

Crl.A.No.669 of 2008:- That the appellant herein/Accused Viz Magendiran was directed to be released on bail as per the order of this court dated 5.9.2008 and made in M.P.No.1 of 2008 in Crl.A.No.669 of 2008 and made herein.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2016

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THE HON'BLE DR.JUSTICE P.DEVADASS

Crl.A.No.669 of 2008

Magendiran .. Appellant/Accused

Versus

State: Rep. by its
Inspector of Police
Neyveli Township Police Station ... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C to set aside the Judgment and Conviction passed by the learned Sessions Judge [Mahila Court], Cuddalore in S.C.No.472 of 2007 dated 07.08.2008.

For Appellant : Mr.C.Prasanna Venkatesh

For Respondent : Mr.P.Govindarajan
Addl. Public Prosecutor

JUDGMENT

The sole accused in the Sessions Case No.472 of 2007 on the file of the learned Additional Sessions Judge [Mahila Court], Cuddalore is the appellant.

2. The accused has been prosecuted for offences under Sections 324 and 307 of IPC.

3. On appreciation of the evidence, the trial court acquitted him from the charge under Section 324 IPC; however with reference to the injury sustained by his wife/PW1 altered the

conviction to Section 326 IPC and sentenced him to undergo two years R.I and imposed a fine of Rs.10,000/-; in default to undergo three months R.I. He has paid the fine amount.

4. The case of the prosecution briefly runs as under:

(i) PW1-Menaka is the wife of the appellant. They were blessed with children but not with a happy married life. There were often quarrels between them.

(ii) On 13.07.2007 due to the quarrel between the spouses, PW1 came to her husband's sister/ PW2's house in Neyveli Township. PW2 and her husband/PW3, pacified her and provided her asylum. On the night around 12.30 p.m there were shriek of PW1. PWs.2 and 3 rushed there. The accused aiming to do away his wife assaulted her indiscriminately with MO1 iron knife. PW1 tried to ward off the assault; she sustained injuries on her head and she also lost tip of her middle finger. She was given first aid in a private hospital. For further treatment, she was taken to Government Hospital, Cuddalore. Intimation was received by the Neyveli Township Police. PW9-Women Sub Inspector of Police visited the hospital; she recorded Ex.P1 statement from PW1. PW9 registered this case [Ex.P7 FIR].

(iii) P.W.10-Inspector of Police took up his investigation. He examined PW1. Recorded her statement. He had also examined other witnesses and recorded their statement. He visited the scene place. Prepared Ex.P9-rough sketch and Ex.P2-Observation Mahazar in the presence of P.W.5 and another witness. He has arrested the accused. Recorded his confessional statement Ex.P10. In pursuance of the same, at the instance of the accused, PW10 recovered MO1 Knife.

(iv) PW8-Dr.Ramesh, Civil Assistant Surgeon, Government Hospital, Cuddalore treated PW1. He issued her Ex.P5 wound certificate. Accident Register copy Ex.P6. PW10 obtained the Accident Register copy. Concluding his investigation PW10 filed the final report before the concerned court.

5. On committal, the learned Additional Sessions Judge [Mahila Court] Cuddalore, upon hearing both sides and on perusal of the case records, framed charges under Section 324 IPC on the allegation that the accused had assaulted his sister PW2 and under Section 307 IPC on the allegation that he has attempted to do away with his wife PW1. The accused pleaded not guilty to the charges.

6. Prosecution examined P.Ws.1 to 10, marked Exs.P1 to P11 and exhibited MO1 knife.

7. When the accused was examined under Section 313 Cr.P.C. on the incriminating aspects appearing in the prosecution evidence, he denied the offences. He did not examine any witness nor mark any document on his side.

8. Appreciating the evidence and considering the arguments of both sides as stated already the trial court had acquitted the accused from the charge under Section 324 IPC; however, recorded a conviction under Section 326 IPC and sentenced him as already stated.

9. According to the learned counsel for the appellant, there is 9 hours delay in lodging the FIR. PW1 disowned Ex.P1 complaint. Even as to the time of occurrence there is inconsistency. According to prosecution, the occurrence was on 13.07.2007 at about 12.30 am; however, PW1 would say it was around 4 a.m. PW3 did not supported the prosecution. When PW1 had every opportunity to name the accused before PW8 the Doctor, she has simply stated that a known person has assaulted her. The prosecution has thoroughly failed to establish even the charge under Section 326 IPC.

10. On the other hand, the learned Additional Public Prosecutor would submit that PW1 is an injured witness. She is the wife of the accused. She has no motive to rope him in this case. She lodged the FIR. On intimation from the hospital, PW9-SI travelled from Neyveli to Cuddalore and recorded the statement of PW1 at about 11 am, thereafter, she returned to Neyveli and registered the FIR. In the circumstances, the trial court has rightly convicted the accused and appropriately punished him.

11. I have anxiously considered the rival submissions, perused the judgment of the trial court and also the evidence on record.

12. Now the question is whether an offence under Section 326 IPC has been established as against the accused beyond all reasonable doubts by the prosecution?

13. It is a case of husband having voluntarily caused grievous hurt to his wife/PW1 with a deadly weapon/MO1 knife. In her evidence, PW1 had clearly implicated her husband. PW8's medical evidence corroborates the injuries found on the person of PW1. PW2, the sister of the accused also corroborated PW1.

Although PW3, brother in-law of the accused turned hostile; a close reading of his evidence does supply some incriminating evidence linking the accused with this case as to his presence on the occurrence day at the scene place.

14. The delay occurred in lodging the FIR has been satisfactorily explained. PW1 has not preferred any written complaint. From the evidence of PW9- the SI, it is seen that she has recorded statement from PW1. Therefore, the lodging of the First Information Report and the evidence of PW1 is quite natural. By the time, when she was rushed from a private clinic to Cuddalore, the dead night was over. Further, PW1 is not highly educated. She is a rustic women living in a village. We cannot expect her to come with meticulous particulars with mathematical precision. PW8 is not expected to record the name of the accused in the Accident Register. That is how he has recorded that PW1 was assaulted by a known person. An husband is a known person to the wife.

15. In the circumstances acting upon the cogent and natural evidence of PW1, the trial court has rightly convicted him under Section 326 IPC.

16. Now we come to the sentence aspect. The trial court has awarded him two years R.I. and also fined him. The accused is the husband of PW1. The couples are having children. The spouses are not aged. Many more years are there to continue their marital life. The future of the children is also involved. The motive for the occurrence is domestic quarrel.

17. "Just as a past behind a saint, a sinner too has a future", so also the accused will turn a new leaf. He may not be doomed forever. There is a chance for his redemption and reformation. In the circumstances, it is apt to dilute the rigor of the sentence.

18. This appeal is partly allowed. The conviction under Section 326 IPC is confirmed. The sentence of two years RI is reduced to 85 days of RI. He is given set off under Section 428 Cr.P.C. The sentence of fine is maintained.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

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To

1. The Additional Sessions Judge,
[Mahila Court]
Cuddalore

2. do thro the Principal Sessions Judge
Cuddalore

3. The District Munsif Cum Judicial Magistrate
Neyveli

4. do thro the Chief Judicial Magistrate
Cuddalore District

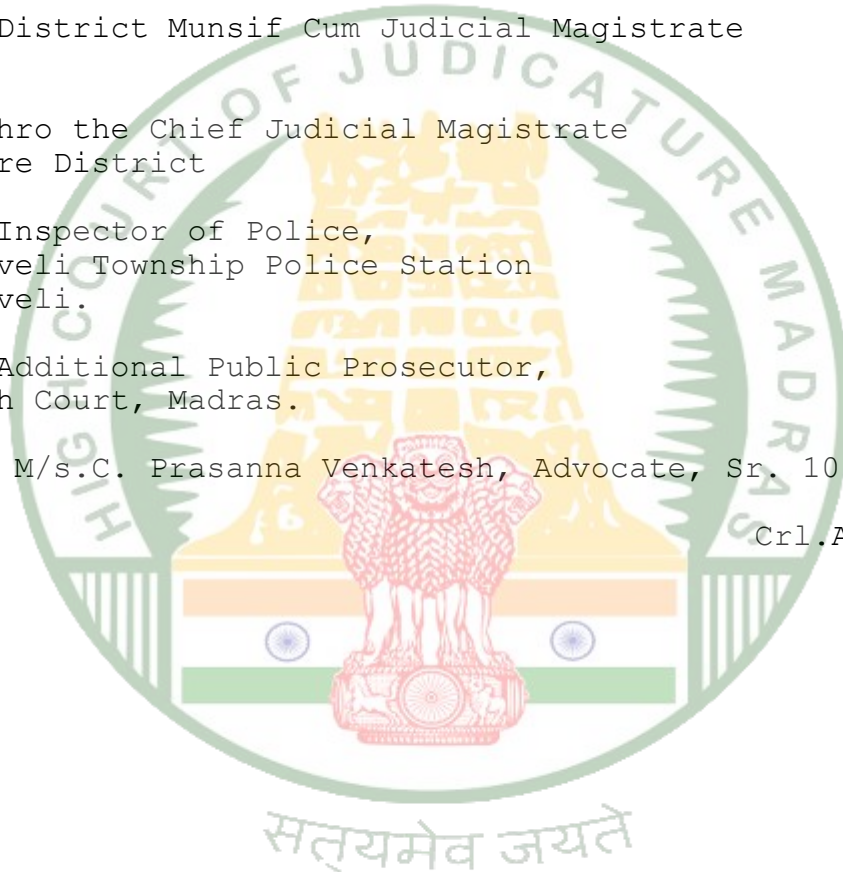
5. The Inspector of Police,
Neyveli Township Police Station
Neyveli.

6. The Additional Public Prosecutor,
High Court, Madras.

1 cc to M/s.C. Prasanna Venkatesh, Advocate, Sr. 10525

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