

Bail Slip

The accused namely Jothimani, S/o.Jeganathan, was released on bail as per the order of this Hon'ble Court dated: 30.06.2011 made in MP.No.1/2011 in CrI A.397/2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 05.06.2018

JUDGMENT PRONOUNCED ON : 25.07.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

CrI.A.No.397 of 2011

Jothimani .. Appellant / Accused

versus

State rep. by
The Inspector of Police,
Mettupalayam Police Station,
Coimbatore. .. Respondent / Complainant

Prayer: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the order of conviction and sentence dated 16.06.2011 made in S.C.No.98 of 2011 by the learned Additional District and Sessions Court [Fast Track Court No.I], Coimbatore.

For Appellant : Mr.S.Gunalan

For Respondent : Mr.G.Raman

Government Advocate [Criminal Side]

J U D G M E N T

The sole accused in S.C.No.98 of 2011 on the file of the learned Additional District and Sessions Judge [Fast Track Court No.I], Coimbatore, is the appellant herein. He stood charged for offences under Sections 341, 294[b] and 307 of IPC. The accused denied the charges and opted for trial. Therefore, he was put on trial on the charges. After full-fledged trial, the learned Additional District and Sessions Judge found him guilty of offences under Sections 294[b] and 307 of IPC. The accused was accordingly convicted and sentenced to undergo simple imprisonment for one month for the offence under Section 294[b] of IPC and to undergo rigorous imprisonment for one year with a fine of Rs.1,000/-, in default to undergo three months rigorous imprisonment for the offence under Section 307 of IPC., however, he was acquitted of the other charge under Section 341 of IPC. Challenging the conviction and sentence, the accused is before this court with the present criminal appeal.

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

2.1. P.W.1 [Balaraman] was residing in Cheran Nagar, Mettupalayam and he was working as Forest Guard in Nellimalai Division. On 06.02.2010, the appellant was found in possession of "sand boa snake". The possession of the said snake is the offence punishable under the Tamilnadu Forest Act, 1988. So, P.W.1 produced the appellant before the Ranger and consequently, fine was paid by the appellant.

2.2. On 07.02.2010 at about 6.30a.m., when P.W.1 was going to milkbooth near Mariamman Temple, Mettupalayam, the appellant waylaid him and by using the wooden log attacked him on his head and he repeatedly assaulted the P.W.1 by using the same weapon in both the legs and caused injuries. Due to the assault made by the appellant, P.W.1 went to the stage of unconscious. Immediately, the neighbours admitted the P.W.1 in the Government Hospital, Mettupalayam. In the said Hospital, he was treated by Dr.Muthukrishnan [P.W.6], for which, he issued wound certificate under Ex.P.4. Before that the said Doctor found the following injuries on P.W.1 and gave opinion as follows:

"1.Lacerated would 3cmx1 cmx1 cm at left side of head.

2.The laceration 2cmx1cmx1cm at front side of right leg.

Right leg swollen and painful. Unable to lift right leg.

3.Toddle of left leg swollen and painful."

The injuries sustained by the P.W.1 are simple in nature.

2.3. After getting the intimation from the Government Hospital, Mettupalayam, on 07.02.2010 at about 8.15 a.m. P.W.8 [Thangavelu], the then Sub Inspector of Police, Mettupalayam Police Station, went to the Hospital and recorded the statement given by P.W.1 under Ex.P.1. Thereafter, the case has been registered in Crime No.323 of 2010 for the offences under Sections 341, 294[b] and 307 I.P.C. Ex.P.6 is the First Information Report. After registration of the case, he handed over the case records to the Inspector of Police for investigation.

2.4. After receiving the case records from P.W.8 [Thangavelu], P.W.9 [N.Mani], the then Inspector of Police, Nilgiris District, took the same for investigation and on the same day at about 9.30a.m., went to the scene of occurrence and in the presence of P.W.5 [Nagaraj] and one Mohan, he prepared an Observation Mahazar under Ex.P.2. Further, he draw a rough sketch under Ex.P.7. Moreover, from the scene of occurrence, in

the presence of same witnesses, he recovered the wooden log under Ex.P.3 Mahazar.

2.5. In continuation of the investigation, on the same day, P.W.9 rushed to the Hospital, in which, P.W.1 was admitted and recorded the statement from him. On 08.02.2010 at about 10.00a.m., in Mettupalayam to Kovai road near Vellankanni bus stop, he arrested the appellant and made arrangements for sending him to the judicial custody. After concluding the investigation, on 20.03.2010 he laid a final report for the offences stated in the First Information Report.

2.6. After receiving the final report, the learned Judicial Magistrate, Mettupalayam, took the same as P.R.C.No.53 of 2010 and after the appearance of the appellant, he furnished the copy of the documents, which are all relied on by the prosecution. Thereafter, he committed the case to the Court of Session, Coimbatore.

2.7. In the Court of Session, a case number was assigned as S.C.No.98 of 2011 and made it over to the learned Additional District and Sessions Judge [Fast Track Court No.I], Coimbatore. In the said Court, after giving sufficient time, the appellant was questioned with regard to the allegation levelled against him, for which, he pleaded not guilty. Further, the charges have been framed for the offences under Sections 341, 294[b] and 307 I.P.C. Subsequent to the framing of charges in order to prove the case of prosecution, 9 witnesses were examined as P.W.1 to P.W.9, besides 8 documents were exhibited as P.1 to P.8.

2.8. Out of the said witnesses, P.W.1 is the victim stated in his evidence about the payment of fine by the appellant as well as about the weapon used and the place of occurrence and the manner of assault committed by the appellant. P.W.2 to P.W.4 alleged to be the eye-witnesses for the occurrence had not stated anything about the occurrence and they are all treated as hostile witnesses.

2.9. With regard to the preparation of Observation Mahazar, P.W.5 deposed that on 07.02.2010 at about 10.00a.m., the Inspector of Police prepared those documents. P.W.6 in his evidence stated about the particulars of injury sustained by the P.W.1 and issued the certificate about the nature of injury sustained by the P.W.1. P.W.7 is the Ranger deposed about the punishing of the appellant for the illegal position of "sand boa snake". Finally, P.W.8 and P.W.9 are the police officers gave evidences with regard to the registration of the case, investigation and about the laying of final report.

2.10. The learned trial Judge with reference to the incriminating materials adduced by the prosecution questioned the accused under Section 313 of Cr.P.C., for which, he pleaded not guilty, however, he did not choose to examine any witnesses nor did he mark any documents on his side.

2.11. After concluding the trial, the learned Additional District and Sessions Judge [Fast Track Court No.I], Coimbatore, came to the conclusion that the appellant is found guilty for the offences under Sections 294[b] and 307 I.P.C. and convicted him as stated above. Now, challenging the said conviction and sentence, the appellant is before this Court.

3. Today, when the appeal is taken up for hearing, I have heard the arguments of Mr.S.Gunalan, learned counsel appearing for the appellant, Mr.G.Raman, learned Government Advocate [Criminal Side] appearing for the State and also perused the records carefully.

4. The first and foremost contention raised by the learned counsel appearing for the appellant is that after lodging the complaint before the police officer, the appellant was beaten like anything for the reason that P.W.1 is a departmental staff. Moreover, in the alleged occurrence, the appellant had also sustained injuries and took treatment for number of days, which was identified by the prosecution. But without seeing the said aspect, the learned Additional District and Sessions Judge, passed an order of conviction which is nothing but erroneous one. Accordingly, the learned counsel prayed for setting aside the judgment rendered by the trial Court.

5. On going through the submission made by the learned counsel appearing for the appellant, in order to narrate the incident, 4 witnesses were examined on the side of the prosecution. In the trial court, except the injured [P.W.1], the other witnesses examined as P.W.2 to P.W.4 had not supported the case of the prosecution, thereby, P.W.2 to P.W.4 are treated as hostile witnesses. Even during the time of cross-examination, the witnesses had not stated anything in respect of the assault committed by the appellant. So, in order to accept the case of the prosecution, the evidence of P.W.1 alone is available in this case. Further, according to the evidence of P.W.1 and P.W.7, one day prior to the date of occurrence, the appellant was punished for the possession of "sand boa snake". The evidence with regard to the said aspect is not disputed on the side of the appellant. So, it is quite natural on the part of the appellant for forming the enmity against the P.W.1.

6. In the said circumstances, during the time of giving evidence, P.W.1 has stated that the appellant by using the wooden log attacked him on the forehead and in both the legs. So, according to the evidence of P.W.1, there may be the possibility for sustaining injuries on the forehead and in both the legs. In this regard, Dr.Muthukrishnan [P.W.6] has stated in his evidence that he found the injuries on both the legs and on the forehead of P.W.1. So, the evidence given by the P.W.1 clearly corroborated through the evidence given by the Doctor. According to the Doctor, the injuries sustained by P.W.1 are simple in nature.

7. Now, on going through the cross-examination of Doctor [P.W.6], he clearly stated that at the time of admitting the P.W.1 in the Hospital, he was in the conscious stage. But P.W.1 stated that immediately after made assault, he went to the stage of unconscious. Further, he specifically stated that somebody told to him as one Senthilkumar [P.W.2] and Sampathkumar [P.W.4] are admitted him in the Hospital. In the said circumstances, being the Doctor [P.W.6], there is no necessity for telling lie before the Court. So, it appears that P.W.1 exaggerated the incident and gave evidence as he went to the stage of unconscious, which shows the evidence given by the P.W.1 has to be thoroughly scrutinised. However, this Court is not in a position to reject the entire evidence given by the P.W.1.

8. The next contention raised by the learned counsel appearing for the appellant is that the appellant has also sustained injuries in the alleged occurrence. In this regard, in order to prove the said argument, nobody was examined on the side of the appellant. However, when at the time the appellant was in the central prison, the relatives of the appellant filed a petition before the Judicial Magistrate, Mettupalayam, for sending him for medical examination, for which, the respondent police filed a counter affidavit. The copy of the counter affidavit filed by the respondent police is marked as Ex.D.2 in the trial court.

9. On going through the said counter affidavit filed by the P.W.9, it appears that in the central prison, the prison authority has examined the accused by giving proper treatment and till now, the medical treatment is continuing. The said averment made by the P.W.9 clearly established that in the occurrence the appellant has also sustained injuries. But the said particulars had not been shown before the trial court by any of the witnesses. Even after seeing the counter affidavit filed by the P.W.9, the trial court without discussing the said aspects convicted the appellant under Section 307 I.P.C. is highly unjustifiable one. So, convicting the appellant for the

said offence needs interference.

10. In view of the aforesaid reasons, this Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/accused by the learned Additional District and Sessions Judge [Fast Track Court No.I], Coimbatore, in S.C.No.98 of 2011, dated 16.06.2011 are hereby set aside and the appellant is acquitted. Bail bonds executed, if any, shall stand terminated. Fine amount paid, if any, is directed to be refunded to the appellant.

Sd/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

To

- 1.The Additional District and Sessions Judge
[Fast Track Court No.I], Coimbatore.
- 2 The Judicial Magistrate,
Mettupalayam.
- 3 The Chief Judicial Magistrate,
Coimbatore.
- 4.The Inspector of Police,
Government of Tamil Nadu,
Mettupalayam Police Station, Coimbatore.
5. The Director General of Police,
Mylapore, Chennai-4
6. The District Collector,
Coimbatore
- 7.The Section Officer,
V.R. Section,
Madras High Court, Chennai.

+1cc to Mr.S.Gunalan, Advocate, S.R.No.49888

Pre-delivery Judgment in
Crl.A.No.397 of 2011

NRI (CO)
SMI/07.08.2018