

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Reserved on : 19.06.2018]

[Pronounced on : 30.07.2018]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.A.No.861 of 2016

M.Siluvai Murugan @ Murugan ... Appellant/Accused

.. Vs ..

State Rep.
Inspector of Police,
B-8, V.H.Road Police Station,
Coimbatore
Crime No.156 of 2014 ... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the judgment, conviction and sentence dated 8.9.2016 passed in S.C.No.199 of 2014 by the III Additional Assistant Sessions Court at Coimbatore.

For Appellant : Mr.C.D.Sugumar
For Respondent : Mr.R.Surya Prakash,
Govt.Advocate (Crl.side)

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JUDGMENT

The convicted sole accused is the appellant herein.

2. In this appeal, the appellant/accused challenges the conviction passed by the learned III Additional Assistant Sessions Judge, Coimbatore for the offences under Sections 326(A) of I.P.C, and 506(ii) of I.P.C and sentencing him to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.10,000/- in default to undergo one month simple imprisonment for the offence under Section 326 (A) IPC and also sentencing him to undergo one year rigorous imprisonment and to pay a fine of Rs.500/-, in default to undergo one month simple imprisonment for the offence under Section 506(ii) IPC.

3. The respondent-police filed a final report before the jurisdictional Magistrate alleging that on 22.03.2014 at about 4.00 a.m, when the victim namely, Suseela along with his cousin brother Manikandan and witness Ranjith Kumar were extracting gold materials from the waste water of the goldsmith shop in Telugu Road in Ukkadam, Coimbatore (in front of Manoj Bakery) at around 4.30 a.m, the accused who came over there and questioned the victim Suseela as to "why she is not speaking to him" ? As the victim was keeping in silence, being angry with the victim Suseela the accused by stating that "vdf;F fpilf;fhj eP ntW ahUf;Fk; fpilf;ff;TlhJ brj;Jg;ngh" threw acid from the bottle which was kept in the hip on the right face of the victim Suseela, thereby the victim Suseela suffered simple injury on her right face, right forehead, left thigh, right forehead and left chest and also created a permanent scar on her and when the said victim was raising alarm out of the pain, the witnesses Manikandan and Ranjith Kumar came to rescue her and at that time, the accused criminally intimidated them and threw acid on their face also and escaped from the scene, and thereby committed the offences under Sections 326(A) and 506(ii) of I.P.C.

4. After observing the formalities, the case was numbered as S.C.No.199 of 2014 and made over to III Additional Assistant Sessions Judge, Coimbatore.

5. After framing of the charge under the above said Sections, the matter was posted for trial and during the time of trial, the prosecution examined P.W.1 to P.W.11 and marked Exhibit P1 to P10 and also marked MO1 bottle containing remaining portion of the acid.

6. On appreciation of the private prosecution witnesses P.W.1, the victim girl and taking note of the medical evidence of P.W.7 Doctor along with the Accident Registers Ex.P7 and P8, the learned Additional Assistant Sessions Judge, Coimbatore convicted the accused for the above said Sections and sentenced him as stated supra.

7. Aggrieved by the said order of the conviction and sentence, the appellant has preferred this appeal.

8. Heard both sides and perused the records.

9. The following Points arise for consideration :-

i) Whether the prosecution has proved the charges under Section 326(A) I.P.C against the accused beyond reasonable doubt?

ii) Whether the prosecution proved the

charge under Section 506(ii) I.P.C

iii) Whether the judgment of the trial Court is sustainable in law?

iv) and to what other relief?

10. The learned counsel for the appellant contended that

i) in the absence of any permanent disfigurement, the offence under Section 326(A) I.P.C is not attracted and

ii) there is a discrepancy in quantity of acid, 10 m.l between the seizure magazar and the report of the Forensic Department, touching the root of the prosecution.

11. Relying upon Ex.P7-Accident Register, wherein the injury was classified as simple in nature, the learned counsel for the appellant further contended that since the injuries are simple in nature that does not fall under the category of "grievous injury" as defined under Section 325 I.P.C., and hence, conviction under Section 326 (A) I.P.C or 326(B) IPC is not sustainable in law and prayed for setting aside the judgment of conviction and sentence passed by the learned Session Judge.

12. The learned Government Advocate (crl.side) appearing for the respondent made submission in support of the judgment of the trial Court.

13. The prosecution theory is that the victim Suseela has a son aged about 7 years and her husband had died 5 years prior to the incident. She has engaged herself in collecting gold pieces that could be extracted from the sand and drained water near the gold making shop and the accused, along with other also doing the same job and in view of her close association with the accused, they have decided to marry. At this juncture, when the others are found to be speaking with the victim Suseela, the accused has developed suspicion that she might not marry him and hence, he started giving trouble to the victim.

14. The injured Suseela examined herself as P.W.1 and she could depose that on the fateful day, when she along with her cousin brother Manikandan and witness Ranjith Kumar were doing the extraction of gold particles from the gold particles shop in front of a jewellery shop in the Telugu street in Coimbatore, at about 4.30 a.m.,

the accused came there and scolded as to why she is not speaking with him nowadays and whether she does not like him and as she kept silence, he lift the bottle which was hidden in his hip and throw acid on her face by saying "vdf;F fpilf;fhj eP ntW ahUf;Fk; fpilf;ff;TlhJ brj;Jg;ngh" and thereby, she sustained injury. In her evidence, P.W.1 also deposed about the treatment given to her. The alleged occurrence was witnessed by Ranjith Kumar and Manikandan, who were examined P.W.3 and P.W.2 respectively and they have categorically deposed regarding the act of the accused throwing acid on the body of P.W.1 as spoken to by P.W.1 which duly corroborates with the contents of the complaint-Ex.P1.

15. With regard to the alleged incident and the act of the accused in throwing acid from the bottle, the evidence of P.W.1 is clear and cogent and there is nothing in the cross examination to discredit her evidence and in the absence of anything elucidated in the cross examination of P.W.1, which duly stands corroborated by the evidence of P.W.2 and P.W.3, the trial Court came to a conclusion that the accused has committed the said act as spoken to by P.W.1 and such finding of the trial Court does not suffer from any illegality or irregularity warranting interference by this Court at this appellate stage.

16. With regard to the "injury" happened due to the act of the accused, P.W.7-Dr.Prasannakumar, who had initially given treatment to P.W.1 and issued Ex.P7-Accident Register spoken about the injury sustained by P.W.1 and his evidence clearly supported the oral evidence of P.W.1. In view of the corroboration by the medical evidence of Doctor P.W.7 coupled with Ex.P7 and the version of injured witness P.W.1, the trial Court has come to a conclusion that the accused had committed the offences under Sections 326(A) and 506(ii) IPC and held that the victim-P.W.1 has suffered acid attack and suffered injury as per Ex.P7 and thus, the finding of the trial Court with regard to nature of injury is well considered and it does not call for any interference by this Court and accordingly, the same is hereby confirmed.

17. The learned counsel for the appellant would contend that there is discrepancy in the quantity between the seizure magazar and the Forensic report. The trial Court has considered the said plea and based upon the evidence of P.W.6, the Magazar witness and coupled with Ex.P6-Observation Magazar, the trial Court has categorically stated that it does not cause dent in prosecution theory, which is found to be just and proper and does not warrant any interference at this stage.

18. It is to be stated that under Ex.P5, which is a admissible portion of the confession statement of the accused which led to the recovery of the bottle with acid under Ex.P6 seizure magazar and in view of the certificate issued by the Forensic Department and perusing the request made by the learned Judicial Magistrate No.V, Coimbatore, who has sent the bottle which was recovered from the accused by the respondent-police during the course of investigation under Ex.P2, and the report of the Forensic Department-Ex.P3, wherein, it is stated that the content of bottle is "Acid" and hence, the trial Court, based upon the admissible portion of the confession statement leading to recovery to new fact, namely the recovery of a bottle consisting of a liquid, which was forwarded to the Forensic Department and who had issued a certificate as stated above, is "corrosive in nature" and based upon Ex.P7 and Ex.P3, the trial Court came to a conclusion that what was thrown on the face of P.W.1 by the accused is "Acid" and that Acid is "corrosive in nature" and P.W.7-Doctor has clearly spoken about the nature of the injury found on the body of the victim-P.W.1 and that chemical portions over right hand side of face and in that final opinion, he has given that the chemical injury 12% and accordingly, classified the injury as simple in nature and therefore, the trial Court has correctly appreciated the evidence of P.W.1 in proper perspective and came to a conclusion that the accused has thrown acid on the body of P.W.1 and in view of the said acid attack on her body, P.W.1 has suffered injury on the right hand side of the face and left hand side of the arm and the left hand side of the thigh which are classified as "chemical injuries" at 12%.

19. The learned counsel for the appellant contended that since the medical evidence of the Doctor P.W.7, who had categorically stated that the injuries are simple in nature, the provisions under Sections 326(A) & 326(B) IPC does not come into operation and could not treated as grievous in nature as defined under Section 320 I.P.C .,

20. This Court has given its anxious consideration to the said contention of the learned counsel for the appellant and was unable to affix the seal of approval for the said contention for more than one reasons.

21. In this connection, it is to be noted that in view of the problem of rampant acid attacks on females and recommendations made for curbing this problem by Justice J.S.Verma Committee, by criminal amendment Act, 326(A) which came into force with effect from 03.02.2013,

wherein the penal provisions of Indian Penal Code in Sections 326 (A) and 326 (B) read thus:

"326-A:- Voluntarily causing grievous hurt by use of acid, etc - whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses of the treatment of the victim;

Provided further that any fine imposed under this Section shall be paid to the victim.

326-B:- Voluntarily throwing or attempting to throw acid- whoever throws or attempts to throw acid on any person or attempts to administer acid to any person, or attempts to use any other means, with the intention of causing permanent or partial damage or deformity or burns or maiming or disfigurement or disability or grievous hurt to that person, shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

Explanation I: For the purposes of Section 326-A and this Section, "acid" includes any substance which has acidic or corrosive character or burning nature, that is capable of causing bodily injury leading to scars or disfigurement or temporary or permanent disability.

Explanation II: For the purposes of Section 326-A and this Section, permanent or partial damage or deformity shall not be required to be irreversible.

Classification of offence:- The offence under this section is cognizable, non-bailable and triable by Court of Session".

'Acid' - For the purpose of this Section, the word 'acid' has been ascribed a definite meaning vide Explanation I to Section 326-B, which is an analogous provision prescribing a distinct but similar offence with use of acid. Accordingly, any substance which has acidic or corrosive character or burning nature, that is capable of causing bodily injury leading to scars or disfigurement or temporary or permanent disability, will fall within the meaning of acid for the purpose of the mischief defined in this Section.

'Permanent or Partial damage or deformity' - This phrase has not been defined, and left for medical opinion. However, it has been clarified vide Explanation I to Section 326-B, that the permanent or partial damage or deformity resulting from the throwing of acid need not be irreversible in nature. As such even temporary or momentary damage or deformity will be covered within the mischief of this section if the same has been caused with the use of acid. The use of different words in this section - burns, maims, disfigures, disables, causes grievous hurt - give a wide coverage to this section and every nature of injury caused with the use of acid is covered under this offence.

The need for having an analogous yet distinct provision would be apparent from seeing the focus of the both the sections.

While Section 326-A focuses more on the grievous hurt resulting from the use of acid, in Section 326-B the legislative focus is more on the act of throwing or attempting to throw acid with the intention of causing grievous hurt of the nature as mentioned therein.

22. On a close scanning and scrutiny of the words and phrases adopted in the above said two Sections and the words adopted in the above extracted portions, it will clearly go to show that whichever caused either

permanent or partial damage or deformity or portion of disfigurement in any part or parts of the body of the person, are causing grievous by throwing acid with a knowledge that it is likely to cause such injury or yet, the phrase adopted will clearly indicate that the injury need not be grievous in nature.

23. However, in order to attract the penal provisions of above two Sections, the use of the weapon for crime should be "acid" and as a result of which, the victim should have suffered either permanent or partial damage or any deformity or burns or maims or disfigurement and other categories (8 in number) as mentioned in the above said Sections and the accused must have knowledge that by the use of said "acid" will result in such injury and couple with that element of an intention of causing such injury. So, if it is established by the prosecution, then the above two Sections 326(A) or 326(B) IPC will come into play, de hors whether the injury is simple or grievous as defined under Section 320 IPC.

24. In the instant case, it is useful to refer the explanation I wherein, it is specifically stated that for the purpose of Sections 326(A) and 326(B) as it includes any substance (emphasis supplied) and hence, in the instant case in view of the explanation and the meaning attributed and extracted above, if the injury caused by the use of acid and if the victim has suffered any one of the 8 kinds of damages as mentioned in the above said section then, de hors it is a simple nature of injury, the same is punishable under the amended provision of the 326 (A) or 326(B) I.P.C.

25. The legislature in its wisdom has made a clear definition & distinction between the sentence that could be awarded under these two sections, while the sentence awarded for the offence under Section 326(A) I.P.C., was not less than 10 years, which may be extended with imprisonment for life coupled with fine. However, for the offence under Section 326(B), lesser sentence prescribed is, viz., the sentence shall not be less than 5 years may be extended upto 7 years and also liable to fine.

26. Therefore, in view of the clear explanation given to the word "acid" in the explanation No.I and also in view of the document Ex.P2 scientific report, wherein it is categorically mentioned regarding the nature of liquid used by the accused and nature of injuries sustained by the victim as could be seen from Ex.P7 which falls under the injury list in the above said Sections, I have no hesitation to negative the plea of

the counsel for the appellant.

27. Therefore, taking into consideration the entirety of the facts and circumstances of the case, I am of the considered view that the act of the accused in throwing the substance of liquid with the percentage as stated supra and the consequent injury on the body of the victim-P.W.1, and the case in hand will squarely fall under Section 326(B) I.P.C and not under Section 326(A) I.P.C.

28. Accordingly, the conviction passed by the trial Court under Section 326(A) is set aside and it is modified into one under Section 326(B) I.P.C. Further, the sentence awarded by the trial Court shall also stand modified from 10 years and reduced to seven (7) years as contemplated under Section 326(B) of I.P.C., while, the fine amount and default sentence shall remain unaltered. In view of the specific evidence of P.W.2 and P.W.3, the conviction and sentence passed by the trial Court for the offence under Section 506 (ii) I.P.C remains unaltered.

29. With the above modifications, the criminal appeal is partly allowed to the limited extent indicated above. The period of sentence undergone by the appellant during the trial shall be given commuted for the purpose of undergoing the sentence period now imposed.

30. The fine amount of Rs.10,000/- imposed by the trial Court shall be given to the victim towards compensation.

31. If the appellant/accused is on bail, the trial Court is directed to take steps to secure the custody of the accused to undergo the remaining period of sentence.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

nvi/Jrl

To

1.The III Additional Assistant Sessions Judge,
Coimbatore.

2.The Judicial Magistrate no.5
Coimbatore.

3.Thro The Chief Judicial Magistrate,
Coimbatore.

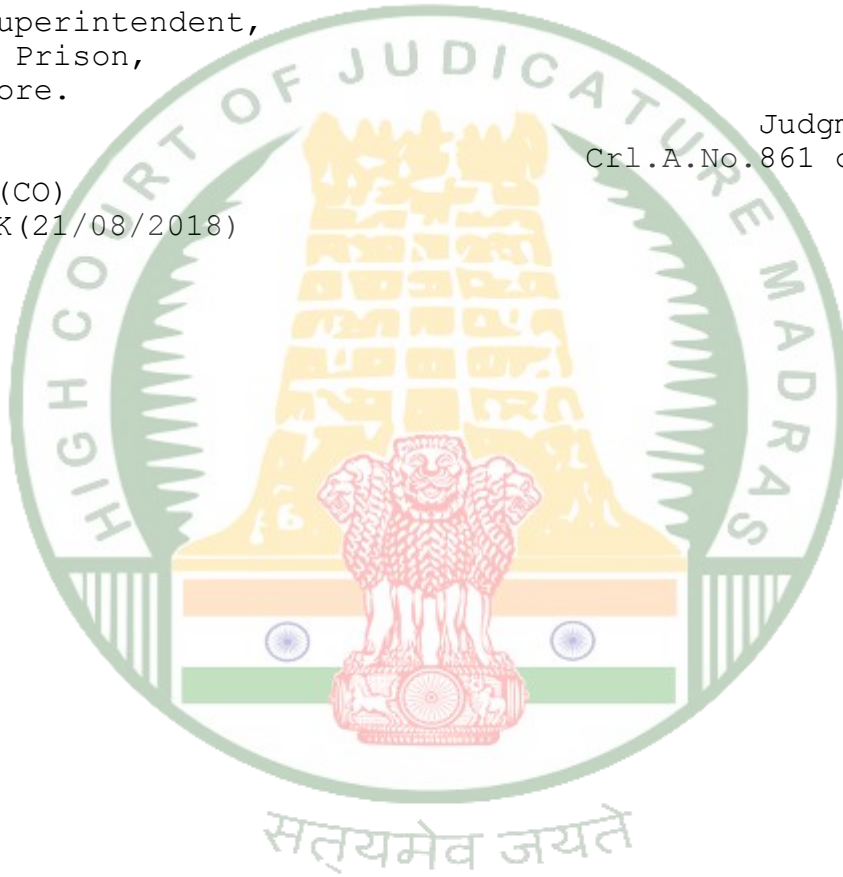
4. The Inspector of Police, B-8, V.H.Road Police Station,
Coimbatore.

5.The Public Prosecutor, High Court, Madras.

6.The Superintendent,
Central Prison,
Coimbatore.

Judgment in
Crl.A.No.861 of 2016

MR (CO)
ASK(21/08/2018)



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