

Bail Slip

The Petitioner/Accused, namely .Jenifer @ Sheeba is directed to be released on bail as per order of this Hon'ble Court dated 09.07.2010 made in MP.NO.1/10 IN CRL A.NO.318/2010 on the file of this Hon'ble court.;

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 27.02.2019

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA
Crl.A.No.318 of 2010

J.Jenifer @ Sheeba ... Appellant/Accused

/Vs/

The State by Inspector of Police
E-1, Mylapore Police Station
Chennai - 600 004. ... Respondent/complainant

PRAYER: This Criminal Appeal is filed, against the judgement of conviction and sentence, dated 10.03.2008, made in SC.No.35 of 2008 by the III Additional Sessions Judge, Chennai.

For Appellant : Ms.W.Valliammal, Amicus Curiae

For Respondent : Mr.K.Prabakar
Additional Public prosecutor

J U D G M E N T

This Criminal Appeal is filed, against the judgement of conviction and sentence, dated 10.03.2008, made in SC.No.35 of 2008 by the learned III Additional Sessions Judge, Chennai, convicting and sentencing the Appellant, under Section 224 of IPC to undergo six months Simple Imprisonment and for the offence under Section 307 of IPC to undergo five years Rigorous Imprisonment and ordering the sentences to run concurrently.

2. The case of the Prosecution has arisen, on the basis of the complaint Ex.P1, dated 25.09.2007, given by the complainant, PW.1, Kathir Begam, who was working as the Deputy Superintendent in the Government Home for Women, Chennai, alleging that the Appellant/accused was detained in the custody of the Government Home for Women, Chennai, on 17.9.2007, in Cr.No.606 of 2007, for the offences under Sections 3(1), 4(1), 5(1), 6(1), 7 and 8 of the Immoral Traffic (Prevention) Act, 1956, pursuant to the judgement of the learned VIII Metropolitan Magistrate and that when she was

in the said Home, on 24.9.2007 at 1.15 hours with an intention to escape from the Home, by stealing the Keys from the Servant, PW.2 and murdering PW.2, the Appellant/accused pushed down PW.2, dumped a cloth in her mouth and by pressing a pillow on her face, attempted to murder her. Hence, the Appellant/accused was charge sheeted for the offences under Sections 224 and 307 of IPC.

3. The case was taken on file in S.C.No.35 of 2008 by the learned III Additional Sessions Judge, Chennai and necessary charges were framed. The appellant/accused had denied the charges and sought for trial. In order to bring home the charges against the appellant/accused, the prosecution examined PW.1 to PW.6 and marked Exs.P1 to P5 and also M.Os 1 and 2.

4. PW.1 is Kathir Begam, Superintendent of the Government Home for Women, Chennai, PW.2 is the victim, Rajakumari, Staff of the Government Home for Women, Chennai, PW.3, Ranjitham, is the Grade II Staff of the Government Home for Women, Chennai, PW.4 is Selvam, Watchman of the Government Home for Women, Chennai, PW.5 is the Sub Inspector of Police, Mylapore Police Station, Chennai, who, on receipt of the complaint, Ex.P1, registered the case in Cr.No.1325 of 2007 under Section 307 of IPC and prepared the First Information Report, Ex.P4. PW.6 is the Inspector of Police, who conducted the investigation and filed the charge sheet against the appellant/accused under Sections 224 and 307 of IPC on 20.12.2007.

5. Ex.P1, dated, 25.9.2007 is the complaint given by PW.1. Ex.P2, dated, 25.09.2007, is the observation Mahazar. Ex.P3, dated, 25.09.2007 is the Mahazar. Ex.P4, dated, 25.09.2007 is the printed First Information Report. Ex.P5, dated, 25.09.2007 is the rough sketch. MO.1 is the pillow and MO.2 is the torn cloth.

6. On completion of the evidence on the side of the prosecution, the appellant/accused was questioned under Section 313 of Cr.PC as to the incriminating circumstances found in the evidence of prosecution witnesses and the appellant/accused has come with the version of total denial and stated that she has been falsely implicated in this case.

7. The court below, after hearing the arguments advanced on either side and also looking into the materials available on record, found the accused/appellant guilty and awarded punishments, as referred to above, which is challenged in this Criminal Appeal.

8. This court heard the submissions of the learned counsel on either side.

9. The learned Amicus Curiae for the appellant/accused has assailed the impugned judgement of conviction and sentence, on the following infirmities, discrepancies and grounds:-

a. The prosecution has not made out the case for the offences under Sections 224 and 307 of IPC, by cogent and convincing evidence. Non examination of the inmates of the Home creates a doubt in the case of the Prosecution. No independent witness was examined to support the case of the Prosecution. PW.1, PW.2 and PW.3 are interested witnesses.

b. There was previous enmity between P.W.1 and the appellant/accused and P.W.1 had grudges against the appellant/accused for her disobedient and bad behaviour in the Home. There is also unnatural evidence given by PW.2, inasmuch as, she has deposed to the effect that when the appellant/accused was stated to have dumped a cloth in the mouth of PW.2 and pressed a pillow on her face, she made a hue and alarm.

c. None of the witnesses has stated anything as if the appellant/accused had such intention or knowledge that by her act, she would cause the death of the victim. There was also unexplained delay in lodging the complaint given by PW.1, which is fatal to the case of the Prosecution.

d. There is also no evidence to show that the appellant/accused attempted to escape from the Home, in which she was lawfully detained for any such offence and that she offered any resistance or illegal obstruction to the lawful apprehension of person. Like wise, there is also absolutely no materials to show that the appellant/accused attempted to commit the murder of PW.2 and there is evidence to show that there was no injury on the victim.

10. The learned Amicus Curiae for the appellant/accused would ultimately contend that the impugned judgement of conviction and sentence is against law and that the prosecution has failed to prove its case beyond all reasonable doubts by cogent evidence and that the Trial Court is not correct and justified in convicting and sentencing the appellant/accused and hence, the appellant/accused is entitled for acquittal.

11. The learned Additional Public Prosecutor for the respondent would submit that the Prosecution has proved the charges levelled against the appellants/accused by valid evidence and hence, the trial Court has rightly convicted the appellants/accused, which warrants no interference by this Court.

12. I have given my careful and anxious consideration to the rival contentions put forward by either side and

carefully analysed the entire evidence available on record and also perused the impugned judgement of conviction, including the relevant provisions of the Act.

13. What needs to be seen to whether the Prosecution has proved its case beyond all reasonable doubts or not, by cogent evidence and whether there are infirmities, discrepancies and contradictions, as projected by the appellant/accused and particularly, whether there are valid evidence to make out a case for the offences under Sections 224 of 307 of IPC, attracting the ingredients of the said Sections.

14. There was a delay in lodging the complaint, Ex.P1, making the case of the Prosecution, doubtful. Though, the place of occurrence and the police station are very close to each other, within a 10 minutes walkable distance and the occurrence was stated to have happened in the midnight hours at 01.15 hours on 24.09.2007, the complaint was given, after a delay of 20 hours, on 25.09.2007 at 23.30 hours, for which there was no explanation, much less, valid explanation, given by the Prosecution, thereby creating a doubt in their case.

15. It came to light from the evidence on record that there was previous enmity between the appellant/accused and PW.1, who had grudges over the appellant/accused for having disobeyed her, which is evident from the deposition of PW.2. Hence, there was every possibility of wrecking vengeance against the appellant/accused by PW.1, by making a false complaint due to such grudge.

16. Another glaring discrepancy in the evidence is the evidence of PW.2, victim, which is unnatural. In her examination in chief, PW.2 has deposed that while the appellant/accused dumped a cloth in the mouth of PW.2 and pressed a pillow on her face, she made a hue and alarm, on hearing which, PW.3 and another came there and thwarted the incident. In such a situation, PW.2 could not have been able to make a hue and cry. Such an unnatural evidence also creates a great doubt in the case of the Prosecution that such an occurrence could not have happened as projected by the Prosecution.

17. There is also great suspicion over the case of the Prosecution in respect of MO.2, torn cloth. As per the evidence of PW.6, Investigating Officer, he had seized orange color torn cloth and marked the same as MO.2. Whereas, while PW.2 deposing evidence, blue color torn cloth was shown as MO.1 to PW.2. PW.2 has deposed that MO.1 is not the cloth, which was dumped in her mouth at the time of the incident. This is another discrepancy in the evidence of the Prosecution, which would go in favour of the appellant/accused. Apart from the fact that PW.1, PW.2 and

PW.3 are interested witnesses, no independent witness was examined to support the case of the Prosecution.

18. Apart from the afore said infirmities, now, it is to be seen as to whether the essential ingredients of the Sections 224 and 307 of IPC are attracted to base conviction on the appellant/accused under the said Sections. The appellant/accused was convicted for having attempted to murder PW.2 and attempted to escape from the custody.

19. The essential ingredients of Section 224 of IPC are that the appellant/accused must have been detained in custody lawfully and that she escaped from such custody intentionally. Intention is also one of the main ingredients of offence under Section 224 of I.P.C.

20. Though it is not in dispute that the appellant/accused was detained lawfully, there is no piece of evidence to show that the appellant/accused escaped from the custody or attempted to escape from the custody, inasmuch as though the occurrence was stated to have happened on 24.09.2007 at midnight hours, the appellant/accused was arrested by PW.6, Investigating Officer, on 26.09.2007 at 3.15 p.m. in the Home itself. It is not in evidence that the appellant/accused was having an intention to commit the offences, but, on the other hand, it is in evidence that PW.1 had grudges over the appellant/accused. Hence, the question of either escaping or attempting to escape from the custody by the appellant/accused does not arise and thereby, ingredients of Section 224 of IPC are not attracted against the appellant/accused. Consequently, it is held that the appellant/accused had neither any intention to offer any resistance or illegal obstruction to her lawful apprehension of herself for any offence for which she was charged or of which she has been convicted or to escape or to attempt to escape from any custody and, therefore, there could not have been prosecution under Section 224 of IPC.

21. To support conviction under Section 307 of IPC, it must be proved that the acts intended would cause death and also that the act is, one which is capable of causing death in the ordinary course but death did not eventually ensue for some reason or other. The intention is to be gathered from various circumstances and not merely from the consequence that ensues. The prosecution should place and prove all the facts and circumstances as mentioned in Section 300 of IPC. Unless it can be said that the intention or knowledge of the appellant/accused was to cause such a bodily injury as would come within the scope of Section 300 of IPC, the appellant/accused cannot be found guilty under Section 307 of IPC when there is attempt to cause injury. It must be proved that if the act complained of would have culminated in the death of the victim, the offence would have come within the ingredients as envisaged in Section 300 of IPC.

22. In the case on hand, admittedly, there is no injury suffered by the victim, PW.2, which is evident from the evidence of PW.3, who has deposed that since PW.2 did not sustain any injury, she was not taken to the Hospital. There is also no medical evidence. There was no independent witness examined on the side of the Prosecution. There was also no intention on the part of the appellant/accused, established by the Prosecution by leading valid evidence.. The torn cloth shown to PW.2 did not match with the seized one by PW.6, Investigating Officer. Apart from the absence of medical evidence, the testimonies of the witnesses, PW.1 to PW.6 do not establish the ingredients of Section 307 of the IPC. As discussed above, it is established that that appellant/accused has no intention or knowledge, which is a necessary ingredient of Section 307. In the absence of such intention or knowledge, there can be no offence of an attempt to murder. The state of mind cannot be proved as a fact precisely by direct evidence and it can only be inferred from other factors. Therefore, in my considered opinion, the appellant/accused would not have been convicted under Section 307 of IPC.

23. In view of all the above foregoings, this Court is of the view that the Prosecution has not established the guilt on the Appellants/accused beyond all reasonable doubts, by cogent and convincing evidence. Further, in the absence of any material to prove the guilt on the Appellant/accused, this Court has to necessarily interfere with the impugned judgement of conviction and sentence and consequently, the same is liable to be set aside.

24. In the result, this Criminal Appeal is allowed. The impugned judgment of conviction and sentence is set aside. The appellant/accused is acquitted of all the charges levelled against her. The bail bond, if any, executed by the appellant/accused, shall stand cancelled. The fine amount, if any, paid by the appellant/accused shall be refunded to her.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

kv/Srcm

To

1. The 3rd Additional Sessions Judge, Chennai.
2. The Inspector of Police,
E-1, Mylapore Police Station,
Chennai - 600 004.
3. The Public Prosecutor,
High Court of Madras.

4.The Chief metropolitan magistrate,
Egmore, Chennai.

5.The metropolitan magistrate XVIII,
Saidapet, Chennai.

6.The Superintendent, Central Prison, Puzhal, Chennai.

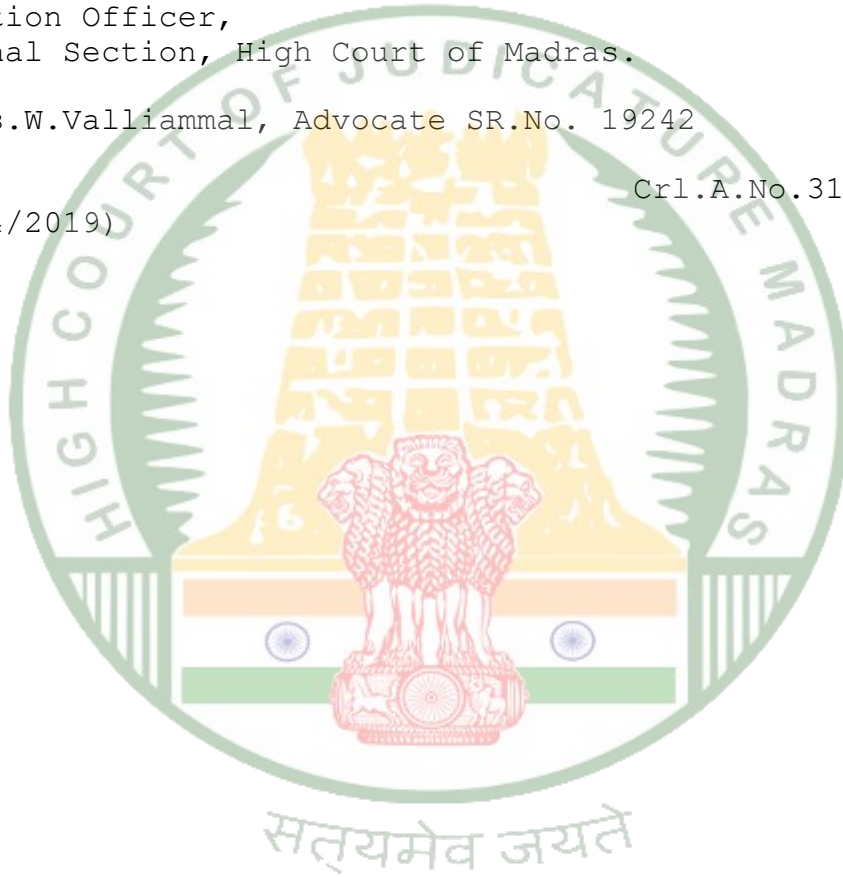
7.The Director General of Police,
Mylapore Chennai.

8.The Section Officer,
Criminal Section, High Court of Madras.

+lcc to Ms.W.Valliammal, Advocate SR.No. 19242

CrI.A.No.318 of 2010

A.SK(04/04/2019)



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