

BAIL SLIP

The Appellant/1st accused viz. Jayagopu, aged 21 years S/o.Jaganathan, in CrI.A.No.311/09 was directed to be engaged on bail as per order dt.22.6.2009 made in MP.1/2009 in CrI.A.No.311/2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

CrI.A.No.311 of 2009

Jayagopu

.. Appellant/1st Accused

Vs.

State represented by
The Inspector of Police,
Mangalampettai Police Station,
Cuddalore District.
(Crime No.56 of 2007)

.. Respondent

Criminal Appeal filed under Section 374(2) Cr.P.C. against the judgment dated 29.05.2009 in S.C.No.381 of 2007 on the file of the Additional District and Sessions Judge (Fast Track Court No.3), Virudhachalam.

For appellants : Mr.G.Ranganathan

For respondent : Mr.P.Govindarajan, Addl.P.P

JUDGMENT

The appellant is A1. By the impugned judgment dated 29.05.2009, the appellant/A1 along with A2 and A3 in S.C.No.381 of 2007 were convicted by the trial Court for the offence under Section 325 IPC and sentenced to undergo rigorous imprisonment for four years and to pay a fine of Rs.10,000/-, in default to undergo four months rigorous imprisonment. He was acquitted of the charges framed under Sections 294, 324 and 307 IPC. A2 and A3 were acquitted of the charges.

2. It is the case of the prosecution that Anandaraj (P.W.1), Jayaraman (P.W.2) and Jayakumar (P.W.3) belong to Kovilaanur Village, Cuddalore District. There was a land dispute between the family of the above said persons and the family of the accused persons. In this regard, a civil dispute was also

pending before the Civil Court. While so, on 01.05.2007 at about 5 p.m., when P.W.1 entered into the disputed land, the appellant/A1 Jayagopu along with A2 Balamurugan abused P.W.1 Anandaraj in filthy language and pelted stones on him and P.W.1 escaped from the scene. Again, at about 6 p.m., when P.W.3 Jayakumar was going in a bi-cycle to fetch water, the appellant/A1 along with A3 Govindammal pelted stones on him and A2 also tried to attack him with stones, in which incident, P.W.3 Jayakumar sustained injury near his right toe. On the same day at about 7 p.m., when P.W.2 Jayaraman was returning in a TVS-50 motor vehicle, near a curve of a Temple, the appellant/A1, waiting for P.W.2 Jayaraman, made an attempt to attack P.W.2 on his head with M.O.1 wooden log and on seeing the appellant/A1, P.W.2 moved his head to avoid attack, which resulted in attack on his left hand and he sustained fracture injury. Thereafter, P.Ws.1 and 3 took P.W.2 to Virudhachalam Government Hospital, where he was admitted and since the injury sustained by P.W.2 was grave in nature, he was referred to Cuddalore Government Hospital for further treatment, from where he took treatment in a private hospital. Subsequently, on 04.05.2007, P.W.1 lodged Ex.P-1 complaint with P.W.9 Inspector of Police, Mangalampettai Police Station and on receipt of the complaint, P.W.9 registered a case in Crime No.56 of 2007 for the offences punishable under Sections 147, 148, 294, 325 and 307 IPC. Ex.P-6 is the printed FIR. Thereafter, P.W.9 went to the scene of occurrence and prepared Ex.P-2 observation mahazar and drew Ex.P-7 rough sketch in the presence of witnesses; P.W.9 subsequently enquired the witnesses and recorded their statements. The offences were subsequently altered under Sections 294, 325 and 307 IPC. Ex.P-8 is the alteration report. Thereafter, on 05.05.2007 at about 2 p.m., P.W.9 arrested A1 near Mangalampettai Sumaithaangi bus stand and recorded his confession statement in the presence of witnesses and M.O.1 wooden log was recovered from him under a cover of seizure mahazar. Subsequently, A2 and A3 were arrested at about 4.30 p.m. and the accused were remanded to judicial custody. On 18.05.2007, P.W.9 examined P.W.8 Doctor and recorded his statement. After completion of investigation, P.W.9 filed charge sheet before Court on 22.05.2007 for the offences punishable under Sections 294, 325 and 307 IPC. The case was taken up on file by the trial Court for trial in S.C.No.381 of 2007. During the course of trial, P.Ws.1 to 9 were examined, Exs.P-1 to P-8 were marked and M.O.1 was produced. When the appellant/A1 was questioned under Section 313 Cr.P.C., he denied his complicity in the crime. He examined himself as D.W.1 and marked Ex.D-1. On a consideration of oral and documentary evidence, the trial Court convicted and sentenced the appellant/A1 as stated supra. Challenging the same, A1 has filed this appeal.

3. Learned counsel for the appellant/A1 submitted that though it is the case of the prosecution that the occurrence

took place on 01.05.2007 itself, the complaint has been lodged only on 04.05.2007 and hence, had the alleged occurrence been true, the complaint would have been lodged on the same day of occurrence. Therefore, learned counsel contended that there is considerable doubt with regard to the lodging of Ex.P-1 complaint, which is fatal to the case of the prosecution. He further submitted that except the self-interested testimonies of P.Ws.1 to 3, no independent witness has been examined to corroborate the evidence of P.Ws.1 to 3. Though P.W.4 was examined as eye-witness, his presence in the place of occurrence is doubtful, because, his name was not mentioned in the FIR. Learned counsel also submitted that there is no cogent and convincing evidence to prove the case against the appellant/A1 beyond reasonable doubt by the prosecution. Learned counsel invited the attention of the Court to the evidence of P.W.8 Doctor and submitted that P.W.8 Doctor has admitted in his evidence in cross-examination that when he examined the victim P.W.2 Jayaraman who was brought by P.W.3 Jayakumar, he suspected that the injury sustained by P.W.2 victim might have been due to fracture injury. By relying upon the evidence of P.W.8 Doctor, learned counsel submitted that there is no definite evidence to show that P.W.2 sustained fracture injury. Learned counsel also contended that x-ray report, radiologist report, etc., have not been marked to prove the injury sustained by P.W.2. For all these reasons, it has to be inferred that the prosecution has not established its case beyond reasonable doubt. As an alternative argument, learned counsel submitted that if this Court ultimately comes to the conclusion that the conviction is liable to be confirmed, then he requested that the sentence may be reduced to the period already undergone by the appellant/A1.

4. Learned Additional Public Prosecutor appearing for the respondent-Police contended that there is clear, cogent and convincing evidence to come to the conclusion that the appellant/A1 has caused fracture injury on P.W.2 Jayaraman and hence, the trial Court, by analysing the entire evidence on record, recorded its findings and concluded that the appellant/A1 is guilty of the offence and the same is in proper perspective, and therefore, he prayed that no interference is called for in the impugned judgment of the trial Court and prayed for dismissal of the appeal.

5. I have given my anxious consideration to the submissions made on either side and perused the materials available on record.

6. The main contention of the learned counsel for the appellant/A1 is that there was delay in lodging the complaint, which has not been properly explained by the prosecution, which is fatal to the case of the prosecution. But, on a perusal of the materials available on record, I find that P.W.2 Jayaraman

was initially admitted in the nearby Government Hospital, from where he was referred to main Government Hospital, from where he was under treatment in a private hospital and only thereafter, the parties have decided to lodge the complaint. Therefore, in this process, the delay has occurred, which has been satisfactorily explained by the prosecution, but the same cannot be a ground to doubt the case of the prosecution.

7. Learned counsel for the appellant/A1 submitted that P.Ws.1 to 3 are self-interested witnesses and no independent witness has been examined to speak about the occurrence, though P.W.4 is stated to be the eye-witness to the occurrence, who has categorically stated that while P.W.2 victim Jayaraman was going in TVS-50 motor vehicle, P.W.4 was pillion-rider and he further stated that while they were going near a curve, the appellant/A1 attacked P.W.2 with M.O.1 wooden log and both of them fell down from the said two-wheeler and in this incident, P.W.4 also sustained lacerated injury. But, in my considered opinion, P.W.4's evidence, coupled with the evidence of P.Ws.1 to 3, themselves are sufficient to come to the conclusion that the prosecution has proved its case. But, at the same time, I find that as contended by learned counsel for the appellant/A1, absolutely there is no evidence to show that P.W.2 Jayaraman sustained fracture injury. In fact, P.W.8 Doctor has not stated positively in his evidence that the injury sustained by P.W.2 victim is only fracture injury, more particularly, he adduced evidence in cross-examination to the effect that initially when P.W.2 was examined by him, he suspected the injury to be a fracture injury. Moreover, as rightly contended by the learned counsel for the appellant/A1, the crucial documents like x-ray report, radiologist's report, etc., have not been marked.

8. In those circumstances, considering all the above aspects, I am of the opinion that the conviction and sentence imposed on the appellant/A1 for the offence under Section 325 IPC are sustainable.

9. However, since learned counsel for the appellant/A1 made an alternative plea for modifying the sentence imposed on the appellant to the period already undergone by him, this Court is of the opinion that the same could be considered on the facts and circumstances of the case, as the injury sustained by P.W.2 victim is doubtful as to whether the same is grave or simple, since medical evidence is not crystal clear with regard to the same. Therefore, while confirming the conviction imposed on the appellant/A1, this Court modifies the sentence to the one already undergone by him.

10. With the above observations, the appeal is partly allowed.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

Copy to

1. The Additional District and Sessions Judge (Fast Track Court No.3), Virudhachalam.
 - 2.-do- thro'The Principal District and Sessions Judge, Virudhachalam.
 - 3.The Judicial Magistrate II, Virudhachalam.
 4. do thro'The Chief Judicial Magistrate, Cuddalore.
 - 5.The Inspector of Police, Mangalmpettai police Station, Cuddalore.(cr.No.56/07)
 - 6.The Superintendent, Central Prison, Cuddalore.
 7. The Public Prosecutor, High Court, Madras.
- +1 cc to Mr.G.Ranganathan,advocate,sr.42449.

vd(co)
krd 29/8

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Cr1.A.No.311 of 2009

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