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BAIL SLIP

The Appellant herein/accused Viz; M.Natesan S/o.Marappan, was directed to be released on bail as per the order of this court, dated 02.07.2003 made in Crl.MP.5733/2000 in Crl.A.No.639/2003.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
Criminal Appeal No.639 of 2003

M.Natesan

... Appellant/Accused

Vs.

State, Rep. by
The Inspector of Police,
Pollipalayam Police Station,
Namakkal District

... Respondent/Complainant

Prayer: Criminal Appeal filed under section 374(2) of CRPC against the judgment and conviction dated 21.03.2003 made in S.C.No.29 of 2003 on the file of Additional Sessions Judge (Fast Track Court) Namakkal and prays to set aside the same.

For Appellant : Mr.N.Chandrasekharan
for Ms.C.V.Charanya

For Respondent : Mrs.T.P.Savitha
Government Advocate (Crl.Side)

JUDGMENT

This criminal appeal has been filed against the judgment dated 21.03.2003 in S.C.No.29 of 2003 passed by the learned Additional District and Sessions Judge, Namakkal (Fast Track Court), convicting the appellant under Section 307 (2 counts), IPC and sentencing him to undergo 10 years R.I on each count and pay a fine of Rs.1000/- for each count, in default to undergo one month R.I. and convicting the appellant under Section 341 IPC and sentencing him to undergo one month S.I. The sentences are ordered to run concurrently.

2.It is the case of the prosecution that, PW1 Kandiannan and PW2 Gunjayee @ Gunjammal are husband and wife. The accused Natesan was known to PW1 Kandiannan. Three year prior to the date of occurrence the accused borrowed Rs.5000/- from PW1 Kandiannan. Despite repeated demand the accused two months prior to the date of occurrence paid Rs.1000/-. Since PW1 Kandiannan



repeatedly asking the accused to pay the balance amount of Rs.4,000/-, the accused got hostility with the said Kandianan and his wife. Due to the above said previous enmity on 12.10.2000 at about 5 pm when PW1 Kandianan and his wife Gunjayee @ Gunjammal came in front of the house of the accused along with their goats, the accused Natesan waylaid them and attacked with an intention to murder PW1, Kandianan on his left forearm, head and caused minor injuries. When the above said act of the accused was questioned by PW2 Gunjayee, the accused with an intention to murder her attempted to cause cut injury on her neck and the same was defended and in that event her left hand was cut into two fingers and thereby caused injuries. For the said occurrence an FIR in Crime No. 5/2001 was registered for the offences under Section 307 (2 counts) and 341 IPC by the respondent police.

3.After the occurrence PW1 and PW2 were taken to Government Hospital, Tiruchenkodu by Car by her daughter PW5 Kuppayee where the respondent police obtained their statement and the same was reduced into writing which is the complaint Ex-P1. Thereafter they were referred to G.H, Erode where the respondent police enquired them.

4.PW1 is the husband of PW2 and both of their evidence corroborated each other stating that the accused barrowed Rs.5000/- and not returned the same. When PW1 & PW2 demanded to return the amount borrowed by the accused, the accused developed enmity. Due to previous enmity, the accused waylaid the PW1 and PW2 on 12.10.2000 and caused injuries.

5.PW3 and PW4 who are neighbors came to the place of occurrence upon hearing the sound of the PW1 and PW2 turned hostile. The PW5 who is the daughter of PW1 and PW2 deposed that on receiving the information about the above said occurrence, She took a Car and taken their parents in the Car and admitted them into Government Hospital, Thiruchenkodu, where the Inspector of Police came and obtained statement and the same was reduced into writing as complaint Ex-P1, wherein they put their LTI. The PW1 and PW2 were treated by PW7 Dr.Ramasamy.

6.The investigation in this case was taken over by the PW9, who enquired PW8 the Sub- Inspector of Police worked at Mouchi Police Station. The PW-9 inspected the place of occurrence and drawn sketch and prepared Ex-P2 Mazahar, in the presence of the witnesses Thangavel and Arockiyasamy and recovered M.O.1 in their presence. Thereafter he has also examined the victims and recorded separate statements. On 05.01.2000 PW-9 went to



Thiruchenkodu, G.H and obtained wound certificate and recorded the statement of PW9 Dr. Ramasamy. In the meantime the accused surrendered before the Judicial Magistrate No.3, Erode on 17.10.2000. Thereafter PW9, Investigation Officer completed the investigation on 19.1.2001 and filed charge sheet against the accused for the offence under Section 307, 341 of IPC. Since the offence Under Section 307 is triable by Sessions Court, the learned Judicial Magistrate, Thiruchenkodu committed the above said case to the Principal District and Sessions Court, Nammakkal in PRC.No.5 of 2001 on 08.06.2001. Thereafter the above case was made over to the learned Additional District Sessions Judge, Nammakkal, and numbered as S.C. No.29 of 2003.

7. Based on the above materials, the trial court framed charges under Section 307 and 341 I.P.C. The accused pleaded innocence, so he was put on trial. The prosecution in order to prove the guilty of the accused examined PW1 to, PW9 and exhibited Ex.P1 to Ex.P8 documents and produced M.O.1.

8. When the above incriminating materials put to the accused under Section 313 Cr.P.C. he denied the same as false. However, the trial court, on the basis of the available records come to the conclusion that the appellant is found guilty of the offences under section 307 and 341 I.P.C. and accordingly punished him. Aggrieved against the same, the accused is before this Court by way of this criminal appeal.

9. I heard Mr.N.Chandrasekharan for M/s.C.V.Charanya, learned counsel for the appellant and Mrs.T.P.Savitha, learned Government Advocate (Criminal Side) for the respondent and perused the records.

10. The learned counsel for the petitioner would vehemently argue that the findings of both the trial court is not supported any independent eye witness and the evidence of Pws 1 and 2 have not been corroborated with Pw-7 doctor regarding accused / the appellant herein who alleged to have attempted to commit murder and there is no incriminating materials against the accused to implicate him in the above crime and therefore the finding of the court below is baseless and unfounded, as such no offence under Section 307 is attracted and the conviction of sentence for the same is thus unsustainable, both in law and on facts. The learned counsel further submitted that M.O.1 has not been sent for chemical analysis and it affects the route of the prosecution case and therefore the conviction on the basis of M.O.1 is not proper. There is a failure on the part of the prosecution in the investigation and hence the conviction and sentence imposed on the accused /appellant herein is liable to be set aside.



11. Per contra, the learned public prosecutor would submit that the trial court after analyzing the case thoroughly has come to the conclusion that the prosecution proved the case beyond reasonable doubt and convicted the accused which is not required any interference by this Hon'ble Court. Further, the prosecution has proved the case by examining the eye witnesses Pws-1 and 2. The weapon used i.e. M.O.1 was identified by PWs 1 and 2. Therefore the learned public prosecutor would submit that the conviction and the sentence imposed upon the appellant herein need not be disturbed.

12. In this case PW-1 and PW-2 are victim and they are husband and wife. Except PW-1 and PW-2 there is no other eye witness to speak about the scene of occurrence. Both of them have deposed about the land dispute occurred 2½ years back prior to the date of occurrence and at that time the accused said to have attempted to cause injury by throwing stone on PW-1 and PW-2 while they were in their field, which was prevented by them. But in order to prove the same, either independent witness examined or any police complaint was lodged. So the above version of PW-1 and PW-2 falsifies the case of prosecution regarding previous enmity.

13. Further according to PW-1 and PW-2 they were admitted in the Government Hospital, Thiruchengode by PW-5, daughter of PW-1 and PW-2. Whereas, in Ex-P4 and P5 wound certificate it is mentioned as a person, who was accompanied with them was one Palaniappan and not PW-5 Kuppayee.

14. That apart it is the specific case of the prosecution is that PW-1 and PW-2 were attacked by the accused Natesan with Scimitar (Koduval). But in Ex-A4 and A5 at the time of admission of PW-1 and PW-2 in to G.H it is mentioned that they have been attacked by a known person. When the case of PW-1 and PW-2 is that the accused Natesan has borrowed money from them and in that regard they are acquainted with each other for the past many years prior to the date of occurrence, they have not stated the name of the accused at the time of admission in Government Hospital. The same creates a serious doubt in the mind of this court whether the accused has involved in the offence on hand. When there is a serious doubt over the case of prosecution, then necessarily the benefit of doubt has to be given to the accused.

15. In the cross examination of PW-7 who is the doctor treated PW-1 and PW-2 at G.H, Thiruchengodu deposed that PW-1



and PW-2 stated to him that the injuries caused to them were happened in their house. The version of PW-7 is thus non-corroborative with the version of PW-1 and PW-2 regarding scene of occurrence, thereby it is weakening the case of prosecution. Therefore, the place of occurrence is also doubtful and the same has not been established by the prosecution beyond reasonable doubt.

16. That apart PW-1 and PW-2 have not even stated about the date, time of occurrence. More so, this court is able to see from evidence of PW-9 Investigation Officer that M.O.1 was not sent to Chemical Analysis, is fatal to the case of prosecution. This Court finds that the investigation conducted by the prosecution in this case is not proper and it is lacking. As stated above except PW-1 and PW-2 no independent witness had supported the prosecution. PW-3 and PW-4 said to have eye witnesses turned hostile. PW-5 who is the daughter of PW-1 and PW-2 is only a hearsay witness and also would be interested. Thus in the opinion of this court the witnesses 1, 2 & 5 being interested witness.

17. In view of the discussion made above, the prosecution has failed to prove the case beyond reasonable doubt. Therefore the conviction of the trial court found to be conjecture and surmise. Therefore the accused is entitled for acquittal by giving the benefit of doubt.

18. In the result, this criminal appeal is allowed and the judgment and conviction dated 21.03.2003 made in S.C.No.29 of 2003 on the file of Additional Sessions Judge (Fast Track Court) Namakkal is hereby set aside.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vs

To
1. The Additional Sessions Judge,
(Fast Track Court No.III),
Namakkal.



2.The Chief Judicial Magistrate
Namakkal (for information)

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3.The Judicial Magistrate Tiruchengode

4.The Principal Sessions Judge, Namakkal (for information)

5.The Superintendent Central Prison
Coimbatore

6.The Inspector of Police
pallipalayam Police Station
namakkal

7.The Public Prosecutor
High Court, Madras

copy to
The Section Officer
Criminal Section High Court Madras

+1 cc to M/s.C.V.Charanya Advocate sr 19756

Crl.A.No.639 of 2003

ssv(co)
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