

years and to pay a fine of Rs.2,00,000/-- (two lakhs only) I.D., to undergo imprisonment for 3 years and etc.,

This Criminal Appeal coming on for hearing this day the Court delivered the following:

JUDGMENT

This appeal is by the accused against the order of conviction and sentence passed by the Trial Court Bangalore city, in S.C.N(445/2007) dated 11.11.2007.

2. According to the statement of the complainant, she was rescued by the accused by means of a chopper when she intervened to rescue P.W. 5 and caused grievous injuries to her by the chopper when she intervened to rescue her life.

The accused had been charged with the offence of kidnapping under Section 307, 324 and 506(b) of IPC. The incident is said to have taken place at the staff quarters of Ashwini Nursing Home, Akshayanagar, Bangalore. On receiving the message, the SHQ of K.R. Puram police rushed to Ashwini Nursing Home and recorded the statement of the injured in the presence of the Doctor and case has been registered in Crime No. 301/2006 for the offences under Sections 307, 324, 506(b) of IPC.

Recording the statement of the eyewitness and other witnesses after conducting a search and investigation, the K.R. Puram police have filed the charge sheet against the accused for the offences under Section 307 of IPC exclusively. The Sessions Court, Bangalore, has examined the witnesses during the trial and got the evidence recorded and also several material objects as in the possession of the accused was total denial, after hearing both sides, the trial Court has acquitted the accused for the offence under Section 506 of IPC while acting under Section 235(2) of Cr.P.C. and convicted and sentenced him for the offences punishable under Sections 307 and 324 of IPC and he was sentenced to undergo imprisonment for 21 months

period of one year and to pay a fine of Rs.1,000/-- and default sentence of six months imprisonment, for the offence under Section 324 of IPC and for the offence under IPC, he was sentenced to undergo imprisonment for 2 years. As against the said order of conviction and sentence passed, the accused is before this Court on various grounds.

3. Heard.

Counsel for the appellant, it is not a case where the witnesses who have been examined by the prosecution are the staff witnesses and the injured and are interested witnesses. have turned hostile to the version of the prosecution and some of the independent witnesses who were examined at the spot were not examined. In the

absence of .., examination of the independent witnesses who are eyewitnesses to the incident, the story of the prosecution cannot be believed. .

I Accordingly, stating that the case against the accused has not been proved beyond reasonable doubt, he has sought_ for acquittal of the accused.

5. Per--contra, the learned Got/t. Pleavder that, there is cogent evidence on re.co'rdii'to hold'-M. the acciused guilty of t.he offence. Apart froi'wwt_he evidelicetof injured, there are eyewitnesses havei-witnes,sed_ the incident and they have spoken aboutv,the..o'ver't pact the accused. It is a clear attemptéto i:murder_ '_byjA' .the:iaccttsed in assaulting with thé»s{:hopperi.a[C}~ »ovrder""to.iescape when Victim Rarnya has raised her feilil on the hand and 1_ater, it has been "'~o_v_a1nptttated. fl'hereV""i'sv-we-ogent evidence on record to hold the offences and the impugned order does not va.nji:if-.V.in:terfei*ence. Accordingly, he has sought for t ' ~»dismiss'a1,_ 'I-

6. In the light of the arguments advanced, the points that would arise for consideration are:

Y

(i) Whether the prosecution has proved beyond reasonable doubt that, the accused has voluntarily ca sed,hurt to P.W.5 by chopper which is likely to cause,%□as such, he has committed the offence punishable under Section 324ofIPC?

(ii) Whether the prosecution has proved beyond V' 4_ doubt that, the accused has assaulted ~.. 2 means of chopper with an intent 'te.ca';ise_; her i(_leathT:and, thereby committed the offence,' pu_r1ishable u.nder"S'ect'i-an 307 of EPC'?

(iii) Whether the prose.cutionii'ha;slproved.be'yondi}:easonable dou.bt that, the accused,.has'<cornmitted--an offence of criminal. intimidation. by.'threavten_ing'--l?.W.2 Sabitha?

7. In the,.case---on ligand,' thefd_ate 'of?«the alleged incident, the ac,t:usedi'iga:ine:d eatry□into the staff quarters of Ashwini',Nursing_.i'iiit).□e,,:_"by"" holding chopper in his hand, assaulted onthe, V_r'igiht palm of the victim, which is completely and when P.W.2 tried to rescue P.W.5, the accused P.W.2 and threatened to kill her. It is also on 1'eco1'd that, the accused was caught at the place of incident and the"«.weapon used for the commission of the offence was also seized at the spot. The motive behind the commission of the offence is that, since the victim has not obliged to marry him, "it"

the accused has retaliated against her having hatched a plan to finish her off and when he attempted to assault on the of the body, the victim P.W.5 raised her hand anciltiiev on her hand and it was severed.

8. The evidence of that, during 2005 she was w;;sišing As□wisi Nursing Home and she used to samples and send the the accused used to get theie.pQ□s:i~%~oiin_ over to the victim and at

that tin1'e,- 'with her and he put forth a proposal "o--f_l marriage "her, for which she refused and 'V " _ she was shifted to Ramamurthinagar Branch and the 'accused used, to--; make phone calls to her asking her to come to the police station to other places, for which she used to refuse. Three days prior to the incident, when herself and one of her

--.V'r.ie_nid Uma»P.W.4 had been to shop to purchase sweater and ----when her friend Uma went to purchase fruits and the victim was standing on the road, accused came there and questioned as to 33*' when she has no time to go with him, how she got time to go with her friend and showed a chopper and threatened for which, she being frightened ran away. Subsequent to 10.1.3.2006 around 10.30 am. when she came back after night duty for rest, between 11:45 till 1:00 am, she went inside the room and caught her neck and as she was trying to pull her --. O' right palm with the chopper. The result was that her right palm was completely severed and help of skin and when P.W.2 came to see her, she cried for help. P.W.1-

Dr.Sreedhar-r the spot and admitted her to the hospital -the-Doctor..Vhas:ii-removed the palm and admitted her .__to 'Since the Hospital demanded Rs.3 lakhs for later shifted to Victoria Hospital.

9.»The evidence of P.W.1-Dr.Sreedhar, who rushed to the spot immediately after the incident is to the effect that, on the date of incident around 12.00 noon while he was attending the patients P.W.2 came running having sustained injuries to her 3*"

right hand and informed that one person is attempting to Commit murder of Ramya and he immediately rushed to the rest room and found that the right palm of amputated and it was hanging with skin. Immediately he treated her and also he treated 1>.w.72}nd ~informed: "the police through a letter as per Ex.P.1He treated. P.W.2, i'np;ti'eni"». _ from 10.11.2006 to 17.11.2006"ai_i{ } he has i' iopineio5 that the injuries sustained by her grievous..nature. it is version of the prosecution -a_iid went to the extent of saying that she has not -sustained any injuries and she does not know the .V_inCi'de.nti._oV.But her evidence goes to show that she has sustained p_iii1ju_r'ie.siiandsiiwas treated in the hospital}. 1€__,ii:'P.W.4--Uma is working in the Nursing Home and she

--has;not supported the version of the prosecution. PWs.3 and 6who are the panchas for the seizure panchanama have also turned hostile. P.W.7 is the constable of K.R.Puram police station who has given the seized material objects for chemical examination.

12. As per the evidence of who was working as a Sr.Specialist ;itii"ViCto_ria Hosp'ita_IVdu'i'ing'. the said period, he has treated the injured. diR_ amyaio_n :l'o.°l and she was taken to the hospital immediately after the assault around 4.30 pm. with 3 history of assault at 'the afternoon and on her examination, it was... found' --.that sustained the following f(u)l*.iVnjuCrie_s: . V

1.. Amputation --1im'b.

2. One incised wound over the right exterior aspect of right elbow measuring 3 xi'/2 X '/2 cms.

wound over the right shoulder upper 1/3": of right thumb measuring 4 x 1/2 X 1/2.

4} One level. Cls r3s. Clis W Ou1}d over the right shoulder measuring 3 x 1/2 xi' -/2 Cinsf i per the evidence of §3. W.8, injury No.1 is grievous in nature and the rest are simple in nature and in this regard, wound ii Hiicertificate was issued as per _Ex.P7. P.W.5 the injured Ramya ye' was hospitalised for nearly .10 days from 10.11.2006 to 20.11.2006 at Victoria Hospital, Orthopedic Department--eand the wound certificate at Ex.P7 would reveal that limb of P.W.5 was amputated.

13. The evidence of was working as Asst. Director of F01"e.r_1s:ic.._La1)01'atoi'y,. _BaAlt}ga1ore, is to the effect that, he received "sefV}ei.1 "articles including blood sample .7 the FSL.

the investigating officers, who have deposedii to the effect' of Conducting investigation and the 15Ao'licve-«Constable who carried the FIR to the

1.S.i'1~The offences alleged against the accused are under 324, 307 and 506(b) of IPC. Despite some ___d.isc1'epancies and some of the witnesses turning hostile 1 including P.W.2, the fact remains that P.Ws.2 and 5 have V, sustained injuries and that the accused has assaulted P.W.5 by means of M.O.6, the chopper and due to the assault, her right palm was completely amputated. Of course, the defen_se~V accused is that this injured P.W.5 was in love ll who was suffering from kidney failure"and« whengh.el' refused to": marry her, she has inflicted injury to l'h_el*self and also that 'sas- had raised a loan to the tune Of lakhs from the accused and when there was lallde.inand..to return the same, a false complaint has been filed against l6. '%""ho!.:gl'1,':':ta.therl"ind'e;1erident witnesses have not been examined, lll'I;uVt thell evidenceincei' of Dr.P.W.8 who has treated the llthaevidence of P.W.5 and P.W.2 to some pextenttsw--Qui(l"dep--i.Ct that, the accused has attempted to commit thet nurdyerlthe victim and in order to avoid, when the victim raised l'he1' hand the blow fell on her hand, due to which her ri'g--ht _l.palm was completely severed. iv :3 I7. it is seen that the injured has sustained as many as four injuries and the accused has not only caused injury to P.W.5, but also caused injury to P.W.2-Sabitha whoji:wie"nt:"to rescue P.W.5 from the accused. The trial convicted the accused for the offences j_pjuni;shab!e V under'. Sections 324 and 307 of IPC, _ Although, charged for the offence under 506(5). when the accused was held f()I5_iitheioff.e_ncesA _underiSiection 324 and 307 of {PC it may him guilty for the offence

18. a,lso- _not£ced~i'that accused rather tried to make . _j_false"lpleaj' that in love with one Doctor and since he 'tina:fry'--her, she attempted to inflict injury to herself. However,, .the_ . version of the prosecution and also the evidence V"-on recorcfearly reveals that the accused was forcing P.W.5 to i -in'arr.§,=5 him when accidentally she came in contact with her in

->-thee course of official work and when she refused, having determined he attempted on the life of P.W.5 Rarnya and also in \§<:/ the course of the alleged incident when P.W.2 intervened to rescue P.W.5, the blow also fell on her hand.

19. The trial Court has sentenced the offence under Section 324 of ¥PC and"sHent'ence-d h.;i«miiV:t'o _ _unde'rgo'1 imprisonment for one year and to pay a fine of .lA.,oOof«':<li the offence under Section _IPCi,"~.th'e--iia accused was sentenced to undergo fine of Rs.2,00,000/-. 1n._the for

the commission'. has refused to marry the against her, he attempted to Commit herrnu1'der. . l
" _2l{, _'How. ever, in modification of the order of sentence paissued, meet the ends of justice if the
accused is ii"" «. __ii'-sentencedli' to undergo R.I. for five years and to pay a fine of and default
sentence of six months simple ~»v--i-ii1_p1'isonment for the offence under Section. 307 of IPC and
for the offence under Section 324 of ZPC to undergo R.I. for one year and to pay 21 fine of
Rs.2,000/--, in default, to undergo sirnpie imprisonment for two months. Both the sentences are
ordered to run concurrently. The accused is entitled"fofrgthye benefit of set off under Section 428
Cr.P.C. for detention already undergone during the iperiod of triai. If the fine amount is
depositediteheisaid att}.{Y.t:Y11 sha\$1i"i2eii'--..L paid to P.W.5, the injured.

21. Appeaiis a1Iow.ed.:.iiiw.p2u.'it. it sa/§_ Judge