

BAIL SLIP

The Appellant herein/Accused viz, P.Kannan was directed to be released on bail as per order of this Court dated 23.06.2010 made in Crl.Mp.1 of 2010 in Crl.A.324 of 2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.A.No.324 of 2010

P.Kannan

.. Appellant/Accused

versus

State Rep.by Inspector of Police,
F-5, Choolaimedu Police Station,
Choolaimedu, Chennai-94.

.. Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, against the order of conviction and sentence dated 29.01.2010 in S.C.No.160 of 2009 on the file of the 4th Additional District and Sessions Judge (Fast Track Court No.IV), Chennai. Crime No.67 of 2008 on the file of the Inspector of Police, F-5, Choolaimedu Police Station, Pursue same.

For Appellant : Mr.C.Durai Pandian

For Respondent : Mr.G.Ramar

Government Advocate (Crl.side)

J U D G M E N T

The appellant is the sole accused in S.C.No.160 of 2009 on the file of the learned Additional District and Sessions Judge [Fast Track Court No.IV], Chennai. He stood charged for the offences under Sections 384, 307 and 506(ii) of IPC. By a judgment dated 29.01.2010, the trial Court convicted him and sentenced to undergo 3 years rigorous imprisonment with a fine of Rs.1,000/-, in default to undergo 6 months rigorous imprisonment for the offence under Section 384 of IPC. He has been convicted under Section 307 of IPC and sentenced to undergo 5 years rigorous imprisonment with a fine of Rs.1,000/-, in

default to undergo 6 months rigorous imprisonment. Further, he was sentenced to undergo 2 years rigorous imprisonment with a fine of Rs.1,000/-, in default to undergo 3 months simple imprisonment for the offence under section 506(ii) of IPC. Challenging the said conviction and sentence, the appellant is before this Court with the present Criminal Appeal.

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

i) P.W.1 [Salaman Selladurai] is the husband of P.W.3 [Seeronmani]. P.W.2 [Pauldurai] is the brother of P.W.1. P.W.4 [Manikaraj] is the son born to P.W.1 and P.W.3. Prior to the occurrence, P.W.1 run a grocery shop in 54, M.H.Colony, Aminjikaiarai. On 18.01.2008, at about 9.00a.m., when P.W.1 to P.W.3 are in the grocery shop, the present appellant / accused came and demanded to pay mamool. For that, P.W.1 responded to the accused that no amount is available with him. Further he told to him that the business has not been commenced. So the accused threatened as if the amount is not paid he would go to kill him. Consequent to the wordy altercation the accused pulled down the P.W.2 and P.W.3. Further, by using the knife [M.O.1], he attacked the P.W.2 on the neck. Due to the said attack, P.W.2 sustained the injury in the neck and went to the stage of unconscious. So, P.W.4 [Manikaraj] made arrangement for giving necessary treatment to P.W.2. In the meantime, P.W.1 intimated the occurrence to the police station in turn the police came to the occurrence place and secured the accused along with M.O.1. In the meanwhile, on the same day, at about 9.30a.m., P.W.14 [Dr.Megajabeen] working in a Kilpauk Medical College Hospital, examined the P.W.2 and found the following injuries:

"On the left side of neck found injuries, it measures 8cmx2cmx1cm"

ii) Since the said injury is serious in nature, he admitted the P.W.2 as in-patient and made arrangement for taking C.T.Scan. He issued a A.R.Copy under Ex.P8 and wound certificate under Ex.P9. According to him, the injury sustained by P.W.2 is simple in nature.

iii) On receipt of the complaint, given by P.W.1, P.W.15, the then Sub-Inspector of Police, Amijikaiarai Police Station registered a case in Crime No.67/2008 under Sections 307 and 506(ii) IPC. Complaint given by the P.W.1 is marked as Ex.P.1. The FIR prepared by the P.W.15 is marked as Ex.P.10. After the preparation of FIR, he made arrangement for sending the same to the Court, further he handed over the copy of the FIR to P.W.16 for investigation.

iv) On receipt of FIR, on the same day, P.W.16, the then Inspector of Police, Choolaimedu Police Station visited the scene of occurrence, he prepared observation mahazar and rough

sketch under Exs.P.11 and 12 respectively. Thereafter, he examined the witnesses and recorded the statements. In continuation of the investigation, he went to the hospital, in which P.W.2 was admitted and examined him in the presence of P.W.8 Kandasamy and one Paaldurai. He recovered the blood stained cloth, worn by P.W.2 under the cover of mahazar. Further, he recovered blood stained cloth from P.W.7 who brought the injured to the hospital. The seizure mahazars are marked in the trial Court under Exs.P.13 and P.14.

v) On 19.02.2008, between 14.00 to 15.00 hours, he arrested the accused in the presence of P.Ws.9 and 10 and recorded the confession given by him. In the confession statement, the appellant admitted the guilt. Further stated that the weapon used for the commission of offence is thrown away in the scene of occurrence itself. Thereafter, the witnesses P.W.16 and the accused went to the occurrence place and on identification by the accused, the knife was recovered under the mahazar Ex.P.16. The admitted portion of the confession statement given by the accused is marked as Ex.P.15. After sending the accused to the judicial custody, P.W.16 has examined the Doctor who treated P.W.2 and completed the investigation. Finally he laid a final report.

vi) 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 16 witnesses were examined as P.W.1 to P.W.16 and 16 documents were marked as Exs.P.1 to P.16, besides 6 material objects.

vii) Out of the said witness, P.W.1 is the defacto complainant, as well as the eye witness to the occurrence has stated in his evidence that on 18.01.2008 at about 9.00 am, while he was in the grocery shop along with P.W.2 and P.W.3, the accused came and demanded to pay a mamool amount. Responding to the demand made by the accused, told to him as, now only the shop was opened. So I do not have any cash. Enraged over the the reply stated by him, the accused took the knife and made life threat to P.W.1 to P.W.3. Further he attacked the P.W.2 by using the knife on his neck. Finally, the injured admitted in the hospital with the help of P.Ws.4 and 7 and thereafter, he lodged the complaint before P.W.15 under Ex.P.1.

viii) P.W.2 is the brother of P.W.1, has stated that on the day of occurrence, the accused came to the grocery shop and made wordy quarrel with P.W.1. He has further stated that during the time of occurrence, the accused made life threat to P.Ws.1 to 3 and finally took the knife and attacked on his neck. So he sustained injury in his neck. After seeing the blood oozing from the wound which found in the neck he went to the

stage of unconscious. Thereafter, he was admitted in the hospital as an in-patient for one day.

ix) P.W.3 is the wife of P.W.1 who is also an eye witness to the occurrence, has stated in her evidence in support of the evidence given by P.Ws.1 and 2 in respect of the attack made by the accused.

x) P.W.4 born to P.Ws.1 and 3 has stated in his evidence as on the day of occurrence, after hearing the noise from the grocery shop, he went to the occurrence place. He has further stated during the time of occurrence, the accused made a life threat by saying "I will kill you". Further, he assaulted the P.W.2 by using knife. According to him, he admitted the P.W.2 in the hospital.

xi) P.W.5 Mahindrakumar, P.W.6 Selvi alleged to be the eye witnesses to the occurrence has not supported the case of prosecution in any manner.

xii) P.W.7 Selvam has stated after the completion of occurrence, he took the P.W.2 from the spot and admitted in the hospital.

xiii) P.W.8 to P.W.12 are the witnesses to the preparation of observation mahazar and for the recovery of material objects. They have not stated any evidence in support of the prosecution.

xiv) P.W.13 is the chemical examiner, working in Forensic Science Department, Chennai has stated in his evidence that through the letter sent by Magistrate, he received the MOs1 to 8 for chemical examination. He has further stated that during the time of examination, it was identified as the blood found in MO1 and MO3 to MO7 are the human blood. Further, they are all belongs to 'B' Group, he issued certificate under Ex.P.6.

xv) P.W.14 Mehajabeen, attached with Kilpauk Medical College Hospital has stated in her evidence as on 18.01.2008 at about 9.30 am she examined P.W.2 and found he is having one wound in the size of 8x2x1cm on his left neck.

xvi) P.Ws.15 and 16 are the police officers stated about the registration of the case, details of investigation and filing of final report.

xvii) The trial Judge, with reference to the incriminating materials, adduced by the prosecution, question the accused under Section 313 Cr.P.C., and for which he pleaded not guilty. However, he did not choose to examine any witness

nor did he mark any documents on his side.

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

3.I have heard Mr.C.Durai Pandian learned counsel for the appellant and Mr.G.Ramar, learned Government Advocate for the respondent.

4.The learned counsel appearing for the appellant would contend that in the trial Court, the appellant has been convicted for the offences under Sections 385, 307 and 506(ii) IPC. In order to prove the said offences, the prosecution has to prove the intention which had by the accused to kill the injured, further, the prosecution has to prove that the injury sustained by the P.W.2 is sufficient to cause the death but in this case those aspects have not been proved. He would further contend that there are lot of contradictions in the evidence of P.W.1 and P.W.2. The witnesses examined on the side of the prosecution has stated different version in respect to the arrest of the accused. He would further contend that the above contradiction create a serious doubt on the prosecution case.

5. Per contra, the learned Government Advocate (Crl.side) would contend that P.W.1 to P.W.4 are the eye witnesses to the occurrence, who are none other than the close relatives of the injured, the occurrence took place in a main road near to the grocery shop run by P.W.1. He would further contend that at the time of occurrence, the accused voluntarily go to the grocery shop run by P.W.1 and demanded to pay mamool. The said occurrence, clearly and elaborately deposed by P.W.1 to P.W.4 in the trial Court. Therefore, there is no need to interfere with the conviction and sentence passed by the trial Court.

6. I have considered the rival submissions made on either side.

7. Admittedly, P.W.1, P.W.3 and P.W.4 are the family members of the injured P.W.2. The other eye witnesses P.W.5 and P.W.6 examined on the side of the prosecution have not supported the case of prosecution. In the said circumstances, the evidence given by the injured was corroborated through the evidence of P.W.1, P.W.3 and P.W.4. Now on going through the judgment of our Hon'ble Apex Court in Ashok Kumar Pandey Vs. State of Delhi reported in (2002) 4 SCC 76, in which it was held as follows:-

"It is well settled that evidence of a witness cannot be discarded merely on the ground that his either partisan or interested or both, if otherwise the same is found to be credible."

8. So, according to the principle laid down in the above judgment, only for the reason that they are the relative of P.W.2, we are not in a position to discard the entire testimony of P.W.1, P.W.3 and P.W.4. In the said circumstances, this Court is having the duty to scrutinize their evidence with much care and caution. Now, on going through the evidence given by P.W.1, P.W.3 and P.W.4 they are all given evidence, in support of the evidence given by the injured particularly, in respect to the attack made by the appellant. According to their evidence, at the time of occurrence, the accused assaulted the P.W.2 on his neck by using the knife. Now, the Doctor who gave treatment to P.W.2 has stated that P.W.2 sustained injury on his neck, so the medical officer has also corroborated the evidence given by P.W.2, more than that the evidence given by the chemical examiner also proves, the blood found in the clothes recovered from the accused and the blood found in the knife are of the same group.

9. However, P.W.1 has stated before the trial Court that the accused was arrested by the police officer, in the place of occurrence itself. Per contra, P.W.16 the investigation officer has stated that the accused was arrested on 19.02.2008 at about 14.00 to 15.00 hours, further he stated, after recording the confession statement from the accused, based on his disclosure statement the weapon used by the accused in the commission of offence was recovered from the scene of occurrence. Now, comparing the evidence of P.W.1 with the evidence of P.W.16 it would create doubt whether, the accused was secured by P.W.16 or not. If really the evidence given by P.W.1 is true one in respect to the arrest of the accused, the evidence given by P.W.16 is false one. The said contradiction will affect the very root of the case, even though the defective investigation is not a ground for acquitting the accused. Now on going through the judgment of our Hon'ble Apex Court in State of Haryana Vs. Jagbir Singh reported in 1977 SCC (Cri) 638 wherein, it was held as follows:-

"6. The High Court found a very serious infirmity in the entire prosecution case from an admission which had been made earlier by Sukhbir Singh (PW 18), the father of the deceased. From that statement the High Court found that Sukhbir Singh had admitted that the accused were arrested by the police in this case on March 16, 1975, the very day the dead body of his son was found at the Ram Lila Grounds. If the arrest of the accused on March 16 is true, as

stated by Sukhbir Singh, not only the extra judicial confession of the accused before Deputy Prasad on March 18, 1975 but also the recoveries of the blood stained clother and kirpans made by the police on March 18, 1975 following the alleged statements of the accused lose all credibility. This is the principal ground on which the High Court came to the conclusion that there was "padding" in the prosecution case and that certain evidence was fabricated in order to implicate the accused."

10. So, applying the principles laid down by the Hon'ble Apex Court, in this case also the prosecution has not approached the trial Court with clean hands. Since the arrest itself doubtful, all other evidences given by prosecution will goes away, further on the side of prosecution, there is no evidence is available to know the intention of the accused. Apart from that as per the evidence of medical officer P.W.2 sustained only simple injury and it would not sufficient to cause the death.

11. In the result, the criminal appeal is allowed and the conviction and sentence imposed upon the appellant in S.C.No.160 of 2009 dated 29.01.2010 by the learned Additional District and Sessions Judge (Fast Track Court No.IV), Chennai is set aside. 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(CS V)

//True Copy//

Sub Assistant Registrar

AT

To

1. The Metropolitan Magistrate,
No.XVII, Saidapet, Chennai.
2. The Chief Metropolitan Magistrate,
Egmore, Chennai (For Information)
3. The Additional District and Sessions Judge
(Fast Track Court No.IV),
Chennai.

4. The Inspector of Police,
F-5, Choolaimedu Police Station,
Choolaimedu, Chennai-94.
5. The Superintendent,
Central Prison, Puzhal, Chennai.
6. The Public Prosecutor,
High Court, Madras.
7. The Section Officer,
V.R.Section, Madras High Court,
Chennai. (2 Copies)

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RR(CO)
CS/26/10/2018



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