

Bail Slip

The Appellant/2nd Accused viz., Sivakumar, aged about 45 years, S/O Late Ramaiyya, was directed to be released on bail, as per order of this Court dated 12/6/08 in CrI M.P.1/08 in CrI. Appeal No.138/2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2015

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.138 of 2008

Sivakumar ...Appellant/2nd Accused

Vs

State by
Deputy Superintendent of Police,
Palladam,
Coimbatore District.
Crime No.739/2006 ... Respondent/Complainant

Prayer:- This Criminal Appeal has been filed under Section 374 (2) of the Criminal Procedure Code, to call for the records in S.C.No.11 of 2007 on the file of the Special Court cum Principal Sessions Court, Coimbatore and set aside the judgment dated 31.01.2008.

For Appellant : Mr. R.Sivasubramaniam

For Respondent : Mr. P.Govindarajan,
Additional Public Prosecutor.

JUDGMENT

The conviction and sentence passed in Sessions Case No.11 of 2007 by the Special Court cum Principal District and Sessions Court, Coimbatore are being challenged in the present Criminal Appeal.

2. The case of the prosecution is that the defacto complainant by name Nandhakumar belongs to Scheduled caste. The defacto complainant has acquainted with one Deepa, who is none other than the sister of the first accused. The second accused is the brother-in-law of the first accused and both belong to

some other caste. On 30.12.2006, at about 10.30 a.m., the accused 1 and 2 and their relatives have brought the defacto complainant to the house of one Murugesh, which situates in Senthuram Colony, wherein, the first accused has attacked him by using a scissor. The second accused has attempted to murder the defacto complainant by way of dousing kerosene on his person and set fire on him. After occurrence, the defacto complainant has given a complaint and the same has been registered in Crime No.739/2006. The complaint alleged to have been given by the defacto complainant has been marked as Ex.P1.

3. On receipt of Ex.P1, the Investigating Officer, viz PW.10 has taken up investigation, examined connected witnesses and after completing investigation, laid a final report on the file of the District Munsif cum Judicial Magistrate Court, Palladam and the same has been taken on file in P.R.C. No.4 of 2007 and subsequently made over to the trial court. The trial court has taken the same in Special Sessions Case No.11 of 2007.

4. The trial court, after hearing arguments of both sides and upon perusing the relevant records, has framed first charge against the first accused under Section 324 of Indian Penal Code, second charge against second accused under Section 307 of Indian Penal Code read with 3(2)(v) of the Scheduled Caste/Scheduled Tribes Act and the same have been read over and explained to the accused. Both the accused have denied the charges and claimed to be tried.

5. On the side of the prosecution, P.Ws.1 to 10 have been examined and Ex.P.1 to Ex.P.15 and M.O.1 to M.O.3 have been marked.

6. When the accused have been questioned under Section 313 of Criminal Procedure Code 1973 as respects the incriminating materials available in evidence against them, they denied their complicity in the crime. No oral and documentary evidence have been adduced on the side of the accused.

7. The trial court after hearing arguments on both sides and upon perusing the relevant evidence available on record has acquitted the first accused. Whereas, the second accused has been found guilty under Section 307 of Indian Penal Code read with 3(2)(v) of the Scheduled Caste/Scheduled Tribe Act and sentenced to undergo 7 years Rigorous Imprisonment and also imposed a fine of Rs.1000/- with usual default clause. Against the conviction and sentence passed by the trial court, the present Criminal Appeal has been preferred at the instance of the second accused as appellant.

8. The consistent case put forth on the side of the prosecution is that the defacto complaint belongs to Scheduled

caste and he made acquaintance with one Deepa, sister of the first accused. The second accused is the brother-in-law of the first accused and both belong to some other caste. On 30.12.2006, at about 10.30 a.m., the present accused and their relatives have taken the defacto complainant to the house of one Murugesh, which situates in Senthuram Colony, where the first accused has attacked the defacto complainant by using a scissor and the second accused has made an attempt to murder him by way of dousing kerosene on his person and set fire.

9. On the side of the prosecution, for the purpose of proving its case, the defacto complainant has been examined as P.W1 and the said Murugesh has been examined as PW.5. But, P.W.5 has become hostile witness. Since P.W.5 has become hostile witness, the court is not having evidence of other persons, except the defacto complaint, who has been examined as P.W.1, the trial court has invited conviction and sentence against appellant/second accused only on the basis of sole testimony of PW.1.

10. The learned counsel appearing for the appellant/second accused has sparingly contended that the defacto complaint/P.W.1, during the course of cross examination has clearly admitted in his evidence that occurrence has taken place in N.S.K. Nagar, whereas the case of the prosecution is that occurrence has taken place in Senthuram Colony and that too, in the house of P.W.5. The trial court without considering the vital contradiction found on the side of the prosecution has erroneously invited conviction and sentence against the appellant/second accused and

therefore, the conviction and sentence passed by the trial court are liable to be set aside.

11. Learned Additional Public Prosecutor has contended that in the instant case, even though the other witnesses have not supported the version of the prosecution, the defacto complainant/P.W.1 has given a clear evidence about the factum of occurrence and details of attack made on his person by the second accused and the trial court after considering the evidence available on record has rightly invited conviction and sentence against the second accused. Further on the side of the prosecution, sufficient medical evidence is available for the purpose of proving the injuries sustained by PW.1.

12. On the basis of divergent contentions raised on either side, the court has to look into as to whether the prosecution has clearly established the place of occurrence.

13. In the first charge, it has been specifically mentioned that the present accused and their relatives have

taken the defacto complainant to the house of P.W.5, which situates in Senthuram Colony.

14. As rightly pointed out on the side of the appellant/second accused, during the course of cross examination, PW.1 has clearly admitted to the effect that the entire occurrence has taken place in N.S.K. Nagar. With regard to the said aspect, no sufficient evidence is available on the side of the prosecution.

15. Since in the first charge, it has been specifically stated that the entire occurrence has taken place in Senthuram Colony, whereas, P.W.1, during the course of cross examination has clearly admitted to the effect that occurrence has taken place in N.S.K. Nagar and since on the side of the prosecution, concrete evidence is not available with regard to the place of occurrence, it is highly impossible on the part of the court to accept the sole testimony of the P.W.1, the defacto complainant.

16. The trial court without considering the vital contradiction found on the side of the prosecution with regard to the place of occurrence has erroneously invited conviction and sentence against the appellant/second accused.

17. In view of the discussion made earlier, this court has found subsisting force in the contention made on the side of the appellant/second accused and altogether, this criminal appeal is liable to be allowed.

18. In fine, this Criminal Appeal is allowed. The conviction and sentence passed in Special Sessions Case No.11 of 2007 by the trial court are set aside and the appellant/second accused is acquitted. Bail bonds if any executed by him shall stand cancelled. Fine amount if any paid by him is ordered to be refunded forth with.

Sd/- सत्यमेव जयते
Assistant Registrar (CS-V)

True Copy

Sub Assistant Registrar

mrp
To

1.The Judicial Magistrate,
Paladam.

2.The Chief Judicial Magistrate,
Coimbatore.

3.The Special Court cum Principal Sessions Court,
Coimbatore.

4.The Superintendent,
Central Prison,
Coimbatore.

5.The Public Prosecutor,
High Court, Madras.

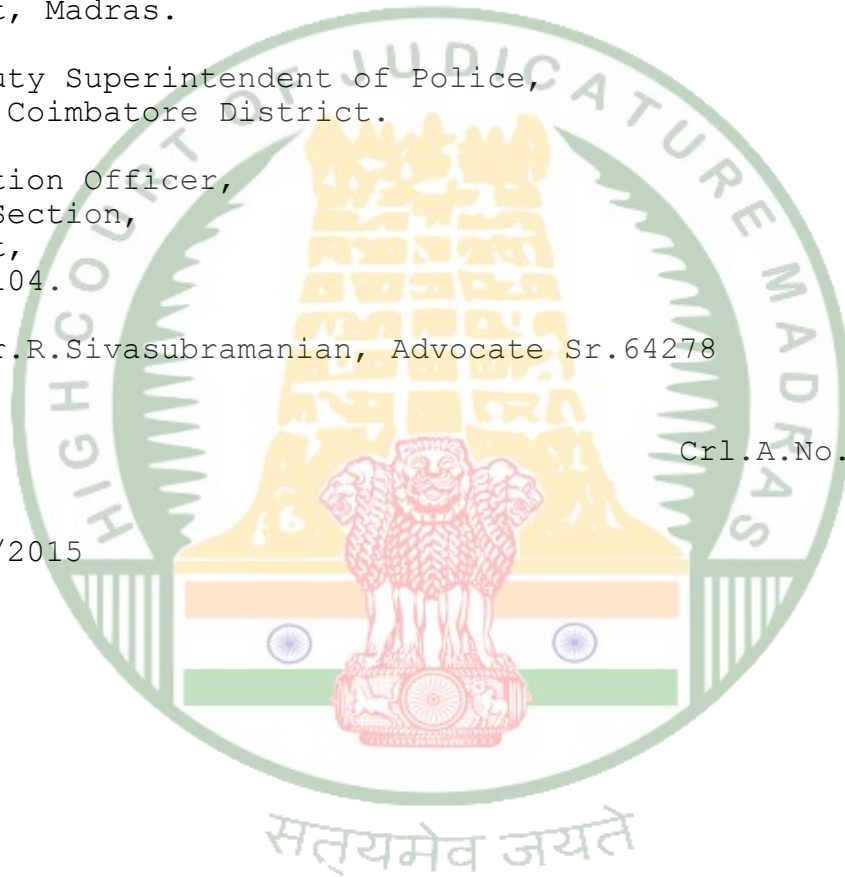
6.The Deputy Superintendent of Police,
Palladam, Coimbatore District.

7.The Section Officer,
Criminal Section,
High Court,
Chennai -104.

+lcc to Mr.R.Sivasubramanian, Advocate Sr.64278

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