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Crl.A.No.374 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.02.2026

PRONOUNCED ON : 12.03.2026

CORAM:

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

Crl.A.No.374 of 2022

P.Prakash,
S/o.Perumal,
Pudhukadu Village,
Thonnakuttahalli Post,
Pennagaram Taluk,
Dharmapuri District.

...

Appellant / Accused

versus

The State rep. by the Inspector of Police,
Pennagaram All Women Police Station,
Dharmapuri District.
(Crime No.7 of 2016)

...

Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 of Cr.P.C. against the judgment dated 30.11.2021 in Spl.S.C.No.7 of 2017 on the file of the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri.

For Appellant : Mr.C.P.Sivamohan

For Respondent : Mr.R.Kishore Kumar
Government Advocate (Crl. Side)



Cr.L.A.No.374 of 2022

JUDGMENT

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This Criminal Appeal has been preferred against the judgment dated 30.11.2021 in Spl.S.C. No.7 of 2017 on the file of the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri.

2. The trial court convicted the appellant and sentenced as follows:-

<i>Penal Provisions</i>	<i>Sentence of Imprisonment</i>	<i>Fine Amount</i>
<i>Section 6 of POCSO Act</i>	<i>10 years RI</i>	<i>Rs.5,000/-, in default to undergo 6 months SI</i>

3. According to the prosecution, the victim/PW1 minor girl aged 14 years was studying 10th standard in Government Higher Secondary School at Athimarathur. PW1 is staying along with her grandmother at Pudhukadu of Eriyur. PW2/father and PW3/mother of the victim are staying away at Coimbatore and doing mason work for their livelihood and they visit the village once in a month. PW1's brothers were also staying with her grandmother and all were going to school.



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4. The accused is the parental uncle's son/ cousin brother of the victim and their house is also situated near the victim's house. Earlier, since the accused's house was under construction, all of them stayed together in the grandmother's house. The accused inspite of being a blood relative/ cousin brother of the victim, taking advantage, had forcible sexual intercourse on several occasions since the time she was in 9th std. Immediately after Vinayakar Chathurthi festival, the accused who had come to victim's house again had forcible sexual relationship.

5. The victim got severe stomach pain and feared that she was pregnant. When she informed the accused, he asked her to say that some of them had kidnapped, injected and raped her. Due to pain and fear, without going to school, she had gone to the nearby forest area. PW4, on noticing the victim in uniform, enquired and intimated to her father/PW2 and took her to village Oor Gounder's house.

6. PW1 narrated the incident to her parents, PW2 and PW3. PW1 lodged the complaint/Ex.P1. PW12/Sub-Inspector of Police received the



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complaint and registered FIR/Ex.P13. Thereafter PW13 took up the investigation, prepared Ex.P3/ observation mahazar and Ex.P14/Rough sketch. Requisition for medical examination of the victim was made in Ex.P6. Head Constable/PW7 took the victim/PW1 for medical examination. PW9/Doctor examined the victim and issued Accident Register/Ex.P8 and the medical opinion/Ex.P10. The accused was thereafter arrested and sent for medical examination by Doctor/PW11, who gave medical opinion/Ex.P11. PW8/Head Constable took the victim before the learned Judicial Magistrate No.II, Dharmapuri, where the statement under Section 164(5) Cr.P.C, was recorded in Ex.P2.

7. PW13/Inspector of Police thereafter altered the offence from Sections 341, 506(i) IPC and 5(l) r/w 6 of POCSO Act to Section 6 r/w 5(n) (l) of POCSO Act and 506(i) IPC through the alteration report/Ex.P18. After completion of investigation, PW13 filed the final report.

8. The trial court, on taking the case on file, issued summons, complied with the provisions of Section 207 of Cr.P.C. and framed the charges against the accused under Section 5(n)(l) r/w 6 of POCSO Act and



506(i) IPC. When questioned, the accused pleaded not guilty and stood trial.

In order to prove the charges, the prosecution examined 8 witnesses as PW1 to PW13 and marked Ex.P1 to Ex.P18.

9. After completion of the prosecution evidence, when the accused was questioned under Section 313 Cr.P.C., about the incriminating materials available he denied the same as false. However, neither any witnesses were examined nor any documents were marked on the side of the accused.

10. The trial court after conclusion of the arguments and on analyzing the evidences, found the accused guilty of the charges leveled and thereby convicted the accused and imposed sentence as stated supra. Assailing the conviction and sentence, the accused has preferred the above appeal.

11. Mr.C.P.Sivamohan, learned counsel appearing for the appellant contended that there is an inordinate delay in lodging the FIR, which is fatal to the case of the prosecution. Further, when the FIR/Ex.P13 mentions that the occurrence had happened from 01.03.2015 to 07.09.2016 there had been no explanation for the absence of any complaint during this period and also



no further explanation for further delay of 40 days in registering the FIR, from the date of the complaint.

12. He further contended that there is a huge discrepancy in the evidence, particularly in the evidence of victim/PW1. Even according to PW1, she was kidnapped by 4 persons, which includes one known person and was raped. The testimony of PW1 is inconsistent, unreliable and untrustworthy. When the testimony of PW1 is not corroborated by any other evidence and lacks credibility, the trial court erroneously convicted the appellant merely on the sole testimony of PW1. The prosecution failed to examine the Oor Gounder before whom the victim was produced by PW4 and also the victims grand mother. There is an inconsistent version in respect of information made to PW2 and PW3, when PW4 states that he informed to PW2, whereas as per the victim, she informed it to her mother/PW3.

13. Learned counsel by relying on the evidence of Doctor/PW9, submitted that the hymen was not intact probably only due to the riding of bicycle by the victim. The further opinion of the Doctor based on the finger test cannot be relied on, as the same has been deprecated by the Courts, as it



is violative of Article 21 of the Constitution. There was a dispute between the parents of accused and PW1, which led to the false complaint.

14. In support of his contentions, learned counsel relied on the following decisions:-

- (i) *Santosh Prasad v. State of Bihar* [2020] 3 SCC 443]
- (ii) *Chellappan v. State* [(2016) 4 MLJ (Crl) 611]
- (iii) *Mohammed Sulthan @ Shafeek v. State* [Crl.A.No.772 of 2019 dated 30.07.2021]
- (iv) *Karthikeyan v. State* [Crl.A.(MD)No.129 of 2016 dated 20.09.2021]

15. Per contra, Mr.R.Kishore Kumar, learned Government Advocate (Crl. Side) appearing for the State contended that, PW1 has given a clear and cogent evidence in respect of the forceful sexual relationship had by the accused on several occasions. PW1 who was helpless due to pain and fear, went to the nearby forest area in school uniform and PW4 has given evidence corroborating the evidence of PW1. The accused had repeated forceful sexual relationship by threatening the minor victim. The evidence of Doctor/PW9 coupled with the medical opinion/Ex.P10, establishes that the victim had been subjected to sexual relationship.



16. The allegation of kidnap and rape was retracted by the complainant/PW1 herself even before the Doctor, where she had stated that she said so only based on the instigation and instruction of the accused. He further submitted that when the prosecution has established the foundational facts, the trial court rightly in view of the presumption under Section 29 of POCSO Act and in the absence of rebuttal by the accused, had convicted and imposed the sentence, which needs no interference.

17. Heard the rival submissions and perused the materials available on record.

18. It is an unfortunate case where the victim/PW1 had suffered sexual assault in the hands of her blood relative cousin brother who ought to have been a protector. PW1 and her brothers were staying with her grandmother in the village and were going to school. PW2 and PW3, father and mother of the victim, were staying far away in Coimbatore doing mason work for their livelihood. The appellant, whose house is situated adjacent to the victim grandmother's house, is charged with the offence of aggravated



penetrative sexual assault for having sexually assaulted the minor on several occasions, for nearly more than a year.

19. In the cases invoking offences under POCSO Act, the prosecution has to first establish that the victim was a minor, as per Sec.2(d) of the Act. As per PW1, her date of birth is 17.03.2002 and studied up to 10th std. PW5/Head Master of the school had deposed that PW1 studied 10th standard in their school in the academic year 2016-17 and the date of birth of the victim is 17.03.2002. The admission register of the school/ Ex.P4 and the school certificate/ Ex.P5, pertaining to the victim PW1 has been marked. The age of the victim has not been disputed by the accused. As per the evidence of PW5 coupled with the documents in Ex.P4 and Ex.P5, the date of birth of the victim is 17.03.2002 and aged 14 years during the time of occurrence. As such, it has been established that the victim was a minor during the alleged occurrence.

20. PW1/victim had deposed that the accused started to misbehave with her as they were all staying together in the grandmother's house, when the accused's house was under construction. At that time, she was studying



9th standard and the accused had sexual intercourse with her. Thereafter, the accused had come to her house on several occasions and had sexual relationship. In spite of PW1 warning him that it is wrong, but still he continued to have sexual relationship with her.

21. Even 2 days after Vinayakar Chathurthi festival, he had come to the house and had sexual relationship with her. On the next day when she was going to school, she felt pain and feared that she would have become pregnant. When she informed the accused, he just ignored, saying nothing like that. As such, she had kept the school bag and skipped the school and went to the nearby forest area, where PW4 saw her and informed to her parents, PW2 and PW3.

22. In fact, even in the complaint/Ex.P1 given by victim, she has clearly stated that when she was studying 9th standard, the accused came to her grandmother's house and had forcible sexual intercourse with her and thereafter, every time he came to the village, he had forcible sexual relationship and last of such sexual relationship was 2 days after Vinayakar Chathurthi festival. In the statement of the victim/Ex.P2, under Sec.164(5)



Cr.P.C also, the victim had clearly stated that the accused had sexual intercourse and he had been having sexual relationship continuously even after some dispute among their parents and the last of such relationship was 2 days after Vinayakar Chathurthi festival.

23. PW1's testimony is clear and cogent to the effect that the accused had sexual relationship with her when she studied 9th std, as they were staying together in the grand mother house. Thereafter the accused continued to have sexual relation ship on several occasions and even after the dispute regarding taking water between their parents, still the accused continued to have sexual relationship.

24. PW2/father and PW3/mother both had given evidence to the effect that they had been staying at Coimbatore for work and PW1 who was staying with the grandmother, had been repeatedly sexually assaulted by the accused who is the blood relative. The learned counsel for the appellant mainly argued that the entire case is fabricated due to enmity and the enmity has been admitted by both PW1 and PW2. In fact, though PW2/father had admitted that there had been some dispute with his brother regarding taking



water, but he had clearly stated that the same has been sorted out and thereafter there had been no such problem. PW1 to PW3 had denied the suggestions put forth by the defence, in respect of any prevailing dispute and that only due to enmity a false complaint has been lodged.

25. PW4/independent witness, had clearly deposed that on finding the victim in the forest area in uniform, he enquired and on sensing that there was some problem, he had intimated the parents, PW2 and PW3. Observation mahazar Ex.P3 has been prepared in his presence. PW4 evidence corroborates with the evidence of PW1, regarding her isolated presence in the forest area in the school uniform.

26. PW9 /Doctor had deposed that she had examined the victim and issued the Accident Register/Ex.P8 and medical opinion/Ex.P10. Both in the Ex.P8 and Ex.P10, after recording the version of the victim about the alleged assault and rape by 1 known and 3 unknown persons, it is recorded that later PW1 had contradicted her statement and said that 1 known person had sexually assaulted her.



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27. As per the medical opinion Ex.P10, there was no external injury found over the genitals/body of the victim and therefore there is no evidence of any recent sexual intercourse in the victim. The opinion further discloses that the victim's hymen is not intact and the vagina admits only one finger. PW9 in her evidence has stated that there is a possibility that the hymen may not be intact due to the victim riding a bicycle and there is no evidence of any possibility of rape.

28. Even though it is suggested that the hymen may not be intact due to the riding of a bicycle, but from the evidence of PW9 coupled with Ex.P8 and Ex.P10, it could be seen that the victim had been subjected to sexual relationship and further there is no evidence of rape or recent sexual intercourse. The victim being a minor, any consensual sexual relationship is immaterial and it has been established that the victim had been subjected to sexual relationship.

29. PW11/Doctor deposed that he had examined the accused and issued the medical opinion Ex.P11. The medical opinion clearly reveals that



the accused is potent, sexually active and capable of being involved in the sexual relationship.

30. PW7, PW8 and PW10 have deposed in respect of taking the victim and accused for medical examination and recording the statement before the Magistrate. PW12 and PW13 have clearly deposed regarding the registration of Ex.P13 and collecting medical reports Ex.P9 and Ex.P12 and the evidences are in corroboration of the testimony of PW1.

31. It is vehemently contended on the side of the appellant that the conviction is based merely on the testimony of PW1 which is not corroborated by any other evidence and further there are lot of discrepancies in the testimony of PW1. At this juncture it is opposite to refer to the decision of the Hon'ble Supreme Court in the case of *Ganesan v. State* reported in **(2020) 10 SCC 573**. The Hon'ble Court while deciding the issue as to whether, in the case involving sexual harassment, molestation, etc., there can be conviction on the sole evidence of the prosecutrix held that conviction can be made based on the sole testimony of the victim, if the evidence is found to be trustworthy and unblemished with sterling quality.



Further minor discrepancies and contradictions shall not be a ground to throw out, otherwise reliable prosecution case. The relevant portion is extracted as under:-

“10.1. Whether, in the case involving sexual harassment, molestation, etc., can there be conviction on the sole evidence of the prosecutrix,

11. In State of Punjab v. Gurmit Singh, (1996) 2 SCC 384 : 1996 SCC (Cri) 316], this Court held that in cases involving sexual harassment, molestation, etc. the court is duty-bound to deal with such cases with utmost sensitivity. Minor contradictions or insignificant discrepancies in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration. The court may look for some assurances of her statement to satisfy judicial conscience. The statement of the prosecutrix is more reliable than that of an injured witness as she is not an accomplice. The Court further held that the delay in filing FIR for sexual offence may not be even properly explained, but if found natural, the accused cannot be given any benefit thereof. The Court observed as under: (SCC pp. 394-96 & 403, paras 8 & 21)

‘8. ... The court overlooked the situation in which a poor helpless minor girl had found herself in the company of three desperate young men who were threatening her and preventing her from raising any alarm. Again, if the investigating officer did not conduct the investigation



properly or was negligent in not being able to trace out the driver or the car, how can that become a ground to discredit the testimony of the prosecutrix? The prosecutrix had no control over the investigating agency and the negligence of an investigating officer could not affect the credibility of the statement of the prosecutrix. ... 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. ... Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. ... Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. ...

21. ... 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 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 trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.'

(emphasis in original)

....

14. Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix."

10.2. *In Krishan Kumar Malik v. State of Haryana, (2011) 7 SCC 130 : (2011) 3 SCC (Cri) 61], it is observed and held by this Court that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient, provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality.*

10.3. *Who can be said to be a "sterling witness", has been dealt with and considered by this Court in Rai Sandeep v. State (NCT of Delhi), (2012) 8 SCC 21 : (2012) 3 SCC (Cri) 750]. In para 22, it is observed and held as under: (SCC p. 29)*

"22. In our considered opinion, the "sterling witness" should be of a very high quality and calibre whose version should,



therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a “sterling witness” whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime



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should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

32. From the above, it is clear that in the cases involving sexual assault, the sole testimony of the victim is sufficient and the conviction would be justified and permissible if the testimony is found reliable and trustworthy with sterling quality. Further minor contradictions or insignificant discrepancies in the statement of a prosecutrix shall not be taken as a ground to throw out an otherwise reliable prosecution case.

33. In the instant case, the victim has been consistent and clear in her complaint Ex.P1, statement in Ex.P2 and evidence regarding the sexual relationship had by the accused on several occasions, from her studying in 9th std to 10th std. In the substantive evidence when examined in court, PW1 had clearly deposed, that the accused had sexual relationship with her when she was studying 9th standard. The victim had given clear and cogent evidence in respect of the sexual intercourse had by the accused on several occasions, inspite of PW1 warning that it is wrong.



34. Even though there are some contradictions regarding the allegation of kidnap and rape, the minor discrepancies does not in any way affect or discredit her testimony which cogently establishes the continued sexual relationship had by the accused. The victim had also cogently explained that she came out with the version of kidnap and rape only based on the instruction of the accused. It could be seen that since the accused had sexual relationship with his sister PW1, which is a prohibited relationship, the victim initially feared to reveal the relationship due to shame and acted as per the instructions of the accused.

35. The prosecution has established the foundational facts that the victim is a minor and she has been subjected to continued sexual relationship by the accused. When once the foundational facts are established, there is a statutory presumption under Section 29 of POCSO Act and it is upon the accused to dislodge the presumption. However, the accused had neither offered any explanation during the questioning under Section 313 Cr.P.C. nor brought in any oral or documentary evidence to rebut the presumption.



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36. The appellant being a blood relative and cousin of PW1, who is the natural protector after her parents had taking advantage of the victim being alone in the grandmother's house, as her parents were staying far away for their livelihood, had sexually exploited the victim. The accused had continued the sexual exploitation of the victim for over a period whenever he visited the village.

37. Further, due to the prohibited relationship, she was helpless and was forced to act on the dictates of the appellant, where she went to the extent of complaining that she was kidnapped by 1 known and 3 unknown persons and raped. When she was taken for medical examination, even though the victim came up with such a statement had contradicted and spelt out the truth before the Doctor/PW9 which is recorded in Ex.P8 and Ex.P10. In the absence of any evidence regarding rape and recent sexual relationship, as per PW9, medical opinion/ Ex.P10 and the explanation of PW1 coupled with the evidence of PW4, the discrepancy regarding kidnap and rape, does not in any way affect the prosecution case. This court cannot be oblivious of the fact that the minor victim was under fear of shame in the family and



society apart from the trauma she had undergone, which made her to act as per the instructions of the accused.

38. The testimony of the victim is reliable, trustworthy and inspires the confidence of this court regarding the sexual assault committed by the accused. PW1 had been consistent and given clear and cogent evidence regarding the sexual intercourse had by the accused on several occasion from her studying in 9th std and 10th std. In fact, PW1 had withstood the rigor of cross-examination and defence was not able to elicit anything adverse to the case of the prosecution. In the cases of this nature involving the sexual assault on the minor that too in a prohibited relationship, the delay in lodging the complaint cannot be taken a ground to discredit the prosecution case and the contention of the appellant in this regard deserves to be rejected.

39. The Hon'ble Supreme Court in the case of ***Bhanei Prasad alias Raju v. State of Himachal Pradesh*** reported in ***2025 SCC OnLine SC 1636*** dealing with the case where the father was convicted for the sexual assault on the daughter had observed that the scars are not merely physical but



psychological, cutting across every fibre of trust, safety, and dignity. When the perpetrator is none other the father, the natural guardian, the crime assumes a demonic character. When person who is expected to be a shield becomes the source of violation, the betrayal is not personal but institutional. In such cases, there can be no mitigation in sentencing.

“13. When a father who is expected to be a shield, a guardian, a moral compass, becomes the source of the most severe violation of a child's bodily integrity and dignity, the betrayal is not only personal but institutional. The law does not, and cannot, condone such acts under the guise of rehabilitation or reform. Incestuous sexual violence committed by a parent is a distinct category of offence that tears through the foundational fabric of familial trust and must invite the severest condemnation in both language and sentence. The home, which should be a sanctuary, cannot be permitted to become a site of unspeakable trauma, and the courts must send a clear signal that such offences will be met with an equally unsparing judicial response. To entertain a plea for leniency in a case of this nature would not merely be misplaced, it would constitute a betrayal of the Court's own constitutional duty to protect the vulnerable. When a child is forced to suffer at the hands of her own father, the law must speak in a voice that is resolute and uncompromising. There can be no mitigation in sentencing for crimes that subvert the very notion of family as a space of security.”



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40. The trial court, on considering the evidences, concluded that the victim was subjected to aggravated penetrative sexual assault and previous enmity projected by the defence as a motive to lodge false complaint, is not subjective to discredit the prosecution case, had convicted and imposed the statutory minimum sentence.

41. The decisions relied on by the appellant does not support the facts and circumstances of the present case. In the decision in Santosh Prasad, it was was case of rape and the Hon'ble Supreme Court on finding that there was previous enmity and the medical evidence did not support the charge of rape, disbelieved the case of prosecution and acquitted the accused. In the case of Chellappan, the Division bench of this Court finding that there were several contradictions in the evidence and finding that the hymen was intact disbelieved the allegation of sexual assault and acquitted the accused. In the other decisions relied also, this court disbelieved the prosecution case as the victims testimony was not consistent and supported by any substantial evidence.



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42. This Court, on reappraisal of the entire evidences and arguments raised in this appeal, does not find any illegality or perversity in the findings arrived at by the trial court warranting interference.

43. Accordingly, Criminal Appeal stands ***dismissed***. The trial Court shall take steps to secure the accused and commit him to prison to undergo the remaining period of sentence.

12.03.2026

Speaking order

Index : Yes

Neutral Citation : Yes

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To

1.The Sessions Judge,
Fast Track Mahila Court, Dharmapuri.

2.The Inspector of Police,
Government of Tamil Nadu,
Pennagaram All Women Police Station,
Dharmapuri District.

3.The Public Prosecutor,
High Court, Madras.



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G.ARUL MURUGAN, J.

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Pre-Delivery Judgment made in
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12.03.2026