

THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 12.07.2016

PRONOUNCED ON: 15.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.276 of 2016

Vijay Baskar .. Appellant/Accused

- Vs -

State rep by The Inspector of Police,
Adhambakkam Police Station,
Chennai.
(Crime No.168 of 2013) .. Respondent/Complainant

Prayer:- Appeal filed under Section 374(2) of the Code of Criminal Procedure against the judgment passed by the learned Principal Sessions Judge, Kancheepuram District at Chengalpattu, in S.C.No.119 of 2013 dated 28.10.2015.

For Appellant : Mr.C.Durai Pandian

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

J U D G M E N T

(Judgment of the Court was delivered by S.Nagamuthu, J.)

The appellant, sole accused in S.C.No.119 of 2013 on the file of the learned Sessions Judge, Kancheepuram district at Chengalpattu, who, stood convicted for offence under Section 302 I.P.C. and sentenced to undergo imprisonment for life and pay a fine of Rs.50,000/- in default to undergo simple imprisonment for six months has come up with this appeal, challenging the said conviction and sentence.

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

2.1. The deceased in this case was one Vidhya, aged about 21 years. She had studied upto plus two. Her father died many years before her death. She was brought up by her mother

and brother. She was residing with them at Parameswaran Nagar, Adhambakkam, Chennai. She was working in a browsing center known as "Sri Browsing Center" situated at Thiruvalluvar Main Road, Adhambakkam, Chennai.

2.2. Earlier, she had fallen in love with one Robin. Later she realized that Robin was not a good man as he had lot of bad habits. Therefore, she put a full stop with Robin. It was only thereafter, she started working in the browsing center.

2.3. The accused Mr. Vijay Basker, a young man, aged 31 years, used to visit the browsing center frequently. In that process, he started speaking to the deceased. Treating him as a customer the deceased addressed him as brother. But the accused took it otherwise. He managed to get the mobile number of the deceased and started talking to her over cellphone from the month of August, 2012. During the said talk, on one occasion, the accused told that he had developed love for her and he wanted to marry her. This proposal was not initially agreeable to the deceased. But the accused told her that if she did not accept the said love and proposal for marriage, he would commit suicide. Because of the said pressure, the deceased also started responding positively. Thus the love affair between the accused and the deceased went on smoothly for some time. This was not known initially to their respective parents. But the accused wantonly leaked out the information to the aunt of the deceased. Thus, it came to the knowledge of the mother of the deceased, her aunt and other family members and also to the family members of the accused. Both the family members accepted the said love affair and they also agreed to celebrate the marriage between the deceased and the accused.

2.4. After the above understanding between the two families, the accused started taking the deceased frequently outside for amusement. When this came to the knowledge of the family members of the deceased they warned her not to frequently go with the accused until the marriage was over. On one occasion, when the accused wanted her to come with him from the browsing center for amusement, the deceased refused. She told that her mother and family members warned her not to go with him frequently. Then the accused called the family members of the deceased and shouted at them. They, in turn spoke to the mother of the accused. The accused wanted to celebrate the marriage immediately but the family members of the deceased told that marriage could be celebrated after three months.

2.5. When this was going on, on 30.01.2013 in the usual course, the deceased had gone to the browsing center and she was involved in her duty. Between 1.30 p.m. and 1.45 p.m. the

accused came to the browsing center. He did not entered into the browsing center, instead, he was standing outside. On noticing the accused standing outside, the deceased came out of the browsing center and wanted him to come inside the browsing center. But the accused refused and instead he told that he was waiting for his mother, who was on her way to meet the deceased. Therefore, the deceased went into the browsing center. Then the accused disappeared from the said place. When the deceased was again engaged in her work, the accused suddenly emerged and get into the browsing center. He was holding a bottle containing a liquid (later on it came to light that it was a mixture of nitric acid and sulphuric acid). He shouted at the deceased that she had cheated him and now the deceased had chosen some other boy as her companion. Out of this suspicion, suddenly, with a view to do away with the deceased, the accused poured the acid at her face. The deceased bent down and the acid fell on her back and hands. Then the accused held the head of the deceased and rubbed the same on the floor where the acid had fallen. Thus the acid came into contact on her face also. Shouting at her that she should die, the accused kicked her and pushed her down. The deceased unable to bear the pain due to acid burn injuries and physical violence caused by the accused cried for help. The accused fled away from the scene of crime. When he took to his heels, the people who ran to the rescue of the deceased gave a chase, but he escaped from them. The deceased sustained extensive acid burn injuries on her body and she was wailing.

2.6. The owner of the browsing center immediately rushed to the browsing center, took the deceased and admitted her in Kilpauk Medical College hospital. On due information, her family members had also come to the hospital.

2.7. While she was in the hospital, on receiving intimation from the hospital, P.W.12, the then Sub Inspector of Police went to the hospital and recorded the statement of the deceased. On returning to the police station at 04.30 p.m., he registered a case in Crime No.18 of 2013 under Section 307 I.P.C. and Section 4 of the Tamil Nadu Prevention of Harassment of Women Act. Ex.P8 is the F.I.R. He forwarded both the documents to Court.

2.8. Then on intimation, P.W.15, the VII Metropolitan Magistrate Mrs.Hermis went to the hospital at 10.00 p.m. P.W.16 Dr.Ramkumar who was attending on the deceased, after examining her, gave certificate that the deceased was conscious, oriented and in a fit state of mind to give statement. P.W.15, the learned Magistrate made certain queries to the deceased and from the answers elicited and also from the opinion of the Doctor she decided that the deceased was in fit state of mind to make a dying declaration. Then she

recorded the dying declaration as spoken by the deceased and completed at 11.10 p.m.

2.9. In the statement made to P.W.12 as well as in the dying declaration made to the learned Magistrate, the deceased vividly stated about the relationship between her and the accused and the circumstances which led to the occurrence and finally how the accused poured the acid and rubbed her face against the floor where the acid had fallen and also how she was physically manhandled.

2.10. The case was taken up for investigation by P.W.18. He went to the place of occurrence at 05.30 p.m. on 30.01.2013. In the presence of P.W.7 and another witness he prepared an observation mahazar and a rough sketch showing the place of occurrence. Then, he recovered the broken pieces of bottle and pieces of clothes which was half burn due to acid, which was lying at the place of occurrence.

2.11. Then, on the same day at 07.00 p.m. near Adhambakkam N.G.O. Colony bus stand he arrested the accused in the presence of P.W.8 and another witness. On such arrest, he gave a voluntary confession, in which, he disclosed the place where he had hidden the knife. In pursuance to the said disclosure statement, he took the police and the witnesses to the place of hideout and produced M.O.4 knife and M.O.3 pant. P.W.18 recovered the same under a mahazar in the presence of the same witnesses. Then, he examined the Doctor who gave treatment to the deceased.

2.12. Despite the treatment, on 24.02.2013 at 04.15 a.m. the deceased succumbed to the injuries. On getting intimation from the hospital, he altered the case into one under Section 302 I.P.C. Then on 24.04.2013, between 07.30 a.m. and 09.30 a.m. he conducted inquest on the body of the deceased and forwarded the same for postmortem.

2.13. P.W.14 Dr.Jithendher Singh conducted autopsy on the body of the deceased on 24.02.2013 at 11.25 a.m. He found the following injuries:

"Moderately nourished female body, wrapped with gauze around the body, the gauze material was found soaked with greenish yellow foul smelling infected slough and pus, on removal of gauze, infected epidermal and dermo-epidermal burns with denuded cuticle exposing the patchy areas of outer aspect and upper part of right shoulder with intervening normal skin with scab, outer aspect of lower third of right chest to upper part of right abdomen, front and back of right forearm to

right hand with intervening normal skin with scab, spared palm of hand, patchy areas upper part of right abdomen with scab, patchy areas of right loin with scab, patchy areas over outer and in front of sides and back of upper third to middle third or right thigh with intervening normal skin, patchy areas of right knee with scab, patchy areas over inner aspect of right leg with scab, patchy areas of inner and lower third of right leg to right foot with scab, Back of upper third of left thigh and back of right lower limb, inner aspect of lower third of left leg to left foot, outer aspect of upper third left thigh to left foot, patchy areas over inner aspects of left thigh with scab, front and back of left forearm to middle third of left arm, spared areas over palm, patchy areas over middle part of left arm with scab, back of trunk, gluteal region with intervening normal skin with greenish yellow foul smelling thick purulent discharge with multiple pus point oozed out from the surface of burnt areas, with healed areas over face. No other external or internal injuries made out. Scalp, bones, membranes: Intact, brain, edematous, surface vessels engorged. Hyoid bone: Intact, Larynx and Trachea: Normal. Heart: normal in size, C/S: All chambers contained fluid and clotted blood, valves and coronary vessels: patent. Lungs: Both lungs adherent to chest wall, c/s greenish yellow foul smelling exudes purulent discharge oozed from both lung and its all lobes. Stomach: 150 ml of green coloured fluid mucosae: normal. Intestine: Distended with gas. All Internal organs: Normal in size c/s pale. Bladder: empty; Uterus: c/s empty; Pelvis and Spinal column : intact."

Ex.P10 is the postmortem certificate. He gave opinion that the death of the deceased was due to the effects of the acid burn injuries.

2.14. Then, the investigation was continued by P.W.19. Since, the deceased belonged to Scheduled Caste, he obtained a

certificate from the Tahsildar to the said effect. On completing the investigation, he laid charge-sheet against the accused on 09.04.2013.

2.15. Based on the above materials, the trial Court framed charge as detailed in the first paragraph of this judgment, which the accused denied. In order to prove the case, on the side of the prosecution, as many as 19 witnesses were examined, 21 documents and 4 material objects were marked.

2.16. Out of the said witnesses, P.W.1 is the mother of the deceased. She has stated about the love affair between the accused and the deceased. She has further stated that on the date of occurrence at around 1.45 p.m. she went to the browsing center where the deceased was working, carrying lunch for her. When she was nearing the browsing center, she found the accused entering into the browsing center with a bottle and then threw the acid on the deceased. She has stated about the entire occurrence. She has further stated that the accused fled away from the scene of occurrence. P.W.2 is a resident of Adhambakkam Kakkan Nagar. He used to visit the browsing center where the deceased was working. According to him, he has seen the accused and the deceased together in the browsing center engaged in some kind of friendly conversation. According to him on 30.01.2013, at about 1.45 p.m. he went to the said browsing center and he found the accused shouting at the deceased and threw acid from a bottle on her. He has also spoken about the arrival of P.W.1 at the place of occurrence. P.W.3 is the friend of P.W.2. He has also stated that he had seen the deceased and the accused together in the browsing centre on few occasions. He has also spoken about the entire occurrence. P.W.4 has stated that at the time of occurrence, he was in the shop situated next to the browsing center. At that time, he heard the distress call of a woman from the browsing center. When he rushed towards the browsing center, he found P.W.1 there. Then, he came to know about the occurrence. P.W.5 has stated that he had also gone to a neighbouring shop situated near the browsing center where the occurrence has taken place. He has spoken that between 01.30 p.m. and 02.00 p.m. when he was in the said shop, he heard the distress call of a woman from the browsing center. When he went to the shop, he found P.W.1 also there and he saw the deceased with injuries.

2.17. P.W.6 is the owner of "Sri Browsing Center" under whom the deceased was working. He has stated that at the time of occurrence he was not available in the browsing center as he had gone out for lunch. When he returned to the browsing center, he found the accused fleeing away from the scene of occurrence. He went into the shop and found the deceased with acid burn injuries. When he enquired, the deceased told him

that the accused threw acid on her. Then he took the deceased to the hospital and admitted her. P.W.7 has spoken about the preparation of the observation mahazar and the rough sketch and the recovery of material objects from the place of occurrence. P.W.8 has spoken about the arrest of the accused, his disclosure statement and consequential recovery of M.O.4 knife and pant (M.O.3) from him. P.W.9 the Head Constable has stated that he took the dead body and handed over the same to the doctor for postmortem. P.W.10 Dr.Gopinath has stated that on 30.01.2013, the deceased was brought to KMC hospital and he admitted her as inpatient. At that time, the deceased told that a known person has poured acid on her. She further stated that she was taken to a private hospital S.P. Hospital for first aid and then she was brought to KMC hospital. He found excessive burn injuries on her body.

2.18. P.W.11 the Tahsildar, Sriperumbudur has stated that the deceased belongs to Scheduled Caste and he gave a certificate to the said effect. P.W.12 the then Sub Inspector of police has stated that on receiving intimation from the hospital, he went to KMC hospital to record the statement of the deceased and on returning to the police station at 04.30 p.m. on 30.01.2013, he registered the present case against the accused. P.W.13 has stated that on 30.01.2014, he was on duty at S.P.Hospital at Adhambakkam which is a private hospital. He examined the deceased and gave first aid treatment and referred her to KMC hospital. P.W.14 Dr.Jithendher Singh has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.15 the learned VII Metropolitan Magistrate has spoken about the dying declaration recorded by her from the deceased (Ex.P13). P.W.16 has spoken about the fact that he certified to P.W.15 that the deceased was in a fit state of mind to make dying declaration. P.W.17 has stated that he examined the material objects and found that a mixture of nitric acid and sulphuric acid were found on the material objects. P.Ws.18 and 19 have spoken about the investigation done and the final report filed.

3. When the above incriminating materials were put to the accused, under Section 313 of Cr.P.C., he denied the same as false. On the side of the accused three witnesses were examined. D.W.1 Dr.Vidya has stated that on 30.01.2013 at around 08.55 p.m. she was on duty at the Government Hospital at Tambaram. On that day the accused was brought before her by the respondent police in connection with Crime No.168 of 2013. When she examined him, she found that there were acid burn injuries on his right forearm. When she enquired, the accused told that accidentally the acid had fallen on his right forearm. Ex.D14 is the case sheet and Ex.D15 is the O.P. treatment given for the accused. D.W.2 has stated that he was a freelance photographer. He was a photographer in Nakeeran fortnightly during the period between 1983 to 2000. According

to him, he had taken photographs Ex.D8 to D13 which were published in Nakeeran fortnightly. In the photographs the shop where the occurrence had taken place and the surrounding areas were found. D.W.3 is a forensic expert, having P.G. Degree in forensic medicine. She was in the forensic medicine department in various Government medical hospitals between 2008 - 2011. She has further stated that she got experience of conducting autopsy in about 2000 cases. She has further stated that she went through the medical records pertaining to the deceased issued by P.W.14. She has stated that in that medical record there was no specific mention as to the pieces of the dress material of the deceased where there were acid burns. She has further stated that if only the dress materials were sent for chemical examination, it can be stated whether the injuries were caused by acid or not. From the sites of the burn injuries, she has stated that acid should have been thrown on her when she was facing towards opposite direction. From the location of the injuries, according to her she did not find any defence injuries.

4. Having considered all the above, the trial Court convicted the appellant as detailed in the first paragraph of this judgment and that is how, he is before this Court with this appeal.

5. We have heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the State and also perused the records, carefully.

6. In this case, as we have already narrated, P.Ws.1, 2 and 3 are the eyewitness to the occurrence. P.W.1, the mother of the deceased has stated about the motive also. According to her, on the date of occurrence, around 1.45 p.m. when she went to the browsing center, where the deceased was working and carrying lunch for the deceased, she witnessed the entire occurrence. P.W.2 has stated that as usual on the date of occurrence, around 1.45 p.m. when he went to the browsing center, he found the accused and the deceased held up in a conversation for some time and suddenly the accused took out a bottle and poured acid on the body of the deceased. P.W.3 has also stated that when he went to the browsing center at around 1.45 p.m. along with P.W.2, he witnessed the entire occurrence. These two witnesses have further stated about the presence of P.W.1 at the place of occurrence.

7. The learned counsel appearing for the appellant would submit that these three witnesses cannot be believed because, according to him, they are interested witnesses. He has further submitted that the presence of these three witnesses at the crucial point of time is highly unbelievable.

8. We have given anxious consideration to the said contentions of the learned counsel for the appellant. But we do not find any merit at all in this argument. It is not the law that simply because a witness is closely interested in the affairs of the deceased and when his presence at the crucial moment of time was by chance, his evidence should be rejected. It is only a Rule of Prudence that the Court should closely scrutinize the evidence of such witness who is interested in the affairs of the deceased and also a chance witness. On such close scrutiny, if the evidence of a chance and the interested witness, inspires the confidence of the Court, there is no legal impediment to act upon the said evidence, even in the absence of any corroboration from any other independent source.

9. Here, in this case, P.Ws.1 to 3 were cross examined at length by the accused. In fact, P.W.1 was examined in chief on 03.10.2013, but the learned counsel for the accused, though present in Court, did not cross examine her on the same day. Later, on an application made by the accused, P.W.1 was recalled and allowed to cross examine only on 21.10.2013. A perusal of the cross examination of this witness would go to show that several questions were either unreasonable or irrelevant. In fact, cross examination of this witness reveals that it amounts to a tacit harassment of the witness. No answer worth considering was elicited during cross examination except a few, particularly, one answer, wherein P.W.1 has admitted that the deceased was unable to open her eyes due to pain. Thus, we do find any reason to reject the evidence of P.W.1.

10. P.W.2, another eyewitness has stated that he along with P.W.3 had gone to the browsing center and at that time, they found P.W.1 present at the scene of occurrence and they witnessed the entire occurrence. P.W.2 was examined in chief by the prosecution on 03.10.2013. But, he was not cross examined by the accused on the same day. On an application made, he was recalled again and he was cross examined only on 31.10.2013. Similarly, P.W.3 who was examined in chief on 03.10.2013 was cross examined only on 04.11.2013. Though these two witnesses were cross examined at length, we do not find any answer elicited from them worth considering so as to doubt their credibility.

11. As a matter of fact, during cross examination of P.Ws.1 to 3, the accused had admitted his presence at the place of occurrence. It was suggested to these witnesses, that acid was poured by Robin on the deceased and that the accused intervened and attempted to rescue the deceased and in that process, he also sustained acid burn injuries. Had it been true, that it was Robin who had thrown acid on the deceased and this accused tried to save her, there would not

have been any justifiable reason for the deceased to say in her dying declaration that it was this accused who poured acid on her. Thus, we do not find any reason to reject the evidence of P.Ws.2 and 3.

12. Then comes the evidence of P.Ws.4 and 5. P.W.4 has stated that he went to the shop near 'Sri Browsing Centre', where the occurrence had taken place. When he was inside the said shop purchasing balloons, he heard the distress call made by a woman. He peeped through the glass door of the said shop and found P.W.1 standing in front of the browsing center and the accused was found running away from the scene of occurrence. This witness was examined in chief on 03.10.2013, but was recalled for cross examination on 05.11.2013. This witness was also cross examined to an unusual length, but nothing could be elicited in favour of the accused. P.W.5 is yet another independent witness. He has stated that he had accompanied P.W.4 to the shop for purchase. He has further stated that at the time of occurrence, he heard distress call of a woman from the browsing center. When he peeped through the glass door of the shop, he found the accused fleeing away from the scene of occurrence after pouring acid on the deceased. He also had seen P.W.1 present at the scene of occurrence. He has further stated that he found the deceased with acid burn injuries on her back. From these two witnesses, not only the prosecution has proved the involvement of the accused in the crime but also proved the presence of P.W1 at the place of occurrence.

13. P.W.6 is not an eyewitness to the occurrence. He had gone to the shop situated near the browsing center, where the occurrence had taken place. When he went near the browsing center, he found the deceased with acid burn injuries. According to him, when he enquired the deceased, she told that it was this accused who threw acid on her. This witness was also examined in chief on 03.10.2013 and cross examined on 05.11.2013 at length. Nothing has been elicited from this witness also to doubt his credibility. Thus, the evidence of P.W.6 duly corroborates the eyewitness account of P.Ws.1 to 3.

14. In our considered view, the evidence of these witnesses viz., P.Ws.1 to 6 themselves are sufficient to convict the accused. But, the prosecution has got some more clinching evidence to prove the guilt of the accused.

15. After the occurrence was over, the deceased was taken to a private hospital and after first aid treatment, she was taken to the Kilpauk Medical College hospital. When she was in the private hospital, on receipt of intimation from the police, P.W.12 had gone to the hospital. Recording the statement of the deceased, on returning to the police station, P.W.12 had registered the present case at 04.30 p.m. on 30.01.2013. In that statement, the deceased has vividly

spoken about her relationship with the accused, the reasons for the said relationship becoming strained, the conversation between her and the accused just before the occurrence and the entire occurrence. She has vividly stated that it was this accused who poured acid on her. She has further stated that since she bent down, the acid fell on her back and other parts of the body. Since there was no acid thrown on the face, the accused pushed her down and rubbed her face against the acid which has spilled on the floor. Thus, she sustained acid burn injuries on her face also and then the accused attacked the deceased. That is how she has narrated the entire occurrence.

16. The said statement is a dying declaration. The learned counsel for the appellant would submit that P.W.1 has stated that the deceased was wailing and unable to speak from the time of admission in the hospital and therefore the statement said to have been given by the deceased to P.W.12 cannot be true. We find no force in the said argument, for P.W.1 has not at all stated that the deceased was unconscious from the time of her admission in the hospital. She has only stated that the deceased was wailing, out of pain. P.W.12 has recorded the statement of the deceased, which, in our considered view, cannot be doubted. This statement, being a dying declaration, is a substantive evidence which would again go to clinchingly prove the guilt of the accused.

17. Then comes a very vital part of evidence in favour of the prosecution viz., judicial dying declaration recorded by the learned Metropolitan Magistrate (P.W.15). On receiving intimation from the Sub Inspector of Police, Adhambakkam Police Station, P.W.15 had gone to Kilpauk Medical College hospital at 10.00 p.m. on 30.01.2013. Dr.Ramkumar (P.W.16) was attending on the deceased, after examining the deceased, had given opinion that the deceased was conscious, oriented and in a fit state of mind to give a statement. P.W.15, to satisfy her judicial conscience, about the mental fitness of the deceased, had made certain queries and from out of the answers elicited from the deceased and from the opinion of the Doctor, she was satisfied that the deceased was in a fit state of mind to make a dying declaration. It was only after the said satisfaction, she recorded the judicial dying declaration (Ex.P.15). In the judicial dying declaration, the deceased has made a complete narration of her relationship with the accused and how it become strained, the conversation between her and the accused just before the occurrence and the actual occurrence. This judicial dying declaration is in conformity with the statement recorded by the Sub Inspector of Police (P.W.12) and also the oral evidence of P.Ws.1 to 3.

18. So far as the judicial dying declaration is concerned, the learned counsel for the appellant would submit that the same cannot be believed as it was only out of

tutoring. Though attractive, we find no material on record even to remotely infer that the deceased would have been tutored by anyone including P.W.1.

19. The accused had suggested during cross examination to P.Ws.1 to 5 that it was Robin who poured acid on the deceased and the accused sustained injury only when he tried to rescue the deceased. Admittedly, the accused also had acid burn injuries on this right forearm. There is no denial of the fact that in the same transaction, the accused also sustained the said injuries. Thus, the presence of the accused at the place of occurrence has been fairly admitted by the accused and further his presence has been spoken by all the eyewitnesses as well as by the deceased through her two dying declarations. As we have repeatedly stated herein above, had it been true that Robin was the one who threw acid on her, she would have no reason to omit him and falsely implicate the accused if already he had gone to save her. Thus, from these evidences the prosecution has clearly established that it was this accused who poured acid on the deceased, which resulted in her death. The medical evidence duly corroborates the eyewitness account as well as the dying declaration.

20. P.W.13 Dr.Stalin has stated that on 30.01.2013, when he was on duty in S.P. Hospital, the deceased was brought with acid burn injuries for treatment. He has stated that he gave first aid to her. The learned counsel for the appellant would vehemently contend that he had violated the medical ethics. The learned counsel took us through the cross examination of this witness. A perusal of the cross examination of this witness which runs to at least four pages would show that most of the questions were unnecessary and unlawful and were in the nature of harassing the doctor. To illustrate, one of the questions put to him, was on completing M.B.B.S. degree course, he, as a rule, should have joined Government service. Yet another question asked to him was as to who were all the partners of S.P. Hospital and who was the Managing Director of the said hospital. Yet another question asked is as to the number of years during which the said hospital had been functioning; whether proper license has been issued under the Tamil Nadu Private Clinical Establishment Act, 1997. Yet another question is that as to how many beds were there in the hospital. It has also been elicited that there is an operation theatre, a minor O.T. and labour ward in this hospital. Likewise, this doctor who has stated that he simply gave first aid treatment and referred the patient to the Government hospital has been harassed by asking unnecessary questions. This doctor was examined in chief on 09.10.2013, but the learned counsel did not cross examine him on the same day. He was recalled and cross examined on 06.11.2013. The cross examination went on for more than four pages, but still it was inconclusive and the doctor was again recalled on

07.11.2013. That day he was cross examined at length, which runs to another four pages. But as we have already pointed out, there is nothing elicited from this witness to doubt his credibility. Thus, it is not understandable as to why this doctor was repeatedly asked to come to Court and subjected to cross examination which was mostly aimed at harassing him.

21. P.W.14 Dr.Jithendher Singh has spoken about the postmortem examination conducted on the dead body of the deceased and his final opinion regarding the cause of death. He was examined in chief on 09.10.2013. But the said doctor was not cross examined on the same day. He was recalled on 13.03.2014, i.e., after five months and cross examined. An attempt has been made to elicit from him that the acid would have been thrown on the back of the deceased when she was bending down. One of the questions put to this doctor is as to whether any acid burn injuries were found on the private parts of the deceased. According to the doctor, there was no such injury. The suggestion of the defence was that since there was no injury to the private parts of the deceased the acid would not have been poured on the back of the deceased when she was bending. We are unable to understand the logic or reason behind this question. Thus, from this witness also nothing has been elicited in favour of the accused. This witness has categorically stated that the death was due to acid burn injuries. Thus, the prosecution has clearly established that it was this accused who threw acid on the deceased which ultimately resulted in her death.

22. The learned counsel for the appellant took us through the evidence of the investigating officer and went to the extent of submitting to the Court that the investigating officer should be prosecuted for having fabricated the documents in this case. But this argument virtually finds no basis. There is no iota of evidence to show that the investigating officer had fabricated any document.

23. Now turning to the defence witnesses, D.W.1 Dr.R.Vidya has spoken about the acid burn injuries found on the right forearm of the accused. According to her, the accused was brought before her at Tambaram Government Hospital only by the police. This fact has not been denied by the prosecution. As a matter of fact the injuries found on the right forearm of the accused should have been proved by the prosecution and explained. But the accused had fairly come forward to admit that he sustained the said acid burn injury only in the same occurrence. Location of the said injury on the right forearm of the accused would suggest that while pouring the acid or at least when the accused pushed the deceased and rubbed her face on the acid spilled on the floor, he would have sustained the injuries because the acid was on the back of the deceased, where the right hand of the accused

would have come into contact. D.W.2 has spoken about the photographs taken at the place of occurrence. But from out of the photographs, marked as Exs.8 to 12, we are unable to find anything in favour of the accused to disbelieve the case of the prosecution. D.W.3 is an expert in the forensic medicine. He has stated that from the postmortem findings, he did not find any injury sustained in defence by the deceased. But it is in the dying declaration of the deceased that when the accused was about to throw acid on her, to save her face, she bent down and therefore the acid fell on her back. Thus, the evidence of this witness that there were no defensive injuries cannot be accepted.

24. From the foregoing discussions, we find that because the accused had doubt that the deceased would cheat him, disown him and marry someone, he had gone to the browsing center where the deceased was working with acid bottle and poured the acid on her and since the acid did not fall on her face, he held her and rubbed her face against the acid which had spilled on the floor and he had also manhandled her and thus caused the death of the deceased. There is no iota of doubt in the case of the prosecution. The prosecution has proved the case beyond all reasonable doubts. The trial Court was thus right in convicting the accused.

25. Now, turning to the quantum of punishment, the trial Court has imposed only reasonable punishment which is also proportionate and the same does not require any interference at the hands of this Court. Thus, we do not find any merit at all in this appeal.

26. In the result, the appeal fails and the same is accordingly dismissed. The conviction and sentence imposed on the appellant by the learned Principal Sessions Judge, Kancheepuram District at Chengalpattu, in S.C.No.119 of 2013 dated 28.10.2015 are hereby confirmed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

kk/kmk

To

1. The Principal Sessions Judge,
Kancheepuram District at Chengalpattu.

2. The Inspector of Police,
Adhambakkam Police Station,
Chennai.

3. The Public Prosecutor,
Madras High Court.

4. The Superintendent,
Central Prison,
Puzhal, Chennai.

5. The District Collector, Chennai.

6. The Director General of Police,
Mylapore, Chennai.

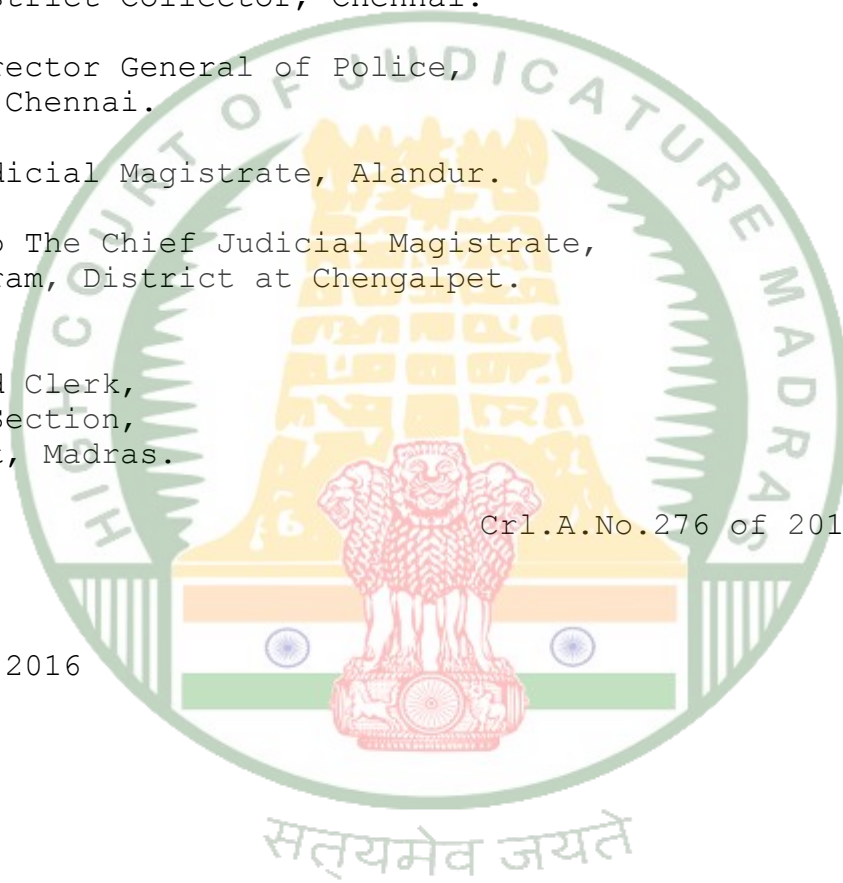
7. The Judicial Magistrate, Alandur.

8. Do-Thro The Chief Judicial Magistrate,
Kancheepuram, District at Chengalpet.

Copy to:
The Record Clerk,
Criminal Section,
High Court, Madras.

Cr1.A.No.276 of 2016

ak co
kra 29.07.2016



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