

Bail Slip

The Appellant herein Viz., Balavenkatesan, S/O Selvarasu Chettiar, Accused in SC.3/08 on the file of Additional District and sessions Judge, Fast Track Court, Ariyalur, was released on bail as per order of this Court dated 13.6.08 made in M.P.No.1/08 in CrI. A 266 of 2008.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2016

CORAM:

THE HONOURABLE DR.JUSTICE P.DEVADASS

CrI.A.No.266 of 2008

Balavenkatesan .. Appellant/Accused

Vs.

State by the Inspector of Police,
Thalavai Police Station,
Perambalur District.

Crime No.30 of 2007 .. Respondent

Criminal Appeal against the judgment dated 13.03.2008 in S.C.No.3 of 2008 on the file of the Additional District and Sessions Judge, Fast Track Court, Ariyalur.

For appellant : Mr.M.N.Balakrishnan

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

JUDGMENT

The sole accused in the Sessions Case in S.C.No.3 of 2008 on the file of the learned Additional Sessions Judge (Fast Track Court), Ariyalur, is the appellant.

2. Originally, he was prosecuted for an offence under Section 307 IPC. Ultimately, on appreciation of evidence, the trial Court, while finding him guilty, altered the conviction to Section 326 IPC and sentenced him to three years' R.I. and also fined him Rs.5,000/- i/d six months' S.I.

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

(i) P.W.1's husband Thangavelu and the accused are neighbours in Echangadu Village in Ariyalur District. They have some boundary dispute. In the circumstances, on 29.06.2007, at about 10.30 a.m., while Thangavelu was near his land, the

accused splashed some corrosive substance on his person from a plastic mug (M.O.1). Thangavelu felt burning sensation. He cried out of excruciating pain. P.W.1 witnessed the occurrence. P.Ws.3 to 5 have seen the injured. P.W.5 has seen the accused running away from the scene place. He was having burn injuries on his eyes, face and chest. He was rushed to the Government Hospital, Jayankondam, by P.W.6. P.W.2 Dr.Mathiazhagan treated Thangavelu and he was having serious burn injuries over his face, neck, both upper limbs, upper part of abdomen, front of chest, vision blurred and he could not open both his eyes (see Ex.P-2 Accident Register copy). He was taken to Government Medical College Hospital, Thanjavur for further treatment.

(ii) At the said Hospital, the injured gave Ex.P-1 complaint to P.W.8 Head Constable. Based upon that, this case was registered (Ex.P-6 - FIR). P.W.10 Sub-Inspector of Police took up his investigation. He visited the scene place. He prepared Ex.P-4 observation mahazar in the presence of P.W.7 and another person. He drew rough sketch (Ex.P-7). He seized M.O.1 plastic mug in the presence of said witnesses. In the meanwhile, P.W.9 Sub-Inspector of Police arrested the accused. Victim Thangavelu was having grievous injuries. He had lost his vision. (see Ex.P-3 Wound Certificate). P.W.11 Inspector continued the investigation. He concluded his investigation and filed the Final Report against the accused for an offence under Section 307 IPC before the concerned Court.

4. The learned Magistrate committed the case to the Court of Sessions. The learned Additional Sessions Judge, upon hearing both and on consideration of the case records, framed a charge under Section 307 IPC. The accused pleaded not guilty to the charge.

5. Prosecution examined P.Ws.1 to 11, marked Exs.P-1 to P-7 and exhibited M.O.1.

6. When the accused was examined under Section 313 Cr.P.C. on the incriminating aspects in the prosecution evidence, the accused denied the offence. He did not let in defence evidence.

7. On appreciation of the evidence and the submissions made by both sides, the trial Court found him guilty under Section 326 IPC and sentenced him as stated already.

8. Learned counsel for the appellant contended that there is two days' delay in lodging the F.I.R. with the Police. As to the time of occurrence, there is correction in Ex.P-1 complaint. Prosecution has not proved its case beyond all reasonable doubts. At any rate, the sentence is very heavy.

9. The learned Additional Public Prosecutor contended that the victim had suffered acid attack at the hands of the accused. It was spoken to by P.W.1 and also by the other witnesses. There is corroborating medical evidence. There is motive on the part of the accused to throw acid on the injured. In the circumstances, the trial Court has rightly convicted him and sentenced him.

10. I have anxiously considered the rival submissions and perused the impugned judgment of the trial Court and also the entire materials on record.

11. The question is whether an offence under Section 326 IPC has been proved by the prosecution beyond all reasonable doubts as against the accused.

12. Thangavelu, the victim of the offence and the accused belonged to the same village. They are neighbours. They have boundary dispute. There was enmity between them. Under these circumstances, on 29.06.2007, at about 10.30 a.m., while Thangavelu was near his land, the accused splashed some corrosive substance from M.O.1 plastic mug on him. P.W.1 witnessed this occurrence. Thangavelu had burn injuries and his eyes blurred. P.W.6 rushed him to the Government Hospital, Jayankondam. P.W.2 Doctor treated him and noticed burn injuries on his face, chest and upper limbs. He lost his vision. Thangavelu suffered acid attack. It is grievous in nature (as per Exs.P-2 and Ex.P-3 medical records). The evidence of P.W.1 substantiates the statement of Thangavelu in Ex.P-1. Subsequently, Thangavelu suffered natural death. No dent has been made in the cross-examination of prosecution witnesses by the defence.

13. Two days' delay in lodging the F.I.R. is understandable in this case, because, Thangavelu was admitted to the Government Hospital, Jayankondam, with extensive burn injuries. He was then crying out of excruciating pain. Subsequently, he was rushed to Government Medical College Hospital, Thanjavur.

14. There is some correction in Ex.P-1 complaint as to the time of occurrence. There is evidence of witnesses as to the time of occurrence. In Ex.P-1, Thangavelu also has affixed his thumb impression. It would show the condition in which he was then placed. On the analysis of evidence on record, an offence under Section 326 IPC has been proved by the prosecution beyond all reasonable doubts.

15. The learned counsel for the appellant also submitted that the accused has already underwent 6 months' imprisonment. He is the sole bread-winner of his family. Now, he is eking out

his livelihood as a labourer in a Banian Company. He may be shown mercy and let off.

16. There should not be any misplaced sympathy. The accused has exhibited his criminal propensity. Acid attack is a serious one. Now, on his behalf, certain mitigating factors have been presented.

17. This Criminal Appeal is partly allowed. The conviction under Section 326 IPC is upheld. Sentence of fine is maintained. His sentence of imprisonment is reduced to two years' rigorous imprisonment. He is entitled to set-off under Section 428 Cr.P.C. The trial Court is directed to secure the appellant and send him to jail to serve the remaining modified period of sentence of imprisonment.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

Copy to

1. The Additional District
and Sessions Judge (Fast Track Court),
Ariyalur.
2. The Judicial Magistrate,
Jayankondam.
3. The Chief Judicial Magistrate,
Peramballur.
4. The Public Prosecutor,
High Court, Madras.
5. The Inspector of Police,
Thalavai Police Station,
Perambalur District.
6. The Section Officer,
Criminal Section, High Court,
Madras-104.

+1cc to Mr.M.N.Balakrishnan, Advocate Sr.16230

Crl.A.No.266 of 2008

kgk(CO)
srg(30/03/2016)