



Crl.A.No.97 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :06.07.2022

CORAM:

THE HONOURABLE Dr.JUSTICE **G.JAYACHANDRAN**

Criminal Appeal No.97 of 2012

Ganesan @ Nolla Kannu Ganesan

.. Appellant

/versus/

State Rep., by
The Inspector of Police,
R-10, M.G.R.Nagar Police Station,
Chennai.
Crime No.176 of 2006

.. Respondent

Criminal Appeal has been filed under Section 378 of Criminal Procedure Code praying to set aside the judgment and conviction dated 28.01.2012 in S.C.No.73 of 2007 on the file of the Sessions Judge, Chennai-104 (Mahalir Neethimandram at Chennai).

For Appellant : Mr.Dr.G.Krishnamurthy

For Respondent : Mr.S.Udaya Kumar
Government Advocate (crl.Side)



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J U D G M E N T

The appeal is preferred by the sole accused in S.C.No.73 of 2007 for the offence under Sections 341, 324, 307 of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act.

2. The case of the prosecution is that on 19.02.2006, at about 6.30 p.m., near Soolaipallam, Venkatraman Road, near Manna Fast Food shop, the accused restrained one Padmavathy and forced her to give consent for his love. Since she refused and proceeded, the accused attacked Padmavathy with a blade and caused cut injury over her cheek and also attacked in her neck uttering that she should not live if she is not available for him. After the occurrence, the victim has gone to her house, reported the matter to her sister and thereafter got admitted in the hospital at about 7.15 p.m. Her father Elumalai has gone to the police station and given a written complaint, which has been registered in Crime No.176 of 2006. On completion of investigation, a final report filed and based on the material, the Mahila Court at Chennai has framed charges under Sections 341, 326, 307 of IPC and Section 4 of Tamil Nadu Prohibition of



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Harassment of Woman Act.

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3. To prove the charges, the prosecution has examined eleven (11) witnesses as PW.1 to PW.11 and marked eight (8) documents as Ex.P1 to Ex.P8 and one material object, which is a blood stained cloth of PW.2. In defence photograph jointly taken by the accused and the victim PW.2 was marked as Ex.D1 to suggest that PW.2 and the accused were in love. But, due to sudden provocation being insulted by PW.2 regarding his facial appearance, the incident has taken place. However, the trial Court, after considering the evidence held that the accused is guilty of offence under Sections 341, 324 and 307 of IPC, convicted and sentenced him to undergo one month Rigorous Imprisonment with a fine of Rs.250/- in default to undergo further period of one week Simple Imprisonment for the offence under Section 341 of IPC; to undergo two years Rigorous Imprisonment with a fine of Rs.5,000/- in default to undergo further period of one month Simple Imprisonment for the offence under Section 324 of IPC; to undergo five years Rigorous Imprisonment with a fine of Rs.10,000/- in default to undergo further period of six months Simple



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Imprisonment for the offence under Section 324 of IPC. The trial Court held that since the accused is convicted for the offence under Sections 341, 324 and 307 of IPC, no separate sentence is required for the offence under Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act. The period of sentences ordered to run concurrently and out of fine amount, a sum of Rs.15,000/- was ordered to be given as compensation to PW.2/victim.

4. The learned counsel for the appellant would submit that the trial Court erred in convicting the accused for the charges framed without appreciating the fact that the evidence for prosecution is not consistent and doubtful. In the absence of independent witnesses to corroborate the statement of PW.2, who in fact interested witness to cover up the conduct, the Courts below should have accepted Ex.D1 and acquitted the accused. Taking note of the material contradiction, the Court below ought not to have convicted the accused for the offence under Section 324 or 307 of IPC, since the evidence for prosecution does not satisfy the ingredient required for Sections 324 and 307 of IPC.



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5. Per contra, the learned Government Advocate (Crl.Side) for the respondent would submit that the evidence of PW.2 / victim, PW.5- Sister of PW.2 and the Accident Register - Ex.P.4 would clearly show that the grievous injury was sustained by PW.2 at the hands of the accused and non recovery of weapon or mis-description of weapon is not fatal to the prosecution. Further pointing out the alleged expression made by the accused while assaulting PW.2, he would further submit that the intention to cause death could be inferred from the action and the word of the accused.

6. This Court while scrutinizing the deposition of PW.2, who is the victim in this case, she admits that the accused is known to her and he restrained her on the date of occurrence while she was returning home and forced her to tell that she love him. When PW.2 did not respond and proceeded, the accused came and attacked her with a blade causing injury on either side of her cheek and forehead. He also uttered the word “get lost” and tried to attack her neck, but she pushed him down and proceeded to her home.

7. Now the charge against him is something different. It says



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that the accused expressed that if she is not agree to marry PW.2, nobody else should marry her and then attacked her. There is vast different between two expressions, what is found in charge sheet and what deposed by PW.2. No doubt, the Accident Register - Ex.P4 and the evidence of PW.2 is sufficient to hold that the injury sustained by PW.2 was caused by the accused with the weapon, but that was caused with an intention to cause death is the question for the Court to appreciate and decide. Section 307 of IPC mandates the act done must be with an intention or knowledge that it will cause death from the evidence.

8. This Court finds that the injury sustained by PW.2 are (1)

இடது கன்னத்தில் நடுவில் குறுக்கு வாட்டில் $7 \times \frac{1}{2} \times \frac{1}{2}$ அளவுள்ள கிழிந்த காயம் இரத்த ஒழுக்குடன் இருந்தது. (2) இடது கன்னத்தில் இக்காயத்திற்கு 2 அங்குலம் மேலே $7 \times \frac{1}{2} \times \frac{1}{2}$ செ.மீ அளவுள்ள கிழிந்த காயம் இரத்த ஒழுக்குடன் இருந்தது. (3) இடது கன்னத்தில் முதல் காயத்திற்கு 2 அங்குலம் கீழே, இடது வாயிலிருந்து தாடை வரை $8 \times \frac{1}{2} \times \frac{1}{2}$ செ.மீ அளவுள்ள கிழிந்த காயம் இரத்த ஒழுக்குடன் இருந்தது. (4) வலது கன்னத்தில் $4 \times \frac{1}{4} \times \frac{1}{4}$ செ.மீ அளவுள்ள கிழிந்த காயம் இரத்த ஒழுக்குடன் இருந்தது.

9. The injuries are grievous in nature as per the opinion given



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by PW.8- Dr.Gunasekaran. There are some contradiction regarding the weapon used, since in the Accident Register, it is stated that the injury was caused by a known person with the blade and knife, but the case of the prosecution is that it was caused by blade. However neither blade nor knife was recovered in the course of investigation. Hence the question whether the weapon used is a deadly weapon or not remains opened. Therefore, the inference has been drawn based on the injury sustained by PW.2 and place of injury. Though PW.2 says that he tried to attack her in the neck with a weapon and she pushed the assailant down and moved on. No sign of injury over the neck.

10. Hence from the evidence available, the Court cannot jump into the conclusion that the accused had intention to cause death or that would likely to cause death. If the prosecution version as found in the First Information Report and the PW.2 is correct. The intention to cause injury ought to have been to disfigure PW.2, so that nobody will marry her. Therefore, absence of satisfactory evidence to prove the intention of the accused for causing the said injury, this Court holds that the conviction of the appellant for the offence under Section 307 of IPC has



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to be set aside as for want of proof. At the same time, this Court also finds that the trial Court ought to have given its finding on the charge under Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, which is distinct offence and a charge has also been framed for the said offence.

11. For the reasons best known, the trial Court has observed that having convicted the accused for other three charges, no separate sentence need to be imposed for the offence under Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act.

12. Since this is an appeal by the accused, this Court is not inclined to say further on that point except to point out the error. The trial Court has ordered fine Rs.15,250/- in total. Rs.10,000/- for the offence under Section 307 of IPC, Rs.5,000/- for the offence under Section 324 of IPC and Rs.250/- for the offence under Section 341 of IPC. Since this Court now finds no substantial evidence to convict the accused under Section 307 of IPC set aside the order of the trial Court. Consequently the fine amount of Rs.10,000/- ordered for offence under Section 307 of IPC is to be refunded to the appellant. However considering the nature of the



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case, this Court is of the opinion that the fine amount already been deposited and probably it has been given to the victim as compensation, therefore, no modification in that fine part of the order of the trial Court is required.

13. As a result, this *Criminal Appeal is partly allowed.*

(i) The conviction and sentence imposed on the appellant / accused under Section 307 of IPC by the trial Court is set aside. The conviction and sentence imposed by trial Court for the offences under Sections 341 and 324 of IPC stands confirmed.

(ii) The period of imprisonment already undergone by the accused shall be set off.

(iii) The learned trial judge shall take steps to enforce this judgment.

06.07.2022

Index : yes/no

Speaking order/ Non speaking order

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To



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1.The Sessions Judge, Chennai-104 (Mahalir Neethimandram at Chennai).

2.The Inspector of Police,
R-10, M.G.R.Nagar Police Station,
Chennai.

3.The Public Prosecutor, High Court, Madras.

Dr.G.JAYACHANDRAN,J.



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