

BAIL SLIP

The Appellants in Criminal Appeal 774 of 2011 viz., (1) Murugan, aged 50 years, S/o.Perumal Gounder and (2) Akkumari @ Mari, aged 48 years, W/o.Murugan, was directed to be released on bail as per order of this Court dated 02.12.2011 and made in MP No.1 of 2011 in CRL A No.774 of 2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.02.2019

PRONOUNCED ON : 13.02.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.774 of 2011

1.Murugan  
2.Akkumari @ Mari

.. Appellants

Vs

State represented by  
The Inspector of Police,  
Barur Police Station,  
Barur,  
Krishnagiri District.  
(Crime No.35/2007)

.. Respondent

Prayer:- This Criminal Appeal is filed under Section 374(2) Cr.P.C., against the conviction and sentence passed by the learned Additional Special Judge, Krishnagiri in S.C.No.1 of 2010 dated 14.11.2011 against the appellants.

For Appellants : Mr.V.Rajamohan

For Respondent : Mr.K.Prabakar,  
Additional Public Prosecutor

JUDGMENT

This Criminal Appeal is preferred by the appellants challenging the conviction and sentence passed by the learned

Additional Subordinate Judge, Krishnagiri in S.C.No.1 of 2010 dated 14.11.2011.

2.The case of the prosecution, as per the final report is that, one Shanthi, a resident of Kudimanahalli Kattakalan Kottai was married to one Krishnan. During the subsistence of their marriage, her husband started living with another lady at Paparapatti. Shanthi gave a complaint with Bargur Police regarding the illicit affair of her husband with another lady. It did not yield the expected result. The elders of the family, thereafter, suggested Shanthi to join her husband and live together with his paramour.

3.Shanthi was employed as a Sweeper at Kelamangalam Government Hospital. She got transferred to Primary Health Centre at Panathur, so that, she can join her husband. On the day of occurrence, Shanthi took her daughter to her mother 's house. Left her daughter with her mother and returned to Kattalan kottai. For returning home, late in the evening, her mother-in-law and father-in-law scolded her in a filthy language so, Shanthi went to her room and closed the door and slept. Hearing the knocking of the door, she opened the door and found her mother-in-law and father-in-law waiting. Her mother-in-law (A.2), caught hold of her hair and hand. Her father-in-law (A.1), attacked her with Aruval over her neck, leg, hip and back. Shanthi pleaded for mercy and screamed to leave her alive and allow her to go elsewhere and live with her daughter peacefully.

4.On hearing her cry, one Kasiammal and Periyannan who are living nearby trying to rescue Shanthi from the clutches of A.1 and A.2. But, the accused (A.1 and A.2) threatened them with dire consequences, if they intervene. So Kasiammal and Periyannan moved away from the place. A.1 attacked Shanthi with Aruval on both her wrists. A.1 and A.2 after removing the saree of the victim, threw her in a well. While they were preparing to dig a pit, the victim escaped. On her way, Kumar, Lakshmanan and Shankar saw her, took her to Kaveripattinam hospital. Later, she was shifted to General Hospital, Salem. After receiving the complaint from the victim - Shanthi, the F.I.R., came to be registered. Based on the final report, the trial Court has framed charges under Sections 341, 307 and 506(ii) I.P.C., against A.1 and under Sections 341, 506(ii) I.P.C., and 506(ii) r/w 109 I.P.C., and 34 I.P.C., against A.2.

5.To prove the case, the prosecution has examined 13 witnesses and marked Exs.P.1 to P.19 besides M.Os.1 to 9. The accused have not chosen to examine any witness or mark any document on their side.

6.The trial Court, after appreciating the material facts before it, held both the accused guilty of charges, convicted and sentenced A.1 and A.2 as follows:-

| Sl.No | Accused | Conviction      | Sentence                                                                                                             |
|-------|---------|-----------------|----------------------------------------------------------------------------------------------------------------------|
| 1     | A.1     | 341 I.P.C.,     | One month Simple Imprisonment                                                                                        |
|       |         | 307 I.P.C.,     | Rigorous Imprisonment for a term of 10 years and a fine of Rs.1,000/- in default, simple imprisonment for one month. |
|       |         | 506(ii) I.P.C., | Rigorous imprisonment for a term of 7 years no fine imposed                                                          |
| 2     | A.2     | 341 I.P.C.,     | One month simple imprisonment                                                                                        |
|       |         | 307 I.P.C.,     | Rigorous imprisonment for a term of 10 years and a fine of Rs.1,000/- in default, simple imprisonment for one month. |
|       |         | 506(ii) I.P.C., | Rigorous imprisonment for a term of 7 years no fine imposed                                                          |

7.The present Criminal Appeal is preferred by the accused 1 and 2, on the ground that except the victim's evidence (P.W.1), no evidence of the independent witness has corroborated the prosecution case. In the Accident Report (Ex.P.9), it was stated that four persons alleged to have attacked P.W.1. Whereas, P.W.1, in her deposition, has indicated only two persons. The omission to implicate other two persons casts doubt over her evidence. The contradiction about the nature of the weapon used is fatal to the prosecution. P.W.1 not sure, 'Whether she was attacked with Aruval or Vettu kathi'. The earliest information received by the Police is not before the Court. Ex.P.1 - complaint which was prepared subsequently carries embellishment and false information. The hostility of eye witness (P.W.2) is fatal to prosecution. Conviction is based wholly upon the interested witness viz., P.W.1 and the same is contrary to the settled principle of law. Hence, the learned counsel for the appellants pleaded that the conviction and sentence is liable to be set aside.

8.Per contra, the learned Additional Public Prosecutor appearing for the respondent/State would submit that besides the evidence of the injured victim, the persons who took the injured to the Hospital; the Doctor who issued the Accident Report were examined as P.Ws.3, 4 and 9 respectively. The victim was first taken to Kaveripakkam hospital and due to the gravity of injuries, P.W.1 was referred to the General Hospital, Salem. This fact is recorded in Accident Report - Ex.P.9.

9.The F.I.R., was registered after receiving the statement from the victim. The statement of witnesses that the Police was informed about the incident prior to that, does not mean that the said information was sufficient to record first information report and proceed.

10.The learned Additional Public Prosecutor would also submit that the weapon used to attack the victim - P.W.1 has been identified as M.O.3. Therefore, the discrepancy in naming the weapon or the hostility of recovery mahazar witness are insignificance in the light of victim evidence.

11.The learned Additional Public Prosecutor would submit that the defacto complainant - P.W.1 had given a clear picture of what happened to her, on the day of occurrence. Her evidence being natural, cogent and consistent, corroborated by the Wound Certificate and the material objects, M.O.1 - blood stained hair; M.O.3 - blood stained knife. The blood stained clothes of the victim are clinching evidence against the accused persons. Though P.Ws.2, 6 and 7 have turned hostile and failed to support the case of the prosecution, the evidence elicited from the rest of the witnesses proved the prosecution case, beyond doubt that the accused 1 and 2/appellants have committed offence under Sections 341, 307 and 506(ii) I.P.C.

12.The point to be determined in this Criminal Appeal is, 'Whether the evidence relied by the prosecution is sufficient to hold the appellants guilty of the charges framed against them' and 'Whether the trial Court failed to appreciate the evidence in proper perspective'.

13.The appellants are father-in-law and mother-in-law of the defacto complainant (P.W.1). The victim was admitted in the Government hospital, Salem for the injuries she sustained. Laxmanan - P.W.3, Kumar - P.W.4 have deposed that they took P.W.1 - Shanthi to the Burgur Government Hospital and on reference, she was taken to Kaveripattinam Hospital and was given first aid and on the advice of the Doctor, she was shifted to Salem Government Hospital. P.W.9 - Dr.Hariram has spoken

about the injuries on P.W.1. The Accident Register copy is marked as Ex.P.9.

14. Based on the intimation received from the hospital, the Police attached to Burgur Police station has gone to the hospital, recorded the statement of the victim - P.W.1 and taken up the investigation. P.W.10 - Murugesan, Grade - I Police has spoken about these facts. It is corroborated by P.W.11 - Inspector of Police. Therefore, apart from the evidence of the victim, through the deposition of P.W.4 - Kumar and P.W.5 - Pandiyan, the prosecution has proved the fact that, P.W.1 has sustained cut injuries all over her body and she was taken to the hospital for treatment. To establish who caused that injuries, the evidence of P.W.1 gain significance since, she being the victim, in her deposition she had stated that on 28.02.2007, her mother-in-law (A.1) knocked the doors of the room. She under the impression that A.1 has brought food for her, innocently opened the door. At that time, A.1 caught hold of her hair tightly. A.1 with Aruval has indiscriminately attacked her on her neck, hand, hip, shoulder and leg. When she pleaded for her life and prayed to leave her alone so that, she will go somewhere, they did not allow her. She tried to flee from there. But both of them (A.1 and A.2) chased her and threw her nearby Well. According to P.W.1, they tried to bury her. While they were digging pit to bury her, she escaped from them and met Kumar - P.W.4, Laxmanan - P.W.3 and one Shankar, on the way and with their help, she was taken to hospital.

15. P.W.9 - Dr. Hariram, who was working in Kaveripattinam Primary Health Centre has deposed that, on 28.02.2007 at about 11.00 pm, Shanthi - P.W.1 came to the hospital and on examining her, he found seven injuries on her body. He has referred her to Salem Government Hospital for further treatment. The Accident Register marked as Ex.P.9, indicates the defacto complainant (P.W.1) has sustained seven cut injuries, out of which, three were grievous in nature. The weapon used to attack the victim has been seized under mahazar based on the confession statement of the accused 1 and 2. Though the mahazar witnesses have turned hostile, the victim has identified the Aruval used by A.1. The said Aruval is marked as M.O.3.

16. A feeble doubt is raised by the learned counsel for the appellants regarding the previous complaint and the statement of P.W.1 alleged to have been given before the Kaveripattinam Police. From the evidence we could not find any such complaint or statement formally lodged with the Kaveripattinam Police Station. The victim who had pleaded for her life, cannot expected to recollect the event during the cross examination more particularly, to whom are all she has reiterated about the

incident. Minor discrepancies regarding this aspect does not shake the strong foundation of the prosecution.

17.Few witnesses failure to support the prosecution also, will not have any impact in the prosecution case. The victim had deposed about the overt act of the appellants. The injuries found on her body and the nature of weapon used to attack her does not give any other inference but the appellants had intention of murdering P.W.1. Therefore, the finding of the trial Court holding A.1 and A.2 guilty of offences under Sections 307, 341 and 506(ii) I.P.C., is based on evidence and it requires no inference.

18.At this juncture, the learned counsel for the appellants would submit that the first appellant is no more and the second appellant being a lady, sentence of 10 years rigorous imprisonment is too harsh and excessive. Though, no death certificate is furnished regarding the death of the first accused, considering the age and the gender of the second appellant, this Court is of the view that, the sentence imposed on the second appellant for offence under Section 307 I.P.C., is reduced to seven years rigorous imprisonment and fine of Rs.1,000/- in default to undergo one month simple imprisonment. The sentences shall run concurrently. Except the above modification, the conviction and sentence passed by the trial Court is confirmed.

19.In the result, the Criminal Appeal is allowed in part. The trial Court is directed to secure the presence of the appellants to undergo the remaining period of sentence, if any.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jbm

To

- 1.The Additional Special Judge,  
Krishnagiri.
- 2.Do through The Principal Sessions Judge,  
Krishnagiri.
- 3.The Inspector of Police,  
Barur Police Station, Barur, Krishnagiri District.

- 4.The Public Prosecutor, High Court, Madras.
- 5.The District Munsif cum Judicial Magistrate,  
Pochampalli.
6. The Superintendent, Special Woman Prison,  
Vellore.
7. The District Collector,  
Vellore.
8. The Chief Judicial Magistrate,  
Vellore.
9. The Director General of Police,  
Mylapore, Chennai -4.

Copy To:  
The Section Officer,  
Criminal Section,  
High Court, Madras.

+1 cc to Mr.N.Mohideen Basha, Advocate Sr.No.12726

Crl.A.No.774 of 2011

VD(CO)  
CSL/07.03.2019