

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T. SELVAM

AND

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

Cr1.A.No.446/2017

Sivakumar ... Appellant / Sole Accused
Vs.

State rep. by,
The Inspector of Police
Erode South Police Station
Erode District. ... Respondent

Criminal Appeal filed under Section 374[2] of the Criminal Procedure Code against the judgment of conviction and sentence passed against the appellant by the learned Sessions Judge, Mahila Court, Fast Track Court, Erode, dated 14.03.2017 in SC.No.158/2016.

For Appellant : Mr.S.Anbazhagan for
M/s.Arulselvam Associates

For Respondent : Mr.M.Prabhavathi, APP

JUDGMENT

[Judgment of the Court was delivered by N.SATHISH KUMAR, J.,]

Appellant, sole accused in the case in SC.No.158/2016 on the file of the Court of the learned Sessions Judge, Mahila Court, Fast Track Court, Erode. The appellant/accused stood charged and tried for the offence u/s.307 [Part II] IPC. The Trial Court, under judgment 14.03.2016, convicted him for the said offence and sentenced him to undergo imprisonment for life and to pay a fine of Rs.10,000/- as compensation to be paid to P.W.1. Aggrieved over the said conviction and sentence, the present appeal came to be filed by the appellant/accused.

2 The brief facts of the prosecution case, are as follows:-

[a] P.W.1-Vijayalakshmi is the wife of Sivakumar - appellant/accused. P.W.2-Indhupriya is the younger daughter of P.W.1 and the appellant/accused. The spouses were running a fruit stall in the Big Bazaar, Erode. The appellant/accused used to suspect P.W.1 frequently and as a result, there arose some misunderstanding between the couple and hence, P.W.1 left the appellant/accused and went to her parental home along with her elder daughter Mohanapriya. However, P.W.2-younger daughter of the couple, remained with the appellant/accused. Subsequent thereupon, P.W.2 attained puberty and there was some compromise between the appellant/accused and P.W.1. Thereafter, the couple with their daughters, were residing separately in a house at Teachers' Colony, Erode. P.W.1 and the appellant/accused had purchased a house in their names jointly at Majith Street, Erode. The appellant/accused was demanding P.W.1 to sell the said house, which proposal was declined by P.W.1. For the above reasons, the appellant/accused used to cause unnecessary trouble to P.W.1

[b] When the matter stood thus, on 13.03.2015 at about 8.45 a.m., the appellant/accused suspected P.W.1 and took knife [M.O.4] and saying that she should die, cut her on her neck besides beating her. When P.W.1 warded off the attack, she sustained grievous injuries on her right and left thumb, wrist etc. P.W.2 who was present in the house at that time, witnessed the occurrence. She pushed her father, the appellant/accused herein down. P.W.1 came out of the house shouting to save her from the appellant/accused. P.W.9 and P.W.10, neighbours of P.W.1, came to her rescue and P.W.9 took P.W.1 to the Government Hospital, Erode. While P.W.1 was in the hospital, police came there and obtained her statement under Ex.P.1 [Complaint].

[c] P.W.5-Dr.Siddharthan, Medical Officer attached to the Government Hospital at the relevant time, on 13.03.2015 at 9.10 a.m., when he was in Casualty, P.W.1 was brought by P.W.9 and P.W.1 has stated to P.W.5 that she was attacked by her husband in her house with a knife [M.O.4]. He noted the following injuries:-

"1.10cm Cut injury present over lower neck right side.
2.5cm superficial cut injury present over left side of neck.
3.5cm cut injury present over left thumb."

He issued Ex.P.5-Accident Register and Ex.P.7-Wound Certificate. He also gave intimation to the police under Ex.P.6. P.W.1 got discharged and went to a private hospital for taking further treatment.

[d] P.W.12-Mrs.Valarmathi, Sub Inspector of Police

attached to the respondent police, on receipt of intimation from the hospital, went to the hospital and recorded the statement of P.W.1 and on returning to police station, registered the crime in Cr.No.194/2015 for the offence u/s.307 IPC. Ex.P.12 is the First Information Report. He despatched the originals of Ex.P.1 and Ex.P.12 to the jurisdictional Court and copies to the higher officials.

[e] P.W.6-Dr.Periyasamy, Medical Officer attached to Erode Trust Hospital admitted P.W.1 as an In-Patient on 13.03.2015, after she was given First Aid in the Government Hospital, Erode. He noted down the following injuries:-

- 1.Sutured wound seen on left side of neck.
- 2.Lacerated wound left thumb.
- 3.Lacerated wound right thumb.
- 4.Lacerated wound left wrist.
- 5.Abrasion left ring finger.
- 6.Sutured wound left cheek.
- 7.Linear abrasion chin
- 8.Lacerated wound back of neck.
- 9.Lacerated wound left side of neck.

Ex.P.8-Wound Certificate has been issued by him in this regard.

[f] P.W.14-Eswaran, Inspector of Police attached to the respondent police, on receipt of FIR, took up the case of investigation, went to the place of occurrence at 1.00 p.m., and prepared the Observation Mahazar [Ex.P.2] and Rough Sketch [Ex.P.15] in the presence of P.W.3 and one Sadhasivam. He seized blood-stained knife [M.O.4] under the cover of Mahazar [Ex.P.3]. He examined the witnesses and recorded their statements. He went to hospital and recorded the statement of P.W.1. He recovered the blood-stained cloth from P.W.1 under Mahazar [Ex.P.4]. Thereafter, on 15.03.2015, he effected the arrest of the appellant/accused at 2.30 p.m., in the presence of P.W.13-Satheeshkumar [VAO] and his Menial Ravi. The appellant/accused came forward to give a voluntary confession statement, admissible portion of which is marked as Ex.P.13, pursuant to which, the Investigating Officer seized the blood-stained shirt from the bushes at the instance of the appellant/accused under Mahazar [Ex.P.14]. He sent the appellant/accused for judicial remand and also the material objects to Court under Form 91, along with requisition to send the same to the Forensic Lab for Chemical Analysis.

[g] P.W.7-Vijayakumar, Scientific Officer attached to Regional Forensic Laboratory, Coimbatore, examined the material objects and issued Ex.P.10-Forensic Report, stating that human "A" Group blood was detected in the material objects. P.W.15-Nalina, Scientific Officer in the Forensic Lab, examined the clothes seized from P.W.1 and issued Ex.P.16-Serology Report.

P.W.9-Appadurai is a tenant in one of the portions of houses in which P.W.1's house is also located and where the occurrence took place.

[h] P.W.14, the Investigating Officer, in continuation of the investigation, examined the Medical Officers and recorded their statements and obtained the Medical Reports and on completion of investigation, filed the Final Report against the accused u/s.307 and 201 IPC and u/s.4 of the Tamil Nadu Prevention of Harassment on Women Act, before the learned Judicial Magistrate No.3, Erode, who took it on file in PRC.No.12/2015 and issued summons to the accused and on his appearance, furnished him copies of the documents u/s.207 Cr.P.C. and having found that the case is exclusively tried by the Sessions Court, committed the same to the Court of the Principal District and Sessions Judge, Erode, u/s.209 Cr.P.C., who in turn, had made over the case to the learned Sessions Judge, Mahila Court, Fast Track Court, Erode, who took it on file in SC.No.158/2016 and on appearance of the accused, had framed the charges u/s.307 [Part II] IPC and questioned him. The accused pleaded not guilty to the charge framed against hi.

[i] The prosecution examined P.Ws.1 to 15 and marked Exs.P.1 to 16 besides marking M.O.1 to M.O.5.

[j] The appellant/accused was questioned under section 313 Cr.P.C., with regard to the incriminating circumstances against him in the evidence rendered by the prosecution and he denied it as false. No evidence was let in on the side of the defence nor any documents were marked.

[k] The Trial Court, on consideration and appreciation of the oral and documentary evidence and other materials, had convicted and sentenced the appellant/accused as above stated and hence, this appeal.

3 The learned counsel for the appellant submitted that the injuries sustained by P.W.1-wife of the appellant/accused are only simple in nature and there was no intention on the part of the appellant/accused to cause the death of P.W.1 and the entire occurrence took place in an ordinary quarrel and therefore, submitted that some leniency may be shown to the appellant/accused.

4 Heard Mr.R.Prathap kumar, learned Additional Public Prosecutor appearing for the State on the submissions made by the learned counsel for the appellant.

5 We have perused the entire materials and evidence on record.

6 In the light of the above submissions, now it has to be analysed whether the prosecution has brought home, the guilt of the appellant / accused beyond all reasonable doubt?

7 The fact that P.W.1 is the wife of the appellant/accused is not in dispute. Similarly, though there were misunderstanding in the marital life of the spouses previously, at the time of occurrence, both of them were residing in Teachers' Colony, Erode, where the occurrence had taken place, along with their daughters. This fact is also not in dispute. When the evidence of P.W.1 is carefully scanned, on the date of occurrence, i.e., on 13.03.2015, at about 8.45 a.m, the appellant/accused, as usual, picked up a quarrel with P.W.1 and took the knife [M.O.4] and caused cut injuries on her neck. When the same was warded off, she sustained injuries on her neck besides sustaining injuries on her left and right thumb, left wrist etc. P.W.2, minor daughter of the appellant/accused and P.W.1, in her evidence, has also categorically and clearly stated the role played by her father, the appellant/accused herein. P.W.9-neighbour of the spouses, on hearing the alarm raised by P.W.1, saw P.W.1 coming out of her house with injuries and took her to hospital. P.W.10, one Gnanasundari, has also seen P.W.1 coming out her house with injuries and had also seen P.W.9 taking P.W.1 to hospital. It is also her evidence that P.W.1 informed her that her husband had caused such injuries on her. Thus, the evidence of P.W.9 and P.W.10 amply corroborates the evidence of P.W.1 and P.W.2 and as such the evidence of P.W.9 and P.W.10 certainly fall within the ambit of section 6 of the Indian Evidence Act.

8 Further, P.W.2 - younger daughter of P.W.1 and the appellant/accused, was all along with her father till P.W.1 and the appellant/accused had set up a separate house. Therefore, there was no motive for P.W.2 to falsely implicate her father. Further, it is not the case of the appellant/accused that there was no occurrence whatsoever took place in the house at the relevant time. The only contention of the appellant/accused is that the injuries on P.W.1's neck was self-inflicted ones. Such contention has no force at all, upon perusing the evidence of P.Ws.5 and 6. P.W.5-Medical Officer attached to the Government Hospital, Erode, admitted P.W.1 at 9.10 a.m. on 13.03.2015 and he noted a cut throat injury measuring 10cm on the right side of the neck. Similarly, he has also noted 5cm cut injury on the left side of the neck. Immediately, P.W.5 had given First Aid. As P.W.1 had left the hospital for taking further treatment in a private hospital, he could not give a definite opinion in the Wound Certificate. The evidence of P.W.6-Medical officer attached to Trust Hospital, Erode, shows that P.W.1, after taking First Aid from the Government Hospital, came to the Trust Hospital for taking

further treatment. In fact, he has noted a sutured wound on the left side of the neck ; multiple laceration on the right and left thumb and injuries on the ring finger and a sutured injury on the left chin. Therefore, the evidence of the Medical officers coupled with Exs.P.5, 7 and 8, clinchingly establish the nature of injuries sustained by P.W.1. 10cm size of cut throat injury and another injury of 5cm and a lacerated injury on the neck, clearly substantiate and corroborate the version of P.W.1 that it was this appellant/accused who had caused such grievous injuries with knife [M.O.4]. The nature of injuries inflicted on P.W.1 clearly indicate that the appellant/accused had an intention to cause injuries on the vital part as he knows that the same would likely to cause the death of P.W.1. Therefore, the intention of the appellant/accused can be easily inferred from the circumstances and from the manner in which the injuries were caused on the vital part of P.W.1. The material objects, viz., the cloth, seized from the appellant/accused, also contained human blood. All these facts clearly establish the complicity of the appellant/accused with the crime. Hence, we are of the view that the act of the appellant/accused would certainly fall within the ambit of section 307 IPC. Hence, the findings recorded by the Trial Court, in convicting the appellant/accused for the offence u/s.307 [Part II] IPC is apt in all aspects and warrants no interference at the hands of this Court.

9 Now, coming to the submission of the learned counsel for the appellant/accused as regards leniency to be shown on the appellant/accused, it is seen that the occurrence took place in a quarrel that ensued between the husband and wife and that the spouses are having two minor daughters. Hence, we are of the view that in order to give a chance for the reformation of the appellant/accused and to take care of his family, awarding eight years rigorous imprisonment for the aforesaid offence, would meet the ends of justice.

10 In the result, the criminal appeal is DISMISSED. The conviction imposed on the appellant/A-1 for the offence u/s.307 [Part II] IPC by the learned Sessions Judge, Mahila Court, Fast Track Court, Erode, in SC.No.158/2016 vide Judgment dated 14.03.2016, is confirmed. However, the sentence of life imprisonment awarded by the Trial Court is modified and the appellant/accused is sentenced to undergo eight years rigorous imprisonment. Fine amount awarded by the Trial Court remains unaltered. However, we are of the view that some amount of fine is to be paid towards the State. Accordingly, from out of the fine amount of Rs.10,000/-, the appellant/accused is directed to pay a sum of Rs.500/- to the State and the remaining amount of Rs.9500/- to P.W.1 as compensation.

11 It is reported that the appellant / accused is in jail. He is directed to undergo the sentence now awarded by this Court. The period of sentence already undergone by him, shall be given set-off.

Sd/-
Assistant Registrar (CS-ix)

//True Copy//

Sub Assistant Registrar

AP

To

- 1.The Principal District and Sessions Judge
Erode District.
- 2.The Sessions Judge
Mahila Court, Fast Track Court,
Erode District.
- 3.The Judicial Magistrate No.3,
Erode.
- 4.The Chief Judicial Magistrate,
Erode District.
- 5.The Inspector of Police
Erode South Police Station
Erode District.
- 6.The District Collector
Erode District.
- 7.The Director General of Police
Mylapore, Chennai-4.
- 8.The Superintendent of Prison
Central Prison, Coimbatore.
9. The Public Prosecutor,
High Court, Madras.

सत्यमेव जयते

Cr1.A.No.446/2017

gmr (CO)
TR(27/03/2018)

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