



Bail slip

The Petitioner/Appellant/Accused, Rengasamy, S/o.Ponraj, was directed to be released on the bail by the order of this Hon'ble court dated 20.01.2017 made in CRL MP(MD).260 of 2017 in Crl.A.(MD) No.6 of 2017.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED : 30.06.2021

JUDGMENT PRONOUNCED : 29.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**

Crl.A.(MD) No. 6 of 2017

Rengasamy
S/o. Ponraj : Appellant/Accused

-vs-

State represented by
The Inspector of Police,
Andipatti Police Station,
Theni District.
Crime No.05 of 2014 : Respondent/Complainant

PRAYER:- Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, to call for the records from the Lower Court, hear the counsel for the Appellant/Accused and set aside the judgment of conviction and sentence of imprisonment imposed on the Appellant/Accused dated 14.12.2016 imposed on the appellant by the learned Fast Track Mahila Judge, Theni, in S.C.No.65 of 2014 in Crime No.05/2014 of Andipatti Police Station.

For Appellant : Mr.K.Samidurai

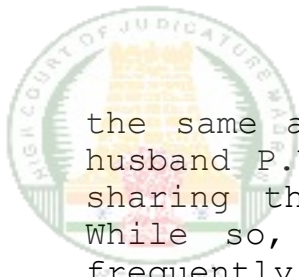
For Respondent : Mr.T.Senthil Kumar
Government Advocate (Crl.Side)

JUDGMENT

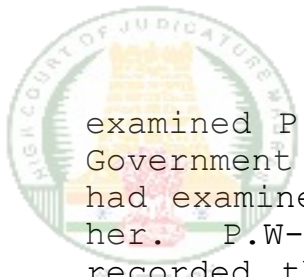
This Criminal Appeal has been filed to set aside the conviction and sentence imposed on the appellant by the learned Fast Track Mahila Judge, Theni in S.C.No.65 of 2014 dated 14.12.2016.

2. The brief facts which are relevant for consideration in this appeal are as follows:

2.1. P.W-1-Divya was married to P.W-3-Bhakya Raj. The Appellant/Accused herein is a friend of the husband of P.W-1. They had been friends right from their School days and had been living in



the same area viz., Nachiyarpuram, Theni District. P.W-1 and her husband P.W-3 were living in the upper portion of the house and by sharing the house with the parents of P.W-3 as a joint family. While so, the Appellant/Accused used to visit the joint family frequently. P.W-1 being a new member of the joint family was not familiar to the friend and acquaintance of her husband, viz., the Appellant/Accused. However, the Appellant/Accused, while coming to the house and discussing among the family members, used to hit the head of P.W-1 with his hands. P.W-1 was protesting to the same and informed about the conduct of the Appellant/Accused to her mother-in-law, her husband and to her maternal aunt P.W-6-Latha, who is also residing in the nearby village. They had protested to the accused and questioned him regarding his conduct. On 04.01.2014 after having dinner, P.W-1 went to the upper portion of the house to retire to bed by around 9 p.m. While so, the accused, who had been hiding in the bathroom in the upper portion of the house suddenly came behind P.W-1 and caught hold of her mouth. He gagged P.W-1 with a knife stating that you had ashamed me by complaining against me and further stated that "Only if you are alive, you complain, I will finish You". By uttering those words, he attacked P.W-1 with a knife on her neck. She thwarted the same with her hands. P.W-1 then pushed him away and shouted for help and cried. Hearing her cries, her in-laws came running upstairs. By that time, the Appellant/Accused ran down stairs and escaped from the place. P.W-1 was saved by her in-laws. They took her into the house in the ground floor and they had attended to her injuries. They had informed her husband working in a Hotel 3 Km away from their residence and P.W-6-Latha the maternal aunt of P.W-1 who was residing in a neighbouring village. By early morning 1.30 a.m., P.W-3-husband of P.W-1 returned home from his work. He took her to the Government Hospital at Theni. P.W-1 was admitted in the Government Hospital, Theni. The Hospital authorities had given intimation to the Police Station. P.W-10-Dr.Tamizharasi had examined P.W-1-victim and issued Wound Certificate under Ex.P-7 wherein the injury in front of her neck was considered as simple injury. On receipt of intimation from the Government Hospital, Theni, P.W-11-Pandiammal, Sub Inspector of Police had visited Theni Medical College Hospital and took the oral statement of victim from her Hospital bed. On her return to Andipatti Police Station P.W-11 had recorded the complaint and registered the FIR in Cr.No.5 of 2014 for the offence under Section 307 of IPC against the accused. The original FIR under Ex.P-8 and the original complaint under Ex.P-1 was forwarded to the Court of the learned Judicial Magistrate, Theni with copies to the higher officials of the Police Department including P.W-13-Nallu-Inspector of Police, Andipatti Police Station. On receipt of the FIR under Ex.P-8, P.W-13-Inspector of Police went to the house of P.W-1 and her in-laws at Anna Nagar, Nachiyarkulam, prepared Observation Mahazar under Ex.P-2, Rough Sketch under Ex.P-9 in the presence of witnesses P.W-14-Gunasekaran and one Sekar. P.W-13 also recorded their statements. P.W-13 had



examined P.W-1 and recorded her statement. P.W-13 had visited the Government Medical College Hospital, Theni, examined the Doctor who had examined P.W-1 and obtained Wound Certificate under Ex.P-7 from her. P.W-13 had examined in-laws of P.W-1, husband of P.W-1 and recorded their statements. P.W-13 had arrested the accused. On arrest, the accused confessed to the crime and based on the confession, P.W-13 had recovered the knife under M.O-1 in the presence of witnesses. The admissible portion of the confession leading to recovery is Ex.P-10. P.W-13 had also sent an alteration report altering the offence from under Section 307 of IPC alone to the offence under Section 307 of IPC along with Section 458 of IPC to the learned Judicial Magistrate under Ex.P-12. The confession statement was recorded in the presence of P.W-8-Manikandan and P.W-9-Sudaram. He had arrested the accused and sent him to remand with Police Escorts. After completion of the investigation, he had laid the final report under Section 173 of Cr.P.C.. before the Court of the learned Judicial Magistrate, Theni.

2.2. The learned Judicial Magistrate had taken cognizance of the offence under Sections 307 and 458 of IPC and numbered the case as P.R.C.No.04 of 2014 and issued summons to the accused. On appearance of the accused, copies were furnished under Section 207 of Cr.P.C and accused was examined regarding his capacity to engage a counsel. He had informed that he has resources to engage a counsel. Thereafter, the case was committed to the Court of the learned Principal District and Sessions Judge, Theni and the accused was bound over to the Court of Sessions.

2.3. On committal proceedings, after receipt of records in P.R.C.No....., the learned Principal District and Sessions Judge had taken cognizance of the case and numbered as S.C.No.65 of 2014 on the file of the learned Principal District and Sessions Judge. Since the alleged offence is against women, the case was made over to the file of the Fast Track Mahila Court for disposal. On appearance of the accused before the Fast Track Mahila Court, after hearing the arguments of prosecution and defence, charges were framed under Sections 307 and 458 of IPC. The accused pleaded not guilty to the charges and claimed to be tried. Therefore, the learned Sessions Judge, Fast Track Mahila Court had ordered trial.

2.4. During trial, the prosecution had examined the witnesses P.W-1 to P.W-14 and marked documents Ex.P-1 to Ex.P-13 and M.O-1-knife have been marked.

2.5. After completion of the prosecution evidence, incriminating evidence available from the deposition of P.W-1 to P.W-14 against the accused was put to him and he was questioned under Section 313 of Cr.P.C. The accused denied the incriminating evidence against him. After examination of the accused under Section 313 of Cr.P.C., the prosecution had argued the case and the

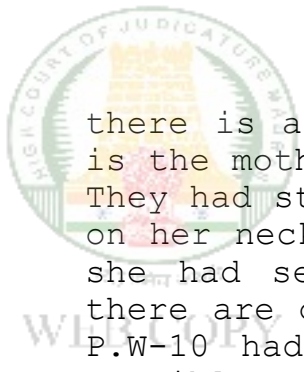


defence had replied to the prosecution arguments.

2.6. After hearing the prosecution and the defence, the learned Sessions Judge, Fast Track Mahila Court, Theni, on proper appreciation and assessment of evidence, had arrived at a conclusion that the charges framed against the accused under Section 307 and 458 of IPC had been proved beyond reasonable doubt. Therefore, by the above judgment dated 14.12.2016, the learned Sessions Judge had convicted the accused for the offence under Section 307 of IPC and sentenced him to undergo Rigorous Imprisonment of 10 years and to pay a fine of Rs.10,000/- in default to undergo Rigorous Imprisonment of one year and had convicted for the offence under Section 458 of IPC and sentenced him to undergo Rigorous Imprisonment of 10 years and to pay a fine of Rs.10,000/- in default to undergo Rigorous Imprisonment of one year.

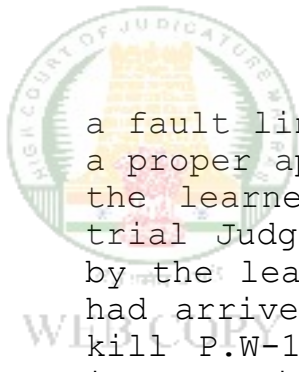
3. Aggrieved by the judgment of conviction and sentence of imprisonment of 10 years and to pay a fine of Rs.10000/-, the sole accused had preferred this appeal before this Court.

4. Mr.K.Samidurai, the learned counsel for the Appellant/Accused had submitted his written arguments. As per his written arguments, the case of the prosecution had not been proved beyond reasonable doubt. The alleged occurrence is said to have taken place on 03.01.2014 by around 9.30 p.m. The victim was taken to Hospital on 04.01.2014 by around 01.30 a.m. and the same shows the victim was not seriously injured to endanger her life through the evidence. The prosecution witnesses, in their cross examination had stated that husband of P.W-1 has returned from his work (i.e) he was working in a hotel and is 3 km away from his residence and the Hotel is just opposite to the Government Hospital. While so, if the victim was seriously injured, she could have reached the Hospital at the earliest. Not only that her in-laws were available in the house. They could have taken her to Hospital at the earliest. There is no explanation regarding the delay in lodging the FIR. It is the defence of the accused that the in-laws in the family suspected that P.W-1 had an illicit relationship with the Accused. Therefore, on the date of occurrence, there was altercation in the family. Therefore, victim herself attempted to commit suicide. The injury caused on the neck of P.W-1 was used as a ploy to implicate the accused. Therefore, the case had been registered after much discussion in the family. That is why, the FIR was registered on the next day morning around 1.30 a.m. The victim was taken to the Hospital by around 1.30 a.m. Therefore, the prosecution is unable to explain the delay in lodging the FIR. Further, the alleged occurrence had taken place in the upstairs. As per the evidence of P.W-1, hearing her cries, the accused jumped and escaped in darkness. The other witnesses are hearsay witnesses. When the defence of the accused were put in cross examination of P.W-1 to P.W-6, they had denied the defence in their cross examination that



there is an illicit relationship between P.W-1 and accused. P.W-2 is the mother-in-law of P.W-1. P.W-4 is the father-in-law of P.W-1. They had stated in their evidence that the accused had stabbed P.W-1 on her neck as well as on her hand. P.W-10- Doctor had stated that she had seen only two injuries on the neck of P.W-1. Therefore, there are discrepancies in the evidence. In the cross examination, P.W-10 had stated that if a person self inflicts such injury is possible. As per the version of P.W-1, M.O-1 knife recovered from Thorn Bush near the House of the victim. P.W-13-Investigation Officer stated that knife was recovered from Bridge nearby Bhakiyamman Temple, Nachiyarpuram. Therefore alleged recovery of weapon under M.O-1 is falsified. Further, the witnesses for recovery of weapon P.W-8 and P.W-9, have turned hostile during trial. P.W-1 to P.W-6 are all relatives, P.W-7 to P.W-9 are Mahazar witnesses. P.W-1 to P.W-6 are interested witnesses and they are interested in implicating the accused in the offence. Therefore, the judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Theni is perverse.

5. Mr.T.Senthil Kumar, the learned Government Advocate (Crl. Side) had rebutted the arguments of the learned counsel for the Appellant/Accused stating that the occurrence took place in the night in the house of the P.W-1. By that time, neighbours may not seen or heard about the occurrence. Not only that, in crimes of these nature people are not willing to help to the Investigation Officer. Therefore, who are all available in the house of P.W.1 were examined. The Investigation Officer had conducted fair investigation and laid final report . The evidence of P.W-1 as victim is to be accepted as she is the injured witness. It is for the accused to explain the original cause for which he was implicated as an accused in this case. There are many reported decisions of the Hon'ble Supreme Court stating that the evidence of injured witness had to be accepted. Here, P.W-1-injured witness had clearly narrated the occurrence and the same has been corroborated by P.W-10-Dotor, who had issued Wound Certificate under Ex.P-7. Not only that, the place of occurrence is Nachiyapuram and the same is not a Town, it is a village. The witnesses, in their cross examination had clearly stated that vehicles are not available at that time. On hearing the news, P.W-6 had come to the residences of the in-laws of P.W-1 and took her along with her husband to the Government Hospital. From the Hospital, the intimation was given to the Police Station. Therefore, the case was registered. It is to be noted that 9.30 p.m., to 6 am., there will be lack of vehicle movement and that is the reason for the delay. During the evidence of the witnesses, the delay wherever occurred had been properly explained. Therefore, nothing in the case creates doubt favouring the accused. Further, the learned Government Advocate (Crl.Side) submitted that even though there are discrepancies in the investigation, the Court can assess the evidence available before the Court. In any manner, the discrepancies in the investigation or



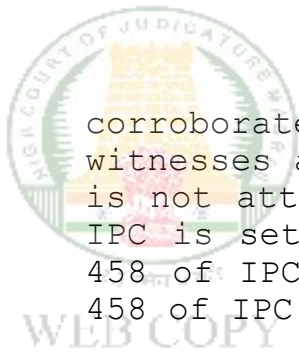
a fault lines can convict the accused, if the learned trial Judge on a proper appreciation of evidence and the materials available before the learned trial Judge which inspires confidence in the learned trial Judge. Therefore, in the light of the exhaustive discussion by the learned Sessions Judge in paragraph Nos.18 to 33 wherein he had arrived at a conclusion that the accused with an intention to kill P.W-1 had caused wound on her neck. If not for the timely intervention of the in-laws, Accused/Appellant would have killed P.W-1. Therefore, the appeal lacks merits and it has to be dismissed.

6. Point for Consideration:

Whether the judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Theni in S.C.No.65 of 2014 is perverse warranting interference by this Court as appellate Court?

7. Perused the entire materials available on record and the judgment of the learned Sessions Judge, Fast Track Mahila Court, Theni.

8. On considering the rival submission, the argument of the learned Government Advocate (Crl. Side) regarding the delay in admitting the victim to Hospital, cannot at all be considered lightly. If the injury on the neck had been serious, P.W-1 would have been brought to the Hospital within the shortest time from her home by her in-laws. The alleged occurrence took place between 8.30 p.m., and 9.30 p.m., but the victim was brought to the Hospital by 1.30 a.m in the Morning and the same shows that P.W-1 to P.W-6 did not consider it as serious. The recovery of knife was not subjected to the Forensic Examination as per the cross examination of P.W-13-Investigation Officer and the witnesses to the recovery of knife P.W-8 and P.W-9 had turned hostile. Therefore, alleged recovery is found to be suspicious. P.W-10-Doctor had issued Ex.P-7 stating that the injuries found on the front portion of neck are simple in nature. Considering the injury on the neck as simple in nature, the ingredients of Section 307 of IPC is not attracted. Had it been stab injury causing deeper wounds, then it attracts the ingredients of Section 307 of IPC. It is a simple injury in front of the neck and not a deeper wound injury intending to take the life of the victim. Considering the rival submissions and on a perusal of the entire materials available through P.W-1 to P.W-10, this Court is of the opinion that the accused is alleged to have caused simple hurt with dangerous weapon. The weapon recovered in this case had not been proved through the Forensic evidence regarding blood stain on the knife. Recovery had not been proved through the recovery witnesses. Hence, the benefit of doubt has to be extended to the accused and the accused has to be acquitted from the charges. In those circumstances, when the evidence of P.W-1 which is



corroborated through P.W-10 and considering the fact that all the witnesses are from the same family, offence under Section 307 of IPC is not attracted. Accordingly, the conviction under Section 307 of IPC is set aside. On the same reasoning, the charge under Section 458 of IPC also is found not proved. The conviction under Section 458 of IPC against the Appellant/Accused is also set aside.

9. The point for consideration is answered in favour of the Appellant/Accused and against the Prosecution. The judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Theni in S.C.No.65 of 2014 is found perverse.

In the result, the appeal is allowed.

The finding of guilt recorded by the learned Sessions Judge, Fast Track Mahila Court, Theni in S.C.No.65 of 2014 and the conviction and sentence imposed under Sections 307 and 458 of IPC are set aside. The bail bond executed by the appellant, if any, shall stand discharged. The fine amount paid, if any, shall be refunded to the appellant.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

- 1.The Sessions Judge,
Fast Track Mahila Court,
Theni.
- 2.The Judicial Magistrate, Theni.
- 3.Do Through The Chief Judicial Magistrate,
Theni.
- 4.The Inspector of Police,
Andipatti Police Station,
Theni District.
5. The Superintendent, Central Prison, Madurai.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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

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+1 CC to M/s.K.SAMIDURAI, Advocate (SR-33499[F] dated 01/11/2021)

Judgment made in
Crl.A.(MD) No.6 of 2017
29.10.2021

ps (CO)
TR/pm(18.11.2021) 8P 10C