



BAIL SLIP

The Appellant/Sole Accused Pothumani was directed to be released on bail vide order of this Court dated:14.03.2016 and made in Cr1.MP(MD)No.823 of 2016 in Cr1.A(MD)No.24 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Cr1.A(MD)No.24 of 2016

Pothumani : Appellant/ Sole Accused
Vs.

The State, rep. by
The Inspector of Police,
Palaviduthi Police Station,
Karur District. Crime No.113 of 2014 : Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, to set aside the conviction and sentence made in S.C.No.80 of 2015 on the file of the Fast Track Mahila Court, Karur, dated 29.12.2015.

For appellant : Mr.J.S.Murali
Legal Aid Counsel
For Respondent : Mr.E.Antony Sahaya Prabahar
Government Advocate (crl.side)

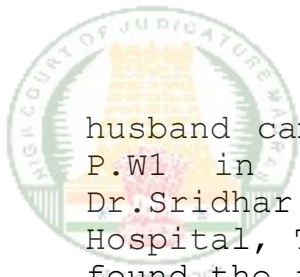
JUDGMENT

The present appeal is directed against the conviction and sentence, dated 29.12.2015, made in S.C.No.80 of 2015, on the file of the Fast Track Mahila Court, Karur.

2. The appellant is the sole accused. He stood charged for the offence punishable under Section 307 of IPC. After full-fledged trial, the learned Sessions Judge, Fast Track Mahila Court, Karur, came to the conclusion that the appellant was found guilty for the offence under Section 307 of IPC, convicted and sentenced 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. Challenging the said conviction and sentence, the appellant is before this Court, by way of filing the present Criminal Appeal.

3. The relevant facts of the case, which gave rise to the filing of this appeal are necessary to be recapitulated for the disposal of this appeal:-

(i) P.W1-Muthammal is the co-sister of the accused. On 23.10.2014 around 8.00 a.m., when PW1 was taking water in Public bore-well, the accused after suspecting the behaviour of P.W.1 as she is having illicit relationship with her husband, came and abused her by saying filthy language. During such time, when PW1 was moved to her resident, the accused attacked her with aruval and caused injury on her left neck. After hearing the cue and cry of P.W1, her



husband came there and by utilizing 108 ambulance, he admitted the P.W1 in the Government Hospital, Manamadurai, wherein, P.W7-Dr.Sridhar gave first aid and referred the injured to the Government Hospital, Trichy, however, while at the time of giving first aid, he found the following injury:-

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A large laceration of size 15 cm X 2 cm extending from post aspect of nape of neck on to the left ear lobe.

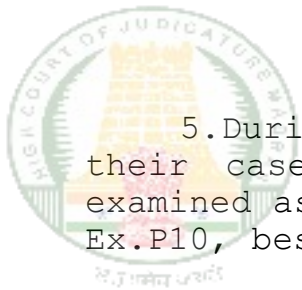
According to him, the injury sustained by P.W1 is simple in nature. In this regard, he issued the wound certificate under Ex.P.3. The Accident Register issued by Government Hospital, Trichy, was marked as Ex.P4.

(ii) In the Government Hospital, Trichy, P.W.8-Nilamegam, the then Sub-Inspector of Police attached with Palaviduthi Police Station, recorded the statement from P.W.1 under Ex.P1. After recording the statement, P.W.8 returned to the Police Station and registered a case against the accused in Crime No.113 of 2014 under Section 307 of IPC. The printed FIR was marked as Ex.P5. After registration of the case, he handed over the copy of FIR to P.W.10, for investigation.

(iii) On receipt of the said FIR, PW10-Adhiveera Ramapandiyan, the then Inspector of Police, Palaviduthi Police Station, on the same day around 3.30 p.m., visited the scene of occurrence and prepared an observation mahazar under Ex.P2. He drawn the rough sketch and the same was marked as Ex.P8. On the same day, around 5.00 p.m in Yannaivagana Savadi bus stand, he arrested the accused and in the presence of P.W5-Rajalingam and one Siva, he recorded the confession statement from him Pursuant to the confession statement given by the accused. He recovered the aruval, which was hidden in the house of the accused. The admitted portion of the confession statement given by the accused was marked as Ex.P9 and recovery mahazar prepared for the recovery of Aruval was marked as Ex.P10.

(iv) In continuation of investigation, P.W10 examined the witnesses and recorded their statements. He made arrangements for sending the accused to the remand. He examined the Doctor, who gave treatment to P.W1 and recorded his statement. After collecting the certificate from the Doctor, he concluded the investigation and came to the positive conclusion that the appellant while at the time of occurrence attempted to kill P.W1 and thereby, she is liable to be convicted under Section 307 of IPC. He filed the final report accordingly.

4. Based on the above materials available on record, the trial Court framed the charges against the accused under Section 307 of IPC. The accused denied the charge and opted for trial. Therefore, the accused was put on trial.



5. During the course of trial proceedings, in order to prove their case, on the side of the prosecution, 10 witnesses were examined as PW1 to PW10 and 10 documents were exhibited as Ex.P1 to Ex.P10, besides one material object (M.O.1).

6.(i) Out of the above said witnesses, PW1-Muthammal is the victim/injured in this case. She speaks about the occurrence as during the relevant point of time suspecting her character, the accused by using aruval attacked on her back side and caused injury in the left neck.

(ii) P.W2-Kulanthaivel and P.W3-Pandiyan, who are the alleged eyewitnesses, did not give evidence in support of the case of the prosecution. Hence, after getting leave from the trial Court, they were treated as hostile witnesses.

(iii) P.W.4-Manickam, who is the husband of P.W1, speaks about the occurrence as during the relevant point time, the accused by using aruval attacked P.W.1 and caused injury.

(iv) P.W.5-Rajalingam gave evidence as the observation mahazar exhibited in this case was prepared by P.W10 in his presence. P.W.6-Perumal and P.W.9-Katthan, who are the residents of Ayyampalayam East, signed as witnesses in the confession statement given by the accused, have not stated anything in support of the prosecution. Hence, they were treated as hostile witness.

(v) P.W7-Dr.Sridhar attached with Government Hospital, Manamadurai, speaks about the details of treatment given to P.W1. According to him, the injury sustained by P.W1 is simple in nature.

(vi) P.W8-Nilamegam, the then Sub-Inspector of Police, Palaviduthi Police Station, gave evidence as after the occurrence, he went to the Government Hospital, Trichy and recorded the statement from P.W.1. He further stated that after recording the statement, he has registered the case against the accused in Crime No.113 of 2014 under Section 307 of IPC.

(vii) P.W10- the then Inspector of Police speaks about the receipt of the copy of FIR and in respect to the investigation made by him and about the filing of final report.

7. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., the accused denied the same as false. However, she did not choose to examine any witness nor mark any document on her side.

8. Having considered all the material and on considering the arguments advanced on either side, the learned Sessions Judge, Fast Track Mahila Court, Karur, came to the conclusion that the accused



was found guilty under Section 307 of I.P.C, convicted and sentenced as stated in paragraph No.2 of this judgment. Aggrieved by the said conviction and sentence, the appellant/accused is before this Court with this appeal.

9. I have heard Mr.J.Murali, learned legal aid counsel appearing for the appellant/accused and Mr.E.Antony Sahaya Prabahar, learned Government Advocate (crl.side) appearing for the State and also perused the records carefully.

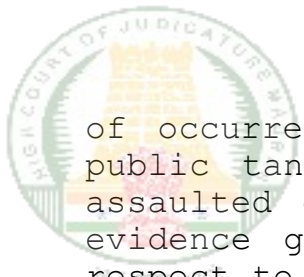
10.The learned counsel appearing for the appellant would contend that before the trial Court, in respect to the occurrence, except P.W1, none of the witnesses examined on the side of the prosecution have not given any evidence in support of the evidence given by P.W1. Further, in respect to the recovery, the evidence given by Investigation Officer has not been proved through independent witnesses and therefore, it cannot be held that the accused is guilty for the offence under Section 307 of IPC.

11.Per contra, the learned Government Advocate (crl.side) appearing for the State would contend that though the evidence given by P.W1 is not corroborated through independent witnesses, considering the fact that the evidence given by P.W1 in respect to the assault made by the accused is not having any infirmity, it could be concluded that the accused alone during the time of occurrence attempted to murder the P.W1 and therefore, the conviction and sentence rendered by the trial Court cannot be set aside.

12.I have considered the rival submissions made by the learned counsel appearing on either side.

13.It is the case before the trial Court, to prove the occurrence except P.W1, the witnesses examined on the side of the prosecution as eyewitnesses to the occurrence, have not supported the case of the prosecution. Therefore, in the absence of corroborative piece of evidence, it is necessary to decide whether the solitary testimony of P.W1 is sufficient to accept the case of the prosecution with entirety.

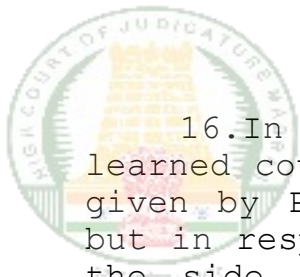
14.Here it is the case, the evidence given by P.W1 is very clear during the relevant point of time, the accused came to the occurrence place with aruval and attacked on her left backside. She has further stated after made attack as above, the accused ran away from the scene of occurrence. In the said circumstances, though she has narrated the occurrence as above in the chief examination, in her cross-examination, she has stated as while at the time, the accused made abuse, she has not found with any weapon. Now, on considering the said evidence with the story projected by the prosecution, it is the case of the prosecution that during the time



of occurrence, while at the time P.W1 was taking water from the public tank, the accused came with aruval and after made abuse, assaulted on the back side of P.W1. In the said occasion, the evidence given by P.W1 in her cross-examination, specifically in respect to the possession of weapon by the accused, posed a question as in the absence of any weapon how the accused attacked P.W1 and caused cut injury.

15.Yet another occasion, which creates a doubt in this case, is that P.W1 in her cross examination has admitted that the alleged occurrence had happened on the day of Deepavali. Further she says on the day of Deepavali, she has not going out from her residence. In the said circumstances, if the said evidence is taken into account, it is impossible for the accused to attack P.W1 as alleged by her. In the said circumstances, the whole evidence given by P.W1 comes under the category of neither wholly reliable nor wholly unreliable and therefore, the said evidence given by P.W1 needs corporation. At this juncture, it would relevant to see the judgment of **Vadiveldevar Vs State of Madras** reported in **1957 criminal law journal 1000**, wherein, our Hon'ble Apex Court has held as follows:-

Generally speaking oral testimony in this context may be classified into three categories, namely (1) wholly reliable (2) wholly unreliable and (3) neither wholly reliable nor wholly unreliable. In the first category of proof, the Court should have no difficulty in coming to its conclusion either way- it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the Court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the Court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if Courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The Court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony.



16.In the above circumstances, as rightly pointed out by the learned counsel appearing for the appellant that since the evidence given by P.W1 is wholly unreliable, the same needs corroboration, but in respect to the said corroboration, the witnesses examined on the side of the prosecution as eyewitnesses have not given any evidence in support of the prosecution. Therefore, in the absence of corroborative evidence, the evidence given by P.W1 cannot be accepted as a whole to convict the accused. Though the Doctor, who gave treatment to P.W1, had given evidence as there was a cut injury found on the back side of P.W1. According to him, the injury sustained by P.W1 is simple in nature. Further, the said Doctor gave evidence as the above said injury may be caused due to fallen of a sharp edged portion. Therefore, the opinion of Medical Officer is also not in correspondence with the evidence given by P.W1. Further, here it is the case, the factum of recovery of weapon alleged to be used for the commission of offence has also been not proved as required by the law. In this area, the evidence given by P.W10 was not corroborated through the independent witnesses and the same also goes against the case of the prosecution.

17.Therefore, in view of the above, I am of the considered opinion that the evidence given by the prosecution witnesses has not proved the case of the prosecution beyond reasonable doubt. The trial Court without considering the evidence given by P.W1, in a perspective manner, had convicted the accused, which is against the principles of settled law.

18.In fine, this Criminal Appeal is allowed and the conviction and sentence imposed on the appellant by the learned Sessions Judge, Fast Track Mahila Court, Karur, in S.C.No.80 of 2015, dated 29.12.2015, is set aside and the appellant is acquitted from all the charges. The fine amount, if any, paid by him, shall be refunded to him. Bail bond, if any, executed by the appellant shall stand cancelled.

Sd/-

Assistant Registrar (W)

// True Copy //

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Sub Assistant Registrar(CS)

cp

To

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



2.The Judicial Magistrate No.I, Kulithalai,

3.The Chief Judicial Magistrate, Karur.

4.The Inspector of Police,
Palaviduthi Police Station,
Karur District.

5.The Officer Incharge,
Sub Jail, Palakkari,
Trichy.

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

COPY TO:-

The Section Officer,
Criminal Section Records,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.J.S.MURALI, Advocate (SR-29718[F] dated 21/09/2021)

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20.09.2021

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