

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.208 of 2009

C.Kesavan

Appellant

Vs

State rep. By
Inspector of Police,
Nagarasampatti Police Station,
Krishnagiri District.
Crime No.80/2007

Respondent

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the conviction and sentence imposed on the appellant by the learned Assistant Sessions Judge (Chief Judicial Magistrate), Krishnagiri in S.C.No.229 of 2007 dated 23.12.2008 convicting him to undergo one month RI for the offence under Section 341, 3 years RI for the offence under Section 498-A and imposed fine of Rs.500/- and 10 years RI for the offence under Section 307 and imposed fine of Rs.1,000/- and the trial Court ordered to undergo all punishments concurrently.

For Appellant : Mr. K.Thiruvengadam

For Respondent : Ms.M.F.Shabana,
Govt. Advocate (Crl.side)

JUDGMENT

The appellant is the sole accused in S.C.No.229 of 2007 on the file of the learned Assistant Sessions Judge (Chief Judicial Magistrate), Krishnagiri at Karaikkal. He stood charged for the offences under Sections 341, 498-A, 294 (b) and 307 IPC. By judgment, dated 23.12.2008, the trial Court convicted the appellant/A1 under Section 341 IPC, and sentenced him to undergo Rigorous imprisonment for 1 month and convicted him under Section 498-A IPC and sentenced him to undergo Rigorous Imprisonment for 3 years and also to pay a fine of Rs.500/- in default, to undergo Rigorous Imprisonment for two months also convicted him under section 307 IPC and sentenced him to undergo Rigorous Imprisonment for 10 years and also to pay a fine of Rs.1000/- in default, to undergo Rigorous Imprisonment for six months and he was acquitted for the offence under Section 294 (b) of IPC. The trial Court ordered the above sentences to run concurrently. Challenging the said conviction and sentences, the appellant is before this Court with this Criminal Appeal.

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

P.W.1 is the injured in this case. She is the wife of the accused/husband. The accused is a drunkard and gambler and he

used to harass his wife by demanding money frequently. He used to beat her whenever she failed to part with money. Unable to bear with the above cruel act of the accused, P.W.1 went to her parent's house. On 3.3.2007 at about 3.30 p.m, P.W.1 along with P.W.2 and others went to a temple festival. At that time, the accused, came there and abused P.W.1 with filthy language and attacked her indiscriminately with Koduval. On seeing the occurrence, P.W.2 ran away from the scene of occurrence. After hearing the alarm of P.W.1, her brother P.W.3 and her mother P.W.4 came to her rescue and took her to Kaveripattinam Government Hospital wherefrom P.W.1 was referred to Krishnagiri Government Hospital.

3. P.W.14, the doctor, who was then working in Krishnagiri Government Hospital gave first aid to P.W.1 and since the injuries were grievous in nature, he referred P.W.1 to the Government Hospital, Salem. Ex.P.12 is the Accident Register. Earlier, at Kaveripattinam Hospital, P.W.15, doctor examined P.W.1 and found that P.W.1 sustained five injuries, in which, three injuries were grievous in nature and other two injuries were simple in nature. P.W.16, a Doctor, was working in Mohan Kumaramangalam Government Hospital, admitted P.W.1 as inpatient and gave treatment to her and he issued a certificate Ex.P.15.

4. P.W.17, the then Sub Inspector of Police, Nagarasampatti, based on the memo sent by the hospital, proceeded to the Government Hospital and recorded the statement of P.W.1. Based on the same, he registered a case in Cr.No.80 of 2007, under Sections 301, 294(b) and 307 IPC and prepared Express F.I.R, Ex.P.16.

5. P.W.18, the then Circle Inspector of Police, on receipt of the First Information Report Ex.P.1, took up investigation and proceeded to the scene of occurrence. He prepared Observation Magazar Ex.P.2 and also took samples of blood stained soil and sample soil and recorded the statements of witnesses. Thereafter, on 6.3.2007, he arrested the accused. On such arrest, the accused gave a confession statement voluntarily. Based on the said statement, he recovered a Koduval under a cover of magari. Then, he forwarded the accused to the Court for judicial remand. He also recorded the statement of the few other witnesses and after completing the investigation, he filed a charge sheet.

6. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as

18 witnesses were examined and 17 documents were exhibited, besides 6 Material Objects.

7. Out of the witnesses examined, P.W.1 is the injured eye witness. According to her, accused, the husband of P.W.1 is a drunkard and gambler. He frequently quarreled with her by demanding money. P.W.1 therefore, went to her parent's house along with her children. On the day of occurrence, when she was proceeding to a temple festival along with P.W.2 and others, her the accused, who came there, abused her in a filthy language and attacked her with Koduval and ran away. Thereafter, her brother and mother took her to the Kaveripattinam Government Hospital, wherefrom she was referred to Krishnagiri Government Hospital.

8. P.W.2, is the sister in law of P.W.1. She is an eye witness to the occurrence. According to her, on the day of occurrence, at about 3.30 p.m, when they were proceeding to a temple festival, the accused, suddenly emerged there and attacked P.W.1 with Koduval on her neck and her body, while she attempted to prevent him, he tried to attack her also. Thereafter, on hearing the alarm raised by P.W.1, P.W.3 and P.W.4 came to their rescue on seeing them, A.1 ran away from the scene of occurrence.

9. P.W.3 is the brother of P.W.1. He has stated that he also

went to the temple festival along with P.W.1. According to him, while P.W.3 and P.W.4 were following P.W.1 and P.W.2, near the temple, the accused attacked P.W.1 with Koduval and she raised alarm. On hearing the alarm raised by P.W.1, they came to her rescue and took her to the Kaveripattinam Government Hospital.

10. P.W.5 is also an eye witness to the occurrence. P.W.6 has turned hostile. P.W.7 is the witness to the Observation Magazar Ex.P.2. P.W.8 is the witness to the recovery of blood stained soil and the sample soil. P.W.9 and P.W.10 are the witnesses to the recovery of M.Os. 1 to 3, under the Magazar Ex.P.4. P.W.11, is the witness to the seizure of Koduval. P.W.12, who was working as Head Clerk in the Judicial Magistrate Court, Pochampalli, has stated that on the request of the Inspector of Police, Nagarasampatti and on the orders of the learned Magistrate, he sent all the materials objects for chemical examination. P.W.13, who was the Head Constable, attached to the Nagarasampatti Police Station, recorded the statement of P.W.1 (Ex.P.1) in the hospital.

11. P.W.14, the Doctor, who was working in Krishnagiri Government Hospital, gave first aid to P.W.1 and thereafter, he referred her to the Government Hospital, Salem. He issued a case summary/Accident Register (Ex.P.12). P.W.15, the Doctor, who was

on duty at Kaveripattinam Hospital, found five injuries on the body of P.W.1. and he opined that of which three were grievous and two are simple in nature. He issued a wound certificate Ex.P.14. P.W.16 is also a Doctor at Salem who treated P.W.1 and issued Ex.P.15, C.T. Scan report.

12. P.W.17 is a Sub Inspector of Police attached to Anjetti Police Station. He registered the complaint in Cr.No.80 of 2007. P.W.18 was the then Circle Inspector of Police. He conducted investigation and prepared Observation Magazar Ex.P.2, and collected blood stained soil and sample soil and recovered the material objects. After completion of investigation, he filed charge sheet against the accused.

13. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. In order to prove his case, he examined himself as D.W.1, but, however, he did not chose to mark any document.

14. Having considered all the above materials, the trial Court convicted the appellant/accused as stated in the first paragraph of this judgment. Challenging the same, the

appellant/accused is before this Court with this Criminal Appeal.

15. I have heard Mr.K.Thiruvengadam, learned counsel appearing for the appellant and Ms.M.F.Shabana, learned Government Advocate (Criminal side) appearing for the State and I have perused the records carefully.

16. There are three eye witnesses to the occurrence. P.W.1 is the injured witness. P.W.2 is the sister in law of P.W.1. P.W.5 is an independent witness. According to P.W.1, at the time of occurrence, she along with P.W.2 and others proceeded to a temple festival. At that time, the accused, who was following P.W.1, suddenly emerged there and abused her in filthy language and thereafter attacked her with Koduval and caused injuries. P.W.2 is the sister in law of P.W.1, who accompanied P.W.1 also stated that the accused attacked P.W.1, when she attempted to prevent the attack, the accused tried to attack her also, but on hearing the alarm raised by P.W.1, P.W.3 and P.W.4 came to their rescue and the accused fled away from there.

17. P.W.5 is an independent witness. He also speaks about the attack made on P.W.1 by the accused at that time, when he went to the temple festival. P.W.3 and P.W.4, also went along with P.W.1

and P.W.2 and they followed P.W.1 at a little distance. After hearing the alarm, they saw the accused running with bloodstained Koduval and they also saw found P.W.1 with bleeding injuries. Immediately, they took her to the Kaveripattinam Government Hospital.

18. P.W.14, the Doctor, who was working in Krishnagiri Government Hospital, gave first aid to P.W.1 and referred her to the Government Hospital, Salem. He has also issued Accident Register/Case Summary Ex.P.12. P.W.15, the Doctor, who was working in Kaveripattinam Hospital, gave treatment to P.W.1 and issued a wound certificate Ex.P.14, wherein it is stated that 1, 2 and 3 were grievous injuries and 4 and 5 were simple injuries. When P.W.1 was brought before P.W.15 for treatment, she had stated that her husband(accused) attacked her with Koduval. P.W.16 is a Doctor, who treated P.W.1. He has stated that out of five injuries three were of grievous in nature and issued a C.T.Scan Medical Report Ex.P.15.

19. The medical evidences corroborates the evidence of P.W.1, P.W.2 and P.W.5. The evidence of P.W.1, who sustained injuries in the occurrence and the evidence of P.W.2 and P.W.5 are consistent and their presence in the scene of occurrence is natural,

therefore, there is no reason to disbelieve evidence of the eye witnesses. In such circumstances, the prosecution has clearly established that this accused only attacked P.W.1 and caused grievous injuries.

20. From the evidence of P.W.1 and other witnesses, the prosecution has also proved the offence under Section 498-A IPC. The accused waylaid her and wrongfully restrained P.W.1 and caused injuries on her and hence, he is liable to be punished for the offence under Section 341 IPC as well.

21. The next question is as to whether the accused has committed an offence under Section 307 IPC. In order to bring home the offence under Section 307 IPC, the prosecution is expected to prove the following essential ingredients:

- i) that the death of a human being was attempted;*
- ii) that such death was attempted to be caused by, or in consequence of the act of the accused; and*
- iii) that such act was done with the intention of causing death; or that it was done with the intention of causing such bodily injury as; (a) the accused knew to be likely to cause death; or (b) as sufficient in the ordinary course of nature to cause death, or that the accused attempted to cause death by doing an act known to him to be so imminently dangerous that it must in all probability cause (a) death, or (b) such*

bodily injury as is likely to cause death, the accused having no excuse for incurring the risk of causing such death or injury.

22. None of the above ingredients is present in the instant case and so the prosecution failed to prove the offence under Section 307 IPC. Hence, the appellant cannot be convicted for the offence under Section 307 IPC. However, the prosecution has established that the accused attacked P.W.1 with Koduval, which is a dangerous weapon and caused as many as five injuries, out of which, three were of grievous nature and hence, the accused is liable to be convicted for the offence under Section 326 IPC.

23. So far as the quantum of sentences are concerned, the learned counsel for the appellant submitted that the accused/husband is a poor man and after the occurrence, he realised his mistake and he has also attempted to commit suicide. He had no bad antecedent. Pending appeal, the appellant was in jail for more than three years. Hence, he prayed leniency in the matter of sentence.

24. Taking into consideration of the mitigating circumstances, I am of the considered view that sentencing the appellant to the period already undergone by him for the offences

under Sections 326, 498-A and 341 of IPC with fine of Rs.1,000/-, for the offence under Section 326 IPC at Rs.500/- for offence under Section 498A of IPC would meet the end of justice.

25. In the result, the Criminal Appeal is partly allowed. The conviction and sentence imposed on the appellant under Section 307 is set aside instead he is convicted for the offences under Section 326 of IPC. The conviction imposed on the appellant for the offences under Sections 498-A and 341 IPC are confirmed. The appellant is sentenced to undergo the period already undergone by him during investigation, trial and pending appeal for the above said offences and to pay a fine of Rs.1,000/- for offence u/s 326 IPC. The fine imposed by the trial Court for offence under Section 498-A of IPC is confirmed and the fine imposed for the offence under Section 307 of IPC by the trial Court shall be adjusted towards the fine imposed by this Court for offence under Section 326 of IPC.

17.02.2017

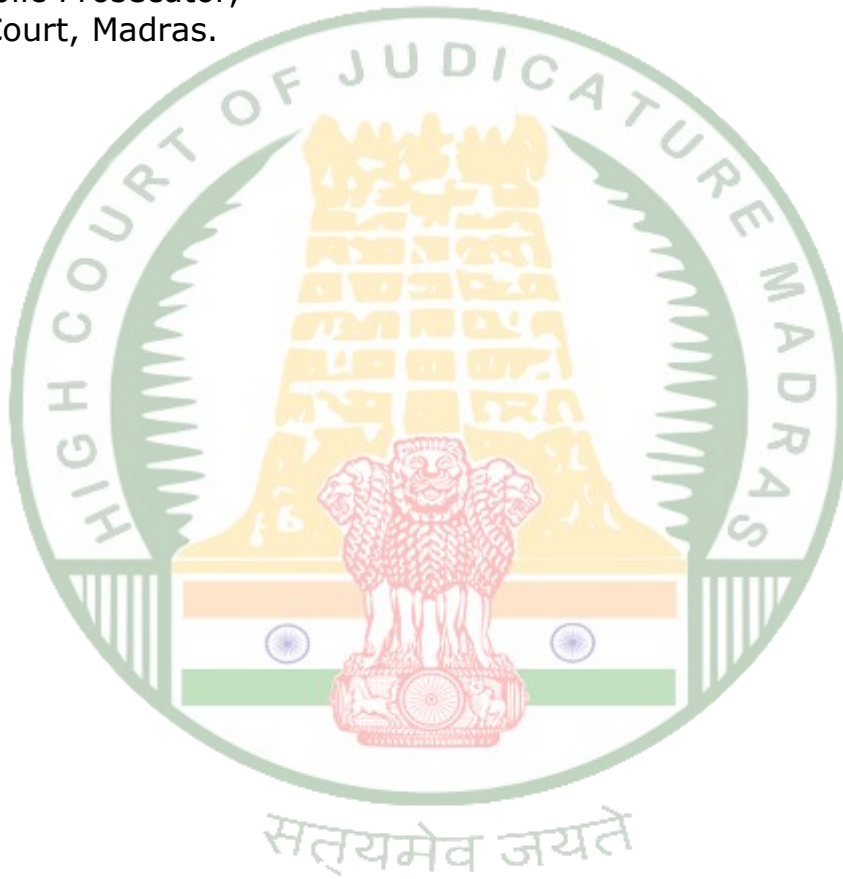
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To

- 1.The learned Assistant Sessions Judge
(Chief Judicial Magistrate),
Krishnagiri.
- 2.The Public Prosecutor,
High Court, Madras.



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V.BHARATHIDASAN.J.,

cla



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