

BAIL SLIP

The Appellant/Accused Parthasarathy S/o.Gopalsamy, enlarged on bail in Crl.MP.No. 1 of 2012 in Crl.A.No.673/2012 dated 12/10/2012 by this Honourable Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.07.2018

PRONOUNCED ON : 27.07.2018

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.A.No.673 of 2012

Parthasarathy ... Appellant

Vs

The State,
Rep. by the Inspector of Police,
Vanoor Police Station,
Villupuram District.
(Crime No.42 of 2011) ... Respondent

Prayer : Criminal Appeal filed under Sections 374 (2) of Criminal Procedure Code, to set aside the conviction judgment dated 28.09.2012 made in S.C.No.8 of 2012 passed by the learned II Additional District and Sessions Judge, Tindivanam.

For Appellant : Mr.K.Selvakumaraswami

For Respondents : Mr.R.Ravichandran,
Government Advocate (Crl.Side)

J U D G M E N T

This appeal is arising out of the judgment dated 28.09.2012 made in S.C.No.8 of 2012 on the file of the learned II Additional District and Sessions Judge, Tindivanam, thereby convicting the appellant/accused for the offence under Section 324 of IPC and sentencing him to undergo Rigorous Imprisonment for three months and to pay a fine of Rs.5,000/- in default of payment of fine to undergo Simple Imprisonment for one month.

2. The case of the prosecution is that on 30.03.2011 at about 8.00 p.m. P.W.1, P.W.2 and P.W.3 along their relatives were watching television inside of their house. While so, they heard a noise from outside their house and they came out. They

saw A1 to A3 standing in front of their house, questioning about the quarrel between their family members. On such quarrel, the second accused attacked P.W.2, P.W.1 and P.W.3 using his hands and legs. The second accused assaulted P.W.1 with his hands and the first accused attacked P.W.1 on his head by stick. Immediately, P.W.1, the complainant was taken to Jipmer Hospital, Puducherry. The Doctor, P.W.5, noted the injuries and issued wound certificate on the same day. The Sub Inspector of Police recorded the statement of P.W.1 and registered the same in Crime No.42 of 2011 for the offences under Sections 341, 323 and 307 of IPC as against A1 to A3. The Inspector of Police P.W.6 took up the investigation and proceeded with the interrogation of witnesses and filed charge sheet for the above said offences against A1 to A3. The accused denied the same and claimed the trial.

3. The prosecution examined the witnesses P.W.1 to P.W.6 and marked Exs.P1 to P8 and produced M.O.1. On questioning under Section 313 of Cr.P.C, all the accused denied all the incriminating evidence against them and pleaded innocence and false implication in the crime in question ; on completion of trial, the Trial Court acquitted the accused 2 and 3 and convicted the appellant/A1 alone for the offence under Section 324 of IPC and sentenced as stated above as against which the present appeal.

4.The learned counsel for the appellant submitted that all the accused A1 to A3 are standing in the same footing and when the accused 2 and 3 got acquitted, the said benefit should also be extended to the appellant herein. Further, he would contend that there was a delay in filing complaint and the prosecution failed to examine any independent witness to prove the case. There is a major contradiction between the evidence of P.W.3 and P.W.4, in respect of overt act against the accused. Further, he would contend that the Accident Register Ex.P4 being the earliest document would show that P.W.1 to P.W.3 were attacked by 5 persons known to them. Whereas, in the complaint-Ex.P1, P.W.1 has stated that only three persons attacked them. Therefore, the prosecution failed to prove the case beyond any doubt. Further, contended that in respect of recovery of M.O.1, there is a material contradiction between the prosecution witness. Therefore, the conviction imposed upon the appellant is liable to be set aside and prayed for acquittal of the appellant.

5. On the other hand, Mr.R.Ravichandran, learned Government Advocate (Crl.Side) appearing for the respondent submitted that the prosecution has proved its case beyond all reasonable doubt. The offence under Section 324 of IPC is made out through the prosecution evidence. Under these circumstances, this is not a

fit case for acquittal, hence, prayed for dismissal of the appeal.

6. Heard the arguments advanced by Mr.K.Selvakumaraswami, learned counsel appearing for the appellant and Mr.R.Ravichandran, learned Government Advocate (Criminal Side) appearing for the State and perused the materials available on record.

7. P.W.1 has deposed that on 30.03.2011, while he was watching television with his family members had heard the sound from outside of their house and all of them came out. While being so, P.W.1, P.W.2 and P.W.3 were attacked by the accused persons in particular the appellant assaulted P.W.1 with M.O.1 on his head. P.W.2 and P.W.3 have deposed and corroborated the evidence of P.W.1, in respect of assault committed by the appellant. The Doctor, P.W.5 examined P.W.1 to P.W.3 and issued wound certificate Ex.P4 and the case sheet marked as Ex.P5. Further, he opined that the injury sustained by P.W.1 is grievous in nature. Therefore, the medical evidence also corroborated the ocular testimony. The Doctor- P.W.5 has examined P.W.1 and the C.T.Scan had taken and found that a blood clot on the parietal area of the brain was seen. It is a grievous injury. Hence, this injury can be concluded that the appellant has committed an offence under Section 324 of IPC for causing injury to P.W.1.

8. The learned counsel appearing for the appellant submitted that there is a delay in preferring F.I.R and that creates suspicion in the occurrence. The delay in F.I.R. alone cannot form basis for acquittal. It could be seen as to whether any prejudice is caused to the accused. Further, the accused has to offer explanation for the prejudice caused to him, out of the delay in registering the F.I.R. The statement of P.W.1 was recorded by the Sub Inspector of Police and immediately he went to the police station and registered the F.I.R. Therefore, there is no delay in registering the F.I.R. and even if it is treated as delay it has not caused any prejudice to the accused. In respect of the contradiction between the witnesses in recovery of M.O.1 stick, normally, recovery of weapon would be made to find out if any blood stain are found on the weapon and it should be deducted and compared with that of the injured. Otherwise, recovery would be of no use to the prosecution. Even otherwise, if weapon is not recovered, that cannot be a ground or the basis for an acquittal. Therefore, non sending of M.O.1 to the Chemical Analysis has not affected the case of prosecution in any way.

9. Considering the evidence of prosecution and defence and on close scrutiny, it is found that the appellant was an assailant who used M.O.1 to assault P.W.1, thereby, causing injuries to him, which is supported by medical evidence and

hence the offence under Section 324 of IPC is clearly made out and there is no illegality and infirmity in the impugned judgment of the Trial Court. The conviction under this offence needs no interference in this appeal.

10. In respect of the sentence is concerned, considering the facts and circumstances, the sentence, imposed on the appellant is reduced to the period already undergone. Further, in addition to fine, the appellant is directed to pay compensation of Rs.10,000/- (Rupees Ten thousand only) to the victim P.W.1 on or before 10.09.2018 and report compliance before the Trial Court, failing which the sentence imposed by Trial Court will be restored.

11. With the above directions, this Criminal Appeal is partly allowed .

Sd/-
Assistant Registrar (CS VIII)

//True copy//

Sub Assistant Registrar

LPP

To

1. The II Additional District and Sessions Judge,
Tindivanam.
2. The Chief Judicial Magistrate,
Villupuram (For Information)
3. The Judicial Magistrate,
Vauoor.
4. The Inspector of Police,
Vanoor Police Station,
Villupuram District.
5. The Public Prosecutor,
High Court, Madras.

CRL.A.No.673 of 2012

SVN(CO)
GN(11/08/2018)