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Crl.A.No.76 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.09.2023

DELIVERED ON : 20.09.2023

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.A.No.76 of 2022

Syed Ibrahim

... Appellant

Vs.

State Rep. by
The Inspector of Police
H-6, R.K. Nagar Police Station
Chennai 600 021
(Crime No.1013/2017)

... Respondent

PRAYER: Criminal Appeal filed under Section 374 of Criminal Procedure Code, 1973 against the judgment dated 31.08.2021, passed by the learned II Additional Sessions Judge, City Civil Court, Chennai, in S.C.No.122 of 2018.

For Appellant : Mr.T. Shanmugaboopathi

For Respondent : Mr.S. Sugendran
Additional Public Prosecutor.



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JUDGMENT

This criminal appeal is filed against the judgment dated 31.08.2021, passed by the learned II Additional Sessions Judge, City Civil Court, Chennai, in S.C.No.122 of 2018.

2. The appellant is the accused in S.C.No.122/2018 and he is convicted under Section 326 IPC and sentenced to undergo Rigorous Imprisonment for 5 years and a fine of Rs.1,000/-, in default, to undergo Simple Imprisonment for three months.

3. Incident

3.1. P.W.1, Soloman Raj, is stabbed on his right chest with a knife (M.O.1) by the accused at about 8 p.m. on 20.06.2017 near a ration shop located near his house in Nethaji Nagar, Tondiarpet, Chennai. The accused, Syed Ibrahim @ Kurangu Syed had a grudge against P.W.1 who was the one who called the police earlier due to which the accused was apprehended and arrested. The accused was later enlarged on bail.



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3.2 The accused had first gone to P.W.1's house and enquired his whereabouts to his wife Janet (P.W.2) and on knowing that P.W.1 is standing near a ration shop close by, went there, confronted P.W.1, pushed him down, kicked him, abused him and stabbed him on the right chest causing bleeding injuries. The accused fled the scene, while P.W.1 was rushed to the Stanley Government Hospital by his wife, daughter Prema (P.W.3), friends Velusamy and Ekambaram in an auto.

4. The Investigation

4.1. On receipt of information by the police, Thiru.Sundaram, Inspector of Police (P.W.8), R.K. Nagar Police Station, went to the hospital, recorded the statement (Ex.P1) of Janet (P.W.2), seized the blood stained white colour shirt (M.O.2) that was worn by the victim P.W.1, and went back to the police station and registered an FIR (Ex.P7) at 10.15 p.m. on the same day in Crime No.1013/2017 under Section 307 IPC against the accused Syed Ibrahim @ Kurangu Syed.



4.2. At about 11 p.m., the same day, he went to the scene of occurrence, prepared an Observation Mahazar (Ex.P8) and a rough sketch (Ex.P9) in the presence of witnesses Munusamy (P.W.4) and Kathiresan (not examined). He examined the witnesses Janet (P.W.2), Prema (P.W.3), Velusamy, Ekambaram, mahazar witnesses Munusamy (P.W.4) and Kathiresan (not examined) individually and recorded their statements. Later on 21.06.2017 at about 1.30 p.m. he arrested the accused Syed Ibrahim @ Kurangu Syed near ESI School at Ennore High Road in the presence of Santhosh (not examined) and Vignesh (P.W.5), recorded his voluntary confession, the admitted portion of which is Ex.P.11 and also recovered the knife (M.O.1) from IOC pipeline near ESI School under a mahazar (Ex.P10) in the presence of the same witnesses. Subsequently, the accused was remanded to judicial custody and the seized articles M.O.1 and M.O.2 were sent to the concerned court with Form 95 (Ex.P12).

4.3. The Investigation Officer also examined Dr. Muthu Narayanan (P.W.6) and Dr.Vijayalakshmi (P.W.7), obtained the Accident Register copy (Ex.P5) and Medico Legal Opinion (Ex.P6) and recorded their statements.



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Later he filed the final report on 06.09.2017 under Sections 341, 294(b), 326 and 307 IPC against the accused before the XV Metropolitan Magistrate, George Town, Chennai.

5. Trial in the court

5.1. The final report was taken as P.R.C. No.8/2018 on the file of the XV Metropolitan Magistrate, George Town Chennai. The accused was furnished with copies of records under Section 207 Cr.P.C.. After perusing the records, the Magistrate Court found that the offence under Section 307 IPC is prima facie made out which is exclusively triable by Court of Sessions and committed the case under Section 209 Cr.P.C. to the Principal Sessions Court, Chennai. This was taken up as S.C.No.122/2018 by the Principal Sessions Judge, who made over to II Additional Judge, City Civil Court, Chennai, for trial. Charges were framed under Sections 294(b), 326 and 307 IPC and they were read over and explained to the accused who denied the same and pleaded not guilty.



5.2. The prosecution examined P.W.1 to P.W.8 and marked Ex.P1 to Ex.P12 and M.O.1 M.O.2 to prove the guilt of the accused.

5.3. Soloman Raj (P.W.1) the victim had deposed the sequence of events as to how the accused Syed Ibrahim used to threaten public brandishing a knife and was caught by police earlier. He deposed that the accused had a grudge against him and therefore attacked him on 20.06.2017 at 8 p.m. near his house in front of the ration shop. He also stated that he was stabbed with a knife (M.O.1) on his chest causing bleeding injuries and that his wife, daughter and friends took him to the Stanley Government Hospital where he was treated as an inpatient. He identified the knife and the blood stained shirt (M.O.2).

5.4. Janet (P.W.2) deposed that the accused Syed Ibrahim came to her house on 20.06.2017, asking for P.W.1 (her husband) and when told that he was near the ration shop chatting with his friends, the accused went there and kicked P.W.1 who fell down and later stabbed P.W.1 with a knife (M.O.1). She along with her daughter (P.W.3) and P.W.1's friends



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Velusamy and Ekambaram, rushed P.W.1 to the Stanley Government Hospital. Sundaram (P.W.8), Inspector of Police on receipt of information from the Hospital visited the hospital and recorded the statement of P.W.2.

5.5. Prema (P.W.3) has deposed that she is the daughter of the injured victim P.W.1 and that she along with her mother P.W.2 were sitting outside the house when the accused Syed Ibrahim enquired the whereabouts of her father P.W.1. He was told that her father was standing nearby the ration shop. She has also deposed that she along with her mother followed the accused only to find her father getting kicked by the accused and her father fell down. He was also stabbed by the accused on the right chest by a knife (M.O.1) before he could get up and she along with her mother and two of her father's friends rushed him to Stanley Government Hospital where he was admitted in Intensive Care Unit. She also deposed that he was admitted as an inpatient and underwent treatment for 12 days. P.W.3 also identified the knife (M.O.1) and the blood stained shirt (M.O.2).



5.6. Munusamy (P.W.4) who owns a petty shop near the place of occurrence has deposed that he along with one Kathiresan who is running a barbar shop nearby were present on 20.06.2017 when the police had prepared an observation mahazar (Ex.P8) and a rough sketch (Ex.P9). Vignesh (P.W.5) a resident of the Housing Board at Tondiarpet found police surrounded by a crowd near ESI School near Ennore High Road where one Syed Ibrahim was arrested in his presence and the confession statement was also obtained. The knife was also recovered from the site under the cover of a seizure Mahazar (Ex.P4).

5.7. Dr. Muthu Narayanan (P.W.6), who was in the Emergency Ward of the Stanley Government Hospital, treated P.W.1 and admitted him as an inpatient and also issued Accident Register (Ex.P5) recording that a stab injury of 5x3x1 cm was found in the right chest of the victim. Dr.Vijayalakshmi, to whom P.W.1 was referred for an expert opinion, certified that the injury was of grievous in nature and his right rib was fractured. This was after studying the X-ray and CT scan report. Thiru.Sundaram, the Investigation Officer, R.K. Nagar Police Station,



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recorded the statement of P.W.2 and registered FIR in Crime No.1013/2017
of H-6, R.K. Nagar Police Station.

5.8. The accused when questioned under Section 313 Cr.P.C. about the incriminating circumstances appearing in evidence against him, he denied of having committed any offence. He had no oral or documentary evidence on his side.

5.9. The trial court, after analysing the evidence on record, had found the accused guilty of the offence under Section 326 IPC and sentenced him to undergo Rigorous Imprisonment for 5 years and a fine of Rs.1,000/-, in default, to undergo Simple Imprisonment for three months. Aggrieved over the same, the present Criminal Appeal is filed by the appellant/accused.

6. The Appeal

Mr.T. Shanmugaboopathi, learned counsel for the appellant would contend that the vital ingredient of Section 326 IPC has not been proved beyond reasonable doubt by the prosecution in the light of contradictory versions made by P.W.1 to P.W.3. He pointed out that P.W.1 after



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admission in the Hospital told the Emergency ward doctor Muthu Narayanan (P.W.6) that he was stabbed by a known person. It was also pointed out that the injured victim P.W.1 had told Dr. Vijayalakshmi (P.W.7) that the assailants were 3 unknown persons. Janet (P.W.2), it is argued, deposed that she heard the scream of her husband and then rushed to the scene of occurrence, while Prema (P.W.3) the daughter of P.W.1 has deposed that she along with her mother followed the accused and saw the assault in front of her. Such discrepancies coupled with by inordinate delay in sending the FIR to a concerned Magistrate Court are all serious infirmities and fatal to the case of the prosecution, it was contended. It was further contended that there were no independent witnesses except the close relatives P.W.2 and P.W.3. It was also argued that the blood stained shirt as well as the knife used by the accused ought to have been sent to forensic Laboratory for a conclusive proof against the accused. Therefore, the learned counsel for the appellant pleaded for acquittal of the accused.

7. Per contra, Mr.S.Sugendran, learned Additional Public Prosecutor contended that the trial court had, after analysing the oral/documentary



evidence, rightly convicted and sentenced the accused and therefore, no interference is called for by this court and prayed for dismissal of the Criminal Appeal.

8. Conclusion

8.1. In the instant case, the theory of the prosecution is that the accused Syed Ibrahim @ Kurangu Syed had criminal antecedents and was imprisoned earlier when he was found threatening the public brandishing a knife. It is also the theory that P.W.1 was one who had earlier called the police leading to the arrest of the accused. Therefore, the accused coming in search of P.W.1 and attacking him with a knife are all convincing. This theory is fortified with the eye witness accounts of P.W.1 to P.W.3. P.W.1 took the brunt of the attack and is the injured witness. Even if slight contradiction between the depositions of P.W.2 and P.W.3 are to be considered, the first hand account of P.W.1 is paramount. The argument of the defence that P.W.1 did not utter the name of the accused to Dr.Muthu Narayananan in the Emergency Ward has to be understood in the right perspective. It is only a previous statement of P.W.1 and the doctor had recorded it on what he understood. P.W.1 also sustained grievous injuries



and it is clear from the deposition of Dr.Vijayalakshmi that the 6th rib on the right hand side of the victim was fractured due to the attack using the knife by the accused. It has been certified as 'Grievous Injury'. The period of hospitalisation has been for more than 10 days. Though the learned counsel for the defence in the trial court while cross examining the witness had tried to elicit the information as to whether P.W.1 was unconscious, or semi-conscious or awake, the nature of injury definitely points out the state of mind of P.W.1 in the Hospital. Nothing much can be inferred from the statements made by P.W.1 to the doctors. Moreover, as observed earlier, it is only a previous statement and the same can be used only to contradict the witnesses. In the instant case, nothing useful was suggested to P.W.1 during the course of cross examination to discredit or believe his versions.

8.2. A bare perusal of the rough sketch of the ration shop where the attack took place is not far away from P.W.1's house and therefore, whatever contradictions pointed out by the defence in the depositions of P.W.2 and P.W.3 pale into insignificance. It is pertinent to note that the police had infact sent the profused dark brown stains in M.O.1 and M.O.2



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to the Forensic Department though court. The trial court seems to have conducted trial even without obtaining the serology report. However, the overwhelming evidence on the side of the prosecution proved the guilt of the accused beyond reasonable doubts.

8.3. As regards the sentence awarded by the trial court, the trial court had convicted the accused only for an offence under Section 326 IPC and sentenced him to undergo Rigorous Imprisonment for 5 years and imposed a fine of Rs.1,000/-, in default, to undergo Simple Imprisonment for three months. The accused was acquitted from the offences under Section 294(b) and 307 IPC. Though the attack was made by the accused on the vital part of P.W.1, the chest, P.W.1 had miraculously escaped and therefore, the trial court ought to have punished the accused under Section 307 IPC. Unfortunately, the prosecution has not filed any appeal. In the facts and circumstances, the conviction and sentence passed by the trial court is confirmed.



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WEB COPY 9. In the result.

- i. the Criminal Appeal is dismissed.
- ii. The judgment dated 31.08.2021, passed by the learned II Additional Sessions Judge, City Civil Court, Chennai, in S.C.No.122 of 2018, is confirmed.

20.09.2023

bga

Index : yes/no

Speaking /Non speaking Order

To

1. The II Additional Sessions Judge, City Civil Court, Chennai.
2. State Rep. by
The Inspector of Police
H-6, R.K. Nagar Police Station
Chennai 600 021
(Crime No.1013/2017)
3. The Additional Public Prosecutor
High Court, Madras.
4. The Section Officer,
Criminal Section, High Court, Madras.

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R.HEMALATHA, J.

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Pre-Delivery Judgment in
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