



BAIL SLIP

The Appellant in CrI.A.No.130 of 2016 Viz., R.Murugan S/o Ramachandran aged 30 years was directed to be released on Bail as per order of this Court dated 21/06/2017 made in CrI.MP.No.6449 of 2017 in CrI.A.No.130 of 2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.10.2021
PRONOUNCED ON : 29.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CrI.A.No.130 of 2016

R.Murugan

... Appellant/Accused

Vs.

The State represented by
The Inspector of Police,
Sendurai Police Station, Ariyalur District.
(Cr.No.161 of 2014).

... Respondent/Complainant

Prayer: This Criminal Appeal has been filed under Section 374 (2) of Cr.P.C., to call for the records relating to the conviction and sentence passed by the learned Sessions Judge, Fast Track Mahila Court, Ariyalur, in S.C.No.61 of 2015, dated 05.11.2015 and set aside the same.

For Petitioner : Ms.A.Veeramarthini
Legal Aid Counsel

For Respondent : Mr.S.Vinoth Kumar
Public Prosecutor

JUDGMENT

The convicted accused is the appellant herein.

2.This appeal is filed by the sole accused challenging the order of conviction and sentence passed in S.C.No.61 of 2015, by the learned Fast Track Mahila Judge, Ariyalur, dated 05.11.2015, wherein the learned Judge has found the accused guilty and convicted him for the offence under Section 307 of IPC and sentenced him to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.15,000/-, in default to undergo six months rigorous imprisonment. Out of



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the fine amount, a sum of Rs.10,000/- is ordered to be paid to PW1/victim viz., Vijayalakshmi under Section 357 of Cr.P.C. Further, Taluk Legal Service was directed to award suitable compensation as the compensation awarded under Section 357 of Cr.P.C.

3(a)(i).The case of the prosecution is that PW2/complainant namely Rajalakshmi, who is the sister of the victim/PW1 viz., Vijayakumari, who married the appellant herein viz., R.Murugan of Kodukkur Kadikadu Village about seven years ago. The appellant herein/accused and the victim are having three children.

3(a)(ii).The appellant/accused doubted the fidelity of the victim, which resulted in frequent quarrels. About six months prior to the complaint both the appellant and the victim had a quarrel and in the end, the victim came to her parents house at Marudur Village and there she gave birth to a female child.

3(a)(iii).On 12.08.2014 at about 1.00 pm., when the victim PW1 viz., Vijayakumari was chatting with her sister viz., Rajalakshmi (PW2) and grandmother viz., Muthulakshmi (PW3), the appellant/accused came there and picked up a quarrel with her and said "நான் கூப்பிட்டா வரமாட்ட, சுக்கரவாத்தி கூப்பிட்டா போவியா" and took out a Sickle (MO1) which was hidden behind his back and attacked her on the left side of the head, back of the head, left shoulder and left forearm and wrist uttering the word "ஒழிந்துபோடி", Thereby, the victim fell down with bleeding injuries.

3(b).The learned Sessions Judge has framed the charge for the offence under Section 307 of IPC. To prove the charge, the prosecution has examined PW1 to PW11 and marked Exs.P1 to P13 and MO1/knife was marked.

3(c).PW1 is the victim girl; PW2 is the younger sister of PW1; PW3 is the grand mother of PW1 viz., Muthulakshmi (another witnesses); PW4 is the father of the victim girl; PW5 & PW6 are the attestors of the observation mahazar; PW7 is the attestor of the confession statement, who has turned hostile; PW8 is the Doctor, who had treated PW1/victim girl and issued Ex.P7/accident registrar & Ex.P8/wound certificate, which is discussed in detail infra; PW9 is the Sub-Inspector of Police, who has registered FIR on 12.08.2014; PW10 is the another Doctor, who had issued Ex.P10/Case Sheets Series, which is discussed in detail infra; PW11 is the Investigating Officer, who has prepared observation mahazar.

3(d).After perusing the oral and documentary evidence, the learned Sessions Judge, Ariyalur, has convicted the accused for the offence under Section 307 of IPC and sentenced him as stated supra. Aggrieved against the said conviction



and sentence, accused has preferred the present Criminal Appeal before this Court.

4. Heard Ms.A.Veeramarthini, learned Legal Aid Counsel for the appellant/accused and Mr.S.Vinoth Kumar, learned Public Prosecutor for the respondent and perused the materials placed on record.

5. The learned legal aid counsel appointed for the appellant/convicted accused would contend that the introduction of the word "Kallapurushan" by PW1 to PW3 only during their course of evidence and not during the statement of witnesses recorded under Section 161(3) of Cr.P.C., is an indication that the witnesses were tutored witness. PW2 & PW3 are not the occurrence witness since they are not prevented the alleged attack of the appellant against the victim. Further, PW2 & PW3 who were present at the place of alleged occurrence clearly states both in their evidence and also in the statements of witnesses recorded under Section 161(3) of Cr.P.C that they did not try to stop the appellant/accused from attacking the victim. Further, the description of weapon by the complainant did not match with MO1/sickle.

6. The learned Public Prosecutor would contend that the prosecution has let in positive evidence to prove the charge for the offence under Section 307 of IPC and the oral evidence of occurrence witness PW1 to PW3. The motive and intention to commit the offence of murder of the victim is established, which is established from the victim's evidence and also corroborated by the medical evidence.

7. The point for consideration in this appeal are:

(i) whether the charge under Section 307 of IPC is proved beyond reasonable doubt and the conviction under Section 307 of IPC is sustainable.

(ii) whether the sentence awarded by the Trial Court is excessive.

8. The learned legal aid counsel would contend that introduction of the word "Kallapurushan" (meaning paramour) by PW1 to PW3 during the course of their evidence is an embellishment, amounting to contradiction. This Court has given its anxious consideration for the said contention. The word Kallapurushan (paramour) "was spoken to by PW1 to PW3 only during the recording of evidence at the time of the trial" has no significance, for more than one reason, the relationship between PW1 and PW2 is as that of husband and wife. It is a specific case of the prosecution that the appellant/accused has suspected the fidelity of PW1/victim and also challenged the paternity of the third child born. Unable to bear the torture given by the appellant/accused, PW1/victim has moved over to maternal house and delivered the baby. hence, after exchange of words between the husband and wife,



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the appellant/accused alleged to have attack his wife doubting her fidelity and during such course of action they may utter so many words. Therefore, so called "prefix as Kallapurushan (paramour)" before the name of Chakkaravarthy does not lead to the conclusion that she is tutored witnesses.

9. On a perusal of the records, it is seen that the victim (wife of the accused) viz., Vijayakumari, was examined as PW1 and she has narrated her marital life with the accused. She had three female children. The victim spoke about the ill treatment by the appellant/accused during their matrimonial life. Further, it is her specific version that the appellant/accused always doubted her fidelity and also used to beat her oftenly. The accused did not take care of her when she was pregnant for the third time. Since no treatment was given to victim when she was pregnant, she came to her parents house at Marudur for child birth. Further, the victim has specific on the assault committed by the accused that on 12.08.2014 at about 1.00 p.m, when she was having chatting with her sister PW2/Rajalakshmi and grandmother PW3/Muthulakshmi, the accused came there and picked up a quarrel with her and took out an Aruval (M.O.1) which was hidden behind his back and attacked her on the left side of the head, back of the head, left shoulder and left forearm and wrist, due to which, she fell down with bleeding injuries and thereafter, she had underwent surgery and after, a steel plate has been implanted inside her forearm. Further, the victim has also expressed how she is suffering after the attack and she could not lift any items with her hand. Further, the aftermath of the assault, she is experiencing headaches, vomiting and other problems due to the injuries suffered by her. She could not work as normal as before.

10. PW8/Dr. Ravishankar, treated the victim at the hospital at Jayankondam on 12.08.2014 and also issued Ex.P7/accident register. In Ex.P7, it was recorded that the victim was attacked at her house by a known person at about 1.00 p.m with knife. The doctor found the following injuries on the body of the victim.

(i). a lacerated injury measuring 15cm x 1cm on the left temple region on the head.

(ii). a lacerated injury measuring 2cm x 2cm on the left shoulder.

(iii). a lacerated injury measuring 15cm x 1cm on the left forearm and wrist.

all the above injuries were noted in Ex.P7/accident register and thereafter, he was referred to Thanjavur Medical College Hospital for further management of the patient. The wound certificate issued at the Thanjavur Medical College Hospital through PW8 was also marked as Ex.P8. As per the wound certificate the third injury was of a grievous nature. The weapon (M.O.1) was also shown to the doctor and was questioned about possibilities of causing the injuries found on the body



of victim by use of the weapon. The doctor answered in affirmative, assumes significance.

11.PW10/Dr.Thirumalaipandiyan was working as Assistant Professor in the Thanjavur Medical College Hospital where the victim was treated by him. PW10 diagnosed the victim and found that the "radius bone on the left hand" of victim was broken. As per the evidence of PW10 and case sheet (Ex.P10 series) it was found that surgeries were performed on the victim. He also authenticated Ex.P8/wound certificate issued by him and marked through PW8.

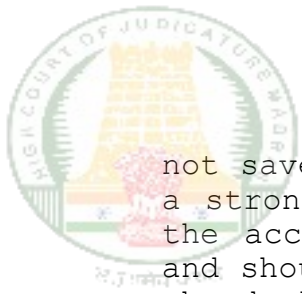
12.Thus, I find that the evidence of PW1/victim is duly corroborated by PW8 & PW10, who had issued Exs.P7, P8 & P10 series respectively, which goes to show that the nature of injury resulted in the body of PW1 due to the ferocious act of the accused with the use of M01/Sickle.

13.With regard to the act of the accused, the evidence of PW2/younger sister of PW1, duly corroborates the act and facts narrated by PW1. PW3/Muthulakshmi, is the eye witnesses to the attack of the accused on the victim and she has duly corroborated with the oral evidence of PW1 & PW2. There is nothing in the cross examination to discredit the independent evidence of PW3.

14.In the instant case, PW1 is the victim girl, she is none other than the wife of the accused and she lived with the accused more than seven years and they had three female children. Therefore, in the absence of any positive evidence being elicited in the cross-examination, it cannot be stated that the wife falsely implicated the accused, who is her own husband, whereby, she can put her future life to endanger and therefore, the reason assigned by the learned Sessions Judge for accepting the evidence of PW1 to PW3 mutually corroborated with each other, besides the evidence of PW1(victim) & PW3 independent witness were duly corroborated by the medical evidence of PW8 & PW10.

15.During the cross examination of PW8/Dr.Ravishankar in the witness box, he had deposed that it is possible for a person to cause such an injury as found in the body of the victim in connection with the weapon.

16.In view of the discussion in the preceding paragraphs regarding reliability of the evidence of prosecutrix/PW1 which is duly corroborated by PW3's independent witnesses and the same is duly corroborated by the medical evidence of PW8 and PW10, this Court finds that the accused went to the parents house of the victim on 12.08.2014 at 1.00 p.m and attacked her indiscriminately with Aruval (M.O.1) on the left side of her head, backside of her head, left shoulder, left forearm and wrist, in the presence of PW2 & PW3. PW3 an old lady, who could not even walk and PW2 who was gripped with fear could



not save PW1 from the attack by the accused, who is physically a strong and well built men. However, they had tried to stop the accused from further attacking the victim by pulling him and shouting. PW1 defended the attack by her left hand as such she had suffered radius bone fracture and lacerated injury measuring 15cm x 1cm on her left forearm and wrist. Hencer, there was no doubt that the appellant/accused attacked the victim with Aruval.

17.Thus, the Trial Court has rightly appreciated the facts on the proper prospective and arrived at the conclusion.

18.To attract the charge under Section 307 of IPC, intention or knowledge is essential. It is seen from the records that MO1/Sickle is used by the accused to cause the injury on the body of the victim and from the evidence of PW1, the accused has used it repeatedly. The accused attacked the victim persistently on the head, which was defended by the victim with her left hand, by which she has suffered radius bone fracture on her left hand and sustained an injury measuring 15cm x 1cm on her left forearm and wrist. She suffered an injury on her temple region and also on her left shoulder. The nature of the injuries and the seat of injuries on the body of the victim suggest that the appellant/accused persistently targeted the head of the victim. The accused also had a motive against the victim. He doubted the fidelity of the victim. Even during the attack he had uttered words and called her an infidel. PW1 to PW4 have spoken about the ill will of the accused against the victim. PW1 further deposed regarding the previous conduct and behaviour of the accused towards her. All the above evidence confirms that the accused had a motive against the victim.

19.Further, the weapon used by the accused was brought by him. He brought the Aruval discreetly hiding it in his shirt behind his back. The manner how the accused had carried the weapon implies that he came to the scene of crime, after preparation and armed with the weapon and it shows his pre-determined mind and pre-planned attack. Unless the accused had intention to kill the victim, he would not have come to the scene of crime armed with a weapon.

20.Hence, I find that the prosecution let in positive evidence to prove the charge under Section 307 of IPC beyond reasonable doubt and on similar reasoning, the Trial Court has rightly laid the conviction under Section 307 of IPC.

21.On the point of quantum of sentence, the learned legal aid counsel would contend that some leniency may be shown citing his economical condition. In the instant case, the victim sustained serious injuries, her left hand had become useless and she is experiencing the aftermath of the attack such as giddiness, vomiting and other problems. The attack on her head left her in a miserable condition. She has to take



care of her children also. Considering all the above aspects and the family background age and economic status of the appellant/accused is punished moderately.

22.Hence, the conviction under Section 307 of IPC is hereby confirmed and the sentence awarded for seven years rigorous imprisonment by Trial Court is reduced to six years and the fine of Rs.15,000/- awarded by the Trial Court is confirmed.

23.In the result, this Criminal Appeal is partly allowed and the conviction passed by the learned Fast Track Mahila Court Judge, Ariyalur, in S.C.No.61 of 2015, dated 05.11.2015, is hereby confirmed and the sentence is reduced to the extent as indicated above. Since the appellant/accused was enlarged on bail, the learned Sessions Judge is hereby directed to take steps to secure the accused to undergo balance of period of sentence.

Sd/-

Assistant Registrar (CCC)

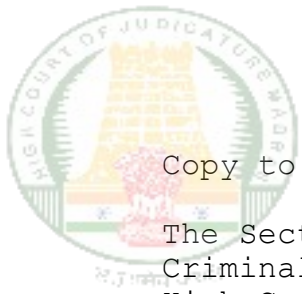
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Sub Assistant Registrar

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To:

- 1.The Sessions Judge,
Fast Tract Mahila Court,
Ariyalur.
- 2.The Inspector of Police,
Sendurai Police Station,
Ariyalur District.
(Cr.No.161 of 2014).
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Judicial Magistrate,
Ariyalur.
- 5.The Chief Judicial Magistrate,
Ariyalur.
- 6.The Central Prison,
Tiruchirapalli.



Copy to:

The Section Officer,
Criminal Section,
High Court,
Madras.

+2ccs to M/s.A.Veeramarthini, Advocate SR. No.57066

Crl.A.No.130 of 2016

PM (CO)

PR (04/01/2022)