



BAIL SLIP

The Appellant/Sole Accused namely Dharmar aged about 30 years S/o.Murugaraj was directed to be released on bail as per order of this Court dated 26.11.2009 in MP1/2009 in CRL A.(MD).384 of 2009 on the file of this Court.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	13.04.2019
Date of Judgment	12.07.2019

CORAM

THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI****Crl.A.(MD)No.384 of 2009**

Dharmar : Appellant/Sole Accused

Vs.

The State represented by
The Inspector of Police,
Erwadi Dharga Police Station,
Ramanathapuram District.
(Crime No.29 of 2009)

: Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code against the judgment made in S.C.No.123 of 2009, dated 06.11.2009 on the file of the Additional Sessions Judge (Fast Track Court), Ramanathapuram.

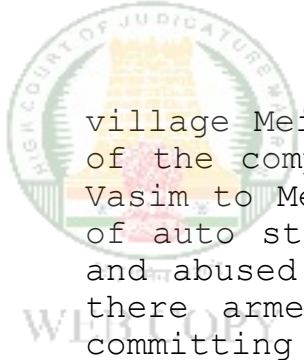
For Appellant : Mr.R.Gandhi

For Respondent : Mr.S.Chandrasekar
Additional Public Prosecutor

J U D G M E N T

This Criminal Appeal is directed against the judgment made in S.C.No.123 of 2009, dated 06.11.2009 on the file of the Additional Sessions Judge (Fast Track Court), Ramanathapuram.

2.It is the case of the prosecution that there was a love affair between on Selvakumar and Vijayalakshmi @ Ayisha Gani and Selvakumar was close friend of the accused Dharmar and to solemnize the marriage between Selvakumar and Vijayalakshmi, on 09.03.2009 the accused took her to Erwadi Dharga bus at about 9.30 pm and when her mother and brother came there, he took her and returned to their



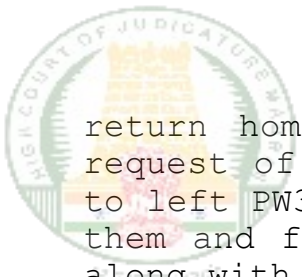
village Meiyavalasai on the same day at about 10.30 pm in the auto of the complainant Vasim and one Shameer was also accompanied with Vasim to Meiyavalasai and when Shameer and Vasim were in the place of auto stand at Erwadi Dharga, the accused questioned the Shameer and abused him by using obscene words in the public place and came there armed with Aruval kept in his waist with an intention of committing murder the Shameer and assaulted him with Aruval on his head occipital region, left back and left forearm and caused injured on him and also threatened the witnesses, who were intervened and by showing Aruval. The Inspector of Police attached to Erwadi Dharga Police Station has filed a final report against the accused by examining the witnesses.

3. In the trial court, 8 witnesses were examined and 7 Exhibits and 1 material object were marked. When the accused was questioned about the incriminating circumstances, he denied the same. On the side of the accused, no witness was examined and no documents were marked. The trial court convicted the accused and sentenced him to undergo **RI for 3 months** and to pay a fine of Rs.300/-, in default to undergo SI for 3 weeks for the offence under Section 294(b) IPC; for the offence under Section 307 IPC convicted and sentenced him to undergo **RI for 5 years** and to pay a fine of Rs.500/-, in default to undergo SI for one month and further convicted and sentenced him to undergo **2 years RI** and to pay a fine of Rs.200/-, in default SI for 2 weeks for the offence under Section 506(ii) IPC. Aggrieved by the judgment passed by the trial court, the appellant/accused is before this court.

4. Heard both sides and perused the materials available on record.

5. The contention raised on the side of the appellant/Accused is that there are contradictions between the oral evidence and the medical evidence and the arrest and the recovery of MO1 Aruval is highly artificial and the respondent police created story so as to show the arrest and recovery at the instance of the de-facto complainant and MO1 was not subjected to chemical analysis test so as to ascertain the blood group of the blood stain found in the Aruval, which was admitted by the Investigating Officer and as such convicting the appellant on the basis of the improper investigation is not sustainable in law and no independent witness was examined and hence, the prosecution evidence creates lot of suspicion and prays that the appellant/Accused is entitled to acquittal.

6. It is admitted on both sides that PW3 had love affairs with one Selvakumar and they decided to perform marriage and Selvakumar sent his friend Dharma i.e., the accused to take PW3 for marriage and as per the prosecution, the accused took PW3 from Meiyavalasai to Erwadi Dharga bus and when PW3 and the accused reach Erwadi Dharga busstand, PW3's mother and brother came there and they called PW3 to



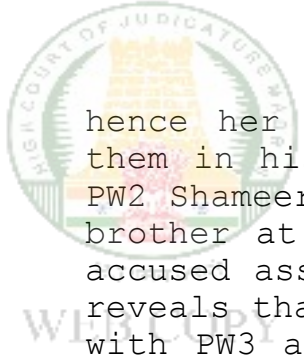
return home, but PW3 refused to go go with them and due to the request of the mother of PW3 and PW1 and PW2 requested the accused to left PW3 with them and due to it, wordy altercation arose between them and finally, PW3 was taken to her village in the auto of PW1 along with her mother, brother and PW2.

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7.PW1 is the complainant and gave Ex.P1 complaint. PW1 in his complaint and evidence stated that on 09.03.2009 at 9.30 pm, the accused and Vijayalakshmi stood in Erwadi Dharga bus stand and at that time, the brother and mother of Vijayalakshmi came and asked Vijayalakshmi to come with them, but Vijayalakshmi refused to go with them and the brother of Vijayalakshmi called his auto and he took Vijayalakshmi, her brother and her mother in the auto and while they were in the auto, Vijayalakshmi told that the accused took her to marry with one Selvakumar and then he left Vijayalakshmi, her brother and mother in their native place and he and his friend Sameer after talking in the auto stand, at that time, the accused came to the place of occurrence and abused Sameer PW2 and stated 'how you can took Vijayalakshmi, who came with me' and attacked with aruval on his back side of scalp and the accused again cut with the same aruval on his left shoulder and again the accused attempted to attack him, he resisted it and the aruval caused injury on his left forearm. Hence, the evidence of PW1 is corroborated with the contents found in Ex.P1 complaint.

8.PW2 is the injured. PW2 deposed that on 09.03.2009 at about 9.30 pm, when he and PW1 were at the auto stand near Erwadi Dharga Bus stand, the accused came there in his motor cycle and parked in front of hardware shop and he again quarrelled with them and abused him with obscene language, took Aruval from his waist and assaulted with Aruval on the back side of his scalp and against when he forced to cut on the head, he bent down his head and escaped from the attack and subsequently, he cut with the same Aruval on his left shoulder and again he attempted to cut on his neck and it was warded of with his left hand and the cut fall on his left forearm and he was taken to the Government Hospital, Ramanathapuram and PW1 gave complaint statement to the police since he was in serious condition.

9.PW3 deposed that the accused Dharmar was the close friend of Selvakumar and Selvakumar made an arrangement for the marriage with her and informed her to come along with his friend Dharmar to a particular place and as per their plan, the accused Dharmar took her to Erwadi Dharga bus stand on 09.03.2009 at about 9.00 pm and she and the accused waited for the bus in the Erwadi Dharga bus stand, she had a brief box in her hand and at that time her mother and brother came there and compelled her to return home, but she refused to go along with her mother and brother and lastly her brother caught hold of her hands and took her in an auto which was waiting in the auto stand to return to their house at Meiyavalasai and in the auto stand PW1 auto was waiting as a first auto in the row and



hence her mother and brother were entered into auto and PW1 took them in his auto to the place of Meiyavalasai and took his friend PW2 Shameer for his help in the auto and they dropped her, mother and brother at Meiyavalasai and further she heard that due to it, the accused assaulted PW1 and PW2. Hence, from the evidence of PW3, it reveals that the accused arranged marriage for his friend Selvakumar with PW3 and the accused took PW3 in PW1's auto and PW2 went with PW1 for help and the marriage between PW3 and Selvakumar was not solemnized and due to it, the accused assaulted PW1 and PW2. Therefore, the evidence of PW2 is corroborated with the evidence of PW1 and PW3.

10. The Doctor, who gave treatment to PW2 was examined as PW6. PW6 deposed that PW2 told him that he was assaulted by a known person with Aruval on 16.03.2009 at the place of Erwadi Dharka auto stand and PW6 found the following injuries viz., (i) Lacerated injury on the occipital area 6 x 4 x 2, (ii) Lacerated injury on the right side of axilla 3 x 2 x 1 cm and (iii) Lacerated wound on the left forearm 3 x 2 x 1 cm. PW2 during his evidence stated that the accused assaulted him with aruval and it caused injury on his back left shoulder and left forearm.

11. PW6 also found injuries on the occipital area, right axilla and left forearm. PW6 during his chief examination stated that all the injuries could have caused with Aruval and during his cross examination, PW6 stated that when the blade portion of the Aruval caused injury, it would be an incise wound or cut injury, but the other portions caused injury, it may be lacerated and cut injuries and the injuries depend upon the manner of attack.

12. Further, PW6 admitted during his evidence that the injuries 1 to 3 are caused with Aruval blade M01. PW1 also deposed that the accused with Aruval caused injury on the scalp and left shoulder of PW2. Hence, the oral evidence of PW1 and PW2 is corroborated with the medical evidence. Hence, the argument put forth on the side of the appellant/accused stating that the evidence of PW1 and PW2 is not corroborated with the medical evidence is not at all acceptable.

13. PW5 is the arrest and recovery witness. PW5 deposed that prior to six months, he was waiting in the Kilakarai Engineering bus stop, at that time the police arrested the accused and the accused gave confession and on the basis of the confession, the weapon used for the alleged occurrence was recovered. PW1 and PW2 also deposed that the accused came with Aruval and assaulted PW2. Hence, the evidence of PW1 and PW2 is corroborated with the evidence of PW5.

14. The learned counsel appearing for the appellant/accused argued that as per the prosecution version, PW2 injured worn shirt, as a result of the injuries his shirt was damaged and was blood



stained and PW1 took him in his auto and hence, his dresses were also blood stained, but the blood stained dress of PW1 and PW2 and also the auto seat were not recovered and produced and hence, it creates doubt about the prosecution case and prays that the appellant/accused is entitled to acquittal.

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15. It is seen that in this case, the Investigating Officer failed to recover the blood stained dresses of PW1 and PW2. It is the fault on the part of the Investigating Officer. However the fault on the part of the Investigating Officer in anyway will not affect the case of the prosecution. Already, it was decided that the oral evidence of PW1 and PW2 is corroborated with the medical evidence and hence, the non recovery of blood stain dresses of PW1 and PW2 will not affect the case of the prosecution.

16. The learned counsel appearing for the appellant/accused argued that there are contradictions in respect of the place of occurrence. Hence, the place of occurrence is not proved and prays that the Appellant/accused is entitled to acquittal. In Ex.P2 observation mahazar and Ex.P7 rough sketch the place of occurrence is shown as auto stand Erwadi Dharga.

17. PW1 and PW2 stated during their evidence that when the accused attempted to attack them near Elango medical shop and Dharga gate, but they ran away and only in the auto stand, the accused assaulted them. As per the prosecution case, PW2 sustained injury in the auto stand. Hence, the place of occurrence was proved by the prosecution. Hence, the argument put forth on the side of the appellant/accused stating the place of occurrence was not proved is not acceptable.

18. The learned counsel appearing for the appellant/accused argued that the occurrence was taken place on 10.03.2009, but the complaint was given on 11.03.2009 at 2.30 am and hence, there was a delay in registering the case and hence it is fatal to the prosecution.

19. It is seen that the occurrence took place on 10.03.2009 at about 9.20 pm and one hour after the occurrence, PW2 was taken in PW1's auto and went to the Primary Health Centre where bandage was tied on the wounds. After that, they reached Government Head Quarters Hospital Ramanathapuram at about 11.55 am. PW7 the Sub Inspector of Police Erwadi Dharga police station received information on 11.03.2009 at about 1.00 am and he reached hospital at 2.30 am and received the statement of complaint from PW1 since PW2 was unconscious and not about to give statement. Therefore, complaint Ex.P1 was received from PW1 and he returned to Erwadi Dharga police station registers the First Information Report on 3.30 pm and the First Information Report is marked as Ex.P6 and the Sub Inspector of Police dispatched the Express Report at 7.30 pm to

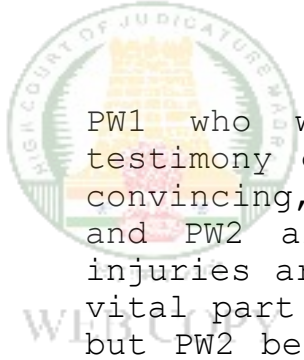
Judicial Magistrate No.II, Ramanathapuram and there is no delay in lodging complaint. The First Information Report was received in court in about 3.30 pm since the time is night hours, he dispatched Express Report at about 7.30 am and the delay in dispatching the First Information Report to the Judicial Magistrate court is properly explained and there is no delay in reaching the FIR to the court. No possibility of concoction of impleading accused and the complaint Ex.P1 was properly received and registers First Information Report and there is no delay in lodging the complaint and regarding that sufficient reports.

20.On careful perusal of the evidence of PW1 and PW2, it reveals that the accused repeatedly attacked PW2 with Aruval and when PW2 not resisted the attack, the cut used fall on his neck and it may cause death and the injury caused to the back side of the head and attempted to attack him again on head and neck cut incised that the accused had attached him them with in intention to murder him, but fall it caused simple injuries. Hence the offence under Section 307 IPC is proved as against the accused.

21.It is seen that the occurrence place is the auto stand near the bus stand of Erwadi Dharga and it is a public place and PW1, PW2 and PW3, her mother, brother, auto drivers Nishar Ali, Beer Mohammed, Appass, Habib, Asan, Esack, Natarajan, Kamardeen were in the occurrence place and the accused abused PW2 by the obscene words தேவடியா மகனே in the presence of others that the above witnesses and it caused annoyance to others and thereby the accused committed an offence under Section 294(b) IPC. When the witnesses PW1, Nishar, Ali, Beer Mohammed, Appass, Habib, Asan, Esack were attempted to intervene to stop the attack, the accused threatened them by showing Aruval, if they came nearer he would cut and killed them. PW1 in his cross examination stated that எதிரி சமீர வெட்டிய இடத்தில் வைத்து எதிரியை பிடிக்க போனோம் அவ்வாறு நாங்கள் பிடிக்க போகும் போது எங்களை வெட்டுவதாக அருவாளை ஓங்கி பயமுறுத்தினார். Likewise PW2 also stated in his cross examination that எதிரி ஆட்டோ ஸ்டாண்டில் என்னை அருவாளால் வெட்டியபோது அசா.1 ம் சாட்சி நி ஷார் அலி பீர் முகம்மதும் அவரை மறைத்தார்கள் அப்போது எதிரி அவர்களைப் பார்த்து அருவாளால் வீசினார்.

22.It is to be noted here that the conduct of the accused would show that he threatened the witnesses by showing Aruval for causing injury to cause death and grievous injury. Hence, this court is of the considered view that the charged against the accused under Section 506(ii) IPC is proved beyond all reasonable doubt.

23.In this case, PW1 and PW2 categorically stated that the accused only attacked them and caused injuries. The oral testimony of PW1 and PW2 are cogent, convincing, trustworthy and believable. In the case on hand, PW2 who sustained injury in the incident deposed that the accused attacked him with Aruval on his head back side, left shoulder, left forearm, thereby caused simple injury.



PW1 who witnesses the occurrence deposed in support of oral testimony of PW2. The oral testimony of PW1 and PW2 are cogent, convincing, trustworthy and believable. The oral testimony of PW1 and PW2 are consistency with medical evidence. Even though the injuries are simple in nature, when the place of injury that are in vital part head back side and again he attempted to attack on head, but PW2 bent his head and escaped from sustaining injury, further, he attempt to attack with Aruval towards his neck that was warded of with his left hand and thereby it is understood that the mind of the accused that he attacked PW2 with an Aruval for murder. He committed the offence of attempt to commit murder. It is further seen that the accused abused PW2 by using obscene words in the public place causing annoyance to others and the accused threatened the witnesses by showing Aruval if they come near he would cause murder or grievous wound. Hence, this court is of view that the charges against the accused under Section 294(b), 307 and 506(ii) are clearly proved beyond all reasonable doubts.

24. For all the reasons stated above, this court is of the considered view that the trial court on careful appreciation of the evidence both oral and documentary had given a correct finding, which does not require any interference by this court. However, considering the fact that the accused is the sole breadwinner of the family, the punishment imposed on the appellant/accused for the offence under Section 307 IPC requires modification and accordingly, it is reduced to 2 years of RI.

25. In the result, this Criminal appeal is **partly allowed**. The punishment imposed on the appellant under Section 307 IPC is reduced to two years RI. In other aspects, the findings of the trial court is confirmed. The period of sentence, if any already undergone by the appellant shall be given set off under Section 428 of Cr.P.C. The appellant, after adjusting the period of imprisonment already undergone shall undergo imprisonment for the remaining period.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar (CS)

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To,

1. The Additional Sessions Judge
(Fast Track Court No.2)
Ramanathapuram.



2. The Principal Sessions Judge, Ramanathapuram.
3. The Chief Judicial Magistrate, Ramanathapuram.
4. The Judicial Magistrate No.II, Ramanathapuram.
5. The Inspector of Police,
Erwadi Dharga Police Station,
Ramanathapuram District.
6. The Superintendent of Prison,
Central Prison, Madurai.
7. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Judgment made in
Crl.A. (MD) No.384 of 2009
12.07.2019

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