



Crl.A. No.545 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 02.06.2025

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Appeal No. 545 of 2016

Pandian

.. Appellant

Versus

The State Represented by
Inspector of Police,
All Women Police Station,
Gudiyatham,
Vellore District.

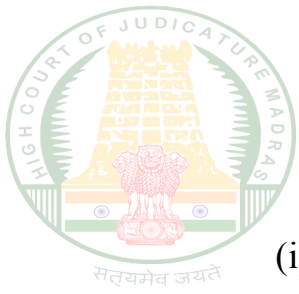
.. Respondent

Criminal Appeal filed under Section 374 (2) of Cr.P.C., praying to set aside the Judgment of Conviction and sentence dated 02.06.2016 passed in in Spl.S.C.No.21 of 2014 on the file of the learned Sessions Judge, Fast Track Mahila Court, Vellore.

For Appellant	:	Mr. R. Sankarasubbu
For Respondent	:	Mrs. G.V. Kasthuri Additional Public Prosecutor

J U D G M E N T

The sole Accused in Spl. S.C. No.21 of 2014 on the file of the learned Sessions Judge, Fast Track Mahila Court, Vellore is the Appellant in this appeal. He is aggrieved by the Judgment dated 02.06.2016 passed in the said case convicting and sentencing him as follows:-



(i) Convicted for the offence under Section 341 (2 counts) of Indian Penal Code and sentenced to pay Rs.1,000/- for both counts, in default, to undergo two weeks Simple imprisonments for both counts

(ii) Convicted for the offence under Section 4 of Protection of Children from Sexual Offences Act and sentenced to undergo rigorous imprisonment for seven years with fine of Rs.2,000/-, in default to undergo simple imprisonment for two months

2. The prosecution came to be launched against the Accused at the instance of the victim girl, who was studying VI Standard at the time of the alleged occurrence. According to the victim girl, on 20.08.2013, she along with her friend by name Revathi were riding their respective bicycle to their home at Melkavalur. When they were riding their respective bicycles at a place called K.P. Kuppam bus stand, the Accused waylaid them in his autorickshaw and asked the victim to stop riding the cycle. However, the victim ignored it and proceed in the bicycle along with her friend Revathi. However, the Accused followed them and when they were nearing a place called Gorimedu, he once again way laid them. When it was resisted by the friend of the Accused – Revathi, the Accused slapped her in her cheek on both sides. Thereafter, the friend of the Victim left the place to bring the elders in



their Village. However, the Accused, inspite of the resistance offered by the victim, taken her to a thorny bush. When the victim shouted for help, the Accused closed her mouth with the duppatta and also tied her hands. Thereafter, when the Accused attempted to remove her under pant, she kicked him on his chest. However, the Accused undressed the victim, had penetrative sex inspite of resistance of the victim girl. At this time, the friend of the victim Revathi went to her house and brought the grand father of the victim by narrating the occurrence. When the grandfather of the victim and other Villagers shouted as to whose autorickshaw is this and standing on the road, the Accused sensed some trouble and therefore, untied the knot in her hands and relieved the victim girl. However, the Accused threatened the victim not to disclose the incident to anyone, else he will kill her. Thereafter, the victim girl and the Accused emerged from the bush from where the grandfather accompanied his grand daughter to the house. When her grandfather asked as to what has happened, the victim did not disclose the incident to him. However, on reaching home, the victim girl disclosed it to her mother, who in turn waited for the father of the victim to come back. On 23.08.2013, when the father of the victim returned from Tiruvannamalai, the victim as well as his parents approached the District Superintendent of Police, who directed them to go to the All Women Police Station, Gudiyatham and to lodge a complaint.



Accordingly, the complaint was given on 23.08.2013 based on which the First Information Report, Ex.P9 was registered for the offences punishable under Sections 376, 506 (ii) and Sections 4 and 8 of Protection of Children from Sexual Offences Act. The copies of Ex.P9, First Information Report were sent to the Court as well as the higher police officials for information.

3. On receipt of the Copy of the First Information Report, Ex.P9, PW12, Inspector of Police, Gudiyatham All Women Police Station, proceeded to the scene of occurrence, prepared Ex.P4, Observation Mahazar in the presence of PW6-Selvam and one Singaram. She also drew rough sketch under Ex.P10. She arrested the Accused at K.V. Kuppam Bus stand and recorded his confession statement in the presence of PW10, Raja, Village Administrative Officer and his Assistant Mr. Murugan. She seized the Auto Rickshaw used for the commission of offence in the presence of Mari @ Masilamani and Chandirasekaran. On his arrest, the Accused has given a voluntary confession statement, the admissible portion of which is Ex.P11. During the course of examination, P.W-12 forwarded the victim for medical examination to the Duty Doctor in the Government Hospital, Gudiyatham. The Doctor at the casualty ward noted the injuries on the victim and issued Accident Register. Also, she forwarded the victim to the Gynaecologist in the



Government Hospital, who examined the victim and issued certificate regarding medical examination and she opined that the victim is subjected to sexual intercourse. Similarly, the Accused was subjected to potency test and therefore PW12 examined the Doctor who issued potency certificate. As per the potency certificate, the Accused cannot be considered as impotent. Also, the Inspector of Police, Gudiyatham had examined the parents of the victim and maternal grandfather of the victim and neighbours who are acquainted with the facts of the case. She also examined the Headmaster of the School where the victim girl was studying and obtained the xerox copy of the certificate maintained by the School. After completing the investigation, PW12 laid the final report against the Accused herein.

4. The learned Judicial Magistrate, Vellore taken the charge sheet on file, issued notice to the Accused and on his appearance furnished the copies of the documents relied on by the prosecution. Thereafter, the learned Judicial Magistrate committed the case records to the Court of the learned Principal Sessions Judge, Vellore and bind over the Accused to the said Court. The learned Principal Sessions Judge, Vellore forwarded the case to be tried by the learned Sessions Judge, Mahila Neethi Mandram (Fast Track Mahila Court), Vellore. After committal proceedings, when the Accused appeared before the



learned Sessions Judge, Fast Track Mahila Court, charges were framed. The Accused denied the charges and therefore trial commenced. During trial, on behalf of prosecution 12 witnesses were examined as P.W-1 to 12 and 12 documents were marked as Exs. P1 to P12. The auto rickshaw bearing TN 23 BC 7881 used by the Accused during the commission of offence was marked as Mo1. On behalf of the defence, Mr. Sampath, Inspector of Police was examined as D.W-1 and Mr. Dominic, Sub-Inspector of Police was examined as D.W-1. Two documents were produced as defence documents and they were marked as Ex.D-1 and D-2.

5. The learned Sessions Judge, on appreciation of the oral and documentary evidence, convicted and sentenced the Accused as mentioned above.

6. Assailing the Judgment dated 02.06.2016 passed in Sessions Case No. 21 of 2014, the Accused has filed the present appeal.

7. The learned Counsel for the Appellant submitted that the case was foisted against the Accused and he is innocent. The learned Counsel for the Appellant invited the attention of this Court to the Charges framed by the



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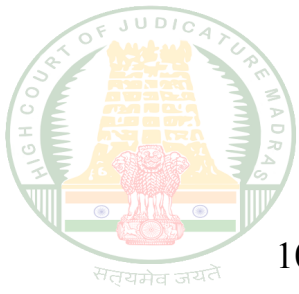
learned Sessions Judge, Fast Track Mahila Court, Vellore. It is the contention of the learned counsel for the Appellant that the incident is not true and it was a made believe story. There are two complaints preferred by the victim. First Complaint is against one Ganesan who is residing in the same village within the same street of the victim after four or five houses from the victim's house. The said Accused is not the present Appellant. The said Accused is a different person by name Ganesan, s/o. Ganapathy before the K.V. Kuppam Police Station. Subsequently, at the insistence of the villagers, to wreak vengeance on the Accused herein, they preferred the Complaint with All Women Police Station, Gudiyatham. During trial, the victim herself had spoken that the Complaint was lodged and drafted by an Advocate. Also, she had spoken that the Complaint was given to the Superintendent of Police who forwarded the same to the All Women Police Station.

8. The learned Counsel for the Appellant invited the attention of this Court to the evidence of the Prosecution Witnesses P.W-1 to P.W-12 particularly cross-examination of witnesses. The case narrated by the victim cannot at all be accepted as it was after school time, students in large number leave the School by cycle or walk between 4 and 5 p.m., daily. The K.V. Kuppam bus stand is adjacent to the occurrence site. The police station is also



in the vicinity of the occurrence spot. The area witness heavy traffic during the alleged time of occurrence. If the occurrence really happened it would have been witnessed by several persons. The case narrated by the victim is unbelievable as though the Accused waylaid the victim and her friend Revathi near the K.V. Kuppam bus station, a place which will be crowded at all times. The victim alleged that she was dragged to the bushes near Gorimedu between K.V. Kuppam Police Station and house of the victim which itself is found unacceptable.

9. The learned counsel for the Appellant submitted that the victim alleged that her friend-P.W-2 brought her grandfather and he shouted as to whose auto is this on the road. On hearing this, the Accused and the victim emerged from the bush. However, it is stated that the grandfather simply accompanied the victim girl without confronting the Accused as to what she was doing in the bush along with his granddaughter. The grandfather in his evidence as P.W-5 also stated that he saw that the under pant of his grand daughter was torn, however, he has not questioned anything about it either towards his grand daughter or against the Accused. This is quite unnatural. A close reading of the statement of grandfather itself would indicate that the case projected by the prosecution is not real and it is fabricated.



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10. Referring to the cross-examination of the victim girl, the learned counsel for the Appellant submitted that she admitted that at the relevant point of time, there were people on the road, including students, who are leaving their home. However, none of them have come to her rescue or even witnessed the occurrence. Further, the Doctor claims that the victim was subjected to sexual intercourse merely based on the swollen appearance of the female genital which cannot be considered as rape or presumed rape. In fact, the Doctor examined the victim girl four days after the alleged incident. The Doctor however says that there are no injuries on the back of the victim girl which would rule out the possibility of being raped.

11. It is the contention of the learned Counsel for the Appellant that on 20.08.2013, the allegation that the Accused pulled and dragged the victim to the bushes and committed rape is far from truth. In fact, on that day, the Sub Inspector of Police, K.V. Kuppam Police Station involved in vehicular check up at Gorimedu. During such check, he apprehended the Accused for driving the vehicle in an inebriated state for which he was fined and charged. In order to prove the same, the Accused examined D.W-1 and D.W-2 who are Police officials and based on their evidence, it was substantiated that on the alleged time and date, the Accused was apprehended by D.W-1 and D.W-2 for driving



the vehicle after consuming alcohol. While so, the incident projected by the prosecution against the Accused is not true. Only with vengeance to detain the Accused in prison for long time, the villagers of Melkavanur have designed to wreak havoc with the Appellant. The learned Sessions Judge failed to appreciate the facts admitted in cross-examination by the victim herself. The learned Sessions Judge lost sight of the above fact and erroneously convicted the Accused for the offence under Section 341 of IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012 which is perverse and is to be set aside.

12. In support of his contention, the learned Counsel for the Appellant relied on the following rulings:-

(i) ***Crl.A.No.424 of 2017*** in the case of ***Sivakumar @ Ramesh vs. State.***

the relevant portion reads as follows:-

“11. Further, the medical evidence shows that Hymen was not in tact when the victim was examined. Merely because the hymen was not in tact, we cannot presume penetrative sexual assault. If really P.W.2 was repeatedly subjected to sexual intercourse by four persons, taking advantage of her projected by the prosecution, there should have been mental illness/retardation and mental age, as projected some symptoms on the body of the victim or at least the doctor could have found out that she was subjected to sexual intercourse regularly. Whereas the medical evidence does not even suggest that vagina admits a finger and except the absence of hymen, the Medical Officer was not able to give any definite opinion about the repeated penetrative sexual assault.



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12. *It is the version of the prosecution that all four Accused had committed such heinous act more than twice or thrice. The above version is also not supported by the medical evidence. Of course, when the evidence of the victim is strong and inspires the confidence of the Court, the medical evidence assumes insignificance. But, as discussed, in the instant case, the question of placing reliance and credence upon the evidence of P.W.2 does not arise, particularly, when taking into consideration, the medical evidence about her mental age and her capacity and having regard to the same, this Court finds it difficult to place reliance on her version and the same is highly doubtful. Also, the conduct of the father and grandmother of P.W.2 and other witnesses, allegedly knowing the occurrence on 20.09.2016 itself and remaining silent all along and lodging the complaint on 23.09.2016, creates a serious doubt about the prosecution version. Except the official witnesses, all other witnesses are highly connected and related to each other. There exists enmity between the grandmother of P. W.2 and the family of the Appellant/Accused, as evidenced from the statements of D. Ws 1 and 2 daughter and father of the Appellant/Accused. Therefore, the possibility of implicating the Appellant/Accused by P.W.1 and other witnesses, cannot be ruled out.*

15. *Therefore, in view of the series of improbabilities, infirmities and discrepancies coupled with the factum of delay in lodging the FIR and also the abnormal conduct of the father and grandmother of P.W.2 and the unusual conduct of P.W. 1 and others in approaching the police belatedly, viz., after a week, even after coming to know of the alleged occurrence earlier, we are of the view that it is highly unsafe to convict the Appellant/Accused with the grave crime."*

(ii) **CRIMINAL APPEAL NO.1053 OF 2009** in the case of **Alamelu**

& Anr... Appellants Vs. State represented by Inspector of Police. the relevant portion reads as follows:-

"38. We will first take up the issue with regard to the age of the girl. The High Court has based its Conclusion on the transfer certificate, Ex P16 and the certificate issued by PW8 Dr. Gunasekaran, Radiologist, Ex.P4 and Ex.PS. Undoubtedly, the transfer certificate, Ex.P16 indicates that the girl's date of birth was 15th June, 1977. Therefore, even according to the aforesaid certificate, she would be above 16 years of age (16 years 1 month and 16 days) on the date of the alleged incident, ie, 31st July, 1993. The transfer certificate has been issued by a Government School and has been duly



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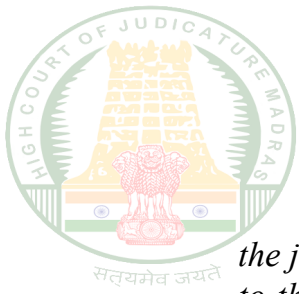
signed by the Headmaster; Therefore, it would be admissible in evidence under Section 35 of the Indian Evidence Act. However, the admissibility of such a document would be of not much evidentiary value to prove the age of the girl in the absence of the material on the basis of which the age was recorded, The date of birth mentioned in the transfer certificate would have no evidentiary value unless the person, who made the entry or who gave the date of birth is examined. We may notice here that PW1 was examined in the Court on 9th August, 1999. In his evidence, he made no reference to the transfer certificate (Ex.P16). He did not mention her age or date of birth. PW2 was also examined on 9th August, 1999. She had also made no reference either to her age or to the transfer certificate. It appears from the record that a petition was filed by the complainant under Section 311 Cr.P.C. seeking permission to produce the transfer certificate and to recall PW2. This petition was allowed. She was actually recalled and her examination was continued on 26th April, 2000. The transfer certificate was marked as Ex.P16 at that stage, i.e., 26th April, 2000. The judgment was delivered on 28th April, 2000. In her cross-examination, she had merely stated that she had signed on the transfer certificate, Ex. P16 issued by the School and accordingly her date of birth noticed as 15th June, 1977. She also stated that the certificate has been signed by the father as well as the Headmaster. But the Headmaster has not been examined. Therefore, in our opinion, there was no reliable evidence to vouchsafe for the truth of the facts stated in the transfer certificate.

39. Considering the manner in which the facts recorded in a document may be proved, this Court in the case of Birad Mal Singhvi Vs. Anand Purohiti, observed as follows:-

"The date of birth mentioned in the scholars' register has no evidentiary value unless the person who made the entry or who gave the date of birth is examined....."

42. We are of the opinion, in the facts of this case, the age of the girl could not have been fixed on the basis of the transfer certificate. There was no reliable evidence to vouchsafe the correctness of the date of birth as recorded in the transfer certificate. The expert evidence does not rule out the possibility of the girl being a major. In our opinion, the prosecution has failed to prove that the girl was a minor, at the relevant date.

"The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of



the judge,... The only rule of law is that this rule of prudence must be present to the mind of the judge or the jury as the case may be and be understood and appreciated by him or them. There is no rule of practice that there must, in every case, be corroboration before a conviction can be allowed to stand."

(iii) **AIR 1982 SC 1297** in the case of **Jaya Mala vs Home Secretary**.

The relevant portion reads as follows:-

" However, it is notorious and one can take judicial notice that the margin of error in age ascertained by radiological examination is two years on either side..... "

(iv) **(2007) 12 SCC 57** in the case of **RADHU Vs. STATE OF MADHYA PRADESH** the relevant portion reads as follows:-

" 4. Feeling aggrieved the two Accused filed an appeal before the High Court. During the pendency of the appeal Gyarsibai died. The High Court by judgment dated 12-9-2003 dismissed the appeal, affirming the conviction and sentence of the first Accused Radhu. In this appeal, challenging the said decision, the learned counsel for the Appellant urged the following contentions:

(i) The Accused were falsely implicated by Sumanbai at the instance of her father who was indebted to Radhu's father, Nathu, to avoid repayment of the debt.

(ii) The medical evidence showed that there was no injury on the private parts of Sumanbai and that the rupture of hymen was old. The doctor (PW 8) also stated that she could not express any opinion as to whether a rape had been committed or not.

(iii) The discrepancies in the evidence, absence of corroboration, the close relationship (the prosecutrix described Radhu as her maternal uncle, as Radhu's parents were kaka and baba of Sumanbai's mother) and the manner in which the incident is alleged to have taken place, clearly demonstrated that it was a false charge.

12. Dr. Vandana (PW 8) stated that on examination of Sumanbai, she found



that her menstrual cycle had not started and pubic hair had not developed, and that her hymen was ruptured but the rupture was old. She stated that there were no injuries on her private parts and she could not give any opinion as to whether any rape had been committed. These were also recorded in the examination report (Ext. P-8). She, however, referred to an abrasion on the left elbow and a small abrasion on the arm and a contusion on the right leg of Sumanbai. She further stated that she prepared two vaginal swabs for examination and handed it over along with the petticoat of Sumanbai to the police constable, for being sent for examination. But no evidence is placed about the results of the examination of the vaginal swabs and petticoat. Thus, the medical evidence does not corroborate the case of sexual intercourse or rape.”

(V) Criminal Appeal No. **264 of 2020** in the case of Santosh Prasad @

Santosh Kumar vs. The State of Bihar, the relevant portion reads as follows:-

“In the case of Krishna Kumar Malik v. State of Haryana (2011) 7 SCC 130, it is observed and held by this Court that no doubt, it is true that to hold an Accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality.”

13. It is the contention of the learned Counsel for the Appellant that merely the Medical report states that the female genital organ of the victim had reddish color, it does not mean she was subjected to sexual intercourse in light of the reported ruling in **(2006) 3 SCC 373** in the case of **Yerumalla latchaiah Vs. State of A.P.** Therefore, he seeks to set aside the Judgment of the learned Sessions Judge, Fast Track Mahila Court, Vellore.

14. On the other hand, the learned Additional Public Prosecutor



submitted that as per the Protection of Children from Sexual Offences Act, 2012, if the victim is a minor on the date of alleged occurrence, based on the sole testimony of the victim, the learned Sessions Judge shall convict the Accused. Also, as per Section 4 of Protection of Children from Sexual Offences Act, 2012, when the victim is a child who had not completed 18 years on the date of alleged occurrence ie., 20.08.2013, she should be treated as a victim who had suffered injuries. The belief in the criminal justice system is that the presumptions available to the Court that the injured victim has no reason to exclude the real attack instead foist a false case. It is for the Accused to let in evidence regarding the reason for the victim to foist a case against him. Therefore, the evidence of the victim is more weightage than the other Prosecution Witnesses. Under those circumstances, the evidence of the victim as P.W-1 is corroborated by the evidence of P.W-7-Dr.Arul, P.W-2 friend of the victim, who had accompanied the victim on the alleged date of occurrence and who had informed the same to maternal grandfather of the victim -P.W-5 to the scene of occurrence. The incident was reported by the victim P.W-1 to her mother and it was supported by the evidence of P.W-7 – Dr. Arularasi and medical certificate issued by her under Ex.A-5. The evidence of P.W-7 support the claim of the victim. The evidence of P.W-2, the person who had accompanied the victim from School to her house who had informed the



maternal grandfather of the victim occurrence corroborated the evidence of Prosecution. P.W-3 and P.W-4 are the parents of the victim. Their evidence is hearsay. Still, they had supported their daughter and they were cross-examined by the Accused but nothing was elicited in their cross-examination. Therefore, the argument of the learned Counsel for the Appellant is to be rejected and the Judgment of the learned Sessions Judge, Fast Track Mahila Court, Vellore is to be confirmed.

15. The learned Additional Public Prosecutor relied on the ruling reported in **(2019) 3 SCC (cri) 239** in the case of ***Dola alias Dolagobinda Pradhan and another Vs. State of Odisha*** the Hon'ble Supreme Court held as follows:-

“11. In view of these factors the victims and their relatives are not too keen to bring the culprit to books. And when in the face of these factors the crime is brought to light there is a built-in assurance that the charge is genuine rather than fabricated. On principle, the evidence of a victim of sexual assault stands on a par with evidence of an injured witness. Just as a witness who has sustained an injury (which is not shown or believed to be self-inflicted) is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of a sex offence is entitled to great weight, absence of corroboration notwithstanding. And while corroboration in the form of eyewitness account of an independent witness may often be forthcoming in physical assault cases, such evidence cannot be expected in sex offences, having regard to the very nature of the offence. It would therefore be adding insult to injury to insist on corroboration drawing inspiration from the rules devised by the courts in the western world (obeisance to which has perhaps become a habit presumably on account of the colonial hangover). We are therefore of the opinion that if the evidence of the victim does not suffer from any basic infirmity, and the



"probabilities factor does not render it unworthy of credence, as a general rule, there is no reason to insist on corroboration except from the medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming, subject to the following qualification Corroboration may be insisted upon when a woman having attained majority is found in a compromising position and there is a likelihood of her having levelled such an accusation on account of the instinct of self-preservation. Or when the "probabilities factor" is found to be out of tune."

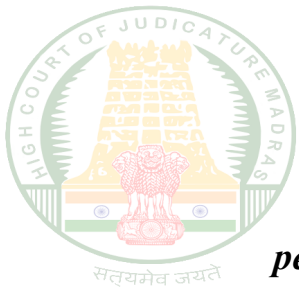
8. In *Sadashiv Ramrao Hadbe v. State of Maharashtra*³, this Court reiterated that the sole testimony of the prosecutrix could be relied upon if it inspires the confidence of the Court: (SCC p. 95. para 9)

"9. It is true that in a rape case the Accused could be convicted on the sole testimony of the prosecutrix, if it is capable of inspiring confidence in the mind of the court. If the version given by the prosecutrix is unsupported by any medical evidence or the whole surrounding circumstances are highly improbable and belie the case set up by the prosecutrix, the court shall not act on the solitary evidence of the prosecutrix. The courts shall be extremely careful in accepting the sole testimony of the prosecutrix when the entire case is improbable and unlikely to happen."

16. The learned Additional Public Prosecutor also submits that the prosecution has proved the guilt of the Accused beyond any reasonable doubt by examining the victim, her friend, which is supported by medical evidence. Therefore, the learned Additional Public Prosecutor sought to dismiss the Appeal.

Point for consideration:

Whether the Judgment of Conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Vellore in Spl.S.C.No.21 of 2014 dated 02.06.2016 is to be set aside as



perverse?

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17. Heard the learned Counsel for the Appellant and learned Additional Public Prosecutor. Perused charges framed by the learned Sessions Judge, Fast Track Mahila Court and the deposition of witnesses P.W-1 to P.W-12 and the evidence of retired Police Officials as D.W-1 and D.W-2, documents marked on the side of Prosecution as Ex.P-1 to Ex.P-12 and on the side of defence as Ex.D-1 and Ex.D-2.

18. On the date of incidence, as per the evidence of the victim, she was studying 9th standard and her friend/P.W-2 was studying 6th standard in the Government School, K.V.Kuppam. After School, they were returning home in their respective bicycle. When P.W-1 and P.W-2 were proceeding through Main Road, K.V.Kuppam bus station and adjacent to the Police Station towards their Village Melakavanur, the Accused who was driving empty Auto-rickshaw waylaid the victim and her friend on the main road. However, the victim resisted it and proceeded in her bicycle. The Accused however chased and waylaid them. For the second time, near Gorimedu where he dashed the cycle driven by the victim and pulled her by hand. When this was resisted by her friend P.W-2, the Accused slapped her in both her cheeks. Therefore, she left the place by saying that she will bring her Villagers. In the meantime, the



Accused dragged the victim girl to nearby push and unmindful of the protest of the victim girl, he performed penetrative sexual assault on the victim girl.

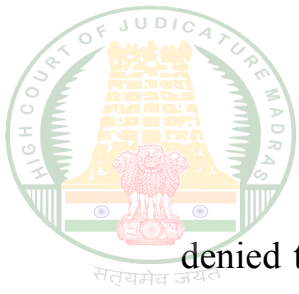
He forced the victim into nearby bush some time between 5 and 6 p.m., In the cross-examination of P.W-2-friend of the victim it was stated that both of them left home and returning home jointly in their bicycle. The School for 6th standard ends by 4.30 p.m., and for 9th standard it ends by 5 or 5.30 p.m., Therefore, she waited for the victim so as to jointly return home that was a regular practice. The distance between the house and School are 6 k.m. The School timing was between 9 a.m., and 4.30 p.m., The victim was cross-examined exhaustively stating that there are busy roads near the school, the Police Station and K.V. Kuppam Bus Station will be flooded by School student or general public in the evening and therefore, the statement of the victim is false. She admitted those facts but proceeded to state that the Accused waylaid her on the main road between Gudiyatham to Katpadi near K.V.Kuppam Bus Station for the first time, which she resisted. For the second time, the Accused waylaid her near Gorimedu and it was getting dark indicating the time was somewhere around 6.p.m.,

19. The Defence of the Accused was that the original Complaint was



given against one Ganesan who is residing 10 houses away from the house of the victim on 20.08.2013. Subsequently, on the instigation of neighbours, the name of the Accused was given. This was denied by P.W-1, P.W-3 to P.W-5.

20. For the delay in filing Complaint, the victim stated that her father was not at home on the date of alleged occurrence. Her mother wanted to give Complaint on return of her father from Tiruvannamalai. Accordingly, on 23.08.2013, the parents of the victim along with grandfather went to Superintendent of Police, Vellore and given a Complaint and it was forwarded to All Women Police Station, Gudiyatham. P.W-1 in her cross-examination admits that they gave a Complaint to the K.V.Kuppam Police Station but they had refused to register the Complaint. Therefore, they had gone to the Superintendent of Police, Vellore who had referred them to All Women Police Station, Gudiyatham. The suggestion of the learned Counsel for the Defence that in the earlier Complaint, the name of the Accused was given as Ganesan and subsequently, at the insistence of Villagers and neighbours, the name of the Accused was included instead of Ganesan was denied by the victim. The suggestion of the learned Counsel for the Accused that the victim was in love affair with Ganesan s/o. Ganapathy and the alleged incident had taken place among the said Ganesan and the victim was denied by her. She had stoutly



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denied the suggestion that the name of the Accused was included only on the insistence of neighbours and villages on the ground the Ganesan left the village after the incident. The Accused was confident of Ganesan. Therefore, the Accused knows whereabouts of Ganesan. The name of Accused was given in the place of Ganesan s/o. Ganapathy which was stoutly denied by her, P.W-3 to P.W-5. The eyewitness to the incident was P.W-2 and she had narrated the incident. She also mentioned in her deposition that P.W-5 grandfather of the victim was brought by her and at the time the empty Auto-rickshaw was parked on the road. Therefore, PW5 shouted whose Auto is this. On hearing the same, the Accused and the victim emerged near the Auto. On seeing victim, P.W-5 came to know that some thing had taken place as her dress was torn. Only on reaching home, the victim opened up to her mother narrating the entire incident. P.W-5 also denied the suggestion of learned Counsel for the Accused that the name of the Accused was implicated wantonly and no such incident had taken place. This suggestion was denied by P.W-5 also. The suggestion of learned Counsel for the Accused that P.W-5 immediately after the occurrence caught hold Ganesan and attacked him was also denied by PW5. The same suggestion was put to P.W-3 and P.W-4. They had denied such suggestion.



21. The victim was examined by the Doctor, P.W-7, who had noted down the injuries on the victim in Ex.P-5 and stated that she was subjected to sexual intercourse. As per evidence of Radiologist, the victim was aged 17 years on the date of alleged incident. The birth certificate of the victim was marked as Ex.P-2 wherein the date of birth of the victim is mentioned as 29.04.2000, thus on the date of alleged incident, her age was 13 years. On perusal of Ex.P-5, it is found that injuries were noted on the body of the victim indicating what was narrated by her in the Court to be true. In Ex.P-5, it was stated as follows:-

“....She was mouth gagged & sexually assaulted by one Mr.Pandian on 20/08/2013 at 4.30 p.m.,

1) Left shoulder 3-4 days old 0.01x0.01cm. Both breast normal. No external injuries and soot no external injuries. L/E pubic hair seen. No external injuries seen over labia majora, labia minora.

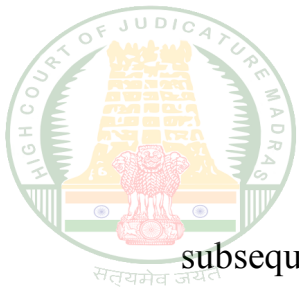
Bed abrasion seen over fourchik and right side of vaginal introitus. AVOS admits one finger. Hymen not intact.

Vaginal smear takes for seminal analysis”

22. The victim was 13 years on the date of incident. Her evidence was corroborated by the friend, P.W-2, who was accompanying her on the date and time of occurrence and she had brought the maternal grandfather/P.W-5 to the scene of occurrence. That much is available in the evidence of P.W-2 to P.W-5. Regarding two complaints, the Earlier Complaint with different name and subsequent complaint given in the name of Accused cannot be accepted by the



Court. The victim of crime does not have control over the investigation agency. Investigation Agency worked under pressure to protect the Accused based on the political influence. If the evidence of D.W-1 and D.W-2 as Defence witnesses is to be believed, the Accused was intoxicated and found arrest for driving under the influence of alcohol around 6 p.m., that indicates that after the occurrence or in the course of the occurrence, he must be under the influence of Alcohol. D.W-1 and D.W-2 are not serving as Officer, they retired at that point of time when the case came up for trial. Therefore, their evidence cannot be given much weightage. The Accused ought to have been under the influence of Alcohol at the time of alleged occurrence or consumed alcohol after the occurrence. That will not make the Prosecution's case weak. The place where the occurrence taken place is Gorimedu which is not far away from K.V.Kuppam and in between Melkavanur Village and the K.V.Kuppam School are approximately 6 k.m., away and in between, only the occurrence occurred. Therefore, the Accused can cover the distance of 3 or 4 km within a few minutes time. The defence witness examined by the Accused will not in any manner relieve from the charges proved against him. Also, in the course of trial, P.W-1 had admitted in cross-examination that the Accused was found in Police Station, when they went to give a Complaint. It is to be noted that on the date of occurrence, grandfather and mother went to the Police Station,



subsequently after return of their father, they went to the Superintendent of Police Office to lodge a Complaint. If the evidence of D.W-1 and D.W-2 is to be considered, the Police Officials of K.V. Kuppam Police Station refused to register the case. Therefore, they were forced to approach the Superintendent of Police, Vellore with the Complaint. Under those circumstances, the deposition of D.W-1 and D.W-2 has to be considered as the one to protect the Accused to wriggle out of the case.

23. In **(2006) 3 SCC 373** in the case of ***Yerumalla latchaiah Vs. State of A.P.*** 8 years old girl was alleged to have been raped by the Appellant. In the evidence before the trial Court, when the vaginal smear collected and examined in Microscope no sperm was detected. Therefore, the Hon'ble Supreme Court arrived at a conclusion that the evidence of the Prosecutrix is believed by medical evidence. Here, there are other witnesses available. Here, the age of the prosecutrix as per her birth certificate and as per her evidence was 13 whereas Radiologist opinion is more than 17 years which is found unacceptable. When there is conflict between medical evidence and the prosecutrix evidence, the evidence of the prosecutrix has to be believed. In this case, the evidence of P.W-7 clearly stated that there was symptom of sexual intercourse on the private part of the victim which are two or three days old



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24. As far as delay of three days in lodging the complaint, it was explained by the Prosecution witnesses P.W-1, P.W-3 to P.W-5. They wait for the father of the victim to return from Tiruvannamalai and then went to the Office of the Superintendent of Police. On the same day evening, on the date of occurrence, the mother and maternal grandfather had gone to K.V.Kuppam Police Station, but they did not register the case. Later, after the return of father of Prosecutrix, father of the victim/P.W-3, mother of the victim/P.W-4 and paternal grandfather/P.W-5 approached the Superintendent of Police, Vellore with the Complaint. The Superintendent of Police directed them to approach All Women Police Station. Therefore, based on the direction of Superintendent of Police only, the FIR was registered by All Women Police Station. The evidence in cross-examination of P.W-1, P.W-3 to P.W-5 indicates that immediately after this occurrence, the Accused was arrested for different offence of driving the vehicle under the influence of alcohol by D.W-1 and D.W-2, the Police Officials of K.V.Kuppam Police Station. The refusal of Police Officer to register the case against the Accused had to be explained by D.W-1 and D.W-2 alone. They had retired from service; otherwise they could have faced disciplinary action based on the Complaint given by the parents of



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the victim. It is found from Judicial experience that the helpless victim are normally made to run from pillar to post by the Investigation Officer due to various reasons. One of the commonly observed reason is that the Accused is clever and have legal influence through political parties and politicians to influence the Investigation officer. That is why, the family has to approach High Court invariably under Section 482 Cr.P.C., in all cases. In cases of this nature, there are reasons that the family of the victim alone supports victim and one cannot expect supporting witnesses or corroborating witnesses. That cannot be the sole ground to reject the evidence of the Prosecutrix. The evidence of Prosecutrix is similar to the injured witnesses in the case of assault in which the evidence of the injured has more weightage in the courts of law. In this case, P.W-2 was available along with the victim on the date of occurrence and immediately after the occurrence, she brought P.W-5 to the place of occurrence and his evidence is found cogent and there is nothing to suggest that it was a case fixed against the Accused by the relative of the family of the victim to wreak vengeance on the Accused. No such evidence is available in the cross-examination of victim/P.W-1, parents of the victim as P.W-3 and P.W-4 and grandfather as P.W-5 that there was prior enmity between two families so that the Accused was fixed in this case registered under the provisions of the Protection of Children from Sexual Offences Act, 2012.



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Rajendra Jawanmal Gandhi the facts of the reported ruling is that the Appellant before the Hon'ble Supreme Court is alleged to have raped a 8 year old girl. The learned Sessions Judge had convicted the Appellant for the offence under Section 376 of IPC and Section 57 of Bombay Children Act, 1948 for having committed rape on the eight years. He was sentenced to undergo seven years of Rigorous Imprisonment and pay a fine of Rs.5,000/-, in default, to undergo six months of Rigorous Imprisonment. For the offence under Section Section 57 of Bombay Children Act, 1948, he was sentenced to undergo one year Rigorous Imprisonment and pay a fine of Rs.500/-. The substantive sentences were ordered to run concurrently. The Maruti Car in which the offence of rape was committed was ordered to be forfeited and confiscated by the State. The Accused appealed to the Bombay High Court against his conviction and sentence. A Division Bench of the High Court by Judgment dated 04.10.1994 upheld the conviction of the Accused under Section 57 of the Bombay Children Act and upset the conviction under Section 376 of IPC and instead convicted him for an offence under Section 354 of IPC and sentenced him to suffer Rigorous Imprisonment which he had already undergone (which was 33 days in all) and to pay a fine of Rs.40,000/-. In



default of payment of fine, the Accused was sentenced to undergo Rigorous Imprisonment for three months. Out of fine amount Rs.25,000/- was ordered to be paid to the Complainant who was the father of the child. For the offence under Section 57 of Bombay Act, sentence was reduced to Imprisonment already undergone. The Maruti Car was ordered to be returned to the Accused and the order of forfeiture and confiscation was set aside. The matter did not end there. Nagrik Kirti Samiti, Kolhapur agitated about the acquittal of the Accused for an offence under Section 376 IPC. The Convenor of the Samiti, filed an Appeal to the Hon'ble Supreme Court against the acquittal of the Accused under Section 376 IPC. In the meantime, the Accused deposited the fine of Rs.40,000/- as ordered by the Hon'ble High Court and out of this amount a sum of Rs.25,000/- had been withdrawn by the father of the child. Therefore, based on the representation of the Convenor, Nagrik Kirti Samiti, Kolhapur, the State had preferred the Appeal before the Hon'ble Supreme Court. The State of Maharashtra filed Appeal against the conviction. The Accused filed Appeal against his very conviction and sentence under Section 354 IPC and Section 57 of the Bombay Children Act. The Hon'ble Supreme Court observed that the Accused ought to have been tried before the Court of Sessions, Kolhapur. But because of public outcry, the plea of the Accused that he may not get fair trial at Kolhapur was accepted and the case was transferred



to the file of Sessions Judge, Satara. The Hon'ble Supreme Court had on basis of evidence before the trial Court had arrived at a conclusion that the offence was not under Section 354/376 of IPC as per the evidence before the trial Court, Section 376 IPC r/w. 511 of IPC. It was found that in the course of the evidence that the victim was a 8 years old child on the date of alleged occurrence as per the evidence available before the trial Court. As per the case of the Prosecution, the Accused is alleged to have committed rape of 12 year old child taking her inside the Maruti Car and forcibly removed her dress and his dress. In the light of all the materials available before the trial Court, the Hon'ble Division Bench of Bombay High Court had altered conviction imposed on the Accused under Section 376 IPC to the offence under Section 354 IPC and Section 57 of Bombay Children Act, thereby he was imposed with fine of Rs.40,000/- and the period already undergone was set off. When the Appeal reached the Supreme Court, the Accused had also preferred the Appeal. The Accused had preferred the Appeal against the conviction imposed by the trial Court as well as Appellate Court. The State of Maharashtra filed Appeal against imposing less sentence for rape for 33 days and seeking enhancement of sentence of not less than 10 years. In the Appeal by the State, the Hon'ble Supreme Court had awarded sentence of five years of Rigorous Imprisonment and to fine already imposed was upheld at Rs.40,000/- to meet



the ends of justice. The conviction and sentence under Section 57 of Bombay Children Act was affirmed. The Appeal preferred by the Accused was dismissed. The Hon'ble Supreme Court also had given a clear and loud message that no person who had committed rape should be allowed to escape punishment.

26. The victim in this case was a student of 9th Standard and the occurrence would have created a stigma on the victim girl and her family. When she was deposing evidence before the trial Court, she had claimed that after incident, she had not attended School. Considering the child as a normal child, the incident of rape had caused trauma on the young girl, it has affected her physically and mentally, thereby she had withdrawn from society as observed in this case of *State of Maharashtra Vs. Rajendra Jawanmal Gandhi* reported in (1997) 8 SCC 386

27. When the Constitution of India guarantees equal rights to women, the Union of India as well as different States in the Country are day by day enacting new laws to protect the women and encourage women to study and stand on their own legs for which education is a tool. The Accused herein had caused mental trauma on to the victim and also stigma on the family of the



victim which resulted in the victim withdrawing from Society and dropping out of School. Therefore, the consequences are larger which shall not be ignored by the Court of law. If any leniency is shown to the Accused it will be against the message given by the Hon'ble Supreme Court that the rapist should not be given lesser sentence by considering the period already undergone

28. There are several loopholes in the investigation conducted in this case. However, in cases under Protection of Children from Sexual Offences Act, 2012, the statement of victim has to be considered as paramount. If the statement of the victim is considered, this Court finds that her deposition is natural and cogent. Therefore, the conviction awarded by the learned Sessions Judge, Fast Track Mahila Court convicting the Accused for the offence under Section 4 of Protection of Children from Sexual Offences Act, 2012 is well-reasoned Judgment that does not warrant any interference.

29. In the light of the above discussions, the point for consideration is answered against the Appellant and in favour of the Prosecution. The Judgment passed by the learned Sessions Judge, Fast Track Mahila Court, Vellore in Spl.S.C.No.21 of 2014, dated 02.06.2016 is found proper which does not warrant any interference by this Court.



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In the result, this ***Criminal Appeal is dismissed*** as having no merits. The Judgment passed by the learned Sessions Judge, Fast Track Mahila Court, Vellore in Spl.S.C. No. 21 of 2014 dated 02.06.2016 is confirmed. The Accused is directed to surrender within 15 days before the learned Sessions Judge, Fast Track Mahila Court to undergo the remaining period of sentence. The Superintendent of Police concerned is directed to secure the Accused and produce him before the Court of the learned Sessions Judge, Fast Track Mahila Court. The learned Sessions Judge, Fast Track Mahila Court shall also issue warrant in the light of the Judgment of conviction recorded by the learned Sessions Judge in Spl. S.C.No. 21 of 2014 and issue direction to the Inspector of Police, All Women Police Station to produce the Accused before the learned Sessions Judge, Fast Track Mahila Court failing which report the same before the Superintendent of Police along with copy to the High Court to proceed with action against the erring Police Officials.

02.06.2025

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Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order



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To

- 1.The Sessions Judge,
Fast Track Mahila Court, Vellore.
- 2.The Inspector of Police,
All Women Police Station,
Gudiyatham, Vellore.
- 3.The Superintendent of Police,
Vellore, Vellore District.
- 4.The Public Prosecutor,
High Court, Madras.
- 5.The Section Officer,
Criminal Section,
High Court Madras.



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SATHI KUMAR SUKUMARA KURUP, J

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Judgmnet made in
Criminal Appeal No.545 of 2016

02.06.2025