



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.03.2023

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.A.(MD).No.92 of 2016

A.Backiam

... Appellant/Sole Accused

Vs.

The Inspector of Police,
Pamban Police Station,
Crime No.93 of 2012,
Ramanathapuram District.

... Respondent/Complainant

PRAYER : Criminal Appeal filed under Section 374(2) of Cr.P.C to call for the records relating to the Judgment passed in S.C.No.116 of 2014, dated 23.02.2016 on the file of the Assistant Sessions Court, Ramanathapuram and set aside the same and acquit the appellant/accused from the charge levelled against him.

For Appellant

: Mr.R.Venkateswaran

For Respondent

: Mr.T.Senthil Kumar
Additional Public Prosecutor



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JUDGMENT

This appeal has been preferred as against the Judgment passed in S.C.No.116 of 2014 on the file of the Assistant Sessions Court, Ramanathapuram, dated 23.02.2016.

2.The case of the prosecution is that on 04.09.2012 at about 09.00 p.m., the accused while washing his omni car parked in the middle of the road in front of the house of the complainant, the neighbour Loganathan questioned about the parking of his car often in the middle of the road. Due to which, there was a wordy quarrel between them and after hearing the noise, the injured came out from his house and questioned about the quarrel. Immediately, the accused stabbed him with a knife. Therefore, he sustained an injury on his left below the hip rib. Hence, the complaint.

3.On receipt of the complaint, the respondent registered the F.I.R in Crime No.93 of 2012 for the offence under Section 294(b) and 307 of I.P.C. The respondent, after completion of the investigation, filed a final report and the same has been taken cognizance in S.C.No.116 of 2014 on the file of the Assistant Sessions Court, Ramanathapuram.



4.In order to bring the charges to home, the prosecution had examined P.W.1 to P.W.14 and marked Exs.P.1 to P.13. The prosecution also produced material object M.O.1 and on the side of the accused, no one was examined and no documents were marked.

5.On perusal of the oral and documentary evidence, the trial Court found him guilty for the offence punishable under Section 307 of I.P.C and sentenced him to undergo 8 years Rigorous Imprisonment and imposed a fine of Rs.5,000/- and in default to undergo six months Rigorous Imprisonment and acquitted him for the offence under Section 294(b) of I.P.C. Aggrieved by the same, the present Appeal.

6.The learned counsel appearing for the appellant would submit that initially the appellant's wife was attacked by the injured and as such, she sustained injuries. In order to prevent the attack, the appellant attacked the injured. Therefore, there was absolutely no motive in order to attract the charge under Section 307 of I.P.C. The prosecution also failed to explain the injury sustained by his wife and also the injuries sustained by the appellant herein. Therefore, it is fatal to the case of the prosecution and the benefit of the doubt caused in favour of the appellant. All the witnesses are interested witnesses and there was enmity already existed between



P.W.3 and the appellant. Therefore, the non-examination of the independent witness which was available for the prosecution is fatal to the case of the prosecution. The prosecution also suppressed the vital fact and there were discrepancies between prosecution witnesses are fatal to the case of the prosecution. In fact, when the appellant was remanded to judicial custody, the injuries were found by the remanded Magistrate and recorded as simple injury. Therefore, he prayed to set aside the conviction and sentence imposed by the trial Court.

7.Per contra, the learned Additional Public Prosecutor appearing for the respondent would submit that the prosecution had examined P.W.1 to P.W.14. The injured was examined as P.W.2. The eyewitnesses were examined as P.W.1, 3, 4 and 5. They categorically deposed that the injured was stabbed by the appellant by a knife which was produced as M.O.1, due to which P.W.2 sustained three injuries. One of his rib was broken. Admittedly, there was previous enmity in order to do away the life of P.W.2, he stabbed him. The injury was also corroborated by the wound certificate which was marked as Ex.P.8. The Doctor, who treated the injured, was examined as P.W.10. Thereafter, he was referred to Ramanathapuram Government Hospital and thereafter, he was referred to Meenakshi Mission Hospital, Madurai. He was admitted



as an inpatient on 05.09.2012 and he was discharged only on 12.09.2012. The said Doctor was examined as P.W.12. Therefore, the prosecution proved its case beyond doubt and the trial Court rightly convicted the appellant for the offence under Section 307 of I.P.C and prayed for dismissal of the appeal.

8. Heard the learned counsel appearing on either side and perused the materials available on record.

9. The appellant is the sole accused. On 04.09.2012 at about 09.00 p.m., when the appellant was washing his Maruthi omni car parked in the middle of the road in front of the house of the complainant, it was questioned by P.W.3 why he parked his car very often in the middle of the road. There was a wordy quarrel between them. After hearing the noise, the injured, namely P.W.2 came out from his house. There was a quarrel between them, due to which the appellant stabbed him with a knife on his left rib. Immediately, he was taken to the Hospital. The accident register was recorded by P.W.10 and the accident register was marked as Ex.P.6. It revealed that the injury sustained about 8 X 6 cm on his left subcostal area. Immediately, he was referred to Rameshwaram Government Hospital. Thereafter, he was admitted to Meenakshi Mission Hospital, Madurai. The Doctor, who treated him, was examined as P.W.12.



10.The injured was examined as P.W.2. He deposed that immediately after hearing the quarrel between P.W.3 and the appellant, he came out from his house and questioned the same. Immediately, the appellant stabbed him with a knife on his left below the chest. Therefore, he got fainted and was taken to the Hospital. P.W.3 also deposed that when the appellant was washing his car in the middle of the road, he was questioned about the same. Therefore, the appellant started a quarrel with him and also scolded him with filthy language. After hearing the noise, other relatives came out of their house and questioned the same. When P.W.2 was questioned about the quarrel, immediately the appellant stabbed him with a knife. The other witnesses also deposed and corroborate the evidence of P.W.2 and P.W.3. Therefore, there was no motive to murder P.W.2. On sudden quarrel when P.W.2 intercepted the quarrel between P.W.3 and the appellant, the appellant stabbed him with a knife. In order to attract the offence under Section 307 of I.P.C, there are absolutely no ingredients. It is relevant to extract the provision under Section 307 of I.P.C, which reads 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 hereinbefore mentioned."

11.In order to justify the conviction under Section 307 of I.P.C., the intention to commit it, the preparation to commit it and an attempt to commit it. Therefore, the prosecution failed to bring the charge under Section 307 of I.P.C to home. However, the appellant caused grievous hurt on P.W.2 by stabbing with a knife. Therefore, it would attract the offence under Section 326 of I.P.C.

12.That apart, admittedly, the appellant and his wife sustained injuries during the quarrel. However, the appellant did not lodge any complaint and failed to mark any wound certificate to that effect. It was recorded by the remanded Magistrate at the time of remanding the appellant. It was also recorded by the trial Court which concluded that it happened due to quarrel between them. Therefore, it is not fatal to the case of the prosecution.



13.It is seen that the appellant is also neighbour to P.W. 1 to P.W.5. He used to park his car in front of his house and washed the same. While he was washing his car by parking in the middle of the road, there was a quarrel between P.W.3 and the appellant. At this juncture, it was questioned by P.W.2 and as such, there was a quarrel between them. When it was intercepted by the injured, the appellant stabbed him with a knife. Therefore, there is absolutely no material to attract the offence under Section 307 of I.P.C in order to convict the appellant under Section 307 of I.P.C.

14.In view of the above, the conviction under Section 307 of I.P.C cannot be sustained as against the appellant. But he is liable to be convicted for the offence under Section 326 of I.P.C.

15.Accordingly, this Criminal Appeal is partly allowed and the Judgment passed in S.C.No.116 of 2014 on the file of the Assistant Sessions Court, Ramanathapuram, dated 23.02.2016, thereby convicting the appellant for the offence under Section 307 of I.P.C is hereby set aside, however, this Court found the accused guilty for the offence under Section 326 of I.P.C and the appellant is convicted for the offence punishable under Section 326 of I.P.C and sentenced to undergo three years Rigorous Imprisonment and to pay a fine of Rs.5,000/- and in default to undergo six months



Rigorous Imprisonment. The fine amount already paid by the appellant is adjusted to this sentence. The trial Court is directed to secure the appellant/Accused to undergo the remaining period of sentence, if any. The period of sentence already undergone by the appellant is given set off under Section 428 of Cr.P.C.

30.03.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
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To

- 1.The Assistant Sessions Court,
Ramanathapuram.
- 2.The Inspector of Police,
Pamban Police Station,
Ramanathapuram District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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