

IN THE COURT OF THE JUDICIAL MAGISTRATE No.1 AT THIRUVALLUR

Present : Thiru. B.C.GOPINATH, M.L.,
Judicial Magistrate No.1

C.C.NO. 123 of 2009

Tuesday the 11th day of December 2012

State rep. By
Deputy Supt. of Police,
OCU-I, CB CID, Chennai
Cr.No.363/2008 of Vengal PS

...Complainant

-Vs-

Palanisamy (33)
S/o Govindaswamy
Peria Marai,
Sullan Kud Post, Thirumannai Via
Ariyalur District.

...Accused.

This case taken on file on 06.07.2009 and coming before me for final hearing in the presence of the Asst. Public Prosecutor for the State and the accused remaining on bail and being defended by Thiru.M. Thirumalai, M.R. Sugumar. R. Masilaman on hearing both sides, upon perusing the records and having stood over for consideration till this day, this court delivered the following

JUDGMENT

The Deputy Superintendent of Police, Organized Crime unit, Chennai – 1 CBCID. has laid a report u/s. 173 (2) of Cr. Pc alleging that the accused Was working as Physics Teacher of Maha Kavi Bharathiyar Matriculation Higher secondary ("the School" for short) School, Kasava illage, Pakkam Post, Thiruvallur District during the academic year 2006-2007. Durgadevi ("the Victim" for short) was a student of class IX during that academic time. On 11.08.2006 a science exhibition was held in the school in which the victim also participated. On the said day at about 1 pm the victim had gone to physics laboratory located in the second floor of the school for taking a broom stick to sweep the exhibition hall. While the victim picked up the broom stick from the lab, the accused came from behind and molested her. Therefore, it appears that the accused has committed offences u/s.4 of Prohibition of Women Harassment Act & Sec.354 IPC.

2. On securing the accused free copies of all documents relied upon by the prosecution were furnish to him in compliance of sec 207 Cr.Pc. After perusing the records hearing both side. charges u/s.4 of Prohibition of Women Harassment Act and 354 of IPC was framed, read over and explained to the accused by my predecessor on 01.10.2009 as required u/s.240 (2) CrPc. The accused pleaded not guilty, denied the offence and claimed to be tried.

3. Thereupon, the prosecution has produced and examined PW 1 to 24 witnesses and exhibits from P-1 to P-63 & MO 1 were marked.

4. The evidence of the prosecution witnesses in brief is as follows:

PW1 Kanchana is the defacto complainant and mother of Victim girl Durgadevi. She has deposed to the effect that her daughter was studying 9th standard in the Sevalaya school near 2006 and the accused used to misbehave with her. Therefore her daughter declined to go to school and cried. A teacher named Vatchala informed her that her daughter was subjected to harassment and thereafter she gave a complaint to the District Collector and also the School Management. No action was taken thereon and so as advised a complaint was lodged before Child Welfare Committee. The school management issued Transfer certificate to her daughter Durgadevi. Durgadevi later narrated of what happened in the physics lab. So a private complaint in **Ex.P-1**, was filed before this court and the same was forwarded to the Vengal Police station for registering a case and investigation. The Vengal police closed the case without proper investigation and therefore she approached the Hon'ble High court for a direction to transfer the case to a better investigating agency and accordingly an order was passed. The order of Hon'ble High court is **Ex.P-2**. She later gave a statement before the Judicial Magistrate, Uthukottai and her signature therein is **Ex.P-3**.

5. **PW-2 Durgadevi the victim** of the occurrence has deposed to the effect that while she was studying in Mahakavi Bharachiyar School run by Sevalaya Trust a science exhibition was conducted on 11.8.2007. During lunch brake, she was required to clean the exhibition area with a broomstick. So, she went to the Physics lab to fetch a broomstick, where the accused was found alone. When she informed him of the purpose of her arrival, the accused is said to have told her that broom stick was on the shelf near the

ceiling and asked her to take it using a stool. She took a stool and stood over it and took a broomstick from the loft. The accused hugged her from behind and so she jumped down. She requested the accused to leave her. But the accused embraced her and caressed her breasts. He asked her to wait for a minute and placed his palms on her face touched & kissed her lips. Thereafter, she came down crying and informed about this to her friend Adhilakshmi who did not believe at the first instance. So Adhilakshmi said that she would come along with Durgadevi when she goes back to the lab to keep the broomstick. Accordingly, she went to the physics lab to keep the broomstick. At that time the accused embraced her and so she shouted 'Adhi'. Hearing her scream, Adhilakshmi who was standing at the entrance of the lab, came in. On seeing Adhilakshmi, the accused freed her (Durgadevi). When they were about to leave the lab the accused called her and warned her not to disclose about this to anybody or else he will detain her in the 9th standard. So, she could not vent it to anybody but suffered from sleeplessness and mental agony. After one week, she informed about this to librarian teacher Vatchala who advised her to contact an Ex-teacher named Premakumari. Durga devi informed the said Premakumari over phone and thereafter Adhilakshmi and she narrate everything to Premakumari and her husband named Prabhu. Till this point time she did not inform about this to her parents. Because of this incident she did not go to school for two days. Towards the end of the 9th standard the subjects of 10th standard was taught and at that time she informed the Head Master Chitt Babu about this incident. He stated that these things are common there and since she is provided with free education, requested not to disclose about this to anybody until she completes Plus 2. Thereafter she informed about this to the correspondent Muralidharan who used to visit the school every Saturday. He did not take any action. Thereafter she was held responsible for somebody assaulting a teacher named Kingston. Following this, the Headmaster advised her for over an hour and with the assistance of teachers Annapoorna and Nirmaia, managed to get a letter stating that nothing untoward happened in the school. English Teacher Annapoorna and Tamil Teacher Nirmaia also advised her not to snowball the issue. Since they threatened her, she gave a letter stating that no such incident happened in the school out of fear that she

would be sent out of the school. After a couple of days, she informed about this to her mother. Since the school management took no action, she directly gave a complaint to the District Collector, Thiruvalur. The District Collector promised to take necessary action. The Ex-teacher Premakumari and her husband Prabhu came to her house and videographed all what she said. Thereafter she obtained T.C from the school and joined Dossar Higher Secondary school for studying 10th standard. She informed about this to a Donor of Sevalaya Trust named Rajesh. The said Rajesh asked to lodge a complaint with Indian Council for Child Welfare (ICCW). Her complaint was recorded and an enquiry was held. Thereafter no action was taken. Hence her mother filed a complaint with the Vengal police. The Vengal Police closed the case without proper investigation. Hence they approached the Hon'ble High court to transfer the case to CBCID for proper investigation. She gave a statement before the Judicial Magistrate, Uthukottai and her signature therein is **Ex.P4**. The T.C issued to her is **Ex.P5**. The complaint that she lodged before ICCIW is **Ex.P6**.

6. **PW-3 Vatchala** has deposed to the effect that she was librarian of the school from 1997 to 2007. The accused was employed as physics teacher during that period. PW2 Durgadevi was studying in 9th standard in the year 2006. A science exhibition was conducted for three days. One week later, PW2 informed her that when she was asked to clean the veranda she went to the physics lab to fetch a broom stick, the accused was alone in the lab and he asked to take a broomstick from the loft using a chair. Thereafter when she attempted to take the broomstick the accused embraced from behind and then she ran out of the lab and informed about this to Achilakshmi. When PW2 went back to keep the broomstick, the accused once again misbehaved with her and left her on seeing Adhilakshmi. She has further deposed that PW2 informed her that the accused threatened her of negative results in her 9th std if she disclosed this to anybody. Since she (PW3 Vatchala) was employed in the school at that time, she could not help PW2. Therefore she asked PW2 to narrate about the incident to a former teacher named Premakumari. Thereafter she also advised PW2 to give a complaint to District Collector. **PW2 also informed her that teachers named Annapoorna, Nirmala compelled her to give a letter stating that no such**

incident happened in the school premises. PW5 Adhilakshmi and her brother named Mohanraj were sent out of the school and since she feared to continue her education in the school she obtained a Transfer Certificate and joined another school. She, along with PW2 and Adhilakshmi informed about this to a Donor named Rajesh who advised them to approach the ICCW. Therefore they gave a petition before ICCW in Ex.P-7 and an enquiry was held thereafter the case was transferred to CBCID.

7. PW-4 Kas has deposed to the effect that PW2 is his daughter and she was studying class 9th during the academic year 2006-2007. His daughter is a heart patient and when she was promoted from 9th standard to 10th standard, she refused to go to school. She did not disclose the reason for not going to school. So her education for three months was spoiled and after one month he came to know about what happened to his daughter through PW3 Vatchala and Advocate Prabhu. He cried about hearing this and a complaint before the Vengal police fell in deaf ears. His daughter Durga had informed about this only to PW5 Adhilakshmi and a former teacher Premakumari. Thereafter his wife lodged a complaint with the District collector upon which no action was taken. Advocate Prabhu recorded all what they said in the video but later left the matter without taking any further action. Therefore a private complaint was lodged before this court and the same was forwarded to the Vengal Police for registering a case and investigation. But no proper investigation was done and so they approached the Hon'ble High court which transferred the case to the CBCID. Since the school refused to grant Transfer Certificate to his daughter they approached the Education Minister and upon his orders Transfer Certificate was issued. His request to issue Transfer Certificate is Ex.P-8.

8. PW-5 Adhilakshmi has deposed to the effect that she along with PW2 Durga has studying in Mahakavi Bharathiyar School during the academic year 2006-2007. In 2006 a science exhibition was conducted. A teacher named Vijaya asked PW 2 to clean the exhibition area. But broomstick was not available. So PW2 went to the physics lab in the first floor to fetch a broomstick. The accused Palanisamy was there alone and when PW2 requested a broomstick he asked her to use a stool and take out a broom stick from the loft. At that time PW2 is said to have been embraced

by the accused from behind and PW2 said about this to her. PW2 also requested her to accompany her while she keeps back the broomstick in the lab. When PW2 went to keep the broomstick she stood just outside the lab and once again the accused embraced PW2. PW2 shouted 'Adhi' and she peeped into the lab. On seeing Adhilakshmi the accused freed PW2 who came out crying as the accused threatened her to detain her in 9th standard. She has further deposed that her brother Mohan was studying in the school and after harassing her mother, **Transfer Certificate was issued to both herself and her brother**. She was required to hand over the books and uniform and so and after crying for sometime she left the school. Thereafter PW3 asked her to say about this to Premakumari. Premakumari's husband recorded their statements in video. Thereafter she accompanied PW2 and her parents and gave a complaint to the District Collector. Subsequently they also gave a complaint before the ICCIW and her complaint is **Ex.P-10**. The T.C issued to her is **Ex.P-10**. **As demanded by the Head Master and other teachers they gave a letter stating that no such incident happened in the school.** Later, on 23.3.2009 she gave a statement before the Judicial Magistrate, Uthukottai and her signature therein is **Ex.P-11**.

9. **PW-6 Tamilsely** has deposed to the effect that she knows PW2 and the accused. She studied along with PW2 during the year 2006 and in the month of August a three day science exhibition was conducted. PW5 Adhilakshmi told her that physics teacher Palanisamy misbehaved with PW2 Durgadevi, when she went to take a broomstick. Thereafter PW2 informed about this to Premakumari and her husband Prabhu, who recorded their statements in a video. **Later on the Head Master Chittibabu manipulated to obtain a letter from PW2 stating that no such incident happened in the school premises.** Then she accompanied PW2 and lodged a complaint to the District Collector and ICCIW. Her petition dated 15.10.2007 is **Ex.P-12**. Because of this incident the management deliberately detained her in 9th std and issued Transfer Certificate in **Ex.P-13**. Thereafter PW2 and PW5 Adhilakshmi also obtained Transfer Certificate.

10. **PW-7 Murugesan** has deposed to the effect that that he was Van driver in the school. From 2002 to 2007 and his wife Vatchala was working as Librarian. When he was employed as Driver he used to collect all

the rotten vegetables from the market along with students and handed over the same to the school hostel. A Science exhibition was conducted in the year 2006 and at that time the accused was the physics teacher. PW2 informed his wife that the accused misbehaved with her when she went to the physics lab to fetch a broomstick. They advised PW2 to tell about this to former teacher Premakumari. The matter was informed to Premakumari and her Prabu who is an advocate. Their statements were recorded in video. Later, a complaint was given to District Collector. But no action was taken thereon. As advised they also lodged a complaint with the ICCIW through the donor named Rajesh. Then the case was transferred to CBCID by the Hon'ble High court. Thereafter she gave a statement before the Judicial Magistrate, Uthukottai and the signature therein is **Ex.P-14**. **PW2 was allegedly intimidated to give a letter stating that no such incident occurred in the school by Head Master Chittibabu, Assistant Head Master Annapoorna and another teacher Nirmala.** They also obtained the books and uniforms from PW2 and PW5 and issued T.C and he also gave a complaint before ICCIW and his signature therein is **Ex.P-15**.

11. **PW-8 Arumugham** has deposed to the effect that he is a coolie and he fenced the Sevalaya School where his daughter Adhilakshmi and son Mohanraj studied. Adhilakshmi studied 9th std in the year 2006 and PW2 Durgadevi was her classmate. One day PW2 had informed his daughter the accused misbehaved with her. His daughter also informed about this to him. They reported about this a Donor Rajesh. **The school Management threatened him that they would issue transfer certificate to his daughter, if they disclosed about this incident to anyone.** Thereafter They compelled him to give an application for issuing transfer certificate on the guise that they are leaving that place. He signed in the application that was written by school staff and his signature therein is **Ex.P-16**. Transfer certificate was issued to Adhilakshmi and also Mohanraj (**Ex.P-17**). So they gave a complaint before the District Collector and Child Welfare Committee. Later on she gave a statement before the Judicial Magistrate, Uthukottai and his signature in the statement is **Ex.P-18**.

12. PW-9 Bharadhisasan has deposed to the effect that that he was employed as Tamil Teacher in Mahakavi Bharathiyar School from 2006 to 2007. Durgadevi Adhilakshmi and Mohanraj were his students. He was taking classes to 6th std to 9th std. The accused was employed as Physics teacher. A science exhibition was conducted for three days in 2006. After a week he learned from PW2 that the physics master (accused) misbehaved with her when she went to fetch a broomstick. When he went to inform about this to the Head Master Chitty Babu, the accused was already in that room and the Headmaster is alleged to have stated that he knows about the incident. One month later, he was sent out of the school. Young students were made to go to Koyambedu Market early in the morning to fetch rotten vegetables for the hostel. The Head Master instructed him to mark as present to those students who were sent to Koyambedu Market. He also gave a petition to the District Collector in Ex.P-19 and also the ICCIW. The invitation for the science exhibition is marked as Ex.P-20. The Programme Schedule for 12.8.2006 is Ex.P-21. The attendance register for the 9th std that he maintained during the relevant period is Ex.P-22. PW-2 Durgadevi was present on 11.8.2006 and the entry to that effect is Ex.P-23. On the same day Adhilakshmi was also present and the entry to that effect is Ex.P-24.

13. PW-10 Premakumar has deposed to the effect that she was employed as Tamil Teacher from 2005-2006. PW2 was studying 9th std in 2006. A science exhibition was held and students were required to do everything. PW2 informed her that when she (PW2) went to the physics lab to take a broomstick the accused embraced her from behind in the guise of helping her to take the broomstick. PW2 also informed her that she asked her friend Adhilakshmi to accompany her in keeping broom stick. When PW2 went to keep the broomstick, the accused misbehaved in the similar manner. He threatened PW2 of dire consequences, if she divulges about this incident to any body. PW2 has first informed about this to Vatchaia and thereafter Bharadhisasan. Then she informed the HeadMaster about this incident who advised her to mind her own business. For no reason Adhilakshmi and her brother Mohanraj were sent out of the school. They informed about this to her husband Prabhu who recorded their statements in video. Thereafter, they gave a petition to the District Collector who took no

action. On her intervention, Durgadevi, Adhilakshmi and Monanraj were admitted in a another school.

14. PW-11 Rajesh has deposed to the effect that he is a social worker and his uncle Srinivasa Rajagopal, a Canadian citizen settled in Malasia started an Association for social service. From 1998 to 2005 his uncle has donated over Rs.51 lakhs for various projects of sevalaya trust. He used to visit the school personally and verify the needs of the school as instructed by his uncle. They also donated a school bus, auto, dining hall and a tiled kitchen. When he went to the school he saw that children were used for cleaning toilets and also washing clothes of teachers. They were also sent to Koyambedu market to collect wastage vegetables through driver Murugesan. PW2 Durgadevi a student of class 9 told him all what is happening in the school and how she was molested by physics teacher Palanisamy during a science exhibition in August 2006. This was also confirmed by another student named Adhilakshmi. When she reported the matter to Head Master Chittibabu and other teachers, without initiating any action against the concerned they threatened the student of dire consequences. She also narrated all the story to an Advocate Prabhu who videographed their statements. On his advise they reported about the incident to the ICCW and the District Collector. Since there was no proper action by the Vengal police, the Hon'ble High court directed the investigation by CBCID.

15. PW-12 Rajan has deposed to the effect that during the year 2007 one girl named Parameshwari who is studying in Sevalaya school came to him and reported that the teachers in the institution are abusing and are also directing students to wash utensils, washing toilets and also harassing girls students. The head master showed reluctance over the issue and asked him to report to the concerned police station. The wife of the correspondent did not give a plausible explanation to the issue. The police also did not take any action and he also filed a petition in Ex.P-25 before ICCW.

16. PW-13 Nagaraj has deposed to the effect that her was employed in Mahakavi Bharathiyar School from 1995 to 2005. Whenever the correspondent Murulidharan went abroad, he used to manage the affairs of the school alongwith one Thangara. Following a misunderstanding, the said

Thangaraj left the institution and thereafter Head Master Chittbabu and Assistant Head Master Kingston were incharge of the school. He learned about the occurrence and advised PW2 and her parents to lodge a complaint before the Human Rights Commission. His petition before the ICCW is **Ex.P-26**.

17. PW-14 Dennis and PW15 Gulapudin have deposed to the effect that when they were working in Vengal Police Station as Head Constables. They assisted the Deputy Superintendent of Police in investigating the case in Cr.No. 366/2008 under section 4 of Woman Harrassment Act. The investigating Officer inspected the scene of occurrence, prepared an observation manazar and Rough sketch in their presence. His signature is Mahazar in **Ex.P-27**.

18. PW-16 Krishnakumar has deposed to the effect that he is a reporter in a magazine. During June 2007 Durgadevi and Tamilselvi and three other students of Sevalaya School came to their office at Ekkattuthangal and complained about the sexual harassment meted out to Durgadevi. They also reported that the Head Master turned deaf ears to the complaints of students. The management did not give any proper explanation to the matter.

19. PW-17 Gunasekaran has deposed to the effect that he is a retired Inspector of Police and when he was inspector of police in Vengal Police Station, on 1.9.2008 he received a complaint forwarded by the Judicial Magistrate No.1, Thiruvallur and registered a case in Cr.No.363/2008 u/s 4 of Woman Harrassment Act. The printed FIR dated 01.09.2008 is **Ex.P28**. During Investigation PW2 Durgadevi stated that the accused pulled her by hands and no one else other than her deposed about the occurrence. Therefore he closed the case as 'Mistake of Fact'. As directed by the Hon'ble High court he transferred the case to CBCID Chennai.

20. PW-18 Chandra Thanigachalam has deposed to the effect that she is employed as Secretary in Indian Council for Child Welfare, Tiruvallur and she received many complaints regarding harassment meted out to children in Sevalaya school and PW2 Durgadevi also complained about the misbehaviour of a teacher named Palanisamy. Durgadevi was accompanied by her parents and other persons who were formerly associated with

Sevalaya. All of them gave their petitions. The complaint given by Kanchana is **Ex.P-29**. The complaint of Mohan is **Ex.P-30**. The complaint of Sundarambal, mother of Adhilakshmi is **Ex.P-31**. The petition of one Prabhakaran addressed to child line is **Ex.P-32**. The petition of one Loganathan is **Ex.P-33**. All of them reported about the irregularities and illegalities and violation of Human Rights in the school run by Sevalaya trust. On behalf of the school Tmt. Bhuvanewari Muralidharan participated in conciliation and her statement in **Ex.P-34** was recorded. During enquiry the correspondent Muralidharan sent a letter stating that all the allegations levelled against the institution were false. Thereafter, enquiry was conducted and all the concerned were examined. On 1.2.2008 they received a notice stating that some donor is behind all these complaints and the same has been marked as **Ex.P-35**. Later on, they also received a letter stating that the enquiry is not satisfactory and the same is **Ex.P-36**. She has further deposed that they are incompetent to enquire into such allegations and they requested the Inspector of Police to enquire through a letter in **Ex P-37**.

21. PW-19 Vidya Reddy has deposed to the effect that she is employed in an organisation named 'Thulr' investigating into allegations of sex abuse against children. On 08.01.2008 a meeting was held and she participated in it. PW2 Durgadevi narrated about the misbehaviour of a teacher in physics lab. Many people with various complaints came there and the same were sent to the Sevalaya trust to conduct an enquiry. They received a reply and the ICCW in **Ex.P-38**. They handed over all the documents to the Police along with all the complaints and the enquiry conducted thereon. The same is **Ex.P-39**.

22. PW-20 Vijayalakshmi has deposed to the effect that she is a District Elementary Educational Officer and on 16.08.2007 she received a petition from the District Collector asking her to conduct an enquiry. Thereupon she went to the school run by Sevalaya and conducted an enquiry with regard to misbehaviour by teachers. Nobody came forward with any incriminating evidence and after enquiry they submitted a report to the District collector. She came to know that Durgadevi has properly obtained Transfer Certificate from the school and she left the school on her own accord. She sent all the records to the CBCID Police. The proceedings of the District

Educational officer is **Ex.P-40**. The proceedings dated 5.7.2008 is **Ex.P-41** and the letter sent to the Director of School Education is **Ex.P-42**. The letter of District Collector is **Ex.P-43**. The complaint dated 28.6.2007 given by one Krishnakumar is **Ex.P-44**. The letter through which the document were sent to the CBCID is **Ex.P-45**.

23. PW-21 Tmt. Jayasurya has deposed to the effect that she is Judicial Magistrate in the Fast Track Court at Alandur and when she was Judicial Magistrate at Uthukottai, the Chief Judicial Magistrate, Thiruvallur had directed her to record the 164 Cr.P.C statements of the witnesses concerned in Cr.No.363/2008. The said proceedings is **Ex.P-46**. Thereupon she issued summons to witnesses Durgadevi, Adhilakshmi, Kanchana, Arumugham, Vatchala, Murugesan and the witnesses appeared on 26.3.2009. Witness Durgadevi stated about the misbehaviour of a teacher named Palanisamy. Her statement is **Ex.P-47**. Similarly the statement of Adhilakshmi is **Ex.P-48**. Adhilakshmi deposed before her that her friend Durgadevi narrated about the misbehaviour of teacher Palanisamy. The statement of Kanchana was also recorded (**Ex.P-49**) The statement of Arumugham is **Ex.P-50**. The statement of Murugesan is **Ex.P-51**. She sent all the documents to this court under covering letter in **Ex.P-52**.

24. PW-22 Dr. Ramamoorthy has deposed to the effect that he is a heart Specialist in Steadford Hospital and on 5.5.2003 Durgadevi was brought for treatment and he after diagnosis detected that she was suffering from rheumatic valvular heart disease. She was treated as out-patient. In 27.1.2011 Eco cardio gram was taken for her. The out patient card issued for her is **Ex.P53**. The Eco Cardio gram report is **Ex.P54**. The report thereto is **Ex.P55**. The report to show that Eco Cardio gram was on 27.1.2011 is **Ex P56**.

25. PW-23 Prabhu has deposed to the effect that he does not know Durgadevi. He was treated hostile by the prosecution.

26. PW-24 Subbulakshmi has deposed to the effect that when she was Deputy Superintendent of Police in organised Crime Unit -1 she took investigation of Cr.No.363/2008 of Vengal Police Station. She examined the witnesses 1 to 23 and recorded their statements. She first examined Kanchana, Durgadevi, Adhilakshmi, Arumucham, Murugesan,

Bharadhidasan, Premakumari, Kas, Prabhu, Nagaraj, Krishnakumar and recorded their statements. She also recorded the statements of Chandra Thanigachalam and Vidya Reddy. She went to the place of occurrence on 12.2.2009 at 11.00 a.m. and prepared a rough sketch and observation mahazar. The rough sketch is **Ex.P57**. The observation mahazar is **Ex P58**. The witnesses to Kanchana Durgadevi, Murugesan and Premkumari expressed willingness to give statements u/s 164 CrPc. Therefore they were produced before the Judicial Magistrate Uthukottai for recording their 164 Statements. The statements were recorded and investigation revealed that **accused Palanisamy had committed offence under section 4 of Women Harrassment Act. She arrested him on 5.2.2009 at 7.00 a.m and sent him for judicial custody.** After completion of investigation she laid a final report against the accused on 29.5.2009. **During investigation witness Prabhu appeared before her and handed over a C.D containing the statements of the witnesses.** The same was received under Form.95 and sent to this court. The said C.D is **M.O.1**. The proceedings transferring the case to CBCID-OCU is **Ex.P-59**. She requested the Manager of Indian Bank to furnish information about Bank accounts maintained by witnesses Kasi, Durgadevi and Kanchana. The same is **Ex.P-60**. Kanchana has no balance in her account. While witnesses Kasi and Durgadevi had no account at all. The reply given by the Manager Indian Overseas Bank is **Ex.P-61**. Letter given by manager A'ahabad Bank Thirunindravur branch is **Ex.P-62**. The report given by Tmt.Rudhvennila District Social officer is **Ex P-63**. She recovered the attendance register of the school of the relevant period and also obtained Medical Certificate for Durgadevi. Witness Durgadevi and Kanchana have expressed ignorance about the complaint lodged before this court for the reason that the complaint was drafted in English. She also examined the Judicial Magistrate who recorded the 164 Cr PC statements and recorded her statement and **she examined the Chief Educational Officer (CEO) and recorded her statement. The CEO gave a statement with regard to various complaints against the Sevalaya Trust. The enquiry conducted and other details. She has stated that the accused appears to have committed offences punishable under section 4 of Women Harrassment Act.**

27. Examination U/s.313 CrPc.

After the prosecution evidence was closed the accused was examined u/s.313 (1) CrPc with regard to the incriminating evidence appearing in the prosecution evidence. He stated that the evidence let in by the prosecution is false and opted to lead defence evidence. Thereupon, he produced two witnesses (DW 1 and DW2) and Exhibits D1 to D8 and D M.O.1 were marked.

28. DW-1 Thiru.Sarathy has deposed to the effect that the CB CID police investigated him and recorded his statement under section 161 of of CR.PC. He has further deposed that PW-11 Rajesh called him over phone and asked them to come T.Nagar and requested him to depose against the Sevalaya. He has further deposed that he asked him to gather all the staff who left Sevalaya and the students who were affected by the institution. He has further deposed that he wrote a letter to Muralitharan on 8.1.08 stating about this. He has further deposed that one Y.V. Rajagopal who is in uncle of Rajesh called him over phone and threatened him.

29. DW-2 Nirimala has deposed to the effect that she is employed as Assistant Headmistress in the school and the CBCID police examined her and recorded her statement. She has further deposed that all the students studying in that school are poor and PW2 Durga Devi was admitted to the school by her father PW4 Kasi and the application for her admission has been marked as exhibit D.4. She has also deposed about the circumstances which witnesses Vatsala, Murugesan and others were sent out from the school and the dismissal order issued to Murugesan is exhibit D-8. She has also deposed that P.W.11 Rajesh used to come to the school in a drunken mood and used to act against the interests of the institution.

30. Exhibit D-1 is a series of 6 photographs purported to be showing the house of PW-2. These photographs were marked during the cross examination of PW-2. Exhibit D-2 is a copy of the petition that PW-two lodged before the human rights commission in SHRC NO. 8324/08. A copy of this petition was also marked during the cross-examination of P.W-2.

31. From the evidence supra, the case of the prosecution in brief is as follows:

P.W.2 Durga Devi and P.W.5 Adi Lakshmi were students of 9th standard in the MahaKavi Bharathiyar School at Kasuva run by the Sevalaya

trust during the academic year 2006-07. The accused was handling physics subject in the said school. During August 2006, a science exhibition was held in the said school from 10.08.2006 to 12.08.2006. (Exhibit P-20 invitation card). On the second day of the exhibition, Durga Devi was asked to clean the area where several participants had scattered food and connected items. Therefore Durga Devi went to the physics lab in the second-floor to fetch a broomstick to clean the area. The accused Palaniswamy who was the physics teacher at the time was sitting alone in the lab. Durga Devi is alleged to have asked him for a broomstick. The accused is said to have said that broomstick is on the loft and she can use a stool to climb up and take out one. [When Durga Devi attempted to take one from the loft, the accused is alleged to have hug her from behind which made to jump down from the stool. Thereafter the victim requested the accused to leave her but, the accused asked her to wait for a minute and placed his palms on her face and touched her lips. Besides carrassing her breasts, the accused Kissed her lips.] She came out crying and informed about this to her friend Adi Lakshmi (PW 5). At the outset, Adi Lakshmi did not believe this and said that she would accompany Durga Devi when she goes back to the lab to replace the broomstick. Accordingly Durga Devi went back to the physics lab to keep the broomstick, while Adi Lakshmi stood outside the lab. The accused behaved in a similar manner which made Durga Devi to shout "Adhi" meaning (Adi Lakshmi). When Adi Lakshmi peeped in, the accused freed his hands and left Durga Devi. When they were about to leave the lab, the accused called Durga Devi and warned her not to divulge about this to anybody or else results for the ninth standard will go against her. Fearing this intimidation, Durga Devi did not disclose about this to anyone but suffered from sleeplessness and mental agony.

32. A week later she disclosed about this to P. W.3 Vatsala who was the then librarian of the school from 1997 to 2007. Since Vatsala expressed her inability to help Durga Devi in any manner as she was working in the same school, she advised Durga Devi to contact Prema Kumari, a former teacher of the school. Thereafter Durga Devi narrated everything to Prema Kumari and her husband Prabhu, who happens to be an advocate. Towards the end of the academic year, the 10th standard curriculum was taken up and at that time she informed the headmaster named Chitti Babu about this

incident. Instead of taking action, he requested Durga Devi not to disclose about this to anyone until she completes her higher secondary education. Later she reported about this to the correspondent Muralidaran, who used to pay a visit to the school every Saturday. Unfortunately he also did not take any action. It was only after all these that Durgadevi informed her mother Kanchana (P.W.1) after about this incident. So Kanchana launched a complaint preferred a complaint to the District Collector, Thruvallur and the Indian Council for Child welfare at Tiruvallur. Although there was an enquiry by all concerned, no substantive action was taken against the accused. Therefore on 16. 09. 2009, Kanchana filed a private complaint before this court. The same was referred to the Vengal police station for registering a case and investigation. The said complaint is Exhibit P-1. The Vengal police registered a case in Cr.No. 363/08. Investigation was done and the case was closed as "mistake of fact" and a referred charge sheet came to be filed on the very next day. This compelled the de- facto complainant to approach the Hon'ble High Court for a direction to transfer the case to the CB CID police, Chennai for investigation. The Hon'ble High Court in its order dated 18.11.2008 (Exp P-2) directed the investigation to be done by CBCID and the Additional Director-General of Police (crime) was directed to nominate an officer for carrying out further investigation. In pursuance of the order of the Hon'ble High Court, PW-24 Tmt. Subbulakshmi was entrusted with the investigation of the case. The proceedings under which Subbulakshmi was entrusted with reinvestigation is Exp.P-59. She took up investigation and examined the witnesses and recorded their statements. She went to the place of occurrence on 12. 2. 2009 at 11 AM and prepared an observation Manazer (exhibit P-58) and rough sketch (exhibit P -57). The witnesses Kanchana, Durga Devi, Murugesan and Prema Kumari offered to give their statements us 164 CRPC before a Judicial Magistrate and accordingly the investigating officer produced there before the Judicial Magistrate, Uthukkottai and the learned magistrate recorded their statements (Exo.P47-51) Thereafter the investigating officer arrested the accused and produced him for judicial custody. She collected all the materials required to prove the prosecution case and after completing investigation, she laid a charge sheet against the

accused under section 4 of the Tamil Nadu Prohibition of Woman Harassment Act and section 354 IPC.

33. Submissions:-

Thereafter submissions of the Assistant Public Prosecutor for the State, the defacto complainant assisting the prosecution and the counsel for accused was heard. The submissions can be summarised as under

34. The learned A.P.P. Appearing for the state would contend that the case as against the accused has been proved beyond all reasonable doubts and hence the accused deserves to be dealt with for the charges framed against him.

35. The learned A.P.P. Would also contend that the delay in lodging the F.I.R. has been reasonably explained and even if there is any such delay the same cannot be taken as a ground to reject the prosecution case particularly in cases relating to sexual offences. In this connection she would rely upon the case of **Mohammed Imran Khan Vs state** (Govt.of NCT of Delhi) to underline the ratio that the evidence of the prosecutrix should ordinarily be accepted and her evidence stands on a higher pedestal than an injured witness as she suffer from emotional injury and it is not necessary to look for corroboration. She would, by relying upon **Dinesh @ Buddha Vs State of Rajasthan** underline the ratio that corroboration is not the sine qua non for conviction.

36. Gist of the written arguments filed on the behalf of the defacto complainant assisting the prosecution brief as follows :

1. The victim has clearly narrated the act of Molestation caused to her by the accused before the Judicial Magistrate Uthokottai u/s.164 CrPc and it does not suffer form any informative.
2. PW 5 Adhilakshmi has cogently corroborated the evidence of the victim.
3. The act of Sexual abuse has been informed to the school Headmaster and management at the earliest point of time. But they took no action.
4. The victim was threatened and compelled to give a statement as if nothing happened in the school. There after 15.10.2007 the victim had lodged a complaint before the ICCW. But the incident was suppressed by the management of the school.

5. The victim was dismissed from the school for bringing the issue to the media and the victims family were made to run from pillar to post to take appropriate actions against accused. Thereafter the defacto complainant lodged a complaint before this court and the same was forwarded u/s. 156 (3) of CrPc to registered a case and investigate.
6. The Vengal Police on the last day of of the 4 weeks time granted register a case 01.09.2008 u/s.4 of Women Harresment Act in Cr.No. 363/2008 and close the case has "mistake of facts" on the very next day. Therefore, the victims family had to approach the Hon'ble High Court to transfer the investigation in Crl.Op. No. 28037/2008 on the Hon'ble High Court was pleased to transfer the investigation to the CBCID Chennai Unit.
7. Therefore there is no delay on the part of defacto complainant and only the school management and the Vengal Ps are responsible for the delay that occasion. The accused who had a duty to protect the victim has try to take advantage of his position has a teacher and so he cannot be let scot fore. The evidence of the victim and her statement u/s.164 is convicing to base a conviction
8. No leniency should be shown to the accused who was indulged in sexual abuse of children. Hence, he deserve to be dealt with deserves to be given the maximum punishment as prescribed by law.

37. Notes of arguments were filed on behalf of the accused wherein the following points were interalia raised.

1. The prosecution has failed to prove its case beyond all reasonable doubts.
2. The evidence of P.W.2 suffers from infirmities and contradictions and she has deviated from the case narrated in the F.I.R and her explanation about the inordinate delay in lodging the first information is unsatisfactory. In this connection the learned defence counsel has relied upon the case of **Ramdas and others Vs State of Maharashtra** reported in (2007) 2 SCC 170 11.
3. P.W.2 Durga Devi has not mentioned the date on which the occurrence took place even in her statement before the judicial magistrate us 164

Cr.P.C. Therefore the statement and the evidence of Victim is bereft of material particulars and cannot be acted upon.

4. P.W.5 Adhilakshmi is a relative of the de facto complainant Kanohana and she is obviously an interested witness who wants to bring disrepute to the institution.
5. P.W.2 Durga Devi has disowned most of the averments in the allegations in the complaint marked as exhibit. P-1, although she states that the complaint was given by her mother on her instructions.
6. That is no satisfactory explanation from the prosecution as to why these sort of allegations are levelled against the managing trustee of the school.
7. There is total contradiction between the complaint and the statements of Durga Devi vis-à-vis complaint before the human rights commission.
8. Durga Devi and Adi Lakshmi have given contradictory statements as to who asked Durga Devi to fetch the broomstick from the physics lab. Durga Devi says that one teacher named Narayanamurthy asked her to bring the broomstick while other Lakshmi says that a teacher named Vijaya asked her to fetch the broomstick. There is no satisfactory explanation as to who is the Paymaster of advocate Sridhar who is appearing for the victims in this case before various forums.
9. Although there are serious allegations against advocate Sridhar, he has been permitted by this court to assist the prosecution. This makes it abundantly clear that the said Sridhar is behind this case and the case of the prosecution is not genuine.
10. The economic status of the de facto complainant has improved after this case was instituted which goes to say that they were financially being supported by somebody.
11. At present both Durga Devi and Ad. Lakshmi are studying in colleges and there is discrepancy with the regard to the person who is sponsoring their education.
12. The German donor Rajagopal who is offering financial assistance to Durga Devi and the Lakshmi have induced them to file false complaints against Sevalaya trust.

13. Transfer certificates to P. W.2 Durga Devi and P. W.5 Adi Lakshmi were issued at their own request and not at the instance of the institution. In this connection P. W.4 Kasi has clearly deposed that he requested the institution to issue transfer certificate for his daughter. P. W.8 Arumugham has also deposed in a similar fashion.
14. Complaint in the instant case has been launched after a delay of 703 days. There is no plausible explanation in this regard by P. W.1 Kanchana and the accused is entitled to the benefit of doubt for non-explanation of this delay.
15. The statements of the primary witnesses u/s 164 of Cr.P.C has not been dispatched to the court at the earliest point of time and the prosecution case suffers on this score also.
16. The prosecution has not proved its case beyond reasonable doubts and the defence version is more probable than the prosecution version. The accused is entitled to the benefit of doubt which enures to him.

By relying upon the above aspects the learned counsel has prayed for the acquittal of the accused.

38. Now the point for determination is whether the prosecution has brought home the guilt of the accused beyond all reasonable doubts and if so what could be the punishment that can be inflicted upon the accused.

Child sex abuse is a scourge to any civilized society. The prosecution has come forward with an unfortunate and heart-rending tale of a 13 year old student of class IX being sexually abused by her Physics Teacher (the accused). At the risk of repetition, the brief case of the prosecution is that on 11.08.2006 at about 1 p.m when the victim went to Physics lab to fetch a broom stick, the accused who was alone indulged in indecent behaviour which has the effect of outraging her modesty. This court has carefully perused all the material available on records besides anxiously considering the submissions advance on either side. In the light of the above let me now proceed with the discussion on the point.

39. The contention of delay in FIR:

The first contention strongly urged by the learned defence counsel is that there is enormous delay of over 700 days in lodging the complaint and registering the FIR.

40. It is not in dispute that the alleged occurrence took place on 11.8.2006 whereas the first complaint (Ex.P-29) was lodged before the Vengal Police Station on 15.10.2007. No action was taken on the basis of the set complaint. Therefore, the defacto complainant preferred a private complaint before this court on 15.07.2008 (Exp.P-1). The same was forwarded to the Vengal Police Station on 11.08.2008 for registering a case, investigation and filing a report within 4 weeks. On the basis of the complaint forwarded by this court, a case was registered in Cr.No.363/08. F.I.R in Ex.P-28 is dated 1.09.08. What has to be seen is whether the delay is properly accounted for by the prosecution and it does not shake the root of the prosecution case. Before appreciating this contention, it would be useful to refer to certain cases where ratio with regard to delay in lodging FIR in sexual offences has been laid down by the hon'ble higher courts.

41. For instance, it would be useful to refer to the case of ***Dildar Singh Vs State of Punjab reported in (2006)2MLJ(crL) 1030***

Relevant excerpts from the judgment is extracted below :

" This court has observed in several decisions that the courts cannot overlook the fact that in sexual offences delay in lodging of F.I.R can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. A girl in a tradition bound non-permissive society would be extremely reluctant even to admit that any incident, which is likely to reflect upon her chastity, had occurred, being conscious of the danger of being ostracized by the society or being looked down by the society. Her not informing any one about the incident in the circumstances cannot detract from her reliability. In normal course of human conduct an unmarried girl would not like to give publicity to the traumatic experience she had undergone and would feel terribly embarrassed in relation to the incident to narrate such incident. Overpowered, as she may be, by a feeling of shame her natural inclination would be to avoid talking to anyone,