

Bail Slip

The Petitioner/Accused namely Suresh @ Pallu Suresh S/o Munusamy aged about 29 years was directed to be released on Bail as per order of this Hon'ble Court dated 14.3.2014 made in CrI MP 1/2014 in CrI.A.No.115/2014 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :10.01.2017

C O R A M

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

Criminal Appeal No.115 of 2014

Suresh @ Pallu Suresh

... Appellant/Accused

Vs

State Rep. By its
Inspector of Police,
N.1 Royapuram Police Station,
Chennai.
(Cr.No.104/2012)

... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 378 Cr.P.C., praying to call for the records in S.C.No.221 of 2012 on the file of the Learned III Additional Sessions Judge, Chennai and set aside the order dated 24.02.2014.

For Appellant : Mr.P.Prince Premkumar

For Respondent : Mr.R.Ravichandran
Government Advocate (CrI. Side)

JUDGMENT

The Appellant/Accused has filed the instant Criminal Appeal (as an aggrieved person) as against the Judgment dated 24.02.2014 in S.C.No.221 of 2012 passed by the Learned III Additional Sessions Judge, Chennai.

Preface:

2.The Learned III Additional Sessions Judge, Chennai, while passing the impugned Judgment on 24.02.2014 in S.C.No.221 of 2012, at paragraph 20, had observed the following:

"20.P.W.1 in his evidence would depose that on 28.01.2012 at about 9.30 P.M. by standing in front of his house, which actually belonged to P.W.2, the accused came there and abused him in filthy words as "njtoah igah" and uttering as "cd;id Fj;jp bfhiy gz;zpdhy; jhd;"and subsequently stabbed over his right chest. There is no evidence to hold that the accused wrongfully restrained P.W.1 and thereafter committed the occurrence. In Ex.P.1 also the abusive the words uttered by the accused found place. P.W.1's house is situated at S.N. Chetty Street only. The occurrence had taken place when P.W.1 was standing on the street only. The Doctor has not deposed that P.W.1 sustained any simple injury over his face. Therefore, I found the accused not guilty under Section 323 I.P.C., P.W.1 never stated that the accused threatened anybody else including himself with dire consequences. Therefore, I found the accused guilty under Sections 294(b) and 307 I.P.C., only and not guilty under Sections 341, 323 and 506(ii) I.P.C."

and in respect of an offence under Section 294(b) imposed a fine of Rs.250/-, in default of payment of fine, directed him to undergo one week simple imprisonment and in respect of an offence under Section 307 I.P.C. imposed a punishment of five years Rigorous Imprisonment and directed him to pay a fine of Rs.1,000/-, in default of payment of fine, he was directed to undergo simple imprisonment for three months.

3. Being dissatisfied with the Judgment dated 24.02.2014 passed by the trial Court in S.C.No.221 of 2012, the Appellant/Accused has preferred the present Criminal Appeal contending that the trial Court had failed to appreciate the various inconsistencies of the evidence adduced by the witnesses and further, in the instant case, there was no proper and clear 'Corroborative Evidence' tendered by the prosecution.

Appellant's Contentions:

4. The Appellant/Accused had raised a plea that the alleged friend Annian @ Dharmaraj who accompanied P.W.1 was not examined and produced before the trial Court. Also, on behalf of the Appellant, a stand is taken that the house owner of the injured as well as the Accused had not supported the prosecution

case and the person who brought the victim to the hospital was not examined and produced before the trial Court.

5. Besides the above, it is the version of the Appellant that delay in forwarding the First Information Report was not considered by the trial Court and also the delay aspect pertaining to other incriminating materials and the evidence were not considered by the trial Court. It is also projected on the side of the Appellant that the trial Court had failed to appreciate the evidence in its proper perspective.

Respondent's Submissions:

6. Conversely, it is the submission of the Learned Government Advocate (Crl. Side) that before the trial Court, in the main case, on behalf of the Respondent/Prosecution as many as witnesses P.W.1 to P.W.9 were examined and Exs.P1 to P10 were marked. Also, M.O.1 - Knife was marked. As a matter of fact, the trial Court had analysed the entire gamut of oral and documentary evidence available on record and came to a consequent conclusion that the Appellant/Accused was guilty in respect of an offence under Section 294(b) and 307 I.P.C. and imposed necessary punishments. Further, the said conclusion is free from legal infirmities.

7. In this connection, the Learned Government Advocate (Crl. Side) for the Respondent informs this Court that the Appellant was found not guilty in respect of the offence under Sections 341, 323 and 506(ii) I.P.C. and he was acquitted in respect of these charges.

8. To appreciate the rival contentions in a wholesome and proper perspective, this Court necessarily makes a useful reference to the evidence of prosecution witnesses.

Summation of Evidence of Witnesses:

9. It is the evidence of P.W.1 that he knows the Accused (Appellant) and that on 28.01.2012 night at about 9.30 P.M., he was talking along with Anniyan @ Dharmaraj at the entrance of Door No.109 S.N.Chetty Street, Royapuram and at that time, the Appellant/Accused came to him and stated that because of him, the house owner was asking him to vacate the house and by uttering the words 'bastard son', he stabbed him on his cheek and when he asked him as to why the Appellant creating a problem with him, at that time, the Appellant stabbed him on his right side chest with the knife that he was possessing in his hand.

10.P.W.1 proceeds to add in his evidence that he raised hue and cry and later the nearby people had gathered and one Tirupathi and Panneerselvam after seeing the knife got afraid and stood there and at that time, Dharmaraj, who was talking to him after seeing the knife ran away from the scene of occurrence and that he was taken to Stanley Hospital by one Chandran and that he was examined by the Inspector of Police at the Hospital when he was an inpatient and a complaint - Ex.P1 statement was recorded and M.O.1 was the weapon used by the Appellant at the time of incident.

11.P.W.1 (in his cross examination) had stated that he went to Hospital along with Chandran and that his house owner had not accompanied him to the Hospital and he had informed the Doctor as to how he had sustained the injury and Chandran gave information to the Police and the Police came there and that he does not know about the person who wrote the complaint.

12.P.W.2 in his evidence had deposed that he knows the Appellant/Accused and he had informed the Appellant to vacate from his house but he continued to reside in his house and on 28.01.2012 at about 9.30 P.M. in front of his entrance, P.W.1 and Dharmaraj were indulging in talking at that time, when he came from his second floor of his house (after hearing the noise), the Appellant (Suresh) gave a blow on the cheek of Elayaraja. Later, the Appellant with a knife in his hand and stabbed P.W.1 on right side chest and also threatened that if anybody come to catch him, he would murder them and that P.W.1 was taken to hospital and further that he was examined by the Police both at in his house and at the police station. Later, the Appellant in the month of June had vacated his house.

13.It is the evidence of P.W.2 (in cross examination) that he does not know as to the happening of occurrence and he does not know about the happening of occurrence between the P.W.1 and the Appellant directly and only after being informed he came to know about the incident.

14.P.W.3 in his evidence had deposed that when he was proceeded to Panaimarathotti, at the Panaimarathotti corner the Appellant there with a knife and if seen the knife, he could identify the same (M.O.1) and that the Appellant had given a confession statement in which he had affixed his signature as a witness along with his friend Baskar.

15.Continuing further, P.W.3 had stated in his evidence that the Appellant/Accused gave a confession that he stabbed P.W.1 with his knife and the admitted portion of the confession Ex.P3 in which he had affixed his signature and also that in the Seizure Mahazar - Ex.P4 he had affixed his signature and that he was examined by the Police. P.W.3 in his cross examination had deposed that he does not know as to when the occurrence took place and only he came to know about the stabbing incident after being informed by the police and only at that time, he had seen M.O.1 and he had not properly seen as to whether in the knife there was blood stain and that already he does not know the Appellant/Accused.

16.P.W.4 (Doctor) in his evidence had deposed that when he was on duty on 28.01.2012 night at about 10.05 P.M. at the emergency ward of the Government Stanley Hospital, P.W.1 - Elayaraja (aged about 29 years) was brought by one Chandran (as an common person) as per his version, P.W.1 was attacked by a known person on 28.01.2012 at about 9.30 P.M. and when he was examined him at that time, he found that his breathing was at a low pressure and that his right side chest, there was a stab injury measuring 5cm below the skin and he administered an injection to him and examined the x-ray and admitted him for further treatment at Ward No.9 as an inpatient and that there was a possibility that the injury to P.W.1 could occur in order to that of M.O.1. Apart from that, he had also stated in his evidence that he gave Ex.P5-Accident Register copy.

17.P.W.5 in his evidence had stated that on 28.01.2012 at about 9.30 P.M. in the night he was viewing T.V. and at that time, P.W.1 and his friend were talking and that the Appellant (Suresh) stabbed P.W.1 on is right side chest and there was a dispute between the Appellant/ Accused and the house owner and that he knows the Appellant/Accused and that P.W.1 was taken to the hospital with blood injury and that he was examined by the Inspector.

18.P.W.6 in his evidence, had deposed that when he was doing D.T.P. Job at the place where he was carrying out his job and in the inside of the compound wall on 28.01.2012 at about 9.30 P.M. there was huge crowd and at that time, he heard that the Appellant (Suresh) had stabbed a person and he went and saw on the next day P.W.1 (Elayaraja) at the hospital and the Inspector of Police had drew a plan of the occurrence place and in which he had affixed his signature and also he had affixed his signature in Ex.P6 - Observation Mahazar.

19.It is the evidence of P.W.7 (Doctor) that on 28.01.2012 he was on duty at the Government Stanley Hospital, he gave treatment to inpatient Elayaraja (P.W.1) and he informed that he was stabbed on his chest by a person and he found punctured wound measuring 3 x 2 x 5 cm and X-ray and C.T. were taken and for stopping the oozing out of the blood, a minor operation was performed and after recovering from treatment, he was discharged from hospital on 05.02.2012 and he issued Ex.P8 - Injury Certificate stating that it was a 'Grievous Injury' and further that the injury sustained by P.W.1 could occur with the use of M.O.1 - Knife.

20.P.W.8 (Assistant Commissioner of Police) in his evidence had deposed that when he was serving as a Inspector of Police (Law and Order) at Royapuram Police Station on 28.01.2012 night at about 12 P.M. he received an information from the Stanley Hospital and proceeded to hospital and examined P.W.1 (Elayaraja) and obtained a complaint statement and also, his signature and later came to the police station and based on the complaint of P.W.1 he registered a case in Royapuram Police station Crime No.104/12 under Section 341, 294 (b), 3434, 307 and 506(ii) I.P.C. and that Ex.P.9 was the First Information Report.

21.P.W.8 adds in his evidence that he went to the scene of occurrence after inspected the same, examined Paneerselvam, Tirupathi, Chandran, Dayanandhan and obtained a statements and also in the presence of witnesses, he inspected the occurrence place and prepared the Observation Mahazar and Rough Sketch (Ex.P10) and apart from that he examined witnesses Shanavas, Elavarasan and recorded their statements and on the day itself, he examined Dr.Muthunarayanan (P.W.4) who gave treatment to P.W.1 and obtained his statement.

22.Besides the above, P.W.8 in his evidence had deposed that when he arrested the Appellant/Accused on 30.01.2012 at about 9.00 P.M. in the night near Royapuram Panaimarathotti, he recorded the voluntary confession statement given by the Appellant/ Accused in the presence of witnesses Lakshmanan and Baskar and recorded the same. Further, based on Ex.P3, the admitted portion of the confession statement, he went to the Appellant/Accused house and seized a knife with plastic handle - Ex.P4, Samsung phone, Nokia Cellphone in the presence of witnesses Lakshmanan, Baskar and M.O.1 knife was one seized under Ex.P4 and he examined Lakshmanan, Baskar and obtained the statements and also sent the Appellant/Accused to the Judicial Custody with a report and also through Form No.95, sent the case properties to the Court and thereafter, his successor one

P.Thangavelu took charge as Inspector of Royapuram Police who did the further investigation in the case.

23.P.W.9 - Inspector of Police (in his evidence) had stated that when he was serving as Royapuram Inspector of Police 31.01.2012 he took up the investigation of the case in Royapuram Police Station Crime No.104/2012 under Sections 341, 323, 294 (b), 307, 506(ii) I.P.C. and he examined the arrested Accused (Appellant) who was involved in the same Police Station Crime No.112/2012 under Sections 341, 384, 394, 427, 336, 506(ii) I.P.C. and the Appellant gave an information about the present case and therefore on 31.01.2012 at about 10.45 a.m. he arrested the Appellant/Accused in the present case and he submitted the knife to the Court involved in the commission of offence in the present case and the knife in Crime No.112/2012 (which was the same) and had not recorded the statement of witnesses P.W.1 to P.W.8 because they repeated the same version as they projected earlier and he examined Dr.Balaji (P.W.7) and obtained a Wound Certificate and after completion of investigation laid a final report on 15.03.2012 against the Appellant/Accused under Sections 341, 323, 294(b), 307 and 506(ii) I.P.C.

24.A mere running of the eye of Ex.P1 - Complaint dated 28.01.2012 of P.W.1 (Complainant) shows that the Appellant/Accused had beat him firstly on his cheek by uttering the obscene words 'son of a bastard if you were allowed to remain alive, there would not be any peace' and when he asked the Appellant/Accused as to why he was picking up quarrel with him at that time, the Appellant took a knife (hidden) from his hip and by uttering another obscene word, he had stated that the Complainant was speaking against him and by shouting that he would not spare him without murdering him, with force, stabbed him on his right side chest, (vital organ). From this, it is candidly quite clear that the Appellant/ Accused had caused an injury to P.W.1 with an intention and the knowledge to commit murder. As a matter of fact, P.W.4 (Doctor) on examination of P.W.1 (Complainant) found a low pressure for his right lung and also P.W.7 (Doctor) saw a blood oozing out from the injury and in fact, he performed a surgery to stop the bleeding. To put it precisely, P.W.7 (Doctor) had given a certificate Ex.P8 opining that the injury sustained was of a grave 'Grievous Nature'.

25.It comes to be known that P.W.1 (Complainant) had deposed that on 28.01.2012 at about 9.30 P.M. when he was standing in front of his house (the house belonging to P.W.2), the Appellant came there and abused him in obscene/vulgar words and later stabbed him over his right chest. Since there was no evidence on the side of the Respondent/Prosecution that the Appellant had

wrongfully restrained P.W.1 and committed the occurrence, the Appellant was rightly not found guilty under Section 323 I.P.C. by the trial Court. Also, P.W.1 (Complainant) had not stated that the Appellant had threatened any other person (including himself) with dire consequences and therefore, the finding of not guilty arrived at by the trial Court in respect of Section 506(ii) I.P.C. is free from any flaw, in the considered opinion of this Court.

26. At this stage, it is to be pointed out by this Court that to sustain/secure a conviction under Section 307 I.P.C., it is not necessary that bodily injury capable of causing death should have been inflicted. If an individual knows that a particular result will follow from his act, then, he should be deemed to intend such result by the act. After all, a Court of Law is to visualise whether the act, irrespective of its result, was done with an intention or knowledge under the circumstances specified in Section 307 I.P.C. For fastening of liability, it is sufficient, if an endeavour had gone so far, that the crime would have been completed, but for the extraneous intervention which frustrated its consummation.

27. That apart, under Section 307 I.P.C., the onus is on the prosecution to establish (i) the act i.e. Actus Reas (ii) Mens Rea (guilty mind/intention). For the offence under Section 307 I.P.C. all the essentials of murder, other than the victim's death are very much necessary, as opined by this Court. The deciding factor is purely the 'Knowledge or Intention' and not the gravity of injury. Furthermore, the circumstances that the injury inflicted by the Accused was simple or major would not ruled out the invocation of Section 307 I.P.C.

28. In so far as the charges under Sections 294(b) and 307 I.P.C. levelled against the Appellant/Accused are concerned, this Court comes to an inevitable and irresistible conclusion that in the present case, there is enough evidence adduced on behalf of the Prosecution to show that P.W.1 (Complainant) had sustained a grievous injury on his right chest and in fact, the said injury was caused by the Appellant/ Accused and furthermore, for uttering the vulgar language 'bastard son' and further stating that only if you were murdered etc. would show that the charge levelled against the Appellant/Accused under Section 294(b) was made out by the Respondent/Prosecution. Suffice it for this Court to point out that the Respondent/Prosecution had established the offence under Sections 294(b) and 307 I.P.C. beyond all shadow of doubt. However, in regard to the imposition of fine of Rs.250/- in respect of the offence under Section 294(b), this Court is of the considered view that it is marginally on the higher side and by exercising its discretion, reduces the same to that of

Rs.125/-. But, in regard to the imposition of punishment of five years Rigorous Imprisonment awarded by the trial Court, in respect of an offence under Section 307 I.P.C., this Court, considering the fact that the Appellant is Young (aged 29 years at the time of occurrence and now aged 33 years), reduces the punishment from 5 years to 3 ½ years of Rigorous Imprisonment, to subserve the ends of Justice. In regard to the imposition of fine of Rs.1,000/- for an offence under Section 307 I.P.C. by the trial Court, the same is reduced by this Court to Rs.500/-. Consequently, the Appeal succeeds.

29. In fine, the Criminal Appeal is allowed. The Judgment of the trial Court dated 24.02.2014 in S.C.No.221 of 2012 stands modified on above terms. The Learned III Additional and Sessions Judge, Chennai is directed to take necessary steps to secure the presence of the Appellant/Accused and to immure him in Prison to serve the remaining period of sentence. It is open to the Appellant/Accused to file necessary petition before the trial Court (under Criminal Rules of Practice) for refund of the balance fine amount in S.C.No.221 of 2012 on the file of the trial Court and to seek appropriate remedy in accordance with Law.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

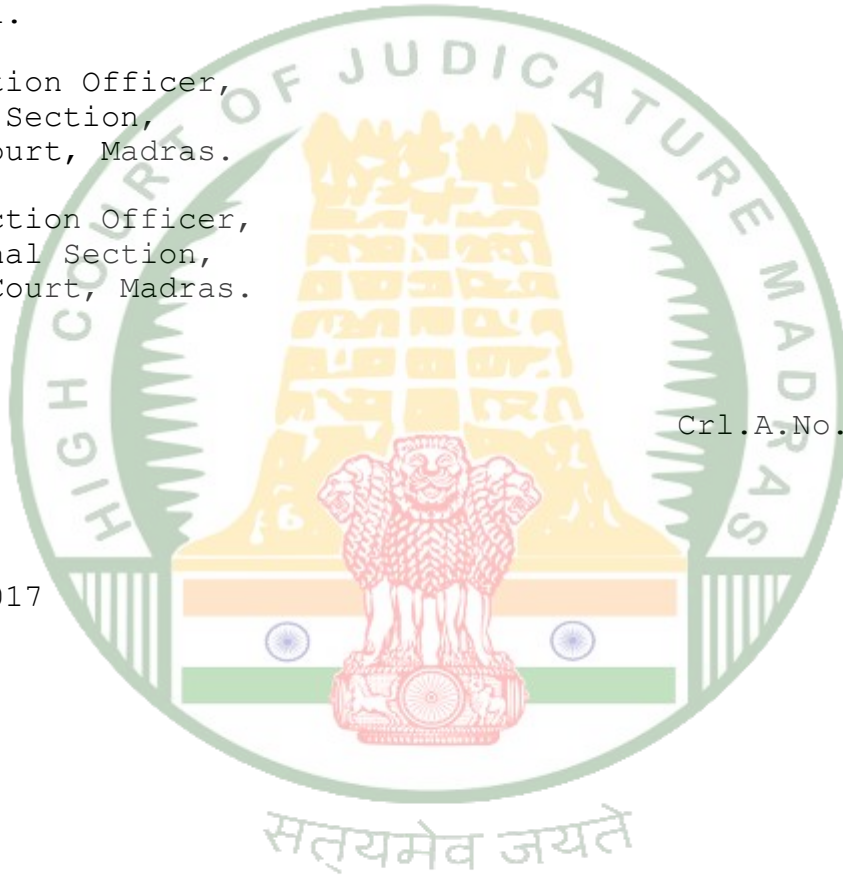
Sgl
To

- 1.The III Additional Sessions Judge,
Chennai.
- 2.The Inspector of Police,
NlRayapuram Police Station,
Chennai.
- 3.The Metropolitan Magistrate,
No.XIV, George Town, Chennai.
- 4.The Chief Metropolitan Magistrate,
Egmore, Chennai.

- 5.The Public Prosecutor,
High Court, Madras.
- 6.The Superintendent,
Central Prison, Puzhal, Chennai.
- 7.The Director General of Police,
Mylapore, Chennai.
- 8.The District Collector,
Chennai.
- 9.The Section Officer,
Record Section,
High Court, Madras.
- 10.The Section Officer,
Criminal Section,
High Court, Madras.

Crl.A.No.115 of 2014

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