

Bail Slip

The Appellant herein/Accused Viz., Murugan S/o Ponnusamy was directed to be released on bail as per order of this Court dated 21/09/2011 made in M.P.No.1 of 2011 in Crl.A.No.564 of 2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.07.2018

PRONOUNCED ON : 30.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.A.No.564 of 2011
in
Crl.M.P.No.9373 of 2018

Murugan

... Appellant/Accused

Vs

The State
Rep. by Inspector of Police,
Madhikonpalayam Police Station,
Dharmapuri. ... Respondent/Complainant

Prayer : Criminal Appeal filed under Sections 374 (2) of Criminal Procedure Code, to set aside the conviction judgment dated 04.08.2011 made in S.C.No.26 of 2011 passed by the learned Additional District and Sessions Judge, Fast Track Court, Dharmapuri.

For Appellant : Mr.I.C.Vasudevan
for Mr.V.R.Anna Gandhi

For Respondents : Mrs.M.Prabhavathi Ganeshram
Additional Public Prosecutor

J U D G M E N T

This appeal is preferred against the judgment and order dated 04.08.2011 made in S.C.No.26 of 2011 on the file of the learned Additional District and Sessions Judge, Fast Track

Court, Dharmapuri, thereby convicting the appellant/accused for the offence under Section 307 of IPC and sentencing him to undergo Rigorous Imprisonment for ten years and to pay a fine of Rs.500/-, in default, to undergo simple Imprisonment for three months.

2. The case of the prosecution is that the accused has three brothers and the complainant is also one of the brother. The accused along with the brothers effected partition of their ancestral property land measuring two acres. The complainant insisted the accused to make the partition of the land purchased from third party, for which the accused refused to do so. The accused due to this enmity, on 19.01.2010 at about 7.30 p.m. with an intention to cause death of the complainant, created huge noise and he lighted the torch on the face of the complainant. The accused assaulted the complainant on the right elbow with Koduval and scolded saying that "on the death of the complainant then they will live peacefully". The accused assaulted the complainant, who suffered grievous injuries on his right side cheek, right side fore arm, scrotum right back side and right side stomach. He caused these injuries with an intention to kill him with knowledge that the act committed by him would cause death of the complainant. As such, on the complaint and the statement recorded as Ex.P1 from P.W.1 injured, P.W.8 registered the F.I.R in Crime No.59 of 2010, for the offence under Section 307 of IPC against the accused.

3. P.W.8 registered the case and handed over to the investigating officer P.W.9 for investigation. P.W.9 investigated the case and laid charge sheet against the accused.

4. The Trial Court framed the charges and the accused pleaded not guilty and claimed the trial. During the course of trial, the prosecution examined P.W.1 to P.W.11 and marked Exs.P1 to P9 and produced M.Os.1 and 2. When the accused was questioned under Section 313 of Cr.P.C. about the incriminating evidence against him, he denied the same. On considering the above oral and documentary evidence, the Trial Court convicted the accused and sentenced him as stated above.

5. Heard the learned counsel for the appellant as well as the learned Additional Public Prosecutor for the State and the complainant (P.W.1) and perused the materials available on record.

6. The learned counsel for the appellant contended that he is not challenging the conviction of the appellant. However, the appellant and the victim, being the brothers, have come for an amicable settlement, during the pendency of the present

appeal. The matter is amicably settled between them now and they are residing peacefully. Therefore, he pleaded that in view of the compromise between the parties, the sentence awarded to the appellant may be altered to the sentence already undergone.

7. The learned Additional Public Prosecutor for the respondent also has corroborated the plea of the learned counsel for the appellant with respect to the amicable settlement between the parties. She also contended that the accused had caused grievous injuries to the complainant. Further, the offence under Section 307 of IPC is also made out. Therefore, the sentence awarded to the accused by the learned Trial Judge is justified does not call for any deduction.

8. The complainant was examined as PW.1, and he deposed that due to their family circumstances, one of his brother Theerthamalai sold his share to P.W.1. and also the share allotted to the parents to the P.W.1, victim and the accused and other brothers. The said land was jointly purchased in the name of the accused. Thereafter, it was partitioned through the panchayator and as per the partition, the complainant demanded to transfer the property to his name. Therefore, the enmity between the accused and the complainant developed and on 19.01.2010 at about 7.30 p.m., the accused lighted the torch on the eye of P.W.1 and attacked him with Koduval. Hence, he sustained grievous injuries on his right shoulder, right side, back side, right cheek and three places of head and private part of his body. He was admitted to the Dharmapuri Government Hospital and his statement was recorded and registered in the above said manner.

9. P.W.11, the Doctor, to examine the victim and registered Accident Register and marked as Ex.A9. He found the following injuries :

1. 3x1x½ c.m cut injury on the right back side.
2. 5x2x1 c.m cut injury on his right cheek.
3. 6x3x1 c.m cut injury on his right elbow.
4. 6x2x1 c.m cut injury on his testical bag.
5. 1x½ c.m cut injury on his left upper hand.
6. 2x1x½ c.m cut injury on his right hip.
7. 1x½x½ c.m cut injury on his right clavical bone.

10. Thereafter, the victim was treated by P.W.7, who has noted the following injuries :

1. Sutured wound on the below the right eye. 4 c.m in length
2. 4 c.m length sutured wound on the right side clavical

bone.

3. Sutured wound 6 c.m length on the right side above hip.
 4. 4X1 c.m depth injury on his private part.
 5. Lacerated flesh depth 7x5 c.m and vision of blood vessels wound on the right elbow.
 6. 4x1 c.m flesh depth injury near the right lower back.
- He opined the injuries 1 to 6 are grievous injuries.

11. P.W.4 is wife of P.W.1. P.W.3 is son of P.Ws.1 and 4. She also reiterated the deposition of P.W.1 and supported the case of the prosecution. She took P.W.1 to the Government Hospital, Dharmapuri and thereafter to Salem Hospital. P.W.3 also rushed to the spot on hearing the sound and saw that the accused attacked P.W.1 and thereafter, left occurrence place and witnesses also found the injuries sustained by P.W.1. P.W.5 and P.W.10 as observation mahazar witnesses.

12. M.Os. 1 and 2 were seized from the accused, the torch light and knife and Seizure Mahazar marked as Ex.P4.

13. Though the learned counsel for the appellant has not challenged the conviction of the appellant recorded by the learned Trial Judge has only pleaded for reduction of sentence on the basis of compromise between the parties, during the pendency of the present appeal. Yet this Court is required to evaluate the legality of the conviction of the appellant recorded by the Trial Court. Thus, from the ocular evidence adduced by the prosecution, which is fully corroborated by the medical evidence, it is established that the appellant have caused the injuries to the complainant. So no fault can be found that the conviction of the appellant recorded by the learned Trial Judge.

14. This fact is not disputed that the appellant as well as the victim are own brothers. During the pendency of the present appeal an amicable settlement taken place between the parties. The victim/complainant also filed an affidavit to prove the amicable settlement between them. The relevant portion of the affidavit is reads as follows :

"2. I submit that the 2nd respondent namely Murugan, who is my brother, has filed the above appeal against the Judgment dated 04.08.2011 passed in S.C.No.26/2011 on the file of the Additional Sessions Court (Fast Track Court), Dharmapuri for the following facts and circumstances of the case.

3. I submit that I lodged the complaint before the 1st respondent on 19.01.2010 against the 2nd respondent herein since my brother assaulted me and caused injuries by knife due to previous enmity and on my complaint the 1st respondent registered a case in Crime No.59/2010 and after investigation filed the charge sheet in S.C.No.26/2011 on the file of the Hon'ble Additional Sessions Court (Fast Track), Dharmapuri. The Hon'ble Court after trial, by its judgment dated 04.08.2011, convicted the 2nd respondent to undergo 10 years R.I and also to pay fine of Rs.500/- i/d to undergo 3 months S.I.

4. It is submitted that aggrieved over the same, the 2nd respondent has preferred the above appeal in CrI.A.No.564/2011 before this Hon'ble Court and the same is still pending.

5. I submit that since the 2nd respondent is my brother and subsequently as per the compromise made by the well wishers of both of us, the above matter is settled out of Court. Hence, it is just and necessary to permit me to withdraw the said complaint given by me against the 2nd respondent and to compound the said case.

6. I submit that hence it is just and necessary to compound the said case as settled out of Court. Otherwise I would be put to much trouble and hardships."

15. In view of the same, this Court ordered the presence of the victim at the time of hearing of the appeal. The victim/complainant is present today and on enquiry by this Court, he confirmed the amicable settlement between him and his brother and sought for suitable orders. The victim/complainant would further submit that the accused has four daughters and due to his family circumstances, he does not want any compensation from the accused. He has no objection if the appellant is discharged by this Court. The aforesaid affidavit filed by the complainant says that during the pendency of the present appeal, an amicable settlement has been reached between the parties and now he has no grievance against the appellant.

16. In this regard, it is relevant to point out the judgment reported in CrI.A.No.2177 of 2003 - Bakhtawar Singh and others Vs. State of Haryana" and held as follows :

"21. The Hon'ble Supreme Court in case Ram Pujan and others Versus State of Uttar Pradesh AIR 1973

Supreme Court 2418 has laid down that the fact of compromise could be taken into account in determining the quantum of sentence even if the offence for which the accused was sentenced is non-compoundable. Case Santokh Singh Versus The State of Punjab 1978 CLR 124 was a case under Section 307, 326 of Indian Penal Code.

This Court held that although offences in question are not compoundable but the circumstances of the compromise between the parties who are PUSHINDER SAINI 2015.02.27 10:11 I attest to the accuracy and integrity of this document High Court Chandigarh closely related to each other can be taken into consideration while determining the quantum of sentence in the interest of amity between the parties. In case Vir Singh Versus The State of Punjab, 1981 PLR 135, the appellant was convicted for the offence punishable under Section 307 IPC. The compromise had taken place between the parties. This Court reiterated the legal position that although the offence under Section 307 IPC is non-compoundable but the factum of compromise can be taken into consideration for determining the question of sentence. The same legal position has been reiterated in cases Angrez Singh Versus State of Haryana 1983(2) Recent Criminal Reports 441, Lachhman Singh and others Versus State of Punjab 1985(2) RCR (Criminal) 464, State of Haryana Versus Jahangir Singh and another 1985(2) RCR 491, Sukhdev Singh and others Versus State of Punjab 1993(3) RCR (Criminal) 102, Ishwar Singh Versus State of Madhya Pradesh, 2009 (1) RCR (Criminal) 1 (SC), Hari Singh and others Versus The State of Haryana 1988 (2) RCR (Criminal) 610, Ram Tirath Versus State of Haryana 1993 (3) RCR (Criminal) 409 and Dimpey Gujral Versus Union Territory through Administrator, U.T. Chandigarh and others 2013(1) RCR (Criminal) 745 (SC). Thus, in view of the consistent rule of law laid down in the cases referred above, the factum of compromise between the parties can be taken into consideration even though the offence punishable under Section 307 Indian Penal Code is non-compoundable".

17. Thus, in view of the consistent rule of law laid down in the cases referred above, the factum of compromise between the parties can be taken into consideration even though the offence punishable under Section 307 Indian Penal Code is

non-compoundable. The custody of the accused from the date of F.I.R. was more than six months. In the above circumstances and the facts of the case, it is a fit case where the substantial sentence awarded to the appellant can be reduced to the period already undergone by him.

18. Thus, keeping in view of the above discussion, this appeal against the conviction stands dismissed. However, the quantum of sentence is hereby modified. The appellant's sentence is reduced to actual sentence already undergone by him. The fine as well as the default sentence imposed upon the appellant shall remain the same. Consequently connected Criminal Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

LPP

To

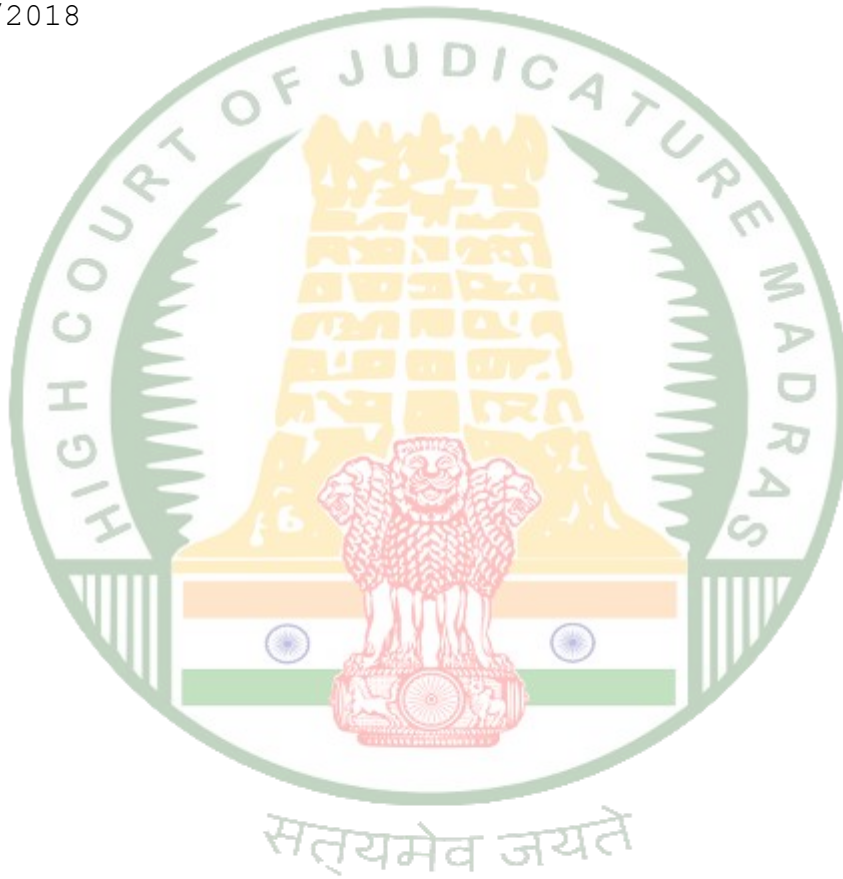
1. The Additional District and Sessions Judge,
Fast Track Court,
Dharmapuri.
2. The Inspector of Police,
Madhikonpalayam Police Station,
Dharmapuri.
3. The Judicial Magistrate No.2,
Dharmapuri.
4. Thro' The Chief Judicial Magistrate,
Dharmapuri.
5. The Superintendent,
Central Prison,
Vellore.

6. The Public Prosecutor,
High Court, Madras.

+lcc to Mr.V.R.Anna Gandhi, Advocate Sr.51280

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srg 14/08/2018



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