

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.183 of 2016

Mohanraj .. Appellant/ Single Accused

- Vs -

State rep by Inspector of Police,
Ammamet Police Station,
Erode District.
(Cr.No.13 of 2015) .. Respondent/ Complainant

Prayer:- Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned Sessions Judge, Mahalir Fast track Court, Erode in S.C.No.158 of 2015 dated 17.02.2016.

For Appellant : Mr.N.Manokaran

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

J U D G M E N T

(Judgment of the Court was delivered by S.Nagamuthu, J.)

The appellant is the sole accused in S.C.No.158 of 2015 on the file of the learned Sessions Judge, Mahalir Fast Track Court, Erode. He stood charged for offences under Sections 450, 307(Part 2) and 354 I.P.C. By judgment dated 17.02.2016, the trial Court acquitted him from the charge under Section 354 I.P.C. and convicted him under Sections 450 and 307(Part 2) I.P.C. and sentenced him to undergo rigorous imprisonment for ten years and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for two years for offence under Section 450 I.P.C. and to undergo imprisonment for life and pay a fine of Rs.5,000/- in default to undergo simple imprisonment for two years for the offence under Section 307 (Part 2) I.P.C. Challenging the said conviction and sentence the appellant is before this Court with this appeal.

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

2.1. The accused is a resident of Kamarajar Street, Ammapet in Erode district. P.W.2 Ms.Sakithya aged about 18 years is a resident of Marriamman Koil Street at Ammapet.

During the year 2014, she was studying first year Bio Medical course in a local college. There is a playground by the side of the house of P.W.2. Six months prior to the occurrence, the accused used to come to the said playground and he used to play volleyball in the said ground. On that occasion, the accused had seen P.W.2. Once he intercepted P.W.2 and told her that he had fallen in love for her. P.W.2 did not respond positively, she rejected the said love and returned to her home. She informed the same to her parents. They in turn, called the accused and warned him.

2.2. Thereafter, on 24.01.2015 around 07.00 p.m., the accused, scaled down the compound wall of the house and came to the verandah of the house. At that time, P.W.2 was standing in the verandah, on reaching her, he wanted her to come with him. P.W.2 refused. Suddenly, the accused took out a knife and shouted at P.W.2 that since she was not available for him to marry, she should not be available for anybody else to marry and started attacking her with a knife on her neck and silted her neck thrice. P.W.2 raised alarm, the accused, fled away from the place of occurrence with the weapon.

2.3. P.W.1 is the mother of the deceased. She has stated that on hearing the alarm raised by P.W.2, when she came out from her house, she found the accused pulling the hands of P.W.2 and causing injury with a knife on her neck. She also raised alarm. P.W.3 is the uncle of P.W.2, he has stated that he heard the cry of P.Ws.1 and 2 and when he rushed to the house of P.Ws.1 and 2, he found the accused fleeing away from the scene of occurrence. He gave a chase, but he could not catch him hold. Thereafter, P.W.3 made arrangement for 108 ambulance service and in that, he rushed her to Bhavani Government Hospital.

2.4. P.W.6 Dr.Revathi examined P.W.2 on 24.01.2015 at 09.15 p.m. She found the following injuries:

"Injuries: (1) Incised wound 15x2x1 cm around left side of neck extending from middle of neck to below left ear lobule running upwards obliquely. (2) Incised wound 5x2x1 cm over right side aspect of neck. (3) Incised wound 3x1x1 cm exposing tendon over right hand 5th MC bone extension restricted."

2.5. P.W.2 was conscious and she told that she was cut with a knife by a known person at 07.30 p.m. at her house. P.W.6 gave opinion that all the three injuries found on the person of P.W.2 could have been caused by a knife. She further opined that the injuries were grievous in nature. Ex.P5 is the accident register. She gave intimation to the police.

2.6. On receiving the intimation from the hospital, P.W.8 the then Special Sub Inspector of Police rushed to the

hospital and recorded the statement of P.W.1 and on returning to the police station at 02.30 a.m. on 25.01.2015, registered a case in Crime No.13 of 2015 under Section 307 I.P.C. against the accused. Ex.P8 is the F.I.R. He forwarded both the documents to Court, which was received by the learned Magistrate at 06.00 p.m. on 25.01.2015.

2.7. P.W.10 took up the case for investigation. He went to the place of occurrence, prepared an observation mahazar and a rough sketch in the presence of P.W.5 and another witness. Then, he examined P.Ws.1, 3 and 4 and recorded their statements. Going over to the hospital, he examined P.W.2 and recorded her statement.

2.8. On 30.01.2015, P.W.10 arrested the accused near Ammapet post office bus stop in the presence of P.W.7 and another witness. On such arrest, at 12.45 p.m., he gave a voluntary confession, in which, he disclosed the place where he had hidden the knife. In pursuance of the same, he took the police and the witnesses to the place of hideout and produced M.O.1 knife. P.W.10 recovered the same under a Mahazar. On returning to the police station, he forwarded the accused to the Court and handed over the material object also to the Court.

2.9. During investigation, it turned out that the accused had caused injuries to himself and he underwent treatment at the Government Hospital at Bhavani on 24.01.2015. There was incised wound on the middle of his neck. The investigation was thereafter continued by P.W.11. He collected the medical records pertaining to the accused and on completing the investigation, he laid the chargesheet against the accused.

2.10. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment, which the accused denied. In order to prove the case, on the side of the prosecution as many as 11 witnesses were examined, 14 documents and 1 material object were marked.

2.11. Out of the said witnesses, P.Ws.1 and 2 has spoken about the entire occurrence. P.W.2 is an injured witness. P.W.3 has stated that he found the accused fleeing away from the scene of occurrence. P.W.4 has stated that on 24.01.2015 around 07.30 p.m. along with his friend by name Sakthivel when he was taking bath at Easwaran Kovil Padithurai at Ammapet, the accused jumped into the river and started swimming. P.W.4 shouted that there was enormous current in the water but the accused did not stop and he swam further and reached the other side of the bank of the river and went away.

2.12. P.W.5 has spoken about the preparation of the observation mahazar and a rough sketch. P.W.6 has spoken about the treatment given to P.W.2 at the Government hospital at Bhavani on 24.01.2015 at 08.30 p.m. P.W.7 the Village

Administrative Officer has spoken about the arrest of the accused, the disclosure statement made by him and the consequential recovery of M.O.1. P.W.8, the then Special Sub Inspector of Police has spoken about the registration of the case on the complaint of P.W.1. P.W.9 has stated that he was a part time doctor at a private hospital known as Sudha hospital at Erode. He has stated that on 24.01.2015 at 09.15 p.m. P.W.2 was brought to the hospital for treatment and he gave treatment and discharged her on 30.01.2015. According to him all the three injuries found on her were grievous in nature. P.Ws.10 and 11 have spoken about the investigation done and the final report filed.

3. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness nor to mark any document. Having considered all the above, the trial Court convicted the accused as detailed in the first paragraph of this judgment and that is how, he is before this Court with this appeal.

4. We have heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the State and also perused the records, carefully.

5. The learned counsel for the appellant would submit that the evidences of P.Ws.1 to 3 cannot be believed for they have not explained the injuries sustained by the accused. He has further submitted that it has been proved that the accused also sustained injury and he had undergone treatment in the Government Hospital at Bhavani, but no case was registered by the police in connection with the said injury. Thus, according to the learned counsel, the prosecution has not come forward with the true version of the occurrence. Though attractive, we do not find any force at all in this argument.

6. P.W.2 is an injured witness at the hands of the accused. She has vividly spoken about the entire occurrence. She has also spoken about the motive. The occurrence had been seen by P.W.1, since the occurrence had taken place in the verandah of the house of P.W.1 the presence of P.W.1 and her witnessing the occurrence cannot be doubted. P.W.3 was residing by the side of the house of P.W.2. According to him, on hearing the alarm raised, when he rushed to the house of P.W.2, he found the accused scaling down the compound wall and running away from the scene of occurrence. He has further stated that though he gave a chase, he could not catch hold. From these evidences, in our considered view, the prosecution has clearly established that it was this accused who caused injuries on P.W.2 in an attempt to murder her. The contention the learned counsel that these witnesses have not explained the injury sustained by the accused, deserved only to be rejected for the simple reason that the accused did not

sustain any injury in the occurrence. He scaled down the compound wall and ran away from the scene of occurrence. P.W.4 Mr.Suresh had seen him swimming across the river at 07.30 p.m. on the day of occurrence. The evidence of P.W.4 assumed much importance. The accused has thus crossed the river by swimming after he had attacked P.W.2 at her house. P.W.4 had not seen any injury on the accused at the time when the accused jumped into the river and when he crossed the river by swimming. Therefore, it is crystal clear that after escaping from the scene of occurrence and after crossing over the river, the accused had sustained the said injury. Therefore, there is no question of these eye witnesses to explain the injury sustained by the accused at all.

7. According to the entry made in the accident register, the accused had told the doctor that he had caused a single slit injury on his neck by himself. The accused has not made any allegation that the said injury was caused by anyone at the place of occurrence. Therefore, in our considered view, the non-explanation of the injury sustained by the accused elsewhere would not in any manner create doubt in the credibility of P.Ws.1 to 3.

8. At the earliest point of time, P.W.2 had told the doctor that she was attacked by a known person with knife at her house at around 07.00 p.m. This formal statement of P.W.2 further corroborates her said version. There is no delay in the F.I.R. so as to create any doubt. Thus, from these evidences, in our considered view, the prosecution has clearly established that it was this accused who trespassed into the house of P.W.2 by scaling down the compound wall and caused injuries on P.W.2.

9. The learned counsel for the appellant would submit that the said act of the accused would not make out an offence under Section 307 I.P.C. We find no force at all in the said argument. The very fact that the accused had gone by scaling down the compound wall of the house with a knife in his hand and the very fact that he had chosen to cause three grievous hurt on the neck of P.W.2 would go to given an inference that the intention of the accused was only to cause the death of P.W.2. Because P.Ws.1 and 2 raised alarm, the accused, did not continue the execution of his intention and ran away from the scene of occurrence. Thus, the act of the accused in causing the injuries on P.W.2 was an attempt on the life of P.W.2, therefore, the appellant is liable to be punished for offence under Section 307 I.P.C. For having trespassed into the house of P.W.2 with an intention to murder her, he is liable to be punished for offence under Section 450 I.P.C. The trial Court was thus right in convicting the accused under these two penal provisions.

10. Now turning to the quantum of punishment, at the time of occurrence, the accused was hardly 19 years old. Therefore there are lots of chances for reformation. He has got no bad antecedents. After the occurrence also he had not committed any other crime. He hails from a decent family. He has got a bright future. Having regard to these mitigating as well as aggravating circumstance, we are of the view that sentencing the accused to undergo rigorous imprisonment for five years and pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for four weeks for offence under Section 307 (Part 2) I.P.C. and sentencing him to undergo rigorous imprisonment for two years and pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for four weeks for offence under Section 450 I.P.C. would meet the ends of justice.

11. In the result, the appeal is partly allowed on the following terms:

(i) The conviction of the appellant/accused for offence under Section 450 IPC is confirmed, however, the substantive sentence of rigorous imprisonment for ten years and fine of Rs.5,000/- in default to undergo simple imprisonment for two years imposed on him is set aside and instead, he is sentenced to undergo rigorous imprisonment for two years and pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for four weeks.

(ii) The conviction of the appellant/accused for offence under Section 307 (Part 2) IPC is confirmed, however, the substantive sentence of imprisonment for life and fine of Rs.5,000/- in default to undergo simple imprisonment for two years imposed on him is set aside and instead, he is sentenced to undergo rigorous imprisonment for five years and pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for four weeks for each count.

(iii) It is directed that the period of detention already undergone by the accused shall be set off under Section 428 Cr.P.C.

(iv) The fine amount now imposed shall be adjusted from the fine amount already paid, if any, and the excess, if any, shall be refunded to the appellant.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

Tsi/kk

To

1. The Sessions Judge,
Mahalir Fast track Court,
Erode.
 2. The Inspector of Police,
Ammamet Police Station,
Erode District.
 3. The Public Prosecutor,
Madras High Court.
 - 4.The Judicial Magistrate
Bhavani
 5. The Chief Judicial Magistrate
Erode District
 6. The District Collector
Erode District
 7. The Director General of Police
Chennai
 8. The Superintendent
Central Prison, Coimbatore
- 1 cc to M/s. N. Manokaran, Advocate, Sr. 43605

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