

Bail Slip

That the Appellant / Accused namely Kannadasan was directed to be released on bail as per the order of this court dated 30.07.2009 and made in Crl.M.P.No. 1 of 2009 in Crl.R.C.No. 625 of 2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2015

CORAM:

THE HON'BLE MR.JUSTICE B. RAJENDRAN

CRL. R.C. No. 625 of 2009

Kannadasan

...Petitioner/Accused

Versus

The State of Tamil Nadu
represented by the Inspector
Krishnagiri Town P.S.
[Cr.No.591/2003]

...Respondent/Complainant

Criminal Revision Case filed under Sections 397 and 401 of the Criminal Procedure Code, against the judgment of conviction and sentence dated 17.08.2006 passed in Crl.A. No. 6 of 2004 on the file of the I Additional Sessions Judge, Krishnagiri, confirming the judgment of conviction and sentence dated 09.01.2004 passed in S.C. No. 199 of 2003 on the file of the Chief Judicial Magistrate No.I-cum-Assistant Sessions Judge, Dharmapuri at Krishnagiri.

For Petitioner : No Appearance

For Respondent : Mr.V.Arul
Government Advocate (Crl.Side)

O R D E R

The petitioner/accused stood charged for the offence punishable under Section 307 IPC alleging that on 03.06.2003 at about 4.00 p.m. in a Wine shop at Krishnagiri, while P.Ws. 2, 4 and 5 were consuming brandy, the petitioner came there and asked P.W.2 to purchase brandy for him, when it was refused, the accused attempted to take and consume the brandy of P.W.2, when P.W.2 objected to the same, the petitioner assaulted P.W.2 with

a broken glass tumbler near his left neck and caused grievous injury to him. Based on the complaint lodged by P.W.1, who is the supplier of Wineshop, a case was registered in Cr.No.591 of 2003 for the offence under Section 307 IPC. After trial in S.C.No.199 of 2003, the petitioner was convicted by the learned Chief Judicial Magistrate No.I-cum-Assistant Sessions Judge, Dharmapuri at Krishnagiri, for the aforesaid offence and sentenced him to undergo rigorous imprisonment for seven years and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for a period of six months. The judgment of conviction and sentence imposed on the petitioner was confirmed by the learned I Additional Sessions Judge, Krishnagiri, in CrI.A. No. 6 of 2004, dated 17.08.2006. As against the same, the petitioner has come forward with the present Criminal Revision Case.

2. Today, though, the matter is listed under the caption "Old Year Cases", when the matter is taken up, there is no representation for the petitioner. The Hon'ble Apex Court in the judgment reported in (1994) 4 Supreme Court Cases 664, Prasuram Patel & another vs. State of Orissa, has held that the Criminal Appeal cannot be dismissed for default in appearance of the appellant, but, the Court must decide the matter on merits even in the absence of the appellant or his counsel.

3. It is also relevant to refer to the judgment of the Hon'ble Apex Court reported in (2013)3 Supreme Court Cases 721, K.S.Panduranga vs. State of Karnataka, wherein, the Hon'ble Apex Court has culled out certain principles and has held in paragraph No.19 as follows:-

"19. From the aforesaid decision in Bani Singh vs. State of Uttar Pradesh, reported in (1996) 4 SCC 720, the principles that can be culled out are:

19.1. That the High Court cannot dismiss an appeal for non-prosecution simpliciter without examining the merits;

19.2. That the Court is not bound to adjourn the matter if both the appellant or his counsel/lawyer are absent;

19.3. That the court may, as a matter of prudence or indulgence, adjourn the matter but it is not bound to do so;

19.4. That it can dispose of the appeal after perusing the record and judgment of the trial court;

19.5. That if the accused is in jail and cannot, on his own, come to court, it would be advisable to adjourn the case and fix another date to facilitate the appearance of the appellant-accused if his lawyer

is not present, and if the lawyer is absent and the court deems it appropriate to appoint a lawyer at the State expense to assist it, nothing in law would preclude the court from doing so; and

19.6. That if the case is decided on merits in the absence of the appellant, the higher court can remedy the situation."

4. Very recently, the Hon'ble Apex Court in the reported in (2014) 14 Supreme Court Cases 222, Surya Baksh Singh vs. State of Uttar Pradesh, has reiterated the above principles culled out in the decision cited supra and has held in paragraph No.15 as follows :-

"15. The discussion would not be complete without noticing the orders in Parasuram Patel vs. State of Orissa, (1994) 4 SCC 664 and Madan Lal Kapoor vs. Rajiv Thapar, (2007) 7 SCC 623. In neither of these cases had the appellate court taken steps available to it to ensure the attendance of the appellant. Instead, it appears that the High Court concerned had adopted the obviously less tedious approach of dismissing the appeals only because neither the appellant nor his counsel were present when the case was called on for hearing. The Court did not ruminate upon the curial malpractice which has now become endemic viz., the filing of appeals by convicts with the obvious intent to frustrate and circumvent sentences passed by criminal courts."

5. In the light of the judgments of the Hon'ble Apex Court cited supra, one thing is crystal clear that no doubt, the Court can decide the matter even in the absence of the petitioner or his counsel, but, only criteria is that the case should be decided on merits in the absence of the petitioner and the Court cannot dismiss an appeal for non-prosecution simpliciter without examining the case on merits. Hence, following the decisions cited supra, the main Criminal Revision Case itself is taken up and disposed of on merits, after hearing the learned Government Advocate appearing for the respondent and also after perusing the materials available on record.

6. Mr.V.Arul, learned Government Advocate (Criminal Side) appearing for the respondent would submit that with an intention to kill, the petitioner assaulted P.W.2 with a broken glass tumbler near his left neck and caused grievous injury. The Trial Court has taken into consideration the cogent evidence of all the witnesses and come to a clear conclusion that the occurrence has clearly been proved. He would further add that the accused

has involved in six previous cases and he is a notorious rowdy element and therefore, there is no reason to show any leniency or to interfere with the reasoned judgment of the Trial Court.

7. Heard both sides. By consent, the main Criminal Revision Case itself is taken up for final disposal.

8. On a careful perusal of the entire evidence available on record as well as the judgment of the Trial Court, it is clear that the fight has emanated in the bar. P.W.2 is the injured person and in his evidence, he has categorically stated that he went to the wineshop for drinking brandy along with P.Ws. 4 and 5 and when they were drinking liquor, the petitioner came there and asked P.W.2 to purchase brandy for him, when it was refused, the accused attempted to take the brandy of P.W.2 and hence, there started a wordy quarrel, immediately, the accused took a glass tumbler and broke it and stabbed in the left side of the neck of P.W.2 by saying "இத்தோடு ஒழிந்து போடா நாயே" and thereafter, the accused ran away from the place of occurrence. This was witnessed by P.Ws. 4 and 5 and they immediately took the injured person to Government Hospital, Krishnagiri and therefore, they took him to St. John's Medical College Hospital, Bangalore, for further treatment. The Investigation Officer has recovered from P.W.2, the blood stained kaakki pant, which has been marked as M.O.2; the underwear marked as M.O.3; and broken glass marked as M.O.1. Similarly, the evidence of P.Ws. 4 and 5 has corroborated the evidence of P.W.2. P.W.8 is the Doctor, who has issued Ex.P.7-Wound Certificate to the effect that the injuries are grievous in nature and it was inflicted in the vital part of the human body and was caused with knowledge and intention. A perusal of the evidence of P.W.10-Doctor, Ex.P.12.-Wound Certificate issued by P.W.10 and Ex.P.13-Case Sheet of P.W.2 would go to show that P.W.2 was admitted in the St. John's Medical College hospital, Bangalore, for further treatment for the injuries sustained by him and he has been taking treatment as inpatient for more than ten days and he was operated, which would clearly prove that the injuries sustained by P.W.2 were grievous in nature. Infact, the Trial Court has categorically stated that the evidence of P.W.2 is cogent and clear. Even though, an argument was raised that P.Ws. 4 and 5 are relatives and they are interested witnesses and similarly, P.W.3 did not see the scene of occurrence directly, the Trial Court has clearly stated that their evidence can be taken as a circumstantial evidence to prove the case. It is further seen that P.Ws.1, 3 and 6 are working in the wineshop and as far as they are concerned, they have no enmity against the accused, therefore, their evidence is credible, which was accepted by the Trial Court. Since, the injury is caused in the vital part of the neck, a clear case under Section 307 IPC is made out. Apart from that, the

petitioner has no previous enmity with P.W.2. The Trial Court as well as the Appellate Court has considered all these aspects and has come to a clear conclusion. The findings of both Courts below is clear.

9. At this juncture, on a perusal of the records, the learned Government Advocate brought to the notice of the Court that the judgment of Appellate Court was passed on 17.08.2006 and he had been in jail and he has preferred this revision belatedly, that too, with a petition seeking to condone the delay of 860 days in preferring the revision and thereafter, the delay was condoned and thereafter, he has filed an application seeking suspension of sentence in M.P.No. 1 of 2009. This Court granted suspension on 30.07.2009 and in the said order, this Court has specifically stated that the petitioner has already undergone five years rigorous imprisonment. The learned Government Advocate further brought to the notice of this Court that the petitioner had already been detained under Act 14 of 1982 in S.C.No. 73 of 1998 on 26.10.1998. Taking into consideration of the fact that the petitioner has already been in jail for five years, instead of seven years, in my considered opinion, the sentence can be reduced to five years.

10. In the result, this Criminal Revision Case is partly allowed. The conviction passed by the Appellate Court dated 17.08.2006 stands confirmed and the sentence alone is modified to the effect that the petitioner shall undergo rigorous imprisonment for a period of five years. The fine amount imposed by the Trial Court stands confirmed. The Trial Court is directed to take steps to secure the presence of the petitioner/accused to undergo the remaining period of sentence, if any. It is needless to mention that any sentence already undergone by the petitioner/accused shall be given set off as contemplated under Section 428 of Cr.P.C. If he had already been in jail for more than five years, the sentence shall be treated as period already undergone is sufficient.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

paa

To

1. The I Additional Sessions Judge,
Krishnagiri.
2. -Do- Through The Principal Judge,
Krishnagiri.
3. The Chief Judicial Magistrate No.I,
cum Assistant Sessionss Judge at Krishnagiri,
Dharmapuri at Krishnagiri.
4. The Inspector of Police,
Krishnagiri Town P.S.
5. The Public Prosecutor,
High Court, Madras.
6. The Superintendent,
Central Prison,
Vellore.
7. The Judicial Magistrate,
Krishnagiri Taluk & District.

Crl.R.C. No. 625 of 2009

MG(CO)
PSI (03.11.2015)



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