

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.09.2023

DELIVERED ON : 04.10.2023

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.A.No.230 of 2022

State represented by
The Inspector of Police
Meensurutti Police Station
Ariyalur District
(Meensurutti P.S. Cr.No.60/2014)

... Appellant

Vs.

1. A. Thamilarasan

2. Mallika

... Respondents

PRAYER: Criminal Appeal filed under Section 378(i) of Criminal Procedure Code, 1973 against the judgment dated 13.02.2019, passed by the learned Assistant Sessions Judge, Jayamkondam, Ariyalur District, in S.C.No.16 of 2016.

For Appellant : Mr.S. Sugendran
Additional Public Prosecutor.

For Respondents : Mr. V. Perarasu

JUDGMENT

The present appeal is filed by the State against the judgment dated 13.02.2019, passed by the learned Assistant Sessions Judge, Jayamkondam, Ariyalur District, in S.C.No.16 of 2016, acquitting the accused of the offences under Sections 341, 294(b), 506(i) and 307 IPC.

1. The incident

1.1. A 14 year old girl Kamaladevi studying in IX standard in a school in Aiyappan Naickenpettai Village, was waylaid and attacked on her way to school on 24.02.2014 at about 9.30 a.m. She was intercepted by her cousin Tamilarasan, the accused (A1), who was armed with a knife. She was first hurled with abuses and threats for her refusal to marry him. The victim girl (P.W.1) Kamaladevi was first approached by her paternal aunt Mallika (A2), who wanted the victim to marry her son, the accused, and when her father was told about it he had flatly refused stating that she was still a child (14 years) and that she was studying. This infuriated the paternal aunt (A2) Mallika who instigated her son to attack her.

1.2. On the fateful day, the accused Tamilarasan attacked the victim girl with a knife causing injuries on the left side of head, eyebrows, palm (when she tried to fend herself) and her right leg. The accused has exclaimed that she should not be in this World when she has not assented for marrying him. He fled the scene when one Kumar (P.W.2) and one Veerasami (P.W.3) tried to intervene. The victim was rushed to the Jayamkondam Government Hospital in an 108 Ambulance from where she was referred to Thanjavur Medical College Hospital.

2. The Medical treatment

2.1. Dr. Senthilvel (P.W.7) attended to her and prepared the Accident Register (Ex.P5) which contained the following injuries:

- 1) 3x1x0.5 cm laceration in left temporal region
- 2) 3x0.5/0.5 cm laceration in nose
- 3) 1x0.5x0.5 cm lateral side of left eyebrow
- 4) 2x1x0.5 cm laceration in lower end right leg
- 5) 4x1x1 cm laceration in left palm
- 6) 4x1x0.5 cm laceration in left wrist joint
- 7) 2x1x0.5 cm laceration in lower end of left forearm.

The victim was referred to Thanjavur Medical College Hospital, for further treatment. She was admitted as an inpatient in the hospital on 26.02.2014 and was discharged on 04.03.2014. Dr. Sureshkumar (P.W.11) who attended to her and treated her mainly for the head injury (left temporal contusion) opined it as a grievous injury which was noted by Dr.Senthilvel (P.W.7) on the reverse of the Accident Register copy and he also opined that the injury was grievous in nature.

3. The investigation

3.1. Thiru.Saravanan (P.W.10), Sub Inspector of Police, Meensurutti Police Station, on receipt of information from Jayamkondam Government Hospital, visited the hospital and took the statement of the victim girl Kamaladevi, reduced it into writing as Ex.P.1, registered an FIR (Ex.P9) in Crime No.60/2014 against the accused for the offences under Sections 341, 294(b), 506(i) and 307 IPC and sent the same to Judicial Magistrate Court, Jayamkondam.

3.2. Thiru.Velusamy(P.W.12), Inspector of Police, Meensurutti police station, took up the investigation on the same day and visited the scene of occurrence at 1.30 p.m., prepared an observation mahazar (Ex.P2) and a rough sketch (Ex.P10) in the presence of witnesses Ezhilarasan (P.W.9) and Mahalingam (P.W.5) and also recorded their statements. He also recorded the statements of the victim Kamaladevi, Kumar (P.W.2), Veerasami (P.W.3), Kannagi (P.W.4) and Pappathi (not examined). On knowing that there was truth in their statements, he apprehended Mallika (A2) and Tamilarasan (A1) and arrested them on the same day at 4 p.m. Tamilarasan had confessed the crime in the presence of Ramalingam (P.W.8) and Gopalakrishnan (P.W.6). The accused also confessed the place where he had hidden the knife (M.O.1) used in the attack and the knife was recovered from behind his house at 5.30 p.m. the same day in the presence of Ramalingam (P.W.8) and Gopalakrishnan (P.W.6) under the cover of seizure mahazar (Ex.P12). The accused were remanded to judicial custody by the jurisdictional Magistrate M.O.1 was sent to the court under Form 95 (Ex.P13). P.W.12 recorded the statement of Dr.Senthilvel ((P.W7) and

Dr.Sureshkumar (P.W.11) on 27.05.2014 and also that of Thiru. Saravanan (P.W.10), Sub Inspector of Police. After completing investigation , he filed a final report on 26.07.2014 against both the accused for the offences punishable under Sections 341, 294(b), 506(i) and 307 IPC.

4. The Trial in the court

4.1. The Judicial Magistrate Court, Jayamkondam, which received the FIR and the related documents, after furnishing copies of records to the accused under Section 207 CrP.C, committed the case to the Court of Principal District and Sessions Judge, Ariyalur, under Section 209 Cr.P.C. since the offence under Section 307 IPC is exclusively triable by court of sessions. The Principal District and Sessions Judge, Ariyalur, took the case on file in S.C. No.16/2016 and made over the same to the Assistant Sessions Judge, Jayankondam, Ariyalur District.

4.2 The Assistant Sessions Court, Ariyalur, conducted the trial after framing charges against the 1st accused for the offences under Sections 341, 294(b) and 307 IPC and the 2nd accused for an offence under Section

506(i) IPC. They had denied the charges and pleaded not guilty.

4.3. The prosecution examined P.W.1 to P.W.12 and adduced Ex.P1 to Ex.P13 along with M.O.1, the knife, used in the attack. P.W.1, the victim girl, Kamaladevi, in her deposition stated that she is a student of IX standard in the local Government School and that on 24.02.2014 she was attacked by the accused, Tamilarasan, her cousin (paternal aunt's son) with knife causing grievous injuries on her head, eyebrows, palm and leg. She has described the attack and how the accused fled after inflicting the injuries on her once he saw someone approaching to help her. According to her it was one Kumar (P.W.2) and one Veerasami(P.W.3) who tried to rescue her. She was taken to the Jayamkondam Government Hospital immediately where she was enquired by the police of Meensurutti police station who recorded her complaint statement (Ex.P1) and registered an FIR (Ex.P9) and acted upon it.

4.4. Kumar (P.W.2), who is an eyewitness to the attack deposed that he was returning home in his motorcycle after dropping his daughter Ramya

in the school when the attack took place. Veerasami (P.W.3), deposed that on hearing the cries of the victim girl he had rushed to the place of occurrence and the accused had threatened him with the knife after the attack. P.W.4, Kannagi, the mother of the victim girl rushed to the place of attack once she was informed and rushed her daughter to the Jayamkondam Government Hospital. Her name finds a place in the Accident Register ((Ex.P5). P.W.5, Mahalingam and P.W.9, Ezhilarasan are the two witnesses who deposed that they were witnesses to the preparation of Observation Mahazar and rough sketch by the police on 24.02.2014. Both of them are residents of the same village. Gopalakrishnan (P.W.6), and Ramalingam (P.W.8) are the two witnesses of the arrest of the accused and the confession statement made by A1. They also witnessed the recovery of the knife used for the attack. Dr. Senthilvel (P.W.7) deposed on the nature of the injuries inflicted on the victim girl. She was treated by him and referred to Thanjavur Medical College Government Hospital. He prepared the Accident Register (Ex.P5) and he deposed that the head injury was grievous in nature. Thiru.Saravanan (P.W.10), the Sub Inspector of Police, Meensurutti Police Station, deposed that he got information from

Jayamkondam Government Hospital regarding the admission of the victim with injuries sustained in an attack by the accused. He visited the hospital and recorded the statement of the victim, reduced it into a complaint (Ex.P1) and registered an FIR (Ex.P9). Dr. Sureshkumar (P.W.11) who is a neurosurgeon in Thanjavur Government Medical College Hospital has deposed that when the victim was referred to him for further medical examination, arranged for CT scan of brain and found bleeding in the brain and concluded the head injury as grievous. His certificate was marked as Ex.P6. Thiru. Velusamy (P.W.12), the Inspector of Police, Meensurutti Police Station, the Investigation Officer, deposed on the investigation done by him leading to the arrest of the accused and the filing of the final report after investigation.

4.5. The accused were questioned under Section 313 Cr.P.C. regarding the circumstances and evidence presented by the prosecution against them. They denied the charges. The plea of the defence was that there was a previous enmity between the two families on some financial transaction and the victim was used as a ploy to implicate them. It was also

contended that A1 was not in the village when the incident happened and he had an alibi. However, no evidence was adduced on their side nor any witness was examined on the defence side.

4.6. The trial court acquitted both the accused by categorically concluding that the guilt of the accused was not proved beyond reasonable doubt. The trial court observed that the prosecution has not produced the CT scan report which made Dr. Sureshkumar to conclude that the head injury was grievous in nature. The trial court also concluded that the prosecution ought to have substantiated the contention that had the grievous injury resulted in death, the accused would have been charged for murder. Thus the trial court concluded that the prosecution has failed in proving the guilt of the accused beyond reasonable doubts.

The present appeal is against the acquittal.

5. The Appeal

The State represented by the Inspector of Police, Meensurutti Police Station, has filed this appeal. The grounds of the present appeal are that the trial court had not accorded any importance to the deposition of P.W.1, the

victim girl herself. It was also pointed out that oral evidence of P.W.1 to P.W.3 were corroborative and this also was ignored by the trial court. The third ground was that the judgment of the trial court was full of assumptions and presumptions instead of a thorough analysis of the fact presented by the prosecution.

6. The argument in the appeal

6.1. Mr. S.Sugendran, learned Additional Public Prosecutor would contend that it was a fit case for appeal because the decision of acquittal was a perverse one with no basis whatsoever. He added that it was not the verdict which relied on the evidence of alibi or a glaring contradictions in the depositions of the eye witnesses. He further contented that the injured victim was the P.W.1 and she had withstood the testimony of cross examination. It was also contended that P.W.2 was another eyewitness to the incident and P.W.3 had deposed the presence of the accused with the knife, the weapon used for the attack on the victim. The further contention of the Additional Public Prosecutor is that the verdict of the trial court lacked in convictions and bad in law. He pleaded for setting aside of the

trial court's judgment.

6.2. Mr.V. Perarasu, learned counsel for the respondents contended that there is absolutely no evidence to show that the family of the accused requested the victim's family to give the victim in marriage to the 1st accused and that in the copy of the Accident Register (Ex.P5) it is alleged that only one known person attacked her with a knife. According to him, the name of the accused has not even been mentioned before the Doctor even though the accused and the victim are closely related to each other. It is his further submission that though P.W.1 in her deposition had stated that the incident took place when she was proceeding to her school on 24.02.2014, in the rough sketch (Ex.P10), the school has not been shown and the Investigation Officer has not also explained the same. According to the prosecution, the Doctor in the Government Hospital, Jayamkondam, referred the victim to the Thanjavur Medical College Hospital for further treatment and though the Discharge Summary (Ex.P6) of the Thanjavur Medical College Hospital, Thanjavur, shows that the victim was admitted on 26.02.2014 and discharged on 04.03.2014, there are no records to show that she was

admitted in the Government Hospital, Jayamkondam from 24.02.2014 to 26.02.2014. According to the learned counsel for the respondents/accused, there was a dispute over financial transaction between the family of the accused and the victim, on account of which a false case was foisted against the accused. He would further contend that the prosecution has miserably failed to prove the guilt of the accused beyond reasonable doubts and therefore the trial court had rightly given the benefit of doubt to the accused.

7. Conclusion

7.1. This is a case of a minor girl being attacked in a violent manner causing grievous injuries. The girl (P.W.1) is the defacto complainant. As P.W.1, she withstood the testimony of cross examination. There was no reason to disbelieve her. The nature of injuries sustained by her have been certified by two doctors. One doctor who treated her first in the Jayamkondam Medical College Hospital and then a Specialist (Neuro Surgeon) in the Thanjavur Government Hospital. A perusal of the documentary evidence adduced on behalf of the prosecution shows that

there is no CT scan report. However, Dr.Sureshkumar (P.W.11) had deposed that the CT scan report revealed the bleeding in the brain of the victim. The head injury is not an invented one. The victim girl was rushed to the Jayamkondam Government Hospital immediately after the assault. She had seen the assailant. Veerasamy (P.W.3), also had confronted the accused while trying to help the victim girl. The involvement of the accused in the attack is proved beyond reasonable doubts.

7.2. Now the nature of head injury. Head injury was not the only injury sustained by the victim. She had also sustained other injuries on the forehead, above the left eyebrow, left palm and right leg. Out of the many injuries only the head injury was diagnosed as a grievous one. The accused had taken a plea that he was not present in the scene of occurrence at the time of the incident. There was also a plea that there was previous enmity between the two families due to financial transaction and that it was the reason for falsely implicating them.

7.3. It is true that there were minor contradictions in the deposition of P.W.2 and P.W.3. They are insignificant and not fatal to prosecution case. The victim girl was just 14 years old when she was attacked. The 1st accused is her cousin. If the previous enmity version is to be believed, it is a double edged sword and would help the prosecution too. The injuries sustained by the victim girl cannot be rebutted. She is the best witness and the prime witness. The incident occurred in the morning at 9.30 a.m. when she was going to the school. It was not a secluded place. The house of Veerasamy (P.W.3) was very near the place where the attack took place. There were other houses too in the vicinity. P.W.2 was an eyewitness to the incident. This again cannot be rebutted as he had withstood the testimony of cross examination effectively. P.W.3 also saw the assailant who reportedly threatened him. The accused had intercepted the victim girl. What he spoke to her need no separate evidence. It is convincing. Strangely, the trial court disbelieved her version. It went ahead stating that the CT scan report was not filed. The trial court could have summoned it if it had any doubt. The neurosurgeon had deposed in the court regarding the nature of injury in the head as grievous. Even assuming it is not grievous

and the court is not satisfied with the evidence of the doctor (neurosurgeon), the fact that there was an injury implicated on the head of the victim is certain. It was inflicted by the accused as stated by P.W.1, the victim. Acquitting the accused for the deadly assault defies logic. The accused was armed with a knife. He attacked the victim violently going by the number of injuries sustained by her. Such assault, could have resulted in death. The prosecution was right in contending that had the head injury resulted in death, the charge would have been one of murder. The accused have taken a defence of previous enmity. As already stated earlier, it is a dangerous plea as it can be used against them too.

7.4. Mr.V. Perarasu, learned counsel for the respondents/accused contended that there are no records to show that the victim girl was admitted in the Government Hospital, Jayamkondam, from where she was referred to Thanjavur Medical College Hospital. As already observed, the Accident Register (Ex.P5) issued by the Government Hospital, Jayamkondam, clearly shows that immediately after the attack the victim was rushed to the Government Hospital, Jayamkondam and there after she was referred to

Thanjavur Medical College Hospital, for further treatment.

7.5. Mr.V.Perarasu, learned counsel for the accused further argued that when P.W.1 had deposed that the 1st accused (1st respondent) had attacked her with a knife when she was proceeding to her school, in the rough sketch, the school is not shown. It is not the case of the prosecution that she had almost reached the school. Therefore the contention of the learned counsel for the accused that the school has not been shown in the rough sketch cannot be accepted. The further contention of the counsel for the respondents is that in the Accident Register, the victim had stated before the Doctor that she was attacked by a known person and that she has not mentioned the name of the accused. It is settled law that the statement made before the Doctor is only a previous statement of any witness and it can be used only for contradicting the said witness. In the instant case, P.W.1 has not been cross examined on this aspect. Moreover, the victim was attacked indiscriminately and she was profusely bleeding as is seen from the number of injuries on her body and it is too much to expect the victim to mention the name of the person to the Doctor before getting treatment. The evidence of

P.W.1 is cogent and she has narrated the sequence of events with clarity and there is no good ground to discard her evidence.

7.6. However, the role of A2, the mother of the prime accused is not clear. It has not also been proved by the prosecution. The charge of 506(i) IPC fails against her. But the A1, is guilty of the offences under Sections 341, 294 (b) and 307 IPC. I do not find any reason as to why to disbelieve the versions of the victim girl. She was just 14 years old and such an incident would have cost her life. She had a miraculous escape. The trial court definitely erred in its conclusion. I find every reason to reverse the decision of the trial court.

8. In the result,

- i. The appeal is partly allowed.
- ii. The 1st accused, namely, A.Thamilarasan, is found guilty of the offences under Sections 341, 294 (b) and 307 IPC.
- iii. The charge of 506(i) IPC against the 2nd accused, namely, Mallika, has not been proved by the prosecution and therefore, she is acquitted

from the above charge. The second accused shall be released forthwith, if no other case is pending against her.

- iv. To the above extent, the judgment dated 13.02.2019, passed by the learned Assistant Sessions Judge, Jayamkondam, Ariyalur District, in S.C.No.16 of 2016, is partly confirmed.
- v. Since the 1st accused is found guilty of the offences under sections 341, 294 (b) and 307 IPC, the case is posted to 05.10.2023 for questioning him with regard to the sentence to be imposed upon him.
- vi. The Inspector of Police, Meensurutti Police Station, Ariyalur District, is directed to produce the 1st accused, namely, A.Thamilarasan, before this Court on 05.10.2023 at 10.30 a.m.

04.10.2023

bga

Index : yes/no

Speaking /Non speaking Order

Note: Issue order Copy today.

To

1. The Assistant Sessions Judge, Jayamkondam, Ariyalur District.
2. The Superintendent of Jail, Central Prison, Trichy.
3. The Superintendent of Jail, Central Women Prison, Trichy.

Crl.A.No.230 of 2022

R.HEMALATHA, J.

bga

Pre-Delivery Judgment in
Crl.A.No.230 of 2022

04.10.2023

Crl.A. No.230 of 2022

R. HEMALATHA, J.

In compliance of the Judgment of this Court dated 04.10.2023, the first accused namely A. Thamilarasan is produced by the Inspector of Police, Meensurutti Police Station, Ariyalur District today i.e., 05.10.2023 at 10.35 a.m. The first accused has been questioned regarding the sentence to be imposed on him.

2. கேள்வி :- உமக்கு வழங்கப்பட இருக்கும் தண்டனை குறித்து நீர் என்ன கூற விரும்புகிறீர்?

விடை :- எனக்கு இரண்டு முறை கை உடைந்து அறுவை சிகிச்சை நடந்துள்ளபடியால் குறைந்தபட்ச தண்டனை அளிக்குமாறு மிகவும் தாழ்மையுடன் கேட்டுக்கொள்கிறேன்.

குற்றவாளி கையொப்பம்

3. Today, Mr.S.Sugendran, learned Additional Public Prosecutor for the appellant / State and Mr. V. Perarasu, learned counsel for the accused appeared before this Court.

4.The nature of offences which have been proved by the prosecution is grievous and the accused is liable for a deterrent sentence. Forcing a girl to marry and if the overtures are resisted and declined attacking the girl is condemnable. Such instances have to be curbed and therefore I intend to impose the following sentence which is likely to deter such potential offenders. Therefore, I sentence the 1st accused, namely, A.Thamilarasan, as given in the tabular column below.

Conviction	<i>Sentence</i>
341 IPC.	Simple Imprisonment for a period of one month.
294 (b) IPC	Simple Imprisonment for a period of one month.
307 IPC	Rigorous Imprisonment for a period of 10 years and a fine of Rs.1,00,000/- (Rupees one lakh only), in default, to undergo Rigorous imprisonment for a period of one year. The sentence passed under Sections 341, 294(b) and 307 IPC shall run concurrently.

The entire fine amount of Rs.1,00,000/- (Rupees one lakh only) shall be paid to the the victim as compensation under Section 357 Cr.P.C. The period of sentence already undergone by the accused shall be set off under Section 428 Cr.P.C.

5.Registry is directed to prepare committal warrant against the 1st accused, namely, A.Thamilarasan and issue copy of the judgment by today itself (**i.e, on 05.10.2023**).

6.The Inspector of Police, Meensurutti Police Station, Ariyalur District, is directed to secure the custody of the 1st accused to execute the period of imprisonment.

05.10.2023

Copy to: The Superintendent of Prison,
Central Prison, Trichy.

தீர்ப்பு நகலை பெற்றுகொண்டேன்.

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