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CrI.A.No.289 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.11.2022

Pronounced on : 06.12.2022

CORAM

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Criminal Appeal No.289 of 2015

1.Vanishree @ Imagulate

2.Sisaro

3.Venus @ Jegadeesan (died)

... Appellants/Accused

/versus/

State by

The Deputy Superintendent of Police,
Attur, Salem District.

Crime No.393 of 2003

... Respondent/Complainant

Prayer:- Criminal Appeal is filed under Section 374 of Cr.P.C., prayed to call for the records and to set aside the order of conviction and sentence passed against the appellants (A1 to A3) by the Principal Sessions Judge Court, Salem in S.C.No.242 of 2005 dated 30.04.2015 and acquit them from all the charges.

For Appellants : Mr.V.R.Appaswamee

For Respondent : Mr.R.Kishore Kumar
Government Advocate (CrI.Side)

JUDGMENT



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The Principal Sessions Court, Salem convicted the appellants 1 to 3 herein and sentenced vide impugned judgment dated 30.04.2015, made in S.C.No.242 of 2005, as follows:-

<i>Rank of the accused</i>	<i>Charges</i>	<i>Findings of the trial Court</i>	<i>Punishment</i>
1 st accused	U/s.342 IPC	Found guilty	Convicted and sentenced to undergo one year Rigorous Imprisonment and to pay a fine of Rs.1,000/-; in default to undergo two months Rigorous Imprisonment.
	U/s.307 r/w.34 IPC	Found guilty	Convicted and sentenced to undergo five years Rigorous Imprisonment and to pay a fine of Rs.2,000/-; in default to undergo six months Rigorous Imprisonment.
2 nd accused	U/s.342 IPC	Found guilty	Convicted and sentenced to undergo one year Rigorous Imprisonment and to pay a fine of Rs.1,000/-; in default to undergo two months Rigorous Imprisonment.
	U/s.307 r/w.34 IPC	Found guilty	Convicted and sentenced to undergo five years Rigorous Imprisonment and to pay a fine of Rs.2,000/-; in default to undergo six months Rigorous Imprisonment.



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<i>Rank of the accused</i>	<i>Charges</i>	<i>Findings of the trial Court</i>	<i>Punishment</i>
	U/s.355 IPC	Found guilty	Convicted and sentenced to undergo one year Rigorous Imprisonment and to pay a fine of Rs.1,000/-; in default to undergo two months Rigorous Imprisonment.
3 rd accused	U/s.342 IPC	Found guilty	Convicted and sentenced to undergo one year Rigorous Imprisonment and to pay a fine of Rs.1,000/-; in default to undergo two months Rigorous Imprisonment.
	U/s.307 r/w.34 IPC	Found guilty	Convicted and sentenced to undergo five years Rigorous Imprisonment and to pay a fine of Rs.2,000/-; in default to undergo six months Rigorous Imprisonment.

2. These three appellants were also charged for offence under Section 3(2)(v) of SC/ST (Prevention of Atrocities) Act, 1989 r/w. Section 34 I.P.C., but the trial Court found that the prosecution has failed to prove the said charge and acquitted the appellants.



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3. The gist of the prosecution is that Kamatchi, the daughter of PW.1

was working as a maid in the house of Vanishree/the 1st appellant herein. She had been working in their house for nearly 7 months. For about 5 months, she was taken care well, but when Kamatchi saw Vanishree and the 2nd appellant /2nd accused in a compromise position, they both started physically torturing her. The 3rd appellant/3rd accused joined with other accused and subjected Kamatchi to brutal attack and as a consequence, she was taken to a private hospital for the injuries. This incident came to the notice of a Women Association at Salem by name “மகளிர் விழிகள் சங்கம்” and they informed the police on 11.07.2003. The respondent police went to Selva Hospital recorded the statement of Kamatchi and registered the First Information Report in Crime No.393 of 2003 dated 11.07.2003 against these three appellants for the alleged offences under Sections 341, 343, 323 and 506(i) I.P.C. Later through investigation, it was found that the appellants with intention to cause death, the 1st appellant tried to strangulate Kamatchi. The 2nd and 3rd appellants had attacked her all over the body with stick. All the three accused has confined her in a room to prevent her from disclosing the illegal intimacy between A1 and A2. The 2nd accused has also forced the victim girl/ Kamatchi to dance for cinema tune and made 1st appellant sons to urinate in



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the mouth of Kamatchi. Since the victim Kamatchi belong to scheduled caste charged under Sections 3(2)(v) SC/ST(Prevention of Atrocity) Act, 1989, r/w.34 IPC, Section 342 I.P.C., 307 r/w.34 I.P.C against A1 to A3 and Section 355 I.P.C., against A2 were framed.

4. To prove the charges, the prosecution examined 16 witnesses as PW.1 to PW.16 and marked 16 exhibits as Ex.P1 to Ex.P16. The trial Court believed the case of the prosecution that the victim girl was subjected physical torture and attempt to commit murder, but disbelieved the prosecution case that the crime against Kamachi was caused because she belongs to SC/ST. Therefore, the charge framed against A1 to A3 under Section 3(2)(v) of SC/ST (Prevention of Atrocity) Act, was held to be not proved. However, the other charges were found to be proved and convicted as mentioned above.

5. The victim girl died before the commencement of trial. The statement of victim girl under Section 164 Cr.P.C., to the learned Magistrate recorded during the course of investigation has been relied by the trial Court as one of the materials for arriving at for the said conclusion through the accused had no



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opportunity to cross examine the victim girl. The prime witness to the prosecution was the mother of the victim girl examined as PW1. She had narrated the circumstances under which she sent her daughter to the house of the 1st accused to work as house maid. PW.1 admits that for 4 or 5 months she has contact with her daughter and her daughter was taken care properly by the 1st accused and Ravi Bernard. She was informed by the 1st accused that her daughter got injured at the construction site and getting treatment in the hospital. Knowing that, she came to Salem along with her husband and her sister. When she saw her daughter, her daughter disclosed how she was cruelly attacked by the accused persons and why they did so.

6. The information given by her daughter has been passed on to the police which has been reduced into writing and has been marked as Ex.P1. That apart, Kamatchi since deceased and her mother, PW.1 have also given statement before the Magistrate and recorded under Section 164 Cr.P.C. Thereafter, the victim girl was taken to Chennai. PW.2 is the maternal aunty of the deceased Kamatchi. She has corroborated the evidence of PW.1 regarding her visit to Salem along with PW.1 to the hospital, where she saw Kamatchi injured all over the



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body and the information given by Kamatchi regarding the injury found on her

body. PW.3/Neela, a staff in “பாரதியார் மக்கள் நல்வாழ்வு சங்கம்” had deposed that on reading the news in the daily, she went to the hospital and saw the girl, who was taking treatment for the injuries. At that time, the victim girl was not in a position to talk. She was not examined by the police and she is not aware of the date on which she visited the hospital. PW.4/Mangai and PW.5/Settu turned hostile. PW.6/Pandurangan(VAO) is a witness to the rough sketch of the house of the accused persons. He has identified the Observation Mahazar, in which, he has signed. One of the crucial witnesses to the prosecution is PW.7/Dr.Selvambal, who actually treated the girl Kamatchi. In her evidence, she has deposed that the girl had injury in her left leg and it was found infected. For the said infection, she treated and given antibiotic medicine and the girl was in the hospital for 3 days for dressing. On the 4th day, the members from Woman Association came and spoke to the patient Kamatchi. They forced her to sent the patient Kamachi along with them. When she told those members that she cannot allow the patient to go with third parties, unless the person who admitted her make such request, the members of the மகளிர் விழிகள் சங்கம் came with the Sub Inspector of Police,



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Vazhapadi Police Station and on his request, the victim girl was sent with the members of the association. This witness had also stated that when the patient got admitted, it was informed that the patient sustained injury when a wooden stick poked her leg.

7. PW.8/Manimegalai, is the duty Doctor attached to the Government Hospital, Salem. She in her evidence had stated that on 11.07.2003, while she was on duty at about 11.20 p.m., Kamatchi along with her relatives Senthamarai Durairaj came to the causality and informed her that Kamatchi was assaulted by two known persons with wire and wooden log. She examined the patient who was conscious and found old injuries over her body. X-ray of her left leg was taken and the patient was admitted in the women ward. The Accident Register issued by her was marked as Ex.P4. In the cross examination of PW.8, she has stated that Senthamarai Durairaj who brought Kamatchi belongs to women's organization and she has not found any fresh wound on the Kamatchi body and what she has noticed are healed old wound. Ex.P4 /the Accident Register issued by PW.8 reflects what PW.8 has deposed before the Court. It also indicates that the மகளிர்



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வழிகள் சங்கம், Salem as the address of the victim girl and Senthamarai Durairaj who brought the victim girl as Secretary of the Association. PW.9/Dr.R.Anand Subramaniam, who had examined Kamatchi on 19.07.2003, has given opinion regarding plastic surgery for the injury on the left foot of Kamatchi. PW.10/Dr.Deepak Kabir is the civil Surgeon, who has given his opinion regarding the injury found on the left foot of Kamatchi as grievous.

8. The learned Judicial Magistrate who recorded statement under Section 164 Cr.P.C., of Kamatchi and her mother, PW.1/Janaki. The statement of Kamatchi was marked as Ex.P8 and statement of Janaki was marked as Ex.P2. In the cross examination, it is elucidated that PW.1 was not aware where her daughter Kamatchi was for past 8 months and she was not aware that she was at Vazhapadi. Only when she received telegram from the Woman Association, she went to the house of Ravi Bernard and she was informed that her daughter sustained injury on her leg due to accident fall of brick. In the cross examination, she admitted that she has not said anything about putting chilly powder and salt in the mouth of her daughter Kamatchi or any harassment by A3.



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9. PW.12 is the Photographer, who has taken photo of the victim girl and the injuries. After examined the police witnesses PW13 to PW16, the prosecution has closed its evidence.

10. The learned counsel for the appellants submitted that the trial Court erred in believing the evidence of the above said witnesses, though they are not reliable and their testimony bristles with inherent contradictions. There is no evidence to show that the alleged injuries on the body of Kamatchi was caused by the accused persons. The evidence of PW.7/the Doctor, who has really seen the injured Kamatchi and treated her had clearly stated that Kamatchi had injury on her left leg and it was found infected. For the infection, she treated, done dressings and kept her as in-patient for 3 days. Thereafter, the custody of the child been forcibly taken by the members of the woman association with the help of the Sub Inspector of Police. While so, the said Kamatchi was next seen by PW.9 only on 11.07.2003. It is mentioned that Kamatchi was admitted in the women ward of the Government hospital, Salem. The k-sheet/Ex.P5 of the patient indicates that she was admitted only on 18.07.2003. PW.8 had deposed that she took X-ray of the left leg of the patient, when she examined the girl on 11.07.2003, she saw only



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healed old injuries and there was no new injury on her body. While so, the exaggeration of PW.1 before the Magistrate as well as before this Court which itself self contradictory to each other does not corroborate the medical evidence. Hence PW1 evidence ought to have been rejected by the trial Court, but unfortunately the trial Court has convicted the appellants for offence under Sections.342, 307, r/w.34 and 355 I.P.C., though there is no material to show that the accused persons voluntarily caused injury and such act was an attempt to commit murder of Kamatchi.

11. Heard the learned counsel for the appellants and the learned Government Advocate (Crl.Side) for the State. Records perused.

12. The complaint [Ex.P.1] is alleged to have been recorded at the hospital, when Kamatchi was admitted and taking treatment at Selva hospital. PW.7, is the doctor at Niharika hospital, Vazhapadi, she is the doctor, who has admitted Kamatchi and treated her as in-patient and after the request from women association group discharged Kamatchi and allowed her to go along with the members of women association and the Sub Inspector of Police. She had treated



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Kamatchi for the infection wound on the left leg of Kamatchi. It is to be noted that when the Woman association took custody of the girl from the Niharika hospital, the girl had no other injury, except the infection on the left leg and was treated by PW7. Thereafter, Kamatchi had been brought to the Government Hospital, Salem on 11.07.2003. She was brought by one Senthamarai Durairaj, Secretary of the women association. PW.8, who has examined Kamatchi has seen traces of old wounds. She has taken X-ray for the left leg. But there is no evidence to show that the victim girl had sustained any fracture and fresh wound. In the cross examination, PW.8 had deposed that when she saw Kamatchi on 11.07.2003, she had no new injury, but all the injuries were old injuries and she found only healed wound mark. There is no evidence from prosecution about the age of those wounds. The women group had taken Kamatchi to PW.9 and consulted him for plastic surgery. This has happened on 19.07.2003 at about 18 days after Kamatchi was medically examined by PW.8. The K-sheet also indicates about the plastic surgery proposed on Kamatchi. The evidence of PW.1/the mother of Kamatchi reveals that after ensuring her daughter is cured of her infection would she has taken her back to Chennai and not consented for any plastic surgery.



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13. Be that as it may, the doctors, who had examined Kamatchi prior to 11.07.2003 and after 11.07.2003 deposed that they had not found any fresh injury on the body of the girl except injury on her left leg, which was due to infection and cured. While so, some of the allegations which could have been established through the victim girl has not been established in view of her death before commencement of trial. Her statement recorded by the Magistrate under Section 164 Cr.P.C., cannot be looked into for any purposes. Since that statement does not say about the cause for her death, it is yet another previous statement of the witness in the course of investigation which is not tested on oath and subjected to cross examination.

14. It is a case where a minor girl, who had been admittedly deserted by her family been working under the appellants herein for 7 months. For her infected injury, she had been admitted in the private hospital by the appellants and taken care. The members of women association, who had suspected ill treatment, had approached the police, given a complaint on 11.07.2003, gone to the hospital of PW.7 and forcibly taken the girl who was under treatment with the help of the



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police. On the same day, Kamatchi had been taken to Government Hospital, Salem, she had been examined by PW.8/Dr.Manimegalai, Government Hospital, Salem. PW8 in her evidence categorically stated that the injuries found on Kamatchi were all healed old injuries. No fresh injury or unhealed injury found on her body. While fact being so, the imaginary and exaggerated allegations against these appellants for the sake of sensation and publicity by the women association has led to filing a frivolous final report against the appellants herein, by including the provisions of SC/ST Act, for which, there is not even iota of evidence.

15. The alleged infected injury noticed by PW.7 on the left leg. Even if it is caused intentionally it cannot be considered as attempt to commit murder. The probability of getting that injury by fall brick or at poking of brick not ruled out. The said infected injuries cured even before the custody of the girl forcibly taken away to the hospital and registration of complaint on 11.07.2003. When there is no other fresh injuries found on the body and the age of the old injuries not spoken by any of the three doctors who had been examined by prosecution, undoubtedly it is an highly exaggerated, motivated complaint leading to conviction of these appellants for offence under Sections 342, 307 r/w.34 IPC and 355 IPC are



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without any substantial reliable evidence. Hence the conviction without any substance and proof is liable to be set aside.

16. Accordingly, this Criminal Appeal is allowed. The judgment of the trial Court is set aside. The appellants are set at liberty. Fine amount, if any paid by the accused shall be refunded to them. Bail bond if any executed by the accused shall stand cancelled.

06.12.2022

Index : Yes/No
Speaking order/Non-speaking Order
rpl

To,

1.The Principal Sessions Judge Court, Salem

2.The Deputy Superintendent of Police,
Attur, Salem District.

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



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Dr.G.JAYACHANDRAN.J.,

rpl

Delivery Judgment made in
Criminal Appeal No.289 of 2015

06.12.2022