

Bail Slip

The Appellant/Accused namely Kumar @ Anthony S/o.Francis was ordered to be released on bail by order of this Court dated 28.02.2011 and made in CrI.MP.No.1 of 2011 in CrI.A.672/2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.672 of 2009

Kumar @ Anthony ... Appellant/Accused

Vs

State of Tamilnadu,
rep. by Inspector of Police,
G-2 Periamet Police Station,
Chennai - 3.
(Crime No.449/2007)

... Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the judgment passed in S.C.No.294 of 2008 dated 29.09.2008 by the Additional District and Sessions Court (II Fast Track Court), Chennai.

For Appellant : Mr.Malarmannan,
Legal Aid Counsel

For Respondent : Mr.R.Sekar,
Gov. Advocate

JUDGEMENT

The sole accused in S.C.No.294 of 2008 on the file of the Additional District and Sessions Court (II Fast Track Court), Chennai, is the appellant herein. He stood charged for the offences under Sections 341, 392 r/w. 397, 353, 336 and 506(ii) IPC. By judgment dated 29.09.2008, the trial court convicted the appellant/accused under Section 341 IPC and sentenced to undergo imprisonment for one month and convicted him under Section 397 IPC and sentenced to undergo rigorous imprisonment for 7 years and acquitted the appellant from the charges under Sections 353, 336 and 506(ii) IPC. Now, challenging the above said conviction and sentence, the appellant/accused is before this Court with this Criminal

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

P.W.1 is the injured witness in this case. On 26.07.2007, at about 2.15 p.m., while P.W.1 was walking alone near Choolai rountana, the appellant waylaid him and taken a cellphone and Rs.200/- forcibly from P.W.1 and when P.W.1 resisted, the appellant attacked him with knife on his stomach and caused injuries. On hearing the noise, P.Ws.2, 3, Sub-Inspector of Police and the Head Constable, attached to the Periyamedu Police Station, who were on patrol, rushed to the scene of occurrence and saw P.W.1 with injuries and while trying to catch the accused, he threatened them with dire consequences and also thrown soda bottles and then both of them managed to catch hold of the appellant. Then, they took P.W.1 in an auto and sent him to hospital for further treatment. Then P.W.8, Doctor, working in the Government General Hospital, Chennai, admitted P.W.1 in the hospital and issued an Accident Register, Ex.P.6. There after, P.W.9, Inspector of Police, Periamadu police station, based on the complaint given by P.W.1 registered a case in Crime No.449 of 2007 for the offences under Sections 341, 332, 336, 427, 324, 392, 307 & 506(ii) IPC and prepared First Information Report (Ex.P.7). Then, he proceeded to the scene of occurrence and prepared an Observation mahazar (Ex.P.8) and Rough Sketch (Ex.P.9) in the presence of the witnesses. Based on the disclosure statement given by the accused, he recovered a cellphone (M.O.1) and Rs.200/- currency note (M.O.2) and knife (M.O.3) under the cover of Mahazar (Ex.P.10). He has also recovered broken soda bottle pieces (M.O.4). Thereafter, he recorded the statement of the witnesses and after completion of investigation, he laid charge sheet against the accused.

3. Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 9 witnesses were examined and 12 documents were exhibited, besides 5 material objects.

4. Out of the witness examined, P.W.1 is the injured eye-witness in this case. According to him, when he went near Chocholai rountana, the appellant waylaid him, threatened him with knife and robbed a cellphone and also Rs.200/- cash from him. The accused caused serious injuries by knife. Thereafter, P.Ws.2 and 3 police personnels came there and arrested the accused and he was taken to the hospital and where he has given a complaint and based on the complaint, a case has been registered. P.W.2, Sub-Inspector of Police, attached to the Periamet Police Station, who was on patrol, near the scene of occurrence at the time of occurrence, on hearing the noise, he along with P.W.3 went there and saw P.W.1 with injuries while they were trying to catch the

accused, he threatened them with dire consequences and also thrown soda bottles and thereafter, they caught the accused and took him to the police station. He also sent P.W.1 to the hospital. P.W.3, the Head Constable, attached to the police Station, also reiterates the evidence of P.W.2. P.W.4 is the witness to the recovery of cellphone, knife and cash. P.W.5 evidence has no substance. P.W.6 turned hostile. P.W.7, Head Constable, working in the respondent police, took P.W.1 to the hospital. P.W.8, Doctor, treated P.W.1 and issued an accident register (Ex.P.6) and he has stated that P.W.1 was in an intoxicated mood and the doctor was not able to say whether the injuries are grievous or simple. Then, P.W.9, Inspector of Police, who conducted investigation, arrested the accused and recovered the material objects and after completion of investigation, he laid charge sheet against the accused.

5. 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 chose to examine any witness or mark any documents.

6. Having considered all the above materials, the trial Court convicted the appellant/accused as stated in the first paragraph of this judgment. Challenging the same, the appellant/accused is before this Court with this Criminal Appeal.

7. Earlier when the matter was called, there was no representation for the appellant and hence the matter was posted for dismissal and even thereafter also there is no representation for the appellant and hence, Mr.Malarmannan, Advocate was appointed as legal aid counsel.

8. We have heard Mr.Malarmannan, learned legal aid counsel appearing for the appellant and Mr.R.Sekar, Government Advocate, appearing for the State and I have also perused the records carefully.

9. The learned counsel appearing for the appellant would contend that except the evidence of P.W.1, there is no eye-witness to the occurrence. Eventhough the occurrence took place in a busy area, i.e., Choolai rountana, no independent witness has been examined by the prosecution. Apart from that P.Ws.2 and 3 are police officials and they have also not spoken about the occurrence. There are lot of discrepancies in the recovery of the stolen articles from the appellant, the medical evidence did not corroborate the evidence of P.W.1 and the doctor also has stated that he was also under the influence of alcohol and the Doctor is not in a position to say whether the injuries are grievous or simple. Without considering all those materials, the Trial Court erroneously convicted the appellant under Section 397 IPC and this case has been falsely foisted against the appellant only for the purpose of detaining him under Act 14 of 1982.

10. Per contra, the learned Government Advocate would submit that P.W.1 is the injured witness and he has categorically stated about the occurrence and P.Ws.2 and 3, who are police officials, were on the patrol at the time of occurrence and they have caught hold of the accused in the scene of occurrence and the stolen articles were also recovered from the appellant. P.W.8, Doctor, examined P.W.1 and he has given first aid to him and he found stabbed injuries on his stomach which is grievous in nature. Considering all those materials, the trial Court convicted the appellant under Section 397 IPC and there is no reason to interfere with the judgment of the Court below.

11. I have heard the learned counsel appearing for the appellant and Government Advocate appearing for the respondent and perused the materials available on record.

12. P.W.1 is the injured witness in this case. According to him, while he was walking along with Choolai rountana, the appellant waylaid him and threatened him with a knife and robbed a cellphone and also a sum of Rs.200/- cash. While raising alarm, the accused stabbed him with a knife on his stomach. At that time, P.Ws.2 and 3, who are police officials, were on patrol in that area, rushed to the scene and after seeing the police officials the appellant has threatened them and thrown soda bottles, P.Ws.2 and 3 caught hold of the appellant in the scene of occurrence itself. Then, P.W.1 was taken to the hospital, where he was given treatment by P.W.8. P.Ws.2 and 3, police officials attached to the Periyamedu police station, who were on the patrol in that area, clearly stated that they saw P.W.1 with bleeding injuries and when they were trying to caught the accused, he intimidated them and thrown soda bottles and they managed to catch him and took him to the police station. Thereafter, based on the complaint, a case was registered and then the cellphone and the currency were recovered from the accused. P.W.8, Doctor, working in the Government General Hospital, stated that P.W.1 was brought to the hospital by a police constable and he examined him and he found stabbed injuries on his stomach. But, in his cross examination, he has not stated whether the injuries on P.W.1 is simple or grievous in nature. Considering all those evidences, I am of the considered view that the prosecution has clearly established that it is only this accused who had attacked P.W.1 and robbed a cellphone and cash from him. Even though, the appellant was convicted under Section 397 IPC, from a perusal of medical evidence P.W.8, Doctor, has clearly stated that at the time of occurrence, P.W.1 was also in an intoxicated mood and he was not in a position to say whether the injuries are simple or severe in nature. In the above circumstances, as it is not clear that the injuries are simple or grievous, it cannot be held that P.W.1 has suffered a grievous hurt or there is an

attempt on the part of the appellant to cause his death. In the above circumstances, the appellant cannot be convicted under Section 397, but he could be convicted under Section 392 IPC.

13. So far as the quantum of sentence is concerned, the learned Government Advocate would submit that the appellant was in jail for more than 2 1/2 years pending trial as well as pending appeal. Considering the fact that the appellant is a poor person and he has a big family to maintain and also considering the mitigating circumstances, he was sentenced to undergo the period already undergone.

14. In the result, the Criminal Appeal is partly allowed and the conviction and sentence imposed on the appellant under Section 341 IPC is confirmed and the conviction under Section 397 IPC is set aside, instead, he is convicted under Section 392 IPC and sentence is modified to that of the period already undergone. Since the appellant already undergone the period of sentence in respect of both the offences, he need not be incarcerated in jail again.

15. While parting with the case, I appreciate the services rendered by Mr. Malarmannan, learned counsel who appeared on behalf of the appellant/accused, as Legal Aid Counsel. The Legal Services Authority is directed to pay his remuneration.

mrp

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Additional District and Sessions Judge,
Fast Track Court No.II,
Chennai.
2. The X Metropolitan Magistrate,
Avikulam Complex,
Chennai
3. The Superintendent, Central Prison,
Puzhal, Chennai
4. The Inspector of Police
G-2, Periamet Police Station, Chennai-3

5. The Public Prosecutor,
High Court, Madras.

Copy to: The Section Officer,
Criminal Section,
High court, Madras.

SV(CO)
sm:14.2.2018

CrI.A.No.672 of 2009



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