

BAIL SLIP

The Appellant/Accused viz, M.Tamilvanan aged about 31 years S/o. Murugesan was directed to be released on bail as per order of this court dated 04/07/2012 in MP.No.1/12 in CrI.A.No.352/12

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 04.04.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.KALAIYARASAN
Criminal Appeal No.352 of 2012

M.Tamilvanan Appellant/accused

Vs

State rep. by
Inspector of Police,
Kunnam Police Station,
Kunnam, Perambalur District. Respondent /Complainant

Criminal Appeal filed under Section 374[2] of Cr.P.C. to set aside the judgment dated 19.03.2012 passed in S.C.No.114 of 2007 on the file of the Additional District and Sessions Judge, Fast Track Court, Ariyalur.

For Appellant : Mr.G.K.Ilanthiraiyan
for M/s.Sai Bharath Ilan
For Respondent : Ms.M.Prabhavathi Ganeshram,
Addl. Public Prosecutor

J U D G M E N T

This criminal appeal has been filed against the judgment of the Additional District and Sessions Court, [Fast Track Court], Ariyalur dated 19.03.2012, in S.C.No.114 of 2007, convicting and sentencing the accused to undergo RI for 5 years and to pay a fine of Rs.5,000/-, in default to undergo RI for 1 year for the offence under Section 307 of IPC.

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

The accused Tamilvanan and the victim-P.W.2 Boopathi @ Poovarasan, both had illicit intimacy with one Devi, who is the wife of one Ramesh. Both had enmity with each other, due to intimacy with a common lady and due to that enmity, when the victim-P.W.2 was in slumber, near Pachaiaamman Temple entrance, on 09.05.2006, the accused went with bill-hook at 01.30 a.m. and indiscriminately cut the victim with the said weapon, on his head, cheek, right ear and caused grievous injuries and thus, he attempted to murder the victim. He was

taken to the hospital. On the complaint given by the brother of the victim P.W.1-Viswanathan, a case was registered. The Investigating Officer went to the scene of crime and prepared Observation Mahazar. He arrested the accused on 17.05.2006. Pursuant to the confession statement volunteered by the accused, the Investigating Officer recovered the bill-hook through the accused. The case properties were sent for chemical analysis and after examining the witnesses, the Investigating Officer laid charge sheet and the trial Court, after following the procedure, analysed the evidence and convicted the accused as aforesaid.

3.Learned counsel for the appellant mainly raised the following points:

- i. There is absolutely no evidence as to the motive.
- ii. Though the victim was immediately taken to the Government Hospital, Tittagudi and then to the Government Head Quarters Hospital at Cuddalore, Accident Register copies of the concerned two hospitals have been suppressed and the Doctor, who saw the victim at the first instance after the incident and gave first aid, has not been examined.
- iii. The victim, who is the district leader of a political party has been attacked during night hours and he himself stated before the Doctor, who examined him in the Government Hospital at Chennai that three persons attacked him and therefore, the prosecution has not proved its case beyond all reasonable doubt.

4.Learned Additional Public Prosecutor inter alia argued that the trial Court, after analysing the available evidence, has rightly convicted the accused and the same does not warrant any interference.

5.The undisputed facts are that when P.W.2 was in slumber on 09.10.2006 night in an open place near Pachaiaamman Temple entrance, he was attacked at 01.30 a.m. Immediately, he was taken to the Government Hospital, Tittagudi and first aid was given by one Dr. Ilamaran and then, he was referred to Government Headquarters Hospital, Cuddalore. From there, he was taken to Madras Medical College Hospital, Chennai. Due to the attack during night hours, P.W.2 sustained injuries over head and face.

6.The specific case of the prosecution is that due to previous enmity between the accused and P.W.2, the accused attacked P.W.2 with bill-hook at 01.30 a.m. on 10.05.2006. As rightly pointed out by the learned counsel for the appellant, there is absolutely no iota of evidence as to the motive. The prosecution examined P.W.1 to P.W.6 as occurrence witnesses. Among these witnesses, P.W.2-injured has deposed about the

occurrence. Other witnesses P.W.s 1 and 3 to 6 have not spoken about the occurrence.

7.This Court has to analyse whether the evidence of P.W.2-injured is convincing and acceptable, so as to bring home the guilt of the accused. No doubt, P.W.2 says in his evidence that the accused attacked him with bill-hook. The occurrence took place at 01.30 a.m. i.e. during midnight, when P.W.2 was in slumber. There is no evidence as to the availability of street light or any light in and around the scene of crime. Further, P.W.2 himself says before the Doctor-P.W.11, who treated him in Madras Medical College Hospital, Chennai that he was attacked by three persons at 1.30 a.m.

8.It is also pertinent to note that though the victim was immediately taken to the Government Hospital, Tittagudi and then referred to Government Headquarters Hospital, Cuddalore, Accident Register copies of the concerned hospitals, have not been filed and Dr.Ilamaran, who saw and treated the victim at the first instance, has not been examined. Suppression of the above important documents and non examination of Doctor, coupled with discrepancy as to the number of assailants do not inspire confidence to base conviction on the basis of evidence of P.W.2. The above factors and non availability of evidence as to the motive, create reasonable doubt about the prosecution case. The accused is entitled to the benefit of doubt and therefore, this Court holds that the accused is not found guilty for the offence under Section 307 of IPC. The trial Court is not correct in convicting the accused.

9.In the result, this Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/accused by the learned Additional District and Sessions Judge [Fast Track Court], Ariyalur, dated 19.03.2012, in S.C.No.114 of 2007, is set aside and the appellant/accused is acquitted from the charges. The fine amount, if any paid, shall be refunded to him. The bail bond, if any, executed by the appellant/accused, shall stand cancelled.

Sd/-
Assistant Registrar(CS VIII)
//True Copy//
Sub Assistant Registrar

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To

1.The Judicial Magistrate Perambalur

2.do-Thro The Chief Judicial Magistrate,
Perambalur

3.The Additional District and Sessions Court,
Fast Track Court, Ariyalur.

4.The Superintendent Central Prison
Trichy

5.The Inspector of Police
Kunnam Police Station
Kunnam Perambalur District

+1 cc to M/s.Sai Bharath & Ilan Advocate sr 25242

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