



Crl.A. No.177 of 2017

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2025

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Appeal No.177 of 2017

Bharanitharan

.. Appellant

Versus

The State Rep. By
The Inspector of Police,
Pallapatty Police Station,
Salem District.
Crime No.372 of 2014

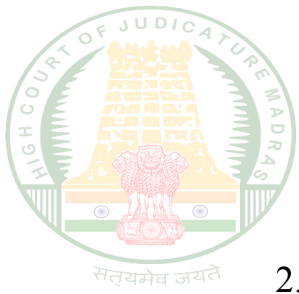
.. Respondent

Criminal Appeal filed under Section 374 (2) of Cr.P.C., praying to set aside the Order dated 03.03.2017 made in Spl.S.C. No. 8 of 2015 on the file of the learned Sessions Judge, Mahila Court, Salem.

For Appellant/Accused	:	Mr. B. Kumarasamy
For Respondent	:	Mrs. G.V. Kasthuri Additional Public Prosecutor

J U D G M E N T

This Criminal Appeal had been filed to set aside the Judgment dated 03.03.2017 passed by the learned Sessions Judge, Mahila Court, Salem in Spl. S.C. No. 8 of 2015.



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2. The brief facts, which are necessary for the disposal of this Criminal Appeal, are as follows:-

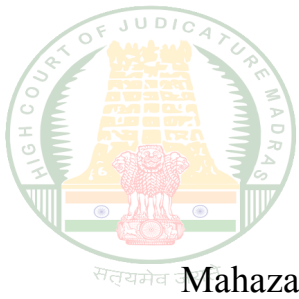
2.1. The *De-facto Complainant* was a student of St. Mary's High School, Arisipalayam, Salem. She is studying in IX Standard. She is residing along with her grandmother. Her father died when she was a child and her mother was working in Tiruppur. Her mother used to visit them once in a month. According to the *De-facto Complainant* during March 2014, in connection with her School project, she went to the Computer Centre run by the Accused. It was stated that the Accused used to converse with the *De-facto Complainant* very often. While so, on 02.04.2014 in the afternoon, when everyone left the browsing centre, the Accused locked the door, went near to the *De-facto Complainant* and pinched her hip. Even though it was resisted by the *De-facto Complainant*, the Accused promised her to marry. Under such pretext, the Accused removed the dress of the *De-facto Complainant* and indulged in sexual intercourse. In similar fashion, the Accused had sexual intercourse with the *De-facto Complainant* on two or three occasions in the browsing centre. Subsequently, on 16.07.2014, the Accused called the *De-facto Complainant* for an outing. Accordingly, on that day, under the pretext of attending the School, the *De-facto Complainant* went to Salem Bus Stand at



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9.30 am from where the Accused picked her up on his two wheeler. They went to a lakeside abutting Kalipatty to Vaikuntam Road, where they had sexual intercourse. Thereafter, the Accused left the *De-facto Complainant* back in Salem at about 4.30 p.m. It was stated that the mother of the *De-facto Complainant* came to know that she did not attend the School on that day. Therefore, the mother of the *De-facto Complainant* came to Salem from Tiruppur and questioned her. When questioned, the *De-facto Complainant* informed her that the Accused promised to marry her and under such pretext he had sexual intercourse. Therefore, the complaint was given by the *De-facto Complainant* based on which the case in Crime No. 372 of 2014 came to be registered for the offences under Sections 363 of Indian Penal Code and Sections 3 and 4 of The Protection of Children from Sexual Offences Act, 2012. Ex.P-15 is the copy of the First Information Report which was sent by P.W-12, Sub-Inspector of Police to the concerned Court as also the higher Police Officials, including P.W-13, Inspector of Police.

2.2. On receipt of a copy of Ex.P-15, P.W-13 took up investigation and proceeded to R.S. Browsing Centre at 17.00 hours where he recorded the statement of Anand-P.W-4 and Rajammal. He also prepared an Observation



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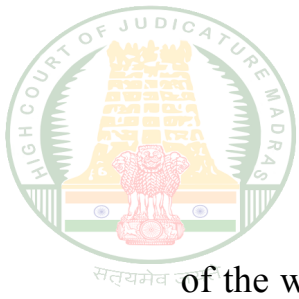
Mahazar under Ex.P-16 and Rough sketch under Ex.P-17. Subsequently, P.W-13, accompanied by Mrs.Santhi, Inspector of Police, All Women Police Station, Suramangalam enquired the *De-facto Complainant*, Valli-P.W-2, Absal Khan-P.W-3, Umarkabar, Muniyasamy, Anand-P.W-4 and Rajammal and recorded their statements. On 20.07.2014, P.W-13 arrested the Accused and recorded his voluntary statement. Thereafter, the Accused identified the two wheeler – Bajaj Pulsar black colour bearing Registration No. TN-30-BA-1953 which was used by him for commission of offence and it was recovered in the presence of the witnesses through seizure mahazar. On the same day, the Accused was sent to remand. On the next day viz., 21.07.2014, P.W-13 has given a requisition letter, Ex.P-21 to the Government Mohan Kuramamangalam Hospital for examining the victim girl. On the basis of the investigation conducted by P.W-13, the offence for which the First Information Report was altered into one under Section 363 of IPC, Section 3 and 4 of Protection of Children from Sexual Offences Act, 2012 and Section 376 (i) (ii) (n) of Indian Penal Code. Ex.P-22 is the alteration report. Similarly, P.W-13 had given a requisition letter under Ex.P-23 to carry out potency test on the Accused. Accordingly, potency test was conducted. P.W-13 also given a requisition letter under Ex.P-25, addressed to the Chief Judicial Magistrate for



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recording the statement of the victim under Section 164 of the Code of Criminal Procedure. Based on the said letter, the Chief Judicial Magistrate had nominated the Judicial Magistrate No.IV, Salem to record the statement of the victim girl. The statement so recorded was marked as Ex.P-17. During the course of investigation, P.W-13 was transferred and therefore, he had handed over the case records to his successor, P.W-14. P.W-14 took up the investigation on 08.08.2024 and went to the place of occurrence and examined the witness in this case. He also met the Head Master of St. Mary's High School where the victim studied and recorded his statement. He also collected the copies of School records such as Transfer Certificate etc., He, thereafter, recorded the statement of Dr.Sangeetha, who had medically examined the *De-facto Complainant*. After concluding his investigation, P.W-14, the Investigation Officer, had filed his final report on 08.12.2014 against the Accused for the offences punishable under Sections 363 and 366 and Section 6 read with Section 5 (I) of Protection of Children from Sexual Offences Act, 2012.

2.3. When the Accused appeared before the learned Sessions Judge, Mahila Court, Salem, the copies of the prosecution documents and statement



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of the witnesses have been furnished to him under Section 207 of the Code of Criminal Procedure. Thereafter, arguments of Counsel for both sides were heard and charges were framed against the Accused on 07.09.2015. Since the Accused denied the charges and claimed to be tried, trial was ordered. During trial, the Prosecution had examined 14 witnesses as P.W-1 to P.W-14 and marked 29 documents under Ex.P-1 to Ex.P-29. The two wheeler used by the Accused for commission of the offence was marked as M.O-1. On behalf of the defence, neither any witness was examined nor any document marked.

2.4. Among the Prosecution witnesses P.W-1 is the victim. P.W-2 is the maternal grandmother of the victim. P.W-3 is the owner of the building in which the Accused was alleged to have been running a Browsing centre under the name of Sara Browsing center. P.W-4 is the owner of a Provision Store near the browsing center. P.W-5 is an attesting witness to the confession statement of the Accused during arrest. P.W-6 is the woman Head Constable who accompanied the victim to subject her to medical examination. P.W-7 is the Special Sub Inspector of Police, Pallapatty Police Station who accompanied the Accused to subject him to medical examination and his age. P.W-8 is the Headmistress of the School where the victim studied during the



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relevant period. P.W-9 is the Scientific Officer in the Forensic Lab, Salem who conducted the forensic examination of the vaginal swab of victim and sent a report to the Court under Ex.P-7. P.W-10 is the Assistant Professor, Government Mohan Kumaramangalam Medical College Hospital, Salem who examined the Accused and issued potency certificate under Ex.P-9. P.W-11- Assistant Professor of Forensic Examination/Women Doctor, Government Mohan Kumaramangalam Medical College Hospital, Salem who subjected the victim/P.W-1 to the medical examination and issued certificate of medical examination for sexual offences under Ex.P-12 and final opinion under Ex.P-13 and age certificate based on the Radiological examination for victim. As per the age certificate of victim issued by P.W-11, the victim was aged above 16 and below 18. P.W-12 is the Sub Inspector of Police who received the Complaint from P.W-1 and registered the FIR under Ex.P-15. P.W-13 is the Inspector of Police, Fairlands Police Station, is the Investigation Officer and P.W-14 is the successor of P.W-13.

2.5. After hearing the argument of the Prosecution and the learned Counsel for defence, the learned Sessions Judge, Fast Track Mahila Court by Judgment dated 03.03.2017 in Spl.S.C.No.8 of 2015 convicted the Accused for

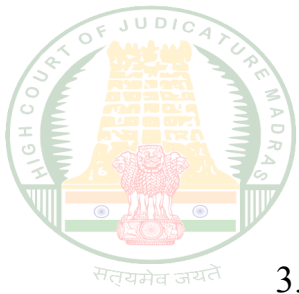


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the offence under Section 363 of IPC and sentenced him to undergo seven years of Rigorous Imprisonment and to pay a fine of Rs.2,000/-, in default, to undergo six months of Simple Imprisonment. For the offence under Section 366 of IPC, the Accused was sentenced to undergo 10 years of Rigorous Imprisonment and to pay a fine of Rs.2,000/-, in default, to undergo six months of Simple Imprisonment. For the offence under Section 6 r/w. 5 (i) of Protection of Children from Sexual Offences Act, 2012, he was sentenced to undergo 10 years of Rigorous Imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo six months of Simple Imprisonment. Out of total fine of Rs.20,000/-, Rs.10,000/- was ordered as compensation under Section 357(1) of Cr.P.C. All the sentences were ordered to run concurrently and the period of sentence already undergone was ordered to be set off under Section 428 of the Code.

2.6. Aggrieved by the Judgment of conviction and sentence dated 03.03.2017 made in Special Sessions Case No. 8 of 2015 by the learned Sessions Judge, Mahila Court, Salem, this Appeal had been preferred by the Accused.



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3. The learned Counsel for the Appellant/Accused/Accused submitted that a false case had been foisted against the Accused and he was fixed based on the Complaint of P.W-1. P.W-1, victim had given the complaint, based on the insistence of her mother. According to the learned Counsel, the mother and paternal aunt of the victim girl are Members of Democratic Youth Federation of India and they have wielded their influence to register the case against the Accused. P.W-5 is also Office bearer of Democratic Youth Federation of India who stood as witness for arrest and confession of the Accused.

4. According to the learned Counsel for the Appellant/Accused, it was a love affair between the Accused and the victim. It was a case of elopement by the victim with the Accused on the insistence of the victim. However, the case was foisted as though the victim is a child under Protection of Children from Sexual Offences Act, 2012. The Prosecution documents have been procured to project as though the victim was a child. P.W-8, Headmistress was examined by the Prosecution, but she had not produced any document from School. She had issued only “*Bona fide Certificate*” under Ex.P-6, based on which, the entire case had been neatly stitched against the

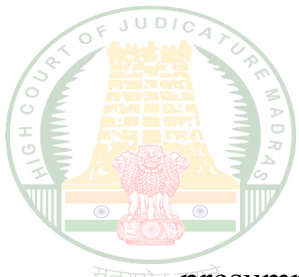


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Accused. As per the Radiology report, the victim is aged between 16 and 18.

It is a consensual relationship between the Accused and the victim which was not considered by the learned Sessions Judge while recording a conviction against the Accused.

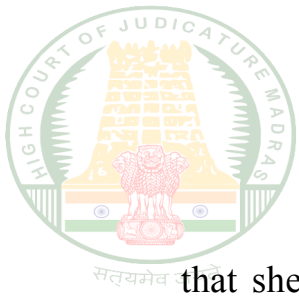
5. The learned Counsel for the Appellant/Accused submitted that P.W-11/Doctor who had subjected the victim/P.W-1 to medical examination, admitted in her cross-examination that children of the age of the victim, who are active in sports, will get their hymen ruptured and it is a natural phenomenon. However, she had wantonly denied cross-examination by partly admitting that the hymen will be torn but adding that it is not one such case. There are materials in the Medico-Legal Jurisprudence that the girl of the age of the victim who is active in sports will suffer hymen torn and such a rupture cannot be presumed only when the girls are subjected to sexual intercourse. P.W-1/victim admitted that she was a hockey player in her School representing the State Level Team. She had admitted in cross-examination that she had been taking strenuous practice and physical exercise for the game. This part of evidence was omitted to be considered by the learned Sessions Judge and she had mechanically convicted the Accused on the basis of Section 29 of Protection of Children from Sexual Offences Act, 2012 by drawing



presumption against him.

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6. The learned Counsel for the Appellant/Accused further submitted that the case was foisted against the Appellant/Accused by the mother of the victim, however, she was not at all examined as a witness before the trial Court. There is no explanation forthcoming from the Prosecution as to why she was not examined before the trial Court. P.W-2 is the paternal grandmother of the victim. The mother of the victim was instrumental in registering the FIR and it is she who has forced the victim to give a complaint. Even the victim, in her deposition, had stated that her mother unearthed the relationship between her and Accused. Even the victim had stated in her deposition that she, on her own, accompanied the Accused. However, the complaint, based on which the First Information Report was registered, was given with a different version at the instance of the mother and aunt of the victim. According to the learned Counsel for the Appellant/Accused, P.W-1/victim proposed love to the Accused and when he refused, she had even committed self-inflicted injuries in her hands. Thus, only at the instance of the *De-facto Complainant*, the Accused developed a relationship with her, which was objected to by the mother of the victim. P.W-1 in her evidence also stated



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that she was slapped by her mother for coming late on a particular day and based on her insistence only, the Complaint under Ex.P-1 was lodged by her/P.W-1. Therefore, the Prosecution ought to have examined the mother of P.W-1 and it is fatal to the case. The learned Sessions Judge, Mahila Court, Salem, failed to appreciate the circumstances under which Ex.P-1 was lodged and ought to have drawn an adverse inference against the Prosecution case for not examining the mother of the victim. Thus, a case of consensual sex was converted into one of penetrative sexual assault falling within the provisions of the Protection of Children from Sexual Offences Act, 2012 on the insistence of Office bearers of Democratic Youth Federation of India, which is legally not sustainable.

7. The learned Counsel for the Appellant/Accused proceeded to contend that P.W-5 is an active member of Democratic Youth Federation of India, Salem and he is a familiar personality in the locality. His evidence is unbelievable as he is a chance witness. In his cross-examination, he had stated that he heard from those residing in the vicinity about the sexual assault made by the Accused. He had also stated that on 20.07.2014, when he went near Gokulam Hospital for purchasing spare parts, the Pallapatti Police officials



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asked him and one Murugan to sign the statement recorded by him. Therefore, his statement will have no evidentiary value. He admitted in cross-examination that he knew the family of the victim and Accused. He rejected the suggestion of the learned Counsel for the defence that there is animosity between him and the Accused regarding fund raising by P.W-5. P.W-5 is a Ward Secretary of Democratic Youth Federation of India. According to the learned Counsel, when P.W-5 asked the Accused to donate funds, he refused and therefore, he was cornered by P.W-5 to wreck vengeance. The case is a foisted based on discussion among the Democratic Youth Federation of India activists of Salem City. Even the victim in her evidence had stated that her paternal aunt is an office bearer in Democratic Youth Federation of India, Salem and they had accompanied P.W-1 to ensure that a case is registered against the Accused.

8. The learned Counsel for the Appellant/Accused also submitted that the Inspector of Police/P.W-13 in his evidence denied the suggestions that the case was foisted on the basis of pressure exerted by Democratic Youth Federation of India, Salem. It is through P.W-13 the photostat copy of the birth certificate of the victim was marked, which is inadmissible in evidence. Had it been true, he ought to have produced the original birth certificate of the



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victim but only a photostat copy was marked. Therefore, the learned Counsel for the defence, during trial, objected to marking Ex.P-24. Further, the owner of the building/P.W-3 had not supported the case of the Prosecution. Therefore, he was treated as hostile.

9. It is further submitted by the learned Counsel for the Appellant/Accused that P.W-8 is the Headmistress of the School where P.W-1 studied. P.W-8 did not furnish the original School Certificate or copy of the register maintained by the School. Therefore, Ex.P-6 issued by P.W-8 had no evidentiary value. The Prosecution had not produced original birth certificate in this case for reasons best known to the Investigation Officer. Above all, the alleged occurrence is on 02.04.2014 whereas the Complaint was given on 20.07.2014. However, the Prosecution did not explain the delay in preferring the Complaint. Therefore, it is submitted that the Complaint was given after much discussion and deliberation among the Office bearers of Democratic Youth Federation of India, Salem with a clever drafting to attract the Protection of Children from Sexual Offences Act, 2012, to wreck vengeance on the Accused who refused to provide funds to Democratic Youth Federation of India. It is also an admitted fact that the paternal aunt of the prosecutrix is



an active member of Democratic Youth Federation of India.

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10. The learned Counsel for the Appellant/Accused further stated that the suggestion put to the Investigation Officer that the two wheeler of the Accused was seized from the house of the Accused and not while the Accused was proceeding on his motorcycle near the Gokulam Hospital was denied by P.W-13. The suggestion that all the records were prepared in the Pallapatty Police Station by the subordinates of P.W-13 was also denied by him. It is to be noted that P.W-13 in his cross-examination had stated that the victim had in her statement mentioned about the sexual intercourse taken place near Erikarai @ Kalipatti Vaigundam Road, but no rough sketch had been prepared about the geographical location of the said place and was admitted by him.

11. The learned Counsel for the Appellant/Accused invited the attention of this Court to the subsequent improvements of the Prosecutrix in her examination-in-chief by introducing new facts which she had not mentioned in her Section 164 Cr.P.C. statement before the Investigation Officer. Those statements had been admitted by P.W-13 in his cross-examination. The evidence of the prosecutrix is not a sterling quality to

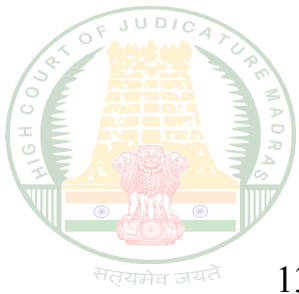


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invoke Section 29 of the Protection of Children from Sexual Offences Act, 2012. Only if the Court arrives at a conclusion that the prosecutrix evidence inspires confidence, the Court can convict the Accused. The evidence of prosecutrix and her maternal grandmother are not of sterling quality. A birth certificate had been procured by the Investigation Officer as a photostat copy and it was marked whereas the original birth certificate had not been produced. The School Headmistress had not produced the register maintained in the School to furnish the correct date of birth of the prosecutrix. Therefore, the Judgment of conviction recorded by the learned Sessions Judge, Mahila Court is perverse and is to be set aside.

12. In support of his contention, the learned Counsel for the Appellant/Accused relied on the unreported ruling in ***Crl.A.No.1053 of 2009*** in the case of ***Alamelu and another Vs. State represented by the Inspector of Police*** which is based on the ruling of the Hon'ble Supreme Court in the case of ***Birad Mal Singhvi Vs. Anand Purohit [1988 AIR 1796]***, wherein it was observed as follows:-

“The date of birth mentioned in the scholars' register has not evidentiary value unless the person who made the entry or who gave the date of birth is examined.....”



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13. The learned Counsel for the Appellant/Accused also submitted that a person who had given or furnished the date of birth of the child during the admission of the child in the School is competent to depose in this case. If that person is not examined, the date of birth mentioned by the Prosecution has to be treated as one without any supportive evidence. The parents who provided the date of birth at the time of admission ought to have been examined in this case. As mentioned above, the mother of the victim was not at all examined for the reasons best known to the Prosecution. Here, the mother of the victim is alive. As per the evidence of the victim, her father died when she was a child and she is staying with her grandmother. While so, the mother of the victim is a competent person to depose about the age of the victim. She could have provided the date of birth of the victim when she was admitted in School. As per the evidence of the Headmistress/P.W-8, the date of birth of the victim, as per the register, is 1999. In her cross-examination, she had stated that the date of birth entered in the School register is based on the date of birth provided in the transfer certificate from the earlier School where the student studied upto 5th standard. Thus, in the absence of furnishing the complete School records maintained by the Headmistress/P.W-8, the determination of age of the victim is not proper. Therefore, based on the

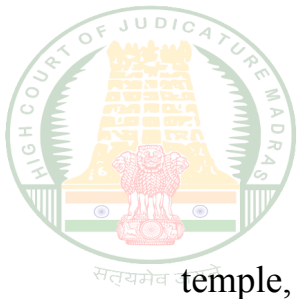


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ruling reported in ***Birad Mal Singhvi Vs. Anand Purohit [1988 AIR 1796]***, the Judgment dated 03.03.2017 of the learned Sessions Judge, Salem in Spl.S.C.No.8 of 2015 is liable to be set aside.

14. Opposing the submissions made by the learned Counsel for the Appellant/Accused, the learned Additional Public Prosecutor submitted that the evidence of P.W-1 and P.W-2 paternal grandmother is of a sterling quality. The victim had clearly narrated the facts that when she was studying 9th standard, she had gone to the nearby browsing center, which is nearer to her place of residence, to complete her project work. She also deposed that after one or two acquaintances, the Accused made advances as though he is in love with her. Even though she refused, he teased her when going to School and on returning to School and stalked her. Subsequently, he convinced that he will marry her. On a particular day, when she had gone for project work after sending away everyone from the browsing centre, under the pretext of lunch and that he is going to close down the browsing center, he forcibly undressed the victim girl and had sexual intercourse with her. Subsequently, he had asked the victim to come to the Bus Stand at Pallapatty and from there accompanied her in his motorcycle to a temple. After worshiping in the



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temple, enroute, he had stopped the vehicle near a lake, where, near a bush, he had sexual intercourse with the prosecutrix. On that day, the victim did not go to School and the teachers of the School contacted the mother of the prosecutrix who is working in Tiruppur. Therefore, when the victim reached home late, she was questioned by her grandmother and also by her mother. Subsequently, the mother of the victim came from Tiruppur and questioned her. P.W-1 also in her deposition clearly stated that when she returned home from School hours on a regular School time, she was surprised to find her mother at home in Salem. When her mother questioned as to why she came late two days back, she gave evasive reply, which was not accepted by the mother. When the victim was slapped by her mother, she had spilled the beans. The mother of the *De-facto Complainant* immediately asked the victim to give a complaint to the Police. According to the learned Additional Public Prosecutor, by the time when the case was taken up for trial, the mother of the victim girl was employed in Dubai and she could not travel all the way from her place of employment to Salem, India. She was working as a housemaid in Dubai to support the victim girl for her bright future. The victim was an active hockey player. It is in evidence that her sports dress was removed by the Accused at the browsing center.



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15. The learned Additional Public Prosecutor also submitted that the Headmistress of the School had furnished the School records maintained by her. The Headmistress of the Government Aided School is an official of the Government. Her statement has evidentiary value. She is leading evidence based on records. As per Section 114 of Indian Evidence Act, the Government Official in due course of his/her official work is presumed that they are executing their official work. There is no intention on the part of the Headmistress to give a false date of birth certificate while deposing evidence. She is aware of the risk involved in giving false evidence before the Court. If the evidence of P.W-8 is false, the Accused should have summoned the documents from the School where the prosecutrix studied at the relevant point of time. The medical evidence of P.W-11 under Ex.P-14 disclose the age of the victim given as 16 to 18. It is well settled that the probable age disclosed by the medical experts can be more or less. If that is taken into consideration, the radiological report differs from individual to individual based on the food habits, heredity of individual etc., Therefore, +/-2 is added to the range 16 to 18. Here, there is clear evidence by P.W-8 that the date of birth as recorded in the School is 16.03.1999. The prosecutrix was admitted in 6th standard in the



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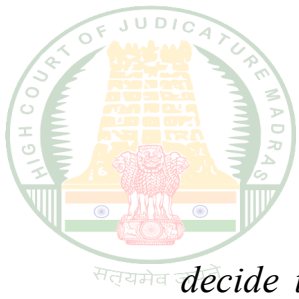
year 2011 in St.Marry's School and she was studying IX standard during the year 2014. In her cross-examination, P.W-8 had clearly stated that the School records are maintained based on the caste certificate and date of birth certificate furnished by the parents of the children. Therefore, the evidence of P.W-8 has evidentiary value and it is admissible in evidence and therefore, the ruling of Hon'ble Supreme Court in the case of ***Birad Mal Singhvi Vs. Anand Purohit [1988 AIR 1796]*** cannot be made applicable to the facts of the present case. Further, the Inspector of Police had furnished the date of birth certificate, Ex.P-24, attested photostat and it also corroborates the evidence of P.W-8. If that was disputed by the Accused, the Accused should have summoned the officials of the Salem Municipal Corporation from where birth certificate had been issued under Ex.P-24. He had not discharged the reverse burden to dispute the presumption under Section 29 of the Protection of Children from Sexual Offences Act, 2012. Therefore, the victim is a child attracting the provisions of the Protection of Children from Sexual Offences Act, 2012. The Judgment of the Trial Court is found acceptable and well reasoned Judgment. The learned Judge had discussed those circumstances in Paragraph No.28 of the Judgment and rejected the claim of the defence Counsel that the medical report furnished by P.W-11 and P.W-9 against the



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Accused does not contain injury on the genital of the Accused and victim.

16. The learned Additional Public Prosecutor also pointed out the cross-examination of P.W-11, wherein she had clearly denied the suggestion that the injury or tear caused on the hymen of a girl, similar to the age of the victim, who is active in sports, will not be as in the case of the victim and this is a clear case of sexual assault. If what had been stated by the learned Counsel for the Accused had been true that the girls of the age of the victim who are active in sports suffer hymen tear based on the medico-legal cases, they should have furnished those records or books regarding Medico-Legal cases but it was not done. A theoretical question was put to P.W-11 and she refused and denied it based on her experience in the field. The arguments of the learned Counsel for the Accused before the trial Court that the genitals of the victim as well as the Accused did not have injuries indicates it was a consensual sex was also rejected by the learned Sessions Judge, Mahila Court on the ground. The learned Judge had clearly discussed the emotional circumstances of a teenage girl who had been exploited by the Accused. The same had been discussed by the learned Judge in Paragraph Nos. 28 and 29. In Paragraph Nos.32 and 33, the learned Judge observed that “*What dress she wear is not important to*



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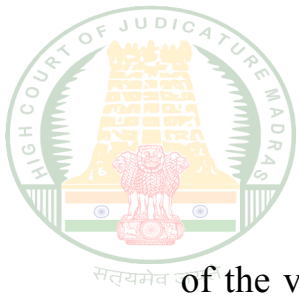
decide the case. What act committed by the Accused is more important to decide the case. The victim girl clearly deposed in her evidence that the Accused removed her dress and committed penetrative sexual assault, at his browsing center on 02.04.2014, again on 16.07.2014 at Attayampatty Erikarai Karadu Accused had committed penetrative sexual assault. Even though she gave consent to the sexual act of the Accused it is not at all considered due to the age of the victim girl. And the Medical Officer who conducted the medical examination of the victim girl clearly deposed that her hymen is not intact and she shows signs of defloration. The victim girl sent for medical examination only on 21.07.2014. After 5 days from the date of occurrence. Hence there is no possibility of spermatozoa in the vaginal smear of the victim girl.”

17. The learned Additional Public Prosecutor also contends that the claim of the defence that the case was foisted based on the influence exerted by P.W-5 was rejected. The delay in lodging a case had been explained by the Investigation Officer claiming that the delay is due to the complainant. The learned Judge had discussed that the delay in lodging case is not vitiated. In Paragraph No.35 of Judgment, based on the ruling of the Hon'ble Supreme Court, the learned Judge had discussed that it is a settled law that the victim of



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sexual assault is not treated as an accomplice, as such her evidence need not be corroborated by any other evidence including Doctor. In the normal course, victim of child sexual assault does not like to disclose such offence even before family members, much less before public or Police. The Indian women has a tendency to conceal such offence, because it involves her prestige and reputation of her family. The victim girl had deposed that her ambition is to become a hockey player, due to this incident, she had to leave the St. Marry's School and had to get admission in St. Dominic Higher Secondary School, Trichy where she did not have facility to practice hockey. Also, the learned Judge had stated that in the statement under Section 164 of Cr.P.C. the victim had narrated the incident to the learned Judicial Magistrate. The statement under Section 164 of Cr.P.C. does not have evidentiary value, it is only a formality and a mandatory provision to inspire confidence of the Investigation Officer that the investigation is on the right track. After 16.07.2014, after the involvement of the Accused with the victim at Tathiyampatti Erikkarai, the incident came to light due to the absence of the victim from the School which was informed to her mother. Therefore, her mother, working at Tiruppur, came down to Salem and questioned the victim when she returned from School after her regular School time. The learned Judge had also discussed about the age



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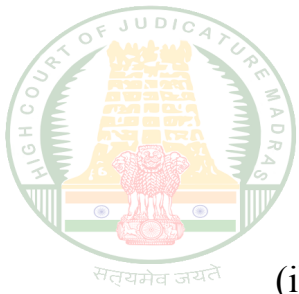
of the victim and the certificate by P.W-8 in paragraph No.40 and considered that the date of birth is 16.03.1999 as per Ex.P-24. If Ex.P-24 is objected by the Accused, the Accused should have summoned competent officials of corporation of Salem from where Ex.P-24 has been issued and marked the same. Also, they should have summoned the original register maintained by the School but they did not do so. Therefore, the Court can draw adverse inference from the conduct of the Accused in not summoning the documents. The learned Trial Judge is, therefore, justified in rejecting the arguments of the Accused on the ground that (i) the case was foisted; (ii) There is delay in lodging the FIR by three months after the alleged date of occurrence; (iii) On the instigation of P.W-5 only, the FIR was registered by the mother insisting the victim to register the complaint under Ex.P-1 after discussion among them and (iv) there is consensual sex between victim and the Accused as the Doctor's evidence under Ex.P-9 to Ex.P-13 did not indicate any injuries on the genitals of the Accused and the victim. The plea on behalf of the Accused that when there is no injury, it is a consensual sex was rejected by the learned Sessions Judge on the ground that the victim of the sex is not accomplished considering her age to be 15 on the relevant point of time. Therefore, the learned Judge is well within her discretion to invoke Section 29 of the



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Protection of Children from Sexual Offences Act, 2012 by drawing presumption that the evidence of the victim/P.W-1 is true and rejecting the defence laid by the Accused that (i) age of the victim is not proved; (ii) it is a consensual sex, where the victim only eloped with the Accused; (iii) delayed First Information Report and (iv) foisted case. The logical conclusion arrived by the learned Sessions Judge, Salem in convicting the Accused for the offence under Section 6 r/w. 5 (i) of the Protection of Children from Sexual Offences Act, 2012 is well-reasoned and it does not warrant any interference by this Court.

18. Even for the argument sake that there are lapses on the part of the Investigation Officer in conducting the case, considering the nature of the offence committed on the helpless teenager, aged 15 at the relevant point of time, the Court shall convict the Accused based on the evidence of the prosecutrix alone, if it inspires confidence. It is not for the Accused to claim that it does not inspire confidence. It is the discretion of the Trial Judge who presides the Court and who records the evidence to appreciate the evidence to decide whether the statement of the victim inspires confidence of the Court. The learned Additional Public Prosecutor also relied on the following rulings:-



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(i) (2010) 8 SCC 191 in the case of *Vijay alias Chinee Vs. State of Madhya Pradesh* wherein the Hon'ble Supreme Court had held as follows:-

“A. Penal Code, 1860 – S. 376 (2) (g) r/w S.34 and S.114-A, Evidence Act, 1872 – Gang rape – Presumption of non-consensual intercourse – Prosecutrix consistently stating that she had never consented to intercourse and that she was forcibly caught, threatened at knife-point and thereafter subjected to gang rape – No dispute regarding place or alleged occurrence – FIR lodged promptly and Accused arrested immediately – No evidence of false implication since Accused were unknown to prosecutrix – Discrepancies found in her testimony insignificant considering that she was illiterate rustic village girl – Non-resistance because of fear, held, not unnatural – Consent by prosecutrix, even if assumed she was a major, not established – Hence, conviction of Appellant/Accused under Ss.376/34 and sentence of 10 years' RI along with fine of Rs.500, held proper – Evidence Act, 1872 – S.114-A – Applicability.”

19. It is settled legal proposition that while appreciating the evidence of a witness, minor discrepancies on trivial matters, which do not affect the core of the prosecution case, may not prompt the Court to reject the evidence in its entirety.

20. In *State of Rajasthan Vs. Om Prakash* AIR 2007 SC 2257, while dealing with a similar issue, this Court held that "irrelevant details which do not in any way corrode the credibility of a witness cannot be levelled as omissions or contradictions."

21. In *State of U.P. Vs. M.K. Anthony* AIR 1985 SC 48, this Court laid down certain guidelines in this regard, which require to be followed by the courts in such cases. The Court observed as under :-

"While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, draw-backs and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case,



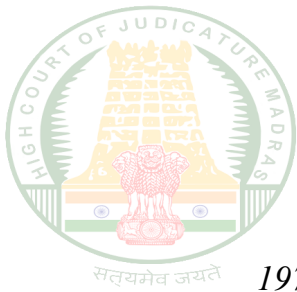
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hyper- technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross examination is an unequal duel between a rustic and refined lawyer."

22. In *State Vs. Saravanan & Anr.* AIR 2009 SC 152, while dealing with a similar issue, this Court observed as under :-

".....while appreciating the evidence of a witness, minor discrepancies on trivial matters without affecting the core of the prosecution case, ought not to prompt the court to reject evidence in its entirety. Further, on the general tenor of the evidence given by the witness, the trial court upon appreciation of evidence forms an opinion about the credibility thereof, in the normal circumstances the appellate court would not be justified to review it once again without justifiable reasons. It is the totality of the situation, which has to be taken note of. Difference in some minor detail, which does not otherwise affect the core of the prosecution case, even if present, that itself would not prompt the court to reject the evidence on minor variations and discrepancies."

23. It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the Accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution witness. As the mental capabilities of a human being cannot be expected to be attuned to absorb all the details, minor discrepancies are bound to occur in the statements of witnesses (vide *Sohrab & Anr. Vs. The State of M.P.* AIR



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1972 SC 2020; *Bharwada Bhogini Bhai Hirji Bhai Vs. State of Gujarat* AIR 1983 SC 753; *Prithu @ Prithi Chand & Anr. Vs. State of Himachal Pradesh* (2009) 11 SCC 588; and *State of U.P. Vs. Santosh Kumar & Ors.* (2009) 9 SCC 626).

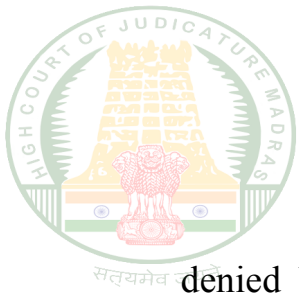
24. Thus, in view of the above, the law on the point can be summarised to be that the evidence of the witnesses must be read as a whole and the cases are to be considered in totality of the circumstances and while appreciating the evidence of a witness, minor discrepancies on trivial matters, which do not affect the core of the prosecution case, should not be taken into consideration as they cannot form grounds to reject the evidence as a whole.”

(ii) (2020) 10 SCC 573 in the case of *Ganesan Vs. State* wherein the

Hon'ble Supreme Court had held as follows:-

“A. Crimes against Women and Children – Protection of Children from Sexual Offences Act, 2012 – S.7 r/w. S.8 – Conviction on sole testimony of victim – Permissibility of – Where testimony of victim is found reliable and trustworthy, reiterated, conviction on basis of her sole testimony is permissible- In instant case, victim P.W-13 aged 15 yrs at time of deposition was matured and her testimony was found trustworthy, unblemished and her evidence was of sterling quality – Hence, conviction on basis of her testimony was justified – Criminal Trial – Witnesses – Sole/Solitary Witness.”

19. In this case, the learned Judge observed that the mother of the victim girl had gone to Dubhai for job and hence, she was not examined. At the time of occurrence P.W-1 was residing at her grandmother's house. The victim girl had not stated to her mother that the incident happened on 02.04.2014. On 16.07.2014 only she reported everything to her mother. Thereafter, the Complaint was given to Pallapatty Police Station. The suggestion put to P.W-5 that he was instrumental in lodging the complaint was



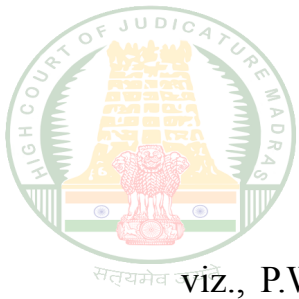
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denied by him. He admitted that he was a member of Democratic Youth Federation of India. When the learned Counsel for the Accused put a question that the Accused did not contribute to the funds of Democratic Youth Federation of India and therefore, there was an enmity between the Accused and P.W-5 and only to wreck vengeance, P.W-5 had instigated the Complaint against the Accused, was denied by him. The Accused also is a member of Democratic Youth Federation of India and after this incident, he was removed from Democratic Youth Federation of India for his misconduct. The nature of the offence committed by the Accused was considered in detail by the learned Trial Judge and he was sentenced to undergo 10 years of Imprisonment. Such a well considered Judgment need not be interfered with by this Court. Accordingly, the learned Additional Public Prosecutor prayed for dismissal of this Appeal.

Point for consideration:-

Whether the Judgment dated 03.03.2017 passed in Spl. S.C. No.8 of 2015 by the learned Sessions Judge, Mahila Court, Salem, recording conviction under Section 6 r/w. 5 (i) of IPC and Sections 363 and 366 of IPC is to be set aside as perverse?

20. Heard the learned Counsel for the Appellant/Accused and the learned Additional Public Prosecutor. Perused the evidence of the Prosecution



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viz., P.W-1 to P.W-14 and documents under Ex.P-1 to Ex.P-29 and also the Judgment dated 03.03.2017 passed in Spl. S.C. No.8 of 2015 by the learned Sessions Judge, Mahila Court, Salem.

21. From the records, it is found that the case was registered by P.W-12 Sub Inspector of Police, Pallapatty Police Station based on the complaint under Ex.P-1 given by the *De-facto Complainant* for the offence under Section 363 of Indian Penal Code and Sections 3 and 4 of the Protection of Children from Sexual Offences Act, 2012. After completion of investigation, the Investigation Officer laid the final report altering the charges and by including Section 376 (2) (i) (n) of IPC. The learned Session Judge, Mahila Court framed the charges for the offence under Sections 363, 366 and Section 6 r/w. 5 (1) of the Protection of Children from Sexual Offences Act, 2012. The difference between Sections 3 and 5 are Section 3 defines penetrative sexual assault whereas Section 5 explains penetrative sexual assault committed by Police Officials or Officials in Armed Force who has control over his subordinates. For the aggravated penetrative sexual assault committed by the Members of Police Force or Armed Forces, the punishment is mentioned in Section 6 which is not less than 20 years and which may extend to life or the



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reminder of natural life of person. But for the offence of penetrative sexual assault under Section 3, the minimum punishment as per Section 4 is 10 years. Subsequent to the amendment in the year 2019, instead of 7 years, it was amended as 10 years and then it was enhanced to minimum 20 years. The incident reported by the prosecutrix in this case took place in the year 2014 viz., prior to 2019. Therefore, the sentence imposed by the learned Sessions Judge is not as per Section 5 of the Act and it only attract punishment under Section 3 r/w. 4 of the Protection of Children from Sexual Offences Act, 2012 as its exists on the date of commission of the offence. The framing of charge by the then learned Sessions Judge is found faulty. However, the learned Counsel for the Appellant/Accused did not point out the same for reasons best known to him. Even though the learned Additional Public Prosecutor objected to the argument of the learned Counsel for the Appellant/Accused and supported the Judgment of the learned Sessions Judge recording the conviction, she also did not point out the same. Section 3 to 6 of the Protection of Children from Sexual Offences Act, 2012 are to be extracted hereunder:-

***“3. Penetrative sexual assault.*—A person is said to commit “penetrative sexual assault” if—**

(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or



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(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or

(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or

(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.

4. Punishment for penetrative sexual assault.—Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine.

B.—AGGRAVATED PENETRATIVE SEXUAL ASSAULT AND PUNISHMENT THEREFOR

5. Aggravated penetrative sexual assault.—

(a) Whoever, being a police officer, commits penetrative sexual assault on a child — (i) within the limits of the police station or premises at which he is appointed; or (ii) in the premises of any station house, whether or not situated in the police station, to which he is appointed; or (iii) in the course of his duties or otherwise; or (iv) where he is known as, or identified as, a police officer; or

(b) whoever being a member of the armed forces or security forces commits penetrative sexual assault on a child—

(i) within the limits of the area to which the person is deployed; or

(ii) in any areas under the command of the forces or armed forces; or

(iii) in the course of his duties or otherwise; or

(iv) where the said person is known or identified as a member of the security or armed forces; or

(c) whoever being a public servant commits penetrative sexual assault on a child; or



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(d) whoever being on the management or on the staff of a jail, remand home, protection home, observation home, or other place of custody or care and protection established by or under any law for the time being in force, commits penetrative sexual assault on a child, being inmate of such jail, remand home, protection home, observation home, or other place of custody or care and protection; or

(e) whoever being on the management or staff of a hospital, whether Government or private, commits penetrative sexual assault on a child in that hospital; or

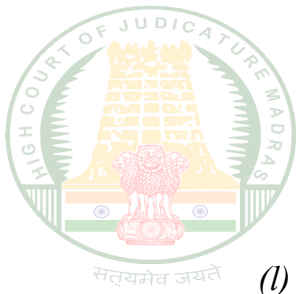
(f) whoever being on the management or staff of an educational institution or religious institution, commits penetrative sexual assault on a child in that institution; or

(g) whoever commits gang penetrative sexual assault on a child. Explanation.—When a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang penetrative sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone; or
(h) whoever commits penetrative sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or

(i) whoever commits penetrative sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or

(j) whoever commits penetrative sexual assault on a child, which— (i) physically incapacitates the child or causes the child to become mentally ill as defined under clause (b) of section 2 of the Mental Health Act, 1987 (14 of 1987) or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently; or (ii) in the case of female child, makes the child pregnant as a consequence of sexual assault; (iii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or Infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks; or

(k) whoever, taking advantage of a child's mental or r physical disability, commits penetrative sexual assault on the child; or



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(l) whoever commits penetrative sexual assault on the child more than once or repeatedly; or

(m) whoever commits penetrative sexual assault on a child below twelve years; or

(n) whoever being a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of the child or who is living in the same or shared household with the child, commits penetrative sexual assault on such child; or

(o) whoever being, in the ownership, or management, or staff, of any institution providing services to the child, commits penetrative sexual assault on the child; or

(p) whoever being in a position of trust or authority of a child commits penetrative sexual assault on the child in an institution or home of the child or anywhere else; or

(q) whoever commits penetrative sexual assault on a child knowing the child is pregnant; or

(r) whoever commits penetrative sexual assault on a child and attempts to murder the child; or

(s) whoever commits penetrative sexual assault on a child in the course of communal or sectarian violence; or

(t) whoever commits penetrative sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for time being in force; or

(u) whoever commits penetrative sexual assault on a child and makes the child to strip or parade naked in public, is said to commit aggravated penetrative sexual assault.

6. Punishment for aggravated penetrative sexual assault.—

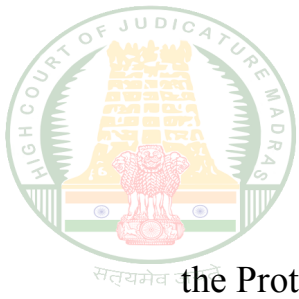
Whoever, commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall



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also be liable to fine.”

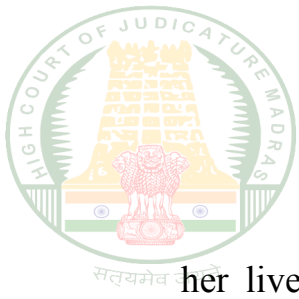
22. The sentence imposed by the learned Sessions Judge is therefore found proper. As per Section 3 and 4 of the Protection of Children from Sexual Offences Act, 2012, by inadvertence, the charge framed at the initial stage as penetrative sexual assault or aggravated penetrative sexual assault under Section 5 of Act. Therefore, the sentence imposed by the learned Sessions Judge is justified. That part of the Judgment is found not as per the act committed by the Accused but as per the evidence of the victim. Therefore, the sentence imposed under Section 5 r/w. 6 of the Protection of Children from Sexual Offences Act, 2012 is altered by this Court as offence under Section 3 r/w. 4 of Act even though the Investigation Officer P.W-14 had laid the final report under Section 376 (2) (i) (n) of IPC. The learned Judge had not considered the same as it was found proper that under Section 5 and 6 of the Protection of Children from Sexual Offences Act, 2012 alone is attracted. That is a flaw committed by the learned Sessions Judge who was the then presiding Judge, Mahila Court, Salem. The learned Judge conducted trial and the Judge who convicted the Accused are different individuals. She had imposed sentence as per the charge framed by the learned Sessions Judge who had framed charges under Sections 363, 366 of IPC and Section 6 r/w. 5 (i) of



the Protection of Children from Sexual Offences Act, 2012.

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23. On assessment of evidence of the Prosecution witnesses, it is seen that P.W-3 was the owner of the building where the Accused was running his browsing center and P.W-4 is the provision shop owner on the adjacent shop adjoining the browsing center within the same building belonging to PW-3. Both had not supported the Prosecution regarding observation mahazar and they were cited as witnesses to the observation mahazar. Invariably in cases of this nature, the witnesses other than the victims of crime turn hostile. That will not weaken the case of the Prosecution. In Sessions case, the offences are in grave nature and if the evidence of the victim inspires confidence, the Court is justified in convicting the Accused. Here, as pointed out by the learned Counsel for the Appellant/Accused, the mother of the victim had not been examined. The learned Sessions Judge had given out the reasons for dispensing with the evidence of the mother of the victim. By the time when trial commenced, the mother of the victim was employed in Dubhai. The grandmother of the victim/P.W-2 had mentioned that the mother of the victim was employed as housemaid in Dubhai. Earlier, she was working as a tailor in Tiruppur Banian Factory. At the time of lodging of complaint, she was eking



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her livelihood to bring up her children who lost their father without much difficulty to make them successful in their life by providing them good education. The grandmother with whom the victim and the elder sister were living was also eking her livelihood by working as a maid in a hospital. In the course of the evidence, P.W-2 had expressed her agony by her uncontrollable cry for help before the Court which was recorded by the learned Sessions Judge. This was also pointed out by the learned Additional Public Prosecutor during the course of argument. The learned Additional Public Prosecutor pointed out that P.W-2 broke down while deposing evidence because of the sexual exploitation of her minor grandchild by the Accused. The learned Trial Judge had recorded the demeanour of witnesses.

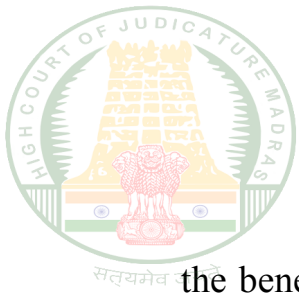
24. The learned Judge relied heavily on the evidence of P.W-1. As a trial Court, it need not consider the statement which was recorded by the Police under Section 161 Cr.P.C. or the statement under Section 164 of Cr.P.C., before the learned Judicial Magistrate – IV. The trial Court is conducting the trial to know the truth. Therefore, what is deposed as evidence by the witnesses before the trial Court will have more weightage. It is for the respective trial Judges to reject a part of evidence and to accept another part of



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evidence. As rightly pointed out by the learned Additional Public Prosecutor, the learned Judge had ignored the minor discrepancies which she had clearly discussed in Paragraph Nos.21 to 33. The learned Judge had also discussed the defence of the Accused and rejected it in Paragraph Nos.26, 31 and 33. In Paragraph No.33, the learned Judge had observed that what dress she wear is not important to decide the case. What act committed by the Accused is more important to decide the case. The victim clearly deposed that the Accused removed her dress and committed penetrative sexual assault at his browsing center on 02.04.2014 and again on 16.07.2014 at Attayampatty Erikarai Karadu. Even though she gave consent to sexual act of the Accused, it is not at all considered as a consent, as she is incompetent to give consent due to her age.

25. The Medical Officer P.W-11 Dr.Sangeetha had clearly deposed that hymen is not intact. The victim girl was subjected to medical examination on 21.07.2014, after 5 days from the date of occurrence. Therefore, there is no possibility of spermatozoa in the vaginal smear of the victim. Taking note of this, the learned Judge discussed the defence of the Accused in Paragraph Nos.34 and 35 and rejected the defence of the Accused. As the trial Judge had



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the benefit of observing the demeanour of the witnesses and the Accused, the Appellate Court only can peruse the depositions recorded by the trial Judge and documents marked before the trial Court to conclude whether the evidence so recorded have been properly assessed.

26. As rightly pointed out by the learned Additional Public Prosecutor, the Headmistress of School P.W-8 where the victim studied at the relevant point of time in the year 2014 in 9th standard furnished the certificate issued by her and authenticated by her from the School records. As per the ruling cited by the learned Counsel for the Appellant/Accused in the case of ***Birad Mal Singhvi Vs. Anand Purohit [1988 AIR 1796]*** that part of evidence cannot be considered. At the same time, P.W-8 had clearly stated in her cross-examination that in the School register, the date of birth of the student is recorded as 16.03.1999. That part of evidence of P.W-8 has weightage because she does not have any cause to take sides against the Accused. Also, Headmistress of Government Aided School where the victim is a student in 9th standard was summoned by the Court to give particulars about the date of birth registered in the School. The Investigation Officer at the initial stage of investigation had obtained relevant details by examining her and obtained the



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records from the School. Therefore, she had given a School certificate signed by her which attracts the provisions of Section 114 of Indian Evidence Act. As per Section 114 of Evidence Act, Government Officials are presumed to act lawfully in discharge of their duty. There is no necessity for P.W-8 to give false evidence before the Court to see to it that the Accused is punished.

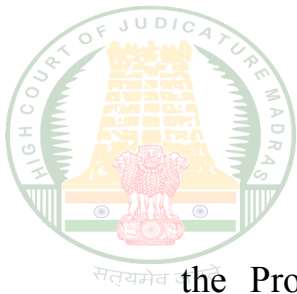
27. The Investigation Officer in this case P.W-13 had collected the photostat copy of the date of birth certificate under Ex.P-24 issued to the victim when she was born. It contains the name of the father of the victim/Pandian and mother of the victim/Poongodi. If what is furnished as Ex.P-24 is disputed by the Accused, the Accused should have let in evidence to discharge the reverse burden and disprove Ex.P-24 and Ex.P-6 by summoning documents from the School. Since the Accused had not let in evidence, this Court accept the evidence marked through P.W-13 with objection of the Accused. The objection was over-ruled by the learned Sessions Judge by relying on the birth certificate marked as Ex.P-24. It is to be noted that it is a prime document issued by the competent authorities concerned. Therefore, the rejection of the objection by the learned Sessions Judge regarding Ex.P-24 is justified. If Ex.P-24 is rejected by the learned



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Sessions Judge, it will result in rejecting the most important evidence before the trial Court which will help the Accused to wriggle out of the case. Therefore, the objection of the learned Counsel for the Accused before the trial Court regarding marking of Ex.P-24 on the pretext it is only a photostat copy is considered a ploy to derail the trial. When a document is marked before the trial Court, it forms part of the trial records and it is retained in the Court till the final stage of Appeal before the highest Court of the land either the High Court or Supreme Court in which case the valuable document available with the family of the victim for very many reasons in future required for the education and job opportunities. The Investigation Officer had done a right job by furnishing photostat copy for his file as material evidence in the investigation of the case and the same had been marked in the Court.

28. The victim P.W-1 is a student of St. Mary's School, Salem wherein P.W-8 was the Headmistress from 2011. In the year 2014, the victim was a student of 9th Standard in St.Marry's School. Therefore, the evidence of P.W-8 supports Ex.P-24 based on which, the age of the victim as on the date of occurrence is recorded as 16.07.2014. In this case, the FIR was registered on 20.07.2014. At that time, the victim was aged 15, attracting the Provisions of



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the Protection of Children from Sexual Offences Act, 2012. The trial Court/Special Court for the Protection of Children from Sexual Offences Act, 2012 shall presume that such person has committed the offence. Therefore, the assessment of evidence by the learned Sessions Judge based on the evidence of P.W-1 victim and P.W-2 grandmother of the victim is justified. The non-examination of mother of the victim regarding the date of birth of victim P.W-1 as per the reported ruling in ***Birad Mal Singhvi Vs. Anand Purohit [1988 AIR 1796]*** relied by the learned Counsel for the Appellant/Accused is rejected by this Court .

29. The ruling relied on by the learned Counsel for the Appellant/Accused will not hold good in the facts and circumstances available under Ex.P-1 to Ex.P-29 and the evidence available through P.W-1 and P.W-2. The evidence of P.W-11 is also challenged by the Appellant/Accused on the ground that she had wantonly denied the suggestion of the learned Counsel for the defence before the trial Court that the child victim/Prosecutrix had admitted that she was a Hockey player in School at the State Level and undergoing strenuous exercise daily. She had by her sports activities suffered rupture of the hymen which was noted by P.W-11 as rupture of the hymen. It



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was only a suggestion of the defence to which P.W-11 answered. The opinion of P.W-11 is very clear that the tear of hymen is due to a sexual activity to which the victim was subjected to.

30. The attack on the evidence of P.W-1 and P.W-2 that they are not sterling quality cannot be countenanced. The learned trial Judge had the advantage of observing the demeanour of witness which is not available to this Court. The Investigation Officer had recorded the statement under Section 164 Cr.P.C., by addressing the learned Chief Judicial Magistrate and the learned Chief Judicial Magistrate had nominated the learned Judicial Magistrate-IV, Salem to record the statement. In the statement, the victim had narrated the entire incident. Therefore, the evidence of P.W-1 has more weightage under the Provision of the Protection of Children from Sexual Offences Act, 2012. The deposition of P.W-1 is a sterling quality and therefore, the learned Trial Judge placing reliance on evidence of P.W-1 is justified.

31. As rightly pointed out by the learned Additional Public Prosecutor, minor discrepancies has to be ignored in the light of the reported



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191]. As per the ratio laid down in the said Judgment, the learned Judge had ignored the minor discrepancies in the case. The learned Counsel for the Appellant/Accused before the trial Court had pointed out the discrepancies of the evidence of the prosecutrix regarding the dress worn by her as per her statement before the Police and a different version in her statement under 164 Cr.P.C., It was also pointed out that there is discrepancy in the evidence before the trial Court regarding the dress worn by her at the time of alleged occurrence. Such discrepancies had been rejected as minor and ignored by the learned Sessions Judge by observing that the dress worn by the victim is not important. The act committed by the Accused against the victim is more important. The learned Trial Judge had rightly rejected the chaff from the grain and based on the sterling quality of evidence arrived at a logical conclusion to convict the Accused for the offence under Sections 363, 366 of IPC and Section 6 r/w. 5 (i) of the Protection of Children from Sexual Offences Act, 2012.

32. On perusal of the evidence and on assessment of evidence of the Prosecution Witnesses, P.W-5 had admitted in his cross-examination that he



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had accompanied the victim along with family to the Police Station. Just because P.W-5/Member of Democratic Youth Federation of India and the paternal aunt of victim happens to be Member of Democratic Youth Federation of India, the claim of the Accused that he was framed cannot be accepted. The contention of the Accused that he was targeted for not co-operating with the Democratic Youth Federation of India in their fund raising will not be a ground to wriggle out of this case. The evidence of P.W-5 in cross-examination that the Accused was also a Member of Democratic Youth Federation of India and he was removed after this incident also had to be considered.

33. The widowed mother of victim was working in Tiruppur and maintaining her family at Salem which is roughly 120 kms away. The victim and her sister are left in the care of paternal grandmother. Only female elders are at home. Therefore, it is justified that they sought help of an acquaintance who is also Member of Democratic Youth Federation of India to visit the Police Station to lodge the complaint and it cannot be treated as a discussion in the family to lodge a false Complaint against the Accused. Therefore, the defence of the Accused is rejected by this Court on independent assessment of evidence.



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34. In the light of the above discussion, the argument of the learned Counsel for the Appellant/Accused placing reliance on the unreported ruling in ***Crl.A.No.1053 of 2009*** in the case of ***Alamelu & Another Vs. State*** which is based on reported ruling in the case of ***Birad Mal Singhvi Vs. Anand Purohit [1988 AIR 1796]*** regarding the evidence of P.W-8 and document under Ex.P-6 and Ex.P-24 is rejected. As already discussed above, the original birth certificate was not parted by the victim as she requires the same for very many purpose in future. Therefore, the family of victim had given photostat copy of the same which was attested by the Investigation Officer P.W-13 as true copy after comparison with the original. If what is claimed by the learned Counsel for the Appellant/Accused is *bona fide* nothing prevented the Accused from summoning the original document. Therefore, the Court draws adverse inference against the Accused for not summoning the original documents and discharging the reverse burden to disprove Ex.P-6 and Ex.P-24. The reasons given by the learned trial Judge in accepting Ex.P-6 and Ex.P-24 is found acceptable by this Court for the reasons mentioned above. Therefore, invoking Section 29 of the Protection of Children from Sexual Offences Act, 2012 and considering evidence of P.W-1 as sterling quality by the Trial Court is accepted



Crl.A. No.177 of 2017

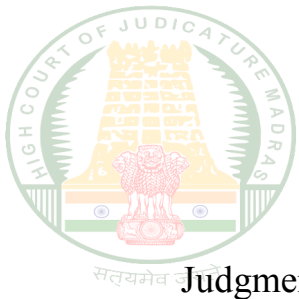
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by this Court. Accordingly, the point for consideration is answered in favour of the Prosecution and against the Appellant/Accused. The Judgment dated 03.03.2017 passed in Spl. S.C. No.8 of 2015 by the learned Sessions Judge, Mahila Court, Salem, recording conviction under Section 6 r/w. 5 (i) of IPC and Sections 363 and 366 of IPC is found proper which does not warrant any interference by this Court.

In the result, **this Criminal Appeal is dismissed.** The Judgment passed by the learned Sessions Judge, Mahila Court, Salem in Spl.S.C.No.8 of 2015 dated 03.03.2017 is confirmed.

The Chairman, District Legal Services Authority/Principal District Judge, Salem shall order enquiry by summoning the victim, the Investigation Officer in this case/the Inspector of Police, Pallapatty Police Station with relevant records and after holding enquiry shall grant appropriate compensation as per the Victim Compensation Act within a reasonable period of three months from the date of receipt of a copy of this order.

The learned Sessions Judge, Mahila Court, Salem is directed to issue Warrant in continuation of the Judgment of Conviction recorded in the



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Judgment dated 03.03.2017 in Spl.S.C.No. 8 of 2015 to undergo the remaining period of sentence of imprisonment by the Accused.

The Commissioner of Police, Salem City is directed to execute the warrant through his sub-ordinates and produce the Accused before the Court through the Inspector of Police, Pallapatty Police Station and report compliance to the High Court.

17.04.2025

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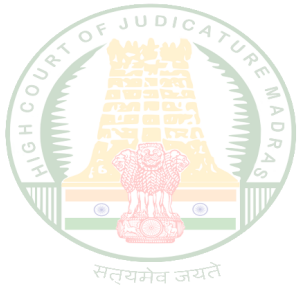
Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

To

- 1.The Sessions Judge,
Mahila Court, Salem.
- 2.The Inspector of Police,
Pallapatty Police Station,
Salem District.
3. The Public Prosecutor,
High Court, Madras.
- 4.The Section Officer,
Criminal Section,
High Court Madras,
Chennai – 600 104.



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CrI.A. No.177 of 2017

SATHI KUMAR SUKUMARA KURUP, J

5.The Chairman, District Legal Services Authority/
Principal District Judge, Salem.

6.The Commissioner of Police,
Salem City, Salem.

7.The Superintendent,
Central Prison,
Salem.

dh

Judgment in
Criminal Appeal No.177 of 2017

17.04.2025