



Bail Slip

Appellants 1 to 4 in CrI.A.No.69/2008 (Accused 1 to 4 in S.C.No.237 of 2007 dated on the file of the Additional Sessions FTC No.II, Kancheepuram) were directed to be released on bail as per order of this court dated 13.03.2008 and 4.6.2008 vide MP.Nos.2 & 3/2008 in CrI.A.No.69/08.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.69 of 2008

1.Raja
2.Raghu
3.Arul
4.Jayaraj

... Appellants/Petitioners

vs.

State by:
Inspector of Police,
Vishnukanchi Police Station,
Kancheepuram

... Respondent/Respondent

Criminal Appeal filed under Section 374(2) of Cr.P.C., to call for the records in S.C.No.237 of 2007 and to set aside the judgment made in S.C.No.237 of 2007 dated 4.1.2008, passed by the Additional Sessions Judge, Fast Track Court, No.II, Kancheepuram.

For appellants : Mr.R.C.Paul Kanagaraaj

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

JUDGMENT

The convictions and sentences dated 4.1.2008, passed in Sessions Case No.237 of 2007, by the Additional District and Sessions Court (Fast Track Court No.II), Kancheepuram, are being challenged in the present criminal appeal.

2. The schema of the case of the prosecution is that on 6.10.2006, at about 11.30 a.m., the victim, by name, David, has proceeded to market and near the cycle shop of one Raj, all the accused have illegally detained him and subsequently attacked him by



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using deadly weapons and thereby caused grievous injuries and during the course of occurrence, the accused have threatened the victim and one more witness by name, Premkumar. After occurrence, one of the eyewitnesses, by name, Lokesh, as defacto complainant, has given a complaint and the same has been registered by the concerned Sub-Inspector of Police in Crime No.653 of 2006. The complaint given by the defacto complainant has been marked as Ex.P1.

3. On receipt of Ex.P1, 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 the Judicial Magistrate Court, No.I, Kancheepuram, and the same has been taken on file in PRC No.7 of 2007.

4. The Judicial Magistrate, Kancheepuram, after considering the fact that the offences alleged to have been committed by all the accused are triable by Sessions Court, has committed the case to the Court of Sessions, Kancheepuram Division and taken on file in Sessions Case No.237 of 2007 and subsequently made over to the trial Court.

5. The trial Court, after hearing arguments of both sides and upon perusing the relevant records, has framed first charge against all the accused under Section 341, second charge under Section 307 and third charge under Section 506(ii) of the Indian Penal Code and the same have been read over and explained to them. The accused have denied the charges and claimed to be tried.

6. On the side of prosecution, P.Ws.1 to 11 have been examined and Exhibits P.1 to P.12 and Material Objects 1 to 4 have been marked.

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

8. The trial court, after hearing the rival arguments put forth on either side and upon perusing the relevant evidence, has found all the accused guilty under Section 341 of the Indian Penal Code and sentenced them to undergo one month simple imprisonment. The accused have also been found guilty under Section 307 of the Indian Penal Code and sentenced to undergo seven years rigorous imprisonment and also imposed a fine of Rs.1000/- upon each of them with usual default clause. The trial Court has also found all the accused guilty under Section 506(ii) of the Indian Penal Code and sentenced him 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 accused, as appellants.



9. Before contemplating the rival submissions made on either side, the Court has to look into as to whether the prosecution has proved the guilt of the accused punishable under Sections 341, 307 and 506(ii) of Indian Penal Code.

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10. One of the eyewitnesses, by name, Lokesh, as defacto complainant, has given Ex.P1-complaint, wherein, it has been clearly stated about the occurrence and also the details of attack alleged to have been made by all the accused on the person of the victim by name, David. The said David has been examined as P.W.2 and both of them have consistently stated in their evidence that in the place of occurrence, all the accused have deterred P.W.2-victim and indiscriminately attacked on his persons by using deadly weapons and also threatened them.

11. The Doctor, who has given treatment and also issued wound certificate Ex.P4, has been examined as P.W.5 and his specific evidence is that P.W.2 has sustained injuries as mentioned in Ex.P4. Further P.W.5 has clearly adduced evidence to the effect that the right hand of P.W.2 has been amputated.

12. From the conjoint reading of evidence given by the witnesses referred to supra, the Court can very well come to a conclusion that the prosecution has clearly established the guilt of the accused punishable under Sections 341, 307 and 506(ii) of the Indian Penal Code.

13. The learned counsel appearing for the appellants/accused without touching the merits of conviction, has contended that all the accused have already undergone three months imprisonment and therefore, some leniency may be shown in awarding sentence.

14. The learned Additional Public Prosecutor has contended that due to overt acts of the accused, P.W.2 has lost his right hand and the trial Court, after considering the gravity of offence alleged to have been committed by all the accused, has rightly awarded seven years rigorous imprisonment under section 307 of the Indian Penal Code and there is no mitigating circumstances in the present case and therefore, the question of adopting leniency does not arise.

15. As pointed out earlier, due to overt acts of all the accused, P.W.2 has lost his right hand. The trial Court has awarded seven years rigorous imprisonment under Section 307 of the Indian Penal Code.

16. Considering the fact that due to overt acts of all the accused, P.W.2 has lost his right hand and also considering the age of all the accused, this Court is of the view to adopt some leniency in awarding sentence under Section 307 of the Indian Penal Code, as stated infra.



In fine, this criminal appeal is allowed in part. The convictions and sentences passed under Sections 341 and 506(ii) of the Indian Penal Code by the trial Court are confirmed. Likewise, the conviction passed under Section 307 of the Indian Penal Code is confirmed, however, the quantum of punishment imposed under the said Section is modified as follows:

The appellants/accused are sentenced to undergo three years rigorous imprisonment under Section 307 of the Indian Penal Code instead of seven years rigorous imprisonment and there is no modification with regard to the fine amount.

If the appellants/accused are on bail, the trial Court is directed to take appropriate steps so as to incarcerate them in prison to serve out the remaining period of sentence.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.1, Kancheepuram.
2. -do- Through The Chief Judicial Magistrate, Chengalpattu.
- 3.The Additional Sessions Judge,
Fast Track Court, No.II, Kancheepuram.
4. -do- Through The Principal Sessions Judge, Chengalpattu.
5. The Superintendent Central Prison Puzhal, Chennai.
- 6.Inspector of Police,
Vishnukanchi Police Station,
Kancheepuram.
7. The Public Prosecutor
High Court, Chennai

CrI.A.No.69 of 2008

TEJ(CO)
EU 24.09.15