

Bail Slip

Appellant i.e., Raja in Crl.A.No.722 of 2003 (sole accused in S.C. No. 436/2001 on the file of the Additional District and Sessions Judge, Fast Track Court No.2, Chennai) was directed to be released on bail vide order dated 06.05.2003 made in Crl.M.P.No.4194 of 2003 in Crl.A.No.722 of 2003.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2015

CORAM:

THE HONOURABLE MS. JUSTICE R. MALA

Criminal Appeal No.722 of 2003

Raja
S/o.Arumugam

...Appellant/Accused

v.

The State rep by its
The Inspector of Police
P.4, Basin Bridge Police Station
Chennai
(Crime No.28/2001)

...Respondent/Complainant

Prayer:

Criminal appeal filed under Section 374(2) of Cr.P.C., against the judgment of conviction and sentence dated 28.03.2003 made in S.C.No.436 of 2001 on the file of learned Additional District and Sessions Judge, Fast Track Court No.2, Chennai.

For Appellant : Mr.V.Sambamurthy

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

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J U D G M E N T

This Criminal Appeal arises out of the judgment of conviction and sentence dated 28.03.2003 made in S.C.No.436 of 2001 on the file of learned Additional District and Sessions Judge, Fast Track Court No.2, Chennai, whereby the appellant/accused is convicted and sentenced as follows:

Sections	Sentences
353 IPC	Two years R.I
307 IPC	Five years R.I, Fine of Rs.3000/- in default to undergo three months R.I.
506(ii) IPC	Three years R.I, Fine of Rs.2000/- in default to undergo three months R.I.
The Sentences imposed on the accused are ordered to run concurrently. Set off was also ordered under Section 428 Cr.P.C.	

2. The case of the prosecution based on the prosecution witnesses is as follows:

(i) On 03.02.2001 at 8.20 P.M, when P.W.1/Muthuraj, S.I of Police Basin Bridge Police Station was on bandhobust duty along with P.W.2/Elangovan, Head Constable; P.W.3/Devadoss, Head Constable; P.W.6/Ashok Kumar, Head Constable because of the clashes between two groups viz., Anandan group and P.K.Colony group, P.W.1/Muthuraj saw P.W.11/Jayavelu being chased by a group.

(ii) Immediately, P.W.1/Muthuraj, S.I of Police went to the rescue of P.W.11/Jayavelu. During the course of the incident, the appellant/accused threatened P.W.1/Muthuraj with dire consequence if he tried to save P.W.11/Jayavelu and abused him with filthy language. When P.W.1/Muthuraj continued to protect P.W.11/Jayavelu, the appellant/accused in a fit of rage attacked P.W.1/Muthuraj with M.O.1/Kathi and caused injuries on this Right forehead. When the other policemen present in the scene of occurrence tried to apprehend the appellant/accused, he brandished the knife and threatened to attack them and he fled from the scene of occurrence.

(iii) Immediately, P.W.1/Muthuraj was taken to the hospital by P.W.3/Devadoss, Head Constable, where he was treated by P.W.9/Dr.Bithal and issued with Ex.P.3/Wound certificate, which states that the injury caused upon P.W.1/Muthuraj is only a simple

injury. P.W.13/Dr.Manivel also examined the victim P.W.1/Muthuraj and issued Ex.P.5/Accident Register.

(iv) On receipt of the information, P.W.15/Rasool Samraj, Inspector of Police visited the hospital and received the Ex.P.1/Complaint from P.W.1/Muthuraj, S.I of Police and registered a case in Crime No.28/2001 under Section 353, 307 and 506(ii) IPC. The FIR is marked as Ex.P.7. Thereafter, he rushed to the scene of occurrence and prepared the Ex.P.8/Observation Mahazar and Ex.P.9/Rough sketch in the presence of witnesses. He also recorded the statement of the witnesses and seized the material objects under Ex.P.10 and Ex.P.12/Recovery Mahazar. Thereafter, since he was transferred, he handed over the investigation to P.W.16/Senthil Kumar, Inspector of Police.

(v) P.W.16/Senthil Kumar, on taking up the investigation from his predecessor re-examined the witnesses and after completing the investigation, filed the chargesheet against the accused under Sections 353, 307 and 506(ii) IPC.

3. The learned Trial Judge placed incriminating evidence against the accused under Section 313(1)(b) Cr.P.C. The accused denied the same in toto. After considering the oral and documentary evidence, the learned Trial Judge has convicted the appellant/accused as stated above.

4. Challenging the conviction and sentence passed against this appellant, the present appeal has been filed.

5. The learned counsel for the appellant would raise the following points:

(a) Except the police/official witnesses, the independent witnesses viz., P.W.2/Elangovan, P.W.4/Devadoss, P.W.5/Senthilkumar, P.W.8/Elumalai and P.W.14/Prasanna turned hostile.

(b) There is no intention for this accused to attack P.W.1/Muthuraj. When the appellant/accused was chasing P.W.11/Jayavel with an intention to assault him, P.W.1/Muthuraj, S.I. Of Police intervened and tried to save P.W.11 and only aggrieved against the same, the appellant/accused attacked P.W.1 with M.O.1/Knife on his forehead and there is no intention to murder P.W.1. So, the ingredients of Section 307 IPC is not made out.

(c) There is discrepancy in the place where P.W.1/Muthuraj sustained injury. P.W.1 in his evidence has stated that he sustained injury in the Left forehead. However, the other eye-witnesses had deposed that P.W.1 had sustained injury in Right forehead.

(d) Even though P.W.1 was sent for medical treatment with memo, the memo was not placed before the Court which is fatal to the case of the prosecution.

(e) The evidence of P.W.9/Dr.Bithal and P.W.13/Dr.Manivel contradicted with each other. P.W.9/Dr.Bithal has stated that 10 person had assaulted P.W.1/Muthuraj, while P.W.13/Dr.Manivel has stated that a known person has assaulted the victim P.W.1/Muthuraj.

(f) P.W.7/Mohammed Nawas and P.W.8/Elumalai, the attestors of the Observation Mahazar also turned hostile.

(g) The confession does not lead to recovery, but it has been marked as Ex.P.11/Admitted portion of confession.

The Trial Court without considering the above aspects had convicted the accused and hence, the learned counsel for the appellant prayed for setting aside the conviction and sentence. To substantiate his argument, the learned counsel relied upon the decision reported in 2007 (4) Crimes 159 (SC), Prakash Chandra Yadav v. State of Bihar and Others and prayed for acquittal.

6. Resisting the same, the learned Government Advocate (Criminal Side) would submit that it is true that the independent witnesses turned hostile. But, when P.W.1/Muthuraj, S.I. Of Police was in bandhobust duty, on hearing that one Jayavel was being chased by the people of K.B.Park, the victim/P.W.1 interfered to save Jayavel from assault. At that time, the appellant/accused abused P.W.1/Muthuraj using filthy language and prevented him from discharging duty. Further, the appellant/accused with an intention to murder P.W.1/Muthuraj attacked him with deadly weapon and caused injury on the Right forehead and also caused criminal intimidation. The Trial Court considering all the above aspects in proper perspective had convicted the accused under Sections 353, 307 and 506(ii) IPC. Thus, the learned Government Advocate would submit that the conviction and sentence passed by the Trial Court does not warrant interference and he prayed for dismissal of the appeal.

7. Considered the rival submissions made by both sides and perused the typed set of papers.

8. Now the point to be decided is whether the evidence of the injured P.W.1/Muthuraj, S.I. of Police; P.W.2/Elangovan, Head Constable; P.W.3/Devadoss, Head Constable; P.W.6/Ashok Kumar, Head Constable are reliable?

It is true that P.W.4/Devadoss who is an independent witness in his evidence has stated that on the date of offence, when he was in the police station for obtaining license for conducting the 15th day

ceremony of his brother-in-law, P.W.1/Muthuraj, S.I of Police came to the police station with bleeding injuries. However, the evidence of P.W.4/Devadoss does not in any way support the case of the prosecution. Further, P.W.4/Devadoss also turned hostile.

9. P.W.5/Senthil Kumar, who is another independent witness turned hostile. P.W.7/Mohammed Nawas and P.W.8/Elumalai who are the attestors of P.W.8/Observation Mahazar also turned hostile. P.W.12/Jeeva, who is an independent witness also turned hostile.

10. So, now this Court has to decide whether the official witnesses are sufficient to impose conviction?

Admittedly, on 03.02.2001 at 08.20 P.M, when P.W.1/Muthuraj, S.I of Police was on bandhobast duty along with P.W.2/Elangovan, Head Constable; P.W.3/Devadoss, Head Constable; P.W.6/Ashok Kumar, Head Constable because of the problem between two groups viz., Anandan group and B.K.Colony group, P.W.11/Jayavel who was returning home after work was found being chased by a group of people. Immediately, P.W.1/Muthuraj went to his rescue and protected him and at that juncture, the appellant/accused aggrieved over the action of P.W.1/Muthuraj in protecting P.W.11/Jayavel, inflicted injuries on P.W.1/Muthuraj.

11. P.W.11/Jayavel, who is the star witness in his evidence has stated that on 03.02.2001 at 8.20 P.M, when he was returning home from work place, there was a conflict between two groups. Assuming him to be a person belonging to B.K.Colony, people were chasing him with weapons. On seeing the incident, P.W.1/Muthuraj, S.I of Police came to his rescue and during the course of the incident, P.W.1/Muthuraj sustained injuries in his Right forehead.

12. The above factum was corroborated by the evidence of other witnesses. In such circumstances, I am of the view that merely because P.W.1/Muthuraj; P.W.2/Elangovan, Head Constable; P.W.3/Devadoss, Head Constable and P.W.6/Ashok Kumar, Head Constable are police officials, their evidence cannot be discarded, since their evidence are corroborated with the evidence of one another. It is true that P.W.1/Muthuraj, in his chief-examination has stated that he had sustained injuries in his Left forehead, whereas in the first document Ex.P.5/A.R. Copy which came into existence on 03.02.2001 at 8.35 PM it was clearly stated "Alleged H/o assault at K.P.Park pm 03.02.01 at 8.20 P.M by known persons by vettu kathi O/E Pt conscious, oriented. Injuries - Lacerated wound over the Rt parietal region - 2cm."

13. Even in the Ex.P.1/Complaint, it was specifically stated that when the accused tried to assault P.W.1/Muthuraj on his neck, he turned towards left side and hence, he sustained injuries in Right forehead. Merely because P.W.1 in his chief-examination has stated that he sustained injury on the left forehead, it is not a reason for discarding the evidence of P.W.1. So, the medical evidence viz., Ex.P.5/A.R.copy, Ex.P.1/Complaint and the evidence of P.W.2/Elangovan, Head Constable; P.W.3/Devadoss, Head Constable; P.W.6/Ashok Kumar, Head Constable has corroborated that P.W.1/Muthuraj sustained injury on his right forehead. So, the argument advanced by the learned counsel for the appellant that there is contradiction between the evidence of P.W.1/Muthuraj and the medical evidence does not merit acceptance.

14. At this juncture, it would be appropriate to incorporate the ingredients of Section 353 IPC.

"353. Assault or criminal force to deter public servant from discharge of his duty.—Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

Ingredients

1. Assault was to a public servant.

2. Such public servant was acting in discharge of his duty.

3. Assault was—

(i) intended to prevent or deter him from discharging his duties.

(ii) it was used in consequence of anything done or attempted to be done by the said public servant in discharge of his duty as a public servant.

15. The evidence of P.W.1/Muthuraj, S.I of Police; P.W.2/Elangovan, Head Constable; P.W.3/Devadoss, Head Constable; P.W.6/Ashok Kumar, Head Constable and P.W.11/Jayavel has proved that while P.W.1/Muthuraj was discharging his official duty, the accused had prevented him and assaulted him and caused injury on him. So, I am of the view that the Trial Court has rightly held that the accused is guilt under Section 353 IPC.

16. Now this Court has to decide whether the offence under Section 307 IPC has been made out?

Admittedly, it is true that at the time of commission offence, the appellant herein is not having intention to murder P.W.1/Muthuraj, whereas his intention is to murder P.W.11/Jayavel. Only because P.W.1/Muthuraj protected P.W.11/Jayavel from being assaulted, the appellant/accused in a fit of rage assaulted P.W.1/Muthuraj and causing injuries on him. At this juncture, it would be appropriate to consider the decision relied on by the learned counsel for the appellant.

17. The learned counsel for the appellant relied upon the decision reported in 2007 (4) Crimes 159 (SC), Prakash Chandra Yadav v. State of Bihar and Others, wherein it was held that the necessary ingredients for attracting the first part of Section 307 IPC is intention or knowledge. It is appropriate to incorporate paragraph 12 of the said decision:

"12. From a bare perusal of the said provision, it is evident that first part thereof does not contemplate that receipt of any injury on the part of the victim is a pre-requisite for convicting an accused thereunder. In the event injuries are received, the second part of Section 307 would be attracted. The necessary ingredients for attracting the first part of Section 307 of the Indian Penal Code is intention or knowledge. The legal position would be evident from the illustration (c) appended to the said provision which reads as under:

"(c) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and if by such firing he wounds Z, he is liable to the punishment provided by the latter part of the first paragraph of this section.""

18. There is no evidence to show that the appellant was having intention to murder P.W.1/Muthuraj. Hence, I am of the view that the prosecution has failed to prove the guilt of the accused under Section 307 IPC beyond all reasonable doubt. Furthermore, the injury caused upon P.W.1/Muthuraj by the appellant/accused is only simple in nature, as per the evidence of P.W.9/Dr.Bithel and Ex.P.3/Wound Certificate.

19. The learned counsel for the appellant also drawn by attention through Ex.P.11/Admitted Portion of confession. Ex.P.11 is

not the discovery portion. When the appellant/accused was arrested, he himself handed over M.O.1/Kathi, which was seized under Ex.P.12/Seizure Mahazar. However, M.O.1/Kathi was not sent to chemical analysis and there was no blood stain in it. The non-sending of M.O.1 is not fatal to the case of the prosecution. So, I am of the view that the injury sustained by P.W.1/Muthuraj is only simple in nature. Thus, the appellant has only committed an offence under Section 324 IPC and not 307 IPC. For the offence under Section 324 IPC, the appellant/accused is sentenced to undergo three months Rigorous Imprisonment and imposed with a fine of Rs.1,000/-.

20. Now this Court has to decide whether the conviction and sentence under Section 506(ii) IPC is sustainable?

P.W.1/Muthuraj, S.I. of Police; P.W.2/Elangovan, Head Constable; P.W.3/Devadoss, Head Constable has categorically stated before the commission of the offence, the appellant/accused had abused P.W.1/Muthuraj and only thereafter, he assaulted P.W.1. P.W.1/Muthuraj in his deposition has categorically stated that when the policemen tried to get apprehend the appellant/accused, he brandished the knife before them and made criminal intimidation, before he fled from the scene of occurrence. So, I am of the view that the prosecution has proved the guilt of the accused under Section 506(ii) IPC.

21. At this juncture, the learned counsel for the appellant would submit that the appellant/accused is aged only 38 years with two children. Further, he is not having any bad antecedents and he was also not involved in any other offence. Hence, he prayed for leniency in the sentence.

22. Considering the fact that except the police witnesses, no other witnesses support the case of the prosecution, the appellant/accused is convicted and sentenced as follows:

(a) Instead of Section 307 IPC, the appellant/accused is convicted under Section 324 IPC and sentenced to undergo three months Rigorous Imprisonment and imposed with a fine of Rs.1,000/-.

(b) The conviction imposed by the Trial Court under Section 353 IPC is hereby confirmed. However, the sentence is reduced from two years Rigorous Imprisonment to three months Rigorous Imprisonment.

(c) The conviction imposed by the Trial Court under Section 506 (ii) IPC is hereby confirmed. However, the sentence is reduced from three years Rigorous Imprisonment to three months Rigorous Imprisonment. The fine amount ordered by the Trial Court is hereby confirmed.

23. In fine,

(i) The Criminal Appeal is partly allowed.

(ii) The conviction and sentence imposed on the accused under Section 307 IPC is hereby set aside and instead, the appellant/accused is convicted under Section 324 IPC and sentenced to undergo three months Rigorous Imprisonment and imposed with a fine of Rs.1,000/-.

(iii) The conviction imposed by the Trial Court under Section 353 IPC is hereby confirmed. However, the sentence is reduced from two years Rigorous Imprisonment to three months Rigorous Imprisonment.

(iv) The conviction imposed by the Trial Court under Section 506 (ii) IPC is hereby confirmed. However, the sentence is reduced from three years Rigorous Imprisonment to three months Rigorous Imprisonment. The fine amount imposed by the Trial Court under Section 506(ii) IPC viz., Rs.2000/- is hereby confirmed.

(v) The sentences awarded to the accused are ordered to run concurrently. The period of punishment already undergone is set off under Section 428 Cr.P.C.

(vi) The jail authorities are directed to set free the appellant/accused forthwith, if the period of sentence viz., three months R.I, imposed on him by this Court is already over and he had paid the fine amount and if he is not required in any other case.

Sd/-

Assistant Registrar(CO)

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Sub Assistant Registrar

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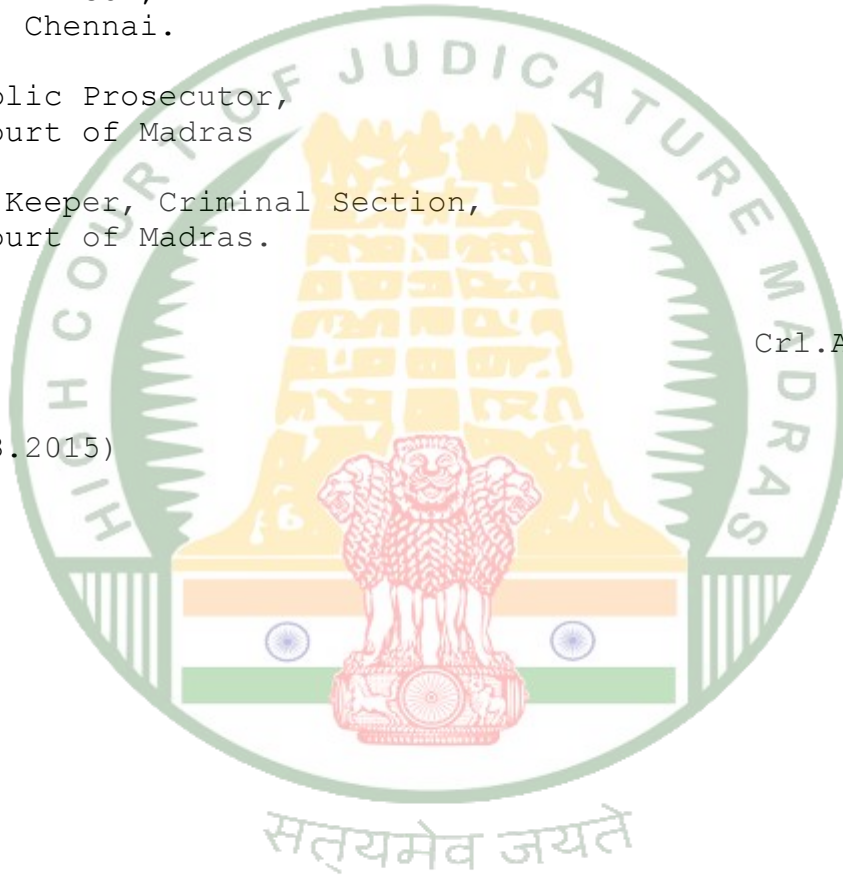
To

1. The Additional District and Sessions Judge,
Fast Track Court No.2,
Chennai.
2. -Do- Through The Principal Sessions Judge,
Chennai.

3. The X Metropolitan Magistrate,
Chennai.
4. -Do- Through The Chief Metropolitan Magistrate,
Egmore, Chennai - 8.
5. The Inspector of Police,
Egmore, Chennai - 8.
6. The Superintendent,
Central Prison,
Puzhal, Chennai.
7. The Public Prosecutor,
High Court of Madras
8. Record Keeper, Criminal Section,
High Court of Madras.

CrI.A.No.722 of 2003

GJ (CO)
PSI (11.03.2015)



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