

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 09.03.2021

Judgment pronounced on : 21.04.2021

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Criminal Appeal No.466 of 2020

1.Boopathy @ Manikandan

2.Vijay @ Vijayakumar

... Appellants

Versus

State Rep.by
The Inspector of Police,
Velagoundampatty Police Station,
Namakkal District.
(Crime No.200 of 2014)

... Respondent

Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to admit this appeal on file, call for the records in S.C.No.18 of 2016 on the file of the learned Sessions (Fast Track Mahila) Judge, Namakkal, allow the appeal by setting aside the Judgment and conviction in S.C.No.18 of 2016, dated 11.09.2020.

For Appellants : Mr.D.Selvam

For Respondent : Mr.K.Madhan,
Government Advocate (Crl.side)

JUDGMENT

The respondent-police registered a case in Crime No.200 of 2014 against two unknown persons for the offence punishable under Section 326(A) of IPC (2 counts). Subsequently, after investigation, the respondent-police laid a charge against the appellants for the offence under Section 326 (A) of IPC, before the Judicial Magistrate No.I Namakkal, which was taken on file as PRC. No. 12 of 2015. After completing the formalities, since the offence is triable by the learned Sessions Judge, the case was committed to the Principal District & Sessions Judge, Namakkal. The learned District & Sessions Judge taken the case on file in SC.No.18 of 2016 and made over the same to the Sessions Judge (Fast Track Mahila Court), Namakkal, since in this case one of the victims is a woman and the offence is against the woman. the learned Sessions Judge, (Fast Track

Mahila Court) Namakkal framed the charge against the appellants for the offence under Section 326(A) of IPC (2 counts).

2.After framing charge, in order to prove the case of the prosecution, during trial, on the side of the prosecution, as many as 24 witnesses were examined as PW.1 to PW.24 and 18 documents were marked as exhibits Ex.P1 to P18, Besides 8 material objects were exhibited as MO.1 to MO.8.

3.After completing examination of the prosecution witnesses, when incriminating circumstances culled out from the evidence of the prosecution witnesses were put to the appellants, they denied the same as false. On the side of the defence no oral and documentary evidence were produced.

4.After completing the hearing of the arguments advanced on either side and considering the material facts and circumstances of the case, the Trial Court found the appellants guilty for the offence punishable under Section 326(A) of IPC (2 counts), convicted and sentenced them to undergo 10 years Rigorous Imprisonment each with fine of Rs.25,000/- each, in default of payment of fine, undergo further period of one year simple Imprisonment to each for each counts. Challenging the said conviction and sentence, both the accused/appellants have filed the present appeal before this Court.

5.The learned counsel for the appellants would submit that in the First Information Report, the name of the appellants were not mentioned but it was mentioned as unknown persons. The prosecution has not proved the case against the appellants, as alleged by the prosecution. As per the evidence of PW.21, she had gone to Namakkal Government Hospital on intimation given by that Hospital, where PW.21 did not record the statement from the victim, since she was in unconscious state, whereas the evidence of PW.2/victim stated that she was not fully unconscious but only semi unconscious. Further, PW1 has not seen the appellants at the time of occurrence and PW.14, also turned hostile as she has not supported the case of the prosecution. The victim has not stated that persons, who came to the hospital and quarreled with her only came by bike and thrown the fluid. Even they have not stated that they thrown the acid and they stated that they thrown some fluid and further stated that the fluid was thrown by A2 and the first appellant has not committed any offence. The prosecution has also not established the case that the first accused was rider of the two wheeler and the place of occurrence was also not proved. Even in the accident register, they have not named the appellants. Further the extra judicial confession alleged to have been recorded by the Village Administrative Officer cannot be relied on as it is not admissible in evidence. PW.7 is not the VAO to the said village and he is only a stock

witness. The police has registered the case in the name of unknown persons in the first information report, subsequently they developed the case to suit their convenience and fixed the appellant's in this case. The prosecution failed to prove the case beyond reasonable doubt. All the witnesses namely PW1 to PW8 are interested witnesses and based on their evidence, the conviction recorded by the trial Court cannot be sustained and it warrants interference of this Court.

6.The learned Government Advocate (Crl.side) would submit that motive between the first appellant and the victim has been clearly established through oral and documentary evidences. The occurrence was also duly established by the evidence of PW.1 and PW.2. PW.1 and PW.2 are injured as well as eye witnesses. PW.2 has clearly stated about the persons who followed their vehicle in the TVS Star City Bike, bearing Registration No. TN 34 - M-3147. The bike was driven by A1 and overtook the bike driven by PW1 on the left side of the vehicle. A-1 gave the acid bottle along with the plastic cup and A2 poured the acid from the bottle into the plastic cup and threw it over PW.2/victim with an intention to cause bodily injured to her. The Trial Court placed reliance on the evidence of PW.2 which reads as follows:-

"Again on 31.10.2014, the 1st accused Boopathy @ Manikandan came along with his mother and others in the morning to the Primary Health Centre and picked up quarrel with the doctor stating the same allegation. So the accused Boopathy alias Manikandan developed enmity on Vijayakumari and Muniswari and decided to wreck vengeance. A1 has expressed his grievances to his friend A2 Vijai @ Vijayakumar. On 30.12.2014 at about 5.00 pm, when Vijayakumari was proceeding to her house along with the witness Kesavan alias Narayanan in his TVS 50 bearing registration No.TN 33 V 5405 from west to east direction on the Tiruchengodu - Namakkal Road, and when they were near Puliyamarathukadai, both the accused followed them there in their TVS Stary City Bike, bearing registration No.TN 34 M 3147, in which A1 was riding the bike and A1 overtook the bike on the left side of Kesavan's bike. A1 gave the acid bottle along with the plastic cup and A2 poured the acid from the bottle into the plastic cup and throw it over to Vijayakumari with an intention to cause bodily injury and with knowledge that they would cause bodily injury to the person. As a result of which Vijayakumari sustained grievous injury on her right side face, neck, and right side chest and Kesavan also sustained simple injury on his

back. Both the accused committed offence punishable under Section 326(A) of IPC (2 counts) each."

7. PW1 who is the rider of the two wheeler in which the victim PW2 traveled. Both the evidence of the PW1 & 2 clearly established the manner in which the occurrence had taken place. The evidence of PW3-8 who are the co-workers working in the Primary health center in which PW2, Vijayakumari working as a Nurse clearly established about the wife of A1 admitted in the hospital for delivery and subsequently the wife of A-1 was referred to Namakkal Government Hospital as well as death of the child born to the wife of A-1. They have also stated that A1 came with relatives to the Primary Health Center, in which Vijayakumari, the PW2 was working. They made quarrel with them and subsequently the occurrence had taken place. Therefore the motive was established and the occurrence was also established. Further, the Village Administrative officer had deposed that appellants have given extra judicial confession and recovery was also effected. PW18 has clearly stated that A1 came and purchased the acid. Further, the PW20/Doctor clearly deposed that the injury sustained by PW2/victim is caused through acid and PW2 sustained burning injuries. EX.P9 and EX.P10, accident register and medical certificate given by the doctor clearly shows that PW.2/victim sustained grievous injuries and she was admitted, soon after the occurrence. Subsequently, she was admittedly taken to the Manikampalayam Government Hospital from where she was referred to the Namakkal Government Hospital for better treatment. Thereafter, she was referred to Salem and subsequently, she was taken for treatment to Coimbatore Government Hospital. As per the oral and documentary evidence of PW.1 & PW.2 and medical evidence the prosecution has proved the case against the appellants with reliable and cogent evidence. The Trial Court rightly appreciated the evidence and come to the conclusion that the appellants have committed the offence punishable under Section 326(A) of IPC and convicted and sentenced them to undergo 10 years rigorous Imprisonment and there is no merit in the appeal. The appeal is liable to be dismissed.

8. Heard the learned counsel for the appellants and the learned Government Advocate (Crl.side) appearing for the respondent-police and perused the materials available on record.

9. The case of the prosecution is that due to previous enmity, the first appellant, with the aid of the second appellant, threw acid on PW.2/victim while travelling as a pillion rider in the two wheeler ridden by PW1. Due to the act of throwing acid, the victim/PW.2 sustained grievous injuries in her face and ear. PW.1 also sustained simple injuries. This

case was initially registered against unnamed persons, subsequently, during investigation it was found that the appellants have committed the offence. The appellants have given confession statement and based on the confession statement, the appellants were arrested and charge sheet was filed. The Trial Court framed the charges against the appellants and convicted and sentenced them to undergo rigorous imprisonment. Challenging the said conviction passed by the Trial Court, the appellants have come up with the present appeal before this Court.

10. The appellants were charged for the offence under Section 326(A) of IPC. Since PW.1 & PW.2 sustained injuries during the occurrence, charge was framed under Section 326(A) of IPC for 2 counts. To prove the charges, on the side of the prosecution, totally 24 witnesses were examined as PW.1 to PW.24, 18 documents were marked as Ex.P1 to Ex.P18 and 8 material objects were exhibited as M.O.1 to M.O.8. Out of which the victims were examined as PW.1 & PW.2. The evidence of PW.2 clearly shows that prior to the occurrence, in the year 2014, PW.2, was working as a nurse in Elachipalayam, Primary Health Centre. PW.11/ Maheswari, who was attended the delivery for the wife of A-1, who was brought to the treatment to the Primary Health Centre. On that day, PW.2/victim had gone to the field work and returned back to the work at Primary Health Centre, where she saw the lady and the child were not in normal condition and therefore, the child was referred to Tiruchengodu Government Hospital for further treatment. Later the mother of the child was also referred to the Government Hospital, Tiruchengodu. PW.11, one of the nurses in the hospital accompanied the child to the Tiruchengodu Government Hospital.

11. On the thirtieth day of the same month, A-1, the husband of the said lady, who was admitted in the hospital for delivery, came to the Primary Health Centre and stated that the child died since they did not give proper treatment. He also stated that he had spent huge money to secure his wife and child but he lost his child. Therefore, A-1 demanded money from PW1 and PW11. Next day A-1 made a quarrel with the doctor and all the witnesses working in the hospital have noticed the same. After two months, on 30.12.2014, PW2 after attending the weekly review meeting in Elachipalayam, went to Ezhampulli. Since there was a bus strike, the PW2 saw PW1 and asked him to drop her in her home in his vehicle since he is a known person to her. PW1 took PW2 in his vehicle and when they were nearing Manickampalayam, Puliyamarathadi, two persons followed them in a red color bike and overtook the TVS 50 vehicle ridden by PW1. PW1 slowed down the vehicle and at that time the person who came in a red color bike threw some fluid on them due to which, she suffered burn injuries on her right side face, neck and right side chest. PW1 also suffered burning sensation in his back. PW2 clearly saw the

two persons in the bike who have thrown the fluid. So also A-1 saw them. The neighbour who gathered at the spot called the ambulance and sent the victim PW2 and PW1 to the Manickampalayam Government Hospital from where PW2 was referred to Namakkal Government hospital. On intimation to the jurisdiction police she was referred to Government Hospital, Salem where she took further treatment for sometime. Later she was referred to Kovai Government Hospital. The accident register EX. P9 clearly states that on 30.10.2014, she was admitted in the Government Hospital, Namakkal. She was taking treatment from 30.12.2014 to 07.01.2015 as an inpatient there. Subsequently, she was referred to Government Hospital, Salem on 07.01.2015 where she was taking treatment till 12.02.2015 as inpatient. The wound certificate issued by the Government Hospital, Coimbatore was marked as EX. P10. As per EX. P10, the injuries sustained by PW2 is grievous in nature. PW.3 to PW.8 have spoken about the motive of the appellants. PW1 & PW2 have stated about the occurrence. PW2 not only proved the motive but also the occurrence. PW20/Doctor deposed that the injuries sustained by the PW1 & PW2 are due to throwing of acid. EX.P9 and EX.P10 proved the injuries sustained by the PW2. Therefore the prosecution has clearly proved its case beyond reasonable doubt.

12.The Appellate Court is a fact finding Court which should render independent finding for which it has to re-appreciate the entire evidence. Accordingly, this Court re-appreciated the entire materials produced before the Trial Court and also this Court perused the Judgment rendered by the Trial Court.

13.The learned counsel for the appellants vehemently contended that the extra judicial confession recorded by PW.17 is not admissible in evidence. Assuming that it is not admissible in evidence, the prosecution did not rest upon solely on extra judicial confession recorded by PW.17. The prosecution established its case clearly through PW.1 & PW.2. They are injured as well as eye witnesses. Though the learned counsel for the appellants would submit that in the First Information Report the name of the appellants were not mentioned and even the victims have not stated that the appellants have thrown the acid, but they have only stated that two persons came in a red colour TVS Star City Bike and thrown some fluid. Even then they have not seen the appellants. Whereas on reading of the evidence of PW.2 it clearly shows that two persons followed the vehicle of PW.2, in which she travelled as pillion rider. Further, she has deposed that he gave a bottle and one plastic cup and A2 poured it and thrown on PW.2. Subsequently, she sustained injury on the right side face, neck, and chest. When she had burning sensation she shouted and on hearing the cry of PW.2, the appellants turned on the victim side, at that time, the victim/PW.2 saw the appellants and identified them. Therefore,

the prosecution proved the motive against the appellants and also occurrence through PW.2. Subsequently, the injuries sustained on PW.1 and PW.2 also proved through the medical evidence. Therefore, the prosecution has proved its case beyond reasonable doubt.

14.This Court also independently finds that the prosecution has proved its case with cogent and reliable evidence. This Court also finds that the appellants have committed the offence punishable under Section 326(A) of IPC. Though the accused/A1 has got the motive and A2 is accompanied A1, both came in one two wheeler and threw the acid on PW.1 & PW.2 both sustained injuries. Further, this Court considering the fact that the injuries sustained by the victims are serious in nature and the appellants knowing fully well if acid is thrown on a person, he or she would sustain injuries and such injuries would lead to death of that person sometimes. Therefore, in these circumstances, this Court finds that the prosecution has proved the case beyond reasonable doubt. The trial Court also rightly appreciated the entire materials and elaborately discussed both the prosecution case as well as the defence raised and given cogent reason for conviction. Therefore, this Court does not find any merit in the appeal and the appeal is liable to be dismissed.

15.In the result, the Criminal Appeal is dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

- 1.The learned Sessions (Fast Track Mahila) Judge,
Namakkal.
- 2.The Inspector of Police,
Velagoundampatty Police Station,
Namakkal District.
- 3.The Superintendent of Prison,
Central Prison,
Coimbatore.

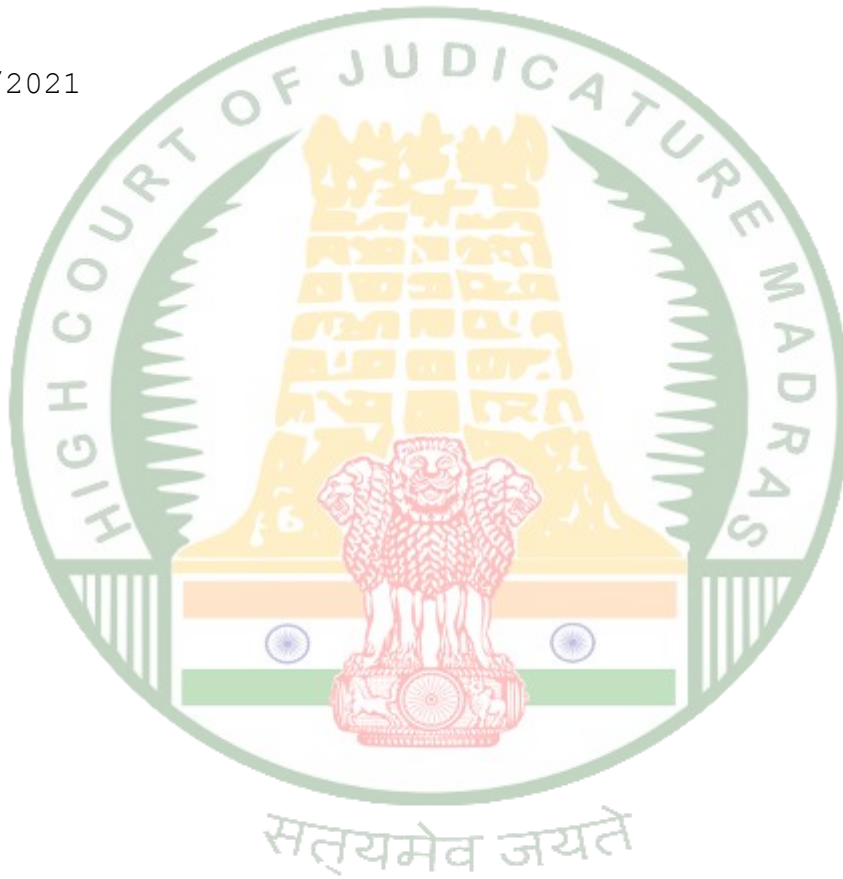
4.The Public Prosecutor,
High Court of Madras, Chennai.

Copy to

The Section Officer,
Criminal Section,
High Court, Madras.

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