

**IN THE COURT OF THE SESSIONS JUDGE, MAGALIR NEETHIMANDRAM
(MAHILA COURT), COIMBATORE.**

**Present: Thiru.A.Manimozhi, B.A., LL.B.,
Sessions Judge**

Tuesday the 25th day of July 2017
Hevilambi Varudam 9th day of Aadi Thingal

Special C.C No.32/2015

(All Women Police Station, Coimbatore (West). Cr.No.02/2015)

1. Complainant	:	State by the Inspector of Police, All Women Police Station (West), Coimbatore City.
2. Name of the accused	:	Senthilkumar (25/2015), S/o. Moorthi, Thiyagi Sivaram Nagar, Sungam Bye Pass, Coimbatore.
3. Charge framed	:	u/s.366 IPC, Section 9 of Prevention of Child Marriage Act and 3 (a) r/w 4 of Protection of Children from Sexual Offences Act-2012.
4. Plea of the accused	:	Accused pleaded not guilty u/s.366 IPC, Section 9 of Prevention of Chil Marriage Act and 3 (a) r/w 4 of Protection of Children from Sexual Offences Act-2012.
5. Findings of the court	:	Accused found guilty u/s.366 IPC and 3 (a) r/w 4 of Protection of Children from Sexual Offences Act-2012, and not found guilty u/s. 9 of Prevention of Child Marriage Act.
6. Sentence or order	:	In the result, since the accused found guilty u/s.366 IPC and 3 (a) r/w 4 of Protection of Children from Sexual Offences Act-2012, he

	is convicted and sentenced to undergo FIVE YEARS Rigorous Imprisonment and to pay fine of Rs.3,000/- in default sentenced to undergo THREE MONTHS Simple Imprisonment for the charge u/s. 366 IPC, and further convicted and sentenced to undergo TEN YEARS Rigorous Imprisonment and to pay fine of Rs.3,000/- in default sentenced to undergo THREE MONTHS Simple Imprisonment for the charge u/s.3 (a) r/w 4 of POCSO Act-2012. The above sentences are ordered to run concurrently. Detention period already undergone by accused, is ordered to be set off u/s.428 Cr.P.C. [Total Fine Amount Rs.6,000/-]. The accused is not found guilty u/s.9 of Prevention of Child Marriage Act and he is Acquitted u/s. 235(1) Cr.P.C, from the above charge. The victim girl was aged 15 years and accused subjected her to penetrative sexual assault. The occurrence would have considerably affected the victim both mentally and physically. Hence considering the gravity of the offence and the poor situation of the victim, a sum of Rs.50,000/- is recommended as compensation under Rule 7 (2) of POCSO Rules 2012 and State Government is to pay the above said amount of compensation either from the victim compensation fund or from
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		the any other scheme within 30 days from the receipt of this order and the said amount shall be deposited in any Nationalized Bank in the name of the victim P.W-2 represented by the Natural Guardian her mother, till she attains majority. This court office is directed to forward a copy of Judgment to the District Collector, Coimbatore for taking necessary steps to award the compensation amount to the victim and also forward a copy of Judgment to District Legal Services Authority, Coimbatore for follow up action. There is no case properties produced in this case.
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This case is coming before me for final hearing on 11-07-2017 and upon hearing the arguments of Tmt.R.Sarojini, Special Public Prosecutor for the State and upon hearing the arguments of Thiru.N.Hariprasad, Advocate appearing for the accused and upon perusing the records and having stood over for consideration till this date, this court is delivering the following;

JUDGEMENT

The case of prosecution:

1. (a) The defacto complainant Kanchana @ Santhi is the wife of Murugan. Due to mis-understanding they are living separately. Their younger daughter by name XXXX (Name hidden) aged 15 years, was residing with the complainant

and she was 8th standard drop-out. She is the victim in this case. Six months prior to 17.02.2015, during Amman Temple Festival, the victim and the accused Senthilkumar got acquainted and they started loving each other. While so, on 17.02.2015 the accused contacted the victim over phone and induced her to come out of her home to get married and at 08.00 p.m she came to Townhall, and he kidnapped her to Palani and married her on the same night by tying Thali at the Vinayagar Temple situated on the foot-hill of Palani Temple and returned to his sister's house situated at Sivaram Nagar, Sungam, Coimbatore on 18.02.2015 and stayed along with victim and has forcibly had sexual intercourse with the victim against her wish.

1. (b) Therefore, on the complaint by the complaint, the Inspector of Police, All Women Police Station(West), Coimbatore has laid charge sheet against the accused u/s.366 IPC, and Section 3(a) r/w 4 of POCSO Act-2012.

2. On appearance of the accused before this court, copies furnished to him u/s.207 Cr.P.C at free of cost and the entire case records perused, proceedings u/s.226 Cr.P.C heard, and upon hearing both side, since the prima facie case made out by prosecution, charges framed u/s. 366 IPC, Section 9 of Prevention of Child Marriage Act and 3 (a) r/w 4 of Protection of Children from Sexual Offences Act-2012 against the accused, reduced into writing, explained to him in Tamil and questioned, and after having understood the charges, accused denied the charge as false and pleaded not guilty.

3. In order to prove the prosecution case, the prosecution has cited totally 22 witnesses, out of which PW-1 to PW-17 have been examined and Ex.P-1 to Ex.P-15 have been marked. No material object was marked by the prosecution.

The case of the prosecution in brief from the evidence of the prosecution witnesses, is as follows:

4. P.W-1 Kanchana @ Santhi is the wife of Murugan. They have three sons and one daughter. P.W-1 and her husband are residing separately due to some mis-understanding between them. P.W-3 Mohan, one of their son is residing along with his father in Perur Chettipalayam. Other two sons and daughter P.W-2 the victim here in, are residing along with P.W-1 in Rathinam Street, Five Corner, Coimbatore. P.W-3 Mohan and P.W-8 Ananth are brothers of P.W-2. P.W-9 Tmt.Jeyalakshmi is the sister of P.W-1. P.W-13 Tmt.Priya is the sister of the accused and P.W-7 Suresh is the brother-in-law of the accused. P.W-7, P.W-13 and the accused are residing in Sivaram Nagar, Sungam byepass, Coimbatore. P.W-6 Thangavelu is the House-owner of P.W-13.

5. After completing 8th standard P.W-2 discontinued her education and was staying in the house along with P.W-1. Her age was 15 years at that time. On 17.02.2015 P.W-1 had gone for work. P.W-3 came to the house of P.W-1 to see her. At about 08.00 p.m his sister P.W-2 left the house for shopping. She did not return even after 09.30 p.m. P.W-1 and P.W-8 returned home at 09.30 p.m after finishing their work. They all enquired the neighbours. They could not get any information. They

thought that P.W-2 would have gone to temple as the day was Sivarathiri. So they did not take any further action. P.W-2 did not return home on the next day also. On further enquiry, P.W-1, P.W-3, P.W-8 and P.W-9 came to know about the love affair between P.W-2 and the accused. A known person told P.W-1 that he had seen P.W-2 and the accused chatting together near the Townhall. So they went to the house to accused and enquired with his mother and sister. They did not give proper reply. In the mean time, on the night of 18.02.2015 P.W-2 contacted P.W-1 over phone and informed that the accused married her at Palani. P.W-1 asked both of them to return to her house. P.W-1 also filed a Complaint Ex.P-1 in the police station. The accused and P.W-2 came to the police station on 19.02.2015. At that time, on enquiry P.W-2 informed P.W-1 about the forcefull sexual contact committed by the accused upon her.

6. P.W-13 the sister of accused, when P.W-1 came to her house in search of her daughter, joined with P.W-1 and searched for P.W-2. P.W-13 found P.W-2 in her father's house. She took P.W-2 to the police station, despite this, P.W-1 filed Complaint against them.

7. P.W-2 the victim got acquainted with the accused in the year 2014 during the Amman Temple Festival. Initially they behaved as friends and latter they started loving each other.

8. Her parents on coming to know about this affair warned P.W-2. She informed the same to the accused over phone on 17.02.2015. The accused told her that they would enter into a marriage and asked her to come to Townhall. P.W-2 by informing her brother that she is going for shopping, left the house and went to Townhall at about

08.00 p.m. The accused was waiting there. Both proceeded to Palani and on the same day night the accused tied Thali on P.W-2 at the foot-hill of Palani Murugan Temple. They spent the night in the bus stand. Next day early morning they returned Coimbatore and proceeded to the house of P.W-13. On the night, the accused has forcibly had sexual intercourse with P.W-2 by saying that they got married and no one could separate them. P.W-2 informed about these things to P.W-1 on the same night over phone. P.W-2 gave a statement before the learned Judicial Magistrate, which is Ex.P-2.

9. P.W-16 Tmt.Mekala, Sub Inspector of Police on 19.02.2015 received the complaint from P.W-1 in the All Women Police Station (West), Coimbatore and registered a case and prepared Ex.P-4 First Information Report.

10. P.W-17 Tmt.Manickam, then Inspector of Police, All Women Police Station (West), Coimbatore received the copy of First Information Report on 19.02.2015 and took up the case for investigation and examined P.W-1 and P.W-2 in the station and recorded their statements. Then she examined the accused who was also present in the police station. The accused voluntarily gave a confession statement in the presence of P.W-4 Sivakumar and P.W-5 Udayakumar. P.W-17 recorded the same and arrested the accused at 07.00 p.m. The signatures of P.W-4 and P.W-5 in the confession statement are Ex.P-3 and Ex.P-4 respectively. Then P.W-17 visited the place of occurrence at 09.00 p.m and prepared Ex.P-5 Observation Mahazar and Ex.P-15 Rough Sketch in the presence of P.W-6 Thangavelu and P.W-7 Suresh. Then she sent the victim for medical examination and she sent the accused for judicial custody.

11. P.W-10 Doctor.Nandhini, on 19.02.2015 at 10.30 p.m at the C.M.C Hospital, Coimbatore, examined P.W-2 and issued Ex.P-6 Accident Register Copy.

12. P.W-12 Mr.Ravi, the Head Master of corporation Higher Secondary School, Coimbatore, on 19.02.2015, at the request of the police, issued Ex.P-9 (Series), the Bonafied Certificate and Xerox copy of Transfer Certificate of P.W-2 stating that her date of birth is 08.09.1999.

13. P.W-17 examined the witnesses and sent requisition letters for recording the statement of victim, for conducting the Radiology Test for the victim and for the medical examination of the victim.

14. On 27.02.2015 P.W-14 Tmt.Deepa, then learned Judicial Magistrate recorded the statement of P.W-2 in the Additional Mahila Court, Coimbatore and the proceedings were recorded by Audio and Video equipments. Ex.P-10 is the file containing the proceedings of recording the statement of P.W-2. Ex.P-11 Series is the Compact Discs.

15. P.W-15 Doctor.Pandeeswaran, on 07.03.2015 at C.M.C. Hospital, Coimbatore, examined Senthilkumar and issued Ex.P-13 Potency Test Certificate. Ex.P-12 is the Requisition letter to conduct the medical examination.

16. P.W-11 Doctor.Senthilkumar on 07.03.2015 conducted Radiology Test for P.W-2 and issued Radiology Test Report Ex.P-8. Ex.P-7 is the requisition letter for the test.

17. Continuing with the investigation, P.W-17 the Inspector of Police examined the above Doctors, Photographer and other Police Officials and the Head Master and recorded their statements. With this she completed investigation and laid charges sheet against the accused u/s.366 (A) IPC and 3 (a) r/w 4 of POCSO Act-2012.

18. With the above witnesses, the prosecution closed the prosecution side evidence. P.W-4 and P.W-13 were treated as hostile by prosecution.

19. The incriminating portions of the prosecution side evidence have been highlighted, reduced in to writing, typed in the form of questions, explained to the accused and questioned as it is required u/s. 313(1)(b) Cr.P.C and the accused having understood, denied the evidences as false and reported that he has defence witness. But he has not examined any witness and produced any document. Later he endorsed no witness on his side and hence defence side evidence was closed.

POINT:

20. Upon Careful consideration of the evidence and materials on record, the following points arise for consideration,

1. Whether the victim was a child as per the definition u/s. 2(d) of the POCSO Act 2012?

2. Whether the accused person committed kidnap, marriage and penetrative sexual assault upon the victim child P.W-2, and whether the charges against the accused u/s.366 IPC, 9 of Prevention of child marriage Act and 3 (a) r/w 4 of Protection of Children from Sexual Offences Act-2012 has been proved by the prosecution?

ARGUMENTS:

21. The learned Special Public Prosecutor would contend that, the evidence of P.W-2 the victim child is clear and sufficient to prove the occurrence; the evidence of P.W-10 Doctor. Nanthini supports the case of prosecution; P.W-1 the mother of the victim has filed the complaint in the police station, the hearsay evidences of P.W-1, P.W-3, P.W-8 and P.W-9 are corroborative with each other; the accused, taking advantage of close acquaintance, kidnapped and committed penetrative sexual assault upon P.W-2 and all these aspects have been clearly proved by prosecution and the charges against the accused has been proved beyond reasonable doubt and as such she prayed to convict the accused suitably, considering the serious nature and gravity of the offence.

22. The learned counsel for the accused filed a written arguments and submitted that the accused is innocent, that the victim because of love and affection went to her father's residence which is at Perur, that the accused did not take her to Palani, that the material witnesses Murugan the husband of P.W-1 and

the Customer who allegedly had seen the accused and P.W-2 together at the Townhall, were not examined by the police, that the age of the victim has not been proved, that the medical evidence does not support the prosecution case and that there are very many material contradictions in the evidence of prosecution witnesses. As such the learned counsel contended that the prosecution has miserably failed to prove the charges against the accused and so he prayed for the acquittal of the accused.

DECISION AND REASON FOR DECISION:

23. Arguments on both sides heard. In order to appreciate the merit of rival contention in a right perspective it is necessary to advert to the evidence on record which has been thoroughly discussed.

ANALYSIS OF EVIDENCE:

Point No.I

24. As per section 2 (d) of the POCSO Act 2012 it is defined, 'child' means any person below the age of 18 years.

25. According to the prosecution, the age of victim P.W-2 was 15 years at the time of occurrence which is allegedly taken place on 17.02.2015 and 18.02.2015. P.W-12 the Head Master has issued Ex.P-9 (series) - Bonafide Certificate and xerox copy of Transfer Certificate of P.W-2, in which her date of birth has been mentioned as 08.09.1999. Further P.W-11 Doctor (Radiologist)

has issued Ex.P-8 Radiology Test Report with his opinion that P.W-2 was above 16 years of age and below 18 years of age at the time of his examination ie., on 07.03.2015. The perusal of above evidences would go to show that the age of the victim P.W-2, at the time of occurrence, would be only 15 years. This fact is not disproved by the defence by any material evidence. There is no evidence to show that the victim has completed 18 years at the time of occurrence. So the contention by the defence that the age of P.W-2 has not been proved by the prosecution, is not acceptable. Therefore this court finds no merits in the contention of the defence. Considering the evidence on record, this court holds that at the time of occurrence the victim girl P.W-2 was a child within the meaning of section 2 (d) of the POCSO Act 2012. Accordingly Point No.I is answered.

Point No.II

26. The accused is charged for the offences u/s.366 IPC, 9 of Prevention of Child Marriage Act and 3 (a) r/w 4 of Protection of Children from Sexual Offences Act-2012. It is now to be considered whether the accused had committed penetrative sexual assault upon P.W-2 or rape is established from the evidence on record. Penetrative sexual assault is defined u/s.3 of POCSO Act 2012 as:-

- (a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or

- (b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or
- (c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or
- (d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.

27. The aforesaid definition is in pari materia with the amended definition of rape u/s.375 IPC except that section 3 is gender neutral and confined to child victim as defined u/s.2 (d) (below 18 years) and additionally, the circumstances, explanation and exceptions mentioned in section 375 IPC are not to be found in section 3 of POCSO Act 2012. But Section 30 of POCSO Act 2012 provides for presumption of culpable mental state of the accused 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.

28. Further Section 29 of POCSO Act reads as follows:

Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3,5,7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.

WEB COPY

29. There is no serious dispute about the fact that the accused and P.W-2 are already known to each other and P.W-2 have also had acquaintance with the family of the accused. According to prosecution the accused on the fateful day, enticed and kidnapped P.W-2, got married her and committed penetrative sexual assault upon her.

30. In this regard the evidence of P.W-2 the victim is as follows:-

.....என் வீட்டிற்கு அருகில் உள்ள அம்மன் கோவிலில் 2014-ம் ஆண்டு திருவிழா நடந்தபோது எதிரி செந்தில்குமார் அங்கு வந்தபோது அவருக்கும் எனக்கும் பழக்கம் ஏற்பட்டது. முதலில் நாங்கள் இருவரும் நண்பர்களாக பழகி வந்தோம். பின்னிட்டு இருவரும் காதலிக்க ஆரம்பித்தோம். இந்த விசயம் என் பெற்றோருக்கு தெரிய வந்து அவர்கள் என்னை

எதிரியுடன் பேசக்கூடாது என்று கண்டித்தார்கள். நான் அது குறித்து எதிரியிடம் நான் 17.02.2015-ம் தேதியன்று போன் மூலம் தகவல் சொன்னேன். உடனே எதிரி நாம் இருவரும் திருமணம் செய்துகொள்ளலாம் என்று என்னை கோவை டவுன்ஹால் அருகில் வந்துவிடும்படி சொன்னார். நான் வீட்டில் இருந்த என் அண்ணனிடம் கடைக்கு போவதாக கூறிவிட்டு டவுன்ஹாலுக்கு வந்தேன். அப்போது இரவு சுமார் 08.00 மணியிருக்கும். டவுன்ஹால் பஸ் ஸ்டேண்டில் எதிரி இருந்தார். நானும் எதிரியும் அங்கிருந்து புறப்பட்டு உக்கடம் பஸ் ஸ்டேண்டிற்கு சென்று பழனிக்கு சென்றோம். பழனிமலை அடிவாரத்தில் வைத்து 17.02.2015-ம் தேதியன்று இரவே எனக்கு எதிரி தாலி கட்டினார். அங்கு யாரையும் எங்களுக்கு தெரியாததால் பழனி பஸ் ஸ்டேண்டிலேயே இருந்தோம். அடுத்த நாள் 18.02.2015-ம் தேதி காலை அங்கிருந்து புறப்பட்டு கோவை சுங்கம் பைபாஸ் ரோடுக்கு அருகில் உள்ள எதிரியின் தங்கை ப்ரியா என்பவர் வீட்டிற்கு சென்றோம். அன்று இரவு எதிரி என்னிடம் நாம் இருவரும் திருமணம் செய்து கொண்டதால் இருவரையும் யாரும் பிரிக்கமாட்டார்கள் என்றும் எனவே உடலுறவு கொள்ளலாம் என கூறி என்னுடன் உடலுறவு கொண்டார். எதிரியை நான் தடுத்தும் அவர் என்னை கட்டாயப்படுத்தி உடலுறவு வைத்துக் கொண்டார். அப்போது எனக்கு வயது 15 ஆகும்....

31. P.W-2 has also given a similar statement before the learned Judicial Magistrate P.W-14, u/s.164 Cr.P.C and the same has been marked as Ex.P-2.

The Ex.P-11 series is the 4 Compact Discs containing the recording of the proceedings held before P.W-14.

32. P.W-1 the Mother of P.W-2, lodged a complaint Ex.P-1 on 19.02.2015. According to P.W-1, her daughter P.W-2 found missing from 08.00 p.m on 17.02.2015. They searched for her in the surrounding and they could not get any information. She was under impression that since it was Sivarithiri her daughter would have gone to the temple and return on the next day. But as P.W-2 did not return on the next day also, she again enquired and came to know about the affair between her daughter and the accused. She went to the house of accused and enquired his mother and sister. They did not give proper reply . She decided to file a complaint. At that time P.W-2 spoke to her over phone and informed about the happening. So P.W-1 asked her to return to the house. This evidence of P.W-1 has been corroborated by her sons P.W-3 and P.W-8 and also by P.W-9 her sister. Further P.W-13 the sister of accused has also admitted about the fact that P.W-1 came to their house and enquired about P.W-2. So from their evidence it is clear that the delay in lodging the complaint has been properly explained by prosecution. Normally in this type of cases parties would not rush immediately to the police station because they would be very much concerned about the reputation of the family and the future of the victim and so it cannot be stated that the delay has not been properly explained.

33. Admittedly, P.W-1 is residing separately from her husband. During the cross examination of the witnesses, it has been suggested that the family of the accused are in support of the husband of P.W-1 and so false complaint has been foisted against them. Further it has been suggested that the accused did not kidnap P.W-2, but she was very well present in the house of her father at Perur Chettipalayam. P.W-13 the sister of the accused has spoken about this. The defence is that the family of the accused is in cordial relationship with the husband of P.W-1. If it is so, the defence could have very well examined the husband of P.W-1 to support their defence. But the accused has not chosen to examine the husband of P.W-1. Therefore this court is not inclined to accept the above defence projected by the accused.

34. In the cross examination also P.W-1 to P.W-3, P.W-8 and P.W-9 have reiterated the same thing and denied the suggestion that they were deposing falsely. In the statement u/s.164 Cr.P.C (Ex.P-2) and the statement before the police recorded u/s.161 Cr.P.C, P.W-2 had stated the same version as deposed before this court. There is no exaggeration or embellishment in the version of the victim. The testimony of the victim girl is clear and cogent.

35. The testimonies of P.W-1 to P.W-3, P.W-8 and P.W-9 are not shaken in the cross examination and there is no reason to disbelieve their evidences. Of course there is no eye witness. Except P.W-2, all other witnesses are only hearsay witnesses. The evidence of P.W-2 the victim is clear, cogent and convincing. The Hon'ble Supreme Court in rape cases observed that, if the

evidence of the victim does not suffer from any basic infirmity and the probabilities factor does not render it unworthy of credence as a general rule there is no reason to insist on corroboration except from the medical evidence. This being so, in such cases where the statement of the victim does not suffer from any basic infirmity and the probabilities factor support the allegation of rape, then only relying upon her statement conviction can be based. Applying the above test to the facts of the instant case the statement of the victim girl do not suffer from any infirmities (or) any improbabilities. The victim had clearly testified that the accused had ravished her. It is a settled legal proposition that courts can act on solitary evidence of victim if it is cogent and trustworthy. In this case, the accused failed to disprove the prosecution case by placing evidence to come to a conclusion that the entire case of the prosecution is improbable and unlikely to happen.

36. The chance of false implication in this case is too remote, since the accused is already known to P.W-2 and there is no evidence on record to establish that the accused was falsely implicated in this case.

MEDICAL EVIDENCE:

37. The medical evidence in this case also prove that the victim P.W-2 was subjected to sexual intercourse and that the accused is medically fit for sex.

38. P.W-10 Doctor.Nanthini in Ex.P-6 Accident Register Copy, has stated that,

“Hymen not Intact. Vagina easily admits two fingers. No evidence of any external injuries over Vulva. No evidence of nail scratches or injuries over patient's body”.

39. Further, P.W-10 has deposed as follows:

... அவர் தான் தனக்கு தெரிந்த நபருடன் 17.02.2015 அன்று இரவு சுமார் 08.00 மணியளவில் வீட்டை விட்டு சென்று பழனியில் வைத்து அவரை திருமணம் செய்துகொண்டதாகவும் அதன் பிறகு அவருடன் இரண்டு முறை உடலுறவு கொண்டதாகவும் பின்பு 19.02.2015 அன்று மேற்படி காவல் நிலையத்திற்கு அவர்களாகவே வந்ததாக சொன்னார்...

... அவருடைய பிறப்பு உறுப்பை பரிசோதனை செய்தபோது கன்னித்திரை இல்லை. பிறப்பு உறுப்பில் இரண்டு விரல்கள் அனுமதிக்கத்தக்கதாக இருந்தது.

....

40. Further in the cross examination P.W-10 has denied the suggestion of the defence and ruled out the possibilities of rupture of hymen by any other means. Her evidence is as follows:-

.... உடலுறவு கொண்டதால் மட்டுமே கன்னித்திரை இல்லை என்று கூறமுடியாது என்றால் அதுவும் ஒருகாரணம் என்று

கூறமுடியும். அதிக விளையாட்டு பயிற்சி காரணமாக ஒரு பெண்ணின் பிறப்பு உறுப்பு இரண்டு விரல்கள் அனுமதிக்கதக்க அளவிற்கு அகலமாக வாய்ப்பு உள்ளது என்றால் இல்லை....

41. Further P.W-15 Doctor.Pandeeswaran has examined the accused and issued Potency Certificate Ex.P-13 stating that “there is nothing to suggest that he (Accused Senthilkumar) is impotent”.

42. Therefore the above evidences by the doctors prove that the medical evidence is also in favour of prosecution.

OTHER EVIDENCE:

43. P.W-6 and P.W-7 have spoken about the visit of police to the place of occurrence. They were not cross examined by Accused. P.W-4 and P.W-5 have been examined to speak about the confession statement of accused. Since there was no disclosure of new facts and no recovery leading to confession, their evidence do not assume any importance; but this will not affect the case of prosecution, as P.W-2 has deposed about the occurrence in clear and categorical manner and there are other medical evidences pointing to the guilt of the accused. P.W-16 the Sub Inspector has spoken about the preparation of First Information Report. P.W-17 the Inspector of Police has spoken about the investigation process and laying of charge sheet against the

accused. Further the defence counsel also contended that the mobile phone numbers of the accused, P.W-1 and P.W-2 have not been mentioned in the charge sheet and the call details of their phone numbers have not been produced by prosecution and so according to him this creates a serious dent on prosecution. It is true that the mobile phone numbers and call details have not been furnished by prosecution. But non-production of the said particulars would not affect the case of prosecution. P.W-2 has deposed during cross examination that she contacted her mother through the cell phone of accused. As per Section 106 of Indian Evidence Act, burden of proving the fact especially within his knowledge is upon the accused. The mobile phone number and its call details of the accused mobile phone is within the knowledge of the accused and he could have produced those details of his mobile number to disprove the case of prosecution. But he has not done so. Hence the accused has not discharged the burden of proof cast on him and so this aspect is also not in favour of the defence. There may be some minor contradictions in the evidences of prosecution witnesses. There may also be some minor infirmities and inconsistencies in the investigation, but that would not go to the root of the case.

44. So far as the contention by the defence that the earlier complaint given by P.W-1 in the Variety Hall Police Station has been suppressed, it cannot be accepted, because P.W-1 has clearly spoken about filing of Ex.P-1 Complaint. P.W-1 has originally approached the Variety Hall Police Station to file complaint, but the police instructed her to approach the All Women Police

Station on the point of jurisdiction. Therefore her answer for a suggestion during the cross examination, would not indicate that there are two complaints, and it is not the case of P.W-1 also.

45. The defence would further contend that P.W-2 was accompanied by P.W-1 and P.W-9 at the time of recording her statement by the police and by the learned Judicial Magistrate and so her evidence is a tutored one. But this contention has no merits because the POCSO Act permits the presence of the mother or any close relative of the child at the time of recording of her statement.

MARRIAGE:-

46. Ofcourse, P.W-2 has deposed that the accused took her to Palani and married her by tying Thali at the Vinayagar Temple, on the night of 17.02.2015. The prosecution has not gathered any evidence on the alleged marriage. No document was produced and no one was examined to prove the alleged marriage. Therefore, as rightly pointed out by the defence, the alleged marriage has not been proved. Eventhough there is no evidence for the alleged marriage, the prosecution has adduced sufficient evidence to prove the kidnap and Penetrative Sexual Assault and so this aspect will not affect the case of prosecution.

CONCLUSION:

47. From the testimony of P.W-2 and other witnesses, it is clear that by taking advantage of dominant position, the accused enticed, took P.W-2 away from the lawful custody of her mother and had committed Penetrative Sexual Assault on P.W-2 who is a child. The medical evidence also supports the evidence of P.W-2. It inspires the confidence of the court and there is no reason to disbelieve the testimony of victim girl. In the above circumstances, under section 29 of the POCSO Act, the presumption arises that the accused had committed the offence. Even though it is a rebuttable presumption the accused has not rebutted the said presumption by any material on record. Thus, the said un rebutted presumption also would go to conclusively prove the guilt of the accused.

48. Considering all the above materials, this court comes to the conclusion that the prosecution has proved that it is this accused who has committed the offence and this court concludes that the prosecution has established the guilt of the accused u/s.366 IPC and 3 (a) r/w 4 of POCSO Act-2012 beyond all reasonable doubt. The charge against the accused u/s.9 of Prevention of Child Marriage Act has not been proved by prosecution. The point No.2 is answered accordingly.

49. Since this court concluded that the accused found guilty and liable to be punished u/s.366 IPC and 3 (a) r/w 4 of Protection of Children from Sexual Offences Act-2012, the accused was questioned u/s.235(2) Cr.P.C about the sentence to be awarded, he answered as follows:

“ நான் எந்த தவறும் செய்யவில்லை. எனக்கு திருமணமாகவில்லை. குறைந்தபட்ச தண்டனை வழங்க வேண்டுகிறேன்.”

50. I have considered the submissions of Accused. A woman's body is not a man's plaything to satisfy his lust. The accused committed the offence, upon a minor girl aged 15 years. The POCSO Act 2012 came into force to protect children from sexual offences and to ensure towards securing that the tender age of children are not abused and their childhood and youth are protected against exploitation and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity. The accused is aged about 25 years. He has no bad antecedents. He is unmarried. There is a chance for his reformation. Hence this court considers that a sentence of Rigorous Imprisonment of Five Years and a fine of Rs.3,000/- for the charge u/s. 366 IPC; and Rigorous Imprisonment of Ten Years and a fine of Rs.3,000/- for the charge u/s.3 (a) r/w 4 of POCSO Act-2012 would meet the ends of Justice and will also act as a deterrent.

RESULT:-

51. In the result, since the accused found guilty u/s.366 IPC and 3 (a) r/w 4 of Protection of Children from Sexual Offences Act-2012, he is convicted and sentenced to undergo **FIVE YEARS** Rigorous Imprisonment and to pay fine of **Rs.3,000/-** in default sentenced to undergo **THREE MONTHS** Simple Imprisonment for the charge u/s. 366 IPC, and further convicted and sentenced to undergo **TEN YEARS** Rigorous Imprisonment and to pay fine of **Rs.3,000/-** in default sentenced to undergo **THREE MONTHS** Simple Imprisonment for the charge u/s.3 (a) r/w 4 of POCSO Act-2012. The above sentences are ordered to run concurrently. Detention period already undergone by accused, is ordered to be set off u/s.428 Cr.P.C.[Total Fine Amount Rs.6,000/-]. The accused is not found guilty u/s.9 of Prevention of Child Marriage Act and he is Acquitted u/s. 235(1) Cr.P.C, from the above charge.

52. The victim girl was aged 15 years and accused subjected her to penetrative sexual assault. The occurrence would have considerably affected the victim both mentally and physically. Hence considering the gravity of the offence and the poor situation of the victim, a sum of Rs.50,000/- is recommended as compensation under Rule 7 (2) of POCSO Rules 2012 and State Government is to pay the above said amount of compensation either from the victim compensation fund or from the any other scheme within 30 days from the

receipt of this order and the said amount shall be deposited in any Nationalized Bank in the name of the victim P.W-2 represented by the Natural Guardian her mother, till she attain majority. This court office is directed to forward a copy of Judgment to the District Collector, Coimbatore for taking necessary steps to award the compensation amount to the victim and also forward a copy of Judgment to District Legal Services Authority, Coimbatore for follow up action.

53. There is no case properties produced in this case.

Dictated to Steno Typist, taken down by her in shorthand, transcribed and typed by her, corrected and pronounced by me in open court this the 25th day of July 2017.

-Sd.A.Manimozhi-
Sessions Judge,
Magalir Neethimandram,
(Mahila Court) Coimbatore.

LIST OF WITNESSES EXAMINED FOR PROSECUTION:

P.W.1	Kanchana @ Shanthi
P.W.2	Manjula
P.W.3	Mohan
P.W.4	Sivakumar
P.W.5	Udhayakumar
P.W.6	Thangavelu
P.W.7	Suresh
P.W.8	Anand
P.W.9	Jayalakshmi
P.W.10	Doctor.Nandhini

P.W.11	Doctor.Senthilkumar
P.W.12	Mr.Ravi, Head Master
P.W.13	Priya
P.W.14	Tmt.Deepa, Judicial Magistrate
P.W.15	Doctor.Pandeeswaran
P.W.16	Tmt.Mekala, Sub Inspector of Police
P.W.17	Tmt.M.Manickam, Inspector of Police

LIST OF WITNESSES EXAMINED FOR DEFENCE SIDE :NIL

LIST OF EXHIBITS MARKED ON THE SIDE OF PROSECUTION

1	Ex.P1	19.02.2015	Complaint
2	Ex.P2	27.02.2015	164 Cr.P.C Statement of P.W-2
3	Ex.P3	19.02.2015	Signature of P.W-4 in the Confession Statement
4	Ex.P4	19.02.2015	Signature of P.W-5 in the Confession Statement
5	Ex.P5	19.02.2015	Observation Mahazar
6	Ex.P6	19.02.2015	Accident Register Copy
7	Ex.P7	19.02.2015	Requisition Letter for Radiology Test
8	Ex.P8	19.02.2015	Radiology Test Report
9	Ex.P9	07.04.2015	Bonafide Certificate and Transfer Certificate Xerox Copy.
10	Ex.P10	27.02.2015	File containing 164 Cr.P.C Statement of victim P.W-2.
11	Ex.P11	-	4 Compact Dics
12	Ex.P12	19.02.2015	Requisition Letter for Potency Test
13	Ex.P13	07.03.2015	Potency Test Certificate
14	Ex.P14	19.02.2015	First Information Report
15	Ex.P15	19.02.2015	Rough Sketch

LIST OF MATERIAL OBJECTS MARKED ON THE SIDE OF PROSECUTION :

Nil

LIST OF EXHIBITS AND MATERIAL OBJECTS MARKED ON THE SIDE OF DEFENCE:NIL

-Sd.A.Manimozhi-
Sessions Judge,
Magalir Neethimandram,
(Mahila Court) Coimbatore.

Note :

- 1) The accused was on Bail.
- 2) No witness has been detained unexamined beyond three days.
- 3) Fine amount has not been paid.
- 4) Copy of the judgment furnished to the accused.
- 5) The accused has been classified as casual and committed to Central Prison, Coimbatore.
- 6) Slip proceedings issued to police.

WEB COPY

COPY OF JUDGMENT
Spl.CC.32/2015
Date:25.07.2017
Mahila Court,
Coimbatore.