

BAIL SLIP

The appellant/accused viz m.nagaraj, s/o.maniraj, aged about 25 years was already directed to be released on bail in and by the order of this court dated 25.10.2017 and made in MP.1 of 2009 in Crl A.No.341 of 2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 25.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.A.No.341 of 2009

M.Nagaraj Appellant/Appellant/Accused

vs.

The State, rep.by

The Inspector of Police,
F-2, Egmore Police Station,
Chennai.

(Crime No.520 of 2008) Respondent/Respondent/Respondent

Criminal appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 11.05.2009, passed by the learned Additional District and Sessions Judge, (Fast Track Court No.V), Chennai, in S.C.No.19 of 2009.

For Appellant : Mr.N.Raja

For Respondent : Mr.Mr.V.Arul

Additional Public Prosecutor

JUDGMENT

The sole accused, in Sessions Case No.19 of 2009, on the file of the learned Additional District and Sessions Judge, (Fast Track Court No.V), Chennai, is the appellant herein. He stood charged for offence under Sections 307, 324 and 506(ii) IPC. The trial Court, after trial, by judgement dated 11.05.2009, convicted the appellant/accused for the offence under Section 324 IPC., and sentenced him to undergo rigorous imprisonment for two years and to pay a fine of Rs.500/- in default, to undergo rigorous imprisonment for three months and acquitted him for the offence under Sections 307 and 506(ii) IPC. Challenging the above said conviction and sentence, the appellant/accused is before this Court with this appeal.

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

P.W.1 is the injured witness. On 22.06.2008 at about 8.30 p.m., while he was returning home, near Das Prakash Hotel, the appellant/accused waylaid him and demanded Rs.50/- for purchased of liquor. But, P.W.1 expressed his inability, he has given Rs.7/-, so the accused attacked him with wooden log and also abused him with filthy language, and while leaving the scene of occurrence, the accused thrown sticks and stones on him, and caused injuries. P.W.2, the sister of P.W.1. On 22.06.2008 at about 8.30 p.m., when she was returning home from her duty, near Das Prakash Hotel, she saw the accused attacking her brother P.W.1 with wooden log. She took P.W.1 and admitted him in the Government Medical College hospital, Kilpauk. P.W.5, the Doctor, working in the Government Medical College Hospital, Kilpauk, Chennai. He admitted P.W.1, examined him and he found some swelling on his face, contusion around the eyebrow and he issued Accident Register [Ex.P3]. Thereafter, P.W.1 gave the complaint before the respondent police. P.W.6, the Inspector of Police, working in the respondent police station. On receipt of the complaint from P.W.1, registered a case in Crime No.520 of 2008 for the offence under Sections 341, 384, 324, 307, 337, 332, 506(i) IPC, prepared first information report[Ex.P4]. Then, he proceeded to the scene of occurrence, prepared observation mahazar[Ex.P6], rough sketch[Ex.P7] and he examined the witnesses and recorded their statements. On 27.06.2008, he arrested the accused and sent him to the Judicial custody, he examined the Doctor and recorded his statement and after completion of investigation he laid charge sheet.

3. Based on the above materials, the Trial Court framed charges as detailed above, and the accused denied the same as false. In order to prove its case, the prosecution examined as many as 6 witnesses, exhibited 9 documents and two material objects were marked.

4. Out of the witnesses examined, P.W.1 is the injured witness. According to him, on 22.06.2008 at about 8.30 p.m., while he was returning home, near Das Prakash Hotel, the appellant/accused waylaid him and demanded Rs.50/- for purchasing liquor, but he has given only Rs.7/-, being agitated over the same, the accused attacked him with wooden log and also abused him with filthy language, and while he escaping from the scene of occurrence, the accused thrown the sticks and stones on him and caused injuries. P.W.2, the sister of P.W.1. According to to her, on 22.06.2008 at about 8.30 p.m., when she was returning home from her duty, near Das Prakash Hotel, the accused attacked her brother P.W.1 with wooden log and then she took P.W.1 and admitted him in the Government Medical College hospital, Kilpauk. P.Ws.3 and 4 turned hostile. P.W.5, the

Doctor, working in the Government Medical College Hospital, Kilpauk, Chennai. He admitted P.W.1 and examined him and found some swelling on the face and contusion around eyebrow of P.W.1, and issued Accident Register [Ex.P3]. Thereafter, P.W.1 gave the complaint before the respondent police. P.W.6, the Inspector of Police, working in the respondent police station, on receipt of the complaint from P.W.1, registered a case in Crime No.520 of 2008 for the offence under Sections 341, 384, 324, 307, 337, 332, 506(i) IPC, prepared first information report[Ex.P4]. Then, he proceeded to the scene of occurrence, prepared observation mahazar[Ex.P6] and rough sketch[Ex.P7]. He examined the witnesses and recorded their statements. On 27.06.2008, he arrested the accused and sent him to Judicial custody, then he examined the Doctor who treated P.W.1, recorded his statement and after completion of investigation he laid charge sheet.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. His defence was a total denial. The accused did not examine any witness and no document was marked on their side.

6. Having considered all the above, the Trial Court convicted and sentenced the accused for the offences as stated in the first paragraph of this judgment. Challenging the above conviction and sentence, the accused are before this Court.

7. I have heard Mr.N.Raja, learned counsel appearing for the appellant and Mr.V.Arul, learned Additional Public Prosecutor appearing for the State and I have also perused the records carefully.

8. The learned counsel appearing for the appellant would submit that it is a false case foisted against the appellant in order to detain him under Goondas Act. Even as per the evidence of P.W.1, he was attacked by the accused only with wooden log and there is no injuries found on the appellant, P.W.5 Doctor found only swelling on his face. P.W.2, namely, the sister of P.W.1, her presence in the scene of occurrence is highly doubtful. Apart from that the independent witness namely, P.Ws.3 and 4 turned hostile. In the above circumstances, except the interest evidence of P.Ws.1 and 2, absolutely there is no material available to prove the prosecution case. The Court below, based on the interested testimony of P.Ws.1 and 2, convicted the appellant under Section 324 IPC. Hence, he prays for allowing the appeal.

9. Per contra, the learned Additional Public Prosecutor appearing for the State would submit that P.W.1 is the injured witness and he has categorically stated that the involvement of the accused in this case. P.W.2 is the sister of P.W.1, she is

corroborates the evidence of P.W.1, and the medical evidence also corroborating the evidence of P.Ws.1 and 2. Considering all the materials, the Court below rightly convicted the accused/appellant and there is no reason to interfere with the judgment of the Court below.

10. I have considered the rival submissions.

11. P.W.1 is the injured witness in this case. According to him, at the time of occurrence at about 8.30 p.m., while he was returning home, near Das Prakash Hotel, the appellant/accused, already known to him, waylaid him and demanded Rs.50/- for purchasing liquor, but he has given only Rs.7/- and agitated over the same, the appellant/accused attacked him with wooden log on his face and eyebrow and also abused him with filthy language, and thrown the sticks and stones on him, caused injuries. P.W.2 is the sister of P.W.1, she was also present in the scene of occurrence and after the occurrence, she took him to the Government Medical College Hospital, Kilpauk, Chennai. P.W.5, the Doctor examined P.W.1 and issued Accident Register[Ex.P3] stating that there are swelling on his face and lips and contusion around his eyebrow, and he is of the opinion that M.O.1 would cause such injury. Thus, the medical evidence also corroborating the evidence of P.Ws.1 and 2. The occurrence took place at about 8.30 p.m., P.W.1 was admitted in the Hospital at about 9.30 p.m., Thereafter, based on the intimation received from the hospital, the respondent police came to the hospital and then they took P.W.1 to the police station and registered the first information report at about 10.30 p.m. Hence, there is no delay in filing the first information report. In the above circumstances, I am of the considered view that the prosecution has clearly established that it is only this accused attacked the accused and caused injuries. Now, the question is what was the offence committed by the accused, and whether the conviction imposed by the trial Court against the appellant/accused for the offence under Section 324 IPC is correct. Considering all the materials available on record, it is seen that the appellant/accused attacked P.W.1 with a wooden log and there is no serious injuries and the injuries are simple in nature and only swelling on his face and lips and contusion around eyebrow. In the above circumstances, I am of the considered view that the appellant/accused is liable to be punished only for the offence under Section 323 IPC.

12. Turning to the quantum of punishment, the accused is a poor man and he had no bad antecedence, the accused attacked P.W.1 with wooden log and there is no serious injuries and he is in jail for a considerable period and he has a chance to reform. Taking into consideration of mitigating as well as aggravating

circumstance, I am of the considered view that modifying the sentence of imprisonment to the period of sentence already undergone and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for four weeks would meet the ends of justice.

13. In the result, the Criminal Appeal is partly allowed and the conviction of the appellant/accused under Section 324 IPC is set aside and instead, the appellant is convicted for an offence under Section 323 IPC., the appellant is sentenced to undergo sentence already undergone by him, and to pay a fine of Rs.500/-, in default, to undergo four weeks rigorous imprisonment.

Sd/-

Assistant Registrar (CS-vi)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Additional District and Sessions Judge,
Fast Track Court No.V,
Chennai.
- 2.The Inspector of Police,
F-2, Egmore Police Station,
Chennai.
- 3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.N.RAJA, Advocate, S.R.No. 75183

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Cr1.A.No.341 of 2009

ppa (CO)
TR(04/05/2018)

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