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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CRL.A.NO.16 OF 2020

S.Nagarajan

.. Appellant

Versus

State rep. by
The Inspector of Police,
Namakkal Police Station,
Namakkal District
(Crime No.893/2015)

.. Respondent

Prayer: Criminal Appeal is filed under Section 374 (2) of Cr.P.C., against the judgment made in S.C.No.09 of 2018 by the learned Principal Sessions Judge, Namakkal, dated 26.11.2019 by convicting the Appellant/Accused under Section 324, (2 Counts) of IPC, and sentenced to undergo R.I 8 days each offence and to pay a fine of Rs.10,000/- I/d 2 days each offence S.I for the following among the other grounds.

For Appellant : Mr.C.D.Johnson

For Respondent : Mr.S.Vinoth Kumar
Government Advocate
(Criminal Side)

JUDGMENT

This appeal is filed aggrieved by the conviction and sentence imposed on the appellant by judgment dated 26.11.2019 in S.C.No.9 of 2018, thereby convicting the appellant for the offence under Section 324 of IPC (2 counts) and imposing sentence of rigorous imprisonment for a period of eight days for each count and imposing fine of Rs.10,000/- for each count and in default, to undergo simple imprisonment for a period of two days for each default.



2. On 21.02.2015, when P.W.7 was on duty at the Namakkal Police Station, the statement recorded at the Hospital from P.W.1 by P.W.9 was received and he has registered a case in Crime No.893 of 2015 for the offence under Sections 324 and 307 of IPC. Thereafter P.W.11 took up the case for investigation and laid a charge sheet before the learned Judicial Magistrate No.I, Namakkal, which was taken on file in P.R.C.No.17 of 2016 and copies were furnished to the accused under Section 207 of Cr.P.C. Thereafter the case was committed to the Principal District and Sessions Judge, Namakkal, under Section 209 of Cr.P.C, which was taken on file in S.C.No.9 of 2018 and the same was made over to the learned Chief Judicial Magistrate, Namakkal. The learned Chief Judicial Magistrate, Namakkal, on appearance of the accused, after perusing the records, since found prima facie case, framed charges against the accused for the offence under Section 364 and 307 (2 counts) of IPC and when the accused was questioned under Section 313 of Cr.P.C., he pleaded not guilty and stood trial. Thereafter, the case was transferred to the Principal Sessions Judge, Namakkal, for want of jurisdiction and charges were framed for the offence under Section 364 and 324 (2 counts) of IPC.

3. The prosecution thereafter examined P.Ws.1 to 11, marked Exs.P1 to P15 and Material Objects 1 to 3 and rested its case. Upon being questioned about the evidence relied on by the prosecution and the incriminating materials, under section 313 of Cr.P.C. the appellant denied them as false. Thereafter no evidence was let in on behalf of the defence and thereafter the trial Court proceeded to hear the learned Public Prosecutor on behalf of the prosecution and the learned counsel for the accused and by judgment dated 26.11.2019, acquitted the appellant for the offence under Section 364 and in respect of charges for the offence under Section 324 (2 counts) of IPC, found the appellant guilty and imposed the sentence as aforesaid. Aggrieved by the same, the present appeal is filed before this Court.

4. Mr.C.D.Johnson, learned counsel appearing on behalf of the appellant would submit that this is a case, where all the witnesses including the injured witness have turned hostile and absolutely there is no iota of evidence on record connecting the accused with the offence. The trial court has convicted the accused on the ground that even though the witnesses may turned hostile and lie before the Court, the documents already on record namely the Wound Certificate Ex.P5 and the complainant statement, which is marked as Ex.P6 would prove the injury and connection of the accused to the said offence. He would further submit that as far as wound certificate Ex.P5 is concerned, it can be an evidence for the injury and it will not connect the accused with the offence. As far as Ex.P6 is concerned, P.W.1,



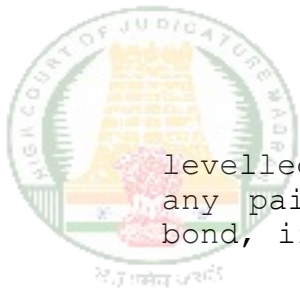
in the witness box, had disowned the complaint and only the signature alone was marked and therefore relying upon such complaint by the trial Court is perverse. Therefore there is no positive piece of evidence connecting the accused with the offence. Hence, the trial Court thereby wrong in convicting the accused.

5. Per contra, Mr.S.Vinoth Kumar, learned Government Advocate (Crl.Side) appearing for the respondent police would submit that even though, the witnesses have turned hostile, the admissible portions of evidence of hostile witnesses can be relied upon by the trial Court to convict the accused. In this case, the trial Court considering the nature of the offence, the injury and the medical evidence let in by the prosecution coupled with the admissible portions of the confession statements leading to recovery of material objects, is well within its right to have convicted the accused. He would further submit that already a lenient view has been taken by the learned trial Judge in awarding the sentence and hence prayed for dismissal of the appeal.

6. I have heard the rival submissions made by both the learned counsel and have perused the materials on record.

7. I am not in agreement with the submissions of the learned Government Advocate (Crl.Side) that merely because leniency shown in the sentence, the trial Court can be justified in convicting the accused. As rightly pointed out by the learned counsel for the appellant that the trial Court has taken into account Ex.P6 complaint statement so as to convict the accused. A reading of the evidence of P.W.1 clearly show that P.W.1, who lodged the complaint, had disowned the same and turned hostile. In the cross examination of hostile witnesses, nothing has been elicited by the prosecution and therefore there is nothing to rely upon in the evidence of the hostile witnesses. A perusal of the evidence let in by the prosecution clearly shows that there is no positive piece of evidence to connect the appellant with the offence. Even though the wound certificate Ex.P5 is there, it can only prove the injury alone. Therefore, I am of the view that the trial Court erred in convicting the appellant and the appellant is entitled for the benefit of doubt.

8. In the result, the criminal appeal is allowed and the judgment of conviction made in S.C.No.09 of 2018 by the learned Principal Sessions Judge, Namakkal, dated 26.11.2019 is set aside and the appellant is hereby acquitted from all the charges



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levelled against him in Cr.No.893 of 2015. The fine amount, if any paid by the appellant shall be refunded to him and bail bond, if any, executed by the him shall stand cancelled.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Judicial Magistrate,
Namakkal.
2. The Principal Sessions Judge,
Namakkal.
3. The Inspector of Police, Namakkal Police Station,
Namakkal District.
4. The Public Prosecutor,
High Court of Madras.

+1cc to Mr.C.D.Johnson, Advocate, S.R.No.36084

CrI.A.No.16 of 2020

SKM(CO)

RLP(05/07/2022)