

*lest the family name and honour is brought into controversy. Thus, delay in lodging the first information report cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same on the ground of delay in lodging the first information report. Delay has the effect of putting the court on guard to search if any explanation has been offered for the delay and, if offered, whether it is satisfactory."*

42. It would also be illuminating to refer to the case of **RAMDAS AND OTHERS VS STATE OF MAHARASHTRA (2007) 2 SCC 170.**

Excerpts relevant from para-24 runs thus:

*It is no doubt true that mere delay in lodging the first information report is not necessarily fatal to the case of the prosecution. However, the fact that the report was lodged belatedly is a relevant fact of which the court must take notice. This fact has to be considered in the light of other facts and circumstances of the case, and in a given case the court may be satisfied that the delay in lodging the report has been sufficiently explained. In the light of the totality of the evidence, the court of fact has to consider whether the delay in lodging the report adversely affects the case of the prosecution. That is a matter of appreciation of evidence. There may be cases where there is direct evidence to explain the delay. Even in the absence of direct explanation there may be circumstances appearing on record which provide a reasonable explanation for the delay. There are cases where much time is consumed in taking the injured to the hospital for medical aid and, therefore, the witnesses find no time to lodge the report promptly. There may also be cases where on account of fear and threats, witnesses may avoid going to the police station immediately. The time of occurrence, the distance to the police station, mode of conveyance available, are all factors which have a bearing on the question of delay in lodging of the report. It is also possible to conceive of cases where the victim and the members of his or her family belong to such a strata of society that they may not even be aware of their right to report the matter to the police and seek legal action, nor was any such advice available to them. In the case sexual offences there is another consideration which may weigh in the mind of the court i.e. the initial hesitation of the victim to report the matter to the police which may affect her family life and family's reputation. Very often in such cases only after*

considerable persuasion the prosecutrix may be persuaded to disclose the true facts. There are also cases where the victim may choose to suffer the ignominy rather than to disclose the true facts which may cast a stigma on her for the rest of her life. These are cases where the initial hesitation of the prosecutrix to disclose the true facts may provide a good explanation for the delay in lodging the report with the police is a matter of appreciation of evidence, and the court must consider the delay in the background of the facts and circumstances of each case. Different cases have different facts and it is the totality of evidence and the impact that it has on the mind of the court that is important. No strait jacket formula can be evolved in such matters, and each case must rest on its own facts. It is settled law that however similar the circumstances, facts in one case cannot be used as a precedent to determine the conclusion on the facts in another. (See *Pandurang Vs. State of Hyderabad*) Thus mere delay in lodging of the report may not by itself be fatal to the case of the prosecution, but the delay has to be considered in the background of the facts and circumstances in each case and is a matter of appreciation of evidence by the court of fact.

43. Thus the proportion of law and the ratio laid down by the honourable Superior Courts is very clear when it comes to applicability to cases relating to sexual offences. The instant case is one of sexual harassment levelled against a school teacher on his student. Therefore the ratio laid down in the above cases are squarely applicable to the instant case and the delay in FIR has to be appreciated with the help of the yardsticks laid down in the above case. To put it short, the ratio is that delay in lodging the first information report cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same on the ground of delay in lodging the first information report. Delay has the effect of putting the court on guard to search if any explanation has been offered for the delay and, if offered, whether it is satisfactory.

44. With his legal proposition in the back drop, let us now come to examine the contention of delay in lodging FIR and, registering a case and whether the delay is fatal to the prosecution case. For appreciating this aspect, the very genesis of the case has to be gone into.

#### 45. GENESIS OF THE CASE

The day on which the victim is alleged to have been subjected to sexual harassment by accused Palani Swamy is on 11.8. 2006 in the physics laboratory of Maha Kavi Bharatiyar school run by the Sevalaya at a village called Kasuva. She was studying 9<sup>th</sup> std at that time. It is alleged that the accused embraced from behind, caressed her breasts and kissed on lips when she attempted to take out a broomstick from the loft in the physics lab to clean the exhibition area in the school. Durga Devi was hardly 13 years old when the alleged incident happened. It was to Adi Lakshmi (P.W-5) that she vented about the misbehaviour of the accused at the first instance. When Adi Lakshmi came to know about this she volunteered to accompany the victim keeping back the broomstick in the physics lab. Accordingly she went to the physics lab to keep the broomstick from where she took. Other Lakshmi stood outside the lab to see what happens. When Durga Devi placed the broomstick in the same place the accused behaved alike. So the victim shouted "Adhi" and witness Adi Lakshmi peeped into the lab. On seeing Adi Lakshmi, the accused freed the victim. When they left the lab, the accused alleged to have threatened the victim that her 9<sup>th</sup> standard results is at her disposal and if she divulges about this incident to anybody, that would reflect on the results. If that be so, the victim a tender girl of 13 years would have definitely been drowned with fear.

46. The evidence of the victim shows that she was suffering from mental trauma after the incident and she did not go to school for a couple of days. In fact that she did not divulge about this incident even to her mother (W-1 Kanchana). After a few days, she mustered her guts to inform about the incident to librarian teacher Vatsala, who expressed her inability to help in any manner for the simple reason that she was at that point of time employed in the school. Therefore she advised the victim to report about the incident to one Prema Kumari who was a former teacher of the school. Accordingly after telephonic conversations, the victim accompanied by her parents and Adi Lakshmi reported about this to Prema Kumar. (PW-10) and her husband Prabhu (PW-23), who happens to be an advocate. Prabhu is said to have promised to help them in this matter and in the process he video-graphed

statements of the victim, Ad. Lakshmi and Kanchana. But later on Prabhu did not take any follow up action and he shifted allegiance.

47. Subsequently as advised by the donor Rajesh (PW-11) they lodged complaints before the District Collector and the Indian Council for Child Welfare at Tiruvallur. But unfortunately although enquiry was held by both no concrete action was taken. It is only after all these that Kanchana opted to Lodge a complaint in Exp.P27 before the Vengal police. But the police did not take at any action on the complaint lodged by a Kanchana and so she was constrained to file a private complaint before this court and the same was forwarded to the Vengal police station for registering a case and investigation. The said complaint is Exhibit P-1.

48. The Vengal police who received the complaint were gracious enough to register a case in crime number 363/2009. But they conducted a hasty investigation and lodged a referred charge sheet before this court on the very next day of registering the case. This perhaps speaks volumes about the biased manner in which the Vengal police went about the case. Being aggrieved by this closure of case on the ground of "mistake of fact", the defacto complainant approached the Hon'ble High Court for a direction to transfer the case to CB CID wing of the police for fair investigation. This is how the case came to be transferred to the CB CID police for investigation. It is evident that the victim later reported about this matter to the correspondent Muralidaran who used to pay a visit to the school on every Saturday. He is said to have advised the victim not to divulge about this incident and to concentrate on studies. note of. A timid girl of 13 years will definitely not like to rub shoulders with teacher in whose hands her academic result lays. She would have definitely not succeeded in mustering her guts to take on the physics teacher, which would under all probabilities would have a negative impact upon her education and her future at large. This is pretty ordinary prudence. No ambitious student, particularly who come from a very poor background would like to jeopardise her education, career, future and also family. Under these circumstances the victim did not go to school for a couple of days under trauma. Being at teenage girl of 13 years she would not have known the consequence of not reporting about the alleged offence to the concerned at the earliest point of time.

Relevant area of non evidence is extracted below :

"நாங்கள் இருவரும் வேண்டிய உருப்போது ஏதும் என்னை கூப்பிட்டு இந்த விஷயத்தை மாட்டமாறு சொன்னால் 9வது நீசல்ட் நான்தான் போ. வேண்டுமீ நன்றாக நிலையில் வைத்தகொள். பெய்லக்கிவிடுவேன என்று சொன்னார். சர் என்று சொல்லிவிட்டு வந்தவரீட்டை. அப்போது என் வயது 16. எதிரி அவ்வாறு பிரிட்டியதால் என வீட்டில் சொன்ன முடியாமல் தூங்க முடியாமல் மன வேதனைப்பட்டேன். இந்த சம்பவம் முடிந்து ஒரு வாரம் கழித்து என் டள்ளி Library ஆசிரியர் என்பவருடன் எதிர் செய்த செய்கையை பற்றி தெரிவித்தேன். 2006ஆம் ஆண்டு முதல் 2007 வரை சேலாவா பள்ளியில் 9வது வகுப்பு 1.08.2006 நேரத்தி நடந்தது. எதிரி என்னை பிரிட்டியதால் தான் என தெரிதோரீடம் சொல்லவில்லை. தலைமை ஆசிரியர் டம் சீல் டெட்டரில் கையெழுத்து வாங்க சேலாம்போது இந்த பள்ளியில் எதுவும் நடக்கவில்லை என்று எழுதி கொடு என்று சொன்னார். என் அம்மா வேங்கல் காவல்தலைமையத்திற்கு சென்று புகார் கொடுத்தார். ஆனால் வேங்கல் காவல் நிலையம் எந்த நடவடிக்கையும் எடுக்கவில்லை. நானே தேரிடையாக சென்று திருவள்ளூர் மாவட்ட ஆட்சியர் டம் புகார் தெரிவித்தேன். நான் போய் சொல்லும்போது பத்திரிக்கைகாரர்கள் இருந்தார்கள். இந்த விஷயத்தை பத்திரிக்கையில் போட்டார்கள். மாவட்ட ஆட்சியர் நான் கொடுத்த புகாருக்கு நடவடிக்கை எடுக்குமாறு தெரிவித்தார்கள்".

"போலீஸ் ராஜேஸ் என்பவரிடம் நான் போய் எனக்கு நடந்ததை சொன்னேன். இதைப்பற்றி ICCW குழந்தைகள் நல காப்பகத்தில் சொல்லும்படி தெரிவித்தார். அங்கேயும் நடந்த சம்பவத்தை பற்றி கூறினேன். நான் சொன்னவாறு அவர்கள் எழுதி கொண்டார்கள். சேலாவா பள்ளியிலிருந்து 2 டேரை வரவழைத்து விசாரணை செய்தார்கள். வரவழைத்தவர்கள் பெயர் முரளிதாஸ் சாரிஸ் மலைவி மற்றும் அவரது மாமாஸார் ஆவார்கள். இதுவரை இது போல் நடந்தது இல்லை என்றும் வேண்டுமென்றால் புகார் எழுதி கொடுங்கள் நான் போய் கேட்கிறேன் என்று சொன்னார். ஆனால் அவர்கள் எனக்கு எந்தவித பதிலும் சொல்லவில்லை. வேங்கல் காவல் நிலையத்தில் நாங்கள் கொடுத்த புகாருக்கு எந்த வித நடவடிக்கையும் எடுக்காத காரணத்தால் மீண்டும் ராஜேஸ் சாரிடம் தெரிவித்தேன். வழக்கிற்கு முலமாக திருவள்ளூர் குற்றவியல் நீதிமன்றத்தில் என் அம்மா தனிபுகார் தூங்கள் செய்தார். அதன் பேரில் வேங்கல் காவல் நிலையத்தில் வழக்கு பதிவு செய்தார்கள். குழந்தைகள் நல காப்பகத்தில் எதிரி மீது எந்த நடவடிக்கையும் எடுக்கவில்லை".

49. Records and evidence is to the effect that she has knocked every door seeking justice. But all the doors were not the right ones and it is at last her mother Kanohana lodged the private complaint in Ex P-1. Although the Vengal Police registered a case they conducted a much investigation and closed the case as "mistake of fact". This compelled the the defecto complainant to approach the Hon'ble High Court to transfer the case to a

better investigating agency. Accordingly, the Hon'ble High Court in its order in Ex P-2 directed investigation to be up by the CBCID Chennai. Under Ex.P-59, PW 24 Subbulakshmi took over investigation of the case. The above facts are uncontroverted. This brings us to a conclusion that the delay occasioned due to the following factors

- 1) The prosecutrix is a teenage girl of 13 years who do not know the consequences of reporting about an offence at the earliest point of time.
- 2) The accused had intimidated by her of dire consequences and adverse results in the ninth standard if she divulges about this incident to anyone and therefore the accused himself has contributed to the delay by his own act. It is not only wise but also reasonable that the victim did not divulge about this to anyone fearing vindictive action by the accused. Her wait until she completes her schooling in that school is quite reasonable and justifiable.
- 3) The prosecutrix has reported about this incident to some class teachers, Prema Kumari under husband, district collector, the Indian Council for child welfare, Thiruvallur seeking justice for the injustice done to her.
- 4) Thereafter Kanchana her mother who is also the de-facto complainant came to know about this incident after some delay and she lodge a petition in Exp.P29 at the first instance. No action was taken thereon.
- 5) Kanchana was constrained to file a private complaint before this court after all the door she locked did not open. The private complaint was on 11.08.2008 forwarded under section 156(3) CrPc for registering a case and investigation.
- 6) The Vengal police received the complaint forwarded by this court on 01.09.2008 and registered a case. But after a hasty investigation they close the case on the very next day as "mistake of fact". In this connection the Inspector of police Vengal Police Station Thiru. Gunasekaran (PW-17) has categorically admitted that the victim has in the course of investigation stated that the accused Palanisamy pulled her hands. But he opted to close the case as "mistake of fact" for the simple reason that no other witnesses corroborated her version.

Pulling a girl of 13 years by itself amounts to harassment of woman and the Vengal police ought to have proceeded positively on her sole testimony. But however referring the case on the ground of mistake of fact has given occasion for further delay. Thus the Vengal police have a major role in the delay in registering the FIR.

- 7) Aggrieved by the final report of the Vengal police, the defacto complainant approached the Hon'ble High Court for a direction to transfer the investigation to CB CID for better investigation. Accordingly time was consumed in this fashion also

50. Thus the above vital factors, in particular the fact that the victim had to safeguard her education, the threat posed by the accused which prevented her from divulging the information to the right persons and even her parents, the fact that the de facto complainant Kanchana was driven to file a private complaint before this court and the subsequent events that followed has contributed to the delay in lodging the first information report. Thus, there is plausible explanation at every stage subsequent to the incident. Most important of all is that the victim was a girl aged 13 yrs old who could not ventilate the sexual advances made by her own teacher and the embarrassment in divulging this to others at the cost of her own reputation is a major factor that caused delay in late FIR. Applying the ratio laid down by the honourable apex court in **Dildar's** case cited supra, and on careful scrutiny of the totality of the encircling circumstances, this court holds that the delay in lodging the FIR is satisfactorily explained by the prosecution and the delay as such does not give a death blow to the prosecution case. Hence the contention of the learned defence counsel on this point is unsustainable.

51. The next contentious issue raised by the learned defence counsel is that the entire episode is at the behest of one Rajagopal (referred as German Rajagopal) who is an erstwhile donar to the Sevalaya Trust and who has stained relationship with the trust and his bend upon bringing disrepute to the Sevalaya Trust and the school run by the trust. In this connection the learned defence counsel has drawn the attention of this court to the relevant area in this evidence adduced on behalf of the accused. In this connection he has turned attention of this court to the evidence of DW – 1 Sarathi who is a trustee in a private trust. He has deposed to the effect that PW 11 Rajesh

asked him to collect people to go against the Sevalaya Trust. The said the Rajagopal is none other than the uncle of PW 11 Rajesh. Sarathy has further deposed that Rajesh is the master mind behind the plot to bring the institution to disrepute. Similarly he is also taken this court to the testimony of DW 2 Nirmaia the assistant Head Master who has stated that following misunderstanding between the donor Rajagopal and the trustee Muralitharan, they started against the interest of the Sevalaya Trust.

52. While appreciating this contention his court has carefully gone into the evidence of PW 11 Rajesh. He has deposed to the effect that his uncle Rajagopalan donated over Rs.51 lakhs from 1998 to 2005 for various project of Sevalaya Trust, and he used to visit the school personally to look into the needs of the school. They also donated a School bus, Auto, Dining Hall and Tiled Kitchen. He has further deposed that he used to inform his uncle of what happens in the school over phone. During the course of his cross examination he has categorically mentioned that his uncle was donating to the trust until December 2004. Thereafter misunderstanding crept in because of which his uncle stopped donating to the trust the relevant portion of the evidence is as follows :

"2004 டிசம்பர் வரை எனது மாமா டொரிஸ் நடத்தி வரும் நிறுவனம் சேவாலாயா என்று நிறுவனத்திற்கு ஒன்றோடொன்று கொடுத்தது. வந்தபின்னர் என்று சேவாலாயா சரி. டிசம்பர் 2004 ஆம் ஆண்டுக்கு பிறகு மாமாவிடிலும் சேவாலாயா நிறுவனத்திற்கும் இடையே உடனடி உறவு சரியான முறையில் இல்லை"

53. The above deposition of Rajesh makes it clear that the relation between Rajagopal and Muralitharan ran into rough weathers way back in 2004 itself. Thereafter he stopped donating to the trust. While the relationship between Rajagopal and Muralitharan got stained in the year 2004 itself, it is hard to believe that after 5 years Rajagopal wrecked vengeance against the trust by instigating the defacto complainant to come forward with a complaint.

54. From the prosecution evidence it is obvious that more people than the victim and her parents have got of grudges against the institution. For instance PW 7 Murugesan has alleged that when he was employed as a driver he used to collect rotten vegetable in the Koyambedu market with



school children for the hostel. His complaint before the ICCW is Ex.P-15. PW-8 Bharathidasan has also deposed about various irregularities in the school (Exp.P-19 his petition before ICCW, Thiruvalur). PW-12 Rajan is also deposed that girl students were subjected to harassment in the school like employing them to wash utensils, toilets etc. His complaint before ICCW is Ex.P-25. Similarly PW-13 Nagaraj has given a petition before the Human Rights Commission in Ex.P-26. It may or may not be true that the aforesaid witnesses might have deposed against the school management at the instigation of P.W-11 Rajesh or the ex-donor Rajagopal. But all these witnesses in so far as this case is concerned are hear-say witnesses who are not concerned or directly connected with the harassment meted out to the victim.

55. In this case we are only concerned with a short point as to whether the accused caused indecent affront to the sexual modesty of the victim. We are not concerned about the other illegalities in the school, although it may be incidentally relevant.

56. The next relevant question is whether the victim and the corroborative witness Adi Lakshmi (P. W-5) could have acted on the instigation of either Rajesh or Rajagopal. To appreciate this aspect, certain relevant factors have to be considered.

57. The victim was born on 15. 4. 1993 and she was 13 years old during the alleged occurrence. She was 15 years old when she came forward with her statement U/s 164 Cr. P.C before the Judicial Magistrate, Uthukkottai. (Ex.P- 47). She was hardly 18 years when she deposed before this court in Examination-in Chief on 19.11.2011.

58. Even assuming that some of the witnesses cited by the prosecution like P.W.7 Murugesan, P.W.8 Arumugham and P.W-9 Bharathidasan could have deposed against the school at the advice or instigation of Rajesh or Rajagopal, it is hard to believe that a girl aged 13 yielded to the request of those who are inimically disposed against the school. Similar is the case of P. W. 5 Adi Lakshmi who was also barely 16 years old and the time of the alleged occurrence and 19 years old when offering her statement before the judicial magistrate in Ex.P- 48. Even assuming that the said Rajesh or Rajagopal are sponsoring the witnesses who are alleged that

such tenderly aged girls would've mustered their guts to adduce false evidence in public court about indecent behaviour meted out to them staking their own dignity. In this aspect it would be relevant to note that the victim has categorically stated that although many witnesses came forward with several petitions before the District Collector and the I. C. C. W, her distinct case was not emphasised by anyone. That apart, even if the victim was tutored by certain other people, that is no specific reason pointed out by the learned defence counsel as to why she should take on the accused Paani'samy or make him a scapegoat for sexual harassment leaving out other reasons which may not have impact on her own reputation.

59. For the aforementioned reasons, this court is unable to sustain the contentions of the learned defence counsel that the entire prosecution is at the behest of the erstwhile donor Rajagopalan.

#### **60. APPRECIATION OF EVIDENCE:**

At the outset it is worthwhile to mention that the Investigating Officer has over-zealously conducted investigation and travelled a long way beyond the prosecution case. But for the primary witnesses from P.W.1 to 6, all the other witnesses barring P.W.10 Prema Kumari are not indispensable for the prosecution case. P.W.2 is the victim and P. W. 5 is the corroborative witness. It is just enough to see if there evidence is blemish free, inspires confidence and can be acted upon to base a conviction. But the Investigating Officer has over-enthusiastically included all the persons who have some sort of grievance or grudge against the School as witnesses, particularly those who have preferred petitions against the Trust with the District Collector, ICCW, Human Rights Commission, etc. There are forums where these allegations can be raised and in this case, those are not relevant at all. The Investigating Officer has also obtained letters from Banks to falsify the defence version that the victim's family enriched themselves by this case.

61. The learned defence counsel has vehemently submitted that there are material contradictions and marked deviations in the evidence of the victim and P.W.5 Aci Lakshmi from the original complaint in Ex.P- 1 and so it is not in the interest of Justice or fairness to act on the the evidence of the victim to base a conviction. In support of this contention he has drawn the attention of this court to the allegations levelled in the complaint in Ex.P- 1

and the statement of the victim before the Judicial Magistrate and also the evidence before this court apart from a statement under section 161 CrPc.

62. The learned defence counsel has taken the notice of this court to the allegations levelled against not only the accused but also certain other teachers in the school. On perusing Ex.P- 1, this court finds that there are various allegations against not only the accused but also certain others like teacher Kingston, and also the correspondent Muralidaran. There are allegations to the effect that the victim was stripped and she was also asked to hold the private organs of the accused and the teacher Kingston. There are further allegations that the headmaster Chitty Babu, teacher Kingston and the correspondent Muralidaran also molested the victim. But however the investigating officer who conducted a fair investigation has, after investigation found that the charges against the accused alone is true and that is no sufficient evidence to proceed against the other persons namely Chitty Babu, Kingston and Muralidaran. The investigating officer has come to this conclusion after recording the statements of the prosecution witnesses and also after perusing the statement given by the main witnesses before the Judicial Magistrate, Uthukkottai on 26. 3. 2009.

63. On perusing the complaint, the 161 statements, 164 statements and the evidence of primary witnesses it is obvious that there are contradictions and variations as contended by the defence counsel. I accede to the submission of the learned defence counsel that there are material contradictions in the Ex P- 1 viz-a-viz the 164 statements and the deposition. Be it as it may, it has to be closely scrutinised if it wholly affects the prosecution case after taking into consideration the totality of the evidence adduced on behalf of the prosecution.

64. Explanation with regard to this can be found in the evidence of the defacto complainant, Kanchana. She has, in her Chief examination categorically stated that in her complaint she has levelled allegations against the trustee Muralidaran, headmaster Chitty Babu, teacher Kingston @ Arokkiaraj, English teacher Annapurna, Tamil teacher Nirmala besides the accused. She has admitted that the signature in Ex.P- 1 is her's. She has during her cross-examination, candidly stated that she gave a complaint towards the end of September and the complaint was drafted by an advocate.

She has also stated that the complaint was in English and she does not know to read or write English. Therefore, it cannot be said that the de facto complainant Kanchana is fully aware of the allegations in the complaint given by her because it was drafted in English. It is pretty ordinary prudence that victim could have even hesitated to narrate the proper facts to her own mother. The counsel engaged by the de facto complainant may also have exaggerated the version of the de facto complainant. The victim was only 13 years old when the alleged occurrence took place and she was incompetent to lodge a complaint with the police or the court. Therefore, as a responsible mother it is her duty to take all necessary actions for the injustice meted out to her minor daughter. In the process it is quite natural that certain exaggerated versions have come in the prosecution case. But this cannot be taken as a ground to discard the valuable testimony of the victim or the corroborative witness, if found trust-worthy. Even if we reject the complaint in Ex.P- 1, it has to be seen whether the evidence of the victim is supplemented and complemented by the corroborative witness viz, Adi Lakshmi.

65. In her statement before the Judicial Magistrate u/s 164 Cr. P.C, the victim has cogently stated that during the science exhibition held during the academic year 2006, one teacher asked to sweep the exhibition hall for which she went to fetch a broomstick from the physics lab in the second-floor. When she went to take the broomstick, the accused was alone in the lab and he asked to take the broomstick from the loft by using a stool. Accordingly when she stood on the stool to take the broom, the accused hugged her from behind, caressed her breasts besides kissing her lips. The learned magistrate (P.W-21) has after adopting all the formalities to record witness statement has recorded the statement of the victim and the same is Ex.P- 47. The Learned magistrate while deposing before this court has also stated that the victim narrated about the sexual harassment meted out to her by the accused.

66. Similarly P. W. 5 Adi Lakshmi has also deposed in conformity to her statement under section 161 Cr.P.C. She has also cogently stated about the manner in which she accompanied the victim in keeping the broomstick back in the physics lab, how the accused caught hold of her, how the victim screamed "Adi", how she went into the lab and how the accused freed the victim from his clutches on seeing her (Adi Lakshmi).

67. The evidence of the victim and the corroborative witness i.e. Adi Lakshmi compliments each other and the learned defence counsel has not been able to elicit anything concrete to discredit their evidence, but for some mere suggestions that they were being tutored and the exact date of the occurrence has not been stated by the witnesses.

68. While appreciating the contention that the actual date of occurrence has not been mentioned by the victim and Adi Lakshmi in their evidence, or 164 statement, the victim has categorically deposed in court that the occurrence took place on 11.8.2006 when a science exhibition was held in the school. As mentioned earlier, she was hardly 13 years old when she gave a statement u/s 164 Cr.P.C and there was a considerable gap between the occurrence day and the day on which the statement u/s 161 or 164 was recorded. This can be attributed to immaturity or nervousness in standing before a court of law at such a tender age. Therefore, the non-mentioning of the day is of no consequence as the totality of the evidence points out to the day of occurrence. The invitation and the programme chart for the science exhibition during the year 2006 has been marked through P.W.9 Bharadhidasan as Ex.P- 20. The programme schedule for 12.8.2006 is Ex.P- 21. The attendance register for the relevant day (11.8.2006) in respect of the victim and witness Adi Lakshmi are Ex.P- 23 and 24 respectively. The attendance register makes it very clear that science exhibition was held on the said day and the victim and Adi Lakshmi were present on the day. Therefore this court is unable to sustain the contention that the prosecution case suffers for not being clear about the date of occurrence. The victim has during her evidence-in-chief initially stated that the occurrence was on 11.8.2007. But she has later rectified herself by stating that the occurrence took place on 11.08.2006. The learned defence counsel cannot be allowed to take advantage of the wrong mentioning of the date of occurrence because the victim was examined on 19.09.2011 i.e. five years after occurrence.

69. The learned defence counsel has contended that the evidence of the victim and Adi Lakshmi is far away from the allegations in Ex.P- 1. As mentioned supra, this contention is true. In such circumstances, a positive duty is cast upon this court to carefully examine the evidence of the victim and Adi Lakshmi to check if that is any artificiality in it and it has been tutored by

someone. As mentioned earlier the victim was barely 13 years old when she came forward with the statement before the Judicial Magistrate under section 164 Cr. P.C.

70. It is evident from Ex.P- 1 and the evidence of the victim that the Ex.P- 1 contains lot more allegations on charges against not only the accused but also certain others. The mere fact that the victim has come forward with a different version from that of Ex.P- 1 lends support to the credibility of evidence. Had she been tutored as alleged by the learned defence counsel, she would have deposed in conformity with all the allegations in Ex.P- 1. The victim has not stuck herself to the complaint in Ex.P- 1 even when she was examined five years after the occurrence and when she has acquired sufficient maturity. She has confined herself to her original statement that she gave before the investigating officer and the judicial magistrate. This adds credibility and strength to her evidence, contrary to the contention of the learned defence counsel. She has cogently narrated about the sexual advances made by the accused during the science exhibition. She has deposed before this court in a similar fashion and minor discrepancy cannot be taken as ground to reject her testimony in toto. Therefore I do not see any artificiality or tutoring in the evidence of the victim and also Adi Lakshmi. They have perfectly narrated the occurrence in a cogent and convincing manner. This inspires confidence and this court finds no reason why their testimony should be rejected. It is not irrelevant to mention that P. W.10 Prema Kumari has also supplemented the evidence of the victim and P.W.5 Adi Lakshmi by deposing that the witness and Adi Lakshmi reported about this incident to her and her husband Prabhu who recorded their statements in a video. But for obvious reasons, PW-23 Prabhu has turned hostile and so the C.D in which the statements of the victim, her mother and witness Adi Lakshmi has been marked through the investigating officer.

71. It is well settled in law that in sexual offences the evidence of the victim if found blemish free and reliable can be the sole ground for conviction and it is necessary to look for corroboration only when there are material contradictions and discrepancies which would improbabilise the prosecution version. In the instant case the evidence of the victim and witness Adi Lakshmi is more than sufficient to act upon and this court does not feel the

need to look for corroboration. In this aspect it would be useful to the advert to the case of **Rameshwar vs State of Rajasthan AIR 1952 SC 54** wherein this ratio has been underlined. The relevant excerpts from the judgement referred above runs thus:

*"The rule, which according to the cases has hardened into one of law is not that corroboration is essential before there can be a conviction but the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the court".*

72. While coming to the defence version, the accused has produced and examined two witnesses namely PW- 1 Sarathy and DW-2 Nirmla to fortify his version that the entire episode is at the behest German Rajaogopal and PW-11 Rajesh. He has also produced photographs of a building under construction in DMO- 1 series to impress that the defacto complainant and her family enriched themselves after lodging this complaint. There is nothing to suggest that the photographs depict the house of the defacto complainant. That apart, this court has already ruled out the probability of the victim and PW 5 Adhilakshmi being tutored and deposing at the instigation of either Rajesh or Rajagopal. Therefore this court is unable to accept the evidence of DW 1 Sarathy to that effect.

73. DW 2 Nirmla is a teacher against whom various charges as been levelled in the original complaint. She is also alleged to have compelled the victim to give a statement that no untoward incident happened in the school. She is working for the school and as such, is definitely an interested witness. She has simply deposed that witnesses like Arumugam and Murugesan have been terminated from the institution on valid grounds and because of their dismissal from the school they are, inimically disposed towards the school. Therefore her testimony does not come to rescue of the accused in any manner is rejected in limine.

74. Learned defence counsel has also marked Ex D-2 a copy of the complaint that the victim preferred before the State Human Rights Commission in petition No.8324/2008 to bring out the contradiction between the complaint to elicit the contradictions between her evidence and the petition before the Human Rights Commission. I am afraid, this contention



cannot be sustained for the simple reason that a petition before some other forum cannot be used to contradict the statement of the accused before this court or before the Magistrate to whom she gave her statement u/s.164 CrPc. Therefore the defence version fails and there is no credit-worthy evidence to negative the prosecution version which has been proved through convincing and trust over the evidence.

75. The learned defence counsel has contended that the victim, Adi Lakshmi and her brother obtained transfer certificate from the school on their own accord. But to the contrary, P. W. 8 Arumugham has deposed to that the school management compelled him to give a requisition to issue transfer certificate for his daughter Adi Lakshmi concerned Mohan. The school itself prepared a requisition as if he requested for the transfer certificates of his daughter Adi Lakshmi and son Mohan. Upon compulsion he was made to sign in that requisition letter. On producing the letter in Ex.P- 16, it is seen that Arumugham has signed at the foot of the letter. But the addressor therein, has been named as Sundaram and not Arumugham. If Arumugham himself has written that letter then he would not of certainly mentioned the name of Sundaram as the person requesting the issuance of transfer certificate. This clearly goes to say that the school management sent out Adi Lakshmi and her brother Mohan from the school. Similarly P. W. 6, Tamil Selvi has also deposed that she was deliberately detained by the school administration in the ninth standard. This clearly portrays the vindictive action that the school administration has taken against students who went against the institution or who raised voice against the institution. Hence this contention also fails and it is for the appropriate authorities to look into this sort of activities by school managements.

76. For the aforesaid reasons, this court holds that the evidence of the victim and Adi Lakshmi which is credible, trustworthy, blemish free and suffers from no infirmity or artificiality warranting its rejection. Their evidence is sufficient proof to hold that the accused indulging in the act of molesting the victim by taking advantage of his position as a teacher and out powering the victim by not letting her to divulge about the occurrence to anyone at the earliest point of time.



77. To sum up, the prosecution has successfully established that the accused indulged in indecent affront to the sexual modesty of the victim in a public place, thereby committing an offence punishable u/s 4 of the Tamil Nadu Prohibition of Harassment to Woman Act 1998 and also an offence u/s 354 of IPC and accordingly he is found guilty of the charges framed thereunder and is liable to be convicted. The point is answered accordingly.

**78. Now the question of sentence:**

Having found the accused guilty of the charges framed u/s 4 of the Tamil Nadu Prohibition of Harassment to Woman Act and also an offence u/s 354 of IPC, he was questioned under section 248 (2) Cr.P.C with regard to the punishment that can be inflicted upon him. The accused maintained that he is innocent and the case has been foisted against him.

79. The learned defence counsel contended that the accused was a bachelor at the time of occurrence and now he is married and has a couple of children, both being girls. He has further contended that the accused is highly educated and he is the only bread-winner of the family. This court has considered these submissions.

80. Sexual abuse on children, as surveyed by various magazines and organisations shows, is on the rise in India and most of it does not come to light because of ignorance and innocence of children and in particular because of the fact that the persons who indulge in such activities are those under whose custody they are. So obviously, in children who become victims are easily overpowered in schools, hostels or place of work. Very few incidents like the instant case come to light. The victim in the instant case has mustered her guts to come forward seeking justice for the injustice meted out to her by her own teacher. Teachers, in whose custody children are in almost the predominant part of their childhood, have a positive duty to protect them and do what is best for their interest and well-being. While the duty is doubly cast upon teachers, no leniency can be shown towards those who took advantage of the custody itself.

81. In Hindu mythology, teachers are placed next to parents and above God i.e. Matha, Pitha, Guru Deivam. Parents send children to school with fond and fervent hopes that the teachers will shape them into responsible citizens, carve a wonderful career and develop them into strong pillars of the

nation in future. Moreso are the parents in down-trodden section like the de facto complainant and her husband Kasi (P.W.4) They have sent their daughter to school with hopes that at least their next generation will be educated and have a better standard of living than them. **But in the instant case,** a teacher who has to **teach discipline, morality and right conduct has himself indulged immoral activity setting a bad example to all the teachers. He has looked upon the victim as an object to satisfy his carnal needs and in the process not only ruined her career but also destroyed her psychology and outlook towards the world. It is desired that all concerned perform their duties with devotion and do not show callousness and insensitivity on complaints from students, as done in the instant case.**

82. In this aspect it is worth adverting to the case of ***Bodhisattwa Gautam Vs Subhra Chakraborty(1996) 1 SCC490,AIR 1996 SC 922*** wherein it was observed as follows:

*" Sexual violence destroys the psychology of a woman and pushes her into deep emotional crisis. It is a crime against basic human rights, and is also violative of the victim's most cherished fundamental right, viz., the right to life contained in Article 21 of the Constitution. The courts are, therefore, expected to deal with cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. A socially sensitized Judge, in our opinion, is a better statutory armour in cases of crime against women than long clauses of penal provision, containing complex exceptions and provisos"*

83. *Therefore the accused who has taken advantage of his position as a schoolteacher and can play havoc with the career of students deserves no leniency in the view of this court. His stature, his education and that he has girl children to take care cannot be taken as extenuating or mitigating circumstances to even reduce the punishment that can be inflicted upon him. A person who has made sexual advances on a hapless 13 years old girl who suffers from rheumatic heart disease (Ex.P-53 -56 Medical Reports) deserves no mercy or leniency. A deterrent punishment is all that he deserves.*

84. *Therefore this courts deems it fit and proper to inflict the substantive sentence of imprisonment for the offence u/s 4 of the Tamil Nadu Prohibition of Harrasment to Women Act. Since the ingredients of Section 354*

IPC is inbuilt in section 4 of Tamil Nadu Prohibition of Harrasment to women Act, I do not propose to inflict separate punishment under section 354 IPC, for punishment is awarded for the major offence.

85. In the result the accused is found guilty u/s 4 of Tamil Nadu Prohibition of Harrasment to women Act, and is convicted thereunder u/s.248(2) CrPc and sentenced to undergo RI for a period of two years and to pay a fine of Rs. 10,000/- and in default to pay fine he shall undergo SI for six months. Set off allowed under section 428 CrPc.

86. The material objects produced by either side are directed to be kept along with the records till appeal period and thereafter it shall be handed over to the respective parties.

Dictated to the Steno-typist directly, typed by her on computer, corrected and pronounced by me in the open court on this 11<sup>th</sup> day of December 2012.

(sd) B.C. Gopinath  
Judicial Magistrate No.1  
Tiruvallur

**Appendix :**

**LIST OF PROSECUTION WITNESSES:**

- PW.1 - Tmt. Kanchana
- PW.2 - Miss. Durgadevi
- PW.3 - Tmt. Vatchala
- PW.4 - Mr. Kasi
- PW.5 - Miss. Adhilakshmi
- PW.6 - Miss. Tamilselvi
- PW.7 - Mr. Murugesan
- PW.8 - Mr. Arumugam
- PW.9 - Mr. Bharathidasan
- PW.10 - Mrs. Premakumari
- PW.11 - Mr. Rajesh
- PW.12 - Mr. Rajan
- PW.13 - Mr. Nagaraj
- PW.14 - Mr. Dennis
- PW.15 - Mr. Gulapudin
- PW.16 - Mr. Krishnakumar
- PW.17 - Mr. Gunasekaran
- PW.18 - Mrs. Chandra
- PW.19 - Mrs. Vidyareddy
- PW.20 - Mrs. Vijayalakshmi

PW.21 - Mrs. Jayasurya  
 PW.22 - Dr. Ramamurthy  
 PW.23 - Mr. Prabhu  
 PW.24 - Mrs. Subbulakshmi

**LIST OF PROSECUTION EXHIBITS:**

- Ex.P- 1 Private complaint of Kanchana dated 14.7. 2008  
 Ex.P- 2 Order of Honible High Court dated 18.11 2008  
 Ex.P- 3 Signature of Kanchana in her CrPc 164 statement  
 Ex.P- 4 Signature of Durga Devi in her CrPc 164 statements  
 Ex.P- 5 Transfer Certificate of Durga Devi  
 Ex.P- 6 Complaint of Durga Devi dated nil  
 Ex.P- 7 Petition of Vatsala  
 Ex.P- 8 Letter of Kasi seeking transfer certificate  
 Ex.P- 9 Petition of Adhilakshmi  
 Ex.P- 10 Transfer certificate of Adi Lakshmi  
 Ex.P- 11 Signature of AdiLakshmi to her CrPc 164 statement  
 Ex.P- 12 Petition of Tamil Selvi dated 15.10.2007  
 Ex.P- 13 Transfer Certificate of Tamil Selvi  
 Ex.P- 14 Signature of Murugesan in his CrPc 164 statement  
 Ex.P- 15 Petition of Murugesan dated nil  
 Ex.P- 16 Letter of one Sundaram to headmaster of school dated 19.06.2007  
 Ex.P- 17 Transfer certificate of a Mohan  
 Ex.P- 18 Signature of Arumugham in his CrPc 164 statement  
 Ex.P- 19 Petition of Bharathidasan to ICCW  
 Ex.P- 20 Invitation Card for inauguration of science exhibits and in Sevalaya  
 Ex.P- 21 Programme schedule for 12.08.2006  
 Ex.P- 22 Attendance Register of the academic year 2006-07  
 Ex.P- 23 Entry in exhibit P22 dated 11.08.2006  
 Ex.P- 24 Entry in Ex.P- P22 dated 11.08.2006  
 Ex.P- 25 Petition of Rajan to ICCW dated 8.1. 2007  
 Ex.P- 26 Petition of Nagaraj to ICCW  
 Ex.P- 27 Signature of Dennis in Observation Mahazer  
 Ex.P- 28 Printed FIR dated 1.9 2008  
 Ex.P- 29 Petition of Kanchana dated 15.10.2007  
 Ex.P- 30 Petition of a Mohan dated 15.10.2007  
 Ex.P- 31 Petition of one Sundarambal dated 15.10.2007  
 Ex.P- 32 Petition of one Prabhakaran to child line  
 Ex.P- 33 Petition of one Raja dated 15.10.2007  
 Ex.P- 34 Minutes of the meeting in ICCW dated 8.1.2008  
 Ex.P- 35 Letter of Sevalaya dated 1.2.2008  
 Ex.P- 36 Letter of ICCW dated 3.3.2008  
 Ex.P- 37 Letter of ICCW to the investigating officer dated 9.2.2009  
 Ex.P- 38 Letter of Tulir to the investigating officer  
 Ex.P- 39 Signature of Vidya Reddy in Ex.P- 38  
 Ex.P- 40 Proceedings of the Chief Educational Officer, Thiruvallur dated  
 6.8.07  
 Ex.P-41 Proceedings of the Chief Educational Officer, Thiruvallur dated  
 5.07.07  
 Ex.P- 42 Letter of Chief Educational Officer, Tiruvallur dated 5.7.07

- Ex.P- 43 Letter of Chief Educational Officer at Tiruvallur to District Collector dated 21. 2.09
- Ex.P- 44 Letter of Indian Makkal Mandram to the District Educational Officer dated 28.06.2007
- Ex.P-45 Letter of Chief Educational Officer dated 28.03.2009 to the investigating officer
- Ex.P- 46 Proceedings of Chief Judicial Magistrate dated 23.01.2009
- Ex.P- 47 CrPc 164 statement of Durga Devi
- Ex.P- 48 CrPc 164 statement of Aci Lakshmi
- Ex.P- 49 CrPc 164 statement of Kanchana
- Ex.P- 50 CrPc 164 statement of Arumugham
- Ex.P- 51 CrPc 164 statement of Murugesan
- Ex.P- 52 Letter of the Judicial Magistrate, Uthukottai to this court dated 30.3.09
- Ex.P- 53 Medical Registration Durga Devi dated 3.5 2003
- Ex.P- 54 Echocardiogram report of Durga Devi
- Ex.P- 55 Report on Echocardiogram
- Ex.P- 56 Report of medical officer for echocardiogram dated 27.01.2011
- Ex.P- 57 Rough Sketch prepared by Investigating Officer dated 12 to 2009
- Ex.P- 58 Observation Mahazer by the Investigating Officer dated 12.02.2009.
- Ex.P- 59 proceedings of the director-general of police dated 1612 2008
- Ex.P- 60 letter of Indian overseas bank to the investigating officer dated 7 to 2009
- Ex.P- 61 Letter of Indian Bank to the Investigating Officer dated 7.2.2009
- Ex.P- 62 Letter of Allahabad bank to Investigating Officer dated 6.2.2009
- Ex.P- 63 Office Note of District Social Welfare Officer to District Collector dated 26.1.2009

**LIST OF MATERIAL OBJECTS:**

1. MO - One Compact Disc

**LIST OF DEFENCE WITNESSES :**

1. D. W.1 Thiru. Sarathy  
2. D. W. 2 Tmt. Nirmala

**List of Defence Exhibits:**

1. Ex.D1 Petition of Durga Devi to Human Rights Commission
2. Ex.D.2 Complaihnt of Durga Devi to HRC No.,8324(Signature a.one)
3. Ex.D3 Statement of Adhilakshmi to the School
4. Ex.D4 Application form for the Durga Devei 21.04.2006
5. Ex.D5 Letter of Sevalaya to Tmt Vatchala 26.05.2007
6. Ex.D6 Letter of Sevalaya to Muruga25.06.2007
7. Ex.D7 Termination order of Thiru. Murugesan by Sevalaya 01.07.2007
8. Ex.D8 Returned cover containng Ex.D-7

List of material objects of defence:

MO 1 - Photographs (6 nos) showing in the house of Durga devi

(3d) B.C. Cooperath.  
Judicial Magistrate No.1  
Tiruvallur

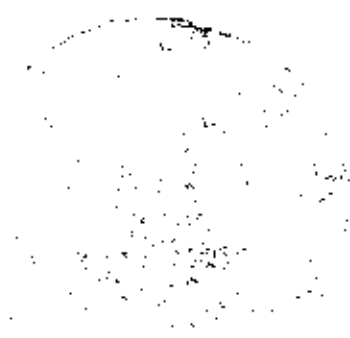
Copy submitted to:

The Hon'ble Chief Judicial Magistrate,  
Tiruvallur.

Free copy to:

The Accused

*/one copy/*



JUDICIAL MAGISTRATE - 1  
TIRUVALLUR.

Copy received on: 13/12/2012

*[Signature]*  
Dee/ocw - I  
13/12/12.