

Bail Slip:- The Appellants/Accused Nos.1 to 3 Viz Venkatesan S/o. Suruttaian Gounder aged 28 years, Veeramani S/o. Suruttaian Gounder aged 34 years Sekar, S/o. Suruttaian Gounder aged 30 years respectively be and hereby were directed to released on bail as per order dated 7.5.2008 made in M.P.Nos.1 and 2/2008 in CrI.A.No.359/2008.

1.

2. IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.359 of 2008

1. Venkatesan
2. Veeramani
3. Sekar

.... Appellants/ Accused Nos.1 o 3

vs.

State Rep. By
The Inspector of Police,
Singarapettai Police Station
Crime No.217/2002

... Respondent

Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment made in S.C.No.260 of 2004 dated 29.04.2008 on the file of the I Additional Sessions Judge, Krishnagiri

For appellant : Mr.V.Rajamohan

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

JUDGMENT

The convictions and sentences dated 29.4.2008 passed in Sessions Case No.260 of 2004 by the I Additional District and Sessions Court, Krishnagiri are being challenged in the present Criminal Appeal.

2. The case of the prosecution is that on 16.7.2002, at about 6 p.m., in Nayakanurpudur, a dispute has been in existence in between the families of Kumaresan and accused with regard to cutting of a Neem tree and due to that, the first accused has attacked one Kasirajan by using a deadly weapon and thereby

caused injuries. During the course of occurrence, the second accused has attacked one Amudha by using a deadly weapon and thereby caused injuries on her person. The third accused has attacked one Manickam by using a deadly weapon and thereby caused fatal injuries and subsequently he passed away. Further, during the course of occurrence, the third accused has also attacked one Tamilselvi. After occurrence, the said Tamilselvi, as defacto complainant, has given a complaint and the same has been registered in Crime No.217 of 2002.

3. On receipt of the Complaint, the Investigating Officer, viz., P.W.15, has taken up investigation, examined connected witnesses and after knowing the death of the deceased, viz., Manickam, he changed sections of law and made arrangements to conduct autopsy on the body of the deceased and accordingly, Dr.Sankar (P.W.10) has conducted Post Mortem and he found the following external and internal injuries:-

"External Injuries:

- (1) Sutured wound Rt side neck 5cm size. muscle deep. on exploration
- (2) Sutured wound below wound No.1 3cm.size. muscle deep on exploration
- (3) Sutured wound (L) side cheek 4 cm.size
- (4) Infected, sutured wound (L) forearm - elbow -10cm size
- (5) Sutured wound base of (L) middle finger 3 cm.size. Fracture dislocation of 1 MCT joined.

Internal examination:

Thorax , Hyoid bone intact, Ribs no fractures, Lungs pale. Heart clotted blood present in all chambers.

Abdomen: Stomach contains 150 ml. of watery liquid with partially digested rice particles.

Liver pale, Spleen pale, Kidneys pale, Bladder empty.

Cranium - scalp normal, vault intact, brain pale, No basal fracture"

The Post Mortem Certificate has been marked as Ex.P.12. After completing investigation, the Investigating Officer has filed a final report on the file of Judicial Magistrate Court, Uthangarai and the same has been taken on file in P.R.C.No.14 of 2003.

4. The Judicial Magistrate, Uthangarai, 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, Krishnagiri Division and the same has been taken on file in Sessions Case No.260 of 2004.

5. The trial court, after hearing arguments of both sides and upon perusing relevant documents, has framed first charge

against the first accused under Section 324, second charge framed against the second accused under section 326, third charge against the third accused under section 302 and fourth charge against him under section 323 of Indian Penal Code and the same have been read over and explained to them. The accused have denied the charges and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 15 have been examined and Exhibits P.1 to P.23 and Material Objects 1 to 7 have been marked.

7. When the accused have been questioned under Section 313 of the Criminal Procedure Code, as respects the incriminating materials available in evidence against them, they denied their 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 first accused guilty under Section 324 of the IPC and sentenced him to undergo 3 years Rigorous Imprisonment and imposed a fine of Rs.1,000/- with usual default clause. The second accused has been found guilty under Section 326 of the IPC and sentenced to undergo 10 years Rigorous Imprisonment and imposed a fine of Rs.5,000/- with usual default clause. Likewise, the third accused has been found guilty under Section 326 of the IPC and sentenced to undergo 10 years Rigorous Imprisonment and imposed a fine of Rs.5,000/- with usual default clause. The third accused has also been found guilty under section 323 of IPC and sentenced to undergo one year rigorous imprisonment and imposed a fine of Rs.1,000/- with usual default clause. Against the convictions and sentences passed by the trial court, the present Criminal Appeal has been filed at the instance of the accused as appellants.

9. The crux of the case of the prosecution is that on 16.7.2002 at about 6 p.m., in Nayakanurpudur Village with regard to cutting of a Neem tree, a tussle has arisen in between the accused and injured as well as the deceased and during the course of occurrence, the first accused has attacked the injured witness by name Kasirajan. Likewise, the second accused has attacked the injured witness by name Amudha. The third accused has attacked the injured witness by name Tamil Selvi.

10. The trial court, after considering the materials found in Ex.P.1, Complaint and also the evidence given by injured witnesses, namely P.Ws.1 to 3, coupled with medical evidence, has found the first accused guilty under section 324, second accused guilty under section 326, third accused guilty under section 326 and also under section 323 of Indian Penal Code.

11. The learned counsel appearing for the appellants/accused has contended that in Exs.P.6 and P.8, it has been stated to the effect that the injured witnesses have been attacked by 3 male and 3 female. Likewise, in Ex.P.23, it has been mentioned as 3 male and 2 female, but the prosecution has not given proper explanation and further Ex.P.1 has been registered on 16.7.2002, whereas it has reached the court on 17.7.2002. Further, the specific evidence given by P.W.1 is that in hospital, some policemen have enquired the occurrence and subsequently, the Inspector of Police has enquired them. But the trial court, without considering the infirmities found on the side of the prosecution, has erroneously invited convictions and sentences against the appellants/accused and therefore, the convictions and sentences passed by the trial court are liable to be interfered with.

12. Per contra, the learned Additional Public Prosecutor has contended that in the instant case, three injured witnesses have been examined as P.Ws.1 to 3 and apart from their evidence, P.W.4 has given clear evidence to the effect that in the place of occurrence, the accused Nos.1 to 3 have attacked the injured witnesses, Kasirajan, Amudha and Tamil Selvi and also the deceased Manickam. The evidence given by P.Ws.1 to 4 have been clearly corroborated by medical evidence by way of filing Exs.P.6 to P.8 and P.23 and the trial court, after considering the evidence available on record, has rightly found the first accused guilty under section 324, second accused guilty under section 326 and third accused guilty under sections 326 and 323 of Indian Penal Code and therefore, the convictions and sentences passed by the trial court need not be interfered with.

13. As pointed out earlier, the prosecution has set the law in motion on the basis of Ex.P.1 alleged to have been given by the defacto complainant, viz., P.W.1. In Ex.P.1, it has been clearly stated about the occurrence and also the details of attack made by the accused 1 to 3 on the persons of the injured as well as the deceased. The defacto complainant, viz., P.W.1 and other injured witnesses, namely, Kasirajan and Amudha, viz., P.Ws.2 and 3 have consistently stated about the occurrence and details of attack. Apart from their evidence, P.W.4 Govindhammal has given clear evidence to the effect that in the place of occurrence, the accused has attacked the injured persons and also the deceased. The evidence given by them have been clearly corroborated by the Doctor, who has been examined as P.W.8 and filed Exs.P.6 to P.8 and P.23. Therefore, from the evidence given by P.Ws.1 to 4 and 6 coupled with Exhibits P.6 to P.8 and P.23, the Court can easily come to a conclusion that the occurrence has taken place as alleged on the side of the prosecution.

14. The first and foremost contention put forth on the side of the appellants/accused is that in Exhibits P.6 to P.8, it has been mentioned to the effect that the injured witnesses have been attacked by three male and three female persons. Likewise, in Ex.P.23, it has been mentioned as 3 male and 2 female and the prosecution has not given proper explanation with regard to this aspect.

15. At this juncture, it would be apropos to look into the material averments in Ex.P.1, wherein it has been clearly stated that the injured persons have been attacked by the accused 1 to 3. Since in Ex.P.1, no mention has been made with regard to involvement of female in the occurrence, the first contention put forth on the side of the appellants/accused cannot be accepted.

16. The second contention put forth on the side of the appellants/accused is that even though Ex.P.1 has been registered on 16.7.2002, it reached the court on 17.7.2002 and therefore, Ex.P.1 is nothing but a concocted document. It is a settled principle of law that mere delay in sending material documents or material objects, would not affect the case of the prosecution. Therefore, the second contention put forth on the side of the appellants/accused also goes out without merit.

17. The third contention put forth on the side of the appellants/accused is that P.W.1, in her evidence has clearly admitted to the effect that in the Hospital, some police have enquired her and subsequently, Inspector of Police has enquired. Even though some police have enquired P.W.1, Ex.P.1 has been registered by the Sub Inspector of Police and therefore, the evidence given by P.W.1 would not affect the case of the prosecution.

18. It has already been pointed out that P.Ws.1 to 3 are nothing but the injured witnesses and their evidence cannot be discarded. Further, their evidence has been clearly corroborated by the evidence given by P.W.4. Apart from their evidence, the case of the prosecution has been clearly proved by way of filing Exs.P.6, P.8 and P.23. Therefore, viewing from any angle, this Court is of the view that the prosecution has clearly established the guilt of the first accused under section 324, second accused under section 326, third accused under section 326 and also under section 323 of Indian Penal Code.

19. The learned counsel appearing for the appellants/accused has advanced his residual argument to the effect that the injured persons as well as accused 1 to 3 are related to each other and all of a sudden, the occurrence has taken place. Under the said circumstances, some leniency may be shown in awarding sentence.

20. As narrated earlier, the entire occurrence has taken place on 16.7.2002 only in respect of cutting of a Neem tree and further the entire occurrence has taken place on the spur of moment. Under the said circumstances, some leniency can be shown in awarding sentence under section 326 of Indian Penal Code against the accused 2 and 3 and to that extent, the present Criminal Appeal is liable to be allowed in part.

In fine, this Criminal Appeal is allowed in part. The conviction and sentence under section 324 of IPC against the first accused, under section 323 against the third accused are confirmed. Likewise, the conviction passed under section 326 against the accused 2 and 3 is also confirmed. However, the quantum of sentence imposed against them under the said section is modified as follows:

"The accused 2 and 3 are sentenced to undergo four years rigorous imprisonment instead of ten years rigorous imprisonment under section 326 of Indian Penal Code. No modification in respect of fine amounts. If the appellants/accused are not in duress, the trial court is directed to take appropriate steps to immure them in prison to serve out the remaining period of sentence."

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

ajr

To :

1. The Judicial Magistrate
Uthangarai

2. The Chief Judicial Magistrate
Dharmapuri @ Krishnagiri

3.The I Additional Sessions Judge, Krishnagiri

4.The Inspector of Police,
Singarapettai Police Station

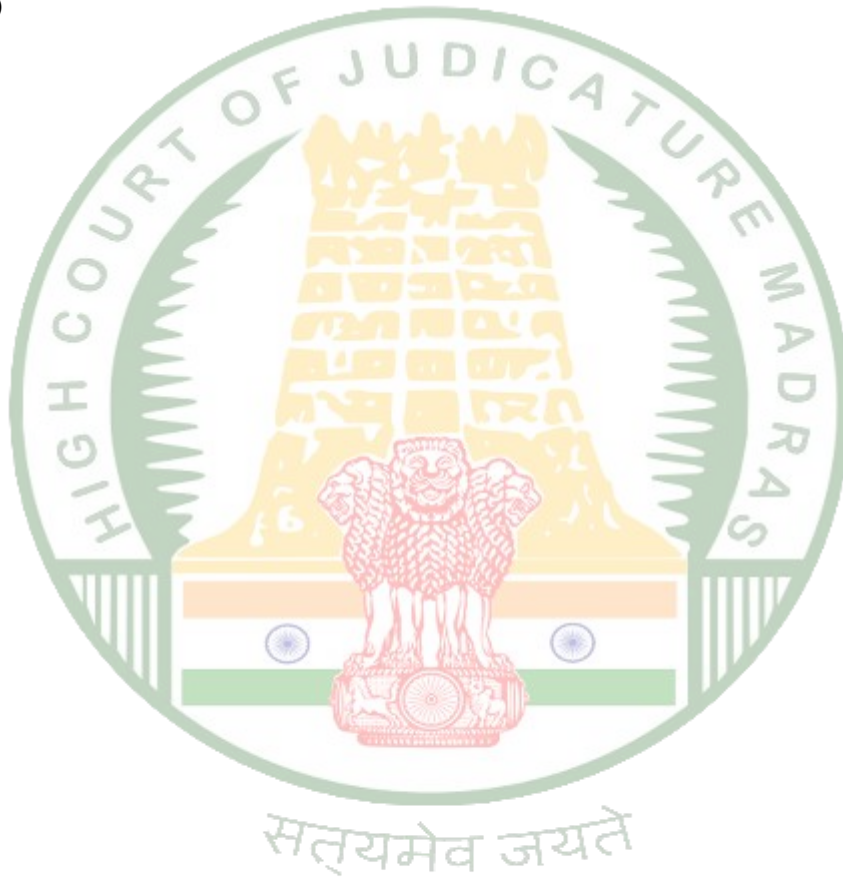
5. The Superintendent
Central Prison, Vellore

6. The Public Prosecutor, High Court, Chennai

1 cc to Mr.N. Mohideen Basha, Advocate, sr. 3815

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