

Murugan @ Muruges Vs. State,

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Court : Chennai

Decided On : Dec-03-2014

Judge : The Honourable Ms.Justice R.Mala

Appellant : Murugan @ Muruges

Respondent : State,

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

03. 12.2014 CORAM: THE HONOURABLE MS.JUSTICE R.MALA Criminal Appeal (MD)No.288 of 2007 Murugan @ Murugesan : Appellant/Accused Vs. State, represented by, the Inspector of Police, Srivaigundam Police Station, Alwarthirunagari Circle, Thoothukudi District. (Crime No.198/2006) : Respondent/Complainant Prayer : Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, against the judgment dated 31.05.2007 in S.C.No.23 of 2007, on the file of the learned Additional District and Sessions Judge/FTC- I, Thoothukudi. !For Appellant :: Mr.S.R.A.Ramachandhran ^For Respondent :: Mrs.S.Prabha, Government Advocate (Crl. Side) ***** :

JUDGMENT

This appeal is directed against the conviction and sentence passed in S.C.No.23 of 2007, dated 31.05.2007 on the file of the learned Additional District and Sessions Judge/FTC-I, Thoothukudi.

2. The case of prosecution in brief is as follows: (i) There was a previous enmity between P.W.1 and the accused before four months from the date of occurrence. On 04.10.2006 at about 03.30 p.m., P.W.1 (Santhosh Senthilrajan) had spoken with P.W.2 (Muthuraj) in front of the house of P.W.3 (Leelavathi). At that time, the accused stabbed him with knife by saying 'nj;BjhL brj;J bjhiye;J Bgh'. P.W.1 prevented the same. Again, the accused cut him on the left hand. When the accused tried to attack him on his chest, it was turned on the right chest. On hearing the noise of P.Ws.2,3 and 4, the accused fled away from the place with knife. Then, P.W.4 (Seethalakshmi) and P.W.2 (Muthuraj) took P.W.1 by auto to Srivaikundam Government Hospital for treatment. Thereafter, he was referred for further treatment to Tirunelveli Government Hospital. (ii) P.W.10 (Jeyasankari), the Sub-Inspector of Police, Srivaikundam, obtained a complaint from P.W.1 at 05.30 p.m., which was marked as Ex.P.1. Based on the complaint, she registered a case in Crime No.198 of 2006 for the offence under Section 307 IPC. She prepared the printed F.I.R. (Ex.P.8). (iii) P.W.11 (Manoharan), the Inspector of Police, on receiving the case details on 04.10.2006 at about 07.30 p.m., went to the place of occurrence and in the presence of P.W.6 (Balakrishnan) and witness (Siva Anand), prepared an observation mahazar Ex.P.2 and rough sketch Ex.P.9. He recorded the statements of P.Ws.2,3,5,6 and one Siva Anand and also the statement of P.W.1. He also seized the material objects under Ex.P.3. On 05.10.2006 at about 07.30 a.m., he arrested the accused in the presence of P.W.7 (Madasamy) and Shanmugam. He seized M.O.1 (knife) shown by the accused under Ex.P.4. Ex.P.5 is the admissible portion of the confession statement of the accused. He also recorded the statement of doctor (P.W.8), who gave treatment to P.W.1 and issued accident register Ex.P.6. On completion of investigation, he laid the charge sheet against the accused for the offence punishable under Section 307 IPC. (iv). Before the trial Court, on behalf of the prosecution, P.Ws.1 to 11 were examined and Exs.P.1 to P.9 were marked along with M.Os.1 to 4. On completion of the examination of the witnesses on the side of the prosecution, the accused was questioned under Section 313 Cr.P.C., as to the incriminating circumstances found in the evidence of the prosecution witnesses and he denied the same as false. On behalf of the defence, D.W.1 was examined and no document was marked. (v). The learned trial Judge, after considering the oral and

documentary evidence, even though charge was framed against him under Section 307 IPC, convicted the accused for the offence under Section 324 IPC and sentenced him to undergo 2 months rigorous imprisonment, to pay a fine of Rs.1,000/- in default, to undergo 1 month rigorous imprisonment.

3. Aggrieved over the conviction and sentence, the appellant is before this Court.

4. Heard the submissions made on either side.

5. Challenging the conviction and sentence, the learned counsel for the appellant would submit that except P.W.1 and his mother P.W.4, other witnesses viz. P.W.2 and P.W.3 were turned hostile. That factum was not considered by the Trial Court. He would further submit that P.W.4 is not an eye witness and in the transaction, the appellant also sustained injury. That factum has not been proved by the prosecution and hence, it is fatal to the case of the prosecution. To substantiate his contention, he relied upon the decisions reported in 2011(3) MWN (Cr.) 493 [Ramalingam v. State]. and 2009(1) MWN (Cr.) 423 [Sulian @ Chinnathambi & Anr. v. State]. and prayed for setting aside the conviction and sentence imposed by the Trial Court.

6. The learned counsel would further state that even though charge has been framed against the appellant under Section 307 IPC, he was convicted only under Section 324 IPC and sentenced to undergo 2 months rigorous imprisonment, to pay a fine of Rs.1,000/- in default, to undergo one month rigorous imprisonment. Fine amount has been paid and the appellant was in prison for more than four weeks. Hence, he prayed for reduction in sentence, if the Court is not accepting the contention put forth.

7. Resisting the same, the learned Government Advocate (Criminal side) would submit that the evidence of P.W.1 is wholly reliable, since he is the injured. P.W.1 has deposed about the previous enmity and the injury has been properly explained by P.W.1 and P.W.3. Hence, there is no violation of Police Standing Order 588-A. Hence, the Trial Court has considered all the aspects in proper perspective. Even though charge has been framed against him under Section 307 IPC, the Trial Court has correctly convicted him under Section 324 IPC. Hence, she prayed for

dismissal of the appeal.

8. Considering the rival submissions made by both sides and on perusal of the typed-set of papers, it is seen that the alleged occurrence is said to be taken place on 04.10.2006 at 03.30 p.m., in front of the house of P.W.3. To prove the incident, P.Ws.1 to 4 were examined. Here, P.W.2 and P.W.3 turned hostile. But, P.W.4 is none other than the mother of P.W.1.

9. It is true that there is a case and counter case. On the basis of the complaint given by P.W.1, a case in Crime No.198 of 2006 has been registered under Section 307 IPC by P.W.10-Jeyasankari, Sub-Inspector of Police. Similarly, on the basis of the complaint given by the accused, a case in Crime No.199 of 2006 has been registered under Section 326 IPC against P.W.1. As per the evidence of D.W.1, the case has been referred as mistake of fact. In such circumstances, I am of the view that P.W.1 himself has deposed as to how the occurrence is said to be taken place and hence, the decisions relied upon by the learned counsel for the appellant reported in 2011(3) MWN (Cr.) 493 [Ramalingam v. State]. and 2009(1) MWN (Cr.) 423 [Sulian @ Chinnathambi & Anr. v. State]. are not applicable to the facts of the present case, since, in those cases, eye witnesses suppressed part of transaction and their evidence are not reliable and on that ground, conviction has been set aside.

10. Now, the only point to be decided in this appeal is whether the conviction under Section 324 IPC is sustainable?.

11. As already stated, P.W.2 and P.W.3 were turned hostile. It is the well settled dictum of the Apex Court that the evidence of hostile witness can be reliable, provided it must be supported the case of the prosecution or the case of the defence. A perusal of the deposition of P.W.2 and P.W.3 would go to show that both of them are stating that on 04.10.2006 the accused and P.W.1 were scuffled and immediately, they made hue and cry, which shows that there was a scuffle between both parties and hence, the occurrence has taken place. P.W.8 (Dr.Jeyakumar) had issued Accident Register-Ex.P.6, in which, he had stated that the injured was assaulted by known person with knife, due to which, he sustained two injuries. In such circumstances, I am of the view that the evidence of P.W.1 is

reliable, since his evidence has been corroborated by P.W.8. P.W.4 is the mother of P.W.1. She is supporting her son. There is a previous enmity between both family. The case is based on the eye witness. Motive has not played a vital role. Considering the evidence of P.W.1 along with P.W.8, the appellant herein has assaulted him with a deadly weapon M.O.1-knife and caused injuries, which are simple in nature. Hence, I am of the view that the Trial Court has correctly found the guilt of the accused under Section 324 IPC. Hence, the conviction is, hereby, confirmed.

12. In respect of the quantum of sentence imposed, the learned counsel for the appellant would submit that the appellant was in incarceration for more than four weeks and he has also paid the fine amount and he has to maintain his family and hence, he prays for leniency.

13. Considering the plight of the accused and also considering the fact that he has also paid the fine amount and he was in incarceration for more than four weeks, I am inclined to reduce the sentence. Hence, the period of sentence already undergone is treated as sentence. Fine amount is, hereby, confirmed.

14. The Criminal Appeal is disposed of with the above modification. 03.12.2014
Index:Yes/No Internet:Yes/No SML To 1.The Court of Additional District Sessions Judge -cum- Fast Track Court No.IV, Periyakulam. 2.The Inspector of Police, Srivaigundam Police Station, Alwarthirunagari Circle, Thoothukudi District. R.MALA, J.

SML3The Public Prosecutor, Madurai Bench of Madras High Court, Madurai.
Judgment made in Criminal Appeal (MD)No.288 of 2007 Dated:- 03.12.2014

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