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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.11.2016

PRONOUNCED ON : 30.08.2018

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRL.A.No.28 OF 2013

Mrs.Poomani

.. Appellant/Accused 1

Vs

State, rep. By Inspector of Police,
Maharajakadai Police Station,
Krishnagiri District.
(Crime No.197 of 2005)

.. Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., 1973 to set aside the judgment and order passed on the appellant/accused by the Additional District Judge, Krishnagiri, made in S.C.No.114 of 2007 dated 04.12.2012 convicting the appellant/accused under Section 302 of IPC and sentence to undergo life imprisonment and to acquit her.

For Appellant : Mr.V.Sakkarapani

For Respondent : Mr. P.Govindarajan
Additional Public Prosecutor

J U D G M E N T

The appellant is the first accused. This Criminal Appeal has been directed against dated 04.12.2012 passed in S.C.No.114 of 2007 by the learned Additional District Judge, Krishnagiri, whereby, the trial Court convicted the accused for the offence u/s.326 of IPC and sentenced her to undergo Rigorous Imprisonment for a period of seven years and to pay a fine of Rs.1000/-, in default, to undergo simple imprisonment for a period of two months. The period of detention already undergone by her is ordered to be set off under section 428 of Cr.P.C.

2. The case of the prosecution is as follows:

The appellant and one Selvi deceased were friends. The deceased Selvi was the wife of PW.1-Govindasamy and daughter of PW.7 Chinnaraj and PW.8 Nagaveni. She along with her husband was residing at Periyathoppu. Both the



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accused herein and the deceased selvi were running a Canteen in Sentharam School. While so, misunderstanding arose between them, due to which, the deceased Selvi did not want to continue her business with the appellant and she expressed the same to the accused, who, inturn called Selvi over phone of PW.3-Kumar, who is the neighbour of Selvi and threatened her that she will pour Acid on her, if Selvi does the business without her. The deceased did not respond to her words and was running a fancy store near Krishnagiri, due to which, the accused got angry.

3. Being dissatisfied with the act of Selvi, A1 with the assistance of A2, with an intention to murder the deceased, went to the house of the deceased on 06.09.2005 at about 1.00 a.m. and knocked the door. When the deceased Selvi opened the door, A1 poured nitric acid on her face, neck, chest and all parts of the body and due to irritation of burning, she shouted at. On hearing the same, her husband rushed to the spot and tried to rescue her.

4. PW.1 with the help of neighbours, took the deceased Selvi to Krishnagiri Government Hospital for treatment. The incident was informed to the Police Station near the Krishnagiri Government Hospital. Upon getting the information PW.16-Head Constable went to the Hospital and enquired the deceased Selvi and recorded her statement and forwarded the same to Magarajakadai Police Station, which is the Jurisdictional Police Station. The information received from the Hospital was marked as Ex.P.12, the complaint given by Selvi was marked as Ex.P.1, the endorsement made by PW.16 in Ex.P12 was exhibited as Ex.P13.

5. PW17-Rathinavel, Head Constable on receipt of intimation through post from the victim, registered a case in Cr.No.197 of 2005 for the offences punishable under sections 307 and 326 IPC and prepared Ex.P.14 printed FIR and forwarded the same to PW.23-Noorullakhan/ Sub Inspector of Police for investigation.

6. PW 23, on receipt of Ex.P14, went to the place of occurrence and drew Ex.P.20 rough sketch and prepared Ex.P.6 observation mahazar in the presence of the witnesses saminathan and Kuttikhan. He also took photographs, which were marked as M.O.5 series. Thereafter, he seized two stainless steel tumblers which were marked as MO.2 series, in one of which, it has been written as KMK in English and Poomani in Tamil. Further, he examined the witnesses-Jothi, Vasantha, Gnanam, Kumar, Saminathan and Kuttikhan and recorded their statements. Apart from that,



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he seized nighty worn by the deceased Selvi at the time of the incident under Ex.P2-seizure mahazar, which was marked as MO.1. On 10.09.2005, at 4.00 a.m., he arrested the accused Poomani in front of Vasuki Hotel, Krishnagiri and obtained confession statement from her in the presence of the witnesses Sevathan and Sundararaj. The admitted portion of the voluntary confession statement of the accused was marked as is Ex.P.4. On the basis on 10.09.2005, he seized MO.6 TVS 50 bearing Registration No.TN 246862 and a bag of two glass bottles containing some Acid under Ex.P5 seizure mahazar in the presence of the witnesses Chinnaraj and Sevathan. The plastic wire bag was marked as MO.3 and the glass bottles containing acid was marked as MO.4.

7. Thereafter, on identification by the 1st accused, PW.23 arrested the 2nd accused. On next day he produced the arrested persons and seized material objects to the Judicial Magistrate and made a letter requesting to conduct identification parade and also obtained an order on 20.09.2005. In the meanwhile, on 10.12.2005, he received an information over phone from PW16 Paunraj that the victim Selvi died in the hospital, due to which, he altered the sections into one under Section 302 IPC and sent Ex.P19 alteration report to the Court through a head constable.

8. In continuation of the investigation, PW.23 conducted inquest over the dead body of the deceased Selvi in the presence of Panchayatdars and prepared Ex.P.21 inquest report. Thereafter he sent the dead body to the hospital along with a requisition letter for conducting autopsy through PW18 Yacoob, Head Constable. PW14, Dr.Narayanasamy conducted autopsy over the dead body and issued Ex.P.10-Post Mortem Report.

9. PW.23 examined PW14, Dr.Narayanasamy, PW19-Dr.Chandrasekaran, who gave initial treatment to the deceased, PW6-Dr.Radhakrishnan, PW24-Dr.Natesan, PW13-Dr.Gopalakrishnan and PW12-Dr.Paramasivam, who issued post mortem certificate and recorded their statements. The discharge summary issued by A.R.K hospital, in which the deceased underwent treatment was marked as Ex.P.3. He also obtained Ex.P17-Chemical analysis report. The accident Registers issued by Pondicherry Hospital and Govt. Hospital, Kilpauk were marked as Exs.P.22 and P.23 respectively.

10. After completing the investigation, he filed a final report against the accused for the offence under section 302 IPC .



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11. The case was committed to the Sessions Court, Krishnagiri. When the accused were questioned they pleaded not guilty and they denied the allegations in toto. The learned Sessions Judge framed charges against the accused under section 302 IPC when the charge was explained to him he denied the charge and pleaded not guilty therefore the case was posted for trial.

12. The prosecution, in order to prove their case, examined PW1 to PW24 witnesses and marked Ex.P1 to P23 documents, besides exhibited MO.1 to MO.6 material objects. On the side of the defence no one was examined and no documents was marked.

13. The trial Court, after analysing the entire oral and documentary evidence, found the accused guilty of the offence under section 326 of IPC and acquitted them from the charge under Section 302 of IPC and sentenced them for the above stated offence. Challenging the said judgment of conviction and sentence, the first accused is before this Court with the present appeal.

14. The learned counsel appearing for the appellant contended that the prosecution has failed to bring home the guilt of the accused beyond all reasonable doubt. He further contended that the deceased made her Ex.P1 statement in the form of complaint on 06.09.2005 and she died on 10.12.2005, i.e., after a period of three months and hence, Ex.P1 could not be treated as dying declaration of the deceased and the judgment of conviction passed by the Trial Court, based on such document, cannot be allowed to sustain. The learned counsel also contended that though there are serious discrepancies and contradictions in the evidence of the prosecution witnesses, the Trial Court, without appreciating the same in proper perspective, has erroneously convicted the appellant and sentenced her for the same. In other words, he contended that the appreciation of evidence by the Trial Court is perverse and is liable to be set aside.

15. Per contra, learned Additional Public Prosecutor appearing on behalf of the State supported the impugned judgment of conviction and sentence. According to him, there is clinching evidence on record against the appellant to prove her guilt; FIR in the case was lodged immediately after the incident and hence, there is no question of falsely implicating the appellant in this case. The learned Additional Public Prosecutor further submitted that the



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deceased sustained acid burn injuries at the hands of the appellant, due to which, she died. As such, her statement was treated as dying declaration by the trial court. Hence, looking to the gravity of the offence, no interference is warranted in the judgment of conviction and sentence passed by the trial court. He also submitted that the appeal filed by the accused is bereft of any substance, hence, the appeal is liable to be dismissed.

16. Heard Mr.V.Sakkarapani, learned counsel appearing for the appellant and Mr.P.Govindarajan, learned Additional Public Prosecutor appearing for the respondent and perused the entire materials available on record.

17. The allegation raised against the appellant is that on 06.09.2005 at about 1.00am, due to previous enmity, with an intention to murder the deceased Selvi, the appellant had poured acid on the deceased and thereby, committed the offence punishable under Section 302 IPC. Initially, the appellant was charged under Sections 307 and 326 IPC, which were subsequently altered into under Section 302 IPC.

18. The case of the prosecution is that the appellant and the deceased were friends and due to previous enmity, on 06.09.2005 at 1.00am, the appellant along with a male person went to the home of the deceased and poured acid on her, due to which, she sustained acid burn injuries on face, neck and other parts of the body and died subsequently. After recording the statement from the deceased, the case was registered and the charge sheet was laid against the accused.

19. The prosecution has examined as many as 24 witnesses and marked Exs.P1 to P23 documents and M.O.1 to M.O.6-material objects, whereas the appellant did not choose to examine any witness in her defence. She, however, pleaded in her statement under section 313 Cr.P.C., before the Trial Court that in order to save the real culprit, she has falsely been roped in.

20. It could be seen from Ex.P1 statement of the deceased in the form of complaint that the appellant and the deceased were friends and they were running a canteen in Senthampalli Stone Quarry, during the course of which, having not satisfied with the activities of the appellant, the deceased left her and started a fancy store, due to which, the appellant called her over phone and threatened her. Thereafter, on 06.09.2005 at 1.00am, when the deceased was sleeping in her home, the appellant along with a male



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person went to the home of the deceased and called her name; when the deceased opened the door, the appellant poured acid on her, due to which, she sustained acid burn injuries on face, neck and all over the body. According to the deceased, due to previous enmity, the appellant had poured acid on her and she was able to identify the male person who accompanied the appellant at the time of occurrence.

21. P.W.1, who is the husband of the deceased, deposed in his evidence that he woke up on hearing the cries of the deceased and saw the deceased, who received acid burn injuries on face, neck and other parts of the body. Immediately, with the help of neighbours, he took the deceased to the Krishnagiri Government Hospital for treatment.

22. PW5-Vasantha who is the neighbour of the deceased, stated in her evidence that on hearing the voice of the deceased, she went to the scene of occurrence and saw the deceased, who, in turn, told her that the appellant poured acid on her. However, P.W.5, in her cross examination, deposed that at the time of occurrence, there was heavy rain and no power supply and that, the occurrence place was dark.

23. The learned counsel for the appellant contended that on hearing the sound of the deceased, PW1, husband of the deceased and P.W.5 neighbour of the deceased, came to the scene of occurrence and took her to the hospital for treatment. Further, P.W.5 in her cross examination stated that there was no light and the occurrence place was dark. In such circumstances, they could not have seen as to who poured acid on the deceased and they are not the direct eye witness to the occurrence. Hence, the prosecution failed to prove the guilt of the appellant. This Court is of the view that though there was no power supply and the place of occurrence was dark, considering the fact that the appellant and the deceased were close friends and the deceased could very well identify the voice of the appellant and as such, on hearing and after identifying the voice of the appellant, the deceased came and opened the door, even there was no power supply and the place was dark. That apart, P.W1 and P.W.5 have categorically stated in their respective evidence that the appellant poured acid on her. Therefore, the evidence of P.W1 and P.W5 is more credential and very well supported the case of the prosecution.

24. The Trial Court treated Ex.P1 complaint given by the deceased Selvi as dying declaration. The deceased made



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the said statement to P.W.16 Head Constable about the incident, in which, she clearly stated that the appellant along with a male person came to her house and poured acid on her, due to previous enmity and that, she was able to identify the said male person. The medical evidence adduced by the prosecution would go to show that on 6.9.2005, the deceased Selvi was admitted by P.W.1 in Krishnagiri Government Hospital. Thereafter, she was shifted to ARK Private Hospital for better treatment. Again, at the instance of her parents P.W.7 and P.W.8, she was shifted to Pondicherry Hospital and K.M.C Hospital. Thereafter, she was shifted to Krishnagiri Government Hospital on 10.12.2005, wherein, she died i.e., after three months from the date of occurrence. This Court is of the view that as the deceased died, due to the burn acid injuries, her statement recorded in the hospital, immediately after the occurrence, in conscious state of mind, could be treated as dying declaration by the trial court. Further, Ex.P1 complaint was sealed and forwarded to the Judicial Magistrate concerned on the same day itself. As such, the placing reliance on the said document by the Trial Court cannot be found fault with.

25. The evidence of P.W.19-Dr.Chandrasekaran and Ex.P15-accident register would disclose that the deceased sustained burn injuries due to acid attack. P.W.20-Assistant Director, Forensic Science Department and Ex.P17 forensic report disclosed that the acid poured on the deceased was nitric acid. Further, the evidence of P.W.23-Investigating officer and the material objects seized by him would manifestly prove the contents made in Ex.P1 statement by the deceased that the appellant due to previous enmity, poured acid on the deceased.

26. In view of the above evidence led by the prosecution, documentary as well as oral, the vivid picture that emerges is that the FIR of the incident was lodged promptly without any delay; the deceased sustained acid burn injuries, at the hands of the appellant, due to which, she died subsequently; the medical evidence was in corroboration with the ocular evidence; the statements of the witnesses were recorded promptly nailing the appellant to the commission of the offence. In such circumstances, this Court is of the opinion that because of the acid injuries caused by the appellant, the deceased died and the prosecution has proved its case beyond reasonable doubt.

27. This Court is of the view that having considered all the oral and documentary evidence, the Trial Court has rightly found the appellant guilty of the offence under Section 326 IPC and discharged him from the offence under



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Section 302 IPC, as the appellant has committed such offence, not with an intention to commit murder, but only to disfigure the face of the deceased by pouring acid. However, the prosecution has not filed any appeal against the judgment of conviction under Section 326 IPC. Since the deceased died only after three months from the date of occurrence. The findings so rendered by the Trial Court are just and proper and the appellant has rightly been convicted by the Trial Court for the aforesaid offence, as it is well established principle of law by the Apex Court that in case of acid attacks, the Court should not show any leniency towards the accused persons.

28. In the result, the Criminal Appeal stands dismissed by confirming the conviction and sentence passed by the Additional District Judge, Krishnagiri in SC.No.114 of 2007 dated 04.12.2012. The trial Court is directed to secure the accused to undergo the remaining period of sentence, if any.

30.08.2018

Speaking order/non-speaking order

Index:Yes/No

Ub/tsh

To

1. The Additional District Judge, Krishnagiri,
2. The Section officer, VR Section, High Court, Madras.

Judgment in
CRL.A.No.28 of 2013

ASK(24/09/2018)