

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.342 of 2015
and
M.P.No.1 of 2015

G.Anandan

... Appellant/Accused

Vs.

The State, rep.by
The Inspector of Police,
Annamalai Nagar Police Station,
Annamalai Nagar,
Chidambaram,
Cuddalore District/
(Cr.No.35 of 2012)

... Respondent/Complainant

Criminal Appeal filed under Section 374 of Cr.P.C., r/w.389 of Cr.P.C. to set aside the conviction and sentence passed by the District Mahila Sessions Court, Cuddalore in S.C.No.206 of 2012, dated 05.05.2015.

For appellant : Mr.V.R.Balasubramaniam for
Mr.C.Prakasam

For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor

JUDGMENT

The convictions and sentences dated 05.05.2015 passed in Sessions Case No.206 of 2012, by the Mahila Court, Cuddalore, are being challenged in the present Criminal Appeal.

2. The case of the prosecution is that on 9.2.2012 at about 12.30 a.m., the accused has stealthily entered into the house of the defacto complainant and tried to outrage her

modesty and during the course of occurrence, he attacked the defacto complainant by using deadly weapons. After occurrence, the defacto complainant has given a complaint and the same has been registered in Crime No.35 of 2012. The complaint given by the defacto complainant has been marked as Ex.P1.

3. On receipt of Ex.P1, the investigating officer (P.W.9) has taken up investigation, examined connected witnesses and after completing the same, laid a final report on the file of the Judicial Magistrate No.I, Chidambaram and the same has been taken on file in P.R.C.No.24 of 2012.

4. The Judicial Magistrate No.I, Chidambaram, after considering the fact that the offences alleged to have been committed by the accused are triable by Sessions Court, has committed the case to the trial Court and the same has been taken on file in Sessions Case No.206 of 2012.

5. The trial Court, after hearing arguments of both sides and upon perusing the relevant records, has framed first charge against the accused under Section 442 of the Indian Penal Code, second charge against him under Section 354 of the Indian Penal Code, third charge against him under Section 307 of the Indian Penal Code and fourth charge under Section 4 of the Tamil Nadu Prohibition of (Harassment of Women) Act and the same have been read over and explained to him. The accused has denied the charges framed against him and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 9 have been examined and Exs.P1 to P7 and M.O.1 have been marked.

7. When the accused has been questioned under Section 313 of the Criminal Procedure Code, as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. No oral and documentary evidence have been let in on the side of the accused.

8. The trial Court, after hearing arguments of both sides and upon appraising the available evidence on record, has found the accused guilty under Sections 448, 354 and 307 of the Indian Penal Code and also under Section 4 of the Tamil Nadu Prohibition of (Harassment of Women) Act and imposed sentences as mentioned in the judgment. Against the convictions and sentences passed by the trial Court, the present criminal appeal has been preferred, at the instance of the accused, as appellant.

9. The sum and substance of the case of the prosecution is that on 9.2.2012, at about 12.30 a.m., the accused has trespassed into the house of the defacto complainant and tried to outrage her modesty and since his attempt has become futile, he attacked the defacto complainant by using a deadly weapon and thereby caused injuries on her person.

10. The defacto complainant has been examined as P.W.1 and her husband has been examined as P.W.2. The daughter of P.W.1 and P.W.2 have been examined as P.W.3 and their neighbours have been examined as P.Ws.4 and 5. The Doctor, who treated P.W.1, has been examined as P.W.7. The trial Court, after considering their evidence, has found the accused guilty under Sections 448, 354 and 307 of the Indian Penal Code and also under Section 4 of the Tamil Nadu Prohibition of (Harassment of Women) Act and imposed sentence as mentioned in the judgment.

11. The learned counsel appearing for the appellant/accused has raised the following points so as to set aside the convictions and sentences passed by the trial Court:

(a) The specific evidence given by P.W.8 is that he registered the complaint at 5.00 a.m., whereas, the defacto complainant, examined as P.W.1, has given evidence to the effect that the complaint has been given after seeing the Doctor viz., P.W.7 and therefore, the complaint (Ex.P1) is highly doubtful.

(b) Among the prosecution witnesses, contra evidence is available with regard to time of arrest of the accused.

(c) The specific case of the prosecution is that the accused has attacked the deceased by using a vegetable cutter, but the kitchen of the defacto complainant is situated in a different place and therefore, the weapon alleged to have been used by the accused is highly doubtful.

12. In order to sustain the convictions and sentences passed by the trial Court, the learned Additional Public Prosecutor has contended that the defacto complainant has been examined as P.W.1 and her specific evidence is that in the place of occurrence, the accused has tried to outrage her modesty and also attacked her person and thereby caused injuries. The evidence given by the defacto complainant has been clearly corroborated by the evidence given by P.Ws.2 to 5 and the trial Court, after considering the plenitude of evidence found on the

side of the prosecution, has rightly invited convictions and sentences against the appellant and therefore, the convictions and sentences passed by the trial Court are not liable to be interfered with.

13. The first and foremost contention put forth on the side of the appellant/accused is that ExP1, complainant, is highly doubtful.

14. It is true that P.W.8 has given clear evidence to the effect that Ex.P1 has been registered at 5.00 a.m., whereas P.W.1, defacto complainant, has given a specific evidence to the effect that immediately after occurrence, she has been taken to P.W.7, Dr.Kamali and only after getting treatment, she has gone to the police station. Since with regard to registration of Ex.P1, a slight variation is found place on the side of the prosecution, the same cannot be a ground for rejecting the case of the prosecution. On the side of the prosecution, replete evidence is available so as to prove the offences alleged to have been committed by the accused. Therefore, the first and foremost contention urged on the side of the appellant is sans merit.

15. The second contention put forth on the side of the appellant/accused is that with regard to time of arrest, rival evidence is available on the side of the prosecution.

16. It is seen from the records that after occurrence, the accused has been caught and subsequently handed over to the police. Even if there is any contra evidence with regard to time of arrest, the same would not militate the case of the prosecution and therefore, the second contention put forth on the side of the appellant/accused goes out without merit.

17. The third contention put forth on the side of the appellant/accused is that the weapon alleged to have been used by the accused is highly doubtful.

18. It is seen from the rough plan that kitchen of the defacto complainant is situated in a different place and that itself would not be sufficient for coming to a conclusion that the accused would not have attacked the defacto complainant by using a vegetable cutter. Therefore, viewing from any angle, all the contentions put forth on the side of the appellant/accused cannot be accepted.

19. The trial Court, after considering the over all evidence available on record, has rightly found the appellant/accused guilty under Section 448, 354 and 307 of the Indian Penal Code and also under Section 4 of the Tamil Nadu Prohibition of (Harassment of Women) Act.

20. The learned counsel appearing for the appellant/accused, as a residual contention, has contended that some leniency may be shown in awarding sentence, since the appellant/accused is a first offender.

21. Considering the nature of offences alleged to have been committed by the appellant/accused as well as the injuries sustained by P.W.1, this Court is of the view that three years rigorous imprisonment under Section 307 of the Indian Penal Code would be sufficient to meet the ends of justice and only with regard to the said modification, this criminal appeal is liable to be allowed in part.

In fine, this criminal appeal is allowed in part. The convictions and sentences passed under Sections 448, 354 of the Indian Penal Code and Section 4 of the Tamil Nadu Prohibition of (Harassment of Women) Act, by the trial Court are confirmed. The conviction passed by the trial Court under Section 307 of the Indian Penal Code is confirmed. However, the quantum of sentence imposed against the appellant/accused under the said Section (307 IPC) is modified as follows:

The appellant/accused is sentenced to undergo three years rigorous imprisonment under Section 307 of the Indian Penal Code instead of ten years. No modification with regard to fine amount. The sentences imposed against the appellant/accused shall run concurrently.

connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

msk

To :

- 1.The Inspector of Police,
Annamalai Nagar Police Station,
Annamalai Nagar,
Chidambaram,
Cuddalore District.
(Crime No.35 of 2012)
- 2.The District Mahila Sessions Judge,
District Mahila Sessions Court, Cuddalore
- 3.The Superintendent,
Central Prison,
Cuddalore.
- 4.The Public Prosecutor,
High Court, Madras
- 5.The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.C.Prakasam, Advocate, S.R.No.64023

Crl.A.No.342 of 2015

EV(CO)
CA(26/11/2015)



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