



Criminal Appeal No.264 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Delivered on : 09-01-2025

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THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Appeal No.264 of 2017

T. Ezhumalai

.. Appellant

Versus

The State, represented by
The Inspector of Police,
All Women Police Station,
Vellore.
(Crime No.40/2014)

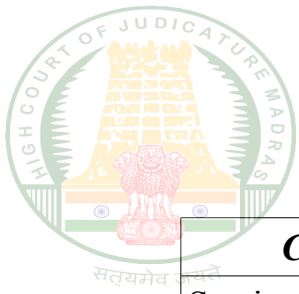
.. Respondent

Criminal Appeal is filed under Section 374 (2) of the Criminal Procedure Code, 1973, seeking to set aside the conviction and sentence imposed by Judgment dated 23.12.2016 made in Special Sessions Case No. 18 of 2015 on the file of the learned Sessions Judge, Fast Track Mahila Court, Vellore.

For Appellant	:	Mr. Dharani Kasinathan
For Respondents	:	Mrs. G.V. Kasthuri Additional Public Prosecutor

JUDGMENT

This Criminal Appeal is filed to set aside the Judgment dated 23.12.2016 made in Special Sessions Case No. 18 of 2015 by the learned Sessions Judge, Fast Track Mahila Court, Vellore. By the impugned judgment, the Appellant was convicted and sentenced as follows:-



<i>Convicted for the offence</i>	<i>Period of Sentence</i>
Section 363 of Indian Penal Code	To undergo rigorous imprisonment for a period of 1 year and to pay fine of Rs.1,000/-, in default, to undergo simple imprisonment for a period of one month.
Section 366 of Indian Penal Code	To undergo rigorous imprisonment for a period of 2 years and to pay fine of Rs.2,000/-, in default, to undergo simple imprisonment for a period of two months.
Section 6 read with Section 5 (m) of POCSO Act	To undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.2,000/-, in default, to undergo two months simple imprisonment.

1.2 The punishments were ordered to run concurrently and the period of sentence already undergone by the Accused was ordered to be set off under Section 428 of Cr.P.C.

2. The brief facts, which are necessary to decide this Criminal Appeal, are as follows:-

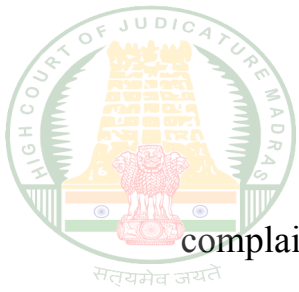
2.1. P.W-1 is the mother of P.W-2, victim girl, who was aged 4 years at the time of occurrence. P.W-1 is residing at Door No.144, Thuthikadu, Kollaimedu Village. P.W-1 is a coolie worker and her husband is a gardener. It is stated that P.W-1 knows the Accused. According to P.W-1, on 02.08.2014 at about 4.15 p.m, one Ajithkumar informed her that the Accused



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had taken her daughter/P.W-2 in his two wheeler. Since the Accused has got bad antecedents, P.W-1 went in search of her daughter in the vicinity. P.W-1 also went to the house of the Accused and caused enquiry with his brother, who was present there. When questioned, the brother of the Accused informed P.W-1 that his brother had left his mobile phone in his house and he will come back. When P.W-1 was returning back to her home, P.W-2 was coming back near Perumal Temple land. When P.W-1 enquired, P.W-2 informed her that the Accused had taken her to a pit, removed her undergarments and inserted his penis on the vagina. P.W-2 also stated that she cried in pain and she also noticed blood in her vaginal area. Therefore, P.W-1 took P.W-2 to her house and informed the incident to her husband. P.W-1 also noticed blood stains in the vaginal portion of P.W-2 and also contusions. Later in the day at about 7 p.m., when the husband of P.W-1 reached home, both of them went to the house of Jayaseelan (P.W-5), the President of the Village and narrated to him about the incident. Later, P.W-1 also taken P.W-2 to the hospital and admitted her. Since it is a medico legal case, intimation was given to the All Women Police Station, Vellore.

2.2. On the basis of the intimation received from the hospital, P.W-18/Inspector of Police, All Women Police Station, went to the hospital and recorded the statement of the complainant/P.W-1. On the basis of such



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complaint, the case in Crime No. 40 of 2014 was registered for the offence

punishable under Section 376 of the Indian Penal Code read with Section 6 of

The Protection of Children from Sexual Offences Act (POCSO Act).

Immediately, P.W-18 proceeded to the scene of occurrence and drawn a sketch

as well as Observation mahazar in the presence of witnesses Mani/P.W-8 and

one Jagadeesan. She also recorded the statement of P.W-1, P.W-2, P.W-4,

P.W-5 and P.W-8. Later, on the basis of reliable information about the

Accused, she proceeded to Pandian Nagar Bus Stop at about 13.00 hours on

03.08.2014 where she arrested the Accused in the presence of the witnesses

namely Murugan, Son of Elumalai and another Murugan (P.W-9), Son of

Kannan. In the presence of the very same witnesses, P.W-18 recorded the

confession statement of the Accused and sent him to judicial custody. Later,

P.W-18 had given a requisition letter to the Court to subject the Accused to

medical examination. She also recovered the dresses worn by the victim girl at

the time of the occurrence and sent them to the Court along with Form No.95.

She also taken steps to subject the victim girl to medical examination.

Accordingly, the minor girl was examined by Dr. Radhika (P.W-14). P.W-18

also recorded the statement of the Doctor (P.W-14). Similarly, the Accused

was subjected to medical examination by Dr. A.Nagendra Kumar (P.W-15).

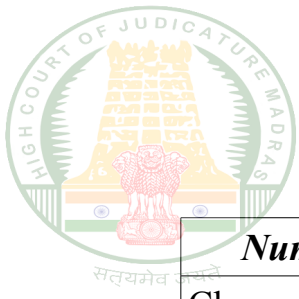
Therefore, P.W-18 recorded the statement of P.W-15 and also the other



Prosecution witnesses during the investigation.

WEB COPY 2.3. P.W-18 also taken steps to record the statement of the victim as well as the Accused under Section 164 of the Code of Criminal Procedure before the learned Judicial Magistrate, Additional Mahila Court. The child was also subjected to medical examination and the report of the Doctor was obtained by P.W-18. The dress worn by the Accused as well as the dress worn by the minor child were also seized by the Investigation Officer and they were sent for forensic examination. P.W-18 has also filed the alteration report before the Court against the Appellant altering the offences under Sections 376 read with Section 6 of the POCSO Act into the offence under Section 363, 366 and Section 6 read with Section 5 (m) of POCSO Act.

2.4. On receipt of the final report, the learned Sessions Judge, Fast Track Mahila Court, Vellore, had taken cognizance of the offence and issued summons for appearance of the Accused. On receipt of summons, the Accused appeared before the trial court and he was furnished with copies of the Prosecution documents as required under Section 207 of Cr.P.C. After hearing the arguments of the Additional Public Prosecutor and the Counsel for the Appellant, the learned Sessions Judge, Fast Track Mahila Court, Vellore, had framed the following charges:-



<i>Number of Charges</i>	<i>Charges framed</i>
Charge 1	363 IPC
Charge 2	366 IPC
Charge 3	6 r/w. 5(m) of the Protection of Children from Sexual Offences Act, 2012.

2.5. The Accused denied the charges. Therefore, the learned Sessions Judge, Fast Track Mahila Court, Vellore, ordered trial. During trial, to prove the charges, the Prosecution had examined 18 witness as P.W-1 to P.W-18, marked 12 documents as Ex.P-1 to Ex.P-12 and produced 3 material objects as M.O-1 to M.O-3. After closing of the Prosecution evidence, the Accused was examined under Section 313 of the Cr.P.C, regarding the incriminating evidence against him. The Accused denied the incriminating evidence against him. After examination of the Accused under Section 313 of Cr.P.C. the arguments of the Prosecution and the defence were heard.

2.6. On appreciation of the evidence, the learned Sessions Judge, Fast Track Mahila Court, Vellore, by judgment dated 23.12.2016 in Special Sessions Case No. 18 of 2015, which is impugned in this appeal, convicted and sentenced the Accused as mentioned in the preceding paragraph.

2.7. Aggrieved by the judgment of conviction passed by the learned Sessions Judge, Fast Track Mahila Court, Vellore, in Special Sessions Case No. 18 of 2015, dated 23.12.2016, the Accused has filed this Appeal.



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The learned Counsel for the Appellant submitted that P.W-1 is the mother of the victim, P.W-2 is the victim, P.W-3 is the sister of the victim, P.W-4 is the father of the victim and P.W-5 is the President of the Village Panchayat. According to the learned Counsel for the Appellant, there was previous enmity between the Accused and P.W-5, regarding mining operation in the village as the Accused questioned the same. Therefore, in order to wreck vengeance, P.W-5 had exaggerated the incident falsely to victimise the Appellant. P.W-6 Irudhayamary Woman Police Constable who had accompanied the Accused to the Hospital along with the requisition of the Investigation Officer to subject the Accused to medical examination in the Medical College Hospital at Vellore. P.W-7 Mr. Thanji is the paternal uncle of the victim. P.W-8 Mani had turned hostile. P.W-9 Murugan also turned hostile. P.W-8 and P.W-9 are mahazar witnesses. P.W-10 Mr. Ajithkumar also turned hostile. P.W-11 Tmt. Lakshmi, Woman Police Constable who had accompanied the victim as well as the mother of the victim to the Government Hospital at Adukkamparai to subject the victim to medical examination along with the requisition of the Investigation Officer. P.W-12 Mr. Ashok Kumar is the Assistant Director of Regional Forensic Laboratory, Vellore who had received the material objects viz., the petticoat of the victim (M.O-1) and the



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who is an Investigation Officer had deposed regarding the receipt of copy of FIR and the Investigation conducted by her. She had on receipt of copy of the FIR went to the scene of occurrence, prepared rough sketch and observation mahazar in the presence of the witnesses. She had arrested the Accused and subjected him to medical examination. After completion of the investigation she had laid the final report against the Accused for the offence under Sections 363, 366 IPC and Section 6 r/w. 5(m) of the Protection of Children from Sexual Offences Act, 2012.

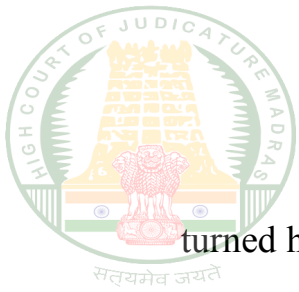
4. The learned Counsel for the Appellant invited the attention of this Court to the complaint under Ex.P-1. As per the complaint under Ex.P-1, the mother of the victim (P.W-1) had complained that on 02.08.2014 by around 4.15 p.m. she was informed by Ajith Kumar, S/o. Elumalai that he saw the Accused Elumalai, S/o.Thangavel taking her minor daughter (victim) in his two wheeler. On hearing that, she was shocked as the Accused did not have a reputation in his village. Therefore, scared of the safety of the minor child, she went in search of the minor daughter. At that time, she saw the shepherds, who were returning after grazing their cattle, stating that they saw the Accused along with minor child. Also they had asked her to go to the house of the Accused. On reaching the house of the Accused, the brother of the Accused



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stated that the child will be returned to her by his brother and he will not do any harm. On her return from the house of the Accused, she saw her minor daughter and when enquired, the victim girl told her that the Accused taken her to grazing field (*Madu*) where, in a pit (channel from the lake) she was made to lie and her undergarments was removed and he forced his penis on her vagina. She also stated that she experienced pain and also blood oozed out from her vaginal portion. The mother of the victim was shocked and on reaching home, she examined the body of the minor daughter and found out that her vagina had been swollen and blood was also seen on the vagina. The child was weeping in pain and she consoled her. On return of her husband (P.W-4) from work, both of them went to the Village President P.W-5 and afterwards they had gone to the hospital. In the hospital, she was admitted. This is the contents of the complaint under Ex.P-1. Whereas this has not been proved by the Prosecution. It is not proved as to where from the child was kidnapped to attract Section 363 of IPC.

5. The learned Counsel for the Appellant invited the attention of this Court to the evidence of P.W-1, P.W-2, P.W-3, P.W-4, P.W-5, P.W-7 and P.W-10. PW-10 Ajith Kumar is the person who reported to P.W-1 that her daughter had been taken in a two wheeler by the Accused. However, P.W-10



turned hostile before the trial Court.

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6. The learned Counsel for the Appellant submitted that at the instigation of P.W-5 Panchayat President, this case has been foisted against him, as the Accused used to question the actions of the Village Panchayat President (P.W-5). The learned Counsel for the Appellant invited the attention of this Court to the observation mahazar prepared by the Investigation Officer under Ex.P-11 and the rough sketch under Ex.P-10 wherein it is mentioned that the alleged scene of crime is near the Village Road. If what had been stated by P.W-1 is true, the child would have screamed for the pain suffered by her which could have been heard by the people nearby the road. As per the rough sketch under Ex.P-10 the scene of crime is roughly about 15 feet from the 10 feet wide Thuthikadu-Rangapuram Road running through the village and at the time the villagers were grazing their cattle nearby.

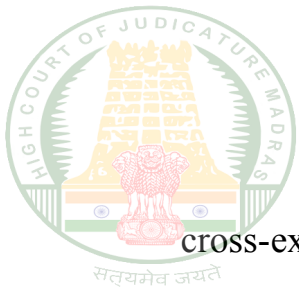
7. P.W-2 is the minor victim aged 6 years at the time of examination before the trial Court. She had stated that the Accused had taken her in a two wheeler to the pit (channel from the lake) and inserted his penis on her vagina and she cried in pain. Therefore, he took her back and left her near her house and the mother of the victim took her home. Later, the victim girl was taken to



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hospital. P.W-3 is the elder sister of the victim who was aged 10 years at the time of her examination before the Court. As per her deposition, she had accompanied the sister to fetch fodder for their cattle and they were sitting on the bridge near the lake. At that time, the Accused came there on a two wheeler, took her sister/P.W-2 and later on he dropped the victim near the bridge. When both were returning home, her mother came in search of them. On reaching home, the victim informed the mother that she was having pain in her vagina and therefore, P.W-1 took the victim to the hospital.

8. P.W-4 is the father of the victim. As per the evidence of P.W-4, the mother of the victim went in search of the house of the Accused. At that time, the brother of the Accused informed her that if the Accused had taken the child, he will safely bring her back and she need not worry. At that time, the mother of the victim P.W-1 went in search of the child towards the pit (channel from the lake). The villagers who were grazing the cattle nearby informed them that they saw the child coming from Perumal Kollai crying and when enquired by the mother, the child had informed her mother that the Accused had taken her near pit (channel from the lake) pressed his penis on her vagina and blood oozed out from her vagina. By evening when the father of the victim returned home P.W-1 and the child went to Hospital. In the



cross-examination, P.W-4 had stated that only from his wife he came to know about the occurrence. P.W-7 Mr. Thanji, Ward Member of the Panchayat and P.W-5 Mr. Jeyaseelan was the Panchayat President and they were inimical to the Accused as the Accused questioned them for their actions as Panchayat President and Ward Member. Therefore, only to wreck vengeance this case had been foisted.

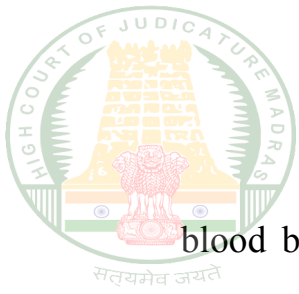
9. The learned Counsel for the Appellant submitted that the incident as narrated by each of the victim are different. P.W-1 states that the child on reaching home informed her that the Accused took her to pit (channel from the lake) and pressed his penis on her vagina. P.W-2 minor child had stated that the Accused took her to pit (channel from the lake) and committed the offence. P.W-3 did not mention those facts. P.W-4 stated that he was not known about the occurrence and only he came to know about the occurrence from his wife. P.W-5 in his evidence stated that he saw the child and her dress had blood stains. P.W-5 states that P.W-1 showed him the dress worn by the child victim with blood on it. Whereas the evidence of the Doctor (P.W-14) who examined the victim states that she might have been subjected or might not have been subjected to sexual assault. The vagina was swollen, hymen was in tact meaning thereby the child could have suffered injury when playing with other



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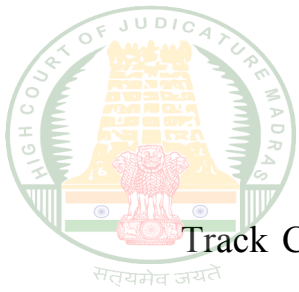
10. The learned Counsel for the Appellant submitted that only if the Prosecution is able to prove the charges beyond reasonable doubt, the presumption under Section 29 of the Protection of Children from Sexual Offences Act, 2012 comes in to play. Here Section 29 of the Act alone is taken by the learned Sessions Judge to convict the Accused on the ground that the Accused had not let any evidence.

11. The learned Counsel for the Appellant submits that the entire case of the Prosecution is on the basis of the complaint/Ex.P-1 wherein P.W-1/mother of the child stated that she went in search of her daughter on being informed by P.W-10/Ajith Kuumar that he saw the Accused taking P.W-2 in his two wheeler. Since the Accused does not have a good reputation in the village, P.W-2 said that she scared for the safety of the child. The evidence of P.W-1 is unbelievable as she stated that on examination of her child, she saw blood on the vagina whereas the Doctor (P.W-14) who examined the victim had stated that only on touch of the vagina, the child experienced pain and it was swollen. If what had been stated by P.W-1 is true, the Forensic Report under Ex.P-5 would have specifically indicated that the skirt/petticoat contain



blood but it is not so. P.W-14/Dr. Rathika had in her medical examination stated that there was no spermatozoa seen. Therefore, the learned Counsel for the Appellant submitted that the judgment of the learned Sessions Judge, Fast Track Mahila Court, Vellore in Spl. S. C.No. 18 of 2015, dated 23.12.2016 is perverse and is to be set aside.

12. The learned Additional Public Prosecutor by way reply vehemently objected to the line of arguments made by the learned Counsel for the Appellant and submitted that the evidence of P.W-2 victim alone will be sufficient to convict the Accused. Here in this case, P.W-1 mother of the child, P.W-2 victim, P.W-3 sister of the victim, P.W-4 father of the victim and P.W-5 Mr. Jeyaseelan, Panchayat President and P.W-7 Mr. Thanji, the brother of P.W-4 had narrated the occurrence as was informed by the victim. P.W-14 Dr.Rathika had examined the victim and issued Ex.P-6 wherein she had stated that the vagina of the child was swollen and on touch the child experienced pain. This evidence is sufficient to convict the Accused. Apart from that, as per Section 29 of the Protection of Children from Sexual Offences Act, 2012, the Accused had not let any evidence to rebut the prosecution evidence. Therefore, based on the presumption, the Court is duty bound to believe the victim's narrative. Therefore, the judgment of the learned Sessions Judge, Fast



Track Court, Vellore, is a well considered judgment and it does not warrant any interference by this Court.

13. The learned Additional Public Prosecutor relied on the decision of the Hon'ble Supreme Court in the case of ***Ganesan vs. State represented by its Inspector of Police*** reported in ***(2020) 10 SCC 573*** for the proposition that in a case of this nature the evidence of victim alone will be sufficient to convict the Accused. The learned Additional Public Prosecutor also relied on the decision of the Hon'ble Supreme Court in the case of ***Vijay alias Chinee vs. State of Madhya Pradesh*** reported in ***(2010) 2 SCC 191*** wherein it has been observed as follows:-

“Discrepancies and inconsistencies in depositions of witnesses:

20. 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.

21. 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."

22. 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



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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, 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."

23. 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."

24. 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



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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 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).”

14. By way of reply to the submissions of the learned Additional Public Prosecutor, the learned Counsel for the Appellant submitted that in cases of this nature, statement under Section 164 of the Code of Criminal Procedure has to be recorded, but such statement was not at all recorded in this case. The statement under Section 164 of the Code was not marked during trial. The alleged occurrence has taken place on 02.08.2014. The child was subjected to medical examination on 02.08.2014 wherein it is clearly stated that the hymen was in tact and no bleeding seen. Therefore, the evidence of P.W-1, P.W-4, P.W-5, P.W-7 is made only with an intention to wreak vengeance on the Accused. Only if the Prosecution is able to prove the charge, the presumption under Section 29 comes to play. The learned Counsel for the Appellant relied on the following rulings:-

(i) In the case of *M.Veerabatharappa vs. State of Tamil Nadu* reported in (2015) 5 CTC 772 wherein it has been held as follows:-

“24. False charges of rape is not unknown in this Country. In Modis Text Book of Medical Jurisprudence and Toxicology, 1972 Edition, the following passage occurs:



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False charges.- False charges of rape are not uncommon in India. Occasionally parents may introduce chillies into the vagina of their female child to cause irritation and inflammation or may injure her genitals for the purpose of substantiating a false charge of rape brought against an individual with a view to taking revenge or extorting money from him, and may tutor their child to tell a circumstantial story of a rape. Modi saw a case in which the father thrust his thumb into the vagina of his daughter, six years old, in order to bring a false charge of rape against his neighbour who was his enemy, and lacerated the posterior part of the hymen, the posterior part of the vagina and the posterior commissure. At times parents inflict injuries on the private parts of their female child, and then kill her by strangulation or suffocation in order to bring a false accusation of rape and murder against their enemy. If necessary X-rays should be taken to ascertain age."

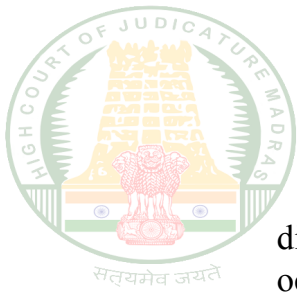
25. Things have not improved any better. In *Prashanth Bharathi v. State (NCT) Delhi [2013(9) SCC 293]*, the Hon'ble Supreme Court quashed the proceedings against the Accused holding that the victim has brought out a false charge of rape."

(ii) The decision of the High Court of Sikkim at Gangtok in the case of

Kishore Gurung vs. State of Sikkim reported in ***2023 SCC OnLine Sikk 28***

wherein it has been observed as follows:-

"6. (xi) While addressing the concerns raised by Learned Counsel for the Appellant pertaining to the unreliability to the victim's evidence, in view of the contradictions apparent in her statement before the Court and under [Section 164 Cr.P.C.](#), we notice that the victim has indeed made contradictory statements requiring the Court to be especially circumspect while appreciating her evidence. Under [Section 164 Cr.P.C.](#) statement she stated that her friend and her boyfriend went to one room, while she was (2010) 9 SCC 209 *Kishore Gurung vs. State of Sikkim* given one extra room. In contradiction thereof, before the Court, it was her testimony that the residence of her friend's boyfriend was a single room with two beds. This is confirmed by her cross-examination where it is her admission that, on the relevant night four of them had stayed in one single room. In Exhibit 1, she had reported that 'S' and her boyfriend slept on one bed and she slept on another bed. She



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did not indicate that there was another room with a bed which she occupied. In her [Section 164](#) Cr.P.C. statement she has stated that the said "Sudesh Rai" sexually assaulted her that night, but before the Court in exaggeration of her earlier statement, she deposed that, he repeatedly assaulted her sexually that night. Her evidence appears to have been embellished and the new facts that emerge in her evidence appear to have been made in order to fortify the Prosecution case. Such contradictory statements cannot be considered by the Court as gospel truth to nail the Appellant, when the Prosecution has failed to discharge its responsibility of proving the case beyond reasonable doubt. In passing it is noticed that 'S' has conveniently disappeared from the annals of the Prosecution case along with her boyfriend, which makes the genesis of the Prosecution case itself doubtful."

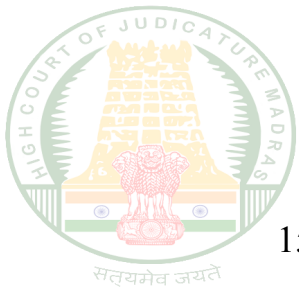
(iii) The decision of the High Court of Bombay in the case of *Navin*

Dhaniram Baraiye vs. State of Maharashtra reported in *2018 SCC OnLine*

Bom 1281 wherein it has been held as follows:-

"36. A proper analysis of the evidence of the prosecution witnesses and the medical evidence brought on record by the prosecution shows that the foundational facts necessary in the present case to raise presumption under [Section 29](#) of the POCSO Act, have not been established beyond reasonable doubt by the prosecution. The defence has been able to demonstrate that the prosecution story cannot be believed and that, therefore, the presumption would not operate. A dispassionate analysis of the evidence and material on record also demonstrates that the present case could be a case of false implication or a complete misunderstanding of the situation by the complainant P.W-1 who seemed to jump to conclusions by making allegations against the Appellant and thereafter making statements in the evidence which were material improvements over her own statements made to the Police. In this backdrop, it would be unsafe to hold that the prosecution had proved its case against the Appellant under the provisions of the [POCSO Act](#) or even under [Section 377](#) of the IPC.

37. In the light of the above, the instant appeal is allowed. The impugned judgment and order passed by the trial Court is set aside and the Appellant is acquitted of the charges levelled against him. Consequently, the Appellant shall be released from custody forthwith, if not required in any other case."



15. Heard the learned Counsel for the Appellant and the learned

Additional Public Prosecutor appearing for the Respondent.

Point for consideration:

Whether the conviction and sentence imposed on the Accused by the Judgment dated 23.12.2016 made in Special Sessions Case No. 18 of 2015 on the file of the learned Sessions Judge, Fast Track Mahila Court, Vellore, is to be set aside as perverse?

16. Perused the evidence of P.W-1 to P.W-18, Ex.P-1 to Ex.P-12 and the judgment of the learned Sessions Judge, Fast Track Mahila Court, Vellore, in Spl. S. C. No.18 of 2015, dated 23.12.2016.

17. On consideration of the evidence of P.W-1, P.W-2, P.W-3, P.W-4, P.W5 and P.W-7 it is noticed that they have deposed cogently regarding the alleged occurrence. The Doctor (P.W-14) who examined the minor child P.W-2 had issued certificate under Ex.P-6 wherein it is stated that the hymen is intact, the vagina is swollen and on touch, the child experienced pain. However, it is stated that there is no bleeding and no spermatozoa seen. In Ex.P-6 and Forensic Report under Ex.P-5 there is indication about blood on the pant of the



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Accused and not on his briefs. Therefore, that cannot be taken as if the Accused had caused sexual assault against the child. Merely on presumptions the Accused cannot be convicted. In the light of the reported rulings of the Honourable Supreme Court as well as the judgment of the High Court of Bombay in the case of *Navin Dhaniram Baraiye vs. State of Maharashtra* reported in *2018 SCC OnLine Bom 1281*, the observation of the Hon'ble Supreme Court that merely filing a charge sheet for the offence under the Protection of Children from Sexual Offences Act, 2012 cannot be treated as gospel truth when the Accused had not rebutted the Prosecution version, the Accused is to be convicted and the said ratio applies to this case also. May be there is animosity between the family of the victim P.W-1, P.W-2, P.W-3, P.W-4, P.W-5 and P.W-7 with the Accused but the allegations is found to be wild. If the evidence of P.W-1 is to be accepted, it is not supported with medical evidence, Ex.P-6 does not support the evidence of P.W-1. P.W-1 had stated that she saw blood oozing from the vagina of the child. If that be so, the Doctor could have recorded it. The suggestion put to minor victim that her mother tutored her, was denied by her. P.W-3 is the elder sister of P.W-2 victim and she had only stated that her sister was taken to hospital by her mother on the alleged date of occurrence when they were playing near the pit (channel from the lake). Apart from that, as rightly pointed out by the learned



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Counsel for the Appellant, the place of occurrence is not far away from the village road and it is hardly 15 feet. As per the rough sketch Ex.P-10, the observation mahazar Ex.P-11, if the child had screamed, the villagers who were grazing their cattle could have come to the rescue of the child. The time of the alleged occurrence is 4.15 p.m. Apart from the above, P.W-10 is the person who is alleged to have informed P.W-1 that he saw the daughter of P.W-1 taken in a two wheeler by the Accused had turned hostile. Also, the alleged villagers who had been returning from grazing field and who informed P.W-1 also remained hostile. The evidence of Doctor (P.W-14) does not support the claim of P.W-1. Ex.P-5 and Ex.P-6 are against the Prosecution. The learned Sessions Judge, Fast Track Mahila Court, Vellore, failed to appreciate those facts and convicted the Accused.

18. In the light of the above discussion, the ruling cited by the learned Additional Public Prosecutor will not be applicable to the facts of this case. Above all, in this case, 164 statement has not at all been recorded and marked during trial. Therefore, the presumption under Section 29 of the Protection of Children from Sexual Offences Act, 2012 cannot be held against the Accused.

19. Accordingly, the point for consideration is answered in favour of



Criminal Appeal No.264 of 2017

the Accused and against the Prosecution. The conviction and sentence imposed on the Accused by Judgment dated 23.12.2016 made in Special Sessions Case No. 18 of 2015 on the file of the learned Sessions Judge, Fast Track Mahila Court, Vellore, is found perverse and the same is to be set aside.

In the result, **this Criminal Appeal is allowed.** The Judgment dated 23.12.2016 passed in Special Sessions Case No. 18 of 2015 made by the learned Sessions Judge, Fast Track Mahila Court, Vellore, is set aside. The Appellant is acquitted from all the charges. The bail bond executed by the Appellant, if any, is directed to be cancelled and the fine amount, if any paid, by him is directed to be refunded.

09-01-2025

srm

Internet : Yes / No.

Index : Yes / No

Speaking/Non-speaking order



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To

1. The Sessions Judge,
Fast Track Mahila Court,
Vellore.
2. The Deputy Superintendent of Police,
Pollachi Division,
All Women Police Station,
Pollachi.
3. The Public Prosecutor,
High Court, Madras.
4. The Section Officer,
Criminal Section,
High Court Madras.



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Criminal Appeal No.264 of 2017

SATHI KUMAR SUKUMARA KURUP, J.,

srm

Judgment made in
Criminal Appeal No.264 of 2017

09-01-2025