

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 03.02.2023

Judgment Pronounced on : **24.02.2023**

Sentenced on : **28.02.2023**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CrI.A.No.482 of 2016

State rep. by
The Public Prosecutor,
High Court,
Madras - 600 104.
(Tiruppur AWPS (North)
Cr.No.31 of 2013)

.. Appellant

Versus

1. Dandayutham @ Kannan
2. Raja
3. Saravanan
4. Devendran

.. Respondents

Prayer : Criminal Appeal filed under Section 378 of The Criminal Code of Procedure, to allow the appeal, set aside the judgment of acquittal passed by the learned Principal Sessions Judge, Tiruppur in S.C.No.92 of 2013, dated 04.04.2014 and convict and sentence the accused.

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

For Respondents : Mr.M.Umashankar, for R1
(Vakalath not filed)

: M/s.A.Veeramarthini,
Legal Aid Counsel for R1

: Ms.Kalpana,
Legal Aid Counsel for RR-2 and 3

: Mr.N.Ponraj, for R4

JUDGMENT

A. The Appeal :

This appeal is filed by the State aggrieved by the judgment, dated 04.04.2014 of the learned Principal Sessions Judge, *Tiruppur* in S.C.No.92 of 2013, thereby, acquitting the respondents / accused, more specifically the respondent No.1 / accused No.1, of the offences under Section 6 read with Section 5(i), (m) and (r) of the *Protection of Children from Sexual Offences Act, 2012* (hereinafter referred to as '*POCSO Act*'); under Sections 450 and 307 of The Indian Penal Code (hereinafter referred to as '*The IPC*') and the respondent Nos. 2 to 4 / accused 2 to 4, of the offence punishable under Section 506 (ii) of *IPC*.

B. The Complaint :

2. On 12.04.2013, when **P.W.18** was on duty at the All Women Police Station, Tiruppur, **P.W.1**, ZZZZ (*name redacted*) appeared before her at about 24:00 hours and had lodged a complaint to the effect that she was residing at the address mentioned in the complaint for the past 8 years and that she was working as a Tailor in a Hosiery concern. On 12.04.2013, her younger daughter, aged 8 years, came home from school after finishing her exam at about 12.30 P.M. On the said day, at about 8.30 pm, when she returned home, she found that many persons have gathered in front of her house and that her daughter was found lying in the lap of one *Devi (P.W.13)*. Due to power cut at that time, she saw her daughter through torch light and noticed bite wounds of lacerations, bruises and contusions with blood clots on her cheeks, left breast, and eyes were swollen. She also had injuries on her neck and lower lips. She had blood stains on her gown. There was blood in her vagina and on further examination, the private part was torn and blood was oozing out. Upon enquiry, her daughter stated that she came home at 12.30 P.M. After changing her uniform, she went to her tuition Teacher's place and came back home. When she was about to come to the ground floor from her portion of the house, at about 1.30 P.M, the first accused, by name *Kannan*, who is also residing in adjacent portion of

the same house, barged into the house and choked her mouth and dragged her inside the house and pushed her on to the cot and bite her left cheek and left breast and lay on her and disturbed her vagina and thereafter smothered her with pillow and thus, she fainted. Sometime later, when other child, *Suresh*, came to her house and called her for playing, she was still lying on the bed and was unable to even move and was suffering from pain and therefore, *Suresh* went off. After some time, since there was power cut and it was getting dark, out of fear, she managed to somehow come down and upon seeing *P.W.13, Devi*, the neighbour, she laid in her lap. Immediately, *P.W.1*, with the help of others, took her to *Sree Saran Medical Centre, Tiruppur* where she was admitted for treatment. Therefore, she prayed to take action against *Kannan* (accused No.1). On their way to the Police Station to lodge a complaint against the said *Kannan*, his friends namely, *Raja, Saravanan, Devendran* (accused Nos. 2 to 4) threatened her with life and therefore, prayed for action against all the four of them.

C. The Investigation & Final Report :

3. On the strength of the said complaint, *P.W.18* registered a case in Crime No.31 of 2013 for the offences under Sections 376(2)(i), 376(2)(m), 307, 324, 294(b), 341, 506(ii) of *The IPC*; Section 3 read with Section

4 of the *POCSO Act* and Section 4 of the *Tamil Nadu Prohibition of Harassment of Woman Act, 1998* (hereinafter referred to as '*TNPHW Act*') and took up for investigation. After completion of the investigation, filed a Final Report before the learned Principal Sessions Judge, *Tiruppur* proposing the first accused guilty of the offences under Section 6 read with Section 5(i), (m) and (r) of the *POCSO Act* and Section 307 of *The IPC* and the accused Nos.2 to 4, for the offence under Section 506(ii) of *The IPC*.

3.1. The case was taken on file as S.C.No.92 of 2013 and upon furnishing of copies and after hearing both the sides, charges were framed as above in respect of the accused. The accused denied the charges and stood trial.

D. The Trial :

4. On behalf of the prosecution :

* ZZZZ, the mother of the victim child and the first informant, was examined as **P.W.1**. She spoke about returning home and listening to the episode from the child and lodging of complaint;

* The victim child was examined as **P.W.2**. The child categorically and clearly spoke about the above acts committed by the first accused;

* One *Dr.Palanisamy* was examined as **P.W.3** who was the Doctor at *Sree Saran Medical Centre, Tiruppur* where the child was immediately taken by the mother. He spoke about the injuries on the body of the victim child and giving first aid treatment to the child;

* One *Dr.Kurinchi Priya*, Assistant Professor in the Gynecology department of the *Coimbatore Medical College Hospital, Coimbatore* was examined as **P.W.4**. She spoke about the fact that the child was brought on 13.04.2013 for treatment and she had explained the condition of the victim child and about the injuries, entering particulars in the Accident Register copy of the Hospital;

* One *Uma Maheswari*, Staff Nurse in *Sree Saran Medical Centre, Tiruppur* was examined as **P.W.5** who deposed about taking vaginal smear by the Doctor and handing over to the Investigating Officer;

* One *Velmurugan*, who was a neighbour to the victim, who was also present at about 8.30 P.M when **P.W.1** came home and talked

to the girl and who along with **P.W.1**, took the child in his two wheeler to the Hospital, was examined as **P.W.6**;

* One *Dr.Jayasingh*, who was examined as **P.W.7**, who is the Head of the Department of Forensic Medicine, who examined the first respondent / accused, *Kannan*, issued Potency Certificate;

* One *Balashanmugam* was examined as **P.W.8**. He is the Assistant Director of Forensic Lab, *Coimbatore*, who analysed vaginal smear and gave a report in **Ex.P-10**, finding no spermatozoa present;

* One *Dr.Ravishankar* was examined as **P.W.9**, who is a Psychiatrist in *Ganga Medical Centre and Hospitals Pvt. Ltd., Coimbatore*, to whom the child was taken for treatment on 21.04.2013. After listening to the incident happened to the child and observing the psychological behaviour and condition of the child, he treated the child and upon treatment, the condition of the child slowly improved;

* One *Dr.Balakrishnan* was examined as **P.W.10**. He is working as Assistant Professor in the Neurology Department at *P.S.G Hospitals, Coimbatore*. The child was taken to him for treatment and he treated the child since the child had suffered due to smothering and was unable to walk on account of the same;

* One *Dr.Geetha* was examined as **P.W.11**. She was working as Woman Health Specialist in *Ganga Medical Centre and Hospitals Pvt. Ltd., Coimbatore*, who also treated the child and spoke about the condition of the child;

* One *Dr.Devdutt Thomas*, was examined as **P.W.12** who is an Eye Specialist, at *Ganga Medical Centre and Hospitals Pvt. Ltd., Coimbatore* to whom the child was taken for treatment on 22.04.2013 and he treated the child for *sub-conjunctival hemorrhage* in the eyes;

* One *Devi*, a neighbour to whom the victim child went and fell on her lap when her mother came home at about 8.30 P.M and to whom the child first narrated the incident, was examined as **P.W.13**.

* One *YYYY (name redacted)*, the elder sister of the victim child, who is living in her matrimonial home, was examined as **P.W.14**, who spoke that her mother telephonically informed her about the incident and that she came to the Hospital, saw the condition of the child, accompanied her mother and assisted in lodging the complaint;

* One *Rangasamy* was examined as **P.W.15** who was a witness to the voluntary confession statement given by the accused;

* One *Rangarajan* was examined as **P.W.16**, who is the Special Sub-Inspector of Police, *Tiruppur* South Police Station, who was

present at the time of arrest and who took the accused for remand and handed over to the *Coimbatore* Central Jail and again took him from Jail for D.N.A test;

* One *Dr.Madhu Periyasamy* was examined as **P.W.17** who is a Plastic Surgeon in *Ganga Medical Centre and Hospitals Pvt. Ltd., Coimbatore*. She treated the child and issued wound certificate in **Ex.P-11** and also entered the details in Accident Register in the Hospital in **Ex.P-14**;

* The Investigating Officer namely, *Nirmala*, the Inspector of Police, All Women Police Station, *Tiruppur* was examined as **P.W.18**, who spoke about the registration of the complaint, taking the case for investigation, examining the witnesses, apprehending the accused and completing the investigation and laying chargesheet.

4.1. On behalf of the prosecution, the complaint given by **P.W.1**, was marked as **Ex.P-1**. The Accident Register at *Sree Saran Medical Centre, Tiruppur* was marked as **Ex.P-2**. The Accident Register at *Coimbatore Medical College Hospital, Coimbatore* was marked as **Ex.P-3**. The seizure mahazar, seizing the cloth and other articles at the house of the victim child, was marked as **Ex.P-4**. The observation mahazar drawn by the Investigating Officer depicting the scene of crime, was marked as **Ex.P-5**.

Two seizure mahazars, containing seizure of dress etc., of the accused and the victim child, were marked as **Exs.P-6** and **P-7**. The Potency Certificate issued to the first accused is marked as **Ex.P-8**. The reports of the Forensic Science Department, *Coimbatore* were marked as **Exs.P-9** and **P-10**. The Wound Certificate, issued to the victim child by the *Ganga Medical Centre and Hospitals Pvt. Ltd., Coimbatore*, was marked as **Ex.P-11**. The signature of the attesting witness in the confession statement, was marked as **Ex.P-12**. The seizure mahazar, containing seizure of some more articles of the accused, was marked as **Ex.P-13**. The Accident Register, issued by *Ganga Medical Centre and Hospitals Pvt. Ltd., Coimbatore*, was marked as **Ex.P-14**. The First Information Report was marked as **Ex.P-15**. The Rough Sketch was marked as **Ex.P-16** and the admissible portion of the confession leading to recovery of blood stain dress etc., of the first accused, was marked as **Ex.P-17**.

4.2. The blood stained bedsheets, saree, lungi, pillow, blood stained gown, blood stained drawer, blood stained sleeveless banians, blood stained dhothi and drawer were all produced as **M.Os.1 to 11**.

4.3. Thereupon, the Trial Court questioned the accused on the material evidence and incriminating circumstances on record as per Section 313 of The Code of Criminal Procedure (hereinafter referred to as '*The Cr.P.C.*') and the accused denied the same as false. Thereafter, no evidence was let in on behalf of the defence and therefore, the Trial Court proceeded to hear the learned Public Prosecutor and the learned Counsel for the accused and by a judgment, dated 04.04.2014, acquitted all the four accused of all the charges. Aggrieved by the same, the State has come up with the present appeal against the acquittal.

E. The Submissions :

5. Heard *Mr.R.Kishore Kumar*, learned Government Advocate (Crl. Side) on behalf of the appellant and *Mr.M.Umashankar*, learned Counsel appearing on behalf of the respondent No.1 / accused No.1. Since, on the earlier occasion, no Counsel was ready for arguments, this Court appointed *Ms.A.Veeramarthini*, learned Counsel as learned Legal Aid Counsel for the respondent No.1 / accused No.1. As such she was also permitted to argue on behalf of the respondent No.1 / accused No.1. *Ms.Kalpana*, learned Legal Aid Counsel appeared on behalf of the respondent Nos.2 and 3 / accused Nos.2 and 3, and *Mr.N.Ponraj*, learned

Counsel appeared on behalf of the respondent No.4 / accused No.4 and made their submissions.

5.1. *Mr.R.Kishore Kumar*, learned Government Advocate (Crl. Side), taking this Court through the entire evidence on record, would submit that the Trial Court acquitted the accused on absolutely irrelevant considerations and inconsequential minor contradictions. He would submit that the first accused and two of his friends were staying as bachelors in another portion of the same house as that of the victim. On the date of occurrence i.e., on 12.04.2013 at about 1.30 P.M, since the victim girl was alone at home, the accused trespassed into their portion and committed the heinous crime. The actions of the accused are extremely grave in nature and he has bitten the child all over the body. The child had injuries on account of the bites. Her vagina was bleeding and there was tear injury. During the course of committing the above offence, the child was also smothered and the child would lay unconscious and only after few hours, she could muster some energy collecting herself and walked down and upon finding **P.W.13**, another neighbour, would lay in her lap. Shocked by the condition of the child, all the neighbours gathered. The child knew the accused very well

and has categorically told **P.W.13** and **P.W.1**, after she came home, that it is the first accused, *Kannan*, who did the dastardly act.

5.2. The child was examined as **P.W.2** and she had clearly and categorically spoken about the extreme acts of sexual violence committed on her by the first accused. Her evidence is corroborated by **P.W.1**, her mother, to whom she narrated about the incident and **P.W.13**, an independent witness, who is also a neighbour to them. The fact is mentioned right from the Accident Report and the earliest reporting even to the Doctor who gave first aid. Each and every injury, which happened to the child, has been proved to be injuries arising out of sexual violence and the prosecution had examined *Dr.Palanisamy*, the Doctor who first treated the victim child at *Sree Saran Medical Centre, Tiruppur*. The prosecution examined *Dr.Kurinchi Priya*, Assistant Professor in the Gynecology Department at *Coimbatore Medical College Hospital, Coimbatore* who gave treatment to the victim. The prosecution also examined *Dr.Ravishankar*, Psychiatrist at *Ganga Medical Centre and Hospitals Pvt. Ltd., Coimbatore*, who treated the child. The prosecution also examined *Dr.Balakrishnan*, Neuro Specialist at *Coimbatore Ganga Medical Centre and Hospitals Pvt. Ltd., Coimbatore*, who also treated the child. The

prosecution examined *Dr.Devdutt Thomas*, Eye Specialist, who treated the child. Thus, the medical evidence on record is overwhelming.

5.3. This apart, the first accused gave voluntary confession leading to the recovery of blood stained clothes etc., which further corroborates the case of the prosecution. The attesting witness to the said confession has categorically spoken to and supported the prosecution's case. The accused was examined by a Doctor who found that he was potent. Thus, in this case, the prosecution has proved the offence to the hilt without any iota of doubt. The prosecution's case is also further buttressed by the presumption under Section 29 of the *POCSO Act* and once the prosecution has discharged its burden, in the absence of any statement under Section 313 of *The Cr.P.C.*, or any other defence evidence, the accused, having failed to rebut the presumption, the Trial Court ought not to have acquitted the accused.

5.4. *Mr.R.Kishore Kumar*, learned Government Advocate (Crl. Side) would submit that the only defence, which is taken by the accused, is disputing the identity. But, however, the records of the case clearly establish that the accused is known as *Kannan @ Dandayutham* and the

prosecution has also explained about the discrepancy of his father's name as he himself has given fake name and address at the time of arrest and there were no doubts in the mind of the child or *P.W.1* or *P.W.13* because the accused was residing in a portion of the same compound and were very much known to the victim as well as the other prosecution witnesses. The Trial Court absolutely omitted to consider the stellar quality of *P.W.2*'s evidence and the other corroborating materials and acquitted the accused on irrelevant considerations. Therefore, he would pray that this Court shall allow the Criminal Appeal against the acquittal, convict the accused and sentence him to undergo maximum punishment.

5.5. Per *contra*, *Mr.M.Umashankar*, learned Counsel appearing on behalf of the first respondent / accused, by placing a copy of Aadhar card of the accused, firstly, would contend that in this case, the prosecution has not even established the proper identity of the accused No.1. The father's name of the first accused is *Palanisamy* and not *Ramalingam*, as mentioned in the chargesheet. Since in this case there was public outcry, without even properly investigating into the matter, just because the first accused was a poor labourer who was staying nearby, on a mere suspicion, the Police had taken him along with the other accused to custody and unable to trace out

the correct accused, pressurised the accused to extract an imaginary confession and convinced **P.W.1**, mother of the victim, to name him. The child was tutored to say his name. He would submit that there are lot of discrepancies in the First Information Report itself. Even though the Court and the Police Station were in the same campus, the F.I.R reached with a delay of more than 20 hours, that too, only at the time of remand.

5.6. *Mr.M.Umashankar*, learned Counsel would submit that it can be seen from the evidence of **P.W.3** that he had informed the concerned Police Station immediately after admission of the victim child. As a matter of fact, in the Accident Report copy, the said telephone number is also mentioned. In the cross-examination of **P.W.16**, Investigating Officer, she had admitted that phone number did not belong to the All Women Police Station. As a matter of fact, the said phone number belongs to the jurisdictional *Anupparpalayam* Police Station. They started investigation after having received the information and even the Inspector of the said Station also visited the Clinic in which the child was admitted. These facts would categorically prove that the First Information Report was not the earliest information and as such, is hit by Section 161(2) of *The Cr.P.C.* The Trial Court also further found the further discrepancies such as time

etc., not being mentioned in the appropriate column of the F.I.R which would further throw doubt in the case of the prosecution.

5.7. He would further submit that no statement under Section 164 of *The Cr.P.C.*, was recorded in the present case. The Investigating Officer was cross-examined regarding her deposition that the child gave a statement to her at 00.30.00 hours at the Hospital, as the contents recorded does not seem to be that of an 8 year old child. Even the Psychiatrist of *Ganga Medical Centre and Hospitals Pvt. Ltd., Coimbatore* clearly mentions that only after knowing the history from the mother, he talked to the victim. Thus, it can be categorically seen that it is **P.W.1**, mother, who had tutored the child. Admittedly, in this case, there was some previous enmity between the first accused who was residing in the adjacent portion and because **P.W.1** was not clear as to who committed the act, erroneously roped in the first accused out of previous enmity.

5.8. *Mr.M.Umashankar*, learned Counsel would submit that the most important witnesses in this case namely, another child by name *Suresh*, who was studying III standard and who had supposed to have seen the victim child after the incident, when she was lying on the cot, was not at

all examined. If the case of the prosecution is true that the said child *Suresh* saw the victim child lying in the cot with blood, the said *Suresh*, after going home, would have immediately informed his mother or others about the condition of the victim, which never happened. That would itself throw doubt on the case of the prosecution.

5.9. *Mr.M.Umashankar*, learned Counsel would further contend that in this case, there is yet another witness namely, the tuition Teacher, who was a vital witness. As the child has spoken that she went to the tuition Teacher after returning from the school exam and thereafter returned home, her evidence was crucial in respect of the corroboration of the said fact as well as timing of the child returning home etc. Further, exams were over and *P.W.1* also admits that the tuition Teacher had informed that there will be no tuition on the day of occurrence, the same assumes significance and the Trial Court had taken the said reasoning correctly to acquit the accused. When the Investigating Officer has not examined the crucial witnesses, naturally, the investigation is flawed and may lead to nailing of an erroneous person and as such first accused is entitled for the benefit of doubt.

5.10. The learned Counsel, again taking this Court through the evidence of **P.W.15** and the Investigating Officer with respect to the manner of arrest of the first accused, would submit that it would be clear that in a predetermined manner, *Kannan* was kept in a Jeep and was being examined. **P.W.1** also admits that she was present at the spot of arrest and the evidence in respect thereof is contradictory. When the case of the prosecution is doubtful as to the manner of arrest, the accused is entitled for the benefit of doubt.

5.11. As far as the scientific evidence is concerned, even though vaginal smear was taken, no blood or semen of the accused could be traced out in the vaginal smear. Even in the clothes, which are produced as Material Objects, which are sent to analysis, no clinching proof for the accused to have indulged in the offence is not found.

5.12. As a matter of fact, as per the case of the prosecution, the child is said to have given a statement to them that she had bitten the hand of the perpetrator. But, however, the Doctor, who examined the accused who was arrested on the very next day of the incident, did not find any bite mark on the hands of the first accused. Therefore, the same also throws

considerable doubt on the case of the prosecution. In this case, the child is said to have been treated in three different Hospitals while the Accident Register copy of all the three Hospitals were not produced and marked by the prosecution. He would submit that the condition of the child itself, as spoken to by the Doctors, is said to be serious and therefore, there is no way child would have categorically identified the first accused and given such a statement. It is only by way of an afterthought, the first accused has been erroneously roped in and the case has been foisted against him. Therefore, he would pray that when the Trial Court has exercised its discretion and found that the prosecution has not established its case beyond reasonable doubt and granted the benefit of doubt to the accused, the same should not be interfered in this appeal against the acquittal.

5.13. *M/s.A.Veeramarthini*, learned Legal Aid Counsel would also submit that there is no corroboratory evidence who have independently witnessed the accused entering the house and would submit that the arrest of the accused and alleged confession, all appeared to be artificial and there are discrepancies in the evidence of the mahazar witness.

5.14. *Ms.Kalpana*, learned Counsel appearing on behalf of the accused Nos.2 and 3, would submit that as far as the accused Nos.2, 3 and 4 are concerned, the only allegation is that they have threatened **P.W.1** stating that they will harm her life if they give complaint against the first accused. As a matter of fact, there is clear material contradiction in the complaint as well as in the evidence of **P.W.1**, the mother and **P.W.14**, the elder daughter of **P.W.1**. While the allegation is that on their way to Police Station, they were threatened, as per the version of the prosecution witnesses, the complaint was written in the Hospital itself. If so, the names of the accused Nos.2 to 4 could not have been mentioned in the said complaint.

5.15. *Mr.N.Ponraj*, learned Counsel appearing on behalf of the accused No.4, by raising the very same contention and by taking this Court through the material contradiction in the evidence of **P.W.14**, would submit that just because the matter got public attention and was widely reported in Newspapers, only to overcome the public pressure, the Police had roped in the accused Nos.2 to 4 who have otherwise no role in the crime alleged as against the first accused. Therefore, he would pray that the appeal shall be dismissed inasmuch as concerns with the accused Nos.2 to 4.

F. Questions for consideration :

6. Upon considering the submissions made on either side and perusing the material records of the case, the following questions arise for consideration in this appeal:-

(i) Whether or not the prosecution has proved the incident beyond any reasonable doubt?

(ii) Whether or not the prosecution has proved that the first accused had committed the offence beyond reasonable doubt?

(iii) Whether the findings of the Trial Court are liable to be reversed in this Criminal Appeal against the acquittal?

(iv) Whether or not the prosecution has proved the offence against the accused Nos.2 to 4 punishable under Section 506(ii) of The IPC beyond reasonable doubt?

G. Question No.i :

7. As far as the incident is concerned, it is the allegation of the prosecution that on 12.04.2013, at about 1.30 P.M in the afternoon, when the victim girl was alone at home, she was brutally raped and attempted to be murdered. The victim girl was examined as **P.W.2**. She deposed that she was 8 years old. **P.W.1**, the mother of the victim girl, also deposed that the victim child was 8 years old. Her age has been recorded in the medical

records as well. The age of the victim child is not at all disputed by the defence. Secondly, the child was taken to *Sree Saran Medical Centre, Tiruppur* at about 8.30 P.M on 12.04.2013. **P.W.3**, *Dr.Palanisamy* is the Doctor who first gave treatment to the victim child. He deposed that the victim was conscious, but, was terrified. There was a contusion on her neck. There was *sub-conjunctival hemorrhage* in her eyes. There was a lacerated bite injury with blood clot. There were bite injuries on her left breast. There were nail marks near both the eyes. Her vagina was bleeding and after first aid, she was referred for higher treatment to *Coimbatore Medical College Hospital, Coimbatore*. *Dr.Kurinchi Priya*, **P.W.4**, the Assistant Professor of Gynecology confirmed the above injuries and deposed about entering those injuries in **Ex.P-3**, Accident Register. She had also categorically ruled out that the damage in the vagina of the child could not have happened due to her mother or other persons pressing through their fingers. *Dr.Ravishankar*, **P.W.9**, Psychiatrist attached to *Ganga Medical Centre and Hospitals Pvt. Ltd., Coimbatore* spoke about how the victim child deteriorated after the incident. Her activities drastically changed. She was sleepless, could not eat, cried, laughed and remained tensed and could not even sit at one place and was unable to walk. She was unable to control her mind. She was restless. She was gravely hurt

in her mind. She did not even show interest in speaking with others or watching T.V etc. The condition was diagnosed as *Acute Stress Reaction and Hypoxic encephalopathy* and was treated. During the treatment, he also enquired with the victim child. The victim child narrated the incident and specifically mentioned the name of the first accused, *Kannan*, and told that he came to her house and asked for food and he also tried to strangulate and then, she became unconscious. When she was slowly recovering, one day, one of the Police personnel showed her Mobile phone, in which, the photo of the first accused was there and upon seeing the picture of the first accused, again her condition relapsed and **P.W.1** told the victim child that already the accused was killed and after the explanation and continued psychological treatment, she was again brought back to normal.

7.1. **P.W.10**, Neurologist in *P.S.G Hospitals, Coimbatore* deposed that when he examined the child, the child complained that she has got pain in the left thigh and ankle and she was unable to walk without the help of others. Upon diagnosis, it was found that the blood circulation has been stopped to her brain, as a result of which, she got *Post Anoxic myoclonus*. Thereafter, she was administered appropriate medicines. The said condition could have happened due to smothering the child with pillow.

7.2. **P.W.11**, *Dr.Geetha*, again confirmed all the injuries. She could also witness nail marks even in hands, thighs, stomach etc. She had deposed that her hymen was ruptured and vagina admitted one finger. She could notice a healing wound in the vaginal part of the child. Upon repeat examinations and continuous treatment, the condition of the child improved.

7.3. **P.W.12**, *Dr.Devdutt Thomas*, is the Eye Specialist, who examined the child and diagnosed that she had *sub-conjunctival hemorrhage* and started course of the treatment. He has categorically deposed that such hemorrhage will take place generally when somebody has strangulated in the neck, when pressure in the blood veins increases and it bursts. *Dr.Madhu Periyasamy*, Plastic Surgeon, attached to *Ganga Medical Centre and Hospitals Pvt. Ltd., Coimbatore* also gave treatment to the child and she also confirmed all the injuries and that the child was irritable and withdrawn and her hands and legs had abnormal movements. She was not walking normally. She gave wound certificate to the child in **Ex.P-11** and she confirmed that **Ex.P-14** was the Accident Register copy. **P.W.1**, the mother and **P.W.14**, the elder sister of the victim child also have categorically spoken about the condition of the victim child. The

Investigating Officer has also produced **M.Os.1 to 4** namely, blood stained bed sheet, saree, lungi, another blood sheet; **M.O.5**, pillow and **M.Os.6 to 11**, blood stained gown, drawer and sleeveless banians, dhoti and a drawer. From all the above, the prosecution has proved beyond any doubt that on 12.04.2013, at about 1.30 P.M, **P.W.2**, child was subjected to a grave and heinous sexual assault and that she was also smothered in the course of the same and she suffered above injuries. The sexual assault was violent and barbaric leaving the tender child with serious physical lacerated wounds, bruises, contusions and a tear injury in her private part. Psychologically, her complete personality stood distracted and she was terrified. To call this assault 'animalistic', it will be injustice even to animals as they do not sexually assault young / baby animals.

H. Question No.ii :

8. The next question is as to who committed the dastardly act. In this regard, from the evidence of **P.W.1, P.W.2, P.W.13** coupled with the admissible portion of the confession of the accused and the defence's own version as per their cross-examination, it is confirmed that the first accused, **Kannan @ Dandayutham**, was also in the same house complex in another portion and he is a known person to the victim child, her mother **P.W.1**,

neighbour **P.W.13** etc. In this regard, the child has categorically and clearly mentioned that it is only the first accused who trespassed into her house and committed the above act. At the earliest point of time, she has spoken about the same to **P.W.13**, *Devi* and **P.W.1**, the mother of the victim child.

8.1. The Accident Register entry, made at the earliest point of time immediately after the admission of the child at *Sree Saran Medical Centre, Tiruppur* in **Ex.P-12** clearly mentions as "alleged sexual assault at her home by one known person (*Kannan*) on 12.04.2013 at about 1.30 P.M". The rough sketch also depicts the portion of the accused as well as the victim child's portion. On the very next day i.e., on 13.04.2013, the first accused was arrested and remanded to custody. Even thereafter in the subsequent treatments by Psychiatrist etc., the child has consistently spoken that it is only *Kannan* who committed the offence. Thus, it can be seen that the evidence of **P.W.2**, the victim child and the version of the other prosecution witnesses has been consistent, unwavering and from the beginning, immediately after the commission of the offence, the name of the first accused has been mentioned as the perpetrator. The evidence of **P.W.2**, the victim girl, is stellar in quality. Useful reference can be made in this regard to the Judgment of the Hon'ble Supreme Court of India in

Ganesan Vs. State¹, particularly to paragraph Nos.10 to 13, whereby it has been categorically held that in cases of sexual assault, molestation etc., conviction can be based on the sole testimony of the victim and the Court need not look for corroborative materials. The relevant portion is extracted hereunder :

" **10.** *In the present case, the appellant-accused has been convicted by the learned trial court for the offence under Section 7, punishable under Section 8 of the PocsO Act. We have gone through the entire judgment passed by the learned trial court as well as the relevant evidence on record, more particularly the deposition of PW 1 father of the victim, PW 2 mother of the victim and PW 3 victim herself. It is true that PW 2 mother of the victim has turned hostile. However, PW 3 victim has fully supported the case of the prosecution. She has narrated in detail how the incident has taken place. She has been thoroughly and fully cross-examined. We do not see any good reason not to rely upon the deposition of PW 3 victim. PW 3 aged 15 years at the time of deposition is a matured one. She is trustworthy and reliable. As per the settled proposition of law, even there can be a conviction based on the sole testimony of the victim, however, she must be found to be reliable and trustworthy.*

10.1. *Whether, in the case involving sexual harassment, molestation, etc., can there be conviction on the sole evidence of the prosecutrix, in Vijay [Vijay v. State of M.P., (2010) 8 SCC 191 : (2010) 3 SCC (Cri) 639] , it*

1 (2020) 10 SCC 573

is observed in paras 9 to 14 as under: (SCC pp. 195-98)

“9. In State of Maharashtra v. Chandraprakash Kewalchand Jain [State of Maharashtra v. Chandraprakash Kewalchand Jain, (1990) 1 SCC 550 : 1990 SCC (Cri) 210] this Court held that a woman, who is the victim of sexual assault, is not an accomplice to the crime but is a victim of another person's lust and, therefore, her evidence need not be tested with the same amount of suspicion as that of an accomplice. The Court observed as under: (SCC p. 559, para 16)

‘16. A prosecutrix of a sex offence cannot be put on a par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested

in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to Illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence.'

10. In **State of U.P. v. Pappu** [**State of U.P. v. Pappu**, (2005) 3 SCC 594 : 2005 SCC (Cri) 780] this Court held that even in a case where it is shown that the girl is a girl of easy virtue or a girl habituated to sexual intercourse, it may not be a ground to absolve the accused from the charge of rape. It has to be established that there was consent by her for that particular occasion. Absence of injury on the prosecutrix may not be a factor that leads the court to absolve the accused. This Court further held that there can be conviction on the sole testimony of the prosecutrix and in case, the court is not satisfied with the version of the prosecutrix, it can seek other evidence, direct or circumstantial, by which it may get assurance of her testimony. The Court held as under: (SCC p. 597, para 12)

‘12. It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if the court of facts finds it difficult

to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice, would do.'

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

'8. ... The court overlooked the situation in which a poor helpless minor girl had found herself in the company of three desperate young men who were threatening her and preventing her from raising any alarm. Again, if the investigating officer did not conduct the investigation properly or was negligent in not being able to trace out the driver or the car, how can that become a ground to discredit the testimony of the prosecutrix? The prosecutrix had no control over the investigating agency and the negligence of an investigating officer could not affect the credibility of the statement of the prosecutrix. ... The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not,

unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. ... Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. ... Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances.

...

21. ... *The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her*

testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.'

(emphasis in original)

12. In **State of Orissa v. Thakara Besra** [**State of Orissa v. Thakara Besra**, (2002) 9 SCC 86 : 2003 SCC (Cri) 1080] , this Court held that rape is not mere physical assault, rather it often distracts (sic destroys) the whole personality of the victim. The rapist degrades the very soul of the helpless female and, therefore, the testimony of the prosecutrix must be appreciated in the background of the entire case and in such cases, non-examination even of other witnesses may not be a serious infirmity in the prosecution case, particularly where the witnesses had not seen the commission of the offence.

13. In **State of H.P. v. Raghbir Singh** [**State of H.P. v. Raghbir Singh**, (1993) 2 SCC 622 : 1993 SCC (Cri) 674] this Court held that there is no legal compulsion to look for any other evidence to corroborate the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony

of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate against her veracity. A similar view has been reiterated by this Court in **Wahid Khan v. State of M.P.** [**Wahid Khan v. State of M.P.**, (2010) 2 SCC 9 : (2010) 1 SCC (Cri) 1208] placing reliance on an earlier judgment in **Rameshwar v. State of Rajasthan** [**Rameshwar v. State of Rajasthan**, 1951 SCC 1213 : AIR 1952 SC 54] .

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

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

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

“22. In our considered opinion, the “sterling witness” should be of a very

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

accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a “sterling witness” whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

11. *On evaluating the deposition of PW 3 victim on the touchstone of the law laid down by this Court in the aforesaid decisions, we are of the opinion that the sole testimony of the PW 3 victim is absolutely trustworthy and unblemished and her evidence is of sterling quality.*

12. *Therefore, in the facts and circumstances of the case, the learned trial court has not committed any error in convicting the accused, relying upon the deposition of PW 3 victim.”*

8.2. This apart, all the other four mentioned witnesses and documents corroborate her version. As a matter of fact, the child comes out

of the scene of occurrence, once she manages to muster some energy and narrates the incident to **P.W.13, Devi**. **P.W.13** an independent witness has also spoken about the same. In this regard, the evidence of **P.W.13** cannot be termed as hearsay, but will be admissible on the principles of *res gestae* as enshrined under Section 6 of the *Evidence Act, 1872*. The Hon'ble Supreme Court of India, particularly dealing with the offence of rape, in paragraph Nos.33 to 37 in its judgment in **Krishan Kumar Malik Vs. State of Haryana**², held as follows :

" 33. As per the FIR lodged by the prosecutrix, she first met her mother Narayani and sister at the bus-stop at Kurukshetra but they have also not been examined, even though their evidence would have been vital as contemplated under Section 6 of the Evidence Act, 1872 (for short "the Act") as they would have been *res gestae* witnesses. The purpose of incorporating Section 6 in the Act is to complete the missing links in the chain of evidence of the solitary witness. There is no dispute that she had given full and vivid description of the sequence of events leading to the commission of the alleged offences by the appellant and others upon her. In that narrative, it is amply clear that Bimla Devi and Ritu were stated to be at the scene of alleged abduction. Even though Bimla Devi may have later turned hostile, Ritu could still have been examined, or at the very least, her statement recorded. Likewise, her mother could have been similarly examined regarding the chain of events after the prosecutrix had arrived back at Kurukshetra. Thus, they would have been the best

² (2011) 7 SCC 130

persons to lend support to the prosecution story invoking Section 6 of the Act.

34. We shall now deal with Section 6 of the Act, which reads as under:

“6.Relevancy of facts forming part of same transaction.— Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.”

35.Black's Law Dictionary defines *res gestae* as follows:

“(Latin: ‘things done’) The events at issue, or other events contemporaneous with them. In evidence law, words and statements about the *res gestae* are usually admissible under a hearsay exception (such as present sense impression or excited utterance).”

36. The said evidence thus becomes relevant and admissible as *res gestae* under Section 6 of the Act.

37. Section 6 of the Act has an exception to the general rule whereunder hearsay evidence becomes admissible. But as for bringing such hearsay evidence within the ambit of Section 6, what is required to be established is that it must be almost contemporaneous with the acts and there could not be an interval which would allow fabrication. In other words, the statements said to be admitted as forming part of *res gestae* must have been made contemporaneously with the act or immediately thereafter. Admittedly, the prosecutrix had met her mother Narayani and

sister soon after the occurrence, thus, they could have been the best res gestae witnesses, still the prosecution did not think it proper to get their statements recorded. This shows the negligent and casual manner in which the prosecution had conducted the investigation, then the trial. This lacunae has not been explained by the prosecution. The prosecution has not tried to complete this missing link so as to prove it, beyond any shadow of doubt, that it was the appellant who had committed the said offences."

8.3. Further, the defence theory is that since the accused, *Kannan*, was confronting *P.W.1*, regarding the use of toilets by many of the visitors, so as to wreak vengeance, *P.W.1* has falsely implicated the accused. The defence has not done anything to establish the same. It could not get any favourable answer from any of the witnesses nor they had let in any evidence in respect thereof. Further, it is highly illogical to allege that *P.W.1*, mother, would agree to falsely rope in the first accused immediately after the commission of the offence when such a grave and dastardly act has been committed on her daughter. Any mother will only be interested in bringing the actual culprit to books. There is no iota of truth or logic in the defence theory and it deserves to be rejected *in limine*.

8.4. Similarly, the contention about non examination of the other child *Suresh* is rejected since the child is not a witness to the occurrence,

but only to the condition of the victim. The grave condition of the victim is established by medical evidence and thus there was no necessity to examine the said *Suresh*, who is again a child studying III Standard.

8.5. Further contention that the tuition Teacher should have been examined is also rejected as she was also not a witness to the incident and hence the non-examination will not be in any manner fatal to the case of the prosecution.

8.6. The learned Counsel also contended before this Court that the identity of the first accused is in doubt. However, by their own cross-examination it is admitted that the first accused was residing in the adjacent portion of the house and that out of previous enmity, he was falsely implicated, stares at the face of those arguments about the identity of the accused.

8.7. The further contention of the learned counsel that no other witness has been examined to demonstrate that the first accused was seen entering the house or otherwise is concerned, it can be seen that the entire building was occupied by working folks and they were living in small portions. The timing of the offence is in the afternoon at about 1.30 P.M

and therefore, when the inhabitants have gone out to work and no one is there in the houses, then it is possible and logical that nobody would have seen the accused entering the portion of the victim and arguments in this regard is liable to be rejected. There was no defence which was raised or evidence which was adduced that the accused was not present at the scene of occurrence. Thus, I reject the contentions on behalf of the accused No. 1 and hold that the prosecution has proved that the offence is committed by the first accused beyond any reasonable doubt.

8.8. From the evidence on record, it is clear that the accused had committed aggravated penetrative sexual assault as per Section 5(i), (j), (m) of the *POCSO Act* read with Section 6 of the *Act*. From the evidence of P.W.2 and the medical evidence, more specifically **P.W.10**, Neuro Specialist, it is clear that the child was also smothered to the extent that oxygen supply was cut to the brain leading to several neurological disorders and also making the child unconscious. The evidence of **P.W.12**, Ophthalmologist confirms that the child's veins in the eyes burst on account of smothering. Therefore, the offence punishable under Section 307 of *The IPC* is also made out. As a matter of fact, the evidence of all the Doctors and the Investigating Officer clearly point out as to how they all toiled together to save the life of the child. As a matter of fact, in this case, with

commendable co-ordination, without insisting upon any protocols, the Doctors / Specialists of three hospitals namely, *Sree Saran Medical Centre, Tiruppur; Coimbatore Medical College Hospital, Coimbatore* and *Ganga Medical Centre and Hospitals Pvt. Ltd., Coimbatore*, they all come together and virtually pulled out the child from the jaws of death and this Court records its appreciation for their noble service.

8.9. It goes without saying that the accused had trespassed into the house of the victim child with an intention of committing the above offences. The offence under Section 307 of *The IPC* is punishable with life imprisonment. Therefore, the accused No.1 is liable to be punished for the offence under Section 450 of *The IPC*. Accordingly, I hold that the accused is guilty of the aforesaid offence.

I. Question No.iii :

9. The Trial Court had acquitted the first accused by giving various reasons which are not only perverse, but also, are not plausible reasons. The reasons given by the Trial Court and the illegality / perversity thereof is given in the following tabular column:-

Findings of the Trial Court	Reason
In the second page of the F.I.R, the time at which P.W.1 appeared in the Police Station has not been mentioned and that the same is admitted by P.W.18.	The same, at best, can only be an inadvertent error and does not in any manner relevant to the offence alleged or the defence taken by the accused.
The time and manner of intimidation by the accused Nos.2 to 4 is doubtful as the complaint has been claimed to be written in the <i>Sree Saran Medical Centre, Tiurppur</i> itself and if so, the factum as to the accused Nos.2 to 4 threatening the complainant on the way to police station could not have been mentioned in the complaint.	This finding can be relevant only in respect of the accused Nos.2 to 4 and is absolutely irrelevant while dealing with the first accused. As a matter of fact, the same was also explained by P.W.1 stating that originally, from the Hospital, when they started for the Police Station, they were threatened and therefore, they again came back to the Hospital and thereafter, the complaint was written and they proceeded further to the Police Station.
The earliest information is given to the Phone No.2238580 and the said information and the other information shows that the F.I.R is not the earliest information.	Even assuming that the first information has gone to Anuppapalayam Police Station by way of telephone call, even going to the extent that the F.I.R, in this case, is not the earliest information and is hit by Section 161(2) of <i>The Cr.P.C.</i> , the same by itself is not a ground for acquittal.
When P.W.2 has already finished her last examination and when the tuition Teacher has informed that there will not be any tuition, there was no necessity for P.W.2 to go to the tuition Teacher's house and thereafter, come home. The major portion of paragraph No.7 of the lower Court judgment is dedicated to this.	When the offence had happened at the victim child's house. Before that whether she went to the tuition Teacher's home and came back or not itself is not having a great bearing on the incident. This apart, it is common knowledge that every tuition Teacher closes classes on the last examination and it is also common for every child, after finishing the examination, to visit the tuition Teacher just to show the question paper or otherwise. Therefore, the Trial Court, as if it is not in the knowing of the normal course of the facts in this part of the world, makes a big issue as to why the child went to the tuition Teacher when there was no tuition.

<p>P.W.1 has not stated in the complaint that her daughter told her that the accused pressed his male organ into the female organ and the accused strangulated P.W.2 on her neck by using one blue colour saree.</p>	<p>In the complaint it is categorically stated that the accused disturbed the vagina of the victim child. It is the way of expression of PW-1, considering the fact that the victim , her daughter was 8 years old.</p>
<p>The other child, <i>Suresh</i>, is not examined as a witness.</p>	<p>Admittedly, <i>Suresh</i> was not witness to the incident. As it was not a dire necessity, the prosecution has done the right thing in not roping in and causing trauma to yet another child.</p>
<p>When the prosecution has seized blood stained bed sheet, saree, lungi etc., and when the child claims that she got up and went to the ground floor by herself, how blood stains were found and there is no evidence to show as to whom the <i>lungi</i> belongs.</p>	<p>The case of the prosecution is that the accused committed aggravated penetrative sexual assault and the injuries on the child were all over the body. There were bleeding injuries all over the body. The child lay unconscious for a long time. Therefore, it was quite natural that the clothes having blood stains. It is natural for a lungi to be found in the home as the PW-1's husband has been visiting them and the ownership of lungi cannot be and need not be established by the prosecution.</p>
<p>If the victim had told P.W.13, <i>Devi</i>, about the incident, they would not have waited till the mother of the child to arrive and they would have taken her to the Hospital immediately.</p>	<p>Firstly, the behaviour of P.W.13 and other neighbours cannot form the basis for acquitting the first accused. Secondly, when the act was committed, the child did not immediately came down crying. As a matter of fact, she lay unconscious on the bed. After she woke up, still she did not have any energy to get up. But, after some time, when it started becoming dark and since there was no electricity, out of fear, the child could muster some more courage and walked down and upon seeing a neighbour, P.W.13, the poor thing fell on her lap and narrated the incident. Since that was time for P.W.1 to return from work, natural course was to wait for her arrival since the child was conscious and speaking.</p>

<p>Dr.Kurinchi Priya has stated that when the victim was brought to the Coimbatore Medical Hospital, they have not brought any notes to show the treatment given to the victim in Tiruppur Hospital.</p>	<p>As found by this Court, the Doctors have done yeomen and noble service to the child, breaking all protocols in this matter, as their primary aim was to save the life of the child. Thus, the very many findings relating to the Accident Register copy, medical notes etc., contained in paragraph No.7 are absolutely irrelevant.</p>
<p>P.W.1 told P.W.9, Doctor that her daughter informed her that she bit the victim in the hand, but, however, no such bite marks were found on the person of the first accused.</p>	<p>First of all, the accused was arrested on the next day and such statement was specifically not there before the Doctor, who examined the accused, to have examined the accused to check the mark. The Doctor overall scans through the body of the accused and certifies that no injuries were present on the accused. Secondly, it depends on the strength of that child at that time and if the bite was not that forceful, it is natural that no visible mark would have been there at the time of the examination of the accused after 24 hours of the incident.</p>
<p>Even if the arrest of the accused is proved, that will not prove the guilt of the accused.</p>	<p>The prosecution does not seek to prove the guilt by the arrest of the accused, but, by the stellar evidence of P.W.2.</p>
<p>It is true that P.W.2, victim child, had some injuries and suffered some consequences on the basis of those injuries. P.W.2 had also stated something about the occurrence against the first accused. But, considering the totality of the evidence, the evidence of P.W.1 by itself is not enough to prove the guilt of the accused.</p>	<p>It is not 'some' injuries, but, grave injuries and it is not of 'some' consequences, but, it is of very grave consequences the child's body and soul stood battered and bruised. The child did not say 'something' about the accused, but, vividly in detail spoke about the commission of the offence. The child's evidence is corroborated by overwhelming medical evidence, the evidence of PW-13 and P.W.1, the mother. The Trial Court had completely overlooked the presumption under Section 29 of the POCSO Act. Be that as it may, in this case, <i>dehors</i> the presumption, there is overwhelming material pointing out to the irresistible conclusion of the guilt of the accused.</p>

Thus, it can be seen that the Trial Court has acquitted the first accused on the basis of considerations and materials which are not relevant while absolutely discarding the relevant materials which is the deposition of the P.W.2 and the corroborative evidence. Therefore, each and every finding of the Trial Court is perverse in nature. The findings and conclusions of the Trial Court are impossible given the nature and the evidence on record.

9.1. On a cumulative reading of the entire evidence on record and the judgment of the Trial Court, even by exercising great restraint, it is to be stated that the judgment of the Trial Court is an affront on judicial conscience. Thus, I have no hesitation whatsoever in upturning the finding of the acquittal as to one of guilt.

J. Question No.iv :

10. As far as the accused Nos.2 to 4 are concerned, it is seen that there is a discrepancy in the evidence of **P.W.1** and **P.W.14**. There is no other corroboratory material clearly establishing the manner, place and time, in which, they threatened **P.W.1**. As a matter of fact, it can be seen that they were only co-residents of the first accused and had no part whatsoever

in the commission of the offence by the first accused. Therefore, I am unable to upturn the findings of the Trial Court regarding the accused Nos.2 to 4 into one as guilt and accordingly, the accused Nos.2 to 4 are acquitted of the charge against them.

K. The Result :

11. In the result, this Criminal Appeal is partly allowed on the following terms:-

(i) The judgment, dated 04.04.2014 in S.C.No.92 of 2013 is set aside inasmuch as it concerned with the respondent No.1 / accused No.1, *Dandayutham @ Kannan* and the respondent No.1 / accused No.1, *Dandayutham @ Kannan* is found guilty of the offences under Sections 5(i) (m) and (r) read with Section 6 of the *POCSO Act* and Sections 307 and 450 of *The IPC*;

(ii) This Criminal Appeal shall stand dismissed inasmuch as it concerned with the respondent Nos.2 to 4 / accused Nos.2 to 4 namely, *Raja, Saravanan* and *Devendran* and they are acquitted in respect of the charge under Section 506(ii) of *The IPC* laid against them;

(iii) Since this is an appeal against acquittal, post the matter on 28.02.2023 for production of the accused for questioning on sentence to be

imposed. The Sub-Inspector of Police, All Women Police Station (North), *Tiruppur* is directed to secure the first accused and produce him before this Court on 28.02.2023. The question relating to payment of compensation to the victim child will also be decided at the time of pronouncement of sentence.

12. Call on 28.02.2023.

24.02.2023

28.02.2023:

13. Today, the first accused is produced before this Court. Upon questioned about the sentence, the first accused submitted that he is married to one XXXX (*name redacted*), aged 32 years and has got three children. His elder daughter, XXXX (*name redacted*), who is aged 14 years and second daughter, XXXX (*name redacted*), who is aged 13 years are studying in XXXX (*particulars redacted*). The third daughter, XXXX (*name redacted*), who is aged 7 years, is studying in XXXX (*particulars redacted*). Therefore, he would pray that minimum punishment should be imposed on him. In this case, as per the Aadhar Details, the name of the Accused is P. Thandayudapani, Son of Palanisamy and he is a resident of

[REDACTED]. However, it can be seen that he represented himself as Kannan and gave fictious particulars above himself in Tiruppur and that is why in the charge sheet his name was mentioned as Kannan @ Dandayutham.

14. I have also heard *Mr.R.Kishore Kumar*, learned Government Advocate (Crl. Side) who prayed for maximum sentence and *Mr.M.Umashankar*, learned Counsel appearing on behalf of the first accused who pleaded for minimum sentence.

15. Upon considering the facts and circumstances of this case, on consideration of the manner in which the offence is committed, the first accused deserves maximum punishment. But, however, the fact that the occurrence happened in the year 2013 and the accused was acquitted in the year 2014 and now, this appeal against acquittal is allowed in the year 2023 and in between there is a time lag of more than 9 years is a relevant factor to be taken into account. Secondly, the family and socio economic background of the accused is also taken into account.

16. After taking into consideration all the above factors, the first accused is sentenced to undergo Rigorous Imprisonment for a period of 10 years for the offence punishable under Section 6 of the *POCSO Act* and to pay a fine of Rs.5,000/- and in default of payment of fine to undergo Simple Imprisonment for a period of three months; for the offence under Section 307 of *The IPC* to undergo Rigorous Imprisonment for a period of 10 years and to pay a fine of Rs.5,000/- and in default of payment of fine to undergo Simple Imprisonment for a period of three months; for the offence under Section 450 of *The IPC* to undergo Rigorous Imprisonment for a period of 7 years and to pay a fine of Rs.3,000/- and in default, to undergo Simple Imprisonment of two months. The sentences shall run concurrently. The first accused will also be entitled to set off the period which he was in custody during trial.

17. Now, coming to the question of compensation, it is seen that the victim was so far not paid any compensation whatsoever. The Hon'ble Supreme Court of India in *Nipun Saxena Vs. Union of India* [(2019) 13 SCC 715] had emphasised of payment of compensation and had framed the Compensation Scheme for Women Victims / Survivors, 2018. However, since the P.W.2 / minor is the victim of the offence under the *POCSO Act*,

the entire compensation has to be paid by the Social Defence Department, Government of Tamil Nadu. As per the scheme, the survivor / victim of rape is entitled for the maximum compensation of Rs.7 lakhs + 50% of the Rs.7 lakhs, in all totalling to Rs.10.5 lakhs. As a matter of fact, the Delhi High Court in *X Vs. State (NCT of Delhi)* reported in *2023 CriLJ Del 18*. has awarded the said sum as compensation for the survivor of rape. I have recorded in detail the amount of suffering by the child and also the concerted effort to be put up by the Doctors from various Hospitals to save her from the jaws of death and to psychologically revive her. Therefore, the suffering and trauma of the victim is maximum in this case and therefore, I hold that she will be entitled for the maximum compensation of Rs.10.5 lakhs.

18. As a matter of fact, today, in the hearing, the Inspector of Police, All India Women Police Station, *Tiruppur North* has submitted her report about the status of the victim that she is studying 12th standard in a particular school and has also furnished three passport size photographs, Aadhar Card of *P.W.1* - her mother, Aadhar Card of the victim child, her birth certificate, bonafide certificate issued by the school and also the bank account details of *P.W.1*, the mother. As recorded earlier *supra*, the child

was psychologically disturbed and she even fainted upon seeing the picture of the accused. Therefore, without subjecting to any further enquiry or further trauma, the child has to be paid the compensation amount of Rs.10.5 lakhs. Therefore, I direct the Director, Department of Social Defence, Kellys, Chennai - 600 010 to disburse the said compensation of Rs.10.5 lakhs by crediting the same into the bank account of **P.W.1**, the mother of the victim child. It is made clear that the said compensation shall be utilised by **P.W.1** for the educational purposes, rehabilitation and well-being of the victim child alone. Registry is directed to mark a copy of this judgment to the Director, Department of Social Defence, Chennai - 600 010. Along with this copy, the particulars which as furnished by the Inspector of Police including passport size photographs the other details of the victim child and her mother, **P.W.1** shall be forwarded to the Director of Social Defence, Chennai. As stated supra, without insisting of any further formality, with due sensitivity, the compensation amount shall be directly credited to the account.

19. In this case the Court cannot also stop with the above. There is a further issue. The accused in his answer to the question regarding the quantum of sentence had stated that he has three minor girl children and his

wife is also aged 32 years. The above particulars are vouched to be corrected by the Inspector of Police, All Women Police Station, Tiruppur North. The whole scenario has been made more complex on account of the initial acquittal and thereafter being upturned into one of the guilt in the appeal against aquittal. These children are generally termed as “Orphans of Justice” or “Invisible Victims” or “Hidden Victims”. They are put to untold misery and deprivation without any fault on their part. There is United Nations Draft Guidelines Over Alternative Care of these children. As a matter of fact the prison directorate of West Bengal in partnership with NALSA is providing support to the families and children of prisoners in the community. They have not only been providing educational but also providing social security. The children are also trained according to their talent and inclinations into professions of their choice. It is represented that State of West Bengal has even made rules ensuring education of children of prisoners who are studying in the school or college. The Gujarat High court had an occasion to consider about the same in the Judgment in ***Malabhai Bharatbhai Bhuriya Vs. State of Gujarat & Anr.*** reported in ***(2012) 1 GLH 818*** it is relevant to extract the paragraph No.4 of the said Judgment:

“At the same time, if the facts stated in the application and in the certificate, as aforesaid, were correct, the young children and wife of the applicant might be suffering untold misery and

deprivation, without any fault on their own part. Therefore, Ld. APP was requested to take instructions from the Welfare Officer from the jail as to what help can be extended to the family of the convict. It was submitted on instructions of the Social Welfare Officers appointed in Central Jail at Ahmedabad and Vadodara that as a part of welfare of the prisoner, his family could be helped as far as possible through the local Social Defence Officers, appointed at almost all district places. It was further submitted that the family of the prisoner may be entitled to various social security and welfare schemes launched by the Government, particularly for ensuring education and nutrition of the young children. However, it was necessary to inform and request the Social Defence Officers concerned in the respective districts to locate the family of the prisoner and see to it that the family members are provided with the benefits of such schemes as far as they are eligible and entitled to the benefit of such social welfare measures.”

Therefore, considering the facts that first accused has three girl children, and taking into consideration of the peculiar facts and circumstances of the case, and considering the age of the wife of the accused and age of the three minor children/girl children being aged 14, 13, and 7 years respectively, I am of the view that in this case, a direction is also to be given to the Secretary to the Government, Social Welfare & Women Empower Department, Government of Tamilnadu to consider the case of the wife, three minor children of the convict for State Assistance to ensure

continuance of the education and nutrition of the children and to ensure the livelihood of the wife. The Registry is directed to mark a copy of this Judgment to the Secretary to the Government Social Welfare Women Empower Department along with their details.

28.02.2023

Index : yes
Speaking order
Neutral Citation : yes
grs

To

1. The Principal Sessions Judge,
Tiruppur.
2. The Public Prosecutor,
High Court of Madras.
3. The Inspector of Police,
All Women Police Station (North),
Tiruppur.
4. The Superintendent,
Central Prison,
Coimbatore.
5. The Secretary,
District Legal Services Authority,
Tiruppur.
6. The Director,
Department of Social Defence, Kellys, Chennai - 600 010.
7. The Secretary to the Govt. Social Welfare Women Empower Dept.,
Fort St. George, Chennai - 600 009. (along with details of the victim girl
and wife and three girl children of the first accused)

Crl.A.No.482 of 2016

D.BHARATHA CHAKRAVARTHY, J.,

grs

Pre-Delivery Judgment in

Crl.A.No.482 of 2016

24.02.2023