

Bail Slip

The Appellant/Accused-1 viz, Ramaraj S/o.Maruthamuthu, is directed to be released on bail as per the order of this court dated 09.04.2010 in CrI.MP.No.1 of 2010 in CrI.A.No.235 of 2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2018

CORAM

THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN

CrI.A.No.235 of 2010

Ramaraj ... Appellant/Accused 1
Vs.

State by
Inspector of Police,
Padalur Police Station,
Perambalur.
(Crime No.53 of 2005) ... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to set aside the conviction and sentence dated 23.03.2010 passed in S.C.No.56 of 2008 on the file of Mahila Court, Perambalur.

For Appellant : Mr.G.Ravikumar

For Respondent : Mr.T.P.Savitha, G.A.(CrI.Side)

J U D G M E N T

The appellant is the 1st accused in S.C.No.56/2008 on the file of Sessions Judge, Mahila Court, Perambalur, his wife Vijaya Kumari is the second accused in the above said case. They stood charged for the offences under Sections 324, 326, 307, 324 r/w 114 IPC. By a Judgment dated 23.03.2010, the trial Court convicted appellant under Section 326 IPC and sentenced to undergo 2 years R.I. and to pay a fine of Rs.1,000/- in default to undergo 3 months R.I. Both of them acquitted for the remaining charges. Challenging the conviction and sentence under Section 326 IPC the appellant is before this Court.

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

i) P.W.1 Navu is residing in Salem. The defacto complainant Shankar is her husband. In the year 2005, one day at about 7.30 pm while P.W.1 along with her husband is in near to panchayat office, the appellant Ramaraj waylaid them and with the help of aruval, he attacked the husband of P.W.1. Due to which P.W.1s husband sustained injury on his finger and on the right shoulder. Due to the interruption in the quarrel P.W.1, had also sustained a injury on her right forearm. Thereafter, one Nellavani and Papathi took the P.W.1 along her husband to the Government Hospital, Perambalur. Thereafter, both of them were referred to Government Hospital, Tirichy. At the time of admission in the hospital, both P.W.1 and her husband are in the stage of unconscious.

ii) After regaining the conscious, the husband of P.W.1 lodged a complaint before the police under Ex.P.9.

iii) In the meantime, P.W.8 Dr.Rajsekar, when he was working as Doctor in Perambalur Government Hospital, on 02.03.2005 at about 7.30 am., he treated the Shankar. According to him, the injury sustained by the Shankar is simple in nature. Further, on the same day at about 7.30 pm, he treated the P.W.1 for the injury, found in the right hand. According to him, the injury found on P.W.1 is grievous in nature. Ex.P.7 and P.8 are the Accident Register Copies issued by P.W.8. After giving treatment, both the P.W.1 and her husband were referred to Government Hospital, Tirichy for further treatment.

iv) P.W.9 Subramaniam, the then Sub-Inspector of Police, Padular Police Station on 03.03.2005 at about 9.00am., received an intimation to this occurrence and went to the Hospital, Trichy, in which the husband of P.W.1 was admitted as in-patient. He recorded the statement under Ex.P.9. Thereafter, he registered a case in Crime No.53/2005 under Section 307 IPC. Ex.P.10 is the copy of the printed FIR.

v) After the registration of case, on the same day at about 11.00am, he visited the scene of occurrence and prepared an observation mahazar in the presence of P.W.6 and P.W.7. Further, he drew the rough sketch. Ex.P.11 and P.12 are the observation mahazar and rough sketch respectively.

vi) After the preparation of those documents, he examined the witnesses and recorded the statements. Further, on the same day at about 14.00 hours, in the presence of P.W.6 and 7, he arrested both the accused. After made arrest, the appellant gave confession statement, in which he admitted the guilt. Further he stated about the hiding of aruval which was used for the commission of offence. Pursuant to the confession, the investigating officer and the witnesses went over to the

house of accused and recovered the aruval which was hidden near to the house. After recovering the aruval, the investigation officer made arrangement for sending the appellant to remand. Subsequently, after completing investigation, he laid a final report against the appellant and against one Vijayakumari for the offences under Sections 324, 326, and 307 IPC.

vii) Based on the above materials, the trial Court framed the charges and the accused denied the same. In order to prove the case on the side of the prosecution, as many as 11 witnesses were examined as P.Ws.1 to 11 and 14 documents were marked as Ex.P.1 to Ex.P.14, besides 1 material object.

viii) Out of the said witnesses, P.W.1 is the wife of one Shankar, who is the defacto complainant in this case. As of now, the said Shankar is in Dubai. Prior to the occurrence, the accused suspected the Shankar as whether he had any illegal intimacy with one Dhanalakshmi who is his relative. Further, he is having the doubt over the Shankar for the theft of fuse carrier from his field. She has further stated on the day of occurrence when she was with her husband (Shankar) in working spot, the accused came and by using the aruval, attacked the Shankar, due to which, her husband sustained injury on his left hand as well as on the right shoulder. Since P.W.1 intervened into the occurrence, she has also sustained injury near to her right knee. In the same transaction, the other accused namely Vijaya lakshmi now acquitted by the trial Court made life threat to the P.W.1. After sustaining injury, P.W.1 and her husband fell down and went to the stage of unconscious. Both of them regained conscious only in the Perambalur Government Hospital. During the time of giving treatment, both of them are referred to the Tirichy Medical College for further treatment.

ix) P.W.2 Chitran is the resident of same village has stated on the day of occurrence, P.W.1 and her husband are lying in the street. She has further stated that she made arrangement for admitting them in a Perambalur Government Hospital.

x) P.W.3 is the eye witness to the alleged occurrence has stated at the time of occurrence, the accused assaulted and caused injury to the P.W.1 and her husband. Further, he stated after the completion of occurrence, he made arrangement for admitting them in the hospital.

xi) P.W.4 to 7 who are the witnesses to the occurrence as well as to the arrest of accused had not supported the case of prosecution in any manner.

xii) P.W.8 Dr.Rajasekaran, has stated in his evidence as on 02.03.2005 when he was working as Doctor in Perambalur

Government Hospital, at about 7.30 pm, he treated the injured Shankar who came to the Hospital for injuries sustained by him. During examination, he found the following injuries:-

"Laceration 20cm x 10cm bone deep in the right cubical fossa extending to right upper forearm."

After giving initial treatment, he referred the injured to the Tirichy Government Hospital. According to him, the injuries sustained by the Shankar is simple in nature. He has further stated on the same day at about 7.30 pm, he gave treatment to P.W.1 and found the following injuries:-

- i) Laceration 1x1/2x1/2 on little finger
- ii) Laceration 1/2x1/2 base of middle finger
- iii) Laceration 1/4x1/4cm middle of middle finger
- iv) Laceration 1/4x1/4cm back of right shoulder"

According to him, the injuries sustained by P.W.1 is grievous in nature.

xiii) P.Ws.9 to 11 are the Police Officers spoken about the details with regard to receiving of complaint, investigation and filing of charge sheet.

xiv) The trial Court with reference to the incriminating materials adduced by the prosecution questioned the accused under Section 313 Cr.P.C. and for which, both the accused pleaded not guilty. However, they did not choose to examine any witness nor did he mark any documents on his side.

xv) The trial Court on perusal of the materials placed and on considering the arguments advanced by both sides, convicted and sentenced the appellant as stated supra. Challenging the same, the present appeal has been filed.

3. Today, when the appeal is taken up for consideration, I have heard Mr.G.Ravikumar learned counsel for the appellant and Ms.T.P.Savitha learned Government Advocate for the respondent.

4. The first contention submitted by the learned counsel for the appellant is in this case the defacto complainant has not been examined as witness to prosecution, the other eye witness has not supported the case of prosecution. Further, he added that the place of occurrence which was mentioned by the prosecution is entirely different as per the evidence given by P.W.1, thereby, those lapses on the part of the prosecution clearly proved that the appellant was not involved in the alleged offence.

5. Per contra the learned Government Advocate would contend that as of now, the defacto complainant in this case is

residing in foreign country. So prosecution offered a proper explanation for the non production of the defacto complainant. Further he would contend since P.W.1 being eye witness to the alleged occurrence as well as the injured in this case, her evidence is more than sufficient for believing the case of prosecution.

6. It is true in this case, except P.W.1 the other two witnesses said to have been examined as eye witness and the witnesses attested in the observation mahazar as well as in the confession statement given by the appellant have not supported the case of prosecution, thereby, in the trial Court they were all treated as a hostile witness.

7. Hence, in order to decide the case of prosecution, the available evidence in this case is P.W.1, P.W.8, and P.W.9 to P.W.11, who are the victim, medical officer and investigation officers in this case.

8. According to P.W.1, he sustained injury on her right hand. The said evidence was clearly corroborated through the evidence of P.W.8., medical officer. P.W.8 has clearly stated that at the time of giving treatment, he found that P.W.1 sustained injury in the right hand in the size of 20x10cm. So, the evidence given by Doctor is clearly corroborated the evidence of P.W.1.

9. In this regard, the learned counsel appearing for the appellant would submit that P.W.1 and the appellant are having previous enmity, due to which there might be chance for lodging the false complaint against the accused. It is true previous to the occurrence, the appellant had suspicion over the defacto complainant as whether he is having any illegal intimacy with one Thamarai, who is the relative of appellant. However, since previous enmity being the double edged weapon, we can not come to the conclusion that previous enmity alone is not a sufficient ground to reject the case of the prosecution entirely.

10. The next submission made by the appellant is the evidence put forth by the prosecution did not prove the origin of occurrence. Now on considering the said submission P.W.1 has stated that the occurrence had happened at about 7.30pm opposite to the union office building. In this context, on going through the rough sketch prepared by the investigation officer exhibited as P.9 discloses near to the scene of occurrence, one Periyaswamy, Shankar and one Kandaswamy are having the house. On the other hand near to the occurrence place, the union office is not situated. In this regard, P.W.10 who is the investigating officer has stated in the cross-examination as the

alleged occurrence had happened opposite to one Periyasamy house. So on bringing the said evidence with the evidence of P.W.1, it is true the genesis and origin of occurrence have not been properly explained by the prosecuting agency. In this regard, reliance is placed in the judgment rendered in Bhagwan Sahai Vs. State of Rajasthan reported in (2016) 13 SCC 171 in which, our Hon'ble Apex Court held as follows:

"8...Once the Court came to a finding that the prosecution has suppressed the genesis and origin or the occurrence and also failed to explain the injuries on the person of the accused including death of father of the appellants, the only possible and probable course left open was to grant benefit of doubt to the appellants..."

11. Hence, complying the principles of our Hon'ble Apex Court in the case in our hand, the prosecution has not explained genesis of occurrence and thereby, the said aspect is nothing but fatal to prosecution.

12. Accordingly, the appellant is entitled for the benefit of doubt, thereby, interference is necessary in the judgment rendered by the Sessions Judge, Mahila Court, Perambalur.

13. In the result, the criminal appeal is allowed and the conviction and sentence imposed upon the appellant in S.C.No.56/2008 dtd 23.03.2010 by the learned Sessions Judge, Mahila Court, Perambalur is set aside and the appellant/accused are acquitted of the charges. The bail bond, if any, executed by the appellant/accused shall stand cancelled. The fine amount, if any, paid by appellant/accused shall be refunded to him.

Sd/-

Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

AT

To

1. The Inspector of Police,
Padalur Police Station,
Perambalur.
2. The Sessions Judge, Mahila Court,
Perambalur.

WEB COPY

3. -do-through The Principal Sessions Judge, Perambalur

4. The Public Prosecutor, Madras.

Copy To

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

+1cc to Mr.G.Ravikumar, Advocate SR.No.43956

Crl.A.No.235 of 2010

GMV (11/10/2018)



WEB COPY