

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 01.02.2019

Delivered on: 26.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Criminal Appeal No.490 of 2018

Sabari @ Sabarinathan @ Sabarivasan

... Appellant

vs.

- 1.The Inspector of Police,
Belukurichi Police Station,
Namakkal District.
- 2.The Director General of Police,
No.1, Dr.Radhakrishnan Salai,
Mylapore,
Chennai-600 004
- 3.The State Commission for Protection
of Child Rights,
rep.by its Chairperson, No.183/1,
EVR Periyar Salai,
Poonamallee High Road,
Kilpauk,
Chennai-600 010
- 4.The Commissioner of Social Defence,
Department of Social Defence,
Old No.153, New No.300,
Purasawalkam High Road,
Kellys,
Chennai-600 010

5.The Secretary,
Department of Social Welfare and
Noon Meal Programme, Fort St.George,
Chennai-600 009

... Respondents

Respondents 2 to 5 *Suo motu* impleaded
vide Court order dated 09.01.2019

Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the order of conviction and sentence passed by the Sessions (Fast Track Mahila) Judge/Children Court, Namakkal in Special C.C.No.55 of 2018, dated 20.06.2018 and acquit the accused by allowing the appeal.

For appellant : Mr.L.Rama

For Respondents : Mrs.V.Sarathadevi,G.A.

JUDGMENT

This criminal appeal is directed against the order of the Court of Sessions, Fast Track Court (Mahila Judge), Namakkal, in Special Calendar Case No.55 of 2015, dated 20.06.2018, convicting the appellant/A1 under Section 363 of IPC and Section 5(I) read with Section 6 of POCSO Act, 2012 and sentencing him to undergo five years Rigorous Imprisonment, along with a fine of Rs.2,000/-, in default, sentencing him to undergo Rigorous Imprisonment for three

months for the offence under Section 363 IPC; and further sentencing him to undergo Rigorous Imprisonment for ten years along with a fine of Rs.3,000/-, in default, sentencing him to undergo Rigorous Imprisonment for four months for the offence under Section 5(1) r/w Section 6 of Protection of Children from Sexual Offences Act, 2012 ('POCSO Act' for brevity).

2.The case of the prosecution in brief is as follows:

(i)The appellant/accused was in relationship with a minor girl (P.W.2) and had kidnapped her on 28.06.2014 from the lawful custody of her grandparents and thereafter committed sexual assault on her on many occasions. The victim girl was staying with her grandparents at Singalandapuram, at that relevant point of time. On the date of occurrence, i.e. on 28.06.2014, she had gone out to purchase Shampoo at about 8.00 p.m., but she did not return home. The appellant/accused induced her and took her to Erode; tied 'thali' on her neck in Marumariammal Kovil, on 30.06.2014, and thereafter took her to Bangalore and stayed with the victim girl (P.W.2) and committed aggravated penetrative assault on her.

(ii)The parents of the appellant/accused, viz., A2 and A3 were also responsible for the stay of the appellant/accused and the victim girl at Sangagiri Hills, till the victim was secured by the police on 15.07.2014.

(iii)P.W.1, the grandfather of the victim girl, preferred a complaint, which was marked as Ex.P1. The victim girl could not be traced immediately and after a lapse of six months, she was traced along with the appellant/accused, who, according to the prosecution, kidnapped her.

3.On behalf of the prosecution, twenty four witnesses were examined as P.Ws.1 to 24 and 14 documents were marked as Exs.P1 to P14. On behalf of the defence no one was examined nor any document was marked. No Material Objects were also recovered.

4.P.W.1, the grandfather of the victim girl, as defacto complainant, has stated in his complaint-Ex.P1 that on 28.06.2014, the victim girl came to his house for getting Transfer Certificate and on the same day at about 8.00 p.m., she went to buy shampoo, but she did not return home and on enquiry, he came to know that the

appellant/accused kidnapped her by inducing her. He would also state that the victim girl, at that time, was 17 years old. P.W.2 is the victim girl, who did not support the case of the prosecution at all and she was clear in her deposition that she had known the appellant/accused only as a student of the school and he did not kidnap her at all. Her deposition was disbelieved by the trial Court. P.W.3 is the mother of the victim girl, who vouched the fact that the victim was found missing and during the relevant time, she was living with her grandparents. P.W.4 is the father of the victim girl, who had deposed that he was informed that the appellant/accused had kidnapped the victim girl; however, P.W.4 himself was not sure as to whether the appellant/accused had kidnapped her and he was sounding tentative during his cross-examination. However, contradiction by the said witness was discarded by the trial Court. P.W.5 is the grandmother of the victim girl and she supported the evidence of P.W.1, her husband and the grandfather of the victim (P.W.2). P.Ws.6 to 10 are all persons from the same village, who are hearsay witnesses, who had heard about the missing of the girl through P.W.1, P.W.3, P.W.4 and P.W.5. P.W.11 spoke about the preparation of Observation Mahazar- Ex.P3, by the police. P.W.12 is a witness to the confession statement given by the appellant/accused. PW.13 is the Headmaster, who deposed that

the date of birth of the victim girl is 10.07.1997 and according to his evidence, admittedly the victim girl was a minor, below the age of 18 years. P.W.14, the person who had made arrangements for the stay of the appellant/accused and the victim girl and P.W.15, being the house owner, who had let out his house for the accused and the victim, have turned hostile and did not support the case of the prosecution. P.W.16, the Doctor, deposed that the victim girl could have had sexual intercourse, as she found that the hymen of the victim girl was ruptured. The opinion given by P.W.16 was marked as Ex.P8. P.W.17 deposed regarding the staying of the victim girl at the Childline at Salem. P.W.18-the Doctor deposed that the appellant/accused was not suffering from any impotency and he was capable of sexual intercourse. The certificate issued by the Doctor is marked as Ex.P9. The other witnesses, viz., P.W.19 to P.W.24 are official witnesses, who were part of the investigation done by the police.

5. On the basis of the evidence as rendered by the above witnesses and also the documents marked, the trial Court has come to the conclusion that the parents of the appellant/accused were not guilty of the charges framed against them and found the appellant guilty of offences under Section 363 IPC and also under Section 5(I) r/w. Section

6 of POCSO Act 2012 and accordingly sentenced the appellant/accused, as aforementioned.

6. On behalf of the appellant/accused Mr. L. Ramu, learned counsel appeared. According to the learned counsel for the appellant/accused this is a case of no evidence at all and unfortunately, the trial Court has convicted the appellant on the basis of unwarranted and uncalled presumption in favour of the prosecution, even though the provisions of the POCSO Act provides for such presumption under Section 29 of the POCSO Act. According to the learned counsel, none of the witnesses had any personal knowledge of the appellant/accused kidnapping the victim girl and having committed penetrative sexual assault on her. All the witnesses have only deposed to the effect that the appellant/accused alone could have kidnapped her. The main witnesses, viz., P.Ws. 14 and 15, including the victim girl (P.W. 2), have turned hostile, and in the absence of any cogent evidence from these witnesses, the chain of events could not unequivocally point to the guilt of the appellant/accused. No Material Objects were also seized from the victim girl or from the appellant/accused. The entire judgment of the trial Court is sketchy, without any meaningful discussion of the evidence that was let in during the trial Court. The trial Court has

simply brushed aside most material evidence i.e. inconsistencies in the evidence let in on behalf of the prosecution and it so appears that the trial Court has pre-determined to convict the appellant/accused, regardless of lack of evidence in favour of the prosecution. The trial Court has discarded the lack of evidence in finding the appellant guilty of the offences, by concluding that the evidence of the victim girl P.W.2 was not significant nor was the evidence of other important witnesses, including the father of the victim girl P.W.4 and P.Ws.14 and 15. When the trial Court has chosen to brush aside the evidence of those witnesses, whose evidence had made a dent in the prosecution theory, the trial Court ought to have acquitted the appellant. Ultimately, the trial Court has based its conviction only on the basis of negligible evidence, which cannot, by any legal standard, be the basis for convicting any accused, much less the present appellant/accused.

7.The learned counsel for the appellant would submit that the only place in which the appellant and the victim were found together was at Sangagiri in the house of P.W.15, as per prosecution. But P.W.15 turned hostile and stated in his evidence that he did not know the accused persons, in which event, the entire prosecution theory of accused kidnapping the victim girl and living with her at

Sangagiri and committing sexual assault on her became baseless and unfounded. The factum of sexual assault was also not clearly established, since the Doctor P.W.16 had merely stated in her evidence that there was likelihood of sexual intercourse and no sperm was found on the private part of the victim girl.

8. Moreover, the trial Court has also completely ignored the evidence of P.W.2-the victim girl that she was found missing on an earlier occasion on the ground that her parents were arranging for her marriage and she had known the accused only as a co-student of the school in which she had studied and she has denied all the allegations about the kidnapping of her by the appellant/accused. She had also deposed that her signature had been obtained on a blank paper. The trial Court has also failed to appreciate that only when a case of sexual assault is made out, the question of consent being immaterial can be pressed into service. In this case, according to the learned counsel, the trial Court has concluded that the consent was immaterial when no case of sexual assault itself was made out. The trial Court further failed to appreciate that the complaint was given after 30 days, after the victim was found and the delay was not properly explained. Such a long delay itself can be fatal to the case of the prosecution. The trial

Court further erred in relying upon the prosecution theory, without appreciating the fact that when the victim girl stated that she had stayed in her friend's house during the relevant period, the said friend of the victim girl was not examined as a witness and in the absence of procuring such important witness, the entire edifice of the prosecution crumbled down. Therefore, the learned counsel would submit that it is a case of no evidence and unfortunately the trial Court has convicted the appellant/accused and sentenced him, as aforementioned.

9. Per contra, the learned Government Advocate for the prosecution would submit that the appellant/accused himself has confessed about the kidnapping of the victim girl and also of the sexual assault on her. It was also a fact that the victim girl was missing for a few months and she was traced finally by the police and was found in the company of the appellant/accused. Although certain witnesses have turned hostile for obvious reasons, the other evidence by grandparents, parents and few other independent witnesses would corroborate the complaint given by P.W.1, the grandfather of the victim girl. Since P.W.2, the victim girl has turned hostile and two other witnesses, viz., P.W.14 and P.W.15, the trial Court has rightly discarded their evidence, since there are other pieces of evidence to

establish the offences against the appellant/accused. She would submit that although there were holes in the prosecution, yet, the prosecution has nevertheless proved the offences against the appellant/accused beyond any reasonable doubt. More so, in cases of offences under the POCSO Act, there is a presumption in favour of the prosecution under Section 29 of the POCSO Act. Once the age of the victim girl is established, the burden shifts on the accused to prove the contrary. According to the learned Government Advocate there was no evidence let in on behalf of the defence to prove the contrary nor was any efforts taken to prove the contrary on the basis of the prosecution evidence, either. Therefore, she would submit that the trial Court has rightly found the appellant/accused guilty of the offences and the same does not call for any interference by this Court.

10. Heard the learned counsels appearing for parties and perused the evidence and other materials placed on record.

11. The prosecution, before the trial Court, though examined 24 witnesses and marked 14 documents, has failed to clinchingly prove its case against the appellant/accused for several reasons, which need to be stated hereunder:

12.First of all, the victim girl herself has become hostile completely and not supported the case of the prosecution and nothing could be elicited from her even remotely, in order to implicate the appellant/accused with the offences he was charged with. The evidence of grandparents and parents of the victim girl in this case does not unequivocally point to the guilt of the appellant/accused, since there was no direct evidence given by any of them as having seen the accused and the victim girl together. It was only a case of presumption on the part of the relatives of the victim girl that the accused could have kidnapped her and could have committed sexual assault on her.

13.As rightly contended by the learned counsel for the appellant, the important witnesses, viz., P.Ws.14 and 15 have turned hostile and therefore, the factum of the victim girl and accused seen together or living together for a particular period of time was not found established at all. In the absence of such important material fact, the entire prosecution case that the appellant/accused kidnapped the victim girl and committed offences under the provisions of POCSO Act does not hold water at all.

14.As rightly contended by the learned counsel for the appellant/accused, the trial Court appeared to be too eager to convict the appellant/accused regardless of the weight of evidence that was made available before it. Whenever the important witnesses turn hostile and not support the case of the prosecution, the trial Court appeared to have concluded that their evidence was not significant and ignored the same. The trial Court has ignored the evidence of the victim girl P.W.2, and the evidence of P.Ws.14 and 15, whose evidence would only unequivocally establish the case of the prosecution. Unfortunately these witnesses had become hostile and the fact that these witnesses have become hostile had only helped the defence to prove the contrary as provided in the Scheme of POCSO Act. The clear deposition of the victim girl that except knowing the accused being a student of the same school, she had no other relationship with him and the accused had not kidnapped her, cannot be fully brushed aside.

15.As rightly pointed out by the learned counsel for the appellant, the prosecution case suffers from several inconsistencies, including considerable delay of 30 days in filing the complaint, for which, no explanation was forthcoming. There was also inconsistency in regard to the evidence of P.W.4 and P.W.5 as to when P.W.2 the

victim girl was found and brought back. Moreover, even the Doctor's evidence was not clear in regard to the sexual assault alleged to have been committed on the victim girl, by the appellant/accused. P.W.16, the Doctor merely had opined that there was likelihood of the victim girl having sexual intercourse. Such opinion by itself cannot be the basis for coming to any conclusion one way or other by the trial Court. In fact, the prosecution has also miserably failed to strengthen its case against the appellant/accused by means of recovery of any Material Objects. In the absence of any Material Objects, the commission of sexual assault has to be ruled out or at least, it has to be held that it was not legally proved.

16.Likewise, in the absence of any evidence in regard to the appellant/accused and the victim girl staying together in a particular place, since the two crucial witnesses to support such fact, viz., P.Ws.14 and 15, turned hostile, the offence under Sections 363 of IPC ought to be also ruled out, if not, not proved legally.

17.The trial Court, despite holes in the prosecution case, has merely relied on hearsay evidence of all the witnesses, who are relatives or neighbours of the family of the victim girl. On the whole, if

the evidence could be analysed, it is the case of nonexistence of evidence in regard to the offences charged against the appellant/accused. The trial Court has completely misdirected itself by raising unwarranted presumption without any basis in favour of the prosecution. Although the presumption in favour of the Prosecution is provided under Section 29 of the POCSO Act, such presumption must have legal backing and basis. But it cannot be on the basis of any foregone conclusion, irrespective of the fact whether there was any evidence at all in favour of the prosecution.

18. More so, the trial Court appears to have placed undue reliance on the official witnesses in order to come to such conclusion. It appears from the conclusion of the trial Court that the trial Court has weighed the circumstances pointing out the involvement of the appellant/accused in the offences charged against him. This Court is unable to appreciate such conclusion by the trial Court and unable to understand as to which circumstances weighed with the trial Court to come to such conclusion. This Court is unable to see any circumstances, which can ultimately establish the offences against the appellant/accused. In the absence of evidence by crucial witnesses, mere existence of some evidence, cannot give rise to valid presumption

in favour of the prosecution. Any presumption could be drawn by the Court in favour of the prosecution must be sound, reasonable and concrete and such presumption cannot be allowed to hang over a baseless premise.

19. In this case, the trial Court has erred in drawing presumption without any material whatsoever in support of such presumption. On the whole, the conclusion by the trial Court is totally flawed and the findings of the trial Court are unsustainable and cannot be countenanced both in law and on facts. In view of all the above, this Court holds that the prosecution has failed to prove the case beyond reasonable doubts and therefore, the appellant is entitled for acquittal.

20. In the result, this criminal appeal is allowed; the conviction and sentence imposed on the appellant by the trial Court are set aside and the appellant/accused is acquitted. Bail bond, if any, executed by him shall stand cancelled. Fine amount, if any, paid by him is ordered to be refunded forthwith. The appellant shall be set at liberty forthwith, if he is not required in connection with any other case.

26.04.2019

21. When this case was taken up for hearing, this Court became concerned about the growing incidence of offences under the POCSO Act on one side and also the Rigorous Imprisonment envisaged in the Act. Sometimes it happens that such offences are slapped against teenagers, who fall victim of the application of the POCSO Act at a young age without understanding the implication of the severity of the enactment.

22. The Act itself under Sections 43 and 44 provide for wide publicity to its provisions to spread awareness among the people about the scope, import and object and the ramification on its implementation. The spreading of awareness is to curb the abominable menace of POCSO offences and also warn the potential offenders that in case, they run afoul of the Legislation they would face a minimum of seven or ten years Rigorous Imprisonment. In order to ascertain as to what steps the respondents have taken in furtherance of implementation of Sections 43 and 44, which are extracted hereunder this Court has *suo motu* impleaded R2 to R5 herein on the basis of suggestions put forth by the Government Advocate Shri V. Saradhadevi for the prosecution. She was directed to submit the details as to what steps the various respondents have initiated in implementing the

objectives of Sections 43 and 44 of the POCSO Act. This initiative has been taken by this Court with the coordinated support of the Government Advocate Sri.V.Saradhadevi, as this Court is confronted with frequent cases of POCSO Offences, which are being reported more often and such crimes are on the increase day-by-day. Therefore, it is legally and socially imperative to ensure that the awareness programmes reached the people of the State across the Board in order to achieve the ultimate aim of the Society to be free from such crimes in future.

23.Sections 43 and 44 of the POCSO Act which deal with awareness and monitoring of implementation of the Act are extracted hereunder:

“Section 43. Public awareness about Act - The Central Government and every State Government shall take measures to ensure that:-

a)The provisions of this Act are given wide publicity through media including the television, radio and the print media at regular intervals to make the general public, children as well as their parents and guardians aware of the provisions of this Act.

(b)The officers of the Central Government and the State Governments and other concerned persons (including the police officers) are imparted periodic training on the matters relating to the implementation of the provisions of the Act.

44. Monitoring of implementation of act (1)The National Commission for Protection of Child Rights constituted under Section 3, or as the case may be, the State Commission for Protection of Child Rights constituted under Section 17, of the Commissions for Protection of Child Rights Act, 2005, (4 of 2006) shall, in addition to the functions assigned to them under that Act, also monitor the implementation of the provisions of this Act in such manner as may be prescribed.

(2)The National Commission or, as the case may be, the State Commission, referred to in sub-section (1), shall, while inquiring into any matter relating to any offence under this Act, have the same powers as are vested in it under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006)

(3)The National Commission or, as the case may be, the State Commission, referred to in sub-section (1), shall, also include, its activities under this section,

in the annual report referred to in section 16 of the Commissions for Protection of Child Rights Act, 2005 (4 of 2006).”

24. In response to the various queries put forth by this Court as to the respective steps initiated by the respondents 2 to 5, they have submitted various reports detailing the programmes conducted by the officials and also came forward with various suggestions and difficulties faced by them while implementing the programmes. In respect of each of the Departments, which is impleaded *suo motu* by this Court, separate reports have been filed by the respondents, Department wise, which would run thus:

Second respondent's report:

As per the aforesaid provisions of the POCSO Act, the Tamil Nadu Police Department has conducted 523 POCSO Training courses as the imparted periodic training on the matters relating to the implementation of the provisions of the Act towards the 20 Deputy Superintendents of Police, 2232 Inspectors of Police and 15475 Sub - Inspectors of Police and other Police personals all over Tamil Nadu in the years of 2016, 2017 and 2018. The salient features of the said

training on POCSO Act Cases; steps to be adhered for investigation of the cases booked under this act were discussed in detail; they are educated in all the other aspects to follow the procedure while registering the cases under POCSO Act; trained on the techniques to be adopted while making enquiry with the victimized children and the children in conflict with law etc.,

DIST/CITIES		TRAINING CONDUCTED FOR POLICE PERSONNELS EFFECTIVE IMPLEMENTATION OF POCSO ACT CASES UNDER SEC 43 & 44				
		2014	2015	2016	2017	2018
	COIMBATORE CITY	318	403	354	780	656
	SALEM CITY					1
CITIES	TIRUNELVELI CITY			3	5	
	TRIPUR CITY	44	40	59	49	68
	KANCHIPURAM	79	399	187	266	451
NORTH ZONE	TIRUVALLUR	2	1	4	4	112
	VILLUPURAM	7	8	10	14	29
	CUDDALORE	103	134	101	130	201
	VELLORE	99	292	219	195	246
	SALEM	439	864	649	1237	1145
	NAMAKKAL					50
WEST ZONE	DHARMAPURI	6	4	52	15	142
	KRISHNAGIRI					17
	COIMBATORE	363	619	298	624	481
	TRIPPUR	151	212	149	145	309
	ERODE	46	96	59	225	200
	NILGIRIS	34	59	20	75	116
	TRICHY	212	458	91	637	260
	KARUR	8			4	42
CENTRAL ZONE	PUDUKOTTAI			38	49	44
	THANJAVUR	146	89	37	25	103
	NAGAPATTINAM	129	42	32	41	140
	THIRUVARUR	78	51	32	13	60
	MADURAI					5
	VIRUDHUNAGAR		112	82	117	170
	DINDUGAL	112	442	181	137	107
SOUTH ZONE	RAMANAD	254	339	20	552	35
	SIVAGANGAI					135
	TIRUNELVELI	136	225	61	271	111
	TUTICORIN			121	326	24
	KANYAKUMARI		185	165	155	196
CCB	CHENNAI-CITY					61
	TOTAL	2766	5074	3024	6091	5717

As per the aforesaid provisions of the POCSO Act, the provisions of this Act are given wide publicity through media including the television, radio and the print media at regular intervals to make the general public, children as well as their parents and guardians aware of the provisions of this act. The Tamil Nadu Police has also regularly conducting the video awareness campaigns at most of the educational Institutions (Schools and Colleges) which has been telecast in the wide screen by Department of social Defence from the years of 2012 to 2018, and at present the same video has been telecast every day by the Department of Information and Public relations at Trade Fair in Chennai.

The above said awareness campaigns are regularly conducted at all the Educational Institution and Public Places in all the cities and district across Tamil Nadu by the police Department and proper Instructions were already given to all the Station House Officers to implement the provisions of the Juvenile justice Act 2015 and the POCSO Act firmly. They also organize awareness campaigns in regular intervals. From the year 2012 to 2019 (till this date) 6,13,779

students, parents, children in conflict with law and Public have attended the said awareness program conducted by the Tamil Nadu police Department in various Cities and District.

DIST/CITIES		AWARNNESS PROGRAM CONDUCTED TO (STUDENTS, PARENTS, PUBLIC AND CHILDREN CONFLICT WITH LAW) ON POCSO ACT CASES SEC 43 & 44							
		2012	2013	2014	2015	2016	2017	2018	2019
CITIES	COIMBATORE CITY							4302	
	MADURAI CITY							1200	
	TRICHY CITY			2635	1475	1300	2800	4795	
	SALEM CITY						3150	4800	
	TIRUNELVELI CITY							1923	
	TRIPUR CITY			650	955	455	155	1005	
NORTH ZONE	KANCHIPURAM							640	4303
	TIRUVALLUR	660	620	2027	3220	3533	5329	15967	
	VILLUPURAM				7145	6990	2600	85819	745
	CUDDALORE					132	298	3552	
	VELLORE							5631	400
	SALEM	465	270	1141	5358	5042	8425	21555	2179
WEST ZONE	NAMAKKAL			165	595	754	1329	1565	800
	DHARMAPURI				285	350	1090	7368	3737
	KRISHNAGIRI							10779	450
	COIMBATORE							7639	
	TRIPPUR			777	1506	1724	2004	7122	
	ERODE			288	410	280	385	4392	874
CENTRAL ZONE	NILGIRIS	110	115	1293	2843	3757	6635	5085	
	TRICHY				84	20	486	2230	250
	KARUR							3946	120
	PUDUKOTTAI							2790	240
	PERAMBALUR					515	855	410	
	ARIYALUR							720	
SOUTH ZONE	THANJAVUR							1050	750
	NAGAPATTINAM		1730	5963	25496	19515	13416	30482	100
	THIRUVARUR							2682	4369
	MADURAI							1250	
	VIRUDHUNAGAR	1425	1852	7373	6566	3568	4800	8501	
	DINDUGAL		283	120	183	2050	6165	11640	8295
SOUTH ZONE	THENI							691	2389
	RAMANAD	760	680	1341	1808	2250	2626	16491	1621
	SIVAGANGAI							1900	
	TIRUNELVELI				200			53350	3409
	TUTICORIN						3350	1765	
	KANYAKUMARI					7505	12295	13617	
CHENNAI-CITY					0	460	747	82	
TOTAL		3420	5550	23773	58129	59740	78653	349401	35113

Moreover, the Director General of Police Tamil Nadu is regularly conducting a monthly review meeting through video conference in which the POCSO Act cases are discussed as one of the main agenda and status are reviewed with regard both as to the awareness and the pending cases. The above said measures have been effectively carried out by the office of the Director General of Police and the concerned police officers of the State of Tamil Nadu in the welfare of both the Public and children.

REPORT FILED BY THE 3RD RESPONDENT

It is submitted that this report is being filed for the efforts and activities by the Tamil Nadu Commission for Protection of Child Rights (TNCPCR) in POCSO Act.

Ø This Tamil Nadu Child Protection of Child Rights was established in the 2013 as per the Provision of Section 17(1) of Commission for Protection Act, 2005. The Commission functions with a Chairperson and six Members. The present commission assumed office along with the Chairperson and six other Members from 5th May, 2017.

Ø The commission has been functioning with minimum staff only. The staff sanctioned as per G.O Ms. No. 45, dated: 28-03-2012 has not given effect to till date by the Social Welfare and Nutritious Meal

Programme Department, Government of Tamil Nadu and there is no budgetary allocation from government for conducting the awareness programmes.

Ø The funds from ICPS for advocacy programmes were not allocated to the Commission by the Department of Social Defence.

Ø No fund was given exclusively for preparation of Information, Education and Communication materials in order to disseminate the various provisions of the POCSO and other child related legislations among the public and the Children as well.

Ø No staff being sanctioned exclusively for POCSO related matters.

Ø In spite of the non availability of staff and budget, the present commission is conducting awareness programmes for the Parents, Teachers, Children and other Stake holders and line departments with the allocation of funds from Sarva Shiksha Abhiyan (SSA) fund from Education Department, NCPCR funds for designated programmes and also in collaboration with NGO'S

Ø The Commission has been monitoring the POCSO Act with the support of the Members in coordination with the Collectors.

ROLE OF MONITORING BY THE TNCPCR:

Ø The Commission reviews monthly reports from the State Crime Record Bureau and correlates the reports received from the District Child Protection Unit.

Ø The Commission monitoring POCSO related cases by securing information from various sources such as media - printed and electronic media.

Ø Direct Intervention from information received from the sources and direct complaints.

Ø District collectors or the Superintendent of Police of the Districts are contacted for investigation and interrogation.

Ø Members of the TNCPCR make immediate enquires about fact findings and do necessary interventions as required.

Ø Case by Case is taken for review and interventions are done immediately. Cases where FIR is not filed, if predators were not interrogated, charge sheets were not filed then the Commission initiates immediate follow up action.

Ø Victimized minor girls are provided with treatment through government hospitals/doctors for a safe delivery or a Medical Termination of Pregnancy (MTP) has to be conducted for the victims within 12-20 weeks of pregnancy.

Ø Number of cases handled directly by TNCPCR – 416 Cases (May 2017 – Dec 2018).

Ø On reviewing the data for three years an average of 1500 cases per

year are registered of which 966 cases are charge sheeted and 876 cases are pending for disposal. From the data it reveals that average disposal of cases per year from the specially designated Mahila Courts approximately clearing 120 cases. Hence it will take 3 to 4 years per case taken for trial.

Ø The Commission also has done direct enquiry regarding sexual abuse cases and has recommended to Government to issue exclusive provision for victim Compensation Fund for POCSO victims related cases. The list victims who were given compensation Fund is given below:

S. No	Name of the Victim	District	Quantum Of Compansation fund
1	Pandiselvi (Age 12)	Sivagangai	3,00,000/-
2	Selvi (Age 15)	Sivagangai	3,00,000/-
3	Sneha (Age 9)	Tirupur	2,00,000/-
4	Kathery (Age 9)	Vellore	3,00,000/-
5	Sanjana and Kirthika (Age 5)	Namakkal	4,00,000/- (Each 2 ,00,000)
6	Pongudai (Age 10)	Salem	3,00,000
7	Subhisha (Age 3 ½)	Virudhunagar	1,00,000
7	V.Elikiya (Age 16)	Thanjavur	1,00,000
8	Thangammal	Virudhunagar	3,50,000

(Age 14)

AWARENESS PROGRAMMES

Ø It is submitted that as mandated by the Act, this commission has taken multi thronged approach in creating Awareness to Children, Adolescent, Parents, Teachers and Public. Both Urban and Rural population have been addressed by the Commission in spreading awareness.

Ø Orientation and Awareness of various stake holders who work for and with children was conducted.

Ø **112** total number of awareness programmes were conducted by the present Commission.

FEW HIGHLIGHTS ON WORKSHOPS/ AWARENESS/TRAINING/SEMINARS/MEETINGS CONDUCTED FROM 2017

PROGRAM	VENUE
Consultation with stakeholders, experts and child rights activists on resolving the child rights issues.	TNCPCR
Consultation meeting with personnel's of Special Juvenile Police Unit (SJPU)	TNCPCR
Consultation with District Officials of Villupuram and Thiruvannamalai in the line child welfare for developing the Blocks identified low indicator in	Collectorate- Vilupuram – Thiyakathuruvam Block Collectorat-Thiruvannamalai – Jamunamaruthur Block

implementing the child protection	
TWO Workshop on implementation of POCSO Act 2012 and JJ Act 2015 conducted for Counselor's in District Child Protection UNITS and Heads of Child Care Institution supported by NCPCR, New Delhi	Ooty
Seminar on implementation of POCSO Act 2012 and JJ Act 2015 conducted for Hon'ble Judges, High Court of Madras, Government Higher Officials, NCPCR & TNCPCR Chairperson & Members, NGOs and stakeholders. It was presided by Honorable Chief Justice of Madras Her Lordship Tmt Indira Banarje.	Hotel The Park, Chennai
Review meeting on performance of TNCPCR conducted by the Hon'ble Minister for Social Warfare Dept.	Secretariat, Chennai
Consultation meeting on implementation of POCSO Act.	Secretariat, Chennai
Awareness cum Training Program for the Child Welfare Police Officers/ Government Medical Practitioners /Special Public Prosecutors/ Asst. Public Prosecutors/ Child Welfare Committee and Stake holders Meeting for the Welfare of the children of the laborers working in the Tea Plantations in Nilgiris District.	Ooty.
Consultation meeting on Child Trafficking, Child Sexual Abuse and Child labour.	Madras School of Social Work, Chennai
Consultation meeting on Child	Anna Institute of Management,

Trafficking, Child Sexual Abuse and Child labour.	Chennai
State Level Conference on Child Rights and POSCO, it was presided by the Honorable Minister for Social Welfare and Nutritious Meals Tmt.Dr.V.Saroja.	Anna Institute of Management, Chennai
Awareness Program on child Protection for School Principals & Teachers (TNCPCR & Dept. of School Education, Govt. of Tamil Nadu. Around 1500 participated and it was conducted Zonewise.	Santhome Higher Secondary School, Chennai-31, & MCC Higher Secondary School, Chennai-31
Schools and Community workshop on awareness is done by the TNCPCR members periodically in the districts they are assigned.	All Districts

SUGGESTIONS:

Ø From our records, the analysis shows that majority of the cases are elopement cases registered under POCSO. Elopement cases have to be dealt separately since the cases are voluminous. Due to this, the actual cases of minor rape victims are not prioritized resulted in delays in rendering justice for the minor victims of rape.

Ø The Commission is of the view that the child marriage shall not be taken under POCSO, in some cases the honor killing is also be associated.

Ø If the boy and a girl belong to the same community then the whole villagers support the child marriage and no case is filed against them, but in the case of different communities' case is made out against the

boy which ends up with communal unrest.

Ø In case a boy and girl below 18 years elope, only the boy is punished which is detrimental against the natural justice for the boy.

Ø Offence by Juveniles to Juveniles sends an alarm to the society. Our analysis shows that the Juveniles are falling a prey to the environmental hazards and children are of deviant background hence rape crimes seem to be raging. It is said by Psychologist that if juvenile is a victim of abuse in any form will take revenge against society and in most cases they become the perpetrators of crime in the later dates.

Ø In cases where of Adult commits crime against a minor should be dealt with severe punishments.

Ø In case of gang rape, if the Juvenile is one among the perpetrator the case has to be conducted on the recent amendment that he has to be treated as an adult in the designated court.

Ø The Child Welfare Committees and the District Child Welfare Officers have to play an important role in case of POCSO related matters but the department is silent about taking cognizance of POCSO Act or rules.

Ø For better monitoring is ensured if adequate budget and staff have to be provided to bring awareness to this commission.

Ø Educative materials on POCSO can be circulated in schools to spread awareness among Teachers, Parents and Children and to media professionals.

FUTURE PLANS

1.The Commission has completed training and awareness programmes for Principals and teachers in greater Chennai. It plans to conduct

similar awareness programmes in all districts.

2.Awareness programmes has been planned to conduct in all schools.

3.Awareness programmes/Workshops/Rallies/Seminars/Human Chain is planned for this year.

4.The Commission is working in two blocks of two districts to make the village's child friendly. It is planning to widen child friendly blocks for two more districts.

5.Information Education and Communication (IEC) materials on POCSO related cases from National Commission is going to be translated into vernacular and will be distributed for spreading awareness among public at large.

It is humbly prayed that this Honorable High Court may take the report on record and pass suitable order and thus render justice.

REPORT FILED BY THE 4th RESPONDENT

It is submitted that this report is being filed for the efforts and activities by Department of Social Defence on POSCO awareness programs and other activities below:-

a)POCSO Campaigns have been made during the year 2018 -2019 by the District Child Protection Units of all 32 Districts wherein 448 Campaigns were organized among all the stakeholders in the districts in order to sensitize the public stakeholders, institutions, schools, hostel, child care institution and hospitals on mandatory reporting of an offence committed or likely to be committed upon a child to the local Police/SJPU/CWC immediately.

b)POCSO Wall Paintings have been made during the year 2018 -2019 by the District Child Protection Unit of all 32 District which includes 1379 wall paintings on Sexual Offence in order to sensitize communities, schools and NGO's from Protection of Sexual Offence Act.

c)Advertisements have been made during the year 2018 – 2019 by the District Child Protection Unit of all 32 District in order to sensitize public communities and school students on Prevention of Sexual Offence Act, which include 88 advertisements given in mass media like TV/Radio and other modes.

d)Rallies have been conducted during the year 2018 -2019 by the District Child Protection Unit of all 32 Districts. 33 Rallies for POCSO Awareness with message of Safe touch and unsafe touch has been propagated.

e)POCSO Lectures were organized during the year 2018 – 2019 by the District Child Protection Unit of all 32 Districts. 3488 Lectures on POCSO among all the stakeholders in the districts were held in order to strengthen the intervention protocols and convergence including POCSO Lectures which was made in several districts.

f) During the year 2018 – 2019 the District Child Protection Units of all 32 Districts with help of District Legal Services Authority gave compensation to the children who received the same out of the victim compensation fund.

POCSO Awareness Programme from January to December 2018								
Sl. No	Name of the District	Total no of Camp aigns	Total no of Lectures	Total no of Wall painting with Photographs	Total no of Advertisem ent (TV/Radio/ and other mode)	Total no of Rally	Total no of Victim Compe nsation disburs ed	Total no of Trainings for stake holders
1	Ariyalur	42	130	6	1	0	3	10
2	Chennai	1	35	27	0	0	0	8
3	Coimbatore	0	108	5	0	1	0	0
4	Cuddalore	2	252	0	0	0	6	3
5	Dharmapuri	6	87	120	1	0	0	9
6	Dindigul	6	152	158	2	1	3	10
7	Erode	2	74	10	0	0	1	6
8	Kanchipuram	18	26	29	0	1	0	0
9	Kanyakumari	5	192	2	1	1	0	3
10	Karur	22	37	2	3	1	0	15
11	Krishnagiri	31	105	12	0	0	7	1
12	Madurai	1	40	0	0	2	1	4
13	Nagapattinam	11	25	392	0	0	0	4
14	Namakkal	7	10	1	0	0	0	8
15	Perambalur	70	110	121	0	0	0	9

16	Pudukkottai	4	108	215	0	13	24	4
17	Ramnad	9	299	0	1	0	5	10
18	Salem	0	93	0	0	1	0	3
19	Sivagangai	4	4	10	0	1	2	4
20	Thanjavur	9	56	17	72	1	0	8
21	The Nilgiris	4	256	15	3	0	0	0
22	Theni	149	149	130	1	0	0	12
23	Thiruvallur	13	29	2	0	3	4	12
24	Thiruvarur	2	101	0	1	4	0	8
25	Thoothukud i	7	56	50	0	0	0	4
26	Trichy	0	188	0	0	0	0	11
27	Thirunelveli	3	36	1	0	1	0	7
28	Tirupur	15	11	0	0	0	4	59
29	Thiruvanna malai	1	53	0	1	0	0	8
30	Vellore	2	265	4	1	0	0	2
31	Villupuram	1	187	0	0	1	0	7
32	Virudhunag ar	1	103	50	0	1	0	15
	Total	448	3677	1379	88	33	60	264

It is submitted that the Department of Social Defence by way of the above cited awareness programmes and activities has taken all possible measures to spread awareness among public and children with regard to the implementation of the provisions of POCSO Act.

Fifth Respondent's report

It is respectfully submitted that this report is being filed detailing the steps taken by the Department of Social Welfare and Nutritious Meal Programme as per the rule 43 of the POCSO Act, 2013, on sensitising all stakeholders including school Community etc., in order to create awareness of the POCSO Act through campaign programs and other activities as detailed below:-

a)It is respectfully submitted that during the year 2018-19, 448 POCSO campaigns have been organised by the District Child Protection Units of all 32 Districts among all the stakeholders in the Districts in order to sensitize the public, stakeholders, institutions, schools, hostel, child care institution and hospitals regarding the mandatory reporting of an offence committed or likely to be committed upon a child to the local police/SJPU/CWC immediately.

b)During the year 2018-2019, 1,319 Wall Paintings regarding POCSO Have been arranged by the District Child Protection Unit of all 32 Districts including Sexual offence in order to sensitize communities, schools and NEG's about the POCSO Act, 2012.

c)During 2018-2019, 88 Advertisements have been given in the mass media like TV/Radio and other modes by the District Child Protection Unit of all 32 Districts in order to sensitize public communities and school students on the Prevention of Sexual Offence Act, 2012.

d)33 Rallies have also been conducted for creating awareness on POCSO with message of propagating Safe touch (good touch) and unsafe touch (bad touch) during the year 2018-19 by the District Child Protection Unit of all 32 Districts.

e)3,488 Lectures on POCSO Act were organized during the year 2018-2019 by the District Child Protection Unit of all 32 Districts among all the stakeholders in the districts in order to strengthen the intervention protocols and convergence.

f)264 number of Trainings have been provided by the Department of Social Defence in all 32 Districts for various stakeholders.

g)During the year 2018-2019 with the help of Tulir and NGO working for the prevention and healing of Child Sexual Abuse conducted a One Day Training Programme on "Dynamics of Child Sexual Abuse and its Preventive Aspects for all 32 District Child Protection Officers at Chennai.

h)During the year 2018-2019 in order to draw the attention from the public about the Child Sexual Abuse, an exclusive Stall has been launched at Trade Fair, Chennai displaying the Child Protection Services and to create awareness about the Juvenile Justice System for promoting the awareness on child protection services rendered by the State. Further, the Hon'ble Chief Justice and Juvenile Justice Committee members have inaugurated the stall on 09.01.2019.

i)An Electronic display board has been installed in the trade fair at a cost of Rs.4 lakh to exclusively display "Safe touch and unsafe touch" Assault and Punishment with special references to POCSO Act, 2012, Juvenile Justice Act, 2015 etc., Every day seven hours continuous programme has been arranged in the display.

j)During the year 2018-2019 compensation to the Children from the Victim Compensation Fund has been provided by the District Child Protection Units of all 32 Districts with help of District Legal Services Authority.

The District wise programmes awareness on POCSO were conducted during 2018 as detailed below:

POCSO Awareness Programme from January to December 2018								
Sl. No	Name of the District	Total no of Camp aigns	Total no of Lectures	Total no of Wall painting with Photographs	Total no of Advertisem ent (TV/Radio/ and other mode)	Total no of Rally	Total no of Victim Compe nsation disburs ed	Total no of Trainings for stake holders
1	Ariyalur	42	130	6	1	0	3	10
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6	Dindigul	6	152	158	2	1	3	10

7	Erode	2	74	10	0	0	1	6
8	Kanchipuram	18	26	29	0	1	0	0
9	Kanyakumari	5	192	2	1	1	0	3
10	Karur	22	37	2	3	1	0	15
11	Krishnagiri	31	105	12	0	0	7	1
12	Madurai	1	40	0	0	2	1	4
13	Nagapattinam	11	25	392	0	0	0	4
14	Namakkal	7	10	1	0	0	0	8
15	Perambalur	70	110	121	0	0	0	9
16	Pudukkottai	4	108	215	0	13	24	4
17	Ramnad	9	299	0	1	0	5	10
18	Salem	0	93	0	0	1	0	3
19	Sivagangai	4	4	10	0	1	2	4
20	Thanjavur	9	56	17	72	1	0	8
21	The Nilgiris	4	256	15	3	0	0	0
22	Theni	149	149	130	1	0	0	12
23	Thiruvallur	13	29	2	0	3	4	12
24	Thiruvarur	2	101	0	1	4	0	8
25	Thoothukudi	7	56	50	0	0	0	4
26	Trichy	0	188	0	0	0	0	11
27	Thirunelveli	3	36	1	0	1	0	7
28	Tirupur	15	11	0	0	0	4	59
29	Thiruvannamalai	1	53	0	1	0	0	8
30	Vellore	2	265	4	1	0	0	2
31	Villupuram	1	187	0	0	1	0	7
32	Virudhunagar	1	103	50	0	1	0	15
	Total	448	3677	1379	88	33	60	264

With regard to provisions under Section 44 of the POCSO Act, 2012 and the Rule 6 of the POCSO Rules, the following details are submitted:-

a)In Tamil Nadu the Mahila Special Courts have been designated to try the offences under POCSO Act.

b)The Government have appointed the Public Prosecutor to try the offences under the POCSO Act.

c)The Government have already issued necessary Guidelines described in Section 39 of POCSO Act vide G.O.(Ms) No.17, Social Welfare and Nutritious Meal Programme Department, dated 18.09.2015 for the use of Non-Governmental Organizations, professionals and experts or persons having knowledge of psychology, social work, physical health, mental health and child development to be associated with the pre-trial and trial stage to assist the child, and to monitor the application of these guidelines;

d)The Directorate of Social Defence has already disseminated programmes regarding the provision of the Act at regular intervals to create awareness away general public, children, etc.,

Provision 6(3) of the POCSO Act monitored by TNSCPCR:-

i. Average of 1500 cases per year were registered. Charges framed in 966 cases. 876 cases are pending for disposal. Mahila Special Courts disposed of 120 cases. During May 2017 and December 2018, TNSCPCR handled 416 cases directly.

ii. TNSCPCR monitored the procedures under the Act.

iii. TNSCPCR monitored the victimised minor girls as per the provision of medical treatment through Hospitals.

iv. TNSCPCR has also conducted many workshop/Awareness/Training/Seminars etc since 2017.

6. It is respectfully submitted that the Department of Social Welfare and Nutritious Meal Programme has taken decisive steps so as to implement and monitor the POCSO Act, 2013 effectively in true letter and spirit to spread the awareness to various stakeholders inclusive of public and children."

26. From the above it could be seen that respondents 2 to 5 herein have taken laudable steps towards creation of awareness and implementation of the provisions of the POCSO Act. But it is very unfortunate that despite such constant awareness programs being

created among the general public, the POCSO offences are happening unabatedly. Therefore, this Court is of the view that some more efforts need to be taken in order to bring down the level of instances of POCSO offences in the State. The Court is also conscious of the fact that due to exposure of younger generation to unwanted and undesirable visual materials that are available on various cyber sites and also the influence of main stream cinema to some extent, the POCSO offences are increasing day-by-day. Therefore, suggestions were invited from the impleaded respondents in order to curb the POCSO offences and to prevent the younger generation from being trapped within the mischief of the POCSO Act. Various suggestions as emanated from the respondents towards implementation of the provisions of the POCSO Act, are enumerated hereunder:

SUGGESTIONS MADE ON BEHALF OF THE RESPONDENTS

The following suggestions are made in order to carry out the effective implementation of the provisions of POCSO:-

1) That the District Collectors of all the Districts across Tamilnadu shall be directed to take necessary steps to create awareness through the District Child Protection Units headed by them.

2)That the officers concerned at the Village Level Child Protection Committee and the Block Level Child Protection Committee shall take efforts to create POCSO awareness among the rural masses where large number of cases are being reported.

3)That the Department of Social Defence shall prepare slides and documentary films in relation to POCSO Act and the same shall be given wide publication through electronic media.

4)That the Directorate of Information and Public Relation shall direct the press and media to publish the slides, documentary films and advertisements relating to POCSO in all Theaters, TV Channels, Radio, Newspaper and other social net working platforms including Facebook, Twitter, Instagram and online channels like Youtube etc., and printing of pamphlets in order to create widespread awareness among the public and the same shall be done at regular intervals.

5)That a tagline shall be made in order to indicate the consequences of POCSO Act and the same shall be displayed in all movies, wherein, the content attracts any offence under POCSO Act.

6)That adolescence counseling shall be made compulsory in all the schools and colleges throughout Tamilnadu including the Governments Schools and Colleges to make children aware of the

consequences of POCSO.

7) That the Education Department shall be directed to appoint Counsellors in Schools and Colleges in order to educate the children about POCSO and take further steps in creating POCSO awareness among School and College children.

26. In addition to the above, this Court is of the view that 'warning' of attraction of POCSO Act must be displayed before screening of any film, which have teenage characters suggesting relationship between boy and girl.

27. Apart from the above, this Court is of the view that as per the 3rd respondent's report, majority of cases are due to relationship between adolescent boys and girls. Though under Section 2(d) of the Act, 'Child' is defined as a person below the age of 18 years and in case of any love affair between a girl and a boy, where the girl happened to be 16 or 17 years old, either in the school final or entering the college, the relationship invariably assumes the penal character by subjecting the boy to the rigours of POCSO Act. Once the age of the girl is established in such relationship as below 18 years, the boy involved in the relationship is sure to be sentenced 7 years or 10

years as minimum imprisonment, as the case may be.

28. When the girl below 18 years is involved in a relationship with the teen age boy or little over the teen age, it is always a question mark as to how such relationship could be defined, though such relationship would be the result of mutual innocence and biological attraction. Such relationship cannot be construed as an unnatural one or alien to between relationship of opposite sexes. But in such cases where the age of the girl is below 18 years, even though she was capable of giving consent for relationship, being mentally matured, unfortunately, the provisions of the POCSO Act get attracted if such relationship transcends beyond platonic limits, attracting strong arm of law sanctioned by the provisions of POCSO Act, catching up with the so called offender of sexual assault, warranting a severe imprisonment of 7/10 years.

29. Therefore, on a profound consideration of the ground realities, the definition of 'Child' under Section 2(d) of the POCSO Act can be redefined as 16 instead of 18. Any consensual sex after the age of 16 or bodily contact or allied acts can be excluded from the rigorous

provisions of the POCSO Act and such sexual assault, if it is so defined can be tried under more liberal provision, which can be introduced in the Act itself and in order to distinguish the cases of teen age relationship after 16 years, from the cases of sexual assault on children below 16 years. The Act can be amended to the effect that the age of the offender ought not to be more than five years or so than the consensual victim girl of 16 years or more. So that the impressionable age of the victim girl cannot be taken advantage of by a person who is much older and crossed the age of presumable infatuation or innocence.

30. In this regard, the respondents 3 to 5 are directed to place the decision before the competent authority and initiate appropriate steps to explore whether the suggestions made by this Court are acceptable to all stakeholders. The respondents are directed therefore to take the issue forward as they deem fit, as expeditiously as possible.

31. The third respondent in his report has suggested that they are having a serious resource crunch, as hardly there was any budget allocation to the Commission to carry out the necessary

awareness programmes in furtherance of the provisions of the POCSO Act. In which case, the 5th respondent is directed to ensure that adequate funds are made available to the third respondent and also sanction adequate posts of staff, since the protection of children is a paramount consideration for the health of the future society. Protection of children and the effective implementation of the POCSO Act must receive the highest priority at the hands of the impleaded authorities and the third respondent, who is entrusted with the task of spreading awareness of the provisions of the POCSO Act must be equipped adequately with the staff and finances in order to achieve the objective of the Act. This Court hopes that the Government shall sanction sufficient funds and also adequate staff to strengthen the Commission.

32. Before bringing the curtain down certain loud thinking on the issue needs to be expatiated. Off late Society has been witnessing alarming rise of incidence of sexual assault on women and children as well. More than treating such growing incidence as a legal issue dealing with the offenders of sexual assault by resorting to most deterrent provisions of Penal laws, the cause for such perverse and wicked behaviour among some men, who were otherwise normal in

their disposition, need to be examined and studied, like what are the factors which are likely to constitute and provoke such predatory sexual instincts to some members of the society to commit such horrific crimes, shaking the very moral foundation of the society, we live in. Literally no day is spared without a report of sexual assault on children and women, despite stringent laws dealing with such crimes.

33.The Society must collectively introspect what is it that drives some men to unleash their libidinous rage on hapless children and women of all age. The cause for such abominable deviant conduct on the part of the perpetrators of sexual crime on children and women is perhaps because of access to uncensored pornographic and erotic materials that are available on the internet 24 X 7. Access to such provocative and lewd sites lead to criminal sensuality that drives the perpetrators to commit such appalling crimes on children and women, in complete depravity. When minds are filled with lust, smouldering all the time by watching pornographic site of all kinds on the handset or otherwise, such crimes are the natural result of the depraved minds.

34.Further the society which dominantly come under the influence of mainstream cinema, must collectively express its concern

over certain contents of some films, though certified by the Censor Board, which are created and intended to appeal to the baser instincts of the viewers. In some films, women are objectified and stereotyped and portrayed as mere symbol of carnal attraction and amorous appeal. Avid viewers of such films, who are part of the society, cannot be expected to develop a healthy mindset towards women and children as they are susceptible to negative influence. Their perception of women on such influence gets skewed and they look at girl children and women as their legitimate sexual prey by reducing them to the state of mere anatomical existence.

35. The Society which has been rooted in one of the oldest civilizations of the world is facing its gravest challenge of steep cultural fall and degradation of an inconceivable kind, where children and women come under constant sexual attack day in and day out pushing the society to the brink of its civilized existence. In a Society where sexual crimes against children and women is the order of the day, something horrendously has gone wrong with evolution. The answer must be found beyond the criminal laws and its implementation. Sexual crimes are committed more often than not by ordinary individuals who have no ingrained criminal mindset unlike habitual

offenders, but the sexual urge in themselves provoke them to commit crimes unmindful of the penal consequences that catch up with them after the act. Sexual urge is a biological factor common to all living beings but when it assumes monstrous proportion resulting in proliferation of sex related crimes, then the society as a whole needs to wake up to the challenge to protect itself from moral denudation.

36. In such circumstances, it is socially imperative that the collective conscience of society must take upon itself the task of soul searching than leaving the ominous issue to be tackled only by the law enforcing authority. Society need not aim to become an Utopian State, but it can at least prevent itself from perilously inching towards dystopian era.

37. In the above circumstances, the initiatives of the authorities as collated and quoted in the decision above are assuaging and admirable and need to be appreciated. However, despite such constant efforts by various departments in initiating awareness programmes in multitude in terms of the POCSO Act, there appears to be let up in the sexual crimes particularly against children.

38. Therefore, the need of the hour is to identify the cause first before dealing with effect of such cause. This Court, in consideration of various factors and the circumstances, is of the view that a high level committee may be appointed by the State Government concerned comprising persons of eminence from various walks of life, like Social auditor, psychologists, Social Scientist etc., to investigate and study the malady afflicting the Society. Hope the appropriate authorities, who are equally concerned, may take this decision as a cue to initiate action to find a social solution in curbing the despicable menace of pathological behaviour of the perverted kind unleashed on the society, which society once boasted off great civilizational connectivity. The Committee may consider as far as possible each case of violence against women and children as a study and come up with social answers. The Committee may study such crimes from various dimensions including the cultural psyche of the offenders and may come up with suggestion periodically to arrest atleast further growth of such crimes in future.

39. The above suggestions may be circulated to all concerned by the Department and the suggestions may be translated into deeds by the Government in the larger interest of the society. Besides the suggestions made on behalf of respondents 2 to 5 may also

be taken note off with all earnestness by the authorities, at the helm of affairs.

40. Before parting with this case, this Court places immense appreciation for the coordinated efforts of Mrs.V.Saradhadevi, Government Advocate, who was steadfastly instrumental in getting reports from all the respondents 2 to 5. But for her, these reports could have escaped from the attention of this Court.

26.04.2019

msk

Index:Yes/No

Internet:Yes/No

To

- 1.The Inspector of Police,
Belukurichi Police Station,
Namakkal District.
- 2.The Director General of Police,
No.1, Dr.Radhakrishnan Salai,
Mylapore,
Chennai-600 004
- 3.The State Commission for Protection
of Child Rights,
rep.by its Chairperson, No.183/1,
EVR Periyar Salai,

Poonamallee High Road,
Kilpauk,
Chennai-600 010

4.The Commissioner of Social Defence,
Department of Social Defence,
Old No.153, New No.300,
Purasawalkam High Road,
Kellys,
Chennai-600 010

5.The Secretary,
Department of Social Welfare and
Noon Meal Programme, Fort St.George,
Chennai-600 009

6.The Sessions (Fast Track Mahila) Judge/Children Court,
Namakkal

V.PARTHIBAN,J.

Msk

Pre-delivery judgment in

Crl.A.No.490 of 2018

26.04.2019