



CrI.A.(MD) No.482 of 2019

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CrI.A.(MD) No.482 of 2021

Ganesan

... Appellant

-vs-

The State
rep.by Inspector of Police
Thirugokarnam Police Station
Pudukkottai
(Crime No.147/2016)

... Respondent

PRAYER: Appeal filed under Section 374(2) of the Code of Criminal Procedure against the Judgment dated 04.10.2021, in S.C.No.123 of 2016, on the file of the Sessions Judge (FAC), Mahila Court, Pudukkottai.

For Appellant : Mr.A.Ganapathisubramanian
for Mr.Rameshkumar.D.

For Respondent : Mr.A.Thiruvadikumar
Additional Public Prosecutor



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J U D G M E N T

[Judgment of the Court was made by P.N.PRAKASH, J.]

This criminal appeal is filed against the Judgment and Order, dated 04.10.2021, in S.C.No.123 of 2016, on the file of the Sessions Judge (FAC), Mahila Court, Pudukkottai.

2. The Trial Court framed as many as four charges against the appellant, as detailed below:

Charge	Penal Provisions
1	498-A I.P.C.
2	294(b) I.P.C.
3	307 I.P.C. (2 counts)
4.	506(II) I.P.C.

3. By Judgment and Order, dated 04.10.2021, the Trial Court acquitted the appellant of the charge under Section 294(b) I.P.C., however, convicted and sentenced him, for the other offences, as detailed below:-

Section of Law	Sentence of imprisonment	Fine amount
498-A I.P.C.	To undergo three (3) years rigorous imprisonment.	Rs.20,000/- in default to undergo simple imprisonment for one (1) year.



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307 I.P.C. (2 counts)	To undergo imprisonment for life.	Rs.30,000/- in default to undergo simple imprisonment for one (1) year.
324 I.P.C.	To undergo three (3) years imprisonment.	Nil
506(II) I.P.C.	To undergo seven (7) years rigorous imprisonment.	Nil

The sentences imposed on the accused were ordered to run concurrently and the period of incarceration was ordered to be set off under Section 428 Cr.P.C.

4. The prosecution case is as under:

4.1. The appellant is the husband of Shanmugavalli (P.W.1) and the couple has three daughters. The couple, after marriage, was living in V.Kottaiyur Village, Thirumayam Taluk, Pudukkottai District. The appellant was working in Muscat after marriage and after he lost his employment there, he returned to his native village and was loitering without any employment. He was a chronic tippler and used to drink at the cost of his wife Shanmugavalli (P.W.1) and harass her and the children for no good cause. Valarmathi (P.W.2), mother of Shanmugavalli, was a resident of Thirugokarnam Village in Pudukkottai District, where



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she was running a petty shop abutting her house. The appellant's mother (not examined) sympathized with her daughter-in-law, Shanmugavalli (P.W.1), and advised her to go to her natal home with the children, so that she would not suffer the torture of the appellant. On the advice of the appellant's mother, Shanmugavalli (P.W.1) went to her natal home in Thirugokarnam Village with her children sometime in the month of June, 2016. Thereafter, the appellant is said to have come to the house of Valarmathi (P.W.2) in Thirugokarnam Village armed with a stick and beaten his wife Shanmugavalli (P.W.1) for refusing to join him.

4.2. On 03.07.2016, around 02.00 p.m., Shanmugavalli (P.W.1) packed lunch for her mother and took it to the petty shop. While Shanmugavalli (P.W.1) was serving lunch for her mother Valarmathi (P.W.2) in the petty shop, the appellant came there armed with a billhook (M.O.1) in a two-wheeler (M.O.2) bearing registration No.TN63 K1211. On seeing his wife Shanmugavalli (P.W.1) and mother-in-law Valarmathi (P.W.2), the appellant started attacking them indiscriminately. This attack was witnessed by Aanandhan (P.W.3) and Pandurangan (P.W.4), who



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WEB COPY also have their shops near to the petty shop of Valarmathi (P.W.2).

After the attack, the appellant fled in his two-wheeler (M.O.2) with the weapon (M.O.1).

4.3. Prasath (P.W.6), an auto driver, and Chitra (P.W.8), a neighbour, took Valarmathi (P.W.2) in the autorickshaw of Prasath (P.W.6) to the Government Hospital, Pudukkottai. Similarly, Kesavan (P.W.7), an auto driver, and one Kamala (not examined) took Shanmugavalli (P.W.1), in the autorickshaw of Kesavan (P.W.7), to the Government Hospital, Pudukkottai.

4.4. At the Government Hospital, Pudukkottai, Dr.Suguna Alamelu (not examined) examined Valarmathi (P.W.2) at 02.30 p.m. on 03.07.2016 and noted the following injuries in the accident register (Ex.P8) as follows:

- “O/E.
- 1) Laceration 5x3x2cm (R) cheek.
 - 2) Cut injury 10x3x3cm (L) hip.
 - 3) Multiple abrasions face.
 - 4) Laceration 5x2x1cm (L) frontal region scalp.
 - 5) Laceration 5x2x2cm (L) chest.
 - 6) Laceration 3x2x1cm (L) shoulder.



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Patient conscious, oriented, afebrile.

CVS-S1S2(+), RS: NVBS heard.

P/A. Soft, Vitals stable.

Admin in (41) ward.”

4.5. Thereafter, Dr.Suguna Alamelu examined Shanmugavalli (P.W.1) at 02.55 p.m., and noted the following injuries in the accident register (Ex.P9) as follows:

“O/E. 1) Laceration 5x2x2cm (L) forearm (Posterior aspect).

2) Laceration 10x4x4cm (L) abdomen.

O/E. *Patient conscious, oriented, afebrile.*

CVS-S1S2(+), RS: NVBS heard.

P/A. Soft, Vitals stable.

Admin in (41) ward.”

4.6. Since Dr.Suguna Alamelu had gone abroad, in lieu of her Dr.Arunagiri (P.W.12) was examined to prove the copies of the accident registers (Exs.P8 and P9).

4.7. On receiving intimation from the Government Hospital, Pudukkottai, Swaminathan (P.W.14), Sub Inspector of Police, Thirugokarnam Police Station, went to the Government



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Hospital, Pudukkottai, where he recorded the statement of Shanmugavalli (P.W.1), which has been marked as Ex.P1, wherein she has narrated the entire events sequentially. Based on the statement of Shanmugavalli (P.W.1), he registered a case in Thirugokarnam Police Station Crime No.147 of 2016, on 03.07.2016, at 03.00 p.m., for the offences under Sections 294(b), 324, 307 and 506(II) I.P.C., read with Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002.

4.8. Since the condition of Valarmathi (P.W.2) was little critical, they decided to shift her to a private hospital, namely, Preethi Hospitals, Madurai, where Shanmugavalli (P.W.1) and Valarmathi (P.W.2) were admitted as inpatients and were treated by Dr.Chidambaram (P.W.11) and Dr.Somasekar (P.W.15). The injury-cum-treatment certificate (Ex.P6) issued by Preethi Hospitals for Valarmathi (P.W.2) reads as under:

“The injured person was first seen by the undersigned at 10.30pm on the 03.07.2016 and the examination was conducted at the same time at Preethi Hospitals (P) Ltd., Madurai.



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When the following injuries were found and of treatment given:

Patient Conscious

X-Ray Skull and CT : Fracture of outer table of left coronal suture

CT Chest : Fracture Manubrium sternum with vertical split, Extensive pneumo-mediastinum with pneumo-hemothorax seen left with lung contusion left.

Discharged on 18.07.2016

I am of the opinion that the injury is grievous in nature.”

4.9. The injury-cum-treatment certificate (Ex.P7) issued by Preethi Hospitals for Shanmugavalli (P.W.3) states that the injuries suffered by her are simple in nature.

4.10. Investigation was taken over by Dineshkumar (P.W.16), Inspector of Police and was completed by Tamilmaran (P.W.17), Inspector of Police, Thirugokarnam Police Station. The Investigating Officer went to the place of occurrence, prepared an observation mahazar (Ex.P2) and rough sketch (Ex.P13). The appellant was arrested by Dineshkumar (P.W.16) on 03.07.2016 at



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06.00 p.m. and based on his confession statement, the admissible portion of which has been marked as Ex.P3, the first Investigating Officer seized the two-wheeler (M.O.2) and a bloodstained shirt (M.O.3) that was worn by the appellant, under the cover of a mahazar (Ex.P4). Thereafter, on the showing of the appellant, a billhook (M.O.1) was seized under the cover of a mahazar (Ex.P5).

4.11. After completing the investigation, Tamilmaran (P.W.17) filed a final report in P.R.C.No.48 of 2016, before the learned Judicial Magistrate, Pudukkottai, under Sections 498-A, 294(b), 307 and 506(II) I.P.C. against the appellant.

5. On 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, Pudukkottai, in S.C.No.123 of 2016 and was made over to the Mahila Court, Pudukkottai, for trial.

6. The Trial Court framed charges against the accused, as detailed in Paragraph No.2, supra. When questioned, the accused pleaded "not guilty". To prove the case, the prosecution examined 17 witnesses and marked 16



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exhibits and 3 material objects. When the accused was questioned under Section 313 of the Code of Criminal Procedure on the incriminating circumstances appearing against him, he pleaded “not guilty”. No witness was examined from the side of the accused nor any document was marked.

7. The Trial Court, after considering the evidence on record and hearing either side, by Judgment and Order dated 04.10.2021, convicted and sentenced the accused, as detailed in Paragraph No.3 supra. Challenging the above said conviction and sentence, the appellant has filed the present appeal.

8. Heard Mr.A.Ganapathi Subramanian, learned counsel, appearing for Mr.D.Rameshkumar, learned counsel on record for the appellant and Mr.A.Thiruvadikumar, learned Additional Public Prosecutor appearing for the respondent.

9. The entire prosecution case rests on the evidence of the injured witnesses Shanmugavalli (P.W.1) and Valarmathi (P.W.2). Shanmugavalli (P.W.1), in her evidence, has stated that she got married to the appellant six years prior to the incident; she has three daughters through the appellant; her husband (appellant) was working in Muscat; he lost his job there and came to



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his parental home in V.Kottaiyur Village; her husband (appellant) was addicted to liquor and under the influence of alcohol, he (appellant) used to beat her (P.W.1) frequently demanding money from her (P.W.1); the appellant used to ask her (P.W.1) to get money from her mother Valarmathi (P.W.2); the appellant's mother was very sympathetic towards her (P.W.1) and she advised her (P.W.1) to go to her parental home with her children and not suffer so much at the hands of the appellant; accordingly, she (P.W.1) went with her three children to Thirugokarnam Village, where her mother Valarmathi (P.W.2) was running a petty shop adjacent to her house; three days prior to the incident, the appellant came there and assaulted her (P.W.1) with a stick asking her to come and join him; when she refused to join him, he left; again, on 03.07.2016, around 02.00 p.m., when she (P.W.1) took lunch to her mother Valarmathi (P.W.2) and was serving her (P.W.2) in the petty shop, the appellant came with a billhook (M.O.1) and attacked both (P.Ws.1 and 2) indiscriminately and fled in his two-wheeler (M.O.2); she (P.W.1) was carried to the Government Hospital, Pudukkottai, where she gave a statement (Ex.P1) and thereafter, for better treatment, she (P.W.1) and her mother Valarmathi (P.W.2) got admitted in Preethi Hospitals in Madurai.



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10. The evidence of Valarmathi (P.W.2) is also on the same lines.

The eyewitnesses Aanandhan (P.W.3) and Pandurangan (P.W.4) corroborated the evidence of Shanmugavalli (P.W.1) and Valarmathi (P.W.2). It may be pertinent to state here that Shanmugavalli (P.W.1) and Valarmathi (P.W.2) were examined in chief on 25.09.2017, but, they were not cross-examined on the same day. They were recalled and cross-examined on 26.08.2019, nearly two years after they were examined in chief. In the cross-examination of these injured witnesses, the defence was not able to make any serious dent. It was suggested to them that when the appellant came to his mother-in-law's (P.W. 2's) house on the fateful day, he was assaulted by Parthiban (P.W.5), uncle of Shanmugavalli (P.W.1), with a billhook and that had mistakenly hit Shanmugavalli (P.W.1). As regards Valarmathi (P.W.2), it was suggested to the witness that in the confusion, she fell down and sustained injuries by the glass pieces spread on the floor. It was further suggested that they threw chilli powder on the appellant and attacked him. The fact that these two witnesses, Shanmugavalli (P.W.1) and Valarmathi (P.W.2) were injured due to the attack of the appellant has been satisfactorily established through the medical witness as both of them were immediately carried by the auto drivers, Prasath (P.W.6) and Kesavan (P.W.7) to the Government Hospital,



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Pudukkottai, wherefrom, they were shifted to Preethi Hospitals, Madurai. The injuries suffered by Valarmathi (P.W.2) were indeed grievous in nature.

11. Mr.P.Ganapathi Subramanian, learned counsel appearing for the appellant, submitted that the injury-cum-treatment certificates (Exs.P6 and P7) issued by Preethi Hospitals do not disclose the details of the injuries that were suffered by Shanmugavalli (P.W.1) and Valarmathi (P.W.2) and therefore, it cannot be said that Valarmathi (P.W.2) would have suffered grievous injuries as testified by Dr.Chidambaram (P.W.11) and Dr.Somasekar (P.W.15).

12. We are unable to countenance this submission, because the facts of the case show that the appellant has been continuously beating his wife Shanmugavalli (P.W.1), on account of which, she had no other option, but to go to her natal home with the children. The appellant came from V.Kottaiyur Village in his motorcycle (M.O.2) armed with a billhook (M.O.1), which indeed shows that he had the intention to get rid the victims. The brutal nature of the attack mounted on the two hapless women in broad daylight in the petty shop of Valarmathi (P.W.2), as testified by them, clearly indicates that it was an attempt to murder and nothing short of it.



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Fortunately, by sheer luck, these two women, especially Valarmathi (P.W.2), escaped death. There is no other motive for Shanmugavalli (P.W.1), Valarmathi (P.W.2), Aanandhan (P.W.3) and Pandurangan (P.W.4) to falsely implicate the appellant in this case. It is trite that the evidence of an injured witness has to be kept at a higher pedestal as alluded to in the Supreme Court Judgment in ***Abdul Sayeed vs. State of Madhya Pradesh [(2010) 10 SCC 259]***, wherein in Paragraph No.30, it is held as follows:

“30.The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.”

13. Mr.P.Ganapathi Subramanian, learned counsel appearing for the appellant, further contended that there is no evidence to sustain the conviction for the offence under Section 506(II) I.P.C., as none of the witnesses



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WEB COPY has stated anything about the criminal intimidation said to have been made by the appellant.

14. The charges for the offence under Section 506(II) I.P.C., have been framed for criminally intimidating Shanmugavalli (P.W.1), whereas the evidence shows that the appellant intimidated the others, who came to rescue the injured Shanmugavalli (P.W.1) and Valarmathi (P.W.2). Hence, there is sufficient force in the submission of the learned counsel for the appellant.

15. As regards the other charges, namely, Sections 498-A, 307 (2 counts) and 324 I.P.C., we have no hesitation in holding that the prosecution has proved the case beyond doubt.

16. Coming to the question of sentence, Mr.P.Ganapathi Subramanian, learned counsel for the appellant, contended that the appellant wanted his wife Shanmugavalli (P.W.1) to join him, but his mother-in-law Valarmathi (P.W.2) appeared to be an obstacle and therefore, the appellant targeted his mother-in-law Valarmathi (P.W.2) more than his wife Shanmugavalli (P.W.1).



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17. In our opinion, the appellant had come with the intention of getting rid of both the mother Valarmathi (P.W.2) and her daughter Shanmugavalli (P.W.1), but the evidence of Shanmugavalli (P.W.1) shows that the appellant has been asking her to join him at V.Kottaiyur. Taking into consideration the facts and circumstances of the case, we are of the view that the sentence of life imprisonment for the offence under Section 307 I.P.C., could be reduced to twelve years rigorous imprisonment. Insofar as the conviction and sentence imposed on the appellant for the offences under Sections 498-A and 324 I.P.C., they are liable to be confirmed. The appellant is acquitted of the charge under Section 506(II) I.P.C.

In fine,

- This criminal appeal is partly allowed;
- The Judgment and Order dated 04.10.2021, in S.C.No. 123 of 2016, on the file of the Sessions Judge (FAC), Mahila Court, Pudukkottai, is hereby modified;
- The conviction imposed on the appellant by the Trial Court for the offence under Section 307 I.P.C., (2 counts) is confirmed, but the sentence is reduced



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from life imprisonment to twelve (12) years rigorous imprisonment. The fine amount therefor is confirmed.

- The conviction and sentence imposed on the appellant for the offences under Sections 498-A and 324 I.P.C. are hereby confirmed.
- The appellant is acquitted of the charge under Section 506(II) I.P.C.
- The sentences shall run concurrently.

[P.N.P., J.] [R.H., J.]

23.06.2022

Index : Yes / No
Internet : Yes / No

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To:

- 1.The Sessions Judge (FAC),
Mahila Court, Pudukkottai.
- 2.The Inspector of Police,
Thirugokarnam Police Station,
Pudukkottai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Record Keeper,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.



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