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CrI.A.No.666 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2022

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

CrI.A.No.666 of 2019

Tamila alias Tamilarasi

... Appellant

Vs.

State Represented by
The Inspector of Police,
Veeranam Police Station,
Salem District.

... Respondent

Prayer:Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment dated 13.09.2019 passed in S.C.No.105 of 2017 on the file of the Mahila Court, Salem.

For Appellant : Mr.M.Santhanaraman

For Respondent : Mr.S.Sugendran
Additional Public Prosecutor

JUDGEMENT

This Criminal Appeal has been filed against the judgment dated 13.09.2019 passed in S.C.No.105 of 2017 on the file of the Mahila Court, Salem.



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2. The respondent police registered a case against the appellant for the offence under Sections 451 and 307 IPC. After investigation laid a charge sheet before the Judicial Magistrate, Additional Mahila Court, Salem and the same was taken on file in P.R.C.No.41 of 2016 and after formalities, the case was committed to the Sessions Judge, Mahila Court, Salem. The learned Sessions Judge taken the case on file in S.C.No.105 of 2017. On completion of trial, hearing the arguments advanced on either side, the trial court found the appellant guilty for the offence under Section 451 IPC and convicted and sentenced him to undergo two years Rigorous imprisonment and to pay fine of Rs.10,000/-, in default to undergo three months Simple Imprisonment. Though the appellant was acquitted for the offence under Section 307 I.P.C., he was convicted for the offence under Section 324 I.P.C and sentenced him to undergo two years Rigorous Imprisonment and to pay fine of Rs.10,000/-, in default to undergo three months Simple Imprisonment. Challenging the said judgment of conviction and sentence, the accused has filed the present Criminal Appeal before this Court.



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3. In order to substantiate the charges framed against the appellant, on the side of the prosecution, totally 9 witnesses were examined as P.Ws.1 to 9 and 11 documents were marked as Exs.P1 to P11. Besides, one material object was marked as M.O.1. After completing the examination of the prosecution witnesses, incriminating circumstances were culled out from the prosecution witnesses, put before the accused, by questioning under Section 313 Cr.P.C., and the same was denied by the accused as false and pleaded not guilty. On the side of the defence, no oral and documentary evidence was produced.

4. On conclusion of trial and hearing the arguments advanced on either side and perused the materials on record, the trial judge found the appellant guilty for the offence under Section 451 I.P.C and convicted and sentenced him to undergo two years Rigorous imprisonment and to pay fine of Rs.10,000/-, in default to undergo three months Simple Imprisonment and convicted the appellant for the offence under Section 324 I.P.C and sentenced him to undergo two years Rigorous Imprisonment and to pay fine of Rs.10,000/-, in default to undergo three months Simple Imprisonment.



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5. The learned counsel for the appellant would submit that defacto complainant having land adjacent to her land. When the defacto complainant requested her to sell the property, the appellant refused his request. In order to grab the property, the defacto complainant foisted a false case against the appellant. Further, none of the witnesses have spoken that they have seen the occurrence. One of the witnesses has stated that the occurrence had taken place at the defacto complainant's house and all other witnesses have spoken that the occurrence has taken place at the appellant's house. One of the witnesses stated that she took the weapon from the house of the defacto complainant. Though the said weapon was recovered and the same was produced before the learned Magistrate with delay. The weapon has not been sent for chemical analysis. The respondent has not explained as to why they have not recovered the blood stained weapon. If the child was bled, there was a blood stain in the curdle and also on the soil. The prosecution has not recovered any blood stained soil and the curdle cloth and also sent the same to Forensic Lab to corroborate the case that the blood stain in the weapon, earth and the curdle cloth are one and the same of human blood. Therefore, the respondent has not substantiated its stand that



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the appellant with the intention to kill the child trespassed into the house of the defacto complainant. After seeing the relative of the child, the accused flew away from the occurrence place that was not established by the prosecution before the Trial court. There is no eye witness for the alleged occurrence. All the injuries are simple in nature. Therefore, the prosecution failed to prove its case beyond reasonable doubt. The Trial Court failed to appreciate the evidence and acquitted the appellant for the offence under Section 307 IPC, however convicted the appellant for the offence under Section 324 IPC, which warrants interference of this Court.

6. Learned Additional Public Prosecutor would submit that the appellant and the defacto complainant are neighbors and adjacent land owners. The defacto complainant's chicks and goats while grazing on the lands of the appellant, caused damages to the crops. Due to that they quarreled each other. In order to take vengeance, the appellant trespassed into the house of the defacto complainant and caused injuries to the child with koduval. Hence the complaint.



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7. Heard the learned counsel for the appellant and the learned

Additional Public Prosecutor appearing for the respondent.

8. The case of the prosecution is that the appellant and the defacto complainant's are adjacent land owners. The defacto complainant's chicks and goats passes through the accused lands and caused damages and there was quarrel arose between them. In order take vengeance, when the defacto complainant's child was sleeping in the curdle, the appellant trespassed into the defacto complainant's house with the intention to kill the child, caused multiple injuries to the child, by using sickle. Upon hearing the crying sound of the child, mother of the child rushed to the place and at that time the appellant left from the place. Subsequently, the child was admitted in the hospital. The respondent police registered the case in Crime No.92 of 2011.

9. This Court is the Appellate Court and final Court of fact finding, it has to re-appreciate and revisit the entire evidence and give the independent finding.



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10. The trial court framed the charges as stated above. In order to substantiate the charges, on the side of the prosecution totally nine witnesses were examined and 11 documents were marked and one material object was also exhibited. P.W.1 and P.W.2 are father and mother of the child respectively. P.W.3 is the neighbour. He has spoken about the previous enmity between both the parties. P.W.4 is also one of the relative of the defacto complainant. P.W.6 is the doctor one who examined the child and gave the wound certificate Ex.P3 and A.I.R Copy Ex.P2.

11. In this case, there is no eye witness and all the witnesses are relatives. P.Ws.1 and 2 are the parents of the child. P.Ws.3 and 4 are the relatives of P.Ws.1 and 2. The case is based only on the circumstantial evidence. It is well settled proposition of law, in order to establish the circumstantial evidence, chain of circumstances has to be linked. If any one chain is de-linked, then the benefit of doubt will be in favour of the accused. It is stated that there was enmity between both the parties and in order to take vengeance, the appellant entered into the shed of the defacto



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complainant and took koduval from there itself, caused injuries with the intention to kill the five years old child, who was sleeping in the curdle.

From Ex.P3, wound certificate, it is found that the injuries sustained by the child are simple in nature. Based on the confession statement, the weapon was recovered and the same was produced before the Court belatedly. Though P.Ws.1 and 2 stated that there was bleeding, that might be spread on the earth under the curdle. But the prosecution neither recovered the blood stained soil nor the blood stained curdle cloth. The prosecution relied only on the circumstantial evidence. In this case, place of occurrence is also not clear. Trial court also observed that the prosecution failed to establish their case. From the medical record it is found that all the injuries sustained by the child are scratches which are simple in nature and also there is no cut injury. Weapon has not been sent to Forensic Lab for chemical analysis and the same was also sent to Court belatedly. Prosecution failed to established its case beyond reasonable doubt. Further the prosecution has not examined the eye witness. The prosecution failed to prove the case beyond reasonable doubt. Hence, the appellant is entitled for the benefit of doubt.



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12. Therefore, this Court finds that the trial court has not properly appreciated the evidence and wrongly convicted the appellant. Therefore, this Court finds that the judgment of the trial court is perverse and liable to be set aside. Accordingly, the Criminal Appeal is allowed by setting aside the judgment of the trial court. Resultantly, the appellant is acquitted of both the charges for which he was convicted. Fine amount if any paid, shall be refunded. Consequently, connected miscellaneous petition, if any, is closed.

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Index:yes/No

Internet:yes/No



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P.VELMURUGAN, J.

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To

1. The Sessions Judge,
Mahila Court, Salem
2. The Inspector of Police,
Veeranam Police Station,
Salem District.
3. The Public Prosecutor,
High Court of Madras,
Chennai.

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