

Bail slip

The Appellant in CrI A No.380 of 2008 (Accused in SC No.229 of 2007, dated 09.05.2008 on the file of the Additional sessions Judge cum FTC III, Poonamallee) was released on bail vide order of this court dated 24.06.2008 in CrI MP No.1/2008 in CrI A.380/2008.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 20.07.2017

C O R A M

THE HONOURABLE Mr. JUSTICE C.T. SELVAM

Criminal Appeal No.380 of 2008

Vijay @ Chokku
S/o.Mahimaidoss

...Appellant/Accused

Versus

State represented by
The Inspector of Police,
L&O, T-4 Maduravoil Police Station.
Crime No.2576 of 2005

...Respondent/Complainant

Criminal Appeal filed under Section 374 of Criminal Procedure Code against the judgment of learned Additional Sessions Judge cum Fast Track Court III, Poonamallee, passed in S.C.No.229 of 2007 on 09.05.2008.

For Appellant : Mr.V.Parthiban

For Respondent : Mr.V.Arul

Additional Public Prosecutor

J U D G M E N T

This appeal arises against the judgment of learned Additional Sessions Judge cum Fast Track Court III, Poonamallee, passed in S.C.No.229 of 2007 on 09.05.2008.

2. Prosecution case is that PW-3 had a love affair with sister of appellant owing to which she became pregnant. Since PW-3 refused to marry his sister, appellant assaulted him using a knife and caused grievous injuries. PW-1, mother of PW-3, preferred complaint, Ex.P1 with PW-8, Sub-Inspector of Police, Maduravoyal, who registered a case in Crime No.2576 of 2005 for offences u/s.394(b), 506(ii) and 307 IPC. The Printed First

Information Report is Ex.P8. PW-8 took up investigation, visited the place of occurrence and prepared Ex.P2- observation mahazar and Ex.P9 - rough sketch. PW-8 examined PWs.1, 2 and others and recorded their statements. PW-8 examined PW-4 and another and recorded their statements. On 05.10.2005 at about 14.00 hours, PW-8 arrested the accused and recorded his confession statement in the presence of PWs.5 and 6. The admissible portion of confession statement is Ex.P10. PW-8 seized MO-1, knife, under Ex.P3 - recovery mahazar, in the presence of PWs.5 and 6. PW-8 sent the accused to judicial custody. PW-8 forwarded the case properties to Court under Form-95. PW-8 examined PWs.1, 2 and 6 and recorded their statements. Thereafter, PW-8 handed over investigation to PW-9, Inspector of Police, Maduravoyal. On 21.11.2005, PW-9 examined PW-3 and recorded his statement. PW-9 examined Dr.Deepa, who treated PW-3, obtained copy of Accident Register and recorded her statement. On completion of investigation, PW-9 filed charge sheet informing commission of offence u/s.307 IPC before learned Judicial Magistrate II, Poonamallee. Upon committal, the case was taken on file in S.C.No.229 of 2007 on the file of learned Additional Sessions Judge cum Fast Track Court III, Poonamallee.

3. Before trial Court, prosecution examined 9 witnesses and marked 10 exhibits and 1 material object. None were examined on the side of defence nor were any exhibits marked.

4. On appreciation of materials before it, trial Court, under judgment dated 09.05.2008, convicted appellant/accused for offences u/s.307 IPC and sentenced him to 5 years R.I. and fine of Rs.1,000/- i/d 3 months R.I. Against such finding, the present revision has been filed.

5. Heard learned counsel for appellant and learned Additional Public Prosecutor.

6. Learned counsel for appellant submitted that PW-1, mother of PW-3, is the de facto complainant but she had been treated hostile since she did not depose in keeping with the prosecution case of her having witnessed the occurrence. PW-3, injured witness, as also PW-2, an eye witness to the occurrence, both have spoken to injuries suffered by PW-3 to the throat but had not spoken to injury found on his chest by Doctor, PW-7, upon his admission at hospital. Learned counsel further submitted that both PWs.2 and 3 have spoken to the occurrence having taken place at 08.30 a.m. whereas the evidence of PW-7, Doctor, informed that at 08.30 a.m. injured had been admitted at hospital. Therefore, PW-2 wrongly informed the time of occurrence and the possibility of his not having witnessed the same could not be ruled out. Learned counsel also submitted that though PW-7 had informed the injuries suffered by PW-3 were

grievous he had not informed that the same were likely to cause death. Learned counsel submitted that appellant already has undergone incarceration for a period of about two years. Submitting as above, learned counsel prayed that this Court may find in favour of appellant.

7. Heard learned Additional Public Prosecutor on the above submissions.

8. This Court is of the view that not much can be made of PWs.2 and 3 informing the time of occurrence as 08.30 a.m. though the hospital records Ex.P6 - Wound Certificate and Ex.P7 - Accident Register inform the time of PW-3's admission at hospital as 08.30 a.m. On the facts of this case, the same would only be a minor discrepancy. When the injured witness has spoken clearly regards two injuries to his neck and the same find support from the hospital records as spoken to by PW-7, Doctor, his merely not informing anything about the injury to the chest, which was only an abrasion, cannot really be complained against. The evidence of PW-3 finds support in the evidence of PW-2, an eye witness to the occurrence. In the attendant facts and circumstances of the case, trial Court has arrived at a reasoned and just finding of conviction. The sentence imposed by it is also considered appropriate.

The Criminal Appeal shall stand dismissed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

gm

To

1. THE ADDITIONAL SESSIONS JUDGE,
FAST TRACK COURT III,
POONAMALLEE.
2. THE JUDICIAL MAGISTRATE NO.II, POONAMALLEE,
3. CHIEF JUDICIAL MAGISTRATE, CHENGALPATHU.
4. THE SUPERINTENDENT, CENTRAL PRISON, PUZAL CHENNAI.
5. THE SUPERINTENDENT, CENTRAL PRISON, VELLORE.

6. THE INSPECTOR OF POLICE,
L&O, T-4 MADURAVOIL POLICE STATION.

7. THE PUBLIC PROSECUTOR,
HIGH COURT, MADRAS.

+1cc to Mr.V.PARTHIBAN, Advocate, S.R.No. 50861

Criminal Appeal No.380 of 2008

CNR(CO)
TR(05/03/2018)



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