



BAIL SLIP

The Appellant/Sole Accused M.Mahendiran was directed to be released on bail vide order dated 08.06.2016 made in Cr1 Mp.4156/16 in Cr1 A. (MD).184/2016 on the file of this Court.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 28.09.2021

Pronounced on : 06.10.2021

C O R A M

THE HON'BLE MR.JUSTICE R. PONGIAPPAN

Criminal Appeal (MD) No.184 of 2016

M.Mahendiran

... Appellant / Sole Accused

versus

State, Represented by
The Inspector of Police,
Vangal Police Station,
Karur District.
(Crime No.8 of 2015)

... Respondent / Complainant

Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, to set aside the conviction and sentence dated 13.05.2016, passed in S.C.No.91 of 2015, on the file the learned Sessions Judge (Fast Track Mahila Court), Karur.

For Appellant : Mr.M.Ajmalkhan
Senior Counsel
for M/s.Ajmal Associates

For Respondent : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor

For Victim/Injured : Mr.N.Anandkumar

J U D G M E N T

This criminal appeal is directed against the conviction and sentence dated 13.05.2016, made in S.C.No.91 of 2015, on the file of the learned Sessions Judge, Fast Track Mahila Court, Karur.

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



2.The appellant is the sole accused. He stood charged for the offences under Sections 307 and 506(ii) I.P.C. After full-fledged trial, the learned Sessions Judge, Fast Track Mahila Court, Karur, came to the conclusion that the accused is guilty under Section 307 I.P.C., convicted and sentenced him to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for one month. In respect of the charge under Section 506(ii) I.P.C., the learned Sessions Judge acquitted the accused.

3.Challenging the said conviction and sentence, the appellant/accused is before this Court with this Criminal Appeal.

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

(i) One Jeyanthi, who is the wife of the accused, is the injured in this case. P.W.1 - Ramasamy is her grandfather. On 05.01.2015 while at the time P.W.1, P.W.4, P.W.5 and the injured were in the house of P.W.1, the accused came there and after developing a wordy quarrel with the injured, when the accused attempted to attack her with the aid of Aruval, the injured resisted the same, however, the accused cut the left hand wrist of the injured. After seeing the same, when the injured Jeyanthi tried to run away from the said place, by using the same weapon, the accused attacked the injured near the left knee. Thereafter, a crowd was gathered there and after seeing the crowd, the accused Mahendran ran away from the scene of occurrence.

(ii) Subsequent to that, by utilizing the services of 108 Ambulance, the injured was brought to the Amaravathi Hospital, Karur, wherein, the Doctor refused to give treatment and therefore, the injured was brought to Coimbatore Hospital, wherein she was admitted as Inpatient. In the meantime, P.W.1 lodged a complaint under Ex.P.1 before the Station House Officer, Vangal Police Station.

(iii) On receipt of the said complaint, P.W.9 - Balamurugan, the then Inspector of Police, Vangal Police Station, registered a case against the accused in Crime No.8 of 2015 under Section 307 I.P.C. The printed F.I.R. is marked as Ex.P.5. After registering the case, he took up the same for investigation. On 06.01.2016 around 08.00 a.m., he visited the scene of occurrence. In the presence of witnesses, he prepared an Observation Mahazar under Ex.P.2. He drew the Rough Sketch and the same was marked as Ex.P.6. He examined the witnesses and recorded their statements. He submitted an application before the Judicial Magistrate Court No.II, Karur, for taking the accused to the Police custody. In turn, the said application was ordered in favour of the respondent Police and after taking Police custody, during enquiry, the accused gave a confession statement, wherein he admitted the commission of offence

<https://hcservices.judges.gov.in/hcservices/> produce the Aruval, which was hid in a Culvert.



(iv) P.W.9 in the presence of witnesses recorded the confession statement and went to the Thalavapalam Culvert and after identifying the weapon, he recovered the same under the cover of Mahazar Ex.P.3. He examined P.W.9 - Dr.Madhu Periyasamy, who issued wound certificate and after concluding investigation, he came to the positive conclusion that the accused is liable to be convicted under Sections 307 and 506(ii) I.P.C. He filed a final report accordingly.

5.From the above materials, the trial Court framed charges under Sections 307 and 506(ii) I.P.C. The accused pleaded not guilty and opted for trial. Hence, in order to prove their case, on the side of the prosecution, 9 witnesses were examined as P.W.1 to P.W.9 and 7 documents were marked as Ex.P.1 to P.7, besides one Material Object (M.O.1).

(i) Out of the said witnesses, P.W.1 - Ramasamy, who is the grandfather of the injured as a de-facto complainant, has stated about the occurrence as, on 05.01.2015 when at the time, he was in his house along with P.W.4, P.W.5 and the injured, the accused came there and after made quarrel with the injured with the aid of Aruval, caused injury on the left hand wrist and near the left knee. He has further stated that after the occurrence, the injured was admitted as Inpatient in Ganga Hospital. In this regard, he lodged the complaint [Ex.P.1] before the respondent Police.

(ii) P.W.2 - Thangammal and P.W.3 - Pappayee, who are the eyewitnesses to the occurrence, have not given any evidence in support of the case of prosecution. Hence, they were treated as hostile witnesses.

(iii) P.W.4 - Selvarani, who is the wife of P.W.1, gave similar evidence as deposed by P.W.1.

(iv) P.W.5 - Saraswathi, who is the grandmother of the injured Jeyanthi, has stated before the trial Court as, prior to the occurrence, the injured Jeyanthi eloped with the accused and afterwards, she married the accused. In the said circumstances, in respect of missing of Jeyanthi, a complaint has been lodged before the Velayuthampalayam Police Station, further, Habeas Corpus Petition has also been filed before this Court. After securing the injured, when at the time, she was produced before this Court, she made a statement as, she is willing to join with the accused. Subsequent to the said events, the injured leads a matrimonial life along with the accused in Namakkal, wherein the accused demanded the injured to bring immovable property owned by her family members. In view of such intolerant attitude of the accused, the injured lodged a complaint before the Superintendent of Police, Namakkal District and thereafter, she was examined in Velayuthampalayam Police Station. Subsequent to the examination, she wanted to go along with her mother. Subsequent



to that, she was residing with her parents at Panduthakaranpudur. She has further stated that while at the time of occurrence, the accused made a quarrel, as a result of which, with the aid of Aruval, attacked the injured on the left hand wrist and near to left knee.

(v) P.W.6 - Subramani has stated about the preparation of Observation Mahazar [Ex.P.2] as, P.W.9 prepared an Observation Mahazar in the occurrence place in his presence. He has further stated that the confession statement, which was given by the accused and the Seizure Mahzar [Ex.P.3], which was prepared for recovery of the Aruval, were prepared in his presence.

(vi) P.W.7 - Thangavel, who is the alleged occurrence witness, did not give any evidence in support of the case of prosecution. Hence, he was treated as hostile witness.

(vii) P.W.8 - Dr.Madhu Periyasamy attached with Ganga Hospital, speaks about the nature of injury sustained by the injured and about the issuance of wound certificate.

(viii) P.W.9 - Balamurugan, the then Inspector of Police gave evidence in respect of receipt of complaint, registration of the case, investigation and about the filing of final report.

6.When the above incriminating materials were put to the accused under Section 313 Cr.P.C., the accused denied the same as false. However, he did not choose to examine any witness or mark any document on his side.

7.Having considered the materials placed before him and on considering the arguments advanced by the learned counsel appearing on either side, the learned Sessions Judge, Fast Track Mahila Court, Karur, came to the conclusion that the appellant was guilty under Section 307 I.P.C., convicted and sentenced him as stated in paragraph 2 of this judgment.

8.Aggrieved over the said findings, the accused is before this Court with this criminal appeal.

9.I have heard Mr.M.Ajmalkhan, learned Senior Counsel appearing for the appellant, Mr.N.Anandkumar, learned counsel appearing for the injured/victim, and Mr.M.Muthumanikkam, learned Government Advocate (Criminal side) appearing for the respondent Police.

10.The learned Senior Counsel appearing for the appellant would contend that before the trial Court in respect of motive attributed against the injured, the evidence given by the prosecution witnesses is having lot of contradictions. The witnesses, who gave evidence in support of the case of prosecution, are all related to P.W.1 and therefore, the evidence given by them have to be scrutinized with <https://services.e-courts.gov.in/services/>. The evidence given by the Medical Officer [P.W.8]



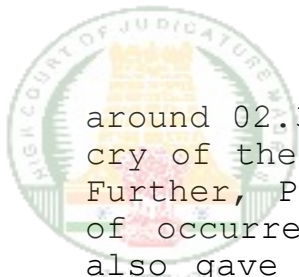
in respect of nature of injury sustained by the injured is not in accordance with the evidence given by P.W.1 and P.W.5. The learned Senior Counsel would further submit that P.W.1 - de-facto complainant is having previous enmity with the accused and therefore, he lodged the false complaint. The learned Senior Counsel also would contend that the injured, who is the crucial witness to speak about the occurrence, had not been examined as a witness before the trial Court. For non-examining the injured, the prosecution has not offered reasonable explanation and therefore, the conviction and sentence awarded against the accused is liable to be set aside.

11.Per contra, the learned Government Advocate (Criminal side) appearing for the respondent Police would contend that non-examination of the injured alone is not sufficient to throw away the entire case of prosecution. The evidence given by P.W.1, P.W.4 and P.W.5 are all in support of the case of prosecution as, during the relevant point of time, the accused attacked the injured and caused injuries and therefore, interference of this Court in the findings arrived at by the trial Court does not require.

12.I have considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on record.

13.Initially, being the reason that the accused herein was convicted under Section 307 I.P.C., it would be necessary to see whether the prosecution has projected the motive, which is having by the accused over the injured. In this regard, the evidence given by P.W.1 and P.W.4 is that, after the marriage, the accused made harassment to the injured with a view to obtain the immovable property owned by her family members. In this aspect, though P.W.1 and P.W.4 gave evidence in support of the case of prosecution, P.W.4 has stated in her cross-examination as one Kumarayee, who is the grandmother of the injured, executed a Will, wherein she bequeathed the property in favour of the injured. It is further evidence given by P.W.4 is that, the said property is in the possession of the accused. Therefore, the said evidence is sufficient to hold that there is no necessity for the accused demanding the injured to brought the immovable property owned by the family members of the injured. Hence, in view of the above, in the absence of any evidence from the injured, this Court cannot hold that prior to the occurrence, the accused harassed the injured with a view to grab the immovable property owned by her family members. So, in respect of motive, the story put forth by the prosecution creates a doubt whether the accused is having motive to kill the injured or not.

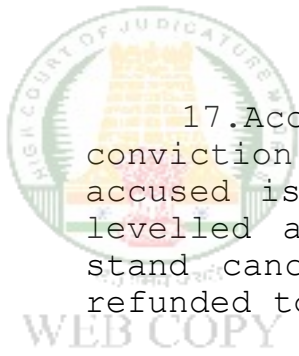
14.Secondly, in respect of the alleged occurrence though P.W.1, P.W.4 and P.W.5 had given evidence in support of the case of prosecution in their chief-examination, P.W.1 in his cross-examination admitted that during the relevant point of time



around 02.30 p.m., he was inside his house and after hearing hue and cry of the injured, he came out from his house and saw the injured. Further, P.W.4 has stated in her cross-examination as, at the time of occurrence, she was available in her house. Similarly, P.W.5 also gave evidence as, during the time of occurrence, she saw the accused in a two wheeler. Therefore, the said evidence given by P.W.1, P.W.4 and P.W.5 are very significant that they have not seen the occurrence fully as alleged by the prosecution. In otherwise, in respect of enmity having by P.W.1 with the accused, P.W.1 in his cross-examination has stated that he do not like the accused. Further, in this regard, he has admitted that, so far he had not withdrew the complaint given by him during the time the injured eloped with the accused. It shows that P.W.1 is having previous enmity with the accused.

15. One another important aspect, which is necessary to decide in this appeal is that, in view of the evidence given by P.W.1, P.W.4 and P.W.5, who are all relatives of the injured, during time of occurrence, the accused attacked the injured and caused injury on two areas of her body. In this regard, the wound certificate as well as in the evidence given by P.W.8 - Doctor, who treated the injured, gave evidence as, there was an injury in left forearm, left leg and right hand. Therefore, in respect of number of injuries sustained by the injured, the evidence given by the alleged witnesses is not tallied with the evidence given by P.W.8 - Doctor, who treated the injured. Therefore, the evidence given by the Doctor coupled with the evidence recorded from P.W.1, P.W.4 and P.W.5, create a doubt whether the alleged occurrence had happened in the presence of P.W.1, P.W.4 and P.W.5. In the said circumstances, the competent person to state the occurrence is the injured, who sustained injuries in the alleged occurrence. She is alone having the knowledge about the motive having by the accused and about the number of attacks made by him at the time of occurrence. But, without offering any explanation, she has not been examined as a witness before the trial Court. After levelling a charge under Section 307 I.P.C., non-examining the injured shows that, before the trial Court, without any involvement, the prosecution has proceeded the case.

16. Therefore, in the absence of any clear evidence in respect of attack and motive, this Court is not in a position to hold that the story put forth by the prosecution is true one. Accordingly, the discrepancies found in the evidence given by the eyewitnesses and in view of the non-examination of injured, I am of the considered opinion that the prosecution has not proved its case beyond reasonable doubt. The trial Court without appreciating the said aspects in proper perspective, imposed the conviction and sentence against the accused, which is erroneous. Hence, the same is liable to be set aside.



17. Accordingly, this Criminal Appeal is allowed and the conviction and sentence awarded by the trial Court against the accused is set aside. The accused is acquitted from the charges levelled against him. Bail bond, if any, executed by him shall stand cancelled and fine amount, if any, paid by him, shall be refunded to him.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

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To

1. The Sessions Judge [Fast Track Mahila Court],
Karur.

2. The Inspector of Police,
Vangal Police Station,
Karur District.

3. The Superintendent,
Central Prison, Trichy.

4. The Inspector of Police Town Police Station Dindigul.

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

6. The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s. AJMAL ASSOCIATES, Advocate (SR-31458[F] dated
07/10/2021)

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06.10.2021

RK(12.10.2021) 7P 9C