

Bail Slip: The Appellant/Accused namely Kandasamy S/o. Periannan was directed to be released on bail as per order dated 21.11.2007 in CrI.M.P.1/07 in CrI.A.771/07 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 21.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.771 of 2007

Kandasamy ... Appellant/Accused

vs.

State Inspector of Police
Keelapalur Police Station
Perambalur District, Crime No.66/2004 ...Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, 1973 against the order of conviction and sentence rendered in S.C.No.62 of 2007 dated 13.08.2007 on the file of Additional District and Sessions Judge, Fast Track Court, Ariyalur.

For appellant : Mr.T.I.Ramanathan

For respondent : Mr.P.Govindarajan,
Addl.Public Prosecutor

JUDGMENT

The conviction and sentence dated 13.08.2007 passed in Sessions Case No.62 of 2007 by the Additional District and Sessions Court, Fast Track Court, Ariyalur are being challenged in the present Criminal Appeal.

2. The case of the prosecution is that the defacto complainant viz., Thanaraj and the accused by name Kandasamy are brothers. On 22.02.2004, the accused has made tussle with his wife by saying that she is having illicit intimacy with defacto complainant and due to that, the wife of the accused has gone to her parental home and on 23.02.2004 at about 5.00 p.m., the accused has stated to his mother to the effect that only due to her, his wife has left marital home and he also tried to attack her. At that time, the defacto complainant has intervened and all of a sudden, the accused with intention to murder the defacto complainant has attacked him by using an aruval and thereby, caused injuries. After occurrence, the defacto complainant has given a complaint and the same has been registered in Crime No.66/2004.

3. On receipt of the complaint, the Investigating Officer viz., P.W.10 has taken up investigation, examined connected witnesses and after completing investigation, laid a final report on the file of Judicial Magistrate Court, Ariyalur and the same has been taken on file in P.R.C.No.5 of 2007.

4. The Judicial Magistrate, Ariyalur, 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, Perambalur and taken on file in Sessions Case No.62 of 2007 and subsequently made over to the trial court.

5. The trial court, after hearing arguments of both sides and upon perusing the relevant records has framed a charge against the accused under Section 307 of the Indian Penal Code (hereinafter called as "IPC") and the same has been read over and explained to him and the accused has denied the charge and claimed to be tried.

6. On the side of the Prosecution, P.Ws.1 to 10 have been examined, Exhibits 1 to 9 and Material Objects 1 and 2 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. No oral and documentary evidence have been adduced on the side of the accused.

8. The trial court, after hearing arguments of both sides and upon perusing the relevant records, has found the accused guilty under Section 307 of the IPC and sentenced him to undergo 7 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 consistent case put forth on the side of the prosecution is that both the defacto complainant and accused are brothers and their mother name is Mookayee. On 22.02.2004, the accused has made a tussle with his wife by saying that she is having illicit intimacy with defacto complainant and due to that she left the marital home and on 23.02.2004, at about 5 p.m., the accused has stated to his mother to the effect that she is the sole cause for such a tussle between him and his wife and at that time, the defacto complainant has intervened and all of a sudden, attacked the defacto complainant by using an aruval and thereby caused injuries.

10. In Ex.P.1, it has been clearly stated about the motive for occurrence and also details of attack alleged to have been

made by the accused on the person of the defacto complainant. The defacto complainant has been examined as P.W.1. The mother of defacto complainant and accused, by name Mookayee has been examined as P.W.2 and other independent eye witnesses have been examined as P.Ws.3 and 4. The trial court, after considering the materials found in Ex.P.1 and also evidence given by P.Ws.1 to 4, has found the accused guilty under Section 307 of the IPC and sentenced him to undergo imprisonment as mentioned in the judgment.

11. The learned counsel appearing for the appellant/accused has raised the following points to set aside the convictions and sentences passed by the trial court against the appellant/accused :-

- (i) In the instant case, motive for occurrence has not been established on the side of the prosecution;
- (ii) The specific evidence given by P.W.2 is that in the place of occurrence, the accused has attacked P.W.1/defacto complainant by using an aruval, but M.O.1 is not an aruval, used by accused and the same has not been considered by the trial court;
- (iii) The mahazar witness viz., P.W.5 has stated in his evidence that the Police have simply obtained his signatures and he does not know where from the Police have seized the weapon and
- (iv) The occurrence has taken place on 23.02.2004 at about 5.00 p.m., whereas Ex.P.1 has been given on 24.02.2004 and the prosecution has not given proper explanation.

12. The learned Additional Public Prosecutor has contended that in the instant case, the injured witness, defacto complainant has been examined as P.W.1, the mother of P.W.1 and accused has been examined as P.W.2 and both of them have clearly stated about the overtacts alleged to have been made by the accused. Apart from their evidence, P.Ws.3 and 4 have given clear evidence to the effect that the accused has attacked P.W.1 and the trial court, after considering the evidence given by them, has rightly invited the conviction and sentence and therefore, the conviction and sentence passed by the trial court are not liable to be set aside.

13. It is an admitted fact that the defacto complainant has sustained 3 injuries and the same have been mentioned in Ex.P.8, Accident Register and out of 3 injuries, 1 injury is grievous in nature. As mentioned supra, the injured witness has been examined as P.W.1 and in fact, he specifically stated about the overtacts committed by the accused on his person. The mother of the accused and defacto complainant has been examined as P.W.2 and her specific evidence is that the accused has attacked P.W.1 by using an aruval. From the evidence given by P.Ws.1 and 2, the court can easily come to a conclusion that the occurrence has taken place as spoken on the side of the prosecution and in the

place of occurrence, the accused has attacked P.W.1 by using an aruval. Apart from their evidence, P.Ws.3 and 4 have given clear evidence to the effect that they found accused in the place of occurrence. Further the specific evidence given by P.W.4 is that in the place of occurrence, the accused has attacked P.W.1. Since the evidence given by P.Ws.3 and 4 have clearly corroborated the evidence given by P.Ws.1 and 2, the court can very well come to a conclusion that the accused has attacked P.W.1 by using an aruval.

14. The first and foremost contention put forth on the side of the appellant/accused is that in the instant case, motive has not been established. In Ex.P.1, it has been clearly mentioned that the accused has had suspected to the effect that P.W.1 is having illicit intimacy with his wife. It is true that P.W.2 has stated some other reason, whereas, P.W.1 has spoken about the alleged intimacy. Even assuming without conceding, on the side of the prosecution, motive has not been established, since P.W.1 is an injured eyewitness and since P.W.2 is also equally an eyewitness, motive has become insignificant in the present case. Therefore, the first contention put forth on the side of the appellant/accused goes out without merit.

15. The second contention put forth on the side of the appellant/accused is that the specific evidence given by P.W.2 is that M.O.1 has not been used by the accused at the time of occurrence. Even M.O.1 has not been used at the time of occurrence since P.Ws.1 and 2 have given creditworthy evidence with regard to occurrence, the second contention put forth on the side of the appellant/accused has not affected the case of the prosecution.

16. The third contention put forth on the side of the appellant/accused is that the specific evidence given by P.W.5 is that he simply put his signatures without actually seeing the seizure of M.O.1. Even though P.W.5 has given such kind of evidence, the same would not affect the case of the prosecution.

17. The last contention put forth on the side of the appellant/accused is that even though the occurrence has taken place on 23.02.2004, Ex.P.1 has come into existence on 24.02.2004. It is seen from the evidence that after occurrence, P.W.1 and others have directly gone to the concerned Police Station and the Police have directed P.W.1 to go to hospital for getting treatment so as to save his life and accordingly, P.W.1 has gone to hospital. Considering the above said facts and circumstances of the case, it is very clear that the prosecution has given proper explanation for launching the complaint on 24.02.2004. Therefore, the last contention put forth on the side of the appellant/accused goes out without merit.

18. As adverted to earlier, both P.W.1 and accused are brothers and P.W.2 is their mother; only on trivial reason, occurrence has taken place. Considering the factual circumstances of the case and also close relationship between P.W.1 and accused, this court is of the view to award lesser punishment to the appellant/accused and to that extent, this Criminal Appeal is liable to be allowed in part.

In fine, this Criminal Appeal is allowed in part. The conviction passed by the trial court against the appellant/accused under Section 307 of the IPC is confirmed. However, the quantum of punishment imposed against him by the trial court is modified as follows:-

"The appellant/accused is sentenced to undergo 6 months rigorous imprisonment instead of 7 years. No modification with regard to fine amount."

If the appellant/accused is not in duress, the trial court is directed to take appropriate steps so as to imprison him to serve out the remaining period of sentence.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

nvsri

To

1. The Additional District and Sessions Judge,
Fast Track Court, Ariyalur.

2. The Judicial Magistrate
Ariyalur
Perambalur District

3. Do thro the Chief Judicial Magistrate
Perambalur

4. The Superintendent
Central Prison
Trichy

5. The Inspector of Police
Keelapalur Police Station

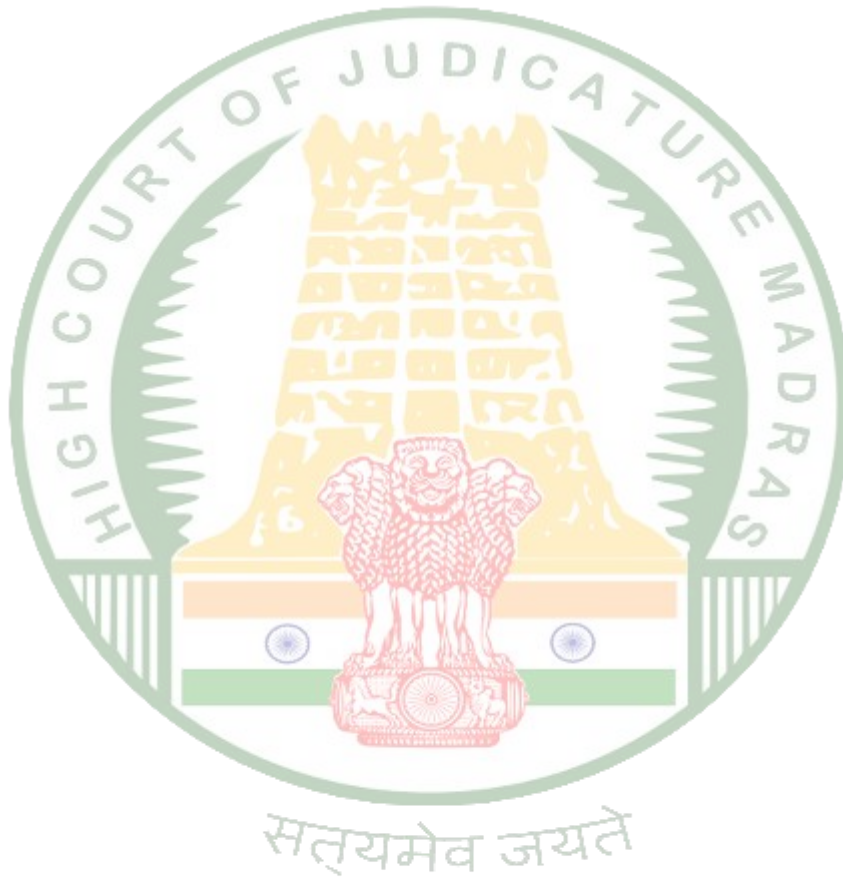
Perambalur District

6. The Public Prosecutor
High Court, Madras

1 cc to Mr.T.I. Ramanathan, Advocate, Sr. 3267

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