



Crl.A.No.375 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

Crl.A.No.375 of 2019

Balu @ Balamurugan

...Appellant

Vs.

The State represented by
The Inspector of Police,
Pallapatti Police Station,
Salem District.

...Respondent

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to set aside the judgment of conviction and sentence imposed on the appellant by the learned Sessions Judge, Mahila Court, Salem, Salem District on 22.04.2019 made in S.C.No.351 of 2016.

For Appellant : Mr.P.Govindarajan
for Mr.G.Saravanan

For Respondent : Mr.A.Gokulakrishnan,
Additional Public Prosecutor



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JUDGMENT

(Judgment of the Court was made by M.S.RAMESH, J.)

Through a judgment passed by the learned Sessions Judge, Mahila Court, Salem, on 22.04.2019 made in S.C.No.351 of 2016, the appellant/accused was found guilty of having committed the offence under Sections 341 and 307 of the Indian Penal Code (IPC), together with Section 4 of Tamil Nadu Prohibition of Harassment of Women Act and sentenced him to undergo imprisonment in the following manner:-

(i) for the offence under Section 341 IPC, the accused was sentenced to undergo one month simple imprisonment and to pay a fine of Rs.500/-, in default of which to undergo one week simple imprisonment.

(ii) for the offence under Section 307 IPC, the accused was sentenced to undergo life imprisonment and to pay a fine of Rs.1,00,000/-, in default of which to undergo six months simple imprisonment.

(iii) for the offence under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, the accused was sentenced to undergo three years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default of which to undergo six months simple imprisonment.

All the sentences were ordered to run concurrently. The aforesaid



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judgement of the trial Court is under challenge in the present appeal.

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2. For the sake of convenience, the parties in the appeal are addressed according to their ranks before the trial Court.

3.1. The brief case of the prosecution is as follows:-

3.2. The accused, who is an Auto Driver, is a neighbour of Raman (P.W.1) and his wife Deepa (P.W.2). The accused had made physical advances with sexual intent to P.W.2 on several occasions. P.W.2 had reported about these sexual advances to her husband (P.W.1) and in order to avoid him, both P.W.1 and P.W.2 had shifted their residence about one week prior to the incident elsewhere.

3.3. On 29.12.2013, when P.W.2 was returning from her work, the accused had waylaid her and threatened her with dire consequences, since she had deceived him by shifting her house. P.W.2 had reported about this incident to P.W.1 on the same night.

3.4. On 30.12.2013, before going to her work, P.W.2 had asked P.W.1 to escort her while returning from her work place, fearing harm from the accused.

3.5. On the same day, when P.W.2 was returning from her work, at



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about 07.00 P.M., when the accused had waylaid her, she confronted him stating that she would raise an alarm and call everyone there. Instantly, the accused took out a knife which he concealed in his hip and indiscriminately attacked P.W.2 on her neck, back, stomach and hip.

3.6. P.W.1, who was coming in the opposite direction to escort P.W.2, saw the incident and when he ran to protect her, the accused attempted to attack P.W.1 also, but P.W.1 thwarted the assault and fell down. Thereafter, the accused fled the scene, leaving P.W.2 on the ground, who was bleeding profusely.

3.7. Based on the complaint given by P.W.1, the prosecution had charge sheeted the accused for having committed the offences under Sections 341, 307 IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act.

4. To substantiate the charges, the prosecution had examined 12 witnesses P.W.1 to P.W.12 and marked 13 documents Ex.P.1 to Ex.P.13, apart from the material objects M.O.1 to M.O.6. On the side of the accused, one witness D.W.1 was examined and one document Ex.D.1 was marked.

5. The trial Court, on the strength of the oral and documentary



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evidences before it, had found the accused guilty of the charged offences and sentenced him to imprisonment, as stated hereinbefore.

6. The learned counsel appearing for the accused submitted that though the prosecution claims that the colleague of P.W.2, namely Selvi (P.W.4), had accompanied P.W.2 on the day of occurrence and was projected as an eye witness to the incident, she had not spoken about the other witness, namely P.W.1's presence in the scene and therefore, the evidences of both P.W.1 and P.W.4 requires to be discarded. He further submitted that P.W.2 claims that her husband had come behind her, whereas P.W.1 claims to have come in the opposite direction when the alleged incident took place. Pointing out to these controversies, he claimed that P.W.1's testimony that he had witnessed this occurrence, casts a serious doubt. By drawing our attention to the evidence of D.W.1, the learned counsel submitted that at the time of occurrence, which was about 07.30 P.M., there was an electricity supply failure, which fact has been established through this witness, as well as Ex.D.1 and therefore, there was no possibility for P.W.1 and P.W.4 to have identified. Thus, there is a serious doubt as to whether P.W.2 had also clearly seen the accused, in view of the power failure. With such submissions, the learned



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counsel appearing for the accused sought for setting aside the judgment of the trial Court.

7. Per contra, the learned Additional Public Prosecutor submitted that P.W.2 and P.W.1 have narrated the entire episode commencing from the earlier incidents of the accused attempting to approach P.W.2 with sexual intention, as well as the earlier incident of 29.12.2013, when he had threatened P.W.2 with dire consequences. Apart from the prior incident, he further submitted that the oral testimony of both P.W.2 and P.W.1 are so cogent and clear, without any material contradictions and therefore, the trial Court had rightly appreciated their evidences and had come to the conclusion. With regard to the other eye witness, namely P.W.4, is concerned, the learned Additional Public Prosecutor submitted that the fact that P.W.4 did not see P.W.1 in the scene has no relevance, since P.W.1 himself claims that he came from the opposite direction to escort P.W.2 when he saw the occurrence and further from the testimony of P.W.4 that when the accused attempted to assault her, P.W.2 had ran away and she thereafter went behind her and saw the accused attacking her, at which point of time, she fainted. With regard to the absence of power supply, he submitted that the accused is well known to P.W.1,



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P.W.2 and P.W.4 and even assuming that there was no power supply, it cannot be concluded that these three witnesses will not be in a position to identify him.

8. We have given our careful consideration to the submissions made by the respective counsels.

9. P.W.1 is the husband of the victim-P.W.2. In her oral testimony, P.W.2 has categorically stated that she was often approached by the accused with a sexual intent, when they were residing near his house. She had also reported about this conduct of the accused to her husband. P.W.1, in his oral testimony, has also reiterated the same facts about the behaviour of the accused and about P.W.1 reporting it to him. Both of them, in a cogent manner, had narrated the earlier day's incident of 29.12.2013, when the accused had threatened her with dire consequences and the fact that P.W.2 had asked P.W.1 to accompany and escort her while she returned from her work place next day. We do not find even a single discrepancy in these statements of the two witnesses.

10. Insofar as the assault is concerned, while P.W.2 categorically



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testifies each and every assault caused by the accused on her neck, back, stomach and hip, P.W.1 also ratifies each and every assault on P.W.2.

Both these witnesses have also spoken about the accused fleeing away from the scene of occurrence, after assaulting P.W.2. Thus, when the evidences of P.W.1 and P.W.2 are closely looked into and compared, we find that both these witnesses cogently speak about the motive, the earlier occurrence, as well as the commission of the crime on 30.12.2013.

11. P.W.4 is a co-employee of P.W.2, who usually returns back from work place together. On the day of the incident, P.W.4 also speaks about the accused waylaying both of them and the threat caused by him to P.W.2. According to her, when the accused had threatened P.W.2, she was standing behind P.W.4 and after warning the accused to refrain from approaching her, she ran away in the front direction. It is P.W.1's clear statement that on the earlier night hours of 30.12.2013, he was on the way to meet and escort P.W.2, when he saw her coming in the front and the accused attacked her at that time.

12. The learned counsel for the accused made a faint attempt to



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draw out a contradiction from the statement of P.W.4 that she had confirmed that she had seen P.W.1 in the scene of occurrence and therefore raised a doubt with regard to P.W.1's presence at all. We are unable to draw such an inference from the contradiction pointed out by the learned counsel.

13. When it is the prosecution's case that P.W.1 was walking in the opposite direction to meet his wife when the assault took place, there was every possibility for P.W.4 in failing to notice the presence of the accused. P.W.4 has also stated that when the accused started to threaten P.W.2, she cautioned him and ran away in the forward direction. Owing to this, there is also a possibility that P.W.4 could not have seen P.W.1 at the relevant point of time. Even otherwise and assuming that there is a contradiction in the evidence of P.W.4 in this regard, it is not such a material contradiction, so as to discard and ignore all the other cogent statements made by P.W.2 and P.W.1 with regard to motive, earlier incidents and the commission of offence at the dreadful day. Thus, we are unable to endorse the grounds raised by the learned counsel for the accused in this regard.



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14. After the incident had taken place, P.W.1 immediately took his wife P.W.2 to the General Hospital in an ambulance and admitted her as an inpatient. Thereafter, he had given a written complaint (Ex.P.1) to the Police at 11.00 P.M. on 30.12.2013, based on which, an FIR (Ex.P.8) was registered in Crime No.908/2013, which was transmitted to the jurisdictional Magistrate at 01.30 A.M. on 31.12.2013.

15. At the time of admission, P.W.9 who is the doctor, who rendered first aid and the subsequent treatment to P.W.2, had registered the incident in the accident register (Ex.P.6) and issued the medical report (Ex.P.7). In his oral evidence, P.W.9 had referred to four injuries, namely (i) a cut injury on the left chest measuring 5x5x3 cms; (ii) a cut injury on the neck measuring 10x5x5 cms; (iii) a cut injury on the left hand measuring 3x2x2 cms; and (iv) a cut injury on the stomach measuring 10x7x1 cms. All these four injuries tallies with the statements of P.W.1 and P.W.2, whose oral testimonies speak about the overt acts of the accused with regard to the assault on P.W.2. P.W.7 is the daughter of P.W.1 and P.W.2, who also speaks about the earlier approaches made by the accused to P.W.2 and the threat caused by him on 29.12.2013, as informed to her by her mother (P.W.2). These statements are ratified and



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corroborated with the evidences of P.W.1, P.W.2 and P.W.4 and therefore, the motive for the attack by the accused on P.W.2, also stands established.

16. P.W.10 is the Sub-Inspector of Police, who had registered the FIR on 30.12.2013 at 11.00 P.M. A perusal of the FIR would reveal that the incident that had occurred around 07.00 P.M. has been reported around 11.00 P.M. on the same day and within 1½ hours at 01.30 A.M, the FIR was transmitted to the jurisdictional Magistrate and hence, there is no inordinate delay in either reporting the offence or transmitting the same to the Magistrate.

17. P.W.11 and P.W.12 are the Inspectors of Police, who had conducted the investigation. According to P.W.11, after registration of the complaint, he had gone to the scene of occurrence and prepared a rough sketch (Ex.P.9). Thereafter, under a seizure mahazar (Ex.P.10), he had collected samples of earth, with and without blood stains. He then collected blood stained clothes of P.W.2 and P.W.1 under Ex.P.11 and forwarded the same to the jurisdictional Magistrate. On 31.12.2013, he had arrested the accused at 07.00 A.M., who had voluntarily confessed to



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the crime. The admitted portion of his confession statement was marked as Ex.P.12. Based on the confession, the accused had led the Investigating Officer and handed over the concealed blood stained knife (M.O.5) and his blood stained shirt (M.O.6), which was forwarded to the Magistrate's Court under Form-91 (Ex.P.13). The investigation was then handed over to P.W.12, who had filed the charge sheet.

18. From the evidence of P.W.11, the statement made by him with regard to the receipt of complaint (Ex.P.1) and the registration of the complaint in FIR (Ex.P.8), corroborates with the oral testimony of P.W.1 of having given the complaint within a very short time from the incident. Likewise, the recovery of the blood stained weapon from the accused, based on his confession, also stands corroborated with the evidences of P.W.1 and P.W.2, who speak about the weapon (M.O.5).

19. On an overall appraisal of these evidences, we have no hesitation to come to the inevitable conclusion that the accused had attacked P.W.2 with intention, as well as knowledge that such an attack may result in death and therefore, the finding of the trial Court that he was guilty of having committed the offence under Section 307 IPC,



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cannot be found fault with.

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20. The learned counsel for the accused had placed reliance on the evidence of D.W.1, who is the Assistant Executive Engineer of the Tamil Nadu Electricity Board, Salem, as well as Ex.D.1, which is the daily log register, to establish that between 07.12 P.M. and 07.17 P.M. of 30.12.2013, there was no power supply and therefore, P.W.1 and P.W.2, including P.W.4, could not have identified the assailant. We cannot place much reliance on the evidence of D.W.1 for the simple fact that during the cross examination, he had admitted that there was power supply at 07.30 P.M. on 30.12.2013, at which point of time, the incident had taken place, according to the prosecution.

21. This apart, we have also taken into account that the accused was very closely known to both P.W.1 and P.W.2 for quite sometime and even assuming there was poor visibility during night time, his identification by the eye witnesses was quite plausible. The Hon'ble Supreme Court, in the case of *Augustine Saldanha Vs. State of Karnataka* reported in (2003) 10 SCC 472, had reiterated this position, by holding that even when an incident takes place in the dark night when



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visibility is poor, identification was possible because the victims of the assailants were known to each other and therefore, identification of the accused by the witness cannot be doubted.

22. Having held that the prosecution has established that the accused is guilty of having committed the offence under Section 307 IPC, we shall now deal with the punishment imposed by the trial Court for the said offence. In this case, among other offences, for which the accused was convicted, the trial Court had sentenced him to undergo life imprisonment for having committed the offence under Section 307 IPC. For imposition of the maximum punishment of life imprisonment, the trial Court had taken note of the fact that P.W.2 is a married woman with a girl child and the accused had been sexually harassing her and since she had refused to oblige to his sexual advances, he had preplanned to murder her and by waylaying her when she was returning from her work place, he had indiscriminately stabbed her with a knife. By observing so, the trial Court had placed reliance on the decision of the Hon'ble Supreme Court in the case of *Ravji alias Ram Chandra Vs. State of Rajasthan* reported in (2016) 2 L.W. (Crl.) 323 for the proposition that an appropriate punishment should be awarded for a crime which is



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committed, not only against the individual victim, but also against the society to which the criminal and the victim belong and that the punishment so awarded should respond to the society's cry for justice against the criminal. Further reliance was placed on the decision of the Chhattisgarh High Court in the case of **Deepak Vs. State of Chhattisgarh** reported in **2016 Crl. L.J. 2850**, for the proposition that crimes against women are social crimes which disrupt the entire social fabric and hence, calls for harsh punishment.

23. The facts surrounding the crime and touching upon the statements of P.W.2, as well as the decisions relied upon therein, cannot be disputed. However, an incidental issue that might require consideration is as to how and why the trial Court had chosen to impose the “maximum punishment” of life imprisonment for the offence.

24. In this regard, it is relevant to refer to the judgment of the Hon'ble Division Bench of this Court in the case of **Liyakhath Ali Vs. Mani Anbazhagan** made in **Crl.A.Nos.619 of 2021 & 272 of 2019**, where one of us was a party to the judgment [MSRJ]. The Co-ordinate Bench had followed the judgment of the Hon'ble Supreme Court of India



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in the case of **Swamy Shraddananda Vs. State of Karnataka** reported in **(2007) 12 SCC 288** and held that the reasons must be detailed, setting clearly as to why any punishment, other than the maximum punishment, will not suffice. For ready reference, the relevant portions of **Liyakhath Ali's case (cited supra)** are extracted below:-

“10. However, as regards the sentence imposed on the appellants, we find that the appellants had been sentenced to the maximum sentence of seven years and also directed to pay fine of Rs.1 Crore and to undergo a default sentence for a period of one year.

*11. On this aspect, we may observe that it has been consistently held in several decisions of the Hon'ble Supreme Court that while awarding sentences, a Judge has a wide discretion within the statutory limits and therefore, there cannot be any uniformity in imposition of such offences. In the case of State of **Rajasthan Vs. Mohan Lal and Another** reported in **(2018) 18 SCC 535**, it has been held that while imposing the punishment, the Courts will have to take into account certain principles while exercising their discretion in sentencing, such as proportionality, deterrence and rehabilitation. In a proportionality analysis, it is*



necessary to assess the seriousness of an offence in order to determine the commensurate punishment for the offender. The seriousness of an offence depends, apart from other things, also upon its harmfulness.

12. The Hon'ble Court in the case of Soman v. State of Kerala reported in (2013) 11 SCC 382, observed thus:-

“27.1. Courts ought to base sentencing decisions on various different rationales — most prominent amongst which would be proportionality and deterrence.

27.2. The question of consequences of criminal action can be relevant from both a proportionality and deterrence standpoint.

27.3. Insofar as proportionality is concerned, the sentence must be commensurate with the seriousness or gravity of the offence.

27.4. One of the factors relevant for judging seriousness of the offence is the consequences resulting from it.

27.5. Unintended consequences/harm may still be properly attributed to the offender if they were reasonably foreseeable. In case of illicit and underground manufacture of liquor, the chances of toxicity are so high that not only its manufacturer but the distributor and the retail vendor would know its likely risks to the consumer. Hence, even though any harm to the consumer might not be directly intended, some aggravated culpability must attach if the consumer suffers some grievous hurt or dies as result of consuming the spurious liquor.”



13. *The same is the verdict of the Hon'ble Supreme Court in the case of **Alister Anthony Pareira v. State of Maharashtra** reported in (2012) 2 SCC 648, wherein it was observed as follows:-*

“84. Sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straitjacket formula for sentencing an accused on proof of crime. The courts have evolved certain principles: the twin objective of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances.”

14. *On an overall appraisal of the aforesaid decisions, it could be said that the imposition of sentence by a Court would be determinable on the facts and circumstances of each case and would be within the discretion of the concerned Court.*

15. *However, the exercise of such discretion also came to be dealt with by the Hon'ble Supreme Court in the case of **Swamy Shraddananda Vs. State of Karnataka** reported in (2007) 12 SCC 288, wherein it was held as follows:-*



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“66. There is a clear and discernible necessity of caution to set the maximum punishment in an offence. And also by implication there must be intensive and exhaustive inquiry into accused-related parameters before employing the maximum sentence by a court of law. Therefore, discretion to the judiciary in this respect (to declare the maximum punishment) is of utmost critical and seminal value. Reasons must be detailed setting clearly why any punishment other than the maximum punishment will not suffice. This is a general and age-old rule of sentencing which has been statutorily recognised under Section 354(3).”

25. The trial Court, though was of the view that an harsh punishment requires to be imposed against the accused, had not considered the aforesaid decisions of the Hon'ble Supreme Court and rendered its reasons for imposing the maximum punishment. In this regard, we are of the firm view that the maximum sentence of life imprisonment could be modified into a lesser one, for which purpose, the rigorous imprisonment for 10 years could be appropriate.

26. For all the foregoing reasons, the judgment passed by the learned Sessions Judge, Mahila Court, Salem District, in S.C.No.351 of 2016 dated 22.04.2019, insofar as it holds the accused guilty of having



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committed the offences under Section 341 IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act and the conviction and consequential sentences imposed for these two offences, are upheld. Insofar as the sentence of life imprisonment imposed for the offence under Section 307 IPC is concerned, the same is modified to the effect that the accused shall undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.1,00,000/-, in default of which to undergo six months simple imprisonment. All the sentences shall run concurrently. The Criminal Appeal thus stands partly allowed. No costs.

[M.S.R., J] [M.J.R., J]
18.10.2024

Index:Yes/No
Neutral Citation:Yes/No
Speaking/Non-speaking order

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To

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1. The Sessions Judge,
Mahila Court,
Salem District.
2. The Superintendent of Police,
Central Prison, Salem.
3. The Inspector of Police,
Pallapatti Police Station,
Salem District.
4. The Public Prosecutor,
High Court of Madras.



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and
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