

BAIL SLIP

The accused namely Anbazhan, S/o.Ponnusamy was released on bail as per order of this Court in M.P.No. 1/2009 in CrI.A.367/2009, dated 15/07/2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.12..2017

CORAM

THE HON'BLE MR.JUSTICE V. BHARATHIDASAN

Criminal Appeal No.367 of 2009

Anbazhan

... Appellant/1st Accused

-Versus-

State Rep. by its
Inspector of Police,
Tirupur North Police Station,
Tirupur.

[Crime No.65 of 2008]

... Respondent/Complainant

Appeal filed under Section 374(2) of Cr.P.C. against the judgment of conviction and sentence recorded by the learned Additional District and Sessions Judge, Fast Track Court-V, Coimbatore, in S.C.No.184 of 2008 on 24.06.2009.

For Appellant : Mr.R.Karthikeyan

For Respondent : Mr.J.Karuppiah, APP

JUDGEMENT

The Accused No.1 in S.C.No.184 of 2008 on the file of the learned Additional Sessions Judge, Fast Track Court-V, Coimbatore, is the appellant herein. There were totally three accused, including the appellant, in the said case. A1 stood charged for offence under Section 307 of IPC and A2 and A3 stood charged for offences under Sections 307 r/w 34 and 294(b) of IPC. They denied the charges and opted for trial. After full-fledged trial, the learned Additional Sessions Judge, by judgment dated 24.06.2009, found appellant/A1 alone guilty of offence under Section 307 of IPC. Accordingly, the learned Judge convicted the appellant/A1 under Section 307 of IPC and sentenced him to undergo rigorous imprisonment for five years and to pay a fine of Rs.5,000/- in default to suffer imprisonment for six months and acquitted A2 and A3 of charges under Sections 294(b) and 307 r/w 34 of IPC. Aggrieved by the above said conviction and sentence, A1 is before this court with this criminal appeal.

2. The case of the prosecution in brief is as follows: P.W.7 is the injured in this case. P.W.7 along with P.W.1, P.W.2, P.W.4 and P.W.5 running a partnership firm in the name and style of 'M/s.Amirtha Apparels' at Tirupur. Always the Managing Partner. It is the case of the prosecution that A1 misappropriated the fund of the firm to the tune of Rs.50 Lakhs. On 12.11.2008, P.W.7 along other partners went to the company at about 08.00 p.m. where the accused was taking rest at his room. When all the witnesses entered into the room, A2 and A3 scolded them in a filthy language and A1 attacked P.W.7 with a bill hook on his head. When P.W.7 warded off the attack by raising his right hand, the bill hook injured his thumb, ring and little fingers. Thereafter, A1 gave another blow. This time, P.W.7 prevented the same by raising his left hand and the bill hook fell on all fingers of his left hand. A1 to A3, thereafter, immediately fled away from the scene of occurrence. Thereafter, P.W.7 was taken to Kovai Medical Centre Hospital, Coimbatore. P.W.8, the Doctor, admitted P.W.7 in the hospital and treated him for the injuries sustained by him. The doctor has also sent a memo to the police in this regard.

3. P.W.11, the then Head Constable, Tirupur North Police Station, on receiving such intimation from the Hospital, rushed to the hospital at 05.45 a.m. on 13.01.2008. P.W.11, recorded the statement of P.W.1, who was present there, as P.W.7 was in unconscious state. Ex.P.9 is the statement of P.W.1 and Ex.P.1 is the signature of P.W.1. On returning to the police station, P.W.11 registered a case in Crime No.65 of 2008 under Section 294(b) and 307 of IPC against A1 to A3. Ex.P.10 is the printed FIR. Then, he submitted the case diary to P.W.12, the then Inspector of Police for investigation.

4. P.W.12 taking up the case for investigation, proceeded to the place of occurrence and prepared a rough sketch (Ex.P.11) and observation mahazar (Ex.P.12) in the presence of witnesses. He recorded the statement of witnesses. Thereafter, he went to the hospital and recovered the blood stained dress materials from the person of P.W.7. Then, he arrested A1 on 14.01.2008 at 06.30 p.m. near Ticket counter at the back side of Tirupur Railway Station. On such arrest, A1 gave a voluntary confession. Pursuant to the same, A1 took P.W.12 to the place of occurrence where at the instance of A1, P.W.12 recovered a bill hook (M.O.4) and a blood stained shirt of A1 (M.O.5) under a cover of mahazar (Ex.P.15). On returning to the police station, P.W.12 forwarded A1 to the court for judicial remand. He also forwarded the material objects to the court with a request to send them for chemical examination. P.W.12 examined the doctor and few other official witnesses and recorded their statements. On completing his investigation, P.W.12 laid charge sheet against the accused.

5. Based on the above materials, the trial court framed charges as detailed in the first paragraph of this judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 12 witnesses were examined, 19 documents and 5 material objects were marked.

6. Out of the above said witnesses, P.W.1, who was one of the partners in the firm, turned hostile. P.W.2, who was also a partner in the firm and attesting witness to the observation mahazar and rough sketch, has also turned hostile. P.Ws.3 to 5 have also turned hostile. P.W.6, an attesting witness to the seizure mahazar, also turned hostile. P.W.7 was the Managing Partner in the firm and injured witness. He has spoken about the verbal attack made on him by A2 and A3 and physical attack made by A1.

7. P.W.8, the Doctor, has spoken about the treatment given to P.W.7. He noticed the following injuries on P.W.7:

"1. Cut wound 1st web space right hand, bone deep - thenar muscles x 1st metacarpal cut. Flexor pollicis longueur tendon cut. Digital nerve to thumb cut. Right thumb hanging by a small piece.

2. Cut wound base of right ring x little fingers. Flexor tendons x digital nerves cut.

3. Left hand - cut wound case of left thumb; cut wound across palmar aspect of index, middle x ring fingers. Flexor tendons of index x middle fingers cut. Digital nerves cut.

4. Cut wound lateral aspect of right upper arm 4 x 1 cm muscle deep.

5. Cut wound flexor aspect of right fore arm 4 x 1/2 cm.

6. Cut wound measuring 1 cm base of left neck;

7. Cut wound lateral aspect of left shoulder 3 x 1 cm muscle deep.

8. Abrasions lateral aspect of right upper arm, exterior aspect of right forearm."

P.W.8, the doctor, issued Ex.P.6 Wound Certificate. According to P.W.8, the injuries 1 to 3 were of grievous in nature.

8. P.W.9 is the mother of P.W.7. She was only a hearsay witness. P.W.10, an attesting witness to the confession of A1, has also turned hostile. P.W.11 has spoken about the registration of the case. P.W.12, has spoken about the investigation done by him and the filing of charge sheet against A1 to A3.

9. When the above incriminating materials were put to A1 to A3 under Section 313 of Cr.P.C. they denied the same as false. However, they did not choose to examine any witness nor did they

mark any document. Their defence was a total denial. Having considered all the above, the trial court convicted A1 alone as detailed in the first paragraph of this judgment. Challenging the above said conviction and sentence, A1 is now before this Court with the present criminal appeal.

10. I have heard the learned counsel for the appellant/A1 and the learned Additional Public Prosecutor for the respondent/State and also perused the record carefully.

11. The learned counsel for the appellant contended that except the testimony of P.W.7, the injured witness, there is absolutely no other evidence to support the case of the prosecution. He pointed out the discrepancy regarding the scene of occurrence and the variation in the oral evidence of P.W.7. The learned counsel further contended that when the learned trial judge has partly disbelieved the evidence of P.W.7 and acquitted A2 and A3, the learned ought not to have convicted A1 alone on the basis of uncorroborated testimony of P.W.7. He would further add that the alleged crime weapon was not shown to P.W.8, the doctor, in court. He would lastly submit that the recovery of alleged weapons of crime have not been proved by the prosecution in accordance with the provisions of Section 27 of the Indian Evidence Act.

12. Per contra, the learned Additional Public Prosecutor would vehemently oppose the criminal appeal. According to him, the evidence of P.W.1 is well supported by medical evidence and it is not always necessary to look for corroboration to the injured witness and the reasonings for conviction given by the trial court are well balanced and there is no reason warranting interference in the judgment of the trial court.

13. I have carefully considered the submissions made on either side, evidence and materials on record.

14. PW.7 is the injured witness. According to him, he was one of the partners in the firm. P.W.1, P.W.2, P.W.7 and A1 were the other partners. A1 is stated to have misappropriated the funds of the firm and there was a dispute between the partners in this regard. According to P.W.7, on the date of occurrence, when he along with other partners questioned A1, A2 and A3 scolded them in filthy language and A1 attempted to attack him with bill hook on his head. He has further stated that A1 aimed at his life and when he warded off the attack, he sustained injuries on his both hands. According to P.W.7, he was immediately taken to Kovai Medical Centre Hospital, Coimbatore where P.W.8, the doctor, treated him. P.W.7 has stated that the occurrence took place in Amirtha Apparels wherein P.W.7, P.W.1, P.W.2 and A1 were partners. There is yet another firm by name

'Amirtha International" which was run by A1 individually and it has got nothing to do with Amirtha Apparels. P.W.1 and P.W.2, the other partners, who were allegedly present at the place of occurrence, have turned hostile and they did not support the prosecution case in any manner. P.W.12, the investigating officer, has stated that the occurrence took place in Amirtha International and the observation mahazar and rough sketch would also depict the same. Thus, this court finds material variation in the scene of occurrence. It is also admitted case of the prosecution that no blood stains were lifted from the scene of occurrence. So far as the alleged recovery of M.O.4 bill hook is concerned, P.W.6 and P.W.10 have turned hostile. Thus, the prosecution has not proved the recovery made under Section 27 of the Evidence Act.

15. Apart from the above, as rightly pointed out by the learned counsel for the appellant, the alleged crime weapon (M.O.4) was not shown to the doctor (P.W.8) who treated P.W.8 for his opinion as to whether the injuries on P.W.7 could have been caused by such a weapon. Except the evidence of the injured P.W.7, there is absolutely no evidence to corroborate the prosecution version. The trial court partly disbelieved the evidence of P.W.7 and acquitted A2 and A3 holding that their presence at the scene of occurrence is doubtful. In the considered opinion of this court, the other part of the evidence of P.W.7 is also not found to be trustworthy as there is material contradiction in respect of the place of occurrence. The alleged crime weapon was not shown to the doctor and the recovery of the alleged crime weapon has also not been proved by the prosecution. Under the above circumstances, it is highly unsafe to convict a person on the basis of such reliable and untrustworthy evidence of P.W.7. Therefore, this court is of the view that the learned trial Judge was not right in holding the appellant guilty of offence under Section 307 of IPC and so the appellant is entitled for acquittal.

16. In the result, this criminal appeal is allowed; the conviction and sentence of the appellant/A1 recorded by the trial court is set aside and he is acquitted of the charge under Section 307 of IPC. Fine amount already paid, if any, shall be refunded to the appellant/A1. The bail bond executed by the appellant shall stand terminated.

Sd/-

Assistant Registrar(CS IX)

//True copy//

Sub Assistant Registrar

kmk

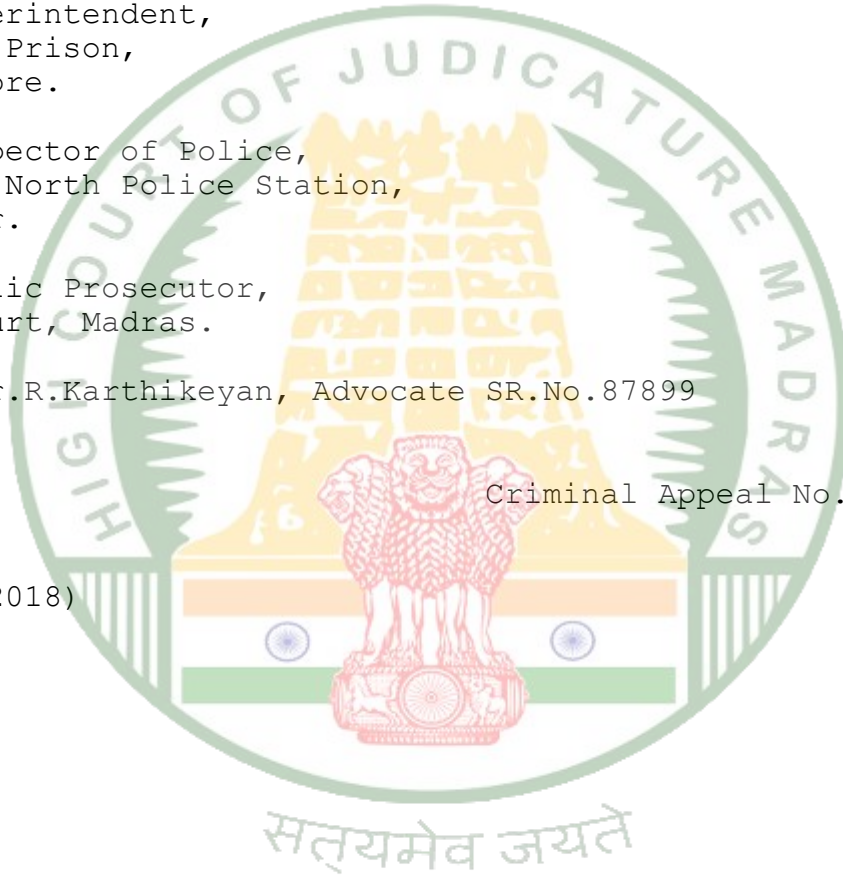
TO

- 1.The Judicial Magistrate No.I,
Tiruppur.
- 2.The Chief Judicial Magistrate,
Coimbatore at Tiruppur.
- 3.The Additional Sessions Judge,
Fast Track Court-V, Coimbatore.
- 4.The Superintendent,
Central Prison,
Coimbatore.
- 5.The Inspector of Police,
Tirupur North Police Station,
Tiruppur.
- 6.The Public Prosecutor,
High court, Madras.

+1cc to Mr.R.Karthikeyan, Advocate SR.No.87899

Criminal Appeal No.367 of 2009

NRI (CO)
GN(13/06/2018)



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