

Bail Slip

The Accused/Petitioner herein viz Prabha @ Prabhakaran was released on bail as per the order of this court dated 11.12.2008, Crl.MP.NO./2008 in Crl.A.No.809/2008.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.809 of 2008

Prabha @ Prabhakaran .. Appellant

Vs

State rep. By
The Inspector of Police,
C-5 Kothavalchavadi Police Station,
Chennai. .. Respondent

Prayer:- Criminal Appeal filed under Section 374 (2) r/w.401 of Cr.P.C., to reverse the judgment dated 14.10.2008 in S.C.No.339 of 2007 on the file of the VI Additional Sessions Judge, Chennai.

For Appellant : Ms.R.Srividhya,
Legal Aid Counsel

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

JUDGEMENT

The sole accused in S.C.No.339 of 2007 on the file of the VI Additional Sessions Court, City Civil Court, Chennai, is the appellant herein. He stood charged for the offences under Sections 341, 332, 307 and 506(ii) IPC. By judgment, dated 14.10.2008, the trial Court convicted the appellant for the offence under Section 332 IPC and sentenced him to undergo simple imprisonment for one year and to pay a fine of Rs.1000/- in default, to undergo simple imprisonment for 3 months and convicted him under Section 307 IPC and sentenced to undergo simple imprisonment for 2 years and to pay a fine of Rs.1000/-, in default, to undergo simple imprisonment for 3 months and the appellant was acquitted from the charges under Sections 341 and

506(ii) IPC. The trial Court ordered the sentences to run concurrently. Challenging the above said conviction and sentence, the appellant/accused is before this Court with this Criminal Appeal.

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

P.W.2, working as Head Constable in C5,, Kothavalchavadi Police Station, Chennai, he along with P.W.1, a Sub-Inspector of Police and P.W.3 went in search of the accused/appellant, who is absconding, in connection with Cr.No.159 of 2005 for the offences under Sections 341, 323 and 506(ii) IPC, on 16.03.2005 near Annapillai street, Davidson street, Chennai. On seeing the police personnels, the accused tried to run away, and P.W.2 chased the accused. The accused scolded P.W.2, with filthy language and tried to attack him with a knife on his head. While P.W.2 warded the attack, he suffered injuries on his left hand. In the meantime, other 2 witnesses also came there and caught hold of the appellant/accused. Thereafter, he was taken to the police station and P.W.1 filed a Special Report(Ex.P.1). Based on the same, P.W.7, Inspector of Police, attached to the respondent police, registered a case in Crime No.164 of 2005 for the offences under Sections 341, 353, 332, 307 and 506(ii) and prepared First Information Report (Ex.P.5) and arrested the appellant/accused.

3. Thereafter, P.W.7, proceeded to the scene of occurrence and prepared an Observation Mahazar (Ex.P.7) and drew a rough sketch (Ex.P.8) in the presence of P.W.4 and another witness and also recovered the stones, said to have thrown by the appellant. Then, he sent P.W.2, for treatment to the Stanley Medical College Hospital with a memo and recorded the statement of the witnesses and after completion of investigation, he laid the final report.

4. Based on the above materials, the trial Court framed charges as mentioned in paragraph one of the judgement and the accused denied the same. In order to prove its case, on the side of the prosecution, as many as 7 witnesses were examined and 10 documents were exhibited, besides 2 material objects were marked.

5. Out of the witness examined, P.W. 1 is the Sub-Inspector of Police, attached to the respondent police station. According to him, the appellant is an accused in Crime No.159 of 2005 on the file of the same police station, and he was absconding. On the date of occurrence, he has received information that the accused was found near Annapillai street,

immediately, he along with P.Ws.2 and 3 rushed there and after seeing the police personnels, the accused tried to attack P.W.2 with knife, P.W.2 sustained injuries, the accused also abused him with filthy language and threw stones on them, and there was a tussle in the scene of occurrence, and they have managed to caught hold of the appellant and brought him to the police station and he filed a special report. P.W.2, Head Constable, is the injured witness. He also reiterated the evidence of P.W.2 and stated that while they were trying to apprehend the appellant, he attacked him with knife and when he warded the attack, he suffered injuries on his right hand and they have managed to caught hold of the accused, thereafter, he was sent to Stanley Medical College Hospital for treatment. P.W.3 is another Head Constable and he has also formed a part of the police team. He has also reiterated the evidence of P.Ws.1 and 2. P.Ws. 4 and 5, who are witnesses to the arrest of the accused and seizure Mahazar, turned hostile. P.W.6, who is the witness to the confession of the accused, also turned hostile. P.W.7, Inspector of Police, attached to the respondent police, registered the First Information Report, arrested the accused, recorded the statement of the witnesses and after completion of investigation he laid charge sheet against the accused.

6. 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 examine any witness or mark any documents on his side.

7. 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 are before this Court with this Criminal Appeal.

8. Earlier when the matter was taken up for hearing, there was no representation on behalf of the appellant on 05.10.2017 and hence, the matter was posted under the caption "for dismissal" on 13.10.2017 and on that day also there was no representation for the appellant, hence Ms.R.Srividhya, Advocate, has been appointed as legal aid counsel for the appellant.

9. Ms.R.Srividhya, learned counsel appearing for the appellant would vehemently contended that except the interested evidence of P.Ws.1, 2 and 3, there is no other evidence available to establish the case of the prosecution. Admittedly, there are number of public were present in the scene of occurrence, but the prosecution did not examine any independent witness to prove the same. That apart, both the Mahazar witness and the witness for the recovery of weapon and the confession of accused had also turned hostile. Even though P.W.2 was given

treatment in Stanley Medical College Hospital, the Doctor, who treated P.W.2 was not examined and only the accident register has been marked through the Investigating Officer, which creates doubt in the prosecution case.

10. The learned counsel appearing for the appellant further submit that this case has been foisted against the accused only for statistical purpose and absolutely, no such occurrence had taken place and the Court below based on the testimony of the interested witnesses, convicted the appellant. She further submits that even from the evidence of P.Ws.1 and 2, no offence under Section 307 IPC is made out and even as per the accident register, P.W.2 had suffered only two linear abrasions in his left hand, but the Court below erroneously convicted him under Section 307 IPC.

11. Per contra, the learned Government Advocate would submit that P.Ws.1 to 3 are police officials. It is their consistent evidence that the appellant is an accused in another crime and he was absconding, and on information, they went to arrest him, on seeing them, he started attacking the police team by throwing stones and he also attacked P.W.2, Head Constable with knife and caused injuries to him. P.W.2, injured witness, also categorically narrated the occurrence and there is no reason to disbelieve their evidence. Eventhough the Doctor has not been examined, the accident register, Ex.P.10 shows that P.W.2 suffered injuries, the accused was caught red handed, the weapon was recovered from him on the date of occurrence, and P.W.2 has identified the weapon. Merely because the witness to the seizure mahazar turned hostile, it no way affect the prosecution case. The learned Government Advocate further submitted that the Court below after considering the entire materials rightly convicted the appellant and there is no reason to interfere with the well considered judgment of the Court below.

12. I have considered the rival submissions and perused the materials available on record carefully.

13. P.W.1 is the Sub-Inspector of Police and P.Ws.2 and 3 are Head Constables, who were working in the respondent police. It is the consistent evidence of P.Ws.1 to 3 that the appellant is an accused in another crime registered in the same police station and he was absconding. While they were in search of the accused, they got information that the appellant was seen near Annapillai street and they rushed there and on seeing them, the accused started running and while P.W.2 tried to catch him, he attacked him with knife and caused lacerated injuries on his left hand and thereafter, he threw stones on the police party and the public ran to shelter themselves. Then, P.Ws.1 and 3 managed to caught hold of the appellant, recovered the

weapon and took him to the police station, where P.W.1 filed a special report. Based on the same, a crime has been registered by P.W.7. P.W.2 is the injured witness. He has also deposed that while he was trying to apprehend the accused, he attacked him with knife and he suffered injury on the right hand. Even though Ex.P.10, Accident Register was not marked through the Doctor, who treated P.W.2, it was marked through the investigating officer, which was objected by the accused. But the Court below admitted the same in evidence. A perusal of the Accident register also clearly shows that P.W.2 suffered a linear abrasion on his left hand.

14. The learned counsel appearing for the appellant would contend that since the witnesses to the seizure of M.O.1 knife and confession of the accused had turned hostile, recovery of the knife from the appellant has not been proved. Considering the fact that the accused was apprehended in the scene of occurrence itself, M.O.1 knife was also seized from him, which was also identified by P.W.2 and there is no reason to disbelieve the recovery, P.Ws.1 to 3 are police personnels and only on official duty, while trying to apprehend the appellant in another crime, he caused injuries to P.W.2.

15. The testimony of P.W.1 to P.W.3 are consistent, reliable and trustworthy. There is no reason to disbelieve their evidence. Merely because no independent witnesses have been examined, their evidence cannot be simply brushed aside.

16. In the above circumstances, I am of the considered view that the prosecution has clearly proved its case that, it is only thus accused had attacked P.W.2 with weapon and caused serious injuries.

17. Now, it has to be considered whether the act of the accused will fall within the ambit of Section 307 IPC. In order to bring home an offence under Section 307 IPC, the prosecution has to prove the following essential ingredients:

- "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; and
- 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) as sufficient in the ordinary course of nature to cause death, or that the accused attempted to cause 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.

18. But, none of the above ingredients is present in the instant case. Hence, the appellant cannot be convicted under Section 307 IPC. But the prosecution has clearly established that it is only this appellant attacked P.W.2 with knife and he suffered minor injuries on his right hand. Hence, the appellant is liable to be punished only under Section 324 IPC.

19. So far as the quantum of sentence is concerned, the accused is a poor person and has a big family to maintain. In the above circumstances, considering the mitigating as well as aggravating circumstances, sentence imposed on the appellant/accused is modified to undergo rigorous imprisonment for six months for the offence under Section 324 IPC. So far as the conviction and sentence imposed on the appellant under Section 332 is concerned the same is liable to be confirmed.

20. In the result, the Criminal Appeal is partly allowed and the conviction imposed on the appellant under Section 307 IPC is set aside, instead, he is convicted under Section 324 IPC and sentenced to undergo rigorous imprisonment for 6 months and to pay a fine of Rs.1000/-, in default to undergo simple imprisonment for 4 weeks and the conviction under Section 332 IPC is confirmed and he was sentenced to undergo rigorous imprisonment for 6 months and to pay a fine of Rs.1000/- in default to undergo simple imprisonment for 4 weeks. The period of sentence already undergone by the appellant/accused shall be set off under Section 428 Cr.P.C and all the sentences are directed to run concurrently.

21. While parting with the case, I appreciate the services rendered by Ms.R.Srividhya, learned counsel who appeared on behalf of the appellant/accused, as Legal Aid Counsel. The Legal Services Authority is directed to pay her remuneration.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The VI Additional Sessions Judge,
City Civil Court,
Chennai.

2.The Public Prosecutor,
High Court, Madras.

3.The District General of Police,
Mylapore,
Chennai.

4.The Superintendent,
Central Prison,
Puzhal, Chennai.

5.The Inspector of Police,
C-5 Kothavalchavadi Police Station,
Chennai.

Copy to:

The Member Secretary,
Legal Services Authority,
Chennai (in respect of para No.21 of this order)

+1cc to M/s.R.Srividhya, Legal Aid Counsel, sr.no.78852

Crl.A.No.809 of 2008

rsk(co)
nr 11/06/2018



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