

Bail Slip

The Appellant, namely K. Balamurugan, (Accused in S.C.NO.277 of 2010 on the file of the Additional District Court Y& Fast Track Court No.V, Chennai) was released on bail vide order of this court, dated 11.02.2011 in MP.NO.1/11 in Crl.A.655 of 2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN

Crl.A.No.655 of 2010

K.Balamurugan ... Appellant/ Single Accused

Vs.

The State Rep.by its
The Inspector of Police,
K7, I.C.F. Police Station,
Chennai - 38.
(Crime No.658 of 2009)

... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to set aside the conviction and sentence passed in S.C.No.277 of 2010 by the Additional District Court & Fast Track Court No.V Chennai dated 21.09.2010 and acquit the appellant.

For Appellant : K.Balaji

For Respondent : Mrs.T.P.Savitha
Government Advocate (Crl.side)

J U D G M E N T

The appellant herein is the sole accused in S.C.No.277/2010 on the file of Additional District and Sessions Judge, Fast Track Court, Chennai - 1.

2. In the said case, he was convicted for the offence under Section 307 (2 Counts) and sentenced to undergo 7 years rigorous imprisonment and to pay a fine of Rs.2,000/- in default to undergo 3 months rigorous imprisonment for each count. Further, he was convicted for the offence under Section 323 IPC and sentenced to undergo 3 months rigorous imprisonment. Apart

from that, he was further convicted for the offence under Section 506(ii) IPC and sentenced to undergo 2 years rigorous imprisonment.

3. Against the said conviction and sentence, the appellant stands before this Court.

4. The case of the prosecution is as follows:-

i) On 08.12.2009 at about 10.00 pm., near to the I.C.F., Primary School when the act of appellant is questioned by P.W.2 Dhilip Kumar, he abused in filthy language, pulled his shirt and fisted on his face due to which he lost the balance and fell down. The said act is questioned by P.W.1-Purushothaman for which the appellant took out the bottle from the dust bin, broke it and by using the broken bottle piece stabbed the defacto complainant (P.W.1) with force on his abdomen and later by using the same broken glass bottle assaulted the P.W.2 on his left side chest. Further, the accused made criminal intimidation as to cause death if they complain to the police and went away from the place with the girl. Admittedly, she is the former lover of P.W.2.

ii) After hearing the news, P.Ws.3 and 4 who are the parents of P.W.1 and 2, came to the scene of occurrence and took P.W.1 and 2 to the K.M.C. Hospital for giving necessary treatment. In Kilpauk medical college Hospital, P.W.6 Mani was working as doctor. He admitted P.W.1 and P.W.2 and issued Accident Register Copy in respect to P.Ws.1 and 2 under Ex.P5 and P6 respectively. Thereafter, P.W.7 treated P.W.2 Dhilip Kumar and issued certificate under Ex.P3 stating that the injury sustained by him is simple in nature. In the same way, P.W.11 Dr.S.Venugopal treated P.W.1 and issued a certificate under Ex.P8 in which he gave opinion as the injury sustained by P.W.1 is grievous in nature.

iii) P.W.12 Iyyaappan was working as Sub Inspector of Police, K.7., I.C.F., Police Station. On 08.12.2009, he received intimation from the Kilpauk Medical College with regard to the admission of P.Ws.1 and 2. Immediately, he rushed to the hospital and recorded the statement of P.W.1 under Ex.P1. Thereafter, he went to the police station and registered a case in Crime No.658/2009 under Sections 341, 323, 324, 307, 506 (Part 2) IPC. Ex.P9 is the First Information Report. After the registration of the case, he handed over the case records to the Inspector of Police for investigation.

iv) P.W.13 when he was working as Inspector of Police in D7, Arasinar thottam received the case records from P.W.12. After receiving the case records, he rushed to the place of

occurrence and in the presence of P.W.6 and one Maran he prepared a observation mahazar under Ex.P.10. Further, he draw the rough sketch under Ex.P11. After the preparation of those documents, he went to the hospital in which P.W.1 and P.W.2 admitted and recorded statements from the injured as well as from the witnesses who saw the occurrence.

v) During the course of investigation on 09.12.2009 at about 10.30 am., near New Avadi Road, he arrested the accused and recorded the confession statement from the accused. In the confession, the accused admitted the guilt and he was willing to identify the weapon, which was used for the commission of offence. Further, he took the investigation officer and the witness to the scene of occurrence and handed over the broken glass to the investigation officer, the same was recovered by the investigating officer under the cover of mahazar. On the same day in the evening hours, he recovered blood stained lungi and shirt from P.W.1 under the cover of mahazar. After recovering the same, he had taken steps to send it for chemical examination. Subsequently, after receiving chemical examination report, he completed the investigation and laid charge sheet.

vi) In the trial Court, after taking cognizance, charges have been framed against the accused for the offence under Sections 307 IPC (2 counts) 323 and 506(ii) IPC. After framing the charges, 13 witnesses were examined on the side of prosecution besides 15 documents are marked as Ex.P1 to P15. Further, 2 material objects were marked as MOs1 and 2. After concluding the trial, the learned Additional District and Sessions judge came to the conclusion that the appellant is found guilty for the offences under Sections 307(2 counts), 323 and 506(ii) IPC and sentenced him to undergo the period already mentioned. Now challenging the said conviction, the appellant approached this Court by way of this appeal.

5. Heard the arguments of Mr.K.Balaji learned counsel for the appellant and Ms.T.P.Savitha learned Government Advocate for the respondent.

6. The learned counsel appearing for the appellant would submit his contention in three folds. According to him,

1.the place of occurrence is not properly explained by the prosecution witnesses

2.Material objects are not recovered as stated by the investigating officer

3. Serology report not produced

4.no independent witnesses were examined on the side of prosecution.

7. With regard to the first contention raised by the counsel, it is true, at the time of admitting PW.1 and 2 in the hospital, P.W.1 stated before the doctor that the alleged occurrence had happened near to ICF Police Station, another injured i.e., P.W.2 stated before the doctor that the alleged occurrence had happened in ICF. In this regard, on going through the charges framed against the appellant, it appears that it was mentioned that the alleged occurrence had happened near ICF Primary School. With regard to this contention, the learned Government Advocate would submit the places which were mentioned as above are all situated one by one, since the occurrence has happened at 10.00 pm. It is not easy to name the correct location.

8. Now, considering the submissions made by either side, it is true in the rough sketch prepared by investigating officer, it was mentioned that the railway protection force, newly constructed building and I.C.F Colony, primary school are situated one by one.

9. Further, the distance between the ICF Primary School is only 50ft from the Police Station. Since the name mentioned by the witnesses are situated as one by one calling the occurrence place in different name would not affect the case of prosecution.

10. With regard to the second contention raised by the learned counsel appearing for the appellant, it appears that P.W.6 is the witness who attested the recovery mahazar. According to him, broken bottle used for the commission of offence was recovered through the appellant. In this regard as per the evidence given by the doctor, who treated P.W.1 it was mentioned that at the time of getting treatment, P.W.1 stated that he was assaulted by using knife. On the other hand, P.W.2 stated that he was assaulted through the weapon without any identification. At the same time, as per the case of the investigation, the appellant used the broken glass bottle and assaulted P.Ws.1 and 2. In this regard, on going through the evidence given by P.W.1 it is seen that he stated in the chief examination, by using the broken glass piece, the appellant assaulted him. As per the evidence given by the P.W.1 in the chief examination, he clearly stated that the appellant used only broken glass. The said evidence given by him is clearly corroborated through the evidence of another injured Dhilip Kumar. Further in this case, in support of the prosecution P.W.5 Vidya was examined as eye witness to the alleged occurrence. She also stated that during the time of alleged occurrence, the appellant used the broken glass and assaulted P.W.1.

11. In the said circumstances the evidence given by

P.Ws.1, 2 and 5 with regard to the weapon used by the appellant is convincing one. So the contradiction available in the evidence given by the doctor is not a ground for allowing the appeal.

12. The 3rd contention raised by the learned counsel for the appellant is that serology report was not marked in this case. Now on going through the entire case, it was alleged at the time of occurrence, the appellant assaulted P.W.1 and 2. The said act of the appellant was clearly elucidated in the evidence of P.Ws.1, 2 and 5. In the said circumstances, even though, the investigation officer stated in his evidence as the blood stained cloth is recovered, he had not stated any thing with regard to obtaining serology report. Since the evidence given by P.Ws.2 and 5 is cogent and convincing one, non-marking of the serology report alone is not fatal to conclude the appeal in favour of the appellant.

13. Finally, the learned counsel made a submission before this Court that no independent witnesses were examined on the side of the prosecution. It is true that except P.W.1, 2 and 5, no other witnesses were examined on the side of the prosecution to elicit the alleged occurrence. In this regard, P.W.5 stated in his evidence that previous to the occurrence, he knew the appellant. That apart, he had not stated anything about the relationship with P.Ws.1 and 2. Further on the side of the appellant, there is no contention that P.W.5 is a interested witness in this case.

14. It is already settled that solitary testimony of single evidence is sufficient to hold the case of prosecution is true one, subject to the condition that the evidence is wholly reliable one. In this case, the evidence given by P.W.1 and 2 is in the form of cogent and convincing one.

15. Further, on going through the evidence given by P.Ws.1 and 2 the alleged occurrence had happened without any motive and knowledge. For convicting to the offence 307 the prosecution has to prove that the appellant had intention to kill the P.W.1 and P.W.2. But in this case, no such evidence is let in by P.W.1 and P.W.2. But, in the trial Court, the appellant is convicted for the offence under Section 307 (2 counts) IPC. Further, in this regard since the appellant is convicted for the offence under Section 307 IPC convicting for the offence 323 IPC is not necessary. So this Court concludes that the appellant had voluntarily caused grievous hurt by using the deadly weapon to P.W.1 and in the same way caused simple hurt to P.W.2.

16. Accordingly, this Court holds that the appellant

committed the offence punishable under Sections 326, 324 IPC alone, so the conviction awarded by trial Court is set aside. Now coming to the point of punishment as per the case records, at the time of offence the appellant is aged about 20 years.

17. Hence, while confirming the conviction for the offence under Section 326 IPC, the sentence awarded is modified to 3 years R.I. and for Section 324 IPC, the sentence awarded is modified to 1 year. It is reported that appellant is on bail. Bail bonds, if any, executed by the appellant would remain cancelled forthwith and the trial Court is directed to secure the presence of appellant and commit him to the prison to serve the rest of the sentence imposed on him. Further it is ordered to run the sentence concurrently. 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.

18. Accordingly, appeal is partly allowed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

AT

To

1. The Additional District and Sessions Judge,
Fast Track Court No.V, Chennai.
 2. The Principal District and Sessions Judge, Chennai.
 3. The Inspector of Police,
K7, I.C.F. Police Station, Chennai - 38.
 4. The Superintendent, Central Prison,
Puzhal, Chennai.
 5. The District Collector, Chennai.
 6. The Director General of Police,
Mylapore, Chennai-4.
 7. The Public Prosecutor, High Court, Madras.
- Copy to: The Section Officer,
Criminal Section, High Court, Madras.

+ 1 cc to MR.K.Balaji, Advocate Sr.41342

CrI.A.No.655 of 2010

GJ(CO)

EU(18/09/2018)