

Bail Slip

The Petitioners/Accused Viz., Kalimuthu(A2) S/O.Backiyaraj and Rajadurai @ Duraiselvam (A1) S/O.Duraipazhem Nadar were directed to be released on bail as per order of this Court in M.P.No.1/2009 in Crl.A.No.334/2009 and M.P.No.1/2009 in Crl.A.No.370/2009, dated 01.07.2009 and 17.07.2009 respectively.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

Crl.A.Nos.334 and 370 of 2009

Kalimuthu .. Appellant in Crl.A.No.334 of 2009

Rajadurai @ Duraiselvam .. Appellant in Crl.A.No.370 of 2009

Vs.

State represented by
The Inspector of Police,
R-1 Mambalam Police Station,
Chennai. (Crime No.298 of 2008) .. Respondent in both the
appeals

Criminal Appeals are filed under Section 374(2) Cr.P.C. against the judgment dated 11.06.2009 in S.C.No.54 of 2009 on the file of the Additional District and Sessions Court, Fast Track Court-V, Chennai.

For appellants : Mr.S.Kingston Jerold

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

COMMON JUDGMENT

These Criminal Appeals are filed against the judgment dated 11.06.2009 in S.C.No.54 of 2009 on the file of the Additional District and Sessions Court, Fast Track Court-V, Chennai. Since both the appeals arise out the same judgment, and Crl.A.No.334 of 2009 is filed by A2 and Crl.A.No.370 of 2009 is filed by A1, these appeals are disposed of by this common judgment. The appellants/A1 and A2 are convicted and sentenced by the trial Court as under:

Offence	Conviction and Sentence	Fine
Section 307 read with 34 IPC	A1 and A2 - each sentenced to undergo seven years rigorous imprisonment	Fine of Rs.3,000/- each, in default, each to undergo six months rigorous imprisonment

2. The case of the prosecution is as follows:

P.W.1 / de-facto complainant is running "Vanitha Pawn Broker Shop" in Ramanathan Street, T.Nagar, Chennai. A1 is the regular customer in that shop and he used to pledge his jewels and redeem it. On 20.03.2008 at about 17.30 hours, A1, with his friend A2, came to the shop and told the de-facto complainant that he wants to redeem the jewels pledged in the shop. The de-facto complainant, by perusing the receipt, told him that the amount due is Rs.1,200/- including interest. A1 told de-facto complainant that he would not pay interest and he would pay only principal amount and demanded the de-facto complainant to return back the gold ring by receiving the money. The de-facto complainant refused to waive the interest. Hence, A1 told P.W.1 angrily that he would get back the jewels from him and he had to wait and see in what manner he would get it, and by uttering so, the accused went out of the shop. On 22.03.2008 at about 13.15 hours, the accused persons came to the shop of the de-facto complainant and demanded him to return back the jewels. When P.W.1/de-facto complainant told that they have to pay principal and interest, the accused persons, with common intention to commit murder of the de-facto complainant, stated that if he demands interest from them, he would be done away with, and stating so, by taking out a knife that was kept secretly by A1, the de-facto complainant was cut by A1 aiming at his neck. The de-facto complainant warded it off with his left hand and as he warded off the attack, P.W.1/de-facto complainant sustained only simple injury on his left fore arm. Had he not warded off the knife-cut with left hand, he would have died. Hence, A1 was said to have committed the offence under Section 307 IPC and A2 is said to have committed the offence under Section 307 read with 34 IPC. After attacking P.W.1 as noted above, A1 and A2 ran away from the scene of occurrence. P.W.1 raised alarm and on hearing his noise, his wife P.W.5 took P.W.1 to Royapettah Government Hospital. While P.W.1 was taking treatment, statement (Ex.P-1 complaint) was recorded from him on 22.03.2008 by P.W.7 Inspector of Police. Thereafter, P.W.7 came to R-1 Mambalam Police Station and registered a case in Crime No.298 of 2008 for the offences under Sections 307 and 506 (Part-2) IPC and prepared Ex.P-3 FIR and sent the FIR to the Court. Thereafter, P.W.7 went to the scene of occurrence and enquired the

witnesses. He prepared Ex.P-4 observation mahazar and drew Ex.P-5 rough sketch. He recovered M.O.1 knife under seizure mahazar Ex.P-6. Thereafter, P.W.7 recorded the statement of other witnesses. After completing the formalities, P.W.7 filed charge-sheet, which was taken on file in S.C.No.54 of 2009 before the Court below.

3. During the course of trial, the prosecution has examined P.Ws.1 to 7, marked Exs.P-1 to P-7 and produced M.O.1.

4. When the appellants/A1 and A2 were questioned under Section 313 Cr.P.C., they denied their complicity in the crime. No evidence was adduced nor any document was filed on the side of defence.

5. The trial Court, upon hearing both sides and on a perusal of the oral and documentary evidence, convicted and sentenced the appellants/A1 and A2, as stated supra. Challenging the same, the present appeals are filed by A1 and A2 respectively.

6. Learned counsel for the appellants/A1 and A2 submitted that except the self-interested testimony of P.W.1 victim, no other witness had spoken about the occurrence. Learned counsel mainly relied on the evidence of P.W.6 Doctor, who adduced in his evidence that the injury sustained by P.W.1 victim is only simple injury. Learned counsel also brought to the attention of this Court to Ex.P-2 accident register, and submitted that there was an entry in it that the injury is simple in nature. Therefore, the learned counsel for the appellants submitted that taking into consideration the nature of the offence, the conviction and sentence imposed on A1 may be modified. He further submitted that none of the witnesses have stated about the presence of A2 in the place of occurrence and hence, he prayed that A2 may be acquitted of the charges.

7. Countering the above submissions, learned Additional Public Prosecutor appearing for the respondent-Police submitted that the evidence of prosecution is cogent and convincing and no infirmity could be found in the conviction and sentence imposed on the appellants/A1 and A2 by the trial Court and hence he prayed for dismissing the appeals.

8. Keeping in mind the above submissions of the learned counsel for the parties, I have given my anxious consideration to the same and also perused the materials available on record.

9. On going through the evidence of prosecution, I find that it is strongly proved that P.W.1/de-facto complainant was attacked by M.O.1 knife by A1. The only question that is to be seen is as to whether the conviction passed on the appellants/A1 and A2 under Section 307 read with 34 IPC is warranted to the facts of the case. In this regard, it is to be noted that P.W.6 Doctor has stated in his evidence that the injury sustained by P.W.1 is only simple in nature and he has also certified the same in Ex.P-2 accident register. That being so, the conviction of the appellants/A1 and A2 for the offence under Section 307 read with 34 IPC is totally unwarranted and the same is not legally sustainable.

10. Considering the above aspects of the case, more particularly the fact that P.W.1 victim sustained only simple injury on account of attack made by A1, I am of the view that the conviction imposed on A-1 shall be altered from Section 307 read with 34 IPC, to Section 324 IPC. Accordingly, the conviction imposed on A1 is altered to Section 324 IPC. With regard to the sentence of imprisonment imposed on A1, the same is modified to the period of sentence already undergone by him. Accordingly, Crl.A.No.370 of 2009 filed by A-1 is partly allowed.

11. So far as A2 is concerned, since there is no evidence to speak about the role played by A2 in the incident, the conviction and sentence imposed on A2 is liable to be set aside. Accordingly, the appeal filed by A2 in Crl.A.No.334 of 2009 is allowed, setting aside the impugned judgment of conviction and sentence imposed on A2 and A2 is acquitted of the charge(s) framed against him. The bail bond, if any executed by A2 shall stand cancelled. The fine amount, if paid by A2 shall be refunded to him.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Copy to

1. The Additional District and Sessions Judge,
Fast Track Court-V,
Chennai.
 2. -Do- thro the Principal Sessions Judge,
Chennai.
 3. The XVII Metropolitan Magistrate,
Saidapet, Chennai-15.
 4. -Do- thro the Chief Metropolitan Magistrate,
Egmore, Chennai-8.
 5. The Superintendent,
Central Prison,
Puzhal, Chennai.
 6. The Inspector of Police,
R-1 Mambalam Police Station, Chennai.
(Crime No.298 of 2008).
 7. The Public Prosecutor,
High Court, Madras.
 8. The Record Keeper,
Criminal Section,
High Court, Madras.
- +2cc to Mr.S.Kingston Jerold, Advocate Sr.41260, 41261

Crl.A.Nos.334 and 370 of 2009

bur[col]
srg 23/08/2016

सत्यमेव जयते

WEB COPY