



BAIL SLIP

The Petitioner/Accused Viz., Arumugam, Male aged 29 year S/o.Paramasivam was directed to be released on bail order dated 28.05.2015 made in Crl.MP.No.1/2015 in CRL.RC.No.490/2015 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CRL.R.C.NO.490 OF 2015

Arumugam

.. Petitioner

Versus

State represented by
Inspector of Police,
Madukarai Police Station,
Coimbatore.

.. Respondent

Prayer:

Criminal Revision Case is filed under Section 397 r/w 401 of Cr.P.C., to to set aside the judgment of the learned Principal District Judge of Coimbatore, dated 17.03.2015, passed in Crl.A.No.38 of 2015 in confirming the judgment, dated 22.07.2014 passed by the learned II Additional Sessions Judge, Coimbatore in S.C.No.96 of 2011 in erroneously convicting the petitioner herein under Section 307 of I.P.C and sentencing him to 5 years Rigorous Imprisonment and fine of Rs.1000/- in default to undergo three months Simple Imprisonment.

For Petitioner : Ms.K.Ponmani
Legal Aid Counsel

For Respondent : Mr.V.Arul
Government Advocate
(Criminal Side)



ORDER

This Criminal Revision Case in Crl.R.C.No.490 of 2015 is filed by the petitioner/sole accused, aggrieved by the Judgment of the learned II Additional Assistant Sessions Court, Coimbatore in S.C.No.96 of 2011, dated 22.07.2014, thereby, finding the petitioner/accused guilty of an offence under Section 307 of Indian Penal Code and imposing a sentence of five years Rigorous Imprisonment and a fine of Rs.1000/- and in default of fine, to undergo Simple Imprisonment of another three months and the judgment of the learned Principal District and Sessions Judge, Coimbatore, dated 17.03.2015 in Crl.A.No.38 of 2015, confirming the conviction and sentence imposed against the petitioner/accused.

2. On 29.07.2010, upon receipt of intimation from Nataraj hospital, P.W.6, Sub-Inspector of Police, went to the hospital and recorded a statement of P.W.1, studying final year in Avinashi Arts college, that when she was returning home on 29.07.2010 at about 6.00 P.M from Madukkarai bus stop, the accused called her by her name. She replied by asking as to how did he know her name. Immediately, the petitioner/accused caught hold of her hair and pulled her to ground and before she could get up, uttered that beautiful persons like her will not see the persons like the accused and saying so, he took out a knife and by pronouncing her to die, slit her neck. When she attempted to stop the petitioner/accused, he caught hold of her hand and also cut her hand also. She suffered injuries on the neck and hand. Immediately, she was taken to the hospital by ambulance.

3. Upon said statement, P.W.6 registered a case in Crime No.888 of 2010 under Section 307 of Indian Penal Code and thereafter PW-7 took up the case and completed the investigation and laid a final report proposing the petitioner/accused guilty of the offence under Section 307 of Indian Penal Code.

4. The Final Report was taken on file as P.R.C.No.1 of 2011 by the learned Judicial Magistrate No.VII, Coimbatore and after furnishing of copies under Section 207 of Cr.P.C., and the learned Magistrate committed the case as per Section 209(b) of Code of Criminal Procedure to the learned District and Sessions Judge, Coimbatore, who took the case on file as S.C.No.1 of 2011 and thereafter, made over the same to the learned II Additional Assistant Sessions Judge, Coimbatore, where the case is re-numbered as S.C.No.96 of 2011. Thereupon, considering the Final Report and the documents, the Trial Court framed a charged under Section 307 of Indian Penal Code. Upon being questioned about the charge, the accused denied the same as false.



5. Thereafter, the prosecution examined the victim/prosecutrix, Ms. AAAA as P.W.1; her father as P.W.2; her mother as P.W.3; her brother as P.W.4; the Doctor, who gave her the treatment, namely Dr.Natarajan, as P.W.5; the Sub-Inspector of Police, who registered the F.I.R, namely Vijayalakshmi as PW-6 and the Investigating Officer, namely Anbarasu, the Inspector of Police, as P.W.7. On behalf of the prosecution, the complaint statement given by P.W.1 was marked as Ex.P-1; the observation mahazar was marked as Ex.P-2; the signature in the admissible portion of the confession statement was marked as Ex.P-3; the seizure mahazar was marked as Ex.P-4; the wound certificate, issued to P.W.1, was marked as Ex.P-5; the First Information Report was marked as Ex.P-6; the rough sketch was marked as Ex.P-7; the admissible portion of the confession statement was marked as Ex.P-8 and Form-95 was marked as Ex.P-9. The shaving knife used by the accused to attack the victim was marked as M.O-1 and the prosecution rested its case.

6. Upon being questioned about adverse evidence on record and material circumstance against the accused under Section 313 of Code of Criminal Procedure, the accused denied the same as false. Thereafter, no oral or documentary evidence was let in on behalf of the petitioner/accused. The Trial Court, therefore, proceeded to hear the learned Additional Public Prosecutor on behalf of the prosecution and the learned Counsel for the accused and by a judgment, dated 22.07.2014 found that P.W.1 has deposed to the effect that the accused caught hold of her hair and pulled her down and by uttering the words mentioned supra, used shaving knife with a blade and had slit at the neck. Therefore, from the words uttered by the accused, from the nature of weapon used, from the part of the body which he has chosen to inflict the injury, the Trial Court found that there is intention to kill the victim. Therefore, the accused, having inflicted the injury, which is 6 cm x 2 cm cut injury, as per the Doctor, had committed the offence punishable under Section 307 of Indian Penal Code. The Trial Court further found that in view of the injury, there could be no doubt that the accused was present at the scene of occurrence. The victims' evidence should be given the due importance and the other witnesses, namely her father, P.W.2; mother, P.W.3 have also corroborated her evidence. Further, the petitioner/accused on 31.10.2010, upon his arrest, has taken the Police to the place in which he has kept the knife and has submitted the same, which is clear from the admissible portion of the confession, which led to the recovery of a knife. The said recovery is not denied by the accused. Therefore, the accused had both the intention and also the knowledge that his action is likely to cause the death of P.W.1. Therefore, the Trial Court held that the accused has guilty of the offence under Section 307 of Indian



Penal Code and sentenced him as aforesaid.

7. Aggrieved by the said judgment and findings, the petitioner/accused filed a Crl.A.No.38 of 2015 and by a judgment, dated 17.03.2015, the lower Appellate Court found that the entire effort of the defence, during the trial, was to establish that there was a love affair between P.W.1 and the accused and even though P.W.1 denied it and went to the extent of saying that the accused is stranger, the very defence case only props up the prosecution case and dispenses with the requirement of test identification parade. Once it is not disputed that P.W.1 suffered a cut injury of the denomination of 6 cm x 2 cm on her neck and that she had to be given 21 stitches to close the wound, the same is enough material to establish the guilt of the accused. The Appellate Court, further found that the defence did not challenge possibility of P.W.1 knowing the accused and therefore, in the absence of the challenge, the contradiction of P.W.1 stating that she did not know the accused does not matter much. The lower Appellate Court found that even though P.Ws.2 and 3 evidence has to be taken as hearsay evidence, there is no way P.W.1's evidence can be discounted as she is the victim. The lower Appellate Court further found that dispatching the F.I.R belatedly to the learned Magistrate; not indicating the house of P.W.1 in the rough sketch; not obtaining lab report of the blood stain sample; etc., are all the lapses on the part of the investigating agency and the same would not enure to the benefit of the petitioner/accused. As far as the injuries on the person of the accused is concerned, the lower Appellate Court found that the defence had not claimed that it was arising out of the same transaction and therefore, when the accused himself has ignored the injury, the same will not affect the prosecution case. Finding so, the lower Appellate Court confirmed the conviction and sentence imposed by the Trial Court. Aggrieved by the same, the present Revision is laid before this Court.

8. Heard Ms.K.Ponmani, learned Legal Aid Counsel on behalf of the petitioner and Mr.V.Arul, Government Advocate (Criminal Side) on behalf of the prosecution.

9. The learned Counsel for the petitioner submitted that the following circumstances clearly stare on the face of the prosecution:-

(a) In the earliest statement, which is made to the hospital authorities, P.W.1 has stated that she was attacked by an unknown person. But, however, after 2 ½ hours, at about 10.30 P.M, when she gave the statement, on which the First Information Report was registered, she mentioned the name of the accused;



(b) At the time of registration of F.I.R, when the name of the accused is clearly mentioned in the F.I.R and admittedly as per the evidence of P.W.7, the investigating officer, the accused is also undergoing treatment in the same hospital, the accused is neither arrested nor any action is taken. But, however, P.W.1 would stated that after two days, when the accused was found at the Madukkarai bus stop, he was arrested and there the accused has given a confession statement and the knife was recovered;

(c) As per the case of P.Ws.1, 2 and 3, they caught the accused at the spot itself and therefore, the recovery of the alleged shaving knife from the place shown by the accused is absolutely artificial;

(d) When P.W.7 had recovered the shaving knife, he has categorically mentioned that he has not recovered the same along with the blade and when the knife was having blood stains on the same, neither blood was recovered nor the lab report, pursuant to Ex.P9 Form-95, was obtained from the lab and laid before the Court;

(e) The manner of cut injury, as deposed by P.W.5, Doctor, clearly raises strong suspicion whether it was inflicted by the accused, even while P.W.1 was resisting, as it is clearly mentioned that wound was not open;

(f) The investigating officer omitted to collect the blood stained earth from the place of occurrence and this is a serious lapse which would go to show that the occurrence did not happen in the manner as portrayed by the prosecution;

(g) The house of P.W.1 is not even there in the rough sketch. Therefore, the evidence of P.Ws.2 and 3 that they heard the cry of P.W.1 and rushed from their house, appear to be, on the face of it, as false. In any event, there can never be eye witness to the incident, in the manner in which P.W.1 narrates the incident to happen;

(h) P.W.7, investigating officer, has categorically deposed that P.W.1 had known the accused prior to the incident and therefore, she would submit that taking into account the religion of both the parties, the defence of the accused that P.W.1 and the accused getting caught in the hands of the relatives of P.W.1 and bot got injured on account of the attack by the relatives, can never by overruled and on the strength of these circumstance, the Trial Court as well as the lower Appellate Court grievously erred in not approaching the evidence in right perspective and convicted the petitioner/accused merely on the solitary that too self-contradictory evidence of P.W.1.



10. Opposing the above submissions, the learned Government Advocate (Criminal Side) appearing on behalf of the prosecution would submit that P.W.1 is the victim. Even though she had deposed that she did not know the accused, the entire effort of the accused was only to establish that there was an affair. As rightly concluded by the lower Appellate Court, whether there was an affair or not, the factum of the accused inflicting injury on the particular date has been proved by the prosecution and therefore, the nature of weapon used, the place of injury, the manner of injury, whereby 21 stitches have to be given to P.W.1 could clearly establish the grievous and serious nature of the injury, which would have led to death of P.W.1, and her parents, P.Ws.2 and 3 and other relatives immediately rushed to her rescue and therefore, the Trial Court as well as the lower Appellate Court has rightly convicted the petitioner/accused for the offence under Section 307 of Indian Penal Code and therefore, he would submit that there is nothing in this case for this Court to interfere by way of this Revision.

11. I have considered the rival submissions made on either side. I have gone through the records. In this case, the first and foremost circumstances is that P.W.7 categorically admits that the petitioner/accused was admitted in the same Nataraj hospital on the day of occurrence, after he was injured and when the F.I.R names him as an accused on the same date i.e., on 29.07.2010, at about 10.30 itself, there is a serious lapse on behalf of the prosecution in not explaining as to why the accused was neither questioned nor taken into custody. The manner of arrest after two days, when the accused was arrested near the bus stop, itself is in serious doubt. The first information report also reaches the Magistrate only two days after it was registered. The second important circumstance is that the redundancy, the self-contradictory nature of the evidence of P.W.1. P.W.1, in the A.R copy, has informed the Doctor that she was attacked by an un-known person. However, within 2 ½ hours, in the First Information Report, she has categorically named the accused including his place of residence.

12. In the chief evidence, she had deposed that____

“ஆஜர் எதிரியை எனக்கு தெரியாது. சம்பவம் தொடர்பாக எனக்கு எதுவும் தெரியாது.”

This has been contradicted by the investigating officer stating that the name of the accused is mentioned in the F.I.R only upon the statement of P.W.1 and he would further depose that P.W.1 knew the name and also the place of residence of the accused. Therefore, the entire prosecution case as if the



petitioner/accused was a stranger and as if he was stalking P.W.1 is seriously in doubt.

13. This apart, when the petitioner/accused had also suffered injuries, P.W.7 admits that_____

“எதிரியை நீதிமன்ற காவலுக்கு உட்படுத்தப்பட்டபோது அவருக்கு காயம் இருந்தது என்றால் உண்மைதான். இந்து, முஸ்லீம் காதல் ஏற்பட்டால் கலவரம் ஏற்பட வாய்ப்பு உண்டு., மதுக்கரையல் பெரிய மருத்துவமனை நடராஜ் மருத்துவமனை தான். சம்பவத்தன்று மருத்துவமனையில் எதிரி அடமிட் ஆகியிருந்தார்.”

Similarly, it is also admitted that the accused had injuries on his person, at the time of treatment and it was specifically put to P.W.7 on account of the religious differences, these injuries could have been happened. Further, on behalf of the accused, P.W.2 was specifically cross-examined that the relatives of P.W.1 including P.W.2 only hit the accused in the same transaction. While so, the findings of the lower Appellate Court that the accused himself has disowned the injury as not happening in the same transaction is contrary to the material evidence on record. Therefore, when the accused was also injured in the same transaction and was admitted in the same hospital as that of P.W.1, the prosecution was duty bound to explain that injuries. Therefore, in the absence of the same, the same also raises a serious doubt in the case of the prosecution. The Hon'ble Supreme Court of India, had, in Lakshmi Singh v. State of Bihar¹, held as follows :

“ It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the court can draw the following inferences:

“(1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

(3) that in case there is a defence version which explains the injuries on

¹ (1976) 4 SCC 394 : 1976 SCC (Cri) 671



the time of alleged arrest and recovery which all happened two days after the alleged incident, which also throws doubt in the case of the prosecution.

16. Further, the house of P.W.1 is not even shown in the Ex.P7, rough sketch and the entire version that P.Ws.2 and 3 rushed from their house, upon hearing P.W.1 is very much doubtful. Further, P.W.1 had also deposed that the accused had also inflicted a cut injury on her hand. However, the Doctor's evidence and the wound certificate does not support the same. Even as per the case of the prosecution, people from the neighborhood immediately came to the spot and rescued P.W.1. But, however, not even a single independent person has been examined as a witness in this case. All these factors, cumulatively throw serious questions on the veracity of the prosecution case and certainly, it raises a probable doubt in the case of the prosecution.

17. In the teeth of these doubts, the findings of the Trial Court as well as the lower Appellate Court that the prosecution has proved the offence beyond any doubt is perverse and requires interference by this Court in exercise of the revisional jurisdiction.

18. Accordingly, this Criminal Revision Case is allowed. The judgment of the learned II Additional Assistant Sessions Judge, Coimbatore, dated 22.07.2014 in S.C.No.96 of 2011 and the judgment of the learned Principal District and Sessions Judge, Coimbatore, dated 17.03.2015, in Crl.A.No.38 of 2015 are set aside. The accused is acquitted of the offence giving the benefit of doubt. Fine amount, if any, paid by him shall be refunded to him.

19. This Court also places its appreciation for the learned Legal Aid Counsel, Ms.K.Ponmani, for rendering effective assistance in disposing of the present Revision Case.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

grs



To

1. The Principal District and Sessions Judge of Coimbatore.
2. The II Additional Assistant Sessions Judge, Coimbatore.
3. The Judicial Magistrate No.VII, Coimbatore.
4. The Chief Judicial Magistrate , Coimbatore.
(For information)
5. The Superintendent of Central Prison,
Coimbatore.
6. The Inspector of Police,
Madukarai Police Station, Coimbatore.
7. The Public Prosecutor,
High Court of Madras.

+1cc to Ms.K.Ponmani, Advocate, S.R.No.3456

Cr1.R.C.No.490 of 2015

PMK (CO)
PM/17/02/2022