

Bail Slip:- The Appellant/Accused Viz., Tamil @ Tamilarasan was enlarged on bail as per order of this court in CrI.M.P.No.1/2009 in CrI.A.No.259/2008 dated 6.4.2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.01.2016

DELIVERED ON : 27.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.259 of 2008

Tamil @ Tamilarasan

... Appellant

vs.

State By
The Inspector of Police,
F.1 Chindatripet Police Station
Chennai

... Respondent

Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment made in S.C.No.4 of 2008 dated 12.2.2008 on the file of the Additional Sessions Judge (Fast Track-1), Chennai

For appellant : Mr.A.Manoharan

For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor.

JUDGMENT

The conviction and sentence dated 12.3.2008 passed in Sessions Case No.4 of 2008 by the District and Sessions Court (Fast Track Court No.1), Chennai are being challenged in the present Criminal Appeal.

2. The case of the prosecution is that the accused is an accused in a murder case. In the said murder case, the defacto complainant by name Sivakumar is one of the eye witnesses and with an intention to murder the defacto complainant, on 14.7.2006, at about 17.30 hours in Padavattaman Koil Street, near A.1 Beef Stall, Chindatripet, the accused has attacked the defacto complainant, by using a deadly weapon and thereby caused injuries. After occurrence, a complaint has been given and the same has been registered in Crime No.1399 of 2006.

3. On receipt of complaint, the Investigating Officer, viz., P.W.9, has taken up investigation, examined connected witnesses and after completing investigation, has laid a final report on the file of 14th Metropolitan Magistrate, Egmore, Chennai and the same has been taken on file in P.R.C.No.169 of 2006.

4. The XIV Metropolitan Magistrate, Egmore, Chennai, after considering the facts that the offences alleged to have been committed by the accused are triable by Sessions Court, has committed the case to the Court of Sessions, Chennai and the same has been taken on file in Sessions Case No.4 of 2008.

5. The trial court, after hearing arguments of both sides and upon perusing relevant records has framed a charge against the accused under Sections 341, 324 and 307 of the Indian Penal Code and the same has been read over and explained to him. The accused has denied the charge and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 9 have been examined and Exhibits P.1 to 11 and Material Objects 1 to 3 have been marked.

7. When the accused has been questioned under Section 313 of the Criminal Procedure Code, as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. No oral and documentary evidence have been adduced on the side of the accused.

8. The trial court, after hearing arguments of both sides and upon perusing relevant evidence available on record has found the accused guilty under Sections 341, 324 and 307 of the IPC and sentenced him to undergo 5 years Rigorous Imprisonment and also imposed a fine of Rs.1,000/- with usual default clause under section 307 of IPC. No separate punishments have been imposed against him under sections 341 and 324 of IPC. Against the convictions and sentence passed by the trial court, the present Criminal Appeal has been filed at the instance of the accused as appellant.

9. The consistent case put forth on the side of the prosecution is that the brother of the defacto complainant by name Sasi Kumar has been murdered and in the said case, the present accused has also been arrayed as accused. The defacto complainant is a vital witness in the said case and with an intention to murder the defacto complainant, on 14.7.2006 at about 17.30 hours, in the place of occurrence, the accused has attacked the defacto complainant by using a deadly weapon and caused injury on his person.

10. Even though on the side of the prosecution P.Ws.1 to 9 have been examined, the trial court has believed the evidence of P.Ws.1, 6 and 7 and Exhibits P.1, P.5 and P.7.

11. The learned counsel appearing for the appellant/accused has raised the following points to set aside the convictions and sentence passed against the appellant/accused:

(A) In Ex.P.1, the name of P.W.2 by viz Socrates has not been mentioned. Since Ex.P.1 has been registered after Ex.P.8, Ex.P.1 is a concocted document.

(B) Ex.P.1 has reached the court belatedly.

(C) The weapon alleged to have been used by the accused in the place of occurrence has not been subjected to chemical examination.

12. The learned Additional Public Prosecutor has contended that in the instant case, the motive for occurrence has been clearly established on the side of the prosecution and after occurrence, the defacto complainant has passed away and on the side of the prosecution, P.Ws.2 and 3 have been examined as eye witnesses, but P.W.3 has not supported the version of the prosecution, whereas P.W.2 has given clear evidence about the overtacts alleged to have been committed by the accused on the person of the defacto complainant. The evidence given by P.W.2 has been clearly corroborated by the evidence given by P.Ws.6 and 7 coupled with Exs.P.5 and P.7 and the trial court, after considering the evidence available on record, has rightly found the accused guilty under sections 341, 324 and 307 of IPC and therefore, the convictions and sentence passed by the trial court do not require interference.

13. It is seen from the records that after occurrence, the defacto complainant has passed away, due to some other reason. On the side of the prosecution, the said Socrates has been examined as P.W.2 and his specific evidence is that in the place of occurrence, he is running A-1 Beef Stall and on the date of occurrence, the accused has attacked the defacto complainant by using a deadly weapon and thereby caused injuries on his person. In fact, this Court has perused the entire evidence given by P.W.2 and no infirmities are found place. Further P.Ws.6 and 7 have given clear evidence with regard to nature of injuries sustained by the defacto complainant and one of the injuries is found on the left side of his head. Therefore, it is quite clear that with an intention to murder the defacto complainant, the accused has attacked him by using a deadly weapon.

14. The first and foremost contention put forth on the side of the appellant/accused is that in Ex.P.1, the name of P.W.2 has not been mentioned. It is a settled principle of law that mere non-mention of names of witnesses in the complaint would not militate the case of the prosecution, provided the prosecution has

adduced cogent/trustworthy evidence for the purpose of proving its case.

15. In the instant case, it is an admitted fact that the entire occurrence has taken place in front of Beef Stall of P.W.2 and with regard to that said aspect, no denial has been made on the side of the accused. Therefore, even though the name of P.W.2 has not been mentioned in Ex.P.1, his evidence cannot be discarded. Under the said circumstances, the contention put forth on the side of the appellant/accused is sans merit.

16. The second contention put forth on the side of the appellant/accused is that there is a delay in sending FIR to the court. It is also a settled principle of law that mere delay in sending the material documents as well as material papers, cannot be a sole cause for rejecting the case of the prosecution and therefore, the second contention put forth on the side of the appellant/accused also goes out without merit.

17. The third contention put forth on the side of the appellant/accused is that the weapon alleged to have been used by the appellant/accused in the place of occurrence has not been subjected to chemical examination. It is nothing but a mere faulty investigation. It is also a settled principle of law that mere faulty investigation would not be a ground for rejecting the case of the prosecution. Under the said circumstances, as mentioned supra, P.W.2 has given trustworthy evidence to the effect that in the place of occurrence, the accused has attacked the defacto complainant by using deadly weapon and thereby caused injuries. Therefore, the third contention put forth on the side of the appellant/accused cannot be accepted.

18. The trial court, after considering the available evidence on record, has rightly found the accused guilty under sections 341, 324 and 307 of IPC. In view of the discussions made earlier, this Court has not found any force in the contentions put forth on the side of the appellant/accused and altogether, the present Criminal Appeal deserves to be dismissed.

In fine, this Criminal Appeal is dismissed. The convictions and sentence passed against the appellant/accused in S.C.No.4 of 2008 by the trial court are confirmed. If the appellant/accused is not in duress, the trial court is directed to take appropriate steps so as to immure him in prison to serve out the remaining period of sentence.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

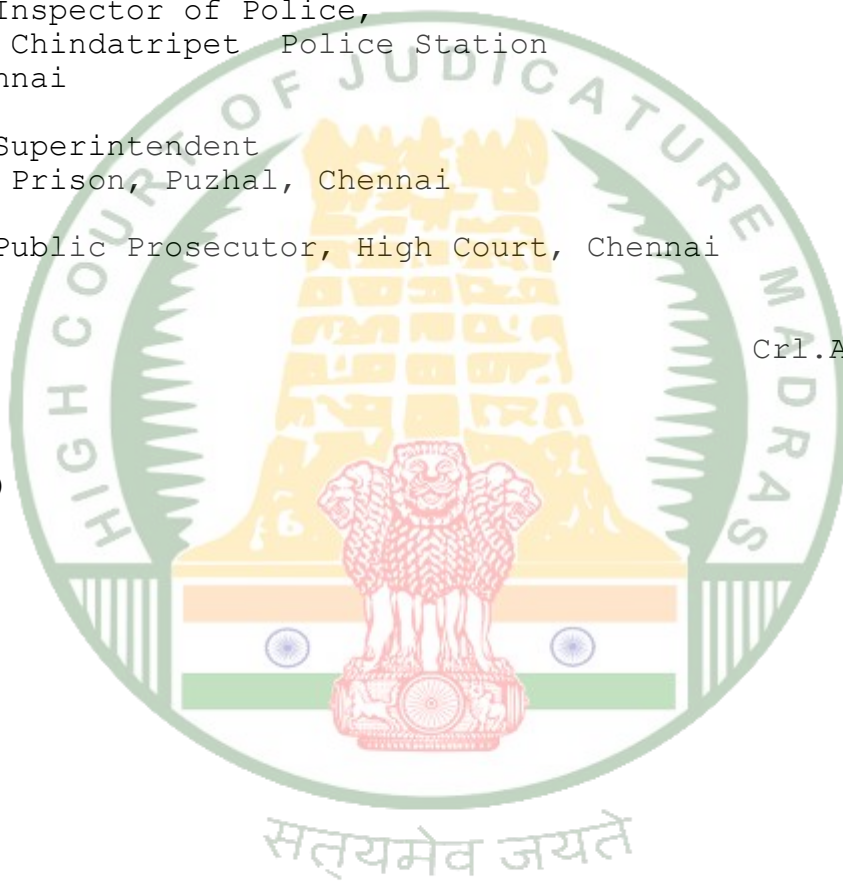
ajr

To :

1. The Additional Sessions Judge (Fast Track-1),
Chennai
2. The XIV Metropolitan Magistrate
Egmore, Chennai
3. Thro the Chief Metropolitan Magistrate
Egmore, Chennai
4. The Inspector of Police,
F.1 Chindatripet Police Station
Chennai
5. The Superintendent
Central Prison, Puzhal, Chennai
6. The Public Prosecutor, High Court, Chennai

Crl.A.No.259 of 2008

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