

Bail Slip

The Appellant/Accused Namely P.Ravi @ Safari Ravi be and hereby are directed to be released on bail vide Court Order dated 26/03/2009 in M.P.1/2009 in CrI A 136/2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2016

CORAM

THE HON'BLE DR.JUSTICE P.DEVADASS

CrI.A.No.136 of 2009

P.Ravi @ Safari Ravi ... Appellant/Accused

vs

State: Rep. by
Inspector of Police
F-5, Choolaimedu Police Station
Chennai 600 094. ... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C to set aside the Judgment and Conviction passed by the learned IV Additional Sessions Judge, Chennai in S.C.No.293 of 2008 dated 22.01.2009.

For Appellant : Mr.A.Raghunathan
Senior counsel for
Mr.D.Venkateswarulu

For Respondent : Mr.P.Govindarajan
Addl. Public Prosecutor

JUDGMENT

The sole accused in the Sessions Case in S.C.No.293 of 2008 on the file of the learned IV Additional Sessions Judge, Chennai is the appellant.

2. The accused has been prosecuted for offences under Sections 353 and 333 IPC.

3. The trial court found him guilty under both the penal provisions of law. However, sentenced him only under Section

332 IPC to 2 years R.I. with fine Rs.10,000/-; i/d 6 months R.I., out of the fine amount, Rs.7,500/- was ordered to be paid as compensation to PW2 under Section 357(1)(b) Cr.P.C. No separate sentence was imposed for the offence under Section 353 IPC.

4. The case of the prosecution briefly runs as under:

(i) PW6 is the mother of one Dr.Sundar, who owns Door No.27, situate in Gangaianman Koil Street in Choolaimedu, Chennai. On 25.07.2007, as per the directions of PW1 Assistant Engineer, TWAD Board, PW2 staff of the Board and his colleagues viz., P.Ws.3, 4 and 5 went to discharge their duty to disconnect unauthorized pipe connection. [See Ex.P4 Work Allotment record]. At about 11 a.m, at the upstairs, the accused snatched Ex.P3 notice from PW6 and tore it. The accused fisted on PW2's chest. It was witnessed to by P.Ws.3, 4 and 5. PW2 submitted Ex.P2 report to PW1.

(ii) PW1 lodged Ex.P1 complaint to PW10-S.I of Police. He registered this case [Ex.P8 FIR]. He took up his investigation. He examined the witnesses and recorded their statement. He sent PW2 to Government Hospital. PW9-Dr.Mahajaben examined him [Ex.P7-O.P.ticket]. He complained of chest pain. He had noticed fracture in his chest. [See Ex.P6 Accident Register Copy].

(iii) In the meanwhile, PW10 visited the scene place. Prepared Ex.P9-Observation Mahazar in the presence of P.W.7 and another person. Drew Ex.P10 rough sketch of the scene place. He had arrested the accused and sent him to Court for his judicial custody. Thereafter, PW11-Inspector continued the investigation. Concluding the investigation, he filed the Final Report before the concerned Court for offences under Section 333 and 353 IPC.

5. After completion of the statutory formality under Section 207 Cr.P.C., the learned Magistrate committed the case under Section 209 Cr.P.C to the Court of Sessions.

6. On committal, the learned Additional Sessions Judge , upon hearing both sides and on perusal of the case records, framed charges under Sections 333 and 353 IPC. The accused pleaded not guilty to the charges.

7. Prosecution examined P.Ws.1 to 11 and marked Exs.P1 to P10.

8. When the accused was examined under Section 313 Cr.P.C. on the incriminating aspects appearing in the prosecution evidence, he denied the offences. No defence evidence.

9. Considering the arguments of both sides and appreciating the evidence on record, as no fracture was established through medical evidence, the trial court recorded the conviction under Section 332 IPC and also under Section 353 IPC and sentenced him only under Section 332 IPC and did not impose any separate sentence under Section 353 IPC.

10. The learned Senior counsel for the appellant would submit that PW2 would have pretended that he experienced chest pain.

11. The learned Senior counsel for the appellant would further contend that scanning the evidence of PW2 and of other alleged ocular witnesses shows that the assigned work has been over; thereafter only the alleged occurrence is stated to have taken place. In such circumstances, there will not be any question of PW2 having been deterred from discharge of his public duty. Thus, the prosecution has not established the charges beyond all reasonable doubts.

12. On the other hand, the learned Additional Public Prosecutor would submit that the evidence of PW2 has been substantiated by the medical evidence of PW9. Besides that the evidence of PW2 has been corroborated in material particulars by PWs.3 to 5. In the circumstances, the trial court has recorded the conviction and sentenced him accordingly.

13. I have anxiously considered the rival submissions, perused the judgment of the trial court and also the entire materials on record.

14. Now the question is whether offences under Sections 332 and 353 IPC have been established by the prosecution as against the accused beyond all reasonable doubts?

15. It is beyond pale of any controversy that PW2 was a public servant, at the time when the occurrence is alleged to have taken place as PW1 his Superior Officer who assigned him an official work to disconnect some unauthorized sewerage connection in the house belonging to PW6's son [See Ex.P4 work allotment order] and have gone to attend to the said work also has been spoken to by PWs.3 to 5.

16. Under these circumstances, according to PW2 the accused came; tore Ex.P3 notice and when he protested, the accused fisted him on his chest. As per the evidence of PWs.2 to 5 thereafter, they did not proceed with their work.

17. The evidence of PW9, the Doctor and the medical records Ex.P7 [O.P.ticket] and Ex.P6 [Accident Register Copy] would show that PW2 had complained of chest pain. The evidence of PW2 stand corroborated by the medical evidence.

18. The evidence of PW2 is crystal clear that, at the time of occurrence, they were doing their work. They were in discharge of their public duty. In such circumstances, the defence submission that PW2 was not deterred from discharging of his public duty cannot be accepted. It would be an hurt.

19. Thus, while PW2 went to discharge his public duty, hurt was caused to him and thereafter he could not proceed with his work.

20. In such circumstances, after recording a conviction under Section 332 IPC, recording of conviction under Section 353 IPC will not arise and it will be superfluous.

21. In the facts and circumstances the sentence imposed upon the accused is excessive and it is disproportionate to the offence established.

22. In view of the foregoing, this appeal is allowed in part. The conviction of the appellant under Section 332 IPC is maintained. His conviction under 353 IPC is set aside. His sentence of 2 years RI is also set aside. The fine amount of Rs.10,000/- is maintained. The direction of the trial court to pay Rs.7,500/- out of the fine amount as compensation to PW2/victim under Section 357 Cr.P.C is upheld.

सत्यमेव जयते

Sd/-
Assistant Registrar(AS)

//True Copy//

Sub Assistant Registrar

To

1. The IV Additional Sessions Judge,
Chennai.

2. The Chief Metropolitan Magistrate,
Chennai.

3. The Inspector of Police,
F-5, Choolaimedu Police Station
Chennai 600 094.

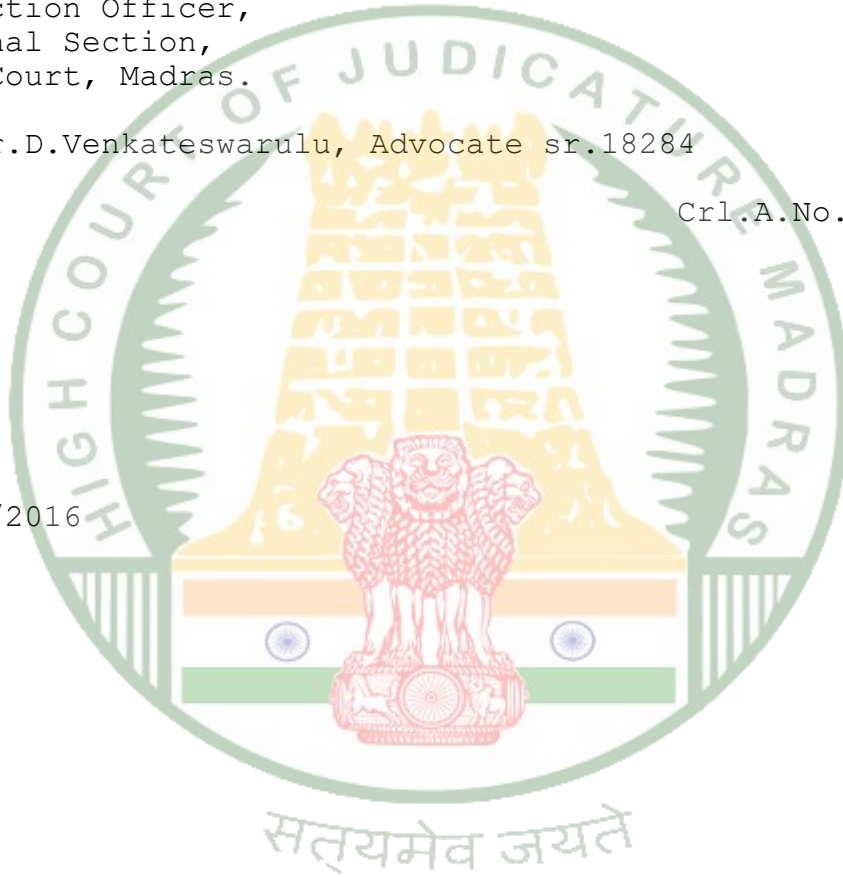
4. The Additional Public Prosecutor,
High Court, Madras.

5. The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.D.Venkateswarulu, Advocate sr.18284

Crl.A.No.136 of 2009

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srg 05/04/2016



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