



Crl.A.No.258 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 28.02.2024

Coram :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Appeal No. 258 of 2017

Muthuraman

.. Appellant

Versus

The State by Inspector of Police,
F.1.Police Station (Law and Order)
Chindadripet
Chennai-600002
(Crime No.76 of 2015)

.. Respondent

Criminal Appeal filed under Section 374 of Cr.P.C to set aside the judgment dated 29.04.2017 passed in S.C.No.214 of 2016 on the file of the XIX Additional Sessions Judge, Chennai.

For Appellant
For Respondent

.. Mr. D.N. Dhurga Sha
.. Mr. S. Sugendran
Addl. Public Prosecutor

JUDGMENT

This Criminal Appeal has been filed to set aside the Judgment dated 29.04.2017 passed in S.C.No.214 of 2016 on the file of the learned XIX Additional Sessions Judge, Chennai.



2. The brief facts, which are necessary to dispose of this Criminal Appeal, are as follows:-

2.1. There was enmity between the Accused-Muthuraman and his wife Maha @ Muthulakshmi on the one side and P.W-1 Thulasidharan and his wife Saraswathy on the other side. According to the Prosecution, a suit in O.S. No. 1919 of 2014 is pending between them on the file of the learned IV Assistant Judge, City Civil Court with respect to the property of Late. Chandra, mother of Maha @ Muthulakshmi and Saraswathy. The Accused/Appellant is the co-brother of the *De-facto Complainant* Thulasidharan. The wife of the Accused and the wife of the *De-facto Complainant* are sisters.

2.2. On 12.01.2015 when the Civil Case came up for hearing, the *De-facto Complainant* Thulasidharan and his wife Saraswathy and the Appellant/Accused Muthuraman was discussing about the said case at 12.01.2015 at about 9.30 pm. At that time, the Appellant/Accused is alleged to have abused P.W-1- Thulasidharan and his wife Saraswathy in not allotting his due share in the property and thereby they have cheated his wife Muthulakshmi. When this was questioned by his wife and P.W-1 and asked the Appellant/Accused as to why he should abuse them, a scuffle ensued between them. At that time, it is alleged that the Appellant/Accused had taken out an aruval and knife from a bag and attempted to attack P.W-1. In that



process, P.W-1 sustained injury. The Accused also threatened the *De-facto Complainant* to put an end to his life. For the injuries sustained, P.W-1 was taken to General Hospital in an auto rickshaw. In this context, based on the oral complaint given by the *De-facto Complainant*, a case in Crime No. 76 of 2015 was registered for the alleged offence under Section 294 (b), 307 and 506 (ii) of IPC on 12.01.2015.

2.3. On receipt of the intimation from the hospital, P.W-7, Inspector of Police rushed to the hospital and recorded the statement of the *De-facto Complainant*. He also proceeded to the scene of occurrence and prepared an observation mahazar under Ex.P-2 as well as rough sketch under Ex.P-3. He examined Saraswathi, Wife of Udayakumar, Saraswathy, wife of *De-facto Complainant* Thulasidharan, Sathish and Pushparaj and recorded their statement. He also obtained the wound certificate from Dr. Geetha. As the Appellant/Accused has obtained anticipatory bail, he was not arrested. P.W-7 filed the charge sheet against the Appellant/Accused for the offences under Sections 294 (b), 307 and 506 (ii) of IPC before the learned XIV Metropolitan Magistrate, Egmore, Chennai. The learned XIV Metropolitan Magistrate, Egmore, Chennai took cognisance of the final report for the offences under Sections 294 (b), 307 and 506 (ii) of IPC. Since the offences are exclusively triable by the Court of Sessions, the learned XIV Metropolitan Magistrate,



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Egmore, Chennai had taken the final report filed by P.W-7 Inspector of Police, Chindatripet Police Station as P.R.C.No.9 of 2016. On appearance of the Appellant/Accused, copies were furnished to him under Section 207 of Cr.P.C. Since the case is triable by the Court of Sessions, the case was committed to the learned Principal Sessions Judge, Chennai and it was taken on file in S.C. No. 214 of 2016.

2.4. On appearance of the Appellant/Accused, the learned Principal Session Judge, had made over the case in S.C.No.214 of 2016 to the file of the learned XIX Additional Session Judge, City Civil Court and bound over the Accused to the learned XIX Additional Sessions Judge, City Civil Court. On appearance of the Accused before the learned XIX Additional Sessions Judge, City Civil Court, had after hearing the Prosecution and the learned Counsel for the defence framed charges under Section 307 and 294(b) of IPC. The Accused denied the charges and claimed to be tried. Therefore, trial was ordered. To prove the charges, the Prosecution had examined seven witnesses as P.W-1 to P.W-7 and marked five documents as Ex.P-1 to Ex.P-5. The Accused was examined under Section 313 of Cr.P.C. by the learned trial Judge regarding the incriminating evidence available through the witnesses and documents marked by Prosecution. The Accused denied the incriminating evidence against him. After hearing the Prosecution and the defence, the



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learned XIX Additional Sessions Judge, City Civil Court, on assessment of evidence convicted the Accused for the offence under Section 307 of IPC and sentenced him to undergo simple imprisonment for a period of 7 years, with fine of Rs.10,000/-, in default, to undergo simple imprisonment for a period of one month.

2.5. Aggrieved by the judgment of conviction and order of sentence imposed on the Appellant, the Appellant had filed this Criminal Appeal.

3. On 18.05.2017, when this Appeal was taken up for hearing along with Crl.M.P. No. 6437 of 2017 in Crl.A. No. 258 of 2017, this Court suspended the substantial portion of sentence imposed on the Appellant and directed him to appear before the learned XIX Additional Sessions Judge, City Civil Court, Chennai on 1st working day of every month at 10.30 am.

4. The learned Counsel appearing for the Appellant submitted that the Appellant as well as P.W-1 are co-brothers and their wives are sisters. A Civil Suit is pending before the City Civil Court. On the alleged date of occurrence, there was an altercation between P.W-1 and the Appellant herein. The Appellant is alleged to have attacked P.W-1 by uttering obscene words. On hearing the commotion, neighbours rushed to the spot. On seeing the neighbours, the Appellant is alleged to have ran away from the scene of



occurrence. The learned Counsel appearing for the Appellant further submitted that P.W-1 was taken to hospital and he was admitted. The Doctor/P.W-5 who examined him, had issued wound certificate under Ex.P-4 which does not mention about any grievous injuries caused to the vital part of body. Even though there were injuries on the head, it was stated by the Doctor-P.W-5 as simple in nature. Except the said injury, there is no other injury on the body of P.W-1.

5. The learned Counsel for the Appellant invited attention of this Court to the deposition of P.W-1. He admitted that he was discharged on the same day of his admission in the hospital. As per the Prosecution case, when P.W-1 was under treatment in the hospital, P.W-6 had visited the hospital and recorded the statement of the injured, based on which, the FIR was registered. By the time, the trial commenced, wife of P.W-1-Saraswathy was not alive and P.W.3- is also Saraswathy, who is the w/o. one Udayakumar. P.W.2 was residing in the upstairs portion of the house where P.W-1 and his wife were residing. P.W-1 in his cross examination had fairly conceded that he was discharged on the same day (Amudha Hospital). Except the injury mentioned in Ex.P.4, there is no other serious injury. According to the learned Counsel for the Appellant, during the scuffle, P.W-1 fell against a sharp edge of a wall



and caused minor injury on his head and it will not attract Section 307 of the Indian Penal Code. The learned Sessions Judge, in his Judgment, had observed that the alleged weapon used by the Accused had not been recovered or produced before the Court. There was no material object presented for marking during the trial. In spite of the same, the learned Sessions Judge convicted the Accused for an offence under Section 307 IPC.

6. On the above contentions, this Court heard the learned Additional Public Prosecutor appearing for the Respondent. The learned Additional Public Prosecutor submitted that immediately after the occurrence, the victim was admitted in the hospital and the same was intimated to the Police by the Doctor. P.W-6, Sub-Inspector of Police reached the hospital, recorded the statement of P.W-1 and the FIR was registered. The investigation proceeded in the right direction and witnesses were examined immediately and the place of occurrence was also visited by the Inspector of Police P.W-7. During the investigation, the wife of the injured was also examined. The neighbour P.W-2 and his Wife P.W-3 were examined. P.W-5 is the Doctor who issued the wound certificate and his statement was also recorded. It is the submission of the learned Additional Public Prosecutor that even though the injured was described as simple by P.W-5, the injury was caused on the head of P.W-1.



Further, the learned Additional Public Prosecutor invited the attention of this Court to the evidence of the *De-facto Complainant* P.W-1 in which he clearly stated that Appellant herein attacked him with sharp edged weapon by uttering obscene words and also threatened to kill him. But for the interference by the neighbours, who came to rescue the *De-facto Complainant*, the Appellant would have executed the death threat. The learned Additional Public Prosecutor further submitted that all the witnesses examined by the Prosecution are natural witnesses and they have cogently deposed regarding the occurrence. The deposition of Prosecution Witnesses corroborates with the evidence of P.W-1. The learned Trial Judge appreciated the evidence in the proper perspective and convicted the Appellant/Accused. Therefore, the learned Additional Public Prosecutor appearing for the Respondent submitted that the judgment of conviction and sentence passed by the trial Court is proper and it does not call for any interference by this Court.

Point for consideration:

Whether the Judgment of conviction recorded by the learned XIX Additional Sessions Judge, City Civil Court, Chennai in S.C.No.214 of 2016, dated 29.04.2017 is to be set aside as perverse?



7. Heard the learned Counsel for the Appellant and the learned Additional Public Prosecutor for the Respondent and perused the materials placed, including the judgment of the trial Court.

8. On assessment of the evidence, it is seen that the Prosecution failed to prove the charge against the Appellant under Section 307 IPC in a manner known to law. The conviction under Section 307 of IPC is not at all warranted in this case. The learned Counsel for the Appellant invited the attention of this Court to the evidence of P.W-5-Doctor who examined the *De-facto Complainant* P.W-1 at the earliest point of time. He had clearly stated that the injury suffered by P.W-1 is simple in nature. The learned Sessions Judge failed to appreciate the medical evidence but mechanically delivered the Judgment against the Appellant herein and convicted him for the offence under Section 307 IPC. A simple hurt has been caused to the *De-facto Complainant*/P.W-1 for which conviction was awarded for the offence under Section 307 of IPC.

9. The admission of P.W-1 in cross-examination assumes significance in that case. He deposed that he was discharged on the same day after observation. Therefore, the deposition of P.W-1 is in terms of the



deposition of P.W-5 and the wound certificate issued by him. If P.W-1 was unconscious after the attack, after suffering the injury on the head, then it surely attracts Section 326 of IPC or even Section 307 of IPC. Here, the injured was treated as Out Patient and he was discharged on the same day. While so, it cannot be said that the injury suffered by P.W-1 is such that it was serious in nature. Moreover, the weapon allegedly used by the Appellant has not been recovered in this case. Though the Prosecution claims that the Appellant attacked P.W-1 with a lethal weapon and but for the interference of the neighbours, the Appellant would have executed the life threat against the *De-facto Complainant*, the weapon allegedly used has not at all been recovered. This Court is of the view that a simple injury suffered during a scuffle between two co-brothers has been blown out of proportion and the learned Trial Judge, without considering the evidence properly, convicted the appellant to undergo seven years of rigorous imprisonment for the offence under Section 307 of IPC.

10. In paragraph No.10 to 19 of the impugned Judgment, the trial Judge concluded that even though the injury caused on P.W-1 by the Accused was a simple injury as per medical evidence, the intention of the Accused was to cause the murder of P.W-1 for denying a share in the property to his wife.



To prove the intention of the Accused or his past conduct, no evidence was made available. The fact remains that there is a civil dispute between the Accused and P.W-1 as both had married the sisters. It is the contention of the defence that P.W-1 forcibly evicted the wife of the Accused from the building belonging to the mother-in-law of the Accused as well as P.W-1 and P.W-1 had alleged to have obtained a settlement deed in favour of his wife and a release deed under the pretext of a partition deed from the wife of the Accused so that the entire property can become the property of the wife of P.W-1. Thus, a share in the property was denied to the Appellant/Accused and his wife by P.W-1 and this has prompted a heated discussion between the parties. Further, the learned Counsel for the Appellant submitted that during the scuffle, P.W-1 fell down and suffered a minor injury on his head and that he had not used any weapon to attack P.W-1. While so, the learned XIX Additional Sessions Judge, City Civil Court, having concluded that the injury is minor, ought not to have convicted the Appellant for the offence of under Section 307 of IPC. Therefore, this Court is of the view that the judgment of conviction passed by the trial Court is not legally sustainable.

11. On re-appraisal by this Court, it is found that P.W-1 had suffered only minor injury and it is not a life threatening injury, as alleged. Therefore,



the ingredients of offence under Section 324 and 506(ii) of IPC alone are in this case. However, no charges were framed for the offence under Section 324 of IPC. While so, the conviction of 7 years under Section 307 is unwarranted. If at all, the Appellant is liable for conviction and sentence under Section 324 of IPC but there was no charges framed or evidence let in to that effect during trial in the case.

12. P.W-1 is the co-brother of the Accused/Appellant and considering the relationship between the parties, the benefit of Probation of Offenders Act is extended in favour of the Appellant/Accused. The Appellant/Accused will be on probation during which period he is directed to maintain good conduct for a period of three years. The Probation Officer is directed to supervise the Appellant/Accused. If the Appellant/Accused indulged in any offence, the benefit of Probation of Offenders Act shall stand automatically rescinded and he has to be imprisoned for such repeat offence. The Accused is released on probation on his executing a bond for Rs.10,000/- with two sureties for the like sum to the satisfaction of the learned XIX Additional Sessions Judge, City Civil Court, Chennai for a period of three years.



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In the result, this **Criminal Appeal is partly allowed** by extending the benefit of Probation of Offenders Act in favour of the Appellant/Accused.

The Judgment dated 29.04.2017 passed in S.C.No.214 of 2016 on the file of the XIX Additional Sessions Judge, City Civil Court, Chennai, is modified as offence under Section 324 of IPC instead of Section 307 of IPC.

28.02.2024

vsn/dh

Index : Yes/No

Internet : Yes/No

Speaking Order / Non-speaking Order

To

1.The XIX Additional Sessions Judge,
Chennai.

2.The Public Prosecutor,
Madras High Court,
Chennai – 600 104.



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SATHIKUMAR SUKUMARA KURUP. J.

dh

Pre-Delivery Judgment in
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