

Bail Slip

The petitioner A2 namely Pugazhendhi, S/o. Aubu as directed to be released on bail as per the order of this Court dt.8.08.2007 in CrI.MP.No.1/07 in CrI.A.No.669/07 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 21-12-2015

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

Criminal Appeal No.669 of 2007

1. Charles
2. Pugazhendhi ... Appellant/Accused

Vs.

State rep. by
Inspector of Police,
J-5, Shasthri Nagar Police Station
Chennai
(Crime No.737 of 2001) ... Respondent/Complainant

Criminal Appeal under Section 374(2), Cr.P.C., against the judgment dated 21-04-2003 in S.C.No.335 of 2002 on the file of the Additional District Sessions Judge cum Fast Track Judge-2, Chennai and to set aside the conviction imposed upon the appellants/accused.

For appellants :: Mr. K. Govi Ganesan

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

JUDGMENT

The convictions and sentences, dated 21-04-2003 passed in S.C.No.335 of 2002 by the Additional District Sessions Judge cum Fast Track Judge-2, Chennai are being challenged in the present Criminal Appeal.

2. The case of the prosecution is that on 08-09-2001, at about 12:10 p.m., near seashore both the accused have deterred the deceased and both of them have attacked him by using their hands and due to their overtacts, the deceased has passed away. After occurrence, the defacto complainant by name, Saravanan has given a complaint and the same has been registered in Crime No.737 of 2001.

3. On receipt of the complaint, the Investigating Officer viz., P.W.9, has taken up investigation, examined connected witnesses and also made arrangements to conduct autopsy on the body of the deceased and accordingly, Dr. Baskar (P.W.8) has conducted autopsy and he found the following external and internal injuries:

- "1. An incised wound 2.5 x 0.5 x 0.5 cms over right side of face 2 cms below lower lid margin.
 2. Laceration 2 x 1 x 0.5 cms over the chin.
 3. Cut injury 3 x 0.5 x 0.5 cms over outer 3rd of right eyebrow.
 4. Diffuse contusion over right side of neck 10 x 8 cms.
- O/D Scalp appear normal. Cranial vault and meninges: intact

Brain: Grossly appear normal

Contusion over left side of face and blackening left eye seen.

Fullness of neck region with contusion of right side of neck and front of chest made out.

Haematoma over right side of neck, root of neck and front of upper part of midchest made out.

Haemorrhage seen between the intermuscular compartments. Contusion of thyroid gland made out.

Laceration of anterior jugular vein and haemorrhage about the blood vessels of right side of neck seen.

Hyoid Bone: Laryngeal cartilages and thoracic cage: Intact.

Heart: Normal in size. Chambers contained clotted blood.

Lungs: Congested. Stomach: Contained 120 gms of semidigested food material. Mucosa - appear normal.

Intestines: Distended with gas.

Liver, Spleen and Kidneys: Congested. Bladder: Empty.

Pelvis and Spinal Column - Intact.

Opinion: The deceased would appear to have died of "BLUNT FORCE INJURY TO NECK."

VISCERA preserved for chemical analysis.

The injuries are antemortem in Nature.

The deceased would appear to have died 22 to 26 Hours prior to autopsy. "

The post-mortem report has been marked as Ex-P4. The Investigating Officer after completing investigation has laid a final report on the file of the IX Metropolitan Magistrate, Chennai and the same has been taken on file in P.R.C.No.6766 of 2001.

4. The IX Metropolitan Magistrate, Chennai 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, Chennai Division and taken on file in Sessions Case No.335 of 2002 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 first charge against both the accused under Section 341, IPC, second charge against them under Section 302 read with 34, IPC 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 the prosecution, P.Ws.1 to 9 have been examined. Exs-P1 to P10 and M.Os.1 to 4 have been marked.

7. When the accused have been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects incriminating materials available in evidence against them, they denied their complicity in the crime. No oral and documentary evidence has been adduced on the side of the accused.

8. The Trial Court after hearing arguments of both sides and upon perusing relevant evidence has found both the accused guilty under Section 341, IPC and sentenced them to undergo six months' Rigorous Imprisonment and also imposed a fine of Rs.1000/- (Rupees One thousand only), upon each of them, with usual default clause. The accused have also been found guilty under Section 323, IPC and sentenced to undergo six months' 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. The consistent case put forth on the side of the prosecution is that on 09-08-2001 at about 12:10p.m., in Besant Nagar, 6th Avenue near seashore both the accused have deterred the deceased Arumugam and subsequently, attacked him by using their hands and thereby, caused fatal injuries on his vital part and subsequently, he succumbed to injuries.

10. The prosecution has set the law in motion only on the basis of the complaint marked as Ex-P1. The author of Ex-

P1 has been examined as P.W.1 and other eyewitnesses have been examined as P.Ws.2 and 3 and both of them have become hostile witnesses. The Trial Court after considering the evidence given by P.W.1, coupled with medical evidence as well as Ex-P4 has found both the accused guilty under Sections 341 and 323,IPC.

11. The learned counsel appearing for the appellants/accused has contended that in Ex-P1, the names of the accused have not been mentioned. But the defacto complainant (P.W.1) has deposed in his evidence that even prior to occurrence, he knows the accused and if really P.W.1 has seen the occurrence, definitely, he would have mentioned the names of the accused in Ex-P1. But the same has not been done and further the Doctor, P.W.8 who conducted autopsy has found both the cut as well as incised wounds on the body of the deceased and no proper explanation has been given on the side of the prosecution as to how those injuries occurred. Further, P.W.5 has stated in his evidence that he has seen the accused in the Police Station whereas PW.9 has stated in his evidence that he arrested both the accused next day and the Trial Court without considering the vital infirmities found on the side of the prosecution has erroneously invited convictions and sentences against the appellants/ accused and therefore, the convictions and sentences passed by the Trial Court are liable to be interfered with.

12. Per contra, the learned Additional Public Prosecutor has contended that the defacto complainant (P.W.1) has given clinching evidence to the effect that in the place of occurrence both the accused have attacked the deceased by using their hands and P.W.8, the Doctor who conducted the autopsy has given clear opinion about the injuries found on the body of the deceased and the Trial Court has rightly relied upon the evidence given by P.Ws.1 and 8 coupled with Ex-P4 and therefore, the convictions and sentences passed by the Trial Court are not liable to be set aside.

13. The entire case of the prosecution is based upon Ex-P1, wherein as rightly pointed out on the side of the appellants/accused, the names of the accused have not been mentioned. But the specific evidence given by P.W.1 is that even prior to occurrence, he knows both the accused. If really P.W.1 is an eyewitness to the occurrence, definitely, he would have mentioned the names of the accused in Ex-P1. Since the names of the accused have not been mentioned in Ex-P1, the Court cannot come to a conclusion that P.W.1 is an eyewitness and therefore, his evidence can easily be eschewed.

14. It is an admitted fact that in the post-mortem Certificate, Ex-P4, given by P.W.8, the Doctor, who conducted the autopsy, it is clearly stated that the Doctor found both cut and incised wounds on the body of the deceased. But the prosecution has not given proper explanation as to how those

injuries have occurred on the body of the deceased. Of course, it is true that P.W.8 has given opinion to the effect that if the deceased has fallen on a rough surface, those injuries are possible. But the Investigating Officer has not stated that the occurrence was on rough surface. Since the prosecution has not explained as to how the deceased sustained both cut and incised wounds, it is needless to say that the case of the prosecution is nothing but false. It has already been pointed out that P.W.1 is not at all an eyewitness and his evidence can easily be eschewed. Since P.W.1 is not at all an eyewitness to the occurrence, virtually the prosecution has not adduced any evidence so as to point out the guilt of the accused punishable under Sections 341 and 323,IPC. The Trial Court without considering the vital infirmities found on the side of the prosecution has erroneously invited convictions and sentences against the appellants/accused Nos.1 and 2. In view of the discussion made earlier, this Court has found considerable force in the contentions put forth on the side of the appellants/accused and therefore, the present criminal appeal is liable to be allowed.

In fine, this criminal appeal is allowed. The conviction and sentence passed in Sessions Case No.335 of 2002 by the Trial Court are set aside. The appellants are acquitted. Bail bonds, if any executed by the accused shall stand cancelled. Fine amounts, if any, paid by the appellants are ordered to be refunded forth with.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

glp
To

1. Inspector of Police, J-5, Shastri Nagar Police Station, Chennai.
2. Additional District & Sessions Judge, Fast Track Court No.2, Chennai.
3. -do- Through The Principal Sessions Judge, Chennai.
4. The Public Prosecutor, High Court, Chennai.
5. The Superintendent, Central Prison, Puzhal, Chennai.
6. The 9th Metropolitan Magistrate, Chennai.
7. -do- Through The Chief Metropolitan Magistrate, Egmore, Chennai-8.

+ 1 cc to Mr.K. Govindanesan, Advocate SR.69118

Criminal Appeal No.669 of 2007

SKV(CO)
EU 04.1.16