

Bail Slip

The Appellant/Accused viz, Pushparaj S/O Chellappan is directed to be released on bail as per the order of this Court, dt:31/08/2010 in CRL.MP.No.1 & 2 of 2010 in CRL.A.No.523 of 2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 31.10.2018

CORAM :

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.A.No.523 of 2010

Pushparaj Appellant

Versus

State represented by
The Inspector of Police,
K-3, Aminjikarai Police Station,
Chennai - 29
(Crime No.339 of 2009) Respondent

PRAYER: Criminal Appeal filed under Section 374 (2) of Cr.P.C., to set aside the conviction and sentence imposed on the petitioner by a judgment dated 04.08.2010 in S.C.No.200 of 2010 on the file of the Additional District & Sessions Judge-Fast Track Court-II, Chennai and acquit the appellant.

For Appellant : Mr.A.Thamizharasan
Legal-Aid-Counsel

For Respondent : Mrs.V.Sarathadevi
Government Advocate (crl.side)

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JUDGMENT

The convicted sole accused is the appellant herein.

2. This appeal is filed by the accused, who was convicted for offences under Sections 341 and 307 I.P.C and sentenced to pay a fine of Rs.500/- in default to undergo Simple Imprisonment for one week for the offence under Section 341 IPC and Rigorous Imprisonment for 7 years and to pay a fine of

Rs.10,000/- in default to undergo a further sentence of 6 months Simple Imprisonment for the offence under Section 307 I.P.C, imposed by the judgment dated 04.08.2010 in S.C.No.200 of 2010 on the file of the Additional District and Sessions Judge, Fast Track Court-II, Chennai.

3. The case of the prosecution is that on 13.04.2009, when P.W.2 was selling plastic vessels in exchange for old clothes in his tri-cycle, the tri-cycle accidentally grazed the appellant. The infuriated appellant damaged two plastic vessels and later with, the intention of causing the death of P.W.2, the appellant wrongfully restrained P.W.2 and by strangulating the victim pushed him down causing grievous injuries on the head of P.W.2.

4. To prove the charges, prosecution examined P.W.1 to P.W.9 and Exhibits P1 to P9 were marked and M.O.1 and M.O.2 were also marked.

5. On consideration of both oral and documentary evidence, the trial Court convicted the appellant under Sections 341 and 307 I.P.C and sentenced as stated supra.

6. The learned Legal-aid-counsel appearing for the appellant would submit that though there was material discrepancy in the evidence of P.W.s.1 to 3 as to the manner in which the victim sustained injuries, but the learned Trial Judge, instead of giving the benefit of doubt to the accused, had given untenable reasons to get over the discrepancy. The lower Court had failed to see that the parties were strangers to each other and there could not have been any motive for an assault with an intention to murder and also submitted that the sentence does not commensurate with the alleged offence and accordingly, prayed for acquittal.

7. The learned Government Advocate (Crl.Side) has made submissions in favour of the judgment of the trial Court.

8. Points for determination are that:-

i) Whether the prosecution has proved the charge under Sections 341 and 307 I.P.C beyond reasonable doubt?

ii) Whether the sentence passed under Sections 341 and 307 I.P.C are excessive?

9. Heard both sides and perused the records.

10. After hearing the rival contentions and also perusing documentary evidence of P.W.1 to P.W.9, it is seen from the evidence of the prosecution that P.W.2 is the injured person

and P.W.1 is the wife of the P.W.2 who had lodged Exhibit P1-complaint based upon which, Exhibit P7 F.I.R was registered. While, P.W.3 independent witness had deposed regarding the act of the accused in dragging P.W.1 and hitting P.W.1 against wall whereby, he sustained injury on the head, P.W.4 is the son-in-law of P.W.2 who had deposed regarding the statement given by P.W.1. The other witnesses P.W.5 and P.W.6 turned 'hostile'. P.W.7-Doctor Sasidharan issued Ex.P5 Accident Register and deposed regarding the time of the admission into the Government Hospital. However, he is not in a position to narrate the incident and has stated P.W.2 was given admission and P.W.8 Doctor Swarnarekha who had issued Ex.P6 medical opinion would depose that surgery was done in the skull as there was blood clot in the brain and that the surgery was done by opening the skull and he was under treatment for more than a month and the medical status, as that of the injured, at the time of the operation, at the time of admission and after the admission has been spoken to and also issued Ex.P5 Wound Certificate wherein the injury was classified as grievous in nature.

11. It is the specific evidence of P.W.8 that the injury is possible by dashing the head on the wall and also by hand. In the cross-examination, nothing was elicited with regard to nature of injury. However, she had deposed in detail in cross examination as to why there was a leakage of blood in the brain resulting in a major surgery in the brain assumes significance.

12. Thus, this Court finds that based upon the medical evidence of P.W.7-Doctor and P.W.8-Doctor and Exhibits P5 and P6, P.W.2 have sustained a grievous injury in the skull, which has resulted in a brain surgery and also the injury was fatal.

13. Now, the points for consideration is that whether the prosecution has proved beyond reasonable doubt as to whether the accused has caused such injury on the body of P.W.2?

14. With regard to the identification of the accused, both P.W.1 and P.W.2 have categorically identified the accused in the witness box. Besides P.W.1 had identified the accused during the time of interrogation at the Police Station. It remains to be stated that P.W.3 independent witness had deposed in clear terms that the accused has acted in a manner as to why P.W.1 is still engaging in the selling of small articles in a tri-cycle in the area wherein the accused proclaimed himself to be a big man in the locality and P.W.4, the son-in-law of P.W.2 has stated about the condition of P.W.2 immediately after the incident and taking him to the hospital for treatment and also admission into the private hospital and thereafter, in Government Hospital and thus, this Court finds that the evidence

of P.W.1 regarding attack and assault on his body by the accused and also spoken to by P.W.2, whose presence was neither disputed nor challenged in the cross-examination by the defence lawyer in the trial Court, is found to be clear and cogent and support the contents of Ex.P1-complaint. Furthermore, the clear and cogent evidence of P.W.2 and P.W.1 has been duly corroborated by the independent evidence of P.W.3 and thus, this Court is of the considered view that in view of the clear and cogent evidence of P.W.1 and P.W.3 which is found to be reliable and trustworthy the accused cannot deny causing injury on the head of PW.2 after wrongful restraining him. Thereafter, the admission of P.W.2 in the hospital and the nature of the treatment and the nature of the injury sustained by him have been spoken to by the medical witnesses as discussed supra and thus, this Court finds the finding rendered by the trial Court in respect of the offence under Sections 307 and 341 I.P.C does not call for interference as the same does not suffer from any illegality or irregularity and thus, this Court finds that the accused having the knowledge that such action of his throwing P.W.1 against the wall and hitting the head of P.W.1 against the wall will cause death and accordingly, the ingredients of the offence under Section 307 I.P.C have been made out.

15. Considering the nature and gravity of the offence and injuries sustained by P.W.2, I find that the sentence awarded by the trial Court commensurate with the offensive act of the accused on the body of P.W.2 and hence, the conviction and sentence passed by the trial Court is hereby confirmed.

16. Accordingly, this Criminal Appeal is dismissed. The conviction and sentence imposed by the learned Additional District & Sessions Judge-Fast Track Court-II, Chennai in S.C.No.200 of 2010 are confirmed. The fine amount imposed on the accused by the trial Court is also confirmed. The trial Court is directed to take steps to secure the accused/appellant and send him to prison in order to undergo the remaining period of sentence.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional Sessions and Fast Track Court,
Dharmapuri District

2. The Public Prosecutor (Crl.Side),
High Court, Madras.

3.The Metropolitan Magistrate No.V,
Egmore Chennai.

4.Thro' The Chief Metropolitan Magistrate,
Egmore Chennai.

5.The Superintendent, Central Prison,
Puzhal, Chennai

6.The Inspector of Police,
K-3, Aminjikarai Police Station,
Chennai-600 029.

Copy to
The Section Officer,
Criminal Section,
High Court, Madras.

Crl.A.No.523 of 2010

PA (CO)
GSP (30/11/2018)



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