

BAIL SLIP

R.Murali, S/o.Rajan, accused in S.C.No.645/2005 on the file of Additional District and Sessions Judge, Fast Track Court No.III, Chennai - 1 was enlarged on bail in M.P. No.1 of 2006 in CrI.A.No.989 of 2006 dated 02.01.07.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.A.No.989 of 2006 and
CrI.M.P.No.1 of 2006

R.Murali

... Appellant

-Vs-

State rep. by:-

The Inspector of Police,
K-7, I.C.F Police Station,
Chennai.
(Crime No.709 of 2005)

... Respondent

PRAYER : Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure, to set aside the Judgment passed against this appellant/accused in S.C.No.645 of 2005 on the file of the learned Additional District Sessions, Judge, Fast Track Court-III, Chennai-1 on 03.03.2006 and acquitting him from all the charges and pass appropriate order.

For Appellant : Mr.L.Baskaran
Legal Aid Counsel

For Respondent : Mr.T.P.Savitha
Government Advocate [CrI. Side]

JUDGMENT

This appeal arises out of the conviction and sentence imposed by the learned Additional District and Sessions Judge, Fast Track Court-III, Chennai in S.C.No.645 of 2005 dated 03.03.2006, the appellant was tried for the offence punishable under Sections 341, 324, 336 and 307 of IPC. The learned trial Judge has convicted the appellant for offence under Section 341 of IPC and sentenced him to undergo one month simple

imprisonment, under Section 324 of IPC sentenced him to undergo two years rigorous imprisonment, under Section 336 of IPC sentenced him to undergo three months simple imprisonment and under Section 307 of IPC sentenced him to undergo seven years rigorous imprisonment and acquitted him from the offence under Sections 427 and 506(ii) of IPC.

2.The case of the prosecution is that on 11.08.2005 at about 05.30 p.m, when PW1 was having tea at Relax Cafe, New Avadi Road, the appellant picked up a quarrel and pulled him by his shirt and also abused him with filthy language for the reason that PW1 deposed against his friend Arunagiri and sent him to jail, hence would not allow him to go free. He took a knife [MO1] from his back and assaulted PW1. At that time PW1 defended by his right hand, thereby he sustained injury. Again, when the appellant attempted to attack him, PW1 ran away from the occurrence. The appellant took the Soda Bottles [MO2] from nearby shops and smashed on the road, due to which the shops put down their shutters. The public who attempted to rescue PW1 were threatened. The appellant ran away from the scene. Thereafter, PW1 went to the police station, lodged a complaint [Ex.P1] to the Inspector of Police and proceeded to Government Hospital for treatment. On receipt of the complaint [Ex.P1], PW7 registered a case in Crime No.709 of 2005 [Ex.P7] for the offence under Sections 341, 324, 336, 427, 307 and 506(ii) of IPC. On completion of the investigation and charge sheet was filed and committed and tried in S.C.No.645 of 2005 by the learned Additional District and Sessions, Fast Track Court-III, Chennai.

3.Before the trial Court, prosecution has examined 7 witnesses and marked 8 exhibits and 2 materials objects. None were examined and no exhibits were marked on the side of the defence.

3.1.PW1 the defacto complainant has stated that on 11.08.2005, when he was having tea at Relax Cafe, New Avadi Road, the appellant picked up a quarrel and pulled him by his shirt and abused him with filthy language for deposing against his friend Arunagiri. The appellant took a Knife [MO1] from his back and assaulted PW1. At that time PW1 defended with right hand and he sustained a cut injury on his right forearm. Again the appellant attempted to assault, PW1 ran away from the scene and the appellant took the Soda bottles from nearby shops and smashed on the road and thereby caused disturbance of public order. Thereafter, PW1 went to the police station lodged a complaint [Ex.P1] and had proceeded to the Government hospital for treatment.

3.2.PW2/Natesan was working in a Tea shop at I.C.F Gandhi Nagar, Chennai. He stated that on 11.08.2005 at about 05.30

p.m, the appellant picked up a quarrel with PW1 and smashed the Soda bottles [MO2] on the road. In cross he admitted that after the occurrence, he came out of the tea shop and saw the crowd. He did not witness the occurrence properly and people were moving normally. He came to know about the occurrence through others. Hence, he is in the nature of hearsay.

3.3.PW3/Thirunavukarasu having a cycle shop in I.C.F Gandhi Nagar, Chennai deposed that on 11.08.2005 at about 05.30 p.m, the appellant picked up a quarrel with PW1 and smashed the Soda bottles [MO2] on the road.

3.4.PW4/Sankar the coconut vendor is the witness for observation Mahazar [Ex.P2] and Seizure Mahazar [Ex.P3] for broken bottles [MO2].

3.5.PW5 the Casualty Medical Doctor gave treatment to PW1 and issued the Accident Register [Ex.P4] in which he recorded that PW1 had a laceration wound of 6 X 1 cm in his right forearm and he had consumed alcohol at the time of examination.

3.6.PW6 is the witness for the arrest, confession [Ex.P9] of the appellant and recovery of the material objects MO1-Knife and MO2-Broken Bottles.

3.7.PW7 the Investigating Officer, who on receipt of the complaint [Ex.P1] registered a case in Crime No.709 of 2005 [Ex.P7] for the offence under Sections 341, 324, 336, 427, 307 and 506(ii) of IPC. Thereafter visited the scene of crime, prepared Observation Mahazar [Ex.P2] and Rough Sketch [Ex.P8], examined the witnesses and recorded their statements, arrested the accused, recorded his confession, seized the material objects, forwarded the accused to judicial custody and upon completion of investigation filed the charge sheet for the offence under Sections 341, 324, 336, 427, 307 and 506(ii) of IPC.

4.The appellant was charged for the offence under Section 341, 324, 336, 427, 307 and 506(ii) of IPC. On questioning under Section 313 Cr.P.C., appellant denied the charges. On appreciation of evidence, oral and documentary, the trial Court under Judgment dated 03.03.2005 in S.C.No.645 of 2005 convicted the appellant. Against which the present appeal.

5.Heard the learned counsel for the appellant and the learned Additional Public Prosecutor for the respondent.

6.The learned counsel for the appellant would submit that for the purpose of detaining the appellant under Goondas Act, a false case has been foisted against him, as could be seen from

the complaint [Ex.P1] and also from the evidence of PW1, wherein disturbance of public order seems to be the concern. Further PW7/Investigating Officer admitted that the appellant was having four or five cases pending against him in the police station. All the witnesses in this case are obliging witnesses, PW2 was working in a tea shop, PW3 is having a cycle repair shop in the platform at Gandhi Nagar, I.C.F, Chennai, PW4 is a tender coconut vendor, who is having a shop in the platform in New Avadi Road, PW6 the cycle mechanic, who is having a shop on the platform of the road. Thus all the witnesses in this case are at the mercy of the respondent. PW2 admitted that he does not know the appellant prior to the occurrence. No identification parade has been held by the respondent. Hence identity of appellant is highly doubtful. Further PW2 admitted that after the occurrence, he came out of the tea shop, saw the crowd dispersing and people on the move and normalcy prevailing. He admitted that he came to know about the occurrence through others. Hence, he is in the nature of hearsay. Likewise, PW3 admitted that he has not seen the occurrence in proper and he does not know for what reason there was a fight.

7.PW4 the witness for Observation Mahazar [Ex.P2] admitted that he was not aware of any mahazar and he stated that he has only affixed his signature and did not know the contents in it. Hence no credence to be given for the Observation Mahazar [Ex.P2] and Seizure Mahazar [Ex.P3].

8.The learned counsel for the appellant would further submit that PW6 is the witness for arrest and recovery of material objects, but he has not identified the knife [MO1] with certainty. PW5 the Casualty Medical Officer attached to the Government Hospital issued Accident Register [Ex.P4], in which he recorded that PW1 had a cut injury of 6 X 1 cm on his right forearm and further stated that the injury sustained by him could have happened even during fall and he stated that the injury is not a grievous one and it is simple in nature. No wound certificate has been produced in this case. Further PW5 recorded in the Accident Register [Ex.P4] that PW1 has consumed liquor during the occurrence. PW1 has stated that only on Sunday he consumes alcohol and on the date of occurrence he did not consume any liquor. The evidence of PW5 and PW1 are contrary. PW1 is an obliging witness to the police and his evidence is highly doubtful.

9.PW7 the Investigating Officer who on receipt of the complaint [Ex.P1] registered a case in Crime No.709 of 2005 [Ex.P7] for the offence under Sections 341, 324, 336, 427, 307 and 506(ii) of IPC at about 06.00 p.m. In the complaint [Ex.P1] there is a correction in the time and for the same, no proper explanation has been given. PW1 stated that there is correction

in the time and he does not know who did the same. Further he stated that he had gone to the Police station and admitted that he has not written the complaint [Ex.P1] and the same was not read over to him before he signed.

10.It is the further submission of the learned counsel for the appellant that initially PW1 has gone to the hospital and thereafter he went to the Police station and lodged the complaint [Ex.P1]. As per Ex.P1, the complaint has been registered at 06.00 p.m. In the Accident Register [Ex.P4] it is stated that he was in the hospital at 06.30 p.m. The complaint [Ex.P1] becomes highly doubtful. The lower Court has wrongly convicted the appellant for the offence under Sections 324 and 307 of IPC for one and same injury. The case was foisted against the appellant to detain him under Goondas Act.

11.Per contra, the learned Government Advocate [Crl. Side] appearing on behalf of the respondent would submit that the prosecution has examined PW1 to PW7 in this case and marked exhibits P1 to P9. The appellant has been arrested and based on his confession [Ex.P9], MO1 [Knife] and MO2 [Broken Bottles] found in the scene of occurrence, have been recovered. PW1 is an injured witness, PW2 & PW3 are the eye witnesses to the occurrence, who corroborated as regards the time of occurrence, PW4 is the witness for Observation Mahazar [Ex.P2]. PW6 is the witness for the arrest and confession [Ex.P9] of the appellant. PW5 is the Casualty Medical Doctor, who gave the Accident Register [Ex.P9] for the cut injury sustained by PW1. PW7 the Investigation Officer registered the complaint [Ex.P1] of PW1, reached the scene of occurrence, prepared the Observation Mahazar [Ex.P2] and Rough Sketch [Ex.P8], recorded the statement of witness, arrested the accused, recovered the material objects and thereafter on completion of the investigation filed the charge sheet before the learned V Metropolitan Magistrate, Egmore, Chennai. The consumption of alcohol by the appellant will not affect his evidence as per Ex.P4, which recorded that the appellant was conscious and oriented.

12.The lower Court has properly analyzed the evidence of the case and after careful consideration, rightly convicted the appellant and prayed for dismissal of the appeal.

13.This Court considered the submissions made by the learned Counsel on either side and perused the materials available on record.

14.It is seen that there are contradictions in the evidences of PW1, PW2 and PW3. Though PW1 is an injured witness having a cut injury of 6 X 1 cm, PW5 the Casualty Medical Doctor opined that such injury could have happened during fall. Coupled with the fact that at the time of occurrence, PW1 has consumed alcohol, which was denied by PW1, but was recorded by PW5 in the

Accident Register [Ex.P4]. PW2 & PW3 admitted that they reached the scene later and they only saw the broken bottles [Ex.P2] on the road. PW4 the witness for Observation Mahazar [Ex.P2] stated that he was not aware of the contents in the mahazar and Rough Sketch [Ex.P8]. PW5 has admitted that the nature of injury as simple in nature and further the injury sustained by him could have occurred during fall.

15.PW6 is the witness for the arrest of the appellant and recovery of the material objects. PW7 the investigating officer admitted that there were four to five cases pending against him. The narration in the complaint [Ex.P1] as well as the evidence of PW1, PW2 and PW3 projects to the fact that there was a disturbance in public order as such the appellant was to be detained only under Goondas Act. It is stated that all the witnesses in this case, PW1 a Tricycle rider, PW2 the worker in a tea shop, PW3 the cycle mechanic, PW4 the tender coconut vendor and PW6 another cycle mechanic are having daily work in the road side platform nearby the scene of occurrence and are at the mercy of the police. Further for the injury sustained by PW1, there is no wound certificate in this case. The evidence of these witnesses does not inspire confidence.

16.In view of the above, the evidence of witnesses does not inspire confidence to be acted upon and creates serious doubt in the prosecution case. The prosecution failed to prove the guilt of the accused/appellant beyond reasonable doubt. The appellant has been implicated in this case for detaining him under Goondas Act. The same cannot be brushed aside.

17.For the foregoing reasons, the appeal succeeds and is accordingly, Allowed. The impugned judgment of conviction and sentence dated 03.03.2006 passed by the learned Additional District and Sessions Judge, Fast Track Court-III, Chennai in Sessions Case No.645 of 2005 is hereby set-aside. The appellant is acquitted of the charges levelled against him. He shall be set at liberty forthwith, if he is not required in any other case. Fine paid, if any, shall be refunded to him. Consequently, the connected miscellaneous petition is closed. No costs.

18.This Court places its appreciation to Mr.L.Baskaran, Legal Aid Counsel appearing for the appellant for thorough preparation and effective arguments.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Additional District and Sessions,
Judge, Fast Track Court-III,
Chennai.
- 2.The Inspector of Police,
K-7, I.C.F Police Station,
Chennai.
- 3.The Public Prosecutor,
High Court, Madras.
4. The V Metropolitan Magistrate,
Egmore, Chennai.
5. The Superintendent,
Central Prison, Puzhal,
Chennai.

Copy to:-

The Section Officer,
Criminal Section,
High Court, Madras - 104.

Crl.A.No.989 of 2006

Kak(30/10/2019)