

BAIL SLIP

The Petitioner/Accused namely Kattaiyan @ Arumugam S/o.Duraisamy Padayachi, was released on bail as per the order of this Court dated 13/10/2009 made in Crl.M.P.No. 1/2009 in C.A.609/2009 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 20.04.2018

PRONOUNCED ON : 11.08.2018

CORAM

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

CRL.A. No.609 of 2009

Kattaiyan @ Arumugam ... Appellant/Sole Accused

Vs.

State by rep. by its Inspector of Police,
Aavinangudi Police Station,
(Crime No.23 of 2008) ... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 of Cr.P.C., against the Judgment of conviction and sentence passed by the Additional District and Sessions Court, (Fast Track Court No.3), Virudhachalam, dated 31.08.2009. in S.C.No. 393 of 2008.

For Appellant : Mr.M.R.Chellappan

For Respondent : Mr.Arul Mozhi Maran
Government Advocate (Crl.Side)

JUDGMENT

This Criminal Appeal has been filed by the accused against the judgment of conviction and sentence passed by the Additional District and Sessions Judge (Fast Track Court No.3), Virudhachalam, dated 31.08.2009.

2. The respondent herein has filed a charge sheet stating that on 06.05.2008 at about 4 p.m at Tholarkudikadu Village within the jurisdiction of the Avinankudi police station, when the de-facto complainant Tmt.Palaniyammal and her husband Thiru.Mayavel were in front of their house, the appellant / accused went there and asked to re-pay the loan amount of Rs.30,000/- and for that, the said Mayavel replied that he is

not having money and enraged by the same, the appellant / accused attacked the said Mayavel with Billhook (Koduval) on his head and on right shoulder with an intention to murder him and also used obscene words and caused simple injuries and on seeing the said occurrence, the de-facto complainant Tmt.Palaniyammal intervened and that the appellant / accused has attacked her also with the same Billhook on her head and also used obscene words and caused simple injury and hence the appellant / accused is liable to be punished under Sections 294(b), 324, 341 and 307 of I.P.C.,

3. Based on the aforesaid charge sheet, the learned District Munsif - cum - Judicial Magistrate, Thittakudi, has taken the case on file as P.R.C.No.27 of 2008 and after appearance of the accused, furnished copies under Section 207 of Cr.P.C. and committed the case to the Court of Sessions, Cuddalore. The learned Principal Session Judge, Cuddalore, has taken the case on file in S.C.No.393 of 2008 and made for the same to the Additional District and Sessions Judge (Fast Track Court, No.3), Virudhachalam.

4. The learned Additional District and Sessions Judge (Fast Track Court, No.3), Virudhachalam, after appearance of the accused, perusing the records and hearing both sides, has framed charges under Sections 294(b) (2 counts), 324 (2 counts), 341, 307 of I.P.C and read over and explained to the same to the accused. The accused denied the charges and pleaded not guilty. Thereafter, the learned Additional District and Sessions Judge fixed the date for trial and examined the witnesses, which were produced on the side of the prosecution.

5. The case of the prosecution, in brief, as follows:

On 06.05.2008 at about 4.00 p.m., at Thittakudi Village, P.W.1 Tmt.Palaniyammal, her husband P.W.2 Thiru.Mayavel and their daughter-in-law P.W.3 Tmt.Elavarasi were doing some domestic work in the front yard of their house. At that time, the accused came there and asked the P.W.2 to repay the loan amount of Rs.30,000/-. P.W.2 replied that he will repay the said amount as soon as his son returned to India from abroad where he is working. Not satisfied with the said answer, the accused uttered some filthy words and also said that he won't leave him without murdering and also attacked him with a Billhook (M.O.1) and caused simple injuries on his head and right shoulder. On seeing the same, the P.W.1 intervened. The accused attacked her also with the same Billhook on her head by saying that he wont to leave her also without murdering and caused simple injury on her head. P.Ws 1 to 3 raised alarm and on hearing the same, the neighbours namely Devi, Paranjothi, Palaniammal, Murugan, Pazhamalai, Aarimuthu came there. Aarimuthu and Pazhamalai took the P.Ws 1 and 2 to the Government

Hospital, Thittakudi. After providing first aid, P.W.2 was referred to the Government Hospital, Cuddalore, for further treatment.

6. P.W.5 Dr.Kumaravel, on 06.05.2008 at about 5.30 p.m. when he was working at Government Hospital, Thittakudi has seen the P.W.2 and noticed the following injuries on his body.

(i) lacerated injury measuring about 10 x 4 x 2 c.m on the head and bone exposed.

(ii) lacerated injury measuring about 10 x 3 x 4 c.m on the back side of the right shoulder.

He referred PW2 to the Government Hospital, Cuddalore for further treatment. There X-rays have been taken to the aforesaid injuries and found that there was no fracture in the bone. Hence, he issued the wound certificate (Ex.P4) stating that the aforesaid injuries are simple in nature. On the same day, at about 6 p.m., he has seen P.W.1 in the same hospital and noticed an incised wound on her head measuring about 10 x 2 x 2 c.m. For her, he took X-ray and CT scan and found that there was no fracture in the bone and hence he issued a wound certificate (Ex.P5) stating that the said injury is simple in nature. P.W.5 has sent intimation to the police.

7. P.W.8 Thiru.Pushparaj, when he was working as Sub-Inspector of Police at Aavinankudi police station, on 06.05.2008 at about 7 p.m., he has received an intimation from the Government Hospital, Thittakudi, in which, it was stated that the person mentioned in the said intimation referred to the Government Hospital, Cuddalore. Hence, he went to the Government Hospital, Cuddalore and there he found that the P.W.1 was admitted as inpatient. He has recorded the statement with the P.W.1 (Ex.P1) and returned back to the police station and registered a case on 07.05.2008 at 11.00 a.m., in Crime No.23 of 2008 u/s.294(b), 341, 324, 506(ii) and 307 IPC. The printed copy of the First Information Report (F.I.R) has been marked as Ex.P8. He has forwarded a complaint and the F.I.R. to the concerned Judicial Magistrate and submitted the case file to the Inspector of Police, Thittakudi for investigation.

8. P.W.9 Mr.Kumara Balan, when he was working as Inspector of Police in Thittakudi Circle, on 07.05.2008, he received the case file from the P.W.8 and took the matter for investigation. He went to the place of occurrence on 07.05.2008 at about 2 p.m. and prepared an Observation Mahazer (Ex.P2) in the presence of P.W.4 Thiru.Kandhasamy and one Rajendren. He also prepared a Rough Sketch (Ex.P9). Thereafter, from the place of occurrence at about 3.30 p.m. he has seized M.O.1 Billhook; he took sample for the blood stained soil (M.O.5) and Ordinary Soil (M.O.6), under the Seizure Mahazar (Ex.P3) in the presence of P.W.4 and one Rajendren. He

also seized the blood stained saree of the P.W.1 (M.O.2), Blouse (M.O.3) and blood stained towel (M.O.4) under the same mahazar and sent the same to the Court.

9. In continuation of the investigation, the P.W.9 has arrested the accused near the Kodikalam Sellihaman Kovil at about 8.30 p.m. on the same day and enquired with the accused. The accused gave a confession voluntarily and the same has been recorded by the P.W.9 in the presence of P.W.6 Thiru.Annadurai and one Thiru. Chinnadurai. The signature of P.W.6 found in the said confession has been marked as Ex.P6. Thereafter, he examined other witnesses. He has submitted a requisition before the District Munsif-cum-Judicial Magistrate, Thittakudi to send the Material Objects to the Forensic Science Laboratory, Villupuram, for chemical analysis. Accordingly, the District Munsif-cum-Judicial Magistrate has sent the Material Objects for chemical analysis.

10. P.W.7 Dr. Shanmugam, when he was working as Scientific Assistant, Grade II at Regional Forensic Science laboratory, Villupuram, has received a letter from the District Munsif-cum-Judicial Magistrate, Thittakudi, along with the material objects with a request to analyse those material objects and submit a report. Accordingly, he has analyzed the material objects and found blood stain in all the items except in M.O.6 and he has sent a report to that effect. The report submitted by him has been marked as Ex.P7.

11. P.W.9 after receipt of the wound certificates and examining other witnesses filed a charge sheet against the accused under the aforesaid Sections.

12. The evidence on the side of the prosecution was closed with the evidence of P.W.9. Thereafter, the accused was questioned under Section 313 of Cr.P.C. with regard to the circumstances found against him in the evidence of the prosecution witnesses. He has admitted that on that date, he went to the house of PWs 1 and 2 and demanded for repayment of loan. However, he denied the allegations that he has attacked the PWs 1 and 2. He further stated that he did not see P.W.3 in the place of occurrence. He further stated that he is having witnesses on his side and subsequently, he did not examine any witness on his side.

13. After hearing both sides and on perusing the materials placed before him, the learned Additional District and Sessions Judge acquitted the accused for the offences under Sections 294(b) (2 counts), 341 and 307 of I.P.C., However, he found the accused guilty under Sections 324 (2 counts) of I.P.C. and after questioning the accused with regard to the sentence to

be awarded against him convicted the accused and awarded 2 years Rigorous Imprisonment for each count of the offence under Section 324 of I.P.C. He also ordered that the sentences shall run concurrently. He also ordered that the period of custody during the investigation and trial shall be given set off under Section 428 of Cr.P.C. Aggrieved by the same, the accused has preferred the present appeal.

14. Heard Mr.M.R.Chellapan, learned counsel for the appellant / accused and Mr.Arulmozhimaran, learned Government Advocate (Crl.Side) appearing for the respondent.

15. The points for consideration are as follows:-

'1. Whether the trial Court was right in convicting the accused under Section 324 of I.P.C. (2 counts)?

2. Whether this appeal has to be allowed?'

16. Points Nos.1 and 2

In this case on the side of the prosecution, P.W.1 to P.W.9 were examined as witnesses; Ex.P1 to Ex.P9 were marked as exhibits and M.O's 1 to 6 were marked as material objects. On the side of the accused, witnesses were not examined; exhibits and MOs also not marked.

17. The case of the prosecution is that P.Ws 1 and 2 are liable to repay the loan amount of Rs.30,000/- to the accused and on 06.05.2008 at about 4 p.m., the accused went to the house of the P.Ws 1 and 2 and demanded to repay the said loan. Its further case is that the P.W.2 told the accused that his son is working in abroad and after his return, he will repay the said loan. Not satisfied with the said reply, the accused attacked the P.W.2 with M.O.1 Billhook on his head and right shoulder by saying some obscene words and that he won't leave him without killing him. Its further case is that when the P.W.1 intervened the accused attacked her also with the same Billhook on her head by saying that he won't leave her also and caused simple injuries for P.Ws 1 and 2.

18. With regard to the aforesaid charges, the P.W.1 has stated in her evidence that on 06.5.2008 at about 4 p.m., she was doing some cleaning work in the front of the yard of their house and at that time, the accused came there and demanded to repay a sum of Rs.30,000/-. For that her husband (P.W.2) has replied that their son is working in abroad and after his return, he will pay the amount and not satisfied with the said reply, the accused attacked the P.W.1 with the Billhook and caused simple injuries on his head and right shoulder. She also deposed that on seeing the said attack, she intervened and at

that time, the accused attacked her also with the same Billhook and caused simple injury on her head. P.W.3 has also deposed corroborating the evidence of P.Ws.1 and 2.

19. P.W.5, the Doctor who gave treatment to the PWs 1 and 2 has deposed that on the same day at about 5.30 p.m., he has seen the P.W.2 and noticed lacerated injuries on his head and right shoulder. He also deposed that on the same day at about 6 p.m., he has seen the P.W.1 and found an incised wound on her head. He opined that those injuries could have been caused by the weapon like M.O.1 Billhook. So, it is clear that the evidence of injured persons (P.Ws 1 and 2) and eye witness (P.W.3) is corroborated by the Doctor's evidence (P.W.5).

20. The evidence of P.W.8 would show that after receipt of intimation from the hospital, he went to the Government Hospital, Cuddalore and recorded the statement (Ex.P1) from the P.W.1 and thereafter he went back to the police station and registered a case and submitted the case file to the P.W.9 for investigation.

21. The evidence of the P.W.9 would show that after receipt of the case file from P.W.8, he took the matter for investigation and rushed to the place of occurrence and prepared an Observation Mahazar in the presence of P.W.6 and one Rajendren and also seized the material objects under the mahazar in the presence of the same witnesses and also prepared a Rough Sketch. His evidence further shows that he has arrested the accused and him for remanded. His evidence further shows that he has examined the witnesses and recorded the statements under Section 161(3) of Cr.P.C and after completing investigation, he filed charge sheet against the accused.

22. The evidence of the injured persons (P.Ws 1 and 2) and eye witnesses (PW3) has been corroborated by the evidence of P.W.5 (Doctor). Their evidence also corroborated by the complaint (Ex.P1) which was given by the P.W.1 to the P.W.8. Therefore, it is clear that the charge with regard to the offence under Section 324 (2 counts) is proved beyond reasonable doubt.

23. The learned counsel for the appellant / accused contended that the P.Ws 1 to 3 are closely related to each other and as such, they are interested witnesses and in the absence of evidence of independent witnesses, the trial Court should not have relied upon the evidence of P.Ws 1 to 3. He further submitted that the injuries sustained by the P.W.2 are lacerated injuries and the said injuries sustained could not have been caused by the M.O.1 Billhook.

24. It is well settled that the evidence of the interested witnesses need not be rejected. The Court has to scrutinize their evidence with care and caution. In this case, the accused has not denied the allegation that on the date of occurrence, he went to the house of the P.Ws 1 and 2 and

demanded the repayment of loan. In fact, he has admitted in his answer to the questions asked under Section 313 of Cr.P.C, that he went to the house of the P.Ws 1 and 2 and asked the repayment of loan. So, it is clear that at the time of occurrence, he was present in the place of occurrence. The Doctor's evidence would clearly show that Pws 1 and 2 sustained injuries. Further the Doctor has stated that the injuries which were sustained by the P.Ws 1 and 2 could have been caused by the M.O.1 - Billhook. Therefore, the contention of the learned counsel for the appellant that the P.Ws 1 to 3 are interested witnesses and their evidence cannot be accepted without corroborating evidence by the independent witness, is not acceptable. Further the contention of the learned counsel that the injuries sustained by the P.Ws 1 and 2 would not have been caused by M.O.1 - Bill hook also cannot be accepted.

25. As already pointed out that the prosecution has proved the charge that the accused caused simple injuries to the P.Ws 1 and 2 by using M.O.1 - Billhook through the evidence of P.Ws 1 to 3 and P.W.5. This Court does not find any infirmity in the said findings of the Trial Court.

26. On coming to the question of the sentence awarded by the trial Court, taking into consideration of the fact that since the Pws1 and 2 caused delay in repaying the loan amount, the accused attacked the P.Ws 1 and 2 with M.O.1 - Billhook and caused simple injuries and also the fact that the accused was in custody for 52 days during investigation stage and 44 days after conviction, totally 96 days (as per the letter sent by the III Additional District and Sessions Judge, Cuddalore at Virudhachalam dated 10.08.2018), this Court is of the view that awarding of the sentence to the period which was already undergone by the accused would meet the ends of justice. Accordingly, these points are answered.

27. In the result, the findings and conviction of the Trial Court that the accused has committed offence under Section 324 (2 counts) of I.P.C., are confirmed. The sentence awarded by the Trial Court for the aforesaid offence is modified to the extent that the period of custody which was already undergone by the accused. Therefore the period of custody already undergone by the accused shall be treated as sentence.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

vsa

To

- 1.The Additional District and Sessions Court,
(Fast Track Court No.3),
Virudhachalam.
2. The Inspector of Police,
Aavinangudi Police Station
3. The superintendent,
Central Prison, Cuddalore.
4. The District Munsif cum Judicial Magistrate,
Thittakudi.
5. The Chief Judicial Magistrate,
Cuddalore.
6. The Public Prosecutor,
High Court, Madras.

CRL.A.No.609 of 2009

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