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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
03.04.2019	24.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE **P.N.PRAKASH**
AND
THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRL.A[MD].No.235 of 2017

1.Vetrivel

2.Somasundaram : Appellants/Accused Nos.2&3

Vs.

State, rep by
Inspector of Police,
Eraniel Police Station,
Eraniel, Kanyakumari District.
(Crime No.834 of 2011).

: Respondent/Complainant

PRAYER: Appeal is filed under Section 374(2) of the Code of Criminal Procedure against the Judgment dated 24.08.2016 made in S.C.No.9 of 2013, on the file of the learned Sessions Judge, Mahila Fast Track Court, Nagercoil, Kanniyakumari District.

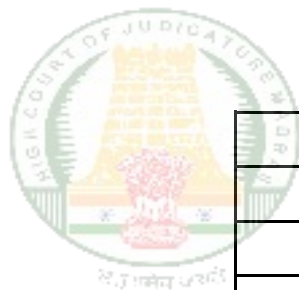
For Appellant : Mr.D.Srinivasa Ragavan

For Respondent : Mr.M.Chandrasekaran
Additional Public Prosecutor

JUDGMENT

P.N.PRAKASH, J.

The appellants are the accused Nos.2 and 3 in S.C.No.9 of 2013, on the file of the learned Sessions Judge, Mahila Fast Track Court, Nagercoil, Kanyakumari District. There were totally five accused in this case. The Trial Court framed as many as eight charges against the accused, as detailed below.



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Charge	Accused	Penal Provisions
1	1	148 IPC
2	2 to 5	147 IPC
3	1 to 5	449 IPC
4	2 to 5	341 IPC
5	1 to 5	294(b) IPC
6	2	323 IPC
7	1	302 IPC
8	2 to 5	302 r/w 109 IPC

2. By Judgment dated 24.08.2016, the Trial Court has convicted the accused Nos.1 to 5 and sentenced them, as detailed below:-

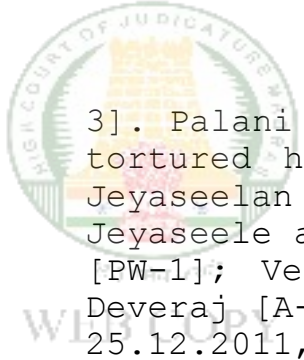
Accused	Section of Law	Sentence of imprisonment	Fine amount
1	148 IPC	No sentence	Fine of Rs.2,000/-, in default to undergo eight months simple imprisonment.
1	294 (b) IPC	No sentence	Rs.500/- in default to undergo simple imprisonment for one week.
1	302 IPC	To undergo imprisonment for life.	Rs.15,000/- in default to undergo rigorous imprisonment for one year.
2	147 IPC	No sentence	Fine of Rs.2,000/-, in default to undergo two months simple imprisonment.
2	323 IPC	No sentence	Rs.500/- in default to undergo simple imprisonment for two weeks.
3 to 5	147 IPC	No sentence	Fine of Rs.2,000/-, in default to undergo two months simple imprisonment.

Challenging the said conviction and sentence, the appellants/accused Nos.2 and 3 have come up with this Criminal Appeal.

3. The case of the prosecution, in brief, is as follows:-

<https://hcservices.courts.gov.in/>

the deceased in this case, was given in marriage to Palani [A-1] about 15 years prior to the occurrence and through the wedlock, they have two sons, namely, Srijith [PW-2] and Sujith [PW-



3]. Palani [A-1] suspected the fidelity of his wife - Jeyaseele and tortured her by saying that she is having illicit intimacy with Jeyaseelan [PW-4], on account of which, the couple got estranged and Jeyaseele and her sons were staying in her mother's house - Velammal [PW-1]; Vetrivel [A-2], Somasundaram [A-3], Thangadurai [A-4] and Deveraj [A-5] were the friends of Palani [A-1]; around 02.15 p.m, on 25.12.2011, A-1 to A-5 came to the house of Velammal [PW-1] and saw Jeyaseele talking to Jeyaseelan [PW-4]; they abused Jeyaseele and Jeyaseelan [PW-4]. At that time, Palani [A-1] was armed with a stone and he attacked Jeyaseele and caused injuries to her; thereafter, he took out a stove and belaboured her; when Jeyaseele's mother - Velammal [PW-1] intervened, Vetrivel [A-2] attacked her on her head with a stick and caused injuries to her; in the attack, Jeyaseele died;

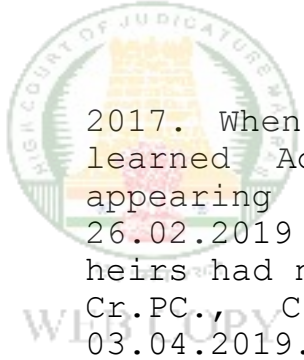
3.1. On the statement [EX-P1] given by Velammal [PW-1], Ramasamy [PW-24] registered a case in Crime No.834 of 2011, for the offences under Sections 147, 148, 149, 294(b), 452, 323 and 302 r/w 109 IPC, at 19.00 hours, on 25.12.2011 and prepared the printed First Information Report, [EX-P18], which reached the jurisdictional Magistrate at 10.00 p.m, on 25.12.2011, as could be seen from the endorsement made therein.

3.2. Velammal [PW-1] was sent to the Government Hospital, Padmanabapuram, where she was examined by Dr.Kosal Ram Chandra [PW-12] at 09.10 p.m, on 25.12.2011, who, in his evidence as well in the copy of the Accident Register [EX-P7], the following injuries were noted:-

"3 X 2 CM contusion on the left head
3 X 3 CM contusion on the right wrist
not able to move the left hand".

3.3. After completing the investigation, Muthumani [PW-28] filed final report in PRC.No.8 of 2012 before the learned District Munsif cum Judicial Magistrate, Eraniel. On the appearance of the accused, the provisions of Section 207 of the Code of Criminal Procedure were complied with and the case was committed to the Court of Session in S.C.No.9 of 2013 and made over to the learned Sessions Judge, Mahila Fast Track Court, Nagercoil, Kanniyakumari District, for trial. The Trial Court framed charges against the accused, as detailed in Paragraph No.1, supra. When questioned, the accused pleaded "not guilty". To prove the case, the prosecution examined 28 witnesses, marked 22 exhibits and 9 material objects. No witness was examined on the side of the accused nor any document marked. When the accused were questioned about the incriminating circumstances appearing against them, they denied the same.

3.4. The Trial Court, after considering the evidence on record and hearing either side, by Judgment dated 24.08.2016, convicted the accused, as detailed in Paragraph No.2 supra. Challenging the said conviction, Palani [A-1] preferred CrI.A.(MD).No.322 of 2017 and Vetrivel [A-2] and Somasundaram [A-3] filed CrI.A.(MD).No.235 of



2017. When these Criminal Appeals were taken up for hearing, the learned Additional Public Prosecutor and the learned counsel appearing for Palani [A-1] submitted that Palani [A-1] died on 26.02.2019 and his death certificate was produced. Since his legal heirs had not chosen to continue the appeal, in terms of Section 394 Cr.PC., CrI.A.(MD).No.322 of 2017 was closed as abated on 03.04.2019. Now, what remains for us is CrI.A.(MD).No.235 of 2017 filed by Vetrivel [A-2] and Somasundaram [A-3].

4. The learned counsel appearing for the appellants submitted that there is absolutely no evidence to show that Vetrivel [A-2] and Somasundaram [A-3] were part of the unlawful assembly and shared the common object with Palani [A-1] in attacking either Jeyaseele or Velammal [PW-1].

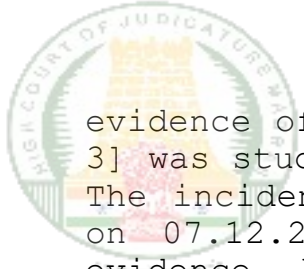
5. Per contra, Mr.M.Chandrasekaran, learned Additional Public Prosecutor, refuted the above submissions.

6. This Court gave its anxious consideration to the rival submissions.

7. In this case, apart from the evidence of Velammal [PW-1], the injured witness, we have the evidence of the two sons of Jeyaseele, namely, Srijith [PW-2] and Sujith [PW-3]. Velammal [PW-1] has stated that her daughter - Jeyaseele was married to Palani [A-1], through whom, two children, namely, Srijith [PW-2] and Sujith [PW-3], were born; Palani [A-1] suspected his wife's fidelity and quarrelled with her frequently; so, she got separated from him and was living with her [PW-1]; on the date of the incident, Palani [A-1] came with Vetrivel [A-2] and Deveraj [A-5] and abused Jeyaseele, touching upon her morality; Palani [A-1] threw a stone at Jeyaseele, which fell on her head; Jeyaseele fell down; Palani [A-1] and Vetrivel [A-2] attacked her with stick; on seeing this, she and her son hollered; Palani [A-1] and Vetrivel [A-2] took out a stove and hit Jeyaseele with that; when she [PW-1] raised alarm, Vetrivel [A-2] hit her [PW-1] on her head with a stick; thereafter, all the accused left the place of occurrence. Velammal [PW-1] gave a complaint to the police and the complaint was marked as EX-P1.

8. The learned counsel for the appellant contended that there was previous enmity between Vetrivel [A-2] and Jeyasheelan [PW-4] in connection with the administration of a local temple and that is why, Vetrivel [A-2] was falsely implicated in the case at the instance of Jeyasheelan [PW-4]. In support of this contention, he took us through the evidence of some of the witnesses, who have stated that there was dispute between Jeyasheelan [PW-4] and Vetrivel [A-2] in this regard.

9. We carefully examined the evidence on record. We find that there are overwhelming materials to show that Palani [A-1] and Vetrivel [A-2] were present at the scene of occurrence and Vetrivel [A-2] attacked Velammal [PW-1] on her head with a stick. The

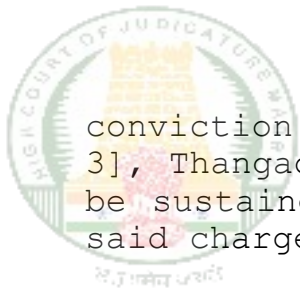


evidence of Sujith [PW-3] is very clear on this aspect. Sujith [PW-3] was studying in the seventh standard at the time of the incident. The incident had taken place in the year 2011 and he gave evidence on 07.12.2015 and at that time, he was aged 16 years. In his evidence, he has stated that he knows the accused; he was living with his mother - Jeyaseele in the house of his maternal grandmother; his mother would did beedi rolling work to eke her livelihood; on 25.12.2011 around 02.30 p.m., while he was in his grandmother's house, along with his mother and Jeyasheelan [PW-4] and were talking in the portico, his father - Palani [A-1] came there along with Vetrivel [A-2], Somasundaram [A-3] and Thangadurai [A-4] and another person whose name he does not know; his father asked his mother as to why she was talking to Jeyasheelan [PW-4] and abused her; thereafter, his father threw a stone at his mother, which hit on her head and she fell down; his father took out a stick and attacked his mother all over the body; then, he took a kerosine stove with which he attacked his mother on her head; at that time, Vetrivel [A-2] gave a blow on his grandmother's head with a stick; on seeing this, he got terrified.

10. The defence was not able to make any dent in the cross-examination of this witness. This witness has accepted that Vetrivel [A-2] and Somasundaram [A-3] were administering the local Mutharamman Temple in the year 2011 and there was dispute between them and Jeyasheelan [PW-4]. This does not mean that Sujith [PW-3] had falsely implicated his father - Palani [A-1] and others at the instance of Jeyasheelan [PW-4]. Immediately after the occurrence, Velammal [PW-1] was taken to the Government Hospital, where she was treated for the injuries sustained by her as could be seen from the evidence of Dr.Kosal Ram Chandra [PW-12] and the copy of the Accident Register [EX-P7]. Therefore, the evidence of Velammal [PW-1] that Palani [A-1] attacked Jeyaseele and Vetrivel [A-2] attacked her on her head stood corroborated by the medical evidence, namely, the evidence of Dr.Kosal Ram Chandra [PW-12] and the copy of the Accident Register [EX-P7]. Her version is also corroborated by the evidence of Sujith [PW-3], which we have discussed above.

11. PW-2 [Srijith], the brother of Sujith [PW-3], has stated that he was not present at the place of occurrence, but, he came to know of it and went to his grandmother's house - Velammal [PW-1], where he found his mother - Jeyaseele lying dead and his grandmother - Velammal [PW-1] with head injuries. In the light of such overwhelming materials, in our opinion, the conviction and sentence imposed on Vetrivel [A-2] cannot be interfered with.

12. As regards the role of Somasundaram [A-3], we find that there is no material to show that the assembly was unlawful, because, the members did not have a common object. Only Palani [A-1] had a motive against his wife - Jeyaseele, because, he was suspecting that she had illicit affair with Jeyaseelan [PW-4]. On seeing Jeyaseele in the company of Jeyaseelan [PW-4], Palani [A-1] got infuriated and attacked her. Under such circumstances, the



conviction and sentence imposed on Vetrivel [A-2], Somasundaram [A-3], Thangadurai [A-4] and Deveraj [A-5] under Section 147 IPC cannot be sustained and therefore, they are liable to be acquitted of the said charge.

13. In the result, this Criminal Appeal is allowed in part to the extent indicated below:-

- The conviction and sentence imposed on Vetrivel [A-2], Somasundaram [A-3], Thangadurai [A-4] and Deveraj [A-5] under Section 147 IPC is set aside and they are acquitted of the said charge, even though Thangadurai [A-4] and Deveraj [A-5] are not before this Court in appeal, in view of the law laid down by the Supreme Court in **Rajaram and others v. State of M.P. (1994) 2 SCC 568** and **Dandu Lakshmi Reddy vs. State of A.P. [1999 (7) SCC 69]**.
- The conviction and sentence imposed on Vetrivel [A-2] under Section 323 IPC stands confirmed.
- Fine amount, if any, paid by Vetrivel [A-2], Somasundaram [A-3], Thangadurai [A-4] and Deveraj [A-5] for the offence under Section 147 IPC is directed to be refunded to them.

Sd/-

Assistant Registrar

/ True Copy /

Sub Assistant Registrar(CS)

To

1.The Sessions Judge, Mahila Fast Track Court,
Nagercoil, Kanniyakumari District.

2.The Inspector of Police,
Eraniel Police Station,
Eraniel, Kanyakumari District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy To:

The Record Keeper, Criminal Section,
Madurai Bench of Madras High Court, Madurai.(2copies)

+1 CC to M/s.D.SRINIVASARAGAVAN, Advocate
(SR-62294[F] dated 24/04/2019)

**JUDGMENT MADE IN
CRL.A[MD].No.235 of 2017
24.04.2019**