

BALI SLIP

The Appellant herein/Accused namely 1)Vellingiri 2)Jaganathan 3)Loganathan, All son of Kuppusamy, was directed to released on bail by order of this court dated 14.06.2011 and made in CrI M.P.No.1 of 2011 in CrI A.331/2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.07.2018

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

CORAM:

Criminal Appeal No. 331 of 2011

1. Vellingiri
2. Jaganathan
3. Loganathan

...Appellants/A1 to 3

Vs

The State Rep. by
The Inspector of Police,
B-9 Saravanapatti Police Station,
Coimbatore District.
Crime No. 552/2009

...Respondent/Complainant

Prayer: Appeal filed under Section 374(2) of the code of Criminal Procedure, against the order of conviction and sentence dated 01.06.2011, in S.C.No. 177 of 2010 by the learned Additional District and Sessions Judge [Fast Track Court -I] Coimbatore.

For Appellant : Mr. Thomas T. Jacob

For Respondent : Mrs. T.P. Savitha
Govt. Advocate (CrI.side)

J U D G M E N T

The appellants 1 to 3 are arrayed as A1 to A3 in S.C.No.177 of 2010 on the file of the learned Additional District and Sessions Judge [Fast Track Court-I] Coimbatore. They stood charged for the offence under Sections 294(b) and 307 IPC. The accused denied the charges and opted for trial. Therefore, they were put on trial on the charges. After, full-fledged trial by the judgment dated 01.06.2011 the learned Additional District and Sessions Judge [Fast Track Court-I], Coimbatore, convicted the 1st and 3 appellants under Sections 307 r/w 34 IPC and sentenced to undergo 4 years Rigorous Imprisonment with the

fine of Rs.5,000/-, in default to undergo six months imprisonment each. Further, the second appellant was convicted under Section 307 IPC and sentenced to undergo the same punishment awarded to the 1st and 3rd appellants. Challenging the conviction and sentence all the accused are before this Court with the present criminal appeal.

The case of the prosecution in brief is as follows:

2. P.W.1 is the injured in this case. P.W.3 is his mother and P.W.4 is the wife of P.W.1, on 18.06.2009, at about 11.00 p.m., when P.W.1 was standing in Balaji Nagar middle street, with play fullness P.W.1 kicked the small stone lying in the street and the same was unwittingly fall on the 2nd accused, for that he abused the P.W.1 by using the filthy language. When the same was questioned by P.W.1, all the accused attacked the P.W.1. Further, in the same transaction the 1st and 3rd accused caught hold the hands of P.W.1 in order to facilitate for attacking by the 2nd accused. Thereafter, the 2nd accused in this case stabbed the P.W.1 on his left abdomen area by using the knife. Due, to the attack made by the 2nd accused, the intestine of P.W.1 came out from his abdomen. Immediately, P.W.3 and P.W.4 admitted the P.W.1 in Coimbatore Medical College Hospital, and on receipt of information P.W.8 P.Ravisankar the then Special Sub Inspector of police Saravanapatti Police Station came to the hospital and examined P.W.1. He recorded the statement from P.W.1 under Ex.P1., and after, recording the statement he returned to Police Station, registered a case in Crime No. 552 of 2009 under Sections 341, 323, 326 IPC and 75 of Tamilnadu City Police Act, Ex.P4 is the copy of the First Information Report. After, registration of the case, he despatched the First Information Report to the Court concerned.

3. In the mean while, on the same day P.W.9 Dr.Dhinakar Babu working in CMC, hospital, Coimbatore examined P.W.1 and found the following injuries:

- "1. Cut injury - 4 X 3 cm.
2. Omentum protruding out
3. Abrasion - 4 X 0.5 cm on the right side chest."

He issued Accident Register copy under Ex.P5. In which, he gave opinion as the injury sustained by P.W.1 is grievous in nature.

4. After the registration of the case, P.W.8 handed over the First Information Report to P.W.10 for investigation. P.W.10 the then Inspector of Police took the case for investigation and on the same day he visited the scene of occurrence, in the presence of P.W.6 and P.W.7, he prepared an observation mahazar under Ex.P.3. Further, he drawn a rough sketch under Ex.P6. On the same day, at about 05.00 p.m, he

arrested the 2nd accused and recorded his confession statement, pursuant to the confession statement given by the 2nd accused P.W.10 recovered the blood stained knife, through the seizer mahazar. The confession statement of the 2nd accused and recovery mahazar are prepared by P.W.10 in the presence of P.W.7 Mahendran and one Sivakumar. After, recovering of the knife he made arrangements for sending the accused to the judicial custody. He examined the witnesses and recorded the statements. He altered the Section of law as 307 IPC. Finally he examined the Doctor and received the wound certificate, after concluding the investigation he came to the positive conclusion that all the accused in this case are attempted to kill the P.W.1. Accordingly, he filed a final report against the all accused.

5. Based on the above materials the trial Court framed the charges as detailed in the first para of this judgment, for which they denied the same as false. In order to prove their case, on the side of prosecution as many as 10 witnesses are examined as P.W.1 to P.W.10 and 6 documents were marked as Ex.P1 to Ex.P6, besides one material object.

6. Out of the said witnesses P.W.1 Mahendran is the injured/defacto complainant in this case. He has stated on 18.06.2009 at about 11.00 p.m. For the stone fall on 2nd accused he abused him and all the accused attacked him. Further, he has stated in the occurrence the 1st and the 3rd accused caught hold his hands, and there after, 2nd accused by using the knife stabbed on his abdomen. He has further stated after the occurrence, he was admitted in the hospital. In the hospital P.W.8 came and recorded his statement.

7. P.W.2 Sivakumar is residing in Balaji nagar Maniyakarampalayam, he knows the P.W.1, he has stated on 18.06.2009 at about 11.00 p.m. When he was going in the street, all the accused way laid the P.W.1., and in the same transaction, 2nd accused stabbed the P.W.1 on his left abdomen by using M.O.1. According to him, he has rang up to the ambulance and made arrangements for admitting the P.W.1 in the hospital.

8. P.W.3 Santhamani who is the mother of P.W.1, has stated on 18.06.2009 at about 11.00 p.m., after hearing the cue and cry of P.W.1, she came to the occurrence place, along with her daughter in law. At the same time, one Jegathees also came to the occurrence place, and on seeing the P.W.1, he was in the road with the injury on his left abdomen. P.W.4 is the wife of P.W.1 gave evidence in support of evidence given by P.W.3.

9. P.W.5 Jagathees who is also the occurrence witness, he has stated that at the time of occurrence 2nd accused abused the P.W.1, and thereafter, during the time of occurrence the 1st and 3rd accused caught hold the hands of P.W.1, and after that P.W.2

attacking the P.W.1 on his abdomen by using the knife, he has further stated that after the occurrence, P.W.2 to P.W.4 came to the occurrence place and made arrangements for admitting the P.W.1 in the hospital.

10. P.W.6 Ganapathi was residing in Balaji nagar. According to him on 19.06.2009 Investigation Officer in this case, came to the scene of occurrence and prepared an observation mahazar. In the said document he was signed as a witness. P.W.7 is the witness to the confession statement given by 2nd accused. He has stated that on 19.06.2009 when he was in Maniyakarampalayam bus stop the investigation Officer in this case came and arrested the accused. He has further stated, after made arrest, the accused voluntarily gave a confession statement, the said confession was recorded by the Investigation Officer in their presence, pursuant to that confession the very same investigating officer recovered the knife through the seizer mahazar. P.W.8 is the Special Sub Inspector of Police has stated, about the recording of statement from P.W.1 and about the registration of case.

11. P.W.9 Dhinkar Babu is working as a Doctor in Coimbatore Medical College Hospital, he has stated on 18.06.2009 at about 11.00 p.m., he examined the P.W.1 and found the injuries sustained by him.

12. P.W.10 Investigation Officer has stated about the details of investigation, arrest of accused and about the filing of final report.

13. when the above incriminating materials were put to the accused under Section 313 of Cr.P.C, all the accused denied the same as false. However, they did not choose to examine any witness on his side nor marked any documents. Having considered the above, the trial Court convicted them as detailed in the 1st para of this judgment. Challenging the above said conviction and sentence all the accused before this Court with the present criminal appeal.

14. Today I have heard the arguments of Mr. Thomas T. Jacob learned counsel for the appellants and Mrs. T.P. Savitha learned Government Advocate for the respondent, also perused the records carefully.

15. The learned counsel appearing for the appellant would content that, there are lot of contradictions in the evidence of P.W.1 to P.W.4., further, the recovered material object M.O.1 was not sent to the chemical examination, he would contend that there is a delay in sending the statement of witnesses to the Court, according to him the above contradictions create doubt over the prosecution case.

16. Per Contra, the learned Additional Public Prosecutor would contend that P.W.2 who is an eye witnesses to the occurrence, is not related either to the injured or to the accused, further the occurrence took place in the street near to the house of P.W.2. Considering the above facts the trial Court rightly convicted the appellant under Section 307 IPC. Therefore, there is no need to interfere with the conviction and sentence passed by the trial Court.

17. Submission made by either side are carefully considered.

18. The trial Court convicted the appellants under Section 307 IPC. Initially for proving the offence under Section 307 IPC. The following ingredients has to be proved, on the side of the prosecution.

- (i) That the death of a human being was attempted;
- (ii) that such death was attempted to be caused by, or in consequence of the act of the accused and
- (iii) that such act was done with the intention of causing death; or that it was done with the intention of causing such bodily injury as:

- (a) the accused knew to be likely to cause death; or
- (b) was sufficient in the ordinary course of nature to cause death, or that the accused attempted to cause death by doing an act known to him to be so imminently dangerous that it must in all probability cause (a) death, or (b) such bodily injury as is likely to cause death. The accused having to excuse for incurring the risk of causing such death or injury. The first part makes any act committed with the intention or knowledge that it would amount to murder if the act caused death punishable with imprisonment up to ten years. The second part makes such an act punishable with imprisonment for life if hurt is caused thereby. Thus even if the act does not cause any injury it is punishable with imprisonment up to 10 years. If it does cause an injury and therefore hurt, it is punishable with imprisonment for life.

19. In this case none of the witnesses examined on the side of the prosecution has stated about the previous enmity or the intention which having by the accused to kill P.W.1. However, as per the evidence given by P.W.1, P.W.2 and P.W.6 during the time of occurrence the 1st and 3rd accused caught hold the hands of P.W.1 and at the same time, 2nd accused stabbed the P.W.1 on his abdominal area by using the knife. As per the evidence of the Doctor, intestine of P.W.1 is came out from his abdomen. Further, the occurrence had happened in the street.

20. In the said circumstances, as per the evidence of medical Officer the injury sustained by P.W.1 is likely to cause the death, further, during the time of occurrence, A2 used the knife for committing the offence. the said knife is nothing but

deadly weapon. So, the necessary ingredients for attracting the Section 307 IPC is clearly available from the evidence of P.W.1 in this case.

21. About the attack made by the accused, the evidence given by P.W.1 and P.W.2 is cogent and convincing, complementary to the said evidence P.W.9 Dr.Dhinakar Babu deposed before the Trial Court that, P.W.1 sustained a cut injury in the size of 4 X 3 cm in the abdomen. Further, he stated that through the said injury a portion of intestine was came out. Accordingly, the medical evidence also corroborated the evidence given by P.W.1 and P.W.2.

22. In respect to the sending of case records to the Court, it appears this case has been registered on 18.06.2009. Subsequently, after concluding the investigation P.W.10 filed a charge sheet on 08.02.2010, accordingly charge sheet has been filed in this case after 8 months. For the said delay, during the time of trial, before the investigation officer, on the side of the accused nothing was suggested as records are sent to the Court with delay. So, without any dispute in earlier occasion arguing as above is not a substantial ground for allowing the appeal.

23. According to the submission of the appellant counsel, the knife which was recovered from P.W.2 is not having any blood stain. He would contend, if really the second accused attacked the P.W.1 as stated by the prosecution witnesses, definitely the blood stain would have been available on the knife, In this case, the Investigation Officer has also admitted, there is no blood stain was found in the knife. In the said circumstances, non sending of the knife to the chemical examination and non recovery of the blood stain dresses from P.W.1 create a doubt whether the occurrence is happened or not.

24. On considering the said argument, it is true the Investigation Officer, in this case, during the time of investigation not collected the blood stain dresses from the accused. He is not collected any blood stained soil in the occurrence place, only after two days from the date of occurrence, the knife was recovered from the second accused and the same was not sent to the chemical examination, in the said circumstances, the evidence given by P.W.10, with regard to the recovery of material object is not at all having any evidentiary value for deciding this case. However, the evidence given by the injured and the eyewitness are corroborated through the evidence of medical officer, the said lapse now indicated by the appellant counsel alone not sufficient to hold that the entire prosecution case is false one.

25. Last contention raised by the learned counsel for the

appellant is the appellants are not having any intention to kill P.W.1., only due to the provoke, all the accused committed this offence. So, convicting them under Section 307 IPC is against the legal principles and prayed for modification.

26. On considering the said arguments, it is true during the time of occurrence, without any intention to kill the P.W.1 within the short span, only due to the falling of a small stone on 2nd accused, all the accused provoked and committed this offence. Thereby we cannot hold the appellants are attacked P.W.1 with the motive to kill P.W.1. The occurrence now stated by P.W.1 and P.W.2 shows 2nd accused by using dangerous weapon voluntarily causing the hurt on P.W.1. For which, in the same transaction A1 and A3 with the common intention, participated in the occurrence. So, convicting the A2 under Section 326 and convicting A1 and A3 under Section 326 r/w 34 IPC is sufficient one.

27. In the light of the above discussions, this Criminal Appeal is partly allowed. It is concluded that the 2nd accused is found guilty under Section 326 IPC and the 1st and 3rd accused found guilty under Section 326 r/w 34 IPC. Accordingly, all the accused are convicted and sentenced to undergo 2 years rigorous imprisonment and to pay a fine of Rs.5,000/- each in default to undergo 6 months simple imprisonment. The Trial Court is directed to take steps to secure the custody of the appellants for undergoing the remaining period of sentence. It is also directed that the period of sentence already undergone by the appellants shall be given set off, as required under Section 428 Cr.,P.C.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

msv / sbn

To

1. The learned Additional District and Session Judge,
Fast Track Court - I,
Coimbatore.
2. The Inspector of Police,
B-9, Saravanapatti Police Station,
Coimbatore District.
(Crime No:552/2009)

4. The Judicial Magistrate No.II, Coimbatore.

5. The Superintendent, Central Prison, Coimbatore

6. The Public Prosecutor,
Madras High Court, Madras.

Copy To

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

+2cc to Mr.Thomas T Jacob, Advocate SR.No.47008

Crl.A.No. 331 of 2011

SK(CO)

GMV(02/11/2018)



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