



Crl.A.Nos.47, 137, 283, 312, 376, 529, 59,  
617 & 65 of 2019, 356 & 441 of 2021,  
822 of 2023 and 734 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

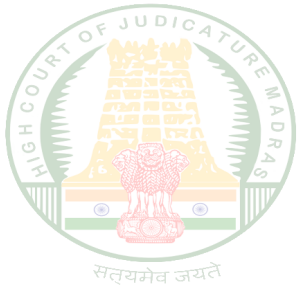
RESERVED ON	01.07.2024
DELIVERED ON	16.07.2024

CORAM:

THE HON'BLE MR. JUSTICE M.S.RAMESH  
and  
THE HON'BLE MR. JUSTICE SUNDER MOHAN

**Crl.A.Nos.47, 137, 283, 312, 376, 529, 59, 617 & 65 of 2019, 356 & 441**  
**of 2021, 822 of 2023 and 734 of 2024**  
**and Crl.M.P.No.8360 of 2024 in Crl.A.No.734 of 2024**

1. Mohanraj @ Mohan
2. Mathivanan ... Appellants in Crl.A.No.47 of 2019 /A14 &A15
3. Sharmila Begam ... Appellant in Crl.A.No.137 of 2019 /A10
4. Girija @ Radha ... Appellant in Crl.A.No.283 of 2019 /A9
5. Balasubramanian @ Balu ... Appellant in Crl.A.No.312 of 2019 /A18
6. Rajalakshmi @ Kavitha ... Appellant in Crl.A.No.356 of 2021 /A11
7. Selvaraj @ Anbu ... Appellant in Crl.A.No.376 of 2019 /A16
8. Anbazhagan @ Anbu ... Appellant in Crl.A.No.441 of 2021 /A12
9. Anantharaj @ Tower ... Appellant in Crl.A.No.529 of 2019 /A17
10. Fathima ... Appellant in Crl.A.No.59 of 2019 /A7
11. Amutha ... Appellant in Crl.A.No.617 of 2019 /A13



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12. Arul Doss ... Appellant in Crl.A.No.65 of 2019 /A4  
13. Kala @ Mekala  
14. Dhanalakshmi  
@ Lakshmi ... Appellants in Crl.A.No.734 of 2024 /A2 & A3  
15. Rathika @ Radha ... Appellant in Crl.A.No.822 of 2023 /A19

vs.

State Rep. By  
The Dy. Superintendent of Police,  
CBCID, Cuddalore.  
(Cr.No.1/2016) ... Respondent / Complainant in all cases

**Common Prayer:** Criminal Appeals filed under Section 374(2) Cr.P.C. seeking to set aside the judgment of conviction and sentence dated 04.01.2019 and 07.01.2019 passed in Spl.S.C.No.20 of 2018 on the file of the learned Sessions Judge, Mahila Court, Cuddalore.

**For Appellants**

In Crl.A.No.47 of 2019  
for 1<sup>st</sup> Appellant /A14 : Mr.John Sathyan, Sr. Advocate  
for Mr.C.Prabhakaran  
for 2<sup>nd</sup> Appellant / A15 Ms.A.Shabnam Banu,  
for Mr.A.M.Esakiappan  
In Crl.A.Nos.137 of 2019 and 734 of  
2024 : Mr.S.Mohamed Ansar  
Appellants/A10, A2 and A3



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In Crl.A.Nos.283 of 2019 and 65 of 2019 : Mr.R.Sankara Subbu  
Appellants/A9 and A4

In Crl.A.No.312 of 2019 : Ms.A.Shabnam Banu  
Appellant/A18 : Legal Aid Counsel  
Assisted by Mr.D.Senthur Kugan

In Crl.A.No.356 of 2021 : Mr.A.Arasu Ganesan  
Appellant/A11

In Crl.A.No.376 of 2019 : Mr.V.Perarasu  
Appellant/A16

In Crl.A.No.441 of 2021 : Ms.V.S.Jothilakshmi  
Appellant/A12 : for Mr.A.Sivakumar Sivaaji

In Crl.A.No.529 of 2019 : Mr.S.Suresh  
Appellant/A17 : for Mr.A.Thamizharasan

In Crl.A.No.59 of 2019 : Ms.V.Bhavani  
Appellant/A7

In Crl.A.No.617 of 2019 : Ms.V.S.Jothilakshmi  
Appellant/A13 : for Mr.A.Sivakumar Sivaaji

In Crl.A.No.822 of 2023 : Ms.A.Veeramarthini  
Appellant/A19

**For Respondent/Complainant** : Mr.E.Raj Thilak  
in all cases : Additional Public Prosecutor

### **COMMON JUDGMENT**

These Criminal Appeals have been filed by Accused Nos.2, 3, 4, 7 and 9 to 19, challenging the conviction and sentences imposed upon them



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vide judgment dated 04.01.2019 and 07.01.2019 in Spl.S.C.No.20 of 2018 on the file of the learned Sessions Judge, Mahila Court, Cuddalore. The judgment of conviction was pronounced on 04.01.2019 and the sentences were pronounced on 07.01.2019.

2. As all these appeals arise out of a common judgment of the trial Court, they are taken up together, heard and disposed of by this common judgment. For the sake of convenience, the parties are hereinafter referred to as per their ranking before the trial Court.

### **3. Case of the Prosecution:**

(i) It is the case of the prosecution that two victim girls aged 13 and 14 years, who were studying in 7<sup>th</sup> and 8<sup>th</sup> standard, respectively, were abducted by the accused and were forcibly trapped into commercial sex trade; that victim-1 (PW2) was brought up by her grandmother (PW3) as she lost both her parents; that victim-2 (PW9) was brought up by her father (PW1), as she lost her mother at a very young age; that PW2 was



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enamoured by one of her friend's financial status; that when she enquired from that friend, she told that A3 had given her that money; that during Pongal Holidays 2014 (January), PW2 was introduced to A3; that one day in January 2014 PW2 went to A3's house; that A3 was running commercial sex trade; that A3 introduced PW2 to A17, who committed penetrative sexual assault; that thereafter, A3 threatened PW2 that if she did not continue to visit her place, she would expose her to her classmates; that thereafter, A3 took PW2, to several places, including the house of A2 and was subjected to penetrative sexual assaults; that a little later, PW2 brought PW9 to the house of A3 and PW9 also was trapped into commercial sex trade; that on the complaint given by father of PW9, victims were traced and brought to their respective houses; that the victims then did not complain about the penetrative sexual assaults; that thereafter on 08.06.2014, the victims left their respective homes and again met A3 and A2 and were forced into commercial sex trade.



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WEB COPY (ii) It is the further case of the prosecution that some of the accused were running commercial sex trade and committed the offence of abetment of penetrative sexual assaults and some of the accused had committed penetrative sexual assaults.

(iii) The role played by each of the accused, according to the prosecution is as follows:

(a) A1-Sathishkumar, was running commercial sex trade and is absconding and hence, the case against him was split up. A2-Kala @ Mekala was a partner of A1 and she bought PW2 and PW9 from A3-Dhanalakshmi @ Lakshmi by paying Rs.3,000/- and forced them into commercial sex trade. A2 handed over these girls [PW2 and PW9] to one Jabeena, who in turn engaged the victims in commercial sex trade. The said Jabeena, who was originally arrayed as accused was absconding and therefore, the case against her was split up and is tried separately. A3 was running commercial sex trade and victims were first lured by A3, who forced



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the victims to commercial sex trade. She had abetted the penetrative sexual assaults committed by the other accused.

(b) A4-Arul Doss was a Church father and according to the prosecution, the two minor victims had gone to his house; he had shown some obscene pictures and pornographic videos; and had forcible sexual intercourse with PW2. A5-Sridhar, has not yet filed an appeal. The case against A6-Tamizharasi @ Kavitha @ Thamarai, was was split up and she is facing trial independently.

(c) According to the prosecution, A7-Fathima was running commercial sex trade along with her husband, one Namazhvar (since deceased); that she was involved in trafficking of the victims; that she detained them and forced them into commercial sex trade; that they sent PW9 to A12-Anbazhagan @ Anbu, after obtaining money from him; and that they sent PW2 to A19's house after forcing her into commercial sex trade.



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(d) A8-Mahalakshmi @ Maha, is said to be involved in the trafficking of the victims and forced them to indulge in commercial sex trade. However, she was acquitted by the trial Court.

(e) A9-Girija @ Radha, according to the prosecution, was running commercial sex trade. A1 brought the victims to her house and she forced the victims to indulge in commercial sex trade.

(f) According to the prosecution A10-Sharmila Begum, also was running commercial sex trade. A1 is said to have sent the victims to A10's house, where she forced the victims to indulge in commercial sex trade.

(g) A11-Rajalakshmi @ Kavitha, who was a partner in the commercial sex trade run by A1, illegally detained the victims at the instance of A1 and forced the victims to indulge in commercial sex trade.





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WEB COPY (h) A12-Anbazhagan @ Anbu, was doing commercial sex trade, along with his wife A13-Amutha. They both took PW9, at the instance of deceased accused-Namazhvar, to Salem and forced her to indulge in commercial sex trade and handed over the victims to A7-Fathima.

(i) A14-Mohanraj @ Mohan, along with his friend A15-Mathivanan, visited the house of A3-Dhanalakshmi @ Lakshmi, who was running commercial sex trade at Tittakudi and on payment of money, committed penetrative sexual assaults on the victims, viz., PW2 and PW9.

(j) A16-Selvaraj @ Anbu, was running a TV Mechanic shop and visited the house of A2 along with his friend A18-Balasubramanian @ Balu and on payment of money, had committed penetrative sexual assaults, on both victims. He had also acted as an agent for trafficking of the victims.

(k) A17-Anandaraj @ Tower is said to have been in the house of A3 when the victim-PW2, first visited the house of A3 and was found in a



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compromising position with A3; that thereafter, A3 forced PW2 to engage in sexual intercourse with A17. A17 is said to have played an active role in kidnapping the victims and forcing them into commercial sex trade and acting as an accomplice to A3.

(l) A18-Balasubramanian @ Balu, according to the prosecution, was working in a Ration Shop at Virudhachalam. He along with his friend A16-Selvaraj @ Anbu, visited the house of A2-Kala @ Mekala and committed penetrative sexual assaults on the victims on payment of money. He also joined A2 in acting as an agent and helped the other accused in forcing the victims for commercial sex trade.

(m) A19-Rathika @ Radha, was a partner in the commercial sex trade business run by the deceased accused Namazhvar and his wife-A7-Fathima and at her instance, A7 left PW2 in her house and thereafter, A19 forced PW2 into commercial sex trade.



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WEB COPY (n) The other accused are either facing trial independently or died during trial.

(iv) As stated earlier, the occurrence is said to have taken place in two phases. The first phase, as we may call, took place between January and February 2014 and the second phase of the occurrences took place between 08.06.2014 and 05.08.2014, when the victims were secured on the complaint given by PW1, the father of PW9.

(v) It is the prosecution case that when the victims went missing in January 2014, PW50 registered CSR Nos.34 of 2014 and 35 of 2014 on the complaints given by PW1 (father of PW9) and PW3 (grandmother of PW2), respectively. The said two CSRs were closed at the instance of the complainants, as the victim girls returned to their respective houses on 15.02.2014. It is the version of PW50 that the victims did not disclose about the alleged penetrative sexual assaults committed on them, during the said period. When the victims again went missing on 08.06.2014, PW1 lodged a



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complaint on 11.07.2014 to PW50. An FIR was registered in Cr.No.141 of 2014 by PW50 for 'Girl Missing' and after the victim girls were traced, he altered the offences and handed over the investigation to All Women Police Station, Virudhachalam.

(vi) PW51, the second investigating officer, took up the investigation, examined the victims and recorded their statements. She arrested A1 to A3 and the absconding accused Jabeena. Thereafter, she handed over the investigation to PW53-Amudha, who was then the Inspector of Police, Cuddalore. PW53 had once again examined the victims and arrested about 17 accused on the basis of the materials collected by her. She also made arrangements to conduct the Test Identification Parade for a juvenile accused -Vignesh, A14, A15 and A17. PW54, the then Judicial Magistrate No.II, Cuddalore, conducted the Test Identification Parade and both the victims had identified A14, A15 and A17.



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**WEB COPY** (vii) In the meanwhile, Section 164 Cr.P.C., statements of the victims were also recorded at the instance of PW53-Amudha. However, the prosecution chose not to mark those statements.

(viii) PW1 filed a writ petition before this Court, praying for the transfer of the investigation, as he was aggrieved by the investigation conducted by PW53 and the earlier investigating officers. This Court by the order dated 30.04.2015 in W.P.No.27995 of 2014, which was marked as Ex.P55, transferred the investigation to CBCID, besides directing the payment of compensation to the victims at Rs.50,000/- each.

(ix) PW55, the Deputy Superintendent of Police, CBCID, thereafter took up the investigation and after recording the statements of the victims and the other witnesses, she filed a final report against all the accused for offences under the POCSO Act, Immoral Traffic (Prevention) Act under Sections 366-A r/w 34, 372, 373, 370-A (1), 354-B and 342 of the IPC,



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before the learned Sessions Judge, Mahila Court, Cuddalore, which was taken on file as Special S.C.No.20 of 2018.

(x) On the appearance of the accused, the provisions of Section 207 Cr.P.C., were complied with and the trial Court framed charges against the accused, and when questioned, the accused pleaded 'not guilty'.

(xi) To prove the case, the prosecution examined 55 witnesses as P.W.1 to P.W.55, marked 62 exhibits as Exs.P1 to P62 and marked 8 Material Objects as M.O.1 to M.O.8. When the accused were questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against them, they denied the same. The accused neither examined any witness nor marked any document on their side.

(xii) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established its case beyond reasonable doubt and held the accused/A2, A3, A4, A7, A9 to A19 guilty of the



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offences levelled against them and thus, convicted and sentenced them as follows:

<b><i>Accused No.</i></b>	<b><i>Offence under</i></b>	<b><i>Sentence imposed</i></b>
A2, A3 & A7	366-A IPC (2 counts)	Each of them to undergo RI for 10 years and to pay a fine of Rs.10,000/-, in default to undergo SI for 2 years, for each count.
	372 IPC (2 counts)	Each of them to undergo RI for 10 years and to pay a fine of Rs.10,000/-, in default to undergo SI for 2 years, for each count.
	342 IPC (2 counts)	Each of them to undergo RI for 1 year and to pay a fine of Rs.1,000/-, in default to undergo SI for 3 months, for each count.
	6 r/w 17 of POCSO Act (2 counts)	Each of them to undergo RI for life and to pay a fine of Rs.2,00,000/-, in default to undergo SI for 3 years, for each count.
The sentences were ordered to run concurrently.		

<b><i>Accused No.</i></b>	<b><i>Offence under</i></b>	<b><i>Sentence imposed</i></b>
A4	6 of POCSO Act	To undergo RI for 30 years and to pay a fine of Rs.5,00,000/-, in default to undergo RI for 5 years.
A9	6 r/w 17 of POCSO Act (2 counts)	To undergo RI for 10 years and to pay a fine of Rs.10,000/-, in default to undergo SI for 2 years, for each count.
A10	6 r/w 17 of POCSO Act (2 counts)	To undergo RI for 10 years and to pay a fine of Rs.1,000/-, in default to undergo SI for 2 years, for each count.



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<b><i>Accused No.</i></b>	<b><i>Offence under</i></b>	<b><i>Sentence imposed</i></b>
A11	6 r/w 17 of POCSO Act (2 counts)	To undergo RI for 10 years and to pay a fine of Rs.5,000/-, in default to undergo SI for 2 years, for each count.
A14	6 of POCSO Act (2 counts)	To undergo RI for life and to pay a fine of Rs.1,00,000/-, in default to undergo SI for 3 years, for each count.
A15	6 of POCSO Act (2 counts)	To undergo RI for life and to pay a fine of Rs.1,00,000/-, in default to undergo SI for 3 years, for each count.
A19	6 r/w 17 of POCSO Act	To undergo RI for 10 years and to pay a fine of Rs.5,000/-, in default to undergo SI for 2 years.
The sentences were ordered to run concurrently.		

<b><i>Accused No.</i></b>	<b><i>Offence under</i></b>	<b><i>Sentence imposed</i></b>
A12	366-A IPC	To undergo RI for 10 years and to pay a fine of Rs.10,000/-, in default to undergo SI for 2 years.
	372 IPC	To undergo RI for 10 years and to pay a fine of Rs.10,000/-, in default to undergo SI for 2 years.
	342 IPC	To undergo RI for 1 year and to pay a fine of Rs.1,000/-, in default to undergo SI for 3 months.
	6 r/w 17 of POCSO Act	To undergo RI for life and to pay a fine of Rs.3,00,000/-, in default to undergo SI for 3 years.
The sentences were ordered to run concurrently.		

<b><i>Accused No.</i></b>	<b><i>Offence under</i></b>	<b><i>Sentence imposed</i></b>
A13	366-A IPC	To undergo RI for 10 years and to pay a fine of





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<b><i>Accused No.</i></b>	<b><i>Offence under</i></b>	<b><i>Sentence imposed</i></b>
		Rs.10,000/-, in default to undergo SI for 2 years.
	372 IPC	To undergo RI for 10 years and to pay a fine of Rs.10,000/-, in default to undergo SI for 2 years.
	342 IPC	To undergo RI for 1 year and to pay a fine of Rs.1,000/-, in default to undergo SI for 3 months.
	6 r/w 17 of POCSO Act	To undergo RI for 10 years and to pay a fine of Rs.10,000/-, in default to undergo SI for 2 years.
The sentences were ordered to run concurrently.		

<b><i>Accused No.</i></b>	<b><i>Offence under</i></b>	<b><i>Sentence imposed</i></b>
A16	366-A IPC (2 counts)	To undergo RI for 10 years and to pay a fine of Rs.5,000/-, in default to undergo SI for 2 years, for each count.
	372 IPC (2 counts)	To undergo RI for 10 years and to pay a fine of Rs.5,000/-, in default to undergo SI for 2 years, for each count.
	6 of POCSO Act	To undergo RI for life and to pay a fine of Rs.10,000/-, in default to undergo SI for 3 years.
	6 r/w 17 of POCSO Act (2 counts)	To undergo RI for life and to pay a fine of Rs.10,000/-, in default to undergo SI for 3 years, for each count.
The sentences were ordered to run concurrently.		

<b><i>Accused No.</i></b>	<b><i>Offence under</i></b>	<b><i>Sentence imposed</i></b>
A17	366 IPC	To undergo RI for 10 years and to pay a fine of Rs.10,000/-, in default to undergo SI for 2 years.



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<b><i>Accused No.</i></b>	<b><i>Offence under</i></b>	<b><i>Sentence imposed</i></b>
	6 of POCSO Act (2 counts)	To undergo RI for life and to pay a fine of Rs.1,00,000/-, in default to undergo SI for 3 years of each count.
	6 r/w 17 of POCSO Act (2 counts)	To undergo RI for life and to pay a fine of Rs.1,00,000/-, in default to undergo SI for 3 years, for each count.
The sentences were ordered to run concurrently.		

<b><i>Accused No.</i></b>	<b><i>Offence under</i></b>	<b><i>Sentence imposed</i></b>
A18	372 IPC (2 counts)	To undergo RI for 10 years and to pay a fine of Rs.10,000/-, in default to undergo SI for 2 years, for each count.
	6 of POCSO Act (2 counts)	To undergo RI for life and to pay a fine of Rs.1,00,000/-, in default to undergo SI for 3 years, for each count.
	6 r/w 17 of POCSO Act (2 counts)	To undergo RI for life and to pay a fine of Rs.1,00,000/-, in default to undergo SI for 3 years, for each count.
The sentences were ordered to run concurrently.		

Hence, the appellants/A2, A3, A4, A7 and A9 to A19 have preferred these appeals challenging the said conviction and sentence.

4. Heard, Mr.John Sathyan, learned senior counsel for A14/1<sup>st</sup> appellant in Crl.A.No.47 of 2019; Ms.A.Shabnam Banu, learned counsel for



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A15/2<sup>nd</sup> appellant in Crl.A.No.47 of 2019 and A18/appellant in Crl.A.No.312 of 2019; Mr.S.Mohamed Ansar, learned counsel for A10/appellant in Crl.A.Nos.137 of 2019 and A2 & A3/appellants in Crl.A.No.734 of 2024; Mr.A.Arasu Ganesan, learned counsel for A11/appellant in Crl.A.No.356 of 2019, Mr.V.Perarasu, learned counsel for A16/appellant in Crl.A.No.376 of 2019; Ms.V.S.Jothi Lakshmi, learned counsel for A12/appellant in Crl.A.No.441 of 2021 and A13/appellant in Crl.A.No.617 of 2019; Mr.S.Suresh, learned counsel for A17/appellant in Crl.A.No.529 of 2019; Mr.V.Bhavani, learned counsel for A7/appellant in Crl.A.No.59 of 2019; Ms.A.Veeramarthini, learned counsel for A19/appellant in Crl.A.No.822 of 2023; and Mr.E.Raj Thilak, learned Additional Public Prosecutor appearing for the respondent/State.

5. The learned counsel for the appellants made various submissions about which we would be discussing while dealing with the case against each of the accused. However, broadly, they made the following three submissions, viz.;



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(a) that even assuming that the prosecution had established that the victims were children, they have not established the fact that the customers, who visited the brothel houses and other persons were aware of the fact that they were children and forced them into commercial sex trade; and that even if the evidence of victims, was accepted to be true, they would only be guilty of the offences under the Immoral Traffic (Prevention) Act;

(b) that the prosecution had not established the age of the victims in the manner known to law. The Headmistress of the school where PW2 and PW9 studied, who had made entries in the School Register and had issued the Educational Certificates of the victims, was not examined. However, a different Headmistress i.e. PW49 was examined. Thus, the prosecution had not established the basis on which, the Date of Birth of the two victims were recorded in those two certificates. Further, neither PW1 nor PW3 deposed about the Date of Birth of these two victims. The necessary ingredient of the



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offence under the POCSO Act that the victim has to be a child, has not been established in the manner known to law; and

(c) that the prosecution had combined two different occurrences, one pertaining to the months of January and February 2014 and the other pertaining to June to August 2014 and conducted a joint trial in violation of the established procedure. Further, the charges framed by the trial Court only related to the alleged incidents that took place between 08.06.2014 and 05.08.2014 and therefore, the accused who were not involved in the occurrence during that period were seriously prejudiced and the error in the charge goes to the root of the matter, which would be fatal to the prosecution case, as against those accused.

6. The learned Additional Public Prosecutor, *per contra* made the following submissions on the above legal points raised by the defence.

(a) Though the charge may be defective, the fact that the accused understood the charges and the nature of cross examination, would suggest



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that they faced the trial after understanding the charge against them and therefore, no prejudice is caused to them. He relied upon the judgment of the Hon'ble Supreme Court in *Willie (William) Slaney v. The State of Madhya Pradesh*, reported in 1955 SCC OnLine SC 34 and *Mohan Singh v. State of Bihar*, reported in (2011) 9 SCC 272. He also pointed out to the cross examination conducted on the side of the accused to demonstrate that the accused fully understood the charges and defended themselves in the trial;

(b) that the prosecution had proved the age of the victims by marking the Educational Certificates issued by the school authorities and he also relied upon the report of the Ossification test and the evidence of the doctors, which established the age of the victims. He further submitted that this is one of the earliest cases under POCSO Act and therefore the prosecution had proved the age of the victims in accordance with the law that then existed and therefore, this Court may accept the evidence of the doctors, who had assessed the age of the victims; and



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(c) that the submission of the accused that they were not aware of the age of the victims is not sustainable in view of Section 30 of the POCSO Act, which provides for the presumption of the requisite culpable mental state of the accused. He submitted that the explanation would show that the "culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.

Section 30 of the POCSO Act, reads as follows:

“(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

(2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability

*Explanation.*--In this section, "culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.



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7. We have carefully considered the rival submissions and perused the materials available on record.

8. Before we deal with the submissions made on either side on facts, we propose to deal with the general submissions made on behalf of the accused and prosecution.

(a) (i) It is the case of the prosecution that the victim girls were subjected to penetrative sexual assaults, during the months of January and February 2014 and once again between the months of June to August 2014. However, unfortunately, the charges framed against all the accused refer only to the alleged occurrences between 08.06.2014 and 05.08.2014.

(ii) In our view, there are defects in the charges, as rightly contended by the learned counsel for the appellants. The learned Sessions Judge ought to have framed separate charges in respect of the alleged occurrences that





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had taken place in two different periods. We also find yet another infirmity in the charge, viz., that instead of framing individual charges, the accused have been grouped together and an omnibus charge has been framed for some of the offences. We would like to remind the trial Courts that whatever be the nature of the offences or the gravity of the offences, the charges have to be framed and the trial has to be conducted in accordance with the provisions of the Cr.P.C., relating to framing of charge and the conduct of trial. Unfortunately, in this case, the prosecution also had not taken any steps to rectify these defects in the charge.

(iii) However, we find from the evidence of the witnesses and the cross examination conducted by the accused that they understood the charges and defended them accordingly.

(iv) In *Willie (William) Slaney's case* [cited supra], the Hon'ble Supreme Court had held as follows:



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“76. A case of complete absence of a charge is covered by section 535, whereas an error or omission in a charge is dealt with by section 537. The consequences seem to be slightly different. Where there is no charge, it is for the court to determine whether there is any failure of justice. But in the latter, where there is mere error or omission in the charge, the court is also bound to have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.”

(v) Similarly in *Mohan Singh's case* [cited supra], the Hon'ble Supreme Court had held in paragraph No.27 as follows:

“27. In view of such consistent opinion of this Court, we are of the view that no prejudice has been caused to the appellant for non-mentioning of Section 302 I.P.C. in the charge since all the ingredients of the offence were disclosed. The appellant had full notice and had ample opportunity to defend himself against the same and at no earlier stage of the proceedings, the appellant had raised any grievance. Apart from that, on overall consideration of the facts and circumstances of this case we do not find that the appellant suffered any prejudice nor has there been any failure of justice.”



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(vi) Though we do not approve of the manner in which omnibus charges have been framed, the non-framing of a separate charge relating to occurrences during January and February 2014 and the prosecution also did not attempt to rectify the same, on the perusal of the evidence, we are of the view that no serious prejudice has been caused to the accused and hence, in the light of the above decisions, we hold that the trial is not vitiated on that ground.

(b) (i) To prove the age of the victims, the prosecution had examined PW49, who was working as the Headmistress in the school, where the victims studied. She had marked two certificates viz., Ex.P41 and Ex.P43 in respect of the victims, PW2 and PW9, respectively, called the 'Educational Certificate', in which the Date of Birth is mentioned as 23.12.2000 in respect of PW2 and 20.12.1999 in respect of PW9. She had also marked Ex.P42 and Ex.P44-Admission Registers, in which the same Date of Birth of the victims, is found. However, in none of the above documents, the basis



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on which these entries were made is mentioned. Further, PW49 had not issued Ex.P41 to Ex.P44. PW49 had admitted in her cross examination that she was not aware as to on what basis, the Date of Birth of these two victims, have been entered in the Admission Register and the Educational Certificates, said to have been given by the earlier Headmistress. Unfortunately, in this case, neither PW1, the father of PW9 nor PW3, the grandmother of PW2, had spoken about the Date of Birth of the victims.

(ii) In a recent decision in *P.Yuvaprakash v. State, rep. by Inspector of Police*, reported in **2023 SCC OnLine SCC 846**, the Hon'ble Supreme Court had reiterated the manner in which the age of the victim has to be established. The relevant portion reads as follows:

“11. Before discussing the merits of the contentions and evidence in this case, it is necessary to extract Section 34 of the POCSO Act which reads as follows:

**“34. Procedure in case of commission of offence by child and determination of age by Special Court. – (1)**

Where any offence under this Act is committed by a child, such child shall be dealt with under the provisions of the



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Juvenile Justice (Care and Protection of Children) Act, 2015  
(2 of 2016).

(2) If any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person and it shall record in writing its reasons for such determination.

(3) No order made by the Special Court shall be deemed to be invalid merely by any subsequent proof that the age of a person as determined by it under sub-section (2) was not the correct age of that person.”

12. In view of Section 34 (1) of the POCSO Act, Section 94 of the JJ Act, 2015 becomes relevant, and applicable. That provision is extracted below:

“94. Presumption and determination of age. – (1)  
Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person



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brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining –

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.”

13. It is evident from conjoint reading of the above provisions that wherever the dispute with respect to the age of a person arises in the



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context of her or him being a victim under the POCSO Act, the courts have to take recourse to the steps indicated in Section 94 of the JJ Act. The three documents in order of which the Juvenile Justice Act requires consideration is that the concerned court has to determine the age by considering the following documents:

“(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board”.

14. Section 94 (2)(iii) of the JJ Act clearly indicates that the date of birth certificate from the school or matriculation or equivalent certificate by the concerned examination board has to be firstly preferred in the absence of which the birth certificate issued by the Corporation or Municipal Authority or Panchayat and it is only thereafter in the absence of these such documents the age is to be determined through “an ossification test” or “any other latest medical age determination test” conducted on the orders of the concerned authority, i.e. Committee or Board or Court. In the present case, concededly, only a transfer certificate and not the date of birth certificate or matriculation or equivalent certificate was considered. Ex. C1, i.e., the school transfer certificate showed the date of birth of the victim as



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11.07.1997. Significantly, the transfer certificate was produced not by the prosecution but instead by the court summoned witness, i.e., CW-1. The burden is always upon the prosecution to establish what it alleges; therefore, the prosecution could not have been fallen back upon a document which it had never relied upon. Furthermore, DW-3, the concerned Revenue Official (Deputy Tahsildar) had stated on oath that the records for the year 1997 in respect to the births and deaths were missing. Since it did not answer to the description of any class of documents mentioned in Section 94(2)(i) as it was a mere transfer certificate, Ex C-1 could not have been relied upon to hold that M was below 18 years at the time of commission of the offence.”

[emphasis supplied]

(iii) In yet another case in *Manak Chand @ Mani v. State of Haryana*, reported in **2024 (1) MWM (Crl) 255 (SC)**, the Hon'ble Supreme Court had held as follows:  
para 8 and 9.

“8. There are two aspects which ought to have been considered by the Trial Court and the High Court in greater detail than what has been done. The first is the age of the prosecutrix. The age of the prosecutrix has an extremely crucial bearing in the case. The only evidence relied by the court for holding the prosecutrix as a minor (less than sixteen years of age), is the school register of Government Girls High School, which was placed





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in the Court by the clerk of the school, Ram Sahay (PW-2). Undoubtedly, the date of birth in the school register is 04.04.1987 which makes the prosecutrix less than sixteen years of age at the time of the incident. But it has also come in the evidence of Ram Sahay (PW-2) that this date of birth was recorded not on the statement of the parents of the prosecutrix, but by some other person and more importantly, it was based on the transfer certificate of Government Primary School where the date of birth was recorded as 04.04.1987. All the same, this transfer certificate, on the basis of which the date of birth was recorded, was never produced in the Court. Yet, both the Trial Court and the High Court have relied upon the veracity of the school register. It is the same school register which marks the presence of the prosecutrix on 12.09.2000 in the school. This is also the date when the prosecutrix was allegedly raped for the first time, in the house of the appellant in village Sanwat Khera, whereas the school is at another place called Dabwali Mandi. The Trial Court discards the evidence in the same school register, as not being authentic, when the defence had raised the apparent contradictions on the prosecutrix being in school and at the Sanwat Khera village at the same time. This is not a fair appreciation of evidence, to say the least, as same school register is the only basis for the determination of the age of the prosecutrix!

9. This Court in **Birad Mal Singhvi v. Anand Purohit** (1988) Supp SCC 604 had observed that the date of birth in the register of a school would not have any evidentiary value without the testimony of the person making the entry or the person who gave the date of birth.

“14. ...The date of birth mentioned in the scholar’s register has no evidentiary value unless the person who made



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the entry or who gave the date of birth is examined. The entry contained in the admission form or in the scholar's register must be shown to be made on the basis of information given by the parents or a person having special knowledge about the date of birth of the person concerned. If the entry in the scholar's register regarding date of birth is made on the basis of information given by parents, the entry would have evidentiary value but if it is given by a stranger or by someone else who had no special means of knowledge of the date of birth, such an entry will have no evidentiary value."

In our opinion, the proof submitted by the prosecution with regard to the age of the prosecutrix in the form of the school register was not sufficient to arrive at a finding that the prosecutrix was less than sixteen years of age, especially when there were contradictory evidences before the Trial Court as to the age of the prosecutrix. It was neither safe nor fair to convict the accused, particularly when the age of the prosecutrix was such a crucial factor in the case."

(iv) In the light of the above observations, we are of the view that it is not safe to accept the prosecution case as regards the date of birth on the basis of Ex.P41 to Ex.P44. However, the prosecution has examined PW45 who had conducted the Radiological examination and issued certificates Ex.P37 and PW38 in respect of PW2 and PW9 respectively. As per Ex.P37,



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on the basis of the physical, dental and Radiological findings, the doctor had opined that PW2 was aged between 16 and 18 years as on 27.04.2017. Similarly in respect of PW9, the Doctor had opined that she was aged between 16 and 18 years as on 28.04.2017. The above reports of PW45 have not been challenged by the defence. The reports, therefore, suggest that at the time of the commission of the offence, the victims were children.

(v) We are of the view that the ossification test conducted by the prosecution can be taken as sufficient proof of the age of the victims, although the prosecution, in our view, has failed to establish the age through the documents in the manner known to law. Therefore, we are unable to accept the submissions on the side of the defence, that the age of the victims was not established.

(c) As regards the submission that the prosecution had not established that the accused knew the age of the victims, we are of the view that the



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nature of the proof required would depend on the facts of each case and a general proposition cannot be laid down.

9. Now, having held that the above common legal submissions made on behalf of the accused would not come to their aid, we propose to examine the prosecution case against each of the accused, the evidence adduced in support of the said case and the offences charged against them.

10. The following witnesses were examined by the prosecution:-

(i) PW1 is the father of PW9. PW2 is one of the victim. PW3 is the grandmother of PW2. PW4 to PW8 are teachers, who worked in the school, where the victims studied and spoke about the absence of victims during the relevant period, i.e., during the month of June 2014. PW9 is the other victim. PW10 is the sister of PW9 and is a hearsay witness. PW11 is a witness to the Observation Mahazar. PW12 and PW13 are the witnesses to the confessions of A1 to A3 and A17, who turned hostile.



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**WEB COPY** (ii) PW14 was a neighbour of A1 and A6's house and speaks about seeing PW2 and PW9 visit the house of A1 and A6, on several occasions. Similarly, PW15 was a landlord of the house of A1 and A6. He had also deposed that he had seen PW2 and PW9 visit the house on several occasions. As A1 and A6 are not before us, the evidence of these witnesses will not be relevant, in the instant appeals.

(iii) PW16 to PW18, according to the prosecution, were neighbours of A2 and they turned hostile. PW19, alleged to be the neighbour of A3, turned hostile. PW20 and PW21, who according to the prosecution, were neighbours of A4-Arul Doss, turned hostile. PW22, speaks about his friendship with the absconding accused-A23 (Kabilan) and his involvement in the occurrence. PW23 was known to PW24 and had warned the victims PW2 and PW9, when they were speaking to PW24 and asked them to go to their respective houses. PW24 is the friend of PW9, who stated that PW9 called him twice through her mobile phone and asked for help stating that she was locked by someone and that PW9 however, did not inform the



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place of detention. PW25 was studying in the same school as that of PW2 and PW9 and had deposed that she had seen both PW2 and PW9 get money from A3 and when she asked them, they told her that A3 would give money to her also, if she agreed to illegal activities. PW26 is the cousin brother of A17 and he speaks to the fact of giving his bike to A15 for temporary use.

(iv) PW27 is the father of A12 and had identified A12 and A13 in Court, which is hardly of any significance to the prosecution case. PW28, is the landlord where A13 is said to have indulged in commercial sex trade and forced the victims into commercial sex trade. PW29 is the landlord of the absconding accused Jabeena, whose evidence would not be relevant in the instant case. According to the prosecution, PW30 and PW31 were the neighbours of A10, who turned hostile. PW32 deposed that he was a tenant in A9-Girija's house. PW33 deposed that he was the landlord of A7-Fathima and he came to know that some illegal activities were going on in her house and that when he asked A7, she gave evasive replies. PW34 is the car broker, who speaks about buying a car M.O.2, which is of no relevance.



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PW35 is the owner of a lodge called the 'Bommas Lodge' and stated that the absconding accused, one Kabilan, PW22 and the victim girls PW2 and PW9, stayed in his lodge for two days in June 2014. PW36 is the wife of PW35 and corroborates PW35. PW37, the Motor Vehicles Inspector, identified the bike of A17 and had issued Ex.P18, certificate giving the details of the ownership of the said bike.

(v) PW38, is the doctor, who conducted medical examinations of the victims PW2 and PW9 and issued certificates Ex.P19 and Ex.P20, respectively. PW39, is the doctor, who conducted medical examination of accused A14, A15 and A17. PW40, who according to the prosecution, is the witness to the confession of A6, A7, A5, A8, A9, A10 and A11, turned hostile. PW41 is the witness to the confession of the same accused. PW42, is the witness to the Seizure Mahazar of the vehicle belonging to A17. PW43, is the Doctor conducted potency test on A1 and A4 and marked the Certificates Ex.33 and Ex.P34, respectively.



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**WEB COPY** (vi) PW44, is the doctor who conducted further medical examination of two victims PW2 and PW9 and issued Ex.P35 and Ex.P36 respectively. PW45, the doctor examined the victims and after perusal of the medical examination reports, she gave the final opinion Ex.P37 and Ex.P38 for PW2 and PW9, respectively. PW46, is the Motor Vehicle Inspector, who had issued Ex.P39-certificate in respect of the two-wheeler bearing Regn.No.TN24 H 6795. PW47 is the Constable who produced the victims for medical examination before the doctor. PW48 is the Sub Inspector of Police, who registered the FIR in Cr.No.141 of 2014 for the 'Girl Missing', marked as Ex.P40. PW49 is the Headmistress, as stated earlier, who had marked Ex.P41 to Ex.P44 viz., the Admission Registers and Educational Certificates of PW2 and PW9.

(vii) PW50 is the Inspector of Police, who had conducted preliminary investigations in CSR Nos.34 of 2014 and 35 of 2014 and closed them on 15.02.2014. PW50 also registered the FIR in Cr.No.141 of 2014, on the complaint of PW1 on 11.07.2014 and conducted the investigation. PW51,





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is the Inspector of Police, to whom the case in Cr.No.141 of 2014 was transferred for further investigation. PW52 speaks about the registration of FIR in Cr.No.1/2016 on the file of Cuddalore, CBCID, pursuant to the orders of this Court dated 04.07.2016 in W.P.No.27995 of 2014, marked as Ex.P45. PW53 is the Inspector of Police, who took over the investigation from PW51 and had conducted substantial part of the investigation. PW54 is the learned Magistrate, who conducted the Test Identification Parade for the witnesses PW2 and PW9 to identify A14, A15 and A17. PW55, is the investigating officer from CBCID to whom the case was transferred pursuant to the orders of this Court in the above referred Writ Petition and had filed the final report.

11. We now propose to examine the role played by the individual accused, the evidence adduced against them and whether the offences alleged against them have been established.

**12. A2-Kala @ Mekala [1<sup>st</sup> appellant in Crl.A.No.734 of 2024]:**



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WEB COPY (i) A2-Kala @ Mekala was charged for the offences under Sections 366-A of the IPC (2 counts), 372 of the IPC (2 counts), 342 of the IPC (2 counts) and Section 6 r/w 17 of the POCSO Act, 2012 (2 counts). She is convicted by the trial Court for all the charges and sentenced as stated above in Paragraph No.3(xiii).

(ii) It is the case of the prosecution, that A2 was running commercial sex trade and she was known to A3. It is PW2's evidence that she along with PW9 went to A2's house along with A3. It is the further case of the prosecution that A2 forced her to have sexual intercourse with certain known accused and some unidentified accused and thereafter, the victims returned to their respective houses and did not complain to anybody regarding the same.

(iii) PW2 would state that she along with PW9 once again went to A2's house after 08.06.2014 on her own. A2 had sent them back stating that there were guests in her house and asked them to stay at the Railway



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Station. It is also PW2's evidence that thereafter, A2 sent her to A4's house, wherein A4 forced her to have sexual intercourse. PW9's evidence corroborates the evidence of PW2, except for some minor contradictions, as regards the role played by A2.

(iv) The cross examination of these two victims by A2 has not discredited their version as regards A2's involvement in the offence. The evidence of PW2 and PW9, in our view, can be accepted with regard to the involvement of A2 in the offences alleged against her. Even though there are minor contradictions in the evidence of PW2 and PW9, it would not affect their testimony. Further, we find that the involvement of A2 has been spoken to by the victims consistently in all their previous versions, during the investigation and in their statements, before the learned Magistrate, as could be seen from the evidence on record. A2 had knowledge of the fact that the victims were school going children. A2 was not only involved in the occurrences that took place in January and February 2014, but also in the occurrences between June and August 2014. Even though the occurrences



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in January and February 2014 were not reported, since A2 was involved in the second phase of the occurrences also, her role has been established beyond doubt.

(v) Since the victims were known to A2, the fact that no Test Identification Parade was conducted would not have any bearing on appreciating their evidence. ***Therefore, we hold that A2 is guilty of the offences charged against her.***

**13. A3-Dhanalakshmi @ Lakshmi [2<sup>nd</sup> appellant in Crl.A.No.734 of 2024]:**

(i) A3-Dhanalakshmi @ Lakshmi, was charged for the offences under Sections 366-A of the IPC (2 counts), 372 of the IPC (2 counts), 342 of the IPC (2 counts) and Section 6 r/w 17 of the POCSO Act, 2012 (2 counts). She was convicted by the trial Court for all the charges and sentenced as stated above in Paragraph No.3(xiii).



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WEB COPY (ii) According to PW2, it was A3, who first lured and forced her into commercial sex trade and introduced her to various persons. It is the version of PW2, that after she saw A3 and another accused in a compromising position, A3 forced her to have sexual intercourse with the said person and thereafter, with other persons; and that A3 also threatened her with exposing her amongst her school friends.

(iii) It is on record that A3 was aware of the fact that PW2 was a school going child and she had not only abetted the offence of penetrative sexual assault under Section 6 punishable under Section 17 of the POCSO Act, but, also had indulged in trafficking of the victims by selling them to other accused, including A2.

(iv) It is the case of the prosecution that during the second phase of the occurrence, PW2 voluntarily went to A3's house. However, this does not justify A3's exploitation of the victim for commercial sex work. PW9 also, in a cogent and convincing manner, corroborates the evidence of PW2 as



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regards the involvement of A3. Even as regards the involvement of A3, the victims had consistently stated this throughout in all their earlier versions as could be seen from the evidence of the investigating officers viz., PW51, PW53 and PW55. A3 was also involved in both phases of the occurrence. Even though the first phase of the occurrences was not reported by the victims earlier, since A3 was involved in the second phase of the occurrence, her involvement has been established by the prosecution.

(v) The cross examination conducted on behalf of A3 with regard to the version of the victims, has not in any manner affected the version of these two witnesses with regard to the involvement of A3.

(vi) It is the contention of the learned counsel for A2 and A3 that PW1 the father of PW9 had lodged the complaint only on 11.07.2014, even though, according to him, the victim girls went missing on 08.06.2014 and that this would establish the fact that the victims were in the habit of staying away from the house without informing their respective family members.



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(vii) The learned counsel further submitted that the victims had not disclosed the instances that took place during January and February, 2014 when they returned in February 2014 and therefore, the allegations made by the victims regarding January and February 2014, cannot be believed. The learned counsel further submitted that there is no independent evidence of the prosecution except the evidence of the victims to prove the case.

(viii) It is true that the neighbours examined by the prosecution turned hostile. However, when the evidence of the victims inspires confidence, as regards the involvement of A2 and A3, we see no reason to disbelieve them, merely, because the other witnesses examined by the prosecution turned hostile. Further, as stated earlier, both A2 and A3 were involved in both phases of the occurrence and the fact that the victims did not complain about the earlier period of the occurrences when they returned to their respective houses, would not help both the accused. ***Therefore, we hold that A3 is guilty of the offences charged against her.***



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**14. A4-Arul Doss [Crl.A.No.65 of 2019]:**

(i) A4-Arul Doss, was charged for the offences under 342 of the IPC (2 counts) and Section 6 of the POCSO Act, 2012 (2 counts). He was convicted by the trial Court for the offence under Section 6 of the POCSO Act, 2012 (1 count) alone and sentenced as stated above in Paragraph No.3(xiii).

(ii) It is the admitted case of the prosecution that A4 was a church father. According to PW2, A2 had sent her to the house of A4 and he had shown some obscene pictures and pornographic videos and had committed repeated penetrative sexual assaults on both PW2 and PW9 for almost two days. PW9, however, would state that she went along with PW2 to the house of A4, at the instance of A2 and A4 had sexual intercourse only with PW2. Both the victims had identified A4 in Court during their depositions. No Test Identification Parade was conducted.



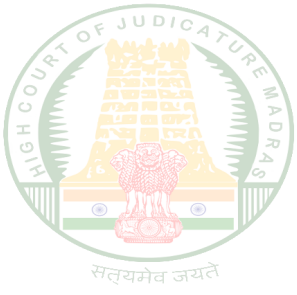


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(iii) The learned counsel for the defence submitted that except for PW2 and PW9, the other witnesses who were examined had turned hostile. The learned counsel further submitted that the victim's earlier statements did not implicate A4, as could be seen from the evidence of PW51. It is evident from the testimonies of PW2 and PW9 that A4 had committed penetrative sexual assault on PW2, though it is the prosecution's case that A4 committed penetrative sexual assaults on both the victims. That apart, we find from the evidence of PW53 that the victims had not stated several facts regarding the involvement of A4 in their statements given to the Magistrate, under Section 164 of the Cr.P.C. PW53 had confirmed this fact in the cross examination conducted by A4. The relevant portion of PW53's evidence in the cross examination which reads as follows:

“असा2 மற்றும் 9ஐ நடுவர் நீதிமன்றத்தில் ஆஜர் செய்து குவிமுசு பரிவு 164(5)ன் கீழ் வாக்குமூலங்கள் பதிவு செய்யப்பட்டன. அசா.2, 13.8.2014 அன்று கடலூர் நீத்த்துறை நடுவர் எண்.2யிடம் கொடுத்த வாக்குமூலத்தில் கலா, பாதர் அருள்தாஸ் வீட்டுக்கு போகச் சொன்னதாக குறிப்பிடவில்லை. அதிலும் அசா2 இரண்டு நாட்களாக 4வது எதிரி மாறி மாறி தங்களுடன் உடலுறவு கொண்டதாக குறிப்பிடவில்லை. அதேபோல 4வது எதிரி இரண்டு



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WEB COPY நாட்கள் கழித்து கலா வீட்டுக்கு அனுப்புவதற்காக கலாவுக்கு  
போன் செய்ததாகவும் இல்லை.

அதேபோல அசா9 நடுவர் நீதிமன்றத்தில் கொடுத்த  
வாக்குமூலத்தில் எதுவும் சொல்லவில்லை என்றால் சரிதான்.”

(iv) It is also seen from the evidence of the investigating officer-PW51 that PW9 had not stated anything about the penetrative sexual assaults said to have been committed by A4 on PW2 during her examination. In Section 164 Cr.P.C., statement the PW2 had not stated about the repeated sexual assaults on her.

(v) As stated earlier, there are contradictions in the evidence of PW2 and PW9 with regard to the acts of A4 and the version of PW2 is contrary to the prosecution case. Further, there are contradictions about A4's role in the Section 164 Cr.P.C. statements of the victims and their depositions. The version in the deposition is exaggerated and there are many material improvements. We are unable to separate the chaff from the grain and believe a portion of the evidence of the victims to find A4 guilty of the



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offences. Considering the above infirmities, it would be highly unsafe to hold A4 guilty of the offences under Section 6 of the POCSO Act against A4. ***Hence, A4 is acquitted of the charges levelled against him.***

**15. A7-Fathima [Crl.A.No.59 of 2019]:**

(i) A7-Fathima, was charged for the offences under Sections 366-A of the IPC (2 counts), 372 of the IPC (2 counts), 342 of the IPC (2 counts) and Section 6 r/w 17 of the POCSO Act, 2012 (2 counts). She is convicted by the trial Court for all the charges and sentenced as stated above in Paragraph No.3(xiii).

(ii) The allegation against A7 as stated earlier, is that she was running commercial sex trade and had paid money to A3 for the trafficking of the two victims. It is the version of PW2 that A3 had handed them over to A7, who came along with her husband and forced them into commercial sex work. PW2 had identified A7 in Court in her deposition.



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WEB COPY (iii) It is the further case that PW2 alone stayed in A7's house and PW9 was sent along with A12 to Salem. The evidence of PW9 as regards the involvement of A7 corroborates the evidence of PW2. She had also identified A7. It is suggested by the defence that the house owner PW33 cannot be relied upon and there is no evidence to suggest that the deceased accused, Namazhvar, was A7's husband. They also produced some documents indicating that A7 is not the wife of Namazhvar.

(iv) It is further the case that even according to PW9, she never stayed in A7's house and therefore, the trial Judge ought not to have convicted her for two counts. It is the case of the prosecution that PW9 was not subjected to penetrative sexual assault in A7's house. Even according to PW2, though she was taken to the house of A7, there was no instance of sexual assault at the house of A7. It is alleged that A7 took PW2 to A9's house, where she was subjected to penetrative sexual assault. We are of the view that the evidence of the victims is not clear and cogent as regards the involvement of A7 with regard to the offence of abetment of penetrative sexual assaults.



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However, she had taken the victim to the house of A9. The evidence of PW2 and PW9 would at best prove the offences under Section 366-A of the IPC and Section 342 of the IPC against A7. Further, there is no evidence for an offence under Section 372 of the IPC as against A7. ***Therefore, in our view, A7 would be guilty of offences under Sections 366-A of the IPC (2 counts) and 342 of the IPC (2 counts) . The prosecution had not established the offence of abetment of the penetrative sexual assault and the offence under Section 372 of the IPC.***

**16. A9-Girija @ Radha [Crl.A.No.283 of 2019] and A19-Rathika @ Radha [Crl.A.No.822 of 2023]**

(i) Though, A9-Girija @ Radha was charged for the offences under Sections 366-A of the IPC (2 counts), 372 of the IPC (2 counts), 342 of the IPC (2 counts) and Section 6 r/w 17 of the POCSO Act, 2012 (2 counts), she was convicted by the trial Court only for the offence under Section 6 r/w 17 of the POCSO Act, 2012 (2 counts) and sentenced as stated above in Paragraph No.3(xiii).



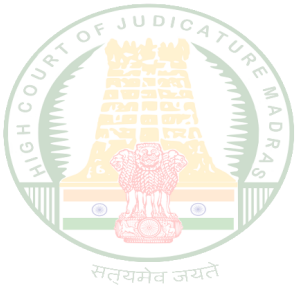
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(ii) Similarly, though, A19-Rathika @ Radha was charged for the offences under Sections 366-A of the IPC (2 counts), 372 of the IPC (2 counts), 342 of the IPC (2 counts) and Section 6 r/w 17 of the POCSO Act, 2012 (2 counts), she was convicted by the trial Court only for the offence under Section 6 r/w 17 of the POCSO Act, 2012 (1 count) and sentenced as stated above in Paragraph No.3(xiii).

(iii) It is the case of the prosecution that the victims were taken to A9's house. However, we find that the victim-PW2 could not identify A9. She had identified A19 as A9. Therefore, in our view, both A9 and A19 were wrongly identified by PW2. During her examination, the victim sought a break and even after a three minutes break, her deposition, in our view does, not clearly state about the involvement of A9 or A19, in whose house, she is alleged to have stayed and been subjected to penetrative sexual assaults. PW9 had however identified both A9 and A19. However, neither PW2 nor



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PW9 could identify or state about the names of persons, who had allegedly committed the penetrative sexual assaults in their houses.

(iv) We are mindful of the fact that it is impossible for the victims to remember the persons or their names and that by itself, cannot be a reason to hold that they were not subjected to penetrative sexual assaults. However, considering the nature of the evidence let in by PW2 and PW9, we are of the view that it would be highly unsafe to convict A9 and A19 on the strength of such evidence. Further, we also find that from the evidence of the investigating officers, in their earlier versions or their Section 164 Cr.P.C., statements, neither PW2 nor PW9 had stated about the involvement of A9.

The relevant portion reads as follows:

“13.8.2014 அன்று கடலூர் நீதித்துறை நடுவரிடம் கொடுத்த வாக்குமூலங்களை நான் பரிசீலித்து பார்த்தேனா என்றால் பார்த்தேன். மேற்படி வாக்குமூலங்களில் 5, 8, 9, 10, 13 மற்றும் 16வது எதிரிகள் குறித்து எந்த விவரங்களும் கூறப்படவில்லை என்றால் சரிதான்.”



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WEB COPY (v) That apart, there is nothing on record to show that A19 was running commercial sex business in her house. The investigating officers admitted that neither the observation mahazar nor the rough sketch were prepared in the house of A9. Even if the evidence is accepted to be true, the prosecution, in our view, has at best only established the offence under Section 366-A and 342 of the IPC. The prosecution has not challenged their acquittal for these offences. In any case, both A9 and A19 have been in custody for more than six years.

(vi) It is also seen that A8, who was similarly placed as that of A9, has been acquitted by the trial Court. The reasons assigned for the acquittal of A8 would enure to the benefit of A9 as well. We see no significant differences between the roles alleged by the prosecution, as against A8 and A9.

(vii) In the light of the above and considering the doubt in the evidence of PW2 and PW9 as regards the involvement of A9 and A19, we





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are of the view that both are entitled to benefit of doubt as regards the offence under Section 6 r/w 17 of the POCSO Act and ***hence, both of them (A9 and A19) are acquitted of the said charge.***



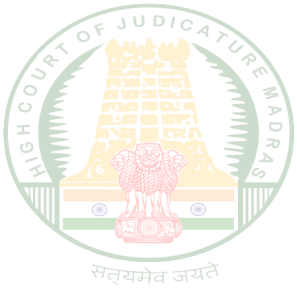
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**17. A10-Sharmila Begam [Crl.A.No.137 of 2019]**

(i) Though, A10-Sharmila Begam was charged for the offences under Sections 366-A of the IPC (2 counts), 372 of the IPC (2 counts), 342 of the IPC (2 counts) and Section 6 r/w 17 of the POCSO Act, 2012 (2 counts), she was convicted by the trial Court only for the offence under Section 6 r/w 17 of the POCSO Act, 2012 (2 counts) and sentenced as stated above in Paragraph No.3(xiii).

(ii) According to the prosecution, the allegation against A10 is that the victims were brought to her house by A1. It is the further case of the prosecution that PW2 and PW9 were locked in her house and forced into commercial sex by A10. PW2, could not identify A10 and therefore, she was treated as hostile on that aspect and cross examined. In the cross examination, nothing was elicited so as to fix the identity of A10, except for suggesting to the witness that in her examination she had stated about the involvement of A10.



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WEB COPY (iii) Though PW9 had identified A10, PW9 could not remember the person who came to A10's house. She had deposed that A10 called one person and forced her to have sexual intercourse with him. However, this person was not identified by the prosecution. Be that as it may. However, we find that the evidence of the investigating officer suggests that neither PW2 nor PW9 could state about the exact place where A10 resided.

(iv) In the evidence of PW53, it is seen that the victims have not stated about the involvement of A10 in their earlier versions, including their Section 164 Cr.P.C., statements. The relevant portion reads as follows:

“13.8.2014 அன்று கடலூர் நீதித்துறை நடுவரிடம் கொடுத்த வாக்குமூலங்களை நான் பரிசீலித்து பார்த்தேனா என்றால் பார்த்தேன். மேற்படி வாக்குமூலங்களில் 5, 8, 9, 10, 13 மற்றும் 16வது எதிரிகள் குறித்து எந்த விவரங்களும் கூறப்படவில்லை என்றால் சரிதான்.”

(v) In the light of the above infirmities, we are of the view that it would be highly unsafe to convict A10 for the offences alleged against her



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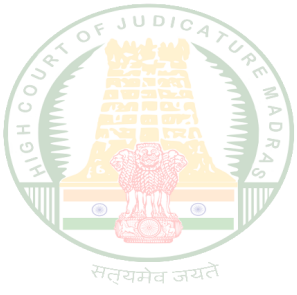
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and therefore, we hold that the prosecution has not proved the case against A10 and hold her not guilty of the offence under Section 6 r/w 17 of the POCSO Act. *Accordingly, A10 is acquitted of the said charge.*

**18. A11-Rajalakshmi @ Kavitha [Crl.A.No.356 of 2021]**

(i) Though, A11-Rajalakshmi @ Kavitha was charged for the offences under Sections 366-A of the IPC (2 counts), 372 of the IPC (2 counts), 342 of the IPC (2 counts) and Section 6 r/w 17 of the POCSO Act, 2012 (2 counts), she was convicted by the trial Court only for the offence under Section 6 r/w 17 of the POCSO Act, 2012 (2 counts) and sentenced as stated above in Paragraph No.3(xiii).

(ii) It is alleged by the prosecution that A11 was a partner with A1 and she took the victims to her house on payment of money to A1 and then she compelled the victims to have penetrative sexual assaults with strangers. Here again, PW2 could not identify A11. She was treated hostile on that aspect. In spite of cross examination, PW2 could not identify A11, though, it



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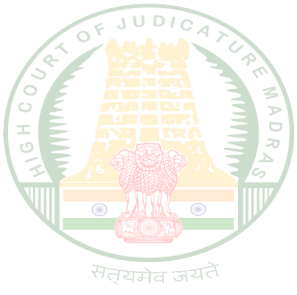
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was suggested by the prosecution that she had stated about the involvement of A11 during the investigation. PW2 had stated in her evidence as follows:

“எனக்கு குழப்பமாக இருந்ததால் மேற்படி  
நபர்களை முதல்விசாரணையில் என்னால்  
அடையாளம் காட்ட முடியவில்லை.”

The above portion relates to A11, A12 and A13 also.

(iii) PW9 had identified A11. According to her, she was forced by A11 to have penetrative sexual assaults with a stranger. But the prosecution could not identify the alleged perpetrator. As stated earlier, this by itself could not be the basis to disbelieve the evidence of the victims. But in the facts of the case, considering the fact that PW2 could not identify and the investigating officer had not collected any evidence to prove the place of residence of A11 and the fact that the victims had not stated about the involvement of A11 in their Section 164 Cr.P.C., statements, we are of the view that it would be highly unsafe to convict A11 on the basis of such evidence. The relevant portion of PW53's evidence on the statements made



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by the victims as regards the non-mentioning of A11's role by the victims in their Section 164 Statements is extracted hereunder.

“13.8.2014 அன்று அசா<sup>9</sup> நீதித்துறை நடுவரிடம் கொடுத்த வாக்குமூலத்தில் 11வது எதிரியை பற்றி எதுவும் சொல்லவில்லை என்றால் சரிதான். அதேபோல அசா<sup>2</sup> கடலூர் மற்றும் சிதம்பரம் நீதித்துறை நடுவர்களிடம் கொடுத்த வாக்குமூலத்தில் 11வது எதிரியை பற்றி எதுவும் சொல்லவில்லை என்றால் சரிதான்.”

(iv) Therefore, we are of the view that the prosecution has not established its case against A11 and *therefore, we hold A11 not guilty of the offence. Accordingly, A11 is acquitted of the charge levelled against her.*

**19. A12-Anbzhagan @ Anbu [Crl.A.No.441 of 2021] and A13-Amutha [Crl.A.No.617 of 2019]**

(i) Though, A12-Anbzhagan @ Anbu was charged for the offences under Sections 366-A of the IPC (2 counts), 372 of the IPC (2 counts), 342



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of the IPC (2 counts) and Section 6 r/w 17 of the POCSO Act, 2012 (2 counts), he was convicted by the trial Court for the offences under Sections 366-A of the IPC (1 count), 372 of the IPC (1 count), 342 of the IPC (1 count) and Section 6 r/w 17 of the POCSO Act, 2012 (1 count) and sentenced as stated above in Paragraph No.3(xiii).

(ii) Similarly, A13-Amutha was charged for the offences under Sections 366-A of the IPC (2 counts), 372 of the IPC (2 counts), 342 of the IPC (2 counts) and Section 6 r/w 17 of the POCSO Act, 2012 (2 counts), he was convicted by the trial Court for the offences under Sections 366-A of the IPC (1 count), 372 of the IPC (1 count), 342 of the IPC (1 count) and Section 6 r/w 17 of the POCSO Act, 2012 (1 count) and sentenced as stated above in Paragraph No.3(xiii).

(iii) According to the prosecution, A12 and A13 are husband and wife, respectively. It is the prosecution case that PW9 was taken by A12 to Salem and that there she was subjected to penetrative sexual assaults by



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A12 and also by others at the instance of A12. It is also the evidence of PW9 that A13 was present in the house. PW9's version is that A12 thereafter took them to a place at Kovianoor to the house of A7 and that she called A1 and told him that they were not willing to stay in the said house and thereafter, A1 picked them up in a car that was driven by A5. Both the victims had identified A12 in their deposition.

(iv) Though it is the version of PW2 that she was not taken to A12's house, she identified A12 as the person, who took PW9. It is seen from the evidence of the investigating officers that the victims had stated about the involvement of A12 in their statements made to the police and in their Section 164 Cr.P.C., statements. The cross examination on behalf of A12 has not discredited the evidence of victims as regards his involvement in the offence of Sections 366-A, 342 and Section 6 r/w 17 of the POSCO Act (1 count). However, the offence under Section 372 of the IPC is not made out as against A12. ***Accordingly, A12 is convicted for the offences under***





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***Sections 366-A [1 count], 342 of the IPC [1 count] and Section 6 r/w  
Section 17 of the POCSO Act [1 count].***

(v) However, in the case of A13, it is seen that PW2 also had identified A13, during her deposition, although, as per the prosecution case, PW2 had no occasion to meet A13. Though PW9 had identified A13 as a person who was in the house when A12 took her to Salem, we find that in none of her earlier statements, the involvement of A13 was mentioned. PW53 in the extracted portion referred to above had admitted that there is no reference to A13 in the Section 164 Cr.P.C., statements of the victim. Further PW51 and PW53 had also stated that during their examination, the victims had not referred to the involvement of A13. In such circumstances, we are of the view that A13 cannot be convicted on the basis of such evidence. ***Hence, A13 is acquitted of all charges.***

**20. A14-Mohanraj @ Mohan and A15-Mathivanan [Crl.A.No.47 of  
2019]**



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WEB COPY (i) A14-Mohanraj @ Mohan was charged for the offence under Section 6 of the POCSO Act, 2012 (2 counts). He is convicted by the trial Court for the said charge and sentenced as stated above in Paragraph No.3(xiii).

(ii) Similarly, A15-Mathivanan was charged for the offence under Section 6 of the POCSO Act, 2012 (2 counts). He is convicted by the trial Court for the said charge and sentenced as stated above in Paragraph No.3(xiii).

(iii) As regards the involvement of A14 and A15, who stand on the same footing and were convicted for the offence under Section 6 of the POCSO Act (2 counts), we find that even according to the prosecution, they were not involved in the occurrence after June 2014. Both these accused were identified during the Test Identification Parade by both the victims. The victims had identified these two accused during their examination in



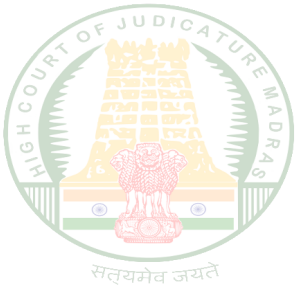
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Court as well. However, it has to be seen whether the evidence of the victims, as regards the involvement of A14 and A15, inspires confidence.

(iv) The charge No.5 relates to the offence of aggravated penetrative sexual assault. Charge No.5 framed against A14 and A15 along with five other accused, suggests that they had committed penetrative sexual assaults on PW1 and PW2 during June 2014. The prosecution case is that A14 and A14 were involved only in the occurrences that is said to have taken place in the months of January and February 2014. As stated earlier, even though the non-framing of the charge of penetrative sexual assault during the months of January and February would not be fatal to the prosecution in the facts of this case, we have to examine if the allegation against A14 and A15 can be believed.

(v) It is the case of the prosecution that when the victims returned to their respective homes in February 2014 after they went missing in January 2014, the complaints in CSR Nos.34 and 35 of 2014, were closed. It



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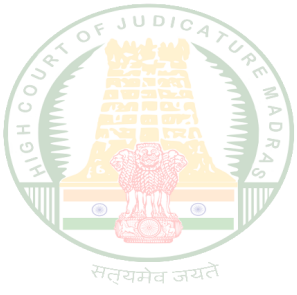
therefore has to be presumed that the victims did not complain about penetrative sexual assaults that had taken place in January and February 2014 at that point in time. It is also the admitted case of the prosecution that both A14 and A15 were not involved in the occurrences that took place from June to August 2014. The doctor's evidence PW45 would also state that the victims stated that they were subjected to penetrative sexual assaults from 08.06.2014 onwards. The relevant portion reads as follows:

“14வது, 15வது மற்றும் 17வது எதிரி தாப்பில்

குறுக்குவிசாரணை:

சிறுமிகள் இருவரும் 8.6.14 முதல்  
தொடர்ச்சியாக பல நபர்களால் பாலியல்  
தாக்குதலுக்கு உள்ளாக்கப்பட்டதாக குறிப்பிட்டு  
சொல்லியுள்ளார்கள் என்றால் சரிதான்.”

(vi) PW55's evidence as regards the contradiction in the statements of PW1 and the victims as to the occurrences in January 2014 also would make it highly unsafe to believe the testimony of the victims as regards the



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involvement of A14 and A15. The relevant portion of the evidence of PW55 in that regard reads as follows:

“8.6.2014க்கு முன்பு சிறுமிகள் காணாமல் போய் திரும்பி வந்தபோது தங்கள் தோழிகள் வீட்டுக்கு போய்விட்டு வந்ததாக அசா1 என்னிடம் கொடுத்த வாக்குமூலத்தில் சொல்லியுள்ளார் என்றால் சரிதான். அசா2 மற்றும் 9 என்னிடம் கொடுத்த வாக்குமூலத்தில் சம்பவங்கள் குறித்தும், தங்களுக்கு என்ன நடந்தது என்பது குறித்தும் தங்கள் பெற்றோரிடமும் தங்கள் பாட்டியிடமும் சொன்னதாக உள்ளது என்றால் சரிதான்.”

(vii) Further, PW51 had confirmed this fact in her deposition.

“நான் பதிவு செய்த வாக்குமூலங்களில் அசா2 மற்றும் 9 ஆகியோர் 5,8,9,10,13,14,15 மற்றும் 18 ஆகியோர்கள் பெயர்களை சொல்லவில்லை என்றால் சரிதான்.”

(viii) The delay in reporting would not be fatal in all cases. But in the light of the nature of the evidence let in by the prosecution and in view of the evidence of the investigating officer and the fact that the complaints were closed after the victims returned to their respective houses in February 2014,



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we are of the view that the accused would be entitled to the benefit of doubt.

***Accordingly, A14 and 15 are acquitted of all charges levelled against them.***

**21. A16-Selvaraj @ Anbu [Crl.A.No.376 of 2019]**

(i) Though A16-Selvaraj @ Anbu was charged for the offences under Sections 366-A of the IPC (2 counts), 342 of the IPC (2 counts), 372 of the IPC (2 counts) and Section 6 of the POCSO Act and Section 6 r/w 17 of the POCSO Act, 2012 (2 counts), he was convicted by the trial Court for the offences under Sections 366-A of the IPC (2 counts), 372 of the IPC (2 counts) and Section 6 of the POCSO Act (1 count) and Section 6 r/w 17 of the POCSO Act, 2012 (2 counts) and sentenced as stated above in Paragraph No.3(xiii).

(ii) A16 was running a TV Mechanic shop and according to PW2, the victims were taken to A16's shop, where A16 is said to have had a discussion with the other accused. Subsequently, A1 had taken the victims



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to a cashew-nut grove, where she was subjected to penetrative sexual assault by one Satish Kumar[A1].

(iii) Therefore, the prosecution suggests that A16 was involved in the offence of abetment of penetrative sexual assaults. However, PW9 in her deposition, would state that when the victims were at A2's house, both A16 and A18 had penetrative sexual assaults, which is contrary to the evidence of PW2. It is also not clear as to how A16 had abetted the commitment of penetrative sexual assault by anybody else. A16 was not identified by the victims during the investigation. It is also admitted by the investigating officer, PW53 that the involvement of A16 was not stated by the victims to her, during the investigation or in their Section 164 Cr.P.C., statements. We have extracted the relevant portion in the earlier part of the judgment.

(iv) In the light of the above contradictions in the evidence of PW2 and PW9 and the evidence of the investigating officer, we are of the view that the prosecution case against A16, who was aged about 61 years at the



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time of occurrence, has not been established. ***Hence, A16 is acquitted of all charges levelled against him.***

**22. A17-Anantharaj @ Tower [Crl.A.No.529 of 2019]**

(i) Though, A17-Anantharaj @ Tower was charged for the offences under Sections 366, 366A (2 counts), 372 (2 counts) and 342 (2 counts) of the IPC and Section 6 and Section 6 r/w 17 of the POCSO Act, 2012 (2 counts), he was convicted by the trial Court for the offence under Sections 366 of IPC (1 count) and Section 6 (2 counts) and Section 6 r/w 17 of the POCSO Act, 2012 (2 counts) and sentenced as stated above in Paragraph No.3(xiii).

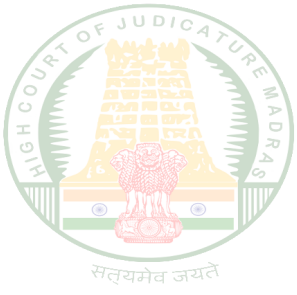
(ii) It is the case of the prosecution that during Pongal 2014, PW2 saw A3 in a compromising position with A17 and thereafter, she forced PW2 to have sexual intercourse with A17.





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WEB COPY (iii) As regards the involvement of A17, PW2 would state that he had committed penetrative sexual assaults by taking her to several places. The reasons assigned by us for acquitting A14 and A15 would also apply to A17 as the victims PW9 and PW2 have both admitted that A17 was not involved in any acts after 08.06.2014. The doctor as stated earlier has stated that the victims complained of sexual assaults only after 08.06.2014. Further, the evidence suggests that the identification of A17 by PW2 in Court is also doubtful. There is no evidence of Section 342 and 366-A or 372 also as against A17. ***Hence, A17 is entitled to the benefit of doubt and is acquitted of all charges levelled against him.***



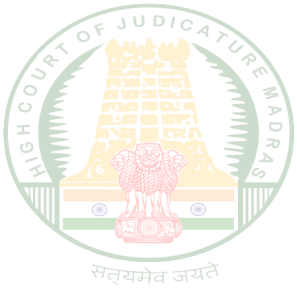
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**23. A18-Balasubramanian @ Balu [Crl.A.No.312 of 2019]**

(i) Though A18-Balasubramanian @ Balu was charged for the offences under Sections 372 of the IPC (2 counts), 342 of the IPC (2 counts) and Section 6 of the POCSO Act (2 counts) and Section 6 r/w 17 of the POCSO Act, 2012 (2 counts), he was convicted by the trial Court for offences under Sections 372 of the IPC (2 counts) and Section 6 of the POCSO Act (2 counts) and Section 6 r/w 17 of the POCSO Act, 2012 (2 counts) and sentenced as stated above in Paragraph No.3(xiii).

(ii) It is the case of the prosecution that A18's involvement was not revealed by the victims during the investigation conducted by PW51 and PW53. His name was revealed for the first time during the investigation by the CBCID. PW51 had confirmed this fact in her deposition.

“நான் பதிவு செய்த வாக்குமூலங்களில் அசா2 மற்றும் 9 ஆகியோர் 5,8,9,10,13,14,15 மற்றும் 18 ஆகியோர்கள் பெயர்களை சொல்லவில்லை என்றால் சரிதான்.”



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WEB COPY (iii) The cross examination of PW55 would also suggest that there is no evidence that A18 was called as 'Ration Shop Balu' and that there is no evidence that he was working in a Ration Shop. Further, PW9 would state that A18 had not committed any penetrative sexual assault. PW9 had accepted that she had not stated about the involvement of A18 in any of her earlier versions and for the first time she had stated before the CBCID officer. A18's involvement was not stated by the victims in the statement before the Magistrate, as admitted by PW53 in the cross examination. The relevant portion reads as follows:

“18வது எதிரி ரேஷன் கடையில் பணிபுரிகிறார் என்று காட்டுவதற்கு ஏதாவது ஆதாரம் உள்ளதா என்றால் இல்லை. அவர் தான் ரேஷன் கடை பாலு என்பதற்கும் ஆதாரங்கள் எதுவும் தாக்கல் செய்யவில்லை என்றால் சரிதான். அசா2 மற்றும் 9, 13.8.2014 அன்று நடுவரிடம் கொடுத்த வாக்கீஸ்லத்தில் 18வது எதிரியை பற்றி சொல்லவில்லை என்றால் சரிதான்.”

(iv) Further, we also find that PW2 has also not stated that A18 had committed the penetrative sexual assault. She would only refer to the presence of A18 at the shop of A16.



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(v) In the light of the above facts, we are of the view that A18's involvement has not been established as regards any of the offences charged and convicted by the trial Court. ***Hence, A18, is entitled to the benefit of doubt and therefore, is acquitted of all the charges.***

24. In the light of the above evidence and in view of the serious nature and the extreme penalty involved in the offences under the POCSO Act, it would be desirable to convict the accused only if the evidence is unimpeachable. All the accused have been in custody for more than six years. Considering the infirmities in the evidence, we have given benefit of doubt to some of the accused.

25. As stated earlier, when the victims first returned to their homes, in February 2014, there was no complaint of illegal detention or penetrative sexual assaults. Even after the second phase of occurrences, the victims had not informed the doctor about the penetrative sexual assaults committed



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prior to 08.06.2014. In such circumstances, it would be highly unsafe to rely on the testimony of the accused in the occurrences that happened in the months of January and February 2014.

26. To sum up,

(i) As regards A4, A9 to A11 and A13 to A19, we hold that they are not guilty of the offences levelled against them and the conviction and sentence imposed upon the aforesaid accused in Spl.S.C.No.20 of 2018 dated 07.01.2019, on the file of the learned Sessions Judge, Mahila Court, Cuddalore, are set aside. The appellants/A4, A9 to A11 and A13 to A19, are acquitted of all the charges and directed to be released forthwith, unless their presence is required in connection with any other case. The fine amounts, if any, paid by the appellants shall be refunded. Bail bonds, if any, executed shall stand discharged.

**(ii) Conviction and Sentence against A2, A3, A7 and A12:**

**(a) For A2, A3 and A12:**



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**WEB COPY** (a) (i) A2 and A3 are held guilty of all the four offences levelled against them and are convicted for all the aforesaid four offences. A12 is guilty of the offences under Section 366-A of the IPC (1 count), Section 342 of the IPC (1 count) and Section 6 r/w 17 of the POCSO Act (1 count).

(ii) This is an unfortunate case where the victims were lured to commercial sex trade due to extreme poverty. PW9 lost her parents and was brought up by her grandmother-PW3. PW2 lost her mother and was brought up by her father-PW1. The evidence suggests that a lack of family love and poverty have driven these poor victims to commercial sex activity. We are of the view that the evidence of the victims, as regards the occurrences that had taken place in January and February 2014, has to be approached cautiously in the light of their original versions, contrary to their present deposition in Court.

(iii) In the light of our earlier findings and observations, we are inclined to confirm the sentence imposed by the trial Court on A2, A3 and



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A12, for the offences under Sections 366-A, 372 and 342 IPC. As regards the offence under Section 6 read with Section 17 of the POCSO Act, we are of the view that the ends of justice would be met by imposing a minimum sentence of 10 years RI with a fine of Rs.50,000/- and in default to undergo three months SI. While doing so, we have taken into consideration, the nature of the offence, the circumstances of the accused, the nature of the evidence let in by the prosecution, the prevaricating statements of the victims, the fact that the offence is of the year 2014 and there is reasonable probability of reformation of the appellants in view of the long period of incarceration. The facts and circumstances of the case do not warrant imposition of maximum sentence. In this regard, we may usefully refer to the observation of the Hon'ble Supreme Court in ***Swamy Shraddananda Vs. State of Karnataka*** reported in ***(2007) 12 SCC 288***, had held as follows:-

*“66. There is a clear and discernible necessity of caution to set the maximum punishment in an offence. And also by implication there must be intensive and exhaustive inquiry into accused-related parameters before employing the maximum sentence*



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*by a court of law. Therefore, discretion to the judiciary in this respect (to declare the maximum punishment) is of utmost critical and seminal value. Reasons must be detailed setting clearly why any punishment other than the maximum punishment will not suffice. This is a general and age-old rule of sentencing which has been statutorily recognised under Section 354(3).”*

(iv) Accordingly, the sentence imposed upon A2 and A3/Appellants in Crl.A.No.734 of 2024 and A12/Appellant in Crl.A.No.441 of 2021 in S.C.No.20 of 2018 dated 07.01.2019 on the file of the learned Sessions Judge, Mahila Court, Cuddalore, is modified as follows:

<b>Accused No.</b>	<b>Offence under</b>	<b>Sentence now modified</b>
A2 & A3	366-A IPC (2 counts)	Each of them to undergo RI for 10 years and to pay a fine of Rs.10,000/-, in default to undergo SI for two years, for each count.
	372 IPC (2 counts)	Each of them to undergo RI for 10 years and to pay a fine of Rs.10,000/-, in default to undergo SI for two years, for each count.
	342 IPC (2 counts)	Each of them to undergo RI for 1 year and to pay a fine of Rs.1,000/-, in default to undergo SI for 3 months, for each count.
	6 r/w 17 of POCSO Act	Each of them to undergo RI for 10 years and to pay a fine of Rs.50,000/-, in default to undergo SI for 3 months, for each count.





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<b>Accused No.</b>	<b>Offence under</b>	<b>Sentence now modified</b>
	(2 counts)	

A12	366-A IPC	To undergo RI for 10 years and to pay a fine of Rs.10,000/-, in default to undergo SI for 2 years.
	372 IPC	To undergo RI for 10 year and to pay a fine of Rs.10,000/-, in default to undergo SI for 2 years.
	342 IPC	To undergo RI for 1 year and to pay a fine of Rs.1000/-, in default to undergo SI for 3 months.
	6 r/w 17 of POCSO Act	To undergo RI for 10 years and to pay a fine of Rs.50,000/-, in default to undergo SI for 3 months.

The sentences imposed on A2, A3 and A12 are ordered to run concurrently;

The period of sentence already undergone by A2, A3 and 12 shall be set off under Section 428 Cr.P.C.; and

The excess fine amount, if any paid by them, shall be refunded.

(b) As regards A7, there is no evidence of she having committed the offence under Section 372 of the IPC and under Section 6 r/w 17 of the POCSO Act. She is acquitted of the charges under these two provisions. A7 has been in custody for a period of nearly 5 years and 9 months. A7 is convicted for the offence under Sections 366-A and 342 of the IPC. She is sentenced as follows:



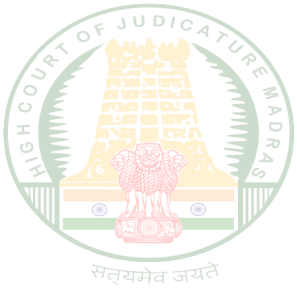
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<b><i>Accused No.</i></b>	<b><i>Offence under</i></b>	<b><i>Sentence now modified</i></b>
A7	366-A IPC	To imprisonment for period already undergone and to pay a fine of Rs.10,000/-, in default to undergo SI for 3 months.
	342 IPC	To undergo RI for 1 year and to pay a fine of Rs.1,000/-, in default to undergo SI for 3 months.
The sentences are ordered to run concurrently; and		
The period of sentence already undergone by A7 shall be set off under Section 428 Cr.P.C.		

27. Considering the nature of the gravity of the offences suffered by the victims, we deem it appropriate to award a compensation of Rs.3,00,000/- each to PW2 and PW9, in addition to the compensation already received by them, if any. The said compensation shall be paid by the State from the Tamil Nadu Child Victims Compensation Fund established under the POCSO Act, or any other Scheme.

28. In the result, the Criminal Appeals filed by A4, A9 to A11 and A13 to A19 in Crl.A.Nos.47, 137, 283, 312, 376, 529, 617 and 65 of 2019, 356 of 2021 and 822 of 2023, are allowed. The Criminal Appeals filed by A2, A3, A7 and A12 in Crl.A.Nos.734 of 2024 & 59 of 2019 and 441 of



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2021, stand partly allowed. Consequently, the connected Criminal  
Miscellaneous Petition, is closed.

**(M.S.R., J.) (S.M., J.)**  
**16.07.2024**

Index: Yes/No  
Speaking/Non-speaking order  
Neutral Citation: Yes/No.  
ars

To

1. The Sessions Judge,  
Mahila Court, Cuddalore.
2. The Inspector of Police (Law and Order),  
The Dy. Superintendent of Police,  
CBCID, Cuddalore.
3. The Superintendent of Prisons,  
Central Prison, Cuddalore.
4. The Superintendent of Prisons,  
Central Prison, Vellore.
5. The Superintendent of Prisons,  
Special Prison for Women, Vellore.



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6. The Superintendent of Prisons,  
Special Prison for Women, Puzhal, Chennai.

7. The Public Prosecutor,  
High Court of Madras,  
Chennai 600 104.



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822 of 2023 and 734 of 2024

**M.S.RAMESH, J.**  
and  
**SUNDER MOHAN, J.**

ars/dk

Pre-delivery Common judgment in  
Crl.A.Nos.47, 137, 283, 312, 376, 529, 59,  
617 & 65 of 2019, 356 & 441 of 2021,  
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16.07.2024