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Bail Slip

The Petitioner/accused herein Mr.Venkatesan @ Jalapathy, was released as bail vide order of this court made in CrI.M.P.No.11274/2016 in CrI.R.C.No.1247/2016 dated 08.11.2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2022

CORAM:

THE HON'BLE Ms.JUSTICE R.N.MANJULA

CrI.R.C.No.1247 of 2016

Venkatasamy @ Jalapathy ... Petitioner/Accused

Vs.

The State Rep by
The Inspector of Police,
Kaveripattinam Police Station. ... Respondent/Complainant

Prayer: Criminal Revision filed under Sections 397 and 401 Cr.P.C praying to set aside the order and judgment dated 09.09.2016 made in Criminal Appeal No.69/2015 on the file of Additional District Sessions Judge, Krishnagiri against S.C.No.125 of 2014 on the file of Additional Sessions Judge, Krishnagiri.

For Petitioner : Mr.T.Sathyamoorthy
for M/s.Mukund R.Pandiyan

For Respondent : Mr.A.Gopinath
Government Advocate (CrI. Side)

O R D E R

This Criminal Revision case has been preferred challenging the judgement of the learned Additional District and Sessions Judge, Krishnagiri dated 09.09.2016 made in C.A.No.69 of 2015 which confirmed the judgment of the learned Assistant Sessions Judge, Krishnagiri dated 19.11.2015 made in SC.No.125 of 2014.



2. The case of the prosecution is that on 20.12.2018 at about 7.00.am when PW2/Chinnappa was conversing with her father/PW3-Soodappan in front of her house at Pangamutlu village, the accused appeared suddenly there and voluntarily attacked PW2 with Koduval over her right leg, right hand and left hand by saying that only if she dies, the problem would be over. Since the accused caused grievous injuries with an intention and knowledge that such grievous attack would lead to her death, the accused was charged for the offence under Section 307 IPC.

3. On the complaint given by PW1/sister of the victim on the same day at about 10.30.am, a case was registered in Crime No.839 of 2009 of Kaveripattinam Police Station under Section 307 IPC by PW10/Venkatachalam, Inspector of Police. After registering the case, he took up the investigation, went to the place of occurrence, prepared the Observation Mahazar in the presence of the witnesses. He also seized the blood stained Lungi along with blood stained soil, plain soil from the place of occurrence under Seizure Mahazar. He examined the witnesses and recorded their statement and he arrested the accused on the same day at 4.00.pm and recorded his confession statement. Based on his confession statement, the Koduval used by the accused for the occurrence has also been recovered under the Seizure Mahazar in the presence of PW8/Dhavamani-Village Administrative Officer. Thereafter, he sent the accused for remand. He also enquired the doctor, who had registered the Accident Register (Ex.P5) and given treatment to the victim and got the relevant medical certificates. He also sent the seized Material Objects to Court under Form-95. After completing his investigation, he filed the charge sheet against the accused under Section 307 IPC before the learned Judicial Magistrate-I, Krishnagiri. After the case was taken on file in PRC.No.2 of 2011 and after furnishing the copies to the accused and complying other legal mandates, the case was committed to the file of the learned Principal Sessions Judge, Krishnagiri. Thereafter, the case was assigned to the file of the learned Assistant Sessions Judge, Krishnagiri for trial. The learned Trial Judge, after perusing the materials available on record and on being satisfied, framed the charges against the accused for the offence under Section 307 IPC and questioned the accused. Since the accused pleaded innocence and claimed to be tried, trial was conducted.

4. During the counsel of trial, on the side of the prosecution 10 witnesses were examined as PW1 to PW10, 10 documents were marked as Ex.P1 to P10 and 4 Materials Objects were marked as M.Os.1 to 4. When the incriminating materials found on the prosecution evidence were put to the accused under



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9. Point for consideration:-

Whether the conviction and sentence imposed on the accused for the offence under Section 324 IPC by the learned Sessions Judge based on the materials available on record is fair and proper?

10. Some of the fundamental facts which are not in dispute are that PW2 and the accused were known to each other in their capacity as step-mother and step-son. The complaint was given by PW1, who is the sister of PW2. There is also no dispute with regard to the place of occurrence. Immediately after the occurrence, PW2 was taken to the hospital by her sister/PW1 to the Kaveripattinam Government Hospital for treatment. At the time of the occurrence, the father of the accused was also not alive and hence, PW2 was living along with her sister/PW1 and father/PW3. So they happened to be the natural witnesses for the occurrence when the occurrence had taken place in front of their house. PW2 has stated in her evidence that she was attacked by the accused with Koduval on her head and several places like hands and legs. Despite the doctor noted down the injuries on her legs and hands, no injury was found on her head.

11. The learned counsel for the revision petitioner submitted that the above discrepancy in the evidence of PW2 would render her evidence unreliable. But the fact remains that the victim was not attacked on her head alone as stated by her. She had been repeatedly attacked and she sustained several injuries. Excepting the head injuries, rest of the injuries match with the list of the injury noted by the Medical Officer/PW9, who registered the Accident Register. Even PW2 had stated that she was attacked by the accused by Koduval. Such a spontaneous evidence of PW2 cannot be rejected just for the reason that one of the injuries did not match her evidence.

12. It is also submitted that there are some discrepancies in the serial number of the Accident Register (Ex.P5), when it was compared with the original Accident Register maintained by the Hospital Authority. The learned Trial Judge had taken the pain of comparing the original Accident Register(Ex.P5) and found that the hospital did not maintain single Accident Register and that caused the confusion. The Medical Officer(PW9) did not have any motive against the accused in order to do any favour to PW2 by producing a false Accident Register extract. Just because there are some clerical commission and omission done at the staff level of the hospital, the veracity of the Accident Register registered by the doctor cannot be suspected.



13. The learned counsel for the revision petitioner further submitted that though immediately after the occurrence, PW2 was taken to the hospital by PW1 and blood was oozing from her injuries, the blood stained clothes of either of PW2 or PW1 was not recovered by the Investigating Officer. It is true that the recovery of those materials would have strengthened the case of the prosecution. However, those material objects would have been helpful only as corroborative evidence. But the substantive evidence of the injured witness itself is cogent and clear about the manner in which the weapon was used for the occurrence. The doctor has also stated in his evidence about the nature of the injuries and that it could be sustained by MO.1-Koduval. Hence, there is no reason to reject the available evidence of the prosecution. Despite the doctor had given the wound certificate by stating that some of the injuries sustained by PW2 are grievous in nature, the learned trial Judge had convicted the accused only for the offence under Section 324 IPC. The learned Trial Judge has stated that the opinion of the doctor, who had continued the treatment was not obtained and hence, the Court did not act on the grievous nature of the injuries as certified by PW9.

14. It could have been possible for the trial Court to call the doctor who had treated the injured for examining him about the nature of the injuries. Neither the prosecution had filed any cross appeal by challenging the above findings. The learned Appellate Judge also simply confirmed the judgment of the learned trial Judge and did not venture further. At this point of time and in the absence of any appeal filed by the prosecution, this Court cannot make a different observation.

15. PW2 has further stated that there was some ill-will between her son and her step son (accused) and because of that he was angry with her. The motive is also found to be probable in the background of the relationship between the accused and PW2. Thus, the evidence on record is more than sufficient to prove the guilt of the accused for the offence under Section 324 IPC.

16. However, due to the length of time and all other attending circumstances of the case, I feel that some lenience may be shown in the matter of punishment. It is seen that the accused has been convicted and sentenced to undergo Rigorous Imprisonment for 2 years, but without any fine. I feel that the ends of justice will be served if the imprisonment is reduced and fine amount is imposed.



17. In the result, this Criminal Revision is disposed and the judgment of the learned Additional District and Session Judge, Krishnagiri in C.A.No.69 of 2015 dated 09.09.2016 is modified to the effect that the accused is found guilty for the offence under Section 324 IPC and convicted and sentenced to undergo Simple Imprisonment for six(6) months and to pay a fine of Rs.25,000/-. The fine amount so paid by the accused can be treated as compensation payable to PW2. If the accused is on bail, the trial Court is directed to issue Non-bailable Warrant to secure him and send him to undergo the remaining punishment.

Sd/-

Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

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To

- 1.The Additional District Sessions Judge,
Krishnagiri.
- 2.-do-Thro The Principal District and Sessions Judge,
Krishnagiri.
- 3.The Judicial Magistrate No.I,
Krishnagiri.
- 4.-do-Thro The Chief Judicial Magistrate,
Krishnagiri.
- 5.The Assistant Sessions Judge,
Krishnagiri.
- 6.The Inspector of Police,
Kaveripattinam Police Station.
- 7.The Superintendent,
Centrla Prison, Vellore.



8.The Public Prosecutor,
High Court of Madras,
Chennai-104.

Copy to:
The Section Officer,
Criminal Section,
High Court, Madras-104.

+1cc to Mr.Mukund R.Pandian, Advocate SR.No.6535

Cr1.R.C.No.1247 of 2016

SSV(CO)
CB(02/03/2022)