

BAIL SLIP

CRL.A.NO.476 OF 2008

The Appellants/Accused 1 and 2 (Viz) (1) Venkatesan, Male Aged 31 years, S/o.Muthukaruppan and (2) Radhakrishnan, Male Aged 46 years, S/o.MuthuKrishnan were directed to be released on bail by the order of this Court dated 30.06.2008 and made in MP.1/2008 in Crl.A.No.476/2008.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2016

CORAM

THE HON'BLE DR.JUSTICE P.DEVADASS

Crl.A.No.476 of 2008

1.Venkatesan  
2.Radhakrishnan

.. Appellants/Accused 1 & 2

Versus

State: Rep. by :  
Inspector of Police,  
P.2, Otteri Police Station,  
Chennai.  
(Crime No.1291 of 2005)

.. Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C. against the judgment and conviction passed in S.C.No.19 of 2008 by order dated 20.06.2008 on the file of the 7th Additional Sessions Judge, Chennai.

For Appellant : Mr.S.N.Arun Kumar

For Respondent : Mr.P.Govindarajan  
Additional Public Prosecutor

## ORDER

A1 and A2 in the Sessions Case in S.C.No.19 of 2008 on the file of the learned VII Additional Sessions Judge, Chennai, are the appellants.

2. A1 and A2 were tried for charges under Section 341, 324, 307 of IPC. The Trial Court acquitted them from the charges under Section 307 of IPC however, convicted and sentenced them as detailed below:

| Accused | Conviction               | Sentence                                                                                                                                                                                |
|---------|--------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A1      | 341, 324, 324 r/w 34 IPC | (1) fine of Rs.500/-, i/d one week SI. under Section 341 IPC<br>(2) 3 years RI and fine of Rs.5,000/- i/d six months RI for each of the offences under Section 324, and 324 r/w 34 IPC. |
| A2      | 341, 324, 324 r/w 34 IPC | I) fine of Rs.500/-, i/d one week SI. under Section 341 IPC<br>(2) 3 years RI and fine of Rs.5,000/- i/d six months RI for each of the offences under Section 324 and 324 r/w 34 IPC.   |

Both the sentences were directed to run concurrently.

3. The case of the prosecution in brief runs as under:

(i) A1 and A2 are brothers. P.Ws.1 and 2 are their relatives. They are residing in neighbouring houses in Bricklin Road, Otteri, Chennai. There is some dispute between both sides in connection with a bicycle. In the circumstances, on 06.04.2015, at about 10.15p.m. when P.W.1 was standing in front of his house, A1 and A2 came. Some wordy altercation took place between P.W.1 and A1. A1 knifed P.W.1 on the right side of his chest, while A2 caught hold of him. P.W.2 raised alarm. A1 stabbed her on her left chest while A2 caught hold of her. P.W.3, daughter of P.Ws.1 and 2 witnessed the occurrence. P.Ws.1 and 2 went to Otteri police station. They have handed

over their blood stained clothes, (M.Os.2 and 3). They were sent to Kilpauk Medical College Hospital, Chennai. P.W.11 received Ex.P1-complaint from P.W.1. He registered this case (Ex.P10, FIR). P.W.9, Doctor, treated the injured P.Ws.1 and 2. He had noticed the following injuries upon them.

laceration injury below right nipple 8 X 4cm into depth on P.W.1

laceration injury 4 X 2cm in the medical side of left chest on P.W.2

(Ex.P.6 & P.7 accident register copies)

(ii) P.W.12 took up the investigation. He visited the scene. Prepared Ex.P4, Observation Mahazar in the presence of P.W.5 and another person. Drew Ex.P11, Rough Sketch of the scene place. Recorded the statement of witnesses. Seized M.O.1, knife from A1. Arrested the accused. Sent them to judicial custody. He has sent the M.Os. through Court. P.W.10, gave his scientific report Ex.P.9. Concluding his investigation, P.W.12 filed the Final Report before the concerned Court for offences under Section 311, 321 and 307 r/w Section 34 of IPC.

4. The committal Magistrate, complied the requirement under Section 207 Cr.P.C., committed the case under Section 209 Cr.P.C. to the Court of Sessions Chennai. The case was made over to VII Additional Sessions Judge, Chennai.

5. The Trial Court, upon hearing both sides and consideration of the case records framed charges under Section 341, 324, 307 r/w 34 of IPC. The accused have pleaded not guilty to the charges.

6. To substantiate the charges, prosecution examined P.Ws.1 to 12, marked Exs.P1 to P13 and exhibited M.Os. 1 to 3.

7. When the accused was examined on the incriminating aspects appearing in the prosecution evidence under section 313 Cr.P.C., they have denied the offence. No defence evidence.

8. Considering the arguments placed by both sides and the above evidence, the Trial Court convicted and sentenced A1 and A2, as stated already.

9. Learned counsel for the appellants would contend that the prosecution has not established its case beyond all reasonable doubts. Actually, it is before the start of the occurrence, quarrel arose between both sides. P.W.1 has assaulted A1 and that has been barked by the prosecution. Due to enmity the case has been foisted against the appellants. P.Ws.1 to P.W.3

cannot be believed. Further, during their examination under Section 313 of Cr.P.C., A1 has stated the genuineness of the crime.

10. On the other hand the learned Additional Public Prosecutor submitted that P.Ws.1 and 2 are injured witnesses. P.W.1 is the author of the FIR. The injuries on P.Ws.1 and 2 has been corroborated by the medical evidence of P.W.9. In the circumstances, the Trial Court has rightly convicted and sentenced them.

11. I have anxiously considered the rival submissions, perused the Trial Court's judgment and also perused the entire materials on record.

12. Now the question is whether the prosecution has established that A1 has committed the offence under sections 341, 324 of IPC and A2 under Section 324, 324 r/w 34 of IPC beyond all reasonable doubts.

13. Identity of the accused is not in dispute. They are close relatives. The evidence of P.W.1 is that on the occurrence day A1 has assaulted him with a knife has been spoken to by P.W.2, who, herself has suffered knife injury on her left side of the chest. It is her evidence that injury has been caused by A1. P.Ws.1 and 2 have spoken that while A1 committed the said overt act. A2 was present in the scene of crime and also participated in the occurrence and A2 had caught hold of them when they suffered knife injury one after the another. The injuries on their presence has been corroborated by the medical evidence of P.W.9. P.W.3, daughter of P.Ws.1 and 2 has also spoken to as to the knife injury sustained by her parents. Their evidence is cogent and acceptable. At the time of occurrence P.W.1 was standing in front of his house. There is no averment in the complaint, there is no evidence that A1 or A2 restrained had wrongfully prevented P.W.1 or P.W.2 to move in a direction according to their wish and will. Thus, an offence under Section 341 IPC is not made out.

14. P.Ws. 1 and 2 has suffered injuries at the hands of A1 and the injuries were caused by knife. Thus, an offence under Section 324 is made out against A1. As A2 was present at the scene of crime facilitating, A1's overt act and he also shared the common intention of A1. Thus an offence under Section 324 read with 34 IPC has been made out. P.Ws.1 and 2 and A1 and A2 are close relatives.

15. A1 and A2 are main offenders. They have knifed P.Ws.1 and 2. But A1 attacked P.Ws.1 and 2 facilitated by A2. In the facts and circumstances, the three years sentence is excessive.

16. In view of the foregoing, this appeal is allowed in part. The conviction under Section 341 IPC is set aside. The conviction under Section 324 of IPC as against A1 and the conviction under Section 324 r/w 34 IPC against A2 are confirmed. The three years sentence of imprisonment are set aside. Instead they are sentenced and it is reduced to the period already undergone. The sentence of fine imposed upon A1 and A2 is maintained. They are entitled to set off under Section 428 of Cr.P.C. the fine amount of Rs.5,000/- each shall be paid as compensation to P.Ws.1 and 2 each, under Section 357 (1) Cr.P.C..

-s/d-

Assistant Registrar (CSVII)

True Copy

Sub-Assistant Registrar

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To

1. The VII Additional Sessions Judge, Chennai.
2. The V Metropolitan Magistrate Egmore, Chennai
3. The Chief Metropolitan Magistrate, Egmore Chennai
4. The Superintendent, Central Prison, Puzhal, Chennai
5. The Inspector of Police, P.2, Otteri Police Station, Chennai.

6.The Public Prosecutor, High Court,  
Chennai,

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

+1 cc to Mr.S.N.Arun Kumar Advocate sr.22093

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