

Bail Slip

The Appellant/Accused namely Kannan aged about 28 years S/o.Kaliyaperumal was directed to be released on bail by the order of this Hon'ble Court in MP No.1 of 2010 dated 06.01.2010 in CrI.A No. 5 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
Criminal Appeal No.5 of 2010

Kannan

... Appellant

Vs

State, rep. by
The Inspector of Police,
Padalur Police Station,
Perambalur District,
(Crime No.98 of 2006)

...Respondent

Appeal under Section 374(2) of the Code of Criminal Procedure against the judgment dated 30.11.2009 made in S.C.No.29 of 2008 on the file of the Mahila Judge, Perambalur.

For Appellant : Mr.R.Sankarasubbu

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

JUDGMENT

This appeal arises out of the judgment in S.C.No.29 of 2008 on the file of the Mahila Court, Perambalur, convicting the appellant/1st accused under Section 294(b), 326 and 324 IPC and sentencing him to undergo 4 years rigorous imprisonment for the offence under Section 326 IPC and to undergo 3 years rigorous imprisonment for the offence under Section 324 IPC and to pay fine of Rs.1000/- for the offence under Section 294(b) IPC, in default to undergo 1 month rigorous imprisonment. The trial Court ordered sentences to run concurrently.

2. The case of the prosecution is that on 25.3.2006 at about 7.30 A.M., there was a wordy quarrel between Paramila (2nd accused), wife of the appellant and PW3-Sivabakkiam in the public water tap and at the time of quarrel, accused Muthulakshmi (3rd accused) came over there. On seeing the

quarrel, the appellant (A1) came with crowbar and tried to attack PW3-Sivabakkiam. When PW1-Panneerselvam prevented, the appellant attacked PW1 and caused grievous injuries. The appellant also threatened with dire consequences.

3. On 27.3.2006, PW9-Ramachandran, Sub Inspector of Police of Padalur Police Station obtained Ex.P1-complaint statement from PW1 and registered Ex.P5-FIR in Crime No.98 of 2006 under Sections 294(b), 324 and 307 IPC against the accused 1 to 3. Since the Inspector of Police was on leave, PW9 took up the investigation and visited the scene of occurrence and prepared observation mahazar and rough sketch and also examined witnesses and recorded their statements.

4. On 8.4.1996 at 11.30 A.M., PW9 arrested the appellant and remanded him to judicial custody. Since the Inspector of Police joined duty, PW9 handed over the case file to PW10-Manickam, Inspector of Police for further investigation. PW10 took up the case for investigation and examined witnesses and Doctor who treated the victims and after completing the investigation, filed the charge sheet against the appellant and two other accused under Section 294(b), 324, 326 and 307 IPC before the Judicial Magistrate, Perambalur and thereafter, the case was committed to the Sessions Court.

5. In order to prove the case of the prosecution, the prosecution examined PWs 1 to 10 and marked Exs.P1 to P6. No oral and documentary evidence was adduced by the defence/accused.

6. Upon consideration of the oral and documentary evidence, the learned Sessions Judge came to the conclusion that the offence under Section 307 has not been made out, however, the learned Sessions Judge modified the Section to 324 IPC and convicted the appellant under Section 294(b), 324 and 326 IPC and sentenced him as aforesaid. By the same judgment, the learned Sessions Judge, convicted the accused Nos.2 and 3 and imposed fine of Rs.1000/- each, in default to undergo 1 month rigorous imprisonment. Aggrieved by the conviction and sentence imposed on the appellant, the appellant has filed the appeal.

7. Assailing the conviction and sentence imposed on the appellant, the learned counsel for the appellant submitted that the trial Court ought to have considered that there was a delay of 2 days in lodging the complaint and even after registering the FIR on 27.3.2006, the copy of the same was sent to the Court only on 28.3.2006. He would submit that the trial Court ought to have considered that the vital material object i.e., crowbar, which was said to have been used by the appellant to attack the victims has not been seized and produced before the Court.

8. The learned counsel would further submit that in respect of the quarrel, the appellant had also lodged a complaint before the respondent police, but the respondent police has not registered any case on the complaint lodged by the appellant. The learned counsel next submitted that the trial Court ought to have acquitted the appellant from the offence, as there was no clinching evidence to show that the appellant had committed the offence and prayed for allowing of the appeal.

9. Drawing the attention of this Court to the judgment of the trial Court, the learned Government Advocate (Criminal Side) submitted that the non-production of material object is not fatal to the case of the prosecution and the evidence adduced by the prosecution would clearly establish the conviction of the appellant. The medical evidence produced by the prosecution would clearly show that victims sustained injuries from the hands of the appellant. She would submit that after analysing the evidence adduced, the trial Court convicted the accused and imposed the sentence and the same warrants no interference.

10. I heard Mr.R.Sankarasubbu, learned counsel for the appellant and Mrs.T.P.Savitha, learned Government Advocate (Criminal Side) for the respondent and I have carefully examined the evidence, materials on record and the rival submissions.

11. The prosecution case rests entirely on the evidence of PW1. In his evidence PW1 stated that about three years back at about 7.00 A.M., his wife was taking water from the public tap and at that time there was a wordy quarrel between his wife and Muthulakshmi (A3) and Muthulakshmi scolded his wife with unparliamentary words. When PW1 asked the appellant, why they scolded like, immediately, the appellant went inside his house and brought the crowbar and tried to attack PW1's wife. When PW1 prevented, the appellant attacked PW1 and his mother Annapottu (PW2) and caused injuries to them. PW1 stated that the said incident was witnessed by Veerasamy (PW5) and Kaliyaperumal (PW4).

12. In his evidence, PW5-Veerasamy stated that on 25.3.2006 at 7.00 A.M., when he was going to the shop, he saw PW3-Sivabakkiam, A2 and A3 were scolding each other and he warned both parties. When he was returning from shop, he heard that the appellant attacked PW1 and PW2 with crowbar and caused injuries to them. PW5 further stated that he took both the injured to the hospital and one Muthusamy and PW4-Kaliaperumal accompanied him. But in his evidence, PW4-Kaliaperumal stated that he was not gone to the hospital.

13. Thus, from the evidence of PWs.5 and 4, it is clear that PW5 is only a hearsay witness and he has not actually witnessed the occurrence. In his evidence PW5 stated that PW4 accompanied

him to the hospital, whereas PW4 stated that he has not gone to the hospital. Since there are contradictions in the evidence of P.Ws.5 and 4, it is highly doubtful that they witnessed the occurrence as alleged by PW1.

14. According to the prosecution, the victims were treated by PW7-Dr.M.Selvaraj and issued Exs.P3 and P4-wound certificate and accident register respectfully. It is the say of the prosecution that from the evidence of PW7-Doctor and Exs.P3 and P4, it is clear that the appellant attacked the victims with crowbar and caused injuries to them. In his evidence PW7-Doctor stated that as far as the injuries sustained by PW1 was concerned, the injuries were simple in nature and the injuries sustained by PW2 was concerned the same were grievous in nature.

15. Drawing the attention of this Court to the cross-examination of PW7, the learned counsel for the appellant submitted that in his evidence PW7 admitted that if the alleged crowbar was used for attacking the victim, there was every possibility for broke open the skull of the victim, but in the instant case, there was no injury as such.

16. In this regard, it is pertinent to note that in the cross-examination, PW7-Doctor stated that the injuries of the victims were possible if they fell down themselves in the quarrel. Since the alleged wordy quarrel took place in a public tap wherein the floor is wet, there is every possibility for skating down in a wet floor in a quarrel.

17. In the case on hand, on the side of the prosecution, no seizure was made and no objects were seized from the scene of occurrence viz., the alleged crowbar, which was said to have been used by the appellant for commission of the offence and the blood stained clothes of the victims and/or bloodstained earth.

18. The learned counsel for the petitioner contended that it is a serious flaw on the side of the prosecution and that when the alleged crowbar has not been marked, it goes to the very root of the prosecution case and in such circumstances, the appellant/A1 should not have been convicted.

19. It is pertinent to point out that the main case of the prosecution is that the accused attacked PW1 and PW2 with crowbar, but, admittedly, the said weapon (crowbar) was never recovered or produced. There is no evidence produced by the Investigating Officer as to why, he has not produced the crowbar. No explanation has been put forth by the prosecution for the non- production of the material object, namely, crowbar. Merely, because there is injury, it will not be a ground to convict the appellant/A1 for the offence. The non-production of material object itself is fatal to this case. Since the

respondent have failed to produce material objects, the evidence of PW7-Doctor gains importance.

20. Coming to the delay in lodging the FIR is concerned, the learned counsel for the appellant contended that the occurrence said to have been taken place on 25.3.2006 at 7.30 A.M. Ex.P1-complaint statement said to have been obtained by PW9 from PW1 at the hospital on 27.3.2006 at 1.00 P.M., when PW9 visited the hospital for other purpose. Thus, it was contended that there is a delay of 2 days in lodging the complaint after the occurrence to the respondent police.

21. In respect of the arguments of the learned counsel for the appellant on the aspect of delay in registering the FIR, the learned Government Advocate would submit that the FIR was for the offence under Section 294(b), 324 and 307 IPC, which would not be deemed to be an express FIR., and the delay in registering the FIR cannot be taken as a ground for acquitting the accused, when the prosecution has proved the case by examining the injured witnesses.

22. This Court also perused the records and it is also seen that the prosecution has not taken steps to mark the X-ray of the victims, which is also a flaw.

23. Considering the facts and circumstances of this case, this Court finds that the delay in registering the FIR could not be taken as a ground for acquitting the accused, however, when the material object viz., crowbar had not been produced and marked before the Court below during the trial and when there is no reason or explanation with regard to the same, the non-production of the important material object (crowbar) would be fatal to the prosecution case. Moreover, this Court finds that the non-marking of the X-ray is also a flaw, which affects the prosecution case. In such circumstances, the conviction and sentence awarded by the Court below are liable to be set aside.

24. In the result, this Criminal Appeal is allowed. The conviction and sentence awarded by the trial Court on the appellant is set aside. The fine amount, if any, paid by the appellant is directed to be refunded to him and the bond executed by the appellant shall stand cancelled.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Sessions Judge,
Mahila Court,
Perambalur.

2.The Inspector of Police,
Padalur Police Station,
Peramablur District.

3.THe Judicial Magistrate,
Perambalur.

4.The Chief Judicial Magistrate,
Perambalur (For Information),

5.The Superintendent of Central Prison,
Trichy.

6.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.R.Sankarasubbu, Advocate, S.R.No.19295

Criminal Appeal No.5 of 2010

VBA (CO)

rrs 11/10/2018



WEB COPY