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Crl.A.No.430 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2024

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.A.No.430 of 2017

1. Appu @ Illavazahgan

2. Manoj

...Appellants

vs.

State rep by
The Inspector of Police,
V-4, Rajamangalam Police Station
Chennai 600 099
(Cr. No.1250 of 2013)

...Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code, 1973, against the judgment dated 12.07.2017 made in S.C.No.73 of 2014 on the file of the XVII Additional Sessions Judge (FAC), Chennai.

For Appellants : Mr. V. Murali

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 order dated 12.07.2017, passed by the learned XVII Additional Sessions Judge (FAC), Chennai, in S.C.No.73 of 2014.

2. The appellants are the accused in S.C.No.73/2014 and are convicted and sentenced as detailed hereunder:

<i>Accused</i>	<i>Conviction</i>	<i>Sentence</i>
Appu @ Ilavazhagan (A1)	Section 341 IPC	Simple Imprisonment for one month and a fine of Rs.200/-, in default, to undergo Simple Imprisonment for seven days.
	Section 326 IPC	Rigorous Imprisonment for 7 years and a fine of Rs.5,000/-, in default, to undergo Simple Imprisonment for six months.
Manoj (A2)	Section 341 IPC	Simple Imprisonment for one month and a fine of Rs.200/-, in default, to undergo Simple Imprisonment for seven days.
	Section 326 IPC r/w 34 IPC	Rigorous Imprisonment for 7 years and a fine of Rs.5,000/-, in default, to undergo Simple Imprisonment for six months.
The aforesaid sentences were ordered to run concurrently. The period of sentence already undergone by them was directed to be set off under Section 428 Cr.P.C.		



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3. The case of the prosecution in a condensed form is as

follows :

3.1. Sridhar (P.W.1) is a resident of Kolathur. He had completed Diploma in Computer Application and was searching for a job. He was also doing centering work. On 25.08.2013, at about 9.30 p.m., when he was returning home from his work place, near Vijay cars at Kolathur bypass road, both the appellants, who are already known to him, waylaid him and demanded money from him for purchase of alcohol. Since this was denied by him, both the appellants abused him in filthy language and while the 2nd appellant Manoj caught hold of the victim's hand, the 1st appellant Appu @ Ilavazhagan took a knife from his waist and stabbed P.W.1 on his thighs, right side face and back side of his head.

3.2. The victim (P.W.1) raised an alarm and on hearing the same, Kamatchi (P.W.2) and her son Saravanan (P.W.3) came to the spot. They are related to P.W.1. On seeing P.W.2 and P.W.3, both the appellants fled away from the scene of occurrence. P.W.1 was immediately rushed to Kilpauk Medical College Hospital, Chennai. Dr.Gopinath (P.W.10) examined P.W.1 on 25.08.2013 and found the following injuries on him.



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- i. Laceration on left posterior skull measuring 10x1x1 and 8x1x1cm.
- ii. Cut injury on the middle of the skull measuring 10x2x2 cm.
- iii. Deep cut injury in the left cheek measuring 12x2x4 cm.
- iv. Laceration on left leg measuring 12x4x5 and 7x4x6 cm.
- v. An abrasion in the middle of the leg measuring 5x3x3 cm.
- vi. Laceration on left side knee 5x3x4 cm on scale.

The copy of the Accident Register was marked as Ex.P.6. He admitted P.W.1 as an inpatient.

3.3. On receiving information from the hospital Thiru.Ashokan (P.W.13), the Inspector of Police, Rajamangalam Police Station, Chennai, went to KMC Hospital and recorded the statement of the victim, who was undergoing treatment at the hospital. He went back to the police station and registered FIR (Ex.P10) in Crime Number 1250/13 of Rajamangalam Police Station, Chennai, against the appellants for the offences punishable under Sections 294(b), 341 and 307 IPC.

3.4. On 26.08.2013, P.W.13 took up investigation, went to the scene of occurrence and prepared an observation Mahazar (Ex.P11) in the presence of the witnesses Babu (P.W.5) and Devaraj (P.W6) and a



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rough sketch (Ex.P12). He examined the witnesses and recorded their statements individually. On the same day, he arrested Manoj, the 2nd appellant near Nathamuni Junction, Villivakkam, and recorded his confessional statement in the presence of the witnesses Srinivasan (P.W.7) and Kathirvel (P.W.8). Thereafter, he produced the 2nd appellant before the concerned Jurisdictional Magistrate for judicial remand. On 27.08.2013, at about 1.30 p.m. he arrested Appu @ Ilavazhagan, the first appellant, near Villivakkam Bus Stand and recorded his confessional statement (the admissible portion of which was marked as Ex.P13) in the presence of the witnesses Prasath (P.W.11) and Rajasekaran (P.W.12). Based on his confessional statement, P.W.13 recovered a knife (M.O.1) from the 1st appellant under the cover of a mahazar (Ex.P14) in the presence of the same witnesses.

3.5. Dr. Chelladurai Pandian (P.W.9), Rajiv Gandhi General Hospital, Chennai, performed an operation on the head of the victim (P.W.1). On 06.09.2013, the victim was discharged from the hospital and in the opinion of P.W.9, the injuries sustained by the victim are grievous in nature. The wound certificate issued by him was marked as Ex.P.5.



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3.6. The Investigation Officer, after completing investigation, laid a final report before the learned X Metropolitan Magistrate, Egmore, Chennai, in P.R.C. No.149/2013 for the offences punishable under Sections 341, 294-b, 307 and 506(ii) r/w 34 IPC against the 1st appellant and under Sections 341, 307 and 506(ii) r/w 34 IPC against the 2nd appellant. The learned Metropolitan Magistrate, committed the case to the Court of Principal Sessions Judge, Chennai, after furnishing copies of records to the appellants under Section 207 Cr.P.C.

3.7. The learned Principal Sessions Judge, Chennai, took up the case on file in S.C. No.73/2014 and made over the same to the XVII Additional Sessions Court, Chennai. The learned XVII Additional Sessions Judge, Chennai, framed charges for the offences punishable under Sections 341, 294-b, 307 and 506(ii) r/w 34 IPC against the 1st appellant and under Sections 341, 307 and 506(ii) r/w 34 IPC against the 2nd appellant.

3.8. When the appellants were questioned with regard to the circumstances appearing in evidence against them under Section 313 of Cr.PC, they denied of having committed any offence. However, they



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did not examine any witness on their side.

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3.9. The learned XVII Additional Sessions Judge, Chennai, after analysing the oral and documentary evidence on record, vide his judgment and orders dated 12.07.2017, convicted and sentenced the accused as stated in paragraph No.2. Aggrieved over the conviction and sentence passed by the learned XVII Additional Sessions Judge, Chennai, the present Criminal Appeal has been filed by the appellants.

4. Heard Mr. V. Murali, learned Legal Aid Counsel for the appellants and Mr.S. Rajakumar, learned Additional Public Prosecutor for the respondent/state.

5. Mr. V. Murali, Legal Aid Counsel for the appellants would contend that the prosecution has not examined any independent witnesses to prove the occurrence and except the interested testimony of P.W.1 to P.W.3, there is no other evidence to support the case of the prosecution. It is also his contention that the witnesses to the Observation Mahazar, confessional statements of the appellants and the seizure mahazar, turned hostile to the prosecution and these aspects have



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not at all been considered by the trial court judge and therefore, the conviction and sentence passed by the trial court judge should be set aside.

6. Per contra, Mr.S. Raja Kumar, learned Additional Public Prosecutor would contend that the trial court had, after analysing the oral/documentary evidence, rightly convicted and sentenced the accused and therefore, no interference is called for by this court and prayed for dismissal of the Criminal Appeal.

7. At the outset it may be observed that the victim Sridhar is an injured witness and he has clearly deposed that he was attacked with a knife by the 1st appellant when the 2nd appellant caught hold of him. It is also his contention that both the appellants abused him in filthy language. P.W.1 had already known both the appellants and infact the appellants had demanded money from P.W.1 for consuming alcohol. The occurrence was also witnessed by Kamatchi (P.W.2) and Saravanan (P.W.3). Nothing useful was suggested to P.W.1 to P.W.3 during the course of cross examination to discredit or disbelieve their versions. Merely because P.W.2 and P.W.3 are related to P.W.1, their evidence



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cannot be termed as interested testimony. Moreover, normally a close relative would not try to make the real offenders to escape from the clutches of law. It is true that all the witnesses to the observation mahazar, confessional statement and seizure mahazar, turned hostile to the case of the prosecution. However, it does not affect the case of the prosecution in view of overwhelming evidence of P.W.1 to P.W.3 with regard to commission of offences by the appellants. Both P.W.2 and P.W.3 corroborated the versions of P.W.1 in all material particulars. and therefore, there is no reason for this court to conclude that P.W.1 to P.W.3 are speaking lies.

7.1. In the instant case, the appellants had stabbed P.W.1 with a knife (M.O.1) on the back side of his head, face and legs. An operation was also performed by Dr. Gopinath (P.W.10). The victim was hospitalised from 25.08.2013 till 06.09.2013 and the injuries sustained by him are grievous in nature. The weapon was also recovered from the possession of the 1st appellant.

7.2. The contention of the learned counsel for the appellants is that the weapon and the dress worn by the appellants and the victim were not



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sent for forensic lab to get an expert's opinion. In the instant case there is no dispute with regard to the identity of the appellants and FIR was lodged without any delay. Therefore sending the dress worn by the victim and the appellants to forensic lab is not necessary. In any event the appellants cannot take advantage of poor investigation. The eye witnesses account is also clear on all the aspects and fits in with the evidence of P.W.1. In the circumstance, the conviction of the appellants for the offences punishable under Sections 341 and 326 IPC is perfectly in order.

7.3. As regards the sentence, the contention of the counsel for the appellants is that the appellants are less than 30 years of age and therefore, some leniency can be shown to them. Taking this aspect into consideration, the sentence passed by the trial court, for the offence under Section 326 IPC is reduced to 5 years.

8. 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:



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	Section 326 IPC r/w 34 IPC	Rigorous Imprisonment for a period 5 years and a fine of Rs.5,000/-, in default, to undergo Simple Imprisonment for six months.

(iii) The period of sentence already undergone by them are set off under Section 428 Cr.P.C.

(iv) The sentences shall run concurrently.

(v) The appellants shall surrender before the learned XVII Additional Sessions Judge (FAC), Chennai, within 15 days from the date



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of receipt of a copy of this order/uploading of the order, failing which, the Trial Court shall take steps to secure them for serving the remaining period of sentence.

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

04.04.2024

bga
Index : yes/no
Speaking /Non speaking Order

To

1. The Inspector of Police,
V-4, Rajamangalam Police Station
Chennai 600 099
(Cr. No.1250 of 2013)
2. The XVII Additional Sessions Judge (FAC), Chennai.
3. The Public Prosecutor, High Court, Madras.
4. The Section Officer, Criminal Section, High Court, Madras



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R.HEMALATHA, J.

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