

Bail Slip.

The Appellant/Accused namely Yacobu @ Jaccob directed to be released on bail as per the order of this court dated 13.08.2010 made in M.P. No. 1/2010 CrI.A. No. 437/2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.06.2018

CORAM :

THE HON'BLE MR. JUSTICE R.PONGIAPPAN

CrI.A.No. 437 of 2010

Yacobu @ Jaccob .. Appellant

Vs.

State by the Inspector of Police,
K3, Aminjikarai Police Station,
Chennai
(Crime 770/2008)

..Respondent

Prayer: Criminal Appeal is filed under Section 374 (2) of Cr.P.C., against the judgment dated 19.07.2010 in S.C.No.123/2010 on the file of the Additional District and Sessions Judge (Fast Track Court No.III), Chennai, in which, the appellant is found guilty for the offences under sections 341,324,307 and 506(2) of Indian Penal Code.

For Appellant : Mr.N.Selvarajan

For Respondent : Mrs.T.P.Savitha
Government Advocate(CrI.Side)

JUDGMENT

This appeal is directed against the judgment dated 19.07.2010 in S.C.No.123 of 2010 on the file of the Additional District and Sessions Judge (Fast Track Court No.III), Chennai.

2. In the above said case, the appellant herein is the sole accused. After concluding the trial, the learned Additional District and Sessions Judge (Fast Track Court No.III), Chennai, convicted the accused for the offences under Sections 341, 324, 307 and 506 (2) I.P.C., and sentenced him to undergo rigorous

imprisonment for one month for the offence under Section 341 I.P.C; to undergo rigorous imprisonment for two years with a fine of Rs.5,000/- in default to undergo simple imprisonment for 3 months for the offence under Section 324 IPC; to undergo rigorous imprisonment for one year with a fine of Rs.5,000/- in default to undergo simple imprisonment for 3 months for the offence under Section 506(2) IPC; and to undergo rigorous imprisonment for five years with a fine of Rs.10,000/- in default to undergo simple imprisonment for 3 months for the offence under Section 307 IPC. Now, against the conviction and sentence the appellant approached this Court praying to set aside the conviction and judgment.

3. The case of prosecution in the Trial Court is as follows:

The injured is a retired Port Trust employee. PW1 (Lakshmi) is his wife. PW3 (Iyyapan) is his son. On 08.10.2008 at about 7.40 p.m., when the injured (victim) came to reach Thiruveedhi Amman Koil Street, through a lane, the accused assaulted him with a knife on his back. When he was about to run, the victim was attacked on his right hand, left leg, shoulders and thereby caused severe injuries. On hearing the noise, PW1 came down from his residence to the scene of occurrence and found the accused with knife. Thereafter, PW1 admitted the injured in Kilpauk Medical College Hospital with the help of their son (PW8). After getting the intimation from the hospital at about 8.15. p.m., PW9, The Sub-Inspector of Police, K3 Police Station, Chennai went to the Hospital wherein the injured was taking treatment and found that the injured is not in a position to give statement. Hence, the defacto complainant PW1 gave a complaint and it was recorded as Ex.P.1. Thereafter the case has been registered in Crime No.770/2008 for the offences under Section 341,324,506(2) I.P.C and the original FIR was submitted to the V Metropolitan Magistrate, Egmore, Chennai.

4. After taking up the case for investigation, PW9 had proceeded to the scene of occurrence and prepared observation mahazar and rough sketch under Ex.P.13 and Ex.P.14. in the presence of Philips (PW4) and Balaji. Thereafter, he rushed to the hospital and examined the defacto complainant and recorded her statement and recovered the blood stained dhoti and colour shirt under Form95 (Ex.P2). On 09.10.2008 at about 13 hours, the accused was arrested nearer to Thiru.Vi.Ka. Park. The confession given by the accused was also recorded in the presence of PW5 and Pw6. Based on the confession given by him, M.O.3 knife which was used for the commitment of offence was recovered under Ex.P.16, seizure mahazar. In turn, material object were forwarded to the V Metropolitan Magistrate. In the

meantime, on 10.10.2008, PW10, the Inspector of Police, K3 Police station took the case for further investigation and altered the section of law as 307 I.P.C. Thereafter, he recorded further statement of witnesses, who were already examined by PW9. Further, he sent requisition to the V Metropolitan Magistrate, Egmore, Chennai for sending its material objects for chemical examination. Subsequently, after receiving the chemical examination report, he had filed the charge sheet for the offence punishable under sections 341,324,307 and 506(2) of IPC.

5. In the Trial Court 10 witnesses were examined as PW1 to PW10 on the side of the prosecution, 18 documents were marked as exhibits P.1 to P.18. Thereafter, the Material objects were also marked. On the side of the appellant two witnesses were examined and no documents were marked.

6. After concluding the Trial, the learned Additional District and Sessions Judge, Fast Track Court No.III had convicted the accused for the offence 341,324,307 and 506(2) of IPC. Against which, the appellant has preferred this appeal.

7. Today, when the appeal is taken up for hearing, Mr.Mr.N.Selvarajan, learned counsel for the appellant and Mrs.T.P.Savitha, learned Government Advocate (Crl.Side) are present.

8. The First and foremost contention raised by the appellant is that the alleged occurrence had happened in the evening at about

7.45. hours. In the evidence of PW2 he had stated that during the time of occurrence eight street lights were found in Thiruveethi Amman Kovil Street. It is also an admitted fact that no street light was in the lane leading to his residence. PW1 and PW2 also stated that during the time of occurrence, no light was available at the scene of occurrence. Further, he added in the said circumstances that there is no chance for seeing the appellant by PW1 and PW2 in the scene of occurrence.

9. In this regard, on going through the evidence given by the PW1 and PW2, It is clear that at the time of occurrence, no lights were burning in the street. Moreover, on go through the rough sketch marked under Ex.P.14, the alleged occurrence had happened in the middle of the street and in the occurrence place only 5 houses were surrounded. Further, the lamp post were not mentioned in the rough sketch. However, it is probable for seeing the accused by using light burning in the houses

surrounded the occurrence place, since it was happened at about 7.45. p.m. It is probable that all the houses are having the light at that time. So the arguments advanced by the learned counsel for the appellant is not a ground to disbelieve the case of prosecution. The Trial Court also took the same view and accepted the case of the prosecution.

10. The next contention raised by the counsel for the appellant is that there was no previous enmity between the appellant and the defacto complainant/PW1.

11. On going through the entire evidence of PW1, it seems she came to the scene of occurrence only after hearing the voice of her husband/victim, so, PW1 cannot be treated as eyewitness. But, the victim, who sustained injury has clearly narrated the entire prosecution case, for the allegation levelled in the charge, the said evidence given by the victim was clearly corroborated by the eyewitness PW3. Further, the contradictions in the evidence of PW1 and PW2 are all minor in nature. Since PW2 and PW3 have deposed evidence before the Trial Court after 2 years from the date of occurrence, we cannot expect the evidence for entire happenings without any minor contradiction.

12. Now as per the evidence given by the PW2 he sustained injury on his back side right hand, 2 legs and left shoulder. Now on going through the evidence of Doctor, he deposed as when at the time of giving treatment to PW2 he found following injuries:

1. Laceration 8x3 cm over right knee.
2. Laceration 6 x 2 cm over left knee.
3. Laceration 6 x 0.05 cm over back."

13. So, now comparing the evidence given by PW2 with the evidence of PW8, it is probable if the appellant assaulted the PW2 by using the aruval, injury noted by the PW8 had occurred to the PW2. In this way, the evidence given by the Doctor is corroborated with the evidence given by the victim. Further, there is no inconsistency between the evidence of PW2 and the Doctor.

14. The last contention raised by the counsel for the appellant is that the witness who were examined for proving the observation mahazar, arresting the accused and to proving the recovery have not supported the case of prosecution. Thereby, prosecution had not proved his case beyond reasonable doubt.

15. Considering the said argument, as per the case of prosecution, after recording the confession statement from the appellant, the property which was used for an commission of

offence is recovered. It is true, the witnesses attested in the observation mahazar and seizure mahazar are not supported the case of the prosecution. In this regard, since the evidence given by the PW2 is supported by the medical evidence. Non proving the mahazar alone is not diluted the case of prosecution. Even though no evidence is available for showing that the weapon was recovered from the accused, that fact alone not sufficient to disbelieve the case of prosecution entirely since the medical evidence is corroborated the evidence given by injured.

16. However, on going through the judgment rendered by the Trial Judge, the appellant was convicted for the offence under Sections 341, 324, 307 and 506(2) of Indian Penal Code. In fact, on going through the Charge framed against the accused, the Trial Court had not framed any charge for 324 IPC but convicting the accused for the above offence is nothing but erroneous.

17. Further, on going through the evidence given by PW1, PW3, PW6, the appellant is not having any intention or knowledge for committing murder of PW2. Usually for the offence of Section 307 IPC, the prosecution has to prove the intention and knowledge of the appellant. In this case, the prosecution did not establish the intention of the accused, so, convicting the accused for the offence under Section 307 of Indian Penal Code is also needs interference. Further more, on going through the entire evidence given by PW2, he had not stated anything about the criminal intimidation made by the appellant at the time of occurrence, merely the words are not sufficient to prove the offence under section 506(2) of IPC, thereby awarding the punishment to 506(2) of IPC is not sustainable.

18. Therefore, on going through the entire records, it reveals that during the time of occurrence, the accused had voluntarily caused hurt to the victim by using weapon, thereby, he committed the offence under section 326 alone. The evidence and other materials put forth by the prosecution in the Trial court proved the said offence.

19. In the light of the above discussion, the appeal filed by the appellant is partly allowed and the judgment dated 19.07.2010 in S.C.No.123 of 2010 on the file of the learned Additional District and Sessions Judge (Fast Track Court No.III), Chennai is modified and the appellant/accused is convicted under Section 326 I.P.C and sentenced to undergo two years Rigorous Imprisonment and to pay a fine of Rs.20,000/- (twenty thousand), in default, undergo further period of 3 months. In respect of offences under Sections 341, 324, 506(2) and 307 IPC, the conviction and sentence awarded by the Trial Court are set aside. Fine amount paid by him already is to be adjusted for the fine now imposed. The Trial Court is directed

to take steps to secure the custody of the appellant for undergoing the remaining period of sentence. 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.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

msv

To

1. The V Metropolitan Magistrate
Egmore, Chennai 8.
2. Do Thro The Chief Metropolitan Magistrate
Egmore, Chennai(for information)
3. The Additional District and Sessions Judge
FTC III, Chennai.
4. The Superintendent
Central Prison, Puzhal No.1, Chennai.
5. The Inspector of Police,
K3, Aminjikarai Police Station,
Chennai
(Crime 770/2008)
- 6.The Public Prosecutor,
High Court, Madras.

+2 Ccs to Mr. V. Parthiban, advocate sr 39235

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SP(23/07/2018)