

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN  
and  
THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.A.No.219 of 2017  
&  
Crl.MP.No.5310 of 2017

Rajesh ..... Appellant/Accused

Vs.

State of Tamilnadu represented by  
The Inspector of Police,  
Chithode Police Station,  
Erode District.  
(Crime No:354 of 2014) .... Respondent/Complainant

Appeal filed under section 374(2) of Code of Criminal Procedure, 1973 to call for the records in S.C.No.11 of 2016 of the learned Sessions Judge Mahila Court (Fast Track Mahila Court) at Erode and allow the appeal, set aside the conviction and sentence accorded in the judgment dated 05.10.2016 and acquit the appellant.

For Appellant : Mr.R.Ganesh Kumar

For Respondent/State : Mr.R.Ravichandran,  
Government Advocate  
[Crl.Side]

[Order of the Court was made by M.SATHYANARAYANAN.,J.]

#### JUDGMENT

The sole accused who stood charged and convicted for the commission of the offence under Sections 450 and 307 (2) IPC vide impugned Judgment dated 05.10.2016 in SC No.11 of 2016, by the Court of Mahila Judge-Fast Tract, Erode, has preferred this appeal.

2. The conviction and sentence imposed on the appellant /accused is as follows :-

| Conviction under section | Sentence Imposed                                                                                                       |
|--------------------------|------------------------------------------------------------------------------------------------------------------------|
| 450 IPC                  | Rigorous Imprisonment for 10 years and to pay a fine of Rs.5,000/-, in default, to undergo 2 years simple imprisonment |
| 307 (2) of IPC           | Imprisonment for life and to pay a fine of Rs.5,000/-, in default, to undergo 3 years simple imprisonment.             |

3. The Trial Court, after sentencing the accused to pay the fine amount of RS.10,000/- had directed that it should be paid to the victim namely, PW8 under Section 357 Cr.P.C. The Trial Court has ordered the sentences of imprisonment awarded to the appellant / accused for commission of the above said offences to run concurrently and also ordered the set off under Section 428 of Cr.P.C. The appellant / accused aggrieved by the said conviction and sentence imposed by the Trial Court, has filed this appeal.

4. The facts leading to the filing of this appeal briefly narrated for the disposal of the same, are as follows :

[a] PW8, who was aged about 17 years at the relevant point of time, is the daughter of PW9.

[b] PW9 at the relevant point of time, was employed as "Aaya" (Menial Staff) in Agarwal Eye Hospital, Erode District and her daughter, namely PW8 was studying 12<sup>th</sup> Standard in CSI Girls Higher Secondary School and the Appellant / accused was employed in a nearby hotel and PW9 used to go to the hotel for getting tea and tiffin etc and they had acquaintance and PW9 treated him like her brother. The daughter of PW9 also used to come to the hospital in which PW9 was employed and both of them used to go to the hotel in which the appellant / accused was employed. The appellant / accused as well as PW8 used to move as good friends. On a particular date, PW8 left the home on the pretext that she is going to school and however, she eloped with the appellant / accused and in that regard, PW9 lodged a complaint with the Erode Town Police Station and thereafter, PW8 was traced and her custody was restored to PW9. Thereafter, PW8 was not inclined to go to school and hence, PW9 took a decision to give her in marriage and she has also expressed her inclination to do so and accordingly, the arrangement was made to give PW8 in marriage with somebody.

[c] The appellant / accused was also aware of the same and when PW9, on account of deepavali festival, got permission from his owner and went outside to procure sweets and clothes, got down at Nassiyanur bus stop and when she

proceeded further, at that time she saw somebody taking her daughter in an injured condition and she has noted that PW8 has suffered injury on her neck. PW9 went to the nearby hospital and contacted an emergency service -108 and thereafter, she was sent to the Government Hospital at Erode. PW9 made enquiries with her daughter PW8 and she informed that her Maternal uncle and appellant / accused came to her house and the appellant / accused took to her to the kitchen and ask her to give consent to marry him but however, she told him that her marriage has already been fixed and that she should satisfy the wishes of her mother and in response to the same, the appellant / accused told that if she is not prepared to marry him, there is no useful purpose would be served by her and so saying, the appellant / accused took a knife and started cutting on her neck and immediately on raising alarm, PW1 as well as the neighbours came inside and on seeing them, the appellant / accused ran away and on the next date on 22.10.2014, the victim [PW8] was examined by the police.

[d] PW5 was the Special Sub-Inspector of Police, Chithode Police Station and on receipt of the intimation from the Government Hospital, Erode, with regard to the injury caused to PW8, he went to the hospital and found that she was in an unconscious state and hence, he came back to the police station and recorded the same in the General Diary and again on receipt of information, he visited the said hospital at about 5.00 a.m. on 22.10.2014 and recorded the statement of PW8 and recording the same, he registered a case in Crime No.354 of 2014 for the commission of alleged offences under Section 307 of IPC. The printed FIR is marked as Ex.P5. PW5, has despatched the original statement as well as the FIR to the Jurisdictional Magistrate and also informed the same to the higher officials. PW6, the then Inspector of Police of Chithode Police Station, on assuming the charge, took up the investigation and came to know that since PW5 had already recorded the statement from the concerned witnesses, he did not obtain the statements independently.

[e] PW6, effected the arrest of appellant / accused on 07.11.2014 at about 10.30 am in Perundurai Police Station and on that date, produced him before the Jurisdictional Magistrate Court and he was remanded to judicial custody on 24.11.2014 . PW6 examined PW4-Dr.Anand who treated PW8 and on 04.12.2014, altered the sections from 307 IPC to one of sections 450 and 307 IPC and the alteration report is marked as Ex.P6, which was forwarded to the Court of the Judicial Magistrate No.III, Erode. PW6 after completion of the investigation, has filed the final report on file of the said Court, charging the appellant / accused for the commission of offences under Section 450 and 307 of IPC.

[f] The Court of Judicial Magistrate, NO.III, Erode, on filing of the Charge sheet / final report, took it on file in FRC NO.8 of 2015 and issued a summons to the accused and on

his appearance furnished him with copies of documents Under Section 207 of Cr.P.C and having found that the case is to be exclusively tried by Principal Sessions Court at Erode, forwarded the case papers to the said Court, which in turn, had forwarded the case to the learned Mahila Judge, Fast Track Court at Erode, who took it on the file of SC No.11 of 2016.

[g] The Trial Court, on appearance of the accused has framed charges under Section 450 and 307 IPC and questioned the appellant / accused as to the charges framed against him. He pleaded not guilty to the charges framed against him.

[h] The prosecution, in order to sustain their case, examined PW1 to PW9 and filed Ex.P-1 to Ex-P10 and also marked M.O.1 and M.O.2 . The appellant / accused was questioned under 313(1) (b) of Cr.P.C with regard to the incriminating circumstances made out against him in the evidence rendered by the prosecution and he denied the same. Exhibits D1 and D2 were marked on his side.

[i] The Trial Court on appreciation of oral and documentary evidence, found that the prosecution had established the guilt on the part of the appellant / accused beyond any reasonable doubt and accordingly, convicted and sentenced him as stated above and challenging the said conviction and sentence, the appellant / accused, has filed this Appeal.

3. Mr.R.Ganesh Kumar, learned counsel appearing for appellant / accused made a following submission :

[a] Admittedly, PW9, mother of the victim, namely PW8, has lodged the complaint on the file of Erode Town Police Station on the date of occurrence on 21.10.2014 and admittedly, no FIR was registered on the same day and the earliest information has been burked. It is admitted by PW9 - the mother of the victim-PW8 that earlier, PW8 had eloped with appellant / accused and both of them got married and on account of the police complaint given by PW9, PW8 was secured and her custody was handed over to her mother namely PW9 and to evidence the fact, that PW9 was aware of the relationship between the appellant / accused and PW8/victim, Exs.D1 and D2 were marked and the said documents have not been considered in proper perspective manner by the Trial Court while appreciating the evidence.

[b] The alleged weapon i.e M.O.1, has not been subjected to scientific analysis and in the absence of vital evidence, it cannot be said that the appellant / accused, had stabbed the victim namely PW8.

[c] It is an admitted case of the prosecution that the appellant / accused along with PW1 came to the house of the victim in a Motor bike and thereafter, the occurrence took

place and admittedly, no investigation has been done as to the ownership of the said bike and it also creates a grave doubt as to the presence of the appellant / accused in the scene of occurrence. Alternatively, it is contended by the learned counsel appearing for the appellant / accused that admittedly even assuming without admitting the case of the prosecution that the appellant / accused before committing the crime, asked the victim PW8 to marry him, she refused to do so on the ground that she wanted to fulfill the wishes of her mother, namely PW9 and enraged by the same, he took the knife - M.O.1 and caused injury and according to the evidence of PW4-Medical Officer coupled with wound certificate marked as exhibit B4, the injuries are simple in nature and as such, the conviction of the appellant / accused under section 307 IPC and imposition of sentence of Rigorous Imprisonment for life and the imposition of 10 years for the commission of offence under section 450 IPC, is very much on the higher side. It is further submitted that taking into consideration of the fact that the appellant/accused had no bad antecedents and that there is every chance that he will be reformed and realised his mistakes and considering his future, prayed that the sentence of imprisonment of the appellant/accused may be reduced.

4. Per contra, Mr.R.Ravichandran, learned Government Advocate (criminal side) appearing for the state would contend that the testimony of the injured victim namely PW8 has inspired confidence and her evidence is also corroborated by the testimony of PW1 and it is also supported by the medical evidence of PW4 coupled with Exs.P3 and P4 and it is a settled position of law that the testimony of the injured witness / victim itself is sufficient for recording conviction and the trial Court has taken note of the oral and documentary evidence coupled with the well settled legal position and has rightly convicted and imposed sentence upon the appellant / accused. Since the appellant / accused has committed serious offence, the punishment awarded by the Trial Court is correct and the same would meet the ends of justice and prays for dismissal of this appeal.

5. This Court has paid it's best attention and anxious consideration to the rival submission and also perused the oral and documentary evidence and other materials as well as original records.

6. The following questions arise for consideration :

[a] Whether the prosecution is able to prove the offence on the part of the appellant / accused beyond any reasonable doubt?

[b] Alternatively, whether the imposition of sentence of imprisonment for recording conviction for having committed by the appellant / accused under Section 307 and 450 IPC warrants interference ?

7. Question No.1: PW9 who is the mother of victim - PW8 and her testimony would disclose that there was a relationship between the PW8 and the appellant / accused and in fact PW8 had eloped with appellant / accused and got married to him and PW9 lodged a complaint with Erode Town Police Station and acting upon the said complaint, PW8 was traced and her custody was restored to PW9. Attention of PW9 was drawn to Exhibits D1 and D2/letter written by PW9 and the signature of the PW9 found in a letter purported to have been written by the lawyer.

8. PW9 would admit that her daughter had left with appellant / accused and got married at Aranthangi Village, Pudukottai Taluk and after marriage, she stayed in the said village for 15 days and thereafter, her custody was restored to PW9 and the "mangalsuthra" worn by PW8 has been removed and handed over to the appellant/accused in the police station and subsequently, she got married to a another person. Therefore, the relationship between the appellant / accused and PW8 has been admitted by PW9 and her testimony would clearly reveal that prior to the arrangement of marriage by PW9, both of them got married and on lodging of police complaint by her mother, the custody of PW8 was restored to her mother and subsequent to that the "mangalsuthra" worn by PW8 out of her wedlock with the appellant/accused, has been removed and handed over to him. The prosecution has placed reliance upon the evidence of the injured victim namely PW8. PW8 in the cross examination made an attempt that she went with appellant / accused and on lodging complaint by her mother, her custody was restored and as regards the commission of the offence, she would state that on 21.10.2014 at about 8.15 p.m., the appellant/accused came along with PW1 [maternal uncle of PW8] to see her and the appellant/accused asked her that he would like to converse with her in private and accordingly, he took her to the kitchen and asked her to marry him and when she refused, by saying her to die, he pushed her down and took the knife [M.O.1] and started cutting her neck and on raising the alarm, the neighbours have taken her to the hospital and on the way, she saw her mother, namely, PW9, who phoned to the Emergency Service-108 and thereafter, she was admitted in the Government Hospital, at Erode and in the cross-examination, P.W.8 has admitted about Ex.D1 written by PW9 and also made further categorical admission that she went with appellant/accused to Aranthangi Village, Pudukottai Taluk and she stayed in the house of the appellant/accused for about 15 days and during that time, arrangements were made to solemnise her marriage with the appellant/accused and thereafter, the marriage was solemnised in a temple between her and the appellant/accused and her mother, expressed her dis-inclination after the said marriage.

9. It was further deposed by PW8 that after the marriage with the appellant/accused, her mother PW9 with the help of Police, took her and with regard to the complaint

lodged by her mother [PW9], the Erode Town Police Station did not register a case and did not produce him before the Court, on account of the fact that the Mangalsutra worn by her on account of the said marriage, has been removed and handed over to him in the presence of police. She would further admit that after the marriage, they came back to Chennai and went to the Murugan Temple at Vadapalani and worshiped the Deity and she also stayed in a Lodge and took photographs also. Thus, the testimony of PW8 would clearly disclose that on an earlier occasion, PW8 voluntarily went with the appellant/accused and initially, it was not resisted by PW9 and both of them got married in Aranthangi Village and stayed there for some time and after coming to Chennai, also stayed in a Lodge for a day and since the mother, viz., PW9, was not inclined for the solemnisation of the said marriage, lodged a complaint in the police station, based on which the custody was secured and she was handed over to PW9. Therefore, both the appellant/accused and PW8, in spite of marriage, did not live as husband and wife and therefore, the appellant/accused had a grudge/grievance.

10. The appellant/accused on hearing the fact that PW8 is going to be given in marriage to somebody by way of arranged marriage, at the instance of PW9, took the maternal uncle of PW8 and went to the house of the victim-PW8 and after informing her, went inside and told her that he wanted to talk with her in privacy and took her to the kitchen and asked to marry him and however, P.W.8 told him that she will not marry him for the reason that her marriage has already been arranged and she wants to fulfill the wishes of her mother and enraged by the same, the appellant/accused took M.O.1 and caused injury on the neck of P.W.8. P.W.8 was taken to the Government Hospital, Erode and she was treated by P.W.4 and he has given Wound Certificate stating that injuries sustained by her, are simple in nature. It is relevant to extract the contents of Ex.P.4-Wound Certificate given by P.W.4:-

"Laceration neck measures 10x5x3cm.

I am of the opinion that, alleged H/O assault with sharp knife at her house at 8.15 p.m. on 21.10.2014, assaulted by known person - Rajesh.

DOA:21.10.2014

DOD:01.11.2014

O/E: Patient GC Fair [NC]

CVS/RS-NAD-BP-110/70 mm HG

PR 98/min.

X-Ray No.1503. Dated 23.10.2014.

X-Ray Neck-normal. No fracture.

Case S/B Dr.O.R.found-CDS

Under anesthesia exploration done with suturing.

Opinion: According to my opinion, would number [1] is simple in nature."

P.W.4 also opined that the injury found, could not have been caused by a blunt weapon. The analysis of the oral and documentary evidence would reveal that victim-PW8 also got married to the appellant/accused and lived as husband and wife for few days and on account of lodging of complaint by P.W.9, the custody of P.W.8 was secured and handed over to her mother [P.W.9] and the "Mangalsutra" worn by P.W.8 on account of the marriage with the appellant/accused, was also removed by the police and handed over to him and due to the persuasion of her mother, P.W.8 changed her mind and was willing to marry somebody as per the wishes of her mother and the appellant/accused on coming to know of the same, he took the maternal uncle of P.W.8 to her house and thereafter, asked her to marry him and since the answer was in negative, out of disturbed state of mind, he took the knife and stabbed on her neck.

11. It is to be remembered at this juncture that P.W.8 also got married the appellant/accused and the marriage has not been dissolved in a manner known to law. The fact remains that the Mangalsutra has been removed and subsequently, the victim got married to somebody and now, both of them are living as husband and wife. In the considered opinion of the Court, there is no mens rea / intention on the part of the appellant/accused to do away the life of the victim [P.W.8] and he persuaded her to marry him and since he was in a fit of rage, he lost control over his mind and committed the said offence.

12. Question No.2: The fact remains that no tenable explanation has been offered by the appellant/accused as to why he carried a knife while going to the house of P.W.8 and therefore, his intention appears only to make a threat and accordingly, inflicted simple injuries and insofar as the offence under section 450 IPC is concerned, this Court is of the view that the offence has not been made out for the reason that ever as per the evidence of P.W.9, he was a frequent visitor of the house and there was a good relationship between P.W.9 and the appellant/accused and on the date of the commission of the offence, he took the maternal uncle of P.W.8 to the house of P.W.8 and thereafter, with the permission, he took her to the kitchen for having private conversation, wherein, he tried to persuade her to marry him and since she has refused, he committed the offence. Since the ingredients of the offence, viz.450 IPC-the criminal trespass, have not been made out, in the considered opinion of this Court, conviction and sentence recorded under the concerned section warrants interference.

13. In the result, the criminal appeal is partly allowed and the conviction of the appellant/accused u/s.307 IPC by the Trial Court, is confirmed. However, taking into consideration, the above facts and circumstances, sentence of

life imprisonment awarded to the appellant/accused is reduced to rigorous imprisonment of five years and the sentence of fine with default sentence is maintained and also the award of compensation in favour of P.W.8. The conviction under section 450 IPC and the sentence of imprisonment and fine awarded by the Trial Court, is set aside.

14. It is made clear that the period of incarceration already undergone by the appellant/accused, shall be given set off. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

sk/rka

To

1. The Additional District and Sessions Judge  
Fast Track Court,  
Mahila Court NO.I, Erode.
2. Do Through the Principal Sessions Judge,  
Erode.
3. The Judicial Magistrate No.III  
Erode.
4. Do Through the Chief Judicial Magistrate,  
Erode.
5. The Inspector of Police,  
Chithode Police Station,  
Erode District.
6. The Superintendent,  
Central Prison, Coimbatore.
7. The Public Prosecutor  
High Court, Madras.
8. The Superintendent of Police,  
Erode District.
9. The District Collector,  
Erode.
10. The Director General of Police,  
Mylapore, Chennai 04.

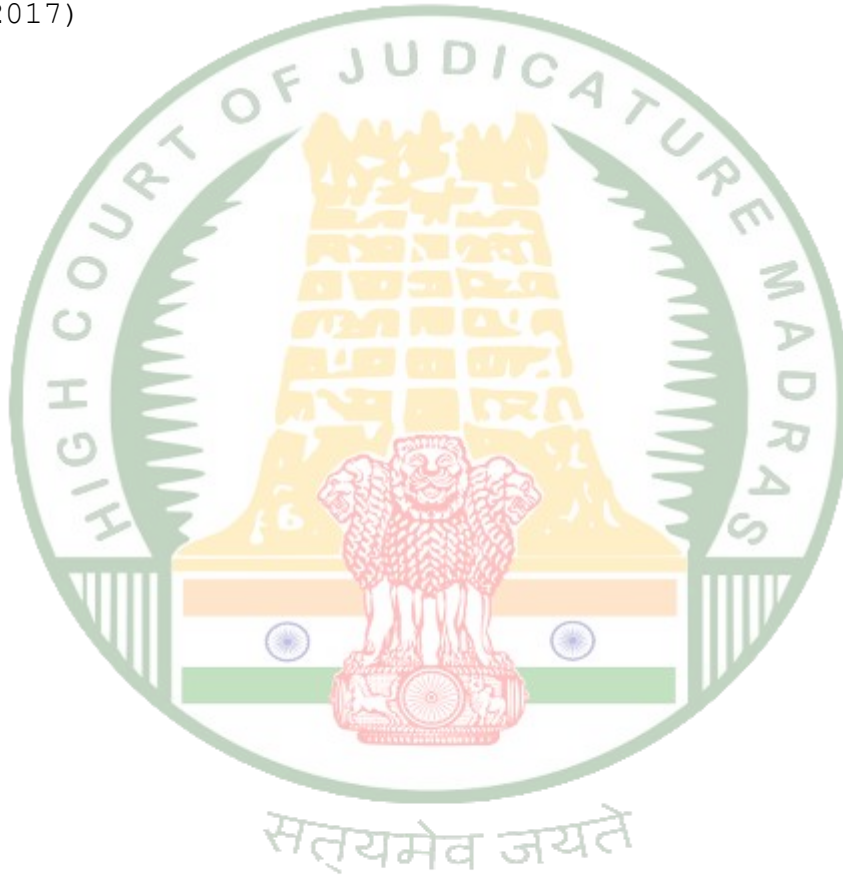
Copy To

The Section Officer,  
Criminal Section,  
High Court, Madras 104.

+1cc to Mr.R.Ganesh Kumar, Advocate, S.R.No.74060

Cr1.A.No.219 of 2017

RJ(CO)  
CA(14/11/2017)



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