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Crl.A.No.131 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2026

CORAM

THE HONOURABLE Mr.JUSTICE G.ARUL MURUGAN

Criminal Appeal No.131 of 2022

Manikandan

.. Appellant

Vs.

State rep. by
The Inspector of Police
Velur Police Station
Namakkal District
(Crime No.600/2014)

.. Respondent

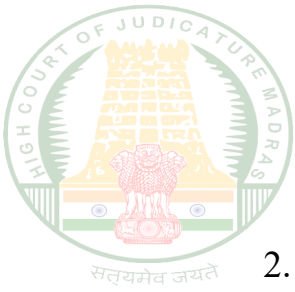
Criminal Appeal filed under Section 374 Cr.P.C. against the judgment dated 08.10.2021 passed by the learned Sessions (Fast Track Mahila) Judge, Namakkal, in S.C.No.71 of 2015.

For Appellant : Mr.B.Vasudevan

For Respondent : Mr.J.Subbiah
Government Advocate (Crl. Side)

J U D G M E N T

The appeal is filed challenging the judgment dated 08.10.2021 in S.C.No.71 of 2015 on the file of the Court of Sessions (Fast Track Mahila), Namakkal.



2. The appellant/1st accused was convicted and sentenced by the trial Court as under:

<i>Penal Provision</i>	<i>Sentence of Imprisonment</i>	<i>Fine Amount</i>
Sections 5(l) and 5(j)(ii) of POCSO Act, 2012	20 Years Rigorous Imprisonment for each of the offences	Rs.5,000/- for each of the offences, in default to undergo six months simple imprisonment

The sentences were ordered to run concurrently.

3. It is the case of the prosecution that the victim (P.W.2) is a minor, who had discontinued 10th standard. Victim's father (P.W.1) belongs to Scheduled Caste community and the victim worked in a hospital viz., Santha Devi Nursing Home at Velur. In the year 2014, when the victim (P.W.2) came to the hospital to attend duty, the appellant/1st accused, who belong to Vanniyar community, use to follow the victim. The 1st accused is an auto driver in Velur Town. The 1st accused, in some time, developed love affair with the victim and around April 2014, the 1st accused had taken the victim to his house, on the pretext that there is a festival in the village. On going to the house, when the victim found no one was there, the 1st accused immediately, locked the house and on promising her to marry, had forcible sexual intercourse. The 1st accused had dropped the victim on the next day morning. Thereafter, the 1st accused called the victim and by threatening her, had taken her to his house on several



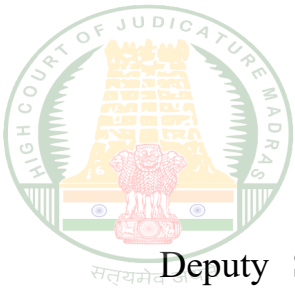
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occasions and had forcible sexual relationship. Due to the sexual relationship had by the 1st accused with the victim, she became pregnant. Only when there was a bodily change, her parents noticed and when her father (P.W.1) enquired about the same, the love affair with the 1st accused was disclosed by the victim and the sexual relationship had by him. Immediately, the victim's father (P.W.1), along with his wife (P.W.3) and the victim (P.W.2), had gone to the house of the 1st accused to enquire about the assault meted out by the 1st accused. They were abused by mentioning their caste name and they were threatened for life and chased away. Thereafter, the victim's father (P.W.1) had lodged a complaint (Ex.P1).

4. On receipt of the complaint (Ex.P1), the Inspector of Police (P.W.16) had registered an F.I.R. (Ex.P11) for the offences under Sections 3 read with 4 of the POCSO Act, 2012 and 506(i) of IPC and Section 3(2)(v) of SC/ST (POA) Act, 1989.

5. Police Constable (P.W.8) had taken the victim (P.W.2) for medical examination before Doctor (P.W.12). The Doctor (P.W.12) examined the victim and issued the medical report (Ex.P6). The victim was taken to the learned Magistrate and the statement was recorded under Section 164 Cr.P.C. is Ex.P3.

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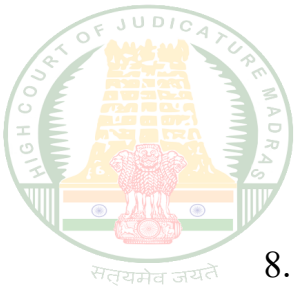
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Deputy Superintendent of Police (P.W.17) took up the investigation and prepared the Observation Mahazar (Ex.P5) and Rough Sketch (Ex.P12). Community Certificates of the accused were collected under Ex.P9 series and the Community Certificates of the victim and her father (P.W.1) were collected under Ex.P10 series. Head Mistress (P.W.9), Government Girls Higher Secondary School, Paramathi, issued School Certificate of the victim (Ex.P4), certifying that the date of birth of the victim is 09.06.1998. The 1st accused being arrested and was taken for medical examination before Doctor (P.W.13), who issued Potentiality Certificate (Ex.P8).

6. Upon completion of the investigation, the Deputy Superintendent of Police (P.W.17) filed the final report before the learned Judicial Magistrate, Paramathi and the same was taken on file as P.R.C.No.12 of 2015.

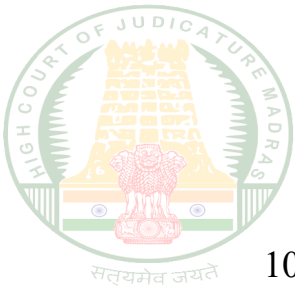
7. After complying with Section 207 Cr.P.C., the case was committed to the Court of Sessions (Fast Track Mahila) Judge, Namakkal. On committal, the trial Court framed charges against the 1st accused for the offences under Sections 5(l) and 5(j)(ii) of POCSO Act, 2012 and Section 506(i) IPC and Section 3(2)(v) of SC/ST (POA) Act, 1989. On being questioned, the 1st accused pleaded not guilty and stood trial.

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8. To prove the charges, the prosecution examined P.W.1 to P.W.17 and marked Ex.P1 to Ex.P13. On completion of the prosecution evidence, when the appellant/1st accused was questioned under Section 313 Cr.P.C. about the incriminating materials, he denied the same. The defence, to disprove the charges examined, D.W.1 and D.W.2 and marked Ex.D1 and Ex.D2.

9. The trial Court, after completion of the case and finding that there are sufficient materials available to alter the charge by including Section 5(j)(ii) of the POCSO Act, 2012, as the victim (P.W.2) was pregnant, altered the charge. On alteration of the charge, the 1st accused was again questioned, who pleaded not guilty. Thereafter, the accused were given opportunity to cross-examine the witnesses and the victim (P.W.2) has been cross-examined. After completion of the trial and arguments, the trial Court considering the materials available, concluded that the 1st accused alone is guilty for the offence under Sections 5(l) read with 5(j)(ii) of POCSO Act, 2012. However, acquitted the 1st accused from Section 506(i) IPC and Section 3(2)(v) of SC/ST (POA) Act, 1989. The trial Court had also acquitted 2nd accused and 3rd accused from all the charges. On arriving at such a conclusion by convicting the 1st accused, the trial Court has imposed the sentence as stated *supra*. Assailing the conviction and sentence imposed, the appellant/1st accused has preferred the above appeal.



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10. Mr.B.Vasudevan, learned counsel for the appellant argued that it is a case of love affair and since the parents of the victim (P.W.1 and P.W.3) were not inclined to accept the marriage in view of the different community, which has resulted in the complaint being lodged by the father of the victim (P.W.1). The accused was in a love affair and in the normal course, the accused would have married the victim, but for the interference of the parents. The evidence of the parents of the victim (P.W.1 and P.W.3) would evidently make it clear that they were against the proposal. He further submitted that he mainly relied on the cross-examination of the victim (P.W.2). It is submitted that the victim (P.W.2), in her cross-examination, had categorically stated that the accused has not committed any offence as alleged and he is not the father of the child. She had further stated that she was not present at the time, when the complaint (Ex.P1) was given. Further, she had stated before the learned Magistrate as suggested and instructed by the Police. When the victim (P.W.2) evidence is clear, nothing more was required for the appellant to rebut the presumption and the trial Court had erroneously convicted the appellant, when the charges are not proved.

11. Learned counsel further submitted that, when the occurrence was taken place in the year 2014, as per the unamended Section 6 of the POCSO

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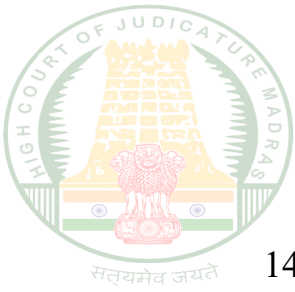


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Act, 2012, the minimum punishment prescribed is 10 years, which would be imposed up to term of life and only in view of the amendment made on 16.08.2019, Section 6 was amended by prescribing with a minimum sentence of 20 years. He further submitted that the amendment could have only prospective effect and the trial Court has imposed the sentence of 20 years, by applying the amended provision which was not in effect on the date of occurrence and therefore, the sentence imposed is against Article 20(1) of the Constitution of India.

12. Learned counsel further submitted that when the victim (P.W.2) was found pregnant, the prosecution failed to take a DNA test which would amply support the case of the appellant/1st accused, in view of the specific stand of the victim (P.W.2) in her cross-examination.

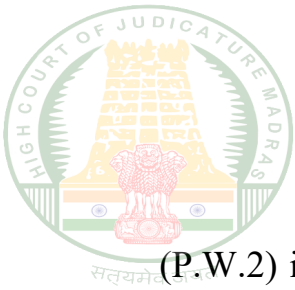
13. Learned counsel made a fervent appeal that only since the victim had now married and settled, being a love affair, the victim (P.W.2) herself had given a categorical evidence as the life of the appellant should not get affected in any way and sought for interference of this Court.



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14. *Per contra*, learned Government Advocate (Crl. Side) appearing for the State argued that, in the case involving a charge under the POCSO Act, consent by the victim is immaterial and once it is proved that the victim is a minor on the date of occurrence, the offence gets attracted and the accused cannot plead that the relationship was consensual. He further submitted that, the victim (P.W.2) had given a clear statement under Section 164 Cr.P.C. before the learned Magistrate about the forceful sexual relationship had by the accused on the false pretext of marriage and also thereafter, had repeated sexual relationship by threat and due to which, the victim was pregnant at an advanced stage of eight months. P.W.2 also in her testimony before the Court, had been clear and cogent in stating that, the accused had taken her to his house on the pretext of festival and had forcible sexual relationship by promising to marry and thereafter, on several occasions by threatening her, had indulged in repeated sexual relationship. He further submitted that, P.W.2 was not cross-examined on the same day and after a period of nearly 2½ years, when cross-examined, she had come out with a different version which would not any way affect the case of the prosecution.

15. When the statement recorded under Section 164 Cr.P.C. and the testimony before the Court is clear and categorical and the fact that the victim



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(P.W.2) is pregnant and the medical opinion offered in Ex.P6 coupled with the evidence of the Doctors (P.W.12 and P.W.13) would amply prove the charge against the appellant/1st accused, the trial Court had rightly appreciated the materials on record and convicted the 1st accused and imposed the sentence. However, in respect of sentence of 20 years, he fairly submitted that since the occurrence had happened in the year 2014, the amended provision may not strictly apply.

16. Heard the rival submissions and considered the materials available on record.

17. The victim (P.W.2) is the daughter of P.W.1 and P.W.3. P.W.1 belongs to the Scheduled Caste community, as per the certificates filed in Ex.P10 series. The victim had discontinued her X standard from the Government Girls Higher Secondary School, Paramathi, in the year 2013 and she had been working in Santha Devi Nursing Home at Velur. The appellant/1st accused who is an auto driver in Velur, belongs to Vanniyar community, as per the Community Certificates filed in Ex.P9 series. The 1st accused had followed the victim (P.W.2) and developed a love affair. On the pretext of a festival, the accused had taken the victim to his house. The 1st accused, on

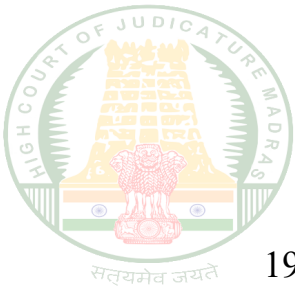
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promising to marry, had forcible intercourse with the victim. Thereafter, he had called her through phone and on several occasions, by threatening her, the 1st accused had continued to have sexual relationship, due to which, the victim (P.W.2) got pregnant. As such, the 1st accused along with his parents 2nd accused and 3rd accused, were charged for the offences under Section 5(l) and 5(j)(ii) of POCSO Act, 2012 and Section 506(i) of I.P.C and Section 3(1)(s) of SC/ST (POA) Act, 1989.

18. As the provisions of POCSO Act are invoked, to prove the age of the victim that she is a child below the age of 18 years as per Section 2(d) of the POCSO Act, 2012, the prosecution had filed the school certificate in Ex.P4. The Head Mistress of the School (P.W.9), who issued Ex.P4, has been examined. As per Ex.P4, the age of the victim is 09.06.1998. P.W.9 has deposed that the victim (P.W.2) had studied in their school till X standard and her date of birth is 09.06.1998. The age of the victim (P.W.2) is not disputed and from the document in Ex.P4 and the evidence of P.W.9, it is established that the victim was aged 16 years on the date of occurrence and the victim (P.W.2) is a child, as per the provisions of the POCSO Act, 2012.



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19. The victim (P.W.2) had given the statement before the learned Magistrate under Section 164 Cr.P.C. in Ex.P13. The victim has stated that she had discontinued X standard and she was working in Santha Devi Nursing Home. While returning from duty, the accused regularly followed her and he used to enquire about her name and place. The accused had invited her to his house for a festival. When she went to the house, no one was there and the accused locked the house and on promising to marry her, in spite of her refusal, the accused had forcible sexual intercourse. She was dropped on the next day morning by the accused. The accused had thereafter, more than two or three times threatened and had forcible sexual relationship with her, due to which, the victim became pregnant. Her parents, on coming to know that she was eight months pregnant during a medical check up, she along with her parents went to the accused's house, where they were threatened and ill-treated by their caste name by the parents of the accused.

20. The victim (P.W.2), in her testimony before the Court, had clearly deposed that she had gone to work in the Santha Devi Nursing Home. She belongs to Arundathiyar community and the accused belongs to Vanniyar community. When she used to go to hospital by bus, the accused used to accompany her and enquired her about her name and village. Thereafter, the

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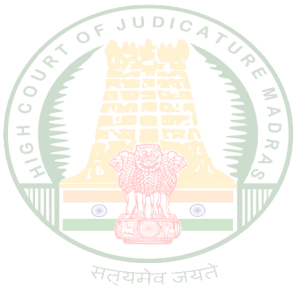
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accused had taken her to his house at Kuchipalayam on the pretext of a festival.

When no one else was there, the accused, on the promise of marrying her, had forcible sexual relationship. Thereafter, the accused had contacted her and by threatening her, he used to take her to his house and had forcible sexual relationship. Only when her parents noticed the bodily change and enquired her, she revealed her relationship with the accused and thereafter, she was taken to the hospital, where she was informed that she was pregnant. When the victim has given her testimony before the Court on 03.12.2018, the accused had not cross-examined her.

21. Victim's father (P.W.1) and mother (P.W.3) have deposed that they belong to Arundathiyar community and the accused belong to Vanniyar community and their daughter was working in Santha Devi Nursing Home and at the time of occurrence, she was a minor aged 16 years. The accused who was an auto driver had taken the victim to his house and on promising to marry her, had committed sexual assault. On noticing the change in her body, doubting that she is pregnant, her parents have enquired her, pursuant to which, she had revealed the relationship with the accused. They had gone to the accused's house to enquire, where they were ill-treated by stating their caste name, due to which, they have lodged the complaint.

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22. P.W.4 and P.W.5, with whom P.W.1 and P.W.3 are working, have deposed about the victim (P.W.2) who was found to be pregnant, due to the sexual relationship had by the accused.

23. Doctor (P.W.6) had deposed that the victim (P.W.2) was working as Nurse in their hospital from January 2014 to June 2014.

24. Doctor (P.W.12) who had examined the victim (P.W.2) had issued the medical report Ex.P6. As per Ex.P6, it is recorded that there was sexual assault by a known person, due to which, she became pregnant. The Doctor had offered medical opinion Ex.P6, stating that the victim is not virgin, hymen is absent and the vagina admits two fingers, pursuant to which, the Doctor opined that she might have had penetrative sex and she was found pregnant with gestational age 31-32 weeks. Doctor (P.W.12) had deposed that, on examination of the victim, no injury was found. Hymen was not intact and the victim was found to be pregnant. In the scan, growth of the fetus was diagnosed as 31 weeks and 6 days. The victim (P.W.2) had informed that she was sexually assaulted by a known person. From the evidence of P.W.12, coupled with the medical opinion Ex.P6, it is clear that the victim had been subjected to repeated



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sexual assault, due to which, she became pregnant and the growth of the foetus has been diagnosed as 31 weeks and 6 days.

25. After trial, since the Court found that there are materials to the effect that the victim (P.W.2) was pregnant, due to the sexual assault and therefore, the offence under Section 5(j)(ii) of POCSO Act, 2012, also get attracted, had altered the charge, by including the offence under Section 5(j)(ii) of POCSO Act, 2012. After alteration of the charge, the accused had availed the opportunity of again cross-examining the witness. When the accused did not choose to cross-examine the victim on 03.12.2018, had subjected the victim to cross-examination on 17.08.2021, *i.e.*, after a period of more than three years. Even though in the cross-examination made after nearly three years, the victim had come out with a different version, She had been confronted with the statement recorded under Section 164(5) Cr.P.C. before the learned Magistrate.

26. When the victim had given a clear statement before the learned Magistrate under Section 164(5) Cr.P.C. and in her testimony before the Court, had given evidence in respect of the sexual assault committed by the appellant/1st accused on several occasions, due to which, she became pregnant and also delivered a child, the offence under Sections 5(l) read with 5(j)(ii) of

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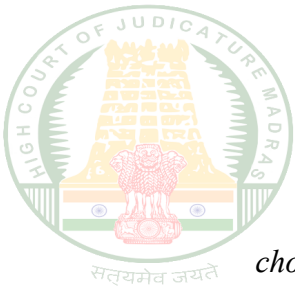


POCSO Act, 2012, gets attracted. The mere resiling of the statement and evidence in cross-examination, by P.W.2 from her evidence let in examination-in-chief and the statement before the Court in Ex.P3, would not come to aid the 1st accused to hold that the charges are not proved.

27. In this regard, it is useful to refer the decision of the Hon'ble Supreme Court in the case of ***Selvamani v. The State Rep. by The Inspector of Police*** reported in **2024 INSC 393**, wherein even though the victim resiled her version given in examination-in-chief, still after considering various decisions on this aspect, convicted the accused based on the sufficient corroboration to the version of the victim in chief-examination. The relevant portion reads as follows:

“8. No doubt that the prosecutrix and her mother and aunt in their cross-examination, which was recorded three and a half months after the recording of the examination-in-chief, have turned around and not supported the prosecution case.

*9. A 3-Judge Bench of this Court in the case of **Khujji @ Surendra Tiwari v. State of Madhya Pradesh (1991) 3 SCC 627 : 1991 INSC 153**, relying on the judgments of this Court in the cases of **Bhagwan Singh v. State of Haryana (1976) 1 SCC 389 : 1975 INSC 306**, **Sri Rabindra Kuamr Dey v. State of Orissa (1976) 4 SCC 233 : 1976 INSC 204**, **Syad Akbar v. State of Karnataka (1980) 1 SCC 30 : 1979 INSC 126**, has held that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution*



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chose to treat him as hostile and cross-examined him. It was further held that the evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.

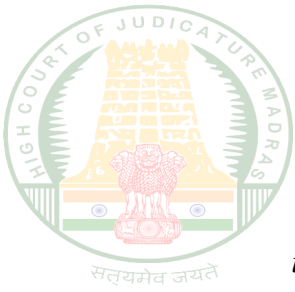
10. This Court, in the case of *C. Muniappan and Others v. State of Tamil Nadu* (2010) 9 SCC 567 : 2010 INSC 553, has observed thus:

“81. It is settled legal proposition that : (Khujji case, SCC p. 635, para 6)

‘6. ... the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.’

82. In State of U.P. v. Ramesh Prasad Misra, (1996) 10 SCC 360] this Court held that (at SCC p. 363, para 7) evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by this Court in Balu Sonba Shinde v. State of Maharashtra, (2002) 7 SCC 543], Gagan Kanojia v. State of Punjab, (2006) 13 SCC 516], Radha Mohan Singh v. State of U.P., (2006) 2 SCC 450], Sarvesh Narain Shukla v. Daroga Singh, (2007) 13 SCC 360] and Subbu Singh v. State, (2009) 6 SCC 462.

83. Thus, the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts



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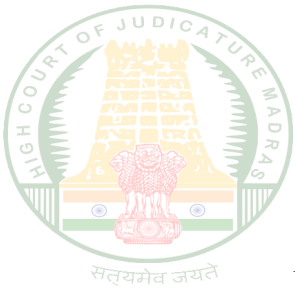
thereof which are admissible in law, can be used by the prosecution or the defence.

84. In the instant case, some of the material witnesses i.e. B. Kamal (PW 86) and R. Maruthu (PW 51) turned hostile. Their evidence has been taken into consideration by the courts below strictly in accordance with law. Some omissions, improvements in the evidence of the PWs have been pointed out by the learned counsel for the appellants, but we find them to be very trivial in nature.

85. 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 through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution's witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses. Vide Sohrab v. State of M.P., (1972) 3 SCC 751, State of U.P. v. M.K. Anthony, (1985) 1 SCC 505, Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, (1983) 3 SCC 217, State of Rajasthan v. Om Prakash, (2007) 12 SCC 381, Prithu v. State of H.P., (2009) 11 SCC 588, State of U.P. v. Santosh Kumar, (2009) 9 SCC 626 and State v. Saravanan, (2008) 17 SCC 587”

11. In the case of *Vinod Kumar v. State of Punjab* (2015) 3 SCC 220 : 2014 INSC 670, this Court has observed thus:

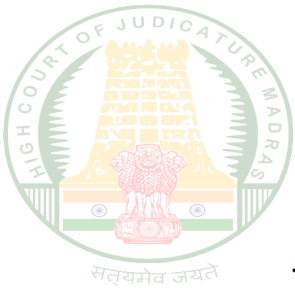
“51. It is necessary, though painful, to note that PW7 was examined-in-chief on 30-9-1999 and was cross-examined on 25-5-2001, almost after



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1 year and 8 months. The delay in said cross-examination, as we have stated earlier had given enough time for prevarication due to many a reason. A fair trial is to be fair both to the defence and the prosecution as well as to the victim. An offence registered under the Prevention of Corruption Act is to be tried with all seriousness. We fail to appreciate how the learned trial Judge could exhibit such laxity in granting so much time for cross-examination in a case of this nature. It would have been absolutely appropriate on the part of the learned trial Judge to finish the cross-examination on the day the said witness was examined. As is evident, for no reason whatsoever it was deferred and the cross-examination took place after 20 months. The witness had all the time in the world to be gained over. We have already opined that he was declared hostile and re-examined.

52. It is settled in law that the testimony of a hostile witness can be relied upon by the prosecution as well as the defence. In re-examination by the Public Prosecutor, PW 7 has accepted about the correctness of his statement in the court on 13-9-1999. He has also accepted that he had not made any complaint to the Presiding Officer of the court in writing or verbally that the Inspector was threatening him to make a false statement in the court. It has also been accepted by him that he had given the statement in the court on account of fear of false implication by the Inspector. He has agreed to have signed his statement dated 13-9-1999 after going through and admitting it to be correct. It has come in the re-examination that PW 7 had not stated in his statement dated 13-9-1999 in the court that recovery of tainted money was not effected in his presence from the accused or that he had been told by the Inspector that amount has been recovered from the accused. He had also not stated in his said statement that the accused and witnesses were taken to the Tehsil and it was there that he had signed all the memos.



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53. Reading the evidence in entirety, PW 7's evidence cannot be brushed aside. The delay in cross-examination has resulted in his prevarication from the examination-in-chief. But, a significant one, his examination-in-chief and the reexamination impels us to accept the testimony that he had gone into the octroi post and had witnessed about the demand and acceptance of money by the accused. In his cross-examination he has stated that he had not gone with Baj Singh to the Vigilance Department at any time and no recovery was made in his presence. The said part of the testimony, in our considered view, does not commend acceptance in the backdrop of entire evidence in examination-in-chief and the re-examination.

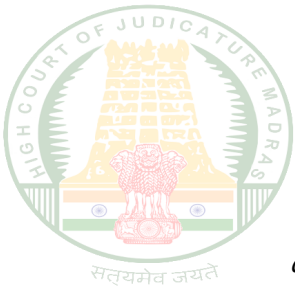
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57. Before parting with the case we are constrained to reiterate what we have said in the beginning. We have expressed our agony and anguish for the manner in which trials in respect of serious offences relating to corruption are being conducted by the trial courts:

57.1. Adjournments are sought on the drop of a hat by the counsel, even though the witness is present in court, contrary to all principles of holding a trial. That apart, after the examination-in-chief of a witness is over, adjournment is sought for cross-examination and the disquieting feature is that the trial courts grant time. The law requires special reasons to be recorded for grant of time but the same is not taken note of.

57.2. As has been noticed earlier, in the instant case the cross-examination has taken place after a year and 8 months allowing ample time to pressurise the witness and to gain over him by adopting all kinds of tactics.

57.3. There is no cavil over the proposition that there has to be a fair and proper trial but the duty of the court while conducting the trial is to be guided by the mandate of the law, the conceptual fairness and above

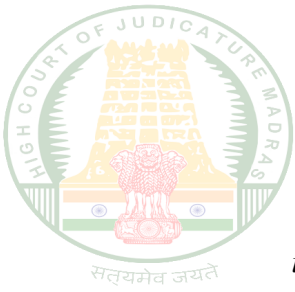


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all bearing in mind its sacrosanct duty to arrive at the truth on the basis of the material brought on record. If an accused for his benefit takes the trial on the path of total mockery, it cannot be countenanced. The court has a sacred duty to see that the trial is conducted as per law. If adjournments are granted in this manner it would tantamount to violation of the rule of law and eventually turn such trials to a farce. It is legally impermissible and jurisprudentially abominable. The trial courts are expected in law to follow the command of the procedure relating to trial and not yield to the request of the counsel to grant adjournment for non-acceptable reasons.

57.4. In fact, it is not at all appreciable to call a witness for cross-examination after such a long span of time. It is imperative if the examination-in-chief is over, the cross-examination should be completed on the same day. If the examination of a witness continues till late hours the trial can be adjourned to the next day for cross-examination. It is inconceivable in law that the cross-examination should be deferred for such a long time. It is anathema to the concept of proper and fair trial.

57.5. The duty of the court is to see that not only the interest of the accused as per law is protected but also the societal and collective interest is safeguarded. It is distressing to note that despite series of judgments of this Court, the habit of granting adjournment, really an ailment, continues. How long shall we say, "Awake! Arise!". There is a constant discomfort. Therefore, we think it appropriate that the copies of the judgment be sent to the learned Chief Justices of all the High Courts for circulating the same among the learned trial Judges with a command to follow the principles relating to trial in a requisite manner and not to defer the cross-examination of a witness at their pleasure or at the leisure of the defence counsel, for it eventually makes the trial an apology for trial and compels the whole society to suffer chicanery. Let



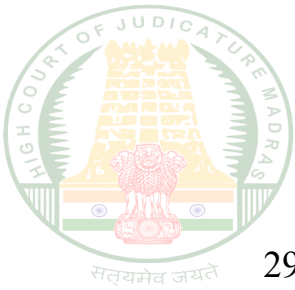
it be remembered that law cannot be allowed to be lonely; a destitute.”

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12. Relying on the aforesaid judgments, this Court has taken a similar view in the case of *Rajesh Yadav and Another v. State of Uttar Pradesh* (2022) 12 SCC 200 : 2022 INSC 148.

13. In the present case also, it appears that, on account of a long gap between the examination-in-chief and cross-examination, the witnesses were won over by the accused and they resiled from the version as deposed in the examination-in-chief which fully incriminates the accused. However, when the evidence of the victim as well as her mother (PW-2) and aunt (PW-3) is tested with the FIR, the statement recorded under Section 164 CrPC and the evidence of the Medical Expert (PW-8), we find that there is sufficient corroboration to the version given by the prosecutrix in her examination-in-chief.

28. In the instant case involving offence under the POCSO Act, the victim having been established a minor and when her testimony before the Court is clear and cogent, which is almost the same version, as per the statement recorded under Section 164 Cr.P.C. and there has been no exaggeration or any inconsistency, the resiling of the statement in the cross-examination that has been recorded after more than three years, will not in any way affect the evidence categorically let in by the victim in chief examination, establishing the charge against the accused.



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29. It is also the vehement contention of the learned counsel for the appellant/1st accused that the prosecution ought to have taken DNA test to ascertain the parentage to prove the charge against the appellant. This submission may not hold good, as there is overwhelming material, in view of the testimony of the victim (P.W.2) coupled with the medical opinion (Ex.P6) and the evidence of the Doctor (P.W.12). When it has been established that the victim (P.W.2) has been subjected to repeated sexual assault in the hands of the 1st accused and the victim (P.W.2) was also found pregnant nearly eight months, there was no occasion required on the part of the prosecution, to go for DNA test to prove the charges against the 1st accused.

30. In view of the evidences let in by P.W.1 to P.W.3 coupled with the testimony of P.W.2 and the Doctor's evidence (P.W.12) and the medical opinion (Ex.P6), the prosecution has established the foundational facts including that the victim (P.W.2) is a minor, who has been subjected to sexual assault on several occasions by the 1st accused and as a result of which, she became pregnant. When there is presumption under Section 29 of the POCSO Act, 2012, the 1st accused had only examined D.W.1 and D.W.2 and marked Ex.D1 and Ex.D2. The evidence brought in by the 1st accused is only to the effect to contend that P.W.1 to P.W.3 had not visited their house, after the



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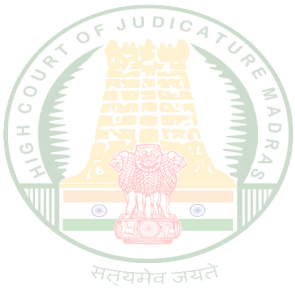
occurrence and these materials does not in any way help the appellant/1st accused in dislodging the presumption.

31. Further, the accused has been subjected to medical examination by the Doctor (P.W.13), who had issued the medical opinion in Ex.P8.

32. The evidence of the Doctor and the medical opinion suggest that the 1st accused was fit and potential to involve in the sexual relationship. The charges against the accused stand proved through the evidence of P.W.1 to P.W.3 and the Doctors, who examined the victim (P.W.2) and the 1st accused and their respective medical opinions furnished.

33. In view of the materials available on record establishing the charges and in the absence of any relevant material to dislodge the presumption under Section 29 of the POCSO Act, the trial Court had rightly ignored the cross-examination which was done after a period of three years and had convicted the appellant/1st accused for the offence under Sections 5(l) and 5(j) (ii) of the POCSO Act. This Court on reappraisal of the entire evidences, does not find any infirmity or perversity in the findings arrived at by the trial court in convicting the Accused, warranting inference.

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34. However, as regards the sentence imposed, the trial Court on convicting the appellant had imposed a sentence of 20 years for each of the offences along with fine. At this juncture, it is useful to refer to Section 6 of the POCSO Act, which reads as under:

6. Punishment for aggravated penetrative sexual assault

(1) Whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person and shall also be liable to fine, or with death.

(2) The fine imposed under sub-section(1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.

35. Section 6 was amended on 16.08.2019 and as per the amended Act, whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall not be less than 20 years. However, prior to amendment, as per Section 6, the minimum sentence prescribed was 10 years which could extend up to imprisonment for life. Admittedly, the offence was committed in the year 2014. Any conviction or punishment could be imposed only as per the provision that was in existence on the date of occurrence. As per Article 20(1) of the Constitution of India, a



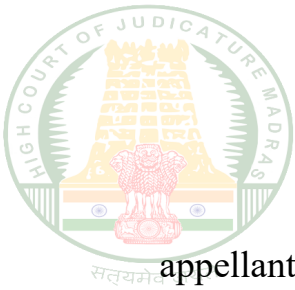
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person shall not be subjected to a penalty greater than that which might have been inflicted under the law in force, at the time of the commission of the offence.

36. In this regard, it is useful to refer to the decision of the Hon'ble Apex Court in ***Satauram Mandavi Vs. The State of Chhattisgarh & Another (2025 INSC 892)***, where it is held that the punishment under the amended provision could be imposed only in respect of the offence that has been committed pursuant to the amendment and imposing the enhanced sentence for offence committed earlier is unconstitutional. The relevant portion is extracted hereunder:

“11.The constitutional bar against retrospective imposition of a harsher penalty under Article 20(1) is clear and absolute. The trial Court, in applying the enhanced sentence introduced by the 2019 Amendment to Section 6 of the POCSO Act, has effectively subjected the appellant to a punishment greater than that which was permissible under the law in force at the time of commission of the offence which is clearly violative of the bar contained in Article 20(1) of the Constitution of India.”

37. In view of the above, the sentence of 20 years imposed by the trial Court under the amended provision for the offence that was committed in the year 2014, prior to the amendment is unconstitutional and cannot be sustained. Further considering the fact that there had been a love affair and the age of the



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appellant, at the time of occurrence, this Court is of the considered opinion that the minimum sentence under the unamended provisions may be imposed.

38. Therefore, while sustaining the conviction, the sentence imposed alone shall stand modified to a period of 10 years rigorous imprisonment for each of the offences and the sentences shall run concurrently. In all other aspects, the sentence shall remain undisturbed.

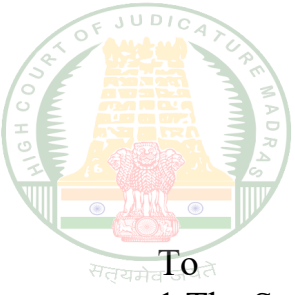
39. In the result, the Criminal Appeal is partly allowed. Any sentence already undergone by the appellant/1st accused shall be set off against the substantive sentence under Sec.428 of Cr.P.C. The trial Court shall take steps to secure the accused to serve the remaining period of sentence.

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Index : Yes

Neutral Citation : Yes



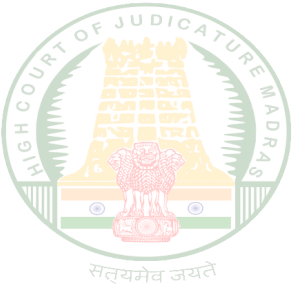
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To

1.The Sessions (Fast Track Mahila) Judge
Namakkal

2.The Inspector of Police
Velur Police Station
Namakkal District
(Crime No.600/2014)

3.The Public Prosecutor
Madras High Court, Chennai 600 104



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G.ARUL MURUGAN, J.

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