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CRL. A. No.38/2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
21.06.2024	08.07.2024

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. A. NO.38 OF 2022

P.Naveenkumar .. Appellant

- Vs -

The State, rep. By
The Inspector of Police
Annamalai Nagar Police Station
Cuddalore District. .. Respondent

Criminal Appeal filed u/s 374 (2) Cr.P.C. praying this Court to set aside the order dated 14.9.2021 passed by the District and Session Judge, Mahila Court, Cuddalore, in S.C. No.377 of 2018.

For Appellant : Mr. V.Raja Mohan

For Respondent : Mrs. G.V.Kasthuri, APP

JUDGMENT



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The judgment of conviction and sentence passed against the appellant in S.C. No.377 of 2018 vide judgment dated 14.09.2021 by the District & Sessions Judge, Mahila Court, Cuddalore, is put in issue before this Court.

2. The appellant was charged for the offence u/s 294 (b) and 307 IPC on the allegation that at about 7.30 a.m. on 30.04.2018, the appellant had telephoned P.W.8, the friend of P.W.1/the complainant and had asked her to come in front of the post office, which is opposite the hostel, where P.W.1 and during the course of the conversation, the appellant had used obscene and intemperate words against P.W.1 attracting the offence u/s 294 (b) and in the course of the same transaction the appellant is alleged to have caught hold of the hair of the appellant and uttering words to the effect to do away with her, slashed the neck of P.W.1 with a knife and when P.W.1 tried to ward off the attack, the appellant had attacked her right hand, face and had attempted to murder P.W.1 attracting the offence u/s 307 IPC.

3. After trial, the trial court found the appellant guilty of the offences charged and convicted the appellant, sentenced the appellant to undergo



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rigorous imprisonment for three months together with a fine of Rs.5,000/-, in default to undergo simple imprisonment for a period of two weeks for the offence u/s 294 (b) and sentenced the appellant to undergo rigorous imprisonment for ten years together with fine of Rs.50,000/-, in default to undergo simple imprisonment for a period of two years for the offence u/s 307 IPC. The sentences were directed to run concurrently and the period of incarceration already suffered was ordered to be set off u/s 428 Cr.P.C. Aggrieved by the said conviction and sentence, the present appeal has been filed by the appellant.

4. Shorn of unnecessary details, the case of the prosecution, as could be culled out from the evidence of the witnesses is as under :-

P.W.1, the injured victim, is a native of Kothandapatti, Vaniyambadi Taluk, Vellore District. She knows the appellant, who is an Engineering Graduate in Information Technology. P.W.1 has been pursuing her 2nd year post-graduate studies in science during the year 2018 at Annamalai University and was staying in the ladies hostel. P.W.8 is the friend of P.W.1 and she is also studying along with P.W.1. P.W.1 has acquaintance with the appellant since her school days as



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both were attending the same tuition centre. P.W.1 and the appellant fell in love with each other since 2012 when P.W.1 was doing her graduation at Adhiparasakthi Agricultural College.

5. The appellant was in the habit of doubting P.W.1 and had frequent quarrels, which was amicably resolved amongst the appellant and P.W.1. The appellant was addicted to alcohol and inspite of the advice of P.W.1, the appellant did not pay heed to the said advice.

6. The appellant had asked P.W.1 to lend him a sum of Rs.20,000/- from out of the money, which P.W.1 had received from her house for the purpose of paying her second year college fees and though P.W.1 initially refrained from giving the amount, however, the appellant lured her to part with the said amount. Inspite of the repeated demand made by P.W.1, the appellant did not return the amount. As the appellant was in the habit of castigating P.W.1 in obscene language, P.W.1 felt emotionally and mentally disturbed and in fact, P.W.1 was even contemplating to break up her love affair with the appellant.



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7. Thereafter, P.W.1 refrained from attending the calls from the appellant, which was known to the friends of P.W.1, including P.W.8. P.W.1 contacted the appellant through the phone of P.W.8 and informed him not to call her, but the appellant, entertaining a grudge that P.W.1 was moving away from him because of her friends, even threatened that he would do away with her friends.

8. On 29.4.2018, the appellant had called P.W.8 and informed that he will be returning the money, which he took from P.W.1 the next day and asked P.W.8 to inform P.W.1 to come and collect the money from him. On the next day, at about 7.30 a.m., the appellant came the hostel where P.W.1 was staying and called P.W.8 over phone and informed her that he had come with the money. Though P.W.1 delayed her departure, however, the appellant did not leave the place. Later at about 10.30 a.m., P.W.1 came to know that the appellant was standing in front of her college and P.W.1, informing P.W.8 about the presence of the appellant in front of their college asked P.W.8 to convey that she will meet the appellant in front of the hostel and P.W.8 informed the same to the appellant.



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9. Thereafter, P.W.1 and P.W.8 exited the hostel where the appellant was standing near the auto stand. P.W.8 stood at a distance while P.W.1 approached the appellant and asked the appellant to part with the money, which he had stated to have brought. The appellant, moving aside some distance took the money from the bag, which he was carrying and gave the same to P.W.1. Thereafter, P.W.1 called P.W.8 and handed the money over to her and P.W.8 took the money and stood some distance away. The appellant informed P.W.1 that he had given her Rs.15,000/- and the balance Rs.5,000/-, he will take from the ATM and give it to her. In spite of P.W.1 asking the appellant to keep that money with him, the appellant insisted on returning the money. P.W.1 informed the appellant that there is an ATM within the hostel compound and, therefore, asked the appellant to part with the ATM card, so that P.W.1 could withdraw the money from his account. At that time, feigning himself to be thirsty, the appellant moved away and took a bottle from his bag and sipped its contents. Keeping aside the notebook of P.W.1 when appellant was drinking from the bottle, the notebook fell down and, therefore, P.W.1 approached the appellant at which time the appellant caught hold of the hair of P.W.1 and pushing her down, wielded a knife and started attacking P.W.1 on her neck. Upon hearing



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the cries of P.W.1, the persons, who were standing in and around the place, started attacking the appellant.

10. P.W.1 suffered five cut injuries on her neck, four injuries on her right hand, one injury on her shoulder, one cut injury below her right ear and one injury on the left wrist. When P.W.1 tried to ward off the attack by catching the knife with her left hand, the fingers on the left hand were severed. P.W.1 also suffered injuries below her nose, between her eyes and below her eyes. Persons, who were standing nearby, caught hold of the appellant and P.W.8 immediately took P.W.1 in an auto to Chidambaram Raja Muthiah Hospital. While P.W.1 was attacking P.W.1 with the knife, he had used foul and obscene language against P.W.1. On P.W.1 being admitted in the hospital, information was sent to the police station and police came to the hospital before whom, P.W.1 gave the complaint, Ex.P-1.

11. P.W.9, the Sub Inspector of Police attached to Chidambaram Annamalai Nagar Police Station, on receiving information at about 11.00 a.m. from the Raja Muthiah Medical College Hospital Police Outpost, went to the



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hospital and obtained the complaint, Ex.P-1. Returning back to the police station at about 1.00 p.m., on the same day, P.W.9 registered the case in crime No.78/2018 against the appellant/accused by preparing FIR, Ex.P-7. The printed FIR was sent to the Judicial Magistrate No.I, Chidambaram and a copy of the same was also sent to the higher officials and also placed before the Inspector of Police for further investigation.

12. On P.W.1, being brought before P.W.2, the Doctor attached to Raja Muthiah Medical College & Hospital, by P.W.8, examined P.W.1 and upon examination of P.W.1, P.W.8 found the following injuries on the person of P.W.1:-

- i) *Deep cut injury on all the fingers on the left hand;*
- ii) *5 x 1 x 1 cm cut injury on the left wrist;*
- iii) *2 x 0.5 x 0.5 cm cut injury on the front of left hand*
- iv) *3 x 0.5 x 0.5 cm cut injury on the left side ear;*
- v) *X x 0.25 x 0.25 cm cut injury below the left eye;*
- vi) *1 x 0.25 x 0.25 cm cut injury near the opening of the nose;*
- vii) *4 x 0.25 x 0.25 cm cut injury on the left jaw;*



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- viii) *8 x 2 x 1 cm cut injury on the left side of neck. (The deep cut reveals the tissues and blood vessels which were visible from outside);*
- ix) *Multiple small cut injuries on the front portion of the neck;*
- x) *5 x 0.5 x 0.5 cm cut injury on the chest;*
- xi) *5 x 0.25 x 0.25 cm cut injury on the right shoulder;*
- xii) *5 x 0.25 x 0.25 cm cut injury on left elbow;*
- xiii) *4 x 1 cm cut injury on left elbow;*
- xiv) *7 x 0.5 x 0.25 cm cut injury on right palm;*
- xv) *6 x 0 x 0.5 cm cut injury on the right hand; and*
- xvi) *2 x 0.5 x 0.25 cm cut injury on the right thumb."*

13. The doctor issued Ex.P-2, accident register and also recommended treatment and surgery for P.W.1 with Ortho specialist and other specialist doctors.

14. P.W.10, upon taking receiving the printed FIR in Crime No.78/2018, took up investigation on 30.4.2018 at about 2.00 p.m. He went to the scene of occurrence and prepared the observation mahazar, Ex.P-8 and drew the rough sketch, Ex.P-9 in the presence of witnesses. P.W.10 further examined Aurljothi,



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Sambandam and other witnesses and recorded their statements. On the same day, at about 2.50 p.m., P.W.10 recovered one knife, M.O.1, from the scene of occurrence under the cover of mahazar, Ex.P-10. Thereafter, P.W.10 proceeded to Raja Muthiah Hospital and examined P.W.1, the injured victim and also examined the other witnesses, who were present at the scene of occurrence.

15. On 4.5.2018, at about 1.10 p.m., P.W.10 arrested the appellant at Cuddalore Government Hospital after informing him the reason for arrest and he was brought to the police station at about 2.00 p.m. At the police station, the appellant came forward and gave a voluntary confession statement in the presence of witnesses and the same was reduced into writing the admissible portion of which is marked as Ex.P-5. At about 3.00 p.m. on the same day, the empty Bovonto bottle, M.O.1, without cap was seized upon being identified by the accused and the same was recovered under recovery mahazar, Ex.P-6. Thereafter, the accused was brought to the police station and sent for judicial remand along with the material objects. P.W.10 examined further witnesses and recorded their statements. P.W.10 also seized the memory card, Ex.P-11, in which one Aadhi had recorded the occurrence and also recorded his statement.



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16. P.W.10, continuing his investigation further, examined the Doctor, P.W.2, who had examined and gave treatment to P.W.1 and recorded his statement and also obtained wound certificate. Since the doctor, P.W.2 had opined that the injuries sustained by P.W.1 were grievous in nature, P.W.10 altered the section of offence from 294 (b), 324 and 307 IPC to 294 (b), 307 and 326 IPC and sent the alteration report, Ex.P-12 to the court. On completion of investigation, P.W.10 filed the final report against the accused before the Court for the offences aforesaid.

17. The trial court, upon analysing the materials placed before it, framed two charges against the accused, viz., u/s 294 (b) and 307 IPC. To prove the case, the prosecution examined P.W.s 1 to 10 and marked Ex.P-1 to P-12 and M.O.s 1 & 2.

18. The accused was questioned u/s 313 Cr.P.C. on the incriminating circumstances appearing against him in the evidence of the prosecution witnesses. He denied all the incriminating circumstances and on the side of the



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defence, two witnesses were examined as D.W.s 1 and 2 and Ex.D-1, the copy of the discharge summary of the accused was marked.

19. The trial court, on consideration of oral and documentary evidence and other materials, convicted the accused for the offences u/s 294 (b) and 307 498-A and 306 IPC and sentenced them as above. Aggrieved by the said conviction and sentence, the appellant has filed the present appeal.

20. Learned counsel appearing for the appellant submitted that the trial court miserably failed to consider that the eye witnesses, who are alleged to have witnessed the occurrence turned hostile and notwithstanding the said fact, the trial court has convicted and sentenced the appellant, which is wholly perverse and unreasonable.

21. It is the further submission of the learned counsel that even the recovery of M.O.2, knife, which is alleged to be the weapon used by the appellant for inflicting the injuries on P.W.1, the witness, who was examined to



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speak about the said recovery turned hostile and in the absence of any witness to the said recovery, the recovery of the knife itself is doubtful.

22. Learned counsel for the appellant also laid emphasis on the deposition of D.W.s 1 and 2, who have spoken about the fact that the accused had drank poison on account of P.W.1 discarding her love for him. It is therefore the submission of the learned counsel that the chances of the accused committing the offence, though could be on account of psychological disturbance, however, the accused/appellant could be given leniency, as his undying love for P.W.1 had resulted in his consumption of poison and attacking and injuring P.W.1.

23. It is the further submission of the learned counsel that there is no iota of evidence which connects the appellant with the crime, barring the deposition of P.W.1 inspite of the fact that the occurrence had happened in broad daylight and in the absence of any eye witness being examined, who has spoken about the occurrence and the witnesses, who have been examined as eye witnesses having turned hostile, the case has not been proved beyond reasonable doubt by the prosecution and, therefore, the appellant is entitled for an acquittal.



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24. Per contra, learned Addl. Public Prosecutor appearing for the respondent submitted that merely because the witnesses, who had witnessed the occurrence had turned hostile, cannot be the sole ground to doubt the entire case of the prosecution. It is the further submission of the learned Addl. Public Prosecutor that even though the witnesses P.W.s 3 to 6 and 8 have turned hostile, there still are materials, which unerringly point to the guilt of the appellant in the form of the evidence of P.W.s 1 and 2, who have no axe to grind against the appellant and, therefore, rightly appreciating the aforesaid materials, the court below had convicted and sentenced the appellant, which does not require any interference at the hands of this Court.

25. Learned Addl. Public Prosecutor, in support of the aforesaid submission, placed reliance on the decision of this Court in ***Radha – Vs – State of TN (2020 (1) LW (Crl.) 524***).



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26. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

27. There could be no quarrel with the proposition that the prosecution has to prove its case beyond reasonable doubt, whereinafter alone, the accused could be held guilty, as otherwise it is the normal presumption under the Code that an accused is presumed innocent until proven guilty. With that in mind, this Court would now proceed to analyse the deposition of the witnesses to find out whether the prosecution has proved its case beyond reasonable doubt so as to sustain the conviction.

28. P.W.1 is the injured victim. She has spoken in great detail about her affair with the appellant and also the mood swings of the appellant and the psychology of the appellant in respect of his movement with P.W.1. P.W.1 has spoken clearly about the fact that she knew the appellant since her school days, as both of them had gone to the same tuition class and, thereafter, love blossomed between the appellant and P.W.1 and they were seeing each other.



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However, it is the further deposition of P.W.1 that the appellant was in the habit of doubting P.W.1 and used to manhandle her by beating her frequently and she has also deposed about the occasions in which P.W.1 was beaten by the appellant.

29. It is to be pointed out that an extensive chief examination has been conducted of P.W.1 who has spoken about many instances of the appellant behaving in a wrong way with her. In fact, there is a specific deposition of P.W.1 to the effect that the acts of the appellant being continued in the same fashion, P.W.1 was also intending to break up the relationship, as she was frightened by the acts of the appellant.

30. In the above backdrop, on the fateful day, the occurrence is alleged to have happened in which P.W.1 had suffered the grievous injuries at the hands of the appellant. It is the specific deposition of P.W.1 that upon the appellant attacking her, she suffered five incised wounds on the neck, four injuries on her right hand, one injury on her right shoulder, one injury below her right ear and one injury on her left wrist. The deposition further reveals that the injuries



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suffered by P.W.1 were exhibited by her before the trial court at the time of recording of the evidence. From the above, it clearly transpires that P.W.1 has suffered injuries on the fateful day for which she had been admitted in the hospital and taken treatment.

31. The whole case of the defence lingers on the eye witnesses turning hostile and, therefore, it is submitted on behalf of the appellant that it would be unsafe to rely on their evidence to find him guilty.

32. Before addressing the evidence of the witnesses, who have turned hostile, it would be useful to turn to the evidence of the doctor, P.W.2, who had seen P.W.1 at the earliest point of time with the injuries and who had issued Ex.P-2, wherein the injuries suffered by P.W.1 have been recorded. Ex.P-2 is in consonance with the deposition of P.W.1 with regard to the injuries suffered by her.

33. Upon scrutinizing the evidence of the Doctor, P.W.2, before Court coupled with Ex.P-2, the accident register, it is evident that P.W.2 had deposed



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that P.W.1 was brought to the hospital for treatment before him by P.W.8, the friend of P.W.1. It is the further deposition of P.W.2 that upon enquiry, P.W.1 informed P.W.2 that she was attacked by one known person on 30.04.2018 at about 10.30 a.m. near B.C. Corner auto stand. Upon examination, the doctor had found the injuries, as is evidenced through Ex.P-2. The doctor had also opined that all the injuries suffered by P.W.1 are grievous injuries and that P.W.1 was not able to move her fingers.

34. From the above evidence of P.W.2, it is clear that at the earliest point of time, P.W.1 was not only brought to the hospital by P.W.8, her friend, but P.W.1 has also informed P.W.2 that she was attacked by one known person at about 10.30 a.m. on 30.04.2018 near B.C. Corner auto stand. In essence, with respect to the attack proper, the evidence of P.W.1 finds corroboration through the evidence of the doctor, P.W.2. There is also one further corroboration with reference to the person who had brought P.W.1 to the hospital and unerringly it is pointed to be P.W.8, who had brought P.W.1 to the hospital.



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35. A suggestion was made by the defence as to whether the injuries on the hand of P.W.1 could have been suffered when she was fighting to retrieve the knife from the other person to which P.W.2 had categorically stated that the same is possible, but in the same breath, P.W.2 has stated that the injuries on the neck are not possible. To the further suggestion whether upon pushing down a person and the person being attacked on the neck by the assailant by cutting the neck, whether the injuries would be smooth or otherwise to which the P.W.2 had replied that if the person is attacked with force, proper smooth injuries could be caused.

36. From the above deposition of P.W.2, not only there is corroboration with regard to the injuries suffered by P.W.1, but also with regard to the occurrence, as P.W.1 had stated, even at the earliest point of time, as to how she sustained the injuries and the person, who had caused the said injuries. Therefore, corroboration of the evidence of P.W.1 is there in the evidence of P.W.2.



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37. As stated above, the major contention of the appellant is on P.W.s 3 to 6 and 8 who have turned hostile and there deposition could not be relied on to convict the appellant.

38. In this regard, it is to be pointed out that it is a regular phenomena in criminal cases of witnesses turning hostile in the course of criminal trial even though they had supported the case of the prosecution through their statements at the time of investigation and in the said circumstances, the manner in which the evidence of the hostile witnesses have to be looked into has been spelt out in the decision of this Court in *Radha's case (supra)*, wherein, this Court, advertng to the decisions of the Supreme Court, culled out the following :-

39. The Hon'ble Supreme Court, in the case of ***Ramesh & Ors. – Vs – State of Haryana (2017 (1) SCC 529 :: AIR 2016 SC 5554)*** had occasion to consider the phenomenon that is being a regular feature in criminal cases, the witnesses turning hostile and in that context, analysing the ratio laid down on the said aspect as also the reasons discerned for such an attitude, held as under :-



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“39. We find that it is becoming a common phenomenon, almost a regular feature, that in criminal cases witnesses turn hostile. There could be various reasons for this behaviour or attitude of the witnesses. It is possible that when the statements of such witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 by the police during investigation, the investigating officer forced them to make such statements and, therefore, they resiled therefrom while deposing in the court and justifiably so. However, this is no longer the reason in most of the cases. This trend of witnesses turning hostile is due to various other factors. It may be fear of deposing against the accused/delinquent or political pressure or pressure of other family members or other such sociological factors. It is also possible that witnesses are corrupted with monetary considerations.

40. In some of the judgments in past few years, this Court has commented upon such peculiar behaviour of witnesses turning hostile and we would like to quote from few such judgments. In Krishna Mochi v. State of Bihar [Krishna Mochi v. State of Bihar, (2002) 6 SCC 81 : 2002 SCC (Cri) 1220] , this Court observed as under:

“31. It is a matter of common experience that in recent times there has been a sharp decline of ethical values in public life even in developed countries much less developing one, like ours, where the ratio of decline is higher. Even in ordinary cases,



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witnesses are not inclined to depose or their evidence is not found to be credible by courts for manifold reasons. One of the reasons may be that they do not have courage to depose against an accused because of threats to their life, more so when the offenders are habitual criminals or high-ups in the Government or close to powers, which may be political, economic or other powers including muscle power."

* * * * *

43. In *State v. Sanjeev Nanda* [*State v. Sanjeev Nanda*, (2012) 8 SCC 450 : (2012) 4 SCC (Civ) 487 : (2012) 3 SCC (Civ) 899], the Court felt constrained in reiterating the growing disturbing trend:

"99. Witness turning hostile is a major disturbing factor faced by the criminal courts in India. Reasons are many for the witnesses turning hostile, but of late, we see, especially in high profile cases, there is a regularity in the witnesses turning hostile, either due to monetary consideration or by other tempting offers which undermine the entire criminal justice system and people carry the impression that the mighty and powerful can always get away from the clutches of law, thereby eroding people's faith in the system.

100. This Court in *State of U.P. v. Ramesh Prasad Misra* [*State of U.P. v. Ramesh Prasad Misra*, (1996) 10 SCC 360 : 1996 SCC (Cri) 1278] held that it is equally settled law that the evidence of a hostile witness could not be totally rejected, if spoken in favour of the prosecution or the accused, but it can be subjected to closest scrutiny and that portion of the evidence



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which is consistent with the case of the prosecution or defence may be accepted. In K. Anbazhagan v. Supt. of Police [K.Anbazhagan v. Supt. of Police, (2004) 3 SCC 767 : 2004 SCC (Cri) 882] , this Court held that if a court finds that in the process the credit of the witness has not been completely shaken, he may after reading and considering the evidence of the witness as a whole, with due caution, accept, in the light of the evidence on the record that part of his testimony which it finds to be creditworthy and act upon it. This is exactly what was done in the instant case by both the trial court and the High Court [Sanjeev Nanda v. State, 2009 SCC OnLine Del 2039 : (2009) 160 DLT 775] and they found the accused guilty.

101. We cannot, however, close our eyes to the disturbing fact in the instant case where even the injured witness, who was present on the spot, turned hostile. This Court in Manu Sharma v. State (NCT of Delhi) [Manu Sharma v. State (NCT of Delhi), (2010) 6 SCC 1 : (2010) 2 SCC (Cri) 1385] and in Zahira Habibullah Sheikh (5) v.State of Gujarat [Zahira Habibullah Sheikh (5) v. State of Gujarat, (2006) 3 SCC 374 : (2006) 2 SCC (Cri) 8] had highlighted the glaring defects in the system like non-recording of the statements correctly by the police and the retraction of the statements by the prosecution witness due to intimidation, inducement and other methods of manipulation. Courts, however, cannot shut their eyes to the reality. If a witness becomes hostile to subvert the judicial process, the court shall not stand as a mute spectator and every effort should be made to bring home the truth. Criminal judicial system cannot



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be overturned by those gullible witnesses who act under pressure, inducement or intimidation. Further, Section 193 IPC imposes punishment for giving false evidence but is seldom invoked.”

44. On the analysis of various cases, the following reasons can be discerned which make witnesses retracting their statements before the court and turning hostile:

- (i) Threat/Intimidation.*
- (ii) Inducement by various means.*
- (iii) Use of muscle and money power by the accused.*
- (iv) Use of stock witnesses.*
- (v) Protracted trials.*
- (vi) Hassles faced by the witnesses during investigation and trial.*
- (vii) Non-existence of any clear-cut legislation to check hostility of witness.*

45. Threat and intimidation has been one of the major causes for the hostility of witnesses. Bentham said: “witnesses are the eyes and ears of justice”. When the witnesses are not able to depose correctly in the court of law, it results in low rate of conviction and many times even hardened criminals escape the conviction. It shakes public confidence in the criminal justice delivery system. It is for this reason there has been a lot of discussion on witness protection and from various quarters



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demand is made for the State to play a definite role in coming out with witness protection programme, at least in sensitive cases involving those in power, who have political patronage and could wield muscle and money power, to avert trial getting tainted and derailed and truth becoming a casualty. A stern and emphatic message to this effect was given in Zahira Habibullah case [Zahira Habibullah Sheikh v. State of Gujarat, (2006) 3 SCC 374 : (2006) 2 SCC (Cri) 8] as well.”

40. From the above, it is clear that merely because witnesses have turned hostile would not be a ground to acquit the accused or to hold that the prosecution have not made out a case. The Court can very well peruse the evidence of the witnesses to come to a holistic conclusion with regard to the believability of the evidence and decide the case on the basis of such an approach. Therefore, the probative value of such evidence is the criteria based on which this Court has to come to a conclusion and in this regard, useful reference can be had to the decision of the Apex Court in Bhajju v. State of M.P., (2012) 4 SCC 327, and the Hon'ble Supreme Court held as under :-

“36. It is settled law that the evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident. The evidence of



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such witnesses cannot be treated as washed off the records, it remains admissible in trial and there is no legal bar to base the conviction of the accused upon such testimony, if corroborated by other reliable evidence. Section 154 of the Evidence Act enables the court, in its discretion, to permit the person, who calls a witness, to put any question to him which might be put in cross-examination by the adverse party.

37. The view that the evidence of the witness who has been called and cross-examined by the party with the leave of the court, cannot be believed or disbelieved in part and has to be excluded altogether, is not the correct exposition of law. The courts may rely upon so much of the testimony which supports the case of the prosecution and is corroborated by other evidence. It is also now a settled canon of criminal jurisprudence that the part which has been allowed to be cross-examined can also be relied upon by the prosecution. These principles have been encompassed in the judgments of this Court in the following cases:

(a) *Koli Lakhmanbhai Chanabhai v. State of Gujarat* [(1999) 8 SCC 624 : 2000 SCC (Cri) 13],

(b) *Prithi v. State of Haryana* [(2010) 8 SCC 536 : (2010) 3 SCC (Cri) 960],

(c) *Manu Sharma v. State (NCT of Delhi)* [(2010) 6 SCC 1 : (2010) 2 SCC (Cri) 1385] and



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(d) Ramkrushna v. State of Maharashtra [(2007) 13 SCC 525 : (2009) 2 SCC (Cri) 427].”

(Emphasis Supplied)

41. Keeping the ratio laid down above in mind, this Court would now proceed to analyse the evidence of P.W.s 3 to 6 and 8 to find out as to the extent on which reliance could be placed on their evidence and the manner of corroboration that the said evidence gives to the evidence of P.W.1. The Courts can very much rely upon so much of the testimony which supports the case of the prosecution, which corroborates the other evidence.

42. P.W.3, as per the case of the prosecution, is the auto driver, who had taken P.W.1 to the hospital. P.W.3 in his deposition in chief, before turning hostile, has stated that about 11.00 a.m., on a day about a year back, when P.W.3 was getting near the auto stand with a ride, P.W.1, who had suffered injuries, was boarded in his auto. Along with P.W.1, two males and a female boarded the auto and P.W.1 was taken to Chidambaram Raja Muthiah Medical College & Hospital. P.W.3 had gone on to depose that he knows the witnesses P.W.s 4 and 5 and one Ramamoorthy. P.W.3 had further deposed that P.W.1 had



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suffered bleeding injuries. However, beyond this point, P.W.3 did not support the prosecution version and he was treated as hostile and cross examined. P.W.1 contradicted his own statement made to the investigating agency, when he was enquired u/s 161 Cr.P.C.

43. From the above, it is evident that P.W.1 had suffered injuries on the said date and that P.W.3 had taken P.W.1 along with two males and one female in his auto to the hospital. In this regard, turning back to the evidence of P.W.s 1 and 2, it would be evident that P.W.1 had deposed that P.W.8 had taken her to the hospital and P.W.3 had deposed that P.W.1 was brought to the hospital by her friend P.W.8. Therefore, there is corroboration to the said extent in the evidence of P.W.3.

44. Turning back to the evidence of P.W.4, he has stated in chief that he is an auto driver by profession and that he was stationed near the thamarai Hostel, where P.W.1 was staying and he knows P.W.1. P.W.4 has further deposed that about 10.00 a.m. a year back, he was informed that one person had caused cut injuries to the neck of a women and that one of the person in the said place had



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videographed the said occurrence and that P.W.4 had seen the said video and had further deposed that he could identify the said video if the same is shown to him. P.w.4 had further gone on to depose in chief that in the said video, the accused/appellant herein was sitting and the public were beating him. Though objection was made to the displaying of the said video, however the same was displayed, which was also seen by the appellant/accused. At that time, the Court questioned the accused with regard to the identity of the person, who is in the video, who was being beaten by the public and the accused accepted that he is the person in the said video. However, beyond this point, P.W.4 did not support the prosecution and, therefore, was treated as hostile.

45. P.W.5 is also an auto driver by profession and that he also knows P.W.1, but does not know the accused. However, beyond that he did not support the prosecution and he was treated as hostile.

46. P.W.6 is the President of the auto stand functioning near the ladies hostel and that he was a witness to the recovery of the knife and had signed the recovery mahazar and had acknowledged his signature in the mahazar, which



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has been marked as Ex.P-3. However, beyond this, P.W.6 had not supported the case of the prosecution.

47. From the above evidence of P.W.s 3 to 6, it is evident that not only the said witnesses know P.W.1, but they have also spoken about the occurrence that is alleged to have taken place on 30.4.2018. In fact, in the video, which has been objected to on behalf of the accused, on being questioned u/s 313 Cr.P.C., the accused had accepted that he is the person, who is in the said video, who is being beaten by the public. Therefore, there is corroboration to the deposition of P.W.1 with regard to her being attacked, being taken in an auto and she being accompanied by P.W.8 and that the auto in which she was taken belonged to P.W.3 and was driven by P.W.3.

48. Now turning the attention to the crucial deposition of P.W.8, who is the friend of P.W.1, while she had corroborated the deposition of P.W.1 prior in point of time to the occurrence with regard to the intimacy between the accused and P.W.1 and the presence of P.W.1 before the hostel on 29.4.2018.



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Thereafter, P.W.8 has not supported the case of the prosecution and she has been treated hostile and was subjected to cross examination.

49. In cross examination, P.W.8 has deposed that she knows that P.W.1 had loaned money to the accused. P.W.8 had further gone on to depose that she had received many calls from a particular number, but she did not call back. She has further deposed that P.W.1 had seen the number and informed her that it was the number of the accused. However, P.W.8 did not depose as to how her number was within the knowledge of the accused.

50. In this regard, a perusal of the deposition of P.W.1 reveals that she had contacted the accused over the phone number of her friends, including P.W.8 and informed the accused not to call her henceforth. However, it is the further deposition of P.W.1 that the accused frequently disturbed the friends of P.W.1 by calling them and even threatening P.W.1 that he will do away with her friends. Therefore, the manner in which the accused came to know the phone number of P.W.8 is evident from the deposition of P.W.1 and, therefore, the hostility of P.W.8 not to disclose about her knowledge of the occurrence is on



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account of the fact that they were frightful of the wrath of the accused against them.

51. Going back to the evidence of P.W.8, it is the specific deposition of P.W.8 that on 30.04.2018, she saw the accused standing outside the hostel, though she feigned no knowledge about the accused contacting her and asking her to tell P.W.1 to come and meet him. P.W.8 has further deposed that as usual, P.W.1 and herself came out of the hostel for going to the college. It is the further deposition of P.W.8 that upon the accused giving her the money, which he had taken as loan from P.W.1, P.W.1 had given her the money, which she received, though it is the evidence of P.w.8 that she received the money, which P.W.1 had given her without disclosing the fact that the money was given by the accused. Yet from the above deposition of P.W.8, it transpires that when P.W.1 and the accused were talking during which the accused parted with the money, P.w.1 had received the money and given the same to P.W.8, which was received by P.W.8. However, one deposition of P.W.8 that stands tall to show that she had indeed received the money given by the accused to P.W.1 is that she had deposed that she received the money and went to the college.



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52. From the above deposition of P.W.8, it is evident that she was well available at the scene of occurrence, when P.W.1 met with the attack at the hands of the accused and that she had taken P.W.1 to the hospital, which is corroborated by the deposition of P.W.2, the doctor, who had categorically stated that P.W.1 was brought by her friend P.W.8. The above evidence of P.W.2 dismantles the evidence of P.W.8 that she came to know about the attack on P.W.1 only from the professor at her college and came to know that P.W.1 was taken to the hospital for treatment. In fact, it was P.W.8, who had taken P.W.1 to the hospital and that she was an eye witness to the occurrence.

53. From the above discussion, the presence of P.W.s 3, 4, 5 and 8 at the scene of occurrence stands established and in the said backdrop, the hostility exhibited by the said witnesses cannot for the basis to doubt the evidence of P.W.1, which has been corroborated by P.W.2 and also finds necessary corroboration in the evidence of P.W.s 3, 4, 5 and 8 as to the occurrence and also the movement of P.W.1 from the place of occurrence to the hospital through the auto belonging to P.W.3 accompanied by P.W.8.



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54. Further, M.O.1 knife had been recovered by P.W.10 in the presence of P.W.6, which recovery has been attested to by P.W.6. The knife, M.O.1 was blood stained and it was recovered from near the place of occurrence. Though chemical examination had not been conducted with regard to the blood found on the knife, the mere fallacious investigation of P.W.10 in not sending M.O.1 for chemical analysis and also not retrieving bloodstained earth and sample earth to prove that the blood on the knife and the blood at the scene of occurrence were relatable to the blood of P.W.1 cannot be the basis to doubt the prosecution case, when the evidence of P.W.1 had been corroborated by P.w.2 and P.W.s 3 to 5 and 8.

55. Further, it is also to be noted that even it is the deposition of P.W.1 that she and the accused were in love with each other, but the continuous psychological deterioration of the accused and his continuous manhandling of P.W.1 had resulted in P.W.1 desisting to see the accused and even going to the extent of breaking up the relationship with her. This clearly shows that the act of the accused with P.W.1 was the reason for P.W.1 trying to distance herself from



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the accused. Further, the loan granted by P.W.1 to the accused, which the accused had returned to P.W.1 partly on the day of occurrence has been spoken to by P.W.8, as she is the person, who was given the amount by P.W.1, which she had received from the accused.

56. Further, the act of the appellant in causing grievous injuries on P.W.1 could also be ascertained from the fact that D.W.1, the police constable, who had taken the appellant to the hospital and had given him treatment and, thereafter, shifting him to Government Hospital, Cuddalore, has stated in his evidence in chief that blood was oozing from the head of the appellant, when he went to the scene of occurrence. In his deposition in cross, D.W.1 had deposed that upon enquiry from the persons nearby, he was informed that the appellant had attacked a women with knife causing grievous injuries on the neck and since he was in possession of a knife, the public did not dare to go near him and to cause injury so that they could ward off the attack, they had thrown stones at him causing injuries resulting in the bleeding on the appellant.



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57. The evidence of D.W.2 the doctor, who had treated the appellant is of no support to the appellant as merely D.W.2 has spoken about the critical condition in which the appellant was brought to the hospital and the treatment given and also obtainment of signature with regard to the condition of the patient. It only proves that the appellant had consumed poison, but the same in no way advances the case of the appellant.

58. Therefore, the act of the accused is writ large in the manner in which P.W.1 had moved with the accused earlier and later deciding to distance herself. Therefore, it can safely be concluded that the accused had indeed caused the injuries on the person of P.W.1, thereby attracting the offence u/s 307 IPC and rightly, the accused/appellant had been sentenced by the court below for the said offence.

59. Now turning the attention back to the offence u/s 294 (b) IPC, the allegation against the accused is that he degraded the morality of P.W.1 by using profane and obscene language. Section 294(b) of the IPC talks about the obscene acts and songs. Section 294 of the IPC as a whole reads thus :-



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"294. Obscene acts and songs - Whoever, to the annoyance of others –

(a) does any obscene act in any public place, or

(b) sings, recites or utters any obscene song, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both."

60. The acts, which are alleged to be obscene so as to attract the rigours of Section 294(b) IPC, has been considered by the Apex Court in the decision in ***N.S.Madhanagopal & Anr. – Vs – K.Lalitha (2022 Live Law (SC) 844)***, wherein the Apex Court held as under :-

"It is to be noted that the test of obscenity under Section 294(b) of the I.P.C. is whether the tendency of the matter charged as obscenity is to deprave and corrupt 4 those whose minds are open to such immoral influences. The following passage from the judgment authored by Justice K.K. Mathew (as his Lordship then was) reported in P.T. Chacko v. Nainan (1967 KLT 799) explains as follows:

"The only point argued was that the 1st accused has not committed an offence punishable under Section 294(b) IPC., by uttering the words above-mentioned. The courts below have held that the words uttered



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were obscene and the utterance caused annoyance to the public. I am not inclined to take this view. In the Queen v. Hicklin, [L.R.] 3 Q.B. 360 at 371 Cockburn C.J. Laid down the test of 'obscenity' in these words: "..... the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences" This test has been uniformly followed in India. The Supreme Court has accepted the correctness of the test in Ranjit D. Udeshi v. State of Maharashtra, AIR 1965 SC 881. In Samuel Roth v. U.S.A., 354 US 476 (1957), Chief Justice Warren said that the test of 'obscenity' is the "substantial tendency to corrupt by arousing lustful desires". Mr. Justice Harlan observed that in order to be 'obscene' the matter must "tend to sexually impure thoughts".

I do not think that the words uttered in this case have such a tendency. It may be that the words are defamatory of the complainant, but I do not think that the words are 'obscene' and the utterance would constitute an offence punishable under S. 294(b) IPC". 5 It has to be noted that in the instance case, the absence of words which will involve some lascivious elements arousing sexual thoughts or feelings or words cannot attract the offence under Section 294(b). None of the records disclose the alleged words used by the accused. It may not be



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the requirement of law to reproduce in all cases the entire obscene words if it is lengthy, but in the instant case, there is hardly anything on record. Mere abusive, humiliating or defamative words by itself cannot attract an offence under Section 294(b) IPC. To prove the offence under Section 294 of IPC mere utterance of obscene words are not sufficient but there must be a further proof to establish that it was to the annoyance of others, which is lacking in the case. No one has spoken about the obscene words, they felt annoyed and in the absence of legal evidence to show that the words uttered by the appellants accused annoyed others, it cannot be said that the ingredients of the offence under Section 294 (b) of IPC is made out."

61. In the case on hand, it is the specific deposition of P.W.1 that the appellant used obscene words and castigated P.W.1 and degraded her character and that the said words were uttered in a public place. Though none of the witnesses have corroborated the deposition of P.W.1, yet it should not be lost sight of that P.W.s 3 to 5 and 8 have corroborated the evidence of P.W.1, as detailed above and in such a scenario, there was no necessity for P.W.1 to hold any grudge against the accused to depose that he used obscene words against her. As aforesaid, P.W.1 and the accused were in love with each other, which



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deteriorated only due to the act of the appellant. Further, it is the specific case of the prosecution that the appellant is addicted to alcohol and in an inebriated state, too often, manhandles P.W.1 by beating her. Such being the position, there being no necessity for P.W.1 to make allegation attracting Section 294 (b) IPC against the accused and when this Court has accepted one part of her evidence with regard to the attack perpetrated by the appellant on P.W.1, there is no necessity for this Court to doubt the other part of the testimony of P.W.1, where she has alleged that the accused used obscene language and degraded her in filthy words. In fact, it is the case of the prosecution that it is not an isolated incident, but too often P.W.1 was offended by the appellant using filthy words.

62. Further, it is to be pointed out that this Court has accepted one part of the testimony of P.W.1 and naturally the other part of the testimony also deserves to be accepted for the simple reason that P.W.1 had no axe to grind against the appellant. In such a scenario, the deposition of P.W.1 is not only acceptable, but is convincing as she her entire deposition reveals that she has



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spoken the truth as had happened between the appellant and P.W.1 with which this Court cannot find any ambiguity and the same deserves to be accepted.

63. In the present case, the happening having taken place in the street, much to the hearing of the public and the words used are of such a temper so as to cause annoyance to the public, necessarily Section 294 (b) stands attracted to the act of the accused/appellant and the appellant deserves to be convicted for the said offence, which has been rightly done so by the court below.

64. This Court also cannot show any leniency with regard to the sentence imposed upon the appellant as the injuries caused by the appellant on P.W.1 are so very grave in nature, that P.W.1 could not freely move her finger nor can bend the same and is leading a life with the same. The gruesome mind with which the act had been perpetrated by the appellant had pushed P.W.1 to severe mental and physical turmoil and the extent of injury and its implications on the life of P.W.1 has been spoken to by P.W.2. The number of cut injuries and the depth of the injuries suffered by P.W.1 at the hands of the appellant, though claimed to emotionally disturbed, really shows the venom with which the act has been



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perpetrated on P.W.1. The act of the appellant does not show to be one of a person suffering from the break up of love, but rather it is of a maniac who is trying to take revenge on the person, who is not inclined to dance to his tunes. The depravity of the appellant is evident from the vicious acts committed by him on P.W.1 and in the aforesaid circumstances, if this Court considers any leniency to the appellant, it would not only be against the interest of P.W.1 but would be a travesty of justice to the justice delivery system. The mere fact that the appellant had consumed poison, which shows his emotional disturbance cannot be a ground to show leniency, as the psychological impact of break up in love is sidelined when considering the gravity of the attack on P.W.1, which has a lasting impact on the life of P.W.1.

65. For the reasons aforesaid, this Court does not find any infirmity or inconsistency in the analysis of the evidence and the conviction and sentence recorded by the trial court are based on materials and the same deserves to be confirmed. Accordingly, this criminal appeal stands dismissed confirming the conviction and sentence passed S.C. No.377 of 2018 vide judgment dated 14.09.2021 by the District & Sessions Judge, Mahila Court, Cuddalore.



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08.07.2024

Index : Yes / No

GLN

To

- 1) The Sessions Judge
Mahila Court, Cuddalore.
- 2) The Inspector of Police
Annamalai Nagar Police Station
Cuddalore District.
- 3) The Public Prosecutor
High Court, Madras.



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CRL. A. No.38/2022

M.DHANDAPANI, J.

GLN

**PRE-DELIVERY JUDGMENT IN
CRL. A. NO. 38 OF 2022**



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CRL. A. No.38/2022

**Pronounced on
08.07.2024**