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CRL.A.NO.795 OF 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 24 / 08 / 2023

JUDGMENT PRONOUNCED ON: 30 / 01 / 2024

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

CRL.A.NO.795 OF 2017

Saravanan

... Appellant

Versus

State represented by
The Inspector of Police
J-5, Sasthiri Nagar Police Station
Chennai.
Crime No.271 of 2015

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973, praying to set aside the conviction and sentence imposed on the petitioner by a judgment dated 28.11.2017 in S.C.No.199 of 2015 on the file of the VI Additional Sessions Judge, Chennai and acquit the appellant by allowing this appeal.



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For Appellant : Mr.P.K.Ganesh
For Respondent : Mr.C.E.Pratap
Government Advocate (Criminal Side)

JUDGMENT

This Criminal Appeal is preferred, assailing the judgment dated 28.11.2017 passed by the 'learned VI Additional Sessions Judge, Chennai' (henceforth 'Trial Court' for the sake of brevity) in S.C.No.199 of 2015, by the 'appellant herein' (henceforth 'accused' as per Trial Court's description), in which he was convicted and sentenced to undergo ten years rigorous imprisonment with a fine of Rs.10,000/-, in default thereof, to undergo one year rigorous imprisonment, for the offence under Section 307 of 'The Indian Penal Code, 1860' [hereinafter referred to as 'IPC' for the sake of brevity and convenience]; and sentenced to undergo three months rigorous imprisonment with fine of Rs.1,000/-, in default thereof, to undergo twenty days rigorous imprisonment for the offence under Section 294(b) of IPC; and sentenced to undergo one year rigorous imprisonment with a fine of Rs.1,000/-, in default thereof, to undergo three months rigorous imprisonment for the offence under Section 506(ii) of IPC.



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2.The case of the prosecution, in brief, is as follows:

2.1.The accused-Saravanan and his brother-Sathish are residing at D.No.6/51, 7th Lane, Sasthiri Nagar, Chennai. P.W.1-Karthik, who's pursuing his final year B.Com degree, is the *defacto* complainant / victim in this case. They're residing in the same street. On February 8th, 2015 at about 21.30 hours, the accused-Saravanan and his brother-Sathish were involved in a fight in street and were using filthy language, in front of their house. While passing by, *defacto* complainant-Karthik (P.W.1) and Siva (P.W.2) questioned as to why they're using filthy language in the street. Infuriated by this, the accused-Saravanan hurled abuse, took out a knife from his 'Star City' Bike, and attempted to assault Siva with it, which Siva warded off and fell down. Then, the accused hurled abuse at Karthik and stabbed him at the central region of his chest and then at his left hip region and then inflicted cut injuries on his left leg and right hand. Karthik raised alarm, upon which, the accused threatened the people in the vicinity not to approach, hurled abuse at Karthik and Siva and threatened to kill them. Then the accused left the spot in his 'Star City' Bike. Thereafter, friends and family members admitted Karthik who suffered blood injuries to Royapettah Govt. Hospital.



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2.2. Upon learning about the said incident on the aforementioned date at 23.00 hours, the 'then Sub-Inspector of Police, Sasthiri Nagar Police Station' (P.W.11) rushed to the Hospital and recorded Ex-P.1-Complaint Statement from Karthik and then, on February 9th, 2015 at 00.30 hours, registered First Information Report [FIR] (Ex-P. 9) in Crime No.271/2015 under Section 307 of IPC.

2.3. Upon receiving the case files, the 'then Inspector of Police, Sasthiri Nagar Police Station' (P.W.12) [henceforth 'Investigation Officer' for the sake of brevity and clarity] rushed to the scene of occurrence on the aforementioned date at 01.00 hours and prepared Rough Sketch (Ex-P.11) and Observation Mahazar (Ex-P.10) in the presence of the witnesses Murali (P.W.8) and Dhandapani. He then examined and recorded the statements of the Sathesh S/o Elumalai (P.W.3), Siva S/o Rajendran (P.W.4) and the other witnesses and then seized the Blood-stained Purple T-Shirt (M.O.2) worn by Sathesh S/o Elumalai (P.W.3) and the Blood-stained yellow T-Shirt (M.O.5) worn by Siva (P.W.4) under Seizure Mahazar (Ex-P.12) in the presence of the same witnesses. Then, he went to the Hospital and recorded the statement of



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Karthik and seized Blood-stained grey shorts (M.O.3) and red, blue and white checked shirt (M.O.4), worn by the victim-Karthik during the incident under Form 91(Ex-P.14).

2.4.Then he arrested the accused on the aforementioned date at 06.00 hours near Odaikuppam Paindi Amman Temple. Then he recorded the voluntary confession statement given by the accused in the presence of the witnesses Rajesh (P.W.7) and Sabari. The admissible portion of the confession is marked as Ex-P.4. Pursuant to the confession, he seized Blood-stained small Knife (M.O.1) under Form 91 (Ex-P.15). Then he sent the accused for Judicial Remand. All the properties were also sent to Judicial Custody. Then, based on the Investigation Officer's request to the Court, all the properties (M.O.1 to M.O.5) were sent for forensic analysis. Chemical Report is marked as Ex-P.16. Then he obtained a report from TNEB (Ex-P.17) to the effect that there was no power cut in the scene of occurrence around the material point of time. Then he examined and recorded the statements of the other witnesses.



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2.5. After completion of investigation, Investigation Officer filed Charge Sheet against the accused for the offence punishable under Section 307 of IPC before the learned IX Metropolitan Magistrate, Saidapet, Chennai (henceforth Metropolitan Magistrate).

2.6. The learned Metropolitan Magistrate registered the case on file as PRC.No.62/2015. After furnishing copies under Section 207 of 'The Code of Criminal Procedure, 1973' (hereinafter referred to as 'Cr.P.C.,' for the sake of brevity and convenience) to the accused, the learned Metropolitan Magistrate committed the case file to the learned Principal Sessions Court under Section 209(a) of Cr.P.C., as offence punishable under Section 307 of IPC is exclusively triable by Sessions Court. The learned Principal Sessions Court in turn made over the case to the Trial Court. The Trial Court, after receiving the case file, framed charges under Sections 294(b), 307 and 506(ii) of IPC against the accused, read over and explained the charges to the accused in Tamil. Since the accused pleaded not guilty, trial was ordered.



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2.7.To prove its case, the prosecution examined P.W.1 to P.W.12 (Witnesses) and marked Ex-P.1 to Ex-P.17 (Documents) and M.O.1 to M.O.5 (Material Objects). The defence side neither examined any witnesses nor marked any documents or material objects.

2.8.The Trial Court after hearing either side, concluded that the prosecution has proved the offences punishable under Sections 294(b), 307 and 506 (ii) of IPC against the accused. Accordingly, the Trial Court convicted and sentenced the accused as stated supra in paragraph no.1.

2.9.Feeeling aggrieved with the Conviction recorded and the Sentence imposed by the Trial Court, the accused has preferred this Criminal Appeal under Section 374(2) of Cr.P.C.

ARGUMENTS

3.Mr.P.K.Ganesh, learned counsel for the accused submitted that P.W.1 to P.W.8 being close relatives and friends, are interested witnesses; that



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the prosecution has not examined any independent witness in this case; that there is no previous enmity among P.W.1, P.W.2 and the accused and thus challenged the motive for the alleged crime; that Karthik (P.W.1) got injured elsewhere and is wrongly attributing the injury to the accused; that there is a discrepancy between the witnesses' accounts describing the weapon used in the attack as a small knife and the prosecution's evidence, presenting M.O.1 as the weapon used by the accused, which is a larger knife measuring 24cm in length; that though M.O.1 to M.O.5 were sent for serological examination, the pursuant report has been withheld by the prosecution; that the fingerprints on M.O.1 were not collected; and that the prosecution failed to prove the case beyond reasonable doubt. Further, he submitted that the accused is a Daily Wage Labourer and has no previous case and that he has already underwent 319 days of Imprisonment. Accordingly, he prayed to allow the Criminal Appeal, set aside the impugned judgment and acquit the accused.

4.In response to the above arguments, Mr.C.E.Pratap, learned Government Advocate (Criminal Side) for the respondent-State submitted that P.W.1 is the injured witness and P.W.2 to P.W.4 are the ocular witnesses; that



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P.W.2 to P.W.6 and the accused are known persons and natural witnesses and there is no reason to disbelieve their evidence; that the evidence of the injured witness is reliable and trustworthy; that the presence of blood in M.O.2 and M.O.5 has been proved through Chemical Report (Ex-P.16) and it supports the presence of P.W.3 and P.W.4 in the scene of occurrence; that the medical evidence corroborates the evidence of P.W.1 to P.W.4 and proves the offence against the accused; and that the prosecution has proved the case beyond reasonable doubt. Accordingly, he prayed to dismiss the Criminal Appeal and sustain the Conviction recorded and Sentence imposed by the Trial Court.

5.This Court has perused the case file and heard either side. The following points arise for consideration:-

i. Whether the prosecution has proved the charges levelled against the accused under sections 294(b) and 506 (ii) of IPC?

ii. Whether the prosecution has proved the charges



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levelled against the accused under sections 307 of IPC?

iii. Whether there exist any reason to interfere with the impugned judgment?

DISCUSSION AND DECISION FOR POINT NOS.(i) (ii) & (iii)

6.The accused-Saravanan and his brother-Sathish are residing at D.No.6/51, 7th Lane, Sasthiri Nagar, Chennai - 20. P.W.1-Karthik is also residing on the same street. P.W.1 and P.W.4 are brothers, P.W.6 is their father. P.W.2 and P.W.3 are brothers. P.W.5 is the paternal uncle of P.W.1. P.W.7 and P.W.8 are friends of P.W.1. P.W.1 to P.W.6 are residing in the same street as the accused and are all known to each other. There is no dispute with regard to the above facts.

6.1.P.W.1 in his evidence has deposed that on 08.02.2015 at about 09.30 hours, while he and Siva (P.W.2) were going to buy cigarettes for



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his father, the accused-Saravanan and his brother-Sathish were involved in a fight in the street; that he and Siva (P.W.2) questioned as to why they're fighting in the street; that, infuriated by this, the accused-Saravanan hurled abuses in filthy language against them, took out a knife from his 'Star City' Bike, and attempted to assault Siva with it; that, Siva escaped from the attack while P.W.1, who was standing behind Siva (P.W.2), got injured in the central region of his chest in course of the same attack; that then, the accused stabbed P.W.1 at his left hip and then inflicted cut injuries on his right hand and left foot; that P.W.3 and P.W.4 came there to help; that the accused threatened to kill the people in the vicinity if they approach; that the accused then left the spot; that thereafter, P.W.2 to P.W.6 admitted P.W.1 who had suffered blood injuries to Royapettah Government Hospital; that, for further treatment, he went to Government General Hospital, Chennai; and that he gave the Ex-P.1-Statement to the police who came there. Further, he identified the accused and the knife (M.O.1), and identified M.O.3 and M.O.4 as worn by him during the incident. In his cross-examination, he denied the defence side suggestion that he and P.W.2 to P.W.4 used to stand near ladies hostel, eve-teasing the ladies therein; and that the accused-Saravanan and his brother-Sathish



questioned the same because of which, he (P.W.1) and fourteen other men physically assaulted accused's brother. He further denied the suggestion that, due to his aforementioned conduct, the area people assaulted him and caused injuries which he is falsely attributing to the accused. Furthermore, he denied the suggestion that, only with a view to suppress and evade the consequences of his acts of violence towards the accused's brother, he foisted this false case against the accused.

6.2.Siva (P.W.2) deposed in line with the evidence of P.W.1 and thus corroborates the evidence of P.W.1. The same set of suggestions put to P.W.1 were put to him and he denied the same as false.

6.3.Sathish (P.W.3) and Siva (P.W.4) also have deposed along the lines of P.W.1 and P.W.2 and corroborated their evidence. They further deposed that, since they took P.W.1 to Royapettah Government Hospital, they got stains of P.W.1's blood in their upper garments. They identified M.O.2 and M.O.5 as the clothes worn by them during the incident. It's pertinent to note here for the sake of clarity that, P.W.3 has clearly deposed that he was



wearing a T-shirt during the incident which is mentioned as M.O.2 in the judgment. However, in his deposition, it has been wrongly mentioned as M.O.4 instead of M.O.2. It appears to be a typographical error.

6.4.P.W.5 who is the paternal uncle of P.W.1, deposed that he did not witness the incident directly and that he just arranged for an Auto-rickshaw to convey P.W.1 along with his parents and brother to the Hospital.

6.5.P.W.6 is the father of P.W.1 and P.W.4. He deposed that P.W.1 and P.W.2 went to buy cool drinks and P.W.1 returned with blood all over him along with P.W.2; that P.W.1 had injuries in his chest, hip and leg; that he rushed P.W.1 to the Hospital; and that he did not witness the incident directly. In his cross-examination, he deposed that, at about 23.00 hours, P.W.1 was admitted to the Hospital; that P.W.1 was conscious enough to speak; that then, Police recorded P.W.1's statement at the Hospital; and that there is no history of animosity between the accused and P.W.1.

MEDICAL EVIDENCE



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7.Dr.B.Senthil (P.W.8), who administered First-aid to P.W.1 at Royapettah Government Hospital, has deposed that, on 08.02.2015 at 22.30 hours, while he was on duty in the emergency ward, Karthik (P.W.1) aged 20 years was brought in by Siva (not clear as to whether P.W.2 or P.W.4); and that P.W.1 made a statement to him that a known person attacked him at 21.20 hours at 7th Lane, Sashtri Nagar. He noted the following injuries on the body of P.W.1:

- 1)Stab injury in the chest region
- 2)Stab injury in left hip.

7.1.He then referred P.W.1 to a Surgeon. He issued Accident Register marked as Ex-P.8. He admitted that he did not mention about the depth and size of the injury in Ex-P.8. He further deposed that, P.W.1 did not mention about the weapon using which he was attacked.

7.2.Dr.Manivannan (P.W.9) is the doctor who treated P.W.1 at Government General Hospital, Chennai. He deposed that, P.W.1 referred from



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Royapettah Government Hospital was admitted is his Hospital on 09.02.2015

at 00.05hours; that, a general surgery for his injuries was done and that the injury around the chest was grievous in nature and the other injuries were simple in nature. In his cross-examination, he admitted that, he has not stated about the depth and size of the injuries. He further deposed that, “chest bones” were fractured and a nerve in the chest region was also damaged. Notably, P.W.9 did not depose about the span of treatment, nature and consequences of the injury properly. He also did not produce the records such as Treatment Summary. In a nutshell, he has not deposed as to whether the injuries suffered by P.W.1 are fatal in nature. Unfortunately, both doctors have not stated whether the injuries suffered by P.W.1 are capable of causing death and have not provided the measurements of the injuries. The Prosecutor ought to have obtained clarifications from both doctors in this regard. Notably, the Trial Court also did not seek clarifications from both doctors in this regard.

PLACE OF OCCURRENCE

8. Investigation Officer prepared Rough Sketch (Ex-P.11) and Observation Mahazar (Ex-P.10) in the presence of the witnesses Murali

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(P.W.8) and Dhandapani. Testimony of P.W.8 corroborates the Rough Sketch and Observation Mahazar. Therefore, this court is of the view that the prosecution has proved the place of occurrence.

8.1.Perusal of Rough Sketch reveals the presence of an electric street lamp in working condition attached to an electric pole. TNEB Report (Ex-P.17) proves that there was no power cut in the scene of occurrence around the material point of time. Thus, the prosecution has also proved that the place of occurrence was lit.

ARREST, CONFESSION AND RECOVERY

9.Investigation Officer (P.W.12) deposed about the Arrest, Confession and Recovery. His evidence has been corroborated by the following evidences of P.W.7.

9.1.P.W.7 deposed that the accused is a known person to him. He further deposed that on 09.02.2015 at at 06.30 hours, he and his friend- Sabari were walking along Besant Nagar Beach; that, at that time, Police had



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arrested the accused and were enquiring him near Paindi Amman Temple; that, the police requested them to stand there as witnesses and recorded the confession statement given by the accused, the admissible portion of which is marked as Ex-P.4; that pursuant to the confession, the Investigation Officer seized Blood-stained small Knife from the vicinity of compound wall of “Governor’s Bungalow”. Further, the stains found in the Knife marked as M.O.1 were blood-stains (vide Chemical Report Ex-P.16). Though Serology Report has not been marked by the prosecution, considering the other evidence available on record, this court is of the view that the prosecution has proved the arrest, confession and recovery of M.O.1.

9.2.The incidence took place on Sunday, February 8th, 2015 at about 21.30 hours. It is an admitted fact that P.W.1’s house and the accused’s house are 10-15 houses apart and that they’re living in the same area. P.W.1 is an injured witness and his chest injury is grievous in nature. His evidence is corroborated by Medical evidence. P.W.2 to P.W.4 are the ocular witnesses who also corroborate the evidence of P.W.1. Blood-stains found in M.O.2 and M.O.5 strengthen the evidence of P.W.3 and P.W.4. As stated *supra*, the



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recovery of M.O.1 from the accused coupled with the testimonies of the ocular witnesses, clearly connects the accused with the case. The contention of the accused is that if really the occurrence took place in a residential area as alleged, there would have been independent witnesses to the incident, however, the prosecution has not produced any such independent witnesses and that P.W.1 to P.W.8 are interested witnesses and their evidence can't be relied on. In view of the nature of the injury coupled with the medical evidence, this court is of the view that there is no reason to reject the testimony of the injured witness corroborated by other witnesses. The testimonies of P.W.2 to P.W.5 and their presence in the scene of occurrence is quite natural. Hence, the contention that P.W.2 to P.W.8 are interested witnesses does not hold water.

9.3.Further, the defence theory that P.W.1 to P.W.4 used to stand near ladies hostel eve-teasing the ladies therein; that the accused-Saravanan and his brother-Sathish questioned the same because of which, P.W.1 and fourteen other men physically assaulted accused's brother; that, due to the aforementioned conduct of P.W.1, the area people assaulted P.W.1 and caused

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injuries which he is falsely attributing to the accused; and that, only with a view to suppress and evade the consequences of his acts of violence towards the accused's brother, he has foisted this false case against the accused, has not been established by the defence side by way of preponderance of probabilities.

10.In light of the above discussion, this Court is of the view that the accused caused grievous injury to P.W.1, verbally abused him with filthy language and threatened him dire consequences and therefore, his acts clearly attract the offence punishable under Section 294(b) and 506(ii) of IPC.

11.Further, as stated *supra*, the accused caused grievous injury in P.W.1's chest region using M.O.1. Admittedly, there is no history of animosity between the accused and P.W.1 and there is no pre-meditation to cause injury. The medical evidence remains silent on the question of whether the injuries suffered by P.W.1 are fatal in nature. The doctor who treated P.W.1 has merely stated that the chest injury suffered by P.W.1 is grievous in nature. He neither delved into the details nor produced any documents.



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Further, P.W.1 was conscious and oriented after the incident. In these circumstances, though the chest region is generally considered a vital part, in the case on hand, the prosecution failed to establish that the injuries suffered by P.W.1 are fatal in nature *i.e.*, they are capable of causing death. As alluded to *supra*, there was no pre-meditation or intention for the accused to kill P.W.1. No doubt that intention to cause death could be gathered from the attending circumstances and nature of the injury. Though the prosecution has proved that the accused had an intention to cause injury to P.W.1 and/or P.W.2, it has failed to establish any intention for the accused to kill or cause fatal injuries to P.W.1 and/or P.W.2. Intention to kill and knowledge that the bodily injury is potentially fatal, are important ingredients to establish an offence under Section 307 of IPC which are not proved beyond reasonable doubt in this case. Therefore, this Court is of the view that, the act of the accused would not attract the offence punishable under Section 307 of IPC but attracts the offence punishable under Section 326 of IPC. Thus, the judgment passed by the Trial Court is liable to be interfered with to that extent. Point Nos. (i), (ii) and (iii) are answered accordingly, partly in favour of the accused.

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12.Considering the fact that the accused is a Daily Wage Labourer and that there is no previous case against him, this Court imposes 5 Years of Rigorous Imprisonment along with a fine of Rs.5,000/- (Rupees Five Thousand only), in default thereof, to undergo a further period of 3 Months of Rigorous Imprisonment for the offence under Section 326 of IPC. The conviction and sentence imposed by the Trial Court for the offences punishable under Sections 294(b) and 506(ii) of IPC are sustained and the sentences shall run concurrently along with the sentence imposed as above by this Court for the offence punishable under Section 326 of IPC. Further, the accused is entitled to set-off under Section 428 of Cr.P.C. for the period of imprisonment already undergone by the accused.

13.Resultantly, the Criminal Appeal is partly allowed in the following manner:

(i)Conviction and sentence imposed by the Trial Court under Sections 294(b) and 506(ii) of IPC are sustained ;



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ii)Conviction and sentence imposed by the Trial Court under Section 307 of IPC cannot be sustained. However, the offence under Section 326 of IPC is made out. Hence, the accused shall undergo Five Years of Rigorous Imprisonment along with a fine of Rs.5,000/- (Rupees Five Thousand only), in default thereof, to undergo further period of Three Months of Rigorous Imprisonment for the offence punishable under Section 326 of IPC;

(iii)The Trial Court is directed to secure the appellant / accused and commit him to the prison to undergo the remaining period of sentence;

iv)Substantial sentence of imprisonment shall run concurrently;



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v)The period of detention already undergone by the appellant / accused shall be given set off under Section 428 of Cr.P.C.

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Speaking order
TK

To

- 1.The VI Additional Sessions Judge
Chennai.
- 2.The Inspector of Police
J-5, Sasthiri Nagar Police Station
Chennai.
- 3.The Public Prosecutor
High Court of Madras.

R.SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT MADE IN
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