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CRL.A.(MD).No.176 of 2016



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.04.2023

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.A.(MD).No.176 of 2016
and
Cri.M.P(MD)No.4655 of 2021

Raja

... Appellant/Accused

Vs.

The Assistant Commissioner,
Tallakulam,
Crime No.196 of 2016,
Anna Nagar Police Station,
Madurai.

... Respondent/Complainant

PRAYER : Criminal Appeal filed under Section 374(2) of Cr.P.C to set aside the conviction and sentence passed by the learned III Additional Sessions Judge (PCR), Madurai, dated 29.02.2016 made in S.C.No.40 of 2004 by allowing the present Criminal Appeal.

For Appellant

: Mr.K.S.Durai Pandian

For Respondent

: Mr.T.Senthil Kumar
Additional Public Prosecutor



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JUDGMENT

This appeal has been preferred as against the order of conviction and sentence passed in S.C.No.40 of 2004, dated 29.02.2016 on the file of the learned III Additional Sessions Judge (PCR), Madurai.

2.The case of the prosecution is that on 13.02.2001, at about 05.00 a.m., the accused went to the Tea shop owned by the victim, where the victim asked money for the Tea along with the earlier balance money which was borrowed from his son, the accused abused him with filthy language by mentioning his community name and attacked him by his hands and legs. He attacked his private part and also scrotal. Therefore, he sustained injuries and immediately he was taken to the Hospital. Hence, the complaint. On receipt of the complaint, the respondent registered the F.I.R in Crime No.196 of 2001 for the offences under Sections 341 and 323 of I.P.C. After a period of six months, the victim died on 14.07.2001. Therefore, P.W.1-the wife of the deceased victim lodged another complaint. On receipt of the same, the respondent altered the offence under Sections 341 and 323 of I.P.C into Sections 341 and 302 of I.P.C and Section 3(2)(v) of SC/ST Act,



1989. After completion of the investigation, the respondent filed a final report and the same has been taken cognizance in S.C.No.40 of 2004 on the file of the learned III Additional Sessions Judge (PCR), Madurai.

3.On the side of the prosecution, they had examined P.W.1 to P.W.19 and marked Exs.P.1 to P.18. The prosecution also produced material object M.O.1 and on the side of the accused, no one was examined and marked Ex.D.1.

4.On perusal of the oral and documentary evidence, the trial Court found the accused guilty only for the offence punishable under Section 307 of I.P.C and sentenced him to undergo 7 years Rigorous Imprisonment and imposed a fine of Rs.3,000/-, in default to undergo six months Simple Imprisonment and acquitted him for the offence under Sections 3(2)(v) of SC/ST Act, 1989 and 3(1)(x) of SC/ST Act. Aggrieved by the same, the present Appeal.

5.The learned counsel appearing for the appellant would submit that on the date of the alleged occurrence, even according to the victim, the appellant along with two others went to his shop and when the victim demanded to pay the cost for a Tea and also the old balance which was borrowed from his son, the appellant and two



others attacked him by their hands, legs and also stick. Therefore, he sustained injuries. Immediately, he went to the Hospital and his statement was recorded in the accident register, which was marked as Ex.P.12. It revealed that the victim was attacked by three known persons by hands, legs and stick at about 05.00 a.m on 13.02.2001. It was recorded at about 09.55 a.m on 13.02.2001. Whereas the victim lodged the complaint before the respondent, in which he categorically alleged that the appellant alone attacked him with his hands and legs and on his private part and scrotal. Immediately, he was treated and discharged from the hospital within a period of three days. However, he sustained some infection and again he was admitted in the hospital for hernia and he performed surgery on the victim. Unfortunately, due to cardiac arrest, he died. Once again P.W.1, namely his wife, lodged the complaint by an improved version that the appellant attacked the victim by hands and legs and also abused him mentioning his caste name. On the said complaint, the respondent altered the offence under Sections 341 and 323 of I.P.C into Sections 341 and 302 of I.P.C and Section 3(2)(v) of SC/ST Act, 1989.

6.The learned counsel appearing for the appellant would further submit that the Doctor who treated the victim categorically deposed that he recorded the accident register in which the victim



stated that he was attacked by three known persons. The victim suffered with hernia and as such, he had undergone hernia operation after discharge from the hospital. Again he had a hole in his small intestine and as such, he had undergone another operation. He certified that the injuries sustained by the victim are grievous. There was absolutely no intention for the appellant to do away with the life of the deceased. Therefore, the offence under Section 307 of I.P.C would not be attracted. Even then, without considering the same, the trial Court convicted the appellant for the offence punishable under Section 307 of I.P.C.

7.Per contra, the learned Additional Public Prosecutor appearing for the respondent would submit that the victim was sustained grievous injuries on a private part and scrotal and as such, admitted in the hospital and he has undergone surgery and even then it was not cured, therefore, again he had undergone another surgery. Unfortunately, after six months, he died. Though the respondent altered the offence under Sections 341 and 323 of I.P.C into Sections 341 and 302 of I.P.C and Section 3(2)(v) of SC/ST Act, 1989, after completion of the investigation, the respondent filed a final report only for the offence under Section 307 of I.P.C and Section 3(2)(v) of SC/ST Act, 1989. The victim's wife was examined as P.W.1. She categorically deposed that only



the appellant had attacked the victim on his vital part and due to which he sustained injuries. In fact, that leads to his death. It is also duly corroborated by the evidence of the Doctor, who was examined as P.W.15. Therefore, the trial Court rightly convicted the appellant and the same does not warrant any interference by this Court.

8. Heard the learned counsel appearing on either side and perused the materials available on record.

9. The victim was running a Tea shop. The appellant was also the owner of neighbour's shop. The appellant borrowed money from the victim's son. While being so, on 13.02.2001 at about 05.00 a.m when the appellant visited the shop of the victim to drink tea, after having tea when the victim asked about the money and also for the earlier due which was borrowed from his son, the appellant attacked him by hands and legs on private part. Therefore, he sustained grievous injuries. Immediately, after the occurrence, the victim went to the respondent Police Station and lodged the complaint. It was marked as Ex.D.1. On perusal of the said complaint revealed as follows:-

“இன்று அதிகாலை 5 மணி அளவில் நான் எனது டீ
கடையில் அடுப்பை பற்றவைத்து கொண்டு இருந்தேன். அப்போது



தேற்று எனது பேரனிடம் கடனுக்கு சரக்கு வாங்கிய ராஜா என்பவர் எனது கடை அருகே வந்தார். ஆவரிடம் கடன்காசை கேட்டதற்கு, என்னை அசிங்கமாக திட்டிவிட்டு கீழே தள்ளிவிட்டு எனது உயிர் தளத்தில் மிதித்து, அதனால் எனது விரை வயிற்று பகுதிக்கு ஏற மூச்சு திணறுகிறது. எனவே அதிகாரிகள் இதை விசாரித்து எனக்கு நீதி வழங்குமாறு தாழ்மையுடன் கேட்டுக்கொள்கிறேன்.”

10.Accordingly, he was attacked only by the appellant. Whereas, he was referred to the Government Rajaji Hospital along with a memo from the Sub Inspector of Police reference No.11/MC/KIPS2001, dated 13.02.2001. Where the Assistant Surgeon recorded the accident register as follows:-

"Alleged to have been sustained injury due to assaulted by three known persons with கம்பு, கைகளால், காலால் மிதித்து at about 5 a.m., on 13.02.2001 at இந்திரா நகர்."

As per the accident register, the victim was attacked by three known persons, that too by stick, hands and legs.



11. Normally, the injured person would visit the hospital, where the accident register was recorded on the other hand by recording the statement of the victim. In the case on hand, the victim went to the Police Station and thereafter, on the memo from the respondent Police Station the victim went to the hospital. Therefore, the said contradiction need not be considered for any purpose.

12. After a period of six months, the victim died. Immediately, the wife of the victim, namely P.W.1, lodged the complaint on 13.07.2001, which was marked as Ex.P.1. On perusal of Ex.P.1 reveals as follows:-

“ கடந்த 13.02.2001ம் தேதி காலை சுமார் 5 மணிக்கு எனது கணவர் சுப்பையா டிக்கடையிலிருந்தபோது எங்கள் கடைக்கு அருகில் டிக்கடை நடத்திவரும் ராசேந்திரன் சேர்வை மகன் இராஜா என்பவரிடம் எங்கள் கடையில் கடனாக வாங்கிய ரூ.30/-ஐ கேட்டதற்கு ஏன்டா பரத் தாயோழி, உனக்கு என்ன திமிர் இருந்தால் என்னைப் பார்த்து காலையில் கடன் கேட்பாய் என்று கூறி எனது கணவரை கையால் ஓங்கி அடித்தும் காலால் எனது கணவரின் உயிர்தளத்தில் ஓங்கி எத்திவிட்டார். என் கணவரின் விரையில் எத்தியதால் அவர் மயங்கிவிட்டார். இது சம்பந்தமாக அண்ணா நகர் காவல் நிலையத்தில் நாங்க அன்றைக்கு புகார்



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கொடுக்க அண்ணா நகர் போலீஸ் ஸ்டேசனில் வழக்கு போட்டு விசாரணை செய்தார்கள். என் கணவர் சுமார் 2 மாத காலமாக மதுரை பெரியாஸ்பத்திரியில் உள் நோயாளியாக இருந்தார். வெளியே வந்த பின்னும், அவருக்கு அடிக்கடி ஏதாவது தொந்தரவு செய்து வந்ததால் நாங்க அவருக்கு அவ்வப்போது தனியார் மருத்துவமனை சென்று சிகிச்சை செய்து வந்தோம். அப்படியிருக்க, என் கணவர் சுப்பையா 13.07.2001ம் தேதி (வெள்ளிக்கிழமை) இரவு 10 மணிக்கு என் வீட்டில் (படுத்த படுக்கையாக இருந்தவர்) இறந்துவிட்டார். என் கணவர், மேற்படி இராஜா அடித்து காலால் மிதித்ததால் தான் இறந்தார். நடவடிக்கை எடுக்க கேட்டுக்கொள்கிறேன். இது சம்பந்தமாக என் மகள் முத்துமாரி மற்றும் என் கொளுந்தன் S.ஊர்காலனுடன் தங்களிடம் வந்து புகார் கொடுத்தேன்.”

13.It is a completely improved version as pointed out by the learned counsel appearing for the appellant and after receipt of the same, the respondent altered the offence under Sections 341 and 323 of I.P.C into Sections 341 and 302 of I.P.C and Section 3(2) (v) of SC/ST Act, 1989. During the investigation, after perusal of the postmortem report and also opinion with regard to the death of the victim, they filed a final report for the offence under Section 307 of I.P.C read with Section 3(2)(v) of SC/ST Act, 1989. On perusal of



the opinion revealed that after sustained injury during the occurrence on 13.02.2001, the deceased victim was treated at Government Rajaji Hospital, Madurai and he had also undergone surgery and thereafter, he was discharged from the hospital on 25.03.2001, after full recovery from his illness. He died on 13.07.2001 from occlusion of left coronary artery of the heart. So his death was not related to the previous injuries sustained by him, as he recovered from his illness.

14.The Doctor, who treated the victim after the occurrence, was examined as P.W.15. He deposed as follows:-

□நான் தற்போத அரசு ராஜாஜி மருத்துவமனையில் அறுவை சிகிச்சைத் துறை பேராசிரியராக பணிபுரிந்து வருகிறேன். 13.2.2001ம் தேதி காலை 10.20 மணிக்கு நான் உதவி மருத்துவராக பணியிலிருந்தபோது, தன்னை அடையாளம் தெரிந்த ஒரு நபர் காலை வைத்து மிதித்ததாகக் கூறி மருத்துவமனைக்கு சுப்பையா என்பவர் வந்திருந்தார். அவரை பரிசோதனை செய்த போது 6 X 6 செ.மீ அளவில் இடது புறம் சிராய்வுப் பகுதியில் இருந்தது. அவரை பரிசோதனை செய்ததில் இடதுபுற குடல் இறக்கம் அடைப்பட்டு இருந்தது. அவருக்கு அறுவை சிகிச்சை செய்யப்பட்டு, சிகிச்சை அளிக்கப்பட்டது. மீண்டும் 6 நாட்கள் கழித்து அவரது சிறுகுடலில் ஓட்டை விழுந்திருந்ததால்



மீண்டும் ஒரு அறுவை சிகிச்சைச் செய்யப்பட்டு 25.3.2001ம் தேதி அவர் விடுவிக்கப்பட்டார். அவருக்கு ஏற்பட்ட காயங்கள் கொடுங்காயம் என்று கருத்துரை வழங்கி சான்றிதழ் வழங்கியுள்ளேன்.□

15.Accordingly, the injuries sustained by the victim were declared as grievous injury. Though the victim sustained a grievous injury in order to attract the offence under Section 307 of I.P.C., there was no ingredients placed by the prosecution. As per the deposition of P.W.1 and the complaint lodged by the deceased victim revealed that he sustained only grievous hurt by the appellant. That apart, the prosecution also failed to prove that the victim was attacked with stick by the appellant. He attacked the deceased only with his legs and hands. He hit the victim's private part and also scrotal, due to which, he sustained injury. It was declared as a grievous one. Further, he had no intention to do away with the life of the victim. In this regard, it is relevant to extract the provision under Section 307 of I.P.C which reads as follows:-

"307. Attempt to murder.—Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for



a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to 1[imprisonment for life], or to such punishment as is hereinbefore mentioned.”

16.In order to justify the conviction under Section 307 of I.P.C, it is not essential that bodily injury capable of causing death should have been inflicted. An attempt in order to be criminal need not be the penultimate act foreboding death. It is sufficient in law if there is present an intent coupled with some overt act in execution thereof, such act being proximate to the crime and if the attempt has gone so far that it would have been complete but for the extraneous intervention which frustrated its consummation. There are different stages in a crime. First, the intention to commit it, second, the preparation to commit it; third, an attempt to commit it.

17.In the case on hand, the appellant had no intention to murder the deceased. In fact, he went to the shop of the victim and he had tea from his shop. When the victim asked money for the tea and also the earlier balance, he attacked with his hands and legs. Unfortunately, hit his private parts and scrotal and he sustained grievous injuries. Therefore, no offence is made out under Section 307 of I.P.C. However, the victim sustained injuries hurt.



Therefore, it would attract the offence punishable under Section 323 of I.P.C.

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18. In view of the above, the conviction under Section 307 of I.P.C cannot be sustained as against the appellant. But he is liable to be convicted for the offence under Section 323 of I.P.C and the Judgment passed in S.C.No.40 of 2004, dated 29.02.2016 on the file of the learned III Additional Sessions Judge (PCR), Madurai, thereby convicting the appellant for the offence under Section 307 of I.P.C is hereby set aside, however, this Court found the accused guilty for the offence under Section 323 of I.P.C. In so far as the sentence is concerned, he had already undergone more than five months imprisonment. Therefore, the appellant is sentenced to undergo for the period which was already undergone by him.

19. Accordingly, this Criminal Appeal is partly allowed. Consequently, the connected Miscellaneous Petition is closed.

20.04.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes



To

- 1.The III Additional Sessions Judge (PCR),
Madurai.
- 2.The Assistant Commissioner,
Tallakulam,
Anna Nagar Police Station,
Madurai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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