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Crl. Appeal No. 800 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.09.2023

Coram

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.A.No.800 of 2017

Abdul Muthalip

.. Appellant/Accused

Vs

State by

The Inspector of Police,

Palladam Police Station, Tiruppur District

(Crime No.1033/2015)

.. Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 (2) Cr.P.C to set aside the order of judgment dated 30.11.2017, made in Sessions Case No.108 of 2016 passed by the learned Mahalir Neethimandram (Fast Track Mahila Court, Tiruppur) acquit the appellant.

For Appellant

..

Mr.V.Murali

Legal Aid Counsel

For Respondent

..

Mrs.G.V.Kasthuri

Additional Public Prosecutor



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JUDGMENT

The Appellant has preferred the Appeal as against the judgment dated 30.11.2017 made in S.C.No.108 of 2016 passed by the learned Mahalir Neethimandram, (Fast Track Mahila Court, Tiruppur).

2.When the case came up for hearing, on 14.07.2023, 18.07.2023, 20.07.2023, 24.07.2023 and 19.09.2023 none appeared. Therefore, this Court had ordered the learned Sessions Judge, (Fast Track Mahila Court) Tiruppur to secure the Accused. On 11.09.2023 also this Court had directed the Legal Service Authority to nominate a Counsel for the Appellant so that the case can be disposed of.

3.On 19.09.2023, Thiru.V.Murali, legal Aid Counsel appeared on behalf of the Appellant and requested that the case may be adjourned for two days and by the time, he will prepare arguments. Accordingly, the case was adjourned to 25.09.2023.



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4.Today, on 25.09.2023, when the case was posted the first item, the learned Counsel for the Appellant Thiru.V.Murali, Legal Aid Counsel, appeared on behalf of the Appellant and submitted his arguments. The learned Counsel for the Appellant invited the attention of this Court to the charge framed by the Court. Only the charge framed by the learned Sessions Judge, (Fast Track Mahila trial Court, Tiruppur) is under Section 307 IPC which runs as follows:

"307. Attempt to murder.—Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to 1[imprisonment for life], or to such punishment as is herein before mentioned. Attempts by life convicts.—2[When any person offending under this section is under sentence of 1[imprisonment for life], he may, if hurt is caused, be punished with death"

5.On 24.08.2015 by 8.45 p.m the victim was returning home after attending her work. Near Panapalayam bus stand, she was confronted by the Accused. The



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Accused questioned and wanted to know from her whether the victim will marry him or not. The victim had already refused the proposal of the Accused, as he was already a married man and there is age difference between the victim and the Accused. To this, the Accused suddenly took out the knife and attacked on her neck with an intention to murder her, by uttering the words, "if you are not willing to marry me, you shall not live in this world". Hearing her cries the passers by came to her rescue. By then, the Accused ran away from the scene of occurrence.

6.Since the Accused denied the charges, the learned Sessions Judge, (Fast Track Mahila Court) Tiruppur ordered trial. During trial, the prosecution examined P.Ws.1 to P.W.15 and marked documents Exs.P.1 to Ex.P.10 and marked material objects M.O.1 to M.O.3.

7.The learned Counsel appearing for the Appellant invited the attention of this Court to Ex.P.6 and Ex.P.7 earliest document in this case arising from the hospital where the victim underwent first aid and later she was referred to Coimbatore Medical College where they had issued Ex.P.7 and Ex.P.8 in all these



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medical documents, it is stated that it is the case of chain snatching and injury was noted as simple injury, not a grievous injury and while so, P.W.1 developed a case on the insistence of a parents.

8.To support the case of the Appellant/Accused, the learned Counsel for the Appellant invited the attention of this Court to the evidence of P.W.7 who was the previous employer of P.W.1, the victim and the Accused. He had stated that there were intimate relationship with each other and there were problems between them. He had terminated them from service. The learned Counsel for the Appellant invited the attention of this Court to the evidence of P.W.1. Even though, she refused marriage proposal of the Accused on the ground that he was already married and having two children and also there is vast difference of age between her and the Accused, still the Accused insisted her to marry him. She had sought permission of her father who refused stating that there was vast age difference between them. Only after the involvement of the parents of P.W.1, a simple case of chain snatching had been developed as a case of attempt to murder. The learned Counsel for the Appellant also invited the attention of this Court to the evidence of Investigation



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Officer P.W.14 and P.W.15. Since the medical records did not support the case of the prosecution, the Investigation Officer had taken further statement from the victim P.W.1 at her house in which she stated that if she had disclosed at the earliest point of time that the Accused attempted to murder her, it will affect her life. Therefore, she had made it as a case of chain snatching. The learned Counsel for the Appellant further invited the attention of this Court to the portions of the cross examination of the witnesses HC-6, HC-31/(P.W.11), HC-33/(P.W.12), HC-37/(P.W.13), HC-39/(P.W.14), HC-40/(P.W.15), HC-44, HC-58/(Ex.P.6), HC-60 (Ex.P.8). Also the learned Counsel for the Appellant invited the attention of this Court to the discussion by the learned Sessions Judge, (Fast Track Mahila Court) Tiruppur in the judgment regarding the evidence of HC-79, HC-89, HC-90, HC-94. In the course of the trial, from the evidence of the victim P.W.1, three contradiction are available. At first immediately after the injury, she had underwent treatment where she had stated the Doctors who attended her, that it was the case of chain snatching. In the accident register and in the wound certificate issued by the Doctors, it was stated that it was a case of chain snatching. They had recorded as simple injury not life threatening. While so, to thwart the alleged relationship



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between the P.W.1 and the Accused, on the existence of the favour of P.W.1, P.W.2, P.W.1-victim had stated that the Accused caused injury with an intention to kill. Also, she states that at the time of admission, she did not disclose the fact that it was a case of chain snatching, the people who accompanied her and might have stated so as she was in a stage of giddiness and she could not speak at that time, which was found to be not true from the evidence of the Doctors who treated viz., P.W.11 and 12. P.W.13 the Sub-Inspector of Police had recorded the earliest statement from the P.W.1 from Government Hospital and registered the FIR. Subsequently, in the course of investigation, she had changed her statement as though the Accused attempted to kill her, further the learned Counsel for the Appellants submitted that confession statement leading to recovery had been marked, but the knife alleged to have been recovered, at the instance of the Accused was not subjected to forensic examination to find out the involvement of the Accused connecting to the crime. In the absence of the forensic examination of the material object one has to draw adverse inference. The learned Sessions Judge, (Fast Track Mahila Court) Tiruppur had discussed all the fact in the course of the judgment but she had given a finding that the victim had, due to fear of her life, not disclosed that the accused attempted



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to murder her. Instead she had informed the Doctors that it is a case of chain snatching. That explanation of the victim was accepted by the learned Judicial in the light of the several contradiction in the prosecution case. Therefore, the discussion of the learned Sessions Judge, (Fast Track Mahila Court) Tiruppur in the evidence available through the witnesses P.W.14 and P.W.15 and through Exs.P.1 to P.10 and arrived at a conclusion that the conduct of the Accused had resulted in the injury to the victim attracting the charge under Section 307 IPC and convicting the Accused for the offence under Section 307 IPC and sentencing to imprisonment for 7 years and fine of Rs.5000/- is found perverse particularly, in the light of several contradiction in the case of the prosecution.

1.At the earliest opportunity under Ex.P.6 it is stated as chain snatching and injury was stated as simple injury (not life threatening).

2.The victim herself stated that she was also feeling giddy, when she was not conscious and she was in hospital. Therefore, the persons who accompanied her might have stated it was chain snatching

3. She herself in her cross examination stated that due to fear of her life as it would cause difficulties for her marital life, she had voluntarily not disclosed the



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actual occurrence.

These three contradictions were ignored by the learned Sessions Judge, (Fast Track Mahila Court) Tiruppur, and had convicted the Accused based on the explanation offered by P.W.1 which is perverse and is to be set aside.

9.The learned Counsel for the Appellant relied on the ruling of the Hon'ble Supreme Court in the case of *Panchram vs. The State of Chhattisgarh and Another* in *Crl.A.No.1078 of 2023*

10.The learned Additional Public Prosecutor by way of reply vehemently objected to the line of the argument of the learned Counsel for the Appellant stating that P.W.1 had given explanation for the contradictions in the Medical Certificate under Ex.P.6, Ex.P.7 and Ex.P.8 and her evidence due before the trial Court. The learned Sessions Judge, had rightly accepted explanation offered by P.W.1. Further, the learned Additional Public Prosecutor relied on the evidence of the employer P.W.7 under whom Accused and P.W.1 were previously employed regarding the motive for the overt act. Further it is borne out by the evidence of P.W.3, P.W.2-



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father of the victim, P.W.3 and P.W.4 the persons who accompanied her to hospital, the alleged occurrence took place near the medical store of P.W.3. Also it is the evidence of P.W.5, 6 & 8. Therefore, the learned Sessions Judge,(Fast Track Mahila Court) Tiruppur, had, on proper appreciation of evidence, arrived at a conclusion that injury of the victim P.W.1, was caused by the Accused. Therefore, there is no ground for this Court to interfere with the judgment of conviction recorded by the learned Sessions Judge. The appeal lacks merits and has to be dismissed and judgment of the learned Sessions Judge, (Fast Track Mahila Court), Tiruppur is to be confirmed.

11.Whether the judgment of the learned Sessions Judge, (Fast Track Mahila Court, Tiruppur) in S.C. 108 of 2010 is to be set aside as perverse?

12.Perused the Charges framed by the trial Court, the evidence of the witnesses before the trial Court P.W.1 to P.W.15, the documents marked before the learned Sessions Judge, (Fast Track Mahila Court) Tiruppur under Ex.P.1 to Ex.P.10 and the judgment of learned Sessions Judge, (Fast Track Mahila Court)



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Tiruppur, in S.C.No.108 of 2010 dated 30.11.2017. On a perusal of the evidence of P.W.1, in the light of the evidence of the Doctors P.W.11 and P.W.12 and Exs.P.6 to Ex.P.8 the injuries found are simple injury, is not life threatening. Earliest document in this case, wound certificate of the accident register states it, as simple injury caused by chain snatching. The evidence of P.W.1 does not inspire the confidence of the Court. The learned Sessions Judge had accepted the explanation offered by the victim P.W.1 that she had not disclosed the original occurrence, due to fear for her matrimonial life in future, is found to be unacceptable by this Court. On a perusal of the entire materials before the learned Sessions Judge, it is seen that at one point of time the victim states that due to fear for her marital life in future she had not disclosed the occurrence. In the course of the cross examination she says that the persons who accompanied her to the hospital might have given it as case of chain snatching. The evidence of P.W.11 and P.W.12 Doctors who treated the victim does not support the case of the prosecution.

13.As rightly pointed by the learned Counsel for the Appellant, the material object 1-knife was not subjected to forensic examination. The evidence of P.W.11 and



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P.W.12 were not supporting the case of the prosecution. The learned Sessions Judge believing the version of the of P.W.1 that the Accused caused injury; the Accused attacked her with an intention to kill her for resisting his intention to marry, is found unbelievable, in the light of the materials available before the Court. Further as per the guidelines issued by the Hon'ble Supreme Court, in appreciation of evidence by the trial Judge when there is a possibility of acquittal, the Sessions Judge had lean towards acquittal. Here, there are contradictions available in the materials placed by the prosecution before the trial Court through the witnesses P.W.1 to P.W.15 and Exs.P.1 to Ex.P.10. There are glaring contradiction. The learned Sessions Judge, ignoring those contradictions and believing the explanation of the P.W.1 victim alone, had found the accused guilty which is not safe to arrive at a conclusion, to convict the accused particularly, regarding grave offence under Section 307 IPC, attracting punishment of seven years and above. Having convicted it is found to be perverse. Therefore, the judgment of the learned Sessions Judge, (Fast Track Mahila Court) Tiruppur, in S.C.No.108 of 2016 dated 30.11.2017 is set aside. The Accused is acquitted from the charges

under Section 307 IPC. The bail bond executed by the Accused is to be cancelled and fine amount deposited into the satisfaction Court on the file of the learned Sessions Judge, Fast



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Track Mahila Court, Tiruppur in S.C.No.108 of 2016 is to be refunded. While disposing this case, the service of Mr.V.Murali, Legal Aid Counsel who nominated by the Tamil Nadu Legal Aid Committee attached to this Court, is appreciated.

14.In the result, the Criminal Appeal stands allowed, the judgment of the learned Sessions Judgment is set aside.

25.09.2023

vsn

Internet:Yes/No

Index:Yes/No

Speaking/Non-speaking order

To

The Sessions Judge, Fast Track Mahila Court, Tiruppur

SATHI KUMAR SUKUMARA KURUP.J.

vsn



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Pre delivery judgment made in

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