

BAIL SLIP

The Appellant/Accused namely M.Murugan @ Ramesh, S/o.Mani, was directed to be released on bail as per the order of this Court dated 12.10.2015 in MP.No.1/2015 in Crl.A.No.612 of 2015 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.07.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Crl.A.No.612 of 2015

M.Murugan @ Ramesh ... Appellant

Vs

The State of Tamil Nadu
represented by
The Inspector of Police
Gobichettipalayam Police Station
Erode District. ... Respondent

Appeal filed u/s.374 (2) Cr.P.C., against the Judgment of conviction and sentence passed by the learned Sessions Judge, Mahila Court (Mahila Fast Track Court), Erode, in S.C.No.41 of 2015 on 31.08.2015.

For Appellant : Mr.T.Gowthaman

For Respondent : Mr.M.Maharaja,
Additional Public Prosecutor

JUDGMENT

[Judgment of the court was delivered by V.BHARATHIDASAN, J.,]

The sole accused in S.C.No.41 of 2015 on the file of the learned Sessions Judge, Mahila Court (Mahila Fast Track Court), Erode, is the appellant herein. He stood charged for an offence under Sections 341, 294 (b) and 307 IPC. The trial Court convicted him under Section 341 IPC and sentenced him to undergo one month simple imprisonment with a fine of Rs.500/-, in

absence to undergo simple imprisonment for one week and convicted him under Section 294(b) IPC and sentenced him to undergo three months rigorous imprisonment with a fine of Rs.1,000/- in default to undergo two weeks simple imprisonment and also found him guilty under Section 307 IPC and sentenced him to undergo life imprisonment and also to pay a fine of Rs.5,000/-, in default to undergo two years simple imprisonment. Challenging the above conviction and sentence, the present Appeal has been filed.

2. The case of the prosecution, in brief, is as follows:-

(i) The injured one Jeeva Karpagam is the brother's wife of the accused. The injured, accused and the husband of the injured, viz., one Loganathan were all living together. One year prior to the occurrence, the husband of the injured, viz., Loganathan died due to heart attack. After his death, the house, which stood in the name of the deceased Loganathan was transferred to his wife, the injured (PW.2). Hence, the accused had a grievance and demanded a share in the property. On 20.02.2014 at about 5 p.m, the accused scolded PW.2 with filthy language and attacked her with an iron rod on her head, forehead, forehands and back.

(ii) PW.1, a nephew of PW.2 and P.W.3, who were present in the scene of occurrence, rushed to rescue and on seeing them, the accused fled away from the scene with the weapon of crime. Immediately, PW.1 and PW.3 took the injured to Gobichettipalayam Government Hospital, where PW.12, Assistant Surgeon examined PW.2 and found the following injuries

- " (1) A lacerated wound about 10 x 2 x bone depth on the right side of forehead.
- (2) A cut injury about 2 X 1 X ½ cms on the left forehead.
- (3) A cut injury about 1 x ½ x ½ cms on the nose.
- (4) A multiple cut injuries about 8 in number, size from 8 x 1 x bone depth to 4 x 1 x bone depth on the right parietal and temporal region.
- (5) A lacerated wound about 4 x 1 x 1 cm on the left forearm.
- (6) A lacerated wound about 1 x 1 x ½ cm on the area of left breast.
- (7) A lacerated wound about 2 x 1 x 1 cm on the left arm.
- (8) A cut injury about 2 x 1 x 1 cm on the left side of back of chest wall.
- (9) A cut injury about 2 x 1 x 1 cm on the left side of chest wall. "

He issued Accident Register (Ex.P10) and Wound Certificate (Ex.P12) and referred her to General Hospital, Coimbatore. He

also sent a memo to the respondent police (Ex.P11). PW.1, then went to the police station and lodged a complaint (Ex.P1) at about 7 p.m and based on the same, PW.11 registered a case in Crime No.80 of 2014 for offences under Sections 341, 294(b) and 307 IPC. Ex.P9 is the First Information Report. PW.11 sent the First Information report to the Judicial Magistrate and copies thereof to higher officials.

(iii) PW.14, Inspector of Police of the respondent police, commenced investigation, proceeded to the scene of occurrence, made an observation there and prepared an Observation Mahazar and also a rough sketch (Ex.P13). He recovered bloodstained soil (M.O.2) and sample soil (M.O.3), under a cover of Mahazar. Then, he recorded the statements of some of the witnesses. On 21.02.2014 at about 6.15 a.m, he arrested the accused and on such arrest, he voluntarily gave confession and based on the disclosure statement (Ex.P14), he recovered M.O.1- iron rod and also seized a dhoti (M.O.6) and shirt (M.O.7) of the accused and sent him to judicial custody. On 25.02.2014, PW.14 recorded the statement of PW.2 at Coimbatore Government Hospital and recovered bloodstained saree (M.O.3) and bloodstained jacket (M.O.4) of PW.2 and also recorded the statements of Doctor and other witnesses. After completion of investigation, he filed charge sheet.

3. Considering the above materials, the trial Court framed charges against the accused, as mentioned in paragraph-1 of the judgment. The accused denied the same. In order to prove the charges, the prosecution examined 14 witnesses and exhibited 15 documents and 7 material objects.

4. Out of the witnesses examined, PW.1 is a nephew of PW.2. According to him, there was a dispute between the accused and PW.2 regarding the house property, which was originally standing in the name of the husband of PW.2 and after his death, the property was transferred in the name of his wife, viz., PW.2; in view of the same, on the date of occurrence, the accused scolded the injured (PW.2) in filthy language and attacked her with M.O.1 - iron rod and caused injury; he went to the police station and lodged a complaint Ex.P1. PW.2 is the injured witness. According to her, the accused quarelled with her claiming share in the house property and on 20.02.2014 at about 5 p.m, while she was going to the shop, the accused waylaid and scolded her in filthy language and attacked her with M.O.1 - iron rod, on her head, forehands, forehead and back; and then, she was taken to Gobi Government Hospital, from where she was referred to General Hospital, Coimbatore. PW.3 is another close relative of PW.2. According to him, he and PW.1 were standing near the scene of occurrence and while he and PW.1 were talking together, the accused attacked PW.2 and caused injuries. He has also spoken about the motive. PW.4 is a resident of

Pachamalai. He is an independent witness. According to him, he was taking tea in a tea shop near the house of the injured and at that time, the accused attacked PW.2. PW.5 is a witness for recovery of M.O.1, under Ex.P2. PW.6 is a witness to Observation Mahazar and also recovery of M.O.2 and M.O.3. PW.7 is the brother of PW.2. He is a witness to recovery of M.O.4 and M.O.5, bloodstained saree and bloodstained blouse of the injured, PW.2. PW.8 is the Scientific Officer, working in the Forensic Lab. He has examined the bloodstained material objects and given a report, Ex.P6. PW.9 is the Head Constable. He, along with PW.13, recorded the statements of witnesses. PW.10 is the Bench Clerk, working in Judicial Magistrate Court. He has stated that he sent the material objects for chemical examination. PW.11 is the Special Sub Inspector of Police and he has stated that he registered the First Information Report (Ex.P9). PW.12 is the Assistant Medical Officer, working in Gobichettipalayam Government Hospital. He has stated that he admitted PW.2 and issued Accident Register (Ex.P10) and Wound Certificate (Ex.P12) and referred PW.2 to the General Hospital, Coimbatore. PW.13 is a Plastic Surgeon, working in Coimbatore Medical College Hospital and he has spoken about the treatment given to PW.2. PW.14 is the Inspector of Police. He has spoken about the investigation done by him and filing of final report, after completion of investigation.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he had denied the same as false. The accused did not examine any witness, but he has marked Marriage Registration Certificate, as Ex.D1.

6. Considering the above materials, the trial Court convicted and sentenced the accused, as stated in paragraph-1 of the judgment. Challenging the above said conviction and sentence, the present appeal has been filed by the accused before this Court.

7. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor.

8. The learned counsel appearing for the appellant would submit that the motive alleged by the prosecution is very flimsy and one Selvi, who is said to have accompanied PW.2 to the hospital, has not been examined and there is a long delay in sending the First Information Report to the Judicial Magistrate Court, which creates a doubt over the prosecution case and the medical evidence is also not corroborating the prosecution case. The learned counsel for the appellant would further submit that apart from that all the eye witnesses are related to the injured and thus, they are interested witnesses and their evidence cannot be relied upon.

9. Per contra, the learned Additional Public Prosecutor would submit that there are three eye witnesses, apart from the injured witness, PW.2, and their presence in the scene of occurrence is natural and PW.4, an independent witness, has stated that when he was taking tea in the tea shop near to the scene of occurrence, he saw the occurrence and the medical evidence clearly corroborates the evidences of eye witnesses. The learned Additional Public Prosecutor would further submit that the prosecution has proved the case beyond any reasonable doubt.

10. We have considered the rival submissions and perused the records, carefully.

11. There are three eye witnesses in this case. PW.2, the injured witness, is the brother's wife of the accused and they were all living together in the same house. After the death of the husband of PW.2, the house property, which stood in his name, was transferred to PW.2 and therefore, the accused had demanded a share in the house property, which has been denied by PW.2. Hence, the accused had a grievance against PW.2. PW.1 and PW.3, even though they are related to PW.2, were standing near to the house of the injured and chating. At that time, the accused had scolded PW.2 with filthy language and attacked her. PW.4, an independent witness, who was standing in a tea stall and taking tea, has also seen the occurrence. PW.2 is the injured witness. She has spoken about the motive. She has also clearly described the injuries suffered by her. While she was taken to Government Hospital, Gobichettipalayam, she has clearly stated before PW.12 Doctor that a known person attacked her with a sharpened stick (M.O.1.). So far as the injuries sustained by PW.2, the medical evidence clearly corroborates the evidence of eye witnesses.

12. So far as the contention of the learned counsel for the appellant that as per the evidence of PW.12 Doctor, one Selvi had taken PW.2 and admitted her in the hospital, but she was not examined by the prosecution and therefore, the prosecution has withheld a material witness, we are of the considered view that the non- examination of the said Selvi in no way affect the case of the prosecution, since the other eye witnesses have clearly spoken about the occurrence and the injuries caused on PW.2.

13. The next ground raised by the appellant is that there is a long delay in sending the First Information Report to the Judicial Magistrate Court. But, mere delay in forwarding the copy of the First Information Report to the Judicial Magistrate would not demolish the other credible evidences available on record. It is only the delay caused by the respondent police and mere delay would not, by itself, falsify the prosecution case. In the present case, all the four eye witnesses,

including the injured witness, have clearly deposed that it is only this accused, who attacked PW.2. Hence, we are of the considered view that the prosecution has clearly proved that this accused alone had attacked PW.2 and caused serious injury on PW.2. The trial Court has also elaborately considered all the aspects and there is no reason to interfere with the well considered judgment of the trial Court.

14. Now turning into the quantum of sentence, the trial Court has convicted the appellant and imposed a maximum punishment of life imprisonment for the offence under Section 307 IPC. The appellant is a poor man and he has no bad antecedents and considering his age and also considering the mitigating and aggravating circumstances, sentencing him to undergo ten years rigorous imprisonment and also to pay a fine of Rs.10,000/- in default to undergo rigorous imprisonment for four weeks would meet the ends of justice.

15. In the result, the Criminal Appeal is partly allowed. The conviction and sentence imposed on the appellant/accused in S.C.No.41 of 2015 on the file of the learned Sessions Judge, Mahila Court (Mahila Fast Track Court), Erode, under Sections 341 and 294 (b) IPC are confirmed and while confirming the conviction under Section 307 IPC, the sentence imposed under Section 307 IPC is reduced to ten years rigorous imprisonment with a fine of Rs.10,000/- in absence, to undergo rigorous imprisonment for four weeks. Fine already paid shall be adjusted towards the fine amount now imposed. The period of sentence already undergone by the appellant/accused shall be given set off under Section 428 Cr.P.C. The trial Court is directed to secure the accused to undergo the remaining period of the sentence, if the accused is on bail.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Sessions Judge,
Mahila Court (Mahila Fast Track Court),
Erode.
2. The Judicial Magistrate Gobichettipalayam

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3.The chief Judicial Magistrate
Erode

4.The Superintendent Central prison
Coimbatore

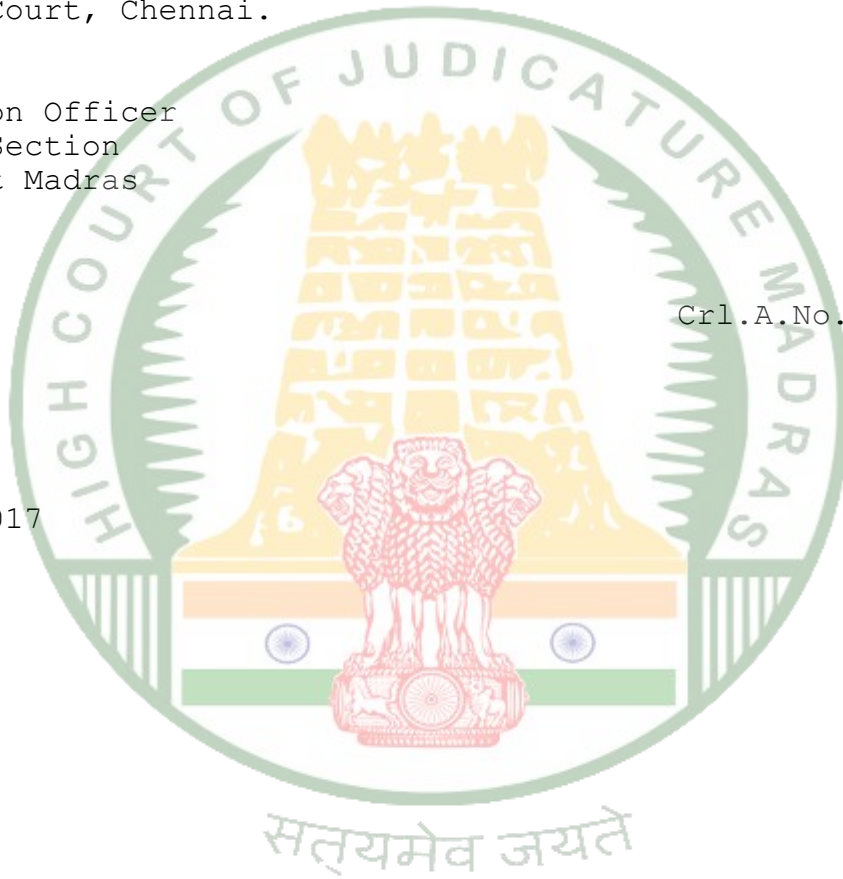
5. The Inspector of Police
Gobichettipalayam Police Station
Erode District.

6. The Public Prosecutor,
High Court, Chennai.

copy to
The Section Officer
Criminal Section
High Court Madras

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