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Crl.A.No.329 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2023

CORAM:

The Honourable MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.A.No.329 of 2016

- 1.Vijaya
- 2.Vanitha
- 3.Saranya

...Appellants/Accused No.1-3

-Vs-

State Represented by,
The Inspector of Police,
D1, Poonamallee Police Station,
Crime No. 60 of 2003.

...Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, 1973, to set aside the conviction and sentence imposed in S.C.No. 32 of 2013 dated 22.04.2016 on the file of Mahila Court, Thiruvallur (FTC).

For Appellants : Mr.R.Sankarasubbu

For Respondent : Mr.G.V.Kasthuri
Additional Public Prosecutor



J U D G M E N T

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The learned Counsel for the Appellants submitted that the Accused-1 to Accused-4 are daughters and mother. Accused-1 to Accused-3 are daughters of Accused-4. As per the Prosecution case, P.W-2 who was the injured victim is alleged to have given a complaint as against the son of the Accused-4 and the brother of Accused-1 to Accused-3. Based on the complaint, FIR was registered by the Police. There was enmity between the Accused-1 to Accused-4 and P.W-2. As per the prosecution case on 21.01.2003, the Accused-1 to Accused- 4 taking objection to lodging the complaint against the brother of Accused-1 to Accused- 3 and the son of Accused-4 by P.W-2 admitted to kill her by the intervention of the neighbor. The P.W-2 was saved and she was taken to hospital where P.W-10 had seen the injury. Initially, P.W-2 was taken to Government Hospital, Poonamallee and later on, she was shifted to K.M.C. Hospital.

2. It is the submission of the learned Counsel for the appellants that the Accused-4 died prior to the trial. Accused-1 was convicted and sentenced to undergo rigorous imprisonment for five years for the offence under Section 307 of I.P.C. and to pay a fine of Rs.1,000/- and the Accused-2 and 3 were sentenced to undergo rigorous imprisonment for



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three years for the offence under Section 307 read with Section 34 of I.P.C. and a fine of Rs.1,000/-.

3. Aggrieved by the same, the appeal had been preferred. The short point of attack by the learned Counsel for the appellant is that the witnesses are relatives. P.W-1 is the husband of P.W-2 who injured herself. PW1 had given a complaint which was marked as Ex.P1. Based on which the Ex.P9/ FIR was registered. P.W-2 is the injured. P.W-1 who is the husband of P.W-2 is the hearsay witness. PW3 is the daughter of PW2. It is the contention of the learned counsel for the appellants that the case had been foisted using the injuries suffered by the P.W-2, making out a case as though the Accused-1 to Accused-4 were alleged to have trespassed into the house of P.W-2 and attacked her with an intention to kill her.

4. Even though, the trial Court had framed charge under Sections 450 and 307 of I.P.C., the learned Sessions Judge (Fast Track Mahila Court), Tiruvallur had acquitted the accused from the charges under 450 of IPC and convicted Accused-1 alone for offence under Section 307 of IPC and Accused -2 and Accused - 3 for offence under Section 307 read with Section 34 of IPC.



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5. It is the further contention of the learned Counsel for the appellants that the evidence of P.W-2/the victim had not been corroborated by the medical evidence.

6. The learned Counsel for the appellants had invited the attention of this Court to the medical evidence of the Doctors marked as P.W-10 and P.W-12. They had clearly stated that the injured had suffered only lacerated injuries and not puncture wounds. Further, he would submit that as per the prosecution case, the accused threw away the knife alleged to have been used to attack the victim/P.W-2. Whereas, the Ex.P-17 confession leading to recovery had not been proved before this Court as the Mahazar witness turned hostile. As per the prosecution case, the accused is alleged to have thrown away the knife near the place of occurrence. Whereas, during the trial the prosecution had attempted to prove the case based on confession leading to recovery. Therefore, the provision of Section 27 of the Indian Evidence Act had not been proved before the Trial Court. The learned Session Judge had on the basis of the evidence of P.W-2 had convicted the accused. It is the contention of the learned Counsel for the appellants the evidence of P.W-2 cannot be believed as it had been proved in cross examination of the Doctors marked as P.W-10 and P.W-12.



PW-2 had only suffered bruises and lacerated injuries. Therefore, the charge under Section 307 of I.P.C., cannot be invoked. Therefore, the learned counsel for the appellants seeks to set aside the judgment of the conviction recorded by the learned Session Judge, Fast track Mahila Court, Thiruvallur in S.C .No. 32 of 2013 dated 22.04.2016.

7. Further, it is the submission of the learned Counsel for the appellants that the daughter of P.W-2 herself was examined as PW3. In her cross examination, it had been proved that she was not a direct witness to the occurrence. PW-4 and PW-5 are relatives. The Charge framed by the prosecution had not been proved beyond any reasonable doubt. There are reasonable doubt in the case of prosecution. The learned Session Judge, Fast Track Mahila Court, had ignored the materials available in the cross examination of the prosecution witness and had convicted the accused based on the evidence of P.W-2/the victim alone. Therefore, the same is erroneous and the same shall be set aside.

8. The learned Additional Public Prosecutor has vehemently objected the line of the arguments of the learned Counsel for the appellants stating that the evidence had been cogently placed before the Trial Court by the prosecution. The learned Additional Public Prosecutor relied on the



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following materials:

Exhibit P7, Ex-P18, Ex-P19 was issued by the Doctor who treated the victim. It had been clearly stated that the injuries are grievous injuries. The prosecution had examined 13 witnesses and marked 21 documents and also four Material Objects. The learned Additional Public Prosecutor relied upon the forensic report marked as Ex.P20 and Ex.P21 wherein it is clearly stated that the Material Objects 1, 2 and 4 contained blood. Ex.P7 and Ex.P18 clearly stated that the injured had suffered grievous injury. The learned Additional Public Prosecutor objects to the marking of the document Ex.P19 by the investigation officer. The Doctor who had issued Ex.P19 was not at all examined. Therefore, the same will not stand scrutiny. This Court cannot rely such documents in the absence of the Doctor Expert who is competent to speak about the grievous injuries and not the investigation officer.

9. Heard the learned Counsel for the appellants and the learned Additional Public Prosecutor for the state. Perused the judgment of the learned Sessions judge, Fast Track Mahila Court, considered the evidence of P.W-1 to P.W-13 and Ex.P1 to Ex.P21.

10. On consideration of the rival submissions, the point for



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consideration is whether the judgment of conviction recorded by the learned Sessions judge, Fast Track Mahila Court, Thiruvallur in S.C.No. 32 of 2013 dated 22.04.2016 is to be set aside. On perusal of the evidence of P.W-1 to P.W-3, it is rightly pointed out by the learned Counsel for the appellant that the P.W-1 is the husband of the P.W-2. He is running a shop near Poonamalle Bus Stand from which the Police Station is hardly 50 meters. Whereas the complaint was lodged by around 11a.m. and the FIR reached the Court on 22.01.2023 by 7.p.m. As per the evidence, he is not an eye witness. P.W-3 is the daughter of P.W-2. In her cross examination, she admits that she had not visited the hospital and not informed her father about the occurrence. She denies the suggestion that the earlier case had ended in acquittal. She herself and her mother had remained hostile in the earlier case.

11. To attract the conviction under Section 307 of IPC, the injuries should be fatal, but for the emergency medical intervention she would not have survived. If the evidence of P.W-1 is to be believed that she was attacked with a sharp edged weapon by Accused-1 from the abdomen and piercing through the back of her body. But, there is no such evidence, the



medical evidence of the Doctors who treated her. Particularly Ex.P7 and Ex.P18. Therefore, as rightly pointed out by the learned Counsel for the appellants there are materials available before the Trial Court. The evidence of P.W-2 cannot be believed wholly. As rightly pointed out there is recovery of the MO.4, the witness turned hostile. The recovery itself goes even otherwise if the witness of the prosecution is to be considered. The P.W-2 had only suffered lacerated wound for which Section 307 of I.P.C. cannot be invoked by the Trial Court.

12. In the light of the evidence of the P.W-1 to P.W-3 and the Ex.P7 to Ex.P18 does not mention about the injury on the abdomen with a sharp edged weapon piercing through the back of the body. If it had been the case, the conviction under Section 307 of I.P.C., has to be confirmed. But, it was not so. Further, there is a delay in lodging the F.I.R. The occurrence alleged to have taken by around 11.00 a.m. whereas the F.I.R., had reached the Court by 7.00 p.m. on 21.01.2003. Considering the place of occurrence where PW1 is engaged in his business and the distance between the Police Station and the shop was hardly 50 meters. The F.I.R having been received by the Court by 7.00 p.m. it is found to be belated and there are too many



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doubtful circumstances in the case of the prosecution.

13. In the light of the above, the prosecution evidence of the victim/P.W-2 had not been supported with the Doctors evidence regarding endangering life of the victim. On consideration of the P.W-7 and P.W-8, it is found that there are only lacerated injuries and not punctured wounds as stated by the victim P.W.2. In the light of the above, the evidence of P.W-2 had not been supported with the medical evidence. Therefore, the judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court in S.C.No.32/2013 dated 22.04.2016 is found perverse, warranting interference by this Court.

14. In the result, this Appeal by the Convicted Accused is allowed. The judgment of conviction and sentence of imprisonment recorded as against the Accused is set aside.

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Index : Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

SATHI KUMAR SUKUMARA KURUP, J.,



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To

- 1.The Sessions Judge (Fast Track Mahila Court),
Tiruvallur.
- 2.The Inspector of Police,
D1, Poonamallee Police Station.
- 3.The Public Prosecutor,
High Court, Madras.

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