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Crl.A.No.282 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2024

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.A.No.282 of 2017

Kokilan @ Chakravarthi

...Appellant

vs.

State represented by
The Inspector of Police,
Gobichettipalayam Police Station,
Erode District.

...Respondent

PRAYER: Criminal Appeal filed under Section 374 r/w 386 of Criminal Procedure Code, 1973, against the judgment and orders dated 10.04.2017 passed in S.C.No.157 of 2016 by the Additional Sessions Judge, Magalir Neethi Mandram (Fast Track Mahil Court), Erode.

For Appellant : Mr. Maruthiraj

Legal Aid Counsel

For Respondent : Mr.S. Rajakumar

Additional Public Prosecutor.



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JUDGMENT

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This criminal appeal is filed against the judgment and orders dated 10.04.2017, passed in S.C.No.157 of 2016, by the learned Additional Sessions Judge, Magalir Neethi Mandram (Fast Track Mahil Court), Erode.

2. The trial court framed charges against the appellant for the offences punishable under Sections 294(b) (4 counts), 341 (4 counts) and 307 (part 2) (4 counts) IPC and after full trial, convicted the appellant and sentenced him as detailed hereunder.

<i>Conviction</i>	<i>Sentence</i>
324 (2 counts) IPC	Rigorous Imprisonment for two years for each count and a fine of Rs.1,000/- for each count, in default, to undergo Simple Imprisonment for two months for each count.
326 IPC	Rigorous Imprisonment for 5 years and a fine of Rs.10,000/-, in default, to undergo simple imprisonment for 2 years.



3. The case of the prosecution as could be discerned from the oral

and documentary evidence is as follows:

- i. Soundarya (P.W.4) is the wife of the appellant. Jayalakshmi (P.W.1) is the mother of P.W.4. Baskaran (P.W.2), Natarajan (P.W.11) and Matheswaran (P.W.3) are the brothers of P.W.4.
- ii. P.W.4 got married to the appellant seven years prior to the date of occurrence. The evidence of P.W.4 is that her husband (the appellant) used to come home late in the night fully drunk and assault her. According to her, the appellant suspected her fidelity and abused her in filthy language, on account of which, she was forced to leave her matrimonial home and join her parents.
- iii. The appellant's mother's house was nearer to the house of P.W.1 to P.W.4 and P.W.11. According to P.W.1 to P.W.4 and P.W.11, the appellant used to come to their house in an inebriated condition and shout at P.W.4 using abusive language.
- iv. On 22.02.2016, at about 10.15 p.m., the appellant, as usual, came down to their house and asked his wife (P.W.4) to come back home. He also abused her in filthy language. When he was confronted by Natarajan (P.W.11), the appellant took hollow brick



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stones (M.O.4 series) from the road and threw it at his face and legs. On seeing this, Baskaran (P.W.2) and Matheswaran (P.W.3), tried to prevent the appellant from attacking P.W.11. However, the appellant hit Matheswaran (P.W.3) with hollow block stones (M.O.6) causing injuries all over his body. He also stabbed Baskaran (P.W.2) with a knife (M.O.1) on his left neck. Jayalakshmi (P.W.1) rushed to the spot to rescue her three sons and she was also attacked by the appellant with a knife (M.O.1).

v. Kasthuridevi (P.W.12), Raman (P.W.13), who are neighbours of P.W.1, on seeing the commotion in front of the house of P.W.1, rushed to the spot. On seeing them, the appellant made good his escape.

vi. The injured were immediately rushed to the Government Hospital, Gobichettipalayam, where Dr. Malini (P.W.8), the Assistant Surgeon, examined P.W.1 to P.W.3 and P.W.11 and found the following injuries on them.

P.W.1

1. Lacerated wound on the left side upper arm measuring

5 x 5 x 3 cm.

2. Lacerated wound on the left side chest measuring 3x3x2 cm.



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P.W.2

1. Lacerated wound on the left side of the neck measuring

3x3x2 cm

2. Lacerated wound at the back side of the neck measuring

2 x 2 x1 cm.

P.W.3

Lacerated wound behind the right ear measuring 3x2x2 cm.

P.W.11

1. Lacerated wound on the tip of the nose measuring 3x2x2 cm.

2. Lacerated wound on the right leg measuring 4x3x3 cm

and on the left hand measuring 3x3x2 cm.

The Accident Registers were marked as Ex.P.7 to Ex.P10 and Ex.P21. All the four of them were admitted as inpatients in the very same hospital.

vii. On receiving intimation from the hospital, Thiru.Muthusamy (P.W.16), the Special Sub Inspector of Police, Gobichettipalayam Police Station, went to the hospital and recorded the complaint statement (Ex.P1) of Jayalakshmi (P.W.1) and came back to the police station and registered an FIR in Crime No.135/2016 against the appellant for the offences punishable under sections 294(b),



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341, 324 and 307 IPC. He then placed the records before Thiru.Arul (P.W.15), the then Inspector of Police, Gopichettipalayam Police Station, for further investigation.

viii. In the meanwhile, P.W.1 to P.W.3 and P.W.11 got themselves discharged from the Government Hospital, Gopichettipalayam, Erode, against medical advice and got admitted as inpatients on the same day of discharge at Dakshin Trauma Centre & Hospital, Gobichettipalayam.

ix. Thiru.Arul (P.W.15), Inspector of Police, took up investigation in Crime No.135/2016 of Gobichettipalayam Police Station, went to the scene of occurrence and prepared an observation mahazar (Ex.P2) and a rough sketch (Ex.P24) in the presence of the witnesses Pannerselvam (not examined) and Saravanan (P.W.5). He also recovered a blood stained cement hollow brick stone, a broken blood stained hollow brick stone, blood stained soil, soil without blood stain, blood stained bricks (M.O.4 series) under the cover of a mahazar Ex.P3 in the presence of the same witnesses. He then went to the Dakshin Trauma Centre & Hospital, Gobichettipalayam, where the victims were taking treatment and recovered their blood stained clothes (M.O.2, M.O.3 and M.O.5)



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under the cover of a mahazar (Ex.P4) in the presence of the witnesses Mahalingam (P.W.6) and Narmadha Priyanka (not examined). Thereafter, he arrested the appellant on 23.02.2016 at about 02.30p.m near Gobi Kacherimedu bus stop and recorded his confessional statement (the admissible portion of which was marked as Ex.P5) in the presence of the witnesses Nataraju (P.W.7) and Duraisamy (not examined). Based on his confession, he recovered a knife (M.O.1). Thereafter, P.W.15 examined the witnesses individually and recorded their statements under section 161 (3) Cr.P.C. In the meanwhile, since he was transferred, Thiru. Balamuralisundaram (P.W.17), the then Inspector of Police, Gobichettipalayam Police Station took up further investigation in Crime No.135/2016. He examined all the witnesses and verified their statements which were recorded by his predecessor. He then went to Dakshin Trauma Centre & Hospital, Gobichettipalayam and obtained wound certificates (Ex.P16, Ex.P19 & Ex.P22) for the victims.

- x. In the opinion of Dr.Sundararajan (P.W.14) the injuries sustained by P.W.1 to P.W.3 are simple in nature and the injuries sustained by Natarajan (P.W.11), are grievous in nature. The Accident



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Registers, discharge summaries, wound certificates and X-rays were marked as Ex.P.7 to Ex.P23.

- xi. Tmt.Kasthuridevi (P.W.12) and Thiru.Raman (P.W.13) who are the eyewitnesses to the occurrence corroborated the versions of P.W.1 to P.W.4 and P.W.11 in all material particulars.
- xii. Thiru.Balamuralisundaram (P.W.17), after concluding investigation laid a final report against the appellant before the Judicial Magistrate Court No.I, Gobichettipalayam in P.R.C.No.17/2016 for the offences punishable under sections 294(b) (4 counts), 341 (4 counts) and 307 (part 2) (4 counts) IPC, who in turn committed the case to the Court of Principal Sessions Court, Erode, after furnishing copies of records to the accused under section 207 Cr.P.C.
- xiii. The learned Principal Sessions Judge, Erode, took the case on file in S.C. No.157/2016 and made over the same to the Additional Sessions Court, Mahalir Neethimandram (Fast Track Mahila Court), Erode.
- xiv. When the accused was questioned with regard to the incriminating circumstances appearing in evidence against him under Section 313 of Cr.PC, he denied of having committed any offence.



However, he did not examine any witness on his side.

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xv. The learned trial court judge after analysing the oral and documentary evidence on record, acquitted the accused from the offences punishable under sections 294(b) (4 counts), 341 (4 counts) and 307 (part 2) (4 counts) IPC but convicted him under sections 324 (2 counts) and 326 IPC.

xvi. Aggrieved over the conviction and sentence passed by the trial court judge, the present criminal appeal is filed.

4. Heard Mr. H.Maruthiraj, learned Legal Aid Counsel appearing for the appellant and Mr.S. Raja kumar, learned Additional Public Prosecutor appearing for the respondent.

5. In the instant case, apart from the evidence of the injured (P.W.1 to P.W.3 and P.W.11), the eyewitnesses account is clear on the aspect of the occurrence that took place on 22.02.2016 at about 10.15 p.m. In fact the eyewitness Kasthuridevi (P.W.12) and Raman (P.W.13) are independent witnesses and their specific evidence is that the accused in an inebriated condition used to visit the house of P.W.1 and abuse his wife (P.W.4) in filthy language and that on 22.02.2016, he, as usual came



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down to the house of P.W.1 and shouted at his wife (P.W.4). According to them, when this was questioned by the brothers of P.W.4, they were all attacked by the appellant with hollow block stones and a knife. Their evidence fit in with the evidence of P.W.1 to P.W.3 and P.W.11 in all material particulars and nothing useful was suggested to them during the course of cross examination to discredit or disbelieve their evidence. All the injured were rushed to the Government Hospital, Gobichettipalayam, immediately after the occurrence and Dr.Malini (P.W.8) had noted down various injuries sustained by P.W.1 to P.W.3 and P.W.11. Though they were all admitted in the hospital as inpatients, they got themselves discharged against the medical advice got admitted in a private hospital namely Dakshin Trauma Centre and Hospital, Gobichettipalayam. Dr.Sundarrajan (P.W.14) Orthopedic Surgeon of Dakshin Trauma Centre and Hospital took x-rays and gave treatment to the victims. According to P.W.14, the injuries sustained by P.W.1 to P.W.4 are simple in nature and the injuries sustained by P.W.1 are grievous in nature. Thus the evidence of the injured coupled with the medical evidence prove that the appellant was guilty of inflicting injuries on the victims.



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6. It is pertinent to point out that the appellant and P.W.4 were estranged and she lived with her parents. It is also in evidence that the appellant in an inebriated condition would come down to the house of P.W.1 where P.W.4 was residing and abuse her in filthy language. He has been doing this for a long time and this was witnessed by the neighbours of P.W.1. In fact P.W.12 and P.W.13 had testified this aspect in their evidence. The family of P.W.1 had not given any police complaint against the appellant hoping that things would get improved. However, on 22.02.2016 the sequence of events shows that it went out of control and P.W.1 to P.W.3 and P.W.11 were attacked by the appellant. The appellant attacked all the injured when he was confronted by them. Therefore, it cannot be stated that P.W.1 had given a false complaint against the appellant.

7. H.Maruthiraj, learned Legal Aid Counsel appearing for the appellant would contend that the appellant did not attack his wife P.W.4 though she was also present in the scene of occurrence and that some leniency may be shown to the appellant while passing the sentence against him.



WEB COPY 8. In the instant case, the appellant is the husband of P.W.4 and though they lived separately, they have not divorced each other. P.W.4 is residing in her parents' house. The occurrence took place in the year 2016 and the appellant had already undergone the ordeal of trial and therefore the sentence passed by the trial court, for the offences under Section 324 (2 counts) and 326 IPC can be reduced.

9. In the result,

(i) This Criminal Appeal is partly allowed.

(ii) While the conviction passed by the trial court is confirmed the sentence is modified as under:

<i>Conviction</i>	<i>Sentence</i>
324 (2 counts) IPC	Rigorous Imprisonment for three months for each count and a fine of Rs.1,000/- for each count, in default, to undergo Simple Imprisonment for one month for each count.
326 IPC	Rigorous Imprisonment for six months and to pay a compensation of Rs.2,00,000/- in default, to undergo simple imprisonment for one month.

(iii) The period of sentence already undergone by the appellant is



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set off under Section 428 Cr.P.C.

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(iv) The sentences shall run concurrently.

(v) The appellant shall surrender before the learned Additional Sessions Judge, Magalir Neethi Mandram (Fast Track Mahil Court), Erode, within 15 days from the date of receipt of a copy of this order/uploading of the order, failing which, the Trial Court shall take steps to secure him for serving the remaining period of sentence.

(vi) This Court places on record its appreciation to Mr.H.Maruthiraj learned Legal Aid counsel, for his valuable assistance in deciding this case. The High Court Legal Services Committee shall pay a sum of Rs.10,000/- to the Legal Aid Counsel towards his fee.

26.04.2024

bga

Index : yes/no

Speaking /Non speaking Order

R.HEMALATHA, J.



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To

1. The Inspector of Police,
Gobichettipalayam Police Station,
Erode District.
2. The Additional Sessions Judge, Magalir Neethi Mandram
(Fast Track Mahil Court), Erode,
3. The Public Prosecutor, High Court, Madras.
4. The Section Officer, Criminal Section, High Court, Madras.

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