

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 04.06.2025

PRONOUNCED ON : 31.07.2025

CORAM:

THE HONOURABLE Dr.JUSTICE R.N.MANJULA

Crl.A.(MD)No.17 of 2017

S.Raju

... Appellant/sole accused

vs.

State through
The Deputy Superintendent of Police
Sirkazhi Subdivision,
Aanaikaran Chatharam Police Station
Crime No.168 of 2011
of Nagapattinam District

...Respondent

PRAYER : This Criminal Appeal has been filed under Section 374 of Criminal Procedure Code against the Judgement of the learned I Additional District and Sessions Judge (PCR), Thanjavur, dated 05.12.2016 in Spl.S.C.No.73 of 2013.

For Appellants : Mr.N.Anantha Padmanabhan
Senior Counsel
for Mr.S.Srikanth

For Respondent : Mr.K.Gnanasekaran
Government Advocate (Crl. Side)



JUDGEMENT

WEB COPY This appeal has been filed challenging the Judgement of the learned I Additional District and Sessions Judge (PCR), Thanjavur, dated 05.12.2016 in Spl.S.C.No.73 of 2013.

2. The appellant is the sole accused, who has been charged under Sections 341, 342, 355, 376(i), 506(ii) IPC, Section 4 of Tamil Nadu Prohibition of Harassment of Women Act and Section 3(2)(v) of SC/ST (PoA) Act, 1989 and convicted and sentenced as under.

Accused	Offences under Sections	Punishment	Fine	In default Sentence
Sole Accused	341 IPC		Rs.500/-	1 week SI
	342 IPC	6 months SI	Rs.500/-	1 month SI
	376(ii) IPC	10 years RI	Rs.10,000/-	1 year RI
	506(ii) IPC	3 years RI	Rs.5,000/-	6 months SI

3. The sentences were ordered to run concurrently. Set off under Section 428 Cr.P.C. is also ordered.

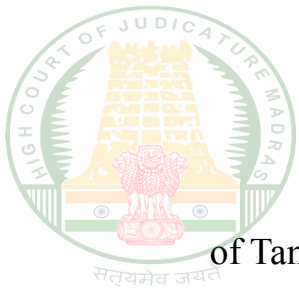


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4. The case of the prosecution is that on 23.03.2011, at about 20.30 hours, when the victim 'X' was proceeding alone in Sivan Kovil Street, the accused who was standing in front of his house dragged the victim into his house, bolted the doors, threatened the victim by showing knife and raped her forcibly. Thereafter, the accused had given sedative drugs and tea to the victim and she became unconscious. Subsequently, he cut her hair. On 24.03.2011, at about 14.00 hours, when the victim re-gained conscious, the accused once again raped her.

5. On the complaint given by the father of the victim (PW1), a case has been registered in Crime No.168 of 2011 on the file of the Anaikaaran Chathiram Police Station, Nagapattinam. After conclusion of the investigation, charge sheet has been filed against the accused for the offences punishable under Sections 341, 342, 355, 376(i), 506(ii) IPC, Section 4 of Tamil Nadu Prohibition of Harassment of Women Act and Sections 3(i)(xi) and 3(2)(v) of SC/ST (PoA) Act, 1989.

6. After completing the legal mandate of furnishing copies and all other legal formalities, charges have been framed against the accused for the offences under Sections 341, 342, 355, 376(i), 506(ii) IPC, Section 4



of Tamil Nadu Prohibition of Harassment of Women Act and Section 3(2)

(v) of SC/ST (PoA) Act, 1989. When the accused was questioned, he denied his involvements and claimed to be tried.

7. Before the Trial Court, on the side of the prosecution PW1 to PW15 have been examined and Exs.P1 to P10 have been marked. On the side of the accused, no oral or documentary evidence has been marked.

8. After the conclusion of trial, the learned I Additional District and Sessions Judge (PCR) acquitted the accused from the charges under Section 355 IPC, Section 4 of Tamil Nadu Prohibition of Harassment of Women Act and Section 3(2)(v) of SC/ST (PoA) Act and found the accused guilty for the offences under Sections 341, 342, 376(ii) and 506(ii) IPC and convicted and sentenced him as mentioned supra. Aggrieved over that, the appellant / sole accused has preferred this appeal.

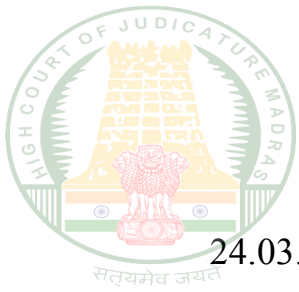
9. Mr.N.Anantha Padmanabhan, learned senior counsel appearing for Mr.S.Srikanth, learned counsel for the appellant submitted that there is an exorbitant delay in lodging the complaint, registration of FIR and



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despatching the same to Magistrate Court; there are contradictions between the evidence of the victim (PW2) and Accident Register Ex.P2; the averments in the complaint Ex.P1 is completely in contradiction to the statement of the victim before PW8 Doctor; the date of occurrence is 23.03.2011 and 24.03.2011; however, the victim was referred to the PW8 Doctor only on 02.05.2011; the victim has given statement before the PW8 Doctor that the occurrence had taken place on 23.04.2011, which is in contradiction to the averments in the FIR; PW9 Doctor has stated during his evidence that there was no erectile function for the appellant / accused when he examined; however he had opined that there was nothing to suggest that the appellant / accused is impotent or he is not capable to have sexual intercourse; PW9 Doctor has given evidence on this aspect only on assumption and not in terms of the medical examination; a false complaint has been given just with a motive to extract money from the appellant / accused; and all these material evidence and contradictions have not been properly appreciated by the learned Judge.

10. Mr.K.Gnanasekaran, learned Government Advocate (Crl. Side) submitted that the occurrence had taken place on 23.03.2011 and on



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24.03.2011 and thereafter, the accused was absconding and he has been traced only on 19.04.2011; PW5 Teacher has incidentally seen the appellant / accused taking away the victim and this fact has been stated by the victim herself in her evidence and the trial Court did not have any reason to reject her evidence; medical evidence also tallies with the evidence of the victim; and hence it is right for the trial Court to convict the accused.

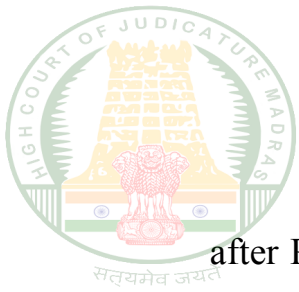
11. The victim (PW2) was studying in 6th standard when the occurrence had taken place. On the evening of 23.03.2011, there was a family function, which was attended by the victim and her family. The function venue was just 1 km from the victim's house and at about 08.00 p.m., she came back by herself on her own from the function and her parents told that they would follow her. But the victim did not reach home and hence they searched her all over. Only on 24.03.2011 evening, the victim was found under a tamarind tree behind the house of the appellant / accused and the victim's brother had lifted her to home. The father of the victim who was examined as PW1 has given the complaint on 28.03.2011.



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12. It was submitted by the learned senior counsel for the appellant that there was delay in lodging the FIR. As per the evidence of PW1 and his complaint, his 10 year old daughter when brought by his son after finding her under the tamarind tree, did not have the conscious to state what had happened to her. Only after they learnt about the occurrence from the victim (PW2), the complaint came to be filed. When the victim's family saw her in such a pathetic condition, their anxiety would be to save her and then to know what had happened and how it happened. Even after learning that it was sexual assault, due to some social cultural reasons, it is possible for them to take some more time to go to the Police Station. So, in this kind of offence, delay will not cause any fatal damage to the prosecution case and the learned Judge had rightly applied the position of law and held that the delay will not affect the case of the prosecution.

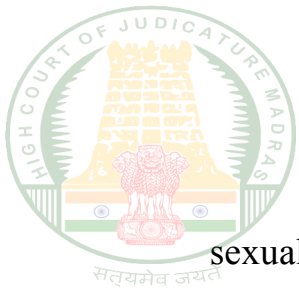
13. The appellant / accused was known to the victim's family as he was living nearby and he was all alone. He was a retired teacher. There is no previous enmity between the victim's family and the appellant / accused in order to falsely implicate him in the case. In fact, the delay in lodging the complaint would show how natural the complaint could be



after PW1 learnt the details from his daughter after she became better to narrate the occurrence.

14. As the occurrence had taken place in the year 2011, the Special Act for prevention of sexual violence against children has not come into force. The Doctor who had examined the victim on 02.05.2011 by registering Accident Register has been examined as PW8 and the Accident Register has been marked as Ex.P2. PW8 Doctor has recorded that the victim was 10 years old and hence she was a child.

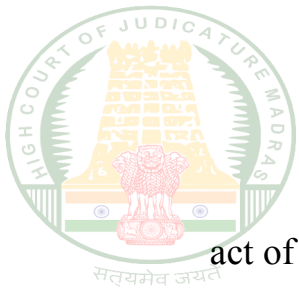
15. When the victim was examined as PW2 she has stated in her evidence that on 23.03.2011, at about 08.00 p.m., while she was walking along the street leading to her house from the function place, she came across her Teacher PW5 and she has stated that she was in her uniform itself. When the Teacher enquired her where she was going, she told her that she had been to the marriage and returning home. She has further stated that the appellant / accused came behind her, closed her mouth and pulled her inside the house and thereafter, removed her dress and threatened her stating if she dared to shout, she would tell everyone that she had been there to steel. Further he showed knife to threaten her and



sexually assaulted her by squeezing her breast and then committed the act of rape. The victim's narration about the occurrence in her own language and the description would only convey about the act of rape committed by the appellant / accused on her. She has also stated that the appellant / accused had also given her some drinks and after she drank it, she was half conscious. On the next day morning also, he raped her once again. When she was not fully conscious, he pulled her and left her under the tamarind tree. During the course of cross examination, she has stated that the appellant / accused also cut her hair and thereafter, she could not remember what had happened.

16. As the victim's family was in search of the victim on several places, the brother of the victim spotted her in the evening of 24.03.2011 and took her home. As she could not regain her conscious for 2 to 3 days, she could describe her mother about what had happened to her only after 3 days and thereafter, the complaint was given.

17. The cross examination of PW1 has brought out only minor contradictions and it did not damage the evidence of PW2 as to how she was handled by the appellant / accused and her clear narration about the



act of rape committed by the appellant / accused.

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18. The brother of PW2 was examined as PW4 and he has stated in his evidence that on 24.03.2011, at about 08.00 p.m., as he was searching for his sister, he found her lying under the tamarind tree behind the house of the appellant / accused. He has stated that his sister was in blue and white dress. This tallies with the evidence of PW2 where also she had stated that she was wearing blue and white dress, which was her school uniform. As the victim was in school uniform and participated in the function, probably by going directly from School, it could have been possible to leave and proceed to house, before her parents stated to leave from the function. The evidence of PW1 as to how he came to know about the occurrence from the mouth of PW2 after she regained conscious and the evidence of PW4 how he traced her under the tamarind tree are natural, cogent, convincing and sequential. As the cross examination did not falsify their evidence in chief, the Trial Judge cannot be found fault for relying upon their evidence. In fact, the cross examination of PW4 would further strengthen what he had stated in his chief on all aspects.

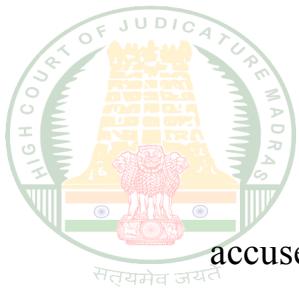


19. PW5 is the Teacher who met PW2 on the day of occurrence.

She had seen the appellant / accused taking the victim, but, she did not think anything untoward in order to interfere and rescue the child. It is probably because, the appellant / accused closed PW2's mouth. She could not scream and PW5 could not sense anything dangerous. PW5 is an incidental witness and she had no reason to adduce any false evidence. PW5 has got the reason to walk on the same street at the relevant point of time as she was going to her sister's house, that has been stated by her in her cross examination. So, the cross examination of PW5 only fortify her chief examination and hence, the Court is right in believing her evidence.

20. Apart from the evidence of the victim who had identified the appellant / accused as he was already known and a person who was residing nearby, the ocular evidence of PW5 seeing the appellant / accused taking the victim girl would confirm the involvement of the appellant / accused and that he is the perpetrator.

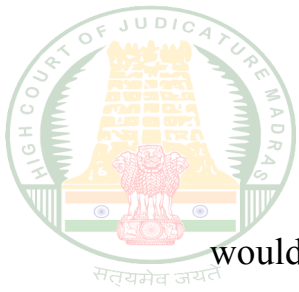
21. It is submitted by the learned senior counsel for the appellant that the evidence of PW6 and PW7 that they had seen the appellant /



accused bringing the victim and leaving her under the tamarind tree is not reliable. Even in the absence of the evidence of PW6 and PW7, there are sufficient evidence and more particularly, the evidence of PW2 is more reliable as she was half conscious when the appellant / accused pulled her and left her under the tamarind tree on 24.03.2011. As she was fully conscious when she was taken by the appellant / accused to his house, the identity of the accused by the victim that he was the person who had committed the offence does not suffer from any inadequacy or weakness.

22. Unfortunately, PW8 Doctor had treated the victim only on 02.05.2011, even though the offence had taken place two months ago. The insensitivity with which the investigation has been done before POCSO Act would only show Special Act to prevent the sexual violence against the children was badly needed.

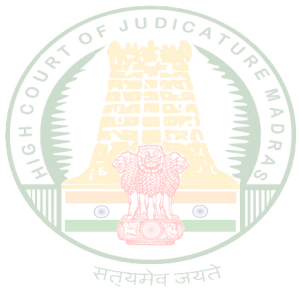
23. The victim, her father and her brother have all stated in their evidence that the victim had pain over her body and there were marks and other injuries. PW8 Doctor could not notice any external injuries. It is probably because of passage of time and in that course, the wound



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would have got healed. However PW8 Doctor has stated that the hymen of the child was ruptured and she still has pain over her private parts and breast. Even to the Doctor, the victim has stated that a known Teacher had given her Tea and she was sexually assaulted when she was unconscious. But the Doctor had noted the date as 23.04.2011 when the occurrence had taken place on 23.03.2011 and 24.03.2011. As the FIR itself has been registered on 30.03.2011 and the complaint has been given on 28.03.2011, the clerical error of recording the date of occurrence as 23.04.2011 in the Accident Register Ex.P2 by PW8 Doctor is patent. Ex.P7 FIR would show that the complaint was given on 28.03.2011 which was given with petition number and FIR was not registered immediately.

24. It appears that the appellant / accused was a Teacher and hence the victim had referred him as Teacher. Even in the complaint Ex.P1, the victim's father has stated that the appellant / accused is a retired Teacher and he was 70 years old. Only because he was a Teacher, PW5 another Teacher who was an incidental witness could not take it seriously when he took the victim with him on the day of occurrence in order to alert someone nearby.



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25. Failure to subject the victim to immediate medical examination is a flaw on the part of the prosecution. But that cannot defeat the other concrete evidence on record. In the Observation Mahazar marked as Ex.P9, it is observed that there was a tamarind tree behind the place of occurrence. Again in the Rough Sketch Ex.P10, the Investigation Officer omitted to show the tamarind tree by committing another mistake.

26. The appellant / accused was alone at his house at the time of occurrence and he found it convenient to do the ugly act on the child who was helpless, vulnerable and all alone. The learned Trial Judge has already observed that the testimony of the rape victim can be relied without any corroboration as she stand on a higher pedestal than the injured witness. Only when the victim's evidence on the face of it appears to be doubtful and confusing, the other corroborating evidence needs to be relied on. While corroborating evidence would strengthen the evidence of the victim of sexual violence case, the absence of the same will not weaken her evidence or make it doubtful.

27. In this context, it is appropriate to refer the Judgement of the Apex Court in the case of **Phool Singh vs. State of Madhya Pradesh**



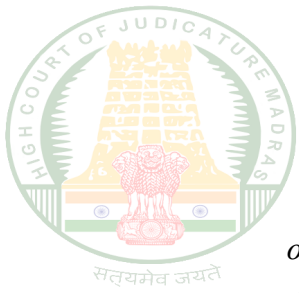
reported in (2022) 2 SCC 74. The relevant part of the above Judgement is extracted under.

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"5.3 In the case of Pankaj Chaudhary (supra), it is observed and held that as a general rule, if credible, conviction of accused can be based on sole testimony, without corroboration. It is further observed and held that sole testimony of prosecutrix should not be doubted by court merely on basis of assumptions and surmises. In paragraph 29, it is observed and held as under:

"29. It is now well-settled principle of law that conviction can be sustained on the sole testimony of the prosecutrix if it inspires confidence. [Vishnu v. State of Maharashtra [Vishnu v. State of Maharashtra, (2006) 1 SCC 283]. It is well-settled by a catena of decisions of this Court that there is no rule of law or practice that the evidence of the prosecutrix cannot be relied upon without corroboration and as such it has been laid down that corroboration is not a sine qua non for conviction in a rape case. If the evidence of the victim does not suffer from any basic infirmity and the "probabilities factor" does not render it unworthy of credence, as a general rule, there is no reason to insist on corroboration except from medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming. [State of Rajasthan v. N.K. [State of Rajasthan v. N.K., (2000) 5 SCC 30]."

5.4 In the case of Sham Singh v. State of Haryana, (2018) 18 SCC 34, it is observed that testimony of the victim is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of the victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. It is further



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observed that seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. In paragraphs 6 and 7, it is observed and held as under:

“6. We are conscious that the courts shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If the evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations or sexual assaults. [See State of Punjab v. Gurmit Singh [State of Punjab v. Gurmit Singh, (1996) 2 SCC 384] (SCC p. 403, para 21).]

7. It is also by now well settled that the courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females



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and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. (See Ranjit Hazarika v. State of Assam [Ranjit Hazarika v. State of Assam, (1998) 8 SCC 635]."

6. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and as observed hereinabove, we see no reason to doubt the credibility and/or trustworthiness of the prosecutrix. She is found to be reliable and trustworthy. Therefore, without any further corroboration, the conviction of the accused relying upon the sole testimony of the prosecutrix can be sustained.

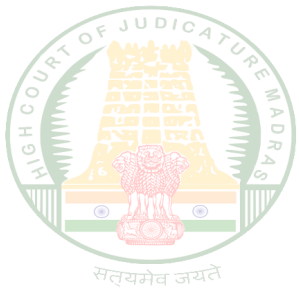
7. Now so far as the submission on behalf of the accused that as there were no external or internal injuries found on the body of the prosecutrix and therefore it may be a case of consent is concerned, the aforesaid has no substance at all. No such question was asked, even remotely, to the prosecutrix in her cross-examination. Therefore, the aforesaid submission is to be rejected outright."

28. In the instant case, the sequence of the occurrence revealed from the evidence of the prosecution witnesses from the day when the victim was walking alone on the street where the house of the appellant / accused is situated is very much natural and each stage of the occurrence



connects with the other stage perfectly and sequentially without causing any doubt. PW8 Doctor has stated that she noticed pain on the sexual organs of the victim and her hymen was ruptured. This would not only probabilize and corroborate, but also conclude that the victim was raped by the appellant / accused as narrated by her. Hence, there is absolutely no reason to discrete the evidence of the victim and the evidence of the other witnesses.

29. Much stress was made about the evidence of the PW9 Doctor who has examined the appellant / accused and stated that at the time of his examination, the appellant / accused did not have erection. So, it is claimed by the defence that the appellant / accused could not have raped as he had erectile dysfunction. Despite the same, PW9 Doctor has given opinion that the appellant / accused is capable of performing the act of sexual intercourse. He added explanation to his opinion by saying that the appellant / accused can get erection on other occasions. Just because the appellant / accused could not exhibit erection at the time when he was examined, it cannot be ruled out that he did not have the capability to get erection on any other occasion.



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30. In fact, the Court has clarified by putting a specific question to PW9 Doctor that the erection capability of an individual would change in accordance with the time and situation. The Doctor has given an affirmative answer and the Court further asked what is the reason. The Doctor has stated that the erectile function of a person may change in accordance with the situation. He added that a person can get erection even by imagining a female sexual organ or touched by a woman. When the Court asked whether the Doctor has done the above examination, the Doctor said 'No'. The Doctor cannot be expected to demonstrate with the help of any woman to confirm that the appellant / accused could have erectile function on other occasions. Even if the accused did not get erection at the time of examination, the possibility that he could have got it at the time he committed the offence has been confirmed by the Doctor by giving proper explanation. The above evidence of the PW9 Doctor coupled with the evidence of the victim PW2 would tally with the case of the prosecution and the learned Trial Judge has also rightly dealt with the above point.

31. As the Trial Court has rightly appreciated the essential aspects of the evidence with due sensitivity and understanding and found the



accused guilty for the offences under Sections 341, 342, 376(ii) and 506(ii) IPC, I do not find any reason to interfere with the sensible Judgement.

32. In the result, this Criminal Appeal is dismissed. The Judgement of the learned I Additional District and Sessions Judge (PCR), Thanjavur, dated 05.12.2016 in Spl.S.C.No.73 of 2013 is confirmed. The I Additional District and Sessions (PCR) Court, Thanjavur shall take steps to secure the appellant / accused for undergoing the remaining period of sentence, if any.

31.07.2025

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To

1.The I Additional District and Sessions Judge (PCR),
Thanjavur.

2.The The Deputy Superintendent of Police
(Sirkazhi Subdivision),
Aanaikaran Chatharam Police Station,
Nagapattinam District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Crl.A.(MD)No.17 of 2017

Dr.R.N.MANJULA, J.

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Pre-Deliver Judgement in
Crl.A.(MD)No.17 of 2017

31.07.2025