

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.660 of 2015
and
M.P.No.1 of 2015

Babulal Appellant/Sole Accused

Vs.

State, represented by
The Inspector of Police,
J.6, Thiruvanmiyur Police Station. ... Respondent/Complainant
(Crime No.700/2009)

Criminal Appeal filed under Section 374(2) of Cr.P.C.,
against the judgment dated 16.10.2015, passed by XVII Additional
Sessions Judge, Chennai, in S.C.No.18 of 2011.

For appellant : Mr.A.M.Rahamath Ali

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

JUDGMENT

The convictions and sentences, dated 16.10.2015, passed
in Sessions Case No.18 of 2011, by the 17th Additional District
and Sessions Court, Chennai, are being challenged in the present
criminal appeal.

2. The case of the prosecution is that the husband of
defacto complainant, by name, Kailash Chand, has been running a
Pawn shop attached to his house. The accused has pledged some
jewels with him. On 04.09.2009, at about 9.00 p.m., the accused

has come to the house of the defacto complainant and asked his husband to return the pledged jewels since he is ready to pay a small amount. The request of the accused has not been accepted by the husband of the defacto complainant and all of a sudden, the accused has attacked the defacto complainant, her husband and her daughters by using a deadly weapon and thereby caused injuries on their persons. After occurrence, a complaint has been given and the same has been registered in Crime No.700 of 2009.

3. On receipt of the complaint, alleged to have been given by the defacto complainant, the investigating officer, viz., P.W.13, has taken up investigation, examined connected witnesses and after completing investigation, laid a final report on the file of the IX Metropolitan Magistrate, Saidapet, Chennai and the same has been taken on file in P.R.C.No.99 of 2010.

4. The IX Metropolitan Magistrate, Saidapet, Chennai, after considering the facts that the offences alleged to have been committed by the accused are triable by Sessions Court, has committed the case to the Court of Sessions, Chennai Division and the same has been taken on file in Sessions Case No.18 of 2011 and subsequently made over to the trial Court.

5. The trial Court, after hearing arguments of both sides and upon perusing the relevant documents, has framed first charge against the accused under Section 452 of the Indian Penal Code; second charge against him under Section 326 of the Indian Penal Code; third charge against him under Section 307 of the Indian Penal Code and fourth charge against him under Section 506(ii) of the said Code and the same have been read over and explained to him. The accused has denied the charges and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 13 have been examined and Exhibits P.1 to P.21 and M.Os.1 to 13 have been marked.

7. When the accused has been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. On the side of the accused, Exs.D1 to D3 have been filed.

8. The trial court, after hearing arguments of both sides and upon perusing the relevant evidence available on record, has found the accused guilty under Section 324 of the Indian Penal Code and sentenced him to undergo three years rigorous imprisonment. The trial Court has also found him guilty under Section 307 of the Indian Penal Code and sentenced him to undergo ten years rigorous imprisonment and also imposed a fine of Rs.10,000/- with usual default clause. The accused has also been found guilty under Section 452 of the Indian Penal Code and sentenced to undergo five years rigorous imprisonment and also imposed a fine of Rs.5000/- with usual default clause. 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 both the accused and husband of the defacto complainant, who has been examined as P.W.2, are having business transaction and prior to occurrence, the accused has pledged his jewels in the pawn shop of P.W.2. On 4.9.2009, at about 9.00 p.m., the accused has come to the house of P.W.2 and asked him to return his pledged jewels by way of saying that he is ready to give a small amount and since his request has not been conceded by P.W.2, all of a sudden, the accused has attacked him and also attacked defacto complainant and her daughters, by using a deadly weapon and thereby caused injuries on their persons.

10. On the side of the prosecution, the defacto complainant has been examined as P.W.1. The remaining injured witnesses have been examined as P.Ws.2 to 5. The concerned Doctors have been examined as P.Ws.10 and 11. The trial Court, after considering the evidence adduced on the side of the prosecution, has found the accused guilty under Sections 324, 307 and 452 of the Indian Penal Code.

11. The learned counsel appearing for the appellant/accused has contended that both P.Ws.1 and 13 have not been cross-examined and in order to recall them, a separate petition has been filed on the file of the trial Court and the same has been dismissed and against the dismissal order, a revision has been filed on the file of this Court and necessary permission has been granted and during the interregnum period, P.W.1 has passed away and further, on the side of the defence, effective cross-examination has not been done to vital prosecution witnesses and since effective cross-examination has

not been done on the side of the accused, certain important points are not elicited and further, some vital discrepancies are in existence with regard to identification of weapon and further, on the basis of evidence given by the defacto complainant, viz., P.W.1, the Court cannot come to a conclusion that the accused has committed an offence punishable under Section 452 of the Indian Penal Code and the trial Court, without considering the lapses on the side of the prosecution and without considering that no effective cross-examination has been done on the side of the accused, has erroneously found the accused guilty under Sections 324, 307 and 452 of the Indian Penal Code and therefore, the convictions and sentences passed by the trial Court are liable to be set aside.

12. In order to sustain the convictions and sentences passed by the trial Court, the learned Additional Public Prosecutor has contended that in the instant case, P.Ws.1 to 5 are injured eyewitnesses and their clear evidence is that in the place of occurrence, the accused has indiscriminately attacked on their persons and thereby caused injuries and further, P.W.10, Doctor, has given clear evidence with regard to injuries sustained by P.Ws.1 to 5 and the trial Court, after considering the evidentiary value of the evidence given by P.Ws.1 to 5, coupled with medical evidence, has rightly found the accused guilty under Sections 324, 307 and 452 of the Indian Penal Code and therefore, the convictions and sentences passed by the trial Court are not liable to be set aside.

13. It is seen from the records that the occurrence has taken place on 4.9.2009 at about 9.00 p.m. in the house of the defacto complainant. The prosecution has set the law in motion only on the basis of Ex.P1, wherein it has been clearly stated that prior to occurrence, the accused has come to the house of the defacto complainant and asked her husband viz., P.W.2 to return his pledged jewels by way of accepting small amount and her husband has refused to concede the request made by the accused and all of a sudden, the accused has taken a deadly weapon and indiscriminately attacked on the person of her husband and also attacked her and her daughters.

14. The author of Ex.P1 has been examined as P.W.1 and other injured eyewitnesses have been examined as P.Ws.2 to 5 and all of them have consistently/cogently stated about the overt acts alleged to have been committed by the accused.

15. The Doctor, who is concerned with the wound certificates, has been examined as P.W.10 and he speaks about all wound certificates relating to P.Ws.1 to 5.

16. The trial Court, after considering the evidence given by P.Ws.1 to 5, coupled with medical evidence, has found the accused guilty under Sections 324, 307 and 452 of the Indian Penal Code.

17. The first and foremost attack made on the side of the appellant/accused is that some discrepancies are in existence on the side of the prosecution with regard to identification of weapon. In Ex.P1, it has been clearly stated about the identification of the weapon alleged to have been used by the accused. Of course, it is true that some of the injured eyewitnesses have given a separate identification with regard to the weapon alleged to have been used by the accused in the place of occurrence and that itself would not pave the way for coming to the conclusion that the entire case of the prosecution is false. In the instant case, P.Ws.1 to 5 have consistently stated in their evidence that in the place of occurrence, by using a deadly weapon, the accused has attacked them on their persons and thereby caused injuries. Therefore, the first and foremost point urged on the side of the appellant/accused is sans merit.

18. It is true that both P.Ws.1 and 13 have not been initially cross-examined and subsequently filed a petition so as to recall them and the trial Court has dismissed the same and against the dismissal order, a revision has been filed on the file of this Court and this Court has permitted the accused to recall and cross-examine P.Ws.1 and 13 and during the interregnum period, P.W.1 has passed away.

19. Simply because on the side of the accused effective cross-examination has not been made to the prosecution witnesses, the Court cannot come to a conclusion that the accused has not been given sufficient opportunity to make cross-examination to the prosecution witnesses and on that score the convictions and sentences passed by the trial Court cannot be set aside.

20. The learned counsel appearing for the appellant/accused has also contended to the effect that the specific evidence given by P.W.1 is that prior to occurrence, the accused has come to the house of P.W.1 and she permitted him

to enter into the house and under the said circumstances, Section 452 of the Indian Penal Code is not attracted in the present case.

21. It is true that P.W.1 has given such kind of evidence. But in Ex.P1 as well as in the evidence of P.Ws.1 to 5, it is clearly stated to the effect that the accused has, all of a sudden, taken a knife, which has been kept by him and attacked on their persons. Therefore, it is quite clear that only with a guilty intention or necessary mensrea, the accused has made entry into the house of P.W.1 and on that basis, the Court can very well come to a conclusion that in the present case Section 452 of the Indian Penal Code is very well attracted.

22. The learned counsel appearing for the appellant/accused has also made a faint attempt to the effect that the accused has not committed an offence punishable under Section 307 of the Indian Penal Code. In fact, this Court has perused the wound certificate relating to P.W.2, wherein it is found that some grievous injuries are found place and some of the injuries have been caused on the occipital region of P.W.2 and therefore, it is quite clear that the accused has really attempted to murder P.W.2. Under such circumstances, Section 307 of the Indian Penal Code is also attracted in the present case.

23. It is seen from the records that the accused is aged about 46 at the time of occurrence and further, the accused is a first offender. Under the said circumstances, this Court is of the view that some leniency can be shown in awarding sentence under Section 307 of the Indian Penal Code and to that extent, 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 324 and 452 of the Indian Penal Code, by the trial Court, are confirmed. The conviction passed under Section 307 of the Indian Penal Code is also confirmed. However, the quantum of sentence imposed under the said Section by the trial Court is modified as follows:

The appellant/accused is sentenced to undergo five years rigorous imprisonment instead of ten years. There is no modification with regard to fine amount.

connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

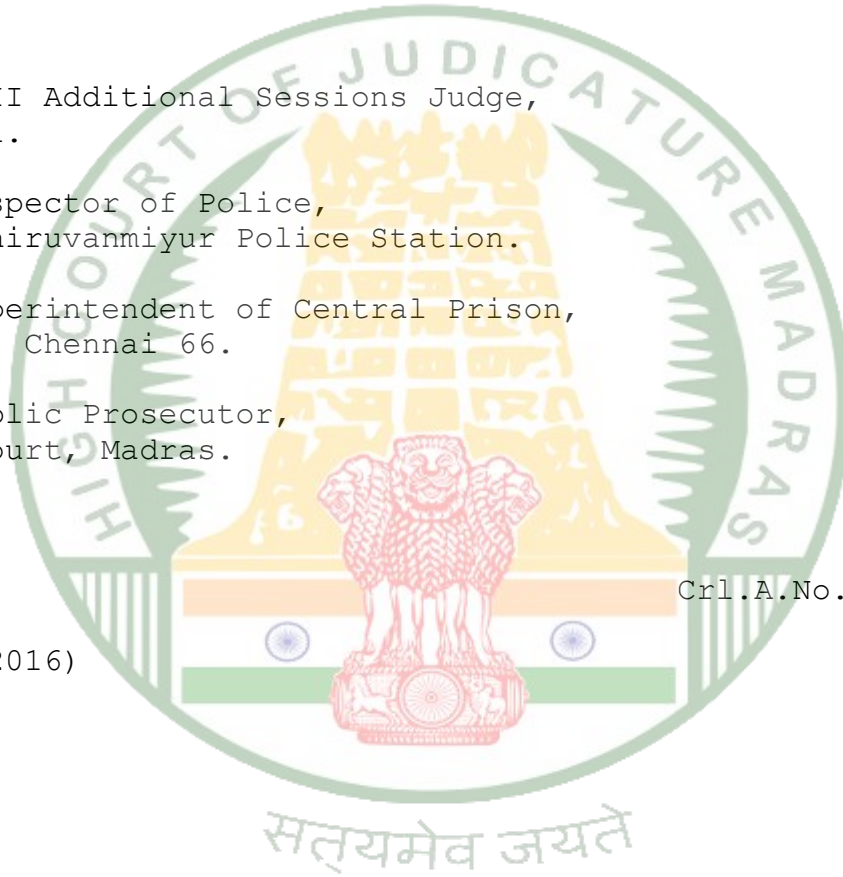
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To

1. The XVII Additional Sessions Judge,
Chennai.
2. The Inspector of Police,
J.6, Thiruvanmiyur Police Station.
3. The Superintendent of Central Prison,
Puzhal, Chennai 66.
4. The Public Prosecutor,
High Court, Madras.

JSV(CO)
CA(19/01/2016)

Crl.A.No.660 of 2015



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