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Date : 22.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.A.(MD)No.194 of 2016

Vijayakumar

... Appellant/Sole Accused

vs.

State Represented by
The Inspector of Police,
Karambakudi Police Station,
Pudukkottai District.
In Crime No.5 of 2013

...Respondent/Complainant

PRAYER : This Criminal Appeal has been filed under Section 374(2) of Cr.P.C., to set aside the Judgment and Conviction, dated 31.05.2016 by the learned Sessions Judge, Mahila Neethimandram, Pudukkottai in S.C.No.48 of 2013 and acquit the appellant.

For Appellant : Mr.D.Rameshkumar

For Respondent : Mr.K.Sanjai Gandhi
Government Advocate (Crl. side)

JUDGMENT

This appeal has been filed as against the Judgment and conviction dated 31.05.2016 on the file of the learned Sessions Judge, Mahalir



Neethimandram, Pudukottai passed in S.C.No.48 of 2013 and thereby, convicted the appellant for the offences under Sections 294(b), 354, 326 and 307 of IPC.

2. The case of the prosecution is that the defacto complainant was married to one Kaathalingam. Even after 15 years from the date of their marriage, they had no children. Therefore, the husband of the de-facto complainant got married with the defacto complainant's sister. Thereafter, he died and as such, the defacto complainant had illegal intimacy with the appellant/accused. During their relationship, he had borrowed a sum of Rs.1,00,000/- from the defacto complainant. Thereafter, the accused also got married another woman. When the defacto complainant demanded to return the said amount, the accused on 11.01.2013 had promised to return the money and had dragged the defacto complainant in his vehicle to a secluded place. Thereafter, he stopped the vehicle and verbally abused the defacto complainant in filthy language and slapped her. Thereafter, he also kicked her down and stamped her with his legs. He also sat on her chest and told her that he would chop off her tongue by using a blade and tried to pull out her tongue. When the defacto complainant bit her teeth, he cut her lips with the blade and also caused injuries on the face of the defacto complainant and cheeks. After hearing



her noise, the persons who were in the agricultural field in and around the scene of crime came and rescued the defacto complainant from the accused. Immediately, the accused escaped from the scene of crime by his two wheeler. Immediately, she was taken to hospital. On the complaint, the respondent police registered the FIR in Crime No.5 of 2013 for the offences punishable under Sections 294(b), 323, 324, 354 and 307 IPC. After completion of investigation, the respondent police has filed a final report and the same has been taken cognizance by the trial Court.

3. On the side of the prosecution, they had examined P.W.1 to P.W. 14 and marked Ex.P.1 to Ex.P.13. The prosecution had produced materials objects as M.O.1 to M.O.8. On the side of the accused, no one was examined and no documents were marked.

4. On perusal of the oral and documentary evidence, the trial Court found the appellant guilty for the offences under Sections 294(b), 354, 326 and 307 IPC. He was sentenced to pay a fine of Rs.500/- in default to undergo one week Simple Imprisonment for the offence under Section 294(b) IPC. He was sentenced to undergo 3 years Rigorous Imprisonment and to pay a fine of Rs.1000/- in default to undergo 6



months Rigorous Imprisonment for the offence under Section 354 IPC.

He was sentenced to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.1000/- in default to undergo 6 months Rigorous Imprisonment for the offence under Section 326 IPC. He was also sentenced to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.1000/- in default to undergo 6 months Rigorous Imprisonment for the offence under Section 307 IPC. Aggrieved by the same, the present appeal.

5. The learned counsel for the appellant would submit that the prosecution has failed to prove the charges by evidence during trial or material evidence. There were contradictions in the Accident Register recorded by the three hospitals. The victim categorically stated before the Doctor that she was attacked by the accused persons and without mentioning the name, though she had illegal intimacy with the accused for so long years. There was delay in preferring the complaint and the delay has not been properly explained by the prosecution. The medical evidence did not support the case of the prosecution. In fact, even according to the victim, the appellant abused her in filthy language and also attempted to cut her tongue because she repeatedly asking for return of money which was borrowed by the appellant. Therefore, the offence



under Section 307 IPC is not at all attracted as against the appellant.

Admittedly, there is a previous enmity between the respondent and the appellant and as such, a false case has been foisted as against the appellant herein. There were contradictions in respect of the admission to the hospital and also the period of treatment taken by the victim. Therefore, the prosecution has failed to prove the case beyond any doubt and prayed for acquittal.

6. Per contra, the learned Government Advocate (Crl. Side), would submit that the appellant borrowed a sum of Rs.1,00,000/- while they were in relationship. When the appellant asked for return of money, she dragged her into the remote place and attempted to do away her life. He caused injuries on the entire face of the victim and also cut down her lips. Therefore, she sustained grievous injuries and immediately, she was taken to hospital. In order to corroborate the evidence of P.W.1, other eyewitnesses P.W.2 to P.W.5 were examined and they categorically deposed and proved the case of the prosecution. The Doctor, who treated the victim also categorically deposed and the injuries were corroborated with Ex.P.9, the Wound certificate. There was recovery of two wheeler from the accused and blade from the accused. The respondent also seized the blood stained soil and hairs which were cut down by the accused,



which was marked as M.O.4, M.O.7 and M.O.8. Therefore, the trial Court rightly convicted the appellant and it does not warrant any interference by this Court.

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

8. The victim was examined as P.W.1. She deposed that she had illegal intimacy with the appellant and he borrowed a sum of Rs.1,00,000/-. Despite her repeated request, the appellant has failed to return the money. On 11.01.2013, when the victim asked for return of money, the appellant assured to return the money and dragged her to a secluded place in his two wheeler, which was produced as M.O.1. Immediately, he abused her in filthy language and he also slapped her and kicked her down and thereafter, he attempted to pull her tongue out of her mouth to cut it down. Since the victim repeatedly demanded money from the appellant, he also strangled her neck by using her saree. After raising alarm, the persons who were engaged in a agricultural activities, came and rescued the victim from the appellant. Immediately, he escaped from the scene of crime by his two wheeler. Thereafter, they called Ambulance and the victim was taken to Government hospital,



Ilayankudi. Again, she was referred to the Government Hospital, Pudukottai for better treatment. While she was under treatment, her statement was recorded and the same was marked as Ex.P.1. Thereafter, again she was shifted to the Rohini Hospital at Tanjore and admitted as inpatient. The Doctor, who treated the victim was examined as P.W.11. He categorically submitted that the victim was admitted as inpatient on 12.01.2013 at about 12.45 p.m. He found the following injuries:

- 1.கீழ் உதடு முழுமையாக தாறுமாறாக கிழிந்து காயங்களாக இருந்தது.
- 2.முகத்தில் பல இடங்களில் சிராய்ப்புக்காயம் காணப்பட்டது.
- 3.தலையின் முன் பக்கத்தில் சிராய்ப்புக்காயம் இருந்தது.
- 4.மார்பு பகுதியிலும், வயிற்று பகுதியிலும் வலி உள்ளதாக சொன்னார்.□

When the victim was in the Government Hospital, Pudukottai, P.W.10 recorded her statement and registered the First Information Report in Crime No.5 of 2013. After raising alarm, P.W.2 to P.W.5 came to the scene of crime and found that the victim sustained injuries on her lower lip and also sustained lacerated wound on her face. Immediately, the appellant escaped from the scene of crime by his two wheeler. Therefore,



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P.W.2 to P.W.4 corroborated the evidence of P.W.1. P.W.5 and P.W.6, had also seen, when the victim was dragged by the appellant in his two wheeler. Therefore, the prosecution proved the charges for the offences under Sections 294(b), 354, 326 IPC. The only point for consideration in this appeal is that whether the prosecution proved the charge under Section 307 IPC? On seeing the injury sustained by the victim, the appellant attempted to cut down her tongue, since she was repeatedly asking for return of her money, which was borrowed by the appellant. Even according to D.W.1, he deposed that he abused her in filthy language and slapped her on her face and he also kicked her to fell down. Thereafter, he sat on her chest and told her that he would chop off her tongue by using a blade and tried to pull out her tongue. Therefore, the victim bit her teeth and refused to open her mouth. Therefore, the appellant cut the victim's lip with blade and caused injuries. Therefore, there was no intention to do away the life of the deceased by the appellant herein. It is relevant to extract the provision under Section 307 IPC as under:

“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 imprisonment for life, or to such punishment as is hereinbefore mentioned.

Attempts by Life Convicts: *When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death.”*

9. In order to prove the charge for the offence under Section 307 IPC, 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. If at the third stage, the attempt fails, the crime is not complete but the law punishes for attempting the same. An attempt to commit crime must be distinguished from an intent to commit it or preparation of its commission. Though it is sufficient to justify a conviction under Section 307 IPC, if there is presence of an intent coupled with some overt act in execution thereof. If no intention to commit crime of murder, the accused cannot be convicted for the offence under Section 307 IPC. That apart, the way in which, the appellant committed the crime, would not attract the offence under Section 307 IPC. Therefore, the charge under Section 307 IPC is not at all attracted as against the appellant, since he had no intention to do away the life of the deceased. He intended to cut her



tongue and it would not cause any death. Therefore, the charge under Section 307 IPC is not proved by the prosecution.

10. Insofar as the sentence is concerned, considering the above facts and circumstances and also the nature of the offence committed by the appellant, the sentence of 10 years Rigorous Imprisonment for the offence under Section 326 IPC can be reduced.

11. Accordingly, the conviction imposed against the appellant for the offence under Section 307 IPC by the learned Sessions Judge, Mahila Neethimandram, Pudukkottai in S.C.No.48 of 2013, dated 31.05.2016 is hereby set aside. Insofar as sentence imposed against the appellant for the offence under Section 326 is concerned, it is modified from 10 years Rigorous Imprisonment to 3 years Rigorous Imprisonment.

12. In the result, this Criminal Appeal is partly allowed. The respondent is directed to secure the appellant to serve the remaining period of sentence.

22.06.2023

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

1.The Sessions Judge,
Mahila Neethimandram, Pudukkottai.

2.The Inspector of Police,
Karambakudi Police Station,
Pudukkottai District.

3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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