

Bail Slip.

The Appellant/Accused No.2 viz Ramesh, 29 years, S/o Perumal was released on bail as per order of this court dated 21.01.2011 in M.P.No.1/2010 in CrI.A. 529/2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2018

CORAM:

THE HON'BLE MR.JUSTICE R. PONGIAPPAN

CrI.A.No.529 of 2010 and
M.P.No.1 of 2010

Ramesh

..Appellant/A2

Vs.

State represented by
Inspector of Police,
Mangalamedu Police Station,
Ariyalur District.
In Crime No.213 of 2006.

.. Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, against the order of conviction and sentence dated 12.02.2008 made in S.C.No.148 of 2007 by the learned Additional District and Sessions Judge [Fast Track Court], Ariyalur.

For Appellant : Mr.T.Arulraj

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

JUDGEMENT

The present appeal has been directed against the conviction and sentence awarded by the learned Additional District and Sessions Judge [Fast Track Court], Ariyalur in S.C.No.148 of 2007, dated 12.02.2008.

2. The appellant herein is the second accused in the above said case. Along with one another accused, he stood charged for the offence under Section 394 r/w 34 and 397 r/w 34 IPC. By judgment dated 12.02.2008, which is impugned herein, the trial Court convicted him for the aforesaid offences and sentenced to

undergo rigorous imprisonment for 7 years and to pay a fine of Rs.5,000/- in default to undergo 3 months simple imprisonment for each offences. Challenging the aforesaid conviction and sentence, the appellant is before this Court with the present Criminal Appeal.

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

[i]. PW1 [Ramesh] is an auto driver in Indira Nagar. He used to pick up the customers as well as the domestic articles in the locality of Thozhuthur on hire basis. On 03.09.2006 at about 2.00pm, the appellant and another accused Sankar took PW1's auto bearing Regn.No.TN45 AB 3848 for transporting bureau and cot. When the auto reached to Chinnaru, they asked the PW1 to stop the auto for purchasing domestic articles, after purchasing the same, they directed the PW1 to go to Namaiyur, but in a way, they stopped the auto; took the key of it; tied PW1's hands back and pushed him from the auto. Further, they attacked PW1 and cut his neck by a weapon and ran away with the auto, as a result of which, PW1 went to the stage of unconscious. After recovery, PW1 rushed to the Police Station and gave Ex.P1 complaint. Thereafter, he went to the Government Hospital, where, he was treated by PW9 [Dr.Sekar], who, after examining PW1, issued Ex.P6 accident register.

[ii]. PW11-Ayyanar, the then Inspector of Police, Mangalamedu, on receipt of Ex.P1 complaint given by PW1, registered (Ex.P10) FIR in Crime No.29 of 2006 for the offence under Section 394 IPC. Subsequently, he recovered the blood stained shirt, lungi and nylon from PW1. Thereafter, he went to the scene of occurrence and prepared Ex.P2 Observation Mahazar and drew (Ex.P11) Rough Sketch. Further, he made arrangements for taking photographs of PW1 and the vehicle, which was stolen away at the time of occurrence. That apart, he examined the witnesses and recorded their statements. On 07.09.2006, during the time of vehicle's checkup, the appellant and another accused were arrested. Thereafter, PW11 examined the accused and obtained their confession statements, based on which, he recovered the stolen auto and knife from them.

[iii]. In the mean while, based on Ex.P7 order passed by the learned Chief Judicial Magistrate, P.W.10 -then Judicial Magistrate, Ariyalur conducted an identification parade and submitted Ex.P9 report. During the time of identification parade, PW1 [Ramesh] correctly identified the accused. After completing the investigation, PW11 altered the charges into one under Sections 394 and 397 IPC and filed a final report before the learned Chief Judicial Magistrate, Ariyalur. The final report was taken on file as P.R.C.No.30 of 2007 and it was committed to the Court of Sessions, Ariyalur Division and was renumbered as S.C.No.148 of 2007, which was taken up for trial

by the learned Additional District and Sessions Judge [Fast Track Court], Ariyalur. Further, the charges have been altered into one for the offences under Sections 394 r/w 34 IPC and 397 r/w 394 r/w 34 I.P.C.

(iv). From the materials available, the Trial Court framed the charges as stated in the first paragraph of this judgment, for which, both of them pleaded not guilty. In order to prove the guilt of the accused, the prosecution examined 11 witnesses as P.W.1 to P.W.11 and marked 13 documents as Exs.P1 to P13, besides, M.O.1 to M.O.5 material objects. However, no one was examined and no document was marked on the side of the accused.

4. The trial Court, after analysing the oral and documentary evidence, concluded that the appellant was found guilty of the offences as referred to above and sentenced him for the same. Aggrieved over the same, the appellant is before this Court.

[i]. Before going into the merits of the case, it is but necessary to look into the major evidence adduced by the parties, which run thus:

PW1 [Ramesh] in his evidence, stated in detail about the incident that took place on 03.09.2006, lodging of the complaint, the treatment undertaken by him at the Government Hospital and identification of the accused by him etc.

PW7 [Rajendran] deposed that he is a witness to the observation mahazar and rough sketch prepared by the Investigating Officer.

PW9 [Dr.Sekar] who was working as Doctor in Government Hospital, Civil Surgeon, Mangalamedu, after examining PW1, found the following injuries:

"(1) Lacerated injury over the anterior aspect of neck 4 x 3 x 1 cm size edges irregular, on right side end of the wound size tapured with two tails.

(2) Three 1cm length incised injuries just into to 1st injury upper side of the neck.

(3) Contusion upper elbow 3 x 3 patient admitted in AE ward."

and issued Ex.P6 accident register.

PW10 [A.K.K.Rajani] who is the then Judicial Magistrate, Ariyalur, has deposed in detail about the conduct of identification parade and identification of the accused by PW1.

PW11 [Ayyanar] is the Investigating officer, who stated in his evidence about the registration of the FIR, preparation of the observation mahazar, rough sketch, arrest of the accused, recovery of the material objects and filing of charge sheet etc.

5. I have heard the arguments of Mr.T.Arulraj, learned counsel appearing for the appellant/A2 and Mrs.T.P. Savitha, learned Government Advocate (Criminal Side) appearing for the State and also perused the records carefully.

6. The learned counsel for the appellant made the following contentions:

(i). PW1, during the course of his cross examination, stated that only after seeing the photographs of the accused, he identified the appellant/A2 in the identification parade before the learned Judicial Magistrate, based on which, the learned Judicial Magistrate filed her report, whereas, he stated in the trial proceedings that he has not identified the appellant. As such, the accused have not committed the aforesaid offences and they have been falsely implicated as accused in this case.

(ii). In the First Information Report, based on the complaint lodged by PW1, it was stated that at the time of occurrence, the accused used knife for cutting his neck. On the other hand, before the Doctor, who treated him, he has stated that the accused used blade for cutting his neck. The said contradiction found in his evidence would shatter the entire case of the prosecution.

(iii). As per the evidence of PW1, the police station is situated within five kilometers from the scene of occurrence, whereas, according to the First Information Report, the distance between the occurrence place and the police station is only two kilometers. In such circumstances, the delay in lodging the complaint by PW1 would create a doubt about the case of the prosecution.

(iv). The trial Court convicted the accused for the offences punishable under Sections 394 r/w 34 and 397 r/w 34 IPC, which, according to the learned counsel, is purely illegal for the single occurrence and is fatal to the case of the prosecution.

7. Regarding the first contention, it is true that PW1, during the course of his cross examination, has categorically stated that before entering into the jail, the police, who was present at that time, has shown the photographs of the accused. As such, the said evidence would shatter the case of the prosecution with regard to the report submitted by the learned Judicial Magistrate relating to identification of the accused by PW1. However, during trial, PW1 clearly identified the appellant and the other accused. Moreover, as per the case of the prosecution, the alleged incident had happened in a day light. In such event, it is not necessary for PW1 to identify the appellant at the time of identification parade, before the learned Judicial Magistrate and his identification before the trial Court itself is sufficient enough to implicate the appellant as an accused in this case. Consequently, the first contention is rejected.

8. With regard to the second contention, it is necessary to see the evidence of PW1, in which, he categorically stated that at the time of cutting his neck, the accused have used one unknown weapon. Further, as per the Accident Register, PW1 sustained one lacerated injury and one contusion. This Court is of the opinion that if a person is attacking another person by using knife or blade, which makes an injury, the doctor is the competent person to say about the type of weapon used. Apart from that, if a injured person came to the hospital for getting treatment, the first and foremost duty of the doctor is to give proper and sufficient treatment and it is not necessary for him to record the particulars about the incident. As such, the said contradiction between the averments in the First Information Report and the evidence of PW1 is not at all trustworthy to disprove the case of the prosecution. Accordingly, the second contention is rejected.

9. The third contention raised by the learned counsel for the appellant is that the delay in lodging the complaint has not been properly explained by the prosecution and the same would amount to fatal to the case of the prosecution. As per the evidence given by PW1, the alleged occurrence had happened at 2.00 p.m. and the case has been registered by the respondent police, at 5.00pm on the same day. In my view, though the distance between the occurrence place and the police station is two kilometers, it is reasonable to take 3.00 hours for receiving and registering the case by the police. Therefore, this Court cannot hold it as much delay to disbelieve the case of the prosecution, in view of the fact that the defacto complainant sustained injuries on his neck, for which, he has to first get some first aid and thereafter only, lodge a complaint. Accordingly, the said submission is also rejected.

10. It is true that the Trial Court convicted the accused for two offences. In the alleged occurrence, two persons were involved. As discussed earlier, the weapon used by the accused has not been explained by the Trial Court in a proper manner and it created suspicion as to whether the accused used blade or knife for committing the aforesaid offences. Further, according to the evidence of PW9-Dr.Sekar, PW1 sustained only simple injury. In such circumstances, punishing the accused for the offence under Section 397 IPC is illegal and unsustainable in law. However, the act committed by the accused would attract the offence under Section 394 IPC. Hence, this Court hold that the accused have committed the offence under Section 394 IPC alone. To that extent, the conviction and sentence imposed by the trial court requires modification.

11. In the result, this Criminal Appeal is partly allowed by setting aside the conviction and sentence imposed on the

appellant for the offence under Section 397 r/w 34 IPC. Consequently, the appellant is acquitted from the same. Bail bond executed, if any, shall stand terminated. Fine amount paid, if any, is directed to be refunded to the appellant. However, the conviction and sentence imposed on him for the offence under Section 394 r/w 34 IPC is hereby confirmed.

-s/d-

Assistant Registrar(CS-IX)

True Copy

Sub-Assistant Registrar

msm

To

1. The Additional District and Sessions Judge-cum-Fast Track Court, Ariyalur District
2. The Judicial Magistrate, Perambalur.
3. The Chief Judicial Magistrate, Perambalur.
4. The Inspector of Police Mangalamedu Police Station Ariyalur District.
5. The Public Prosecutor High Court, Madras 104.
6. The Superintendent, Central Prison, Tiruchirapalli

सत्यमेव जयते

CrI.A.No. 529 of 2010

CA(CO)
SP(12/11/2018)

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