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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2023

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THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.747 of 2017

1.Jothi @ Madhana Jothi

2.Loganathan

Appellants

vs.

State by the Inspector of Police,
J-13, Taramani Police Station,
Chennai.
(Crime No.641 of 2015)

Respondent

Prayer: Criminal Appeal filed under section 374(2) of Code of Criminal Procedure, to call for the entire records in connection with the S.C.No.223 of 2015 on the file of the V Additional Sessions Judge, Chennai and set aside the conviction and sentence imposed by the V Additional Sessions Judge, Chennai dated 10.11.2017 in S.C.No.223 of 2015.

For Appellants : Mr.V.Paarthiban

For Respondents : Mr.A.Gokulakrishnan
Additional Public Prosecutor

**JUDGMENT**

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The above appeal is filed challenging the judgment holding the appellants guilty under Section 324 of IPC and sentencing them to undergo rigorous imprisonment for a period of one year and to pay a sum of Rs.10,000/- each towards compensation under Section 357(3) of Cr.P.C., to the victim.

2.It is the case of the prosecution that, on 13.02.2015, the appellants and the victim had a wordy quarrel and enraged by the said incident, the appellants went to the shop of PW1 and asked him to come out of the shop. When PW1 came out of the shop, the 1st appellant by uttering the words “எங்களிடமா தகராறு செய்கிறாய், இத்துடன் செத்து தொலை” and attacked the victim on his neck with a knife. The 2nd appellant also attacked the victim with a knife and when the victim tried to ward off from the said attack, he sustained cut injury in the middle finger.

3.It is further case of the prosecution that PW2 who is the employee of PW1 was present and he attempted to prevent the attack and he was pushed away by the appellants; that he took the victim/PW1 to a private hospital at Velachery and thereafter to the Government Hospital, Royapettah where he took



treatment. PW1 was examined by the police at the hospital and on his complaint (EX.P1), Inspector of Police (PW10) registered an FIR (EX.P9) for the offence under Section 307 IPC.

4. After registering the FIR, PW10 commenced the investigation. He went to the scene of occurrence, prepared the Observation Mahazer (Ex.P10) and Rough Sketch (Ex.P11) respectively. He examined witnesses and arrested both the accused at about 1:00 p.m., on 15.02.2015. On their confession, he seized the knives MO1 and MO2. Thereafter, he examined Doctors who had issued Wound Certificate for the victim and filed the final report before the XVIII Metropolitan Magistrate, Saidapet on 04.04.2015 for the offence under Section 307 IPC.

5. After the appellants were served copies under Section 207 Cr.P.C., the case was committed to the Court of V Additional Sessions Court, Chennai. The learned V Additional Sessions Court, Chennai, framed charges under Section 307 IPC against both the appellants.

6. The prosecution examined PW1 to PW10 and marked Ex.P1 to Ex.P17 and MO1 & MO2. The appellants did not examine any witnesses and not



marked any documents.

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7.The Trial Court after considering the evidence of PW1 and PW2 held that the appellants had no intention to cause the death of the victim and therefore, they were not guilty of the offence under Section 307 IPC. The learned Judge however found that the appellants were guilty of the offence under Section 324 IPC and sentenced them as stated above.

8.Mr.V.Paarthiban, learned counsel for the appellants, submitted that PW4, an independent eye witness examined by the prosecution, turned hostile and the other witnesses viz., PW3, PW5, PW6 and PW7 also turned hostile who had signed as witnesses in the Mahazer and the confession. The learned counsel submitted that PW8 issued Accident Register (Ex.P7) who was working at Government Hospital, Royapettah for the victim. PW9 had issued a Wound Certificate (Ex.P8) who was working at Rajiv Gandhi Government Hospital. (It is submitted that Wound Certificate originally issued by PW9 was misplaced and PW9 had issued another form indicating the wounds suffered by the victim).

9.The learned counsel submitted that PW2 could not have been the eye



witness. His presence has not been spoken to by PW1 while he lodged the complaint Ex.P1. In the complaint, he had only stated that PW2 came to the spot after he came to know about the assault on PW1. The learned counsel further submitted that the evidence of PW1 also cannot be believed as he had made a false case because he had a grudge against the appellants due to wordy quarrel that occurred between them on the morning of the 13.02.2015 and he was injured in a fight at a TASMAC wine shop. The learned counsel therefore submitted that the prosecution has not established the case beyond reasonable doubt.

10.The learned Additional Public Prosecutor, per contra, submitted that the evidence of PW1 is cogent and convincing. In Ex.P1, the presence of PW2 is recorded. PW1 in Ex.P1 does not rule out the presence of PW2. The learned Additional Public Prosecutor therefore submitted that there is no reason why PW1 should falsely implicate the appellants when he was attacked by some other third parties and he submitted that Trial Court had rightly convicted the appellants under Section 324 IPC though the charges were under Section 307 IPC.

11.This Court on perusal of the records finds that the prosecution case



rests on the evidence of PW1 and PW2 primarily. PW1 is the injured victim.

PW2 is the employer. This Court finds that in the complaint given by the PW1(Ex.P1), the presence of PW2 is stated. The version in the complaint does not rule out the presence of PW2. It is the prosecution case that the occurrence took place outside of the shop of PW2 where PW1 was working. Therefore, his presence is natural at the place of occurrence. Further, there is no necessity for PW1 to falsely implicate the appellants. PW1 has stated in clear and categorical terms that the appellants had attacked with MO1 and MO2. Nothing has been elicited in the cross-examination of PW1 to disbelieve his version in this case. Therefore, this Court is of the view that the finding of the Trial Court holding the appellants guilty of the offence under Section 324 IPC cannot be faulted and therefore, there is no reason to interfere with the said finding of the guilt.

12. At this juncture, the learned counsel submitted that the appellants may be considered for release under Section 4 of the Probation of Offenders Act, 1958. As there are no previous antecedents and the evidence also suggest that the incident took place due to wordy quarrel, the learned counsel submitted that this would be a fit case for exercise of powers of this Court to release the appellants on probation of good conduct.



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13. This Court is of the view, on the facts, that the appellants may not be entitled to benefit of the benevolent provision of Section 4 of the Probation of Offenders Act, 1958. However, in the facts and circumstances of the case, this Court is of the view that in the interest of justice, this Court can enhance the fine amount on the appellants in lieu of the sentence of imprisonment and direct the substantial portion of the fine amount to be paid to the victim as compensation for the injury sustained by him. It is also seen that the Trial Court directed the appellants to pay a sum of Rs.10,000/- each towards compensation under Section 357 (3) of Cr.P.C. The learned counsel submitted that the appellants have already deposited the said amount and produced the copy of the receipts evidencing the deposit made by the appellants before the Trial Court.

14. Considering the facts and circumstances of the case and for the reasons stated above that there are no antecedents against the appellants, this Court modifies the sentence imposed on the appellants and direct the appellants to pay a fine of Rs.25,000/- each and in default to undergo three months rigorous imprisonment. On such payment of fine, the victim shall be paid a sum of Rs.40,000/- as compensation in addition to Rs.20,000/- already deposited by the appellants before the Trial Court. The Trial Court shall ensure that on



payment of fine, the victim is paid a compensation of Rs.60,000/- totally.

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SUNDER MOHAN, J.

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15. With the above observation, this criminal appeal is partly allowed.

08.12.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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To

1. The V Additional Sessions Judge, Chennai.
2. The Inspector of Police,
J-13, Taramani Police Station,
Chennai.
3. The Public Prosecutor,
High Court, Madras.

Crl.A.No.747 of 2017