

R.T.(MD).No.05 of 2026 and Crl.A.(MD).No.689 of 2026

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On	:	22.06.2026
Pronounced On	:	08.09.2026

CORAM

**THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH
AND
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN**

R.T.(MD).No.05 of 2026
and
Crl.A.(MD).No.689 of 2026

R.T.(MD).No.05 of 2026:

State of Tamil Nadu
Rep by the Inspector of Police,
All Women Police Station,
Thiruppathur,
Sivagangai.
Cr. No. 1/2024

... Appellant

Vs.

Chandran

... Respondent



R.T.(MD).No.05 of 2026 and Crl.A.(MD).No.689 of 2026

PRAYER : RT proceedings has been submitted by the Principal Sessions Judge (POCSO Act Cases) Sivagangai District for confirmation of sentence of death in Spl.S.C.No.23 of 2024 dated 20.04.2026.

For Appellant : Mr.R.John Sathyan
State Public Prosecutor Assisted by
: Mr.G.Karupasamy Pandian
State Public Prosecutor
For Respondent : Mr.A.Prasanna Rajadurai
: Mr.A.K.Hemaraj
: Mr.J.Prabu

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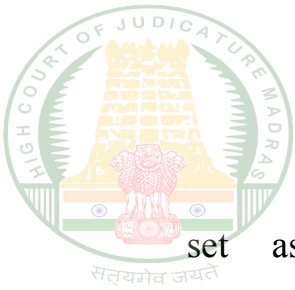
Chandran ... Appellant

Vs.

State of Tamil Nadu
Rep by the Inspector of Police,
All Women Police Station,
Thiruppathur
Sivagangai.
Cr. No. 1/2024.

... Respondent

PRAYER : Criminal Appeal is filed under Section 415 of BNSS, 2023, to call for the records relating to the judgment dated 20.04.2026 made in Spl.S.C.No.23 of 2024 on the file of the learned Principal Sessions Judge, the Principal Sessions Court (POCSO Act Cases), Sivagangai District and



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set aside the conviction and sentence imposed against the appellant/accused and allow the above appeal by acquitting the accused.

For Appellant : Mr.A.Prasanna Rajadurai
Mr.A.K.Hemaraj
Mr.J.Prabu

For Respondent : Mr.R.John Sathyan
State Public Prosecutor Assisted by
: Mr.G.Karupasamy Pandian
State Public Prosecutor

COMMON JUDGMENT

(Judgment of the Court was made by **K.K.RAMAKRISHNAN,J.**)

The death sentence awarded to [REDACTED], Sole Accused in Spl.S.C.No. 23 of 2024 on the file of the learned Principal Sessions Judge, the Principal Sessions Court (POCSO Act Cases), Sivagangai District by judgment dated 20.04.2026, is now before us for confirmation under under Section 407 of BNSS (366 of Cr.P.C.). [REDACTED] has also filed Crl.A.(MD).No.689 of 2026, challenging the very conviction and the sentence imposed as follows:



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Sl.No	Offence under Section	Punishment	Fine	Default Sentence
1	506(ii) of	Sentenced to under three years of rigorous imprisonment	Rs.1,000/-	One month simple imprisonment
2	5(l) r/w Section 6 (4counts) of POC SO Act, 2012	Sentence to undergo life imprisonment	Rs.1,000/-	One year Rigorous imprisonment
3	3 r/w Section 4 of POC SO Act, 2012	Sentenced to undergo 20 years of rigorous imprisonment	Rs.1,000/-	One year Rigorous imprisonment
4	5(m) r/w Section 6 (5 counts) of Pocso Act 2012	Sentence to death and that he shall be hanged by the neck, till he is dead	Rs.5,000/- in default to undergo rigorous imprisonment of six months	--

2. The said appeal is tagged along with Referred Trial (MD).No.5 of 2026 for confirmation of the death sentence.

3.Facts of the case:

3.1.The sole accused in Special S.C. No. 23 of 2024 on the file of the Principal Sessions Court (Special Court, POCSO Act Cases), Sivagangai, has preferred the present appeal challenging the judgment of



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conviction and sentence dated 20.04.2026. Since the learned trial Judge imposed the sentence of death, a reference has also been made to this Court under Section 407 of BNSS.

3.2.According to the prosecution, P.W.1, P.W.4, P.W.5, P.W.6 and P.W.7, who are the child victims, were subjected to sexual assault by the appellant. On the complaint, P.W.22 registered the FIR, commenced the investigation, arrested the accused, recorded his confession statement, and recovered the material objects. Thereafter, P.W.23 continued the investigation by examining the witnesses, collected the medical records and other documentary evidence, and ultimately filed the final report. The case was taken on file as Special S.C.No.23 of 2024.

3.3.Upon the appearance of the accused, copies of the prosecution records were furnished under Section 207 Cr.P.C. Necessary charges were framed and explained to him. The accused pleaded not guilty and claimed to be tried. To substantiate its case, the prosecution examined P.W.1 to P.W. 23, marked Ex.P1 to Ex.P36 and produced M.O.1 to M.O.6. After the prosecution evidence was closed, the accused was examined under Section 313 Cr.P.C. with reference to the incriminating circumstances appearing

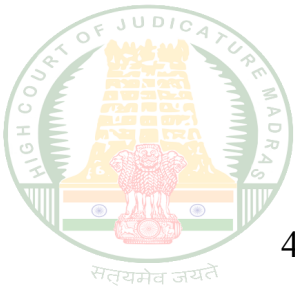


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against him. He denied the same and did not choose to examine any witness or mark any document on his side. Upon appreciation of the oral and documentary evidence, the learned trial Judge convicted the appellant for the charged offences and imposed the sentence of death by the impugned judgment. Aggrieved thereby, the accused has preferred the present appeal.

4.Submissions of the learned counsel appearing for the appellant:

4.1.The learned counsel appearing for the appellant submitted that the conviction is legally unsustainable, as the prosecution failed to establish the foundational facts constituting the offences alleged. According to him, the age of the victims, which is a sine qua non for attracting the provisions of the POCSO Act, has not been proved by legally admissible evidence. He further contended that there are material contradictions and inconsistencies in the testimonies of P.W.1, P.W.4, P.W.5, P.W.6 and P.W.7, and there is no independent corroboration to their versions. One of the victims has not even spoken about any act amounting to sexual assault. Therefore, the prosecution has failed to establish the guilt of the appellant beyond reasonable doubt.

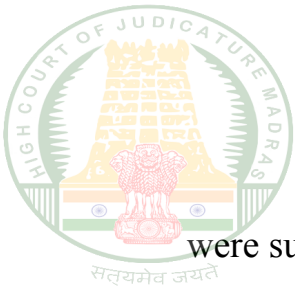


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4.2.The learned counsel further submitted that there was an inordinate and unexplained delay in lodging the complaint. According to the prosecution itself, the complaint came to be lodged only after the de facto complainant returned from Chennai, thereby creating a strong possibility of deliberation and false implication.

4.3.It was further contended that the prosecution version is inherently improbable. The alleged occurrence is stated to have taken place during daytime in a small house without a door, situated amidst several neighbouring houses in a village. According to the victims, they screamed during the occurrence. Had such an incident actually taken place, the screams would have been heard by the persons in the neighbourhood and the nighbours would have rushed to the spot. The absence of any such evidence renders the prosecution case highly doubtful.

4.4.The learned counsel also submitted that the evidence of the victims would indicate that they came to disclose the alleged acts as sexual abuse only after they were taught about "good touch" and "bad touch" by a social worker in their school. This circumstance, coupled with the delay in lodging the complaint, probabalises the defence plea that false allegations



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were subsequently made against the appellant.

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4.5.It was further argued that the findings recorded by the learned trial Judge are mutually inconsistent. While holding that the ingredients of the offence under Section 5(l) of the POCSO Act were not established, the trial Court nevertheless convicted the appellant under Section 5(m) without discussing the essential ingredients required to constitute the said offence, while also convicting him under Section 4 of the Act. Such contradictory findings, according to the learned counsel, vitiate the judgment.

4.6. The learned counsel lastly submitted that the evidence of the parents of the victims, read along with the statements recorded under Section 161 Cr.P.C., probabilises the defence case that the prosecution was launched with the intention of getting monetary compensation available under the Government victim compensation scheme. In the absence of reliable and consistent evidence establishing the essential ingredients of the offences, the conviction for such grave offences and the imposition of the extreme penalty of death are palpably wrong. The learned counsel therefore prayed that the conviction and sentence, including the sentence of death, be set aside. In support of his submissions, he placed reliance



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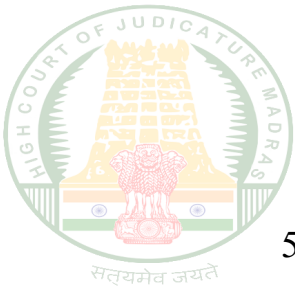
upon various decisions of the Hon'ble Supreme Court.

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5.Submission of the learned State Public Prosecutor:

5.1.The learned State Public Prosecutor vehemently opposed the submissions advanced on behalf of the appellant. Taking this Court through the oral evidence of the victims, the testimonies of the other prosecution witnesses, and the documentary evidence collected during the course of investigation, he contended that the prosecution has established the guilt of the appellant beyond all reasonable doubt. According to the learned State Public Prosecutor, the present case involves a most heinous offence against children, warranting imposition of the extreme penalty of death.

5.2.The learned State Public Prosecutor submitted that the testimonies of P.Ws.1, 4, 5, 6 and 7 are cogent, consistent and trustworthy, and there are no circumstances warranting their rejection. Their evidence, according to him, stands duly corroborated by the medical and other surrounding circumstances. Therefore, the learned State Public Prosecutor prayed for confirmation of the conviction and sentence.

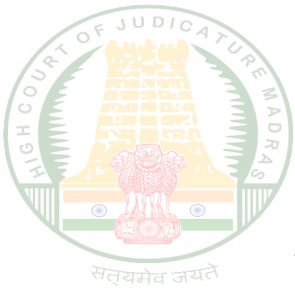


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5.3. With regard to the delay in lodging the complaint, it was contended that the father of one of the victims was employed at Chennai and that the complaint came to be lodged immediately after his arrival. Hence, the delay cannot be treated as a circumstance to discard the otherwise reliable testimony of the victims.

5.4. The learned State Public Prosecutor further relied upon several decisions of the Hon'ble Supreme Court and a Division Bench judgment of this Court, including the suo motu decision governing the award of capital punishment, to contend that the present case falls within the category of the rarest of rare cases warranting the sentence of death.

5.5. He further submitted that although the learned trial Judge convicted the appellant under Section 4 of the POCSO Act without framing a specific charge, the conviction under Section 5 was otherwise fully supported by the evidence on record. According to him, the prosecution has satisfactorily established all the ingredients of the aggravated offence, and the accused has not adduced any evidence to probabalise his defence or discredit the prosecution case. He therefore prayed for confirmation of both the conviction and the sentence.



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5.6.This Court carefully considered the rival submissions made by the learned counsel appearing for the accused and the learned State Public Prosecutor, perused the entire records and considered the precedents relied upon by both sides.

5.7. In the present case, the principal questions that arise for consideration are:

5.8. Whether the prosecution has proved the essential ingredients of the offence charged against the appellant beyond reasonable doubt and whether the conviction and sentence of capital punishment imposed upon the appellant call for interference by this Court?

6.Discussion on the Principle relating to the death reference :

6.1.Although the learned Trial Judge imposed the sentence of death upon the appellant and submitted for reference to confirm the death sentence, this Court, while exercising its jurisdiction under under Section 407 of BNS(366 of Cr.P.C) is first required to satisfy itself that the conviction is legally sustainable before considering the question of confirmation of the sentence. The jurisdiction exercised by this Court under Section 407 of BNS (366 of Cr P C)while considering a reference



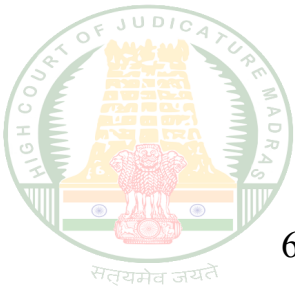
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for confirmation of a death sentence is undoubtedly onerous and exacting.

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This responsibility assumes even greater significance in cases arising under the POCSO Act, where the death sentence has been imposed for offences committed against children. The duty cast upon the Court is, therefore, not merely to examine the procedural validity of the reference, but also demand a comprehensive and independent re-appreciation of the entire evidence on record, with the highest degree of judicial scrutiny and circumspection to see whether offence is proved beyond reasonable doubt and whether the extreme penalty of death is legally and factually justified on applying principles governing sentence of death penalty.

6.2.The law on the scope of confirmation proceedings is no longer res integra. It is well settled that, in a reference under Sections 407 to 412 of the BNSS, 2023, which correspond to Sections 366 to 371 of the Cr.P.C., 1973, and earlier to Sections 374 to 381 of the Cr.P.C., 1898, the High Court has a statutory as well as constitutional obligation to scrutinize the entire material, both on facts and law, uninfluenced by the conclusions of the trial Court, and to satisfy itself whether the conviction is sustainable and whether the case falls within the category of the “rarest of rare” warranting imposition of capital punishment.

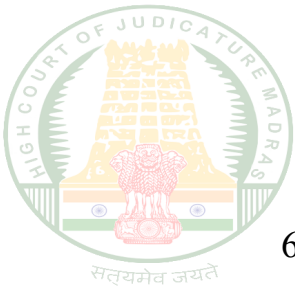


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6.1.2. In the case of *Masalti v. State of Uttar Pradesh*, a Bench of Four Judges of the Hon'ble Supreme Court and a bench of three Judges the Hon'ble Supreme Court in the case of *State of T.N. v. Rajendran, (1999) 8 SCC 679* and *AIR 1977 SC 2046*, have held as follows:

Masalti Vs State of U.P, AIR 1965 SC 202	State of T.N. v. Rajendran, (1999) 8 SCC 679
8. ...Section 374 provides that the sentence of death shall not be executed unless it is confirmed by the High Court. In other words, the sentence of death imposed by the Court of Sessions is not effective until and unless it is confirmed by the High Court. It is only when the High Court confirms the sentence of death that it is capable of execution. That is why this Court emphasised the solemnity of the proceedings brought before the High Court under Section 374, and it pointed out that under Section 375, the High Court is given the power to admit additional evidence if it thinks necessary to do so. Proceedings brought before the High Court for confirmation of a death sentence give a right to the condemned prisoner to be heard on the merits and to require the High Court to consider the matter for itself without being influenced by the conclusions recorded by the Court of Session. The conclusions of the High Court on the merits in such proceedings must be independent, and so, the High Court inevitably has to go into the whole of the evidence, consider all the pros and cons of the case and satisfy itself that the offence charged under Section 302 IPC is established beyond reasonable doubt and the sentence of death submitted to it for its confirmation is fully justified.	5.... When a reference is made to the High Court under Section 366 of the Code of Criminal Procedure by the learned Sessions Judge on passing a sentence of death, the High Court has to satisfy itself whether a case beyond reasonable doubt has been made out against the accused for infliction of the extreme penalty of death. The proceedings before the High Court in such a case require a reappraisal and reassessment of the entire facts and law so that it can come to its independent conclusion but while so doing, the High Court cannot also totally overlook the conclusion arrived at by the learned Sessions Judge. In performing its duty, the High Court is of necessity bound to consider the merits of the case itself and has to examine the entire evidence on record. The legislature having provided in the confirmation proceedings, a final safeguard of the life and liberty of the subject in cases of capital sentences, the duty of the High Court becomes more onerous to consider independently the matter carefully and examine all relevant material evidence and come to a conclusion one way or the other. It is, therefore, the duty of the High Court in a death reference to consider the evidence afresh. If the impugned judgment of the High Court is scrutinised bearing in mind the aforesaid parameters, the conclusion becomes irresistible that the High Court as a court of appeal has failed to exercise its power under Section 386 of the Code of Criminal Procedure and instead of discharging its bounden duty to examine the evidence and other materials on record and without appreciating the same, it has merely on surmises and conjectures come to the conclusion that the accused is entitled to the benefit of doubt. In our considered opinion, the aforesaid conclusion cannot be sustained. Not only has there been an infraction of the duty and obligation of the appellate court but also such infraction has caused a gross miscarriage of justice.



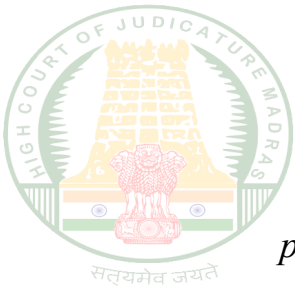
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6.1.3. From the above reading of the provisions and reiterated principles of Hon'ble Supreme Court the confirmation proceedings of death sentence impose a dual and heightened responsibility upon the High Court and the High Court must independently examine whether the guilt of the accused has been proved beyond reasonable doubt, based on the entire evidence on record and only upon being fully satisfied about the correctness of the conviction, the Court must further determine whether the present case falls within the category warranting extreme penalty of death.

6.2. A criminal trial is a judicial examination of the facts in the case process in the discovering truth to decide the facts in issue to arrive at a just decision of the question being the guilt or the innocence of the accused.

6.3. In the case of “**Zahira Habibullah Sheikh v. State of Gujarat**” reported in **2006 3 SCC 374**, the Hon'ble Supreme Court of India observed as follows:

“Each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much an injustice to the accused as is to the victim and to society. Fair trial obviously would mean a trial before an impartial judge, a fair

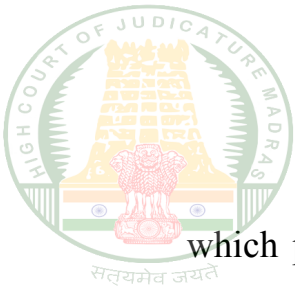


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prosecutor and an atmosphere of judicial calm. A fair trial means a trial in which bias or prejudice for or against the accused, the witness or the cause which is being tried, is eliminated”.

6.4. In a criminal trial, the burden of proving the guilt of the accused is upon the prosecution, as the trial begins with the presumption of innocence in favour of the accused. The greater the severity of the punishment, the greater is the obligation upon the prosecution to establish the foundational facts beyond reasonable doubt. Graver the crime, greater should be the standard of proof. The Constitution Bench of the Hon'ble Supreme Court in the case “***Mukeshsingh Vs. State***” reported in **2020 10 SCC 120** and other cases has consistently held that the prosecution must establish the foundational facts and prove the guilt of the accused beyond reasonable doubt. The burden never shifts from the prosecution merely because the allegation is grave. Most particularly, in prosecutions under special statutes carrying severe penal consequences, coupled with statutory provisions for victim compensation, the Court is required to exercise heightened judicial vigilance. In recent years, this Court has noticed that, in certain prosecutions under special statutes, including the POCSO Act,



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which provide for statutory victim compensation, there exists a potential for misuse of the statutory mechanism. The prospect of monetary compensation may, in appropriate cases, influence the manner in which complaints are presented and subsequently investigated. This circumstance, therefore, calls for heightened judicial vigilance in evaluating the evidence and surrounding circumstances, without, however, permitting such apprehension to prejudice a genuine victim. The task of carefully balancing the protection of the victim with the fundamental requirement of a fair and impartial trial is undoubtedly one of the most difficult functions of judicial adjudication.

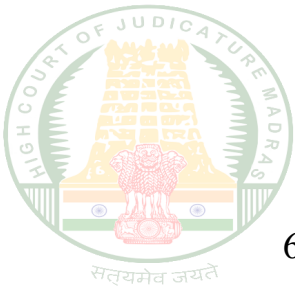
6.5. The extraordinary safeguards and stringent provisions incorporated in the Act cast a corresponding duty upon the Courts to ensure that its salutary object is not defeated by false, exaggerated or motivated allegations. Before the statutory presumptions or reverse burden can be invoked, the prosecution must first establish the foundational facts constituting the offence alleged. The existence of such foundational facts cannot be presumed but must be proved by reliable and cogent evidence. The POCSO Act does not, either expressly or by necessary implication, dispense with the cardinal principle of criminal jurisprudence that the



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prosecution must prove its case beyond reasonable doubt. The gravity of the accusation, the social object of the legislation, or the severity of the prescribed punishment cannot dilute this fundamental standard of proof and the graver the charge and the more severe the punishment prescribed, the greater is the degree of care required in appreciating the evidence. The ultimate obligation of the Court is to ascertain the truth through a careful, balanced, impartial, and comprehensive appreciation of the entire evidence in accordance with the settled principles of criminal jurisprudence. Having regard to the gravity of the charges in the present case and the sentence imposed upon the appellant, this Court is fully conscious of the solemn responsibility to ensure that no egregious error is committed either in the appreciation of the evidence or in the assessment of the circumstances bearing upon the prosecution case. Accordingly this Court undertakes a *multi-layered and comprehensive re-appreciation* of the findings recorded by the trial Court, the testimony of each witness, the documentary and other evidence on record, and all the surrounding circumstances relevant to the determination of the guilt by keeping the following principles laid down by the Hon'ble supreme court judgments:



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6.5.1. In the case of “**Mousam Singha Roy v. State of W.B**” reported in (2003) 12 SCC 377 the Hon'ble Supreme Court of India has held as follows :

“28.it is also a settled principle of criminal jurisprudence that the more serious the offence, the stricter the degree of proof, since a higher degree of assurance is required to convict the accused.”

6.5.2. In the case of “**Bijender v. State of Haryana**,” reported in (2022) 1 SCC 92 the Hon'ble Supreme Court of India has held as follows :

17.Incontrovertibly, where the prosecution fails to inspire confidence in the manner and/or contents of the recovery with regard to its nexus to the alleged offence, the court ought to stretch the benefit of doubt to the accused. It is nearly three centuries old cardinal principle of criminal jurisprudence that “it is better that ten guilty persons escape, than that one innocent suffer” [W. Blackstone, Commentaries on the Laws of England, Book IV, c. 27 (1897), p. 358. Ed. : see R. v. John Paul Lepage, 1995 SCC OnLine Can SC 19.] . The doctrine of extending benefit of doubt to an accused, notwithstanding the proof of a strong suspicion, holds its fort on the premise that “the acquittal of a guilty person constitutes a miscarriage of justice just as much as the conviction of the innocent”.

18.It may not be wise or prudent to convict a person only because there is rampant increase in heinous crimes and victims are often reluctant to speak truth due to fear or other extraneous reasons. The burden to prove the guilt beyond doubt does not shift on the suspect save where the law casts duty on the accused to prove his/her innocence.



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19. Unmindful of these age-old parameters, we find that the prosecution in the present case has miserably failed to bring home the guilt of the appellant and the courts below have been unwittingly swayed by irrelevant considerations, such as the rise in the incidents of dacoity. In its desire to hold a heavy hand over such derelictions, the trial court and the High Court have hastened to shift the burden on the appellant to elucidate how he bechanced to be in possession of the incriminating articles, without primarily scrutinising the credibility and admissibility of the recovery as well as its linkage to the misconduct. We say so for the following reasons:

6.5.3. In the case of “*Digamber Vaishnav v. State of Chhattisgarh*,” reported in (2019) 4 SCC 522 the Hon'ble Supreme Court of India has held as follows :

14. One of the fundamental principles of criminal jurisprudence is undeniably that the burden of proof squarely rests on the prosecution and that the general burden never shifts. There can be no conviction on the basis of surmises and conjectures or suspicion howsoever grave it may be. Strong suspicion, strong coincidences and grave doubt cannot take the place of legal proof. The onus of the prosecution cannot be discharged by referring to very strong suspicion and existence of highly suspicious factors to inculcate the accused nor falsity of defence could take the place of proof which the prosecution has to establish in order to succeed, though a false plea by the defence at best, be considered as an additional circumstance, if other circumstances unfailingly point to the guilt.

*34. This Court in *Jaharlal Das v. State of Orissa* [*Jaharlal Das v. State of Orissa*, (1991) 3 SCC 27 : 1991 SCC (Cri) 527], has held that even if the offence is a shocking one, the gravity of offence cannot by itself overweigh as far as legal proof is concerned. In cases depending highly upon the circumstantial evidence, there is always a danger that the conjecture or suspicion may take the place of legal proof. The court has to be watchful and ensure that the*



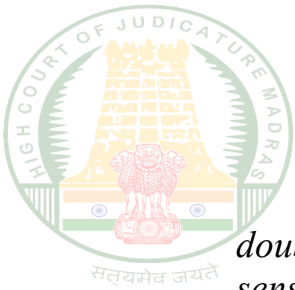
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conjecture and suspicion do not take the place of legal proof. The court must satisfy itself that various circumstances in the chain of evidence should be established clearly and that the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused.

17. In Varkey Joseph v. State of Kerala [Varkey Joseph v. State of Kerala, 1993 Supp (3) SCC 745 : 1993 SCC (Cri) 1117] , this Court has held that suspicion is not the substitute for proof. There is a long distance between “may be true” and “must be true” and the prosecution has to travel all the way to prove its case beyond reasonable doubt.

18. In Sujit Biswas v. State of Assam [Sujit Biswas v. State of Assam, (2013) 12 SCC 406 : (2014) 1 SCC (Cri) 677] , this Court, while examining the distinction between “proof beyond reasonable doubt” and “suspicion” has held as under: (SCC p. 412, para 13)

“13. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that “may be” proved, and something that “will be proved”. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between “may be” and “must be” is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between “may be” true and “must be” true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between “may be” true and “must be” true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable



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doubt, but a fair doubt that is based upon reason and common sense.”

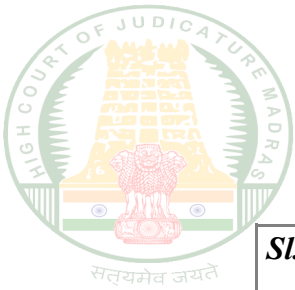
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6.5.4. In the case of “**Raju v. State of M.P.**, reported in **(2008) 15 SCC 133**”, the Hon'ble Supreme Court of India, is held as follows:

11. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well.

7. Proof of age of victim:

7.1. Coming to the proof of age of victims, namely, P.W.1, P.W.4, P.W.5, P.W.6 and P.W.7 the following documents were produced by the prosecution to prove that they are under the age of 12 years and the birth certificates of some of the victims and school certificates of all the victims were produced and the Head Master of the school/P.W.19 also was examined and no supportive material was elicited during the course of the cross examination to counter his version about the age of the victim and also no contra evidence was adduced on the side of the accused and the relevant documents are as follows:



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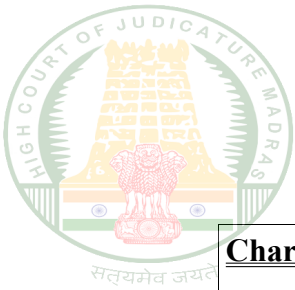
<i>Sl. No.</i>	<i>Victim</i>	<i>Age</i>	<i>Birth certificate</i>	<i>School Transfer certificate</i>
1	P.W.1	11	Ex.P.2 - 01.09.2013	Ex.P.16
2	P.W.4	11	21.10.2013	Ex.P.17
3	P.W.5	9	Ex.P.32-28.07.2015	Ex.P.18
4	P.W.6	10	Ex.P.33- 09.10.2014	Ex.P.19
5	P.W.7	11	Ex.P.36- 25.08.2014	Ex.P.20

The said documents satisfactorily establish that all the victims are under 12 years.

8.Discussion on victims evidence:

8.1. According to the prosecution, the accused, who was about 45 years of age at the relevant point of time, committed aggravated penetrative sexual assault upon five victims.

8.2.As per the final report filed by the investigating officer, the following allegation has been made against the accused:



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Charge No.1

The accused taking advantage of absence of anyone at his house on 04.02.2024 at 10.30 am., as well as on 03.02.2024 and on various prior dates and times, lured the victim children, namely P.W.2 [REDACTED], P.W.6 [REDACTED], P.W.7 [REDACTED], P.W.8 [REDACTED], and P.W.9 [REDACTED], under the pretext of giving them a mobile phone to play games and buying them snacks, and repeatedly subjected them to sexual assault, thereby committing an offence punishable under Section 5(l) read with Section 6 of the Protection fo Children from Sexual Offences (POCSO) Act, 2015 (5counts).

Charge No.2

The accused further in continuation, despite knowing fully well that the victims were all below 10 years age, committed penetrative sexual assault upon them and thereby he said to have committed an offence punishable under Section 5(m) read with Section 6 of the Protection of Children from Sexual Offences (POCSO) Act, 2015 (5counts).

Charge No.3.

The accused also after repeatedly sexually assaulted the victim [REDACTED], had criminally intimidated her by threatening to murder her if she disclose the matter to anyone and thereby, said to have committed offence punishable under Section 506(2) of IPC.

Aggravated penetrative sexual assault,	5(m) whoever commits penetrative sexual assault on a child below twelve years;
5(l) whoever commits penetrative sexual assault on the child more than once or repeatedly	

8.3.To sustain a conviction under Sections 5(l) and 5(m), the

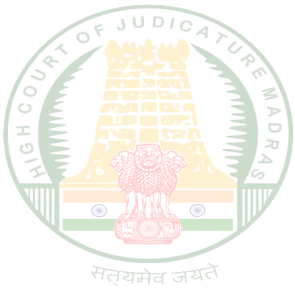


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prosecution must establish, as a foundational fact, that the victim who was below twelve years of age on the date of the occurrence was subjected to penetrative sexual assault more than once or repeatedly. Unless these essential ingredients are proved, the offence of aggravated penetrative sexual assault under Section 5(l) and 5(m) cannot be held to be proved.

8.4.To prove the charged offence, prosecution examined five victims, five victims' mothers, one victim's father. To keep the names secret, for better appreciation and sake of convenience, the victim and her relative shall hereafter be referred as follows:

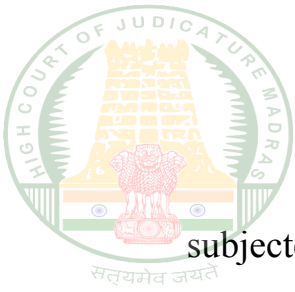
<i>Name of the witnesses</i>	<i>Rank of the witnesses</i>	<i>Hereafter referred as</i>
██████	P.W.1 victim No.1	aaa
██████	P.W.4 Victim No.2	bbb
██████	P.W.5 Victim No.3	ccc
██████	P.W.6 Victim No.4	ddd
██████	P.W.7 Victim No.5	eee
██████	P.W.2	Father of P.W.1
██████	P.W.3	Mother of P.W.1
██████	P.W.9	Mother of P.W.4
██████	P.W.10	Mother of P.W.5
██████	P.W.11	Mother of P.W.6
██████	P.W.14	Mother of P.W.7



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WEB COPY **9. Deposition of P.W.1:**

9.1.1. First victim “aaa” was examined as P.W.1 and she deposed that on 04.02.2024 at about 09.30 a.m., she and another victim “eee” went to her friend's “bbb” house, and bbb's mother/P.W.9 informed her that bbb had gone to the appellant's house. Therefore, she and “eee”, went to the appellant's house. At that time, “bbb” had been viewing at the appellant's phone. Thereafter, “bbb” told “eee” to go out of the house, and the appellant asked “aaa” to come inside the house. Thereafter, he removed her clothes and his clothes and placed her on a tub and committed penetrative sexual assault by placing his private part into the private part of the victim. He also kissed her. P.W.1 further deposed that it caused pain and hence, she jumped from the tub and put on her dress and ran away from the said house and reached her house. She also deposed that the accused criminally intimidated her not to disclose the occurrence to anybody. P.W.1 further deposed that after the occurrence, she returned to her house but did not disclose the incident to anyone. After four days, during a programme conducted in her school, she realised that the act committed by the appellant amounted to sexual assault. Thereafter, she informed her mother about the occurrence. She also disclosed that two other victims had been



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subjected to similar acts by the appellant. Subsequently, her father returned from Chennai and lodged the complaint before the police. P.W.1 further affirmed that she had given her statement under Section 164 of the Code of Criminal Procedure before the learned Magistrate. She identified the accused before the Court and reiterated that it was the accused who had sexually assaulted her.

9.1.2. P.W.1 in her cross examination deposed that her family members were not familiar with the accused prior to the occurrence. She did not know about the distance between her house and the accused's house. She used to play video games with six persons including victims and other six persons namely [REDACTED]. She did not know about the video game played by (bbb) [REDACTED]. She wore yellow and brown colour dress. She went to the police station along with her father to give a complaint. She did not remember the date. Her father came to her native village only after four days she had informed her mother. One [REDACTED] who was the teacher had taught about the "Good Touch – Bad Touch". Inside the accused house there were two rooms. At the time of the occurrence, in the accused house, she, victim "bbb", "eee" were present. Victim "bbb" and "eee" went outside the house. They did not know about the occurrence that took place

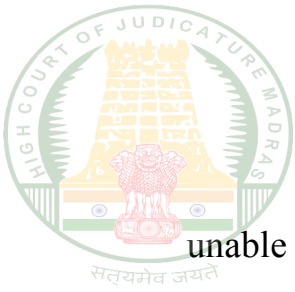


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inside the house. She did not remember the colour of the tub. She also denied the suggestion that she deposed upon tutoring by her mother and father.

9.2. Deposition of P.W.4:

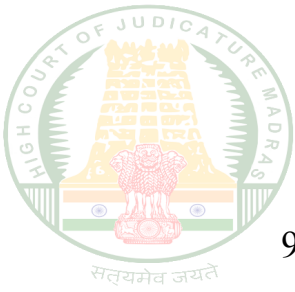
9.2.1. P.W.4 (bbb) another child victim, deposed that she used to visit the house of the appellant to play with his grandchild. According to her, the appellant would usually hand over his touchscreen mobile phone to her for playing games, particularly a balloon game. She further stated that the other four child victims also accompanied her on such occasions. P.W.4 deposed that whenever she visited the appellant's house, he used to show her obscene photographs stored in his mobile phone, depicting nude male and female persons. After displaying those photographs, the appellant asked her to remove her clothes in the same manner as shown in the images. Acting upon his instructions, she removed her clothes. Thereafter, the appellant committed penetrative sexual assault upon her by lying over her and inserting his private part into her private part. She further stated that the appellant kissed her private parts as well as her face. According to her, despite her crying due to unbearable pain, the appellant continued the assault and repeated such acts on several occasions. However, she was



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unable to specify the exact dates on which the incidents occurred. P.W.4

WEB COPY further deposed that the appellant used to give her gulab jamun and Kurkure snacks and instructed her not to disclose the incidents to her mother or to any other person. He also threatened her with serious consequences if she revealed the occurrence. According to her, the appellant gave her Rs.20 and asked her to bring the other children to his house. On his instructions, she brought the other child victims to the appellant's house, where they visited on four or five occasions for playing games on his mobile phone. P.W.4 further stated that, on 8.2.2024, her school conducted an awareness programme on "Good Touch and Bad Touch," during which the children were taught that they should not allow anyone touch their private parts and that, if such an act occurred, they should immediately raise an alarm and inform their parents or elders. After attending the programme, P.W.4 realised that the appellant's conduct constituted "bad touch." She discussed the matter with the other child victims, following which P.W.1 informed her parents, resulting in the registration of the present case. P.W.4 also stated that her statement under Section 164 Cr.P.C. was recorded and that she had informed the Magistrate about the appellant giving her Rs20. She also identified the appellant as the person who had committed the alleged acts.



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9.2.2. In her cross examination she deposed that she did not remember about when her father passed away. She always had fights with her elder and younger brothers. Her house is situated on the right side of the accused's house. There was no painting in the house of the accused. At the time of the occurrence, the daughter of the accused was not present in the house. She went to the house of the accused only to play video games with the grandchild of the accused. She had gone to the house of the accused more than 10 to 15 times. On all those occasions nobody was present in the accused's house. She played the game on the accused's cell phone. The accused had shown the nude photos of male number of times. She did not remember the colour of the dress worn by her. The accused kissed on her lips and she sustained pain and cried. In spite of that, the accused did not leave her. At that time nobody was present and nobody came to the house. The accused purchased and gave one rupee chocolate. She had not informed her mother out of fear. She had not also informed her brother under fear that he would inform her mother. Totally five persons played the video games on the cell phone of the accused one after another ie., after the first person got lost in the game, another person would play the games. One day, in school, a person from college had delivered a lecture about "good touch – bad touch" touching the private parts is bad



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touch and touching the hand is good touch. Her mother had a fight with the accused prior to the occurrence. She denied the suggestion that her mother tutored her to make false allegations against the accused.

9.3. Deposition of P.W.5:

9.3.1. P.W.5(ccc), another child victim, deposed that her house is situated near the houses of P.W.4 and the accused and P.W.4 and the other child victims were her friends. All usually play games on Saturday and Sunday and other holidays. According to her, one day P.W.4 took her to the house of the accused to play video games on his mobile phone. At that time, the accused alone was present in the house. The accused handed over his mobile phone to P.W.4 and asked to play outside the house. Thereafter, P.W.5 and the other child victims also joined and played video games on the phone. The accused provided them with snacks, including Kurkure. P.W.5 further deposed that, while the other children were playing outside the house, the accused took her alone inside the house. According to her, the accused removed her clothes and also removed his own clothes. Thereafter, he hugged her, kissed her private parts, and asked her to touch his private parts. He then laid her on the floor and committed penetrative sexual assault by inserting his private part into her private part. She stated



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that the accused committed similar acts on more than two occasions

whenever she visited his house to play games. However, she was unable to remember the exact dates of those incidents. P.W.5 further stated that the accused threatened her not to disclose the incidents to anyone. She also deposed that, on 08.02.2024, her school conducted an awareness programme on "Good Touch and Bad Touch," during which the children were informed about inappropriate physical contact and the precautions to be taken. It was only after attending the said programme she realised that the acts committed by the accused were improper. She further stated that it was P.W.4, namely bbb, who had taken her to the accused's house and that the accused had also given her Rs.20. According to her, P.W.1 thereafter lodged the complaint with the police, and subsequently her statement under Section 164 Cr.P.C. was recorded by the learned Judicial Magistrate. She identified the accused in Court and stated that he was known by the nickname " [REDACTED]" and that he only committed the alleged acts.

9.3.2. In her cross examination, she deposed that at the time of the occurrence she was staying at her aunt's house. Her aunt has no child. At the time of the awareness programme relating to the “good touch-bad touch” in the school all the students from I standard to V standard



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assumpled in one place. After the programme all the victims interacted

with each other about the “good touch-bad touch” in the school ground. On

the said date, they did not disclose the same to anybody. She did not

remember the colour of the dress worn by the accused on the date of the

occurrence. She also did not know about the colour of the cell phone of the

accused. They played ball games on the cell phone of the accused. They

did not remember the duration of playing the games. She did not remember

the day of the occurrence. She went to the house of the accused only twice.

All the victims went to the accused's house. The accused's house had no

painting. The accused's house did not have a door. But, the curtain was

there. She did not remember the colour of the said curtain. In the accused's

house two rooms are available. The said house was not bigger than the

present Court hall. There is no separate kitchen and he cooked outside the

house. She did not remember whether any other things like T.V., etc are

available. The house did not even have a window. A number of persons are

living adjoining the house of the accused. At the time when [REDACTED] kissed, she

screamed, but no one turned up hearing the scream. She did not remember

the colour of the dress she wore. She did not remember the duration of the

time she was present in the accused's house. At the time when the accused

kissed her, the other friends were outside the house. She left the house of



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the accused after he committed sexual assault upon her. She came out of the house of the accused screaming. At that time, victims “bbb, ddd and eee” were available outside the house. They did not inquire about why she screamed. The police officer enquired her in the house. Her uncle visited her house daily. After the occurrence, she did not go to the house of the accused. The accused gave a sum of Rs.20/- for more than three times. She did not inform about the receipt of the amount. The accused showed the photo on his cell phone. The accused gave the cell phone to the victim “bbb”. All played the games and “bbb” used the cell phone for more hours. They did not see the youtube video in the said cellphone. At the time of the examination by the learned Judicial Magistrate, the mother of P.W.1 did not tutor them. After the Court visit, all five victims did not have any meeting. P.W.1 did not disclose the dispute pending between the accused and her family members.

9.4. Deposition of P.W.6:.

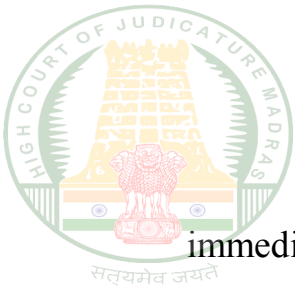
9.4.1. P.W.6(ddd) deposed that the Accused asked her to come to his house to play games on his mobile phone. Accordingly, she, along with the other victims, went to the appellant's house. At that time, the accused was the only person present in the house. All of them initially played games on



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the accused's mobile phone. Thereafter, the other children went outside the

house, while the accused gave snacks and sweets to Victim. He then asked her to come inside the house and instructed the remaining victims to stay outside. According to her evidence, the accused removed her clothes, touched her private parts, hugged her, and kissed her private parts. He also asked her to touch his private parts. When she refused, he forcibly made her to touch it. Thereafter, he spread a mat on the floor, asked her to lie on the mat, lay on top of her, kissed her all over her body and he touched her private part and did something. She stated that she suffered pain and cried during the incident. After the occurrence, the accused brought the other child (P.W.4/bbb) inside the house and acted in a similar manner with her. Subsequently, the victims watched an awareness programme regarding "Good Touch and Bad Touch." After learning from the programme, Victim No.1 informed her parents about the incidents. During the police investigation, Victim No.4 also gave her statement, identified the accused, and stated that he had committed the sexual assault on her. During the course of her evidence before the Trial Court, the learned Judge recorded that she identified the accused in Court. During cross-examination, she stated that the accused had attempted to tie "mangalsuthra" around her neck using hay straw (வைக்கோல்). She further stated that she had not

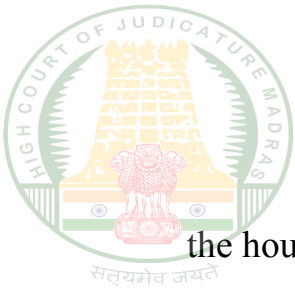


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immediately informed her parents about the incident. She also deposed that

her house was close to the accused's house, at a short distance.

9.4.2. In her cross examination she deposed that the accused was not her relation. All five victims went to the house of the accused. The accused house is situated near her house within walkable distance. In the accused house, only two rooms are available. Except her, other victims stayed outside his house. She was wearing a gown when she went to the accused's house. The accused also attempted to tie Thali by using hay straw. She did not remember the teacher who gave the lecture on the “good touch-bad touch”. At the time of the said programme, one child was called to demonstrate the “good touch-bad touch”. She did not remember the name of that girl. She did not inform her mother about the said act of kissing and the pain sustained by her out of fear that the accused had threatened that if she disclosed, her parents would be killed. “bbb” alone went to the house of the accused first. Lastly, “ccc” went to the house of the accused. At the time of committing the sexual assault upon her she screamed. All the victims had discussion about the act committed by the accused in the school grounds. The police officer came and examined her in the house. In the Thirupathur Court she had stated that firstly (bbb) [REDACTED] alone went to



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the house of the accused. At the time of committing the sexual assault upon her she sustained pain and hence she screamed and shouted but no elder member came. After examination in the Thirupathur court, before the learned Judicial Magistrate, they all went to a hostel for further investigation and they stayed in the hostel. She did not remember the fight between P.W.1's father and the accused family.

9.5. Deposition of P.W.7:

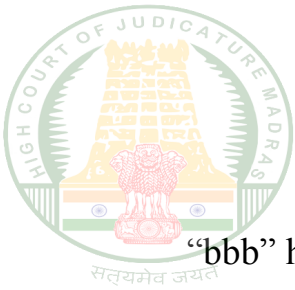
9.5.1. P.W.7(eee) another victim, was examined. She deposed that she knew the accused. According to her, about six months prior to the complaint, on a Saturday or Sunday, when the school was closed for holidays, she, along with the other victims after taking food went to play in the place where they used to play games. At that time, the accused asked them to come to his house. Initially, they refused, but the accused repeatedly insisted, and thereafter the victims accompanied him to his house. According to P.W.7, the accused asked the first victim and another child to remain outside the house and gave them snacks. Thereafter, the accused called her alone into the house and removed her clothes as well as his own clothes and placed his private part on her private part, thereby committed penetrative sexual assault. She cried and requested the accused



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to leave her. Thereafter, the accused allegedly committed similar acts upon the other victims. The witness further deposed that the accused warned them not to disclose the incident to anyone and threatened that, if they revealed the occurrence, he would kill their parents. She did not disclose the incident to anybody immediately. According to the witness, the occurrence took place between 1.00 p.m. and 1.30 p.m. After about two days, an awareness programme on "Good Touch and Bad Touch" was conducted. On watching the programme, the victim realised that the acts committed by the accused were wrong. Thereafter, she disclosed the incident to his teachers. The teachers advised her to inform her parents. Subsequently, the first victim informed her mother, who in turn informed the father, following which a complaint was lodged before the police. The witness also stated that her statement was recorded by the learned Judicial Magistrate under Section 164 of the Code of Criminal Procedure.

9.5.2. Now her mother does not go for any work, but earlier she used to go as a coolie. Her mother entered into a second marriage. Her father used to go to work while her mother stayed at home. She usually walks to school along with her friends. Her sister was studying in IX standard and hence, she would go alone. It is a walkable distance between her house and



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“bbb” house. She went to the house of “bbb” at 1^o clock on the date of the

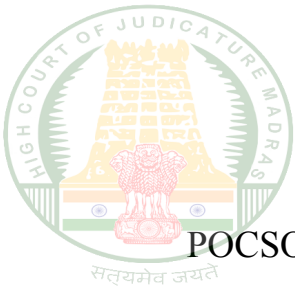
occurrence. Only to play a game she went to the house of “bbb”. At that time, [REDACTED] called them and all of them went to his house. The accused called them saying that he would give them his phone and sweets. [REDACTED] gave the cell phone to “bbb”. In the accused house two rooms are available without doors and the said house also had no door. Firstly the accused took the victim “ddd”. Except her, the other victims were playing game in the cell phone outside the house. She came out of the house and told that the accused committed penetrative sexual assault by inserting his private part into her private part. At that time, all the victims were outside the house. Secondly, the accused took the victim “ddd”. The accused criminally intimidated “ddd” by telling that her parents would be killed if she refused to come. Thereafter, he took her inside the house. At the time of the occurrence, the accused was wearing a blue shirt. The accused removed his shirt and lungi and thereafter he sexually assaulted her. He hugged her and gave kiss. She sustained pain and hence, she screamed but nobody came. [REDACTED] got a promise from her not to disclose the act to anybody. But she informed her mother. But her mother did not take her to anyone. She further deposed that she disclosed her mother on the next day. But her mother did not take her to hospital but scolded her and beat her. Her



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mother did not go to the accused's house and did not confront him. She also disclosed the same to her sister. She studied in a different class and “ccc” and “ddd” studied in different classes. None of the victims received any amount from the accused. The police officer came and took her to the Court. In the school all the victims discussed the act of the accused. The accused committed the sexual assault after making her lie on the floor. She denied the suggestion that due to the motive between P.W.1's father and the accused she falsely made the allegation against the accused.

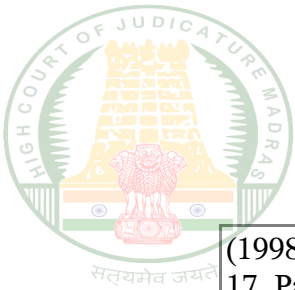
10.The Protection of Children from Sexual Offences Act, 2012 (POCSO Act) was enacted by Parliament to provide a comprehensive and robust legal framework for the protection of children from sexual offences, to establish a child-friendly mechanism for reporting, investigation and trial of such offences, and to prescribe stringent punishments coupled with statutory presumptions and a reverse burden in specified circumstances. The object of the legislation is unquestionably benevolent and deserves to be implemented in its true spirit. The Act also contemplates victim compensation through the Child Welfare Committee (CWC) and other statutory mechanisms to facilitate the rehabilitation of child victims. Judicial experience has shown that, in certain cases, allegations under the



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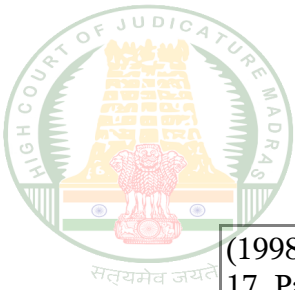
POCSO Act have been invoked for extraneous purposes, including to settle personal scores, obtain victim compensation, or wreak vengeance in the backdrop of matrimonial discord, neighbourhood disputes, or other strained relationships. In such cases, the child may unfortunately be used as an instrument for advancing the motives of adults. Several High Courts have cautioned that, while the Court must zealously protect genuine victims of child sexual abuse, it must also remain vigilant against false or motivated accusations, since an unfounded allegation under the POCSO Act has serious consequences both for the accused and for the child who is drawn into the criminal justice process.

10.1. Therefore, in this case , this court undertakes the appreciation of evidence in the light of the principles governing judicial evaluation of child witness as enunciated by the Hon'ble Supreme Court in the following cases:



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(1998) 7 S.C.C. Page 17, Panchhi and Ors. v. State of U.P	"11. ...The law is that evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and thus a child witness is an easy prey to tutoring.
Digamber Vaishnav And another, Vs. State of Chhattisgarh, reported in (2019) 4 SCC 522,	22.This Court has consistently held that evidence of a child witness must be evaluated carefully as the child may be swayed by what others tell him and he is an easy prey to tutoring. Therefore, the evidence of a child witness must find adequate corroboration before it can be relied upon. It is more a rule of practical wisdom than law.
State of Madhya Pradesh Vs. Ramesh and Another reported in (2011) 4 SCC 786,	14.In view of the above, the law on the issue can be summarised to the effect that the deposition of a child witness may require corroboration, but in case his deposition inspires the confidence of the court and there is no embellishment or improvement therein, the court may rely upon his evidence. The evidence of a child witness must be evaluated more carefully with greater circumspection because he is susceptible to tutoring. Only in case there is evidence on record to show that a child has been tutored, the court can reject his statement partly or fully. However, an inference as to whether child has been tutored or not, can be drawn from the contents of his deposition.
K.Venateshwarlu Vs. State of Andhra Pradesh reported in (2012) 8 SCC 73,	Evidence of a child witness can be relied upon if the court, with its expertise and ability to evaluate the evidence, comes to the conclusion that the child is not tutored and his evidence has a ring of truth. It is safe and prudent to look for corroboration for the evidence of a child witness from the other evidence on record, because while giving evidence a child may give scope to his imagination and exaggerate his version or may develop cold feet and not tell the truth or may repeat what he has been asked to say not knowing the consequences of his deposition in the court. Careful evaluation of the evidence of a child witness in the background and context of other evidence on record is a must before the court decides to rely upon it.



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(1998) 7 S.C.C. Page 17, Panchhi and Ors. v. State of U.P	"11. ...The law is that evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and thus a child witness is an easy prey to tutoring.
Bhagwan Singh and others Vs. State of Madhya Pradesh reported in (2003) 3 SCC 21,	The evidence of a child is required to be evaluated carefully because he is an easy prey to tutoring. Therefore, always the court looks for adequate corroboration from other evidence to his testimony. 22.It is hazardous to rely on the sole testimony of the child witness as it is not available immediately after the occurrence of the incident and before there were any possibility of coaching and tutoring him.

10.2. Further, the Hon'ble Supreme Court in the case of ***State of M.P. v. Balveer Singh*** reported in (2025) 8 SCC 545 has enumerated and summarised the following various principles:

“67. We summarise our conclusion as under:

67.1. The Evidence Act does not prescribe any minimum age for a witness, and as such a child witness is a competent witness and his or her evidence cannot be rejected outrightly.

67.2. As per Section 118 of the Evidence Act, before the evidence of the child witness is recorded, a preliminary examination must be conducted by the Trial Court to ascertain if the child witness is capable of understanding sanctity of giving evidence and the import of the questions that are being put to him.

67.3. Before the evidence of the child witness is recorded, the Trial Court must record its opinion and satisfaction that the child witness understands the duty of speaking the truth and must clearly state why he is of such opinion.



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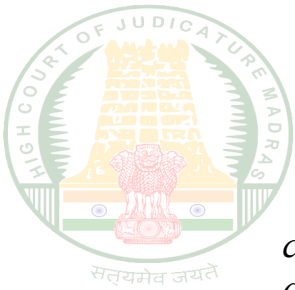
67.4. *The questions put to the child in the course of the preliminary examination and the demeanour of the child and their ability to respond to questions coherently and rationally must be recorded by the Trial Court. The correctness of the opinion formed by the Trial Court as to why it is satisfied that the child witness was capable of giving evidence may be gone into by the appellate court by either scrutinising the preliminary examination conducted by the Trial Court, or from the testimony of the child witness or the demeanour of the child during the deposition and cross examination as recorded by the Trial Court.*

67.5. *The testimony of a child witness who is found to be competent to depose i.e. capable of understanding the questions put to it and able to give coherent and rational answers would be admissible in evidence.*

67.6. *The Trial Court must also record the demeanour of the child witness during the course of its deposition and cross-examination and whether the evidence of such child witness is his voluntary expression and not borne out of the influence of others.*

67.7. *There is no requirement or condition that the evidence of a child witness must be corroborated before it can be considered. A child witness who exhibits the demeanour of any other competent witness and whose evidence inspires confidence can be relied upon without any need for corroboration and can form the sole basis for conviction. If the evidence of the child explains the relevant events of the crime without improvements or embellishments, the same does not require any corroboration whatsoever.*

67.8. *Corroboration of the evidence of the child witness may be insisted upon by the courts as measure of caution and prudence where the evidence of the child is found to be either tutored or riddled with material discrepancies or contradictions. There is no hard-and-fast rule when such*

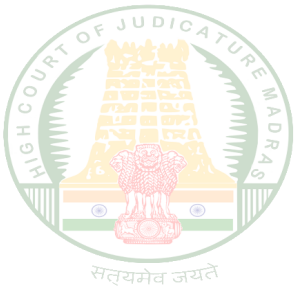


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corroboration would be desirable or required, and would depend upon the peculiar facts and circumstances of each case.

67.9. Child witnesses are considered as dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded and as such the courts must rule out the possibility of tutoring. If the courts after a careful scrutiny, find that there is neither any tutoring nor any attempt to use the child witness for ulterior purposes by the prosecution, then the courts must rely on the confidence-inspiring testimony of such a witness in determining the guilt or innocence of the accused. In the absence of any allegations by the accused in this regard, an inference as to whether the child has been tutored or not, can be drawn from the contents of his deposition.

67.10. The evidence of a child witness is considered tutored if their testimony is shaped or influenced at the instance of someone else or is otherwise fabricated. Where there has been any tutoring of a witness, the same may possibly produce two broad effects in their testimony; (i) improvisation or (ii) fabrication . (i) Improvisation in testimony whereby facts have been altered or new details are added inconsistent with the version of events not previously stated must be eradicated by first confronting the witness with that part of its previous statement that omits or contradicts the improvisation by bringing it to its notice and giving the witness an opportunity to either admit or deny the omission or contradiction. If such omission or contradiction is admitted there is no further need to prove the contradiction. If the witness denies the omission or contradiction the same has to be proved in the deposition of the investigating officer by proving that part of police statement of the witness in question. Only thereafter, may the improvisation be discarded from evidence or such omission or contradiction be relied upon as evidence in terms of Section 11 of the Evidence Act.



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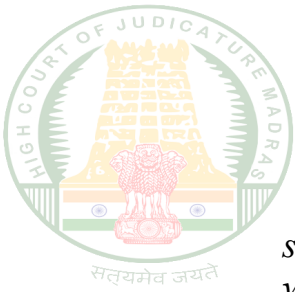
(ii) *Whereas the evidence of a child witness which is alleged to be doctored or tutored in toto, then such evidence may be discarded as unreliable only if the presence of the following two factors has to be established being as under:*

Opportunity of tutoring of the child witness in question—whereby certain foundational facts suggesting or demonstrating the probability that a part of the testimony of the witness might have been tutored have to be established. This may be done either by showing that there was a delay in recording the statement of such witness or that the presence of such witness was doubtful, or by imputing any motive on the part of such witness to depose falsely, or the susceptibility of such witness in falling prey to tutoring. However, a mere bald assertion that there is a possibility of the witness in question being tutored is not sufficient.

Reasonable likelihood of tutoring—wherein the foundational facts suggesting a possibility of tutoring as established have to be further proven or cogently substantiated. This may be done by leading evidence to prove a strong and palpable motive to depose falsely, or by establishing that the delay in recording the statement is not only unexplained but indicative and suggestive of some unfair practice or by proving that the witness fell prey to tutoring and was influenced by someone else either by cross-examining such witness at length that leads to either material discrepancies or contradictions,

or exposes a doubtful demeanour of such witness rife with sterile repetition and confidence-lacking testimony, or through such degree of incompatibility of the version of the witness with the other material on record and attending circumstances that negates their presence as unnatural.

67.11. Merely because a child witness is found to be repeating certain parts of what somebody asked her to say is no reason to discard her testimony as tutored, if it is found that what is in substance being deposed by the child witness is



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something that he or she had actually witnessed. A child witness who has withstood his or her cross-examination at length and able to describe the scenario implicating the accused in detail as the author of crime, then minor discrepancies or parts of coached deposition that have crept in will not by itself affect the credibility of such child witness.

67. Part of the statement of a child witness, even if tutored, can be relied upon, if the tutored part can be separated from the untutored part, in case such remaining untutored or untainted part inspires confidence. The untutored part of the evidence of the child witness can be believed and taken into consideration for the purpose of corroboration as in the case of a hostile witness.” (emphasis supplied by this Court)

10.3. It is therefore clear that Where the testimony of a child witness, on its face and upon judicial assessment, appears wholly reliable and inspires the confidence of the Court, there is ordinarily no necessity to search for independent corroboration. Such testimony, if found trustworthy, can by itself form the basis of conviction. However, where the evidence is, on its very face, affected by inherent improbabilities, material embellishments, significant contradictions, or indications of tutoring resulting in a regurgitated or rehearsed version, the Court cannot act upon such testimony in isolation. In such cases, it becomes imperative for the Court to examine the surrounding circumstances, contemporaneous conduct of the parties, medical and scientific evidence, independent



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witnesses, documentary evidence, and other corroborative materials to

ascertain whether the prosecution version is truthful.(i.e).the degree of corroborative scrutiny is proportionate to the apparent reliability of the witness. The more the testimony appears doubtful on its own intrinsic merits, the greater is the necessity for the Court to test it against the surrounding circumstances and other independent evidence before recording a finding of guilt.

10.4. Every criminal case must ultimately be decided on the basis of the quality of evidence and not on assumptions either in favour of or against the prosecution. Ordinarily, in criminal trials, assessing the truthfulness and credibility of witnesses is one of the most difficult judicial functions. The task becomes even more arduous when the witnesses are children. Owing to their tender age, children are susceptible to influence and may merely repeat what has been tutored to them. While genuine victims deserve full protection under the law, the constitutional guarantee of a fair trial equally demands that an accused should not be convicted *on the basis of tutored, embellished, or inherently unreliable testimony*. If the Court mistakenly accepts a false or tutored version as truthful, an innocent accused may suffer wrongful conviction. Conversely, if the Court fails to



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recognise a truthful account, the guilty may escape the reach of

justice. Therefore, the exercise of evaluating the testimony of a child witness is, metaphorically speaking, akin to walking on fire. Thus, the Court is required to strike a delicate balance between these competing risks while assessing the credibility of a child witness. It is in such a delicate and exceptional situation that this Court proceeds to analyse the present case.

10.5. To prove the charge framed against the accused, the prosecution is required to establish the following foundational facts beyond reasonable doubt. First, that all the victims had assembled at the house of the accused on 04.02.2024 and also on the dates prior thereto. Secondly, that all the victims were subjected to penetrative sexual assault. Thirdly, that, pursuant to a programme conducted in their school regarding “Good Touch and Bad Touch”, the victims disclosed the alleged assault to their respective relatives. Fourthly, that the alleged assault was corroborated by the medical evidence.

10.6. Upon considering the testimony of each victim individually, with particular reference to the material improvements, embellishments,



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inconsistencies, indications of tutoring, and inherent improbabilities in their respective narrations, and having regard to the defence contention that the prosecution was actuated by an ulterior motive, including the allegation that the parents of the victims were motivated by avarice to secure substantial compensation, which has been substantiated through the evidence of the prosecution witnesses and the surrounding circumstances, this Court holds that the prosecution has failed to establish the foundational facts beyond reasonable doubt. Accordingly, this Court proceeds to discuss as to how the testimonies of the prosecution witnesses are unbelievable under the following heads:

11. Assembling together:

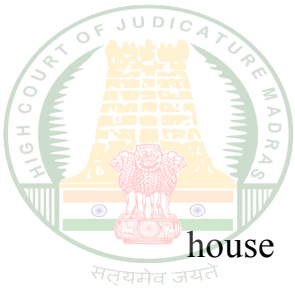
11.1.A careful scrutiny of their evidence reveals material inconsistencies regarding the very manner in which they came to be present at the house of the accused together, thereby rendering the prosecution version artificial and doubtful. P.W.4 is a star witness in the prosecution case, since her presence at the house of the accused forms the connecting link between the testimonies of the other witnesses and the alleged occurrence. The evidence of the other witnesses discloses that they either first went to the house of P.W.4 and, on coming to know that she had



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gone to the house of the accused, followed her there, or accompanied P.W.

4 directly to the house of the accused. Even P.W.4 herself claims that she went to the house of the accused along with the other victims. Therefore, the prosecution case substantially rests upon the presence of P.W.4 at the accused's house and the circumstances under which the other witnesses allegedly accompanied her and reached the said house. Consequently, the presence of P.W.4 at the house of the accused cannot be treated as a mere peripheral circumstance. It is a foundational fact which requires careful scrutiny. If the prosecution fails to establish the presence of P.W.4 at the accused's house in the manner alleged, the very basis on which the presence of the other witnesses at the scene is sought to be established becomes doubtful. Thus, the presence of P.W.4 at the house of the accused and the prosecution case that the other witnesses accompanied her and reached the accused's house together constitute a crucial aspect of the case. Therefore, it has to be examined, on an overall appreciation of the evidence available on record, whether the presence of P.W.4 at the accused's house and the circumstances under which the other witnesses allegedly accompanied her and assembled there have been established beyond reasonable doubt. The crucial question is whether the prosecution has established, beyond reasonable doubt, that P.W.4 went to the accused's



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house and that the other witnesses accompanied her or subsequently reached the said house in the manner projected by the prosecution.

11.2. As per the version contained in the FIR and the testimony of P.W.1, P.W.1 along with P.W.7 initially went to the house of P.W.4. Since P.W.4 was not present there, P.W.9, the mother of P.W.4, informed P.W.1 that P.W.4 had gone to the house of the accused. According to P.W.1, P.W.4's mother(P.W.9) informed her that P.W.4 had gone to the house of the accused, whereupon P.W.1 proceeded to the accused's house in search of P.W.4.

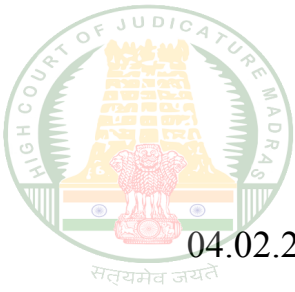
11.3. Consequently, P.W.1, accompanied by P.W.7, went to the house of the accused in search of P.W.4. This version finds no corroboration from P.W.4,5,6,7. On the other hand, P.W.4 deposed that she herself took P.W.5 to the house of the accused for the purpose of playing games on the accused's mobile phone. P.W.5 also failed to support the version of P.W.1. P.W.6, in turn, stated that P.W.4 had taken her along with P.W.s 1, 5 and 7 to the house of the accused. P.W.7 again narrated a different version, stating that while she along with P.W.s 1, 4, 5 and 6 were proceeding to play games, the accused called everyone inside the house and thereafter



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committed penetrative sexual assault, one after another. Thus, each victim has spoken a different account as to how and under what circumstances they assembled at the house of the accused. These are not minor discrepancies attributable to normal lapse of observation or memory, but material contradictions striking at the very genesis of the prosecution case. The inconsistencies are so fundamental that they create serious doubt regarding the prosecution's version that all the victims had assembled in the house of the accused at the relevant point of time and that the accused together successively committed the alleged aggravated penetrative sexual assault upon each of them. There is no synchronization in evidence of victims about their visit to the house of accused.

11.4. *The testimonies of victims have not corroborated with either the contemporaneous circumstances or the medical evidence as discussed below.* Accordingly, The prosecution version in this regard namely assembling of all victims in accused house either on 4-2-2024 or prior to appears to be artificial, improbable and inherently doubtful. Therefore, this Court has no hesitation in holding that the prosecution has failed to establish, beyond reasonable doubt, the circumstances under which P.W.s 1, 4, 5, 6 and 7 allegedly assembled at the house of the accused on



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04.02.2024 or prior dates.

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12 .Discussion on Topography:

12.1.Having regard to the topography of the place of occurrence, the surrounding circumstances, and the absence of any natural reaction from persons residing or present in the immediate vicinity, this Court finds the prosecution version on this aspect to be inherently improbable and affects the credibility of the prosecution case. The Observation Mahazar, the Rough Sketch and the evidence of the prosecution witnesses, clearly demonstrate that the house of the accused was incomplete structure, without door and window situated at Mutharaiyar Street in a densely inhabited residential area of the occurrence village and is surrounded by several neighbouring houses and that several persons were living in the immediate vicinity. More particularly, number of victims' houses are also situated in the said vicinity. Moreover, the accused's house did not have both door and window, and it was a small structure. The relevant portion of evidence in this aspect is as follows:



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P.W.5	P.W.6	P.W.7	Ex.P4
██████ வீட்டுக்கு டோர் கிடையாது. டோருக்கு பதிலா துணிய கட்டி இருப்பாங்க. துணியின் நிறம் ஞாபகம் இல்லை. கண்ணாடி ████████ வீட்டுல ரெண்டு ரும் இருக்கும். இந்த கோர்ட் கால் அளவுக்கு பெருசா இருக்குமான அப்படி எல்லாம் இருக்காது. வீட்டுக்கு வெளியில வச்ச சமைப்பாங்க. ████████ வீட்டுல துணி இருக்கும். வேற பொருள் இருந்தது பொறுத்து ஞாபகம் இல்லை.	██████ வீட்டுல ரெண்டு ரும் இருக்கு. ████████ வீட்டுல கதவு இல்லை. துணி தான் கட்டி இருந்தா ரு ஆனா நான் சத்தம் போட்டப்போ யாரும் வரலை.	எதிரி வீட்டில் ரெண்டு ரும் இருக்கு. குதவு இருக்காது. ரெண்டு ருமக்கு கதவில்லை. ருமக்குள்ள பர்ஸ்ட் ████████ தான் கூட்டிட்டு போனாரு. மத்தவங்க எல்லோரும் வெளியில போனத பாத்துட்டு இருந்தான்.	ஏதிரி ████████ என்பவரின் செங்கற்களால் செனட்ரிங் போடப்பட்டு புச்சு புசாத கதவு இல்லாத வீட்டினுள் அமைந்துள்ளது.

12.2.In the said small house of the accused without door and window, according to the prosecution, on 04.02.2024 a Sunday either 10.30 a.m. or 1.30 p.m. all the victims were subjected to forcible aggravated penetrative sexual assault one after another in spite of their resistance. The victims have also admitted that other children were playing near the place of occurrence at the relevant point of time. Each victim deposed that the accused forcibly committed penetrative sexual assault by either inserting his private part with the private part of the victim or kissing their private part either placing the victim on the tub or on the floor. The consistent case of all the victims is that they suffered pain and each of them cried aloud, screamed, during the alleged aggravated penetrative sexual assault. In such circumstances, any loud cry or alarm raised by a



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child would ordinarily be audible to the occupants of the adjoining houses

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and more particularly, if five children were simultaneously crying, screaming, and weeping, it is natural to expect that their cries would have been heard by the persons residing in the adjoining houses. Ordinarily, such commotion would have attracted the attention of the neighbours or other residents, prompting some form of intervention or immediate response and it would be natural to expect that the commotion would have attracted the attention of the neighbouring residents or others present in the locality, leading to some form of intervention or rescue. Significantly, no such evidence is forthcoming. No independent witness has been examined to establish that the cries were heard or that any attempt was made by the neighbours to rescue the children. Equally, the Investigating Officer has not conducted any meaningful investigation on this aspect or explained the absence of any such natural witnesses. The prosecution has not examined any independent neighbour to explain this conspicuous silence. This omission creates a significant improbability in the prosecution version. That apart, all the victims specifically stated that the accused, on each occasion, asked the remaining victims to go out of the house and committed penetrative sexual assault one after another, and there was a continuous noise inside. Further, each victim was subjected to aggravated



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penetrative sexual assault separately and each one was not aware of the act committed against the other and they were outside the house. This improbability persuades this Court to conclude that that victims' evidence are the result of tutoring/influence.

13.Discussion on Motive:

13.1.In view of the above unnatural circumstances, the defence plea that P.W.2 ,P.W.3 P.W.7 harboured enmity against the accused prior to the alleged occurrence and another suggestion that the accused, being addicted to alcohol, used to create nuisance in the locality, thereby giving rise to ill-feelings against him and therefore, there was no cordial relationship between their families and thereby providing a motive for the institution of the present complaint and the further argument that the complaint was motivated by an intention to secure compensation available under the victim compensation scheme also assumes significance in the overall appreciation of the evidence and cannot be brushed aside as wholly improbable. The defence consistently suggested to P.W.2 and several other prosecution witnesses that the accused, who resided in a house without a door, was in the habit of quarrelling with and abusing the residents of the locality while under the influence of alcohol. It was further suggested that



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the accused had also scolded the children of P.W.2, which enraged P.W.2 and ultimately led to the lodging of a false complaint. This defence was put to several prosecution witnesses.

13.2.P.W.2, P.W.3 and P.W.4 deposed about the motive

P.W.1	P.W.3	P.W.4
சம்பவத்துக்கு முன்பே பெற்றோர்கள் பேசிக்கொள்ள மாட்டார்கள் என்றால் ஆமாம்.	நானும் எதிரியும் இந்த சம்பவத்திற்கு முன்பிருந்தே பேசிக்கொள்வதில்லை என்றால் சரிதான்.	வீடு எங்க வீட்டிலிருந்து வலதுபக்கத்தில் இருக்கும்..... முன்னாடியே பக்கத்து வீடுங்கிறதனால் என் அம்மாவுக்கும் சண்டை வரும்.

13.3.In the above factual background, the evidence of P.W.1 has to be appreciated in consonance with the testimonies of P.W.3 and P.W.4. Since P.W.1 and P.W.4 have admitted the existence of prior enmity with the accused and the admitted strained relationship between their family and that of the accused , their evidence requires cautious evaluation. According to the prosecution itself, the entire sequence of events commenced with the arrival of P.W.4 at the house of the accused. If P.W.4 had not gone to the accused's house, the other victims would not have assembled there. Therefore, the credibility of P.W.4, read along with the testimony of P.W.9, assumes considerable significance and requires careful scrutiny. The



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defence has consistently contended that there existed strained relations between the family of P.W.9 and that of the accused. P.W.4 herself admitted during her evidence that there was no cordial relationship or regular interaction between her family and the accused. P.W.3, the mother of the first victim, deposed that she had not even talked to the accused prior to occurrence and specifically admitted that she was not acquainted with the accused. In the backdrop of the admitted hostility between the families, the prosecution version that P.W.1, the victim, voluntarily went to the house of the accused itself creates a strong suspicion regarding the truthfulness of the prosecution case and lends support to the defence plea of false implication.

13.4.During cross-examination, P.W.2 was confronted with the suggestion that there had been a long running dispute between the accused and the family of one of the victims(P.W.1, P.W.4), and that, owing to such enmity, they had joined together and falsely implicated the accused by alleging that he had committed penetrative sexual assault upon the victims. The said victim P.W.1, also admitted that there had been frequent quarrels between the accused and her mother. In the backdrop of the admittedly strained relationship between the families, it is inherently improbable that



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the victim would have gone to the house of the accused or that her parents

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would have permitted her to do so. The occurrence is alleged to have taken place in a small remote village where interpersonal relationships are generally well known to the residents. In such circumstances, it appears inherently improbable, despite the admitted strained relationship with the accused, they would have permitted P.W.1, 4 to visit the accused's house. This circumstance strikes at the very foundation of the prosecution story and creates a serious doubt regarding the genesis of the occurrence as projected by the prosecution. It is the specific defence that the complaint was lodged not only due to the existing enmity arising out of the property dispute between P.W.1's family and the accused but also with the intention of claiming Government compensation available to victims under the relevant scheme. Another suggestion was that the accused, being addicted to alcohol, used to create nuisance in the locality, thereby giving rise to ill-feelings against him. Therefore, defence version, cannot be brushed aside and raises a reasonable doubt regarding the prosecution case. It is a settled principle of criminal jurisprudence that motive is a double-edged weapon. While motive may furnish a reason for the accused to commit the crime, it may equally furnish a reason for interested witnesses to falsely implicate an accused. Therefore, where the prosecution witnesses themselves admit



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the existence of prior hostility, the Court is required to subject their testimony to closer and nevertheless, it is a relevant circumstance which must be weighed along with the entirety of the evidence while assessing the credibility of the prosecution case. Having regard to the aforesaid admitted strained relationship between their family and that of the accused, particularly the doubtful recording of the identification of the accused, the improbabilities surrounding the alleged occurrence, and the admitted strained relationship between the families, this Court is unable to place implicit reliance upon the testimony of victims and without any hesitation this court holds that they had been tutored by her family members before giving statements before police and evidence before this court. In the above factual background, the defence theory that the families conspired to falsely implicate the accused by presenting tutored and rehearsed versions cannot be brushed aside as improbable.

14.Discussion on Delay:

14.1.According to the prosecution, the accused has committed aggravated penetrative sexual assault upon the five victims on 04.02.2024 at about 10.30 am. All the victims specifically deposed that immediately after the occurrence they returned home. They did not disclose the incident



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to anyone. One of the victim's father gave complaint on 13.02.2024 at

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16.00 hours. The complaint was received by P.W.22, and she registered the case in Crime No.1 of 2024 under Section 5(m) r/w 6 of POCSO Act, r/w 506(i) of IPC on 13.02.2024 at 16.00 hours. This Court has carefully considered the entire evidence on record. Admittedly, the complaint was lodged after a delay of nine days. *Two explanations have been offered by the prosecution.*

14.2.The first explanation offered by the prosecution is that, on 08.02.2024 a programme regarding good touch and bad touch was conducted in the victims' school wherein practical demonstrations were given to the students regarding the places and manner of bad touch upon the children and during the said session, the students were educated about sexual harassment and informed that such acts constitute offences. Only thereafter did P.W.1 realise that the conduct of the accused amounted to a punishable offence, whereupon she disclosed the incident to her mother (P.W.3), who in turn informed P.W.2 and P.W.2 gave a complaint on 13-4-2024. To appreciate the same, this court went through evidence of all victims and Investigating Officer. But, this court is unable to find truth in the said theory. The very substratum of the prosecution case, insofar as the



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explanation for the delay is concerned, rests upon the alleged awareness

programme conducted by the school. According to the prosecution itself,

but for such programme, the complaint would not have been lodged.

However, no teacher or any other representative of the school was

examined to establish that such a programme was in fact conducted or that

the students were sensitised about sexual harassment. The prosecution has

projected the school awareness programme as the genesis for the

registration of the case. If that be so, the school authorities, upon receiving

information regarding the commission of an offence under the POCSO Act,

were under a statutory obligation to report the matter to the Special

Juvenile Police Unit or the local police in terms of Section 19 of the

Protection of Children from Sexual Offences Act, 2012. Significantly, no

complaint was lodged by the school authorities, nor has the prosecution

examined any teacher or school official to establish the conduct of the

awareness programme or the disclosure allegedly made by the victims.

This omission assumes considerable importance because the prosecution

itself relies upon the awareness programme as the foundation for the

initiation of criminal proceedings. Apart from that, the conduct of P.W.s 4,

5, 6 and 7 in not disclosing the alleged assault either to their parents,

relatives or the police until P.W.1 lodged the complaint, that too after a



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considerable delay of 9 days creates reasonable suspicion. The mothers' of the victims' did not make any complaint even though they were available in the village after the occurrence that took place on 02.02.2024. Furthermore, they have not made the complaint on 13.02.2024 and the investigation officer recorded their statement after the registration of the case on the basis of the complaint given by P.W.2, on 14.02.2024. This also creates doubt over the credibility of the statement of the remaining victims. In the considered opinion of this Court, the non-examination of any witness from the school materially weakens the prosecution's explanation for the delay in lodging the complaint.

14.3.Secondly prosecution has also explained the delay on the ground that the accused had criminally intimidated all the child victims by threatening them not to disclose the incident to their parents and warning that, if they did so, their parents would be killed. Each victims' 164 Cr.P.C. statement has been recorded on 19.02.2024. In their statement, they never disclosed about the threat made by the accused. The above omission is not a mere discrepancy but a material improvement touching upon the very explanation for the delay in lodging the complaint. Such an improvement appears to have been introduced during the trial to fill the lacunae in the



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prosecution case and to furnish an explanation for the delayed disclosure.

The same is further strengthened by the evidence of one of the victims' mothers, who categorically stated that the victim had immediately informed her, but she did not take any action.

14.4. Though delay in lodging a complaint in cases of sexual offences is not, by itself, fatal to the prosecution case, the Hon'ble Supreme Court, in a three-Judge Bench decision in ***Parminder Kaur v. State of Punjab, (2020) 8 SCC 811***, has held that the question of delay has to be considered in the facts and circumstances of each individual case and the relevant portion is as follows:

Sweeping assumptions concerning delays in registration of FIRs for sexual offences, send a problematic signal to society and create opportunities for abuse by miscreants. Instead, the facts of each individual case and the behaviour of the parties involved ought to be analysed by courts before reaching a conclusion on the reason and effect of delay in registration of FIR.

14.5. The Hon'ble Supreme Court on various occasions has further emphasised that the conduct and behaviour of the parties must be carefully analysed before arriving at a conclusion as to the reason for, and the effect



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of, the delay in registration of the FIR. Thus, while delay cannot be mechanically treated as a ground to discard the prosecution case, an unexplained or suspicious delay, when considered in the context of the surrounding circumstances and conduct of the parties, may assume significance in assessing the credibility of the prosecution version.

14.6. Applying the above principles to the peculiar facts of the present case, forcible penetrative sexual assault is stated to have been committed in a village on 4-2-2024 , in broad daylight, in a house without any door, while other villagers were nearby and victims house were either next door or adjacent, coupled with the prosecution version that the children cried loudly during the occurrence but no person from the neighbourhood came to their rescue, the delay assumes significance and cannot be lightly brushed aside and the allegation appears highly improbable. Therefore, this Court is of the view that the delay of 9 days in this case has not been satisfactorily explained. This intervening period provided sufficient opportunity for deliberation and consultation among the victims and their family members. The prosecution has failed to furnish a satisfactory explanation for the delay, thereby creating a reasonable possibility of deliberation, consultation, and embellishment before the



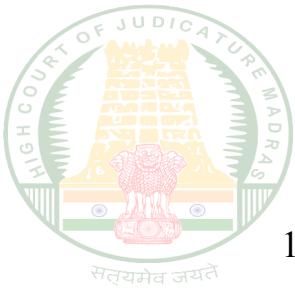
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registration of the case. In the absence of such explanation, the delay creates suspicion regarding the credibility of the witnesses.

14.7. The delayed disclosure, unsupported by the foundational fact relied upon by the prosecution has engendered a serious infirmity in the prosecution case. Consequently, the delay has caused prejudice to the accused and casts a cloud of suspicion over the prosecution case. Such suspicion can be dispelled only if the prosecution evidence, particularly that of the child victims and the corroborative circumstances, is of sterling quality and inspires the confidence of the Court. This court finds no such evidence of sterling quality.

15. Discussion on discrepancies and embellishment:

15.1. According to the prosecution, the occurrence took place on 04.02.2024. However, none of the victims disclosed the alleged occurrence to anyone immediately thereafter. It is the further case of the prosecution that, subsequently, a programme relating to “good touch” and “bad touch” was conducted in the school, pursuant to which one of the victims disclosed the alleged occurrence to her parents only on 10.02.2024. Thereafter, the complaint came to be lodged only on 12.04.2024.



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15.2. It is significant to note that all the victims gave statements under Section 164 of the Code of Criminal Procedure before the learned Judicial Magistrate on 19.02.2024. However, in their respective statements under Section 164 Cr.P.C., none of the victims referred either about the alleged programme conducted in the school regarding “good touch” and “bad touch” or the alleged criminal intimidation said to have been made by the accused. These aspects were developed only subsequently in their evidence before this Court. In this aspect, it is relevant to refer the following observation of the Hon'ble Supreme Court in the case of ***Aman Kumar v. State of Haryana***, reported in **(2004) 4 SCC 379**:

12.Though the prosecutrix's version in court was of rape, when it is compared with the one given during investigation, certain irreconcilable discrepancies are noticed. The evidence regarding actual commission of rape is at variance from what was recorded by the police during investigation.

15.3.These material improvements and inconsistencies, when viewed in the light of the unexplained delay in lodging the complaint, the admitted enmity between the families, the absence of corroborative evidence, and the other surrounding circumstances, create a serious doubt



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regarding the prosecution case.

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15.4. Therefore, considering the unusual circumstances surrounding the disclosure, the material omissions in the statements under Section 164 Cr.P.C., the subsequent improvements and embellishments, the inconsistencies in the testimony, and the inherent improbabilities already discussed, this Court finds that the evidence of the victims does not inspire confidence. The material improvements made after a considerable period of time, particularly in respect of the circumstances allegedly explaining the delayed disclosure, materially affect the foundation of the prosecution case and render their testimony unsafe to rely upon in the absence of independent corroboration.

16. Discussion on a “Good Touch–Bad Touch” awareness programme conducted in the School of the victims:

16.1. Upon perusal of the evidence of the victims, it is seen that the alleged occurrence took place on 04.02.2024. Admittedly, about five days thereafter, the school conducted a “Good Touch–Bad Touch” awareness programme. According to the prosecution, it was only after the said programme that the victims realised that they had been subjected to



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penetrative sexual assault by the accused. However, except P.W.1, none of the other victims disclosed the alleged occurrence to their parents even after attending the said programme. Even after registration of the case at the instance of P.W.2, it is not the case of either the parents or the remaining victims that they themselves went to the police station and lodged a complaint. The police officials visited the houses of the victims only after the disclosure made by P.W.2. As this Court has already made a detailed discussion regarding the strained relationship between the family of P.W.1 and the accused, there is a possibility that P.W.1 would have given a false complaint against the accused. Therefore, the subsequent examination of the victims, after registration of the case on the basis of the complaint given by P.W.2, assumes significance. The absence of any supporting evidence regarding conduct of the alleged “Good Touch–Bad Touch” awareness programme for the victims constitutes a serious lacuna in the prosecution case. The Investigating Agency ought to have examined the school authorities and produced appropriate evidence to corroborate the testimony of the victims regarding the conduct of the said awareness programme. In the absence of such evidence, the prosecution has failed to establish its assertion that the victims came to realise that they had been subjected to penetrative sexual assault only after attending the said



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programme. Therefore, this Court is unable to place reliance upon the evidence of the victims, their parents, and the Investigating Officer to the effect that the victims disclosed the alleged occurrence only after the awareness programme.

17. Medical evidence:

17.1. The accused, who was about 45 years of age at the relevant point of time, allegedly committed aggravated penetrative sexual assault upon five child victims. Some of the victims stated that the appellant placed them on a tub and committed penetrative sexual assault by placing his private part into their private part in forcible manner. As per the evidence of some of the victims, accused placed them on the floor and committed penetrative sexual assault by placing his private part into their private part in forcible manner. Some victims have stated that accused bit them in their lips and they sustained unbearable pain. All the victims stated that they were subjected to Penetrative Sexual assault by forceful manner and experienced great pain during the occurrence and that they cried. The Medical Officer, categorically deposed that the victims were medically examined on 14.02.2024 and he did not find any external or internal injuries on the bodies of the victims and also found no trace of any fresh or



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healed injuries consistent with the alleged assault. Equally, none of the parents of the victims has spoken about noticing any external injuries, marks of violence, or any physical marks on the bodies of the children immediately after the alleged occurrence which would lend assurance to the prosecution version.

17.2.The appreciation of medical evidence vis-à-vis ocular evidence in a case involving an injured witness or an eyewitness stands on a different footing from the appreciation of evidence in cases of sexual assault. In cases where the prosecution relies upon the testimony of an injured witness or an eyewitness to establish the occurrence, the ocular testimony ordinarily constitutes the primary evidence, and the medical evidence is principally examined to determine whether it corroborates or contradicts such testimony.

17.3.However, in cases alleging forcible sexual assault, particularly where the victim is a child, the medical evidence assumes considerable significance. The nature, extent and circumstances of the alleged sexual assault have to be examined in the light of the medical findings, and the medical evidence cannot be treated as merely corroborative in the same



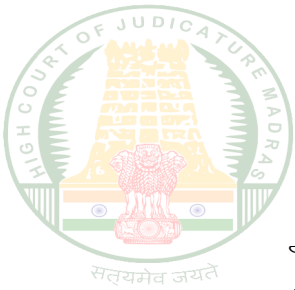
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manner as in an ordinary case resting upon ocular testimony. The Court is required to assess the medical evidence along with the testimony of the victim and the other surrounding circumstances, keeping in view the specific nature of the allegation and the manner in which the sexual assault is alleged to have been committed.

17.4. Therefore, while the principles governing the reconciliation of ocular and medical evidence in cases involving injured witnesses or eyewitnesses cannot be mechanically applied to cases of sexual offences. The medical evidence assumes particular importance where the prosecution case is one of forcible sexual assault, especially upon a child. The Hon'ble Supreme Court has repeatedly emphasised the significance of medical evidence in the proper appreciation of such allegations.

17.5. The Medical Officer admitted that he had not noticed any injuries suggestive of forcible penetration or rupture of any internal organs. He further clarified that his observations regarding sexual intercourse were not based upon any positive medical findings but were recorded only on the basis of the history narrated to him at the time of examination:

“என்னுடைய மருத்துவ பரிசோதனையில் உடலுறவுக்கு உட்பட்ட



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அறிகுறிகள் உள்ளதாக குறிப்பிட்டுள்ளீர்களே எதனடிப்படையில் அவ்விதம் கூறுகிறீர்கள் என்றால் வழக்கு சரித்திரம் குழந்தைகளை விசாரித்ததன் அடிப்படையில் அவர்கள் ஹைமன் இல்லாத நிலையில் அவ்விதம் தெரிவித்திருக்கிறேன்.”

17.6. His opinion, therefore, was substantially based upon the case *history furnished by the victims and missing of the hymen* and not upon objective medical findings. From the evidence of the victims, it is clear that they played together and used to walk to school. In view of such physical activities, the absence of the hymen cannot, by itself, be treated as incriminating material against the accused in a case alleging the grave offence of aggravated penetrative sexual assault, particularly when there were no injuries on the private parts of any of the victims. Therefore, the absence of the hymen, by itself, is not sufficient to hold that penetrative sexual assault had been committed.

17.7. It is equally well settled that the condition of the hymen is not a decisive indicator either to prove or disprove the commission of penetrative sexual assault. The Hon'ble Supreme Court in the case of the *State of Jharkhand vsl. Shailendra Kumar Rai @ pandav Rai* reported in *2022 SCC Online SC 1494* has held that missing or intactness of the hymen may occur due to several reasons and, therefore, cannot by itself



establish or negate the allegation of rape or penetrative sexual assault and relevant portion of the judgment as follows:

Hymen should therefore be treated like any other part of the genitals while documenting examination findings in cases of sexual violence. Only those that are relevant to the episode of assault (findings such as fresh tears, bleeding, edema etc.) are to be documented.

17.8.The Hon'ble Supreme Court in the case of **Aman Kumar v.**

State of Haryana, reported in (2004) 4 SCC 379 also held as follows:

.....In examination of genital organs, state of hymen offers the most reliable clue. While examining the hymen, certain anatomical characteristics should be remembered before assigning any significance to the findings. The shape and the texture of the hymen is variable. This variation, sometimes permits penetration without injury. This is possible because of the peculiar shape of the orifice or increased elasticity. On the other hand, sometimes the hymen may be more firm, less elastic and gets stretched and lacerated earlier. Thus a relatively less forceful penetration may not give rise to injuries ordinarily possible with a forceful attempt. The anatomical feature with regard to hymen which merits consideration is its anatomical situation. Next to hymen in positive importance, but more than that in frequency, are the injuries on labia majora. These, viz. labia majora, are the first to be encountered by the male organ. They are subjected to blunt forceful blows, depending on the vigour and force used by the accused and counteracted by the victim. Further, examination of the female for marks of injuries elsewhere on the body forms a very important piece of evidence.

17.9. The doctor's opinion , therefore, was substantially based upon the case history furnished by the victims and not upon objective medical



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findings. Therefore, the doctor's opinion in this suggestive manner in the

considerable opinion of this court, *is bereft of logic or objectivity, the court is not obliged to go by that opinion and this court inclines to adopt the view which is more objective or probable on appreciation of facts of this case.* The absence of injuries, viewed along with the other infirmities in the prosecution case, defies the case of the prosecution that the victims were subjected to forcible penetrative sexual assault in the tub and floor. Therefore, this Court finds merit in the submission of the learned counsel appearing for the accused that the absence of injuries on the victims, coupled with the medical evidence not corroborating testimony of the child victims regarding the alleged aggravated penetrative sexual assault, assumes considerable significance in the facts and circumstances of the present case. Accordingly, the medical evidence in the present case neither corroborates nor independently supports the prosecution version.

17.10. Yet another disturbing circumstance in the present case is that prosecution specifically alleges that the accused assaulted the victims on 04.02.2024. According to the prosecution and the evidence of the victims, the occurrence took place on 04.02.2024 at about 10.30 a.m. P.W.18, the Doctor, examined the victims to determine their age. After conducting the

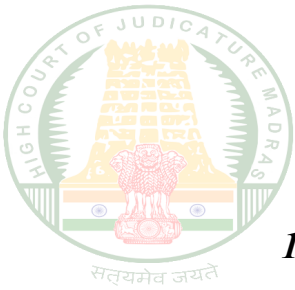


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necessary medical examinations, the Doctor issued age certificates in respect of P.W.4 and P.W.7. However, in those medical reports, the date of occurrence is specifically mentioned as 10.02.2024 instead of 04.02.2024. The trial Court put the following specific question to P.W.18 to clarify the said discrepancy:

பாதிக்கப்பட்ட சிறுமியிடம் குற்ற சம்பவம் நிகழ்வுற்ற தேதி பொறுத்து கேட்டு தெரிந்துகொண்டேன். என்றால் தெரிந்துகொண்டேன். 10.02.2024 ம் தேதி என்று தெரிந்தது.	சம்பவம் நிகழ்வுற்ற தேதியை தெரிந்துகொள்ள வேண்டிய சட்டத்தின்பாற்பட்ட தேவை இல்லை என்றாலும் கூட சிறுமியிடம் கேட்டதற்கு சம்பவம் நிகழ்வுற்ற தேதியாக 10.02.2024 ம் தேதி என்று கூறினார்.
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17.11. The Doctor explained that the date of occurrence mentioned in the reports was based on the history furnished by the victims at the time of examination. The cross-examination of P.W.18 also makes it clear that the victims had informed the Doctor that the occurrence had taken place on 10.02.2024. Thus, there exists a material discrepancy regarding the very date of the alleged occurrence. In these circumstances, the material discrepancy regarding the date of occurrence, coupled with the absence of any corroborative medical evidence, creates a reasonable doubt about the prosecution case.



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18.Discussion on the Non-recovery of the mobile Phone of the

accused:

18.1.It is the consistent case of all the child victims that they went to the house of the accused to play video games on his mobile phone. According to the prosecution, accused is said to have called the victims to play video games in his cellphone and show obscene materials and subjected them to sexual assault and the relevant portion of the evidence are as follows:

P.W.1	P.W.4	P.W.5	P.W.5	P.W.7
■■■■ வினையாடிய கேம் என்ன என்று ஞாபகம் இல்லை	நான் அவரு நான் அவருடைய போனில் பனுன் உடைக்கிற கேம் வினையாடுவேன். நான் ■■■■ வீட்டுக்கு போகும் போது அவர் என்னிடம் அவர் போனில் டிரஸ் கழட்டிட்டு இருக்கிற மாதிரி ஆம்பள பொம்பளைங்ளபள காமிப்பாரு எல்லோரும் அவரோட போன்ல கேம் வினையாடுங்கன்னு சொன்னாரு. ஆதனால நான் என்னோட பிரண்ட்ஸ் ■■■■ அப்புறம் ■■■■ வீட்டுக்கு கூட்டிட்டு போய் அவரோட செல்போன்ல கேம் வினையாடுவோம் ■■■■ செல்போன்ல சப் வே சப் கேம் வினையாடுவேன் செல்போன்ல ஆம்பள பொம்பள டிரஸ் இல்லாத நிறைய முறை ■■■■ காட்டி இருக்காரு என்னோட சேர்த்து அஞ்சு பேர் வினையாடபோவோம் ஒருத்தர் அவுட் ஆனா ஆடத்தவங்க வினையாடுவோம்	ஒரு நாள் ■■■■ வீட்டுக்கு செல்போனால வினையாடலாம்னு சொல்லி கூட்டிட்டுபோச்சு அப்போ நான் 4ம் வகுப்பு படிச்சேன் ■■■■ கூட்டிட்டு போனப்ப ■■■■ மட்டும் தான் வீட்டுல இருந்தாரு. ஆவருடைய செல்போன் ■■■■ கொடுத்தாரு. ■■■■ கேம் வினையாடுறத நான் பாத்துட்டு இருந்தேன். நானும் ■■■■ எல்லோரும் போனோம் நான்கு எல்லோரும் செல்லுல வினையாடுவோம். ■■■■ செல்போனால லேடசும் பசங்களும் டிரஸ் இல்லாத இருக்கிற போட்டாவ காமிப்பாரு பார்க்கமாட்டேன்னு சொல்லுவேன்.	■■■■ கூட நானும் ப ■■■■ போனோம் போனப்ப ■■■■ மட்டும் தான் வீட்டுல இருந்தாரு. ஆவருடைய டச் போனால நங்க எல்லோரும் கேம் வினையாண்டோம். நான்கு எல்லோரும் செல்லுல வினையாடுவோம்	■■■■ செல்போனை ■■■■ கையில் கொடுத்தாரு

18.2.Therefore, the existence and use of the said mobile phone constitute a material circumstance forming the foundation of the prosecution case. When the cell phone was not recovered and the victims



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going to play video games and forced to see the obscene photograph was also not proved. In the facts and circumstances of the present case, the recovery of the mobile phone or at least collection of electronic evidence to show accused had cellphone assumes considerable significance as it could have provided objective corroboration to the prosecution version that the victims had assembled at the accused's house for the purpose of playing video games. However, the Investigating Officer failed to recover the alleged mobile phone from the possession of the accused or from any other source. No explanation has been offered for such non-recovery. This omission constitutes yet another circumstance creating a reasonable doubt regarding the prosecution case. When the prosecution's case is that the victim went the accused's house to play video games in his mobile and where the accused showed her obscene photographs and thereafter committed sexual assault, the absence of the cell phone allegedly containing such photographs, coupled with the failure to collect or produce any electronic evidence corroborating the allegation, assumes significance. In the peculiar facts of the present case, where the prosecution version is already beset with material inconsistencies, unexplained delay, lack of medical corroboration, and other infirmities, these deficiencies further strengthen the doubt surrounding the prosecution case. Consequently, the

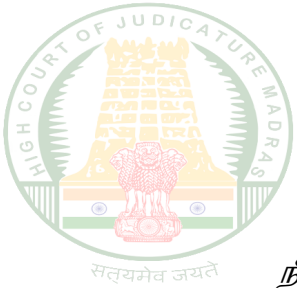


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very foundation of the prosecution case regarding the reason for the victims visiting the accused's house remains unsubstantiated. Accordingly, this Court finds that the prosecution has failed to satisfactorily establish the foundational circumstance that the victims had gone to the accused's house to play video games on the accused's mobile phone and while playing the video game accused clandestinely made them to see the obscene photographs and committed penetrative sexual assault upon the victims

19. Identification of accused:

19.1. Identification of accused in the case under POCSO is one of foundational fact. Even if the accused is known person to the victim, accused identification must be important one. Therefore, the procedure has to be adopted to identify the accused to show the accused after recording examination by removing either the partition glass or through any transparent manner. In this case, this Court finds neither of these procedures had been followed to identify the accused who had committed penetrative sexual assault upon all victims. In this context, it is relevant to extract the following portion of recording of the evidence of P.W.1 by the learned trial Judge:-



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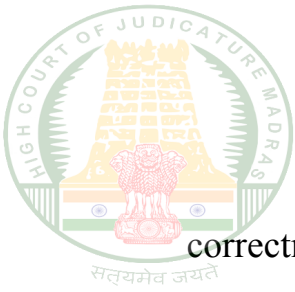
இந்த வழக்கில் பாதிக்கப்பட்ட சிறுமி ஆஜர். அவர் நீதிமன்ற கூடத்திற்குள் அழைத்து வரப்படுவதற்கு முன்பாகவே, வழக்கின் எதிரி [REDACTED] என்பவர் நீதிமன்ற கூடத்திற்குள் வரவழைக்கப்பட்டு சாட்சி பாதிக்கப்பட்ட சிறுமி எதிரியை பார்க்காத வகையில் நீதிமன்றக்கூடத்தில் [REDACTED] த்திரைக்குப் பின்னால் எதிரி நிறுத்தி வைக்கப்பட்டார். சாட்சி விசாரணையின் போது பாதிக்கப்பட்ட சிறுமியால் எதிரியை பார்க்க இயலாது என்பதும், சாட்சியை எதிரி பார்க்க முடியும் என்பதும் ஊர்ஜிதப்படுத்தப்பட்டது. அதன் பின்னர் பாதிக்கப்பட்ட சிறுமி நீதிமன்ற கூடத்திற்கு அழைத்து வரப்பட்டார். பாதிக்கப்பட்ட சாட்சி 11 வயது நிரம்பியவர் ஆவார். சாட்சி விசாரணையின் போது அவருடன் யார் இருக்கலாம் என்பதாக அந்த பாதிக்கப்பட்ட சிறுமியின் விருப்பம் கேட்கப்பட்டது. அதற்கு அந்த பாதிக்கப்பட்ட சிறுமி தன்னுடன் தன் தாயார் இருக்கலாம் என கூறியதால் அவரது தாயார் உடனிருக்கலாம் என முடிவு செய்யப்பட்டது.

19.2. It is not necessary to extract the similar recording of evidence of remaining victims namely P.W. 4, P.W.5, P.W.6 and P.W.7. From above, it is clear that the learned Trial Judge has observed that a screen was erected so that the child witness could not see the accused while deposing. However, there is nothing on record to show that the learned Trial Judge adopted any other procedure to enable the child witness to identify the accused. In the absence of any material to show that the accused was identified by the victim through any permissible mode, the recording of her evidence in the manner as though she had identified the accused is not supported by the record:



P.W.1	P.W.4	P.W.5	P.W.6	P.W.7
ஆஜர் எதிரி தான் [REDACTED] ஆவார். என்னிடம் தவறாக நடந்து கொண்டவர் ஆவார்	ஆஜர் எதிரிதா ன் என்னிடம் கெட்ட பழக்கம் செய்த [REDACTED] ஆவார்.	ஆஜர் எதிரி தான் [REDACTED] அவர் கூப்பிடுவாங்க. அவருதான் என்னை பேட் டச்சு செஞ்சவரு.	ஆஜர் எதிரிதான் [REDACTED]. அவர் கூப்பிடுவாங்க. (சிறுமி அந்த தருணத்தில் மிகுந்த அழுத முகத்துடன் காணப்பட்டார்) அவருதான் என்னை பேட் டச்சு செஞ்சவரு.	ஆஜர் எதிரி யத் தெரியு ம். அவரை நான் பார்த்தி ருக்கிறே றன

19.3.At the outset, the evidence of all victims relating to the identification of the accused creates a serious doubt. The record shows that, during the deposition, the accused was seated behind a glass partition and was not shown to the witness. The deposition itself indicates that the witness had no opportunity to see the accused in Court. Nevertheless, the learned trial Judge recorded that all victims had identified the accused. Such recording is contrary to the proceedings reflected in the deposition. It is not the case of the prosecution that the accused was shown to the witness either by removing the glass partition or through any other legally recognised mode of identification. This Court finds no material or circumstance to infer that the identity of the accused was properly established during the course of her deposition .Therefore, the recording that the witness identified the accused in Court casts a serious doubt on the



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correctness of the deposition.

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20.Special discussions on P.Ws.1, 4, 5, 6, 7 :

20.1.According to P.W.1, she first went to the house of P.W.4, where P.W.4's mother informed her that P.W.4 had gone to the appellant's house. Thereafter, P.W.1 and P.W.5 proceeded to the appellant's house. This sequence of events creates suspicion in the prosecution case. The evidence on record discloses that there existed prior animosity between the families of P.W.1 and P.W.4 and the accused. If such animosity had in fact existed, it appears improbable that the parents would have permitted the children to visit the house of the accused. Therefore, the sequence of events projected by the prosecution does not appear probable or believable.

20.2.Apart from the above, all victims except P.W.7 admitted that she did not disclose the occurrence to anybody immediately after the incident. She further stated that at the time of the alleged sexual assault, the other victims were outside the house and were unaware of the occurrence. This version is also difficult to believe. If P.W.1 had sustained pain during the occurrence, it is improbable that the other children waiting outside would not have heard her cries or made any enquiry regarding the

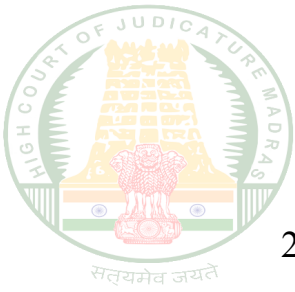


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delay in her return. Therefore, considering all the above circumstances, this

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Court is of the view that there is a dent in the evidence of victims and hence lacks credibility. The defence has consistently contended that there existed strained relations between the family of some of victims' families and that of the accused and unimpeachable evidence also is available on record in this regard. The occurrence is alleged to have taken place in a small interior village where interpersonal relationships are generally well known to the residents. Another significant circumstance is the testimony of P.W.4. During her evidence, P.W.4 went to the extent of alleging that the accused had also committed a similar act behind the school, in a vacant site. This allegation, however, does not find support from the prosecution case as originally projected and constitutes a material improvement in her evidence. In such circumstances, it appears inherently improbable that parents of the victim, despite the admitted strained relationship with the accused, would have permitted P.W.4 to visit the accused's house. This circumstance strikes at the very foundation of the prosecution story and creates a serious doubt regarding the genesis of the occurrence as projected by the prosecution.



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20.3.This Court is unable to place reliance upon the testimony of P.W.5 for several reasons. Admittedly, her statement under Section 164 Cr.P.C. was recorded on 19.02.2024. A careful comparison of the statement recorded under Section 164 Cr.P.C. with her deposition before the trial Court reveals material improvements. In her statement before the learned Judicial Magistrate, P.W.5 merely stated that the accused had shown her obscene photographs on his mobile phone, after which she left and returned home. She did not make any allegation regarding the accused removing her clothes, removing his own clothes, hugging her, kissing her private parts, compelling her to touch his private parts, or committing penetrative sexual assault. However, during her chief examination before the trial Court, P.W.5 introduced, for the first time, detailed allegations of repeated penetrative sexual assault and other acts of sexual abuse. These material omissions in her earliest judicial statement constitute significant improvements, striking at the very root of the prosecution case. Such substantial embellishments on material particulars render her testimony unsafe to rely upon without strong independent corroboration. In the absence of such corroborative evidence, the testimony of P.W.5 does not inspire the confidence of this Court. A reading of the entire evidence of the victim clearly shows that the witness appeared to have been tutored and



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made improvement after improvement during the course of the deposition.

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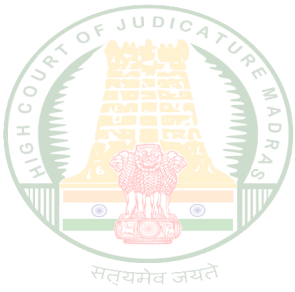
More importantly, there is no specific statement in the evidence that the accused subjected the victim to aggravated penetrative sexual assault. The victim has only spoken about the accused kissing him. Therefore, this Court finds that the evidence of the said victim is not wholly reliable. P.W. 5 is one of the alleged child victims. Her statement under Section 164 of the Code of Criminal Procedure was recorded by the learned Judicial Magistrate on 19.02.2024 (Exhibit P-30).



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P.W.5 (164 Cr.P.C.)	Evidence before the Court
என்பவர் எங்களுக்கு காசு கொடுப்பார் நான் கடைக்கு போகும் போதெல்லா ம் அவர் காசு கொடுப்பார் காசு கொடுத்துவி ட்டு கூப்பிடுவார். நான் போகமாட்டே ன் அவர் செல்போனி ல் கெட்ட படத்தை வைத்து காண்பிப்பார். நான் ஓடி போய்விடுவே ன்.	ஆஜர் எதிரியைத் தெரியும். அவரை நான் பார்த்திருக்கிறேன். அவர் எங்கள் ஊரைச் சேர்ந்தவர் ஆவார். அவர் பெயர் சந்திரன் ஒரு 6 மாசுதிற்கு முன்பு சனி, ஞாயிறு. லீவு அன்னைக்கு நான் [REDACTED] வீட்டுக்கு சென்றேன். [REDACTED] என்னுடைய பிரண்டு. சாப்பிட்டு முடித்த பின்பு நாங்கள் விளையாட போய்கொண்டிருந்தோம். நான், [REDACTED] ஆகியோர் ஒன்றாக இருந்தோம். அப்போது எதிரி எங்களை வாங்கப்பா என்று கூப்பிட்டார். நாங்கள் வரலைன்னு சொன்னோம். அதற்கு எதிரி சுமமா வாங்கப்பா என்று சொன்னார். அவர் எங்களை ருமுக்கு கூட்டிட்டு போயி, [REDACTED] மட்டும் ருமிற்குள் இருக்க சொல்லிவிட்டு எங்களிடம் போனை கொடுத்து மிட்டாய் வாங்கி தரேன் வெளியே இருங்க என்று சொன்னார். உள்ளே எதிரி யூரின் போற இடத்தை [REDACTED] யூரின் போற இடத்தில் அழுத்தியதால் தீபிகா அழுதுச்சு, [REDACTED] அழுதது ருமுக்கு வெளியே இருந்த எனக்கு கேட்டுச்சு. [REDACTED] விடுங்க, விடுங்க என்று கத்தி அழுதது. அப்புறம் [REDACTED] எதிரி செய்தார். பிரியதர்சினியும், [REDACTED] அதே மாதிரி எதிரி செய்தார். [REDACTED] கேட்டேன். அவங்க சொன்னங்கள். அதுங்க அழுதப்பயும் நான் கேட்டேன். அதுக்கப்பரம் என்னையும் டிரைஸ் கழட்டி எதிரி யூரின் போற இடத்தை நான் யூரின் போகும் இடத்தில் வைத்து அழுத்தினாங்க. எனக்கு வலிச்சுச்சு அதனால் அழுதேன். எங்கள் எல்லோரிடமும் இங்க நடந்ததை யார்டயும் சொன்னீங்கன்னா உங்க அம்மா, அப்பா அழிஞ்சுருவாங்கன்னு சொன்னார்.

20.4. A comparison of the statement recorded under Section 164 Cr.P.C. with the testimony subsequently given before the trial Court reveals material improvements on significant aspects of the prosecution case.



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WEB COPY 20.5. Upon a careful appreciation of Exhibit P-30 and the oral evidence of P.W.5, this Court finds that her deposition before the trial Court substantially departs from her earlier statement. Significantly, the nature of these improvements is similar to those found in the evidence of the other child victims. Such uniformity in the subsequent improvements raises a serious doubt regarding the spontaneity and independent nature of their testimony. The record further indicates that, while recording the statement under Section 164 Cr.P.C., no clarification appears to have been sought by the Magistrate regarding these material aspects. These circumstances, when viewed cumulatively, create a reasonable apprehension that the testimony of P.W.5 may have been influenced or tutored. Having regard to the material improvements made by P.W.5 over her statement under Section 164 Cr.P.C., the inconsistencies regarding her presence at the place of occurrence, the unexplained omissions on the part of the school authorities, the delayed initiation of criminal proceedings, the improbabilities arising from the surrounding circumstances, and the absence of any convincing medical or independent corroborative evidence, this Court is of the considered view that the prosecution has failed to establish the charge of penetrative sexual assault beyond reasonable doubt.



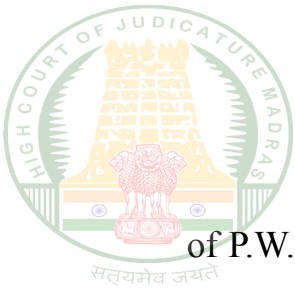
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The evidence of the victims, in the facts and circumstances of the present

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case, does not inspire the confidence of the Court to record a conviction solely on its basis, and the benefit of doubt must necessarily enure to the accused. The evidence of P.W.5 has to be appreciated in conjunction with the evidence of P.W.10. P.W.5, in her statement recorded under Section 164 Cr.P.C. before the learned Judicial Magistrate, had specifically stated that the accused had not committed penetrative sexual assault upon her. P.W.10, who was present at the time of recording the said statement, also did not dispute the correctness of the recording. However, while deposing before the Court, P.W.5 materially improved her earlier version and, in a parrot-like manner similar to the testimony of P.W.1 and P.W.4, stated that the accused had committed penetrative sexual assault by inserting his private part into her private part. Such a substantial departure from the earlier judicial statement amounts to a material improvement affecting the very substratum of the prosecution case. It is well settled that where a witness makes material improvements on vital aspects of the prosecution case, such testimony loses its evidentiary value and becomes unsafe to rely upon unless corroborated by independent and reliable evidence.

20.6. Apart from the above material contradiction, the very presence



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of P.W.5 at the place of occurrence is rendered doubtful by the evidence of

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P.W.10. According to P.W.10, he is a resident of Pilliyendal Village, and Marudupatti, where the alleged occurrence took place, is situated at a distance requiring nearly one hour of travel. P.W.10 deposed that he had entrusted the custody of P.W.5 to his father-in-law and mother-in-law residing at Marudupatti. On the contrary, P.W.5 stated that she had been staying at his aunt's house in the said village. The prosecution has neither examined the father-in-law and mother-in-law of P.W.10 nor the alleged aunt of P.W.5 to establish where P.W.5 was actually residing at the relevant point of time. No documentary or oral evidence has been adduced to substantiate either version. This unexplained inconsistency creates a serious doubt regarding the presence of P.W.5 at the place of occurrence and consequently renders her testimony inherently doubtful.

20.7.The P.W.7 admitted that, at the time when the accused allegedly committed sexual assault on one victim inside the room, the other victims were waiting outside the room. The witness further deposed that she informed her mother about the incident. However, according to her own evidence, her mother neither took any immediate action nor took her to a hospital for medical examination. On the contrary, she stated that her



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mother beat her. The witness also deposed in Tamil as follows:

WEB COPY "அம்மா [REDACTED] வீட்டுக்கு போய் கோபத்தில் சண்டை போட்டாங்கன்னா...
அம்மா சண்டை போடலை."

20.8.The above statement indicates that, even according to the witness, her mother did not immediately confront the accused or took prompt legal action. This circumstance lends further support to the defence contention that the prosecution case was the result of tutoring.

21.Discussion on a parrot-like version:

21.1.All the victims deposed about the manner of the penetrative sexual assault committed by the accused, screaming and crying, the reason for non-disclosure, the awareness programme relating to good touch and bad touch, and the criminal intimidation caused by the accused, without even changing the narration, in strikingly similar language. Most of the above versions were not found in the Section 164 of Cr.P.C. statements, and only during the course of the chief examination they deposed in similar language and narration.

21.2.It is the specific case of the prosecution that all the victims specifically stated that the accused, at the time of the penetrative sexual



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assault on each victim, asked the remaining victims to go out of the house

and committed the penetrative sexual assault one after another, and that

there was continuous hue and cry. The house of the accused was

surrounded by a number of houses. More particularly, the accused's house

did not have both a door and a window, and it was a small portion. But

each victim deposed that they were not aware about the sexual assault

committed upon other victims and the said unison version of the victims

created a serious doubt in the mind of the Court. Therefore, the evidence of

all the victims appears to be a parrot-like version in some crucial aspects.

Therefore, this Court took into account the said parrot-like versions, taking

into account the remaining improbable circumstances discussed above,

along with the huge delay in registering the case. Where several witnesses

depose in strikingly similar language or reproduce substantially identical

versions of the occurrence, the Court is duty-bound to examine whether

such uniformity is the natural consequence of witnessing the same incident

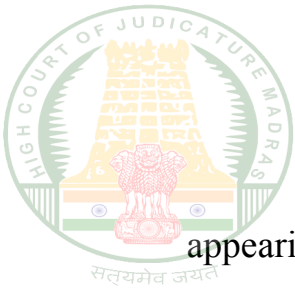
or whether it is indicative of tutoring or coaching. This principle assumes

greater significance in cases where the prosecution evidence discloses

indications of tutoring or rehearsed testimony, particularly where several

witnesses depose in substantially identical language. Therefore, this Court

finds every reason to accept the contention of the learned counsel



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appearing for the accused that the testimonies of the victims and their mothers appear to be in the nature of a rehearsed or regurgitated version, suggestive of tutoring or coaching. In such circumstances, this Court is under a solemn duty to find whether any other circumstances exist to hold that the accused had committed the assault, as alleged by the prosecution, upon the five victims on one occasion continuously, and whether the same is believable or not. But this Court has no other option except to “hold no”.

22.Discussion on the learned trial judge:

22.1.The learned Trial Judge committed a serious error in convicting and sentencing the appellant under Section 4 of the POCSO Act, despite the fact that no charge under the said provision had been framed. In the absence of a specific charge, the conviction and sentence under Section 4 are legally unsustainable and have caused serious prejudice to the appellant.

22.2.Apart from the above legal infirmity, the findings recorded by the learned Trial Judge are also unsupported by the evidence on record. According to the prosecution, many victim girls consistently deposed that they had gone to the house of the accused to see the new born child of the accused's daughter, who was his grandchild. However, there is absolutely



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no evidence, either oral or documentary, to establish that the accused's daughter had already left the appellant's house along with her child and had gone to her matrimonial home. Despite the absence of any such evidence, the learned Trial Judge recorded a finding that the daughter of the accused had gone to the matrimonial home of the accused's daughter. This finding is not borne out by the evidence on record and is, therefore, based on mere assumption and conjecture.

22.3.The learned Trial Judge has also failed to properly appreciate the significance of the non-recovery of the mobile phone. The Trial Court merely accepted the explanation said to have been offered by the Investigating Officer without examining whether such explanation was satisfactory or acceptable. Upon an independent scrutiny of the evidence, this Court finds that no satisfactory explanation has been furnished by the Investigating Officer regarding the failure to recover the mobile phone.

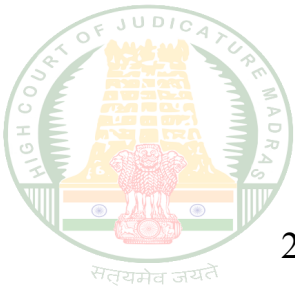
22.4.According to the prosecution, the victims had gone to the house of the appellant to use the mobile phone and the appellant handed over the mobile phone to the victims for playing video games. Several of the victims have deposed that they were indeed playing video games on the



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WEB COPY said mobile phone. They further alleged that the accused showed them obscene photographs on the mobile phone before committing the alleged sexual assault. In these circumstances, the mobile phone constituted a material piece of evidence capable of corroborating or disproving the prosecution case. The failure to recover and produce the said mobile phone, coupled with the absence of any satisfactory explanation for such non-recovery, assumes considerable significance. The learned Trial Judge has failed to properly appreciate this important aspect of the case.

22.5.The learned Trial Judge has also not correctly appreciated the medical evidence. The doctor merely opined that there was a possibility of sexual intercourse on the ground that the hymen was found to be missed. However, such an opinion, by itself, does not establish that the alleged missing was caused by the appellant or that it was attributable to the alleged occurrence. In the absence of any evidence connecting the medical findings with the alleged incident, the medical opinion cannot be treated as corroborative evidence of the prosecution case.

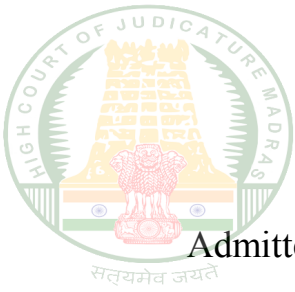


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23. Discussion on the application of the concept of "suggestibility

theory":

23.1. In the present case, all the five alleged victims, their respective mothers, and the father of one victim have narrated the occurrence in substantially identical terms. Such verbatim uniformity, viewed in the light of the surrounding circumstances, raises a legitimate doubt as to whether the witnesses were independently narrating the occurrence from their own recollection or whether they had been tutored after the recording of their statements under Section 164 of the Code of Criminal Procedure. Further, the evidence of two of the victims and the mother of one victim discloses the existence of prior animosity against the accused. This circumstance assumes significance while assessing the credibility of the prosecution case. The cumulative effect of the admitted motive, the unnatural uniformity in the testimony of the prosecution witnesses, and the absence of independent corroboration creates a reasonable doubt regarding the genuineness of the prosecution version. Having regard to the delay in the disclosure of the alleged occurrence, the manner in which the statements came to be recorded, and the admitted existence of prior disputes between the families, In view of the above discussion upon the evidence of victims, the alleged occurrence is stated to have taken place on 04.02.2024.



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Admittedly, about five days thereafter, the school conducted a "Good

Touch–Bad Touch" awareness programme. The complaint came to be

lodged only thereafter, with an unexplained delay. It is a well-recognised

principle of appreciation of evidence that while a witness may sometimes

embellish or even depart from the truth, the surrounding circumstances

ordinarily do not lie. The prosecution version must, therefore, be tested not

merely on the oral testimony of the witnesses but also on the touchstone of

the attendant circumstances and the probabilities of the case. These

surrounding circumstances demand application of the concept of

"suggestibility theory" .The concept of "suggestibility" assumes

considerable significance while appreciating the testimony of a child

witness. Psychological research recognises that a child subjected to

repeated suggestive questioning may, in certain circumstances, develop

memories of events that did not actually occur. Children are comparatively

more susceptible to suggestion, social influence, and memory distortion

than adults. They may unconsciously tailor their responses to meet the

perceived expectations of parents, teachers, investigators, or other

authority figures. This phenomenon, often described as "demand

characteristics", refers to the tendency of an interviewee to conform to

what he or she believes the interviewer expects. Equally relevant is the



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phenomenon of "memory contamination", where post-event information

becomes assimilated into the child's own recollection, resulting in genuine but inaccurate memories. Thus, the encoding, storage, retrieval, and narration of events by a child may be influenced by a variety of social and psychological factors. Repeated discussions, rehearsal of events, or repeated narration before making a complaint or deposing before the Court may further reinforce such suggestibility. The evidence of the victims in this case indicates that the victims were tutored before making their statements to the police as well as before deposing before the court. In view of the above discussion upon the evidence of victims, this Court is of the view that the possibility of suggestive tutoring cannot be ruled out. Applying the above principle to the present case, this Court finds that the surrounding circumstances do not lend assurance to the testimony of P.W.s 1, 4, 5, 6 and 7.

24.Discussion on Theory Improbability:

24.1. This Court considers Section 3 of the Evidence Act, as well as the judgment of the Hon'ble Supreme Court reported in *(2022) 12 SCC 200, Rajesh Yadav v. Shweta Gupta*, and *2025 SCC OnLine SC 1496, Isakki Muthu v. State*, represented by the Inspector of Police to apply the



theory of improbability.

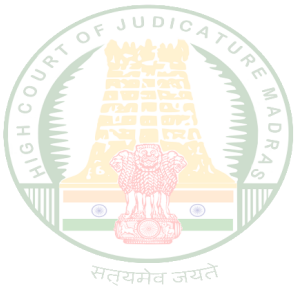
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24.1.1. Section 3 of the Evidence Act, 1872 :

“Proved”.	“Disproved”
A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.	A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

24.1.1.(A)In the first judgment in the case of “*Rajesh Yadav v. Shweta Gupta*”, reported in (2022) 12 SCC 200”, the Hon’ble Supreme Court discussed the concept of probability and the manner in which probability is to be assessed and relevant paragraph as follows:

12.*Section 3 of the Evidence Act defines “evidence”, broadly divided into oral and documentary. “Evidence” under the Act is the means, factor or material, lending a degree of probability through a logical inference to the existence of a fact. It is an “adjective law” highlighting and aiding substantive law. Thus, it is neither wholly procedural nor substantive, though trappings of both could be felt.*



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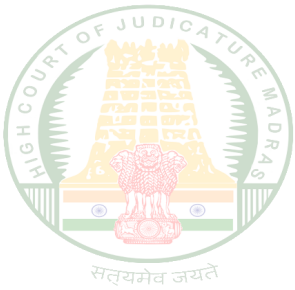
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13. The definition of the word “proved” though gives an impression of a mere interpretation, in effect, is the heart and soul of the entire Act. This clause, consciously speaks of proving a fact by considering the “matters before it”. The importance is to the degree of probability in proving a fact through the consideration of the matters before the court. What is required for a court to decipher is the existence of a fact and its proof by a degree of probability, through a logical influence.

14. Matters are necessary, concomitant material factors to prove a fact. All evidence would be “matters” but not vice versa. In other words, matters could be termed as a genus of which evidence would be a species. Matters also add strength to the evidence giving adequate ammunition in the Court's sojourn in deciphering the truth. Thus, the definition of “matters” is exhaustive, and therefore, much wider than that of “evidence”. However, there is a caveat, as the court is not supposed to consider a matter which acquires the form of an evidence when it is barred in law. Matters are required for a court to believe in the existence of a fact.

15. Matters do give more discretion and flexibility to the court in deciding the existence of a fact. They also include all the classification of evidence such as circumstantial evidence, corroborative evidence, derivative evidence, direct evidence, documentary evidence, hearsay evidence, indirect evidence, oral evidence, original evidence, presumptive evidence, primary evidence, real evidence, secondary evidence, substantive evidence, testimonial evidence, etc.

17. What is important for the court is the conclusion on the basis of existence of a fact by analysing the matters before it on the degree of probability. The entire enactment is meant to facilitate the court to come to an appropriate conclusion in proving a fact. There are two methods by which the court is expected to come to such a decision. The court can come to a conclusion on the existence of a fact by merely considering the matters before it, in forming an opinion that it does exist. This belief of the court is based



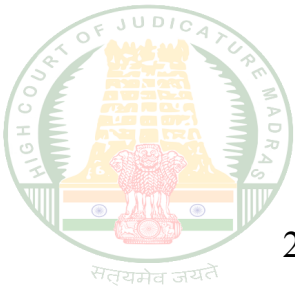
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upon the assessment of the matters before it. Alternatively, the court can consider the said existence as probable from the perspective of a prudent man who might act on the supposition that it exists. The question as to the choice of the options is best left to the court to decide. The said decision might impinge upon the quality of the matters before it.

18. The word “prudent” has not been defined under the Act. When the court wants to consider the second part of the definition clause instead of believing the existence of a fact by itself, it is expected to take the role of a prudent man. Such a prudent man has to be understood from the point of view of a common man. Therefore, a Judge has to transform into a prudent man and assess the existence of a fact after considering the matters through that lens instead of a Judge. It is only after undertaking the said exercise can he resume his role as a Judge to proceed further in the case.

9. The aforesaid provision also indicates that the court is concerned with the existence of a fact both in issue and relevant, as against a whole testimony. Thus, the concentration is on the proof of a fact for which a witness is required. Therefore, a court can appreciate and accept the testimony of a witness on a particular issue while rejecting it on others since it focuses on an issue of fact to be proved. However, we may hasten to add, the evidence of a witness as whole is a matter for the court to decide on the probability of proving a fact which is inclusive of the credibility of the witness. Whether an issue is concluded or not is also a court's domain.

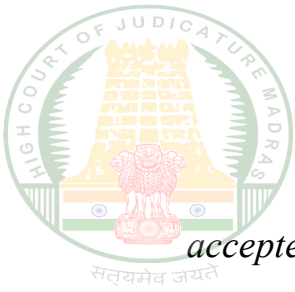
24.1.1.(B) In the second case, in the case of “*Isakki Muthu v. State*, represented by the Inspector of Police, reported in 2025 SCC OnLine SC 1496”, the Hon’ble Supreme Court discussed the theory of physical improbability in the overall assessment of evidence.



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24.1.2. While considering the statement of the victim, it is also the duty of this Court to prevent irremediable injustice. The concept of inherent improbability must include circumstances in which the testimony of a witness is so inherently dubious and apparently false that it becomes unsafe to rely upon it. The standard of inherent improbability in the assessment of witness testimony has been recognised and developed by courts across jurisdictions. Where, upon an overall assessment of the evidence, the testimony of a witness is found to be sufficiently improbable, having regard to the surrounding circumstances and the physical possibilities of the case, the Court may disregard such testimony while determining whether sufficient and reliable evidence exists to sustain a conviction.

24.2. This Court, upon the above discussion of the evidence, which suffers from inherent infirmities, finds that the rule laid down regarding the principle of improbability is applicable. The *principle of improbability* rests upon the concept of inherent probability, which is a legitimate consideration in the judicial appreciation of criminal evidence. *Human intuition ordinarily tells us that certain occurrences are extraordinarily unlikely and, therefore, that they ought not readily to be*

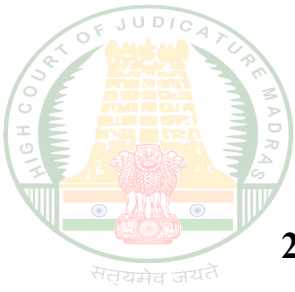


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accepted as having occurred without convincing supporting

circumstances. The Court must, therefore, examine whether the prosecution version accords with the probabilities emerging from the proved circumstances, whether it is consistent with ordinary human conduct, and whether the alleged occurrence is so inherently improbable that it creates a reasonable doubt about the truth of the prosecution case.

The sequence of events of this case that the accused committed penetrative sexual assault upon all the victims one after another one particular brother day in his house which had no door or window inspite of their screaming and crying , leading to the belated registration of the FIR, the unexplained delay, the absence of corroborative medical evidence, the improvements in the testimony of the witnesses, the testimonies of the victims are surrounded by suspicious circumstances and the surrounding circumstances collectively create a reasonable doubt regarding the prosecution case. This Court also finds certain fundamental improbabilities and circumstances which shake the judicial conscience in sustaining the conviction of the accused, a woodcutter earning approximately Rs.300/- per day. The principal improbabilities are set out below:



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24.2.1. First Improbability:

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The charge itself proceeds on the footing that the accused committed the alleged penerative sexual acts upon all the victims during one particular period significantly, one after another. The prosecution case is that the accused committed the offences inside his house, where the victims allegedly cried and were subjected to assault, including by being placed in a plastic tub and on the floor. Admittedly, the house had no door or window and was surrounded by the houses of neighbours. In such circumstances, the allegation that several minor girls were brought together into the house, that the alleged assaults were committed one after another, and that the victims cried out in pain without any neighbour noticing the occurrence or coming to their rescue, is a notable improbability. The absence of any independent circumstance supporting such an occurrence, despite the alleged screaming of the children, constitutes a significant circumstance requiring serious consideration.

24.2.2. Second Improbability:

None of the victims allegedly disclosed the occurrence to their parents or to any other person until the awareness programme concerning “Good Touch and Bad Touch” was conducted in their school, stated to



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have been held four days after the alleged occurrence. Even thereafter, none of the victims is stated to have immediately disclosed the occurrence to their parents, except one victim. In respect of that disclosure, the family of the concerned victim is alleged to have had prior motive against the accused, and the complaint was lodged only after a further delay of three days from the alleged disclosure. Significantly, the prosecution has taken the specific stand that, but for the said awareness programme, there was no possibility of the victims disclosing the alleged occurrence to their family members. Yet, no witness was examined to establish that such an awareness programme was in fact conducted in the school. This unexplained evidentiary gap, coupled with the delayed disclosure, constitutes a circumstance of another notable improbability.

24.2.3. Third Improbability:

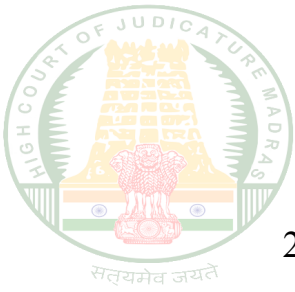
The prosecution case is one of forcible sexual assault. Nevertheless, none of the victims was found to have sustained any injury on the body. There is also a complete absence of medical corroboration supporting the allegation of forcible assault. While medical evidence can not be dispensed with in every case of sexual assault, in the peculiar facts of the present case, where the prosecution alleges forcible acts upon several children and



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the occurrence is alleged to have involved repeated physical acts, the complete absence of any medical corroboration assumes significance. This circumstance, coupled with the substantial and unexplained delay in disclosure and initiation of the criminal proceedings, creates a serious doubt regarding the prosecution version.

24.2.4.Fourth Improbability: The prosecution alleges that the children assembled at the accused's house for the purpose of playing video games on the accused's mobile phone. The accused is admittedly a woodcutter earning a meagre daily income. However, the prosecution has not satisfactorily established even the foundational fact that the accused possessed the alleged mobile phone. No meaningful investigation appears to have been undertaken to trace the mobile phone or to collect the corresponding electronic evidence to establish that the accused possessed or used such a device. In the absence of proof of the very circumstance which allegedly brought the children to the accused's house, the prosecution's explanation regarding their assembly there becomes doubtful.

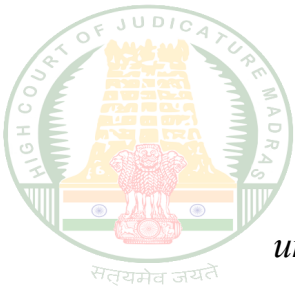


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24.3.The cumulative effect of these circumstances cannot be brushed aside merely because the allegations are grave or because the victims are minors. The Court is required to distinguish between the seriousness of an allegation and the strength of the evidence adduced to prove it. The presumption of innocence remains a fundamental principle of criminal jurisprudence, and it does not disappear merely because the allegation concerns an offence which understandably evokes strong public sentiment.

24.4.The aforesaid circumstances also lend substantial support to the defence contention that the statements of the victims were influenced or tutored and that there were material variations between their versions prior to the registration of the complaint and their subsequent statements, including the statements recorded under Section 164 of the Code of Criminal Procedure. When these circumstances are considered cumulatively, rather than in isolation, the prosecution case is attended by serious and unresolved doubts. It is relevant to refer the following portion of hon'ble supreme court judgment in the case of ***Nirmal Premkumar*** reported;

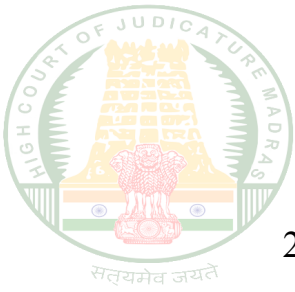
“24. What flows from the aforesaid decisions is that in cases where witnesses are neither wholly reliable nor wholly



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unreliable, the Court should strive to find out the true genesis of the incident. The Court can rely on the victim as a “sterling witness” without further corroboration, but the quality and credibility must be exceptionally high. The statement of the prosecutrix ought to be consistent from the beginning to the end (minor inconsistencies excepted), from the initial statement to the oral testimony, without creating any doubt qua the prosecution's case. While a victim's testimony is usually enough for sexual offence cases, an unreliable or insufficient account from the prosecutrix, marked by identified flaws and gaps, could make it difficult for a conviction to be recorded.”(emphasis supplied by this Court).”

24.5. Accordingly, this Court is unable to sustain the conviction merely on the basis of the gravity of the allegations or the surrounding public sentiment. The prosecution must establish the guilt of the accused beyond reasonable doubt through legally admissible and reliable evidence. Where the evidence is attended by such substantial improbabilities and unexplained circumstances, the benefit of the doubt necessarily accrues to the accused. The principle of presumption of innocence therefore operates in favour of the accused, and the prosecution has failed to overcome the reasonable doubt arising from the cumulative circumstances noticed above.



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24.6. Having regard to the cumulative effect of the unexplained delay

in lodging the complaint, the material inconsistencies in the testimony of the witnesses, the admitted prior enmity between the parties, the absence of satisfactory medical corroboration, the non-recovery of the material object, namely the mobile phone, and the other surrounding circumstances, this Court finds that the defence version appears to be reasonably probable. Consequently, the prosecution has miserably failed to establish the guilt of the accused beyond reasonable doubt.

25. Discussion on the offence under section 5(1) :

25.1. On a careful appreciation of the evidence, it is clear that the number of victims have not stated that they were subjected to repeated sexual assault. There is also no independent or corroborative evidence on record to establish that the victims were subjected to repeated assault. Even the witnesses examined by the prosecution have spoken only about a single incident of assault alleged to have taken place on 04.02.2024 and one of the witness P.W.11 deposed that “எத்தனை முறை எதிரி [REDACTED] தவறாக நடந்துகொண்டார் என்று என் மகள் கூறினாளா என்றால் ஒரு நாள் மட்டும் தவறாக நடந்துகொண்டதாக சொன்னாள்.” In the absence of evidence establishing repeated sexual assault, the essential ingredients of the offence

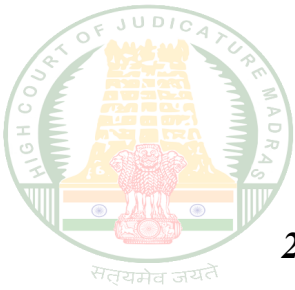


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with which the accused has been charged are not made out. Therefore, the charge framed under Section 5(1) cannot legally be sustained.

26. Discussion on the availability of two views:

26.1. On a careful appreciation of the evidence of the victims and the surrounding circumstances established through the prosecution witnesses, this Court finds that there is no credible, cogent and corroborative evidence pointing conclusively towards the involvement of the accused in the offences with which he has been charged. On the contrary, the evidence on record also gives rise to another reasonably possible view, which does not support the prosecution case regarding the involvement of the accused. Thus, on an overall appreciation of the evidence, this Court finds that two reasonably possible views emerge from the evidence on record—one pointing towards the guilt of the accused and the other towards his innocence. In such circumstances, this Court is inclined to apply the settled principle of criminal jurisprudence that, where two views are reasonably possible on the evidence on record, the view favourable to the accused has to be adopted and the accused is entitled to the benefit of doubt. This principle has been consistently reiterated by the Hon'ble Supreme Court in including the following judgment:



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26.2. In the case of *Digamber Vaishnav v. State of Chhattisgarh*,

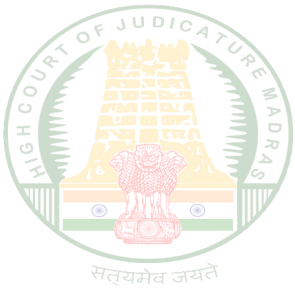
reported in **(2019) 4 SCC 522**

36. It is also well-settled principle that in criminal cases, if two views are possible on evidence adduced in the case, one binding to the guilt of the accused and the other is to his innocence, the view which is favourable to the accused, should be adopted.

27. Mockery of trial and judicial massacre :

27.1. The prosecution has come forward with the case that the accused committed aggravated penetrative sexual assault upon five minor victims. The allegations, by their very nature, attracted considerable public attention and media coverage. In cases of this nature, there is a real possibility that even the counsel appearing for the accused may be viewed, in the public perception, as being sympathetic to or abetting the alleged crime. The atmosphere created by intense media intervention and heightened societal sensitivity therefore cannot be ignored while considering the requirement of a fair trial. ***It is relevant to extract the following para of hon'ble three judges of supreme court in the case of Jaharlal Das v. State of Orissa reported in (1991) 3 SCC 27***

even if the offence is a shocking one, the gravity of offence cannot by itself overweigh as far as legal proof is



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concerned. In cases depending highly upon the circumstantial evidence, there is always a danger that the conjecture or suspicion may take the place of legal proof. The court has to be watchful and ensure that the conjecture and suspicion do not take the place of legal proof.

27.2. In the case of ***Hemudan Nanbha Gadhvi v. State of Gujarat***, reported in **(2019) 17 SCC 523**

10.A criminal trial is but a quest for truth. The nature of inquiry and evidence required will depend on the facts of each case. The presumption of innocence will have to be balanced with the rights of the victim, and above all the societal interest for preservation of the rule of law. Neither the accused nor can the victim be permitted to subvert a criminal trial by stating falsehood and resort to contrivances, so as to make it the theatre of the absurd.

27.3. However grave and abhorrent the allegations may be, the Court cannot permit the gravity of the accusation or public sentiment to influence the judicial assessment of evidence. We are governed by the rule of law. The rule of law demands a fair trial, and a fair trial necessarily requires that the accused be afforded a meaningful and adequate opportunity to defend

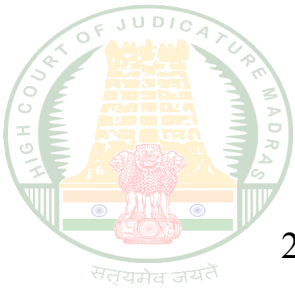


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himself and that the evidence be appreciated strictly in accordance with law and the procedural safeguards and guidelines repeatedly laid down by the Hon'ble Supreme Court. However, criminal courts are required to decide the case solely on the basis of legally admissible evidence and not on the gravity of the allegations or public sentiment.

27.4.The manner in which the trial was conducted in the present case raises grave concerns regarding the fairness and legality of the proceedings. The accused, a woodcutter, is confined in jail from the day one, was tried for heinous offences and ultimately subjected to the extreme penalty of death. In the considered opinion of this Court, in the backdrop of the proceedings suffering from such fundamental deficiencies, the conviction and sentence cannot be permitted to stand.

27.5.Firstly, the learned Trial Judge failed to adhere to the guidelines laid down by the Hon'ble Supreme Court in **2019 (20) SCC 196**, emphasising the obligation of the Court to afford the accused adequate and effective opportunity to participate in the trial and to ensure that the assistance of counsel is meaningful and effective.



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27.5.1.The Hon'ble Supreme Court had in the case of ***Imtiyaz Ramzan Khan v. State of Maharashtra*** reported in **2018 (9) SCC 160**, reiterated the necessity of ensuring that an accused in custody is afforded a meaningful opportunity to communicate and consult with his counsel in the following para:

5. In our view such a direction on part of the Supreme Court Legal Services Committee is quite commendable and praiseworthy. Very often we see that the learned advocates who appear in matters entrusted by the Supreme Court Legal Services Committee, do not have the advantage of having had a dialogue with either the accused or those who are in the know of the details about the case. This at times seriously hampers the efforts on part of the learned advocates. All such attempts to facilitate dialogue between the counsel and his client would further the cause of justice and make legal aid meaningful. We, therefore, direct all Legal Services Authorities/Committees in every State to extend similar such facility in every criminal case wherever the accused is lodged in jail. They shall extend the facility of videoconferencing between the counsel on one hand and the accused or anybody in the know of the matter on the other, so that the cause of justice is well served.

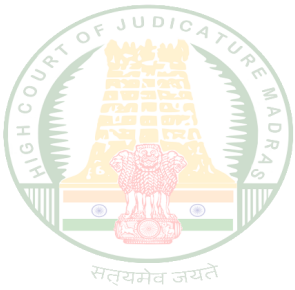
27.5.2.Such communication is essential to enable counsel to effectively defend the accused and to make the constitutional guarantee of legal aid a meaningful reality.in this case , we find no such compliance and the same is revealed from the recording of evidence of witness itself i.e. in



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the present case, the record of proceedings discloses that, although counsel had been engaged for the accused, the said counsel was not present on every material occasion when prosecution witnesses were examined. On several such occasions, legal-aid counsel conducted the examination of witnesses. However, there is nothing on record to demonstrate that such counsel had been afforded a meaningful opportunity to consult the accused and obtain his instructions regarding the evidence and the defence to be projected. The record is conspicuously silent as to whether the requirement emphasised by the Hon'ble Supreme Court in **2018 (9) SCC 160** was, in fact, complied with. The deficiency becomes still more serious in view of the fact that the accused was in custody and was, on several occasions, produced through video-conferencing, while certain witnesses were examined in his presence before the Court. On one such occasion, the accused specifically stated that he had tried to contact his advocate, but the advocate had not answered his telephone call and had failed to appear. The relevant portion of the proceedings is extracted below:

“எதிரி ஆஜர் படுத்தப்பட்டார். எதிரியிடம் குறுக்கு விசாரணையை பொறுத்து கேட்ட போது எதிரியின் வழக்கறிஞர் போனை எடுக்கவில்லை என்று கூறினார். ஆகவே, மாண்புமிகு உச்ச நீதிமன்ற வழிகாட்டுதலுக்கு இணங்க சிவகங்கை LADCS-ன் தலைவர்



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வழக்கறிஞர்

திரு.ப.செந்தில்குமார்

என்பவர் இந்நீதிமன்றத்தால் சாட்சியை குறுக்கு விசாரணை செய்வதற்காக நீதிமன்றத்தால் கேட்டுக்கொள்ளப்பட்டார்.

27.5.3.Further, in respect of the examination of other witnesses, the record does not consistently disclose whether the accused was present, whether his engaged counsel was present, or whether an effective opportunity for cross-examination was afforded. Though the learned Trial Judge has observed in the concluding portion of the judgment that the counsel for the accused had facilitated the trial, this Court is unable to concur with such a finding in the light of the factual circumstances borne out by the record.

27.5.4.The right to a fair trial is an integral component of Article 21 of the Constitution. The Hon'ble Supreme Court, in a series of decisions, has emphasised that the guarantee of free legal aid and effective legal representation is not a mere formality but an essential facet of a fair procedure. The principles laid down in **2019 (20) SCC 196**, **2004 (4) SCC 156**, and **(2006) 3 SCC 374** among other decisions, make it clear that an accused must be afforded a real and effective opportunity to defend



himself, including adequate opportunity to consult counsel and to cross-

examine prosecution witnesses and the relevant paragraph of the judgment

in the case of **Anokhilal v. State of M.P.**, reported in (2019) 20 SCC 196

are as follows:

9. In this connection, we may refer to the decisions of two of the High Courts where a similar situation arose. Alla Nageswara Rao, In re[Alla Nageswara Rao, In re, 1954 SCC OnLine AP 115 : AIR 1957 AP 505] reference was made to Rule 228 of the Madras Criminal Rules of Practice which provided for engaging a pleader at the cost of the State to defend an accused person in a case where a sentence of death could be passed. It was held by Subba Rao, Chief Justice as he then was, speaking for the Bench, that : (SCC OnLine AP para 4)

‘4. A mere formal compliance with this Rule will not carry out the object underlying the Rule. A sufficient time should be given to the advocate engaged on behalf of the accused to prepare his case and conduct it on behalf of his client. We are satisfied that the time given was insufficient and, in the circumstances, no real opportunity was given to the accused to defend himself.’

This view was expressed on the basis of the fact found that the advocate had been engaged for the accused two hours prior to the trial. In Mathai Thommen v. State[Mathai Thommen v. State, AIR 1959 Ker 241] the Kerala High Court was dealing with a sessions trial in which the counsel was engaged to defend the accused on 2-8-1958, when the trial was posted to begin on 4-8-1958, showing that barely more than a day was allowed to the counsel to get prepared and obtain instructions from the accused. Commenting on the procedure adopted by the Sessions Court, the High Court finally expressed its opinion by saying:

‘Practices like this would reduce to a farce the engagement of counsel under Rule 21 of the Criminal Rules of Practice which has been made for the purpose of effectively carrying out the duty cast on courts of law to see that no one is deprived of life and liberty without a fair and reasonable opportunity being afforded to



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him to prove his innocence. We consider that in cases like this counsel should be engaged at least some 10 to 15 days before the trial and should also be furnished with copies of the records.’

In our opinion, no hard-and-fast rule can be laid down as to the time which must elapse between the appointment of the counsel and the beginning of the trial; but, on the circumstances of each case, the Court of Session must ensure that the time granted to the counsel is sufficient to prepare for the defence. In the present case, when the counsel was appointed just before the trial started, it is clear that there was failure to comply with the requirements of the rule of procedure in this behalf.”

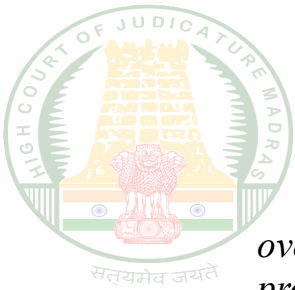
(emphasis supplied)

15. On this difference of opinion, the matter went to a Bench of three Judges which accepted [Mohd. Hussain v. State (NCT of Delhi), (2012) 9 SCC 408 : (2012) 3 SCC (Cri) 1139] the view taken by H.L. Dattu, J. and directed de novo trial. It was observed [Mohd. Hussain v. State (NCT of Delhi), (2012) 9 SCC 408 : (2012) 3 SCC (Cri) 1139] : (Mohd. Hussain case [Mohd. Hussain v. State (NCT of Delhi), (2012) 9 SCC 408 : (2012) 3 SCC (Cri) 1139] , SCC pp. 416 & 426-28, paras 15, 38 & 40)

“15. Section 304 of the Code mandates legal aid to the accused at State's expense in a trial before the Court of Session where the accused is not represented by a pleader and where it appears to the court that the accused has not sufficient means to engage a pleader.

38. In Best Bakery case [Zahira Habibulla H. Sheikh v. State of Gujarat, (2004) 4 SCC 158 : 2004 SCC (Cri) 999] , the Court also made the following observations : (SCC p. 187, paras 38-40)

‘38. A criminal trial is a judicial examination of the issues in the case and its purpose is to arrive at a judgment on an issue as to a fact or relevant facts which may lead to the discovery of the fact issue and obtain proof of such facts at which the prosecution and the accused have arrived by their pleadings; the controlling question being the guilt or innocence of the accused. Since the object is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout



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over technicalities, and must be conducted under such rules as will protect the innocent, and punish the guilty. The proof of charge which has to be beyond reasonable doubt must depend upon judicial evaluation of the totality of the evidence, oral and circumstantial, and not by an isolated scrutiny.

39. Failure to accord fair hearing either to the accused or the prosecution violates even minimum standards of due process of law. It is inherent in the concept of due process of law, that condemnation should be rendered only after the trial in which the hearing is a real one, not sham or a mere farce and pretence. Since the fair hearing requires an opportunity to preserve the process, it may be vitiated and violated by an overhasty, stage-managed, tailored and partisan trial.

40. The fair trial for a criminal offence consists not only in technical observance of the frame and forms of law, but also in recognition and just application of its principles in substance, to find out the truth and prevent miscarriage of justice.'

The Bench emphasised that : (Best Bakery case [Zahira Habibulla H. Sheikh v.State of Gujarat, (2004) 4 SCC 158 : 2004 SCC (Cri) 999] , SCC p. 192, para 52)

'52. Whether a retrial under Section 386 of the Code or taking up of additional evidence under Section 391 of the Code [in a given case] is the proper procedure will depend on the facts and circumstances of each case for which no straitjacket formula of universal and invariable application can be formulated.'

40. "Speedy trial" and "fair trial" to a person accused of a crime are integral part of Article 21. There is, however, qualitative difference between the right to speedy trial and the accused's right of fair trial. Unlike the accused's right of fair trial, deprivation of the right to speedy trial does not per se prejudice the accused in defending himself. The right to speedy trial is in its very nature relative. It depends upon diverse circumstances. Each case of delay in conclusion of a criminal trial has to be seen in the facts and circumstances of such case. Mere lapse of several years since the commencement of prosecution by itself may not justify the discontinuance of prosecution or dismissal of indictment. The factors concerning the accused's right to speedy trial have to be



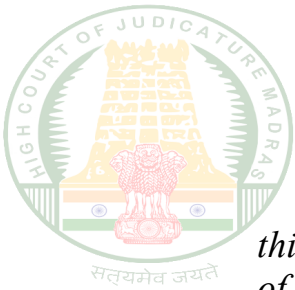
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weighed vis-à-vis the impact of the crime on society and the confidence of the people in judicial system. Speedy trial secures rights to an accused but it does not preclude the rights of public justice. The nature and gravity of crime, persons involved, social impact and societal needs must be weighed along with the right of the accused to speedy trial and if the balance tilts in favour of the former the long delay in conclusion of criminal trial should not operate against the continuation of prosecution and if the right of the accused in the facts and circumstances of the case and exigencies of situation tilts the balance in his favour, the prosecution may be brought to an end. These principles must apply as well when the appeal court is confronted with the question whether or not retrial of an accused should be ordered.”

26.Expeditious disposal is undoubtedly required in criminal matters and that would naturally be part of guarantee of fair trial. However, the attempts to expedite the process should not be at the expense of the basic elements of fairness and the opportunity to the accused, on which postulates, the entire criminal administration of justice is founded. In the pursuit for expeditious disposal, the cause of justice must never be allowed to suffer or be sacrificed. What is paramount is the cause of justice and keeping the basic ingredients which secure that as a core idea and ideal, the process may be expedited, but fast tracking of process must never ever result in burying the cause of justice.

23.In our considered view, the trial court on its own, ought to have adjourned the matter for some time so that the Amicus Curiae could have had the advantage of sufficient time to prepare the matter. The approach adopted by the trial court, in our view, may have expedited the conduct of trial, but did not further the cause of justice. Not only were the charges framed the same day as stated above, but the trial itself was concluded within a fortnight thereafter. In the process, the assistance that the appellant was entitled to in the form of legal aid, could not be real and meaningful.

20.2.It has been well accepted that right to free legal services is an essential ingredient of “reasonable, fair and just” procedure for a person accused of an offence and it must be held implicit in the right guaranteed by Article 21. The extract from the decision of



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this Court in Best Bakery case[Zahira Habibulla H. Sheikh v.State of Gujarat, (2004) 4 SCC 158 : 2004 SCC (Cri) 999] (as quoted in the decision in Mohd. Hussain [Mohd. Hussain v. State (NCT of Delhi), (2012) 9 SCC 408 : (2012) 3 SCC (Cri) 1139]) emphasises that the object of criminal trial is to search for the truth and the trial is not a bout over technicalities and must be conducted in such manner as will protect the innocent and punish the guilty.

31.4.Any learned counsel, who is appointed as Amicus Curiae on behalf of the accused must normally be granted to have meetings and discussion with the accused concerned. Such interactions may prove to be helpful as was noticed in Imtiyaz Ramzan Khan[Imtiyaz Ramzan Khan v. State of Maharashtra, (2018) 9 SCC 160 : (2018) 3 SCC (Cri) 721] .

27.5.5. The relevant paragraph of the judgment in the case of **Zahira Habibullah Sheikh (5) v. State of Gujarat**, reported in **(2006) 3 SCC 374** is as follows:

36..... Each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial judge, a fair prosecutor and an atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated.....

27.5.6. In the present case, the manner in which the trial proceeded, particularly on material dates in the absence of the engaged counsel and without any material demonstrating that the legal-aid counsel had an



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effective opportunity to consult the accused regarding the case, cannot be regarded as substantial compliance with the constitutional requirement of a fair trial. The appointment of counsel, without ensuring that a meaningful communication between counsel and the accused had taken place, does not satisfy the constitutional guarantee of effective legal representation.

27.6. The deficiencies are not confined to the issue of legal representation. The procedure contemplated under **Section 118 of Evidence Act, (Section 124 of BSA)** also appears not to have been properly complied with in relation to the victims.

28.1. The evidence of P.W.1, however, does not inspire the confidence of this Court for the following reasons. Firstly, she was subjected to preliminary questioning by the trial Court to ascertain her competency to depose. On a perusal of the questions put to her, this Court finds that there was no proper or effective assessment of her capacity to understand the questions and to give rational answers before recording her substantive evidence. Consequently, the Court is of the view that the competency of the child witness was not satisfactorily determined prior to the recording of her testimony. The following questions were put to P.W.1



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by the learned Trial Judge to ascertain her competency to depose before the

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கேள்வி: அரசு வழக்கறிஞர் காட்டி, அவர் யார் என்று தெரியகிறதா?

பதில்: தெரியாது

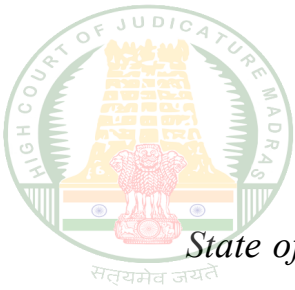
கேள்வி: நீங்கள் இருக்கிற இடம் எந்த இடம் என்று தெரியுமா?

பதில்: தெரியாது

கேள்வி: நீங்கள் எதற்காக வந்திருக்கிறார்கள்?

பதில்: பிரச்சனை இருப்பதால் அதை சொல்ல வந்துருக்கிறேன்.

28.2.From the nature of the questions put to her, this Court finds that there was no proper appreciation or assessment of her capacity to understand the questions and give rational answers before her evidence was recorded. Similarly in the case of other victims also this Court finds that there was no proper appreciation or assessment of her capacity to understand the questions and give rational answers before her evidence was recorded. The said non compliance also fatal to the prosecution *as held by the Hon'ble Supreme Court in the case of "Pradeep Vs. The State of Haryana, reported in 2023 SCC Online SC 777 and in the case of Agniraj and Ors. Etc., Vs. State through Deputy Superintendent of Police CB-CID, reported in 2025 Live law (SC) 644 and also Hon'ble three Judges bench of Supreme Court in the case of Aejaaz Ahmad Sheikh vs.*



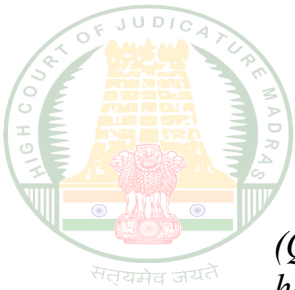
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State of Uttar Pradesh and another reported in 2025 SCC Online SC 913

WEB COPY *has reaffirmed and reiterated the principles the following paragraphs:*

10. We will deal with evidence of eye-witness P.W.5 Kamar Hasim, who was 15 years old at the time of recording his evidence. It is well settled that a minor is also a competent witness. This Court in the case of P. Ramesh v. State has dealt with this issue. Under Section 118 of the [Indian Evidence Act, 1872](#) (the ‘Evidence Act’), a minor is a competent witness. In paragraph 16 of the said decision in the case of P. Ramesh, this Court held thus:

“16. In order to determine the competency of a child witness, the Judge has to form her or his opinion. The Judge is at liberty to test the capacity of a child witness and no precise rule can be laid down regarding the degree of intelligence and knowledge which will render the child a competent witness. The competency of a child witness can be ascertained by questioning her/him to find out the capability to understand the occurrence witnessed and to speak the truth before the court. In criminal proceedings, a person of any age is competent to give evidence if she/he is able to (i) understand questions put as a witness; and (ii) give such answers to the questions that can be understood. A child of tender age can be allowed to testify if she/he has the intellectual capacity to understand questions and give rational answers thereto. [Ratansinh Dalsukhbhai Nayak v. State of Gujarat, [\(2004\) 1 SCC 64 : 2004 SCC \(Cri\) 7](#)] A child becomes incompetent only in case the court considers that the child was unable to understand the questions and answer them in a coherent and comprehensible manner. [Sarkar, Law of Evidence, 19th Edn., Vol. 2, Lexis Nexis, p. 2678 citing Director of Public Prosecutions v. M, [\[1998\] Q.B. 913 : \[1998\] 2 WLR 604 : \(1997\) 2 All ER 749](#)



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(QBD)] If the child understands the questions put to her/him and gives rational answers to those questions, it can be taken that she/he is a competent witness to be examined.”

(emphasis added)

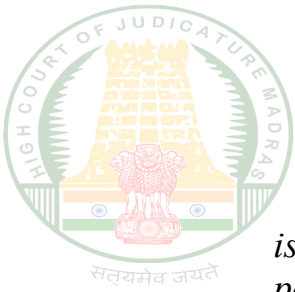
In the case of Pradeep v. State of Haryana⁷ in paragraphs 9 and 10, this Court held thus:

“9. It is a well settled principle that corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence. A child witness of tender age is easily susceptible to tutoring. However, that by itself is no ground to reject the evidence of a child witness. The Court must make careful scrutiny of the evidence of a child witness. The Court must apply its mind to the question whether there is a possibility of the child witness being tutored. Therefore, scrutiny of the evidence of a child witness is required to be made by the Court with care and caution.

10. Before recording evidence of a minor, it is the duty of a Judicial Officer to ask preliminary questions to him with a view to ascertain whether the minor can understand the questions put to him and is in a position to give rational answers. The Judge must be satisfied that the minor is able to understand the questions and respond to them and understands the importance of speaking the truth. Therefore, the role of the Judge who records the evidence is very crucial. He has to make a proper preliminary examination of the minor by putting appropriate questions to ascertain whether the minor is capable of understanding the questions put to him and is able to give rational answers. It is advisable to record the preliminary questions and answers so that the Appellate Court can go into the correctness of the opinion of the Trial Court.”

(emphasis added)

11. We may note here that before administering oath to P.W.5, even preliminary questions were not put to him by the learned Trial Judge for ascertaining whether he



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is able to understand the questions put to him and is in a position to answer the same. The learned Judge should have asked preliminary questions to him to ascertain whether he understood the importance of the oath. The learned Judge ought to have recorded satisfaction that the minor was competent to depose. However, this was not done by the learned Judge. He straightaway administered oath to the minor witness. In the deposition, it is not even mentioned that certain preliminary questions were put to the witnesses. Thus, it is apparent that the learned Trial Judge administered oath to P.W.5 and recorded his deposition without satisfying himself about the competence of the minor to depose. This raises a question mark on the testimony of P.W.5 especially when a minor witness can be easily tutored.

28.3.Further, the manner in which the identity of the accused was established during the proceedings is not shown to be in conformity with the applicable procedure. As already observed, there is no satisfactory and legally reliable identification of the accused emerging from the record. These procedural defects assume considerable significance in a case resting upon the testimony and identification of the victims, particularly where the ultimate consequence of the trial was the imposition of capital punishment. Leaving aside the aforesaid deficiencies for a moment, the learned Trial Judge proceeded to impose the extreme penalty of death without demonstrating strict compliance with the safeguards and guidelines repeatedly laid down by the Hon'ble Supreme Court governing

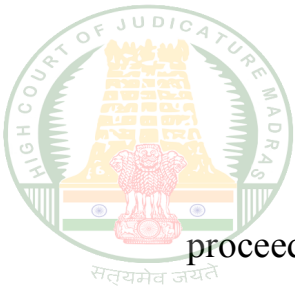


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cases involving capital punishment. The Court was required to undertake a careful and comprehensive assessment of the entire evidence, including the testimony of the child witnesses, the surrounding circumstances, the reliability of the prosecution evidence, and the circumstances relating to the accused.

28.4. In a case carrying the ultimate penalty, procedural safeguards cannot be treated as technicalities. They constitute substantive guarantees intended to ensure that no person is deprived of life except through a procedure that is fair, just and reasonable within the meaning of Article 21 of the Constitution.

28.5. On an overall consideration of the record, this Court is unable to hold that the accused received a fair and meaningful trial. The cumulative effect of the denial of an effective opportunity to consult and instruct counsel, the absence of counsel on material occasions, the inadequacy of the record regarding effective cross-examination, the procedural irregularities concerning the victims, the deficiencies in identification, and the failure to adhere to the safeguards governing capital sentencing has resulted in a fundamental failure of the trial process. The



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proceedings, in the considered opinion of this Court, have been reduced to a mockery of the constitutional guarantee of a fair trial and have resulted in a grave miscarriage of justice. The deficiencies go to the root of the proceedings and cannot be treated as mere irregularities capable of being overlooked. It is a settled principle that where the procedure adopted in a criminal trial violates the fundamental guarantee of a fair trial under Article 21, and such violation has caused prejudice to the accused, the conviction and sentence cannot be sustained. The constitutional requirement of a fair, just and reasonable procedure assumes its highest significance where the sentence imposed is death. Accordingly, this Court, without hesitation, holds that the conviction and sentence imposed by the learned Trial Court are vitiated by fundamental violations of the accused's right to a fair trial. The judgment of conviction and the sentence of death are, therefore, liable to be set aside.

28.6. Ordinarily, in a case where false allegations are established, this Court may consider directing appropriate action against the parents of the victims, including recovery of compensation, wherever permissible in law. However, in the present case, this Court is of the view that the victims themselves appear to have suffered at the hands of their parents, who were



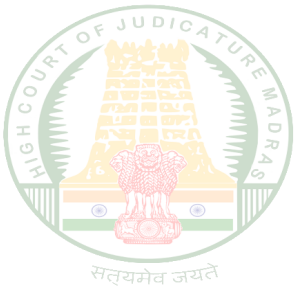
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responsible for setting the criminal law in motion. Therefore, this Court refrains from taking any action against the victims or directing recovery of compensation from them.

29. Discussion on the refund of compensation

29.1 At the heart of the present case lies a delicate constitutional balance and the humanity of criminal justice namely to shield children from exploitation and further trauma, and simultaneously to ensure that no person is deprived of liberty except upon legally sufficient proof. Justice is not achieved by sacrificing one vulnerable person to vindicate another. The law must protect the child without abandoning the accused to a conviction unsupported by proof.

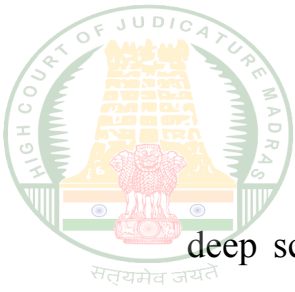
29.2. The true measure of a criminal justice system in a constitutional democracy lies in its ability to protect the vulnerable from exploitation, shield the innocent from wrongful conviction, and ensure that the coercive power of the State to punish is exercised only upon legally sufficient proof established in accordance with law. Therefore, the criminal law insists upon proof beyond reasonable doubt before liberty is taken away and guilt is judicially stamped upon a human being.



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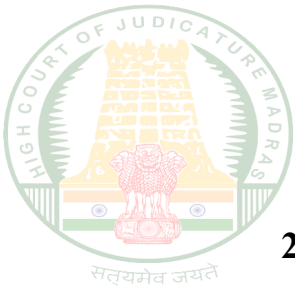
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29.3.The duty of a criminal court is not to convict because the accusation is grave, nor because public sentiment is strong, but to ascertain, with disciplined judicial detachment, whether the prosecution has proved beyond reasonable doubt. The Court cannot shut its eyes either to the vulnerability of children or to the danger of an innocent person being convicted upon evidence which does not attain the standard required by law. The Court must remain faithful to evidence even when the allegations evoke strong concern, because the legitimacy of criminal justice lies precisely in its refusal to substitute emotion for proof. Justice must reach the truth. But, this court may deeply regret that in this case, the truth has not been brought home with sufficient certainty. In the present case evidence being suggested that children may have been drawn into criminal proceedings for collateral purposes, including monetary compensation or hostility towards the accused, the Court calls for judicial approach to safeguard two sides of complementary imperatives of justice namely the protection of children and the protection of the innocent .Bearing this fundamental duty in mind, during the last two months,this Court has subjected the entire the oral and documentary evidence to repeated and



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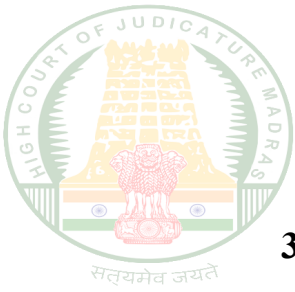
deep scrutiny on more than twenty occasions. After such prolonged and painstaking scrutiny, this Court finds that the evidentiary foundation necessary to sustain a conviction is conspicuously absent and this Court finds that the prosecution case suffers from material inconsistencies, omissions and deficiencies which affect its very foundation. Each material circumstance, each inconsistency, each omission and each surrounding circumstance has been examined not in isolation, but in its cumulative setting. When reasonable doubt survives a conscientious judicial scrutiny, acquittal is not an act of indulgence; it is the command of the rule of law. Where, after a comprehensive appreciation of the evidence, a reasonable doubt remains regarding the very occurrence alleged and the involvement of the accused, the benefit of such doubt necessarily belongs to the accused. An acquittal in such circumstances is not a failure of justice; rather, it is a consequence of the fundamental principle that no person can be convicted unless the prosecution proves his guilt beyond reasonable doubt. Accordingly, in view of the doubts arising from the prosecution case and the failure to establish the charges beyond reasonable doubt, the accused is entitled to the benefit of doubt and is, therefore, acquitted.



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29.4. At the same time ,it must do so without sacrificing the child at the altar of the litigation. The Court must also remember that the children shall not be made the casualties of an unsuccessful prosecution and an unsuccessful prosecution should not become a source of further suffering to the children. This Court, therefore, deliberately refrains from directing recovery of the compensation already paid to the children. Nor does this Court consider it just or expedient, in the peculiar circumstances of the case, to set the criminal law in motion against their parents.

29.5.Accordingly, in the peculiar facts of this case, the compensation already received by the children need not be recovered. With these observations and directions, this Court now brings to a close its long and painstaking journey through the evidence and the governing principles of law in this Reference arising from the impugned judgment. The journey has been one of understanding of the awesome responsibility that attends the exercise of the judicial power to take away life, and guided throughout by the enduring command that justice must neither be sacrificed to sympathy nor surrendered to suspicion.



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30. Conclusive finding:

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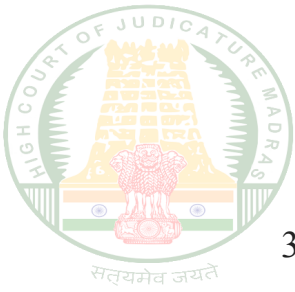
30.1. Accordingly, the Referred Trial in R.T.(MD).No.5 of 2026 is hereby answered against the prosecution and the Criminal Appeal in Crl.A.(MD).No.689 of 2026 stands allowed on the following terms:

30.2. The conviction and death sentence of imprisonment passed in Spl.S.C.No.23 of 2024 by the learned Principal Sessions Judge, the Principal Sessions Court (POCSO Act Cases), Sivagangai District by judgment dated 20.04.2026 is hereby set aside.

30.3.The accused is acquitted of all the charges and shall be released forthwith, unless his custody is required in connection with any other case.

N.ANAND VENKATESH,J.

31.I have had the privilege of reading the meticulous judgment authored by my learned brother, Justice K.K.Ramakrishnan. I concur fully with every finding, as well as the conclusion setting aside the conviction and death sentence, and ordering the acquittal of the accused.



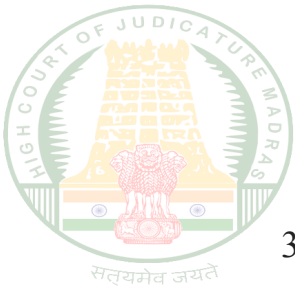
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32. Having heard this matter at length and reserved judgment on 22.06.2026, we deliver our verdict nearly two and a half months later. A question may naturally arise: *Why did a court take such a long time to deliver a verdict, particularly when setting an innocent person at liberty from the shadow of the gallows?*

33. The answer lies in the agonizing responsibility cast upon a court handling a case of this magnitude. A judge must deliberate, re-deliberate, and rigorously cross-examine their own reasoning to ensure that the pursuit of true justice remains unswayed by haste.

34. As my learned brother has observed, this case presents a profound structural tension: the imperative to safeguard vulnerable children under the strict regime of the POCSO Act, balanced against the sacred duty to prevent wrongful conviction especially where a human life hangs in the balance. The POCSO Act is intentionally stringent, designed as a shield to protect children from exploitation. Yet, it is deeply painful to witness instances where vulnerable children are used as pawns by adults to settle private scores, rendering the child a victim twice over.



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35.This case stands as a classic textbook illustration of how draconian statutory provisions can be weaponized, holding an innocent person beneath the suspended sword of a death sentence. In an era where trial by media often pronounces guilt long before the judicial process concludes, high-profile cases generate intense public expectation. Courts cannot and must not be guided by popular clamor or media narratives. Yet, intense public scrutiny places an extra duty of care upon the bench to ensure every shred of evidence is exhaustively analyzed, leaving no stone unturned.

36.Courts are acutely aware of societal interests and the heavy burden of public trust. Reaching a final conclusion in a matter of life and liberty cannot be rushed. Crafting a judgment that stands up to scrutiny requires time, precision, and immense Judicial restraint. In this case, we felt it necessary to exercise profound restraint regarding the conduct of the victim's mother, consciously pruning harsh observations from earlier drafts to protect the long-term well-being and interests of the children involved.

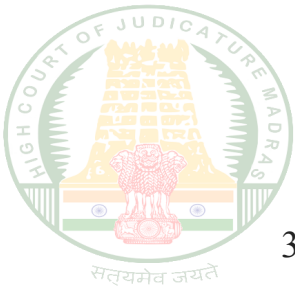
37.This case also brings to light a troubling systemic reality: the quality of legal defense available to accused persons under the POCSO



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Act. Accused individuals who are incarcerated from the outset often struggle to instruct counsel effectively. Worse still, defense advocates in such sensitive cases are frequently ostracized by society, and at times, local Bars even refuse representation. In such an environment, the court must adopt a proactive, vigilant role shedding all pre-conceived notions to guarantee a fair trial. As an appellate court, our duty expands to evaluating whether the trial judge was subtly influenced by the heinous nature of the charge, leading to findings rooted in assumption rather than proof. Today, the availability of audio-visual recordings of statements under Section 164 Cr.P.C. provides us a direct window into the demeanor of the child, but reviewing such material thoroughly amid heavy daily dockets and weekend work naturally demands time.

38.Finally, reserving a capital judgment for two and a half months exacts an inescapable psychological toll on the judge. A case of this nature settles into the subconscious, constantly demanding reflection until the pen is ultimately laid down.



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39.I deem it necessary to append this postscript to lay bare the deliberate judicial process, the institutional constraints, and the moral weight that guided the timing of this final verdict.

[N.A.V.J.] & [K.K.R.K.J]

08.09.2026

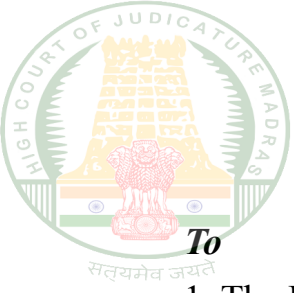
NCC :Yes/No

Internet :Yes/No

Index :Yes/No

sbn

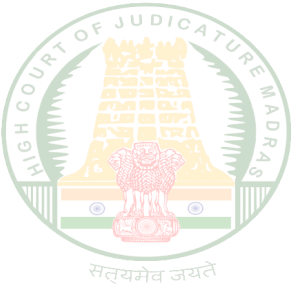
Note: The Registry is hereby directed to remove the name of the victims- P.W.1, P.W.4, P.W.5, P.W.6 and P.W.7, name of the parents of the victims, P.W.2, P.W.3, P.W.9, P.W.10, P.W.11 and P.W.14 while uploading this judgment on the official website.



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To

1. The Principal Sessions Court (POCSO Act Cases),
Sivagangai District.
2. The Inspector of Police,
All Women Police Station,
Thiruppathur
Sivagangai.
3. The Superintendent of Prison,
Central Prison,
Madurai.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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N.ANAND VENKATESH,J.

and

K.K.RAMAKRISHNAN,J.

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and

Crl.A.(MD).No.689 of 2026

08.09.2026