

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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| <b>Date of Reservation</b> | <b>19.10.2019</b> |
| Date of Judgment           | 25.10.2019        |

CORAM

THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI****Crl.A.(MD)No.333 of 2018**

Marimuthu : Appellant/Sole Accused

Vs.

State represented by  
The Inspector of Police,  
Mukkudal Police Station,  
Tirunelveli District.  
(Crime No.228 of 2013)

: Respondent/Complainant

**Prayer:** Criminal Appeals filed under Section 374(2) of the Criminal Procedure Code against the judgment, dated 21.12.2017 passed in S.C.No.285 of 2016 by the Sessions Judge, Mahalir Neethimandram, Tirunelveli.

For Appellant : Mr.K.Veilmuthu

For Respondent : Ms.M.Anantha Devi,  
Government Advocate  
(Criminal side)

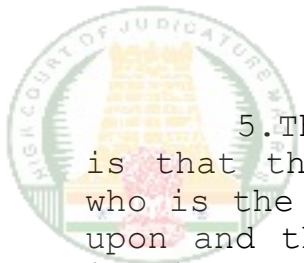
**J U D G M E N T**

This Criminal Appeal is directed against the judgment passed in SC No.285 of 2016, dated 21.12.2017 by the Sessions Judge, Mahalir Neethimandram, Tirunelveli.

2.According to the prosecution, on 15.11.2014 at 20.30 hours PW1 rolling Beedi in front of her house, the accused came there in a drunken mood and when she was questioned about the consuming of liquor, he abused her in filthy language and assaulted on her neck with Aruval and once again assaulted her on the middle finger in the right hand and thereby caused injuries. The Inspector of Police attached to Mukkudal Police Station, Tirunelveli District has filed a final report against the accused examining the witnesses.

3.The trial court, after proper appreciation of the entire materials available on record, found the appellant/accused guilty under Section 324 IPC and sentenced him to undergo 2 years RI. Aggrieved by the judgment of 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 material contradictions in the evidence of PW1, who is the solitary witness and hence, her evidence cannot be relied upon and the evidence of PW1 is full of embellishment and does not inspire confidence and the oral evidence of PW1 is not corroborated with the evidence of PW7 and no independent witnesses were examined and PW2 to PW5 turned hostile and did not support the case of the prosecution and hence, in the absence of independent corroboration, the evidence of PW1 cannot be believed and as per the prosecution case, PW1 sustained an injury measuring 8 x 4 x 2 cms and in view of the nature of injury, blood ought to have oozed out and as such, the presence of blood stains would have been present in the place of occurrence, but the Investigating Officer admitted that the blood stains were not found in the scene of occurrence, which creates doubt about the prosecution case and the injuries sustained by PW1 is self-inflicted and prays that the appellant/accused is entitled to acquittal.

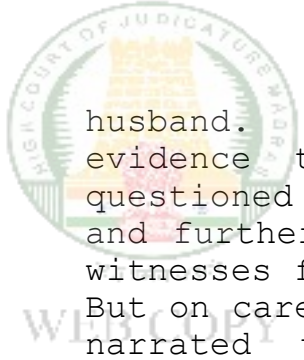
6. PW1 is the wife of the accused and she gave Ex.P1 complaint. PW1 in her complaint and evidence stated that on 15.11.2013 at 20.30 hours when she was rolling Beedi in front of her house, at that time the accused came in a drunken mood and when it was questioned by her, the accused used filthy language and he took the knife and said that "இத்தோடு செத்து தொலைந்து போ" and caused injury on her neck and when she resisted it, she caused injury on her right hand middle finger and outrage her modesty and on hearing her noise, Sivasubramaniam and Ganeshamoorthy came, the accused fled away and she was taken to the Government Hospital, Tirunelveli, by way of 108 Ambulance and she gave the complaint statement to the police.

7. In this case, PW2 to PW5 are cited as eye witnesses. But they turned hostile and did not support the case of the prosecution.

8. The Doctor, who gave treatment to PW1 was examined as PW7. PW7 deposed that PW1 told him that on 15.11.2013 at 10.15 pm, she was assaulted by her husband and he found laceration 8 x 4 x 2 cm in front of her neck.

9. PW7 during his evidence stated that the injury sustained by PW1 is possible by knife. PW1 deposed that due to the assault by her husband with knife, she sustained injuries on her neck and right hand middle finger. PW7 also found the injuries on the front side of her neck. Hence, the evidence of PW7 is corroborated with the evidence of PW1. Hence, the argument put forth on the side of the appellant/accused stating that the medical evidence is not corroborated with the oral evidence of PW1 is not at all acceptable.

10. PW2 to PW5 are the neighbours of PW1. But they turned hostile and did not support the case of the prosecution. In this case, in respect of the occurrence, PW1 evidence alone is available. There was no motive for the wife to give false complaint against her



husband. PW1 categorically stated in her complaint statement and evidence that when her husband came in a drunken mood, she questioned it and due to it, the accused assaulted her with knife and further she advised her husband not to consume liquor. The eye witnesses failed to give evidence in order to safeguard the accused. But on careful perusal of the evidence of PW1, she has categorically narrated the occurrence. Hence, her evidence is cogent and trustworthy. Therefore, it is held that the solitary evidence of PW1 can be relied upon.

11.The learned counsel appearing for the appellant/accused argued that as per the prosecution case, the accused with knife caused injury on the neck of PW1 and hence, blood ought to have oozed from the above injury, but no blood stained materials were recovered and it is fatal to the prosecution.

12.In this case, the Investigating Officer was examined as PW8. PW8 during his cross examination stated that in the place of occurrence, no blood stains were found. This does not mean that blood not to have oozed from the injury. Further, it is the fault on the side of the Investigating Officer for the non-recovery of blood stained articles. Hence, it will not affect the case of the prosecution.

13.In this case, immediately after the occurrence, PW1 has lodged a complaint before the respondent police and therefore, there is no delay in giving the complaint.

14.For all the reasons above, this court is of the considered view that the trial court, after considering the entire materials available on records, has given a correct findings, which does not call for any interference by this court. However, considering the fact that the appellant/accused is the sole breadwinner of the family, the punishment imposed on the appellant/accused requires modification.

15.In the result, the Criminal Appeals are **partly allowed**. The punishment imposed on the appellant/accused for the offence under Section 324 IPC is reduced to **one** year RI. In other aspects, the findings of the trial court is confirmed. The period of sentence, if any already undergone by the appellant/accused shall be given set off under Section 428 of Cr.P.C. The appellant/accused, after adjusting the period of imprisonment already undergone shall undergo imprisonment for the remaining period. The appellant is directed to run the sentence concurrently with the another case.

Sd/-

Assistant Registrar (CS-II)

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To,

- Cr1.A(MD) No.333 of 2018  
25.10.2019

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