

Bail Slip

The petitioner/Accused namely Murugan @ Gundu Murugan was ordered to be released on bail by order of this Court dated 26.09.2011 and made in Cr.M.P.No.1 of 2011 in CrI.R.C.No.1304/2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Revision No.1304 of 2011

Murugan @ Gundu Murugan ..Petitioner/ (Accused)

Vs

State rep. By
Inspector of Police,
B-3, Kattur Police Station,
Coimbatore,
Coimbatore District,
Crime No.1541 of 2008 ..Respondent (Complainant)

Prayer:- Criminal Revision filed under Sections 397 and 401 of Cr.P.C., to set-aside the order of conviction and sentence passed in C.A.No.235 of 2010 on the file of the learned Additional District and Sessions Judge, Fast Track Court NO.III, Coimbatore, dated 23.03.2011 confirming the order of conviction passed in S.C.No.24 of 2009 on the file of the learned Assistant Sessions Judge-cum-Chief Judicial Magistrate, Coimbatore dated 03.11.2010.

For Appellant : Mr.P.Venkatasubramanian
For Respondent : Mrs.M.F.Shabana,
Gov. Adv. (CrI. Side)

JUDGEMENT

The sole accused in S.C.No.24 of 2009 on the file of the Assistant Sessions Judge cum Chief Judicial Magistrate, Coimbatore, is the revision petitioner herein. He stood charged for an offence under Section 307 IPC. The trial court, by judgment dated 03.11.2010, convicted the petitioner under Section 307 IPC and sentenced him to undergo rigorous imprisonment for 3 years. Challenging the above said conviction and sentence, the petitioner preferred an appeal in C.A.No.235 of 2010 on the file of the Additional District and

Sessions Court, Fast Track No.III, Coimbatore and the lower appellate court confirmed the conviction and sentence and dismissed the appeal. Aggrieved by the same, the petitioner is before this court with this revision.

2. The case of the prosecution, in brief, is as follows:-

P.W.1 is the injured witness in this case. On 06.09.2008, at about 10.30 p.m., when P.W.1 and other witnesses were standing near a Tasmac Shop at Gandhipuram, the accused came there and asked P.W.1 to purchase some liquor for him. When P.W.1 refused to do so, the accused attacked P.W.1 with a knife on his stomach and caused injuries.

3. P.Ws.2,3,4 and 8, who were also standing along with P.W.1 took him in an auto to P.W.1's house and from there, P.W.5 father of P.W.1, took him to the Government Medical College Hospital, Coimbatore. P.W.13, Doctor, working in the Government Medical College Hospital, admitted P.W.1 and had given treatment and also issued an Accident Register (Ex.7). Based on the intimation sent by the hospital, P.W.12, Sub-Inspector of police, went to the hospital and obtained a statement from P.W.1 and based on the same, he registered a case in Crime No.1541/2008 for an offence under Section 307 IPC and prepared the First Information Report (Ex.P.6)

4. P.W.14 Inspector of Police, on receipt of the First Information, commenced investigation and proceeded to the scene of occurrence and prepared an Observation Mahazar (Ex.P.2) and drew a Rough Sketch (Ex.P8) in the presence of the witnesses. Then, he went to the hospital and recorded the statement of P.W.1 and recovered the blood stained pant and shirt (M.Os.2 and 3) under the cover of Mahazar. Subsequently, on 19.08.2008, the accused surrendered before the Judicial Magistrate Court, Coimbatore. Then, P.W.14 took the accused to police custody and the accused had voluntarily given a confession and based on the disclosure statement, he recovered the knife(M.O.1) under the cover of mahazar. Then he recorded the statements of the doctor and other witnesses and after completion of investigation, he laid charge sheet against the accused.

5. Based on the above materials, the trial Court framed charges as mentioned in the first paragraph of the judgment and the accused denied the same. In order to prove its case , on the side of the prosecution, as many as 14 witnesses were examined and 8 documents were exhibited, besides 3 material objects were marked.

6. Out of the witnesses examined, P.W.1 is the injured witness. P.Ws.2,3,4 and 8 are eye-witnesses to the occurrence. P.W.5 is the father of P.W.1 and he, along with others took P.W.1 to the hospital. P.W.7 is a witness to the observation mahazar and P.Ws.9 to 11 are attestors to the seizure mahazar and also for recovery of the material objects. P.W.12 is the Sub-Inspector of Police, who recorded the statement of P.W.1 and based on that, he registered the First Information Report. P.W.13 is the Doctor, who admitted P.W.1 in the hospital and gave treatment to him. P.W.14 is the Inspector of Police, who continued the investigation and recorded the statement of the witnesses and after completion of investigation he laid charge sheet against the accused.

7. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness or mark any documents.

8. Having considered all the above materials, the trial Court convicted the petitioner/accused as stated in the first paragraph of this judgment. Challenging the same, petitioner/accused preferred an appeal in C.A.No.235 of 2010 on the file of the Additional District and Sessions Court, Fast Track Court No.III, Coimbatore and the lower appellate court confirmed the conviction and sentence and dismissed the same. Challenging the conviction and sentence, the petitioner/accused is before this Court with this Criminal Revision.

9. Heard both sides and perused the materials available on record carefully.

10. There are 5 eye-witnesses to the occurrence. P.W.1 is the injured witness and P.Ws.2 to 4 and 8, were all standing along with P.W.1 at the time of occurrence. According to P.W.1 on the date of occurrence at about 10.30 p.m., he and other eye-witnesses were fixing a banner for their political party leader and at that time, the accused came there and asked P.W.1 to purchase some liquor for him. When P.W.1 refused, the accused started quarreling with him and during the quarrel the accused took out the knife and stabbed P.W.1 below his chest and the other witnesses standing there took him to his house and from there, along with the father of P.W.1, admitted P.W.1 in the hospital.

11. P.W.2 an eye-witness to the occurrence deposed that at the time of occurrence, the accused demanded P.W.1 to buy some liquor. When he refused, there was quarrel between the accused and P.W.1 and at that time, the accused attacked P.W.1 with knife. P.W.3 has also spoken about the quarrel between the accused and P.W.1 and during the quarrel, the accused attacked P.W.1 with knife. P.W.4 also saw the

occurrence. According to him, during the quarrel, the accused attacked P.W.1 with knife. P.W.8 has also spoken about the quarrel between P.W.1 and the accused and at the end of quarrel, the accused stabbed P.W.1 with knife. Since it is the consistent evidence of all the eye-witnesses that during the occurrence, there was a quarrel between the accused and P.W.1 and during the quarrel, out of provocation, the accused suddenly took the knife and attacked P.W.1 and caused single stab.

12. The evidence of all the eye-witnesses are consistent and no motive was attributed against the accused and they have no axe to grind against the accused. Hence, there is no reason to disbelieve their evidence. So far as the evidence of P.W.13, Doctor, who admitted P.W.1 in the hospital is concerned, he has stated that at the time of admitting P.W.1, and he told him that some unknown persons attacked him opposite to his house, it is only a former statement of the witness given before the doctor, and it is not a substantive evidence. In the instant case, all the eye witnesses had vividly deposed about the occurrence and the overt act of the accused.

13. From the above, it is clear that at the time of occurrence, there was a quarrel between the accused and P.W.1 and during the quarrel, the accused attacked P.W.1 with a knife and caused injuries and prosecution has clearly established that it is this accused has attacked P.W.1 and caused injuries on him.

14. Now the next question is what was the offence that was committed by the accused. Admittedly, before the occurrence, there was a quarrel and during the quarrel, the accused attacked P.W.1 with a knife and from the evidence of the eye-witnesses, it could be seen that the petitioner/accused never intended to cause such injury, which would likely to cause his death, and his act was imminently dangerous that in all probabilities it would cause his death. In order to bring home the offence under Section 307 IPC, the prosecution should establish that the accused had an intention to cause such injury as he knew it would cause his death or intended to inflict injury which was sufficient in the ordinary course of nature to cause death or that he knew that his act was imminently dangerous that it must in all probabilities cause death or causing injuries as is likely to cause death. But from the available evidence, the prosecution has not established the offence under Section 307, but the offence committed by the revision petitioner/accused false squarely under Section 324 IPC. So far as the quantum of sentence is concerned, the petitioner is a poor person and have a big family to maintain and he has no bad antecedent. Considering all the mitigating circumstances, the petitioner is sentenced to undergo rigorous imprisonment for one year and

to pay a fine of Rs.1000/-, in default, to undergo rigorous imprisonment for 4 weeks.

15. In the result, the Criminal Revision Petition is partly allowed and the conviction and sentence imposed on the petitioner under Section 307 IPC, is set aside and instead, the petitioner is convicted under Section 324 IPC and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.1000/-, in default, to undergo rigorous imprisonment for four weeks. The period of sentence already undergone by the petitioner/accused shall be given set off under Section 428 Cr.P.C.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mrp

To

1. The Additional District and Sessions Judge,
Fast Track Court No.III,
Coimbatore.
2. -do- Thro' The Principal Sessions Judge, Coimbatore.
3. The Assistant Sessions Judge cum Chief Judicial Magistrate,
Coimbatore.
4. The District & Sessions Judge, Coimbatore.
5. The Inspector of Police, B-3, Kattur Police Station,
Coimbatore District.
6. The Judicial Magistrate No.II, Coimbatore.
7. -do- Thro' The Chief Judicial Magistrate, Coimbatore.
8. The Superintendent, Central Prison, Coimbatore.
9. The Public Prosecutor, High Court, Madras.

Copy to: The Section Officer, Criminal Section,
High Court, Madras-104.

Cr1.R.C.No.1304 of 2011