

Bail Slip

The Petitioner herein K.Gopal, S/o. Kabali, was directed to be released on bail by the order of this court dated 15.06.2015 made in M.P.No. 1 of 2007 in CrI.A.No.415 of 2007.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.415 of 2007

K.Gopal

...Appellant/Accused

vs.

State Rep. By
Inspector of Police,
H.4, Korukkupet Police Station,
Chennai 21.

... Respondent/Complainant

Criminal Appeal filed under Section 374 of Cr.P.C., against the judgment and conviction made in S.C.No.23 of 2007 dated 27.02.2007 on the file of the Additional District and Sessions Court, (Fast Track Court No.1), Chennai.

For appellant : Mr.A.Raghunathan, Senior Counsel
for Mr.D.Venkateswarulu

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

JUDGMENT

The convictions and sentences dated 27.02.2007 passed in Sessions Case No.23 of 2007 by the Additional District and Sessions Court (Fast Track Court No.1), Chennai are being challenged in the present Criminal Appeal.

2. The case of the prosecution is that the accused is the husband of the defacto complainant by name Thulasi and father of

P.W.2 viz., Shanthi. On 16.10.2005, at about 5.30 a.m., in Door No.34/8, Namasivayam Street, Korrukupet, the defacto complainant and P.W.2 while sleeping, the accused has caused them to awake and demanded money. Since the defacto complainant has refused to concede the demand made by the accused, he sprinkled acid on the persons of the defacto complainant and P.W.2 and due to his overtacts, both the defacto complainant and P.W.2 have sustained injuries. After occurrence, the defacto complainant has given a complaint and the same has been registered in Crime No.1268 of 2005. The complaint given by her has been marked as Ex.P.1.

3. On receipt of Ex.P.1, the Investigating Officer, viz., P.W.13 has taken up investigation, examined connected witnesses and also made arrangements to record a statement under section 164 of Code of Criminal Procedure, 1973 from the defacto complainant and accordingly P.W.6 has recorded the same. After transfer of P.W.13, his successor in office, viz., P.W.14 has completed the investigation and laid a final report on the file of XV Metropolitan Magistrate, George Town, Chennai and the same has been taken on file in P.R.C.No.61 of 2006.

4. The XV Metropolitan Magistrate, George Town, Chennai, after knowing the facts that the offences alleged to have been committed by the accused are triable by Sessions Court, has committed the case to the Principal Sessions Court, Chennai and the same has been taken on file in Sessions Case No.23 of 2007 and subsequently made over to the trial court.

5. The trial court, after hearing arguments of both sides and upon perusing relevant records, has framed charges against the accused under Sections 307 and 326 of the IPC and the same have been read over and explained to him. The accused has denied the charges and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 14 have been examined and Exhibits P.1 to 18 and Material Object No.1 have been marked.

7. When the accused has been questioned under Section 313 of the Criminal Procedure Code, 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 accused.

8. The trial court, after hearing arguments of both sides and upon perusing the relevant evidence available on record in respect of the injury alleged to have been caused by the accused on the person of P.W.1, has found him guilty under Section 307 of the IPC and sentenced him to undergo 10 years Rigorous Imprisonment and also imposed a fine of Rs.1,000/- with usual default clause. Further, he has been found guilty under section 326 of IPC and sentenced to undergo 5 years Rigorous Imprisonment and also imposed a fine of Rs.1,000/- with usual default clause. The trial court, in respect of the injuries alleged to have been caused by the accused on the person of P.W.2 has found him guilty under Section 307 of the IPC and sentenced to undergo 7 years Rigorous Imprisonment and also imposed a fine of Rs.1,000/- with usual default clause. Likewise, he has been found guilty under section 326 of IPC and sentenced to undergo 3 years Rigorous Imprisonment and also imposed a fine of Rs.1,000/- with usual default clause. Against the convictions and sentences passed by the trial court, the present Criminal Appeal has been filed at the instance of the accused as appellant.

9. The learned counsel appearing for the appellant/accused does not touch the merits of the convictions given by the trial court, but he has contended that the accused is the husband of the defacto complainant and father of P.W.2 and on the spur of moment, he committed the alleged offences and further on the basis of the injuries sustained by the defacto complainant and P.W.2, the accused cannot be mulcted with liability under section 307 of IPC and under such circumstances, some modification may be given in the matter of sentence.

10. Per contra, the learned Additional Public Prosecutor appearing for the respondent has contended that on 16.10.2005, at about 5.30 a.m., without fault of the defacto complainant and P.W.2, the accused has sprinkled acid on their person and caused injuries and in fact, he attempted to murder them. Considering the gravity of the offences alleged to have been committed by the accused, the trial court has rightly invited convictions and sentences under sections 307 and 326 of IPC and therefore, the convictions and sentences passed by the trial court do not warrant interference.

11. It is an admitted fact that the defacto complainant is the wife of the accused and P.W.2, viz., Shanthi is the daughter

of the accused as well as defacto complainant. Before proceeding further, the Court has to look into as to whether the offences alleged to have been committed by the accused would come within the purview of Section 307 of IPC.

12. It is seen from the records that due to overtacts alleged to have been committed by the accused on the person of the defacto complainant, she lost her vision. Further, due to overtacts alleged to have been committed by the accused, P.W.2 has lost her vision in one eye.

13. At this juncture, the Court has to look into Section 320 of IPC, wherein secondly, it has been mentioned that permanent privation of the sight of either eye, would come within the purview of grievous hurt.

14. The trial court, as narrated earlier, has found the accused guilty under section 307 of IPC (two counts) and imposed the sentence as noted down earlier. Considering the nature of injuries caused by the accused on the persons of both P.W.1 (defacto complainant) and P.W.2, this Court is of the view that the accused has committed an offence punishable under section 326 of IPC, but the trial court has erroneously found him guilty under section 307 of IPC and therefore, the accused at the most can be mulcted with liability only under section 326 (2 counts) of IPC. The separate punishments imposed under section 326 (2 counts) of IPC along with Section 307 (2 counts) IPC are liable to be set aside.

15. It is an admitted fact that the defacto complainant, as stated earlier, is the wife of the accused and P.W.2 is their daughter. Considering the close relationship between the accused and P.Ws.1 and 2 and also considering that the entire occurrence has taken place on the spur of moment, this Court is of the view to take lenient approach in awarding sentence and to that extent, Criminal Appeal is liable to be allowed in part.

In fine, this Criminal Appeal is allowed in part. The convictions and sentences passed under section 307 (2 counts) of IPC by the trial court as well as separate punishments passed by the trial court under section 326 (2 counts) of IPC are set aside and instead, the appellant/accused is found guilty under section 326 (2 counts) of IPC and sentenced to undergo fifteen months rigorous imprisonment for each count. The sentences

imposed against the appellant/accused shall run concurrently. The fine amounts imposed under section 307 of IPC by the trial court are ordered to be refunded to the appellant/accused and in respect of fine amounts imposed under section 326 (two counts) of IPC by the trial court, there is no modification. If the appellant/accused is not in duress, trial court is directed to take appropriate steps so as to imprison him to serve out the remaining period of sentence.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ajr

To

1. The Additional District and Sessions Court,
(Fast Track Court No.1),
Chennai.
2. -Do- Through The Principal Sessions Judge,
Chennai.
3. The Metropolitan Magistrate No.XV,
George Town, Chennai.
4. The Chief Metropolitan Magistrate,
Egmore, Chennai (For Information)
5. The Superintendent,
Central Prison, Puzhal,
Chennai.
6. Inspector of Police,
H.4, Korukkupet Police Station
Chennai 21

7. The Public Prosecutor,
High Court, Chennai.

1 CC to Mr.D.Venkateswarulu, Advocate SR.No. 60576

Crl.A.No.415 of 2007

PSI (06.11.2015)



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