



WEB COPY

Bail Slip

The Appellant/Accused, namely Pranesh aged 19 Years S/o. Gunasekaran was released on bail as per order dated 24.03.2011 made in MP.NO.1/11 IN CRL A.NO.222/2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2019

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.222 of 2011

Pranesh

... Appellant/Accused

Vs.

State represented by
Inspector of Police,
R-2 Kodambakkam Police Station,
Chennai.
(Crime No.139 of 2010)

... Respondent / Complainant

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, to set aside the judgment passed by the learned Additional District and Sessions Judge, III Fast Track Court, Chennai in S.C.No.439 of 2010, dated 22.03.2011.

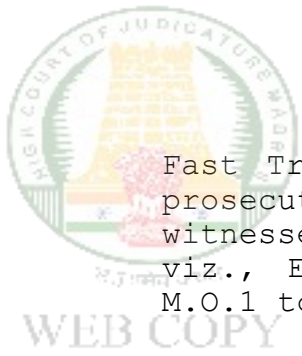
For Appellant : Mr.C.Sivakumar

For Respondent : Mr.T.Shanmugarajeswaran
Government Advocate (Crl. Side)

JUDGMENT

This Criminal Appeal has been filed to set aside the judgment passed by the learned Additional District and Sessions Judge, III Fast Track Court, Chennai in S.C.No.439 of 2010, dated 22.03.2011.

2. The respondent police registered a case in Crime No.139 of 2010 against the appellant for offence under Sections 341, 324, 354 and 307 of IPC and Section 4 of Tamil Nadu Prohibition of Women Harassment Act (hereinafter referred to as 'TNPWH Act'). After investigation, the police filed charge sheet before the learned XVII Metropolitan Magistrate, Chennai for offence under Sections 341, 324, 354, 307 read with Section 4 of TNPWH Act and the same was taken on file in P.R.C.No.72 of 2010. Since the offences are triable by the Court of Sessions, the learned Magistrate committed the case to the learned Principal Sessions Judge, Chennai. The learned Principal Session Judge, took the case on file in S.C.No.439 of 2010 and made over the case to the learned III Additional District and Sessions Judge,



Fast Track Court, Chennai. During trial, on the side of the prosecution, the respondent police examined as many as 8 witnesses viz., P.W.1 to P.W.8 and marked as many as 9 documents viz., Ex.P.1 to Ex.P.9 and produced two material object viz., M.O.1 to M.O.2.

3. After completion of the evidences on the side of the prosecution side, the accused was questioned under Section 313 (1)(b) Cr.P.C. The appellant denied the incriminating circumstances and all the evidences as false. On the side of the defence, no one was examined, and one document was marked as Ex.D1. After hearing the arguments of both sides, and considering the records, the learned Additional Sessions Judge, found the accused not guilty of the offence under Section 341, 324, 354 of IPC and Section 4 TNPHW Act and found him guilty for the offence under Section 307 IPC and convicted and sentenced him to undergo seven years simple imprisonment and to pay a fine of Rs.50,000/-, out of which, Rs.45,000/- was to be paid to the victim as compensation and in default, to undergo further period of one year simple imprisonment.

4. Challenging the judgment of conviction and sentence passed by the learned III Additional District and Sessions Judge, Fast Track Court, Chennai in S.C.No.439 of 2010, dated 22.03.2011, the convict has preferred the present Appeal before this Court.

5. The learned counsel for the appellant would submit that the appellant and the victim loved each other and the appellate Court failed to consider the evidence of P.W.1 victim and she has also written a letter to the appellant, which was marked as Ex.D1. But the case was projected by the prosecution that when the appellant expressed his love to victim, she refused and denied his proposal. Therefore, he took knife, stabbed her and caused injuries. Ex.D1 itself clearly shows that the evidence of the P.W.1 victim girl is not trust worthy. Based on the evidence of P.W.1, conviction was recorded by the learned Sessions Judge, which warrants interference of this Court. Other witnesses have not supported the case of the prosecution. The evidence of P.W.8 Sub Inspector of Police has not tallied with the injuries sustained by the victim and the weapon has not been identified. During the cross examination, P.W.1 has stated that she does not know whether the appellant has used blade for causing injury or knife. The victim herself is not sure about that which weapon was used by the appellant. Therefore, the prosecution has failed to prove its case beyond reasonable doubt. The benefit of doubt should be extended to the accused. The learned Sessions Judge, disbelieved the evidence of the P.W.1 for offence under Sections 341, 324, 354 of IPC and Section 4 TNPHW Act and the same benefit of doubt should have been extended for the offence under Section 307 IPC, which warrants interference of this Court.



6. The learned counsel for the respondent (Crl. side) would submit that P.W.1 Victim has clearly stated that she is college going girl. At the time of occurrence, she was a student of third year. While she was going to College, the appellant followed her and expressed his willingness to her and she refused his proposal. Due to sudden provocation, he took knife, tried to attack her and caused injuries on ear and she also sustained injuries on other parts of the body. Immediately, the victim was taken to hospital. The victim was admitted in the Government Hospital at Government Stanley Hospital, Chennai and P.W.7/Doctor treated her and deposed that P.W.1/victim came to hospital and reported that one known person attacked her. P.W.3 has given wound certificate/Ex.P6. P.W.2 has clearly narrated the scene of occurrence. The respondent police has recovered the weapon used by the appellant and marked as M.O.1. The prosecution has proved its case beyond reasonable doubt. The learned Sessions Judge has rightly convicted the accused, and the same does not warrant any interference.

7. Heard the learned counsel for the appellant as well as the learned Government Advocate (Crl. side) and perused the materials available on record.

8. The case of the prosecution is that on 16.02.2010 at about 7.20 p.m. the respondent police received information from Stanley Medical College about the incident. The victim was admitted in the hospital. On intimation given by the Doctor, P.W.8 proceeded to the hospital and recorded statement from P.W.1 as complaint and registered a case against the appellant in Crime No.139 of 2010 for the offence under Sections 341, 324, 354, 307 IPC and Section 4 of TNPWH Act and laid charge sheet before the learned XVII Metropolitan Magistrate and made it over to the Court of Sessions. The lower Appellate Court, convicted the accused and sentenced him to undergo seven years SI and to pay a fine of Rs.50,000/- for the offence under Section 307 IPC.

9. P.W.1 is the victim, who was studying in third year, B.Tech in Madha College of Engineering at the time of occurrence. On the fateful day, while she was going to the College, the appellant followed her and expressed his love. Since she denied, he took knife and attacked her and caused injuries, as found in the wound certificate given by the Doctor. Therefore, the appellant has committed the offence.

10. In this case, P.W.2, who was eyewitness, has stated that he has seen the occurrence from some distance place and that he has seen the appellant followed the victim and there was a quarrel between them. Subsequently, the appellant took the knife and attacked her.

11. P.W.7 Doctor, who treated the victim in hospital, has clearly stated that she sustained cut injuries in right side



cheek and right hand wrist and right side little finger. The learned counsel for the appellant submitted that the story of the prosecution is that she has not loved him and the appellant only loved her, whereas Ex.D1 is a letter written by the victim to the appellant, stating that she also loved the appellant. Therefore, the prosecution has suppressed the fact. The prosecution has not investigated the case properly about the reason for the occurrence. Once the prosecution has not proved its case, benefit of doubt should be extended to the accused.

12. In this case, mere producing the letter is not fatal to the case of the prosecution. Ex.P1 is not going to tilt the balance in favor of the appellant. Even if it is admitted that Ex.D1 was written by P.W.1, she has every right to reject the appellant at a later point of time for personal reasons. On the date of occurrence, the appellant approached the victim and there seems to be some argument. The victim seems to have rejected the proposal of the appellant. Angered, appellant has attacked the victim violently. Therefore, the act of the appellant in attacking the victim brutally attracts offence under Section 307 IPC. It is not the case of the prosecution that he promised to marry, subsequently he has not married her. It is not the case he cheated her. But convicted the appellant for the offence under Section 307 IPC. Because she sustained injury as stated in the wound certificate. Even though she loved and written a letter to the accused, thereafter, for some reason, she would have refused. Because of her refusal, he took knife, stabbed her and caused injuries. Here, the question as to whether she loved the accused or not, is not at all a matter.

13. Considering the facts and circumstances of the case, the learned Sessions Judge acquitted the appellant for all other offence like 324, 354 and Section 4 of TNPWH Act, but convicted only for the offence under Section 307 IPC. since, he used deadly weapons and caused injury in the vital part of the victim.

14. Considering the evidence of P.W.1 victim, P.W.2 eyewitness, P.W.7 Doctor, who has examined the victim, Copy of the Accident Register/Ex.P6 and also the wound certificate/Ex.P5 given by the Doctor, this Court confirms the conviction under Section 307 IPC. P.W.1 has clearly stated that at that time of attacking her, he used the words by saying 'you die'. Therefore, the intention of the appellant was to take the life of the victim.

15. The lower Appellate Court has rightly appreciated the prosecution evidence and come to the conclusion that the appellant has committed the offence under Section 307 IPC. The same does not warrant any interference by this Court. This Court does not find any perversity in the judgment passed by the trial Court and there is no merit in the appeal.



16. Considering the nature of the injuries sustained by the victim and the sentence given by the Sessions Court, seven years RI is modified as five years RI.

17. In the result, the conviction is confirmed. The sentence is reduced to five years rigorous imprisonment.

18. With the above modification, this appeal is dismissed. Consequently, connected miscellaneous petition is closed.

19. The trial Court is directed to secure the custody of the accused to undergo remaining period of sentence, if any.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

rli
To

1.The Additional Sessions Judge
III Fast Track Court, Chennai

2.The Inspector of Police,
R-2 Kodambakkam Police Station,
Chennai.

3. The Public Prosecutor,
High Court of Madras.

+1cc to Mr.C.Sivakumar , Advocate SR.No. 72743

Crl.A.No.222 of 2011
and
M.P.No.1 of 2011

A.SK(05/02/2020)