

Bail Slip

The Appellant/Accused-I, namely Manivasagam, aged 38 years, S/O Ayyakannu, was directed to be released on bail vide order dated 17/08/2010, made in MP.Nos.1 to 2 of 2010 in CRL.A.No.433 of 2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.07.2018

CORAM :

THE HON'BLE MR. JUSTICE R.PONGIAPPAN

Crl.A.No. 433 of 2010

1.Manivasagam

2.Subramaniyan

.. Appellants/Accused1-2

Vs.

State: Rep by
The Inspector of Police,
Vikkiramangalam Police Station
(Crime No.2/2006)

..Respondent/Complainant

Prayer: Appeal filed under Section 374 (2) Cr.P.C., challenging the Judgment of conviction and sentence dated 28.06.2010 in S.C.No.37 of 2010 by the learned Additional District Sessions Judge (Fast Track Court), Ariyalur.

For Appellant

: Mr.Arun Anbumani

for M/s. Arulselvam Associates

For Respondent

: Mrs.T.P.Savitha

Government Advocate (Crl.Side)

JUDGMENT

The appellants 1 and 2 are arrayed as A1 and A2 in S.C.No.37 of 2010 on the file of the learned Additional District and Sessions Judge, Ariyalur. They stood charged for the offence under Section 307 IPC. By a Judgment dated 28.08.2010, the learned Additional Sessions Judge convicting the 1st appellant under section 307 IPC and sentenced to undergo 7 years Rigorous

Imprisonment and to pay a fine of Rs.20,000/-, in default, to undergo 6 months Simple Imprisonment. Further, the second appellant is convicted under Section 324 IPC and sentenced to undergo Rigorous Imprisonment for 2 years and to pay a fine of Rs.5,000/-, in default, to undergo the Rigorous Imprisonment for 3 months. Challenging the said conviction and sentence, the appellants are before this Court with the present criminal appeal.

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

(i). P.W.1 is the Defacto Complainant and he is an injured in the occurrence. On 09.01.2006, when P.W.1 gone to attend the natural call, the first accused herein by using the aruval hit on his head, further, he attacked on the right hand thumb finger, due to which, the finger was completely cut and completely damaged. In the same transaction, the second accused attacked the P.W.1 on his head, due to the assault made by the both accused, P.W.1 sustained cut injury over the right leg, left leg and all over the body. After hearing the hue and cry of P.W.1, P.W.2 who is the wife of P.W.1 came to the occurrence place. After seeing the P.W.2, the appellants were ran away from the scene of occurrence and thereafter, P.W.2 made arrangements for admitting the P.W.1 in Government Hospital, Ariyalur. From the Government Hospital, Ariyalur, the injured was referred to Government Hospital, Thanjavur.

(ii). In the meanwhile, on 11.01.2006, P.W.6, the then Head Constable of Vengalur Police Station received information through a telephonic call from Government Hospital, Thanjavur. On receipt of information, he went over to the Hospital and recorded the statement from the P.W.1, and thereafter, the case has been registered in Crime No.2 of 2006 under Section 307 IPC. Ex.P8 is the printed FIR. Ex.P1 is the statement given by P.W.1.

(iii). After registration of the case, P.W.8 sent the F.I.R. to the Court. Further, he handed over the copy of the F.I.R. to the Inspector of Police for investigation.

(iv). On 12.01.2006, P.W.9, Dhanraj, the then Inspector of Police, Nadayarpalayam Police Station had received a copy of the F.I.R and took up the case for investigation. He immediately visited the scene of occurrence and prepared an Observation Mahazar under Ex.P9. Further, he drawn the Rough Sketch under Ex.P.10. Further, he examined the witnesses and recorded the statements.

(v). In continuance of investigation, on 12.01.2006, at about 5.30 a.m. near Kaikatti Adithya S.T.D Booth, P.W.9

arrested the first accused in the presence of P.W.4 (Sellaperumal) and one Palanisamy. After made arrest, he recorded the confession statement given by the accused in the presence of same witnesses. Pursuant to the confession statement of the first accused, all of them went to the house of the accused and on identification by the accused, P.W.9 recovered the Aruval under seizure mahazar (ExP4). After recovering the weapon, he made arrangements for sending the accused to the Judicial custody.

(vi). In the Meanwhile, on 09.01.2006, P.W.5 Dr.S.Lakshmi who is a Assistant Surgeon working in Government Hospital, Ariyalur treated P.W.1 and found the following injuries:

- " 1. Right hand index finger upper half amputated.
2. Laceration 4 X 1 X .25 cm on the middle of forehead.
3. Laceration 8 X 2 X 1 cm on the right leg below knee.
4. Laceration 3 X 1 X 0.25cm on the left knee.
5. Left foot last 2 toes distal and amputated.
6. Laceration 5 X 1 X 1 cm on the palmar aspect of right hand.
7. Laceration 8 X 2 X 1 cm on the middle scalp.
8. Laceration 4 X 1 X .25 cm on the middle of forehead."

She has given opinion that all the injuries sustained by the P.W.1 is simple injury except the injury no.1. According to her, injury no.1 is is grievous in nature, for that she issued a AR copy and wound certificate under Ex.P5 and Ex.P6 respectively. P.W.7 (Dr.P.Jayanthi) working in the Government Hospital, Thanjavur has given further treatment to P.W.1.

(vii) In continuation of the investigation, P.W.9 examined the Doctors and recorded their statements. Subsequently, since he was transferring from the said post, the case records was handed over to P.W.10 for further investigation.

(viii). P.W.10 (Ramasamy), the then Inspector of Police, Vikramangalam Police Station received the case records from P.W.9 and after perusing the records, he came to the positive conclusion that the accused committed the offence under Section 307 IPC. Hence, he filed a charge sheet against the accused under Section 307 IPC.

3. Based on the above materials, the Trial Court framed charges against the accused as stated supra and the accused denies the same. In order to prove the case of prosecution, as many as 10 witnesses were examined as P.W.1 to P.W.10, 10 documents were marked as Ex.P.1 to Ex.P.10, besides two material objects.

4. Further, in the cross examination of P.W.1 on the side of the accused, the judgment rendered by the Mahila Court, Perambalur in S.C.No.106 of 2007 dated 11.04.2008 was marked as

Ex.D.1. Further, the signature found in the remand report of second accused dated 19.03.2006 was marked as D2.

5. Out of the said witnesses, P.W.1 is the defacto complainant as well as the injured in this case, he has stated in his evidence that as on 09.01.2006, when he go to attend the natural call, both the accused came there and by using the aruval, the first accused attacked on his right hand thumb, due to the assault, the finger completely cut and damaged. Further, he stated that the second accused in this case has also caused injury on his head. According to him, both the accused has assaulted him and caused the injury on his forehead, below the right leg, left leg and all over the body.

6. P.W.2 is the wife of P.W.1 has stated in her evidence that after hearing the hue and cry of P.W.1, she went to the occurrence place and made arrangements for admitting the P.W.1 in Government Hospital, Ariyalur.

7. P.W.3 and P.W.4 alleged to be the eye witnesses to the occurrence had not supported the case of prosecution in any manner.

8. P.W.5, Dr.S.Lakshmi attached to the Government Hospital, Ariyalur has stated about the injuries sustained by P.W.1 and about the issuance of AR copy and wound certificate. P.W.7 Dr.D.Jeyanthi has also spoken about the injuries sustained by P.W.1.

9. P.W.6 to P.W.10 are the Police Officials stated in their evidence about the registration of the case, details of investigation, arrest of accused and about the filling of final report.

10. Learned Judge with reference to the incriminating materials adduced by the prosecution examined the accused under Section 313 of Cr.P.C., for which, they denied as false. However, they did not choose to examine any witnesses nor did they mark any documents on their side.

11. The learned Trial Judge on perusal of the materials placed and on considering the arguments advanced by both sides, convicted and sentenced the appellants as stated above. Challenging the same, the present criminal appeal has been filed.

12. Today, when the appeal is taken up for hearing, I have heard, Mr.Arun Anbumani, learned counsel for the appellant and Mrs.T.P.Savitha, learned Government Advocate (Crl.Side) for the respondent and also perused the records carefully.

13. The learned counsel appearing for the appellant would contend that there are lot of contractions in the evidence of P.W.1 and P.W.2 in respect to the manner of assault committed by the appellants. He has further stated that whole reading of the evidence given by P.W.2 proves that she is not an eye witness to the occurrence. The injured at the time of getting treatment from P.W.5 has stated before the Doctor that 8 persons were assaulted him at the time of occurrence. He would further contend that the above contradictions creates a serious doubt on the case of prosecution.

14. Per contra, the Government Advocate would contend that P.W.1 is the victim and P.W.2 is an eye witness to the occurrence, the evidence given by P.W.1 and P.W.2 in respect of occurrence was corroborated through the evidence of Doctor who treated the P.W.1. Since the occurrence had took place in the day light, the evidence of P.W.1 and P.W.2 is sufficient for ascertaining the case of prosecution.

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

16. First of all in the Trial Court, both the appellants taking the stand that the P.W.1 is the then philanderer, further, before PW 1, it was suggested on the side of the accused that due to the abuse made by the P.W.1, the wife of the first accused committed suicide, for which, a case has been registered against the P.W.1 in crime No. 1 of 2004. Further, in the said case, he has been convicted and sentenced to undergo 5 years Imprisonment along with a fine of Rs.15,000/-. The said judgement was exhibited in the Trial Court as D1. It was further suggested due to the previous enmity, false case has been foisted against the accused. On considering the said aspect, it is true if PW 1 is convicted as stated above, definitely both of them having the enmity. However, being the fact that previous enmity is the double edged weapon, I am of the opinion that the previous enmity alone is not a ground for lodging the false complaint.

17. In other aspects in the Trial Court, the wife of the P.W.1 was examined as P.W.2, she has stated that prior to the occurrence, P.W.1 told to her that he was going to tea shop. Further, before, she went to the occurrence place, one Danavel stands in the tea shop has informed to her that PW 1 went to the North side along with one Uthaman. Then only, after hearing the hue and cry of PW 1, she went to the scene of occurrence place. Now, on going through the cross examination of Investigation Officer, she has not stated as above before the Investigation Officer. It shows that P.W.2 has exaggerated the occurrence and gave the false evidence in the Trial Court. Thereby, in order

to accept the case of prosecution, the evidence of P.W.1 alone available in this case.

18. On considering the contradiction arising in the statement given before the Doctor, P.W.1 has stated in the Trial Court is as follows:

"சம்பவம் நடந்தவுடன் என்னை அரியலூர் அரசு மருத்துவமனைக்கு 1/2 மணிநேரத்திற்குள் கூப்பிட்டுக்கொண்டு போய்விட்டனர். நான் அரசு மருத்துவமனையில் டாக்டரிடம் என்னை எத்தனை பேர் எந்தெந்த ஆயுதத்தால் தாக்கினார் என்று நான்தான் சொன்னேன். "

19. In the above said circumstances, P.W.5 who gave treatment to P.W.1 in the earlier stage has stated in his evidence as at the time of giving treatment, P.W.1 told to her that 8 persons were attacked him. So, the said contradiction creates a doubt whether the PW 1 was assaulted by present appellants or by some other persons. Moreover, in Ex.D2, which was the remand report of A2 written by PW 9, in which it was mentioned as the case has been registered in Crime No.2 of 2006 under Section 307 IPC based on the complaint given by one Ganesan. Further it was specifically mentioned on 13.01.2006 at about 3.30 p.m, the said Ganesan appeared in the Police Station and lodged the complaint. The said contentions of the documents are admitted by the Investigation Officer. Now, on going through the evidence given by P.W.8, the complaint has been recorded in the Hospital. So, in respect to the receiving of complaint, two set of evidence was let in by prosecution.

20. Accordingly, the manner of receiving the complaint is not properly explained by the prosecution agency in this case. Moreover, it is an admitted fact that the case has been registered with the delay of 2 days and the said fact is also admitted by the Investigating Officer. For the said delay, on go through the entire records submitted on the side of the prosecution, no explanation is offered by the prosecution witnesses. Further PW 10 Ramasamy, who is also the Investigating Officer in this case has stated in the cross examination that the charge sheet, statements recorded from the witnesses, Observation Mahazar and Rough Sketch are sent to the Court with the delay of 3 years. The reason for the said delay is also not properly explained on the side of the prosecution.

21. The learned Additional District Sessions Judge without considering those contradictions in a perspective manner, convicted the accused which needs interference. Accordingly, I am of the opinion that the delay in sending the documents to the Court, the contradictions arising in the evidence of PW 1 and PW 2, the mistake committed by the Investigating Officer in the Remand Report are all created a doubt, whether the alleged

occurrence had happened as stated by the prosecution or not. Accordingly, I am of the opinion that the respondent has not proved his case beyond reasonable doubt.

22. In the result, the Criminal Appeal is Allowed. The conviction and sentence imposed upon the appellants in S.C.No.37 of 2010 dated 28.06.2010 by the learned Additional District and Sessions Judge (Fast Track Court), Ariyalur is set aside and the appellants/accused are acquitted of the charges. The bail bond, if any, executed by the appellants/accused shall stand cancelled. The fine amount, if any, paid by appellants/accused shall be refunded to him.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

- 1.The Judicial Magistrate,
Jayankondam.
- 2.The Chief Judicial Magistrate,
Perambalur.
3. The Additional District and
Sessions Judge (Fast Track Court),
Ariyalur.
- 4.The Superintendent central prison,Trichy
5. The Inspector of Police,
Vikkiramangalam Police Station.
6. The Public Prosecutor,
High Court, Madras.

Copy to

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

+lcc to Mr.Arulselvam Associates, Advocate, S.R.No.45447

CrI.A.No. 433 of 2010

GJII(CO)
GSP(29/10/2018)