

Bail Slip

Radhakrishnan, the petitioner was directed to be released on bail as per order of this court dated 22.3.2011 made in Crl.MP.No.1 of 2011 in Crl.A.209/11 on the filing this Court.

IN THE HIGH Court OF JUDICATURE AT MADRAS

Reserved on: 26.10.2017
Pronounced on: 02.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal No.209 of 2011

Radhakrishnan .. Appellant/Accused

Vs.

State, rep. by
Inspector of Police,
J-1, Saidapet Police Station,
Chennai-600 015. ..Respondent/Complainant
(Crime No.516/2009)

PRAYER: This Criminal Appeal is filed under Section 374(2) of Cr.P.C to call for the records and to set aside the judgment and sentence imposed on the Appellant/Accused by the learned Additional District and Sessions Judge, Fast Track Court No.1, Chennai, by his Judgment dated 15.03.2010, passed in S.C.No.367 of 2009.

For Appellant : Mr.M.Santhanamari
for Mr.E.J.Ayyappan

For Respondent : Mr.J.Karuppiyah
Additional Public Prosecutor

JUDGMENT

The appellant is the sole accused in S.C.No.367 of 2009 on the file of the Fast Track Court I (Additional District and Sessions Judge), Chennai. He was charged for the offences under Section 341 and 307 of IPC. By judgment dated 15.03.2010, the trial Court convicted him under Section 341 of IPC and sentenced him to undergo simple imprisonment for 1 month and further he was convicted for the offence under Section 307 IPC and sentenced him to undergo R.I. for 5 years and to pay a fine of

Rs.3,000/-; in default to undergo simple imprisonment for 6 months. Challenging the said conviction and sentence he has come up with this appeal.

2.The case of the prosecution, in brief is as follows:

The accused is a resident of Model Adamant Road, C.I.T. Nagar. The victim in this case is PW1 namely Dilli. According to the case of the prosecution as on the date of the alleged occurrence i.e. on 01.10.2009 at about 07.30 a.m., when PW1 Dilli was standing near the house bearing D.No.49, Model Adamant Road, C.T.I. Nagar, the accused was in a intoxication mood having wordy quarrel with one Babu, PW-5, which was questioned by the witness PW1 who is the brother of the accused as to why he is quarreling with PW5 Babu. For that the accused uttered a word that PW1 refusing to partition the family property and suddenly stabbed the victim Dilli with Scissor which was hidden in his hip and thereby caused injuries on his left side Stomach, Neck, left hand and right hand. The above said occurrence was witnessed by the wife of the victim PW2, daughter PW3 and neighbors PW4 & 5. Immediately after the occurrence, PW-1 was taken for treatment to the Government Royapettah Hospital by his wife PW2. The PW8 investigation officer on information received from the hospital, rushed there and received the complaint (Ex- P1) from the victim Dilli orally which was reduced into writing. On the basis of the said complaint, PW8 has registered the case in Crime No.516 of 2009 under Section 341, 324 and 307 IPC in the printed FIR is Ex P4.

3.Thereafter, the case was taken up for investigation by PW8 on the same day and he arrested the accused at the junction of Cannel Bank Road at C.I.T. Nagar market and obtained the confession statement from the accused. On the basis of the said confession PW8 recovered the Scissor/M.O from the accused under Mahazar (Ex-P7). Thereafter PW1 examined the witnesses PW1 to PW7 and recorded their statements. On completing the investigation PW8 laid charge sheet against the accused for the offences under Sections 341 and 307 of IPC, before the Learned IX Metropolitan Magistrate, Saidapet and the same was taken on file in P.R.C.No.120 of 2009. As the offence under Section 307 IPC is exclusively triable by the Court of Sessions, the Learned Magistrate committed the same to the Principal District and Sessions Judge, Chennai. The learned Principal District Judge has made over the same to the Additional District Sessions Judge/Fast Track Court No.I, Chennai for disposal.

4.Based on the above materials the trial Court framed charges against the accused and the accused denied the same. In order to prove the case, on the side of the prosecution 8 witnesses were examined and 7 documents were marked and 1 material object was marked. No oral evidence adduced or documents produced on the side of the accused.

5.Out of the said witnesses, PW2 the wife of the victim has stated that when her husband PW1 brushing the teeth, the accused who is none other than the brother of PW1 picked up quarrel with the neighbor Babu-PW5, when the same was questioned by her husband, the accused uttered a word that why PW1 refusing to partition the family property and suddenly stabbed the left side Stomach, Neck, left hand and right hand of the husband of PW-2. Thereafter, PW-2 with the assistance of her daughter, PW-3 daughter-in-law and other neighbors took her husband to Government Hospital, Royapettah.

6.PW-3 Indira who is the daughter of PW1 and PW2 also corroborated the statement of her mother PW2.

7.PW4 Murugesan deposed that on 01.10.2009 at about 07.30 a.m. when he was in his house at C.T.I. Nagar, PW2 called upon him and told that her husband was assaulted by the accused and sustained bleeding injuries. He also accompanied with the victim PW1, Dilli to the hospital.

8.PW5 Babu to whom the accused had picked up quarrel and who is the prime witness was turned hostile.

9.PW6 Dr.Basker deposed that on 01.10.2009 at about 09.30 a.m. when he was on duty, he admitted the victim Dilli for treatment and noted the following injuries.

1. A Laceration left side neck 1.5 x 1.5 c.m
2. A Laceration below the left ankle 1.5 x 1.5 c.m
3. A Laceration left side abdomen 1.5 x 1.5 c.m
4. A Laceration right forearm 1.5 x 0.5 x 1.5 c.m

10.PW7 Dr. Thangamani deposed that on 01.10.2009 when he was at causality ward, examined Dilli and for expert treatment he had discussions with the Neuro Surgeon and took scan on his stomach and gave treatment. After treatment he discharged the victim (PW1) on 05.10.2009 and issued the wound certificate (Ex-P3) as simple injuries.

11.PW8 the investigation officer has spoken about the registration of the case on the complaint of PW1, the investigation done and the filing of the final report.

12. Having considered all the above facts and circumstances of the case and the material evidence produced, the trial Court convicted the accused as detailed in the first paragraph of this judgment. Hence the appellant is before this Court with this appeal.

13. The learned counsel for the appellant would submit that there is a delay in registering the F.I.R. The vital witness PW-5 Babu turned hostile and he has not supported the case of the prosecution. The other witnesses are family members of the victim and therefore the conviction by the trial Court is improbable and therefore prayed to set aside the conviction imposed on him.

14. Per contra, the learned Additional Public Prosecutor argued that the prosecution has proved the case with sufficient oral and documentary evidence and the learned trial judge has recorded conviction after proper analysis. The learned Additional Public Prosecutor would submit that the evidence of doctor who record the Accident Register categorically deposed that the victim informed him that he was stabbed by the accused with Scissor. Further the version of PW-1 is corroborated with the evidence of PW-2 and PW-3. Hence, no intervention is required on the judgment of the learned Trial Court. Therefore, considering the totality of the case the appeal is to be dismissed.

15. I have heard Mr. M. Santhanamari for Mr. E. J. Ayyappan, learned counsel for the appellant and Mr. J. Karuppaiah, learned Additional Public Prosecutor appearing for the State and also perused the materials available on record.

16. In the judgment of the trial Court, while dealing with the argument of the learned counsel for the appellant that PW5 is a vital independent witness with whom the accused has quarrel before committing the alleged offence against PW1 and therefore when PW5 has turned hostile, the very basis of the prosecution case failed and it is not safe for the trial Court to convict the appellant/accused on the sole testimony of PW1. The other witnesses namely PW-2 and PW-3 are interested witness and they are none other than the wife and daughter of the victim Dilli. The trial Court has held that though PW4 and PW5 has not supported the prosecution case leads to the benefit of doubt to the accused. But it is very clear from the evidence of PW4 and PW5 the accused having previous enmity and motive in this case against PW1. In the considered opinion of this Court the said finding is totally perverse when the prosecution alleges that the alleged wordy quarrel started with PW5 Babu by the accused and the prime witness PW5 deposed that no such occurrence taken

place as alleged by the prosecution on 01.10.2009 is totally affecting the very route of the prosecution case and therefore the accused should have been acquitted in the above case by giving benefit of doubt. According to PW-5 when the occurrence itself was not taken place, the subsequent incident as alleged by the prosecution is creates a serious doubt in the mind of this Court.

17.Now, turning to the other contention of the learned counsel for the appellant that the prosecution has not given any explanation for the inordinate delay in sending the F.I.R. and other vital documents to the Court, which creates a serious doubt about very basis of the prosecution case and therefore the learned counsel argued that benefit of doubt has to be given in favour of the accused. The other contention put forth by the Learned Counsel for the appellant is that there is a discrepancy with the regard to the time of occurrence mentioned in the F.I.R. and in the accident register has not been explained by the prosecution, creates a serious doubt whether occurrence took place in the time and the manner alleged by the prosecution.

18.At this juncture, it is to be noticed that in the F.I.R. the alleged time of occurrence is mentioned as 07.30 a.m., whereas in (Ex-P2) Accident Register the time of occurrence is mentioned as 09.30 a.m. In this regard PW6 Doctor has stated that the occurrence took place at 09.30 a.m. and PW1 was admitted in the hospital at 10.00 a.m. on 01.10.2009 by the wife of PW1. Further Ex-P2 accident register the name of the accused has not been mentioned. If really the accused has committed the offence who his none other than the brother of PW1, at the time of admission of PW1 in the hospital by his wife PW2 definitely she would have stated the name of the accused before PW-6, Doctor who has written the Accident Register Ex-P2. From the above, this Court finds that there is a clear discrepancy with regard to time of occurrence and also the non mentioning the name of the accused in the Accident Register Ex-P2 creates a serious doubt over the case of the prosecution. Further a perusal of records would clearly reveal that Ex-P4 F.I.R. was registered only at 15.30 hours (3.30 P.M) and according to PW-1 and PW-2 the alleged occurrence taken place at 07.30 a.m. and therefore, there is a delay of 8 hours in registering the F.I.R. by the police and for that there is no explanation by the prosecution which creates a serious doubts over the time and place of occurrence and the involvement of the accused in this crime.

19.This Court also finds that when the evidence of PW-5 is not absolutely supporting the prosecution case, this Court has no hesitation at all to hold that the prosecution has failed to prove the case with reliable evidence. Once, the evidence of the

prosecution is found insufficient to hold the conviction of the learned trial Court then the judgment of the learned trial Court is necessarily liable for intervention in the interest of justice.

20.Over all above facts and circumstances of the case, the prosecution has not proved the case beyond reasonable doubt and therefore the accused is liable to be acquitted from the conviction and sentences imposed by the trial Court by giving benefit of doubt. In view of the above, the conviction and sentence imposed on the accused is set aside and the fine amount paid by the accused is directed to be refunded to him.

21.In the result, this Criminal Appeal is allowed and the Judgment in S.C.No.367 of 2009 on the file of the Fast Track Court No.I (Additional District and Sessions Judge), Chennai dated 15.03.2010 is set aside.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Inspector of Police,
J-1, Saidapet Police Station,
Chennai-600 015.

2.The Additional District and Sessions Judge,
Fast Track Court No.1, Chennai.

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

+ 1 cc to Mr.E.J. Ayyappan, Advocate Sr.312

Criminal Appeal No.209 of 2011

KS (CO)
EU (23/01/2018)