant / accused and P.W.1 were in a relationship outside of marriage and the victim disowned her own statement. Further, she admitted that there is no external or internal injury on her cheek, face, lips and mouth and private parts. Further, she deposed that after hearing the alarm of her husband after the incident, the nearby residents had come to know about the incident. Further, she admitted that the dispute with regard to the chit amount had been settled between the appellant / accused and the victim's husband one year prior to the occurrence. Further, she admitted that at the time of admission in Government Hospital, Edapadi, P.W.2 told the doctor that a known person attacked him in front of his house. She deposed that she did not say so to the doctor.

9. P.W.2 is the husband of the victim (P.W.1). He deposed that on 20.12.2012 at 10.00 p.m. P.W.1 went to the Mulberry Farm to attend nature's call. At that time he heard his wife (victim) cry for help. He reached the spot



CRL.A.NO.190 OF 2018

and saw P.W.1 (victim) crying there and said that the appellant / accused had attacked her and ran away from the spot. When he enquired P.W.1, she told him that the appellant / accused misbehaved with her. The next day he and the victim went to Government Hospital, Edapadi. He was treated as out-patient and the victim was given first aid and thereafter referred to Government Mohan Kumaramangalam Medical College Hospital, Salem.

9.1. In his cross-examination, he admitted that he did not see the incident directly and he came to know about the incident only through his wife (victim). P.W.2 admitted that the appellant / accused ran a chit business and he joined the chit of Rs.50,000/-. Further, he admitted that he withdrew the chit amount in the second instalment. He denied the suggestion that he failed to pay the instalments. He deposed that on 06.01.2012 there was a compromise held between him and the appellant / accused at Poolampatti Police Station in the presence of mediators and thereafter there was no money transaction between the appellant / accused and him. He admitted that he called P.W.3 – Sub-Inspector of Police, Poolampatti Police Station on 20.12.2012 at 10.00 p.m and on his call he came to his house at 10.00 P.M.



CRL.A.NO.190 OF 2018

He further admitted that at the time he did not give complaint to the Sub-Inspector. He further admitted that the Sub-Inspector asked him to come to the Police Station on the next day morning ie., on 21.12.2012. P.W.2 and his wife (victim) went to the Police Station for giving complaint the next day but the police refused to receive the complaint by saying that only after the arrival of Sub-Inspector the complaint would be entertained. Further, he admitted that he gave the statement to the Doctor that one known person attacked him using stick in front of his house on 20.12.2012 at 10.00 P.M. He categorically admitted that there was prior enmity between him and the appellant / accused with regard to chit money transaction and that both were not in good terms.

10. P.W.3 is the Sub-Inspector of Police. He deposed that on 21.12.2012 at 03.00 p.m. when he was at the Police Station, he received an intimation from Government Hospital, Edapadi, about admission of P.W.1 and P.W.2. After receiving the intimation, he went to Government Hospital, Edapadi, where the Doctor told him that P.W.1 was referred to Government Hospital, Salem. He further deposed that on 21.12.2012 at 11.00 p.m. he went



CRL.A.NO.190 OF 2018

to Government Hospital, Salem and recorded the statement of the victim. The statement was marked as Ex-P.1. Thereafter, he registered F.I.R on 22.12.2012 at 10.00 am under Sections 376 and 506 (i) of IPC in Crime No.242 of 2012 and sent the original complaint statement (Ex-P.1) and F.I.R to Judicial Magistrate No.1, Sankari.

10.1. In his cross-examination, he deposed that in the F.I.R., mistakenly it is mentioned that a written statement was obtained from P.W.1 whereas in reality an oral statement was recorded from the victim (P.W.1). P.W.3 further deposed that instead of writing that the victim complaint statement was recorded at Government Hospital, Salem by mistake he wrote Government Hospital, Edapadi. Further, he admitted that the F.I.R and complaint were received by Judicial Magistrate Court on 24.12.2012. He explained that he sent the F.I.R and complaint statement immediately to Court but due to Court Holiday, the cover containing F.I.R and complaint might have been opened on 24.12.2012 only. He denied the suggestion that on 20.12.2012 he went to P.W.2's house. The accused side put a suggestion to him that a written complaint was given by the victim but P.W.3 concealed it



CRL.A.NO.190 OF 2018

and fabricated the document stating it as oral complaint. P.W.3 denied the above said suggestion put forth by the accused side.

11. Dr.Bharathi (P.W.4) deposed that she examined the victim on 21.12.2012 and found no external injury or internal injury on the victim's body. She took samples from her private parts and sent it for Forensic Science Examination. Further deposed that she received the report from Forensic Science Laboratory stating that vaginal smear did not detect Spermatozoa. P.W.4's Final Report is marked as Ex-P.6.

12. Dr.Gokularamanan (P.W.5) is the doctor who examined the appellant / accused. He issued the Ex-P.10 statement stating that there is nothing to suggest that the appellant / accused is impotent.

13. Dr.Venkatraghavan (P.W.7) is a doctor at Government Mohan Kumaramangalam Medical College Hospital, Salem. He deposed that on 21.12.2012 at 03.30 p.m., while he was on duty, the victim came along with her husband P.W.2 and that he admitted the victim as in-patient and that



CRL.A.NO.190 OF 2018

there is no external injury found on her body. He issued Ex-P.23 Accident Information Register.

14. Dr.Mohankumar (P.W.8) is the Doctor working at Government Hospital, Edapadi. He deposed that Dr.Lavanya was on maternity leave and he is acquainted with her handwriting. Dr.Lavanya was on emergency ward duty on 20.12.2012 at Government Hospital, Edapadi. On that day, at 10.00 pm, the victim came for treatment and told that a known person attacked and raped her in front of her house and that she was suffering from pain in her left forearm. Dr.Lavanya examined her and registered the same in the Accident Information Register marked as Ex.P24. Further, she took vaginal smears from the victim's body and sent it for forensic examinations. Further, she referred the victim to Government Hospital, Salem. On the same day, at 11.30 p.m., victim's husband came to hospital for taking treatment. Dr.Lavanya treated him as an out-patient. At that time, the victim's husband (P.W.2) told the Doctor that a known person attacked him on 20.12.2012 at about 10.00 p.m., in front of his house using stick. Dr. Lavanya found no external injury on his body. He told the Doctor that he



CRL.A.NO.190 OF 2018

was suffering pain in his knees. Dr.Lavanya then registered Accident Information Register marked as Ex.P25.

14.1. In his cross-examination, he deposed that the victim and her husband were brought to the hospital at the same time with the aid of one Chinnathambi. He admitted that in Ex-P.24 and Ex-P.25, the time of incident was mentioned as 10.00 pm on 20.12.2012.

15. Thiru Subramaniam (P.W.6) is the Investigating Officer. He deposed that after receiving the F.I.R in Crime No.242 of 2012 under Sections 376 and 506(1) IPC, he took the case and started investigation. P.W.6 visited the scene of occurrence on 22.12.2012 at 03.00 p.m. and in the presence of witnesses Settu and Pazhaniswamy, he prepared a Rough Sketch Ex-P.16 and Observation Mahazar Ex-P.15. Thereafter, he examined the victim (P.W.1), victim's husband (P.W.2) and other witnesses and recorded their statements. On 05.01.2013 he arrested the appellant / accused near Chittoor Melkadu Bus Stop. He further deposed that the appellant / accused voluntarily gave a confession statement in the presence of witnesses



CRL.A.NO.190 OF 2018

Pazhaniswamy and Subramani and he recorded the same. The admissible portion of the confession statement is marked as Ex-P.17. Thereafter, the appellant / accused took him to his house and handed over his lungi. P.W.6 seized the said lungi in the presence of the said witnesses and put it under Seizure Mahazar marked as Ex-P.18. Thereafter he examined the Doctor who filed the final report.

15.1. In his Cross-Examination he admitted that in column 4 of F.I.R it was mentioned that a written complaint was received. Further, he admitted that in F.I.R it is mentioned that complaint statement was recorded on 21.12.2012 at 23.00 hrs. at Government Hospital, Edapadi. P.W.6 explained that P.W.3 in his cross-examination had clarified that the above complaint statement was recorded at Government Hospital, Salem. Further, he admitted that he did not visit the victim's house and did not know whether toilet facility and bathroom facility were available at P.W.1's house at the time of occurrence.

16. The learned counsel for the appellant / accused strenuously



CRL.A.NO.190 OF 2018

contended that in this case, the earlier complaint was suppressed by the prosecution. In this regard, he drew attention of this court to the evidence of P.W.1 and P.W.2 and Ex-P.1 – complaint statement and Ex-P.3 – First Information Report. P.W.1 and P.W.2 deposed that on 21.12.2012 they went to police station to file complaint but went to hospital without filing complaint. Whereas in Ex-P.3, it has been stated that Ex-P.1 was recorded at Government Hospital, Edapadi. Though P.W.3 clarified the contradiction as oversight mistake, this Court is of the view that it could not be an oversight mistake. He stated that the F.I.R was registered on 22.12.2012 but the same was received by the Judicial Magistrate No.1, Sankari, only on 24.12.2012 at 10.30 am. The Judicial Magistrate recorded the same with his initial. Hence, the theory of Court holiday is not believable. For the reasons stated infra, the earlier complaint might have been suppressed by then prosecution.

17. P.W.1 and P.W.2 stated before Dr.Lavanya who first examined them, that on 20.12.2012 at 10.30 a.m. known person attacked them in front of their house whereas P.W.1 in her evidence has deposed that on 20.12.2012 at 10.00 a.m., when she went to Mulberry Farm to attend



CRL.A.NO.190 OF 2018

nature's call, the appellant / accused raped her and ran away from the scene of occurrence on seeing P.W.2. P.W.2 in his evidence has deposed that on hearing his wife's cry, he went out and saw his wife crying. At that time, appellant / accused attacked him and ran away. According to P.W.1 and P.W.2 the said incident occurred at one Subramani's Mulberry Farm. As per Rough sketch (Ex-P.16) and observation mahazar (Ex-P.15) Subramani's land is situated 100 feet parallel to the house of P.W.1 and P.W.2. It's to be noted that two incidents involving the same persons can't happen at the same time.

18. The alleged occurrence happened on 20.12.2012. As per the medical evidence, P.W.1 had no external or internal injuries on her body or private parts. If really, the incident had happened as alleged by the prosecution in the silk garden, there must be some injuries on the victim's body and her clothes would have got dirty with mud. The Investigating Officer did not collect the clothes worn by the victim during the alleged occurrence.



CRL.A.NO.190 OF 2018

19. PW2 in his evidence has clearly deposed that on 20.12.2012,

Sub-Inspector of police (P.W.3) came to his house on his call at 10.00 p.m. If really the occurrence happened as alleged by P.W.1, P.W.3 would have sent her to hospital for treatment and registered F.I.R. Hence, there could not be any occurrence as alleged by P.W.1. Medical evidence also do not support the version of P.W.1.

20. P.W.1 and P.W.2 admitted the chit transaction between them and the appellant / accused and that there was a dispute with regard to the same. Further, PW1 in her complaint (Ex-P.1) and 161(3) statement, has stated that there was a relationship outside of marriage between her and appellant / accused which she disowned in her cross-examination. In view of the medical evidence and the defence theory, the evidence of P.W.1, seems to be an exaggerated and unbelievable version. Hence, this Court is of the view that the evidence of P.W.1 and P.W.2 does not inspire confidence.

21. Further, D.W.1 in his examination has deposed that the appellant / accused was running a chit fund scheme and P.W.2 being a part of



CRL.A.NO.190 OF 2018

it, took money approximately amounting to one lakh from the chit and thereafter didn't pay the monthly instalments duly. Therefore, the accused / appellant along with other members of the chit went to P.W.2's house and asked for pending payment of instalments. He further deposed that P.W.2 refused to pay the pending instalments.

22. It's a settled position of law that the defence can be established by way of cross-examination of the witnesses and/or by adducing evidence on his behalf and the standard of proof being preponderance of probabilities. The defence theory that the complaint was falsely foisted against the appellant / accused with a view to defeat and defraud the chit money payable by P.W.2 to the appellant / accused and pursuant to some prior enmity was established through cross-examination of the witnesses P.W.1, P.W.2 and DW1 and through examination of the appellant / accused under Section 313 (1)(b) of Cr.P.C., wherein he has reiterated about falsely foisting him in this case, owing to prior enmity and dispute over chit money, by preponderance of probabilities.



CRL.A.NO.190 OF 2018

23. In this case, this Court has perused the examination of the accused under Section 313 (1)(b) of Cr.P.C. The entire deposition of each witness was bundled together as one single question and put to the accused. Hence, the appellant / accused might not have been able to put forth a rational and intelligible explanation [*vide JAI PRAKASH TIWARI VS STATE OF MADHYA PRADESH (2022 LIVELAW (SC) 658)*]. The Trial Court ought to have taken much care as examination of the accused under Section 313 (1)(b) of Cr.P.C., is not a mere formality. Therefore, it can be seen that principles of natural justice have not been duly followed in this case by the Trial Court.

24. To be noted, except Ex-P.1 to Ex-P.3 documents, other documents namely rough sketch, observation mahazar, and Section 161 (3) of Cr.P.C., statement are all sent to the Court belatedly without any explanation which adds to the suspicion over the prosecution case. Therefore, this Court is of the view that the prosecution has failed to establish its case beyond reasonable doubt whereas the appellant / accused has established his defence by preponderance of probabilities.



CRL.A.NO.190 OF 2018

CONCLUSION:

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25. In view of the discussion and dispositive reasoning stated supra, this Court decides that the charge against the appellant / accused under Section 376 (1) of IPC is not established by the prosecution beyond reasonable doubt and therefore, the judgment of the trial court is liable to be interfered with. The points are answered accordingly in favour of the appellant / accused.

26. Resultantly, the Criminal Appeal is allowed. The conviction and sentence imposed on the appellant / accused by the trial court on 22.02.2018 for the offence under 376(1) of IPC in S.C.No.326 of 2014 on the file of learned Sessions Judge, Mahila Court, Salem, is hereby set aside and the appellant / accused is acquitted from the charge levelled against him. Bail bonds, if any, shall stand terminated. Fine amount, if any paid by the appellant, shall be refunded to him.

29 / 09 / 2023

Index : Yes
Speaking order
Neutral Citation : Yes
SPP/TK



CRL.A.NO.190 OF 2018

To

- 1.The Sessions Judge
Mahila Court
Salem.
- 2.The Inspector of Police
Pulampatti Police Station
Edapadi Taluk,
Salem District.
- 3.The Public Prosecutor
High Court of Madras.



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CRL.A.NO.190 OF 2018

R.SAKTHIVEL, J.

SPP/TK

PRE-DELIVERY JUDGMENT MADE IN
CRL.A.NO.190 OF 2018

29 / 09 / 2023