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CRL.A.(MD).No.95 of 2016



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.04.2023

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.A.(MD).No.95 of 2016

Ganesan

... Appellant/Sole Accused

Vs.

The State of Tamil Nadu,
Represented by the Inspector of Police,
Seidunganallur Police Station,
Tuticorin District.
(Crime No.26 of 2015).

... Respondent/Complainant

PRAYER : Criminal Appeal filed under Section 374(2) of Cr.P.C to call for the records and set aside the Judgment and conviction passed by the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thoothukudi in S.C.No.306 of 2015, dated 24.02.2016 and acquit the appellant.

For Appellant : Mr.M.S.Jeyakarthik

For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor



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JUDGMENT

This appeal has been preferred as against the Judgment and conviction passed in S.C.No.306 of 2015 on the file of the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thoothukudi, dated 24.02.2016.

2.The case of the prosecution is that on 25.01.2015 at about 05.30 p.m., while the victim was sitting in her neighbour's house and rolling beedies, the accused came there and asked her whether she is supporting her brother and abused her in filthy language, and he also pulled her hair, and he had also beaten on her right cheek, and he strangulated her neck. While so, Muthuselvi and Ponnammal caught hold of the accused. At that time, the victim ran away. The accused had taken Aruval and followed her to cause injury. He has also thrown Aruval on her. However, she ran away. Immediately, she had gone to the hospital. On recording her statement, F.I.R has been registered against the appellant in Crime No.26 of 2015 on the file of the respondent for the offences under Sections 294b, 323, 307 and 506(2) of I.P.C r/w under Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act.



3. On the side of the prosecution, they had examined P.W.1 to P.W.9 and marked Exs.P.1 to P.7 and also marked material object M.O.1 and on the side of the respondent, no one was examined and no documents were marked.

4. On perusal of the oral and documentary evidence, the trial Court framed charges against the accused under Section 307 of I.P.C and under Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act and convicted him for the offence punishable under Section 323 of I.P.C and sentenced him to undergo one year Rigorous Imprisonment and also imposed a fine of Rs.1,000/- and in default to undergo two months Rigorous Imprisonment and acquitted him for the offence under Section 307 of I.P.C and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act. Aggrieved by the same, the present Appeal.

5. The learned counsel appearing for the appellant would submit that there was a delay in the lodgment of the complaint. P.W. 1 also suppressed the first complaint. Even according to the Doctor-P.W.7, who treated P.W.1, deposed that there was a lacerated wound on her neck. There was no cut injury or any other injury caused by the appellant in order to attract the offence under Section 323 of



I.P.C. The appellant had no motive to do away with the life of P.W.1.

However, the trial Court convicted the appellant for the offence under Section 323 of I.P.C., without even any injury sustained by P.W.1.

6.The learned counsel appearing for the appellant would further submit that though one eyewitness was examined as P.W.3, she had turned hostile and did not support the case of the prosecution. The other witnesses, namely P.W.2 and P.W.4, are interested witnesses since they are closely related to P.W.1. Therefore, the trial Court ought not to have taken consideration of those witnesses and though the F.I.R was registered on the next date, it was reached the Court only after five days. There is absolutely no explanation by the prosecution for the long delay in reaching the Court.

7.Per contra, the learned Additional Public Prosecutor appearing for the respondent would submit that P.W.1 categorically deposed that she was strangled by the accused, for which, she sustained a lacerated wound on her neck. Though there were no ingredients to attract the offence under Section 307 of I.P.C., the trial Court rightly found that the appellant is liable to be convicted under Section 323 of I.P.C and accordingly convicted him. P.W.7,



who had treated P.W.1, also deposed that P.W.1 sustained a lacerated wound on her neck. Therefore, the conviction and sentence imposed by the trial Court do not warrant any interference by this Court.

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

9. In order to prove the charge under Section 307 of I.P.C and under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, the prosecution had examined P.W.1 to P.W.9. The victim was examined as P.W.1. She deposed that two months prior to the occurrence, there was a dispute between her brother and the accused. In the said occurrence, the appellant attacked him, for which P.W.1 lodged the complaint and went to the Police Station along with her brother. Therefore, on 25.01.2015 at about 05.30 p.m., while P.W.1 was doing work in the neighbour's house, she was attacked by the appellant by pulling her hair. He also strangulated her neck. When P.W.1 attempted to run away, the appellant had thrown the sickle. Therefore, she went to the hospital. In order to corroborate the evidence of P.W.1, the prosecution had examined P.W.2. She also corroborated the evidence of P.W.1. Though P.W.3 one of the eyewitnesses turned hostile, other



witnesses had spoken and proved the overt act of the appellant herein. Though the respondent filed a final report for the offence under Section 307 of I.P.C., the trial Court rightly convicted the appellant for the offence punishable under Section 323 of I.P.C. However, P.W.1 sustained only a lacerated wound on her neck. Immediately, she went to the Government Hospital, Tirunelveli. She was brought by her mother to the Hospital. She stated that one known person had attacked her with his hands and also sickle. P.W.7 found an injury on her neck about 6 X 0.5 cm and 3 X 0.5 cm and two lacerated wounds. However, there was no fracture and no other injury found on her. The said injuries were declared as simple in nature. The statement of P.W.1 was recorded by P.W.8. On receipt of the information from the Hospital on recording the statement of P.W.1, P.W.8 registered the F.I.R in Crime No.26 of 2015 for the offences under Sections 294b, 323, 307 and 506(2) of I.P.C r/w under Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act. P.W.9 investigated the crime and filed a final report. Therefore, the prosecution categorically proved the offence under Section 323 of I.P.C as against the appellant and this Court finds no infirmity or illegality in the conviction ordered by the trial Court. However, the appellant was so far incurred for more than two months, considering the above facts and circumstances and also the nature of the injury sustained by P.W.1, this Court is inclined to reduce the sentence



from one year to the period which was already undergone by the appellant.

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10. In view of the above, the conviction imposed as against the appellant by the trial Court for the offence under Section 323 of I.P.C., is hereby confirmed. Insofar as the sentence imposed by the trial Court is hereby modified to the period which was already undergone by the appellant. Accordingly, the Criminal Appeal is partly allowed.

06.04.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
ps

To

The Sessions Judge,
Mahalir Neethimandram
(Fast Track Mahila Court),
Thoothukudi.

2. The Inspector of Police,
Seidunganallur Police Station,
Tuticorin District.



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