

(2016) 06 MAD CK 0106

MADRAS HIGH COURT

Case No: Criminal Appeal No. 361 of 2014.

Suresh Kumar @ Appu -
Appellant @HASH State Rep. by
The Inspector of Police, Town
Police Station, Karaikal,
Puducherry. (Crime No.275 of
2012)

APPELLANT

Vs

RESPONDENT

Date of Decision: June 28, 2016

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 357A
- Evidence Act, 1872 - Section 27
- Penal Code, 1860 (IPC) - Section 302, Section 307, Section 324, Section 326

Citation: (2017) 1 LW(CrI) 24 : (2016) 4 MLJCriminal 274

Hon'ble Judges: S. Nagamuthu and V. Bharathidasan, JJ.

Bench: Division Bench

Advocate: Mr. J. Raja Kalifulla, Senior Counsel for Mr. K. Sellathurai, Advocate, for the Appellant; Mr. V. Balamurugane, APP [Puducherry], for the Respondent

Final Decision: Partly Allowed

Judgement

S. Nagamuthu, J. - "Vinodhini". This name fills the grieved hearts of the masses even today. A young engineering graduate, at the age of 23, the only daughter of poor parents, employed in a Software Company in Chennai, with a lot of "vision" about her future would have had no reason to anticipate that the Deepavali, on 13.11.2012, the festival of lights symbolising the victory of righteousness, was going to be close to the last day of her vision and life. Yes. She celebrated the festival with her parents at her home town Karaikal, with all joy and jubilation. On 14.11.2012, at 10.00 p.m., when she was on her way to the bus stand to board a bus to Chennai, the gory incident occurred. In the acid attack at the hands of the stony hearted

accused, whose one sided love was rejected by her, she lost her vision of both the eyes making the entire universe dark for her. Her valiant battle for life in the hospital lasted for 90 long days. The professional skill of the eminent doctors and their fight to save her life, at last, could not succeed. She breathed her last on 12.02.2013 leaving her old parents in unconsolable grief and despair. It is reported that unable to bear the loss, her mother, after the verdict by the trial court, committed suicide. Our heart is filled with a sense of concern for the father of the unfortunate victim. But, we, unfailingly caution ourselves that our judging of the issues in this case should not be swayed by emotion and anxiety. With this prelude, let us go into the facts of this case with the fond hope that we may not have an occasion to deal with yet another case of this kind.

2. The appellant is the sole accused in S.C.No.22 of 2013 on the file of the learned Additional Sessions Judge, Puducherry at Karaikal. He has been convicted for offences under Section 302 of IPC in the alternative under Section 326 of IPC(?) and under Section 324 of IPC [Two counts]. The trial court has sentenced him to undergo imprisonment for life and to pay a fine of Rs. 1,00,000/- in default to suffer rigorous imprisonment for two years for offence under Section 302 of IPC or alternatively under Section 326 of IPC? and sentenced him to undergo rigorous imprisonment for two years for each count under Section 324 of IPC [Two counts]. Further, the trial court ordered payment of Rs. 50,000/- from and out of the fine so imposed, as compensation to the parents of the deceased.

3.1 The case of the prosecution in brief is as follows:- Miss. Vinodhini, did her Diploma in Engineering in a Polytechnic College in Karaikal. Then, she joined B.E., course at "Perunthalaivar Kamarajar Engineering College", Karaikal. After graduating from the said College, she secured a decent job in a Software Company in Chennai. On account of her job, she was staying in Chennai. Her parents (P.Ws.1 and 2) were residing at Engineer Garden, M.M.G. Nagar, Karaikal, Puducherry. P.W.1 was working as a security in a private school.

3.2. The accused was known to the deceased through her father. After the deceased joined the engineering course in Perunthalaivar Kamarajar Engineering College at Karaikkal, the accused used to follow her while she was travelling in the bus to the college. On few occasions, he told the deceased that he had fallen in love for her and he wanted to marry her. The deceased did not respond positively and instead she replied that she had no place at all in her heart for him. Even then, the accused did not stop his one sided love. After she joined services in Chennai, the accused approached P.W.1, the father of the deceased, in the month of January, 2012 with an offer to marry the deceased. P.W.1 bluntly rejected the said offer. Even after that the accused troubled the deceased a lot by following her and by extending overtures. Therefore, P.W.1 made a complaint to the police in the month of January, 2012 against the accused. The police summoned the accused, inquired and warned him. Thereafter, the accused did not visit the house of the accused.

3.3. On 11.11.2012, for celebrating "Deepawali" festival with her family members, the deceased had gone to her house at Karaikal. After spending her time fully with her parents on the day of deepawali, she planned to return to Chennai in an omni bus. P.W.2 is her boyhood friend. He also had a plan to come to Chennai. P.W.2, therefore, came down to Karaikal to the house of the deceased. The bus was scheduled to depart at 10.20 p.m. on 14.11.2012. The distance between the house of the deceased and the bus stand was hardly 1/2 km. Around 10.00 p.m., the deceased accompanied by her father [P.W.1] and friend [P.W.2] was proceeding to Karaikal bus stand. Her belongings in a bag were on the carrier of the bicycle belonging to P.W.1 and P.W.1 was then pushing the bicycle along the road towards bus stand. P.W.2 and the deceased were also walking. When they were reaching the junction of the 4th Cross, on M.M.G. Road, the deceased and P.W.2 had gone walking few feet ahead of P.W.1. At that time, suddenly, the accused emerged there with a horlicks bottle in his hand. He came from the opposite direction. Within a fraction of a second, even before the deceased and others could realise the imminent danger on the fast track, he threw the contents from the bottle on the face of the deceased. The liquid substance fell on P.W.1 and 2 also. It was a corrosive substance which caused burn injuries extensively on the body of the deceased, more particularly, on her face, both eyes, chest and other parts of her body. Unable to bear the pain, she fell down, rolled, wailed and wept. P.Ws.1 and 2 also sustained burn injuries. What was thrown on them by the accused was, later on, identified as "nitric acid". On hearing the distress call raised by the deceased, P.W.1 and P.W.2, P.W.5 and P.W.6, who were incidentally proceeding towards M.M.G. Nagar, rushed to the place of occurrence. At that time, they found a man [the accused] fleeing away from the scene of occurrence in a two-wheeler. Then, with the help of P.Ws.5 and 6, P.Ws.1 and 2 took the deceased to a private hospital known as "Suga Priya Hospital" at Karaikal. One Dr. Sakthivel [not examined before the court] gave first aid treatment to the deceased and immediately referred her to the Government General Hospital at Karaikal along with a referral letter under Ex.P.12.

3.4. On 14.11.2012, at 10.30 p.m. P.W.12, Dr. Prithivirajan, admitted her as in patient at the Government General Hospital, Karaikal. At that time, since the deceased was struggling with unbearable pain, she was not able to answer the enquiries made by the doctor. She had lost her vision. P.W.1 told him that a known male person threw acid on the deceased and on P.W.1 and P.W.2 at 10.00 p.m., on 14.11.2012. P.W.11 entered the same in the accident register. He admitted P.W.1 and 2 also as inpatients. Ex.P.13 is the accident register pertaining to the deceased. Exs.P14 and P15 are the accident registers pertaining to P.Ws.1 and 2 respectively. A team of Doctors treated the deceased at Karaikal Government General Hospital. Since the deceased required treatment in a higher medical institution, P.W.11 referred the deceased and P.W.2 to Kilpauk Medical College Hospital, Chennai. On 15.11.2012, at 10.10 a.m., the deceased was, accordingly, admitted at Kilpauk Medical College Hospital by P.W.13. P.W.2 and P.W.1 were also admitted as inpatients.

3.5. When the deceased, P.Ws.1 and 2 were undergoing treatment at Government General Hospital at Karaikal on getting intimation from the hospital, P.W.22, the then Sub Inspector of Police, Karaikal Town Police Station, rushed to the hospital around post night on 15.11.2012. Since the deceased was not in a position to make any statement, P.W.22 recorded the statement of P.W.1 under Ex.P.1 at 12.35 a.m. on 15.11.2012 and on returning to the police station, he registered a case in Crime No.275 of 2012 under Sections 307, 326 and 324 of IPC against the accused. Ex.P.39 is the FIR. Then, P.W.22 forwarded both the complaint-Ex.P.1 and the FIR-Ex.P.39 to the court, which were received by the learned Magistrate at 11.10 a.m. on 15.11.2012.

3.6. P.W.22, immediately, rushed to the place of occurrence at 01.45 a.m. on 15.11.2013 and prepared an observation mahazar and a rough sketch in the presence of P.W.4 and another witness. Then, he recovered the material objects [M.O.1 to 14] which were lying at the place of occurrence. He could not examine P.Ws.1 and 2 and the deceased, as they had already been shifted to Kilapuk Medical College Hospital, Chennai, for further treatment.

3.7. On 15.11.2012 at 03.15 p.m., P.W.22 arrested the accused near Thirumeni Azhagar Temple at Thiruvettakudi in the presence of P.W.8 and another witness and brought him to the police station at 03.30 p.m. At the time of arrest, P.W.22 noticed that the accused had acid burn injuries on his face and hands. Therefore, at 03.50 p.m., he forwarded the accused to Karaikal Government Hospital for treatment. After treatment, the accused was brought to the police station at 04.45 p.m. While in custody at the police station, at 05.00 p.m. in the presence of P.W.8 and another witness, the accused made a voluntary confession. In that confession, he made a disclosure statement in which he disclosed the place where he had hidden an empty horlicks bottle, identified the shop from where he purchased acid and also the place where he had hidden his motor cycle, a shirt, lungi and another acid bottle. In pursuance of the said disclosure statement, the accused was taken by the police along with the witnesses in a police jeep. At 07.00 p.m., the accused produced the empty horlicks bottle (M.O.15) from the hideout near M.M.G. Nagar park. P.W.22 recovered the same under a mahazar. Since it was dark at 07.30 p.m. P.W.22 brought back the accused to the police station without making further recoveries. Since the accused again complained of irritation on the burn injuries, he was again sent back to Karaikal Government Hospital for treatment. When the accused was in the police station P.W.22 obtained the finger prints of accused by following the procedure established. Then, he made a request to the Government Finger Prints Expert to visit the police station and to examine the finger prints. According on 15.11.2012, during night, P.W.16, the Finger Print Expert, came to the police station examined the horlicks bottle and found a chance finger print on the same. He took photograph of the said finger print and also collected the admitted finger prints of the accused for the purpose of examination. The examination conducted by P.W.16, later on, revealed that the chance finger print found on the Horlicks Bottle (M.O.15)

tallied with the admitted finger prints of the accused.

3.8. On 16.11.2012 at 11.20 a.m., the accused was discharged from the hospital and he was brought back to the police station. P.W.8 and another witness, as instructed earlier, had come to the police station. Then, pursuant to the disclosure statement made on the previous day, the accused led the police to the shop of P.W.9 and identified him. P.W.9 is a licensed seller of acid. P.W.9 informed P.W.22 that the accused purchased nitric acid from his shop in a sealed bottle on 12.11.2012. Then, accused took P.W.22 and the witnesses to the house of his uncle at Thiruvettankudi and produced the motor cycle (M.O.15), shirt (M.O.17), lungi (M.O.18) and another empty bottle (M.O.19) from the hideout. P.W.22 recovered the same under individual mahazars in the presence of the same witnesses. Thereafter, P.W.22 forwarded the accused to the court for judicial remand. He forwarded the recovered material objects also to the court along with a request to send them to Forensic Science Laboratory for chemical examination.

3.9. As we have already narrated, the deceased was undergoing treatment at Kilpauk Medical College Hospital at Chennai, from 10.10 a.m. on 15.11.2012 onwards. On receiving intimation from P.W.22, P.W.18, the then XXII Metropolitan Magistrate, Egmore, rushed to Government Kilapuk Medical College Hospital at 10.50 a.m. on 16.11.2012. He found that the deceased was conscious. Since the deceased had already lost her vision in both eyes, she was explained by the Magistrate that he had come to record the dying declaration. P.W.19, the Doctor, who was treating the deceased at Kilpauk Medical College Hospital, on examining the deceased found her fully conscious and accordingly, he certified the same to P.W.18. P.W.18, on his part, in order to satisfy his judicial conscience about the mental fitness of the deceased made certain queries and from the answers elicited and from the opinion of the doctor, P.W.18 was satisfied that the deceased was in a fit mental state to make a dying declaration. Then at 11.00 a.m., the deceased started giving dying declaration. P.W.18 reduced the same into writing. After the recording of dying declaration was over, P.W.18 read over the same to the deceased and she admitted the same to have been correctly recorded. Then, she affixed her left thumb impression on the same. Ex.P.35 is the Dying Declaration.

3.10. P.W.19, who was an experienced doctor, in the field, treated the deceased at Kilpauk Medical College Hospital during which, a surgery was conducted. On 30.11.2012, he retired from service and joined a private hospital known as "Aditya Hospital" at Kilpauk in Chennai. P.W.1 and his family members later thought it fit to take the deceased to the said private hospital to continue further treatment under P.W.19. Therefore, the deceased was discharged from the hospital and admitted to Aditya Hospital. P.W.19 gave treatment to the deceased intensively. On 28.01.2013, since further treatment was required and since the same could not be given at Aditya Hospital, she was again taken to Killpauk Medical College Hospital on 28.01.2013. She under went treatment there till 31.01.2013. On 31.01.2013, she was

again discharged from the Kilpauk Medical College Hospital, Chennai and brought back to Aditya Hospital for continuation of treatment under P.W.19. The condition of the deceased was worsening. Despite the efforts of the doctors, at last, she died on 12.02.2013 at 09.10 a.m.

3.11. P.W.22 on receiving the death intimation under (Ex.P.21) immediately rushed to Aditya Hospital. But, by that time, the dead body had already been dispatched to the Government Hospital. As P.W.23, the Inspector of Police was appointed as a special investigating officer, he directed P.W.22, the Sub Inspector of Police to conduct the inquest proceedings.

3.12. On 13.02.2013, between 07.00 a.m. and 09.45 a.m. as directed by P.W.23, P.W.22, conducted inquest on the body of the deceased during which, he examined many more witnesses. He prepared an inquest report (Ex.P5). Then, he forwarded the body for postmortem. In the mean time, P.W.23, the investigating officer, submitted an alteration report under Ex.P.44 to the court thereby altering the case into one under Section 302 of IPC.

3.13. P.W.20, Dr. I. Jithender Singh, conducted autopsy on the body of the deceased at 11.00 a.m. on 13.02.2013. He found the following:-

"Moderately nourished female body, wrapped with gauze around the body, the gauze material was found soaked with greenish yellow foul smelling infected slough and pus, on removal of gauze, infected epidermal and dermo-epidermal burns with denuded cuticle exposing the reddish area seen over face including eyes nose and lips, eyelashes and eyebrow was completely burnt, front and back of neck, front of upper part of chest above both nipples, back of both shoulder and front of left shoulder, left axila, front, outer and inner aspect of left upper arm, front of middle third of right arm to right wrist and dorsum and palm of right hand in patchy areas, front, centre and left side of abdomen over umbilical area, above the left ribs and its space over an area 12 x 8 x 0.2 cm corresponding to 8th to 11th ribs at post axillary line, upper part of inner aspect of right thigh, inner and front of left thigh, left forearm and left arm with greenish yellow foul smelling thick purulent multiple pus point oozed out from the surface of burnt areas.

Healed and partially healed burns over left foot, front of lower third of left leg, front of left thigh, upper left thigh, front of abdomen, outer aspect left chest, outer aspect of left arm, patchy areas of face and neck, both upper limbs, back of chest and abdomen.

Superficial layers of skin was found grafted in right thigh, left thigh, right leg, with greenish yellow foul smelling thick purulent multiple pus point oozed out from the few areas of graft with infected slough sent for pus culture, tooth found stained, bed sores seen over an area of 6 x 4 x 1.5 cm, 2 x 1 x 0.5 cm gluteal region with infected pus and slough.

No other external or internal injuries made out.

Scalp, Bones, Membranes: Intact. Brain: Edematous, surface vessels engorged, CSF: Turbid.

Hyoid Bone: Intact.

Larynx and Trachea: Normal

Heart: Normal in size, C/S All chambers contained clotted blood. Valves and coronary vessels: Patent.

Lungs: Firm inconsistency, C/S: Greenish yellow foul smelling. Exudes purulent discharge oozed from all lobes of both lungs, pus sent for culture.

Stomach : 100 ml of brown coloured fluid, mucosae: Normal.

Intestine: Distended with gas.

All internal organs: Normal in size C/S: Pale.

Bladder: Empty. Uterus: C/S Empty. Ovaries and Tubes: NAD, Genitalia: NAD, Pelvis and Spinal Column: Intact."

He preserved the visceral organs for chemical analysis. Ex.P.37 is the postmortem certificate. He opined that the deceased would appear to have died of complications of extensive burns.

3.14. On 01.03.2013, P.W.23 took over the investigation from P.W.22. He collected medical records from the hospital, examined few more witnesses, including the doctor and recorded their statements. Thereafter, P.W.24 continued the investigation. On completing the investigation, P.W.24 laid charge sheet against the accused.

4.0. Based on the above materials, the trial court framed charges as detailed in the second paragraph of this judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 24 witnesses were examined, 44 documents and 20 material objects were marked.

4.1. Out of the said witness, P.Ws.1 and 2 are the eye witnesses to the occurrence. They had also sustained injuries in the same occurrence. They have vividly spoken about the entire occurrence. P.W.1 has spoken about the complaint made to the police. P.W.3, the mother of the deceased, has stated that from the year 2010 onwards, as a friend of P.W.1, the accused used to visit their house on few occasions. Then, the accused offered to marry the deceased. She has further stated that on few occasions, when the deceased was travelling in the bus, the accused travelled in the same bus and expressed love for her. The deceased negated the same and then informed the incidents to P.W.3. She has further stated about the complaint made in the month of January, 2012 against the accused upon which the

accused was called to the police station, inquired and was finally warned not to interfere with the life of the deceased. She has further stated that thereafter the accused did not visit her house at all. On 11.11.2012, according to P.W.3, the deceased had come to her house to celebrate "Deepawali" on 14.11.2012. According to her, the deceased left for the bus stand at Karaikal along with P.W.1 and P.W.2. She has further stated that after some time, P.W.1 spoke to her over phone and informed her about the occurrence. She rushed to the place of occurrence and thereafter took the deceased to the hospital.

4.2. P.W.4 is a resident of Mariammal Koil Street, Karaikal. He has stated that around 01.30 a.m. on 15.11.2012, when he was returning from a cinema theatre, at the place of occurrence, P.W.22 prepared an observation mahazar and a rough sketch in his presence. He has further stated about the recovery of material objects M.O.1 to M.O.13 from the place of occurrence.

4.3. P.W.5 is a resident of Seniyar Tank Road, Karaikal. He has stated that around 10.00 p.m. on 14.11.2011, he along with P.W.6, a friend of him, was proceeding towards M.M.G.Nagar. When they were nearing the 4th Cross they heard a hue and cry of a woman. They immediately rushed to the place of occurrence. At that time, they found the accused fleeing away from the scene of occurrence in his motor cycle. They found the deceased with extensive burn injuries on her body and crying for help out of pain. P.Ws.1 and 2 were also found at the place of occurrence with injuries. Then, he and P.W.5 helped P.Ws.1 and 2 to take the deceased as well as P.W.1 and P.W.2 to the hospital. P.W.6 has also stated the same facts.

4.4. P.W.7 is the relative of the deceased. He has stated about the treatment taken by the deceased in the hospital and her ultimate death on 12.02.2013. He has also stated that he was present when the inquest was conducted on the body of the deceased. P.W.8 has spoken about the confession given by the accused while in custody with the police and the consequential recovery of M.Os.15 to 17. P.W.9, during the relevant time, was running a shop at Housing Board, Nehru Nagar, Karaikal. For doing business in the said place, he has got license. He was dealing in acids and other chemicals for domestic and industrial purposes. Six months prior to the occurrence, the accused got himself introduced to P.W.9. He told P.W.9 that for removing the plants around Thirumeni Azhagar Temple at Thiruvettakudi and to destroy them, he was in need of acid. P.W.9 sold 500 ml of nitric acid to the accused for a sum of Rs. 200/-. Since he was doing retail business, he did not issue any receipt for the said sale. Again on 12.11.2012, around 11.00 a.m., the accused came to his shop and wanted 500 ml of nitric acid for destroying the plants on the walls of his house. Accordingly, P.W.9 sold 500 ml of nitric acid for a sum of Rs. 200/-. This time also, he did not issue any receipt. According to P.W.9, the bottle-M.O.19 was the one in which he sold 500 ml of nitric acid to the accused. P.W.10 is a resident of Seniyar Tank Road, Karaikal. He has stated that on 14.11.2012 around 10.00 p.m. he was proceeding via M.M.G. Nagar. At that time, he heard a commotion from the

place of occurrence. When he rushed to the place of occurrence, he found a young man fleeing away from the place of occurrence. He further found two persons giving a chase to catch him hold, but they could not succeed. The person who ran from the scene of occurrence disappeared.

4.5. P.W.11, Dr.Privithirajan, has stated that on 14.11.2012 at 10.30 p.m. , the deceased was brought to the Government General Hospital, karaikal. The deceased was conscious. She told that at 10.00 p.m. at M.M.G. Nagar, Karaikal, when she was walking, a known male threw acid on her. He has further stated that before the deceased was brought to the said hospital, she was taken to "Suga Priya Hospital" at Karaikal and with a referral letter she was brought to the Government General Hospital, Karaikal. Ex.P.12 is the letter from Suga Priya Hospital. P.W.11, the Doctor, found that the deceased was not able to open her eyes and there were extensive burn injuries on her body. He admitted her in the hospital. He examined P.Ws.1 and 2 on whom also he found extensive acid burns. He treated them in the said hospital as inpatients.

4.6. Yet another Doctor namely, P.W.12 Dr.Udhayakumar, from Karaikal Government General Hospital, has stated that during investigation, he has handed over to the investigating officer the case sheets and the other medical records pertaining to the deceased, P.W.1 and P.W.2. Ex.P.17 is the treatment records relating to P.W.1. Ex.P.18 is the treatment records relating to P.W.2. Ex.P.19 is the treatment records relating to the deceased. P.W.13, Dr. Dhanraj, has stated that during the relevant time, he was working as Assistant Professor in the Department of Plastic Surgery, Kilpauk Medical College Hospital, Chennai. The deceased was brought to the said hospital on 15.11.2012 at 10.10 a.m. At that time, the deceased was conscious. She told that a known male threw acid on her at 10.00 a.m. on 14.11.2012 near Karaikal Bus Stand. He found 31% of acid burn injuries on her. She underwent treatment as inpatient in the said hospital till 06.12.2012. P.W.13 has further stated that on 06.12.2012 against the medical advise, she got discharged from the hospital. Ex.P.20 is the treatment records.

4.7. P.W.14, Dr. R. Santhanaraman, was yet another doctor working in the said hospital during the relevant point of time. He has stated that on 15.11.2012, P.W.2 came to the said hospital on reference. He told him that a known person threw acid on him on 14.11.2012 at 10.00 p.m. According to him, P.W.1 was discharged from the hospital on 16.11.2012 on his own volition against the medical advise.

4.8. P.W.15 Dr. G.L. Udhayakumar was working as Senior Analyst (Public) and Chemical Examiner in the Department of Food and Drug Testing at Puducherry. According to him, the Inspector of Police, handed over a bottle containing 1 ml of a residue transparent liquid with pungent smell and wanted his opinion. He found into he said bottle (M.O.19) nitric acid. He opined that if nitric acid is thrown on the skin it will produce irritating effect. The actual damage would depend upon the counter action. He has further opined that it would destroy the living tissues.

According to P.W.15, if the said acid is contacted to the eye it will damage the retina and the injured would become total blind.

4.9. P.W.16 is a Finger Print Expert. On a call made by the police on 15.11.2012, he went to the police station and examined M.O.15 - Horlicks Bottle. In that he found a chance finger print which on further examination tallied with the finger print of the accused. P.W.17 is the photographer. He has stated that he took photographs at the place of occurrence as requested by the investigating officer. He has proved the photographs as M.Os.27 to 33.

4.10. P.W.18, the learned XXII Metropolitan Magistrate, Egmore, Chennai, has spoken about the dying declaration recorded by him from the deceased on 16.11.2012 at 10.50 a.m. at Kilpauk Medical College Hospital, Chennai. He has stated that from the opinion the Doctor and from the answers elicited by him for the queries by him to the deceased, he was fully satisfied that the deceased was in a fit state of mind to make a dying declaration. In the said dying declaration, the deceased had made a complete narration of the entire occurrence.

4.11. P.W.19, Dr. V. Jayaraman, was the Chief Doctor in the Department of Plastic Surgery at Kilpauk Medical College Hospital, Chennai, during the relevant point of time. He has stated that he treated the deceased, conducted surgery and tried to save her. On 30.1.2012, he retired from service and joined a private hospital in Chennai. To have continuation in the mode of treatment, the parents of the deceased got her discharged from the Kilapauk Medical College Hospital and admitted her at Adithya Hospital on 06.12.2012. Till 28.01.2013, P.W.19 treated her. On 28.01.2013, again the deceased was shifted to Kilapauk Medical College Hospital, for treatment. After two days, she was again brought back to Adithya Hospital on 30.01.2013. P.W.19 has narrated about the extent of acid burn injuries. He found acid burn injuries on the entire face including two eyes, on both sides of neck, back of the shoulder, chest, hands, abdomen on both thighs, on both front legs, and front left foot of the deceased. According to him the injuries were third degree acid burns estimated at 31%. When P.W.18 recorded the dying declaration, according to P.W.19, he assessed the patient and found her conscious and in a fit state of mind to make a dying declaration . Accordingly, he gave certificate.

4.12. P.W.20, Dr.Jithender Singh, was the Tutor in Forensic Science Medicine, Kialpauk Medical College Hospital, Chennai, during the relevant point of time. He has spoken about the autopsy conducted on the body of the deceased and his final opinion regarding the cause of death. According to him, the death was due to the effects of acid burn injuries. Ex.P.37 is the postmortem certificate.

4.13. P.W.21 was working as Head Constable attached to Karaikal Town Police Station during the relevant time. He has stated that he was present when the inquest was held by the Inspector of Police and he has further stated that he handed over the dead body and identified the same to the Doctor for postmortem.

4.14. P.W.22, the then Sub Inspector of Police, Karaikal Town Police Station, has stated that on 14.11.2012 at 10.55 p.m., on receiving the intimation from the Government General Hospital, Karaikal, that the deceased had been admitted in the hospital, he immediately rushed to the hospital. Since the deceased was under treatment, he recorded the statement of P.W.1. On returning to the police station he registered a case in Crime No.275 of 2012 under Sections 307, 326 and 324 of IPC. He has further spoken about the preparation of the observation mahazar and rough sketch at the place of occurrence and also the recovery of material objects from the place of occurrence. He has further stated that the deceased died on 12.02.2013. Then, as per the directions of the Inspector of Police, he conducted inquest on the body of the deceased in Chennai. P.W.23, the then Inspector of Police has spoken about the fact that after the death of the deceased, he altered the case into one under Section 302 of IPC and the further progress made in the investigation. P.W.24 has spoken about the further investigation done by him and the filing of charge sheet against the accused.

5.0. When the above incriminating materials were put to the accused, he denied the same as false. On his side, two witnesses were examined as D.W.1 and D.W.2 and Exs.D1 to D7 were marked. D.W.1 was working as the Executive Engineer in Karaikal Municipality during the relevant time. He was summoned to produce the M.M.G. Nagar layout plan since it was not there, he did not produce it. Nothing has been elicited from him by the defence. Thus, his evidence is of no use for the defence. D.W.2 is the Member Secretary of Town Country and Planning, Karaikal. He has produced the layout approved plan for M.M.G. Nagar.

5.1. Having considered all the above, the trial court found the accused guilty under Section 302 of IPC in the alternative under Section 326 of IPC and under Section 324 of IPC [Two counts], convicted and sentenced him as detailed in the second paragraph of this judgement. That is how, the accused is now before this court with this criminal appeal.

6. We have heard the learned senior counsel for the appellant/accused and the learned Additional Public Prosecutor [Puducherry] for the respondent and also perused the records carefully.

7. The learned senior counsel for the appellant would submit that P.Ws.1 and 2 are highly interested in the case of the prosecution and that they would not have seen the assailant at all. He would further submit that P.W.2 has not identified the accused. Therefore, according to the learned senior counsel, the evidence of P.Ws.5 and 6 are liable to be rejected. So far as the evidences of P.Ws.5 and 6 are concerned, the learned senior counsel would submit that there was no test identification parade held in respect of P.Ws.5 and 6 and therefore, the identification of the accused made by them for the first time, in court, cannot be given weightage. The learned senior counsel would further submit that thus the evidences of P.Ws.1, 2, 5 and 6 are liable to be rejected.

8. The learned senior counsel would further submit that it is the admitted case of the prosecution that the deceased was initially taken to a private hospital by name "Suga Priya Hospital" at Karaikal. Thus, the deceased would have made her earliest statement to the doctor in the said private hospital. That statement, according to the learned senior counsel, must be the earliest dying declaration of the deceased. He would further pointed out that neither the doctor who treated the deceased at the said private hospital has been examined, nor the medical records have been produced in evidence.

9. The learned senior counsel would also point out that the dying declaration said to have been given by the deceased to P.W.18 cannot be given any weight age of inasmuch as the deceased would not have noticed the assailant at all at the time of occurrence. He would further add that the medical records pertaining to the treatment given to the deceased have not been proved properly in evidence. The learned counsel would also add that the cause of death of the deceased has also not been established by the prosecution.

10. Lastly, the learned senior counsel would submit that the conviction of the Accused under Section 302 of IPC or in the alternative under Section 326 of IPC is illegal. At any rate, according to the learned senior counsel, there are lot of doubts in the case of the prosecution and therefore, the appellant/accused is entitled for acquittal.

11. The learned Additional Public Prosecutor would vehemently oppose this criminal appeal. According to him, the evidences of P.Ws.1, 2, 5 and 6 are so cogent and convincing which deserve acceptance. The learned Additional Public Prosecutor would further submit that the deceased, in her dying declaration, has clearly narrated about the entire occurrence. According to him, there is no reason to reject the said judicial dying declaration. He would further submit that the cause of death has been spoken by P.W.20, the Doctor, who conducted autopsy on the body of the deceased wherein he has stated that the death was due to the effects of burn injuries. The learned Additional Public Prosecutor would further submit that the trial court has meticulously analysed the entire evidences and has come to the right conclusion that the death of the deceased was caused only by the accused.

12. The learned Additional Public Prosecutor would further submit that though it is true that the trial court has convicted the appellant/accused under Section 302 of IPC and in the alternative under Section 326 of IPC, on that score the appellant/accused cannot be acquitted. The conviction of the appellant/accused under Section 302 of IPC and the sentence imposed thereunder should be sustained, he contended. Similarly, regarding the conviction of the appellant/accused for offence under Section 324 of IPC [Two counts] should also be sustained, he contended. Thus, according to the learned Additional Public Prosecutor, the criminal appeal deserves to be dismissed.

13. We have considered the above submissions carefully.

14. As we have already pointed out, P.Ws.1 and 2 have been examined as eye witnesses to the occurrence. P.W.2 has stated that he was a friend of the deceased. Since he had a plan to go over to Chennai, he decided to go along with the deceased and that is how, P.W.2 had come to the house of the deceased. P.Ws.1 and 2 have further stated that to board the bus which was scheduled to depart at 10.20 p.m., they started from the house of the deceased around 10.00 p.m. P.W.3, the mother of the deceased, has stated that P.Ws.1 and 2 accompanied the deceased to go to the bus stand at Karaikal. P.Ws.1 and 2 had also sustained acid burn injuries in the same occurrence. From these evidences, it is crystal clear that P.Ws.1 and 2 were along with the deceased at the place of occurrence. P.Ws.5 and 6 have stated that on hearing the hue and cry raised by the deceased, they rushed to the place of occurrence and at that time, they found a young man fleeing away from the scene of occurrence in his motor cycle. They have further stated that when they reached the place of occurrence, they found the deceased lying with acid burn injuries and crying for help. They found P.Ws.1 and 2 also there with acid burn injuries. Thus, the evidences of P.Ws.5 and 6 also corroborate the eye witness account of P.Ws.1 and 2.

15. P.Ws.1 and 2 have stated that when they were nearing the place of occurrence, the deceased and P.W.2 had gone a few steps ahead of P.W.1 and P.W.1 was following them by pushing his bicycle. The belongings of the deceased packed in a bag were kept on the carrier of the bicycle. They have further stated that at that time, the accused suddenly came from the opposite direction with a horlicks bottle in his hand and within a fraction of a minute, he poured the acid on the person of the deceased. It fell on the face, chest, hands, legs and other parts of the body of the deceased. Unable to bear the acid burn injuries, the deceased cried and wailed. When the acid was thrown on the deceased by the accused, a portion of the acid, fell on P.Ws.1 and 2 also. That is how, they had also sustained acid burn injuries. Though it is argued by the learned senior counsel for the appellant/accused that P.Ws.1 and 2 would not have seen the accused, we find no force at all in the said argument inasmuch as they have categorically stated that they found the accused coming from the opposite direction with a bottle and then witnessed the accused throwing acid on the deceased and P.Ws.1 and 2. The learned senior counsel would further submit that it is the admitted case of the prosecution that the accused, at the time of his arrest, was found to have sustained acid burn injuries on his face, chest and hands. These injuries have not been explained away by P.Ws.1 and 2, the learned senior counsel contended. P.Ws.5 and 6 also have not stated anything about the acid burn injuries on the accused. Though attractive, this argument does not at all persuade us. As soon as acid was thrown so suddenly on the deceased as well as on P.Ws.1 and 2, there would have been no occasion for them to patiently notice every act of the accused whether he had sustained injury on his body. Therefore, in our considered view, P.Ws.1 and 2 would not have had occasion at all to have noticed that the accused had sustained any injury in the very same occurrence while

throwing acid. Since nitric acid was a concentrated liquid even the vapour from the acid would have affected the accused. Therefore, non explanation of the injuries by P.Ws.1 and 2 as well as P.Ws.5 and 6 would not in any manner create a doubt in their evidences.

16. The learned senior counsel would further submit that P.Ws.5 and 6 were not put up for test identification parade and therefore, identification of the accused made by them for the first time in court cannot be believed. We find force in the said argument. P.W.5 has stated that he found a person fleeing away from the scene of occurrence and two others gave a chase to catch him hold. He has tacitly admitted that he did not know the person who fled away from the scene of occurrence. He was treated as hostile by the prosecution. Even in court, P.W.5 had not identified the accused as the one who was then fleeing away from the scene of occurrence. Thus, we do agree that the evidence of P.W.5 would not go to incriminate the accused in any manner. However, his evidence would go to corroborate the evidences of P.Ws.1 and 2 in respect of the presence of P.Ws.1, 2, the presence of P.Ws.6 and also the time of occurrence. He has stated that when he had reached the place of occurrence, an old man by the side of the deceased who had also sustained burn injuries told that since the deceased did not respond love for the young man he had thrown acid. Therefore, to this extent, the evidence of P.W.5 would go to corroborate the evidences of P.Ws.1 and 2.

17. Now, turning to the evidence of P.W.6, he has stated that he had accompanied P.W.5. P.W.5 has also stated about the same. P.W.6 has stated that he found a young man fleeing away from the scene of occurrence. He has further stated that when he enquired the father of the girl, he told that the boy who ran away from the scene of occurrence, had thrown acid on the deceased as well as on P.Ws.1 and 2. He has identified the accused in court. However, there was no test identification parade. Therefore, the identification made by P.W.6 for the first time in court cannot have any weight age. But, the other facts spoken by P.W.6 in respect of the presence of P.Ws.1 and 2 along with the deceased, the fact that P.Ws.1 and 2 had also sustained injuries, the time of occurrence and place of occurrence, duly corroborate the eye witness account of P.Ws.1, 2 and 5.

18. Next comes, the judicial dying declaration by P.W.18. The leaned senior counsel for the appellant is not able to point out any material on record to create even a slightest doubt regarding the said judicial dying declaration made by the deceased. P.W.18 had gone to the Kilpauk Medical College Hospital, Chennai, at 10.50 a.m. on 16.11.2012. P.W.19, Dr. V. Jayaraman, was attending on the deceased. On examining her, he gave opinion that the deceased was conscious and in a fit state of mind to make dying declaration. The learned Magistrate, on his part, in order to satisfy his judicial conscience in respect of mental fitness of the deceased, had made certain queries and from the answers elicited from the deceased and also from the opinion of the doctor (P.W.19), P.W.18 was fully satisfied that the deceased was conscious

and in a fit state of mind to make dying declaration. That is how, thereafter, P.W.18 had recorded the judicial dying declaration. In the judicial dying declaration, the deceased had narrated the entire event. We do not find any reason even to have a slightest doubt regarding the statement made by the deceased. Thus, the judicial dying declaration, by itself, being a substantive piece of evidence, could be the basis for conviction even in the absence of any corroboration. Here, in the instant case, the judicial dying declaration is corroborated by the eye witness account of P.Ws.1 and 2, the injured witnesses and vice versa.

19. Next comes, the arrest of the accused by P.W.22. The accused was arrested on 15.11.2012 at 03.15 p.m. near Thirumeni Azhagar Temple at Thiruvettakudi. P.W.8 and another witness were present at the time of arrest. Since the deceased had burn injuries on his body, P.W.22, immediately, sent him to the hospital for treatment. After treatment, he was brought back to the police station and at that time, he made a voluntary confession. In the said confession, the accused disclosed the fact that he had purchased acid from P.W.9. But for the said disclosure statement, the fact that the accused had purchased nitric acid from P.W.9 would not have come to light. Thus, the said disclosure statement made by this accused squarely falls within the ambit of Section 27 of the Evidence Act. Apart from that the accused had identified P.W.9. P.W.9 in his evidence has stated that the accused had purchased nitric acid in the bottle (M.O.19). Though the accused disputed the evidence of P.W.9, we do not find any reason to reject the evidence of P.W.9.

20. The learned senior counsel for the appellant would submit that for the sale of nitric acid to the accused no document has been produced. But, P.W.9 has explained that since, he sold 500 ml of nitric acid to the accused as retail sales, he did not give any receipt at all for the same. However, he has produced the other relevant documents for the purchase of nitric acid by the accused to prove the business conducted by P.W.9. After all, he is a licensed vendor. Thus, from the evidence of P.W.9, in our considered view, the prosecution has clearly proved that on 12.11.2012, the accused had purchased 500 ml of nitric acid for a sum of Rs. 200/- contained in the bottle (M.O.19).

21. On the disclosure statement made by the accused horlicks bottle (M.O.15) was also recovered. The finger print expert had found the chance finger print of the accused on the said bottle. From the evidence of the finger print expert the prosecution tries to say that the bottle was held by the accused for some time. We do not find any force in the said argument of the learned Additional Public Prosecutor at all for the reason being, after all the bottle was produced by the accused on his arrest. P.W.8 has stated that the accused took M.O.15 from the hideout and handed over the same. Therefore, at the time when he produced the bottle, his finger prints would have been affixed on the bottle. Therefore, the evidence of the finger print expert in this case has got no material value.

22. P.W.10 is yet another witness who had seen the accused fleeing away from the scene of occurrence. But, unfortunately, there was no test identification parade for him also. Though he has identified the accused as the one who fled away from the scene of occurrence, such identification made by him for the first time in court cannot be given any weight age for want of prior test identification parade. As we have already discussed, to the extent that P.Ws.1 and 2 and the deceased had sustained injuries around 10.00 p.m. on the day of occurrence at the place of occurrence is corroborated by this witness also.

23. From these evidences which we have discussed thus far, in our considered view, the prosecution has proved beyond any reasonable doubt that it was this accused who poured nitric acid on the deceased and the said nitric acid also fell P.Ws.1 and 2.

24. Admittedly, from the day of occurrence, till her demise, the deceased was undergoing treatment in one hospital or the other. The doctors, more particularly, P.W.19, who is an expert in the field of plastic surgery used his professional skill and made all possible efforts to save the deceased. But, unfortunately, the deceased died on 12.02.2013.

25. The learned counsel for the appellant would submit that the cause of death of the deceased has not been established by the prosecution. We have gone through the evidence of P.W.20, the Doctor, who conducted autopsy on the body of the deceased and his final opinion. He had found greenish yellow foul smelling infected slough and pus. On removal of gauze, infected epidermal and dermo-epidermal burns with denuded cuticle exposing the reddish area seen over face including eyes nose and lips eyelashes and eyebrow was completely burnt; front and back of neck, front of upper part of chest above both nipples, back of both shoulder and front of left shoulder, left axila, front, outer and inner aspect of left upper arm, front of middle third of right arm to right wrist and dorsum and palm of right hand in patchy areas, were all burnt. He also found greenish yellow foul smelling thick purulent multiple pus point oozed out from the surface of burnt areas. Healed and partially healed burns seen over left foot, front of lower third of left leg, front of left thigh, upper left thigh, front of abdomen, outer aspect left chest, outer aspect of left arm; and patchy areas of face and neck, both upper limbs, back of chest and abdomen. On internal examination, he noticed greenish yellow foul smelling and exudes purulent discharge oozed from all lobes. Based on the above findings, he opined that the deceased would appear to have died of complications of extensive acid burns.

26. Despite the treatment given and efforts taken, the acid burn injuries did not heal they got infected which is the resultant complication and because of the infection and other complications the deceased died. Therefore, it cannot be contended that the death was due to some other cause other than the acid burn injuries. In our considered view, there can be no doubt that the death was due to acid burn injuries

which had its own complications. The medical evidence thus clearly establishes that the death of the deceased was caused only by acid burn injuries caused by the accused.

27. The learned counsel for the appellant would submit that the medical records from Suga Priya Hospital, Karaikal where the deceased was taken first were not marked in evidence and the doctor was also not examined. Of course, it is a flaw but, that would not in any manner affect the case of the prosecution. The medical records pertaining to the treatment given to the deceased for a particular spell has also not been marked. That also in our considered view would not cause any harm to the case of the prosecution.

28. The learned senior counsel would further submit that the medical records pertaining to the injuries sustained by the accused also have not been produced. In our considered view, when it has been proved that the accused sustained acid burn injuries only at the place of occurrence, the non production of the medical records pertaining to the accused would not cause any dent in the case of the prosecution. Of course, we do agree that the investigating officer ought to have collected these material records and to have examined the doctors. But, on that score, we are not inclined to reject the case of the prosecution.

29. From the above discussion, we come to the conclusion that it was this accused who caused the death of the deceased. Now, the question is, "What was the offence that was committed by the accused by his act?" P.Ws.1 and 3 have stated about the motive. The accused had on earlier occasions extended love for the deceased and even disturbed her on few occasions while she was going in the bus. In this regard, a complaint was made to the police and during inquiry, the accused was warned. It was only thereafter, he stopped coming to the house of the deceased. This happened in the month of January, 2012. The accused had purchased acid on 12.11.2012. This would give an inference that the accused had hatched a plot to kill the deceased. At the time of occurrence, the accused had uttered that since the deceased was not available for him to marry, she should not live to marry anyone else. Only after uttering these words, he had poured acid on the deceased. These evidences would clearly go to establish the intention of the accused that he intended only to cause the death of the deceased by pouring nitric acid on her. Thus, the act of the accused would squarely fall within the first limb of Section 300 of IPC and, so, he is liable to be punished only for the offence under Section 302 of IPC.

30. The trial court has, however, strangely convicted him under Section 302 of IPC and alternatively under Section 326 of IPC. A Sessions Judge was not apprised of the legal provision relating to punishment for a crime committed by an individual, we regret. Here, in the instant case, having come to the conclusion that the accused had caused the death of the deceased which is punishable under Section 302 of IPC, it is not understandable as to how, the learned Sessions Judge convicted the accused alternatively under Section 326 of IPC. The offence committed by the

accused should fall either within the sweep of Section 326 of IPC or under Section 302 of IPC which cannot fall under both simultaneously. In our considered view, sentencing a person under two different penal provisions for the one single act will amount to double jeopardy. But, in the instant case, though the trial court has convicted the accused under Section 302 of IPC and sentenced him thereunder, it has not stopped with that and strangely, the trial court had stated that the accused was alternatively found guilty under Section 326 of IPC. This in our considered view is illegal and, thus, to that extent, the judgment of the trial court needs interference at the hands of this court.

31. So far as the quantum of punishment is concerned, the trial court ought to have examined the question of sentence elaborately to find out whether the offence committed by the accused would fall within the rarest of rare cases as propounded by the Hon'ble High Court in **Bachan Singh v. State of Maharashtra, AIR 1980 SC 898 : 1980 (2) SCC 684 : LNIND 1980 SC 261 : (1980)1 MLJ (Crl) 827**. so as to impose the capital punishment on the accused. Unfortunately, the trial court has not made any such exercise. The Government of Union Territory of Puducherry also has not made any appeal challenging the quantum of punishment. Therefore, we are unable to go into the question as to whether imposing death penalty on the accused would be the only appropriate sentence for the accused and also to examine whether life sentence would be inadequate. Without going into the question as to whether the accused is liable to be visited with death penalty or not, we are forced to confirm the quantum of substantive sentence and imposed by the trial court for the offence under Section 302 of IPC. Next, for having caused simple hurt on P.Ws.1 and 2 by the accused, the trial court has convicted the accused under Section 324 of IPC [Two counts] for which the trial court has sentenced him to undergo rigorous imprisonment for two years which also deserves to be confirmed. Further, the trial court has ordered payment of Rs. 50,000/- as compensation out of the said fine amount which also deserves to be confirmed.

32. The trial court has miserably failed to recommend for compensation under Section 357-A of Cr.P.C. The trial court ought to have recommended for payment of compensation under the "Union Territory of Puducherry Victim Assistance Scheme, 2012" to P.W.1, the father of the deceased. We would like to rectify the above failure by directing the Union Territory of Puducherry State Legal Services Authority to award a sum of Rs. 3,00,000/- to P.W.1 under the Union Territory of Puducherry Victim Assistance Scheme, 2012 framed under Section 357-A of Cr.P.C.

33. After the hearing of this appeal was over on 21.06.2016, this court reserved the case for judgement. But, even before we could sit to write this judgement, we have heard of a similar incident, where yet another girl Miss.Swathi, aged 24 years, a Software Engineer, has fallen a victim of a brutal attack in the Nungambakkam Railway Station in a broad day light within the public view. The recurrence of these kinds of brutal murders of young girls, either out of sexual obsession or failure of

love or for any other reasons will tend to create a sense of insecurity among the womenfolk. We believe that in order to check recurrence of these kinds of heinous crimes, the police and the other authorities in the system should act with iron hands to bring to book the culprits, to have speedy trials and to get deterrent punishments. We are aware that there are criticisms about the deterrent theory of punishment. But, that will not deter our belief that the story of "Vinodhini" shall be at least a lesson and deterrence for those who may have a semblance of feeling to commit such gruesome acts against the women-folk. After all, our tradition glorifies our women as goddesses. "We will get rid of the stupidity of insulting women" - Mahakavi Bharathiyar.

34. In the result, this Criminal Appeal is partly allowed in the following terms:-

(i) The conviction and sentence imposed on the appellant/accused for the offence under Section 302 of IPC are confirmed. However, the alternative conviction imposed for the offence under Section 326 of IPC is set aside.

(ii) The conviction and sentence imposed on the appellant/accused for the offence under Section 324 of IPC [Two counts] are also confirmed.

(iii) The fine amount of Rs. 1,00,000/- imposed by the trial court for the offence under Section 302 of IPC, on collection, shall be paid to P.W.1, the father of the deceased as compensation.

(iv) In addition to the above, we direct that a sum of Rs. 3,00,000/- [Rupees Three Lakhs only] be awarded by the Union Territory of Puducherry State Legal Services Authority under the Union Territory of Puducherry Victim Assistance Scheme, 2012 framed under Section 357-A of Cr.P.C. to P.W.1 within a period of three months from today.