

Crl.A(MD)No.26 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 25.11.2024

CORAM:

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

Crl.A(MD)No.26 of 2022

~~Ravichandran~~

... Appellant/sole accused

Vs.

The State rep. By
The Inspector of Police,
All Women Police Station,
Aranthangi,
Pudukottai District.
(in Cr.No.03 of 2019)

...Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to call for the entire records connected to the judgment in Spl.S.C.No.05 of 2019 on the file of the Sessions Judge, Mahila Court Pudukkottai, dated 24.02.2020 and set aside the conviction and sentence imposed against the appellant.



WEB COPY



Crl.A(MD)No.26 of 2022

For Appellant : Mr.S.Siva Subramanian

For Respondent : Mr.E.Antony Sahaya Prabahar

Additional Public Prosecutor

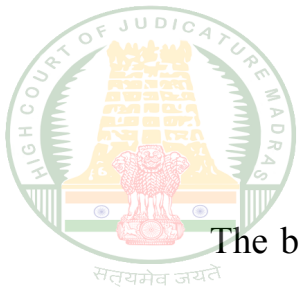
JUDGMENT

(Judgment of this Court was delivered by **R.POORNIMA, J.**)

This Criminal Appeal is filed against the conviction and sentence passed against the accused/sole appellant in the judgment dated 19.08.2019 passed by the Sessions Judge, Mahila Court, Pudukkottai, in S.C.No.05 of 2019 by convicting and sentencing the appellant for the offence punishable under Sections 5(l), 5(n), 5(j)(ii) r/w.6 of POCSO Act to undergo imprisonment for life and to pay a sum of Rs.5,000/- and in default to undergo one month simple imprisonment and sentenced to undergo imprisonment for three years under Section 506(ii) IPC (fine amount Rs.5,000/-).

2. The case of the prosecution are as follows :

(a) The complainant is the mother of the victim girl. The accused is the husband of the complainant and step father of victim girl.



Crl.A(MD)No.26 of 2022

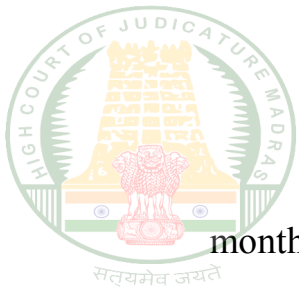
WEB COPY

The biological father of the victim girl died, when she was four months old. Thereafter, she married the accused and was living with him at Aranthangi. Her daughter, the victim girl was looked after by her parents. Through the second marriage, she gave birth to a daughter and a son. The accused owned a Tata Ace, and derived income; she was also working in a timber shop.

(b) Accused informed her that they should bring the victim girl from her parents and keep with them. He compelled her and brought her daughter to Aranthangi and joined her 10th standard in the Government Higher Secondary School.

(c) Her daughter complained about stomach-ache, her husband took her to hospital on 13.02.2019. The doctor prescribed some tablets and advised to take scan to detect the real problem.

(d) On 15.02.2019, her husband again took her daughter viz., victim girl to the hospital for taking scan. After that, he came with the victim girl and left her outside the house and went somewhere. Her daughter was crying and informed her that she was pregnant by six



Crl.A(MD)No.26 of 2022

WEB CONTENT

months. When she enquired as to what happened, the victim girl informed her that, when the complainant and the children had gone to the Church on 12.08.2018 she was staying alone in the residence, the accused hugged her and raped her. Again after two weeks, when she was on leave due to illness, staying at home, again the step father viz., the accused misbehaved with her and threatened that she should not reveal the same to anybody or he will kill her brother and other family members. Due to fear, she could not reveal the same to anybody.

(e) After hearing the victim girl, P.W.1 called her father Subbaiah and narrated the entire episode. She feared that, if she went to police, media would publish the news and the life of the victim will be ruined, and it affect other children's lives.

(f) On 16.02.2019 her father came to Tirunelveli and took her daughter with him. Her owner and other co-workers asked her as to why she had not lodged complaint against the accused after knowing that he had spoiled her daughter's life and cautioned that it is unsafe to live with him.



Crl.A(MD)No.26 of 2022

(g) Her husband came on 17.02.2019, and she asked him why did

he spoil the child, for which he admitted that he is the reason for the pregnancy of her daughter. He directed her to bring the victim girl, both should live together with him after the victim girl gives birth to a child or he will kill the complainant and her children.

(h) Taking into consideration of the welfare of the other children she brought the victim girl and lodged a complaint on 18.02.2019.

(i) After the receipt of the complaint, the Sub Inspector of All Woman Police Station, Aranthangi registered FIR in Crime No.03/2019, under sections 5(l), 5(n), 5(j) (ii) r/w.6, of Protection of Children from Sexual Offences Act, 2012 and section 506(i) of Indian Penal Code and forwarded the original FIR (Ex.P.6) along with the complaint (Ex.P.1) to the Sessions Judge, Mahila Court, Pudukkottai, and sent the copies to the respective officers for further action.

(j) After receipt of the FIR, the Inspector of Police PW7, took up the case for investigation, on 18.2.2019 at 10.00 a.m., inspected the place of occurrence in the presence of witnesses Chandrashekar, Sharmila and



Crl.A(MD)No.26 of 2022

prepared observation mahazar Ex.P.3, rough sketch Ex.P7. Thereafter,

WEB COPY

the Investigation Officer examined the witnesses Muthulakshmi, complainant and the victim girl 'X'. Subbiah, Pandian, Chandrashekhar and Sharmila and recorded their statements.

(k) At about 14.30 hours the Investigation Officer arrested the accused and recorded his confession treatment.

(l) The victim girl 'X' was sent to the Government Hospital for medical examination through Head Constable Manimegalai 1483.

(m) PW4 Dr.Divya, Medical Officer of Pudukottai Medical College examined the victim girl. The victim girl had informed her that she had sexual intercourse with her step father six months back. The child was found to be 28 weeks pregnant. She issued the accident register Ex.P4.

(n) On 19.02.2019, after medical examination, the victim child was handed over through Constable, Rajalakshmi-1355 to the Child Welfare Committee.



Crl.A(MD)No.26 of 2022

WEB CONTENT

(o) Thereafter she had handed over the file for further investigation. PW8-Tmt.Rashia Suresh, Inspector of Police, All Women Police Station took up the case for further investigation, recorded the statement of victim under section 161 Cr.P.C. On 25.02.2019 she submitted requisition letter to the Chief Judicial Magistrate with request to record the statement of the victim under Section 164 Cr.P.C.

(p) The Chief Judicial Magistrate directed the Judicial Magistrate, Aranthangi to record the statement of victim. Therefore, the victim was produced before the Judicial Magistrate, Aranthangi on 26.02.2019 at 2.00 p.m. The Judicial Magistrate, Aranthangi recorded the statement of the victim girl under section 164 Cr.P.C. and the same was videographed by the Police. The CD was marked as M.O.1.

(q) Thereafter, the Investigating Officer had sent a request letter to the Government Hospital, Pudukkottai to examine the accused. The accused was examined by Dr.Valliyaapn on 13.03.2019 at about 12.20 p.m., and certificate Ex.P5 issued, Doctor in his certificate opined that there is nothing to suggest that the person examined by him is impotent.



Crl.A(MD)No.26 of 2022

(r) Thereafter, P.W.8 examined the witnesses, Dr.Divya,

Dr.Valliappan, Kumaresan, Constables Rajalakshmi, Suganthi, Natesh Kumar, Sub Inspector-Shanti and recorded their statements. On 28.03.2019 she had completed the investigation and filed charge-sheet against the accused.

3. After receipt of the charge-sheet, the Sessions Judge, Mahila Court, Pudukottai, issued summons to the accused and after appearance of the accused, the copies of all the prosecution documents were furnished under Section 207 Cr.P.C.

4. After hearing both sides, the Sessions Judge framed charges against the accused under Section 5(l), 5(n), 5(j) (ii) r/w.6, of POCSO Act, 2012 and section 506(i) of IPC. The charges were explained to the accused and the accused denied the charges and claimed to be tried. Hence the matter was posted to trial.

5. On the side of the prosecution, PW1 to PW8 were examined Ex.P1 to Ex.P8 were marked and M.O.1 was produced.



Crl.A(MD)No.26 of 2022

6. After full trial, the learned Sessions Judge, Mahila Court,

WEB.COM

Pudukkottai, in S.C.No.05 of 2019, vide judgment dated 24.02.2020, hold the accused guilty of offence and convicting and sentencing the appellant for the offence punishable under Sections 5(l), 5(n), 5(j)(ii) r/w. 6 of POCSO Act to undergo imprisonment for life and to pay a sum of Rs.5,000/- and in default to undergo one month simple imprisonment and sentenced to undergo imprisonment for three years under Section 506(ii) IPC (fine amount Rs.5,000/-), against which the present Criminal Appeal has been filed with the following among other grounds:

(i) That there is delay in lodging the complaint. The victim girl, PW1-complainant and the accused were living in one roof. But the victim girl did not inform her mother till she became pregnant by six months. The delay is fatal to the prosecution case.

(ii) That the victim girl informed her mother PW1 that the appellant is the cause for her pregnancy, on the contrary when she was produced before the doctor PW8, she stated that unknown person had intercourse with her, the said variation of her version is doubtful



CrI.A(MD)No.26 of 2022

(iii) That DNA matching and identification evidence has become

WEB COPY

new feather in the cap of investigating agencies. These agencies in collusion with the section of scientific community are propagating publishing that positive DNA evidence is the conclusive proof of guilt of the accused.

(iv) On the contrary in criminal case atleast one sample i.e., sample lifted from the crime scene or even samples of vaginal swabs in rape cases are lifted atleast hours. Hence absence of DNA test is great fatal to the prosecution case.

(v) To support his contention, the learned counsel for the appellant relied upon the following judgments reported in :

- 1) AIR 2023 SC 1487 (Premchand Vs. State of Maharashtra)
- 2) Ganesh Orang Vs. State of West Bengal and another (in C.R.A.No. 248 of 2019 on the file of High Court at Calcutta)
- 3) AIR 2022 – SC 13 (Attorney General for India and Others Vs. Sathish and Others)
- 4) State of Madhya Pradesh Vs. Mandi @ Vijay Kumar (in Cr.A.No.8664 of 2019 on the file of High Court of Madhya Pradesh)



Crl.A(MD)No.26 of 2022

5) 2014(8) SCC 913 (State of Karnataka Vs. Shivanna)

6) 2023 Crl LJ 4413 (B.Mooventhan Vs. State of Tamil Nadu)

(vi) That there is delay in produce the victim girl for recording 164 Cr.P.C. Statement, but the same was not explained by the prosecution.

Hence, he prayed to setaside the judgement of the trial court and to acquit the accused from all charges.

7. The prosecution case unfolded from the evidence of PW1 to PW8 are as follows:

(a) The evidence of PW1 and PW2 was recorded by the trial Court through incamera proceedings.

(b) PW1, the mother of the victim girl and wife of accused deposed that the victim girl was born to her through her first marriage. When the child was four months old, her first husband died. Thereafter, she married the accused for the second time and living with him at Aranthangi. She was blessed with three children from out of the second marriage. The victim girl was living with her parents and pursued her education.



Crl.A(MD)No.26 of 2022

WEB COPY

(c) When the victim was 15 years old, as per the advice of the accused, she brought the victim girl to her residence and joined her in 10th standard at Government Higher Secondary School, Aranthangi. She was admitted in hostel. The accused told her that her daughter is not interested in staying in hostel and brought her to the residence.

(d) During the month of December, she went to her parental house and noticed that the victim girl missed her menstrual cycle and complained about stomach pain. Accused took her to the hospital. Doctor advised to take scan.

(e) On 16.02.2019 at about 7.00 p.m., when she returned from her job, her children informed that Victim girl was taken by the accused for taking scan. Within short span., the accused dropped the child outside the house and ran away.

(f) The victim girl was weeping and informed that she is six months pregnant, and narrated the entire episode that on 12.08.2018, when she was staying alone at the home the accused had sexual intercourse with her and after two weeks, when she was staying alone, he



Crl.A(MD)No.26 of 2022

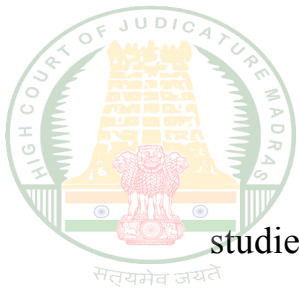
repeated the same and threatened that if she revealed the same to anyone,

WEB COPY he would kill the entire family and therefore, she could not divulge the same to anyone.

(g) Thereafter, she felt that if she revealed the same, her daughter's future will be ruined. Therefore, she called her father and informed the same to him and he took the child to Tirunelveli.

(h) The accused returned home after two days. When she questioned about his conduct, accused told her that, if the victim girl was not returned within two days, he will kill her. Therefore, she informed her father and her father brought the victim girl on 18.02.2019. On the same day, She lodged a complaint Ex.P1 at 9.00 p.m. The birth certificate of the victim girl was marked, which shows that her date of birth is 02.04.2003, the victim girl was aged about 15 years at the time of occurrence. P.W.1 further deposed that subsequently the victim girl delivered a male child.

(i) The victim girl was examined as PW2. She deposed that her date of birth is 02.04.2003. She was living with her grandparents, till she



Crl.A(MD)No.26 of 2022

WEB COPY

studied 9th standard. When she joined 10 standard, the accused created problem with her grand parents and took her to Aranthangi. She joined 10th standard in the Government Higher Secondary School at Aranthangi. On 12.08.2018, her mother and sisters had gone to Church and she was studying at her home. At that time, the accused came and brought eatables and gave it to her and misbehaved her. He had mixed something in juice and she was not able to understand what happened. But in the beginning the accused hugged her and kissed her and did something differently.

(j) After 15 days, due to headache when she was on leave, at about 11.00 a.m., the accused misbehaved with her. He threatened her that if she revealed the same to anyone, he will kill her brother and sisters. Due to fear, she did not reveal the same to anybody.

(k) She felt stomach ache from the beginning of February, 2019. On 13.02.2019, the accused took her to the hospital, Doctor, asked them to take scan. After two days, the accused took her to hospital for taking scan. The doctor examined her and informed that she was pregnant by six months. The doctors enquired who had accompanied her. She pointed to



Crl.A(MD)No.26 of 2022

her step father viz., accused. The accused informed the Doctor that he was the husband of the victim girl. Thereafter, the accused dropped her near the house and went somewhere. She narrated the episode to her mother. Thereafter, she was taken by her grandfather to Tirunelveli. Her statement was recorded. Now she delivered a child.

(l) PW3, one Sharmila, Sub Inspector of Police spoke about preparation of observation mahazar and rough sketch.

(m) PW4 Dr.Divya who had examined the victim deposed that on 18.02.2019 at about 10.00 p.m., the victim girl was produced by the police. During medical examination, the victim girl informed that six months back, she had sexual intercourse with a known person viz., her step father . After medical examination, she found that she was pregnant by 28 weeks, scan was taken and the foetus found alive. The accident register was marked as Ex.P4.

(n) Dr.Valliappan who was examined as PW5 spoke about the examination of the accused and stated that is not an impotent.



Crl.A(MD)No.26 of 2022

(o) PW6, who had registered the FIR in Crime No.3 of 2019

deposed about the registration of FIR.

(p) PW7 Tmt.Kavitha, Inspector of Police spoken about the initial investigation and arrest of the accused.

(q) PW8 Tmt.Rashia Suresh, Inspector of Police spoken about the further investigation, recording the evidence of victim, by Police as well as the Magistrate, and also about the filing of charge-sheet.

8. The learned counsel for the appellant argued that there is delay in lodging the complaint. As per the prosecution case, the victim girl 'X' was taken to hospital by the accused with the complaint of stomach pain, on 13.02.2019. As per advice of the doctor scan was taken after two days and the doctor confirmed the pregnancy of the child. The victim girl 'X' also informed the same to PW1, her mother, that she was molested by the step father six months back under threat. P.W.1 had not reported the incident immediately but lodged the complaint only after two days, for which, in the complaint itself, P.W.1 clearly stated that due to fear that if she complained, the matter would be published in media



Crl.A(MD)No.26 of 2022

and the life of the victim will be ruined and also with fear about the Court proceedings, she was not in a position to lodge the complaint immediately.

9. The complainant is not an educated lady and the offence was committed by none other than her husband. Further, she is having three more children through the accused and the victim girl was a school going child; if she complained about the sexual abuse meted out to her daughter, it will definitely affect her future life. Thereafter, her owner and others advised her to lodge the complaint when the accused asked her to bring the victim girl and directed that both should live with him, she lodged the complainant. The reasons stated in the complaint and surrounding circumstances seem to be natural and convincing and therefore, the delay in lodging the complaint is neither willful nor deliberate.

10. We rely upon the following judgement to show that the delay in filing the first information report should not automatically lead to the dismissal of prosecution case or cast doubt on its credibility.



Crl.A(MD)No.26 of 2022

11. In *Tulshidas Kanolkar Vs. The State of Goa* reported in

2003(8) SCC 590, wherein, the Hon'ble Supreme Court has held as

follows :

“5. We shall first deal with the question of delay. The unusual circumstances satisfactorily explained the delay in lodging of the first information report. In any event, delay per se is not a mitigating circumstance for the accused when accusations of rape are involved. Delay in lodging first information report cannot be used as a ritualistic formula for discarding prosecution case and doubting its authenticity. It only puts the court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the Court is to only see whether it is satisfactory or not. In a case if the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand satisfactory explanation of the delay is weighty enough to reject the plea of false implication or vulnerability of prosecution case. As the factual scenario shows, the victim was totally unaware of the catastrophe which had befallen to her. That being so, the mere delay in lodging of first information report does not in any way render prosecution version brittle.”



WEB COPY

12. In State of Himachal Pradesh Vs. Prem Singh reported in 2009(1) SCC 420, wherein, the Hon'ble Supreme Court has held as follows :

“6. So far as the delay in lodging the FIR question is concerned, the delay in a case of sexual assault, cannot be equated with the case involving other offences. There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the police station to lodge a complaint. In a tradition bound society prevalent in India, more particularly, rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is some delay in lodging the FIR. In that score, learned Counsel for the appellant is right that the High Court has lost sight of this vital distinction. Additionally, we find that the prosecution has clearly established commission of offence punishable under Sections 154 and 506 IPC. So far as the offence punishable under Section 376 IPC is concerned, the basic ingredients are set out in Section 375 IPC. On a reading of the evidence of the prosecutrix, we find that a case of rape has not been established so far as the respondent is concerned.”



Crl.A(MD)No.26 of 2022

13. The learned counsel for the appellant further argued that

there are contradiction in the statement of victim girl before the Judicial Magistrate and in the trial, which is fatal to the prosecution case.

14. Normally minor contradictions in evidence usually would not affect a case and the Court cannot expect the victim girl to speak stereotype evidence at each stage. Quite naturally minor contradiction would occur. Further, the victim girl is an young child and she had no motive to implead the accused in the crime.

15. We rely upon the judgment in a case ***Vijay @ Chinee Vs. state of Madhya Pradesh***, reported in ***2010(8) SCC 191***, wherein, the Hon'ble Supreme Court has held as follows :

9. In State of Maharashtra Vs. Chandraprakash Kewalchand Jain AIR 1990 SC 658, this Court held that a woman, who is the victim of sexual assault, is not an accomplice to the crime but is a victim of another person's lust and, therefore, her evidence need not be tested with the same amount of suspicion as that of an accomplice. The Court observed as under :-

"A prosecutrix of a sex-offence cannot be put on par with an accomplice. She is in fact a victim of



WEB COPY



CrI.A(MD)No.26 of 2022

the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the Court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a



WEB COPY



CrI.A(MD)No.26 of 2022

conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence."

.....

11. In [State of Punjab Vs. Gurmit Singh & Ors.](#) AIR 1996 SC 1393, 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 :-*

"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



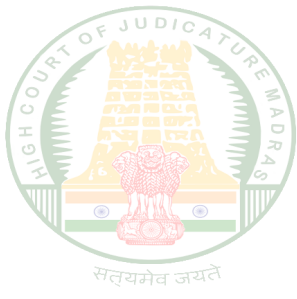
WEB COPY



CrI.A(MD)No.26 of 2022

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 replying 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.

*** ** * * * 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*



WEB COPY



Crl.A(MD)No.26 of 2022

responsibility and be sensitive while dealing with cases involving sexual molestations."

16. The learned counsel for the Appellant argued that the mother of the victim girl-P.W.1, her husband and the victim girl were residing under the same roof. The victim girl had not revealed anything to her mother for six months and there was every possibility to P.W.1 to note down the physical changes that happened to the victim girl, and the evidence of P.W.1 that she was unaware about anything till the victim girl revealed to her creates suspicion.

17. The argument advanced by the learned counsel for the appellant could not be acceptable, as, in number of cases, the pregnancy of the victim girl go unnoticed till the advanced stage of pregnancy and subsequently their parents approach the High Court for termination of pregnancy. Therefore, the argument advanced on the above aspect is not a valid one.

18. The learned counsel for the appellant further argued that the prosecution failed to conduct DNA test to prove that the accused is



Crl.A(MD)No.26 of 2022

the reason for her pregnancy. But the argument advanced by the defence

counsel is not correct. Failure to conduct DNA test is not fatal to the

prosecution case. We rely on the judgment in ***Sunil vs. State of Madhya***

Pradesh reported in **2017 (4) SCC – 393**, wherein the Hon'ble Supreme

Court has held as follows :

“3. From the provisions of Section 53A of the Code and the decision of this Court in Krishan Kumar (supra) it does not follow that failure to conduct the DNA test of the samples taken from the accused or prove the report of DNA profiling as in the present case would necessarily result in the failure of the prosecution case. As held in Krishan Kumar (para 44) Section 53A really "facilitates the prosecution to prove its case". A positive result of the DNA test would constitute clinching evidence against the accused if, however, the result of the test is in the negative i.e. favoring the accused or if DNA profiling had not been done in a given case, the weight of the other materials and evidence on record will still have to be considered. It is to the other materials brought on record by the prosecution that we may now turn to.”

19. Since we are satisfied that the other part of evidence and materials are available to prove the guilt of the accused, the point raised by the appellant counsel has no legs to stand and is not sustainable. The complaint was lodged by none-other than the wife of the accused. It is not established that the complainant had previous enmity with the accused.



Crl.A(MD)No.26 of 2022

20. Further PW1 and PW2 clearly stated that the victim was

staying in her grand parents house till she studied ninth standard.

Thereafter, the accused purposely took her from her grandparents house, and kept in his house. Initially the victim girl was admitted in an hostel, but the accused withdrew her from the hostel and brought her home. The victim girl clearly stated that after her mother, brother and sisters had gone to Church, the accused misbehaved with her. After two weeks, once again, the accused had sexual intercourse with the victim girl and threatened her not to reveal the same to anybody, or he will kill the entire family. Hence, she could not reveal the same to anybody.

21. The victim girl lost her biological father when she was a child. Her mother was depending upon the accused. At present she also solely depend upon the accused, she was threatened by the accused not to reveal the same. The surrounding circumstances lead to the conclusion that in those circumstances she could not reveal the same to anybody.

22. The complaint was lodged by P.W.1 who is none other than the wife of the accused against her husband in spite of the fact that she begot three children through him. Further in a sexual harassment



Crl.A(MD)No.26 of 2022

case, the testimony of victim is sufficient to prove the guilt of the accused. Corroboration of victim's testimony is not an absolute requirement if the victim's statement inspires confidence.

23. We rely upon the judgement reported in **2010(8) SCC 191 (Vijay @ Chinee Vs. state of Madhya Pradesh)**, wherein, the Hon'ble Supreme Court has held as follows :

“13. In State of Himachal Pradesh Vs. Raghubir Singh (1993) 2 SCC 622, this Court held that there is no legal compulsion to look for any other evidence to corroborate the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate against her veracity.”

24. The consistent testimony of the victim was corroborated with the evidence of PW1, Doctors evidence and medical report Ex.P.5. Further before the Judicial Magistrate the victim in her 164 statement clearly stated that the accused committed penetrative sexual assault with her under threat. PW8, Doctor who had examined the witness confirmed



Crl.A(MD)No.26 of 2022

the pregnancy of the victim. Further even during trial, the victim girl stated that a child was born to her. This is sufficient to prove the guilt of the accused. The victim and P.W.1 has no enmity to involve the accused in a serious crime.

25. This is the pathetic story of a child who had lost her father when she was four months old. She was under the care and custody of her grandparents after her mother married the accused, she remained with them till she attained the age of 13. The accused had cast his covetous eyes on her, brought the child to his house and spoiled her life after knowing fully well about her helplessness and threatened her to not to reveal the same to anybody. Poor girl due to fear and shame could not reveal the same to anybody, till she became pregnant. When she suffered pain, the accused after knowing fully well that his wife would take her to the hospital and would come to know about his illegal act, he himself took her to the doctor. During enquiry P.W.2 the victim girl deposed that the accused introduced himself to the Doctor as her husband.



Crl.A(MD)No.26 of 2022

26. It is disturbing to note that in all the records pertaining to

the victim girl viz., birth certificate, school records and other records the name of the accused is mentioned as the father. We could infer that PW1 married the accused with fond hope that the accused would look after her minor child and that is why she gave his name as father in all the school records. But the accused shattered her faith.

27. After taking advantage of the fact that the victim child was totally dependant upon him, he molested her, and threatened her that she should not reveal the same to anyone or he will kill everyone in the house. It reveals from the evidence that in the residence, except P.W1, nobody was there to take care of the victim, in such situation no one could expect that the child would disclose her ugly experience to her mother or others. In our society till date, the girl who undergoes sexual assault is not treated equally with others but treated by society as if she committed a sin. That is the reason for many of them not revealing the same to anyone.

28. The trauma undergone by the victim who had believed a person from the child hood as father shattered her expectations and



Crl.A(MD)No.26 of 2022

caused physical and physiological injury which is unexplainable. The physical injury could be healed by efflux of time but the mental agony undergone by the child would subsist till her life time.

29. Various studies conducted by researchers reveals that sexually abused children experience clinically significant symptoms in the affective, cognitive, physical, and behavioral domains. The acute psychological response to sexual abuse, may include anxiety, fear, regressive behaviour, night-mares, withdrawn behaviour, internalizing and externalizing disorders, delinquency, cruelty, self injuries behaviour, general behavioural problems, post traumatic stress disorder, low self-esteem, etc. Long-term psychological sequelae of sexual abuse may include depressive and anxiety disorders, psychiatric hospitalization, drug, and alcohol use suicidal behaviour, borderline personality disorder, somatizam disorder, eronicizam, learning difficulties, post-traumatic stress disorder disassociated disorders and conversion reactions, running away/prostitution, victimization, poor parenting etc.

30. The offence is committed by close relatives of the victim in many cases. In our country, number of children faced sexual assault



Crl.A(MD)No.26 of 2022

by close relatives viz., father, brother, uncle, grandfather or close family

WEB CO friends.

31. Most shocking news about child sexual abuse in India that all child sexual abuse case in the country which is part of national crime records, bureau, (NCRB,) 96% of cases, most of the sexual abusers were known to the children. And even more disturbing is the fact that sexual abuse is known to the family and NCRV 2020 data on offenders relation to child victims of POCSO Act,(section 4, and 6) 2020, it shockingly revealed that most sexual offenders of the minor children were family members, family friends, neighbours, or people known to the family and friends or online friends on the promise of marriage. The above category offender committed such offences, after taking advantage of the fact that they are in dominating possession, sexually abused children continuously under threat or coercion. The parents of children not noticing the pain and change in the attitude or behaviour which tends the child to behave differently, viz., became rude, lack of interest in studies, fear to middle with others.

32. When the child met with such harassment travel with a



CrI.A(MD)No.26 of 2022

deep wound till her lifetime. Many of cases are left unreported due to the family prestige and future life of the child. Therefore, many accused escape without punishment.

33. We are of the opinion that it is for the State to take serious efforts to curtail the offence by enacting the law and impose severe punishments to those involved in sexual offence are family members or close friends. The state should take immediate steps to protect the children from the sexual offence by providing awareness programme in all television channels, theatre, schools. The Child Welfare Committee should visit hostels, schools etc., to see that any child affected with sexual harassment and take necessary action. The State should provide funds to open protection home for the children aged between 1 to 17 in order to protect them from sexual offence.

34. Majority of cases of sexual offence goes unnoticed and unreported on account of the innocence of the victim, stigma attached, callousness of investigation etc., child sexual abuse is a universal problem which include the physical and psychological maltreatment of child.



Crl.A(MD)No.26 of 2022

WEB COPY

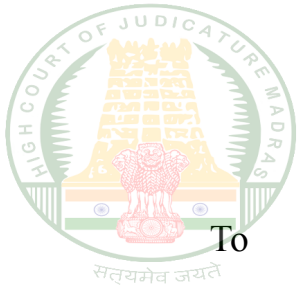
35. We conclude that on careful perusal of entire records there is no material available to interfere with the judgment of the trial Court. The Criminal Appeal has no merit and hence, the Criminal Appeal is liable to be dismissed.

36. Accordingly, the Criminal Appeal stands dismissed.

(G.R.S., J.) & (R.P., J.)
25.11.2024

Index : Yes / No
Internet : Yes / No
NCC : Yes / No

RM



Crl.A(MD)No.26 of 2022

To

WEB COPY

- 1.The Sessions Judge,
Mahila Court
Pudukkottai,
- 2.The Inspector of Police,
All Women Police Station,
Aranthangi,
Pudukkottai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.A(MD)No.26 of 2022

G.R.SWAMINATHAN, J.
AND
R.POORNIMA, J.

RM

Judgment in
Crl.A(MD)No.26 of 2022

25.11.2024