

Bail Slip

The Petitioner/ Accused Viz Kamaraj was released on Bail in Mp.No.2/2008 in W.A.No.111/2008 dated 14.5.2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.111 of 2008

Kamaraj

...Appellant/A2

vs.

The State rep. by
The Inspector of Police,
Padalur Police Station
Perambalur District
(Maruvathru P.S)

... Respondent

Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment in S.C.No.47 of 2007 dated 25.01.2008 on the file of the Additional District Judge (Fast Track Court), Ariyalur.

For appellant : Mr.A.Sirajudeen

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

JUDGMENT

The convictions and sentences dated 25.01.2008 passed in Sessions Case No.47 of 2007 by the Additional District and Sessions Court (Fast Track Court), Ariyalur are being challenged in the present Criminal Appeal.

2. The case of the prosecution is that the accused 1 and 2 are friends. The sister's name of the first accused is Valarmathi and her husband's name is Ponnusamy and both of them

are not living together and due to that, on 14.5.2002 at about 8.30 p.m., while the injured witness by name Nallamuthu has been in front of his house, both the accused have come there and with an intention to murder him, the second accused has attacked him by using a knife and thereby caused injuries. After occurrence, the injured witness has been taken to Ariyalur Government Hospital. Since his condition has become critical, he has been referred to Thanjavur Medical College Hospital, where the defacto complainant Ramasmy, who is none other than the brother-in-law of the injured witness has given a complaint and the same has been registered in Crime No.90 of 2002. 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.11 has taken up investigation, examined connected witnesses and after completing investigation, has laid a final report on the file of Judicial Magistrate, Perambalur and the same has been taken on file in P.R.C.No.32 of 2003.

4. The Judicial Magistrate, Perambalur, after considering the facts that the offences alleged to have been committed by the accused are triable by Sessions Court, has committed the case to the Court of Sessions, Perambalur Division and the same has been taken on file in Sessions Case No.47 of 2007 and subsequently made over to the trial court.

5. The trial court, after hearing arguments of both sides and upon perusing relevant documents, has framed the first charge against the second accused under Section 307 r/w.34, second charge against him under section 342 and third charge against him under section 326 of Indian Penal Code and the same have been read over and explained to him. The second accused has denied the charge and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 11 have been examined and Exhibits P.1 to 10 and M.Os 1 to 4 have been marked.

7. When the second accused has been questioned under Section 313 of Code of Criminal Procedure, as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. No oral and documentary evidence have been adduced on the side of the second accused.

8. The trial court, after hearing arguments of both sides and upon perusing the available evidence on record, has found the second accused guilty under Section 307 r/w 34 of the IPC

and sentenced him to undergo 7 years Rigorous Imprisonment and also imposed a fine of Rs.5,000/-. He has been also found guilty under section 342 of IPC and sentenced him to undergo 3 years Rigorous Imprisonment and also imposed a fine of Rs.5,000/-. Further, he has been also found guilty under section 326 of IPC and sentenced him to undergo 3 years Rigorous Imprisonment and also imposed a fine of Rs.5,000/- with usual default clause. Against the convictions and sentences passed by the trial court, the present Criminal Appeal has been preferred at the instance of the second accused as appellant.

9. The learned counsel appearing for the appellant/second accused has raised the following points so as to supplant the convictions and sentences passed by the trial court against the second accused:

(i) The injured witness by name Nallamuthu has been examined as P.W.2 and during the course of cross-examination, he would say that at about 12 O'Clock in the hospital, he has been examined by the Police, whereas Ex.P.1, complaint, has been registered on 15.5.2002 at about 4 p.m and the prosecution has not given proper explanation and on that score alone, Ex.P.1 cannot be believed in.

(ii) In Ex.P.9, Accident Register, it is stated that P.W.2 has been brought to hospital by his father, but he has not been examined.

(iii) The specific evidence given by P.W.2 is that the occurrence is seen by one Nallathambi and two others and the said Nallathambi has been examined as P.W.5 and the remaining two eye witnesses have not been examined.

(iv) Even though occurrence has taken place on 14.5.2002 at about 8.30 p.m., Ex.P.1, Complaint, has come into existence on the next day at about 4 p.m and further Ex.P.1 as well as statements recorded from the witnesses under section 161(3) of Code of Criminal Procedure, 1973 have reached the court very belatedly.

(v) The specific case of the prosecution is that in the place of occurrence, the second accused has attacked P.W.2 by M.O.1, but the same has not been subjected to chemical examination.

10. In order to buttress the convictions and sentences passed by the trial court, the learned Additional Public Prosecutor appearing for the respondent has contended that even though P.W.1 is not an eye witness, he would say that he has taken P.W.2 from the place of occurrence to the Government

Hospital, Ariyalur. The wife of P.W.2 has been examined as P.W.4 and her specific evidence is that before occurrence, both the accused have come to her house and subsequently she has come to know that both the accused have attacked her husband. Apart from the evidence given by P.Ws.1 and 4, the injured witness has been examined as P.W.2 and his specific evidence is that in the place of occurrence, the second accused has attacked him by using a knife and further he has identified the said knife. The trial court, after considering the overwhelming evidence available on record, has found the second accused guilty under sections 307 r/w 34, 342 and 326 of Indian Penal Code and therefore, the convictions and sentences passed by the trial court need not be set aside.

11. Before considering the rival submissions made on either side, the Court has to meticulously analyze as to whether the prosecution has proved the alleged guilt of the second accused as stated in the charges.

12. The prosecution has set the law in motion only on the basis of Ex.P.1, Complaint and the same has been registered on 15.5.2002 at about 4 p.m. The author of Ex.P.1 has been examined as P.W.1 and his specific evidence is that he has seen the injured witness P.W.2 in the place of occurrence and subsequently he has been taken to Government Hospital, Ariyalur. Further, he would say in his evidence that since P.W.2 has become unconscious, police have examined him. The injured witness, as stated earlier, has been examined as P.W.2 and his specific evidence is that in the place of occurrence, the second accused has attacked him by using a knife (M.O.1) and thereby he sustained injuries. Apart from P.Ws.1 and 2, the wife of P.W.2 has been examined as P.W.4 and her specific evidence is that before occurrence, both the accused have come to her house and subsequently she came to know that her husband has been attacked by the second accused. The independent witness by name Nallathambi has been examined as P.W.5 and his specific evidence is that P.W.2 has fallen down by way of saying that he has been attacked by the second accused.

13. It is seen from the evidence that after occurrence, P.W.2 has been admitted in hospital by P.W.10 and his specific evidence is that the injuries sustained by P.W.2 would be possible if he has been attacked by M.O.1.

14. From the evidence adduced on the side of the prosecution, the Court can easily come to a conclusion that the

occurrence has taken place as spoken on the side of the prosecution. In the instant case, P.W.2 Nallamuthu is an injured eye witness and his specific evidence is that in the place of occurrence, the second accused has attacked him by using M.O.1. Since P.W.2 is an injured eye witness, his evidence cannot be discarded merely on the basis of some flimsy infirmities found in his evidence. Therefore, it is quite clear that the prosecution has clearly established the occurrence as mentioned in the charges.

15. The first and foremost contention put forth on the side of the appellant/second accused is that P.W.2 during the course of cross-examination has stated to the effect that the police have enquired him at about 12 O'Clock. In fact, this Court has perused the entire evidence adduced by P.W.2 and ultimately found that P.W.2 is an uneducated person and under the said circumstances, he would have stated that he has been examined at about 12 O'Clock and that itself would not affect or militate the case of the prosecution. Therefore, the first and foremost contention put forth on the side of the appellant/second accused goes out without merit.

16. The second contention put forth on the side of the appellant/second accused is that in Ex.P.9, it has been clearly mentioned that P.W.2 has been brought to hospital by his father. It is true that father of P.W.2 has not been examined as one of the prosecution witnesses and that itself would not pave the way for coming to a conclusion that the entire case of the prosecution is false.

17. The third contention put forth on the side of the appellant/second accused is that the specific evidence given by P.W.2 is that the occurrence is seen by P.W.5 and two more persons and those persons have not been examined.

18. It is seen from the evidence given by P.W.2 that the occurrence is seen by P.W.5 and two more persons, but, as rightly pointed out on the side of the appellant/second accused, the remaining witnesses have not been examined. But, the prosecution has chosen to examine one of the independent eye witness by name Nallathambi as P.W.5. Since P.W.5 has been examined with regard to factum of occurrence, the prosecution need not examine the remaining eye witnesses so as to avoid proliferation of evidence. Therefore, the third contention put forth on the side of the appellant/second accused is sans merit.

19. The fourth contention put forth on the side of the appellant/second accused is that even though the occurrence has taken place on 14.5.2002 at about 8.30 p.m., Ex.P.1 has come into existence on 15.5.2002 at about 4 p.m., and no explanation has been given on the side of the prosecution and further Ex.P.1 and statements recorded under section 161(3) of Cr.P.C have reached the court very belatedly.

20. It is seen from the records that the occurrence has taken place on 14.5.2002 at about 8.30 p.m., admittedly P.W.2 has sustained serious injuries and in order to save his life, initially he has been admitted in Government Hospital, Ariyalur and since his condition has become critical, he has been referred to Thanjavur Medical College Hospital. Considering the fact that for the purpose of saving his life, his own kith and kin have taken steps, such delay would have occurred and the same would not be a cause for disbelieving the version of the prosecution.

21. It is a settled principle of law that mere delay in sending Material Objects as well as statements belatedly to the Court, would not be a cause for rejecting the case of the prosecution. Therefore, the fourth contention put forth on the side of the appellant/second accused also goes out without merit.

22. The last contention put forth on the side of the appellant/second accused is that M.O.1 Knife alleged to have been used by the second accused in the place of occurrence for attacking P.W.2 has not been subjected to chemical examination. It is nothing but a mistake on the part of the Investigating Agency. Further, it is an archaic principle of law that faulty investigation would not be a ground to reject the case of the prosecution, provided on the side of the prosecution sufficient evidence is available so as to point out the guilt of the accused. Therefore, the last contention put forth on the side of the appellant/second accused cannot be accepted.

23. The trial court, after considering the available evidence on record, has found the appellant/second accused guilty under section 307 r/w 34 of Indian Penal Code. Likewise, the second accused has also been found guilty under section 342 of IPC. The trial court has also found the second accused guilty under section 326 of IPC.

24. Considering the first charge framed against the second accused under section 307 r/w 34 of IPC, the third charge under

section 326 of IPC is totally unwarranted. Under the said circumstances, the conviction and sentenced passed under section 326 of IPC by the trial court are liable to be set aside.

25. It is seen from the records that at the time of occurrence, the second accused has attained 35 years of age and also having family members. Considering his age and also considering the cause of occurrence, this Court is of the view to take lenient approach in awarding sentence under section 307 r/w 34 of IPC against the appellant/second accused and to that extent, the present Criminal Appeal is liable to be allowed in part.

In fine, this Criminal Appeal is allowed in part. The conviction and sentence passed under section 326 IPC are set aside and fine amount under the said section is ordered to be refunded to the appellant.

The conviction passed under section 307 r/w 34 of IPC is confirmed. However, the quantum of sentence imposed against the appellant/second accused is modified as follows:-

"The appellant/second accused is sentenced to undergo three years Rigorous Imprisonment under section 307 r/w 34 of IPC, instead of 7 years Rigorous Imprisonment and no modification is made with regard to fine amount imposed by the trial court under the said sections. Further, no modification is made with regard to conviction and sentence passed under section 342 of IPC against the appellant/second accused by the trial court. If the appellant/second accused is not in duress, the trial court is directed to take appropriate steps so as to imprison him to serve out the remaining period of sentence."

सत्यमेव जयते

Sd/-

Assistant Registrar (CCC)

True Copy

Sub Assistant Registrar

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To :

1. Additional District Judge (Fast Track Court),
Ariyalur.

2. The Inspector of Police,
Padalur Police Station
Perambalur District,
(Maruvathru P.S)

3. The Public Prosecutor,
High Court,
Chennai

4. The Superintendent of Central Prison,
Trichy.

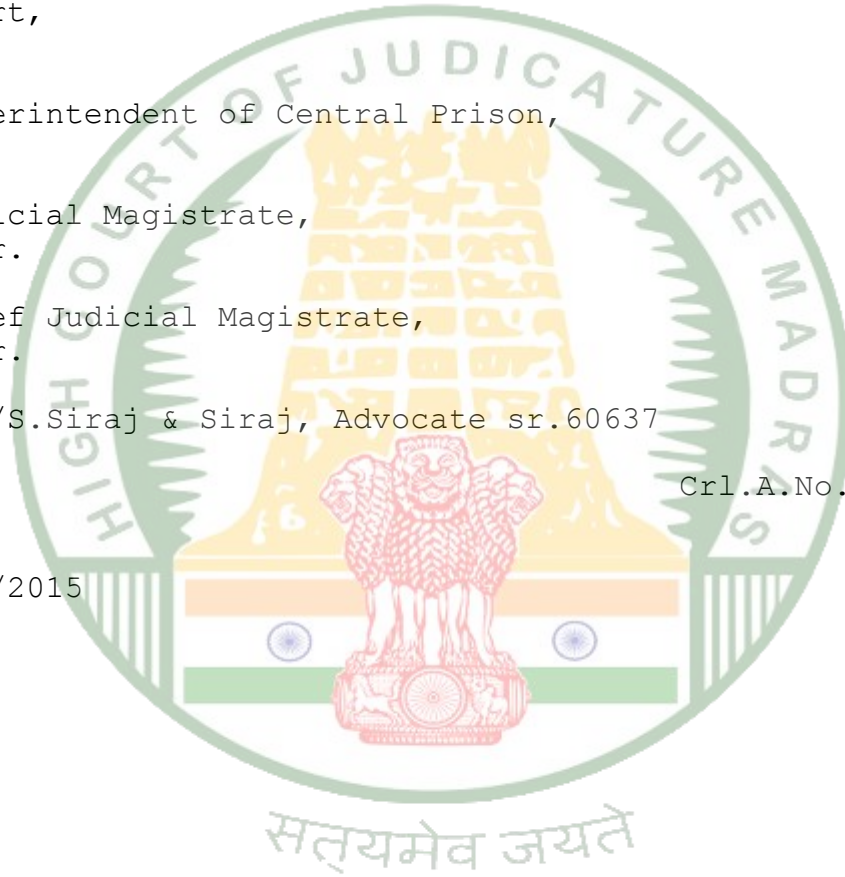
5. The Judicial Magistrate,
Perambalur.

6. The Chief Judicial Magistrate,
Perambalur.

+1cc to M/S. Siraj & Siraj, Advocate sr.60637

Crl.A.No.111 of 2008

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srg 23/11/2015



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