



BAIL SLIP

The Appellant/Accused Namely, R.Iyyappan S/o. Ramu Male/A33 Years was directed to be released on bail by order of this court dated 10.02.2020 and made in CrI.MP.No.13294/2014 in CrI.A.No.618 of 2019.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY
CrI.A.No.618 of 2019

R.Iyyappan

... Appellant

Versus

The State rep. by
The Inspector of Police,
Thittakudi Police Station,
Thittakudi, Cuddalore District.

... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C, to call for the records pertaining to S.C.No.239 of 2016 (on the file of learned Mahila Court, Cuddalore) and set aside the judgment, dated 01.08.2018 made in S.C.No.239 of 2016.

For Appellant : Mr.P.Muthamizh Selvakumar

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

ORDER

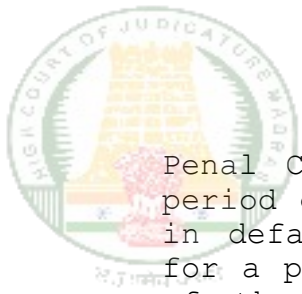
On 13.08.2016, on receipt of information from the victim, Kannagi, taking treatment as impatient in Thittakudi Government Hospital to the effect that the victim, being a flower vendor, was travelling in a bike with one Sampath on 13.08.2016 at about 7.30 P.M and the appellants waylaid them and abused with sexually overtured unparliamentary words and when she tried to run, by pulling her down, attacked her with knife on the nose, cheeks and neck. On the strength of the said information, P.W.8, one Vembu, S.I of Police registered a case in Crime No.188 of 2016 for the offence under Section 341, 294(b), 323, 324, 307 and 506(ii) of I.P.C read with Section 4 of Tamil Nadu Prohibition of Women Harassment Act and P.W.11, one Suthakar,



Inspector of Police took up the case for investigation and laid a Final Report, proposing the appellant guilty of the said offences.

2. The same was taken on file as P.R.C.No.22 of 2016 by the learned District Munsif-cum-Judicial Magistrate, Thittakudi and after appearance of the accused and furnishing of copies under Section 207 of Cr.P.C., the case was committed to the learned Principal Sessions Judge, Cuddalore, as per Section 209 of the Code of Criminal Procedure and the case was taken on file as Sessions Case No.239 of 2016. The Trial Court framed the charges under Section 341, 294(b), 307, 506(ii) of I.P.C and Section 4 of the Tamil Nadu Prohibition of Women Harassment Act. Upon being questioned, the appellant denied the charges and stood trial. The prosecution, thereafter, examined the injured victim, Kannagi, as P.W.1; the rider of the bike, Sampath, as P.W.2; independent witnesses, one Murugan, Surendiran, as P.Ws.3 and 4, who turned hostile; one Karuppusamy, who was witness to the Mahazar, as P.W.5; one Balakrishnan, Village Administrative Officer, as P.W.6; one Kejalakshmi, who was witness to the confession statement, as P.W.7; one Vembu, Sub-Inspector of Police, who registered the F.I.R, as P.W.8; one Dr.Chellaperumal, who treated P.W.1, as P.W.9; one Dr.Girishkumar, who gave wound certificate and opinion; and the investigating officer, Suthakar, Inspector of Police as P.W.10.

3. On behalf of the prosecution, the complaint was marked as Ex.P-1, the observation mahazar as Ex.P-2, the admitted portion of the confession statement of the appellant, leading to recovery was marked as Ex.P-3, seizure mahazar as Ex.P-4, First Information Report as Ex.P-5, the Accident Register as Ex.P6, the case sheet and discharge summary of P.W.1 as Ex.P-7, rough sketch as Ex.P-8. This apart, the prosecution also produced M.O.1, Knife; M.O.2, the saree worn by the victim and M.O.3, X-Ray and C.D containing the images. Upon being questioned about the material evidence on record and incriminating circumstances, the appellant denied the same as false. Thereafter, no evidence was let in on behalf of the defence. The Trial Court, thereafter, proceeded to hear the learned Special Public Prosecutor on behalf of the State and the learned Counsel for the accused and after appraising the evidence, found the appellant guilty for the offence under Section 341 of the Indian Penal Code and sentenced to undergo Simple Imprisonment of one week and ordered to pay a fine of Rs.5,000/- and in default of payment of fine, to undergo Simple Imprisonment of one week; for the offence under Section 307 of the Indian Penal Code and sentenced to under Rigorous Imprisonment for a period ten years and ordered to pay a fine of Rs.10,000/- and in default of payment of fine, to undergo Simple Imprisonment for a period of one year; for the offence under Section 294(b) of the Indian



Penal Code and sentenced to undergo Simple Imprisonment for a period of one month and ordered to pay a fine of Rs.1,000/- and in default of payment of fine, to undergo Simple Imprisonment for a period of one week; for the offence under Section 506(ii) of the Indian Penal Code and sentenced to undergo Rigorous Imprisonment for a period of one year and ordered to pay a fine of Rs.5,000/- and in default of payment of fine, to undergo Simple Imprisonment for a period of six months; for the offence under Section 4 of the Tamil Nadu Prohibition of Women Harassment Act and sentenced to undergo Rigorous Imprisonment for a period of two years and ordered to pay a fine of Rs.10,000/- and in default of payment of fine, to undergo Simple Imprisonment for a period of six months.

4. Heard Mr.P.Muthamizh Selvakumar, learned Counsel for the appellant and Mr.S.Vinoth Kumar, learned Government Advocate (Crl. Side) for the respondent.

5. The learned Counsel for the appellant contended that as per the case of the prosecution, the occurrence happened in the middle of the road where several other persons were passing by. However, in the instant case, apart from the evidence of P.Ws.1 and 2, the victim and the co-traveller who have an motive against the appellant, no other independent witnesses have spoken against the appellant. There could have been a number of independent eye witnesses to the incident, but, only two of them, namely P.Ws.3 and 4, were sought to be examined, who have turned hostile which would go to show that the entire case, as alleged by the prosecution, is unbelievable and there is an element of doubt.

6. He would further submit that a perusal of the cross-examination of the P.W.8, Doctor and the wound certificate, it would be clear that the injuries are simple in nature. A perusal of Ex.P-7, the case sheet and discharge summary, would verify the said fact and injured was discharged on the same day. Therefore, in the absence of any serious injuries and only simple injuries having been inflicted on the victim, the Trial Court ought to have taken into consideration of the same and totally ignored the said medical evidence on record, while convicting the petitioner for the offence under Section 307 of the Indian Penal Code. The learned Counsel would further submit that also there is a grave doubt and contradiction in the evidence regarding the recovery of the material object. As per the evidence of the Village Administrative Officer, namely P.W.6, in whose presence confession statement has been made, the recovery was made from the front yard of the house of the accused, while as per the seizure mahazar, it is from the back yard of the house. Therefore, there is a material contradiction regarding the recovery of the alleged knife, which is used in



the incident.

7. He would further submit that in this case, from the cross-examination of P.W.1, it is seen she has admitted that she is going to get her daughter married and she and P.W.2, both of them are related to each other and in the cross-examination, P.W.1 has admitted that the appellant has given a complaint of getting her daughter married even before the age of 18 years and misusing her. Therefore, it is clear that they have had motive as against the appellant. When the defence has, by cross-examination, established that P.Ws.1 and 2 had vengeance as against the appellant, it is dangerous to rely upon their evidence alone in the absence of any other corroborating material to convict the appellant and therefore, he would pray that the appellant should be acquitted of all the charges and the appeal should be allowed.

8. Per contra, the learned Government Advocate (Crl. Side) would submit that this is an offence against a woman. Admittedly, P.W.1, victim, had an affair and was living together with the appellant for a short period and thereafter, the relationship turned sore and she had left the appellant and therefore, unable to fathom that P.W.1 was not under the control of the appellant, he had a strong motive and hence attacked the victim. A perusal of the type of injuries, which are mentioned by P.W.9, would categorically show that the attack was deadly that too with a dangerous weapon i.e., knife, which is also recovered and produced as M.O.1 and therefore, he would submit that the Trial Court had rightly convicted the appellant for the offence under Section 307 of the Indian Penal Code as well as the other offences. He would further submit that in a case of this nature, P.W.1's evidence, which is stellar in nature by itself is enough to convict the appellant. Over and above, P.W.1's evidence is corroborated with the evidence of P.W.2, coupled with the medical evidence on record and proper investigation done in the case by collecting the saree of the victim and the other relevant materials coupled with the observation mahazar and the seizure mahazar, would categorically and clearly prove the charges against the appellant and therefore, he would submit that there are no merits in the appeal and appeal be dismissed.

9. I have considered the rival submissions made on either side and perused the materials on record. A careful reading of the entire evidence on record, it would be clear that there was a motive for the appellant against the victim. After being in a relationship, the victim had moved on of the said relationship and therefore, the appellant was angry with the victim. But, however, it may be seen that the manner in which the occurrence happened, that the appellant waylaid the victim, pulled her down



from the back and made the injuries on her nose and around the face, which clearly shows the determination of appellant to injure the victim and to disfigure her because he was angry that she had left the appellant. Therefore, considering the nature of injuries and the relationship between the parties, mere using of the words that "இனிமேல் உன்னை உயிரோடு விடமாட்டேன்டி" by itself would not make out an offence under Section 307 of the Indian Penal Code, but, the Court has to take into account the overall circumstances and nature of injuries and place of attack and manner of attack etc. If taken cumulatively along with the Ex.P-7, as rightly contended by the learned Counsel for the appellant that the injuries are simple in nature around the nose, cheeks and face and therefore, I am of the view that in this case, the offence under Section 307 of the Indian Penal Code is not made out. Since the petitioner has attacked the victim with knife, which is recovered as M.O.1, the lesser offence under Section 324 of the Indian Penal Code is made out. Accordingly, I modify the conviction of the Trial Court under Section 307 of the Indian Penal Code as one under Section 324 of the Indian Penal Code.

10. As far as the other offences are concerned, P.Ws.1 and 2 have spoken about the accused waylaying them and therefore, the offence under Section 341 of the Indian Penal Code is made out and the obscene words spoken by the appellant in the public road would clearly make out the offence under Section 294(b) of the Indian Penal Code and the offence under Section 506(ii) of the Indian Penal Code as well. The said conduct of the appellant would also come within the definition of harassment and therefore, would amount to offence under Section 4 of the Tamil Nadu Prohibition of Women Harassment Act. Therefore, in other respects, the findings of the conclusions of the Trial Court are upheld.

11. In the result, this Criminal Appeal is partly allowed on the following terms:-

(i) The conviction of the appellant by the Mahila Court, Cuddalore, by its judgment, dated 01.08.2018 in S.C.No.239 of 2016 in respect of the offences under Section 307 of the Indian Penal Code is set aside and modified as to one under Section 324 of the Indian Penal Code;

(ii) Considering the age of the accused, the background of the parties, the relationship mentioned by the prosecution case itself, and overall circumstances of the case, the accused is ordered to undergo Rigorous Imprisonment for a period of two years and ordered to pay a fine of Rs.10,000/- for the offence under Section 324 of the Indian Penal Code;

(iii) The conviction and sentence in respect of the other offences are maintained;

(iv) The sentences should run concurrently and the



appellant is entitled to set off the period already undergone;
(v) It is stated that the appellant is on bail. Therefore, a period four weeks, from the date of receipt of a copy of this order, is granted for the appellant to surrender before the Trial Court to undergo the remaining period of sentence.

12. Accordingly, this Criminal Appeal is partly allowed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

grs
To

1.The Sessions Judge,
Mahila Court, Cuddalore.

2.The Superintendent Central Prison,Cuddalore.

3.The Inspector of Police,
Trichy Contonment Police station, Trichy.

4. The Inspector of Police,
Thittakudi Police Station,
Thittakudi, Cuddalore District.

5.The Public Prosecutor,
High Court of Madras.

Copy to:
The Section Officer,
Criminal Section,
High Court,Madras.

+1 cc to Mr.P.Muthamizh Selvakumar, Advocate Sr.NO. 36529
Crl.A.No.618 of 2019

GPL(CO)
A.SK(01/07/2022)