

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.07.2018

PRONOUNCED ON : 24.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.A.No.270 of 2007

Murugan

... Appellant/Accused

Vs

The State Rep by
The Deputy Superintendent of Police,
Villupuram Town Police Station,
Villupuram.

Crime No.478 of 2003

... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 of Cr.P.C., against the judgment made in S.C.No.108 of 2004 dated 26.02.2007 passed by the learned Special Judge (Principal Sessions Judge), Sessions Division, Villupuram and set the accused/appellant at liberty.

For Appellant : Mr.C.D.Johnson
for Mr.J.Muthukumaran

For Respondent : Ms.M.Prabavathi Ganeshram
Additional Public Prosecutor

J U D G M E N T

This appeal arose out of the judgment and conviction passed in S.C.No.108 of 2004 on the file of the learned Special Judge, Principal Sessions judge, Sessions Divison, Villupuram dated 26.02.2007, convicting the appellant for the offence under Section 307 of IPC r/w Section 3(2)(V) of SC/ST (PA) Act 1989 and sentenced him to undergo rigorous imprisonment for ten years and also to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for three months.

2. The case of the prosecution is as follows :- P.W.1 Gangaianaran is the son of P.W.2 Poongothai and they are belonging to Adidharaviar community. They owned a house and the accused also a owned house in front of their house. Both the houses are situated in railway poramboke. The accused and his

mother and his brother encroached some portions of P.W.2's house and tried to fence in the said encroached land. It was questioned by P.W.2 family and as such there was previous enmity between both the families. While so, on 16.07.2003 at about 10.30 a.m., when P.W.2, victim questioned the act of the accused, he came with Koduval (Knife) and attacked head, jaws, right hand and back of her body and scolded with filthy language mentioning her community. As such she sustained grievous injury and P.W.1 took her by auto to the Government Hospital, Villupuram. P.W.7, the Doctor examined the victim and treated her and registered the Accident Register, Ex.P.5. P.W.7 opined that the injuries are grievous in nature and also found that the victim sustained fracture in her left hand and also issued wound certificate Ex.P.6.

3. P.W.1 lodged a complaint and on receipt of the same, the Sub Inspector of Police registered a case in Crime No.478 of 2003 for the offence under Section 307 of IPC r/w Section 3(2) (V) of SC/ST (PA) Act under Ex.P.7. In turn, he submitted the First Information Report to P.W.8 the Investigating Officer. P.W.8 investigated the case and filed charge sheet against the accused for the offence under Section 307 of IPC r/w Section 3 (2)(V) of SCST (PA) Act. Trial court framed charges for the offence under Section 307 of IPC r/w Section 3(2)(V) of SC/ST (PA) Act against the accused and he denied the charges and claimed to be tried.

4. The prosecution examined P.W.1 to P.W.8 and marked Ex.P.1 to Ex.P.15 and produced M.O.1 to M.O.4. The trial Court questioned the accused under Section 313 of Cr.P.C., putting forth the incriminating materials against the accused, which he denied toto. Considering the oral and documentary evidences, the trial Court convicted and sentenced the accused as stated above. Challenging the said conviction and sentence, the accused preferred this appeal.

5. The learned counsel appearing for the appellant submitted that there are contradiction between the eye witnesses, in respect of the number of persons allegedly attacked the victim. P.W.1, who admitted the victim P.W.2, in the hospital and on his statement, which marked as Ex.P.5, the Accident Register, recorded that the victim was attacked by three male members. It is also corroborated by P.W.7, the Doctor, who treated the victim, deposed that the victim was attacked by three male persons. Therefore, the prosecution failed to prove the case beyond any doubt.

6. Further the learned counsel appearing for the appellant contended that P.W.1 is not an eye witness. P.W.5 neighbour of P.W.2, deposed that in the place of occurrence,

P.W.1 was not present and as such the entire case of the prosecution lost its veracity. More over, there is a clear contradiction in respect of seizing of weapon. P.W.8, the Investigating Officer stated that the weapon allegedly used by the accused seized near the church, whereas, P.Ws. 1 and 2 stated that it was recovered in the place of occurrence itself. Further pleaded that if at all the case of the prosecution is accepted, the offence under Section 307 has not attracted against the accused and due to sudden provocation, the accused attacked P.W.2 and it was attracted only for the offence under Section 334 of IPC and sought for modification of conviction under Section 334 of IPC.

7. Per contra, the learned Additional Public Prosecutor has vehemently opposed that the prosecution proved the case beyond all doubts. The injuries sustained by the victim, P.W.2, are grievous in nature and the evidence of P.Ws.1 and 2 are clinching and trustworthy to prove the case of the prosecution, as such the conviction and sentence passed by the learned trial Court does not warrant any interference from this Court and prayed for dismissal of the appeal.

8. Heard the rival submissions made by Mr.D.D.Johnson, learned counsel appearing for the appellant and Ms.M.Prabavathi Rameshram, learned Additional Public Prosecutor and perused the available records.

9. It is seen from the records, the occurrence took place in a day light at about 10.30 a.m. The accused and P.W.2 are neighbours and when the accused encroached some portions of the land belonging to P.W.2 and putting up the fence by him and it was questioned by P.W.2, the occurrence took place. As such, the identification of the accused is not disputed and the injuries caused by the accused are also proved by the evidence of P.Ws.1,2,3 and 5. The evidence of the victim P.W.1, corroborated by P.W.2, who is the son of P.W.1. The learned counsel for the appellant submitted that if P.W.1 present at the time of occurrence, he would also have sustained injury, when his mother was attacked and his presence at the place of occurrence is doubtful. It cannot be accepted, since the evidence of the victim corroborated by other witnesses and P.W.1 has taken his mother in the auto to the Government Hospital and he admitted P.W.2 to the hospital and it is proved by Ex.P.5.

10. The next contention raised by the learned counsel appearing for the appellant is that P.W.1 stated as three male persons attacked the victim before the Doctor, and it has also reflected in the Accident Register - Ex.P.5. It is seen from Ex.P.1, the complaint, P.W.1 stated as there was a wordy quarrel between the accused and his mother and one Ananthkumar. But the

accused only took the Koduval and attacked the victim P.W.2. Therefore, three persons were present at the time of occurrence, but the accused only attacked the victim. Even in their deposition, P.Ws.1 and 2 deposed about the presence of three persons. Therefore, there is no contradiction about the number of persons present at the time of occurrence or number of persons attacked the victim.

11. As far as the injuries are concerned, the learned counsel for the appellant submitted that the injury No.4 is a grievous one as deposed by the Doctor, whereas the injury No.4 is not a grievous one. It is seen from the evidence of Doctor, P.W.7, he found the following injuries :-

- "1. An incised wound over right fore-head 4X1X1c.m.
2. An incised wound over right frontal region 3X1X1 c.m.
3. An incised wound right of back 10X2 c.m., Xbone deep
4. An incised wound over right scalp 4X1 c.m.,
5. An incised wound over left elbow bone fractured."

P.W.2 sustained fracture on her left hand and it was recorded in the Accident Register as fifth wound as grievous one. It is seen from Ex.P.5, the fifth wound in the left hand is grievous one and he wrongly stated as fourth wound. This manner of discrepancies usually occur while deposing. P.W.2 sustained five injuries and all of them are incised injuries on her forehead, back, left hand and right scalp. P.W.2 sustained injuries all over her body and the medical evidence has also corroborated the evidence of P.Ws.1 and 2.

12. The learned counsel for the appellant further contended that the assault committed by the accused due to sudden provocation and as such the alleged occurrence would not attract the offence under Section 307 of IPC. If at all the occurrence owes, the offence under Section 334 of IPC only attract against the accused and as such prayed for modifying the conviction under Section 334 of IPC. In such circumstances, it is appropriate to consider the Section 307 of IPC which reads as follows :-

"307. Attempt to murder -Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is herein before mentioned. "

13. In this regard, it is relevant to rely the judgment of the Hon'ble Supreme Court of India to justify the conviction under Section 307 of IPC under the judgment reported in "AIR 1983 SC 305 - State Of Maharashtra vs Balram Bama Patil and Ors." as follows:-

".....it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in this section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof."

It was also held that it was not correct in acquitting the accused of the charge under Section 307 IPC merely because the injuries inflicted on the victims were in the simple in nature.

14. In the present case, the nature of weapon used, the motive for commission of offence and the nature and size of injury, part of the body of the victim on which it was inflicted and the serious of blows are the important factors, which have to be taken into consideration in coming to the findings, whether the case under Section 307 of IPC is made out or not. On consideration of these circumstances, this Court is of the opinion that the offence under Section 307 of IPC is made out.

15. As discussed in the fore going paragraphs, this Court finds that the prosecution is very well succeeded its case beyond all reasonable doubts and this Court finds no reason for interfering the factual aspect or to reverse the findings of the Court below.

16. Now coming to the question of sentence. The entire conviction is under Section 307 of IPC and the sentence imposed by the trial Court is rigorous imprisonment for ten years and also a fine of Rs.1,000/-. The attack on P.W.2 was an one man

attack by the accused. The accused house situated in front of the house of P.Ws.1 & 2 and both houses are situated in the railway poramboke. They have been living there for the past 15 years. The occurrence took place, when P.W.2 questioned about putting up fence by the accused. The quarrel arose only because of the certain portions of land belongs to P.W.2 was encroached and tried to put up fence by the accused. As such, the entire quarrel arose only because of that reason and the incident took place in the year 2003. Now fifteen years have been lapsed, since the date of occurrence. The motive alleged against the accused is not condoned and the act of the accused lessor gravity of offence. On considering all various aspects, this Court feels that rigorous imprisonment of five years will be adequate sentence. In view of the reduction and modification of sentence, an amount of compensation will have to be ordered, so that a good amount can be given as damage to the injured. Therefore, a sum of Rs.1,00,000/- is ordered as compensation payable by the accused to the victim P.W.2.

17. In the result, the conviction against the accused under Section 307 of IPC r/w Section 3(2)(V) of SC/ST (PA) Act 1989 passed by the trial Court is confirmed. However, the sentence imposed by the trial Court will stand reduced to rigorous imprisonment of five years. In view of the reduction of sentence, the accused shall pay a sum of Rs.1,00,000/- (Rupees one lakh only) to the victim P.W.2. The accused is directed to surrender before the trial Court to serve out the modified sentence and to make the payment of compensation voluntarily, within a period of two months from today. In case of default in making payment of compensation, the accused will have to undergo the sentence as imposed by the trial Court. The trial Court is directed to secure the appellant for the purpose of sentencing him to undergo the reduced/modified period of sentence. It is also directed that the period of sentence already undergone by the appellant, if any, shall be given set off, as required under Section 428 Cr.P.C.

18. With the above directions, the criminal appeal is partly allowed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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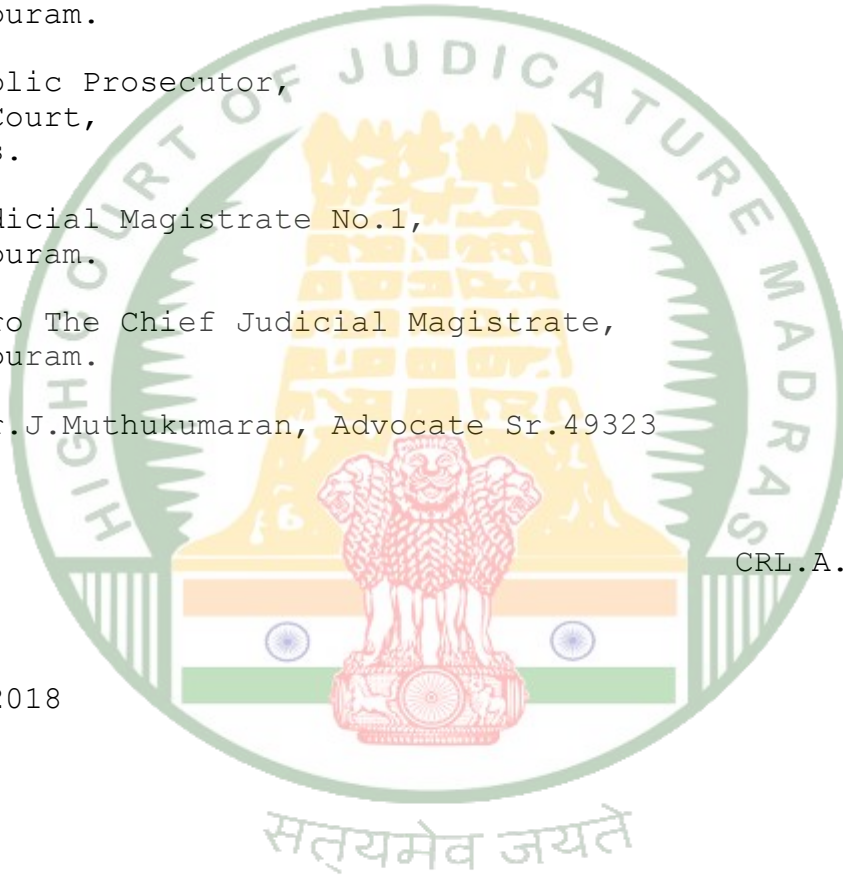
To

1. The Presiding Officer,
The Special Judge, (Principal Sessions Judge)
Sessions Division, Villupuram.
2. The Deputy Superintendent of Police,
Villupuram Town Police Station,
Villupuram.
3. The Public Prosecutor,
High Court,
Madras.
4. The Judicial Magistrate No.1,
Villupuram.
5. -Do-Thro The Chief Judicial Magistrate,
Villupuram.

+1cc to Mr.J.Muthukumaran, Advocate Sr.49323

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srg 6/08/2018



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