

BAIL SLIP

The Appellant/Accused namely Shakul @ Shakul Hameed S/o.Abdul Kather was directed to be released on bail as per order of this court dated 19.05.2010 and made in MP.No.1/10 in Crl.A.314/10 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06..12..2017

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.314 of 2010

Shakul @ Shakul Hameed ...Appellant/Accused

-Versus-

State Rep. by  
The Inspector of Police,  
B-1, North Beach Police Station,  
Chennai.

[Crime No.150 of 2009) ... Respondent/Complainant

Appeal filed under Section 374(2) of Cr.P.C. against the judgment of conviction and sentence dated 27.04.2010 made in S.C.No.213 of 2009 by the learned IV Additional Sessions Judge, Chennai.

For Appellant : Mr.R.Singaravelan Senior Counsel  
for Mrs.M.Srividhya

For Respondent : Mr.R.Ravichandran,  
Government Advocate

JUDGEMENT

The sole accused in S.C.No.213 of 2009 on the file of the learned IV Additional Sessions Judge, Chennai, is the appellant herein. He stood charged for offence under Sections 307 and 506 (ii) of IPC. The accused denied the charges and opted for trial. Therefore, he was put on trial on the charges. After full-fledged trial, the learned Additional Sessions Judge found him guilty of offences under Section 307 of IPC. The accused was accordingly convicted and sentenced to undergo imprisonment for seven years with a fine of Rs.10,000/- [no default sentence was imposed], however, he was acquitted of the other charge under Section 506(ii) of IPC. Challenging the conviction and sentence,

the accused is before this court with the present criminal appeal.

2. The case of the prosecution in brief is as follows:- P.W.1 was working as a salesman in a shop at Angappan Naicken Street in Mannadi. The accused was also working in the same shop as salesman. On 24.03.2009 at about 11.00 p.m. there was a wordy altercation between the accused and P.W.1 over a petty issue, in which, P.W.1 stated to have slapped the accused and what began as a wordy altercation on a petty issue turned into a scuffle between the accused and P.W.1. The persons, who were present there at the scene of occurrence, pacified them. The accused challenged P.W.1 that he would not leave him.

3. It is the further case of the prosecution that on the next day, i.e., on 25.03.2009 at 08.00 a.m. when P.W.1 was sleeping in his room, the accused dropped an empty LPG cylinder on the head of P.W.1 and caused injuries. P.W.1 was taken to Government General Hospital, Chennai, at 12.00 noon, where P.W.6, the Doctor, examined P.W.1. At that time, P.W.1 told P.W.6 that on 25.03.2009 at 08.00 a.m. a known person had dropped an empty LPG cylinder on his head. P.W.6, the Doctor, treated P.W.1 for the head injuries. He found a lacerated injury on the right side of the scalp. He issued Ex.P.4 wound certificate. P.W.6, the doctor, referred P.W.1 for a X-Ray. Thereafter, P.W.1 was admitted as inpatient in casualty for further treatment where a CT Scan was taken and on such scan report, P.W.6 found a fracture on the right side of the head and back of the head. There was also a hemorrhage found over the brain. P.W.6, the doctor, sent a memo to the police in this regard. P.W.8, the then Sub Inspector of Police, on getting intimation from the hospital regarding the medico legal case at 00.30 Hours on 26.03.2009, immediately rushed to the hospital where he recorded the statement of P.W.1. Ex.P.1 is the statement of P.W.1. Then, on returning to the police station, based on the statement of P.W.1, P.W.8, registered a case in Crime No.150 of 2009 under Section 341, 307 and 506(ii) of IPC on 26.03.2009 at 01.30 a.m. Ex.P.9 is the FIR. Then, he forwarded the original FIR to the jurisdictional court and a copy to his higher officer.

4. P.W.9, the then Inspector of Police, on receipt of a copy of the FIR, took up investigation, rushed to the place of occurrence 02.15 a.m. and inspected the place of occurrence in the presence of P.W.5 and another witness. He prepared an observation mahazar and a rough sketch in the presence of witnesses and recorded their statements. He also examined few more witnesses and recorded their statements. Then, he rushed to Government General Hospital where he examined the doctor and recorded her statement as P.W.1 was not able to speak then. Then, at 08.00 p.m. he arrested the accused at Angappa Naicken

Street in the presence of P.W.3 and P.W.4. On such arrest, the accused gave a voluntary confession and pursuant to his confession, he took the police to the place of occurrence and identified the empty cylinder. P.W.9, recovered a blood stained empty cylinder; a blood stained pillow cover; a blood stained dry grass mat; a blood stained towel; a blood stained full sleeve shirt; and a blood stained lungi under a cover of mahazar. They are M.Os.1 to 7 respectively. Then, he forwarded the material objects to the court with a request to forward them to the Forensic Lab for report. He examined the doctor, recorded her statement and obtained the discharge summary. On completing the investigation, he laid charge sheet against the accused under Sections 341, 326, 307 and 506(ii) of IPC.

5. Based on the above materials, the trial court framed charges under Section 307 and 506(ii) of IPC. The accused denied the charges and wanted trial. Therefore, the accused was put on trial. During trial, the prosecution in order to prove the charges against the accused, examined as many as 9 witnesses and exhibited 11 documents and 7 material objects.

6. Out of the above said witnesses; P.W.1 is the injured witness. He has spoken about the wordy altercation that ensued initially between him and the accused on the previous day of the occurrence and later on, as to how it was turned into a scuffle between the accused and himself. P.W.1 has further stated that due to the enmity, on the next day morning at 08.00 a.m. when he was sleeping in his room, the accused had dropped an empty cylinder on him which resulted in head injuries to him. P.W.2, a co-worker as well as the room-mate of P.W.1, has spoken about the altercation between P.W.1 and the accused that occurred on the previous day of occurrence. P.W.2 in his evidence has further stated that on the next day morning, he saw the accused dropping the cylinder on the head of P.W.1 and P.W.1 was bleeding. P.W.3 has spoken about the confession made by the accused to the police and the consequential recovery of the material objects at the instance of the accused. P.W.4, who was working as a cook in the stores where the accused and P.W.1 were also employed, has also stated about the previous day's altercation. He has further stated that on the next day morning, when he was cooking, he saw the accused holding an empty cylinder in his hand. Then, on hearing the alarm, when he rushed towards the scene of occurrence, he found P.W.1 profusely bleeding. He also found a cylinder lying by the side of P.W.1. The accused was also there. Immediately thereafter, the accused rushed out of the room.

7. P.W.5 has spoken about the rough sketch and the observation Mahazar prepared by the police at the place of occurrence on 26.03.2009 at 02.00 a.m. P.W.6, the Doctor, has stated that on 25.03.2009 P.W.1 was brought before her for

treatment at 12.00 noon. On examining him, she found a lacerated injury measuring 3 x 1 x 1/2 c.m. on the right side of the head. She referred him for X-Ray. P.W.1 was admitted as in patient. Ex.P.4 is the Accident Register. C.T. scan is Ex.P.5. She found fracture on the right side of the head and back of the head. According to her, P.W.1 was under treatment from 25.03.2009 to 06.04.2009. Ex.P.6 is the discharge summary. She opined that the injuries sustained by P.W.2 were of grievous in nature.

8. P.W.7 was also a salesman in the stores where P.W.1 was employed. He has stated on the date of occurrence, while he was sleeping he heard some noise inside the room and when he woke up he found some people taking P.W.1 to hospital. He has not stated anything about the occurrence. P.W.8 has spoken about the registration of the case based on the statement recorded from P.W.1. P.W.8 has also spoken about the investigation conducted by him and the filing of charge sheet against the accused.

9. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C. he denied the same as false, however, he did not choose examine any witnesses nor did he mark any documents.

10. Having considered the above, the learned Additional Sessions Judge found the accused guilty of attempting to murder. Accordingly, the accused was convicted under Section 307 of IPC and sentenced to a term as indicated in the first paragraph of this judgment. Aggrieved by his conviction and sentence, the accused has come up with the present appeal.

11. I have heard the learned counsel for the appellant/accused and the learned Government Advocate for the respondent/State and also perused the records carefully.

12. Admittedly P.W.1 and accused were co-workers in a stores situated at Angappa Naicker Street in Manndadi, Chennai. P.W.1 was staying in a room situated on the same building where he was employed. P.W.4 was working as cook for the servants working in the stores. P.W.2 was also staying along with P.W.1 P.W.1 has vividly spoken about the occurrence. He has stated there was a wordy altercation between himself and the accused on 24.03.2009 over a petty issue in which he had slapped the accused and the altercation what begun as a wordy altercation, later on, turned into a scuffle between them. P.W.1 has further stated that on the next day of that occurrence, at 08.00 a.m. when he was sleeping on a mat, the accused had dropped an empty cylinder on his head which resulted in head injury. P.W.2 supported the version of P.W.1. P.W.4 has stated that he saw the accused keeping an empty cylinder on his hands and saw P.W.1 profusely bleeding from the head injuries. P.W.2 and P.W.4 had no axe to grind against the accused. This court finds no reason to

disbelieve their testimonies. The injuries found on P.W.1 are supported by medical evidence. P.W.6 Doctor, who examined P.W.1, has found fractures on right side and back of the head. According to her, the injuries found on P.W.1 were of grievous in nature. Thus, the prosecution has substantiated its case that it was this accused who dropped the empty cylinder on the head of P.W.1 resulting in fractures on the head.

13. Now the question which arises for consideration is whether by causing these injuries offence under 307 of IPC is made out or not and if not what was the offence committed by the accused by his act?

14. For convicting the accused for offence under Section 307 of IPC, prosecution has to prove the following facts :

- i) that the death of a human being was attempted.
- ii) that such death was attempted to be caused by, or in consequence of, the act of the accused.
- iii) that such act was done with the intention of causing death; or that it was done with the intention of causing such bodily injury as (a) the accused knew to be likely to cause death; or (b) was sufficient in the ordinary course of nature to cause death; or That the accused attempted to cause such death by doing an act known to him to be so imminently dangerous that it must in all probability cause (a) death or (b) such bodily injury as is likely to cause death, the accused having no excuse for incurring the risk of causing such death or injury.

15. There is nothing on record to infer that the accused had any intention to kill P.W.1. Even though the injuries caused to P.W.1 were of grievous in nature, the entire occurrence was due to wordy altercation on a petty issue. P.W.1 is stated to have slapped the accused in the altercation that had occurred on the previous day of occurrence. The prosecution has not proved any of the above ingredients so as to convict the accused under Section 307 of IPC and at the maximum the accused could be convicted for offence under Section 335 of IPC. Therefore, this court is of the considered view that to the extent indicated above, the judgment of conviction recorded by the trial court is required interference at the hands of this court.

16. Next coming to the quantum of sentence, the learned counsel for the appellant submitted that the appellant had already served sentence for few months and he was let on bail and therefore, he prayed lenient view may be taken in the matter of sentence.

17. Considering the submissions made by the learned counsel for the appellant and the mitigating circumstances, this court is of the view that sentencing the appellant to the period already undergone besides a fine of Rs.10,000/- for offence under Section 335 of IPC would meet the ends of justice.

18. In the result, this criminal appeal is allowed ; the conviction and sentence imposed on the appellant/accused for offence under Section 307 of IPC by the learned IV Additional Sessions Judge, Chennai, are hereby set aside and instead, he is convicted under Section 335 of IPC and sentenced to the period already undergone besides fine of Rs.10,000/-. It was reported that fine imposed by the trial court has already been paid by the appellant/accused before the trial court. Therefore, the fine amount already paid by the appellant shall be adjusted towards the fine now imposed by this court. The fine amount paid by the accused, shall be paid to P.W.1 as compensation under Section 357 of the code of criminal procedure.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

kmk

To

1.The IV Additional Sessions Judge, Chennai.

2.-do- Thro The Principal Sessions Judge, Chennai

3.VIIth Metropolitan Magistrate  
George Town Chennai

4.-do- The Chief Judicial Magistrate, Chennai

5.The Inspector of Police, B-1, North Beach Police  
Station, Chennai.

6.The Superintendent  
Central Prison, Puzhal Chennai

7.The District Collector  
Chennai

8.The Director General of Police  
Mylapore Chennai

9.The Public Prosecutor, High Court, Chennai 600 104.

copy to

The Section Officer  
Crl. Section High Court, Madras

+1 cc to Mrs.M.Srividhya Advocate sr 87480  
Criminal Appeal No.314 of 2010

rsy(co)  
aa08/06/2018



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