



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.03.2022

CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.A.No.150 of 2020 and
Crl.MP.No.2797 of 2020

Ashok Kumar @ Keecha

... Appellant/accused

Vs.

The State Rep. by
Inspector of Police,
Egmore Railway Police Station,
Chennai
(Cr.No.248 of 2015)

...Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the judgment of conviction and sentence imposed upon the appellant by the learned Sessions Judge, Mahila Court, Chennai, in S.C.No.10 of 2016 dated 13.04.2018.

For Appellant : Mr.M.Subash

For Respondent : Mr.Leonard Arul Joseph Selvam,
Government Advocate(crl.side)

J U D G M E N T

The present appeal has been filed by the appellant / accused against the judgment of conviction and sentence imposed upon him by the learned Sessions Judge, Mahila Court, Chennai, in S.C.No.10 of 2016 dated 13.04.2018.

2. The appellant in the present appeal is arrayed as sole accused in the abovesaid case. The accused stood charged for the offence punishable under Section 307 IPC. The accused denied the charge and opted for trial. Therefore, he was put on trial on the charge. After full fledged trial, the learned Sessions Judge, found the accused guilty under Section 307 IPC. Accordingly, he was convicted and sentenced as follows:

Offence	Sentence
Under Section 307 IPC	to undergo seven years simple imprisonment and to pay a fine of Rs.5,000/- in default, to undergo further period of six months simple imprisonment

The trial Court ordered, the period of remand already undergone by the accused if any, to be set off against the sentence imposed.



3. Challenging the conviction and sentence the accused is before this Court by way of filing the present appeal.

4. The case of the prosecution, in brief, is as follows:-

(i) The case of the prosecution is that PW1-Manimala is the injured / victim in the alleged occurrence. She was working as Typist in Central Polytechnic College, Taramani. On 20.08.2015 at about 5.30 p.m., when she was climbing in the lift at Kasturi Bai Railway Station, she was alone in the lift. When the lift was ready to start, the accused got into the lift and immediately within a few seconds, he cut her throat with a knife. PW1 thought that the accused cut away her chain and when she touched her neck, she found that blood was oozing from her neck. At the time, the accused was having a blood stained knife in his hand and when she asked him what he did? he did not tell anything. When the lift came up and opened, she went out by crying. On the other hand, the accused went down in the same lift. After seeing the position of PW1, people came there and admitted her in the Malar Hospital. They also informed about the occurrence to the police.

(ii) In the Malar Hospital, Dr.Lakshmi given first aid and issued an accident register copy under Ex.P6. In the said document, she gave opinion that the injury sustained by Manimala is grievous in nature. Later, PW1 was referred to the Government Hospital for further treatment. In the Government Hospital, PW6-Dr.Mahadevan admitted the PW1 as in-patient and on examination, he found that she was having a lacerated injury on her neck measuring 10.2 x 2 cm. For the said injury, he performed surgery on 21.08.2015 and afterwards on 24.08.2015, she was discharged from the hospital. In this regard, he issued a wound certificate certifying that the injury sustained by PW1 was grievous in nature. The wound certificate issued by PW6 was marked as Ex.P5.

(iii) In the meantime, on 20.08.2015 at about 20.30 hrs, on receipt of intimation, PW8-Thiru.Sekar, the then Inspector of Police, Egmore Railway Police Station went to the Rajiv Gandhi Government Hospital and received the complaint from PW1, returned to the police station and registered a case in Cr.No.248 of 2015 under Section 307 of IPC. The first information report prepared by PW8 was marked as Ex.P7. After registering the case, he visited the scene of occurrence and in the presence of witnesses, he prepared an observation mahazar under Ex.P2. He drawn rough sketch and the same has been marked as Ex.P8. He examined the witnesses and recorded their statements.

(iv) In continuation of investigation on 12.09.2015 at about 7.00 a.m., he arrested the accused at Kasturi Bai Railway Station and recorded the confession statement under Ex.P9 in the presence of PW5-Pichandi. In the confession statement, he has stated as he is willing to identify the knife which was used in the commission of offence and later he brought the investigation team to his house and produced the



knife. After identifying the knife, PW8 recovered the same in the presence of same witnesses under cover of mahazar-Ex.P4. The admitted portion of confession statement given by the accused is marked as Ex.P9. After made recovery, the accused was sent to the judicial custody. Thereafter, PW8 received wound certificate from the doctors, examined them and recorded their statements. After completing investigation, he came to the positive conclusion that the accused committed an offence punishable under Section 307 of IPC. He filed a final report accordingly.

5. Based on the above materials, the trial Court framed the charges under Section 307 of IPC and the accused denied the same. In order to prove their case, on the side of the prosecution, eight witnesses have been examined as PW1 to PW8 and ten documents were exhibited as Ex.P1 to Ex.P10, besides one Material Object, which was marked as M.O.1.

(i) Out of the said witnesses, PW1-Manimala is the victim in this case. She speaks about the occurrence as during the relevant point of time, the appellant came into the lift, wherein she was ready to climb to other floor, and by showing knife, cut her neck with it. According to her, the public present in the occurrence place had admitted her in the hospital, wherein PW8 came and recorded the statement from her.

(ii) PW2-Natarajan is the father of PW1. He deposed before the trial court as in usual, daily at 7.30 a.m., PW1 left her home for attending her regular work. In the said occasion, on 20.08.2015 around 6.00 p.m., he received an information as his daughter was admitted in the hospital for the injury sustained by her. When at the time he went into the Malar Hospital, he was informed that his daughter was shifted to Government Hospital. After knowing the same, he went into the Government Hospital and saw his daughter.

(iii) PW3-Mohan is a resident of Korukkupettai. He deposed that on 21.08.2015 he signed as witness in the observation mahazar prepared by PW8. PW4-Janaki is a resident of Madipakkam and she speaks about the occurrence as on 20.08.2015 around 5.15 p.m., when at the time she moved to Velachery, the present accused entered into the lift and thereafter there was hue and cry from the lift. On enquiry, she knows an unknown person assaulted the lady and caused hurt to her with knife.

(iv) PW5-Pichandi speaks about the occurrence as on 12.09.2015 around 7.00 a.m., the police examined the accused and obtained a signature from him.

(v) PW6 and PW7 are the doctors spoken about nature of injuries sustained by the injured and about issuance of certificate in this regard.



(vi) PW8-Thiru.Sekar, the then Inspector of Police speaks about the receipt of complaint from the PW1, registration of complaint, investigation and about filing of final report.

6. When the above incriminating materials were put to the accused, under Section 313 Cr.P.C., he denied the same as false. However, in order to prove his case, he examined himself as DW1. He gave evidence as during the relevant point of time, the police officers came to his house and requested to come to police station. In the police station, he was detained for three days and thereafter they registered a false case against him.

7. The learned Sessions Judge, Mahila Court, Chennai, after perusing all the above materials and on considering the arguments advanced by either side convicted and sentenced the appellant as stated supra. Aggrieved against the said conviction and sentence, the appellant is before this Court, with the present criminal appeal.

8. I have heard Mr.M.Subash, learned counsel appearing for the appellant and Mr.Leonard Arul Joseph Selvam, learned Government Advocate(crl.side) appearing for the respondent State.

9. The first and foremost submission made by the learned counsel appearing for the appellant is that before the trial court, in order to prove the occurrence, on the side of the prosecution one folding knife was marked as M.O.1 alleging that the same was used by the accused in the commission of offence. But in this regard, the person who signed as a witness in the confession statement given by the accused as well as in the seizure mahazar prepared by the police officer, gave contradictory evidence and therefore it cannot be said M.O.1-folding knife was recovered by the prosecuting agency as stated by PW8.

10. Now on considering the said submission with the relevant records, PW8 who is the investigation officer in this case, gave evidence as on 12.09.2015 around 7.00 a.m. in Kasturi Bai Railway Station, in the presence of PW5-Pichandi and one, Murugan, he arrested the accused and after recording the confession from him, upon admitted portion of the confession statement given by the accused, M.O.1 was recovered from the house of the accused, which was hidden at the top of his house. So according to him, the confession statement alleged to be given by the accused and the weapon was recovered in the presence of PW5. In this regard, PW5 gave evidence in his cross examination as the knife was recovered in Kasthuri Bai Railway Station. Now on seeing the said evidence with the evidence given by PW8, there are some contradictions in recovering the material object. If the evidence given by PW5 is found correct, it cannot be said after securing the accused, the accused after given



confession, produced the said weapon. However, only because of the reason that the prosecution has not proved the recovery, it cannot be said the entire occurrence narrated by the prosecution is false.

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11. Now on going through the other evidences given by the prosecution witnesses, it seems, in the complaint-Ex.P1, PW1 who is the injured has clearly narrated the occurrence as one third party came into lift and after assaulting her with the help of knife, ran away from the scene of occurrence. As per the complaint, she sustained injury in her neck. Afterwards, while at the time of giving evidence before the trial court as PW1, she has clearly narrated the occurrence as only the accused herein committed the said offence as stated in the first information report.

12. In this regard, it is the contention raised by the counsel appearing for the appellant that after securing the accused, the prosecution has not conducted any identification parade and therefore it cannot be said that the accused alone committed the offence.

13. Now on considering the said submission with the relevant record, it is true after securing the accused, there was no identification parade conducted by the prosecuting agency. On the other hand, while at the time of giving evidence as PW1, the victim identified the accused as he alone committed the offence. In support of the said evidence, PW2, who is the father of the PW1 also gave evidence as while at the time he went into the police station along with his daughter, identified the accused to the police officers as he alone committed the offence. In the said situation, it would necessary to see whether the identification made by PW1 and PW2 before the police station as well as in the court is sufficient to accept the case of the prosecution. In this regard, it is useful and necessary to see the judgment of the Division Bench of this Court wherein while at the time of disposing CrI.A.Nos.1863 of 2002 & 1816 of 2003 dated 16.12.2004, has held as follows:

"11..... In DANA YADAV v. STATE OF BIHAR [(2002) 7 SCC 295], the Supreme Court, while considering the probative value of the test identification parade, held that the evidence regarding the identification in Court does not become inadmissible and cannot be discarded on the ground of not being preceded by a test identification parade, when the Court finds the same to be trustworthy. The Supreme Court further held that the identification of an accused by a witness in Court is substantive evidence whereas the evidence of identification in the test identification parade is though a primary evidence, it is not a substantive one and the same can be used only to corroborate identification of



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the accused by a witness in Court. The law laid down by the Supreme Court, therefore, clearly shows that even if there had been no test identification parade, the case of the prosecution cannot be thrown out, if the Court is satisfied about the trustworthiness of the witnesses and if the witnesses are able to identify the accused for the first time in Court, their evidence regarding the test identification parade does not become inadmissible and cannot be discarded on the ground that there was no test identification parade earlier.

14. Following the judgment of our Hon'ble Apex Court, the Division Bench of this Court has held that conducting identification parade is not a mandatory one and therefore, identifying the accused in the police station as well as in the court is sufficient to accept the case of the prosecution as accused alone committed this offence.

15. On going through the evidence given by the medical officers, both PW6 and PW7 have categorically held that while at the time of examining PW1, they found that she sustained injury in her neck in the size of 10.2 x 2 cm. Accordingly, the evidence given by PW6 and PW7 has corroborated the evidence given by PW1 and the same will prove only in the alleged occurrence, the accused caused grievous hurt to the PW1.

16. In otherwise, affirmatively due to the reason that the recovery of weapon is not proved by producing the relevant evidence, this Court cannot hold that with the help of the knife, the accused at the time of occurrence, caused grievous hurt to PW1. Furthermore, the whole evidence projected by the prosecution does not show that the accused / appellant herein is having an intention to kill PW1. Of course, the evidence given by PW1 disclose the fact that she is a stranger to the accused. Accordingly, convicting the accused for the offence punishable under Section 307 of IPC is not necessary and on the other hand, the evidence given by PW1, PW6 and PW7 and other prosecution witnesses clearly proves that at the time of occurrence, the accused wantonly caused hurt to PW1 and therefore he is found guilty and is convicted under Section 325 of IPC.

17. In fine, the Criminal Appeal is partly allowed. The conviction and sentence imposed upon the accused by the learned Sessions Judge, Mahila Court, Chennai, for the offences under Section 307 IPC, vide judgment dated 13.04.2018, in S.C.No.10 of 2016, is modified as hereunder:

(i) The conviction and sentence imposed by the trial Court for the offence under Section 307 IPC is set aside.



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(ii) The appellant / accused is found guilty and is convicted for the charges under Section 325 of IPC and is sentenced to undergo three years rigorous imprisonment with a fine of Rs.5,000/-, in default to undergo further period of six months simple imprisonment. The period of remand already undergone by the accused if any, is ordered to be set off against the sentences imposed.

(iii) If the period of remand already undergone by the accused is three years, he is directed to be set at liberty forthwith unless his custody is required in connection with any other case.

(iv). The bail bond, if any executed by the accused, shall stand cancelled. The fine amount, if any paid, to be adjusted against the sentence imposed now.

Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Sessions Judge,
Mahila Court, Chennai

2.The Principal Sessions Judge,
Chennai,

3.The IX Metropolitan Magistrate, Saidapet, Chennai.

4. Do through the Chief Metropolitan Magistrate, Egmore.

5.The Superintendent,
Central Prison,
Puzhal, Chennai

6.The Inspector of Police,
Egmore Railway Police Station,
Chennai

7.The Public Prosecutor,
High Court, Madras.

Criminal Appeal No.150 of 2020

MT(CO)

A.SK(19/04/2022)

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