

Bail Slip

Mr.P.K. Nijesh, accused in S.C. No. 52/2007 on the file of the II Additional Sessions Judge, Puducherry was released on bail in M.P.No.1 of 2010 in CrI.A.No.136 of 2010 vide this court order dated 03.03.2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN

CrI.A.No.136 of 2010

1. P.K.Nijesh

2. Vijith M.K. ... Appellant/Accused 1 & 2

Vs.

State rep.by
Sub-Inspector of Police,
Palloor Police Station,
Mahe, Pudhucherry District
(Crime No.76/2006)

.. Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, against the order of conviction and sentence dated 08.02.2010 in S.C.No.52 of 2007 by the learned II Additional Sessions Judge, Pudhucherry.

For Appellants : Mr.G.Karthikeyan

For Respondent : Mr.D.Bharatha Chakravarthy

J U D G M E N T

The appellants 1 and 2 are arrayed as A1 and A2 in S.C.No.52/2007 on the file of the learned II Additional Sessions Judge, Pudhucherry. They stood charged for the offences under Sections 341, 307, 324 IPC r/w 34 IPC. After full fledged trial, by the judgment dated 08.02.2010, the learned II Additional Sessions Judge found them guilty under Sections 341, 324 IPC r/w 34 IPC. Accordingly, both the accused are convicted and sentenced to undergo 3 years rigorous imprisonment and to pay a fine of Rs.1,000/- each and in default to undergo simple imprisonment for 3 months under Section 324 and 324 r/w 34 IPC

respectively. Further, they were convicted and sentenced to pay a fine of Rs.500/- each for the offence under Section 341 IPC in default to undergo simple imprisonment for 3 months each. Challenging the conviction and sentence, the accused are before this Court with the present criminal appeal.

2. During the pendency of the appeal, the second accused/second appellant died to that effect, the learned Government Advocate (Puducherry) filed a memo and the same was recorded. Thereby, the appeal pertaining to second accused stands dismissed as abated.

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

i) P.W.1 Vinod knows all the accused persons. Prior to the occurrence in the month of May, one day at about 7.00 pm, he came to the petrol pump in a Autorickshaw bearing No.K.L.13-L-4725 for putting petrol to the said vehicle. In the petrol pump the appellants and one Vijith were present and asked the P.W.1 to get some banana leaves from his auto, for that, P.W.1 refused by saying that he is returning to his home after finishing the regular work, due to which a wordy quarrel arose between them and thereafter, the appellants and other accused went away from the petrol pump. After sometime, P.W.1 went over to Palloor along with P.W.6 T.T.Rajesh. At that time the appellants and the other three intercepted the vehicle, and thereafter, one of the accused attacked the P.W.1 on his right leg by using Koduval thereby, P.W.1 sustained cut injuries in his right leg. After the assault, all the accused ran away from the scene of occurrence. After sustaining the injury, P.W.1 was admitted in Hospital. After getting intimation from the Hospital, P.W.9, Shanmuga sundaram a police person came to the hospital and obtained complaint from P.W.1. Ex.P1 is the complaint given by the P.W.1. Meanwhile, P.W.5 Dr.Shymala attached with Indra Gandhi Hospital examined the P.W.1 and found the following injuries:-

1. Curved incised wound 5x1 cm muscle deep on the left thigh with bleeding.

2. Incised wound 2x1 cm on the right knee.

3. Incised wound 3x1 cm muscle deep below right knee with bleeding.

4. Incised wound on the left hand thumb finger with bleeding 5x1 cm tender injuries.

ii) According to her the injuries sustained by P.W.1 are simple in nature for which she issued a certificate under Ex.P.5.

iii) After recording the statement from P.W.1, P.W.9 the then Sub Inspector of Police registered a case in Crime No.78/2006 under Sections 341, 307, 324 IPC r/w 34 IPC. After the registration of the case, he visited the scene of occurrence and prepared an observation mahazar under Ex.P.2. Further, he

recovered the clothes worn by P.W.2 under the cover of mahazar Ex.P4.

iv) Moreover, he recovered blood stained sample soil and soil without blood from the scene of occurrence through the seizure mahazar. Further he examined the witnesses and recorded the statement under Section 161 Cr.P.C. Subsequently, after the completion of the above formalities on 30.05.2006, P.W.9 arrested all the accused and recorded the confession statement given by the appellant. Pursuant to the confession statement, P.W.9 recovered two knives (MO1 & MO2) which was used for the commission of offence under the cover of mahazar Ex.P.8. The admissible portion of the confession statement given by the appellant is marked as Ex.P.7. After recovering MO1 and MO2, P.W.8 took the photograph of the scene of occurrence in 4 angles under Ex.P9. Before that P.W.9 prepared crime details report under Ex.P.12 and on completion of investigation, he laid a charge sheet against the accused for the offences under Sections 341, 307, 224 IPC r/w 334 IPC.

v)Based on the above materials in the trial Court, charges have been framed against the appellants as stated in the first paragraph of this judgment. All the accused denied the charges and opted for trial. So in order to prove their case on the side of the prosecution as many as 9 witnesses were examined as P.W.1 to P.W.9 and 19 documents were exhibited as P1 to P9, besides 5 material objects.

vi)Out of the said witnesses, P.W.1 Vinod is the resident of Panniyannur. He is the victim in this case. He has stated about the occurrence that 2 years back in the month of May, at about 7.00pm in the evening, when he went to the petrol pump for putting the petrol to the Autorikshaw bearing registration No.K.L.13-L-4725, the first accused in this case was present and asked him to get some banana leaves from Auto for that he refused to take banana leaves by saying that he is returning to his home. Hence, there was a wordy quarrel between them and after the wordy quarrel, both of them went away. He has further stated during the time of occurrence, while P.W.6 Rajeash was driving the vehicle near to mosque in Puloor road, the first, second and other 2 accused intercepted the vehicle and by using the koduval, the second accused attacked on his left leg and caused cut injuries. After the said occurrence, somebody took him to Indra Gandhi Hospital, situated in Thalasserry. He has further stated that from the Hospital, he lodged a complaint before the police officer under Ex.P1.

vii) P.W.2 Prabhakaran has stated on 28.05.2006 at about 8.00 pm, P.W.1 came from the petrol bunk with injuries and fallen down, he has further stated immediately P.W.1 was taken to the hospital and thereafter, police came and took photograph.

viii) P.W.3 is the resident of Nedumbram. He has stated on 28.05.2006 at about 10.00 pm, investigation officer in this case has visited the scene of occurrence and prepared observation mahazar under Ex.P2 and Ex.P3 in which he attested as a witness.

ix) P.W.4 Byju has stated on 29.05.2006 at about 1.00 am, when he was in the hospital, the police seized the dresses MO.4 and MO5 from P.W.1 and prepared a seizure mahazar under Ex.P4. According to him, he attested as a witness in the seizure mahazar.

x) P.W.5 Dr.P.Shyamala working as a Doctor in Thalassery Co-operative Hospitals, has stated that on 28.05.2006 at about 8.30 pm, P.W.1 was brought to the hospital, according to her P.W.1 sustained four simple injuries. She issued wound certificate under Ex.P5 stating that the injury sustained by P.W.2 are simple in nature.

xi) P.W.6 Rajeesh who is an eye witness to the occurrence has stated that at the time of occurrence both the accused/appellant waylaid the Auto and pushed out the P.W.1 from the vehicle and by using koduval, A2 attacked P.W.1 and caused cut injuries on the left leg of P.W.1.

xii) P.W.7 is the resident of Panniyannur, has stated that on 30.05.2006, the investigation officer arrested the 1st and 2nd accused and recorded the confession given by them. He has further stated pursuant to the confession statement given by the accused all are went to the place of occurrence and the investigation officer recovered MO1 and MO2 through the seizure mahazar. According to him, he was a witness to the confession statement as well as to the seizure mahazar.

xiii) P.W.8 Sudheesh is the photographer who took photographs of the place of occurrence.

xiv) P.W.9 is the Sub Inspector of Police who has stated about receiving of complaint, details of investigation, arrest of the accused and about the filing of final report in this case.

xv) When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., they denied the same as false. However they did not choose to examine any witness on their side.

xvi) Having considered all the materials available on record, the trial Court convicted and sentenced the appellants, as stated in the first paragraph of this judgment.

4. Today, when the appeal is taken up for hearing, I have heard Mr.G.Karthikeyan learned counsel for the appellant and Mr.D.Bharatha Chakravarthy learned counsel for the

respondent.

5. The learned counsel appearing for the appellant would contend that as per the evidence given by the prosecution witnesses, the place of occurrence is not fixed. According to the rough sketch prepared by P.W.9, the place of occurrence is opposite to a mosque. On the other hand, P.W.1 and other victim P.W.6 gave evidence that the occurrence had happened near the petrol bunk. Further, the said discrepancy shows that alleged occurrence has not happened as stated by the prosecution for which the learned Government Advocate would submit in the rough sketch prepared by P.W.9, it was mentioned that the alleged occurrence had happened opposite to mosque. Further, only after sustaining injury, P.W.1 ran to the petrol bunk, which was clearly established through the evidence of P.W.2. So the said discrepancy alone is not sufficient to disbelieve the case of entire prosecution.

6. Now considering the submission made by the learned counsel appearing on either side, it is true, during the time of cross examination, P.W.1 has stated that after consuming liquor in a bar which was situated 10 feet from the petrol bunk, he returned to the auto when at the time, the driver of auto made a quarrel with the appellant and the other accused. In otherwise A1 and A2 had not made any assault either against the driver or against his vehicle.

7. In the said case, it is to be noted in the chief examination P.W.1 clearly stated that at the time they started the journey to Palloor, at the time of reaching the mosque, the appellant and the other accused stopped the vehicle, the appellant assaulted P.W.1 and caused cut injury on the left leg and the said evidence was clearly corroborated through the evidence of P.W.6 in his cross examination. On the other hand P.W.2, who is a worker of petrol bunk, has stated at the time of occurrence, P.W.1 came to the petrol bunk with injuries. Moreover, P.W.2 clearly stated that there was no incident in his petrol bunk. So the evidence given by P.Ws.1 to 6 clearly proves that the occurrence had happened only near to mosque as stated in the rough sketch.

8. In the said circumstances, the contention raised by the counsel is not at all a ground for allowing the appeal.

9. Secondly, on going through the evidence given by the victim/P.W.1 due to the assault made the appellants, he sustained injury on his left leg and the right hand. Per contra the medical officer who treated the P.W.1 has stated P.W.1 sustained four simple injuries including in left leg and right hand. On comparing the area in which P.W.1 sustained injury and the evidence given by P.W.1 to P.W.5, there is no discrepancy.

Likewise, the evidence given by P.W.9 with regard to the registration and the manner of investigation is not having any infirmity.

10. According to the submission made by either side, there was minor contradiction is available in the evidence given by P.W.1 and P.W.6. However, since the evidence given by the medical officer is corroborated the evidence given by injured witness, this Court came to the conclusion that the minor contradiction arising between the eye witnesses cannot be taken into account for deciding the case in favour of the appellant.

11. This Court comes to the conclusion that the trial Court correctly decided the case and found that the appellant is guilty of the offence under Sections 341 and 324 IPC.

12. On this occasion, the learned counsel appearing for the appellant made a submission before this Court that for the offence under Section 324 IPC, punishment provided is either fine or imprisonment and prayed to modify the sentence awarded by the trial Court. In this case as per the certificate issued by the Doctor, P.W.1 sustained only simple injuries.

13. Now considering the submission made by the learned counsel for the appellant in the occurrence without any reason both the accused by using the deadly weapon attacked the PW1 and causing simple injury on him. Further, due to the attack, PW1 sustained 4 incised wounds. However the first appellant is facing this case for the past nearly 10 years. Further, as per the submission of the learned counsel, the first appellant is having family and children, thereby, the conviction and sentence awarded to the accused under section 324, 324 r/w 34 IPC the period of 3 years punishment is reduced to 1 year rigorous imprisonment. With regard to the punishment awarded under section 341 IPC is confirmed. The Trial Court is directed to take steps to secure the custody of the first appellant for undergoing the remaining period of sentence. It is directed that the period of sentence already undergone by the first appellant shall be given set off, as required under Section 428 Cr.P.C.

14. Accordingly, appeal is partly allowed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

AT

To

1. The Judicial Magistrate
Mahe, Puducherry.
 2. Do Through The Chief Judicial Magistrate
Pondicherry.
 3. The II Additional Sessions Judge, Pudhucherry.
 4. Do Through The Principal Sessions Judge, Puducherry.
 5. The Sub-Inspector of Police,
Palloor Police Station,
Mahe, Pudhucherry District.
 6. The Public Prosecutor (Pondy)
High Court, Madras 104.
 7. The District Collector
Puducherry
 8. The Director General of Police
Puducherry.
- +1 CC to Mr.G. Karthikeyan, Advocate sr 39459.

Crl.A.No.136 of 2010

SS (CO)
SP (30/10/2018)

सत्यमेव जयते

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