

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.01.2019

Pronounced on: 06.02.2019

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Crl.Appeal No.777 of 2016

Elangovan

... Appellant

Vs

State represented by
The Inspector of Police,
Venganur Police Station,
Venganur.

... Respondent

PRAYER : Criminal Appeal is filed under Section 374 (2) Cr.P.C. against the judgment of conviction dated 02.11.2016 passed by the Fast Track, Mahila Court, Ariyalur in S.C.No.66 of 2016.

For Appellant : Mr.V.Partheeban for
Mr.S.Arivazhagan

For Respondent : Mr.V.Sarathadevi, GA

JUDGMENT

This Criminal Appeal has been filed against the judgment dated 02.11.2016 passed by the Fast Track, Mahila

Court, Ariyalur in S.C.No.66 of 2016 whereby the appellant/accused has been convicted under Sections 307 IPC and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.500 and in default whereof, to further undergo simple imprisonment for a period three months and he has been further convicted under Section 324 IPC and sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.500/- and in default whereof, to further undergo simple imprisonment for a period of one month. Apart from this, the appellant/accused has been further directed to pay a sum of Rs.1,50,000/- towards compensation to PW.1 as undertaken by him and in default whereof, to undergo simple imprisonment for a further period of one year.

2. The appellant/accused is the husband and the defacto complainant/PW.1 is the wife and PW.2 is their daughter. The prosecution case, in brief, is that on 30.05.2016 at about 14.00 hours, when the victim Poongodi PW.1 was grinding flour in her house at Kaliyamman Kovil Street, Kovil Esanai village, the accused came inside along

with a knife, abused her in filthy language and told her to die and with the help of knife, cut her neck again and again and attempted to murder her and due which, she sustained injuries on her neck and head. PW.2 daughter, Gopika who was there during the incident, attempted to save her mother from the accused and when she intervened, the accused also cut her neck with knife and uttered 'you also die with this' and he also stabbed PW.2 on her stomach and thus attempted to murder his daughter PW.2 also. Later, a complaint was lodged and based on the same, a case in Crime No.72 of 2016 was registered against the accused for the offences punishable under Sections 294(b), 324 and 307 (2 counts) IPC.

3. On completion of the investigation, a final report was filed, which was taken on file as PRC No.17 of 2016 by the Judicial Magistrate, Ariyalur. On committal, the matter was taken as S.C.No.66 of 2016 on the file of the Fast Track Mahila Court, Ariyalur. Thereafter, charges under Sections 307 (2 counts) and 324 IPC were framed against the accused, read over and explained to him, for which, he pleaded not

guilty.

4. In order to prove the case, the prosecution has examined 15 witnesses as Pws.1 to 15 and marked 18 documents as Exs.P1 to P8 and marked one material object as MO.1. On the side of the defence, none were examined and no documents were marked.

5. PW.1 Poongodi, defacto complainant in her evidence, deposed that she was living seperately along with her daughter and on 30.05.2016 at about 2.30 p.m., while she was grinding flour, the accused came there, caught hold of her hair and cut her neck. PW.1 also deposed that on her shouting, her daughter Gopika PW.2 intervened and pleaded the accused to leave PW.1. On their hue and cry, PW.3 and others rushed to the scene, where, the accused also threatened PW.3. PW.1 also deposed that the accused also cut the neck of PW.2 and also stabbed her. She stated that after the incident, they were referred to Thanjavur Government Medical College Hospital and took treatment for a week.

3. PW.2 Gopika spoke about the incident and corroborated the evidence of PW.1, that the accused caused injuries to herself and PW.1 and the intervention of other witnesses.

4. PW.3 Dhanamani, neighbour of PW.1 deposed that on the date of occurrence, the accused had a fight with PW.1 and when she attempted to enter the house of PW.1, she was threatened her and on her request, Pws.5 and 6 came and dragged the accused out of the house and thereafter, she along with others took Pws.1 and 2 to Venganur Primary Health Centre. She further deposed that blood was oozing out from the necks of PW.1 and PW.2. Since her evidence is contradictory to her statement recorded under Section 161(3) Cr.P.C., the prosecution has treated her as hostile witness.

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5. PW.4 Jayalakshmi, who is an eye-witness, said to have seen the occurrence along with PW.3, deposed that on the date of occurrence, she heard hue and cry from the house of PW.1 and saw the accused and PW.1 engaged in a fight and she was shocked having seen the occurrence and came back

running.

6. PW.5, an auto driver, who came near the house of the accused to pick up a passenger on 30.5.2016 at about 2.00 p.m., he had seen PW.3 shouting in the street and seeking help and upon hearing the same, PW.5 went to the house of PW.1 along with PW.6 Annadurai. He deposed that he scolded the accused and snatched the knife from him and threw it away. He further deposed that he saw cut injuries on the necks of PWs 1 and 2 and thereafter, he and other witnesses sent the injured to hospital in an auto.

7. PW.6 Annadurai, who is a resident of same street where PW.1 and PW.2 reside, identified the accused and the injured. He deposed that on 30.05.2016 at about 2.00 p.m., in the afternoon, when he was standing near the house of PW1, he heard women folk shouting and pleading for help and he had gone and seen the accused holding a knife and standing inside the house of PW.1 and he snatched away the knife and brought him out of the house.

8. PW.7 Rajendran deposed that on 30.05.2016 at

about 2.00 or 2.30 p.m., he saw Pws.1 and 2 coming out of their house with injuries and pleaded for help and that he tied his towel around the neck of PW.1 and thereafter, he took them to Venganur Police Station in an auto, where police told to go to hospital immediately, as such, they went to hospital.

9. PW.8 Pichaipillai, father of PW.1 deposed that on 30.05.2016, when he was in his village, he heard about the incident and went to Thanjavur Medical College Hospital and saw the victims after surgery.

10. PW.9 Rengaraj, a resident of the same street where the occurrence had taken place, he vouched for the preparation of Observation Mahazar and rough sketch, which are marked as Exs.P2 and P3.

11. PW.10 Rajendran @ Towndurai deposed that on 30.5.2016 at about 2.30 p.m. while he was standing near Chavadi, Pws.1 and 2 came there with bleeding injuries on their necks and pleaded for help.

12. PW.11 Manikandan also deposed in the same lines as deposed by PW.10. But since they denied witnessing the confession of the accused and seizure of knife, they were declared hostile by the prosecution.

13. PW. 12 Lakshmanan is a hearsay witness.

14. PW.13 and PW.15 who are Special Sub-Inspector of Police and Inspector of Police, have spoken to registering the complaint, recording statements of witnesses, conducting the investigation, preparing rough sketch and filing final report, etc.

15. PW.14 Dr.Santhoshkumar, who has given treatment to Pws.1 and 2 and found injuries (lacerations) sustained by them on their necks, fingers, etc., and opined that the injuries are simple in nature.

16. On closure of the evidence, the accused was examined under Section 313 Cr.P.C. as regards the incriminating evidence appearing against him, for which, he

denied the same.

17. The learned trial Court finally heard arguments of both the sides and after assessing the entire evidence produced by the prosecution, convicted and sentenced the accused for the offences as mentioned supra. Aggrieved by the same, the appellant/accused is before this Court.

18. A perusal of the entire evidence on record would establish that on 30.05.2015 between 2.00 and 2.30 p.m., the appellant/accused caused cut injuries to Pws.1 and 2 with a knife on their necks, fingers and on other parts of their body and this was witnessed by PW.3, who raised hue and cry in the street and sought for help of others and Pws.5 to 7, who rushed to the scene of occurrence, also corroborated that they saw the appellant/accused holding a knife at the scene of occurrence and the injured Pws.1 and 2 coming out of their house with injuries and thereafter, they took the injured to the hospital. These witnesses are independent witnesses and the trial Court has rightly found these witnesses credible,

reliable and trustworthy. Further there appears to be no reason to falsely implicate the appellant/accused as there was no animus or grudge against him. The presence of the appellant/accused at the scene of occurrence and sustaining the injuries by the victims Pws.1 and 2 was not denied by the defence. According the defence, while the appellant/accused was sleeping in the house, PW.1 had asked PW.2 to bring a knife, which was not obliged by PW.2 and thereafter, when PW.2 was holding the knife, PW.1 had pulled the same and a a tug of war was ensued between both of them, which resulted in causing injuries to Pws.1 and 2 on various parts of their bodies and on hearing the noise, the appellant/accused woke up, warned and slapped PWs 1 and 2. By this, it is clear that on the date of occurrence, the appellant/accused was present at the scene of occurrence and in this regard, the learned trial Court rightly held that since both Pws.1 and 2 sustained injuries on their necks and other parts of their bodies, the version of defence is unbelievable and there would be no possibility of Pws1 and 2 sustaining cut injuries one after another with one knife.

19. As regards the intention to cause murder of Pws.1 and 2, the trial Court has categorically held that the appellant/accused had a longstanding ill-will against PW.1 due to matrimonial disputes and on the date of occurrence, he entered the house of PW.1 with knife and while she was grinding flour, he caught hold of her hair, cut her neck and when PW.2 intervened to save her mother, the appellant/accused also cut the neck of PW.2 as a result of which, both PW1 and 2 sustained injuries on their necks. PW.14 Medical Officer who treated the injured, issued wound certificates Exs.P12 and P15 and opined that the injuries are simple nature. By which, it is established that the appellant/accused, with an intention to murder PW.1, specifically caused injuries on neck with knife by cutting her neck and when PW.2 intervened, he also caused injuries to her. It is pertinent to note that there was no intention to cause murder of PW.2, but when PW.2 intervened, he caused simple hurt her with knife. Therefore, the trial Court, after analyzing the evidence available on record in proper perspective, has

found the appellant/accused guilty of the offence punishable under Section 307 IPC and 324 IPC.

20. As a matter of fact, Mr.V.Partheeban, learned counsel appearing for the appellant/accused would not seriously contest the conviction of the appellant for the above mentioned offences, but he mainly urge this Court to reduce the quantum of sentence since during the pendency of the appeal, the defacto complainant/PW.1 and the appellant/accused have become cordial and compromised the matter by settling their differences and disputes amicably once and for all.

21. It is pertinent to note that the offence under Section 307 IPC is not compoundable in terms of Section 320(9) of Cr.P.C., however, since compromise entered between the parties, while awarding the sentence, the effect of compromise can be taken into consideration. In this regard, the learned counsel appearing for the appellant relies upon a decision of the Hon'ble Supreme Court reported in "**Rajendra**

Harakchand Bhandari and others versus State of Maharashtra and another), wherein, the Hon'ble Supreme Court has held in paragraph 13 as under:

“13. We must immediately state that the offence under [Section 307](#) is not compoundable in terms of [Section 320\(9\)](#) of the Code of Criminal Procedure, 1973 and, therefore, compounding of the offence in the present case is out of question. However, the circumstances pointed out by the learned senior counsel do persuade us for a lenient view in regard to the sentence. The incident occurred on May 17, 1991 and it is almost twenty years since then. The appellants are agriculturists by occupation and have no previous criminal background. There has been reconciliation amongst parties; the relations between the appellants and the victim have become cordial and prior to the appellants' surrender, the parties have been living peacefully in the village. The appellants have already undergone the sentence of more than two and a half years. Having regard to these circumstances, we are satisfied that ends of justice will be met if the substantive sentence awarded to the appellants is reduced to the period already undergone while maintaining the amount of fine.”

"14. Consequently, while confirming the conviction of the appellants for the offences

punishable under Section 307 read with Section 34, Section 332 read with Section 34 and Section 353 read with Section 34, the substantive sentence awarded to them by the High Court is reduced to the period already undergone. The fine amount and the default stipulation remain as it is."

22. It is also relevant to refer a decision rendered by the Hon'ble Supreme Court reported in "**Ishwar Singh v. State of Madhya Pradesh**" reported in (2008) SCW 7856" wherein also, the Supreme Court in the light of the compromise entered into between the accused and the complainant in a case where the accused was convicted for the offence under Section 307 of IPC, has held in paragraphs 14 to 17 as under:

"14. In Jetha Ram v. State of Rajasthan, (2006) 9 SCC 255, Murugesan & Ors. v. Ganapathy Velar, (2001) 10 SCC 504 and Ishwarlal v. State of M.P., JT 1988 (3) SC 366 (1), this Court, while taking into account the fact of compromise between the parties, reduced sentence imposed on the appellant-accused to already undergone, though the offences were not compoundable. But it was also stated that in Mahesh Chand v. State of

Rajasthan, AIR 1988 SC 2111, such offence was ordered to be compounded.

"15. In our considered opinion, it would not be appropriate to order compounding of an offence not compoundable under the Code ignoring and keeping aside statutory provisions. In our judgment, however, limited submission of the learned counsel for the appellant deserves consideration that while imposing substantive sentence, the factum of compromise between the parties is indeed a relevant circumstance which, the Court may keep in mind.

"16. In the instant case, the incident took place before more than fifteen years; the parties are residing in one and the same village and they are also relatives. The appellant was about 20 years of age at the time of commission of crime. It was his first offence. After conviction, the petitioner was taken into custody. During the pendency of appeal before the High Court, he was enlarged on bail but, after the decision of the High Court, he again surrendered and is in jail at present. Though he had applied for bail, the prayer was not granted and he is not released on bail. Considering the totality of facts and circumstances, in our opinion, ends of justice would be met if the sentence of imprisonment awarded to the appellant (Accused No.1) is reduced to the period already undergone.

"17. For the foregoing reasons, the appeal deserves to be partly allowed and accordingly

allowed by maintaining the conviction recorded by the trial court and confirmed by the Appellate Court but by reducing the sentence already undergone by the appellant. The sentence of payment of fine is not disturbed. If the appellant has not paid the amount of fine, he will pay such amount within four weeks from today. "

23. Having regard to the above settled legal position and in the light of the compromise which has been entered into between the parties, who are none other than husband (accused/appellant) and wife (defacto complainant) and as the present case also would fall within the factual matrix of the cases cited above, this Court is of the considered view that it is fit case where the prayer made by the learned counsel for the appellant can be considered.

24. Accordingly, while confirming the conviction of the appellant for the offences punishable under Sections 307 and 324 IPC, the substantive sentence awarded to him by the trial Court is reduced to the period already undergone and the fine amount and the default stipulation remains in tact.

The Criminal Appeal is allowed in part to the extent above. The appellant/accused shall be set at liberty forthwith if he is not required in any other crime.

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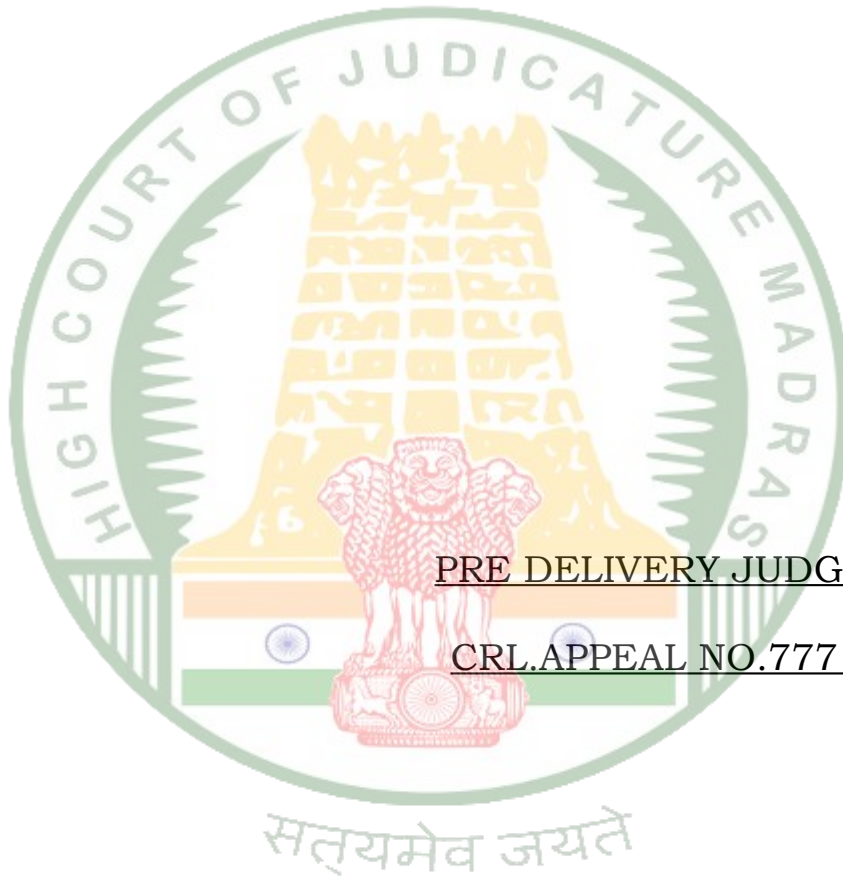
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V.PARTHIBAN, J.

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PRE DELIVERY JUDGMENT IN

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