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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.A.NO.332 OF 2016

Mani @ Manikandan

... Appellant/Accused

Vs.

State by
Inspector of Police,
R-10 M.G.R. Nagar Police Station,
Chennai - 600 083.

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to set aside the judgment dated 24.02.2016 passed in S.C.No.82 of 2011 on the file of the VI Additional Sessions Judge, Chennai, convicting the appellant for the offence under section 304 Part I of IPC and sentencing him to undergo rigorous imprisonment for 10 years and to pay fine of Rs.1,000/-, in default to undergo three months simple imprisonment and consequently to acquit the appellant.

For Appellant : Mr.T.Saikrishnan
for M/s.Sai Bharath and Ilan

For Respondent : Mr.R.Kishore Kumar
Government Advocate

JUDGMENT

The appellant/accused in S.C.No.82 of 2011 was convicted by the learned VI Additional Sessions Judge, Chennai, by judgment dated 24.02.2016, sentencing him to undergo rigorous imprisonment for 10 years and to pay fine of Rs.1,000/-, in default to undergo three months simple imprisonment for offence under Section 304 Part I IPC. Against which, the appellant preferred this appeal.



2.The gist of the case is that the appellant/A1 along with Rajesh @ Rajasekar/A2 and Soundararajan/A3 are the accused in this case. Since the said Soundararajan is a minor, he was tried by the Juvenile Justice Court. The appellant/A1 and Rajesh @ Rajasekar/A2 were tried by the Trial Court. The appellant was in relationship with one Rajakumari, both of them got married and after marriage, there was some dispute between them. Therefore, the said Rajakumari was living separately from the appellant. The appellant took steps for reconciliation but the said Rajakumari refused to live with him. Thereafter, the said Rajakumari developed relationship with one Selvam, due to which the appellant got enraged and he wanted to teach her a lesson. On 24.07.2007, the appellant along with Rajesh @ Rajasekar and Soundararajan met at a shop in M.G.R. Nagar, Chennai, devised a plan to buy acid and planned to throw acid on the said Rajakumari. On 25.07.2007, all the three accused went to Flower Bazaar area, bought 250 ml of Sulphuric acid. Thereafter on 27.07.2007 at about 7.00 am the said Soundararajan was asked to monitor the movements of Rajakumari, who in turn informed the appellant and other accused that the said Rajakumari and her friend Shanthi were riding bi-cycle and proceeding near the Kasi Theatre underpass bridge. The appellant along with other accused/A2 came to the place in a M80 Motor cycle rode by A2 and the appellant was sitting as pillion rider carrying the acid can. On nearing the place of occurrence, the appellant threw acid on the said Rajakumari and thereafter fled away. The said Rajakumari, who sustained acid throw, fell down, cried in pain, her friend Shanthi, who was riding bicycle alongside took her to K.K.Nagar Peripheral Hospital, where P.W.21 Casualty Doctor examined her, finding that the acid throw was serious in nature, referred to K.M.C. Hospital. P.W.1 informed P.W.28/father of the victim Rajakumari about the incident and she left home. Thereafter, the said Rajakumari was taken to K.M.C. Hospital where P.W.24/Casualty Doctor examined the victim and found that she was brought dead.

3.On receipt of the complaint from P.W.28/father of the deceased, P.W.29 registered a case in Crime No.1829 of 2007 for the offence under Section 302 IPC, by FIR/Ex.P12. P.W.29 visited the scene of occurrence, recorded the statement of witnesses, conducted inquest, prepared observation mahazar, rough sketch and thereafter sent the body for Postmortem. P.W.23/Postmortem Doctor confirmed that the death is due to acid burn. Further the burnt pieces of flesh, dress and the articles found on the deceased were seized and sent for forensic study, all confirms the presence of Sulphuric acid. The Postmortem report, marked as Ex.P9 and the Forensic reports, marked as Ex.P6 and Ex.P7. Thereafter, P.W.29 got transferred, P.W.30, who took up the investigation was monitoring the movement of



accused, formed a special team and was in search of the accused. On 10.11.2010, P.W.30 received information that the appellant/A1 was arrested in a case in Crime No.278/2010 for the offence under Section 394 IPC by Kandakottai Police Station, Pudukottai District and was confined in Prison. Thereafter, in the presence of Jail Superintendent, a formal arrest was made and through PT warrant, the appellant was brought before the learned Magistrate where a petition for police custody filed and the appellant/A1 was taken under custody. The appellant gave a confession statement, based on his confession the role played by other accused got revealed and M.O.5/Plastic can was recovered. On completion of investigation, charge sheet filed, P.W.1 to P.W.3 were examined, Ex.P1 to Ex.P21 and M.O.1 to M.O.8 were marked. The Trial Court on conclusion of trial, convicted the appellant as stated above and acquitted the other accused/A2.

4.The contention of the appellant is that P.W.1 is the friend of the deceased Rajakumari, who was riding bicycle along with her on 27.07.2007 near Kasi Theatre cause way bridge, at that time, the appellant is said to have thrown acid on her and fled away. P.W.1 in her statement submit that she took the deceased to K.K. Nagar Peripheral Hospital, admitted her in the Hospital and left to home immediately, informing about the incident to P.W.28/father of the deceased Rajakumari. P.W.28 states that on receipt of information, he went to the scene of occurrence, found his daughter's dupatta, thereafter went to the Police Station and lodged a complaint. On the contrary, in the complaint/Ex.P11 it is recorded that on 27.07.2007 at about 9.15 a.m., P.W.9 received information from Casualty Department, K.M.C. Hospital, thereafter he went to the Hospital, recorded the statement of P.W.28/father of the deceased and registered a case at 11.00 a.m. Thus, the evidence of P.W.1 is contrary to the evidence of P.W.28. Further, the origin of the complaint is highly doubtful as P.W.1 states that the Police were informed even at while she was in K.K.Nagar Peripheral Hospital, but the specific case of the prosecution is that they received information from K.M.C. Hospital. Likewise, the statement of P.W.28/father of the deceased is also highly doubtful. Added to it, there is no evidence to show that the appellant purchased Sulphuric acid. P.W.27/Chemical dealer not supported the case of the prosecution and there is no material to show that the appellant purchased any chemical. Further, in this case the occurrence is of the year 2007, the appellant was arrested three years thereafter in a case at Pudukottai in the year 2010 and thereafter, he was shown arrest in this case. M.O.5 was recovered after three years and this recovery is also highly doubtful. The confession statement of the appellant is recorded in the presence of P.W.8/Village Administrative Officer who work in close tandem with the police, who are obliging witnesses, the



5. It is further submitted that the appellant had some dispute with this wife, they were living separately, in fact the deceased Rajakumari developed relationship with one Selvam and the same was objected by the appellant. Further, the appellant was arrested three years after the occurrence and no identification parade conducted to identify him. There is no material to show that P.W.1 knew the appellant earlier and she was familiar with him, added to it, the witnesses present near the scene of occurrence, P.W.2 and P.W.3 not supported the case of the prosecution. It is further submitted that the only witness in this case, P.W.1 who identifying the appellant is highly doubtful, further the manner in which she went home from the hospital after admitting the deceased Rajakumari even before any one came to her aid. Further, there is no circumstance to link the appellant, to be the reason for throwing acid on the victim. The chemical dealer/P.W.27 not supported the case of the prosecution. Therefore, merely on surmises and conjunctures the appellant cannot be convicted. Hence, he prayed for acquittal.

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appellant who came to the place of occurrence in M80 Motorcycle as pillion rider along with A2, threw the acid on the victim Rajakumari. After the incident, the Mobike was sold to a second-hand dealer by A2 which is confirmed by the evidence of P.W.13 to P.W.15. The victim succumbed to burn injuries due to Sulphuric acid throw which is confirmed by P.W.23/Postmortem Doctor in the Postmortem report/Ex.P9. Further, P.W.20/Forensic Expert, who examined M.O.1 to M.O.5 as well as the burnt flesh of the victim sent by the Postmortem Doctor confirm the presence of Sulphuric acid on her and the Forensic reports marked as Ex.P6 and P7. P.W.20 confirms the presence of unadulterated Sulphuric acid, which will be in thick and mercurial form which is lethal. Thus, the prosecution with cogent evidence and materials proved its case. It is further submitted that the death is instantaneous, the occurrence took place on 27.07.2007 at 7.00 a.m. and the death occurred within two hours thereafter. Therefore, the Trial Court rightly convicted the appellant under Section 304 Part I IPC. Hence, he prayed for dismissal of this appeal.

7.Considering the submissions made and on perusal of the materials placed on record, it is seen that P.W.1 is the eye witness to the occurrence, who was riding a bicycle along with the deceased Rajakumari at the time of acid throw. The acid was thrown by the appellant is confirmed by the evidence of P.W.1, further the deceased also informed P.W.1 that her husband threw the acid on her. Immediately after the acid attack, the victim was taken to K.K.Nagar Peripheral Hospital, where P.W.21/Casualty Doctor examined her, given accident register/Ex.P8 and thereafter she was rushed to the K.M.C. Hospital for better treatment, where P.W.24/Casualty Doctor confirmed that she was brought dead. Postmortem was conducted by P.W.23 and the Postmortem certificate was marked as Ex/P9. Thus, the victim died unnaturally immediately due to the acid throw by the appellant and the presence of the appellant in the scene of occurrence is also proved. The presence of acid on the material objects and on the skin/flesh of the victim is confirmed by the Forensic report. The petitioner not attended the funeral of his wife absconded for years. With much effort, the Investigating Officer secured the accused after three years, on his confession, M.O.5/Plastic can used to carry Sulphuric acid was recovered. There is no reason to doubt the evidence of P.W.1 and other witnesses and all reports in this case. The ocular evidence, medical evidence and forensic evidence confirm the case of the prosecution. Thus, the Trial Court in detail analysed the evidence of the witnesses, the materials produced and rightly convicted the accused. Therefore, this Court finds no reason to interfere with the finding of the Trial Court.



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8. In the result, the Criminal Appeal stands dismissed.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The VI Additional Sessions Judge,
Chennai.
2. The XXIII Metropolitan Magistrate,
Saidapet, Chennai.
3. The Inspector of Police,
R-10 M.G.R. Nagar Police Station
Chennai - 600 083.
4. The Superintendent,
Central Prison,
Puzhal, Chennai.
5. The Public Prosecutor,
High Court, Madras.
6. The Section Officer,
Criminal Section (Records),
High Court, Madras.

+1cc to M/s.T.Saikrishnan, Advocate, S.R.No.23072

Cr1.A.No.332 of 2016

SSN(CO)

RLP(29/04/2022)