

BAIL SLIP

The Appellant/Accused namely Rajesh S/o.Shanmugam was directed to be released on bail as the order of this Court dated 06.11.2015 in CrI.R.C.No.1173 of 2015 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2016

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

CrI.R.C.No.1173 of 2015  
and  
M.P.Nos.1 & 2 of 2015

Rajesh  
S/o.Shanmugam

... Petitioner/Accused

Vs.

State by  
Inspector of Police,  
Sirkazhi Police Station.  
Crime No.399 of 2007

... Respondent/Complainant

Criminal Revision filed under section 397 & 401 of the Code of Criminal Procedure, against the judgment of learned Sessions Judge, Fast Track Mahila Court, Nagapattinam, passed in C.A.No.14 of 2011 on 18.08.2015 modifying the judgment of learned Additional Assistant Sessions Judge, Mayiladuthurai, passed in S.C.No.182 of 2008 on 03.03.2011.

For Petitioner : Mr.S.Silambu Selvan

For Respondent : Mr.C.Iyyapparaj  
Government Advocate (CrI.side)

O R D E R

This revision is preferred against the judgment of learned Sessions Judge, Fast Track Mahila Court, Nagapattinam, passed in C.A.No.14 of 2011 on 18.08.2015 modifying the judgment of learned Additional Assistant Sessions Judge, Mayiladuthurai, passed in S.C.No.182 of 2008 on 03.03.2011.

2. Petitioner faced trial for offences u/s.341, 324, 326 and 307 IPC in S.C.No.182 of 2008 on the file of learned Additional Sessions Judge, Mayiladuthurai. The prosecution case is that the petitioner/accused and PW-1 were in love and the same was opposed by parents of PW-1. Angered thereby, on 15.05.2007 at about 05.00 p.m., while PW-1 was returning home after fetching water, the petitioner/accused obstructed her and with an intent to murder her, indiscriminately cut her with an aruval, owing to which PW-1 sustained injuries. A case in Crime No.399 of 2007 on the file respondent was registered. Upon completion of investigation, a charge sheet has been laid informing commission of offences u/s.341, 324, 326 and 307 IPC.

3. Before the trial Court, the prosecution examined nine witnesses and marked eleven exhibits and one material object. None were examined on behalf of the defence nor were any exhibits marked. On appreciation of materials before it, trial Court, under judgment dated 03.03.2011, convicted petitioner/accused and sentenced him to 1 month S.I. for offence u/s.341 IPC, 2 years R.I. for offence u/s.326 IPC and 2 years R.I. for offence u/s.307 IPC. No separate sentence was passed for offence u/s.324 IPC. The trial Court directed that sentences run concurrently. There against, petitioner moved C.A.No.14 of 2011 on the file of learned Sessions Judge, Fast Track Mahila Court, Nagapattinam. Appellate Court, under judgment dated 18.08.2015, while confirming the finding of conviction and sentence in respect of offence u/s.307 IPC acquitted the petitioner/accused of offences u/s.341 and 326 IPC. Hence, this revision.

4. Heard learned counsel for petitioner and learned Government Advocate [Crl.side].

5. This Court finds no error in the finding of conviction entered by the appellate Court. However, this Court is unable to sustain the conviction for offence u/s.307 IPC. A reading of the entire evidence in the case reflects that PW-1, victim, has fallen down after suffering the first injury to the head and totally was helpless. If, indeed the intent of the petitioner/accused was to murder her, he would have acted further towards fulfilling such intent. From the fact that he has, immediately after attacking PW-1, fled from the scene, it is to be gathered that the intent of the petitioner/accused was not to murder her. In the decision of this Court in Mahendran v. Inspector of Police [2000-2-L.W. (Crl.) 651], it has been held thus:

“5. The only question is whether the act of the appellant amounted to attempt to commit murder?

Section 307 I.P.C. reads 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 herein before mentioned"

The entire edifice of Criminal Law contained in Indian Penal Code is writ on the golden principle of *actus non facit reum, nisi mens sit rea*. It is evidence that the appellant had inflicted an injury. But the question is whether he had inflicted the injury with the intention of causing death of victim Deepa Menon. Intention can be ascertained by direct evidence and also by circumstantial evidence."

PW-1 has not suffered any grievous injury. In the circumstances, this Court would read down the offence of the petitioner/accused to one of voluntarily causing hurt by dangerous weapons covered u/s.324 IPC. Petitioner/accused has undergone imprisonment for a period of fifty days. It is the submission of learned counsel for petitioner that the entire occurrence had taken place owing to a love affair between the petitioner/accused and PW-1, which fact was admitted by PW-2, mother of PW-1 and owing to the pendency of the present case, the petitioner/accused, who was aged 24 on the date of occurrence, has remained unmarried till date.

7. Taking into consideration the submissions of learned counsel for petitioner, this Court would reduce the sentence to one of already undergone and direct payment of fine in a sum of Rs.1,00,000/- (Rupees one lakh only) i/d 1 year S.I. Fine amount shall be paid on or before 28.02.2016. In the event of failure to effect payment of fine, the petitioner shall be taken into custody towards serving out the default sentence.

This Criminal Revision is disposed of with the above modification. Consequently, connected miscellaneous petitions are closed.

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gm

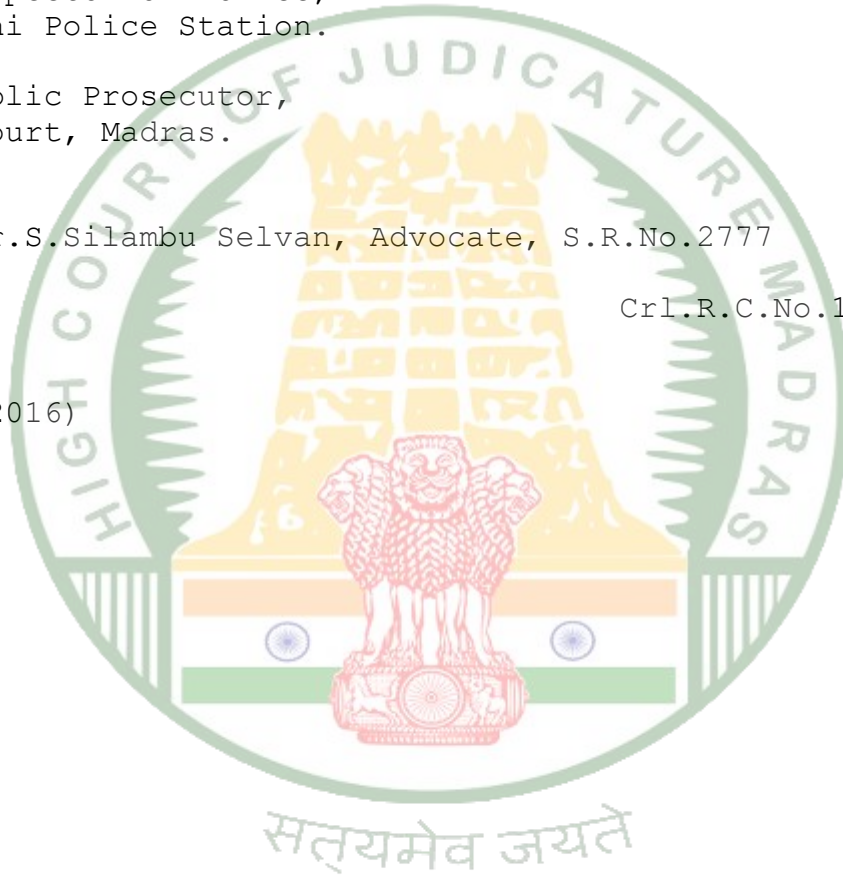
To

1. The Sessions Judge,  
Fast Track Mahila Court,  
Nagapattinam.
2. The Additional Assistant Sessions Judge,  
Mayiladuthurai.
3. The Inspector of Police,  
Sirkazhi Police Station.
4. The Public Prosecutor,  
High Court, Madras.

+1cc to Mr.S.Silambu Selvan, Advocate, S.R.No.2777

Crl.R.C.No.1173 of 2015

KK(CO)  
CA(29/02/2016)



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