



CrI.A.(MD)No.391 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 28.01.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MS.JUSTICE R.POORNIMA**

CrI.A.(MD)No.391 of 2020

Sivanperumal

... Appellant

Vs.

The Inspector of Police,
All Women Police Station,
Ambasamuthiram,
Tirunelveli District.

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, to call for the entire records connected to the judgment in Spl.S.C.No.85 of 2019 on the file of the Special POCSO Sessions Court, Tirunelveli dated 21.10.2020 and set aside the conviction and sentenced imposed against the appellant.

For Appellant : Dr.R.Alagumani

For Respondent : Mr.T.Senthilkumar,
Addl. Public Prosecutor.



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JUDGMENT

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(Judgment of the court was delivered by G.R.Swaminathan, J.)

Sivanperumal, the appellant herein was convicted for the offence under Section 6 of Protection of Children from Sexual Offences Act, 2012 and sentenced to undergo life imprisonment and fine of Rs.50,000/- was also levied, in default to undergo one year simple imprisonment vide judgment dated 21.10.2020 in Spl.S.C.No.85 of 2019 on the file of the Special Court for POCSO Act Cases, Tirunelveli. The co-accused were however acquitted.

2.The question that calls for consideration is whether the impugned judgment deserves to be sustained.

3.The case of the prosecution is that the appellant had sexual intercourse with P.W.1 / victim leading to delivery of a girl child. Crime No.18 of 2017 was registered on the file of All Women Police Station, Ambasamudram. The prosecution examined as many as 20 witness and marked Exs.P1 to P17 in support of the charge.



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4. According to the prosecution, P.W.1 (M...) was the victim. P.W.1 in her testimony before the Court below did not support the prosecution. She was declared as hostile. P.W.2 is the mother of the victim. She admitted that the appellant was her son-in-law and that her daughter and the appellant are happily living as husband and wife. P.W.3, P.W.4, P.W.5, P.W.6, P.W.7, P.W.8 and P.W.9 turned hostile. P.W.10 was working as duty doctor in Tirunelveli Medical and College Hospital and she examined the victim on 12.07.2017. P.W.11 examined the appellant and issued potency certificate (Ex.P8). P.W.12 is the Registrar of Births and Deaths, Tirunelveli Corporation and he issued Ex.P9 / birth certificate for the child of P.W.1 who was born on 15.11.2017. P.W.13 produced the victim before the Judicial Magistrate No.V, Tirunelveli. P.W.14 had taken the appellant for medical examination. P.W.15 deposed that she produced the victim and the child born to her as well as the appellant for medical examination on 07.03.2018 and that she handed over the FTA card to forensic science department, Madurai.

5. P.W.16 was the Headmistress of the school in which the victim had studied. She deposed that the victim was born on 09.02.2022. In the



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cross examination, she admitted that while admitting the child in the school, the date of birth could have been varied. P.W.17 is the Assistant Director working in Forensic Science Department, Madurai and the DNA report (Ex.P14) was marked through him. P.W.18 was the Inspector of Police who carried out part of the investigation. P.W.19 was working as Police Constable Grade – I in All Women Police Station, Ambasamudram, it was she who produced the victim for medical examination. P.W.20 filed the final report.

6.The Court below had convicted the appellant only on the strength of DNA report.

7.The learned counsel for the appellant drew our attention to the decision dated 20.12.2023 made in Crl.A.No.538 of 2023 (Chandra Mohan Vs. State). Paragraph No.11 of the said judgment reads as follows:-

“11. In a recent decision, the Hon'ble Bombay High Court had occasion to consider the case where the victim was a mentally retarded person, and the conviction by the trial Court was on the basis of expert evidence of the DNA. It was found in



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*that case that the prosecution had not let in any evidence to show how the samples were collected, packed, and preserved. The Division Bench of the Bombay High Court in **Suresh Vs. The State of Maharashtra**, reported in **2023 SCC Online Bom 641**, held as follows:*

“9... P.W.8 the investigating officer ought to have explained, where those samples were kept, in which condition they were kept and how they were transmitted. P.W.9 A.S.I. Sonawane is the carrier, however, he has not stated as to in which condition, that means in which boxes, he had taken those samples. The method of preservation is not stated by anybody. Under such circumstance, we cannot rely on the DNA test report Exhibit-41.

10. We have considered the ocular evidence as well as the scientific evidence. As regards the ocular evidence is concerned, at the cost of repetition, we would like to say that P.W.4 and P.W.5 are not trustworthy as they have changed their statements in the cross. When the ocular evidence was not supporting, conviction ought not to have been based only on the DNA test report i.e. medical report.””

8.This judgment was followed subsequently in Crl.A.No.641 of 2021 dated 19.06.2024 (Krishnaraj @ Thangaraj Vs. State). Paragraph No.12 of the said judgment is as follows:-

“12. In a similar case, where there was no evidence of blood sample being taken from the accused and in the absence of establishing the chain of custody, to ensure that the blood samples were collected from the person concerned, packed and



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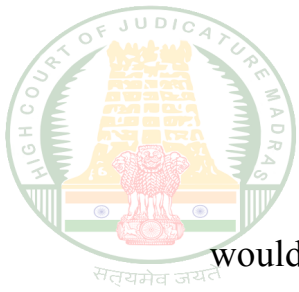


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preserved properly, the Hon'ble Supreme Court in Prakash Nishad @ Kewat Zinak Nishad v. State of Maharashtra, in Crl.A.Nos.1636-1637 of 2023 dated 19.04.2023, held that the DNA report cannot be relied upon in such circumstances. The judgment laid stress on the importance of establishing the chain of custody of the sample. The relevant observations are as follows:

“62. The document also lays emphasis on the 'chain of custody' being maintained. Chain of custody implies that right from the time of taking of the sample, to the time its role in the investigation and processes subsequent, is complete, each person handling said piece of evidence must duly be acknowledged in the documentation, so as to ensure that the integrity is uncompromised. It is recommended that a document be duly maintained cataloguing the custody. A chain of custody document in other words is a document, which should include name or initials of the individual collecting the evidence, each person or entity subsequently having custody of it, dated the items were collected or transferred, agency and case number, victim's or suspect's name and the brief description of the item.””

9. In the case on hand also, there is no evidence to establish the chain of custody of the sample. According to the prosecution, DNA samples were collected from the victim, accused as well as child. No doctor has been examined to show collection of sample from the child. Since this vital piece of evidence is missing, we are of the view that it



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would be unsafe to sustain the conviction of the appellant only on the strength of DNA report.

10.The appellant and the victim appeared before us. The appellant and the victim informed us that they are living as husband and wife happily for the last several years.

12.The case of the prosecution is that Kayal was born to the appellant and the victim and that is the basis for the instant prosecution. Subsequently, one more child namely, Sivakarthikani was born to them. In these circumstances, to sustain the impugned judgment would lead to certain ruin of the family.

13.The appellant had also executed a settlement deed dated 06.12.2024 in favour of the children namely, Kayal and Sivakarthikani. It was registered as Document No.7499/2024 on the file of the Sub Registrar, Alangulam. The appellant has solemnly undertaken before us that he would continue to maintain P.W.1 as well as the two children. This undertaking to maintain P.W.1 and the two children given before us by the appellant is placed on record.



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14.In this view of the matter, the impugned judgment is set aside and the appellant is acquitted and the criminal appeal is allowed. The fine amount, if any paid by him shall be refunded forthwith. The bail bond, if any, executed by him shall stand cancelled.

(G.R.S. J.) & (R.P. J.)
28.01.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-

- 1.The Special POCSO Sessions Court,
Tirunelveli.
- 2.The Inspector of Police,
All Women Police Station,
Ambasamuthiram,
Tirunelveli District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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