Crl. A(MD)No.1034 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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**RESERVED ON : 03.06.2026****PRONOUNCED ON : 05.06.2026**

CORAM:

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

**Crl. A(MD)No.1034 of 2023**

Murugan

: Appellant(s)

Vs.

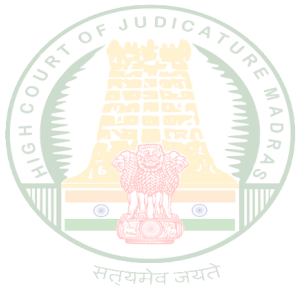
The State rep. by  
The Inspector of Police,  
Bodinayakkanur Taluk Police Station,  
Theni District.  
Crime No.125 of 2020.

: Respondent(s)

**PRAYER:** Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, to call for records and set aside the conviction and sentences imposed by the learned Fast Track Mahila Court, Theni, in Spl.S.C.No.27 of 2020 dated 31.07.2023 and acquit the appellant.

For Appellant  
For Respondent

: Mr.Mayilvahana Rajendran  
: Mr.D.Venkatesh  
Counsel for the State (Crl. side)



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## **J U D G M E N T**

**(Judgment of the Court was  
delivered by N.ANAND VENKATESH, J.)**

The sole accused in the present appeal has assailed the judgement passed by the Fast Track Mahila Court, Theni, in Special S.C.No.27 of 2020, dated 31.07.2023, wherein the appellant has been convicted for offence under Section 5(l) read with Section 6 of the “Protection of Children from Sexual Offences Act, 2012” (hereinafter referred to as “Act” for brevity) and sentenced to undergo life imprisonment and to pay a fine of Rs.1000/-, in default to undergo one month simple imprisonment and was also convicted for offence under Section 506 of IPC and sentenced to undergo one month simple imprisonment. The sentences were directed to run concurrently.

2. The case of the prosecution is that the appellant, who was aged about 40 years, called the victim girl, who was aged about 13 years, to the house of one Balaji on 18.01.2020 at 2.00 PM and committed penetrative sexual assault on her. He also threatened the victim girl not to disclose the occurrence to anyone. The further case of the prosecution is



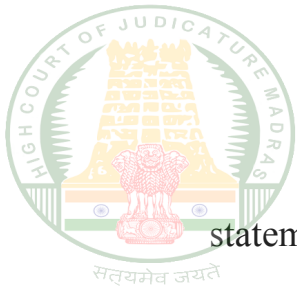
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that the appellant repeatedly committed the said offence and once again threatened the victim girl on 16.02.2020 not to reveal about the same to anyone.

3. The incident came to light and PW1, who is the mother of the victim girl, gave a complaint (Exhibit P6) to PW11 based on which an FIR came to be registered in Crime No.125 of 2020 (Exhibit P7) for offences under Section 5(1) r/w 6 of the Act and Section 506(1) of IPC.

4. The investigation was taken over by PW14 and the investigation officer went to the scene of crime on 29.03.2020 at about 11.00 AM and recorded the statements of the victim girl and her parents and others. An observation mahazar (Exhibit P11) and rough sketch (Exhibit P12) were prepared. The accused person was arrested on the same day at about 15.30 hours and he was produced before the concerned court and remanded to judicial custody.

5. PW14 proceeded to collect the school certificate (Exhibit P4) from the Headmaster of the Government High School (PW6). He ascertained the date of birth of the victim girl as 29.05.2006. The



statement of the Headmaster was also recorded.

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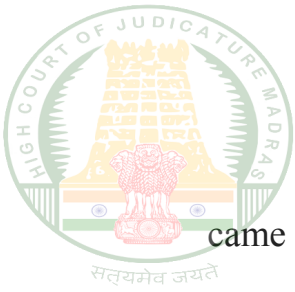
6. The victim girl was subjected to medical examination and the medical examination was conducted by PW12, who found that the victim girl was five weeks pregnant. The certificate of examination (Exhibit P8) was issued and the following finding has been rendered:

“Examination:

The person examined was moderately built and moderately nourished. Her physical and mental status was normal for her age. Her secondary sexual characters were well developed gives history of 02 months of ammenorrhoea, Per abdomen examination – soft. Pervaginal examination hymen not intact, vagina admits one finger, no discharge. No external injuries over breast or genitalia Uterus – anteverted bulky. UPT – Positive.”

7. The victim girl was produced before the Judicial Magistrate and her statement under Section 164 of Cr.P.C. was recorded (Exhibit P1).

8. After recording the statements of the witnesses under Section 161(3) of Cr.P.C., and after completion of investigation, the police report



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came to be laid before the Special Court which was taken on file in Special S.C.No.27 of 2020.

9. The Special Court framed charges against the accused person for offences under Sections 5(1) r/w 6 of the Act, Section 506(2) and 506(1) of IPC. The accused person denied the charges when he was questioned.

10. The prosecution examined PW1 to PW14 and marked Exhibits P1 to P24.

11. The incriminating circumstances and evidence was put to the accused person when he was questioned under Section 313(1)(b) of Cr.P.C. and he denied the same as false.

12. The accused person did not examine any witness nor mark any documents.

13. The trial court on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to the conclusion that the prosecution has laid the foundational facts and the legal presumption of the commission of offence has not been rebutted by

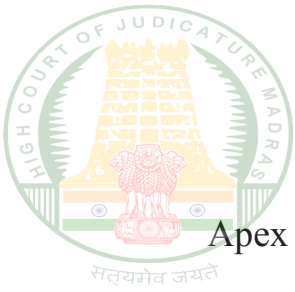


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the accused person and accordingly, convicted and sentenced the accused person in the manner stated supra. Aggrieved by the same, the present appeal has been filed before this Court.

14. This Court has carefully considered the submissions made on either side and the materials available on record.

15. The main ground that was urged by the learned counsel for the appellant is that neither the victim girl nor her parents supported the case of the prosecution and the trial court had convicted the appellant only based on the DNA report. There were no materials to show that there was proper chain of custody and whether the samples were properly taken. Apart from that, the relevant documents were marked through the investigating officer and not through the expert who had prepared the report. The relevant documents pertaining to the DNA test came to surface only after the filing of the final report and those copies were not furnished to the accused person as mandated under Section 207 of Cr.P.C. In view of the same, it is submitted that the conviction and sentence of the accused person is not sustainable. The learned counsel in order to substantiate the submission would rely upon the judgment of the



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Apex Court in *Karandeep Sharma @ Razia @ Raju v. State of Uttarkhand*, in Criminal Appeal Nos.630 to 631 of 2018, dated 04.03.2025.

16. Per contra, Mr.D.Venkatesh, learned Counsel appearing for the respondent-State submitted that the investigation officer has clearly explained the manner in which the sample was taken and sent for DNA test and the investigation officer has not been confronted with any questions during cross-examination to assail the taking of samples and the DNA report collected from the expert. Insofar as the furnishing of documents is concerned, the copies were furnished to the accused person and it is only based on the same, the cross-examination was done by the accused person through his counsel. The judgment that was relied upon by the counsel for the appellant will not apply to the facts of the present case. Hence, it is contended that there are no merits in this criminal appeal and the same is liable to be dismissed by this Court.

17. In the case on hand, neither the victim girl nor her parents (PW1 to PW3) supported the case of the prosecution and all of them turned hostile. PW3, who is the victim girl, has admitted that the



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signature that is found in the 164 statement is her signature and she does not state that the statement was recorded under any threat or coercion.

She even goes to the extent of denying the birth of the child. The statement recorded under Section 164 of Cr.P.C. can be used both for contradiction as well as corroboration. Since PW3 has not denied that she gave the statement before the learned Magistrate and the signature found in Exhibit P1 is her signature, the same can be used for corroboration.

18. The clinching evidence in this case that was strongly relied upon by the prosecution is the DNA report that was marked as Exhibits P9, P10, P18, P19, P20, P21 and P24. The DNA report makes it abundantly clear that the appellant is the father of the child that was born to the victim girl/PW3.

19. In the case in hand, the child was born to PW3 only on 24.10.2020, after the final report was filed in this case. Hence, the Child Welfare Committee had sent a letter dated 17.12.2020 to the investigation officer to take necessary steps for DNA test. Based on the same, the investigation officer submitted an application to the trial court on 05.01.2021 to get FTA card and the same was allowed by the trial court



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by letter dated 06.01.2021. The trial court had sent a letter to the Deputy

Director, Forensic Science Laboratory, Madurai, to furnish FTA card and

accordingly, the FTA card along with the covering letter was received

from the Deputy Director. Pursuant to the same, on 20.01.2021, the

investigation officer submitted an application for collecting blood

samples from the accused person, victim girl and the child. On receipt of

this letter, the trial court through a communication dated 01.02.2021

informed the Medical Officer, Government Medical College Hospital,

Theni, to collect the blood samples. On 10.02.2021, the blood samples

were collected and sent to the trial court with a covering letter. On receipt

of the same, the trial court sent a communication to the Assistant

Director, Forensic Science Laboratory, Madurai, on 16.02.2021 to

analyse the blood samples and to send the DNA report. The DNA report

dated 11.08.2021 was prepared and it was sent to the trial court on

02.09.2021. On 04.09.2021, the DNA report was submitted to the trial

court.

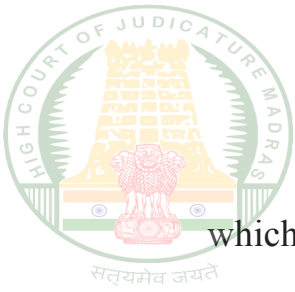
20. It is quite clear from the above sequence of events that the need for conducting the DNA test arose only after the final report was filed. It is too late in the day for the appellant to raise any doubts regarding the



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collection of blood samples since it was not even questioned by the appellant at any point of time and not a single question was raised to the investigating officer during cross-examination. Even insofar as the chain of custody is concerned, the blood samples were collected by the medical officer of the Government Medical College Hospital, Theni, on 10.02.2021 and within 6 days it was sent to the FSL, Madurai and the DNA report was prepared on 11.08.2021. Therefore, there is no material to show that there was any tampering of the blood samples collected, since it has gone to the court immediately and thereafter was sent to the FSL.

21. The other ground that was raised by the learned counsel for the appellant as if documents were not furnished to the accused person as mandated under Section 207 of Cr.PC., is again unsustainable. None of the documents pertaining to DNA was available at the time of filing of the police report. The child was born only after filing of the police report and thereafter steps were taken to conduct the DNA test. The fact that the copy of the relevant documents was furnished to the accused person is evident from the fact that the accused person had put questions to PW13, who is the Deputy Director of FSL, Madurai, based on those documents

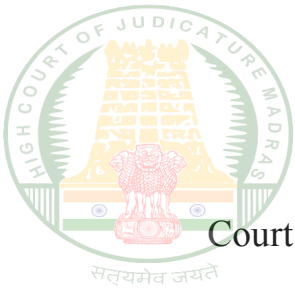


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which shows that the accused person was very much in possession of the relevant documents pertaining to the DNA test.

22. It is submitted that the relevant documents pertaining to the DNA test ought not to have been marked through the investigation officer and only the person who made the report ready should have been examined. PW13 has been examined in this regard and he explained about the DNA report and sufficient questions have been put to the witness during cross-examination. In view of the same, the accused person had sufficient opportunity to assail the DNA report and after having availed the opportunity, the accused person cannot be allowed to turn around and question the collection of samples, furnishing of documents and opportunity to cross-examine during the trial.

23. The judgment that was relied upon by the learned counsel for the appellant will not have any application to the facts of the present case. That was a case where the accused is said to have committed sexual assault on a child who was later found dead in a nearby field. The hair of the suspect is said to have been recovered from the body of the child and was sent for DNA profiling and the report was relied upon. The Apex



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Court rendered the findings that the procedure of collection and forwarding of DNA samples to the FSL was full of lacunae and loopholes and even at the very inception, the procedure of collecting the samples was tainted, since it was not sealed when it was sent to the FSL. That apart, the Apex Court found that the entire trial had been conducted in a hasty manner without giving reasonable opportunity to the accused person to cross-examine the witnesses. Therefore, it was held that the DNA report has to be necessarily eschewed and in the absence of any other evidence, the accused therein was entitled for an acquittal.

24. In the case in hand, the blood samples were taken not only from the accused person and the victim girl but it was also taken from the child that was born to the victim girl. The collection of blood samples was never questioned by the accused person. Thereafter, it was sent to the court and within a short time, the court had handed over the same to the FSL. The FSL report was submitted to the trial court and PW13, was examined on the side of the prosecution to talk about the DNA report.

25. This sufficiently establishes that the DNA report was properly prepared and marked in the court and it was also explained by PW13



who is none other than the Deputy Director of FSL, Madurai.

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26. The trial court was perfectly right in relying upon the DNA report to come to the conclusion that the child was born to the appellant and the victim girl and that clearly laid the foundational fact to substantiate the charge of penetrative sexual assault against the victim girl. It was corroborated by the 164 statement that was recorded by the victim girl which was marked as Exhibit P1.

27. In the light of the above discussion, the grounds that were raised by the learned counsel for the appellant does not carry any merit and the same is liable to be rejected by this Court.

28. The charge that has been framed against the accused person was for offence under Section 5(l) r/w Section 6 of the Act. This charge can be sustained only in a case where penetrative sexual assault is committed on the child more than once or repeatedly. Since PW3 did not support the case of the prosecution, it is not clear as to whether there were repeated penetrative sexual assaults on the child. In view of the same, it will be appropriate to bring this case under Section 5(j)(ii) of the Act and its consequence will be the same. Therefore, by altering the



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offence, no prejudice will be caused to the accused person.

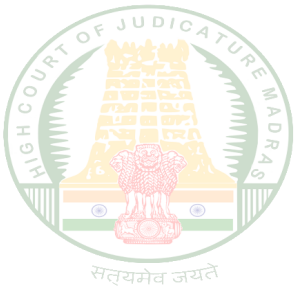
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29. Insofar as the sentence imposed by the trial court, considering the facts and circumstances of the case and also taking note of the fact that the victim girl and her parents had chosen to remain hostile, this Court is inclined to modify the sentence. Accordingly, the sentence of life imprisonment is modified to one of rigorous imprisonment for a term not less than 20 years as provided under Section 6 of the Act.

30. Insofar as the charge under Section 506 of IPC is concerned, since PW3 has turned hostile, this charge cannot be sustained and hence, the conviction under this provision has to be set aside.

31. In the result, this criminal appeal is partly allowed in the following terms:

(a) The judgment of the learned Sessions Judge, Fast Track Mahila Court, Theni, made in Special S.C.No.27 of 2020 dated 31.07.2023 is modified and the appellant is convicted for offence under section 5(j)(ii) of the Act and sentenced to undergo rigorous



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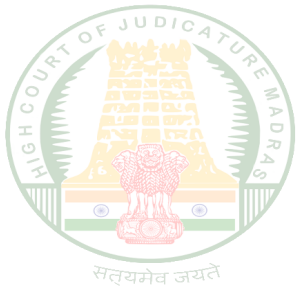
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imprisonment for a term not less than 20 years; and

(b) The conviction under Section 506 of IPC is set aside.

**[N.A.V., J.]                      [K.K.R.K., J.]**  
**05.06.2026**

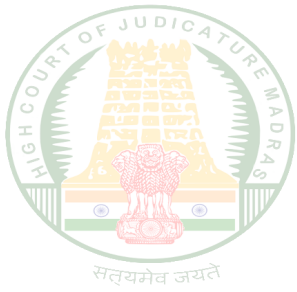
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Internet : Yes  
Neutral Citation : Yes  
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- 1.The Sessions Judge, Fast Track Mahila Court, Theni.
- 2.The Inspector of Police,  
Bodinayakkanur Taluk Police Station,  
Theni District.
- 3.The Additional Public Prosecutor  
Madurai Bench of Madras High Court,  
Madurai.



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**N.ANAND VENKATESH, J.**  
**AND**  
**K.K.RAMAKRISHNAN, J.**

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Judgment made in  
**Crl.A.(MD)No.1034 of 2023**

**05.06.2026**