

Bail slip

The Appellant/Accused No.2 Viz Ramesh S/o.Narayanan was released on bail in CrI mp.No.1/14 is CA.No.121/14 as per order of this Court dated 10/03/2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2017

CORAM

THE HONOURABLE MR. JUSTICE M.VENUGOPAL

CrI.A.No. 121 of 2014

Ramesh

... Appellant / Accused No.2

Vs.

State Rep. By
The Inspector of Police,
Keelapalur Police Station,
Keelapalur,
Ariyalur District

... Respondent / Complainant

PRAYER: Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure to set aside the conviction passed by the Learned Principal Sessions Judge, Ariyalur Division, Ariyalur dated 19.02.2014 made in Sessions Case No.24 of 2013.

For Appellant : Mr.V.Rajamohan

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

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J U D G M E N T

The Appellant / A.2 has preferred the instant Criminal Appeal before this Court as against the Judgment dated 19.02.2014 in S.C.No.24 of 2013 passed by the Learned Sessions Judge, Ariyalur Division, Ariyalur.

2. The Learned Sessions Judge, Ariyalur while passing the impugned Judgment at Paragraph No.23 of the Judgment had

observed as under:-

"Thus all these witnesses have clearly stated that the 1st accused had given a punch whereas the 2nd accused gave a blow with an iron rod. The blow given by the 2nd accused has been sufficient to cause a fracture in the shoulder bone of the P.W.1 and hence he has caused a grievous injury over the P.W.1. P.W.12 Dr.Balasubramaniam has let in evidence and marked Ex.P.6 series, which contains the Wound certificate, Accident injury report and the case summary which reveals that the P.W.1 has suffered a comminuted fracture clavicle left region. The doctor has not chosen to state that the injury caused by the 2nd accused is such nature that it is likely to cause death to the P.W.1. In the absence of any such evidence it can be held that the nature, mode and manner of attack would attract the provisions of the ingredients of the penal Section 325 of IPC and shall not attract the penal provisions of the Section 307 of IPC."

3. Further, the trial court at Paragraph No.24 opined that "... In this context the learned prosecutor submitted that immediate after the attack the P.W.1 got himself admitted to the private hospital namely Geethanjali Hospital at Trichy and the person who got him admitted therein was one Manivel. The said Manivel has been examined before the court and he has confirmed about the admission of the P.W.1. There has been no specific and elaborate evidence on the aspect of the passing of the medico-legal message to the jurisdictional police by the said hospital authorities. In the absence of which, it is found that the police at Ariyalur had been on lapse and the delay has been attributed to the slackness on the part of the police agency. In view of this explanation the delay is properly explained and the reasons for the delay is justified. Since this delay does not affect the root of the case this court discards this aspect and proceed to consider the case of the prosecution rather to discard the case of the score alone."

4. Moreover, the trial court at Paragraph Nos.25 and 26 had observed as follows:

"25..... In this context it is found that there is no reference as to whether such a version was stated by the P.W.1 or by P.W.8 Manivel. During the cross examination the P.W.12 has stated that this endorsement in Ex.P.6 had been written by one Pattappan who was the then duty doctor in the said hospital at the time of the admission of P.W.1. Unless otherwise the said Pattappan has been examined before this Court it shall not be possible to decide the case on this aspect. Therefore the non-examination of the said Doctor does

not help the defense to substantiate their contention. The third aspect is that the crime number has been mentioned in the Ex.P.6 and this has been done even prior to the registration of the case. In this context on a close perusal of the Ex.P.6 it is found that P.W.1 has been admitted on 08.10.2010 and has been discharged on 13.10.2010 and during this intervening period the case has been registered. Therefore there is no impropriety in the meaning of the crime number in the Ex.P.6. The learned counsel pointed out several conflicts in the evidence let in by the witnesses and a close perusal of the same it is found that they are trivial in nature and do not affect the root of the case. Hence the plea raised by the defense is rejected.

26. Thus it is found that the 1st accused has made an attack punishable under Section 323 of IPC whereas the 2nd accused has made an attack punishable under Section 325 of IPC. Hence the four charges are now altered to have only Section 323 as against the 1st accused and Section 325 as against the 2nd accused and the prosecution has been able to establish the commission of the offence punishable under these two penal section. Therefore the 1st accused is held guilty of the modified Section 323 of the IPC and the 2nd accused is held guilty of the modified Section 325 of IPC."

and ultimately found A.1 guilty (Father of Appellant/A.2) in respect of an offence under Section 341 of IPC and found the present Appellant / A.2 not guilty in respect of an offence under Section 341 of IPC.

5. In so far as the charge under Section 294(b) of IPC was concerned, the trial court found A.1 not guilty under Sections 294(b) of IPC in fact, the trial court had modified the Sections and found the A.1 guilty under Section 323 of IPC and found the present Appellant / A.2 guilty under Section 325 of IPC.

6. At the outset, it is to be pointed out by this Court that since the Petitioner / Appellant / A.2 was convicted and sentenced to undergo One Year Rigorous Imprisonment under the modified Section 325 of IPC, he has preferred the instant Appeal (As an aggrieved person) in regard to the Judgment of the trial court passed in S.C. No.24 of 2013 dated 19.02.2014.

7. Questioning the Judgment of Conviction passed by the trial court in respect of the Petitioner / Appellant / A.2, the Appellant / A.2 has focussed the instant Criminal Appeal by

contending that the trial court should have seen that in Ex.P.6, Wound Certificate, it was mentioned that three unknown persons had caused the attack of P.W.1, but the case of the prosecution is in conflict with Ex.P.6.

8. The Learned Counsel for the Appellant urges before this Court that before the trial Court, the author of Ex.P.6, Wound Certificate was not examined and as such, the contradiction viz., the assault was made by three unknown persons, is made mention of in Ex.P.6 could not be decided.

9. The Learned Counsel for the Appellant takes a stand that it is the prime duty of the Respondent / Prosecuting Agency to examine the author of Ex.P.6 and his non-examination is fatal to the version of the prosecution case.

10. The Learned Counsel for the Appellant projects an argument that the trial court had only considered the evidence of witnesses (in chief examination) and had failed to consider the evidence of witness (in cross examination) and this had resulted in serious miscarriage of justice.

11. By means of a reply, the Learned Government Advocate (Crl.Side) for the Respondent / Complainant submits that the trial court had analysed the evidence of prosecution witnesses and rightly convicted the A.1 guilty in respect of the modified Section 323 of IPC and also found the present Appellant / A.2 guilty in respect of an offence under Section 325 of IPC. In so far as A.1 was concerned, he was convicted and sentenced to pay a fine of Rs.500/- in respect of an offence under Section 341 of IPC, in default of payment of said fine, he was directed to undergo one week Simple Imprisonment and also he was directed to pay a fine of Rs.1,500/- under Section 323 of IPC, in default of payment of fine, directed him to undergo one week Simple Imprisonment.

12. It is to be pointed out by this Court that the present Appeal is preferred by the Appellant / A.2 (A.1's Son). In this regard, the Learned Government Advocate (Crl.Side) takes a plea that the trial court had rightly convicted the Petitioner / Appellant / A.2 in respect of an offence under Section 325 of IPC and sentenced him to undergo one year Rigorous Imprisonment. The said finding of guilt arrived at by the trial court in respect of the Petitioner / Appellant / A.2 is free from flaw.

13. It is to be noted that Ex.P.1, Complaint was given by P.W.1 (complainant) on 12.10.2010. In reality, when P.W.1 / Complainant was taking treatment as inpatient at Trichy Geethanjali Hospital on 12.10.2010, the complaint was received from him and the case was registered in Keelapalur Police

Station in Crime No.275 of 2010 under Sections 294(b), 323 and 307 of Indian Penal Code.

14. A perusal of the Ex.P.1, Complaint (given by P.W.1) points out that on 08.10.2010 at about 7.30 a.m. in the morning, when P.W.1 was proceeding in his own Hero Honda Two Wheeler bearing registration no.TN45 Y 4813 to his Lemon garden for the purpose of watering, on his bike, one Saravanavel of Malathankulam was the pillion rider and he was holding the empty water drum and at that time, one Narayanan son of Rangasamy of his street, in front of his house, there was a pathway dispute and because of previous enmity, waylaid his vehicle and uttered the words 'Bastard's son' and punched him on his face with his hand and also snatched the key of his vehicle. Further, the blood was coming out from the face of P.W.1 and at that time, the present Appellant / A.2 (Ramesh) came near him and with an iron rod stated that 'he (P.W.1) will not be left without killing him etc., and after uttering these words, he beat him with the said Log on his head and when he slanted his head, the hit fell on his left shoulder and his clavicle bone was fractured. Apart from that, Narayanan (A.1 - father of A.2) with a log in his hand had beat him repeatedly on his body and this incident was witnessed by Ravichandran's wife Parimala and also this incident was known to Saravanavel Son of Sengamuthu and Masilamani son of Dhonar and later after coming to know about the incident, Manivel Son of Ganesan came to Trichy Geethanjali Hospital and admitted him and that he was examined by the police of Keelapalur Station and he informed him about the happening of occurrence and prayed for taking requisite action based on Ex.P.1, complaint, given by him.

15. Ex.P.5, FIR was registered by the Spl. Assistant Sub-Inspector, Keelapalur Police Station on 12.10.2010 in Crime No.275 of 2010 under Sections 294(b) 341, 323 and 307 of Indian Penal Code. In Ex.P.5- FIR, the date of occurrence was mentioned as 08.10.2010 at about 7.30 a.m. In fact, the information was received at the Police Station on 12.10.2010 at 22.00 hrs. P.W.1 had given Ex.P.1 - Complaint. In Ex.P.5, the accused were mentioned as Ramesh (the Appellant / A.1's son) and Narayanan, A.1 (father of A.2) in Sl.No.8 of Ex.P.5, FIR, it was mentioned that the delay in reporting the complaint was because of P.W.1/ Complainant and coupled with the fact that information was obtained from the hospital and the case being registered.

That apart in Ex.P.5, the distance between the place of occurrence and the Keelapalur Police Station was mentioned as approximately 1 Km Southwest.

16. In the present case, P.W.1 (Complainant) had stated that on 08.10.2010 at about 7.30 a.m. in the morning when he was proceeding to his field, from his house for watering purpose, in

his Hero Honda bike bearing Registration no. TN45 Y 4813, at that time, the present Appellant / A.2 and his father Narayanan (A.1) waylaid him and after snatching the key of the bike scolded him with vulgar words, such as 'Bastard's son', etc., and when he asked A.1 to return his key at that time, A.1 (Narayanan - Father of Appellant / A.2) punched him on his face and thereafter, he stated that 'All because of you there is a problem get yourself Lost' and by so saying, the present Appellant / A.2 (Ramesh) took a Log (M.O.2) and with his aid, beat him and the said injury fell on his shoulder and unable to bear the said pain when he fell down at that time, A.1 further beat him with a Log and immediately on his face the blood came out and since there was a sign of getting unconscious, he sat down in that posture.

17. P.W.1 adds in his evidence that the aforesaid incident was witnessed by someone and they shouted that they had murdered, came running in front of him and among those, who came running P.W.5 (Sellaperumal) P.W.4 (Lakshmanan) P.W.3 (Parimala) separated with a view that the Accused should not further attack him and that he suffered a fracture on his shoulder and that P.W.8, Manivel took him to the Trichy Geethanjali Hospital and when he was admitted as inpatient, the police obtained Ex.P.1, Complaint wherein he had affixed his signature. Besides this, the rod shown before him was a big one used by the Appellant / A.2 at the time of commission of offence.

18. P.W.2 (Pillion rider) had deposed that on the day of occurrence he was sitting behind P.W.1's motor cycle and when they have passed A.1's house at a distance approximately 10 Kms, A.1 waylaid the P.W.1's two wheeler and there was a altercation between P.W.1 and A.1 and at that time, A.1 took the key of P.W.1 and later he does not know as to what had happened. In fact, P.W.2 was treated as a 'Hostile Witness.'

19. P.W.3 in his evidence (in cross examination) had deposed that P.W.1 is his brother through his mother's side and that P.W.1 after the incident went to Keelapalur police station and thereafter went to the hospital and when he went to the hospital, the police had not arrived there and that on the day of occurrence, the Police had not inspected the scene of occurrence and when he went to the place of occurrence, there were four or five persons and that the two accused ran away and when he went to the place of occurrence at that place only P.W.1 (his uncle) was there.

20. P.W.4 in his evidence had deposed that one day P.W.1 along with P.W.2 went to his field at that time the Accused (A.1 and A.2) came to that place, they snatched the bike's key and each one of them were indulged in beating and when he went and saw he saw an injury on the left shoulder of P.W.1 and P.W.1 had

informed him that after beating, the Accused were running away and that he had seen these details directly. P.W.4 was treated as 'Hostile witness'.

21. P.W.5 in his evidence had deposed that there was dispute between A.1 (Narayanan) and P.W.1 (complainant) in respect of pathway and that when P.W.1 came in his bike, he was waylaid by A.2 who snatched his bike key and at that time, when P.W.1 got up from his bike, the present Appellant before this Court and A.1 scolded him in obscene words and also beat on the shoulder of P.W.1 with iron rod. At that time, A.1 with the wooden log by uttering obscene words beat P.W.1 and that he had seen the incident and at that time, one Parimala, Lakshmanan were there and also there was a big crowd and that he was examined by the police and P.W.1 was taken to hospital.

22. P.W.5 (in Cross-examination) had deposed that he went to the place of occurrence five minutes after the occurrence and that time his brother was there when he went there two accused ran away and he had not visited hospital to see his brother.

23. P.W.6 in his evidence had deposed that he knows the witnesses and the Accused. P.W.1 was beat by A.1, Narayanan with wooden log and the iron rod and nearby there were other witnesses and the injured Narayanan (P.W.1) was taken to the hospital and later he left the place and subsequently four days after he was examined by the police. As a matter of fact, P.W.6 was treated as 'Hostile Witness'

24. P.W.7 in her evidence had deposed that on 08.10.2010 when her husband, P.W.1 and P.W.2 were proceeding to Lemon garden for watering purpose and at that time, A.1 scolded P.W.1 in vulgar words and snatched his key and also that A.1 beat her husband, P.W.1 with Bamboo stick and A.2 (the present Appellant) beat her husband, P.W.1 with Iron rod (M.O.2) and because of them, her husband P.W.1 suffered an injury on his left shoulder and that the Accused ran away from the place and the other witnesses were with her and separated the accused and that she was examined by the police.

25. P.W.7 (wife of P.W.1) (in her cross examination) had stated that three days after the incident she went to the hospital to see her husband and that two or three days after the occurrence she was examined by the police at her husband's house.

26. P.W.8 in his evidence had stated that due to personal work, he came from his village to Keelapalur, at 7.30 a.m., approximately and went to Ananthakurichi side, large crowd were assembled and that he was informed that P.W.1 had suffered an injury and that he was informed that the Accused (Appellant /

A.2 and A.1) had beat him and that he had admitted P.W.1 at the Trichy Geethanjali Hospital and later he was examined by the police.

27. P.W.9 in his evidence had deposed that on 13.10.2010 in connection with the present case at the scene of occurrence, the details had enquired by the police, he had affixed his signature in Ex.P.2, Observation Mahazar in which one Baskar had also affixed his signature.

28. P.W.10 in his evidence had deposed that when he was standing along with one Ramadas on 13.10.2010 at about 7.30 a.m. in the morning at Keelapalur Bus stand, the present Appellant / A.2 and A.1 were standing nearby to them and at that time, the Inspector of Keelapalur Police Station came there and they enquired about the incident of beating of P.W.1 and that the accused were enquired into and he was informed that the present Appellant / A.2 had beat P.W.1 (Complainant) with M.O.1 (Wooden log) and M.O.2 (Iron rod) and that the Inspector had recorded the statement given by present Appellant / A.2 and that the present Appellant / A.2 had informed that he was keeping the M.O.1 and M.O.2 in his bathroom which was used for beating P.W.1 and based on the said confession, the Inspector of Police took him to the present Appellant / A.2's house and from the bathroom of his house, the present Appellant / A.2 produced M.O.1 and M.O.2 and that the admitted portion in the confession was Ex.P.3 and in the Seizure Mahazar, Ex.P.4 had affixed his signature and that he was examined by the police.

29. P.W.11 (Special Sub Inspector of Police) in his evidence had deposed that when he was on duty at Ariyalur District, Keelapalur Police Station on 12.10.2010 based on the information obtained from Trichy Geethanjali hospital, he went to the said hospital obtained the statement from Narayanan s/o Maruthamuthu (P.W.1) and based on that at about 10.00 p.m. registered a case in Crime No.272 of 2010 under Sections 294(b), 341, 323 and 307 of Indian Penal Code. Further he transmitted the case papers to the Inspector Police of Keelapalur and also copy of FIR to the Court and that he was examined by the Inspector of Police. Further, Ex.P.5 FIR was registered by him. P.W.11 (in his cross examination) had categorically observed that P.W.1 had not stated the reason for not giving the complaint immediately after the occurrence before the Keelapalur Police station and that the FIR which was registered on 12.10.2010 at about 10 p.m., in the night was received by the Learned Judicial Magistrate on 13.10.2010 at 13.00 p.m., in the afternoon.

30. P.W.12 (Doctor) in his evidence had stated that on 08.10.2010 at about 9.45 a.m. in the morning, P.W.1 was brought by Manivel for treatment and there was a left clavicle fracture

seen on P.W.1 and further that P.W.1 had informed that he was assaulted by three known persons and therefore he had suffered fracture and also he added at 7.30 a.m. on the same day the occurrence took place and for the injuries sustained by P.W.1 (complainant) he gave a certificate and apart from that on P.W.1's left side cheek on the skin, there was a injury measuring at the length of 1 X 1 cm and on the left shoulder there was a fracture and a surgery was performed for the same on 11.10.2010 and plate screw was fixed and on 13.10.2010, he was discharged and he had given a Surgery Certificate (Wound Certificate) and that he was examined by the Inspector of Police.

31. P.W.13 (Inspector of police) in his evidence had deposed that he took up the FIR registered by P.W.11 and on 13.10.2010 at about 6.00 a.m. he went to the place of occurrence prepared Plan, Ex.P.7, Observation Mahazar, Ex.P.2 in the presence of witnesses.

32. Further, on 13.10.2010, P.W.13 arrested A.1, Narayanan and A.2, Ramesh (Present Appellant) and that recorded confession statement given by the present Appellant / A.2 at 7.30 a.m. in the presence of witnesses Ramadoss, Srinivasan and Rajarathinam and seized 51 cms of iron rod and bamboo stick measuring of 68 cms of length at presence of witnesses from the nearby place of Appellant / A.2 and came to the Keelapalur Police Station with the case properties and later produced the present Appellant/ A.2 and his father (A.1) before the Learned Judicial Magistrate and the properties were sent in Form No.95 to the Court, he examined P.W.1 (complainant) at 6.00 p.m., In the evening in Geethanjali Hospital and recorded his statement later after completion of investigation, he laid a final report against A.1 under Sections 341, 294(b), 323, 307 r/w Section 34 and as against the present Appellant / A.2 under Sections 307, 341, 294(b), 323 r/w 34 of IPC.

33. Be that as it may, even though in Ex.P.6, Wound Certificate copy it was mentioned that P.W.1 had stated that he was assaulted by three persons and in the present case, there were only A.1 and A.2, yet, this Court is of the considered view that the discrepancies in this regard (not withstanding the fact that were not explained by the prosecution) yet the case of the prosecution does not fail in this regard. Equally true P.W.12 (Doctor) in his evidence had clearly stated that P.W.1 had informed that he was assaulted by three persons, as a result of which he suffered the clavicle fracture and although in the present case, there is no satisfactory explanation as to why a Final report was laid against A.1 and A.2, yet this Court is of the earnest opinion that on account of this omission or on account of this discrepancy, the case of the prosecution does not suffer.

34. In the instant case, it cannot be disputed that the present Appellant / A.2 had beat the P.W.1 (Appellant) with M.O.2, Iron rod and because of that he had suffered a fracture on the left clavicle which was spoken to by P.W.12 and the injury was equally evident from Ex.P.6. Also that the surgery was conducted on P.W.1 for the left clavicle fracture sustained by him by P.W.12, in the present case which cannot be brushed aside in any manner. Also that the Appellant / A.2 and his father viz., A.1 had also beat P.W.1 with M.O.1 bamboo stick / wooden Log and the trial court had found Appellant's father (A.1) guilty in respect of an offence under Section 341 and imposed upon him necessary punishment.

35. At the risk of repetition, this Court relevantly points out that only the present Appellant (A.2) has preferred the instant Appeal before this Court. At this stage on a careful and meticulous consideration of the evidence of the Prosecution Witnesses, this Court comes to an inevitable conclusion that the present Appellant / A.2 had attacked P.W.1 (complainant) with M.O.2, Iron rod and caused grievous injury, viz., 'Clavicle Fracture on his left shoulder' and that the trial court had rightly found him guilty and imposed him with a punishment of One Year Rigorous Imprisonment. The said finding of guilt arrived at by the trial court in respect of the present Appellant / A.2 under Section 325 of IPC is free from material irregularities and patent illegalities in the eye of Law.

36. However, it is represented before this Court that the present Appellant / A.2 after 'Judgment of Conviction' in main case, rendered by the trial court was married and living with his wife. This Court taking into account of the subsequent development, reduces the punishment of One Year Rigorous Imprisonment to that of Six Months Rigorous Imprisonment to promote the substantial cause of justice.

In fine, the Appeal is partly allowed. The Judgment of the trial court dated 19.02.2014 in S.C.No. 24 of 2013 passed by the Learned Principal Sessions Judge, Ariyalur Division, Ariyalur stands modified on above terms. Further, the trial court is directed to secure the presence of Appellant / A.2 and immure him in prison to serve the remaining period of sentence.

sd/
Assistant Registrar

/true copy/

Sub Assistant Registrar

ssd

To

1. The Learned Principal Sessions Judge,
Ariyalur Division, Ariyalur
 2. The Inspector of Police,
Keelapalur Police Station,
Keelapalur,
Ariyalur District
 - 3.The Record Keeper,
Criminal Section,
High Court, Madras
 - 4.The Judicial Magistrate,
Ariyalur.
 - 5.The Public Prosecutor,
Madras High Court,
Madras.
- +1cc to Mr.N.Mohideen basha, advocate sR.No.8743

CrI.A.No. 121 of 2014

RK(CO)
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