



Bail Slip

The Petitioner/Accused namely Babu @ Farook Batcha @ Auto Babu male 39 years S/O Mohammed Ali was directed to be released on bail by the order of this Court datd 8/2/11 and made in CrI.MP No.1/11 in CrI A No.85/2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 05.06.2018

JUDGMENT PRONOUNCED ON : 17.07.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

CrI.A.No.85 of 2011

Babu @ Farook Batcha @ Auto Babu .. Appellant/ Accused

versus

State by Inspector of Police,
B-14, Kuniamuthur Police Station,
Coimbatore District.

..Respondent/ Complainant

Prayer: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the conviction and sentence passed by the learned Additional District and Sessions Judge [Fast Track Court No.II], Coimbatore in S.C.No.100 of 2010 dated 01.02.2011.

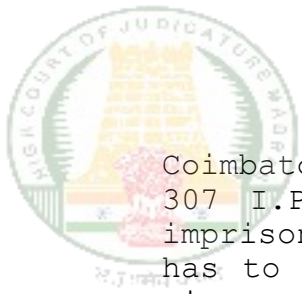
For Appellant : Mr.R.Rajarithnam

For Respondent : Mr.G.Raman
Government Advocate [Criminal Side]

J U D G M E N T

The present appeal has been directed against the conviction and sentence awarded by the learned Additional District and Sessions Judge [Fast Track Court No.II], Coimbatore in S.C.No.10 of 2010 dated 01.02.2011.

2. The appellant / accused herein is the sole accused in the above said case. After concluding the trial, the learned Additional District and Sessions Judge [Fast Track Court No.II],



Coimbatore, convicted the accused for the offence under Section 307 I.P.C. and sentenced him to undergo three years rigorous imprisonment with a fine of Rs.5,000/- [out of which Rs.4,000/- has to be paid to P.W.1 as compensation], in default to undergo rigorous imprisonment for three years. Now, against the said conviction and sentence, the present appeal has been preferred by the appellant praying to set aside the same.

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

3.1. P.W.1 [Jalil Rahman] was residing in Karumbukadai, Coimbatore. P.W.2 [Sagar Banu] is his wife and P.W.3 [Mujibun Rahman] is his brother. The appellant herein is the brother-in-law of P.W.1. Before the occurrence, the sister [Mujira Banu] of P.W.1 fell in love with the appellant and got married, due to their wedlock, they were blessed with three male children. Before some time from the date of occurrence, the appellant frequently consumed the liquor and harassed his wife [Mujira Banu], due to which, she returned to the house of P.W.1 and preferred a compliant before the All Women Police Station, Puliyankulam. During enquiry, the appellant asked apology and took his wife to his house.

3.2. On the day of occurrence i.e., on 10.12.2009 at about 9.00p.m., the appellant called the P.W.2 through mobile phone and abused her by using filthy language and hence, P.W.2 switched off the mobile phone. In the same day at about 10.30p.m., after closing his shop, P.W.1 came to his residence and after finishing the dinner, he went to bedroom. At about 11.30p.m., after hearing the noise near to the gate he opened the door, at that time, the appellant and his son jumped into the compound wall and asked the P.W.1 about the allegations mentioned in the complaint given in the Police Station. Further, the appellant abused P.W.1 by using filthy language and immediately, he took the small knife and attacked P.W.1 on the abdomen. After seeing the occurrence, P.W.2 came to the scene of occurrence but the appellant threatened P.W.2 by showing the knife, due to which, P.W.2 shouted like anything. On hearing the noise, the neighbours came to the scene of occurrence and thereafter, the appellant ran away from the spot with the knife.

3.3. Subsequently, P.W.1 was admitted in the Abirami Hospital for getting treatment. In the said Hospital, he was treated by Dr.Venkatesan, for which, he issued wound certificate under Ex.P.5. After admitting the P.W.1 in the Hospital as an inpatient, the said Doctor intimated the incident to the police officers under the MLC Intimation [Ex.P.4]. Further another one Dr.R.Vivekanandan [P.W.4] found the following injury and gave opinion as follows:



"1. A deep stab injury over the Mid-Abdomen about 4 cm"
The injury sustained by P.W.1 is grievous in nature.

3.4. After getting the intimation from the Abirami Hospital, Coimbatore, on 11.12.2009 at about 1.30a.m., P.W.5 [R.Arumugam], the then Sub-Inspector of Police, Kuniamuthur 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.263 of 2009 for the offence under Section 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.

3.5. After receiving the case records from P.W.5 [R.Arumugam], P.W.7 [J.Kumaresan], the then Inspector of Police, B-6 Police Station, rushed to the Hospital, in which P.W.1 was admitted and recorded the statement and he examined P.W.2 and P.W.3. On the next day at about 6.00a.m., he went to the scene of occurrence and in the presence of P.W.6 [Mahamutha] and one Amir Basha, he prepared an Observation Mahazar under Ex.P.7. Further, he draw rough sketch under Ex.P.8.

3.6. In continuation of the investigation, on the same day, at about 7.00a.m., he arrested the accused in the presence of same witnesses, who attested in the Observation Mahazar and recorded the confession statement given by the accused. Before that, P.W.7 recovered the Auto bearing Registration No.TN-38-C-8659, which was driven by the appellant under the cover of Mahazar. Based on the confession given by the appellant, P.W.7 recovered the knife, which was used for the commission of offence from the backside of the auto. The admitted portion of the confession statement was exhibited as P.2. Thereafter, P.W.7 recovered the dresses owned by the P.W.1 under the cover of Mahazar and sent it to the same for chemical examination. After completing the chemical examination, the report was received by him under Ex.P.10. Finally, P.W.7 completed the investigation and laid a Charge Sheet for the offence under Section 307 I.P.C.

3.7. After receiving the Charge Sheet, the learned Judicial Magistrate No.VII, Coimbatore, has taken the case on file as P.R.C.No.18 of 2010 and thereafter, the same has been committed to the Court of Sessions, Coimbatore.

3.8. In the Court of Session, a case number was assigned as S.C.No.100 of 2010 and made over the same to the learned Additional District and Sessions Judge [Fast Track Court No.II], Coimbatore, for disposal. In the said Court, after giving sufficient time, the appellant was questioned with regard



to the allegation levelled against him, but he pleaded not guilty. So, the charges have been framed for the offence under Section 307 I.P.C. Subsequent to the framing of charges, 7 witnesses were examined on the side of the prosecution as P.W.1 to P.W.7, besides 10 documents were exhibited as P.1 to P.10.

3.9. After concluding the trial, the learned Additional District and Sessions Judge [Fast Track Court No.II], Coimbatore, came to the conclusion that the appellant is found guilty for the offence under Section 307 I.P.C. and awarded the punishment as stated above. Now, challenging the said conviction and sentence, the appellant is before this Court.

4. Today, when the appeal is taken up for hearing, I heard the arguments of Mr.R.Rajarathinam, learned counsel appearing for the appellant, Mr.G.Raman, learned Government Advocate [Criminal Side] appearing for the State and perused the material documents available on record.

5. The first and foremost contention raised by the learned counsel appearing for the appellant is that the alleged offence had happened in the night hours at about 11.30p.m. so, it is impossible for P.W.1 to P.W.3 to see the appellant and hence, the prosecution had failed to prove the case with sufficient evidence. Further, he submit that on going through the rough sketch [Ex.P.8] prepared by P.W.7, nothing had mentioned with regard to the lamp-post and the light available in the scene of occurrence. Accordingly, he prayed for allowing the appeal.

6. On considering the said arguments, as per the rough sketch [Ex.P.8] and according to the evidences of P.W.1 to P.W.3, the alleged occurrence had happened between the compound wall and to the entrance of the house. In this regard, P.W.1. in his evidence had categorically mentioned that during the time of occurrence a light is available in the scene of occurrence. Further, it is necessary to borne in mind that the appellant and P.W.1 being the close relatives, it is very easy to identify the appellant based on the voice itself. So, the contention raised by the learned counsel appearing for the appellant with regard to the light is no way diluted the case of the prosecution.

7. The next contention raised by the learned counsel appearing for the appellant is that as per the evidence given by P.W.4 [Dr.Vivekanandan], P.W.1 had not sustained any grievous injury. But without knowing the said aspect, the trial Judge, convicted the appellant for the offence under Section 307 I.P.C. is nothing but erroneous one.



8. On considering the said aspect with the evidence given by P.W.5, it appears that actually one Dr.Venkatesan was treated P.W.1 at the time of occurrence but instead of the said Doctor, another one Dr.R.Vivekanandan [P.W.4] was examined for proving the nature of injury sustained by P.W.1. In the chief-examination, he clearly stated that the edge of the knife is went upto the liver. In the cross-examination, he admitted that when at the time of doing surgery through the laparoscope, the liver sustained cut injury. Further, he stated that he has not seen the knife used by the appellant. So, according to the cross-examination of P.W.4, the liver was damaged only at the time of giving treatment to the P.W.1. But in the wound certificate [Ex.P.5], which was mentioned as "a deep stab injury over the mid-abdomen about 4cm." Further, it was certified that the said injury is grievous in nature. Accordingly, in the wound certificate, the Doctor [P.W.4] has not noted about the cut injury occurred to the liver. The Doctor, who issued the wound certificate certifies that the injury sustained in the abdomen is grievous in nature. Accordingly, this Court is also agreeing with the contents of the wound certificate [Ex.P.5] and came to the conclusion that due to the time of occurrence, the appellant caused grievous injury to P.W.1.

9. Moreover, as per the evidence of the Investigating Officer [P.W.7], the knife recovered from the appellant and the clothes received from the injured were all sent to the chemical examination. On going through the report [Ex.P.10] of the chemical examination, it was mentioned that the knife, shirt, bedsheet, lungi and a torn towel are all having the blood. Even though the group of the blood is not disclosed in the report, if really the appellant is not involved in this offence there is no necessity for him to produce the blood stained knife before the police officers. So, the evidences given by P.W.1 and P.W.2 are corroborated with the contents of the report [Ex.P.10]. Accordingly, the second submission made by the learned counsel appearing for the appellant also is not a ground for allowing the appeal.

10. The third submission made by the learned counsel appearing for the appellant is that in the Mahazar prepared for the recovery of knife, there is no averment with regard to the blood stains found on the knife. In the circumstances, sending the blood stained knife for chemical examination is highly doubtful. Accordingly, the report submitted by the chemical examiner is no way helpful to accept the case of the prosecution.

11. It is true in the Mahazar prepared by the Investigating Officer [P.W.7], there is no specific averment



with regard to the blood stains found on the knife. In the said circumstances, even assuming the chemical report [Ex.P.10] is a false one, the evidences given by P.W.1 and P.W.2 alone are sufficient to hold the case of the prosecution is a true one. Accordingly, the said contention is also decided against the appellant.

12. Moreover, in this case during the time of occurrence in odd hours after taking the knife, the appellant went to the house of P.W.1. Those circumstances shows that the appellant is having the intention to murder the P.W.1. In this aspect also without any hesitation I hold that the appellant is found guilty for the offence under Section 307 I.P.C.

13. In the light of the above discussion, this Criminal Appeal is dismissed and the sentence awarded by the learned Additional District and Sessions Judge [Fast Track Court No.II], Coimbatore in S.C.No.10 of 2010 dated 01.02.2011 is confirmed. The respondent is directed to secure the appellant for the purpose of sentencing him to undergo the remaining period of conviction. It is also directed that the period of sentence already undergone by the appellant shall be given set off, as required under Section 428 Cr.P.C.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.VII,
Coimbatore.
2. The Chief Judicial Magistrate,
Coimbatore.
3. The Additional District and Sessions Judge
[Fast Track Court No.II],
Coimbatore.
4. The Inspector of Police,
B-14, Kuniamuthur Police Station,
Coimbatore District.



5. The Public Prosecutor,
Madras.

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

Crl.A.No.85 of 2011

vg II[col]
srg 30/07/2018