

BAIL SLIP

Jayachandran @ Jaya Sekar, the petitioner/Accused was directed to be released on bail as per Order of this court dated 27.06.2011 made in Crl.MP.2/11 in Crl.RC.832/11 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal R.C. No.832 of 2011

Jayachandran@Jayasekar ... Petitioner

Vs.

The State
Inspector of Police,
Pallavaram Police Station,
Chennai.
(Crime No.239/2002) ... Respondent

PRAYER: Criminal Revision filed under Section 397 and 401 of Criminal Procedure Code against the impugned order in Crl.A.No.166 of 2006 dated 26.05.2011 passed by the learned Additional District Judge, Fast Track Court No.1, Chengalpattu and confirming the judgment of conviction and sentenced to undergo R.I. for 2 years and to pay a fine of Rs.1000/- in default to S.I. for three months u/s 326 IPC dated 16.10.2006 passed in S.C.No.115 of 2005 by Additional Assistant Sessions Judge, Chengalpattu.

For Appellant : Mr.P.Vijendran

For Respondent : Mr.K.Madhan
Government Advocate (Criminal side)

JUDGMENT

The sole accused in S.C.No.115 of 2005, on the file of the Additional Assistant Sessions Judge, Chengalpattu, is the

petitioner herein. He stood charge for the offence under section 307 IPC. The Trial Court convicted the petitioner under Section 307 IPC, and sentenced him to undergo two years rigorous imprisonment and also imposed a fine of Rs.1000/- in default to undergo three months simple imprisonment. Challenging the above said conviction and sentence, the petitioner filed an appeal in Criminal Appeal No.166 of 2006, on the file of the Additional District and Sessions Judge, Fast Track Court-I, Chengalpattu, and the lower Appellate Court dismissed the appeal confirming the conviction and sentence imposed by the Trial Court. Challenging the above said conviction and sentence, the petitioner is before this Court with this Revision.

2. The brief facts of the case are as follows:

The petitioner is the brother of P.W.2, the injured witness. The mother of the petitioner and P.W.2 purchased a property in her name. Subsequently, she sold the same to his son-in-law for Rs.10,000/- and the petitioner claimed 1/2 share in the above sale consideration. On 14.04.2002, at about 8 p.m., he came to the house of P.W.2 and demanded money. P.W.2 told him to get the money from his mother. At that time, the petitioner attacked P.W.2 with a knife in the head and P.W.2 fell down. Then, P.W.1, the wife of P.W.2, filed a complaint with the respondent-Police. P.W.6, the Inspector of Police in the respondent Police Station after receipt of the complaint, registered a case in Crime No.239 of 2002 for the offences under Section 307 IPC, and prepared FIR-Ex.P.8. Then, he proceeded to the scene of occurrence and prepared observation mahazar and drew rough sketch and recorded the statement of witnesses. Thereafter, on 15.04.2002, he arrested the accused. P.W.5 is the Doctor working in the Government Hospital, Chennai, who has admitted P.W.2 and found there is a fracture in the skull bone, subsequently, P.W.2 was discharged on 24.04.2002. Since P.W.6 was transferred, P.W.7-Inspector of Police took up the case for further investigation. He recorded the statement of the Doctor and other witnesses, filed a charge sheet against the petitioner.

3. Considering the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment against the accused and the accused denied the same.

4. In order to prove the case, the prosecution examined as many as 7 witnesses and marked 9 documents and one material object was exhibited.

5. Out of the witnesses examined, P.W.1 is the wife of P.W.2-injured witness. P.W.2 is the injured witness. P.W.3 is the witness to the observation mahazar and also seized M.O.1-knife. P.W.4 is the witness to the seizure mahazar and observation mahazar. P.W.5 is the Doctor, treated P.W.2 in the

Government General Hospital, Chennai. P.W.6 is the Inspector of Police, who registered the complaint and conducted investigation initially P.W.7, the Inspector of Police, continued the investigation and filed charge sheet.

6. Considering all the above, the trial Court found the accused guilty of offence under section 307 IPC and accordingly sentenced him as detailed in the first paragraph of this judgment. Challenging the said conviction and sentence, the petitioner/accused filed an appeal in Criminal Appeal No.166 of 2006 before the learned Additional District and Sessions Judge, Fast Track Court-I, Chengalpattu and the appellate Court dismissed the appeal, confirming the conviction and sentence ordered by the Trial Court. Aggrieved over the same, the accused/appellant is before this Court with this revision.

7. Heard the Mr.P.Vijendran, learned counsel appearing on behalf of the petitioner and Mr.K.Madhan, Government Advocate (Criminal Side) appearing on behalf of the respondent.

8.Learned counsel for the petitioner/accused would submit that P.W.1 and P.W.2 are interested witnesses even though the occurrence took place in the house of the P.W.2. There are nearby houses and there were no independent witnesses examined and the medical evidence is also not corroborating the evidence of the eye witness. It is unsafe to convict the accused based on the uncorroborated testimony of interested witnesses. Even as per the evidence of P.W.1 and P.W.2 and the medical evidence, no case is made out to convict the petitioner under Section 326 IPC.

9.Per Contra, the learned Government Advocate appearing for the respondent would submit that P.W.2 is the injured witness. P.W.1 is the wife of P.W.2 and the occurrence took place inside the house of P.W.2 and the presence of P.W.1 cannot be doubted and their evidence is also corroborated by medical evidence and both the Courts below after considering the evidence, convicted the accused under Section 326 IPC. Hence, there is no reason to interfere with the the well considered judgments of both Courts below.

10. I have considered the rival submissions made by the learned counsels.

11. From the evidence of P.W.1 and P.W.2, it can be seen that there was a property dispute between them. On the date of occurrence, the petitioner came to the house of P.W.2 and demanded money, and there was a quarrel. During the quarrel, the petitioner attacked P.W.2 with a knife on the head and caused injuries. P.W.1 is the wife of P.W.2. She has also corroborated the evidence of P.W.2. P.W.5-the Doctor, who examined him has stated that there is a fracture in the head. Hence, the medical

evidence is also corroborating the evidence of P.W.2. As the occurrence took place in the house of P.W.2, the presence of P.W.1 is natural and her evidence is also reliable. Considering all the evidences, both the Courts below has come to a conclusion that the petitioner has attacked the accused and caused injuries and convicted the petitioner, and I see no illegality or perversity in the findings of the Courts below.

12.From the evidence of P.W.1 and P.W.2, it would be seen that at the time of occurrence, there was a civil dispute between P.W.1 and the accused. A day prior to the occurrence, the petitioner's mother sold a property for a sum of Rs.10,000/- and on the date of occurrence, petitioner went to the house of P.W.2 and demanded his 1/2 share in it. But, P.W.2 refused to give the money. Then there is a wordy quarrel between the accused and P.W.2. At that time, the accused attacked P.W.2 with a knife available at the scene of occurrence and caused injury to his head. Only due to sudden provocation, the petitioner lost his mental balance and attacked P.W.2 and caused the injury.

13.In the above circumstances, the act of the accused will only fall under Section 335 IPC. The petitioner has no intention or knowledge to cause grievous injury on the P.W.2. In the above circumstances, the petitioner is liable to convict under Section 335 IPC. The occurrence took place in the year 2002 and it is only a property dispute between the brothers and the occurrence took place due to sudden provocation and the petitioner has lost his mental balance in a wordy quarrel and attacked P.W.1. The petitioner has already in jail for more than two months. The accused/petitioner is a poor man, has no bad antecedents and has a family to maintain. Considering the aggravating and mitigating circumstances, the sentence is modified to that of the sentence already undergone by the petitioner/accused.

14.In the result, the Criminal Revision is partly allowed and the conviction and sentence of the petitioner under Section 326 is set aside and the petitioner is convicted under Section 335 IPC, and sentenced with the period that he has already undergone. The fine amount if any already paid by the petitioner shall be refunded to him.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

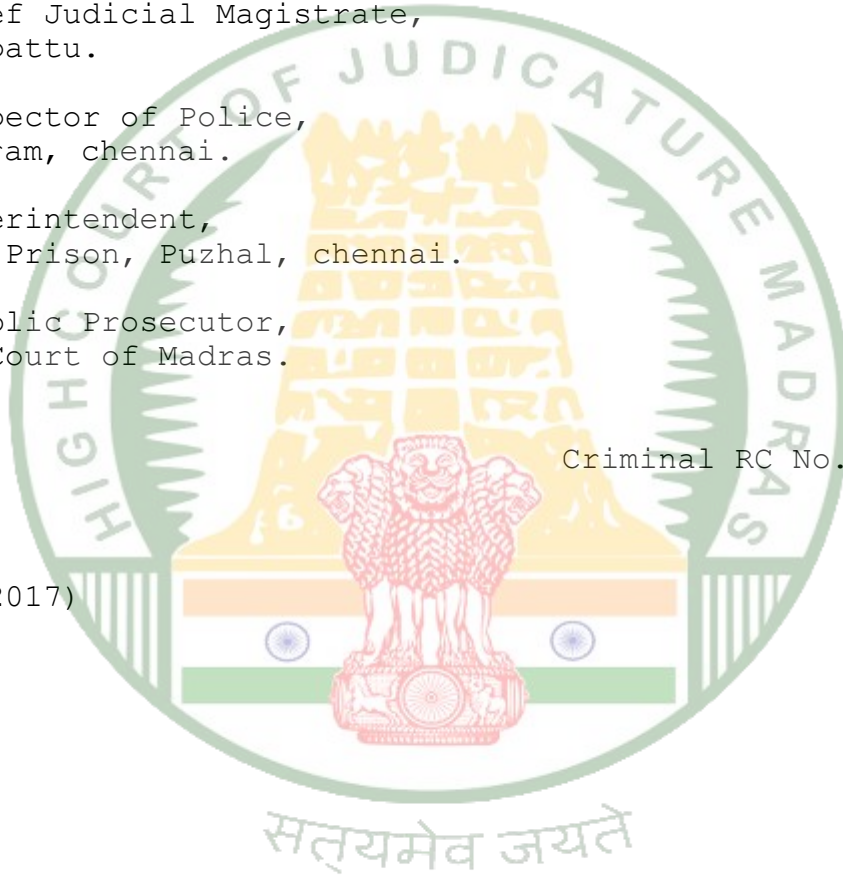
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To

1. The Additional Assistant Sessions Judge,
Chengalpattu.
2. The Additional District and Sessions Judge,
Fast Track Court-I,
Chengalpattu.
3. The Judicial Magistrate,
Tambaram.
4. The Chief Judicial Magistrate,
Chengalpattu.
5. The Inspector of Police,
Pallavaram, Chennai.
6. The Superintendent,
central Prison, Puzhal, Chennai.
7. The Public Prosecutor,
High Court of Madras.

Criminal RC No.832 of 2011

KS (CO)
GN (06/12/2017)



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