

BAIL SLIP

The petitioner/accused viz., Suresh, 22 years, S/o.Thangamani, was released on bail as per order of this Court dated 02.02.2011 in CRL MP no.1 of 2010 in CRL A No.762 of 2010 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.01.2018

DELIVERED ON : 30.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal No.762 of 2010

Suresh

... Appellant

Vs

State by Inspector of Police,
P2 Otteri Police Station,
Chennai (Cr.No.447 of 2005)

... Respondent

Prayer: Appeal filed under Section 374(2) of the Criminal Procedure Code, to set aside the judgment of the Additional District and Sessions Judge, (F.T.C.No.III), Chennai-1 made in S.C.No.246 of 2010 by judgment dated 23.09.2010 and acquit the accused/appellant herein from the charges.

For Appellant : Mr.S.Jayakumar

For Respondent : Mrs.T.P.Savitha
Government Advocate

JUDGMENT

This criminal appeal is preferred by the appellant/accused against the conviction and sentence passed by the learned Additional District and Sessions Judge, (Fast Track Court III) Chennai made in S.C.No.246 of 2010 by judgment dated 23.9.2010 wherein the learned trial court convicted the appellant, for the offence under section 341 read with 394 of IPC and sentenced him to undergo one month rigorous imprisonment together with fine of Rs.1000/- in default to undergo 15 days simple imprisonment and

convicted under section 394 of IPC and sentenced to undergo 5 years rigorous imprisonment and to pay a fine of Rs.10,000/- in default to undergo 3 months simple imprisonment.

2. Brief case of the appellant/accused

The prosecution case is that the defacto complainant having plastic manufacturing company at Kodungaiyur usually proceed 9.00 am and 10.00 pm on every day. On 10.2.2005 while defacto complainant was returning from his company around 9.00PM and passing through Dr.Ambedkar college road and reaching nearer to Stephenson road junction in his motor cycle bearing registration number TN 05 J 3404, the appellant/accused had stopped the vehicle for a lift and requested to drop him at the end of the road and while both were passing the road, the appellant/accused request to stop the vehicle for attend his natural call. When the defacto complainant has got into the vehicle and found that the appellant/accused did not get into the vehicle but suddenly kept his knife on the left side of the stomach of the defacto complainant and threatening him to kill him and demanded to take away the money , the defacto complainant having not any money, the appellant/accused taken away the nokia cell phone and taken away half sovereign chain and ring worn by the defacto complainant forcibly and when the defacto complainant immediately got down from the vehicle and attempted to catch, the appellant/accused attacked the defacto complainant with knife and caused injury on his left knee and had run away. The defacto complainant preferred Ex.P1 written complaint to PW 6 Subramanian, Sub Inspector of Police and registered FIR in Cr.No.447 of 2005 for the offences under section 394 of IPC.

3.PW7 Inspector of Police had taken further investigation and proceeded to the scene of occurrence and observed the place of occurrence and prepared observation mahazar in the presence of witnesses Sairam and Samsuddin and prepared rough sketch. The interrogated witnesses Gopinath, Srinivasan, Venkatesan, Palani, Ganesan, Rajagopal, Devan, Lakshmi and Sairam and Samusuddin and their statements were recorded. Thereafter the investigating officer had proceeded to the hospital and interrogated the Doctor Amutha and recorded her statement.

4.On 9.4.2005 on the identification of the defacto complainant, the appellant/accused was arrested in the presence of witness Peruman and Kumar nearer to Mahalskhmi Theatre and on his interrogation his voluntary statement was recorded in the presence of same witnesses and on his identification the cell

phone and knife used for commission of crime as well as the half sovereign jewels were seized under seizure mahazar. Thereafter the appellant/accused and property were remanded to judicial custody.

5.The bond executed for getting the interim custody of the jewels was marked as Ex.P.2 the photo and negative of the jewels was marked as Ex.P3, the accident register was marked as Ex.P4, the printed form of the FIR was marked as Ex.P5, the observation mahazar was marked as Ex.P6 and rough sketch was marked as Ex.P7, the admissible portion of the confession was marked as Ex.P8 and the seizure mahazar was marked as Ex.P9.

6.After getting opinion from the doctor, on completion of the investigation, the PW7 has filed the final report before the learned Xth Metropolitan Magistrate, Egmore, Chennai.

7.The learned X Metropolitan Magistrate was take up the case on file as PRC.No.335 of 2010 and after service of copies of records on the appellant/accused under section 207 of Cr.P.C. and after perusal of records came to conclusion that the offences leveled against the appellant/accused is exclusively triable by the sessions court and so the case was committed under Section 209 of Cr.P.C.

8.On receipt of the records by the learned Principal Sessions Judge on 21.06.2010 had assigned the case as S.C.No.246 of 2010 and made over the case to sessions court for disposal in accordance with law and framed the charges for the offences under Sections 341, 394 r/w 397 of IPC.

9.During the trial, the prosecution witnesses examined PWs-1 to 7 and marked Exhibits-P1 to P9. No witnesses examined on the side of appellant/accused.

10.After completion of trial, the learned Additional District and Sessions Judge, (Fast Track Court III) Chennai made in S.C.No.246 of 2010 by his judgment dated 23.9.2010 convicted the appellant/accused for the offence under section 341 read with 394 of IPC and sentenced him to undergo one month rigorous imprisonment together with fine of Rs.1000/- in default to undergo 15 days simple imprisonment and convicted under section 394 of IPC and sentenced to undergo 5 years rigorous

imprisonment and to pay a fine of Rs.10,000/- in default to undergo 3 months simple imprisonment. Aggrieved over the same, the appellant/accused preferred this criminal appeal.

11.The learned counsel for the appellant/accused submits that the court below further failed to note that except PW1, there was no eye witness to the occurrence and that too PW1 has not been able to identify the appellant as the alleged occurrence said to have taken place in darkness.

12.The learned counsel for the appellant/accused submits that the court below ought to have seen that PW3 has deposed in evidence that he has seen a person threatening another person with knife but he did not go near them and this would falsify the testimony of the evidence of PW3. Moreover PW2 is the brother of PW1 and naturally their evidence would only support the case of the prosecution and therefore the court below ought not to have placed reliance on the evidence of the prosecution witnesses 1 to 3.

13.The learned counsel for the appellant/accused submits that the court below ought to have seen that the doctor PW5 has deposed in his evidence that PW1 Gopinath came to him for treatment and when he was questioned, he said that he was attacked by some unknown person which would clearly show that PW1 could not be able to identify the real culprit.

14.The learned counsel for the appellant/accused submits that the court below ought to have held that the alleged recovery of knife is false and the entire case of the prosecution is to be thrown out as the prosecution failed to establish its case beyond all reasonable doubt.

15.The learned counsel for the appellant/accused submits that the court below ought to have seen that the non production of the jewels said to have been seized from the appellant/accused before the court is fatal to the case of the prosecution.

16.The learned counsel for the appellant/accused submits that the court below ought to have seen that even as per the case of the prosecution the appellant/accused was not at all present at the alleged scene of occurrence and even none of the witnesses speak about the alleged connection with the alleged crime.

17.The learned counsel for the appellant/accused submits that the court below ought to have seen that the statement recorded under section 161(3) Cr.P.C. from the witnesses on the side of the prosecution are not voluntary in nature and that the same has been obtained in a mechanical way without any corroboration to each other.

18.The learned counsel for the appellant/accused submits that the court below further failed to note that except PW1, the other witnesses in this case are hear-say witnesses and therefore without witnessing the occurrence, their evidences cannot be relied upon and upon such reliance of those witnesses, the conviction and sentence on the appellant/accused is unwarranted and uncalled for and the same is liable to be set aside.

19.The learned counsel for the appellant/accused submits that the court below ought to have seen that the value of the property allegedly involved in this case is only Rs.7000/- but the fine amount imposed on him is Rs.11,000/- which cannot be remitted by the appellant/accused in the circumstances of his family.

20.The learned counsel for the appellant/accused submits that the trial court ought to have seen that the ingredients of the offence under section 341 r/w 394 of IPC are not made out as against the appellant/accused as the entire case rests on circumstantial evidences and there is no chain link connecting the appellant/accused with the alleged crime is not completed.

21.The learned Government Advocate (Criminal Side) appearing for the respondent supported the findings of the trial court and sought for dismissal of the appeal.

22.I heard Mr.S.Jayakumar, learned counsel for the appellant and Mrs.T.P.Savitha, learned Government Advocate (Criminal Side) for the respondent and perused the entire materials available on record.

23.In the case on hand, PW1 the defacto complaint herein deposed before the doctor PW5 that he has attacked by some unknown person.

24.PW1 in this case deposed that the appellant/accused attacked him and PW2 is the brother of the PW 1 supported the evidence. PW3 independent witness did not identify the appellant/accused. Except this, none of the prosecution witnesses identified the appellant/accused. Admittedly no test identification parade was conducted. Therefore the identity of the appellant/accused in respect of the crime is doubtful without any corroboration. The evidences of PWs 1 and 2 cannot be believed and their identification before the court for the first time is meaningless.

25.In the result:

a) This criminal appeal is allowed and thereby the conviction and sentence imposed on the appellant in S.C.No.246 of 2010, dated 23.9.2010, on the file of the learned Additional District and Sessions Judge, (Fast Track Court III) Chennai is set aside.

(b) The appellant/accused is acquitted from all the charges and the fine amount if any paid by the appellant/accused shall be refunded by the trial court;

(c) The bail bond if any executed by the appellant/accused shall stands cancelled.

Consequently, M.P.No.1 of 2010 is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vs
To

1. The Additional District and Sessions Judge,
(Fast Track Court III), Chennai.

2. The Metropolitan Magistrate No.X,
Egmore, Chennai.

3. The Chief Judicial Magistrate,
Egmore, Chennai.

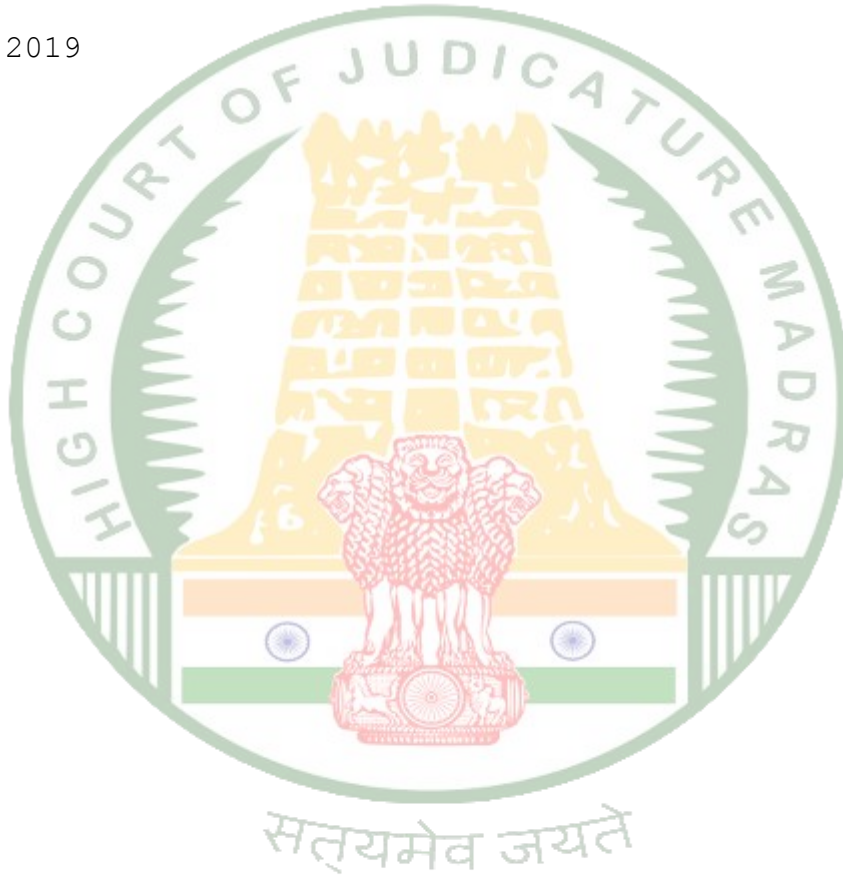
4. The Superintendent,
Central Prison, Puzhal, Chennai.

5. The Public Prosecutor,
High Court, Madras.

6. The Inspector of Police,
P2, Otteri Police Station,
Chennai.

judgment made in
Criminal Appeal No.762 of 2010

KAN(CO)
CSL/22.03.2019



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