

Bail slip

Crl Appeal No.117 of 2007

That the Appellant herein /Accused viz; Cinna Azhagan was directed to be released on bail as per the order of this court dated 31.1.2007 and made in Crl.M.P.No.1 of 2007 in Crl appeal No.117/2007 and made herein.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.117 of 2007

Chinna Azhagan ... Appellant/Accused

vs.

State represented by
The Inspector of Police
Anthiyur Police Station
Erode District
Cr.No.216/05.

...Respondent/complainant

Criminal Appeal filed under Section 374 of Criminal Procedure Code, 1973 against the judgment dated 18.01.2007 made in S.C.No.67 of 2006 on the file of Additional District Sessions Judge, Fast Track Court No.4, Bhavani, Erode District.

For appellant : Mr.M.Venkadeshnan

For respondent : Mr.P.Govindarajan, Addl.Public Prosecutor

JUDGMENT

The conviction and sentence dated 18.01.2007 passed in Sessions Case No.67 of 2006 by the Additional District Sessions Court, Fast Track Court No.4, Bhavani, Erode District are being challenged in the present criminal appeal.

2. The case of the prosecution is that the defacto complainant and the accused are teachers and both of them have served in same school. On 24.05.2005, at about 4 p.m., a miff has arisen in between them and their colleagues have desisted them. On the same day, at about 6 p.m., the accused has wrangled with the defacto complainant

and pulled him down from 3rd floor and due to that, the defacto complainant has sustained various injuries including grievous in nature and after occurrence, he has given a complaint and the same has been marked as Ex.P.1 and registered in Crime No.216/05. The complaint given by the defacto complainant has been marked as Ex.P.1.

3. On receipt of Ex.P.1, the Investigating Officer viz., P.W.10 has taken up investigation, examined connected witnesses and after completing the same, laid a final report on the file of Judicial Magistrate Court, Bhavani and the same has been taken on file in P.R.C.No.29/05.

4. The Judicial Magistrate, Bhavani, after considering the facts has found that the offence alleged to have been committed by the accused is triable by the sessions court, committed the case to the court of sessions, Erode Division and taken on file in Sessions Case No.67/06 and subsequently made over to the trial court.

5. The trial court, after hearing both sides has framed a charge against the appellant/accused under Section 307 of the Indian Penal Code (hereinafter called as "IPC") and the same has been read over and explained to him. The accused has denied the charge and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 10 have been examined and Exhibits P.1 to P.7 have been marked and M.O.1 series has been marked.

7. When the accused has been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against him, he denied his complicity in the crime.

8. On the side of the accused, D.Ws.1 and 2 have been examined and Exhibits D.1 to D.3 have been marked.

9. The trial court, after hearing arguments of both sides and also upon perusing the relevant evidence has found the accused guilty under Section 307 of the IPC and sentenced him to undergo 7 years rigorous imprisonment and also imposed a fine of Rs.500/- 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 appellant/accused.

10. The learned counsel appearing for the appellant/accused has contended that due to occurrence, the accused has also sustained injuries and he has also given a separate complaint, but the Prosecuting Agency has not at all considered the case of the appellant/accused and further, the defacto complainant has simply stated to P.W.8 to the effect that he has fallen from 3rd floor and since he has not specifically stated about the alleged overtacts of

the appellant/accused to P.W.8, the entire case of the prosecution is liable to be thrown out, but the court below, without considering the lack of evidence on the side of the prosecution has erroneously found the appellant/accused guilty under Section 307 of the IPC and therefore, the conviction and sentence passed by the trial court are liable to be set aside.

11. The learned Additional Public Prosecutor has contended that in the instant case, the defacto complainant viz., the injured witness has been examined as P.W.1 and his specific evidence is that in the place of occurrence, the accused himself has wrangled with him and consequently, he has pulled down him from 3rd floor, due to that, he sustained various injuries and further the evidence given by P.W.1 has been clearly corroborated by the doctor (P.W.9); further, the specific evidence given by P.W.9 is that P.W.1 has sustained various injuries including three grievous injuries and the trial court, after considering the overwhelming evidence, has rightly found him guilty under Section 307 of the IPC and sentenced him to undergo 7 years rigorous imprisonment and therefore, the conviction and sentence passed by the trial court do not warrant interference.

12. The entire case of the prosecution is based upon Ex.P.1, the complaint, wherein, it has been clearly stated that during the course of occurrence, the accused has pushed down the defacto complainant from 3rd floor and thereby, he sustained various injuries. The author of Ex.P.1 has been examined as P.W.1 and in fact he has clearly corroborated the contents of Ex.P.1. Apart from evidence of P.W.1 coupled with Ex.P.1, the doctors viz., P.Ws.8 and 9 have given clear evidence in support of the case of the prosecution. Further, it is seen from the evidence that P.W.1 has sustained three grievous injuries. Therefore, there is no incertitude in coming to a conclusion that the prosecution has clearly established the guilt of the accused, punishable under Section 307 of the IPC.

13. The main argument put forth on the side of the appellant/accused is that during the course of occurrence, the appellant/accused has also sustained injuries and he has also given a separate complaint and the same has not been properly enquired into.

14. It is an admitted fact that the complaint alleged to have been given by the accused has been registered and proper investigation has been done, subsequently, referred to as mistake of fact. Therefore, the contention put forth on the side of the appellant/accused cannot be entertained.

15. The learned counsel appearing for the appellant/accused, as a residual contention has argued that both the defacto complainant and appellant/accused are teachers and both of them are friends and therefore, some leniency may be shown in awarding sentence.

16. Considering the fact that both of them are teachers and also friends, this court is of the view to modify the quantum of sentence as stated infra.

In fine, this Criminal Appeal is allowed in part. The conviction imposed under Section 307 of the IPC by the trial court is confirmed. However, the quantum of the sentence imposed by the trial court is modified as follows:-

" The appellant/accused is sentenced to undergo 6 months rigorous imprisonment instead of 7 years rigorous imprisonment under Section 307 of the IPC. No modification with regard to fine amount."

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

1.The Inspector of Police,
Anthiyur Police Station,
Erode District (Cr.No.216/05).

2.The Additional District Sessions Judge,
Fast Track Court No.4, Bhavani, Erode District.

3.-Do- Thro The Principal session Judge,
Erode.

4. The Judicial Magistrate,
Bhavani.

5.-Do- Thro The Chief Judicial Magistrate,
Erode.

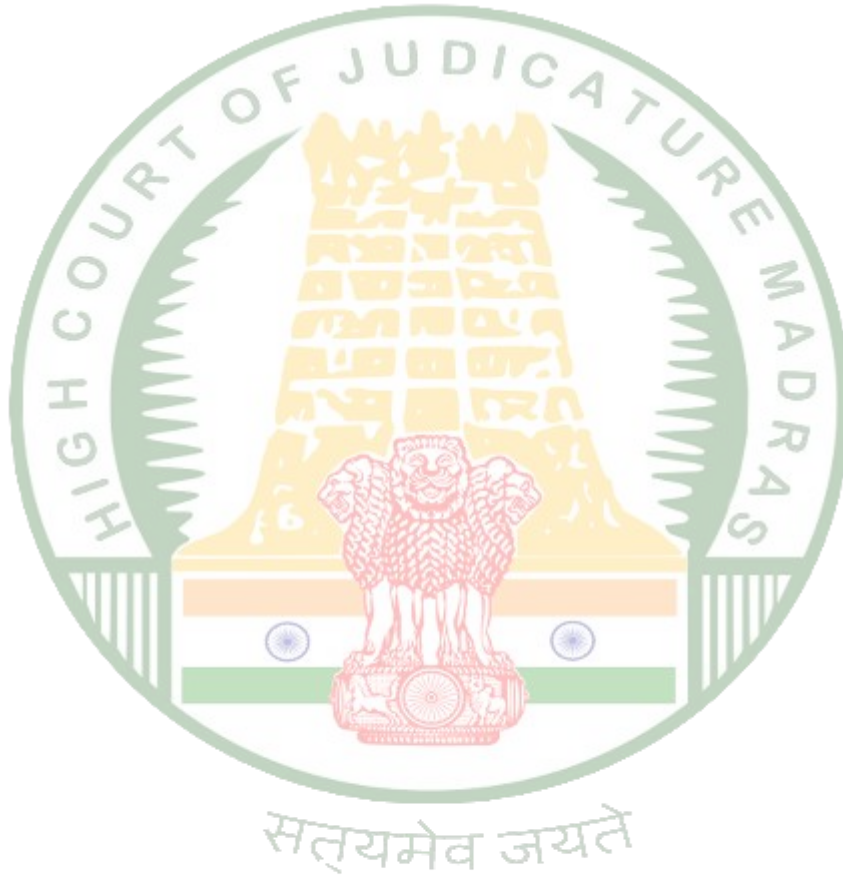
6.The Superintendent Central Prison,
Coimbatore.

7. The Public Prosecutor,
High court, Madras.

+lcc to Mr.M.Venkadeshan Advocate, sr.48902

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srg 29.09.2015



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