

BAIL SLIP

Thangavel, Appellant/Accused in S.C.No.163/06 on the file of the Prl.Sessions Judge, Salem was directed to be released on bail by the Order of this Court dated 4.7.2007 and made in M.P.No.1/07 in CrI.A.No.551/07 pending on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 04-09-2015

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

Criminal Appeal No.551 of 2007

Thangavel

... Appellant

Vs.

State representation by
Inspector of Police
Thevattipatti Police Station
Salem
(Crime No.351/2005)

... Respondent

Criminal Appeal under Section 374(2) of CrI.P.C., against the judgment and order of conviction recorded by the Principal Sessions Court, Salem in S.C.No.163/2006 on 20-12-2006, convicting the appellant for the alleged offences under section 324 (2 counts), 506 (ii) (2 counts) and 304 (ii), IPC and sentencing him to under R.I. for one year each for the offence under Section 324 IPC, R.I. for one year each for the offence under Section 506(ii) and R.I. for 10 years for the offence under Section 304(i) IPC.

For petitioner :: Mr. K.V. Shanmuganathan
For respondent :: Mr. P. Govindarajan, Addl.P.P.

ORDER

Challenge in this criminal appeal is to the convictions and sentences dated 20th December 2006 passed in Sessions Case No.163 of 2006 by the Principal District and Sessions Court, Salem.

2. The schema of the case of the prosecution is that the first accused is the brother-in-law of one Padmini. The deceased by name Ponnusamy has had illicit intimacy with her. On 05-08-2005, the accused Nos.1 and 2 have questioned the said Ponnusamy with regard to his illicit intimacy with Padmini and due to that, a tussle has arisen and with an intention to murder the said Ponnusamy, the first accused has attacked the deceased Ponnusamy by using a whinger and due to his overt acts, he passed away. During the course of occurrence, the first accused has also caused injuries to the witnesses by name Chinnaraj and Padmini. Further the second accused has lent his support to the first accused. After occurrence, one of the witnesses by name Chinnaraj has given a complaint and the same has been registered in Crime No.351 of 2005. The complaint alleged to

have been given by the said Chinnaraj has been marked as Ex-P1.

3. On receipt of Ex-P1, the Investigating Officer viz., P.W.13 has taken up investigation, examined connected witnesses and also made arrangements to conduct autopsy on the body of the deceased and accordingly, the concerned Doctor, P.W.9 has conducted post-mortem and issued post-mortem certificate. The Investigating Officer after completing investigation has laid a final report on the file of the District Munsif cum Judicial Magistrate Court, Omalur and the same has been taken on file in PRC No.5 of 2005.

4. The District Munsif cum Judicial Magistrate, Omalur, after considering the facts that the offences alleged to have been committed by both the accused are triable by Sessions Court has committed the case to Sessions Court, Salem Division and the same has been taken on file in S.C.No.163 of 2006.

5. The Trial Court after hearing arguments on both sides and upon perusing the relevant records has framed the first charge against the first accused under Section 302 IPC and second charge against the second accused under Section 302 read with 34, IPC, third charge against the first accused under Section 307 IPC, fourth charge against the first accused under Section 324, IPC (two counts), fifth charge against the first accused under Section 506(ii), IPC (two counts) and sixth charge against first accused under Section 506(ii), IPC and the same has been read over and explained to them. The accused have denied the charges and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 13 have been examined and Exs-P1 to P32 and M.Os.1 to 10 have been marked.

7. When the accused have been questioned under Section 313, Cr.P.C., as respects the incriminating materials available in evidence against them, they denied the 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 on both sides and also upon appraising the available evidence on record has found the first accused guilty of the offences under Section 324 (two counts), 506(ii) (two counts) and 304(i), IPC and convicted and sentenced him to undergo R.I. for one year each for the offence under Section 324, IPC and R.I. for one year each for the offence under Section 506(ii), IPC and R.I. for ten years for the offence under Section 304(i), IPC and to pay a fine of Rs.1000/-, in default to undergo one year rigorous imprisonment. Against the convictions and sentences passed by the Trial Court, the present criminal appeal has been preferred at the instance of the first accused, as appellant.

9. The learned counsel appearing for the appellant/first accused has stoutly contended that during the course of occurrence, the first accused as also the second accused has sustained injuries. The specific finding given by the Trial court is that the first accused has exceeded his right of private defence and in the said circumstances, the Trial Court has found him guilty under Section 304 (i) IPC and sentenced him to undergo ten years rigorous imprisonment. The learned counsel would therefore, contend that considering the

above said factual circumstances some leniency may be shown in awarding sentence under the said Section.

10. The learned Additional Public Prosecutor has contended that the first accused without any basis has attacked the deceased Ponnusamy and due to his overtacts, he has passed away and the Trial Court has rightly found him guilty of offence under Section 304(i), IPC. Under the said circumstances, no leniency can be shown in awarding sentence.

11. The specific case put forth on the side of the prosecution is that the first accused is the brother-in-law of P.W.2, by name Padmini. It is alleged on the side of the prosecution that the deceased Ponnusamy has had illicit intimacy with P.W.2 and further, with regard to grassing of cattle, a tussle has arisen in between the accused and the said Ponnusamy.

12. Considering the nature of dispute that existed in between the first accused and deceased and also the defense taken on the side of the prosecution, this Court can modify the sentence imposed against the first accused as stated infra.

In fine, the criminal appeal is allowed in part. The conviction passed under Section 304(i), IPC as well as convictions and sentences passed under Section 324(2 counts), 506(ii)(2 counts) by the Trial Court are confirmed. However, the quantum of sentence imposed under Section 304(i), IPC is modified as follows:

The appellant/ first accused is sentenced to undergo five years rigorous imprisonment instead of ten years.

In other aspects, there is no modification.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

glp

To

1.The Principal Sessions Judge, Salem.

2.The Inspector of Police
Thevattipatti Police Station
Salem.

3.The Public Prosecutor, High Court, Madras.

4.The Judicial Magistrate, Omalur.

5.-do- The CJM, Salem.

6.The Superintendent, Central Prison, Coimbatore.

Criminal Appeal No.551 of 2007