



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.689 of 2011

K.Ezhil @ Ezhilarasan
Appellant

...

vs.

State represented by
The Inspector of Police,
K-6 T.P.Chatham Police Station,
Chennai - 600 029.
(Crime No.399 of 2009).

... Respondent

The Criminal Appeal has been filed under Section 374(2) of Cr.P.C, to set aside the conviction of the appellant in S.C.No.353 of 2011 dated 29.09.2011 by the learned Additional District and Sessions Judge (Fast Track Court No.III) Chennai, by allowing this appeal.

For Appellant : Mr.K.Seetharam
Legal Aid Counsel

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

JUDGMENT

This criminal appeal has been filed against the judgment of conviction made by the learned Additional District and Sessions Judge, (Fast Track Court No.III), Chennai, in S.C.No.353 of 2011 dated 29.09.2011.

2 Case of the prosecution is that on 18.06.2009 when P.W.1 the defacto complainant, who is an Auto Mechanic, was repairing his customer's Auto at R.V.Nagar, Chennai, the appellant/accused came and threatened him not to repair the auto in his area and therefore P.W.1 took the Auto to V.O.C.Nagar, Nehru Street and was repairing the Auto. The appellant came to that place also and again threatened him and attacked him with knife and the victim got injuries in his head. Therefore respondent police registered a case against the appellant/accused in Cr.No.399/2009 and after investigation, laid a charge sheet before the learned Vth Metropolitan Magistrate, Egmore, Chennai, and since the offence charged against the appellant has been triable only the Court of Sessions, the



WEB COPY

case was committed to the learned Principal Sessions Judge, Chennai. The learned Principal Sessions Judge made over the same to the Additional District and Sessions Judge (Fast Track Court III), Chennai, for disposal and the case was taken on file in S.C.No.353 of 2011. The learned Additional Sessions Judge, after completing legal formalities, framed charges against the appellant.

3 During trial, in order to prove the case of the prosecution, P.Ws.1 to 10 and Exs.P1 to 10 were marked besides one Material Object. After completing prosecution evidence, when incriminating circumstances culled out from the evidence of prosecution witnesses and put before the appellant, the appellant denied as false. On the side of the defence, no one was examined and no document was produced. After trial, the learned Additional Sessions Judge, found the appellant/accused guilty for the offence punishable under Section 307 of IPC and by judgment dated 29.09.2011 convicted him and sentenced to undergo rigorous imprisonment for a period of five years with fine of Rs.2,000/-, in default, to undergo rigorous imprisonment for a period of three months, but however acquitted the appellant from the offence under Section 506(2) of IPC. Challenging the said judgment of conviction, the appellant has filed this appeal before this Court, seeking to set aside the same.

4 According to learned counsel appearing for the appellant, even though charges were framed against the appellant for the offence under Sections 506(2) and 307, trial Court found that 506 (2) was not proved and hence conviction under Section 307 cannot be recorded. The injuries sustained by the victim is only simple in nature and there is no grievous injuries to convict the appellant under Section 307 of IPC. This case was adverse to the case registered against the appellant under the Gundas Act and the respondent police foisted false case against the appellant. The owner of the Auto, said to have been repaired by the victim at the time of occurrence, was not examined and the registration number of the Auto was also not mentioned. There are material contradictions between the evidence of prosecution witnesses. P.Ws.2 and 3 have turned hostile and they have not supported the case of the prosecution. Even though the occurrence took place in the busy place and near by Temple, no independent witness was examined. The trial Court has failed to consider the above facts and erroneously convicted the appellant, which warrants interference.

5 The learned Government Advocate (Crl.Side) appearing for the respondent police would submit that victim was examined as P.W.1, who has clearly spoken about



WEB COPY

the occurrence. Even though, P.Ws.2 & 3 had turned hostile, they have supported the case of the prosecution to some extent and they have deposed that they only took the victim to the Kilpauk Medical College Hospital, which corroborates with the evidence of P.W.1 regarding date and place of occurrence. P.Ws.4 & 5, who are witnesses for Mahazar, have supported the case of the prosecution. P.W.6 is the witness for confession, recovery and arrest of the accused and he has clearly spoken about the arrest and recovery of the weapon. P.W.8, the Doctor, who gave treatment to the victim P.W.1, has clearly stated that the victim got injuries on his head, which corroborates the evidence of P.W.1. Therefore prosecution has clearly established its case beyond reasonable doubt. Even though, the trial Court has given reason for acquitting the appellant for the offence under Section 506(2) stating that there is no life threat, but, by rightly appreciating the evidence, has convicted the appellant for the offence under Section 307 of IPC. Even though, the injuries sustained by P.W.1 is simple in nature, the weapon used in the occurrence is knife i.e. deadly weapon and therefore the appellant was convicted for the offence under Section 307 of IPC and there is no reason to interfere with the same.

6 Heard the learned counsel appearing on either side and perused the materials available on record.

7 It is seen that P.W.1 is the injured witness and he has clearly narrated the incident and spoken about the offence committed by the appellant/accused. It is contended by the learned counsel appearing for the appellant that no independent witness has been examined by the prosecution to support its case and P.W.2 and P.W.3 have turned hostile. It is seen that the occurrence took place at 11.00 p.m. and hence during late night hours, there may not be any independent witness, even otherwise, no one would come forward to stand as witness in the night hours. P.W.1 sustained injuries through knife i.e. deadly weapon at late night hours and therefore non examination of independent witness is not fatal to the case of the prosecution. Even though, P.Ws.2 & 3 had turned hostile, they have supported the case of the prosecution to some extent regarding date and place of occurrence and they have deposed that they only took the injured witness P.W.1 to the Hospital. The copy of Accident Register reveals that P.W.1 was admitted in the Hospital at 11.15 p.m. and the case was also registered at early morning and there is no delay in registering the case. It is contended that this case was adverse to the case registered against the appellant under the Gundas Act and the respondent police foisted false case against the appellant. On reading of the entire evidence of P.Ws.1 to 8 and also the injuries sustained by P.W.1 and



WEB COPY

the medical evidences, which supports the case of the prosecution, it clearly shows that the appellant has committed the offence under Section 307 of IPC. P.W.1, who is the injured eye witness, has clearly spoken about the occurrence. Even though P.Ws.2 & 3 had turned hostile, on reading of the evidence of them, it reveal that they have proved the case of the prosecution with regard to date and place of occurrence and they have deposed that they took the victim to the Hospital. P.Ws.4 and 5, who are mahazar witnesses had also supported the case of the prosecution. P.W.6, is the witness for confession statement recorded from the appellant and recovery and also the arrest. P.W.7, is the police official, who received the information and she has clearly spoken about the receiving of information and registering of FIR. P.W.8 is the Doctor, who gave treatment to the injured witness P.W.1 has clearly spoken about the injuries sustained by P.W.1 and issued wound certificate Ex.P5 and it has also corroborated with evidence of P.W.1. It is contended that for the injuries sustained by P.W.1, offence under Section 307 could not be charged and the trial Court cannot convict him for the offence under Section 307. Once prosecution has proved that the appellant used deadly weapon i.e. knife and caused injuries at about 11.00 p.m., certainly it would attract offence under Section 307 of IPC. Considering the facts and circumstances of the case and the materials placed on record, this Court does not find any compelled reason to set aside the conviction made by the trial Court. However, considering the fact that the victim sustained injuries, which are simple in nature, this Court is inclined to modify the period of imprisonment alone, which would meet ends of justice.

8 In the result, conviction made by the trial Court for the offence under Section 307 of IPC is hereby confirmed and the period of imprisonment alone modified from five years to three years and the criminal appeal is partly allowed.

9 While parting with the case, I appreciate the services rendered by Mr.K.Seetharam, learned counsel who appeared on behalf of the appellant/accused, as Legal Aid Counsel. The learned counsel on record for the appellant is entitled for remuneration as per rules.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

cgi



To

1. The Additional District and Sessions Judge
(Fast Track Court No.III) Chennai.
2. The Additional Public Prosecutor, High Court of Madras.
3. The Inspector of Police, K-6 T.P.Chathram Police
Station,
Chennai - 600 029.
4. The Metropolitan Magistrate, No.V, Egmore
5. The Chief Metropolitan Magistrate, Egmore chennai
(For Information)
6. The Public Prosecutor, High Court, Madras - 104.

Cr1.A.No.689 of 2011

spd

A.SK(09/08/2019)