



Crl.A.No.382 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 13.03.2025

PRONOUNCED ON : 09.09.2025

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.382 of 2022

Parasuraman

... Appellant

Vs.

State represented by
The Inspector of Police,
Avadi All Women Police Station,
Avadi, Chennai.
Crime No.08/2018.

... Respondent

PRAYER: Criminal Appeal is filed under Section 374(2) of Code of Criminal Procedure, to set aside the order passed by the learned Magalir Neethi Mandram (Fast Track Mahila Court), Tiruvallur in Special S.C.No.61 of 2018 dated 17.03.2022.

For Appellant : Mr.K.T.S.Sivakumar for Mr.C.Sridhar
For Respondent : Mr.L.Baskaran,
Government Advocate (Crl. Side)

JUDGMENT

The appellant was convicted by judgment dated 17.03.2022 in Special S.C.No.61 of 2018 by the learned Sessions Judge, Magalir Neethi Mandram, (Fast Track Mahila Court), Tiruvallur and sentenced to undergo five years



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Rigorous Imprisonment and to pay a fine of Rs.2,000/- in default to undergo four months Simple Imprisonment for offence under Section 9(m) of Protection of Children from Sexual Offences Act, 2012 and further the appellant was convicted and sentenced to undergo ten years Rigorous Imprisonment and to pay a fine of Rs.3,000/- in default to undergo six months Simple Imprisonment for offence under Section 5(m) of Protection of Children from Sexual Offences Act, 2012. Challenging the same, the present criminal appeal is filed.

2.The case of the prosecution is that the defacto complainant/PW1, mother of the victim girl lodged a complaint to the respondent Police on 07.07.2018 complaining that her daughter/PW2 aged about ten years subjected to sexual assault by the house owner, the appellant herein. The defacto complainant's husband/PW3 is an Auto Driver and she, her son aged about 15 years and daughter aged about 10 years studying 7th std and 5th std respectively all living together as tenant under the appellant for two years. On the date of occurrence, the appellant aged about 99 years and the victim girl/PW2 aged about 10 years. On 04.07.2018 at 08.30 p.m., the victim girl/PW2 complained to her mother/PW1 that she was suffering from severe stomach pain for a



week. When PW1 enquired the victim girl/PW2, the victim girl informed that the house owner/appellant rubbed her private part with his hand and forced the victim girl to place his penis into her mouth. When she refused, the appellant beaten the victim girl on her head. This happened on two or three occasions prior to 04.07.2018. For stomach pain, the defacto complainant/PW1 gave fenugreek. PW1's living-in-partner/PW3 came home, immediately PW1 informed the incident. Not knowing what to do immediately, after two days PW1 lodged a complaint (Ex.P1) to the respondent Police namely All Women Police Station, Avadi though the jurisdiction Police is All Women Police Station, Poonamallee for the reason the appellant visiting in Poonamallee Police Station regularly in connection with property dispute within his family and he was familiar with the Poonamallee Police.

3.PW9, Investigating Officer received the complaint (Ex.P1) on 07.07.2018, registered FIR (Ex.P12) in Crime No.8 of 2018 for offence under Sections 3(a), 4, 7 & 8 of Protection of Children from Sexual Offences Act, 2012 at 17.00 hours, visited the scene of occurrence, prepared Observation Mahazar (Ex.P5), Rough Sketch (Ex.P6) in presence of PW5 & PW6, examined the victim girl/PW2, her mother/PW1, father/PW3, recorded their

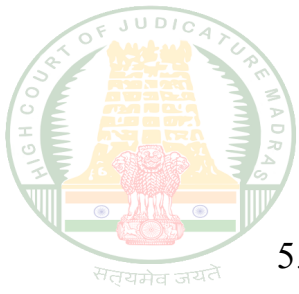


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statements, arrested the appellant on the same day at about 20.00 hours, recorded his confession statement (Ex.P8) recorded in presence of PW7.

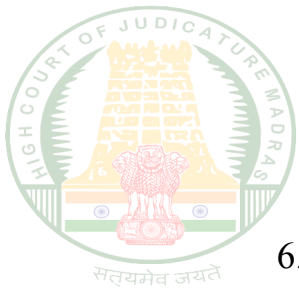
Thereafter, the victim girl/PW2 and her mother/PW1 produced before the Magistrate, their 164 Cr.P.C statements recorded (Exs.P2 & P3). In this case, another victim girl/PW4 also enquired and her 164 Cr.P.C statement (Ex.P4) recorded. Thereafter, the victim girl/PW2 produced before the Doctor/PW8 on 14.07.2018 and the Doctor/PW8 attached to Kilpauk Medical College and Hospital examined her and issued Accident Register (Ex.P10) and medical report (Ex.P11). The appellant produced before a Doctor who conducted potency test and gave potency report (Ex.P14). Based on the evidence and materials collected, PW9 altered the Sections to 366, 376(A), (B) & 506(i) IPC and Sections 5(l), 5(m), 5(n) r/w 6 and Sections 9(l), 9(m), 9(n) r/w 10 of Protection of Children from Sexual Offences Act, 2012 vide alteration report (Ex.P13) and filed charge sheet before the trial Court.

4.During trial, on the side of the prosecution, PW1 to PW9 examined and Exs.P1 to P16 marked. On the side of the defence, no witness examined and no document marked. On conclusion of trial, the trial Court convicted the appellant as stated above.



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5.The learned counsel for the appellant submitted that the appellant, a retired from Army man and retired School Headmaster having 14 residential portions for rent. The defacto complainant/PW1 was one of the tenant residing along with her minor daughter/PW2, her living-in-partner/PW3 and her son. The appellant earlier settled his properties among his five daughters and two sons equally. The appellant's second son Srinivasan was running tasmac bar in one portion of the property. Taking advantage of the old age and ailments of the appellant, his second son Srinivasan deceitfully took the appellant to the Registrar Office, cancelled the settlement and projected as though the entire property is settled in his favour, hence, there was dispute between the appellant, his five daughter, his first son and second son Srinivasan. Even two months prior to date of occurrence, there was a fight between them. The said Srinivasan to somehow keep the appellant silent and also to remove him from the property, he projected a false case by offering money to PW1 who yielded to the same and used her minor daughter/PW2 in foisting a false case against the appellant. The appellant on the date of occurrence was 99 years old and he was physically unfit proved by Ex.P14.

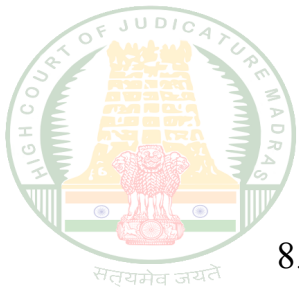


6.The learned counsel further submitted that the victim girl/PW2 stated that during the month of May summer vacation, she, her friend/PW4 and yet another minor girl all playing, at that time, the appellant said to have called the victim girl/PW2 to the car shed where he was sitting, thereafter, he placed his hands on her thighs and gave some eatables to them and further, the appellant did the same to PW4 and another minor girl who left the place. Thereafter, when the victim girl was alone, the appellant rubbed her private part using his hand and forced his private part into the victim's mouth. In this case, the other victim girl examined as PW4 gives total contradictory version with regard to sexual assault. PW4 confirms that the appellant, an elderly person, used to call them and asked them to read newspaper aloud. It is not in dispute that the appellant underwent eye and ear surgery and was short of vision and hearing. The victim girl/PW2 confirms that the appellant needs a support to walk and she also helped him during walk. She further stated that she went to her mother's place at Erode, later came back to Chennai. PW1/defacto complainant's complaint (Ex.P1) is that on 04.07.2018, the victim girl came from the school and was playing, at that time, the appellant committed sexual assault. It is further confirmed by PW1, PW2 & PW3 that on 04.07.2018, PW1 & PW2 were in Erode and they came only at late night.



Further, PW1 had some rental issue with the appellant's daughter and there was fight on 03.07.2018, thereafter, PW1 and PW2 had gone to Erode on 03.07.2018 is not seriously denied. Hence, the victim girl/PW2 subjected to penetrative sexual assault on 04.07.2018 is highly doubtful. PW1 stated that she had gone to pharmacy, bought some medicines for PW2 apart from native treatment. But no evidence in this regard produced.

7.He further submitted that the complaint (Ex.P1) is without any date. PW1 states that she informed the incident and someone had written the complaint. On the other hand, PW3 stated that they informed the incident and it is the Police personnel who had written down the complaint. This complaint (Ex.P1) received on 07.07.2018. On the other hand, PW9/Investigating Officer states that on the direction of the Deputy Commissioner of Police, the complaint (Ex.P1) received knowing well it is beyond the jurisdiction, but there is no such direction or order authorizing PW9 to conduct investigation outside her jurisdiction. Neither in the complaint (Ex.P1) nor in FIR (Ex.P12), there is any reference for entrusting jurisdiction and no other materials produced.



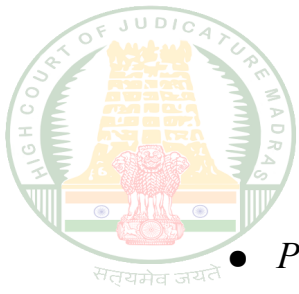
8.He further submitted that in this case, PW8 is the daughter-in-law of the appellant and wife of Srinivasan, with whom, the appellant, his five daughters and first son had property dispute. PW8 confirmed that she was with PW1 and PW3 while lodging the complaint (Ex.P1) and she is a witness for the arrest and confession. In this case, admittedly, the confession is inadmissible and there is no recovery. He further submitted that PW5 & PW6, the witnesses for Observation Mahazar (Ex.P5) and Rough Sketch (Ex.P6) confirmed that their signatures obtained, but they do not know what is written in Exs.P5 & P6. PW8 is the Doctor who issued the Accident Register (Ex.P10) and medical report (Ex.P11) confirming that there is no injury or any traces found on the private parts of the victim girl and the victim girl was accompanied by her mother/PW2 who narrated the entire happenings. Further, it is projected there is a video recording showing appellant's sexual act on the victim girl which is said to have been given to the respondent Police but for the reasons best known no such video produced.

9.It is further submitted that PW1 and PW3 admit they gave interview in TV channel along with an Advocate. The respondent Police not conducted proper investigation to find out the truthfulness of the case when it is admitted



that the appellant, his five daughters and his first son was having some property dispute with the appellant's second son Srinivasan. Added to it, the said Srinivasan neither cited nor examined as witness. PW1 admits that she took hand loan of Rs.12,000/- from the appellant and PW3 admits the promissory note executed, tenancy dispute happened a day before the occurrence. None of the local residents including the co-tenants neither cited nor examined as witness in this case. The respondent Police failed to consider the fact that the appellant, who was 99 years old, underwent eye and ear surgery and able to move with the support of walking stick and others help and Ex.P14 confirming that the appellant is unable to erect his penis. Thus, the attendant circumstances gains importance, which the trial Court failed to consider. The trial Court had gone by the victim girl's evidence and of her mother's evidence failing to look into the fact that the other minor girl/PW4 totally denied any such sexual assault by the appellant. The trial Court failed to consider that the victim girl gave a parrot version as tutored by her mother. In support of his submissions, the learned counsel for the appellant relied on the following decisions:

- *Arbind Singh v. State of Bihar reported in CDJ 1992 SC 568.*
- *Digamber Vaishnav & Another v. State of Chhattisgarh reported in CDJ 2019 SC 375.*

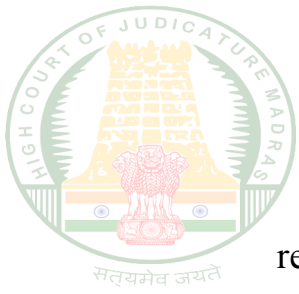


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- *Pradeep v. The State of Haryana reported in CDJ 2023 SC 640.*
- *Senthilkumar v. State, Rep. by The Inspector of Police, A.Pallipatty Police Station, Dharmapuri reported in CDJ 2022 MHC 1469.*
- *Begari Ravi Kumar v. The State of Telangana reported in CDJ 2025 TSHC 001.*
- *Chellappan v. State represented by the Inspector of Police, Gandarvakottai Police Station, Pudukkottai reported in CDJ 2016 MHC 7154.*
- *Harishankar v. State through the Inspector of Police, Anamalai Police Station, Coimbatore reported in CDJ 2021 MHC 1978.*
- *Sri Joubansen Tripura v. The State of Tripura reported in CDJ 2021 THC 050.*
- *Veerpal @ Titu v. State reported in CDJ 2024 DHC 126.*
- *Rajamohan v. State represented by The Inspector of Police, Thallakulam, Madurai reported in CDJ 2024 MHC 6922.*
- *Kisan v. State of Maharashtra in Criminal Appeal No.303 of 2022.*

To buttress the fact that the child witnesses are proven for tutelage and their evidence to be analyzed with care and caution, more so, when there are contradictions between the witnesses and medical records.

- *Just Rights for Children Alliance and another v. S.Harish and Others reported in 2024 SCC OnLine SC 2611* for the point that Sections 29 & 30 of Protection of Children from Sexual Offences Act, 2012 would be invoked when the Court believes the existence of the fact beyond

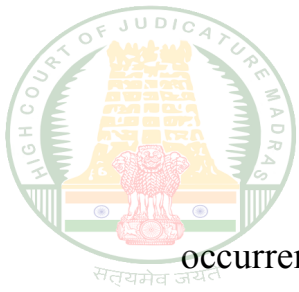


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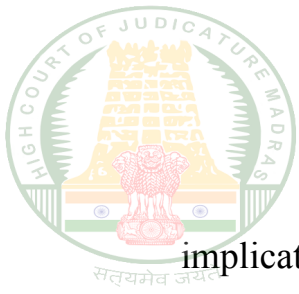
reasonable doubt and thereafter presumption would follow. In this case, the foundational fact not proved, hence, invoking Sections 29 & 30 of the Act and convicting the appellant, is not proper.

10.The learned Government Advocate (Crl. Side) appearing for the respondent Police opposed the appellant's submissions and submitted that in this case the victim girl was 10 years of age on the date of occurrence proved by the school certificate (Ex.P15). The victim girl's date of birth 18.05.2008 is not seriously disputed. Likewise, the victim girl along with her parents (PW1 and PW3) were tenant in the house of the appellant is also not denied. The appellant used to call the victim girl, her friend/PW4 and another girl when sitting in car shed asking them to read newspapers and used to give some biscuits. The appellant committed sexual assault and penetrative sexual assault on PW2 & PW4. PW2/victim girl in her 164 statement (Ex.P3) confirmed the sexual act of the appellant not one but on two occasions. The victim girl informed her mother/PW1 about the appellant's sexual assault on 04.07.2018 who informed to her husband/PW3. Not knowing what to do immediately, considering the dominant position and after recovery from shock on 07.07.2018 PW1 lodged a complaint (Ex.P1) to the respondent Police. PW9 received the complaint (Ex.P1), registered FIR (Ex.P12), visited scene of

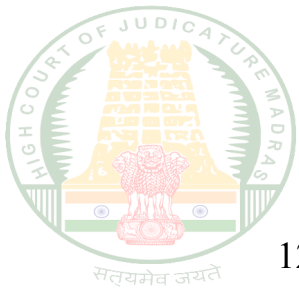


occurrence, prepared Observation Mahazar (Ex.P5), Rough Sketch (Ex.P6) in presence of witnesses PW5 & PW6, recorded the statement of PW1, her daughter/PW2, her husband/PW3 and PW4 another victim girl and others present in the scene of occurrence, arrested the appellant on the same day in presence of PW7. Thereafter, PW1, PW2 & PW4 produced before the Magistrate, their 164 Cr.P.C statements (Exs.P2 to P4) recorded. PW2 produced for medical examination and the Doctor PW8 examined the victim girl and gave report Exs.P10 & P11. The appellant produced for medical examination and potency report (Ex.P14) collected. The victim girl when examined as PW2 confirmed the penetrative sexual assault committed by the appellant which is in conformity to her earlier statement (Ex.P3). PW1 narrated the sequence of events and the victim girl complaining to her about the act of the appellant.

11.He further submitted that in this case, the appellant attempted to project his second son Srinivasan is the reason for his false implication and PW1 and PW2 gave false evidence is not supported with any materials. The appellant failed to examine his second son Srinivasan or his other son or any of his daughters to probablize his defence to prove motive and false



implication. The appellant sitting in a chair in the car shed called the minor girls to read newspapers aloud is also not in dispute. The appellant committed sexual assault and penetrative sexual assault on the victim girl when she was alone is confirmed by PW2. There are minor discrepancies with regard to date of travel to Erode by PW1 and victim girl and about exact date of commission of offence but that is not fatal to the prosecution case. The victim girl being a minor clearly stated that two days prior to 04.07.2018 the appellant committed penetrative sexual assault. The minor contradictions would prove the truthfulness of the witness and genuineness of the complaint (Ex.P1). PW9 stated that on the direction of the Deputy Commissioner of Police, Ambattur Region, she received the complaint (Ex.P1) on 07.07.2018 and registered an FIR (Ex.P12), is clearly admitted. PW9 as Inspector of Police is empowered to conduct the investigation. The appellant to prove the motive of PW9, he ought to have produced documents and examined witnesses but no steps taken. The trial Court rightly considering presumption under Sections 29 & 30 starring against the appellant but the appellant had not taken any steps to probablize his defence, convicted the appellant. Hence, he prays for dismissal.



12.This Court considered the rival submissions and perused the materials available on record.

13.The origination of the complaint (Ex.P1) itself becomes doubtful since the respondent Police is not the jurisdiction Police and PW9 is not authorized to investigate the above case. PW1, mother of the victim girl states that she was informed about the appellant's sexual act on the victim girl on 04.07.2018 when the victim girl complained stomach pain suffering for more than a week. To give relief from pain PW1 gave fenugreek. Since the pain not subsided, PW1 purchased some medicines from a pharmacy and later she informed her husband/PW3, three days after deliberation, the complaint (Ex.P1) lodged to the respondent Police. PW1 admits that the jurisdiction Police is All Women Police Station, Poonamallee and not All Women Police Station, Avadi. Since the appellant used to go to Poonamallee Police Station regularly for the property dispute, PW1 had same apprehension that there will not be proper investigation by Poonamallee Police, hence, she lodged a complaint (Ex.P1) to the respondent Police namely All Women Police Station, Avadi. The appellant used to visit Poonamallee Law & Order Police Station for the property dispute and not to All Women Police Station, Poonamallee.



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14.In this case, PW1 admits she was earlier married to one Arunkumar of Erode, through him and she had two children one boy and a girl/victim girl, and she is yet to get legally divorced. Despite the same, PW1 is living with PW3 as living-in-partner. This is her personal issue. PW1, her children and living-in-partner/PW3 were tenant under the appellant. There are 14 tenants under the appellant in the same building. There are six children in the residential complex. The appellant aged about 99 years as on the date of occurrence with fragile health who underwent eye and ear surgery and he was short of vision and hearing. The appellant used to come and sit in the car



shed, at that time, the children will be called by the appellant asking them to to read newspapers to know the happenings, and appellant used to give some biscuits to the children. The appellant, a retired Army man and a retired Headmaster with earnings and good savings constructed a house and shops. He has five daughters and two sons. The appellant settled all the properties to his daughters and sons equally. The second son Srinivasan running a TASMAR bar in one of the shops. During 2011, in a deceitful manner, the said Srinivasan executed document favouring all properties in his name which later questioned and there was dispute among the siblings of the appellant. PW7, wife of Srinivasan admits she was with the defacto complainant and her husband when the complaint (Ex.P1) was lodged. It is projected as though a video clipping of the appellant committing sexual assault on minor girls were going around in the social media and private TV channels. Though PW3 admits he handover pendrive containing video clippings to PW9, PW9 denies the same. PW1 admits that her husband/PW3 and an Advocate gave interview to TV channel about the incident. PW9 admits that the incident flashed and given wide coverage in dailies, social media and visual media. Thus, an hype was created about this incident. In such circumstances, in all fairness, the requirement is that the Investigating Officer/PW9 ought to have conducted



proper, free and fair investigation. But in this case, it is not so. PW1 admits that she had gone to Erode and came back home only at about 07.30 p.m on that day. The complaint (Ex.P1) proceeds as though on 04.07.2018 after the victim girl coming from school at evening hours, the appellant committed sexual assault and penetrative sexual assault. PW2 states that the appellant placed his hands on her thighs & PW4 and after PW4 left the place, the appellant placed his hands on the victim private parts, rubbed it and also placed his penis in her mouth. PW4, another victim girl denies any such sexual assault and she confirms that she went along with the victim girl/PW2 to read newspapers and the appellant gave some biscuits. PW1 confirms the car shed has a narrow passage permitting only one person walkway which is confirmed by PW5, Observation Mahazar witness. All the tenants of 14 residents necessarily to pass through this passage to go to their houses and it is not a secluded place.

15.The origination of the complaint is doubtful for the reason that PW1 states that the complaint (Ex.P1) dictated by her and it was written by someone. PW3 states that on his dictation complaint written by the Police. Neither in the complaint (Ex.P1) nor in the FIR (Ex.P12) there is any



reference about the scribe of the complaint or the complaint read over and admitted to be correct. Hence, the origination itself becomes doubtful compounded with the fact that the respondent Police is not the jurisdiction Police. The presence of the appellant's second son Srinivasan and his wife PW7 is admitted with whom the appellant had property disputed and animosity. There is no reason for PW7 and her husband Srinivasan to be present in the Police Station. PW7 confirms that she had gone along with PW1 and her husband/PW3 while lodging the complaint. PW9 not considered these aspects but shown arrest of the appellant on the same day at about 08.00 hours and recorded his confession. This confession is inadmissible and there is no recovery leading to the confession.

16.PW3, living-in-partner of PW1 admits that he was informed about the incident by PW1. PW1 admits that she took loan of Rs.12,000/- from the appellant and yet to pay back the amount. It was suggested to PW1 that on 03.07.2018 there was a fight with regard to return of money and PW1 had gone to her native along with the victim girl/PW2 on the same day and came back only on 04.07.2018, the same is not disputed. Hence, the alleged penetrative sexual assault said to have happened on 04.07.2018 at about 05.00



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17.The compounding factor of money dispute, property dispute with Srinivasan, presence of PW7 and her husband Srinivasan in the Police Station are not disputed. The evidence of PW8 Doctor confirms there is nothing to suggest even remotely about any sexual assault committed leaving alone penetrative sexual assault. Ex.P14 the sexual offence certificate of the appellant confirms the appellant's age was 99 years and never could erect his penis and it is in flaccid state. Hence, no such act of appellant committing penetrative sexual assault is possible. There have been improvements and contradictions in the statements of PW1 & PW2 at each stage and does not inspire confidence. The attendant circumstances and admitted fact would prove that there is clear motive and falsity in the complaint (Ex.P1) lodged against the appellant.

17.In this case, admittedly, how PW9 got jurisdiction and investigated the above case, there is no material produced. When the foundational facts becomes doubtful, it is for the prosecution to prove the case against the appellant and Sections 29 and 30 of Protection of Children from Sexual



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Offences Act, 2012 would not come into play.

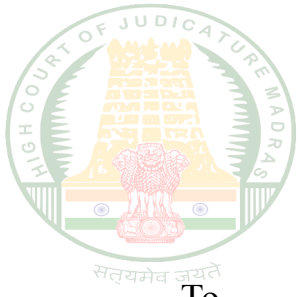
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18.In view of the above, this Court finds that the prosecution failed to prove the case beyond reasonable doubt against the appellant.

19.In the result, this Criminal Appeal stands allowed setting aside the judgment dated 17.03.2022 in Special S.C.No.61 of 2018 passed by the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Tiruvallur. The appellant is acquitted from all charges. Bail bond if any executed shall stand cancelled. Fine amount if any paid shall be refunded.

09.09.2025

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To
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- 1.The Sessions Judge,
Magalir Neethimandram (Fast Track Mahila Court),
Tiruvallur.
- 2.The Inspector of Police,
Avadi All Women Police Station,
Avadi, Chennai.
- 3.The Public Prosecutor,
Madras High Court.



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M.NIRMAL KUMAR, J.

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PRE-DELIVERY JUDGMENT IN
CrI.A.No.382 of 2022

09.09.2025