



Crl.A.No.530 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.03.2023

PRONOUNCED ON: 24.04.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.A.No.530 of 2021

Vediyappan

...
Vs.

Appellant

State. Rep. By the Inspector of Police,
Gurubarapalli Police Station,
Krishnagiri District.
(Crime No.213 of 2016)

...

Respondent

PRAYER: This Criminal Appeal has been filed under Section 374(2) of Code of Criminal Procedure to call for the entire records in connection with the S.C.No.112/2019 on the file of the learned Sessions Judge (Fast Track Magalir Neethimandram), Krishnagiri, Krishnagiri District and set aside the judgment dated 28.09.2021.

For Appellant : Mr.V.Parthiban
for Mr.E.Kannadasan

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor



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JUDGMENT

WEB COPY Challenging the impugned judgment dated 28.09.2021 passed in S.C.No.112/2019 by the learned Sessions Judge (Fast Track Magalir Neethimandram), Krishnagiri, Krishnagiri District, the present criminal appeal has been filed.

2.The prosecution case is that the appellant is the accused in S.C.No.112 of 2019 on the file of the Sessions Judge, Fast Track Magalir Neethimandram, Krishnagiri, Krishnagiri District. The appellant/accused and the complainant's families are neighbours and they are residing at Kuchipalayam Village, Marachandiram Post, Krishnagiri District. There was a dispute between the two families with regard to a common wall. On 13.07.2016 at about 01.30 a.m. when the victim girl /complainant Selvi Bhuaneswari (PW3), her mother Natchiammal (PW1) and her father (PW2) were sleeping in their house, the accused trespassed into their house and poured sulphuric Acid over the victim girl Bhuaneswari (PW3). In consequence, she suffered severe injuries on her body. Immediately, she went to a hospital, thereafter, gave a complaint Ex. P1 to the respondent



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WEB COPY police. Upon receipt of the complaint, a case in Crime No.213 of 2016 has been registered by the respondent police for the offence punishable under Sections 307 IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002. After investigation, the respondent police filed a final report for the offences under Sections 307, 450 & 326(A) IPC.

3.Before the trial court, the prosecution examined fourteen witnesses and marked eighteen documents, besides five material objects have been filed.

4.When the incriminating materials were put to the accused under Section 313 Cr.P.C., the accused denied the same as false, he did not choose to examine any witness nor mark any documents.

5.On consideration of the prosecution evidence, the trial Court found the accused guilty for the offence under Sections 452, 326(A) IPC and



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convicted and sentenced to undergo 5 years Rigorous imprisonment and to pay a fine of Rs.1000/- in default to undergo six months rigorous imprisonment for the offence under Section 452 IPC and for the offence under Section 326(A) IPC, sentenced the accused to undergo ten years rigorous imprisonment and to pay a fine of Rs.1000/- in default to undergo two years rigorous imprisonment and acquitted the accused for the offence under Section 307 IPC. Aggrieved by this judgment, this present criminal appeal has been filed.

6.The learned counsel for the appellant submitted that the trial Court failed to appreciate the prosecution evidence properly. The finding of the trial Court is erroneous, unsustainable on fact and on law. Further, contended that among the fourteen witnesses, PW4 Chinnappan, PW5 Kalirathinam, PW6 Govindhan, PW7 Vaigundan, PW8 Selvam and PW9 Jilaan Batcha were not supported to the prosecution case. They were treated by the prosecution as hostile witnesses. The remaining witnesses PW1 to PW3 to support the prosecution case and all are family members,



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even though their evidence is not enough to connect the appellant with the crime. PW1 Tmt.Natchiammal the mother of the victim girl Bhuvaneshwari, deposed before the Court that the police did not examine her and did not get a statement from her and she did not state about the accused to the police and she deposed about the accused first time before the Court. In the complaint Ex.P1 also, the name of the accused is not mentioned. Further, PW3 her daughter Selvi Bhuvaneshwari victim girl deposed that at the time of the occurrence, her mother PW1 was sleeping in the next house not with her and in the circumstances, she may not see the accused at the time of the occurrence. PW2 Natarajan, during the cross examination, deposed that he came to know about the Acid attack, on hearing the crying sound of her daughter, therefore, he may not see the accused at the time of occurrence. PW3 the victim girl deposed before the Court during the cross examination that she did not know, who poured Acid over her body. In the complaint also mentioned that only an unknown person poured the acid and requested to take action. Further, she deposed that she came to know about the accused through the police. Therefore, there is no evidence to connect the



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accused with the crime. The trial Court based upon the confession of the accused Ex.P13 found guilty and the alleged witnesses to the confession also not supported to the prosecution case, they were treated as hostile. In such circumstances, placing reliance upon the confession of the accused being an inadmissible evidence found guilty is unsustainable. The trial Court erred in relying upon the confession and held guilty of the accused is unsustainable. In this case, the prosecution failed to prove the charge against the accused beyond reasonable doubt. The trial Court without any acceptable legal evidence found guilty and convicted the accused, it has to be set aside and the accused is to be acquitted and thus, pleaded to acquit the accused and allow the criminal appeal.

7.The learned Additional Public Prosecutor supported the judgment of the trial Court and contended that there is no ground to interfere with the finding of the trial Court. The accused himself by giving confession accepted his involvement and Exs.P6 to 17 corroborated the prosecution witnesses. Under these circumstances, it is established that the victim girl was assaulted with Acid and the accused had a previous enmity with the



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victim girl's family. Therefore, the trial Court rightly found guilty and convicted the accused and no merit in the criminal appeal and thus, pleaded to dismiss the criminal appeal.

8.I have considered the matter in the light of the submissions made by the learned counsel for the appellant as well as the learned Additional Public prosecutor for the respondent.

9.This is a case of Acid attack on a girl. The appellant/accused and the victim girl's families are neighbours, which is not disputed. With regard to the dispute of a common wall between them is also not established. Further, the observation of the trial Court that the accused asked permission of PW1 & PW2, who are the victim girl's mother and father, to marry their daughter PW3 Selvi Bhuvaneswari, but they refused to marry their daughter to him, hence he had a strong motivation is also not supported with any material. Therefore, in this case, the alleged motive is not established by the prosecution.

10.I have considered the prosecution case and the evidence on

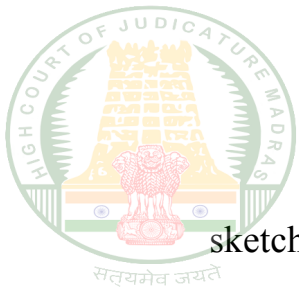


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record. The prosecution examined fourteen witnesses, PW1 Natchiammal,

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PW2 Natarajan are mother and father of the victim Selvi Bhuvaneshwari (PW3). Other witnesses PW4 Chinnappan, PW5 Kalirathinam, PW6 Govindhan, PW7 Vaigundan, PW8 Selvam, and PW9 Jilaan Batcha are all witnesses to the observation mahazer, rough sketch, confession statement and Seizure mahazer i.e Exs.P9 to Exs.14. All are not supporting the prosecution case. They were treated by the prosecution as hostile witnesses. Even though these witnesses were cross examined by the prosecution, unable to get any favourable evidence from them. The remaining witnesses PW10 Dr.lokesh treated the victim girl (PW3) Selvi Bhuvaneshwari, PW11 Murugan, Head Constable, handed over the material objects to the Forensic Department by letter Ex.P6 and Ex.P.7. PW12 Vijayavaani, Sub Inspector of Police received the complaint from PW3 Selvi Bhuvaneshwari on 13.07.2016 and registered a case in Crime No.213/2016 under Section 307 IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, 2002 Ex.P8. PW13 Srinivasan, Inspector of police, took up the case for investigation and inspected the place of occurrence and prepared observation mahazer Ex.P9 and prepared rough



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sketch Ex.P10 and recovered victim's dresses under Mahazer Ex.P11 and also recovered acid bottle M.O.3 near the occurrence place by seizer mahazer Ex.P12 and examined witnesses and arrested the accused on 14.07.2016 and recorded his confession Ex.P13 in the presence of witnesses Arumugam and Selvam and recovered M.O.4 and M.O.5 under seizer Ex.P14 and forwarded the same to the Judicial Magistrate Court under form 91 Ex.P15 and remanded the accused. Thereafter, he was transferred, hence, handed over the case records to PW14 Prabhavathi Inspector of Police, to take charge after him. She continued the investigation and recorded the statement and altered the case into for the offence under Sections 307, 450 & 326(A) IPC and alteration report is Ex.P18. After completing the investigation, filed a final report for the offence under Sections 307, 450, & 326(A) IPC. So, the evidence of PW4 to PW14 are not enough to connect the accused with the crime.

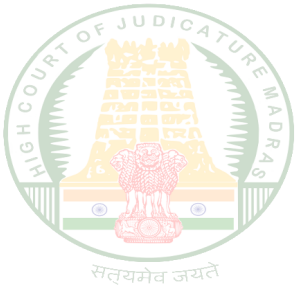
11.I have considered the remaining witnesses of PW1 Natchiammal, PW2 Natarajan and PW3 Selvi.Bhuvaneshwari Victim girl. PW1 Natchiammal is the mother of the victim girl. In her evidence, she deposed



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that three years before, the accused came to her house and asked them to give marriage of Bhuvaneshwari (victim girl) to him, thereafter, after three days, the accused came to her house and poured Acid upon her daughter, at the time all are sleeping in Porch (in front portion of the house) and also stated that at about 01.30 p.m. she woke up on hearing her daughter's crying sound and found the accused was running away from her house and her daughter suffered Acid injuries on her face, neck and also her hair was charred but during the cross examination, she deposed that she woke up only on hearing the crying sound of her daughter and her daughter was washing her face with water and on enquiry her daughter stated about the pouring of acid upon her and she did not give any statement to the police in this regard and also admitted that the police did not enquire her in this regard. Her evidence runs as follows:

”என்னை இந்த வழக்கு சம்மந்தமாக
போலீசார் விசாரித்தார்களா என்றால் என்னை
விசாரிக்கவே இல்லை. நாங்கள் ஆஸ்பத்திரிக்கு
போய்விட்டோம். நான் ஆஸ்பத்திரியில் இருந்து 4



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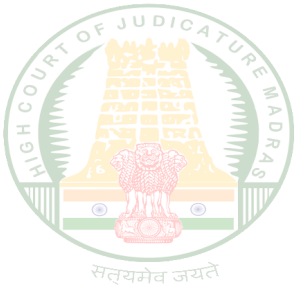


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நாட்கள் கழித்து தான் வந்தேன்.
கிருஷ்ணகிரி மருத்துவமனையிலும் என்னை போலீசார்
விசாரிக்கவில்லை. குருபரபள்ளி காவல் நிலையத்திற்கு
நான் சென்றேனா என்றால் நான் போகவில்லை.
இன்றைய நாள் வரை என்னை எந்த போலீசாரும்
விசாரிக்கவில்லை. சம்பவம் நடந்த அன்றே
13.07.2016ம் தேதி போலீசார் என்னை விசாரித்தார்கள்
என்றால் இல்லை. ”

12.Further, it is noticed that in the evidence of PW3 Bhuvaneshwari
victim girl, she deposed that at the time of occurrence, her mother PW1
Natchiammal was sleeping in a nearby tiled house not with her and her
evidence runs as follows:

“11.07.2016ம் தேதி இரவு நான் எங்கள்
வீட்டிற்கு முன்னால் உள்ள வராண்டாவில் படுத்து
துங்கிக் கொண்டிருந்தேன். என்னோடு என் தாத்தா
எல்லப்பா என்பவரும் படுத்துக்கொண்டிருந்தார். அந்த
சமயத்தில் பக்கத்திலேயே இருந்த ஓட்டு வீட்டிற்குள்
என் அம்மா படுத்திருந்தார். என் அப்பா வெளியே
படுத்திருந்தார். ”



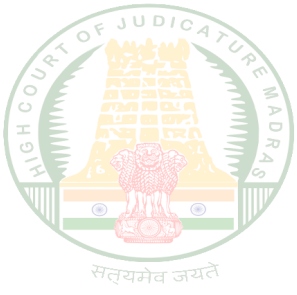
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13.Considering this evidence, the evidence of PW1 is not believable, she could not see the accused at the time of occurrence since she was sleeping in a nearby another tiled house and not sleeping with the victim girl. Therefore, the evidence of PW1 Natchiammal to connect the accused with the crime is unbelievable, she may not be an eye witness to the occurrence. Further, PW2 Natarajan evidence also is not sufficient to connect the accused with the crime. He deposed in his cross examination that he came to know about the incident only after hearing the crying sound of her daughter. His evidence runs as follows;

“ என் மகள் சத்தம் கேட்டு தான் எனக்கு
விவரம் தெரிந்ததா என்றால் ஆமாம்.. . . .”

14.According to the evidence of PW3, his father was sleeping in the outside of the house, he was not sleeping in the same place, where, the victim girl was sleeping in the Varaanda.



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15. Under these circumstances, he could not see the accused and further, the evidence of PW3 Selvi Bhuvaneshwari is also not enough to connect the accused with the crime, since she admitted that he did not see the person, who poured sulphuric acid upon her. Her evidence runs as follows;

“ . . . நான் படுத்திருந்த இடம் இருட்டான இடம். சம்பவம் நடந்தபோது அந்தயிடம் வெளிச்சம் இல்லாமல் இருட்டாகத்தான் இருந்தது. Light போட்ட பின்பு தான் கம்பளி மீது ஆசிட் ஊற்றப்பட்டிருப்பதை பார்த்தேன். நான் Light போட்டு பார்த்த பின்பு யாரோ ஓடிய சத்தம் தான் கேட்டது. நான் ஓடிய அந்த நபரை பார்க்கவில்லை. நான் complaint கொடுத்த பின்பு போலீசார் விசாரித்து எதிரி தான் ஆசிட் ஊற்றியதாக சொன்னார்கள். அதனால் தான் எதிரி தான் confirm ஆக ஊற்றியிருப்பான் என்று சொல்கின்றேன். எதிரி ஆசிட் ஊற்றியதை நான் நேரில் பார்க்கவில்லை. போலீஸ் சொன்னதின் அடிப்படையில் தான் நான் எதிரி ஆசிட் ஊற்றியிருக்கின்றார் என்று சொல்கின்றேன்.

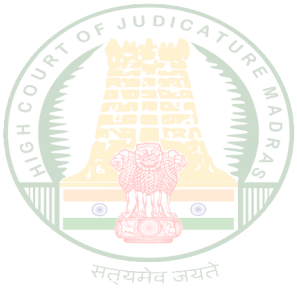


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16. Therefore, the abovesaid evidences reveal that PW3 also not evidenced to connect the accused with the crime. Therefore, in this case, there is no evidence to connect the accused with the crime beyond reasonable doubt.

17. The fundamental principle upon which the administration of justice on the criminal side is founded is that an accused person must be presumed to be innocent until the contrary is proved by credible and legal testimony beyond reasonable doubt.

18. A moral conviction regarding the guilt of an individual has no place in criminal jurisprudence. A court of law is to get at the truth from the legal evidence placed before it, by either side and is not to be guided by a moral conviction or influenced by the gravity of the crime. An order of conviction can be based only on legal evidence and not on hypothetical propositions or unwarranted inferences.



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WEB COPY 19. In this case, the prosecution failed to prove the charges against the accused, therefore, the accused is entitled for acquittal. Accordingly, the criminal appeal is allowed and the conviction and sentence passed by the Trial Court is hereby set aside and the appellant/accused is acquitted from all the charges. Fine amount, if any, paid by the appellant/accused to be refunded to him.

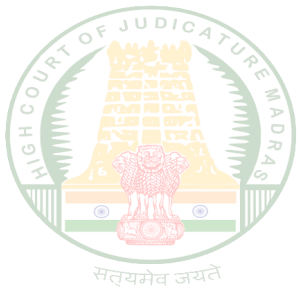
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24.04.2023

To

1. The learned Sessions Judge
(Fast Track Magalir Neethimandram),
Krishnagiri, Krishnagiri District.
2. The Inspector of Police,
Gurubarapalli Police Station,
Krishnagiri District.
(Crime No.213 of 2016)

V.SIVAGNANAM, J.



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Pre-delivery Judgement in
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24.04.2023