

Bail Slip

That the Appellant herein/Accused No.1 viz Duraiswamy, S/o Ramasamy was directed to be released on bail as per Order of the Court dated 01.06.2016 made in Crl.M.P.No. 1870 of 2016 in Crl.A.134 of 2016 on the file of the Court.

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 02.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Criminal Appeal No.134 of 2016
and Crl.M.P.No.1871 of 2016

Duraiswamy

... Appellant

versus

State by
The Inspector of Police,
Masinakudi Police Station,
Udahamandalam District.

.... Respondent

Prayer: Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, 1973 to set aside the judgment dated 24.08.2015 passed in S.C.No.20 of 2012, on the file of the learned Sessions Judge, Magalir Court, [Fast Track], Udahamandalam.

For Appellant : Mr.J.Stalin

For Respondent : Mr.K.Madhan
Government Advocate [Crl.Side]

J U D G M E N T

The accused is the appellant.

2. This appeal is directed against the conviction and sentence imposed in S.C.No.20 of 2012, on the file of the learned Sessions Judge, Magalir Court [Fast Track], Udahamandalam, ordering the accused to undergo Rigorous Imprisonment for 3 years and also to pay a fine of Rs.5,000/-, in default, to undergo further period of 6 months Simple Imprisonment and compensation of Rs.3,00,000/-, in default, to

undergo one year Rigorous Imprisonment of the offence under Section 326 IPC.

3. The facts necessary for the disposal of the appeal, are as follows :-

[i] Indira [P.W.2] is the daughter of Pushpa [P.W.1]. The accused is the husband of Indira [P.W.2]. P.W.1 is a resident of Masinagudi, near Gudalur. The accused used to quarrel with P.W.2 suspecting her fidelity. On 24.02.2010, P.W.2 was at her mother's house. At about 10.15 p.m., the accused, who came there, attacked P.W.2 using M.O.1 [bill hook]. She sustained injuries. Immediately, she was taken to the Government Hospital, Udahamandalam.

[ii] Dr.V.Pandian [P.W.9] examined her and found the following injuries;

- " i. Left wrist and hand separated from forearm.
- ii. 6 x 5 x 4 cm lacerated wound on Rt breast.
- iii. 5 x 4 x 3 cm lacerated wound on back of Rt forearm.
- iv. 3 x 2 x 1 cm lacerated wound near back of Rt elbow."

He referred her to Coimbatore Medical College Hospital, for plastic surgery and for further management. Ex.P.9 is the Accident Register.

[iii] The injured was taken Ganga Hospital, Coimbatore. Dr.Madhu Periasamy [P.W.11] attached to Ganga Hospital, Coimbatore is a Plastic Surgeon. He found the following injuries;

- "1. Guillotine amputation of left hand at inter carpal level distal part brought separately not well preserved.
- 2. 10cm cut wound over the right breast.
- 3. 2cm cut wound over the radial border of MPX region of right little finger. No distal neurovascular deficit.
- 4. 5cm cut wound over the proximal aspect of right forearm.
- 5. 8cm slicing wound over the right mid forearm.
- 6. 3cm slicing wound left forearm."

Replantation of left hand was done at Ganga Hospital.

Ex.P.15 is the wound certificate. Ex.P.16 is the discharge summary issued by Ganga Hospital.

[iv] On 25.02.2010, at about 14.00 hours, Robert [P.W.10], the then Sub-Inspector of Police attached to Masinagudi Police Station received the information from the Police Outpost, Government Hospital, Udahamandalam, about the attack on P.W.2. A constable was sent to Ganga Hospital. He received the statement [Ex.P.1] given by P.W.1. P.W.10 registered a case in Crime No.10 of 2010 of the offences punishable under Sections 307 and 324 IPC. Ex.P.10 is the First Information Report. He took up the investigation, visited the scene of occurrence and in the presence of Mary [P.W.3], Suresh, he prepared the Observation Mahazar [Ex.P.2] and Rough Sketch [Ex.P.11]. At about 5.45 p.m. he recovered M.O.1 [long knife] in the presence of Ganesan [P.W.5] and Vasantha [P.W.7] under the cover of Mahazar [Ex.P.4].

[v] P.W.10 arrested the accused on 26.02.2010 at about 9.30 a.m. in the presence of Balakrishnan and Rajan [P.W.4]. He recovered nighty [M.O.2] and Inskrit [M.O.3] worn by the injured Indira in the presence of Mary [P.W.3] and Jayanthi [P.W.6] under the cover of Mahazar [Ex.P.5]. He has also recovered blood stained banian, which was worn by the accused at the time of occurrence, under the cover of Mahazar [Ex.P.13]. He recorded the statement of the accused and sent the Material Objects to the Court under Form - 91 [Ex.P.14].

[vi] P.W.12, the then Inspector of Police, Masinagudi, took up the further investigation. He examined the Doctors, who treated the victim [P.W.2] and Suresh, who was present at the time of occurrence. After completion of the investigation, P.W.13, Inspector laid the charge sheet. The Trial Court framed charges under Sections 452 [2 counts], 324 [3 counts] 323 and 307 IPC.

[vii] The accused denied the commission of the offence. The accused pleaded not guilty. The prosecution examined 13 witnesses. The accused did not produce any defence witness on his behalf.

[viii] The Trial Court has accepted the case of the prosecution and found the accused guilty under Section 326 IPC alone. He was acquitted of the offences under Sections 452 [2 counts], 324 [3 counts] 323 and 307 IPC.

[ix] Assailing the said conviction and sentence, the appellant moved this Court.

4. The learned counsel appearing for the appellant would submit that the prosecution has failed to prove that M.O.1 [long knife] was employed in the course of the commission of offence. He would further submit that the Trial Court has

committed error in awarding compensation in addition to the fine imposed on the appellant.

5. The learned Government Advocate [Criminal Side] supported the judgment of the Trial Court. According to him, there are enough materials to convict the appellant.

6. Admittedly, the victim [P.W.2] is the wife of the accused. P.W.1 is the mother of Indira [P.W.2]. The occurrence is said to have taken place at P.W.1's house on 24.02.2010 at about 10.15p.m. It is seen from the evidence of P.W.1 and P.W.2 that the accused suspected the fidelity of his wife [P.W.2] and on that account, he used to quarrel with her.

7. It is the evidence of P.W.2 that, on 24.02.2010, at about 10.15p.m., when she was at P.W.1's house, the accused came there and attacked her using M.O.1 [bill hook]. She received cut injuries. She was taken to Government Hospital, Udahamandalam. The evidence of Dr.V.Pandian [P.W.9] would show that he examined P.W.2, on 24.02.2010, at 11.45p.m. and found the following injuries of P.W.2.

- " i. Left wrist and hand separated from forearm.
- ii. 6 x 5 x 4 cm lacerated wound on Rt breast.
- iii. 5 x 4 x 3 cm lacerated wound on back of Rt forearm.
- iv. 3 x 2 x 1 cm lacerated wound near back of Rt elbow."

Hence, he referred her to Coimbatore Medical College Hospital, for plastic surgery and for further management.

8. Mary [P.W.3] is a neighbour of P.W.1. Her evidence is that, she heard the cries of P.W.2 at the time of occurrence and immediately rushed to the house of P.W.1 and that time, she saw the accused running from the house of P.W.1 with a knife on his hand.

9. The evidence of the injured witness [P.W.2] was amply corroborated by medical evidence and also the evidence of P.W.2 and P.W.3. I do not find any reason to disbelieve the evidence given by them. I hold that the incident had taken place in the manner spoken to by P.W.1 to P.W.3.

10. The Investigating Officer [P.W.10] visited the scene of occurrence and recovered the blood stained articles [M.O.1 to M.O.4] and they were subjected to chemical examination by Forensic Department. P.W.7 Scientific Officer found blood on the said articles.

11. The occurrence took place on 24.02.2010 at 10.15p.m. The victim was examined by the Doctor at Udamandalam at 11.45p.m. She informed the Doctor that she was attacked by a known person using aruval at her home. Blood stains were found at the place of occurrence [P.W.1's house] as could be seen from Observation Mahazar [Ex.P.2]. The accused was arrested on 26.02.2010 at about 9.30 a.m. by the then Sub-Inspector of Police [P.W.10]. All these circumstances also indicate the complicity of the accused in the commission of the offence.

12. Having regard to the entire materials on record, I hold that the prosecution has sufficiently established that the accused unleash violence and he caused the injuries sustained by the victim. The Trial Court has convicted the accused under Section 326 IPC. The evidence given by Dr.Madhu Periasamy [P.W.11] would show that the victim sustained a grievous injury. She has also sustained simple injuries. His evidence and the medical certificates [Ex.P.15 and Ex.P.16] issued by Ganga Hospital would show that P.W.2 suffered "guillotine amputation of left hand at inter carpal level". Replantation of her left hand was performed at Ganga Hospital. She was admitted to the Hospital on 25.02.2010 and discharged on 10.03.2010 as per the Discharge Summary [Ex.P.16]. The medical certificates make it clear that the victim has sustained grievous injury. Therefore, there is no difficulty in confirming the order of conviction recorded by the Trial Court against the appellant.

13. The learned counsel appearing for the appellant would submit that the sentence of imprisonment imposed on the appellant is high and excessive and prayed for reduction of sentence. Section 326 IPC is punishable with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. In the case at hand, as already noticed the victim suffered "amputation of left hand at inter carpal level". Having regard to the nature of injury sustained by the victim and the period of hospitalisation, I am not inclined to reduce the sentence of imprisonment imposed by the Trial Court.

14. The next contention of the learned counsel appearing for the appellant is that the Trial Court has committed an error in directing the appellant to pay Rs.3,00,000/- as compensation to the victim in addition to the fine imposed on the appellant. The learned counsel has pointed out that the appellant is unable to pay the fine amount of Rs.5,000/-. The Hon'ble Supreme Court in STATE OF PUNJAB vs. GURMEJ SINGH reported in 2002 CRI.L.J. 3741 has held that the compensation to victim cannot be awarded over and above a fine imposed on the accused. In SIVASURIYAN vs. THANGAVELU reported in (2004) 13 SCC 795 it has been reiterated that the power under

Section 357 (3) can come into play only where court has imposed a sentence, which does not include a fine. In the light of the law laid down by the Hon'ble Supreme Court, I hold that the order of the Trial Court directing compensation to the tune of Rs.3,00,000/- by the appellant is liable to be set aside.

15. For the reasons stated above, this Criminal Appeal is allowed in part. The conviction and sentence imposed on the appellant of the offence under Section 326 IPC by the learned Sessions Judge, Magalir Court [Fast Track], Udahamandalam in S.C.No.20 of 2012, dated 24.08.2015, are confirmed. However, the order of the Trial Court directing payment of compensation of Rs.3,00,000/- by the appellant is set aside. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

sri

To

1. The Sessions Judge,
Magalir Court [Fast Track],
Udahamandalam.
- 2.-do- thro the Principal Sessions Judge,
Nilgiris.
- 3.The Judicial Magistrate,
Gudalur.
- 4.-do- thro the Chief Judicial Magistrate,
Nilgiris.
- 5.The Superintendent, Central Prison,
Coimbatore.
- 6.The Inspector of Police,
Government of Tamil Nadu,
Masinakudi Police Station,
Udahamandalam District.

7.The Public Prosecutor,
High Court of Madras,
Chennai.

8. The District Collector,
Nilgiris.

9.The Director General of Police,
Mylapore, Chennai.

Copy to: The Section Officer,
Criminal Section,
High Court, Madras-104.

+1cc to Mr.J.Stalin, Advocate Sr. 55483

Criminal Appeal No.134 of 2016

RJ(CO)
VR(17/8/2017)



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