



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.A. (MD)No.166 of 2015

WEB COPY

Kanthammal

... Appellant/ P.W.1 (Victim)

-Vs-

1) State rep. by

The Inspector of Police,
Srivilliputhur Town Police Station,
Srivilliputhur,
Virudhunagar District.
(Cr.No.186 of 2008)

... Respondent / Respondent/
Complainant

2) Murugan

... Respondent/ Respondent/
Accused

PRAYER: Criminal Appeal filed under Section 374(ii) of the Criminal Procedure Code, praying to call for the records pertaining to the judgment dated 20.08.2013 passed in Crl.A.No.77 of 2010 on the file of the Learned Principal Sessions Judge, Virudhunagar District at Srivilliputhur setting aside the Judgment dated 15.07.2010 passed in S.C.No.196 of 2008 on the file of the Learned Chief Judicial Magistrate, Virudhunagar District at Srivilliputhur wherein the 2nd respondent was found guilty under Section 307 IPC directing to undergo 5 years Rigorous Imprisonment and to pay a fine of Rs.2,000/- in default to undergo 6 months Simple Imprisonment.

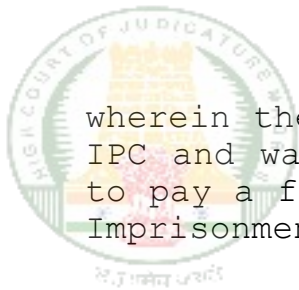
For Petitioner : Mr.M.Jothi Basu

For R-1 : Mrs.S.Bharathi,
Government Advocate (Crl.side)

For R-2 : Mr.Mayil Vahana Rajendran
For Mr.Seemaraj

J U D G M E N T

This Criminal Appeal is filed by the appellant, P.W.1 / victim herein, aggrieved against the order of acquittal dated 20.08.2013 made in Crl.A.No.77 of 2010, on the file of the Learned Principal and Sessions Judge, Virudhunagar District at Srivilliputhur, thereby setting aside the Judgment dated 15.07.2010 passed in S.C.No.196 of 2008 on the file of the Learned Chief Judicial Magistrate, Virudhunagar District at Srivilliputhur,



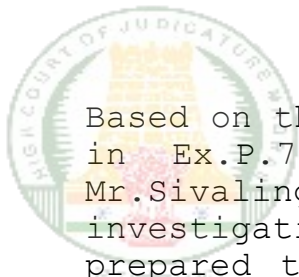
wherein the 2nd respondent herein was found guilty under Section 307 IPC and was sentenced to undergo 5 years Rigorous Imprisonment and to pay a fine of Rs.2,000/- in default, to undergo 6 months Simple Imprisonment.

2. For the sake of convenience, the parties are referred to as per their rank in the trial Court.

3. The case of the prosecution is that the accused Murugan had love affair with the daughter of P.W.1 and after getting consent from P.W.1, and the accused's family members, marriage was solemnized between P.W.2 Murugavalli, D/o Kandammal and the accused. Out of the wedlock, P.W.2 gave birth to two children. After few years of marriage, there arose misunderstanding between the couple and as a result of the same, P.W.2 Murugavalli left her matrimonial home and started to live with her mother P.W.1 Kandammal along with her children. Though the elders of both the families took efforts for conciliation in order to sort out the dispute that arose between them, the same did not materialise and hence, ended in vain. In the meanwhile, frequent altercations also occurred between the couple. Therefore, P.W.2 Murugavalli filed an application for divorce and also succeeded in the same. This created hatred feelings in the mind of the accused / second respondent herein, since the accused assumed that only due to the pressurizing advice of P.W.1, P.W.2 had consented for divorce and P.W.1 was solely responsible for the separation of the accused from his wife and children.

4. Pursuant to the previous enmity between the accused and P.W.1, the accused planned to take revenge upon his mother-in-law, P.W.1. Therefore, on 04.03.2008 at about 1:30 p.m., the accused noticed P.W.1 Kandammal going to the market along with her friend P.W.3 Ponnuthai and her daughter Murugavalli/ P.W.2. After finishing the purchase of goods, when P.W.3 and P.W.2 were waiting in the Sivakasi road in front of Canara Bank, P.W.1 Kandammal went to the nearby shop to purchase some goods and by utilizing that privacy, the accused suddenly appeared in a two wheeler and by proclaiming against Kandammal that, only because of her existence, he could not live with his wife, P.W.2 and his children and therefore, he declared to murder her. At the same time of such proclamation, the accused attacked on the head of Kandammal with aruval which was thwarted by P.W.1, as a result of which, she sustained cut injuries on her left wrist, fingers, on the side of neck, head etc. P.W.2 Murugavalli and P.W.3 Ponnuthai ran to help P.W.1, who fell down on the road with bleeding injuries. By taking advantage of the situation, the accused disappeared from the scene of occurrence by riding his motor cycle. The injured P.W.1 Kandammal was taken to Srivilliputhur Government Hospital.

5. On receipt of the information received, P.W.8, Mrs. Viji, Services Engineering Services Police, recorded the statement of P.W.1 as Ex.P.1.

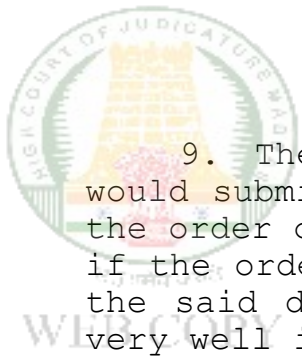


Based on the statement made by P.W.1 a case was registered, as found in Ex.P.7, the First Information Report. Thereafter, P.W.11, Mr.Sivalinga Sekar, Inspector of Police took up the further investigation of the case and visited the place of occurrence and prepared the observation mahazar, Ex.P.2 in the presence of P.W.7 Annamalaiselvan and Govindaraj and also prepared the rough sketch marked as Ex.P.9. Thereafter, the Inspector of Police secured Sonata Gold colour chain watch under the cover of mahazar marked as Ex.P.3. The Inspector of Police, on coming to know about the surrender of the accused before the learned Judicial Magistrate, Court No.II, Madurai, who was also found to be remanded to judicial custody. Therefore, the Inspector of Police took him under police custody for the purpose of interrogation. After investigation, on 20.03.2008, the accused gave his voluntary confession statement, which is Ex.P.4 in the presence of P.W.7 and one Govindaraj. Based on the confession statement, M.O.1, Aruval was seized and produced under the cover of mahazar Ex.P.5, from a hiding place. Again by 5:45 p.m., at Pillaiyarpatty, the accused produced TVS Star City motor cycle bearing registration No.TN 74 U 1597 (M.O.3) and the same was seized by the Inspector of Police in the presence of the witnesses through Ex.P.6 mahazar. The Inspector of Police also enquired P.W.9 Dr.Mariappan and P.W.10 Dr.Arivarasan, who gave treatment to P.W.1 Kandammal and secured the accident register copy, marked as Ex.P.8. Based on the investigation made, the Investigating Officer filed the final report.

6. The Special Court issued summons to the accused and he was furnished with all the documents in accordance with Section 207 of Cr.P.C. Thereafter, on the basis of the incriminating materials collected during the course of the investigation, charges were framed against the accused for offences under Section 307 of I.P.C.

7. To prove the case, the prosecution examined P.W.1 to P.W.11 witnesses and marked Exhibits Ex.P.1 to Ex.P.9 and M.O's 1 to 3 were marked. On behalf of the defence side, no witness and material objects were marked. The incriminating materials that were collected during the course of trial were put to the accused while he was questioned under Section 313 (1) (c) of Cr.P.C. and the same was denied as false.

8. The trial Court after considering the facts and circumstances of the case and after analyzing the oral and documentary evidence, came to a categorical finding that the prosecution has made out the case beyond reasonable doubts and proceeded to convict and sentence the accused in the manner mentioned supra. Aggrieved over the said order of conviction, the accused preferred an appeal in Crl.A.No.77 of 2010, before the Principal and Sessions Judge, Virudhunagar District, Srivilliputhur, dated 20.08.2013, whereby the Lower Appellate Court acquitted the accused from the charges levelled against him. Aggrieved against the



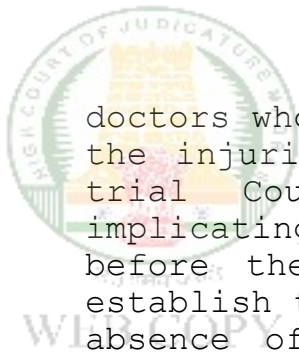
9. The learned counsel appearing for the appellant / P.W.1 would submit that, though normally this Court does not interfere in the order of acquittal passed by the Lower Appellate Court, however, if the order passed by the Lower Appellate Court is perverse and if the said decision is against the legal parameters, this Court can very well interfere with such order of acquittal.

10. The learned counsel for the appellant would further submit that the relationship of the accused with P.W.2, P.W.1 and P.W.5, who are his wife, mother-in-law and brother-in-law, is not in dispute. The accused married P.W.2, with the consent of P.W.1 and the same is also not in dispute in this case. Soon after some years after the marriage, there arose misunderstanding between the accused and P.W.2, as a result of which, P.W.2 applied a petition for divorce.

11. Initially, when difference of opinion arose between the couple, P.W.2 had filed two complaints against the accused, which the accused believed that it was due to the instigation of P.W.1, though P.W.1 denied her involvement in the filing of the above said petitions against the accused person. The earlier act of P.W.1 in instigating P.W.2 to file cases against the accused, provoked the accused to take the decision of taking away the life of P.W.1. Accordingly on that fateful day, the accused came with an Aruval and attacked P.W.1 and thereby caused severe cut injuries to her. Hence, the intention to commit murder by the accused is clearly established by adducing the evidence of P.W.1 and P.W.2. Though the independent witness P.W.3 and 4 turned hostile, however the evidence of P.W.1 and P.W.2 corroborates with the evidence of the Doctors/ P.W.9 & P.W.10, who gave initial treatment to P.W.1 and the A.R. Copy and the evidence of the doctors is sufficient to implicate the accused for the offence under Section 307 of IPC.

12. However, the learned counsel for the appellant further submitted that the Lower Appellate Court completely went wrong by relying upon the evidence of P.W.3 and 4 hostile witnesses and acquitted the accused which is not sustainable one, wherein the trial Court appreciated the entire evidence and convicted the accused under Section 307 of IPC. Therefore, the learned counsel prayed this Court to restore the conviction order passed by the trial Court and set aside the order of acquittal passed by the Lower Appellate Court. Accordingly, he prayed for allowing this Criminal Appeal.

13. Per contra, the learned counsel appearing for the second respondent herein/accused, stated that the relationship of the prosecution witnesses with the accused is not in dispute. The injuries sustained by P.W.1 on that particular day is also not in dispute. P.W.1 has taken treatment from P.W.9 and P.W.10, the



doctors who have given treatment to P.W.1 and through the A.R. copy, the injuries sustained by P.W.1 is clearly established before the trial Court. However, the necessary injuries required for implicating the accused under Section 307 of IPC is not established before the trial Court. It is the duty of the prosecution to establish that the accused had an intention to murder P.W.1. In the absence of material evidence, the lower Appellate Court rightly acquitted the accused and the same cannot be interfered with, in a mechanical manner and further the order of acquittal cannot be interfered with, in a routine mechanical manner unless the perversity is established.

14. Repudiating the above submissions, learned counsel for the appellant would submit that admittedly, the Law Enforcing Agency did not prefer any appeal against the acquittal of the accused. However, the trial Court after appreciating the entire evidence, including P.W.1, 2 and 6 and the evidence of the doctors P.W.9 and P.W.10, who gave treatment to P.W.1 and based on the relevant materials and evidences, the trial Court convicted the accused. However, the lower Appellate Court erroneously acquitted the accused, which has to be necessarily interfered with.

15. Further, the learned Government Advocate (Criminal side) fairly concedes that though the intention of the accused was not clearly established before the trial court, however, necessary injuries as referred under Section 325 of IPC is established. Further, the injuries sustained by P.W.1 is not in dispute and the A.R. copy and the doctor's evidence have clearly established the injuries sustained by her. Therefore, this Court may pass appropriate orders.

16. This Court paid its undivided attention to the submissions advanced by the learned counsel for the parties and also perused the materials available on record to which this Court's attention was drawn.

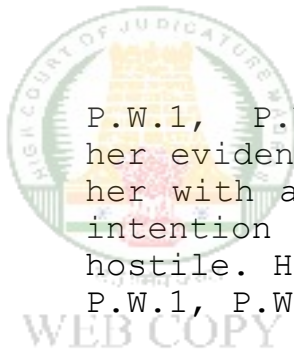
17. The issues arising for consideration are as follows:

"(i) Whether any material is available to interfere with the orders of acquittal passed by the lower Appellate Court?

(ii) Whether necessary ingredients required for implicating the accused under Section 307 of IPC is established or not?

(iii) Whether the injuries sustained by P.W.1 is established and who is responsible for that injury caused due to her?

18. All the above issues are inter connected. Hence, the issues are answered commonly. The entire prosecution case revolves around



P.W.1, P.W.2, P.W.6, P.W.9 and P.W.10. Though P.W.1 had deposed in her evidence that in front of P.W.3 and P.W.4, the accused attacked her with an aruval and caused severe cut injuries to P.W.1 with an intention to commit murder, the witnesses P.W.3 and P.W.4 have turned hostile. Hence this Court is put to task to analyze the evidence of P.W.1, P.W.2, P.W.6, P.W.9 and P.W.10.

19. Considering the facts and circumstances of the case, P.W.1 is the mother-in-law of the accused and mother of P.W.2 and P.W.5. On a perusal of the evidence of P.W.1, who has clearly deposed that her daughter got separated from the accused person and thereafter a criminal case was filed against the accused in which the accused paid the fine amount and the said evidence is corroborated in Ex.P.4 confession statement made by the accused person. Though the confession statement made by the accused person is not an admissible one, however, the information revealed by P.W.1 is corroborated with Exhibit ExP.4 confession statement. At the time of occurrence, P.W.2 daughter of P.W.1 accompanied with P.W.1. In her evidence, she has clearly deposed that the accused person attacked her mother and in order to save her life, P.W.1 defended the attack thereby obtained cut injuries on her hand and the said cut injuries were sustained due to the act of the accused that is also clearly established and the doctor's evidence also clearly corroborated with the evidence of P.W.1 and P.W.2. Hence, this Court has no hesitation to arrive at a conclusion that the injuries sustained by P.W.1 are grievous injuries by the act of the respondent / accused. However, on a close perusal of the evidence of P.W.1, P.W.2 and P.W.6 there is no whisper with regard to the intention of the accused to commit the murder. In this regard, it is relevant to refer the judgment of the Hon'ble Apex Court reported in **2019 (1) Crime 12(SC)** in the case of **Champa Lal Dhakar vs. Naval Singh Rajput & others** and the relevant paragraphs are referred hereunder:

" 5. Heard learned counsel appearing on behalf of the parties at length. We have also perused and considered the material on record, more particularly, the injuries sustained by the original Complainant. Considering the material/evidence on record, we have noticed that the complainant sustained injuries on the nose and fracture of the nasal bone was found. That the case may fall within the grievous hurt, but it cannot be said that even, prima facie, a case is made out for the offence under Section 307 of the IPC. Section 307 of the IPC reads as under:

"307. Attempt to murder.—Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to



imprisonment for life, or to such punishment as is hereinbefore mentioned."

6. Considering the material/evidence on record and the medical certificate and the injuries sustained by the complainant, it cannot be said that the intention of the accused was to cause death of the complainant. Therefore, as rightly observed by the High Court, a charge under Section 325/149 ought to have been framed. Therefore, the High Court has not committed any error in setting aside the order passed by the trial Court insofar as framing the charge under Section 307 of the IPC. We are in complete agreement with the view taken by the High Court."

20. In the absence of necessary ingredients required for implicating the accused for the offence under Section 307 of IPC, the Prosecuting Agency failed to establish the offence under Section 307 of IPC. Admittedly, due to the attack of the respondent accused, P.W.1 sustained grievous injuries that is also established on examination of the evidence of P.W.9 and 10 and the A.R. Copy.

21. In view of the above, this Court has arrived at a conclusion that the necessary ingredients to implicate the accused under Section 325 of IPC which states that, "*Punishment for voluntarily causing grievous hurt - Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine*", and the same has been clearly established and accordingly, the conviction in respect of Section 307 of IPC is set aside and the accused is convicted under Section 325 of IPC and sentenced to undergo imprisonment for a period of three months and to pay a fine of Rs.5000/- fine, in default to undergo Simple Imprisonment for a period of one month.

22. Accordingly, the earlier sentence made in S.C.No.196 of 2008 on the file of the Learned Chief Judicial Magistrate, Virudhunagar District at Srivilliputhur, dated 15.07.2010 sentencing the accused to undergo 5 years Rigorous Imprisonment and to pay a fine of Rs.2,000/- in default, to undergo 6 months Simple Imprisonment is modified from Section 307 IPC to Section 325 of IPC and therefore, the accused is sentenced to undergo imprisonment for a period of three months and to pay a fine of Rs.5000/- fine, in default to undergo Simple Imprisonment for a period of one month.

23. With the above modification, the Criminal Appeal stands partly allowed. The trial Court is directed to secure the accused to <https://services.courts.gov.in/services/> during period of sentence. It is further directed that



the period already undergone by the accused shall be given set off under Section 428 of Cr.P.C.

Sd/-

Assistant Registrar (AD II)

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/ /2020

Sub Assistant Registrar(CS)

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To

- 1.The Principal Sessions Judge,
Virudhunagar District,
Srivilliputhur.
2. The Chief Judicial Magistrate,
Virudhunagar District, Srivilliputhur.
3. The Inspector of Police,
Srivilliputhur Town Police Station,
Srivilliputhur, Viridhunagar District.
(Cr.No.186 of 2008)
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 5.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

+1 CC to M/s.K.SEEMARAJ, Advocate (SR-10945[F] dated 10/03/2020)

Judgment made in

CRL.A. (MD)No.166 of 2015

Dated:

10.03.2020

KK(24.06.2020) 8P 8C