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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02-11-2026

CORAM

THE HON'BLE MR.JUSTICE D.LINGESWARAN

Crl.A(MD) No.131 of 2019

CNR:{HCMD010345132019}

T.Rajan

..Appellant

Vs

The Inspector of Police,
Nithiraivillai Police Station,
Kanniyakumari District.
Crime No.306 Of 2006

..Respondent

Prayer: This Criminal Appeal is filed under Section 374(2) of Cr.P.C., to call for the records in S.C.No.170 of 2017 on the file of the Assistant Sessions Court, Kuzhithurai, Kanyakumari District and set aside the conviction passed by judgment dated 16.07.2018.

For Appellant :Mr.S.Muthu Malai Raja

For Respondent :Mr.A.Robinson
Additional Public Prosecutor

JUDGMENT

This Criminal Appeal challenges the judgment of the Assistant Sessions Court, Kuzhithurai, Kanniyakumari District, in S.C.No.170 of 2017, dated 16.07.2018.

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The case of the prosecution

2. The appellant and PW1 were friends. On 25.11.2006, at about 3.00 PM, they had a wordy quarrel in which PW1 abused the appellant, his mother and his sister in filthy language. The appellant, therefore, harboured an intention to kill PW1. On 27.11.2006, at about 7.30 PM, the two consumed liquor together and then went to their respective houses. At about midnight, the appellant trespassed into the house of PW1, who was asleep. The appellant stamped his foot on the chest of PW1, cut off his private part with a knife, took away the severed part and ran from the house. PW1 was taken to the hospital, his statement was recorded, and an FIR was registered on 28.11.2006. The police investigated the case and arrested the accused. Pursuant to his disclosure statement, they recovered the severed part and the knife, and then filed a final report against him.

The judgment of the Trial Court

3. On completion of the investigation, the Trial Court framed the appropriate charges and conducted the trial. The prosecution examined 12 witnesses and exhibited 15 documents and 6 material objects. The accused neither examined any witness nor exhibited any document. On

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a consideration of the entire evidence, the Trial Court convicted and sentenced the accused as follows:

Section of Law	Sentence of Imprisonment	Fine
452 of IPC	Three years Simple Imprisonment	Rs.2,000/-, in default to undergo three months Simple Imprisonment
307 of IPC	Seven years Simple Imprisonment	Rs.5,000/-, in default to undergo three months Simple Imprisonment

The sentences were ordered to run concurrently. Aggrieved by the conviction and sentence, the appellant has filed the present appeal.

Submissions of the parties

4. The learned counsel for the appellant first prayed for an acquittal on three grounds. First, the house in which the occurrence took place had a door, and the appellant could have entered only by breaking it open, yet there is no evidence that the door was broken. Second, the occurrence took place in darkness at midnight, so even PW1 could not have seen his assailant and had wrongly identified the appellant. Third, PW1 had illicit intimacy with several women in the

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village, so some aggrieved person could have committed the crime, and the appellant was falsely implicated.

5. In the alternative, the learned counsel contended that the prosecution had not established any intention to kill. Even if the facts were admitted, the offence would fall under Section 326 of IPC and not under Section 307 of IPC, and the Trial Court had therefore wrongly framed the charge under Section 307 of IPC and wrongly convicted the appellant under it.

6. Per contra, the learned Additional Public Prosecutor argued that the intention was writ large, as severing the private part would, in the normal course, result in the death of the injured person if not treated properly. For this purpose, he relied upon the evidence of the doctor, PW8 Dr.Anup Mannali. He accordingly prayed that the conviction and sentence be sustained.

Discussion

7. This Court has carefully considered the rival submissions. The following questions arise for determination: (i) whether the prosecution

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has established that the appellant was the assailant and that he trespassed into the house of PW1; (ii) whether the offence is one under Section 307 of IPC or only under Section 326 of IPC; and (iii) whether the sentence calls for any modification.

(i) Identity of the assailant and the trespass

8. PW1 is the injured eyewitness. He not only identified the appellant but also spoke about the quarrel of 25.11.2006 and the motive it gave the appellant. He deposed that on 27.11.2006, at about 7.30 PM, the appellant invited him to drink, brought the liquor himself, and drank with him, and that at about 9.00 PM they parted and went to their respective houses. While PW1 was sleeping at about midnight, the accused came to the spot shouting invectives, placed his leg on the chest of PW1, cut off his private part and ran away with the severed part. The mother and sister of PW1, who were sleeping in the next room, were roused by his cries and saw the accused running away. PW1 was cross-examined at length, but nothing was elicited to discredit his testimony.

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9. The contention that PW1 could not have identified the assailant in the dark is unsustainable, for four reasons. First, the appellant was no stranger to PW1; they had been friends for several years, and had spent the evening of 27.11.2006 together. Second, PW1 was fully awake when he was attacked. Third, the assailant came shouting invectives, so he was identified by his voice as well as by sight. Fourth, the assailant was at close quarters, standing over PW1 with his foot on his chest. Nothing in the cross-examination suggests any mistake in identity. The appellant was identified not only by PW1 but also by his mother and sister, who saw him fleeing the spot. The identification therefore rests on the evidence of three witnesses and is free from doubt.

10. The identity of the appellant is further confirmed by the recoveries. Pursuant to the disclosure statement of the accused (Ex.P11), the severed private part and the knife used in the offence were recovered under the seizure memorandums, Ex.P5 and Ex.P6, and marked as M.O.6 and M.O.3. The place where the severed part and the weapon lay concealed was known only to the person who took them away, and the appellant led the police to it. This is a strong incriminating circumstance, and it corroborates the direct evidence of PW1 and the other two witnesses.

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11. The suggestion that PW1 had illicit intimacy with several women, and that some aggrieved person must have committed the offence, is bare speculation. The defence examined no witness and exhibited no document to substantiate it. In any event, the theory cannot explain why the appellant was named by three witnesses immediately after the occurrence, why a quarrel between PW1 and the appellant two days earlier preceded the attack, or how the severed part and the knife came to be recovered at the appellant's instance. These circumstances rule out a case of false implication.

12. The contention regarding the door misconceives the offence under Section 452 of IPC. That offence is committed when a person commits house-trespass after making preparation for causing hurt, assault or wrongful restraint. The breaking open of a door is not an ingredient of it. The question is whether the appellant entered the dwelling house of PW1 without permission and with a criminal purpose, not how he gained entry. The evidence of PW1 shows that the appellant entered his house at midnight, without invitation, shouting invectives and armed with a knife, and that he used the knife on PW1. These facts establish house-trespass after preparation for causing hurt. The conviction under Section 452 of IPC is therefore confirmed.

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13. This Court accordingly finds no ground to interfere with the finding of the Trial Court that the appellant committed the occurrence.

(ii) Section 307 or Section 326 of IPC

14. Section 307 of IPC requires an act done with the intention or knowledge, and in such circumstances, that if death had been caused the offender would have been guilty of murder. The intention is to be gathered from all the circumstances, including the motive, the weapon used, the part of the body targeted and the manner of the assault. It is not necessary that the injury actually caused should have resulted in death, or that it should be one sufficient in the ordinary course of nature to cause death. That the victim survived because he received timely treatment is therefore no answer to the charge. Section 326 of IPC, on the other hand, applies where grievous hurt is caused with a dangerous weapon but without the intention or knowledge that Section 307 of IPC requires.

15. Tested against these principles, the evidence establishes the requisite intention and knowledge. The conclusion rests on the following circumstances. (a) The appellant had a clear motive, since

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PW1 had abused him, his mother and his sister two days earlier. (b) The attack was premeditated. The appellant had ample time to reflect after the quarrel, spent the evening of 27.11.2006 with PW1 as if nothing had happened, and returned at midnight with a knife in his hand to a house where PW1 lay asleep. (c) He first pinned PW1 down by stamping on his chest and then cut off his private part, which shows a deliberate design and not a sudden or uncontrolled act. (d) He carried away the severed part, which again shows a calculated act. (e) PW8, the doctor, deposed clearly that the wound, if left untreated, was sufficient to cause the death of PW1. The appellant must have known that severing the private part of a human being would, in the natural course, endanger his life.

16. These circumstances, taken together, establish an intention to kill, or at the very least the knowledge that the act was so imminently dangerous that it would in all probability cause death. The appellant's reliance on Section 326 of IPC therefore fails. Since the evidence discloses every ingredient of the offence under Section 307 of IPC, the Trial Court did not err in framing the charge under that Section or in convicting the appellant under it. This Court accordingly declines to alter the conviction from Section 307 of IPC to Section 326 of IPC.

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(iii) Sentence

17. The offence is grave and premeditated, and the Trial Court was in fact lenient in imposing seven years of imprisonment for the major offence under Section 307 of IPC. At the same time, nothing in the judgment of the Trial Court shows that the appellant had any previous bad antecedents, and he was aged about 28 years at the time of the offence. Having regard to his age, his clean record and the circumstances in which the offence was committed, this Court is inclined to reduce the sentence under Section 307 of IPC from seven years of Simple Imprisonment to five years of Simple Imprisonment. This reduction still reflects the gravity of the offence.

Result

18. The conviction of the appellant under Sections 452 and 307 of IPC is confirmed. The sentence under Section 307 of IPC is reduced from seven years to five years of Simple Imprisonment. The sentence and the fine imposed for the other offence, and the fine imposed under Section 307 of IPC, are maintained. The substantive sentences of imprisonment shall run concurrently, and the period of incarceration already undergone by the appellant shall be set off.

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19. The appellant is on bail. The bail bond executed by him is cancelled, and he shall surrender immediately before the Trial Court to undergo the remaining period of the sentence. Apart from the fine, the appellant has deposited a sum of Rs.50,000/- to the credit of Crime No.306 of 2006 on the file of the Inspector of Police, Nithiravilai Police Station, Kanniyakumari District, before the learned Judicial Magistrate No.2, Kuzhithurai. That amount shall be paid to the victim as compensation.

20. With the above modification in the sentence, this Criminal Appeal is disposed of.

02-11-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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To
1. The Inspector of Police,
   Nithiraivillai Police Station,
   Kanniyakumari District.

2. The Additional Public Prosecutor
   Madurai Bench of Madras High Court
   Madurai

Copy To :
Section Officer (VR Section)
Madurai Bench of Madras High Court

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D.LINGESWARAN, J.

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