

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2015

CORAM:

THE HONOURABLE MR. JUSTICE P.DEVADASS

Crl.A.No.122 of 2015

and

M.P.No.1 of 2015

Selvam

.. Appellant

Vs.

State Rep. By
The Inspector of Police,
Kayarlabath Police Station,
Ariyalur District.
(Crime No.134/2013)

.. Respondent

Criminal Appeal is filed under Section 374 Cr.P.C. to set aside the judgment passed in S.C.No.52/2014 dated 02.02.2015 on the file of Additional District and Session Judge and Chief Judicial Magistrate, Ariyalur.

For Appellant : Mr.T.Muruganantham

For Respondent : Mr.P.Govindarajan
Additional Public Prosecutor

JUDGMENT

The sole accused is the appellant in this appeal.

2. This appeal has been filed against the judgment passed by the learned Additional Session Judge, Ariyalur in S.C.No.52 of 2014, on 02.02.2015.

3. The appellant has been tried for charges under Sections 294(b) and 307 IPC.

4. He pleaded not guilty to the charges.

5. In the circumstances, the trial Court directed the prosecution to produce the witnesses.

6. To substantiate the charges, prosecution examined P.Ws. 1 to 9 and marked Exs.P1 to P5.

7. On the incriminating information in the prosecution evidence, the trial Court examined the appellant under Section 313 Cr.P.C. He denied the offence. However, he did not examine any witnesses nor mark any document on his side.

8. Appreciating the said evidence and the submissions of both sides the learned Additional Sessions Judge convicted the appellant and sentenced him as under:

<i>Conviction</i>	<i>Sentence</i>
307 IPC	10 years RI and fine Rs.5,000/-, in default 6 months SI
294(b) IPC	6 months SI and fine Rs.1,000/- in default 2 months SI

The learned Additional Sessions Judge directed both the sentences to run concurrently. Fine amount has been paid.

9. The learned counsel for the appellant would contend that in the facts and circumstances, an offence under Section 307 IPC will not arise. The learned counsel for the appellant contended that even as per the prosecution version, the accused alleged to have picked up a stone and assaulted the injured with that on the rear side of her head. The medical evidence is that she had simple injury. In the circumstances, it may be an offence under Section 324 IPC and not under Section 307 IPC.

10. The learned counsel for the appellant would further contend that the sentence imposed upon the appellant is shocking and it is quite disproportionate to the offence established. The learned counsel for the appellant would also submit that already the petitioner is in jail for 60 days.

11. The learned Additional Public Prosecutor would submit that at the time of occurrence there was quarrel and in a drunken mood intending to kill

P.W.1 the appellant had assaulted P.W.1 with a stone and she sustained injury. She had narrow escape. He has also scolded her in filthy language. In the circumstances, the trial Court has convicted him under Sections 294(b) and 307 IPC and punished him accordingly.

12. I have anxiously considered the rival submissions and perused the impugned judgment and the evidence on record.

13. The appellant and P.W.1 are spouses. They have become estranged couples. They have strained relationship. No love last between them.

14. In this backdrop of the matter, on 07.08.2013, at about 4.30 pm, while P.W.1, was standing in front of her sister Chellammal's house, the accused came, scolded P.W.1 in filthy language and wordy altercation ensued between both, suddenly the accused picked up a stone and thrown it on the rear side of her head.

15. The weapon of offence viz., stone has not been marked. Thus, dimension of the weapon and the size of it are not known. P.W.5, the Doctor, noticed one lacerated wound 4X1 cm bone depth on the rear side of her head. P.W.8, the Doctor, opined that the injury was simple in nature (See Ex.P3-Wound Certificate).

16. From the evidence of P.W.1, it has been established that the accused has committed an offence under Section 294(b) IPC.

17. The main attack of the appellant is as regards the conviction recorded under Section 307 IPC.

18. An offence will have four steps, namely, intention, preparation, attempt and its completion. 'Intention' as such is not punishable because, nobody knows what is in the mind of the other. 'Preparation' is a prelude to commit a crime. An 'attempt' is also punishable. Each attempt has been classified in particular Sections of the Indian Penal Code. In Chapter XXIII, in Section 511 of IPC 'General attempt' has been mentioned. An attempt to commit murder is punishable under Section 307 IPC. The simplest way of explaining an attempt to commit murder is Section 302 IPC = Section 307 IPC less death. Thus, for an offence under Section 307 IPC, intention/knowledge should be present. Thus, for an offence under Section 307 IPC all the necessary ingredients for an offence under Section 302 IPC must present but, death should not occur.

19. For an offence under Section 307 IPC, it is not 'the size of the injury', but the 'seat of the injury' is very important. The type of weapon used is also important. If the injury is on a vulnerable part of the body such as neck with a sharp edged weapon, lethal weapon it would fall under Section 307 IPC, but the victim should survive. But, if the injury is on the knee, it would not present a

case under Section 307 IPC. Thus, if the injury is on the rear side of the head, it would not fall under Section 307 IPC.

20. 'Overt act' (actus reus) is a route to reach the mind of the accused (*mens rea*). Overt act will be known from the nature of the injury caused and also the type of the weapon used. To make an act offence, there must be continuation of *mens rea* and overt act unless mens rea is statutorily dispensed with. These are foundations of criminal liability in India.

21. In the case before us, the weapon of offence used is a stone. Its dimension is not known. By the evidence, it was a small stone picked up from a place. The seat/situs of the injury on the body was on the rear side of the head of P.W.1. The injury was simple in nature. The injury was not on a vulnerable part of the body. It would be unthinkable that the accused had intended to cause the death of his wife by hitting her on the rear side of her head with such a small stone. Thus, in the facts and circumstances of this case an offence under Section 307 IPC is not made out.

22. In this case, it is established that the appellant has voluntarily caused hurt to P.W.1 with a stone on the rear side of her head. It would fall under Section 324 IPC and not under Section 307 IPC.

23. 'Crime' and 'punishment' are not one and the same. They are not synonymous. They are different. A crime is an act as defined by the legislature. A crime has to be proved by establishing the ingredients prescribed therefor. Once the prescribed essential ingredients are established by acceptable legal evidence a finding of guilty has to be recorded. Punishment is not proving an offence it comes under 'penology'. It is a different subject. It relates to 'sentencing policy'. It involves psychological, moral, ethical, individual (Judge's) perception, his out look on the offence established and wide (judicial) discretion is available to the Judge in awarding the sentence. A sentence of Court should not be shocking, barbaric, disproportionate and arbitrary.

24. In the result, this Criminal Appeal is partly allowed. The conviction imposed on the appellant under Section 294(b) IPC is confirmed. The conviction under Section 307 IPC is set aside. Instead, he is convicted under Section 324 IPC. Under Section 294(b) IPC, he is sentenced to 10 days SI. Under Section 324 IPC, his total period of imprisonment, namely, 60 days is awarded as sentence. The sentence of fine imposed under Sections 294(b), 307 of IPC are set aside. The appellant is given relief under Section 428 Cr.P.C. He is entitled to refund of the fine amount. Since the appellant had already undergone the sentence as imposed by this Court, he is directed to be set free. Consequently, connected miscellaneous petition is closed.

25. The Jail authority is directed to release the appellant forthwith, if he is not required for any other case.

08.04.2015

Index: Yes
Internet: Yes

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Note: A copy of this Judgment shall be sent to the
Director, Tamil Nadu State Judicial Academy,
Greenways Road, Chennai-28.

To

- 1.The Principal Session Judge, Ariyalur.
- 2.The Additional Session Judge, Ariyalur.
- 3.The Superintendent,
Central Prison, Trichy.
- 4.The Inspector of Police,
Kayarlabath Police Station,
Ariyalur District.
- 5.The Public Prosecutor,
High Court, Madras.
- 6.Section Officer,
Criminal Section,
High Court, Madras.

P.DEVADASS, J.

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