

Bail Slip

The Appellant/Accused herein viz Chinnappaiyan, S/o Pachaiyappam, was directed to be released on bail as per order of this court dated 13.08.2008, made in CrI.M.P. No 1/2008 in CrI.A. 590/2008.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.590 of 2008

Chinnappaiyan
Appellant/Accused

Vs

The State rep. By
The Inspector of Police,
Chengalpattu Taluk,
Police Station, Chengalpattu.

Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the judgment / order dated 30.06.2008 in S.C.No.558 of 2006 on the file of the Additional District and Sessions Judge (Fast Track Court No.I) Chengalpattu and acquit the appellant.

For Appellant : M/s.S.Krishnaswamy

For Respondent : Mrs.M.F.Shabana

Govt. Adv. (CrI. Side)

JUDGMENT

The sole accused in S.C.No.558 of 2006 on the file of Additional District and Sessions Judge, Fast Track Court, No.I, Chengalpattu, is the appellant herein. He was convicted for offence under sections 307 IPC & 294(b) IPC. The trial court convicted the appellant under Section 294(b) IPC and imposed a fine of Rs.500/- and in default to undergo simple imprisonment for one week and convict the appellant under Section 307 IPC and sentenced to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.9,500/- in default to undergo 3 months. Challenging the above said conviction and sentence, the appellant is before this Court with this appeal.

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

i) PW2 is the injured witness in this case. On 12.09.2005 at about 6.00 pm, she went to her daughter's house. At that time there was a quarrel between the accused and her sister-in-law. While PW2 questioned the accused, he got agitated over the same and took a rough stone available in the scene of occurrence and attacked the PW2 in her head and caused injury. Thereafter, PW1, the son-in-law of PW2, took her to the hospital and admitted there. Thereafter, on the next day morning at 5.00am, he filed a complaint before the respondent Police Station before the Inspector of police, PW6.

ii) On receipt of the complaint, PW6, registered a case in Crime No.358 of 2005, and prepared FIR. Then, he proceeded to the Government Hospital, Chengalpattu, where PW2 was admitted and recorded her statement. Then, he went to the scene of occurrence and prepared a observation Mahazar and rough sketch. Then, he recorded the statement of witness and seized the stone, MO1, under the cover of Mahazar and at about 10.30 am, he arrested the accused and sent him to Judicial custody. PW6 recorded the statement of Doctor, who treated PW2. As he was transferred, he has handed over the investigation to one Gopal, the Sub Inspector of Police, and thereafter, he continued the investigation and altered the charge under Section 307 IPC and after completion of investigation, he filed charge sheet.

3. Based on the above materials, the trial court framed the charge as mentioned in the first para of the judgment, whereas the accused denied the same. In order to prove this case, the prosecution has examined 6 witnesses, exhibited 7 documents, and marked one material object, MO1.

4. Out of the witnesses examined, PW1 is the son-in-law of the injured person PW2. According to him, on 12.09.2005 at about 5pm, PW2, his mother-in-law came to his house, at that time, there was a quarrel between the accused and the sister-in-law of PW2. When PW2 questioned the accused, the accused scolded her with filthy languages and attacked her in head with a stone available in the scene of occurrence. Then, he took her to the Chengalpattu Government Hospital and he gave a complaint to the respondent police.

5. PW2, is the injured witness. According to her, on the date of occurrence at about 8.00 pm, when she went to her daughter's house, there was a quarrel between the accused and her sister-in-law. When she questioned the accused, he attacked her with stone and she fell down. PW3 is the daughter of PW2 and wife of PW1, who is another eye witness to the occurrence. According to her, when PW2 questioned the accused during the quarrel, he attacked her with a stone and caused injuries. PW4 is the witness to observation Mahazar and also recovery of

material object, M01. PW5 is the Doctor working in the Government Medical College & Hospital, Chengalpattu. He admitted PW2 and gave treatment and also issued a Accident Register. PW6 is the Inspector of Police who registered the complaint and arrested the accused and recorded the statement of witness. Thereafter, one Gopal (not examined), the Sub Inspector of Police, completed the investigation and filed charge sheet.

6. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., the accused denied the same. He did not examine any witness nor marked any document.

7. Considering the above materials, the trial court convicted the accused as mentioned in first para of this judgment. Challenging the above conviction and sentence, the appellant moved before this Court with this appeal.

8. Heard Mr.S.Krishnaswamy, learned counsel appearing for the petitioner and Mrs.M.F.Shobana, Governmnet Advocate, learned counsel appearing for the respondent

9. The learned counsel appearing for the appellant would submit that even though PW1 and PW3 are said to be the eye witness to the occurrence, they cannot be considered as eye witness to the occurrence as per the evidence of the investigating officer. Apart from that PW2, the injured witness, while she was admitted in the hospital has stated that 3 persons attacked her and PW5, the Doctor also issued an Accident Register to that effect, and there is also a delay in filing FIR, which has not been explained by the prosecution and hence, he prayed for allowing the appeal.

10. Per contra, the learned Government Advocate appearing for the respondent would submit that there were 3 eye witnesses to the occurrence, the injured PW2, and other two witnesses PWs1 and 3, all of them consistently stated that it is only the accused had attacked PW2 and there is no reason to disbelieve the evidence, the trial Court after considering the entire evidence rightly convicted him and sought to sustain the judgment of the Court below.

11. I have considered the rival statements, and perused records carefully. As per the prosecution case, there are 3 eye witnesses to the occurrence, apart from PW2, the injured witness, PW1, the son in law of PW2 and PW3 the daughter of PW2. According to them at the time of occurrence, there was a quarrel between the accused and the sister in law of PW2. When PW2 questioned the same, the accused attacked her with a stone available in the scene of occurrence and caused injuries. Even though PWs1 and 3 claimed to be the eye witness of the occurrence, in the cross-examination of the investigating

officer, PW6, it has been elicited that during the investigation both of them have stated that they did not see the occurrence. Hence, it is highly doubtful whether PWs 1 and 3 were witnessed the occurrence. So far as PW2, the injured witness is concerned, at the time of admitting her in the hospital she has stated to PW5, that 3 known persons attacked her. The PW5, the Doctor in the Government Hospital, Chengalpattu has also issued a Accident Register to that effect. PW4 also stated that, PW2 was attacked by 3 known persons, and there is a contradiction in their evidence on her first ever statement to the Doctor, PW5. PW2 has stated that three known persons had attacked her and subsequently, changed and said it is only the accused attacked her. It also creates serious doubt over the evidence of PW2. Apart from that, all the three witnesses are interested witness. Even though the investigation officer has stated that some other witnesses were present in the scene of occurrence and he has also recorded their statements under Section 161 Cr.P.C., none of the witnesses were examined by the prosecution to corroborate the evidence of Pws 1, 2 and 3.

12. According to the prosecution, the occurrence was took place on 12.09.2005 at about 6.00 pm, but the complaint was given on 13.09.2005 at about 5.00 a.m. and there is a delay of 11 hours in filing the complaint. Apart from that, the FIR reached the Court only at about 5 pm in the evening. The above delay in filing the complaint was not properly explained by the prosecution. Considering all the above circumstances, I am of the considered view that the prosecution has failed to prove the guilty of the accused beyond any reasonable doubt. Hence, the appellant is entitled for acquittal.

13. In the result, the appeal is allowed and the conviction and sentence imposed in S.C.No.558 of 2006 on the file of Additional District and Sessions Judge, Fast Track Court, No.I, Chengalpattu is set aside and the appellant is acquitted. The fine amount if any paid by the accused should be returned to him. The Bail bond also should be cancelled.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

pvs

To

1. The Judicial Magistrate No II
Chengalpattu.
 2. The Chief Judicial Magistrate
Chengalpattu.
 3. The Additional District and sessions Judge
(Fast Track Court No I)
Chengalpattu.
 4. The Principal Sessions Judge
Chengalpattu.
 5. The Superintendent
Central Prison, Puzhal
 6. The Inspector of Police
Chengalpattu Taluk Police
Station, Chengalpattu.
 7. The Public Prosecutor
High Court, Madras.
- +1 Cc to Mr.S. Krishnaswamy, Advocate sr 3133

Crl.A.No.590 of 2008

SP(07/11/2017)

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