

Bail Slip

The Appellant/Accused 1 Subramanian aged 34 years son of Thangaiyan and the appellant/Accused 2 Dhanushkodi aged 33 years son of Packrisamy were directed to be released on bail as per of this Court dated 30.06.2010 and dated 31.03.10 in MP 2/10 and MP 1/10 in CRL A No.126 of 2010 respectively.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.02.2018

DELIVERED ON : 08.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal No.126 of 2010

1.Subramanian
2.Dhanushkodi

.... Appellants/Accused 1&2

Vs

The State Rep. by
The Inspector of Police,
Tiruvarur Taluk Police Station,
Tiruvarur District. Respondent/Complainant
(Crime No.437/2007)

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, to call for the records in Sessions Case No.68 of 2009 on the file of the learned Assistant Sessions Judge and Chief Judicial Magistrate, Tiruvarur and set aside the Judgment of conviction and sentence pronounced against the Appellants by the learned Assistant Sessions Judge and Chief Judicial Magistrate, Tiruvarur in Sessions Case No.68 of 2009 on 04.01.2010 and acquit the Appellants.

For Appellant : Mr.N.Manokaran

For Respondent : Mrs.T.P.Savitha
Government Advocate (Crl.Side)

JUDGMENT

This Appeal is being directed against the Judgment of conviction sentencing the appellants' for offences punishable

under sections 294(b) and 307 r/w, 34 of IPC, to undergo simple imprisonment for a period of 3 months for offence under section 294(b) of IPC and R.I. of 10 years and a fine of Rs.25,000/- for offences punishable under sections 307 IPC and 307 r/w, with 34 of IPC against the 1st and 2nd appellants' respectively.

2.In actual the above connection was made in furtherance of trial conducted in Sessions Case No.68 of 2009 on the file of learned Assistant Sessions and Chief Judicial Magistrate Court, Tiruvarur. In actual, the appellants Subramanian and Dhanushkodi stood charged by the Inspector of Police, Tiruvarur Taluk Police Station for and offence punishable under sections 294(b) and 307 r/w 34 of IPC. The said charges came to be laid in connection with the Investigation conducted by respondent Police in respect of a crime in Crime No.437 of 2007 dated 10.11.2007 registered on the basis of complaint made by one Ramesh.

3.It was the case of the complainant/PW1 that on 10.11.2007 when the appellant/accused questioned as to their illegal Act of assaulting his brother in law Paarthasarathy (PW2) the accused abused PW1 in filthy language and also threatened to kill him in furtherance of the above wordy quarrel A1 took up a sickle (M.O.1) and A2 pulled it from A1 and attacked Ramesh (PW1) causing injuries on Right hand side of his head and also on the right forehead. Therefore the above complaint was lodged by him before respondent police. The respondent police registered the complaint and conducted investigation. The respondent Police found that on 10.11.2007 when PW2 Paarthasarathy at about 5.00 p.m. was driving his date, the accused Subramaniam (A1) and Dhanuskodi (A2) were found having wordy quarrel with a driver of mini bus due to which Parthasarathy was not in a position to move his auto. When PW2 approached them requesting to stop the quarrel and give way for his auto, A1 and A2 assaulted PW2 the Investigation further revealed that PW2 Paarthasarathy immediately called upon Ramesh (PW1) who is his brother in law to place of incident to question A1 and A2 as to why and how they could assault PW2.

4.Accordingly PW1 came to the spot and questioned however the accused attacked PW1 with sickle. Therefore the respondent Police filed final report before the learned Judicial Magistrate, Tiruvarur and the same being an offence triable by the learned Sessions Court, it was committed to the learned Principal District and Sessions Judge and was sent to trial Court for trial and disposal according to law.

5. On the side of prosecution there were 13 witnesses were examined and Exs.P1-P8 marked, the material object M.O.1, The Aruvaal (sickle) used in the above offence is produced before trial. The injured was examined as PW1 and his brother-in-law Parthasarathy was examined as PW2. PW2, PW3, PW4, PW5 were examined as eye witnesses to the offence. PW5 is none other but wife of PW1 and Sister of PW2. PW6 and PW7 are witnesses to observation mahazar in Ex. P2. PW8 and PW9 are the witness to arrest of accused and recovery of M.O.1, PW10 and PW11 are Doctors who have issued Ex.P4 and P5 wound certificates PW12 and PW13 are the Investigation officer such that PW12 conducted Investigation and PW13 was officer then who filed the final report.

6. The learned trial Judge on appraisal of oral and documentary evidence relying upon the version of PW1 - PW4 concluded the trial by holding the appellants guilty of offence charged against them and thereby convicted and sentenced the appellant in above terms.

7. This Appeal is being filed as against the said order of conviction. The prime grounds of the Appeal as follows that the case against them is false and the same stands proved by the material irregularity as to the place of occurrence. It is their case that the alleged occurrence had taken place nearby water outlet, However Ex-P4 and Ex-P5 project the occurrence as to have occurred near PW1's residence.

8. More so the conclusion of the trial Court sentencing the accused for an offence under section 307 r/w 34 IPC is untenable for want of common intention.

9. The appellant also disputes the arrest of accused and recovery of M.O.1 as to the manner and procedure projected by the prosecution. It is their further contention that PW1 being the brother in law of PW1 and PW5 being the Sister of PW1 respectively being interested witnesses it is unsafe to rely upon their version.

10. In as much as recovery of M.O.1, sickle the same is disputed by appellant contending that when PW3 and PW5 say that the accused came to the scene of occurrence along with M.O.1 but PW2 says that M.O.1 was left at scene of occurrence.

11.I heard Mr.N.Manokaran, learned counsel for the appellants and Mrs.T.P.Savitha, learned Government Advocate (Criminal Side) for the respondent and perused the entire materials available on record.

12.On perusal of the impugned judgment, it is obvious to see that in holding the accused guilty of charge. It had relied upon the evidence of PW1 to PW5. Now it would be appropriate for this Court to scrutinize their evidence in line with the prosecution version.

13.On evaluating, the evidence as to place of occurrence, Ex-P4 and Ex-P5 the accidental register copy dated 20.07.2007 and Ex-P6 the first information report dated 10.11.2007, says that the occurrence took place nearby water outlet. Thus there is no doubt Ex-P4 and Ex-P5 contradicts the prosecution case in respect of the occurrence spot. Secondly, there is no evidence let in against A2 in as much as to establish common intention. It is needless to say that when the Prosecution case suffers want of evidence in respect of common intention with regards to A2, it is automatic that common intention cannot be established against A1. Since meeting of mind and common intention are indispensable to establish common intention.

14.In as much the recovery and arrest procedure are concerned it is seen that PW8 and PW9 who happened to be the witnesses to recovery of M.O.1 turned hostile. It is significant to note hear that with regard to M.O.1 Aruvaal (sickle) PW3 and PW5 says that the accused left the scene of occurrence along with M.O.1 but PW2 says that M.O.1 was left at scene of occurrence. Therefore it is obvious to see that the prosecution has miserably failed to establish recovery of M.O.1 as to how and where, that too when PW8 and PW9 the mahazar witness to recovery turned hostile. In this context it is also noteworthy that the alleged M.O.1 produced before the trial Court was not sent to chemical analysis. More so there is no blood stained clothes or other material produced before the trial. Thus for the foregoing reasons stated above that there is doubt with regard to place of occurrence, arrest and recovery procedure and more particularly the M.o.1 was not subjected to chemical analysis, I am of the firm opinion that the prosecution has miserably failed to establish their case.

15.It is needless to say that unlike civil prosecution, the criminal prosecution and conviction require material evidence beyond all reasonable doubts.

16.In the result:

(a) The Criminal Appeal stands allowed and the conviction on the appellants made in S.C.No.68 of 2009 is set aside;

(b) Both the accused stand acquitted of charges under Sections 294(b), 307 r/w 34 of IPC on the file of the learned Assistant Sessions and Chief Judicial Magistrate, Tiruvarur;

(c) Fine amount if any paid by the appellant/accused is directed to refund the same.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vs

To

1. The Assistant Sessions Judge and
Chief Judicial Magistrate, Tiruvarur.
 2. The Inspector of Police,
Tiruvarur Taluk Police Station,
Tiruvarur District.
 3. The Judicial Magistrate, Tiruvarur.
 4. The Chief Judicial Magistrate
Tiruvarur (for information)
 5. The Superintendent,
Central Prison, Trichy.
 6. The Public Prosecutor,
High Court, Madras.
- +1 cc to Mr.M.Guruprasad, Advocate Sr.No.76310

judgment made in
Criminal Appeal No.126 of 2010

VBA (CO)
CSL/26.11.2018