

BAIL SLIP
CRL.A.407 OF 2010

The Appellant i.e Ramakrishnan, in Crl.A.407 of 2010 (Accused in S.C No. 2 of 2009) was released on bail vide order of this Court, dated 22/07/2010 made in MP.No. 1 of 2010 in Crl.A. 407/2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.06.2018

PRONOUNCED ON : 25.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

CRL.A.407 of 2010

Ramakrishnan

... Appellant

Vs

The State rep. by
The Inspector of Police,
Kottagiri Circle,
(Crime No.317 of 2007

... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment dated 24.06.2010, passed in S.C.No.2 of 2009 by the learned Assistant Sessions Judge, Udhagamandalam and prays that this Court may be pleased to set aside the judgment of conviction and acquit him.

For Appellant : Mr.K.V.Sridharan

For Respondent : Mr.G.Ramar

Government Advocate (Crl.Side)

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J U D G M E N T

This appeal is directed against the conviction and sentence awarded by the learned Assistant Sessions Judge, Udhagamandalam in S.C.No.2 of 2009 dated 24.06.2010.

2. The appellant herein is the sole accused in S.C.No.2 of 2009. The case of the prosecution is that the de-facto complainant Rajan and the present appellant were residing

at Kothagiri. Before the occurrence, the brother of the de-facto complainant one Shankar fell in love with the in-law of the appellant and married her and thereafter they are residing in Erode. On 03.08.2007 at about 5.00 p.m., when the de-facto complainant asked the appellant to give phone number of the said Shankar, the appellant/accused refused to give the same and made quarrel with the de-facto complainant. In continuation of the said occurrence, on the same day at 6.30 p.m., the appellant herein went to the house of the de-facto complainant and assaulted him by using wooden rod and knife. Due to the assault made by the appellant P.W.1 i.e., de-facto complainant has sustained injuries as follows :-

- "1. Cut injury over right Parieto-Occipital region 7.5X2X2 cm
2. Cut injury over right side Cheek 3X1X1 cm
3. Cut injury 5X1/2X1/2 cm right side neck.
4. Contusion & Swelling right Forearm Prick injury 1X1X1 cm forearm
5. Swelling near left wrist & middle of left forearm.
6. Prick injury below left elbow 1X1X1 cm
7. Abrasion over right side abdomen."

3. The further case of the prosecution is that when the mother of P.W.1 questioned the same, she was also assaulted by the appellant and she sustained the following injuries :-

" Injuries - Cut injury left leg. Lower 1/3rd 4X1X1 cm under LA after test does suture done."

Thereafter, P.W.1 and P.W.2 took treatment from P.W.8, who is working as Doctor in Kothagiri Government Hospital, P.W.8 referred P.W.1 to the Coimbatore Government Hospital, in which, P.W.9 treated for the injuries sustained by him. After receiving the information, P.W.10, who is the Head Constable in Kothagiri Police Station went to the Government Hospital and recorded the statement from P.W.1. Subsequently, he registered a case in Crime No.317 of 2007 for the offence punishable under Section 307 and 324 of IPC. The First Information Report was filed as Ex.P.13. After registration of the case, P.W.10 handed over the case to P.W.11 for investigation.

4. After receiving the case records, P.W.11 the then Inspector of Police, went to the scene of occurrence on 04.08.2007 at about 00.30 a.m., and in the presence of P.W.6 Rangarajan and one Kandasamy, he prepared the observation mahazar under Ex.P.3 and Rough sketch under Ex.P.14. Further he recovered M.O.Nos.5 and 6 from the scene of occurrence under Ex.P.4 in the presence of the same witnesses. On the same day at about 3.30 p.m., he arrested the appellant/accused and recorded

the confession statement given by him. In the confession statement, the appellant willing to hand over the knife and wooden rod which are the materials objects used for the commission of offence. As per the confession statement, P.W.11 recovered M.O.Nos. 1 and 2 under Ex.P.6-Recovery mahazar. Before that, P.W.11 recovered M.O.Nos. 3 and 4, which are handed over by P.W.3, who is the wife of P.W.1. Thereafter, the appellant/accused was sent to judicial custody.

5. Subsequent to that, P.W.11 sent the material objects recovered from scene of occurrence to Forensic Department for chemical examination and obtained biology report and chemical examination report under Ex.P.17 and Ex.P.18. Further, P.W.11 examined the Doctors, who gave the treatment to P.W.1 and recorded their statements. At the time of examination, the Doctors were handed over the wound certificate and AR copy, which are exhibited as Ex.P.7 to Ex.P.10. After receiving those documents, P.W.11 laid charge sheet for the offence punishable under Section 307 and 324 (2 counts) of Indian Penal Code.

6. After completion of trial, the learned Assistant Sessions Judge, Udhagamandalam convicted the appellant for the offence under Sections 307 and 324 of IPC and sentenced to undergo 10 years Rigorous imprisonment and imposed fine amount of Rs.2000/- i/d to undergo four months Rigorous imprisonment and to undergo three years Rigorous imprisonment and fine amount of Rs.1000/- i/d to undergo two months Rigorous imprisonment. Now, in order to challenge the said conviction and sentence, the present appeal has been filed by the appellant.

7. Heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the State and also perused the records carefully.

8. In order to substantiate his claim, the learned counsel appearing for the appellant has submitted that as per the wound certificate issued by P.W.8 and 9 and also from their evidence, P.W.1 sustained two fracture in his Forehead and apart from that other injuries are lacerations and contusions. According to the certificate issued by the Doctors, the fracture alone grievous injury and other injuries are simple in nature. Further, the learned counsel appearing for the appellant/accused has submitted that in order to prove the fracture, it is necessary to examine the Radiologist, who took the X-ray.

9. In this aspect, the learned Government Advocate (Crl. Side) appearing for the respondent police would submit that at the time of marking X-ray report as Ex.P.12, the learned counsel for the appellant/accused did not raise any objection. So non raising of the objection amounts to admit the genuineness of the document. Thereby, it is not necessary to consider the genuineness of X-ray.

10. Considering the arguments with the evidence of P.W.9 and 10, it is true that in order to show the fracture sustained by P.W.1, X-ray was marked as Ex.P.12. At the time of marking the said exhibit through Ex.P.9, the learned counsel for the appellant/accused did not raise any objection before the trial Court. So, without raising any objection before the trial Court, the said contention raised by the appellant's counsel is not at all help to decide the appeal in favour of the appellant.

11. Secondly, the learned counsel for the appellant made reference before this Court that the grievous injury sustained by the victim is not in the form for causing death. More over, as per the evidence of P.W.1 and other eye witnesses, the alleged offence was happened due to the sudden provocation. Thereby, the accused has no intention to kill the victim at the time of occurrence. With the said circumstances, without seeing this aspect, the trial Court convicted the accused for the offence under Section 307 of IPC erroneously. Further he relied upon the judgment reported in "The Madras Law Journal Reports (Criminal) 1964 page No.446 between Sarju Prasad Vs. The State of Bihar", in which our Hon'ble Apex Court held as follows :-

"..... the actual act which the assailant is shown to have committed was such as would in the ordinary course of nature have resulted in death and that here as the injury was a simple one, no vital organ of Sharkar Prasad having been damaged, it does not fall within the purview of Section, 307, Indian Penal Code....."

Taking note of the view taken by the Hon'ble Supreme Court of India, in this case also the injuries sustained by the victim P.W.1 is not in the form of causing his death. Thereby, following the said judgment, this court is having considered the appeal that the offence under Section 307 of IPC is not made out. Hence the punishment awarded by the trial court to the appellant is liable to be set aside.

12. However on going through the contention of the complaint given by P.W.1, it is seen that during the time of occurrence, the appellant assaulted P.W.1 by using wooden rod and knife. Further the complaint itself, P.W.1 mentioned as due to the assault made by the appellant, he sustained injury on the right chest, right neck, right forehead and left forearm. The said averments given by P.W.1 in his evidence before the trial Court is corroborated with the documents. Further, the evidence given by P.W.1 also corroborated with the eye witnesses, who are examined as P.W.2 and P.W.3.

13. In this case, on going through the charges framed against the appellant, it is seen that at the time of

occurrence, the appellant assaulted P.W.2 and caused simple injury on her also. That aspect clearly deposed by P.W.2 before the trial Court. The evidence given by P.W.1 and P.W.2 are corroborated by other eye witnesses. More over, the evidence given by the doctors, who were treated P.W.1 and P.W.2 are also corroborated with the evidence given by the victims. The manner of which the Investigating Officer reached the hospital and registered the case and investigating the case are also in the form of cogent.

14. In the said circumstances, this Court came to the conclusion that during the time of occurrence, the appellant voluntarily caused injuries by using deadly weapons and caused grievous hurt to P.W.1 and simple hurt to P.W.2. Accordingly, he committed the offence under Sections 326 and 324 IPC.

15. Now turning to the quantum of punishment, the learned counsel for the appellant would submit that the accused is a very poor man, he has a family to take care of and he has got no bad antecedents. Having regard to the mitigating as well as the aggravating circumstances, this Court is of the view that the sentencing the accused to undergo Rigorous Imprisonment for two years and to pay a fine of Rs.2,000/- for the offence under Section 326 of IPC and to under Rigorous Imprisonment for one year and pay a fine of Rs.1,000/- for the offence under Section 324 of IPC, further ordered for shall run concurrently.

16. In the result, this Criminal Appeal is partly-allowed and the conviction and sentence under Sections 307 and 324 IPC, imposed on the appellant, are set-aside and instead, he found guilty for the offence under Sections 326 and 324 IPC and sentenced to undergo Rigorous Imprisonment for two years and to pay a fine of Rs.2,000/- for the offence under Section 326 of IPC and to under Rigorous Imprisonment for one year and pay a fine of Rs.1,000/- for the offence under Section 324 of IPC, further ordered for shall run concurrently. The respondent is directed to secure the appellant for the purpose of sentencing him to undergo the remaining period of conviction. It is also directed that the period of sentence already undergone by the appellant shall be given set off, as required under Section 428 Cr.P.C.

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Sd/-

Assistant Registrar(CS IX)

//True copy//

Sub Assistant Registrar

To

1. The Assistant Sessions Judge,
Udhagamandalam.
2. Do - Thro The Principal Sessions Judge,
Nilgiris.
3. The Judicial Magistrate,
Kothagiri.
4. do Thro The Chief Judicial Magistrate,
Nilgiris.
5. The Inspector of Police,
Kothagiri circle, Udhagamandalam.
6. The District collector,
Nilgiris.
7. The Public Prosecutor,
High Court, Madras.

Copy To

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

+1cc to Mr. K.V.Sridharan, Advocate SR.No. 40128(25/07/2018)

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GJ(CO)
GN(25/07/2018)

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