

Bail Slip

The petitioner /accused,Viz., Senthil kumar was released on bail as per order of this court dated 24.07.2014 in MP.1/14 in CRL.A.No.384/14 on the file of this Hon'ble court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.09.2018
Pronounced on : 11.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.384 of 2014

Senthil Kumar ...Appellant/Accused
Vs.

State rep. By
The Inspector of Police,
K6, T.P.Chatram Police Station,
Chennai. ...Respondent/Complainant

The Criminal Appeal is filed under Section 374(2) of Code of Criminal Procedure to set aside the conviction and sentences passed by the learned VII Additional Sessions Judge, Chennai, made in S.C.No.265 of 2012 dated 05.07.2014.

For Appellant : Mr.R.C.Paul Kanagaraj
For Respondent : Mr.R.Ravichandran
Government Advocate (Crl.Side)

JUDGMENT

This criminal appeal has been filed against the conviction and sentence passed by the learned VII Additional Sessions Judge, Chennai, made in S.C.No.265 of 2012 dated 05.07.2014.

2 Case of the prosecution is that P.W.1 used to sleep at the platform put up before one nadar's house. Four days prior to the alleged occurrence, the appellant/accused intimidated the P.W.1/complainant not to sleep before the Nadar's house. On 31.05.2011 while P.W.1 sleeping before the nadar's house, at about 3.00 a.m. the accused had woke up P.W.1 and rebuked her as "ஏய் நான் சொன்னா கேட்கமாட்டியா. நீ உயிருடன் இருந்தால்தானே இங்கு வந்து படுப்பே. இத்தோடு நீ ஒழிந்து போ நாய்;" and attacked her with knife in her head and when he tried to attack her once

again, P.W.1 prevented the same with her right hand and got severe injuries in the wrist of right hand, when P.W.1 had shouted, the appellant/accused ran away from the scene of occurrence. Subsequently, she was taken to Kilpauk Medical College & Hospital, Chennai, for treatment, and thereafter taken to Rajiv Gandhi Government Hospital, Chennai, for further treatment. Hence a case was registered against the appellant/accused in Crime.No.597/2011 under Section 307 IPC, by the Inspector of Police, K6, T.P.Chatram Police Station, Chennai/P.W.11. After investigation, P.W.11 had filed a final report before the V Metropolitan Magistrate, Chennai, and committed to VII Additional Sessions Court, Chennai, which was taken on file in S.C.No.265 of 2012.

3 Before the trial Court, in order to prove the case, prosecution had examined P.W.1 to P.W.11 and marked Ex.P1 to Ex.P9 and M.O.1 was produced. On the side of the respondent/accused, D.W.1 & 2 were examined and Ex.A1 & Ex.A2 were marked.

4 The learned Sessions Judge, after trial, found the accused guilty of offence under Section 307 IPC and hence by judgment dated 05.07.2014, convicted and sentenced him to undergo rigorous imprisonment for a period of five years and imposed fine of Rs.2000/-, in default, to undergo rigorous imprisonment for a period of three months.

5 Aggrieved against the judgment of conviction dated 05.07.2014, the accused has preferred this criminal appeal before this Court.

6 The learned counsel for the appellant/accused would submit that the occurrence has taken place on 31.05.2011 at about 3.00. None of the witness had spoken about the occurrence, and only after hearing sound, they came to spot and seen injured P.W.1. Further the allegations leveled against the appellant will not attract Section 307 IPC. In Ex.P4, AR copy, P.W.1 had stated that unknown person had attacked her, if she knew the name of the appellant/accused, she would have mentioned as known person, but she failed to do so. Since the occurrence took place at 3.00 P.M., she might not have identified the accused and wrongly named the appellant in her complaint and since four days prior to the occurrence, there was dispute between the appellant and respondent, the police had developed the case against the accused on presumption that the appellant must have committed the offence. Most of the witnesses examined by prosecution had turned hostile. Further Ex.A2, 01.06.2011 paper publication regarding the alleged occurrence, it was mentioned that police had been searching the accused and name of the appellant was not

mentioned. Therefore benefits of doubt shall be extended to the appellant. Hence the appellant is entitled for acquittal.

7 The learned Government Advocate (Crl.Side) appearing for the respondent police would submit that even though some of the witnesses had turned hostile, P.W.1 had clearly spoken about occurrence and stated that the appellant only attacked her and caused severe injuries. P.W.1 in her evidence has clearly stated that out of fear only, she did not mention that known person attacked her, but subsequently, before the Doctor, who had given further treatment, she stated that known person only attacked her. The appellant/accused had not specifically denied the allegations leveled against him at the time of questioning under Section 313 of Cr.P.C. and formally pleaded that not guilty. Admittedly, the accused, four days prior to the occurrence, had intimidated P.W.1 and hence there was motive for the occurrence and because of the dispute, the accused had attacked P.W.1 and sustained grievous injuries, which was corroborated by the evidence of P.W.8 & 9, Doctors who gave treatment to P.W.1 and Ex.P5/wound certificate. Hence prosecution has established its case beyond reasonable doubts.

8 Heard the learned counsel appearing for the appellant and the learned Government Advocate (Crl.Side) appearing for the respondent police and perused the materials available on record.

9 In the complaint, P.W.1 had stated that when the accused attempted to attack her second time with knife, she prevented the same with her right hand, which caused grievous injuries on the right hand wrist. Hence it is very much possible for P.W.1 to identify the accused. Merely, in the AR copy, it was mentioned that unknown person attacked P.W.1, is not the ground to acquit the appellant/accused. The evidence of P.W.8 & 9 coupled with medical records corroborated the injuries sustained by P.W.1. Further the occurrence had taken place at 3.00 a.m. and hence at that time no one could have seen the occurrence and independence witness cannot be expected. P.W.1 herself clearly stated about the occurrence and the evidence of injured witness P.W.1 cannot be discorded. It is well settled law, that quantity of witness does not a matter and only quality of witness has to be taken into consideration. Further, there was motive for the alleged occurrence and the same was admitted. The trial Court considered all the above facts and convicted the appellant under Section 307 IPC. This Court does not find any reason to acquit the appellant and there is no merit in the appeal.

10 In view of the above, the criminal appeal is dismissed. The judgment of conviction dated 05.07.2014 made in S.C.No.265 of 2012 by the learned VII Additional Sessions Judge, Chennai, is hereby confirmed. The trial Court is directed to secure the accused in prison to undergo remaining period of imprisonment, if any.

Sd/-

Assistant Registrar(CS viii)

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Sub Assistant Registrar

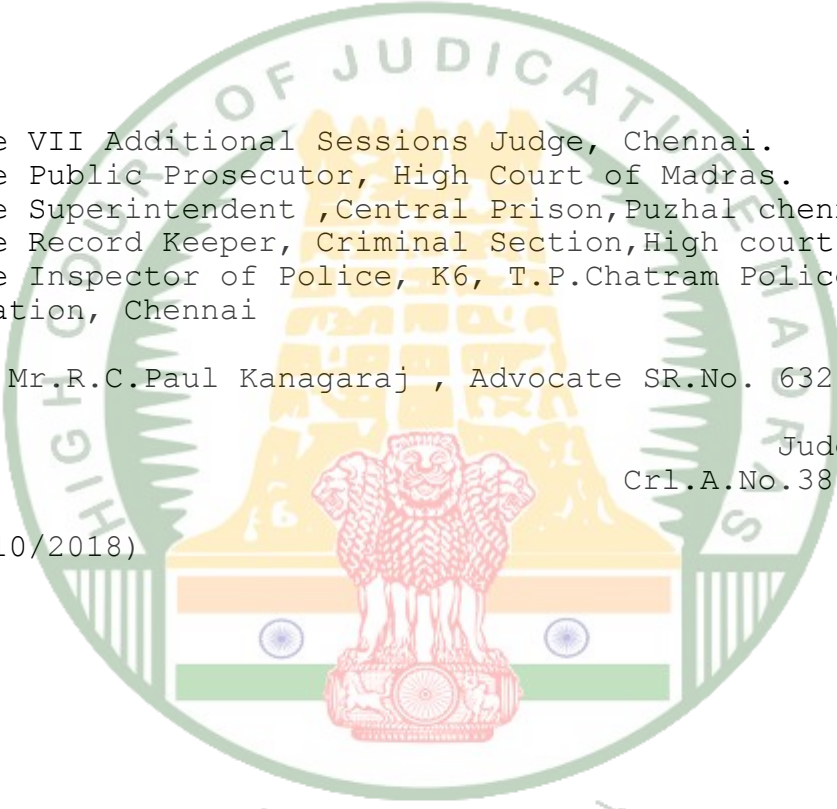
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To

1. The VII Additional Sessions Judge, Chennai.
2. The Public Prosecutor, High Court of Madras.
3. The Superintendent, Central Prison, Puzhal Chennai.
4. The Record Keeper, Criminal Section, High court, Madras
5. The Inspector of Police, K6, T.P. Chatram Police Station, Chennai

+1cc to Mr.R.C.Paul Kanagaraj, Advocate SR.No. 63265

Judgment in
Crl.A.No.384 of 2014

ASK(10/10/2018)



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