BAIL SLIP

The petitioner/Accused-3 namely Venkat @ Venkatesan, aged 31 years, S/o.Mani was directed to be released on bail as per Order of this Honourble Court dated 23.10.2007 in Crl.Mp. 1 of 2007, on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.783 of 2007

1. Prakash @ Francies

2. Jayaraj

3. Venkat @ Venkatesan .. Appellants/Accused 1 to 3

Vs

State rep. By
Inspector of Police,
K-1, Sembium Police Station,
Perambur,
Chennai.
(Crime No.502/2000) .. Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment in S.C.No.351 of 2001 dated 09.08.2007 passed by III Additional Sessions Court, Chennai.

For Appellant-3 : Mr. J.Vinobha Gandhi

For Respondent : Mrs.M.F.Shabana,
Gov. Adv. (Crl. Side)

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JUDGEMENT

A1 to A3 in S.C.No.351 of 2001 on the file of the III Additional Sessions Court, Chennai, are the appellant herein. Totally, there are 4 accused and all the accused were stood charged for the offences under Sections 341, 307 and 506(ii) IPC. Earlier, the trial court acquitted all the accused from the charges, challenging the order of acquittal, P.W.1, injured witness, filed a revision before this Court in Crl.R.C.No.1897 of 2003, and this Court, by a judgment dated 18.02.2005, set aside the order of acquittal against A1 to A3

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and remanded the matter back to the trial court for fresh disposal. On remand, the trial court, by a judgment dated 09.08.2007, convicted A1 to A3, for all the charges and imposed a fine of Rs.100/- each, in default, to undergo simple imprisonment for one week each for the offence under Section 341 IPC, and sentenced to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.500/-each, in default, to undergo rigorous imprisonment for 6 months each for the offence under Section 307 IPC, and for the offence under Section 506(ii) IPC sentenced to undergo rigorous imprisonment for 6 months each and to pay a fine of Rs.100/- each, in default, to undergo simple imprisonment for one month each. Challenging the above said conviction and sentence, the appellants/A1 to A3, are before this Court with this Criminal Appeal.

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

P.W.1 is the injured witness. He was running a petty shop in Vyasarpadi. There was previous enmity between the family of A1, and P.W.1, and A1's wife was attacked by a close relative of P.W.1. Hence, on retaliation, on 05.04.2000, at about 11.30 p.m., while P.W.1 was about to close his shop, all the accused came there and A1 attacked P.W.1 on the right hand with sickle, due to which, 3 fingers were severed. A2 attacked P.W.1 on his left hand twice and A3 attacked him with knife on both the hands. When P.W.1 raised alarm, his neighbours came there, and after seeing them, the appellants/accused fled away, then P.W.1 was taken to the Government General Hospital, Chennai.

3. P.W.4, Doctor, working in the Government General Hospital, Chennai, admitted P.W.1 and given an Accident Register,Ex.P.3, and found the following injuries :

> " Vertical incised wound left side of head about 10 x 1 x 1 c.m. Incised would right elbow posterior about 10cm x 6 cm x bone deep. Incised wound right elbow - Anterior 6 x 3 x muscle deep incised wound right fore arm about 10 cm x 6 cm x bone deep. Incised wound above right wrist 6 x 3 x muscle deep. Incised wound right hand 10 x 6 cm x bone deep. Incised medial to lateral about 8 cm cut injury, little finger, ring finger and middle finger (amputated). Incised wound left forearm 6 x 3 x muscle deep. Incised wound left hand 10 x 3 cm x bone deep. Incised wound right knee 4 x 2 cm x muscle deep. Incised would left leg 3 x 1 x 1 cm"

4. On receipt of a memo from the Government General Hospital, Chennai, P.W.11, Sub-Inspector of Police, attached to the respondent police, proceeded to the hospital and

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recorded the statement of P.W.1, based on the same, he registered a case in Crime No.502 of 2000, under Sections 341, 324, 326 and 506(ii) IPC, and prepared First Information Report, Ex.P.5. Then, he proceeded to the scene of occurrence and prepared an Observation Mahazar, Ex.P.6 and drew a Rough Sketch, Ex.P.7, in the presence of the witnesses, recorded the statements of the witnesses. On 07.04.2000, at Ponnappan street, Melpatti, P.W.11, arrested A1. On such arrest, A1 has voluntarily given a confession and based on his disclosure statement, he seized the weapons used in the occurrence. Then on 08.04.2000, at Karunanithi Street, P.W.11 arrested A2 and A3 and remanded them to judicial custody. On 09.04.2000, he arrested Velu/A4, and remanded him to judicial custody. Since he was transferred, he handed over the investigation to P.W.12, Inspector of Police.

5. P.W.12, Inspector of Police, took up the case for further investigation and recorded the statement of the Doctor, who has given treatment to injured and after completion of investigation, he laid charge sheet against the accused.

6. Based on the above materials, the trial Court framed charges as mentioned in the first paragraph of the judgment and the accused denied the same. In order to prove its case , on the side of the prosecution, as many as 12 witnesses were examined and 9 documents were exhibited.

7. Out of the witnesses examined, P.W.1 is the injured witness. According to him, there was a previous enmity between A1's family and P.W.1's family, as some of the relatives of A1, were attacked by the close relative of P.W.1. Due to the same, on 05.04.2000, at about 11.30 p.m., the appellants came with dangerous weapons and attacked P.W.1 indiscriminately. P.W.2 is the father of P.W.1. He is also an eye-witness to the occurrence. After hearing alarm of P.W.1, he went to the scene of occurrence. At that time, he saw all the accused attacking P.W.1. When he went there, the appellants/accused also threatened P.W.2 with dire consequences and all of them fled away in an auto. P.W.3 is the Doctor, who treated P.W.1 in the Government Stanley Medical College Hospital. According to him, he has given a certificate that all the injuries are grievous in nature and issued the certificate, Ex.P.2. P.W.4, a Doctor, who admitted P.W.1 in the Government General Hospital, Chennai and issued the Accident Register, Ex.P.3. P.W.5, is the wife of P.W.1 and after hearing the alarm of P.W.1, she came to the scene of occurrence. P.W.6, is the Doctor, who admitted P.W.1 in the Government Stanley Medical College Hospital, where, P.W.1 told him that 4 known persons attacked him and he has also issued an Accident Register, Ex.P.4. P.W.7 to P.W.10 turned hostile. P.W.11, Sub-Inspector of Police, registered the case and commenced investigation and arrested the accused and remanded them to judicial custody and since he was transferred, he

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handed over the case to P.W.12, Inspector of Police. P.W.12, Inspector of Police, conducted further investigation and after completion of investigation, he laid charge sheet against the accused.

8. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not examine any witness or mark any documents.

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

10. Learned Government Advocate (Crl. Side) appearing for the respondent submits that pending appeal, A1 in this case, Prakash @ Francies, died on 09.01.2017. He has filed a memo along with death certificate, hence, the appeal is dismissed as abated against A1.

11. We have heard Mr.R.Rajarathinam, learned counsel appearing for the appellants and Mrs.M.F.Shabona, learned Government Advocate (Crl.Side) appearing for the State and also perused the records carefully.

12. P.W.1, is the injured witness in this case. According to him there was previous enmity between the family of A1 and his family. On the date of occurrence, all the accused came to his shop and A1 attacked him on his right hand and his 3 fingers were severed and A2 attacked him on his left hand and A3 attacked him on both his hands. P.W.2 is the father of P.W.1. He is also an eye-witness to the occurrence. According to him, after hearing the alarm of P.W.1, he went to the scene of occurrence, where he saw the accused attacking his son, and he went there to prevent them, but the appellants threatened him with dire consequences, and they fled away in an auto rickshaw. Then, P.W.1 was taken to Government General Hospital, Chennai, where P.W.4, admitted him and issued Accident Register, Ex.P.3. Thereafter, he was referred to Government Stanley Medical College Hospital, Chennai, where, P.W.6, Doctor, working in the causality ward admitted him, and at that time, he told him that four known persons attacked him. P.W.6, also issued an Accident register, Ex.P.4, the evidence of P.W.1, injured witness was corroborated by the medical evidences. Even though the Mahazar witnesses, and the independent witnesses, have turned hostile, from the evidence of P.Ws.1 and 2, which was corroborated by the medical evidence, it could be seen that it is only these accused attacked P.W.1, and caused serious

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injuries, and I find no reason to disbelieve the evidence of P.W.1.

13. In the above circumstances, I am of the considered view that the prosecution has clearly proved its case that, it is only these accused had attacked P.W.1 with weapons and caused serious injuries.

14. 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.

15. 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 these accused who have attacked P.W.1 with dangerous weapons and caused grievous injuries. Hence, the accused are liable to be punished under Section 326 IPC and the prosecution also established that all the accused waylaid P.W.1 and attacked him and they also threatened P.W.2 with dire consequences. Hence, they are also liable to be convicted under Sections 341 and 506(ii) IPC.

16. So far as the quantum of sentence is concerned, the accused are poor persons, they have big family to maintain and they have also chance to reform. Considering the above aggravating as well as mitigating circumstances, the appellants are sentenced to undergo rigorous imprisonment for 3 years for the offence under Section 326 IPC.

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17. In the result, the Criminal Appeal is partly

allowed and the conviction and sentence imposed on the appellants/A2 and A3 under Section 307 IPC is set aside instead they are convicted for an offence under Section 326 IPC and they are sentenced to undergo rigorous imprisonment for 3 years and also to pay a fine of Rs.1000/- each, in default, to undergo rigorous imprisonment for 8 weeks and the conviction and sentence imposed under Sections 341 and 506(ii) IPC are confirmed and the sentences imposed on A2 and A3 are ordered to run concurrently. The appeal against A1 is dismissed as abated. A2 is directed to undergo the sentence imposed on him along with the sentence imposed in S.C.No.61 of 1992. The period of sentence already undergone by the appellants/A2 and A3 shall be set off under Section 428 Cr.P.C.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

mrp

To

1.The III Additional Sessions Judge,
Chennai.

2.The Inspector Of Police,
K-1, Sembian Police Station,
Perambur, Chennai.

3.The superintendent central Prison,
Puzhal, Chennai.

4.The Public Prosecutor,
High Court, Madras.

Crl.A.No.783 of 2007

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