



Crl.A.(MD).No.205 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 14.06.2024

CORAM

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
AND
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

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Patchaimuthu

.. Appellant/Accused

Vs.

State represented by,
The Inspector of Police,
Sivagangai Town Police Station,
Sivagangai.
(Crime No.955/2013)

.. Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to set aside the judgment and conviction dated 10.02.2020 by the learned Special Court, Protection of Children from Sexual Offences Act, 2012, Sivagangai in S.C.No.97 of 2014 and acquit the appellant.

For Appellant : Mr.N.Dilip Kumar

For Respondent : Mr.A.Thiruvadikumar
Additional Public Prosecutor



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JUDGMENT

(Judgment of the Court was made by A.D.JAGADISH CHANDIRA,J.)

This Criminal Appeal is filed against the judgment dated 10.02.2020 passed in S.C.No.97 of 2014, by the Special Court, Protection of Children from Sexual Offences Act, Sivagangai.

2. The Trial Court framed the charges against the accused, as detailed below:

Charges	Penal Provision
1	305 IPC
2	Section 12 r/w 11(iv) of POCSO Act, 2012

3. By judgment dated 10.02.2020, the Trial Court convicted the appellant/accused and sentenced him, as detailed below:

Section of Law	Sentence of imprisonment	Fine amount
305 IPC	life imprisonment	Rs.1000/- in default to undergo one year rigorous imprisonment



Section 12 r/w 11(iv) of POCSO Act, 2012	3 years rigorous imprisonment	Rs.1000/- in default to undergo six months rigorous imprisonment
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Sentences were ordered to run concurrently and the period of incarceration already undergone by the accused was directed to be set off under Section 428 Cr.P.C. The Trial Court further ordered compensation of Rs.8,00,000/- to be paid to the parents of the deceased under Section 33(8) of the POCSO Act r/w Rule 7.

4. The case of the prosecution is as under:

4.1. The deceased minor girl aged about 13 years is the adopted daughter of P.W.1 Anandhaveni and P.W.2 Velmurugan and she was studying VIII Standard. A missed call has come from an unknown number to the victim's phone. When the victim girl asked, the accused introduced him as Raja and that he was studying X Standard in Sivagangai Marudhupandiyar Higher Secondary School. Thereafter, the accused frequently contacted her and the victim girl has warned her not to call her. Despite the same, the accused has sexually harassed her by sending obscene conversations and threatened her that he will kidnap and marry her. Unable



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to bear the harassment, on 17.12.2013 at about 12.00 noon, the victim had committed suicide by self-immolation. She was taken to Sivagangai Government Hospital and thereafter, shifted to Madurai Government Hospital for treatment.

4.2. On information from Madurai Government Rajaji Hospital on 17.12.2013, P.W.10, Murugan, Head Constable went to the hospital and recorded the statement of P.W.1, mother of the deceased and the same was recorded in the General Diary. On information from the hospital, P.W.15 Judicial Magistrate went there and recorded the dying declaration from the victim. Thereafter, the victim girl died on 22.12.2013 at 5.15 PM, while undergoing treatment. On information that the victim girl died, on the basis of complaint (Ex.P1) given by P.W.1, P.W.12, Sub Inspector of Police registered the FIR (Ex.P7) in Crime No.955/2013 for the offence under Section 174 Cr.P.C.

4.3. On 23.12.2013, P.W.12 visited the scene of occurrence and prepared observation mahazar (Ex.P8) and rough sketch (Ex.P9) in the presence of the witnesses Chellapandi (P.W.7), Subramanian (P.W.8) and



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recovered a small piece of the burnt clothes of the deceased, kerosene can and a match box (M.O.1 to M.O.3). P.W.12 examined the witnesses Anandhaveni (P.W.1), Velmurugan (P.W.2), Chellapandi (P.W.7), Subramanian (P.W.8), Muthu (P.W.3), Kalidas (P.W.4), Murali (P.W.6) and recorded their individual statements. Thereafter, P.W.12 conducted inquest on the body of the deceased in the presence of the Panchayatdars and prepared the inquest report (Ex.P9A) and thereafter, she sent the body of the deceased for postmortem and handed over the case records to her higher official.

4.4. P.W.13, Inspector of Police took up the case for investigation and examined Anandhaveni (P.W.1) and recorded her further statement, wherein, P.W.1 had stated that on 20.12.2013, while the victim girl was undergoing treatment, she stated that due to the sexual harassment given by one Raja through SMS, she committed suicide and she also stated the mobile number of the said Raja. In view of the same, P.W.13 found the details of the person using that mobile number through the office of the District Superintendent of Police and asked the said person to come to Vellana Vayal Panchayat. The accused Patchaimuthu @ Raja came there and after confirming that the



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said mobile number belongs to him, P.W.13 arrested the accused on 27.12.2013 at about 9.00 AM. Based on his confession, P.W.13 seized the mobile phone and sim card under Ex.P10 Mahazar and they were marked as M.O.4 and thereafter, he sent the accused to judicial custody. P.W.13 altered the offences to Section 305 IPC and Section 11(iv) r/w Section 12 of POCSO Act, 2012 and the alteration report was marked as Ex.P11. Thereafter, P.W.13 handed over the case records to P.W.14 for further investigation.

4.5. P.W.14, Sub Inspector of Police took up the case for further investigation. After examining various witnesses and collecting reports from the experts, P.W.14 completed the investigation and filed a final report against the appellant under Section 305 IPC and Section 11(iv) r/w 12 of POCSO Act, 2012.

5. The case was taken up in S.C.No.97 of 2014 on the file of the District and Sessions Court, Sivagangai and made over to the Special Court for Exclusive Trial under POCSO Act Cases, Sivagangai for trial. The Trial Court framed the charges against the appellant, as detailed in Paragraph No.2 supra.



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6. When questioned, the appellant pleaded “not guilty” and sought to be tried. To prove the case, the prosecution examined 16 witnesses and marked 15 exhibits and four material objects. When the appellant was questioned under Section 313 Cr.P.C in respect of the incriminating circumstances against him, he denied the same and did not come forward to give any plausible explanation. No witness was examined on the side of the appellant nor any document marked.

7. The Trial Court, after hearing either side and considering the evidence on record, by judgment dated 10.02.2020, found the appellant guilty and convicted and sentenced him, as detailed in Paragraph No.3 supra. Challenging the above said conviction and sentence, the present Criminal Appeal is filed.

8. Mr.N.Dilip Kumar, learned counsel for the appellant would submit that the Trial Court failed to take into consideration the infirmities, exaggerations and embellishments in the evidence of the witnesses. There is absolutely no material on record against the accused for the offence under Section 305 IPC. Admittedly, there is no proof of direct or indirect acts of



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incitement by the appellant to the commission of suicide by the victim.

Mere allegation of harassment without any positive action proximate to the time of occurrence on the part of the appellant that compelled the victim to commit suicide will not be sufficient to convict the accused under Section 305 IPC. In the present case, there is no material to substantiate that the accused played an active role by an act of instigation or that he did any act to facilitate the commission of suicide. He would further submit that the Trial Court failed to take into consideration the suppression of the first complaint on 17.12.2013, which was made by the victim herself. Further, the material evidence relating to the first dying declaration and AR report at Sivagangai Government Medical College Hospital was not produced and marked as exhibit before the Trial Court. The learned counsel would further submit that the occurrence is alleged to have taken place on 17.12.2013 at 11.30 AM and the victim died on 22.12.2013, whereas, the FIR had been registered only on 20.12.2013. This delay in lodging the FIR has not been properly explained by the Police, thereby, inferring that Ex.P1 complaint was created by the Police at a later point of time to suit the story created by them to falsely implicate the accused with an intention to hide the truth and protect P.W.1 and P.W.2. Other than a telephone number alleged to have



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stated by the victim during her dying declaration, there is no other material placed on record to connect the appellant to the crime. The prosecution has relied on Ex.P12 - application for mobile connection and Ex.P13 - CDR details relating to the phone. Ex.P12 and Ex.P13 are only photocopies. Hence, reliance cannot be placed on those documents without there being a certificate under Section 65B of the Indian Evidence Act and the non-examination of the Officer, who has downloaded the same, by the prosecution makes the documents inadmissible and thereby, they are not reliable. When there is absolutely no legal evidence to show that the appellant was the person, who is said to have regularly communicated/chatted with the victim, the entire case of the prosecution fails and the appellant can also not be held for the offences alleged under the POCSO Act.

9. The learned counsel would further submit that P.W.1 had deposed that she had handed over the mobile phone used by the victim to the Police. However, the same was not produced and marked as a material object before the Trial Court. Hence, non-marking of the mobile phone alleged to be used by the victim and her mother and the non-recovery of the SMS chats



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available in the phone despite the recovery of the same by the Police creates a doubt in the prosecution case. Admittedly, the victim committed suicide fearing her parents and not as projected by the prosecution. He would also submit that dying declaration, which was recorded from the victim by P.W.15, cannot be relied upon, since there is a chance of tutoring by the mother of the victim. Further, it is the admitted case of the prosecution that the victim was taken to Sivagangai Government Medical College Hospital and during such time, a statement had been recorded from the victim, wherein, she had stated that she had suffered burn injuries in an accidental fire while playing. Subsequently, the victim was shifted to Madurai Government Rajaji Hospital and a judicial dying declaration was recorded at 3.25 PM. Even taking into consideration the averments in the dying declaration, the prosecution has not proved the charges against the appellant and thereby, the learned counsel seeks to set aside the judgment of conviction and sentence.

10. In support of his submissions, the learned counsel for the appellant relied on the following judgments of the Hon'ble Apex Court:

(i) ***Amalendu Pal Vs. State of West Bengal*** reported in (2010) 1 SCC 707,



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(ii) *M.Arjunan Vs. State represented by its Inspector of Police*

reported in (2019) 3 SCC 315,

(iii) *State of Madhya Pradesh Vs. Ratan Singh and others* reported

in (2020) 12 SCC 630,

(iv) *Nallabothu Ramulu Vs. The State of Andhra Pradesh* reported

in (2014) 12 SCC 261,

(v) *Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal and*

others reported in (2020) 7 SCC 1,

(vi) *Uttam Vs. The State of Maharashtra* in *Criminal Appeal No.*

485 of 2012 and

(vii) *Laxman Vs. State of Maharashtra* reported in (2002) 6 SCC

710.

11. Per contra, Mr.A.Thiruvadikumar, learned Additional Public Prosecutor appearing for the respondent would submit that it is case where the appellant, who is a person aged about 26 years, claiming himself to be a school student, has contacted the victim over mobile phone and continued to sexually harass her by sending obscene messages and thereby, given sexual torture to her and threatened her that he will kidnap and marry her. Being



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unable to bear the harassment, the victim had committed suicide by self-immolation. He would further submit that the victim has, in her dying declaration, given the details of the phone number used by the accused. The prosecution, by marking Ex.P12 - application for mobile connection and Ex.P13 - the CDR records, has proved that the appellant is the owner of the phone number, who had caused sexual torture to the victim girl. The Trial Court by appreciating the evidence, had rightly found the accused guilty and convicted him and thereby, the learned Additional Public Prosecutor prays for dismissal of the appeal by confirming the judgment of the Trial Court.

12. Heard the learned counsels on both sides and perused the materials available on record.

13. As seen from the evidences, P.W.1 and P.W.2 are the parents of the deceased. P.W.1 is the complainant and she had deposed about the deceased having told her that she committed suicide since she was unable to bear the sexual torture given by one Raja through obscene messages, who also threatened the deceased that he will kidnap and marry her. P.W.2 had supported the evidence of P.W.1. P.W.3 is the resident of the Village. He



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had deposed that he called the ambulance. P.W.4 is the relative of the deceased. He had deposed that he went to the hospital and on hearing that the deceased committed suicide because of one Raja, when he asked the victim whether it is true, the victim admitted the same. However, in his cross-examination, P.W.4 had admitted that he has not informed the same to the Police. P.W.5 is the Headmaster of the School, where the deceased was studying. He had deposed that the deceased was studying VIII standard in the said School and had given a certificate regarding the date of birth of the deceased. P.W.6 is the maternal uncle of the deceased, who had accompanied P.W.1 and the deceased to the hospital. He had stated about the deceased having told P.W.1 that one Raja was sending obscene messages to her and fearing her parents, she self-immolated herself. P.W.6 had also admitted in his cross-examination that he has informed the same to Police. P.W.7 and P.W.8 are residents of the Village and they speak about the recovery of the material objects M.O.1 to M.O.3. P.W.9 is Grade I Constable and she had deposed about having assisted P.W.12 to Madurai Government Hospital for postmortem of the body of the deceased and handing over the body of the deceased to the relatives after postmortem. P.W.10 is the Head Constable, who recorded Ex.P1 complaint. He had



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deposed that on 17.12.2013 at about 3.00 PM, on information from the hospital, he went there and since the victim girl was not able to speak, he recorded the statement of her mother, P.W.1. P.W.11 is the postmortem doctor and he had deposed that the deceased would have died due to extensive superficial burns of about 90% and its complications thereof. P.W.12 is the Sub Inspector of Police, who registered the FIR. P.W.12, P.W.13 and P.W.14 are the Investigating Officers in this case.

14. While analyzing the evidence, it is the case of the prosecution that since the accused had frequently contacted and sent obscene messages to the victim girl and threatened her to kidnap and marry her, the victim girl had committed suicide by self-immolation. On perusal of the evidence placed on record, it is seen that there are several contradictions, improbabilities and inconsistencies in the evidence of the witnesses. P.W.1 is the mother of the victim girl and P.W.6 is the brother of P.W.1. P.W.6, in his evidence, has stated that on 17.12.2013, on information, he went to his sister's house and found his sister's daughter with burn injuries and that he accompanied them when she was taken to Sivagangai Government Hospital through 108 ambulance. He had further stated that the victim girl was shifted to Madurai



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Government Hospital and when P.W.1 asked her about the reason for committing suicide, she stated that one Raja was sending her obscene messages and fearing that she would be reprimanded by her parents, she had committed suicide. Whereas, in the evidence of P.W.1, she had deposed that the victim girl had stated her that since the accused had threatened the victim girl that he will kidnap and marry her, she committed suicide. This discrepancy in the evidence of P.W.1 and P.W.6, as to the reason for committing suicide, creates a doubt in the prosecution case and thereby, the same cannot be believed.

15. Further, when the victim was taken to Sivagangai Government Medical College Hospital, she was treated by a doctor and Accident Register was recorded and intimation was sent to the Police from the Sivagangai Government Medical College Hospital. P.W.12, Sub Inspector of Police, who registered the FIR, has deposed in her cross-examination that she came to know from the Accident Register that when the victim was given first aid in the Sivagangai Government Medical College Hospital, she had given a statement that she suffered burn injuries in an accidental fire while playing. Further, P.W.14, Investigating Officer, had deposed in his



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cross-examination about the accident register, wherein, it is recorded that the deceased sustained burn injuries in an accidental fire. However, the said Accident Register and dying declaration was not produced or marked before the Trial Court and the Doctor, who had recorded the statement in the Accident Register was also not examined, which creates a doubt in the prosecution case. Subsequently, a judicial dying declaration (Ex.P15) was recorded from the victim girl at Madurai Government Rajaji Hospital by P.W.15, learned Judicial Magistrate, wherein, she had stated that unable to bear the torture given by one Raja, she committed suicide by self-immolation. The above discrepancies about the cause of the injury shows that there is a possibility of tutoring by the mother of the victim girl and thereby, the dying declaration cannot be reliable.

16. The prosecution heavily relies on Ex.P12 and Ex.P13, which are the application for mobile phone and the CDR details, to connect the accused to the offence. On perusal of Ex.P12 and Ex.P13, it is seen that they are photocopies and no original was marked. Neither the Nodal Officer of the service provider nor the officer, who is alleged to have downloaded the particulars, has been examined by the prosecution. Further, no certificate



was obtained under Section 65B of the Indian Evidence Act. In this regard, it is relevant to refer to the judgment of the Hon'ble Apex Court in **Arjun Panditrao Gorantyal Vs. Kailash Kushanrao Gorantyal and others** cited supra, wherein, it is held as follows:

“61. We may reiterate, therefore, that the certificate required under Section 65-B(4) is a condition precedent to the admissibility of evidence by way of electronic record, as correctly held in Anvar P.V. [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] , and incorrectly “clarified” in Shafhi Mohammad [Shafhi Mohammad v. State of H.P., (2018) 2 SCC 801 : (2018) 2 SCC 807 : (2018) 2 SCC (Civ) 346 : (2018) 2 SCC (Civ) 351 : (2018) 1 SCC (Cri) 860 : (2018) 1 SCC (Cri) 865] . Oral evidence in the place of such certificate cannot possibly suffice as Section 65-B(4) is a mandatory requirement of the law. Indeed, the hallowed principle in Taylor v. Taylor [Taylor v. Taylor, (1875) LR 1 Ch D 426] , which has been followed in a number of the judgments of this Court, can also be applied. Section 65-B(4) of the Evidence Act clearly states that secondary evidence is admissible only if led in the manner stated and not otherwise. To hold otherwise would render Section 65-B(4) otiose.”

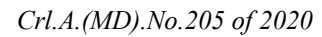
As held by the Apex Court, Section 65B certificate is mandatory for the



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admissibility of electronic records as evidence, except when the original electronic record is produced. In this case, neither the certificate under Section 65B was produced nor the officer, who has downloaded the particulars was examined. Hence, as regards Ex.P12 and Ex.P13, the prosecution has not complied with the certification requirement, for it to be admissible in the Court of law and the same cannot be relied upon to link the accused to the offence.

17. P.W.1 had stated about the victim having told her that she committed suicide unable to bear the sexual torture given by one Raja, whereas, P.W.6 had deposed that the victim self-immolated herself fearing her parents and he admitted in his cross-examination about having informed the same to the Police. Apart from the allegations in the complaint, there is absolutely no evidence placed on record against the accused for the offence under Section 305 IPC. Mere allegation of harassment without any positive action proximate to the time of occurrence on the part of the appellant that compelled the victim to commit suicide will not be sufficient to convict the appellant under Section 305 IPC. In this regard, it is relevant to refer to the judgment of the Hon'ble Apex Court in *Amalendu Pal Vs. State of West*



“12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.

13. In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.”

After carefully assessing the evidence on record, we find that there is no direct evidence to show that the appellant had by his acts instigated or



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provoked the deceased to commit suicide and has not done any act which could be said to have facilitated the commission of suicide by the deceased.

Further, it is the case of the prosecution that the appellant is said to have spoken to the deceased calling himself as Raja, a student studying X standard in the Government School. However, no evidence has been produced to prove that the appellant is also called by name Raja. Hence, the appellant cannot be convicted for the offence under Section 305 IPC.

18. One other aspect is the non-marking of the mobile phone used by the victim and her mother before the Trial Court. It is the case of the prosecution that the accused was frequently calling and sending obscene messages to the deceased and thereby, the deceased committed suicide. On perusal of the evidence of P.W.1, she had stated about having handed over the mobile phone used by her and her daughter to the Police. Despite the same being recovered by the Investigating Officer, the said mobile phone was not produced before the Trial Court and marked as a material object. Further, non-recovery of the messages from the mobile phone of the deceased also creates a doubt in the prosecution case.



19. Admittedly, as per the evidence of P.W.10, the first statement was given by the victim at the Madurai Government Hospital on 17.12.2013 itself. However, the same has been consciously suppressed by the Prosecution and FIR has been registered only on 20.12.2013 much belatedly and thereby, there is a possibility of improving the case and false implication of the accused. In this regard, it is relevant to refer to the judgment of the Hon'ble Apex Court in ***State of Madhya Pradesh Vs. Ratan Singh and others*** cited supra, wherein, it is held as follows: para 8 & 10

“8. As emphasised by this Court in Amitbhai Anilchandra Shah v. CBI [Amitbhai Anilchandra Shah v. CBI, (2013) 6 SCC 348 : (2014) 1 SCC (Cri) 309] , only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154, and consequently there cannot be a second FIR. Rather it is absurd or ridiculous to call such information as second FIR. In Subramaniam v. State of T.N. [Subramaniam v. State of T.N., (2009) 14 SCC 415 : (2010) 1 SCC (Cri) 1392] , this Court observed that if an FIR is filed after recording the statement of the witnesses, such second information would be inadmissible in evidence. Moreover, in Nallabothu Ramulu v. State of A.P. [Nallabothu Ramulu v. State of A.P., (2014) 12 SCC 261 : (2014) 6 SCC (Cri) 673] , the Court was of the view that the non-treatment of



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statements of injured witnesses as the first information cast doubt on the prosecution version.

9. Thus, not only was there a delay in filing of the FIR (which remained unexplained) which was taken as the basis of the investigation in this case, but also there was a wilful suppression of the actual first information received by the police. These factors together cast grave doubts on the credibility of the prosecution version, and lead us to the conclusion that there has been an attempt to build up a different case for the prosecution and bring in as many persons as accused as possible.

10. Additionally, the so-called eyewitnesses to the incident have described different places as the scene of offence. None of the eyewitnesses are consistent so far as the scene of offence is concerned. This means that each of the eyewitnesses must have allegedly seen the incident at different places and happening in a different manner. The suppression of the actual FIR, coupled with the conflicting versions of the so-called eyewitnesses relating to different scenes of offence and different stories collectively would reveal that the prosecution wanted to suppress and has suppressed the real incident and culpability of real culprits. The origin and genesis of the prosecution is clearly suppressed in the case.”



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20. Having considered the matter in detail and having noted various material discrepancies and improbabilities, we are of the firm view that the prosecution has not established its case beyond all reasonable doubts and thereby, the appellant is entitled to be acquitted and the judgment of conviction and sentence is liable to be set aside.

21. In view of the above, the Criminal Appeal stands allowed and the judgment of conviction and sentence passed by the learned Sessions Judge, Special Court for Exclusive Trial under POCSO Act Cases, Sivagangai in S.C.No.97 of 2014 dated 10.02.2020 is set aside and the appellant is set at liberty. Bail bonds, if any executed by the appellant, shall stand cancelled. Fine, if any paid by the appellant, shall be refunded.

(A.D.J.C.,J.) (K.R.S.,J.)
14.06.2024

NCC : Yes / No
Index : Yes / No
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To

1. The Special Court for Exclusive Trial
under POCSO Act Cases,
Sivagangai.
2. The Inspector of Police,
Sivagangai Town Police Station,
Sivagangai.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
4. The Record Keeper,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.



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A.D.JAGADISH CHANDIRA,J.
and
K.RAJASEKAR,J.

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