



CRL. A. (MD) NO. 100 of 2014

Bail Slip

Appellant namely Paraman, male aged 33/2014 was released on Bail as per order of this Court dated 12.03.2014 made in MP(MD)No.1/2014 in Crl.A.(MD) No.100/2014.

BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

Dated : 09.12.2019

CORAM

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

CRL. A. (MD) No. 100 of 2014

1.Paraman

2.Suruliammal

.. Appellants/Accused Nos.1 & 2

- Vs -

The State represented by
the Inspector of Police,
Chinnamanoor Police Station,
Theni District.

(Crime No.1174 of 2010) ..Respondent/Respondent/
Complainant

Prayer : Appeal filed u/s 374 (ii) of the Code of Criminal Procedure, to set aside the judgment and conviction passed by the Additional Sessions Judge, Mahila Court, Theni in S.C.No.96 of 2011, dated 19.02.2014.

For Appellants : Mr.Chandra Mohan
and Ms.M.Beulah Rani
(Legal Aid Counsel)

For Respondent :Mr.K.Suyambulinga Bharathi
Governement Advocate (Criminal side)

JUDGMENT

This Criminal Appeal has been filed against the judgment and conviction passed by the learned Additional Sessions Judge, Mahila Court, Theni, in S.C.No.96 of 2011, dated 19.02.2014.



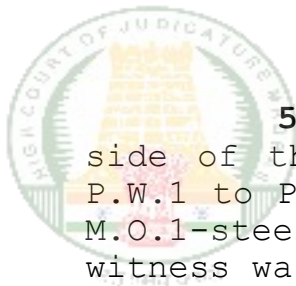
2. The appellants are the accused in this case. The Trial Court convicted the Accused No.1 and imposed a sentence of three months Rigorous Imprisonment for each count for the offence under Section 324 (3 counts) and imposed a sentence of one month Rigorous Imprisonment for the offence under Section 323 I.P.C. The sentences were directed to run concurrently and set off under Section 428 Cr.P.C. was also ordered. The trial Court convicted the accused No.2 for the offence under Section 323 r/w 109 I.P.C. and imposed fine amount of Rs.3,000/- in default to undergo three months Simple Imprisonment.

3. It is represented by the learned counsel appearing for the appellants that during the pendency of the Appeal, Accused No.1 had died on 13.06.2018. A memo has also been filed before this Court. The second appellant is the mother of the first appellant.

4. The facts of the case are briefly stated hereunder:

4.(1). The case of the prosecution is that accused No.1 and P.W.2 are husband and wife. The first accused was having illegal intimacy with another woman, due to which, the accused no.1 frequently quarelled with his wife. On 18.10.2010, at about 07.45 p.m., there was a quarrel between P.W.2 and Accused No.1. At that time, Accused No.1 has taken the shawl and attempted to kill his wife. The Accused No.2 did not allow her to leave. Hearing her cry, P.W.1, P.W.3, P.W.5 and P.W.8 came to the scene of occurrence. Suddenly, Accused No.1 taken steel rod, attacked P.W.1 on his head, shoulders and knee. He attacked P.W.8 on her head and P.W.3 on her knee with steel rod. The Accused No.1 attacked P.W.5 with hands. Thereafter, the victims were taken to the Chinnamanoor Government Hospital by auto.

4.(2). On receiving the information from the Government Hospital, P.W.10-Sub Inspector of Police, attached to the Chinnamanoor Police Station, went to the Hospital, recorded the statement of P.W.1 and registered a case in Crime No.1170 of 2010 for the offences under Sections 324, 323, 307 and 109 I.P.C. against the appellants and sent First Information Report to P.W.11-Investigating Officer. On 18.10.2010, at about 11.00 p.m. P.W.11-Investigating Officer, went to the scene of occurrence, recorded the statement of witnesses, prepared Observation Mahazar-Ex.P.9, Rough Sketch-Ex.P.10, recovered M.O.1-steel rod, arrested first appellant. Thereafter, P.W.11-Investigating Officer completed investigation, filed charge sheet against the first appellant for the offences under Sections 307(2 counts), 324(2 counts) and Section 4 of the Tamil Nadu Prohibition of Harassment Act and against the second appellant for offences under Section 307 r/w 109 and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, before the learned Additional Sessions Judge, Mahila Court, Theni.



5. In order to prove the case of the prosecution, on the side of the prosecution as many as 11 witnesses were examined as P.W.1 to P.W.11 and 9 documents were marked as Ex.P.1 to Ex.P.9 and M.O.1-steel rod was also marked. On the side of the accused, no witness was examined, nor any document was marked.

WEB COPY

6. When the appellants were questioned u/s 313 Cr.P.C. about the incriminating circumstances appearing against them, they denied the same.

7. The trial Court, on the basis of the oral and documentary evidence, convicted and sentenced the accused as aforesaid, challenging the legality of the said conviction and sentence, the present appeal has been filed by the appellants.

Submissions

8. The learned counsel appearing on behalf of the appellants made the following submissions:

- The learned counsel appearing for the appellants would submit that as far as the second accused is concerned, she has been convicted for the offence under Section 323 I.P.C. read with 109 I.P.C. and the trial Court imposed fine amount of Rs.3,000/- in default to undergo three months Simple Imprisonment.
- The learned counsel would further submit that the wife of first accused and P.W.1 are siblings. The case of the prosecution is that the marriage of Accused No.1 and P.W.2 was solemnized in the year 2002. There seems to be some matrimonial discord between them. On the fateful day, there was fight between P.W.2 and Accused No.1. At that time, the Accused No.1 is said to have taken the shawl and attempted to kill her wife. The Accused No.2 is said to have instigated her son / Accused No.1. Hearing her cry, P.W.1, P.W.3, P.W.5 and P.W.8 came to the scene of occurrence. They were assaulted by M.O.1-steel rod by accused No.1 and thereafter, they were taken to the Government Hospital for treatment.
- The learned counsel would further submit that other than P.W.2 none of the witnesses have whispered anything against the second appellant. All the witnesses have admitted that the occurrence happened inside the house of the appellants and it cannot be seen from the house of other witnesses, who are residing three streets away.
- Further, P.W.1 admits that he reached the house of the accused later and he had not seen the occurrence directly.
- P.W.2 admits that the complaint was lodged only after two days from the date of occurrence.



- P.W.2, is another witness, who is uttering false things against the appellants though in her evidence she states that she fainted and she was not aware who accompanied her, when she reached the Police station in auto, P.W.9-causality Doctor states that P.W.2 was conscious and oriented. He admits that P.W.2's statement of she suffering from pain, seems to be highly exaggerated and artificial.
- The learned counsel further submitted that P.W.1 and P.W.3 to P.W.11 are all relatives of P.W.2 and they all are interested witnesses.
- On receipt of information from the Hospital, P.W.10-Sub Inspector of Police, reached the Hospital, recorded the statement and registered Ex.P.8-First Information Report. P.W.12, is the Investigating Officer, who went to the scene of occurrence, recorded the statement of the witnesses, produced all the materials and documents before the trial Court with considerable delay, belatedly along with the final report. No explanation was given for the delay.
- The learned counsel would further submit that P.W.3 was not present at the place of occurrence, as could be seen from the evidence, further the overt act in this case is attributed to Accused No.1. The appellant being mother of Accused No.1 has been falsely implicated to brook vengeance.
- The learned counsel would further submit that the prosecution failed to prove its case beyond reasonable doubts. Hence, the learned counsel pray this Court to allow this Criminal Appeal.

9. The learned Government Advocate (Criminal side) appearing on behalf of the respondent Police made the following submissions:

- Per contra, the learned Government Advocate (Criminal side) appearing for the respondent submitted that in this case P.W.1 to P.W.11 were examined as witnesses, Exs.1 to 9 were marked as documents and M.O.1-steel rod was marked as a material object.
- He would further submit that all the witnesses had supported the prosecution case. The accused No.1 attempted to kill P.W.2 accused No.1 by rapping shawl over her neck and attempted to strangle her and accused no.2 instigated and did not allow her to escape and save her life. Hearing her cry, P.W.1, P.W.3, P.W.5 and P.W.8 rushed to the house of the appellants, found accused No.2 along with accused No.1. The first appellant developed a relationship with a lady and had set up a separate house at Kerala and that is the reason, P.W.2 was constantly harassed. Since P.W.2 was hindrance for the extra marital life, hence, Accused No.1 wanted to do away with her.



The Appellant No.2 / mother of Accused No.1 was supporting her son in this regard.

- He would further submit that accused No.1 in this case had died and as far as Accused No.2 is concerned, except for P.W.2, no other witnesses have spoken anything against her. But P.W.2 is a solitary witness and her version is natural and believable. Coupled with the medical report-Ex.P.7, the trial Court on appreciation of the evidence had rightly convicted the accused in this case.
- He would submit that there was sufficient evidence let in before the trial Court.
- The lower Court, on a proper analysis of the evidence of the witnesses and documents, had rightly convicted the second appellant for the offences under Sections 323 r/w 109 I.P.C., which need not be interfered with.

10. Considered the elaborate submissions of the learned counsel for the appellants and the submissions of the learned Government Advocate (Criminal side) and perused the materials and the pleadings placed on record.

Discussion:-

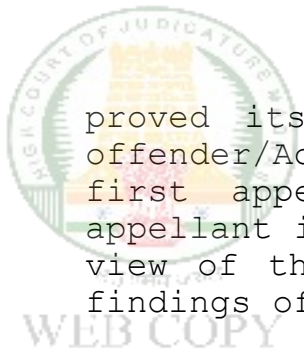
11.(1). As stated earlier, other than P.W.2, none of the witnesses have spoken anything against the appellant / accused No.2. The evidence of P.W.2 does not inspire confidence for the reason that P.W.9-causality Doctor in his evidence admits that P.W.2 was conscious and oriented seems to utter falsehood with regard to the pain, which she is said to be suffering and she seems to be a person with giving exaggerate version.

11.(2). P.W.2 in her evidence states that she had fainted and lost conscious and she does not know what had happened and how she was taken to the Hospital. P.W.9-Doctor, has categorically stated that P.W.2 was conscious with orientation, thus the genesis of the complaint seems to be doubtful, motivated.

11.(3). P.W.2 has admitted in her evidence that she was examined only after two days after the occurrence. The complaint as well as other documents and statement have reached the Court only on 15.12.2010 with considerable delay and no explanation has been given for the same.

11.(4). P.W.2, being the estranged daughter-in-law of Accused No.2, had every reason to implicate Accused No.2.

12. Considering the rival submissions as discussed above and the other materials available on record, this Court finds evidence of P.W.2 does not inspire confidence, prosecution has not



proved its case beyond reasonable doubts. Further the principal offender/Accused No.1 is no more, hence, the charge against the first appellant is that she abated Accused No.1. The second appellant is entitled to get benefit of doubt and acquittal. In such view of the matter, this Court is inclined to interfere with the findings of the Trial Court.

Conclusion

13. Considering the fact that the first appellant / principal offender died on 13.06.2018, Criminal Appeal stands abated as far as the first appellant is concerned. Insofar as the second appellant is concerned, this Criminal Appeal stands allowed. The conviction and sentence imposed on the second appellant in S.C.No.96 of 2011, on the file of the learned Additional Sessions Judge, Mahila Court, Theni, dated 19.02.2014, is set aside and the second appellant is acquitted of the charges framed against her. The bail bond, if any, executed by the second appellant shall stand cancelled. The fine amount, if any, paid by the second appellant shall be refunded to her.

14. This Court places its appreciation of young counsel Ms.Beulah Rani, who had taken strenuous effort for neat presentation of the Appeal. She was articulate.

Sd/-

Assistant Registrar (Crl.side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Tsg

To

- 1)The Additional Sessions Judge, Mahila Court, Theni.
- 2)The Judicial Magistrate, Uthamapalayam.
- 3)-do-Thro' The Chief Judicial Magistrate, Theni.
- 4)The Inspector of Police,
Chinnamanoor Police Station,Theni District.
- 5)The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai
- 6) The Record Keeper, (criminal Section)
Madurai Bench of Madras High Court, Madurai. - 2copies
- 7) The Section Officer, (2 copies)_
V.R. Section, Madurai Bench of Madras High Court, Madurai.
- +1 CC to M/s.R.SHANKAR GANESH, Advocate (SR-104051[F]

JUDGMENT IN

CRL. A. (MD) NO. 100 of 2014

Dated 09.12.2019

SMA/28/01/2020/6P/11C

<https://hcservices.ecourts.gov.in/hcservices/>