



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl A(MD)No.370 of 2011

WEB COPY

Ramajeyam

... Appellant / Accused

Vs.

1.State,

Rep.by the Inspector of Police,
Cantonment Police Station,
Trichy.

... Respondent / Complainant

(Crime No.1228 of 2010)

2.The Principal Secretary to Government,
Home Department,
Government of Tamil Nadu,
Chennai.

(R2 is suo motu impleaded vide
court order dated 29.08.2019
in Crl.A.(MD).No.370 of 2011)

Prayer : This Criminal Appeal is filed under Section 374 (2) of Criminal Procedure Code, against the judgment of conviction passed by the learned Sessions Judge, Mahila Court, Tiruchirappalli in S.C No.53 of 2011 dated 26.07.2011.

For Appellant : Mr.M.Jeyakumar

For Respondents : Mr.A.Robinson
Government Advocate (crl.side)

JUDGMENT

This appeal is directed against the judgment dated 26.07.2011 made in S.C No.53 of 2011 on the file of the Mahila Court/Sessions Judge, Trichirappalli convicting the appellant under Section 326 of IPC and Section 4 of Tamil Nadu Prohibition of Women Harassment Act and sentencing him to ten years rigorous imprisonment and two years rigorous imprisonment respectively and also levying him with fine of Rs.5,000 and Rs.10,000/- respectively.

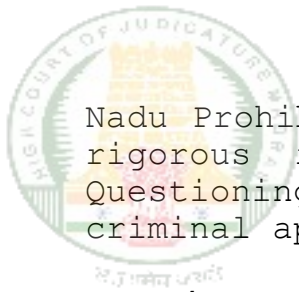
2.The case of the prosecution, in brief, is this :

The defacto complainant Saranya and the appellant were in love



with each other for quite a few years. The defacto complainant was originally based in Chennai and later moved to Trichy for college education. Prior to the occurrence, the mother of the defacto complainant remonstrated with the accused and told him not to continue his relationship with her daughter. Angered by the same, the accused splashed acid on the victim on 27.04.2010 at about 09.30 A.M near Shri Gnanaganesan Temple, Kallukuzhi Village, Trichy District. The victim suffered extensive injuries on the right side head, face, shoulder back, chest etc., She suffered severe facial disfigurement. The victim Saranya was rushed to the nearby Railway Hospital for first aid and thereafter she was taken to the Government Hospital, Trichy. The Sub Inspector of Police, Cantonment Police Station (Law and Order) Trichy City came to the hospital and recorded her statement. Based on the same, at about 12.00 P.M on the same day ie., 27.04.2010, she registered Ex.P6 FIR against the accused for the offences under Sections 324, 307 and Section 4 of Tamil Nadu Prohibition of Women Harassment Act. The case was taken up for investigation by PW.11, the Inspector of Police. He went to the spot and prepared Ex.P2 Observation Mahazar. PW.5 Ragavendran and one Rengaiiah signed as witnesses. He prepared Ex.P7 rough sketch. M.O.1 Horlicks Bottle covered with car tube was lying in the occurrence spot and the same was seized under Ex.P3 Mahazar. He thereafter went to Government Hospital, Trichy and recorded the statement of the victim Saranya/PW.1. He arrested the appellant in the evening at around 05.00 P.M. PW.4 Vinoth and PW.8 Dinesh kumar who knew the appellant identified him to the police. The accused gave a confession on his own. He was brought to the police station and thereafter remanded to judicial custody. PW.2, PW.3, PW.5, PW.8 and one Rengaiiah were enquired and their statements were separately recorded. On 28.04.2010, the statements of PW.7 Durairaj and one Angamuthu were recorded. On 08.07.2010, statement of Dr.Premalatha/PW.9 was recorded and wound certificate was obtained. On 25.08.2010, statement of Uma Kalyani was recorded. On 21.09.2010, he filed final report against the accused under Sections 326, 307 and Section 4 of Tamil Nadu Prohibition of Women Harassment Act.

3.The Judicial Magistrate No.II, Tiruchirappalli took cognizance of the offences and committed the case to the Sessions Court in PRC No.14 of 2010. It was made over to the Mahila Court/Sessions Judge, Trichirappalli for trial in S.C No.53 of 2011. Charges were framed against the accused for the offences under Sections 307 IPC and Section 4 of Tamil Nadu Prohibition of Women Harassment Act. The accused denied the charges and claimed to be tried. The prosecution examined as many as 11 witnesses and marked Exs.P1 to P7 and MO.1 was also marked. On the side of the accused, photos were marked. After considering the evidence on record, the learned Trial Judge convicted the accused for the offence under Section 326 IPC instead of 307 IPC and sentenced him to ten years rigorous imprisonment and to pay a fine of Rs.5,000/-. He was also found guilty of the offence under Section 4 of Tamil



Nadu Prohibition of Women Harassment Act and sentenced to two years rigorous imprisonment and levied with a fine of Rs.10,000/-. Questioning the conviction and sentence, the accused has filed this criminal appeal.

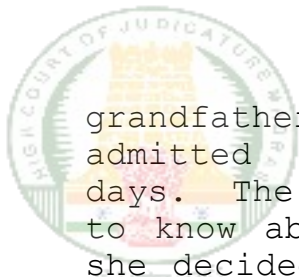
4. Heard the learned counsel on either side.

5. The learned counsel appearing for the accused/appellant reiterated the contentions set out in the appeal memorandum. He also pleaded in the alternative that the relationship between the appellant and the victim continues even after the occurrence. The victim is said to have visited the accused when he was in jail. The victim got married to the accused recently. The accused had been in prison for about one and half years. He therefore wanted this Court to set off the sentence of imprisonment and modify and reduce it to the period already undergone.

6. Per contra, the learned Government Advocate (crl.side) submitted that the impugned judgment is a well considered one and does not call for any interference. He pointed out that the case on hand is a gruesome assault and that if this Court were to adopt a lenient approach, it would send a wrong signal to the society.

7. I carefully considered the rival contentions. Acid attacks by jilted or spurned males are on the rise. The object of the attacker is to forever extinguish the choice of the victim. He wants to possess the victim exclusively. By disfiguring her permanently, the victim is disabled from choosing any other partner. The issue has received the attention of the Hon'ble Supreme Court. The Hon'ble Supreme Court had issued a series of directions forbidding the sale of acid across the shop counter. It is necessary to recognise the heroic battles of the acid attack survivors. What is more important is that they should not only survive the attack with their inner personality intact but also find means of avocation. Unless they are economically self reliant, they will not be able to survive in the society. Writer's Cafe of Chennai employs acid attack survivors in its kitchen. I.A.S officer Ms. Chandralekha suffered acid attack because she took an inconvenient decision on certain policy matters which was not to the liking of her political superiors. She fought back with the assistance of Dr. Subramanian Swamy and even now she is active in public life. Reshma Qureshi became the first acid-attack survivor to walk the runway at the New York Fashion Week. "Being Reshma" published by Macmillan is an inspiring and life-affirming extraordinary story.

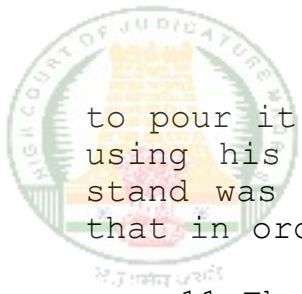
8. The victim was examined as PW.1. She deposed that she did her schooling at Thiruvannamiyur in Chennai. Thereafter, she moved to Trichy to pursue her B.Com. degree. She was in college hostel during the first two years. While studying in the final year, she was sexually harassed by her grandfather Pichai. The house of her



grandfather was in Kallar Street, Kallukuzhi in Trichy. PW.1 admitted that she was in love with the accused since her school days. The appellant also belongs to Chennai. When her mother came to know about the love affair between the accused and the victim, she decided to move PW.1 Saranya from Chennai to Trichy. But, the appellant used to come to Trichy to see PW.1. They used to have regular conversations over phone. Since PW.1 was unable to pay the hostel fees, she moved out of the hostel and attended the college as a day scholar. PW.1 clearly stated that somehow the appellant began to develop suspicion and doubt on her. PW.1's mother called her to the house and demanded to know as to how the accused can lead life with PW.1 if he is having doubt and suspicion over PW.1 even prior to marriage.

9.Following the remonstrations of her mother, the accused left the house without saying anything. Since PW.1 anticipated phone calls from the accused, she switched off her mobile phone. While so, on 27.04.2010 at about 08.00 A.M, the accused came to the house of her grandfather and told the victim that he wanted to have a talk with her. Hence, PW.1 and her aunt Malar/PW.2 went out with him. They reached the Anjaneyar Temple which is situated near the TRP police quarters. PW.1 told the accused that it is not possible to continue her relationship with him. The accused thereupon told her that he wanted to have five minutes of private conversation before returning her photos. The victim walked a little further with him and came near Gnanaganesan temple. At that time, the accused took out a bottle from his bag and hurled acid on her face. This happened all on a sudden. PW.1 cried in pain and tried to run. Her aunt PW.2 contacted her son Dineshkumar/PW.8 who took PW.1 to the Government Hospital. She identified M.O.1 as the bottle which was taken out by the accused at the occurrence time. She stated that acid was splashed on her face, neck, right side head, right hand and back. When PW.1 was in Government Hospital, Trichy, the Sub Inspector of Police Kalaiyarasi/PW.10 recorded her statement. Since her hands had suffered burns, she was not in a position to sign and affix her thumb impression. Ex.P1 was the statement given by her. She also admitted the thumb impression found in Ex.P1 as hers. She was in hospital for about three months as an in-patient.

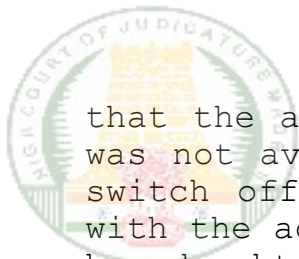
10.Before the Trial Court, the victim removed her head scarf and the learned trial judge recorded that she was without her right ear lobe. The extensive disfigurement suffered by the victim had been duly noted by the learned trial judge. PW.1 was cross examined at length. The defence of the accused was that the occurrence did not take place in the manner as alleged by the prosecution. According to him, the victim had requested the accused to come to the house of her grandfather. On the occurrence date, the accused told the grandfather as well as his aunt Malar/PW.2 that he had already married PW.1 two years ago and that she must be sent with him. Since they refused, a quarrel arose. At that stage, PW.1 came inside and brought acid in a small utensil and tried



to pour it on the accused. When the accused prevented the same by using his right hand, it fell accidentally on the victim. His stand was that it was PW.2 Malar who was the actual attacker and that in order to save her aunt, the victim is deposing falsehood.

11.The trial court rightly rejected the defence taken by the accused. The testimony of PW.1 is cogent, clear and commands the confidence of this Court. It is amply corroborated by the testimony of the prosecution witnesses. PW.2 is the aunt of the victim. She had come down to Kallukuzhi Village on 26.04.2010 in order to attend to her mother who was unwell. On the occurrence date at about 08.00 A.M, when PW.1 was fetching water from the road side pump and returning home, the accused was following her with a bag. PW.2 queried as to who he was. PW.1 stated that he is her friend Ram. PW.2 made him sit on the pial in the house. The accused is said to have told PW.2 that he wanted to take Saranya out with him. When PW.2 wanted to know the reason, he told that he was in love with Saranya and that since their relationship had broken down, he wanted to return her photos. PW.2 asked him to return the photos to her. The accused refused and insisted that only after having a personal conversation with PW.1, he would return the photos. PW.2 agreed and accompanied them. They went to the Anjaneyar Temple. PW.2 asked the accused to come inside the temple. The accused refused. Saranya and the accused were standing outside the temple and were speaking to each other while PW.2 went inside. After she requested the accused to return the photos, the accused returned two photos to PW.2. Thereafter, he told PW.2 to stand a little away as he wanted to speak to PW.1 in strict confidence. Short while later, the accused exclaimed that if she will not be available to him, she will not be available to anybody and hurled the acid on PW.1. Even before PW.2 could realise as to what had happened, the victim shrieked in pain. PW.2 stated that she did not actually see the accused throwing acid on the victim. He ran away from the spot. PW.2 asked for help. She stated that the occurrence spot was near the Gnanaganesan Temple. PW.2 called her son Dineshkumar over phone. PW.1 was rushed to the nearby railway hospital. Thereafter, she was shifted to Trichy Government Hospital. PW.2 was cross examined extensively. But, her testimony could not be shaken. The very same suggestion that was put to PW.1 was also put to PW.2. The accused suggested that it was PW.2 who went inside the house of the grandfather of the victim and brought acid in a small utensil and tried to pour it on the accused and as the accused warded it off, it accidentally dropped on the victim.

12.PW.3 Shenbagam is the mother of the victim and she deposed that she was not in favour of the relationship between the accused and her daughter. She also pointed out that the accused was suspecting the character and conduct of her daughter and that is why she told the accused to leave her daughter in peace. This advice was given by PW.3 on 20.04.2010 at Chennai in the presence of the daughter and other family members. PW.1 would state

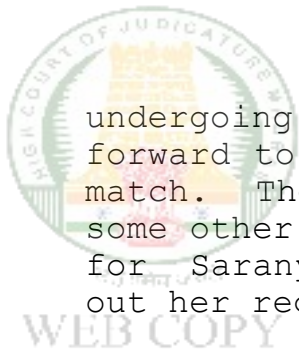


that the accused held out a threat that he would see to it Saranya was not available for anybody else. PW.3 advised her daughter to switch off her mobile phone and not to engage in any conversation with the accused. She received information about the acid attack on her daughter on 27.04.2010 at about 09.30 A.M. PW.4 is a resident of Thiruvalluvar Nagar, Thiruvannamiyur and resided in the same street where PW.3's house is situated. He knew the love affair between the accused and Saranya. Since their relationship was turbulent, PW.1 had advised the accused to forget her. PW.5 is a resident of Kallukuzhi Village, Trichy and he signed as a witness along with one Rengaiah under Ex.P3. He identified M.O.1 bottle which was recovered from the occurrence spot. Only formal suggestions were put to the said witness.

13.The testimony of PW.5 Ragavendran is sufficient to falsify the defence projected by the accused. According to the accused, the occurrence had taken place inside the house of the grandfather of the victim. The prosecution case is that the occurrence took place in a public road near the Pillayar Temple in the very same locality. PW.5 had clearly stated that the occurrence took place near the Pillayar Temple and that M.O.1 was recovered only from the road. This is sufficient to nail the defence projected by the accused. PW.5 has no motive to depose against the accused. PW.6 Doctor Uma Kalyani is working in Trichy Government Hospital. She stated that it was she who gave initial treatment to the victim. She made entries in the Accident Register Ex.P4. She had endorsed in the said accident register that the victim had told her a person known to her caused the acid attack. PW.8 Dinesh Kumar is victim's cousin. He also deposed about the motive of the accused for carrying out the attack. PW.9 is the Doctor who issued Ex.P5 wound certificate.

14.From a careful reading of the testimony of all the witnesses, one can easily come to the conclusion that the prosecution had established the involvement of the accused beyond reasonable doubt. It was the appellant who carried out the gruesome attack on the victim. The learned Trial Judge rightly found him guilty. No ground has been made out for interfering with the finding holding the appellant guilty of the offences under Sections 326 IPC and Section 4 of the Tamil Nadu Prohibition of Women Harassment Act. I sustain the conviction imposed on the appellant/accused.

15.The court below sentenced him ten years rigorous imprisonment. The appellant's counsel wanted me to modify the sentence and reduce it substantially. The appellant prevailed upon the victim to appear in person before me. The victim wanted this Court to forgive the appellant. She told me that she got married to the appellant this year. She also stated that it is the appellant who is taking care of her. On account of the steroids and
~~anti cancer drugs given by her, both her kidneys have failed. She is~~



undergoing dialysis regularly. The appellant is said to have come forward to donate his kidney. But then, their blood groups did not match. The appellant is said to be willing to donate his kidney to some other needy individual so that, in return, a donor can be found for Saranya. The victim even filed an affidavit before me setting out her request.

16.It is true that justice will have to be tempered with mercy. The criminal justice system cannot be blood-thirsty. Its object is to reform the individual. We now believe that stress should be more on reforming and rehabilitating the criminal so that he can be fully integrated back into society. Gone are the days when the deterrent theory held the field. But then, when it comes to certain crimes, law will have to adopt a deterrent approach. In sexual crimes against children and matters concerning national security, there cannot be any compromise. Equally so, in the case of acid attack. That is why, Parliament amended the Indian Penal Code and introduced Section 326 A and 326 B. The minimum sentence prescribed for acid attack is ten years rigorous imprisonment and five years for attempt. Discretion of the Judge to award lesser sentence is taken away.

17.Of course, as rightly pointed out by the learned counsel appearing for the appellant, Section 326 A was introduced only in the year 2013. The occurrence taken place prior to that. Therefore, obviously Section 326 A will not have any application to the case on hand. But, taking note of all the foregoing aspects, particularly, the false defence taken by the accused, I hold that the sentence imposed on the appellant by the court below does not warrant any interference. I am not unmindful of the mitigating factors projected by the learned counsel for the appellant. If for this reason, I modify and reduce the sentence, I will be sending a wrong signal to the society. Firm message will have to be sent to the potential perpetrators of this horrible crime. I therefore decline to interfere with the quantum of punishment imposed on the appellant.

18.Courts cannot rest content with merely handing out sentences of punishment on the accused. We must take note of the victim. That is why victim compensation fund has been created. It is unfortunate that in this case the victim has not all been compensated. In the decision reported in **(2017) 4 SCC 546 (Ravada Sasikala vs. State of Andhra Pradesh)**, the Hon'ble Supreme Court directed the State to pay compensation of Rs.3.00 lakhs to the victim. Even though the occurrence had taken place prior to the incorporation of Section 326 A of IPC, the Hon'ble Supreme Court upheld the entitlement of the victim to receive compensation. Reliance was placed on the decision of the Hon'ble Supreme Court reported in **(2015) 2 SCC 227 (Suresh vs. State of Haryana)**.



19.Likewise, I hold that the victim is entitled to compensation in terms of the Tamil Nadu Victim Compensation Scheme for Women Victims/Survivors of Sexual Assault/Other Crimes, 2018. According to the said scheme, the person whose face has been disfigured as a result of the acid attack is entitled to receive compensation of Rs.7.00 to 10.00 lakhs. In this case, it is beyond dispute that the victim suffered disfigurement as a result of the acid attack committed by the accused. Saranya appears to be in dire need of financial assistance. Therefore, I suo motu implead the Government of Tamil Nadu and direct it to pay a compensation of Rs.10.00 lakhs to the victim. Out of the said amount, seven lakhs of rupees can be kept in a fixed deposit so that the victim is paid the monthly interest. The State is directed to pay a sum of Rs.3.00 lakhs immediately to the victim. The victim has to undergo treatment at Chennai Rajiv Gandhi Government Hospital. The State is directed to provide free and prompt treatment to the victim and if she finds a kidney donor, operation free of cost will be performed. The Dean, Rajiv Gandhi Government Hospital, Chennai is directed to ensure that the victim does not incur any medical expense. I hope that the victim is able to live for a reasonably long period. After her death, the amount deposited as compensation in her name, will be released to the State and will not go to the accused. I am constrained to issue this direction because the accused is now the husband of the victim and he should not make any claim on the said compensation as her legal heir. That is why I directed that the said amount will be kept in a fixed deposit and that monthly interest alone shall be given to the victim. Of course, the amount of Rs.3.00 lakhs will be released to her immediately, preferably within a period of six weeks from the date of receipt of a copy of this order.

20.With these directions, the criminal appeal is dismissed. The impugned judgment of the Trial Judge is confirmed. The learned Trial Judge is directed to secure the accused so that he shall undergo the remaining period of sentence. The sentences imposed on the appellant shall run concurrently.

Sd/-

Assistant Registrar (Writs)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Skm



To

- 1.The Principal Secretary to Government,
Home Department, Government of Tamil Nadu, Chennai.
- 2.The Sessions Judge, Mahila Court, Tiruchirappalli.
- 3.The Judicial Magistrate No.II, Tiruchirappalli.
- 4.The Chief Judicial Magistrate, Tiruchirappalli.
- 5.The Superintendent, Central Prison, Trichy.
- 6.The Inspector of Police, Cantonment Police Station, Trichy.
- 7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 8.The Dean, Rajiv Gandhi Government Hospital, Chennai.
- 9.Miss.Saranya, D/o.Sundaram, No.1263, 6th Main Road,
Thiruvalluvar Nagar, Thiruvananthapuram, Chennai - 600 041

Copy to:

The Section Officer, Criminal Section (Records)
Madurai Bench of Madras High Court, Madurai. (2 Copies)

+3 CC to M/s.M.JAI KUMAR, Advocate (SR-84800[F] dated 03/09/2019)

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29.08.2019

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