

Bail slip

The Petitioner/Accused namely David, S/o.Ekambaram, was directed to be released on bail as per order of this court dated 18/10/2011 and made in MP.2 of 2011 in CrI.A.No.409/2011 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Criminal Appeal No.409 of 2011

David .. Appellant
Vs

The State Rep. by
The Inspector of Police,
K-3, Aminjikarai Police Station,
Crime No.636/2010. .. Respondent

Prayer:- Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure to set aside the judgment of conviction and sentence dated 25.04.2011 passed in S.C.No.53 of 2011 on the file of the learned Additional District and Sessions Court [Fast Track Court No.II], Chennai.

For Appellant : Ms.Greetha Senthil Kumar
(Legal Aid Counsel)

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

J U D G M E N T

The present appeal has been filed to set aside the judgment of conviction and sentence dated 25.04.2011 passed in S.C.No.53 of 2011 by the learned Additional District and Sessions Judge [Fast Track Court No.II], Chennai.

2. The appellant is the sole accused. He stood charged for the offence under Section 307 IPC. By a judgment dated 25.04.2011, the learned Additional District and Sessions Judge [Fast Track Court No.II], Chennai, convicted the appellant under Section 307 IPC and sentenced to undergo Rigorous Imprisonment for 7 years and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for six months. Challenging the said conviction and sentence, the accused is before this Court by filing the present Criminal

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

(i) P.W.1 is the wife of accused and P.W.2 is the brother of P.W.1. After solemnization of the marriage with the P.W.1, the accused suspected over the character of P.W.1, due to which, he frequently quarreled with P.W.1 and made life threat against her. Due to the said reason, P.W.1 returned to her parents house and residing there with her children. Further for the harassment made by the accused, on 15.09.2010, she lodged a complaint against the accused before the All Women Police Station. Based on the complaint, the Police Officers called the appellant and made efforts to compromise the dispute, but in the compromise talk, P.W.1 refused to live with the accused. Subsequent to the compromise talk, when all of them came out from the Police Station, the accused made a life threat to P.W.1 and P.W.2 by saying that he would finish them.

(ii) Subsequently, on 22.05.2005, at about 7.30a.m., when P.W.1 was in the kitchen, the appellant with an intention to kill the P.W.2 came to the house with acid bottle, in which P.W.1 and P.W.2 were residing and poured the acid on the face of P.W.2. Further, by using the knife, he attacked the P.W.2 on his neck, head and all over the body, immediately, in order to escape from the attack made by the appellant, P.W.2 attempted to ran away from his house, but the accused stabbed him in various parts of the body and causing the injury. After hearing the sound from the house of P.W.2, P.W.6 Kalaiarasi, P.W.7 Banu @ Hameesa Banu and P.W.8 Visvanathan, who are the neighbours came inside the house and saw the occurrence. At that time, the appellant took his son [P.W.3] and ran away from the scene of occurrence. Thereafter, P.W.1 admitted the P.W.2 in the Government General Hospital, Chennai for giving necessary treatment. Further, she intimated the occurrence to the Police.

(iii) In the meanwhile, P.W.15 is the Doctor working in Government General Hospital, Chennai, examined the P.W.2 and found the following injuries:

1. chemical burns on the face,
2. cut injuries near to the right ear, left index finger and on the left shoulder.

Further, he issued accident register under Ex.P.6. He has also informed the occurrence to the Police.

(iv) On receipt of the intimation, P.W.23, Seeni Thurai, the then Sub Inspector of Police, Triplicane, came to the Government General Hospital, Chennai and recorded the statement of P.W.1 under Ex.P.1. Based on the statement, he registered a case in Cr.No.636 of 2010 under Section 307 IPC. Ex.P.7 is the printed First Information Report. Subsequent to the registration of the case, he despatched the F.I.R. to the

Court and handed over the copy of the F.I.R. to P.W.26 for investigation.

(v) On receipt of the copy of F.I.R., P.W.26, Anantha Raman, the then Inspector of Police, on 22.05.2010 at about 12.30 hours went to the Government Hospital and recorded the statement from P.W.2. On the same day, at about 1.00 p.m, in the presence of P.W.10 Bablu and P.W.5 Muniraj, he recovered the blood stained clothes, (i.e.) Lungi and two bed sheets (M.O.3 and M.O.4) from P.W.2 under the cover of mahazar Ex.P.2.

(vi) In continuation of the investigation, on 22.05.2010, at about 2.45p.m., he went over to the scene of occurrence and prepared an observation mahazar (Ex.P.3) in the presence of P.W.20 Selvanathan and P.W.9 Sudhakar, he drawn the rough sketch under Ex.P.19. Further, with the help of one Bharathan, working in Forensic Science Department, Chennai, from the occurrence place, he recovered mat, Pillow, capsule, blood stained cotton, blood stained floor, sample floor, Acid dipped cotton, blood stained shawl under the cover of mahazar [Ex.P.20]. Thereafter, he recorded the statements of witnesses. On the same day, he made arrangement for sending the P.W.3 for treatment. At about 6.30 a.m., on receipt of information that the accused is available near Nelson Manickkam Road, he went to the above place and arrested the accused, and in the presence of one Elango [P.W.11] and one Sakthivel [P.W.23], he recorded the confession statement given by the accused. In the confession statement, the accused admitted the guilt and willing to handover the weapon used in the commission of offence. Pursuant to the confession statement, along with the same witnesses, P.W.26 went to the occurrence place situated at Door No.18/11, Ayyavu Street, Ayyavu Naidu Colony and on identification by the accused, he recovered Aruval and blood stained T-shirt under the cover of mahazar [Ex.P.22]. The said material objects were marked as M.O.2 and M.O.8. On 23.06.2010, the accused identified the shop, wherein, the Aruval was purchased, and thereafter, P.W.26 made arrangements for sending the appellant to the judicial custody. Further, he produced the material objects before the Court. Subsequent to that, he submitted a requisition letter to the Magistrate for sending the recovered material objects for chemical examination.

(vii) In continuance of investigation, he recorded the statements of P.W.1 Malathi and P.W.3 Sanjay. Thereafter, he examined Doctors, who treated the P.W.2 and P.W.3 and collected a copy of accident register and wound certificates. Those documents are exhibited as P.15, P.16 and P.18. He also recorded the statement of P.W.25, Dr.Balakumaran. After completing the investigation, he laid charge sheet against the accused for the offences punishable under Sections 341 and 307 IPC.

(viii)Based on the above materials, the trial Court framed charge under Section 307 IPC and the accused denied the same. In order to prove their case, on the side of prosecution, as many as 26 witnesses were examined as P.W.1 to P.W.26 and 22 documents were marked as Exs.P.1 to P.22, besides 10 Material Objects [M.O.1 to M.O.10].

4.Out of the said witnesses, P.W.1 Malathi is wife of the accused, she is the witness to the occurrence, she has stated after their marriage, the accused frequently quarreled with her and therefore, she left the matrimonial home and residing in her brother's house [PW2]. Further, on 15.05.2010, she lodged a complaint against her husband before the Police Station. In the compromise talk arranged by the Police Officer, she refused to live with the accused. Subsequent to that, on 21.05.2010, when P.W.1 and P.W.2 returned from the Police Station, the accused came and made a life threat towards them. She has further stated that on 22.05.2010, at about 7.30 am, when she was in the kitchen room, the accused came with the acid bottle and deliberately poured the acid on the face of P.W.2. In the said occurrence, since P.W.3 is present near to P.W.2, a little bit of acid fallen on him. She has further stated that after pouring the acid, the accused took the knife and attacked the P.W.2 on his neck, head and all over the body. Further, he took the P.W.3 from the occurrence place and ran away. Thereafter, she made arrangements for admitting the P.W.2 in Government General Hospital, Chennai. In the said Hospital, Police Officers came and recorded her statement.

5. P.W.2 Selvaraj is the brother of P.W.1, he has stated that on 22.05.2010 at about 7.30 am, when he was in his house, the accused came with acid bottle and poured the acid on his face. Further, he has stated after pouring the acid on him, he took the knife and attacked on his nose, shoulder and in the right hand. He has also stated that, due to the acid attack, he partially lost his vision.

6. P.W.3 David is the victim as well as the witness to the occurrence, he has stated in his evidence as during the time of occurrence, his father came into the house, and poured acid on the face of P.W.2. Further, he has stated that the accused by using knife attacked P.W.2 all over the body. According to him, a little bit of acid fallen on him. Thereafter, the accused took him and went to Tambaram.

7. P.W.4 is the resident at Sethupattu. P.W.1 is her daughter. She has stated that on the day of occurrence, after receiving the information from P.W.1, she went over to the Hospital and saw the P.W.2. P.W.5 is residing in Kilpauk Sastri Nagar, he has stated that on the day of occurrence, after hearing about the occurrence, he went to the General Hospital for seeing the P.W.2. Further, he has stated that in the Hospital, the Police Officers came and recovered the blood

stained Lungi, 2 bed sheets from P.W.2. According to him, he is the witness for the recovery of above material objects.

8. P.W.6 Kalaiarasi is the resident of MMTA Colony, Chennai, she has stated that on the day of occurrence, after hearing the hue and cry of P.W.2, she came out from her house and saw the occurrence.

9. P.W.7 is the neighbour of P.W.1, she has stated that after the occurrence, P.W.1 cried and asked help for admitting the P.W.2 in the Hospital. P.W.8 has also the neighbour to the P.W.1, he had corroborated the evidence given by P.W.7. P.W.9 Sudhakar is the friend of P.W.2, he has stated in his evidence that after knowing the occurrence, he came to the house of P.W.2, during such time, the Investigation Officer in this case came and preferred the Observation Mahazar. P.W.10 Babu has given evidence in support of the evidence given by P.W.5.

10. P.W.11 is the witness to the arrest of accused, in the trial Court, he has not supported the case of the prosecution in any manner. Hence, he was treated as a hostile witness. P.W.12 Sekaran is the employer of the accused, he has stated that he know the occurrence through the accused. P.W.13 is running a grocery shop, he has also not supported the case of the prosecution. PW 14 is running a Fancy Store in Mathuravayal, he has stated that on 21.05.2010, the accused came to his shop and purchased a knife for Rs.90/-.

11. P.W.15 Thanigai Arasu is the Doctor working in the Government Hospital, Chennai, he has stated that on 22.05.2010, at about 8.00 am, when he was on duty, P.W.1 brought the P.W.2 for taking treatment and on examination, he found the chemical burns on the face of P.W.2 and cut injuries near to the right ear, left index finger and on the left shoulder. After giving first aid, he admitted the P.W.2 as inpatient in the said Hospital and issued accident register copy.

12. P.W.16 Kalarani is working as Deputy Director in Forensic Science Laboratory, Chennai, she has stated on 21.01.2010, through the letter sent by the V Metropolitan Magistrate, she received the following material objects for chemical examination:

1. Mat
2. Pillow with pillow cover
3. Plastic bottle without lid
4. Cotton in small size
5. Cement and Brick
6. Cement and Brick
7. Dupata
8. Lungi
9. Maroon color bed sheet

- 10. Grey colour Bed sheet
- 11. Aruval measuring 53 cm
- 12. T-shirt

On examination, she found that Hydrochloric acid was present in item Nos. 1, 2, 3 and 7. He issued a report to that effect.

13. P.W. 17 Gowri is the then Inspector of Police, All Women Police Station, she has stated on 21.05.2010, when she was on duty, P.W.1 came and lodged the complaint against the accused. She has further stated after receiving the complaint, the same was treated as a petition in CSR No.58 of 2010. She has also stated in the compromise talk made between P.W.1 and the accused, P.W.1 refused to live with the accused.

14. P.W.18 Bharadan is working as Assistant Director in Forensic Science Laboratory, Chennai, he has stated that on the request made by the Investigating Officer, he went to the place of occurrence for collecting the acid samples. P.W.19 Indirani is the then XII Metropolitan Magistrate, Egmore, has stated about the recording of 164 Cr.P.C. statement from P.W.1 to P.W.3.

15. P.W.20 has stated that on the day of occurrence, the Investigating officer in this case came to the occurrence place and prepared the Observation Mahazar and Rough Sketch in his presence.

16. P.W.21 Dr. Padma Priya is the Oculist in the Government General Eye Hospital, Chennai. According to her, on 22.05.2010, she treated the P.W.3 for the injuries sustained by him.

17. P.W.22 Prakash is the Assistant working in V Metropolitan Magistrate, has stated about the sending of material objects to the Forensic Science Laboratory for chemical examination.

18. P.W.23 M.Seenithurai is the then Sub Inspector of Police, Amainthakurai Police Station, he has stated on 22.05.2010, he received an intimation from the Government Hospital, Chennai in respect to this occurrence. He has further stated that immediately on receipt of information, he went over to the Government Hospital and recorded the statement of P.W.1, after returning from the Hospital, he registered a case against the accused in Cr.No.63 of 2010 under Section 307 IPC.

19. P.W.24 Sakthivel is the resident of Sastri Nagar, he has stated about the recording of confession statement from the accused and about the recovery of knife and T-Shirt. According to him, he is a witness to the above statement and to the recovery of material objects.

20. P.W.25 Dr. Balakumar working as a Assistant Professor in Government General Hospital has stated that on 22.05.2010, he examined the P.W.2 and found the following injuries:

- Fracture in back bones
- Cut injury on the backside of the head measuring 8 x 2 x 2cm
- Cut injury on the leftside of the head measuring 5 x 4 x 2cm
- Cut injury found below the right ear measuring 5 x 3 x 2cm
- Cut injury found on the left hand measuring 5 x 4 x 2cm
- Cut injury found on left index finger measuring 3 x 2 x 1cm

According to him, the injuries found on P.W.2 are grievous in nature. He issued Wound Certificate to that effect. Ex.P.18 is the Wound Certificate.

21. P.W.26 is the Investigating Officer, he has stated about the details of investigation conducted in this case and about the filing of Final Report against the accused.

22. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness nor did he mark any documents on his side.

23. The learned Additional District and Sessions Judge, after perusing all the above materials and on considering the arguments advanced by either side, convicted and sentenced the appellant as stated supra. Aggrieved over the said conviction and sentence, the appellant is before this Court with this appeal.

24. I have heard Ms.Greetha Senthil Kumar learned legal aid counsel appearing for the appellant and Ms.T.P.Savitha, learned Government Advocate (Criminal side) appearing for the State. I have also perused the records carefully.

25.The learned counsel for the appellant would contend that the evidence given by the prosecution witnesses are having lot of contradictions, the evidence putforth by the PW1 to PW3 creates a doubt whether PW3 was brought to the hospital by PW1 or by the accused. The evidence given by the medical officer, who treated the PW2 is not in accordance with the evidence given by PW1 to PW3, who are the eye-witness. Furthermore, he would contend that, for convicting the accused under section 307 IPC, the prosecution must prove the motivation and about the knowledge which had by the accused. But in this case no evidence is available from the prosecution to establish the intention of the accused. Accordingly, he prayed to allow the appeal and for setting aside the conviction rendered by the trial court.

26. On the other hand, the learned Government Advocate (crl.side) would contend that the evidence given by the PW1 to PW3 and PW6 are clearly established the case of prosecution as well as about the intention had by the accused. She would further contend that if really the accused is not having any intention there is no necessity to bring the acid bottle to the occurrence place, further, the evidence given by PW1 clearly disclose that the accused is having the previous enmity against herself and against PW2. Furthermore, she submits the evidence given by the medical officer is corresponding to the injury sustained by the PW2. Therefore, interference is not necessary in the conviction and sentence passed by the trial court.

27. I have considered the rival submissions made on either side and perused the records carefully.

28. Initially, the relationship of accused with the PW1 to PW3 is not disputed by either side. Further, in the trial Court, it was not disputed before the occurrence PW1 left the matrimonial home and lived separately along with PW3, moreover, prior to the occurrence, she lodged a complaint against the accused before the All Women Police Station.

29. In the said circumstances, as per the case of prosecution the accused/appellant attacked the PW2 by using the knife and also by using the acid, the evidence given by PW15 Dr.A.Balasundaram proved at the time of giving treatment to PW2, he found with the chemical burns on his face. Further, the evidence given by PW16 Kalarani, Assistant Director Forensic Science Department, Chennai has clearly established in the occurrence place as well as in the material objects collected, a little bit of acid was found, thereby those evidences clearly prove at the time of attack, the accused uses the acid.

30. Now as per the evidence of PW2 at the time of occurrence, the appellant/accused by using the knife attacked him on his neck, shoulder, right fertile region, left hand and all over the body. PW25 Dr.Sankara Narayana Murthy has also stated at the time of examining the PW2, he found the 6 injuries, further, he has stated all the said injuries are grievous in nature. So, the evidence given by the victim with regard to the injury sustained by him is corroborated through the evidence of medical officer.

31. In the said circumstances, with regard to the first contention raised by the appellant, it is true PW3 has stated after pouring the acid on PW2, the accused took him and produced before the Doctor in Tambaram. On the other hand, PW 21 Dr.Padmapriya, who treated the PW3 has stated as PW1 brought the P.W.3 to the hospital, but PW26 Ananatharaman, who is the Investigation Officer in this case has stated during the time of investigation after collecting the material

objects from the occurrence place, he made arrangements for sending the PW3 to the Hospital. Thereby, in respect to the production of P.W.3 before the hospital, 3 set of evidences was available from the evidence of prosecution witnesses. However, P.W.3 has stated in his cross examination as after getting treatment in Tambaram, one Sekar produced him before the police station. Therefore, the said evidence clearly establish that after the occurrence, the present appellant took the P.W.3, and thereafter through one Sekar, he handed over the P.W.3 before Police station, in turn, P.W.26 handed over the P.W.3 to his mother [P.W.1].

32.Secondly, on going through the charges framed against the accused, it appears for the assault made on PW2 a charge under section 307 IPC have been framed against the accused at the same time, there is no specific charge has been framed in the trial court for causing injuries on PW3.

33.Secondly, the learned counsel for the appellant would contend that for confirming the offence under section 307 IPC, the prosecution must prove the intention of the accused. But, in this case, the prosecution fails to prove the motivity and the knowledge of the accused. On considering the said submission, it is settled position for proving the offence under section 307 IPC the prosecution has to prove the following ingredients:

- "(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 case (a) death, or (b) such bodily injury as is likely to cause death."

34.In this case, as per the evidence of PW25, P.W.2 sustained 6 grievous injuries on his vital part of the body, further, in the right hand, one blood vessel was completely damaged and the blood was entirely blocked. So the area on which the injuries found, and the nature of injury sustained will clearly established that the said injuries are sufficient to cause the death of accused. Apart from that, before the Doctor on the side of accused, it was not disputed that the injury sustained by the PW2 is not sufficient to cause the death. So without any denial before the competent witness, making submission during the time of argument by the learned counsel for the appellant is not having any merit.

35. Furthermore, through the evidence of expert, prosecution proved that the accused using the acid for attacking the P.W.2, the acid is found in the occurrence place would show the accused is coming to the occurrence place only with the intention to kill the PW2. As already pointed out by the learned Government Advocate during the time of occurrence against the wishes of accused, P.W.1 was residing in PW2's house. So, it is automatic being the husband of PW1 he developing the enmity against the PW2. Further, the accused after purchasing the weapon came to the house of P.W.1 and committed the offence. Those circumstances clearly show that the accused/appellant is having the intention to kill the PW2 and he is having the knowledge about the injuries sustained by PW2 is sufficient to cause the death.

36. Moreover in the complaint [Ex.P.1] which is the earliest document for this case, PW1, who is the author of the said document has clearly stated before the occurrence, the accused threatened her by saying that he would pour the acid on her. So in the initial stage itself the accused is having the intention to pour the acid on PW1 and PW2. Therefore, the second submission made by the learned counsel for the appellant is also not supported through the relevant evidence.

37. The next submission made by the learned counsel for the appellant is, as the witnesses examined on the side of the prosecution to prove the occurrence are all closely related with each other. Further before the occurrence, P.W.1 and the accused are having the misunderstanding. So, the evidence given by the occurrence witnesses cannot be accepted to decide the issue in favour of the prosecution.

38. On considering the said submission, it is true as already discussed, all the witnesses, who stated the occurrence are closely related with P.W.2. However, as per the case of prosecution, the alleged occurrence had happened inside the house. Further, the accused committed the offence due to the misunderstanding with the P.W.1, now she is residing in the house of P.W.2. Hence, on culling out the entire circumstances, it is apparent that there is no chance for seeing the occurrence by the public. Further in the judgment of our Hon'ble Apex Court in Ashok Kumar Pandey Vs. State of Delhi reported in (2002) 4 SCC 76, in which it was held as follows:-

"It is well settled that evidence of a witness cannot be discarded merely on the ground that his either partisan or interested or both, if otherwise the same is found to be credible."

So, as per the observation of our Hon'ble Apex Court, in this case also considering the nature of offence committed by the accused, it is possible only the P.W.1 to P.W.3 are having the chance for seeing the occurrence, accordingly, their evidence

cannot be discarded only for the reason they are closely related with the accused.

39. In the light of the above discussion, this court came to the conclusion that the evidence put forth by the prosecution is clearly established as during the time of occurrence the accused/appellant with intention to kill the PW2 purchased the acid and knife and go to the house of PW2, and poured the acid on the face of PW2, further by using the knife, attacked the PW2 on his vital parts of the body. So, necessarily he is the offender under section 307 IPC. Accordingly, the findings arrived by the trial Court is accepted by this Court. The trial court while passing the judgment convicted and sentenced the appellant accused to undergo 7 years rigorous imprisonment and a fine of Rs.10,000/- under section 307 IPC. In the said conviction and sentence, the interference is not necessary. In fine, the appeal is dismissed. The conviction and sentence imposed upon the appellant is confirmed. The Trial Court is directed to take steps to secure the custody of the appellant for undergoing the remaining period of sentence. It is directed that the period of sentence already undergone by the appellant shall be given set off, as required under Section 428 Cr.P.C.

40. While parting with the case, I appreciate the services rendered by Ms. Greetha Senthil Kumar, learned counsel, who appeared on behalf of the appellant as Legal Aid Counsel. The High Court Legal Services Authority is directed to pay necessary remuneration.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

cla

To

1. The Additional District cum
Sessions Judge
(Fast Track Court No.II),
Chennai.

2. The Public Prosecutor,
High Court, Madras.

3. The Superintendent
Central Prison, Puzhal,
Chennai

4.The Inspector of Police
K-3 Aminjikarai Police Station

5.The Secretary
Tamil Nadu Legal Services Authority,
High Court, Chennai 104

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

7.The VIth Metropolitan Magistrate,
Egmore, Chennai

8.The Chief Metropolitan Magistrate,
Egmore, Chennai(for information)

+1cc to M/s.Greetha Senthil Kumar, Advocate SR.NO.51512

NRL(CO)
sm:2.11.2018

Cr1.A.No.409 of 2011