

Bail Slip

The Appellant/Sole Accused namely Arokiyasamy, S/O. Bakiyanathan be and hereby was directed to released on bail dt.11.11.2010 made in MP No. 1 of 2010 in Cr1.A.No.616/1 on file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2018

CORAM:

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

Cr1.A.No.616 of 2010

Arokiyasamy

...Appellant/Sole Accused

Vs.

State by the Inspector of Police,
R-1 Mambalam Police Station,
Chennai.
(Crime No.1539/1999)

...Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., to call for the entire records in connection with the S.C.No.23 of 2002 on the file of the learned Vth Additional Sessions Judge, Chennai and set aside the Judgment dated 22.03.2010.

For Appellant : Mr.E.Kannadasan

For Respondent : Mrs.T.P.Savitha
Government Advocate (Cr1.Side)

JUDGMENT

This criminal appeal is preferred by the appellant/accused against the judgment and sentence passed by the learned V Additional Sessions Judge, Chennai in S.C.No.23 of 2002 dated 22.3.2010 to undergo simple imprisonment of one month under section 341 of IPC and sentence to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1000/- in default to undergo simple imprisonment of one year for the offences under section 307 of IPC.

2.Brief case of the appellant/accused

The prosecution case is that PW1 Savarimuthu resident of Aavarampattu. Manaparai Taluk came down to Chennai for avocation

and he was working as a driver in Perinbavilas mansion, situated at T.Nagar, Chennai. PW1 initially stayed at the house of one Raja who is the brother in law of the appellant/accused Arokiasamy and also took food in the house of the said Raja as a paying guest. Whiles, PW1 developed illicit intimacy with the wife of Raja namely Suseela and which was disliked by the accused. As such the appellant/accused warned PW1 not to have any further contact with his sister Suseela, which forced PW1 to leave the house of Raja and stayed at owner's house. That on 12.11.1999 on the basis of the information received by Suseela, PW1 Savarimuthu went to the house of Raja in order to meet Suseela and on the way PW1 came to know the presence of the accused at the house of Raja. Therefore he returned to his owner's house. The said attempt made by PW1 reached the knowledge of the appellant/accused which creates irritation to him. As a result the appellant/accused went to T.Nagar with the sole reason to attack PW1. That on 13.11.1999 at about 10.00 AM at Natesan Road in front of the house bearing door No.5 while PW1 told to the accused, that as he was invited, he tried to meet Suseela. The appellant/accused got wild and warned PW1 not to have further visit and scolded PW1 in a filthy language. During the course of the same transaction, the appellant/accused took out a knife kept on his back and with an intention to kill PW1, in discriminately attacked PW1 over the right side forearm, both side of the cheek, right leg ankle, right thigh, back side of the neck and over body and thereby caused multiple injuries and due to the sudden attack PW1 fell down on the ground. PW2 Johnson who is the brother of the owner of the PW1 and one Baskar working in Rich Hotel, on hearing the hue and cry, rushed to the spot of occurrence and lifted PW1 to Mambalam Police Station in a car in order to lodge complaint and thereafter they went to Royapettah Hospital for treatment. While PW1 was in the hospital, his statement was recorded. The respondent police registered a case in Crime Number 1539 of 1999 for the offences under section 307 of IPC.

3.The case in C.C.No.1569 on the file of the learned XVII Metropolitan Magistrate, Saidapet, Chennai was committed to the next Court of the sessions, vide order dated 11.1.2002. The learned principal judge, City Civil Court, Chennai vide dated 29.1.2002 made over this case to the Vth Additional Sessions Judge, City Civil Court for disposal according to law.

4.PW6 Swaminathan, Head Constable, R1-Mambalam Police Station proceeded to Royapettah hospital at the instruction of the sub inspector of police.

5.PW7 Dr.Khadri, Medical Officer attached to casualty of Royapettah Hospital on 13.11.1999 at 10.30AM PW1 was brought before him by PW6 for treatment allegedly assaulted by known person by name Arokiasamy with Aruval about ½ an hour back on the same day. PW7 Doctor examined PW1 and found the following

injuries:

- 1) A 12 cm cut which was deep cut at the junction of head and neck
- 2) 6 cm long and deep cut on the right cheek
- 3) 8 cm long and deep injury on the left cheek extending below the ear
- 4) 4 cm long and deep cut over the left intraocular region
- 5) 6 cm long and deep cut on the right fore arm and that was cutting both the bones and muscles
- 6) 8 cm long and 3 cm deep cut on the right thigh
- 7) 6 cm long and deep cut on the right leg
- 8) There was a deep cut on the base of the right thumb and cutting the tend one.

6. PW1 was referred to the Government General Hospital, Chennai for further treatment. PW10 K.Velayutham the Sub Inspector of Police examined PW1 and obtained Ex-P1 complaint statement. PW1 suffered injury on both hands, had obtained thumb impression on Ex-P1 in the presence of PW2 Johnson and Baskaran. Thereafter PW10 recovered blood stained shirt and pant of PW1 under cover of mahazar in the presence of the witnesses PW 2 Johnson and Baskaran.

7. PW9 Dr. Periyasamy attached to Government General Hospital, Chennai PW1 was produced before him by PW6. PW9 examined PW1 and found cut injuries over the body. The particulars stated by PW1 and his observation was reduced in to writing in the accident register and issued Ex.P8 A.R.Copy.

8. PW8 Dr. Pandiselvam examined PW 1 and taken x rays found the fracture on right fore arm, and right let ankle and PW 1 was discharged from the hospital on 13.12.1999 and issued Ex.P7 certificate stating that the injury sustained by PW1 was grievous in nature.

9. PW10 Sub Inspector of Police, receipt of Ex-P1 complaint statement and registered a case in Crime No.153 of 1999 under Section 307 of IPC. The original information report was marked as Ex.P9. PW10 examined PW1 and PW2 and Baskaran and recorded their statements. PW 10 went to the scene of occurrence and in the presence of PW3 Kaliappan and Narayanan recorded their statements and prepared Ex.P.10 observation mahazar and also drawn Ex-P11 rough sketch. PW10 has taken blood stained cement road piece without blood and recovered Ex.P12 recovery mahazar in the presence of PW3 Kaliappan and Narayanan.

10. PW10 arrested the accused in the presence of PW4 and PW5. Accused voluntarily confession disclosing the police where he hidden the knife and also expressed the desire to take out the

weapons and to hand over to the police if he had been taken to the place. The admissible portion of the confession was marked as Ex.P13. PW 10 recovered the knife and also recovered the blood stained full hand sleeve under Ex.P.14 cover of mahazar and obtained the signature of the witnesses.

11.The learned trial Court framed the charges against the appellant/accused under section 341 of 307 of IPC. The appellant /accused denied the charges.

12.During the trial, the prosecution examined PWs1 to 11, marked Exhibits-P1 to P15 and no witness was examined on the side of the appellant/accused.

13.After the trial, on appreciating the material available on record, the learned trial Court convicted the appellant/accused for the offences under section 341 of 307 of IPC and sentenced to undergo a sentence of simple imprisonment for one month and to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1000/- in default to undergo simple imprisonment of one year. Aggrieved over the same, the appellant/accused preferred this criminal appeal.

14.The learned counsel for the appellant/accused submits that the trial Court has erred in convicting the appellant only on the basis of the oral evidence adduced by the PW1 and PW2.

15.The learned counsel for the appellant/accused submits that the trial Court has erred in failed to see the contradiction available between the evidence of PW2 and PW6 namely Johnson and the Head constable regarding the manner of occurrence and after the occurrence they were taken the injured into the hospital. PW2 stated in his evidence that he heard the hue and cry and rushed to the scene of occurrence, on lifted the PW1 to Mambalam Police Station in a car in order to lodged a complaint. Whereas PW 6 stated in his evidence that PW2 alone case to the police station in a car and informed him that his driver was sustained cut injury at about 10.10 am and he want to see the injured person and he went along with PW 2 at the scene of occurrence and there he found that PW 1 with injury on his head and on his body to save his life take the injured in the car at Government Hospital. The above said contradiction was puts forth by the defence counsel. But the trial Court has erred in rejected the same.

16.The learned counsel for the appellant/accused submits that the trial Court has erred in failed to see that the main material and independent witnesses namely PW3, PW4 and PW5 were turned hostile, those who are the main witnesses for the above case and they are the eye-witnesses and observation mahazar witnesses and they were witnessed the arrest and confession and leading to seizure of the weapon. But they were not supported the prosecution. The prosecution failed to establish their case beyond all reasonable doubt against the appellant/accused.

17.The learned counsel for the appellant/accused submits that the trial Court has erred in convicting the appellant under section 307 of IPC only on the basis of the oral evidence adduced by the PW8. But the prosecution failed to produced and marked the X-ray to the PW8. The non producing and marking the X-ray as exhibits is fatal to the prosecution.

18.The learned counsel for the appellant/accused submits that the trial Court has erred to see that the prosecution failed to establish the motive between the appellant/accused and the PW1 by examining the witnesses namely owner of the PW1 namely Baskaran, Suseela, and Raja those who are the concerned persons to prove the prosecution case. The non examination of the material is fatal to the prosecution.

19.The learned counsel for the appellant/accused submits that the trial Court has erred to convicting the appellant/accused without producing the M.O.'s before the Court namely the Aruval and other articles. The non availability of the weapon, the appellant/accused counsel unable to cross examine the doctor by showing weapon and possibility of causing through the M.O. The non producing the material object before the Court is highly fatal to the prosecution.

20.The learned Government Advocate (Criminal Side) appearing for the respondent supported the findings of the trial Court and sought for dismissal of the appeal.

21.I heard Mr.E.Kannadasan, learned counsel for the appellant and Mrs.T.P.Savitha, learned Government Advocate (Criminal Side) for the respondent and perused the entire materials available on record.

22.In the case on hand, PW1, the injured deposed about the manner of attack and injuries sustained all over his body. The evidences of Pws-7, 8, 9 and documentary evidences of Exhibits-P6, P7 and P8 established the injuries as grievous in nature.

23.To substantiate the allegation attributed against the appellant/accused, the prosecution cited PW1 Savarimuthu and PW2 Johnson and one Baskaran, employee in Rich Hotel.

24.To this contra, PW8 Doctor Pandiselvam deposed that he examined PW1 as an in-patient and issued Exhibit P7 opinion on 13.12.1999. But in the evidence of PW9 Doctor Periyasamy, he deposed that PW1 Savarimuthu who undergone treatment from 13.11.1999 was not admitted in the ward and he did not given treatment to PW1. The suggestion put forward by the counsel for the appellant/accused was in consonance with the evidence of PW7 Dr.Khadri.

25.The entire crux of the case is that PW 1 was not admitted as in-patient in the hospital and the injuries sustained by him was due to the accident occurred. This suggestion was improved in the evidence of PWS-7 to 9 and corroborated with the evidence

of PW2.

26.The evidence of PW6 would show that PW1 was brought to the police station in a car by PW2 where he was lying in a pool of blood and admitted in the hospital. In the evidence of PW2, it can be seen that after getting initial treatment at Royapettah Government Hospital, PW1 was again transferred to Central Government Hospital. Further PW4 and PW5 did not support the Exhibit-P13 disclosure statement made by the appellant/accused.

27.In this case, there are material contradictions in the evidences of the witnesses examined by the prosecution which affects the root of the case on the following aspects:

i) The case property was not sent to the Court within time and the delay was not properly explained.

ii) The case of occurrence is doubtful

iii) The Form 95 particulars do not reveal the recovery of case property.

iv) The appellant /accused recovery falsified through the evidences of PW4 and 5.

v) PW1 did not sustained injury as alleged by him which was supported by the evidences of PW 2 and PWs 7 to 9.

vi) No public witness was examined near the scene of occurrence.

28.In the result:

a) This criminal appeal is allowed and thereby the conviction and sentence imposed on the appellant in S.C.No.23 of 2002, dated 22.3.2010, on the file of the learned V Additional Sessions Judge, Chennai, is set aside;

b) The appellant/accused is acquitted from all the charges and the fine amount if any paid by the appellant/accused shall be refunded by the trial Court;

c) The bail bond if any executed by the appellant/accused is stands cancelled.

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Assistant Registrar

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Sub Assistant Registrar

VS

To

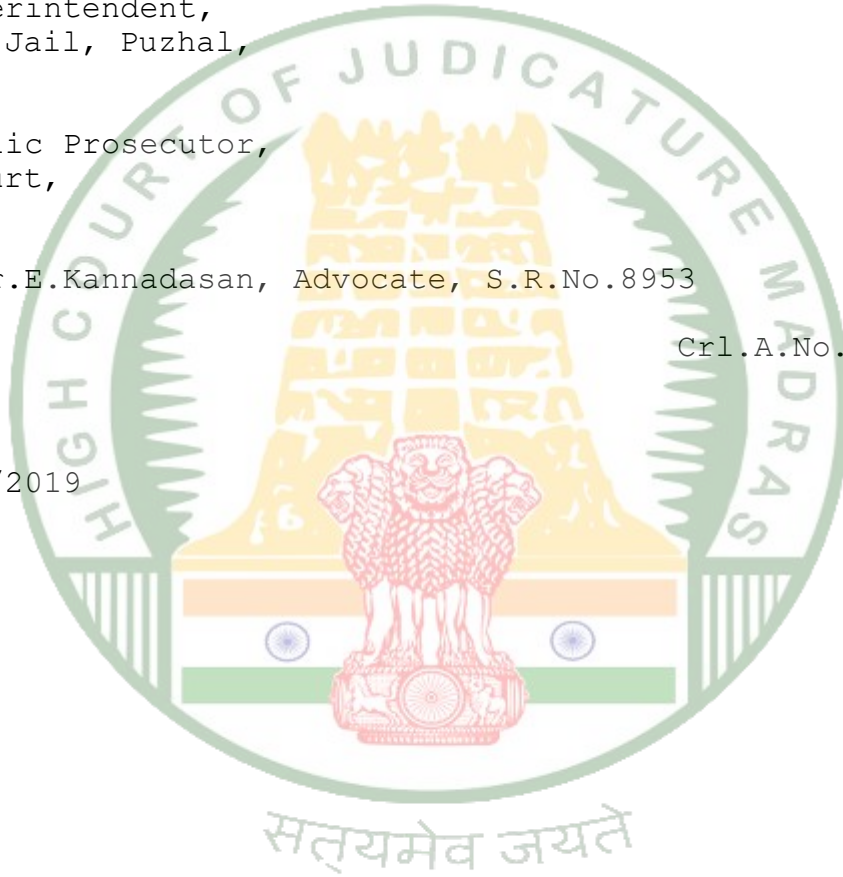
- 1.The V Additional Sessions Judge,
Chennai.
- 2.The XVII Metropolitan Magistrate Court,
Saidapet, Chennai -15.
- 3.The Inspector of Police,
R1, Mambalam Police Station,
Chennai.
- 4.The Superintendent,
Central Jail, Puzhal,
Chennai.
- 5.The Public Prosecutor,
High Court,
Madras.

+1cc to Mr.E.Kannadasan, Advocate, S.R.No.8953

Cr1.A.No.616 of 2010

KJ(CO)

rrs 18/03/2019



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