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CRL A No.501 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2022

Coram:

THE HONOURABLE **MR. JUSTICE P.VELMURUGAN**

Criminal Appeal No.501 of 2022

Mahendran

... Appellant

Vs.

State represented by, Inspector of Police
Valparai Police Station,
Valparai,
Coimbatore District.
(Crime No.16/2016)

... Respondent

Prayer : Criminal Appeal filed under Sections 374 (2) of Criminal Procedure Code, praying to set aside the conviction and sentence imposed in the impugned judgment pronounced by the learned Sessions Judge, Coimbatore in Sessions Case No.5 of 2017 dated 30.08.2019 convicting the appellant and acquit the appellant from all charges.

For Appellant : Mr.H.S.Mohamed Rafi

For Respondent : Mr.S.Sugendran
Additional Public Prosecutor



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JUDGMENT

This Criminal Appeal has been filed seeking to set aside the conviction and sentence imposed in the impugned judgment passed by the learned Sessions Judge, Coimbatore in Sessions Case No.5 of 2017, dated 30.08.2019.

2. The respondent registered the case in Crime No.16 of 2016 for the offence under Section 307 of IPC. After completing the investigation, respondent police filed the charge sheet for the offences under Sections 294(b), 307 IPC and Section 4 Tamil Nadu Prohibition of Harassment of Women Act, before District Munsif cum Judicial Magistrate, Valparai. The learned Magistrate taken the charge sheet on the file in PRC No.01 of 2016. After completing the formalities, committed the case to the Principal District and Sessions Court, Coimbatore, since the offences are exclusively triable by the Court of Session. The Principal District and Sessions Court, Coimbatore taken the case on file in SC No.5 of 2017 and made over to the Mahila Court, Mahalir Neethimanderam, Coimbatore, since the offences are against woman. The learned Mahila



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Judge after completing the formalities framed the charges against the appellant for the offences under Sections 294(b), 307 of IPC and 4 of Tamil Nadu Prohibition of Harassment of Women Act.

3. After framing the charges, in order to substantiate the charges framed against the appellant, during the trial, on the side of the prosecution as many as 14 witnesses were examined as P.W.1 to P.W.14 and 20 documents were marked as Ex. P1 to P20. Besides that 5 material objects were exhibited as M.O.1 to M.O.5 on the side of the prosecution.

4. After completing the examination of prosecution witnesses, when the incriminating circumstances culled out from the evidence of prosecution witnesses were put to the appellant by questioning under Section 313 of Cr.P.C., he denied the same as false and pleaded not guilty. On the side of the defence, no oral and documentary evidence was produced.



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5. On hearing the arguments advanced on either side and considering the materials, the trial Court found not guilty for the offence under 294(b) of IPC and acquitted the appellant from the said charge. However, the trial Court found guilt of the accused for the offence under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1998 and 307 of IPC and convicted and sentenced to undergo three years of rigorous imprisonment and to pay fine of Rs.10,000/- in default to undergo rigorous imprisonment for six months for the offence under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1998 and convicted and sentenced to undergo ten years of rigorous imprisonment and to pay a fine of Rs.1000/- in default to undergo one year of rigorous imprisonment for the offence under Section 307 of IPC.

6. Challenging the said judgment of conviction and sentence passed by the trial court, the accused has filed the present appeal before this Court.

7. The case of the prosecution is that the defacto complainant is a



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widow and got two children. The appellant used to tease and compel the defacto complainant to marry him on her way to work. Since she refused the same, he used to ask her through cell phone. On 30.01.2016, the accused as usual called the defacto complainant for which, the defacto complainant refused the same and told him that she would give complaint to the police. On the same day at about 3.00 p.m., the appellant went to the school in which, the defacto complainant was working and talked to her and abused her with filthy language and finally attacked her with knife and caused injuries all over her body and due to the attack, her two right hand fingers were amputated. Immediately, she was taken to Valparai Government Hospital. The police, on information from the Hospital and on examining the defacto complainant, registered the case against the appellant.

8. The learned counsel for the appellant would submit that the prosecution has not examined any independent witness and there is no corroborative evidence to the evidence of the victim. Further, no identification parade was conducted and none of the witnesses have



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identified the appellant. P.W.12/the Investigating Officer who investigated the case initially, has stated that the victim had put her right thumb impression in the complaint statement, whereas the victim has stated since two of her right hand fingers got amputated, she had put her left thumb impression in the complaint statement which itself creates doubt as to whether the victim sustained injury on her left hand or right hand. Though the occurrence is said to have taken place in the School in which the victim was working and though on the date of occurrence, parents teachers meeting was going on, neither any parent nor any student was examined as independent witness and except the victim/P.W.1, there is no other eye witness to this case. Even though P.W.2 is said to be the eye witness to this case, the victim has not stated that P.W.2 had seen the occurrence. Further there is delay in sending the complaint to the Court. The FIR was registered on 30.01.2016 at 16.10 hrs., whereas the complaint was received by the Court only at 12 noon on 31.01.2016. Originally the case was registered only for the offence under Section 307 IPC and thereafter, without any material, the offences were altered into Sections 294(b), 307 IPC and 4 of Tamil Nadu Prohibition of



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Harassment of Women Act. However, the victim/P.W.1 has not spoken about any abusive language while deposing her evidence both in chief and also in cross examination. Even the witnesses have not stated that in the presence of others, the appellant scolded the victim/P.W.1 with filthy language and therefore, the trial Court rightly acquitted the appellant for the offence under Section 294(b) IPC. However, from the very same evidence and materials, the trial Court erroneously convicted the appellant for the offences under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act and Section 307 IPC. He would submit that the prosecution not proved the allegation as to whether the appellant compelled the victim to marry him and thereby, the prosecution has failed to prove the motive for the commission of offence. In the absence of any strong proof or evidence for the motivation, the conviction passed by the trial Court based on the sole evidence of P.W.1 alone, is not sustainable in the eye of law. Even the prosecution has not recovered the cell phone of the victim and the appellant and also not produced the call details to prove the alleged calls made by the appellant to the victim which is fatal to the case of the prosecution. He would submit that the prosecution



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intentionally failed to produce the cell phone call details of victim.

Further, there are lot of serious material contradictions in respect of place of occurrence and the weapon alleged to have been used by the appellant for the commission of offence and the trial Court has not properly appreciated the contradictions. Before the police, the victim/P.W.1 stated that the weapon used by the appellant was Arival (Sickle), whereas before the Court while deposing as P.W.1, she stated as Kathi (knife). The material difference between the knife and sickle are vast. Further, some of the witnesses including P.W.1 and P.W.4 have stated that the occurrence took place in the Veranda of the School. But P.W.2 has stated, initially the appellant attacked on the head of the victim out side the office room and thereafter, P.W.1 headed to the Head Mistress Room and the appellant chased her and inflicted injuries on the victim in front of the Head Mistress Room. P.W.3/Headmistress has stated that in front of her room, the appellant attacked the victim. The material contradictions and variations in the statements made by P.W.1 to P.W.4 while deposing as witnesses, create doubt about the prosecution case. The doctor who had initially gave first aid to the victim/P.W.1 was



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not examined as prosecution witness at the first instance and at the later stage, he was examined as an additional witness which creates serious doubt on the foundation of the prosecution case. Further, the doctor who initially treated the victim, has made entry in the Accident Register and recorded only 7 injuries, whereas in the wound certificate issued by the doctor who gave further treatment to the victim, it is mentioned that the victim sustained 14 multiple injuries which also creates doubt. Even the Investigating Officer/P.W.14 admitted that he did not investigate any independent witness near the Aanaimalai Auto Garage where the appellant alleged to tease the victim, as to whether the appellant teased or compelled the victim to marry him. He would reiterate that the prosecution has not proved the specific place with respect to place of occurrence which is very crucial for placing conviction on the appellant. Further, the medical records also does not corroborate and match up with the evidence of the victim/P.W.1. Even assuming that the injuries were inflicted to P.W.1, the same would not attract the ingredients of section 307 IPC. The trial Court failed to appreciate the contradictory statements of the prosecution witnesses; non examination of independent witness;



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non recovery of the cell phones of the victim as well as the appellant and also non production of cell phone call details; difference in number of injuries in the medical records viz., Ex.P.12/wound certificate and Ex.P.18/Accident Register and without establishing any strong motive or evidence, the trial Court erroneously convicted the appellant for the offence under Section 4 Tamil Nadu Prohibition of Harassment of Women Act and attempt to murder (307 IPC) IPC, which warrants interference.

9. The learned Additional Public Prosecutor would submit that the defacto complainant is the injured witness in this case and while she was examining as P.W.1, she has clearly spoken about the entire incident and the injuries sustained by her. Further, she has clearly stated that the appellant is the one who caused the injuries on her. P.W.2 and P.W.4 are the colleagues of the victim/P.W.1 and P.W.3 is the Headmistress in which the victim/P.W.1 working. P.W.4 in her evidence has clearly stated that the appellant initially approached her and asked for the victim and in turn, she informed the same to P.W.2 about the arrival of the appellant.



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Thereafter, on hearing the noise, she came out of the office room and found two amputated fingers in the Veranada and the victim/P.W.1 was found with injuries on her head and neck and that the appellant was standing near by the victim/P.W.1. P.W.2 has stated that on the date of occurrence, P.W.4 informed her that the appellant came to meet the victim/P.W.1. By the time, the victim/P.W.1 came out from the office room. Thereafter, the appellant and the victim/P.W.1 were talking with each other. Thereafter, when the victim/P.W.1 was coming towards the office room, the appellant followed the victim/P.W.1 and attacked on her head. Therefore, the victim/P.W.1 ran to the Headmistress room and the appellant also chased her to the Headmistress room and attacked her. The doctor/P.W.13 who gave first aid to the victim/P.W.1 and made entry in the Accident Register has spoken about the injuries sustained by the victim/P.W.1 and he has also stated that when the the victim/P.W.1 was admitted in the hospital, she informed him that a known person attacked her in her school with knife or Arival. Further, the doctor/P.W.11 who gave further treatment to the victim/P.W.1 has clearly spoken about the injuries of sustained by the victim/P.W.1 and also issued the wound



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certificate which would clearly show that the victim/P.W.1 sustained multiple injuries including vital part of the body and that the weapon used for causing the injury is a deadly weapon. Further, the weapon which was used for causing the injuries on the victim/P.W.1 was recovered and produced by the prosecution before the Court and the same was marked as M.O.1. Though the learned counsel for the appellant contended that the nature of the weapon itself is in discrepancy, the weapon is neither Arival nor sickle and it is a Kavathu Kathi which is used for booming trees and with that weapon, if a person is attacked, naturally, he would sustain injuries as stated in this case. Further, there is no delay in filing the complaint. The prosecution proved its case beyond all reasonable doubts by examining the prosecution witnesses and also by producing the medical evidence. Therefore, the trial Court rightly appreciated the evidence and convicted the appellant and there is no merit in the appeal and the appeal is liable to be dismissed.

10. Heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the respondent police and also perused the materials on record.



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11. In order to substantiate the charges framed against the appellant before the trial Court during trial, on the side of the prosecution 14 witnesses were examined and 20 documents were marked besides 5 material objects were exhibited. Out of 14 witnesses, the complainant as well as the injured witness was examined as P.W.1.

12. In the evidence of P.W.1/victim has clearly narrated the entire incident that the victim is widow and having two children. The appellant used to tease and compel her to marry him while going to her work and also over cell phone and when she refused the same, the appellant went to the school in which, she is working and attacked her with deadly weapon and caused multiple injuries.

13. In order to corroborate the evidence of the victim/P.W.1, the doctor who gave first aid to the victim and made entry in the Accident Register/Ex.P.18, was examined as P.W.13 and he has clearly deposed that on 30.01.2016 while he was on duty in the Valparai Government Hospital, the victim was brought by her mother with multiple injuries and



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he gave first aid to her and thereafter, referred the victim to Pollachi Government Hospital for further treatment.

14. Further, the doctor who gave further treatment to the victim was examined as P.W.11 and he has clearly spoken about the nature of injuries sustained by the victim/P.W.1 and the issuance of Wound Certificate/Ex.P.12.

15. P.W.2 is the colleague of P.W.1. She has stated that on the date of occurrence, P.W.4 informed her that the appellant came to meet the victim/P.W.1. By the time, the victim/P.W.1 came out from the office room. Thereafter, the appellant and the victim/P.W.1 were talking with each other. Thereafter, when the victim/P.W.1 was coming towards the office room, the appellant followed the victim/P.W.1 and attacked on her head. Therefore, the victim/P.W.1 ran to the Headmistress room and the appellant also chased her to the Headmistress room and attacked her. Therefore, the evidence of P.W.1/victim is corroborated by the evidence of P.W.2.



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16. The contention of the learned counsel for the appellant is that though on the date of occurrence, parents teachers meeting was going on, none of the parents or students or watchman or any other independent witnesses were examined to support the case of the prosecution and further, the specific motive for the commission of offence was also not established by the prosecution. In this case the, victim is the injured witness and she herself has given the complaint and the same was also corroborated by the evidence of P.W.2, P.W.4 and P.W.11 & P.W.13/doctors and also by medical evidence viz., Ex.P.18/ copy of the Accident Register, Ex.P.12/wound certificate, Exs.P.14, P.16 and P.17/seizure mahazars. Therefore, this Court finds that the prosecution proved its case beyond all reasonable doubt.

17. Further, a perusal of the evidence of victim/P.W.1 and P.W.2 clearly shows that the appellant is the one who caused the injuries to the victim/P.W.1. Though the learned counsel for the appellant contended that there are deferences between the Accident Register and the Wound certificate with respect to number of injuries sustained by the



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victim/P.W.1, in this case, soon after the occurrence, the victim was taken to the hospital with multiple injuries and given first aid by P.W.13/doctor and naturally, some of the incised wounds due to blood clot might have not been noted clearly. However, the doctor PW.11/who gave further treatment, has clearly spoken about the nature of injuries sustained by the victim/P.W.1 and issued the wound certificate/Ex.P.12. As per Ex.P.12, the victim sustained injuries as follows;

S.No.	List of Injuries
1	Coarsely sutured incised wound over right parietal scalp-10x2x1 cm.
2	Incised wound over the bridge of nose 4x4x0.5cm
3	Coarsely sutured V shaped incised wound over left shoulder posterior aspect 20x2x1cm
4	Incised wound over right shoulder lateral aspect 12x3x1 cm
5	Sutured incised wound over right forearm 11x1x1cm (distal 3 rd dorso-lateral aspect)
6	Clean cut amputation of 3 rd and 4 th finger at level PIP right hand
7	Incised wound volar aspect right little finger over PIP (Proximal Crease) 3x2x0.5cm (Near total amputation).
8	Deformity and tenderness right little finger
9	Sututred incised wound over left arm promixal 3 rd lateral aspect 7x1x4cm.



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10	Sutured incised wound over left arm lateral aspect distal 3 rd 10x1x1cm
11	Incised wound partially sutured distal 3 rd forearm, dorsal aspect 8x5x2cm
12	Incised wound over middle 3 rd forearm dorsum 5x3x1cm.
13	Deformity +tenderness middle 3 rd left forearm
14	Incised wound over left gluteal region (lower aspect) 20x7x3cm

Further, the doctor/P.W.11 has given opinion that the injuries mentioned in S.No.1,2,5,6,7,8,9,13 of the wound certificate/Ex.P.12 are grievous in nature and the other injuries are simple in nature which would clearly show that the victim/P.W.1 sustained multiple injuries including the vital part of the body.

18. This Court being an Appellate Court as a final Court of fact finding, it has to necessarily re-appreciate the entire evidence and to give its findings independently. Accordingly, this Court re-appreciated the entire evidence and gives its findings independently.



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19. It is settled proposition of law that in the cases of injury, the evidence of the injured witness can be taken into consideration and conviction can be recorded based on the evidence of the sole witness or injured witness if the evidence of the sole witness/injured witness inspires the confidence of the Court. If the Court finds that there is no reason to disbelieve the or discard the evidence of the sole witness/injured witness and if the evidence of the sole witness/injured witness is natural cogent and consistent, then the conviction can be recorded based on the evidence of the sole witness/injured witness. In this case, the injured was examined as P.W.1 and the same was also corroborated with the evidence of P.W.2 and further, it was strengthened by the medical evidence.

20. Though, the trial Court framed the charge against the appellant for the offence under Section 294 (b) IPC, neither the victim nor any other witnesses stated that the appellant used filthy language against the victim and therefore, the trial Court rightly acquitted the appellant for the offence under Section 294(b) IPC. In this case, after the attack, since the victim/P.W.1 was conscious oriented and was treated immediately, she



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narrowly escaped and survived. In case if the victim was not taken to the hospital immediately and was not given medical attention immediately, the victim/P.W.1 would have lost her life. This Court while re-appreciating the entire evidence and taking into account the multiple injuries and the places in which the victim sustained injuries, comes to the conclusion that the appellant has committed the offence under Section 307 IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act and that the trial Court rightly appreciated the evidence of the prosecution witness and recorded conviction for the offence of attempt to murder viz., Section 307 IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act.

21. Therefore, this Court finds no perversity in the appreciation of evidence by the trial Court. Further, while taking into account, the serious nature of injuries sustained by the victim and two of her fingers got amputated due to the attack made by the appellant and also the weapon used for causing those injuries, this Court does not find any mitigating circumstances. Therefore, the appeal is liable to be dismissed.

22. Accordingly, this Criminal Appeal is dismissed. The



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respondent police is directed to secure the appellant to undergo the remaining period of sentence if any.

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Index:Yes/No



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To

1. The Sessions Judge, Mahila Court,
Coimbatore.
2. The Inspector of Police,
Valparai Police Station,
Valparai,
Coimbatore District.
3. The Public Prosecutor Officer, High Court, Madras
4. The Section Officer, Criminal Section, High Court, Madras.



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P.VELMURUGAN, J

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