



BAIL SLIP

The Appellant /Accused No.1 namely Shankar, S/o.Aruldas (in S.C.No.394/2011 on the file of the XIX Additional Sessions Judge, Chennai) was ordered to be released on bail by order of this Court dated 19.03.2014 and made in M.P.No.1 of 2014 in CrI.A.242 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.A.No.242 of 2013

Shankar

...Appellant/Accused No.1

Vs.

State by

The Inspector of Police

K-4, Anna Nagar Police Station

Chennai - 40

(Cr.No.887/2009)

...Respondent/Complainant

Prayer: This Criminal Appeal filed under Section 374 of Code of Criminal Procedure to set aside the judgment of conviction dated 04.03.2013 passed in S.C.No.394 of 2011 on the file of XIX Additional Sessions Court, Chennai.

For Appellant : Mr.R.Sankarasubbu

For Respondent : Mr.R.Ravichandran
Govt. Advocate (CrI.Side)

JUDGMENT

This criminal appeal has been filed against the judgment of conviction dated 04.03.2013 passed in S.C.No.394 of 2011 on the file of XIX Additional Sessions Court, Chennai.

2 Case of the prosecution is that on 17.10.2009 at about 7.30 p.m., P.W.1 and P.W.2 were sitting in a cool drink shop at Sathya Nagar. After an hour i.e. around 8.30 p.m, the accused persons A1 to A4 came towards P.W.2/victim and threatened him to buy Brandi, P.W.2 refused the same, which lead to quarrel between them. Aggrieved on P.W.2, A1 took out the knife, which had been hidden at his back and stabbed P.W.2 on his right hand



shoulder, at that time, A2 to A4 had caught hold P.W.2. P.W.2 sustained injury and was bleeding. P.W.1 and P.W.2 went to K4 Police Station and lodged a complaint against A1 to A4. The complaint was lodged by P.W.1, as P.W.2/victim became unconscious and fell down due to injury caused by A1. P.W.2/victim was taken to Kilpauk Medical College Hospital and later shifted to Government General Hospital for further treatment. The respondent police registered a case in Crime No.887 of 2009 for the offences punishable under Sections 341, 307 and 506 (2) IPC against A1 and 341, 307 r/w 34 & 506(2) against A2 to A4. After investigation, the respondent police had filed a charge sheet before the learned V Metropolitan Magistrate, Egmore, Chennai, and since the offences charged against the accused were triable only by the Court of Sessions, the case was committed to XIX Additional Sessions Judge, Chennai, which was taken on file in S.C.No.394 of 2013.

3. Before the trial Court, in order to prove the case of the prosecution, P.W.1 to P.W.11 were examined and Ex.P1 to Ex.P9 along with M.O.1/knife were marked. On the side of the accused no one was examined and no document was marked.

4. The trial Court, after careful examination of evidence, found the appellant/A1 guilty of offences punishable under Sections 307 and 506(2) IPC and hence by judgment dated 04.03.2013, convicted and sentenced him to undergo 7 years Rigorous Imprisonment with a fine of Rs.2,000/-, in default, to undergo three months Simple Imprisonment for the offence under Section 307 IPC and to undergo 6 months Rigorous Imprisonment for the offence under Section 506(2) IPC and acquitted the other accused A2 to A4, since they were not found guilty of offences charged against them.

5. Aggrieved against the judgment of conviction dated 04.03.2013, the appellant/A1 has preferred the present criminal appeal before this Court.

6. The learned counsel appearing for the appellant/A1 would submit that P.W.1, who is the author of complaint/Ex.P3 had turned hostile and not supported the case of the prosecution, which itself is fatal to the case of the prosecution. P.W.2, who was an injured person, was in ICU for six days and thereafter shifted to normal ward, but, during the interregnum period, he was not examined. Prosecution has stated that the appellant/A1 alone caused stab injuries and A2 to A4 had caught hold of P.W.2, but the trial Court disbelieved the evidences of prosecution witnesses, as far as A2 to A4 are concerned and convicted the appellant alone. When benefits of doubts extended to other accused, the same should be extended to the appellant/A1 also. P.W.19, the Doctor, who treated the appellant for a long days, was suppose to speak about the injuries

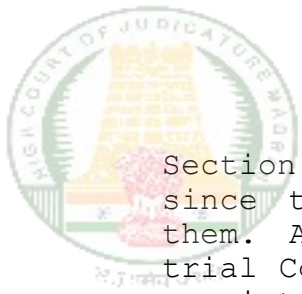


sustained by P.W.2/victim. P.W.9, is not competent to speak about the injuries, since he treated P.W.2 only at the time of admitting in the Hospital. In the AR copy, it was stated that known persons had attacked, but the Court below had not taken the evidence of P.W.2/victim, as far as the other accused are concerned. The appellant/A1 was in jail for more than 1 year and thereafter only got bail. Hence the appellant prays for acquittal, if not, atleast to reduce the sentence imposed on him.

7. The learned Government Advocate (Crl.Side) appearing for the respondent police would submit that the appellant/A1 is a habitual offender. Stab injury has been caused only by the appellant/A1, which was clearly proved through evidence of prosecution witnesses. P.W.3 and P.W.4 had categorically stated that at the time of occurrence, the appellant/A1 alone had knife in his hand and uttered the words "c';fSf;Fk; ,nj fjpjhd;". P.W.9, the Doctor, had stated about the injuries sustained by P.W.2 and P.W.10 in his evidence had opined that the injuries sustained by P.W.2 are grievous in nature. Even though, P.W.1, turned hostile, he had not denied the occurrence and he has admitted that the signature found in the complaint Ex.P1 is that of him and only stated that he could not remember as to whether police has examined him or not. Hence, injuries has been proved through medical evidences and the offence committed by the appellant/A1 has also been proved. If proper treatment had not been given to P.W.2/victim, he would have died. Hence the Court below had rightly convicted the appellant/A1 and sentenced him and therefore, the appeal may be dismissed.

8. Heard the learned counsel appearing on either side and perused the materials available on record.

9. According to prosecution, on 17.10.2009 at about 8.30 p.m., while P.W.1 and P.W.2 were sitting in a cool drink shop at Sathya Nagar, the accused persons A1 to A4 came towards P.W.2/victim and threatened him to buy Brandi, P.W.2 refused the same, which lead to quarrel between them. Aggrieved on P.W.2, A1 took out the knife and stabbed P.W.2 on his right hand shoulder, at that time, A2 to A4 had caught hold P.W.2. Hence, the respondent police registered a case in Crime No.887/2009 and after investigation laid charge sheet for the offences punishable under Sections 341, 307 and 506 (2) IPC against appellant/A1 and 341, 307 r/w 34 & 506(2) against other accused A2 to A4. The learned Sessions Judge, after trial, found the appellant/A1 guilty of offences punishable under Sections 307 and 506(2) IPC and hence by judgment dated 04.03.2013, convicted and sentenced him to undergo 7 years Rigorous Imprisonment with a fine of Rs.2,000/-, in default, to undergo three months Simple Imprisonment for the offence under Section 307 IPC and to undergo 6 months Rigorous Imprisonment for the offence under



Section 506(2) IPC and acquitted the other accused A2 to A4, since they were not found guilty of offences charged against them. According to learned counsel for the appellant/A1, the trial Court extended the benefits of doubt to A2 to A4, whereas, convicted the appellant/A1 alone and stab injuries said to have been caused by the appellant has not been proved with proper evidence. The complainant P.W.1 himself not supported the case of the prose and turned hostile.

10. On a perusal of the evidences, it reveal that even though P.W.1, author of the complaint had turned hostile, admitted his signature in the complaint and other facts, but only stated that he could not remember as to whether police has examined him or not. P.W.2/victim has clearly narrated the occurrence and stated about the involvement of the appellant/A1 and the offence committed by him and there was previous enmity between the appellant/A1 and P.W.2/injured victim. P.W.10, the Doctor, had opined that P.W.2 sustained injuries in the vital part. Further weapon used in the occurrence is deadly weapon. This Court, as an appellate Court has re-appreciated entire evidences on record independently. From the evidence of P.W.2 to P.W.4, prosecution had proved the occurrence and the offence committed by the appellant/A1. Accident Register/Ex.P5 and medical records had clearly shows that P.W.2 sustained stab injuries and the same was also corroborated with the evidence of P.W.2. It is well settled proposition of law, in criminal cases, quantity of witnesses will not be taken for consideration and only quality and credibility of witnesses alone will be taken for consideration. In the present case, the injured witness P.W.2 had clearly stated about the involvement of the appellant/A1 and the previous enmity, which itself would sufficient to convict him. Further there is no reason to discard the evidence of injured witness P.W.2 and mere acquittal of other accused, is not a ground to acquit the appellant/A1, against whom the offence has been clearly proved.

11 In the result, the criminal appeal stands dismissed and the conviction recorded by the Court below is hereby confirmed. However, sentence of imprisonment imposed for the offence under Section 307 IPC alone is modified from 7 years to 5 years, which will meet ends of justice and all other sentence imposed on the appellant shall remain intact. The trial Court is directed to secure the appellant immediately to undergo remaining period of imprisonment, if any.

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Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar



To

1.The XVII Additional Sessions
Judge, (i/c), Chennai.

2.The XIX Additional Sessions
Judge, Chennai.

3.The Public Prosecutor,
High Court of Madras.

4. The V Metropolitan Magistrate,
Egmore, Chennai - 8.

5. The Chief Metropolitan Magistrate,
Egmore, Chennai - 8.

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

7. The Inspector of Police,
K4, Anna Nagar Police Station,
Chennai.

Copy to:-

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

Cr1.A.No.242 of 2013

Kak(16/09/2019)