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Crl.A.No.646 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**RESERVED ON : 25.10.2025
DELIVERED ON : 11.11.2025**

CORAM :

**THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR
AND
THE HONOURABLE MR. JUSTICE M. JOTHIRAMAN**

Crl.A.No.646 of 2019

~~Saxxxxxx~~

... Appellant / Sole Accused

Versus

State rep by
Inspector of Police,
Salem Town, All Women Police Station,
Salem District,
Crime No.9 of 2016.

... Respondent / Complainant

Criminal Appeal filed under Proviso to Section 374(2) of Criminal Procedure Code, praying to set aside the judgment of conviction dated 12.02.2019 in Spl.SC.No.64 of 2016 passed by the learned Sessions Judge, Magalir Needhimandram, Salem.

For Appellant : Mr.V.Thamizhanban

For Respondent : Mr.A.Damodaran, Addl. Public Prosecutor
assisted by
M/s.M.Aritha Thasneem



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JUDGMENT

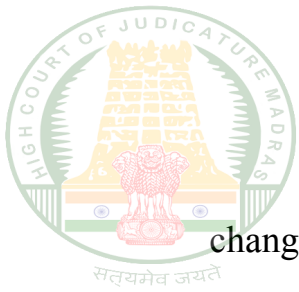
M.JOTHIRAMAN, J.

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The sole accused in Crime No.9/2016 on the file of the respondent herein is the appellant herein. This Criminal Appeal has been filed challenging the judgment of conviction and sentenced dated 12.02.2019 in Spl.SC.No.64 of 2016 passed by the learned Sessions Judge, Magalir Needhimandram, Salem, in and by which the appellant was convicted under sections 4 and 10 of The Protection of Children from Sexual Offences Act, 2012 [in short “POCSO Act”] and sentenced to undergo imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo 6 months simple imprisonment for the offence under Section 4 of POCSO Act and sentenced to undergo 7 years imprisonment and to pay a fine of Rs.5,000/- in default to undergo 6 months simple imprisonment for the offence under Section 10 of the POCSO Act.

2. Facts leading to the filing of this appeal are as follows:

2.1. The accused ~~XXXXXXXX~~, who belongs to Thagapatti Village, Salem, married one ~~XXXXXXXX~~. Out of wedlock, he begot two female children and one male child. Subsequently, he married one ~~XXXXXXXX~~ and he



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changed the name of ~~Saxidola~~ as ~~Saxidola~~ and lived in various places in Salem like Thagapatty, Linemedu and Maniyanoor. The accused and ~~Saxidola~~ have four children namely, XXX / PW2, YYY / PW3, ~~Koodala~~ and ~~Moxidola~~. All the children left the accused and staying in Children Protection and Welfare Home.

2.2. The accused used to come to home daily in drunken manner and when the same was questioned by his wife and children, he used to beat them. Therefore, misunderstanding arose between the husband and wife and during November, 2015, the accused's wife, left the female children XXX/ PW2 and YYY / PW3 with the accused and went by taking other children with her. Thereafter, the accused and his two female children shifted to a rental premises belonging to one Raju. While that being so, the accused /father attempted to give sexual harassment to his 16 years old female child XXX / PW2. In further continuance, the accused also gave sexual harassment to her younger daughter YYY / PW3, who is 13 years old, by pressing his breast and also done gave forceful insertion of his fingers over her private parts. The accused further threatened PW2 with

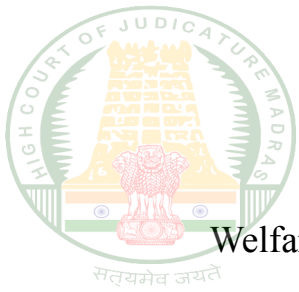


dire consequences if she says the sexual assault done on her to anybody.

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2.3. PW1 – Tmt.Gandhimathi is a working member of the Salem Kumarapatti Children Welfare Organization. On 22.04.2014, through Erode Children Welfare Organization, the two female children namely ~~XXXXXX~~ and ~~XXXXXX~~ were produced and allowed to stay in the Salem Children Welfare Organization. They informed the President of the Organization that they also have one brother the sister, based on which YYY/ PW3 and ~~XXXXXX~~ were take into safe custody from a home at Nethimedu. ~~XXXXXX~~ also gave information that her elder sister XXX/ PW2 is residing along with her father at Thathagapatti, based on which nearly after ten days, Annadanampatti police found XXX / PW2.

2.4. On enquiry, PW2 informed about the forceful sexual penetration done by her father ~~XXXXXX~~ and also the same atrocious immoral activities done on her sister YYY/ PW3. On enquiry, PW3 also reiterated the very same version of her sister / PW2. The three female children and one male child were given education by keeping them under safe custody in Children



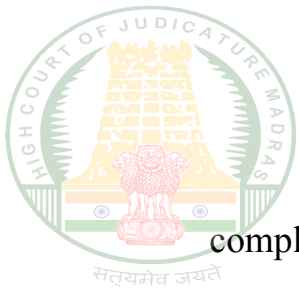
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Welfare Homes.

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2.5. PW1 gave complaint under Ex.P1 to All Women Police Station, Salem, based on which the police enquired PWs.2 and 3 in the presence of witnesses Mageswari / PW4, who is working as Office Assistant and Typist and one Suguna, in which they narrated the sexual assault done on them by their father ~~XXXXXX~~ to the police officials. When she was produced and enquired before the Judicial Magistrate Court at Salem, she narrated the events. Ex.P2 is the confession given by her, which was recorded as video in the Compact Disk-M.O.1. Ex.P3 is the confession given by PW2 before the Judicial Magistrate Court, Salem.

2.6. PW12 – Sayidha is the Women Inspector of Police, Salem Town Police Station. While she was on duty on 22.06.2016, at 11.00 a.m. She received a written complaint from PW1 – Gandhimathi at the said police station, based on which, she registered a case in Crime No.9/2016 under Sections 6 r/w. 5(1), 8 r/w.7 of POCSO Act and Section 506(ii) IPC. Ex.P19 is the First Information Report. PW12 sent the FIR along with the



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complaint to the Mahila Court and also sent copies thereof to other officials concerned. PW12 conducted investigation and went along with the complainant to Kumaraswamipatti Children Welfare Reception Home, where he saw PW2 and PW3 who were in safe custody and recorded their statements in the presence of PW4-Mageswari. He prepared the Medical Memo and sent PWs.2 and 3 along with Police Constable HC1185 - Jeyalakshmi with the help of the mother of the Reception Home, namely Suguna for medical examination at the Salem Kumaramangalam Government Medical College Hospital at 3.00 p.m.

2.7. PW10 is Doctor Priyadharshi and Professor attached to the Government Maternity Hospital. While she was on duty, on 22.06.2015 at 5.00 p.m., PW2 was produced for medical examination by the HC 1185 Jeyalakshmi. PW2 informed to PW10 that she was given sexual harassment by her father for the past 2 years. When PW2 was physically examined, there was no external injuries and her hymen was torn and two fingers can easily penetrate. He took the sample of vaginal fluids from the private part of PW2 and sent for chemical analysis. The chemical analysis does not



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contain any sperm cells. PW10 gave opinion that PW2 could have been compelled to have sexual intercourse. PW10 prepared the Accident Register Ex.P11 for PW2. Medical Certificate given by PW10 is Ex.P12. S.O.C. Form is Ex.P13. Chemical Analysis and Final Opinion Report is Ex.P14. PW10 also examined PW3 on the same day. Ex.P15 is the Accident Register of PW3. Medical Examination Certificate is Ex.P16. S.O.C. Form is Ex.P17 and Final Medical Report is Ex.P18.

2.8. PW12 – Investigating Officer, in continuation of the investigation, visited the scene of occurrence, namely the house located behind at Thadapatti Housing Board in the presence of the witnesses Babu/ PW6 and one Ramesh and prepared the Observation Mahazar – Ex.P6 and Rough Sketch – Ex.P20. She also recorded the statements of the Mahazar witnesses. She also examined the witness Suguna. She also sent requisition for recording statement from PWs.2 and 3 under Section 164 CrPC and also sent requisition to the Mahila Court for medical examination of the accused through Grade I P.C. 394. Ex.P21 is the Medical Requisition Memo. 164 CrPC statement requisition memo is Ex.P22. The proceedings

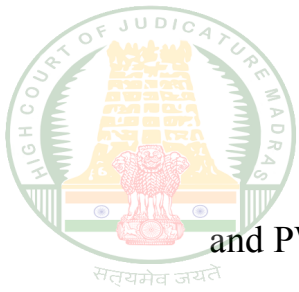


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to record 164 CrPC statement received from the Court is Ex.P23. On the same day, based on the order received from Court, the accused was sent for medical examination at Salem Government Moham Kumaramangalam Hospital and sent back to the Central Prison, Salem.

2.9. PW9 is Dr.Gokularaman, Salem Government Hospital, who examined the accused. Ex.P8 is the Medical Requisition.letter. PW9 examined the accused and opined that the accused is potent and gave the Medical Certificate Ex.P9 and also certified the age of the accused as 49, vide Certificate Ex.P10.

2.10. Thereafter, PW12 also examined the House Owner Raju – PW11 and PW7 and recorded their statements. PW7 – Salam is having a Dyeing Shop in Thadapatti. The accused used to visit the tea shop located near his dyeing shop. PW8 – Prabha is the Headmistress of the school where PWs.2 and 3 studied. Ex.P6 and Ex.P7 are the Registration Certificates issued by the school in respect of PW2 and PW3 respectively and in the said registration certificates, the date of birth of PW2 is mentioned as 18.07.2002



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and PW3 is mentioned as 11.07.2005.

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2.11. PW12 also examined the PW10 – Dr.Priyadharshini and after completion of investigation laid charge sheet, framing charges against the accused under Sections 6 r/w. 5(1) & 8 r/w.7, 10 r/w. 9(I) of POCSO Act and Section 506(i) IPC.

2.12. On the appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Mahila Court Salem in Special S.C.No.64 of 2016, for trial. The trial Court framed charges under Section 4(2) of POCSO Act (2 counts), Section 8 and 9 r/w. 10 of POCSO Act and Section 506(ii) IPC. When questioned, the accused pleaded not guilty.

2.13. To prove the case, the prosecution examined 12 witnesses, marked 23 exhibits and produced 1 Material Object. When the accused was questioned under Section 313 Cr.P.C. about the incriminating circumstances appearing against him, he denied the same. On behalf of the accused, his

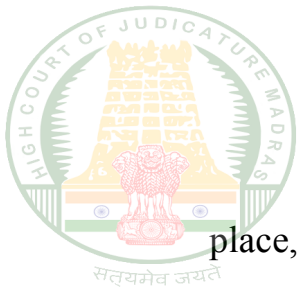


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second wife ~~Sakumthi~~ was examined as DW1 and no document was marked.

2.14. The trial Court, after having considered the oral and documentary evidence, found that the prosecution had proved the guilt beyond reasonable doubt and convicted and sentenced him as stated above, against which the accused has preferred the instant Criminal Appeal.

3. The learned counsel appearing for the appellant would submit that the Trial Court has failed to consider the fact that PW3 and PW2 were examined by the Child Welfare Committee as early as on 04.05.2016, whereas the complaint under Ex.P1 was lodged only on 08.02.2017 after a lapse of more than 10 months. The Trial Court has also failed to consider the fact that PW2 categorically admits that the accused and her mother are in the habit of consuming liquor and PW2 was roaming around with a boy and the same was not liked by the appellant / accused and hence a false case has been foisted against her father / appellant. The Trial Court has also failed to consider the fact that if really such incident would have taken

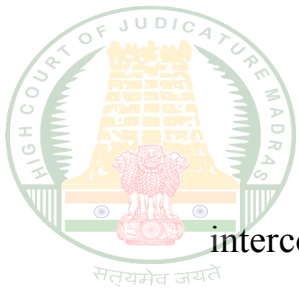


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place, PWs.2 and 3 would have revealed the incident to their neighbours or to her mother / DW1, but no such complaint was given to the neighbours by them.

4. *Per contra*, learned Additional Public Prosecutor appearing for the respondent / State would submit that the victim girls, namely PWs.2 and 3 have categorically deposed about the incident and sexual assault committed by her father / appellant and also deposed that the appellant is addicted to consume alcohol and used to come home daily in drunken mood and when his first wife questioned the same, there was some misunderstanding between the appellant and his wife and she deserted him in the month of November, 2015 along with her children except PWs.2 and 3. The appellant, being the father of the minor children PWs.2 and 3, voluntarily and with an intent to exploit sexually, had committed sexual intercourse repeatedly and thereby committed offences punishable 6 r/w. 5(1) and Section 8 r/w. 7 of POCSO Act. The prosecution also established the guilt of the accused corroborating the evidence of PWs.2 and 3 / victims girls and PW10 / Doctor opined that PW2 was repeatedly forced to have sexual

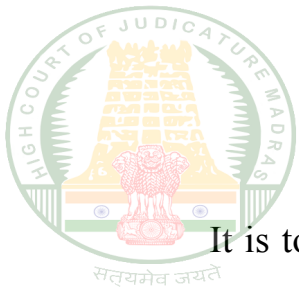


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intercourse and PW3 was also subjected to sexual harassment and her hymen was torn. The evidence of DW1 has not supported the case of the appellant/accused.

5. This Court has given anxious consideration to the rival submissions and also perused the entire materials available on record.

6. PWs.2 and 3 are victims in this case. At the time of the occurrence, PW2 was aged about 16 years. The appellant / father voluntarily and with an intend to exploit her, had forceful sexual intercourse repeatedly many times. The appellant also threatened PW2 not to disclose the sexual assault and she also does not disclosed to anyone on the apprehension that no one is available to support her. PW2's sister PW3, aged 13 years at the time of occurrence, has also narrated that her father exploited her sexually and had committed sexual intercourse, due to which PW3 ran away from their house. PW2 also deposed that she has given statement under Ex.P2 before the Judicial Magistrate and her statement was also recorded in a CD – M.O.1. PW2 is residing in a Child Welfare Home.

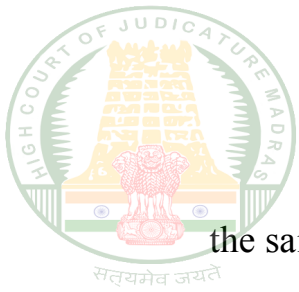


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It is to be noted that PW2 was examined in Chief on 20.09.2017 and cross examined only on 30.07.2018, after a lapse of nearly 9 months. The defence has not elicited anything in favour of the appellant and in her cross examination also, she reiterated the occurrence as deposed in her chief examination.

7. PW3, sister of PW2, was examined in chief on 22.11.2017 and she was cross examined only on 27.06.2018, after a lapse of 7 months. PW3, in her chief examination has deposed that the appellant with an intent to commit sexual assault, made her to lie down, kiss her, pressed and licked her nipples, placed her hand on her private part and pressed forcibly. PW3 has also given statement under Ex.P3 before the Judicial Magistrate and the same was also recorded.

8. At this juncture, it is relevant to cite the judgment of the Hon'ble Supreme Court in *Vinod Kumar v. State of Punjab [(2015) 3 SCC 220]* wherein it has been held that once the witness is examined in chief, the prosecution has to cross examine on the same day. The relevant portion of



the said judgment is extracted hereunder:

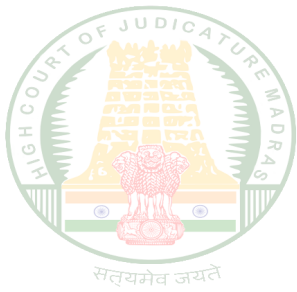
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“57.1. Adjournments are sought on the drop of a hat by the counsel, even though the witness is present in court, contrary to all principles of holding a trial. That apart, after the examination-in-chief of a witness is over, adjournment is sought for cross examination and the disquieting feature is that the trial Court grant time. The law requires special reasons to be recorded for grant of time but the same is not taken note of.

57.2. As has been noticed earlier, in the instant case the cross-examination has taken place after a year and 8 months allowing ample time to pressurise the witness and to gain over him by adopting all kinds of tactics.

57.3. There is no cavil over the proposition that there has to be a fair and proper trial but the duty of the Court while conducting the trial is to be guided by the mandate of the law, the conceptual fairness and above all bearing in mind its sacrosanct duty to arrive at the truth on the basis of the material brought on record. If an accused for his benefit takes the trial on the path of total mockery, it cannot be countenanced. The court has a sacred duty to see that the trial is conducted as per law. If adjournments are granted in this manner it would tantamount to violation of the rule of law and eventually turn such trials to a farce. It is legally impermissible and jurisprudentially abominable. The trial Courts are expected in law to follow the command of the procedure relating to trial and not yield to the request of the counsel to grant adjournment for non-acceptable reasons.

57.4. In fact, it is not at all appreciable to call a witness for cross examination after such a long span of time. ***It is imperative if the examination-in-chief is over, the cross-examination should be completed on the same day.*** If the examination of a witness continues till late hours the trial can be adjourned to the next day for cross examination. It is inconceivable in law that the cross-examination should be deferred for such a long time. It is anathema to the concept of



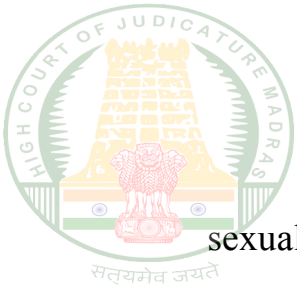
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proper and fair trial.

57.5. The duty of the Court is to see that not only the interest of the accused as per law is protected but also the societal and collective interest is safeguarded. It is distressing to note that despite series of judgments of this Court, the habit of granting adjournment, really an ailment, continues.....”

9. In order to ascertain the age of thee victim girls, namely PWs.2 and 3, the prosecution has relied upon the evidence of PW8 / Headmistress of the school deposed that she is working in a Government Middle School, Annadanampatti, Salem District and as per the admission registers Exs.P6 and P7 pertaining to PW2 and PW3 respectively, PW2 was born on 18.07.2002 and PW3 was born on 11.07.2005.

10. The prosecution has relied upon the evidence of PW9, namely Dr.Gokularamanan, who examined the accused and issued the Medical Report Ex.P9 opining that the accused is potent and there is nothing to suggest that he is impotent and also ascertained the age of the accused/appellant as 49 years. PW10 / Doctor who examined the victim girls / PWs.2 and 3, opined that there were no external injuries, hymen is intact and the vagina admits two fingers. PW10 opined that there was



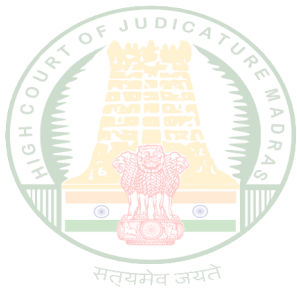
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sexual abuse and repeated sexual intercourse as regards PW2. Insofar as PW3 is concerned, PW10 opined that hymen was intact and sexual intercourse might have occurred. Exs.P14 & P18 are the final medical examination report given by PW10 in respect of PW2 and PW3 respectively.

11. Though the appellant has chosen to examine his second wife as DW1, in her cross examination, DW1 has categorically admitted that due to the offence committed by the appellant, PW2 was conceived and a male child was born and died within 7 months and she also admitted that she is deposing evidence only in order to save her husband / appellant.

12. The learned counsel appearing for the appellant would submit that PW2 was aged about 16 years at the time of the alleged occurrence and therefore, the punishment awarded / imposed by the Court below is to be in consonance with the amendment made in the Protection of Children from Sexual Offences (Amendment) Act, 2019.



WEB COPY 13. It is pertinent to noted that Article 21A of the Constitution of India mandates Right to Education. The State should provide free and compulsory education to all children of the age of 6 to 14 years. Also Article 51A(k) of the Indian Constitution casts a fundamental duty that requires every parent or guardian to provide educational opportunities for their child or ward between the ages of 6 and 14. The Hon'ble Apex Court in the decision in *Avinash Mehrotra v. Union of India and Others [(2009) 6 SCC 398]* had observed as under:

“28. Education occupies a sacred place without our Constitution and culture. Article 21-A of the Constitution adopted in 2002, codified this Court's holding in *Unni Krishnan, J.P. v. State of A.P. [(1993) 1 SCC 645]* in which we established a right to education. Parliament did not merely affirm that right; the amending Act placed the right to education within the Constitution's set of fundamental rights, the most cherished principles of our society. As the Court observed in Unni Krishnan case

“8. The immoral poet Valluvar whose Tirukkural will surpass all ages and transcend all religions said of education:

***'Learning is excellence of wealth that none destroy;
To man nought else affords realty of joy.'***

....

33. Unlike other fundamental rights, the right to education places a burden not only on the State, but also on the parent or guardian of every child, and on the child herself. Article 21-A, which reads as follows, places once obligation



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primarily on the State.

“21-A Right to education.- The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.”

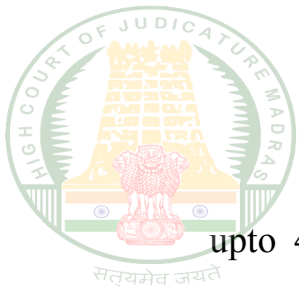
By contrast, Article 51-A(k), which reads as follows, places burden squarely on the parents:

“51-A. Fundamental duties/- It shall be the duty of every citizen of India.-

(k) who is a parent or guardian to provide opportunities for education to his child, or, as the case may be, ward between the age of six and fourteen years.”

The Constitution directs both burdens to achieve one end: the compulsory education of children, free from the fetters of cost, parental obstruction, or State inaction. The two Articles also balance the relative burdens on parents and the State. Parents sacrifice for the education of their children, by sending them to school for hours of the day, but only with a commensurate sacrifice of the State's resources. The right to education, then, is more than a human or fundamental right. It is a reciprocal agreement between the State and the family, and it places an affirmative burden on all participants in our civil society.”

14. Now coming to the case on hand, the prosecution has proved its case through the testimonies of PW2, PW8, 9 and 10. The trial Court, on a careful appreciation of oral and documentary evidence and other materials, had rightly convicted the appellant. At the time of the occurrence, as per the FIR-Ex.P19, PW3 was aged about 13 years and 9 months. PW2 has studied upto 7th standard as per Ex.P6, School Record. Similarly, PW3 has studied

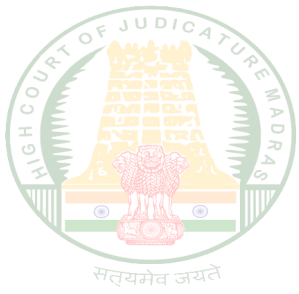


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upto 4th standard and aged about 10 years and 9 months, as per Ex.P7, School Record of PW3. PW2 has stated that the age of 12, the appellant/father forced her to consume alcohol and also deposed that she used to consume liquor only with her parents. This Court, on an independent application of mind and careful scrutiny of the entire materials, finds no mitigating factor warranting interference with the sentence imposed by the trial Court. Hence, the life imprisonment awarded to the accused is upheld, and no reduction or modification of the sentence is warranted. The punishment imposed is commensurate with the gravity of the offence and the moral depravity it embodies.

15. In our culture, father occupies a revered placed next to mother and higher than teacher and the divine, as expressed in the traditional saying **“Matha (mother), Pitha (father), Guru (Teacher), Deivam (God)”**. A father's paramount duty is to ensure the safety, emotional wellbeing, and moral upbringing of his children. When such a sacred responsibility is let down, it strikes at the very foundation of the family and Society.



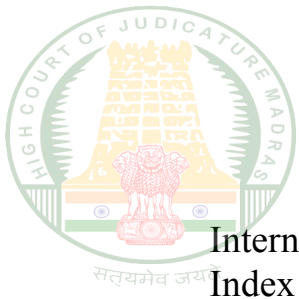
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WEB COPY 16. Instant case is indeed a peculiar case where it is painful to note that the father, who is expected to be the protector and guardian of his children, has turned out to be the very source of their suffering. The present case also portrays a distressing picture of how addiction to alcohol can destroy the harmony of a family and erode moral values. The accused, instead of nurturing and protecting his daughters, allowed his inebriated state to overpower his human instincts and parental duty. The evils of alcoholism not only ruin an individual's health and character but also devastate the peace and sanctity of an entire family.

17. In the result, this Criminal Appeal is dismissed, confirming the judgment of conviction and sentence passed against the appellant/accused dated 12.02.2019 made in Special S.C.No.64 of 20165 by the Sessions Court, Magalir Neethimandram, Salem.

(N.S.K., J.) (M.J.R., J.)
11.11.2025

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Index : Yes / No

Neutral Citation : Yes / No

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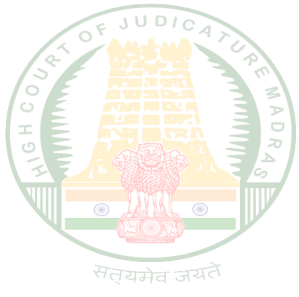
1. Mahila Court, Salem.

2. Inspector of Police,
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Salem District,

3. The Public Prosecutor,
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