

Bail Slip

The Appellant/Accused namely Mr.Raihan Khan, S/O B.A.K.Tareen was directed to be released on bail as per order of this Court dated 15/12/2011 and made in Crl.M.P.No.1 of 2011 in Crl A 706/2011 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Criminal Appeal No. 706 of 2011

Raihan Khan

.... Appellant

Versus

State rep. by
The Inspector of Police,
Mylapore police station,
chennai.

.... Respondent

Criminal Appeal filed under Sections 374(2) of the Code of Criminal Procedure, to set aside the judgment of conviction dated 31.10.2011, in S.C.No.210 of 2011 on the file of the Additional District and Sessions Judge (Fast Track Court No.II), Chennai, and acquit the accused.

For Appellant : Mr.J.I.Rajkumar

For Respondent : Ms.T.P.Savitha
Government Advocate (Crl.Side)

JUDGMENT

The appellant herein is the sole accused in S.C.No.210 of 2011 on the file of the Additional District and Sessions Judge (Fast Track Court No.II), Chennai. He stood charged for the offence under Section 307 of IPC. By judgment dated 31.10.2011, the trial Court convicted him under Section 307 of IPC and sentenced to undergo seven years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo one month rigorous imprisonment. Challenging the said conviction and sentence, the appellant is before this Court with the present appeal.

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

PW1 Karpagam is the daughter of PW4 Rajam. She was working as a copywriter in Scientific Publishing Service Limited situated in Chennai. The accused had joined in the same company prior to two years from the date of occurrence and got training under PW1, when at the time of training, he proposed his love to PW1, for that she refused and rejected the proposal made by the accused. In the said circumstances, on 19.04.2010 at about 05.30 a.m., in Mandaveli Bus Stand, when PW1 was standing for catching the bus, the accused came and proposed his love, subsequently, both of them went to their company and after entering into the premises by using the knife the accused attacked the PW1, on her neck, left chest and near to the left abdomen umbilicus by saying "Ithoda Tholainthu Podi" and thereafter, he fled away from the scene of occurrence. The said incident was witnessed by PW2 Suganthi and PW3 N.S.Sundarrajan. Thereafter, the other colleagues, who are working in the same office admitted the PW1 in Ishabellah Hospital for taking treatment and thereafter, the hospital authorities sent intimation to the Police.

3.On receipt of intimation, PW12 Sukumar, the then Sub Inspector of Police, Mylapore Police Station, came to the hospital and recorded the statement from PW1. Subsequent to that, he returned to the police station and registered a case in Crime No.552 of 2010 for the offence punishable under Section 307 IPC. The statement given by PW1 was marked as Ex.P1. Ex.P6 is the printed First Information Report. After registering the case, PW12 handed over the case records to PW13 Jawahar for investigation.

4.On the same day, PW13, the then Inspector of Police, Mylapore, received the copy of the First Information Report and took up the same for investigation, he visited the scene of occurrence and in the presence of PW2 Suganthi and PW8 Chinnaraj, he preferred an observation mahazar under Ex.P2, further, he drawn the rough sketch under Ex.P7, he examined the witnesses and recorded their statements.

5.In the meanwhile, in the Hospital, PW10 Dr.George Thomas, who admitted the PW1 as a inpatient, gave treatment to PW1 and found the following injuries:

- 1.cut injury for 4 c.m in the left neck.
- 2.stab injury in the part of the near by left chest.
- 3.stab injury in the left side abdomen.

Further, PW11 Dr.Arjun Sundarsingh Rajkumar, who is also working in the same Hospital gave treatment to PW1, issued wound certificate stating that the injuries sustained by PW1 are grievous in nature. The wound certificate and the Accident

Register copy issued by the Doctors are exhibited as P.4 and P.5.

6. In continuance of investigation, on 20.04.2010, in the presence of PW9 Suresh and one Siva, PW13 arrested the accused and recorded the confession statement from him. In the confession statement, he admitted the guilt and produced the knife by saying that the said knife was used for committing the offence. Therefore, PW13 recovered the said knife in the presence of the same witness under the cover of mahazar (Ex.P3) and thereafter, he made arrangements for sending the accused to the judicial custody. In the meanwhile, since he was transferred from the said post, PW14 Appadurai, who is the successor of PW13 took up the case for further investigation and after examining the witnesses, he completed the investigation and laid a charge sheet under Section 307 IPC against the appellant.

7. Based on the above materials, the trial Court framed charges as stated in the first paragraph of this judgment, for which, the accused denied the same as false and opted for trial. In order to prove the case, on the side of the prosecution as many as 14 witnesses were examined as P.Ws.1 to 14 and seven documents were marked as Exs.P.1 to 7, besides one material object.

8. Out of the said witnesses, PW1 is the defacto complainant as well as the victim in this case. In the trial Court, she has stated about the occurrence as, on 29.05.2006, she was joined as a staff in a company called "SPS Private Limited". After one year from the date of her joining, the accused had joined in the same company and came for training under her, due to which both of them developed the friendship, and subsequently, he made a proposal for the love since PW1 refused to accept the proposal made by him, their friendship was got ended. In the said circumstances, on 19.04.2010, when she was in the office, the accused came and by using the knife attacked on her neck, chest and in the abdomen. On seeing the said occurrence, the colleagues, who are all working in the same company admitted her in the Hospital and thereafter, the Sub Inspector of Police came and recorded her statement.

9. PW2 Suganthi and PW3 N.S.Sundarrajan are alleged to be the eye witness to the occurrence had not supported the case of the prosecution in any manner. According to them, they heard the occurrence through their colleagues.

10. PW4 is the mother of PW1, she has stated as after hearing the occurrence, she went to the Isabella Hospital wherein her daughter was admitted as a inpatient. PW5 Murugan working as security in the same company deposed that both the

accused and PW1 are working in the same company and on 19.04.2010, at about 5.15a.m, he heard a noise from the second floor as "Security Security" and at the time when he was about to enter into the company, the accused came out and ran away from the company. PW6, who is also working as security in the same company has stated in his evidence that on the day of occurrence, he saw the accused in the office. Even though both PW5 and PW6 not supported the prosecution case in otherwise, before treating them as a hostile witness they clearly deposed about the presence of accused in the work place. PW7 and PW8 are employees of the company had also not supported the case of the prosecution.

11.PW9 is a load man has stated on 20.04.2010, when he was standing near Janakiraman Travels, the police arrested the accused and recovered the knife.

12.PW10 and PW11 are the Doctors attached with the Isabella Hospital, Mylapore, have stated about the admission of PW1 as a inpatient, and about the nature of injuries sustained by her, further, they issued the Accident Register copy and wound certificate. PW12 has stated about the receiving of complaint from the PW1 and about the registration of case. PWs.13 and 14 are the Police Officers gave evidence about the manner in which the investigation has been progressed, arrest of the accused, recovery of knife and about the filing of final report.

13.The learned trial Judge with reference to the incriminating materials adduced by the prosecution questioned the accused under Section 313 Cr.P.C., and for which, the accused denied as false. However, he did not choose to examine any witnesses nor did he mark any documents on his side.

14.The learned Judge on perusal of the materials placed and considering the arguments advanced on both sides convicted and sentenced the appellant/accused as stated supra. Challenging the same, the present appeal has been filed.

15.I have heard Mr.J.I.Rajkumar, learned counsel appearing for the appellant, Ms.T.P.Savitha, learned Government Advocate (Crl. Side) appearing for the State and also perused the records carefully.

16.The learned counsel for the appellant would contend that the evidence given by the PW1 in the trial court with regard to the assault made by the appellant/accused was not corroborated either through the eye witness or through the medical officer, who treated her. According to the evidence of PW1, she sustained injury on her neck, left chest and near to the left abdomen

umbilicus. But, the Doctors, who issued wound certificate has not stated as PW1 sustained injury in the neck, left chest etc.

17.The learned counsel for the appellant would further contend that on the day of occurrence, the accused had not come to the office and attended the duty, to prove his presence in the occurrence place, the prosecution has not produced any relevant documents such as Attendance Register, worksheet etc. Further, he added that the bloodstained articles, which were recovered by the Police Officers during the time of investigation are not subjected to chemical examination. The trial court without considering the above said aspects, convicted the appellant/accused, which is purely erroneous and unsustainable. According to him, the conviction and sentence rendered by the trial court is liable to be set aside.

18.On the other hand, the learned Government Advocate (Crl.Side) would submit that the evidence given by PW1 proves the presence of the accused in the occurrence place and about the assault made by the appellant. According to him, the trial Court has rightly convicted the appellant/accused and sentenced him and hence, he prays for dismissal of the appeal.

19.I have considered the rival submissions made on either side and perused the entire materials available on record.

20.With regard to the first submission made by the learned counsel for the appellant in the trial court in the chief examination itself, PW1/the victim has clearly stated as the accused attacked on her left neck, left chest and left abdomen. Now on going through the evidence of Doctor, who issued the Accident Register copy, he has clearly stated that there is an injury found on the left neck, left chest and left abdomen. So the evidence given by PW1 in respect to the injury sustained is clearly corroborated through the evidence of medical officer. Without seeing the said aspect, the learned counsel for the appellant made submission that the evidence given by the medical officer is not in accordance with the evidence given by PW1, which is purely wrong on the face itself. Accordingly, this court affirm the view taken by the trial court that the evidence given by the PW1 corroborated through the evidence of the medical officer.

21.In respect to the second submission, it is true in order to know about the occurrence, except the evidence of PW1, no other evidence is available in this case. PW2 and PW3, who are the colleagues of PW1 alleged to be the eye witness had also not supported the case of prosecution in any manner. Accordingly, this case is clearly rests on the evidence of PW1. Now, on going through the dictum of our Honourable Apex Court in CHACKO vS.

STATE OF KERALA reported in (2004) 12 SCC 269, in which, it has observed as follows:

"Section 134 of the Evidence Act, 1872 clearly states that no particular number of witnesses is required to establish the case. Conviction can be based on the testimony of a single witness if he is wholly reliable. Corroboration may be necessary when he is only partially reliable. If the evidence is unblemished and beyond all possible criticism and the court is satisfied that the witness was speaking the truth then on his evidence alone conviction can be maintained."

22. So applying the principles laid down by our Honourable Apex Court in this case also we cannot easily throw out the entire case for the reason that the other eye witness examined on the side of the prosecution has not supported the case of prosecution. Hence, it is necessary to check whether the evidence given by PW1 is cogent and wholly reliable one or not. In this aspect, during the time of cross examination, it was suggested on the side of the accused that from 12.04.2010 to 19.04.2010, the accused has not attended the office. In order to prove the said defence, no documents are produced on the side of the accused, however, it is the duty of the prosecution to prove its case beyond reasonable doubt. In this case, on going through the entire evidence submitted on the side of prosecution, the attendance register pertaining to the accused has not produced before the trial court as an exhibit. So, the said lapse is almost in favour of the defence taken by the accused. However, in the trial court, the security officers who are working in the company in which both the PW1 and the accused are working were examined as PW5 and PW6, they have clearly stated the presence of accused. Infact, they have not supported the entire case of prosecution, even though both of them were treated as a hostile witness, before treating them as a hostile witness, they categorically stated about the presence of accused in the occurrence place, their evidence clearly proved after the occurrence the accused was came and went out from the company, so the evidence given by the PW5 and PW6 will clearly prove the presence of the accused during the time of occurrence. In otherwise, as already discussed, the evidence given by the medical officer is fully corroborated the evidence of PW1, so the said lapse already discussed found on the case of prosecution did not create any platform for acquitting the accused from the charges.

23.The learned counsel for the appellant would submit that the trial court based on the presumption and assumption convicted the accused which is purely erroneous in law. In this regard, he relied on the judgment of our Honourable Apex Court in SADASHIO MUNDAJI BHALERAO vs. STATE OF MAHARASHTRA reported in (2007) 15 SCC 421, in which it was held as follows:

"The Court cannot act on presumption merely on a strong suspicion or assumption and presumption. Presumption can only be drawn which is permissible under the law and the Court cannot rush to the conclusion just because the deceased has died in the police custody without there being any proper link with the commission of the crime."

24.According to the dictum laid down by our Honourable Apex Court, it is true no one convicted based on presumption and assumption. But in this case as per the evidence of PW1, the occurrence had happened on 19.04.2010 at about 5.45a.m. On the other hand, the Doctor, who treated the PW1 has stated on the same day at about 6.30a.m., PW1 was admitted in the hospital for the injury sustained in the neck, chest and abdomen. Hence, no fact is suppressed by the prosecution in respect to the attack made by the PW1 thereby the evidence given by the PW1 is cogent and wholly reliable for accepting the case of prosecution.

25.The learned counsel for the appellant would further contend that during the time of occurrence, the accused is not having any intention and knowledge for murdering the PW1. But without seeing the said aspect, the trial court convicted the accused under section 307 IPC which is legally not sustainable. In respect to the said submission, he relied on the judgment of our Honourable Apex Court in STATE OF RAJASTHAN vss. DHOOL SINGH reported in AIR 2004 SCC 1264, in which it has held as follows:

"13.In regard to the finding of the High Court that the prosecution has not even established that the respondent herein had acted with an intention of causing death of the deceased, we must note that the same is based on the fact that the respondent had dealt a single blow which according to the High Court took the act of the respondent totally outside the scope of Exception I to Section 300 IPC. Here again we cannot agree with the finding of the High Court. The number of injuries is irrelevant. It is not always the determining factor in ascertaining the intention. It is the nature of injury, the part of body where it

is caused, the weapon used in causing such injury which are the indicators of the fact whether the respondent caused the death of the deceased with an intention of causing death or not."

26.Following the dictum laid down by our Honourable Apex Court, it is to be noted in this case as the alleged occurrence had happened in the company, further at the time of occurrence, the accused assaulted the PW1 by using the knife, the said knife has also recovered by the Investigation Officer and produced before the trial court as M.O.1. In the said circumstances, being the employee there is no necessity to bring the knife inside the campus, so, possessing the knife inside the office will clearly proves that the accused is having the intention to kill the PW1. Furthermore, as per the evidence of the Doctor, she sustained injuries on the vital part, accordingly being the educated person, the accused knows if a person is sustained injury on the above parts will leads the death. So, I am unable to accept the contention made by the learned counsel for the appellant as the accused is not having any intention and knowledge. Accordingly, the submission made by the learned counsel for the appellant did not having any merits.

27.At this juncture, the learned counsel for the appellant prays for leniency in the quantum of sentence imposed by the trial Court.

28.Considering the fact at the time of occurrence, the age of the appellant/accused is 27 years, he is having a family and he is the sole breadwinner of the family and hence, the sentence imposed upon the appellant by the trial Court is reduced from seven years to three years.

29.In the result, the Criminal Appeal is partly allowed. The Trial Court is directed to take steps to secure the custody of the appellant for undergoing the remaining period of sentence. It is directed that the period of sentence already undergone by the appellant shall be given set off, as required under Section 428 Cr.P.C.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1.The Additional District and Sessions Judge
(Fast Track Court-II),
Chennai,

2.The Inspector of Police,
Mylapore police station,
chennai.

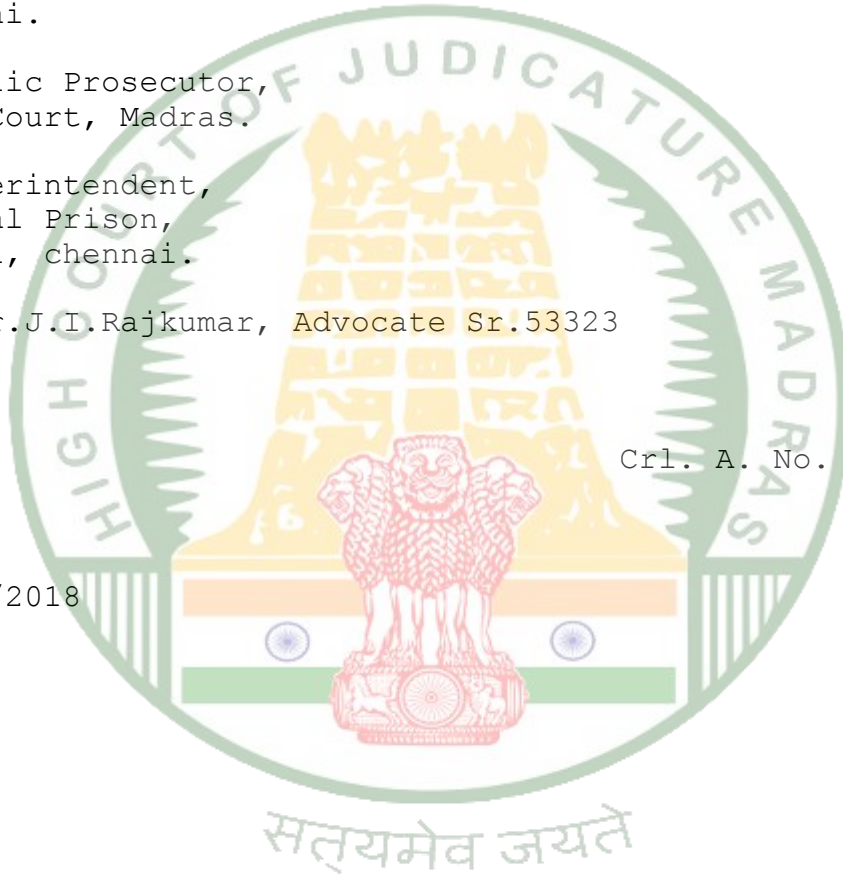
3.The Public Prosecutor,
High Court, Madras.

4.The Superintendent,
Central Prison,
Puzhal, chennai.

+2cc to Mr.J.I.Rajkumar, Advocate Sr.53323

Crl. A. No. 706 of 2011

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srg 31/10/2018



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