



BAIL SLIP

The sole Accused S/o. Vellaichamy Thevar, Male, Aged about 55 years was released on bail by the order of this court dated 25.07.2017 in CRL MP(MD) No.4246 of 2017 in CRL A(MD) No.150 of 2017.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
07.03.2019	26.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE **P.N.PRAKASH**
AND

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**
CRL.A[MD].No.150 of 2017

Selvam : Appellant

Vs.

State through
the Deputy Superintendent of Police,
Peraiyur Sub-Division,
Madurai District,
Crime No.250 of 2014,
T.Kallupatti Police Station,
Madurai District.

: Respondent

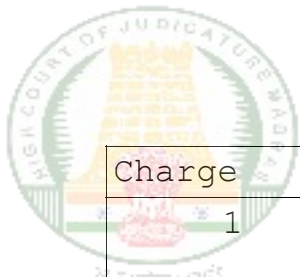
PRAYER: Appeal is filed under Section 374(3) of the Code of Criminal Procedure against the Judgment dated 24.04.2017 made in Spl.S.C.No.74 of 2015, on the file of the Third Additional District and Sessions Judge [PCR Court], Madurai.

For Appellant : Mr.S.Karthikeyan
For M/s.R.Babu Jaganath
For Respondent : Mr.R.Anandharaj
Additional Public Prosecutor

JUDGMENT

B.PUGALENDHI, J.

The appellant is the sole accused in Spl.S.C.No.74 of 2015, on the file of the Third Additional District and Sessions Court [PCR Court], Madurai. The Trial Court framed as many as two charges, as detailed below.



Charge	Penal Provisions
1	3(1)(r)(s) of the Scheduled Castes and Scheduled Tribes [Prevention of Atrocities] Act, 1989, as amended by the Scheduled Castes and Scheduled Tribes [Prevention of Atrocities] Amendment Act, 2015, [for brevity, the "SC/ST Act"]
2	307 IPC r/w 3(2)(v) of the SC/ST Act.

By Judgment dated 24.04.2017, the Trial Court convicted the accused and sentenced him, as detailed below:-

Section of Law	Sentence of imprisonment	Fine amount
3(1)(r) and 3(1)(s) of the SC/ST Act]	To undergo rigorous imprisonment for three years for each offence.	Rs.1,000/- in default to undergo rigorous imprisonment for six months.
307 IPC r/w 3(2)(v) of the SC/ST Act.	To undergo imprisonment for life.	Rs.2,000/- in default to undergo simple imprisonment for three months.

The sentences have been ordered to run concurrently. Challenging the said conviction and sentence, the appellant has come up with this Criminal Appeal.

2. The case of the prosecution, in brief, is as follows:-

the appellant is a caste Hindu and Karuppasamy [PW-1] is a dalit; both hailed from Saptur Village; Karuppasamy [PW-1] is a Nathaswara Musician by profession; his brother, by name, Murugan fell in love with the appellant's daughter - Sathya and ran away with her to avenge which, the appellant attacked Karuppasamy [PW-1], on 16.07.2014, with a sickle with the intention of murdering him; however, Karuppasamy [PW-1] survived the attack;

2.1. On the written complaint [EX-P1] given by Karuppasamy [PW-1], Mahendran [PW-10], the Sub-Inspector of Police, registered a case in Crime No.250 of 2014, for the offences under Sections 307 IPC, 3(1)(r) and 3(1)(s) of the SC/ST Act, at 03.30 p.m, on 16.07.2014 and prepared the printed First Information Report, [EX-P11], which reached the jurisdictional Magistrate at 10.00 a.m., on 17.07.2014, as could be seen from the endorsement made therein. Mahendran [PW-10], thereafter, referred Karuppasamy [PW-1] to the hospital with police memo for treatment. Karuppasamy [PW-1] was examined by Dr.Aananthadurai [PW-8], who, in his evidence as well in the Accident Register Copy [EX-P8], has noted as follows:-

"alleged assault by one known person on 16.07.2014 at 02.00 p.m near his house with aruval.

O/E:



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Patient conscious oriented PR - 82/min, BP - 12-/80,

Injuries:

Deep cut injury left wrist region [5 X 1 X 1.5 CM] with continuous bleeding present.

Incised wound 2 X 0.5X0.5 CM over left shoulder.

Refer to GRH Madurai/Causality

Treatment given".

2.2. Karuppasamy [PW-1] was, thereafter, referred to the Government Rajaji Hospital, Madurai, for further treatment, in view of the serious injuries sustained by him. Dr.Gurumoorthy [PW-11] gave treatment to Karuppasamy [PW-1] at the Government Rajaji Hospital, Madurai, where he was admitted as inpatient till 22.07.2014. Dr.Gurumoorthy [PW-11] has opined that the nature of injuries sustained by Karuppasamy [PW-1] are simple.

2.3. The investigation of the case was taken over by Balasubramanian [PW-12], the Deputy Superintendent of Police, who went to the place of occurrence on 16.07.2014, at 04.30 p,m, and in the presence of witnesses - Nagaraj [PW-6] and Alagarsamy [PW-7], prepared the Observation Mahazer [EX-P3] and Rough Sketch [EX-P13]. He examined some witnesses and recorded their statements. On the same day, he arrested the appellant and recorded his confession statement. Based on the disclosure made by the appellant, he recovered a sickle [MO-1] under the cover of mahazer [EX-P15] on the showing of the appellant. He obtained the Community Certificates of the appellant [EX-P10] and Karuppasamy [PW-1] [EX-P9] from Raju [PW-9], the Tahsildar, Revenue Department. He recorded the statements of the doctors, who treated Karuppasamy [PW-1] and collected the Accident Register [EX-P8].

2.4. On completion of the investigation, Balasubramanian [PW-12] filed final report before the Special Court for SC/ST Act for the offences under Sections 307 IPC r/w Section 3(2)(v) of the SC/ST Act and 3(1)(r) and 3(1)(s) of the SC/ST. On the appearance of the accused, the provisions of Section 207 of the Code of Criminal Procedure were complied with. The Trial Court framed charges against the accused, as detailed in Paragraph No.1, supra. When questioned, the accused pleaded "not guilty". To prove the case, the prosecution examined 12 witnesses, marked 16 exhibits and one material object. No witness was examined on the side of the accused nor any document marked. When the accused was questioned about the incriminating circumstances appearing against him, he denied the same. The Trial Court, after considering the evidence on record and hearing either side, by Judgment dated 24.04.2017, convicted the accused, as detailed hereinabove. The appellant is, therefore, before this Court.

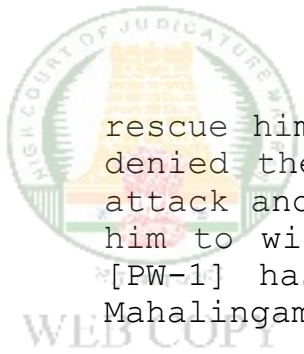
3. Heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the respondent.



4. Karuppasamy [PW-1] was examined-in-chief on 04.07.2016. In the examination-in-chief, he has stated that he is a Dalit and hails from Saptur Village; he is a Nathashvaram Musician by profession; he has a brother - by name, Murugan, who fell in love with Sathya, the daughter of the appellant and ran away with her; he does not know their whereabouts; therefore, the appellant had beaten him and chased him out of the village; so, he shifted his house to Cholaipatti Village.

5. Coming to the incident in question, Karuppasamy [PW-1] has stated that two or three years back, he went for a Nathaswaram performance to Krishnapuram Village and returned to his village by bus; he got down from the bus at 03.00 p.m., and was walking towards his home; at that time, from a nearby bush, the appellant armed with a sickle [MO-1], fell upon him and aimed a blow at his neck; he defended the attack with his left arm and the blow cut his left wrist; the appellant attacked him on his left shoulder by referring to his caste and saying "where is your younger brother"; "your whole generation should be eliminated"; thereafter, Karuppasamy [PW-1] went to the Police Station and gave the complaint [EX-P1]; the police referred him to the Government Hospital, Thirumangalam, from where he was referred to the Government Rajaji Hospital, Madurai, for further treatment; he identified the sickle [MO-1] as the weapon that was used by the appellant to attack him. He was not cross-examined on the same day, but, was re-called and cross-examined on 22.09.2016. In the cross-examination, he has stated that he got down at Cholaipatti Bus Stand and two or three persons, who got down from the bus, were also walking behind him. He has further stated that after the attack by the appellant, he started running and the appellant chased him. What was not spoken to by the witness in the chief-examination was elicited in the cross-examination and this is corroborated by the averments in the complaint [EX-P1] to the effect that after the attack, he [PW-1] fled and he was chased by the appellant.

6. In the cross-examination, he has stated that on coming to know of the incident, ten of his community people came to the Police Station; he did not write the complaint and it was written by a scribe, but, he does not remember the name of the scribe. He admitted that in connection with the incident, in which his brother - Murugan eloped with the appellant's daughter, a police case has been registered against him [PW-1] and his brother and the same is pending. He further admitted that till date, he does not know the whereabouts of his brother and the appellant's daughter. He also admitted that on account of bleeding, his clothes got stained. When he was asked as to whether he lodged any police complaint for the incident in which his house in Saptur Village was damaged by the appellant and his men, he stated that since he was not even able to enter into his village, there was no question of he lodging any police complaint. When asked whether onlookers came to his rescue at the time of the attack, he said that no one came forward to



rescue him and so, he started running for his life. Ultimately, he denied the suggestion that the appellant was not involved in the attack and that a false case has been put on the appellant to force him to withdraw the police complaint. The evidence of Karuppasamy [PW-1] has been generally corroborated by Karuppusamy [PW-2] and Mahalingam [PW-3], who had witnessed the occurrence.

7. Apart from the above, the prosecution examined Raju [PW-9], the then Tahsildar of Peraiyur, who has stated that Karuppasamy [PW-1] belongs to Scheduled Caste and the appellant is a caste hindu. The community certificates issued by Raju [PW-9] were marked as EX-P9 and EX-P10 respectively. Dr. Anandhadurai [PW-8], has stated that while he was on duty on 16.07.2014 in the Government Hospital, Thirumangalam, he examined Karuppasamy [PW-1] at 04.45 p.m and noted the injuries referred to in para 2.1, above and referred him to the Government Rajaji Hospital, Madurai, for better treatment. The copy of the Accident Register was marked as EX-P8. Dr. Gurumoothy, [PW-11], who treated Karuppasamy [PW-1] in the Government Rajaji Hospital, Madurai, has spoken to about the treatment that was given to him and the same has been referred to vividly in Paragraph No.2.2, above.

8. The learned counsel for the appellant contended that in the Accident Register [EX-P8], it has been recorded that Karuppasamy [PW-1] was attacked near his house, but in the complaint, [EX-P1], he has stated that he was attacked while he was going from the bus stand and therefore, there is a doubt in respect of the place of occurrence. We are unable to appreciate the said submission, because, immediately after the attack, Karuppasamy [PW-1] went to the Police Station. On coming to know of the attack, his community people gathered there and after giving the complaint, he was sent to the hospital for treatment. To the doctor, he has clearly stated that he was attacked by one known person with sickle at 02.00 p.m,. Just because it is recorded in the Accident Register copy [EX-P8] that the incident had taken place near the house of Karuppasamy [PW-1], the testimony of Karuppasamy [PW-1] cannot be disbelieved. In fact, Karuppasamy [PW-1] has clearly stated that he went to Krishnapuram Village for a Nathashwaram performance and on return, he got down from the bus and was walking towards his house and at that time, the incident had taken place. This is not a contradiction at all. A contradiction means, two mutually exclusive or incompatible versions. There is no incompatibility in the version of Karuppasamy [PW-1] with regard to the place of attack. His testimony has been duly corroborated by the injuries sustained by him, about which two doctors, namely, Dr. Anandhadurai [PW-8] and Dr. Gurumoothy, [PW-11], have given evidence.

9. As regards the community of the appellant and Karuppasamy [PW-1], the same has been proved beyond cavil via the evidence of Raju [PW-9], the Tahsildar, Revenue Department. The appellant has not denied the fact that his daughter ran away with Murugan, the brother of Karuppasamy [PW-1]. In fact, it has been suggested to



Karuppasamy [PW-1] that the appellant has given a police complaint against Murugan and Karuppasamy [PW-1] with regard to his daughter's elopement.

10. The learned counsel for the appellant contended that the elopement had taken place two or three years prior to the attack and therefore, the motive alleged had become stale. We are unable to countenance this submission, because, the whereabouts of the appellant's daughter and Karuppasamy's [PW-1's] brother was not known to both families. After the elopement, the appellant's group had damaged the house of Karuppasamy [PW-1] and had chased him out of the village and so, he was living in Cholaipatti Village amongst his caste men. In our country side, where caste prejudice is deeply entrenched, bitterness and ill-feeling will not recede easily. Honour killing has no outer time limit. Therefore, we hold that the prosecution has proved the case against the appellant beyond doubt.

11. Coming to Section 3(2)(v) of the SC/ST Act, it has taken away the discretionary power of the Court to award lesser sentence for the offence under Section 307 IPC. In this case, though the injuries were simple, the attack was aimed at the neck of Karuppasamy [PW-1]. When Karuppasamy [PW-1] tried to defend the attack, his left wrist suffered 5 X 1 X 1.5 CM injury with continuous bleeding. The second attack fell on his left shoulder, in which Karuppasamy [PW-1] suffered an incised wound measuring 2 X 5 X 0.5 CM. Since he escaped death by a whisker, he started fleeing for survival. If not for his survival this case would have been one under Section 302 IPC.

12. For the foregoing discussions, the Judgment of the Trial Court warrants no interference.

13. In the result,

- the Judgment dated 24.04.2017 made in Spl.S.C.No.74 of 2015, on the file of the Third Additional District and Sessions Judge Court [PCR Court], Madurai, is confirmed.
- The Criminal Appeal is dismissed.
- Suspension of sentence granted by this Court on 25.07.2017 in CrI.MP(MD).No.4246 of 2017 in CrI.A.(MD).No.150 of 2017 stands cancelled.
- Since the accused/appellant is on bail, it is directed that the Trial Court shall take steps to secure him and to commit him to prison to serve out the period of sentence.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS)



To

1. The Third Additional District and Sessions Court
[PCR Court], Madurai.

2. The Deputy Superintendent of Police,
Peraiyur Sub-Division,
Madurai District,
T.Kallupatti Police Station,
Madurai District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

4. The Superintendent of Sentral Prison Madurai.

5. The Record Keeper,
Vernacular Section, Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

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TR (06.04.2019) 7P 7C