



Bail Slip

The Petitioner/Accused viz., Raja (@) Paranjothi was directed to be released on bail as per the order of this Court dated 24/11/2010 in Crl.M.P. No.1 of 2010 in Crl A.No.716 of 2010 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Criminal Appeal No.716 of 2010

Raja (@) Paranjothi

.....Appellant

Vs

The State Rep. by
The Inspector of Police, L & O,
R-9, Valasarawalkkam Police Station,
Crime No. 860/2008.

.....Respondent

Prayer: Criminal Appeal filed under Section 374(2) of the code of Criminal Procedure, to set aside the conviction and sentence dated 30.10.2010 passed in S.C.No.109 of 2010 on the file of Additional Sessions Judge (FTC-I), Poonamallee.

For Appellant : Mr.R.C.Paul Kanagaraj

For Respondent : Ms. T.P. Savitha
Govt. Advocate (Crl.side)

J U D G M E N T

The sole accused in S.C.No.109 of 2010 on the file of Additional Sessions Judge (Fast Track Court -I) Poonamallee is the appellant here in, he stood charged for the offences under Sections 352, 435 and 506(i) IPC by judgment dated 30.10.2010. The learned Additional Sessions Judge (Fast Track Court -I), convicted the accused under Section 352 IPC and sentenced to pay a fine of Rs.5,00/- in default to undergo 15 days simple imprisonment, he has been convicted under Section 506(i) of IPC and sentenced to pay a fine of Rs.5,000/- in default to undergo 3 months simple imprisonment, he has been further convicted



under Section 435 of IPC and sentenced to undergo 2 years rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo 3 months simple imprisonment.

The case of the prosecution in brief is as follows:

2. P.W.1 Anand was residing in Azhvarthirunagar, Chennai, the appellant herein is also residing in the same area in which P.W.1 is residing. P.Ws.2 and 3 are the close relatives of P.W.1. Before the occurrence, P.W.1 being the vegetable vendor known to the accused. Further, he received a loan of Rs.20,000/- from one Siva and hand it over the same to one Lakshmanan. At the time of demanding the Lakshmanan for repaying the said loan, the said Lakshmanan promised to repay the loan amount after selling his shop. While so, with the help of the appellant, the said Lakshmanan handed over his shop to one Veera. Due to which the appellant developed enmity with P.W.1.

3. In the said circumstances, on 12.07.2008, at about 08.00 p.m., when P.W.1 while doing his business, the present appellant requested the P.W.1 for coming to his office which was situated near to the shop, run by the p.W.1. After entering into the office run by the appellant, a few persons present inside the office and attacked the P.W.1 for which P.W.1 made noise. Thereafter, with the help of the neighbour, P.W.1 came from the office and subsequently, the appellant made a life threat and left from the occurrence place through car. Thereafter, the appellant contacted him through telephone. Because of life threat made through the telephone, P.W.1 decided to lodge a complaint before Valasaravakkam Police Station, for which he went over to the police station and lodged a complaint. At that time, the present appellant called the P.W.1 and uttered a abusive words towards P.W.1 Immediately, P.W.1 handed over the mobile phone to the Inspector of Police, Valasaravakkam, without knowing the fact, the appellant again spoke the abusive words. Thereby, Inspector of Police informed the appellant that he is the Inspector of Police and further instructed the accused to appear before the police within half an hour. Subsequent to the above events, P.W.1 came from police station at about 12.00 hours in the mid night. After receiving the complaint from P.W.1, P.W.8 Mohan the then Inspector of police, valasaravakkam, registered a case in Crime No.860/2008 for the offences punishable under Sections 323, 436 and 506(2) IPC. Ex.P.5 is the First Information Report.

4. Thereafter, he went to the occurrence place and prepared the Observation Mahazar and Rough Sketch in the presence of P.W.5 Suresh and one Manikandan. Observation Mahazar and rough sketch prepared by the said inspector are marked as Ex.P2 and Ex.P6. Respectively, in the presence of the same



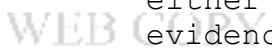
witness, the properties which was marked as M.O.1 and M.O.2 are recovered under Ex.P3 mahazar by him. Thereafter, P.W.9 took the investigation and recorded the statement from the witnesses. Further, he altered the Section of law as 352, 506(2) IPC and sent the alteration report Ex.P7 to the Court. Further, he took photograph under Ex.P3. After completing the investigation, he laid a charge sheet for the said offence.

5. Based on the above materials, the trial Court framed the charges as indicated in the first paragraph of this judgment, for which, the accused denied the same. In order to, prove the case of the prosecution as many as 9 witnesses were examined and 7 documents were marked as Ex.P1 to Ex.P7, besides 3 material objects.

6. Out of the said witnesses P.W.1 is the defacto complainant in this case, he has stated that, he is doing a vegetable selling business in Alwar Thirunagar. He avail a loan of Rs.20.000/- from one Siva and hand it over the same to one Lakshmanan, who is running a coconut business near to his shop. He has further stated that, at the time of demanding the said Lakshmanan for repaying the said due, the said Lakshmanan told to him, at the time of handing over the shop to one Veera, he paid the loan amount, in turn the replay given by the Lakshmanan was intimated to the Siva. Consequentially, due to the said dispute on 12.07.2008 at about 08.00 p.m., the present accused came to his shop and invited to his office, responding to the request made by the accused P.W.1 went to the office run by the accused, wherein five unknown persons gathered and resultantly the accused assaulted him. He has further stated when he was lodged a complaint before Valasaravakkam Police station. The accused called the P.W.1 through the mobile phone and abused by saying the filthy language. So, P.W.1 handed over the mobile phone to the Inspector of Police and thereafter, the Inspector of Police instructed the accused to appear before the Police Station. Within a half an hour but without obeying the direction given by the Inspector, again the accused threatened the P.W.1. Subsequently, at the time when he was returning from the police station, along with P.W.2 to P.W.4, the present accused set the fire on his shop, on seeing the same P.W.1, raised alarm and thereafter the accused ran away from the scene of occurrence. Subsequently, P.W.1 lodged a complaint before the Police Officers.

7. P.W.2 Pethukani has also the vegetable vendor running his shop near to the shop of P.W.1, he has stated that at the time of occurrence, when he was returned from the police station along with P.W.1, P.W.3 and P.W.4. The present accused set the fire on the shop of the P.W.1.

8. P.W.3 Pethuraj is the witness to the occurrence has



16. The submissions made by the counsel appearing on either side are considered. First of all, on go through the evidence given by P.W.1 to P.W.3 it is an admitted fact that both of them are relatives. However, on go through the judgment of our Honourable Apex Court reported in 2002 4 scc page no.76 the testimony of the interested witness cannot be thrown away only for the purpose, they are all relative to the victims. Accordingly, as per the principle laid by our Honourable Apex Court. It is not necessary to discard the entire evidence of P.W.1 to P.W.3.

18. More over, P.W.2 and P.W.3 has stated that, at the time of occurrence, they are having the mobile phone. But they have not taken any steps to inform the occurrence to the fire service station. In the said circumstances, enabling this Court if really, P.W.2 and P.W.3 is in the place of occurrence, definitely they would inform the occurrence to the fire service, in order to avoid the subsequent consequences, so the attitude committed by P.W.2 and P.W.3 is create a doubt, whether they are present in the occurrence place or not.

20. As already discussed only the awning, which was situated near to the shop of P.W.1, was damaged during the time of occurrence. Further P.W.1 run a business of selling vegetables. In the said circumstances, it is necessary to see the photographs of the damaged articles. In the trial Court, the



photographs which have been taken in the occurrence place, was marked as M.O.3. Now, on go through the photographs, the evidence given by P.W.1 is true, but at the same time, the value fixed for the damage is exorbitant one.

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21. Thereby, the evidence put forth on the side of the prosecution to prove their case, create a doubt, whether the occurrence had happened as per the case of prosecution or not. The exaggerated evidence given by P.W.1 to P.W.3., are not cogent and convincing one for accepting the case of prosecution. The trial Court, without considering the said aspect, convicted the accused. Accordingly, interference is necessary in the judgment rendered by the trial Court.

22. So, I am of the considered view, the prosecution approached this Court without clean hands, and accordingly the conviction and sentence imposed upon the accused are liable to be set aside.

23. In the result, the criminal appeal is allowed and the conviction and sentence imposed on the appellant in S.C.No.109/2010 dated 30.10.2010 by the learned Additional Sessions Judge (Fast Track Court - 1), Poonamallee is set aside and the appellant/accused are acquitted of the charges. The bail bond, if any, executed by the appellant/accused shall stand canceled. The fine amount, if any, paid by appellant/accused shall be refunded to him.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

at / sbn

To

- 1.The Additional Sessions Judge (FTC-1),
Poonamallee.
2. The Judicial Magistrate No.I,Poonamallee.
3. The Chief Judicial Magistrate, Tiruvallur (for Information)



4. The Inspector of Police, L&O,
R-9, Valasarawalkkam Police Station,

5. The Public Prosecutor, High Court, Madras.

Crl.A.No. 716 of 2010

RR(CO)
GMV(07/01/2019)