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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	08.02.2023
Date of Judgment	03.03.2023

CORAM

THE HONOURABLE DR JUSTICE G.JAYACHANDRAN
AND
THE HONOURABLE MR JUSTICE K.K.RAMAKRISHNAN

Cr1.A(MD)Nos.36, 118, 193, 272 of 2021 & 223 of 2022

Anbarasu : Appellant/Accused No.4
(In Cr1.A.(MD)No.36 of 2021)

Gurumoorthy : Appellant/Accused No.5
(In Cr1.A.(MD)No.118 of 2021)

M.Vasanth Kumar : Appellant/Accused No.2
(In Cr1.A.(MD)No.193 of 2021)

Dinesh Kumar : Appellant/Accused No.1
(In Cr1.A.(MD)No.272 2021)

Purushothaman : Appellant/Accused No.3
(In Cr1.A.(MD)No.223 of 2022)

Vs.

The State of Tamil Nadu rep by
The Inspector of Police,
Kumbakonam West Police Station,
Thanjavur District.

(Crime No.295 of 2018) : Respondent/Complainant
(In all appeals)



Common Prayer: Criminal Appeals have been filed under 374(2) of the Criminal Procedure Code to call for the records in Special Case No.50 of 2019 on the file of the learned Sessions Judge, Fast Track Mahila Court, Thanjavur, and set aside the conviction passed by the judgment dated 13.01.2020.

For Appellant: Mr.R.Manickaraj,
Legal Aid Counsel for A4
In CrI.A(MD)No.36 of 2021)

: Mr.P.Muthamizh Selvakumar for
Mr.E.Sathish Rajkumar for A5
In CrI.A(MD)No.118 of 2021)

: Mr.P.Muthamizh Selvakumar for A2
(In CrI.A(MD)No.193 of 2021)

: Mr.Mr.P.Muthamizh Selvakumar for
Mr.G.Mani Prabu for A1
(In CrI.A(MD)No.272 of 2021)

: Mr.Mr.P.Muthamizh Selvakumar for A3
(In CrI.A(MD)No.223 of 2022)

For Respondent: Mr.Thiruvadikumar
Additional Public Prosecutor

COMMON JUDGMENT

(Judgment of the Court was made by **K.K.RAMAKRISHNAN, J.**)

All the accused in S.C.No.50 of 2019 on the file of the learned Sessions Judge, Fast Track Mahila Court, Thanjavur, filed the appeal before this Court, in CrI.A(MD)Nos.36, 118, 193 & 202 of 2021 and 223 of



2022 challenging their conviction and the sentence imposed by the Court as below:-

Dinesh Kumar (A-1) & M.Vasantha Kumar (A-2)	(i) Section 352 of IPC (ii) Section 366 of IPC (iii) Section 354(B) of IPC (iv) 354(C) of IPC	(i) 3 months SI. Fine of Rs.2,000/- .In default 1 month SI (ii) 10 years RI. Fine of Rs.5,000/- / In default 1 year SI (iii) 7 years RI. Fine of Rs.5,000/- . In default 1 year SI (iv) 3 years RI. Fine of Rs.2,000/- . In default 1 year SI.
Purushothaman (A-3)	(i) 354(B) of IPC	(i) 7 years RI. Fine of Rs.5,000/- . In default 1 year SI.
A1 to A4 (Anbarasu (A-4)	(i) 376(D) of IPC	(i) Imprisonment of life. Fine of Rs.50,000/- .In default 1 year SI.
Gurumoorthy (A-5)	(i) 393 of IPC (ii) 365 of IPC	(i) 7 years RI. Fine of Rs.5,000/- . In default 1 year SI. (ii) 7 years RI. Fine of Rs.5,000/- . In default 1 year SI.

2. Being aggrieved, Dinesh Kumar (A-1) has preferred CrI.A(MD).No.272 2021, M.Vasantha Kumar (A-2) has preferred CrI.A(MD)No.193 of 2021,



Purushothaman (A-3) has preferred CrI.A.No.223 of 2022, Anbarasu (A-4) has preferred CrI.A.No.36 of 2021 and Gurumoorthy (A-5) has preferred CrI.A.No.118 of 2021. Since all the appeals are directed against one and the same judgment of conviction and sentence passed in S.C.No.50 of 2019 on the file of the Sessions Judge, Fast Track Mahila Court, Thanjavur, which was emanated from same FIR in Crime No.295 of 2018 on the file of the respondent police, all the appeals are taken up together and common judgment is passed.

3. Prosecution Case:-

(i) The defacto complainant aged 23 years old working as Senior Associate in City Union Bank, Karol Bagh, New Delhi, was asked to attend the training programme for six days scheduled between 03.12.2018 and 09.12.2018 at Kumbakonam. In order to attend the Training Program, she boarded Flight at New Delhi on 02.12.2018, reached Chennai, at about 09.00 a.m. Thereafter, took a Train from Egmore at 04.00 p.m.



and reached Kumbakonam Railway Station at 09.30 p.m. Her accommodation was arranged by the Organizers at Venkatramana Hotel at Kumbakonam. Therefore, she engaged an Auto to reach the Venkatramana Hotel. The auto driver [A-5] demanded Rs.50/- as fare, for which, she agreed. But, instead of taking her to the Venkatramana Hotel, with some ulterior intention, he was roaming around the Kumbakonam City. The defacto complainant became suspicious, since A-5 was looking at her luggage and smiling sheepishly. At one point of time, she asked A-5 to stop the auto. When he slowed down the auto, she jumped from the auto with her luggage. But, without knowing the way to reach the Venkatramana Hotel, she was helpless, called her colleague [P.W.2] over cellphone and narrated to him her plight. At that time, A-1 and A-2 came in a two wheeler, offered help to her. Before taking their help, she again called P.W.2 and informed about the offer made by A-1 and A-2 to help her.

(ii) P.W.2 spoke with A-1 and A-2 and believing the words of A-1 and A-2 that they are Highway Patrol



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she had a complaint of severe pain on the throat and over her body. She informed her parents about the incident and on their advice, complaint was given to the Police on 04.12.2018 at 06.00 p.m. and the same was registered in Crime No.295 of 2018 by P.W.30. The investigation was taken up by Ramesh Kumar, Inspector of Police [P.W.33]. A-1 to A-5 were arrested. The Material Objects recovered were sent to the Forensic Laboratory. The Cellphone used by the accused as well as the call details of P.W.2 and P.W.5 were collected. The final report was filed before the learned Judge (FTC), Mahila Court, Thanjavur, under Sections 352, 366, 354(B), 354(C), 376(D), 387, 393, 365 of IPC & 66 of IT Act and the same was taken on file in S.C.No.50 of 2019 and after compliance with Section 207 Cr.P.C by serving the documents of the Investigation Agency under Section 209 Cr.P.C, framed the charges against the accused under the following Sections:-

A-1 - U/s 352, 366, 354(B), 354(C), 376(D) of IPC.



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A-2 - U/s 352, 366, 354(B), 354(C), 376(D) of IPC & U/s 66 of IT Act.

A-3 - U/s 387, 354(B) & 376(D) of IPC.

A-4 - U/s 376(D) of IPC

A-5 - U/s 393, 365 of IPC

4. The accused were questioned under Section 235(2) Cr.P.C and they all pleaded not guilty and denied the charges and their involvement in the offence.

5. The prosecution examined 33 witnesses and marked 68 exhibits and material objects 1 to 18 and the learned Trial Judge put the incriminating evidence to the accused under Section 313 Cr.P.C questioning and recorded. Also allowed the accused to lead the defence witnesses D.W.1 to D.W.6 and mark Ex.D.1 to Ex.D.4.

6. Upon appreciation of the prosecution evidence both oral and document, material objects and defence



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evidence both oral and document, the Court below passed the conviction and sentence of imprisonment stated supra and acquitted them from the charges under Section 66 of the Information Technology Act and Section 387 of IPC.

7. Aggrieved over the conviction and sentence, A-1 prepared the appeal in Cr.A.(MD)No.272 of 2021, A-2 prepared the appeal in Cr.A.(MD)No.193 of 2021, A-3 prepared the appeal in Cr.A.(MD)No 223 of 2022, A-4 prepared the appeal in Cr.A.(MD)No 36 of 2021 & A-5 prepared the appeal in Cr.A.(MD)No 18 of 2021.

8. Assailing the conviction and sentence, the learned Legal Aid counsel for the accused A-4 in Cr1.A.(MD)No.36 of 2021 submitted the following submissions:-

(i) The Trial Court ought not to have taken the final report filed by P.W.33 on the ground that the scene of the occurrence is within the jurisdiction of Thiruvidadaimaruthur Police Station and hence, the final report is not valid one and hence, the case in



S.C.No.50 of 2019 taken on file on the basis of the final report is not valid one.

(ii) The conviction and sentence imposed by the Trial Judge is not sustainable for the reason that the prosecution did not prove the factum of arrival of A-4 to the occurrence place.

(iii) The learned Trial Judge miserably failed to consider the discrepancy regarding the stole and the tops of the victim girl, which has a material bearing in this particular case. According to the prosecution, the victim cleaned the semen of the accused with her stole. However, there was several discrepancies in the evidence of P.W.1 and her statement regarding the stole. She has improved her version found in Section 164 Cr.P.C statement as well as in Section 161 Cr.P.C statement while deposing before the Court.

(iv) The learned Trial Judge has failed to see that the prosecution case of taking the semen sample from the stole is not possible after 24 hours for the reason being that the semen might have been lost its life.



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(v) There was considerable delay in lodging the FIR, i.e., FIR lodged at 06.00 p.m, on 4.12.2018 for the alleged occurrence took place on 02.12.2018 between 09.30 p.m to 01.30 a.m. There was no acceptable reason furnished on the side of the prosecution for this inordinate delay.

(vi) He further contended that apart from the delay in registering the FIR, there was delay in forwarding the FIR to the learned Judicial Magistrate. Both delay create suspicion over the prosecution case.

(vii) The accused were not arrested as projected by the Investigation Officer and they were arrested much prior to the time mentioned. Hence, there is probability of preparing the false material namely, planting the semen of the accused persons in the stole of the victim before forwarding it for biological analysis. Hence, they are entitled for acquittal.

(viii) He further pointed out that the relevant CDR report of the accused is not produced along with



the required Section 65(B) certificate and hence, the material circumstances, relied by the Trial Court to convict the accused is to be held not proved.

(ix) The alleged seizure of the call letter, Ex.P.1 from the scene of occurrence is highly doubtful for the reason that the victim herself did not disclose the same and she deposed that she is not aware of the recovery.

(x) In view of the fact that the accused already in the custody of the police Officer and the accused also sustained leg injuries, the arrest and recovery as projected by the prosecution create the doubt over the prosecution case.

(xi) It is further contended that the discovery of the place of the occurrence under Section 27(a) of the Indian Evidence Act is not a distinct fact and the same should not have been relied by the learned Trial Judge.

(xii) He finally contended that in these type of grave offence, the prosecution is duty bound to prove the case beyond reasonable doubt. In the basis of inconsistent and exaggerated version of the victim



suffering improvement from stage to stage that is previous statements recorded under Sections 161, 164 Cr.P.C., and the deposition before the Court, conviction is not sustainable.

(xiii) He also contended that the Test Identification parade is not properly conducted and their specific case is that even before Test Identification Parade, the accused was shown to the victim and hence, the validity and legality attached to the Test Identification parade has lost.

9(i) Beside the above contentions, the learned counsel further contended that the plea of *alibi* on the strength of the defence witness D.W.5 & D.W.6. was not properly considered. Hence, conviction and sentence imposed against the accused is liable to be set aside.

9(ii) On the same line, the counsel for A-1 and A-2 contended that the number of material contradiction between P.W.1 and other witnesses which goes to the root of the case was not properly appreciated by the learned Trial Judge.



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9(iii) The medical evidence of P.W.13 & 14 did not support the case of P.W.1. In case of gang sexual assault, injuries on the body of the victim is natural. But, in this case, the medical evidence does not indicate any injury. Hence, there are reasonable grounds to disbelieve the evidence of the P.W.1. Further, there suspicion, surmounts in the collection of semen present in the stole of the victim and the semen of the accused which was obtained at the time when they were in illegal custody, thus it amounts to compulsory testimony and vitiated. There was no corroboration on the side of the prosecution to pass order of conviction and defence evidence are not properly considered by the learned Trial Judge.

9(iv) The learned counsel appearing for A-5 in addition to the above submissions stated that the extra judicial confession of A-5 allegedly by given to P.W.9, VAO is not voluntary and hence, the reliance based on the extra judicial confession and the recovery made from A-5 is highly doubtful on the



ground that his photo was already published in the newspaper which was substantiated by examining D.W.1 & D.W.2 by marking Ex.D.1, EX.D.2 & Ex.D.3. In any case, the evidence for prosecution does not satisfy the ingredients required to convict a person under Sections 393 and 365 IPC.

10. Per contra, Mr.Thiruvadikumar, the learned Additional Public Prosecutor submitted that the offence of gang rape by the appellants against P.W.1 is proved beyond reasonable doubt. hence, the judgment of the Court below could not be disturbed. The evidence of P.W.1, the victim girl is trustworthy and it is natural and unimpeachable. On the basis of her evidence alone conviction is sustainable. Further, the submission of the appellants that the delay in lodging complaint was not explained is not correct. The delay, was properly explained by P.W.1 in the complaint as well before the Court. The contradiction in the evidence of P.W.1 regarding the 'stole' and 'tops' of the victim is not a material contradiction and the doubt over the collection of



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semen sample for DNA is legally permissible and will not amount to compulsory testimony as held by the Hon'ble Supreme Court. The investigation Officer properly collected the electronic evidence along with necessary certificate required under Section 65(b) of Evidence Act and hence, the same is admissible. Further, the accused did not give any explanation regarding their presence at scene of occurrence at the relevant time of occurrence and the same is established through the scientific proof namely, CDR report and DNA report. So, all the appeals are deserves to be dismissed.

11.To support his submissions, he relied on the following judgments:-

1.1996 2 SCC 384

2.2022 2 SCC 74

3.2009 13 SCC 722

4.2004 8 SCC 660

5.2012 8 SCC 21



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12. Considering the above submission of the learned counsels for the appellants as well as the learned Additional Public Prosecutor, this Court, formulated the following questions for consideration:-

1. Whether the evidence of P.W.1 inspires confidence upon this Court to sustain the conviction and sentence passed by the Court below against the accused Nos.1 to 5/appellants in the above appeals?

2. Whether the prosecution proved the case beyond reasonable doubt against the appellants for the convicted offence on the basis of the prosecution oral evidence, exhibits, MOs, defence evidence & defence documents?

3. Whether the conviction and sentence of imprisonment and fine imposed by the Court below against the appellants is proper and legally sustainable?

**13. Sterling quality of evidence of victim:-**

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The events as narrated by the victim is cogent, which inspires confidence in the mind of the Court. The chain of events deposed by the victim that she has engaged A-5 to take her in his Auto to the Venkatramana Hotel and A-5 without taking her to the Hotel, roamed around the City for more than 30 minutes. Suspecting his activity she jumped from his Auto and while she was standing in the place helplessly without knowing the way to reach the Hotel, A-1 & A-2 voluntarily approached her and got introduced themselves as patrol police and taken her in a bike. They stopped at a place and asked to step down and wait there. Thereafter, A-1 to A-3 reached that place and taken her to another secluded place and forced her to remove her dress and started on lusturing her. When she pleaded not to harm her and she is in her menstrual cycle, they touched her private part, after ascertaining that she was in her mensuration cycle, A-1, A-2 & A-3 told her to open her mouth and forcibly inserted their penis in her



mouth and asked her to do oral sex. There is no reason to disbelieve her version of narrating the events about A-1 to A-3 and the joining of A-4 in the course of events and their act of subjecting her to undergo oral sex even after she vomited and suffered pain. In continuation of said oral sex, she was forced to keep the gum in her mouth and show it to them. All these obscene acts videographed by the accused persons in their cell phone and same been recovered subsequently. So, this Court has every reason to believe the evidence of the victim and accept her testimony as trustworthy. Especially, the accused could not even able to attribute any motive to P.W.1 for falsely implicate them. On available records, this Court find no material to infer ulterior motive for the victim to depose before the Court implicating the accused falsely demeaning her status. She has clearly identified A-1 to A-4 in the Identification Parade as well as in the Court. So, this Court hold that the evidence of the victim is wholly reliable and solely sufficient to convict the accused Nos.1 & 2 under Section 376(D) IPC, 352, 366,



354(B), 356(C), accused No.3 under Sections 354(B) & 376(D) of IPC, accused No.4 under Section 376(D) of IPC and accused No.5 under Sections 393 & 365 of IPC.

14. The arrival of the above conclusion by this Court that there is no reason to disbelieve the victim's evidence when her evidence is cogent, trustworthy and unimpeachable, is well fortified by the decisions of the Hon'ble Apex Court and they are taken into aid as guidelines.

In **the State of Himachal Pradesh Vs. Sanjay Kumari @ Sunny** reported in **2017 2 SCC 51**, it was held that,

"After thorough analysis of all relevant and attendant factors, we are of the opinion that none of the grounds, on which the High Court has cleared the respondent, has any merit. By now it is well settled that the testimony of a victim in cases of sexual offences is vital and unless there are compelling reasons which necessitate looking for corroboration of a statement, the courts should find no difficulty to act on the testimony of the victim of a sexual assault alone to convict the accused. No doubt, her



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testimony has to inspire confidence. Seeking corroboration to a statement before relying upon the same as a rule, in such cases, would literally amount to adding insult to injury. The deposition of the prosecutrix has, thus, to be taken as a whole. Needless to reiterate that the victim of rape is not an accomplice and her evidence can be acted upon without corroboration. She stands at a higher pedestal than an injured witness does. If the court finds it difficult to accept her version, it may seek corroboration from some evidence which lends assurance to her version. To insist on corroboration, except in the rarest of rare cases, is to equate one who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her claim of rape will not be believed unless it is corroborated in material particulars, as in the case of an accomplice to a crime. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? The plea about lack of corroboration has no substance {[See Bhupinder Sharma v. State of Himachal Pradesh](#)[4]}. Notwithstanding this legal position, in the



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instant case, we even find enough corroborative material as well, which is discussed hereinabove."

15. The prosecution has clearly established all the ingredients of 376(D) IPC against the accused A-1 to A-4 with clear oral and scientific evidence and the corroborative evidence of prosecution witnesses. As against A5, the evidence of P.W.9 corroborating the evidence of P.W.1 and the miserable failure of the attempt to prove *alibi* proves his guilt beyond doubt.

16. Jurisdiction of P.W.33:-

Admittedly, the occurrence originated in the Kumbakonam Railway Station, where A5 took the victim to reach her destination namely, Venkatramana hotel and had been continuously roaming the City probably with a bad intention of looting the articles of the victim girl. Fortunately, the victim girl smelling his bad intention, managed to jump from the Auto. A5 has left her in the lonely place and from that



place A1 & A2, took her to another place and after taken her to the other place. With them A-3 & A-4 subsequently joined. They all together had jointly committed the offence of Rape. A-2 dropped her in the P.W.3 Auto in the Venkatramana Hotel i.e., within the jurisdiction of P.W.33. Among the 4 places, Kumbakonam Railway Station, Venkatramana Hotel and two other places outside Kumbakonam town, one place of the occurrence is within the jurisdiction of the Thiruvidadaimaruthur Police Station. So, the contention of the defence that the Thiruvidadaimaruthur Police Station alone have the jurisdiction is not legally sustained. The origin of the occurrence took place within the jurisdiction of the P.W.33 Police Station and ended with the jurisdiction of the same Station i.e., place of dropping of victim. The victim was taken from Railway Station and the victim herself jumped from A-5 auto and from that place, she was taken to another place and from that place, finally dropped at the Hotel. So, origin and end place come within jurisdiction of P.W.33. So, he has assumed Jurisdiction and investigated the matter. In the



chain of circumstances, the jurisdiction assumed by P.W.33 cannot be found fault. Section 156(2) Cr.P.C stated that case of wrong assumption of jurisdiction is not a ground for questioning in any Court at any stage of the case. Section 156(2) Cr.P.C read as follows :-

"156(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate."

17. That apart, even if to assume there was error of jurisdiction as per Section 465(1) of Cr.P.C., such irregularity which did not cause any prejudice and failure of justice trial will not get vitiated. In this case, the accused never established both. So, the argument of the appellant that P.W.33 has no jurisdiction is not countenanced.

18. Delay in lodging FIR:-

(i) Delay of 44 hours in preferring the



complaint is not a material lapse to doubt the prosecution. In this case, the victim girl has reasonably explained the cause for delay as under:-

First after the incident, she reached Venkatramana Hotel, then she was taken to Anbu Hospital for taking treatment. At that time, she was totally under shock and with body pain, swollen mouth and throat pain. As per the evidence of 'Anbu Hospital' Doctor namely, P.W.14, these facts are spoken and proved.

(ii) Further, there was a fear in the mind of the victim and the other colleagues that the accused A-1 to A-4 might publish the video and photo taken in the semi nude position. Since A-1 to A-4 threatened the victim if she complaint to police, they will not hesitate to publish the video. In addition to that, the victim's father was a heart patient and whether he had capacity to bear this horrible occurrence and that fact also in the mind of the victim. So, all these facts had caused hindrance to her to make independent decision. Further, the mental agony arose from the nerve shock is not sublimated in short



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duration. In the said circumstances, her mental agony slowly subsided when the parents living far away, from the place of the occurrence asked to give the complaint. Without any improvement of new fact from the mouth of the parents and the other persons who accommodated her, she had disclosed what happened to her on that day and the humiliation suffered by her in the course of the events. Under the above circumstances, delay in giving complaint is not fatal to the prosecution. In the sexual offence case, acceptance of the reasoning of delay is Rule and denial is exception. The Hon'ble Supreme Court in the following cases has laid down the law that the delay in registering the case in sexual offence case is entirely different premises from the other crime and hence, explained delay to be accepted except in the case of false implication.

2015 4 SCC 762 (Deepak Vs. State of Haryana)

" 16. The Courts cannot overlook the fact that in sexual offences and, in particular, the offence of rape and that too on a young illiterate girl, the delay in lodging the FIR can occur due to various reasons. One of the



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reasons is the reluctance of the prosecutrix or her family members to go to the police station and to make a complaint about the incident, which concerns the reputation of the prosecutrix and the honour of the entire family. In such cases, after giving very cool thought and considering all pros and cons arising out of an unfortunate incident, a complaint of sexual offence is generally lodged either by victim or by any member of her family. Indeed, this has been the consistent view of this Court as has been held in *State of Punjab vs. Gurmit Singh & Ors.* [(1996) 2 SCC 384)].”

19. **Delay in reaching the FIR to the Court:-**

Further, delay in reaching the FIR is concerned, the same was not a ground to reject the prosecution evidence. More particularly the delay in registering the case as well as the delay in reaching the Court was not questioned during the course of the examination of the Investigation Officer in the Court to explain the delay. The Hon'ble Supreme Court, now repeatedly held that the accused must have been questioned the Investigating Officer and how it was caused prejudice to him. Even otherwise, it is lapse



on the part of the Investigation Officer and the same is not a ground to disbelieve the testimony of prosecution witness. In this regard the following judgments of the Hon'ble Supreme Court are relevant.

2016 2 SCC 607 (State of Rajasthan Vs Daud Khan)

"26. The interpretation of [Section 157](#) of the CrPC is no longer res integra. A detailed discussion on the subject is to be found in [Brahm Swaroop v. State of U.P.](#) [4] which considered a large number of cases on the subject. The purpose of the "forthwith" communication of a copy of the FIR to the Magistrate is to check the possibility of its manipulation. Therefore, a delay in transmitting the special report to the Magistrate is linked to the lodging of the FIR. If there is no delay in lodging an FIR, then any delay in communicating the special report to the Magistrate would really be of little consequence, since manipulation of the FIR would then get ruled out. Nevertheless, the prosecution should explain the delay in transmitting the special report to the Magistrate. However, if no question is put to the investigating officer concerning the delay, the prosecution is under no obligation to give an explanation. There



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is no universal rule that whenever there is some delay in sending the FIR to the Magistrate, the prosecution version becomes unreliable. In other words, the facts and circumstances of a case are important for a decision in this regard.

Sheo Shankar Singh v. State of U.P. reported in

"Time and again, this Court has held that unless serious prejudice was demonstrated to have been suffered as against the accused, mere delay in sending the FIR to the Magistrate by itself will not have any deteriorating (sic) effect on the case of the prosecution."

2015 1 SCC 323 (State of Karnataka Vs. Suvarnamma)

16. Does the alleged suppression or unfair conduct of the investigating agency absolve the Court of its duty to find out the truth? Though we are governed by the adversarial system, the Court cannot be a mute spectator, particularly in criminal cases and shun its primary duty of finding out the truth from the material on record.

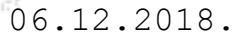


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20. Applying the above principles to the present facts of the case the delay in reaching the FIR to the Court could not be a ground to reject the evidence of P.W.1 when she prepared the complaint on 04.12.2018 at 06.00 p.m itself and also she narrated the events immediately to the P.W.8, Seethalakshmi, trainer in the Bank College.

21. Discrepancy regarding 'stole' and 'tops':-

The absence of the stole in Ex.P.64 is concerned, it is stated that 'etc.,', this Court perused the DVD marked under MO.18 and in the MO.18 the MO.3 namely, 'stole' of the victim was found. So, the argument of the counsel for the appellants that in the absence of the description by stating etc., 'did not include stole is not correct. Apart from that when the said 'stole' was handed over to the P.W.30 by the victim at the time of the registration of FIR and the same was received by the Investigation Officer and the same was found place in Form-95 under Ex.P.41 and the same was produced before the Court on



<https://www.mhc.tn.gov.in/judis>



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counsel is against the medical jurisprudence. In this aspect, it is relevant to extract the following portion in the book of **Dr.K.Narayan Reddy Medicolegal Manual : Page No. 241 & 250**

Stains due to Body Fluids: The blood group agglutination can be demonstrated in stains on clothes due to semen, sweat saliva, nasal secretion, urine or faeces in persons who are 'secreters'.

Semen: Stains on cloth/ paper/ furniture/ floor tiles, anal/ vaginal/ buccal/ penile swabs, vaginal aspirates, fur/ matted hair (pubic/axillary/ scalp, etc.,

Saliva Stains: Cigarette butts/ envelopes/ also nasal mucus stains.

24. In this case, DNA test was conducted following the Polymerase Chain Reaction (PCR) technique. The said technique is used even when a very small amount of DNA or a partially degraded biological material is available. A small amount of DNA is amplified more than a million-fold using



thermal TAQ polymerase. So, the contention of the learned counsel for the appellants that there was no chance for conducting DNA test in the semen found in the stole of the victim after few hours is not sustainable argument and even from the dead body's bone or hair, DNA test would be conducted. The DNA test is a significant scientific development in the case of the forensic medicine and the DNA test can be easily conducted even from the small trace of semen found in the stole of the victim and the said report was marked under Ex.P.66 series without any objection. The non examination of the author of the Ex.P.66 will no way affect the case of the prosecution, when the same was marked through the Investigation Officer, which is permissible under Section 293 of Cr.P.C and this Hon'ble Court vide HC 24900/2019/F2-P. Dis No.40/2019 circular dated 21.03.2019, issued guidelines to mark the report through the Investigation Officer with liberty to the defence counsel to examine the credibility of the report by calling the expert. If any doubt over the DNA report marked under Ex.P.66, remedy very much



available for the accused is to summon the author or call any other expert. Then seek any clarification over the report or disprove it. But, they did not exercise either of the right hence, the submission of the counsel that the semen available in the stole could not have been fit for the DNA test is scientifically incorrect. Further, non-examination of the author of the DNA test report will not vitiate his report or affect the prosecution case. Hence, the said contention is liable to be rejected.

25. Admissibility of CDR Report:-

The contention of the accused that all the accused CDR report was not produced is not correct. CDR reports of A1, A3, A4 were filed in series under Ex.P.30 along with certificate in compliance with Section 65(B) of the Evidence Act. A2 was all along with the company of A1 and A1 made a call to A3 and A4 and A3 made a call to A4 at the relevant point of time of occurrence and the same was proved through the said Ex.P.30 series. P.W.25 clearly stated that



he issued Ex.P.30 along with the certificate under Section 65(B) of the Evidence Act and the same was not objected by the accused at the time of marking. Hence, the relevant entries are admissible in evidence. and also they have had number of communication during the relevant time between themselves. As per the Ex.P.30, A1 made a call to A3 & A4 and A3 made a call to the A4. Further, In the CDR report, the relevant point of time, the accused tower location and the victim's tower location match each other completely hence, undoubtably prosecution has clearly established the presence of the accused No.1 to 4 along with the victim at the relevant point of time.

26. Disclosure of the place of occurrence
admissible under Section 27 of the Evidence Act:-

The contention of the learned counsels appearing for the accused that the disclosure of the place by accused is not a discovery of fact as per Section 27 of the Evidence Act, is not legally correct. The



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Hon'ble Supreme Court has repeatedly held in **State of Maharashtra Vs. Damu and Others** reported in 2000 6 SCC 269 para 35, that, *'recovery of an object is not discovery of a fact as envisaged in (Section 27 of the Evidence Act, 1872). The decision of the Privy Council in Pulukuri Kottayya V. King Emperor is the most quoted authority for supporting the interpretation that the "fact discovered" envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect'* and the said was reiterated in **Mehboob Ali And Another** reported in 2016 14 SCC 640, **Pattu Rajan Vs. State of Tamil Nadu** reported in 2019 4 SCC 771, **Somasundaram Vs. State** reported in 2020 7 SCC 722 and **Asar mohammed Vs State of Uttar Pradesh** reported in 2019 12 SCC 253.

27. The accused disclosed the place where they kept the victim and committed rape is a disclosure of a fact exclusively within the knowledge of the maker and hence, admissible. The Hon'ble Supreme Court



clearly stated that the place can be a fact for discovery, for the reason being that the said place which is not within the knowledge of the Investigation Officer until the disclosure is made by the accused. So, the disclosure of the place of occurrence admissible against the accused during police interrogation is admissible under Section 27 of the Evidence Act regarding their complicity of crime. In this case, the accused disclosed the place where the victim was first dropped and the second place where she was taken and subjected to oral sex. Incriminating materials were recovered from that place.

28. Doubt over the recovery of Ex.P.1:-

The contention of the accused that Ex.P.1 was not recovered from the spot is liable to be rejected since the case of the victim is that the accused received all the belongings of the victim and the materials of victim and the same was under the accused custody and the accused might have dropped it



in that place. The victim P.W.1 had answered in the cross examination that she was not aware of the presence of Ex.P.1 in the scene of occurrence is the fact reasonable and reliable. This is not a circumstance to disbelieve her version of gang rape committed by A-1 to A-4. It is for them to explain their presence in the scene of occurrence. Further, recovery of the Ex.P.1 was clearly affirmed by P.W.6 through corroborative evidence of P.W.33 and the same has been proved through Ex.P.47(seizure mahazar).

29. Non explanation of Accused:-

There was no explanation regarding the positive DNA test and there was no cross-examination regarding that aspect from the prosecution evidence, which clearly established the case of the prosecution of gang rape committed by the accused. Accused A-1, A-2 & A-3 in their 313 Cr.P.C questioning simply deny their complicity and A4 stated that the said semen was taken illegally before his arrest, but same was not established through acceptable evidence.



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30. Admissibility of extra judicial confession of**A5:-**

The contention of the accused that Ex.P.5 extra judicial confession given by the accused is involuntary is not acceptable. The evidence of P.W.9, VAO, who has no enmity with A-5 had clearly narrate events of recording of confession made by A5 and there was no reason to reject his version and he did not make any statement before the learned Judicial Magistrate at the time of judicial remand about illegality committed in obtaining the extra judicial confession. This Court find that there is no reason to reject the extra judicial confession given by the A-5 to P.W.9 as it is voluntary and without any coercion and the same was within the parameter of guidelines enumerated in **Sahadevan and Another Vs. State of Tamilnadu** reported in **2012 6 SCC 403**.

31. Plea of Alibi made by A-3 and A-4:-

The plea of A-3 & A-4 that they are not present in the scene of occurrence on the basis of the



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evidence of D.W.5 & D.W.6 is artificial one. As per Section 103 of the Evidence Act, "alibi" has to be proved with concrete legal evidence. In this case, there was no concrete legal evidence available to overcome the available evidence of the prosecution namely, P.W.1 evidence, Scientific evidence namely, DNA test as well as CDR report. So, this Court hold that the plea of *alibi* is not proved as per law laid down by the Hon'ble Supreme Court in **2015(11) SCC 102**

(Vutukuru Lakshmaiah Vs. State of Andhra Pradesh)

"23. The Latin word *alibi* means "elsewhere" and that word is used for convenience when an accused takes recourse to a defence line that when the occurrence took place he was so far away from the place of occurrence that it is extremely improbable that he would have participated in the crime. It is a basic law that in a criminal case, in which the accused is alleged to have inflicted physical injury to another person, the burden is on the prosecution to prove that the accused was present at the scene and has participated in the crime. The burden would not be lessened by the mere fact that the accused has adopted the defence of *alibi*. The plea of



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the accused in such cases need be considered only when the burden has been discharged by the prosecution satisfactorily. But once the prosecution succeeds in discharging the burden it is incumbent on the accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. When the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the court would be slow to believe any counter-evidence to the effect that he was elsewhere when the occurrence happened. But if the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would, no doubt, be entitled to the benefit of that reasonable doubt. For that purpose, it would be a sound proposition to be laid down that, in such circumstances, the burden on the accused is rather heavy. It follows, therefore, that strict proof is required for establishing the plea of alibi.[Emphasis supplied] The said principle has been reiterated in [Gurpreet Singh v. State of Haryana](#)[13], [S.K. Sattar v. State of](#)



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Maharashtra[14] and Jitender Kumar v. State of Haryana[15]."

32.Hence, it is to be understood that, in order to save their son, D.W.5 & D.W.6 have made lie before this Court and their evidence is artificial, not trustworthy.

33.It is the case of the helpless victim without knowing the local language all along the way crying for help by kneeling down and begging the accused A-1 to A-4 by saying 'Anna'. The barbarian act of the accused A-1 to A-4 forcefully placing their penis one after another in her mouth as deposed by P.W.1 deserves to be accepted and on the basis of the evidence of P.W.1 coupled with the evidence of the positive DNA test and the CDR reports the prosecution has to be held proved though no external injuries on P.W.1.



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34. Contradictions of the P.W.1 evidence:-

Though the learned counsel appearing for the appellants/accused admitted to make out a case of contradiction in the evidence of prosecution, particularly, the evidence of the victim [P.W.1], this Court finds no material contradiction. Even otherwise, the contradictions alleged by the appellants are not contradictions. The contradictions are not legally drawn by the appellant from the Investigation Officer as following the procedure of marking the statements as the procedure delineated in **2015 9 SCC 588 (V.K.Mishra and Another Vs. State of Uttarakhand and Another with Rahul Mishra Vs. State of Uttarakhand) .**

"19. Under Section 145 of the Evidence Act when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of the witness, it becomes the duty of the trial court to ensure that the part of the police statement with



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which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination. The attention of witness is drawn to that part and this must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and there is no need to further proof of contradiction and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but is it yet to be proved. Thereafter when investigating officer is examined in the court, his attention should be drawn to the passage marked for the purpose of contradiction, it will then be proved in the deposition of the investigating officer who again by referring to the police statement will depose about the witness having made that statement. The process again involves referring to the police statement and culling out that part with which the maker of the statement was intended to be contradicted. If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court cannot suo motu make use of statements to police not proved in



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compliance with Section 145 of the Evidence Act that is, by drawing attention to the parts intended for contradiction."

35. So, the contradiction is not properly drawn and hence, the argument to be rejected on the ground of contradiction is not legally drawn. Evidence of P.W.1 is that she cleaned her mouth in her dresses including stole which contains semen as well as saliva of victim. Further, the minor contradiction is not a ground to reject the evidence of P.W.1, more particularly, in the present case that she had been undergone sexual assault for more than 2 hours driven her to the stage of nerve shock which resulted in some omission. This is termed as improvement and contradictions by the appellants. In this regard, it is necessarily to draw guidance from the Hon'ble Supreme Court which state that minor discrepancies in the course of the evidence is not a ground to discard the evidence in entirety.

2015 3 SCC 138 (Vinod Kumar Vs State of Haryana)

"It is also well accepted principle



that no true witness can possibly escape from making some discrepant details, but the Court should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that it would be justified in jettisoning his evidence. It is expected of the Courts to ignore the discrepancies which do not shed the basic version of the prosecution, for the Court has to call into aid its vast experience of men and matters in different cases to evaluate the entire material on record. [See State of U.P. V. M.K. Anthony[13], [Rammi v. State of M.P.](#)[14] and [Appabhai V. State of Gujarat](#)[15]]"

36. Injury in the body of the victim:-

Regarding no injuries was found in the victim's body is concerned, this is a case of oral sex where the victim was subjected to do oral sex. P.W.4 had spoken about the appearance of the victim at 01.30 a.m on 04.12.2018. He has deposed that when he saw the victim, she was crying with swollen face and she disclosed to him that she feel pain all over the body. The Doctors P.W.13 & P.W.14 also stated that she was having pain in her mouth and body.



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37. **Failure to answer and false explanation in the Section 313 Cr.P.C questioning:-**

The prosecution has proved the presence of the accused No.A-1 to A-4 in the scene of the occurrence through the CDR report and DNA test report and the accused did not give any acceptable explanation during the Section 313 Cr.P.C questioning.

38.CDR report is concerned, A3's cell phone number was 8220925808 and from that number, he made a call to A-4's cell phone number 8695586755 on 02.12.2018 during night hours was admitted by A-4. He also admitted that he received a call from A-1 through his phone number 9677777444 and the same was proved by Ex.P.30 series by examination author P.W.25 along with Certificate under Section 65(e) of Evidence Act. Further, P.W.29 clearly stated that P.W.3 made a call from his mobile number 8825623785 to the A-1's mobile number 9677777444 at the instance of A-2 while he was travelling in the Auto along



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39. Apart from that they gave the false explanation and their explanation is not proved through the defence witnesses namely D.W.5 & D.W.6. As held by the Hon'ble Supreme Court false explanation is additional fact to presume the complicity of the accused in the crime. In this aspect, the following portion of the Hon'ble Supreme Court judgment in **Trimukh Maroti Kirkan Vs, State of Maharashtra** reported in **2006 10 SCC 681** is relevant:-

"22. It has been consistently held that if the accused does not offer any explanation how the wife received injuries or offer"s an explanation which is found to be false. It is a strong circumstance which indicated that he is responsible for commission of the crime."

40. **Appreciation of Defence witness and the defence documents:-**

The submission of the appellants' counsel that the defence witnesses not properly considered by the



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learned Trial Court Judge is not acceptable on the following reasons:-

It is the case of the defence that the victim has not treated by P.W.4, Doctor of Anbu Hospital and Ex.P.24 was obtained without giving treatment. For that purpose, D.W.1 was called to produce the CCTV footage and the same was not produced by D.W.1 on account of the efflux of period of storage. Further, the said Ex.P.24 is marked before the Court without any objection and the author of the document was deposed before the Court and her evidence is not impeachable as she did not has any motive against the accused to give such document. Apart from that, the said document only stated that 4 unknown persons and hence, the examination of D.W.1 on the side of the accused is not relevant to prove the defence of false implication of the accused. Similarly, the footage of the Government Hospital where the victim was taken treatment was called by the accused by summoning D.W.2. D.W.2 also produced Ex.D.2 & Ex.D.3, which contain similar answer of erasement of CCTV footage after period of expiry. Here also, the accused



doubted the examination of the victim by P.W.13 at the Government hospital on 05.12.2018 and the veracity of Ex.P.23 issued by P.W.13. P.W.13 is the Government Doctor. Ex.P.23 issued by her also marked without objection and contention of the same also deposed by P.W.13 without any suspicion, even in the said document, there was only reference of 'unknown persons'. Further, she has also no motive against the accused to issue false certificate at the instance of the Investigation Agency. Further, P.W.13 & P.W.14 evidence is corroborated with the version of P.W.4, who has seen the victim immediately after the victim reached the Venkatramana Hotel stated that her face was swollen at the time of the entrance into the Hotel at around 01.30 p.m. So, the case of the defence that P.W.13 & P.W.14 did not give the treatment is not correct.

41.D.W.3 was examined on the side of A-5 to show his illegal custody prior to the arrest as projected by the prosecution on the basis of the Ex.D.1. D.W.3 categorically stated that he unable to disclose the



to the Higher Officials about the illegal custody of the accused A-3. A-3 in his 313 questioning admitted the fact that he had the conversation with A-4, A-1 & A-2. But, D.W.5 assertively stated that he has no contact with anybody. For the above reason, the evidence has to be disbelieved and the reason given by the Trial Court to disbelieve his evidence need not interfere with. D.W.6, the father of A-4 stated that his son was taken by 6 persons on 03.12.2018 at 11.15 a.m for enquiry in the Taluk Police Station. Her wife telephoned A-4's phone and the same was picked by the Police Officials and told that after enquiry, he would have been released. But, he also did not make any complaint against the said 6 persons and make the representation to the Higher Officials to conduct the fair investigation by seeking the transfer of Investigation to find out the truth of false implication. Apart from that, he also admitted that making of a call between A-3 & A-2 in his 313 questioning. In the said circumstance, his evidence is also disbelieved.



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42. Identification of the accused in the Court:-

In this case, the victim continuously suffered untold mental pain and physical sexual assault at the hands of A-1 to A-4 for number of hours. Further, all the accused forcefully have had the sex with the victim by penetrating their organ in the mouth of the victim. In the said circumstance, their identification before the Court is sufficient and her memory regarding the identification of the accused is never lost as per the theory of memory as detailed discussed by the Hon'ble Supreme Court in **2014 14 SCC 619 (Pargan Singh Vs. State of Punjab and Another with Harminder Singh Vs. State of Punjab)**. The relevant paragraphs are as follows:-

"18. Before entering upon the discussion on this aspect specific to this case, we would like to make some general observations on the theory of "memory". Scientific understanding of how memory works is described by Geoffrey R. Loftus while commenting upon the judgment dated January 16, 2002 rendered in the case of Javier Suarez Medina v. Janie Cockrell by United States Court of Appeals, Fifth Circuit in



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Case No.01-10763. He has explained that a generally accepted theory of this process was first explicated in detail by Neisser (1967) and has been continually refined over the intervening quarter-century. The basic tenets of the theory are as follows:

18.1. First, memory does not work like a video recorder. Instead, when a person witnesses some complex event, such as a crime, or an accident, or a wedding, or a basketball game, he or she acquires fragments of information from the environment. These fragments are then integrated with other information from other sources. Examples of such sources are: information previously stored in memory that leads to prior expectations about what will happen, and information-both information from external sources, and information generated internally in the form of inferences- that is acquired after the event has occurred. The result of this amalgamation of information is the person's memory for the event. Sometimes this memory is accurate, and other times it is inaccurate. An initial memory of some event, once formed, is not "cast in concrete." Rather, a memory is a highly fluid entity that changes, sometimes dramatically, with the passage of time. Every time a witness thinks about some event-revisits his or her



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memory of it-the memory changes in some fashion. Such changes take many forms. For instance, a witness can make inferences about how things probably happened, and these inferences become part of the memory. New information that is consistent with the witness's beliefs about what must have happened can be integrated into the memory. Details that do not seem to fit a coherent story of what happened can be stripped away. In short, the memory possessed by the witness at some later point (e.g., when the witness testifies in court) can be quite different from the memory that the witness originally formed at the time of the event.

18.2.Memory researchers study how memory works using a variety of techniques. A common technique is to try to identify circumstances under which memory is inaccurate versus circumstances under which memory is accurate. These efforts have revealed four major sets of circumstances under which memory tends to be inaccurate. The first two sets of circumstances involve what is happening at the time the to-be-remembered event is originally experienced, while the second two sets of circumstances involve things that happen after the event has ended.

18.3.The first set of circumstances involves the state of the environment at the



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time the event is experienced. Examples of poor environmental conditions include poor lighting, obscured or interrupted vision, and long viewing distance. To the degree that environmental conditions are poor, there is relatively poor information on which to base an initial perception and the memory that it engenders to begin with. This will ultimately result in a memory that is at best incomplete and, as will be described in more detail below, is at worst systematically distorted.

18.4. The second set of circumstances involves the state of the observer at the time the event is experienced. Examples of suboptimal observer states include high stress, perceived or directly inflicted violence, viewing members of different races, and diverted attention. As with poor environmental factors, this will ultimately result in a memory that is at best incomplete and, as will be described in more detail below, is at worst systematically distorted.

18.5. The third set of circumstances involves what occurs during the retention interval that intervenes between the to-be-remembered event and the time the person tries to remember aspects of the event. Examples of memory-distorting problems include a lengthy retention interval, which leads to forgetting, and inaccurate



information learned by the person during the retention interval that can get incorporated into the person's memory for the original event.

18.6. The fourth set of circumstances involves errors introduced at the time of retrieval, i.e., at the time the person is trying to remember what he or she experienced. Such problems include biased tests and leading questions. They can lead to a biased report of the person's memory and can also potentially change and bias the memory itself.

19. While discussing the present case, it is to be borne in mind that the manner in which the incident occurred and description thereof as narrated by PW 2, has not been questioned on the ground that narration should not be believed because of lapse of time. Instead, the appellants have joined issue on a very limited aspects viz. Their identification on the ground that faces of the culprits could not have been remembered after 71/2 years of the occurrence as memory fades by that time.

20. We are of the opinion that under the given circumstances and keeping in view the nature of incident, 90 seconds was too long a period which could enable the eyewitness



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(PW 2) to watch the accused persons and such a horrible experience would not be easily forgotten."

43. Test Identification Report:-

The test identification parade conducted by the learned Judicial Magistrate and the accused were properly identified by the victim. The case of the accused that she was introduced by the police much earlier to the test identification parade is not legally proved by them. In the said circumstance, there can be no doubt about the factum of the identification of the accused by the victim in the identification parade. That apart, before the Court also accused were identified.

44. Issue of Unknown person:-

The context of the defacto complainant disclosed the unknown persons under Ex.P.23 is not to be taken negatively, when she has disclosed the name of the accused 'Vasanth' & 'JD' in the complaint for the reason being that among the accused there was



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conversation by exchanging their name. So, the victim girl in her memory disclosed the name of 'Vasanth' 'JD'. Further, A2 had accompanying the Auto along with the victim to take her in the Hotel and in the Auto, he also made a call to A1 from P.W.3 phone by calling his name. In the said circumstances, the unknown persons stated in the exhibits did not affect the trustworthiness of the victim. 'Unknown' is meant by the victim is that the accused never known to her either as relative or friend before the occurrence. Hence, the argument of A4 that even though the victim has the knowledge about the name of the accused, he disclosed the unknown person during examination of P.W.13 & 14 is affected her credibility is not acceptable.

45.To sum up, in nutshell we find the victim girl has narrated 11 specific events to bring the accused for prosecution. They are:-

(1) she started her journey from Delhi to reach the Venkatramana Hotel Kumbakonam to attend the training programme by boarding the flight at 06.00



voluntarily approached the victim girl and expressed their willingness to help her. Immediately, the victim girl telephoned P.W.2 and informed the above fact and the P.W.2, who has able to speak Tamil had conversation with A-1 & A-2 and A-1 & A-2 told that they were highway patrol police and assured to help her. Immediately, P.W.2 directed to instructed to go along with them. So, the victim went in their bike on account of the non-availability of Auto.

(6) After taking her to some distance stopped the bike and asked to step down the bike and the went away leaving her alone by asking the victim to wait there. Immediately, the victim telephoned to P.W.2 and informed her dangerous position.

(7) Some minutes later, 3 persons namely, A-1 to A-3 came and snatched her phone. Immediately, she was started to cry and shout. The accused A-1 to A-3 demanded her bag and money and she handed over all the things and requested to drop the Hotel by saying 'Anna' and continuously she crying and shouting. So, they intimidated her not to shout and A-2 grabbed her mouth and slapped her and asked to keep quit and



crying, P.W.8, Seethalakshmi was called to pacify her.

(11) Upon arrival of P.W.8, the victim disclosed about the horrible incidents.

46.The prosecution proved the above sequence of the events through the oral and documentary evidence beyond reasonable doubt. To prove the first event they marked the Ex.P.2 Flight Ticket and her arrival through the Egmore Railway Station, Ex.P.4 waiting hall ticket was marked. Ex.P.3, the Train Ticket was marked to show her arrival at 09.30 p.m, Kumbakonam in the Tiruchendure Express Train.

46(a) To prove her travel in the A5 Auto, prosecution produced the Ex.P.17 and Ex.P.18 and also through the examination of P.W.19. To prove the conversation between the victim and P.W.2 regarding about the A5 activity, the call details of P.W.2 through the CDR report under Ex.P.29 and the call details of P.W.1 through the CDR report Ex.P.30 are



produced. Upon the perusal of the Ex.P.29 & Ex.P.30, the victim made a call to the P.W.2 and received the call from P.W.2 at the relevant point of time as deposed by her which was cleared from the following details:

P.W.25 deposed that 9821336050 is the mobile number of P.W.1. P.W.24 similarly deposed that 7667876715 is the mobile number of P.W.2. The Ex.P.29 & Ex.P.30 contained the corresponding incoming and outgoing call details between P.W.1 & P.W.2. A call was made by the P.W.1 to P.W.2's mobile on 02.12.2018-22:02:30 and the corresponding entries was available in Ex.P.30. Similarly, a call was made from P.W.2 mobile to the P.W.1's mobile at around 02.12.2018-22:09:31, 22:14:29 and the corresponding entries was also available in both the Exs.39 & 20.

46(b) Further to prove the presence of the accused A-1, A3 & A-4 and their internal communication on the material time from 02.12.2018 to 03.12.2018 early morning the CDR report Ex.P.30 was produced. When A2 along with A1 company, A1 from his



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mobile number 9677777444 made a call to A3 mobile number 8220925808 and A4 mobile number 8695586755.

Further, thereafter, A3 made a call to the A4. The evidence of the expert, P.W.15 also stated that there was frequent call transaction between A3 & A4 and the same was admitted by A4 in his 313 Cr.P.C questioning. He also admitted that he received the number of calls from A1 & A3. The evidence of P.W.3 Auto driver was available along with his phone CDR report to prove the factum of A-2's company along with victim in his Auto and communication between A-2 to A-1 from the P.W.3 mobile while the victim was travelling in the Auto is proved through the CDR report marked under Ex.P.31 I.e., the call has been made from P.W.3 cell number 8825623785 to A1 cell number 9677777444 on 03.12.2018 at 00:40:42 to 00:41:30 and further 3 calls from 9677777444 to 8825623785 on 03.12.2018 at 00:40:49 to 00:44:54. It is the evidence of P.W.24 that 9677777444 is belonged to A1 accused and 8825623785 is belongs to P.W.3.

46(c) The factum of recording of video by the accused is proved through the MO.5, 11, Ex.P.64 and



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the presence of the A1 & A2 in the said video is also proved through the anthropology report Ex.P.60. Further, the DNA test report Ex.P.66 containing the positive finding regarding the presence of their semen in the stole of the victim was produced to prove the complicity in the crime. P.W.11 & P.W.8 also deposed before the Court about the events narrated by the victim immediately after her arrival, which has been admitted on the principle of *res-gestae* under Section 6 of the Evidence Act.

46(d) The victim clearly stated that A1 & A2 forced the victim to remove her dress and sexually assaulted her in spite of her resist with folding hands and the same was videographed by A3 and the same was proved through MO.5. MO.11 (DVD) was downloaded from MO.5 and both MO.5 as well as MO.11 are marked. P.W.11 was author of MO.11 and he issued the certificate under Section 65(B) of Evidence Act. The report of the Anthropologist under Ex.P.60 & 64 clearly stated that A1 & A2 found along with the



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victim girl in semi nude position and the victim also resisted and pleaded with folding hands. The reports under Ex.P.60 & Ex.P.64 are ascertained by this Court by playing MO.11. So, the contents of the reports are found true. So, this Court concurred with the finding of the Court below that the offence under Section 354(B), 354(C) IPC against A1 & A2 and 354(B) IPC against A3 is proved by the prosecution beyond reasonable doubts.

46(e) Apart from that, the prosecution examining 8 group of witnesses namely, 4 Village Administrative Officers, 6 Bank Officials, 4 Doctors, 3 persons from the Cell Phone Companies, 2 learned Judicial Magistrates, 9 Police Officials and 2 independent person namely P.W.3 & P.W.11 to prove the charge and all the witnesses clearly deposed before the Court and all the witnesses did not have any motive against the victim to falsely implicate the accused. So, in all angle, prosecution clearly proved the case beyond reasonable doubt on the basis of the above material documents and unimpeachable oral evidence and hence,



the question Nos.1 & 2 answered positively affirming the conviction of the Trial Court passed against all the accused.

47. Question of Sentence:-

The appellant A1 to A4 counsel make the submission regarding the reduction of the sentence as they have undergone more than 6 years etc., This is the case where A1 to A4 committed offence of the gang rape without even considering the victim was first day of the mensuration cycle. *"mensuration, or period, is normal vaginal bleeding that happens as part of a women's monthly cycle. Many women have painful periods, also called dysmenorrhea. The pain is more often menstrual cramps, which are a throbbing, cramping pain in your lower abdomen."* So, in the painful situation, the victim has been continuously humiliated by forcing to do oral sex in her mouth one after another and asked the victim to have gum in her mouth and the said horrible act upon the body of the women did not deserves any reduction



of the punishment imposed by the Trial Court. The
perverse act of A-1 to A-4 forcing the helpless lady
to have a oral sex with them, besides taking video of
the unnatural sex through their cellphone is proved
by the prosecution through Material Objects. This
Court played the D.V.D., wherein the shock stricken
victim [P.W.1], pathetically pleading with the
accused persons, shocks the conscience of this Court.
P.W.1 by the grace of God at will to withstand in the
drama not only at the hands of the accused, but also
the ordeal subjecting herself to cross-examination.
The sterling quality of her evidence being the victim
of sexual offence, impels this Court to record that
the sentence imposed on them needs no interference
and the observation of the trial Court that no
remission of sentence on any account should be given
to them is also to be re-enforced and confirmed.

48. Insofar as A5 is concerned, he is not privy to the major crime committed by A1 to A4. He due to his greediness has taken P.W.1 around Kumbakonam Town without dropping her at Venkatramana Hotel. For the



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said crime the proportionate sentence shall be 3 years Rigorous Imprisonment with fine Rs.5,000/- in default to 1 year Simple Imprisonment.

49. **Conclusion:-**

So, the first and second questions answered affirmatively and the detailed judgment rendered by the learned Trial Judge is not interfered with and in all the circumstances, the Trial Court conviction is confirmed. The sentence of imprisonment imposed against A1 to A4 are to be confirmed and sentence of imprisonment imposed against A5 for the offence under Sections 393 and 365 IPC is reduced to 3 years Rigorous Imprisonment with fine Rs.5,000/- in default, 1 year Simple Imprisonment for each of the offence. The period of sentences imposed against A-1 to A-5 shall run concurrently. The period of imprisonment shall be set off under Section 428 of Cr.P.C.



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50. In the result, the appeals filed by the accused 1 to 4 in CrI.A.(MD)Nos.36, 193 & 272 of 2021 & 223 of 2022 are dismissed and bail bond executed by A1, A2 & A4 shall stand cancelled and the appeal filed by A-5 in CrI.A.(MD)No.118 of 2021 is partly allowed.

[G.J.J.]

[K.K.R.K.J.]

03/03/2023

NCC :Yes/No
Internet:Yes/No
Speaking/Non-speaking order
dss

To

- 1.The learned Sessions Judge,
Fast Track Mahila Court, Thanjavur,
- 2.The Inspector of Police,
Kumbakonam West Police Station,
Thanjavur District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Note : Issue order copy on 06.03.2023



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DR. G. JAYACHANDRAN, J.
AND
K. K. RAMAKRISHNAN, J.

dss

Judgment made in

Cr1.A(MD) Nos. 36, 118, 193, 272 of 2021 & 223 of 2022

03.03.2023