



Bail Slip

The appellant herein/Accused viz., Thiagu @ Thiagarajan, S/o.Baskar, was directed to be released on bail as per order of this Court dated 25.07.2012 made in Crl.MP.No.1 of 2012, in Crl.A.No.283 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2018

CORAM

THE HON'BLE MR.JUSTICE R. PONGIAPPAN

Criminal Appeal No.283 of 2012

Thiagu @ Thiagarajan

... Appellant/accused

Vs.

The Inspector of Police
P-1, Pulianthope Police Station,
Chennai,
(Crime No.515 of 2010).

...Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, against order of conviction and sentence dated 04.01.2012 made in S.C.No.252 of 2011 by the learned Additional District and Sessions Judge [Fast Track Court - II], Chennai-1.

For Appellant : Mrs.T.R.S.Mouli Devi
Legal Aid Counsel

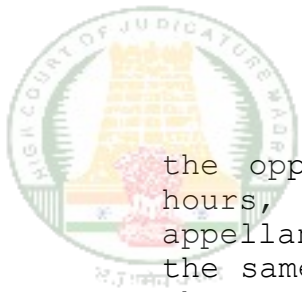
For Respondent : Mrs.T.P.Savitha
Government Advocate (Crl. Side)

J U D G M E N T

The sole accused in SC No. 252 of 2011 on the file of the Additional District and Sessions Judge (FTC II), Chennai is the appellant herein. He stood charged for the offences under Sections 294(b) and 307 IPC. By a Judgment dated 04.01.2012, the trial court convicted the appellant and sentenced to undergo 5 years of simple imprisonment and to pay a fine of Rs.2,000/- in default to undergo simple imprisonment for 3 months under section 326 IPC. Now challenging the above conviction and sentence, the appellant is before this Court with this appeal.

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

PW 1 Latha and PW 2 Raja are the parents of PW 3 Ramya. All are residing in Thiru.V.K. Nagar, Pulianthoppu, Chennai. The appellant Thiagu @ Thiagarajan is residing in



the opposite house of PW 1. On 20.06.2010, at about 9.50 hours, when the son of PW 1 was playing with the son of the appellant, there was a confrontation between the children and the same was questioned by the appellant. In pursuant of that, the accused made wordy altercation with PW 1 and thereafter, by using the knife stabbed on PW1's abdomen with an intention to kill her. After that, she has been admitted in the Hospital by her husband Raja and her daughter Ramya. In the Hospital, on receipt of information PW 10 Manoharan, the then Sub Inspector of Police attached to Pulianthoppu Police Station came and recorded the statement of PW 1 under exhibit Ex.P.1. Thereafter, he registered a case in Cr.No.515 of 2010 under Section 307 of IPC. Ex.P.7 is the printed First Information Report. After registration of the case, he handed over the copy of the First Information Report to PW 10 for investigation.

3. PW 10 Manoharan, the then Inspector of Police, on receipt of the First Information Report went over to the place of occurrence and in the presence of PW 7 Hussain and one Rajkumar, he prepared an Observation Mahazar and Rough Sketch under Ex.P.4 and Ex.P.8 respectively. He has examined the injured in the Hospital at about 14.50 hours, and he recovered the M.O.2 nighty from the injured under Ex.P.3 Seizure Mahazar. He examined the witnesses and recorded their statements.

4. On 20.06.2010, near slauttering house, Pulianthoppu at about 15.30 hours, he arrested the accused and examined in the presence of PW 4 Kumar and one Pasupathi. During the time of examination, the accused gave a voluntary confession statement, in which he admitted the guilt and willing to hand over the knife which was used for the commission of offence. Pursuant to the confession, PW 10 recovered M.O.1 knife through the Mahazar Ex.P.2. Thereafter, he made arrangements for sending the accused to judicial custody.

5. In the meantime, PW 8 Dr. Venkatesan attached with Stanley Medical College Hospital, on 20.06.2010 at about 10.10 am, examined the PW 1 and found the following injuries.

- Cut injury in the middle of the abdomen below the navel measuring 4 x 3 x 5 cm
- 4 x 2 x 1 cm dissected injury on the left hand wrist.

After giving the first aid, PW 8 admitted the injured as inpatient. Ex.P.5 is the Accident Register Copy issued by him. PW 9 Dr. Abraham Jebakumar has also examined PW 1 and found the same injury stated by PW 8. According to him, the injury no.1 is grievous in nature and 2nd injury is simple in nature. In this regard, he issued a Wound Certificate under Ex.P.6.

6. In continuance of the investigation, PW 10 examined the doctors and collected the AR copy and Wound



Certificate. On completion of investigation, he came to the positive conclusion that the accused committed the offences under Sections 294 (b), 307 IPC and filed a Final Report.

7. Based on the above materials, the trial Court framed the charges as detailed in the 1st para of this Judgment and the accused denied the same. In order to prove this case, the prosecution examined as many as 10 witnesses, exhibited 7 documents and marked 2 material objects.

8. Out of the said witnesses, PW 1 has stated that on 20.06.2010 at about 9.30 am, when her son was playing with the son of the appellant, there was a confrontation between the children and the same was questioned by her husband, due to which quarrel has been arose with the wife of the accused. Enraged over the said occurrence, the accused came with knife and attacked on her abdominal area and near the left wrist. Consequentially, the husband of PW 1 and her daughter admitted the PW 1 in the Hospital.

9. PW 2 Raja, who is the husband of PW 1, who also an eye witness to the occurrence has stated that, on 20.06.2010, when his son was played with the son of the accused, there was a quarrel arose between the PW 1 and the wife of the accused. He has further stated at that time of occurrence, the accused came with the knife and assaulted the PW 1 on her abdominal area and near to the wrist.

10. PW 3 Ramya has also stated about the assault made by the accused. PW 4 Kumar is residing in Thantankuzhal Zoolai. According to him, on 20.06.2010, when he was in the occurrence place, Investigation officer in this case arrested the accused and recorded the confession statement given by the accused. Pursuant to the confession, he recovered the knife under the cover of Mahazar.

11. PW 5 is the resident of Thiru.V.Ka. Nagar. He has stated on the same day of occurrence at about 2.30 pm, the Investigation Officer came to the Stanley Hospital and recovered the nighty from PW 1.

12. PW 6 is doing a Real Estate business, he has stated in the trial Court that on the day of occurrence at about 10.00 am, when he was in a way to his friend's house, through the occurrence place, he saw the occurrence, he has stated further during that time, the accused stabbed the PW 1 and thereafter he ran away from the scene of occurrence after taking the knife. Subsequent to the occurrence, he is helped the PW 2 for admitting the PW 1 in the Hospital.

13. PW 7 Hussain is the resident of Pulianthope. According to him, the Investigating Officer in this case



prepared an Observation Mahazar in the occurrence place.

14. PW 8 and PW 9 are the doctors working in the Stanley Medical College Hospital. They have stated about the details of injuries sustained by PW 1 and about the issuance of AR copy and Wound Certificate.

15. PW 10 is the Inspector of Police, Thiruvottriyur has stated about the details of Investigation and filing of Final Report.

16. The learned trial Judge, with reference to the incriminating evidence adduced by the prosecution, questioned the accused under section 313 Cr.P.C. and for which, he denied the same as false. On the side of the defence, one Rekha, who is the wife of the accused was examined as DW 1. She has stated in the year of 2004, her husband (accused) was admitted in the Chennai Government Hospital for a period of 25 days for taking treatment to the injury sustained on his head. Further, she deposed that Ex.D.1 is the document related to the details of the treatment given to the appellant. According to DW 1, the accused is suffered from mental instability.

17. After considering all the materials available on record, the trial Court convicted the appellant and sentenced him as stated above. Challenging the above said conviction and sentence, the accused is now before this court through the present criminal appeal.

18. I have heard the arguments advanced by either side and perused the records carefully.

19. The first and foremost contention raised by the learned counsel appearing for the appellant is, as per the evidence given by the DW1, who is the wife of the appellant, he has suffering from some mental illness. In this regard, the particulars of treatment given to the appellant have been marked as Ex.D1. She further submitted that since offence was committed by lunatic person, conviction of the appellant is not justifiable. Accordingly, the learned counsel sought for allowing this appeal.

20. In the said circumstances, in the trial court itself the appellant is took a plea that he is suffering from mental illness. In this aspect, it is necessary to see the judgment of our Hon'ble Apex Court in CrI.A.No.814 of 2007 in a case of Devidas Loka Rathod v. State of Maharashtra it was decided as follows:

"10. The law undoubtedly presumes that every person committing an offence is sane and liable for his acts, though in specified circumstances it may be rebuttable. The doctrine of burden of proof in the context of the plea of insanity was stated as follows in Dahyabhai Chhaganbhai Thakkar v. State of



Gujarat [Dahyabhai Chhaganbhai Thakkar v. State of Gujarat, (1964) 7 SCR 361 : AIR 1964 SC 1563 : (1964) 2 Cri LJ 472] : (AIR p. 1568, para 7)

"(1) The prosecution must prove beyond reasonable doubt that the accused had committed the offence with the requisite mens rea, and the burden of proving that always rests on the prosecution from the beginning to the end of the trial.

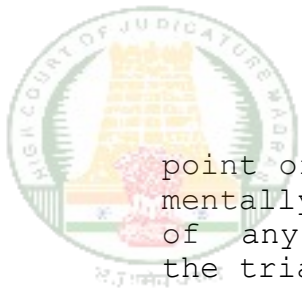
(2) There is a rebuttable presumption that the accused was not insane, when he committed the crime, in the sense laid down by Section 84 of the Penal Code: the accused may rebut it by placing before the court all the relevant evidence, oral, documentary or circumstantial, but the burden of proof upon him is no higher than that rests upon a party to civil proceedings.

(3) Even if the accused was not able to establish conclusively that he was insane at the time he committed the offence, the evidence placed before the court by the accused or by the prosecution may raise a reasonable doubt in the mind of the court as regards one or more of the ingredients of the offence, including mens rea of the accused and in that case the court would be entitled to acquit the accused on the ground that the general burden of proof resting on the prosecution was not discharged."

Now according to the principle laid down by our Hon'ble Apex Court it is necessary for the accused to place a probable evidence in order to prove his contentions.

21. Now, on going through the judgment rendered by the trial court, it appears that the learned Additional District and Sessions Judge [Fast Track Court - II], Chennai, found that the medical certificate (Ex.D1) is not having any seal and the name of the doctor. So, the reliability of the said document Ex.D1 is a questionable one. Accordingly, the evidence adduced on the side of defence/accused is not acceptable.

22. Having regard to this contention, further it is seen from the records that at the initial stage, when the appellant was appeared before the learned Magistrate, there was neither a petition nor any representation made to the Magistrate stating that the appellant was a mentally ill person. Further, in the trial court, procedure to be adopted in respect to the mentally ill-person stated in Chapter-XXV of Criminal Procedure Code has not been followed to find out whether the appellant is a lunatic person or not. If really, the contention raised is a bonafide one, it is the duty of the appellant to file an application before the Magistrate in regard thereto. So, without taking any steps at the earliest



point of time, making a submission now that the appellant is a mentally ill-person will not serve any purpose in the absence of any acceptable material. So, the conclusion arrived at by the trial court in this regard is found to be correct.

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23. As far as the submission made by the learned counsel appearing on behalf of the appellant is concerned, the eye witnesses are all close relatives of the appellant and therefore, their testimony is not at all having any worth and reliability to decide the case of the prosecution. It is true in the trial Court, except the examination of wife and daughter as PW1 and PW3, no independent witnesses have been examined on the side of the prosecution to prove their case. However, PW6 [Elangovan] has stated in his evidence that during the time of occurrence, at the time of seeing the victim, he saw the appellant also as he was running away from the scene of crime. Further, he stated that except PW2 and PW3, no one has been present during the occurrence. Therefore, his evidence clearly establishes that at the time of occurrence, except PW2 and PW3, nobody was present at the scene of crime.

24. Though other independent witnesses were not present, at the scene of crime, the non-examination of the independent witnesses is not fatal to the prosecution, in this context, reliance is placed on the judgment in *Hukam Singh and Others v. State of Rajasthan*, (2000) 7 SCC 490) where the Hon'ble Apex Court in para 7 held as follows:

"The trial court erred in refusing to believe the testimony of the close relatives of the deceased by dubbing them as "interested witnesses". They cannot be termed as interested witnesses. If they had seen the occurrence they would certainly have an interest in bringing the offenders of the murder of their breadwinner to book. Normally the kith and kin of the deceased, if they had seen the occurrence would not absolve the real offenders and involve innocent persons in that murder."

25. So, according to the principles laid down in the judgment, the non examination of the independent witnesses is no way fatal to the case of the prosecution. Accordingly, the said submission made by the learned counsel appearing for the appellant is also rejected.

26. Now, on go through the entire evidence let in by the prosecution, the evidences given by the PW 1/injured was proved through the evidence of PW 2, PW 3 and PW 6. As per their evidence, except those persons, nobody was present in the occurrence place. So non-examination of independent witnesses does not arise in this case. Moreover, according to the evidence given by the doctors, the injured sustained 2



injuries, one in abdominal area another one in her hand. The said injuries are nothing but corresponding to the evidence given by the eyewitnesses. Accordingly, the evidence given by the medical Officer also supported the evidence given by PW 1. Per contra, no other materials is placed on the side of the accused. So this Court affirms the findings arrived by the trial Court. Accordingly, in my opinion, the accused committed the offence under Section 326 IPC.

27. Now, coming to the point of punishment, the Lower Court has awarded five years simple imprisonment under section 326 IPC. On going through the circumstances in which the alleged occurrence is said to have happened is essential to fix the appropriate punishment. According to the evidence put forth by PW1 to PW3, before the occurrence, the son of PW1 and the son of appellant quarrelled with each other. While questioning the same, a dispute have arised and the appellant had committed the offence. Moreover, the appellant is a neighbour of PW1. Therefore, this Court is of the considered view, that five years of simple imprisonment is excessive and accordingly, the same is reduced to three years of simple imprisonment.

28. In the light of the above discussion, this Criminal Appeal is allowed in part and considering the nature of injury, which was inflicted without any prior enmity or premeditation, the accused is sentenced to undergo simple imprisonment for a period of three years for the offence under Section 326 IPC.

29. In the result, this Criminal Appeal is partly allowed, the conviction and sentence imposed upon the appellant by the learned Additional District and Sessions Judge [Fast Track Court-II], Chennai, in S.C.No.252 of 2011, dated 04.01.2012 is modified as indicated above.

30. The trial Court is directed to take steps to secure the accused and made arrangements for sending him to the prison for serving the remaining period of sentence. Further ordered to set off the period already undergone by the accused/appellant under section 428 of Cr.P.C

31. While parting with the case, I appreciate the services rendered by Mrs.T.R.S.Mouli Devi, the learned counsel, who appeared on behalf of the appellant as Legal Aid Counsel. The High Court Legal Services Authority is directed to pay necessary remuneration.

msm

Sd/-
Assistant Registrar

//True Copy//



To

1. The Additional District and
Sessions Judge/Fast Track Court - II,
Chennai-I.

2. The Inspector of Police
P-1, Pulianthope Police Station,
Chennai, (Crime No.515 of 2010).

3. The Xth Metropolitan Magistrate,
Egmore, Chennai

4. The Chief Metropolitan Magistrate,
Egmore, Chennai (for information)

5. The Superintendent,
Central Prison, Puzhal, Chennai.

6. The Secretary,
Legal Service Authority,
High Court, Madras.

7. The Public Prosecutor,
High Court of Madras, Chennai.

+1cc to Mrs.T.R.S.Mouli Devi, Advocate SR.NO.46695

Crl.A.No. 283 of 2012

MR(CO)
GN(23/10/2018)